

**ONTARIO SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**



THE HONOURABLE MR.) FRIDAY, THE 7TH DAY
JUSTICE R.A. BLAIR ad hoc) OF JANUARY, 2005

**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



ORDER

THIS MOTION made by KPMG Inc., the liquidator (the “Liquidator”) of Confederation Life Insurance Company (“Confed”), was heard this day at Osgoode Hall, 130 Queen St. W., Toronto, Ontario.

ON READING the Report of the Liquidator dated January 5, 2005, filed, and upon hearing submissions of counsel for the Liquidator.

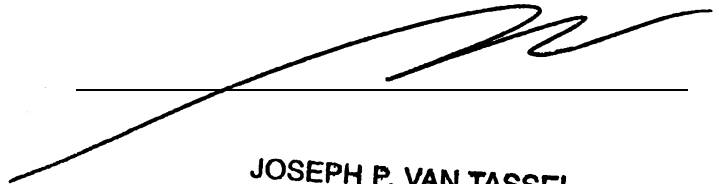
1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and any supporting materials be and the same is hereby abridged such that the service effected on the parties shall be good and sufficient service for this motion, that this motion is properly returnable this day and that any further service of the Notice of Motion and supporting materials be and the same is hereby dispensed with.

2. **THIS COURT ORDERS** that an agreement (the “Settlement Agreement”) between Confed, KPMG Inc. and Sunlife Assurance Company of Canada (UK) Limited (“SLOCUK”) in substantially the form attached as Schedule “A” be and the same is hereby approved.

3. **THIS COURT ORDERS** that the Liquidator be and is authorized and empowered to proceed with and carry out the transactions contained in and contemplated by the Settlement Agreement, to perform Confed’s obligations thereunder, and to execute and deliver such documentation and take such acts and do such things as may be necessary in connection therewith and to agree to such modifications or changes to the Settlement Agreement as may be necessary or desirable without the need to seek or obtain any further authority or approval from the Court.

4. **THIS COURT ORDERS AND DECLARES** that the approval of the Settlement Agreement does not constitute an admission by Confed, SLOCUK or the Liquidator of liability or damages, and cannot be used as evidence against any of them, or for any other purposes in any other proceeding or matter including, without limitation, proceedings within the winding-up of Confed.

5. **THIS COURT ORDERS AND DECLARES** that upon completion of the Settlement Agreement the Liquidator is authorized and directed to take no further steps with respect to policies issued by the former Confed branch in the U.K., including, without limitation, calling for claims of policyholders thereof, and to distribute the assets of Confed, or any part thereof, among the persons entitled thereto without reference to such claims.

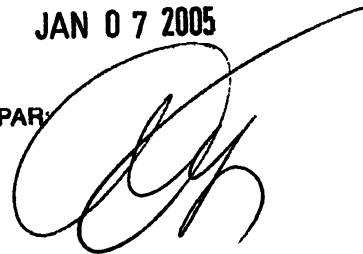


**JOSEPH P. VAN TASSEL
REGISTRAR**

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

JAN 07 2005

PER/PAR:



SETTLEMENT AGREEMENT

THIS AGREEMENT dated the 7th day of January, 2005 among:

**CONFEDERATION LIFE INSURANCE COMPANY,
IN LIQUIDATION**, a mutual company incorporated in
Canada
(**"Confederation"**)

- and -

KPMG INC.
(**"KPMG"**)

- and -

**SUN LIFE ASSURANCE COMPANY OF CANADA,
(UK) LIMITED**, a company registered in England
(**"SLOCUK"**)

WHEREAS:

1. By order made August 15, 1994, the Ontario Court of Justice (General Division) ordered that Confederation Life Insurance Company be wound-up pursuant to the *Winding-Up Act*, R.S.C. 1985 C.W. -11, as amended.
2. On August 16, 1994, Confederation, Sun Life Assurance Company of Canada ("Sun Life"), The Superintendent of Financial Institutions (Canada) (then provisional liquidator of Confederation) and KPMG (then known as Peat Marwick Thorne Inc. and in its capacity as agent for the liquidator as Confederation) entered into a share purchase agreement (the "Agreement") pursuant to which Confederation agreed to sell its shares in Confederation UK Holdings plc to Sun Life and pursuant to which the business of Confederation's United Kingdom branch was transferred to Sun Life under a scheme sanctioned by the High Court of England and Wales in accordance with Section 49 and Schedule 2C of the *Insurance Companies Act 1982*. Subsequently KPMG became permanent liquidator of Confederation.
3. On March 23, 2000 Sun Life's United Kingdom branch (which included the Confederation Branch Policies (as defined hereafter)) was transferred to SLOCUK under a scheme sanctioned by the High Court of England and Wales pursuant to Part I of Schedule 2C of the *Insurance Companies Act 1982*.
4. Since the transfer of the business of Confederation's United Kingdom branch to Sun Life Confederation, SLOCUK and Sun Life have all received various complaints from policyholders alleging the mis-selling of various policies of the former Confederation United Kingdom branch.

