

**IN THE MATTER OF THE *SECURITIES ACT*,
R.S.O. 1990, c.S.5, as amended**

AND

**IN THE MATTER OF
PHILIP SERVICES CORP., ALLEN FRACASSI,
PHILIP FRACASSI, MARVIN BOUGHTON,
GRAHAM HOEY, COLIN SOULE,
ROBERT WAXMAN AND JOHN WOODCROFT**

**SETTLEMENT AGREEMENT
RE: COLIN SOULE**

I. INTRODUCTION

1. By Notice of Hearing, dated August 30, 2000 (the "Notice of Hearing"), the Ontario Securities Commission (the "Commission") announced that it proposed to hold a hearing to consider whether, pursuant to subsections 127(1) and 127.1(1) of the *Securities Act*, R.S.O. 1990, c.S.5, as amended (the "Act"), it is in the public interest for the Commission to make an order that:
 - (a) the Respondents cease trading in securities, permanently or for such time as the Commission may direct;
 - (b) the individual Respondents are prohibited from becoming or acting as a director or officer of any issuer;
 - (c) the individual Respondents resign any positions they may have as a director and/or officer of any issuer;
 - (d) the Respondents be reprimanded;
 - (e) the Respondents, or any of them, pay the costs of Staff's investigation and this proceeding; and/or

(f) such further orders as the Commission may deem appropriate.

II. JOINT SETTLEMENT RECOMMENDATION

2. Staff of the Commission ("Staff") agree to recommend settlement of the proceedings initiated against Colin Soule ("Soule") by the Notice of Hearing in accordance with the terms and conditions set out below. Soule consents to the making of an order against him in the form attached as Schedule "A" on the basis of the facts set out in Part III below.

III. STATEMENT OF FACTS

3. Staff and Soule agree, solely for the purposes of this Settlement Agreement and any order of the Commission contemplated hereby, with the facts and conclusions set out in Part III of this Settlement Agreement. Staff and Soule agree that this Settlement Agreement is without prejudice to Soule in any civil proceedings which may be brought by any other person.

Background

4. Philip Services Corp. ("Philip" or the "Company"), was, at all material times, a reporting issuer in Ontario, Alberta, British Columbia, Quebec, Saskatchewan, Nova Scotia and Newfoundland. Philip's common shares were listed for trading on the Toronto Stock Exchange, the Montreal Exchange and the New York Stock Exchange under the symbol PHV. At all material times, Philip was a corporation amalgamated under the laws of the Province of Ontario, with its head office in the City of Hamilton, in the Province of Ontario. Prior to May, 1997, Philip operated its business under the name of Philip Environmental Inc.
5. Philip was an integrated resource recovery and industrial services company providing metal recovery and processing services to major industry sectors throughout North America. It was considered one of North America's leading suppliers of metals recovery and industrial services. For the year ended December 31, 1997, Philip reported revenues

of U.S. \$1.75 billion, of which U.S. \$1.1 billion was attributed to the Company's Metals and Recovery Group (the "Metals Group").

6. In 1997, Philip's business was organized into two operating divisions – the Metals Group and the Industrial Services Group ("ISG"). The Metals Group was Philip's largest operating division, accounting for more than 60% of the Company's revenue in 1996 and 1997.
7. Robert Waxman ("Waxman") was a Director of Philip and was the President of the Metals Group. In late September 1997, he was relieved of his day-to-day duties and signing authority, although this fact was not publicly disclosed.
8. Philip announced that Waxman had resigned as a Director of Philip and as President of the Metals Group in a press release dated January 5, 1998. Details surrounding Waxman's departure from the Company are more fully described below.
9. Allen Fracassi ("A. Fracassi") and Philip Fracassi ("P. Fracassi") are brothers and were the founders of a company purchased by Philip. A. Fracassi was the President, CEO and a Director of Philip. P. Fracassi was the Executive Vice-President, Chief Operating Officer and a Director of Philip.
10. Howard Beck ("Beck") was the Chairman of Philip's Board of Directors and Chair of Philip's Audit Committee.
11. Marvin Boughton ("Boughton") was the Executive Vice-President and Chief Financial Officer ("CFO") of Philip. Boughton is a chartered accountant.
12. Peter Chodos ("Chodos") was the Executive Vice-President, Corporate development of Philip.
13. Felix Pardo ("Pardo") was a Director of Philip.

