

## **WHAT BROKERS NEED TO KNOW WHEN AN INSURANCE COMPANY FAILS**

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This information has been prepared by PACICC in partnership and with the approval of the Insurance Brokers Association of Canada (IBAC).

### ***It has just been announced one of the insurance companies we write business for has been ordered wound up. What has happened?***

When the governing regulator, OSFI or the provincial superintendent, believes that an insurance company must be closed, the superintendent will apply to the Court for a winding up order under the Winding Up and Restructuring Act (WURA). When the Court grants the order, the wind up is announced.

### ***What is the Winding Up and Restructuring Act?***

The WURA is the legislative framework that governs the affairs of insurance companies in liquidation for all Provinces and Territories. It outlines the rules of liquidation for P&C insurers, life and health insurers, banks as well as certain other financial institutions. The WURA provides for the orderly gathering and realization of the assets and distribution of those assets among priority creditors, including policyholders, under court supervision. It basically sets out the rules to be followed in the liquidation.

### ***Where and how quickly can I get information on the insolvency so I can help my customers?***

The Insurance Brokers Association of Canada (IBAC) has partnered with PACICC to ensure timely and accurate information will be available to IBAC member brokers. The information will be made available as soon as possible after the Court Order has been issued and it will also be posted on the PACICC and IBAC web sites. Information will also be posted on the web site of the appointed liquidator.

***What sort of information will this be?***

This will be information from the Wind Up Order such as the effective date of the liquidation, how long policies will remain in force, who the liquidator will be and contact information for the convenience of policyholders and brokers.

***What is PACICC and what is its role?***

The Property and Casualty Insurance Compensation Corporation (PACICC) is a not-for-profit company that is funded by the property and casualty insurers of Canada to respond to the claims of policyholders and claimants in the event of the failure of a member property and casualty insurer. Membership in PACICC is mandated by legislation or regulation for property and casualty insurers who write business in the lines of insurance covered by PACICC. The program is approved by Government regulators and is extended automatically to automobile, property, liability and most other insurance policies.

While PACICC provides voluntary funding to support the liquidation of an insolvent insurer member insurer, all claims are handled and approved by the Court appointed liquidator. PACICC audits claims paid by the liquidator to ensure compliance with the coverage.

PACICC has been in operation since 1989 and it provides protection for the following types of insurance policies:

- Automobile
- Property policies (commercial and personal)
- Liability (with some exclusions for professional liability, etc)
- Boiler and Machinery
- Credit protection
- Legal expense
- Accident and Sickness.

***What should I tell my customers about coverage under their insurance policies when they call me?***

Although the insurer is no longer in business the Court Order will stipulate, among other things, how long the existing policies are to remain in force. Typically, the period is 45 days from the date of the wind up order, but this will be up to the Court.

This means that policyholders are still covered (for example, they can still drive) until the date that coverage expires. By that time, policyholders of the insolvent insurer will need to obtain replacement insurance coverage. Additional information will be made available to brokers through IBAC and PACICC as soon as a wind-up order is issued.

***What should brokers focus on accomplishing shortly after the liquidation?***

- Policies with the insolvent insurer will be cancelled and should be replaced as soon as possible – and no later than the time period granted by the Court Order.
- Credits for the return premium must be processed by the broker immediately.
- All unearned commissions on the now cancelled policies must be returned directly to the liquidator.
- Unearned premium refunds will be sent to clients directly by the liquidator.
- Claims, both pre-existing and new losses, will now be handled by the liquidator.

***What will happen in situations where the insured has arranged for premium financing through a third party?***

It is advisable to let the liquidator know as soon as possible of any third party contractual arrangements involving premium financing. The liquidator will then be in a position to explain to the policyholder how the return premium is to be handled in such situations.

***Will policyholder coverage limits remain the same?***

While the coverage remains in force, the limits will remain the same. However, policyholders must understand that as the insurer is now in liquidation, full recovery up to policy limits may not be possible in all cases. It is important to remember that while the coverage remains in force, PACICC will provide protection up to the maximum of \$300,000 for personal lines property claims, or \$250,000 for other losses. It is therefore very important to arrange for replacement coverage as soon as possible after the wind-up order to ensure that policyholders have access to full policy limits in the event of any future claims.

***Will an insured be able to collect their claim in full?***

If an insured chooses to be compensated by PACICC, they must assign the claim to PACICC. Protection provided by PACICC is to a maximum of \$250,000 per policy, per occurrence. The coverage limit is \$300,000 for personal property insurance policies.

If the claim exceeds PACICC's limits of \$300,000 for personal lines property claims and \$250,000 for all other covered claims, the insured may eventually be reimbursed for all or part of the shortfall from funds released by the liquidator by way of dividend.

***What about my customers who have outstanding claims and are expecting settlement cheques?***

Outstanding claims will be approved by the liquidator with the co-operation of PACICC. All approved claims will be paid in full by PACICC to a maximum of \$300,000 for personal lines property claims, and \$250,000 for all other covered claims. The majority of claims fall within PACICC's limits. While there might be some delay in the resumption of claim payments, the liquidator and PACICC attempt to keep delays to a minimum.

***Where do new claims get reported to?***

All new claims and enquiries on outstanding claims are directed to the liquidator. Contact information for the liquidator, to answer questions on claims or other inquiries, will be available through IBAC, provincial and regional broker associations, or PACICC.

***What happens to the unearned premium in my broker trust accounts?***

Under the WURA, unearned premiums become the property of the estate. Brokers should treat all unearned premium as trust funds and segregate these from their own funds. The liquidator will then issue unearned premium refunds to policyholders in co-operation with the broker.

***How long will it take the liquidator to issue refunds for unearned premiums?***

PACICC strives to ensure that cheques for unearned premium refunds are issued by the liquidator within 2 to 4 weeks of the wind-up order. However, much will depend upon the accessibility and

condition of the insolvent insurer's data and records. The liquidator will treat unearned premium refunds as a priority and with the co-operation of PACICC and member associations, refund cheques will be issued as quickly as possible. With most recent failures, unearned premiums were paid out within 30 to 60 days of the wind-up order.

***Does PACICC provide any coverage for unearned premiums?***

Unearned premium claims approved by the liquidator are repaid by PACICC to a maximum of 70% or \$700 per policy.

***Where can I get more information on the insolvency process and the role of PACICC?***

PACICC's website provides more in-depth information. See, for example, the *Memorandum of Operation* and the *Guide to Compensation Plan for P&C insurers*. PACICC has also published a series of research studies entitled "Why Insurers Fail." These publications are free and copies can be downloaded from PACICC's website at [www.pacicc.ca](http://www.pacicc.ca) (See the "Publications" section)