

## (IV) COMPANY PROFILE

### (A) HISTORY

The Company was originally chartered under the laws of the State of New York in May, 1841 as the Nautilus Insurance Company, a fire and marine insurer. In April 1843 the Company was reorganized as a mutual life insurance company. The Company's name was changed to New York Life Insurance Company on April 5, 1849.

Unlike many other very large mutual life insurers, the Company has retained its status as a mutual insurer rather than reorganizing as a stock company as is the recent trend.

The Company writes ordinary and term life insurance while offering universal life and variable life insurance products through its largest subsidiary, New York Life and Annuity Corporation, a Delaware domiciled stock life insurer.

The Company is licensed in all of the states, the District of Columbia, Puerto Rico, U. S. Virgin islands and Canada.

### (B) STATUTORY HOME OFFICE

51 Madison Avenue  
New York, New York 10010

### (C) VERMONT REPORTED PREMIUMS

	2000	2001	2002
Life	8,131,386	8,198,127	8,099,433
Annuity	583,357	344,573	19,861
A & H	891,925	971,329	1,112,688
Deposit Funds	26,472	0	75,828
Other	0	55,160	(3,383)
Total	9,633,140	9,569,189	9,304,427

The Company's premium writings in Vermont, which consist primarily of life insurance, have declined slightly over the examination period. The Company's largest subsidiary, New York Life Insurance and Annuity Corporation, writes substantially more total premiums in Vermont than the parent company. The largest portions of the subsidiary's premiums are from annuities.

## (V) CLAIMS PROCEDURES AND PROCESSING

The examination included a review of the Company's practices and procedures with regard to life insurance claims. The review entailed all those activities concerning the administration of claims, from the first receipt of notice of loss to the point of final settlement.

The examiners utilized several tests in order to determine compliance with Vermont's statutes and regulations, specifically 8 V.S.A. § 3665 and Regulation 79-2.

### **Vermont Reported Death Benefits Paid (Ordinary Life) NYLIC**

<b>Year</b>	<b>Death Benefits</b>
2000	\$2,761,745
2001	\$1,516,336
2002	\$1,575,535

### **(A) Claim Practices and Procedures Not In Compliance With 8 V.S.A. § 3665**

It is the Company's practice to pay the policy contract rate of 3.5% from the date of death on life insurance proceeds unless the beneficiary's residence state mandates a higher rate. The Company has applied the 3.5% rate since 1993 according to a table depicting interest rate history, which was furnished by the Company. The table is attached to the report as Appendix I A. This practice contravenes 8 V.S.A. § 3665 (c) (2) in that it permits a minimum rate of interest on policy proceeds of 3.5%, whereas the statute requires that "the interest rate shall be the rate paid on proceeds left on deposit, or six percent whichever rate is greater."

Additionally, in those cases where the Company fails to pay a claim within thirty (30) days of receipt of proof of loss, they use the higher of Option 1 (the rate paid on proceeds left on deposit) or 6% from the date of death. 8 V.S.A. § 3665 (d) requires that "if an insurer fails to pay timely a claim, it shall pay interest on the amount of the claim beginning 30 days after a beneficiary files a properly executed proof of loss. In the event judgment is entered for a beneficiary or a settlement agreement between the insurer and the beneficiary is executed, interest shall accrue from thirty days after the beneficiary filed a proof of loss. The interest rate imposed on the insurer shall be the judgment rate allowed by law." The judgment rate in Vermont pursuant to 12 V.S.A. § 2903 (b) is 12%.

The examiners recommend that the Company revise its procedures to conform to both 8 V.S.A. § 3665 (c ) (2) and 8 V.S.A. § 3665 (d) so that the required interest is paid on all death claim proceeds.

From the table in Appendix I A it can be seen that the Company failed to pay the statutory interest on death claims all the way from 1993 to the present, a period of eleven (11) years.

In view of the above, it is recommended that the Company immediately start paying the correct rate of interest on all death claims paid to beneficiaries under Vermont policies, in addition to recalculating the interest applicable to all such policies for which underpayments of interest were made beginning in 1993. The required amounts of additional interest should include interest at the rate of six percent (6%) per annum, calculated from the original date the claims were paid until the additional amounts are paid.

