

**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

**NOTICE OF MOTION**  
(returnable June 2, 2003)

KPMG Inc., the liquidator (the “Liquidator”) of Reliance (Canada) (as hereinafter defined), will make a motion before the Honourable Mr. Justice Farley on Monday, June 2, 2003 at 2:00 p.m., or as soon after that time as the motion can be heard, at 393 University Avenue, Toronto.

**PROPOSED METHOD OF HEARING:** The motion is to be heard orally.

**THE MOTION IS FOR:**

1. An Order substantially in the form attached as Schedule “A” hereto; and
2. Such further and other relief as this Honourable Court may deem just.

**THE GROUNDS FOR THE MOTION ARE:**

1. 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 a branch.
2. 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*.
3. By Order of this Court made December 3, 2001, 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*. By further Order of this Court made December 3, 2001 (the “Appointment Order”), KPMG Inc. was appointed provisional liquidator of Reliance (Canada).
4. The Liquidator is seeking an Order appointing independent claims administrators to assume responsibility for the Liquidator’s authority, powers, rights and duties in the administration of two claims in the Reliance (Canada) estate described below.
5. Prior to the commencement of the liquidation, Reliance (Canada) was put on notice of a claim (the “Davies Claim”) by Davies Ward & Beck under a policy of insurance issued by Reliance (Canada). The notice was in respect of a claim by HSBC Securities (Canada) Inc. which is the subject matter of an action in the Ontario Superior Court of Justice, being Court File No. 00-CV-189099CM (the “HSBC Action”).
6. Third party claims were issued in the HSBC Action against Lindquist Avey MacDonald Baskerville Inc. (“Lindquist”), AON Reed Stenhouse Inc., and KPMG Inc. and certain entities related to KPMG Inc. Lindquist put Reliance (Canada) on notice of a claim (the “Lindquist Claim”) under a policy of insurance issued by Reliance (Canada) under which Lindquist is an insured.
7. The Davies Claim and the Lindquist Claim (collectively, the “Claims”) have been administered by separate members of the Reliance (Canada) staff and confidentiality has been maintained as between them in accordance with Reliance (Canada)’s internal policies. With the

exception of the signing of certain cheques in respect of defence costs, the Liquidator has not taken any steps in connection with, or reviewed any documents associated with, the Claims.

8. The fact that the Claims both arise in the context of the HSBC Action, in which KPMG Inc. and certain entities related to it are also named as third parties, only recently came to the attention of the Liquidator. None of the members of KPMG Inc. assigned to the Reliance (Canada) liquidation were involved in the matters giving rise to the claims being asserted in the HSBC Action nor did any of them have knowledge of the third party claim issued against KPMG Inc. and the related entities in that action.

9. Upon discovering that KPMG Inc. and related entities were parties to the HSBC Action and that Reliance (Canada) was the insurer for two other parties, the Liquidator immediately took steps to satisfy itself that all documents relating to either Claim were completely secured and inaccessible and began to make arrangements for the appointment of independent claims administrators.

10. The Liquidator is confident that all dealings to date in respect of the Claims have been impartial. No confidential information respecting the Claims has been or will be communicated to the Liquidator. There has been and is no risk of prejudice to the insureds in respect of the Claims.

11. The Liquidator has considered the appropriate course of action to take, balancing the concern that there be no conflict or appearance of conflict, against ensuring that there is no disruption to the administration of the estate, and that the appropriate steps are taken with respect to the Claims so that Reliance (Canada)'s interests and obligations, if any, under each of the policies are honoured.

12. The Liquidator is of the view that it is appropriate that an independent court officer be appointed to assume responsibility for the Liquidator's authority, powers, rights and duties in respect of each of the Claims. In particular, the Liquidator is proposing that these claims administrators deal with the Claims and the interests and obligations of Reliance (Canada) under the respective policies, including without limitation, supervising and instructing the Reliance (Canada) staff and counsel of record.

13. The Liquidator is recommending the appointment of the Honourable Hilda M. McKinlay as claims administrator of the Davies Claim and the Honourable Lloyd W. Houlden as claims administrator of the Lindquist Claim, both of whom have agreed to accept such appointment conditional upon the approval of this Court and the granting of an Order substantially in the form attached hereto.

