

**ONTARIO SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**IN THE MATTER OF
RELIANCE INSURANCE COMPANY**

**AND IN THE MATTER OF THE
INSURANCE COMPANIES ACT, S.C. 1991, C.47, AS AMENDED**

**AND IN THE MATTER OF THE
WINDING-UP AND RESTRUCTURING ACT, R.S.C. 1985, C.W-11, AS
AMENDED**

B E T W E E N:

THE ATTORNEY GENERAL OF CANADA

Applicant

- and -

RELIANCE INSURANCE COMPANY

Respondent

**REPORT OF KPMG INC., THE LIQUIDATOR OF
RELIANCE INSURANCE COMPANY**

January 28, 2002

TABLE OF CONTENTS

	PAGE
I. NATURE OF THE MOTION.....	1
II. BACKGROUND	2
III. THE MERIDIAN PROGRAM.....	3
IV. THE ROLE OF THE SUPERINTENDENT	5
V. RECOMMENDATIONS.....	6

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January 28, 2002

I. NATURE OF THE MOTION

1. This Report is respectfully filed in support of a Motion by KPMG Inc., the liquidator (the "Liquidator") of Reliance (Canada) (as hereinafter defined) for an Order:

- (a) extending the date for payment of valid claims including claims in respect of unearned premiums under the Meridian Program (as hereinafter defined) and other warranty and surety programs issued by Reliance (Canada) from January 31, 2002 to April 30, 2002 or such later date as this Court may Order; and
- (b) authorizing the Superintendent of Financial Institutions (the "Superintendent") to, among other things, attend and call meetings of inspectors of the estate of Reliance (Canada).

II. BACKGROUND

2. Reliance Insurance Company (“Reliance”) is a property and casualty insurer in the United States of America, domiciled in the Commonwealth of Pennsylvania. Reliance has carried on business in Canada as a “foreign company” within the meaning of the *Insurance Companies Act* through its branch since 1918.

3. Reliance was ordered to be liquidated by Order of the Commonwealth Court of Pennsylvania dated October 3, 2001, under the Pennsylvania *Insurance Department Act of 1921*.

4. By Order of the Honourable Mr. Justice Farley made December 3, 2001 (the “Winding-up Order”), the insurance business in Canada of Reliance Insurance Company (“Reliance (Canada)”) was ordered wound-up pursuant to the provisions of the *Winding-up and Restructuring Act*. A copy of the Winding-up Order is attached as Schedule "A" hereto.

5. By further Order of this Court made December 3, 2001 (the "Appointment Order"), KPMG Inc. was appointed provisional liquidator. A copy of the Appointment Order is attached as Schedule "B" hereto.

6. The relevant provisions of the Appointment Order for the purposes of this motion are as follows:

- (a) paragraph 8 provides that the Liquidator may pay all valid policyholder claims, including claims in respect of unearned premiums, to the amount of \$25,000 or the amount of the coverage limits of the Property and Casualty Compensation Insurance Corporation ("PACICC"), if any, until April 30, 2002 or such later date as the Court may order, subject to paragraph 9 of the Appointment Order, and that such payments are deemed to be payments made on account of claims in the liquidation (the “Policy Payments”);
- (b) paragraph 9 provides that the Liquidator may pay all valid claims, including claims in respect of unearned premiums, under the Meridian Program and other warranty and surety programs to the amount of \$5,000 or the PACICC coverage limits, if any, until January 31, 2002 or such later date as the Court may order, and that such payments are deemed to be payments made on account of claims in the liquidation (the "Meridian Payments");

- (c) pursuant to paragraph 13, PACICC and the liquidator of Reliance were appointed inspectors to assist and advise the Liquidator in the winding-up of Reliance (Canada); and
- (d) paragraph 30 provides that the Liquidator may, with the approval of this Court, arrange for the transfer or reinsurance of all or a portion of the policies of Reliance (Canada) or cancel all or a portion of the outstanding policies of Reliance (Canada).

