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

In re: ACR MANAGEMENT, L.L.C., et al.,[1] Debtors.	)	Case No. 04-027848-MBM Chapter 11 (Jointly Administered)
ACR MANAGEMENT, L.L.C., et al., Movants, v. NO RESPONDENT.	)	**Hearing Date and Time:** **Objection Deadline:**

MOTION OF DEBTORS FOR AN ORDER (A) ESTABLISHING A PROCEDURE FOR TREATMENT OF RECLAMATION CLAIMS AND (B) PROHIBITING THIRD PARTIES FROM INTERFERING WITH DELIVERY OF THE DEBTORS' GOODS

The above-captioned debtors and debtors-in-possession (collectively, the "Debtors") hereby move the Court (the "Motion") for entry of an order (a) establishing a procedure for treatment of reclamation claims (the "Reclamation Claims") and (b) prohibiting third parties

[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.

from interfering with delivery of the Debtors' goods. In support of this Motion, the Debtors respectfully state as follows.[2]

Jurisdiction

1. This Court has jurisdiction over the Motion under 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

2. Venue of this proceeding and the Motion is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory bases for the relief requested herein are sections 105(a), 362, 503(b), and 546(c) of title 11 of the United States Code (the "Bankruptcy Code").

Background

4. On June 14, 2004 (the "Petition Date"), the Debtors filed petitions for relief under the Bankruptcy Code (the "Chapter 11 Cases"). As more fully described in the Second Day Affidavit, Debtors have submitted various Second Day Motions that seek to stabilize the Debtors' business operations and allow the Debtors to commence these Chapter 11 Cases in the best position possible to emerge expeditiously.[3] Consistent with the relief requested in the Second Day Motions, Debtors have conducted extensive negotiations and preparations with their Prepetition Senior Lenders regarding their financial obligations and future business operations and have secured a debtor-in-possession financing facility with certain of the Prepetition Senior

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[2] The facts and circumstances supporting this Motion are set forth in the Affidavit of Ronald M. Marmo, Vice President, Administration, in support of certain second day motions, filed contemporaneously herewith (the "Second Day Affidavit").

[3] Any capitalized terms used in this Motion that are not otherwise defined shall have the meaning ascribed to them in the Second Day Affidavit and the Affidavit of Ronald M. Marmo, Vice President, Administration, in support of certain first day motions (the "First Day Affidavit"), filed on the Petition Date.

Lenders to provide for financing of the Debtors' operations following the Petition Date. Moreover, the Company, certain of the Prepetition Senior Lenders and Prepetition Term B Facility Lenders, and the Term C Lender have entered into a lock up and voting agreement in support of a plan of reorganization that embodies the terms of their agreement concerning the Company's restructuring, which terms have been set forth in the term sheet attached to the lock up and voting agreement. The Debtors have also requested the Court designate the Chapter 11 Cases as a complex case pursuant to Local Rule 1002-3, and to jointly administer them pursuant to Bankruptcy Rule 1015(b).

Relief Requested

5. The Debtors anticipate that certain of their vendors may seek to assert reclamation claims (the "Reclamation Claims") against them on account of the commencement of these Chapter 11 Cases. Consequently, the Debtors propose that the Court establish the following procedures for processing and treating Reclamation Claims:

(a) Any vendor asserting a Reclamation Claim must satisfy all requirements entitling it to a right of reclamation under applicable state law and section 546(c)(1) of the Bankruptcy Code, as described more fully herein;

(b) The Debtors will file a report (the "Report") on notice to each party in interest, setting forth the Reclamation Claims and categorizing such claims as valid or invalid pursuant to the order requested herein;

(c) Absent further order of the Court, the Report shall be filed by the Debtors within ninety (90) days of the Court's ruling upon this Motion;

(d) If the Debtors fail to file the Report within the required period of time, any holder of a Reclamation Claim (a "Reclamation Claimant") may bring a motion for allowance of its Reclamation Claim;

(e) All parties in interest shall have the right and opportunity to object to the designation of any asserted Reclamation Claim as valid or invalid in the Report within twenty (20) days after such Report is filed (an "Objection");

(f) The Reclamation Claims designated as invalid in the Report that are not properly the subject of a timely filed Objection, will be deemed invalid without further order of this Court; and

(g) All valid Reclamation Claims allowed by the Court pursuant to the Report will be treated in accordance with the terms of the order allowing such claims.[4]

6. The process described above will streamline resolution of the putative Reclamation Claims that are likely to be asserted against the estates. The Debtors believe it is in the best interests of the estates to implement the process described above. Nothing in this Motion should be deemed or interpreted as an admission of any kind relating to the Debtors' insolvency at any time.

7. Moreover, the Debtors request that the Court authorize the Debtors, in their discretion, and upon the prior written consent of the DIP Agent (as defined in the First Day Affidavit), and otherwise subject to the DIP Budgets, the DIP Loan Amendment and the DIP Orders (as each term is defined in the First Day Affidavit), to make goods available for pick-up by any Reclamation Claimant (a) who timely demands in writing reclamation of goods pursuant to section 546(c) of the Bankruptcy Code and section 2-702 of the UCC, (b) whose goods the Debtors have accepted for delivery, and (c) who properly identifies the goods to be reclaimed.

