SCHEDULE "1"

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, ROBERT WAXMAN
AND JOHN WOODCROFT

SETTLEMENT AGREEMENT
RE: ALLEN FRACASSI, PHILIP FRACASSI,
MARVIN BOUGHTON, GRAHAM HOEY,
JOHN WOODCROFT

I. INTRODUCTION

1. By Notice of Hearing dated August 30, 2000 and Amended Notice of Hearing dated December 12, 2005 (the "Amended 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 Allen Fracassi, Philip Fracassi, Marvin Boughton, Graham Hoey and John Woodcroft (the “Respondents”) by the Amended Notice of Hearing in accordance with the terms and conditions set out below. The Respondents consent to the making of an order against them 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 the Respondents 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 the Respondents agree that this Settlement Agreement is without prejudice to the Respondents in any past, present or future civil proceeding which may be brought by any person. Nothing in this Settlement Agreement is intended to be an admission of civil liability by the Respondents to any person or company; such liability is expressly denied.

The Respondents

4. Allen Fracassi ("A. Fracassi") was the President, Chief Executive Officer (“CEO”) and a Director of Philip Services Corp. (“Philip” or the “Company”).

5. Philip Fracassi ("P. Fracassi") was the Executive Vice-President, Chief Operating Officer ("COO") and a Director of Philip.

6. Marvin Boughton ("Boughton") was the Executive Vice-President and Chief Financial Officer ("CFO") of Philip. Boughton is a chartered accountant. Prior to joining Philip in or around 1991, Boughton was a partner in the Hamilton, Ontario office of the accounting firm of Deloitte & Touche LLP ("Deloitte") and had been employed by Deloitte for approximately 32 years.

7. Graham Hoey ("Hoey") was Senior Vice-President, Finance of Philip. Hoey is a chartered accountant. Prior to joining Philip in 1996, he was a partner with Deloitte.

8. John Woodcroft ("Woodcroft") was the Executive Vice-President, Operations of Philip. Woodcroft is a chartered accountant.

The Other Parties

9. Robert Waxman ("Waxman") became a Director of Philip in January, 1994 and became the President of the Company's Metals Recovery Group (the "Metals Group") in February, 1996. His resignation as a Director of Philip and as President of the Metals Group was publicly announced in a press release dated January 5, 1998.

10. Colin Soule ("Soule") was the General Counsel, Executive Vice-President and Corporate Secretary of Philip. The Commission has approved a settlement agreement between Staff and Soule.

Background

11. Philip was 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 ((then) the "TSE"), the Montreal Exchange and the New York Stock Exchange under the symbol PHV. Philip was a corporation

amalgamated under the laws of the province of Ontario, with its head office in the City of Hamilton.

12. Philip provided metal recovery and processing services to major industry sectors throughout North America. According to Philip's Annual Report (the "Form 10-K"), Philip "was one of North America's leading suppliers of metals recovery and industrial services". Philip’s year end was December 31st. For the year ended December 31, 1997, Philip reported revenues of US $1.75 billion, of which US $1.1 billion was attributed to the Metals Group.

13. On or around September 29, 1995, A. Fracassi, as President and CEO, advised Philip’s Board of Directors that the Company expected consolidated revenue to reach Cdn $1.5 billion by the end of 1997 as a result of internal growth and acquisitions. (All amounts referred to below are in U.S. dollars, unless otherwise indicated.)

14. In 1997, Philip's business was organized into two operating divisions - the Metals Group and the Industrial Services Group ("ISG"). Both of these divisions reported to Philip's head office (“Corporate”).

15. The Metals Group was Philip's largest operating division, accounting for more than 60% of the Company's revenue in 1996 and 1997.

16. Deloitte was Philip's external auditor from 1990 until December, 1999 and provided Philip with a wide range of professional services.

The November 1997 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 $364 million and closed on or about November 12, 1997. The price per each offered common share was $16.50.

18. In connection with the November Offering, on October 24, 1997, Philip filed an amended preliminary prospectus with the Commission. Philip subsequently filed a final Prospectus (the "Prospectus") with the Commission and obtained a final receipt on November 6, 1997. As required pursuant to section 58 of the Act, the Prospectus contained an Issuer's Certificate signed by A. Fracassi, the CEO, Boughton, the CFO, and two directors, Waxman and Herman Turkstra, on behalf of Philip's Board of Directors. A registration statement (the "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 years ended December 31, 1996 and December 31, 1995, for which Deloitte had issued unqualified audit opinions. Deloitte consented to the inclusion of these audit opinions in the Prospectus. 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.

Public Disclosures and Regulatory Filings

20. In a press release dated September 29, 1997, Philip announced that it had filed a Registration Statement in the United States and a preliminary prospectus in Canada with respect to an offering of 20 million of its common shares.

21. In a press release dated November 5, 1997, Philip reported record net earnings of $25.4 million for the three month period ended September 30, 1997, a 105% increase over the $12.4 million from continuing operations for the same period in 1996. It also reported that its revenues for the three month period ended September 30, 1997 increased 246% to $502.2 million from $145.2 million for the same quarter in 1996. The financial information released on November 5, 1997 was incorporated into the Prospectus.

22. In a press release dated November 18, 1997, Philip reported that total net proceeds from the November Offering amounted to approximately $364 million.

23. In a press release dated January 5, 1998, Philip announced the resignation of Waxman as a Director and President of the Company's Metals Group.

24. Philip issued a press release dated January 26, 1998, announcing that:

> ... the Company will record a one time year end charge to earnings of between US $250 million and US $275 million, which on an after-tax basis, is between US $175 million to US $200 million. This one time charge will be comprised of two items. One item will be in the form of a restructuring charge, which on an after-tax basis will amount to between US $100 million and US $120 million. This restructuring charge includes a write-down of goodwill, which makes up 60% to 70% of this charge, severance payments, relocation costs and a variety of other items. The second component being US $75 million to US $80 million after-tax relates primarily to physical inventory adjustments and also to trading losses and charges relating to a market revaluation of inventory held for resale by our Metals Recovery Group.

