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Chapter 11 section 105(a) and 363 motion  
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IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re: )  
) Chapter 11  
)  
ACME METALS INCORPORATED, )  
ACME STEEL COMPANY, ) Case No. 98-2179 (MFW)  
ACME PACKAGING CORPORATION, )  
ALPHA TUBE CORPORATION, ) (Jointly Administered)  
ALABAMA METALLURGICAL )  
CORPORATION, and ACME STEEL )  
COMPANY INTERNATIONAL, INC., )  
)  
Debtors. )  
)

**MOTION FOR ORDER UNDER SECTIONS 105(a) AND 363 OF THE  
BANKRUPTCY CODE AND FEDERAL RULES OF BANKRUPTCY  
PROCEDURE 2002 AND 6004 (i) APPROVING CERTAIN SALE  
AND BIDDING PROCEDURES AND BUYER PROTECTIONS,  
INCLUDING A BREAK-UP FEE; (ii) SCHEDULING A HEARING  
FOR APPROVAL OF SALE OF CERTAIN ASSETS OF ACME  
STEEL COMPANY; AND (iii) APPROVING CERTAIN NOTICE  
PROCEDURES RELATING TO THE SALE OF SUCH ASSETS**

Acme Steel Company ("Acme Steel" or the "Seller") and its affiliated debtors in possession Acme Metals Incorporated ("Acme"), Acme Packaging Corporation, Alabama Metallurgical Corporation and Acme Steel Company International, Inc. (together with the Seller, the "Acme Debtors"), by and through their undersigned attorneys, hereby request entry of an order (i) approving and authorizing (a) certain sale and bidding procedures related to a proposed sale by the Seller to WCI Steel, Inc. ("WCI" or the "Buyer") of substantially all of the assets (the "Assets") of Acme Steel as described in the annexed term sheet (the "Term Sheet") and (b) certain Buyer protections including a break-up fee and reimbursement of certain of the Buyer's expenses, as administrative expenses of Acme Steel's estate; (ii) scheduling a hearing (the "Sale

Hearing”)<sup>1</sup> for approval of the sale of the Assets, free and clear of liens, and (iii) approving certain notice procedures related to such sale. In support of this motion (the “Motion”), the Acme Debtors respectfully state as follows:

### INTRODUCTION

1. On September 28, 1998 (the “Petition Date”), the Acme Debtors and Alpha Tube Corporation, an indirect, wholly-owned subsidiary of Acme (“Alpha Tube” and collectively with the Acme Debtors, the “Debtors”) each filed with the Bankruptcy Court for the District of Delaware (the “Court”) their respective voluntary petitions for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1330 (as amended, the “Bankruptcy Code”). Pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, the Debtors continue to operate their respective businesses and manage their respective properties as debtors in possession.

2. The Debtors are engaged in the business of steel manufacturing and fabricating. Acme is the parent of its wholly-owned subsidiaries Acme Steel and Acme Packaging Corporation (“Acme Packaging”). Alpha Tube and Acme Steel Company, International, Inc. are wholly-owned subsidiaries of Acme Packaging. Alabama Metallurgical Corporation is also wholly-owned by Acme Steel.

3. On October 9, 1998, the United States Trustee appointed an official committee of unsecured creditors (the “Acme Committee”). Pursuant to court order dated January 7, 1999, the United States Trustee appointed an official committee of unsecured creditors to represent unsecured creditors of Alpha Tube (the “Alpha Tube Committee”). No trustee or examiner has been appointed in any of the Debtors’ chapter 11 cases.

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1. As set forth in detail below, the Sale Hearing, together with the related auction contemplated herein, shall only occur if Acme Steel and WCI enter into a binding agreement for the sale of the Assets and if certain environmental conditions to closing are satisfied or waived by WCI.

### JURISDICTION AND VENUE

4. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A). The statutory predicates for the relief requested herein are sections 105(a) and 363(b) of the Bankruptcy Code and Rules 2002 and 6004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

### BACKGROUND

5. Throughout these cases, the Debtors have examined various alternatives and initiatives aimed at realizing the highest possible return to their estates and increasing the likelihood of successful emergence from chapter 11. With these goals in mind, beginning in late 1999, the Debtors and their financial advisors, Wasserstein Perella & Co., Inc. ("WP&Co."), undertook an extensive, formal process of soliciting third-party indications of interest in a possible sale or investment transaction involving Acme Steel's operating assets. Pursuant to the solicitation process, the Debtors and WP&Co. prepared informational packages regarding Acme Steel's steel-making segment, established a due diligence data room with copies of Acme Steel's financial and business records, entered into confidentiality agreements with interested parties, and solicited proposals from over three dozen potential strategic and financial buyers including WCI. As a result of these efforts, the Debtors received a serious expression of interest from a third party, WCI, to acquire Acme Steel's steel-making operations.

6. The Acme Debtors, the Acme Committee and WCI have recently engaged in intensive arms-length negotiations regarding the terms of a proposed sale of the Assets (the "Proposed Transaction") and have memorialized their agreement in principle concerning the material provisions arising from such negotiations in a non-binding letter of intent (the "Letter of Intent") and the related detailed term sheet (the "Term Sheet"), true and correct copies of which are attached hereto as Exhibit "A". The Letter of Intent represents a serious expression of

interest on behalf of WCI to pursue and ultimately consummate the Proposed Transaction pursuant to the terms set forth therein and in the Term Sheet. The Acme Debtors believe that such acquisition, if consummated, would lay the ground-work for a plan of reorganization and the Debtors' ultimate emergence from chapter 11.

### The Term Sheet and Proposed Transaction.

7. The Term Sheet generally provides the following:

Consideration.

The consideration to be received by Acme Steel for the Assets (the "Purchase Price") shall consist of the following:

- a fixed cash component in the amount of \$114,000,000 (the "Fixed Cash Component");
- the Buyer's assumption of certain Environmental Improvement Revenue Bonds in the original aggregate principal amount equal to approximately \$19.9 million ("EIBs") which are secured by certain assets of Acme Steel. The principal amount of the EIBs to be assumed by Buyer will be approximately \$15.5 million assuming a December 31, 2000 closing, and that amount will be reduced by any subsequent adequate protection payments made by the Debtors to the EIB trustee if the sale transaction closes subsequent to that date;
- approximately \$2.4 million cash (assuming a December 31, 2000 closing; such amount will be subject to increase based on any adequate protection payments made to the EIB trustee if the sale transaction closes after such date) representing the present value of the difference between the approximately \$19.9 million original aggregate principal amount of the EIBs and the approximately \$15.5 million principal amount of the EIBs being assumed by the Buyer, assuming a December 31, 2000 closing (the "EIB Cash Component");
- the Buyer's surrender of at least \$59,425,000 face amount of Acme's 10<sup>7</sup>/<sub>8</sub>% Senior Unsecured Notes (the "Notes");
- approximately \$6.2 million cash representing value for capital expenditure incurred by the Seller with regard to

the relining of Seller's blast furnace ("Reline Cash Component"); and

- the Buyer's assumption of certain additional liabilities of Acme Steel, including the Plan Liabilities, Employee Liabilities and Environmental Liabilities (as such terms are defined in the Term Sheet).

