

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re	)	Case No. 00-2426(PJW)
	)	
INACOM CORP., et al <sup>2</sup>	)	Chapter 11
	)	Jointly Administered
Debtors.	)	
	)	<b>Objection Deadline:</b> August 4, 2003, at 4:00 p.m. E.T.
	)	<b>Hearing Date:</b> September 19, 2003, at 9:30 a.m. E.T.

**MOTION OF MCGRATH NORTH MULLIN & KRATZ, PC LLO  
FOR A FEE ENHANCEMENT**

COMES NOW McGrath North Mullin & Kratz, PC LLO, special counsel for the Debtors and Debtors-in-Possession, and respectfully represents to the Court as follows:

**I. INTRODUCTION**

1. McGrath North Mullin & Kratz, PC LLO (herein "McGrath North"), as special counsel for the Debtors and Debtors-in-Possession, hereby requests a fee enhancement due to the extraordinary results which have been achieved in this case and the significant role which McGrath North played in accomplishing these results. The detailed basis for McGrath North's request for a fee enhancement in the amount of \$900,000.00 is set forth below.

**II. JURISDICTION**

2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §1334. This matter is a core proceeding within the meaning of 28 U.S.C. §157(b)(2)(A), (M), and (O).

---

<sup>2</sup> The Debtors are the following entities: InaCom Corp.; InaCom Latin America; InaCom Solutions, Inc.; InaCom Communications, Inc.; Inacomp Financial Services, Inc.; Perigee Communications, Inc.; Networks, Inc.; Gorham Clark, Inc.; InaCom International, Inc.; InaCom Tennessee, Inc.; InaCom Professional Services, Inc.; Kure Associates, Inc.; Office Products of Minnesota, Inc.; Boston Computer Exchange Corporation; PC Technical Services, Inc.; Vanstar Corporation; Computerland International Development, Inc.; Computerport World Trade, Inc.; Vanstar International Corporation; VST West, Inc.; VST Illinois, Inc.; VSTNC, Inc.; Cland Tex, Inc.; InaCom Government Systems, Inc.; Contract Data, Inc.; Computer Professionals, Inc.; and Vanstar Professional Technical Services, Inc.

3. The statutory basis for this Motion is §§105 and 330 of Title 11 of the United States Code (the “Bankruptcy Code”).

### **III. BACKGROUND**

#### **McGrath North’s Historical Representation of InaCom**

4. Beginning with the inception of InaCom Corp. (“InaCom”) in 1982, McGrath North represented InaCom as their main outside counsel with primary responsibility for handling InaCom’s legal affairs. The relationship between InaCom and McGrath North remained largely unchanged from 1982 until late 1999, at which time, after a change in the executive management of InaCom, the new management engaged the law firm of Willkie, Farr & Gallagher (“Willkie Farr”) as their corporate counsel. Following Willkie Farr’s engagement by InaCom, McGrath North’s role was scaled back and became largely one of special counsel, assisting Willkie Farr and InaCom on transactions on an as needed, and as requested, basis.

#### **The Debtors’ Retention of Professionals**

5. On June 16, 2000 (the “Petition Date”), InaCom, the primary debtor in this proceeding (and together with the other debtors herein, the “Debtors”), filed a Voluntary Petition for relief under Chapter 11 of Title 11 of the Bankruptcy Code. Following the Petition Date, the Debtors continued in possession of their respective properties and the management of their respective businesses as Debtors-in-Possession pursuant to §§ 1107 and 1108 of the Bankruptcy Code.

6. On June 21, 2000, an application was filed with this Court whereby the Debtors requested authority to retain Willkie Farr as bankruptcy counsel to the Debtors. On the same day, the Debtors filed an application for an order authorizing the Debtors to retain McGrath North as special counsel to assist the Debtors in various asset dispositions contemplated by the

Debtors in connection with their liquidation. Because Willkie Farr was being retained by the Debtors, at the time the Debtors sought McGrath North's assistance with their bankruptcy proceeding, McGrath North understood that its involvement in this proceeding would be similar to that from late 1999 until the Petition Date, during which time McGrath North served in that of a support role to Willkie Farr.

