

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

ONTARIO SECURITIES COMMISSION

Applicant

- and -

**NEW LIFE CAPITAL CORP., NEW LIFE CAPITAL INVESTMENTS INC., NEW LIFE
CAPITAL ADVANTAGE INC., NEW LIFE CAPITAL STRATEGIES INC., 1660690
ONTARIO LTD., 2126375 ONTARIO INC., 2108375 ONTARIO INC., 2126533
ONTARIO INC., 2152042 ONTARIO INC. and 2100228 ONTARIO INC.**

Respondents

MOTION RECORD

(returnable on May 29, 2009)

May 20, 2009

ThorntonGroutFinnigan LLP
Barristers and Solicitors
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Solicitors for KPMG Inc., in its capacity as the
Receiver and Manager of New Life Capital Corp., et al

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Appendix C	Receiver's First Report to the Court dated March 12, 2009

- Appendix D Consulting Agreement dated April 22, 2009 between the Receiver and Proverian Capital, LLC
- Appendix E Letter, dated May 14, 2009, to the Stakeholders, advising of the Receiver's motion to appoint Representative Counsel
- 3. Draft Order

TAB 1

**ONTARIO
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NOTICE OF MOTION

KPMG INC., in its capacity as the Court-appointed Receiver and Manager (the “Receiver”), without security, of all of the property, assets and undertaking of the Respondents and 2173817 Ontario Inc. (collectively, the “Companies”) will bring a motion before a Judge presiding over the Commercial List on Friday the 29th day of May, 2009 at 10 o’clock in the morning or as soon after that time as the motion can be heard at 330 University Avenue, in the City of Toronto.

THIS MOTION IS FOR:

1. an Order approving the Consulting Agreement dated April 22, 2009 (the “Consulting Agreement”) entered into by the Receiver with Proverian Capital, LLC (“Proverian”) and authorizing and directing the Receiver to carry out the terms of the Consulting Agreement;
2. an Order appointing Kevin McElcheran of the law firm McCarthy Tetrault LLP as the representative counsel (the “Representative Counsel”) to represent the interests of persons

who purchased preferred or common shares in the capital stock of one or more of the Companies excluding Jeffrey Pogachar and Paola Lombardi (the "Investors") for the purpose of advising the Investors in respect of the Realization Plan (as defined herein) being developed by the Receiver (the "Mandate");

3. an Order approving the activities of the Receiver as described in the Receiver's Second Report to Court dated May 20, 2009 (the "Second Report"); and

4. such further and other relief as counsel my request and this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

The Consulting Agreement

1. the principal assets of the Companies are (i) cash on deposit in the aggregate amount of approximately \$2.5 million as at the date of the Second Report; and (ii) a portfolio of 22 life insurance policies or life settlements with a total face value of approximately U.S. \$83 million (the "Policies");

2. a life settlement is a transfer of an ownership interest in a life insurance policy to a third party for compensation;

3. given the various complexities associated with the life settlement industry and the Policies, the Receiver retained Proverian as its consultant and entered into the Consulting Agreement;

4. pursuant to the Consulting Agreement, Proverian will, among other things, review and evaluate the Policies and assist the Receiver with the development of a strategy for realizing on the Policies (the "Realization Plan");

5. the Receiver is of the view that Proverian is the appropriate choice of consultant for various reasons including that (i) Proverian has a number of years in the life settlement industry and appears very experienced and knowledgeable with respect to both the technical aspects of life settlements and the marketplace in the United States; (ii) Proverian has the

appropriate resources and infrastructure to assist the Receiver including a suitable number of staff and its own data management software program to properly catalogue the information contained in the Policies and facilitate analyses of same; (iii) Proverian's compensation is based on hourly rates, which the Receiver believes are reasonable; and (iv) Proverian agreed that, if the Receiver's Realization Plan included the sale of some or all of the Policies, it would not purchase any of the Policies nor would it advise any of its other clients who wish to participate in the New Life sale process;

Representative Counsel

6. the Companies are in the life settlement business and raised approximately (i) \$22 million from the sale of Class A common shares of New Life Investments Inc. to over 600 Investors (the "Class A Investors"); and (ii) \$637,500 from the sale of preferred shares (and common shares in one case) of certain of its other entities to Investors;

7. one or more of the Companies used the funds received from the Investors to purchase life insurance policies or a whole or partial beneficial interest in life insurance policies;

8. the majority of the Class A Investors are retail investors. The average amount of each Class A Investor's investment is approximately \$36,000 and a considerable portion are held through Registered Retirement Savings Plans;

9. several Investors have contacted the Receiver and have sought to participate in the Realization Plan;

10. the Receiver's legal counsel received a telephone call from Kevin McElcheran of the law firm McCarthy Tetrault LLP who advised that he had been contacted by counsel for one of the Investors who wanted him appointed as Representative Counsel to represent the interests of all of the Investors;

11. the Receiver and its legal counsel have met with Mr. McElcheran to discuss the possibility and scope of his role as Representative Counsel;

12. the Receiver is of the view that it is appropriate and necessary to appoint Mr. McElcheran as Representative Counsel solely in respect of the Mandate as (i) there is a

commonality of interest among the Investors; (ii) given the amount of each individual Investor's investment, it would not be cost-effective for each Investor to obtain independent legal advice; and (iii) there is a need to maintain the confidentiality of the Policies;

13. the Receiver is of the view that Mr. McElcheran is qualified to act as the Representative Counsel;

14. Mr. McElcheran has consented to act as Representative Counsel;

15. the Receiver has advised the Investors that it would be seeking the appointment of Mr. McElcheran as Representative Counsel; and

16. such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. the Second Report; and

2. such further and other material as counsel may advise and this Honourable Court may permit.

