

United States Department of Justice  
Office of the United States Trustee  
1100 Commerce St. Room 976  
Dallas, Texas 75242  
(214) 767-8967 x 247

Elizabeth A. Ziegler,  
for the United States Trustee

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION**

**IN RE:**

**Wind Plus Holdings, Inc.,**

**Debtor-in-Possession**

§  
§  
§ CASE NO: 09-47227-rfn11  
§  
§ (Jointly Administered)  
§ Hearing: to be set  
§

**United States Trustee's Motion for the Appointment of Chapter 11 Trustee under 11 U.S.C. § 1104(a), or to convert case to Chapter 7 under 11 U.S.C. § 1112(b)**

TO THE HONORABLE RUSSELL F. NELMS,  
UNITED STATES BANKRUPTCY JUDGE:

The United States Trustee for Region 6 moves for an order directing the appointment of a Chapter 11 Trustee in Wind Plus Holdings, Inc. and Wind Plus, Inc. (collectively, "Corporate Debtors") for cause and best interests of the creditors under 11 U.S.C. § 1104(a). The United States Trustee would show:

**Overview**

The United States Trustee seeks the appointment of a chapter 11 trustee. Before this bankruptcy filing, several courts found the Corporate Debtors' principal violated his fiduciary duties, and he also used money invested in the Corporate Debtors for his personal expenses. The Debtors have failed to file tax returns since 2005, and David

Lyman Spalding, the Debtors' principal, personally filed sequential bankruptcy cases. Despite these prior bankruptcy experiences, in the Corporate Debtors' cases, he has failed to disclose assets, notably a corporate bank account and liabilities accurately.

"Cause" exists for the appointment of a chapter 11 trustee. Mr. Spalding has engaged in gross mismanagement of the bankruptcy estate and dishonesty in failing to be transparent with the court and his creditors as to his true financial condition; and appointing a trustee is in the best interest of creditors. In the alternative, cause exists to convert this case to chapter 7.

**Jurisdiction**

1. The Court has subject matter jurisdiction under 28 U.S.C. § 1334, 28 U.S.C. § 157(a)(1), and the standing order of reference. Appointing a trustee or examiner impacts the case administration and therefore is a core matter that the Court has the power to resolve. 28 U.S.C. § 157(b)(2)(A).
2. The United States trustee has standing to seek appointment of a trustee or examiner. 11 U.S.C. §§ 307, 1104.

**Facts**

**Procedural History:**

1. On November 2, 2009, Wind Plus, Inc. and Wind Plus Holdings, Inc. filed voluntary petitions for relief under chapter 11.
2. On November 12, 2009, the Court granted joint administration of these cases, with Wind Plus, Holdings, Inc., as the lead case (collectively "Corporate Debtors"). The Debtors continue to operate as debtors-in-possession pursuant to §§ 1107(a) and 1108 of the bankruptcy court.

3. To date, no committee of unsecured creditors has been appointed.
4. The Corporate Debtors solicited investors and negotiated leases for the development of wind turbines.
5. The automatic stay forestalled post-judgment discovery responses that a judgment creditor sought from the Corporate Debtors and Mr. Spalding. See *infra* ¶ 30.

Pre-Petition Activity:

6. David Lyman Spalding is the sole officer, director and shareholder of the Corporate Debtors. Mr. Spalding has filed four prior personal bankruptcy cases as summarized below:

Case number	Date filed	Date dismissed	Reason For Dismissal
09-46633-rfn-13	10/21/2009	11/24/2009	Failed to file information including Schedules, Plan, etc.
09-46259-dml13	10/05/2009	10/14/2009 <sup>1</sup>	Exigent Circumstances Waiver Denied
02-45825-dml13	08/06/2002	09/25/2002	Failed to file information
01-43588-dml7	05/15/2001		Case Closed; Debtor received his chapter 7 discharge on 09/17/2001

Financial Records

7. The Corporate Debtors have not filed income tax returns since 2005.
8. David Spalding, individually, has not filed an income tax return since 2005.
9. Upon information and belief, the only corporate financial records maintained by the Debtors since 2005 are bank account statements for Bank of America account xxxx-3226 ("Account").
10. The Account is disclosed on the Debtors' Schedule B with a balance of \$17,312.10. The funds in the Account had been frozen as part of a garnishment action.