5. The liquidation of Confederation is nearing completion and the parties hereto wish to fully and finally settle all matters between them in relation to all liabilities arising out of or pertaining to the Confederation Branch Policies, and/or the manner in which the Confederation Branch Policies were sold.

NOW THEREFORE the parties agree as follows:

ARTICLE 1
INTERPRETATION

1.1 Definitions. Where used in this Agreement, the following expressions shall have the following respective meanings:

- (a) “**Affiliate**” means, in relation to a corporation, a corporation which Controls, is Controlled by or is under common Control with such corporation.
- (b) “**Agreement**” means this agreement and all schedules hereto, as the same may be amended by the parties from time to time.
- (c) “**Business Day**” means every day except a Saturday, Sunday or a statutory holiday under the laws of Ontario or the federal laws of Canada or the laws of England.
- (d) “**Canadian Court**” means the Superior Court of Justice of Ontario, formerly the Supreme Court of Ontario General Division.
- (e) “**Canadian Court Approval**” means an order of the Canadian Court approving Confederation’s entry into, and performance of, this Agreement.
- (f) “**Claim**” means any claim, action, suit, demand or proceeding of any nature whatsoever, whether commenced or pursued in a court, administrative tribunal or in any other forum whatsoever, including any claim, action, suit, demand or proceeding brought or asserted by Sun Life or any of Sun Life’s or SLOCUK’s Affiliates.
- (g) “**Control**” means, with respect to a corporation, (i) holding, directly or indirectly, securities of that corporation sufficient to elect or appoint a majority of its directors, or (ii) exercising *de facto* control of such corporation whether through the ownership of securities, by contract or trust or otherwise.
- (h) “**Confederation Branch Policies**” means all with profit policies of insurance issued by the branch operated by Confederation in the United Kingdom, whether or not in force at the time of the transfer of the business of Confederation’s United Kingdom branch to Sun Life.
- (i) “**With Profit Liabilities**” mean all liabilities of any nature and kind whatsoever arising out of or with respect to the Confederation Branch Policies or the manner in which they were advertised, marketed or sold, including tortious liabilities, liabilities arising with respect to the mis-selling of the Confederation Branch Policies, and extra contractual obligations deemed or found to be appurtenant to

or associated with the Confederation Branch Policies; provided that "With Profit Liabilities" shall not include liabilities arising out of the acts of KPMG in its capacity as liquidator of Confederation of which at least one of SLOCUK, Sun Life or their Affiliates have not been made aware prior to the date hereof.

1.2 Construction. In this Agreement, except as otherwise expressly provided:

- (a) All grammatical changes in gender, tense and number required to give meaning to any provision of this Agreement shall be deemed to have been made;
- (b) The division of this Agreement into Articles and Sections and the use of headings are for convenience of reference only and shall not modify or affect the interpretation or construction of this Agreement or any of its provisions;
- (c) The parties agree that they participated equally in the preparation of this Agreement and that the language of this Agreement should not be presumptively construed against any of them; and
- (d) "Includes" means including without limitation.

ARTICLE 2 **CANADIAN COURT APPROVAL**

2.1 Condition Precedent. The obligations of the parties hereunder are subject to the obtaining of the Canadian Court Approval. Confederation agrees to use all commercially reasonable efforts to obtain the Canadian Court Approval on or before January 14, 2005. Confederation will afford SLOCUK and its representatives the opportunity to review and comment upon the materials to be provided by Confederation to the Canadian Court in order to obtain the Canadian Court Approval and SLOCUK agrees to provide all such information in connection with the obtaining of the Canadian Court Approval as Confederation may reasonably request. All information provided to Confederation by SLOCUK pursuant to the foregoing shall be provided subject to the terms of the Confidentiality and Non-Disclosure Agreement between KPMG and SLOCUK dated May 14, 2004.

