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

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

**MOTION FOR ORDER AUTHORIZING THE DEBTORS TO (A) MAINTAIN EXISTING INSURANCE POLICIES, (B) PAY PRE-PETITION INSURANCE PREMIUMS, AND (C) ENTER INTO POST-PETITION PREMIUM FINANCING AGREEMENTS**

The above-captioned debtors and debtors-in-possession (the "Debtors") file this motion (the "Motion") seeking entry of an order, in substantially the form attached hereto, for authority to (a) maintain existing insurance policies, (b) pay prepetition insurance premiums, if any, and (c) enter into post-petition premium financing agreements. In support of this Motion, the

[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.

Debtors respectfully state as follows:[2]

## Jurisdiction

1. This Court has jurisdiction over this 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 these cases and this Motion is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory predicates for the relief requested herein are sections 105(a), 363(b) and 364(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 Lenders to provide for financing of the Debtors' operations following the Petition Date.

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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.

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).

**Description of Insurance Policies**

5. The Debtors maintain in the ordinary course of business numerous insurance policies providing coverage for, inter alia, commercial general liability, commercial umbrella liability, commercial automobile liability, inland marine liability, and directors, officers and private company liability (each a "Policy" and collectively, the "Policies").[4] Each Policy is essential to preserving the Debtors' businesses, property and assets. In many cases, various regulations, laws and contracts that govern the Debtors' business conduct mandate that the Debtors maintain their insurance coverage.

6. During the past year, the Company's insurance premiums were approximately $6.7 million, of which approximately $3.5 million were funded through premium financing agreements (as more fully described below). The Company also posted letters of credit in an

[4] The Debtor also maintain workers' compensation insurance, which is not covered by this Motion. The Debtor seeks authority to maintain their workers' compensation insurance through the Emergency Motion of Debtors for Entry of Order (A) Authorizing, But Not Directing, The Debtors To Continue To Pay Certain Prepetition (I) Wages, Salaries, and Other Compensation, (II) Employee Medical and Similar Benefits and (Iii) Reimbursable Employee Expenses; (B) Authorizing, But Not Directing, The Debtors To Continue Making Deductions From Employees' Paychecks; and (C) Authorizing Financial Institutions To Pay All Checks and Electronic Payment Requests Made By The Debtors Relating To the Foregoing, filed contemporaneously herewith.

aggregate amount of approximately $5.5 million to back its current and prior year liability obligations under the Policies. The Company expects to spend a like amount in the coming year, as reflected in the DIP Budgets, although those amounts may change during the course of these Chapter 11 Cases.

**Insurance Services Contracts**

7. The Company has engaged Milliman USA, Inc., ("Milliman"), to provide certain actuarial consulting services, pursuant to an engagement letter dated December 2, 2003, a copy of which is attached hereto as Exhibit A (the "Milliman Engagement"). The Company intends to keep operating under the terms of the Milliman Engagement during the course of the Chapter 11 Cases in the ordinary course of its business.

8. Similarly, the Company has a contract with Specialty Risk Services, Inc., ("SRS"), dated as of August 15, 2003, for the period of August 15, 2003, through August 15, 2004, entitled "*Claim Service and Funding Agreement Between Maxim Crane Works and Specialty Risk Services, Inc.*" (the "SRS Insurance Claims Contract"), a copy of which is attached hereto as Exhibit B. Under the SRS Insurance Claims Contract, SRS provides certain services to administer, service and pay out with respect to workers' compensation, general liability, property damage and automobile liability claims that are either self-insured by the Company or are covered by the relevant insurance policy. The Company intends to keep operating under the SRS Insurance Claims Contract during the course of these Chapter 11 Cases. As of the Petition Date, all loss fund deposit requirements under the SRS Insurance Claims Contract that are currently due and owing have been paid.

9. Additionally, the Company has a contract with Aon Risk Services ("AON"), dated July 18, 2003, for the period June 30, 2003, through June 29, 2004, entitled "*AON Risk Services Broker Compensation Agreement*", and has negotiated an extension for the period June

30, 2004, through June 29, 2005, (collectively, the "AON Agreements," copies of which are attached hereto as Exhibit C, and together with the Milliman Engagement and the SRS Insurance Claims Contract, the "Insurance Services Contracts"). Under the AON Agreements, AON acts as the Company's broker of record with respect to several of its lines of insurance, including its primary general liability, automobile liability, excess liability, insured workers' compensation, property, contractors' equipment and surety policies. The Company intends to keep operating under the AON Agreements during the course of these Chapter 11 Cases.

