

**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**

March 21, 2003

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- and -

RELIANCE INSURANCE COMPANY

Respondent

March 21, 2003

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 extending the date for Policy Payments, payment of Defence Costs and Meridian Payments (all as hereinafter defined) from March 31, 2003 to June 30, 2003 or such later date as this Court may order.

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 carried on business in Canada as a “foreign company” within the meaning of the *Insurance Companies Act*

through a branch. In October, 2000, Reliance (Canada) stopped issuing new policies and began “running off” or winding down its existing business.

3. Reliance was ordered liquidated by Order of the Commonwealth Court of Pennsylvania dated October 3, 2001, under the Pennsylvania *Insurance Department Act of 1921*. M. Diane Koken, Commissioner of Insurance for Pennsylvania, was appointed liquidator (the “U.S. Liquidator”).

4. By Order of this Court made December 3, 2001 (the “Winding-up Order”), the insurance business of Reliance in Canada (“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”.

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”.

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

- (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 (the “Policy Payments”), 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;
- (b) paragraph 9 provides that the Liquidator may pay all valid claims, including claims in respect of unearned premiums, under the Meridian Warranty program and other warranty and surety programs to the amount of \$5,000 or the PACICC coverage limits, if any (the “Meridian Payments”), 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;

- (c) paragraph 11 provides that the Liquidator may pay and continue to pay all reasonable legal and other costs, incurred to and including April 30, 2002 that Reliance (Canada) is obligated to pay for defending any insureds against losses under Reliance (Canada)'s policies in accordance with the applicable policy, subject to the terms and limits of such policies (the "Defence Costs"); 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) and cancel all or a portion of the outstanding policies of Reliance (Canada).

7. By Order of this Court dated January 30, 2002 the date of January 31, 2002 with respect to Meridian Payments was extended to April 30, 2002. By further Orders of this Court, the date of April 30, 2002 with respect to Policy Payments, payment of Defence Costs and Meridian Payments (collectively, the "Payments") was extended to March 31, 2003. Copies of the Orders of this Court dated January 30, 2002, April 29, 2002, May 8, 2002 and December 6, 2002 extending the dates for the Payments are attached as Schedules "C" through "F", respectively.

III. MERIDIAN PROGRAM

8. Attached hereto as Schedule "G" is a copy of the Report of the Liquidator dated April 23, 2002 (the "April Report"). The April Report was filed in support of the application to extend the date for the Payments and to approve an agreement between the Liquidator and St. Paul Guarantee Insurance Company, formerly London Guarantee Insurance Company, ("St. Paul Guarantee") pursuant to which St. Paul Guarantee would assume Reliance (Canada)'s liabilities under the Meridian program (the "Meridian Program"). The April Report also discusses the Liquidator's attempts to market the liabilities under the balance of the policies (the "Policy Liabilities").

Background

9. 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. Coverage was written in all provinces, except Quebec. There were approximately 18,000 Meridian policyholders at the beginning of the liquidation. Approximately 5,000 policies have since expired and 3,600 further policies will expire by December 31, 2003. The last policy expires in 2007.

10. The coverage under the Meridian Program was 100% reinsured by other insurers, being AXA Insurance and Lloyds Underwriters (the “Meridian Reinsurers”). This type of arrangement is known in the industry as a “fronting” arrangement, since the issuing insurer (here, Reliance (Canada)) is fully reinsured, with the objective of retaining no residual risk. Reliance (Canada) earns a percentage fee from each of the reinsurers, rather than bearing the ultimate benefit or burden of the underwriting risk. Although the Meridian Program is designed so that the ultimate underwriting risk is borne by the Meridian Reinsurers, 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 Meridian 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 (Canada).

11. After a marketing process, the Liquidator entered into an agreement with St. Paul Guarantee pursuant to which St. Paul Guarantee would assume Reliance (Canada)'s liabilities under the Meridian Program (the “Meridian Transaction”). The terms of the Meridian Transaction are detailed in the April Report. The Meridian Transaction contemplates that the consent of the Meridian Reinsurers to the transaction must be obtained before closing can take place. By Order dated May 8, 2002 (which is attached as Schedule “F” referred to above), this Court approved the Meridian Transaction. Attached as Schedule “H” is a copy of the reasons of this Court dated May 8, 2002.

12. In the April Report, the Liquidator stated that the alternatives to the Meridian Transaction are running off the policies or cancelling them. Because Reliance (Canada) fronts the Meridian Program and so bears the administrative costs but not the liabilities for claims under the policies and because the cost of calculating unearned premiums is so high, the Liquidator is of the view that the cost of cancelling the policies is likely to exceed the cost of running them off. The Liquidator is of the view that the Meridian Transaction would have materially the same

economic impact on the estate as a run-off, and therefore a more beneficial impact than cancellation of the policies.

13. The Liquidator originally anticipated that the Meridian Transaction would close by September 30, 2002. However, it did not close by that date because the Meridian Reinsurers had not provided their consent to the transaction. The Liquidator therefore sought an extension of the date to which it could make Meridian Payments while it continued its efforts to obtain necessary consents. By Order dated December 6, 2002, this Court extended the date to which the Liquidator could make Meridian Payments to March 31, 2003 or such later date as this Court may order.

Extension of the Meridian Payments

14. As indicated, a condition of the Meridian Transaction is the consent of the Meridian Reinsurers. While the majority of the Meridian Reinsurers are Canadian registered reinsurers, their decision makers are located in London, England. The Liquidator has retained U.K. insurance counsel, Kendall Freeman (formerly D.J. Freeman), and is using the services of Reliance (Canada)'s reinsurance broker in London, AON, to assist in dealing with the Meridian Reinsurers. The Liquidator has met with the Meridian Reinsurers, has provided them with all information they have requested concerning the Meridian Transaction and has been responsive to all concerns they have raised to date. Notwithstanding these efforts, the Meridian Reinsurers have still not granted the consents. While the pace of the discussions with the Meridian Reinsurers has been very disappointing, the Liquidator is of the view that it is appropriate to continue to pursue this course of action for the time being. If the consents are not granted, the Liquidator will consider all other options, including seeking the assistance of this Court.