7. Willkie Farr did not ultimately become the Debtors' bankruptcy counsel; instead, on the day before the Court's Order was signed authorizing the Debtors to retain McGrath North as special counsel, the Debtors filed an application to retain the firm of Pachulski, Stang, Ziehl, Young, Jones and Weintraub, P.C. ("Pachulski Stang") as bankruptcy counsel to the Debtors, in lieu of Willkie Farr. The Order authorizing the Debtors to retain Pachulski Stang was subsequently entered by the Court on August 8, 2000. Following Pachulski Stang's entry into this case, McGrath North anticipated assisting Pachulski Stang (instead of Willkie Farr) as special counsel in this proceeding.

**McGrath North's Extensive and Valuable Role in This Proceeding**

8. Following McGrath North's retention, it became apparent that McGrath North's thorough understanding and historical knowledge of InaCom's assets and operations (which Pachulski Stang did not have) would be extremely valuable to the Debtors in their liquidation. Such fact resulted in McGrath North being increasingly called upon to take the lead role in negotiating and documenting numerous complex transactions involving some of the Debtors' most valuable assets. Although at the commencement of this case McGrath North realized that it would be working on these various transactions, the increased level of participation and responsibility in the Debtors' liquidation process was unanticipated by McGrath North and resulted in the firm having to realign its resources in order to devote the necessary professional

resources required to accomplish the results which have been achieved in this case. **The various transactions which McGrath North took part in ultimately resulted in a cash benefit to the Debtors' estate of over \$51,000,000, with over 8,800 hours of time being spent by McGrath North attorneys to accomplish these various transactions.** A breakdown of these various transactions, and the respective dollar amounts associated with them, is set forth on Exhibit A. Although many of these transactions were previously presented to the Court for approval (thus making a full recitation of them here unnecessarily duplicative), a few of the transactions deserve specific mention because of the difficult circumstances which were present in converting these assets into the significant cash recoveries that were received for the benefit of the Debtors' creditors.

#### **Vanstar/Lockheed Martin Lease Transactions**

9. Prior to InaCom's acquisition of Vanstar Corporation (another of the Debtors), Vanstar had entered into a series of complex leasing transactions with several different divisions of Lockheed Martin Corporation, including Lockheed Aeronautics, Lockheed Server Farm and Lockheed Missiles and Space. Although these transactions had very little legal review or negotiation at the time they were originally consummated, and in addition, involved an informal joint venture with a company unrelated to the Debtors called Niloy, Inc. d/b/a DCT Systems Group ("DCT"), through McGrath North's efforts, over \$13,000,000 was generated for the InaCom estate as a result of the sale of the Debtors' interests in these leases. McGrath North's extensive knowledge and insight proved invaluable in the negotiation and successful closing of the Lockheed Martin lease transactions.

### **Disposition of Franchisee and Reseller Interests**

10. Throughout the 1990's, the Debtors, for strategic reasons, acquired various equity and debt interests in numerous franchisees and resellers throughout the United States. Although virtually all of these interests represented largely unmarketable, minority interests with documentation that had little (and sometimes no) prior legal review or negotiation, the Debtors received over \$2,800,000 in cash as a result of McGrath North's efforts in liquidating these various interests. The cash was realized for the estate notwithstanding the existence of vigorous claims presented by these various franchisees and resellers against the Debtors for breach of contract, violations of state franchise and reseller laws (many of which included treble damages provisions), and other claims against the Debtors arising primarily from the Debtors' prior sale of its distribution business to Compaq Computer Corporation. McGrath North's historical knowledge of these various franchisees and resellers, along with the firm's long-standing relationship with the Debtors, proved critical in successfully negotiating and closing the sale of these various interests for cash for the benefit of the creditors in this case and in obtaining releases for the claims asserted against the Debtors.

### **Sale of the Debtors' International Operations**

11. Most of the Debtors' international operations were conducted through InaCom Latin America, Inc. ("ILA"), one of the Debtors. ILA's various foreign subsidiaries were in the business of selling computer hardware, software, and configuration and installation services in their respective countries. Through McGrath North's efforts, over \$1,000,000 was generated from the sale of stock interests and other liquidations of these various international operations. The most valuable of these transactions included the following:

(a) InaCom Venezuela. ILA owned 50% of the stock of Corporacion InaCom de Venezuela, C.A. (“InaCom Venezuela”). In October 2000, the Debtors sold these interests to two of InaCom Venezuela’s principals for \$350,000.