10. The Debtors will decide during the course of these Chapter 11 Cases whether to assume or reject each of the above-described contracts. The Debtors believe that they can continue to operate under each of these contracts in the ordinary course of business under sections 1107 and 1108 of the Bankruptcy Code and seeks the Court's authority to continue to so operate only out of an abundance of caution, with the understanding that continuing to so operate will not have a determinative effect on the classification, priority or allowance of any claims arising thereunder.

**Relief Requested**

11. The Debtors do not believe that they need court approval to maintain their existing Policies. Out of an abundance of caution, however, the Debtors, by this Motion, seek entry of an order by the Court authorizing them to continue to maintain the Policies and, in their sole discretion, revise, supplement or change their coverage as needed. The Debtors also seek authority to pay any unpaid prepetition premiums related to the Policies or preexisting premium financing agreements ("PFAs") to the extent that the Debtors determine in their discretion that any such payment is necessary to avoid cancellation, default, alteration, assignment, attachment, lapse, or any form of impairment to the coverage, benefits or proceeds provided under the

Policies. Finally, the Debtors seek authority to enter into postpetition PFAs without the need for further approval by the Court.

**Basis for Relief**

## I. AUTHORITY TO MAINTAIN EXISTING INSURANCE POLICIES

12. This Court has statutory authority under section 363(b)(1) of the Bankruptcy Code to authorize the use of estate assets outside the ordinary course of business. Cinicola v. Scharffenberger, 248 F.3d 110, 112 (3d Cir. 2001). In determining whether to authorize the use, sale or lease of property of the estate under this section, courts require the debtor to show that a sound business purpose justifies such actions. In re Montgomery Ward Holding Corp., 242 B.R.147, 153 (D. Del. 1999).[5]

13. The Debtors clearly must continue to maintain an appropriate level of insurance coverage throughout these Chapter 11 Cases, whether in the ordinary course of business, which the Debtors have the authority to do pursuant to Section 1108 of the Bankruptcy Code, or otherwise. The Debtors believe it is in the best interest of their estate to authorize the Debtors to maintain their existing insurance policies. Any other alternative would likely require

[5] See also Fulton State Bank v. Schipper, 933 F.2d 513, 515 (7th Cir. 1991) (debtor's decision must be supported by "some articulated business justification"); Stephens Ind., Inc. v. McClung, 789 F 2d 386, 389-90 (6th Cir. 1986); In re Abbotts Dairies of Pennsylvania, Inc., 788 F.2d 143, 147 (3d Cir. 1986) (enunciating the good faith requirement); In re Continental Airlines, Inc., 780 F.2d 1223 (5th Cir. 1986); In re Telesphere Communications, Inc., 179 B.R. 544, 552 (Bankr. N.D. Ill. 1999); In re United Healthcare System, Inc., 1997 WL 176574 (D.N.J. 1997), citing, Lionel, 722 F.2d at 1071 (courts typically must examine whether there was: (1) adequate notice to interested parties, (2) adequate price paid for the asset, (3) good faith by the parties, and (4) a sound business reason for the sale); Titusville Country Club, 128 B.R. at 399 (the "sound business judgment test requires (i) that a sound business purpose justifies the sale outside the ordinary course of business, (ii) that adequate and reasonable notice has been provided to all of the interested parties, (iii) that the debtor has obtained a fair and reasonable price, and (iv) good faith); and In re Phoenix Steel Corp., 82 B.R. 334, 335-36 (Bankr. D. Del. 1987) (listing the elements necessary for approval of a section 363 sale in a chapter 11 case).

considerable additional cash expenditures and would be detrimental to the Debtors' reorganization efforts and adversely affect the value of their estates.

## II. AUTHORITY TO PAY PREPETITION INSURANCE PREMIUMS

14. Section 105(a) of the Bankruptcy Code provides the basis for the Court to grant the authority to pay pre-petition claims out of necessity. Section 105(a) states, in part, "the court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). Courts consistently have recognized the need for debtors-in-possession to pay pre-petition obligations to protect the value and assets of the estate and to ensure a smooth continuation of the debtor's business, and courts consistently have authorized such payments pursuant to Section 105(a) of the Bankruptcy Code under the "doctrine of necessity." See In re Ionosphere Clubs, Inc., 98 B.R. 174, 175-76 (Bankr. S.D.N.Y. 1989) (the court noted that use of equitable powers by a bankruptcy court to authorize the payment of pre-petition debts when such payment is needed for the debtor's restructuring is a commonplace concept); In re Gulf Air, Inc., 112 B.R. 152, 153 (Bankr. W.D. La. 1989) (same).

