

Commercial List File No. 85-RE001780-0000

**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.**

BETWEEN:

THE ATTORNEY GENERAL OF CANADA

Applicant

- and -

NORTHUMBERLAND GENERAL INSURANCE COMPANY

Respondent

**REPORT OF PRICEWATERHOUSECOOPERS INC., LIQUIDATOR OF
NORTHUMBERLAND GENERAL INSURANCE COMPANY**

November 17, 2014

PRICEWATERHOUSECOOPERS INC.,
Liquidator of Northumberland General
Insurance Company
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TABLE OF CONTENTS

I.	THE MOTION	1
II.	BACKGROUND	2
A.	The Company	2
B.	Insolvency Proceedings	3
C.	Settlement with Conservator Regarding Regulation 41 Claims	4
III.	ACTIVITIES OF THE LIQUIDATOR AND STATEMENT OF RECEIPTS AND DISBURSEMENTS OVER THE PERIOD	5
A.	Activities	5
B.	Receipts and Disbursements	7
C.	Professional Fees	7
IV.	PASSING OF ACCOUNTS	9
V.	FINANCIAL STATUS OF THE ESTATE	10
A.	Assets	10
B.	Liabilities	11
VI.	DISTRIBUTIONS AND SURPLUS	13
A.	Previous Distributions	13
B.	Proposed Distribution	16
C.	Allocation of Distribution	18
VII.	UNCLAIMED DIVIDENDS	18
VIII.	RECOMMENDATION	19

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November 17, 2014

I. THE MOTION

1. This Report is filed in support of a motion by PricewaterhouseCoopers Inc. (“**PwC Inc.**”), permanent liquidator (the “**Liquidator**”) of Northumberland General Insurance Company (“**Northumberland**”) for an order:

- (a) passing the accounts and approving the activities of the Liquidator for the period October 1, 2011 to September 30, 2014 (the “**Period**”);
- (b) approving the professional fees of the Liquidator and of its counsel for the Period; and
- (c) authorizing the Liquidator to make a distribution of approximately \$10.1 million from the estate of Northumberland, to be distributed to the Policy Loss Claimants and Unearned Premium Claimants in accordance with the Settlement, without regard to the remaining Contingent Claims (all as defined below).

II. BACKGROUND

A. The Company

- 2. Northumberland was a property and casualty insurance company, licensed to do business in Canada under federal legislation. Northumberland was engaged in the underwriting of, among other products, significant liability insurance policies, including many with “long-tail” coverage (where exposures may not be manifest until long after the expiry of the policy term), and complex coverage including asbestos, alcohol, tobacco and environmental exposures.
- 3. In the late 1970’s, Northumberland began selling policies to companies in the United States, on an “excess and surplus” lines basis. This means that, in times of limited insurance capacity in the marketplace, Northumberland could sell insurance to policyholders in the United States that was not being offered by domestic insurers.

Pursuant to Regulation 41 of the *Insurance Law* of the State of New York (the “**New York Insurance Law**”), Northumberland deposited funds in trust for the protection of its U.S. policyholders and beneficiaries resident in the United States (the “**Regulation 41 Trust Funds**”).

4. In January 1983, Northumberland opened a branch for doing business in the State of New York (the “**U.S. Branch**”). Pursuant to the New York Insurance Law, Northumberland’s U.S. Branch deposited further assets for the protection of its policyholders and creditors in the United States (the “**U.S. Branch Deposit**”).

B. Insolvency Proceedings

5. By Orders of this Court made July 24, 1985, Northumberland was ordered wound-up pursuant to what is now the *Winding-up and Restructuring Act* (“**WURA**”), and the Superintendent of Insurance (Canada) was appointed provisional liquidator of Northumberland. Attached as Schedule “A” are copies of these Orders.
6. From July 24, 1985 to May 20, 2010, PwC Inc. acted as agent to the Superintendent of Financial Institutions, in her capacity as provisional liquidator of Northumberland (the “**Superintendent**”). By Order of this Court dated May 20, 2010, a copy of which is attached as Schedule “B”, the Superintendent was discharged effective at midnight on May 20, 2010 and the Liquidator was appointed permanent liquidator of Northumberland in place of the Superintendent.