<sup>1</sup> The case was dismissed for denial of exigent circumstance waiver on 10/14/2009. The case was reinstated on 10/27/2009 and subsequently closed on 11/18/2009.

11. Other than the Account Statements, the only financial record produced by the Debtors is a *Wind Plus, Inc. Summary of Activities January to July 2005*. The document reflects compensation to David Spalding from July 31, 2004 through July 31, 2005 in the amount of \$604,000. (Exhibit A)
12. No other document or record has ever been produced by the Corporate Debtors that reflects the exact compensation and expense reimbursement to David Spalding.
13. The Debtors also maintain an overdraft account at Bank of America ending in xxxx-6265. This account is not disclosed on the Debtors' Schedules or Statement of Financial Affairs.
14. Upon information and belief, the Debtors have never produced the bank account statements ending in xxxx-6265.

Account Statements

15. David Spalding is the only signatory on the Account. He also possesses the only debit card associated with the Account.
16. Mr. Spalding claims he did not receive a salary from the Debtors prior to 2009, but only withdrew monies for expense reimbursement. In 2009 he contends he received a salary of approximately \$42,000.
17. David Spalding would routinely use the Account for his personal expenses as he was not taking a salary, and claims that these charges are "expense reimbursements." However, other than transactions listed in the bank account, there is no record of the exact compensation and reimbursement of expenses paid for the benefit of David Spalding since 2005.

39. Before confirmation, the Court "shall order the appointment of a trustee . . . for cause, including fraud, dishonesty, incompetence, or gross mismanagement of the affairs of the debtor by current management, either before or after the commencement of the case, or similar cause." 11 U.S.C. §1104(a)(1).<sup>2</sup> Alternatively, the Court must appoint a trustee "if such appointment is in the interest of the creditors, any equity security holders, and other interests of the estate." 11 U.S.C. § 1104(a)(2).

40. The duties of a trustee are defined in section 1106, and the Court has the ability to tailor some of them. 11 U.S.C. § 1106(a).

41. "If the court does not order the appointment of a trustee . . . , the court shall order the appointment of an examiner to conduct such investigation of the debtor as is appropriate . . . if such investigation is in the interest of creditors, any equity security holders, and other interests of the estate . . . ." 11 U.S.C. §1104(c)(1).

42. The Court also can tailor some of an examiner's defined statutory duties. 11 U.S.C. § 1106(b).

43. The "cause" to appoint an examiner or a trustee may be a reason other than the enumerated factors. *Oklahoma Ref. Co. v. Blaik (In re Oklahoma Ref. Co.)*, 838 F.2d 1133, 1136 (10<sup>th</sup> Cir. 1988); cf. *Little Creek Dev. Corp. v. Commonwealth Mortg. Corp. (In re Little Creek Dev. Corp.)*, 779 F.2d 1068, 1072 (5<sup>th</sup> Cir. 1986) (defining "cause" in context of dismissal statute).

44. Two circuits have held that "cause" exists when appointing a chapter 11 trustee "is the only effective way to pursue reorganization." *Cajun Elec. Power Coop., Inc. v.*

<sup>2</sup> Section 1104(e) of the Bankruptcy Code provides that the United States trustee "shall move for the appointment of a trustee under subsection (a) if there are reasonable grounds to suspect that current members of the governing body of the debtor, the debtor's chief executive officer, or members of the governing body who selected the debtor's chief executive or chief financial officer, participated in actual fraud, dishonesty, or criminal conduct in the management of the debtor or the debtor's public financial reporting." 11 U.S.C. § 1104(e).

*Central La. Elec. Coop., Inc. (In re Cajun Elec. Power Coop., Inc.)*, 74 F.3d 599, 600 (5th Cir.) (adopting on rehearing the opinion of dissent in 69 F.3d 746, 751), cert. denied, 519 U.S. 808 (1996); see also *In re Marvel Entertainment Group, Inc.*, 140 F.3d 463 (3d Cir. 1998) (adopting reasoning of *Cajun Electric*, and affirming appointment of trustee when acrimony between debtor's management and creditors undermined any ability to prosecute bankruptcy case). While *Cajun Electric* and *Marvel* have factual distinctions, both *Cajun Electric* and *Marvel* focused on the underlying problem that exists in this case: this case can proceed properly through the chapter 11 process only if a chapter 11 trustee is appointed.