25. In a press release dated January 27, 1998, Philip clarified its January 26, 1998 announcement, stating that the goodwill write-down related to a number of acquisitions the Company concluded over the period from 1993 to 1996. The amount of goodwill included would be 60% to 70% of the restructuring charge. It also stated that the second component related primarily to a book to physical inventory adjustment of approximately $60 million after-tax in the Metals Group copper yard business.

26. On Friday, January 23, 1998, the closing price for Philip's shares on the TSE was $18.90. On January 27, 1998, following the announcements of January 26 and 27, Philip's common shares on the TSE closed at $12.00.

27. In a press release dated March 5, 1998, Philip announced its financial results for the year ending December 31, 1997 and the results of an audit conducted by external auditors into the copper inventory discrepancy. In this press release Philip made a number of disclosures, including that:

(i) its 1997 year-end audited financial results included a $185.4 million (pre-tax), one-time special and non-recurring charge related to the write-down of certain assets;

(ii) it reported a loss of $95.8 million for its 1997 year-end;

(iii) it was restating its earnings for fiscal year 1995 to $3.2 million (rather than approximately Cdn $32.7 million as originally reported) and for fiscal year 1996 to a $20 million loss (rather than a profit of approximately Cdn $39 million as originally reported); and

(iv) there was a discrepancy in the copper inventory in the audited financial statements for the year ended December 31, 1997 in the amount of approximately $92 million (pre-tax) resulting from trading losses and a further amount of approximately $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.

28. On or about March 31, 1998, Philip, pursuant to the United States *Securities Exchange Act* of 1934, filed the Form 10-K for its 1997 fiscal year with the SEC. The Form 10-K included an unqualified audit opinion signed by Deloitte on March 4, 1998.

29. In a press release dated April 1, 1998, Philip announced that on March 31, 1998, the Company had filed its Form 10-K for its 1997 fiscal year end and reported that "as part of its final audit review" it had determined that an additional charge of $13.6 million had to be added to the special and non-recurring charges of $185.4 million (pre-tax), disclosed in its news release of March 5, 1998. These additional charges included $10 million in unrealized losses from copper swap contracts and $3.6 million in "other" costs relating to copper operations.

30. In a press release dated April 23, 1998, Philip announced that its 1997 audited financial statements previously filed with its Annual Report on Form 10-K with the SEC "did not properly reflect the results of transactions in the Company's copper operation and as a

result underestimated the Company's liabilities by an amount estimated to be approximately $30 million". It also announced an adjustment to "certain balance sheet accounts" of approximately $5 million.

31. On or about May 5, 1998, Philip filed a Material Change Report with the Commission, pursuant to section 75(2) of the Act, with respect to its announcement in the above press release of April 23, 1998.

32. On or about May 14, 1998, Philip filed an amended Form 10-K (the "Form 10-K/A") with the SEC which reflected the further adjustments to its 1997 audited financial statements as announced in its press release dated April 23, 1998.

33. On or about May 22, 1998, Philip filed its annual audited financial statements for its fiscal year ended December 31, 1997 with the Commission.

The Metals Group

34. 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 Chief Executive Officer of Resources.

35. In light of his substantial experience and contacts in the metals industry, Philip gave Waxman the responsibility of running the operations it had acquired from the Waxman family interests, as well as other metals holdings of Philip. 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.

36. In January, 1994, Waxman became a Director of Philip. On February 28, 1996, Waxman was appointed President of the Metals Group. Waxman reported to A. Fracassi and, on a day-to-day basis, also reported to P. Fracassi and Woodcroft.

37. In early 1997, Peter McQuillan, the Vice President of Finance in the Metals Group, commenced a review of various copper cathode transactions entered into by the Metals Group. McQuillan had previously been moved from Philip’s corporate head office to the position of Vice President of Finance in the Metals Group.

38. In the summer of 1997, Fred Cranston, the Vice-President, Financial Operations, was preparing a report for A. Fracassi regarding potentially inappropriate copper cathode transactions being effected in the Metals Group.

39. Subsequently, on October 28, 1997, Waxman executed a $10 million promissory note (“Waxman Promissory Note”) in favour of Philip for certain indebtedness he had to the Company.

The Special Charges

A. Overview

40. As noted above at paragraphs 24 and 25, on January 26 and 27, 1998, 11 weeks after the Prospectus was filed with the Commission, Philip issued two press releases announcing that the Company would be taking a restructuring charge. In the January 26, 1998 press release, Philip disclosed that it would be taking a restructuring charge and a charge relating to material financial transactions (the "Special Charges"). On January 27, 1998, Philip issued another news release further explaining these charges.

41. The inappropriate accounting treatment of the many material financial transactions, as subsequently corrected in 1998 as part of the Special Charges, caused the financial statements contained in the Prospectus to be incorrect.

42. In the late summer of 1997, Philip commenced a process to identify and calculate potential items to be included in a restructuring charge. The restructuring charge calculated during the course of this process was similar to the amounts ultimately announced on January 26 and 27, 1998, as set out above.

43. Many of these restructuring costs were identified prior to September 30, 1997, although the Board of Directors had not yet approved the potential restructuring actions on which some of the estimates were based. In particular, the following items were identified as of September 30, 1997, as of January 26, 1998 (the date of a press release by Philip regarding the charge), and actually recorded for the December 31, 1997 year-end and prior years:

$US '000		**Philip's Estimate at September 30, 1997**	**Press Release January 26, 1998**	**Adjustment Actually Recorded for December 31, 1997 and prior years**
Industrial Services Group				
Quebec		$ 20,000	$ 10,400	$ 17,532
Tech Services		26,000	23,700	21,868
Burlington Environmental		40,000	31,500	29,000
Kansas City		11,000	11,400	9,897
Other		31,400	27,400	23,001
TOTAL		$ 128,400	$ 104,400	$ 101,298
Metals Group				
Centennial Plant Closure	(Cdn $168,900)	122,214	45,600	3,775
Other	(Cdn $ 23,770)	17,200		50,647
	(Cdn $192,670)	139,414	45,600	$54,422
Special Charge – Restructuring		$267,814	$ 150,000	$155,720
Special Charge - Inventory and related accounts			125,000	234,992
	Total Special Charges (pre-tax)	$ 267,814	$ 275,000	$ 390,712

44. In the final financial statements for the year ended December 31, 1997, as audited by Deloitte, Philip recorded various Special Charges relating primarily to its copper business, including a restructuring charge of $155.720 million and Special Charges relating to material financial transactions of $234.992 million.

