

**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., 2100228 ONTARIO INC. and 2173817
ONTARIO INC.**

Respondents

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 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., 2100228 Ontario Inc. and 2173817 Ontario Inc. (collectively, the “**New Life**” or the “**Companies**”) will bring a motion before a Judge on Tuesday the 8th day of September, 2009 at 10:00 o’clock in the morning or as soon after that time as the motion can be heard at 330 University Avenue, Toronto, Ontario.

THE MOTION IS FOR:

1. an Order abridging the time for service of the Notice of Motion and the Motion Record herein and dispensing with further service thereof;

2. an Order approving the Document Delivery Protocol dated August 5, 2009 between the Receiver and the Companies' principals, Jeffrey Pogachar and Paola Lombardi;
3. an Order approving the Receiver's realization plan (the "**Advantage Realization Plan**") in respect of three (3) life insurance policies owned by 1660690 Ontario Ltd. and issued by ING on the life of the same individual with a total face value of USD \$570,919 (the "**Advantage Policies**"), as described in the Receiver's Fourth Report to Court dated September 2, 2009 (the "**Fourth Report**");
4. an Order approving the Receiver's realization plan in respect of the nineteen (19) life insurance policies or life settlements (the "**Investments Policies**"), as described in the Fourth Report (the "**Investments Realization Plan**" and with the Advantage Realization Plan, the "**Realization Plan**");
5. an Order authorizing the Receiver to carry out the Realization Plan, subject to any changes to the Realization Plan that the Receiver considers appropriate;
6. an Order approving the Receiver's Statement of Receipts and Disbursements for the period December 17, 2008 to September 1, 2009;
7. an Order approving the Receiver's activities as described in the Receiver's Third Report to the Court dated May 28, 2009 and the Fourth Report;
8. an Order approving a claims procedure for the calling and determination of claims by Investors (as defined below), creditors and any other claimants against the Companies substantially in the form of the draft Order attached to this Motion Record;
9. an Order sealing the Receiver's Supplemental Fourth Report to the Court; and
10. such further and other relief as counsel may advise and this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

1. pursuant to the Order of the Honourable Mr. Justice Campbell dated December 17, 2008, KPMG Inc. was appointed as Receiver of all of the property, assets and undertaking of the Companies (the “**Appointment Order**”);
2. the Receiver was appointed pursuant to Section 129 of the *Securities Act* (Ontario) to protect the interests of persons who purchased preferred or common shares of certain of the Companies (the “**Investors**”) and the creditors of the Companies;

The Document Delivery Protocol

3. upon its appointment, the Receiver took possession of the Companies’ premises and removed and imaged the Companies’ computer servers;
4. shortly after the Receiver’s appointment, Groia & Company, legal counsel for the Companies’ principals, Jeffrey Pogachar and Paola Lombardi, advised the Receiver’s counsel that its clients were asserting solicitor-client privilege and spousal privilege over the Companies’ documents and suggested entering into a protocol to govern the Receiver’s review of the Companies’ documents;
5. on August 5, 2009, the Receiver entered into a document delivery protocol (the “**Document Delivery Protocol**”) with the Companies’ principals, Jeffrey Pogachar and Paola Lombardi, to govern the Receiver’s review of the electronic data the Receiver imaged from the Companies’ computer servers;
6. pursuant to the Document Delivery Protocol, on or about August 7, 2009, KPMG Forensics delivered electronic copies of certain documents that were searched on the Companies’ computer servers to Groia for review. This review is ongoing;

The Realization Plan

7. New Life is in the life settlement business and its main asset consists of a portfolio of twenty-two (22) life insurance policies or life settlements consisting of the Investments Policies and the Advantage Policies (collectively, the “**Policies**”);

8. New Life raised funds from Investors to invest in the Investments Policies and the Advantage Policies through two (2) alternative programs – the New Life Capital Investments program (the “**Investments Program**”) and the Capital Advantage program (the “**Advantage Program**”), respectively. Certain of the funds raised from the Investments Program were used to purchase the Investments Policies and certain of the funds raised from the Advantage Program were used to purchase the Advantage Policies;

