

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

THE HONOURABLE  
JUSTICE HAINEY

) THURSDAY , THE 6TH DAY  
) OF DECEMBER, 2018



**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

**APPROVAL AND DISCHARGE ORDER**

**THIS MOTION**, made by KPMG Inc., in its capacity as liquidator (the "**Liquidator**") of the insurance business in Canada of Reliance Insurance Company ("**Reliance Canada**"), was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Report of the Liquidator dated November 27, 2018 (the “**Report**”), the Affidavit of Graham Smith sworn November 27, 2018 and the Affidavit of Nicholas Brearton sworn November 27, 2018, filed, and on hearing submissions of counsel for the Liquidator, the U.S. Liquidator (as defined below) and Westport Canada (as defined below), no other party appearing, although properly served as appears from the proof of service, filed:

**SERVICE/TERMS USED**

1. **THIS COURT ORDERS AND DECLARES** that the service of the notice of motion and supporting materials herein is good and sufficient service of this motion, that this 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 AND DECLARES** that capitalized terms used but not defined herein shall have the meaning ascribed in the Assumption Reinsurance Agreement (defined below).

**APPROVAL OF ACTIVITIES AND FEES AND PASSING OF ACCOUNTS**

3. **THIS COURT ORDERS** that the activities and accounts of the Liquidator for the period January 1, 2016 to October 31, 2018, as reflected in the Report and in the financial statements of Reliance Canada filed, are approved.
4. **THIS COURT ORDERS** that the fees and disbursements of the Liquidator and of its counsel, Goodmans LLP, for the period January 1, 2016 to October 31, 2018 are hereby approved as submitted.

**ASSUMPTION REINSURANCE**

5. **THIS COURT ORDERS** that the Assumption Reinsurance Agreement a copy of which is at Schedule “H” to the Report (“**Assumption Reinsurance Agreement**”), made November 8, 2018 between Westport Insurance Corporation Canada Branch (“**Westport Canada**”) and KPMG Inc. in its capacity as Liquidator and not in its personal capacity, in its unredacted form and including the schedules thereto, is authorized and approved.
  
6. **THIS COURT ORDERS** that the Liquidator is authorized and empowered to proceed with and carry out the transactions and steps contained in and contemplated by the Assumption Reinsurance Agreement, to perform the Liquidator’s obligations thereunder, and to execute and deliver such documentation and take such steps and acts, execute such additional documents and do such things as may be necessary in connection therewith, and to agree to such modifications, amendments or changes to the Assumption Reinsurance Agreement (including without limitation with respect to the Assumption Consideration (as defined below) pursuant to section 6.3 of the Assumption Reinsurance Agreement or otherwise) as may be in the Liquidator’s opinion necessary or desirable, without the need to seek or obtain any further authority or approval from the Court.
  
7. **THIS COURT ORDERS** that upon Closing the Liquidator shall forthwith deliver to Westport Canada and file with this Court a certificate, substantially in the form at Schedule “A” hereto (“**Closing Certificate**”), confirming the occurrence of Closing. In the event Closing does not occur and the Assumption Reinsurance Agreement is terminated, the Assumption Reinsurance Agreement shall be at an end on the terms provided therein.

8. **THIS COURT ORDERS AND DECLARES** that upon the delivery of the Closing Certificate to Westport Canada, all of Reliance Canada's and the Liquidator's:

- (a) right, title and interest in and to the consideration payable under Section 2.3 of the Assumption Reinsurance Agreement (the "**Assumption Consideration**"), the Remaining Policies (as may be adjusted by the parties in accordance with the Assumption Reinsurance Agreement) and the Records; and
- (b) rights, benefits and entitlements under the Remaining Policies (as may be adjusted between the parties in accordance with the Assumption Reinsurance Agreement) and the Reinsurance Contracts (to the extent (if any) that they may be assignable and transferable, and subject to and in accordance with the Assumption Reinsurance Agreement, Transfer and Assumption Agreement and the Reinsurance Novation Agreements (defined below))

(collectively, the "**Transferred Property and Interests**") shall vest in Westport Canada.