7. By Order of the Supreme Court of the State of New York (the “**New York Court**”) made on August 2, 1985, the Superintendent of Insurance of the State of New York (the “**New York Superintendent**”) was appointed liquidator of the U.S. Branch, including the U.S. Branch Deposit, and to liquidate its business under Article 74 of the New York Insurance Law.
8. By Order of the New York Court made on February 24, 1988, the Superintendent of Insurance of the State of New York (the “**Conservator**”) was appointed as conservator of, and was directed to take possession of and conserve, the Regulation 41 Trust Funds, and to take such other steps as may be required to protect those policyholders and beneficiaries for whose benefit Northumberland had deposited the Regulation 41 Trust Funds.

C. Settlement with Conservator Regarding Regulation 41 Claims

9. Pursuant to a settlement between the Superintendent and the Conservator in 1989, a process was established delegating responsibilities for evaluating, settling and adjudicating the Regulation 41 claims. Under the settlement, the Superintendent was made responsible for adjudicating claims and was required to deposit the Regulation 41 Trust Funds.
10. In 1994, the Superintendent and the Conservator entered into a separate settlement (the “**1994 Settlement**”) under which the Superintendent was required to:
 - (a) pay \$5.35 million, plus interest to the Conservator; and

- (b) hold \$5.35 million, plus interest in the joint names of the Superintendent and the Conservator (the “**Joint Fund**”), pending a determination as to the entitlement of Regulation 41 claimants to these funds, and as security for the obligation of the Superintendent to make payment therefrom to the Conservator.

- 11. Any surplus held in the Joint Fund is required by the 1994 Settlement to be paid over to the Superintendent, now the Liquidator. The 1994 Settlement was approved by this Court by Order dated September 9, 1994.

III. ACTIVITIES OF THE LIQUIDATOR AND STATEMENT OF RECEIPTS AND DISBURSEMENTS OVER THE PERIOD

A. Activities

- 12. The Liquidator has engaged in the following activities in connection with the winding-up of Northumberland during the Period:
 - (a) Continued to deal with claims, including negotiations and settlement of claims and instructing counsel with respect to claims;
 - (b) Prepared financial analyses and projections for discussions with counsel and representative counsel with respect to post-liquidation interest (“**PLI**”), culminating in the Settlement (defined below);
 - (c) Prepared for the motion returnable November 30, 2011, with respect to the settlement of claims for PLI, passing of accounts and seventh interim distribution, including preparation of its report dated November 17, 2011;

- (d) Issued 22,421 dividend cheques in respect of the seventh interim distribution from the Northumberland estate in accordance with the Order dated November 30, 2011;
- (e) Dealt with enquiries received via telephone, email and regular mail from over 2,800 recipients of dividend cheques, and dealt with returned mail and stale-dated cheques. In total 9,928 cheques totalling \$1.1 million were either returned undelivered or became stale-dated;
- (f) Carried out internet searches in an attempt to locate all corporate claimants with outstanding dividends totalling in excess of \$1,000 from all distributions, corresponded with those identified, reviewed evidence to support name changes and reissued dividend cheques where appropriate. As a result of these efforts 724 replacement cheques totalling \$5.0 million were issued;
- (g) Reviewed and analyzed contingent claims filed against the estate and corresponded with these remaining contingent claimants and their counsel. Following discussions with the court-appointed Monitor of one contingent claimant having contingent claims totalling \$2.5 million, the Liquidator issued a notice of disallowance which was not contested.
- (h) Prepared and filed corporate income tax returns and other tax filings, in a timely fashion; corresponded with Canada Revenue Agency (“CRA”) with regards to the Liquidator’s request for a tax clearance certificate; prepared information and schedules for CRA auditor; corresponded further with CRA. The Liquidator has

now received a tax clearance certificate for all taxation years up to December 31, 2011.

- (i) Continued claims administration and reporting of the Regulation 41 claims as agent for the New York Superintendent. The Regulation 41 administration is nearing completion (there is only one unsettled claim);
- (j) Continued monitoring the investment of estate funds in accordance with the established investment policy; and
- (k) Attended to all bookkeeping and accounting matters, including preparation of quarterly financial statements and reinsurance statements.

B. Receipts and Disbursements

13. Attached as Schedule "C" hereto is a statement of receipts and disbursements for the estate over the Period. The Liquidator is of the view that the receipts and disbursements are proper and reasonable.

C. Professional Fees

(i) Goodmans

14. The Liquidator retained Goodmans LLP ("**Goodmans**") as counsel at the commencement of the liquidation to assist and advise in the administration of the liquidation, including with respect to resolution of certain claim litigation matters.

