

**STATE OF VERMONT
DEPARTMENT OF BANKING, INSURANCE, SECURITIES
AND HEALTH CARE ADMINISTRATION**

In Re: New York Life
Insurance Company
NAIC # 66915

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DOCKET NO. 05-027-1

ORDER ADOPTING REPORT OF EXAMINATION

NOW COMES John P. Crowley, Commissioner of the Vermont Department of Banking, Insurance, Securities and Health Care Administration, and hereby issues the following Order adopting the Market Conduct Examination Report in the above referenced docket number, subject to the exceptions and qualifications discussed below.

FINDINGS OF FACT

1. Pursuant to the authority granted by Vermont law, including, but not limited to, that contained in 8 V.S.A. §§ 10-13, 18, 3564-3574 and 4726, the Commissioner of the Department of Banking, Insurance, Securities and Health Care Administration (the "Department") is charged with administering and enforcing the insurance laws and regulations of the State of Vermont and is authorized to conduct examinations of insurers and licensees to determine whether they are in compliance with said laws and regulations.

2. New York Life Insurance Company (the "Company") is authorized to transact business in Vermont under Foreign Insurance Company License No. 1452 P.

3. A final target¹ market conduct examination report was issued by examiners Jennifer Greenway, Robbie Kriplean and James Montgomery entitled MARKET CONDUCT EXAMINATION REPORT OF NEW YORK LIFE INSURANCE COMPANY NEW YORK, NEW YORK AS OF DECEMBER 31, 2002 BY VERMONT DEPARTMENT OF BANKING, INSURANCE, SECURITIES & HEALTH CARE ADMINISTRATION (the "Report").

4. In accordance with the requirements of 8 V.S.A. § 3574(b), the Report was transmitted to the Company and the Company was afforded a reasonable period of time to submit a formal written response to the findings of Report. The Company submitted a formal response (the "Response") addressing the issues raised the Report. Upon review of the Response, the Department has undertaken additional investigation, sought additional information from the Company and negotiated with the Company concerning issues contained herein.

5. Pursuant to 8 V.S.A. § 3574(c), the undersigned Commissioner has fully considered the Report, the Response and additional information provided.

CONCLUSIONS OF LAW

6. To the extent comments made by the Company are not discussed below, such comments are expressly rejected by the undersigned. The examiners' Report, including their recommendations, are adopted unless expressly rejected below.

7. In the **(V) CLAIMS PROCEDURES AND PROCESSING – (A) Claims Practices and Procedures – Not In Compliance with 8 V.S.A. § 3665** section of the Report (pages 7-8), the examiners discuss the Company's failure to comply with 8 V.S.A. § 3665. 8 V.S.A. § 3665 requires that all payments on claims for life insurance shall include

¹ The market conduct examination focused on marketing and sales, consumer complaints, claims procedures and processing, and replacement procedures from January 1, 2000 to December 31, 2002. (Report at page 3.)

interest from the date of the death of the insured at 6% or the rate of interest paid on proceeds left on deposit, whichever is higher. 8 V.S.A. § 3665(c)(2). Additionally, if claims are paid more than 30 days from receipt of a fully executed proof of loss, interest shall begin to accrue at the judgment rate. 8 V.S.A. § 3665(d).² In contrast, the Company has applied an interest rate of 3.5% since 1993. Further, when the Company has failed to pay benefits within 30 days of receipt of proof of loss, it has not paid interest pursuant to 8 V.S.A. § 3665(d). The examiners recommend that the Company revise its claim procedures to conform with Vermont law and recalculate and pay improperly withheld interest from 1993 until the present. (Recommendation Nos. 1 and 2, Report at page 18.)

In its Response, the Company notes that it has been paying interest consistent with 8 V.S.A. § 3665 since November 2003, when the Company discovered the discrepancy. Nonetheless, the Company disputes the Department's interpretation of the statute and urges the application of the "rule of lenity" pursuant to *State of Vermont v. Greg L. Goodhue*, 175 Vt. 457, 833 A.2d 861, 868 (Vt. 2003) and related case law.

Upon consideration, the undersigned finds the cases cited by the Company are not applicable to an administrative proceeding such as this. However, it appears the Company has addressed the problems discovered by the examiners at least as far as claims after November 2003. Nonetheless, a remediation plan shall be implemented to address the underpayments.