The additional interest payments described above should be made under the supervision of the Vermont Department. Such payments should be mailed to the last known addresses of the beneficiaries together with a form letter, approved by the Vermont Department, explaining the reason for making the additional payments. In those cases where the checks are returned and the beneficiaries cannot be located, such amounts should be processed in accordance with 27 V.S.A. § 1208 et. seq. (Unclaimed Property Act) of the State of Vermont.

**See Appendix I A**

**(B) Individual Life Claims (Denied/Compromised)**

The examiners reviewed all denied and compromised claims received during the examination period. There were a total of four. One claim was in violation of Vermont Regulation 79-2 § 5 A and 79-2 § 6 C as described below:

**Claim # 556564**

**Policies: 45820508, 34902124**

The examiners' review of claim # 556564, indicated that the company received the claim form and death certificate on 9-10-97. (Date of death was 7-31-97) The company wrote the claimant on 10-8-97, acknowledging receipt of the claim and stating that it would be necessary to conduct an investigation as policy # 45820508 was still within the contestable period.

Additionally, the examiners observed that the company wrote the claimant on the following dates advising that the claim was still under investigation:

12-19-97, 5-1-98, 7-10-98, 9-11-98, 11-25-98, 2-10-99, 5-14-99 and 8-10-99. On 10-4-99, an attorney representing the claimant wrote the company advising of his involvement as representative of the claimant and the estate of the insured.

The Company is in violation of Vermont Regulation 79-2 § 5 A (requiring acknowledgment of receipt of a claim within 10 working days) and Regulation 79-2 § 6 C, which requires that if the insurer needs more time to determine whether a claim should be accepted or denied, it shall notify the claimant within 15 working days after receipt of the proofs of loss giving reasons more time is needed and that if the investigation remains incomplete the insurer shall every 30 days send the claimant a letter stating the reasons additional time is necessary.

The Company indicated that corrective action has been taken to prevent further violations of Regulation 79-2.

**(C) Individual Life Claim # 679155**  
**Underpayment**

The examiners utilized several tests in order to determine compliance with Vermont's statutes and regulations as previously stated. One of the tests involved a review of the listing of paid life claims information which, was provided in both hard copy and diskette form. The test was performed in order to determine if there were any claims that had an unusually lengthy period of time between date of death and date of payment. Upon identifying such a case the examiners reviewed the claim file and observed violations as described below.

The insured's date of death was 5-7-00; **proof of loss** was received 12-13-01 and payment was made 2-11-02. The policy benefit amount was a total of \$271,997.32, not including interest. (Refer to the discussion in the following section entitled "**Group Life Claim Sample**" regarding "proof of loss").

The Company paid a total amount of interest of \$17,105.45. The examiners' calculations indicate that the interest payable should have been \$30,135.81, which represents an underpayment of \$13,030.36.

The Company is in violation of 8 V.S.A. § 3665 (c) (2) in that the statutory rate of interest (6%) was not applied to the death claim proceeds from date of death (5-7-00) to 1-13-02 (30 days after beneficiary filed a properly executed proof of loss). The Company is in violation of 8 V.S.A. § 3665 (d) in that the appropriate rate of interest (12%) was not applied from 1-13-02 to date of payment (2-11-02) as the claim was not timely paid.

The examiners recommend that the Company recalculate the additional interest and remit to the beneficiary with additional interest at the rate of 6% from the original date of claim payment until the present.

**See Appendix I B**

## **(D) Group Life Claims**

### **Group Life Claims Sample**

The examiners selected a random sample of fifty (50) claim files from a population of ninety-six (96) for review. Violations of Vermont statutes and regulations were noted as described below.

The company is in violation of 8 V.S.A. § 3665 (c) (2) in that the statutory interest rate of 6% was not applied to the death claim proceeds in all of the cases reviewed in the sample, with the exception of certificate # A0195128 and certificate # A0615925. (The beneficiaries in both cases reside in the state of Florida). This represents forty-eight (48) violations of 8 V.S.A. § 3665 (c) (2) out of a sample of fifty (50) claims.