45. The Special Charges relating to material financial transactions impacted on previously reported earnings by Philip in the years ended December 31, 1995 and 1996 and the three quarters ended March 31, June 30 and September 30, 1997 respectively.

B. The Restructuring Charge

Background Facts

46. In the 10-K filed with the SEC on April 1, 1998, Philip explained the restructuring charge.

> As at December 31, 1997, the Company recorded a pre-tax charge of $155.7 million ($117.1 million after tax) reflecting the effects of (i) restructuring decision made in its Industrial Services Group following the mergers of All Waste and Serv-Tech, (ii) integration decisions in various of its acquired Metals Services Group businesses, the most significant of which were acquired in late October 1997 and (iii) impairments of fixed assets and related goodwill resulting both from decisions to exit various business locations and dispose of the related assets, as well as assessments of the recoverability of fixed assets and related goodwill of business units in continuing use.
>
> All businesses assessed for asset impairment were acquired in purchase business combinations and, accordingly, the goodwill that arose in those transactions was included in the tests for recoverability. Assets to be disposed of were valued at the estimated net realizable value while the value of the assets of the business units to be continued were assessed at fair value principally using discounted cash flow methods.
>
> Special and non-recurring charges relate to the impairment of fixed assets and related goodwill and are comprised of the following items:

	($US '000)
Business units, locations or activities to be exited:	
Goodwill written off	$ 10,032
Fixed assets written down to estimated net realizable value of $4,843K	47,584
Unavoidable future lease and other costs associated with properties	9,358
Other assets to be disposed, including $7,800K accrued disposal costs	17,740
Business units to be continued:	
Goodwill impairment	49,558
Fixed assets written down to estimated net realizable value of $8,810K	10,984
Severance, $2,000K paid before year-end	4,464
Accrued costs	6,000
TOTAL	$ 155,720

47. Prior to filing the Prospectus, Philip had identified as potential restructuring charges and estimated the value of most of these items that were ultimately written off. However, there was no specific disclosure in the Prospectus that Philip intended to take a restructuring charge. In addition, the minimal disclosure provided was not representative of what had been identified as potential restructuring items at the time the Prospectus was filed.

48. The only specific disclosures in the Prospectus that could be read as indicating that Philip was considering taking a restructuring charge stated as follows:

The "Risk Factors" section of the Prospectus contains the following:

> "… in particular, reserves established or charges recorded in connection with the acquisitions or the integration thereof may be insufficient and the Company may be required to establish additional reserves or record additional charges at a later date."

Note 8 to the Unaudited Pro Forma Consolidated Financial Statements states as follows:

> "Philip expects that it will incur non-recurring costs relating to severance, relocation and other integration costs. These costs are not quantifiable at this time."

49. Deloitte’s management letters, prepared at the conclusion of the 1994 and 1995 engagements, indicate that the accounting for acquisitions, the capitalization of costs (especially start-up costs and losses) and the recognition of accounting for goodwill were serious concerns for its auditor on an annual basis.

<u>The Quantification of the Restructuring Charge during 1997</u>

50. In January and/or February of 1997, during the course of finalizing the 1996 engagement, Ron McNeill, the head Client Services Partner for Deloitte, advised A. Fracassi to consider a restructuring charge as synergies would be realized from the previous pattern of acquisitions, and the United States marketplace was not reacting adversely to restructuring charges at the time.

51. On February 24, 1997, a meeting was held to discuss finalizing the 1996 audit engagement. In attendance were A. Fracassi, Boughton, Peter Chant, the National Office Partner for Deloitte, and McNeill of Deloitte. Boughton’s notes of the meeting record a discussion of a restructuring charge as follows:

- "2 divisions" structure going forward[:] services - metals, and
- [o]ut of this 're-org' - the Company is contemplating a restructuring charge in Q2/3 [of] 97.

52. Deloitte continued to provide advice to Philip on the issue of a restructuring charge and discussed the charge with Philip.

53. During the late spring or summer of 1997, various staff of Philip were made aware that a restructuring charge was contemplated. At the same time, in the early summer of 1997, the underwriters began meeting with Philip to discuss equity financing.

54. On August 1, 1997, Philip received a fax from Merrill Lynch containing an analysis of the impact of extraordinary charges on the stock price of other publicly listed companies. Attached to the fax were graphs illustrating the impact of extraordinary charges on the price of three separate public companies.

55. Shortly after August 5, 1997, Deloitte became aware that a prospectus was going to be issued in the United States and that Deloitte would be required to provide an opinion on the Philip financial results for January to June, 1997 (the "Q2 Review"). The Q2 Review was conducted by Deloitte in September, 1997. The main participants from Philip at Corporate in the Q2 Review were Boughton, Hoey, Connie Caisse (the Corporate Controller), and James Bellaire (Manager, Financial Reporting).

56. Prior to August 25, 1997, Caisse met with Boughton and McQuillan to identify and quantify items that might be included in a restructuring charge. At the meeting, Boughton assigned Caisse the responsibility of identifying items in Corporate and ISG that could be included in the restructuring charge. Boughton asked McQuillan to provide suggestions of components that might form part of a possible restructuring charge in the Metals Group.

57. On August 25, 1997, McQuillan submitted a memo addressed to Waxman, and copied to Boughton and Caisse. In the memo entitled "Write-off", McQuillan summarized what had been discussed at the meeting. The memo included a list of "items to consider" for a restructuring charge/write-off. McQuillan included the following on the list: the "closure of Centennial yard" and the "cost of exiting the solids copper business in Hamilton. Take hit on inventory".

58. Shortly after August 25, 1997, McQuillan gave Anita Buttenham (a Philip Financial Analyst) this memo and asked her to estimate a restructuring charge based on the items in it.

