

## **PACICC HARDSHIP CLAIM POLICY**

### **Purpose**

PACICC undertook a comprehensive review of its coverage and benefits as its Priority Issue for 2019, to ensure that the levels were appropriate and provided continuing protection to policyholders. The last such review had occurred in 2006. In PACICC's Memorandum of Operation, provisions were made to authorize the Board to make payments in cases where parties appealed for compensation above the established limits, due to economic hardship. And, over the years, such additional payments have from time to time and in a very limited number of cases indeed been made. In the increasingly likely scenario that an insolvency is triggered by a major natural catastrophe event, it is possible that PACICC's Board would see multiple appeals from a large number of policyholders with total loss claims well in excess of our current coverage limits.

This document sets out the process and factors/criteria that will be used by PACICC's Board of Directors to adjudicate hardship claim requests made by policyholders for amounts exceeding PACICC's coverage and benefit limits.

### **Background**

Section II of PACICC's Memorandum of Operation establishes guidelines and procedures whereby the Corporation can make voluntary payments in respect of covered claims and unearned premiums, in order to provide a reasonable level of compensation to eligible claimants who have suffered losses in circumstances where a Member Insurer has become insolvent. Paragraph 2 of the Memorandum provides customer-focused guidance for PACICC's voluntary compensation payments, noting, "The Guidelines and Policies set forth herein are to be given a generous and liberal interpretation in accordance with the spirit of the Corporation's objects."

As its Priority Issue throughout 2019, PACICC undertook a comprehensive review of its lines of coverage (included vs. excluded) and compensation levels in order to improve its system of coverage, and to focus on increased loss claims protection for policyholders who do not have access to sophisticated risk management. PACICC's Board has now committed to review coverage limits at least every five years in future. As a result of the review, PACICC expanded its lines of coverage (from seven to 13) and increased its compensation levels, despite the continued absence of some form of federal mechanism to protect Canadian consumers from the consequences of systemic risk correlated with a major earthquake in Canada.

With this expanded list of covered lines and enhanced benefit levels in place, and a corporate commitment to provide generous interpretation of its compensation policies, PACICC is generally well positioned to protect the interests of P&C insurance consumers and compensate the vast majority of claimants to the full extent of their claim.

### **PACICC Policyholder Protection**

PACICC policyholder protection is automatic and is part of most P&C insurance policies sold in Canada. There are no additional fees required from policyholders. PACICC protection is based on the policy wording and deductibles purchased by an insurance consumer from a Member Insurer. Policy deductibles are applied to the total amount of the insured loss, as prescribed in the policy.

PACICC coverage extends to legitimate claims for the following insurance policies, up to the following limits (on a per policy basis):

• Accident and Sickness (if sold by a PACICC Member)	\$400,000
• Automobile (Excludes Mandatory Auto in B.C., Saskatchewan and Manitoba)	\$400,000
• Boiler and Machinery	\$400,000
• Commercial Liability (unless specifically excluded)	\$400,000
• Commercial Property	\$400,000
• Cyber Liability	\$400,000
• Directors and Officers Liability (only for not-for-profit organizations)	\$400,000
• Equipment Warranty	\$400,000
• Errors and Omission (for non-professionals)	\$400,000
• Home Warranty	\$400,000
• Legal Expenses	\$400,000
• Optional Auto Insurance in B.C. (Includes Government-owned insurers in B.C.)	\$60,000
• Personal Property	\$500,000
• Product Warranty	\$400,000
• Professional Liability (Professional Medical only)	\$400,000

PACICC will also refund 70 percent of the unearned (unexpired) portion of premium (maximum \$2,500) calculated from the date of the Wind-up Order (Maximum refund is \$1,750 per policy).

PACICC has historically not covered specialized insurance products. This position was affirmed in the 2019 review and subsequently endorsed by the Canadian Council of Insurance Regulators. PACICC coverage does not extend to the following insurance policies:

- Accident and Sickness (if sold by life insurers who are Members of Assuris)
- Aircraft
- Automobile insurance sold by Government-owned insurers in B.C., Manitoba and Saskatchewan
- Credit
- Directors and Officers Liability (for-profit organizations)
- Fidelity
- Hail
- Home Warranty (if sold by a non-Member of PACICC)
- Marine
- Mortgage
- Professional Liability (PACICC does cover Professional Medical)
- Surety
- Title.