14. Rules 1.04, 2.03 and 3.02 of the *Rules of Civil Procedure*.

15. Sections 24, 25 and 33 of the *Winding-up and Restructuring Act*.

16. The Orders of this Honourable Court made herein on December 3, 2001.

17. Such further and other grounds as counsel may advise and this Honourable Court permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

1. The Report of the Liquidator dated May 21, 2003; and

2. Such further and other material as counsel may advise and this Honourable Court permit.

May 22, 2003

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Hoogovens Construction Services

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**Mario Forte**  
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Solicitors for The Honourable Hilda M. McKinlay and The Honourable Lloyd W.  
Houlden

**AND TO:** Lerner & Associates LLP  
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Solicitors for Lindquist Avey MacDonald Baskerville Inc., third party insured in Action No. 00-CV-189099CM

**ONTARIO SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE ) MONDAY, THE 2<sup>ND</sup> DAY  
 )  
MR. JUSTICE FARLEY ) OF JUNE, 2003

**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., liquidator (the “Liquidator”) of the insurance business in Canada of Reliance Insurance Company (“Reliance (Canada)”), for an Order that the Honourable Lloyd W. Houlden and the Honourable Hilda M. McKinlay each be appointed as an independent claims administrator of certain claims in the Reliance (Canada) estate was heard this day at 393 University Avenue, Toronto, Ontario.

**UPON READING** the Liquidator’s Motion Record, including the Notice of Motion and the Liquidator’s Report contained therein, filed, and upon being advised of the



consent of the Honourable Lloyd W. Houlden and of the Honourable Hilda M. McKinlay, and upon hearing the submissions of counsel for the Liquidator and ●,

1. **THIS COURT ORDERS** that the Honourable Hilda M. McKinlay is hereby appointed independent claims administrator of the Davies Claim, (as defined in Schedule “A” to this Order) upon the terms and conditions set out in Schedule “A” hereto (the “Davies Claim Administrator”) and is hereby allocated and shall assume all of the Liquidator’s authority, powers, rights and duties in respect of the Davies Claim and shall be the liquidator for this purpose with those of the attendant rights and obligations provided in the Order of this Court dated December 3, 2001 and any further Orders made in these proceedings as may be applicable to this appointment.

2. **THIS COURT ORDERS** that the Honourable Lloyd W. Houlden is hereby appointed independent claims administrator of the Lindquist Claim (as defined in Schedule “B” to this Order) upon the terms and conditions set out in Schedule “B” hereto (the “Lindquist Claim Administrator”) and is hereby allocated and shall assume all of the Liquidator’s authority, powers, rights and duties in respect of the Lindquist Claim and shall be the liquidator for this purpose with those of the attendant rights and obligations provided in the Order of this Court dated December 3, 2001 and any further Orders made in these proceedings as may be applicable to this appointment.

3. **THIS COURT ORDERS** that the Davies Claim Administrator and the Lindquist Claim Administrator (collectively the “Claims Administrators”) shall have no right or obligation to exercise any authority, powers, rights or duties with respect to the liquidation of Reliance (Canada) or any assets or liabilities of Reliance (Canada) other than in connection with the Davies Claim and the Lindquist Claim, (collectively, the “Claims”).

4. **THIS COURT ORDERS** that the Liquidator is hereby relieved from the right or obligation to exercise any of the authority, powers, rights and duties with respect to the Claims granted to the Claims Administrators herein, or in any further Order of the Court, that the Liquidator otherwise has pursuant to the *Winding-up and Restructuring Act*, or pursuant to Orders granted by this Court.

5. **THIS COURT ORDERS** that the Claims Administrators are each hereby authorized to provide information with respect to the Claims to the inspectors in the liquidation of Reliance (Canada) appointed by this Court, or to each of them, in such manner and to such extent as, from time to time, may be agreed as between them or directed by the Court, and that such communications to the inspectors shall not constitute a waiver of any privilege which the Claims Administrators would otherwise be entitled to assert against any other party.

6. **THIS COURT ORDERS** that no action lies against the Claims Administrators or any person acting under the direction of the Claims Administrators for anything done or omitted to be done in good faith in carrying out the authority, powers, rights and duties of the Claims Administrators provided herein, and the Claims Administrators shall be entitled to the same rights of indemnity from the estate of Reliance (Canada) as the Liquidator in respect of their administration of the Claims pursuant to this Order.

7. **THIS COURT ORDERS** that the Claims Administrators shall be at liberty to apply to this Court for advice and directions concerning the discharge of their authority, powers, rights and duties hereunder on such notice as the Court may order.

8. **THIS COURT ORDERS** that, for the purpose of compensating any solicitors, agents, experts, consultants, assistants and employees retained by the Claims Administrators and meeting any further expenses incurred by them in carrying out their authority, powers, rights and duties hereunder, the Claims Administrators shall be entitled to direct the Liquidator to make payments from the assets of Reliance (Canada), including draws on account of each of the Claims Administrators' fees and disbursements.

9. **THIS COURT ORDERS** that the remuneration, costs and expenses of the Claims Administrators, including the costs referred to in paragraph 8 hereof, be treated as part of the costs and expenses of the liquidation of Reliance (Canada), and that each of the Claims Administrators shall pass his or her accounts and apply for the approval of the professional fees incurred by him or her before this Court at such times and in such manner as he or she may deem appropriate or as the Court may require.