The Purchase Price shall be subject to certain adjustments as set forth in the Term Sheet.

Acquired Assets.

The Assets to be acquired shall consist of substantially all of the assets owned by Acme Steel (excluding Acme Steel's cold reduction mill and that certain R-67 slitting machine which will be retained by Acme Packaging), but shall not include the Excluded Assets as defined in the Term Sheet.

Sale Free and Clear.

The Assets are to be sold and assigned to WCI free and clear of all liens, claims, interests and encumbrances (other than the Assumed Liabilities set forth in the Term Sheet) pursuant to sections 363(b) and (f), and 365(b) and (f) of the Bankruptcy Code.

Conditions to Closing.

The Purchase Agreement will contain customary closing conditions concerning the absence of injunctions and the accuracy of representations, and the performance of covenants, in all material respects, including: the expiration or termination of any waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, applicable to the Proposed Transaction; the Buyer's having obtained certain material governmental permits required for the Buyer to operate the Assets in all material respects in the manner conducted by Acme Steel in the ordinary course; the Buyer and the United Steelworkers of America (the "USWA") having entered into a mutually satisfactory collective bargaining agreement; no material adverse change together with the condition that Acme Steel maintain certain specified positive EBITDA levels from September 2000 through the second business day preceding the Closing; the Buyer's satisfaction with the contents of an environmental report concerning certain environmental conditions of Seller's real property; and certain other conditions set forth in the Term Sheet and in the Purchase Agreement.

Deposit.

Buyer will deposit the amount of \$5,000,000 into escrow upon signing of the Purchase Agreement, which upon the closing of

the Proposed Transaction shall be applied to the Purchase Price, and in the event such closing does not occur, shall be released to the Buyer unless the failure of such closing to occur is due to a material breach or inaccuracy of any representation, warranty or covenant of the Buyer, in which case such funds would be released to Acme Steel

This summary of the Term Sheet is intended to be for convenience only. To the extent that this summary differs from the actual terms of the Term Sheet, the terms of the Term Sheet shall be controlling.

8. The Acme Debtors have not definitively determined whether it is in the best interests of their estates to proceed with a sale of the Assets or instead to pursue a stand alone recapitalization of Acme Steel.

9. Furthermore, as set forth in a certain letter agreement ("USWA Agreement") annexed to the current Collective Bargaining Agreement (the "CBA") between Acme Steel and the USWA, the USWA has certain rights of first and concurrent negotiation regarding a purchase of Acme Steel's assets. The USWA Agreement provides Acme Steel must advise the USWA in writing of the commencement of negotiations with any third party with respect to a possible sale of the Assets. On June 27, 2000, Acme Steel provided the USWA with such notice. Pursuant to the USWA Agreement, for the first thirty days following the delivery of such written notice, Acme Steel was prohibited from "entertain[ing] or enter[ing] into a contract" for such sale with a party other than the USWA; during the ensuing sixty days, Acme Steel may entertain offers for such sale, but may not enter into a sale agreement with any party other than the USWA. As of the date hereof, Acme Steel is within the second (sixty day) period referred to above, which will expire on September 27, 2000. Acme Steel will not enter into an agreement regarding a sale of the Assets prior to that date.<sup>2</sup>

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2. The USWA has filed a grievance under the CBA's dispute resolution procedures against Acme Steel asserting that Acme Steel has breached the USWA Agreement in connection with its negotiations with WCI and its affiliates. Acme Steel vigorously disputes that assertion and believes the USWA's grievance is without merit. As required under section 1113 of the Bankruptcy Code and the Third Circuit's decision in

10. For these reasons, Acme Steel is not at this time requesting this Court's authority to enter into a binding agreement with WCI regarding the Proposed Transaction. Instead, in an effort to continue the momentum that has naturally developed regarding the Proposed Transaction, Acme Steel and Acme entered into the Letter of Intent with WCI. Although the Letter of Intent does not bind the parties to enter into or consummate the Proposed Transaction, it does require that Acme Steel and Acme use their reasonable best efforts to seek entry of an order granting the relief requested in this Motion, including the allowance of certain Buyer protections, specifically, a break-up fee or a lesser "alternate" fee (as described below) and expense reimbursement, if earned by WCI, as administrative expenses. WCI's willingness to proceed with its offer, complete due diligence (including a costly environmental review), forego other investment opportunities, devote substantial time and resources to the preparation of definitive documentation, subject its offer to competing bids and otherwise become a "stalking horse" for other bidders, and to have the Term Sheet publicly exposed, is conditioned expressly on Acme Steel's agreeing to file this Motion and seek the relief set forth herein, particularly in view of Acme Steel's reservation of its right to proceed with an asset sale or to pursue instead alternative reorganization strategies such as a stand alone plan.

11. Thus, pursuant to the Letter of Intent, Acme and Acme Steel have committed to using their reasonable best efforts to cause entry of an order approving the relief set forth herein (the "Procedures Order"), a form of which is attached hereto as Exhibit "B", on or before September 22, 2000.

12. The Acme Committee supports the Proposed Transaction and the relief sought herein.

13. The Proposed Transaction contemplated by the Term Sheet will be subject to higher or better offers and to the Debtors' right to propose and confirm a plan of reorganization

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In re Continental Airlines, Inc., 125 F.3d 120 (3d Cir. 1997), this matter will be submitted to arbitration and Acme Steel intends to vigorously defend itself in such arbitration.



that does not include a sale of the Assets (a "Stand Alone Plan") or a plan involving a Competing Bid (as defined below). Subject to the Court's approval of the relief requested herein and the continuing negotiations working toward a definitive asset purchase agreement reflecting the Proposed Transaction (a "Purchase Agreement"), the Acme Debtors will file with the Court a motion to approve the Proposed Transaction (the "Sale Motion") no later than twenty-five (25) days prior to the date of the auction (as established herein), together with a copy of the Purchase Agreement.

