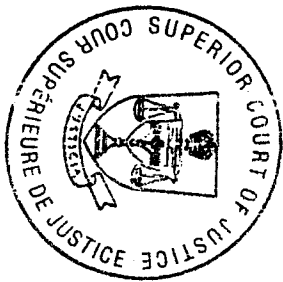


**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

**THE HONOURABLE MR. JUSTICE FARLEY** ) **THURSDAY THE 19<sup>TH</sup> DAY OF**  
)  
) **APRIL, 2001**

**IN THE MATTER OF THE COMPANIES' CREDITORS  
ARRANGEMENT ACT, RSC 1985, c. C-36, SECTION 18.6 AS  
AMENDED**



**IN THE MATTER OF AN APPLICATION OF MATLACK,  
INC. AND THE OTHER PARTIES SET OUT IN  
SCHEDULE "A" ANCILLARY TO PROCEEDINGS UNDER  
CHAPTER 11 OF THE UNITED STATES BANKRUPTCY  
CODE**

**MATLACK, INC. AND THE OTHER PARTIES SET OUT IN  
SCHEDULE "A"**

Applicant

**INITIAL ORDER**

**THIS MOTION** made by the Applicant, Matlack, Inc. and the other parties listed in Schedule "A" hereto, for an Order substantially in the form attached to the Application Record was heard this day at the Court House, 393 University Avenue, Toronto, Ontario.

**UPON READING** (i) the Notice of Application and (ii) the affidavit of Patrick J. Bagley sworn April 17, 2001 and the exhibit thereto, all filed, and upon hearing the submissions of counsel for the Applicant and upon being advised that First Union National Bank takes no position with respect to this application, and upon being advised that no other person who might be interested in these proceedings was served with the Notice of Application and Application Record herein except for Active Bailiff Service Ltd., PPR Holdings/Vedder Transport Ltd., IBM

Canada Ltd. and Ford Credit Canada Leasing Ltd. and on being satisfied that circumstances exist that make this Order appropriate;

### **SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record in support of this Application be and it is hereby abridged such that this Application is properly returnable today and further that service thereof upon any person be and it is hereby dispensed with.

### **RECOGNITION OF THE U.S. BANKRUPTCY PROCEEDING**

2. **THIS COURT DECLARES** that the proceedings commenced by the Applicant and its affiliated companies in the United States Bankruptcy Court for the District of Delaware (the "United States Bankruptcy Court") for relief under Chapter 11 of the United States Bankruptcy Code (the "United States Proceedings") be and are hereby recognized as "foreign proceedings" for the purposes of the *Companies' Creditors Arrangement Act*, RSC 1985, c. C-36 ("CCAA").

### **STAY OF CANADIAN PROCEEDINGS**

3. **THIS COURT ORDERS** that until and including May 11, 2001 or such later date as this Court may order (the "Stay Period"), no suit, action, proceeding, enforcement process, right or remedy (judicial or extra judicial) taken or exercised or that may be taken or exercised in Canada (collectively, the "Proceedings") by any person, firm, corporation, government, administrative body or other entity (including, without limitation, any of the existing or future shareholders, creditors, customers, suppliers, contracting parties, lessors, licensors, co-venturers and partners of the Applicant or its affiliates) (collectively, "Claimants" and individually a "Claimant"):

- (i) against or in respect of the Applicant, its affiliates or any of their respective property, assets, undertaking, estate and effects of any nature wheresoever located, and whether held directly or indirectly, as principal or nominee, beneficially or otherwise (collectively, the "Property"); or
- (ii) arising out of, relating to or triggered by the occurrence of any default or non-performance by the Applicant or its affiliates, the making or filing of

these proceedings or the U.S. Proceedings or any allegation contained in these proceedings or the U.S. Proceedings,

shall be commenced, proceeded with or continued and all such Proceedings are hereby stayed and suspended, including, without limitation:

- (a) the right of any Claimant to commence or continue any seizure, attachment, realization or similar proceeding in Canada in respect of any claim or security interest, encumbrance, lien, charge, mortgage or other security held in relation to, or any trust attaching to, any of the Property (including, without limitation, the right of any Claimant to take any step in asserting or perfecting any right or interest therein or to exercise any right of registration of securities, distress, repossession, foreclosure or sale); and
- (b) the right of any Claimant to assert, enforce or exercise any right, option or remedy available to it arising by law, under any agreement or otherwise (including, without limitation, any right under section 224(1.2) of the *Income Tax Act* (Canada) or substantially similar provision under provincial law (subject to section 11.4 of the CCAA); any right of dilution, buy-out, divestiture, forced sale, demand, acceleration, termination, suspension, modification, cancellation, set-off or consolidation of accounts; any right of first refusal; or any right to revoke any qualification or registration),

except with prior leave of this Court obtained on application brought on at least four clear days' notice to the Applicant.