59. In early September, 1997, Buttenham prepared schedules quantifying the items that could be included in the restructuring charge. Buttenham prepared several iterations of a list compiling items that the Metals Group were suggesting could be included in a restructuring charge or write down. In spreadsheets dated September 2, 1997, Buttenham quantified the estimated "Metals Recovery Restructure Costs" as at July 31, 1997. The spreadsheets included the amount of Cdn $127 million under the heading of "cathode". The items that Buttenham included in this category were primarily losses that had been

inappropriately deferred on the books of the Metals Group and improperly recorded as an asset. These items would ultimately form part of the Special Charges disclosed by Philip in 1998. Buttenham submitted the analysis, totaling Cdn $158 million, to McQuillan.

60. On September 4, 1997, McQuillan prepared a second memo entitled “Restructuring” that was addressed to Boughton and copied to Waxman. The memo commences with the sentence “…these are a number of items we would consider as part of a restructuring charge.” The schedule attached to the memo, totaling Cdn $193 million, referred to several items that were later included in the restructuring and Special Charges subsequently recorded in the 1997 annual financial statements.

61. In September of 1997, Philip management was considering exiting the cathode trading and copper brokerage business located at Centennial. Since early 1997, Philip had been exploring whether they could replace the Centennial yard with another location. When Cranston was re-positioned as Vice-President of the Metals Group on September 16, 1997, he was instructed to close out all cathode trades and not enter into any new ones. Cranston, as the new Vice-President of the Metals Group, reported to Woodcroft and Philip Fracassi.

62. During the first week of September, 1997, Buttenham received McQuillan's second memo dated September 4, 1997. At that time, Buttenham prepared another list of items in the Metals Group that could be included in the restructuring charge.

63. On or about September 9, 1997, McQuillan and Buttenham met briefly with Hoey and Caisse. At the meeting, McQuillan distributed copies of one of Buttenham’s lists of restructuring charge items totalling Cdn $194 million, which was based on estimates as at July 31, 1997.

64. On September 5, 1997, a spreadsheet totaling $137 million in respect of potential restructuring items for ISG was prepared by Caisse and given to Boughton. Caisse continued to refine the list and faxed a slightly revised version to Bob Chiste (President,

ISG Group) on September 30, 1997 which totaled $128 million in ISG restructuring items.

<u>The Prospectus & Philip's Effort to Quantify the Restructuring Charge</u>

65. On September 24, 1997, a due diligence conference call session was held concerning the preliminary prospectus. Philip management was represented by Boughton, Hoey and Caisse. The participants (the representatives of the underwriters) were told that Philip was going to take charges to write-off goodwill. They were also advised that while the amount was not quantifiable, it would be sizeable. No further discussion of the approximate magnitude took place.

66. On September 25, 1997, the Board of Directors of Philip discussed and approved the share offering, thereby committing Philip to the transaction.

67. On September 26, 1997, the preliminary prospectus was filed with the Commission.

68. By September 30, 1997, Philip had identified a series of items for a potential restructuring charge totalling approximately Cdn $194 million for the Metals Group and $128 million for ISG.

69. In October, 1997, Buttenham, on the instructions of McQuillan, made certain recalculations to the restructuring schedules to reflect the revised estimates as at September 30, 1997 and gave this analysis to McQuillan.

70. In mid-October 1997, A. Fracassi again discussed with Deloitte that Philip was considering a charge, but there was no indication of the magnitude or possible causes of the charge.

71. On November 5, 1997, Philip held another due diligence session by conference call concerning the Prospectus. During the conference call, Philip advised that it was considering a restructuring charge but was not close to a decision. Boughton's notes of the conference call indicate that he informed the participants on the call that there "may

be write-downs - looking at it - W/B of size". Deloitte participated in this call when Boughton made the statement that the potential write-downs would be “of size”.

72. Alan Kesler, the U.S. Audit Partner for Deloitte, also had several discussions with Soule and Hoey regarding the restructuring charge. Soule and Hoey confirmed that the decision of whether to take a restructuring charge had not been made and that the asset impairments had not yet occurred.

73. The schedules prepared by Buttenham and McQuillan were not disclosed to Deloitte prior to 1998.

74. As noted above, the final restructuring charge taken by the two operating divisions, ISG and the Metals Group, amounted to $101.298 million and $54.422 million respectively for a total of $155.720 million.

<u>November to December 1997 – Post Prospectus</u>

75. McQuillan prepared a spreadsheet dated November 28, 1997 which calculated the restructuring charge for the Metals Group at approximately Cdn $201.599 million.

76. Caisse relied on this spreadsheet in preparing a list which consolidated the spreadsheet of the Metals Group with the ISG list. It contained the amount of $146.087 million (Cdn $201.599 million) for the Metals Group and the amount of approximately $128 million for ISG. The adjustments totalling $128 million were also noted in the list that Caisse faxed to the ISG President (Rob Chiste) on September 30, 1997. Caisse gave the spreadsheet to Boughton and Hoey on November 27, 1997 and subsequently met with them to discuss it.

77. On December 2, 1997, Boughton and Hoey attended a meeting to discuss a list entitled "Restructuring Charge", listing charges totaling approximately $267 million. An amount of $121 million is included in the list and is described as “Centennial Redundant Assets”.

This item was discussed at the meeting. The handwritten notes on two separate copies of the list reflect the amount being changed to $100 million.

78. In late December, 1997, Boughton informed McNeill of Deloitte of "ball-park" numbers of the restructuring charge ($200 million).

79. On December 22, 1997, McNeill and Kesler of Deloitte attended a meeting with Boughton and Hoey in Boughton's office. Boughton outlined the proposed restructuring charge in general terms, but did not provide supporting detail. Boughton indicated that a charge would be taken of approximately $100 million for ISG and $100 million for Metals.

80. On December 23, 1997 Caisse distributed a memo and schedule at a meeting attended by P. Fracassi, Boughton, Woodcroft, Cranston (the Vice-President of the Metals Group) and Hoey. This meeting was convened to discuss the restructuring charge. According to the spreadsheet, Centennial is noted as having redundant assets of $150 million with the action required being to “close yard and liquidate inventory”.

