

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

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|--|---|------------------------------|
| In re: |) | |
| |) | |
| ACR MANAGEMENT, L.L.C., <u>et al.</u> , ¹ |) | Case No. 04-0____(____) |
| |) | |
| |) | Chapter 11 |
| |) | |
| Debtors. |) | (Jointly Administered) |
| |) | |
| ACR MANAGEMENT, L.L.C., et al., |) | Docket No. ____ |
| |) | |
| Movants, |) | Hearing Date and Time: _____ |
| |) | |
| v. |) | Objection Deadline: _____ |
| |) | |
| NO RESPONDENT. |) | |
| |) | |

**EMERGENCY APPLICATION BY THE DEBTORS FOR
ENTRY OF AN ORDER PURSUANT TO 11 U.S.C. § 327(a) AND RULE 2014(a) OF THE
FEDERAL RULES OF BANKRUPTCY PROCEDURE AUTHORIZING THE
EMPLOYMENT AND RETENTION OF KIRKLAND & ELLIS LLP AS ATTORNEYS
FOR THE DEBTORS AND DEBTORS-IN-POSSESSION**

The above-captioned debtors and debtors-in-possession (collectively, the “Debtors”) hereby submit this application (the “Application”) for entry of an order pursuant to section 327(a) of title 11 of the United States Code (the “Bankruptcy Code”) and Rule 2014(a) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) authorizing the Debtors’

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.

retention and employment of Kirkland & Ellis LLP (“K&E”) as their counsel. In support of this Application, the Debtors respectfully state as follows:²

Jurisdiction

1. The Court has jurisdiction over this Application pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue of this proceeding and this Application is properly in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory bases for the relief sought herein are section 327(a) of the Bankruptcy Code and Rule 2014(a) of the Bankruptcy Rules.

Background

3. On this date (the “Petition Date”), the Debtors filed petitions for relief under the Bankruptcy Code (the “Chapter 11 Cases”). As more fully described in the First Day Affidavit, Debtors have submitted various First 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 First 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. Moreover, the Company,

² The facts and circumstances supporting this Application are set forth in the Affidavit of David L. Eaton in Support of Application For Order Under 11 U.S.C. § 327(a) And Rule 2014(a) Of The Federal Rules Of Bankruptcy Procedure Authorizing the Employment And Retention Of Kirkland & Ellis LLP As Attorneys For The Debtors And Debtors-In-Possession (the “Eaton Affidavit”), and the Affidavit of Ronald M. Marmo, Vice President, Administration, in support of certain first day motions, filed contemporaneously herewith.

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

4. By this Application, the Debtors seek to employ and retain K&E as their counsel to file and prosecute these Chapter 11 Cases and all related matters, effective as of the Petition Date. Accordingly, the Debtors respectfully request the Court enter an order pursuant to section 327(a) of the Bankruptcy Code and Rule 2014(a) of the Bankruptcy Rules authorizing the Debtors to employ and retain K&E as their attorneys under a general renewing retainer to perform the legal services that will be necessary during these Chapter 11 Cases.

5. Contemporaneously herewith, the Debtors are seeking authorization to retain Pepper Hamilton L.L.P. to represent the Debtors in all matters in which K&E may have conflicts in its representation of the Debtors in these Chapter 11 Cases.

Services to be Provided

6. The professional services that K&E will render to the Debtors may include, but are not limited to, the following:

- (a) advise the Debtors with respect to their powers and duties as debtors-in-possession in the continued management and operation of their business and properties;

³ Any capitalized terms used in this Application that are not otherwise defined shall have the meaning ascribed to them in the First Day Affidavit.

- (b) attend meetings and negotiate with representatives of creditors and other parties in interest;
- (c) take all necessary action to protect and preserve the Debtors' estates, including prosecuting actions on the Debtors' behalf, defending any action commenced against the Debtors and representing the Debtors' interests in negotiations concerning all litigation in which the Debtors are involved, including, but not limited to, objections to claims filed against the estates;
- (d) prepare all motions, applications, answers, orders, reports and papers necessary to the administration of the Debtors' estates;
- (e) take any necessary action on behalf of the Debtors to obtain approval of a disclosure statement and confirmation of the Debtors' plan of reorganization;
- (f) represent the Debtors in connection with obtaining postpetition financing;
- (g) advise the Debtors in connection with any potential sale of assets;
- (h) appear before this Court, any appellate courts and the United States Trustee, and protect the interests of the Debtors' estates before those Courts and the United States Trustee;
- (i) consult with the Debtors regarding tax matters; and
- (j) perform all other necessary legal services and provide all other necessary legal advice to the Debtors in connection with the Chapter 11 Cases.