Cause exists to appoint a chapter 11 trustee

45. Cumulatively, the facts of this case establish gross mismanagement, and dishonesty. In addition, the best interests of the creditors and the estate would be served by the appointment of a trustee or examiner. The Court should appoint a trustee or an examiner.

46. Reviewing the facts of this case establishes that the Debtors have systematically attempted to conceal their true financial condition, such that David Spalding has grossly mismanaged the estate leaving the Debtors without a true fiduciary to the bankruptcy estate.

47. Mr. Spalding has violated his fiduciary responsibilities to the estate by looting the corporate assets, failing to properly keep books and records, and failing to properly comply with the obligation to be current on tax returns, which cumulatively establishes the gross mismanagement of the estate, constituting cause for appointment of a chapter 11 trustee. Under the management of David Spalding, the Debtors have failed to produce

any financial statements, including tax returns, which would allow creditors to determine how the investment funds have been used. Given that David Spalding has used the corporate bank accounts to pay his personal expenses without keeping any records of his exact reimbursement amounts and has reimbursed a \$14,000 charge for Harry Winston jewelry, the lack of financial data undermines confidence in David Spalding's ability to act as a fiduciary to the estate. Under these facts, allowing Spalding to remain in control fosters neither unsecured creditor nor public confidence in the bankruptcy system. A trustee should be appointed.

48. Moreover, the Corporate Debtors have failed to accurately disclose their assets and liabilities. The Corporate Debtors are in possession of at least one additional bank account of which no information has been disclosed to the court, or other parties in interest. It is unclear if there are funds on hand in this account, the amount of those funds, or if the David Spalding is using that account post-petition. The Corporate Debtors have also failed to accurately disclose exactly how much money was invested with them for the development of the wind properties. As those funds were deposited in the Corporate Debtors' Account, and used for the benefit of David Spalding, this information is critical to determine potential causes of action against the estate. An independent trustee should be appointed to pursue this asset, as well as any other non-disclosed asset, and to accurately determine the potential liabilities to the estate.

It is in the best interests of creditors to appoint a chapter 11 trustee.

49. Appointment of chapter 11 trustee is also in the interests of creditors, equity security holders, and other interests of the estate. The Court should direct the appointment of a chapter 11 trustee to serve the "interests of creditors, any equity security

holders, and other interests of the estate." 11 U.S.C. §1104(a)(2). Since 2005, the Debtors have not maintained a single financial record regarding their income, expenses, salary or expense reimbursement. No tax returns have ever been filed by the Corporate Debtors. The financial vacuum suggests the Corporate Debtors have not been candid with the United States government, which may be a creditor, or with the creditors generally.

50. As David Spalding appears to have used the corporation as his personal piggy bank for the past four years, he is incapable of conducting an independent and unbiased evaluation of the finances of the Debtors. He has an inherent conflict if he is a potential target of a preferential or fraudulent transfers.

51. It is in the best interest of creditors to have an independent trustee to assume control over the estate, to discover assets, to liquidate those assets, and to potentially provide a return to the unsecured creditors. Therefore, it is in the best interests of creditors to appoint a chapter 11 trustee.

*Alternatively, cause exists for conversion to chapter 7.*

52. In the alternative, cause exists to convert this case to one under chapter 7 as there has been gross mismanagement of the estate. See 11 U.S.C. § 1112(b)(4)(B). Mr. Spalding has routinely used the corporate accounts for his personal gain. He has failed to keep proper books and records for the Debtors and has failed to file corporate tax returns. He has failed to successfully comply with the requirements of a personal chapter 13 bankruptcy, which suggests he will fail to comply with his responsibilities as the fiduciary of the Debtors. Moreover, while David Spalding was in control of the Debtors, he failed to conduct even the most basic accounting and bookkeeping functions required

also lists expense reimbursement in the amount of \$8,700 for the year prior to filing for bankruptcy. [Statement of Financial Affairs]

30. In response to SOFA question 4, the Debtors list six pending causes of action. A judgment has been entered in the first, *Trianon Partners v. Wind Plus, Inc., et al*, cause no. DC-08-13179 in the 191<sup>st</sup> Judicial District, Dallas. Although described only as a breach of contract suit on SOFA, *Trianon Partners* also alleged fraud by David Spalding and the Debtors in their pleadings. Post-Judgment discovery was due on November 2, 2009, the day this case was filed.

