

**CROSS-BORDER INSOLVENCY PROTOCOL
FOR PHILIP SERVICES CORP., PHILIP SERVICES (DELAWARE), INC
AND CERTAIN WHOLLY-OWNED SUBSIDIARIES**

**Between the United States Bankruptcy Court
for the District of Delaware (Case No. 99-B-02385)
and
the Ontario Superior Court of Justice
at Toronto (Case No. 99-CL-3442). (June, 1999)**

This cross-border insolvency protocol (the “Protocol”) shall govern the conduct of all parties in interest in the Insolvency Proceedings (as such term is defined herein):

(A) Background

1. Philip Services Corp. (“Philip”) is a corporation amalgamated under the laws of Ontario.
2. The Philip group of companies consists of approximately 200 direct and indirect subsidiaries of Philip in Canada and the United States, as well as Europe, the Caribbean and elsewhere.
3. Philip and certain of Philip’s subsidiaries in the United States (collectively, the “U.S. Debtors”) have commenced reorganization cases (collectively, the “U.S. Cases”) under Chapter 11 of the United States Bankruptcy Code, 11 U.S.C §§ 101-1330 (the “Bankruptcy Code”), in the United States Bankruptcy Court for the District of Delaware (the “U.S. Court”). The U.S. Debtors are continuing in possession of their respective properties and are operating and managing their businesses, as debtors in possession, pursuant to sections 1107 and 1108 of the Bankruptcy Code. The office of the United States trustee (the “U.S. Trustee”) has not yet appointed any official committee of unsecured creditors in the U.S. Cases (the “Committee”).
4. Philip and certain of its Canadian subsidiaries (collectively, the “Canadian Debtors”) have commenced insolvency proceedings (collectively, the “Canadian Case”) by filing an application under the applicable provisions of the Canadian *Companies’ Creditors Arrangement Act* (the “CCAA”) with the Ontario Superior Court of Justice (the “Canadian Court”). The Canadian Debtors have sought an order of the Canadian Court (as initially made under the CCAA and as subsequently amended or modified, the “CCAA Order”) under which (a) the Canadian Debtors will be determined to be entities to which the CCAA applies and (b) Ernst & Young Inc. will be appointed as monitor of the Canadian Debtors (the “Monitor”), with the rights, powers, duties and limitations upon liabilities set forth in the

CCAA Order and the CCAA.

5. Accordingly, Philip is a party to both the Canadian Case and the U.S. Cases. For convenience, (a) the U.S. Debtors and the Canadian Debtors shall be referred to herein collectively as the “Debtors”, (b) the U.S. Cases and the Canadian Case shall be referred to herein collectively as the “Insolvency Proceedings” and (c) the U.S. Court and the Canadian Court shall be referred to herein collectively as the “Courts”.

(B) Purpose and Goals

6. While dual proceedings are pending in the United States and Canada for Philip, the implementation of basic administrative procedures is necessary to co-ordinate certain activities in the Insolvency Proceedings, protect the rights of parties thereto and ensure the maintenance of the Courts’ independent jurisdiction and comity. Accordingly, this protocol has been developed to promote the following mutually desirable goals and objectives in both the U.S. Cases and the Canadian Cases:

- harmonize and co-ordinate activities in the Insolvency Proceedings before the U.S. Court and the Canadian Court;
- promote the orderly and efficient administration of the Insolvency Proceedings to, among other things, maximize the efficiency of the Insolvency Proceedings, reduce the costs associated therewith and avoid duplication of effort;
- honour the independence and integrity of the Courts and other courts and tribunals of the United States and Canada;
- promote international co-operation and respect for comity among the Courts, the Debtors, the Committee, the Estate Representatives (as hereinafter defined) and other creditors and interested parties in the Insolvency Proceedings;
- facilitate the fair, open and efficient administration of the Insolvency Proceedings for the benefit of all of the Debtors’ creditors and other interested parties, wherever located; and
- implement a framework of general principles to address basic administrative issues arising out of the cross-border nature of the Insolvency Proceedings.

