

**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

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

November 10, 2011

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*1. Introduction*

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**1.1 Purpose of this Report**

- 1.1.1 The purpose of this Second Supplemental Report (the “**Second Supplemental Report**”) to the Eighth Report to the Court of the Receiver dated October 31, 2011 (the “**Eighth Report**”) is to provide a further evidentiary basis for an Order of this Honourable Court approving the Pacific Life Sale Agreement for the sale of the Pacific Life Policy and vesting New Life’s interest therein, if any, in the purchaser free and clear of all encumbrances.
- 1.1.2 All other capitalized terms used herein and not otherwise defined are as defined in the Eighth Report.
- 1.1.3 All references are to Canadian dollars unless otherwise noted. Certain information set out in earlier reports is reported herein for ease of reference.

## 2. *Sale of Pacific Life Policy*

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### 2.1 **Background to the Sale of the Pacific Life Policy**

- 2.1.1 As set out in the Eighth Report, the Receiver conducted the 2009 Sales Process and did not receive a single acceptable offer on any of the Policies. The Receiver undertook a second sales process, the 2011 Sales Process, after receiving the Updated Medical Records from Proverian and received only one offer, the Pacific Life Policy Offer as a result of the 2011 Sales Process.
- 2.1.2 At the request of Representative Counsel, 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, accepted the Pacific Life Policy Offer on September 30, 2011 subject to the negotiation of an agreement of purchase and sale and this Honourable Court's approval.
- 2.1.3 After serving the Eighth Report, the Receiver and the prospective purchaser, Spiritus Life, Inc. ("**Spiritus**"), finalized the terms of and executed the Pacific Life Sale Agreement on November 9, 2011. Attached hereto and marked as **Appendix A** is the executed Pacific Life Sale Agreement.

### 2.2 **Material Terms of the Pacific Life Sale Agreement**

2.2.1 The material terms of the Pacific Life Sale Agreement are as follows:

- as set out in the Eighth Report, the consideration payable is less than Proverian's estimated sale value;
- Spiritus is required to pay a deposit to a third party escrow agent (the "**Escrow Agent**") within one business day of the Pacific Life Sale Agreement's execution (the Receiver has been advised by Spiritus that the deposit would be paid to the Escrow Agent by wire transfer initiated on November 9, 2011);
- Spiritus is required to pay the remainder of the purchase price to the Escrow Agent by no later than November 11, 2011;
- in the event that this Honourable Court approves the Pacific Life Sale Agreement, within one (1) business day thereof, the Escrow Agent shall release to Spiritus and Spiritus shall process the necessary change of ownership and beneficiary forms (the "**Change Forms**") and send them to Pacific Life Insurance Company ("Pacific Life");
- within two (2) business days from the date upon which Spiritus is notified by Pacific Life that the Change Forms have been correctly processed, Spiritus shall cause the Escrow Agent to pay the full purchase price, including the deposit, to the Receiver; and

- the sale of the Pacific Life Policy is subject to this Honourable Court's approval of the Pacific Life Sale Agreement and the Pacific Life Sale Agreement shall immediately terminate in the event that this Honourable Court's approval is not granted.

2.2.2 Both Spiritus and the Receiver have contacted Pacific Life regarding the potential sale of the Pacific Life Policy. The Receiver has been advised that Pacific Life's acknowledgement that the Change Forms have been correctly processed will likely be provided within a week of receipt of this Honourable Court's approval.

### **2.3 Discussions with Representative Counsel Regarding the Sale of the Pacific Life Policy**

2.3.1 As set out in the Eighth Report, 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.

2.3.2 On or about November 2, 2011, Representative Counsel advised the Receiver that it was going to propose a conference call with New Life investors on November 7<sup>th</sup> to discuss, amongst other matters, the possibility of the investors coming together to present a counter offer to purchase the Pacific Life Policy, as well as the Receiver's motion for approval of the Pacific Life Sale Agreement.

2.3.3 The Receiver was advised by Representative Counsel on November 10, 2011 that the aforementioned conference call was held on November 7<sup>th</sup> but that Representative Counsel did not receive the commitments required to fund a competing bid for the Pacific Life Policy.

2.3.4 As set out in the 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 of the other Policies. The sale of the Pacific Life Policy represents the only viable option for the Receiver to secure funds needed to pay Policy premiums and to maintain the Portfolio for the benefit of New Life's stakeholders. As such, the Receiver is of the view that the Pacific Life Sale Agreement should be approved by this Honourable Court.

### **2.4 Need for Sealing**

2.4.1 It is the Receiver's view that **Appendix A** to this Second Supplemental Report should be sealed on the basis that its disclosure to the Service List, the creditors, the investors or the public could be prejudicial to the Receiver's future efforts to market the Pacific Life Policy in the event that the transaction contemplated in the Pacific Life Sale Agreement does not close. In addition to the Court, the Receiver has provided a full copy of this Second Supplemental Report, including **Appendix A**, to Representative Counsel.

**3. Recommendation**

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- 3.1. The Receiver respectfully requests that this Honourable Court make an Order (i) approving the Pacific Life Sale Agreement and vesting the Pacific Life Policy and New Life's interest therein, if any, in Spiritus, or its designate, free and clear of all encumbrances; and (ii) sealing **Appendix A** to this Second Supplemental Report which appendix contains the unredacted Pacific Life Sale Agreement.

All of which is respectfully submitted this 10<sup>th</sup> day of November, 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.**



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J. Bradley Butcher  
Vice-President

## **APPENDIX “A”**

**PACIFIC LIFE SALE AGREEMENT TO BE SEALED  
UNDER COURT ORDER**

ONTARIO SECURITIES COMMISSION

and

NEW LIFE CAPITAL CORP. et al.

Applicant

Respondents

Court File No.: 08-CL-7832

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

Proceedings commenced at **Toronto**

**SECOND SUPPLEMENTAL REPORT TO THE EIGHTH  
REPORT TO THE COURT**

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

**James H. Grout** (LSUC# 22741H 1B)  
**Danny M. Nunes** (LSUC# 53802D)  
Tel: 416-304-1616  
Fax: 416-304-1313

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