8. Additionally, the Debtors request that, pursuant to sections 105(a) and 362 of the Bankruptcy Code, the Court enjoin the Reclamation Claimants and others from seeking to reclaim any goods or interfering with the delivery of any such goods. Such relief will facilitate uninterrupted operations of the Debtors' business operations.

Basis for Relief

9. Section 546(c)(1) of the Bankruptcy Code authorizes vendors who have sold goods to a debtor in the ordinary course of business to reclaim such goods (subject to certain

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[4] The Debtors reserve the right to object to any Reclamation Claim on any grounds, including the ground that reclamation claims are subject to any secured creditor's liens and that the debt secured by such liens exceeds the value of the goods subject to the reclamation claim.

other limitations) if: (a) the debtor was insolvent when the goods were delivered; (b) the seller demands reclamation in writing; (c) such demand is made within 10 days after the debtor received possession of the goods (or within twenty (20) days if the ten (10) day period were to expire after the petition date); and (d) the seller is otherwise entitled to reclamation under applicable state law.[5] To reclaim goods, the debtor must have had actual possession of the goods at the time the debtor received the written reclamation demand. See In re Rozel Industries, Inc., 74 B.R. 643, 646 (Bankr. N.D. Ill. 1987); see generally In re Braniff, Inc., 113 B.R. 745, 751 (Bankr. M.D. Fla. 1990). Section 546(c)(2)(A) of the Bankruptcy Code provides that the Court may deny reclamation to a vendor with a valid right of reclamation only if the Court grants to such vendor a priority claim for reimbursement as an administrative expense or secures such claim by a lien.

10. The Debtors anticipate that a number of vendors may assert Reclamation Claims against the Debtors and otherwise attempt to interfere with the delivery of goods to the Debtors after receiving notice of the commencement of these Chapter 11 Cases. Because of the size of the Debtors' business operations and the volume of fuel oil, spare parts, tires, and other inventory received by them, it may not be feasible for the Debtors to return inventory shipments to vendors in response to Reclamation Claims.

11. The Debtors' business will be severely disrupted if such vendors are allowed to exercise their right to reclaim goods without a uniform procedure that is fair to all parties. Furthermore, absent the establishment of an orderly process for dealing with Reclamation

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[5] For example, state law would generally preclude reclamation if a third party held a perfected security interest in after-acquired inventory or if the goods had already been purchased in good faith by a third party. See In re Paolella, 161 B.R. 107, 122 (E.D. Pa. 1993), aff'd without op. 37 F.3d 1487 (3d Cir. 1994). See generally U.C.C. § 2-702(3).

Claims, management's attention will be diverted from important operational issues to address Reclamation Claims. See In re Griffin Retreading Co., 795 F.2d 676, 679-80 (8th Cir. 1986) (affirming grant of administrative claims because such claims provide flexibility to the bankrupt estate by permitting use of property necessary for a successful reorganization and protecting the seller without placing the plan in jeopardy).

12. The relief requested herein will ensure the continuous supply of goods that is vital to the Debtors' ongoing operations and integral to their successful reorganization. See In re Continental Airlines, 125 B.R. 415, 417-18 (Bankr. D. Del. 1991) (denying reclamation of equipment and granting administrative expense claim to creditor where equipment was necessary to debtors' reorganization). In light of the foregoing, the Debtors believe that the relief requested in this Motion is appropriate and is in the best interests of the Debtors, their estates and their creditors.

13. Moreover, numerous courts in this and other districts have authorized debtors-in-possession to establish procedures regarding reclamation claims that are similar to those in this Motion, particularly as part of so-called "first day" motions. See, e.g., In re SGPA, Inc., Case No. 01-02609 (RJW) (Bankr. M.D. Pa. May 7, 2001); In re National Equipment Servs., Inc., Case No. 03-27626 (PSH) (Bankr. N.D. Ill. June 27, 2003); In re Budget Group, Inc., Case No. 02-12152 (MFW) (Bankr. D. Del. July 29, 2002).

Notice

14. No trustee, examiner or creditors' committee has been appointed in the Chapter 11 Cases. Notice of this Motion has been provided to: (a) the United States Trustee; (b) those parties listed on the Consolidated List of Creditors Holding Largest Twenty Unsecured Claims Against The Debtors, as identified in their chapter 11 petitions; (c) counsel to the Agent for the DIP Lenders; (d) counsel to the Agent for the Prepetition Senior Lenders; (e) counsel to the

Term B Lenders; (f) counsel to the Term C Lender; (g) the Indenture Trustee for the New Senior Notes; and (h) the Indenture Trustee for the New Debentures. In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is required.

No Prior Request

15. No previous request for the relief sought herein has been made to this or any other Court.

WHEREFORE, the Debtors respectfully request that the Court enter an order, substantially in the form attached hereto, (a) establishing a procedure for treatment of Reclamation Claims, (b) prohibiting third parties from interfering with delivery of the Debtors' goods, and (c) granting such other and further relief as is just and proper.

Dated: Pittsburgh, Pennsylvania
June 15, 2004

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