

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

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In re : Chapter 11 Case No.
 :
IWO HOLDINGS, INC., et al., : 05-10009 (PJW)
 :
 : (Jointly Administered)
 :
 :
 : Objection Deadline: 3/21/05 at 4:00 p.m.
Debtors. : Hearing Date: 3/28/05 at 1:30 p.m.
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**FIRST AND FINAL APPLICATION OF LOUGHLIN MEGHJI + COMPANY, AS
CRISIS MANAGERS FOR THE DEBTORS AND DEBTORS
IN POSSESSION, FOR ALLOWANCE OF COMPENSATION
FOR PROFESSIONAL SERVICES RENDERED AND
REIMBURSEMENT OF ACTUAL AND NECESSARY EXPENSES
INCURRED FROM JANUARY 4, 2005 THROUGH FEBRUARY 10, 2005**

Name of Applicant: Loughlin Meghji + Company
Authorized to Provide
Professional Services to: The above-captioned debtors and debtors in possession.
Date of Retention: January 27, 2005, *nunc pro tunc* to January 4, 2005
Period for Which
Compensation Is Sought: January 4, 2005 through February 10, 2005¹
Amount of Compensation
Sought as Actual, Reasonable,
and Necessary: \$1,600,000.00
Amount of Expense
Reimbursement Sought as
Actual, Reasonable,
and Necessary: \$4,308.47
This is a(n): _____ Interim _____ X Final Application

There have been no prior Applications filed.

¹ A hearing to consider this first and final application is scheduled on March 28, 2005 at 1:30 p.m. (Eastern Time).

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Loughlin Meghji + Company (“LM+Co”), crisis managers to IWO Holdings, Inc., Independent Wireless One Corporation, and Independent Wireless One Leased Realty Corporation, as debtors and debtors-in-possession, and now reorganized debtors (collectively, “IWO” or the “Debtors,” and, from and after February 10, 2005, the “Reorganized Debtors”), for its first and final application (the “Application”), pursuant to section 363 of title 11 of the United States Code (the “Bankruptcy Code”), for final allowance of compensation for professional services rendered by LM+Co in the amount of \$1,600,000.00 for the period January 4, 2005 through and including February 10, 2005 (the “Compensation Period”), and for reimbursement of actual and necessary expenses incurred by LM+Co in the amount of \$4,308.47 during the Compensation Period, respectfully represents:

Preliminary Statement

1. Less than six weeks elapsed from the commencement of the Debtors’ chapter 11 cases through the closing of the Debtors’ plan of reorganization. The Debtors’ expeditious emergence from chapter 11 was due, in large part, to the experienced and cooperative efforts of the professionals involved in these cases, including LM+Co as crisis managers. The short

duration of these pre-packaged chapter 11 cases led to a successful restructuring of the Debtors with no adverse effect to their business operations, as well as dramatically reduced administrative expenses, including reduced fees and expenses for professionals.

2. As described in further detail herein, LM+Co's efforts and leadership in advising the Debtors throughout the course of its retention have provided substantial benefit to the Debtors' estates. In consideration of the circumstances present here, LM+Co's fees for its services and expenses are reasonable. Therefore, LM+Co requests that the Court grant the Application and allow final compensation for services and final reimbursement of expenses as described herein.

Background

3. On January 4, 2005 (the "Commencement Date"), each of the Debtors commenced a case under chapter 11 of the Bankruptcy Code. The Debtors continued to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. By order dated January 4, 2005, the Debtors' chapter 11 cases were consolidated for procedural purposes and are being jointly administered pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

4. IWO is a network partner of Sprint Corporation and certain of its affiliates (collectively, "Sprint"). Pursuant to certain agreements with Sprint (as amended from time to time, the "Sprint Agreements"),² IWO has the exclusive right to provide mobile digital wireless personal communications services ("PCS") under the Sprint PCS® and Sprint® brand names in a territory that includes a total population of approximately 6.3 million. IWO's territory covers upstate New York (including the markets of Albany, Syracuse, and Ithaca), New Hampshire (other than the Nashua market), Vermont, and portions of

² The Sprint Agreements include (i) the Sprint PCS Management Agreement, dated February 9, 1999, (ii) the Sprint PCS Services Agreement, dated February 9, 1999, (iii) the Sprint Trademark and Service Mark License Agreement, dated February 9, 1999, and (iv) the Sprint Spectrum Trademark and Service Mark License Agreement, dated February 9, 1999.