15. The Liquidator is recommending that this Court extend the date to which the Liquidator may make Meridian Payments to June 30, 2003. The Liquidator makes this recommendation for the following reasons:

- (a) Assuming the Meridian Transaction closes, it would be counterproductive to interrupt payments. There would be significant costs both in communicating with

the approximately 13,000 Meridian policyholders remaining to explain the interruption in the payment stream and with restarting payments after the transaction closes, which costs St. Paul Guarantee has not covenanted to pay; and

- (b) Even if the Meridian Transaction does not ultimately close, the Liquidator remains of the view that the cost of cancelling the Meridian policies is likely to exceed the cost of running them off. Therefore, it is still more beneficial to the estate to continue to make the Meridian Payments as part of a running off of the business.

16. As set out in the April Report, the Liquidator is confident, based on the information presently available to it, that the estate of Reliance (Canada) will make full payment on all valid claims. However, for the reasons discussed more fully below, the Liquidator is not yet in a position to pay all policyholders 100%. The Liquidator remains of the view that it is appropriate to continue to pay the Meridian Payments at the present level regardless of whether the Meridian Transaction closes because the administrative costs of reducing and adjusting those payments would more than offset any cost differential if the ultimate dividend rate were less than 100%.

17. The Liquidator therefore recommends that it continue to make the Meridian Payments until June 30, 2003, or such later date as this Court may order. The Liquidator will report back to this Court by June 30, 2003 with respect to the status of the Meridian Transaction.

IV. REMAINING POLICY LIABILITIES

Marketing Process

18. As also discussed in the April Report, the Liquidator undertook a process of seeking qualified insurers to assume the Policy Liabilities in exchange for the transfer of assets. The Liquidator engaged Scotia Capital Inc. and KPMG Corporate Finance Inc. as co-advisers in this process. The U.S. Liquidator has been extensively involved in the process as well.

19. In its Report of December 6, 2002 (the "December Report"), the Liquidator advised this Court that on November 21, 2002, it entered into a memorandum of understanding with respect

to a transaction that would result in the assumption by the purchaser of the Policy Liabilities at 100%. The purchaser stipulated that the terms of the memorandum, including its identity, are to be kept confidential at this time.

20. The memorandum of understanding contemplated that a number of steps would be completed by certain dates, several of which were met. One of those steps was that the parties enter into definitive agreements by February 28, 2003. To date, no definitive agreements have been finalized. The process has taken longer than the Liquidator originally anticipated given, among other things, current market conditions, and issues which result from the fact that Reliance (Canada) is a branch and not a subsidiary.

21. The Liquidator remains of the view that a transfer of the Policy Liabilities to another carrier on appropriate terms would result in a substantial benefit to the policyholders and the estate in comparison to a more traditional liquidation. The Liquidator is, therefore, not proposing to terminate discussions with the purchaser even though the issues that have arisen are difficult and the Liquidator is not, at this point, optimistic that they will be resolved.

Extension of the Defence Costs and Policy Payments

22. The Liquidator considers it appropriate and in the best interest of the estate that Policy Payments and payment of Defence Costs should continue. The payment of Defence Costs would facilitate the transaction to transfer the Policy Liabilities in that it eases any potential concerns of the purchaser with respect to the standards of claims adjudication. Payment of Defence Costs also significantly reduces immediate hardship to policyholders.

23. The Liquidator is not recommending any change to the Policy Payments. The Liquidator remains confident that, whether a transaction is consummated or not, all valid claims against Reliance (Canada) will be paid in full. However, as discussed below, there are uncertainties. The Liquidator is of the view that the present Policy Payment level balances the interests of all parties. The Liquidator is proposing that the Policy Payments continue on the same basis until June 30, 2003 or such later date as this Court may order.

24. In the December Report, the Liquidator indicated that it chose the date of March 31, 2003 for the Policy Payments and payment of Defence Costs not because it believed that the transaction to transfer the Policy Liabilities would be completed by that time, but because the Liquidator was of the view that it would be in a better position to report back to this Court on the progress of the transaction. As discussed, serious issues have arisen which throw doubt on whether a transaction can be completed. In all the circumstances, the Liquidator believes that extending the payment of Defence Costs and Policy Payments to June 30, 2003 is appropriate. The Liquidator will report back to this Court on the status of the transaction. If the transaction will not proceed, the Liquidator will make further recommendations to this Court concerning the Policy Payments and Defence Costs, including the payment of an interim dividend.

V. OTHER MATTERS

25. The Liquidator is confident, based on the information presently available to it, that all valid claims against Reliance (Canada) will be paid in full. However, there are two major uncertainties, which are discussed below.

Non-Booked Claims

26. One uncertainty is the potential that certain claims that were not reported in the books of Reliance (Canada) may be valid claims in its liquidation (the "Non-Booked Claims"). The Non-Booked Claims arise from policies written outside of Canada but which have some nexus with Canada, and which, arguably, should have been reported in the books of the branch and for which assets should have been deposited in Canada.

27. The Liquidator has worked co-operatively with the U.S. Liquidator to identify the Non-Booked Claims. Reliance maintains databases with historical and current policy and claim information. With directions from the Liquidator, staff of the U.S. Liquidator have searched these databases using as many query criteria as available to identify Non-Booked Claims. When the search process identifies open claims, the database details and policy files, if available, are reviewed to confirm whether the identified claims are possible Non-Booked Claims. In many cases, they are not. For example, the search may turn up a Canadian address which is not

relevant. It is important to note that the U.S. Liquidator considers the open claims identified as having a possible nexus with Canada as claims which, if valid, would participate in the U.S. estate.

28. The search has thus far identified fewer than 40 potential Non-Booked Claims. About half of these claims have only nominal reserves. In addition, one policyholder that was not identified on the search has contacted the Liquidator. Based on the information presently available, the Liquidator estimates that the total value of the Non-Booked Claims identified thus far, if all proved to be valid, is less than Cdn \$10 million. This would not impact the Liquidator's ability to pay all Reliance (Canada)'s valid claims in full. However, there is no certainty as to the magnitude of the Non-Booked Claims, since they were not originally identified as being appropriately assigned to Reliance (Canada).

