IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

IN RE:	)	Chapter 11
	)	
INACOM CORP., *et al.*,	)	Case No. 00-2426 (PJW)
	)	Adversary Proceeding No. 02-04408
Debtors.	)	(Jointly Administered)
	)	
	)	**Hearing Date: August 3, 2004 @ 9:30 a.m. ET**
	)	**Objection Deadline: July 12, 2004 at 4:00 p.m. ET**

DEBTORS' MOTION PURSUANT TO BANKRUPTCY RULE 9019 FOR APPROVAL OF GLOBAL SETTLEMENT AGREEMENT WITH WILLKIE FARR & GALLAGHER LLP

Inacom Corp., *et al.*, the above-captioned debtors (collectively, the "Debtors"), by and through their undersigned counsel, submit this motion (the "Motion"), pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and section 105 of title 11 of the United States Bankruptcy Code (the "Bankruptcy Code"), for approval of a global settlement between Debtors and Willkie Farr & Gallagher LLP ("WF&G"). In support of this Motion, the Debtors respectfully represent as follows:

I. JURISDICTION

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue of the Debtors' chapter 11 cases and this Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief sought herein are Bankruptcy Rule 9019 and section 105 of the Bankruptcy Code.

II. BACKGROUND

2. The Debtors were formerly a leading singe-source provider of information technology products and technology management services to primarily Fortune 1000 clients. Following the sale of their product distribution business, the Debtors experienced significantly

reduced service-business revenues (and, hence, much greater than expected losses) and other financial difficulties. As a result, the Debtors pursued a sale of their remaining businesses and assets.

3. The inability to locate a purchaser for the Debtors' service-related businesses, which represented a vast majority of the Debtors' business and revenue, coupled with the Debtors' acute liquidity crisis and inability to meet operating liabilities, ultimately led to the filing of these chapter 11 cases. The Debtors have since ceased operations and are in the process of liquidating their assets.

4. On June 16, 2000 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

5. On June 21, 2000, the Debtors filed an Application to Retain Willkie Farr & Gallagher LLP as counsel for the Debtors (the "Application") [Docket No. 22]. No objection was filed to the Application. On October 24, 2000, the Court entered an order approving the Application [Docket No. 790]. The retention of WF&G was *nunc pro tunc* to June 16, 2000.

6. WF&G filed its Final Fee Application in this case on July 14, 2003 [Docket No. 5293](the "Final Fee Application"). The Final Fee Application has not yet been ruled upon by this Court, and was held in abeyance until final disposition of the Adversary Proceeding (defined below).

7. In May 2003, the Debtors confirmed a Plan of Liquidation in these cases and a Plan Administrator has been appointed.

The Avoidance Action

8. On June 11, 2002, the Debtors commenced an adversary proceeding (the "Adversary Proceeding"), having Adversary Number 02-04408, against WF&G by filing the

complaint to (I) Avoid and Recover Preferential Transfers Pursuant to 11 U.S.C. §§ 548 and 550, and (III) to Disallow Claims Pursuant to 11 U.S.C. § 502(d) (the "Complaint"). The Complaint seeks recovery of alleged preferential transfers (the "Transfers") totaling $2,900,000 made within 90 days of the Petition Date. Upon the filing of the Complaint, WF&G filed a motion for authority to withdraw as counsel to the Debtors. By order dated October 4, 2002, the Court granted that motion [Docket No. 3812].

9. WF&G asserted various defenses to the Complaint including, *inter alia*, subsequent new value, contemporaneous exchange for new value, and ordinary course of business.

10. On August 29, 2003, Debtors filed a Limited Objection to Final Summary Application of Willkie Farr & Gallagher LLP for (I) Final Allowance of Fees and Expenses Covering Periods from June 16, 2000 Through April 30, 2002, Inclusive, and (II) Other Related Relief [Docket No. 5470] (the "Objection to Final Fee Application"). WF&G voluntarily agreed not to pursue approval of the Final Fee Application pending the resolution of this Adversary Proceeding.

III. THE MEDIATION AND SETTLEMENT

11. The parties engaged in discovery and related litigation activities in connection with the Adversary Proceeding, culminating in a mediation held before former Bankruptcy Judge Herbert Katz in New York, New York on May 27, 2004. During the course of the mediation, in which all parties (including the Debtors, the Plan Administrator and WF&G) and their respective counsel were present and participating, an agreement was reached to resolve the claims asserted in the Complaint, as well as WF&G's Final Fee Application and the Debtors' Objection to Final Fee Application (the "Settlement Agreement").

