

**ONTARIO
SUPERIOR COURT OF JUSTICE**

IN THE MATTER OF THE *INSURANCE COMPANIES ACT*, S.C. 1991, c. 47, AS AMENDED,
AND THE *MUTUAL PROPERTY AND CASUALTY INSURANCE COMPANY WITH NON-
MUTUAL POLICYHOLDERS CONVERSION REGULATIONS*, SOR/2015-168

IN THE MATTER OF A PLAN OF CONVERSION OF
ECONOMICAL MUTUAL INSURANCE COMPANY

ECONOMICAL MUTUAL INSURANCE COMPANY

Applicant

**FACTUM OF THE RESPONDENT,
ECONOMICAL MUTUAL INSURANCE COMPANY**

**(MOTION TO APPOINT MEMBERS FOR THE ELIGIBLE
POLICYHOLDER COMMITTEES)**

January 17, 2017

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Economical Mutual Insurance Company

PART I - NATURE OF THE MOTION

A. Motion to Appoint Members for the Eligible Policyholder Committees

1. Economical Mutual Insurance Company (“**Economical**”) has initiated a “demutualization process” pursuant to the *Mutual Property and Casualty Insurance Company with Non-Mutual Policyholders Conversion Regulations*, SOR/2015-168 (the “**Conversion Regulations**”).

2. While Economical is demutualizing in order to pursue its long-term business objectives, demutualization also results in financial benefits for policyholders. In particular, if demutualization succeeds, there would be a distribution of the newly created shares arising from the demutualization (or cash raised from selling those shares in an initial public offering) to the eligible policyholders of Economical and others they may designate. Given Economical’s book value of \$1.80 billion as of March 31, 2016,¹ the financial benefits from an initial public offering are substantial.

3. The *Conversion Regulations* provide that the two classes of Economical’s eligible policyholders – mutual and non-mutual – will negotiate, by committees acting on their behalf, to determine the allocation of any such financial benefits (the “**Allocation**”).

4. This motion is brought by the appointed counsel for the two classes of policyholders to appoint the members of the policyholder negotiating committees.

5. Economical does not take a position with respect to the selection of committee members.

¹ Affidavit of David Wilson, sworn June 7, 2016 (“**Wilson Affidavit**”), para. 36, Application Record of Economical (“**Application Record**”), Tab 2, p. 31.

PART II - SUMMARY OF FACTS

A. The Demutualization Process

6. The demutualization process under the *Conversion Regulations* is lengthy and complex, involving participation by multiple stakeholders, regulatory reviews at key stages, and three policyholder votes. The *Conversion Regulations* prescribe four specific phases.

Wilson Affidavit, para. 23, Application Record Tab 2, p. 25

7. Phase one of the demutualization process required the board of directors to pass a resolution recommending demutualization in order to initiate the process. Economical's board passed this resolution on November 3, 2015.

Wilson Affidavit, para. 25, Application Record Tab 2, p. 26

8. Phase two required a meeting of eligible mutual policyholders to vote on whether to proceed to the current phase of the process (which is to negotiate with eligible non-mutual policyholders on the Allocation). This first policyholder meeting occurred on December 14, 2015, and the eligible mutual policyholders voted overwhelmingly in favour of proceeding to the current phase.

Wilson Affidavit, para. 26, Application Record Tab 2, p. 26

9. Phase three is the process to determine the Allocation and for Economical to prepare the conversion proposal, opinions and other required materials for submission to the Office of the Superintendent of Financial Institutions.

10. The fourth and final phase of the demutualization process involves the final approvals of the conversion proposal and the demutualization.

Wilson Affidavit, para. 32, Application Record Tab 2, p. 30

B. Phase Three – The Allocation

11. The demutualization process is currently in phase three, during which the eligible policyholders (through committees acting on their behalf) negotiate to determine the allocation of the demutualization benefits among them and others they may designate.

Conversion Regulations, s. 12(1)

Wilson Affidavit, paras. 20 and 21, Application Record Tab 2, p. 25

12. Phase three itself involves a number of steps. The first step in phase three was for Economical to apply for the Initial Order, which was granted by the Honourable Justice Hainey on July 15, 2016 (the “**Initial Order**”). The Initial Order set out a framework for the certain steps in the demutualization process, including the appointment of counsel for the policyholder committees and members of the policyholder committees.

