

STATE OF NEW YORK INSURANCE DEPARTMENT

REPORT ON EXAMINATION

OF THE

VIATICARE CAPITAL, L.P.

AS OF

DECEMBER 31, 2000

DATE OF REPORT:

AUGUST 31, 2001

EXAMINER:

MARK A. MCLEOD

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

August 31, 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 ViatiCare Capital, L.P., hereinafter referred to as "the Company," at its home office located at 601 Carlson Parkway, Suite 900, Minnetonka, Minnesota 55305.

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 has not purchased any new viatical settlements since 1997 and currently does not have any plans or financing in place to purchase viatical settlements in the future. In 1998, the Company also started to assign most of its viatical settlements that had not matured to another viatical settlement company. As of December 31, 2000, the Company retained only a small number of viatical settlements that were pending assignment to another viatical settlement company. In the future, the Company intends to operate as a broker of viatical settlements in jurisdictions where legally permitted.

The Company violated Section 7804(a) of the New York Insurance Law by using forms 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 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, advertising, 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 items.

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 as a limited partnership under the laws of Delaware and commenced business on June 1, 1995. The Company was issued a viatical settlement license by the Superintendent on April 30, 1996.

B. Holding Company

The Company is owned by three limited partners and a general partner. ViatiCare Financial Services, L.L.C, a Delaware limited liability company (98% ownership), S-F, Ltd., a Minnesota corporation (.99% ownership), and Paul J. Moe (.01% ownership) are the limited partners. The general partner is VC Management Corp., a Delaware corporation (1% ownership).

C. Management

The board of directors of the Company's general partner, VC Management Corp., serves as the Company's board of directors. The Company's limited partnership agreement initially provided that VC Management Corp.'s board of directors would be comprised of seven members. However, the number of members was reduced by a board resolution when the Company's relationship with Cargill Financial Services Corporation ("Cargill"), which had representatives on the board and was the original source of funding for the Company, terminated. As of December 31, 2000, the board of directors consisted of three members. Meetings of the board are held at least four times a year.

The three 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>
Paul J. Moe Delano, MN	President and Chairman Marquee International, Inc.	1995
Overton B. Parrish, Jr. Chicago, IL	President and Chairman Phoenix Health Care, Inc. and Female Health Company	1995
Michael L. Snow Wayzata, MN	Attorney and Counsel Maslon, Edelman, Borman & Brand	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>
Kenneth M. Klein	President
Keith R. Luecke	Secretary and Treasurer
Suzanne B. Moe	Vice President

D. Territory and Plan of Operation

The Company is authorized to purchase life insurance policies as defined in Section 7801(a) of the New York Insurance Law.

The Company is licensed as a viatical settlement company in the states of New York, California, Connecticut, Florida, Illinois, Louisiana, Minnesota, North Carolina, North Dakota, Oklahoma, Oregon, Washington and Wisconsin. During the examination period, it also transacted such business nationwide in jurisdictions where no license was required.

During the examination period, the Company acquired its business through independent viatical settlement brokers and direct contact with viators. In addition, it purchased viatical settlements from other viatical settlement companies.

The Company originally obtained its financing for the purchase of the viatical settlements from Cargill Financial Services Corporation under a funding agreement. During 1997, Cargill notified the Company that it would no longer finance the purchase of viatical settlements due to the increased life expectancies of the insureds on the settled policies.

In 1998, ViatiCare Financial Services, L.L.C. (“ViatiCare Financial”), one of the Company’s limited partners and, at the time, also a licensed viatical settlement company, contracted on behalf of itself with Michael D. Mansfield, Trustee of the Mansfield Trust, to finance the purchase of future viatical settlements. While this occurred, no plans were made for the Company to obtain alternative sources of financing to replace Cargill. As a result, no new viatical settlements were purchased by the Company after June of 1998. In addition, Mansfield Trust also agreed to purchase all the viatical settlements that were originally financed by Cargill that had not matured. In 2000, ViatiCare Financial completed its purchase of all of the New York policies from the Company. There were a few settlements (i.e., non New York business) that remained on the Company’s books as of December 31, 2000; those settlements were pending acknowledgement of transfer of ownership from the insurance companies that issued the policies.

In the future, the Company intends to operate as a broker of viatical settlements in jurisdictions where legally permitted. The Company does not have any plans or financing in place to purchase new viatical settlements.

E. Significant Operating Results

Indicated below is significant information concerning the operations of the Company during the period under examination as extracted from its filed annual statements. Failure of items to add to the totals shown in any table in this report is due to rounding. Amounts shown include adjustments due to reclassifications recommended by the external auditors.

