

**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> , <sup>1</sup>	)	Case No. 04-27848-MBM
	)	Chapter 11
Debtors.	)	(Jointly Administered)
<hr/>	)	
	)	<b>Docket No.: _____</b>
JOHN BELL AND PATRICIA BELL,	)	
	)	<b>Related Docket No.: 865</b>
Movants,	)	
v.	)	<b>Objection Deadline: December 14, 2004</b>
	)	<b>Hearing Date: December 21, 2004, at 3:00</b>
ACR MANAGEMENT, L.L.C., <u>et al.</u> ,	)	<b>p.m. (EST)</b>
	)	
Respondents.	)	
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**RESPONSE OF THE DEBTORS TO [CM/ECF# 865]  
MOTION OF JOHN BELL AND PATRICIA BELL FOR RELIEF FROM  
AUTOMATIC STAY TO PURSUE CAUSE OF ACTION  
AGAINST THE DEBTORS FOR PERSONAL INJURY**

The above-captioned Debtors-in-Possession (collectively, the “Debtors<sup>2</sup>”) by and through their undersigned attorneys, hereby submit this response (the “Response”) to the motion (filed on 11/23/2004, CM/ECF#865, the “Motion”) filed by John Bell and Patricia Bell (the “Movants”), for relief from the automatic stay to pursue a certain cause of action against the Debtors for a work injury. In support of this Response, the Debtors respectfully represent as follows:

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<sup>1</sup> 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.

<sup>2</sup> All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

## **RELEVANT BACKGROUND**

1. The Movants initiated a proceeding in the Court of Common Pleas of Allegheny County, Pennsylvania at No. GD-02-012857 (the “Action”) against one of the Debtors arising out of a work injury alleged to have occurred on July 21, 2000, at Shadyside Hospital where the Debtor and others named in the Action allegedly were acting as general contractors.

2. By the Motion, the Movant now seeks relief from the automatic stay to pursue the Action against the Debtors with recovery to be limited to recovering available insurance proceeds.

3. The Debtors themselves are covered by various insurance policies for possible liability arising out of accidents such as the one underlying the Action. Depending on the year in which an accident occurs, the Debtors may have several layers of third party liability insurance coverage, and the policies involved and the deductibles and/or self-insured retention liabilities may vary.

4. In the time period relevant to the incident giving rise to the Action, the Debtors were covered by several layers of third party liability and indemnity coverage pursuant to various policies (the “Policies”). Pursuant to the terms of some of these Policies, there may have been retentions and/or deductibles. All retentions under the Policies shall be hereinafter referred to, collectively, as the “Retentions.” All deductibles under the Policies shall be hereinafter referred to, collectively, as the “Deductibles.”

## **CONDITIONS TO MOVANT’S RELIEF**

5. The Debtors do not object to the Movants’ request for this Court to lift the automatic stay so as to permit the Movants to continue their prosecution of the Action, so long as (i) the relief is limited to liability covered by the Policies, (ii) the relief does not seek to impose or allow the Movants to impose liability upon the Debtors’ insurers beyond the express terms of

the Policies, (iii) the only relief pursued by the Movants against the Debtors directly shall be to file a Proof of Claim for a prepetition Class 7 general unsecured claim against the Debtors' Estate in the Debtors' bankruptcy cases, (iv) and the relief does not cause the Debtors to bear extraordinary expense.

6. Accordingly, the Debtors request that the Movants' relief be conditioned upon the following:

- a. The relief from stay shall be limited, as to the Debtors, to allowing the Movants to liquidate their claims and recover from any applicable insurance coverage, and the Movants may not seek to enforce any judgment obtained against any asset of the Debtors, or property of the Debtors' estate other than their applicable insurance coverage; provided however, the Movants are not precluded from pursuing recovery upon the Movants' claims from any other party to the Action that may, for any cognizable reason, be liable therefore;
- b. With respect to any verdict or settlement for the Movants relating to the Retentions or the Deductibles, or any amount not covered by any applicable insurance, the only relief that the Movants may pursue as to the Debtors directly or indirectly, shall be to participate in the distribution afforded pre-petition unsecured claims based upon any timely-filed Proof of Claim filed by the Movants, if any, ultimately received in the Debtors' Chapter 11 bankruptcy cases or to seek alternative relief from the Court; provided however, this provision shall not act to limit the liability of any carrier to the applicable coverage to the extent that under applicable law said carrier may have liability in excess of the stated coverage under a claim for bad faith and/or breach of fiduciary duty.

**WHEREFORE**, the Debtors respectfully request that this Court enter an Order (a proposed form of order is being filed simultaneously herewith) (i) granting the Motion subject to the above conditions; and (ii) granting such other relief the Court deems just and proper.

Dated: Pittsburgh, Pennsylvania  
December 14, 2004

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