

**Opening Statement
Chairwoman Sue Kelly
House Committee on Financial Services
Subcommittee on Oversight and Investigations
Hearing on Viatical Insurance Fraud
February 26, 2002**

Today we will examine a sector of the financial services industry that attempts to assist the elderly and terminally ill in meeting their financial obligations. Viatical settlements involve buying life insurance policies from the elderly or terminally ill individual at a discount and then marketing the policies as investments. In a proper transaction, the policyholder assigns the policy to a viatical settlement company for a percentage of the policy's face value. The settlement company then sells the policy to a third-party investor. The settlement company or the investor becomes the beneficiary to the policy, pays the premiums, and collects the face value of the policy after the original policyholder dies.

This industry began, in large measure, as a noble means of allowing AIDS patients to pay the costs of their steep medical bills before death. Unfortunately, bad actors have taken advantage of the situation to create or buy phony policies and then fraudulently bilk investors who expect a healthy return.

When you look at the viatical settlement industry, you see that viaticals start out as insurance policies, but end up as securities sold as investments. We have reviewed the status of viaticals regulation by the states, and as you can see from the chart on the stand, we have found that some treat viaticals as securities or insurance, some treat it as both, and some states don't regulate them at all.

One case that illustrates the potential for both insurance and securities fraud is the Liberte Capital case in Ohio. Last month, 17 people associated with a viatical settlement company, Liberte Capital Group, were indicted on 160 counts of fraud, money laundering, and other illegal acts. The defendants allegedly bought insurance policies that were actually invalid because of hidden medical conditions, and then sold them to

investors. When the insurance companies that originally write the policies found out about the medical problems, they cancelled the policies, leaving investors holding worthless paper. Prosecutors say the investors lost nearly \$105 million between 1996 and 2000. On top of that, Liberte Capital's accountant allegedly embezzled millions from the firm's escrow account that should have been used to pay premiums and the investors.

In Texas alone, state authorities have obtained criminal convictions in 13 separate multi-million-dollar viatical cases since 2000. Just yesterday, the SEC announced that it has filed a lawsuit in Texas against a new scam that defrauded more than 480 mostly elderly investors out of over 30 million dollars.

There are important questions for the Financial Services Committee to consider about viaticals. Is there sufficient coordination between insurance regulators, securities regulators, and law enforcement officials to ensure that viatical fraud can be prosecuted, and better yet prevented? Is there consistent regulatory treatment of viaticals by states, or should this Committee consider mandating some uniformity in treatment? In this regard, we can thank our colleague Rep. Mike Rogers of Michigan, who was instrumental in drafting H.R. 1408, the Financial Services Antifraud Act, to enable law enforcement to share critical information. The bill easily passed the House last year but remains stuck in the Senate. Rep. Rogers planned on being here, but is stuck in a snowstorm in Detroit.

Ohio is showing the way for other states grappling with viatical fraud. It recently passed a comprehensive law that addresses both the insurance and the securities aspects of a viatical settlement. Our witnesses today can discuss the impact of that law and the Liberte Capital case, the extent of fraud in the industry, and the implications for the future regulation of viatical settlements.

We will hear from senior officials from the State of Ohio, a criminal investigator involved in the case, two attorneys with experience and expertise in this area, and an industry representative with experience in securities litigation. We thank them for their attendance and look forward to their testimony.

I would like to inform the Members who are here that it is my intention to enforce the rule that limits their statements and questions to five minutes each, and I would appreciate their cooperation in this.