(C) Comity and Independence of the Courts

7. The approval and implementation of this Protocol shall not divest or diminish the U.S. Court’s and the Canadian Court’s independent jurisdiction over the subject matter of the U.S. Cases and the Canadian Case, respectively. By approving and implementing this Protocol, neither the U.S. Court, the Canadian Court, the Debtors nor any creditors or interested parties shall be deemed to have approved or engaged in any infringement on the sovereignty of the United States or Canada.

8. The U.S. Court shall have sole and exclusive jurisdiction and power over the conduct and hearing of the U.S. Cases. The Canadian Court shall have sole and exclusive jurisdiction and power over the conduct and hearing of the Canadian Cases.

9. In accordance with the principles of comity and independence established in paragraphs 7 and 8 above, nothing contained herein shall be construed to:

- increase, decrease or otherwise modify the independence, sovereignty or jurisdiction of the U.S. Court, the Canadian Court or any other court or tribunal in the United States or Canada, including the ability of any such court or tribunal to provide appropriate relief under applicable law on an *ex parte* or “limited notice” basis;
- require the Debtors, the Committee or the Estate Representatives to take any action or refrain from taking any action that would result in a breach of any duty imposed on them by any applicable law;
- authorize any action that requires the specific approval of one or both of the Courts under the Bankruptcy Code or the CCAA after appropriate notice and a hearing (except to the extent that such action is specifically described in the Protocol); or
- preclude any creditor or other interested party from asserting such party’s substantive rights under the applicable laws of the United States, Canada or any other jurisdiction including, without limitation, the rights of interested parties or affected persons to appeal from the decisions taken by one or both of the Courts.

10. The Debtors, the Committee, the Estate Representatives and their respective employees, members, agents and professionals shall respect and comply with the independent, nondelegable duties imposed upon them by the Bankruptcy Code, the CCAA, the CCAA Order and other applicable laws.

(D) Co-operation

11. To assist in the efficient administration of the Insolvency Proceedings, the Debtors, the Committee and the Estate Representatives shall (a) cooperate with each other in connection with actions taken in both the U.S. Court and the Canadian Court and (b) take any other appropriate steps to co-ordinate the administration of the U.S. Cases and the Canadian Cases for the benefit of the Debtors’ respective estates and stakeholders.

12. To harmonize and co-ordinate the administration of the Insolvency Proceedings, the U.S. Court and the Canadian Court each shall use its best efforts to co-ordinate activities with and defer to the judgment of the other Court, where appropriate and feasible. To the extent permitted by applicable law, the Courts shall strive, to the extent feasible and practicable, to co-operate in the development of

harmonious rules governing the proof of claims by creditors of Philip and the procedures for voting and confirming or sanctioning a plan of compromise or arrangement involving Philip. The U.S. Court and the Canadian Court may communicate with one another with respect to any matter relating to the Insolvency Proceedings and may conduct joint hearings with respect to any matter relating to the conduct, administration, determination or disposition of any aspect of the U.S. Cases and the Canadian Cases, in circumstances where both Courts consider such joint hearings to be necessary or advisable and, in particular, to facilitate or co-ordinate the proper and efficient conduct of the U.S. Cases and the Canadian Case.

13. Notwithstanding the terms of paragraph 12 above, the Protocol recognizes that the US. Court and the Canadian Court are independent courts. Accordingly, although the Courts will seek to cooperate and co-ordinate with each other in good faith, each of the Courts shall be entitled at all times to exercise its independent jurisdiction and authority with respect to (a) matters presented to such Court and (b) the conduct of the parties appearing in such matters.