12. The Settlement Agreement provides that:

(a) WF&G will pay One Million One Hundred Thousand Dollars ($1,100,000.00) in immediately available funds to Inacom Corp. (the "Settlement Amount") within three (3) business days of the order of the Bankruptcy Court approving the Settlement Agreement becoming final and non-appealable;

(b) WF&G will waive any and all claims it has against Inacom Corp., including any claim arising out of the payment of the Settlement Amount, except any claim for payment of fees and reimbursement of costs provided for in the Final Fee Application;

(c) Debtors will withdraw their Objection to the Final Fee Application, and the Final Fee Application shall be approved, in full, as a integral condition of the Settlement Agreement;

(d) Each party, on behalf of itself and its successors and assigns, will fully release the other from any and all claims, demands, causes of action and obligations, whether known or unknown, contingent or non-contingent, liquidated or unliquidated except as to the Settlement Agreement, and the obligation to pay the amounts due under the Final Fee Application;

(e) The Debtors shall dismiss with prejudice the Adversary Proceeding upon the entry of a final order approving the Settlement Agreement and receipt of $1,100,000; and

(f) Nothing contained in the Settlement Agreement shall constitute, and shall not be deemed, an admission of facts or liability by any party and shall be construed as a compromise and settlement of disputed facts and issues intended to avoid the necessity of further protracted litigation over and related to the disputes between the parties.

13. The Settlement Agreement is intended to be a global settlement agreement between Debtors and WF&G.

14. No prior motion has been filed for the relief requested herein.

15. The Settlement is reasonable and in the Debtors' best interests. While the Debtors believe they have a strong preference claim against WF&G, the Debtors avoid costly and time-consulting litigation with the Settlement. The Debtors receive $1,100,000 in immediate cash that can be used to fund distributions to creditors through its plan of liquidation, and WF&G releases any and all claims against the Debtors, including its unsecured claim for the Settlement Payment.

16. Based upon a projected 25% distribution to unsecured creditors, the Settlement provides a total value to the estates in the approximate amount of $1,375,000. The Debtors recognize that the elimination of incurring the cost of litigating the claims against WF&G, based on the facts and WF&G's defenses, may result in a better overall financial condition in the absence of the Settlement unlikely.

IV. RELIEF REQUESTED

17. By this Motion, the Debtors respectfully request that this Court enter an order approving the Settlement Agreement between Debtors and WF&G pursuant to Bankruptcy Rule 9019.

A. Standard of Review

18. Compromises are favored by bankruptcy courts. *See In re Sassalos*, 160 B.R. 646, 653 (D. Or. 1993) (stating that "compromises are favored in bankruptcy, and the decision of the bankruptcy judge to approve or disapprove a compromise...rests in the sound discretion of the judge."). Bankruptcy Rule 9019(a) provides that "on motion by the trustee and after a hearing, the Court may approve a compromise or settlement." [1] The settlement of matters that would result in time-consuming and burdensome litigation, especially in the bankruptcy context, is encouraged. *In re Penn Cent. Transp. Co.*, 596 F.2d 1002, 1113 (3d Cir. 1979) (stating that "'in administering reorganization proceedings in an economical and practical manner, it will often be wise to arrange the settlement of claims as to which there are substantial and reasonable doubts.'"), *quoting In re Protective Comm. for Indep. Stockholders of TMT Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968).

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[1] A debtor-in-possession in a reorganization case has most of the rights of a trustee appointed under Chapter 11 of the Bankruptcy Code. *See* 11 U.S.C. §§ 1106 and 1107.

19. In determining whether the Settlement is fair and equitable, two principles should guide this Court. First, "[c]ompromises are favored in bankruptcy," 10 Lawrence P. King, *Collier on Bankruptcy*, ¶ 9019.01, at 9019-2 (15th ed. rev. 1997) (citing *Marandas v. Bishop (In re Sassales)*, 160 B.R. 646, 653 (D. Ore. 1993)), and are "a normal part of the reorganization process." *Anderson*, 390 U.S. at 424, 88 S.Ct. 15 1163 (quoting *Case v. Los Angeles Lumber Prods. Co.*, 308 U.S. 106, 130, 60 S.Ct. 1, 14 (1939)); *In re A&C Properties*, 784 F.2d 1377, 1381 (9th Cir. 1986) ("The law favors compromise and not litigation for its own sake . . ."); *Michael*, 183 B.R. at 232 (Bankr. D. Mont. 1995) ("[I]t is also well established that the law favors compromise."); *Best Products*, 16 B.R. at 50; *Nellis v. Shugrue*, 165 B.R. 115, 123 (S.D.N.Y. 1994) (Court recognizes "the general rule that settlements are favored. . . .").

20. Second, settlements should be approved if they rise above the lowest point on the continuum of reasonableness. "[The] responsibility of the bankruptcy judge . . . is not to decide the numerous questions of law and fact raised by the appellants but rather to canvass the issues and see whether the settlement fall[s] below the lowest point in the range of reasonableness." *Cosoff v. Rodman (In re W.T. Grant Co.)*, 699 F.2d 599, 608 (2d Cir. 1983); *In re Planned Protective Servs., Inc.*, 130 B.R. 94, 99 n.7 (Bankr. C.D. Cal. 1991); *see generally In re Blair*, 538 F.2d 849, 851 (9th Cir. 1976) (Court should not conduct a "mini-trial" on the merits of a Proposed Settlement.) Thus, the question is not whether a better settlement might have been achieved, or a better result if litigation pursued. Rather, the Court should approve settlements that meet a minimal threshold of reasonableness. *Nellis*, 165 B.R. at 123; *In re Tech. For Energy Corp.*, 56 B.R. 307, 311-312 (Bankr. E.D. Tenn. 1985); *In re Mobile Air Drilling Co., Inc.*, 53 B.R. 605, 608 (Bankr. N.D. Ohio 1985); 10 *Collier on Bankruptcy, supra*, ¶ 9019.02, at 9019-4.