15. Goodmans continued to act as counsel to the Liquidator during the Period and acted or advised on most of the matters described in this Report. The Liquidator is familiar with Goodmans' services. Detailed invoices were received on a timely basis and carefully reviewed by senior members of the Liquidator's staff. The invoices were reviewed for accuracy, adequate detailed information about the work performed and by whom, the time spent and when it was spent, the rate and the amount billed, possible duplicative charges, reasonableness and overall compliance with the terms of retention. Clarifications and adjustments of items included in Goodmans' invoices were requested where it appeared appropriate.
16. A summary of the invoices for Goodmans is attached as Schedule "D" hereto. A summary of the hours and average hourly rates of Goodmans' personnel is attached as Schedule "E" hereto.
17. The hourly billing rates charged by Goodmans had not been increased since the commencement of the liquidation and reflected a very significant discount from regular rates. Effective May 21, 2010, hourly rates were increased to 90% of Goodmans' standard rates, as they are set from time to time.
18. The Liquidator is satisfied that Goodmans' fees are proper, fair and reasonable, that time was appropriately spent, and the Goodmans' fees were incurred in furtherance of the interest of the estate.

(ii) PwC Inc.

19. The Liquidator applied the same standard of review to its own accounts as to the accounts of counsel described above. A summary of the invoices for the Liquidator is attached as Schedule "F" hereto. A summary of the hours and average hourly rates of the Liquidator's personnel is attached as Schedule "G" hereto.
20. The hourly billing rates charged by the Liquidator had not been increased since the commencement of the liquidation, with the exception of a cumulative annual increase equal to the annual increase in the Consumer Price Index for the immediately preceding year, and reflected a very significant discount from regular rates over the course of the liquidation. Effective May 21, 2010, the hourly rates of the Liquidator were increased to an average rate of approximately 75% of the Liquidator's standard rates at that date. These rates remained virtually unchanged during the Period.
21. The Liquidator is satisfied that its fees are proper, fair and reasonable, that time was appropriately spent, and that its fees were incurred in furtherance of the interest of the estate.

IV. PASSING OF ACCOUNTS

22. Pursuant to the May 20, 2010 Order, this Honourable Court dispensed with a requirement that the Superintendent pass further accounts, and confirmed that the Liquidator shall be responsible for the passing and approving of the accounts, and the fees and disbursements of the professional advisors, effective with the period commencing February 1, 2010.

The Liquidator passed its accounts for period February 1, 2010 to September 30, 2011, which were approved by Order of this Court dated November 30, 2011.

23. Professional fees and expenses of the Liquidator and Goodmans for work performed on Regulation 41 matters is charged to, and recovered from, the U.S. Conservator. However, these amounts are included in the accounts for which the Liquidator seeks approval herein.
24. For the Period, the Liquidator's fees and expenses in respect of Regulation 41 matters totalled \$127,481, and Goodmans fees and expenses in respect of Regulation 41 matters totalled \$18,535.

V. FINANCIAL STATUS OF THE ESTATE

25. Attached as Schedule "H" hereto is a calculation of the funds currently available for distribution.

A. Assets

26. The assets of the Canadian Estate as at September 30, 2014 consist of cash or near cash in the amount of \$33.7 million. The majority of reinsurance has now been collected, including through commutation of reinsurance treaties. The Canadian Estate maintains a contingent interest in any surplus in the Joint Fund in the conservation proceedings of the Regulation 41 Claims. The current balance of the Joint Fund is approximately USD\$11.1 million. However, as a conservative measure the Liquidator is not, at this time, ascribing a value to this contingent interest.

27. The Liquidator has commenced discussions with the New York Liquidation Bureau in an effort to resolve outstanding matters regarding the Regulation 41 Claims, including resolution of late-filed claims and entitlement to post-filing interest, and the Joint Fund.