(b) InaCom Mexico. ILA owned 99% of the stock of InaCom de Mexico S.A. de C.V. (“InaCom Mexico”). In April 2001, the Debtors sold their interest in InaCom Mexico to its then current management for \$275,000.

(c) InaCom Asia Pacific. Through a liquidation of assets, the Debtors realized approximately \$500,000 from the wind-down of InaCom Asia Pacific.

McGrath North’s expertise in handling international transactions, when combined with its historical knowledge of the Debtors, enabled McGrath North to make these cash recoveries for the benefit of the Debtors’ estate and the creditors in this case on an extremely efficient basis.

12. To put in perspective the over \$51,000,000 which has now been realized as a result of McGrath North’s extensive involvement in this proceeding, InaCom recently reported that it anticipated having approximately \$67,000,000 available for distribution to the general unsecured creditors in this case.<sup>3</sup> Thus the transactions which McGrath North assisted in have resulted in over 75% of the total amount projected to be available for distribution to the general unsecured creditors.

**McGrath North’s significant contribution to the extraordinary results achieved in this case, the firm’s commitment to the Debtors and its willingness to realign the firm’s professional resources so that McGrath North’s extensive knowledge of the Debtors could be devoted to taking the laboring oar in disposing of some of the Debtors most valuable assets, and the extremely cost-efficient and timely work product generated for the Debtors**

---

<sup>3</sup> See InaCom Wins Court Approval of Plan Disclosure Statement, Daily Bankruptcy Review, March 26, 2003, at 14 (Dow Jones & Company 2003).

throughout this case, makes McGrath North more than deserving of a fee enhancement in this case.

#### IV. LEGAL AUTHORITY AND PRECEDENT FOR THE AWARDING OF FEE ENHANCEMENTS

13. The criteria for awarding attorneys' fees was originally governed by Bankruptcy Rule 219, which focused more on principles of economy rather than on attracting qualified counsel for debtors under the Bankruptcy Code. *See e.g., In re Penn-Dixie Industries, Inc.* 18 B.R. 834, 838 (Bankr. S.D.N.Y. 1982).

14. Fee awards are now governed by Section 330 of the Bankruptcy Code ("Section 330") which generally provides that, after notice and a hearing, the court may award to the attorney for the debtor: (1) reasonable compensation for actual, necessary services rendered based on time, the nature, extent and value of such services and the cost of comparable services other than in a case under this title; and (2) reimbursement for actual, necessary expenses. *Id.*

15. The revised standard for an award of compensation under Section 330 was intended to lure qualified practitioners to the bankruptcy field. *Id.* (Reciting that the rationale for the change is clearly set forth in the House Report on Section 330; namely to encourage the successful administration of estates by attracting bankruptcy specialists of high quality).

16. Since the enactment of Section 330, courts in this and other circuits have awarded fee enhancements and granted requests for premium compensation to further the stated goal of attracting high quality bankruptcy specialists to the field. *See e.g. In re Covad Communs. Group, Inc.*, 292 B.R. 31 (D. Del. 2003) (Wherein the Delaware District Court recently awarded a \$1,000,000 cash award together with a stock option grant to Pachulski Stang as a success fee); *In re Summit Communities of Florida, Inc.*, 84 B.R. 863, 872 (Bankr. S.D. Fla. 1988) ("It is widely accepted that when a benefit conferred on the estate is particularly great, the court may award a

bonus in addition to compensation at customary hourly rates - citing Collier's on Bankruptcy, Section 330.05 (15<sup>th</sup> Ed. 1987)); see also, *In re White Motor Credit Corp.*, 50 B.R. 885, 891 (Bankr. N.D. Ohio 1985) (Awarding a "premium" to debtor's counsel); *In re Bible Deliverance Evangelistic Church*, 39 B.R. 768, 775 (Bankr. E.D. Pa. 1984) ("With the advent of a more liberal standard of compensation under the Code [as opposed to the former Bankruptcy Act], bankruptcy courts have looked with increasing favor upon requests for bonus compensation"); see also, *Matter of Saxon Industries, Inc.*, 29 B.R. 319 (Bankr. S.D.N.Y. 1983) ("Where appropriate, a court may award bonus compensation...").

