

**ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

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

**FIFTH REPORT TO THE COURT
SUBMITTED BY KPMG INC.
AS RECEIVER AND MANAGER**

April 16, 2010

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Appendix A	Order of the Ontario Superior Court of Justice (Commercial List) dated December 17, 2008
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Appendix C	Corporate Chart of New Life Entities
Appendix D	Order of the Ontario Superior Court of Justice (Commercial List) dated September 8, 2009
Appendix E	Release and Settlement Agreement between the Receiver and MassMutual dated March 29, 2010 (redacted)

1. Introduction

1.1 Appointment of Receiver

- 1.1.1 Pursuant to the Orders of the Honourable Mr. Justice Campbell of the Ontario Superior Court of Justice (Commercial List) dated December 17, 2008 and March 18, 2009, KPMG Inc. was appointed Receiver and Manager (“Receiver”) of all of the property, assets and undertakings (collectively, the “Property”) 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. A copy of the Orders dated December 17, 2008 and March 18, 2009 are attached hereto as **Appendix A** and **Appendix B**, respectively.
- 1.1.2 All of the foregoing companies are collectively referred to herein as “New Life” or the “Companies”. 2126375 Ontario Inc., 2108375 Ontario Inc., 2126533 Ontario Inc., 2152042 Ontario Inc., 2100228 Ontario Inc. and 2173817 Ontario Inc. are collectively referred to herein as the “Advantage Companies”.
- 1.1.3 The Ontario Securities Commission made the application for the appointment of the Receiver pursuant to Section 129 of the *Securities Act* (Ontario). New Life did not oppose the application.

1.2 Background to Receivership

- 1.2.1 New Life is in the life settlement business. It raised funds from investors to invest in life insurance policies through two alternative programs – the New Life Capital Investments program (the “Investments Program”) and the Capital Advantage program (the “Advantage Program”). Through various subsidiaries, New Life promoted itself as offering investment and wealth preservation opportunities.
- 1.2.2 Each of the Companies is an Ontario private corporation and, except for the Advantage Companies, was incorporated in 2005 and 2006. The corporate structure of the Companies is presented in **Appendix C**.
- 1.2.3 The principals of New Life are Jeffery Pogachar (“Pogachar”) and Paola Lombardi (“Lombardi”). Pogachar and Lombardi are spouses. Pogachar is the President and/or CEO of each of the Companies.
- 1.2.4 New Life Capital Investments Inc. administered the Investments Program and raised funds by the sale of its Class A common shares (the “Class A Shares”) to the public. Based on information currently available to the Receiver, it appears that New Life Capital Investments Inc. raised approximately \$22 million through the sale of Class A Shares to approximately 600 investors in Canada. New Life used some of the funds raised from the sale of Class A Shares to purchase a portfolio of 22 life insurance policies or life settlements with a total face value of U.S. \$83 million (the “Policies” or “Portfolio”). As described below, substantially all of the beneficial interest of three of the Policies (the

“Advantage Policies”) were designated to the Advantage Companies pursuant to the Advantage Program. The remaining 19 Policies remained as part of the Investments Program and are hereinafter referred to as the “Investments Policies”.

- 1.2.5 The Advantage Companies were established to be used in connection with the Advantage Program. New Life promoted the Advantage Program as offering investors the opportunity to indirectly participate in one life insurance policy. The Receiver understands that New Life raised approximately \$638,400 from the sale of preferred shares of the Advantage Companies (except for 2100228, in which case it sold common shares) to investors. The Advantage Companies used some of the funds raised to purchase substantially all of the beneficial interest of the Advantage Policies.
- 1.2.6 The principal assets of the Companies are (i) cash on deposit in the aggregate amount of approximately \$660,000 as at April 15, 2010; and (ii) the Policies. Since the date of the receivership, the Receiver has allowed one of these Policies to lapse.
- 1.2.7 The Receiver has also been appointed over the following assets purchased using New Life’s monies:
 - any funds on deposit in the bank accounts of Lexington Consulting Inc. and Amarcord International Inc. located at FirstCaribbean International Bank (Bahamas) Ltd. in the Commonwealth of The Bahamas;
 - one condominium located at Unit A1-4, Ocean Club Residences & Marina Phase I, Paradise Island, The Bahamas;
 - approximately U.S. \$1 million of 6.625% Bahamian government bonds;
 - three luxury vehicles consisting of a 2004 Ferrari Challenge, a 2005 Ferrari 575 Superam F1 and a 2007 Maserati;
 - real property municipally known as 3629 Niagara Boulevard, Fort Erie, Ontario;
 - a steel building;
 - two luxury watches;
 - certain custom-made furniture; and
 - a custom-made men’s summer wardrobe.

1.3 Purpose of This Report to the Court

- 1.3.1 The purpose of this Fifth Report to the Court (the “Fifth Report”) is to provide an evidentiary basis for an Order of this Honourable Court:
 - approving a Release and Settlement Agreement dated March 29, 2010 (the “MassMutual Settlement Agreement”) between KPMG Inc., the Receiver

and Massachusetts Mutual Life Insurance Company (“MassMutual”) with respect to one of the Policies and authorizing and directing the Receiver to complete the transactions contemplated therein; and

- approving the activities of the Receiver as described in this Fifth Report.

1.4 Terms of this Fifth Report

- 1.4.1 The Receiver has relied upon information and records available from the Companies and from third parties. The Receiver’s review of this information does not constitute an audit of the Property or the financial position or operating results of the Companies. In addition, any financial information presented by the Receiver is preliminary and the Receiver is not yet in a position to project the outcome of the administration of the receivership.
- 1.4.2 All references are to Canadian dollars unless otherwise noted. Certain information set out in earlier reports is reported herein for ease of reference.
- 1.4.3 All capitalized terms used herein and not otherwise defined are as defined in the Receiver’s Fourth Report to the Court dated September 2, 2009 (the “Fourth Report”).

