



**ONTARIO COURT OF JUSTICE
(GENERAL DIVISION)**

Before the Honourable)
Mr. Justice Houlden) **On Monday,**
) **the 15th day of**
) **August, 1994**

**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 APPLICATION made by the Attorney General of Canada was heard this day at Toronto;

ON READING the Affidavit of John Reid Thompson; AND UPON hearing submissions of Counsel for the Applicant, Counsel for the Respondent Confederation Life Insurance Company (the "Company"), Counsel for the Canadian Life and Health Insurance Compensation Corporation ("COMPCORP") and Counsel for Peat Marwick Thorne Inc.;

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application Record be and it is hereby abridged, and that notice of this Application to the creditors, contributories, policyholders, members and shareholders of the Company is hereby dispensed with.

2. THIS COURT ORDERS that the Superintendent of Financial Institutions or in the absence or incapacity of the Superintendent of Financial Institutions or if the office of the Superintendent of Financial Institutions is vacant, any person appointed by the Governor in Council to hold office under subsection 5(5) of the *Office of the Superintendent of Financial Institutions Act*, (collectively, the “Superintendent”) is provisionally appointed as liquidator of the estate and effects of the Company (the “Liquidator”).

3. THIS COURT ORDERS that the giving of security by the Liquidator upon provisional appointment as liquidator be dispensed with.

4. THIS COURT ORDERS that all moneys belonging to the Company 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. However, the Liquidator shall have the discretion to deposit funds to and use the bank accounts currently in the name of the Company.

5. THIS COURT ORDERS that the agreement (“Loan Agreement”) made on August 11, 1994 between the Company, the Superintendent and CompCorp is accepted and confirmed and shall be binding upon the Liquidator.

6. THIS COURT ORDERS that the agreements (“Escrow Agreements”) made on August 11, 1994 between the Company, the Superintendent, CompCorp and Robert O. Sanderson, Kerryn M. Downey, and Edward G. Bossence, (“jointly as “Escrow Agents”), are accepted and confirmed and shall be binding upon the Liquidator. For greater certainty, it is ordered that premium payments paid to the Escrow Agents pursuant to the Escrow Agreements will not form part of the estate or effects of the Company except as provided in the Escrow Agreements but shall be dealt with as provided in the Escrow Agreements; and for purposes of taxing statutes shall not be deemed to be premiums unless and until brought into the estate.

7. IT IS FURTHER ORDERED that the agreement (“Subordination and Security Agreement”) made on August 11, 1994 between the Company and CompCorp, is accepted and confirmed and shall be binding upon the Liquidator. For greater certainty, it is ordered that the Subordination and Security Agreement shall apply to and secure amounts advanced by CompCorp to the Company and the Liquidator after as well as before the making of this Order.

8. THIS COURT ORDERS that the Liquidator may pay all claims reported after August 11, 1994 under the Guaranteed Group Policies (as defined in the Escrow Agreements) in full and may use all premiums received by the Company in respect of the Guaranteed Group Policies for such purposes.

9. THIS COURT ORDERS that any cheques or drafts not exceeding \$50,000.00 in respect of policies or annuities, issued by the Company prior to the making of the Winding-up

Order and which are presented for payment thereafter, may be paid out of the estate and effects of the Company.

10. THIS COURT ORDERS that the Liquidator may make such payments as the Liquidator in the Liquidator's discretion deems advisable in the circumstances, subject to the provisions of the Loan Agreement, in respect of policies and investment instruments of the Company and such payments shall be deemed for all purposes to have been payments made in the course of liquidation of the Company.

11. THIS COURT ORDERS, without limiting the generality of paragraph 10 hereof, that:

- (a) all payments made to policyholders and claimants pursuant to the provisions contained in paragraph 10 of this Order shall be deemed to be payments made on account of claims in the liquidation of the Company and shall be deducted from the amount which would otherwise be distributed to the respective policyholders and claimants at such time as any further distributions or similar arrangements are made in respect of their claims;
- (b) any payments, other than payments made pursuant to clerical errors, to policyholders and claimants which may have exceeded the ultimate amount which the Liquidator determines is available for distribution to the respective policyholders and claimants (the "Overpayments") shall be deemed not to be preferences which are repayable by the recipients and neither the Liquidator nor the Liquidator's agents, advisers or employees shall be liable to any person for the Overpayments; and
- (c) all payments made by the Liquidator to policyholders and claimants from and after August 11, 1994, shall be deemed to have been made in accordance with paragraph 10 of this Order.