7. The Debtors seek to retain K&E as their attorneys because K&E has extensive experience and knowledge in the field of debtors' and creditors' rights and business reorganizations under chapter 11 of the Bankruptcy Code. In addition, K&E possesses extensive expertise, experience and knowledge practicing before bankruptcy courts.

8. K&E has been actively involved in major chapter 11 cases, and has represented debtor(s) in many cases, including, In re Conseco, Inc., et al., 02-B49672(CAD) (Bankr. N.D. Ill. 2002), In re UAL Corporation, et al., 02-B48191 (ERW) (Bankr. N.D. Ill. 2002), In re Dade Behring Holdings, Inc., Case No. 02-B290201 (EOD) (Bankr. N.D. Ill. 2002); In re Humphrey's Inc., Case No. 01-13742 (REG) (Bankr. N.D. Ill. 2001); In re Chiquita Brands International, Inc., Case No. 01-18812 (Bankr. S.D. Ohio 2001); In re Trans World Airlines, Inc., Case No. 01-

00056 (PJW) (Bankr. D. Del. 2001); In re Teligent, Inc., Case No. 02-12974 (SMB) (Bankr. S.D.N.Y. 2001); In re Quality Stores, Inc., Case No. GG-01-10662 (W.D. Mich. 2001); In re AmeriServe Food Distrib., Inc., Case No. 00-00358 (PJW) (Bankr. D. Del. 2000); In re The Babcock & Wilcox Co., Case No. 00-00358 (PJW) (Bankr. D. Del. 2000); In re United Artists Theatre Co., Case No. 00-3514 (JLR) (D. Del. 2000); In re Harnischfeger Indus., Inc., Case No. 99-02171 (PJW) (Bankr. D. Del. 1999); In re Zenith Elec. Corp., Case No. 99-02911 (MFW) (Bankr. D. Del. 1999).

9. Additionally, K&E represented the Debtors and certain related entities prior to the Petition Date, and therefore will be able to quickly respond to any and all issues that may arise during these Chapter 11 Cases. During its prior representations of the Debtors and in preparation for these Chapter 11 Cases, K&E has become familiar with the Debtors' businesses and affairs and many of the potential legal issues that may arise in the context of these Chapter 11 Cases. Accordingly, the Debtors believe that K&E is both well-qualified and uniquely able to represent them in these Chapter 11 Cases in an efficient and timely manner.

Terms of Retention

10. K&E intends to apply for compensation for professional services rendered in connection with these Chapter 11 Cases, subject to this Court's approval and in compliance with applicable provisions of the Bankruptcy Code, the Local Rules and Orders of this Court, on an hourly basis, plus reimbursement of actual, necessary expenses and other charges that K&E incurs. K&E will charge the Debtors hourly rates consistent with the rates K&E charges in bankruptcy and non-bankruptcy matters of this type. The hourly rates and corresponding rate structure utilized by K&E in these Chapter 11 Cases are the hourly rates and corresponding rate structure normally and customarily used by K&E in restructuring, workout, bankruptcy, insolvency and other comparable matters, whether in court or otherwise, and regardless of

whether a fee application is required (collectively, the “Restructuring Matters”). This rate structure is the presumptive rate structure for all new K&E client representations involving Restructuring Matters.

11. Overall, K&E operates in a complex, national marketplace for legal services in which rates are driven by multiple factors relating to the individual lawyer, his or her area of specialization, the firm’s expertise, performance and reputation, the nature of the work involved and other factors. For certain matters other than Restructuring Matters, the sub-markets for legal services are fragmented and are affected by a variety of individualized and interdependent factors, such that K&E has no one rate that applies to all matters for all clients. For these other types of matters, K&E rates may vary as a function of the type of matter, geographic factors, the nature of certain long-term client relationships and various other factors including those enumerated above. Some of K&E’s rates on these various other matters are lower or higher than the rates for Restructuring Matters. In addition, at times K&E negotiates bonuses and special fee arrangement payments that can make the effective “rate” substantially lower or higher depending on the particular arrangement and outcome of the underlying action.

