

STATE OF NEW YORK INSURANCE DEPARTMENT

REPORT ON EXAMINATION

OF THE

LEGACY BENEFITS CORPORATION

AS OF

DECEMBER 31, 2003

DATE OF REPORT:

AUGUST 7, 2004

EXAMINER:

DENNIS G. BENSEN

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

George E. Pataki  
Governor

Gregory V. Serio  
Superintendent

August 7, 2004

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

Sir:

In accordance with instructions contained in Appointment No. 22226, dated May 3, 2004 and annexed hereto, an examination has been made into the condition and affairs of Legacy Benefits Corporation, hereinafter referred to as "the Company," at its home office located at 350 Fifth Avenue, Suite 4320, New York, New York 10118.

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 violated Section 380.9(a) of Department Regulation No. 148 by accepting a policy for settlement where the viator was not the insured under the policy as required. (See item 5B of this report)

Currently, the Company is principally marketing life settlements. The Company is no longer actively soliciting viatical settlements in New York.

## 2. SCOPE OF EXAMINATION

The prior examination of the Company was conducted as of December 31, 1998. This examination covers the period from January 1, 1999 through December 31, 2003. As necessary, the examiner reviewed transactions occurring subsequent to December 31, 2003 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, 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 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 stock company under the laws of New York on October 17, 1991 and commenced business on January 1, 1992. The Department promulgated Regulation No. 148 on July 6, 1994, which requires viatical settlement companies doing business in the State of New York to acquire a license from the Superintendent. The Company applied for a viatical settlement company license on October 4, 1994 and was issued such license by the Superintendent on April 18, 1996.

#### B. Management

The Company's by-laws provide that the board of directors shall be comprised of three directors; however, there is a provision such that when all of the Company's shares of common capital stock are owned by less than three shareholders, the number of directors may be less than three but not less than the number of shareholders. There is currently one shareholder who owns all of the Company's shares of common capital stock. As of December 31, 2003, the board of directors consisted of two members. Meetings of the board are held in April of each year.

The two board members and their principal business affiliation, as of December 31, 2003, were as follows:

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>	<u>Year First Elected</u>
Meir Eliav Great Neck, NY	President Legacy Benefits Corporation	1991
Carol Regler Williston Park, NY	Senior Vice President Legacy Benefits Corporation	2000

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, 2003:

<u>Name</u>	<u>Title</u>
Meir Eliav	President
Anat Eliav-Peirez	Senior Vice President & Secretary
Carol Regler	Senior Vice President

#### C. 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 14 states, namely New York, Arkansas, California, Connecticut, Delaware, Illinois, Kansas, Minnesota, North Carolina, North Dakota, Pennsylvania, Texas, Washington and Wisconsin. The Company also transacts such business nationwide, in jurisdictions where no license is required. Currently, the Company is principally marketing life settlements. The Company is no longer actively soliciting viatical settlements in New York.

The Company acquires its business through independent viatical settlement brokers and by direct contact with viators.

#### D. Financial Growth

The following table indicates the Company's financial growth during the period under review. These amounts have not been audited by the examiner and are for presentation purposes only.

	December 31, <u>1998</u>	December 31, <u>2003</u>	Increase <u>(Decrease)</u>
Assets	<u>\$1,893,692</u>	<u>\$1,502,912</u>	<u>\$ (390,780)</u>
Liabilities	<u>\$ 522,140</u>	<u>\$ 949,823</u>	<u>\$ 427,683</u>
Common capital stock	\$ 1,000	\$ 1,000	\$ 0
Paid in capital	1,510,000	260,000	(1,250,000)
Retained earnings	<u>(139,448)</u>	<u>292,089</u>	<u>431,537</u>
Total stockholders' equity	<u>\$1,371,552</u>	<u>\$ 553,089</u>	<u>\$ (818,463)</u>
Total liabilities and stockholders' equity	<u>\$1,893,692</u>	<u>\$1,502,912</u>	<u>\$ (390,780)</u>

#### 4. FINANCIAL STATEMENTS

The following statements show the assets, liabilities, capital and stockholders' equity as of December 31, 2003, as contained in the Company's filed 2003 annual statement, and a condensed summary of operations for each of the years under review. 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, 2003

###### Assets

Cash	\$ 383,117
Cost of purchased insurance policies	75,500
Investment income due & accrued	38,238
Furniture and computer equipment	42,024
Accounts receivable	497,756
Prepaid expenses	46,531
Security deposit	37,500
Other assets	<u>382,246</u>
 Total assets	 <u>\$1,502,912</u>

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

Commissions to brokers due and accrued	\$ 323,000
Accounts payable	551,284
Other liabilities	<u>75,539</u>
 Total liabilities	 <u>\$ 949,823</u>
 Capital stock	 \$ 1,000
Paid-in capital	260,000
Retained earnings	<u>292,089</u>
 Total capital and stockholders' equity	 <u>\$ 553,089</u>
 Total liabilities, capital and stockholders' equity	 <u>\$1,502,912</u>