#### RELIEF REQUESTED

14. For the reasons set forth below, Acme Steel requests an order (i) approving certain sale and bidding procedures ("Sale Procedures") related to the proposed sale of the Assets and certain Buyer protections, including procedures for scheduling the submission and consideration of higher or better competing bids on the Assets (the "Auction") and the allowance of the Break-Up Fee or the Alternate Fee (each as defined below) and an expense reimbursement provision as administrative expenses of Acme Steel's estate; (ii) scheduling a date for a hearing (the "Sale Hearing") to approve and authorize the consummation of the Proposed Transaction or a transaction with the proponent of a successful higher or better competing bid; and (iii) approving certain notice procedures related to the Auction, the Sale Hearing and the Proposed Transaction. Acme Steel reserves its right not to proceed with the Proposed Transaction and to reject all Competing Bids (as defined below), at any time prior to the Court's approval of the sale of the Assets, and to proceed instead with a Stand Alone Plan.

15. The herein described Sale Procedures, Buyer protections and timetable for hearing on the Proposed Transaction are all the result of extensive, arms' length negotiations between the Acme Debtors, the Acme Committee and WCI. For the reasons set forth below, the procedures set forth herein will inure to the ultimate benefit of the Acme Debtors' estates and should be approved by the Court.

## BASIS FOR RELIEF REQUESTED

### I. The Asset Sale is Appropriate

16. Although the Debtors continue to believe that a Stand Alone Plan is a viable option for their emergence from bankruptcy, both the Acme Debtors and their key creditor constituencies also recognize that selling certain of the Debtors' assets may be a value maximizing option for the Debtors' estates. Thus the Acme Debtors believe -- and in the Sale Motion will demonstrate in detail and with a complete record -- the sale of the Assets would be appropriate pursuant to section 363 of the Bankruptcy Code, which permits a debtor in possession to use its property other than in the ordinary course of business after notice and a hearing. 11 U.S.C. § 363(b). Bankruptcy courts regularly approve a debtor's requests to use property outside of the ordinary course of business so long as a good business justification exists for the request. See Committee of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.), 722 F.2d 1063, 1071 (2d Cir. 1983); Myers v. Martin (In re Martin), 91 F.3d 389, 395 (3d Cir. 1996); The Dai-Ichi Kangyo Bank, Ltd. v. Montgomery Ward Holding Corp. (In re Montgomery Ward Holding Corp.), 242 B.R. 147 (D. Del. 1999) (explaining that, in evaluating such requests, "courts consider a variety of factors, which essentially represent a 'business judgment test.'"); In re Phoenix Steel Corp., 82 B. R. 334, 335-36 (Bankr. D. Del. 1987) (requiring that a sale of assets under section 363 be fair and equitable, have a good business reason and be made in good faith). In fact, "[w]here the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor's conduct." Committee of Asbestos-Related Litigants and/or Credits v. Johns-Manville Corp. (In re Johns-Manville Corp.), 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986).

17. In these cases, good business justifications will exist for the Acme Debtors' request to sell the Assets. Although, the Debtors' steel-making segment is now generating positive EBITDA, it continues to incur operating losses (after depreciation charges) and may not achieve the sales, production, and performance levels necessary to achieve an operating profit for

the year 2000. This is due, in part, to the fact that the Debtors' steel-making segment has been affected by, and remains subject to, cyclical trends in the industry and intense pricing pressures from imports of foreign steel, which the Debtors believe has at times been sold at prices below their cost of production. For these reasons, and for the reasons that will be set forth in detail in the Sale Motion, the Acme Debtors believe that a sale of the Assets within the near future could maximize the value available for distribution to the Acme Debtors' creditors.

**II. The Sale Procedures and Buyer Protections Sought Herein Will Maximize The Value of the Assets and Should be Approved by the Court**

18. Bankruptcy courts frequently have considered and approved overbid procedures and break-up fee and other buyer protections in advance of proposed sales of property of the estate. *See, e.g., Doehring v. Crown Corp. (In re Crown Corp.)*, 679 F.2d 774, 775 (9th Cir. 1982) (the district court had required specified minimum overbid amounts, deposits, and the form of purchase agreement to be used by bidders); *In re Crowthers McCall Pattern, Inc.*, 114 B.R. 877, 879 (Bankr. S.D.N.Y. 1990) (the bankruptcy court had entered an order approving potential break-up fees and requiring that overbids be made in specified minimum increments with deposits); *In re Table Talk, Inc.*, 53 B.R. 937, 943 (Bankr. D. Mass. 1985) (section 363 of the Bankruptcy Code requires notice and a hearing prior to the establishment of bidding procedure for the sale of property of the estate).

**A. The Proposed Sale Procedures Will Maximize the Value of the Assets and Should Be Approved.**

19. Though something more than the debtor's business judgment is necessary in this Circuit to justify the allowance of break-up fees, courts have made it clear that the debtor's business judgment is entitled to great deference with respect to the other procedures to be used in selling assets from the estate. *See, e.g., Official Comm. of Subordinated Bondholders v. Integrated Resources, Inc. (In re Integrated Resources, Inc.)*, 147 B.R. 650, 656-57 (S.D.N.Y. 1992) (noting that overbid procedures that have been negotiated by a debtor in possession are to

be reviewed according to the deferential "business judgment" standard, under which such procedures and arrangements are "presumptively valid"). Here, as demonstrated below, the proposed sale procedures are supported by ample "business justification" and are reasonable and appropriate under the circumstances of the Debtors' cases.

20. The paramount goal in any proposed sale of property of the estate is to maximize the proceeds received by the estate. See, e.g., Four B. Corp. v. Food Barn Stores, Inc. (In re Food Barn Stores, Inc.), 107 F.3d 558, 564-65 (8th Cir. 1997) (in bankruptcy sales, "a primary objective of the code [is] to enhance the value of the estate at hand"); Integrated Resources, 147 B.R. at 659 ("It is a well-established principle of bankruptcy law that the objective of bankruptcy rules and the Debtor's duty with respect to such sales is to obtain the highest price or greatest overall benefit possible for the estate.") (quoting In re Atlanta Packaging Products, Inc., 99 B.R. 124, 131 (Bankr. N.D. Ga. 1988)).

21. To that end, courts uniformly recognize that procedures intended to enhance competitive bidding are consistent with the goal of maximizing the value received by the estate and are appropriate in the context of bankruptcy sales. See, e.g., Integrated Resources, 147 B.R. at 659 (such procedures should "encourage bidding and [] maximize the value of the debtor's assets"); In re Financial News Network, Inc., 126 B.R. 152, 156 (S.D.N.Y. 1991) ("court-imposed rules for the disposition of assets . . . [should] provide an adequate basis for comparison of offers, and [] provide for a fair and efficient resolutions of bankrupt estates").

22. As explained above, while the Seller and Buyer have entered into a Letter of Intent and a related Term Sheet setting forth the material terms of the Proposed Transaction, the parties have not yet entered into a binding agreement for the Proposed Transaction. The parties anticipate that upon the entry of an order approving the Buyer Protections sought herein, they will commit to drafting and executing a definitive Purchase Agreement as quickly as possible (but in no event before September 27, 2000, the day on which Acme Steel is free to sign such an agreement under the USWA Agreement) and in any event sufficiently in advance of the Auction

and Sale Hearing to provide all interested parties (including competing bidders) ample time to review the Purchase Agreement.

