

SUFFOLK COUNTY
WOMEN'S BAR ASSOCIATION
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WBASNY CONVENTION 2013 By Robin S. Abramowitz

Convention 2013 proved to be another successful and enjoyable convention for the Women's Bar Association of the State of New York



("WBASNY"). The convention was held in the City of "sisterly" love, better known as Philadelphia. A short 2 ½ hour drive took us into the heart of historic Philadelphia where we stayed at the Radisson Plaza Warwick Hotel. I had the pleasure of being co-chair of the Convention Committee as well as co-chair of the Awards Committee. Suffolk was well represented at convention, as it usually is, but particularly this year as the Hon. Hertha C. Trotto was the recipient of the Joan L. Ellenbogen Founders Award.



Convention started early with a Thursday evening event on the Moshulu, the world's oldest and largest rigged sailing vessel still afloat, that was converted to a restaurant and is docked in scenic Penn's Landing.

Continued on page 5

WBASNY MATTERS... By Donna Froscio

...when you want to connect with your colleagues across town, in the next county, or on the other side of New York State!

...when you have a question, need a referral or just want to network!

...when you need to keep informed of what's happening to, by and regarding women and women's issues everywhere!

Did you know that WBASNY has multiple social media sites, where you can accomplish all those goals?



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THE PARAMOUNT IMPORTANCE OF A LIFE INSURANCE AUDIT By Henry Montag, CFP, CLTC

Have you ever discovered a bank entry error in your checking register, resulting in a balance \$100 or \$1,000 less than what it should be? Imagine how much worse you would feel if your, or a client's Life Insurance policy worth \$1,000,000, or more, that you thought would be available to a spouse, child or others upon death, were rendered unavailable due to a technicality.

Unfortunately as a result of the sustained low interest rate environment during the last 2 decades, as well as an equal number of years of neglect on the part of the individual private owners and private trustees responsible for managing those policies, approximately 35% of life contracts have and are expected to expire prior to an Insured's normal life expectancy.

Very few lay people, nor professionals, are aware that their Life Insurance contracts can expire prior to their lifetime. Client's and trustees often incorrectly assume that either the agent or Insurance Company is monitoring their contracts to make sure they will always remain in force, but that's not true. As a matter of fact it would be in the Insurance Company's best interest if after all those years of your paying the premium it became exorbitantly expensive to maintain the contract and the Death Benefit had to be reduced or surrendered. According to Donald Walters General Counsel for the Insurance Marketplace Standards Association, (IMSA,) "While Insurers have not publicized the issue there is a growing concern in the Industry about lapsing universal life policies" I'm not surprised as there is currently absolutely no incentive nor obligation on the part of the Insurance Industry, the agents, nor brokers to do so. They are merely required to send a bill and an annual statement of account.

So in August 2012 the Office of the Comptroller of the Currency (OCC) issued revised guidelines which directs Trustees to treat Life Insurance as they would any other asset class, meaning life Insurance just like stocks bonds and real estate needs to be actively managed. Providing a policy performance evaluation and then monitoring it every 2-3 years is the only way to determine whether a life Insurance contract that was purchased after the mid 1980's is in danger of expiring prematurely. These Universal

Life or Variable Life Insurance Contracts, unlike their more expensive Whole Life counterparts, which have some lifetime guarantees, are not guaranteed to last for a lifetime because their performance was tied to an anticipated annual interest rate, or an anticipated stock index, neither of which are guaranteed, and neither of which were ever achieved.

Allow me to explain: back in the mid-1980s, when prevailing interest rates were as high as 14%-15%, and Life Insurance companies were paying 3% hundreds of thousands of astute policy holders switched their accumulated cash values in their whole life contracts into the significantly higher bank deposits.

In order to stop these outflows, the life insurance industry created a new product called "Universal Life Insurance", which paid an interest rate based on prevailing market interest rates instead of a fixed rate, as had been the case in their traditional Whole Life contracts. If interest rates rose, then one's life insurance coverage would, become less expensive or last for a longer period of time. What was not as clearly understood, however, was that if interest rates decreased, then the length of time the coverage would remain in force would consequently be reduced, or a greater annual premium deposit would be required to be paid in order to prevent the earlier expiration of this coverage.