29. The Liquidator will be seeking the directions of this Court with respect to giving notice to any party who believes they have a claim properly assertable against Reliance (Canada) to come forward, and will then seek directions of this Court with respect to whether the Non-Booked Claims should be allowed in the Canadian estate.

Reinsurance Issues

30. Another issue that arises because Reliance (Canada) is a branch rather than a subsidiary concerns reinsurance. Some of the reinsurance relating to Reliance (Canada)'s business is included in treaties entered into by Reliance. In other cases, Reliance (Canada) entered into its own treaties with reinsurers; many of these reinsurers are also parties to treaties with Reliance, either directly or through related companies. Some of these reinsurers are asserting rights of set-off. There are also other complications that arise under the terms of the specific treaties. The Liquidator has been working co-operatively with the U.S. Liquidator to address these issues to date.

31. Based on the Liquidator's present information, this issue should not prevent the payment in full of all of Reliance (Canada)'s valid claims.

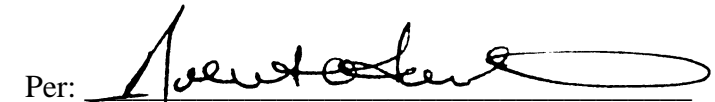
VI. RECOMMENDATIONS

32. The Liquidator recommends that this Court make an order extending the date for Policy Payments, payment of Defence Costs and Meridian Payments from March 31, 2003 to June 30, 2003 or such later date as this Court may order.

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



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
)
)

**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

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.

DEC 09 2001
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**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

WINDING-UP ORDER

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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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**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

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.

DEC 08 2006
PER/PAE
[Handwritten signature]

Viktoria Seckl
Registrar

RELIANCE INSURANCE COMPANY

Respondent

and

CANADA

Applicant

THE ATTORNEY GENERAL OF

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

ORDER

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Solicitors for the Applicant

**ONTARIO
SUPERIOR COURT OF JUSTICE**

COMMERCIAL LIST

THE HONOURABLE) WEDNESDAY, THE 30TH DAY
)
MR. JUSTICE FARLEY) OF JANUARY, 2002



**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

ORDER

THIS APPLICATION, brought by KPMG Inc., the liquidator (the “Liquidator”) of the insurance business in Canada of Reliance Insurance Company (“Reliance (Canada)”), was heard this day at 393 University Avenue, Toronto, Ontario.

ON READING the Report of the Liquidator dated January 28, 2002, filed, and the Order of this Court dated December 3, 2001 appointing the Liquidator (the “Appointment Order”) and on hearing submissions of counsel for the Liquidator and the Property and Casualty

Insurance Compensation Corporation and on being advised of the consent of the Superintendent of Financial Institutions (the "Superintendent") and M. Diane Koken, Liquidator of Reliance Insurance Company,

1. **THIS COURT ORDERS** that the service of the Notice of Motion and materials herein is good and sufficient service of this motion, that the motion is properly returnable before this Court and that further service thereof upon any interested party other than those parties served be and it is hereby dispensed with.

2. **THIS COURT ORDERS** that paragraph 9 of the Appointment Order be and it is hereby amended to extend the date of January 31, 2002 set out therein to April 30, 2002 or such later date as this Court may order.

3. **THIS COURT ORDERS** that the Liquidator shall give notice to the Superintendent of all meetings of the inspectors of the estate and that the Superintendent shall be entitled to attend and be heard at such meetings.

4. **THIS COURT ORDERS** that the Superintendent may call meetings of the inspectors on reasonable notice to the inspectors and to the Liquidator.

5. **THIS COURT ORDERS** that the Liquidator shall give notice of all proceedings in this matter to the Superintendent by including the Superintendent on the service list, and that, subject to further order of this Court, the Superintendent may attend and be heard at such proceedings.

6. **THIS COURT ORDERS** that paragraphs 27 and 28 of the Appointment Order be amended to include the Superintendent, or any of his agents, representatives or employees.

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

ENTERED AT MONTREAL
ON/BOOK NO:
LE/DANS LE REGISTRE NO:

JAN 31 2002

PER/PAR:

NB

D. Jacino
REGISTRAR

THE ATTORNEY GENERAL OF CANADA
Applicant

and

RELIANCE INSURANCE COMPANY
Respondent

Court File No: 01-CL-4313

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

ORDER

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Solicitors for KPMG Inc.,
the Liquidator of Reliance (Canada)

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Court File No. 01-CL-4313

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE) MONDAY, THE 29TH DAY
)
MR. JUSTICE FARLEY) OF APRIL, 2002

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

ORDER

THIS MOTION, brought by KPMG Inc., the liquidator (the “Liquidator”) of the insurance business in Canada of Reliance Insurance Company (“Reliance (Canada)”), was heard this day at Osgoode Hall , 130 Queen Street West, Toronto, Ontario.

ON READING the Report of the Liquidator dated April 23, 2002, filed, the Order of this Court dated December 3, 2001 appointing the Liquidator (the “Appointment Order”) and the Order of this Court dated January 30, 2002 (the “Meridian Extension Order”),

and on hearing submissions of counsel for the Liquidator, the Property and Casualty Insurance Compensation Corporation and Maritime Road Development Corporation,

1. **THIS COURT ORDERS** that the service of the Notice of Motion and materials herein is good and sufficient service of this motion, that the motion is properly returnable before this Court and that further service thereof upon any interested party other than those parties served be and it is hereby dispensed with.

2. **THIS COURT ORDERS** that paragraphs 8 and 11 of the Appointment Order be and hereby are amended to extend the date of April 30, 2002 set out therein to May 6, 2002 or such later date as this Court may order.

3. **THIS COURT ORDERS** that paragraph 8 of the Appointment Order, amended by the Meridian Extension Order to extend the date of January 31, 2002 to April 30, 2002, be and hereby is further amended to extend the date therein to May 6, 2002 or such later date as this Court may order.

4. **THIS COURT ORDERS** that the balance of this motion be and it is hereby adjourned to May 6, 2002.