10. **THIS COURT ORDERS** that the time for service of the Notice of Motion and supporting materials is hereby abridged and that the service made herein is good and sufficient

service of this motion, that this motion is properly returnable today and that any further service of the Notice of Motion and supporting materials be and the same is hereby dispensed with.

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Schedule "A"

May ●, 2003

Hon. Hilda M. McKinlay  
ADR Chambers  
Suite 300  
48 Yonge Street  
Toronto, Ontario M5E 1G6

Dear Sir:

**Re: Reliance Insurance Company - Canadian Branch, in Liquidation ("Reliance (Canada)")**

The purpose of this letter is to confirm the terms on which you will act as Claims Administrator of Reliance (Canada)'s interests and obligations under a policy of insurance issued by Reliance (Canada) to Davies, Ward & Beck ("Davies"), in respect of a claim by HSBC Securities (Canada) Inc., which is the subject matter of an action in the Ontario Superior Court of Justice (the "Court"), being Court File No. 00-CV-189099CM. The action, including third party claims issued therein, will be referred to as the "HSBC Action". Reliance (Canada)'s interests and obligations to Davies with respect to the HSBC Action will be referred to as the "Davies Claim".

BACKGROUND

As you are aware, KPMG Inc. is the liquidator (the "Liquidator") of Reliance (Canada). It has recently been brought to the Liquidator's attention that KPMG Inc. and certain entities related to KPMG Inc. are third party defendants in the HSBC Action. Reliance (Canada) issued two policies relevant to the HSBC Action, the Davies Policy and a policy of insurance to Lindquist Avey MacDonald Baskerville Inc. (the "Lindquist Policy"). In light of the claim against KPMG Inc., the Liquidator is of the view that it is in the best interest of the estate of Reliance (Canada) that independent claims administrators be appointed by the Court to deal with each of the Davies Claim and with the interests and obligations of Reliance (Canada) under the Lindquist Policy in respect of the HSBC Action.

TERMS OF APPOINTMENT

Subject to the approval and direction of the Court in the winding-up proceedings, your appointment will be limited to acting as administrator of the Davies Claim including, without limitation, supervising and instructing the Reliance (Canada) staff and counsel of record.

In connection with your appointment, the Liquidator will:

1. provide you and your representatives and agents with access to the premises, books, records, and (as far as reasonably possible) officers and employees of Reliance (Canada) and of the Liquidator in order to allow you to carry out your mandate; and

2. seek an order in substantially the form attached as Schedule “A” confirming your powers, duties, and protections with respect to the Davies Claim and approving the terms and conditions of your appointment as set out herein.

To the extent that you deem it prudent to do so you may:

1. review and take temporary possession of any of Reliance (Canada)’s books and records as you may reasonably require for the purpose of carrying out your duties hereunder;
2. engage such firms of solicitors as you deem necessary to assist you, including Goodmans LLP. Specifically, you may continue the retainer of counsel of record, and may consult with Goodmans LLP, as you deem appropriate, to assist you in respect of matters concerning Reliance (Canada) relevant to the Davies Claim;
3. meet with representatives of the parties to the HSBC Action and their counsel or such other parties as you deem necessary or appropriate with respect to the HSBC Action;
4. employ and retain such agents, experts, consultants, and assistants as you may consider necessary or desirable; and
5. do all such other acts as you may consider necessary or appropriate for the carrying out of your duties.

The Property and Casualty Insurance Compensation Corporation (“PACICC”) and the Insurance Commissioner of the Commonwealth of Pennsylvania in her capacity as liquidator of Reliance Insurance Company (the “U.S. Liquidator”) have been appointed inspectors (collectively the “Inspectors”) to assist and advise the Liquidator in the winding-up of Reliance (Canada). In addition, by Order dated January 30, 2002, the Superintendent of Financial Institutions is entitled to attend Inspectors’ meetings. You will make available to the Inspectors from time to time such information as they may reasonably require. Further, pursuant to a protocol between the Liquidator and the U.S. Liquidator, a copy of which has been given to you, the Liquidator provides certain information concerning the administration of Reliance (Canada) claims to the U.S. Liquidator and subject to the terms of the protocol, seeks certain approvals. You will supervise the Reliance (Canada) employees to ensure that provisions of the protocol are observed.

#### FEES

Subject to Court approval, your fees will be paid on the basis of time spent at a rate of \$450.00 per hour. Your remuneration, costs and expenses will be treated as part of the costs and expenses of the liquidation of Reliance (Canada). You will pass accounts and apply for approval of the fees and costs incurred by you at such times and in such manner as you deem appropriate or as the Court may require and, if practicable, concurrently with the passings of the accounts of the Liquidator.

If you agree with the above noted terms and conditions, please sign in the space provided below.