2.2 Termination. This Agreement shall terminate and be of no further force or effect if the Canadian Court Approval has not been obtained by March 31, 2005.

ARTICLE 3 **PAYMENT, ASSUMPTION AND INDEMNITY**

3.1 Payment. Within three (3) Business Days of the obtaining of the Canadian Court Approval, Confederation will pay SLOCUK the sum of UK 500,000 pounds by certified cheque or bank draft in the United Kingdom, or by wire transfer to an address in the United Kingdom designated by SLOCUK.

3.2 Assumption. Subject only to receipt of the payment referred to in Section 3.1 (it being acknowledged that no further act or formality shall be required to make the obligations of SLOCUK set out in this Section 3.2 effective or binding once such payment has been received) SLOCUK hereby assumes the With Profit Liabilities, and SLOCUK hereby agrees to indemnify and save Confederation and KPMG harmless on demand from and against all Claims (and all

damages, fines or penalties assessed, levied or awarded therein and all reasonable fees and disbursements associated therewith or incurred by reason thereof) asserted or brought on the basis of, or in relation to, any With Profit Liabilities.

3.3 Procedure for Indemnification. If either of Confederation or KPMG becomes aware of a Claim in respect of which it intends to seek indemnification under Section 3.2, it shall promptly notify SLOCUK of the Claim and provide SLOCUK with all information in KPMG's and Confederation's possession pertaining to the Claim. SLOCUK shall be given the opportunity to lead the defence or settlement of such Claim provided that within twenty (20) Business Days of being notified by Confederation or KPMG of the Claim and being provided with all information pertaining thereto in Confederation's and KPMG's possession it acknowledges in writing that such Claim is one to which the indemnity in Section 3.2 applies and that it is prepared to fulfill its obligations in relation thereto in Section 3.2. Otherwise, SLOCUK will only be entitled to participate in the settlement of such Claim, and will be bound by any result or settlement obtained by Confederation or KPMG in connection therewith. Should SLOCUK elect to lead the defence or settlement of a Claim in accordance with the foregoing, Confederation and KPMG will render all cooperation in connection therewith as SLOCUK may reasonably request, and will be bound by decisions made by SLOCUK in connection with such settlement or defence and will not interfere with same; provided that KPMG shall have the right to approve any admission or any portion of a settlement which could reasonably be expected to have an adverse impact on KPMG's reputation. During the twenty (20) Business Day period referred to above neither Confederation nor KPMG will take any action with respect to a Claim without SLOCUK's prior consent, which consent will not be reasonably withheld

3.4 Covenant not to Sue. Subject only to receipt of the payment referred to in Section 3.1 (it being acknowledged that no further act or formality shall be required to make the obligations of SLOCUK set out in this Section 3.4 effective or binding once such payment has been received), SLOCUK agrees to release and discharge Confederation from all obligations, causes of action, claims and costs whatsoever relating to or arising out of the With Profit Liabilities, and covenant not to sue Confederation in connection therewith.

3.5 No Admission. This Agreement shall not constitute an admission by any party hereto that any Confederation Branch Policies were mis-sold or marketed in an improper or tortious manner or in a manner so as to give rise to obligations not reflected in the express wording of the Confederation Branch Policies or that any liability relating to any of the foregoing would, but for the provisions of this Agreement, be the liability of any party hereto.

3.6 Warranty. KPMG warrants that it has advised SLOCUK and/or Sun Life and/or one of their Affiliates of all complaints it has received in relation to the Confederation Branch Policies or the manner in which they were advertised, marketed or sold.

ARTICLE 4 **GENERAL**

4.1 Notices. All notices required or permitted to be sent under and pursuant to this Agreement shall be in writing, and shall be delivered by hand, or night courier, or sent by telecopier to:

- (a) Confederation Life Insurance Company, in liquidation

Commerce Court West
199 Bay Street, 33rd Floor
P.O. Box 31
Toronto, Ontario M5L 1B2

Attention: Robert O. Sanderson

Telephone No.: (416) 777-8520
Facsimile No.: (416) 777-3683

(b) KPMG Inc.