15. The Debtors seek authority to pay any unpaid prepetition insurance premiums in order to keep their insurance policies in current effect and to ensure that there are not inadvertent lapses in coverage. Any such lapses in coverage would adversely affect the Debtors' estates and thereby potentially diminish the Debtors' prospects for reorganization.

## III. AUTHORITY TO ENTER INTO POSTPETITION PFAS

16. Sections 364(c) and 363(b) of the Bankruptcy Code support the Debtors' business justification to enter into postpetition PFA's to finance insurance premiums. It is in the best interests of the Debtors, their estates and their creditors for this Court to grant such relief.

17. Pursuant to section 364(c) of the Bankruptcy Code, a debtor may, in the exercise of its business judgment, incur secured debt if the debtor has been unable to obtain unsecured

credit and the borrowing is in the best interests of the estate. See, e.g., In re Simasko Production Co., 47 B.R. 444, 448-9 (D. Colo. 1985) (authorizing interim financing agreement where debtor's best business judgment indicated financing was necessary and reasonable for benefit of estate); In re Ames Dept. Stores, 115 B.R. 34, 38 (Bankr. S.D.N.Y. 1990) (with respect to postpetition credit, courts "permit debtor in possession to exercise their basic business judgment consistent with their fiduciary duties.").

18. Courts have routinely granted debtors the authority to enter into post-petition PFAs to finance insurance premiums for reasons similar to those of the Debtors in these Chapter 11 Cases.[6] The Debtors may determine during the course of these Chapter 11 Cases that it is not economically advantageous to pay some or all of the premiums on the Policies on a lump-sum basis. The Debtors may therefore enter into PFAs with nondebtor third parties in the ordinary course of the their businesses as a means of paying these premiums.

19. To reduce the administrative burden of these Chapter 11 Cases on the Court, the Debtors, their creditors and other parties in interest and to minimize expenses incurred during the course of these Chapter 11 Cases, the Debtors seek the Court's authority to enter into post-petition PFAs to the extent that the Debtors determine in their discretion that to do so would be in the best interests of their estates. As the Debtors will incur secured debts by entering into PFAs, under which the creditor will have a security interest in related insurance contracts held by the Debtors, Section 364(c) of the Bankruptcy Code would apply and provide a basis for the Court to grant the Debtors the authority to enter into postpetition PFAs.

20. Moreover, section 363(b) of the Bankruptcy Code provides that a debtor in possession, "after notice and a hearing, may use, sell, or lease, other than in the ordinary course

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[6] See In re SPGA, Inc., No 01-02609 (M.D. Penn. May 7, 2001).

of business, property of the estate." 11 U.S.C. § 363(b). As stated herein, courts determining whether to approve a debtor's decision to use property of the estate outside the ordinary course of business apply a "business justification" standard. See In re Delaware & Hudson Ry. Co., 124 B.R. 169, 175-76 (D.Del. 1991) (section 363 of the Bankruptcy Code requires that the debtor's decision be supported by a "sound business purpose"); Montgomery Ward Holding Corp., 242 B.R. at 153.

21. The Debtors cannot continue to operate their businesses unless they secure appropriate financing to maintain insurance coverage mandated by various regulations, laws and contracts governing the Debtors' businesses. Allowing the Debtors to enter into postpetition PFAs to finance insurance premiums will preserve the Debtors as a going concerns, which will clearly redound to the benefit of the Debtors' estates. Accordingly, the Debtors believe they have articulated a valid business justification for the authority to enter into postpetition PFA's.

**Notice**

22. 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; (h) the Indenture Trustee for the New Debentures and (i) counterparties to each of the Insurance Services Contracts. In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is required.

## No Prior Request

23. No Motion for the relief requested herein has been made to this or any other Court.

WHEREFORE, the Debtors respectfully request entry of an order, substantially in the form attached hereto, granting the relief requested herein and granting such other and further relief as is just and proper.

Dated: Pittsburgh, Pennsylvania
June 15, 2004

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