

**Oversight and Investigations Subcommittee
of the
Financial Services Committee**

Viatical Fraud

Good afternoon Chairwoman Kelly and distinguished Members of the Subcommittee. I am Postal Inspector Greg Beriault, Fraud Team Leader at the U.S. Postal Inspection Service's Indianapolis Field Office. Thank you for the opportunity to testify today on the mission of the Postal Inspection Service, and our leadership role in the campaign to end viatical settlement fraud, a rising menace to consumers, the insurance industry, and law enforcement.

For over two hundred years, America's Postal Inspectors have had the responsibility for protecting postal employees, the mails, and postal facilities from criminal attack. Equally important, Postal Inspectors are also entrusted to protect consumers and businesses from being victimized by fraudulent schemes or other crimes involving the mails. As the law enforcement arm of the Postal Service, we work to rid the mails of drug trafficking, money laundering, and mail bombs; and are regarded as a world leader in the fight against one of the most despicable crimes – child pornography.

Today there are approximately 1,900 postal inspectors, 1,400 postal police officers, and 900 professional, technical and support employees of the Postal

Inspection Service. Our agency has the primary responsibility of enforcing roughly 200 federal statutes designed to protect the postal communications system of our nation, and preserve the public's trust and confidence in the U.S. Mail. The Mail Fraud Statute is the oldest and most effective of the consumer protection laws, and the Postal Inspection Service has successfully used it for over 100 years. Of the more than 1,900 Postal Inspectors across the nation, approximately 300 are assigned to mail fraud investigations.

During Fiscal Year 2001, Postal Inspectors conducted 3,475 fraud investigations, and Inspection Service analysts responded to approximately 66,000 mail fraud complaints. By year's end, Postal Inspectors had arrested 1,691 mail fraud offenders, and 1,477 were convicted as a result.

To achieve our goal of ensuring customers' confidence in the mail, the Postal Inspection Service works cooperatively with other law enforcement and consumer groups to educate the public about fraud involving the mail. To increase our efficiency in investigating suspected mail fraud, Postal Inspectors lead and participate in several joint law enforcement and consumer group initiatives aimed at safeguarding the public's confidence in the U.S. Mail.

My assignment includes determining investigative priorities, based on complaints from postal customers, members of the business community, and referrals from other law enforcement and consumer organizations. Mail fraud investigations

are often broad in scope, and typically involve members of the American public as the victims. One such fraud I have become very involved with is viatical settlement fraud.

Viatical Settlement Defined

A viatical settlement is defined as the discounted, pre-death sale of an existing life insurance policy on the life of a person known to have a terminal condition. Viatical settlements started to become popular in the 1980s.

The parties to a viatical settlement may include the insured party, insurance agent/broker, insurance company, viatical settlement company, viatical broker and an investor(s). For example, in a legitimate viatical transaction, an individual purchases a life insurance policy from an insurance company through an insurance agent. After issuance of the policy, the insured party acquires a terminal illness. The insured party then, either through an insurance agent/broker, viatical broker or directly, enters into a contract with a viatical settlement company. The viatical settlement company buys the policy from the insured party and pays the insured party a percentage of the face value of the policy. The viatical company finds an investor(s) who pays a percentage of the value of the policy to acquire the beneficiary rights of the policy. When the insured party succumbs to the illness, the investor receives the insurance benefits in full, as provided by the terms of the policy.

Viatical Settlement Fraud

The victims of viatical settlement fraud include the public, who are investors, and the insurance industry.

Viatical settlement fraud occurs when misrepresentations are made on the insurance policy applications, in effect, hiding the fact that the party applying for a policy has already been diagnosed with a terminal condition, a practice known as “clean sheeting”. The type of policy usually affected is known as a “jet issue” policy; a policy not requiring blood work or a physical examination to obtain. These policies generally do not exceed \$100,000.

The investor becomes a victim of fraud when misrepresentations are made by the viatical settlement companies about life expectancies of insured parties and guaranteed rates of return.