Yours very truly,

KPMG Inc., in its capacity as Court appointed  
Provisional Liquidator of Reliance (Canada)

Enclosures

AGREED TO:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Schedule "B"

May ●, 2003

Hon. Lloyd W. Houlden  
ADR Chambers  
Suite 300  
48 Yonge Street  
Toronto, Ontario M5E 1G6

Dear Sir:

**Re: Reliance Insurance Company - Canadian Branch, in Liquidation ("Reliance (Canada)")**

The purpose of this letter is to confirm the terms on which you will act as Claims Administrator of Reliance (Canada)'s interests and obligations under a policy of insurance issued by Reliance (Canada) to Lindquist Avey MacDonald Baskerville Inc. ("Lindquist"), in respect of a third party claim by Davies, Ward & Beck ("Davies") in an action against Davies commenced by HSBC Securities (Canada) Inc. in the Ontario Superior Court of Justice (the "Court"), being Court File No. 00-CV-189099CM. The action, including the third party claims issued therein, will be referred to as the "HSBC Action". Reliance (Canada)'s interests and obligations to Lindquist with respect to the HSBC Action will be referred to as the "Lindquist Claim".

BACKGROUND

As you are aware, KPMG Inc. is the liquidator (the "Liquidator") of Reliance (Canada). It has recently been brought to the Liquidator's attention that KPMG Inc. and certain entities related to KPMG Inc. are third party defendants in the HSBC Action. Reliance (Canada) issued two policies relevant to the HSBC Action, the Lindquist Policy and a policy of insurance to Davies (the "Davies Policy"). In light of the claim against KPMG Inc., the Liquidator is of the view that it is in the best interest of the estate of Reliance (Canada) that independent claims administrators be appointed by the Court to deal with each of the Lindquist Claim and with the interests and obligations of Reliance (Canada) under the Davies Policy in respect of the HSBC Action.

TERMS OF APPOINTMENT

Subject to the approval and direction of the Court in the winding-up proceedings, your appointment will be limited to acting as administrator of the Lindquist Claim including, without limitation, supervising and instructing the Reliance (Canada) staff and counsel of record.

In connection with your appointment, the Liquidator will:

1. provide you and your representatives and agents with access to the premises, books, records, and (as far as reasonably possible) officers and employees of Reliance (Canada) and of the Liquidator in order to allow you to carry out your mandate; and
2. seek an order in substantially the form attached as Schedule “A” confirming your powers, duties, and protections with respect to the Lindquist Claim and approving the terms and conditions of your appointment as set out herein.

To the extent that you deem it prudent to do so you may:

1. review and take temporary possession of any of Reliance (Canada)’s books and records as you may reasonably require for the purpose of carrying out your duties hereunder;
2. engage such firms of solicitors as you deem necessary to assist you, including Goodmans LLP. Specifically, you may continue the retainer of counsel of record, and may consult with Goodmans LLP, as you deem appropriate, to assist you in respect of matters concerning Reliance (Canada) relevant to the Lindquist Claim;
3. meet with representatives of the parties to the HSBC Action and their counsel or such other parties as you deem necessary or appropriate with respect to the HSBC Action;
4. employ and retain such agents, experts, consultants, and assistants as you may consider necessary or desirable; and
5. do all such other acts as you may consider necessary or appropriate for the carrying out of your duties.

The Property and Casualty Insurance Compensation Corporation (“PACICC”) and the Insurance Commissioner of the Commonwealth of Pennsylvania in her capacity as liquidator of Reliance Insurance Company (the “U.S. Liquidator”) have been appointed inspectors (collectively the “Inspectors”) to assist and advise the Liquidator in the winding-up of Reliance (Canada). In addition, by Order dated January 30, 2002, the Superintendent of Financial Institutions is entitled to attend Inspectors’ meetings. You will make available to the Inspectors from time to time such information as they may reasonably require. Further, pursuant to a protocol between the Liquidator and the U.S. Liquidator, a copy of which has been given to you, the Liquidator provides certain information concerning the administration of Reliance (Canada) claims to the U.S. Liquidator and subject to the terms of the protocol, seeks certain approvals. You will supervise the Reliance (Canada) employees to ensure that provisions of the protocol are observed.

#### FEES

Subject to Court approval, your fees will be paid on the basis of time spent at a rate of \$450.00 per hour. Your remuneration, costs and expenses will be treated as part of the costs and expenses of the



liquidation of Reliance (Canada). You will pass accounts and apply for approval of the fees and costs incurred by you at such times and in such manner as you deem appropriate or as the Court may require and, if practicable, concurrently with the passings of the accounts of the Liquidator.

If you agree with the above noted terms and conditions, please sign in the space provided below.

Yours very truly,

KPMG Inc., in its capacity as Court appointed  
Provisional Liquidator of Reliance (Canada)

Enclosures

AGREED TO:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_