

Compensation Plan for Property/Casualty Insurers

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[See table of contents](#)

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Article abstract

Nous remercions l'auteur ainsi que M. Raymond Medza, qui ont aimablement consenti à nous confier un texte inédit sur le nouveau régime de compensation créé au Canada, sous l'égide du Bureau d'assurance du Canada.

L'administration et les opérations du régime ont été confiées à la Société d'indemnisation en matière d'assurances IARD, constituée à des fins non lucratives, le 17 février 1988, sous la partie II de la *Loi sur les sociétés commerciales canadiennes*. L'initiative nous paraît excellente, tant est grave le problème de l'insolvabilité éventuelle d'un assureur et tant est importante la protection des assurés ou celle des autres personnes qui ont droit au bénéfice d'assurance. On se souviendra des déboires qu'ont connu certains assureurs, au cours de cette décade. Si le rôle qu'a pu jouer le surintendant fédéral des Assurances à cet effet a été extrêmement important, il ne permettait pas, néanmoins, d'indemniser les assurés en cas de faillite des assureurs. (Une initiative similaire a été prise également en assurances de personnes via la Société canadienne d'indemnisation des assurances de personnes.) Le conseil d'administration sera composé de tous les représentants du milieu au Canada : assureurs, courtiers, compagnies, corporations publiques d'assurance. Les divers surintendants des Assurances au Canada n'en font pas partie mais peuvent siéger et participer aux délibérations du conseil. Le texte de M^e Kennedy décrit brièvement le régime et le fonctionnement du fonds de compensation ainsi que le rôle de la Société d'indemnisation, qui protège toute personne lésée jusqu'à concurrence de 200 000 \$ par sinistre, moyennant une franchise de 500 \$.

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Compensation Plan for Property/Casualty Insurers

by

Alex Kennedy⁽¹⁾

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fi ce d'assurance. On se souviendra des déboires qu'ont connu certains assureurs, au cours de cette décade. Si le rôle qu'a pu jouer le surintendant fédéral des Assurances à cet effet a été extrêmement important, il ne permettait pas, néanmoins, d'indemniser les assurés en cas de faillite des assureurs. (Une initiative similaire a été prise également en assurances de personnes via la Société canadienne d'indemnisation des assurances de personnes.)

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Le texte de M^e Kennedy décrit brièvement le régime et le fonctionnement du fonds de compensation ainsi que le rôle de la Société d'indemnisation, qui protège toute personne lésée jusqu'à concurrence de 200 000 \$ par sinistre, moyennant une franchise de 500 \$.



Hundreds of general insurance companies have paid millions of claims – promptly and in full – over the past century. In all that time only a handful have gone bankrupt and there has not been a single example of a major insurer getting into such financial difficulties that it had to be liquidated. This excellent record is a reflection of responsible management and of the high standard of supervision exercised by regulators.

The industry and the regulators were concerned, however, about any failure and accordingly worked together over several years to develop a solution to the problem. The solution has been to establish an industry funded system to protect policyholders and claimants.

The Property and Casualty Insurance Compensation Corporation/Société d'indemnisation en matière d'assurances IARD was incorporated as a not-for-profit corporation under Part II of the *Canada Corporations Act* on February 17, 1988. On February 23, 1989, the first annual general meeting of the Corporation took place at which a Board of twelve directors was appointed to replace the provisional Board of three directors. The Board is representative of

broker companies, direct writers, international companies, domestic companies, small companies and large companies, government insurance corporations, of the various regions of the country and also has a representative nominated by the Consumers Association of Canada. The Board members are appointed for a term of one year. While the Superintendents of Insurance are not members of the Board, they are entitled to receive notice of all meetings of the Board along with an agenda of the meeting and are also entitled to be present and to participate in discussions at the Board on a non-voting basis.

Between February 1988 and February 1989, the Corporation, after reaching agreement with the Superintendents on the solvency standards that were to be imposed on property/casualty insurers in their jurisdictions, entered into agreements with each province and territory to provide for participation by them in the compensation plan.

As the plan is based on licensing, which is a provincial jurisdiction, no agreement was entered into by the Compensation Corporation with the federal government. The federal government was, however, very much involved in the development of the plan and indeed it was a condition precedent to the plan coming into effect that the federal *Winding-Up Act* be amended so that claims for specific loss or damage have priority over claims for unearned premiums. This amendment was in fact enacted and the Corporation therefore has no liability whatsoever for unearned premiums.