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

MAY 1 - 2002

PER/PAR:

NB

THE ATTORNEY GENERAL OF CANADA
Applicant
and
RELIANCE INSURANCE COMPANY
Respondent
Court File No: 01-CL-4313

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceeding commenced at Toronto

ORDER

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Solicitors for KPMG Inc.,
the Liquidator of Reliance (Canada)

**ONTARIO
SUPERIOR COURT OF JUSTICE**

COMMERCIAL LIST

THE HONOURABLE) WEDNESDAY, THE 8TH DAY
)
MR. JUSTICE FARLEY) OF MAY, 2002



**IN THE MATTER OF
RELIANCE INSURANCE COMPANY**

**AND IN THE MATTER OF THE
RANCE 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

ORDER

THIS MOTION, brought by KPMG Inc., the liquidator (the "Liquidator") of the insurance business in Canada of Reliance Insurance Company ("Reliance (Canada)"), originally returnable April 29, 2002, having been adjourned to May 6, 2002 and having been further adjourned to today, was heard this day at 361 University Avenue, Toronto, Ontario.

ON READING the Report of the Liquidator dated April 23, 2002, filed, the Order of this Court dated December 3, 2001 appointing the Liquidator (the "Appointment Order"), the Order of this Court dated January 30, 2002 (the "Meridian Extension Order") and

the Order of this Court dated April 29, 2002 (the "Second Extension Order"), on hearing submissions of counsel for the Liquidator, and on the consent of the Property and Casualty Insurance Compensation Corporation and of Maritime Road Development Corporation,

1. **THIS COURT ORDERS** that the service of the Notice of Motion and materials herein is good and sufficient service of this motion, that the motion is properly returnable before this Court and that further service thereof upon any interested party other than those parties served be and it is hereby dispensed with.

2. **THIS COURT ORDERS** that paragraphs 8 and 11 of the Appointment Order, amended by the Second Extension Order to extend the date of April 30, 2002 to May 6, 2002, be and hereby are further amended *nunc pro tunc* to extend the date of May 6, 2002 to December 31, 2002 or such later date as this Court may order.

3. **THIS COURT ORDERS** that paragraph 9 of the Appointment Order, amended by the Meridian Extension Order to extend the date of January 31, 2002 to April 30, 2002, be and hereby is further amended *nunc pro tunc* to extend the date to December 31, 2002 or such later date as this Court may order.


4. **THIS COURT ORDERS** that the agreement made the 3rd day of April, 2002 between London Guarantee Insurance Company ("London Guarantee") and the Liquidator substantially in the form attached to the Report (the "Meridian Transfer Agreement") be and hereby is approved.

5. **THIS COURT ORDERS** that the Liquidator be and hereby is authorized to fulfill its obligations under the Meridian Transfer Agreement, and to take such steps and do such acts as may be necessary therewith, including to agree to such modifications as may be, in its opinion, necessary or desirable without further recourse to this Court.

6. **THIS COURT ORDERS** that any payments made by the Liquidator to London Guarantee pursuant to the Meridian Transfer Agreement including, without limitation, the amount payable on Closing (as defined in the Meridian Transfer Agreement) and the amounts paid into the Claims Account (as defined therein), which latter amounts shall be held in trust for the purposes set out in the Meridian Transfer Agreement, shall be free and clear of any right, title, interest or other claim of any person, except as provided in the Meridian Transfer Agreement.

7. **THIS COURT ORDERS** that from and after Closing (as defined in the Meridian Transfer Agreement), the Liquidator and Reliance (Canada) shall have no further liability in respect of the Policy Liabilities (as defined therein) to any person, other than to London Guarantee pursuant to the Meridian Transfer Agreement.

8. **THIS COURT ORDERS** that all of Reliance (Canada)'s right, title and interest in the Policies and the Records (both as defined in the Meridian Transfer Agreement) shall be vested in London Guarantee on the Closing (as defined therein), free and clear of any right, title, interest or other claim of any person.



J. Rogalski

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

MAY 1 0 2002

PER/PAR: JA

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

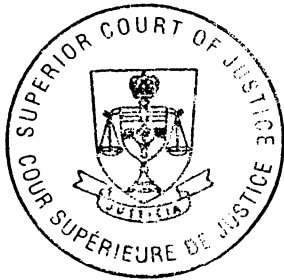
ORDER

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Solicitors for KPMG Inc.,
the Liquidator of Reliance (Canada)



Court File No. 01-CL-4313

**ONTARIO SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

RABLE) FRIDAY, THE 6TH DAY
)
MR. JUSTICE FARLEY) OF DECEMBER, 2002

**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**

BETWEEN:

THE ATTORNEY GENERAL OF CANADA

Applicant

- and -

RELIANCE INSURANCE COMPANY

Respondent

ORDER

THIS MOTION, brought by KPMG Inc., liquidator (the “Liquidator”) of the insurance business in Canada of Reliance Insurance Company (“Reliance (Canada)”), was heard this day at 393 University Avenue, Toronto, Ontario.

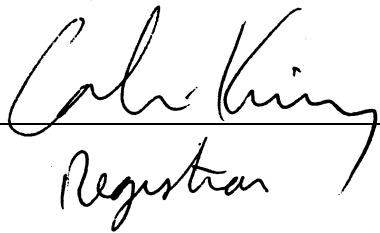
ON READING the Report of the Liquidator dated December 2, 2002, filed, the Order of this Court dated December 3, 2001 appointing the Liquidator (the “Appointment Order”), the Order of this Court dated January 30, 2002 (the “Meridian Extension Order”), the Order of this Court dated April 29, 2002 (the “Second Extension Order”), and the Order of this

Court dated May 8, 2002 (the "Third Extension Order"), on hearing submissions of counsel for the Liquidator, no one opposing.

1. **THIS COURT ORDERS** that the service of the Notice of Motion and materials herein is good and sufficient service of this motion, that the motion is properly returnable before this Court and that further service thereof upon any interested party other than those parties served be and is hereby dispensed with.

