

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

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

November 8, 2011

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*1. Introduction*

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**1.1 Purpose of this Report**

- 1.1.1 The purpose of this Ninth Report to the Court of the Receiver (the “Ninth Report”) is to provide background and support for the Receiver’s motion for approval of professional fees incurred by the Receiver, its Canadian counsel and its Bahamian counsel. The Receiver’s motion for approval of those professional fees is scheduled to be heard on November 29, 2011 and relates to professional fees incurred to September 30, 2011 for the Receiver and TGF and to November 7, 2011 for McKinney.
- 1.1.2 All other capitalized terms used herein and not otherwise defined are as defined in the Receiver’s Eighth Report to the Court dated October 31, 2011 (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.

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2. *Professional Fees*

2.1 Requirements of Appointment Order

2.1.1 Paragraph 20 of the Appointment Order requires that the Receiver and its legal counsel have their accounts approved by the Court from time to time. Further, paragraph 21 of the Appointment Order permits the Receiver to take advances against its fees and disbursements, and those of its solicitors, from time to time. Since the commencement of the receivership, the Receiver and TGF have prepared invoices on a periodic basis. Since its retention as Bahamian counsel, McKinney has also prepared accounts on a periodic basis. As noted below, certain accounts rendered by the Receiver, TGF and McKinney in respect of the receivership proceedings to date have been paid out of funds held by the Receiver and certain accounts remain unpaid.

2.2 Fees Submitted for Approval

2.2.1 The Receiver has prepared and filed with the Court the Affidavit of Elizabeth J. Murphy sworn November 8, 2011 (the "Murphy Affidavit") in support of its application for approval of the Receiver's fees for the period October 24, 2008 to September 30, 2011. Similarly, TGF has filed with the Court the affidavit of James H. Grout sworn on November 9, 2011 (the "Grout Affidavit") in support of TGF's fees and disbursements for the period December 9, 2008 to September 30, 2011. Further McKinney has filed with the Court the affidavit of G. Diane Stewart sworn on November 8, 2011 (the "Stewart Affidavit") in support of McKinney's fees and disbursements for the period July 14, 2009 to November 7, 2011. The Murphy Affidavit, the Grout Affidavit and the Stewart Affidavit each include, as exhibits, summaries of all hours, rates and fees charged by each representative of the Receiver, TGF and McKinney, respectively, as well as copies of all of the invoices rendered by each firm for the periods covered by the respective affidavits.

2.2.2 The professional fees and disbursements incurred to September 30, 2011 by the Receiver and TGF, as presented in the Murphy Affidavit and the Grout Affidavit, total \$1,474,269 and \$648,501, respectively (before GST/HST). The professional fees and disbursements of McKinney incurred up to November 7, 2011, as presented in the Stewart Affidavit, total US \$431,386 (\$B 430,106).

2.2.3 In Section 10.3.2 of the Eighth Report, the Receiver advised this Honourable Court that the Receiver, TGF and Representative Counsel have agreed to defer payment of their fees until such time as additional funds have been realized.

2.2.4 The fees and disbursements of the Receiver, TGF and McKinney can be summarized as follows:

Firm	Accounts Paid	Accounts Unpaid	Total (Before GST/HST)
KPMG Inc.	\$1,369,749 <sup>(1)</sup>	104,520 <sup>(4)</sup>	\$1,474,269
TGF	604,309 <sup>(2)</sup>	44,192 <sup>(5)</sup>	648,501
McKinney (USD)	362,823 <sup>(3)</sup>	68,435 <sup>(6)</sup>	431,386

Notes:

- (1) As per Appendix CC of the Eighth Report
- (2) Total Canadian legal fees paid per Appendix CC of the Eighth Report total \$647,221, of that amount, \$40,380 was paid to securities counsel and \$2,532 was paid to real estate counsel leaving a balance of \$604,309 which was paid to TGF.
- (3) As per Appendix DD of the Eighth Report; comprised of fees of USD306,078 and stamp duty of USD56,745.
- (4) Represents invoices for July, August and September 2011.
- (5) Represents invoices for August and September 2011.
- (6) Represents invoices for the period May 12, 2011 to November 7, 2011.

### 2.3 Allocation of Fees to Capital Advantage Program

- 2.3.1 As has been set out in the Eighth Report and previous reports of the Receiver, New Life raised funds through two separate investment programs: the Investments Program and the Capital Advantage Program. The Capital Advantage Program raised a total of \$638,400 from ten investors while the Investments Program raised approximately \$22 million from approximately 600 investors. In the Eighth Report the Receiver recommended that an investment in the Capital Advantage Program of \$200,000 by one investor be treated as a trust claim and that the Receiver be authorized to return \$180,000 of those funds to the particular investor.
- 2.3.2 As outlined in the Eighth Report, the Receiver and its counsel have spent considerable time on the Traced Funds and the Bahamian Proceeding. Those matters relate solely to the Investments Program. The only New Life assets accruing to the investors in the Capital Advantage Program are beneficial interests in the Advantage Policies which have a total potential maturity value of US \$477,690 (as compared to the total face value of US \$83 million of the Portfolio at the outset of the receivership).
- 2.3.3 To date the Receiver has made the following payments from the Advantage Accounts with respect to professional fees:
  - \$4,485 (before GST) for Receiver's fees;
  - \$690 (before GST) for TGF's fees; and

- A transfer of \$75,000 to an account maintained by the Receiver for the Investments Program to be used for the payment of the Receiver's fees and TGF's fees.

#### 2.4 Need for Sealing

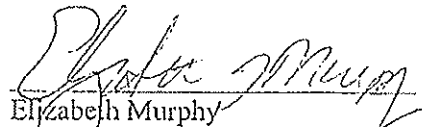
- 2.4.1 There are a number of ongoing matters in the administration of the receivership by the Receiver, including realization with respect to certain of the assets in the estate, which may be adversely affected should detailed and potentially sensitive information with respect to the Receiver's activities be made public. Accordingly, the Receiver, TGF and McKinney have filed complete affidavits with the Court, including copies of all accounts, but the affidavits served upon the Service List and made available to the public do not include copies of the detailed accounts which have been removed. The Receiver seeks an Order from this Honourable Court sealing the appendices to the Murphy Affidavit, Grout Affidavit and Stewart Affidavit containing the detailed accounts pending completion of the administration of the estate or until further Order of this Honourable Court. The Receiver has provided copies of the Murphy Affidavit, Grout Affidavit and Stewart Affidavit, including all appendices thereto, to Representative Counsel.


3. Recommendation

- 3.1. The Receiver respectfully requests that this Honourable Court make an Order (i) approving the fees and disbursements of the Receiver and TGF to September 30, 2011 as more fully set out in the Murphy Affidavit and the Grout Affidavit, respectively; (ii) approving the fees and disbursements of McKinney to November 7, 2011 as more fully set out in the Stewart Affidavit and (iii) sealing the appendices to the Murphy Affidavit, Grout Affidavit and Stewart Affidavit containing the detailed account invoices rendered by the Receiver, TGF and McKinney.

All of which is respectfully submitted this 8<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.

  
Elizabeth Murphy  
Vice-President

  
J. Bradley Butcher  
Vice-President

ONTARIO SECURITIES COMMISSION

and

Applicant(s)

NEW LIFE CAPITAL CORP., et al

Respondent(s)

Court File No.: 08-CL-7832

*ONTARIO*  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

Proceedings commenced at Toronto

NINTH REPORT OF THE RECEIVER

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Manager of New Life Capital Corp., et al