(E) Retention and Compensation of Estate Representatives and Professionals

14. The Monitor, and its officers, directors, employees, counsel and agents, wherever located (collectively, the “Monitor Parties”) and any other estate representatives appointed in the Canadian Case (collectively, the “Canadian Representatives”) shall be subject to the sole and exclusive jurisdiction of the Canadian Court with respect to all matters, including: (a) the Canadian Representatives’ tenure in office; (b) the retention and compensation of the Canadian Representatives; (c) the Canadian Representatives’ liability, if any, to any person or entity, including the Canadian Debtors and any third parties, in connection with the Insolvency Proceedings; and (d) the hearing and determination of any other matters relating to the Canadian Representatives arising in the Canadian Case under the CCAA or other applicable Canadian law. The Canadian Representatives and their Canadian counsel and any other Canadian Professionals (as hereinafter defined) shall not be required to seek approval of their retention in the U.S. Court. The Canadian Representatives and their Canadian counsel and other Canadian professionals (a) shall be compensated for their services solely in accordance with the CCAA and other applicable Canadian law or Orders of the Canadian Court and (b) shall not be required to seek approval of their compensation in the U.S. Court.

15. The Monitor Parties shall be entitled to the same protections and immunities in the United States as those granted to them under the CCAA Order. In particular, except as otherwise provided in any subsequent Order entered in the Canadian Case, the Monitor Parties shall incur no liability or obligations as a result of the CCAA Order, the appointment of the Monitor or carrying out of the provisions of the CCAA Order by the Monitor Parties, except any such liability arising from actions of the Monitor Parties constituting gross negligence or wilful misconduct.

16. Any estate representatives appointed in the U.S. Case, including any examiners or trust-

ees appointed in accordance with section 1104 of the Bankruptcy Code (collectively, “U.S. Representatives”), shall be subject to the sole and exclusive jurisdiction of the U.S. Court with respect to all matters, including: (a) the U.S. Representatives’ tenure in office; (b) the retention and compensation of the U.S. Representatives; (c) the U.S. Representatives’ liability, if any, to any person or entity, including the U.S. Debtors and any third parties, in connection with the Insolvency Proceedings; and (d) the hearing and determination of any other matters relating to the U.S. Representatives arising in the U.S. Cases under the Bankruptcy Code or other applicable laws of the United States. The U.S. Representatives and their U.S. counsel and other U.S. professionals shall not be required to seek approval of their retention in the Canadian Court. Additionally, the U.S. Representatives and the U.S. counsel and other U.S. professionals (a) shall be compensated for their services solely in accordance with the Bankruptcy Code and other applicable laws of the United States or Orders of the U.S. Court and (b) shall not be required to seek approval of their compensation in the Canadian Court.

17. Any Canadian professionals retained by or with the approval of the Canadian Debtors (collectively, the “Canadian Professionals”), shall be subject to the sole and exclusive jurisdiction of the Canadian Court. Accordingly, the Canadian Professionals (a) shall be subject to the procedures and standards for retention and compensation applicable in Canada and (b) shall not be required to seek approval of their retention or compensation in the U.S. Court.

18. Any United States professionals retained by the U.S. Debtors and any United States Professionals retained by the Committee (collectively, the “U.S. Professionals”) shall be subject to the sole and exclusive jurisdiction of the U.S. Court. Accordingly, the U.S. Professionals (a) shall be subject to the procedures and standards for retention and compensation applicable in the U.S. Court under the Bankruptcy Code and any other applicable laws of the United States or Orders of the U.S. Court and (b) shall not be required to seek approval of their retention or compensation in the Canadian Court.

19. Any confidential or privileged information coming into the hands of the Monitor shall remain confidential and subject to all applicable privileges.

