



ONTARIO COURT OF JUSTICE
(GENERAL DIVISION)

**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., AGENT TO THE SUPERINTENDENT
OF FINANCIAL INSTITUTIONS, PROVISIONAL LIQUIDATOR
OF CONFEDERATION LIFE INSURANCE COMPANY**

SEPTEMBER 3, 1997

I. NATURE OF THE MOTION

1. This Report is respectfully filed in support of a Motion by the Superintendent of Financial Institutions (the "Superintendent"), as provisional liquidator (the "Provisional Liquidator") of Confederation Life Insurance Company ("Confed") by his agent, KPMG Inc. (the "Agent") for an Order substantially in the form attached to the Notice of Motion herein as Schedule "A" thereto, including, among other things, the following:

- (a) approving the stepping down of, and discharging, the Superintendent as Provisional Liquidator of Confed;
- (b) appointing the Agent as permanent liquidator of Confed (the "Permanent Liquidator"); and
- (c) appointing the Superintendent as an inspector of the estate.

Directions for the service of this Motion were granted by this Court by Order dated August 1, 1997.

II. GENERAL BACKGROUND

A. Overview of the Business of Confed

2. The business of Confed has been described in previous Reports by the Agent to this Court including the Report dated July 16, 1996 in support of the U.S. Settlement Agreement, as hereinafter defined, and the Report dated August 16, 1996, in support of, among other things, the distribution methodology to the group pension policyholders of Confed.

3. As discussed in the various Reports, Confed's life insurance operations in the U.S., the U.K., Bermuda and Cuba were conducted through branches, rather than through subsidiaries. Approximately two-thirds of Confed's total policyholder liabilities were written

through its branch in the U.S. In addition, the Confederation Life Group of companies (of which Confed was the parent) wrote life insurance through Confederation Life Insurance and Annuity Company ("CLIAC"), and Confederation Life Insurance Company (U.K.) Limited, indirect subsidiaries of Confed based in the State of Georgia and in England, respectively.

4. Confed was a large and complex enterprise which operated in a number of jurisdictions and dealt with diverse lines of business. The liquidation of such an enterprise has raised many difficult issues, for the resolution of which there has often been little or no precedent. These include cross border issues, the strategy for dealing with diverse blocks of insurance business and legal issues with respect to priorities and equitable distribution to policyholders.

B. The Winding-up and Rehabilitation Proceedings

5. On August 11, 1994, the Secretary of State (International Financial Institutions) directed the Superintendent to take control of Confed pursuant to an order under section 680 of the Insurance Companies Act. At the same time, the Attorney General of Canada applied for an Order of this Court for the winding-up of Confed. By Order of this Court dated August 15, 1994 (the "Winding-up Order"), Confed was ordered wound-up pursuant to the Winding-up Act. By further Order of the same date, the Court appointed the Provisional Liquidator. The Provisional Liquidator appointed the Agent to assist in the administration of the liquidation.

6. Pursuant to the Winding-up Order, the winding-up of the business of Confed was deemed to commence on August 12, 1994.

7. At the same time as winding-up proceedings were commenced in Canada, Confed's U.S. branch operations ("Confed (U.S.)"), were ordered by the Circuit Court of the County of Ingham, State of Michigan (the "Michigan Court") to cease all operations and to

become subject to rehabilitation proceedings in accordance with the provisions of the Michigan Insurance Code, all as of August 12, 1994. The Commissioner of Insurance of the State of Michigan was appointed as rehabilitator of Confed (U.S.) (the "Rehabilitator"). By Order dated October 23, 1996, the Michigan Court ordered that Confed (U.S.) be wound up and appointed the Rehabilitator as liquidator of Confed (U.S.). For ease of reference, the term "Rehabilitator" shall refer to the Rehabilitator both in his capacity as Rehabilitator and in his capacity as liquidator of Confed (U.S.).

8. Pursuant to an Order of Rehabilitation made September 12, 1994 by the Superior Court of Fulton County, State of Georgia, the Commissioner of Insurance for the State of Georgia was appointed as rehabilitator of CLIAC and title to all assets and property of CLIAC was vested in the Georgia Commissioner as rehabilitator.

C. Appointment of the Superintendent as Provisional Liquidator

9. The provisions of the Insurance Companies Act as it read at the commencement of the winding-up of Confed contemplated that the Superintendent would act as liquidator of an insurance company which was ordered wound-up under the Winding-up Act, although it was not mandatory. In fact, the Superintendent has been appointed liquidator in respect of all the liquidations of insolvent insurance companies and branch operations under federal jurisdiction in Canada over the last 15 years.