23. The Sale Procedures proposed herein are fair and reasonable and will increase the likelihood that the Acme Debtors will receive the greatest consideration possible for the Assets upon conclusion of the Auction. The Letter of Intent contemplates the Auction occurring prior to the Sale Hearing and requires the establishment of commercially reasonable sale procedures, minimum overbid requirements, the making of a "earnest money deposit" by all Competing Bidders (other than the USWA) and the making of a deposit by any bidder (other than the USWA) whose Qualified Competing Bid is chosen by the Acme Debtors at the Auction as the highest or best offer. In accordance with the Letter of Intent, the Acme Debtors propose that the bidding process be conducted generally on the terms and conditions set forth in the following sub-paragraphs (the "Sale Procedures"):

(a) Each higher or better competing bid on the Assets (a "Competing Bid") must be made in writing, in the form of the Purchase Agreement (which shall be filed with the Court by Acme Steel no later than twenty-five (25) days prior to the date of the Auction) marked to reflect (in bold typeface) all changes, including greater consideration, different buyer and any other conforming changes that must be made to reflect a different buyer. Each Competing Bid must be executed by an individual authorized to bind the prospective purchaser ("Competing Bidder") to its terms. The initial Competing Bid of each party must be served so that such bid is received no later than 4:00 p.m. eastern time on November 10, 2000 (subject to the Acme Debtors' right to adjourn such date as set forth in subparagraph (j) below) (the "Bid Deadline"), upon (i) Brendan L. Shannon, Esq. of Young Conaway Stargatt & Taylor, LLP, One Rodney Square North, 11th Floor, Wilmington, Delaware 19899 (facsimile number (302) 571-0453); (ii) Edward P. Weber, Jr., Esq. of Acme Metals Incorporated, 13500 S. Perry Avenue, Riverdale, Illinois 60827 (facsimile number (708) 841-6010); (iii) David M. LeMay, Esq. of Hughes Hubbard & Reed LLP, One Battery Park Plaza, New York, New York 10004 (facsimile number (212) 422-4726); (iv) Mr. Martin Lewis of Wasserstein Perella & Co., Inc., 31 West 52nd Street, New York, New York 10019 (facsimile number (212) 969-2705); (v) David C.L. Frauman, Esq. of Cadwalader, Wickersham & Taft, 100 Maiden Lane, New York, New York 10038 (facsimile number (212) 504-6666); and (vi) Lawrence M. Handelsman, Esq. of Stroock & Stroock & Lavan LLP, 180 Maiden Lane, New York, New York 10038 (facsimile number (212) 806-6006); and the copy to Young Conaway Stargatt & Taylor, LLP must be accompanied by the Earnest Money Deposit (as defined below).

(b) The initial purchase price offered by any Competing Bidder shall provide value of no less than the sum of (i) the overall value to the Seller as provided by the Purchase Agreement plus (ii) \$7 million, and shall include the assumption of the EIBs on identical terms as set forth in the Purchase Agreement (the "Initial Competing Bid Amount"). However, any Competing Bid submitted by the USWA shall not be required to comply with the initial minimum overbid requirement.

(c) The initial Competing Bid of each party shall be accompanied by:

(i) a certified check, wire transfer or non-contingent irrevocable letter of credit payable to Young Conaway Stargatt & Taylor, LLP, as Acme Steel's agent, for not less than \$1 million, such funds representing a refundable earnest money deposit ("Earnest Money Deposit") to be held in escrow and applied toward the purchase price if the Competing Bid is accepted and the sale is approved by the Court, or returned to the Competing Bidder if the bid is not accepted by the Acme Debtors, *provided, however*, that the USWA shall not be required to submit an Earnest Money Deposit;

(ii) evidence reasonably acceptable to the Acme Debtors demonstrating that the Competing Bidder has the financial ability to close and consummate an acquisition of the Assets without undue delay. If financing is to be provided by any external source(s), included with the Competing Bid shall be a statement of the terms and present status of all financing agreements, if any, and the forms of all commitment agreements anticipated to be obtained. Competing Bidders must provide the names and phone numbers of the contact persons at the institutions providing financing in connection with the Competing Bid, and inform such persons that they may be contacted by the Debtors or their representatives and authorize such persons to communicate with the Debtors or their representatives regarding such Competing Bid;

(iii) the name and telephone number(s) of a contact person who will be available to answer questions regarding the Competing Bid, as well as the names and telephone numbers of any financial and legal advisors retained by the Competing Bidder, as applicable;

(iv) a statement that the Competing Bidder has received all necessary corporate governance approvals. Any material conditions to closing that differ from those set forth in the Purchase Agreement must be set forth in bold type and clearly described in the Competing Bid, including any third-party consents and approvals that the Competing Bidder views as essential to completing the transaction, *provided, however*, that no Competing Bid shall include a material condition to closing that differs from those set forth in the Purchase Agreement and that the Seller or the Acme Debtors would be unable to satisfy, using their reasonable best efforts, within ten (10) business days of the Court's approval of such bid. The scope of any representations, warranties, covenants and any conditions to closing deemed to be material to the Acme Debtors in their sole and

exclusive discretion may cause the Acme Debtors to discount the value of a Competing Bid; and

(v) such other information as reasonably may be requested by the Acme Debtors.

(d) Only those Competing Bids submitted by the Bid Deadline that meet all of the requirements of paragraphs (a) through (c) above (subject to any exceptions set forth in such paragraphs) shall constitute "Qualified Competing Bids," and only parties submitting Qualified Competing Bids shall be entitled to participate in the Auction.

(e) If one or more Qualified Competing Bids are submitted, the Auction shall be conducted on November 20, 2000 (subject to the Acme Debtors' right to adjourn such date as set forth in subparagraph (j) below) (the "Auction Date") at the offices of Young Conaway Stargatt & Taylor, LLP, One Rodney Square North, Wilmington, Delaware 19899, commencing at 9:30 a.m. At the Auction, the Buyer and all parties who have submitted Qualifying Competing Bids will have the opportunity to submit additional higher or better bids. Any additional bid for the Assets made at the Auction shall be in an increment of at least \$1 million in excess of the higher of (i) the last bid or (ii) the Initial Competing Bid Amount, *provided, however*, that any successive bid submitted by the USWA shall not be subject to the minimum incremental increases set forth herein.

