

The Company does not respond to this portion of the Report beyond that which is discussed in the Report by the examiners.

Upon consideration, the undersigned adopts this portion of the Report and the examiners' recommendation. The examiners are correct that a failure of the insured to complain upon receipt of the certificate or of the claimants to complain at the time of the benefits payments cannot conclusively establish the Company paid the benefits in accordance with the insured's instructions. In the second case discussed by the examiners, based on the information provided in the Report, it appears that the insured intended for the spouse and the child to share equally in the proceeds of the insurance, and yet the proceeds were paid exclusively to the spouse.<sup>5</sup> When a consumer chooses to purchase life insurance as part of his or her financial plan, beyond the type of product and benefits purchased, little is more important than the decision of the designated beneficiary or beneficiaries. Often, other financial decisions are based on who has been designated as the beneficiary. The Company must ensure that it takes every reasonable effort to execute the insured's wishes in this regard.

The Company shall submit to the Department, for review and approval, its procedures associated with processing group life beneficiary designation instructions from its insureds. Such procedures shall be submitted no later than December 15, 2005. Although the Company can rely on notice to the insured regarding the beneficiary designation, the Company is instructed to make sure that such notice is clear as to the meaning of the change and provides simple instructions for notifying the Company if a Certificate has been issued in error.

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<sup>5</sup> This is not so obvious in the first instance. Based on the instructions provided by the insured, it is possible the insured had intended the child to be a contingent beneficiary.

11. In the **(VI) REPLACEMENTS** section of the Report (pages 13 - 14), the examiners note violations of the Vermont replacement regulations.<sup>6</sup> As a result of their findings, the examiners recommend the Company assign specific staff members the responsibility for reviewing each replacement file to ensure that all documents are included and that all procedures are followed. (Recommendation No. 7, Report at page 19.)

In its Response, the Company describes its revamped procedures in Vermont intended to ensure that products sold to Vermonters are sold in compliance with the replacement regulation.

Upon consideration, the undersigned adopts this portion of the Report and the examiners recommendation. According to the information provided in the Response, it appears that Company has implemented the examiners recommendations into its processes. As such, no additional action is necessary on the part of the Company. However, the undersigned finds that a \$2,000 administrative penalty is warranted based on the replacement violations discovered. Although the statutes allow a far greater penalty, the Company's proactive and innovative organizational approach to addressing these issues justifies a lesser penalty.

12. In the **(VII) SALES AND MARKETING – (A) INCOMPLETE/INCORRECT APPLICATIONS** section of the Report (page 15), the examiners discuss the use of a form developed to be used by the Company or by New York Life and Annuity Company which contains a box required to be checked to identify the issuing company. In certain instances, the producer did not check off a box or the appropriate box, resulting in confusion regarding from which company the consumer intended to purchase coverage.

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<sup>6</sup> For those policies issued before March 1, 2002, the examiners assessed compliance with Regulation 88-2; for those policies issued after that date, compliance with Regulation I-2001-03 was evaluated.

The examiners note the Company's Administrative Manager stated he would reaffirm the necessity of completing this portion of the application and the examiners make no further recommendation.

In its Response, the Company notes that two of the policies noted are issued by New York Life and Annuity Company and should not be in this Report. Further, the Company notes that in three of the four instances, the name of the issuing company was identified in other portions of the application, even if the box was not checked as noted by the examiners. Nonetheless, the Company indicated that it has reminded its Vermont producers of the importance of using this application form correctly.

Upon consideration, the undersigned adopts this portion of the Report, subject to the following modification: the reference to Policy 62841337 is considered deleted because it does not implicate the Company. Nonetheless, regarding the other two policies to which the Company objects, the fact that the issuing company was identified in other unspecified portions of the application does not alter the fact that the applications should be used as intended, particularly when the issuing company identification must be prominently identified. However, the Company's corrective action appears sufficient and no additional action is necessary.

#### **ORDER**

13. The Report is adopted in its entirety without modification unless expressly stated to the contrary herein.

14. As discussed more fully in Paragraph 7 above, discussing the **(V) CLAIMS PROCEDURES AND PROCESSING – (A) Claims Practices and Procedures Not in Compliance With 8 V.S.A. § 3665** section of the Report, the Company shall undertake

the audit described above and provide a report to the Department no later than December 15, 2005. As noted above in Paragraph 9 above, such remediation program shall include claims made under both individual and group life policies issued in Vermont. It is anticipated upon approval of the report, the Company shall refund underpaid interest due under 8 V.S.A. § 3665 which exceeds \$25.00, as more fully described above.

15. As more fully discussed in Paragraph 8 above, discussing the **CLAIMS PROCEDURES AND PROCESSING – (C) Individual Life Claims - Underpayment – Claim #679155** section of the Report, the Company shall pay the interest due on Claim #679155 as described above. Such payment should occur no later than ten days from the expiration date of the appeal deadline of this Order.

16. As more fully discussed in Paragraph 10 above, the **(V) CLAIMS PROCEDURES AND PROCESSING – (E) Group Life Claims and Irregularities** section of the Report, the Company shall submit, no later than December 15, 2005, for the Department's review and approval, its procedures for processing and executing beneficiary change instructions received from its insured.

17. As discussed in Paragraph 11 above, addressing the **(VI) REPLACEMENTS** section of the Report, the Company shall pay a \$2,000 administrative penalty for the replacement violations discovered by the examiners.

18. All penalties described above shall be paid to the Department no later than 10 days after the expiration of the appeal deadline of this Order, or other administrative or judicial order, as appropriate.

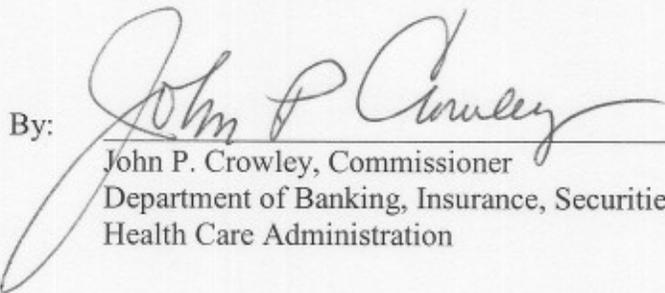
**PURSUANT TO 8 V.S.A. § 3574(c), THIS ORDER AND REMEDIAL ACTION SET FORTH HEREIN MAY BE APPEALED TO THE**

COMMISSIONER BY FILING AN ADMINISTRATIVE APPEAL WITHIN THIRTY (30) DAYS OF THE DATE SET FORTH BELOW. FURTHER REMEDIAL ACTIONS AND PENALTIES ORDERED UPON RECEIPT OF INFORMATION ORDERED HEREIN MAY BE APPEALED WITHIN THIRTY (30) DAYS OF SUBSEQUENT DECISIONS BY THE COMMISSIONER.

Dated at Montpelier, Vermont this 23<sup>rd</sup> day of August, 2005.

Department of Banking, Insurance,  
Securities and Health Care Administration

By:

  
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John P. Crowley, Commissioner  
Department of Banking, Insurance, Securities and  
Health Care Administration