(F) Notice

20. Notice of any motion, application or other pleading or paper filed in one or both of the Insolvency Proceedings and notice of any related hearings or other proceedings mandated by applicable law in connection with the Insolvency Proceedings or the Protocol shall be given by appropriate means (including, where circumstances warrant, by courier, telecopier or other electronic forms of communication) to the following: (a) creditors, including the Committee, and other interested parties in accordance with the practice of the jurisdiction where the papers are filed or the proceedings are to occur; and (b) to the extent not otherwise entitled to receive notice under subpart (a) of this sentence, the Monitor, Murray McDonald, Ernst & Young Inc., Ernst & Young Tower, P.O. Box 251, 222 Bay Street, Toronto-Dominion Centre, Toronto, Ontario, M5K 1J7, (416) 943-3300, the U.S. Trustee, Daniel

Astin Office of the United States Trustee, Curtis Center, Suite 950 West, 601 Walnut Street, Philadelphia, Pennsylvania 19106, Fax: (215) 597-5794, and such other parties as may be designated by either Court from time to time.

(G) Joint Recognition of Stays of Proceedings Under the Bankruptcy Code and the CCAA

21. In recognition of the importance of the stay of proceedings and actions against the Canadian Debtors, their directors and their assets under section 11 of the CCAA and the CCAA Order (the “Canadian Stay”) to the successful completion of the Insolvency Proceedings for the benefit of the Debtors and their respective estates and stakeholders, to the extent appropriate the U.S. Court shall extend and enforce the Canadian Stay in the United States (to the same extent such stay of proceedings and actions is applicable in Canada) to prevent adverse actions against the Canadian Debtors, their directors and the assets, rights and holdings of the Canadian Debtors in the United States. In implementing the terms of this paragraph, the U.S. Court may consult with the Canadian Court regarding (a) the interpretation and application of the Canadian Stay and any orders of the Canadian Court modifying or granting relief from the Canadian stay; and (b) the enforcement in the United States of the Canadian Stay.

22. In recognition of the importance of the stay of proceedings and actions against the US Debtors and their assets under section 362 of the Bankruptcy Code (the “U.S. Stay”) to the successful completion of the Insolvency Proceedings for the benefit of the Debtors and their respective estates and stakeholders, to the extent appropriate the Canadian Court shall extend and enforce the U.S. Stay in Canada (to the same extent such stay of proceedings and action is applicable in the United States) to prevent adverse actions against the assets, rights and holdings of the U.S. Debtors in Canada. In implementing the terms of this paragraph, the Canadian Court may consult with the U.S. Court regarding (a) the interpretation and application of the U.S. Stay and any Orders of the U.S. Court modifying or granting relief from the U.S. Stay and (b) the enforcement in Canada of the U.S. Stay.

23. Nothing contained herein shall affect or limit the Debtors’ or other parties’ rights to assert the applicability or non-applicability of the U.S. Stay or the Canadian Stay to any particular proceeding, property, asset, activity or other matter, wherever pending or located.

(H) Effectiveness; Modification

24. This Protocol shall become effective only upon its approval by both the U.S. Court and the Canadian Court.

25. This Protocol may not be supplemented, modified, terminated or replaced in any manner except by the U.S. Court and the Canadian Court. Notice of any legal proceeding to supplement,

modify, terminate or replace this Protocol shall be given in accordance with paragraph 19 above.

(I) Procedure for Resolving Disputes Under the Protocol

26. Disputes relating to the terms, intent or application of this Protocol may be addressed by interested parties to either the U.S. Court, the Canadian Court or both Courts upon notice. Where an issue is addressed to only one Court, in rendering a determination in any such dispute, such Court: (a) shall consult with the other Court; and (b) may, in its sole and exclusive discretion, either (i) render a binding decision after such consultation, (ii) defer to the determination of the other Court by transferring the matter, in whole or in part, to the other Court or (iii) seek a joint hearing of both Courts. Notwithstanding the foregoing, each Court in making a determination shall have regard to the independence, comity or inherent jurisdiction of the other Court established under existing law.

(J) Preservation of Rights

27. Neither the terms of this Protocol nor any actions taken under the terms of this Protocol shall prejudice or affect the powers, rights, claims and defenses of the Debtors and their estates, the Committee, the Estate Representatives, the U.S. Trustee or any of the Debtors' creditors under applicable law, including the Bankruptcy Code and the CCAA.