III. THE MERIDIAN PROGRAM

7. In October, 2000, Reliance stopped issuing new policies and began "running-off" or winding down its existing business. Among its remaining blocks of insurance business was a program under which Reliance (Canada) issued extended warranty coverage for automobiles and other vehicles, as described below (the "Meridian Program"). Coverage was written in all provinces, except Quebec. There are approximately 18,000 Meridian policyholders. The last policy expires in 2007.

8. In 1995, Reliance (Canada) entered into an arrangement with Meridian Warranty Management Inc. (an unaffiliated company), under which Reliance (Canada) issued certificates extending repair warranty coverage on vehicles. The coverage was 100% reinsured by other insurers. This type of arrangement is known in the industry as a "fronting" arrangement, since the issuing insurer (here, Reliance (Canada)) is fully reinsured for the risk, and retains no residual risk. The effect is that Reliance (Canada) earns a percentage fee from the reinsurer, rather than bearing the ultimate benefit or burden of the underwriting risk.

9. Although the Meridian Program is designed so that the ultimate underwriting risk is borne by the reinsurer, Reliance (Canada) is the issuer of the policies and is therefore directly liable to the policyholders. This means that Reliance (Canada) bears the risk of the reinsurers not paying and must reserve for these policies in the normal way, as liabilities of Reliance (Canada). Conversely, the policyholders bear the risk of Reliance (Canada)'s insolvency. The reinsurance amounts remain an asset of Reliance.

10. Attached hereto as Schedule "C" is a copy of a letter dated November 8, 2001 from KPMG Inc. to the Office of the Superintendent of Financial Institutions Canada, which was included as an exhibit to the affidavit filed in support of the application for the winding-up

Order. As indicated in that letter, it was KPMG Inc.'s view that a transfer or reinsurance of the policies would be in the best interests of policyholders, creditors and other parties interested in Reliance (Canada). KPMG Inc. recommended the making of the Policy Payments and the Meridian Payments to enhance the value to any potential transferee or reinsurer. The Liquidator has been making the payments, as contemplated by the Appointment Order.

11. The Liquidator has been exploring the possibilities of transferring or reinsuring the policies of Reliance (Canada), including those under the Meridian Program. With respect to the Meridian Program, the Liquidator explored the industry and marketplace and identified those insurers who might have an interest in the program. The Liquidator then sought expressions of interest from them and has now entered into exclusive negotiations with one potential purchaser. The Liquidator is satisfied that the negotiations are serious and is optimistic that an agreement will be concluded, although one has not been concluded as of the date hereof.

12. The alternatives to a transaction are:

- (a) to run-off the policies, in which case the estate would have to bear the costs of administration of the run-off until 2007; or
- (b) to cancel the policies. Given that vehicles warranties are generally sold at the time the vehicle is purchased, it is unlikely the policyholders would be able to replace the coverage. Cancelling the policies would involve payment of unearned premium to each of the individual policyholders. The administrative costs associated with the calculation of the unearned premiums would be significant. The calculation of the unearned premium is based on the percentage of the premium referable to the unexpired term of the policy. The term of the policies issued under the Meridian Program is dependent not only on the passage of time but also on the number of kilometres driven which would require eliciting and reviewing responses on this point from 18,000 policyholders.

Given the serious expression of interest by the potential purchaser, the costs associated with cancelling the policies under the Meridian Program and the impact a cancellation would have on the individual policyholders, the Liquidator is of the view that cancellation of the policies at this time is not justified, in the circumstances.

13. The Liquidator is therefore seeking an extension of the January 31, 2002 date in paragraph 9 of the Appointment Order to April 30, 2002, which is coincident with the date contained in paragraph 8 of the Appointment Order. The Liquidator is hopeful that an agreement will be concluded by that time. In such a case, the Liquidator would seek the approval of this Court to the transaction as required by paragraph 30 of the Appointment Order.