2. **THIS COURT ORDERS** that paragraphs 8 and 11 of the Appointment Order, amended by the Second Extension Order and the Third Extension Order to extend the date of April 30, 2002 first to May 6, 2002 and then to December 31, 2002, respectively, be and hereby are further amended *nunc pro tunc* to extend the date of December 31, 2002 to March 31, 2003 or such later date as this Court may order.

3. **THIS COURT ORDERS** that paragraph 9 of the Appointment Order, amended by the Meridian Extension Order, the Second Extension Order and the Third Extension Order to extend the date of January 31, 2002 to April 30, 2002, then to May 6, 2002 and then to December 31, 2002, respectively, be and hereby is further amended *nunc pro tunc* to extend the date of December 31, 2002 to March 31, 2003 or such later date as this Court may order.



Registrar

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

DEC 1 0 2002

PER/PAR:

NB

**ONTARIO SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

ORDER

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Solicitors for KPMG Inc.,
Liquidator of Reliance (Canada)

**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**

April 23, 2002

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**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

April 23, 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) amending the Order of this Court dated January 30, 2002 to extend the date for Meridian Payments (as hereinafter defined) from April 30, 2002 to December 31, 2002 or such later date as this Court may order;
- (b) approving the Meridian Transfer Agreement (as hereinafter defined); and
- (c) amending the Appointment Order to extend the date for Policy Payments and payment of Defense Costs (all as hereinafter defined), as provided in paragraphs 8

and 11, respectively, thereof from April 30, 2002 to December 31, 2002 or such later date as this Court may order.

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*. M. Diane Koken, Commissioner of Insurance for Pennsylvania, was appointed liquidator (the “U.S. Liquidator”).

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 (the “Policy Payments”), 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;
- (b) paragraph 9 provides that the Liquidator may pay all valid claims, including claims in respect of unearned premiums, under the Meridian Program (as

hereinafter defined) and other warranty and surety programs to the amount of \$5,000 or the PACICC coverage limits, if any (the “Meridian Payments”), 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;

- (c) paragraph 11 provides that the Liquidator may pay and continue to pay all reasonable legal and other costs, incurred to and including April 30, 2002 that Reliance (Canada) is obligated to pay for defending any insureds against losses under Reliance (Canada)’s policies in accordance with the applicable policy, subject to the terms and limits of such policies (the “Defense Costs”); 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).

7. By Order of this Court dated January 30, 2002, the date of January 31, 2002 for Meridian Payments was extended to April 30, 2002.

III. THE MERIDIAN TRANSFER AGREEMENT

8. Attached hereto as Schedule “C” is a copy of the Report of the Liquidator dated January 28, 2002 in support of the application to extend the date for Meridian Payments. The Report describes the Meridian Program and the Liquidator’s considerations in exploring a transaction to transfer or reinsure the policies issued under the Meridian Program. In summary:

- (a) 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.
- (b) 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, being AXA Insurance and Lloyds Underwriters (the “Meridian Reinsurers”). This type of arrangement is known in the industry as a “fronting” arrangement, since the issuing insurer (here, Reliance (Canada)) is fully reinsured and retains no residual risk. The effect is that Reliance (Canada) earns a percentage fee from each of the reinsurers, rather than bearing the ultimate benefit or burden of the underwriting risk.

- (c) Although the Meridian Program is designed so that the ultimate underwriting risk is borne by the Meridian Reinsurers, 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 Meridian 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.
- (d) Attached hereto as Schedule “D” 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.

9. The Liquidator has been engaged in a marketing process for the policies of Reliance (Canada), including those under the Meridian Program. With respect to the Meridian Program, the Liquidator considered the nature of the program and its limited profit potential, given that it is only a fee generating business. The Liquidator consulted management of Reliance (Canada), the third party administrators of the Meridian Program, the Meridian Reinsurers, and others involved in this area of the insurance market to identify potential purchasers. Five insurers were approached. One insurer, London Guarantee Insurance Company (“London Guarantee”), expressed an interest in continuing discussions.

10. Attached as Schedule "E" is a copy of an agreement made April 3, 2002 between the Liquidator and London Guarantee (the "Meridian Transfer Agreement"). In summary, it provides:

- (a) London Guarantee will assume Reliance (Canada)'s liabilities under the Meridian Program (the "Meridian Liabilities").
- (b) The benefit of underlying reinsurance will be transferred to London Guarantee simultaneously with its assumption of the Meridian Liabilities.
- (c) The warranties forming part of the Meridian Liabilities have been, to the extent they are known to the parties, listed in a listing initialled by the parties. London Guarantee will assume Reliance (Canada)'s liabilities for warranties not listed but for which either or both of the Meridian Reinsurers accepts liability. It will also assume Reliance (Canada)'s liabilities for warranties not listed for which neither Meridian Reinsurer accepts liability, but if there are more than 2,000 of such warranties, the liabilities for the 2,001st such warranty and each warranty discovered thereafter will not form part of the Meridian Liabilities and will not be assumed by London Guarantee.
- (d) On closing the Liquidator will:
 - (i) pay London Guarantee \$975,000.00;
 - (ii) transfer to London Guarantee amounts in various loss adjustment expense funds and loss reserve funds maintained by Reliance (Canada) in respect of various portions of the Meridian Liabilities; and
 - (iii) reimburse London Guarantee for the aggregate compensation London Guarantee pays a third party administrator, for reinsurance consulting services in relation to the Meridian Liabilities.
- (e) The Liquidator and London Guarantee will establish a trust account with Royal Trust Company of Canada to be designated as the "Claims Account" into which the Liquidator will deposit approximately \$10,500,000.00, being the current actuarial valuation of the Meridian Liabilities. London Guarantee will be entitled to draw on the Claims Account for loss or premium refund claims or any loss

adjustment expense due and payable for which the appropriate Meridian Reinsurer fails to make payment within 7 days of demand. However, London Guarantee may only make the withdrawal if any loss reserve fund or loss adjustment expense fund transferred to London Guarantee for such purpose is fully depleted.