May 20, 2009

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Solicitors for KPMG Inc., in its capacity as
the Receiver and Manager of the Companies

TO: THIS HONOURABLE COURT

AND TO: THE SERVICE LIST

SERVICE LIST

TO:	<p>ONTARIO SECURITIES COMMISSION 20 Queen Street West Suite 1903, Box 55 Toronto, ON M5H 3S8</p> <p>Susan Kushneryk / Daniella Kozovski</p> <p>Tel: 416.595.8782 / 416.593.2368 Fax: 416.593.2319</p> <p>Email: skushneryk@osc.gov.on.ca / dkozovski@osc.gov.on.ca</p> <p>Solicitors for the Regulator</p>
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AND TO:	<p>AIRD & BERLIS LLP Brookfield Place, Suite 1800 Box 754 181 Bay Street Toronto, Ontario M5J 2T9</p> <p>Richard Kimel / Paul V. McCallen</p> <p>Tel: 416.865.3961 / 416.865.7723 Fax: 416.863.1515</p> <p>Email: rkimel@airdberlis.com / pmccallen@airdberlis.com</p> <p>Corporate Solicitors for the Respondents</p>

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Proposed Representative Counsel

ONTARIO SECURITIES COMMISSION
Applicant

and

NEW LIFE CAPITAL CORP., et al
Respondents

Court File No.: 08-CL-7832

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced in Toronto

NOTICE OF MOTION

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TAB 2

**THE SECOND REPORT TO THE COURT IS POSTED
SEPARATELY ON THIS WEBSITE**

TAB 3

**ONTARIO
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THE HONOURABLE MR.) FRIDAY, THE 29TH DAY
JUSTICE COLIN L. CAMPBELL) OF MAY, 2009

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Respondents

ORDER

THIS MOTION made by KPMG INC., in its capacity as the Court-appointed Receiver and Manager (the "Receiver"), without security, of all the property, assets and undertaking of the Respondents and 2173817 Ontario Inc. (collectively the "Companies") for the relief set out in its Notice of Motion dated May 20, 2009 herein was heard this day at 330 University Avenue, in the City of Toronto.

UPON READING the Second Report of the Receiver dated May 20, 2009 (the "Second Report"), upon hearing the submissions of counsel for the Receiver and upon being advised of the consent of Kevin McElcheran to act as the Representative Counsel (hereinafter defined):

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record herein is hereby abridged so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that the style of cause in this proceeding be and is hereby amended to include 2173817 Ontario Inc. as a Respondent.
3. **THIS COURT ORDERS** that the Consulting Agreement dated April 22, 2009 (the "Consulting Agreement") entered into between the Receiver and Proverian Capital, LLC is hereby approved and that the Receiver is hereby authorized and directed to carry out the terms of the Consulting Agreement.
4. **THIS COURT ORDERS** that Kevin McElcheran of the law firm McCarthy Tetrault LLP be and he is hereby appointed as representative counsel (the "Representative Counsel") to represent the interests of persons who purchased preferred or common shares in the capital stock of one or more of the Companies excluding Jeffrey Pogachar and Paola Lombardi (the "Investors") for the sole purpose of advising the Investors in respect of the realization plan being developed by the Receiver in respect of the Companies' portfolio of 22 life insurance policies or life settlements (the "Mandate").
5. **THIS COURT ORDERS** that, in fulfilling the Mandate, the Representative Counsel:
 - (a) may consult with individual Investors but shall not be obligated to follow the instructions of nor provide opinions to individual Investors;
 - (b) may consult with and provide his views to the Receiver;
 - (c) shall act in the best interest of the Investors as a whole and take such necessary and appropriate actions and steps as the Representative Counsel deems fit from time to time; and
 - (d) shall incur no liability or obligation as a result of his appointment or the carrying out of the provisions of this Order save and except for any gross negligence or wilful misconduct on his part.

6. **THIS COURT ORDERS** that the Representative Counsel be and he is hereby authorized to delegate his duties hereunder to members of the law firm McCarthy Tetrault LLP to assist the Representative Counsel in fulfilling his duties as Representative Counsel, which members of McCarthy Tetrault LLP shall be entitled to rely upon the provisions of this Order as if they were the Representative Counsel.

7. **THIS COURT ORDERS** that the Representative Counsel be and he is hereby granted leave to apply to this Court for advice and direction with respect to carrying out the Mandate upon notice to the Receiver and the Service List.

8. **THIS COURT ORDERS** that any expenditure or liability which shall be properly made or incurred by the Representative Counsel, including the fees and disbursements of the Representative Counsel incurred at the rates to be agreed upon by the Representative Counsel and the Receiver, shall be allowed to him in passing his accounts and shall form a first charge on the Property (as defined in the Order of this Honourable Court dated December 17, 2008) (the "Appointment Order") ranking pro rata and pari passu with the Receiver's Charge (as defined in the Appointment Order).

9. **THIS COURT ORDERS** that the Representative Counsel shall pass his accounts from time to time and, for this purpose, the accounts of the Representative Counsel are referred to a Judge of the Commercial List of the Ontario Superior Court of Justice.

10. **THIS COURT ORDERS** that, prior to the passing of the accounts of the Representative Counsel, the Receiver shall be at liberty from time to time to pay reasonable amounts out of the monies in its hands against the fees and disbursements of the Representative Counsel and such amount shall constitute an advance against his remuneration and disbursements when and as approved by this Court.

11. **THIS COURT ORDERS** that the activities of the Representative Counsel shall be restricted to fulfilling the Mandate.

12. **THIS COURT ORDERS** that the Receiver's activities as described in the Second Report are hereby approved.

ONTARIO SECURITIES COMMISSION
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and

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