12. In contrast to these other types of matters and the multiple rate structures applicable to them, K&E uses a uniform rate structure for Restructuring Matters. Because such Restructuring Matters are typically national in scope and typically involve great complexity, high stakes and severe time pressures, the same rate structure is used on virtually all Restructuring Matters in all practice groups within all K&E offices. The fact that a client is in or out of bankruptcy does not alter the rate K&E charges for Restructuring Matters.

13. K&E’s peer group for such work is a relatively small number of sophisticated, full-service national law firms with the resources and expertise to handle complex Restructuring

Matters. Such peer firms regularly appear in major chapter 11 cases around the country and are generally recognized in the legal community for their sophistication and expertise. K&E reviews the billing rates charged by peer firms as disclosed in publicly-available documents. Based on this ongoing review, K&E's rates for its attorneys in these Chapter 11 Cases are comparable to rates charged by equivalent practitioners from peer firms on comparable Restructuring Matters.

14. K&E's hourly rates are set at a level designed to fairly compensate K&E for the work of its attorneys and paralegals and to cover fixed and routine overhead expenses. Hourly rates vary with the experience and seniority of the individuals assigned. These hourly rates are subject to periodic adjustments, without further notice to the Court or any other entity, to reflect economic and other conditions and are consistent with the rates charged in non-Restructuring Matters of this type. In particular, K&E hourly rates for Restructuring Matters range as follows:

| Billing Category | Range |
|-------------------------|-----------------------|
| Partners | \$425 - \$950 an hour |
| Of Counsel | \$325 - \$740 an hour |
| Associates | \$235 - \$540 an hour |
| Paraprofessionals | \$ 90 - \$280 an hour |

15. It is K&E's policy to charge its clients in all areas of practice for all expenses incurred in connection with a client's case. The expenses charged to clients include, among other things, photocopying, witness fees, travel expenses, certain secretarial overtime and other overtime expenses, filing and recording fees, long distance telephone calls, postage, express mail and messenger charges, computerized legal research charges and other computer services, expenses for "working meals" and telecopier charges. K&E will charge the Debtors for these expenses in a manner and at rates consistent with those it generally charges its other clients. K&E believes that it is fairer to charge these expenses to the particular client rather than increasing its hourly rates to spread these expenses amongst all of its clients.

16. To date, K&E has received the amounts set forth in the Eaton Affidavit from the Debtors as compensation for professional services performed relating to the potential restructuring of the Debtors' financial obligations and the potential commencement of these Chapter 11 Cases, as well as additional amounts for the reimbursement of reasonable and necessary expenses incurred in connection therewith. K&E has also received an advance payment as disclosed in the Eaton Affidavit for its prepetition and postpetition services rendered and expenses incurred on behalf of the Debtors. The Debtors have agreed that prepetition fees are an advance payment and not a retainer.

K&E's Disinterestedness

17. To the best of the Debtors' knowledge, and except as disclosed in the Eaton Affidavit, K&E does not hold or represent any interest adverse to the Debtors' estate. K&E is a "disinterested person," as that phrase is defined in section 101(14) of the Bankruptcy Code as modified by section 1107(b) of the Bankruptcy Code, and K&E's employment is necessary and in the best interests of the Debtors and the Debtors' estate.

Notice

18. No trustee, examiner or creditors' committee has been appointed in the Chapter 11 Cases. Notice of this Application 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

19. No prior application for the relief requested 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) authorizing the Debtors to employ and retain K&E as attorneys for the Debtors effective as of the Petition Date and (b) granting such further relief as the Court deems appropriate.

Dated: June 14, 2004
Pittsburgh, Pennsylvania

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.

By: Ronald M. Marmo
Name: Ronald M. Marmo
Title: Vice President of Administration of ACR Management, L.L.C.