

**SUPERIOR COURT OF JUSTICE  
- COMMERCIAL LIST**



THE HONOURABLE MR. ) FRIDAY, THE 19<sup>TH</sup>  
JUSTICE ROBERT A. BLAIR ) DAY OF MAY, 2000



**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**

BETWEEN:

**THE ATTORNEY GENERAL OF CANADA**

Applicant

- and -

**CONFEDERATION LIFE INSURANCE COMPANY**

Respondent

**ORDER**

**THIS MOTION**, brought by KPMG Inc., the liquidator (the “Liquidator”) of Confederation Life Insurance Company (“Confed”) for a declaration that the subordinated indebtedness issued by Confed, consisting of a series of bonds of £100,000,000 due March 3, 2003 and bearing interest at 9 7/8% and a series of bonds of Luxembourg Francs 1,000,000,000 due March 20, 2000 and bearing interest at 8 3/8% (collectively, the “Sub Debt”), is subordinated in accordance with its terms and that any distributions to the holders of Sub Debt

are only to be made once the claims of all policyholders and Ordinary Creditors (as hereinafter defined) have been paid in full, was heard this day at 393 University Avenue, Toronto, Ontario.

**ON READING** the Report of the Liquidator dated April 17, 2000, filed, the Affidavit of Publication dated May 4, 2000, filed and the Affidavits of Service dated May 4, 2000, filed, upon being advised of a letter addressed to Goodman Phillips & Vineberg dated May 15, 2000 from Dierickx, Leys & Cie nv Effectenbank, filed, and upon hearing the submissions of counsel for the Liquidator, for The Chase Manhattan Bank and for Warburg Dillon Read LLC and UBS AG, no other party appearing,


1. **THIS COURT ORDERS** that notice of this motion has been given and service made of the Notice of Motion and supporting materials herein in accordance with the Order of this Court dated April 7, 2000, that such service is good and sufficient notice of this motion, that this motion is properly returnable today and that any further service of the Notice of Motion and supporting materials be and the same is hereby dispensed with.

2. **THIS COURT ORDERS AND DECLARES** that the Sub Debt 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 (being persons, wherever located, with debt or other claims against Confed in existence on August 12, 1994, whether certain or contingent, liquidated or unliquidated, provided that such claims are not claims under policies of insurance and are not subordinated by their terms to all other indebtedness of Confed), once properly proven, have been paid in full.

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

MAY 23 2000

PER/PAR. NB



A handwritten signature in black ink, appearing to read "L. Regier", is written over a horizontal line. The signature is stylized and somewhat cursive.

**THE ATTORNEY GENERAL OF  
CANADA**

and

**CONFEDERATION LIFE INSURANCE  
COMPANY**

Applicant

Respondent

Commercial List Court File No: 97-BK-000543

**SUPERIOR COURT OF JUSTICE  
– COMMERCIAL LIST**

Proceeding commenced at Toronto

**ORDER**

**GOODMAN PHILLIPS & VINEBERG**

Barristers & Solicitors

250 Yonge Street

Suite 2400, Box 24

Toronto, Ontario

M5B 2M6

Gale Rubenstein \LSUC # 17088E

Graham Smith \LSUC #26377D

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Solicitors for KPMG Inc., the Liquidator of  
Confederation Life Insurance Company

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**SUPERIOR COURT OF JUSTICE  
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Applicant

- and -

**CONFEDERATION LIFE INSURANCE COMPANY**

Respondent

**ENDORSEMENT OF  
THE HONOURABLE MR- JUSTICE BLAIR**

Counsel: Graham D. Smith, for KPMG Inc., Liquidator of Confederation Life Insurance Company  
James H. Grout, representative counsel on behalf of the ordinary creditors  
Jay Swartz, for Warburg Dillon Read LLC and UBS AG  
Edward Sellers, for The Chase Manhattan Bank

Date: May 19, 2000

**BLAIR, J.**

It is clear from the contractual terms on which the Subordinated Debt was acquired that in the event of the insolvency or winding-up of Confed the indebtedness evidenced by the trust indentures and bonds would be subordinate in right of payment to the prior payment in full of all other Confed indebtedness. I see nothing in the structure of the winding-up legislation, as it applies to these proceedings, which would preclude such a contractual arrangement. Later amendments to the legislation and regulations have put into place a statutory scheme for such subordination, but it does not follow that the subordination arrangements made prior to the amendments are of no force or effect. Accordingly, a declaration of subordination is granted as requested in the form of the draft order filed and on which I have placed my fiat.

R.A. Blair J.

May 19, 2000

It is clear from the contractual terms on which the Subordinated Debt was acquired that in the event of the ~~sub~~ insolvency or winding-up of Corp the indebtedness evidenced by the trust indentures & bonds would be subordinate in right of payment to the prior payment in full of all <sup>other</sup> Corp indebtedness. I see nothing in the structure of the winding-up legislation, or it appears to these proceedings which would preclude such a contractual arrangement. Later amendments to the legislation & regulations have put into place a statutory scheme for such subordination, but it does not follow that the subordination arrangements made prior to the amendments are ipso facto null and void.

**SUPERIOR COURT OF JUSTICE  
- COMMERCIAL LIST**

Proceeding commenced at Toronto

**MOTION RECORD  
(Returnable May 19, 2000)**

**GOODMAN PHILLIPS & VINEBERG**  
Barristers & Solicitors  
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Suite 2400, Box 24  
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M5B 2M6

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Graham Smith \LSUC #26377D  
Tel: (416) 979-2211  
Fax: (416) 979-1234

Solicitors for KPMG Inc., the Liquidator of  
Confederation Life Insurance Company

Accordingly, a declaration of subordination  
is granted as requested in the form of  
the draft also filed & on which I have  
placed my file.

RD Blaw RSJ

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