

**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**

JUNE 15, 2000

I. NATURE OF THE MOTION

1. This report is filed in support of a motion by KPMG Inc., the liquidator (the “Liquidator”) of Confederation Life Insurance Company (“Confed”), for an order:

- (a) approving the Liquidator’s proposed process for the giving of notice to creditors and claimants of the claims that the Liquidator proposes to recommend to this Court be admitted and for the manner in which they may object to such claims;

- (b) confirming that proofs of claim received by the Liquidator after February 15, 2000 but before the date of this motion should be treated as if they were timely filed; and
- (c) fixing the exchange rate at which claims payable in foreign currencies are to be converted to Canadian currency at the Bank of Canada noon spot rate of exchange for that currency on August 12, 1994.

II. BACKGROUND

2. On August 15, 1994 this Court ordered that Confed be wound-up pursuant to the *Winding-up Act* (now the *Winding-up and Restructuring Act*). By further order of 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. On September 10, 1997, this Court discharged the Superintendent as provisional liquidator of Confed and appointed KPMG Inc. as permanent liquidator.

3. Part III of the *Winding-up Act* (the “Act”) as it was in force at the commencement of Confed’s liquidation governs the winding-up of Confed. The sections of Part I of the Act relevant to this motion have not been amended since the commencement of the liquidation. The relevant sections are attached as Schedule “A” hereto.

4. The Liquidator has declared a distribution percentage to policyholders of 100% of the benefits to which they are entitled under the terms of their respective policies.

5. The Liquidator called for claims from ordinary creditors, other than those holding subordinated debt, and policyholders asserting additional policyholder claims, both as more fully described in the report of the Liquidator filed in support of the call for claims process. February 15, 2000 was fixed as the last day on or before which proofs of claim were to be filed with the Liquidator.

6. To date, the Liquidator has received approximately 1,100 proofs of claim in the approximate amount of \$450 million, including an omnibus proof of claim filed on behalf of 700 Confed retirees, their spouses and dependent children by their court-appointed representative

counsel. The total claims filed to date also include approximately 70 claims in the amount of approximately \$10 million which were received after February 15, 2000.

7. The Liquidator is of the view that certain of the claims filed should be admitted (the “Allowed Claims”) and that a number should be disallowed, in whole or in part (the “Disputed Claims”). The Liquidator is still in the process of reviewing the claims filed.

8. On May 5, 2000, this Court approved the Liquidator’s proposed process for the admission and disallowance of claims, including the form and manner of service of notices for the disallowance of Disputed Claims and for any appeal therefrom. A copy of the Order of this Court dated May 5, 2000 (the “May 5th Order”) is attached hereto as Schedule “B”.

9. In accordance with the May 5, 2000 Order, the Liquidator published notices of the filing of the Statement of Creditors and Claimants with the Office of the Superintendent of Financial Institutions (“OSFI”) in the *Canada Gazette*, in the official gazette of each province and in the national edition of *The Globe and Mail* and *The National Post*. The last notice was published on May 31, 2000.

III. RECOMMENDATIONS

A. Admission of Claims Process

10. The Act provides all creditors with an opportunity to object to the claims of other creditors. In summary, the Act provides as follows:

- (a) the term “creditors” includes all persons having claims against the company and, in all proceedings for determining the persons who are to be deemed creditors, includes any person making a claim (section 2);
- (b) pursuant to section 87 of the Act, any creditor may object to any claim filed with the Liquidator. In addition, subsection 166(3) of the Act provides that any person interested may object to the amount shown for that person or for any other claimant on the statement filed by the liquidator with OSFI;
- (c) pursuant to subsection 88(1) of the Act, where a claim is objected to, the objection must be filed in writing with the Liquidator, together with evidence of the

previous service of a copy thereof on the claimant. The Act does not provide a time within which an objection must be made;

- (d) subsection 88(2) of the Act provides that a claimant shall have six (6) days to answer the objections, or such further time as the Court allows, and the contestant shall have three (3) days to reply, or such further time as the Court allows;
- (e) section 89 of the Act provides that on the completion of the issues on the objections filed, the Liquidator shall “transmit to the Court all necessary papers relating to the contestation”;
- (f) pursuant to section 91 of the Act, where, after a claim has been duly objected to, the claimant does not answer the objections, the Court may, on the application of the contestant, make an order barring the claim or such other order with reference thereto as appears right; and
- (g) the Act provides that the Court may make such order it deems proper in respect of the payment of the costs of a contestation by either party or out of the estate of the company. The Act further provides that the Court may order a contestant to give security for the costs of the contestation.