14. Colin Soule ("Soule") was the General Counsel, Executive Vice-President and Corporate Secretary of Philip.
15. Herman Turkstra ("Turkstra") was a Director of Philip and one of Philip's outside legal counsel.
16. John Woodcroft ("Woodcroft") was the Executive Vice-President, Operations of Philip.

The November Offering

17. On November 6, 1997, Philip made a public offering of 20 million common shares (the "November Offering"), 15 million of which were sold in the United States and 5 million of which were sold in Canada and internationally. The November Offering raised approximately U.S. \$364 million and closed on or about November 12, 1997. The price per each offered common share was U.S. \$16.50.
18. In connection with the November Offering, Philip filed a Prospectus with the Commission and obtained a final receipt on November 6, 1997. As required pursuant to section 58 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act"), the Prospectus contained an Issuer's Certificate signed by the CEO (A. Fracassi) and the CFO (Boughton) and two directors (Waxman and Turkstra) on behalf of Philip's Board of Directors. A registration statement was filed with the United States Securities and Exchange Commission (the "SEC") on or about November 6, 1997.
19. The Prospectus included audited financial statements for the Company for the fiscal years ended December 31, 1996 and December 31, 1995, for which Philip's auditor, Deloitte & Touche ("Deloitte"), had issued unqualified audit opinions. Furthermore, the Prospectus contained unaudited interim financial statements for the six month periods ended June 30, 1997 and June 30, 1996. Deloitte provided a letter of comfort to the Commission dated November 5, 1997 with respect to the inclusion of the unaudited interim financial statements in the Prospectus. The Prospectus also included unaudited third quarter results for the three and nine month periods ended September 30, 1997.

20. In connection with the November Offering, Philip entered into a U.S. Underwriting Agreement dated November 6, 1997 with a syndicate of underwriters, which provided for the sale by the Company of 15 million common shares in the United States.

Relevant Portions of the Prospectus

21. Page 5 of the Prospectus states the following under the heading "Forward-Looking Statements".

Factors that may cause actual results to differ materially from those contemplated or projected, forecast estimated or budgeted in such forward-looking statements include among others, the following possibilities...(6) loss of key executives... [Emphasis added.]

22. Page 18 of the Prospectus states the following under the heading "Reliance on Key Personnel":

The Company's operations are dependent on the abilities, experience and efforts of its senior management. While the Company has entered into employment agreements with certain members of its senior management, should any of these persons be unable or unwilling to continue his employment with the Company, the business prospects of the Company could be materially and adversely affected. [Emphasis added.]

23. Waxman is described on page 67 of the Prospectus under the heading "Management" as "President, Metals Recovery Group and Director". On page 68 of the Prospectus, Waxman is further discussed as follows:

Mr. Waxman has been a director of Philip since January, 1994. Mr. Waxman has been the President, Metals Recovery Group, since February 28, 1996. Since September 1993, Mr. Waxman has been President and Chief Executive Officer of Waxman Resources Inc. From 1989 to 1993, Mr. Waxman was Chief Operating Officer of I. Waxman & Sons Limited.

24. The only disclosure provided in the Prospectus regarding indebtedness to Philip by any person who is or was an executive officer or senior officer of Philip is set out on page 71 as follows:

As at November 4, 1997, the aggregate amount of indebtedness (other than routine indebtedness) due to the Company from all current or former officers, directors and employees was Cdn \$737,200, consisting of the outstanding balance of a loan made to Allen Fracassi, the President and Chief Executive Officer of the Company for the purpose of purchasing a home ... the largest aggregate amount of outstanding under the loan during the fiscal year ended December 31, 1996 was Cdn \$787,200.

25. As noted above, Waxman was one of the directors who executed the Certificate of the Company (the "Certificate"), at page C-1 of the Prospectus, on behalf of the Board of Directors. The Certificate was in the form required pursuant to s.58(1) of the Act as follows:

The foregoing constitutes full, true and plain disclosure of all material facts relating to the securities offered by this prospectus as required by Part XV of the Securities Act and the regulations thereunder. [Emphasis added]

Background Facts Regarding Robert Waxman

26. In 1973, Waxman began working in the scrap metals industry for I. Waxman & Sons Limited, the Waxman family business. In or around September, 1993, I. Waxman & Sons Limited rolled all of its active operating assets into Waxman Resources Inc. ("Resources") and then sold all of the shares of Resources to Philip. At the time Philip purchased the shares of Resources, Waxman was the President and CEO of Resources.
27. In light of his substantial experience, contacts and good reputation in the metals industry, Philip gave Waxman the responsibility of running the operations it had acquired from Resources as well as other metals holdings of Philip. He became a Director of Phillip in January of 1994 and President of Philip's Metals Group in February of 1996. Waxman

performed an integral role for Philip in both the operations of the Metals Group and the strategic planning for the numerous acquisitions by Philip in the metals industry.