The following table indicates the Company's financial growth during the period under review:

	December 31, <u>1996</u>	December 31, <u>2000</u>	Increase (Decrease)
Assets	\$ <u>11,511,041</u>	\$ <u>8,774,178</u>	\$(<u>2,736,863</u>)
Liabilities	\$ <u>12,291,529</u>	\$ <u>9,477,894</u>	\$(<u>2,813,635</u>)
Owner's or partners' capital	\$ (252,010)	\$ 0	\$ 252,010
Retained earnings	<u>(528,477)</u>	<u>(703,716)</u>	<u>(175,239)</u>
Total stockholders' equity	\$ <u>(780,487)</u>	\$ <u>(703,716)</u>	\$ <u>76,771</u>
Total liabilities and stockholders' equity	\$ <u>11,511,041</u>	\$ <u>8,774,178</u>	\$(<u>2,736,863</u>)

4. FINANCIAL STATEMENTS

The following statements show the assets, liabilities 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. The amounts in the financial statements contain amounts that 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 AND STOCKHOLDERS' EQUITY AS OF DECEMBER 31, 2000

Assets

Cash	\$ 182
Bonds	50,000
Cost of purchased insurance policies	4,223,268
Receivable from parent, subsidiaries and affiliates	85,000
Other assets	<u>4,415,728</u>
 Total assets	 <u>\$8,774,178</u>

Liabilities and Stockholders' Equity

Borrowed money	\$4,295,581
Payable to parent, subsidiaries and affiliates	838,897
Other long term liabilities	<u>4,343,416</u>
 Total liabilities	 \$9,477,894
 Retained earnings	 <u>(703,716)</u>
 Total liabilities and stockholders' equity	 <u>\$8,774,178</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	\$ 904,191	\$ 557,630	\$ 160,997	\$ 0	\$ 0
Net investment income	10,375	28,153	8,436	2,305	0
Dividends from insurers	11,309	0	0	0	0
Other income	<u>0</u>	<u>134</u>	<u>463,604</u>	<u>3,646,590</u>	<u>9,111</u>
Total income	\$ <u>925,876</u>	\$ <u>585,917</u>	\$ <u>633,036</u>	\$ <u>3,648,895</u>	\$ <u>9,111</u>
Viatical settlements	\$ 770,994	\$ 0	\$ 0	\$ 0	\$ 0
Interest expense	0	1,601,242	1,099,473	50	0
General expenses	<u>683,360</u>	<u>261,678</u>	<u>1,224,168</u>	<u>269,167</u>	<u>230,109</u>
Total deductions	\$ <u>1,454,353</u>	\$ <u>1,862,920</u>	\$ <u>2,323,641</u>	\$ <u>269,217</u>	\$ <u>230,109</u>
Net income (loss)	\$ <u>(528,477)</u>	\$ <u>(1,277,004)</u>	\$ <u>(1,690,605)</u>	\$ <u>3,379,678</u>	\$ <u>(220,998)</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 file and its solicitation of viators. Based upon the advertising materials 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 the following unapproved forms in obtaining New York viatical settlements during the examination period: NY002 (7/96); NY 003 (7/96); NY005 (8/96); NY006 (8/96); MS006 (7/96); CO PUR K-1 (8/96); and various other applications and disclosure forms used by brokers in obtaining new business.

The Company violated Section 7804(a) of the New York Insurance Law by using forms 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.

Section 7807(b) of the New York Insurance Law states, in part:

“Upon receipt of an application for a viatical settlement, the viatical settlement company shall deliver to the applicant an information booklet describing . . .

(6) the identity of any person who will receive any fee or compensation from the viatical settlement company with respect to the viatical settlement and the amount and terms of such compensation.”

The Company did not include the identity of the broker or the financial services advisor who received a fee or compensation from the Company on the majority of the information booklets (22 of the 23 settlements reviewed) provided to the viator where brokers received compensation.

The Company violated Section 7807(b)(6) of the New York Insurance Law for failing to identify the broker who received a fee or compensation on the information booklets provided to the viators.

Section 7808(c) of the New York Insurance Law states, in part:

“Viatical settlement companies and brokers licensed hereunder shall not . . .

(2) pay or offer to pay any finder’s fee, commission or other compensation to any viator’s physician, attorney, accountant or other person providing medical, legal or financial planning services to the viator, or to any other person acting as agent of the viator with respect to the viatical settlement . . . ”

The Company paid \$1,300 to a viator’s financial services advisor. The Company violated Section 7808(c)(2) of the New York Insurance Law by paying the viator’s financial services advisor a fee.

6. SUMMARY AND CONCLUSIONS

Following are the violations 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 not filed with and approved by the superintendent.	9
B	The Company violated Section 7807(b)(6) of the New York Insurance Law by failing to disclose the identity of the broker or financial services advisor who received a fee or compensation from the Company.	10
C	The Company violated the Section 7808(c)(2) of the New York Insurance Law by paying the viator's financial services advisor a fee.	10

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. 21764

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

VIATICARE CAPITAL, L.P.

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 10th day of August, 2001



GREGORY V. SERIO

Superintendent of Insurance

A handwritten signature in black ink, appearing to read "Gregory V. Serio", written over a horizontal line.

Superintendent