Post-Petition Activity:

31. The Debtors filed a Monthly Operating report for October 2009 and November 2009 on December 22, 2009. [docket no. 45] The Debtors schedule no income and no expenses during that two month time period. Similarly, the Debtors filed a Monthly Operating report for December 2009 on January 25, 2010, which also reflects no income or expenses during the month. [docket no. 47]

32. As part of the *Trianon* judgment, the Debtors were subject to a turnover order on a 2006 Mercedes, which was delivered to *Trianon* on October 30, 2009. The Debtors claim that turnover is a preferential transfer under 11 U.S.C. § 547 and have filed adversary proceeding 09-04385 to recover the vehicle. Upon information and belief, the vehicle remains in the possession of *Trianon*.

33. All the leases negotiated pre-petition have expired as per their own terms. It will take between \$200,000 and \$500,000 of new working capital infusion to restart the business.

34. To date, the Debtor has not sought approval from the court to approve financing to re-sign the leases.

35. At the first 341 meeting held on December 11, 2009, the former attorney for the Corporate Debtors and David Spalding halted the meeting as he claimed Mr. Spalding was not being truthful with his testimony when he failed to admit he was familiar with the *Wind Plus, Inc. Summary of Activities January to July 2005*. At the continued 341 meeting held on January 6, 2010, Mr. Spalding clarified some of his previous testimony to admit he was familiar with the document but could not recall who produced it.

36. At the continued 341 meeting, Mr. Spalding also testified the Corporate Debtors maintained the additional account at Bank of America ending in xxxx-6265. He is also the only signatory on this account. The United States Trustee requested copies of these bank account statements. To date, the statements have not been produced and it is unclear what funds may be in this account.

37. In addition, at the continued 341 meeting, the United States Trustee requested a detailed list of the total amounts contributed by investors. To date, that information has not been provided and it is unclear exactly how much money was invested in the Corporate Debtors.

Legal Analysis and Argument

*Appointment of a trustee required where there is a finding of cause or where it is in the best interest of creditors*

38. The United States Trustee is charged with monitoring the federal bankruptcy system. See 28 U.S.C. § 586(a)(3). See also *United States Trustee v. Columbia Gas Sys., Inc.* (*In re Columbia Gas Sys., Inc.*) 33 F.3d 294, 295-96 (3d Cir. 1994).

18. The Account statements evidence that Mr. Spalding withdrew substantial amounts from the Debtors for inappropriate personal expenditures in the two years prior to filing this case.
19. For example, David Spalding used the Account to his personal real property taxes each year.
20. As other examples, the Account statements show the following transactions in the two years prior to filing for bankruptcy:
- a. Purchase of \$14,400 at Harry Winston Jewelry on August 20, 2008. Mr. Spalding contends the amounts were due to him in the form of deferred expense reimbursement; and
  - b. Purchase of \$17,793.74 at the Four Seasons on September 2, 2008. Mr. Spalding contends the charge was for entertaining investors. However, upon information and belief, Mr. Spalding was married at the Four Seasons on August 30, 2008.
21. The last Account statement produced by the Debtor is for June, 2009. The statement reflects the following charges:
- a. Purchase of \$346.39 for Shawn Spalding at AT&T on June 16, 2009;
  - b. \$118.97 at Lifetime Fitness for monthly dues on June 2, 2009;
  - c. \$114.52 at Costco on June 8, 2009;
  - d. \$116.17 at Ferrari's on June 8, 2009;
  - e. \$72.53 at Dillard's on June 12, 2009;
  - f. \$39.00 at Racetrack at June 17, 2009; and
  - g. \$44.31 at Vonage.

22. In addition, David Spalding contends he travelled extensively through England, France and Italy in 2008 in order to visit with note holders and banks as part of the Debtors' business. He used the Account to fund this trip.

23. However, upon information and belief, at the same time he reports he was conducting business for the Corporate Debtors, he also travelled to England, France and Italy for his honeymoon.

Schedules and Statements of Financial Affairs

24. On Schedule F, the Corporate Debtors list all the promissory notes with their investors as having a disputed, unliquidated and contingent claim of \$0 as all of the notes are with Wind Plus, Inc., a Province of Ontario, Canada Corporation, and not with the Debtors.