**B. CONDENSED SUMMARY OF OPERATIONS**

	<u>1999</u>	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>2003</u>
Revenues from matured life insurance policies	\$ 0	\$ 198,000	\$ 0	\$ 0	\$ 0
Revenues from policies held in trust	11,752,707	8,612,481	9,125,963	12,548,656	18,010,963
Interest income	19,874	20,158	4,593	11,717	13,801
Prior period adjustment	0	0	1,734,882	0	0
Premiums reimbursed - tracking fees			152,700	0	0
Reimbursement of related party transaction fees	0	0	0	0	192,000
Other income	<u>19,960</u>	<u>6,225</u>	<u>24,114</u>	<u>12,616</u>	<u>16,182</u>
 Total income	 <u>\$11,792,541</u>	 <u>\$8,836,864</u>	 <u>\$11,042,252</u>	 <u>\$12,572,989</u>	 <u>\$18,232,946</u>
 Viatical settlements	 \$ 8,505,744	 \$6,506,994	 \$ 7,888,195	 \$ 8,950,353	 \$14,016,329
Insurance premiums	153,469	17,708	11,359	2,864	11,592
Interest expense	0	27,581	53,794	15,587	18,915
Compensation to brokers	1,026,620	689,710	991,690	1,029,605	2,111,589
General expenses	1,144,926	1,485,451	1,980,356	2,279,088	2,051,136
Insurance taxes, licenses and fees	14,250	11,029	14,417	11,266	8,065
Miscellaneous expenses	<u>15,287</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
 Total deductions	 <u>\$10,860,296</u>	 <u>\$8,738,473</u>	 <u>\$10,939,811</u>	 <u>\$12,288,762</u>	 <u>\$18,217,626</u>
 Net income	 <u>\$ 932,245</u>	 <u>\$ 98,391</u>	 <u>\$ 102,441</u>	 <u>\$ 284,227</u>	 <u>\$ 15,320</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 Company did not advertise during the period under examination.

### B. Underwriting and Policy Forms

The examiner reviewed a sample of New York viatical settlements and the policy forms utilized.

Section 7801(b) of the New York Insurance Law states, in part:

“ “Viator” means the owner of a life insurance policy insuring the life of a person who has a catastrophic or life threatening illness or condition, who enters into an agreement under which the viatical settlement company will pay compensation or anything of value, which compensation or value is less than the expected death benefit of the insurance policy, in return for the viator's assignment, transfer, sale, devise, or bequest of the death benefit or ownership of the insurance policy to the viatical settlement company. Viator may also include a person insured under a group life insurance policy who is not prohibited from assigning his or her rights or benefits and who assigns those rights or benefits by a viatical settlement.”

Section 380.9(a) of Department Regulation No. 148 states, in part:

"A viator may not assign, transfer, sell, devise, or bequeath to a viatical settlement company

(1) a death benefit for any insured other than the viator . . . ”

The examiner's review of a sample of viatical settlement files indicated that the Company entered into one settlement agreement where the viator was not the insured under the policy as required.

The Company violated Section 380.9(a) of Department Regulation No. 148 by accepting a policy for settlement where the viator was not the insured under the policy.

C. Treatment of Viators

The examiner reviewed a sample of New York 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. PRIOR REPORT SUMMARY AND CONCLUSIONS

Following is the violation contained in the prior report on examination and the subsequent actions taken by the Company in response to the citation:

<u>Item</u>	<u>Description</u>
A	<p>The Company violated Section 7804(a) of the New York Insurance Law, as well as Section 380.6(a) of Department Regulation No. 148 for using a purchase agreement and an application form, without the prior approval of the Superintendent.</p> <p>The examiner's review of policy forms indicated that all required forms have been filed with and approved by the Superintendent.</p>

7. 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 380.9(a) of Department Regulation No. 148 by accepting a policy for settlement where the viator was not the insured under the policy as required.	8

Respectfully submitted,

\_\_\_\_\_/s/\_\_\_\_\_  
Dennis G. Bensen  
Senior Insurance Examiner

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

DENNIS G. BENSEN, being duly sworn, deposes and says that the foregoing report, subscribed by him, is true to the best of his knowledge and belief.

\_\_\_\_\_/s/\_\_\_\_\_  
Dennis G. Bensen

Subscribed and sworn to before me  
this \_\_\_\_\_ day of \_\_\_\_\_ 2004.

APPOINTMENT NO. 22226

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:

**DENNIS BENSEN**

as a proper person to examine into the affairs of

**LEGACY BENEFITS CORPORATION**

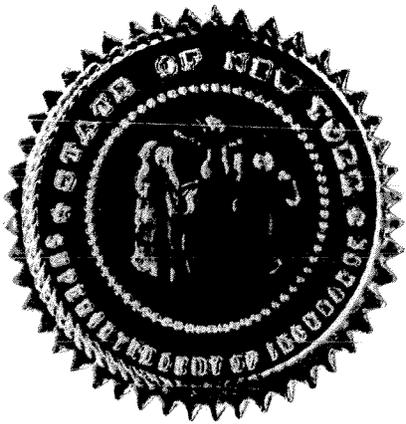
and to make a report to me in writing of the condition of the said

**COMPANY**

with such other information as she 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 3rd day of May, 2004



**GREGORY V. SERIO**

Superintendent of Insurance

*[Handwritten Signature]*  
Superintendent