

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

<hr/>)	
In re:)	
ACR MANAGEMENT, L.L.C., <i>et al.</i> , ¹)	Chapter 11
)	Case No. 04-27848-MBM
Debtors.)	(Jointly Administered)
)	
<hr/>)	Hearing Date and Time: August 30,
ACR MANAGEMENT, L.L.C., <i>et al.</i> ,)	2005, at 3:00 p.m. (requested)
)	
Movants,)	Objection Deadline: August 23, 2005
)	(requested)
v.)	
)	
CENTRAL STATES SOUTHEAST &)	Docket No.:_____
SOUTHWEST AREAS PENSION FUND,)	Related Docket Nos.:_____
and CENTRAL STATES, SOUTHEAST)	
AND SOUTHWEST AREAS HEALTH)	
AND WELFARE FUND,)	
)	
Respondents.		
<hr/>		

**DEBTORS' OBJECTIONS TO PROOFS OF
CLAIM #758 AND #759 FILED BY CENTRAL STATES SOUTHEAST &
SOUTHWEST AREAS HEALTH AND WELFARE FUND AND CENTRAL STATES
SOUTHEAST & SOUTHWEST AREAS PENSION FUND, RESPECTIVELY**

The above-captioned debtors and debtors-in-possession (collectively, the "Reorganized Debtors" or the "Debtors") hereby file this specific objection (the "Objection") to the proofs of claim nos. 758 and 759 filed by Central States Southeast & Southwest Areas Health & Welfare Fund (the "Health & Welfare Fund") and Central States Southeast & Southwest Pension Fund, respectively (the "Pension Fund," together with the Health & Welfare Fund, "Central States") in

¹

The Debtors are the following entities: ACR Management, L.L.C., Anthony Crane Rental Holdings, L.P., ACR/Dunn Acquisition, Inc., Anthony Crane Capital Corporation, Anthony Crane Holdings Capital Corporation, Anthony Crane International, L.P., Anthony Crane Sales & Leasing, L.P., Anthony International Equipment Services Corporation, Anthony Sales & Leasing Corporation, Carlisle Equipment Group, L.P., Carlisle GP, L.L.C., Husky Crane, Inc., Anthony Crane Rental, L.P., d/b/a Maxim Crane Works, Maxim Crane Works, LLC, Sacramento Valley Crane Service, Inc., The Crane & Rigging Company, LLC, Thompson & Rich Crane Service, Inc.

which Central States seeks allegedly unpaid contributions claims against both Debtors Carlisle Equipment Group, L.P., and Anthony Crane Rental, L.P., d/b/a Maxim Crane Works (“Maxim Crane Works”). In support of this Objection, the Debtors respectfully state as follows:

JURISDICTION AND STATUTORY PREDICATE

1. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(A) and (B). Venue of this proceeding and this Objection is properly in this district pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory bases for the relief requested herein are sections 105(a) and 502(b) of the United States Bankruptcy Code, 11 U. S. C. §§101, *et seq.* (the “Bankruptcy Code”), and Rule 3007 of the Federal Rules of Bankruptcy Procedure.

2. This Court has jurisdiction over this Objection under 28 U.S.C. §1334 and Bankruptcy Code §502(b).

BACKGROUND

These Chapter 11 Cases; the Proofs of Claim

3. On June 14, 2004 (the “Petition Date”), each of the above-captioned Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code (these “Chapter 11 Cases”).

4. The last day for pre-petition unsecured creditors to assert a “claim” against the Maxim’s estate by filing a proof of claim with the Debtors’ claims and noticing agent was November 17, 2004.

5. On or about November 15, 2005, the Health & Welfare Fund filed a proof of claim, assigned Claim No. 758, in the amount of \$3,129,104.26 arising out of contributions that allegedly were not made by both Debtors Maxim Crane Works and/or Carlisle Equipment

Group, L.P. to the Health & Welfare Fund for the period of January 1, 1995 through and including June 12, 2004. A copy of Claim No. 758 is attached hereto as Exhibit 1.

6. In Claim No. 758, of the \$3,129,104.26, the Health & Welfare Fund asserts that \$148,340.76 is entitled to priority pursuant to 11 U.S.C. § 507(a)(4)².

7. On or about November 15, 2005, the Pension Fund, filed a second proof of claim, assigned Claim No. 759, in the amount of \$1,815,726.15 arising out of contributions that allegedly were not made by both Debtors Maxim Crane Works and/or Carlisle Equipment Group, L.P. to the Pension Fund for the period January 1, 1995 through and including June 12, 2004 (Claim No. 759 together with Claim No. 758, the “Claims”).³ A copy of Claim No. 759 is attached hereto as Exhibit 2.

