

LAIDLAW INTERNATIONAL INC
Form 8-K
December 17, 2004

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of Earliest Event Reported):

December 17, 2004

LAIDLAW INTERNATIONAL, INC.

(Exact name of registrant as specified in its charter)

Delaware

000-13109

98-0390488

(State or other jurisdiction
of incorporation)

(Commission
File Number)

(I.R.S. Employer
Identification No.)

55 Shuman Blvd. Suite 400, Naperville, Illinois

60563

(Address of principal executive offices)

(Zip Code)

Registrant's telephone number, including area code:

(630) 848-3000

Not Applicable

Former name or former address, if changed since last report

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

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Item 1.01. Entry into a Material Definitive Agreement.

On December 17, 2004, the lenders under the Laidlaw International, Inc. ("Laidlaw") Credit Agreement dated June 19, 2003, by and among Laidlaw, Laidlaw Transit Ltd., and Greyhound Canada Transportation Corp. (collectively, the "Borrowers"), Citicorp North America, Inc., as administrative agent and the other lenders party thereto (as amended or modified from time to time, the "Credit Agreement"), consented to Laidlaw's disposition of its healthcare group, comprised of American Medical Response, Inc., EmCare Holdings Inc. and each of their respective direct and indirect subsidiaries (the "Sale Transaction"); provided Laidlaw use a portion of the proceeds from the Sale Transaction to repay in full the outstanding principal amount of the Term B Revolver and any accrued and unpaid interest thereon. The lenders further agreed, in accordance with the terms of the Bank Consent Letter (as defined below), to release (i) the guarantees granted by AMR, EmCare and their subsidiaries and (ii) all liens on all of the assets of AMR, EmCare and their subsidiaries, upon consummation of the Sale Transaction. Attached hereto is the bank consent letter dated December 17, 2004, by and among the Borrowers, Citicorp North America, Inc. and certain of the other lenders under the Credit Agreement (the "Bank Consent Letter").

Item 9.01. Financial Statements and Exhibits.

(c) Exhibits

99.1 Bank Consent Letter.

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SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

LAIDLAW INTERNATIONAL, INC.

December 17, 2004

By: Douglas A. Carty

Name: Douglas A. Carty

Title: Senior Vice President and Chief Financial Officer

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Exhibit Index

<u>Exhibit No.</u>	<u>Description</u>
99.1	Bank Consent Letter

ificantly greater risk of loss than is the case with traditional investment securities. The Corporation expects that from time to time its venture capital investments may result in a complete loss of the Corporation's invested capital or may be unprofitable. Other investments may appear likely to become successful, but may never realize their potential. Neither the Corporation's investments nor an investment in the Corporation is intended to constitute a balanced investment program. The Corporation has in the past relied and continues to rely to a large extent upon proceeds from sales of investments rather than investment income to defray a significant portion of its operating expenses. INVESTING IN PRIVATE COMPANIES INVOLVES A HIGH DEGREE OF RISK. The Corporation's portfolio consists primarily of investments in private companies. Investments in private businesses involve a high degree of business and financial risk, which can result in substantial losses and accordingly should be considered speculative. There is generally no publicly available information about the companies in which Franklin invests, and Franklin relies significantly on the diligence of its employees and agents to obtain information in connection with the Corporation's investment decisions. In addition, some smaller businesses have narrower product lines and market shares than their competitors, and may be more vulnerable to customer preferences, market conditions or economic downturns, which may adversely affect the return on, or the recovery of, the Corporation's investment in such businesses. THE PORTFOLIO OF INVESTMENTS IS ILLIQUID. Franklin acquires most of its investments directly from private companies. The majority of the investments in its portfolio will be subject to restrictions on resale or otherwise have no established trading market. The illiquidity of most of the portfolio may adversely affect Franklin's ability to dispose of loans and securities at times when it may be advantageous to liquidate such investments. FRANKLIN'S PORTFOLIO INVESTMENTS ARE RECORDED AT FAIR VALUE AS DETERMINED BY THE BOARD OF DIRECTORS IN ABSENCE OF READILY ASCERTAINABLE PUBLIC MARKET VALUES. Pursuant to the requirements of the 1940 Act, the Corporation's board of directors is required to value each asset quarterly, and Franklin is required to carry the portfolio at a fair market value as determined by the board of directors. Since there is typically no public market for the loans and equity securities of the companies in which Franklin makes investments, the board of directors estimates the fair value of these loans and equity securities pursuant to written valuation policy and a consistently applied valuation process. Unlike banks, Franklin is not permitted to provide a general reserve for anticipated loan losses; instead, Franklin is required by the 1940 Act to specifically value each individual investment and record an unrealized loss for an asset that it believes has become impaired. Without a readily ascertainable market value, the estimated value of the portfolio of loans and equity securities may differ significantly from the values that would be placed on the portfolio if there existed a ready market for the loans and equity securities. Franklin adjusts quarterly the valuation of the portfolio to reflect the board of directors' estimate of the current realizable value of each investment in the Corporation's portfolio. Any changes in estimated value are recorded in the Corporation's statement of operations as "Net unrealized gains (losses)." FRANKLIN OPERATES IN A COMPETITIVE MARKET FOR INVESTMENT OPPORTUNITIES. Franklin competes for investments with many other companies and individuals, some of whom have greater resources than does Franklin. Increased competition would make it more difficult to purchase or originate investments at attractive prices. As a result of this competition, sometimes Franklin may be precluded from making otherwise attractive investments. QUARTERLY RESULTS MAY FLUCTUATE AND MAY NOT BE INDICATIVE OF FUTURE QUARTERLY PERFORMANCE. The Corporation's quarterly operating results could fluctuate, and therefore, you should not rely on quarterly results to be indicative of Franklin's performance in future quarters. Factors that could cause quarterly operating results to fluctuate include, among others, variations in the investment origination volume, variation in timing of prepayments, variations in and the timing of the recognition of realized and unrealized gains or losses, the degree to which Franklin encounters competition in its markets and general economic conditions. FRANKLIN IS DEPENDENT UPON KEY MANAGEMENT PERSONNEL FOR FUTURE SUCCESS. Franklin is dependent for