10. The Superintendent agreed to act as Provisional Liquidator of Confed considering:

- (a) The international aspects of Confed's business. The appointment of the Superintendent as Provisional Liquidator would assist in dealing with regulators who were appointed as court officers overseeing Confed's business in other jurisdictions;

- (b) That the Superintendent could assist in the process of dealing with policyholder concerns and facilitating transfers of blocks of policyholder liabilities; and
- (c) Sections 686 and 687 of the *Insurance Companies Act* which provide for the assessment of certain insurance companies (hereinafter referred to as the "Industry") by the Superintendent for costs incurred by him in carrying out as liquidator the winding-up of an insurance company.

D. Appointment of the Agent

11. The *Insurance Companies Act* also provided in section 690 that, where the Superintendent has been appointed liquidator of an insurance company, he may appoint one or more persons as his agent, to act on his behalf. In the case of Confed, the Superintendent appointed KPMG Inc. (formerly Peat Marwick Thorne Inc.) as his Agent for the administration of the liquidation.

12. The Agent has been responsible to the Provisional Liquidator for the day to day operations and administration of the liquidation. The Provisional Liquidator has provided oversight and control functions.

E. U.S. Settlement Agreement

13. On the commencement of the winding-up of Confed, the Provisional Liquidator considered the impact of the U.S. rehabilitation proceedings on the administration of the liquidation, in light of his duties in respect of the assets and liabilities of Confed. He determined that in order to achieve, to the extent possible, certainty for the administration, he would, at some point, have no alternative but to make a request under subsection 164(2) of the Winding-up Act. After having given due consideration to the issues and the implications of different approaches, the Provisional Liquidator and the Rehabilitator concluded that it was in the best interests of all policyholders of Confed that they attempt to reach an agreement on the application of section 164 of the Winding-up Act to Confed and Confed (U.S.).

14. The Provisional Liquidator and the Rehabilitator reached an agreement dated June 11, 1996 concerning, among other things, the future administration of the liquidation of Confed in Canada and the rehabilitation of Confed (U.S.) (the "U.S. Settlement Agreement"). The U.S. Settlement Agreement reflected the agreement of the parties thereto that a single proceeding (referred to as a "Unitary Proceeding"), combining the Canadian and U.S. estates of Confed, would not be in the best interests of the policyholders of Confed.

15. On August 12, 1996, this Court approved the U.S. Settlement Agreement and gave directions concerning the making by the Provisional Liquidator of a request under section 164 of the *Winding-up Act*. On October 23, 1996, the Michigan Court approved the U.S. Settlement Agreement and a plan of rehabilitation proposed by the Rehabilitator. On November 27, 1996, the transactions contemplated by the U.S. Settlement Agreement were implemented.

16. Pursuant to the U.S. Settlement Agreement, if all Canadian Prior-Ranking and Pari Passu Claims and the claims of Canadian Policyholders (all as defined in the U.S. Settlement Agreement) are paid in full, any remaining residue will be paid to the Rehabilitator until U.S. Policyholder (as defined in the U.S. Settlement Agreement) claims have been paid in full. If the U.S. Policyholder claims are paid in full any remaining residue will be transferred or paid to the Provisional Liquidator.

F. Industry Settlement Agreement

17. As stated above, where the Superintendent is appointed as liquidator of an insurance company which is being wound-up under the Winding-up Act, the Insurance Companies Act provides certain assessment powers for expenses incurred by him in carrying out as liquidator the winding-up of the company. A dispute arose between the Superintendent and the Canadian Life and Health Insurance Association (the "CLHIA") concerning whether certain

of the costs of the liquidation of Confed are assessable against the Industry or should, instead, be solely a charge against the estate of Confed.

18. In order to avoid costly and protracted litigation, which would not facilitate the expeditious winding-up of the estate of Confed, and given that, in the event of full recovery to Canadian Policyholders a refund to the Industry would be made, the Superintendent, in his capacity as Superintendent and in his capacity as Provisional Liquidator, and the CLHIA entered into an agreement made as of December 20, 1996 (the "Industry Settlement Agreement"), which was approved by Order of this Court dated February 13, 1997.

19. As contemplated by the Industry Settlement Agreement, concerted efforts were made to determine whether a "Satisfactory Transaction", as defined in the Industry Settlement Agreement, could be concluded. Considering all factors, including an increasingly optimistic view of the ultimate recovery to the Canadian Policyholders, it was determined that no Satisfactory Transaction could be concluded at that time which would be in the best interests of all stakeholders of Confed. Further, it was agreed that the "Outside Date", as defined in the Industry Settlement Agreement, would be extended to December 31, 1998. The Superintendent therefore maintains the ability to assess the Industry at any time after the Outside Date for the expenses of the liquidation of Confed up to the amount agreed in the Industry Settlement Agreement, being \$35,000,000.