(f) At the conclusion of the Auction, the Acme Debtors will announce their determination of the person or entity submitting the highest or best bid for the Assets. Immediately thereafter, such prevailing Competing Bidder (other than the USWA) shall submit to Acme Steel a certified check, wire transfer or non-contingent irrevocable letter of credit payable to Young Conaway Stargatt & Taylor, LLP, as Acme Steel's agent, for not less than \$4 million, which amount shall be held in escrow, together with the prevailing Competing Bidder's Earnest Money Deposit. The prevailing Competing Bidder's deposit of \$4 million and Earnest Money Deposit (collectively referred to as the "Deposit") will be applied toward the purchase price upon the closing of the transaction contemplated by the Competing Bid Agreement. In the event that such closing does not occur, the Deposit, and any interest accrued thereon, would be released to the prevailing Competing Bidder *unless* the failure of such closing to occur is attributable in whole or in part to a material breach or inaccuracy of any representation, warranty or covenant of such prevailing Competing Bidder, in which case such funds would be released to Acme Steel. In the event that the USWA is the prevailing Competing Bidder, the USWA will not be required to make the Deposit.

(g) At the Sale Hearing, the Acme Debtors will present to the Court their recommendation on the highest or best bid. The Court, in its discretion, shall then approve the highest or best bid for the Assets. The Acme Debtors, however, shall have accepted a bid only when it is approved by the Court at the Sale Hearing. Until the Court has approved the sale of the Assets, the Acme Debtors reserve their right to pursue a Stand Alone Plan.

(h) If the closing under a Competing Bid is not timely concluded with a successful Competing Bidder, the Debtors shall have the right, but not the obligation, without further authorization or order from the Court, to promptly conclude the contemplated transactions with the next highest willing bidder having submitted a Qualified Competing Bid, or with the Buyer, as determined by the Acme Debtors.

(i) If no Qualifying Competing Bids are received, the Acme Debtors will not conduct the Auction, and the Court, in its discretion, will decide whether to approve the sale to Buyer under the terms of the Purchase Agreement.

(j) In the event that the Purchase Agreement has not been filed with the Court by October 25, 2000, the Acme Debtors may adjourn the scheduled dates for the Bid Deadline and the Auction, such that the Bid Deadline will be the first business day that is fifteen (15) days after the filing of the Purchase Agreement and the Auction shall occur on the first business day that is twenty-five (25) days after the filing of the Purchase Agreement. In addition, the Auction shall not occur prior to the satisfaction or waiver of the condition identified in paragraph 16(g) of the Term Sheet, which provides for the Buyer's satisfaction with the content of a certain environmental report prepared by a third party assessing environmental conditions of certain of the Assets. In the event of any such adjournment, the Acme Debtors will immediately notify the Court and request that the date for the Sale Hearing be scheduled within three (3) days following the adjourned Auction Date, subject to the Court's availability.

24. These Sale Procedures are supported by ample business justification and are reasonable and appropriate for a transaction of this size and type. For example, the minimum initial bidding requirement set forth in subparagraph (b) above will ensure that Acme Steel's estate will benefit from a successful overbid even after payment to WCI of the Break-Up Fee and Expense Reimbursement (as such terms are defined below) in the event of a sale to a Competing Bidder other than the USWA. The requirement that all Competing Bids be submitted on or before the Bid Deadline will (i) provide the Acme Debtors with a reasonable opportunity to review, clarify and evaluate such bids, (ii) give the Buyer an opportunity to consider the Competing Bid and determine how to proceed at the Auction including whether to increase the amount of its offer, and (iii) ensure that the Auction will be well organized, competitive and productive.

25. Furthermore, the requirement that bidders (other than the USWA) make the Deposit (including the Earnest Money Deposit) and demonstrate their financial ability to close without undue delay will ensure that only serious, committed entities will participate in the



bidding and reduce the chances that the Acme Debtors will be unable to close a transaction because a prevailing bidder proves unable or unwilling to consummate the sale. Additionally, the bidding procedures to be implemented at the Auction, as set forth in subparagraph (e) above, will ensure that the Acme Debtors' estates receive maximum value for the Assets as tested and established by an open auction process.

26. For these reasons, and those set forth above, the Debtors request that the Court approve the Sale Procedures. If at the date of the Auction, no Purchase Agreement is in existence (either because one was never executed or because one was executed and subsequently terminated) the Sale Procedures requested herein would not apply.<sup>3</sup>

**B. The Buyer Protections Are Necessary Expenses of Acme Steel's Estate and Should Be Approved as Administrative Expenses.**

27. As a condition of continuing negotiations regarding the Proposed Transaction, completing due diligence, foregoing other investment opportunities, committing its resources to pursuing the Proposed Transaction and acting as the "stalking horse" for other potential bidders, the Buyer has required that the Debtors agree -- and seek a court order holding -- that the Expense Reimbursement and the Break-Up Fee or Alternate Fee (each as defined below), if earned by the Buyer, shall constitute administrative expenses of Acme Steel's estate. The Buyer has stated that it is not willing to proceed further with negotiation or to enter into an agreement to purchase the Assets if the Expense Reimbursement and Break-Up Fee or Alternate Fee are not approved on the terms and conditions set forth in the Intent Letter.

28. The Acme Committee supports the approval and payment of the Break-Up Fee (or Alternate Fee) and Expense Reimbursement as administrative expenses of Acme Steel's estate.

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<sup>3</sup>. Pursuant to specific terms set forth in the Letter of Intent, in the event that Purchase Agreement is either not entered into or executed and subsequently terminated, the Buyer may still be entitled to its Buyer protections (specifically, the Break-Up Fee or the Alternate Fee and Expense Reimbursement) in the circumstances set forth therein.

29. Thus, by this Motion, the Acme Debtors also seek Court approval of these Buyer protections and the conditions under which these fees and expenses are payable. Specifically, the Acme Debtors seek approval of (i) a break-up fee in the amount of \$5 million (the "Break-Up Fee"), (ii) a lesser fee of \$2 million to be paid in lieu of the Break-Up Fee upon the occurrence of certain events set forth in detail below (the "Alternate Fee"), and (iii) reimbursement of all reasonable out-of-pocket costs and expenses, including reasonable attorneys fees (but in any event excluding internal costs such as wages and salaries of employees and overhead), incurred by Buyer at any time subsequent to April 24, 2000 in connection with the negotiation, execution or consummation of the Proposed Transaction (including performance of due diligence), up to a maximum of \$500,000 (the "Expense Reimbursement," and together with the Break-Up Fee or the Alternate Fee, the "Buyer Protections"). The events that would trigger these Buyer Protections can be summarized as follows:

(i) Competing Bid. (a) Except as otherwise provided in subparagraphs (i)(b), (iii), and (iv) below, in the event the Court approves a Competing Bid, the Buyer shall earn the Break-Up Fee and Expense Reimbursement upon entry of the order approving such Competing Bid.