the selection, structuring, closing and monitoring of its investments on the diligence and skill of its senior management members and other management members. The future success of the Corporation depends to a significant extent on the continued service and coordination of its senior management team, particularly the Chairman and Chief Executive Officer. The departure of any of the executive officers or key employees could materially adversely affect the Corporation's ability to implement its business strategy. Franklin does not maintain key man life insurance on any of its officers or employees. **THERE IS SUBSTANTIAL DOUBT AS TO FRANKLIN'S ABILITY TO CONTINUE AS A GOING CONCERN.** Franklin has determined that it may not have sufficient cash and cash equivalents to meet its working capital requirements over the next fiscal year. Franklin's independent auditors have issued an opinion in which the independent auditors have indicated that there is substantial doubt as to Franklin's ability to continue as a going concern as noted in their explanatory paragraph within their opinion, which is noted in Franklin's year-end financial statements. Franklin is seeking financing alternatives to continue operating through the current fiscal year. If funds were not raised, Franklin may not be able to continue its operations. **INVESTMENT IN SMALL, PRIVATE COMPANIES** There are significant risks inherent in the Corporation's venture capital business. The Corporation has invested a substantial portion of its assets in private development stage or start-up companies. These private businesses tend to be thinly capitalized, unproven, small companies with risky technologies that lack management depth and have not attained profitability or have no history of operations. Because of the speculative nature and the lack of a public market for these investments, there is significantly greater risk of loss than is the case with traditional investment securities. The Corporation expects that some of its venture capital investments will be a complete loss or will be unprofitable and that some will appear to be likely to become successful but never realize their potential. The Corporation has been risk seeking rather than risk averse in its approach to venture capital and other investments. Neither the Corporation's investments nor an investment in the Corporation is intended to constitute a balanced investment program. The Corporation has in the past relied, and continues to rely to a large extent, upon proceeds from sales of investments rather than investment income to defray a significant portion of its operating expenses. **ILLIQUIDITY OF PORTFOLIO INVESTMENTS** Most of the investments of the Corporation are or will be equity securities acquired directly from small companies. The Corporation's portfolio of equity securities is and will usually be subject to restrictions on resale or otherwise have no established trading market. The illiquidity of most of the Corporation's portfolio of equity securities may adversely affect the ability of the Corporation to dispose of such securities at times when it may be advantageous for the Corporation to liquidate such investments. **THE INABILITY OF THE CORPORATION'S PORTFOLIO COMPANIES TO SUCCESSFULLY MARKET THEIR PRODUCTS WOULD HAVE A NEGATIVE IMPACT ON ITS INVESTMENT RETURNS** Even if the Corporation's portfolio companies are able to develop commercially viable products, the market for new products and services is highly competitive and rapidly changing. Commercial success is difficult to predict and the marketing efforts of the Corporation's portfolio companies may not be successful. **FLUCTUATIONS OF QUARTERLY RESULTS** The Corporation's quarterly operating results could fluctuate as a result of a number of factors. These include, among others, variations in and the timing of the recognition of realized and unrealized gains or losses, the degree to which the Corporation encounters competition in its markets and general economic conditions. As a result of these factors, results for any one quarter should not be relied upon as being indicative of performance in future quarters.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK The Corporation's business activities contain elements of risk. The Corporation considers a principal type of market risk to be valuation risk. Investments are stated at "fair value" as defined in the 1940 Act and in the applicable regulations of the Securities and Exchange Commission. All assets are valued at fair value as determined in good faith by, or under the direction of, the Board of Directors. Neither the Corporation's investments nor an investment in the Corporation is intended to constitute a balanced investment program. The Corporation has exposure to public-market price fluctuations to the extent of its publicly traded portfolio. The Corporation has invested a substantial portion of its assets in private development stage or start-up companies. These private businesses tend to be thinly capitalized, unproven, small companies that lack management depth and have not attained profitability or have no history of operations. Because of the speculative nature and the lack of public market for these investments, there is significantly greater risk of loss than is the case with traditional investment securities. The Corporation expects that some of its venture capital investments will be a complete loss or will be unprofitable and that some will appear to be likely to become successful but never realize their potential. Because there is typically no public market for the equity interests of the small companies in which the Corporation invests, the valuation of the equity interests in the Corporation's portfolio is