12. THIS COURT ORDERS that CompCorp, which shall designate from time to time one or more persons, is appointed Inspector to assist and advise the Liquidator in the winding-up of the Company.

13. THIS COURT ORDERS that the Inspector may apply to this Court on motion for directions concerning any matter relating to the liquidation of the Company.

14. THIS COURT ORDERS that the Liquidator is authorised and empowered to take under the Liquidator's control and to manage the Company's segregated funds and to be paid the management fees earned by the Company pursuant to the provisions of any management contract governing any such funds.

15. 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 the Company, pursuant to the terms of administrative services only contracts (“ASO Contracts”) between the Company and such third parties.

16. THIS COURT ORDERS that the Liquidator is authorised and empowered to act as a fund manager and provide investment management services, and to be paid the fees earned by the Company, pursuant to the terms of investment services only contracts (“ISO Contracts”) to which the Company is a party.

17. THIS COURT ORDERS that the Liquidator is entitled forthwith to possession of all of the Company’s books, accounts, securities, documents, papers, computer programs and data, registers and records of any kind (“Books and Records”) and that the Company, 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.

18. THIS COURT ORDERS that all persons, including without limitation, employees, brokers, insurance agents or salespeople, having access to or knowledge of the affairs of the Company or any corporation owned or controlled, directly or indirectly, legally or beneficially by the Company, (the “Subsidiaries”) do co-operate with the Superintendent in providing information or documents necessary or incidental to the liquidation of the Company

19. THIS COURT ORDERS that all persons, firms, corporations and other entities having agreements, whether written or oral, with the Company as at August 11, 1994 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 August 11, 1994 in accordance with usual payment terms or as may hereafter be negotiated by the Liquidator from time to time.

20. 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 the Company as at August 11, 1994 except upon further Order of this Court. From August 11, 1994 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 the Company in respect of the premises so occupied or as may hereafter be negotiated by the Liquidator from time to time.

21. 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 (at present telephone numbers used by Company) or any other utilities of like kind furnished to the Company 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 August 11, 1994 as the same become due in accordance with usual payment terms or as may hereafter be negotiated by the Liquidator from time to time.

22. 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 the Company as they were on August 11, 1994;
- (b) any and all proceedings taken or that may be taken by any person, firm, corporation or entity including without limitation any of the policyholders or creditors of the Company, suppliers, co-insurers, reinsurers, contracting parties, depositors, lessors, tenants, co-venturers or partners (herein "Claimants") against or in respect of the Company shall be 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 orders of credit, bonds or instruments of similar effect, issued by or on behalf of the Company, to take possession of, to foreclose upon or to otherwise deal with any property, wheresoever located, of the Company 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 Chairman 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, ISO Contract, ASO Contract,

swap contract, derivative transaction, option, co-ownership agreement or any agreement of purchase or sale) to which the Company is a party arising out of, relating to or triggered by the occurrence of any default or non-performance by the Company 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 the Company, including the registration or re-registration of any securities owned by the Company, 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 the Company as of the date hereof.

23. THIS COURT ORDERS that all insurers, insurance agents, salespeople, brokers and any and all other persons in the insurance industry shall not in any way counsel, encourage or solicit the cancellation, surrender, replacement or termination of policies issued by the Company until further order of this Court.

24. THIS COURT ORDERS that no action lies against Her Majesty the Minister of Finance, the Secretary of State (International Financial Institutions) the Superintendent, any Deputy Superintendent, any officer or employee of the Office of the Superintendent of Financial Institutions, the Liquidator or any person (or director, officer or employee of any such person) acting under the direction of the Liquidator for anything done or omitted to be done in good faith in the administration of the liquidation of the Company or in the exercise of the Liquidator's powers under this Order.