9. **THIS COURT ORDERS** that, except in respect of the Remaining Policies (as may be adjusted between the parties in accordance with the Assumption Reinsurance Agreement) and the corresponding Remaining Policy Liabilities, and subject to and as provided for in the Assumption Reinsurance Agreement, the Transfer and Assumption Agreement and the Reinsurance Novation Agreements, and for greater certainty without limiting the effect of paragraphs 10 and 11 of this Approval and Discharge Order: (a) Westport Canada shall have no responsibility, obligation or liability whatsoever for any

responsibilities, obligations or liabilities of Reliance Canada or the Liquidator, including under any policies of insurance or reinsurance contracts, creditor claims, or claims of any taxation authority or of the U.S. Liquidator, and (b) no party to whom such responsibilities, obligations or liabilities are owed shall have any claim against the Transferred Property and Interests.

10. **THIS COURT ORDER AND DECLARES** that from and after Closing the Liquidator and Reliance Canada shall have no liability whatsoever in respect of the Remaining Policies (as may be adjusted between the parties thereto in accordance with the Assumption Reinsurance Agreement), or in respect of the corresponding Remaining Policy Liabilities, and Westport Canada shall assume, discharge, perform and fulfill all of such Remaining Policies and Remaining Policy Liabilities, as more particularly set out in Section 2.1 and elsewhere in the Assumption Reinsurance Agreement, and as if such Remaining Policies were originally issued by Westport Canada and as if such Remaining Policy Liabilities were originally incurred by Westport Canada.

11. **THIS COURT ORDERS AND DECLARES** that from and after Closing all claims against and all debts and liabilities of Reliance Canada, including without limitation pursuant to, under, in respect of, arising out of or in any way connected with the Remaining Policies (as may be adjusted between the parties in accordance with the Assumption Reinsurance Agreement), the corresponding Remaining Policy Liabilities or any other policies issued by or on behalf of Reliance Canada, and whether by policyholders or otherwise, and all winding-up charges, costs and expenses, have been satisfied and paid by the Liquidator, including for the purposes of subsections 95(1) and 161(10) of the *Winding-up and Restructuring Act*, and the Liquidator and Reliance

Canada shall have no liability in respect thereof; for greater certainty, nothing in this paragraph affects or diminishes the assumption of liabilities and obligations by Westport Canada pursuant to the Assumption Reinsurance Agreement and this Approval and Discharge Order.

**PAYMENTS UPON CLOSING, ESCROW ARRANGEMENTS AND REINSURANCE TRANSFER**

12. **THIS COURT ORDERS** that upon Closing the fees and disbursements of KPMG Inc., including those of its counsel, from November 1, 2018 onward to complete the further tasks of or related to the liquidation, including without limitation with respect to the Assumption Reinsurance Agreement, the escrow arrangements referred to hereinafter, the release of funds to Reliance Insurance Company or its legal representative provided for hereinafter, and the storage and ultimate destruction of the Books and Records (as defined below), are fixed at \$1,250,000.00 inclusive of HST and shall be paid by Reliance Canada.
13. **THIS COURT ORDERS** that upon Closing the Liquidator is authorized to deposit in a bank any amounts payable by way of previous distributions authorized by this Court but that are unclaimed, to be held on account of the distributions on such claims for a period of three years following the discharge of the Liquidator, to be dealt with by the bank in accordance with Section 138 of the *Winding-up and Restructuring Act* and with any costs associated with such account or payment therefrom to be paid from such account.
14. **THIS COURT ORDERS** that upon Closing the Escrow Agreement (“**Escrow Agreement**”) between the Liquidator, KPMG Inc. and the Insurance Commissioner of