IV. THE ROLE OF THE SUPERINTENDENT

14. As noted above, pursuant to the Appointment Order, PACICC and the liquidator of Reliance were appointed inspectors of the estate of Reliance (Canada). The Superintendent has indicated an interest in maintaining a role in the estate. However, the Superintendent has carefully considered his potential appointment as an inspector and has concluded that he does not wish to be appointed as an inspector.

15. The Superintendent has indicated that he wishes to maintain a role on the following basis:

- (a) he would receive notice of the meetings of inspectors and be entitled to attend and be heard at such meetings;
- (b) he would be entitled to call meetings of inspectors on reasonable notice to the inspectors and to the Liquidator;
- (c) he would receive notice of all proceedings and, subject to further order of this Court, be entitled to attend and be heard at such proceedings;
- (d) the protections offered to the other inspectors pursuant to paragraphs 27 and 28 of the Appointment Order would be extended to the Superintendent; and.
- (e) he would be entitled to apply to this Court on motions for directions concerning any matter relating to the liquidation.

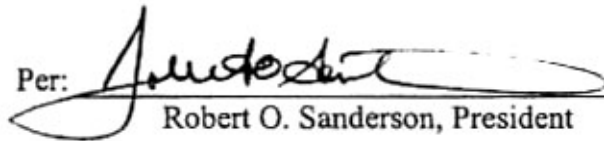
16. The Liquidator and the inspectors are content that the Superintendent play such a role and have agreed on the terms set out above.

V. RECOMMENDATIONS

17. The Liquidator therefore recommends that this Court make an Order:
- (a) extending the date set out in paragraph 9 of the Appointment Order from January 31, 2002 to April 30, 2002 or such later date as this Court may Order; and
 - (b) authorizing the proposed role of the Superintendent as set out above.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

KPMG INC., solely in its capacity as the
Liquidator of Reliance Insurance Company -
Canadian Branch

Per: 
Robert O. Sanderson, President



**ONTARIO
SUPERIOR COURT OF JUSTICE**

COMMERCIAL LIST

THE HONOURABLE) MONDAY THE 3RD DAY
)
MR. JUSTICE FARLEY) OF DECEMBER, 2001
)
)

**IN THE MATTER OF
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B E T W E E N:

THE ATTORNEY GENERAL OF CANADA

Applicant

- and -

RELIANCE INSURANCE COMPANY

Respondent

WINDING-UP ORDER

THIS APPLICATION made by the Applicant was heard this day without a jury at Toronto, in the presence of counsel for the Applicant, for the Respondent, for KPMG Inc., and for the Property and Casualty Insurance Compensation Corporation ("PACICC"), no one opposing.

ON READING the Notice of Application and the evidence filed by the parties, and on hearing submissions of counsel for the parties

1. THIS COURT ORDERS AND DECLARES that the Respondent Reliance Insurance Company is a foreign insurance company within the meaning of the *Insurance Companies Act* to which the *Winding-up and Restructuring Act* applies, and that the insurance business in Canada of the Respondent (“Reliance (Canada)”) may be wound-up by this Court pursuant to Section 10.1 of the *Winding-up and Restructuring Act*.

2. THIS COURT FURTHER DECLARES that it has made no finding that Reliance (Canada) is insolvent.

3. THIS COURT ORDERS that Reliance (Canada) shall be wound-up by this Court pursuant to the *Winding-up and Restructuring Act*.

4. THIS COURT ORDERS AND DECLARES that the winding-up hereunder of Reliance (Canada) shall be deemed to commence November 8, 2001.

5. THIS COURT ORDERS that no suit, action or other proceeding shall be proceeded with or commenced against Reliance (Canada) or Reliance Insurance Company, except with leave of this Court and subject to such terms as this Court may impose.

6. THIS COURT ORDERS that every judgment, attachment, sequestration, distress, execution or like process put into force against Reliance (Canada) or Reliance Insurance Company, or the estate or effects thereof, after the commencement of the winding-up is void and of no effect.

