

**ONTARIO
SUPERIOR COURT OF JUSTICE
- COMMERCIAL LIST**

**IN THE MATTER OF
RELIANCE INSURANCE COMPANY**

**AND IN THE MATTER OF THE
INSURANCE COMPANIES ACT, S.C. 1991, C.47, AS AMENDED**

**AND IN THE MATTER OF THE
WINDING-UP AND RESTRUCTURING ACT, R.S.C. 1985, C.W-11, AS AMENDED**

BETWEEN:

THE ATTORNEY GENERAL OF CANADA

Applicant

- and -

RELIANCE INSURANCE COMPANY

Respondent

**REPORT OF KPMG INC., THE LIQUIDATOR OF
RELIANCE INSURANCE COMPANY – CANADIAN BRANCH**

(Motion returnable December 16, 2009)

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**REPORT OF KPMG INC., THE LIQUIDATOR OF
RELIANCE INSURANCE COMPANY – CANADIAN BRANCH**

December 9, 2009

I. THE MOTION

1. This report is respectfully filed in support of a motion by KPMG Inc., the liquidator (the “Liquidator”) of the insurance business in Canada of Reliance Insurance Company (“Reliance Canada”) for an Order:

- a) passing the accounts and approving the activities of the Liquidator for the period January 1, 2008 to September 30, 2009 (the “Period”), as reflected in the financial statements of Reliance Canada;

- b) approving the professional fees and costs of the Liquidator and of its counsel (the “Professional Fees”) for the Period and the professional fees and costs of the representative counsel appointed by this Court in respect of a motion for advice and directions on post-liquidation interest;
- c) approving and authorizing a distribution (the “Interest Distribution”) in payment of post-liquidation interest pursuant to ss. 95(2) of the *Winding-up and Restructuring Act* (“WURA”), in accordance with this Court’s advice and directions in its Order dated July 14, 2009.

II. OVERVIEW OF THE ESTATE

A. Policy Loss Payments

- 2. Pursuant to Orders of this Court, the Liquidator paid on policy loss claims the following benefits since the commencement of the liquidation of Reliance Canada in 2001:
 - a) defence costs;
 - b) valid claims up to the greater of \$250,000 or the amount, if any, of the voluntary compensation payment of the Property and Casualty Insurance Compensation Corporation (“PACICC”) that may be paid under its Memorandum of Operations; and
 - c) valid claims not covered by PACICC, and claims under Reliance Canada’s “Meridian” program, up to \$25,000

(collectively, the "Authorized Policy Payments").

A copy of the Order appointing the Liquidator and authorizing the Policy Payments is attached as Schedule "A" (the "Appointment Order"). This Court extended the date for making the Authorized Policy Payments from time to time.

3. This Court further approved, on June 26, 2003, a first interim distribution (the "First Distribution") of 25% of valid policy loss claims.
4. On September 2, 2004, this Court approved a second interim distribution (the "Second Distribution") of 25% of policy loss claims, bringing the cumulative distribution level to 50%.
5. On December 21, 2005, this Court approved a third distribution (the "Third Distribution") of 15% of policy loss claims, bringing the cumulative distribution level to 65%.
6. On December 15, 2006, this Court approved a fourth distribution (the "Fourth Distribution") of 15% of policy loss claims, bringing the cumulative distribution level to 80%.
7. On April 8, 2008, this Court approved a fifth distribution (the "Fifth Distribution") of 20% of policy loss claims, bringing the cumulative distribution level to 100%.

B. Ordinary Claims

8. On December 17, 2008, this Court approved a distribution to holders of ordinary creditor claims of 100%, up to a cumulative total of \$100,000.00.

C. Summary

9. The Liquidator therefore now pays policy loss claims and ordinary creditor claims at 100% of the valid and allowed claim amount.

D. Developments Since Last Passing of Accounts

10. The Liquidator has continued to make progress in the administration of the estate. 94 claims with a total value of \$10.8 million have been resolved during the Period. The collection of reinsurance from some markets continues to prove challenging for companies in run-off; however, the Liquidator continues to pursue collection of reinsurance. The reinsurance market has generally been difficult, and collection problems are an industry-wide issue.
11. During the Period, the Liquidator sought and obtained the advice and direction of the Court on the complex issue of post-liquidation interest by way of a contested proceeding, with representative counsel for designated classes of stakeholders. Copies of this Court's Reasons for Decision and Order dated July 14, 2009 are attached hereto as Schedules "B" and "C", respectively.

E. The Future of the Estate

12. The Liquidator will continue the run-off of Reliance Canada's business in an orderly manner, dealing with policy liabilities and collection of reinsurance on a commercially reasonable basis. Given the nature of Reliance Canada's business, a complete run-off process would be expected to take many years. The consulting actuary retained by the Liquidator to calculate actuarial liabilities estimates that a run-off would continue to 2019, but that the number of payments will decline going forward.

13. An objective of the Liquidator is to ensure that all policyholders are treated equally. The Liquidator is analyzing whether to run off the Reliance Canada's business indefinitely, undertake a marketing program for the policy liabilities, or undertake a call-for-policy-claims process to assist in bringing closure to the liquidation. As previously reported, the Liquidator has on a number of occasions pursued marketing programs for the policy liabilities; however, these efforts did not result in a transaction. Recent market conditions have not been suitable for implementing another marketing program for the policy liabilities. In addition, there are costs associated with implementing a marketing process. The Liquidator expects that it will likely recommend a call-for-policy-claims process in 2010 in order to assist in the bringing of closure to the liquidation.

III. BACKGROUND

A. General Background

14. Reliance Insurance Company (“Reliance”) is a property and casualty insurer in the United States of America, domiciled in the Commonwealth of Pennsylvania. Reliance carried on business in Canada as a “foreign company”, within the meaning of the *Insurance Companies Act*, through the Reliance Canada branch. In 2000, Reliance Canada stopped issuing new policies and began “running off” (winding-down) its existing business.
15. Reliance was ordered liquidated by Order of the Commonwealth Court of Pennsylvania dated October 3, 2001, under the Pennsylvania *Insurance Department Act of 1921*. The Commissioner of Insurance for Pennsylvania was appointed liquidator (the “U.S. Liquidator”).
16. By Orders of this Court made December 3, 2001, the insurance business of Reliance Canada was ordered wound-up pursuant to the provisions of the *WURA*, and KPMG Inc. was appointed provisional liquidator.
17. In the Appointment Order (Schedule “A” hereto), this Court appointed the U.S. Liquidator and PACICC as inspectors. By Order dated January 30, 2002, this Court ordered that the Superintendent of Financial Institutions of Canada (the “Superintendent”) may attend meetings of inspectors, be included in the service list, and attend and be heard in matters before this Court.

18. The inspectors are not opposing this motion. Also, the Superintendent has advised that it takes no position on this motion.

B. Reliance Canada's Insurance Business

19. Reliance Canada wrote a very diverse set of policies. Within the classes of liability insurance that it wrote, Reliance Canada specialized in providing coverage for professional liability, directors' and officers' liability, pollution and environmental liability and product liability. While some of Reliance Canada's policies were "claims made" policies, meaning that claims must be reported during the term of the policy or within a defined period thereafter, a substantial portion of its policies were "occurrence" based. These occurrence based policies cover liabilities incurred during the policy period that may not become manifest for years. This latter business is known as "long tail" insurance. Many of Reliance Canada's policies had lengthy policy periods.
20. In addition, Reliance Canada acted as a reinsurer for other insurers. The resulting "assumed reinsurance" is treated as insurance under the *Insurance Companies Act*, and is accorded the same priority as policy loss claims under the *WURA*.
21. In 2000, Reliance Canada voluntarily stopped writing new policies, effectively beginning the winding down of its business. At the beginning of the liquidation, excluding the warranty programs, there were 16 policies still in force, with all other policies having expired or been cancelled, and there were over 1,100 outstanding claims. In addition, Reliance Canada had "incurred but not reported" ("IBNR") claims, primarily on the

occurrence-based policies, for which it may ultimately be put on notice and to which it would have to respond.

22. As at September 30, 2009 there were 145 open claims. All policy terms have expired.

IV. FINANCIAL STATUS OF THE ESTATE

A. Distribution History

23. The First Distribution was based on the financial status of the estate at March 31, 2003. A copy of the Order of this Court dated June 26, 2003 approving and authorizing the First Distribution is attached as Schedule "D".
24. The Second Distribution was based on the financial status of the estate at June 30, 2004. A copy of the Order of this Court dated September 2, 2004 approving and authorizing the Second Distribution is attached as Schedule "E".
25. The Third Distribution was based on the financial status of the estate at September 30, 2005. A copy of the Order of this Court dated December 21, 2005 approving and authorizing the Third Distribution is attached as Schedule "F".
26. The Fourth Distribution was based on the financial status of the estate as at September 30, 2006. A copy of the Order of this Court dated December 15, 2006 approving and authorizing the Fourth Distribution is attached as Schedule "G".

27. The Fifth Distribution was based on the financial status of the estate as at December 31, 2007. A copy of the Order of this Court dated April 8, 2008 approving and authorizing the Fifth Distribution is attached as Schedule "H".

28. The distribution on ordinary creditor claims was approved by Order of this Court dated December 17, 2008, a copy of which is attached as Schedule "I".

B. Passing of Accounts

29. This Court has also passed and approved the accounts of the Liquidator for the periods (i) from the date of the winding-up order to September 30, 2003, as reflected in the Order attached as Schedule "J", (ii) from October 1, 2003 to June 30, 2004, as reflected in the Order attached as Schedule "E" (iii) from July 1, 2004 to September 30, 2005, as reflected in the Order attached as Schedule "F", (iv) from October 1, 2005 to September 30, 2006, as reflected in the Order attached as Schedule "G", and (v) from October 1, 2006 to December 31, 2007, as reflected in the Order attached as Schedule "H".

C. Financial Status

30. Attached as Schedule "K" are the unaudited financial statements for the estate as at September 30, 2009, prepared in a manner consistent with the financial statements before this Court as at December 31, 2007 and previously, and with the same system of internal controls to safeguard the accuracy and reliability of the financial reporting process.

31. In this Report, the Liquidator will generally compare the financial status of the estate at September 30, 2009 to its status at December 31, 2007, the date as of which this Court

last reviewed the estate's status for the purpose of passing accounts and authorizing a distribution on policy claims.

32. As noted in previous Reports, a key characteristic of the Reliance Canada claims profile has been its "lumpiness." That is, a significant number of its policies do not have frequent claims but, if claims occur, they tend to be severe. As further progress is made in dealing with the claims and more information becomes available on which to assess them, the Liquidator adjusts the policy liabilities. In particular, where claims are resolved for amounts lower than the amounts reserved for them, the policy liabilities are reduced, and where more information becomes available to indicate a higher exposure than has been reserved, the policy liabilities are increased. Increases normally also have the effect of increasing the reinsurance recoverables since these claims are generally reinsured at significant levels. Accordingly, fluctuations in the estimated level of surplus in the estate are to be expected, given the volatility of the portfolio.
33. During the Period, the Liquidator continued to make substantial progress in the resolution of claims.
34. The projected estate surplus has decreased from approximately \$92.3 million as at December 31, 2007 to \$91.7 million as at September 30, 2009. The principal reasons for the change in the surplus include: investment income exceeding the costs of the liquidation; adverse development in total policy liabilities; booking the liability for post-liquidation interest and reducing the liability for ordinary creditor claims as a result of the 2008 call for ordinary creditor claims.

(i) **Assets**

Vested Assets

35. As noted, Reliance operated within Canada on a branch basis, with the approval of the Superintendent. The conditions for the Superintendent's approval of the operation of a branch in Canada include the vesting in trust with the Superintendent of assets having a prescribed value (the "Vested Assets") and filings, at least annually, of financial information disclosing both assets for which the branch is entitled to take credit under the *Insurance Companies Act* and liabilities that it is required to report as liabilities of the branch, also under the *Insurance Companies Act*.
36. As at September 30, 2009, cash and investments held by Reliance Canada total approximately \$136.0 million.

Reinsurance

37. The other major asset of Reliance Canada is reinsurance, consisting of:
- a) reinsurance covering only the liabilities of Reliance Canada ("Canadian Reinsurance"); and
 - b) reinsurance entered into through Reliance's head office ("International Reinsurance"), which reinsures both Reliance Canada policies as well as policies written through the U.S. operations.

38. The percentage of Reliance Canada's case reserves that is reinsured changes over time as the composition of the case reserves changes. As at December 31, 2007 approximately 42% of Reliance Canada's gross case reserves were reinsured. Of this amount, approximately 85% was Canadian Reinsurance and 15% was International Reinsurance. As at September 30, 2009, approximately 47% of Reliance Canada's gross case reserves were reinsured, approximately 79% of which was Canadian Reinsurance and 21% International Reinsurance. These percentages do not reflect estimates for uncollectible reinsurance due to credit, collection or contractual risk. Over 74.5% of the reinsurance on the gross reserves as at September 30, 2009 is with reinsurers rated "A" or higher.
39. By September 30, 2009, the Liquidator had collected approximately \$103.9 million in reinsurance since the beginning of the liquidation, with approximately \$14.4 million of this during the Period (i.e., since December 31, 2007). Reinsurance receivables (amounts billed to reinsurers), net of a provision for uncollectible reinsurance, were approximately \$5.0 million at September 30, 2009, down from \$9.6 million at December 31, 2007. Reinsurance recoverables (being amounts referable to (i) reported claims not yet billed and (ii) IBNR, net of a provision for uncollectible reinsurance) were approximately \$22.7 million as at September 30, 2009, down from approximately \$22.9 million at December 31, 2007. (Since September 30, 2009 the Liquidator has collected an additional amount of reinsurance of approximately \$1.3 million).

Summary

40. As at December 31, 2007, the value of Reliance Canada's assets was approximately \$178.7 million, and cumulative unpaid claims and related expenses as at

December 31, 2007 totalled \$76.7 million. As at September 30, 2009, the value of Reliance Canada's assets was approximately \$169.1 million, and cumulative unpaid claims and related expenses totalled approximately \$64.7 million. Below is a summary breakdown for the estate as of September 30, 2009, December 31, 2007 and September 30, 2006:

	September 30, 2009 (in millions)	December 31, 2007 (in millions)	September 30, 2006 (in millions)
Cash or Investments	\$136.0	\$140.9	\$148.8
Reinsurance receivables and recoverables net of estimate for uncollectible reinsurance	\$27.8	\$32.6	\$46.9
Miscellaneous	\$5.3	\$5.2	\$5.7
Total	\$169.1	\$178.7	\$201.4
Cumulative unpaid claims and related expenses	\$64.7	\$76.7	\$112.5

(ii) Liabilities

41. As at December 31, 2007, the estimated value of the policy liabilities was \$77.5 million. As at September 30, 2009, the estimated value was \$70.5 million, determined as described in more detail below.
42. The Liquidator has not undertaken a call-for-policy loss claims to date. However, the Liquidator will likely be recommending a call-for-claims process in 2010. In the absence

of a call-for-policy loss claims, the Liquidator has relied on, and continues to rely on, actuarial projections to reach a view as to the total claims exposure of the estate.

Policy Loss Claims

43. There are basically three categories of policy loss claims:
- a) claims that are settled or otherwise resolved. Since the Fifth Distribution, the Liquidator has resolved approximately 94 claims having a total approximate value of \$10.8 million. As at September 30, 2009, approximately 18,400 policy loss claims, with a total value of approximately \$141.2 million have been resolved, through settlement or otherwise, since the beginning of the liquidation. These have all been paid in full;
 - b) claims that have been reported but not yet resolved (the "Reported Claims"). As at September 30, 2009, there were 145 Reported Claims outstanding, down from 208 as at December 31, 2007, with outstanding gross case reserves increased by approximately \$4.8 million, from approximately \$29.9 million to \$34.7 million. (Case reserves are adjusted as additional information on the estimated amount of a claim becomes known during the course of its settlement. As discussed earlier, this change reflects the volatility and "lumpiness" of Reliance Canada's portfolio); and
 - c) the provision for IBNR and for development in Reported Claims.

Non-Booked Claims

44. As described in previous reports, there is the potential that certain claims that were not reported in the books of Reliance Canada may be valid claims against Reliance Canada (“Non-Booked Claims”). The Non-Booked Claims would arise from policies written outside Canada, and which were not reported in the books of Reliance Canada.
45. The U.S. Liquidator agreed to advise the Liquidator if any Non-Booked Claims are identified in the liquidation of Reliance, including as a result of the U.S. call-for-claims that expired on December 31, 2003. (Over the years of the liquidation, only a small number of potentially Non-Booked Claims have been identified, and only one was accepted, by way of settlement, as in part a claim in the Canadian estate.)
46. Based on the information available, the Liquidator is of the view that the total value of the Non-Booked Claims, if any, would be immaterial and would not have an impact on the estate’s ability to pay the proposed Interest Distribution.
47. Should a claimant assert a Non-Booked Claim that cannot be resolved, the Liquidator will be seeking the directions of this Court with respect to the bringing forward of any claim of a party who believes they have a Non-Booked Claim that can properly be asserted against Reliance Canada, and with respect to whether the alleged Non-Booked Claim should be allowed in the Canadian estate.

Liability Claims Projection Process

48. The Liquidator has applied the same methodology in projecting the policy liabilities for the purpose of this Report as for the Fifth Distribution. The Liquidator has undertaken an extensive review of the policy liabilities, including retaining the services of the consulting actuary who acted for Reliance Canada before it was ordered to be wound-up. Representatives of the U.S. Liquidator have also reviewed the actuarial projections as of June 30, 2009, and the case reserves on which there is significant volatility.

49. Actuarial projections typically consider:
 - a) the current level of reserves;
 - b) the history of claims development;
 - c) the nature of the liabilities underwritten and the terms of the policies;
 - d) industry experience and current developments with respect to similar kinds of policies and liabilities; and
 - e) the potential for adverse deviation.

50. Actuaries then reach a view as to the total policy liabilities to which the insurer will be exposed, including a provision for unreported claims and upward adjustment for reported claims (IBNR). While the actuaries generally provide a single best estimate, there is clearly a range for valuing the total liabilities, depending on the degree of certainty to be achieved.

51. The Liquidator instructed the actuaries to confirm their best estimate of the policy liabilities in accordance with accepted actuarial standards of practice except that discounts to reflect the time value of money should not be used. The Liquidator then carefully reviewed the analysis underlying the actuarial estimates in reaching the estimate of \$70.5 million for policy liabilities as at September 30, 2009.

