

RESPONSE OF
NEW YORK LIFE INSURANCE COMPANY
TO
VERMONT DEPARTMENT OF
INSURANCE
MARKET CONDUCT EXAMINATION
REPORT
AS OF DECEMBER 31, 2002

DATED: April 16, 2004
New York, New York

New York Life Insurance Company, (referred to as "New York Life" or "the Company") responds to the factual errors in the Market Conduct Examination Report as of December 31, 2002 ("the Report") as set forth herein.

CLAIMS PROCEDURES AND PROCESSING

Compliance with 8 V.S.A. 3665

Since November 2003, the Company has paid interest on Vermont claims in accordance with the VT DOI's interpretation of 8 V.S.A. 3665. Prior to that time, the Company paid interest based on a reasonable interpretation of 8 V.S.A. 3665.

An integrated reading of 8 V.S.A. Section 3665 does not require the payment of interest on death claims paid within 30 days. Section (d) provides that a claim that is not timely paid accrues interest beginning 30 days after receipt of final proof of loss. An interpretation of 8 V.S.A. Section 3665 that requires payment of interest from the date of death when a claim is timely paid would result in a higher payment on a death claim for a timely paid claim than for a claim that is not timely paid. The logical intent of the statute is to encourage the timely payment of claims.

Payment of 12% interest for any claim paid after 30 days of receipt of proof should not be required pursuant a reasonable interpretation of 8 V.S.A. Section 3665. The higher rate of interest is required in the case of a judgment or a settlement agreement. A settlement agreement implies that there was litigation between the parties. The section does not specify a distinct rate of interest for payments after 30 days because of contestable investigations or other non-litigation related delays. In these cases, since no specific interest rate is specified, the logical interpretation would be to apply the interest rate specified in (c) (2), which is the greater of 6% or the rate paid on proceeds left on deposit.

Although usually applied in criminal cases, it bears mention in this case where the Department seeks to impose a rate of interest that is punitive in today's interest rate environment, that the Vermont Supreme Court has adopted the rule of lenity. See, *State of Vermont v. Greg L. Goodhue*, ___ Vt. ___, 833 A.2d 861, 868 (Vt. 2003) and cases cited therein. The Court recently reiterated that "where, after examination of language, structure, legislative history and motivating policies, reasonable doubt exists regarding intended meaning of a penal statute, the rule of lenity should be applied. That is, any doubts created by ambiguous legislation be resolved in favor of the defendant." *State v. Quinn*, ___ Vt. ___, 675 A.2d 1336, 1338 (Vt. 1996)(Dissent of Chief Justice Allen). At best, 8 V.S.A. § 3665 statute is ambiguous; that fact should be considered by the Department and it should determine whether the statute provides fair notice to the Company and other companies similarly situated.

The Company's interpretation of 8 V.S.A. Section 3665 is a logical interpretation of both the language and intent of the statute. Under these circumstances, it would be unduly punitive and, as will be detailed in a separate communication, a hardship to require the Company to remediate death claims as far back as 1993.

Individual Life Claim #679155

This claim was paid timely and at the appropriate rate of interest. The Company paid this claim three days after receipt of final proof. Final proof, a tax identification number for the trust, was legally required and requested from the beneficiary at the outset. The instructions on how to complete the claim form state that the tax ID number is required and there is a space for that information on the claim form itself.

On 12/13/01, when the Company received other required documentation for this claim, we specifically requested the tax ID for the trust once again so that we could pay the claim. On 1/29/02, we contacted the attorney and once again requested the tax ID number. The claim could not be paid until this information was received. On 2/8/02, we received the tax ID number. The claim was paid on 2/11/02, three days after final proof was received. Interest was paid from the date of death at the rate required under the contract.

Additional interest at the rate of 12% is not required pursuant to 8 V.S.A. Section 3665 since payment of the claim was made within 30 days of receipt of final proof. The examiners' suggested interpretation of this statute would impose a punitive rate of interest when a claim has not been paid because a claimant has failed to provide legally required documentation.

REPLACEMENTS

During the examination period, it was the Company's usual and customary practice to provide notices of replacements to existing insurers within the time frames required by Vermont law. Previously, this documentation was maintained at the General Offices in hard copy. The procedures were changed and this documentation is now centrally filed and maintained in the permanent file in the Home Office. Therefore, this documentation should be readily available for review in future examinations.

The Vermont General Office has taken numerous opportunities to educate the Vermont agents on the applicable replacement requirements and to emphasize the necessity of compliance with these requirements. Replacement compliance was discussed at three separate meetings at the Vermont General Office held in September 2003 and in January 2004. Replacement requirement notices were sent out to the entire General Office staff on three occasions in May 2003, September 2003, and in January 2003. These requirements have also been

posted on the bulletin board. As of late 2002, a copy of Vermont's replacement requirements is also available to agents on a corporate intranet site.

The importance of compliance with Vermont's replacement requirements was reinforced with the Vermont General Office Staff in a written communication from the Managing Partner in February 2004. In addition, the General Office has a New Business tracking sheet that reminds the staff that processes the applications of the replacement requirements. The Administrative Manager, or his designee in his absence, reviews each replacement application. The Administrative Manager also compares the monthly replacement listing with the replacement files to make sure the necessary copies have been maintained at the General Office.

SALES AND MARKETING: INCOMPLETE/INCORRECT APPLICATIONS

Policies 62841337 and 62823601 are issued by New York Life & Annuity Corporation, and not New York Life Insurance Company and should be deleted from this Report. Furthermore, policies 46850092, 46624317 and 62841337 had the name of the correct Company within the application. The correct name of the issuing company was disclosed to the policyowner. Therefore, these violations for not checking off boxes next to the name of the company issuing the policy should be deleted. Nonetheless, as previously indicated, in order to enhance compliance in this area, the Administrative Manager of the Vermont General Office reviewed the importance of correct and completed applications in a written communication to all Vermont General Office agents and staff in February 2004.