

**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

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

October 31, 2011

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1. Introduction

1.1 Appointment of the Receiver

- 1.1.1 Pursuant to the Orders of the Honourable Mr. Justice Campbell of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated December 17, 2008 (the “**Appointment Order**”) and March 18, 2009, KPMG Inc. was appointed Receiver and Manager (the “**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 Appointment Order and the Order dated March 18, 2009 are attached hereto as **Appendix A** and **Appendix B**.
- 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 2178317 Ontario Inc. are collectively referred to herein as the “**Advantage Companies**”.
- 1.1.3 The Ontario Securities Commission (the “**OSC**”) made the application for the appointment of the Receiver pursuant to Section 129 of the *Securities Act* (Ontario) (the “*Securities Act*”). New Life did not oppose the application.

1.2 Background to the Receivership

- 1.2.1 New Life was in the life settlement business. A life settlement is a transaction pursuant to which a life insurance policy is sold to a third party for an amount less than the maturity value. The third party then makes any required premium payments and, upon the death of the underlying insured, collects the death benefit paid under the policy. The life settlement business is illegal in Canada but is allowed in the United States.
- 1.2.2 New Life raised approximately \$22.6 million from investors and used some of these proceeds to purchase life insurance policies or life settlements. New Life raised the aforementioned funds from investors through two alternative programs – the New Life Capital Investments program (the “**Investments Program**”) and the New Life Capital Advantage program (the “**Advantage Program**”).
- 1.2.3 New Life Capital Investments Inc. administered the Investments Program. It raised approximately \$22 million from the sale of its class A common shares (the “**Class A Shares**”) to approximately 600 investors in Canada. New Life used some of the funds raised to purchase a portfolio of 22 life insurance policies or life settlements with a total face value of US \$83 million (the “**Policies**” or “**Portfolio**”). As described below, substantially all of the beneficial interest of three of the Policies (the “**Advantage Policies**”) was 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**”.

- 1.2.4 The Advantage Companies were involved in the Advantage Program. Pursuant to the Advantage Program, investors were offered the opportunity to indirectly invest in one life insurance policy. New Life raised approximately \$638,400 from ten investors from the sale of preferred shares of the Advantage Companies (except in one case where it sold common shares) to investors. The Advantage Companies used some of the funds raised to purchase substantially all of the beneficial interest in the Advantage Policies.
- 1.2.5 Pursuant to page 23 of New Life's Offering Memorandum, as amended dated September 2006, and page 26 of New Life's Offering Memorandum, as amended dated January 2008, (collectively, the "**New Life Offering Memoranda**"), New Life sold the Class A Shares to investors on the basis that:
- (a) 80-85% of the proceeds raised would be used to purchase life insurance policies or life settlements and maintain the policy premiums thereon; and
 - (b) the remaining 15-20% of the proceeds raised would be used to fund working capital and general corporate purposes.

Attached hereto as **Appendix C** is a copy of the New Life Offering Memoranda.

- 1.2.6 The principals of New Life were Jeffrey Pogachar ("**Pogachar**") and Paola Lombardi ("**Lombardi**"). Pogachar and Lombardi are spouses. Pogachar was the President and/or CEO of each of the Companies. Lombardi was:
- (a) the Executive Vice-President of New Life Capital Investments Inc., New Life Capital Advantage Inc. and New Life Capital Strategies Inc.;
 - (b) the Vice-President of 1660690 Ontario Inc.; and
 - (c) the Secretary of New Life Capital Corp. and each of the Advantage Companies.
- 1.2.7 In addition, Alan Price ("**Price**") was a director of New Life Capital Investments Inc. and was the Secretary-Treasurer of 1660690 Ontario Inc.
- 1.2.8 Each of the Companies (except for the Advantage Companies) was incorporated in Ontario on various dates in 2005 and 2006. Each of the Advantage Companies was incorporated in Ontario on various dates in 2006, 2007 and 2008. The corporate structure of the Companies is presented in **Appendix D**.
- 1.2.9 The OSC regulates the issuance and trading of securities pursuant to the *Securities Act*. The OSC's mandate includes the protection of the investing public.
- 1.2.10 On August 6, 2008, the OSC issued a Temporary Cease Trade Order against the Companies (except for the Advantage Companies), Pogachar, Lombardi and Price, which required each of them to cease trading in securities (the "**Temporary Cease Trade Order**"). Attached hereto as **Appendix E** is a copy of the Temporary Cease Trade Order, as varied.

- 1.2.11 Also on August 6, 2008, the OSC issued a Direction to TD Canada Trust, Branch 2492 in Grimsby, Ontario (“**TD**”) directing TD to retain all funds, securities or property on deposit in the name or under the control of New Life (except for the Advantage Companies) (the “**Direction**”). Attached hereto as **Appendix F** is a copy of the Direction.
- 1.2.12 On August 7, 2008, the OSC issued a Statement of Allegations (the “**Statement of Allegations**”) against each of the Companies (except for the Advantage Companies), Pogachar, Lombardi and Price alleging that their activities breached various provisions of the *Securities Act*. Attached hereto as **Appendix G** is a copy of the Statement of Allegations.
- 1.2.13 On June 23, 2010, Staff of the OSC issued an Amended Statement of Allegations (the “**Amended Statement of Allegations**”) against each of the Companies (including the Advantage Companies), Pogachar, Lombardi and Price alleging, among other things, that:
- (a) New Life, Pogachar and Lombardi perpetrated a fraud on investors by using funds raised from the sale of securities for their own personal purposes contrary to section 126.1(1)(b) of the *Securities Act*;
 - (b) the Respondents traded securities without being registered to trade securities in accordance with Ontario securities law contrary to section 25(1)(a) of the *Securities Act*; and
 - (c) the Respondents, Pogachar and Lombardi, being officers and directors of the corporate Respondents, authorized, permitted or acquiesced in the breaches of Ontario securities law by the corporate Respondents, contrary to section 129.2 of the *Securities Act*.

Attached hereto as **Appendix H** is a copy of the Amended Statement of Allegations.

- 1.2.14 Pursuant to the Order of the Honourable Justice Campbell dated August 12, 2008, the Court ordered that the Direction be continued until final resolution of the OSC proceeding or further Order of the Court. Attached hereto as **Appendix I** is a copy of the Order dated August 12, 2008.
- 1.2.15 In or about August, 2008, Pogachar and Lombardi left Canada and, as discussed further in this Eighth Report, took up residence in The Commonwealth of the Bahamas (the “**Bahamas**”). It is the Receiver’s understanding that they have no plans to return in the near future.
- 1.2.16 In or about November, 2008, Staff of the OSC made the application for the appointment of a receiver and manager pursuant to Section 129 of the *Securities Act*.
- 1.2.17 Pursuant to the Order of the Honourable Mr. Justice Campbell dated March 18, 2009, the Appointment Order was extended to include 2173817 Ontario Inc. Attached hereto as **Appendix B** is a copy of the Order dated March 18, 2009.

1.2.18 The Receiver's mandate is to preserve and secure New Life's Property for the benefit of its stakeholders including the investors. The Receiver has investigated the business and affairs of the Companies in order to maximize recovery for the Companies' stakeholders, including commencing such legal proceedings as it considers reasonably necessary to aid in the recovery of the Companies' assets.

1.3 The Purpose of this Report to the Court

1.3.1 The purpose of this Eighth Report to the Court (the "**Eighth Report**") is to provide the Court and the stakeholders with information on the following:

- (a) the conduct and results of the sales processes undertaken by the Receiver in 2009 and 2011;
- (b) the Receiver's ongoing consultations with Representative Counsel and the Investor Panel (as such terms are defined herein);
- (c) the status of the Portfolio;
- (d) the status of the proceedings commenced by the Receiver in The Commonwealth of the Bahamas (the "**Bahamian Proceedings**");
- (e) the settlement with the OSC;
- (f) the mechanism for distribution of funds to investors;
- (g) the assets and liabilities of the Companies;
- (h) the Receiver's current cash position and implications for the Receiver's ability to continue making premium payments on account of the Policies; and
- (i) the Receiver's go-forward plan.

1.3.2 A further purpose of this Eighth Report is to provide an evidentiary basis for this Honourable Court to make an Order:

- (a) approving the Settlement Contract (the "**Pacific Life Sale Agreement**") for the sale of Pacific Life insurance policy number VF51641220 (the "**Pacific Life Policy**") and vesting the Pacific Life Policy and New Life's interest therein, if any, in the purchaser free and clear of all encumbrances;
- (b) amending paragraph 22 of the Appointment Order to provide that the Receiver may borrow by way of revolving credit or otherwise such monies as it may consider necessary or desirable provided that the outstanding principal amount does not exceed \$2,000,000;

- (c) confirming that the funds paid by Mid-City Holdings Ltd. (“**Mid-City**”) to New Life Capital Advantage Inc. constitute trust funds and authorizing the Receiver to pay to Mid-City the net sum of \$180,000 in full satisfaction of such trust claim;
- (d) approving the Receiver’s Combined Statements of Receipts and Disbursements for the period December 17, 2008 to October 28, 2011;
- (e) sealing the Supplemental Report and the appendix to the Second Supplemental Report (as such terms are defined herein) attaching the Pacific Life Sale Agreement; and
- (f) approving the Receiver’s conduct and activities to the date of this Eighth Report.

1.4 Terms of this Eighth 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.

2. Appointment of Representative Counsel and Investor Panel

2.1 Appointment of Representative Counsel

2.1.1 By Order of the Court dated June 4, 2009, Kevin McElcheran of the law firm McCarthy Tétrault LLP was appointed as the representative counsel (the “**Representative Counsel**”) to represent the interests of the investors for the purpose of advising the investors in respect of the Realization Plan (as hereinafter defined). Attached hereto as **Appendix J** is a copy of the Order dated June 4, 2009.

2.2 Selection of Investor Panel Members

2.2.1 By Order of the Court dated September 8, 2009, the Representative Counsel was authorized to select up to five volunteers from the investors (the “**Investor Panel**”) to provide non-binding input to the Representative Counsel in his assessment of the Realization Plan. Attached hereto as **Appendix K** is a copy of the Order dated September 8, 2009.

2.2.2 In conjunction with the Claims Procedure, which term is defined and discussed in greater detail below, the investors received a notice from Representative Counsel wherein Representative Counsel advised of the formation of the Investor Panel and requested that investors advise the Representative Counsel of their interest in serving on the Investor Panel. This process yielded six applications and the Receiver agreed with Representative Counsel’s suggestion that, rather than trying to exclude one applicant, the Investor Panel should proceed with six members, subject to seeking Court approval of the increase at a later date.

2.2.3 The Receiver understands that the Representative Counsel will make a motion on November 14, 2011 to amend the Order made on September 8, 2009 to provide that the Investor Panel may be comprised of the six investors who volunteered to act. The Receiver supports the Representative Counsel’s recommendation.

