

In re:)	
)	
ACR MANAGEMENT, L.L.C., <u>et al.</u> , ¹)	Case No. 04-27848-MBM
)	
)	Chapter 11
)	
Debtors.)	(Jointly Administered)
)	
ACR MANAGEMENT, L.L.C., <u>et al.</u> ,)	Docket No. _____
)	
)	Related to Docket No. 6
Movants,)	Hearing Date and Time:
)	Objection Deadline:
)	
v.)	
NATIONAL FUEL GAS DISTRIBUTION)	
CORPORATION, and APS,)	
)	
Respondents.)	

The above-captioned Debtors-in-Possession (collectively, the “Debtors”) by and through their undersigned attorneys, hereby submit this motion (the “Motion”) for a determination pursuant to §105(a) of Title 11 of the United States Code (the “Bankruptcy Code”), §101, *et seq.*, of the reasonableness of certain additional adequate assurance requests received by the Debtors from certain Utility Companies (defined below) and to schedule a hearing thereon. In support of this Motion, the Debtors respectfully represent as follows:

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.

BACKGROUND

1. On June 14, 2004 (the “Petition Date”), the Debtors filed petitions for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Western District of Pennsylvania (the “Court”).

2. On June 16, 2004, this Court signed an Order authorizing, for administrative purposes only, the joint administration of the chapter 11 cases commenced by the Debtors (the “Chapter 11 Cases”) (filed on 06/16/2004, CM/ECF#59).

3. On June 16, 2004, this Court entered an Order designating the Chapter 11 Cases as a complex case pursuant to Local Rule 1002–3 (filed on 06/16/2004, CM/ECF# 91).

4. Pursuant to Code §§ 1107 and 1108, the Debtors are continuing to operate their businesses as Debtors–in–Possession.

5. No trustee or examiner has been appointed in these Chapter 11 Cases.

6. An official committee of unsecured creditors was appointed on June 28, 2004 (filed on 06/28/2004, CM/ECF#157).

7. Headquartered in Pittsburgh, Pennsylvania, the Debtors operate the largest comprehensive crane and lifting equipment rentals and services provider in North America. The Debtors have a network of 45 crane rental yards providing services to approximately 8,000 customers in 47 states and the U.S. Virgin Islands.

8. On June 14, 2004, the Debtors filed an Emergency Motion for Entry of an Order (A) Deeming Utilities Adequately Assured of Future Performance and (B) Establishing a Procedure for Determining Adequate Assurances Pursuant to Code Section 366 (the “366 Motion,” CM/ECF#6).

9. This Court entered an Order (CM/ECF#76, entered on June 16, 2004, the “366 Order”) granting the 366 Motion and establishing a procedure for handling requests by the

Debtors' utility companies (the "Utility Companies") for additional adequate assurance of future payment.

10. The 366 Order, *inter alia*, states that any Utility Company can request in writing and addressed to the Debtors' counsel, within 30 days of the date of the entry of the Order (by July 16, 2004), additional assurances of payment in the form of deposits or other security (the "Additional Assurances Request(s)"). Also, the Debtors, without further order of the Court, are entitled to comply with timely Additional Assurance Requests that the Debtors believe are reasonable. Pursuant to the terms of the 366 Order, if the Debtors do not consent to a Utility Company's timely Additional Assurances Request, the Debtors must request a hearing to determine the reasonableness the Additional Assurance Request at issue (the "Determination Hearing").

11. To date, the Debtors received Additional Assurance Requests from various Utility Companies. Generally, if the Debtors' account with a particular Utility Company was delinquent, then the Debtors agreed to pay a deposit in the approximate amount of one month's bills.

12. As to the Additional Assurance Requests received from the above-captioned Respondents, however, the Debtors do not consent to the payment of any security deposit since it appears as though there were no pre-petition arrearages on the Debtors' accounts with these Utility Companies. See spreadsheet attached hereto as Exhibit A.

13. By this Motion, the Debtors request the scheduling of a Determination Hearing at which this Court may determine the reasonableness of the Additional Adequate Assurance Requests received by the Debtors from these Respondents.

JURISDICTION

14. 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)(A) & (O). Venue of this proceeding and the Motion is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

15. The statutory and procedural basis for the relief requested herein is §105(a) of the Bankruptcy Code.

RELIEF REQUESTED

16. The Debtors submit that the Respondents are adequately assured of payment for post-petition services on a current, going-forward basis. There is no reason to believe that these Respondents are subject to an “unreasonable risk of nonpayment for post-petition services.” See In re Keydata Corp., 12 B.R. 156 (1st B.A.P. (Mass.) 1981).

17. Prior to the Petition Date, the Debtors generally were current in the payment of invoices received from the Respondents. The Respondents have not provided evidence asserting anything to the contrary.

18. Moreover, the Respondents are further protected by their entitlement to an administrative expense priority under section 503 of the Bankruptcy Code for any unpaid post-petition utility services. Accord In re: Penn Jersey Corp., 72 B.R. 981, 987 (Bankr. E.D. Pa. 1987) (finding that utility companies are adequately assured by payment for post-petition services via the administrative expense procedures).

19. For all of these reasons, the Debtors respectfully request an Order deeming the remaining Additional Assurance Requests received by the Debtors from the Respondents to be unnecessary.

NOTICE

20. Notice of this Motion has been provided to: (a) the United States Trustee; (b) counsel to the DIP Lenders; (c) counsel to the Prepetition Senior Lenders; (d) counsel to the Term B Lenders; (e) counsel to the Term C Lender; (f) the Indenture Trustee for the New Senior Notes; (g) the Indenture Trustee for the New Debentures; (h) counsel to the Official Committee of Unsecured Creditors; (j) the Respondents; and (k) those parties who have requested notice pursuant to Fed R. Bankr. P. 2002.

21. In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is required.

22. No prior motion for the relief requested herein has been made to this or any other Court.

WHEREFORE, the Debtors respectfully request that this Court enter an Order, substantially in the form attached hereto and granting such other relief the Court deems just and proper.

Dated: Pittsburgh, Pennsylvania
August 27, 2004

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