(b) Notwithstanding subparagraph (i)(a) above, the Break-Up Fee shall not be earned by or payable to the Buyer in any of the following situations:

(1) the Court has approved a Competing Bid submitted by the USWA; or

(2) either the Buyer or the Seller terminates negotiations pursuant to a Notice Letter (as defined below), but only if the Debtors have negotiated with the Buyer in good faith, and if the Buyer has requested any material change in (or requested any provision in a Purchase Agreement that is inconsistent in any material respect with) the provisions of the Term Sheet, except for any such request made in good faith as a result of information first learned by the Buyer, or events or changes occurring, after the date of the Letter of Intent, or the Buyer has otherwise not negotiated in good faith with the Debtors or the USWA; or

(3) a period of 9 months or more elapses between the date on which the Court enters the Procedures Order and the date on which a Competing Bid is submitted to the Court for approval.

As used herein, a "Notice Letter" means a written notice by either the Seller or the Buyer to the other party terminating the negotiation of a Purchase Agreement.

(ii) Stand Alone Plan. (a) Except as otherwise provided in the following sentence and in subparagraphs (ii)(b), (iii) and (iv) below, in the event the Court confirms a Stand Alone Plan, the Buyer shall earn the full \$5,000,000 Break-Up Fee and Expense Reimbursement. Except as otherwise provided in subparagraphs (ii)(b), (iii) and (iv) below, if no Purchase Agreement is executed and the Court thereafter confirms a Stand Alone Plan, the Buyer shall not earn or be paid the full \$5,000,000 Break-Up Fee, but shall instead earn an alternate break-up fee (the "Alternate Fee") in the amount of \$2,000,000 and Expense Reimbursement.

(b) Notwithstanding subparagraph (ii)(a) above, neither the Break-Up Fee nor the Alternate Fee shall be earned by or payable to the Buyer in any of the following situations:

(1) the Seller has negotiated with the Buyer in good faith and no Purchase Agreement is executed because (in whole or in part) (x) either the Seller or the Buyer determines in good faith that one or more conditions precedent (to its or the other party's obligations) or deadlines contemplated by the Term Sheet, other than the condition identified in paragraph 16(h) of the Term Sheet, will not timely be satisfied or met and has not been waived, or (y) the Buyer requests any material change in (or requests any provision in a Purchase Agreement that is inconsistent in any material respect with) the provisions of the Term Sheet; or

(2) a Purchase Agreement is executed and delivered by the Seller and the Buyer but the Closing does not occur for any reason other than a material inaccuracy in any of the representations or warranties made by the Seller in such Purchase Agreement or a material breach by Seller of any of its covenants in such Purchase Agreement.

(iii) Expense Reimbursement Limitations. The Expense Reimbursement shall be earned by Buyer upon entry of the Procedures Order and shall be payable to Buyer in accordance with subparagraph (v) below unless a Purchase Agreement is not executed by the Seller and the Buyer because (in whole or in part) (a) the Buyer failed to negotiate in good faith with the Debtors or the USWA or (b) without limitation of clause (a) hereof, the Buyer requests any material change in (or requests any provision in a Purchase Agreement that is inconsistent in any material respect with) the provisions of the Term Sheet, except for any such request made in good faith as a result of information first learned by the Buyer, or events or changes occurring, after the date of the Letter of Intent.

(iv) General Limitation. In any event, however, neither the Break-Up Fee, nor the Alternate Fee, nor Expense Reimbursement will be payable if (a) the Closing occurs, or (b) the Closing does not occur due in whole or in part to any material breach of any

representation, warranty or covenant by the Buyer, or (c) the Buyer does not proceed in good faith to negotiate the Purchase Agreement.

(v) Time of Payment. The Break-Up Fee and Expense Reimbursement, once earned, shall be payable to the Buyer upon the earlier to occur of either (a) the closing of the transaction contemplated by the Court-approved Competing Bid or (b) on the effective date of a confirmed Stand Alone Plan. The Alternate Fee, once earned, shall be payable to the Buyer on the effective date of a confirmed Stand Alone Plan. Notwithstanding the two immediately preceding sentences, the Expense Reimbursement, once earned, shall be payable regardless of whether a Competing Bid or Stand Alone Plan occurs, unless Buyer forfeits its right to such payment pursuant to subparagraphs (iii)(a) or (b) or (iv) above.

30. Break-up fees, expense reimbursements and other rights to payment on termination are normal and, in many cases, necessary components of significant sales conducted under Section 363 of the Bankruptcy Code:

Break-up fees are important tools to encourage bidding and to maximize the value of the debtor's assets . . . In fact, because the . . . corporation ha[s] a duty to encourage bidding, break-up fees can be necessary to discharge [such] duties to maximize values.

Integrated Resources, 147 B.R. at 659-70 (emphasis in original). Specifically, breakup fees, expense reimbursements and other strategies may be legitimately necessary to convince a bidder to enter the bidding by providing some form of compensation for the risks it is undertaking. See, e.g., Integrated Resources, 147 B.R. at 660-61 (break-up fees can prompt bidders to commence negotiations and "ensure that a bidder does not retract its bid"); In re Hupp Industries, Inc., 140 B.R. 191, 194 (Bankr. N.D. Ohio 1992) ("without such fees, bidders would be reluctant to make an initial bid for fear that their first bid will be shopped around for a higher bid from another bidder who would capitalize on the initial bidder's . . . due diligence").

31. As a consequence, bankruptcy courts frequently approve break-up fees and similar buyer protections in connection with proposed bankruptcy sales. The Third Circuit Court of Appeals became the first circuit court to consider the standards that should govern an award of break-up fees and related expenses in the bankruptcy context in Calpine Corp. v. O'Brien Environmental Energy, Inc. (In re O'Brien Environmental Energy, Inc.), 181 F.3d 527 (3rd Cir.

1999). In that case, the Third Circuit concluded that the jurisprudence governing the general allowance of administrative claims in bankruptcy should govern the authorization of break-up fees and related expenses for the initial bidder in an auction process. *Id.* at 535. Rejecting the business judgment rule in this context, the Third Circuit explained that “the allowability of break-up fees, like that of other administrative expenses, depends upon the requesting party’s ability to show that the fees were actually necessary to preserve the value of the estate.” *Id.*

32. The Third Circuit noted that any number of factors that may or may not have been considered by the debtor in the exercise of its business judgment would help justify allowance of break-up fees under this standard. Among the factors noted by the court was whether the break-up fee is necessary to induce an initial bid or whether, to the contrary, it impermissibly creates an uneven playing field in favor of the initial bidder by increasing the cost of the acquisition to other ready, willing and able bidders. *Id.* In addition, the court noted that the break-up fee is not justified in circumstances where the cost of acquiring the debtor, including the cost of making the bid, is less than the estimated value the purchaser expects to gain from acquiring the company. *Id.* In other words, if the bid is a “low-ball” offer that does not fairly compensate the estate for the assets, allowance of a break-up fee in favor of the initial bidder is not justified. Finally, the court noted that break-up fees are justified if it can be established that the break-up fee promoted more competitive bidding, by inducing a bid that would not have otherwise been made and without which bidding would have been limited. *Id.* at 537. Underlying the requisite analysis in any event is the over-arching consideration of whether awarding the break-up fee and related expenses is necessary to preserve the value of the estate.