Pennsylvania in her capacity as Statutory Liquidator of Reliance Insurance Company (the “**U.S. Liquidator**”), substantially in the form at Schedule “**P**” to the Report, is authorized, approved and effective, the arrangements contemplated therein are authorized and approved, and the Liquidator is authorized and empowered to proceed with and carry out the transactions and steps contained in and contemplated by the Escrow Agreement, perform the Liquidator’s obligations thereunder, execute and deliver such documentation and take such steps and acts, execute such additional documents and do such things as may be necessary in connection therewith and to agree to such modifications or changes to the Escrow Agreement as may be in the Liquidator’s opinion necessary or desirable, without the need to seek or obtain any further authority or approval from the Court. For greater certainty, this Court approves and directs the transfer to KPMG Inc., as escrow agent, of the funds remaining in the estate of Reliance Canada after the payments contemplated in this Approval and Discharge Order are made (“**Remaining Funds**”), to be dealt with in accordance with the provisions of the Escrow Agreement.

15. **THIS COURT ORDERS** that upon Closing the Reinsurance Novation Agreements then entered into among certain reinsurers of Reliance Canada, Westport Canada the Liquidator, substantially in the form at Schedule “**I**” to the Report (“**Reinsurance Novation Agreements**”), and the arrangements contemplated therein, are authorized, approved and effective, that the Liquidator is authorized and empowered to proceed with and carry out the transactions and steps contained in and contemplated by the Reinsurance Novation Agreements, to perform the Liquidator’s obligations thereunder, and to execute and deliver such documentation and take such steps and acts, execute such additional documents and do such things as may be necessary in connection therewith,

and to agree to such modifications or changes to the Reinsurance Novation Agreements as may be in the Liquidator's opinion necessary or desirable, without the need to seek or obtain any further authority or approval from the Court.

**DISCHARGE, RELEASE OF SURPLUS AND ANCILLARY MATTERS**

16. **THIS COURT ORDERS AND DECLARES** that, effective immediately upon Closing and the transfer of the Remaining Funds into escrow pursuant to the aforesaid escrow arrangements, the Liquidator is discharged from its appointment as Liquidator of Reliance Canada and the appointment of the Inspectors is terminated; provided however that the Liquidator, and KPMG Inc. in its capacity as Escrow Agent or in carrying out the completion of the administration of the estate of Reliance Canada, shall have and continue to have the benefit of the provisions of all Orders made in these proceedings, including all approvals, protections and stays of proceedings in favour of KPMG Inc. in its capacity as Liquidator.
17. **THIS COURT ORDERS AND DECLARES** that, conditional upon Closing and the payment of all amounts contemplated in this Approval and Discharge Order, and pursuant to and subject to the terms and conditions of the Escrow Agreement and the completion of all other payments thereunder, the release to Reliance Insurance Company or its legal representative of any remaining funds in the escrow account is authorized and approved pursuant to, and shall constitute the release contemplated by, subsection 161(10) of the *Winding-up and Restructuring Act*.
18. **THIS COURT ORDERS** that, from and after the discharge of the Liquidator pursuant to paragraph 16 hereof, KPMG Inc. is authorized to carry out such further steps and execute



such further documents as in its discretion are appropriate or necessary subsequent to the discharge of the Liquidator to complete the administration of the estate of Reliance Canada, without personal liability, including if required in the name of the Liquidator, and including:

