

**SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**



IN THE MATTER OF  
CONFEDERATION LIFE INSURANCE COMPANY

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

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

B E T W E E N:

**THE ATTORNEY GENERAL OF CANADA**

Applicant

- and -

**CONFEDERATION LIFE INSURANCE COMPANY**

Respondent

**REPORT OF KPMG INC., THE LIQUIDATOR OF  
CONFEDERATION LIFE INSURANCE COMPANY**

**April 17, 2000**

## TABLE OF CONTENTS

I.	NATURE OF THE MOTION .....	3
II.	BACKGROUND .....	3
	A.    Confederation Life Insurance Company .....	3
	B.    Winding-Up Proceedings .....	4
	C.    Call for Claims .....	4
III.	SUB DEBT .....	5
	A.    Pounds Sterling Issue .....	5
	B.    LUF Issue .....	5
IV.	RECOMMENDATIONS .....	6
V.	RELIEF SOUGHT .....	6

**SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

IN THE MATTER OF  
CONFEDERATION LIFE INSURANCE COMPANY

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

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

B E T W E E N:

**THE ATTORNEY GENERAL OF CANADA**

Applicant

- and -

**CONFEDERATION LIFE INSURANCE COMPANY**

Respondent

**REPORT OF KPMG INC., THE LIQUIDATOR OF  
CONFEDERATION LIFE INSURANCE COMPANY**

**April 17, 2000**

**I. NATURE OF THE MOTION**

1. This Report is filed in support of a motion by KPMG Inc., liquidator (the "Liquidator") of Confederation Life Insurance Company ("Confed"), for an order declaring that the Sub Debt (as hereinafter defined) is subordinated in accordance with its terms and that holders of the Sub Debt are not entitled to receive any distributions unless and until the claims of all policyholders and Ordinary Creditors (as hereinafter defined) have been paid in full.

**II. BACKGROUND**

**A. Confederation Life Insurance Company**

2. Confed was a mutual life insurance company, governed by the *Insurance Companies Act*, S.C. 1991, c. 47, as amended (the "*Insurance Companies Act*"). It was the parent of a large group of companies operating in Canada, the U.S., the U.K., Bermuda and Cuba.

## **B. Winding-Up Proceedings**

3. On August 15, 1994 this Court ordered that Confed be wound-up pursuant to the *Winding-up Act*, R.S.C. 1985, c. W-11 (the “*Winding-up Act*”; now the *Winding-up and Restructuring Act*). On the same date, the Court appointed the Superintendent of Financial Institutions (the “Superintendent”) provisional liquidator of Confed. The Superintendent appointed KPMG Inc. as his agent to assist in the administration of the liquidation.

4. On September 10, 1997, this Court discharged the Superintendent as provisional liquidator of Confed and appointed KPMG Inc. as permanent liquidator.

## **C. Call for Claims**

5. On October 7, 1999, the Liquidator applied to this Court for an order respecting a call for claims (the “Call for Claims”) from:

- (a) persons, wherever located, with debt or other claims against Confed in existence on August 12, 1994, whether certain or contingent, liquidated or unliquidated (the “Ordinary Creditors”), provided that such claims are not claims under policies of insurance and are not subordinated by their terms to all other indebtedness of Confed (the “Subordinated Claims”); and
- (b) policyholders who held Confed policies on August 12, 1994, other than policyholders whose policies were issued by the United Kingdom, Cuban or United States branches of Confed, who assert that the claims under their policies have not been fully satisfied or recognized through the assumption of their policies by another insurer or payments made by, or in the process of being made by, the Liquidator.

6. The Report dated September 30, 1999 (the “September Report”) describes the scheme of distribution relevant to Confed and the current status of payments from the estate. In summary, policyholder claims have been or are in the process of being paid in full and payments will be made to Ordinary Creditors. A copy of the September Report is attached as Schedule “A” hereto.

7. On October 7, 1999, this Court made an Order, *inter alia*, approving and authorizing the procedure proposed by the Liquidator for the Call for Claims. The Court fixed December 20, 1999 as the last day on or before which proofs of claim must be filed with the Liquidator. That date was extended to February 15, 2000 by Order of this Court dated December 3, 1999. Copies of the Orders of October 7, 1999 and December 3, 1999 are attached as Schedules “B” and “C” hereto.

8. In the September Report, the Liquidator stated that:

- (a) counsel has advised that the Sub Debt should be treated as subordinated in accordance with its terms;
- (b) there would be no possibility of distribution on the Sub Debt if this were the case; and
- (c) it would seek a declaration from this Court as to the subordination of the Sub Debt before making a distribution that could be prejudicial to its holders.

The Liquidator did not call for claims from the holders of the Sub Debt as it would be an expensive process and could be prejudicial to Sub Debt holders who wish to preserve their anonymity.

9. Based on the information presently available to the Liquidator, including the quantum of claims filed in response to the call for claims, the Liquidator remains of the view that there will be no distribution on the Sub Debt if it is in fact subordinated in accordance with its terms.