ENTERED AT/INSCRIT & VERBALLY
ON/BOOK NO:
LE/DANS LE REGISTRE NO:

DEC 03 2001

PER/PAR:



A handwritten signature in black ink, appearing to read "Vikram Singh", is written over a horizontal line.



Schedule "B"

Court File No. 01-CL-4313

**ONTARIO
SUPERIOR COURT OF JUSTICE**

COMMERCIAL LIST

THE HONOURABLE) MONDAY THE 3RD DAY
)
MR. JUSTICE FARLEY) OF DECEMBER, 2001
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B E T W E E N:

THE ATTORNEY GENERAL OF CANADA

Applicant

- and -

RELIANCE INSURANCE COMPANY

Respondent

ORDER

THIS APPLICATION made by the Applicant was heard this day without a jury at Toronto, in the presence of counsel for the Applicant, for the Respondent, for KPMG Inc., and for the Property and Casualty Insurance Compensation Corporation ("PACICC"), no one opposing.

ON READING the Notice of Application and the evidence filed by the parties, and on hearing submissions of counsel for the parties:

1. THIS COURT ORDERS that the service of the Notice of Application and the materials herein be and it is hereby good and sufficient notice thereof and that any further service of the Notice of Application and materials herein be and it is hereby dispensed with.

2. THIS COURT ORDERS that KPMG Inc. be and is hereby appointed as provisional liquidator (the "Liquidator") of the insurance business in Canada of the Respondent, including the assets in Canada of the Respondent, together with its other assets held in Canada under the control of its chief agent, including, without limitation, all amounts received or receivable in respect of its insurance business in Canada ("Reliance (Canada)").

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

4. THIS COURT ORDERS that all moneys belonging to Reliance (Canada) 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, provided, however, that the Liquidator shall have the discretion to deposit funds to and use the bank accounts currently in the name of or operated by Reliance (Canada).

5. THIS COURT ORDERS that any cheques or drafts in respect of policies, issued by Reliance (Canada) prior to the making of the winding-up order herein and which are presented for payment thereafter, may be paid out of the estate and effects of Reliance (Canada).

6. THIS COURT ORDERS that the amount recoverable from, due or owed by any reinsurer to Reliance (Canada) shall be paid to the Liquidator and shall not be reduced as a result of this Order or the winding-up order, notwithstanding any terms or contractual agreement to the

contrary, and that any payment made directly by a reinsurer to an insured or other creditor or claimant of Reliance (Canada) or Reliance Insurance Company shall not diminish or reduce or affect such reinsurer's obligation to Reliance (Canada).

7. THIS COURT ORDERS that the Liquidator is authorized to cure such defaults and effect such arrangements as may be required to reinstate such reinsurance affecting the operations of Reliance (Canada), as the Liquidator deems to be in the interest and for the protection of policyholders, creditors and claimants of Reliance (Canada).

8. THIS COURT ORDERS that the Liquidator may pay all valid policyholder claims, including claims in respect of unearned premiums, to the amount of \$25,000 or the amount, if any, of the voluntary compensation payment of PACICC which may be paid under the terms of its Memorandum of Operations (the "PACICC Voluntary Compensation Payment") until April 30, 2002 or such later date as this Court may order, subject to paragraph 9 hereof, and such payments shall be deemed for all purposes to have been payments made on account of claims in the course of the liquidation of Reliance (Canada).

9. THIS COURT ORDERS that the Liquidator may pay all valid claims including claims in respect of unearned premiums under the Meridian and other warranty and surety programs to the amount of \$5,000 or the amount, if any, of the PACICC Voluntary Compensation Payment until January 31, 2002 or such later date as this Court may order, and such payments shall be deemed for all purposes to have been payments made on account of claims in the course of the liquidation of Reliance (Canada).