There were four (4) cases from the sample review, in which the Company failed to pay the claim within 30 days from receipt of “**proof of loss**” and did not pay the statutory rate of 12% in violation of 8 V.S.A. § 3665 (d). In all the cases reviewed by the examiners, “proof of loss” is considered to be when the company receives a properly completed claim form and submits a certified death certificate. Guidance, as to identifying what “proof of loss” constitutes, is found under 8 V.S.A. § 3731 (10), which provides: “There shall be a provision that when the benefits under the policy shall become payable by reason of the death of the insured, settlement shall be made upon receipt of due proof of death”, etc. Additionally, the examiners reference 8 V.S.A. § 3664 (Proof of loss forms), which in pertinent part states: “Insurance companies, societies or associations, or insurance adjusters appointed by said companies, societies or associations shall furnish in form for completion by the insured all documents as to proof of loss or other matter required by contract to be submitted to the companies.”

The examiners recommend that the Company follow the same procedure as described on page 9 of this report for payment of additional amounts of interest on death proceeds for the group certificates. The additional interest due to late payment should also be paid in accordance with 8 V.S.A. § 3665 (d).

**See Appendix I C**

**(E) Group Life Claims Irregularities**

The examiners observed two cases in which the Company apparently did not pay the death claim benefits to the beneficiaries as designated by the insured certificateholder, representing two (2) violations of 8 V.S.A. § 4724 (12) (A) and § 3818. It should be noted that section 3818 (Benefit payments) provides that group life policies should contain a provision requiring in part: “any sum becoming due by reason of the death of the person insured shall be payable to the beneficiary designated by the person insured” (Underlining added for emphasis)

The cases are described below:

- Claim # 42619 (Certificate # A0025430)

The enrollment form provides a section entitled “Beneficiary Designation (If Multiple Beneficiaries, Please Attach a Separate Sheet)”. (Underlining added for emphasis) In the space provided, the name, (wife) was written in by the insured. Attached to the enrollment form is a separate sheet with the hand written instructions:

*Dear Sir, I want to put our son's name on as a beneficiary to. His name and address is \_\_\_\_\_ . We would like his name on both policys.*

The entire proceeds were paid to the wife and not divided equally between the two beneficiaries as instructed by the insured.

- Company response

The Company explained to the examiners that when the application was processed the beneficiaries were recorded in their system as wife (primary) and son (secondary) and printed the Certificate with that information on the Data Page. Further, the Company stated that since the insured did not call them to state that this was in error, the Company believed they processed the death claim benefits appropriately and in accordance with the insured's wishes.

- Claim # 57828 (Certificate # A0380619)

The beneficiaries listed on the enrollment form are (husband) and (daughter). No percentages are indicated for the distribution. The enrollment form reads “if more than one beneficiary is designated, proceeds will be divided equally unless you indicate a share.” (Underlining added for emphasis) The death benefit was paid 100% to the husband. A note in the claim file states, “daughter (name) called to see if she needs to complete a claim form. Advised no, she's beneficiary 2. We just need claim form from her dad and CDC.”

- Company response

The Company explained that this case was handled the same as the previously described case (# 42619) in that the Company issued the Certificate with the husband as the primary beneficiary and the daughter as the secondary beneficiary. Additionally the Company responded: “Since NYL did not receive information from (the insured) that it

was issued incorrectly, we paid the claim based on how the certificate was issued.”  
(Underlining added for emphasis)

The examiners maintain that the insured's wishes can be best determined by the original applications which, in both cases, indicate that both the spouse and child are to be beneficiaries. Since the distribution percentages for the death benefit were not indicated by the insured, the proceeds should have been paid 50% to each beneficiary, in accordance with how the application instructs the insurer that the proceeds will be paid in such an instance. The Company erroneously recorded the children in both cases as second beneficiary in the certificates. This was contrary to the statement on the application that explained how the beneficiaries would be recorded and subsequently paid. The insured should not be expected to know the definition of a second beneficiary. The fact that the insured did not catch the error does not make the error correct or determine the insured's wishes.