4. **THIS COURT ORDERS** that, without limiting the generality of paragraph 3, cash placed on deposit by the Applicant or its affiliates with any Claimant during the Stay Period, whether in an operating account or otherwise and whether for its own account or for the account of any other entity, shall not be applied by such Claimant in reduction or repayment of amounts owing as of the date of this Order (whether due and payable before or after the expiry of the Stay Period) or in satisfaction of any interest or charges accruing in respect thereof, provided that nothing in this paragraph shall prevent any financial institution from: (i) reimbursing itself for

the amount of any cheques drawn by the Applicant or its affiliates and properly honoured by the financial institution, or (ii) holding the amount of any cheques or other instruments deposited into an account maintained by the Applicant or its affiliates until those cheques or other instruments have been honoured by the financial institution on which they have been drawn.

5. **THIS COURT ORDERS** that, without limiting the generality of paragraph 3, during the Stay Period, all Claimants having agreements or other arrangements with the Applicant or its affiliates or in connection with any of the Property, whether written or oral (including, without limitation, leases, licenses, contracts for the supply of goods or services to or by the Applicant or its affiliates and equipment leases):

- (a) are hereby restrained from accelerating, terminating, suspending, modifying or cancelling such agreements or other arrangements or the rights of the Applicant or its affiliates thereunder or exercising any other remedy provided for under such agreements or arrangements;
- (b) are hereby restrained from terminating, cancelling, withdrawing or otherwise interfering with any licenses, permits, approvals or consents in respect of the Applicant or its affiliates or in connection with any of the Property;
- (c) are hereby restrained from discontinuing or otherwise interfering with the supply of any goods or services by or to such Claimant (including without limitation, telecommunications services and utilities); and
- (d) shall continue to perform and observe the terms and conditions contained in any agreements or arrangements entered into with the Applicant or its affiliates or in connection with any of the Property (including, without limitation, the payment of all amounts to be paid in respect of services performed or to be performed by the Applicant or its affiliates),

except with prior leave of this Court obtained on application brought on at least four clear days' notice to the Applicant.

6. **THIS COURT ORDERS** that notwithstanding paragraphs 3 to 5 hereof:

- (a) in the case of agreements for the supply of goods or services, or the use of leased or licensed property or other valuable consideration to the Applicant or its affiliates, no Claimant is prohibited, solely by the terms of this Order, from requiring immediate payment for any goods, services, use of leased or licensed property or other valuable consideration to be provided to the Applicant or its affiliates after the date of this Order;
- (b) no Claimant is required, solely by the terms of this Order, to make further advances of money or credit to the Applicant or its affiliates;
- (c) no Claimant is prohibited, solely by the terms of this Order, from commencing or continuing any action, suit or proceeding against any person other than the Applicant or its affiliates who is obligated under a letter of credit or guarantee in relation to the Applicant or its affiliates; and
- (d) no Claimant is prohibited, solely by the terms of this Order, from exercising any right to terminate, amend or claim any accelerated payment under an "eligible financial contract" (as that term is defined in section 11.1 of the CCAA); and
- (e) paragraph 3 shall not apply to securities regulatory authorities.

### **INFORMATION OFFICER**

7. **THIS COURT ORDERS** that Richter & Partners Inc. be and it is hereby appointed as an Information Officer for the purposes of these proceedings and this Order (the "Information Officer") with the following duties and responsibilities and on the following terms:

- (a) the Information Officer shall deliver to the Court an affidavit or report signed by the Information Officer (the "Information Reports"), at least once every three months or at such other times as the Court may order, summarizing the status of the U.S. Proceedings and such other information as the Information Officer believes to be material in connection therewith or as may be ordered by the Court;
- b) the Applicant and the Information Officer shall incur no liability or obligation as a result of the appointment of the Information Officer or the performance by the

Information Officer or any act or omission of the Information Officer in connection with or arising from its duties under this Order except, in the case of the Information Officer, for any liabilities or obligations arising out of any impropriety or wilful misconduct on the part of the Information Officer; and no action or other proceeding shall be commenced against the Applicant, its affiliates or the Information Officer as a result of or relating in any way to the appointment of the Information Officer pursuant to this Order except with prior leave of this Court and upon further Order securing the costs of the Information Officer and the Applicant and its affiliates, on a solicitor and his own client basis, in connection with any such action or proceeding; and

- (c) Such further or other duties as this Court may direct;

### **GENERAL TERMS**

8. **THIS COURT ORDERS** that the Applicant shall, within 10 business days of the date of entry of this Order, publish a notice of this Order in substantially the form attached as Schedule "B" hereto on two separate days in the Globe & Mail (National Edition) and the National Post.