Massachusetts and Pennsylvania.

5. As a PCS affiliate of Sprint, IWO offers national and local calling plans designed by Sprint. IWO markets Sprint PCS products and services through a number of distribution outlets located in IWO's territory, comprised of IWO's retail stores, major national distributors including Radio Shack and Best Buy, and IWO's local third-party distributors. As of September 30, 2004, IWO's network covered approximately 4.8 million people in IWO's territory, and IWO had approximately 231,000 subscribers. IWO currently has approximately 190 employees.

6. Sprint, along with its PCS affiliates, operates the largest 100% digital, 100% PCS nationwide wireless network in the United States. Pursuant to the Sprint Agreements, IWO owns and is responsible for building, operating, and managing the portion of the Sprint PCS nationwide network located in its territory. IWO's portion of the Sprint PCS network is designed to provide a seamless connection with the rest of the nationwide wireless network of Sprint.

7. On March 18, 2004, IWO Holdings entered into a letter agreement with LM+Co (as amended on August 12, 2004, the "Engagement Letter"), wherein LM+Co agreed to become crisis managers for the Debtors in contemplation of a financial restructuring of their business and the prosecution of these chapter 11 cases to facilitate the same. A copy of the Engagement Letter is annexed hereto as Exhibit "A." In connection therewith, the Debtors requested that one of LM+Co's principals, James J. Loughlin, Jr., become the CRO of the Debtors and guide the Debtors' restructuring efforts. Working collaboratively with the senior management team, the Board of Directors, and the Debtors' professionals, the CRO assisted the Debtors in evaluating and implementing potential restructuring alternatives for approximately 9 months prior to the Commencement Date, and in ultimately confirming and consummating the Plan (as defined below), while providing leadership throughout the restructuring process.

8. Prior to the Commencement Date, the Debtors solicited votes to accept or

reject their joint plan of reorganization, dated as of January 4, 2005 (as supplemented, amended, and modified, the “Plan”), through the distribution, commencing on December 1, 2004, of a disclosure statement (the “Disclosure Statement”). The restructuring implemented under the Plan is the result of several months of negotiations with a steering committee of lenders under the Debtors’ secured credit agreement (the “Steering Committee”), an informal committee (the “Senior Noteholder Committee”) of holders of a majority of IWO’s senior note claims, and Sprint.

9. The Plan and Disclosure Statement were filed on the Commencement Date. As set forth in the certification filed concurrently with the Debtors’ chapter 11 petitions, the proposed Plan was overwhelmingly accepted by the only class entitled to vote. Specifically, twenty-two (22) holders of claims in Class 4 (Senior Note Claims) with claims totaling \$142,319,000 voted to accept the Plan, which represents 99.2% in amount and 84.62% in number of holders of claims in Class 4 voting, far in excess of the statutory percentages specified in section 1126(c) of the Bankruptcy Code. The Plan was confirmed by the Court by order dated February 9, 2005 (the “Confirmation Order”) and was consummated on February 10, 2005 resulting in the Debtors’ emergence from bankruptcy (the “Consummation Date”).

10. By order of the Court, dated January 27, 2005, the Debtors were authorized to continue to retain LM+Co during these chapter 11 cases, pursuant to sections 363 and 105 of the Bankruptcy Code, *nunc pro tunc* to the Commencement Date, as their crisis managers (the “Retention Order”), a copy of which is attached hereto as Exhibit “B.” The Retention Order approved the retention of LM+Co during these chapter 11 cases (i) pursuant to the terms of the Engagement Letter and (ii) in compliance with the guidelines for the retention of crisis managers pursuant to section 363 of the Bankruptcy Code as set forth in the Protocol for Engagement of Jay Alix & Associates and Affiliates.³

³ Pursuant to the Retention Order, LM+Co was permitted to be compensated for services performed and reimbursed for expenses incurred in the ordinary course of business. LM+Co was required, however, to file

11. In connection with its retention application, LM+Co submitted the (i) Declaration of James J. Loughlin, Jr. in Support of Motion of the Debtors Pursuant to Sections 363 and 105 of the Bankruptcy Code for Authorization to Employ Loughlin Meghji + Company as Crisis Managers to the Debtors and (ii) First Supplemental Declaration of James J. Loughlin, Jr. in Support of Motion of the Debtors Pursuant to Sections 363 and 105 of the Bankruptcy Code for Authorization to Employ Loughlin Meghji + Company as Crisis Managers to the Debtors.