In the claim file # 57828, the additional beneficiary (the daughter) did inquire if she needed to complete a claim form and she was instructed that she was the second beneficiary. Furthermore, the insured is no longer living at the time the claim is paid to issue a complaint. Therefore, the fact that the Company did not receive complaints after the death benefit payment does not indicate that the Company processed the death claim payment correctly.

It is the examiners' opinion that the Company failed to act as fiduciary, in that the claims were paid based on incorrectly recorded information and that the Company should have verified the correct beneficiaries by reviewing the insured's initial enrollment forms.

The Company should revise its procedures in a manner, which will insure that all claims are paid to beneficiaries in accordance with the insured's instructions.

## (VI) REPLACEMENTS

The examiners selected a random sample of fifty-one (51) replacement files from a total population of two hundred and eleven (211) to review for possible violations of applicable replacement regulations.

Those policies/contracts that were issued prior to 3-1-02 were tested for compliance with Vermont Replacement Regulation 88-2 and those policies/contracts that were issued after 3-1-02, were tested for compliance with Vermont Regulation 2001-3 (Life Insurance & Annuity Replacement Regulation) effective 3-1-02.

The following chart lists the violations found by the examiners from the sample files. The numbers in the right hand column represent violations of various sections of the replacement regulations and are keyed to the legend that identifies the applicable sections of the regulations.

### Violations of Replacement Regulations

Policy Number	Apparent Violations (Numbers are keyed to legend)
47059488	1, 3, 5
47111991	1
46697093	2
46802630	2, 4
47164949	1
47374099	7
47151052	3, 5
47225403	6
47433410	6
46810644	1
46771463	1

There are a total of fifteen (15) separate violations listed in the above chart.

### LEGEND

- 1 No evidence of written communication to existing insurer- Reg. 88-2 § 8 B (2)
- 2 No evidence that written communication to existing insurer was sent within 5 business days- Reg. 88-2 § 8 B (2)
- 3 Failure to leave policy illustration with applicant- Reg. 88-2 § 6 B (3)
- 4 No evidence of "Notice Regarding Replacement"- Reg. 88-2 § 8 ( C)
- 5 Failure to verify that the required forms are received and are in compliance with the Regulation- Reg. 2001-3 § 5 A (1)
- 6 No evidence of notice to existing insurer- Reg. 2001-3 § 5 A (2)
- 7 Notice to existing insurer not sent within 5 business days- Reg. 2001-3 § A (2)

The examiners recommend that the Company assign specific staff members the responsibility for reviewing each replacement file to insure that all of the documents are included and that all of the required procedures have been followed. This review should be made before any file is closed.

## (VII) SALES AND MARKETING

### (A) INCOMPLETE/INCORRECT APPLICATIONS

The examiners observed an irregularity with regard to the companies' issued life sample (sample II). A sample of fifty (50) files was selected from a listing of eight hundred thirty-two (832) records representing both companies' issued life policies for the examination period.

Four (4) policy files contained incomplete or incorrect information with respect to completion of the application. The application, designed to be used by both companies, contains a space at the top (Part I) for indicating from which company the applicant is seeking coverage. The agents failed to mark either company on three of the four files listed in the following chart. The fourth file was mistakenly marked NYLIC, however, the issuing company was NYLIAC.

The following chart identifies those policy files:

<b>Policy #</b>	<b>Issuing Company</b>	<b>Examiners' Comments</b>
46850092	NYLIC	No company name marked on application-was a NYLIAC conversion to a NYL policy
46624317	NYLIC	No company name marked on application-or indicated on the accompanying HIV form
62841337	NYLIAC	No company name marked on application or policy delivery receipt
62823601	NYLIAC	Application marked NYLIC, however issuing company was NYLIAC

The examiners criticized the company for the apparent failure to disclose to the insured the name of the company for which they were seeking coverage. The Company's response included a statement that the Administrative Manager would reaffirm the necessity of completing all the required answers regarding the completion of the application.