<u>January 1998</u>

81. As described above, a significant component of the restructuring charge initially related to inventory at the Centennial yard. McQuillan’s estimate as at September 4, 1997 of Cdn $193 million included an amount of Cdn $167 million for the write down of inventory at Centennial. Consequently items related to the incorrect accounting of inventory at Centennial comprised most of the Special Charges which were subsequently recorded in the 1997 financial statements. Originally, all these accounting irregularities formed part of the proposed restructuring charge.

82. By March 1998, the Centennial accounting items had been reclassified from being part of the restructuring charge to being part of the Special Charges because the items related to accounting irregularities and were not properly related to any restructuring. Most of the items included as a Special Charge, other than the Centennial items, were much smaller,

and had come from assorted plans to consolidate yards and operations, and to move out of certain businesses.

<u>Philip Discloses the Restructuring Charge</u>

83. As described above, on January 26, 1998, Philip issued a news release announcing that Philip planned to take a "one-time year-end charge to earnings" of approximately $250 million to $275 million. One component of the charge related to a copper inventory adjustment of approximately $60 million, after tax.

84. Messrs. A. Fracassi, P. Fracassi, Boughton, Hoey and Woodcroft acted contrary to the public interest by failing to ensure that Philip filed financial statements in the Prospectus that contained full, true and plain disclosure of a restructuring charge in the amount of $155.720 million.

C. The Special Charges in Respect of Material Financial Transactions

85. In the financial statements for the year ended December 31, 1997, as audited by Deloitte, Philip explained the Special Charges in respect of certain material financial transactions, which related primarily to its copper business. In addition to the restructuring charge, the major components of the Special Charges regarding the Inventory and Related Accounts (the "material financial transactions"), as disclosed by Philip in the Form 10-K and the Form 10-K/A, are as follows:

	($US'000)
Non-recurring charges recorded as operating expenses **(including CIBC $10 million and CCG $30 million)**	$ 78,260
Costing errors recorded as operating expenses	32,875
Previously incurred but unrecorded trading losses resulting from speculative trading of copper cathode, recorded as special charges **(including Holding Certificates $31 million, Pechiney $29 million and other "Cathode Trading Losses" (including Waxman Promissory Note) $32.13 million)**	92,235
Overstatement of revenue and accounts receivable, recorded as adjustments to revenue, of which $22.114 million is separately identified.	31,622
TOTAL	$ 234,992

86. The Special Charges caused Philip to restate its comparative financials for the fiscal years ending December 31, 1996 and December 31, 1995, as they were inaccurate. The inaccurate financial statements for the fiscal years ending December 31, 1996 and December 31, 1995 were contained in the Prospectus.

<u>Discovery of an Inventory Shortfall</u>

87. The Special Charges were brought to Deloitte's attention in January 1998 as a result of the significant "shortfall" in the inventory of the Metals Group.

88. On behalf of certain of Philip's creditors, with the agreement and support of Philip's Board of Directors, Deloitte and another accounting firm (KPMG) conducted an investigation into the inventory discrepancy in the Metals Group.

89. KPMG and Deloitte quantified the accounting irregularities which accounted for the inventory shortfall as well as other accounting irregularities which did not impact on the inventory shortfall.

90. The accounting irregularities amounted to approximately $110 million of the total $234.992 million of Special Charges relating to material financial transactions, and are discussed as follows:

- Holding Certificates
- Reversal of Invoices from Pechiney World Trade (USA), Inc. ("Pechiney")
- Commodity Capital Group Metals Inc. ("CCG")
- Canadian Imperial Bank of Commerce ("CIBC")
- Waxman Promissory Note

91. None of the items discussed below were properly disclosed in the financial statements that were contained in the Prospectus.

<u>1. Holding Certificates</u>

92. At various times, Philip financed its operations with the use of holding certificates signifying that the inventory being held by Philip was the property of the customer. The Special Charges included an amount in respect of certain holding certificates issued in 1996 representing a total invoice value of approximately $31 million which were issued to the following customers: $8.8 million to Conversion Resources Inc. (“Conversion”); $7.2 million to Pechiney; $3.5 million to Pechiney; $1.2 million to MIT; $3.4 million to Parametal; $1.9 million to Kataman Metals Inc. ("Kataman") and $4.7 million to Southwire.

93. The majority of the holding certificates were signed by Waxman and Rik Barrese, Metals Manager, who reported to Waxman. Other documents were signed by employees who reported to Waxman and Boughton.

94. The use of holding certificates involved the “sale and repurchase” of metal inventory without a corresponding physical movement of the inventory and would immediately generate cash for Philip.

95. Kataman is an example of these holding certificate transactions. The transaction was recorded as a sale despite the fact that at least Waxman and Barrese were aware that Philip was obligated to pay back the cash by repurchasing the copper cathode or scrap at an inflated price in the future. The liability to repurchase the inventory was never recorded. Accordingly, the transaction should have been recorded as a financing arrangement in the Company’s financial statements for the year ended December 31, 1996.

96. A. Fracassi, P. Fracassi, Boughton and Woodcroft acted contrary to the public interest by failing to ensure that Philip filed financial statements in the Prospectus that contained full, true and plain disclosure of approximately $31 million for holding certificates.

2. Reversal of Invoices – Pechiney

97. In early 1997, McQuillan made an adjustment to the 1996 results in the amount of approximately $29 million in order to increase profits. McQuillan achieved this by reversing seven invoices for the purchase of copper cathode from Pechiney. Consequently, the cost of sales and liabilities for 1996 were both understated in the amount of approximately $29 million.

98. Ultimately, in or around April of 1997, Philip re-recorded the previous reversal of the Pechiney invoices and paid the $29 million due to Pechiney. Consequently, the cost of sales for 1997 were overstated in the amount of approximately $29 million, which offset the 1996 understatement of the same amount. This also corrected the 1996 understatement of liabilities.

99. Although the under and overstatements of cost of sales for 1996 and 1997 were offsetting, the purchases and repayments involving Pechiney were not properly recorded in the Company's financial statements for the year ended December 31, 1996 and for the quarters ended March 31, 1997, June 30, 1997 and September 30, 1997, and therefore these financial statements were misleading and not accurate.