25. Wind Plus, Inc., a Province of Ontario, Canada Corporation is the 100% shareholder of Wind Plus Holdings, Inc.

26. The promissory notes contained a provision that shares of stock in Wind Plus would be issued if certain conditions were met. Specifically, shares would be issued if the Corporate Debtors became public entities. However, as the companies never were approved as public entities, shares were never issued.

27. In addition, the Corporate Debtors claim all the promissory notes are uncollectable as the statute of limitations has run.

28. All of the investment money that was received from the investors was deposited in the Account, referenced *supra* ¶ 9.

29. In response to SOFA question 23, the Debtor lists compensation to David Spalding in the amount of \$42,000 for the year prior to filing for bankruptcy. The Debtor

styled *Trianon Partners v. Wind Plus, Inc., David Spalding, and Wind Plus Holdings, Inc.* in the 191<sup>st</sup> Judicial District in Dallas County, Texas (the "Trianon Litigation"). Trianon thereafter took certain actions to enforce its Judgment and to obtain turnover relief against Spalding and the Debtors, including obtaining Turnover Orders (the "Turnover Order(s)"). Pursuant to the turnover relief granted by the 191<sup>st</sup> District Court, Trianon *inter alia* obtained the turnover of a 2006 Mercedes Benz CLS500 (the "Vehicle"). Also prior to the filing of the bankruptcy petitions, Reinhart Consulting and Reinhart (the "Reinhart Parties") sued the Debtors and Spalding in certain state court litigation styled *Reinhart Consulting, LP and Michael Reinhart v. Wind Plus, Inc., David Spalding, and Wind Plus Holdings, Inc.* in the 298<sup>th</sup> Judicial District in Dallas County, Texas for claims including but not limited to breach of contract, fraud, breach of duty of good faith and fair dealing, breach of fiduciary duty, theft of services, unjust enrichment and attorney's fees and costs (the "Reinhart Litigation") (the Debtors and Spalding are sometimes referred to collectively as the "Defendants") and the Defendants asserted counterclaims against the Reinhart Parties. The trial court in the Reinhart Litigation entered summary judgment for the Reinhart Parties (the "Reinhart Judgment"). The Defendants appealed to the Court of Appeals for the Fifth Judicial District of Texas at Dallas, Texas under Case No. 05-08-01667-CVS and styled *Wind Plus, Inc., David Spalding and Wind Plus Holdings, Inc., v. Reinhart Consulting, LP and Michael Reinhart* (the "Reinhart Appeal"). As security for the Reinhart Appeal, a supersedeas bond sufficient to institute and pursue the appeal was posted by the Debtors. (the "Bond"). There is a dispute between the Reinhart Parties and the Trustee whether the Bond is property of the estate if the Defendants prevail in the Reinhart Appeal.

1.4 **The Adversary Proceeding.** Prior to the Conversion Date, the Debtors filed their "Original Verified Complaint and Application for Temporary Restraining Order and Preliminary

and Permanent Injunction" (the "Complaint") thereby initiating the Adversary Proceeding (the "Adversary Proceeding") of *Wind Plus Holdings, Inc. and Wind Plus, Inc., Debtors, Plaintiffs v. Trianon Partners, Defendant*, Adversary No. 09-04385-RFN, wherein the Debtors sought the turnover of the Vehicle pursuant to Sections 547 and 542 of the Bankruptcy Code.

1.5 **This Agreement.** The Parties concede that there exist *bona fide* disputes and controversies among them as to the validity of the claims of the Trustee to the Bond in the Reinhart Appeal and to the Vehicle as has been alleged in the Complaint. The Parties desire to dispose of all of the controversies and disputes regarding the Bond in the Reinhart appeal and the Vehicle alleged in the Complaint including the claims and causes of action of any kind that currently exist or may exist in the future that relate in any way to the Bond or the occurrences described in the Complaint regarding the Vehicle. The Parties recognize that there may be claims or injuries arising out of the Bond or the occurrences described in the Complaint that are unknown to them at the time of the execution of this Agreement, or that may arise in the future; however, the Parties have negotiated this Agreement with the full knowledge of the possibility of additional claims or injuries and intend that this Agreement settle and finally dispose of all of such claims or injuries arising out of the described occurrences, whether known or unknown. This Agreement is a compromise and settlement of the claims regarding the Bond and the Vehicle alleged in the Complaint that are in dispute and nothing in this Agreement shall constitute an admission of liability by any of the Parties, all liability being expressly denied.