The Corporation is established to provide a reasonable level of recovery for claims of policyholders under most policies issued by property and casualty insurance companies. It will cover home, automobile, and many other types of insurance but it does not include life or accident and sickness insurance for which a separate plan is currently being negotiated by the life insurance industry with the Superintendents, nor does it cover some specialty coverages such as surety and fidelity. There are also other regional automobile insurance exclusions in British Columbia, Manitoba, Saskatchewan and Quebec where there is government automobile insurance.

All the provinces and territories have either enacted legislation deeming all property/casualty insurers to be members of the Compensation Corporation or have made it a condition of being licensed

that the property and casualty insurers enter into a contract of membership with the Compensation Corporation. In each case, the companies are bound by the by-laws and memorandum of operation of the Compensation Corporation which in turn makes them liable for their share of assessments. In most jurisdictions, provision is made for excluding from the scope of the plan certain types of insurers e.g. farm mutuals have their own form of protection.

154 While a company is licensed to do business in any of the jurisdictions, it may not withdraw its membership in the Compensation Corporation and by the same token the Compensation Corporation may not terminate that company's membership. A company's membership is, however, deemed to be terminated six months after cancellation of its licence by a jurisdiction if that cancellation results in its not being licensed in any of the jurisdictions.

It is only after the Superintendent of Financial Institutions has obtained an order to wind up a company under the federal *Winding-Up Act* that the Compensation Corporation becomes involved. At that point the Corporation is obliged, by its by-laws, to notify all policyholders of the need to replace their insurance cover within a period of 45 days from the date of the winding-up order. The Corporation will respond to claims prior to that date and within the 45 days following that date but not thereafter.

Policyholders and claimants against the bankrupt company will negotiate the value of their claim with the liquidator of the bankrupt company and thereafter can decide whether they wish to simply file a claim with the liquidator, which undoubtedly will mean there will be delay in obtaining payment, or they can, on signing appropriate documentation, be paid by the Compensation Corporation. It is anticipated that in the event of a bankruptcy the Compensation Corporation and the liquidator will work very closely together to ensure the least amount of delay in paying policyholders or claimants. In any particular case the Compensation Corporation is not obliged to accept the value placed upon a claim by the liquidator but it is likely that initial discussions between the Corporation and the liquidator will ensure that the Corporation is satisfied as to the manner in which claims are to be handled.

There is a limit of \$200,000 on amounts payable by the Compensation Corporation arising from a single occurrence. In deter-

mining the amount due, all applicable provisions of the policy e.g. deductibles and co-insurance clauses are applied and the insured is required to absorb, in any event, the first \$500 of any loss. Accordingly, a policyholder with a policy deductible of \$250 and a claim of \$100,000 would receive \$99,500 ; and a policyholder with a claim of \$250,000 and a policy deductible of \$100 would receive \$200,000.

Where there are third party claims as well as first party claims, the Corporation will have to establish priorities of payment.

Where the Compensation Corporation makes a payment to a policyholder or claimant (and it will only do so where that person has certified that he has exhausted any claim he may have against other insurance sources and has completed the necessary documentation required by the Corporation), then if the liquidator ultimately makes a payment on the claim of say \$225,000, the Corporation will pay the additional \$25,000 to the policyholder or claimant.

155

To finance its operations in the event of a bankruptcy, the Compensation Corporation has established a \$10 million line of credit with a major bank. In the event of a bankruptcy, one of the early steps for the Corporation will be to make a general assessment in respect of each jurisdiction in which the bankrupt company was operating reflecting the maximum exposure that it anticipates under the particular insolvency. Subsequently, it will levy draws on that assessment as needs for funds arise. In practice, the line of credit will be drawn down, member companies will be assessed and pay that assessment, and the line of credit will be repaid to prevent interest charges running but then can be drawn down again as required.

There are two types of assessment for which companies are liable – one is the administrative assessment simply to cover the operating expenses of the Corporation and this cannot exceed \$1,500 per annum. The Corporation's Board of Directors has decided that this assessment should be by way of a flat charge on all companies no matter their size. The assessment to be made in the event of a company going bankrupt, however, is based on total direct written premiums.

It is hoped that the plan will not need to be called upon but it is there and in place in the event that a bankruptcy happens in future.