10. THIS COURT ORDERS that the Liquidator may, after consultation with the Inspectors, make such other payments as the Liquidator in the Liquidator's discretion deems advisable in the circumstances in respect of policies of Reliance (Canada) and such payments

shall be deemed for all purposes to have been payments made on account of claims in the course of the liquidation of Reliance (Canada).

11. THIS COURT ORDERS that in addition to the payments referred to in paragraphs 8 and 10, until April 30, 2002 or such later date as this Court may order, the Liquidator may pay and continue to pay all reasonable legal and other costs, incurred to and including April 30, 2002, which Reliance (Canada) is obligated to pay for defending any insureds against losses under Reliance (Canada)'s policies in accordance with the applicable policy ("Defence Costs"), subject to the applicable terms and limits of such policies. For greater certainty, all payments of Defence Costs shall be deemed for all purposes to have been payments made on account of claims in the course of the liquidation of Reliance (Canada) and to form part of the expenses of the liquidation as a first charge on the assets of the estate. However, if the applicable policy so provides, such payments shall be taken into account in determining the amount which would otherwise be distributed to the respective policyholders and claimants, or otherwise paid on account of Defence Costs, as the case may be, at such time as any further distributions or similar arrangements are made in respect of their policies.

12. THIS COURT ORDERS that any payments made by the Liquidator pursuant to paragraphs 5, 8, 9, 10 and 11 hereof, other than payments made pursuant to clerical errors (the "Payments"):

- (a) shall be deemed to be payments made on account of claims in the liquidation of Reliance (Canada) and shall be deducted from the amount which would otherwise be distributed at such time as further distributions or similar arrangements are made in respect of such claims;
- (b) shall be deemed to have been made in accordance with this Order;

- (c) in respect of any policy shall not obligate the Liquidator to make further payments in respect thereof; and
- (d) which may have exceeded the ultimate amount which the Liquidator determines is available for distribution to the respective policyholders and claimants, or available for payment of Defence Costs, as the case may be, (collectively, the “Overpayments”) shall be deemed not to be preferences and shall not be repayable by the recipients or policyholders.

Neither the Liquidator nor the Liquidator’s agents, advisers or employees shall be liable to any person in respect of the Overpayments.

13. THIS COURT ORDERS that PACICC, which shall designate from time to time one or more persons as its representative, and the Insurance Commissioner of the Commonwealth of Pennsylvania in her capacity as Liquidator of the Respondent or her designee are appointed inspectors (collectively the "Inspectors") to assist and advise the Liquidator in the winding-up of Reliance (Canada).

14. THIS COURT ORDERS that the Inspectors may apply to this Court on motion for directions concerning any matter relating to the liquidation of Reliance (Canada).

15. THIS COURT ORDERS that each claim in respect of which PACICC makes a PACICC Voluntary Compensation Payment (a “Compensated Claim”) shall be deemed to be and shall hereby be assigned in its entirety to PACICC without specific assignment or further steps required. PACICC shall be entitled to assert each Compensated Claim in the Liquidation. Reliance (Canada) is hereby deemed to have acquiesced to the assignment of Compensated Claims provided for herein and to have received a copy of the deed of assignment. PACICC and the Liquidator shall be deemed to be and shall hereby be released and forever discharged from

any and all claims, actions, losses and liabilities which any person has or may have at present or in the future with respect to each Compensated Claim.

16. THIS COURT ORDERS that, notwithstanding the provisions of paragraph 15, the Liquidator may make funds in the estate available to PACICC from time to time to be used by PACICC to make PACICC Voluntary Compensation Payments pursuant to the terms and conditions of the loan and services agreement made effective as of the date hereof between the Liquidator and PACICC, which is hereby approved.

17. 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 Reliance (Canada), pursuant to the terms of the contracts between Reliance (Canada) and such third parties.

18. THIS COURT ORDERS that the Liquidator is entitled forthwith to possession of all of Reliance (Canada)'s books, accounts, securities, documents, papers, computer programs and data, registers and records of any kind ("Books and Records") and that Reliance (Canada), 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.