B. Liabilities

28. At the commencement of this liquidation, the books and records of Northumberland reflected claims known to Northumberland with a claim value in excess of \$100 million.
29. In addition to the known claims reflected in the books and records of Northumberland, 190 policyholders filed 403 contingent claims, having an aggregate claimed value of approximately \$9 billion. These contingent claims related to potential occurrences during the respective policy periods for which claims had not yet been reported.
30. Over the course of the liquidation, all but 11 of the filed contingent claims were withdrawn or settled, with these 11 claims having a total claimed value of \$11.0 million (the “**Contingent Claims**”), filed on behalf of two policyholders (the “**Contingent Claimants**”).
31. To permit distributions on settled claims while still maintaining appropriate reserves for the remaining unsettled claims and the filed contingent claims, the Liquidator retained the services of a firm of consulting actuaries - Tillinghast, now known as Towers Watson (“**Towers Watson**”) - to perform actuarial projections of the policy liabilities. Towers Watson has performed reviews at least as frequently as annually since 1989. The

Liquidator has made all distributions relying both on the opinion of Towers Watson and the Liquidator's own internal reviews.

32. The outstanding policy claims as at September 30, 2014 are comprised of:
- (a) unclaimed dividends of \$8.7 million for policyholders who cannot be located; and
 - (b) reserves of \$5.6 million for:
 - (i) known unsettled claims of \$5.2 million for policyholders, comprised of corporations and insurers that Northumberland reinsured. The Liquidator has retained an experienced claims consultant in establishing these reserves, which include a factor for related adjusting and defence costs; and
 - (ii) a provision of \$0.4 million for incurred but not reported claims and adverse loss development ("IBNR"), as calculated by Towers Watson as of December 31, 2013.
33. In addition, the Liquidator has considered it prudent to maintain a general contingency reserve of \$7.0 million to cover future administration costs, potential tax reassessments, extraordinary adverse loss development, and other matters (the "**General Reserve**," and together with the reserves referred to in paragraph 32(b)(ii) above, the "**Reserves**").
34. After deducting the above amounts, there is a surplus currently available for distribution of approximately \$12.4 million. For the reasons set out below at paragraph 42, the

Liquidator is proposing not to maintain a separate reserve for the Contingent Claims and to make the proposed distribution without regard to the Contingent Claims.

VI. DISTRIBUTIONS AND SURPLUS

A. Previous Distributions

(i) Distributions Before 2011

35. This Court authorized 6 interim distributions before 2011 in the total amount of approximately \$ 190.8 million, representing payment in full of:

- (a) 3,845 Policy Loss Claims, with a total value of \$88.9 million;
- (b) 48,183 Unearned Premium Claims, with a total value of \$18.2 million;
- (c) 181 ordinary claims, with a total value of \$5.0 million;
- (d) \$42.9 million to Her Majesty in respect of industry-funded liquidation expenses, plus interest thereon of \$30.2 million;
- (e) An initial 5% “flat” payment of PLI on the claims described in (a), (b) and (c) above, totalling \$5.4 million; and
- (f) \$0.2 million to the Office of the Superintendent of Financial Institutions.

(ii) PLI Settlement and December 2011 Distribution

36. On June 21, 2011, the Liquidator applied to the Court for advice and directions with respect to the payment from surplus assets of PLI on allowed claims in the estate of Northumberland. This Court appointed as representative counsel (collectively, the **“Representative Counsel”**):
- (a) Edmond Lamek, for holders of claims (the **“Policy Loss Claimants”**) for indemnity or liability losses covered by policies on account of PLI; and
 - (b) James H. Grout, for holders of claims for refund of unearned premiums¹ (the **“Unearned Premium Claimants”**).
37. Following numerous discussions between the Liquidator, its counsel and the Representative Counsel, a settlement was reached with respect to the payment of PLI (the **“Settlement”**). This Settlement was approved by this Court by Order dated November 30, 2011, a copy of which is attached a Schedule “I”.
38. In summary, the Settlement provided that:
- (a) the Liquidator was to distribute approximately \$27.0 million from the surplus monies in the estate as at September 30, 2011, as follows:

¹ While Mr. Grout’s court-appointment of June 2011 is as representative of Unearned Premium Claimants regarding their entitlement to PLI, Mr. Grout continues to be court-appointed representative counsel for ordinary creditors.