When a company is declared insolvent, a Liquidator is appointed by the Court to wind up the failed company's affairs, including the processing of claims. The Liquidator is responsible for protecting the assets of the failed insurer. The law requires that all creditors are to be treated equally. The Liquidator contacts all policyholders and claimants regarding claim procedures. The Winding-up Order authorizes a Court-appointed Liquidator to pay eligible claims up until the claims cut-off date, or upon further order of the Court. The Liquidator is the only party authorized by the Court to settle claims.

While the Liquidator can accept claims and negotiate settlements, policyholders are not paid immediately. The Liquidator will require time to determine the total assets and liabilities of the insolvent insurer. Policyholders have the option of assigning their rights against the estate to PACICC and accepting more immediate compensation from PACICC, up to established limits. Policyholders are free to pursue a claim against the estate on their own, without involving PACICC. However, given the cost of legal action, the length of time it will take to settle and the unpredictability of outcomes, there is strong incentive for policyholders to settle their claim with the assistance of PACICC.

It is the responsibility of the Liquidator to advise PACICC of the value of policyholder claims, including unearned premium refunds due. While the Liquidator has the authority to settle claims, it is PACICC's responsibility to ensure that these settlements are legitimate and reasonable, before industry funds are spent. PACICC contracts independent external advisors to review and assess the value of claims put forward by the Liquidator, to ensure that the amounts are fair and reasonable. The payment of claims takes place only where agreement has been reached between PACICC and the Liquidator on the amounts to be paid.

While the vast majority of policyholder claims paid over the years by PACICC have been successfully resolved within established limits, to the satisfaction of policyholders and other stakeholders, there have been some situations where PACICC's Board has considered the payment of claims beyond the established limits, as the result of a hardship claim put forward by a policyholder. These situations were anticipated in Section X, Paragraph 39 of PACICC's Memorandum of Operation, which states,

“Where the board of directors is satisfied that the loss suffered by a Claimant or a type of Claimant as a result of the Insolvency of a Member constitutes a hardship case, and where for whatever reason a Compensation Payment is either unavailable or inadequate, the board of directors may, by unanimous approval, authorize the Corporation to compensate that Claimant or type of Claimant or to increase the Compensation Payment otherwise available, as the case may be, in or to an amount established by the board of directors.”

### **Hardship**

Hardship is defined as a situation that is difficult to endure, involving ongoing suffering, deprivation or oppression. Causes of hardship can include: natural disasters, illness, injury, a change in employment status, loss of income, divorce and/or death. Policyholders can find themselves in a position of hardship as a result of a Member Insurer failure because there is no compensation available from PACICC (as their policy is for a line of insurance not covered by PACICC) or because compensation received from PACICC is inadequate in their view. If a policyholder disagrees with the PACICC-approved compensation offered by the Liquidator, the policyholder has a number of options available, including:

- Seeking to resolve the matter directly with the Liquidator (the most common approach);
- Commencing an action in Court, subject to the Court's prior approval; or
- Filing a hardship claim request through the Liquidator for consideration by the PACICC Board, as a last resort and only if the compensation amount requested exceeds the PACICC claims limit.

### **PACICC Hardship Claim Policy**

Any decision on hardship claims is entirely voluntary and is at the sole discretion of the PACICC Board. There is no prescriptive formula that the Board will follow in arriving at its decision. Each hardship claim will be given due consideration, judged on its own merits and decided by the Board unanimously, based on business acumen and a reasonable person approach.

Section X, Paragraph 39 of PACICC's Memorandum of Operation references compensation payments that may be "unavailable." This relates to insurance policies specifically excluded from PACICC coverage. Given that PACICC has historically excluded specialized insurance products from its coverage, and that this position was reaffirmed by the PACICC Board and regulators in 2019, it is unlikely that the Board will be inclined to approve hardship claim requests related to excluded lines of coverage. However, to preserve the discretionary powers of the Board, the possibility here remains.