8. In Claim No. 758, of the \$1,815,726.15, the Pension Fund asserts that \$93,548.02 is entitled to priority pursuant to 11 U.S.C. § 507(a)(4).

9. On December 29, 2004, Maxim filed their third amended plan of reorganization (CM/ECF #1079, the “Plan”), and on December 30, 2004, this Court entered an Order confirming the Plan (CM/ECF#1094, the “Confirmation Order”). On January 28, 2005, the Plan became effective pursuant to its terms.

² Bankruptcy Code §§507(a)(4), in effect as of the Debtors’ Petition Date, provided in part as follows: (a) The following expenses and claims have priority in the following order: (4) Fourth, allowed unsecured claims for contributions to an employee benefit plan--(A) arising from services rendered within 180 days before the date of the filing of the petition or the date of the cessation of the debtor's business, whichever occurs first; but only (B) for each such plan, to the extent of--(i) the number of employees covered by each such plan multiplied by \$4,925; less (ii) the aggregate amount paid to such employees under paragraph (3) of this subsection, plus the aggregate amount paid by the estate on behalf of such employees to any other employee benefit plan. See 11 U.S.C. §507(a)(4).

³ The Pension Fund on or about October 22, 2004, also filed seventeen proofs of claim in these Chapter 11 Cases against the Debtors for contingent withdrawal liability (e.g. in the event the Debtors ceased to have an obligation to contribute to the Pension Fund). Such claims were assigned Claim Nos. 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702 (collectively, the “Withdrawal Liability Claims”) each in the amount of \$928,136.69. The Debtors and the Pension Fund have resolved the Withdrawal Liability Claims; this resolution is the subject matter of a stipulation, which has been filed with this Court.

10. On May 11, 2005, the Reorganized Debtors filed the Debtors' Tenth Objection to Proofs of Claim Pursuant to 11 U.S.C. §§ 105(A), 502(B) and Fed. R. Bankr. P. 3007 (the "Tenth Omnibus Objection," CM/ECF#1812), which the Debtors had not listed on their Schedules and which the Debtors dispute, including the Claims. A hearing on the Tenth Omnibus Objection was held on June 21, 2005, and was continued to August 9, 2005, as to the Claims filed by Central States.

11. In light of the filing of this specific Objection, the Parties have requested, or will request, that the August 9th, 2005 hearing on the Tenth Omnibus Objection, as to the Claims filed by Central States, be moved to August 30, 2005, with the response deadline to be August 23, 2005.

12. The dispute here between the Parties relates to the requisite contributions of the Debtors Maxim Crane Works and Carlisle Equipment Group, L.P. to both the Pension Fund and the Health & Welfare Fund and to these Debtors' adherence to the requirements imposed by certain collective bargaining agreements to which each of these Debtors was a party.

The Acquisition of Assets of Old Carlisle; The Collective Bargaining Agreement with Carlisle Equipment Group, L.P.

13. For all periods of time prior to July 1, 1999, Carlisle Construction Co., Inc., Carlisle Equipment, L.L.C., Carlisle Excavating, L.L.C., Greater Cincinnati Marine, L.L.C., and Morehead Marine, L.L.C. (collectively referred to as "Old Carlisle") were headquartered in Wilder, Kentucky, and operated as privately-owned entities, completely unrelated to any of the Reorganized Debtors.

14. Pursuant to a certain Asset Purchase Agreement ("APA"), effective July 1, 1999, one of the above-captioned Debtors Anthony Crane Rental, L.P. d/b/a Maxim Crane Works

(“Maxim”) created the following two special purpose entities in order to purchase Old Carlisle’s assets: (i) Carlisle GP, L.L.C. (a Delaware limited liability company, wholly-owned by Maxim, and one of the above-captioned Debtors); (ii) Carlisle Equipment Group, L.P. (a Delaware limited partnership, owned one percent (1%) by Carlisle GP, L.L.C. (the wholly-owned general partner) and ninety-nine percent (99%) directly by Maxim. A true and correct copy of the APA, dated June 30, 1999, is attached hereto as Exhibit 3.

15. From July 1, 1999, through December 31, 2000, Maxim Crane Works operated Carlisle Equipment Group, L.P. as a stand-alone business.

16. On May 22, 2000, Carlisle Equipment Group, L.P., entered into a collective bargaining agreement (the “Carlisle CBA”) with the Truck Drivers, Chauffeurs, and Helpers Local Union 100, an affiliate of the International Brotherhood of Teamsters (“Teamsters Union”). The Carlisle CBA became effective March 1, 2000, and expired on February 29, 2004. See Carlisle CBA, Article 36, p. 16. A copy of the Maxim CBA is attached hereto at Exhibit 4.

