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

	)	
In re:	)	Case No. 04-27848-MBM
	)	Chapter 11
ACR MANAGEMENT, L.L.C., *et al.*,	)	
	)	Jointly Administered
Debtors.	)	

STATEMENT OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS REGARDING COURT ORDER TO CREATE A MARKETING PROCESS

The Official Committee of Unsecured Creditors (the "Committee") of the above-captioned debtors and debtors-in-possession (collectively, the "Debtors"), through its undersigned counsel, hereby submits this statement in connection with the directive of this Court to the Debtors at the October 4, 2004 hearing to work with the Committee to create a marketing/sale process, and respectfully states as follows:

STATEMENT

1. On October 4, 2004, this Court held a hearing to consider (a) the Debtors' motion (the "Disclosure Statement Motion") seeking this Court's approval of, among other things, the Debtors' disclosure statement (as amended, the "Disclosure Statement"), solicitation procedures and scheduling a hearing on confirmation of the Debtors' plan of reorganization (as amended, the "Plan"), each dated August 20, 2004; and (b) the emergency motion (the "Exclusivity Motion") of Albert C. Bove and AmQuip Corporation (together, "AmQuip") for the entry of an order, pursuant to section 1121 of title 11 of the United States Code (the "Bankruptcy Code"), reducing or modifying the exclusive periods ("Exclusivity") during which only the Debtors may file a plan of reorganization and solicit acceptances thereof.

2. At the hearing, the Committee reiterated its concerns regarding the Debtors' commitment to fulfill their fiduciary duties to all of their creditors and meaningfully explore restructuring alternatives that might offer greater value to unsecured creditors. Specifically, the Committee -- and this Court -- noted with concern the potential chilling effect of the overly restrictive terms of the pre-petition lock up agreement (the "Lock Up Agreement") that was executed among the Debtors, certain of their pre-petition lenders and the Debtors' equity sponsor. Similarly, the Committee objected to the *de minimis* distribution proposed to the unsecured creditors under the Debtors' proposed Plan and the presence of inappropriate releases to various non-debtor third parties.

3. These and other concerns prompted AmQuip and the Committee to support the termination of Exclusivity in order to allow other parties-in-interest to file competing plans of reorganization, or, some other reorganization alternative. It is the Committee's belief that the Court understood these concerns and that, as a result, directed the Debtors and the Committee, along with their respective advisors, to formulate a protocol for a fair and open process marketing the Debtors' assets and businesses. *See* Hearing Tr., 10/4/04 at 52:22-25. The Court made it clear that it was not prepared to hear the Debtors' Disclosure Statement Motion and suggested that such a motion would not be heard until after the marketing process had been agreed upon by the parties. *See* Hearing Tr., 10/4/04 at 73:20-25; 74:1-2. The Court scheduled a hearing on October 18, 2004, to hear where the parties were in creating such a marketing/sale process. Again, it is the Committee's understanding that the withdrawal of the Exclusivity Motion and the Court's direction were premised upon the notion that a fair and open marketing process that included AmQuip was to take place.

4. Consistent with this Court's directive, on October 6, 2004, counsel to the Committee forwarded to Debtors' counsel its proposed marketing protocol that, in the Committee's good faith estimation, was consistent with the Court's instructions. Subsequently, based upon discussions with the Debtors, the Committee revised its proposed marketing protocol which it still believes is fully consistent with the courts directive and would assure a fair and open bidding process. (A copy of the Committee's bid procedures as delivered to the Debtors and rejected out of hand on October 14, 2004, is annexed hereto as Exhibit "A"). In addition, the Committee provided the Debtors with an appropriate draft order for the withdrawal of the Exclusivity Motion[1]. (A copy of which is annexed hereto as Exhibit "B"). On October 12, 2004, Debtors' counsel responded to the Committee's October 6, 2004 form of protocol with a form of protocol that, in the Committee's view, was inconsistent with the letter and spirit of the Court's order. Specifically, the Debtors' proposal constituted nothing more than a mere extension of the Lock-Up Agreement, by styling the process as an "overbid process" and requiring potential bidders to bid more than $553 million in order to overcome the pre-petition lenders' purported, yet unproven, right to credit bid the entire amount of their claims. Interestingly, the Debtors make this assertion despite the fact that the Committee's investigation into the liens and claims of the pre-petition lenders is still pending.

5. In addition, the Debtors' proposal contemplates a process so restrictive and unduly burdensome that competitive bidding is unlikely to occur. Moreover, the proposal almost entirely disenfranchises the Committee from the marketing process – in direct violation of this Court's directive. Finally, the proposal contemplates a dual-track strategy that would allow

[1] Shortly after the October 4, 2004 hearing, the Debtors submitted to chambers an order for the withdrawal of the Exclusivity Motion without consulting counsel for the Committee. After some discussion, the order was withdrawn with the expectation that a revised agreed upon order would be filed with the Court. To date, the parties have been unable to reach agreement as to an appropriate order for the withdrawal of the Exclusivity Motion.

the Debtors' to engage in a purported marketing process while simultaneously proceeding at full speed ahead with the confirmation of the Plan that is currently on file. Such a protocol does nothing but undermine any possibility of creating more value for the benefit of all creditors.

6. As further evidence of the Debtors' intentions, on or about October 5, 2004, an e-mail was sent by Art Innamorato, the Debtors' CEO, (the "Innamorato E-mail") to all employees. (A copy of this e-mail is attached hereto as Exhibit "C"). The Innamorato Email states that AmQuip withdrew its offer to purchase Maxim at the October 4th hearing and that the Company is not for sale:

> "The question that many people have asked is whether Maxim is for sale. The answer remains "no". At the conclusion of the bankruptcy process there will be a change of control from Bain Capital to a new group of equity holders, the existing bank group."

As this email makes clear, the Debtors' current management has no intention or interest in creating a fair, open and fulsome marketing process. Rather, it is "all systems go" for these Debtors with the Plan that they have been pushing since day one of these cases, irrespective of this Court's order or what is in the best interest of all creditors.

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7. In conclusion, it is evident from the Debtors' conduct, both prior to and after the hearing, as evidenced in the parties inability to reach agreement on a form of order to withdraw the Exclusivity Motion, the Innamorato E-mail, and the proposed "overbid procedures", that the Debtors have no intention to fulfill their fiduciary duties to all creditors. Rather, all the Debtors want, and intend to do, is march forward with the Lock Up Agreement and force a plan on creditors, which only inures to the benefit of the Debtors' secured creditors and its equity sponsor because of the planned releases.

Respectfully Submitted,

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