#### **V. FACTORS TO BE CONSIDERED IN AWARDING PREMIUM COMPENSATION AND FEE ENHANCEMENTS**

17. The guidelines for the award of premium compensation in the Third Circuit are set forth in the *Lindy Brothers* cases (the "Lindy Brothers Test"). See e.g., *In re Bible Deliverance*, 39 B.R. at 775 (citing *Lindy Bros. Builders, Inc. v. American Radiator & Standard Sanitary Corp.*, 487 F.2d 161, 165 (E.D. Cir. 1973) (Discussing that attorneys fees may be awarded to plaintiff's counsel in an antitrust class action under the Clayton Act under the equitable fund doctrine) and *Lindy Bros. Builders, Inc. v. American Radiator & Standard Sanitary Corp.*, 540 F.2d 102, 110 (3d Cir. 1976) (same). Under the Lindy Brothers Test, the court is first required to arrive at the objective value of the individual attorney's services by multiplying the hours worked by the attorney's normal billing rate per hour. See *Schlenski v. Dorsey*, 574 F.2d 131, 151 (3d Cir. 1978). The resulting basic or "lodestar" figure is then increased or decreased depending upon the applicability of various factors. Courts in the Third Circuit look at several factors (none of which appear to be determinative), to evaluate whether an upward adjustment of the lodestar is appropriate. These factors include: (a) the novelty and difficulty of the questions; (b) the preclusion of other employment by the attorney due to



acceptance of the case; (c) the customary fee; (d) time limitations imposed by the client or other circumstances; (e) the amount involved and the results obtained; (f) the “undesirability” of the case; (g) the nature and length of the professional relationship with the client; and (h) awards in similar cases. *See In re Absco, Inc.*, 23 B.R. 250, 251 (Bankr. E.D. Pa. 1982) (citing *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717-719 (5<sup>th</sup> Cir. 1974)).

18. An analysis of these factors, as applied to McGrath North’s extensive involvement and the major role that it played in the Debtors’ proceeding, shows that the fee enhancement being requested by McGrath North is proper in this case.

**Novelty and Difficulty of the Questions/“Undesirability” of the Case**

19. As an example of the difficulty of the transactions which McGrath North was involved in, the transactions handled by McGrath North involving various different divisions of Lockheed Martin presented McGrath North with the significant challenge of trying to realize value from a series of complex leases between Lockheed Martin, a liquidating corporation (i.e. the Debtors) and an informal joint venture partner, namely DCT. In the end, McGrath North’s perseverance and its ability to capitalize on perceived weaknesses in the other parties’ positions resulted in bringing these matters to closure by receiving over \$13,000,000 in cash for the Debtors’ bankruptcy estate.

**Time Limitations Imposed/Preclusion of Other Employment**

20. Because of the time sensitive nature of the transactions involving the Debtors during the pendency of this proceeding, McGrath North attorneys were required to be extremely expedient and highly responsive in handling the Debtors’ affairs. While the timing of various demands from the Debtors and its other professionals often times required night and weekend work, as well as the realignment of professional resources in order for McGrath North to take a

lead role in the asset disposition process, McGrath North has delivered timely and superior work product time and time again in this proceeding.

**Customary Fee/Awards in Similar Cases**

21. McGrath North’s hourly rates charged in this proceeding have been substantially lower than the rates charged by the Debtors’ other professionals in this case. Representative average hourly rates charged by the Debtors’ professionals and consultants during the pendency of this proceeding are as follows:

<b><u>Firm</u></b>	<b><u>Role</u></b>	<b><u>Average Hourly Rate</u></b>
Pachulski, Stang	Primary Bankruptcy Counsel	\$250 - \$295
Bridge Associates LLC f/k/a Restoration Management Corporation (“Bridge Associates”)	Restructuring Consultants to the Debtors	\$250 - \$280
<b>McGrath North</b>	<b>Special Counsel to the Debtors</b>	<b>\$105</b>

22. Likewise, the total fee compensation charged in this case through early 2003 by Pachulski, Stang, Bridge Associates, and McGrath North is as follows:

<b><u>Firm</u></b>	<b><u>Amount</u></b>
Pachulski, Stang	\$9.155MM
Bridge Associates LLC f/k/a Restoration Management Corporation	\$8.686MM <sup>4</sup>
McGrath North	\$950,000

23. **Thus the compensation paid to the Debtors’ other professionals and consultants in this case supports McGrath North’s request for a fee enhancement. In fact, even after including the \$900,000 fee enhancement requested herein, McGrath North’s**

---

<sup>4</sup> Includes contingent fee of approximately \$4.352MM.