2.3 Receiver’s Consultation

2.3.1 The Receiver has been in regular contact with Representative Counsel with respect to various matters including, but not limited to, the 2009 Sales Process and the 2011 Sales Process (both as hereinafter defined), the status of the Portfolio, the Receiver’s cash position, cash requirements for premiums and other costs, developments with respect to the Bahamian Proceedings, and efforts to sell the Bahamian Condo (as defined herein).

2.3.2 Further details on the Receiver’s consultations with Representative Counsel and the Investor Panel are presented later in this Report.

3. Portfolio Realization and Maintenance

3.1 Overview

3.1.1 As at the Receiver's appointment, the principal assets of the Companies consisted of:

- (a) cash on deposit in the amount of approximately \$3 million; and
- (b) 22 life insurance policies with a face value of approximately US\$83.0 million.

3.2 Funding Risk

3.2.1 There are a number of risks associated with the life settlement business. Two significant risks are:

- (a) while the maturity value of a policy is known, the maturity date for the policy is unknown; and
- (b) in order to maintain the value of a policy, the owner of the policy must have the ability to pay the premiums due on the policy until the maturity date.

For further discussion on the Life Settlement business see Section 3.3 below.

3.2.2 From the outset of the Receivership, the Receiver has advised this Court and the stakeholders that the Receiver may run out of cash to pay the premiums due on the Portfolio prior to any realizations from non-cash assets of the Receivership, including any realizations through the sale or maturity of some or all of the Policies (the "**Funding Risk**"). The Funding Risk arises because of the level of cash available to the Receiver, the high level of projected premiums and the long life expectancies of some of the underlying insured individuals.

3.2.3 The Receiver first advised New Life's shareholders of the Funding Risk in a letter dated January 21, 2009, which was mailed to all known holders of Class A Shares. In this letter, the Receiver advised shareholders that given the limited cash resources, the Receiver would not be in a position to make premium payments for an extended period of time.

3.2.4 The Receiver first advised the Court of the Funding Risk in paragraph 6.2.5 of the Receiver's First Report to the Court dated March 12, 2009 that the then projected premium requirements of US \$3.167 million through January 2010 exceeded the cash currently available to the Receiver.

3.2.5 The ongoing nature of the Funding Risk was reaffirmed in the following Receiver's reports to the Court and notices to stakeholders:

- Receiver's update letter dated March 17, 2011 (the "**March 17th Notice**") posted on the Receiver's website (the "**Website**"); and
- Notice on the Website dated July 21, 2011;

- 3.2.6 In addition, since the appointment of Representative Counsel, the Receiver has had ongoing communications with Representative Counsel wherein the Receiver advised Representative Counsel of the cash position of the Receiver and the likelihood that the Receiver would run out of cash to pay the premiums due on the Policies.

3.3 Life Settlement Business

- 3.3.1 A life settlement is the transfer of an ownership interest in a life insurance policy to a third party for compensation. The third party then pays the premiums until (i) the death of the insured, at which time the third party is paid the death benefit under the policy; (ii) the policy lapses because of non-payment of premiums; (iii) the policy is sold to another party; or (iv) the insurer rescinds the policy and, typically, returns the premiums paid on the policy.
- 3.3.2. Life settlements trade at a discount to the maturity value. A number of factors affect the value of a life settlement including the life expectancy of the insured covered by the policy, the expected rate of return sought by the investor, the type of policy, the premiums and other expenses associated with the policy, the net death benefit, the financial position of the insurer, the volume of life settlement transactions, and broader financial market conditions. In addition, a number of legal issues surround any life settlement transaction that may also affect the value of the policy, such as whether the initial sale of the policy is during the “contestable period”. The contestable period is the two years after the issuance of the policy, during which time, the insurer: (i) will not pay a death benefit on the demise of the insured if caused by suicide; and, (ii) may contest the policy or a death benefit claim.
- 3.3.3 All of the policies purchased by New Life were issued by life insurance companies in the United States and all of the Policies insure the lives of U.S. residents. There is a significant life settlement industry in the United States. As life insurance in the United States is regulated on a state-by-state basis, legislation governing the life settlement industry varies between states. In Canada, insurance contracts are generally regulated pursuant to provincial statute. The Receiver understands that there are provisions in the legislation of many Canadian provinces that prohibit or restrict the development of a secondary market for Canadian life insurance policies.

3.4 Initial Valuation of the Portfolio and 2009 Sales Process

- 3.4.1 As detailed in the Receiver’s Second Report to the Court dated May 20, 2009, the Receiver engaged the services of Proverian Capital, LLC (“**Proverian**”) to provide the Receiver with a valuation of the Portfolio and to assist the Receiver with developing a strategy for realizing on the Policies (the “**Realization Plan**”).
- 3.4.2 After careful investigation, Proverian determined that the estimated trading value of the Portfolio under current market conditions was significantly less than the total amount invested by New Life’s investors. Further details regarding Proverian’s investigation are set out in the Receiver’s Fourth Report to the Court dated September 2, 2009 (the

“**Fourth Report**”). Attached hereto as **Appendix L** is a copy of the Fourth Report (without appendices).

- 3.4.3 Proverian’s findings were based on various assumptions, including:
- (a) the existence of a functioning and active tertiary market for life settlements;
 - (b) no allowances being made for the strengths or weaknesses associated with the way New Life acquired its interest in the Policies or the manner in which the Policies were originally applied for and issued;
 - (c) there would be no potential negative impact associated with the legal structure of New Life’s methods of origination, and further that neither the insurance companies nor any other party will challenge the validity of the origination of the Policies or the Policies themselves;
 - (d) that all of the Policies have an insurable interest and potential buyers will not apply a discount to the price of the Policies arising from possible insurable interest risks;
 - (e) that New Life being in receivership will not cause a discount to be applied to the price of the Policies;
 - (f) no accounting for the potential inability of any insurance company to pay claims on the Policies; and
 - (g) that the medical records available to Proverian were complete and that any medical facilities which did not respond to Proverian’s requests for recent records were not in possession of any additional medical records.
- 3.4.4 With the assistance of Proverian, the Receiver developed a process to offer the Policies for sale (the “**2009 Sales Process**”). The 2009 Sales Process was approved pursuant to the Order of the Honourable Mr. Justice Newbould dated September 8, 2009.
- 3.4.5 Pursuant to the 2009 Sales Process, the deadline for the submission of offers for the Portfolio was October 30, 2009. The Receiver did not receive any offers for all or substantially all of the Portfolio by the deadline, however, offers for certain of the Policies were submitted as follows:
- (a) offers from two separate parties were received for the three Advantage Policies; and
 - (b) one offer was received for an Investments Policy.
- 3.4.6 All of the offers were substantially lower than the values provided by Proverian and accordingly, the Receiver rejected all of the offers. The Receiver advised Representative Counsel of the details of these offers and its decision to reject them prior to rejecting them.
- 3.4.7 On or about January 14, 2010, after the completion of the Receiver’s 2009 Sales Process, the Receiver held a conference call with the Representative Counsel and the Investor Panel to discuss the results of the 2009 Sales Process and the status of the Portfolio. The Receiver’s recommended course of action was that the Receiver would continue to pay

minimum premiums for the Policies as they came due, with the likely exception of the MassMutual Policies as defined and discussed below, so long as there were sufficient funds available to do so, thus preserving the value of the Portfolio. The Investor Panel advised the Receiver that their preference was to maintain the Policies until maturity.

3.5 The Lapsed Policy

- 3.5.1 In the Fourth Report, the Receiver advised the Court and the stakeholders that, in the event that a Policy was at risk of lapsing because the Receiver could not or decided not to pay the required premium to keep the Policy in force, the Receiver would notify creditors and Investors via the Website of the decision to allow the Policy to lapse in advance of the lapse date (the “**Lapsing Policy Protocol**”). This would allow interested parties to consider pursuing an acquisition of the Policy.
- 3.5.2 On or about September 13, 2009, the Receiver allowed one of the Policies with a face value of US \$5 million to lapse (the “**Lapsed Policy**”). The Receiver chose to allow the Policy to lapse at that time because the Receiver had limited cash resources, it was a Policy with a significant negative value according to Proverian’s valuation and the premium costs were very high relative to the other Policies. On September 2, 2009, the Receiver posted a notice on the Website advising interested parties, including New Life’s investors, that the Receiver was considering letting the Policy lapse. No one expressed an interest in acquiring the Policy.
- 3.5.3 On or about May 17, 2010, the Receiver became aware that the underlying insured of the Lapsed Policy had died. However, given that the Policy had already lapsed, the insurer was not required to pay the death benefit thereunder.

3.6 MassMutual Policies

- 3.6.1 As outlined above and in the Receiver’s Fifth Report to the Court dated April 16, 2010 (the “**Fifth Report**”), Massachusetts Mutual Life Insurance Company (“**MassMutual**”) had commenced an action in the United States District Court for the Eastern District of New York against, among others, New Life Capital Investments Inc. and KPMG Inc. pursuant to which MassMutual alleged fraud and misrepresentation with respect to the issuance of one of the Policies and sought to rescind that Policy and keep the premiums paid to date thereon. This action was commenced on the last day of the “contestability period” of the Policy. Further, this action was commenced without leave of the Court as required by paragraphs 9 and 10 of the Appointment Order. The Portfolio included a second Policy issued by MassMutual and MassMutual’s legal counsel advised the Receiver’s legal counsel that MassMutual would be commencing a similar action with respect to the other Policy issued by MassMutual, although for that Policy, the contestable period had elapsed.
- 3.6.2 As outlined in the Fifth Report and the Receiver’s Sixth Report to the Court dated June 7, 2010, the Receiver determined that it was in the best interests of the stakeholders to enter into a settlement with MassMutual with respect to the two Policies (the “**MassMutual Policies**”) and executed settlement agreements in that regard.

- 3.6.3 Pursuant to the settlement agreements, the Receiver agreed to rescind the MassMutual Policies and MassMutual agreed to return 90% of the premiums paid thereon to the Receiver.
- 3.6.4 Pursuant to Orders of the Honourable Mr. Justice Campbell dated April 22, 2010 and June 14, 2010, the Court approved the settlements. Attached hereto as **Appendices M** and **N** are the Orders dated April 22, 2010 and June 14, 2010, respectively.
- 3.6.5 The terms of the settlement agreements have been completed. The MassMutual Policies have been rescinded and the Receiver has received the total amount of US \$276,097.50 from MassMutual representing 90% of the premiums paid by New Life for those Policies.

3.7 Status of the Portfolio

- 3.7.1 As a result of the Lapsed Policy and the rescinded MassMutual Policies, the Portfolio now consists of 19 Policies.
- 3.7.2 A summary of the Policies is attached as **Appendix O**. The 19 Policies cover the lives of 16 individuals and were issued by six different insurance companies. The Advantage Companies are designated as beneficiaries on three insurance policies referred to herein as the Advantage Policies issued by ING on the life of the same individual with a total face value of \$570,919. A nominal portion of the beneficial interest in the Advantage Policies has been retained by the Investments Program. The 16 Investment Policies were purchased pursuant to the Investments Program.
- 3.7.3 Since January 2010, the Receiver has continued to maintain the remaining Policies by paying the minimum premium payments thereon. This has involved ongoing communications with the insurers and paying periodically (e.g. quarterly) an amount roughly equivalent to the cost of insurance (which is charged monthly) plus a premium load. A premium load is a commission or sales charge which ranges from 5% to 7%, depending on the insurer, and is deducted from each cash payment made.