2. *The Settlements with MassMutual*

2.1 Background to New Life's Purchase of Policies

- 2.1.1 As indicated above, New Life purchased the Portfolio which, at the date of the Receiver's appointment, consisted of 22 life insurance policies or life settlements with a total face value of approximately U.S. \$83 million. A life settlement is a transfer of an ownership interest in a life insurance policy to a third party for compensation. The third party then makes any required premium payments and holds the policy until the death of the insured at which time the third party is paid the death benefit under the policy. A number of legal issues surround any life settlement transaction that may affect the value of the policy.
- 2.1.2 All of the Policies were issued by life insurance companies based in the U.S. and all of the Policies insure the lives of individuals, who, at the time the Policies were issued, were U.S. residents. There is a significant life settlement industry in the U.S. As life insurance in the U.S. is regulated on a state-by-state basis, legislation governing the life settlement industry varies between states. In Canada, the insurance business is generally provincially regulated. The Receiver understands that there are provisions in the legislation of many of the provinces that have prohibited or restricted the development of a secondary market of Canadian life insurance policies.
- 2.1.3 The Receiver has limited information about the process (including any due diligence and valuation) that was used by New Life to purchase the Policies as the principals have failed to cooperate with the Receiver and the Receiver may not be in possession of all of New Life's records.
- 2.1.4 For the purchase of some of the Policies, New Life used the services of agents who received a commission for brokering the sale of the policy by the insured to New Life. From the limited information available to the Receiver, it appears that New Life paid a fixed purchase price for each Policy. In some instances, New Life paid a deposit to the owner, which represented a portion of the purchase price. The balance of the purchase price was then released to the owner through an escrow agent once the insured had complied with the conditions precedent to the transaction. In other instances, it appears that the entire purchase price was only paid through an escrow agent once the insured had complied with the conditions precedent to the transaction.
- 2.1.5 The Receiver is in possession of New Life's original documents in support of the Policies. For fourteen of the Policies, New Life obtained control of the trust, which had been established by the insured as the owner and beneficiary of the Policy. In such instances, New Life appointed Mr. Jonathan Berck to succeed the existing trustee of the trust (usually a relative of the insured) and New Life became the beneficiary of the Policy. No notice of this change in beneficial interest was provided to the insurer by any of the insureds, New Life or Mr. Berck. Mr. Berck tendered his resignations as trustee on or about December 3, 2008 and, in the Receiver's view, such resignations took effect on or about December 30, 2008. Based on the provisions of the form of trust agreement used by New Life, the Receiver became the trustee of the trust.

2.2 The MassMutual Policies

2.2.1 Two of the Policies were issued by MassMutual and may be described as follows:

- life insurance policy bearing policy no. 15624626 which insured the life of an individual with a face amount death benefit of U.S. \$2.5 million and which designated a trust as the policy owner (“MassMutual Policy #1”); and
- life insurance policy bearing policy no. 15621919 which insured the life of another individual with a face amount death benefit of U.S. \$3.0 million and which designated a trust as the policy owner (“MassMutual Policy #2” and collectively with MassMutual Policy #1, the “MassMutual Policies”).

2.2.2 In accordance with the procedure described above, on or about August 7, 2007 and on or about June 20, 2007, New Life obtained control of the trusts of MassMutual Policy #1 and MassMutual Policy #2, respectively.

2.2.3 Pursuant to a Complaint filed in the United States District Court for the Eastern District of New York dated July 15, 2009 (the “Complaint”), which the Receiver obtained a copy of on August 26, 2009, MassMutual commenced an action in respect of MassMutual Policy #1 against, among others, KPMG Inc., New Life Capital Investments Inc., the underlying insured and Mr. Berck for an Order, among other things, rescinding MassMutual Policy #1 and allowing MassMutual to retain the premium payments paid to date to offset damages. MassMutual did not obtain leave of this Honourable Court prior to commencing this action. A copy of the Complaint is attached as an appendix to the Receiver’s Supplemental Report to the Fourth Report to the Court dated September 4, 2009 and sealed pursuant to the Order of the Honourable Mr. Justice Campbell dated September 8, 2009 (the “September 8 Order”). A copy of the September 8 Order is attached hereto as **Appendix D**.

2.2.4 The Complaint contains serious allegations against the insured and certain relatives of the insured, including misrepresentation and fraud in connection with the application for coverage and subsequent transaction with New Life. In addition to the involvement of KPMG Inc. as a Defendant, the Complaint raises other issues which could impact the New Life receivership including that the insurer will resist paying the death benefit under MassMutual Policy #1.

2.2.5 The Receiver’s legal counsel, ThorntonGroutFinnigan LLP, was advised by MassMutual’s legal counsel, McElroy, Deutsch, Mulvaney & Carpenter LLP, that MassMutual would likely commence a second action against KPMG Inc., New Life Capital Investments Inc. and others in connection with MassMutual Policy #2.

2.3 The MassMutual Settlement Agreement Regarding MassMutual Policy #1

2.3.1 The Receiver has negotiated and entered into the MassMutual Settlement Agreement with MassMutual in respect of MassMutual Policy #1. Attached hereto as **Appendix E** is

an executed copy of the MassMutual Settlement Agreement, which has been redacted to protect the identity of the underlying insured.

2.3.2 The principal terms of the MassMutual Settlement Agreement are as follows:

- the MassMutual Settlement Agreement is subject to the approval of this Honourable Court;
- within 20 days of this Honourable Court's approval, MassMutual will be required to pay to the Receiver a lump sum of U.S. \$103,162.50 (the "Settlement Funds");
- upon receipt of the Settlement Funds by the Receiver, MassMutual Policy #1 will be rescinded and will be of no further force and effect;
- upon receipt of the Settlement Funds by the Receiver, MassMutual will immediately dismiss the Complaint against, among others, KPMG Inc., the Receiver and New Life Capital Investments Inc.; and
- upon completion of the foregoing obligations, each of the Receiver and MassMutual release each other from all claims relating to MassMutual Policy #1.

2.3.3 The amount of the Settlement Funds represents a return of 90% of the premiums paid to date on MassMutual Policy #1. The Receiver agreed that MassMutual may retain 10% of the premiums paid to date to offset any damages suffered by MassMutual.

2.3.4 MassMutual's legal counsel has advised the Receiver's legal counsel that MassMutual has obtained a separate release from the underlying insured and former policy owner to eliminate the risk that the former policy owner would claim a death benefit under MassMutual Policy #1 in the future. As a result of this separate release, MassMutual agreed to release the Receiver from any and all claims associated with MassMutual Policy #1.