100. A. Fracassi, P. Fracassi, Boughton and Woodcroft acted contrary to the public interest by failing to ensure that Philip filed financial statements in the Prospectus that contained full, true and plain disclosure of approximately $29 million of unrecorded liabilities for invoices issued by its supplier, Pechiney, in 1996.

3. Commodity Capital Group Metals Inc. ("CCG")

101. In early 1997, Philip began negotiating a financing transaction with CCG, a corporation based in New York. In August and September of 1997, CCG provided approximately $31 million in financing to Philip. In addition to the amount advanced from CCG, Philip also paid to CCG interest payments totaling approximately $1.6 million.

i) The Agreements

102. On or about August 13, 1997, Philip finalized the financing arrangement with CCG. In summary, the arrangement consisted of the following:

(a) Philip agreed to sell "commodity lots" (scrap metal) to CCG at the market value of the commodity;

(b) Philip was obliged to repurchase the commodity lots from CCG at the same prices at which Philip sold the commodity lots to CCG, plus interest. Philip's obligation to repurchase the commodity lots was "absolute and unconditional". Philip also acknowledged that CCG's obligations to Philip were, at all times, subordinated to CCG's obligations to the banks that were financing the purchases by CCG; and,

(c) According to holding certificates issued by Philip, "Philip agrees to indemnify and hold harmless CCG, the agent, the banks... from and against all claims and liabilities... as a result of holding such commodity lot at the location referred to above."

103. The invoices, backdated to June 30, 1997, were issued by Philip to CCG for the sale of 27 million pounds of inventory. On the same date, June 30, 1997, Philip issued holding certificates for 27 million pounds of inventory held on behalf of CCG.

ii) The August 19, 1997 and September 16, 1997 Transactions

104. On August 19, 1997, (the "First Transaction"), Philip "sold" 27 million pounds of various inventory (commodity lots) to CCG for $26.550 million, although the invoice was dated June 30, 1997. In return, on August 22, 1997, CCG paid Philip $25.225 million, which represented 95% of the purchase price. The 5% balance (net of interest and handling fees) was retained by CCG as a hold-back and was to be paid to Philip at the date Philip "repurchased" the commodity lot from CCG.

105. According to a memo prepared by the treasurer, Mike Myskiw, he

> ...instructed the accounting personnel at corporate that entries for the receipt and disbursement of funds were to be booked to the Metals Recovery intercompany account as the Metals Recovery group would handle the accounting for the sale and repurchase of inventory on their records.

106. On August 19, 1997, CCG issued an invoice to Philip for the sale to Philip of the same quantity of inventory and for the same price, with a due date of November 19, 1997. This invoice, dated August 19, 1997, was "approved for payment" by Woodcroft and Waxman. As a result, as at August 19, 1997, Philip was obligated to repurchase the inventory from CCG on November 19, 1997.

107. The accounting treatment of the First Transaction resulted in Philip's revenue being overstated by $25.225 million for the year ending December 31, 1997, and there was a corresponding understatement of its liabilities.

108. On September 16, 1997, (the "Second Transaction") Philip "sold" 5.4 million pounds of various inventory (commodity lots) to CCG for approximately $4.752 million. In return, Philip received approximately $4.5 million which represented 95% of the purchase price. The balance was retained by CCG as a hold-back.

109. On the same day, CCG invoiced Philip for the sale to Philip of the same quantity of inventory and for the same price, due on December 17, 1997. As a result, as at September 16, 1997, Philip was obligated to repurchase the inventory on December 17, 1997. The Second Transaction was accounted for the same way as the First Transaction.

110. In November, 1997, Deloitte was unaware of these transactions with CCG.

111. On November 19, 1997, Philip and CCG "rolled" the First Transaction; that is, Philip received an extension of the repayment of the loan. Philip and CCG agreed to repeat a transaction that was identical in its terms to the transaction executed on August 19, 1997.

112. On December 17, 1997, Philip repurchased the inventory underlying the second transaction from CCG for approximately $4.7 million. A December, 1997 journal entry processed the $4.7 million payment to CCG, and since the underlying liability had not been recorded, the payment was inappropriately capitalized by charging it to acquisition expenses. The journal entry indicates it was authorized by Hoey.

iii) 1998

113. On or about February 17, 1998, Philip was obligated to repurchase the inventory underlying the first transaction from CCG. Philip paid to CCG the resulting interest and fees and a new agreement was put in place, resulting in a second "rolling" of the transaction. The new agreement required Philip to provide a greater amount of inventory and pay an additional hold-back of $393,694.

114. On March 19, 1998, Philip terminated its involvement with CCG and repurchased the remaining inventory (58.2 million pounds) from CCG.

iv) Deloitte's Discovery of the Transaction

115. Deloitte eventually learned of the unrecorded liability for CCG in mid-April 1998.

v) The Adjustment

116. The financial statements that were contained in the Prospectus were misleading and not accurate due to the inappropriate accounting treatment of the CCG transaction.

117. After Philip filed its Form 10-K in March of 1998, an adjustment of approximately $30 million was taken by Philip regarding the CCG transaction which was described as an unrecorded liability. The adjustment triggered the recall of Philip's Form 10-K and Deloitte's opinion on the financial statements contained in the Form 10-K.

118. A. Fracassi, P. Fracassi, Boughton and Woodcroft acted contrary to the public interest by failing to ensure that Philip filed financial statements in the Prospectus that contained full, true and plain disclosure of a financing arrangement between Philip and CCG in the approximate amount of $30.222 million.

4. Canadian Imperial Bank of Commerce ("CIBC")

119. In or around May of 1997, Philip and CIBC began negotiating a complex financing arrangement, the purpose of which was to provide Philip with funds as a result of the "sale" of copper inventory to CIBC. At the same time, Philip agreed to:

(a) process the inventory and store it on its premises; and

(b) market and sell the inventory on behalf of CIBC, remitting the proceeds to the bank.