12. Among other things, the Retention Order approved the terms of the Engagement Letter providing that the Debtors be permitted to (i) compensate LM+Co on a monthly basis for services rendered, (ii) reimburse LM+Co for actual and necessary expenses incurred, and (iii) pay LM+Co a performance fee (the “Value Added Adjustment”) the terms of which are further described in the Engagement Letter, during these chapter 11 cases.

13. Specifically, the Retention Order approved the terms of the Engagement Letter to permit LM+Co to be compensated during these chapter 11 cases in the same manner as prior to the Commencement Date as follows:

- (i) a monthly fee of \$50,000 payable on the first day of each month as compensation for services of the CRO;
- (ii) additional fees based on actual hours incurred by additional professionals who perform services on behalf of IWO where additional staffing was provided to assist LM+Co in carrying out its obligations under the Engagement Letter;
- (iii) a Value Added Adjustment equal to (a) \$1,500,000, reduced to no less than \$1,000,000 by (b) 50% of the aggregate of all monthly fees paid in respect of each month, following the sixth full calendar month, from the Commencement Date through confirmation of the Plan, payable immediately

quarterly reports of compensation paid. Due to the very short duration of the chapter 11 cases and in anticipation of filing this Application, LM+Co has not filed, nor has been required to file, such quarterly reports.

upon the earlier of (1) consummation of the Plan or (2) completion of an out of court restructuring or (3) the closing of a permanent sale of the Company; and

- (iv) reimbursement of all reasonable out-of-pocket expenses.

Summary of Professional Compensation and Reimbursement of Expenses Requested

14. In the ordinary course of business, the Debtors paid LM+Co a total of \$50,000 relating to the monthly fee for January. In addition, prior to the Commencement Date, the Debtors paid LM+Co a retainer in the amount of \$50,000. The Value Added Adjustment and the invoice for the month of February, have not yet been paid. LM+Co intends to apply its extant retainer of \$50,000 to any amounts so awarded. As for any remaining outstanding amounts allowed hereunder, LM+Co intends to seek payment from the Debtors directly.

15. LM+Co is aware that, pursuant to the Retention Order, the payment of such compensation and reimbursement of such expenses is subject to final allowance by this Court. Accordingly, by this Application, LM+Co is seeking final allowance of 100% of compensation for professional services rendered to the Debtors and reimbursement of expenses incurred relating thereto in the aggregate amount of \$1,604,308.47 consisting of the following: (i) monthly fees earned in the amount of \$100,000 for the two month period of January and February, 2005; (ii) the Value Added Adjustment in the amount of \$1,500,000; and (iii) expenses in the amount of \$4,308.47. A summary of expenses incurred throughout the administration of these cases is detailed in Exhibit "C."

Summary of Services

16. The services performed by LM+Co were vital to the effective administration of the estate and recovery of value to certain parties in interest. Namely, LM+Co's services in these cases were essential in developing, negotiating, preparing, and achieving confirmation and consummation of the Plan. The successful confirmation and consummation of the Plan is the basis for the Valued Added Adjustment portion of the compensation sought herein.

17. As stated above, for approximately 9 months prior to the Commencement Date

and through the Consummation Date, LM+Co has served as crisis managers to the Debtors and James J. Loughlin, Jr. as the CRO of the Debtors, under the terms of the Engagement Letter. In its capacity as crisis manager, LM+Co and the CRO have assisted the Debtors with all aspects of the restructuring process and administration of their chapter 11 cases over such period.