**average effective hourly rate of \$210 is still below that of the Debtors' professionals and consultants in this case.**

24. It should be noted that McGrath North does not feel any of the professionals or consultants in this case have been overpaid for the work performed and the results achieved in this case. Rather, McGrath North simply feels that its extensive involvement in this case, the extraordinary results achieved, and the firm's commitment to the success of this case through the realignment of its professional resources, should now be acknowledged through the awarding of a fee enhancement.

#### **Amounts Involved and Results Obtained**

25. The transactions which McGrath North took lead responsibility for involved significant amounts of InaCom's capital. In these transactions, the combination of unfortunate circumstances between:

- (a) the Debtors' liquidation,
- (b) documentation which originally had little or no legal review or negotiation,
- (c) largely unmarketable, minority interests in small locally-owned franchisees and resellers, and
- (d) the existence of significant, arguably meritorious counterclaims against the Debtors which served as the basis for massive setoff allegations against the Debtors, presented McGrath North with an extraordinarily difficult environment in which to try and realize cash for the Debtor's estate. Notwithstanding these difficult circumstances, the Debtors' estate realized in excess of \$51,000,000 in cash proceeds from McGrath North's efforts.

#### **Length of the Professional Relationship**

26. As stated above, McGrath North has had a relationship with the Debtors since InaCom's inception in 1982. This two-plus decades of representation by McGrath North has resulted in its attorneys acquiring a vast amount of institutional knowledge and insight into the Debtors, their assets and their operations. Throughout this bankruptcy proceeding, McGrath

North has served as an invaluable repository of institutional information concerning the Debtors. McGrath North's knowledge served to not only increase the value and likelihood of settlement and disposition for various matters, but it also allowed such work to be performed in an extraordinarily efficient and cost-effective manner as compared to the additional professional fees that would have been incurred by the estate if the Debtors' other professionals would have had to educate themselves on such matters. In numerous instances over the past three-plus years since the Petition Date, McGrath North attorneys have been posed with questions from the Debtors' professionals and the other professionals engaged in this proceeding, or asked to locate documents which, under normal circumstances, may have taken days or weeks to answer or locate. These matters were often times handled by McGrath North in a matter of hours because of the vast knowledge that McGrath North has concerning the Debtors, its assets, and operations.

**27. While McGrath North is very pleased with the exceptional results that have been achieved in this case, McGrath North believes the equities of this case make a compelling case for the awarding of a fee enhancement and allowing McGrath North to participate, at least in part, in the results achieved in this case. When the demands of this case required extensive participation from McGrath North, the firm stepped forward, adjusted its professional resources and took a lead role in negotiating and successfully closing several extremely valuable, yet very difficult, transactions. McGrath North's long-standing commitment to the Debtors and the success of this case, together with the extraordinary results achieved, should now be applauded through the awarding of a fee enhancement.**

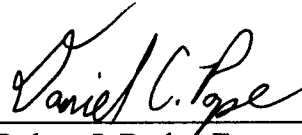
## VI. CONCLUSION

28. For all the reasons stated herein, McGrath North hereby requests a fee enhancement in the amount of \$900,000.00.

**DATED** this 14<sup>th</sup> day of July, 2003.

Respectfully submitted,

By:



---

Robert J. Bothe, Esq.  
Daniel C. Pape, Esq.,  
*McGRATH NORTH MULLIN & KRATZ, PC LLO*  
Suite 3700 First National Tower  
1601 Dodge Street  
Omaha, Nebraska 68102  
Telephone: (402) 341-3070  
Facsimile: (402) 341-0216

SPECIAL COUNSEL TO DEBTORS AND DEBTORS-IN-  
POSSESSION