G. Passing of Accounts

20. The Provisional Liquidator has obtained Orders of this Court passing his accounts as reflected in the financial statements for the estate of Confed and approving the fees of his Agent and Goodman Phillips & Vineberg ("GPV") and other professional advisers to the Agent for the following periods:

- (a) from the commencement of the liquidation to September 30, 1996, on February 13, 1997;
- (b) from October 1, 1996 to December 31, 1996, on May 27, 1997;
- (c) from January 1, 1997 to March 31, 1997, on August 1, 1997; and
- (d) from April 1, 1997 to June 30, 1997, on August 29, 1997 (the "June Quarter").

The financial statements and summaries of professional fees filed in respect of such passings have been sealed by Orders of the Court because they contain confidential information, the dissemination of which may be prejudicial to the estate.

21. The financial affairs of the estate are complex. The Provisional Liquidator prepares quarterly financial statements, incorporating information obtained from third party administrators and reinsurers, delivered on a quarterly basis. If this Court approves his stepping down and discharge, the Provisional Liquidator also respectfully seeks the Court's assistance in dispensing with a requirement that he pass further accounts, instead, confirming that the June Quarter is the last quarter for which the Provisional Liquidator will be responsible for passing accounts and that further passings will be the responsibility of the replacement liquidator. The Provisional Liquidator has and will continue to provide oversight and control functions for the period from the June Quarter to the date of his stepping down, and will provide his comments thereon to the Court at the application for passing of accounts for the quarter ending September 30, 1997. The professional fees of the Agent and GPV have been charged at rates significantly discounted from 1994 market rates. A significant discount will continue to be applied to the professional fees, but such fees will increase to those which are more reflective of current market conditions. The rates and professional fees will be subject to Court approval. Depending on the level of the ultimate realization, a further adjustment to the rates and professional fees may be sought, subject to the approval of the Court and on such notice as the Court may direct.

22. The Provisional Liquidator has not sought reimbursement of all or any portion of the costs incurred by his office in connection with the liquidation, but may do so in the future, depending on the level of the ultimate realization, subject to the approval of this Court, in priority to the claims of ordinary creditors. As referred to in the U.S. Settlement Agreement, CompCorp may seek the approval of this Court for reimbursement of all or any portion of the costs it has incurred or may incur in connection with the liquidation in priority to the claims of ordinary creditors.

H. Discharge of the Superintendent as Provisional Liquidator, Appointment of KPMG Inc. as Permanent Liquidator and Future Role of Superintendent

23. Significant progress has been made in the liquidation of the Confed estate. The Superintendent considers it appropriate that he step down as Provisional Liquidator at this time, considering:

- (a) The reinsurance or the transfer of the administration, as the case may be, of all of Confed's blocks of business in Canada have been effected, with the exception of the group pension business;
- (b) By Order dated September 20, 1996 this Court approved the Provisional Liquidator's proposed distribution methodology for the group pension business. Distributions in accordance therewith commenced in October, 1996. By Order dated August 1, 1997, this Court amended the distribution methodology to allow group pension policyholders who so elect to surrender their policies;
- (c) The Provisional Liquidator and the Rehabilitator have concluded the U.S. Settlement Agreement. Numerous issues in other jurisdictions have been resolved;
- (d) The Industry Settlement Agreement addresses the issues with respect to the assessment of the costs of the liquidation and ensures a degree of protection for the Policyholders which will not be affected by the stepping down of the Superintendent as Provisional Liquidator; and
- (e) The recent amendments to the Winding-up Act (now the Winding-up and Restructuring Act) and to the Insurance Companies Act indicate that it is now the policy of Parliament that the Superintendent not act as liquidator of insurance companies.