25. THIS COURT ORDERS that no suit, action or other proceeding shall be proceeded with or commenced against the Superintendent, the Liquidator, any Deputy Superintendent, any officer or employee of the Office of the Superintendent of Financial Institutions, any person acting under the direction of the Superintendent or the Liquidator any Inspector or any officer or employee of an Inspector, except with leave of this Court and subject to such terms as this Court may impose.

26. THIS COURT ORDERS that the Liquidator may, without the sanction or intervention of this Court and without previous notice to the creditors, contributories, policyholders, members or shareholders of the Company or any other person,

- (a) take control of the estate and effects of the Company 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 the Company, as the case may be;
- (c) carry on the business of the Company so far as it is necessary or incidental to the winding-up of the Company;
- (d) lease or mortgage or otherwise realize upon the undertaking, property and assets of the Company or any part or parts thereof;
- (e) sell the real and personal property, effects, intangibles and choses: in action of the Company, including all or any portion of the Company's financial management or investment services contracts and products and related assets including without limitation, the Company's segregated funds, ISO Contracts, ASO Contracts and 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 the Company, all deeds, receipts, and other documents, and for that purpose use, when necessary, the seal of the Company, and file any elections (tax or otherwise), objections or registrations, and file any notices, all as may be necessary desirable in the opinion of the Liquidator for the better liquidation of the Company;
- (g) prove, rank, claim and draw dividends in the matter of the bankruptcy, insolvency or sequestration of any contributory, for any sum due to the Company 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 the Company;
- (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 the Company;
- (j) pay such debts of the Company as may be necessary to be paid in order to properly preserve and maintain the undertaking, property and assets of the Company or to carry on the business of the Company;
- (k) surrender possession of any premises occupied by the Company and disclaim any leases entered into by the Company;

- (l) apply for any permits, licences, approvals or permissions as may be required by any governmental or regulatory authority;
- (m) cure such defaults and effect such arrangements as may be required to reinstate any reinsurance arrangements affecting the operations of the Company;
- (n) re-direct the Company's mail;
- (o) enter into any eligible financial contracts, as defined in the *Bankruptcy and Insolvency Act*;
- (p) take possession and control of all the securities issued by the Subsidiaries and in which the Company 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, for 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 securities of the Subsidiaries, (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 a Subsidiary or the winding-up, liquidation, rehabilitation, bankruptcy, receivership, restructuring or amalgamation of a Subsidiary), and (v) to sell or otherwise dispose of securities of such Subsidiary;
- (q) 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 the Company or the winding-up of the Company, on the receipt of such sums, payable at such times, and generally on such terms as are agreed on by the Liquidator;
- (r) make such compromise or other arrangements with creditors or persons claiming to be creditors of the Company as the Liquidator deems expedient; and
- (s) do and execute all such other things as are necessary for, or incidental to the winding-up of the affairs of the Company, including without limitation entering into agreements incurring obligations.

27. THIS COURT ORDERS that the Liquidator be at liberty and is hereby empowered to borrow monies, without personal liability, from time to time as it may consider necessary which may, but need not, be as and by way of a revolving credit which may be borrowed or reborrowed at such rate or rates of interest as it deems advisable and for such period or periods as it may be

able to arrange, and that as security for such borrowings and every part thereof, the Liquidator be and is hereby authorized to pledge, assign or give security or securities on any of the assets, undertaking and property of the Company (the "Assets") which shall rank as a first charge on the Assets ranking in priority to all other charges, claims or encumbrances.

28. THIS COURT FURTHER ORDERS that the Liquidator shall be at liberty and it is hereby authorized and empowered to issue Liquidator's certificates or receipts for the purpose of evidencing any money borrowed by it and the security thereof constituted pursuant to this Order, which certificates shall be substantially in the form of Schedule "A" hereto.

29. THIS COURT ORDERS that the Liquidator or any of the Liquidator's agents or employees shall not be deemed to be an employer or a successor employer of the employees of the Company 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 or any of the Liquidator's agents or employees shall not be, nor be deemed to be, in possession, charge or control of the property or business or affairs of the Company 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.

30. 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 the Company.