19. THIS COURT ORDERS that all persons, including, without limitation, employees, brokers, legal counsel, insurance agents, third party administrators, or salespeople having access to or knowledge of the affairs of Reliance (Canada) do co-operate with the Liquidator in providing information or documents necessary or incidental to the liquidation of Reliance (Canada).

20. THIS COURT ORDERS that any entity which has custody or control of any data processing information and records (including but not limited to source documents, all types of electronically stored information, master tapes or any other recorded information) relating to Reliance (Canada), shall transfer custody and control of such records in a form readable by the Liquidator to the Liquidator as of the date of this Order, unless instructed to the contrary by the Liquidator.

21. THIS COURT ORDERS that any entity furnishing claims processing or data processing services to Reliance (Canada) shall maintain such services and transfer any such accounts to the Liquidator as of the date of this Order, unless instructed to the contrary by the Liquidator.

22. THIS COURT ORDERS that Reliance (Canada) and its Chief Agent, officers, trustees, employees, consultants, agents, and legal counsel shall: surrender peacefully to the Liquidator the premises where Reliance (Canada) conducts its business; deliver all keys or access codes thereto and to any safe deposit boxes; advise the Liquidator of the combinations or access codes of any safe or safekeeping devices of Reliance (Canada) or any password or authorization code or access code required for access to data processing equipment; and shall deliver and surrender peacefully to the Liquidator all of the assets, books, records, files, credit cards, and other property of Reliance (Canada) in their possession or control, wherever located, and otherwise advise and cooperate with the Liquidator in identifying and locating any of the foregoing.

23. THIS COURT ORDERS that all persons, firms, corporations and other entities having agreements, whether written or oral, with Reliance (Canada) 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 the date of this Order in accordance with usual payment terms or as may hereafter be negotiated by the Liquidator from time to time.

24. 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 Reliance (Canada) as at November 8, 2001 except upon further Order of this Court. From November 8, 2001 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 Reliance (Canada) in respect of the premises so occupied or as may hereafter be negotiated by the Liquidator from time to time.

25. 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 (including at present telephone numbers used by Reliance (Canada)) or any other utilities of like kind furnished to Reliance (Canada) 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 November 8, 2001 as the same become due in accordance with usual payment terms or as may hereafter be negotiated by the Liquidator from time to time.

26. 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 Reliance (Canada) as they were on November 8, 2001;
- (b) any and all proceedings or steps taken or that may be taken, wheresoever taken, by any person, firm, corporation or entity, including, without limitation, any of the policyholders or creditors of Reliance (Canada), suppliers, co-insurers, reinsurers, contracting parties, depositors, lessors, tenants, co-venturers or partners (hereinafter, in this paragraph "Claimants") against or in respect of Reliance (Canada) shall be and hereby are 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 letters of credit, bonds or instruments of similar effect, issued by or on behalf of Reliance (Canada), to take possession of, to foreclose upon or to otherwise deal with any property, wheresoever located, of Reliance (Canada) 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 Claimant 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, option, co-ownership agreement or any agreement of purchase or sale but not including any eligible financial contract, as defined in the *Winding-up and Restructuring Act*) to which Reliance (Canada) is a party, arising out of, relating to or triggered by the occurrence of any default or non-performance by Reliance (Canada) 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 Reliance (Canada), including, without limitation, the registration or re-registration of any securities owned by Reliance (Canada) 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 Reliance (Canada) as of the date hereof.

27. THIS COURT ORDERS that no action lies against the Liquidator, any of its affiliates (the "Affiliates") any director, officer, agent, representative or employee of the Liquidator or of the Affiliates, any entity or person (or director, officer, agent, representative or employee of any such entity or person) acting under the direction of the Liquidator, or the Inspectors or any director, officer, agent, representative or employee thereof, for anything done or omitted to be done in good faith in the administration of the liquidation of Reliance (Canada) or in the exercise of the Liquidator's powers under this Order or otherwise.