- (f) The Liquidator will also deliver to London Guarantee on closing two letters of credit, each in the initial amount of \$1,000,000.00. London Guarantee will be entitled to draw down these letters of credit for the purpose specified in the preceding paragraph if and when the Claims Account has been depleted.
- (g) On or before the 60th day following each anniversary of closing until all of the policies to which the Meridian Liabilities relate have expired, a valuation of the Meridian Liabilities will be prepared. If the valuation amount shown in such valuation is less than the amount in the Claims Account, the amount of the difference is to be withdrawn from the Claims Account and paid to the Liquidator.
- (h) On the 180th day after the expiration of all policies assumed by London Guarantee, the Claims Account, if then still in existence, is to be closed and the balance therein remitted to the Liquidator, and London Guarantee is to surrender the letters of credit, subject to the Liquidator providing to London Guarantee cash or other security satisfactory to London Guarantee, acting reasonably, in an amount equal to the lesser of:
 - (i) an amount sufficient to pay all amounts then still claimed by persons in respect of the Meridian Liabilities; and
 - (ii) the amount in the Claims Account immediately prior to its closure and the undrawn balance of the letters of credit.
- (i) The security provided by the Liquidator in respect of each outstanding claim will be released to the Liquidator when the claim is resolved and the appropriate Meridian Reinsurer satisfies London Guarantee's liability in respect thereof.
- (j) London Guarantee has agreed with the Liquidator to use reasonable efforts to collect all amounts owing under the reinsurance contracts, and to permit the

Liquidator, at its expense, to commence legal action against a Meridian Reinsurer failing to meet its obligations under its reinsurance contract.

- (k) In addition to the execution of written reinsurance contracts with the Meridian Reinsurers, closing of this transaction is also conditional upon approval of the Minister of Finance under the *Insurance Companies Act*, approval of this court, and the execution of new administration and reinsurance consulting agreements with certain third party administrators in forms which have been attached to the Assumption Reinsurance Agreement.
- (l) The Liquidator anticipates that the conditions will be satisfied, and that closing will occur, no later than September 30, 2002.

11. The alternatives to the Meridian Transfer Agreement 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 Meridian policies depends not only on the passage of time but also on the number of kilometres driven. Therefore the calculation of unearned premium would require eliciting and reviewing responses on this point from 18,000 policyholders. Further, it is not clear whether the Meridian Reinsurers are liable to refund premiums paid to them by Reliance (Canada) to compensate for the cancellation of the policies (on the issuances of the policies.) It is also not clear whether fees paid by Reliance (Canada) would be repayable.

12. Because Reliance (Canada) is fronting the Meridian Program and so bears the administrative costs but not the liabilities for claims under the policies and because the cost of calculating unearned premiums is so high, the cost of cancelling the policies is likely to exceed

the cost of running them off. The Meridian Transfer Agreement will have materially the same economic impact on the estate as a run-off, and therefore a more beneficial impact than cancellation of the policies.

13. The Liquidator is confident, based on the information presently available to it, that the estate of Reliance (Canada) will make full payment on all valid claims. However, for the reasons discussed more fully below, the Liquidator is not yet in a position to pay all policyholders 100%. In the view of the Liquidator, the Meridian Transfer Agreement is not prejudicial to the estate, notwithstanding that it theoretically could result in payment of 100% of their benefits to Meridian policyholders at a time when such payment is not assured to other Reliance (Canada) policyholders. The Liquidator is of the view that, given the alternatives to the Meridian Transfer Agreement, even if the claims were ultimately paid on the Meridian policies at less than 100%, the cost of administering the reduction in payments would more than offset any cost savings to the estate.

14. The Liquidator is recommending that this Court extend the date to which the Liquidator may make Meridian Payments to December 31, 2002, so that, should closing be delayed, there will be no interruption in payments, no further communication required to policyholders concerning the extension and no anxiety created among the Meridian policyholders.

IV. EXTENSION OF POLICY PAYMENTS AND DEFENSE COSTS PAYMENTS

15. As indicated above, the Liquidator has undertaken a process of seeking qualified insurers to assume all of the liability under all of the policies issued by Reliance (Canada) (other than the Meridian policies) in exchange for the transfer of assets. The Liquidator engaged Scotia Capital Inc. and KPMG Corporate Finance as co-advisors in this process. There have been expressions of interest and the co-advisors are currently working with a number of prospective purchasers in formulating a transaction which will meet the Liquidator's requirements. The U.S. Liquidator has been involved in the process as well. The Liquidator remains hopeful that an agreement will be reached in the near future. In the meantime, the Liquidator is recommending that Policy Payments and payment of Defense Costs should continue as at present until December 31, 2002 or such further date as this Court may order.

16. Payment of Defense Costs maintains the standards of claims adjudication, ensures the claims are properly handled and eases possible concerns of potential purchasers, as well as eliminating immediate hardship to policyholders. The Liquidator will report back to the Court

on his progress before December 31, 2002, but believes that all counsel and policyholders should have the assurance that the Defence Costs will be paid to that date, to reduce their anxiety and ensure claims are proceeding without disruption.

17. As indicated, the Liquidator is confident, based on the information presently available to it, that all valid claims against Reliance (Canada) will be paid in full. However, there are uncertainties. The major uncertainty is the potential that claims which were not reported in the books and records of Reliance (Canada) may be valid claims in its liquidation. These claims arise from policies written outside of Canada but which have some nexus with Canada, and which, arguably, should have been reported in the books of the branch and for which assets should have been deposited in Canada. There is no certainty as to the magnitude of such claims, given that they were never identified as being appropriately assigned to Reliance (Canada). Based on an initial review conducted by the U.S. Liquidator at the Liquidator's request, the magnitude of the claims would not prevent payment of full benefits to all policyholders with some remaining surplus available to the U.S. Liquidator, but the review was not definitive. Given this uncertainty, the Liquidator is not yet in a position to increase the level of Policy Payments. The Liquidator is of the view that the level of Policy Payments is a reasonable one in all of the circumstances, pending the result of the marketing efforts.

18. The Liquidator will be seeking the directions of this Court with respect to giving notice to any party who believes they have a claim properly assertable in Canada to come forward, and will then seek directions of this Court with respect to whether the claims should be allowed in the Canadian estate.