3.8 Medical Records Update

- 3.8.1 In April 2011 the Receiver updated its projected cash flow, including premium requirements, and expected financial position through the end of 2011. On or about April 22, 2011 the Receiver met with Representative Counsel to discuss, among other things, the Receiver's concerns about its ongoing ability, absent a maturity of a Policy or the sale of the Bahamian Condo (as defined hereinafter), to continue to pay premiums on some or all of the Policies through the end of 2011. The Receiver further discussed with Representative Counsel that it intended to engage Proverian to obtain updated medical records on insureds and to commission updated life expectancy ("LE") reports ("the **Updated Medical Records**").
- 3.8.2 The Receiver anticipated that the Updated Medical Information would be needed to: (i) inform and facilitate decisions on the retention of Policies that might have to be made in the event that there were insufficient funds to pay premiums as they became due; and/or, (ii) support a further sales process. The Receiver understood, and so advised

Representative Counsel, that Proverian's mandate could take up to two months to complete and, thus, in the Receiver's view, it was vital to start the process as soon as possible.

- 3.8.3 By way of the March 17th Notice, the Receiver advised stakeholders that it would continue to make the minimum premium payments due on the Policies so long as the Receiver had the funds to do so. The Receiver cautioned that, absent the sale of assets or the receipt of a death benefit to pay premiums, there may not be sufficient funds to pay the premiums on all of the remaining Policies through the end of 2011.
- 3.8.4 In April 2011, the Receiver engaged Proverian to obtain the Updated Medical Records. In conjunction with Proverian's mandate, the Receiver wrote to the insureds to request: (i) updated authorization forms as required under the U.S. *Health Insurance Portability and Accountability Act* ("**HIPAA Forms**"); (ii) details of recent medical service providers; and (iii) confirmation of their contact information and that of their personal representatives.
- 3.8.5 As a result of Proverian's work, it was determined that the health of one of the insureds had declined significantly since the previous medical review in 2009. This updated information on the insured resulted in a substantially reduced life expectancy. Proverian also provided the Receiver with an updated valuation estimate on this particular Policy, the Pacific Life Policy, which indicated that significant value could possibly be realized in the market. In order to further support this conclusion, the Receiver asked Proverian to obtain a second independent LE report.
- 3.8.6 Since the conclusion of the 2009 Sales Process, the Receiver kept an electronic data room (the "**Data Room**") in place and permitted access to interested parties from time to time in response to requests received. No viable offers were presented during this interim period.
- 3.8.7 In addition to the Updated Medical Records and LE reports, the Receiver requested that Proverian obtain updated illustrations and verifications of coverage from the insurers. These documents form part of the fundamental data set usually required by prospective purchasers in order to perform their due diligence.
- 3.8.8 In July 2011 the Receiver posted to the Data Room the Updated Medical Records, LE reports, illustrations and verifications of coverage. Also in July 2011, the Receiver contacted certain parties who had expressed an interest in the Portfolio through the 2009 Sales Process and subsequently to advise that updated information was now available. In addition, the Receiver made contact with certain other parties, including some referred to the Receiver by Proverian, which included parties who might be interested in investigating the possibility of making a loan to the Receiver, in addition to exploring the possibility of purchasing one or more Policies.

3.9 2011 Sales Process

- 3.9.1 In July and August a number of parties accessed the Data Room.

- 3.9.2 Throughout this period, the Receiver, through telephone calls and email, updated Representative Counsel on the Receiver's activities with respect to investigating potential sources of funds. Representative Counsel advised the Receiver that it was the Investor Panel's strong preference that none of the Policies be sold and that some form of financing be obtained.
- 3.9.3 A party referred to the Receiver by a member of the Investor Panel submitted an offer to purchase the Pacific Life Policy in July 2011. The Receiver discussed the offer with Representative Counsel. On July 22, 2011 a member of the Investor Panel, without authorization from or consultation with the Receiver, emailed the potential purchaser to reject the offer. Subsequently, the Receiver, after consultation with Representative Counsel, rejected that offer.
- 3.9.4 In August 2011, the Receiver formalized a sales process (the "**2011 Sales Process**") and sent an email attaching the following documents to various parties that could potentially be interested in purchasing one or more Policies:
- (a) an invitation letter;
 - (b) Terms and Conditions which provided, among other things, that the deadline for the submission of offers was September 2, 2001 and that offers would be irrevocable until September 23, 2011; and
 - (c) a standardized Offer Form.
- 3.9.5 As part of the formalization of the 2011 Sales Process, the Receiver expanded the list of invitees beyond those referred to in section 3.8.8 above to include various other participants in the life settlement industry.
- 3.9.6 In addition to sending an invitation letter to identified parties, the Receiver posted a notice of the 2011 Sales Process on the Website. As described in the notice on the Website, the Receiver also explored options to borrow against the Portfolio in order to fund premium obligations.
- 3.9.7 The Portfolio is currently the only asset in the New Life receivership against which a charge can be registered. In the case of a life insurance policy, collateral assignments can be placed against the policy. If a collateral assignment is placed on a policy, the assignee will receive any amount due to them before any payments to the beneficiary. As discussed in 6.2.24 below, until such time as the Bahamian Proceedings are resolved, it is unlikely that the Receiver will be able to sell or borrow against the Bahamian Condo.
- 3.9.8 The activity with respect to the 2011 Sales Process is summarized as follows:

Number of parties invited:	39
Number of confidentiality agreements executed:	8
Number of parties who entered the Data Room:	7

- 3.9.9 The 2011 Sales Process produced one offer prior to the deadline for submissions, which was an offer to purchase the Pacific Life Policy. This offer is from a different party than the offeror referenced in Section 3.9.3.
- 3.9.10 In addition to contacting life settlement market participants with respect to the 2011 Sales Process, the Receiver also contacted a Schedule 1 Canadian bank about the possibility of lending against the Portfolio. The bank advised the Receiver that it was not interested in making a loan because of the nature of the collateral (i.e. the Portfolio), and because any loaned funds would be used to pay the principal and interest on any loan given the lack of positive cash flow back into the New Life estate.
- 3.9.11 To assist the Court in understanding the reasons for the results of the 2009 Sales Process and the 2011 Sales Process, the Receiver, in the Supplemental Report to the Eighth Report (the “**Supplemental Report**”), provides a summary of certain information provided to the Receiver by Proverian and other life settlement market participants about the Portfolio. While the Receiver intends to provide a copy of the Supplemental Report to Representative Counsel and the OSC, the Receiver has requested that this Honourable Court make an Order sealing the Supplemental Report.

3.10 Acceptance of the Pacific Life Offer

- 3.10.1 In early September 2011, the Receiver updated its expected cash flow for the balance of 2011. Based upon the funds available, the Receiver determined that it would not be able to pay any Policy premiums due on October 21, 2011 and thereafter.
- 3.10.2 The Receiver advised Representative Counsel of the results of the 2011 Sales Process, in particular that an offer had been received for the Pacific Life Policy (the “**Pacific Life Policy Offer**”) and that the sale of a Policy appeared to be the only reasonable option available, in the near term, to realize additional funds in order to continue to pay premiums on the Policies. As such, the Receiver advised Representative Counsel that it was of the view that the Pacific Life Policy Offer should be accepted, subject to entering into a formal agreement of purchase and sale and Court approval of the sale. Pursuant to the terms and conditions circulated by the Receiver with respect to the 2011 Sales Process, the deadline for the Receiver to notify offerors of a decision on their offers was September 23, 2011.
- 3.10.3 Representative Counsel advised the Receiver that the Investor Panel did not want the Receiver to accept the Pacific Life Policy Offer. In order to allow Representative Counsel and the Investor Panel to explore other options for raising funds, including the possibility of investors making a loan to the Receiver, the Receiver asked the potential purchaser if it would leave the Pacific Life Policy Offer open for an additional week. The potential purchaser agreed to such request. On September 30, 2011, the Receiver had not been presented with any viable alternative sources of additional funds and the Receiver accepted the Pacific Life Policy Offer subject to entering into a formal agreement on the terms and obtaining Court approval of the sale.

3.11 Potential Lapsing Policies

- 3.11.1 Pursuant to the Lapsing Policy Protocol, on October 12, 2011 the Receiver posted a notice on the Website advising interested parties that, due to the critical shortage of funds available to the Receiver, the Receiver was considering allowing two policies to lapse. In order to keep the particular Policy with a face value of US \$6 million (the “**PHL Policy**”) in force, a premium payment of US \$88,200 was required by October 21, 2011. In order to keep the particular Policy with a face value of US \$10 million (the “**AXA Policy**”) in force, a minimum premium of US \$41,939 must be paid by November 7, 2011.
- 3.11.2 As discussed below in Section 4.1 below, on October 20, 2011 the Receiver borrowed a total of \$100,000 from a group of three Class A Shareholders (the “**Investor Loans**”) and used substantially all of the proceeds from the Investor Loans to pay the premium due on the PHL Policy.
- 3.11.3 After making the aforementioned payment on the PHL Policy, the Receiver placed an updated notice on the Website on October 21, 2011 wherein it advised of the premium payment made in respect of the PHL Policy and of the fact that the Receiver was still considering letting the AXA Policy lapse.

