

IN THE MATTER OF THE SECURITIES LEGISLATION
OF THE PROVINCES OF ALBERTA, BRITISH COLUMBIA, MANITOBA,
SASKATCHEWAN, ONTARIO, NOVA SCOTIA, NEWFOUNDLAND,
PRINCE EDWARD ISLAND AND NEW BRUNSWICK

AND

IN THE MATTER OF THE MUTUAL RELIANCE REVIEW SYSTEM
FOR EXEMPTIVE RELIEF APPLICATIONS

AND

IN THE MATTER OF PHILIP SERVICES (DELAWARE), INC.

-

DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the "Decision Maker" or collectively the "Decision Makers") in each of Alberta, British Columbia, Manitoba, Saskatchewan, Ontario, Nova Scotia, Newfoundland, Prince Edward Island and New Brunswick (the "Jurisdictions") has received an application from Philip Services (Delaware), Inc. (the "Applicant") for a decision pursuant to the securities legislation of the Jurisdictions (the "Legislation") that the distribution of securities to certain persons pursuant to a plan of reorganization (the "U.S. Plan") made under the U.S. Bankruptcy Code and approved by the U.S. Bankruptcy Court (the "U.S. Court") is not subject to the requirements contained in the Legislation to be registered to trade in a security, to file a preliminary prospectus and a prospectus and receive receipts therefor (the "Registration and Prospectus Requirements");

AND WHEREAS pursuant to the Mutual Reliance Review System for Exemptive Relief Applications (the "System"), the Ontario Securities Commission is the principal regulator for this application;

AND WHEREAS the Applicant has represented to the Decision Makers that:

1. The Applicant is an indirect wholly-owned subsidiary of Philip Services Corp. ("PSC") incorporated under the laws of the State of Delaware pursuant to articles of incorporation dated July 10, 1991.
2. PSC is a corporation amalgamated under the *Business Corporations Act* (Ontario) by articles of amalgamation dated April 15, 1991, with its principal executive office in the City of Hamilton, in the Province of Ontario.
3. PSC is a reporting issuer or the equivalent in each of the Jurisdictions and is not in default of any of the requirements of the Legislation.

4. The outstanding PSC common shares are listed and posted for trading on The Toronto Stock Exchange (the "TSE"), were prior to December 6, 1999 listed and posted for trading on the Montreal Exchange and are currently suspended from trading on The New York Stock Exchange (the "NYSE"). The NYSE has commenced formal delisting procedures.

5. As at November 4, 1999, the issued capital of PSC consisted of 131,144,013 common shares.

6. On June 25, 1999, PSC, the Applicant and certain of its U.S. subsidiaries filed voluntary petitions for relief pursuant to Chapter 11 of the U.S. Bankruptcy Code. Also on June 25, 1999, PSC and certain of its Canadian subsidiaries (the "Canadian Applicants") obtained a protective order of the Ontario Superior Court of Justice (the "Ontario Court") pursuant to the *Companies and Creditors Arrangement Act* (the "CCAA").

7. The U.S. Plan was confirmed by the U.S. Bankruptcy Court on November 30, 1999. A CCAA plan of compromise and arrangement (the "CCAA Plan" and collectively with the U.S. Plan, the "Plans") of PSC and certain of its Canadian subsidiaries was confirmed by the Ontario Court on November 26, 1999. All distributions of securities to holders of claims and interests will be made pursuant to the U.S. Plan.

8. The Plans were the result of several months of negotiations between PSC and its secured lenders (the "Secured Lenders") under the credit agreement dated as of August 11, 1997, as amended among PSC, the Applicant and the Secured Lenders (the "Credit Agreement"). The Plans provide for a comprehensive recapitalization of PSC and its subsidiaries through the settlement of claims in consideration of the issuance of debt, debt securities and common shares of the Applicant.

9. The classes of holders of claims and interests impaired under the U.S. Plan or otherwise entitled to disbursements under the U.S. Plan are as follows:

(a) the Secured Lenders;

(b) U.S. resident holders of unsecured claims against PSC, the Applicant and certain of its U.S. subsidiaries and Canadian resident holders of unsecured claims against PSC and certain of its Canadian subsidiaries that have elected to participate in the disbursements under the U.S. Plan (the "Unsecured Creditors");

(c) holders of PSC common shares (the "PSC Shareholders");

(d) holders of claims pursuant to U.S. and Canadian class action proceedings (the "Class Action Claimants"); and

(e) holders of other securities claims (the "Other Claimants").