120. On or about June 27, 1997, Philip finalized the agreement with CIBC. The Purchase, Sales Agency and Processing agreements ("the Agreements") were entered into with a special purpose trust vehicle of CIBC (the "Trust") signed by Myskiw and Hoey on behalf of Philip. Pursuant to the Agreements,

(a) Philip agreed to sell to the Trust "commodities" (unprocessed copper) representing the equivalent of 31.5 million pounds of finished product;

(b) Philip agreed to retain physical possession of the inventory;

(c) The Trust "directed" Philip to process the commodities pursuant to a prescribed schedule;

(d) The Trust "authorized and directed" Philip to sell the commodities in 11 monthly tranches;

(e) The Trust "directed" Philip to remit the sales proceeds, at the COMEX price at the date of the sale, to the Trust, on each settlement date; and,

(f) Philip received $26.8 million in cash, net of prepaid interest and net of a hold-back of the processing and sales agency fees due to Philip.

121. Simultaneously, on June 27, 1997, Philip entered into a "swap agreement" with CIBC. The swap agreement was signed by Myskiw on behalf of Philip. The swap contract ensured that Philip would remit to CIBC proceeds of at least the amount initially paid by CIBC, plus interest, thus eliminating the risk to CIBC of future fluctuations in the price of copper. All of the risks of ownership of the inventory remained with Philip.

122. In correspondence dated October 21, 1997, CIBC provided Philip with a memo regarding the Philip “Inventory Monetization Program” which alerted Philip to issues with the accounting of the transaction. This memo was not disclosed to Deloitte. The memo stated, in part, as follows:

> **Accounting –** Issues may arise in inventory monetizations in the US and Canada if each deal is done with a perfect hedge done back to back from Philip Services to CIBC, and then from CIBC to the Trust. Despite the fact that Philip has no obligation to repurchase any inventory, the auditors of Philip Services may view such transactions as appearing more like a pure financing arrangement which could violate its off-balance sheet treatment…

123. As noted above, each deal with CIBC was in fact done with a “perfect hedge”, which was achieved through the swap agreements. As a result, the transaction should have been recorded as a financing transaction.

i) The Accounting for the Transaction

124. Philip did not process any of the inventory, as required pursuant to the agreements. Rather, as the swap agreements came due every month, Philip "rolled" the transaction. The "rolls" necessitated a net payment from Philip to CIBC or vice-versa.

125. Hoey instructed McQuillan to record the transaction as a sale with a corresponding reduction in inventory which would result in an increase in the cost of sales.

126. Philip recorded the transaction as a sale of its inventory and not a financing arrangement. As a result of this accounting treatment, gross profit in the second quarter of 1997 was overstated by $3.2 million.

ii) The Disclosure of the Swap Agreements to Deloitte

127. On March 5, 1998, Philip issued a press release indicating that,

> [t]he amount of the discrepancy was confirmed at $92.2 million pre-tax caused by trading losses and $32.9 million pre-tax caused by the incorrect recording of copper transactions within the copper division.

These figures did not include an adjustment for CIBC.

128. On or about March 19, 1998, while finalizing the audit, Deloitte discovered the swap agreements, which had not been previously disclosed to them, and understood their impact on the CIBC transaction and the lack of recognition of a liability. As a result, further adjustments to the financial statements were made by Philip at the request of Deloitte.

iii) The Adjustments

129. The financial statements that were contained in the Prospectus were misleading and not accurate due to the inappropriate accounting treatment of the financing arrangement with CIBC.

130. In the Form 10-K, the financing arrangement with CIBC formed a component of the Special Charges announced by Philip and made to its financial statements for the year-end December 31, 1997. The adjustment was in the amount of $10 million.

131. A. Fracassi, P. Fracassi, Boughton, Hoey and Woodcroft acted contrary to the public interest by failing to ensure that Philip filed financial statements in the Prospectus that contained full, true and plain disclosure of $10 million regarding a financing arrangement between Philip and CIBC in the amount of $10 million.

5. Waxman Promissory Note

132. As indicated above at paragraph 39, the Waxman Promissory Note was in the amount of $10 million. The Waxman Promissory Note was improperly recorded in the 1997 Q3 financial statements as inventory in the amount of $10 million. The Waxman Promissory Note was, however, later written off as uncollectible and was also not included as an amount due from, or guaranteed by Waxman in his termination agreement dated January 5, 1998. The Waxman Promissory Note was included in the Special Charges as an item relating to cathode trading activities.

133. Woodcroft acted contrary to the public interest by failing to ensure that Philip filed financial statements in the Prospectus that contained full, true and plain disclosure of the $10 million Waxman Promissory Note.

IV. MITIGATING FACTORS

134. The Respondents all remained employed with Philip after the matters that form the subject-matter of the Notice of Hearing came to light and continued in their respective roles for substantial periods of time, during which they each:

Fully cooperated with and assisted in investigations conducted by an independent committee of the Board and by Philip's lenders; and

Worked diligently to effect a restructuring of Philip pursuant to the *Companies' Creditors Arrangements Act* and Chapter 11 of the U.S. Bankruptcy Code in order to maximize recovery value for all stakeholders of Philip.

135. Allen Fracassi was re-appointed as Philip's interim Chief Executive Officer in November 1998, and remained on the Board of Directors into 2000.

136. The Respondents' continued involvement with Philip's business and affairs was all with the full support of the restructured Board and stakeholders of Philip.

V. TERMS OF SETTLEMENT

137. The Respondents agree to the following terms of settlement:

1. The Commission will make an order approving the settlement agreement;

2. The Commission will make an order pursuant to clause 6 of subsection 127(1) of the Act, the Respondents will be reprimanded by the Commission;

3. The Commission will make an order pursuant to subsection 127(1) clause 7 of the

Act, the Respondents shall immediately resign any positions that they each hold or may hold as a director or officer of any reporting issuer;

4. The Commission will make an order pursuant to subsection 127(1) clause 8 of the Act,

   a. Allen Fracassi is prohibited from becoming or acting as a director or officer of any reporting issuer for a period of twelve years commencing on the date that this Settlement Agreement is approved;

   b. Philip Fracassi is prohibited from becoming or acting as a director or officer of any reporting issuer for a period of ten years commencing on the date that this Settlement Agreement is approved;

   c. Marvin Boughton is prohibited from becoming or acting as a director or officer of any reporting issuer for a period of ten years commencing on the date that this Settlement Agreement is approved;

   d. John Woodcroft is prohibited from becoming or acting as a director or officer of any reporting issuer for a period of ten years commencing on the date that this Settlement Agreement is approved;

   e. Graham Hoey is prohibited from becoming or acting as a director or officer of any reporting issuer for a period of five years commencing on the date that this Settlement Agreement is approved;

5. The Commission will make an order pursuant to section 127.1 of the Act, the Respondents will each pay costs to the Commission in the amount of $100,000 (for total costs to be paid of $500,000); and

6. The Respondents will attend the hearing to approve the settlement in person.

VI. STAFF COMMITMENT

138. If this settlement is approved by the Commission, Staff will not initiate any proceeding under Ontario securities law in respect of any conduct or alleged conduct of the Respondents in relation to the facts set out in Part III of this Settlement Agreement, subject to the provisions of paragraph 143 below.