4. *Investor Loans*

4.1 **Investor Loans**

- 4.1.1 The purpose of the Investor Loans was to facilitate payment of the premium due by October 21, 2011 for the PHL Policy. Without the funds from the Investor Loans, the PHL Policy would have lapsed on October 21, 2011.
- 4.1.2 Each of the Investor Loans is secured by all of the assets in the New Life estate pursuant to Receiver's Certificates executed by the Receiver. Such Receiver's Certificates are substantially in the form of the template attached as Appendix A to the Appointment Order and the three Receiver's Certificates rank *pari passu* amongst themselves. A redacted copy of the Receiver's Certificate issued for each of the Investor Loans is attached as **Appendix P**. While the Bahamian Condo forms part of the "security" for the Investor Loans, the investor lenders do not have the comfort of a charge registered on title against the Bahamian Condo.
- 4.1.3 The principal sums, evidenced by the Receiver's Certificates, and the interest due thereon, are payable in accordance with the terms agreed to in a letter of agreement dated October 19, 2011 (the "**Investor Loan Agreement**"). A redacted copy of the Investor Loan Agreement is included in **Appendix P**. The Investor Loan Agreement includes the following terms:
- (a) the loan is for a period of twelve (12) months (the "**Term**") with simple interest of twelve (12%) percent per annum, payable at maturity;
 - (b) the Receiver may bring a motion seeking the Court's approval of the sale of the Pacific Life Policy and shall serve a Court report in support of the motion no later than two weeks in advance of the motion's return date;
 - (c) the Receiver shall bring a motion for approval of its fees, as well as those of its Canadian counsel, Thornton Grout Finnigan LLP ("**TGF**") and its Bahamian counsel, McKinney Bancroft & Hughes, returnable on or before November 30, 2011, on no less than three weeks' notice;
 - (d) the Receiver, TGF and Representative Counsel each agree to postpone their entitlement to the recovery of their fees and disbursements (the "**Canadian Professional Fees**") until additional funds are available to the estate, which funds shall not include the proceeds of the Investor Loan or the transaction contemplated by the Pacific Life Policy Offer;
 - (e) in the event that the transaction contemplated by the Pacific Life Policy Offer closes prior to the conclusion of the Term, fifty percent (50%) of the principal amount of the Investor Loans, and the interest accumulated thereon, shall be repaid from the proceeds of the transaction with the remaining fifty percent (50%) due at the end of the Term; and

- (f) in the event that the transaction contemplated by the Pacific Life Policy Offer does not close and no further funds are available to the estate at the end of the Term, the Investor Loans shall automatically be renewed, on the same terms set out in the Investor Loan Agreement, as applicable, for an additional twelve (12) months. In any event, the Investor Loans shall be fully repaid prior to or coincident with payment of the Canadian Professional Fees.

4.2 Receiver's Borrowing Power

- 4.2.1 Paragraph 22 of the Appointment Order provides 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 (*sic*) further Order authorize)...”.
- 4.2.2 While the Receiver's efforts to borrow from institutional lenders utilizing specific Policies or the Portfolio as collateral have thus far been unsuccessful, the Receiver wishes to ensure that it has the flexibility to borrow the necessary funds to maintain premium payments on some or all of the Portfolio and to pay receivership expenses, should the opportunity to borrow funds be available in the future from either investors or institutional lenders. The Receiver's requirements and ability to borrow are difficult to predict, however, circumstances may change such that certain Policies increase in value and, thus, become more attractive as security for potential lenders. Alternatively, or in addition, should the Bahamian Proceedings be resolved (as discussed in Section 6 below), the Bahamian Condo may be considered viable collateral to support a loan while the Receiver continues its efforts to sell that property.
- 4.2.3 In order to provide the aforementioned flexibility, the Receiver recommends that this Honourable Court make an Order increasing the Receiver's borrowing limit to \$2 million. The Receiver understands that Representative Counsel is supportive of this recommendation.

5. Sale of Pacific Life Policy

5.1 Background to the Sale of the Pacific Life Policy

- 5.1.1 Pursuant to Section 3(1) of the Appointment Order, the Receiver is authorized to sell the Property out of the ordinary course of business without the approval of this Honourable Court in respect of any transaction not exceeding \$100,000 (provided that the aggregate consideration for all such transaction does not exceed \$1 million) and with the approval of this Honourable Court in respect of any transaction exceeding \$100,000.
- 5.1.2 As set out above, as part of the 2011 Sales Process, the Receiver sent packages containing an invitation letter, Terms and Conditions for the submission of offers and a standardized Offer Form to thirty-nine (39) parties. The list of parties invited to participate included many of those invited to participate in the 2009 Sales Process, as well as additional parties involved in the life settlement industry.
- 5.1.3 The Receiver received eight (8) executed confidentiality agreements and of that group, seven (7) parties entered the Data Room to review the information compiled by the Receiver with respect to the Portfolio.
- 5.1.4 The Receiver received only one offer, the Pacific Life Policy Offer, during the 2011 Sales Process. As discussed in 3.10.3, the Receiver asked for and was granted a one week extension by the prospective purchaser of the deadline for accepting offers set out in the Terms and Conditions governing the 2011 Sales Process. The Receiver was not presented with any viable alternatives to the sale of the Pacific Life Policy and, thus, on September 30, 2011, the Receiver accepted the Pacific Life Policy Offer subject to the negotiation of an agreement of purchase and sale and Court approval.

5.2 Terms of the Pacific Life Sale Agreement

- 5.2.1 As at the date of this Eighth Report, the Receiver and the prospective purchaser of the Pacific Life Policy are in ongoing negotiations to finalize the terms of the Pacific Life Sale Agreement. It is expected that the transaction contemplated therein will close shortly after receipt of this Honourable Court's approval. As a condition precedent under the Pacific Life Sale Agreement, the sale of the Pacific Life Policy, and the change of the beneficiary thereunder, must be acknowledged by the insurer. The prospective purchaser and the Receiver have already communicated with the insurer regarding a potential sale of the Pacific Life Policy. The Receiver has been advised that such acknowledgement will likely be provided within a week of receipt of this Honourable Court's approval.
- 5.2.2 The Receiver obtained an estimated sale value from Proverian for the Pacific Life Policy and the Receiver acknowledges that the consideration payable under the Pacific Life Sale Agreement is less than the Proverian estimate. The terms of the Pacific Life Sale Agreement provide for the payment of a deposit and the prospective purchaser has provided a cheque to the Receiver in respect thereof.

5.2.3 Upon finalizing the terms of the Pacific Life Sale Agreement and its execution by the Receiver and the prospective purchaser, the Receiver intends to file a second supplemental report to this Eighth Report that shall include the executed Pacific Life Sale Agreement as an appendix thereto (the “**Second Supplemental Report**”). While the Receiver will serve the Second Supplemental Report on the entire service list in the receivership proceedings before the Court, the Receiver has requested that this Honourable Court make an Order sealing the appendix attaching the executed Pacific Life Sale Agreement.

5.3 Representative Counsel’s Views on the Sale of the Pacific Life Policy

5.3.1 As set out above, the Receiver discussed the sale of the Pacific Life Policy with Representative Counsel and the Investor Panel.. The Investor Panel advised the Receiver that it did not want the Receiver to accept the Pacific Life Policy Offer.

5.3.2 The Receiver is of the view that the Pacific Life Sale Agreement and the transaction contemplated therein should be approved by this Honourable Court. As set out in this Eighth Report, the Receiver has been unable to secure financing to provide for the payment of ongoing premiums and has received no interest from any parties wishing to purchase any other Policies.

5.3.3 If Policy premiums are going to be paid and the Portfolio maintained for the benefit of New Life’s stakeholders, the Receiver must secure funds immediately. The sale of the Pacific Life Policy contemplated in the Pacific Life Sale Agreement is the only viable option for the Receiver to do so at this critical time. As such, the Receiver respectfully requests that this Honourable Court approve the Pacific Life Sale Agreement and vest in the purchaser all of New Life’s interest in the Pacific Life Policy, if any, free and clear of all encumbrances.

6. Bahamian Proceedings and Subsequent Assets

6.1 Background

6.1.1 Early in its investigation, the Receiver determined that New Life used the approximately \$22.6 million that it raised from the investors as follows:

- (a) New Life spent approximately US \$6.3 million to purchase life insurance policies or life settlements and pay premiums;
- (b) New Life spent approximately \$6 million to fund its operations;
- (c) New Life had approximately \$3 million remaining in its bank accounts upon the Receiver's appointment; and
- (d) approximately US \$7.3 million was unaccounted for (the "**Traced Funds**").

6.1.1 The Receiver has investigated New Life's use of the Traced Funds. The Receiver obtained the Companies' banking records from TD and the OSC. The banking records revealed that, during the period November 2007 to July 2008, New Life transferred approximately US \$7,092,597 from its bank account at TD to the bank account of Lexington Consulting Inc. ("**Lexington**") located at FirstCaribbean International Bank (Bahamas) Limited ("**FirstCaribbean**") (the "**Offshore Funds**"). It appears to the Receiver that, commencing in November 2007, Pogachar and Lombardi spent substantially all of the Offshore Funds on personal expenses or transferred the Offshore Funds from the Lexington Account to other financial institutions or third parties. The banking records seized by the Receiver from New Life's offices did not contain the wire transfer confirmations and other supporting documents related to the Offshore Funds.

6.1.2 In addition to the Offshore Funds, the Traced Funds were used for certain other expenditures (the "**Other Expenditures**"). Such Other Expenditures included the payment of \$10,000 with a Visa card issued to New Life and a cash amount of \$174,067 by way of draft to purchase a 2007 Maserati Quattro (the "**Maserati**") from an exotic automobile dealer in Toronto.

6.1.3 The Receiver does not have any evidence that New Life obtained funds from any source other than the investors.

6.1.4 The Receiver observed that the movement and use of the Traced Funds was not consistent with the business objectives of New Life, as described in the New Life Offering Memoranda. Pursuant to the New Life Offering Memoranda, New Life was to use 80-85% of the funds raised from the investors to purchase and maintain life insurance policies or life settlements and the balance was to fund operating expenses.

6.2 Results of Receiver's Review

6.2.1 The Receiver determined that Lexington is a company incorporated pursuant to the laws of the Bahamas that the principals of Lexington are Pogachar and Lombardi.

- 6.2.2 The Receiver is of the view that the transfer of funds from New Life to Lexington was contrary to the use of investor funds stated in the New Life Offering Memoranda and that there was no legitimate business purpose for these transfers.
- 6.2.3 Pursuant to the Order of the Honourable Mr. Justice Newbould dated September 18, 2009, the Receiver was authorized to trace and attempt to recover any and all funds that were transferred by New Life to Lexington including applying for a Norwich Order in the Bahamas. A Norwich Order compels financial institutions to disclose banking and other information about their customers to third parties without the consent or knowledge of their customers. Attached hereto as **Appendix O** is a copy of the Order dated September 18, 2009.
- 6.2.4 The Receiver then commenced a proceeding in the Bahamas for a Norwich Order naming FirstCaribbean as a respondent thereto. On or about October 27, 2009, the Supreme Court of The Commonwealth of the Bahamas (the "**Bahamian Court**") granted the Norwich Order. Subsequently, FirstCaribbean provided the Receiver with the banking documentation pertaining to Lexington.
- 6.2.5 The Receiver's review of Lexington's banking documentation revealed that Pogachar and Lombardi are the sole signatories on Lexington's bank account at FirstCaribbean and that, during the period November 2007 to September 2008:
- (a) they withdrew cash from the Lexington account in the amount of approximately US \$242,153.17. Of this amount, US \$181,633.17 was subsequently used to purchase two luxury watches (the "**Watches**"); and,
 - (b) they transferred US \$6,872,752 from the Lexington account to the bank account of Amarcord International Inc. ("**Amarcord**"), which account was also located at FirstCaribbean.
- 6.2.6 The Receiver determined that Amarcord is also a company incorporated pursuant to the laws of the Bahamas and that the principals of Amarcord are also Pogachar and Lombardi.
- 6.2.7 Pursuant to the Order of the Honourable Mr. Justice Campbell dated January 12, 2010, Pogachar and Lombardi were restrained and enjoined from withdrawing, transferring or otherwise dealing with any funds in any accounts belonging to Pogachar, Lombardi, New Life, Lexington, Amarcord or any other corporate entity for which Pogachar and/or Lombardi have signing authority. Attached hereto as **Appendix R** is a copy of the Order dated January 12, 2010.
- 6.2.8 On or about January 15, 2010, the Receiver applied for and the Bahamian Court granted a Norwich Order with respect to Amarcord. Subsequently, FirstCaribbean provided the Receiver with the banking documentation pertaining to Amarcord.
- 6.2.9 The Receiver's review of Amarcord's banking documentation revealed that Pogachar and Lombardi are the sole signatories on Amarcord's bank account at FirstCaribbean and that

they transferred funds from the Amarcord account to various third parties located in the Bahamas, the United States and Canada.