9. **THIS COURT ORDERS** that the Applicant be at liberty to:

- (a) serve this Order, any other orders in these proceedings, and all notices and other communications in connection therewith, by forwarding copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to Claimants at their addresses as last shown on the records of the Applicant and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date thereof, or if sent by prepaid ordinary mail, on the third business day after mailing; and
- (b) take such additional proceedings under the CCAA as the Applicant may be advised.

10. **THIS COURT ORDERS** that notwithstanding any other provision of this Order, any interested person may apply to this Court to vary this Order or seek other relief upon 7 days'

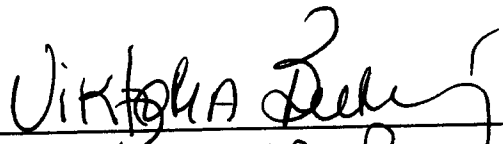
notice to the Applicant and to any other party likely to be affected by the Order sought or upon such other notice, if any, as this Court may order.

11. **THIS COURT ORDERS** that the Applicant and the Information Officer may, from time to time, apply to this Court for directions in the discharge of their respective powers and duties hereunder or in respect of the proper execution of this Order.

12. **THIS COURT ORDERS** that this Order and the proceedings in this application leading to the making of this Order, including the contents of any affidavit filed in this application, shall not, in and of themselves, constitute or be relied upon in evidence or otherwise as constituting a default or failure to comply by the Applicant or any firm, person or corporation owned by or related to the Applicant with any statute, regulation, licence, permit, contract, permission, covenant, agreement, undertaking or other instrument or requirement.

13. **THIS COURT SEEKS AND REQUESTS** the aid and recognition of all Courts and judicial, regulatory or administrative bodies in Canada and the United States Bankruptcy Court for the District of Delaware and all other Courts and judicial, regulatory and administrative bodies of the United States to aid and assist this Court in carrying out the terms of this Order.

14. **THIS COURT ORDERS** that a Cross-Border Insolvency Protocol between this Court and the United States Bankruptcy Court substantially in the form attached as Schedule "C" to this Order and the Guidelines for Court-to-Court Communications in Cross-Border Insolvency Cases developed by the American Law Institute in the form attached as Schedule "1" to the Cross-Border Insolvency Protocol be and the same are hereby approved but shall not become effective until they have been approved by the United States Bankruptcy Court for the District of Delaware.

  
\_\_\_\_\_  
REGISTRAR

TRIBUNAL ADMINISTRATIF A TORONTO  
ON/BOOK NO:  
LE/DANS LE REGISTRE NO:

APR 20 2001

PER/PAR 

## **SCHEDULE "A"**

**Matlack Systems, Inc.**  
**Matlack (DE), Inc.**  
**Transporters Adjusters, Inc.**  
**Matlack Leasing Corporation**  
**Bayonne Terminals, Inc.**  
**Distribution Center of Bayonne, Inc.**  
**Bulk Terminals, Inc.**  
**Matlack International, Inc.**  
**Matlack Properties, Inc.**



**SCHEDULE "B"**

**NOTICE**

**IN THE MATTER OF THE *COMPANIES' CREDITORS*  
*ARRANGEMENT ACT*, RSC 1985, c. C-36, SECTION 18.6 AS  
AMENDED**

**IN THE MATTER OF AN APPLICATION OF MATLACK,  
INC. AND THE OTHER PARTIES SET OUT IN  
SCHEDULE "A" ANCILLARY TO PROCEEDINGS UNDER  
CHAPTER 11 OF THE UNITED STATES BANKRUPTCY  
CODE**

**MATLACK, INC. AND THE OTHER PARTIES SET OUT IN  
SCHEDULE "A"**

Applicant

This notice is being published pursuant to an Order of the Superior Court of Justice of Ontario made April 19, 2001 (the "Canadian Order"). Matlack, Inc. and certain other affiliated corporations listed in this Notice have filed for protection in the United States under Chapter 11 of the United States Bankruptcy Code (the "U.S. Proceeding"). Matlack, Inc. has sought and obtained the Canadian Order under section 18.6 of the *Companies' Creditors Arrangement Act*, RSC 1985, c. C-36 as amended (the "CCAA") granting a stay of proceedings against Matlack, Inc., its affiliates and their respective property (the "Canadian Proceedings"). Further relief may be sought in the future by Matlack, Inc. pursuant to the CCAA or otherwise, as considered necessary or appropriate by Matlack, Inc., to facilitate its restructuring under the U.S. Proceeding and otherwise.