17. Pursuant to the Carlisle CBA, Carlisle Equipment Group, L.P., agreed to recognize the Teamsters’ Union as the exclusive bargaining agency for certain employees. See Carlisle CBA, Article 1, Section 1, p. 1. Central States will assert that Carlisle Equipment Group, L.P.’s covered employees include those who are engaged in a certain line of work⁴ in a specific geographical jurisdiction.⁵

18. For the life of the Agreement, the Carlisle CBA specifically obligated Carlisle Equipment Group, L.P., as an employer, to contribute certain enumerated amounts per week to

⁴ The term “employee” included all truck drivers and truck drivers’ helpers employed by the Employer (as defined by the CBA) directly, indirectly, or in any wholly owned or controlled subsidiary company of the Employer, who are engaged in construction work, coal hauling, demolition, excavating, hauling materials or machinery for construction or used in construction or demolition. See Carlisle CBA, Article 1, Section 2.

⁵ The geographical area included certain counties in Ohio and Kentucky. See Carlisle CBA, Article 2, Section 1.

the Health and Welfare Fund for each employee allegedly covered by the Carlisle CBA who has been on the payroll ninety (90) days or more. See Carlisle CBA, Article 18, p. 10.

19. Pursuant to the Carlisle CBA, Carlisle Equipment Group, L.P. was also obligated to contribute certain enumerated amounts per week to the Pension Fund for each employee allegedly covered by the Carlisle CBA. See Carlisle CBA, Article 19, p. 10.

20. Effective on January 1, 2001, the operating assets of Carlisle Equipment Group, L.P., were assigned to Maxim. Carlisle Equipment Group, L.P. became a direct division of Maxim, as opposed to a wholly owned subsidiary. As of the Petition Date, although Carlisle Equipment Group, L.P. has not been liquidated in a legal sense, it had no employees, assets, or business activity since December 31, 2000, and so for all practical purposes, was a defunct entity.⁶

Collective Bargaining Agreement with Maxim

21. On February 9, 2004, Maxim entered into a collective bargaining agreement (the “Maxim CBA”) with the Truck Drivers, Chauffeurs, and Helpers, Public Employees, Construction Division, Airlines-Greater Cincinnati, Ohio, Local Union 100, an affiliate of the Teamsters’ Union (the “Teamsters’ Union”). A copy of the Maxim CBA is attached hereto at Exhibit 5.

22. The Maxim CBA became effective on March 1, 2004, and expires in February 2007. See Maxim CBA, Article 36, p. 16.

23. Just as with the Carlisle CBA, Maxim agreed to recognize the Teamsters’ Union as the exclusive bargaining agency for certain Maxim employees. See Maxim CBA, Article 1,

⁶

Carlisle Equipment Group, L.P. was legally dissolved in January, 2005 per the Debtors’ Plan. Carlisle Equipment Group, L.P.’ partners executed a resolution to dissolve on January 19, 2005. The State of Delaware issued the certificate of cancellation of limited partnership on January 21, 2005.

Section 1, p. 1. Central States will assert that Maxim's covered employees include those who are engaged in a certain line of work⁷ in a specific geographical jurisdiction.⁸

24. Maxim was obligated to make weekly contributions to the Pension Fund and Health & Welfare Funds for each employee allegedly covered by the Maxim CBA. See Maxim CBA, Article 18, p. 9-11; See Maxim CBA, Article 19, p. 10.

25. Both the Carlisle CBA and the Maxim CBA enabled the "Employer's Associations" to enter into appropriate trust agreements necessary for the administration of the Health and Welfare Fund and the Pension Fund and to designate Employer Trustees under such agreements. See Carlisle CBA, Article 18, p. 10; Maxim CBA, Article 18, p. 20.

26. The Teamsters' Union, Carlisle Equipment Group, L.P., as an Employer, Maxim, as an Employer, and certain individual Trustees, entered into a Revised and Amended Trust Agreement for Central States (the "Trust Agreement"). A copy of the Trust Agreement, dated March 16, 1955, as amended through May 31, 2004, is attached hereto as Exhibit 6.

BASIS FOR OBJECTION TO CLAIM NOS. 758 AND 759

27. The Debtors object to the Claims filed by both the Pension Fund and the Health & Welfare Fund based upon the following:

- a. The supporting documentation to the Claims is insufficient and does not enable the Debtors to understand fully the basis for the purported liabilities, both the priority and non-priority portions;
- b. The Claims, in part, are based on liabilities owed not by any of the Debtors, but by Old Carlisle. Pursuant to the terms of the APA, it is clear

⁷ The term "employee" includes all truck drivers and truck drivers' helpers employed by the Employer (as defined by the CBA) directly, indirectly, or in any wholly owned or controlled subsidiary company of the Employer, who are engaged in construction work, coal hauling, demolition, excavating, hauling materials or machinery for construction or used in construction or demolition, excavating, hauling materials or machinery for construction or used in constructed or demolition. See Maxim CBA, Article 1, Section 2, p. 1.