The elements of the fraud often include a combination of the following:

- Submission of life insurance applications with material
- Misrepresentations (clean sheeting)
- Obtaining multiple policies with various carriers
- Conspiracy between insured party and insurance agent

- Conspiracy between insurance agent and viatical company
- Conspiracy between insured party and viatical company
- Misrepresentations to investors by viatical companies

U.S. Postal Inspection Service response to Viatical Settlement Fraud

In May of 1999, members of the Postal Inspection Service's, Indianapolis Field Office, Fraud Team, were made aware of a growing problem of fraud related to viatical settlements. Based upon discussions with the insurance community, law enforcement and state regulatory agencies it became apparent there was a need to address this issue. A working group of eight Postal Inspectors was established. This working group met in Indianapolis on August 3, 1999, to develop a plan for the Inspection Service's Viatical Fraud Initiative.

In August of 1999, the U.S. Postal Inspection Service established a national task force responsible for developing a strategy for the successful identification, investigation, and prosecution of individuals involved in this fraud. The task force worked from the Indianapolis Field Office and was named Operation "Clean Sheet" (OCS). In November of 1999, the task force became a joint investigative effort with the FBI, and also worked closely with other state law enforcement and regulatory agencies.

Through analysis of the intelligence gathered, the OCS Task Force was able to identify many of the major offenders and assist law enforcement in identifying targets. The OCS Task Force was responsible for initiating, coordinating, and supporting these field investigations.

On May 19, 2000, eight simultaneous search warrants were executed at various locations throughout the United States. Each search warrant was the result of investigations relative to viatical settlement fraud. This effort involved more than 200 federal, state, and local law enforcement officers.

The OCS task force was very successful in forging a cooperative effort among regulatory agencies and state and federal law enforcement nationwide. There are approximately 40 known investigations nationwide. To date, there have been approximately 100 arrests and 75 convictions made relative to viatical settlement fraud. The majority of these investigations are still ongoing.

The Liberte Capital Group investigation in Ohio is a good example of the cooperative effort among state and federal agencies. Agencies participating in this investigation include the U.S. Postal Inspection Service, Ohio Department of Insurance, Federal Bureau of Investigation, Internal Revenue Service and the Department of Justice. On January 18, 2002, seventeen persons associated with the Liberte Capitol Group were indicted on 160 counts of conspiracy to commit mail fraud regarding viatical settlements. Liberte specialized in viatical

settlements, in which investors buy the rights to collect future insurance death benefits of senior citizens and people with fatal illnesses. The indictment alleges that nearly 3000 investors were defrauded of over \$100 million as a result of the scheme. Due to the ongoing nature of this investigation, I must refrain from sharing additional particulars with regard to the status of the Liberte matter.

Due to the complexity of this fraud, a single case often involves an insured party, insurance agent, insurance company, viatical settlement company, viatical broker and investors all living in different parts of the country. Therefore, various state and federal jurisdictional boundaries are affected by these investigations. Due to this dispersion, coordination with the Department of Justice and state prosecutorial authorities has been very instrumental in the successful prosecution of these cases.

Victims - Viatical Settlement Fraud

As stated earlier, the victims of viatical settlement fraud include members of the public, typically investors, and the insurance industry.

I. Public

As with most fraud schemes, senior citizens are often targeted by fraudsters and unfortunately end up as victims. Viatical settlement fraud is particularly insidious, as it frequently entices its victims into investing their life savings.

I believe there are several reasons why so many investors have become victims of this fraud. The life insurance industry is one of the oldest and most trusted industries in our nation. For generations, people have trusted in life insurance and faithfully paid their premiums, only to receive what was due upon the death of the insured. Most investors recognize the risk associated with speculative investments. However, when you discuss life insurance most people think of it as a safe secure investment. The distinction between the insurance industry and the viatical settlement industry may not be fully appreciated or understood by most investors.