**SCHEDULE "C"**

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

**MATLACK SYSTEMS, INC., et al.,**

Debtors

Chapter 11

Case No. 01-01114 (MFW)

Jointly Administered

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

**IN THE MATTER OF THE COMPANIES'  
CREDITORS ARRANGEMENT ACT, RSC 1985,  
c. C-36, SECTION 18.6 AS AMENDED**

**IN THE MATTER OF AN APPLICATION OF  
MATLACK, INC. AND THE OTHER  
PARTIES SET OUT IN SCHEDULE "A"  
ANCILLARY TO PROCEEDINGS UNDER  
CHAPTER 11 OF THE UNITED STATES  
BANKRUPTCY CODE**

**MATLACK, INC. AND THE OTHER PARTIES  
SET OUT IN SCHEDULE "A"**

Applicant

**CROSS-BORDER INSOLVENCY PROTOCOL  
RE MATLACK, INC. AND AFFILIATES**

This Cross-Border Insolvency Protocol (the "Protocol") shall govern the conduct of all parties in interest in a proceeding brought by Matlack, Inc. and certain other parties in the Ontario Superior Court of Justice and a proceeding brought by Matlack Systems, Inc. and certain other parties in the United States Bankruptcy Court for the District of Delaware as Case No. 01-01114 .

**A. Background**

1. Matlack Systems, Inc., a Delaware corporation (“MSI”), is the parent company of a multinational transportation business that operates, through its various affiliates, in the United States, Canada and Mexico.
2. MSI and certain of its affiliates (collectively, the “Matlack Companies”) have commenced reorganization cases (collectively, the “U.S. Cases”) under Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the “U.S. Bankruptcy Court”). The Matlack Companies 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 U.S. Bankruptcy Code. An Official Committee of Unsecured Creditors has been appointed in the U.S. Cases (the “Creditor’s Committee”).
3. One of the Matlack Companies, Matlack, Inc. (for ease of reference, “Matlack Canada”), a United States affiliate of MSI, has assets and carries on business in Canada. The Matlack Companies have commenced proceedings (collectively, the “Canadian Case”) under section 18.6 of the *Companies’ Creditors Arrangement Act* (the “CCAA”) in the Ontario Superior Court of Justice (the “Canadian Court”). The Matlack Companies 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 U.S. Cases have been determined to be “foreign proceedings” for the purposes of section 18.6 of the CCAA; and (b) a stay was granted against actions, enforcements, extra-judicial proceedings or other proceeding until and including August 15, 2001 against the Matlack Companies and their property.
4. The Matlack Companies are parties to both the Canadian Case and the U.S. Cases. For convenience, the U.S. Cases and the Canadian Case are referred to herein collectively as the “Insolvency Proceedings” and the U.S. Bankruptcy Court and the Canadian Court are referred to herein collectively as the “Courts”.

**B. Purpose and Goals**

5. While the Insolvency Proceedings are pending in the United States and Canada for the Matlack Companies, the implementation of basic administrative procedures is necessary to coordinate certain activities in the Insolvency Proceedings, to protect the rights of parties thereto, the creditors of the Matlack Companies and to 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 Case:

- harmonize and coordinate 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;
- honor the independence and integrity of the Courts and other courts and tribunals of the United States and Canada;
- promote international cooperation and respect for comity among the Courts, the parties to the Insolvency Proceedings and the creditors of the Matlack Companies and other parties interested in or affected by 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**

6. 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 Matlack Companies 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.

7. 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.

8. In accordance with the principles of comity and independence established in Paragraphs 6 and 7 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 Matlack Companies or any Creditor’s Committee or 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 U.S. Bankruptcy Code or the CCAA after appropriate notice and a hearing (except to the extent that such action is specifically described in this 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.

9. The Matlack Companies, the Creditor’s Committee, the Estate Representatives and their respective employees, members, agents and professionals shall respect and comply with the duties imposed upon them by the U.S. Bankruptcy Code, the CCAA, the CCAA Order and any other applicable laws.

**D. Cooperation**

10. To assist in the efficient administration of the Insolvency Proceedings, the Matlack Companies, the Creditor’s Committee and the Estate Representatives shall (a) cooperate with each other in connection with actions taken in both the U.S. Bankruptcy Court and the Canadian Court, and (b) take any other appropriate steps to coordinate the administration of the U.S. Cases

and the Canadian Case for the benefit of the Matlack Companies' respective estates and stakeholders.