19. In the meantime, the Liquidator is of the view that continuing the Policy Payments and the payment of Defense Costs strikes the appropriate balance between ensuring identified policyholders and claimants are treated fairly, that the marketing process may continue, and that potential future claimants are not prejudiced.

V. RECOMMENDATIONS

20. The Liquidator therefore recommends that this Court make an Order:

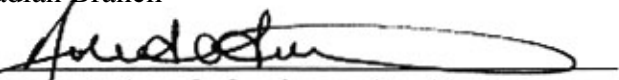
- (a) amending the Order of this Court dated January 30, 2002 to extend the date for Meridian Payments from April 30, 2002 to December 31, 2002 or such later date as this Court may order;

- (b) approving the Meridian Transfer Agreement; and
- (c) amending the Appointment Order to extend the date for Policy Payments and payment of Defense Costs, as provided in paragraphs 8 and 11, respectively, thereof from April 30, 2002 to December 31, 2002 or such later date as this Court may order.

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

**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-1 1, AS AMENDED***

B E T W E E N:

THE ATTORNEY GENERAL OF CANADA

Applicant

- and -

RELIANCE INSURANCE COMPANY

Respondent

**ENDORSEMENT OF
THE HONOURABLE MR. JUSTICE FARLEY**

Date: May 8, 2002

Further to receiving additional information arising out of the Liquidator's Report, Maritime Road Development Corporation consents to an order granting the relief requested by the Liquidator. Order to issue approving the Meridian Transfer Agreement and extending the dates for payment of Defence Costs, Policy Payments and Meridian Payments, as set out in the Liquidator's Report and further ancillary relief. I have fiatted the draft order contained at Tab 1 of the Motion Record (returnable April 29, 2002).

The Meridian Program involved Reliance issuing extended warranty coverage for motor vehicles. There are approximately 18,000 Meridian policyholders in all provinces except Quebec. The last policy expires in 2007.

The Liquidator has been engaged in a marketing process for the policies of Reliance Canada, including those issued under the Meridian Program. The Meridian Program has a limited profit potential, given that it is only a fee-generating business. The Liquidator was able to reach agreement with London Guarantee Reinsurance Company for the transfer of liabilities under the Meridian Program. Pursuant to the Meridian Transfer Agreement, London will assume

Reliance Canada's liabilities under that program, with a transfer of the underlying reinsurance for the benefit of London. London and the Liquidator made Provision for existing warranties which have not been disclosed on the records of Reliance Canada. London's exposure on these transferred liabilities are to be protected by a trust deposit and letters of credit. The Liquidator is to pay London \$975,000 and transfer various reserve and loss adjustment expense funds to it as well as reimbursing London for necessary reinsurance consulting services.

The Liquidator after analysis concluded that in the best interests of the Reliance Canada estate, the Meridian Transfer Agreement was the superior option to the other alternatives of a run-off of the policies to 2007 or a cancellation of the policies. The economic impact on the estate would be materially the same as a run-off but under the transfer arrangement, the Liquidator would not be required to continue significant ongoing administrative activities. Cancellation of the policies would generate disproportionate costs to the estate as well as significant uncertainty as to the scope of the estate's obligations to policyholders and as to its entitlement to recover premiums from the Meridian reinsurers.

The proposed transfer arrangement results in Meridian Policyholders maintaining 100% of their benefits. Although at this early stage of the liquidation it is not absolutely certain that all other policyholders will ultimately realize 100% on their claims, the Liquidator believes that will be the case. In any event, if the Meridian policies remained in the estate and were ultimately paid out at less than 100%, the cost of ministering the Meridian Program claims and the necessary reductions for payments made would more than offset savings to the estate from not doing the transfer transaction. The Liquidator is of the view that the transfer will facilitate the transfer or reinsurance of the balance of Reliance Canada's policies, and failure to do the transfer would have a negative impact on this.

S. 162(1) of the *Winding-up and Restructuring Act* ("WRA") provides that the Liquidator may, with the approval of the Court and without the consent of the policyholders, arrange for the transfer or reinsurance of all or a portion of the policies in Canada of a foreign company, where the terms of the transfer or reinsurance are, in the opinion of the Court, having regard to the priorities set out in Part III of the WRA fair and equitable to:

- (a) the policyholders whose policies are being transferred or reinsured;
- (b) the estate of the company as a whole; and
- (c) the remaining policyholders of the company.

S. 35(1)(c) and (h) confer broad powers on the Liquidator to, with the approval of the Court, to sell or otherwise deal with the assets of the company. In particular S. 35(1)(h) allows the Liquidator to do anything that may be thought expedient with reference to the assets in conjunction with a winding up of the affairs of the company. See Sutherland, Fraser & Stewart, *Company Law of Canada*, 6th ed. (Toronto: Carswell, 1993) at p. 860; *Re Bailey Cobalt Mines Limited* (1920), 47 O.L.R. 13 (C.A.) at p. 26.

Given the analogous situation of a sale by a court appointed officer to the present situation, it seems to me that the principles of *Royal Bank of Canada v. Soundair Corp.* (1991) 4 O.R. (3d) 1 (C.A.) would be applicable *mutatis mutandis*. The Liquidator was appointed by the Court for its experience and expertise in this field. The Court ought not to second guess its officer, absent clear cogent evidence that the officer was acting improperly. See *Soundair*;

Skyepharma pIc v. Hyal Pharmaceutical Corp. (1999), 12 C.B.R. 87 (Ont. Sup. Ct.) at p. 89, affirmed (2000), 47 O.R. (3d) 234 (C.A.). The Court should approve a proposed transfer by a Liquidator unless that officer did not exercise its discretion in a *bona fide* manner, or acted in a manner in which no reasonable Liquidator could act. If the Court is satisfied with the process used to market the property, its discretion pursuant to S. 35(1) of the WRA should be exercised in favour of the transaction, unless it is demonstrated that the price was improvident when the agreement was entered into. See *Leon v. York-O-Matic Ltd.*, [1996] 3 All E.R. 277 (Ch. D.) at pp. 280-1; *Northland Bank (Liquidator of) v. Kuperman*, [1989] 4 W.W.R. 701 (Man. C.A.).