⁸ The geographical area included certain counties in Ohio and Kentucky. See Maxim CBA, Article 2, Section 1, p. 1.

that Old Carlisle was obligated to make all “payments relating to employee pension and multi-employer plans for all periods ending prior to or as of June 30, 1999. See APA, Section 5.19(e)(i). Except for amounts included on the Closing Balance Sheet for the deal, Old Carlisle represented that it had satisfied or would satisfy all such material obligations. See APA, Section 5.19(e)(iii) and Section 8.08(d). From and after June 30, 1999, Maxim had the obligation to contribute to the Pension Fund per substantially the same number of contribution base units for Covered Employees for which Old Carlisle had to contribute. See APA, Section 8.11(a);

Even if Maxim were somehow liable for contributions that Old Carlisle should have made, Maxim does not have any of the pertinent Old Carlisle employee information (i.e., payroll records and wage records for all individuals performing works within the scope of and/or covered by the Carlisle CBA) for the period from January 1, 1995, through June 30, 1999. During the due diligence that preceded the asset purchase, Maxim was entitled to receive only limited payroll and other employee information for the periods prior to the June 30, 1999 closing date. Moreover, at this point in time, Maxim no longer has a right to request the necessary information from Old Carlisle;

- c. The Claims are barred inasmuch Central States lacks the standing to institute actions for delinquent contributions. Both CBA’s provide that such actions may be instituted by only the Local Union, the Area Conference or the Trustees. See Carlisle CBA, Article 18, p. 11 and Maxim CBA, Article 18, p. 11;
- d. The Claims are barred to the extent Central States seeks pension and health & welfare contributions for employees whom the Debtors believe are not, and have never been, covered employees. These disputed employees (i) are not members of the Teamsters’ Union, (ii) are a part of another union, (iii) are not affiliated with any union, (iv) and/or do not render services that would require them to be considered “Covered Employees” within the jurisdiction of the Teamsters’ Union;
- e. The Claims are barred to the extent Central States is estopped from seeking contributions for the disputed employees at issue. For the past several years, the Debtors understood that the terms of the CBA’s did not apply to certain employees. For some of these disputed employees, the Debtors reinforced this understanding by contributing to other pension plans for these same non-Teamsters’ Union employees. At no time, was there a sinister motive or strategic behavior on behalf of the Debtors’ to cut corners with respect to any contribution payments;
- f. The Claims are barred to the extent based on estimated findings. Central States audited the Maxim’s books and records for only the years 1995 through and including 1999. Also, the records of Old Carlisle have been

unavailable. Consequently, Central States extrapolated, in part, the asserted liabilities of both Old Carlisle and Maxim;

- g. Central States does not explain sufficiently its basis for asserting that as to Claim No. 758, of the \$3,129,104.26, that \$148,340.76 is entitled to priority pursuant to 11 U.S.C. § 507(a)(4). In fact, even if Central State's proposed list of Covered Employees were accurate, in order to calculate any priority claim for unpaid contributions to the Health & Welfare Fund, Central States must consider pursuant to 11 U.S.C. §507(a)(4)(B) (i) the aggregate amount already paid to such employees by the Debtors under Bankruptcy Code §507(a)(3) [e.g., wages, salaries, commissions, up to \$4,925 per employee earned within 90 days before the Petition Date], plus (ii) the aggregate amount paid by the Debtors' estate on behalf of such employees to any other employee benefit plan;
- h. Central States does not explain sufficiently its basis for asserting that as to Claim No. 758, of the \$1,815,726.15, that \$93,548.02 is entitled to priority pursuant to 11 U.S.C. § 507(a)(4). Again, even if Central State's proposed list of Covered Employees were accurate, Central States provides no §507(a)(4) data with respect to each employee so as to determine the priority claim.

WHEREFORE, for all of the foregoing reasons, the Debtors respectfully request that the Claims filed by Central States be disallowed in their entirety or that the Debtors be granted such other relief as may be appropriate.

Dated: Pittsburgh, Pennsylvania
July 22, 2005

Respectfully submitted,

CAMPBELL & LEVINE, LLC

/s/ David B. Salzman
Douglas A. Campbell (PA I.D. #23143)
David B. Salzman (PA I.D. #39360)
Salene R. Mazur (PA I.D. #86422)
1700 Grant Building
Pittsburgh, PA 15219
Telephone: (412) 261-0310
Facsimile: (412) 261-5066
Counsel for the Reorganized Debtors