28. Waxman reported to A. Fracassi, although on a day-to-day basis, he also reported to P. Fracassi and John Woodcroft.

Waxman's Conduct

29. In or around June 1997, Tony Pingue ("Pingue"), the Executive Vice President, Corporate and Government Affairs for Philip, received information from a senior employee of the Metals Group that Waxman and one of his subordinates had established a "shrinkage programme" to improperly divert Philip inventory.
30. In or around July, 1997, Pingue became aware that weigh tickets of the Metals Group may have been falsified. The weigh tickets appeared to acknowledge receipt of a higher grade of metal than Philip had in fact received. Philip was required to pay for the higher grade.
31. In or around mid-September, 1997, Waxman admitted to Woodcroft that he had derived a personal benefit of \$2 million from certain transactions that he had instituted. This admission will be referred to as the "Waxman Admission".
32. In or around October, 1997, Pingue advised a number of Philip's directors and officers, including Soule, about the above allegations regarding Waxman and the Metals Group.
33. As a result of the Waxman Admission, in or around September/October, 1997, Philip took the following steps:
 - (a) On or around September 16, 1997, Waxman was relieved of his day-to-day duties and his signing authority for Philip;

- (b) On or around September 19, 1997, Fred Cranston, the VP, Financial Operations was re-positioned as head of the Metals Group, reporting to P. Fracassi and Woodcroft;
 - (c) In or around late September or early October, 1997, the employee who had been involved in the "shrinkage programme" was terminated from Philip's employment and was paid \$120,000 in return for his agreement not to compete with Philip for three years; and
 - (d) In October of 1997, Waxman signed a promissory note in favour of Philip in the amount of \$10 million dollars (the "Waxman Promissory Note") as an indication of his willingness to reimburse Philip for any amounts found owing by him to the Company upon completion of the review being conducted into his activities.
34. Notwithstanding that Waxman had been relieved of his day-to-day duties and signing authority, Waxman continued to be held out, by various directors and/or officers of Philip, as President of the Metals Group to the remaining members of Philip's Board of Directors, other members of senior management, the employees of Philip and the general public. In fact, Waxman continued to attend Board meetings and represented the Company in connection with certain acquisitions. As noted above, Waxman also executed the Issuer's Certificate in the Prospectus on behalf of the Board of Directors.
35. Moreover, on January 5, 1998, almost four months after Waxman had been relieved of his duties and operating authority, Philip issued a press release announcing that Waxman had "resigned". The press release stated, in part as follows:

Philips Services Corp. ("Philip") today announced that as part of the Company's consolidation and restructuring program, a senior management structure has been established within each of the four key divisions of its metal operations... As part of this consolidation, Philip has accepted the resignation of Robert Waxman as a Director & President of the Company's Metal Services Group, effective January 5, 1998. [Emphasis added.]

The Waxman Admission

36. As noted above, the Waxman Admission was made to Woodcroft in mid-September of 1997. The day the Waxman Admission was made, Woodcroft advised Soule and A. Fracassi about it. In mid-September of 1997, A. Fracassi, Soule and Woodcroft agreed that Waxman should be relieved of his day-to-day duties and his signing authority. By October 15, 1997, Soule was aware that Boughton also knew about the Waxman Admission and the subsequent investigation. A. Fracassi told Soule that he had also told P. Fracassi, Chodos, Turkstra, Beck and Pardo.
37. In or around late October, 1997, Soule, A. Fracassi, Woodcroft and Boughton were aware that Waxman had executed the Waxman Promissory Note.
38. The balance of the Board of Directors was advised of the Waxman Admission at a meeting of the Board of Directors held on December 23, 1997. The minutes of this meeting state as follows:

Allen Fracassi advised the Board that in the late spring of 1997, the Company became concerned about certain copper transactions that Robert Waxman, the President of the Company's Metal Recovery Operations had entered into. The Company had commenced a review of the transactions and though questionable in nature, the Company had been unable to conclude that the transactions were anything other than bad business judgement or poor management. Subsequently, in mid-September of 1997, Mr. Waxman admitted to Mr. John Woodcraft, Executive Vice-President, Operations, that he had derived a personal benefit of US \$2 million from certain transactions that he had instituted. Mr. Woodcraft reported Mr. Waxman's admission to Mr. Fracassi. Mr. Waxman was immediately relieved of his duties and any operating authority that he had. The Company intensified its review of Mr. Waxman's actions. Pending the completion of the review, Mr. Waxman as an indication of his willingness to reimburse the Company, executed a US \$10 million promissory note, Mr. Fracassi apprised Mr. Howard Beck, Mr. Felix Pardo and Mr. Herman Turkstra of the Waxman admission.

Mr. Fracassi advised that the Company's subsequent review of the Waxman transactions indicated that invoices for approximately US

\$5 million had not been rendered. H[e] noted that Mr. Waxman had caused US \$1.5 million of the un-invoiced transactions to be repaid and was prepared to guaranty an additional US \$2.5 million of receivables due from Parametals.

... The Board concluded that the Company should request Mr. Waxman's immediate resignation from his position as an officer and director. [Emphasis added.]

39. The Prospectus dated November 12, 1997 did not disclose the Waxman Admission, the fact that Waxman had been relieved of his day-to-day duties and his signing authority and the fact that Waxman had executed the Waxman Promissory Note (collectively the “Waxman Facts”). Soule and other directors and/or officers or Philip, failed, and caused Philip to fail to disclose the Waxman Facts, in the Prospectus.

Philip Re-States its Financial Results

40. In early 1998, Philip made a series of public announcements that negatively altered Philip's financial situation, as disclosed in the Prospectus filed with the Commission in November of 1997. Those public announcements included the following:
- (i) That there was a discrepancy in the copper inventory in the audited financial statements for the year ended December 31, 1997 in the amount of US \$92 million (pre-tax) resulting from trading losses and a further amount of approximately US \$32.9 million (pre-tax) caused by incorrect recording of copper transactions, which losses were incurred over a three year period as a result of speculative transactions done outside of Philip's normal business practices.
 - (ii) Its 1997 year end audited financial results included a US \$199 million (pre-tax), one-time special and non-recurring charge related to the write-down of certain assets;
 - (iii) It reported a net loss of US \$126.3 million for its 1997 year end;

- (iv) It restated its earnings for fiscal year 1995 to US \$3.2 million (rather than the approximately CDN \$32.7 million it originally disclosed); and,
 - (v) It restated its earnings for fiscal year 1996 to US \$20 million dollar loss (rather than CDN \$39 million earnings as originally disclosed).
41. Following these disclosures, the price of Philip's shares dropped dramatically, and Philip was ultimately put into bankruptcy.

Conduct Contrary to the Public Interest

42. At the time, based in part on discussions he had with Allen Fracassi, Soule held the belief that the Waxman Facts, taken as a whole, were not facts which were required to be disclosed in the Prospectus. Soule admits, for the purpose of this proceeding, that his belief was unreasonable in the circumstances, and that the Waxman Facts should have been disclosed in the Prospectus. Soule acted in a manner contrary to the public interest in relation to the disclosure of the Waxman Facts.

Mitigating Facts

43. Soule has cooperated fully with Staff's investigation of the matters that form the subject-matter of the Notice of Hearing.
44. Soule believed that A. Fracassi, Beck, Pardo, P. Fracassi and Turkstra, all directors of Philip had fully considered the Waxman Facts and concluded that, in the circumstances, they were not facts that were required to be disclosed in the Prospectus.
45. Soule remained employed with Philip after the matters that form the subject-matter of the Notice of Hearing came to light and continued in his role as General Counsel and Corporate Secretary until August 31, 2000 and Executive Vice-President until October 31, 2000, during which time Soule:

- (a) fully cooperated with and assisted in investigations conducted by an independent committee of the Board, by Philip's lenders and by all regulatory agencies;
- (b) worked diligently to effect a restructuring of Philip pursuant to the *Companies' Creditors Arrangement Act* and Chapter 11 of the U.S. Bankruptcy Code in order to maximize recovery value for all stakeholders of Philip; and
- (c) after leaving Philip's employ in October, 2000, Soule was engaged as a consultant to provide legal services to Philip for a period of two years.