2.3.5 The Receiver is of the view that the MassMutual Settlement Agreement is in the best interests of the stakeholders of New Life for the following reasons:

- pursuant to the September 8 Order, this Honourable Court authorized the Receiver's realization plan (as described in the Fourth Report) in respect of the Investments Policies, which included offering the Investments Policies for sale en bloc. The Receiver's sale process for the Investments Policies, which included both MassMutual Policy #1 and MassMutual Policy #2, ended on October 30, 2009 and did not result in any acceptable offers;

- the value of MassMutual Policy #1 as at July 1, 2009 as appraised by the Receiver's consultant, Proverian Capital, LLC, is significantly less than the amount of the Settlement Funds;
- the Complaint was issued on the last day of the contestability period for MassMutual Policy #1;
- the costs and risks associated with litigating the Complaint including the risk that the United States District Court for the Eastern District of New York may find in favour of MassMutual and rescind the MassMutual Policy #1 without the return of any premium payments thereon to the Receiver; and
- currently, the Receiver does not have sufficient cash on hand to fund the ongoing premium payments for all of the Policies. Absent new cash, the Receiver will be required to allow some Policies to lapse in the future.

2.4 The Status of the Settlement Negotiations Regarding MassMutual Policy #2

- 2.4.1 The Receiver is in the process of negotiating a similar settlement with MassMutual in respect of MassMutual Policy #2.
- 2.4.2 MassMutual's legal counsel has advised the Receiver's legal counsel that MassMutual has not attempted to obtain a separate release from the underlying insured and former trustee of MassMutual Policy #2. Given that MassMutual has not eliminated the risk that the former policy owner may claim a death benefit under MassMutual Policy #2, MassMutual is not prepared to enter into a settlement that would include releasing the Receiver from all future claims.
- 2.4.3 In order to address this concern, the Receiver has contacted the broker that initially sold MassMutual Policy #2 to the former policy owner regarding the settlement with MassMutual. The broker has advised the Receiver that the underlying insured and his wife reside in Israel and that the original trustee of the trust resides in the U.S. and that the broker may be able to assist in having the appropriate releases executed. The Receiver is in the process of doing so but expects that this process may take some time.
- 2.4.4 If the Receiver is able to obtain a release from the underlying insured, his wife and the original trustee in favour of MassMutual, then the Receiver will enter into a settlement agreement with MassMutual for MassMutual Policy #2 on similar terms of the MassMutual Settlement Agreement. If the Receiver is unable to obtain such a release, then the Receiver and MassMutual will continue to negotiate in good faith settlement terms acceptable to both parties. Any settlement with respect to MassMutual Policy #2 will be subject to the approval of this Honourable Court.

2.5 Representative Counsel's Views on the MassMutual Policies

- 2.5.1 The Receiver has discussed these settlements with the Representative Counsel who has, in turn, discussed this matter with the Investor Panel. The Representative Counsel has

advised the Receiver that the Representative Counsel and the Investor Panel agree to the settlement relating to MassMutual Policy #1 in the manner described herein and the Receiver's course of conduct to date in respect thereof.

3. Further Reporting and Recommendations

3.1 The Receiver's Further Reporting

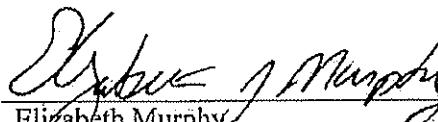
- 3.1.1 The Receiver has reported to New Life's stakeholders, by way of letters and notices posted on its website, on the Receiver's efforts to recover assets located in the Commonwealth of the Bahamas and other jurisdictions outside of Canada.
- 3.1.2 The Receiver is engaged in several ongoing initiatives to secure and recover assets in Ontario and foreign jurisdictions and will report to the Honourable Court on these activities in due course.


3.2 The Receiver's Recommendation to this Honourable Court

- 3.2.1 For the reasons set out above, the Receiver respectfully requests that this Honourable Court issue an Order:
- approving the MassMutual Settlement Agreement between the Receiver and MassMutual with respect to MassMutual Policy #1 and authorizing and directing the Receiver to complete the transactions contemplated therein; and
 - approving the activities of the Receiver as described in this Fifth Report.

All of which is respectfully submitted this 16th day of April, 2010.

**KPMG INC.,
IN ITS CAPACITY AS THE COURT APPOINTED RECEIVER
AND MANAGER 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.**


Elizabeth Murphy
Vice-President

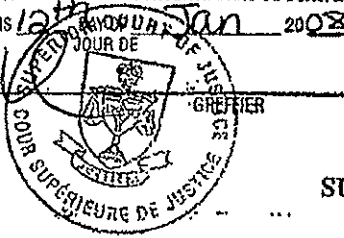

J. Bradley Butcher
Vice President

TAB A

THIS IS TO CERTIFY THAT THIS DOCUMENT, EACH PAGE OF WHICH IS STAMPED WITH THE SEAL OF THE SUPERIOR COURT OF JUSTICE AT TORONTO, IS A TRUE COPY OF THE DOCUMENT ON FILE IN THIS OFFICE

LA PRÉSENT ATTESTE QUE CE DOCUMENT, DONT CHACUNE DES PAGES EST REVÊTUE DU SCEAU DE LA COUR SUPÉRIEURE DE JUSTICE A TORONTO, EST UNE COPIE CONFORME DU DOCUMENT CONSERVÉ DANS CE BUREAU

DATED AT TORONTO THIS 17th DAY OF JAN 2008
FAIT A TORONTO LE



REGISTRAR

Court File No. 08-CL-7832

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**THE HONOURABLE
JUSTICE CAMPBELL**

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**WEDNESDAY THE 17th DAY
OF DECEMBER, 2008**

BETWEEN:

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

ORDER

THIS MOTION made by the Applicant Ontario Securities Commission (the "Commission") for an Order pursuant to Section 129 of the *Securities Act*, R.S.O. c. S.5, as amended (the "Securities Act") appointing KPMG Inc. as Receiver and Manager (in such capacities, the "Receiver"), without security, of all of the property, assets and undertaking of the Respondents, 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.

(collectively, the "Company") was heard this day at 330 University Avenue, in the City of Toronto, Ontario.