## II. Settlement Terms

In consideration of the mutual promises contained in this Agreement, the Parties agree to the settlement terms set forth below:

2.1 **Payment of the Settlement Amount.** Within fifteen (15) days after both the Order approving this Agreement becomes final and non-appealable and the date the Bond funds from the Bond are released to the Trustee and/or the Reinhart Parties, the State Court Plaintiffs shall then pay to the Trustee Forty- Thousand and No Dollars (\$40,000.00) in full and final settlement of the aforementioned disputes regarding the Bond and the Complaint, as follows: (1) Trianon shall pay \$12,500.00; and (2) the Reinhart Parties shall pay \$27,500.00 from the funds from the released Bond and the Reinhart Parties shall receive the remaining funds from the Bond payable to the Reinhart Parties and Strasburger & Price, LLP.

2.2 **Memorialization.** This Agreement shall be signed and executed by the Parties prior to the filing of the 9019 Motion (as defined below), and a copy hereof annexed thereto as well as delivered separately to counsel to the Parties at the time of its signing and execution, to be held in trust pending the Bankruptcy Court's approval of the 9019 Motion.

2.3 **Mutual Releases.**

2.3.1 **Release by Trustee.** Following Bankruptcy Court approval of this Agreement and payment of \$40,000.00 to the Trustee, the Trustee solely in her capacity as Trustee of the Debtors' bankruptcy estates and on behalf of her representatives, agents, employees and attorneys hereby releases, acquits and forever discharges Trianon and the Reinhart Parties from every claim, counterclaim debt, liability, demand, cost, obligation, expense, account, action or cause of action which the Trustee and the Debtors' bankruptcy estates may have against Trianon, the Reinhart Parties and/or their agents and attorneys as of the date of the execution of this Settlement Agreement, whether known or unknown, direct or contingent. Specifically excepted from this release are the obligations set forth herein.

2.3.2 **Release by Trianon and the Reinhart Parties.** Following Bankruptcy Court approval of this Agreement and receipt of the balance of the Bond funds, Trianon and the Reinhart Parties, each individually and on behalf of their representatives, agents, employees and attorneys, hereby release, acquit and forever discharge the Trustee solely in her capacity as Trustee of the Debtors' bankruptcy estates and all the Trustee's agents, representatives and attorneys from every claim, counterclaim debt, liability, demand, cost, obligation, expense, account, action or cause of action which Trianon and/or the Reinhart Parties may have against the Trustee solely in her capacity as Trustee of the Debtors' bankruptcy estates and/or her agents and attorneys as of the date of the execution of this Settlement Agreement, whether known or unknown, direct or contingent. Specifically excepted from this release are the obligations set forth herein, and the foregoing release shall not include any release or waiver of any pre-bankruptcy petition general unsecured claim, any claim arising under Trianon's Judgment and/or Turnover Orders in the Trianon Litigation including but not limited to claims for attorneys' fees and costs, or any claim by Trianon or the Reinhart Parties under 11 U.S.C. § 502(h) resulting from this Settlement Agreement, provided that: (i) any claim under 11 U.S.C. § 502(h) resulting from this Settlement Agreement will be forever waived and discharged if not filed: (a) in a form sufficient under the Federal Rules of Bankruptcy Procedure; and (b) within thirty (30) days of the approval of this Settlement Agreement by a final non-appealable Order of the Bankruptcy Court; and (ii) the Trustee shall retain any defense, claim, or objection to any such surviving claim that may exist under applicable bankruptcy and non-bankruptcy law.

2.3.3 **Enforceability.** The Parties agree that notwithstanding the terms of ¶ 2.3.1 hereof, none of the Parties will be relieved of or from any of such Parties' obligations under this Agreement.

by a corporation. Therefore, grounds exist to convert this case to one under Chapter 7 as there has been gross mismanagement of the Debtor's estate.

For these reasons, the United States Trustee requests the Court to order the appointment of a Chapter 11 Trustee, or to convert this case to chapter 7. The United States Trustee requests any other relief to which he is entitled.