(1) **As Required by the O’Brien Standard,  
the Buyer Protections Are Necessary to  
Preserve Value for the Estate.**

33. The Third Circuit’s requirements that the initial bid represent fair value for the assets being sold is also met here. The Buyer’s bid is the only meaningful offer received for these Assets during the Debtors’ exhaustive marketing efforts over the last year. In the Acme

Debtors' judgment it is far from being a "low ball" offer meant to take advantage of the Debtors' financial difficulties in bankruptcy.

34. Thus, there is real value for the estate created by granting the Buyer's request for the Buyer Protections. The Buyer has in the Letter of Intent and Term Sheet expressed a good faith intent to purchase the Assets at a fair and reasonable purchase price. Granting the Buyer Protections as administrative expenses will commit the Buyer to serve as the "stalking horse" bidder for purposes of the Proposed Transaction with a bid that starts the Auction at a fair and reasonable minimum purchase price, all to the benefit of the Debtors' estates. Because the Buyer Protections are a condition of the Buyer's willingness to complete negotiations and enter into the Purchase Agreement, they are essential to the commencement of the Auction process.

(2) The Buyer Protections will Encourage Fair and Competitive Bidding.

35. The Third Circuit relied heavily on the impact on the bidding process as an indication of the value of the break-up fee award. Other courts have also recognized this as an important factor for approval of break-up fees and other buyer protections. "The usual rule is that if break-up fees encourage bidding, they are enforceable; if they stifle bidding, they are not enforceable." Integrated Resources, 147 B.R. at 659. A break-up fee, and other buyer protections, may encourage bidding by serving "any of three possible useful functions: (1) to attract or retain a potentially successful bid; (2) to establish a bid standard or minimum for other bidders to follow; or (3) to attract additional bidders." Integrated Resources, 147 B.R. at 662; cf. In re Bidermann Industries U.S.A., Inc., 203 B.R. 547, 553 (Bankr. S.D.N.Y. 1997) (disapproving of break-up fees where "the debtors here did not negotiate with third party prospective purchasers, pick the best of them and then proceed to seek approval for topping and expense reimbursement fees. Rather they determined to proceed with a management-led buyout where their chief executive officer and their majority shareholder may acquire equity in and salaries from the acquiring enterprise.").

36. Here, the Buyer Protections payable to the Buyer will not stifle bidding. Simply put, there would not be a public sale without the Buyer's commitment to this transaction. After extensive post-petition marketing efforts by the Debtors and their financial advisors, the Buyer made the only meaningful initial offer for the Assets and demonstrated through its actions a commitment to the Proposed Transaction. In other words, if the Assets are sold to a Competing Bidder, it will, in all likelihood, be solely because of the Buyer's crucial role in jump-starting the bidding process and serving as the stalking horse. Furthermore, if the Assets are sold to a Competing Bidder (other than the USWA), there will be a net benefit to the Debtors' estates (after payment of the Buyer Protections) of at least \$1.5 million.<sup>4</sup> The Acme Debtors and Buyer believe that the Intent Letter and the Auction process described herein will be the "catalyst" for subsequent bids.

(3) The Amount of the Buyer Protections Is Fair and Reasonable and Will Not Chill Bidding.

37. Echoing the decisions of numerous other courts, the Third Circuit emphasized also the requirement that a break-up fee award enhance, rather than chill, the bidding process. See O'Brien, 181 F.3d at 537. In this regard, "[a] break-up fee should constitute a fair and reasonable percentage of the proposed purchase price, and should be reasonably related to the risk, effort, and expenses of the prospective purchaser. When reasonable in relation to the bidder's efforts and to the magnitude of the transaction, break-up fees are generally permissible." Integrated Resources, 147 B.R. at 662 (quotations omitted); see, e.g., Hupp Industries, 140 B.R. at 195.

38. The Break-Up Fee of \$5,000,000 represents at most 3.44% of the sum of the Fixed Cash Component (\$114 million), estimated EIB Cash Component (\$2.4 million), the

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4. As explained above, a Court-approved Competing Bid submitted by the USWA would not be subject to the Break-up Fee. Thus, a sale of the Assets to the USWA would produce a net benefit to the Debtors' estates equal to the difference of USWA's purchase price and the Buyer's purchase price, minus the payment of the Expense Reimbursement.

Buyer's surrender of \$59,425,000 face value of the Notes' (valued solely for purposes of reflecting the percentage of the purchase price represented by the Break-Up Fee at their current trading price of approximately 12% of their face amount, or \$7.13 million)<sup>6</sup>, the Reline Cash Component (approximately \$6.2 million) and long term indebtedness to be assumed by the Buyer (approximately \$15.5 million, assuming a December 31, 2000 Closing). Thus, Acme Steel submits that the proposed Break-Up Fee is reasonable in light of the magnitude of the Proposed Transaction.

39. The percentage of the Break-Up Fee to the total consideration offered by the Buyer is substantially lower taking into account the Buyer's assumption of significant environmental and employee-related liabilities. An additional and very important element of value in the Proposed Transaction is the Buyer's agreement to assume Acme Steel's Pension, Employee and Environmental Liabilities (as such terms are defined in the Term Sheet). The Purchase Price, including the Buyer's assumption of certain of Acme Steel's liabilities, will provide a total benefit to Acme Steel's estate in the vicinity of \$275 million to \$300 million; the \$5 million Break-Up Fee is 1.8% of \$275 million and 1.7% of \$300 million. A comparison of the Break-Up Fee against the total value of the consideration being offered by the Buyer further bolsters the reasonableness of the Break-Up Fee amount.