10. The disbursements under the U.S. Plan will include the following:

(a) 24,000,000 common shares ("New Common Shares") of the Applicant;

(b) The Credit Agreement will be amended and restated as a US\$350 million of five-year secured term debt, US\$100 million of which being convertible into 25% of the New Common Shares on a fully diluted basis after giving effect to the issuance of the 24,000,000 New Common Shares pursuant to the U.S. Plan (the "Convertible Bank Debt");

(c) US\$48 million of unsecured 10 year payment-in-kind notes (the "Unsecured Notes") with interest payable by the issuance of additional Unsecured Notes (the "Interest Notes"); and

(d) US\$18 million unsecured 20 year notes (the "Convertible Notes") convertible into New Common Shares at a conversion price of US\$30.

11. The trades and potential trades which will occur pursuant to the implementation of the Plans (collectively, the "Trades") are summarized as follows:

(a) the issuance to each of the Secured Lenders of its pro rata share of 21,840,000 New Common Shares, the Convertible Bank Debt and Unsecured Notes;

(b) the issuance to each Unsecured Creditor of its pro rata shares of 1,200,000 New Common Shares and of Unsecured Notes or Convertible Notes depending upon an election to receive Convertible Notes which was available to Unsecured Creditors who are residents of the United States;

(c) the issuance to holders of Unsecured Notes of Interest Notes;

(d) the issuance to each PSC Shareholder of its pro rata share of 480,000 New Common Shares;

(e) the issuance to each Class Action Claimant of its pro rata share of 360,000 New Common Shares; and

(f) the issuance to each Other Claimant of its pro rata share of 120,000 New Common Shares.

12. On October 27, 1999, as a result of certain conditions precedent to the then current version of the CCAA Plan having not been satisfied, the Canadian Applicants filed a supplement to the CCAA Plan (the "Plan Supplement"). The Plan Supplement amended and restated the CCAA Plan such that the only class of affected creditors under the CCAA proceedings is the Secured Lenders. The U.S. Plan permitted those persons that would have been affected unsecured creditors under the CCAA Plan as it was prior to being amended and restated by the Plan Supplement, to elect to receive distributions in accordance with U.S. law under the U.S. Plan. Sixty-one (61) of the eighty-three (83) holders of such claims made this election and will receive their share of the distributions to Unsecured Creditors under the U.S. Plan. Those holders that did not so elect are not entitled to any distributions under the Plans.

13. Pursuant to the Plan Supplement, substantially all of the assets of PSC and the other Canadian Applicants will be transferred pursuant to security held by the Secured Lenders to new companies which, on the implementation of the U.S. Plan, will be wholly-owned subsidiaries of the Applicant (the "Canadian Reorganization Transaction"). The current outstanding shares in the capital stock of the Applicant will be cancelled pursuant to the U.S. Plan such that, on the implementation of the U.S. Plan, the Applicant will no longer be a subsidiary of PSC. Accordingly, the Applicant will be the successor to the business currently conducted by PSC and its subsidiaries following implementation of the Plans. The debt of the Secured Lenders will be restructured under the U.S. Plan. The Canadian Reorganization Transaction has been structured and will be implemented so as to comply with the requirements of Policy Statement 9.1 of the Ontario Securities Commission.

14. There are 38 Secured Lenders that will receive distributions under the U.S. Plan of which 26 are resident outside of Canada, 11 are resident in the Province of Ontario and one is resident in the Province of Quebec.

15. There are over 550 Unsecured Creditors of which over 470 are resident outside of Canada, 70 are resident in Ontario, nine are resident in the Province of Quebec, and one is resident in each of the Provinces of Alberta, British Columbia and Nova Scotia.

16. PSC has shareholders resident in each of the provinces of Canada but over eighty percent (80%) of its shares are held by residents of the United States.

17. Following implementation of the U.S. Plan, it is anticipated that over eighty percent (80%) of the New Common Shares will be held by residents of the United States, approximately seventy percent (70%) of the Unsecured Notes will be held by residents of the United States, over eighty percent (80%) of the Convertible Bank Debt will be held by residents of the United States and one hundred percent (100%) of the Convertible Notes will be held by residents of the United States.

18. Application has been made to the TSE and to the Nasdaq National Market for the listing of the New Common Shares and the TSE confirmed to the Applicant on November 8, 1999 that it will conditionally approve a substitution listing of the New Common Shares. The PSC Common Shares will be delisted by the TSE on or prior to the listing of the New Common Shares.

19. Section 1145(a)(1) of the U.S. Bankruptcy Code, as amended, exempts the offer and sale of securities from registration under U.S. federal and state securities laws if (1) the securities have been issued "under a plan" of reorganization by the debtor or its successor or by an affiliate participating in a joint plan of reorganization with the debtor, (2) the recipients of the securities hold a pre-petition or administrative expense claim against the debtor or an interest in the debtor, and (3) the securities are issued entirely in exchange for the recipient's claim against or interest in the debtor, or "principally" in such exchange and "partly" for cash or property. Section 1145(c) of the U.S. Bankruptcy Code deems any offer or sale of securities of the kind and in the manner specified in Section 1145(a)(1) to have been a public offering, and such securities will be freely transferable under the U.S. federal securities laws, subject to certain exceptions.