11. To harmonize and coordinate the administration of the Insolvency Proceedings, the U.S. Bankruptcy Court and the Canadian Court each shall use its best efforts to coordinate activities with and defer to the judgment of the other Court, where appropriate and feasible. The U.S. Bankruptcy Court and the Canadian Court may communicate with one another in accordance with the Guidelines for Court-to-Court Communication in Cross-Border Cases developed by the American Law Institute and attached as Schedule "1" to this Protocol 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 Case, in circumstances where both Courts consider such joint hearings to be necessary or advisable and, in particular, to facilitate or coordinate with the proper and efficient conduct of the U.S. Cases and the Canadian Case.

12. Notwithstanding the terms of paragraph 11 above, this Protocol recognizes that the U.S. Bankruptcy Court and the Canadian Court are independent Courts and, accordingly, although the Courts will seek to cooperate and coordinate with each other in good faith, each of the Courts shall at all times 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 Professionals**

13. Except as provided in paragraphs 16 below, any estate representatives appointed in the U.S. Cases, including any examiners or trustees appointed in accordance with section 1104 of the U.S. Bankruptcy Code and any Canadian professionals retained by the Estate Representatives (collectively, the "Estate Representatives"), shall be subject to the exclusive jurisdiction of the U.S. Court with respect to (a) the Estate Representatives' tenure in office; (b) the retention and compensation of the Estate Representatives; (c) the Estate Representatives' liability, if any, to any person or entity, including the Matlack Companies and any third parties, in connection with the U.S. Case; and (d) the hearing and determination of any other matters relating to the Estate

Representatives arising in the U.S. Cases under the U.S. Bankruptcy Code or other applicable laws of the United States. The Estate 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 Estate Representatives and their U.S. counsel and other U.S. professionals (a) shall be compensated for their services in accordance with the U.S. Bankruptcy Code and other applicable laws of the United States or orders of the U.S. Bankruptcy Court, and (b) shall not be required to seek approval of their compensation in the Canadian Court.

14. Any Canadian professionals retained by or with the approval of the Matlack Companies for purposes of the Canadian Case, including Canadian professionals retained by the Creditor's Committee (collectively, the "Canadian Professionals"), shall be subject to the 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.

15. Any United States professionals retained by the Matlack Companies and any United States professionals retained by the Creditor's Committee (collectively, the "U.S. Professionals") shall be subject to the exclusive jurisdiction of the U.S. Bankruptcy Court. Accordingly, the U.S. Professionals (a) shall be subject to the procedures and standards for retention and compensation applicable in the U.S. Bankruptcy Court under the U.S. Bankruptcy Code and any other applicable laws of the United States or orders of the U.S. Bankruptcy Court, and (b) shall not be required to seek approval of their retention or compensation in the Canadian Court.

**F. Rights to Appear and Be Heard**

16. The Matlack Companies, their creditors and other interested parties in the Insolvency Proceedings, including the Creditor's Committee and the U.S. Trustee, shall have the right and standing to (a) appear and be heard in either the U.S. Court or the Canadian Court in the Insolvency Proceedings to the same extent as creditors and other interested parties domiciled in the forum country, subject to any local rules or regulations generally applicable to all parties appearing in the forum, and (b) file notices of appearance or other processes with the Clerk of the



U.S. Bankruptcy Court or the Canadian Court in the Insolvency Proceedings; provided, however, that any appearance or filing may subject a creditor or an interested party to the jurisdiction of the Court in which the appearance or filing occurs; provided further, that appearance by the Creditor's Committee in the Canadian Case shall not form a basis for personal jurisdiction in Canada over the members of the Creditor's Committee. Notwithstanding the foregoing, and in accordance with paragraph 13 above, the Canadian Court shall have jurisdiction over the Estate Representatives and the U.S. Trustee with respect to the particular matters as to which the Estate Representatives or the U.S. Trustee appear before the Canadian Court.

**G. Notice**

17. 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 this Protocol shall be given by appropriate means (including, where circumstances warrant, by courier, telecopier or other electronic forms of communication) to the following: (a) all creditors, including the Creditor's 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 clause (a) above, the U.S. Trustee, the Office of the United States Trustee, and such other parties as may be designated by either of the Courts from time to time.

**H. Joint Recognition of Stays of Proceedings Under the U.S. Bankruptcy Code and the CCAA**

18. In recognition of the importance of the stay of proceedings and actions against the Matlack Companies and their assets under section 18.6 of the CCAA and the CCAA Order (the "Canadian Stay") on the successful completion of the Insolvency Proceedings for the benefit of the Matlack Companies and their respective estates and stakeholders, to the extent necessary and appropriate, the U.S. Bankruptcy 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 assets, rights and holdings of the Matlack Companies. In implementing the terms of this paragraph, the U.S. Bankruptcy 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.