V. MAJOR ACTIVITIES OF THE LIQUIDATOR

A. Administration

52. On being appointed, the Liquidator considered Reliance Canada's complex array of claims and coverage, and the seniority and reputation of its employees, and consulted with the U.S. Liquidator and PACICC. The Liquidator determined that the best interests of the estate would be served by maintaining continuity, to the extent possible, through retaining existing Reliance Canada staff, and that this would result in cost savings. At the beginning of the liquidation there were 17 employees. As at September 30, 2009, six employees remained (two being part-time).
53. Reliance Canada employees perform day-to-day administration, including instructing defence counsel and outside adjusters, dealing with counsel on coverage issues, administering reinsurance collections, performing accounting and financial reporting with respect to claims and reinsurance functions, and liaising with PACICC and staff of the U.S. estate.

54. The Liquidator maintains responsibility for the conduct of the liquidation. The Liquidator is responsible for all strategic initiatives and major decisions and, as appropriate, is involved in supervising and augmenting, where necessary, the day-to-day activities performed by former Reliance Canada employees.
55. The Liquidator performs the functions specific to the liquidation, including the development of policies and procedures for claims handling and authorities, the institution of internal controls, reporting to the Court and stakeholders, supervising and coordinating legal counsel, monitoring developments in the U.S. liquidation, and providing insureds with information. Additionally, the Liquidator has sole control over all cash and investments of Reliance Canada and signs all cheques. The Liquidator reviews all claims decisions involving claims that meet criteria established in cooperation with PACICC and the U.S. Liquidator, performs the financial reporting, is actively involved in reinsurance collections, makes all investment decisions, instructs and consults with the actuary, and assists on an as-needed basis with the process of resolving claims. A further summary of the Liquidator's activities is set out below.

B. Third Party Administrators

56. Reliance Canada also had arrangements with third party administrators who were responsible for the administration of claims in a number of programs, the major ones including:
- a) Meridian, an automobile warranty program;

- b) Groupe PPP, a financial guarantee program underwritten in the U.S., covering automobile dealers in Quebec;
 - c) Gap Program, a financial warranty program;
 - d) Family Program, a personal lines program in British Columbia; and
 - e) Environmental Program, administered by ECS Inc. in the U.S.
57. Each of the programs is unique in respect of the volume, magnitude and complexity of its claims, and with respect to the discretion accorded the third party administrators. In each case, the Liquidator reviewed the program and the nature of the relationship between the administrator and Reliance Canada. In assessing the continued use of the third party administrators, the Liquidator considered their cost, the potential prejudice if the administration were disrupted and the quality of their work. As previously reported, the Liquidator determined that it was appropriate to maintain the relationships, but introduced additional controls and reporting requirements, as it considered necessary, and regularly reviews the status of the administrations. The Meridian, Groupe PPP and Gap Programs all expired prior to the Period.

C. Stakeholders

PACICC

58. The Liquidator entered into a loan and services agreement with PACICC on December 3, 2001, approved by this Court in the Appointment Order. Pursuant to the loan and service

agreement, the loan terminated upon the cumulative distribution on policy claims reaching 100%.

59. The Liquidator regularly consults with PACICC, which remains an Inspector, concerning the progress of the estate.

U.S. Liquidator

60. By virtue of ss. 161(9) of the *Winding-up and Restructuring Act*, the U.S. Liquidator has an on-going interest in the administration of Reliance Canada. Furthermore, before the liquidation, Reliance Canada depended on Reliance for many services, including information services and technology. In addition, Reliance underwrote insurance policies which were later allocated to Reliance Canada, entered into reinsurance treaties which also covered Reliance Canada liabilities, collected reinsurance proceeds on its behalf, and had ultimate decision-making power for setting Reliance Canada's claims reserves and for settlements.
61. Accordingly, to prevent disruption to the administration of Reliance Canada and in recognition of the U.S. Liquidator's interest in the Canadian estate, the U.S. Liquidator, the Superintendent and the Liquidator entered into a protocol, dated November 28, 2001, providing for cooperation with respect to use of information systems, collection of reinsurance, administration of claims, and the sale process for the policy liabilities. The protocol remains in force and close co-operation between the two Liquidators has continued. However, the Liquidator remains cognizant at all times of balancing the interests of all stakeholders.

Policyholders

62. The Liquidator has been in regular contact with policyholders, third party claimants and relevant counsel concerning the financial status of the estate, particularly with respect to both the timing and quantum of distributions. The Liquidator maintains an informative website for the convenience of policyholders and other stakeholders .

Ordinary Creditors

63. As referenced above, this Court authorized (up to a certain total) payment at 100% of ordinary creditor claims. To date, only one such claim has been filed, in a nominal amount, and it was allowed and paid.

D. Reinsurers

64. With respect to its efforts to collect reinsurance proceeds, the Liquidator has also been in regular contact with reinsurers, either directly, through Reliance or through reinsurance brokers.
65. Through extensive efforts, including meetings with U.K. reinsurers in London, the Liquidator has continued to make progress in reinsurance collections. This is evidenced by the increase in reinsurance collections discussed in this Report. However, the Liquidator continues to expend significant effort in the collection of reinsurance, so as to maximize the ongoing collection of reinsurance recoveries. An ongoing issue in reinsurance collections is the inter-relationship between the Canada and U.S. estates.

E. Post-liquidation Interest Motion

66. As mentioned above, during the Period the Liquidator sought the advice and direction of this Court with respect to its obligations regarding “post-liquidation interest”.
67. As it was apparent that there would be a surplus in the estate of Reliance Canada after payment of the full principal amount of policy loss claims and ordinary creditor claims, the issue arose whether the surplus was to be applied to post-liquidation interest on claims in the Reliance Canada estate, and, if so, on what claims, at what rate, and on what methodology. The issue further arose whether such post-liquidation interest was payable in priority to any ultimate release of excess assets to the U.S. Liquidator under Part III of the *WURA*, notwithstanding the deficit in the Reliance liquidation of several billion dollars such that policy loss claims there will receive dividends at significantly less than 100%.
68. The issue was a complex one, without judicial precedent. Although ss. 95(2) in Part I of the *WURA* provides for post-liquidation interest in the case of a surplus, the *WURA* is not explicit whether that provision applies to the liquidation of an insurance company or a branch of a foreign insurance company under Part III (which is silent on the issue), let alone on which types of claims it might apply, what methodology applies, and whether it creates an entitlement in priority to the release of assets to the foreign head office in the case of a branch insurance company. Further, there was an issue whether, if ss. 95(2) did not apply, the common law principles regarding post-liquidation interest would apply and, if so, to what types of claims, what methodology applies, and whether common-law

interest is payable in priority to the ultimate release of assets to the foreign head office under Part III of the *WURA*.

69. The Liquidator, after considerable analysis, made a recommendation to the Court that the proper construction of the *WURA* is that ss. 95(2) does apply to certain claims in this case, and as to how it applies. The issues were fully discussed with the U.S. Liquidator, and the U.S. Liquidator indicated that it did not agree, at least in part, with the Liquidator's position.
70. As there were also certain arguments that could be made on behalf of classes of claimants, which arguments were not necessarily consistent with the Liquidator's or the U.S. Liquidator's positions, the Liquidator accordingly sought preliminary directions for the appointment of representative counsel for those classes who may have had an interest in advancing positions different from those of the Liquidator or the U.S. Liquidator on the issues.
71. By its Order made January 29, 2009 (the "Preliminary Directions Order"), a copy of which is attached as Schedule "L", this Court established two classes of claimants and appointed corresponding representative counsel as follows:
- (i) The class of "Under-limits Claimants" – being those claimants of Reliance Canada whose policy loss claims the Liquidator was able to pay-in-full as they were settled and allowed (by virtue of the Authorized Policy Payment and/or the 100% distribution level have been reached).
- Representative counsel: Elizabeth Pillon; and

- (ii) The class of “Over-limits Claimants” – being the claimants of Reliance Canada whose (i) policy loss claims (a) were not paid in full as their policy loss claims were settled and allowed, or (b) were or are in litigation and ultimately determined in favour of the claimant and would, but for the winding-up, have been eligible for pre-judgment interest for the period following commencement of the winding-up, or (ii) whose ordinary creditor claims were payable at the commencement of the winding-up and were not paid.

- Representative counsel – James Grout.

72. The Preliminary Directions Order also set out publication and service directions to ensure widespread notice of the post-liquidation interest motion.
73. The post-liquidation interest motion was framed as four questions for the advice and direction of the Court:

Question 1: Does subsection 95(2) of the *Winding-up and Restructuring Act* apply to the winding-up of Reliance Canada, so that interest on allowed claims in the winding-up of Reliance Canada is payable pursuant to subsection 95(2), in the case where there is a surplus, in priority to any release to Reliance Insurance Company (represented by the U.S. Liquidator) of the balance of any assets that the Court may ultimately approve under subsection 161(10) of the *Winding-up and Restructuring Act*?

Question 2: If the answer to Question 1 is yes, on what basis is post-liquidation interest to be determined? That is, on which type of claims is it payable, at what rate, is it simple or compounded, from what date(s) does it run, and are interim payments that were made on claims to be first applied toward the interest payable on the claim and then to the principal amount of the claim or first toward the principal amount of the claim?

Question 3: If the answer to Question 1 is no, is interest payable in the winding-up of Reliance Canada on allowed claims on some basis other than subsection 95(2) of the *Winding-up and Restructuring Act*, in the case where there is a surplus, in priority to any release to Reliance Insurance Company of the balance of any assets that

the Court may approve under subsection 161(10) of the *Winding-up and Restructuring Act*?

Question 4: If the answer to Question 1 is no, and the answer to Question 3 is yes, on what basis is post-liquidation interest to be determined?

74. The Liquidator's position and recommended answers on the questions were:

Question 1: Yes.

Question 2: The proper construction and application of subsection 95(2) results in: (i) payment of post-liquidation interest to the Over-limits Claimants, but not to the Under-limits Claimants, (ii) calculated as simple interest (i.e., not compounded), at an annual rate of 5%, on the unpaid portion of each Over-limits Claimant's allowed claim from the time such claim was settled and allowed (or, (a) in the case of a Disputed Claim, from the time since the commencement of the winding-up that it would have been eligible for pre-judgment interest, but for the winding-up, but not earlier than the commencement of the winding-up, and (b) in the case of an ordinary creditor claim that was already payable as of the commencement of the winding-up, from the commencement of the winding-up) until such portion was paid.

The Liquidator further recommended that any payments made to Over-limits Claimants by way of Interim Dividend Payments and/or Authorized Policy Payments during the course of the winding-up are to be treated as being allocated first toward any post-liquidation interest payable on the claim of an Over-limits Claimant, and then to the principal portion of such claim.

Question 3-4: The recommended answers above would render answers to questions 3-4 not necessary, though the Liquidator through its counsel would make any appropriate submissions on these questions in its factum and at the hearing.

75. By his Reasons issued July 14, 2009 (Schedule "B"), Justice Campbell held that the questions should be answered as recommended by the Liquidator.

F. Summary of Activities

76. In summary, the Liquidator's major activities for the Period included:

- a) Claims adjudication and administration including:
 - (i) overseeing payment of defence and adjustment costs;
 - (ii) overseeing a comprehensive review of all claims including estimating range of possible outcomes;
 - (iii) engaging in extensive discussions with policyholders, claimants and their counsel concerning the estate, including its financial status;
 - (iv) settling or otherwise resolving, and paying approximately 94 claims having a value of approximately \$10.8 million; and
 - (v) obtaining the post-liquidation interest determination;
- b) Reinsurance, including:
 - (i) reconciling accounts;
 - (ii) enforcing liquidation clauses;
 - (iii) entering into agreements with reinsurers and the U.S. Liquidator to facilitate collection of both the Canadian and the International Reinsurance; and
 - (iv) collecting receivables, including direct communication with reinsurers, several visits with U.K. reinsurers in London, and cooperative efforts with the U.S. Liquidator;
- c) reviewing and amending as necessary the investment policy and managing investments in consultation with its investment manager;

- d) reporting regularly to PACICC and the U.S. Liquidator;
- e) performing extensive review of policy liabilities as at June 30, 2009;
- f) maintaining the external website; and
- g) continuing monitoring of the U.S. liquidation, and discussions with the U.S. Liquidator, with respect to cross-border issues and other matters that impact the Canadian estate, including the significant issues with respect to reinsurance collections.

VI. LIQUIDATOR'S ACCOUNTS AND PROFESSIONAL FEES

A. Financial Statements

77. As in the past, the Liquidator does not consider that a traditional statement of receipts and disbursements would provide a meaningful and informative reflection of the financial position of the estate. The Liquidator has therefore prepared the financial statements (unaudited), attached as Schedule "K".
78. The financial statements have been prepared in a manner consistent with the statements approved previously by this Court. The Liquidator maintains a system of internal controls to safeguard the accuracy and the reliability of the financial reporting process.

B. Professional Fees

79. The Liquidator retains professional advisors to assist in the administration of the liquidation from time to time. The Liquidator is familiar with the services provided by each of the professional advisors and has reviewed their invoices. Detailed invoices were timely received and carefully reviewed in detail by senior administrative and management level members of the Liquidator's staff. The invoices were reviewed for accuracy, adequate detailed information describing the work performed and by whom, the time spent and when it was spent, the rate and amount billed, possible redundant charges, reasonableness and overall compliance with the terms of retention. Clarifications and adjustments of items included in the invoices were requested where it appeared appropriate.

80. The Liquidator believes that the Professional Fees of its advisors are proper, fair and reasonable and were incurred in furtherance of the best interests of the estate of Reliance Canada.

Goodmans LLP

81. Goodmans LLP ("Goodmans") has acted as counsel to the Liquidator from the commencement of the liquidation and has acted or advised on all matters described in this report. The Liquidator is familiar with their services and has reviewed their invoices in detail and with the care described above.

82. At the commencement of the liquidation, Goodmans agreed to a discount from its then current market rates of approximately 15% to 20%, with rates not to be increased for one year. In fact, rates were not increased for the first two years of the liquidation, but were raised by 4.79%, effective October 1, 2003, reflecting the change in the Consumer Price Index over the two year period, and a further 5.6% effective January 1, 2008, reflecting the change in the Consumer Price Index from January 1, 2006. Effective July 1, 2008, rates were increased to 90% of current market rates as they are set from time to time, as a result of reaching the 100% distribution level. The discount from Goodmans' current market rates is approximately 10%.

83. Attached as Schedules "M", "N" and "O", respectively, are:

- a) a summary invoice from Goodmans to the Liquidator for the Period;
- b) a summary of the hours and average hourly rates of each of Goodmans' personnel who dedicated more than 30 hours to the estate for the Period; and
- c) a brief description of the areas of concentration of each of Goodmans' personnel who dedicated more than 30 hours to the estate for the Period.

84. Detailed supporting records, including time sheets, are available should this Court wish them produced. An affidavit attesting to the accuracy of the fees and disbursements is also being filed.

85. The Liquidator is satisfied that Goodmans' fees are proper, fair and reasonable, that time was appropriately spent and that Goodmans' fees were incurred in furtherance of the best interests of the estate.

KPMG Inc.

86. The Liquidator has kept careful and detailed records of all time spent by Liquidator personnel on the estate. The Liquidator has instituted internal controls to ensure no redundant or inappropriate charges are made. The Liquidator applied the same standard for review to its accounts as to accounts of other professionals, described above. As discussed above, the Liquidator maximized efficiency and reduced costs by retaining former Reliance Canada employees and third party administrators where prudent and appropriate.
87. At the commencement of the liquidation, the Liquidator agreed to a discount from its then current market rates of approximately 15% to 20%, with rates not to be increased for one year. In fact, rates were not increased for the first two years of the liquidation, but were raised by 4.79%, effective October 1, 2003, and an additional 2.4% effective October 1, 2004, 3.4% effective October 1, 2005, 3% effective October 1, 2006, and 2.6% effective October 1, 2007, reflecting the changes in the Consumer Price Index. Effective July 1, 2008, rates were increased to 90% of current market rates as they are set from time to time, as a result of reaching the 100% distribution level. The discount from current market rates is approximately 10%.

88. Attached as Schedules "P", "Q" and "R", respectively, are:

- a) an invoice from the Liquidator to the estate for the Period;
- b) a summary of the hours and average hourly rates of each of the Liquidator's personnel who dedicated more than 30 hours to the estate for the Period; and
- c) a brief description of the areas of concentration of each of such of the Liquidator's personnel for the Period.

89. Detailed supporting records, including time sheets, are available should this Court wish them produced. An affidavit attesting to the accuracy of the fees and disbursements is also being filed.

90. The Liquidator respectfully requests that this Court pass the accounts of the Liquidator, as reflected in the financial statements, and approve the Professional Fees.

C. Representative Counsel

91. In respect of the post-liquidation interest motion, the Preliminary Directions Order (Schedule "L") provided that the solicitor and client accounts of the two representative counsel shall be assessed by this Court, and that the reasonable remuneration, costs and expenses of the representative counsel shall be a cost and expense of the winding-up.

92. In his Honour's Reasons of July 14, 2009 (Schedule "B"), Justice Campbell expressly recognized the assistance of all counsel, especially the representative counsel.

93. The representative counsels' accounts are attached as Schedules "S" and "T" hereto. The Liquidator and its counsel have reviewed these accounts and are satisfied that they are fair and reasonable.

VII. PROPOSED INTEREST DISTRIBUTION

A. Overview

94. As discussed above, by Order dated July 14, 2009, this Court provided its advice and directions with respect to the entitlement to post-liquidation interest and the methodology to be applied under subsection 95(2) of the *WURA*. The Court also confirmed that this entitlement takes priority to any ultimate release of the balance of any assets to the U.S. Liquidator that the Court may ultimately authorize.