ON READING the affidavit of Stephanie Collins sworn November 7, 2008 and the Exhibits thereto, and on hearing the submissions of counsel for the Commission, no one appearing for the Respondents although duly served and on reading the consent of KPMG Inc. to act as the Receiver,

APPOINTMENT

1. **THIS COURT ORDERS** that, pursuant to Section 129 of the Securities Act, KPMG Inc. is hereby appointed Receiver, without security, of all of the property, assets and undertakings of the Company of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "Property") and the funds in the accounts frozen by the Direction issued by the Commission on August 6, 2008, which was varied by the Commission by Orders dated August 11, September 19 and October 23, 2008 (the "Direction") and was continued by Order of this Court dated August 12, 2008 (the "Frozen Funds").

2. **THIS COURT ORDERS** that the Direction be and it is hereby terminated and all financial institutions holding funds on deposit to the credit of the Company be and they are hereby directed to pay all such funds to the Receiver.

RECEIVER'S POWERS

3. **THIS COURT ORDERS** that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession and control of the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, protect and maintain control of the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate and carry on the business of the Company, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Company;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the powers and duties conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Company or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Company and to exercise all remedies of the Company in collecting such monies, including, without limitation, to enforce any security held by the Company;
- (g) to settle, extend or compromise any indebtedness owing to the Company;

- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Company, for any purpose pursuant to this Order;
- (i) to undertaking environmental or workers' health and safety assessments of the Property and operations of the Company;
- (j) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Company, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (k) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (l) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business, without the approval of this Court in respect of any transaction not exceeding \$100,000, provided that the aggregate consideration for all such transactions does not exceed \$1,000,000; and
 - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause,

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, R.S.O. 1990, c. P.10, shall not be required, and in each case the Ontario *Bulk Sales Act*, R.S.O. 1990, c. B.14, shall not apply;

- (m) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (n) to report to, meet with and discuss with any party deemed necessary or advisable by the Receiver, including without limitation any secured or unsecured creditors of the Company, investors or potential investors in the Company, any other stakeholders of the Company, and any of their respective advisors as the Receiver deems appropriate on all matters relating to the Property, the affairs of the Company, and the receivership of the Company and to share information with such parties subject to such terms as to confidentiality as the Receiver deems advisable;
- (o) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (p) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Company;
- (q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Company, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Company and the power to lend money to or indemnify any such trustee, such trustee's borrowings or indemnity not to exceed \$1,000,000 unless otherwise increased by this Court;

- (r) to exercise any shareholder, partnership, joint venture or other rights which the Company may have;
- (s) without limiting the generality of clause 3(n) above, to share information with, meet with and discuss with any regulatory bodies and their advisors, as the Receiver deems appropriate on all matters relating to the Property, the affairs of the Company and the receivership of the Company, subject to such terms as to confidentiality as the Receiver deems advisable;
- (t) to examine under oath any person the Receiver reasonably considers to have knowledge of the affairs of the Company including, without limitation, any present or former director, officer, shareholder, employee or person registered or previously registered with the Commission or subject or formerly subject to the jurisdiction of the Commission or any other regulatory body respecting the Property and the affairs of the Company;
- (u) to take any steps reasonably incidental to the exercise of these powers,

and in each such case where the Receiver takes any such actions or steps, it shall be exclusively

authorized and empowered to do so, to the exclusion of all other Persons (as defined below);

including the Company, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. **THIS COURT ORDERS** that (i) the Company, (ii) all of its current and former directors, officers, employees, persons registered or previously registered or subject or formerly subject to the jurisdiction of the Commission with the Commission or any other regulatory body, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Receiver of the existence of any

Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Company, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

7. **THIS COURT ORDERS** that any claim of privilege attaching to solicitor-client communications or to disclosure of Records being prohibited by statute shall be determined by this Honourable Court upon motion brought by the Receiver on notice to the Company and any other affected person.

8. **THIS COURT ORDERS** that Internet Providers and other persons who provide email, world wide web, file transfer protocol, Internet connection or other similar services to the Company any/or its present and former directors, officers, employees and agents shall deliver to the Receiver all documents, server files, archive files and any other information in any form in any way recording messages, emails or other information sent or received by such directors, officers, employees or agents in the course of their association with the Company.

NO PROCEEDINGS AGAINST THE RECEIVER

9. **THIS COURT ORDERS** that no action, suit, proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE COMPANY OR THE PROPERTY

10. **THIS COURT ORDERS** that no Proceeding against or in respect of the Company or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Company or the Property are hereby stayed and suspended pending further Order of this Court provided that a Proceeding does not include any action, suit or proceeding outstanding or subsequently commenced by or before any regulatory body including, without limitation, the Commission which are not stayed by this Order.

NO EXERCISE OF RIGHTS OR REMEDIES

11. **THIS COURT ORDERS** that all rights and remedies against the Company, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that nothing in this paragraph shall (i) empower the Receiver or the Company to carry on any business which the Company is not lawfully entitled to carry on, (ii) exempt the Receiver or the Company from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

12. **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Company, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

13. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Company or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Company are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Company's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with the normal payment practices of the Company

or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

14. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "Post Receivership Accounts") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

15. **THIS COURT ORDERS** that all employees of the Company shall remain the employees of the Company until such time as the Receiver, on the Company's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including wages, severance pay, termination pay, vacation pay, and pension or benefit amounts, other than such amounts as the Receiver may specifically agree in writing to pay, or such amounts as may be determined in a Proceeding before a court or tribunal of competent jurisdiction provided that, pursuant to subsection 14.06 (1.2) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA"), the Receiver shall not be liable to any amount that is or could be due to an employee by the Company including, without limitation, any amount calculated by reference to any period of that employment, service or seniority that precedes the date of this order. Nothing in this Order shall derogate from the protections afforded to the Receiver by Section 14.06 of the BIA.

16. **THIS COURT ORDERS** that, pursuant to clause (7)(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Company, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

17. **THIS COURT ORDERS** that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, 1999, S.C. 1999, c. 33, the *Ontario Environmental Protection Act*, R.S.O. 1990, c. E.19, the *Ontario Water Resources Act*, R.S.O. 1990, c. O.40, or the *Ontario Occupational Health and Safety Act*, R.S.O. 1990, c. O.1, and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the

Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

18. **THIS COURT ORDERS** that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Receiver by Section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

19. **THIS COURT ORDERS** that any expenditure or liability which shall properly be made or incurred by the Receiver, including the fees of the Receiver and the fees and disbursements of its legal counsel, incurred at the standard rates and charges of the Receiver and its counsel, both before and after the making of this Order in respect of these proceedings, shall be allowed to it in passing its accounts and shall form a first charge on the Property and the Frozen Funds in priority to all security interest, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person (the "Receiver's Charge").