20. A disclosure statement for the U.S. Plan (the "Disclosure Statement") which was prepared in accordance with the requirements of the U.S. Bankruptcy Code, was approved by the U.S. Bankruptcy Court on September 22, 1999 and distributed to the Secured Lenders and Unsecured Creditors under the U.S. Plan. A summary of the Disclosure Statement was approved by the U.S. Bankruptcy Court and distributed to PSC Shareholders, Class Action Claimants and the Other Claimants.

21. The Disclosure Statement provided a detailed description of the terms of the U.S. Plan, the background and events leading up to the filing of the Plans and prospectus-level disclosure of the business of the Applicant and include pro forma financial statements and was approved by the U.S. Court. A Canadian disclosure statement, containing information specific to the CCAA proceedings, including the Disclosure Statement and approved by the Ontario Court, was sent to each of the Secured Lenders and to each Unsecured Creditor who was a resident of Canada.

22. Implementation of the Plans is necessary for the business carried on by PSC to continue as a going concern and following implementation of the Plans, the business currently carried on by the Applicant will be virtually identical to the business carried on by PSC.

23. Prior to implementation of the Plans, the name of the Applicant will be changed from "Philip Services (Delaware), Inc." to "Philip Services Corporation".

24. Each of the Secured Creditors, Unsecured Creditors, PSC Shareholders, Class Action Claimants and Other Claimants is at arm's length with the Applicant as such term is defined in the *Income Tax Act* (Canada).

25. The Applicant has applied to be deemed to be a reporting issuer in Nova Scotia.

AND WHEREAS under the System, this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the "Decision");

AND WHEREAS each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the Decision has been met;

THE DECISION of the Decision Makers under the Legislation is that:

A. the Registration and Prospectus Requirements shall not apply to the Trades provided that all approvals required by orders of the U.S. Court and the Ontario Court to implement the U.S. Plan and the Canadian Plan, respectively, have been obtained, and all conditions of such Plans have been satisfied or waived in accordance with such Plans; and

B. the first trade in a Jurisdiction of the Unsecured Notes, the Convertible Notes, the Interest Notes and the New Common Shares acquired pursuant to this Decision or the New Common Shares issued on the conversion of the Convertible Bank Debt and the Convertible Notes, shall be a distribution or primary

distribution to the public under the Legislation of such Jurisdiction (the "Applicable Legislation") except where:

- (a) with respect to Jurisdictions in which such trade takes place, the Applicant is a reporting issuer in the Jurisdiction or in the case of Manitoba, Prince Edward Island, New Brunswick and Newfoundland the Applicant has filed with such Jurisdiction the continuous disclosure documents filed by the Applicant in the other Jurisdictions;
- (b) if the seller is in a special relationship with the Applicant, the seller has reasonable grounds to believe that the Applicant is not in default of any requirement of the Applicable Legislation;
- (c) disclosure has been made to the Jurisdiction of the Trade pursuant to which the seller initially acquired the security being sold;
- (d) no unusual effort is made to prepare the market or create a demand for the Unsecured Notes, Convertible Notes, Interest Notes or New Common Shares being sold and no extraordinary commission or consideration is paid in respect of such trade; and
- (e) PSI generally discloses, at the time that securities of PSI are listed on the TSE, that the United States Securities and Exchange Commission is conducting a formal investigation of the circumstances surrounding the restatements of PSC's 1995, 1996 and 1997 financial statements and that the Ontario Securities Commission is reviewing the circumstances surrounding such restatements and the disclosure contained in a prospectus filed by PSC in November, 1997;

then a first trade shall be a distribution or primary distribution to the public only if it is a trade from the holding of a person or combination of persons holding a sufficient number of any securities of the Applicant to affect materially the control of the Applicant, but any holding of a person or combination of persons holding more than 20 percent (20%) of the outstanding voting securities of the Applicant shall, in the absence of evidence to the contrary, be deemed to affect materially the control of the Applicant.

DATED at Toronto on this "23rd" day of February, 2000.

"Howard I. Wetston" "J. A. Geller"

Headnote

Mutual reliance review system for exemptive relief application,- Exemption from prospectus and registration requirements with respect to distribution of securities to certain creditors and shareholders in connection with a plan of arrangement under the U.S. Bankruptcy Code - first trades permitted to holders subject to conditions in subsection 72(5) other than the requirement that the issuer of the securities be a reporting issuer for at least twelve months

Statutes Cited

Securities Act, R.S.O. 1990, c.S.5, as am. ss. 25, 53, 72(5),74(1).

Regulations Cited

Regulation made under the Securities Act, R.R.O. 1990, Reg. 1015, as am.,s. 21 .