

STATE OF NEW YORK INSURANCE DEPARTMENT

REPORT ON EXAMINATION

OF THE

PORTSMOUTH SETTLEMENT COMPANY I, INC.

AS OF

DECEMBER 31, 2000

DATE OF REPORT:

SEPTEMBER 28, 2001

EXAMINER:

MARK A. MCLEOD

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STATE OF NEW YORK  
INSURANCE DEPARTMENT  
25 BEAVER STREET  
NEW YORK, NEW YORK 10004

September 28, 2001

Honorable Gregory V. Serio  
Superintendent of Insurance  
Albany, New York 12257

Sir:

In accordance with instructions contained in Appointment No. 21764, dated August 10, 2001 and annexed hereto, an examination has been made into the condition and affairs of Portsmouth Settlement Company I, Inc., hereinafter referred to as "the Company," at its home office located at 1724 Phoenix Parkway, Atlanta, Georgia.

Wherever "Department" appears in this report, it refers to the State of New York Insurance Department.

The report indicating the results of this examination is respectfully submitted.

## 1. EXECUTIVE SUMMARY

The Company did not renew its viatical settlement license in New York in 2001. Since 1999, the Company has not entered into any new viatical settlements. It has limited its New York business to purchases of senior life insurance policies (i.e., insured individuals over the age of 65 with no catastrophic or life threatening illness or condition).

The Company violated Section 7804(a) of the New York Insurance Law by using forms that were not filed with and approved by the Superintendent. (See item 5B of this report)

## 2. SCOPE OF EXAMINATION

This is the first examination of the Company and covers the period from the date of licensure, November 5, 1996, until December 31, 2000. As necessary, the examiner reviewed transactions occurring subsequent to December 31, 2000 but prior to the date of this report (i.e., the completion date of the examination).

The examination comprised a review of policy forms, corporate structure, agent compensation filings, broker licensing, and treatment of viators. The examiner utilized the National Association of Insurance Commissioners' Examiners Handbook or such other examination procedures, as deemed appropriate, in such review and in the review or audit of the aforementioned matters.

This report on examination is confined to comments on matters which involve departure from laws, regulations or rules, or which require explanation or description.

## 3. DESCRIPTION OF COMPANY

### A. History

The Company was incorporated under the laws of Georgia on October 10, 1995 and commenced business on January 1, 1996. The Company was issued a viatical settlement license by the Superintendent on November 5, 1996.

### B. Holding Company

The Company is a wholly owned subsidiary of Portsmouth Holdings Company, Inc., a Georgia corporation.

C. Management

The Company's by-laws originally provided that the Company's board of directors shall consist of not less than three members. The by-laws were amended on April 26, 1999, to provide that the board shall consist of two directors. The two board members and their principal business affiliation, as of December 31, 2000, were as follows:

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>	<u>Year First Elected</u>
John P. Collins Atlanta, GA	President and Treasurer Portsmouth Settlement Company I, Inc.	1995
C. Michael Bailiff West Palm Beach, FL	Vice President and Secretary Portsmouth Settlement Company I, Inc.	1995

The examiner's review of the minutes of the meetings of the board of directors indicated that each director attended all meetings.

The following is a listing of the principal officers of the Company as of December 31, 2000:

<u>Name</u>	<u>Title</u>
John P. Collins	President and Treasurer
C. Michael Bailiff	Vice President and Secretary
Tracy M. Anderson	Vice President

D. Territory and Plan of Operation

During the examination period, the Company was authorized to purchase life insurance policies as defined in Section 7801(a) of the New York Insurance Law.

As of December 31, 2000, the Company was licensed as a viatical settlement company in the states of New York, California, Illinois, Kansas, Louisiana, North Carolina, Texas, and Washington. The Company also transacts such business nationwide, in jurisdictions where no license is required.

The Company did not renew its viatical settlement license in New York in 2001. Since 1999, the Company has not entered into any new viatical settlements. It has limited its New York business to purchases of senior life insurance policies (i.e., insured individuals over the age

of 65 with no catastrophic or life threatening illness or condition), which are not subject to Article 78 of the New York Insurance Law.

The Company acquires its business through independent viatical settlement brokers. The Company originally obtained its financing for the purchase of the viatical settlements from the Nations Bank of Georgia under a funding agreement dated December 14, 1995.

#### E. Financial Growth

The following table indicates the Company's financial growth during the period under review (the amounts represent the results of adjustments made due to reclassifications recommended by the external auditors):

	December 31, <u>1996</u>	December 31, <u>2000</u>	Increase (Decrease)
Assets	\$ <u>5,703,849</u>	\$ <u>15,208,494</u>	\$ <u>9,504,645</u>
Liabilities	\$ <u>3,489,961</u>	\$ <u>14,247,109</u>	\$ <u>10,757,148</u>
Capital stock	\$ 10	\$ 10	\$ 0
Paid-in capital	999,990	1,647,422	647,432
Owner's or partners' capital	2,325,000	3,219,707	894,707
Retained earnings	<u>(1,111,112)</u>	<u>(3,905,754)</u>	<u>(2,794,642)</u>
Total stockholders' equity	\$ <u>2,213,888</u>	\$ <u>961,395</u>	\$( <u>1,252,493</u> )
Total liabilities and stockholders' equity	\$ <u>5,703,849</u>	\$ <u>15,208,494</u>	\$ <u>2,504,645</u>

#### 4. FINANCIAL STATEMENTS

The following statements show the assets, liabilities, capital and stockholders' equity as of December 31, 2000, as contained in the Company's 2000 filed annual statement, and a condensed summary of operations for each of the years under review. Amounts have been adjusted due to reclassifications recommended by the external auditors. These statements have not been audited by the examiner and are for presentation purposes only.