When Universal Life was first offered, agents and brokers would ask their clients how long they wished the coverage to remain in force. Clients would typically respond that they wanted the coverage to last until age 90-95. Next an average interest rate was assumed for the 20-30 year period it took to get to the specified age after the policy was issued, then that interest rate was plugged into a computer. The resulting computer illustration would provide the anticipated premium needed to keep that particular amount of Life Insurance in force for the desired period, but that time period was not guaranteed, only assumed.

While this interest-sensitive Universal product immediately stopped the tremendous outflow of monies from the insurance industry's cash value coffers to the banks, the solution was not a long-term

fix because it created other problems that have just began to surface over the last 5-6 years. Primarily because very few private owners or private trustees ever thought to adjust the interest rates downward as rates continued to drop from the higher rates paid in the late 80's and 90's, many of these contracts are now expiring years earlier than had originally been anticipated

In order to avoid this from occurring a policy performance evaluation of a Universal Life contract should be independently conducted to examine the actual interest rate return earned each year since the policy was purchased and actuarially determine exactly how long the contract will last based on (1) the historic actual return, (2) the current age of the insured, (3) any outstanding loans, (4) Internal costs and expenses.

The more advance notice an insured or trustee has about a potential shortfall, the less additional monies are needed to adjust the coverage back to its originally projected level. I have often referred to the hidden risk of premature expirations of coverage shortfalls in Universal Life contracts as the insurance industry's "dirty little secret" because there was, in my opinion, not sufficient disclosure initially provided stating that this new product was Not Guaranteed to last for one's lifetime. The combination of a low interest rate environment and the fact that the octogenarian (over age 80) demographic is the fastest growing segment of the population is a ticking time bomb for the Life Insurance industry.

As a result many of the sons and daughters of the insured (or the grantor of a trust), are unaware that their neglect in providing active management of their parents existing Life Insurance contracts has resulted in a failure of their fiduciary responsibility as a trustee, thus leaving them vulnerable to litigation from beneficiaries that lose trust assets in the process.

Over 90% of the approximate \$3 Trillion dollars of T.O.L.I. are managed by private trustees not familiar with the Uniform Prudent Investor Act (UPIA), which fiduciaries are required to follow and liable if they don't, (French vs. Wachovia (July 2011). According to Jan 2007 Fiduciary Advisor Services

“Damage to the beneficial interest in these cases is both measurable and significant. Litigation, therefore, may be anticipated.”

According to the OCC the policy performance evaluation should examine the financial health of the issuing insurance company, and consider whether the policy is performing as illustrated. If the policy is underperforming, or if the policy can be improved upon, the fiduciary should consider replacement or remediation. In accordance with O.C.C Reg. 9.6c.11, if a trustee determines that it lacks the expertise to evaluate the premium adequacy risk or the contract’s appropriateness to fulfill the beneficiary’s objectives, the trustee now has an affirmative duty to bring in the necessary experts and inform the beneficiary of the suggested remediation steps.

While the foregoing considerations are compelling enough by themselves to stress the importance of regularly evaluating and monitoring a Life Insurance contract, individual policyholders and trustees should also consider conducting such policy evaluations for the availability of new features and benefits which

were not available when the contracts were initially purchased. Notably, the Chronic Care Rider which first became available at the end of 2011, allows an individual to withdraw up to \$116,000 tax free in 2013, annually adjusted for inflation from the death benefit of his or her Life Insurance contract to pay for qualifying long-term care expenses. There is no reason not to have this benefit available in any life Insurance contract.

In conclusion an independently conducted, actuarial life Insurance performance evaluation consists of an updated Investment Policy Statement that:

- Updates death benefit requirements
- Summarizes ILIT parties and their responsibilities and intent
- Identifies trustee risk management criteria
- Identifies policy and product evaluation duties and how they will be provided

- Affirms beneficiary updates and communication requirements
- Determines & provides an adequate funding statement for Insured’s life expectancy.

Lastly such an Investment Policy Statement and evaluation not only safeguards the interest of a trustee against litigation risk brought about by other family members by creating a dispute defensible intervention, but equally important is that it is also highly likely to benefit the entire family if a better option costing less, with potentially higher death benefits, with a longer guarantee and new benefits not previously available, were found to be available. The tools for prudent and reasoned life Insurance policy performance monitoring are readily available, they just need to be used.

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