VII. PROCEDURE FOR APPROVAL OF SETTLEMENT

139. Approval of this Settlement Agreement shall be sought at the public hearing of the Commission in accordance with the procedures described in this Settlement Agreement.

140. Staff and the Respondents agree that this Settlement Agreement will constitute the entirety of the evidence to be submitted at the Settlement Hearing.

141. If this Settlement Agreement is approved by the Commission, the Respondents agree to waive their rights to a full hearing, judicial review, or appeal of the matter under the Act.

142. Staff and the Respondents agree that if this Settlement Agreement is approved by the Commission, neither Staff nor the Respondent will make any public statement inconsistent with this Settlement Agreement.

143. If this Settlement Agreement is approved by the Commission, and at any subsequent time the Respondents fail to honour the terms of the settlement set out in Part V herein, Staff reserve the right to bring proceedings under Ontario securities law against the Respondents based on, but not limited to, the facts set out in Part III of the Settlement Agreement, as well as the breach of the Settlement Agreement.

144. Whether or not this Settlement Agreement is approved by the Commission, the Respondents agree that they will not, in any proceeding, refer to or rely upon this Settlement Agreement or the negotiation or process of approval of this Settlement

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

145. If, for any reason whatsoever, this Settlement Agreement is not approved by the Commission or an order in the form attached as Schedule "A" is not made by the Commission, each of Staff and the Respondents 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 Settlement Agreement or the settlement negotiations.

146. The terms of this Settlement Agreement will be treated as confidential by all parties hereto until approved by the Commission, and forever if, for any reason whatsoever, this Settlement Agreement is not approved by the Commission, except with the written consent of both the Respondents and Staff or as may be required by law.

147. Any obligations of confidentiality shall terminate upon approval of this Settlement Agreement by the Commission.

IX. EXECUTION OF SETTLEMENT AGREEMENT

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

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

Dated this "28th" day of February, 2006.

________________________	_"Allen Fracassi"_____________
Witness	Allen Fracassi

______________________	_"Philip Fracassi"___________
Witness	Philip Fracassi
______________________	_"Marvin Boughton"_________
Witness	Marvin Boughton
______________________	__"Graham Hoey"___________
Witness	Graham Hoey
______________________	_"John Woodcroft"_____________
Witness	John Woodcroft

STAFF OF THE ONTARIO SECURITIES COMMISSION

Per:

_"Michael Watson"____________
Michael Watson
Director of Enforcement

SCHEDULE "A"

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, ROBERT WAXMAN
AND JOHN WOODCROFT

O R D E R
(Sections 127 and 127.1)

WHEREAS the Ontario Securities Commission (the "Commission") issued a Notice of Hearing dated August 30, 2000 and an Amended Notice of Hearing dated December 12, 2005 (the "Amended Notice of Hearing") pursuant to section 127 of the Ontario *Securities Act*, as amended, with respect to Philip Services Corp., Allen Fracassi, Philip Fracassi, Marvin Boughton, Graham Hoey, Robert Waxman and John Woodcroft;

AND WHEREAS on August 30, 2000, a Statement of Allegations was delivered and subsequently amended on October 12, 2005 and December 9, 2005, (the "Amended Statement of Allegations");

AND WHEREAS the respondents Allen Fracassi, Philip Fracassi, Marvin Boughton, Graham Hoey and John Woodcroft (the "Respondents") entered into a settlement agreement dated February 28, 2006 (the "Settlement Agreement"), in which the respondents agreed to a proposed settlement of the proceeding commenced by the Amended Notice of Hearing, subject to the approval of the Commission;

AND UPON reviewing the Settlement Agreement and the Amended Statement of Allegations, and upon hearing submissions from counsel for the Respondents and from Staff of the Commission;

AND WHEREAS the Commission is of the opinion that it is in the public interest to make this Order;

IT IS ORDERED THAT:

1. the Settlement Agreement dated February 28, 2006, attached to this Order as Schedule “1”, is hereby approved;

2. pursuant to clause 6 of subsection 127(1) of the Act, the Respondents will be reprimanded by the Commission;

3. pursuant to subsection 127(1) clause 7 of the Act, the Respondents shall immediately resign any positions that they each hold or may hold as a director or officer of any reporting issuer;

4. pursuant to subsection 127(1) clause 8 of the Act,

    a. Allen Fracassi is prohibited from becoming or acting as a director or officer of any reporting issuer for a period of twelve years commencing on the date that this Settlement Agreement is approved;

    b. Philip Fracassi is prohibited from becoming or acting as a director or officer of any reporting issuer for a period of ten years commencing on the date that this Settlement Agreement is approved;

    c. Marvin Boughton is prohibited from becoming or acting as a director or officer of any reporting issuer for a period of ten years commencing on the date that this Settlement Agreement is approved;

    d. John Woodcroft is prohibited from becoming or acting as a director or officer of any reporting issuer for a period of ten years commencing on the date that this Settlement Agreement is approved;

    e. Graham Hoey is prohibited from becoming or acting as a director or officer of any reporting issuer for a period of five years commencing on the date that this Settlement Agreement is approved;

5. pursuant to section 127.1 of the Act, the Respondents will each pay costs to the Commission in the amount of $100,000 (for total costs to be paid of $500,000); and

6. the Respondents will attend the hearing to approve the settlement in person.

DATED at Toronto this day of March, 2006.

______________________________ ______________________________