18. LM+Co has provided essential services that enabled the Debtors to more efficiently manage their chapter 11 cases and worked with the Debtors to achieve significant benefits for the bankruptcy estates and parties in interest. LM+Co's work for the Debtors included, but was not limited to:

- (i) serving as crisis manager and CRO and reporting to the Board of Directors of IWO (the "Board of Directors");
- (ii) working collaboratively with the senior management team, the Board of Directors, and the Debtors' professionals in evaluating and implementing potential restructuring alternatives, including the feasibility of various sales and financing transactions, while providing leadership throughout the restructuring process;
- (iii) providing leadership and guidance to the senior management team and Board of Directors in all aspects of the restructuring, including financial and business planning, valuation, and the development and review of restructuring alternatives;
- (iv) overseeing the activities of the Debtors' restructuring professionals including Evercore Restructuring, L.P., Weil, Gotshal & Manges, LLP, and Richards, Layton & Finger, P.A.;
- (v) serving as the Debtors' senior representative in discussions and negotiations with (a) the agent and the Steering Committee for the senior secured lenders and their financial and legal advisors, and (b) the Senior Noteholder Committee and their financial and legal advisors, all in connection with the

restructuring and negotiating agreements relating to the defaults under the Debtors' debt instruments, which included making numerous presentations relating to the Debtors financial performance, prospects, and restructuring alternatives;

- (vi) negotiating the terms of the management agreement between US Unwired Inc. and IWO that, among other things, provided for the compensation, cooperation, and incentives to accomplish the restructuring and provided the mechanism for the vital transition to the new ownership post-consummation;
- (vii) working effectively with the Debtors' senior management, ownership and each of the various creditor constituents leading to the successful negotiation, confirmation, and consummation of the Plan;
- (viii) reviewing and assessing the feasibility of raising a new high yield debt offering in an amount sufficient to repay in full the senior secured lenders which included (a) meeting with and discussing various financing alternatives with investment bankers to identify the appropriate financing structure that was feasible for IWO to attain in the credit markets, (b) interviewing and selecting a team of investment banks to lead the Debtors' efforts to raise such debt, (c) providing oversight and support to the selected investment bankers in their performance of due diligence of the Debtors, (d) determining the appropriate capital structure for the reorganized company, and (e) preparing the offering memorandum for the high yield offering, all of which resulted in the successful issuance of \$232,720,400 in new debt to fund payments to be made under the Plan;
- (ix) engaging members to serve as the new management of the Debtors and advising and assisting such individuals in their due diligence, planning and transition;

- (x) supervising all bankruptcy planning and preparation including the cash collateral arrangement, cash flow budget, first day bankruptcy pleadings, Plan, Disclosure Statement, Court required schedules and statements, and monthly reporting requirements required by the Office of the United States Trustee for the District of Delaware (the “U.S. Trustee”);
- (xi) negotiating and managing the preparation of the documentation required to implement the Debtors’ emergence from chapter 11;
- (xii) formulating a communications strategy for the Debtors’ employees, relating to their vendors, creditors and shareholders that assisted in avoiding disruption to the business; and
- (xiii) leading the Debtors’ efforts to successfully negotiate critical modifications to the Sprint Agreements, resulting in the settlement of approximately \$16 million of disputed charges, reduce billing and pricing charges and increase reciprocal roaming rates, the amendment to the Sprint Agreements’ burdensome build out requirements.

19. LM+Co submits that compensation for the foregoing services and achievements is reasonable in light of the complexity, importance and nature of the issues that arose throughout the restructuring process. As a result of LM+Co’s leadership, together with the Debtors’ other professionals, the chapter 11 process was extremely smooth, efficient, and cost effective resulting in the Debtors’ emergence from bankruptcy only 36 days after the Commencement Date and providing the Debtors and their estates with significant savings.

20. During the 11 month duration of the LM+Co crisis management assignment, the CRO was supported by additional LM+Co staff to carryout his responsibilities. In fact, approximately 1,440.5 hours and fees of \$525,588.00 were incurred while providing services to IWO. At the Board of Directors request, only \$68,250 of these fees were billed and

collected, saving the Debtors' estate significant expense.⁴ The foregoing professional services were instrumental and vital to the successful negotiation, confirmation, and consummation of the Plan. These services were in the best interests of the Debtors, their estates, and all parties in interest. For the reasons stated above, and others not specifically included herein, the compensation requested herein is reasonable, necessary and should be granted by the Court.