20. **THIS COURT ORDERS** the Receiver and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

21. **THIS COURT ORDERS** that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the normal rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

22. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$250,000 (or such greater amount as this Court may be further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property and the Frozen Funds shall be and are hereby charged by way of a fixed and specific charge (the "Receiver's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge.

23. **THIS COURT ORDERS** that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

24. **THIS COURT ORDERS** that that Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "Receiver's Certificates") for any amount borrowed by it pursuant to this Order.

25. **THIS COURT ORDERS** that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

GENERAL

26. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

27. **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Company.

28. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States or elsewhere in the world to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

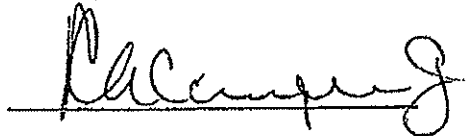
29. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever situate, for the recognition of this Order and for assistance in carrying out the terms of this Order.

30. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

DEC 17 2008

PER / PAR: 



SCHEDULE "A"

RECEIVER'S CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. **THIS IS TO CERTIFY** that KPMG Inc., the Receiver and Manager (the "Receiver") 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. and 2100228 Ontario Inc. appointed by Order of the Ontario Superior Court of Justice (the "Court") dated the 17th day of December, 2008 (the "Order") made in an action having Court File Number 08-CL-7832, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$●, being part of the total principal sum of \$● which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded ~~[daily]~~ **[monthly not in advance on the ● day of each month]** after the date hereof at a notional rate per annum equal to the rate of ● per cent above the prime commercial lending rate of Royal Bank of Canada from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property and the Frozen Funds (as defined in the Order), in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property and the Frozen Funds (as defined in the Order) as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the ● day of ●, 200●.

KPMG Inc., solely in its capacity as Receiver of the Property and the Frozen Funds (as defined in the Order), and not in its personal capacity

Per: _____

Name:

Title:

COURT FILE NO. 08-CL-7832

ONTARIO SECURITIES COMMISSION
Applicant

- and -

NEW LIFE CAPITAL CORP. *et al.*
Respondents

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

ORDER

Ontario Securities Commission
20 Queen Street West
Suite 1903, Box 55
Toronto, ON M5H 3S8

Susan Kushneryk
Litigation Counsel;
Enforcement
LSUC #45702F

Tel: 416-595-8782
Fax: 416-593-2319
E: skushneryk@osc.gov.on.ca

TAB B

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.)
JUSTICE COLIN L. CAMPBELL) WEDNESDAY, THE 18TH DAY
OF MARCH, 2009 .

BETWEEN:

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

ORDER

THIS MOTION made by KPMG INC., in its capacity as the Court-appointed Receiver and Manager of the Respondents (the "Receiver"), for the relief set out in its Notice of Motion dated March 12, 2009 herein was heard this day at 330 University Avenue, in the City of Toronto.

UPON READING the First Report to the Court submitted by KPMG Inc. as Receiver and Manager dated March 12, 2009 and upon hearing the submissions of counsel for the Receiver, counsel for the Respondents and counsel for the Applicant, no one else appearing,

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.



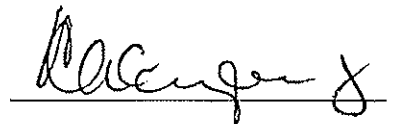
2. **THIS COURT ORDERS** that the activities of the Receiver from the date of its appointment to the date of its First Report to the Court are hereby approved.
3. **THIS COURT ORDERS** that the Receiver is authorized to return two uncashed cheques and one uncashed bank draft in the possession of the Receiver to parties who purported to subscribe for shares in one or more of the Respondents.
4. **THIS COURT ORDERS** that the Receiver is authorized to add the additional investors who completed applications and remitted funds to the Respondents for the purchase of units but who did not receive share certificates and were not included on the Respondents' shareholder register (the "Unprocessed Investors") to the Receiver's mailing list of investors in one or more of the Respondents for the purposes of dissemination of information.
5. **THIS COURT ORDERS** that the Order of the Honourable Mr. Justice Campbell dated December 17, 2008 appointing KPMG Inc. as Receiver of all of the undertaking, property and assets of the Respondents be amended to add 2173817 Ontario Inc. as a Respondent and to include all of its undertaking, property and assets in the receivership.
6. **THIS COURT ORDERS** that the Receiver is authorized, in its discretion, to issue and proceed with one or more Applications for a Bankruptcy Order against one or more of the Respondents on a consolidated basis or otherwise.
7. **THIS COURT ORDERS** that the Receiver is authorized to consent to, on behalf of the Respondents, the making of one or more Bankruptcy Orders against some or all of the Respondents on a consolidated basis or otherwise, once the Applications for a Bankruptcy Order have been issued.
8. **THIS COURT ORDERS** that the Official Receiver is directed to, in the event that the Receiver obtains one or more Bankruptcy Orders against some or all of the Respondents on a consolidated basis, open one estate file and assign one estate file number for each consolidated bankruptcy.

ENTÉRÉ AT / INSCRIT A TORONTO
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LE / DANS LE REGISTRE NO.:

MAR 18 2009

PER / PAR: 

2



ONTARIO SECURITIES COMMISSION

- and - NEW LIFE CAPITAL CORP., NEW LIFE
CAPITAL INVESTMENTS INC., NEW LIFE CAPITAL
INVESTMENTS INC., NEW LIFE CAPITAL ADVANTAGE
INC., NEW LIFE CAPITAL STRATEGIES INC. ET AL

