

**ONTARIO
SUPERIOR COURT OF JUSTICE
- COMMERCIAL LIST**

THE HONOURABLE) TUESDAY THE 21ST DAY
JUSTICE G. MORAWETZ) OF JUNE, 2011



**IN THE MATTER OF NORTHUMBERLAND
GENERAL INSURANCE COMPANY**

**AND IN THE MATTER OF THE
CANADIAN AND BRITISH INSURANCE COMPANIES ACT,
R.S.C. 1970, c. I-15, AS AMENDED**

**AND IN THE MATTER OF THE
WINDING-UP ACT, R.S.C. 1970, C.W-10, AS AMENDED**

BETWEEN:

THE ATTORNEY GENERAL OF CANADA

Applicant

- and -

NORTHUMBERLAND GENERAL INSURANCE COMPANY

Respondent

**ORDER
(Preliminary Motion for Directions Re: Post-Liquidation Interest Motion)**

THIS MOTION made by PricewaterhouseCoopers Inc., permanent liquidator (the "Liquidator") of Northumberland General Insurance Company ("Northumberland"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Report of the Liquidator dated June 10, 2011 (the "Report"), filed, and on hearing submissions of counsel for the Liquidator, the representative counsel for the

Included Ordinary Creditors and the proposed representative counsel for each of the Policy Loss Claimants and the Unearned Premium Claimants (all as defined in the Report),

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

2. **THIS COURT ORDERS** that the Policy Loss Claimants and the Unearned Premium Claimants are classes for the purposes of the Post-liquidation Interest Motion (as defined in the Report), and that the Included Ordinary Creditors (as defined in the Report) are not parties affected by the Post-liquidation Interest Motion, being subordinate to the Policy Loss Claimants and the Unearned Premium Claimants for the purpose of subsection 95(2) of the *Winding-up and Restructuring Act*.

3. **THIS COURT ORDERS** the following counsel be and are hereby nominated and appointed as solicitor and counsel in connection with the Post-liquidation Interest Motion and any appeals in respect thereof, pursuant to section 133 of the *Winding-up and Restructuring Act*:
 - (a) Edmond Lamek, to represent the Policy Loss Claimants; and
 - (b) James H. Grout, to represent the Unearned Premium Claimants.

4. **THIS COURT ORDERS** that the solicitor and client accounts of the representative counsel shall from time to time be assessed by this Court, and that the reasonable

remuneration, costs and expenses of the representative counsel shall be a cost and expense of the winding-up of Northumberland.

5. **THIS COURT ORDERS** that the representative counsel are authorized to take all steps and to do all acts necessary or desirable to carry out the terms of this Order, including recommending a settlement for this Court's approval, and to take all such steps as are necessary or incidental thereto.

6. **THIS COURT ORDERS** that the representative counsel shall be at liberty and are authorized at any time to apply to this Court for advice and directions in the discharge or variation of their powers and duties.

7. **THIS COURT ORDERS** that the representative counsel shall have no personal liability or obligations as a result of the performance of their duties in carrying out the provisions of this Order, save and except for gross negligence or wilful misconduct.

8. **THIS COURT ORDERS** that no action or other proceeding may be commenced against the representative counsel in respect of the performance of their duties under this Order without leave of this Court on at least seven days' notice to the representative counsel.

9. **THIS COURT ORDERS** that notice of the Post-liquidation Interest Motion shall be given (i) within 10 days of this Order, to the representative counsel appointed in connection with the Post-liquidation Interest Motion, the 10 Policy Loss Claimants and the 10 Unearned Premium Claimants with the highest total value of policy loss claims and unearned premium claims, respectively, as identified by the Liquidator, the Remaining Contingent Claimants (as defined in the Report), and those parties currently appearing on the service list for the winding-up proceedings as maintained by the Liquidator's counsel, by sending by prepaid ordinary mail

or by delivering by courier a copy of this Order and the Liquidator's Motion Record in support of the Post-liquidation Interest Motion, and (a) in the case of the said 10 Policy Loss Claimants and 10 Unearned Premium Claimants, a letter substantially in the form of Schedule "A" hereto, to their last known address according to the books and records of Northumberland, and (b) in the case of the Remaining Contingent Claimants, a letter substantially in the form of Schedule "B" hereto, to their last known address according to the books and records of Northumberland; and (ii) within 15 days of this Order, to all other affected persons, by publication of (a) a notice, substantially in the form attached as Schedule "C" hereto, in the national edition of *The Globe and Mail* (the "English Newspaper Notice"), (b) a French-language translation of the English Newspaper Notice in *La Presse* (the "French Newspaper Notice"), and (c) the English Newspaper Notice, the French Newspaper Notice, the Notice of Motion for the Post-liquidation Interest Motion, this Order and the Report on the internet website maintained by the Liquidator.