- (i) Policy Loss Claimants and Unearned Premium Claimants with PLI claims under \$100 were to be paid 100 cents on the dollar on account of their PLI claims to September 30, 2011;
 - (ii) Remaining Policy Loss Claimants were to be paid 78 cents on the dollar on a *pro rata, pari passu* basis on account of their PLI claims to September 30, 2011; and
 - (iii) Remaining Unearned Premium Claimants were to be paid 50 cents on the dollar on a *pro rata, pari passu* basis on account of their PLI claims to September 30, 2011;
- (b) Any future surplus in the estate is to be distributed as follows:
- (i) first to Policy Loss Claimants to 100% of their remaining PLI claims;
 - (ii) thereafter to Unearned Premium Claimants to 100% of their remaining PLI claims; and
 - (iii) thereafter to ordinary creditors on account of their PLI claims;
- (c) policyholders with a Policy Loss Claim and an Unearned Premium Claim under the same policy are entitled to claim on a *pro rata, pari passu* basis on account of their PLI on each claim; and

(d) PLI is to be calculated on the methodology and basis directed by this Court in its decision dated July 14, 2009, in the winding up of Reliance Insurance Company (the “**Reliance Decision**”).

39. Distribution of the amounts referred to in paragraph 38(a) above was made by the Liquidator in December, 2011 (the “**December 2011 Distribution**”).

B. Proposed Distribution

40. As noted above, at September 30, 2014, after deducting the Reserves but without reserving for the Contingent Claims, there is a surplus of approximately \$12.4 million available for distribution. The Liquidator is proposing to make a further PLI distribution of: (a) 100 cents on the dollar to the Policy Loss Claimants on the balance of their PLI claims as at November 30, 2014, and (b) 50 cents on the dollar to the Unearned Premium Claimants on the balance of their PLI claims as at November 30, 2014. Following such distribution and after taking into account the December 2011 Distribution, the Policy Loss Claimants will have received 100% of their PLI claims and the Unearned Premium Claimants will have received 75% of their PLI claims.

41. PLI will be calculated using the methodology and basis in the Reliance Decision based on the outstanding PLI balances at September 30, 2011.

42. The Liquidator is of the view that a distribution of approximately \$10.1 million is appropriate in the circumstances and will not result in prejudice to any parties.

Particularly, the Liquidator is recommending that no reserve be maintained for Contingent Claims given:

- (a) the policies pursuant to which the Contingent Claims were filed, were occurrence-based policies, each of which expired or were terminated at least 29 years ago;
- (b) there have been no claims reported and admitted for dividend in respect of the policies under which the Contingent Claims are advanced since 1986;
- (c) the Liquidator disallowed the Contingent Claims and has attempted on numerous occasions to resolve the Contingent Claims;
- (d) the Liquidator wrote to the Contingent Claimants in May 2014 advising of its intention to bring this motion, and has not received a response;
- (e) the Liquidator is serving notice of this motion on the Contingent Claimants; and
- (f) if the Contingent Claimants file a valid claim in the future, they will be treated as late claimants and will rank with other claims of creditors in any future distribution of assets of Northumberland, as provided for under ss. 74-77 of WURA.

43. Pursuant to the Settlement, any future surplus in the estate is to be distributed as follows:

- (a) first, to the Unearned Premium Claimants to 100% of their remaining PLI claims;
- and

- (b) thereafter, to ordinary creditors on account of their PLI claims.

C. Allocation of Distribution

44. If this Court approves the proposed distribution, the Liquidator will be distributing an aggregate of:

- (a) approximately \$6.5 million to the remaining Policy Loss Claimants on a *pro rata*, *pari passu* basis, based on their allowed PLI claims; and
- (b) approximately \$3.6 million to the remaining Unearned Premium Claimants on a *pro rata*, *pari passu* basis, based on their allowed PLI claims.

VII. UNCLAIMED DIVIDENDS

- 45. There are 2,040 corporate claimants with unclaimed dividends totalling approximately \$3.4 million (\$1,700 per claimant). The Liquidator continues to follow up with the parties identified in its internet searches, as discussed in paragraph 12(f) above.
- 46. There are 32,862 personal claimants with unclaimed dividends totalling approximately \$5.3 million (\$160 per claimant). Over 75% reside or used to reside in the Province of Quebec. Should this distribution be approved, the Liquidator intends to advertise the upcoming distribution in selected regional and local Quebec newspapers and other media in the hope that former policyholders or their heirs will come forward and identify themselves.

VIII. RECOMMENDATION

47. The Liquidator therefore recommends that an Order be granted for the relief requested in the within motion.

ALL OF WHICH IS RESPECTFULLY SUBMITTED,

Date: November 17, 2014

PRICEWATERHOUSECOOPERS INC.,
Liquidator of NORTHUMBERLAND GENERAL
INSURANCE COMPANY and not in its personal
or corporate capacity

Per:



Robert T. Chapman
Senior Vice-President