Initial Order, Exhibit “A” to the Affidavit of Antonetta Murray, sworn January 17, 2017 (“Murray Affidavit”), responding motion record of Economical (the “Economical Responding Record”), Tab 1A, p. 3

13. By order dated September 22, 2016 made by the Honourable Justice Hainey, McCarthy Tétrault LLP (“**McCarthy**”) was appointed as counsel to the class of eligible mutual policyholders, and Thornton Grout Finnigan LLP (“**TGF**”) was appointed as counsel to the class of eligible non-mutual policyholders.

Exhibit “B” to the Murray Affidavit, Economical Responding Record, Tab 1B, p. 17

14. The Initial Order required policyholder counsel to each bring a Member Appointment Motion for the purposes of appointing eligible policyholders to those committees. On November 15, 2016, McCarthy and TGF each brought a Member Appointment Motion.

15. At the Member Appointment Motion, the Court is to appoint three to nine eligible mutual policyholders to form the eligible mutual policyholder committee, and three to nine eligible non-mutual policyholders to form the eligible non-mutual policyholder committee.

Conversion Regulations, s. 9(6)

Initial Order, paras. 10-15, Exhibit “A” to the Murray Affidavit, Economical Responding Record, Tab 1A, pp. 8-10

C. Applications for Member Appointment

16. McCarthy received applications from 51 eligible mutual policyholders, and filed those applications with the Court in Mutual Policyholder Record. Of those applicants, McCarthy initially recommended six candidates to be appointed as members of the eligible mutual policyholder committee (“**Mutual Member Candidates**”).

Affidavit of Nancy J. Carroll (“Carroll Affidavit”), paras. 4, 14 and Exhibit “E”, motion record of the eligible mutual policyholders (“Mutual Policyholder Record”), Tabs 2 and 2(E), pp. 7, 10 and 336

17. On January 12, 2017, McCarthy delivered a supplementary motion record (the “**Supplementary Mutual Policyholder Record**”), increasing the number of Mutual Member Candidates recommended from six to nine.

Affidavit of Nancy J. Carroll sworn January 12, 2017 (“Supplementary Carroll Affidavit”), para. 11 and Exhibit “C”, Supplementary Mutual Policyholder Record, Tabs 2 and 2(c)

18. TGF received applications from 40 eligible non-mutual policyholders, and filed those applications with the Court in the motion record of the eligible non-mutual policyholders (the “**Non-Mutual Policyholder Record**”). Of those applicants, on November 15, 2016, TGF recommended six candidates to be appointed as members of the eligible non-mutual policyholder committee (“**Non-Mutual Member Candidates**”).

**Affidavit of James H. Grout, sworn November 15, 2016 (“Grout Affidavit”),
para. 12, Non-Mutual Policyholder Record, Tab 2**

D. Objections the Member Applicants

19. Section 9(5) of the *Conversion Regulations* provides that an eligible policyholder, McCarthy, or TGF, may object to the candidacy of any Member Applicant,² in the time and manner set out by the court in the Initial Order. The Initial Order required that any eligible policyholder wishing to object send an objection in writing to Economical, to be received by Economical no later than five days before the hearing of the Member Appointment Motion.

Conversion Regulations, s. 9(5)

**Initial Order, para. 17, Exhibit “A” to the Murray Affidavit, Economical
Responding Record, Tab 1A, pp. 10-11**

20. By January 17, 2017, Economical had received one objection in respect of the eligible mutual policyholder committee (the “**Mutual Objection**”), and one objection in respect of the eligible non-mutual policyholder committee (the “**Non-Mutual Objection**”). These objections were filed with the Court in Economical’s Responding Record, dated January 17, 2017.

**Exhibits “C” and “D” to the Murray Affidavit, Economical Responding
Record, Tabs 1C and 1D, pp. 21-24 and 25-27**

² As defined in the Initial Order.

21. The Mutual Objection did not object to any particular Mutual Member Candidate, but instead purported to object “to the decision of counsel to disqualify 70% of the applicants.”

Exhibit “C” to the Murray Affidavit, Economical Responding Record, Tab 1C, pp. 21-24

22. The Non-Mutual Objection objected to the appointment of George Fowlie, a Non-Mutual Member Candidate. The purported reason for the objection to the appointment of Mr. Fowlie was “his prima facie assertion that a mutual policy and a non-mutual policy are ‘essentially the same policy’”. The objector, Michael H. A. O. Neill, went on to state, “It appears to me from that statement that Mr. Fowlie has already made up his mind on the relative value of the policies prior to a complete review of the circumstances and any input from his fellow committee members.”

