

**IN THE MATTER OF THE *SECURITIES ACT*
R.S.O. 1990, c. S.5, AS AMENDED**

- and -

IN THE MATTER OF L. JEFFREY POGACHAR, PAOLA LOMBARDI, ALAN S. PRICE, 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.

**SETTLEMENT AGREEMENT BETWEEN
STAFF OF THE COMMISSION AND ALAN S. PRICE**

PART I - INTRODUCTION

1. The Ontario Securities Commission (the "Commission") will issue a Notice of Hearing to announce that it will hold a hearing to consider whether, pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S-5, as amended (the "Act"), it is in the public interest for the Commission to make certain orders in respect of Alan S. Price ("Price" or "the Respondent").

PART II - JOINT SETTLEMENT RECOMMENDATION

2. Staff of the Commission ("Staff") agree to recommend settlement of the proceeding commenced by Amended Notice of Hearing dated June 30, 2010 (the "Proceeding") against Price according to the terms and conditions set out in Part VI of this Settlement Agreement. Price agrees to the making of an order in the form attached as Schedule "A", based on the facts set out below.

PART III - AGREED FACTS

3. Price admits the facts set out in this Settlement Agreement solely for the purposes of this Settlement Agreement. This Settlement Agreement and the facts and admissions set out in it are

without prejudice to Price in any proceeding including, without limitation, any civil, administrative, quasi-criminal or criminal actions or proceedings that may be brought by any person or agency, whether or not this Settlement Agreement is approved by the Commission. Without limiting the generality of the foregoing, Price expressly denies that this Settlement Agreement is intended to be an admission of civil or criminal liability.

Price and New Life

4. Price is a lawyer. He practises in the area of civil litigation and has been a member of the Law Society of Upper Canada since 1967. Price is not and never has been registered with the Commission in any capacity.

5. In about 2005, Price was approached by L. Jeffrey Pogachar (“Pogachar”). He asked Price to refer him to a law firm that could act as corporate counsel for the New Life companies. Price referred him to a law firm (the “Law Firm”) which was retained to act as counsel. Pogachar asked Price if he would become a director of New Life. Price agreed to this request and was a director of New Life Capital Investments Inc. (“NLCI”) from December 22, 2005 until he resigned on November 27, 2008.

6. Pogachar and his wife, Paola Lombardi (“Lombardi”), created the New Life companies to carry on business in the life settlements industry. The life settlements industry involves the purchase of life insurance policies from policy holders. Upon the purchase of the policy, the purchaser becomes entitled to the benefits paid under the policy as well as being responsible for the payment of premiums. The purchaser’s profit equals the amount of the benefit paid under the policy upon the death of the insured less the amount paid for the life settlement including the amount paid in premiums.

7. In addition to NLCI, the New Life companies consist of New Life Capital Corp. (“NLCC”), New Life Capital Advantage Inc. (“NLCA”), (and its private Ontario subsidiaries: 2126375 Ontario Inc., 2108375 Ontario Inc., 2126533 Ontario Inc., 2152042 Ontario Inc., 2100228 Ontario Inc. and 2173817 Ontario Inc. (the “Numbered Companies”), New Life Capital Strategies Inc. (“NLCS”), and 1660690 Ontario Ltd. (“1660690”).

8. Pogachar and Lombardi divided responsibility for New Life's business among the various corporate entities: NLCC was a holding company which owned the other corporate entities and was registered as a limited market dealer on July 30, 2007; NLCI sold shares of its own issue and held a pool of life settlements; NLCA and the Numbered Companies sold shares of the Numbered Companies and each Numbered Company held an interest in one or more specific life settlements; NLCS "sourced" or found life settlements for investment; and 1660690 served an administrative purpose in connection with NLCI's life settlements.

9. NLCI was incorporated in Ontario on December 22, 2005. NLCI is not and never has been registered with the Commission in any capacity. In addition to Price, the only other directors of NLCI were Pogachar and Lombardi.