Court File No. 08-CL-7832

ONTARIO

**SUPERIOR COURT OF JUSTICE
(Commercial List)**

Proceeding Commenced at Toronto

ORDER

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

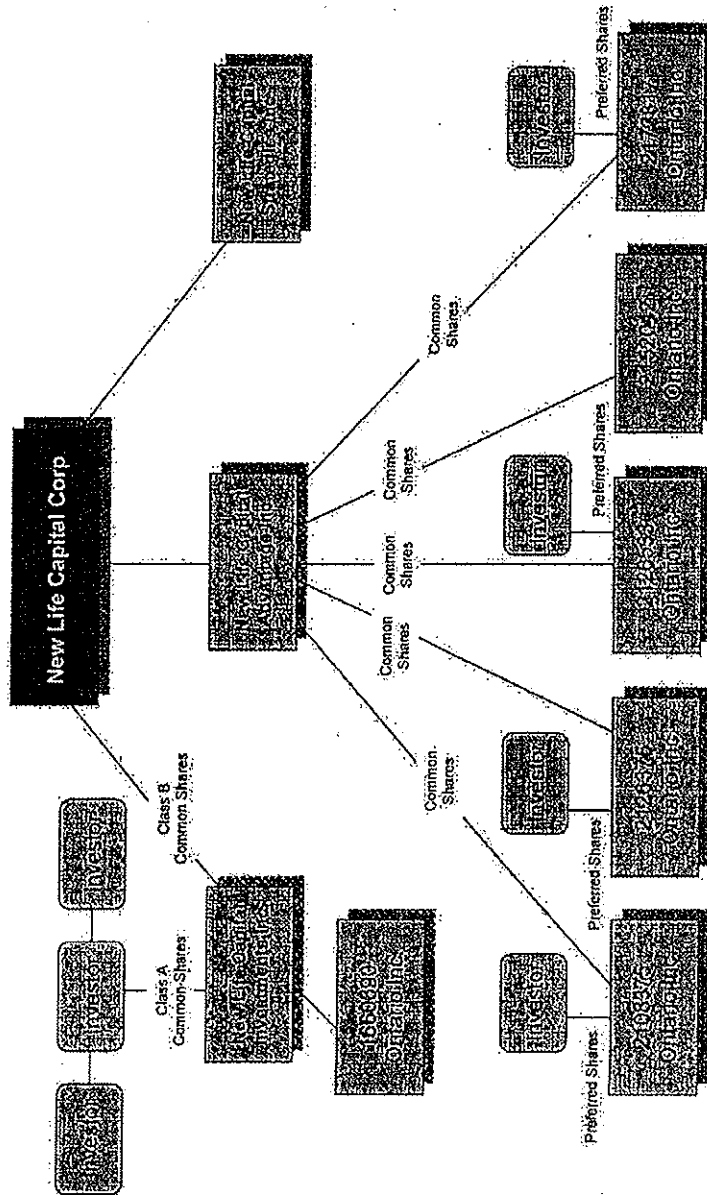
James H. Grout - 22741H
D.J. Miller - 34393P

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

TAB C

The New Life Group of Companies
 Corporate Chart
 as at December 17, 2008



Note: This chart does not include the Respondent 2100228 Ontario Inc. as New Life has no ownership interest in that entity.

TAB D



Court File No. 08-CL-7832

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.)
JUSTICE NEWBOULD)
TUESDAY, THE 8TH DAY
OF SEPTEMBER, 2009

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

**ORDER
(Approval of Realization Plan)**

THIS MOTION made by 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, “**New Life**” or the “**Companies**”), for the relief set out in its Notice of Motion dated September 1, 2009 (the “**Notice of Motion**”) was heard this day at 330 University Avenue, Toronto, Ontario.

UPON READING the Fourth Report to the Court of the Receiver dated September 2, 2009 (the “**Fourth Report**”), the Receiver’s Supplemental Fourth Report to the

Court and upon hearing the submissions of counsel for the Receiver, counsel for the Applicant and of Kevin McElcheran as representative counsel for 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 Receiver's Realization Plan (defined below), no one else appearing,

and the order not being opposed - JW J.
Service

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.

Approval of Document Delivery Protocol

2. **THIS COURT ORDERS** that the Document Delivery Protocol dated August 5, 2009 between the Receiver and the Companies' principals, Jeffrey Pogachar and Paola Lombardi, is hereby approved.

Approval of Realization Plans

3. **THIS COURT ORDERS** that the Receiver's realization plan in respect of the 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 Fourth Report, is hereby approved (the "Advantage Realization Plan").

4. **THIS COURT ORDERS** that the Receiver's realization plan in respect of the nineteen (19) life insurance policies or life settlements (the "Investment Policies"), as described in the Fourth Report, is hereby approved (the "Investment Realization Plan" and with the Advantage Realization Plan, the "Realization Plan").

5. **THIS COURT ORDERS** that the Receiver be and is hereby authorized to carry out the Realization Plan, subject to any changes to the Realization Plan that the Receiver considers to be appropriate.

6. **THIS COURT ORDERS AND DECLARES** that nothing in this Order shall require the Receiver to accept any offer received as a result of the Realization Plan.

Approval of Statement of Receipts and Disbursements and Activities

7. **THIS COURT ORDERS** that the Receiver's Statement of Receipts and Disbursements for the period December 17, 2008 to September 1, 2009 is hereby approved.


8. **THIS COURT ORDERS** that the Receiver's activities as described in the Receiver's Third Report to the Court dated May 28, 2009 and Fourth Report are hereby approved.

9. **THIS COURT ORDERS** that the Receiver's Supplemental Fourth Report to the Court be and it is hereby sealed pending further Order of this Honourable Court.



ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

SEP 08 2009

PER / PAR:  Joanne Nicoara
Registrar, Superior Court of Justice

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

ORDER
(Approval of Realization Plan)

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

James H. Grout (LSUC No. 22741H 1B)
Seema Aggarwal (LSUC No. 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

Tab E

RELEASE AND SETTLEMENT AGREEMENT

This Release and Settlement Agreement ("Agreement") is hereby made this 29th day of March, 2010, by and between MASSACHUSETTS MUTUAL LIFE INSURANCE COMPANY ("MassMutual"), maintaining a principal place of business located at 1295 State Street, Springfield, MA 01111, and KPMG INC., in its capacity as the Court-Appointed Receiver and Manager (the "Receiver") of, among others, New Life Capital Investments Inc. ("New Life"), maintaining a principal place of business located at Suite 4600, Bay Adelaide Centre, 333 Bay Street, Toronto, Ontario M5H 2S5.