19. In recognition of the importance of the stay of proceedings and actions against the Matlack Companies and their assets under section 362 of the U.S. Bankruptcy Code (the "U.S. Stay") to the successful completion of the Insolvency Proceedings for the benefit of the Matlack Companies and their respective estates and stakeholders, to the extent necessary and 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 Matlack Companies 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 order 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.

20. Nothing contained herein shall affect or limit the Matlack Companies' 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.

**I. Effectiveness and Modification of Protocol**

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

22. 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 17 above.

**J. Procedure for Resolving Disputes Under the Protocol**

23. 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, in accordance with paragraph 17 above. 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.

**K. Preservation of Rights**

24. 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 defences of the Matlack Companies and their estates, the Creditor's Committee, the U.S. Trustee or any of the creditors of the Matlack Companies under applicable law, including the U.S. Bankruptcy Code and the CCAA.

**L. Guidelines**

25. The Protocol shall adopt by reference the Guidelines Applicable to Court-to-Court Communications in Cross-Border Cases (the "Guidelines") developed by The American Law Institute for the Transnational Insolvency Project, a copy of which are attached hereto as Schedule "1". In the case of any conflict between the terms of this Protocol and the terms of the Guidelines, the terms of this Protocol shall govern.

**SCHEDULE "1"**

The American Law Institute

---

**TRANSNATIONAL INSOLVENCY PROJECT**

**PRINCIPLES OF COOPERATION IN TRANSNATIONAL  
INSOLVENCY CASES AMONG THE MEMBERS OF THE  
NORTH AMERICAN FREE TRADE AGREEMENT**

---

***Appendix 2:* Guidelines Applicable to Court-to-Court Communications in  
Cross-Border Cases**

---

**Submitted by the Council to the Members of The American Law Institute  
for Discussion at the Seventy-Seventh Annual Meeting  
on May 15,16,17, and 18, 2000**

---

**The Executive Office  
THE AMERICAN LAW INSTITUTE  
4025 Chestnut Street  
Philadelphia, Pa.19104-3099**

Amended – February 12, 2001

**Guidelines**  
**Applicable to Court-to-Court Communications**  
**in Cross-Border Cases**

***Introduction:***

One of the most essential elements of cooperation in cross-border cases is communication among the administering authorities of the countries involved. Because of the importance of the courts in insolvency and reorganization proceedings, it is even more essential that the supervising courts be able to coordinate their activities to assure the maximum available benefit for the stakeholders of financially troubled enterprises.

These Guidelines are intended to enhance coordination and harmonization of insolvency proceedings that involve more than one country through communications among the jurisdictions involved. Communications by judges directly with judges or administrators in a foreign country, however, raise issues of credibility and proper procedures. The context alone is likely to create concern in litigants unless the process is transparent and clearly fair. Thus, communication among courts in cross-border cases is both more important and more sensitive than in domestic cases. These Guidelines encourage such communications while channeling them through transparent procedures. The Guidelines are meant to permit rapid cooperation in a developing insolvency case while ensuring due process to all concerned.

The Guidelines at this time contemplate application only between Canada and the United States, because of the very different rules governing communications with Principles of Cooperation courts and among courts in Mexico. Nonetheless, a Mexican Court might choose to adopt some or all of these Guidelines for communications by a *sindico* with foreign administrators or courts.

A Court intending to employ the Guidelines - in whole or part, with or without modifications - should adopt them formally before applying them. A Court may wish to make its adoption of the Guidelines contingent upon, or temporary until, their adoption by other courts concerned in the matter. The adopting Court may want to make adoption or continuance conditional upon adoption of the Guidelines by the other Court in a substantially similar form, to ensure that judges, counsel, and parties are not subject to different standards of conduct.

The Guidelines should be adopted following such notice to the parties and counsel as would be given under local procedures with regard to any important procedural decision under similar circumstances. If communication with other courts is urgently needed, the local procedures, including notice requirements, that are used in urgent or emergency situations should be employed, including, if appropriate, an initial period of effectiveness, followed by further consideration of the Guidelines at a later time. Questions about the parties entitled to such notice (for example, all parties or representative parties or representative counsel) and the nature of the court's consideration of any objections (for example, with or without a hearing) are governed by the Rules of Procedure in each jurisdiction and are not addressed in the Guidelines.

The Guidelines are not meant to be static, but are meant to be adapted and modified to fit the circumstances of individual cases and to change and evolve as the international insolvency community gains experience from working with them. They are to apply only in a manner that is consistent with local procedures and local ethical requirements. They do not address the details of notice and procedure that depend upon the law and practice in each jurisdiction. However, the Guidelines represent approaches that are likely to be highly useful in achieving efficient and just resolutions of cross-border insolvency issues. Their use, with such modifications and under such circumstances as may be appropriate in a particular case, is therefore recommended.