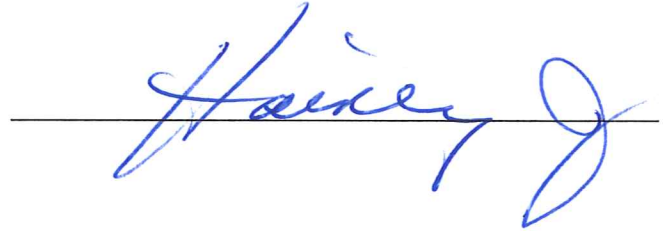
- (a) executing such documents and perform such acts relating to Reliance Canada as it in its sole discretion shall deem appropriate;
- (b) taking any necessary steps to collect on reinsurance receivables existing as of Closing;
- (c) carrying out the Escrow Agreement, escrow arrangements and Reinsurance Novation Agreements;
- (d) making such tax filings and responding to taxing authorities and taking all steps it considers appropriate in the event an assessment for taxes is made; and
- (e) arranging: (i) the final storage of Reliance Canada's books and records in its possession and the Liquidator's books and record in respect of the administration of the liquidation, including in electronic or any other format (collectively, the "**Books and Records**"), and (ii) the destruction of the Books and Records once seven years have passed following the discharge of the Liquidator.

19. **THIS COURT ORDERS** that the fact that this Approval and Discharge Order does not describe or include any particular provision of any agreement approved herein shall not

diminish or impair the effectiveness of such provision, it being the intent that such agreements be approved in their entirety.

20. **THIS COURT ORDERS** that: (i) the Assumption Consideration, section 7.1(d) of the Assumption Reinsurance Agreement and Schedules “A” and “B” thereto (collectively, “**Confidential Portions**”) shall be treated as confidential; (ii) the Confidential Portions may be redacted from the materials filed in the public Court file and the materials served in support of the Approval and Discharge Motion; (iii) the full unredacted Assumption Reinsurance Agreement may be filed on a sealed basis for the use of the Judge presiding over these proceedings, not to be opened except by Order of this Court sought on at least seven days’ notice to the Liquidator and Westport Canada; and (iv) a version of the Assumption Reinsurance Agreement with only Section 7.1(d) and Schedules “A” and “B” redacted therefrom may be filed on a sealed basis, to be opened upon the filing of the Closing Certificate.
  
21. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or elsewhere to give effect to this Approval and Discharge Order and to assist the Liquidator, KPMG Inc. and their agents in carrying out the terms of this Approval and Discharge Order. All courts, tribunals, regulatory or administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Liquidator and KPMG Inc. as may be necessary or desirable to give effect to this Approval and Discharge Order, to grant representative status to them in any foreign proceeding, or to assist them in carrying out the terms of this Approval and Discharge Order.

22. **THIS COURT ORDERS** that the Liquidator be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Approval and Discharge Order and for assistance in carrying out the terms thereof.



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ON / BOOK NO:  
LE / DANS LE REGISTRE NO:

DEC 06 2018

PER / PAR:



**SCHEDULE "A"**

Court File No: 01-CL-4313

**IN THE MATTER OF  
RELIANCE INSURANCE COMPANY**

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B E T W E E N:

**THE ATTORNEY GENERAL OF CANADA**

Applicant

- and -

**RELIANCE INSURANCE COMPANY**

Respondent

**CLOSING CERTIFICATE OF THE LIQUIDATOR**

**THIS CLOSING CERTIFICATE** is delivered to Westport Canada and filed with this Court pursuant to paragraph 7 of the Approval and Discharge Order of this Court made December 6, 2018. The capitalized terms used in this Closing Certificate shall bear the same meaning as in the Approval and Discharge Order. The Liquidator hereby certifies that the Closing occurred on December ●, 2018 at [**time of Closing**].

Dated: \_\_\_\_\_

**Reliance Canada in liquidation, by its  
liquidator, KPMG Inc.**

Per: \_\_\_\_\_

THE ATTORNEY GENERAL OF CANADA  
Applicant

RELIANCE INSURANCE COMPANY  
Respondent

Court File No: 01-CL-4313

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

Proceeding commenced at Toronto

**APPROVAL AND DISCHARGE ORDER**

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

**Gale Rubenstein (LSO #17088E)**  
grubenstein@goodmans.ca

**Graham D. Smith (LSO #26377D)**  
gsmith@goodmans.ca

Tel: 416-979-2211

Fax: 416-979-1234

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