21. Moreover, approval of a proposed settlement is within the "sound discretion" of the bankruptcy court. *In re Neshaminy Office Bldg. Assocs.*, 62 B.R. 798, 803 (E.D. Pa. 1986), cited with approval in *In re Martin*, 91 F.3d at 393. The bankruptcy court should not substitute its judgment for that of the debtor. *In re Neshaminy Office Bldg. Assocs.*, 62 B.R. at 803. The court need not decide the numerous questions of law or fact raised by litigation, but rather should canvas the issues to see whether the settlement falls below the lowest point in the range of reasonableness. *In re W.T. Grant and Co.*, 699 F.2d 599, 608 (2d Cir. 1983), *cert. denied*, 464 U.S. 22 (1983). In addition, "because the bankruptcy judge is unequally situated to consider the equities and reasonableness of a particular compromise, approval or denial of a compromise will not be disturbed on appeal absent a clear abuse of discretion." *In re Neshaminy Office Bldg. Assocs.*, 62 B.R. at 803 (citation omitted); *see also In re Martin*, 91 F.3d at 393 (noting that the standard of review of bankruptcy settlements on appeal is abuse of discretion).

22. In determining the fairness and equity of a compromise in bankruptcy, the Third Circuit has stated that it is important that the Bankruptcy Court "apprise[] itself of all facts necessary to form an intelligent and objective opinion of the probability of ultimate success should the claims be litigated, and estimate the complexity, expense and likely duration of such litigation, and other factors relevant to a full and fair assessment of the [claims]." *In re Penn Cent. Transp. Co.*, 596 F.2d 1127, 1146 (3d Cir. 1979). The District Court, as the intermediate bankruptcy appellate court, "has described the ultimate inquiry to be whether 'the compromise is fair, reasonable, and in the interest of the estate.'" *In re Marvel Entertainment Group, Inc.*, 222 B.R. 243, 249 (D. Del. 1998) (McKelvie, J.), *quoting In re Louise's, Inc.*, 211 B.R. 798, 801 (D. Del. 1997) (Farnan, J.).

23. The Third Circuit is one of the appellate courts that has enumerated a four-factor test that should be employed in deciding whether a bankruptcy settlement should be approved or disapproved, namely "(1) the probability of success in litigation; (2) the likely difficulties in collection; (3) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and (4) the paramount interest of the creditors." *In re RFE Industries, Inc.*, 283 F.3d 159, 165 (3d Cir. 2002), *citing Meyers v. Martin (In re Martin)*, 91 F.3d 389 (3d Cir. 1996). See, also, In re Woodson, 839 F.2d 610, 620 (9th Cir. 1988); *see*, 10 *Collier on Bankruptcy, supra*, ¶ 9019.02, at 9019-4.

24. Finally, section 105 of the Bankruptcy Code authorizes this Court to issue "any order ...that is necessary or appropriate to carry out any provision of [the Bankruptcy Code]." 11 U.S.C. § 105(a).

B. The Settlement Satisfies the Standards Governing Approval of Settlements and Compromises

25. The Debtors believe that the compromises embodied in the Settlement Agreement, are fair, reasonable and in the best interests of the Debtors, their estates and creditors. The Debtors submit that the Settlement Agreement satisfies the criteria for approving such settlements in the Third Circuit and should be approved. Litigating the disputed issues would be costly, and the outcome of such litigation is uncertain.

26. The Settlement Agreement is the product of extensive negotiations between Debtors and WF&G in the context of a mediation conducted by former Bankruptcy Judge Herbert Katz. In addition, the Plan Administrator attended the mediation and fully supports the Settlement Agreement. The Post-Confirmation Committee also supports approval of the Settlement Agreement.

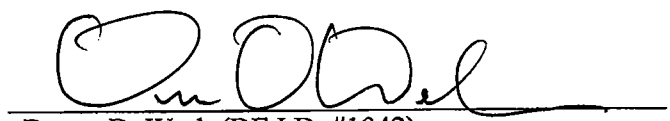
27. Accordingly, because the Settlement Agreement is a fair and reasonable compromise, is in the best interests of the Debtors' estates and creditors and meets the requirements under the Third Circuit's test for such compromises, the Debtors respectfully request that this Court enter an order approving the Settlement Agreement.

NOTICE

28. Notice of this Motion has been provided to: (i) The United States Trustee for the District of Delaware; (ii) counsel for the Post-Confirmation Committee and (iii) all other parties requesting notice pursuant to Rule 2002 of the Federal Rules of Bankruptcy Procedure in accordance with Del. Bankr. LR 2002-1(b). In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is required.

WHEREFORE, for all of the reasons set forth above, the Debtors respectfully request that this Court approve the Settlement Agreement and grant such other and further relief as this Court deems just and appropriate.

Dated: June 22, 2004
Wilmington, Delaware



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