Exhibit “D” to the Murray Affidavit, Economical Responding Record, Tab 1D, pp. 25-27

E. Applicable Law

23. Section 9(6) of the *Conversion Regulations* states:

Appointment

9(6) The court must appoint at least three and not more than nine eligible policyholders to be members of each policyholder committee and must notify the converting company and counsel for the class of policyholders represented by that committee of its decision following a hearing at which the court assesses the ability of each applicant to fairly and adequately represent the interests of the class of policyholders in question, including by taking into account their experience in negotiations and business and financial affairs and by having regard to any objections filed under subsection (5).

24. In selecting policyholder committee members from amongst the Member Applicants, section 9(6) directs the Court to consider:

- (a) The ability of Member Applicants to fairly and adequately represent the interests of the class of policyholders in question, including by taking into account:

- (i) Their experience in negotiations and business and financial affairs; and
- (ii) Any objections filed under subsection 9(5) of the *Conversion Regulations*.

Conversion Regulations, s. 9(6)

F. Economical's Observations on Proposed Committee Members

25. Economical has reviewed the list of Mutual Member Candidates proposed by McCarthy and Non-Mutual Member Candidates proposed by TGF, and appreciates the efforts undertaken by those firms in considering the Member Applicants. Economical takes no position with respect to which Member Applicants ought to be appointed members of the committees.

G. Economical's Observations on Proposed Remuneration and Reimbursement

26. Section 11(1) of the *Conversion Regulations* provides that:

The court must determine, having regard to their reasonableness, the amounts payable by a converting company in relation to the negotiations referred to in section 12, including ... remuneration for policyholder committee members and reimbursement of their expenses for travel, accommodation and meals in respect of attendance at policyholder committee meetings.

27. Economical agrees that reasonable travel and accommodation expenses incurred by committee members ought to be reimbursed. Economical does not oppose compensating the committee members for their work and inconvenience in addition to out-of-pocket expenses. The compensation should ensure a fair, efficient and negotiation process.

H. Limitation of Liability

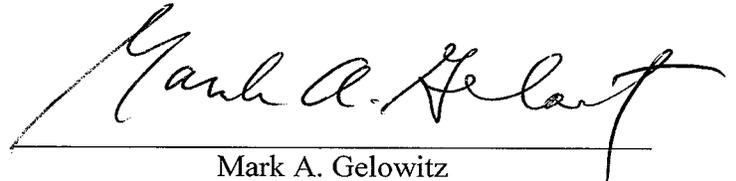
28. Economical does not oppose the release for the committee members sought by TGF.

PART III - ORDER SOUGHT

29. Economical requests that pursuant to section 9(6) of the *Conversion Regulations*, this Court order that:

- (a) Between three and nine eligible mutual policyholder Member Applicants be appointed as members of the mutual policyholder committee; and
- (b) Between three and nine eligible non-mutual policyholder Member Applicants be appointed as members of the non-mutual policyholder committee.

All of which is respectfully submitted, January 17, 2016.



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SCHEDULE “B”
TEXT OF STATUTES, REGULATIONS & BY-LAWS

***Mutual Property and Casualty Insurance Company with Non-mutual Policyholders
Conversion Regulations (SOR/2015-168)***

Committee Membership

8 (1) Any eligible policyholder may submit to counsel for the class of policyholders to which they belong, in the time and manner set out in the initial order, an application for membership on the policyholder committee for that class.

...

Objections

(5) Any eligible policyholder or counsel for a class of policyholders may file, in the time and manner set out by the court in the initial order, an objection to the candidacy of a policyholder who has submitted an application for membership on a policyholder committee.

Appointment

(6) The court must appoint at least three and not more than nine eligible policyholders to be members of each policyholder committee and must notify the converting company and counsel for the class of policyholders represented by that committee of its decision following a hearing at which the court assesses the ability of each applicant to fairly and adequately represent the interests of the class of policyholders in question, including by taking into account their experience in negotiations and business and financial affairs and by having regard to any objections filed under subsection (5).

...

Costs payable by converting company

11 (1) The court must determine, having regard to their reasonableness, the amounts payable by a converting company in relation to the negotiations referred to in section 12, including the costs of counsel and any experts consulted by the policyholder committees, remuneration for policyholder committee members and reimbursement of their expenses for travel, accommodation and meals in respect of attendance at policyholder committee meetings.

...

Method and Benefits

Purpose of negotiations

12 (1) The policyholder committees, with the assistance of the counsel appointed by the court, must enter into negotiations to establish the method of allocating the value of the converting company and to determine whether any benefits will be provided to any persons or classes of persons — other than eligible policyholders — as a result of the conversion.

...

Deadline

14 (5) The conversion proposal and the opinions referred to in paragraph (2)(b) must be submitted no later than one year after the day on which the court appoints the members of the policyholder committees.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

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