31. 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 Superintendent shall not be responsible for any loss, depreciation or damage occasioned by acting in good faith in reliance thereon.

32. 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.

33. 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.

34. THIS COURT ORDERS that the costs of this application including the costs of the Respondent and of CompCorp are to be assessed and shall be costs of liquidation of the Company.

35. THIS COURT ORDERS that interested parties may apply to the Court for advice and directions on reasonable notice to the Liquidator and the Inspectors.



JUDICE J.C.J. (C.V.)

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SCHEDULE A

AMOUNT: \$[*]

LIQUIDATOR'S CERTIFICATE NO. [*]

1. This is to certify that the undersigned, the Superintendent of Financial Institutions, the Liquidator of the undertaking, property and assets of Confederation Life Insurance Company (the "Company") appointed by order of the Honourable Mr. Justice Houlden of the Ontario Court (General Division) dated the 15th day of August, 1994 (the "Order") has issued as such Liquidator to [*] (the "Lender"), this Certificate in the face amount of [*] Dollars (\$[*]) in lawful money of Canada which the Liquidator is authorized to borrow and have outstanding under and pursuant to the Order.

2. All sums advanced from time to time pursuant to the Order shall be evidenced by promissory notes executed by the Liquidator, or its agent in favour of the Lender. All or any portion of the sum or sums advanced shall be payable on demand with interest thereon both before and after all or any of demand, maturity, default and judgment at the rate of interest per annum which is equal to [*] % above the prime lending rate of the Lender, being the rate of interest expressed by it as an annual rate, determined by it from time to time as a reference rate for commercial loans denominated in Canadian dollars made by it in Canada as announced and adjusted from time to time by it and whether or not notice of such adjustment is given by it to the Liquidator, calculated and payable monthly on the 1st day of each and every month on the basis of the actual number of days in the year and together with interest on any overdue interest at the same rate and on the same basis. The first interest payment shall be calculated from the date of advance and the first payment of interest shall be payable on the 1st day of the month thereafter.

3. Pursuant to the terms of the Order, repayment of the principal sums advanced pursuant to this Certificate and interest thereon and all expenses incurred by the holder or holders in connection with the repayment thereof, shall by the terms of the Order be secured by a charge (the "Charge") of the Company on all the undertaking, property and assets of the Company (the "Assets").

4. Pursuant to the terms of the Order, the Charge shall rank in priority to all other charges, claims or encumbrances on any of the Assets. The Charge shall be a continuous charge for any balance and any and all monies payable under the provisions of the Order.

5. The Charge created by the Order shall take effect from the date of the Order and shall be a continuous charge notwithstanding that the balance owing by the Liquidator to the Lender as evidenced by promissory notes may fluctuate and may have been from time to time and at any time reduced to a nil balance and further notwithstanding that the monies advanced pursuant to this Certificate as evidenced by promissory notes may be repaid and further advanced, it being

understood that such continuous charge shall be a security for any balance and any and all monies payable under the provisions of the Order.

6. All sums payable in respect of principal and interest under this certificate are payable at the office of the Lender at [*].

7. This Certificate may be redeemed by the Liquidator at any time without notice or bonus and all liability hereunder shall terminate on tender to the holder hereof of the outstanding balance of the principal together with the interest accrued thereon to the date of tender and all expenses incurred by the holder in connection with repayment thereof.

8. Until all liability in respect of this Certificate shall have been terminated, no certificates creating charges ranking or purporting to rank in priority to or *pari passu* with the Charge created by the Order shall be issued by the Liquidator to any party, other than the holder of this Certificate, without the prior written consent of the holder of this Certificate.

9. Subject to the provisions of paragraph 8 hereof, the Charge shall operate so as to permit the Liquidator to carry on the business and undertaking of the Company and to deal with the Assets as authorized by the Order and by any further or other order of the said Court.

10. The Liquidator does not undertake and is not under any personal liability to pay any sum in respect of this Certificate.

IN WITNESS WHEREOF the Liquidator has executed this Certificate as Liquidator of the Company by the signature of its proper signing officer, or by the signature of its agent in that behalf, this [*] day of [*], 199[*].

per: _____

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