##### A. ASSETS, LIABILITIES, CAPITAL AND STOCKHOLDERS' EQUITY AS OF DECEMBER 31, 2000

###### Admitted Assets

Cash	\$ 1,062,744
Cost of purchased insurance policies	13,544,916
Receivable from parent, subsidiaries and affiliates	372,024
Furniture and equipment	28,190
Other assets	<u>200,620</u>
 Total assets	 <u>\$15,208,494</u>

###### Liabilities, Capital and Stockholders' Equity

Commissions to brokers due or accrued	\$ 395,849
General expenses due or accrued	105,446
Amounts withheld or retained by company as agent or trustee	13,724,916
Deferred service fees	<u>20,898</u>
 Total liabilities	 <u>\$14,727,109</u>
 Capital stock	 \$ 10
Paid-in capital	1,647,422
Owner's or partners' capital	3,219,707
Retained earnings	<u>(3,905,754)</u>
 Total stockholders' equity	 <u>\$ 961,385</u>
 Total liabilities, capital and stockholders' equity	 <u>\$15,208,494</u>

B. CONDENSED SUMMARY OF OPERATIONS

	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>
Revenues from matured or sold life insurance policies	\$ 682,200	\$ 516,800	\$2,434,091	\$3,254,322	\$1,876,910
Net investment income	84,633	68,459	744,160	116,674	23,070
Other income	<u>438,924</u>	<u>390,710</u>	<u>680,137</u>	<u>911,510</u>	<u>2,367,111</u>
 Total income	 <u>\$1,205,757</u>	 <u>\$ 585,917</u>	 <u>\$ 633,036</u>	 <u>\$4,282,506</u>	 <u>\$4,267,091</u>
Viatical settlements	\$ 545,460	\$ 402,089	\$1,854,991	\$2,331,130	\$1,368,174
Insurance premiums	775	1,549	20,124	47,839	24,764
Interest expense	250,211	626,218	1,026,375	668,355	387,383
Compensation to brokers	36,855	37,344	128,287	206,719	96,589
General expenses	943,144	1,025,669	1,178,947	849,581	1,445,837
Miscellaneous expenses	<u>10,471</u>	<u>10,331</u>	<u>10,331</u>	<u>0</u>	<u>0</u>
 Total deductions	 <u>\$1,786,916</u>	 <u>\$ 2,103,200</u>	 <u>\$4,219,055</u>	 <u>\$4,116,771</u>	 <u>\$3,335,016</u>
 Net income (loss)	 <u>\$ (581,159)</u>	 <u>\$(1,127,230)</u>	 <u>\$ (360,667)</u>	 <u>\$ 165,735</u>	 <u>\$ 932,075</u>

## 5. MARKET CONDUCT ACTIVITIES

The examiner reviewed various elements of the Company's market conduct activities affecting viators to determine compliance with applicable statutes and regulations and the operating rules of the Company.

### A. Advertising and Sales Activities

The examiner reviewed the Company's advertising files and its solicitation of viators. Based upon the sample reviewed, no significant findings were noted.

### B. Underwriting and Policy Forms

The examiner reviewed a sample of purchased life insurance policy files and the policy forms utilized.

Section 7804(a) of the New York Insurance Law states, in part:

“No viatical settlement company may use any agreement for a viatical settlement in this state unless it is in writing and has been filed with and approved by the superintendent. . . .”

The Company used various application forms in obtaining New York viatical settlements during the examination period that were prepared by the broker and were not filed with and approved by the Superintendent.

The Company violated Section 7804(a) of the New York Insurance Law by using forms that were not filed with and approved by the Superintendent.

### C. Treatment of Viators

The examiner reviewed a sample of viator files. The examiner also reviewed the various controls involved, checked the accuracy of the computations and traced the accounting data to the books of account.

Based upon the sample reviewed, no significant findings were noted.

6. SUMMARY AND CONCLUSIONS

Following is the violation contained in this report:

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
A	The Company violated Section 7804(a) of the New York Insurance Law by using forms that were not filed with and approved by the Superintendent.	8

Respectfully submitted,

\_\_\_\_\_/s/\_\_\_\_\_  
Mark A. McLeod  
Senior Insurance Examiner

STATE OF NEW YORK     )  
  )SS:  
COUNTY OF NEW YORK    )

MARK A. MCLEOD, being duly sworn, deposes and says that the foregoing report, subscribed by him, is true to the best of his knowledge and belief.

\_\_\_\_\_/s/\_\_\_\_\_  
Mark A. McLeod

Subscribed and sworn to before me

this \_\_\_\_\_ day of \_\_\_\_\_ 2001.

APPOINTMENT NO. 21767

STATE OF NEW YORK  
**INSURANCE DEPARTMENT**

I, GREGORY V. SERIO, Superintendent of Insurance of the State of New York, pursuant to the provisions of the Insurance Law, do hereby appoint:

**MARK MCLEOD**

as a proper person to examine into the affairs of the

**PORTSMOUTH SETTLEMENT COMPANY I, INC.**

and to make a report to me in writing of the condition of the said

**COMPANY**

with such other information as he shall deem requisite.

In Witness Whereof, I have hereunto subscribed by name  
and affixed the official Seal of the Department  
at the City of New York

this 14th day of August, 2001



GREGORY V. SERIO  
Superintendent of Insurance

  
Superintendent