9. as advised in the Receiver’s Second Report to the Court dated May 20, 2009, the Receiver retained Proverian Capital, LLC (“**Proverian**”) to assist the Receiver with the analysis and valuation of the Policies;

10. Proverian has provided the Receiver with (i) six different appraisal values for each Policy based on, among other things, the life expectancy certificates of the underlying insureds obtained from two different life expectancy underwriters; and (ii) a schedule of optimized premiums which need to be paid to preserve the death benefit of each Policy;

(a) The Advantage Realization Plan

11. pursuant to the Advantage Program, New Life offered Investors the opportunity to indirectly participate, sometimes along with a limited number of other Investors, in a single life insurance policy;

12. New Life sold preferred shares of 2126375 Ontario Inc., 2108375 Ontario Inc., 2126533 Ontario Inc., 2152042 Ontario Inc., 2173817 Ontario Inc. and common shares of 2100228 Ontario Inc. to Investors and used certain of the funds to purchase the Advantage Policies;

13. on or about July 2008, New Life prepaid the premiums due on the Advantage Policies and on or about April 2009, the Receiver paid the current premiums invoiced for the Advantage Policies. The Companies referred to in this paragraph are collectively, the “**Advantage Companies**”;

14. according to Proverian's schedule of optimized premium projections, there are no premiums due on the Advantage Policies until September 2010 and premiums could possibly be further deferred by drawing down the cash value accumulated in the Advantage Policies;

15. based on the analysis in the Receiver's Fourth report, the Receiver proposes that there should be a separate realization plan for the Advantage Policies for the following reasons:

- (a) the Advantage Program was a separate product offering of New Life;
- (b) the Investors invested in the Advantage Program with the objective of receiving shares in a company that held a beneficial interest in a specific life insurance policy. In the Receiver's view, with the exception of one Investor that purchased preferred shares of 2173817 Ontario Inc. (as fully described in the Fourth Report), the Investors that invested in the Advantage Program essentially received what they bargained for;
- (c) no premium is due on the Advantage Policies until at least September 2010 and premiums could possibly be further deferred by drawing down the cash value accumulated in the Advantage Policies; and
- (d) pursuant to Proverian's analysis, the Advantage Policies have positive value;

16. the Receiver recommends that New Life continue to hold the Advantage Policies until the Receiver has investigated further the flow of funds between the Advantage Companies and the other Companies, and the Receiver has completed the claims process (described below) in order to confirm the interests of the Investors and any creditors of the Advantage Companies. At this time, the Receiver is not aware of any creditors of the Advantage Companies;

17. the Receiver proposes to market the Advantage Policies at the same time as the Investment Policies. In light of the proposed Investments Realization Plan (described below), the Receiver does not anticipate that there will be significant incremental costs for implementing a sales process for the Advantage Policies. The Receiver will take into consideration the results of the sales process in considering whether to continue to recommend holding the Advantage Policies;

(b) The Investments Realization Plan

18. pursuant to the Investments Program, New Life sold Class A shares of New Life Capital Investments Inc. to Investors and used certain of the funds to purchase the Investments Policies;

19. pursuant to Proverian's analysis, some of the Investments Policies have negative appraisal values. Negative appraisal values arise when the actuarial present value of future premiums exceeds the actuarial present value of future death benefits;

20. after consultation with Proverian and given the optimized premium projections and potential risks associated with holding the Investments Policies, the Receiver proposes to market and offer the Investments Policies for sale, on an "as is where is" basis in the manner described in the Fourth Report;

21. some of the Investments Policies have premiums that are overdue or due in the near future, which if not paid, will cause those Policies to lapse. One such Policy will lapse as early as September 13, 2009. The Receiver recommends that it is in the best interests of all of the Investors and any creditors of the Companies to not pay the premiums due on those Policies that have negative appraisal values;

22. the Receiver recommends a protocol whereby the Receiver may transfer a Policy that is due to lapse to an Investor that is interested in assuming the Policy and paying the premiums going forward, as described in the Fourth Report;

