

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,
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**

B E T W E E N:

THE ATTORNEY GENERAL OF CANADA

Applicant

- and -

NORTHUMBERLAND GENERAL INSURANCE COMPANY

Respondent

NOTICE OF MOTION
(Post-Liquidation Interest Motion)

PricewaterhouseCoopers Inc. ("PwC Inc."), permanent liquidator (the "Liquidator") of Northumberland General Insurance Company ("Northumberland"), will bring a motion on a date to be established by the Commercial List Office at 10:00 a.m., or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto.

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

THE MOTION IS FOR:

1. The advice and directions of this Court with respect to the payment of post-liquidation interest on claims of Policy Loss Claimants and Unearned Premium Claimants (as those terms are defined in the Report of the Liquidator dated June 10, 2011 (the “Report”)), and in particular for answers to the following questions:

- Question 1: Does Subsection 95(2) of the *Winding-up and Restructuring Act* (the “*WURA*”) apply to the winding-up of Northumberland so that interest on allowed claims is payable pursuant to subsection 95(2) of the *WURA*, on the methodology and basis directed by this Court in its Judgment dated July 14, 2009 in the winding-up of the insurance business in Canada of Reliance Insurance Company?
- Question 2: If the answer to Question 1 is yes, is the surplus payable first on account of payment in full of post-liquidation interest on claims of Policy Loss Claimants, and then, to the extent of any remaining surplus, on account of post-liquidation interest on claims of Unearned Premium Claimants, or is it instead payable *pari passu* to both Policy Loss Claimants and Unearned Premium Claimants? Further, in the case of a policyholder who is both a Policy Loss Claimant and an Unearned Premium Claimant under the same policy, in what priority is post-liquidation interest payable?
- Question 3: If the answer to Question 1 is no, is post-liquidation interest payable in the winding-up of Northumberland on allowed claims on some basis other than subsection 95(2) of the *WURA* and, if so, on what basis?

2. Such further and other relief as this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

1. On July 24, 1985, this Court ordered that Northumberland be wound-up under the *WURA* (being then named the *Winding-up Act*);

2. The Court has authorized dividends over the course of the winding-up that cumulatively total 100 cents on the dollar of the principal amount of the allowed claims of the Policy Loss Claimants and the Unearned Premium Claimants;
3. The Liquidator has concluded that there will be a surplus of assets over liabilities in the winding-up of Northumberland;
4. Section 95 of the *WURA*, which came into force on June 28, 1996, provides:
 - (1) The court shall distribute among the persons entitled thereto any surplus that remains after the satisfaction of the debts and liabilities of the company and the winding-up charges, costs and expenses, and unless otherwise provided by law or by the Act, charter or instrument of incorporation of the company, any property or assets remaining after the satisfaction shall be distributed among the members or shareholders according to their rights and interests in the company.
 - (2) Any surplus referred to in subsection (1) shall first be applied in payment of interest from the commencement of the winding-up at the rate of five per cent per annum on all claims proved in the winding-up and according to their priority.
5. The priority of claims for insurance companies has been specified in Part III of the *WURA* since the commencement of the Northumberland winding-up. However, the priority provision has been amended over the course of the winding-up;
6. At the commencement of the winding-up, the Part III priority provision (the “Original Priority Provision”) provided that claims of Policy Loss Claimants and Unearned Premium Claimants ranked equally. (This Court held that where the holder of a Northumberland policy had claims as both a Policy Loss Claimant and an Unearned Premium Claimant, the policy loss claim ranked in priority);

7. In 1987, a new priority provision (the “1987 Priority Provision”) was enacted in Part III, ranking claims of Policy Loss Claimants in priority to claims of Unearned Premium Claimants;
8. The 1987 Priority Provision was subject to a transition provision that stated that the 1987 Priority Provision “shall apply only in respect of the winding-up of the business of a company that commences on or after the day that [the 1987 Priority Provision] comes into force,” which day was July 3, 1987 (i.e., after the commencement of the Northumberland winding-up). This transition provision was not, however, made a provision of the *WURA* itself;
9. At the same date as subsection 95(2) came into force (July 28, 1996), a substantial amendment to Part III also came into force, including a transition provision providing that applications for winding-up Orders that were made on or before June 28, 1996 “shall be dealt with in accordance with the provisions of this Part as they read immediately before that date.”
10. The Liquidator therefore seeks advice and directions as to whether subsection 95(2) applies to the winding-up of Northumberland and as to the applicable priority for the purposes of subsection 95(2);
11. The Liquidator accordingly respectfully requires and seeks this Court’s advice and directions;
12. Rule 37 of the *Rules of Civil Procedure*;
13. The Orders of this Honourable Court made herein, as referenced in the Report;
14. 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.
2. The Supplementary Report of the Liquidator dated June 23, 2011.
3. Such further and other material as counsel may advise and this Honourable Court permit.

Date: June 23, 2011

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Proceeding commenced at Toronto

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