DATED: February 2, 2010

Respectfully submitted,

WILLIAM T. NEARY  
UNITED STATES TRUSTEE

/s/ Elizabeth A. Ziegler  
Elizabeth A. Ziegler  
Licensed by the New York State Bar  
Office of the United States Trustee  
1100 Commerce Street, Room 976  
Dallas, Texas 75242  
(214) 767-8967 x 247  
[elizabeth.ziegler@usdoj.gov](mailto:elizabeth.ziegler@usdoj.gov)

Certificate of Conference

I certify that on February 2, 2010, I conferred with Joe Postnikoff, counsel for the Debtor. The Debtor does not agree to the relief requested in this motion.

/s/ Elizabeth A. Ziegler  
Elizabeth A. Ziegler

Certificate of Service

I certify that I sent copies of the foregoing document on February 2, 2010 to the following parties via U.S. Mail, postage prepaid, or via ECF to the parties listed below and on the attached mailing matrix.

**Wind Plus Holdings, Inc.**  
909 Hidden Ridge Drive  
Suite 450  
Irving, TX 75038

/s/ Elizabeth Ziegler  
Elizabeth Ziegler

**Wind Plus, Inc.**  
909 Hidden Ridge Drive  
Suite 450  
Irving, TX 75038

**Joseph F. Postnikoff**  
Goodrich Postnikoff & Albertson, LLP  
777 Main St., Suite 1360  
Ft. Worth, TX 76102

**Robert P. Franke**  
Strasburger & Price, L.L.P.  
901 Main Street, Suite 4300  
Dallas, TX 75202

**Laurie Spindler Huffman**  
Linebarger Goggan Blair & Sampson,  
LLP  
2323 Bryan St., Suite 1600  
Dallas, TX 75201

**Kevin Thomas White**  
Kevin T. White, P.C.  
601 Silveron Boulevard, Suite 200  
Flower Mound, TX 75028

**James Richard Tubb**  
J. Richard Tubb, PLLC  
8117 Preston Road, Ste. 300  
Dallas, TX 75225

**TW Telecom Inc.**  
co Linda Boyle  
10475 Park Meadows Dr. Ste. 400  
Littleton, CO 80124

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Case 09-47227-rfn11  
Northern District of Texas  
Ft. Worth  
Tue Feb 2 14:03:31 CST 2010

Joseph Postnikoff & Albertson, LLP  
777 Main Street  
Suite 1360  
Fort Worth, TX 76102-5360

501 W. Tenth Street  
Fort Worth, TX 76102-3637

Alex Maki  
10400 Mateo Trail  
Irving, TX 75063-9398

Amy Ivie  
4745 Jerral Drive  
Frisco, TX 75034-2211

Bernard Leroy  
91 Rue De General De Gaulle  
2710 Le Vaudreuil  
Paris, France

Brad Price  
572 Waters Edge Drive  
South Elgin, IL 60177-3709

Brandon Ivie  
4749 Jerral Drive  
Frisco, TX 75034-2211

Brandon Kershaw  
5671 Summer Star Lane  
Frisco, TX 75034

Bruce Drucker  
Trianon Partners, LLC  
945 Ellington Lane  
Pasadena, CA 91105-2742

Cantey Hanger, LLP  
600 West 6th Street, Suite 300  
Fort Worth, TX 76102-6898

Dallas County  
Lineberger Goggin Blair & Sampson, LLP  
CO Laurie Spindler Buffman  
2323 Bryan Street Suite 1600  
Dallas, Texas 75201-2637

David B. Frick Trust  
845 Western Avenue  
Glen Ellyn, IL 60137-3797

David Winthers  
970 Cherrywood Lane  
West Chicago, IL 60185-5012

Don Blanton  
Blanton & Associates, Inc.  
5 Lakeway Centre Court, Suite 200  
Austin, TX 78734-2616

Dr. Daniel and Carol Luetkehans  
1510 Cadet Court  
Wheaton, IL 60189-7380

Dr. Jack Hughes  
9212 NW County Road 1343  
Blooming Grove, TX 76626-3309

Fulbright & Jaworski  
1301 McKinney Street, Suite 5100  
Houston, TX 77010-3095

(p) HERBERT B WARNER  
117 FAIRMAYER DR  
MONTGOMERY TX 77356-5594

WIDE PERS BRIDGES, INC.  
909 Hidden Ridge Drive  
Suite 450  
Irving, TX 75038-3822