WHEREAS MassMutual issued a policy of life insurance bearing policy no. 15624626 which insured the life of [REDACTED] (" [REDACTED] ") with a face amount death benefit of \$2.5 million, which Policy designated the [REDACTED] Legacy Trust 2007 (" [REDACTED] Trust") as the Policy Owner (" [REDACTED] Policy"); and

WHEREAS pursuant to the Order of the Ontario Superior Court of Justice dated December 17, 2008 in court file no. 08-CL-7832, KPMG Inc. was appointed as the Receiver of, among others, New Life Capital Investments Inc; and

WHEREAS following the appointment of the Receiver, the Receiver represented to MassMutual that it is the trustee, owner and beneficiary of the [REDACTED] Trust and maintains all of the lawful authority to exercise all rights, title and interest maintained, possessed and enjoyed by the [REDACTED] Trust including the agreements reached herein; and

WHEREAS MassMutual commenced an action in the United States District Court, Eastern District of New York, bearing civil action no. 09-cv-3037, entitled "Massachusetts Mutual Life Insurance Company v. [REDACTED], [REDACTED], [REDACTED], [REDACTED] Legacy Trust 2007, Jonathan S. Berck, New Life Investments, Inc., and KPMG, Inc." ("Civil Action"); and

WHEREAS KPMG Inc., the Receiver and MassMutual have now agreed to settle the dispute and all matters between them relating and/or arising under the [REDACTED] Policy, the [REDACTED] Trust and the Civil Action; and

WHEREAS the Receiver and MassMutual now wish to confirm and memorialize their settlement of all claims and disputes between them relating to this matter;

NOW, THEREFORE, the Receiver and MassMutual, intending to be legally bound, and for the mutual covenants and promises set forth herein, including incorporation of the foregoing Whereas provisions, agree as follows:

1. Court Approval. Within thirty (30) days after execution of this Agreement by all parties hereto, the Receiver shall apply to the Ontario Superior Court of Justice in court file no. 08-CL-7832 for an Order approving the terms of this Agreement and authorizing the Receiver to complete the transactions contemplated herein ("Court Approval"). For greater certainty, this Agreement and the obligation of the Receiver to complete the transactions contemplated herein are

subject to Court Approval.

2. Payment. Within twenty (20) days of the Receiver obtaining Court Approval, MassMutual shall pay to the Receiver; a lump sum of One Hundred and Three Thousand One Hundred and Sixty-two Dollars and 50/100 cents (USD \$103,162.50) in immediately available United States Dollar funds (the "Settlement Funds").
3. Termination, Surrender and Rescission of the Arking Policy. Upon receipt of the Settlement Funds by the Receiver, and in further consideration for the mutual covenants and promises set forth herein, as set forth above, the Receiver and the [REDACTED] Trust agree and acknowledge that the [REDACTED] Policy is terminated, cancelled, surrendered, rescinded, *ab initio*, and is null and void and of no legal force and effect of whatsoever nature.
4. Dismissal of Civil Action. Upon receipt of the Settlement Funds by the Receiver, MassMutual agrees to immediately dismiss the Civil Action against KPMG Inc., New Life and the [REDACTED] Trust.
5. Release by KPMG Inc., the Receiver and the [REDACTED] Trust. Upon the completion of the obligations set forth in paragraphs 1 to 4 herein, KPMG Inc., the Receiver and the [REDACTED] Trust, including each of their respective predecessors, parent corporations, subsidiaries, affiliates, officers, directors, employees, agents, brokers, attorneys, successors, assigns, representatives and any and all other entities or persons in privity with them and/or who claim through them, agree to release, acquit and forever discharge MassMutual, including its predecessors, parent corporations, subsidiaries, affiliates, officers, directors, employees, agents, brokers, attorneys, successors, assigns, representatives and any and all other entities or persons in privity with it and/or who claim through them, from all claims, demands, debts, liabilities, causes of action, obligations, and liabilities of any kind, that KPMG Inc., the Receiver and the [REDACTED] Trust, may have had or claim to have had, whether at law or in equity, whether known or unknown, whether anticipated or unanticipated, and arising from the beginning of the world to the date of the execution of this Agreement and without in any way limiting the generality of the foregoing, which in any manner arise out of, or in any manner whatsoever directly or indirectly, is connected with or related to: 1) the [REDACTED] Policy and any and all claims for coverage or benefits under the [REDACTED] Policy; 2) MassMutual's administration, processing, investigation, evaluation and/or underwriting of the [REDACTED] Policy; 3) all claims for contractual and extra-contractual, federal or state, statutory or common law, causes of action including, without limitation, all claims for benefits, actual damages, treble damages, attorney fees and costs, prejudgment and post judgment interest, punitive and exemplary damages and the like; 4) any claim for bad faith, fraud or violation of state statutes and/or the insurance codes thereof; 5) any claims that were or could be asserted in the Civil Action relating to the [REDACTED] Policy; and 6) any act, omission, transaction, dealing, conduct or negotiation of any kind whatsoever between KPMG Inc., the Receiver, the [REDACTED] Trust, New Life and MassMutual, or between anyone acting or purporting to act on their respective behalf with respect to the [REDACTED] Policy, or to any claim for benefits submitted thereunder.
6. Release by MassMutual. Upon the completion of the obligations set forth in paragraphs 1 to 4 herein, MassMutual, its predecessors, parent corporations, subsidiaries, affiliates, officers, directors, employees, agents, brokers, attorneys, successors, assigns,

representatives and any and all other entities or persons in privity with it and/or who claim through them, agree to release, acquit and forever discharge KPMG Inc., the Receiver, New Life and the [REDACTED] Trust, including each of their respective predecessors, parent corporations, subsidiaries, affiliates, officers, directors, employees, agents, brokers, attorneys, successors, assigns, representatives and any and all other entities or persons in privity with them and/or who claim through them, from all claims, demands, debts, liabilities, causes of action, obligations and liabilities of any kind, that MassMutual may have had or claim to have had, whether at law or in equity, whether known or unknown, whether anticipated or unanticipated, and arising from the beginning of the world to the date of the execution of this Agreement and without in any way limiting the generality of the foregoing, which in any manner arise out of, or in any manner whatsoever directly or indirectly, is connected with or related to: 1) the [REDACTED] Policy; 2) the Civil Action; and 3) any act, omission, transaction, dealing, conduct or negotiation of any kind whatsoever between KPMG Inc., the Receiver, the [REDACTED] Trust, New Life and MassMutual, or between anyone acting or purporting to act on their respective behalf with respect to the [REDACTED] Policy, or to any claim for benefits submitted thereunder.