B. Approach to Proposed Interest Distribution

95. The Liquidator has calculated the proposed Interest Distribution in accordance with the advice and directions of the Court. As at December 31, 2009, the total Interest Distribution on this basis will be approximately \$5.2 million.
96. In recommending the Interest Distribution, as with all the previous distributions, the Liquidator has introduced further elements of conservatism, beyond those in the loss projection methodology, for purposes of reaching its recommendations, including:
- a) all costs for the completion of the liquidation have been estimated on a very conservative basis;

- b) reserves have been taken for certain policies at their full limits, and notwithstanding that claims have not been asserted at limits; and
 - c) to deal with the three main remaining uncertainties in the estate – reinsurance, Non-Booked Claims and IBNR – in this distribution the Liquidator is ascribing bad debt provisions to reinsurance that has not been collected and is building into the assumptions conservative values for the Non-Booked Claims and IBNR.
97. The Liquidator has also considered the fact that the proposed Interest Distribution will be a final, “one-time” distribution, with the exception of the Over-limits Claimants whose policy loss claims were or are in litigation and ultimately determined in favour of the claimant and would, but for the winding-up have been eligible for pre-judgment interest for the period following commencement of the winding-up.
98. The Liquidator considers that it is appropriate to achieve finality and certainty with respect to the claims that are eligible for post-liquidation interest and to eliminate the ongoing costs and administration of this element to the estate.
99. Based on the foregoing, and the actuarial projections of the estate’s total claims exposure, referenced earlier in this Report, the Liquidator recommends authorization for the Interest Distribution at this time. The Liquidator is of the view that there is no realistic scenario under which this distribution would prejudice any party.

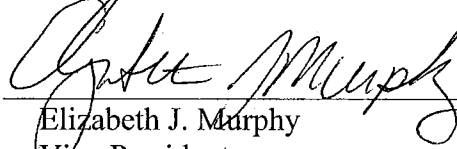
VIII. RECOMMENDATIONS

100. In light of the foregoing, the Liquidator therefore respectfully recommends that this Court approve the Interest Distribution, to be calculated in accordance with Justice Campbell's Order made July 14, 2009, and grant the further relief sought herein.

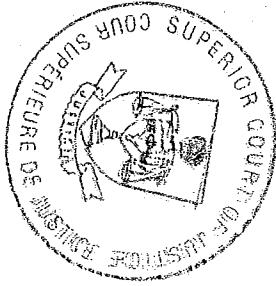
ALL OF WHICH IS RESPECTFULLY SUBMITTED,

KPMG INC., the Liquidator of Reliance Insurance
Company – Canadian Branch

Per:



Elizabeth J. Murphy
Vice-President



**ONTARIO
SUPERIOR COURT OF JUSTICE**

COMMERCIAL LIST

THE HONOURABLE)
MR. JUSTICE FARLEY) MONDAY THE 3RD DAY
) OF DECEMBER, 2001
)
)

**IN THE MATTER OF
RELIANCE INSURANCE COMPANY**

**AND IN THE MATTER OF THE
INSURANCE COMPANIES ACT, S.C. 1991, C.47, AS AMENDED**

**AND IN THE MATTER OF THE
WINDING-UP AND RESTRUCTURING ACT, R.S.C. 1985, C.W-11, AS AMENDED**

BETWEEN:

THE ATTORNEY GENERAL OF CANADA

Applicant

- and -

RELIANCE INSURANCE COMPANY

Respondent

ORDER

THIS APPLICATION made by the Applicant was heard this day without a jury at Toronto, in the presence of counsel for the Applicant, for the Respondent, for KPMG Inc., and for the Property and Casualty Insurance Compensation Corporation ("PACICC"), no one opposing.

ON READING the Notice of Application and the evidence filed by the parties, and on hearing submissions of counsel for the parties:

1. THIS COURT ORDERS that the service of the Notice of Application and the materials herein be and it is hereby good and sufficient notice thereof and that any further service of the Notice of Application and materials herein be and it is hereby dispensed with.
2. THIS COURT ORDERS that KPMG Inc. be and is hereby appointed as provisional liquidator (the "Liquidator") of the insurance business in Canada of the Respondent, including the assets in Canada of the Respondent, together with its other assets held in Canada under the control of its chief agent, including, without limitation, all amounts received or receivable in respect of its insurance business in Canada ("Reliance (Canada)").
3. THIS COURT ORDERS that the giving of security by the Liquidator upon its appointment as liquidator be dispensed with.
4. THIS COURT ORDERS that all moneys belonging to Reliance (Canada) received by or on behalf of the Liquidator and its agents shall be paid into a chartered bank to the account of the Liquidator immediately after the receipt thereof and an account or accounts shall be opened immediately, provided, however, that the Liquidator shall have the discretion to deposit funds to and use the bank accounts currently in the name of or operated by Reliance (Canada).
5. THIS COURT ORDERS that any cheques or drafts in respect of policies, issued by Reliance (Canada) prior to the making of the winding-up order herein and which are presented for payment thereafter, may be paid out of the estate and effects of Reliance (Canada).

6. THIS COURT ORDERS that the amount recoverable from, due or owed by any reinsurer to Reliance (Canada) shall be paid to the Liquidator and shall not be reduced as a result of this Order or the winding-up order, notwithstanding any terms or contractual agreement to the contrary, and that any payment made directly by a reinsurer to an insured or other creditor or claimant of Reliance (Canada) or Reliance Insurance Company shall not diminish or reduce or affect such reinsurer's obligation to Reliance (Canada).

7. THIS COURT ORDERS that the Liquidator is authorized to cure such defaults and effect such arrangements as may be required to reinstate such reinsurance affecting the operations of Reliance (Canada), as the Liquidator deems to be in the interest and for the protection of policyholders, creditors and claimants of Reliance (Canada).

8. THIS COURT ORDERS that the Liquidator may pay all valid policyholder claims, including claims in respect of unearned premiums, to the amount of \$25,000 or the amount, if any, of the voluntary compensation payment of PACICC which may be paid under the terms of its Memorandum of Operations (the "PACICC Voluntary Compensation Payment") until April 30, 2002 or such later date as this Court may order, subject to paragraph 9 hereof, and such payments shall be deemed for all purposes to have been payments made on account of claims in the course of the liquidation of Reliance (Canada).

9. THIS COURT ORDERS that the Liquidator may pay all valid claims including claims in respect of unearned premiums under the Meridian and other warranty and surety programs to the amount of \$5,000 or the amount, if any, of the PACICC Voluntary Compensation Payment until January 31, 2002 or such later date as this Court may order, and such payments shall be deemed for all purposes to have been payments made on account of claims in the course of the liquidation of Reliance (Canada).

10. THIS COURT ORDERS that the Liquidator may, after consultation with the Inspectors, make such other payments as the Liquidator in the Liquidator's discretion deems advisable in the circumstances in respect of policies of Reliance (Canada) and such payments shall be deemed for all purposes to have been payments made on account of claims in the course of the liquidation of Reliance (Canada).

11. THIS COURT ORDERS that in addition to the payments referred to in paragraphs 8 and 10, until April 30, 2002 or such later date as this Court may order, the Liquidator may pay and continue to pay all reasonable legal and other costs, incurred to and including April 30, 2002, which Reliance (Canada) is obligated to pay for defending any insureds against losses under Reliance (Canada)'s policies in accordance with the applicable policy ("Defence Costs"), subject to the applicable terms and limits of such policies. For greater certainty, all payments of Defence Costs shall be deemed for all purposes to have been payments made on account of claims in the course of the liquidation of Reliance (Canada) and to form part of the expenses of the liquidation as a first charge on the assets of the estate. However, if the applicable policy so provides, such payments shall be taken into account in determining the amount which would otherwise be distributed to the respective policyholders and claimants, or otherwise paid on account of Defence Costs, as the case may be, at such time as any further distributions or similar arrangements are made in respect of their policies.

12. THIS COURT ORDERS that any payments made by the Liquidator pursuant to paragraphs 5, 8, 9, 10 and 11 hereof, other than payments made pursuant to clerical errors (the "Payments"):

- (a) shall be deemed to be payments made on account of claims in the liquidation of Reliance (Canada) and shall be deducted from the amount which would otherwise

be distributed at such time as further distributions or similar arrangements are made in respect of such claims;

- (b) shall be deemed to have been made in accordance with this Order;
- (c) in respect of any policy shall not obligate the Liquidator to make further payments in respect thereof; and
- (d) which may have exceeded the ultimate amount which the Liquidator determines is available for distribution to the respective policyholders and claimants, or available for payment of Defence Costs, as the case may be, (collectively, the "Overpayments") shall be deemed not to be preferences and shall not be repayable by the recipients or policyholders.

Neither the Liquidator nor the Liquidator's agents, advisers or employees shall be liable to any person in respect of the Overpayments.

13. THIS COURT ORDERS that PACICC, which shall designate from time to time one or more persons as its representative, and the Insurance Commissioner of the Commonwealth of Pennsylvania in her capacity as Liquidator of the Respondent or her designee are appointed inspectors (collectively the "Inspectors") to assist and advise the Liquidator in the winding-up of Reliance (Canada).

14. THIS COURT ORDERS that the Inspectors may apply to this Court on motion for directions concerning any matter relating to the liquidation of Reliance (Canada).

15. THIS COURT ORDERS that each claim in respect of which PACICC makes a PACICC Voluntary Compensation Payment (a "Compensated Claim") shall be deemed to be and

shall hereby be assigned in its entirety to PACICC without specific assignment or further steps required. PACICC shall be entitled to assert each Compensated Claim in the Liquidation. Reliance (Canada) is hereby deemed to have acquiesced to the assignment of Compensated Claims provided for herein and to have received a copy of the deed of assignment. PACICC and the Liquidator shall be deemed to be and shall hereby be released and forever discharged from any and all claims, actions, losses and liabilities which any person has or may have at present or in the future with respect to each Compensated Claim.

16. THIS COURT ORDERS that, notwithstanding the provisions of paragraph 15, the Liquidator may make funds in the estate available to PACICC from time to time to be used by PACICC to make PACICC Voluntary Compensation Payments pursuant to the terms and conditions of the loan and services agreement made effective as of the date hereof between the Liquidator and PACICC, which is hereby approved.

17. THIS COURT ORDERS that the Liquidator is authorised and empowered to act as administrator of insurance coverage on behalf of third parties who assume all or part of the insurance risk, and to be paid the fees earned by Reliance (Canada), pursuant to the terms of the contracts between Reliance (Canada) and such third parties.

18. THIS COURT ORDERS that the Liquidator is entitled forthwith to possession of all of Reliance (Canada)'s books, accounts, securities, documents, papers, computer programs and data, registers and records of any kind ("Books and Records") and that Reliance (Canada), its present and former shareholders, directors, officers, employees, salespeople and agents, accountants, auditors, solicitors, trustees, and every person having knowledge of this Order and having possession or control of such Books and Records, do forthwith deliver over to the Liquidator or to the Liquidator's agent all such Books and Records.

19. THIS COURT ORDERS that all persons, including, without limitation, employees, brokers, legal counsel, insurance agents, third party administrators, or salespeople having access to or knowledge of the affairs of Reliance (Canada) do co-operate with the Liquidator in providing information or documents necessary or incidental to the liquidation of Reliance (Canada).

20. THIS COURT ORDERS that any entity which has custody or control of any data processing information and records (including but not limited to source documents, all types of electronically stored information, master tapes or any other recorded information) relating to Reliance (Canada), shall transfer custody and control of such records in a form readable by the Liquidator to the Liquidator as of the date of this Order, unless instructed to the contrary by the Liquidator.

21. THIS COURT ORDERS that any entity furnishing claims processing or data processing services to Reliance (Canada) shall maintain such services and transfer any such accounts to the Liquidator as of the date of this Order, unless instructed to the contrary by the Liquidator.

22. THIS COURT ORDERS that Reliance (Canada) and its Chief Agent, officers, trustees, employees, consultants, agents, and legal counsel shall: surrender peacefully to the Liquidator the premises where Reliance (Canada) conducts its business; deliver all keys or access codes thereto and to any safe deposit boxes; advise the Liquidator of the combinations or access codes of any safe or safekeeping devices of Reliance (Canada) or any password or authorization code or access code required for access to data processing equipment; and shall deliver and surrender peacefully to the Liquidator all of the assets, books, records, files, credit cards, and other property of Reliance (Canada) in their possession or control, wherever located,

and otherwise advise and cooperate with the Liquidator in identifying and locating any of the foregoing.

23. THIS COURT ORDERS that all persons, firms, corporations and other entities having agreements, whether written or oral, with Reliance (Canada) for the supply of goods or services, be and they are hereby enjoined from terminating, accelerating, suspending, modifying, determining or cancelling such agreements without the written consent of the Liquidator or leave of this Court, and that all such parties shall continue to comply with their obligations under such agreements or otherwise on terms currently provided so long as the Liquidator pays the normal prices or charges for such goods or services incurred after the date of this Order in accordance with usual payment terms or as may hereafter be negotiated by the Liquidator from time to time.

24. THIS COURT ORDERS that all persons, firms, corporations and other entities be and they are hereby enjoined from disturbing or interfering with the occupation, possession or use by the Liquidator of any premises occupied or leased by Reliance (Canada) as at November 8, 2001 except upon further Order of this Court. From November 8, 2001 and for the period of time that the Liquidator occupies any leased premises, the Liquidator shall pay occupation rent to each lessor based upon the regular monthly base rent that was previously paid by Reliance (Canada) in respect of the premises so occupied or as may hereafter be negotiated by the Liquidator from time to time.

25. THIS COURT ORDERS that all persons, firms, corporations and other entities be and they are hereby enjoined from disturbing or interfering with computer software, hardware, support and data services or with utility services, including, but not limited to, the furnishing of oil, gas, heat, electricity, water, telephone service (including at present telephone numbers used by Reliance (Canada)) or any other utilities of like kind furnished to Reliance (Canada) and they

are hereby enjoined from discontinuing or altering any such utilities or services to the Liquidator except upon further order of this Court, so long as the Liquidator pays the normal prices or charges for such goods and services incurred after November 8, 2001 as the same become due in accordance with usual payment terms or as may hereafter be negotiated by the Liquidator from time to time.

26. THIS COURT ORDERS that, without limiting the generality of the foregoing, and except upon further order of this Court having been obtained on at least 7 days' notice to the Liquidator:

- (a) all persons, firms, corporations and other entities be and they are hereby restrained from terminating, cancelling or otherwise withdrawing any licences, permits, approvals or consents with respect to or in connection with Reliance (Canada) as they were on November 8, 2001;
- (b) any and all proceedings or steps taken or that may be taken, wheresoever taken, by any person, firm, corporation or entity, including, without limitation, any of the policyholders or creditors of Reliance (Canada), suppliers, co-insurers, reinsurers, contracting parties, depositors, lessors, tenants, co-venturers or partners (hereinafter, in this paragraph "Claimants") against or in respect of Reliance (Canada) shall be and hereby are stayed and suspended;
- (c) the right of any Claimant to make demands for payment on or in respect of any guarantee or similar obligation or to make demand or draw down under any letters of credit, bonds or instruments of similar effect, issued by or on behalf of Reliance (Canada), to take possession of, to foreclose upon or to otherwise deal

with any property, wheresoever located, of Reliance (Canada) whether held directly or indirectly, as principal or nominee, beneficially or otherwise, or to continue any actions or proceedings in respect of the foregoing, is hereby restrained;

- (d) the right of any Claimant to assert, enforce or exercise any right (including, without limitation, any right of dilution, buy-out, divestiture, forced sale, acceleration, termination, suspension, modification or cancellation or right to revoke any qualification or registration), option or remedy available to it including a right, option or remedy arising under or in respect of any agreement (including, without limitation, any contract, debt instrument, guarantee, option, co-ownership agreement or any agreement of purchase or sale but not including any eligible financial contract, as defined in the *Winding-up and Restructuring Act*) to which Reliance (Canada) is a party, arising out of, relating to or triggered by the occurrence of any default or non-performance by Reliance (Canada) or the making or filing of these proceedings, or any allegation contained in these proceedings, is hereby restrained; and
- (e) all Claimants are restrained from exercising any extra judicial remedies against Reliance (Canada), including, without limitation, the registration or re-registration of any securities owned by Reliance (Canada) into the name of such persons, firms, corporations or entities or their nominees, the exercise of any voting rights attaching to such securities, the retention of any payments or other distributions made in respect of such securities, any right of distress, repossession, or consolidation of accounts in relation to amounts due or accruing due in respect of

or arising from any indebtedness or obligation of Reliance (Canada) as of the date hereof.

27. THIS COURT ORDERS that no action lies against the Liquidator, any of its affiliates (the "Affiliates") any director, officer, agent, representative or employee of the Liquidator or of the Affiliates, any entity or person (or director, officer, agent, representative or employee of any such entity or person) acting under the direction of the Liquidator, or the Inspectors or any director, officer, agent, representative or employee thereof, for anything done or omitted to be done in good faith in the administration of the liquidation of Reliance (Canada) or in the exercise of the Liquidator's powers under this Order or otherwise.

28. THIS COURT ORDERS that no suit, action or other proceeding shall be proceeded with or commenced against the Liquidator, the Affiliates, any director, officer, agent, representative or employee of the Liquidator, or of the Affiliates, any entity or person (or director, officer agent, representative or employee of any such person) acting under the direction of the Liquidator, or the Inspectors or any director, officer, agent, representative or employee thereof, except with leave of this Court and subject to such terms as this Court may impose.