11. There is no precedent for the application of the above-noted provisions, including sections 166 through 169, to a life insurance liquidation. In order to provide a fair and equitable process for the admission of claims, while bringing certainty to the administration of the estate, the Liquidator proposes to implement the following process (the “Allowance Process”):

- (a) the Liquidator will circulate a list, from time to time, as it considers appropriate. The list will set out the Allowed Claims which it has determined ought to be admitted, in substantially the form attached hereto as Schedule “C” (the “Allowed Claims Sheet”);
- (b) the Liquidator will mail a letter in substantially the form attached hereto as Schedule “D” to each person who filed a proof of claim enclosing the Allowed Claims Sheet and setting out the procedure for objections to Allowed Claims;

- (c) The Liquidator will, at the same time, forward a letter in the form of Schedule “B” to the May 5th Order to the persons having Allowed Claims;
- (d) a creditor who wishes to object to a claim (an “Objecting Creditor”) must serve its written objection on the creditor to whose claim he is objecting (the “Subject Creditor”), such service to be effected by means of prepaid registered mail, facsimile or courier and received by the Subject Creditor within twenty-five (25) days of the date of the letter referred to in (b) above;
- (e) the Objecting Creditor must also serve a copy of its written objection, together with proof of previous service of same on the Subject Creditor, on the Liquidator, such service to be effected by means of prepaid registered mail, facsimile or courier and received by the Liquidator within twenty-five (25) days of the date of the letter referred to in (b) above;
- (f) the Subject Creditor shall have six (6) days after receipt of an objection to answer the objection in writing and to serve such answer on the Objecting Creditor and the Liquidator by means of prepaid registered mail, facsimile or courier;
- (g) the Objecting Creditor shall have three (3) days after receipt of an answer from a Subject Creditor to reply in writing and to serve such reply on the Subject Creditor and the Liquidator by means of prepaid registered mail, facsimile or courier;
- (h) where any time period referred to in (d) through (g) above expires on a Saturday, Sunday or holiday in the jurisdiction in which the creditor resides, service is to be effected on the next business day thereafter;
- (i) where an objection has been raised and the parties are unable to resolve the objection, the Liquidator may seek further directions from the Court or may advise the creditors in question to bring a motion to have the contestation heard by this Court; and

- (j) with respect to any claims to which there was no objection, the Liquidator may seek approval of the Allowed Claims Sheet following the twenty-fifth (25th) day after the date of the letter referred to in (b) above;

12. The Liquidator proposes that the Allowance Process not be required for claims which are the subject of a final decision of this Court, being either claims to which there were objections or claims with respect to which the Liquidator issued a notice of disallowance.

B. Treatment of Late Claims

13. The Act provides that after notices have been given to creditors of the time for sending in claims and the time period has expired, a liquidator may make distributions to creditors of the company, without reference to any claims that have not yet been filed. However the Act appears to contemplate that where claims are sent in after the date fixed for the filing of claims, the late claimant may rank with other claims of creditors in any future distribution of assets of the company.

14. Briefly, the provisions of the Act are as follows:

- (a) pursuant to section 74 of the Act, the Court may fix a certain day or days on or within which creditors of the company may send in their claims;
- (b) subsection 76(1) of the Act provides that after the notices have been given, the times have expired and the claims have been dealt with, the liquidator may distribute the assets of the company, or any part thereof, among the persons entitled and without reference to any claim against the company that has not then been sent to the liquidator;
- (c) pursuant to subsection 76(2) of the Act, the liquidator is not liable to any person whose claim has not been sent in at the time of distributing the assets for the assets so distributed; and
- (d) pursuant to section 77 of the Act, where claims were sent in to the liquidator after any partial distribution, the claims, subject to proof and allowance, shall rank with other claims of creditors in any future distributions.

15. As noted above, the Liquidator has called for the claims of creditors in accordance with section 74 of the Act and February 15, 2000 was fixed as the day on which claims were required to be filed with the Liquidator. The Liquidator has received approximately 70 claims in the amount of approximately \$10 million after February 15, 2000 and before the date of this motion (collectively, the “Late Claims”).

16. The Liquidator recommends that the Late Claims be treated as if they were timely filed and that distributions be made in respect of those claims in the ordinary course.

C. Currency Exchange

17. Section 5 of the Act provides that the winding-up of the business of the company shall be deemed to commence at the time of the service of the notice of presentation of the petition for winding up, which in the case of Confed was August 12, 1994.

18. The Liquidator has received claims which are denominated in US dollars and pounds sterling.

19. The Act has no provisions relating to currency exchange. The Liquidator has been advised by counsel that there is case law that supports the position that claims should be paid in the currency of the country in which the insolvent company is resident and that any currency exchanges should be calculated as at the date of the commencement of the winding-up.

20. In addition, the Liquidator has been advised by counsel that section 275 of the *Bankruptcy and Insolvency Act* (the “BIA”) provides that a claim for a debt that is payable in a currency other than Canadian currency shall be converted to Canadian currency as of the date of the bankruptcy. The BIA defines the date of bankruptcy as the date when the receiving order is granted or the assignment is filed.

21. The Liquidator recommends that any claims payable in foreign currency be converted to Canadian currency at the Bank of Canada noon spot rate of exchange for exchanging such currency to Canadian currency as of August 12, 1994. The applicable exchange rate for US dollars as at August 12, 1994, was \$1.3816. The applicable exchange rate for pounds sterling as at August 12, 1994, was \$2.1353.