Commerce Court West
199 Bay Street, 33rd Floor
P.O. Box 31
Toronto, Ontario M5L 1B2

Attention: Robert O. Sanderson

Telephone No.: (416) 777-8520
Facsimile No.: (416) 777-3683

(c) Sun Life Assurance Company of Canada (UK) Limited

Matrix House
Basingstoke
Hampshire England RG21 4DZ

Attention: The Chief Executive Officer

Telephone No.: 01256 849 923
Facsimile No.: 01256 849 392

or to such other person, address or fax number of which the addressee may from time to time have notified the addressor in writing. A notice shall be deemed to be sufficiently given on the day it is delivered by hand or on the day it is received if couriered on the day on which transmission is confirmed if telecopied, except that if such day is not a Business Day or if notice is delivered by hand or sent by telecopier after 5:00 p.m. at the receiving party's location, then notice shall be deemed to be sufficiently given on the next Business Day.

4.2 Further Acts. The parties acknowledge that their cooperation is required to facilitate the matters provided for herein. The parties shall do or cause to be done all such further acts and things that may reasonably be necessarily or desirable to give full effect to this Agreement.

4.3 Governing Law. This Agreement shall be governed by the laws of England and Wales.

4.4 Waiver. No waiver of any provision of this Agreement shall be binding unless it is in writing. No indulgence or forbearance by a party shall constitute a waiver of such party's right to insist on performance in full and in a timely manner of all covenants in this Agreement.

Waiver of any provision shall not be deemed to waive the same provision thereafter, or any other provision of this Agreement at any time.

4.5 Counterparts. This Agreement may be executed in one or more counterparts which, together, shall constitute one and the same agreement. This Agreement shall not be binding upon a party until it has been executed by all other parties and delivered to it. Delivery may be effected by facsimile transmission.


4.6 Assignment. This Agreement or any rights or obligations of a party hereunder may not be assigned directly or indirectly without the prior written consent of each other party. Any assignment without such consent shall be null and void.

4.7 Enure and Binding Effect. This Agreement shall enure to the benefit or and be binding upon the parties hereto and their respective successors and permitted assigns.


4.8 Personal Liability. It is acknowledged that, save and except for the purposes of Sections 3.2 and 3.3, KPMG Inc. is executing this Agreement solely in its capacity as liquidator of Confederation and not in its personal capacity and shall not incur any personal liability under or by virtue of this Agreement, whether in tort, contract or otherwise. Recourse in respect of the obligations of Confederation under this Agreement shall be limited to the assets of Confederation. The agreements of SLOCUK set out in Sections 3.2 and 3.3 are made in favour of Confederation and KPMG in its personal capacity. KPMG may seek a discharge as liquidator of Confederation at any time hereafter without notice to SLOCUK.

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed by its duly authorized representative on the date set forth below

**CONFEDERATION LIFE INSURANCE
COMPANY, IN LIQUIDATION, BY ITS
LIQUIDATOR, KPMG INC.**

Per: 
Name:
Title:

**KPMG INC., in its personal capacity (for
purposes of Sections 3.2 and 3.3) and in its
capacity as Liquidator of Confederation**

Per: 
Name:
Title:

7. Jan. 2005 13:45

SUN LIFE EXEC SUITE C1256 811129

No. 4734 P. 8/3

- 7 -

SUN LIFE ASSURANCE COMPANY OF
CANADA (UK) LIMITED

Per:

J Fuller
Name: *J FULLER*
Title: *MANAGING DIRECTOR*

GOODMANS 106185.5

THE ATTORNEY GENERAL OF CANADA
Applicant

and

CONFEDERATION LIFE INSURANCE COMPANY
Respondent

Commercial List Court File No: 97-BK-000543

ONTARIO SUPERIOR COURT OF JUSTICE
- COMMERCIAL LIST

Proceeding commenced at TORONTO

ORDER

GOODMANS LLP
Barristers & Solicitors
250 Yonge Street
Suite 2400, Box 24
Toronto, Ontario
M5B 2M6

Gale Rubenstein (LSUC #17088E)

Tel: (416) 979-2211
Fax: (416) 979-1234

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

Our File No. 94.1219

CONFEDERATION LIFE INSURANCE COMPANY, IN LIQUIDATION WEBSITE LEGAL DISCLAIMER

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