21. In addition, the actual expenses incurred in providing professional services were absolutely necessary, reasonable, and justified under the circumstances to serve the needs of the Debtors, their estates, and their creditors.

The Requested Compensation and Expense Reimbursement Should Be Allowed

22. Fee Enhancements for lawyers and accountants are rarely sought and rarely granted. However, LM+Co is neither a law firm nor an accounting firm. On the contrary, LM+Co is, among other things, a firm that specializes in supplying senior executives on an interim basis to financially troubled companies. Unlike law firms and accounting firms, performance fees are normal parts of compensation for firms such as turnaround firms, management restructure consulting firms, and investment banking firms.

23. As the Bankruptcy Court for the Southern District of Ohio held, *In re Cardinal Indus., Inc.*, 151 B.R. 843 (Bankr. S.D. Ohio 1993) (operating trustee in chapter 11 case awarded a fee of \$2.1 million plus a success fee of 50,000 shares of stock):

[P]erformance-based or success-factor bonuses are a normal part of compensation arrangements for management restructure consultants and ... such bonuses generally far exceed the time value of the consultant's services on a lodestar basis. Indeed, the time value component is referred to as the base salary, apparently payable to the consultant even if success is not achieved.

In re Cardinal Indus., Inc., 151 B.R. at 847.

24. Other courts have awarded performance fees to firms that were not law firms

⁴ Under the terms of the Engagement Letter, LM+Co was entitled to utilize the services of personnel in addition to the CRO, the payment of compensation for which was to be at the approval of the Board of Directors (and in addition to the \$50,000 monthly fee). As noted, substantial services were rendered by LM+Co during the pre- and postpetition periods for which it received no remuneration.

or accounting firms. See *Kaufman v. S and C Corp.*, 171 B.R. 38 (S.D. Tex. 1994) (management company that operated hotel entitled to a success fee of \$212,417 for fiscal year 1992); *In re Intelogic Trace, Inc.*, 188 B.R. 557 (Bankr. W.D. Tex. 1995) (awarding consultant a success fee of \$77,500 based on a percentage of the sale price of Debtors' assets plus hourly fees of \$24,880 based on a rate of \$200 per hour); *In re Chicago, Milwaukee, St. Paul and Pacific RR Co.*, 841 F.2d 789 (7th Cir. 1988) (investment banking firm awarded \$1 million success fee).

25. Performance fees are a normal part of compensation for firms such as turnaround firms, management consulting firms, and investment banking firms. In addition, the form of compensation sought herein has already been approved by this Court pursuant to the Retention Order. In as much as payment of the Value Added Adjustment was triggered by the consummation of the Plan under the terms of the Engagement Letter, all of the events required to occur prior to the Value Added Adjustment becoming earned have occurred. Therefore, this court should approve LM+Co's request for payment of the Valued Added Adjustment in the amount of \$1,500,000 and the monthly fees totaling \$100,000 as previously approved by the Court.

Briefing

26. This Application does not present any novel issues of law requiring briefing. Accordingly, pursuant to Rule 7.1.2.(a) of the Local Rules of Civil Practice and Procedure of the United States District Court for the District of Delaware (the "Local District Court Rules"), incorporated by reference into Rule 1001-1(b) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware, the Debtors request that the Court set aside the briefing schedule set forth in Rule 7.1.2.(a) of Local District Court Rules.

Notice

27. No trustee, examiner, or statutory creditors' committee has been appointed in the chapter 11 cases. LM+Co has served notice of this Application on (i) the U.S. Trustee,

(ii) the attorneys for Debtors, and (iii) the attorneys for the Senior Noteholder Committee, in accordance with the Confirmation Order. In light of the nature of the relief requested, the LM+Co submits that no other or further notice need be provided.

Conclusion

WHEREFORE LM+Co respectfully requests (i) final allowance of compensation for professional services rendered in the amount of \$1,600,000, (ii) reimbursement for actual and necessary disbursements LM+Co incurred in the amount of \$4,308.47, and (iii) such other and further relief as is just.

Dated: Wilmington, Delaware
March 11, 2005



James J. Loughlin, Jr.
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Crisis Managers to the Debtors