#### **Guideline 1**

Except in circumstances of urgency, prior to a communication with another Court, the Court should be satisfied that such a communication is consistent with all applicable Rules of Procedure in its country. Where a Court intends to apply these Guidelines (in whole or in part and with or without modifications), the Guidelines to be employed should, wherever possible, be formally adopted before they are applied. Coordination of Guidelines between courts is desirable and officials of both courts may communicate in accordance with Guideline 8(d) with regard to the application and implementation of the Guidelines.

#### **Guideline 2**

A Court may communicate with another Court in connection with matters relating to proceedings before it for the purposes of coordinating and harmonizing proceedings before it with those in the other jurisdiction.

#### **Guideline 3**

A Court may communicate with an Insolvency Administrator in another jurisdiction or an authorized Representative of the Court in that jurisdiction in connection with the coordination and harmonization of the proceedings before it with the proceedings in the other jurisdiction.

#### **Guideline 4**

A Court may permit a duly authorized Insolvency Administrator to communicate with a foreign Court directly, subject to the approval of the foreign Court, or through an Insolvency Administrator in the other jurisdiction or through an authorized Representative of the foreign Court on such terms as the Court considers appropriate.

#### **Guideline 5**

A Court may receive communications from a foreign Court or from an authorized Representative of the foreign Court or from a foreign Insolvency Administrator and should respond directly if the communication is from a foreign Court (subject to Guideline 7 in the case of two-way communications) and may respond directly or through an authorized Representative of the Court or through a duly authorized Insolvency Administrator if the communication is from a foreign Insolvency Administrator, subject to local rules concerning ex parte communications.

### **Guideline 6**

Communications from a Court to another Court may take place by or through the Court:

- (a) Sending or transmitting copies of formal orders, judgments, opinions, reasons for decision, endorsements, transcripts of proceedings, or other documents directly to the other Court and providing advance notice to counsel for affected parties in such manner as the Court considers appropriate;
- (b) Directing counsel or a foreign or domestic Insolvency Administrator to transmit or deliver copies of documents, pleadings, affidavits, factums, briefs, or other documents that are filed or to be filed with the Court to the other Court in such fashion as may be appropriate and providing advance notice to counsel for affected parties in such manner as the Court considers appropriate;
- (c) Participating in two-way communications with the other Court by telephone or video conference call or other electronic means in which case Guideline 7 shall apply.

### **Guideline 7**

In the event of communications between the Courts in accordance with Guidelines 2 and 5 by means of telephone or video conference call or other electronic means, unless otherwise directed by either of the two Courts:

- (a) Counsel for all affected parties should be entitled to participate in person during the communication and advance notice of the communication should be given to all parties in accordance with the Rules of Procedure applicable in each Court;
- (b) The communication between the Courts should be recorded and may be transcribed. A written transcript may be prepared from a recording of the communication which, with the approval of both Courts, should be treated as an official transcript of the communication;
- (c) Copies of any recording of the communication, of any transcript of the communication prepared pursuant to any Direction of either Court, and of any official transcript prepared from a recording should be filed as part of the record in the proceedings and made available to counsel for all parties in both Courts subject to such Directions as to confidentiality as the Courts may consider appropriate.
- (d) The time and place for communications between the Courts should be to the satisfaction of both Courts. Personnel other than Judges in each Court may communicate fully with each other to establish appropriate arrangements for the communication without the necessity for participation by counsel unless otherwise ordered by either of the Courts.

### **Guideline 8**

In the event of communications between the Court and an authorized Representative of the foreign Court or a foreign Insolvency Administrator in accordance with Guidelines 3 and 5 by means of telephone or video conference call or other electronic means, unless otherwise directed by the Court:

- (a) Counsel for all affected parties should be entitled to participate in person during the communication and advance notice of the communication should be given to all parties in accordance with the Rules of Procedure applicable in each Court;
- (b) The communication should be recorded and may be transcribed. A written transcript may be prepared from a recording of the communication which, with the approval of the Court, can be treated as an official transcript of the communication;
- (c) Copies of any recording of the communication, of any transcript of the communication prepared pursuant to any Direction of the Court, and of any official transcript prepared from a recording should be filed as part of the record in the proceedings and made available to the other Court and to counsel for all parties in both Courts subject to such Directions as to confidentiality as the Court may consider appropriate;
- (d) The time and place for the communication should be to the satisfaction of the Court. Personnel of the Court other than Judges may communicate fully with the authorized Representative of the foreign Court or the foreign Insolvency Administrator to establish appropriate arrangements for the communication without the necessity for participation by counsel unless otherwise ordered by the Court.