IV. RELIEF SOUGHT

22. The Liquidator therefore seeks an Order:

- (a) approving the process described above for the giving of notice to creditors and claimants of the claims that the Liquidator proposes to recommend to this Court be admitted and for the manner in which they may object to such claims;
- (b) confirming that the Late Claims should be treated as if they were timely filed; and
- (c) fixing the exchange rate at which claims payable in foreign currencies should be converted to Canadian currency at the Bank of Canada noon spot rate of exchange on August 12, 1994.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

KPMG INC., the Liquidator of
Confederation Life Insurance Company

Per: 

Robert O. Sanderson, President

SCHEDULE "C"

LIST OF CLAIMS TO BE ADMITTED

Name of Creditor	Address and Fax Number	Amount Claimed	Amount Allowed

G264323502.6

SCHEDULE "D"

[LETTERHEAD OF CONFEDERATION LIFE INSURANCE COMPANY]

[Date]

To All Persons who filed Claims with the Liquidator:

Re: Confederation Life Insurance Company, in Liquidation

The Liquidator will file a Statement of Claimants and Creditors (“the Statement”) with the Office of the Superintendent of Financial Institutions in accordance with Part III of the *Winding-up Act* (now the *Winding-up and Restructuring Act*) (the “Act”). The Statement includes those persons from whom the Liquidator called for claims pursuant to the Order of the Court dated October 7, 1999 and who filed claims in response. Inclusion on the Statement with a nil amount indicates that the person’s claim has either been disallowed by the Liquidator, is still in the process of being reviewed by the Liquidator or is the subject of a dispute. The Liquidator is still in the process of reviewing the claims filed. The Statement will be amended from time to time to reflect the results of the process described below.

The attached listing sets out the claims that the Liquidator will recommend be approved by the Ontario Superior Court of Justice (the “Court”) together with the addresses of the creditors.

If your claim does not appear on the attached listing, it does not mean that your claim has been or will be disallowed. You will hear from the Liquidator when your claim has been reviewed and a determination of the merits of the claim has been made. The process described below will be followed from time to time as the Liquidator is in a position to recommend further claims be admitted. You do not need to take any further steps in the meantime.

In accordance with the Act, any creditor may object to any claim filed with the Liquidator. The procedure for objecting to a claim is as follows:

1. A creditor who wishes to object to a claim (an “Objecting Creditor”) must serve a written objection on the creditor whose claim is being objected to (a “Subject Creditor”) including brief reasons for the objection, such service must be made by prepaid registered mail, facsimile or courier and received by the Subject Creditor within twenty-five (25) days of the date of this letter.
2. The Objecting Creditor must also serve a copy of the written objection on the Liquidator at the address set out below, together with a copy of proof of prior service of the objection on the Subject Creditor, such service must be made by prepaid registered mail, facsimile or courier and received by the Liquidator within twenty-five (25) days of the date of this letter.
3. A Subject Creditor has six (6) days after receipt of an objection to answer the objection in writing and to serve such answer on the Objecting Creditor and the Liquidator by means of

prepaid registered mail, facsimile or courier. If the Subject Creditor does not answer the objection, the Court may, on the application of the Objecting Creditor, make an order barring the claim.

4. The Objecting Creditor has three (3) days after receipt of an answer from a Subject Creditor to reply in writing and to serve such reply on the Subject Creditor and the Liquidator by means of prepaid registered mail, facsimile or courier.
5. Where any time period referred to in paragraphs 1 through 4 above expires on a Saturday, Sunday or holiday in the jurisdiction in which the creditor required to effect service resides, service is to be effected on the next business day thereafter.
6. Where an objection has been raised and the parties are unable to resolve the objection, the Liquidator may seek further directions from the Court or may advise the creditors in question to bring a motion to have the contestation heard by the Court. If you object to a claim and the matter is heard by the Court, you may be liable for costs. In addition, security for costs may be sought in advance of the hearing.
7. The above process will not apply to claims being adjudicated by the Court.

If there are no objections to the claims set out in the attached listing within twenty-five (25) days of the date of this letter, the Liquidator will recommend the admission of those claims to the Court. Once the twenty-five day period expires, no further objections may be made. The Liquidator will seek an Order of the Court approving the admission of the claim to the estate for purpose of receiving dividends. Admitted claims will not appear on future lists circulated by the Liquidator.

As noted above, the Liquidator is continuing to review the proofs of claim filed. The Liquidator will therefore circulate additional listings of claims it proposes to admit from time to time. The process of objecting to those additional claims will be as described above.

The address for service on the Liquidator is as follows:

KPMG Inc., Liquidator of Confederation Life Insurance Company
800 Bay Street
8th Floor
Toronto, Ontario
M5S 3A9

Facsimile No. (416) 323-2253

Attention: I. George Gutfreund

With a copy to:

Goodman Phillips & Vineberg
Barristers and Solicitors
Suite 2400
250 Yonge Street
Toronto, Ont.
M5B 2M6

Facsimile No. (416) 979-1234

Attention: Gale Rubenstein

Please note, the fact that you have received this letter does not mean that your claim has been admitted by the Liquidator.

Yours very truly,

CONFEDERATION LIFE INSURANCE COMPANY by
its Liquidator, KPMG Inc.

I. George Gutfreund
Vice-President, KPMG Inc.
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