- 6.2.10 Pursuant to the Order of the Honourable Mr. Justice Campbell dated January 22, 2010, the New Life receivership proceeding was extended to include all of Lexington's and Amarcord's bank accounts at FirstCaribbean and all property acquired using funds from those accounts. Attached hereto as **Appendix S** is a copy of the Order dated January 22, 2010.
- 6.2.11 Pursuant to paragraph 3 of the Order dated January 22, 2010, all persons were required to advise the Receiver of the existence of any funds that they received from Lexington or Amarcord and provide the Receiver with copies of all documentation relating thereto.
- 6.2.12 As the Receiver had only commenced a proceeding naming FirstCaribbean as a respondent in order to obtain the Norwich Orders, the Receiver commenced a proceeding against Pogachar, Lombardi, Lexington and Amarcord to obtain relief relating specifically to them. In this new proceeding, pursuant to an Order of the Honourable Mr. Justice Turner dated February 12, 2010, the Bahamian Court:
- (a) recognized the Order of the Court dated January 22, 2010, such that all persons located in the Bahamas that had received funds from Lexington or Amarcord were required to provide information to the Receiver; and
 - (b) prohibited Pogachar, Lombardi, Lexington and Amarcord from dealing with their assets up to the amount of US \$7,093,057.00, which was the amount that was initially improperly transferred from New Life to Lexington (the "**Bahamian Injunction**").
- 6.2.13 The Receiver made inquiries of many recipients of funds disbursed from the Amarcord account and determined that Pogachar and Lombardi made the following payments, among others, from Amarcord's account at FirstCaribbean:
- (a) on or about November 19, 2007, they transferred US \$515,432.25 to Maranello Sports to purchase a 2005 Ferrari 575 Superam;
 - (b) on or about July 3, 2008, they transferred US \$297,736.00 to Maranello Sports to purchase a 2004 Ferrari Challenge. The 2005 Ferrari 575 Superam and the 2004 Ferrari Challenge are collectively referred to herein as the "**Ferraris**";
 - (c) on or about August 5, 2008, they transferred US \$605,155.45 to Gowling Lafleur Henderson LLP, a Canadian law firm, to purchase real property located at 3629 Niagara Boulevard, Fort Erie, Ontario (the "**Fort Erie Property**");
 - (d) on or about August 6, 2008, they transferred US \$1,029,956 to EFG Bank & Trust (Bahamas) Ltd. to purchase a Bahamian government bond with a face value of US \$1 million (the "**Bahamian Bond**");

- (e) on or about September 29, 2008, they transferred US \$37,456.50 to Stavros Master Tailor & Shirt Maker to purchase a men's summer wardrobe (the "**Summer Wardrobe**");
- (f) on or about October 10, 2008 and January 21, 2009, respectively, they transferred US \$2,600,000 and US \$46,050 to Lennox Paton, a Bahamian law firm, and the majority of the funds were used to purchase Condominium Unit A1-4 in the Ocean Club Residences and Marina Phase I on Paradise Island in the Bahamas (the "**Bahamian Condo**");
- (g) on or about May 22, 2009 and November 12, 2009, respectively, they transferred US \$17,830.25 and US \$3,940.03 to Allied Steel Buildings Inc. to purchase a steel building (the "**Steel Building**");
- (h) on or about May 27, 2009 and August 31, 2009, respectively, they transferred US \$11,625.25 and US \$11,635.25 to Dias Fine Woodworking Ltd. to purchase a medicine cabinet, a shoe cabinet, a dining table and a closet (collectively, the "**Furniture**");
- (i) on various dates, they transferred approximately US \$361,937 to pay their personal Visa accounts with Royal Bank of Canada and TD; and
- (j) they received approximately \$664,944 from the Amarcord account through cash withdrawals and bank drafts. As set out in Section 6.4.2, Lennox Paton accounted for a total of \$2.799 million while the amount traced by the Receiver to Lennox Paton from Amarcord's account was US \$2.646 million as noted in (f) above. The Receiver's assumption is that a portion of the funds withdrawn by way of cash or bank drafts went to Lennox Paton.

6.2.14 Pursuant to the Order of the Honourable Mr. Justice Campbell dated March 16, 2010, the New Life receivership was extended to include the Watches, the Ferraris, the Bahamian Bond, the Summer Wardrobe, the Bahamian Condo and the Furniture (collectively, the "**Subsequent Assets**"). Attached hereto as **Appendix T** is a copy of the Order dated March 16, 2010.

6.2.15 During the course of the Receiver's investigation of the Ferraris, the Receiver determined that, on or about May 30, 2007, New Life transferred \$200,000 from its bank account at TD to Pogachar and Lombardi's personal joint account at TD. Substantially all of these funds, plus a \$10,000 deposit paid by Visa and funded by New Life, were subsequently used by them to purchase the Maserati.

6.2.16 Pursuant to the Orders of the Honourable Mr. Justice Campbell and Mr. Justice Morawetz dated March 24, 2010 and April 6, 2010, respectively, the New Life receivership was extended to include the Maserati and the Fort Erie Property. The Maserati and the Fort Erie Property are hereinafter included in the definition of "**Subsequent Assets**".

- 6.2.17 Pursuant to Orders of the Honourable Mr. Justice Turner of the Bahamian Court dated March 15 and 19, 2010, the Bahamian Court recognized the Order of the Court dated March 16, 2010 and authorized the Receiver to take possession of the items referred to therein.
- 6.2.18 For the period September 18, 2009 to February 18, 2010, the Receiver obtained the various Court Orders and Bahamian Court Orders without providing notice to Pogachar and Lombardi and on a sealed basis in order to improve the likelihood that the Receiver's efforts to trace and secure any funds and assets purchased with those funds would be successful.
- 6.2.19 Pursuant to the Order of the Honourable Mr. Justice Campbell dated February 18, 2010, the Court Orders were unsealed. Thereafter, the Receiver provided Pogachar and Lombardi with notice of any relief it sought from the Court. Attached hereto as **Appendix U** is a copy of the Order dated February 18, 2010.
- 6.2.20 Pogachar and Lombardi became aware of the Bahamian Proceedings in or about March 2010. Subsequently, they retained counsel in the Bahamas.
- 6.2.21 In 2010, Pogachar and Lombardi filed a summons in the Bahamian Court pursuant to which, among other things, they sought to have the Judge who granted the Bahamian Injunction, the Honourable Justice Turner, recuse himself from the case on the basis that his wife is a partner of the Receiver's Bahamian counsel. The matter was heard in December 2010. On May 4, 2011 the Judge delivered his decision refusing to recuse himself from the matter.
- 6.2.22 In materials filed by Pogachar and Lombardi in the Bahamian Proceedings, they claim that the Offshore Funds were properly transferred to Lexington on account of consultancy fees.
- 6.2.23 Pogachar and Lombardi are seeking further relief from the Bahamian Court, including:
- (a) to have the Bahamian Injunction lifted so that they may have access to funds for the purposes of defending the Bahamian Proceedings, in addition to funding personal living expenses; and
 - (b) to have the Bahamian Orders recognizing the extension of the Canadian receivership to be set aside.
- 6.2.24 The Receiver has instructed its Bahamian counsel to oppose the relief being sought by Pogachar and Lombardi.
- 6.2.25 The hearing of the first matter has not yet been scheduled by the Bahamian Court. The final oral arguments in the second matter were to be heard on October 25, 2011 but the hearing has been postponed and has not yet been rescheduled.
- 6.2.26 Until such time as the Bahamian Proceedings are determined, it is unlikely that the Receiver will be able to sell or borrow against the Bahamian Condo. Furthermore, if the

Receiver were to sell the Bahamian Condo prior to a final determination of the Bahamian Proceedings, it is unlikely that the Receiver would be permitted by the Bahamian Court to repatriate the sale proceeds.

6.2.27 At the present time, the Receiver is considering the possibility of bringing a motion within the New Life receivership proceeding, on notice to all defendants in the Bahamian Proceedings, for a declaration by the Court that the Offshore Funds were improperly transferred to Lexington.

6.3 Status of the Subsequent Assets

6.3.1 On or about April 27, 2010, the Receiver sold the Bahamian Bond and received net proceeds in the amount of US \$957,458, which proceeds were transferred to the Receiver's bank account in Canada.

6.3.2 The Receiver determined that Pogachar and Lombardi were residing in the Bahamian Condo. As the New Life receivership had been extended to include the Bahamian Condo, the Receiver, through its Bahamian counsel, sought the assistance of a bailiff in the Bahamas to have Pogachar and Lombardi removed from the Bahamian Condo. In or about April 2010, Pogachar and Lombardi vacated the Bahamian Condo without incident.

6.3.3 On or about July 28, 2010, the Receiver listed the Bahamian Condo for sale with Bahamas Realty Limited. The Furniture is located in the Bahamian Condo and is also being offered for sale. The Receiver has listed the property for sale in the amount of US \$2.3 million. The Receiver understands that the real estate market for luxury properties in the Bahamas is currently depressed and the Receiver is considering leasing the Bahamian Condo while it continues to list it for sale.

6.3.4 While the Receiver has received two offers to purchase the Bahamian Condo, which it pursued to the stage of preparation of formal agreements, neither agreement proceeded due to the purchasers' concerns about the ability of the Receiver to close and deliver possession within a reasonable time period. The Receiver's Bahamian counsel has advised that this uncertainty will likely continue until there is a final determination of the Bahamian Proceedings.

6.3.5 On or about August 6, 2010, the Receiver sold the Ferraris and the Maserati and received net proceeds in the amount of US \$265,000, as described in the Seventh Report. The Receiver, with the assistance of counsel retained in Florida, traced the three vehicles to an automobile dealer in Fort Lauderdale, Florida and arranged with the dealer to hold the vehicles until the completion of a sale.

6.3.6 On or about August 31, 2010, the Receiver sold the Fort Erie Property and the Steel Building and received proceeds in the amount of \$360,000 before real estate commission and other related costs. The Court approved this sale and vested title in the purchasers pursuant to the Order of the Honourable Mr. Justice Campbell dated August 19, 2010.