10. **THIS COURT ORDERS** that the service and notice as ordered herein in respect of the Post-liquidation Interest Motion shall be good and sufficient service thereof, and that no further or other service shall be required in respect thereof.

11. **THIS COURT ORDERS** that any persons or entities (other than the representative counsel) desiring to be heard at the Post-liquidation Interest Motion ("Appearing Party") shall, within 30 days of this Order, serve on counsel for the Liquidator, the Policy Loss Claimants and the Unearned Premium Claimants a completed Notice of Appearance, substantially in the form of Schedule "D" hereto, and shall forthwith thereafter file a copy of such Notice of Appearance with the Court. The Liquidator shall, within 35 days of this Order, provide a copy of any Notice of Appearance that has been served to counsel for any other Appearing Party.

12. **THIS COURT ORDERS** that, upon the request by any Appearing Party, the Liquidator shall provide a copy of the Report to counsel for such Appearing Party.

13. **THIS COURT ORDERS** that any other materials to be relied on in respect of the Post-liquidation Interest Motion shall be served in accordance with the following:

- (i) Any affidavit material on behalf of the Policy Loss Claimants or the Unearned Premium Claimants shall be served on counsel for the Liquidator and any Appearing Party, within 35 days of this Order;
- (ii) Any affidavit material on behalf of any Appearing Party shall be served on counsel for the Liquidator, the Policy Loss Claimants, the Unearned Premium Claimants, and any other Appearing Party, within 60 days of this Order;
- (iii) Any further reply report or affidavit material on behalf of the Liquidator shall be served on counsel for the Policy Loss Claimants, the Unearned Premium Claimants and any Appearing Party, within 75 days of this Order;
- (iv) The factum and supporting authorities of the Liquidator shall be served on counsel for the Policy Loss Claimants, the Unearned Premium Claimants and any Appearing Party, at least 15 days prior to the hearing of the Post-liquidation Interest Motion;
- (v) The factum and supporting authorities of the Policy Loss Claimants shall be served on counsel for the Liquidator, the Unearned Premium Claimants

and any Appearing Party, at least 10 days prior to the hearing of the Post-liquidation Interest Motion;

- (vi) The factum and supporting authorities of the Unearned Premium Claimants shall be served on counsel for the Liquidator, the Policy Loss Claimants and any Appearing Party, at least 10 days prior to the hearing of the Post-liquidation Interest Motion; and
- (vii) The factum and supporting authorities of any Appearing Party shall be served on counsel for the Liquidator, the Policy Loss Claimants, the Unearned Premium Claimants and any other Appearing Party, at least 7 days prior to the hearing of the Post-liquidation Interest Motion,

and all such materials, with proof of service, shall be filed with the Court at least 5 days prior to the hearing of the Post-liquidation Interest Motion.

14. **THIS COURT ORDERS** that service of any materials provided for in paragraphs 11, 12 and 13 hereof may be made by prepaid ordinary mail, courier, personal delivery or electronic transmission and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

15. **THIS COURT ORDERS** that the Post-liquidation Interest Motion shall be heard on a date to be determined by the Court.

16. **THIS COURT ORDERS** that notice of the date of the hearing of the Post-Liquidation Interest Motion shall be given to the representative counsel and each Appearing Party at least two weeks prior thereto.



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

JUN 21 2011

PER/PAR: 

Schedule "A"

**[COVER LETTER
TO TOP 10 UEP AND TOP 10 PLC]**

[Addressee]

**Re: Northumberland General Insurance Company ("Northumberland")
Your Claim Reference No. ● ("Claim")**
And Re: Post-liquidation Interest Motion

Dear Sir/Madam:

We are the Court-appointed Liquidator of Northumberland. You filed the Claim for **[policy loss/unearned premium]** in the winding-up of Northumberland, and the total Claim was accepted and paid in the amount of \$●.

