

Written Statement of

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CONSUMER ADVOCATE AND VIATICAL EXPERT¹**

To be Included in the Hearing Record of

The Subcommittee on Oversight and Investigations

Committee on Financial Services

"Retirement Protection: Fighting Fraud in the Sale of Death"

February 26, 2002

Although I am unable at this time to accept the invitation to testify on this "hot issue," I am greatly relieved that Congress is, at last, taking notice of viatical fraud and the tragedy it has brought to tens of thousands of retirees. Viatical fraud is unlike most other types of fraud. Although the numbers are not as great as with Enron, the continuing vacuum of regulation combined with the complexity of this investment may well result in as many victims as Enron.

Viatical and Life Settlement investments, appropriately dubbed "Death Sales," are an industry that will not go away. The industry has existed for slightly more than ten years, claims annual revenues in the billions, and operates not only in every one of fifty states but has spread to all continents except Africa.

As to claims of billions in revenue, there is no way to know if these numbers are bloated since the lack of regulation means there are no reporting requirements. This is the reason why we also do not know how many people are victims of viatical fraud. We know by name

¹ Internationally recognized as a consumer advocate and expert, Wolk was invited speaker at conferences of NASAA, NAIC, NCOIL, was featured in articles by Jane Bryant Quinn (Washington Post and Newsweek) and Kathy Kristof (Los Angeles Times syndicate); and was the source for information and referrals for personal stories for Kiplinger's Retirement Report, Kiplinger's Personal Finance, TIME, Forbes, Newsweek, Washington Post, The Wall Street Journal, and others. The author of two consumer books on viatical settlements, Wolk began to expose viatical fraud in February 1998, with the consumer information website www.Viatical-Expert.net. Her effectiveness led to four SLAPP suits filed against her by companies that represent the underbelly of the industry. To date, Wolk has prevented upwards of \$2 million from going out of the pockets of naïve investors and into the pockets of scam artists.

approximately ten thousands victims who were identified through investigations of certain companies by the FBI and the Postal Service. The Department of Justice has indicted some of the perpetrators; a few are in jail, but there are many others who continue to operate, undeterred by any law enforcement agency.

Following are some of the new types of fraud related to this complex and sophisticated investment:

- **Cleansheeting:** a terminally ill person applies for new insurance and falsely claims to be in perfect health, then sells this fraudulently obtained policy. Many of these have been cancelled by insurers, leaving investors with nothing.
- **Wet ink:** a healthy person, usually of senior age, applies for new insurance ostensibly for estate planning purposes but actually with the intent of selling the policy immediately. Insurers also may cancel these fraudulently obtained.
- **Life expectancy fraud:** Viatical companies falsely inform investors that the insured is much sicker and thus has a shorter life expectancy than medical records indicate.
- **Life expectancy fraud:** The policy insures a healthy person who submitted false medical reports that indicate terminal illness.
- **Ponzi scam:** False documents provided to investors but no life insurance policies were purchased by the company; earlier investors are paid "profits" from new investors' funds.
- **Misrepresentations.** For details, see chapter 2, "Viatical Settlements: An Investor's Guide" by Gloria Grening Wolk, Bialkin Books, 1998.

FEDERAL ISSUES THAT NEED FEDERAL ACTION

Although not all problems with this industry can be addressed on the federal level, there are four key areas that need immediate action by Congress:

Retirement: IRA accounts

- Most defrauded investors are retirees; many used their IRAs for this investment
- Life insurance is prohibited as an investment for IRAs, but sales agents falsely claim that it is "approved."
- Most IRA trustees do not accept viatical settlement contracts as investments for self-directed IRAs, but four do -- thereby lending credence to the false claim that this is an acceptable investment.
- The injury of learning that their investment is worth less than a roll of toilet paper is compounded when the Internal Revenue Service duns retirees for taxes on funds they will never again see, and interest on the unpaid tax, and penalties.

- Some retirees were forced to sell their homes in order to pay the taxes and have some cash with which to supplement social security.
- Some employees who are nearing retirement convert their 401(k) to IRAs in order to invest in viatical and life settlements contracts.

REMEDY: Hold IRA trustees accountable for their role in fraudulent schemes. Require IRS to publicize more widely and more often that no investments are approved for IRAs. This would not have any fiscal impact.

Tax Law

- Investors may be told that profits from this investment are tax-free. Although death benefits of life insurance generally are tax free to beneficiaries, one exception is when the policy is "transferred for value."
- Tax is levied from the day funds were withdrawn from traditional investments.

REMEDY: Waive all penalties, interest, and taxes due on IRAs belonging to retirees who were defrauded of these funds, upon presentation of proof of fraud and hardship. Also, require IRS to publicize that such hardship waivers are available to retirees. This would not have any fiscal impact

Bankruptcy Law

- A bankruptcy trustee wants to force a 67-year-old man who suffers from Parkinson's Disease to sell his term life insurance policy in order to have more cash for creditors
- Not only does this place the debtor at risk of homicide when the premiums shoot up astronomically, but such a sale would deny benefits available to a seriously ill insured by many insurance companies.
- Such a sale might also violate the insured's privacy rights, since several courts have ruled that once the policy is sold it is a business transaction, thereby negating any laws that protect privacy and confidentiality of medical information. Some viatical companies actually use the medical information as marketing materials, when they solicit investors.
- It is ironic that bankruptcy *protection* is now being used to place the debtor and his family at greater risk.