29. THIS COURT ORDERS that the Liquidator may, without the approval, sanction or intervention of this Court and without previous notice to the policyholders or creditors of Reliance (Canada) or any other person,

- (a) take control of the estate and effects of Reliance (Canada) or such part thereof as the Liquidator shall determine;

- (b) bring or defend any action, suit or prosecution or other legal proceeding, civil or criminal, in the Liquidator's own name as liquidator or in the name or on behalf of Reliance (Canada), as the case may be;
- (c) carry on the business of Reliance (Canada) so far as it is necessary or incidental to the winding-up of Reliance (Canada);
- (d) lease or mortgage or otherwise realize upon the undertaking, property and assets of Reliance (Canada) or any part or parts thereof;
- (e) sell the real and personal property, effects, intangibles and choses in action of Reliance (Canada), including all or any portion of Reliance (Canada)'s contracts and products and related assets, including, without limitation, Reliance (Canada)'s lists of policyholders and customers, by public auction or private contract, and transfer the whole thereof to any person or company, or sell them in parcels;
- (f) do all acts and execute, in the name of and on behalf of Reliance (Canada), all deeds, receipts, and other documents, and for that purpose use, when necessary, the seal of Reliance (Canada), and file any elections (tax or otherwise), objections or registrations, and file any notices, all as may be necessary or desirable in the opinion of the Liquidator for the better liquidation of Reliance (Canada);
- (g) prove, rank, claim and draw dividends in the matter of the bankruptcy, insolvency or sequestration of any contributory, for any sum due to Reliance (Canada) from the contributory, and take and receive dividends in respect of the bankruptcy, insolvency or sequestration, as a separate debt due from that contributory and rateably with the other separate creditors;

- (h) draw, accept, make and endorse any bill of exchange or promissory note in the name of and on behalf of Reliance (Canada);
- (i) give discharges of mortgages and other securities, partial discharges of mortgages and other securities, and pay property taxes and insurance premiums on mortgages and other securities taken in favour of Reliance (Canada);
- (j) pay such debts of Reliance (Canada) as may be necessary to be paid in order to properly preserve and maintain the undertaking, property and assets of Reliance (Canada) or to carry on the business of Reliance (Canada);
- (k) surrender possession of any premises occupied by Reliance (Canada) and disclaim any leases entered into by Reliance (Canada);
- (l) apply for any permits, licences, approvals or permissions as may be required by any governmental or regulatory authority;
- (m) re-direct Reliance (Canada)'s mail;
- (n) enter into any eligible financial contracts, as defined in the *Winding-up and Restructuring Act*;
- (o) take possession and control of all securities in which Reliance (Canada) has an interest (directly or indirectly) and exercise all rights that may be enjoyed by a holder of such securities including, without limitation, rights (i) that may arise by virtue of the holder being a party to a shareholder or similar agreement that may, by way of example, restrict the powers of the directors to manage or supervise the management of the business and affairs of the corporation, (ii) to receive

information, (iii) to attend at and cause to be held meetings of holders of such securities, (iv) to vote such securities for the removal or election of directors and approval of significant transactions (such as the sale or disposition of all or substantially all of the assets of such company or the winding-up, liquidation, rehabilitation, bankruptcy, receivership, restructuring or amalgamation of such company), and (v) to sell or otherwise dispose of such securities;

- (p) compromise all calls and liabilities to calls, debts and liabilities capable of resulting in debts, and all claims, demands and matters in dispute in any way relating to or affecting the assets of Reliance (Canada) or the winding-up of Reliance (Canada), on the receipt of such sums, payable at such times, and generally on such terms as are agreed on by the Liquidator;
- (q) make such compromise or other arrangements with creditors or persons claiming to be creditors of Reliance (Canada) as the Liquidator deems expedient; and
- (r) do and execute all such other things as are necessary for, or incidental to the winding-up of the affairs of Reliance (Canada), including without limitation entering into agreements incurring obligations.

30. THIS COURT FURTHER ORDERS that the Liquidator may, with the approval of this Court and on such notice as the Court may direct:

- (a) arrange for the transfer or reinsurance of all or a portion of the policies of Reliance (Canada); and
- (b) cancel all or a portion of the outstanding policies of Reliance (Canada).

31. THIS COURT ORDERS that the Liquidator and any of the Liquidator's agents, officers, directors, representatives or employees shall be deemed not to be an employer or a successor employer of the employees of Reliance (Canada) within the meaning of the *Pension Benefits Act* (Ontario), *Employment Standards Act* (Ontario), the *Labour Relations Act* (Ontario) or any other Federal, Provincial or Municipal legislation governing employment or labour standards or any other statute, regulation or rule of law or equity for any purpose whatsoever and, further, that the Liquidator and any of the Liquidator's agents, directors, officers, representatives or employees shall not be and shall be deemed not to be, in possession, charge or control of the property or business or affairs of Reliance (Canada) pursuant to any Federal, Provincial or Municipal legislation, statute, regulation or rule of law or equity which imposes liability on the basis of such status including, without limitation, the *Environmental Protection Act* (Ontario), the *Canadian Environmental Protection Act*, or the *Ontario Water Resources Act*, and this shall be binding on all tribunals and administrative bodies.

32. THIS COURT ORDERS that the Liquidator may retain, employ or engage such actuaries, accountants, financial advisors, investment dealers, solicitors, attorneys, valuers or other expert or professional persons as the Liquidator deems necessary or desirable to assist the Liquidator in fulfilling the Liquidator's duties, and all reasonable and proper expenses which the Liquidator may incur in so doing shall be costs of liquidation of Reliance (Canada).

33. THIS COURT ORDERS that the Liquidator may act on the advice or information obtained from any actuary, accountant, financial advisor, investment dealer, solicitor, attorney, valuer or other expert or professional person, and the Liquidator shall not be responsible for any loss, depreciation or damage occasioned by acting in good faith in reliance thereon.

34. THIS COURT ORDERS that the Liquidator shall be paid such remuneration as the Court Orders.

35. THIS COURT ORDERS that the Liquidator shall be at liberty to apply reasonable amounts against its remuneration, expenses and disbursements on a monthly basis and that such amounts shall constitute advances against its remuneration and expenses on, but subject to, the passing of its accounts.

36. THIS COURT ORDERS that this Order and any other orders in these proceedings shall have full force and effect in all Provinces and Territories in Canada.

37. THIS COURT SEEKS AND REQUESTS the aid and recognition of any Court or administrative body in any Province or Territory of Canada and any Canadian Federal Court or administrative body and any Federal or State Court or administrative body in the United States of America and any Court or administrative body in the United Kingdom or elsewhere to act in aid of and to be complementary to this Court in carrying out the terms of this Order.

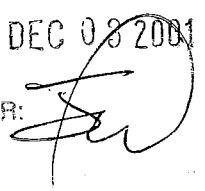
38. THIS COURT ORDERS that the costs of this application, including the costs of the Inspectors, are to be assessed on a solicitor and his own client basis and shall be costs of liquidation of Reliance (Canada).

39. THIS COURT ORDERS that interested parties may apply to the Court for advice and directions on 7 days' notice to the Liquidator and the Inspectors, and that the Liquidator may at any time apply to this Court for advice and directions.

ENTRENEE ATTESTE A TORONTO
CHIFFRE NO:
LE/DANS LE REGISTRE NO.

DEC 08 2001

PER/PAR:



Viktoria Leubner
Registrator

THE ATTORNEY GENERAL OF
CANADA
Applicant

RELLANCE INSURANCE COMPANY
and Respondent

Court File No: 01-CL-4313

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

ORDER

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[3] A Procedural Order dated January 25, 2009 provided for the appointment of representative counsel for the two classes of claimants in the liquidation of Reliance Canada affected by the motion.

[4] Reliance Insurance Company is a property and casualty insurer incorporated in the early 1800's in the Commonwealth of Pennsylvania. In 1918, Reliance Insurance Company established a Canadian branch ("Reliance Canada") in the City of Toronto to carry on specific insurance business in Canada. Reliance Canada carried on business in Canada as a branch of a foreign insurance company under the predecessor legislation to the Part XIII of the *Insurance Companies Act*, S.C. 1991, c. 47 (the "ICA"), and ultimately under the ICA.

[5] The ICA sets out a regime and imposes specific requirements for the carrying on of business of a Canadian branch of a foreign insurance company such as Reliance Canada. Among other matters, a Canadian branch must seek approval to issue policies in Canada, maintain in a trust account in Canada assets of prescribed value and keep appropriate records of its customers and claimants and the nature of its liabilities, including those under policies.

[6] The Reliance branch in Canada is regulated by the Office of the Superintendent of Financial Institutions in Canada, which issues detailed guidelines and requirements under the ICA.

[7] In May 2001, Reliance U.S. was insolvent and its regulator, the Insurance Commission for Pennsylvania, sought and was granted an order on October 3, 2001 appointing the Commissioner liquidator ("U.S. Liquidator") of Reliance U.S.

[8] On October 5, 2001, pursuant to the ICA, the Superintendent took control of the assets in Canada of Reliance Canada and pursuant to the recommendation of the Superintendent, the Attorney General of Canada sought and was granted an Order of Winding-Up pursuant to the WURA dated December 3, 2001 and on the same day, KPMG was appointed liquidator of Reliance Canada.

[9] All policy loss claims that had been settled prior to the commencement of the Winding-Up were paid by Reliance Canada prior to the commencement of the Winding-Up. Reliance Canada's policies were not cancelled with the winding-up, but rather continued to be run-off and settled in the normal course of claims adjudication. From the beginning of the winding-up, this Court permitted payment of various policy loss claims within certain thresholds ("Authorized Policy Payments") as these claims were settled and allowed during the course of the liquidation.

[10] In particular, pursuant to the Appointment Order and subsequent extension Orders of this Court, the Liquidator paid the following policy benefits by way of Authorized Policy Payments: (a) defence costs; (b) valid policy loss claims up to the \$250,000 limit of the voluntary compensation payment of the Property and Casualty Insurance Compensation Corporation ("PACICC"); and (c) valid policy loss claims, not covered by PACICC, up to \$25,000.

[11] Further, as the liquidation progressed, this Court granted Orders approving distributions by various interim dividend payments ("Interim Dividend Payments") on all allowed policy loss claims in the estate of Reliance Canada (to the extent such claims had not already been paid-in-full by way of the Authorized Policy Payments). This Court's Order of April 8, 2008 brought the total authorized level of Interim Dividend Payments to 100% of the principal amount of claims.

[12] Claims other than policy claims have either been paid or provided for by further order.

[13] As a consequence of the two types of payments (the Authorized Policy Payments and the Interim Dividend Payments), many policy loss claims were paid-in-full as they were settled and allowed. That is, the liquidation did not cause any delay in payment-in-full of these claims. (As of December 31, 2007 approximately 18,240 such policy loss claims, with a total value of approximately \$66 million, had been paid-in-full without any delay caused by the liquidation.)

[14] Conversely, several reinsurance claims and 64 policy loss claims (with a combined total value of approximately \$65 million) could *not* be paid-in-full contemporaneously with their being settled and allowed, because they exceeded the Authorized Policy Payments and they were settled prior to the cumulative Interim Dividend Payments level reaching 100%. These policy loss claims were instead paid over time by way of the Court-authorized Interim Dividend Payments, ultimately resulting in a cumulative 100 cents on the dollar distribution on April 8, 2008. (Similarly, the allowed ordinary creditor claim was not paid until the Order of December 17, 2008).

[15] Those policyholders who were paid in full as settled and allowed (as they would have been in contract) are represented in this application as "Under-Limits Claimants." Those claimants not paid in full immediately as their policy loss claims were settled and allowed in the liquidation are referred to as "Over-Limits Claimants." The Canadian Liquidator currently forecasts a surplus in the Canadian estate of approximately \$95.8 million.

Four Questions

[16] The four questions posed by this motion for directions are as follows:

Question 1: Does subsection 95(2) of the *Winding-up and Restructuring Act*, R.S.C. 1985, c.W-11 ("*WURA*") apply to the winding-up of Reliance Canada, so that interest on allowed claims in the winding-up of Reliance Canada is payable pursuant to subsection 95(2), in the case where there is a surplus, in priority to any release to Reliance Insurance Company of the balance of any assets that the Court may ultimately approve under subsection 161(10) of the *WURA*?

Question 2: If the answer to Question 1 is yes, on what basis is post-liquidation interest to be determined? That is, on which type of claims is it payable, at what rate, is it simple or compounded, from what date(s) does it run, and are interim payments that were made on claims to be first applied toward the interest payable on the claim and then to the principal amount of the

claim or first toward the principal amount of the claim?

Question 3: If the answer to Question 1 is no, is interest payable in the winding-up of Reliance Canada on allowed claims on some basis other than subsection 95(2) of the *WURA*, in the case where there is a surplus, in priority to any release to Reliance Insurance Company of the balance of any assets that the Court may approve under subsection 161(10) of the *WURA*?

Question 4: If the answer to Question 1 is no, and the answer to Question 3 is yes, on what basis is post-liquidation interest to be determined?

[17] The position of the Canadian Liquidator is that Part 1 of the *WURA* by s. 9 of the statute applies to all windings-up also applies by s. 95 to codify entitlement to post-liquidation interest payable from a surplus, since Part III of the *WURA*, which applies specifically to Insurance Companies, does not refer to the application of a surplus to post-liquidation interest.

[18] The U.S. Liquidator in its submission raises the issue of the applicability of s. 95 of the *WURA*, given the application of Part III of the statute.

[19] Even assuming that s. 95 of the *WURA* applies and even if some interest is payable, the U.S. Liquidator questions why the Court should exercise discretion to permit certain policyholders (Canadian) to be paid interest with respect to paid claims when other policyholders and other creditors of Reliance U.S. will likely be subject to significant shortfalls of the principal amount of their policy loss claims against Reliance U.S.

[20] The U.S. Liquidator also questions, assuming some interest might be payable, why the rate of interest should exceed the actual interest earned on the assets of the Canadian Branch during the course of the Winding-Up (approximately 3.9% per annum.)

[21] Both the Under- and Over-Limit Claimants support the Canadian Liquidator in the proposition that s. 95 of the *WURA* does apply and that the Canadian policyholders are entitled to receive 5% of their claims from the date of the Canadian liquidation orders (December 3, 2001) to the date of actual payment.

[22] The Over-Limit Claimants assert that in the event the Court applies a later date for the commencement of a rate of interest accruing on the Under- and Over-Limit claims, the Over-Limit Claimants should recover 5% from the date at which those Claimants should have received payment pursuant to the applicable policy terms.

[23] Section 95 of Part I of the *WURA* reads as follows:

95. (1) The court shall distribute among the persons entitled thereto any surplus that remains after the satisfaction of the debts and liabilities of the company and the winding-up charges, costs and expenses, and unless otherwise provided by law or by the Act, charter or instrument of incorporation of the company, any property or assets remaining after the satisfaction shall be distributed among the members or shareholders according to their rights and interests in the company.

(2) Any surplus referred to in subsection (1) shall first be applied in payment of interest from the commencement of the winding-up at the rate of five per cent per annum on all claims proved in the winding-up and according to their priority.

[24] As noted by counsel for the U.S. Liquidator, the WURA is made up of three parts: Part I - General; and two parts applicable to specific industries, which deal specifically with foreign banks and foreign insurance companies, respectively: Part II - Authorized Foreign Banks, which applies only to the winding-up of the business in Canada of authorized foreign banks and to the liquidation of their assets (s. 150); and Part III - Restructuring of Insurance Companies, which applies only to insurance companies, including foreign insurance companies (s. 159.1).

[25] Each Part contains its own provisions regarding the priorities in the distribution of assets in a winding-up: Part I - ss. 93-95; Part II: ss 158.1-158.2; and Part III - s. 161. The provisions of Part I apply subject to those of Part II and Part III, respectively.

[26] Part II of the WURA, dealing with foreign banks, does contain specific terms that provide for the payment of interest from the commencement of the winding-up at the rate of 5% before payment out of remaining assets.

[27] Similar provisions do not apply in Part III that deal with winding up of Insurance Companies.

[28] Section 161 of the WURA under Part III contains detailed provisions relating to claims in the case of policies of life insurance and policies of accident insurance. Among other things, s. 161(2) does provide for the interest component of claims of policyholders on life insurance policies and the priority ranking of claims of policyholders in foreign companies for life policies.

[29] The problem that has given rise to this motion is that there are no detailed provisions applicable to property and casualty policies in Part III as are applicable to life or disability policies.

[30] It is conceded by all parties that whatever assets the foreign insurer (Reliance Insurance Company) had to maintain in Canada in order to operate here have now come under the jurisdiction of the Canadian winding-up Court. See *Maska U.S. Inc. v. Kansa General International Insurance Company Ltd.*, 1998 CanLII 12824 at 29 (QCCA).

[31] As well there is no issue that the winding-up Court sits to administer the assets which are within its jurisdiction and for that purpose the Court administers only the law of its jurisdiction, both on procedural and substantive matters. When a winding-up order is made for the Canadian business of a foreign company, the provisions of the Canadian statute apply and control the entire situation. The Canadian winding-up is an independent and self-contained proceeding.

The Position of the Canadian Liquidator

[32] Prior to the coming into force of ss. 95(2) of the *WURA* on June 28, 1996, the rules about interest in a winding-up were strictly common-law rules. In a winding-up, the well-established "interest stops" rule means that interest on provable claims stops accruing as at the commencement of the winding-up; however, at common-law if there ultimately is a surplus in

the estate, post-liquidation interest is payable where there had been a right to interest on a claim by contract, course of conduct, judgment or statute.

[33] The position of the Canadian Liquidator is that the notion of payment of post-liquidation interest in the event of a surplus, and the applicable interest rate, were codified by the 1996 addition of ss. 95(2), which replaced common law rules that previously applied.

[34] The issue in this case arises from the run-off of claims in the Winding Up of Reliance Canada. Where some claimants have incurred delay in distribution caused by the liquidation and have suffered no prejudice, the Canadian Liquidator submits that ss. 95(2) of the *WURA* clearly applies, and post-liquidation interest is payable on appropriate claims, at the statutory simple rate of 5% *per annum*, before any balance is released to the U.S. Liquidator.

[35] Further, the Canadian Liquidator submits that, properly construed and applied, ss. 95(2) envisages that interest is payable to those having claims where payment-in-full was in fact delayed by virtue of the liquidation process (i.e., in this case, only the Over-Limits Claimants.) Interest is calculated from the date those Over-Limits Claimants would otherwise have been entitled to payment in the ordinary course (i.e., absent a liquidation) to the date of actual payment-in-full to them of principal and interest.

[36] The Canadian Liquidator further submits that any interim distributions (by Authorized Policy Payments or Interim Dividend Payments) that were made to these Over-Limits Claimants should be treated as being allocated first to the post-liquidation interest component, and then to the principal amount, in accordance with this Court's 2003 decision in *Attorney General (Canada) v. Confederation Trust Company*, 2003 Can LII 18103 (ON S.C.)

[37] The submission on behalf of the U.S. Liquidator urges that the Court has discretion to determine issues including interest and if any interest is to be awarded, it should be limited to the actual return on assets. This position would lead to the conclusion that the 1996 Part III amendments to the *WURA* provide a complete code in respect of the Winding Up of Insurance Companies.

[38] One of the few cases on this issue is the decision of Justice Durand of the Quebec Superior Court in *Kansa General International Insurance Company*, 2004 CanLII 21472. While the facts are quite different, I agree with the observation at paragraph 37, which favours coherence between amending parts of legislation such as Parts I and III of the *WURA*. I am not satisfied that there is a contradiction between the provisions of Part III and s. 95 as it applies to Insurance Companies.