6.3.7 In or about May 2010, Bahamian legal counsel for Pogachar and Lombardi, Davis & Co., provided confirmation to the Receiver's Bahamian counsel that Pogachar and

Lombardi provided the Watches to Davis & Co. To date, notwithstanding that the Receiver has been appointed over the Watches, the Watches remain in Davis & Co.'s possession. Pogachar's and Lombardi's counsel has given an undertaking to the Bahamian Court that he will hold the Watches pending Pogachar's and Lombardi's application to set aside the Orders made by the Bahamian Court.

6.3.8 The Receiver cautions that it is not yet in a position to determine the total amount of the Traced Funds that will be secured and recovered by the Receiver. The Receiver further cautions that it is unlikely to be able to secure and/or recover the full amount of the Traced Funds and that the purchase price of an asset does not reflect the expected realization value.

6.4 Summary of Traced Funds

6.4.1 In summary, the Receiver's investigation indicated that a net total of US \$7,085,492 was transferred from New Life's accounts (including interest earned on such funds) and comprised of the following transactions:

Transfers to Lexington	\$7,092,597
Payments to principals' bank account used to fund Maserati purchase	200,000
Visa deposit on Maserati	10,000
Interest on Bahamian Bond and deposit interest, both deposited to Amarcord account	82,995
<hr/>	
Total funds flow	7,385,592
Deduct: repayments to New Life Capital Investments Inc. by Amarcord	(300,100)
<hr/>	
Net Traced Funds	\$7,085,492
<hr/>	

6.4.2 The following table summarizes the realization status of the net Traced Funds:

Description	Amount US \$	Transaction Date	Realized Value/Status
Ferraris	\$824,826	Nov/07 & Jul/08	US \$265,000 collectively for all the vehicles
Maserati	\$184,067	May/07	
Watches	\$181,633	May/08	Held by Davis & Co. Receiver is not yet in a position to sell
Bahamian Bond	\$1,029,956	Aug/08	US \$957,458

Fort Erie Property	\$605,155	Aug/08	\$360,000
Bahamian Condo	\$2,799,130	Nov/08	Purchase of Bahamian Condo, including stamp duty and advance payment of condo association fees and other costs. The Bahamian Condo and the Furniture are listed for sale and the Receiver's ability to transfer title is subject to resolution of the Bahamian court proceedings
Furniture	\$23,261	Aug/09	
Summer Wardrobe	\$37,457	Sept. 29/08	Whereabouts unknown, no realization expected
Bahamian legal fees	\$37,100	Jan/Mar/09	No realizable value
Steel Building	\$17,830	May/09	No separate realization, included in sale of Fort Erie Property
Canadian legal fees	\$171,967	Various	No realizable value
Cash or equivalent	\$571,584	Various	No realizable value
Visa credit card bills	\$361,937	Various	No realizable value
Other	\$239,589	Various	No realizable value
Total	\$7,085,492		\$360,000 and US \$1,222,458

In aggregate to date, the Receiver has recovered a gross total of \$360,000 and US \$1,222,458 from assets purchased with the Traced Funds, before professional fees and certain other costs associated with these realization efforts. The cash generated has assisted in the maintenance of the Policies.

7. The Settlement with the OSC

7.1 Background

- 7.1.1 As outlined above, on August 7, 2008, Staff of the OSC issued the Statement of Allegations and, on June 23, 2010, Staff of the OSC issued the Amended Statement of Allegations.
- 7.1.2 Pursuant to the Statement of Allegations and the Amended Statement of Allegations, Staff of the OSC alleged, among other things, that the activities of the Companies (except for the Advantage Companies) constituted trading in securities without registration in respect of which no exemption was available contrary to Section 25 of the *Securities Act*.
- 7.1.3 The Receiver retained the law firm of Heenan Blaikie LLP (“**Heenan**”) to provide the Receiver with legal advice on securities law in connection with Staff’s allegations. The Receiver obtained an opinion from Heenan confirming that the Companies (including the Advantage Companies) traded in securities without registration contrary to Ontario securities law.

7.2 Settlement Agreement

- 7.2.1 On January 18, 2011, the Receiver entered into a Settlement Agreement with Staff of the OSC on behalf of the Companies (the “**OSC Settlement Agreement**”) pursuant to which the Receiver and Staff of the OSC agreed as follows:
- (a) the Companies were under common management, were promoted to investors as a group of companies with a common purpose and, through their actions, all of the Companies acted directly or indirectly in furtherance of trading in shares of New Life entities without registration contrary to Section 25 of the *Securities Act*;
 - (b) the registration or recognition granted to any of the Companies under Ontario securities law would be terminated permanently;
 - (c) any exemptions contained in Ontario securities law would not apply to the Companies permanently;
 - (c) the Companies would disgorge to the OSC the amount of \$22,508,784.50 (the “**Disgorged Amount**”) being the amount of monies the Companies raised from investors by the sale of shares of New Life entities contrary to Ontario securities law;
 - (d) the Disgorged Amount would be allocated pursuant to Section 3.4(2)(b) of the *Securities Act* to or for the benefit of the following investors:
 - (i) to the holders of the Class A Shares including those investors who had paid for Class A Shares but for whom such Class A Shares had yet to be issued (the “**Class A Shareholders**”); and

- (ii) to the holders of preferred shares of the Advantage Companies (other than 2100228 Ontario Inc. in which case, to the holder of common shares) (the “**Advantage Shareholders**”);
- (e) subject to the Court’s approval, the Receiver is to distribute the Disgorged Amount to the Class A Shareholders and the Advantage Shareholders, directly, in the manner to be ordered by the Court;
- (f) Staff of the OSC may apply to the Court under Section 128 of the *Securities Act* with respect to any additional funds obtained by the Receiver in excess of the Disgorged Amount for:
 - (i) a declaration that the Companies have not complied with Ontario securities law;
 - (ii) an Order authorizing and directing the Receiver to distribute any monies obtained by the Receiver of New Life in excess of the Disgorged Amount, subject to the rights of creditors of New Life, to the Class A Shareholders and the Advantage Shareholders in the manner to be ordered by the Court; and
 - (iii) any other Order that the Court considers appropriate pursuant to Section 128(3) of the *Securities Act*; and
- (g) if the OSC approved the OSC Settlement Agreement, Staff of the OSC would not commence any other proceeding under Ontario securities law in relation to the facts set out in the OSC Settlement Agreement.

Attached hereto as **Appendix V** is a copy of the OSC Settlement Agreement.

7.2.2 On January 25, 2011, the OSC made an Order approving the OSC Settlement Agreement. Attached hereto as **Appendix W** is a copy of the OSC’s Order dated January 25, 2011.

7.2.3 Pursuant to paragraph 3(j) of the Appointment Order, the Receiver has the power to settle or compromise any proceedings in respect of the Companies or the Property.

7.2.4 The Receiver’s reasons for entering into the OSC Settlement Agreement are as follows:

- (a) the settlement provides a mechanism for distribution of funds to the investors in priority to any entitlement that Pogachar and Lombardi may have in respect of their ownership of shares of some of the New Life entities; and
- (b) the Receiver would not be required to bear the costs of attending the two week hearing of the Amended Statement of Allegations which, at the time of the settlement, was scheduled to take place in April, 2011.

7.2.5 The OSC Settlement applies only to the Allegations made against the Companies. The OSC has scheduled a hearing for December 2011 to deal with allegations against Pogachar and Lombardi personally.

7.3 The Mechanism for Distribution to Investors

7.3.1 The investors, as represented by Representative Counsel and the Investor Panel, have expressed concerns to the Receiver that they may have to share any assets available for distribution to the creditors and investors of New Life with Pogachar and Lombardi who, through their shareholding in New Life Capital Corp., hold the Class B common shares of New Life Capital Investments Inc. Prior to the OSC Settlement Agreement coming into force, the Receiver understands that New Life Capital Investments Inc.'s bylaws provided that upon a solvent wind-up of the Company, the residue would be distributed equally among the Class A Shareholders and the Class B Shareholders.

7.3.2 As indicated above, one of the Receiver's purposes for entering into the OSC Settlement Agreement was to establish a mechanism for distribution of funds to the investors in priority to any entitlement that Pogachar and Lombardi may have as a result of their share ownership.

7.3.3 The Order made by the OSC requiring the Companies to disgorge the Disgorged Amount to the investors has the effect of converting the status of the investors from that of shareholders to that of creditors. Accordingly, any distribution of funds made by the Receiver would be made to the investors in their capacity as creditors up to the amount of the Disgorged Amount and any other creditors of New Life before any distribution of funds would be paid to any shareholders of New Life.

7.3.4 In the event that death benefits are paid on the Policies and the Receiver realizes proceeds in excess of the Disgorged Amount, then, pursuant to the OSC Settlement Agreement, Staff of the OSC would apply to the Court in this receivership proceeding for relief under Section 128 of the *Securities Act*. Section 128 of the *Securities Act* is a broad provision that would allow this Court to make any Order that the Court considers appropriate against the Companies where the Companies have breached Ontario securities law. In this instance, Staff of the OSC may seek to:

- (a) have Pogachar's and Lombardi's shares of New Life cancelled; and/or
- (b) have the Companies compensate the investors or pay general or punitive damages to the investors by ordering that the Receiver should distribute the excess amount to the Class A Shareholders and the Advantage Shareholders.

8. New Life's Assets and Liabilities

8.1 Overview

8.1.1 As at the date of this Eighth Report, New Life's assets consist of the following:

- (a) cash in the amount of \$342,414;
- (b) the Portfolio of 19 Policies having a total face value of US \$72.771 million;
- (c) the Bahamian Condo; and
- (d) the Watches.

8.2 Claims Procedure

8.2.1 Pursuant to the Order of the Honourable Mr. Justice Newbould dated September 8, 2009, the Court approved a claims procedure proposed by the Receiver (the "**Claims Procedure Order**"). Attached hereto as **Appendix X** is a copy of the Claims Procedure Order.

8.2.2 Pursuant to the Claims Procedure Order:

- (a) persons asserting claims as creditors of New Life were required to submit a proof of claim to the Receiver by no later than October 30, 2009 (the "**Claims Bar Date**");
- (b) the Receiver sent to each investor a statement setting out:
 - (i) the amount paid by that investor to acquire shares of New Life less any amounts received by the investor from New Life (e.g. cash dividends);
 - (ii) the number of shares of New Life held by the investor;
 - (iii) all amounts invested by the investor; and
 - (iv) the value of any Class A Shares issued to the investor pursuant to New Life's Dividend Reinvestment Program ("**DRIP**"); and
- (c) investors were required to submit a proof of claim to the Receiver by no later than the Claims Bar Date and, if the investor agreed with the amounts set out in the Receiver's statement, could attach that statement to the proof of claim.

8.2.3 As at the Claims Bar Date, the following claims had been submitted to the Receiver:

- (a) creditors with claims totalling \$177,287;
- (b) claims, as adjusted for cash dividends as noted above, totalling \$20,025,829 submitted by holders of Class A Shares; and

(c) \$638,400 in the Advantage Program.