The investment in viatical settlements also appeals to the humanitarian side of the investor. They perceive themselves as helping a terminally ill person pay for the medical attention needed and to live as comfortably as possible in their final days.

Finally, because of the nature of the fraud, and the obvious need to keep information about the insured private, there is reluctance by investors to follow-up or ask a lot of questions about their investment. When the investment does not

pay off due to the death of the insured, they are most often reluctant to complain because in effect they are complaining that the insured did not die as projected.

II. Insurance Industry

The insurance companies are the other victims of this fraud. Insurance companies become victims when individuals, often conspiring with insurance agents or brokers, fill out insurance applications which contain false statements. These false statements typically hide information about the insured's medical history, which if otherwise known, would prevent insurance companies from issuing policies. Once these policies are in force for a twenty-four month period, they cannot be rescinded, even if fraud is discovered.

Fraud Prevention

The prevention efforts of the task force focused primarily on identification and investigation, and also included outreach to consumer protection groups, the insurance and business community, and oversight and regulatory agencies. Although our efforts have had a significant impact in reducing the fraud in this industry, the Postal Inspection Service emphasizes the importance of consumer awareness and prevention as the best protection for consumers.

States have taken different approaches to regulation; some have regulated through the Department of Insurance and others through the State Securities Departments. The National Association of Insurance Commissioners has developed a model Viatical Settlement Law that has been adopted in whole or in part by many states. To date, much legislation has focused on protecting the viator and/or regulating the viatical companies, and has not focused on protecting investors.

There are many challenges facing law enforcement, regulatory agencies, and the insurance companies as they continue to combat and prevent fraud from occurring in the viatical settlement industry. In working as a task force leader, I have had the opportunity to talk with many individuals from the insurance industry, state regulatory agencies, prosecutors and law enforcement. There are certain concerns/issues that surface during each conversation. These issues are as follows:

Life Expectancy Projections – Life expectancy projections are a key component in determining the pricing and selling of viaticated policies. However, some common unregulated practices within the industry make this type of insurance ripe for fraudulent activity. For instance, in many cases, those performing the projections are employees of the viatical companies, where there exists a strong incentive to project the most aggressive mortality rates possible. Additionally, the lack of uniformity among medical evaluations offers increased opportunities for

fraud. These projections are seldom questioned, thus making them highly susceptible to fraud.

Life Settlements – Our investigations to date have focused primarily on the “Clean Sheeting” and Ponzi scheme type related frauds in the viatical settlement industry. The life expectancies for the insured person on these policies are usually three years or less. However, many industry experts believe the viatical companies are now moving towards a new type of viaticated policies known as life settlements. In these settlements the viator is typically made up of the affluent or elderly investor. The life expectancy for these insureds may be five or more years. Many believe this market will see extraordinary growth, and in the absence of uniform regulations, these settlements have the same potential for fraud.

Insurable Interest – The emergence of the viatical settlement industry has raised the question of the definition of insurable interest. Some question whether policies purchased for the sole purpose of selling to an investor violate the insurable interest principal which requires a close personal relationship or substantial economic interest in the person being insured. With the growth of viatical settlements, the number of people who benefit from the death of insureds will increase. The future impact of this is presently unknown, but of some concern to the law enforcement and the insurance industry.

So, as you can see there are a number of issues that need to be addressed to ensure protection for all parties involved in a viatical transaction. Also, legislative proposals such as H.R. 1408, *Financial Services Antifraud Network Act of 2001*, should be helpful to the law enforcement community, if enacted. The Inspection Service fully supports this legislation and believes it will be of great assistance based on its ability to facilitate information sharing and the leveraging of resources among local, state and federal law enforcement agencies. If this bill becomes law, it will no doubt go a long way in fighting viatical settlement fraud.

Thank you for bringing this important issue to the forefront and taking swift action to protect the American public.

Madam Chairwoman and Members of the Subcommittee, this concludes my remarks, and I would be glad to answer any questions at this time.