[39] The position of the U.S. Liquidator contrasts the treatment of different types of policyholders' claims depending on the policy type; namely Life (including accident and sickness) and Non-Life (which includes property and casualty policies such as those issued by Reliance.)

[40] There is a rationale to the distinction made in s. 161(2) and (3) between Life Policies and others. Interest that is expressly provided for in s. 162(3) refers to interest that is part of the policy, not simply interest that arises on a claim in the liquidation.

[41] I accept the position of the Canadian Liquidator that the winding-up Court sits to administer the assets which are within its jurisdiction and for that purpose the Court administers only the law of its jurisdiction, both on procedural and substantive matters. When a winding-up order is made for the Canadian business of a foreign company, the provisions of the Canadian statute apply and control the entire situation. The Canadian winding-up is an independent and self-contained proceeding. *In Re Suidair International Airways Ltd.*, [1951] 1 Ch. 165, at 173-174].

[42] As noted, prior to the coming into force of ss. 95(2) of the *WURA* on June 28, 1996, the rules about interest in a winding-up were strictly common-law rules. The effect of what is known as the "interest stops" rule meant that interest on provable claims stops accruing as at the commencement of the winding-up. At common-law if there was ultimately a surplus in the estate, post-liquidation interest would be payable where there had been a right to interest on a claim by contract, course of conduct, judgment or statute. See *Attorney General (Canada) v. Confederation Trust Company*, 2003 Can LII 18103 at paras. 21, 24 and 28 (ON S.C.); *Canada (Attorney General) v. Security Home Mortgage*, 2003 ABQB 588, at paras. 86 and 89 (Can LII).

[43] The position of the U.S. Liquidator is that since s. 161(3) only provides for interest in respect of Life Policies, there is no statutory requirement that interest be paid in relation to property and casualty insurance policies prior to the transfer of any surplus. It is submitted that if Parliament had intended to require interest on such claims, an express provision could have been inserted into s. 161 similar to s. 158.1 dealing with claims against foreign banks.

[44] The U.S. Liquidator further submits that s. 95 in Part I does not apply to Reliance, as specific provisions are dealt with in s. 161 and the provisions of Part I by s. 9 are subject to the provisions of Part III.

[45] The U.S. Liquidator urges that when the provisions of s. 161(6) are properly applied, there is no surplus, as claimants of Reliance (those in the U.S. Liquidation) are expected to suffer a significant shortfall in their claims against Reliance. In the result, as counsel submitted there should be no "surplus" in s. 95(1) for which the interest in s. 95(2) would be triggered.

[46] I have concluded that there is a logic that supports the position of the Canadian Liquidator. The analysis commences with what Pepall J. of this Court held in an earlier decision¹ in this liquidation, as follows:

[24] By November 8, 2001, two liquidation estates were created, one in the U.S. and one in Canada. The *WURA* specifically provides for a winding up order in respect of the "insurance business in Canada of the foreign insurance company if the court is of the opinion that for any reason it is just and equitable".^[9] There is, therefore, no issue that there was jurisdiction to make the winding up and appointment orders. As noted in *Re Breakwater Co.*,^[10] the jurisdiction of the court to wind up a company is not defeated because a winding

¹ *Canada (Attorney General) v. Reliance Insurance Company*, 2007 CanLII 41899 at para. 24 (ONSC)

up order has already been made in the company's foreign country of origin. The court then administers the assets of the company that are within its jurisdiction: *Re: Suidair International Airways Ltd.*[11]

[44] The winding-up Court sits to administer the assets which are within its jurisdiction and for that purpose the Court administers only the law of its jurisdiction, both on procedural and substantive matters. When a winding-up order is made for the Canadian business of a foreign company, the provisions of the Canadian statute apply and control the entire situation. The Canadian winding-up is an independent and self-contained proceeding.

[47] Part I and s. 95 do apply to liquidations other than those of insurance companies. Section 161, which applies to insurance situations, in my view does not contain a complete code as urged by the U.S. Liquidator. Section 161 does provide some specific provisions for interest, namely those in which the contract itself (i.e., a Life Policy) provides for interest.

[48] I do not find it inconsistent to conclude that liquidation interest, as opposed to contract interest, would be governed by s. 95(2).

[49] I accept the submission of the Canadian Liquidator as set out in paragraph 54 of counsel's factum:

The application of ss. 95(2) to the situation of a surplus in the liquidation of a branch such as Reliance Canada is entirely harmonious and consistent with the treatment of all other liquidations under the *WURA* or bankruptcies under the *BIA*. Further, far from undermining or contradicting Part III of the *WURA* (which is simply the liquidation sequel of the regulatory regime in the *ICA*), ss. 95(2) it is entirely harmonious with the legislative and regulatory regime for foreign insurers who choose to operate in Canada, such as Reliance Insurance Company. As noted in Part II above, that regime imposes conservative margin (i.e., surplus) requirements on foreign insurers and they must deposit in trust in Canada sufficient assets to create a margin of assets over the value of the Canadian branch liabilities, which margin is currently targeted at 150%. The notion of a surplus for the protection of the claimants of the Canadian branch is 'built-in' from the very point that the foreign insurer chooses to commence business in Canada.

[50] The concept of Canadian claimants looking to Canadian branch assets finds its reciprocity in a decision of the New York Court of Appeals dealing with claims against New York assets by a foreign claimant:

We have pointed out in *Matter of People (Norske Lloyd Insurance Company)* (*supra*) that the Legislature in allowing foreign insurance companies "to do business in this State and country intended to treat the domestic agency largely as a complete and separate organization, to place it on a parity with domestic corporations, to supervise and regulate it as such and to require it by the deposit of prescribed assets to set up within this country a capital corresponding to that of domestic corporations and which should be security for business transacted by it here and not elsewhere". Creditors who have dealt with the insurance company here have more than a preference in the distribution of the proceeds of the assets of the corporation on liquidation, or even than a specific lien upon the assets. They are the only claimants who are entitled to share in that distribution. They are the only persons who on liquidation may be regarded in some sense as the equitable owners of the fund in liquidation. All others must look for satisfaction of their claims to the domiciliary representative of the foreign company and not to the fund here. The doctrine that equality is equity can have no application in the liquidation of assets beyond the groups or classes which may share in the distribution under the State. Here "the statute does not classify in different degrees of preference those who are entitled to its protection. They are all in the same class; claimants are entitled to equal protection of the statute or to none at all."

We cannot escape the conclusion that the Legislature in providing carefully for the deposit here of capital by the foreign company for the security and protection of those who transact business with the company here

intended to provide protection as complete as can be given to them through the liquidation of the assets or capital so deposited for their benefit. Concededly, under the statute the claimants who are entitled to the protection of the statute would receive in this proceeding payment of interest on their claims if the foreign corporation were not insolvent. These claimants may not be deprived of the full benefit of the provisions of the statute requiring deposit of capital here sufficient to protect fully those dealing with the foreign company here, because elsewhere the assets applicable to payment of debts proves insufficient.

Matter of People (Norske Lloyd Insurance Company), 249 N.Y. 139 at 148-150 (N.Y. CA 1928) (footnote references deleted)

(Cited with approval on another point: *Union Indemnity Insurance Company*, 199 A.D.2d 209 at 212 (N.Y. App. Div. 1993)

[51] A purposive approach to interpretation of the statutory provisions by reading the words of the statute as a whole in their ordinary sense within the concept and context of the Act is accepted as a means to find the intention of Parliament. See *Re Metcalfe & Mansfield Alternative Investments II Corp.* 2008 ONCA 587 at 11-12 (CanLII) ("*Re Metcalfe*"), leave to appeal denied 2008 CanLII 46997 (S.C.C.); *Interpretation Act*, R.S.C. 1985, c. I-21

[52] Commercial realities are appropriately applied to the interpretation of provisions of an insolvency statute. See *Re Metcalfe, supra* at 11, *Saulnier v. Royal Bank of Canada*, 2008 SCC 58 at para. 42 (CanLII)

[53] The logic that is consistent with the Canadian Liquidator position as well as the statute is as follows:

- (a) Canadian claimants are entitled to be paid from Canadian assets before any payments to a foreign liquidator;
- (b) Payment of any contractual interest on insurance policies is to be paid in accordance with s. 161 of Part III;
- (c) If any other interest is payable in calculating a surplus, it will be dealt with under s. 95, Part I.

[54] The distinction that is applicable to policyholders of Reliance in Canada is that business is being run-off so that policyholder claims arise and are only triggered at some time after the commencement of the winding-up.

[55] Only those policyholders whose claims arise during the run-off the payment of which is delayed by the liquidation would be entitled to interest to run from the time it otherwise would have been paid. This result is consistent with both s. 95(2) and s. 161.

[56] The logical conclusion to this analysis is that only the Over-Limits Claimants would be entitled to interest calculated to the payment in the ordinary course (i.e., absent a liquidation) to the actual payment of principal and interest.

[57] The submissions of the U.S. Liquidator recognize that there may be an equitable jurisdiction under s. 161 that could allow for interest to Over-Limits Claimants limited to time of

actual loss, but that it should be limited to the actual rate of recovery on the surplus assets of 3.990 rather than the 5% provided for in s. 95(2).

[58] If I am correct that s. 95 can be read harmoniously with s. 161 as applied to run-off property and casualty policies, there is no need to speculate or calculate what rate might be.

[59] The Under-Limits Claimants's position does not fit within the logical analysis above. There was no period during which they were delayed in receiving payment in full or, as counsel for the Canadian Liquidator submits, the claim to interest of Under-Limits Claimants runs for zero days.

[60] I conclude that it would lead to an absurd result if one group, the Under-Limits Claimants, received a payment of interest greater than that which would be received by the Over-Limits Claimants. Such a result would be a denial of the interests of fairness, equality and predictability among creditors as between the debtor company and creditors.

[61] The approach to interest above is consistent with that applied by Blair J. (as he then was) of this Court in *Canada (Attorney General) v. Confederation Life Insurance Co.*, [2001] O.J. No. 2610 at paras. 22-26 (S.C.J.)

[62] One final matter arises. Do the interim payments that were made to Over-Limits Claimants (authorized by the Court as funds were available) operate first to pay accruing interest so that the principal balance remains?

[63] I accept the submission of the Canadian Liquidator that the interest first approach is preferable and previously accepted in *Confederation Life, supra* at paragraphs 29-33.

[64] In the result, an Order will issue as proposed by the Canadian Liquidator at paragraph 81 of counsel's factum:

[81] The Liquidator therefore respectfully seeks an Order declaring that the Questions posed be answered as follows:

Question 1: Yes: subsection 95(2) of the *WURA* applies to the winding-up of Reliance Canada, so that interest on allowed claims in the winding-up of Reliance Canada is payable pursuant to subsection 95(2), in the case where there is a surplus, in priority to any release to Reliance Insurance Company (represented by the U.S. Liquidator) of the balance of any assets that the Court may ultimately approve under subsection 161(10) of the *WURA*.

Question 2: The proper construction and application of subsection 95(2) results in payment of post-liquidation interest to the Over-limits Claimants, but not to the Under-limits Claimants. The interest is to be calculated as simple interest (i.e., not compounded), at an annual rate of 5%, on the unpaid portion of each Over-limits Claimant's allowed claim from the time such claim was settled and allowed (or, (a) in the case of a Disputed Claim, from the time since the commencement of the winding-up that it

would have been eligible for pre-judgment interest, but for the winding-up, but not earlier than the commencement of the winding-up, and (b) in the case of an ordinary creditor claim that was already payable as of the commencement of the winding-up, from the commencement of the winding-up) until such portion was paid.

Any payments made to Over-limits Claimants by way of Interim Dividend Payments and/or Authorized Policy Payments during the course of the winding-up are to be treated as being allocated first toward any post-liquidation interest payable on the claim of an Over-limits Claimant, and then to the principal portion of such claim.

Question 3-4:

In light of the recommended answers to Questions 1 and 2 above, it is not necessary to answer Questions 3 and 4.

At the Conclusion

[65] I wish to acknowledge the assistance of all counsel, particularly the representative counsel, in this matter. Despite the amendments made in 1996, the WURA remains a difficult and at times contradictory statute in its application to different kinds of financial institutions.

[66] In the circumstances, I would not think a costs award appropriate, but if any party is of a contrary view, they may make written submissions.

Released:

C. CAMPBELL J.

2009 CanLII 37915 (ON S.C.)

Court File No: 01-CL-4313
Date: 20090714

SUPERIOR COURT OF JUSTICE

IN THE MATTER OF
RELIANCE INSURANCE COMPANY

AND IN THE MATTER OF THE
INSURANCE COMPANIES ACT, S.C. 1991,
C.47, AS AMENDED

AND IN THE MATTER OF THE
WINDING-UP AND RESTRUCTURING
ACT, R.S.C. 1985, C.W-11, AS AMENDED

BETWEEN

THE ATTORNEY GENERAL OF CANADA
Applicant

-and-

RELIANCE INSURANCE COMPANY
Respondent

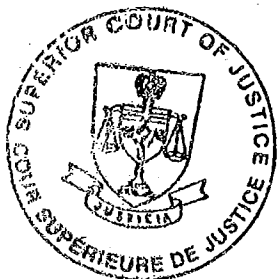
REASONS FOR DECISION

C. CAMPBELL J.

2009 CanLII 37915 (ON S.C.)

Schedule "C"

Court File No. 01-CL-4313



**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE) TUESDAY, THE 14TH
JUSTICE C. CAMPBELL)
DAY OF JULY, 2009

**IN THE MATTER OF
RELIANCE INSURANCE COMPANY**

**AND IN THE MATTER OF THE
INSURANCE COMPANIES ACT, S.C. 1991, C.47, AS AMENDED**

**AND IN THE MATTER OF THE
WINDING-UP AND RESTRUCTURING ACT, R.S.C. 1985, C.W-11, AS AMENDED**

BETWEEN:

THE ATTORNEY GENERAL OF CANADA

Applicant

- and -

RELIANCE INSURANCE COMPANY

Respondent

ORDER

THIS MOTION made by KPMG Inc., in its capacity as Liquidator ("Liquidator") of the insurance business in Canada of Reliance Insurance Company ("Reliance Canada"), for advice and directions in respect of post-liquidation interest on claims in the winding-up of Reliance Canada, was heard April 16 and 17, 2009, at 330 University Avenue, Toronto, Ontario.

ON READING the report of the Liquidator dated January 5, 2009 ("Preliminary Report"), filed, the supplementary report of the Liquidator dated February 10, 2009 ("Supplementary Report"), filed, the Affidavit of Art Mullin sworn March 5, 2009, filed, and upon hearing the submissions of counsel for the Liquidator, counsel for the Insurance Commissioner for the Commonwealth of Pennsylvania, as Liquidator of Reliance Insurance Company ("U.S. Liquidator"), representative counsel for the Over-Limits Claimants (as defined in the Order of this Court dated January 29, 2009), and representative counsel for the Under-Limits Claimants (as defined in the Order of this Court dated January 29, 2009),

1. **THIS COURT ORDERS, ADVISES AND DIRECTS** that the following four questions posed to the Court by the Liquidator:

- Question 1: Does subsection 95(2) of the *Winding-up and Restructuring Act*, R.S.C. 1985, c. W-11 ("*WURA*") apply to the winding-up of Reliance Canada, so that interest on allowed claims in the winding-up of Reliance Canada is payable pursuant to subsection 95(2), in the case where there is a surplus, in priority to any release to Reliance Insurance Company of the balance of any assets that the Court may ultimately approve under subsection 161(10) of the *WURA*?
- Question 2: If the answer to Question 1 is yes, on what basis is post-liquidation interest to be determined? That is, on which type of claims is it payable, at what rate, is it simple or compounded, from what date(s) does it run, and are interim payments that were made on claims to be first applied toward the interest payable on the claim and then to the principal amount of the claim or first toward the principal amount of the claim?
- Question 3: If the answer to Question 1 is no, is interest payable in the winding-up of Reliance Canada on allowed claims on some basis other than subsection 95(2) of the *WURA*, in the case where there is a surplus, in priority to any release to Reliance Insurance Company of the balance of any assets that the Court may approve under subsection 161(10) of the *WURA*?

Question 4: If the answer to Question 1 is no, and the answer to Question 3 is yes, on what basis is post-liquidation interest to be determined?

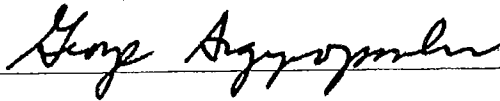
are respectively answered as follows:

Question 1: Yes: subsection 95(2) of the *WURA* applies to the winding-up of Reliance Canada, so that interest on allowed claims in the winding-up of Reliance Canada is payable pursuant to subsection 95(2), in the case where there is a surplus, in priority to any release to Reliance Insurance Company (represented by the U.S. Liquidator) of the balance of any assets that the Court may be ultimately approve under subsection 161(10) of the *WURA*.

Question 2: The proper construction and application of subsection 95(2) results in payment of post-liquidation interest to the Over-limits Claimants, but not to the Under-limits Claimants. The interest is to be calculated as simple interest (i.e., not compounded), at an annual rate of 5%, on the unpaid portion of each Over-limits Claimant's allowed claim from the time such claim was settled and allowed (or, (a) in the case of a Disputed Claim (as defined in the Preliminary Report), from the time since the commencement of the winding-up that it would have been eligible for pre-judgment interest, but for the winding-up, but not earlier than the commencement of the winding-up, and (b) in the case of an ordinary creditor claim that was already payable as of the commencement of the winding-up, from the commencement of the winding-up) until such portion was paid.

Any payments made to Over-limits Claimants by way of Interim Dividend Payments and/or Authorized Policy Payments (as those terms are defined in the Preliminary Report) during the course of winding-up are to be treated as being allocated first toward any post-liquidation interest payable on the claim of an Over-limits Claimant, and then to the principal portion of such claim.


Questions 3-4: In light of the recommended answers to Questions 1 and 2 above, it is not necessary to answer Questions 3 and 4.



