

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

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

**EMERGENCY MOTION FOR INTERIM AND FINAL ORDERS AUTHORIZING THE  
DEBTORS TO OBTAIN POSTPETITION UNSECURED FINANCING PURSUANT TO  
SECTION 364(B) OF THE BANKRUPTCY CODE**

The above-captioned debtors and debtors-in-possession (collectively, the “Debtors”) hereby move this Court (the “Motion”) for entry of interim and final orders pursuant to section 364(b) of chapter 11 of the United State Code (the “Bankruptcy Code”) authorizing the Debtors to obtain postpetition unsecured financing. In support of this Motion, the Debtors respectfully state as follows:<sup>2</sup>

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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> The facts and circumstances supporting this Motion are set forth in the Affidavit of Ronald M. Marmo, Vice President, Administration, in support of certain first day motions, filed contemporaneously herewith (the “First Day Affidavit”).

### **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). Venue of this proceeding and this Motion is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory basis for the relief requested herein is section 364 of the Bankruptcy Code.

### **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.<sup>3</sup> 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, 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

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<sup>3</sup> Any capitalized terms used in this Motion that are not otherwise defined shall have the meaning ascribed to them in the First Day Affidavit.

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 Motion the Debtors seek the authority to perform under a commercial credit card agreement with National City Bank, dated March 24, 2004 (the “National City Agreement,” a copy of which is attached hereto as Exhibit A). National City Bank requires that this Court authorize the Debtors to operate under the National City Agreement and authorize the Debtors to issue a \$250,000 letter of credit (the “Letter of Credit”) before National City Bank will issue the credit cards.

5. The Debtors respectfully submit that the National City Agreement represents an ordinary course of business transaction, but request the Court’s approval under section 364(b) of the Bankruptcy Code out of an abundance of caution. For several years prior to the Petition Date, the Debtors operated under a very similar commercial credit card agreement with PNC Bank, National Association (the “PNC Agreement”). The PNC Agreement terminated as of March 14, 2004, and the Debtors have since negotiated a replacement agreement with National City Bank. The Debtors believe that the National City Agreement is a market-standard commercial credit card agreement, and does not contain materially worse terms than those contained in the former PNC Agreement.

6. The National City Agreement will provide for the issuance of approximately 550 credit cards to be distributed to the Debtors’ employees for covering ordinary course business expenses. The nature of the Debtors’ business is that cranes are rented to job sites scattered across the country, and in many cases crane operators are assigned to operate such cranes. Therefore, at any given time, the Debtors have many employees stationed at different job

sites across the country, incurring business-related expenses. Under the PNC Agreement, an average of approximately \$110,000 in employee expenses per week were charged to the program credit cards. The Debtors anticipate a similar expense volume under the National City Agreement.

7. It is critical that the Debtors be authorized to operate under the National City Agreement and to issue the Letter of Credit. Without a commercial credit card program, the Debtors' employees would be forced to cover their own expenses and to then seek reimbursement. This would be unduly burdensome, and moreover, would be a significant departure from prepetition practices which would undermine the Debtors' message to their employees that the Chapter 11 Cases will not directly impact day-to-day operations.

#### **Basis for the Relief**

8. The Debtors submit that the National City Agreement represents an ordinary course of business transaction entitled to administrative expense priority under section 364(a) of the Bankruptcy Code. However, out of an abundance of caution and at the request of National City Bank, the Debtors also seek approval of the National City Agreement under section 364(b) of the Bankruptcy Code, as financing outside of the ordinary course of business.

9. Section 364(b) of the Bankruptcy Code provides that "[t]he court, after notice and a hearing, may authorize the trustee to obtain unsecured credit or to incur unsecured debt other than under subsection (a) of this section, allowable under section 503(b)(1) of this title as an administrative expense."

10. Unlike a Court's review of postpetition financing proposals under sections 364(c) and (d) of the Bankruptcy Code, section 364(b) does not set forth a heightened standard for reviewing a Debtor's request for relief thereunder. Presumably, this is because all

postpetition financing of a debtor will be, at a minimum, entitled to administrative expense priority.

11. Courts typically apply the business judgement rule when evaluating transactions outside of the ordinary course of business, absent special considerations. See, e.g., In re Montgomery Ward Holding Corp., 242 B.R. 147, 153 (D. Del. 1999) (holding that a debtor's request to sell or use property of the estate, other than in the ordinary course of business, is governed by the business judgment rule). Here, the Debtors' request to perform under the National City Agreement is such a matter of business judgment. The credit cards are necessary to efficiently operate the Debtors' businesses, which warrants approval of the National City Agreement.

#### **Request for Immediate Effectiveness**

12. Notwithstanding the possible applicability of Bankruptcy Rules 6004(g), 7062, 9014, or otherwise, Debtors request that the terms and conditions of any order approving this Motion shall be immediately effective and enforceable upon its entry. This will allow National City to issue the credit cards immediately rather than after any applicable appeal periods have run.

#### **Notice**

13. 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) National City Bank. In

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

**No Prior Request**

14. No prior Motion 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, authorizing the debtors to operate under the National City Agreement and to issue the Letter of Credit.

Dated: Pittsburgh, Pennsylvania  
June 14, 2004

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