28. THIS COURT ORDERS that no suit, action or other proceeding shall be proceeded with or commenced against the Liquidator, the Affiliates, any director, officer, agent, representative or employee of the Liquidator, or of the Affiliates, any entity or person (or director, officer agent, representative or employee of any such person) acting under the direction of the Liquidator, or the Inspectors or any director, officer, agent, representative or employee thereof, except with leave of this Court and subject to such terms as this Court may impose.

29. THIS COURT ORDERS that the Liquidator may, without the approval, sanction or intervention of this Court and without previous notice to the policyholders or creditors of Reliance (Canada) or any other person,

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

- (m) re-direct Reliance (Canada)'s mail;
- (n) enter into any eligible financial contracts, as defined in the *Winding-up and Restructuring Act*;
- (o) take possession and control of all securities in which Reliance (Canada) 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, by way of 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 such securities, (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 such company or the winding-up, liquidation, rehabilitation, bankruptcy, receivership, restructuring or amalgamation of such company), and (v) to sell or otherwise dispose of such securities;
- (p) 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 Reliance (Canada) or the winding-up of Reliance (Canada), on the receipt of such sums, payable at such times, and generally on such terms as are agreed on by the Liquidator;
- (q) make such compromise or other arrangements with creditors or persons claiming to be creditors of Reliance (Canada) as the Liquidator deems expedient; and

- (r) do and execute all such other things as are necessary for, or incidental to the winding-up of the affairs of Reliance (Canada), including without limitation entering into agreements incurring obligations.

30. THIS COURT FURTHER ORDERS that the Liquidator may, with the approval of this Court and on such notice as the Court may direct:

- (a) arrange for the transfer or reinsurance of all or a portion of the policies of Reliance (Canada); and
- (b) cancel all or a portion of the outstanding policies of Reliance (Canada).

31. THIS COURT ORDERS that the Liquidator and any of the Liquidator's agents, officers, directors, representatives or employees shall be deemed not to be an employer or a successor employer of the employees of Reliance (Canada) 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 and any of the Liquidator's agents, directors, officers, representatives or employees shall not be and shall be deemed not to be, in possession, charge or control of the property or business or affairs of Reliance (Canada) 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.

32. 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 Reliance (Canada).

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

34. THIS COURT ORDERS that the Liquidator shall be paid such remuneration as the Court Orders.

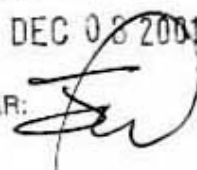
35. THIS COURT ORDERS that the Liquidator shall be at liberty to apply reasonable amounts against its remuneration, expenses and disbursements on a monthly basis and that such amounts shall constitute advances against its remuneration and expenses on, but subject to, the passing of its accounts.

36. 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.

37. 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.

38. THIS COURT ORDERS that the costs of this application, including the costs of the Inspectors, are to be assessed on a solicitor and his own client basis and shall be costs of liquidation of Reliance (Canada).

39. THIS COURT ORDERS that interested parties may apply to the Court for advice and directions on 7 days' notice to the Liquidator and the Inspectors, and that the Liquidator may at any time apply to this Court for advice and directions.

ENTERED AT/INSCRIT A TORDON
ON/BOOK NO:
LE/DANS LE REGISTRE NO:
DEC 08 2001
PER/PAR: 



Registrar

THE ATTORNEY GENERAL OF CANADA and RELIANCE INSURANCE COMPANY
Applicant *Respondent*

Court File No: 01-CL-4313

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

ORDER

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Schedule "C"

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<http://www.kpmg.ca>

November 8, 2001

Office of the Superintendent of Financial Institutions Canada
255 Albert Street
Ottawa, Canada
K1A 0H2

Attention: Francois Gilbert

Dear Sir:

Re: Reliance Insurance Company - Canadian Branch ("Reliance (Canada)")

The Superintendent has designated KPMG Inc. as one of his representatives in connection with his taking of control of the assets in Canada of Reliance (Canada). He has also requested that the Attorney General of Canada apply to the Ontario Superior Court of Justice for an order (the "Order") winding up Reliance (Canada) under the *Winding-up and Restructuring Act*. He is recommending that KPMG Inc. be appointed as liquidator of Reliance (Canada) (the "Liquidator").

