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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA

TI237

MIAMI DIVISION

In re

CASE NO.: 02-42393-BKC-RAM

MELBOURNE INTERNATIONAL  
COMMUNICATIONS, LTD.

CHAPTER 11

Debtor.

\_\_\_\_\_ /

**MOTION TO APPROVE COMPENSATION AGREEMENT  
WITH ALAN GOLDBERG AND REQUEST TO RETAIN  
CRISIS MANAGEMENT, INC.**

Alan Goldberg, the liquidating trustee of the above captioned Debtor ("Goldberg"), pursuant to the authority granted him by; Florida Statute § 620.159, that certain order appointing him as liquidating trustee, that certain order expanding Goldberg's powers and authorizing the filing of this Chapter 11 proceeding, and the Bankruptcy Code in general, respectfully requests the Court enter an order approving a compensation agreement between Goldberg and debtor-in-possession more fully described below and further requests the approval of the retention of Crisis Management, Inc., a company owned by Goldberg, and in support of this request would state:

**I. INTRODUCTION**

1. In October of 2002, Alliston Properties, Inc. commenced a state court liquidation proceeding for the above captioned Debtor, Melbourne International Communications, Ltd., a

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SEC 1 \_\_\_\_\_  
OTH \_\_\_\_\_

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Florida limited partnership ("MICL"). Based upon Goldberg's experience and reputation in the liquidation field, the Honorable Gisela Cardonne appointed Goldberg the liquidating trustee pursuant to Florida Statute § 620.159.

2. Immediately subsequent to his appointment, Goldberg began investigating the assets, liabilities and operations of MICL. MICL was in the business of providing telecommunication services on both a retail and wholesale basis. MICL utilized land time and satellite technology to provide customers with various types of services common in the telecommunications industry, including but not limited to, phone cards, "easy access", and data transmission.

3. Goldberg also discovered that MICL's only general partner, Wajay Investments, Inc. ("Wajay"), in essence walked away from MICL thereby leaving the limited partners of MICL with one of two options, appointing a new general partner within 30 days or allowing the mandatory liquidation of the limited partnership pursuant to applicable Florida law. The limited partners of MICL failed to identify and appoint a new general partner. Thus, as a matter of law MICL must ultimately be liquidated. Consistent with that reality, Alliston commenced the liquidation proceeding in the state court as more fully described above.

4. Goldberg has further identified numerous assets of the Debtor, including furniture, fixtures, machinery, equipment, and accounts receivable. All tangible assets are presently in the constructive possession of the debtor through its agent, Moecker Auctions, Inc. These assets are insured.

5. It appears that the demise of MICL was intentional and was rendered a certainty because of the actions of related entities and affiliates including, but not limited to, Alliston, NACS Inc., d/b/a Texcom ("Texcom"), and other entities that are, directly or indirectly, related to MICL. Discussions with counsel for the prior general partner, Wajay, have confirmed that MICL was in essence a "bust out," and the only entities and parties that benefited from the "bust out" are the related entities including Alliston, Texcom and the entities that own and control them.

6. MICL was operating to a limited extent when Goldberg took over but operations ceased when Texcom "cut off" all of the switching services that it controlled by way of equipment previously belonging to MICL. That act ensured the demise of the then going concern value of MICL.

7. Goldberg believes that there is substantial going concern value in Texcom and other related entities that do business in a similar (if not the identical) format that MICL did. In fact, various leases of both real and personal property were transferred pre-petition from MICL to Texcom and other related entities by virtue of decisions made by Texcom's management. This is consistent with the story told by Wajay's counsel. Texcom operates out of the same physical premises that MICL operated out of and has the same management. All of these facts and many others, indicate that this was a "bust out" designed to directly benefit a sister corporation resulting in a further benefit to the common owners of both Texcom and MICL.

8. With respect to this Chapter 11, Goldberg sought and was given the specific authority to file this Chapter 11 proceeding by Judge Cardonne, the state court judge having jurisdiction over MICL. Goldberg filed the Chapter 11 proceeding in the exercise of his business judgment as he believed and continues to believe, that it is the best interest of all creditors and parties in interest that this Debtor be liquidated in Chapter 11 for the following reasons:

- (1) The automatic stay will prevent the needless, unnecessary and expensive race to the courthouse by creditors and the attendant depletion of estate assets to defend such litigation.
- (2) There appear to be substantial preference actions available to the liquidating trustee in Chapter 11 that are not available in the state court proceeding. (At this time there is at least one preference action in respect to two preferential writs of garnishment whereby the estate will receive \$60,000 almost immediately).
- (3) To the extent that the *alter ego* entities are ultimately collapsed into the Debtor or substantive consolidation is ordered by this Court, there may be operating entities that are valuable on a going concern basis and that this Debtor will be able to sell for substantial value. It is Goldberg's business judgment that the value of those assets will be substantially higher in Chapter 11 than they would be in a Chapter 7 proceeding.