G. Argyropoulos, Registrar
Superior Court of Justice

ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

NOV 24 2009

PER / PAR: 

Joanne Nicoara
Registrar, Superior Court of Justice

THE ATTORNEY GENERAL OF
CANADA

and RELIANCE INSURANCE COMPANY

Applicant

Respondent

Commercial List Court File No: 01-CL-4313

**ONTARIO
SUPERIOR COURT OF JUSTICE
- COMMERCIAL LIST**

Proceeding commenced at Toronto

**ADVICE AND DIRECTIONS ORDER
(Post-liquidation Interest Motion)**

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Solicitors for KPMG Inc.,
Liquidator of Reliance Canada

**ONTARIO SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**



THE HONOURABLE
MR. JUSTICE FARLEY

) THURSDAY, THE 26th DAY
)
) OF JUNE, 2003

**IN THE MATTER OF
RELIANCE INSURANCE COMPANY**

**AND IN THE MATTER OF THE
*INSURANCE COMPANIES ACT, S.C. 1991, C.47, AS AMENDED***

**AND IN THE MATTER OF THE
*WINDING-UP AND RESTRUCTURING ACT, R.S.C. 1985, C.W-11, AS AMENDED***

BETWEEN:

THE ATTORNEY GENERAL OF CANADA

Applicant

- and -

RELIANCE INSURANCE COMPANY

Respondent

ORDER

THIS MOTION, brought by KPMG Inc., liquidator (the "Liquidator") of the insurance business in Canada of Reliance Insurance Company ("Reliance (Canada)"), was heard this day at 393 University Avenue, Toronto, Ontario.

ON READING the Report of the Liquidator dated June 20, 2003, filed, the Order of this Court dated December 3, 2001 appointing the Liquidator (the "Appointment Order") and the Orders of this Court dated January 30, 2002, April 29, 2002, May 8, 2002, December 6, 2002

and March 26, 2003 (collectively the "Extension Orders"), and on hearing submissions of counsel for the Liquidator and counsel for Maritime Road Development Corporation, no one else appearing although properly served as appears from the proof of service filed:

1. **THIS COURT ORDERS** that the service of the Notice of Motion and materials herein is good and sufficient service of this motion, that the motion is properly returnable before this Court and that further service thereof upon any interested party other than those parties served be and is hereby dispensed with.

2. **THIS COURT ORDERS** that paragraphs 8, 9 and 11 of the Appointment Order, amended by the Extension Orders, are hereby further amended *nunc pro tunc* to extend the date of June 30, 2003 to December 31, 2003 or such later date as this Court may order.

3. **THIS COURT ORDERS** that the Liquidator is hereby authorized to pay a first interim distribution from the estate of Reliance (Canada) in the amount of 25% of valid and allowed policyholder loss claims, where such amount exceeds the payments authorized by paragraphs 8 and 9 of the Appointment Order.



ENTERED AT/INSCRIT À TORONTO
ON/BOOK NO:
LE/DANS LE REGISTRE NO:

JUN 26 2003

PER/PAR:

NB

THE ATTORNEY GENERAL OF CANADA
Applicant

and
RELIANCE INSURANCE COMPANY
Respondent

Court File No: 01-CL-4313

**ONTARIO SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

ORDER

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Solicitors for KPMG Inc.,
Liquidator of Reliance (Canada)

G26RUBENSTG4486124.2

**ONTARIO
SUPERIOR COURT OF JUSTICE
- COMMERCIAL LIST**

THE HONOURABLE) THURSDAY, THE 2nd DAY
)
MR. JUSTICE FARLEY) OF SEPTEMBER, 2004

**IN THE MATTER OF
RELIANCE INSURANCE COMPANY**

**AND IN THE MATTER OF THE
INSURANCE COMPANIES ACT, S.C. 1991, C.47, AS AMENDED**

**AND IN THE MATTER OF THE
WINDING-UP AND RESTRUCTURING ACT, R.S.C. 1985, C.W-11, AS AMENDED**

BETWEEN:

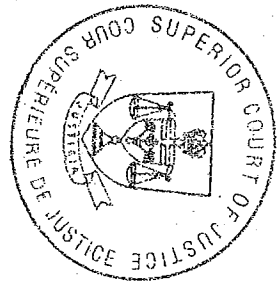
THE ATTORNEY GENERAL OF CANADA

Applicant

- and -

RELIANCE INSURANCE COMPANY

Respondent



ORDER

THIS MOTION, brought by KPMG Inc., liquidator (the "Liquidator") of the insurance business in Canada of Reliance Insurance Company ("Reliance (Canada)"), was heard this day at 393 University Avenue, Toronto, Ontario.

ON READING the Report of the Liquidator dated August 25, 2004 (the "Report"), the Affidavit of Gale Rubenstein sworn August 25, 2004 and the Affidavit of Robert O. Sanderson sworn August 25, 2004, filed, and on hearing submissions of counsel for the

Liquidator, no one else appearing (except for counsel for Maritime Road Development Corporation) although properly served as appears from the proof of service, filed:

1. **THIS COURT ORDERS** that the service of the Notice of Motion and materials herein is good and sufficient service of this motion, that the motion is properly returnable before this Court and that further service thereof upon any interested party other than those parties served be and is hereby dispensed with.

2. **THIS COURT ORDERS** that the accounts of the Liquidator for the period October 1, 2003 to June 30, 2004, as reflected in the financial statements of Reliance (Canada) attached to the Report, be and they are hereby passed and approved as submitted.

3. **THIS COURT ORDERS** that the fees and disbursements of the Liquidator and of its counsel, Goodmans LLP, for the period October 1, 2003 to June 30, 2004 be and they are hereby approved as submitted.

4. **THIS COURT ORDERS** that the Liquidator is hereby authorized to pay up to \$25,000 on valid claims under the Meridian program, until further order of this Court.

5. **THIS COURT ORDERS** that the Liquidator is hereby authorized to pay a second interim distribution from the estate of Reliance (Canada) in the amount of 25% of valid and allowed policyholder loss claims, where, and to the extent that, such amount combined with the amount of payment by way of the first interim distribution exceeds the payments authorized by either paragraph 8 of the Order of this Court dated December 3, 2001 *inter alia* appointing the Liquidator or paragraph 4 hereinabove.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

SEP 07 2004



DAVID EVANS
REGISTRAR

PER/PAR: 

THE ATTORNEY GENERAL OF CANADA
Applicant

and
RELIANCE INSURANCE COMPANY
Respondent

Court File No: 01-CL-4313

**ONTARIO
SUPERIOR COURT OF JUSTICE
- COMMERCIAL LIST**

Proceeding commenced at Toronto

ORDER

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Solicitors for KPMG Inc.,
Liquidator of Reliance (Canada)

GOODMANS\PAQUETT\F5046595.1

**ONTARIO
SUPERIOR COURT OF JUSTICE
- COMMERCIAL LIST**

THE HONOURABLE) WEDNESDAY, THE 21st DAY
)
MR. JUSTICE FARLEY) OF DECEMBER, 2005

**IN THE MATTER OF
RELIANCE INSURANCE COMPANY**

**AND IN THE MATTER OF THE
INSURANCE COMPANIES ACT, S.C. 1991, C.47, AS AMENDED**

**AND IN THE MATTER OF THE
WINDING-UP AND RESTRUCTURING ACT, R.S.C. 1985, C.W-11, AS AMENDED**

BETWEEN:

THE ATTORNEY GENERAL OF CANADA

Applicant

- and -

RELIANCE INSURANCE COMPANY

Respondent

ORDER

THIS MOTION, brought by KPMG Inc., liquidator (the "Liquidator") of the insurance business in Canada of Reliance Insurance Company ("Reliance (Canada)"), was heard this day at 393 University Avenue, Toronto, Ontario.

ON READING the Report of the Liquidator dated December 14, 2005 (the "Report"), the Affidavit of Gale Rubenstein sworn December 14, 2005 and the Affidavit of I. George Gutfreund sworn December 14, 2005, filed, and on hearing submissions of counsel for

MARITIME ROAD DEVELOPMENT CORPORATION
-2-

the Liquidator, and _____, although properly served as appears from the proof of service, filed:

1. THIS COURT ORDERS that the service of the Notice of Motion and materials herein is good and sufficient service of this motion, that the motion is properly returnable before this Court and that further service thereof upon any interested party other than those parties served be and is hereby dispensed with.

2. THIS COURT ORDERS that the accounts of the Liquidator for the period July 1, 2004 to September 30, 2005, as reflected in the financial statements of Reliance (Canada) attached to the Report, be and they are hereby passed and approved as submitted.

3. THIS COURT ORDERS that the fees and disbursements of the Liquidator and of its counsel, Goodmans LLP, for the period July 1, 2004 to September 30, 2005 be and they are hereby approved as submitted.

4. THIS COURT ORDERS that the Liquidator is hereby authorized to pay a third interim distribution from the estate of Reliance (Canada) in the amount of 15% of valid and allowed loss claims, where, and to the extent that, such amount, combined with the amount of payment by way of the first and second interim distributions, exceeds the payments authorized by paragraph 8 of the Order of this Court dated December 3, 2001 *inter alia* appointing the Liquidator.

Dec 21, 2005
order to be filed
in this form
J. F. Fancey

THE ATTORNEY GENERAL OF CANADA
Applicant

and
RELIANCE INSURANCE COMPANY
Respondent

Court File No: 01-CL-4313

**ONTARIO
SUPERIOR COURT OF JUSTICE
- COMMERCIAL LIST**

Proceeding commenced at Toronto

ORDER

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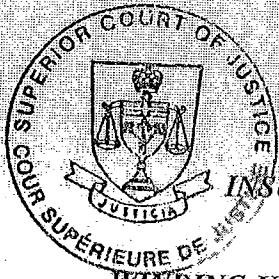
Solicitors for KPMG Inc.,
Liquidator of Reliance (Canada)

GOODMANS\5251587.1

Court File No. 01-CL-4313

**ONTARIO
SUPERIOR COURT OF JUSTICE
- COMMERCIAL LIST**

THE HONOURABLE MR.) FRIDAY, THE 15th DAY
JUSTICE CUMMING) OF DECEMBER, 2006



**IN THE MATTER OF
RELIANCE INSURANCE COMPANY**

**AND IN THE MATTER OF THE
INSURANCE COMPANIES ACT, S.C. 1991, C.47, AS AMENDED**

**AND IN THE MATTER OF THE
WINDING-UP AND RESTRUCTURING ACT, R.S.C. 1985, C.W-11, AS AMENDED**

BETWEEN:

THE ATTORNEY GENERAL OF CANADA

Applicant

- and -

RELIANCE INSURANCE COMPANY

Respondent

ORDER

THIS MOTION, brought by KPMG Inc., liquidator (the "Liquidator") of the insurance business in Canada of Reliance Insurance Company ("Reliance (Canada)"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Report of the Liquidator dated December 8, 2006 (the "Report"), the Affidavit of Gale Rubenstein sworn December 7, 2006 and the Affidavit of Robert O. Sanderson sworn December 8, 2006, filed, and on hearing submissions of counsel for the

Liquidator, and for Maritime Road Development Corporation, no other party appearing, although properly served as appears from the proof of service, filed:

1. **THIS COURT ORDERS** that the service of the Notice of Motion and materials herein is good and sufficient service of this motion, that the motion is properly returnable before this Court and that further service thereof upon any interested party other than those parties served be and is hereby dispensed with.

2. **THIS COURT ORDERS** that the accounts of the Liquidator for the period October 1, 2005 to September 30, 2006, as reflected in the financial statements of Reliance (Canada) attached to the Report, be and they are hereby passed and approved as submitted.

3. **THIS COURT ORDERS** that the fees and disbursements of the Liquidator and of its counsel, Goodmans LLP, for the period October 1, 2005 to September 30, 2006 be and they are hereby approved as submitted.

4. **THIS COURT ORDERS** that the Liquidator is hereby authorized to pay a fourth interim distribution from the estate of Reliance (Canada) in the amount of 15% of valid and allowed loss claims, where, and to the extent that, such amount, combined with the amount of payment by way of the first, second and third interim distributions, exceeds the payments authorized by paragraph 8 of the Order of this Court dated December 3, 2001 *inter alia* appointing the Liquidator.

Dec 15/06 Peter C. Cumming J.

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ON / BOOK NO:
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THE ATTORNEY GENERAL OF CANADA
Applicant

RELIANCE INSURANCE COMPANY
Respondent

Court File No: 01-CL-4313

**ONTARIO
SUPERIOR COURT OF JUSTICE
- COMMERCIAL LIST**

Proceeding commenced at Toronto

ORDER

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Solicitors for KPMG Inc.,
Liquidator of Reliance (Canada)

GOODMANS/SMITH/G6372367.2
File No. 016699

**ONTARIO
SUPERIOR COURT OF JUSTICE
- COMMERCIAL LIST**

THE HONOURABLE)
MR. JUSTICE MORAWETZ)
) TUESDAY, THE 8TH DAY
) OF APRIL, 2008



**IN THE MATTER OF
RELIANCE INSURANCE COMPANY**

**AND IN THE MATTER OF THE
INSURANCE COMPANIES ACT, S.C. 1991, C.47, AS AMENDED**

**AND IN THE MATTER OF THE
WINDING-UP AND RESTRUCTURING ACT, R.S.C. 1985, C.W-11, AS AMENDED**

BETWEEN:

THE ATTORNEY GENERAL OF CANADA

Applicant

- and -

RELIANCE INSURANCE COMPANY

Respondent

ORDER

THIS MOTION, brought by KPMG Inc., liquidator (the "Liquidator") of the insurance business in Canada of Reliance Insurance Company ("Reliance (Canada)"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Report of the Liquidator dated April 1, 2008 (the "Report"), the Affidavit of Gale Rubenstein sworn April 1, 2008 and the Affidavit of Robert O. Sanderson

sworn April 1, 2008, filed, and on hearing submissions of counsel for the Liquidator, no other party appearing, although properly served as appears from the proof of service, filed:

1. **THIS COURT ORDERS** that the service of the Notice of Motion and materials herein is good and sufficient service of this motion, that the motion is properly returnable before this Court and that further service thereof upon any interested party other than those parties served be and is hereby dispensed with.

2. **THIS COURT ORDERS** that the accounts of the Liquidator for the period October 1, 2006 to December 31, 2007 (the "Period"), as reflected in the financial statements of Reliance (Canada) attached to the Report, be and they are hereby passed and approved as submitted.

3. **THIS COURT ORDERS** that the fees and disbursements of the Liquidator and of its counsel, Goodmans LLP, for the Period be and they are hereby approved as submitted.

4. **THIS COURT ORDERS** that the Liquidator is hereby authorized to pay a fifth interim distribution from the estate of Reliance (Canada) in the amount of 20% of valid and allowed loss claims, where, and to the extent that, such amount, combined with the amount of payment by way of the first, second, third and fourth interim distributions, exceeds the payments authorized by paragraph 8 of the Order herein of the Honourable Mr. Justice Farley dated December 3, 2001 that, *inter alia*, appointed the Liquidator (the "Appointment Order").

5. **THIS COURT ORDERS** that the Appointment Order is hereby varied such that the payments authorized by paragraphs 8, 9 and 11 thereof (as may have been varied or amended by further Orders of this Court) are authorized to be paid up to the lesser of (i) the full amount of

the relevant valid claim, or, in the case of paragraph 11, the amount of reasonable legal and other costs, and (ii) the applicable limits of the relevant policy.

ENREGISTRÉ / ENREGISTRÉ À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:



APR 08 2008

PER/PAR: PQ

THE ATTORNEY GENERAL OF CANADA
Applicant

RELIANCE INSURANCE COMPANY
Respondent

Court File No: 01-CL-4313

**ONTARIO
SUPERIOR COURT OF JUSTICE
- COMMERCIAL LIST**

Proceeding commenced at Toronto

**ORDER
(April 8, 2008)**

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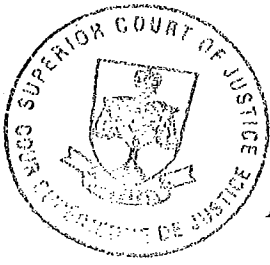
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Solicitors for KPMG Inc.,
Liquidator of Reliance (Canada)

File No. 016699

**ONTARIO
SUPERIOR COURT OF JUSTICE
- COMMERCIAL LIST**

THE HONOURABLE MR.) WEDNESDAY, THE 17TH DAY
JUSTICE CAMPBELL) OF DECEMBER, 2008



**IN THE MATTER OF
RELIANCE INSURANCE COMPANY
AND IN THE MATTER OF THE
INSURANCE COMPANIES ACT, S.C. 1991, C.47, AS AMENDED
AND IN THE MATTER OF THE
WINDING-UP AND RESTRUCTURING ACT, R.S.C. 1985, C.W-11, AS AMENDED**

BETWEEN:

THE ATTORNEY GENERAL OF CANADA

Applicant

- and -

RELIANCE INSURANCE COMPANY

Respondent

ORDER

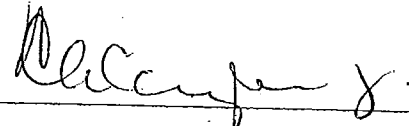
THIS MOTION, brought by KPMG Inc., liquidator (the "Liquidator") of the insurance business in Canada of Reliance Insurance Company ("Reliance Canada"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Report of the Liquidator dated December 10, 2008 (the "Report"), filed, and on hearing submissions of counsel for the Liquidator, no other party appearing, although properly served as appears from the proof of service, filed:

1. **THIS COURT ORDERS** that the service of the Notice of Motion and materials herein is good and sufficient service of this motion, that the motion is properly returnable before this Court and that further service thereof upon any interested party other than those parties served be and is hereby dispensed with.

2. **THIS COURT ORDERS** that the Liquidator is hereby authorized to pay a distribution from the estate of Reliance Canada in the amount of 100% of valid and allowed ordinary creditor claims up to a cumulative total amount of \$100,000.00, including, for greater certainty, the claim of Hub International Ltd. filed in the amount of (U.S.) \$5,810.87.

3. **THIS COURT ORDERS** that the Liquidator is hereby authorized to pay to the Property and Casualty Insurance Compensation Corporation ("PACICC") as remuneration for PACICC's inspectorship herein the sum of \$129,244.99.



ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

DEC 17 2008

PER / PAR: TV

THE ATTORNEY GENERAL OF CANADA
Applicant

RELIANCE INSURANCE COMPANY
Respondent

Court File No: 01-CL-4313

**ONTARIO
SUPERIOR COURT OF JUSTICE
- COMMERCIAL LIST**

Proceeding commenced at Toronto

**ORDER
(December 17, 2008)**

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Solicitors for KPMG Inc.,
Liquidator of Reliance (Canada)

File No. 016699

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ONTARIO SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE) THURSDAY, THE 18th DAY
)
MR. JUSTICE FARLEY) OF DECEMBER, 2003



IN THE MATTER OF
RELIANCE INSURANCE COMPANY

AND IN THE MATTER OF THE
INSURANCE COMPANIES ACT, S.C. 1991, C.47, AS AMENDED

AND IN THE MATTER OF THE
WINDING-UP AND RESTRUCTURING ACT, R.S.C. 1985, C.W-11, AS AMENDED

BETWEEN:

THE ATTORNEY GENERAL OF CANADA

Applicant

- and -

RELIANCE INSURANCE COMPANY

Respondent

ORDER

THIS MOTION, brought by KPMG Inc., liquidator (the "Liquidator") of the insurance business in Canada of Reliance Insurance Company ("Reliance (Canada)"), was heard this day at 393 University Avenue, Toronto, Ontario.

ON READING the Report of the Liquidator dated December 12, 2003 (the "Report"), filed, the Order of this Court dated December 3, 2001 appointing the Liquidator (the

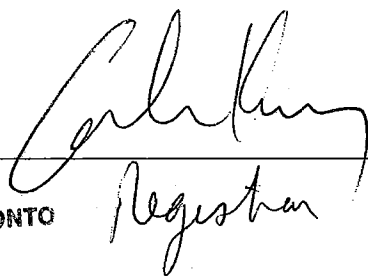
"Appointment Order"), and on hearing submissions of counsel for the Liquidator, no other party appearing, although properly served as appears from the proof of service filed:

1. **THIS COURT ORDERS** that the service of the Notice of Motion and materials herein is good and sufficient service of this motion, that the motion is properly returnable before this Court and that further service thereof upon any interested party other than those parties served be and is hereby dispensed with.

2. **THIS COURT ORDERS** that the accounts of the Liquidator for the periods December 3, 2001 to December 31, 2002 and January 1, 2003 to September 30, 2003, as reflected in the financial statements of Reliance (Canada) attached to the Report, and the fees and disbursements of the Liquidator, and of its counsel, Goodmans LLP, from the commencement of the liquidation to September 30, 2003, be and they are hereby passed and approved as submitted.

3. **THIS COURT ORDERS** that paragraphs 8, 9 and 11 of the Appointment Order, as amended by further orders of this Court, are hereby further amended *nunc pro tunc* to extend the date of December 31, 2003 to June 30, 2004 or such later date as this Court may order.

4. **THIS COURT ORDERS** that any claims payable in foreign currency shall be converted to Canadian currency at the Bank of Canada noon spot rate of exchange for exchanging such currency to Canadian currency on November 8, 2001.



ENTERED AT / INSCRIT A TORONTO
ON/BOOK NO:
LE/DANS LE REGISTRE NO:
DEC 18 2003

PER/PAR:



THE ATTORNEY GENERAL OF CANADA
Applicant

RELIANCE INSURANCE COMPANY
Respondent

Court File No: 01-CL-4313

**ONTARIO SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

ORDER

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Solicitors for KPMG Inc.,
Liquidator of Reliance (Canada)

G326\4500142.1

Schedule "K"

Unaudited Financial Statements of

RELIANCE INSURANCE COMPANY

Canadian Branch (in liquidation)

In our capacity as Liquidator, we have prepared the Balance Sheet of Reliance Insurance Company, Canadian Branch (in liquidation) as at September 30, 2009, December 31, 2007, September 30, 2006, September 30, 2005, June 30, 2004, September 30, 2003 and December 31, 2001, the Statement of Earnings and Changes in Surplus for the twenty-one months ended September 30, 2009, fifteen months ended December 31, 2007, twelve months ended September 30, 2006, fifteen months ended September 30, 2005, nine months ended June 30, 2004, and twenty-two months ended September 30, 2003, and the Statement of Cash Flows for the twenty-one months ended September 30, 2009, fifteen months ended December 31, 2007, twelve months ended September 30, 2006, fifteen months ended September 30, 2005, nine months ended June 30, 2004, and twenty-two months ended September 30, 2003 in our capacity as liquidator. These financial statements have not been audited or reviewed.

In view of the uncertainties surrounding a branch in liquidation, the ultimate realization of the assets and liabilities will differ from the recorded amounts and the differences may be material (see notes).

Readers are cautioned that these statements may not be appropriate for their purposes.

KPMG Inc., Liquidator.
Reliance Insurance Company, Canadian Branch

December 8, 2009

(Unaudited - See Cover Page)

RELIANCE INSURANCE COMPANY
Canadian Branch (in liquidation)
Balance Sheet
As at September 30, 2009, December 31, 2007, September 30, 2006, September 30, 2005, June 30, 2004, September 30, 2003 and December 3, 2001
(\$000)

(Unaudited - see cover page)	September 30, 2009	December 31, 2007	September 30, 2006	September 30, 2005	June 30, 2004	September 30, 2003	December 3, 2001
Assets							
Cash and short term investments (note 4)	\$ (29)	\$ 2,694	\$ 1,101	\$ 916	\$ 155,078	\$ 156,277	\$ 56,165
Investments (note 4) (market value: Sep/09 - \$139,111; Dec/07 - \$138,632; Sep/06 - \$148,049; Sep/05 - \$140,919; Jun/04 - \$0; Sep/03 - \$0; Dec/01 - \$114,392)	136,062	138,240	147,761	141,308	-	-	108,949
Receivable from other insurers/reinsurers	5,054	9,649	11,965	26,863	27,576	13,908	6,090
Income and premium taxes recoverable	-	-	-	-	-	3,070	3,446
Receivable from Reliance US (note 8)	4,848	4,848	4,848	4,848	4,848	4,181	-
Receivable from Reliance US - current balance due (note 8)	35	-	159	222	870	-	-
Other receivables	386	348	361	621	600	958	1,978
Reinsurers' share of provision for Unpaid claims	22,730	22,942	34,928	42,172	71,704	51,761	57,536
Unearned premiums	-	-	306	2,564	4,847	5,430	9,670
Estimate for deductibles on unpaid claims	-	-	-	78	106	1,444	2,527
Total assets	\$ 169,086	\$ 178,721	\$ 201,429	\$ 219,592	\$ 265,629	\$ 237,029	\$ 246,361
Liabilities and Surplus							
Policy liabilities:							
Unpaid claims (note 5)	\$ 64,661	\$ 63,905	\$ 92,190	\$ 111,980	\$ 171,544	\$ 145,815	\$ 135,088
Unearned premiums (note 6)	-	-	421	3,989	8,216	9,177	15,189
Allowed claims (note 9)	-	12,802	20,340	24,163	33,106	17,269	-
Interest distribution (note 15)	5,200	-	-	-	-	-	-
Other liabilities	608	857	605	567	841	2,158	1,917
Total policy liabilities	70,469	77,564	113,556	140,699	213,707	174,419	152,194
Payables:							
Due to Reliance US (note 8)	4,848	4,848	4,848	4,848	4,848	4,848	-
Due to other insurers/reinsurers	1,101	539	576	260	142	189	192
Brokers	6	2,388	2,573	2,656	2,916	2,924	3,389
Taxes and other creditors	954	1,150	1,096	1,034	1,031	1,653	1,826
Reinsurance deposits	10	10	10	10	10	10	3,494
Total liabilities	77,388	86,499	122,659	149,507	222,654	184,043	161,095
Surplus (note 10)	91,698	92,222	78,770	70,085	42,975	52,986	85,266
Contingent liabilities (note 11)	-	-	-	-	-	-	-
Total liabilities and surplus	\$ 169,086	\$ 178,721	\$ 201,429	\$ 219,592	\$ 265,629	\$ 237,029	\$ 246,361

The accompanying notes are an integral part of the financial statements

RELIANCE INSURANCE COMPANY
Canadian Branch (in liquidation)

Notes to Financial Statements for the twenty-one months ended September 30, 2009, fifteen months ended December 31, 2007, twelve months ended September 30, 2006, fifteen months ended September 30, 2005, nine months ended June 30, 2004 and twenty-two months ended September 30, 2003

(unaudited – \$000)

1. Nature of the business:

The Canadian Branch of Reliance Insurance Company, which was primarily engaged in the writing of commercial property and liability insurance in Canada, commenced a voluntary wind down of its operations in Canada effective August 2000. In May 2001, Reliance Insurance Company's U.S. operations ("Reliance US") were placed under an order of rehabilitation. On October 3, 2001, Reliance US was put into liquidation and declared insolvent by the Court of Pennsylvania.

On December 3, 2001, the Ontario Superior Court of Justice (the "Court"), on the application of the Attorney General of Canada, granted an order appointing KPMG Inc. as provisional liquidator (the "Liquidator") of the insurance business in Canada of Reliance Insurance Company, including the assets in Canada of Reliance Insurance Company, together with its other assets held in Canada under the control of its chief agent ("Reliance Canada"). By further order of the same date, the Court ordered that Reliance Canada be wound up.

Since August 2000, existing insurance policies in force have been allowed to expire and Reliance Canada has neither renewed nor cancelled existing policies, nor has it written any new business. Reliance Canada continues to run off the existing policy and claim liabilities in an orderly fashion.

Pursuant to Orders of the Court the Liquidator has paid policy holders and claimants 100% of valid and allowed loss claims pursuant to the fifth interim distribution approved by the Court in April 2008.

2. Basis of preparation:

The accounting policies used in the preparation of these financial statements have been selected with a view to reflecting the financial position of an insurance company that is in liquidation.

The preparation of these financial statements requires the use of estimates and assumptions that affect the reported assets and liabilities as at the date of the financial statements and the reported amount of revenue and expenses for the reporting period. The actual results will differ from these estimates and, in view of the additional uncertainties surrounding a company in liquidation, the differences may be material. Changes in estimates are recorded in the accounting period in which they are determined.

No provision has been made for future liquidation costs. Interest income earned on the assets of Reliance Canada is likely to offset the unbooked future costs of the liquidation.

RELIANCE INSURANCE COMPANY
Canadian Branch (in liquidation)

Notes to Financial Statements for the twenty-one months ended September 30, 2009, fifteen months ended December 31, 2007, twelve months ended September 30, 2006, fifteen months ended September 30, 2005, nine months ended June 30, 2004 and twenty-two months ended September 30, 2003

(unaudited – \$000)

3. Significant accounting policies:

(a) Investments and investment income:

Investments in RBC funds (see note 4) are carried at book value equal to the net invested proceeds. Income distributions and any interest received are reinvested back into the funds. When the carrying amount is greater than the fair market value and the market rate valuation is considered temporary in nature, the carrying amount of these financial instruments is not reduced to fair market value. Where the carrying amount is greater than the fair market value, and after considering such factors as the length of time the carrying value has exceeded the fair market value and the significance of the difference in the values, and if the market rate valuation is considered to be other than temporary in nature, the investment is written down to fair market value.

Investments in term deposits and treasury bills (see note 4) are carried at cost plus accrued interest of \$11 at December 31, 2007, \$334 at June 30, 2004, \$424 at September 30, 2003 and \$325 at December 3, 2001.

Bonds, including accrued interest of \$3,128 at December 3, 2001 (see note 4), are carried at amortized cost, providing for the amortization of the discount or premium on an effective yield basis to maturity.

Investment income is recorded as it is earned. Gains and losses arising on disposal of investments are on a settlement date basis, and are calculated on the basis of amortized cost.

(b) Premium revenue and unearned premiums:

Unearned premiums represent the amount of premiums written which are applicable to the unexpired terms of the policies in force or to the remaining terms of certificates issued as part of program business. Accordingly, premiums written are taken into income when earned. Although policies were generally issued for one year, Reliance Canada also wrote some multi-year policies and some program business with underlying certificates which are multi-year.

If unearned premiums are not sufficient to pay expected claims and expenses, a premium deficiency is said to exist. Any changes in estimates of premium deficiencies recorded as net premium earned in the period in which they are determined.

The reinsurers' share of any unearned premiums, net of a provision for doubtful amounts, is recognized as amounts recoverable from reinsurers at the same time using principles consistent with the method for determining the unearned premium liability.

Notes to Financial Statements for the twenty-one months ended September 30, 2009, fifteen months ended December 31, 2007, twelve months ended September 30, 2006, fifteen months ended September 30, 2005, nine months ended June 30, 2004 and twenty-two months ended September 30, 2003

(unaudited – \$000)

(c) Provision for unpaid claims:

The provision for unpaid claims includes adjustment expenses and represents an estimate for all costs of investigating and settling claims incurred on or before the balance sheet date. The provision estimates do not take into account the time value of money or make explicit provision for adverse deviation.

The provision includes case basis estimates, and a provision for claims incurred but not reported and for development on case basis estimates ("IBNR"). These estimates of future loss activity are necessarily subject to uncertainty and are selected from a wide range of possible outcomes. All provisions are periodically reviewed and evaluated in the light of emerging claim experience and changing circumstances. The resulting changes in estimates of the ultimate liability are recorded as incurred claims in the period in which they are determined. On a periodic basis, the Liquidator instructs external actuaries to confirm their best estimate of the policy liabilities in accordance with accepted actuarial standards of practice except that time value of discount is not used.

(d) Reinsurance ceded:

Net premiums earned and claims incurred are recorded net of amounts ceded to, and recoverable from, reinsurers. To indicate the extent of the credit, collection and contractual risks related to third party reinsurance, estimates of amounts recoverable from reinsurers are recorded separately from the estimated provisions for unearned premiums and unpaid claims.

Amounts recoverable from reinsurers, net of a provision for doubtful amounts, are estimated and recognized at the same time and using principles consistent with Reliance Canada's method for establishing the related liability.

4. Short term investments and investments:

Short-term investments are readily convertible into cash and have maturities of less than 12 months. The carrying value of the short-term investments approximates their market value.

Composition of the cash and short term investments:

	September 30, 2009	December 31, 2007	September 30, 2006	September 30, 2005	June 30, 2004	September 30, 2003	December 3, 2001
Cash	\$ (29)	\$ 1,053	\$ 1,101	\$ 916	\$ 2,856	\$ 420	\$ 1,263
Short term investments (including term deposits and treasury bills)	-	1,641	-	-	152,222	155,857	54,902
Total	\$ (29)	\$ 2,694	\$ 1,101	\$ 916	\$ 155,078	\$ 156,277	\$ 56,165

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RELIANCE INSURANCE COMPANY
Canadian Branch (in liquidation)

Notes to Financial Statements for the twenty-one months ended September 30, 2009, fifteen months ended December 31, 2007, twelve months ended September 30, 2006, fifteen months ended September 30, 2005, nine months ended June 30, 2004 and twenty-two months ended September 30, 2003

(unaudited – \$000)

Composition of investment portfolio:

	September 30, 2009		December 31, 2007		September 30, 2006		September 30, 2005	
	Book	Market	Book	Market	Book	Market	Book	Market
	Value	Value	Value	Value	Value	Value	Value	Value
RBC Cdn Money Market fund	\$ 39,803	\$ 39,803	\$ 49,031	\$ 49,031	\$ 53,243	\$ 53,243	\$ 61,506	\$ 61,506
RBC Short Term Income fund	72,910	75,959	69,812	70,204	77,845	78,173	71,007	70,618
RBC US Money Market fund	23,349	23,349	19,397	19,397	16,673	16,673	8,795	8,795
Bonds - Cdn Government	-	-	-	-	-	-	-	-
Bonds - Cdn Corporate	-	-	-	-	-	-	-	-
Total investments	\$ 136,062	\$ 139,111	\$ 138,240	\$ 138,632	\$ 147,761	\$ 148,089	\$ 141,308	\$ 140,919

	June 30, 2004		September 30, 2003		December 3, 2001	
	Book	Market	Book	Market	Book	Market
	Value	Value	Value	Value	Value	Value
RBC Cdn Money Market fund	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
RBC Short Term Income fund	-	-	-	-	-	-
RBC US Money Market fund	-	-	-	-	-	-
Bonds - Cdn Government	-	-	-	-	99,959	105,415
Bonds - Cdn Corporate	-	-	-	-	8,990	8,977
Total investments	\$ -	\$ -	\$ -	\$ -	\$ 108,949	\$ 114,392

The carrying value of the Short Term Income Fund was written down to fair value as at March 31, 2006 and September 30, 2007. The amounts of the adjustments were \$1,658 at March 31, 2006 and \$444 at September 30, 2007.

Notes to Financial Statements for the twenty-one months ended September 30, 2009, fifteen months ended December 31, 2007, twelve months ended September 30, 2006, fifteen months ended September 30, 2005, nine months ended June 30, 2004 and twenty-two months ended September 30, 2003

(unaudited – \$000)

5. Unpaid claims:

(a) Nature of unpaid claims:

The provision for unpaid claims and adjustment expenses (and for third party reinsurers' share thereof) are based upon estimates of the ultimate claim costs associated with claims occurring as of the balance sheet dates, including estimates for IBNR claims. These estimates are subject to variability, and the variability could be material. The variability arises because all events affecting the ultimate settlement of claims have not yet taken place and may not take place for some time. Additional factors affecting the variability include receipt of additional claim information, the continually evolving and changing regulatory and legal environment, court decisions, economic conditions, public attitudes, claims management practices, actuarial studies, the quality of the data used for projection purposes, the effect of inflationary trends on future claims handling and settlement practices, and significant changes in the severity or frequency of claims from historical trends. In addition, the longer the time required for the settlement of a group of claims, the more variable the estimates.

Reliance Canada had fronting reinsurance arrangements with other insurers and provided self-insurance facilities for selected corporate clients. Because Reliance Canada is the direct insurer under these arrangements, policyholders and claimants look to Reliance Canada for settlement of their claims. Generally Reliance Canada obtains repayment directly from the insurers or corporations. In some cases Reliance Canada holds security deposits from the insurers or corporation, which may be available to fund payment of claims. Reliance Canada is exposed to credit risk if claims exceed either the security deposits or the self-insured's ability to pay.

Reliance Canada accepted certain insurance risks that other insurance companies have underwritten ("assumed reinsurance"). Because of the necessary reliance on the ceding companies for information regarding reported claims, and the resulting reporting lag between the dates of occurrence and the time Reliance Canada is notified of the claims, the inherent uncertainties of estimating reserves is greater for assumed reinsurance than for direct insurance.