10. In February 2006, NLCI began issuing its class A common shares to investors by way of an Offering Memorandum. It continued selling shares until August 8, 2008. Its business activities consisted of raising capital and investing in life settlements sold by US residents. NLCI raised more than \$21 million from over 600 investors in Canada.

11. The directors of all the other New Life companies were exclusively Pogachar and Lombardi.

12. By Order of the Ontario Superior Court of Justice dated December 17, 2008, KPMG Inc. was appointed Receiver and Manager for the New Life companies. New Life has not operated as a going concern since that date.

Failure to identify lack of controls

13. Pogachar and Lombardi held sole signing authority over the bank accounts of the New Life companies. Most of the money in these accounts derived from the sale of shares of NLCI to investors. Pogachar and Lombardi used a significant portion of the money in these bank accounts for their own personal purposes.

14. In February and March, 2008, the Compliance Branch of the Commission carried out a review of the books and records of NLCC. During the course of the compliance review, it was revealed that Pogachar and Lombardi had used funds that derived from the sale of shares in

NLCI to make payments totalling CAD 1.1 million on their personal RBC credit cards held by Pogachar and Lombardi. These payments included expenses purportedly incurred for business but also included personal expenses.

15. Price believed that Pogachar and Lombardi were not taking a salary from the business. When it was revealed that they may have used investor funds to pay personal expenses on their Visa bills, Price believed, based on written communication he received from the Law Firm, that the personal expenses would be accounted for by shareholder loans and employment agreements between NLCI and Pogachar and Lombardi.

16. It was also revealed that Pogachar and Lombardi had used approximately CAD 1.1 million and USD 43,500 derived from NLCI for personal purposes. Some of these funds were accounted for as shareholder loans.

17. Further investigation by Staff and KPMG revealed in July 2009 that between October 2007 and July 2008, Pogachar and Lombardi caused over CAD 2.1 million and USD 4.9 million to be transferred derived from NLCI accounts in Toronto to accounts controlled by them in the Bahamas where the funds were used for their personal purposes.

18. NLCI raised over \$21 million from investors between February 2006 and August 2008. Pogachar and Lombardi held sole signing authority over the NLCI accounts which held these funds raised from investors.

19. Price failed to question the absence of any internal controls governing payments from the NLCI accounts.

Trading Without Registration

20. NLCI, of which Price was a director, sold shares of its own issue until August 6, 2008 when the Commission made an order that it cease trading. It marketed its shares publicly and sold them to investors in Ontario and elsewhere in Canada. More than 600 investors purchased shares pursuant to NLCI's Offering Memorandum since 2006.

21. In selling its shares directly to investors, NLCI engaged in the business of trading in securities as principal and acted as a market intermediary. As such, NLCI was required to be

registered to trade in securities. Although NLCC was registered with the Commission as a limited market dealer, it did not carry out the duties of a limited market dealer respecting the sale of shares of NLCI.

22. As NLCI was not registered under the Act to trade in securities, it, therefore, carried on trading in breach of the Act.

23. As a director of NCLI, Price relied on legal advice from the Law Firm retained to advise New Life in respect of registration issues. Based on the legal advice provided by the Law Firm, Price believed that NCLI was not required to register with the Commission as NLCC was registered as a limited market dealer. Price failed, however, to make any enquiries about whether NLCC was carrying out the duties of a limited market dealer respecting the sale of shares of NLCI.

PART IV - CONDUCT CONTRARY TO THE PUBLIC INTEREST

24. By engaging in this conduct, Price acted contrary to the public interest and in a manner harmful to the integrity of the Ontario capital markets.

PART V - RESPONDENT'S POSITION

25. Price requests that the settlement hearing panel consider the following mitigating circumstance:

- (a) Price did not benefit from his role in NLCI. He did not receive any financial compensation other than a nominal fee to attend a directors' meeting and review related documents and did not receive a salary or any other remuneration or benefits in connection with his role.