8.2.4 As indicated above, as a result of the OSC's Order requiring the Companies to disgorge the Disgorged Amount, the Receiver is of the view that the investors' status has been converted from that of shareholders to that of creditors in respect of the Disgorged Amount.

9. Advantage Trust Claim

9.1 Advantage Inc.'s Bank Accounts

- 9.1.1 Advantage Inc. has two bank accounts – TD Account #5209747, labelled “New Life Capital Advantage Inc.” (the “**Advantage Account**”), and TD Account #5209755, labelled “New Life Capital Advantage – in Trust” (the “**Advantage Trust Account**”) (collectively, the “**Advantage Accounts**”).
- 9.1.2 See **Appendix Y** for a summary of the transactions in the Advantage Accounts. At the date of the Receiver’s appointment, the Advantage Account and the Advantage Trust account had on deposit \$327,177.35 and \$8,615.14, respectively. The numbered Companies (with the exception of 1660690 Ontario Ltd.) (the “**21 Companies**”) do not have bank accounts. The monies received from the Advantage investors were deposited in the Advantage Account except for one investment of \$10,300. In that instance, the monies were deposited in the Advantage Trust Account.

9.2 Investment by Mid-City Holdings

- 9.2.1 Based on information obtained to date, the Receiver understands that a total of \$638,400 was invested in the Advantage Program by ten Advantage Investors.
- 9.2.2 Under the Advantage Program, the intention was that the Advantage investors, in return for their investment, were to receive preferred shares (with the exception of one instance where common shares were issued) in a private Ontario company (one of the 21 Companies). Each of the 21 Companies was to be assigned a partial beneficial interest in a life insurance policy for which the insured was to have a qualifying life expectancy. The premiums were to be continued on the Advantage Policies and the Advantage Investors would recoup their investment after the maturity of the Advantage Policies in which their 21 Company held a beneficial interest. The Receiver observes that with the exception of Mid-City, the Advantage Investors have essentially received what they bargained for with New Life.
- 9.2.3 Further details regarding the Advantage Program are set out in the Fourth Report.
- 9.2.4 Of the \$638,400 invested in the Advantage Program, the \$200,000 invested by Mid-City was deposited in the Advantage Account on March 27, 2008. While Mid-City received 20 preferred shares of in 2173817 Ontario Inc., as far as the Receiver can determine, 2173817 Ontario Inc. does not hold a beneficial interest in any of the Policies nor does it have any other assets. Despite this, the Receiver believes that it was the intention of New Life and Mid-City that the investment in 2173817 Ontario Inc. be part of the Advantage Program. The Receiver does not believe that Mid-City is related to New Life’s principals or the Companies.
- 9.2.5 Page 1 of the Subscription Agreement entered into by Mid-City, which is attached hereto as **Appendix Z**, states that “subscription proceeds will be held in the New Life Capital Advantage Inc.’s trust account at The Toronto-Dominion Bank in Toronto, Ontario until

such time as: (i) the Corporation is established and/or (ii) a qualifying life insurance policy ... is identified and purchased". While a corporation was established, being 2173817 Ontario Inc., based on the information available to the Receiver, no qualifying policy was ever identified or purchased.

- 9.2.6 While the funds from Mid-City were not paid into the Advantage Trust Account, the funds can be traced into the Advantage Account, and they formed part of the balance on deposit when the Direction was made and when the Receiver was appointed. Copies of the relevant bank statements for the Advantage Account are included as **Appendix AA** to this Report. The Receiver submits that Mid-City had no control over which bank account into which New Life's management chose to deposit the funds advanced by Mid-City.

9.3 Receiver's Recommendation Regarding Mid-City's Investment

- 9.3.1 The Receiver recommends that this Honourable Court authorize the Receiver to return the funds invested by Mid-City from the Receiver's mirror account for the Advantage Account subject to the following deductions: (i) \$10,000 for the commission paid by New Life to the investment advisor used by Mid-City to make the investment in 2173817 Ontario Inc.; and (ii) a further \$10,000 to defray the costs incurred by the Receiver and its counsel in dealing with the Mid-City claim. The recommended payment to Mid-City of \$180,000 would be in full satisfaction of any and all claims Mid-City ever had, now has or may ever have against New Life or the Receiver.
- 9.3.2 The Receiver has reviewed its recommended course of action with respect to Mid-City's claim with Representative Counsel. Representative Counsel has advised the Receiver that it takes no position on the Receiver's recommended resolution of the Mid-City claim.
- 9.3.3 The Receiver wrote to all of the investors in the Advantage Program on October 31, 2011 to, among other things, advise of the Mid-City claim and the Receiver's recommended treatment of the claim. A copy of the Receiver's letter is attached hereto as **Appendix BB**.

10. Receiver's Financial Position

10.1 Statement of Receipts and Disbursements

10.1.1 The Receiver's Combined Statements of Receipts and Disbursements for the period December 17, 2008 to October 28 2011 are attached hereto as **Appendix CC** (Canadian dollar accounts) and **Appendix DD** (U.S. dollar accounts). These statements indicate total funds on hand of \$290,648 and US \$51,766, respectively. Based on an exchange rate of US \$1 = \$1, the Receiver estimates the combined total cash amount to be \$342,414 as at October 28, 2011. In summary, the funds under the Receiver's control at Royal Bank of Canada as at October 28, 2011, are:

New Life Entity Reference	Canadian Dollar Appendix CC	U.S. Dollar Appendix DD
Capital Corp.	\$10,171.29	
1660690 Ontario Ltd.	2,545.18	\$ 230.47
Investments Inc.	41,639.04	47,549.96
Strategies Inc.	23,316.41	3,985.61
Total Investments Accounts	77,671.92	51,766.04
Advantage Inc.	204,428.86 (a)	
Advantage Inc. – in trust	8,547.03	
Total Advantage Accounts	212,975.89	
Combined Total	\$290,647.81	\$51,766.04

(a) Includes funds received from Mid-City Holdings as discussed in Section 9 of this Report.

10.1.2 The premium payments due on the Policies, the costs of Bahamian counsel and ongoing expenses for the Bahamian Condo are in U.S. dollars. Accordingly, the Receiver believes it is reasonable for it to continue to hold funds in U.S. dollars.

10.1.3 The Receiver is not aware of any legal or business purposes for the manner in which the Companies allocated funds between their various accounts.

10.1.4 The Receiver's disbursements to date have been primarily limited to payment of premiums due on certain Policies, occupancy costs for the Bahamian Condo and New Life's premises, draws for the professional fees of the Receiver and its various counsel, as authorized by paragraph 21 of the Appointment Order, fees of the Representative Counsel and payment of Proverian's fees. The professional fees relate to services provided to:

- (a) June 30, 2011 for the Receiver;
- (b) July 31, 2011 for TGF;

- (c) May 11, 2011 for Bahamian counsel; and
- (d) March 31, 2011 for Representative Counsel.

10.2 Financial Position of the Receivership

10.2.1 As discussed in 1.4.4, 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. Nevertheless, based upon the information currently available to the Receiver and the Receiver's estimate of the potential impact of a number of factors, the Receiver cautions that there is a very high probability that the Receiver will run out of funds to pay premiums on any Policies presently in force prior to the maturity of a Policy and that, as a result, New Life investors will not recover some or all of their investment.

10.3 Investment Program Cash Flow Projections

10.3.1 The total cash in the bank accounts used for the Investments Program as at October 28, 2011 was \$129,438. Until such time as the Receiver receives additional funds, the Receiver will use the cash on hand at the date of this Report to pay certain Receivership expenses, including fees owed to Bahamian legal counsel and ongoing costs related to the maintenance of the Bahamian Condo.

10.3.2 The payment of all unpaid and future Canadian Professional Fees is deferred until such time as funds can be realized or raised by the Receiver, including through the sale of the Bahamian Condo, borrowing against the Bahamian Condo or one or more of the Policies, or the receipt of a death benefit for one or more of the Policies.

10.3.3 The projected cash disbursements for the Investments Program to December 31, 2012 are summarized below.

Investments Program – Receivership Expenses through Q4 2012 (USD) (1)

	Oct. 28/11 to Dec. 31/11	First Quarter 2012	Second Quarter 2012	Third Quarter 2012	Fourth Quarter 2012	Total
Maintenance of assets:						
Condo costs	\$20,000	25,000	35,000	25,000	25,000	\$130,000
Proverian (2)	3,000	3,000	3,000	3,000	3,000	15,000
Bahamian legal counsel	90,000	20,000	20,000	20,000	20,000	170,000
Total	\$113,000	48,000	58,000	48,000	48,000	\$315,000

(1) 1 CAD = 1 USD

(2) Estimates for ongoing consulting services from Proverian, including month search of death register.

The Receiver has not completed the procedures recommended by the Canadian Institute of Chartered Accountants for the examination of a financial forecast. The financial projections referred to herein are based on the assumptions that accompany them, which are not always capable of objective verification or validation. To the extent that actual conditions vary from those projected, the results predicted can be expected to change. Such changes may be material.

- 10.3.4 In the event the Court approves the sale of the Pacific Life Policy and the transaction successfully closes, the Receiver will use the proceeds from the sale to continue to pay Receivership expenses, excluding Canadian Professional Fees, and Policy premiums. In addition, pursuant to the Investor Loan Agreement, the Receiver will repay fifty percent (50%) of the principal of the Investor Loans, plus interest, upon closing of the sale of the Pacific Life Policy.
- 10.3.5 Upon the closing the sale of the Pacific Life Policy, the Receiver will pay premiums on the Policies as they come due. The Receiver anticipates that funds will not be realized from the sale of the Pacific Life Policy until at least late November 2011. In this event, minimum premiums due on three policies will be paid on or before the following dates: December 2, 2011 (\$30,694), December 2, 2011 (\$30,694) and December 15, 2011 (\$7,000).
- 10.3.6 An amount of US \$41,939 is due on the AXA Policy by or on November 6, 2011. The Receiver does not have the funds to pay this premium, and accordingly, the Receiver anticipates that the AXA Policy will lapse.
- 10.3.7 In the event proceeds are realized from the sale of the Pacific Life Policy, the Receiver anticipates that in April 2012, it will ask Proverian to obtain updated medical records. The Receiver anticipates that updated medical records will be needed to (i) inform and facilitate decisions on the retention of Policies; and/or, (ii) support a further sales process.
- 10.3.8 The aggregate premium projections to December 31, 2012 on the Investment Policies are summarized below.

Summary of Premium Requirement to December 31, 2012 (1)				
Period	Total For Period (1)	Cumulative	Total For Period excluding AXA Policy	Cumulative excluding AXA Policy
Oct 27/11 to Dec 31/11	\$156,770 (2)		\$114,831	
Q1 2012	282,516	439,286	240,516	355,347
Q2 2012	325,400	764,686	281,900	637,247
Q3 2012	334,850	1,099,536	288,350	925,597
Q4 2012	343,550	1,443,086	297,050	1,222,647
Total	\$1,443,086		\$1,222,647	

- (1) Assumes payment of Monthly Cost of Insurance (“MCOI”) on a monthly basis such that Account Value is essentially NIL, except for Policies which have an

Account Value sufficient to support a drawdown, for all or part of the period, of MCOI. Premium payments will be made so as to minimize cash disbursed, however payments will be made in time to avoid the issuance of lapse notices.