### **Guideline 9**

A Court may conduct a joint hearing with another Court. In connection with any such joint hearing, the following should apply, unless otherwise ordered or unless otherwise provided in any previously approved Protocol applicable to such joint hearing:

- (a) Each Court should be able to simultaneously hear the proceedings in the other Court.
- (b) Evidentiary or written materials filed or to be filed in one Court should, in accordance with the Directions of that Court, be transmitted to the other Court or made available electronically in a publicly accessible system in advance of the hearing. Transmittal of such material to the other Court or its public availability in an electronic system should not subject the party filing the material in one Court to the jurisdiction of the other Court.



- (c) Submissions or applications by the representative of any party should be made only to the Court in which the representative making the submissions is appearing unless the representative is specifically given permission by the other Court to make submissions to it.
- (d) Subject to Guideline 7(b), the Court should be entitled to communicate with the other Court in advance of a joint hearing, with or without counsel being present, to establish Guidelines for the orderly making of submissions and rendering of decisions by the Courts, and to coordinate and resolve any procedural, administrative, or preliminary matters relating to the joint hearing.
- (e) Subject to Guideline 7(b), the Court, subsequent to the joint hearing, should be entitled to communicate with the other Court, with or without counsel present, for the purpose of determining whether coordinated orders could be made by both Courts and to coordinate and resolve any procedural or nonsubstantive matters relating to the joint hearing.

#### **Guideline 10**

The Court should, except upon proper objection on valid grounds and then only to the extent of such objection, recognize and accept as authentic the provisions of statutes, statutory or administrative regulations, and rules of court of general application applicable to the proceedings in the other jurisdiction without the need for further proof or exemplification thereof.

#### **Guideline 11**

The Court should, except upon proper objection on valid grounds and then only to the extent of such objection, accept that Orders made in the proceedings in the other jurisdiction were duly and properly made or entered on or about their respective dates and accept that such Orders require no further proof or exemplification for purposes of the proceedings before it, subject to all such proper reservations as in the opinion of the Court are appropriate regarding proceedings by way of appeal or review that are actually pending in respect of any such Orders.

#### **Guideline 12**

The Court may coordinate proceedings before it with proceedings in another jurisdiction by establishing a Service List which may include parties that are entitled to receive notice of proceedings before the Court in the other jurisdiction ("Non-Resident Parties"). All notices, applications, motions, and other materials served for purposes of the proceedings before the Court may be ordered to also be provided to or served on the Non-Resident Parties by making such materials available electronically in a publicly accessible system or by facsimile transmission, certified or registered mail or delivery by courier, or in such other manner as may be directed by the Court in accordance with the procedures applicable in the Court.

#### **Guideline 13**

The Court may issue an Order or issue Directions permitting the foreign Insolvency Administrator or a representative of creditors in the proceedings in the other jurisdiction or an

authorized Representative of the Court in the other jurisdiction to appear and be heard by the Court without thereby becoming subject to the jurisdiction of the Court.

#### **Guideline 14**

The Court may direct that any stay of proceedings affecting the parties before it shall, subject to further order of the Court, not apply to applications or motions brought by such parties before the other Court or that relief be granted to permit such parties to bring such applications or motions before the other Court on such terms and conditions as it considers appropriate. Court-to-Court communications in accordance with Guidelines 6 and 7 hereof may take place if an application or motion brought before the Court affects or might affect issues or proceedings in the Court in the other jurisdiction.

#### **Guideline 15**

A Court may communicate with a Court in another jurisdiction or with an authorized Representative of such Court in the manner prescribed by these Guidelines for purposes of coordinating and harmonizing proceedings before it with proceedings in the other jurisdiction regardless of the form of the proceedings before it or before the other Court wherever there is commonality among the issues and/or the parties in the proceedings. The Court should, absent compelling reasons to the contrary, so communicate with the Court in the other jurisdiction where the interests of justice so require.

#### **Guideline 16**

Directions issued by the Court under these Guidelines are subject to such amendments, modifications, and extensions as may be considered appropriate by the Court for the purposes described above and to reflect the changes and developments from time to time in the proceedings before it and before the other Court. Any Directions may be supplemented, modified, and restated from time to time and such modifications, amendments, and restatements should become effective upon being accepted by both Courts. If either Court intends to supplement, change, or abrogate Directions issued under these Guidelines in the absence of joint approval by both Courts, the Court should give the other Courts involved reasonable notice of its intention to do so.

#### **Guideline 17**

Arrangements contemplated under these Guidelines do not constitute a compromise or waiver by the Court of any powers, responsibilities, or authority and do not constitute a substantive determination of any matter in controversy before the Court or before the other Court nor a waiver by any of the parties of any of their substantive rights and claims or a diminution of the effect of any of the Orders made by the Court or the other Court.