PART VI - TERMS OF SETTLEMENT

26. The Respondent agrees to the terms of settlement listed below.

27. The Commission will make an order pursuant to section 127(1) and section 127.1 of the Act that:

- (a) the settlement agreement is approved;
- (b) the Respondent is prohibited from being registered under the Act;
- (c) any exemptions contained in Ontario securities law do not apply to the Respondent for a period of three years commencing on the date of the Commission's order;
- (d) the Respondent is prohibited from becoming or acting as a director or officer of any issuer permanently; and
- (e) the Respondent pay the costs of the Commission's investigation in the amount of \$1,500.

28. The Respondent agrees to personally make any payments ordered above by certified cheque when the Commission approves this Settlement Agreement. The Respondent will not be reimbursed for, or receive a contribution toward, this payment from any other person or company.

29. The Respondent undertakes to consent to a regulatory Order made by any provincial or territorial securities regulatory authority in Canada containing any or all of the prohibitions set out in sub-paragraphs 27(b) to (d) above. These prohibitions may be modified to reflect the provisions of the relevant provincial or territorial securities law.

PART VII - STAFF COMMITMENT

30. If the Commission approves this Settlement Agreement, Staff will not commence any proceeding under Ontario securities law in relation to the facts set out in Part III of this Settlement Agreement, subject to the provisions of paragraph 37 below.

31. If the Commission approves this Settlement Agreement and the Respondent fails to comply with any of the terms of the Settlement Agreement, Staff may bring proceedings under Ontario securities law against the Respondent. These proceedings may be based on, but are not limited to, the facts set out in Part III of this Settlement Agreement as well as the breach of the Settlement Agreement.

PART VIII - PROCEDURE FOR APPROVAL OF SETTLEMENT

32. The parties will seek approval of this Settlement Agreement at a public hearing before the Commission scheduled for November 10, 2010 at 9:00 a.m. or on another date agreed to by Staff and the Respondent, according to the procedures set out in this Settlement Agreement and the Commission's Rules of Practice.

33. Staff and the Respondent agree that this Settlement Agreement will form all of the agreed facts that will be submitted at the settlement hearing on the Respondent's conduct, unless the parties agree that additional facts should be submitted at the settlement hearing.

34. If the Commission approves this Settlement Agreement, the Respondent agrees to waive all rights to a full hearing, judicial review or appeal of this matter under the Act.

35. If the Commission approves this Settlement Agreement, neither party will make any public statement that is inconsistent with this Settlement Agreement or with any additional agreed facts submitted at the settlement hearing.

36. Whether or not the Commission approves this Settlement Agreement, the Respondent will not use, in any proceeding, this Settlement Agreement or the negotiation or process of approval of this agreement as the basis for any attack on the Commission's jurisdiction, alleged bias, alleged unfairness, or any other remedies or challenges that may otherwise be available.

PART IX - DISCLOSURE OF SETTLEMENT AGREEMENT

37. If the Commission does not approve this Settlement Agreement or does not make the order attached as Schedule "A" to this Settlement Agreement:

- a. this Settlement Agreement and all discussions and negotiations between Staff and the Respondent before the settlement hearing takes place will be without prejudice to Staff and the Respondent; and
- b. Staff and the Respondent will each be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing of the allegations contained in the Statement of Allegations. Any proceedings,

remedies and challenges will not be affected by this Settlement Agreement, or by any discussions or negotiations relating to this agreement.

38. Both parties will keep the terms of the Settlement Agreement confidential until the Commission approves the Settlement Agreement. At that time, the parties will no longer have to maintain confidentiality. If the Commission does not approve the Settlement Agreement, both parties must continue to keep the terms of the Settlement Agreement confidential, unless they agree in writing not to do so or are required by law to disclose the terms.

PART X - EXECUTION OF SETTLEMENT AGREEMENT

39. The parties may sign separate copies of this agreement. Together, these signed copies will form a binding agreement.

40. A fax copy of any signature will be treated as an original signature.

Dated this 29th day of *October*, 2010.

“Alan Price”
Alan S. Price

“Janet Temple”
Witness

“Tom Atkinson”
Director, Enforcement Branch