- (2) This balance includes \$41,939 due on the AXA Policy by or on November 6, 2011. The Receiver does not have the funds to pay this premium, and accordingly, the Receiver anticipates that the AXA Policy will lapse.

10.3.9 As discussed above the payment of any incurred but not paid Canadian Professional Fees and any future Canadian Professional Fees are to be deferred until such time as funds can be realized or raised by the Receiver, including through the sale of the Bahamian Condo, borrowing against the Bahamian Condo or one or more of the Policies, or the receipt of a death benefit for one or more of the Policies.

10.3.10 The estimated aggregate deferred liabilities are summarized in the schedule below.

Investments Program – Schedule of Deferred Liabilities through 4Q 2012 (1)						
	Oct, 28/11 to Dec.31/11	First Quarter 2012	Second Quarter 2012	Third Quarter 2012	Fourth Quarter 2010	Cumulative Total
Estimated Canadian Professional Fees incurred to October 28, 2011 (2)	\$290,000					290,000
Projected Future Canadian Professional Fees	45,000	75,000	75,000	75,000	75,000	345,000
Repayment of Investor Loans and Interest (3)					57,184	57,184
Total	\$335,000	75,000	75,000	75,000	132,814	\$692,814
Proceeds required from Bahamian Condo to pay deferred liabilities (4) (5)						<u>\$750,000</u>

The Receiver has not completed the procedures recommended by the Canadian Institute of Chartered Accountants for the examination of a financial forecast. The financial projections referred to herein are based on the assumptions that accompany them, which are not always capable of objective verification or validation. To the extent that actual conditions vary from those projected, the results predicted can be expected to change. Such changes may be material.

10.3.11 Key assumptions in the analysis in 10.3.10:

- (1) 1 CAD = 1 USD;
- (2) the payment of all unpaid and future Canadian Professional Fees is deferred until such time as funds can be realized or raised by the Receiver, including through the sale of the Bahamian Condo, borrowing against the Bahamian Condo or one or more of the Policies, or the receipt of a death benefit for one or more of the Policies;
- (3) pursuant to the Investor Loan Agreement, the Receiver repays fifty percent (50%) of the principal, plus interest, of the Investor Loans upon the realization of proceeds from the Bahamian Condo;
- (4) the Receiver will not realize any funds from the Bahamian Condo, either through a loan or a sale, until the end of 2012. No Policies mature between the date of this Report and December 31, 2012. There is no change in the value of any of the Policies such that the Receiver is able to sell or borrow against one or some of the Policies; and
- (5) in December 2012, the Receiver uses any proceeds realized from the Bahamian Condo to repay the remaining fifty percent of the Investor Loans plus interest and all accrued Canadian Professional Fees.

10.3.12 The Receiver has included in the Supplemental Report, a table, based upon certain assumptions, projecting the cash flow for the Investments Program from October 28, 2011 to December 31, 2012. Based upon the Receiver's analysis and the assumptions outlined in the Supplemental Report, the Receiver makes the following observations:

- In the event of the sale of the Pacific Life Policy the Receiver will have sufficient funds such that it can continue to pay Policy premiums in 2012; however, the Receiver may not have sufficient funds to pay all Policy premiums due in 2012 be able to pay Policy premiums in 2012;
- Depending upon how the proceeds from the sale of the Pacific Life Policy are allocated between Policies, some or all of the Policies will lapse in 2012 (except those which presently have sufficient account value to support MCOI without further cash premium payments in the near term).

10.4 Advantage Program Cash Flow Projections

- 10.4.1 The total cash in the Advantage Accounts is \$212,976 as at October 28, 2011. In the event that the Court approves of the Receiver's recommended payment to Mid-City in the amount of \$180,000, cash available in the Advantage Accounts to pay premiums, professional fees and other disbursements will be \$32,976.
- 10.4.2 The life expectancy of the individual insured by the Advantage Policies is approximately two years.
- 10.4.3 The Receiver estimates that the cost of insurance for the Advantage Policies will run at approximately US \$3,000 per month in 2012 with the next payments due in January 2012. Failure to make such payments will result in the issuance of lapse notices in respect of the Advantage Policies, pursuant to which the Receiver will have a sixty (60) grace period to bring the premiums current or the Advantage Policies will lapse. As noted above, the balance of the Advantage Accounts will be \$32,976 after disposition of the Mid-City claim. Given that there are and will likely be further professional fees attributable to the Advantage Program, there is a very limited sum available to fund premiums. Accordingly, the Receiver expects that it may be necessary to ask investors in the Advantage Program to advance further funds to cover premiums.

11. Reporting to Stakeholders

11.1 Prior Notices to Stakeholders

- 11.1.1 The Receiver posted a notice dated June 1, 2010 (the “**June 1st Notice**”) on the Website updating New Life’s stakeholders on the status of the receivership proceedings. Further to the Receiver’s notice to stakeholders dated February 22, 2010 wherein the Receiver advised of its discovery of the transfer of the Offshore Funds, the Receiver advised stakeholders in the June 1st Notice that the Traced Funds had been used to purchase the Subsequent Assets and included a summary analysis of the Traced Funds.
- 11.1.2 In the June 1st Notice, the Receiver cautioned that, while it was not yet in a position to determine the total amount of the Traced Funds that would be recovered, it was unlikely that the Receiver would be able to recover the full amount of the Traced Funds. The Receiver updated stakeholders on the steps taken by the Receiver up to the date of the June 1st Notice in trying to secure and realize upon the Subsequent Assets and cautioned that the purchase price of the Subsequent Assets did not reflect the expected realization value.
- 11.1.3 The Receiver also updated the stakeholders with respect to the status of the Bahamian Proceedings, communications with the RCMP and the settlement agreements in respect of the MassMutual Policies in the June 1st Notice.
- 11.1.4 Further to the June 1st 2010 Notice, the Receiver posted the March 17th Notice wherein it updated New Life’s stakeholders on, among other things, the Receiver’s continued efforts to realize upon the Subsequent Assets. The Receiver also advised of the status of the settlement agreements with MassMutual.
- 11.1.5 In the June 1st Notice, the Receiver also advised stakeholders of the OSC Settlement Agreement and the implications for New Life investors of the manner in which they would be treated pursuant to the terms of the OSC Settlement Agreement in the event of a distribution of funds by the Receiver.
- 11.1.6 Finally, in the June 1st Notice, the Receiver advised stakeholders that the Receiver was continuing to make the minimum premium payments due on the Policies as long as the Receiver had sufficient funds to do so. However, the Receiver cautioned that, absent the sale of the Subsequent Assets or the receipt of a death benefit under one or more of the Policies, there may not be sufficient funds to pay premiums on all of the remaining Policies through the end of 2011. The Receiver advised that it would continue to monitor its projected cash flows and prior to making a decision as to whether to sell a Policy or to allow one or more of the Policies to lapse, the Receiver would notify Representative Counsel who, in turn, would notify the Investor Panel and the Receiver would post a notice on the Website advising of the manner in which the Receiver would proceed.

11.1.7 The Receiver's next steps include the following:

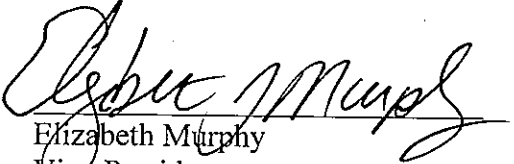
- (a) continuing to prosecute the Bahamian Proceedings commenced by the Receiver against Pogachar, Lombardi, Lexington and Amarcord, including, without limitation, opposing the motions brought by Pogachar and Lombardi to have use of funds to defend the Bahamian Proceedings;
- (b) in conjunction with (a) above, seeking to obtain custody of the Watches and bring certainty to the title issues with respect to the Bahamian Condo. In the interim, continuing to list for sale the Bahamian Condo and the Furniture and to possibly lease the Bahamian Condo in the interim;
- (c) continuing to pay the minimum premium payments on the Policies while the Receiver has funds available to do so;
- (d) continued cooperation with the RCMP in connection with its inquiries regarding a possible investigation into the Companies; and
- (e) seeking the Court's approval of the Receiver's fees and disbursements, including those of its Canadian and Bahamian counsel, for the period October 24, 2008 to September 30, 2011.


12. Recommendations

- 12.1 For the reasons set out above, the Receiver respectfully requests that this Honourable Court issue an Order:
- (a) approving the Pacific Life Sale Agreement and vesting the Pacific Life Policy and New Life's interest therein, if any, in the purchaser free and clear of all encumbrances;
 - (b) amending paragraph 22 of the Appointment Order to provide that the Receiver may borrow by way of revolving credit or otherwise such monies as it may consider necessary or desirable provided that the outstanding principal amount does not exceed \$2,000,000;
 - (c) authorizing the Receiver to recognize the Mid-City trust claim and to pay Mid-City, from the bank accounts maintained by the Receiver with respect to the Advantage Program, the sum of \$180,000 in full satisfaction of any claim that Mid-City ever had, now has or may ever have in the receivership of New Life;
 - (d) approving the Receiver's Combined Statements of Receipts and Disbursements for the period December 17, 2008 to October 28, 2011 as set forth in **Appendices CC** and **DD**, respectively, of this Eighth Report;
 - (e) sealing the Supplemental Report and the appendix to the Second Supplemental report attaching the Pacific Life Sale Agreement; and
 - (f) approving the Receiver's activities and conduct as described in this Report.

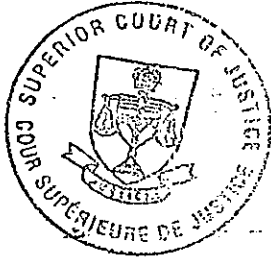
All of which is respectfully submitted this 31st day of October, 2011.

**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

APPENDIX “A”



Court File No. 08-CL-7832

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**THE HONOURABLE
JUSTICE CAMPBELL**

)
)
)
)

**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,
- (i) 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.

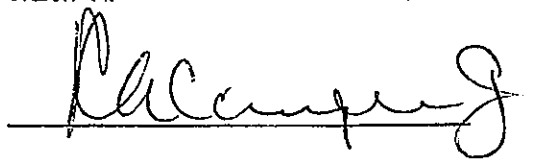
29. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever situate, for the recognition of this Order and for assistance in carrying out the terms of this Order.

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 À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

DEC 17 2008

PER / PAR: TV



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

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APPENDIX “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.

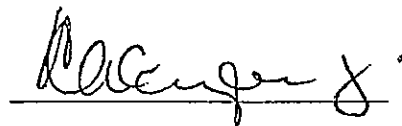
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PER/PAR:



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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

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Receiver and Manager of New Life Capital
Corp., et al