By virtue of a surplus of assets over liabilities in the Northumberland winding-up, in 2003 a payment was made on account of post-liquidation interest on the Claim as authorized by the Court supervising the winding-up. The Liquidator continues to anticipate a surplus, although the ultimate amount of the surplus cannot yet be determined. The Liquidator accordingly will seek the authority of the Court to pay further post-liquidation interest on eligible claims. However, because there is ambiguity concerning the relevant statutory provisions, the relative priority of policy loss claims and unearned premium claims is not clear with respect to post-liquidation interest.

The Liquidator is therefore seeking the advice and directions of the Court to resolve the issue and to confirm the methodology for calculation of post-liquidation interest.

Pursuant to the Preliminary Directions Order of the Honourable ● dated ●, 2011, you are being served with a copy of that Order and the Liquidator's Motion Record in respect of its Post-liquidation Interest Motion scheduled to be heard on a date to be determined by the Court.

The financial impact on your claim of the outcome of the Post-Liquidation Motion is reflected on the attached schedule. This is based on an estimated distribution of \$25 million in respect of post-liquidation interest, as set out in the Liquidator's report.

The Order made ●, 2011 appoints representative counsel for each of the Policy Loss Claimants as a class and Unearned Premium Claimants as a class, and your interests as a member of the appropriate class will be represented by the respective representative counsel. However, you may retain counsel and participate directly in the Post-liquidation Interest Motion by following the directions to become an Appearing Party set out in the Order.

Yours very truly,

Schedule "B"

[COVER LETTER TO REMAINING CONTINGENT CLAIMANTS]

[Addressee]

**Re: Northumberland General Insurance Company ("Northumberland")
Your Contingent Claim Reference Nos. ●
And Re: Post-liquidation Interest Motion**

Dear Sir/Madam:

We are the Court-appointed Liquidator of Northumberland. You have outstanding contingent claims in the winding-up of Northumberland, which claims have not been valued or accepted.

By virtue of a surplus of assets over liabilities in the Northumberland winding-up, in 2003 a payment on account of post-liquidation interest was authorized by the Court supervising the winding-up. The Liquidator continues to anticipate a surplus, although the ultimate amount of the surplus cannot yet be determined. The Liquidator accordingly will seek the authority of the Court to pay further post-liquidation interest on eligible claims. However, because there is ambiguity concerning the relevant statutory provisions, the relative priority of policy loss claims and unearned premium claims is not clear with respect to post-liquidation interest.

The Liquidator is therefore seeking the advice and directions of the Court to resolve the issue and to confirm the methodology for calculation of post-liquidation interest.

Pursuant to the Preliminary Directions Order of the Honourable ● dated ●, 2011, you are being served with a copy of that Order and the Liquidator's Motion Record in respect of its Post-liquidation Interest Motion scheduled to be heard on a date to be determined by the Court.

Your contingent claims are claims in respect of loss. To the extent such claims are allowed, you would therefore be a Policy Loss Claimant.

The Order made ●, 2011 appoints representative counsel for each of the Policy Loss Claimants as a class and Unearned Premium Claimants as a class, and your interests as a member of the appropriate class will be represented by the respective representative counsel. However, you may retain counsel and participate directly in the Post-liquidation Interest Motion by following the directions to become an Appearing Party set out in the Order.

Yours very truly,

Schedule "C"

**IN THE MATTER OF THE WINDING-UP OF NORTHUMBERLAND
GENERAL INSURANCE COMPANY ("Northumberland")**

IMPORTANT NOTICE TO ALL CLAIMANTS OF NORTHUMBERLAND

PricewaterhouseCoopers Inc., as permanent liquidator (the "Liquidator") of Northumberland under the provisions of the *Winding-up and Restructuring Act*, hereby gives notice that it will seek the advice and directions of the Ontario Superior Court of Justice – Commercial List ("Court") in respect of post-liquidation interest, by way of a motion ("Post-liquidation Interest Motion") scheduled to be heard on a date to be determined by the Court.

By the Post-liquidation Interest Motion, the Liquidator will be seeking the advice and directions of the Court with respect to the appropriate methodology for calculation of post-liquidation interest on claims in the estate of Northumberland, the priority ranking for post-liquidation interest as between claimants with claims for indemnity for property or liability losses covered by policies (the "Policy Loss Claimants") and claimants with claims for refund of premium paid for policies that were cancelled early (the "Unearned Premium Claimants").