Soule's continued involvement in Philip's business and legal affairs was all with the full support of the restructured Board and the stakeholders of Philip.

IV. TERMS OF SETTLEMENT

46. Soule agrees to the following terms of settlement:

1. The Commission will make an Order:

- (a) approving the settlement agreement;
- (b) pursuant to clause 8 of subsection 127(1) of the Act, Soule will be prohibited from becoming or acting as a director or officer of any reporting issuer for a period of 3 years commencing on the date that this Settlement Agreement is approved;
- (c) pursuant to clause 6 of subsection 127(1) of the Act, Soule will be reprimanded;
- (d) pursuant to clause 127.1 of the Act, Soule will pay costs to the Commission in the amount of \$50,000; and
- (e) Soule undertakes to continue to co-operate with Staff in these proceedings, including testifying as a witness for Staff in the hearing before the Commission.

V. STAFF COMMITMENT

47. If this settlement is approved by the Commission, Staff will not initiate any complaint to the Commission or request the Commission to hold a hearing or issue any other order in respect of any conduct or alleged conduct of Soule in relation to any of the facts set out in Part III of this agreement or in relation to the allegations set out in the notice of hearing and/or the statement of allegations.

VI. FAILURE TO HONOUR UNDERTAKING

48. If this settlement agreement is approved by the Commission and at any subsequent time Soule fails to honour the undertaking contained in subparagraph (e) above, Staff reserve the right to bring proceedings under Ontario securities law against Soule based on the facts set out in Part III of the Settlement Agreement, as well as for breach of that undertaking.
49. If this settlement is approved by the Commission, Staff will not initiate any other proceeding against Soule in relation to the facts set out in Part III of this agreement or in relation to any of the allegations set out in the notice of hearing and/or the statement of allegations.

VII. PROCEDURE FOR APPROVAL OF SETTLEMENT

50. Approval of the settlement set out in this agreement shall be sought at the public hearing of the Commission in accordance with the procedures described in this agreement.
51. Staff and Soule may refer to any part, or all, of this Agreement at the settlement hearing. Staff and Soule agree that this Settlement Agreement will constitute the entirety of the evidence to be submitted at the Settlement hearing.
52. If this Settlement Agreement is approved by the Commission, Soule agrees to waive his rights to a full hearing, or judicial review appeal of the matter under the Act.

53. Staff and Soule agree that if this settlement is approved by the Commission, neither Staff nor Soule will make any public statement inconsistent with this agreement.
54. If, at the conclusion of the settlement hearing, and for any reason whatsoever, this settlement is not approved by the Commission, or an order in the form attached as Schedule "A" is not made by the Commission:
- (a) this Settlement Agreement and its terms, including all discussions and negotiations between Staff and Soule leading up to the settlement hearing shall be without prejudice to Staff and Soule;
 - (b) each of Staff and Soule will be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing of the allegations in the Notice of Hearing and Statement of Allegations, unaffected by this agreement or the settlement negotiations;
 - (c) the terms of settlement contained in this agreement will not be referred to in any subsequent proceeding, or disclosed to any person, except with the written consent of both Staff and Soule or as may be required by law; and
 - (d) Soule agrees that he will not, in any proceeding, refer to or rely upon this agreement or this negotiation or process of approval of this agreement as the basis for any attack on the Commission's jurisdiction, alleged bias, appearance of bias, alleged unfairness or any other remedies or challenges that may otherwise be available.

VIII. DISCLOSURE OF AGREEMENT

55. Except as permitted above, the existence of this agreement, the settlement provided for herein and its terms, will be treated as confidential and will not be disclosed by any party to the agreement until approved by the Commission, and forever if, for any reason

whatsoever, this settlement is not approved by the Commission, except with the written consent of all parties or as may be required by law.

56. Any obligations of confidentiality shall terminate upon approval of this settlement by the Commission.

IX. EXECUTION OF AGREEMENT

57. This agreement may be signed in one or more counterparts which together shall constitute a binding agreement.

58. A facsimile copy of any signature shall be as effective as an original signature.

Dated this 25th day of November, 2005.

“Colin Soule”

Colin Soule

**STAFF OF THE ONTARIO SECURITIES
COMMISSION**

Per:

“Michael Watson”

Michael Watson
Director of Enforcement