- (4) There may be substantial tax benefits available through the reorganization process that may yield a higher dividend to creditors.
- (5) The United States Bankruptcy Court is clearly the most efficient court in the country in dealing with insolvent and distressed entities. That efficiency will reduce the time and cost of this process to the benefit of all creditors and parties in interest, including Alliston.

## II. GOLDBERG'S COMPENSATION

9. Although no formal agreement was in place during the short period that the liquidation proceeded in the state court, Goldberg billed the state court estate \$200 per hour. Goldberg's fees were approved and paid prior to the bankruptcy, as were his state court counsel's fees. There are no prepetition fees owing either Goldberg's state court counsel or Goldberg. While Goldberg is the management of the debtor-in-possession by operation of law, and may thus make compensation arrangements for the Debtor, Goldberg believes it important that this Court review and approve in advance this compensation agreement between Goldberg and the debtor-in-possession. Goldberg proposes that this Court allow the prepetition arrangement to continue. Goldberg has and continues to bill \$200 per hour, which is billed on a monthly basis. The monthly bills also include all costs and expenses incurred by him. Goldberg proposes that this arrangement continue. Goldberg agrees that his compensation should be subject to court approval so that no creditor or party in interest can have any concern that Goldberg's compensation is other than fair and reasonable. To the extent that Goldberg incurs any cost or

expenses, Goldberg will seek reimbursement of those costs and expenses consistent with the Bankruptcy Code and the United States Trustee's Guidelines.

10. Goldberg proposes to invoice the debtor-in-possession monthly and to pay 80% of the fees invoiced and 100% of all costs invoiced each month, all subject to the ultimate review and approval of the Court upon periodic fee applications that Goldberg will file every 120 days.

### **III. RETENTION OF CRISIS MANAGEMENT**

11. In addition to the services of Goldberg set forth above, Goldberg also seeks the retention of Crisis Management, Inc. ("Crisis Management"), an entity in which he has an equity interest. As this Court is aware Goldberg is a panel trustee and Crisis Management from time to time handles the administrative and day-to-day functions of Goldberg's trustee practice. Goldberg proposes, and hereby requests, that this Court authorize the retention of Crisis Management pursuant to Bankruptcy Code § 327 to allow Crisis Management to assist Goldberg with the day-to day affairs of this Chapter 11. Said retention will allow efficient administration of this estate at substantially reduced cost. With particularity, Crisis Management will designate Lillian Pantaleon to handle the administrative day-to-day matters of this estate subject to Goldberg's review and approval. Her current hourly rate is \$75.00. Other employees of Crisis Management may be utilized. Their hourly rates range from \$50.00 to \$75.00 per hour.

12. Goldberg believes it important that Crisis Management be retained to assist in efficiently administration of this estate. All of Crisis Management's services will be subject to the review by Goldberg. Moreover, since the retention of Crisis Management is pursuant to §

327 of the Bankruptcy Code, all of Crisis Management's fees, costs and expenses shall be reviewed and ultimately approved by this Court. Again, Goldberg proposes that Crisis Management invoice monthly, and be allowed to be paid 80% of all fees invoiced monthly and 100% of all costs. All fees and costs shall be subject to review upon appropriate fee application to be filed every 120 days.

#### IV. CONCLUSION

13. Although this Chapter 11 is somewhat unique given the legal and procedural posture, Goldberg in the exercise of his business judgment, consistent with Florida law and consistent with the specific approval of the state court judge charged with the jurisdiction over the liquidation proceeding of MICL, has filed this Chapter 11 and desires to pursue it in the best interest of the estate including all creditors and all parties in interest. In order to do so Goldberg needs to be assured that he will be compensated appropriately for his efforts. He further requests that the Court authorize and allow him to more efficiently do so with the assistance of Crisis Management, Inc.

WHEREFORE, Alan Goldberg, on behalf of the debtor-in-possession, respectfully requests that this Court approve the present fee agreement between Goldberg and the debtor-in-possession and further approve the retention of Crisis Management, Inc. to support Goldberg's efforts herein and for any further relief as this Court deems just and proper.

I HEREBY CERTIFY that I am admitted to the Bar of the United States District Court for the Southern District of Florida and I am in compliance with the additional qualifications to practice in this Court set forth in Local Rule 2090-1(A).

Respectfully submitted this 2<sup>nd</sup> day of December, 2002.

LUCIO, BRONSTEIN, GARBETT,  
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By: \_\_\_\_\_

Phillip M. Hudson III  
Florida Bar No. 518743

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by facsimile and first class U.S. mail, postage prepaid, upon each of the parties identified on the attached Service List, this 2<sup>nd</sup> day of December, 2002.

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Phillip M. Hudson III