By Order made ●, 2011 ("Preliminary Directions Order"), the Court has determined the procedure for service and filing of materials for the Post-liquidation Interest Motion, and has appointed representative counsel for each of the Policy Loss Claimants class and the Unearned Premium Claimants class, as set out below. The Preliminary Directions Order is posted on the Liquidator's website at ●.

You may request from the Liquidator an estimate of the effect of the disposition of the priority ranking issue on post-liquidation interest payable on your claim(s).

Please note that the Post-liquidation Interest Motion is not a request or recommendation to the Court to authorize the making of a distribution by the Liquidator at this time. Depending on the Court's ruling, the Liquidator will seek authorization for any future distribution at the appropriate time.

For the purposes of the Post-liquidation Interest Motion, the Court has appointed Edmond Lamek as counsel to represent the Policy Loss Claimants and James H. Grout as counsel to represent the Unearned Premium Claimants. The contact information for the respective representative counsel is:

For the Policy Loss Claimants:

Edmond Lamek
Fasken Martineau DuMoulin LLP
333 Bay Street, Suite 2400
Toronto, ON M5H 2T6

Tel.: 416-366-8381

For the Unearned Premium Claimants:

James H. Grout
Thornton Grout Finnigan LLP
Suite 3200, Canadian Pacific Tower
100 Wellington St. West

P.O. Box 329
Toronto-Dominion Centre

Fax: 416-364-7813
E-mail: elamek@fasken.com

Toronto, ON M5K 1K7
Tel.: 416-304-1616
Fax: 416-304-1313
E-mail: jgrout@tgf.ca

The members of each class are bound by the acts of their respective representative counsel. However, if you desire to be individually represented and heard at the hearing of the Post-liquidation Interest Motion, you may do so by following the procedures set out in the Preliminary Directions Order. Please note that in order to be individually represented at the hearing you are required to serve a Notice of Appearance by ●.

This Notice is being given pursuant to the Preliminary Directions Order of the Court.

PricewaterhouseCoopers Inc., Permanent Liquidator
of Northumberland General Insurance Company,
Goodmans LLP, Counsel
333 Bay Street, Suite 3400
Toronto, Ontario
M5H 2S7

Attention: Fanny Paquette
Fax: 416-979-1234
Tel: 416-597-4251
E-mail: fpaquette@goodmans.ca

**ONTARIO
SUPERIOR COURT OF JUSTICE
- COMMERCIAL LIST**

**IN THE MATTER OF NORTHUMBERLAND
GENERAL INSURANCE COMPANY**

**AND IN THE MATTER OF THE
CANADIAN AND BRITISH INSURANCE COMPANIES ACT,
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WINDING-UP ACT, R.S.C. 1970, C.W-10, AS AMENDED**

BETWEEN:

THE ATTORNEY GENERAL OF CANADA

Applicant

- and -

NORTHUMBERLAND GENERAL INSURANCE COMPANY

Respondent

**NOTICE OF APPEARANCE
POST-LIQUIDATION INTEREST MOTION**

The person or entity described below ("Appearing Party") intends to appear by counsel and make representations at the hearing of the Post-liquidation Interest Motion.

NAME OF APPEARING PARTY: _____

STATUS OF APPEARING POLICY

Policy Loss Claimant? Yes No

Unearned Premium Claimant? Yes No

IDENTIFICATION OF COUNSEL

Name:

Firm:

Address for Service:

E-mail address:

Telephone number:

Telecopier number:

**THE ATTORNEY GENERAL OF
CANADA**

and **NORTHUMBERLAND GENERAL
INSURANCE COMPANY**

Court File No. CV-85-RE001780-00

Applicant

Respondent

**ONTARIO
SUPERIOR COURT OF JUSTICE
- COMMERCIAL LIST**

Proceeding commenced at Toronto

**ORDER
(Preliminary Motion For Directions
Re: Post-Liquidation Interest Motion)**

Goodmans LLP
Barristers & Solicitors
333 Bay Street
Suite 3400
Toronto, Ontario
M5H 2S7

Gale Rubenstein\LSUC #17088E
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Lawyers for PricewaterhouseCoopers Inc.,
Liquidator of Northumberland General Insurance
Company
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