In the normal course of settling claims, Reliance Canada acquires rights to subrogate its claims against other parties and, in some cases, recover a portion of the loss from the policyholder as a deductible amount. Salvage and subrogation are deemed not to be material and, as such, are recorded as received. Deductible amounts, which are recoverable on liability claims, have been recognized as assets.

RELIANCE INSURANCE COMPANY
Canadian Branch (in liquidation)

Notes to Financial Statements for the twenty-one months ended September 30, 2009, fifteen months ended December 31, 2007, twelve months ended September 30, 2006, fifteen months ended September 30, 2005, nine months ended June 30, 2004 and twenty-two months ended September 30, 2003

(unaudited – \$000)

(b) Provision for unpaid claims:

Considerable judgement is required to evaluate claims and establish claim liabilities. The estimation of the claims provision is based on known facts and interpretation of circumstances. The basic assumptions made in establishing actuarial liabilities are best estimates of possible outcomes. Methods of estimation have been used which it is believed produce reasonable results given current information; however, the process of determining the provision necessarily involves risks that the actual results will deviate, perhaps substantially, from the best estimate made. It is also not possible to estimate the impact of the additional uncertainties surrounding a company in liquidation on the estimation process.

The changes in the unpaid claim provisions recorded in the balance sheet as at September 30, 2009, December 31, 2007, September 30, 2006, September 30, 2005, June 30, 2004 and September 30, 2003 and their impact on the claims and adjustment expenses for the twenty-one months ended September 30, 2009, fifteen months ended December 31, 2007, twelve months ended September 30, 2006, fifteen months ended September 30, 2005, nine months ended June 30, 2004, and twenty-two months ended September 30, 2003, are as follows:

	Jan 1, 2008 to Sep 30, 2009	Oct 1, 2006 to Dec 31, 2007	Oct 1, 2005 to Sep 30, 2006	Jul 1, 2004 to Sep 30, 2005	Oct 1, 2003 to Jun 30, 2004	Dec 3, 2001 to Sep 30, 2003
Unpaid claims at beginning of period	\$ 63,905	\$ 92,190	\$ 111,980	\$ 171,544	\$ 145,815	\$ 135,088
Recoverable from reinsurers at beginning of period	<u>22,942</u>	<u>34,928</u>	<u>42,172</u>	<u>71,704</u>	<u>51,761</u>	<u>57,536</u>
Net unpaid claims at beginning of period	<u>40,963</u>	<u>57,262</u>	<u>69,808</u>	<u>99,840</u>	<u>94,054</u>	<u>77,552</u>
Increase(decrease) in estimated losses and Expenses for claims occurring in prior years	4,534	(12,514)	(8,722)	(19,974)	12,539	42,317
Increase(decrease) in outstanding deductibles	-	-	(60)	(30)	(65)	(1,090)
Paid on claims (net) occurring during current year (Gap Programs)	-	(283)	(171)	(278)	(577)	(1,377)
Paid on claims (net) occurring during prior years	<u>(3,566)</u>	<u>(3,502)</u>	<u>(3,593)</u>	<u>(9,750)</u>	<u>(6,111)</u>	<u>(23,348)</u>
Net reserves at end of period	41,931	40,963	57,262	69,808	99,840	94,054
Ceded reserves at end of period	<u>22,730</u>	<u>22,942</u>	<u>34,928</u>	<u>42,172</u>	<u>71,704</u>	<u>51,761</u>
Gross reserves at end of period	<u>\$ 64,661</u>	<u>\$ 63,905</u>	<u>\$ 92,190</u>	<u>\$ 111,980</u>	<u>\$ 171,544</u>	<u>\$ 145,815</u>

In order to show the progress of the liquidation from the date of winding-up and, as it is not practicable in a winding-up situation to determine fair value with sufficient reliability, the fair value of the unpaid claims and adjustment expenses, gross and recoverable from reinsurers, has been omitted.

RELIANCE INSURANCE COMPANY
Canadian Branch (in liquidation)

Notes to Financial Statements for the twenty-one months ended September 30, 2009, fifteen months ended December 31, 2007, twelve months ended September 30, 2006, fifteen months ended September 30, 2005, nine months ended June 30, 2004 and twenty-two months ended September 30, 2003

(unaudited – \$000)

6. Unearned premium:

The provisions for unearned premiums include actuarially determined estimates for premium deficiencies. The process for estimating any provisions for premium deficiency involves the use of estimates concerning factors such as expected claims and expenses and future payout patterns. Any provisions are necessarily subject to uncertainty.

The provision estimates do not take into account the time value of money or make explicit provision for adverse deviation.

7. Reinsurance:

In the normal course of business, Reliance Canada sought to reduce the loss that may arise from catastrophes or other events that cause unfavourable underwriting results by reinsuring certain levels of risk, in various areas of exposure, with other insurers. Reliance Canada is not relieved of its primary obligation to policyholders as a result of its third party reinsurance. Failure of reinsurers to honour their obligations could result in losses to Reliance Canada.

Reliance Canada makes specific provisions against reinsurance receivables and recoverables from companies who are in liquidation or run-off, with whom balances are in dispute or where the reinsurer is not settling balances due to Reliance Canada for reasons related to Reliance US. In addition, the Reliance Canada records a general allowance against reinsurance receivables and recoverables based upon the level of allowance already in place and management's judgement. The general allowance reflects the view that a company in liquidation or run-off has a greater collection risk than a going concern company. The establishment of the allowances for doubtful accounts involves judgement and therefore creates a degree of uncertainty as to adequacy at each reporting date.

Reliance Canada's reinsurance program includes both reinsurance placed by Reliance Canada directly with Canadian licensed reinsurers and reinsurance entered into by Reliance US which reinsures both Reliance (Canada) policies and policies of Reliance US and other companies in the Reliance group (the latter are referred to as the "International Reinsurance Treaties").

8. Head office:

(a) Payable to Head Office:

As at September 30, 2009, \$4,848 is recorded in Reliance Canada's books as due to Reliance US for underwriting commissions paid to ECS Managers (the "ECS Commission Payable"); at December 31, 2007 the payable to head office was \$4,848; at September 30, 2006 \$4,848; at September 30, 2005 \$4,848; at June 30, 2004 \$4,848 at September 30, 2003 \$4,848 and at December 3, 2001 the payable was nil.

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RELIANCE INSURANCE COMPANY
Canadian Branch (in liquidation)

Notes to Financial Statements for the twenty-one months ended September 30, 2009, fifteen months ended December 31, 2007, twelve months ended September 30, 2006, fifteen months ended September 30, 2005, nine months ended June 30, 2004 and twenty-two months ended September 30, 2003

(unaudited – \$000)

The liquidator for Reliance US (the "US Liquidator"), subsequent to the date of liquidation, advised Reliance Canada that Reliance US had settled the ECS Commission Payable with ECS Managers on behalf of Reliance Canada prior to the respective and separate liquidations of Reliance Canada and Reliance US. Additionally Reliance US receives reinsurance proceeds on behalf of Reliance Canada pursuant to the International Reinsurance Treaties. The US Liquidator has taken the position that it wishes to withhold payment to the Canadian Liquidator of reinsurance collected by Reliance US on behalf of Reliance Canada on the International Reinsurance Treaties ("Canadian Reinsurance Proceeds") up to the amount of the ECS Commission Payable of \$4,848 or US\$3,034. The Canadian Liquidator disputes that the US Liquidator is entitled to do this; however, the parties have agreed that, without prejudice, Reliance US will pay to Reliance Canada any Canadian Reinsurance Proceeds in excess of the ECS Commission Payable. The US Liquidator and the Canadian Liquidator have agreed to fix the Canadian dollar balance due to Reliance US for the ECS Commission Payable using the exchange rate of 1.5981 (see note 14).

(b) Receivable from Reliance US:

As at September 30, 2009, Reliance US has collected and is holding Canadian Reinsurance Proceeds of \$4,848, pending payment or resolution of the disagreement regarding the ECS Commission Payable. At December 31, 2007 the balance was \$4,848, September 30, 2006 \$4,848; at September 30, 2005 \$4,848; at June 30, 2004 \$4,848; at September 30, 2003 \$4,181; and at December 3, 2001 nil. While Reliance Canada has generally billed its reinsurance in Canadian dollars, Reliance US has generally collected the Canadian Reinsurance Proceeds in US dollars. The US dollar amount due from the Reliance US to Reliance Canada has been fixed at a rate of 1.5981 (see note 14). The resulting foreign exchange gain was booked through the income statement in June 2004.

(c) Receivable from Reliance US – Current Balance Due:

Any Canadian Reinsurance Proceeds collected by Reliance US in excess of the amount of the ECS Commission Payable (the "Excess Canadian Reinsurance Proceeds"), are to be remitted to Reliance Canada within a reasonable timeframe. As at September 30, 2009 the Excess Canadian Reinsurance Proceeds were \$35; at December 31, 2007 the balance was nil; at September 30, 2006 \$159; at September 30, 2005 \$222; at June 30, 2004 \$870 at September 30, 2003 nil; and at December 3, 2001 nil. While Reliance Canada has generally billed its reinsurance in Canadian dollars, Reliance US has generally collected the reinsurance in US dollars. Reliance Canada will recognize a foreign exchange gain or loss on this balance upon receipt of funds from the Reliance

RELIANCE INSURANCE COMPANY
Canadian Branch (in liquidation)

Notes to Financial Statements for the twenty-one months ended September 30, 2009, fifteen months ended December 31, 2007, twelve months ended September 30, 2006, fifteen months ended September 30, 2005, nine months ended June 30, 2004 and twenty-two months ended September 30, 2003

(unaudited – \$000)

(d) Protocol Agreement:

Further to a protocol agreement between the Liquidator and the US Liquidator, Reliance US provides various services to Reliance Canada, particularly in the areas of data processing, claims and reinsurance. For the twenty one months ended September 30, 2009 the cost of the services was \$287; October 1, 2006 to December 31, 2007 \$223; October 1, 2005 to September 30, 2006 \$175; July 1, 2004 to September 30, 2004 \$262; October 1, 2003 to June 30, 2004 \$187; and December 3, 2001 to September 30, 2003 \$505.

9. Allowed claims not fully paid:

As at September 30, 2009, the allowed claim balances due on claims which have been settled and admitted by the Liquidator, in excess of the Court authorized payments, were nil; at December 31, 2007 the allowed claim balances were \$12,802; at September 30, 2006 \$20,340; at September 30, 2005 \$24,163; at June 30, 2004 \$33,106; September 30, 2003 \$17,269; and December 3, 2001 nil. Pursuant to the fifth interim distribution approved by the Court in April 2008, the Liquidator is paying policy holders and claimants 100% of valid and allowed loss claims.

10. Surplus:

As at September 30, 2009, Reliance Canada's estimated surplus was \$91,698; at December 31, 2007 \$92,222; at September 30, 2006 \$78,770; at September 30, 2005 \$70,085; at June 30, 2004 \$42,975; at September 30, 2003 \$52,986; and at December 3, 2001 \$85,266. This estimate is subject to revision. In view of the uncertainties surrounding a company in liquidation, the ultimate realization of the assets and liabilities will differ from the estimated results as at September 30, 2009 and the difference may be material. The *Winding-up and Restructuring Act ("WURA")* provides that the Liquidator may, with the approval of the Court, release to Reliance US any balance of the assets remaining after payment of claims in the order of priority prescribed by *WURA*.

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RELIANCE INSURANCE COMPANY
Canadian Branch (in liquidation)

Notes to Financial Statements for the twenty-one months ended September 30, 2009, fifteen months ended December 31, 2007, twelve months ended September 30, 2006, fifteen months ended September 30, 2005, nine months ended June 30, 2004 and twenty-two months ended September 30, 2003

(unaudited – \$000)

11. Contingent liabilities:

(a) Non-booked claims:

There is the potential that certain claims that were not reported in the books of Reliance Canada may be valid claims against Reliance Canada ("Non-Booked Claims"). The Non-Booked Claims would arise from policies written outside Canada, and which, arguably, should have been reported in the books of Reliance Canada. There is no certainty as to the magnitude of the Non-Booked Claims, if any, since they were not originally identified as being appropriately assigned to Reliance Canada. Should additional loss result from any new claims, such loss would be accounted for as a charge to earnings in the accounting period that the claims are verified as liabilities of Reliance Canada.

(b) Post-liquidation interest:

Assuming that Post-liquidation Interest (as defined in note 15) is payable and accruing on the unpaid portion of the policyholder settlement amount from the date the claim settled until the date that the policyholder is paid in full, and using an interest rate of 5%, we estimated that the accrued interest due to these policyholders was approximately \$4.2 million at December 31, 2007. If some other basis for calculating the Post-Liquidation interest were determined to be appropriate by the Court, the total Post-liquidation Interest due may materially differ from this estimate. After receiving the Court directions in 2009, the Post-liquidation interest amount was included on the September 2009 financial statements; see note 15.

(c) Brokers Payable:

At December 31, 2007, the brokers payable balance was \$2.4 million. In the third quarter of 2008, we did a court approved call for claims for ordinary creditors. Only one claim was filed and allowed for the Canadian equivalent of \$6. The balance of the brokers payable balance has been written off.

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Canadian Branch (in liquidation)

Notes to Financial Statements for the twenty-one months ended September 30, 2009, fifteen months ended December 31, 2007, twelve months ended September 30, 2006, fifteen months ended September 30, 2005, nine months ended June 30, 2004 and twenty-two months ended September 30, 2003

(unaudited – \$000)

12. Supplementary expense information:

	January 1, 2008 to September 30, 2009			October 1, 2006 to December 31, 2007			October 1, 2005 to September 30, 2006		
	Total	Other	Claims	Total	Other	Claims	Total	Other	Claims
Salaries	\$ 1,187	\$ 460	\$ 727	\$ 745	\$ 246	\$ 499	\$ 664	\$ 289	\$ 375
Office Expenses	371	178	193	273	106	167	247	122	125
Legal/Professional Services	117	61	56	87	35	52	135	67	68
Allowance for bad debts	1	1	-	(1)	(1)	-	(1)	(1)	-
Head Office Services	287	144	143	223	94	129	175	88	87
Interest (Income)/expense	(65)	(65)	-	19	19	-	14	14	-
Foreign exchange (gain)/loss	(1,232)	(1,232)	-	2,579	2,579	-	764	764	-
Sale of Business Expense:									
KPMG Corporate Finance	-	-	-	-	-	-	-	-	-
Scotia Capital	-	-	-	-	-	-	-	-	-
Other	-	-	-	-	-	-	-	-	-
Liquidation Expenses:									
KPMG Inc.	726	726	-	730	730	-	478	478	-
Goodmans LLP	696	696	-	632	632	-	201	201	-
Legal-Post Liquidation Interest	144	144	-	523	523	-	-	-	-
Legal-Reinsurance collections	22	22	-	523	523	-	-	-	-
PACICC expenses	129	129	-	523	523	-	-	-	-
Total Expenses	\$ 2,383	\$ 1,264	\$ 1,119	\$ 5,810	\$ 4,963	\$ 847	\$ 2,677	\$ 2,022	\$ 655
	July 1, 2004 to September 30, 2005			October 3, 2003 to June 30, 2004			December 3, 2001 to September 30, 2003		
	Total	Other	Claims	Total	Other	Claims	Total	Other	Claims
Salaries	\$ 945	\$ 473	\$ 472	\$ 1,079	\$ 539	\$ 540	\$ 2,663	\$ 1,331	\$ 1,332
Office Expenses	342	171	171	318	159	159	567	275	292
Legal/Professional Services	311	155	156	111	56	55	310	155	155
Allowance for bad debts	(3)	(3)	-	6	6	-	(108)	(108)	-
Head Office Services	262	130	132	187	93	94	505	262	243
Interest (Income)/expense	27	27	-	(406)	(406)	-	80	80	-
Foreign exchange (gain)/loss	482	482	-	(31)	(31)	-	(306)	(306)	-
Sale of Business Expense:									
KPMG Corporate Finance	-	-	-	-	-	-	227	227	-
Scotia Capital	-	-	-	-	-	-	214	214	-
Other	-	-	-	-	-	-	329	329	-
Liquidation Expenses:									
KPMG Inc.	869	869	-	622	622	-	3,180	3,180	-
Goodmans LLP	485	485	-	174	174	-	1,017	1,017	-
Legal-Reinsurance collections	-	-	-	-	-	-	-	-	-
Total Expenses	\$ 3,720	\$ 2,789	\$ 931	\$ 2,060	\$ 1,212	\$ 848	\$ 8,678	\$ 6,656	\$ 2,022

The claims expenses are included in Claims incurred on the statement of earnings and changes in surplus.

RELIANCE INSURANCE COMPANY
Canadian Branch (in liquidation)

Notes to Financial Statements for the twenty-one months ended September 30, 2009, fifteen months ended December 31, 2007, twelve months ended September 30, 2006, fifteen months ended September 30, 2005, nine months ended June 30, 2004 and twenty-two months ended September 30, 2003

(unaudited – \$000)

13. Foreign exchange:

Further to an order from the Court, dated December 18, 2003 and amended on June 30, 2004, the Liquidator is authorized to pay claims payable in foreign currencies either:

- a) in those foreign currencies in circumstances where the Liquidator is otherwise legally entitled to do so; or
- b) in Canadian currency, converted at the Bank of Canada noon spot rate of exchange for exchanging such currencies to Canadian currency on November 8, 2001.

Further to this, in cases where the agreed claim is determined in U.S. dollars, the rate used by Reliance Canada to calculate the Canadian equivalent is \$1.5981.

14. Capital and other taxes:

Reliance Insurance is a US incorporated insurance company that carries on business in Canada through a registered branch. For Canadian tax purposes investment income from assets designated as investment properties, as provided for in the applicable Income Tax Regulations, is included in its business Canadian taxable income. Non-capital capital losses can be utilized to eliminate any resulting corporate tax on business income. Investment income on any non-designated investment properties, such as trust distributions (in the case of Reliance, income earned on the RBC funds), is subject to a 15% withholding tax. In 2006 and 2007 Reliance Canada was not able to include all of its investments in RBC funds as designated investment properties as defined in the Income Tax Regulations. In 2007 Reliance Canada expensed and paid \$341 in withholding tax for the 2006 taxation year. An accrual of \$703 has been set up for the twenty-one months ending September 30, 2009, and \$410 has been set up for the twelve months ending December 31, 2007. The 2006 financial statements have not been restated, as the amount for 2006 is not material.