23. the Receiver is aware of potential regulatory constraints, which may restrict or preclude the Receiver from implementing the Realization Plan, including transferring any Policies that may lapse to Investors. Given the complexities of the potential regulatory constraints, which includes the jurisdiction of any purchaser or transferee of the Policies, the Receiver will be assessing the potential regulatory constraints on a case-by-case basis. The Receiver will report to the stakeholders of New Life and the Court as soon as it has clarified the application of the regulatory regimes to any ultimate sale or transfer of the Policies;

24. the Receiver is of the view that the Receiver's recoveries pursuant to the Realization Plan in respect of the Policies are very uncertain and may be significantly less than the aggregate amount invested by the Investors;

The Claims Procedure

25. it is advisable and prudent to implement a claims procedure, as described in the Fourth Report, as soon as possible in order to identify and quantify the claims of creditors and the Investors against each of the Companies;

26. the Receiver proposes that stakeholders be required to prove their claims as at December 17, 2008, the date of the Appointment Order;

27. the Receiver recommends that the claims of Investors be calculated on the basis of (i) the amount paid by the Investor to acquire shares of New Life; less (ii) any amounts received by the Investor from New Life;

28. in addition to the foregoing, the Receiver proposes to request information from Investors regarding the number of Class A shares of New Life Capital Investments Inc. issued to the Investor by New Life pursuant to the Dividend Reinvestment Program. While, at this time, the Receiver proposes to calculate the claims of the Investors as set out in the foregoing paragraph, the Receiver wishes to obtain this information while it continues to investigate New Life's business;

29. the Receiver proposes to treat those individuals that purchased shares of one or more of the Companies through the Investments Program but who were not issued corresponding share certificates (the "**Unprocessed Investors**") like the Investors for the purpose of the claims procedure and, in future, in respect of any distributions;

30. in order to expedite the claims process, the Receiver proposes to provide each Investor, including the Unprocessed Investors, with a statement (an "**Investment Statement**") setting out the number of shares issued to and the amount invested by that Investor to be prepared by the Receiver using the information contained in the Companies' books and records;

31. the Receiver recommends that this Honourable Court establish a claims bar date of 4:00 p.m. (Eastern Standard Time) on Friday, October 30, 2009 for the filing of proofs of claim;

32. the Receiver may disallow any proof of claim of a claimant, in whole or in part, by issuing a Notice of Disallowance, substantially in the form attached to the draft Order (Claims Procedure) attached to the Motion Record. The Receiver will issue its Notices of Disallowance prior to any distribution;

33. any claimant may appeal any disallowance of its claim by delivering a Notice of Appeal, substantially in the form attached to the draft Order (Claims Procedure) attached to the Motion Record, within 30 days from the date of receipt of a Notice of Disallowance failing which, the claim will be forever barred and extinguished;

Supplemental Fourth Report to the Court

34. the Receiver will file a Supplemental Fourth Report to the Court containing, among other things, a copy of Proverian's report to the Receiver;

35. given the confidential and sensitive nature of the information contained in Proverian's report and given that the public disclosure of the information contained in Proverian's report may jeopardize the Receiver's Realization Plan, the Receiver proposes to file the Supplemental Fourth Report to the Court on a sealed basis; and

36. such further and other grounds as counsel may advise and this Honourable Court may deem just.

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

1. the Fourth Report;
2. the Supplemental Fourth Report; and

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

September 1, 2009

ThorntonGroutFinnigan LLP
Suite 3200, P.O. Box 329
Canadian Pacific Tower
Toronto-Dominion Centre
Toronto, ON M5K 1K7

James H. Grout (LSUC# 22741H 1B)
Seema Aggarwal (LSUC#50674J)

Tel: (416) 304-1616
Fax: (416) 304-1313

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

TO: THIS HONOURABLE COURT

AND TO: THE SERVICE LIST

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)**

Proceedings commenced at Toronto

NOTICE OF MOTION

ThorntonGroutFinnigan LLP
Barristers and Solicitors
Suite 3200, P.O. Box 329
Canadian Pacific Tower
Toronto-Dominion Centre
Toronto, Ontario
M5K 1K7

James H. Grout (LSUC# 22741H 1B)
Seema Aggarwal (LSUC# 50674J)

Tel: 416-304-1616

Fax: 416-304-1313

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