40. The Break-Up Fee is comfortably within the range of fees typically allowed in other significant sales transactions that have been proposed in a bankruptcy setting. See, e.g., Consumer News & Business Channel Partnership v. Financial News Network, Inc. (In re Financial News Network Inc.), 980 F.2d 165, 167 (2d Cir. 1992) (noting that the transaction at

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5. The Buyer's surrender of its Notes will benefit the estate by reducing the amount of General Unsecured Claims against Acme and Acme Steel by almost \$60 million, thereby increasing the recovery to all other holders of General Unsecured Claims.
  6. The value of the Notes to be surrendered by the Buyer will be determined at the time of the Auction. For purposes of the percentage calculation in this Motion and for general guidance only, the current trading price of approximately 12% of the Notes' faces amount is being used.



issue provided for a \$8.2 million break-up fee on a \$149.3 million transaction); Integrated Resources, 147 B.R. at 662 (approving a \$7.5 million break-up fee on a \$565 million transaction); In re Montgomery Ward Holding Corp., et al., Case No. 97-1409 (PJW) (Bankr. D. Del., June 15, 1998) (court approved break-up fee of 2.75%, or \$3,000,000 in connection with \$110,000,000 sale of real estate); In re HHL Financial Services, Inc., No. 97-398 (SLR) (D. Del. March 31, 1997) (approving 5.5% to 5.9% break-up fees); In re American White Cross, Inc., No. 96-1109 (PJW) (Bankr. D. Del. March 31, 1997) (approving up to 5.8% break-up fee plus up to \$450,000 in expense reimbursement); In re Mid-American Waste Systems, Inc., No. 97-0104 (PJW) (Bankr. Del. Jan. 21, 1997) (3% fee plus up to \$1 million expenses approved); In re Simmons Upholstered Furniture, Inc., No. 94-635 (HSB) (Bankr. D. Del. Aug. 10, 1995) (approving 4.64% fee and up to \$650,000 in expenses); Crown Corp., 679 F.2d 774 (4.9% fee); cf. Chrysler Capital Corp. v. Official Committee of Unsecured Creditors (In re Twenver), 149 B.R. 950, 957 (D. Colo. 1993) (disapproving a proposed break-up fee of ten percent of the total purchase price).

41. For these reasons, given the immense importance of the transaction proposed in the Term Sheet to the Debtors, as well as their estates and creditors, the Acme Debtors urge the Court to approve the Buyer Protections as set forth herein and in the Letter of Intent.

**III. The Court Should Approve the Auction and Proposed Sale Hearing Dates and the Debtors' Proposed Notice Procedures with Respect Thereto.**

42. The Acme Debtors also request that the Court set certain dates and approve the form and manner of notice of Sale Hearing and Auction regarding the Proposed Transaction. Specifically, the Acme Debtors request that the Court set (i) November 21, 2000 at 10:00 a.m. as the date and time for the Sale Hearing; (ii) November 10, 2000 at 4:00 p.m. as the deadline for filing objections to the Sale Motion; (iii) November 10, 2000 at 4:00 p.m. as the deadline for submitting Competing Bids for the Assets; and (iv) November 20, 2000 at 9:30 a.m. as the date and time of the Auction (the "Auction Date"). In the event, however, that the Sale Motion has

not been filed with the Court by October 25, 2000, the Acme Debtors request authority to adjourn the scheduled dates for the Bid Deadline and the Auction, such that the Bid Deadline will be the first business day that is fifteen (15) days after the filing of the Purchase Agreement and the Auction shall occur on the first business day that is twenty-five (25) days after the filing of the Purchase Agreement. The Sale Notice (as defined below) shall reflect such adjourned dates. Furthermore, the Acme Debtors request authority to adjourn the date of the Auction in the event that the condition identified in paragraph 16(g) of the Term Sheet, which provides for the Buyer's satisfaction with the content of a certain environmental report, has not been satisfied or waived by the Buyer prior to the established Auction Date. If any such adjournment occurs, the Acme Debtors will immediately notify the Court and request that the date for the Sale Hearing be scheduled within three (3) days following the adjourned Auction Date, subject to the Court's availability.

43. The Acme Debtors submit that the fixing of such dates will facilitate the sale process and enable the Debtors to provide interested parties with adequate and sufficient notice of the Proposed Transaction and the Sale Procedures.

44. Within two days after the execution of the Purchase Agreement, the Acme Debtors propose to serve a copy of the Sale Motion and all exhibits thereto, including the Procedures Order and the Purchase Agreement<sup>7</sup>, and a notice (the "Sale Notice") of the Auction and Sale Hearing by first class mail, postage pre-paid, upon (a) the United States Trustee for the District of Delaware; (b) counsel to the Acme Committee; (c) counsel to the Alpha Tube Committee; (d) counsel for the Debtors' postpetition secured lenders; (e) counsel for the Buyer; (f) all entities known to have expressed an interest in a transaction with respect to the Assets during the course of these chapter 11 cases; (g) counsel to First Chicago Leasing Corporation; (h) counsel to KeyCorp Leasing; (i) counsel to State Street Bank and Trust Company; (j) counsel

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7. In the event that a definitive Purchase Agreement is not complete upon the filing of the Sale Motion, the Acme Debtors will file with the Court the Purchase Agreement no later than twenty-five (25) days prior to the Auction Date established by the Court.

to National City Bank of Kentucky; (k) counsel to BankOne, formerly NBD Bank; (l) counsel to Morgan Stanley Senior Funding, Inc.; (m) all relevant taxing authorities; (n) counsel to Alpha Tube; and (o) all entities who have filed notices of appearances requesting service of papers in this case in accordance with Bankruptcy Rule 2002. The proposed form of the Sale Notice is annexed hereto as Exhibit "C".

45. The Debtors shall also cause the Sale Notice to be published in the National, European and Asian Editions of the *Wall Street Journal* and in *American Metal Market*, a daily newspaper reporting on the metals and recycling industries.

### NOTICE

46. Notice of this Motion has been or will be provided to (a) the United States Trustee for the District of Delaware; (b) counsel to the Acme Committee; (c) counsel to the Alpha Tube Committee; (d) counsel for the Debtors' postpetition secured lenders; (e) counsel for the Buyer; (f) counsel to First Chicago Leasing Corporation; (g) counsel to KeyCorp Leasing; (h) counsel to State Street Bank and Trust Company; (i) counsel to National City Bank of Kentucky; (j) counsel to BankOne, formerly NBD Bank; (k) counsel to Morgan Stanley Senior Funding, Inc.; (l) counsel to Alpha Tube; and (m) all entities who have filed notices of appearances requesting service of papers in this case in accordance with Bankruptcy Rule 2002. The Acme Debtors submit no other or further notice of the Motion is necessary or required.

WHEREFORE, the Acme Debtors respectfully request entry of an order, substantially in the form annexed hereto as Exhibit B, under sections 105(a) and 363 of the Bankruptcy Code (i) authorizing and approving (a) the Sale Procedures, as set forth herein, and (b) Buyer Protections, including the Break-Up Fee and Reimbursement Expenses, as set forth herein and in the Letter of Intent; (ii) scheduling a date for the Sale Hearing; (iii) approving certain notice procedures related to the Auction and Sale Hearing; and (iv) granting such other and further relief the Court deems proper.

Dated: Wilmington, Delaware  
September \_\_, 2000

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