REMEDY: Add to bankruptcy legislation a prohibition against ordering any debtor to sell his/her life insurance. This would not have any fiscal impact.

Securities Law

- The complete lack of regulation is due to a widely criticized opinion of the D.C. Court of Appeals 1996, which rejected the SEC's bid to regulate viatical investments. The ruling included the opinion that this investment was neither a security nor an insurance product.
- That ruling was contradicted in detailed rulings by two other district courts and a number of state courts.
- The absence of regulation is the main reason viatical fraud has a growth rate akin to that of rabbits.
- The ever-increasing numbers of victims is directly attributable to the lack of regulation.

- When challenged in court, viatical companies that profit from fraud claim as their defense the 1996 decision. As a result, every government or civil attorney must fight this battle anew.
- Eventually, these conflicting rulings will bring the issue before the U.S. Supreme Court, thus costing many taxpayers dollars to accomplish what may be done far more simply and inexpensively if Congress mandated that this investment should fall under the jurisdiction of the Securities and Exchange Commission. Moreover, this would empower state agencies and give some direction to consumer law attorneys, elder law attorneys, etc.

REMEDY: Congressional action that defines viatical and life settlement investments as securities. No fiscal impact.

Note: There have been few civil suits on behalf of victims. Most victims do not file complaints with regulatory agencies. Attached is a letter from one person who did try to get government agencies to help her, without success. This letter from an 84 years old widow is typical of the victims of viatical fraud.

I welcome your interest in this critical issue and will be glad to provide you with any information that is within my power.

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Ms. Wolk --

I am answering questions that you asked in your last email. Now I am a permanent resident of FL. I live in Clearwater FL. I invested \$10,000 in ABC Inc. through my broker which was in PA. At the time I knew him for quite a while. He worked for the Local Bank when he first started then he went into business for himself, had an office in Media, PA and worked out of his home in Westchester, PA.

Mr. Averill came out to my home shortly after I sold my home; he asked me what I was going to do with all my money from the house. I answered that I needed a new car (my other one was 11 yrs. old) and I planned on buying another condo, a little larger. I have a very very small condo, which is so uncomfortable as I was used to a large home all my life. Well, I never got my larger condo. I did get another car.

Well Bill Averill said you do not put all your money in bank you should invest to make money on your money; he preceded to show me the folder with ...(ABC) "Viatical" said I could not go wrong and it paid a good percent of interest. Me, not knowing a thing about viatical or no one else understands how it works I thought, at the time it looked good so I agreed to invest with ABC. Since, I had invested money for income from Averill and it seems to work. In fact he would come out to my home at the end of the year and review the investments to see if I was making

anything. I even had his phone no. and knew where he lived. I never got any reports from ABC other than the initial information, in fact I did not pay too much attention to it, just expecting to get a check plus interest some day; until the FL State Commissioner in Tallahassee wrote me a letter stating they revoked ABC's license in February. I did not receive anything since.

I contacted them several times and they were nice and talked to me at first. Cheryl seemed to know the answers and how it works. The last time I called she said she could not talk to me it was out of her hands and to get an attorney.

I am an old lady 83 yrs. of age and live alone very lonesome and in very poor health. The way I feel now it will not be too long that I will need help myself. I had 2 strokes already which has affected my voice. I am having trouble talking, have a bad heart, on many medications which are costly. I have to get a blood test every month since I take coumadin (a blood thinner). I am off balance often, have very bad feet (neuropathy, meaning nerve endings ache all the time). My feet are numb, burn, itch and ache all the time. I find that I can hardly walk. Worst of all my eyes are getting very bad as you will notice, hard to stay on the line. Eye Dr. tells me I am getting Macular Degeneration (which means that I will not have sight one of these days). This seems to be progressing quite rapidly now. In addition to all the health problems I have pre-skin cancer from early sun. I have spots, lumps, etc. cut out quite often and have constant burning and itching. I have much trouble sleeping at night since I had the stroke which is very exhausting.

I have looked up addresses, phone nos. etc. and written to everyone but the president of U.S. and get the same story, they simply push it on to someone else. I even called and talked to the FBI in Tampa, Orlando, and Clearwater, called consumers' protection, State securities (both FL & PA), Channel 8.

You asked in your note (Email) was my broker licensed. I really do not know. I thought he was as some of my investments come through after his name "Broker." I called Oppenheimer to see what brokerage firm he was employed with, I find "Atlas Brokerage Co." in Washington, PA. I talked to the president Mr. Bryant Fisher, he tells me he has not been with them for 2 yrs. now. I wrote Averill a nice letter and begged him to call me, which I made at least 6 long distance calls, his phone rings but the answering machine comes on (it is his voice). I even talked to the little boy one afternoon. He said he remembered me since I always sent candy at Xmas. He took my phone no. and name but never an answer. I even had Joe Sloan (215-665-1180) NASD Regulations 1835- Market St. 19 FL, Phila. PA 79103.

Many, many thanks for all your concern, I do hope that you can help.

Sincerely,

Rita G. Moore