### **III. SUB DEBT**

10. In 1992, the *Insurance Companies Act* was amended to permit insurance companies to issue subordinated indebtedness and, effectively, treat it for regulatory purposes as capital.

11. Confed issued two series of subordinated bonds, being:

- (a) the first series, in March 1993, of £100,000,000 due March 3, 2003 and bearing interest at 9 7/8% (the "Pounds Sterling Issue"); and
- (b) the second series, in January 1993, of Luxembourg Francs ("LUF") 1,000,000,000 due March 28, 2000 and bearing interest at 8 3/8% (the "LUF Issue").

The Pounds Sterling Issue and the LUF Issue are referred to collectively herein as the "Sub Debt". The Canadian dollar equivalent of the amount owing on the Sub Debt as at August 11, 1994, was approximately \$250 million.

#### **A. Pounds Sterling Issue**

12. The Pounds Sterling Issue was issued in accordance with a trust indenture dated as of March 3, 1993 (the "Trust Indenture") between Confed and Montreal Trust Company of Canada (the "Trustee"). A copy of the Trust Indenture is attached as Schedule "D" hereto. Article Three of the Trust Indenture states that, in the event of the insolvency or winding-up of Confed, the indebtedness evidenced by the bonds shall rank subordinate in right of payment to the prior payment in full of all indebtedness of Confed, other than subordinated indebtedness. It also states that any person who acquires a bond, by purchase and acceptance of the bond, agrees to and shall be bound by the provisions of Article Three.

13. Similarly, the offering circular dated February 26, 1993 for the Pounds Sterling Issue states that, in the event of insolvency or winding-up of Confed, the indebtedness evidenced by the bonds shall be subordinate in right of payment to all policy liabilities and other liabilities of Confed except those that by their terms rank equally with or subordinate to the bonds. A copy of the offering circular is attached as Schedule "E" hereto.

#### **B. LUF Issue**

14. The LUF Issue was made in accordance with a trust agreement made as of January 28, 1993 between Confed and the Trustee (the "Trust Agreement"). A copy of the Trust Agreement is attached as Schedule "F" hereto. Article Two of the Trust Agreement states that, in the event of the insolvency or winding-up of Confed, the indebtedness evidenced by the bonds shall rank subordinate in right of payment to the prior payment in full of all indebtedness of Confed, other than subordinated indebtedness, and that any person who acquires a bond, by its purchase and acceptance, agrees to and shall be bound by the provisions of Article Two.



## CONFEDERATION LIFE INSURANCE COMPANY, IN LIQUIDATION WEBSITE LEGAL DISCLAIMER

This website (the "Site") contains legal documents pertaining to the windup of Confederation Life Insurance Company. This Site is presented as a public service for informational purposes only by Confederation Life Insurance Company by its Liquidator, KPMG Inc. (the "Liquidator"). KPMG LLP is not the Liquidator and has no responsibility for the contents of this Site. WARNING: Transmissions to the Site are not protected and no confidentiality will be maintained with respect thereto. Transmissions to the Site are made at the sender's risk.

This Site is not an official reporter, and the Liquidator does not guarantee that all information is error free, complete, or accurate. The Site does not purport to provide complete records of all litigation and legal documentation pertaining to Confederation Life Insurance Company, in Liquidation. The Site contains no legal advice and nothing herein shall be taken, implied or construed as an offer to provide, or a provision of, legal advice. The Liquidator may change, modify, suspend, or discontinue the Site at any time without notice.

Based on the fundamental universal condition of the electronic communication process, the Liquidator does not guarantee or warrant the Site will be uninterrupted, without delay, error-free, omission-free, or free of viruses. Therefore, the information is provided "as is" without warranties of any kind, express or implied, including accuracy, timeliness and completeness. In no event shall the Liquidator, its employees, agents, consultants, legal counsel, contractors, or affiliates be liable for any direct, indirect, incidental, special, exemplary, punitive, consequential or other damages whatsoever (including, but not limited to, liability for loss of use, data or profits), without regard to the form of any action, including but not limited to contract, negligence or other tortious actions, arising out of or in connection with the Site, any content on or accessed by use of the Site, or any copying, display or other use hereof.

External links are provided on the Site as aids to help you identify and locate other sources of information that may be of interest, and are not intended to state or imply that the Liquidator endorses, sponsors, is affiliated or associated with or is legally authorized to use any trade name, registered trademark, logo, legal or official seal, or copyrighted symbol that may be reflected in the links. In no event shall the Liquidator, its employees, agents, consultants, legal counsel, contractors, or affiliates accept responsibility for the accuracy of the link, the accuracy or completeness of any information obtained through any link. The Liquidator further warns against reliance on any information contained therein and further disclaims any knowledge or information as to the truth or accuracy of the information contained therein.

The Site is controlled by the Liquidator from its offices within the Province of Ontario, Canada. By accessing the Site, you and the Liquidator agree that all matters relating to access to, or use of the Site shall be governed by the laws of the Province of Ontario and the laws of Canada applicable therein, without regard to the conflicts of laws principals thereof. You and the Liquidator also agree and hereby submit to the exclusive personal jurisdiction and venue of the courts of the Province of Ontario with respect to such matters.