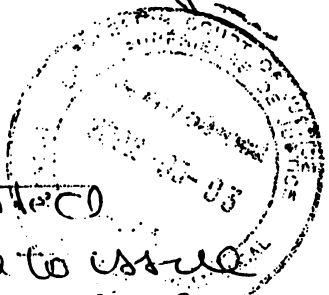
In the subject case, I am satisfied that the Liquidator has acted properly and prudently and that the terms of S. 162(1) have been satisfied. The Meridian Transfer Agreement is approved.

J.M. FARLEY, J

May 8/2002

1075 pages subject to Confidentiality of Report of

Further to receiving additional information
coming out of the liquidator's
report, Matthew Reed
Development Corporation
assents to an order
granting the relief requested
by the liquidator's Order to issue
appreciate the Meridian transfer agreement
and expenses the costs for payment of
deferred costs, Policy Payments and
Meridian Payments, as set out in the
liquidator's Report and further ancillary
relief. I have drafted the draft order
(attached at tab 1 of the Motion Record
submitted April 29, 2002).



The Meridian program involves
Reliance issuing extended warranty coverage
for motor vehicles. There are approximately
48000 Meridian policy holders in all provinces
except Quebec. The cash policy expires in 2007.
The liquidator has been enjoined
in a winding-up process for the purpose of Reliance
under the

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ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at Toronto

SUPPLEMENTARY REPORT OF THE
LIQUIDATOR
(dated May 3, 2002)

GOODMANS LLP
Barristers & Solicitors
250 Yonge Street, Suite 2400
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Gale Rubenstein (LSUC# 17088E)
Graham D. Smith (LSUC# 26377D)

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Solicitors for KPMG Inc.,
Liquidator of Reliance (Canada)

Our File No.: 01.6699

(2)

Meridian Program, the Meridian Program has a limited profit potential, given that it is only a fee-generating business. The liquidator was asked to reach agreement with Canada Guarantee Insurance Company for the transfer of liabilities under the Meridian Program, pursuant to the Meridian Transfer Agreement, Canada will assume Reliance Canada's liabilities under that program, with a transfer of the underlying reinsurance for the benefit of Canada, Canada and the liquidator made provision for existing warranties, which have not been disclosed on the records of Reliance Canada, Canada's exposure on these transferred liabilities are to be protected by a trust deposit and letter of credit. The liquidator is to pay Canada \$975,000 and transfer various reserve and loss adjustment expense funds to it as well as reimbursing Canada for necessary reinsurance casualty services.

^{in the best interests of the Reliance Canada estate}
The liquidator after analysis concluded that the Meridian Transfer Agreement was the superior option to the other alternatives of a runoff of the policies to 2007 or a cancellation of the policies. The economic impact on the estate turned out to be materially the same as a runoff but under the transfer arrangement, the liquidator would not be required to continue significant ongoing administrative activities. Cancellation of the policies would incur disproportionate costs to the estate as well as significant uncertainty as to the scope of the estate's obligations to policyholders and its ability to recover premiums for

The proposed transfer arrangement results in Meridian shareholders receiving 100% of their benefits. Although at this early stage of the liquidation it is not absolutely certain that all other shareholders will ultimately receive 100% on their claims, the liquidator believes that will be the case. In any event, if the Meridian claims remained in the estate and were ultimately paid out at less than 100%, the cost of administering the Meridian program claims and the necessary reductions for payments made would more than offset savings to the estate from not doing the transfer transaction. The liquidator is of the view that the transfer will facilitate the transfer or assumption of the balance of Helicore Canada's policies, and failure to do the transfer would have a negative impact on this.

S.162(1) of the Winding-up and Restructuring Act ("WRA") provides that the liquidator may, with the approval of the court and without the consent of the shareholders, arrange for the

) transfer or renunciation of all or a part of the policies in Canada of a foreign company, where the terms of the transfer or renunciation, are, in the opinion of the Court, having regard to the principles set out in Part III of the WRA fair and equitable to:

- (a) the policy holders whose policies are being transferred or renounced.
- (b) the estate of the company as a whole; and
- (c) the remaining policy holders of the company

S. 35(1)(c) and (h) confer broad powers on the liquidator to, with the approval of the court, to sell or otherwise deal with the assets of the company. In particular s. 35(1)(h) allows the liquidator to do anything which may be thought expedient with reference to the assets in question with a view to the affairs of the company. See Sullivan, *Trusts & Estates, Company Law of Canada*, 6th ed (Toronto: Carswell, 1993) at p. 860; *Re Bailey* (Albert James) (1920), 47 O.R. 13 (CA) at p. 26.

Given the analogous situation of a Canadian company transferred to the present

27 situation, it seems to me that the principles of *Royal Bank of Canada v Sparrow Corp.* (1991), 4 OR (3d) 1 (CA) would be applicable mutatis mutandis. The liquidator was appointed by the Court for its experience and expertise in this field. The Court ought not to second guess its officer, absent clear cogent evidence that the Officer was acting unreasonably. See *Sandain*; *Shepharma plc v Royal Pharmaceutics Corp* (1999), 12 OR 87 (Ont Sup. Ct) at p. 89, aff'd (2000), 47 OR (3d) 234 (CA). The Court should approve a proposed transfer by a liquidator unless the Officer did not exercise its discretion in a bona fide manner, or acted in a manner in which no reasonable liquidator could act. If the Court is satisfied with the process used to market the property, its discretion pursuant to s. 35(1) of the OIA should be exercised in favour of the transaction, unless it is demonstrated that the price was unreasonably when the agreement was entered into. See *Low v York-Dunlop Ltd* [1996] 3 All ER 277 (ChD) at pp 280-1; *Northland Pulp (Liquidator of) v Kuperman* [1982] 4 WWR 701 (Man CA).

In the *Sandain* case, I am satisfied that the liquidator has exercised its discretion in a bona fide manner and that the terms of s. 162(1) have been satisfied.