7. **No Admission by MassMutual.** The parties to this Agreement recognize that any payment or agreement made pursuant to this Agreement is not an admission by MassMutual of any liability for any of the claims that were or could have been asserted by the Receiver and the [REDACTED] Trust, which liability is hereby expressly denied. It is further understood that the payment of any monies and/or the signing of this Agreement shall in no way be deemed or used as an admission of any liability or of any fact and shall have no precedential value as to any claim for alleged wrongdoing or liability in any other legal proceeding whatsoever.

8. **No Admission by KPMG Inc., the Receiver and the [REDACTED] Trust.** The parties to this Agreement recognize that any acknowledgment or agreement made pursuant to this Agreement is not an admission by KPMG Inc., the Receiver or the [REDACTED] Trust of any liability for any of the claims that were or could have been asserted by MassMutual, which liability is hereby expressly denied. It is further understood that the signing of this Agreement shall in no way be deemed or used as an admission of any liability or of any fact and shall have no precedential value as to any claim for alleged wrongdoing or liability in any other legal proceeding whatsoever.

9. **Careful Review of Agreement and Understanding of Release.** Each of the parties hereto represents that it has carefully read this Agreement, and understands its terms and conditions without reservation. Each of the parties hereto acknowledges that it has had ample opportunity to consult with legal counsel of its choice regarding this Agreement and has not relied on any representations or statements of the other party or the other party's counsel with respect to the subject matter of this Agreement. Each of the parties hereto further acknowledges that the other party is not warranting or representing any tax consequences of this Agreement, and that each is relying on its own legal and/or tax advisors and not on the other party in that regard.

10. **Severability.** If any portion or portions of this Agreement may be held by a court of competent jurisdiction to conflict with any federal, state or local law, and as a result

such portion or portions are declared to be invalid and of no force or effect in such jurisdiction, all remaining provisions of this Agreement shall otherwise remain in full force and effect and be construed as if such invalid portion or portions had not been included herein.

11. **Counterparts.** This Agreement may be signed in several counterparts, but all when taken together shall constitute but a single document when executed by all parties. This Agreement shall not constitute the agreement of the parties until such time as it has been executed by all parties.

12. **Entire Agreement.** Each party acknowledges and agrees that no representations or promises have been made to or relied upon by any of them or by any person acting for or on their behalf in connection with the subject matter of this Agreement which are not specifically set forth herein. All prior representations and promises made by any party to another, whether in writing or orally, are understood by the parties to be merged in this Agreement.

13. **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of the parties, their respective heirs, beneficiaries, personal representatives, successors, and assigns.

14. **Amendments.** This Agreement and all documents and instruments executed in connection herewith or in furtherance hereof may not be amended, modified or supplemented except by an instrument in writing signed by all parties hereto.

15. **Further Assurances.** Each party agrees to execute such further and additional documents, instruments and writings as may be necessary, proper, required, desirable or convenient for the purpose of fully effectuating the terms and provisions of this Agreement.

16. **Governing Law.** This Release and Settlement Agreement shall be construed and governed by the laws of the State of New York.

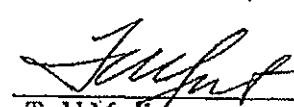
17. **Covenant Not to Sue.** Each of the parties hereto agrees to never commence, prosecute or cause to be prosecuted against the other party any complaint, suit, or proceeding based on the [REDACTED] Policy. Each of the parties hereto represents that it is unaware of any claim or cause of action each has against the other party that is not released by this Agreement.

[The Remainder of this Page is Intentionally Blank]

IN WITNESS WHEREOF, the parties have executed this Release and Settlement Agreement as of the date first set forth above.

KPMG INC., in its capacity as the Court-appointed Receiver and Manager of New Life Capital Investments Inc. and as Trustee of the [REDACTED] Legacy Trust 2007

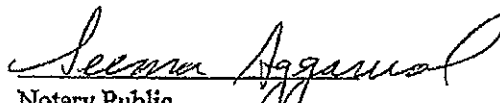
Per: 
Name: Michael Creber
Title: President

Per: 
Name: Todd Martin
Title: Chairman

We have the authority to bind the Corporation.

PROVINCE OF ONTARIO
: SS.
CITY OF TORONTO

Personally appeared the above-named persons who made oath that the execution of this document is his/her own free act and deed in his/her capacity as an officer of KPMG Inc. in its capacity as the Court-Appointed Receiver and Manager of New Life Capital Investments Inc. (the "Receiver"), and the free act and deed of the Receiver, this 24th day of March, 2010.


Notary Public
My Commission Expires:



KPMG INC.

Per: 

Name: Michael Creber

Title: President

Per: 

Name: Todd Martin

Title: Chairman

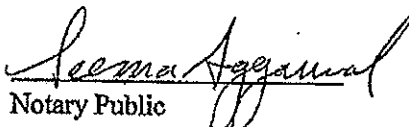
We have the authority to bind the Corporation.

PROVINCE OF ONTARIO

: SS.

CITY OF TORONTO

Personally appeared the above-named persons who made oath that the execution of this document is his/her own free act and deed in his/her capacity as an officer of KPMG Inc., and the free act and deed of KPMG Inc., this 24th day of March, 2010.


Notary Public
My Commission Expires:



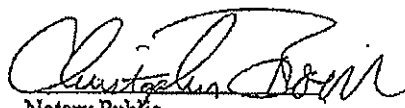
MASSACHUSETTS MUTUAL LIFE INSURANCE
COMPANY

Per: 
Name: KAREN M. PHELAN
Title: CORPORATE VICE PRESIDENT

I have the authority to bind the Corporation.

BY:
COMMONWEALTH OF MASSACHUSETTS *State of Connecticut*
:SS.
COUNTY OF *Hartford*

Personally appeared the above-named Karen M. Phelan who made oath that the execution of this document is his/her own free act and deed in his/her capacity as Corporate Vice President of Massachusetts Mutual Life Insurance Company and the free act and deed of Massachusetts Mutual Life Insurance Company this 19th day of March, 2009.


Notary Public
My Commission Expires: 6.30.2010
CHRISTOPHER BROWN
NOTARY PUBLIC
STATE OF CONNECTICUT
My Commission Expires June 30, 2010