In our capacity as the Superintendent's representative, we have become familiar with the business of Reliance (Canada). Based on our work thus far and on our experience in the liquidations of both property and casualty insurance companies and branches and life insurance companies, we consider that if Reliance (Canada) is liquidated, the best interests of policyholders, creditors and other parties interested in Reliance (Canada) would be best served if, in the initial phases of the liquidation, the Liquidator explored the possibility of arranging for transfer or reinsurance of all or a portion of the policies of Reliance (Canada). In order to enhance the value of the estate as much as possible to any potential transferee or reinsurer, the Liquidator should be specifically empowered in the Order to pay certain liabilities relating to the policies, including:

- (a) the reasonable legal and other costs which Reliance (Canada) is obligated to pay for defending insureds against losses under their policies in accordance with the policies;
- (b) all valid policyholder claims, except as described in paragraph (c) below, up to \$25,000 or the amount, if any, of the voluntary compensation payment ("PACICC Voluntary Payment") of the Property and Casualty Insurance Compensation Corporation ("PACICC"), discussed more fully below;
- (c) all valid claims under certain warranty and surety programs of Reliance (Canada) up to \$5,000 or the amount, if any, of the PACICC Voluntary Payment; and



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- (d) any other payments in respect of the policies that the Liquidator in its discretion deems advisable.

The Liquidator should also be empowered to pay cheques or drafts issued by Reliance (Canada) prior to the making of the Order but presented for payment thereafter and to enter into arrangements with PACICC.

In our view, making these payments will enhance the value of the business, maximizing any potential opportunity for its sale or transfer. It will also minimize the potential disruption or hardship to policyholders and creditors.

With respect to the payment of liabilities relating to policies:

- (a) the payment of defence costs will maintain the standards of claims adjudication, ensuring that claims are properly handled and easing possible concerns of reinsurers; and
- (b) the payment levels recommended are based on our review of the claims profiles, which indicate that the vast majority of the claims are under \$25,000, other than claims under the warranty and insurance programs referred to above, the vast majority of which are under \$5,000.

We recommend that the above provisions with respect to payments on policies be in place until April 30, 2002. By that time, the Liquidator will have had an opportunity to further consider the status of the business and the potential for its transfer, and to further report to the Court and seek directions if necessary.

PACICC was established by property and casualty insurers to compensate policyholders and third party claimants in respect of insolvent property and casualty insurers by making voluntary payments. We considered it prudent to contact PACICC and explore ways in which PACICC and the Liquidator could cooperate, to ensure both the least disruption to policyholders and third party claimants and the most expeditious and efficient handling of claims and processing of PACICC payments. We attach a draft loan agreement reached with PACICC which we would propose be executed by the Liquidator and PACICC if the Order is issued. The loan agreement provides that the Liquidator will advance payments up to PACICC limits from the assets of Reliance (Canada) in respect of policyholder claims covered under PACICC. PACICC will pay the Liquidator the difference between amounts so advanced and the ultimate percentage recovery which the estate would pay, with interest from the date each payment is made to policyholders and claimants.

We have reviewed all outstanding cheques or drafts issued prior to October 5, 2001, and approved them for payment. Any cheques or drafts issued after October 5, 2001 have been drawn with the authority of the representatives.

We respectfully request that the Attorney General include provisions in the Order being requested which would, if the Order is made, empower the Liquidator to make the payments described in this letter and enter into the loan agreement with PACICC.

Yours very truly,

KPMG INC.

A handwritten signature in black ink, appearing to read "Robert O. Sanderson", with a long horizontal flourish extending to the right.

Robert O. Sanderson
President

Attachment