The Company shall perform an audit and issue a report to the Department. The audit shall be of all life insurance claims received by the Company from January 1, 1999 to the date the Company began complying with 8 V.S.A. § 3665, arising out of policies

² The judgment rate of interest is 12%. 9 V.S.A. § 41a.

issued in Vermont. For each claim, the Company shall report the date of death, the date the proof of loss was received, the amount of insurance at the time of death, the amount paid to the beneficiaries, the date payment was made to the beneficiary,³ the amount that should have been paid if interest had been calculated in accordance with 8 V.S.A. § 3665, the policy number, and the claim number. The audit shall be provided to the Department no later than December 15, 2005 and shall be transmitted both in hardcopy and electronically in the form of an Excel spreadsheet. Upon approval, the Company shall refund all underpaid interest owing which exceeds \$25 at the time the benefits were paid.⁴ Upon successful remediation, it is not anticipated any administrative penalty would be warranted.

8. In the **CLAIMS PROCEDURES AND PROCESSING – (C) Individual Life Claims - Underpayment – Claim #679155** section of the Report (page 9), the examiners discuss a claim wherein it appears that the proof of loss was received for claim benefits on December 13, 2001 and yet benefits were not paid until February 11, 2002. The examiners note a \$13,030.36 underpayment of statutorily required interest caused by the Company's failure to pay 6% interest from the date of death as required by 8 V.S.A. § 3665(c)(2) and failure to pay 12% interest from the date the benefits were due until they were paid as required by 8 V.S.A. § 3665(d). The examiners recommend the Company recalculate the interest owing and remit amounts owed but not paid. (Recommendation No. 4, Report at page 18.)

³ The date of payment shall refer to either the date that the check was issued or, in the event of an electronic transfer, the date the transfer was made.

⁴ Refunds shall also accrue interest from the date the benefits were paid until the refunds are paid. Pursuant to 9 V.S.A. § 41a, interest shall be calculated on the refunds exceeding \$25.00 at 12% simple interest per annum.

In its Response, the Company asserts the claim was timely paid and at the appropriate rate of interest. The Company explains that the claimant failed to submit the tax identification number until February 8, 2002 and the benefits were paid three days later. As such, the Company disputes that money is owing on this claim.

Upon consideration, the undersigned adopts this portion of the Report and the examiners' recommendation. Pursuant to 8 V.S.A. § 3665(c), the Company was obligated to calculate interest on benefits at 6% from the date of death until the date the claim was paid. It appears the Company calculated interest at 3.5%. As such, the Company must pay the difference in interest paid and owed and remit the same to the beneficiary. The undersigned notes that under Vermont law, the Company also owes interest at the judgment rate (12%) on those benefits withheld, but not paid (the 2.5% interest shortfall) from the time such interest was due until the date of payment. However, the undersigned agrees with the Company that the claim was not paid late – the Company asserts the tax identification number was requested and required information in order for benefits to be paid. As such, the “proof of loss” was not complete until February 8, 2002 and interest under 8 V.S.A. § 3664(d) did not accrue. This appears to have been an isolated incident and, as such, no penalty is warranted under these circumstances.

9. In the **(V) CLAIMS PROCEDURES AND PROCESSING – (D) Group Life Claims** section of the Report (page 10), the examiners discuss similar problems as noted with the individual policy claims payments. Specifically, the examiners note the Company did not pay interest on claims consistent with 8 V.S.A. § 3665. The examiners further noted four instances where claims were not paid in a timely manner (within 30 days of a completed

proof of loss) and interest was not paid in accordance with 8 V.S.A. § 3665(d) in those cases. The examiners recommend the Company implement the same remediation program for the repayment of past due interest as recommended relating to individual policies.

The Company does not specifically respond to this portion of the Report.

Upon consideration, the undersigned adopts this portion of the Report and the examiners' recommendation. The remediation plan outlined above in Paragraph 7 shall apply to group policies as well. In anticipation of a successful remediation plan, no penalty appears warranted at this time.

10. In the **(V) CLAIMS PROCEDURES AND PROCESSING – (E) Group Life Claims and Irregularities** section of the Report (page 12), the examiners discuss two separate instances where insureds appeared to have attempted to designate a child as a beneficiary to their life policy (in addition to their spouse), yet the claims benefits were paid exclusively to the spouse. In response to the examiners, the Company explained that upon receipt of instructions from the insured, the Company issued a Certificate showing that the spouse remained the primary beneficiary and the child was listed only as a contingent beneficiary. The examiners maintain that in these situations, the insureds' wishes indicate the desire for the child to have been an equal beneficiary with the spouse and that the Company failed to adequately protect the interests of the insured. The examiners recommend the Company revise its procedures in a manner which will ensure that all claims are paid to beneficiaries in accordance with the insured's instructions. (Recommendation No. 6, Report at page 19.)