Albert and Emi Killeri  
2640 N. Military Road  
Arlington, VA 22207-5138

Amy L. Fouts  
5960 McFarland  
Indianapolis, IN 46227-8723

Brandon H. & Amy Ivie  
5500 Preston Road, Suite 250  
Dallas, TX 75205-2699

Britt Brown  
5443 Ellsworth Avenue  
Dallas, TX 75206-5321

Chris S. Wood  
44 Marywood Trail  
Wheaton, IL 60189-5879

David S. Cobb  
6655 South Kessler Frederick Road  
Tipp, OR 45371-9654

Donald Delany  
DH Delaney & Company  
Box 806  
Wheaton, IL 60187-0806

Electric Power Engineers, Inc.  
200 West Highway 26, Suite 260  
Waco, TX 76712

INTERNAL REVENUE SERVICE  
1100 COMMERCE STREET  
DALLAS, TX 75242-1100  
MC5027 DAL

(p) INTERNAL REVENUE SERVICE  
CENTRALIZED INSOLVENCY OPERATIONS  
PO BOX 21126  
PHILADELPHIA PA 19114-0326

John Lockhart  
4650 Washington Road, Suite 1022  
Arlington, VA 22201-5747

Mark Henry  
1709 Foxhall Road NW  
Washington, DC 20007-2032

Michael Reinhart, Reinhart Consulting, I  
CO David Ovard  
Strasburger & Price, LLP  
2801 Work Boulevard, Suite 600  
Frisco, TX 75034-1844

Reliability, Inc.  
Tom Carbone  
2203 Lakeway Drive  
Keller, TX 76248-8391

Rick Edmundson  
Forease Investments  
3505 Glenmoor Drive  
Flower Mound, TX 75022-2753

Ryan Hoffman  
5960 McFarland Road  
Indianapolis, IN 46227-8723

Stanford Kusch  
1204 Old Oak Court  
Frisco, TX 75034-1736

Trianon Partners, LLC  
Tom Carbone  
2203 Lakeway Drive  
Keller, TX 76248-8391

Warren Ivie  
3105 Misty Oak Drive  
Highland Village, TX 75077-1847

Julia Matthews  
3803 Oliver Avenue  
Annaandale, VA 22003-1720

Mark Murray  
9930 Caribou Lane  
Dallas, TX 75238-2127

Paul Lang  
301 Brannan Street, 5th Floor  
San Francisco, CA 94107-3816

Rhonda L. Schueller  
827 South Fairview  
Park Ridge, IL 60068-4708

Robert G. Gibson  
1171 Midwest Lane  
Wheaton, IL 60189-7382

Sheila Luetkehans Trust  
11 Saint Johns Boulevard  
Englewood, FL 34223-1872

Steve Crane  
471 South Stratford Avenue  
Elmhurst, IL 60126-6124

Trianon Partners, LLC, et. al.  
CO Robert P. Franke, Esq.  
Strasburger & Price, LLP  
901 Main Street, Suite 4400  
Dallas, Texas 75202-3729

Warren Ivie  
403 Leigh Court  
Highland Village, TX 75077-6138

Jack Lockhart  
601 Banbury Road  
Noblesville, IN 46062-8432

Marian Egge  
1395 Quincey Lane  
Reston, VA 20194

Mark Siebert  
Trianon Partners, LLC  
2203 Lakeway Drive  
Keller, TX 76248-8391

Phil Harris  
Discovery Communications  
One Discovery Place  
Dept. HC09-12A  
Silver Spring, MD 20910-3354

Richard and Amy Price  
714 Valley Park Drive  
Libertyville, IL 60048-3458

Robert W. and Joan Peters  
1014 19th Street  
Carroll, IA 51401-3523

Stan Kusch  
6095 River Bluff Trail  
Bend, OR 97702-1968

Travis Terral  
3935 Blackjack Oak Lane  
Plano, TX 75074-7751

Universal Field Services  
PO Box 35656  
Tulsa, OK 74133-0656

Joseph F. Postnikoff  
Goodrich Postnikoff & Albertson, LLP  
777 Main St., Suite 1360  
Ft. Worth, TX 76102-5360