subject to the estimate of the Corporation's Board of Directors. In making its determination, the Board may consider valuation information provided by an independent third party or the portfolio company itself. In the absence of a readily ascertainable market value, the estimated value of the Corporation's portfolio of equity interests may differ significantly from the values that would be placed on the portfolio if a ready market for the equity interests existed. Any changes in valuation are recorded in the Corporation's consolidated statements of operations as "Net increase (decrease) in unrealized appreciation on investments."

PART II. OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS On October 15, 2001, Jeffrey A. Leve and Jeffrey Leve Family Partnership, L.P. filed a lawsuit against Franklin, Sunshine Wireless, LLC ("Sunshine") and four other defendants affiliated with Winstar Communications, Inc. in the Superior Court of the State of California for the County of Los Angeles. The lawsuit, which has subsequently been removed to the United States District Court for the Central District of California, alleges that the Winstar defendants conspired to commit fraud and breached their fiduciary duty to the plaintiffs in connection with the acquisition of the plaintiffs' radio production and distribution business. The complaint further alleges that Franklin and Sunshine joined the alleged conspiracy. The business was initially acquired by certain entities affiliated with Winstar Communications and, subsequently, the assets of such business were sold to Franklin and Sunshine (see Note 6). Concurrently with such purchase, Franklin transferred such assets to Excelsior. The plaintiffs seek recovery of damages in excess of \$10,000,000, costs and attorneys' fees. On January 7, 2002, Franklin filed a motion to dismiss the lawsuit or, in the alternative, to transfer venue to the United States District Court of the Southern District of New York. The plaintiffs filed a motion opposing Franklin's request on January 28, 2002. Franklin's motion for dismissal was granted on February 25, 2002, due to improper venue. On June 7, 2002, the plaintiffs filed their complaint to the United States District Court of the Southern District of New York. On July 12, 2002, Franklin filed a motion to dismiss the complaint. Franklin believes that plaintiffs' claims are without merit and intends to defend this lawsuit vigorously, though the outcome cannot be predicted at this time. An unfavorable outcome in this lawsuit may have a material adverse effect on Franklin's business, financial condition and results of operations.

Item 2. CHANGES IN SECURITIES AND USE OF PROCEEDS Not applicable

Item 3. DEFAULTS UPON SENIOR SECURITIES HOLDERS Not applicable

Item 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS Not applicable

Item 5. OTHER INFORMATION Not applicable

Item 6. EXHIBITS AND REPORTS ON FORM 8-K (a) Exhibits Exhibit 99.1 Certification Pursuant To 18 U.S.C. Section 1350, As Adopted By Section 906 Of The Sarbanes-Oxley Act Of 2002 (b) Reports on Form 8-K. The Corporation filed a report on Form 8-K on April 3, 2002 announcing the acquisition of the Dial Entities and filed a report on Form 8-K on July 1, 2002 announcing the termination of the merger with Change Technology Partners, Inc.

SIGNATURE Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

FRANKLIN CAPITAL CORPORATION Date: August 14, 2002 By: /s/
----- Stephen L. Brown CHAIRMAN AND CHIEF EXECUTIVE OFFICER /s/
----- Hiram M. Lazar CHIEF FINANCIAL OFFICER 26