### **Form and Substance**

Any hardship claim request to be considered by the PACICC Board shall be:

- Addressed to the Court-appointed Liquidator, for consideration by the PACICC Board
- In writing, using a standard Hardship Claim Request form available from the Liquidator
- Received by PACICC either electronically or by post
- Received by PACICC on/by the Claims Cut-Off Date established in the Court Order, or otherwise extended by the Court, or a later date established by the PACICC Board of Directors at its sole discretion
- Fact based, thorough, concise and complete
- Detailed regarding the value and nature of the claim
- Detailed regarding any compensation payments received to date from the Liquidator
- Detailed regarding all extenuating circumstances supporting the hardship request.

### **Hardship Claim Processing**

The Liquidator will forward to the Chair of the PACICC Board of Directors (through the PACICC Office) all hardship claim requests received from policyholders.

If there are a small number of hardship claim requests received:

- The PACICC Board will consider each request at a Special Meeting of the Board, convened no later than 30 days after receipt of the hardship claim requests.
- The Board may request further case-specific information from the policyholder that it deems necessary in order to complete its review.
- The Board will communicate its decision in writing to each policyholder filing a hardship request.

If a larger number of hardship claim requests received:

- The PACICC Board may choose to delegate claim review responsibilities to its Pre-Insolvency Regulatory Liaison (PIRL) Committee.
- The Committee would have the authority to determine an appropriate internal process for accommodating the higher volume of appeals and have the authority to retain external advisors as required to ensure that that all cases were addressed no later than 30 days after receipt of the hardship claim request.
- The review would include claims files, and any other information that the Committee deems necessary to complete its review.
- Upon reviewing such hardship claim requests, the PIRL Committee would report back to the full Board with a recommendation on each hardship claim request within an additional 30 days.
- The Board will communicate its decision in writing to each policyholder filing a hardship request.

### PACICC Board Decisions Factors

Factors to be considered by the Board in adjudicating all hardship claim requests may include:

- Estimated value of assets expected to be recovered from the failed insurer's estate
- Number of open claims and total cost
- Number of hardship claim requests received as a result of the insolvency
- Magnitude of loss experienced by the policyholder
- Compensation amount requested by the policyholder in excess of PACICC limit(s)
- Hardship claim amount relative to the estimated assets of the estate
- Hardship claim amount relative to policyholder income and/or assets
- Geographic location
- Line(s) of coverage involved
- Tradesperson costs to execute repair/replacement
- Whether the compensation amount is under dispute with the Liquidator
- Recommendation(s) and accompanying rationale(s) of the PIRL Committee (which are non-binding)
- Any recommendation(s) and accompanying rationale(s) of the Liquidator (which are non-binding)
- Level of sophistication of the policyholder at time of purchase of the policy
- Level of sophistication of the policyholder's intermediary (if any)
- "Small business" status – revenue, number of employees, business history, sophistication, industry maturity, and/or Member feedback/opinion
- Negative impact on consumer confidence in Canada's P&C insurance industry
- Size of proposed industry assessment(s) to manage the insurer insolvency
- Proportion of the potential hardship payment as a percentage of any reinsurance available to PACICC (if such as been purchased by the Corporation)
- Potential negative impact on industry solvency.

### PACICC Hardship Claim Decisions

It is to be understood by hardship claim applicants that all PACICC Board decisions are:

- Voluntary decisions of the PACICC Board of Directors, at its sole discretion
- Consistent with Paragraph 2 of PACICC's Memorandum of Operation, providing a generous and liberal interpretation of PACICC's claims limits
- Reflective of advice received from PACICC's PIRL Committee, where applicable
- Reflective of advice received from the Liquidator, where applicable
- Final, and not subject to further Board consideration and/or appeal.

As per Section X, Paragraph 39 of PACICC's Memorandum of Operation:

- Any PACICC Board decision to approve compensation of a claimant or to increase the compensation payment otherwise available, as the case may be, in or to an amount established by the PACICC Board, **must be unanimous**. This important pre-condition, which balances policyholder compensation and industry affordability, has been in place since PACICC was first established in 1989.
- Any PACICC Board decision to decline a hardship claim request does not require unanimous approval.