24. The Provisional Liquidator recommends that the Agent be appointed as Permanent Liquidator, effective on the date of his discharge since:

- (a) As Agent, KPMG Inc. has been responsible to the Provisional Liquidator for the administration of Confed since the commencement of the winding-up proceedings. The Agent has the knowledge of the estate it would have, had it been liquidator. It will not require any additional time to become familiar with the operations of Confed and to assume the role of Permanent Liquidator;
- (b) The Agent has worked with all of the significant stakeholders in the Confed estate including the Rehabilitator, CompCorp, representatives of various policyholders and employee groups and unsecured creditors;
- (c) The Agent has been directly involved in the negotiations and implementation of the existing contracts relating to the administration of the assets and liabilities of the Confed estate, as well as the contracts for the transfer of assets and liabilities, pursuant to which there may be outstanding obligations. The Agent has worked with the parties to these contracts and its appointment as Permanent Liquidator would ensure the continuity of the administration of these matters; and
- (d) The Agent has been involved with all litigation involving or affecting the estate, is familiar with the issues and can ensure consistency in the approach to dealing with both ongoing and future disputes or litigation.

25. In order further to ensure continuity in the administration, the Superintendent proposes to maintain a role in the liquidation by acting as an inspector of the estate, for which he seeks an order so appointing him from the Court.

26. In addition, the Provisional Liquidator has considered the position of specific groups of stakeholders:

- (a) **The Canadian Policyholders** - The Superintendent's entitlement to assess the Industry in respect of the expenses of the liquidation of Confed is not affected by his discharge as Provisional Liquidator. This, in turn, minimizes any impact on the Canadian Policyholders;
- (b) **The Confederation Real Estate Fund** (the "CREF") - An advisory committee was established to work with the Provisional Liquidator pursuant to an order of this Court dated December 18, 1995, and will continue;
- (c) **The U.S. Policyholders** - The possibility of the Provisional Liquidator stepping down was expressly acknowledged in the U.S. Settlement Agreement. In addition, the U.S. Settlement Agreement contemplates that the expenses of the

liquidation of the Canadian estate of Confed would be paid prior to the transfer of any residual assets from the Canadian estate to the Rehabilitator;

- (d) **The Industry** - As discussed, the Industry Settlement Agreement will remain in effect. The intention of the Provisional Liquidator to step down was referred to therein. Pursuant to section 689 of the Insurance Companies Act, the Superintendent appointed a six-member committee to advise the Provisional Liquidator in respect of all matters pertinent to his duties and responsibilities. If the Agent is appointed Permanent Liquidator, it will ask the members thereof to sit on a committee, to be similarly constituted and consulted; and
- (e) **The Ordinary Creditors** - As discussed, any residual assets from Canadian estate of Confed after the payment of claims of the Canadian Policyholders and expenses of liquidation are to be transferred to the Rehabilitator until U.S. Policyholders are paid in full. Once all policyholders are paid, any residual assets are to be transferred to the Provisional Liquidator for distribution to the remaining creditors of Confed. If the Permanent Liquidator is appointed, such transfer will be made to the Permanent Liquidator.

27. The Provisional Liquidator is of the view that the stepping down of the Provisional Liquidator and the corresponding appointment of the Agent as Permanent Liquidator will not disrupt or prejudice the administration of the liquidation.

28. Subsection 23(2) of the *Winding-up and Restructuring Act* requires that the person to be appointed as liquidator of a company must be a licensed trustee under the Bankruptcy and Insolvency Act. The Agent is a licensed trustee under the Bankruptcy and Insolvency Act. A copy of its consent to act as Permanent Liquidator is attached as Schedule "A" to this Report.

29. The proposal that the Agent be appointed as liquidator of Confed is supported by CompCorp, as Inspector of the estate of Confed.

III. RELIEF REQUESTED

30. The Provisional Liquidator therefore respectfully requests that this Court make the order substantially in the form attached to the Notice of Motion herein as Schedule "A" thereto, including, among other things:

- (a) approving the stepping down of, and discharging, the Superintendent as Provisional Liquidator of Confed;
- (b) appointing the Agent as Permanent Liquidator of Confed; and
- (c) appointing the Superintendent as an inspector of the estate.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

KPMG INC., Agent to the Superintendent of Financial
Institutions, as Provisional Liquidator of Confederation
Life Insurance Company

September 3, 1997

Per: _____
Robert O. Sanderson

**THE ATTORNEY GENERAL OF
CANADA**
Applicant

and

**CONFEDERATION LIFE INSURANCE
COMPANY**
Respondent

Court File No: **RE 4315/94**

**ONTARIO COURT
(GENERAL DIVISION)**

Proceeding commenced at Toronto

REPORT OF KPMG INC., AGENT TO THE
SUPERINTENDENT OF FINANCIAL INSTITUTIONS,
PROVISIONAL LIQUIDATOR OF CONFEDERATION LI
INSURANCE COMPANY

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Solicitors for KPMG Inc., Agent to the Superintendent of
Financial Institutions, Provisional Liquidator of
Confederation Life Insurance Company

Served on Fax:

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