



NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

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In the Matter of

**GLOBE LIFE INSURANCE COMPANY OF NEW YORK,**

No. 2018-0085-S

Respondent.

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**CONSENT ORDER**

**WHEREAS**, the New York State Department of Financial Services (“DFS” or “Department”) commenced an examination (the “Examination”) pursuant to the New York State Insurance Law of Globe Life Insurance Company of New York (hereinafter “Respondent”);

**WHEREAS**, the Department commenced an investigation (“Investigation”) subsequent to the Examination pursuant to Insurance Law Section 308 concerning the Respondent’s contestable claim practices for the period of January 1, 2006 through December 31, 2016 (the “Relevant period”).

**WHEREAS**, from 2006 through 2016, the Respondent marketed on a direct response basis and sold small face value simplified issue life insurance policies to low- and middle-income consumers in New York.

**WHEREAS**, the Department concluded that the Respondent improperly closed claims when policyholders died within the two-year contestable period without proving in an action a misrepresentation by the policyholder on the application for insurance as required by the Insurance Law;

**WHEREAS**, the Department further concluded that the Respondent engaged in unfair claims settlement practices in violation of the New York Insurance Law by improperly misrepresenting facts and policy provisions relating to coverage and not attempting in good faith to

effectuate prompt, fair, and equitable settlements of submitted claims in which liability had become reasonably clear;

**WHEREAS**, the Department further concluded that the Respondent violated Insurance Department Regulations by failing to refer in writing to a specific policy provision, condition, or exclusion in a policy that was the basis for denying a claim, or by not providing a specific reason for disclaiming coverage;

**WHEREAS**, this Consent Order contains the Department's findings and the relief agreed to by the Department and Respondent.

**NOW, THEREFORE**, the Department and Respondent are willing to resolve the matters cited herein in lieu of proceeding by notice and hearing.

#### **TERMS**

1. For purposes of this Consent Order, the following terms shall have the meanings as set forth herein:
  - a. "Contestable period" means the period of two years dating from a policy's date of issue or from the effective date of certain increases or changes to the policy, after which time a life insurance policy in force during the life of the policyholder becomes incontestable.
  - b. "Contestable claim" is a life insurance claim made during the two-year contestable period.

#### **FINDINGS**

2. Respondent is a domestic insurance company authorized to transact life, annuities and accident and health insurance business in this State pursuant to Section 1113(a) of the New York Insurance Law.
3. During the Relevant Period, the Respondent routinely requested medical records from a deceased policyholder's beneficiary or beneficiaries if the death occurred within the contestable period.
4. If medical records were not produced, the Respondent refused to pay the face amount of the policy. Instead, the Respondent unilaterally closed the claim and notified the beneficiary or

beneficiaries that the policy would not be paid because of the failure to provide medical records as requested.

5. During the Relevant Period, the Respondent also unilaterally rescinded claims when it received medical records and concluded that the deceased made a material misrepresentation. The Respondent did not obtain these rescissions through a court action. Upon rescission, the Respondent returned the policyholder's premiums to his or her beneficiary or beneficiaries.
6. As part of its review, the Department evaluated a sample of various types of claims.
7. For claims in which the policyholder's death was reported by someone other than a beneficiary, the Department's review of records found no evidence that the Respondent's personnel made a good faith attempt to locate the beneficiary or beneficiaries.
8. When policyholders died during the contestable period, the Respondent requested medical records or other records related to the policyholder's death. The Respondent closed these contestable claims without payment if it did not receive the policyholder's medical records upon demand to the beneficiary. Respondent did not obtain rescission through a court action or by all beneficiaries agreeing to rescission after being made aware of their rights to contest the rescission claim in an action.
9. In a sample of 17 contestable claims that were closed without payment of the benefit, the beneficiaries provided the required proofs of death, including a certified death certificate.
10. During the period covered by the Investigation, the Respondent did not inform beneficiaries of any specific policy provision, condition, or exclusion in the policy that were the grounds of the denial, or cite any specific reason for disclaiming coverage.

#### **NEW YORK CONTESTABLE CLAIMS**

11. During the Relevant Period, the Respondent had 439 contestable claims with a face amount totaling approximately \$7,330,000 in New York State in which the claims were closed without payment or remained pending because the Respondent did not receive medical records and Respondent did not obtain rescission through a court action or by all beneficiaries agreeing to rescission after being made aware of their rights to contest the rescission claim in an action.

## **RELEVANT STATUTES, REGULATIONS, AND NEW YORK CASE LAW**

12. Pursuant to Insurance Law Section 3203(a)(3), life insurance policies are incontestable after being in force during the life of the insured for a period of two years from its date of issue or, as to certain increases in the death benefit or changes in other policy provisions, from the effective date of those increases or changes. Pursuant to Insurance Law Sections 3203(a)(3), 3105(a), and 3105(b)(1), within the two-year contestable period, an insurer may only contest a covered claim on the basis of a misrepresentation if the insurer proves a material misrepresentation by the insured on the application for insurance.
13. Insurance Law Section 3105(a) provides that a misrepresentation is a false statement by an applicant concerning past or present fact made to the insurer at or before the making of the insurance contract as an inducement to make the contract, such as a false statement that the applicant has not had a particular disease, ailment, or medical impairment.
14. Under Insurance Law Section 3105(b), a misrepresentation will not avoid or defeat recovery under any insurance policy unless the misrepresentation was material. A misrepresentation is material if knowledge by the insurer of the facts misrepresented would have led to the insurer's refusal to make the contract.
15. Insurance Law Section 3105(d) provides: "If in any action to rescind any such [insurance] contract or to recover thereon, any such misrepresentation is proved by the insurer, and the insured or any other person having or claiming a right under such contract shall prevent full disclosure and proof of the nature of such medical impairment, such misrepresentation shall be presumed to have been material."
16. Under relevant New York jurisprudence, if there is a change in the status quo, such as the death of the insured, then an insurer must obtain rescission through a judicial determination or by all beneficiaries agreeing to rescission after being made aware of their rights to contest the rescission claim in an action.
17. Pursuant to Insurance Law Section 2601(a)(1), (2), and (4), it is an unfair claim settlement practice for an insurer to commit the following acts without just cause and with such frequency to indicate a general business practice:

- a. Knowingly misrepresenting to claimants pertinent facts and policy provisions relating to coverages at issue;
  - b. Failing to acknowledge with reasonable promptness pertinent communications regarding claims arising under its policies; and
  - c. Not attempting in good faith to effectuate prompt, fair, and equitable settlement of claims submitted in which liability has become reasonably clear.
18. Pursuant to Insurance Regulation No. 64, 11 N.Y.C.R.R. Section 216.3(b), no insurer shall deny any element of a claim on the grounds of a specific policy provision, condition, or exclusion unless reference to such provision, condition, or exclusion is made in writing to the insured, beneficiary, or claimant.
19. Also, pursuant to Insurance Regulation No. 64, 11 N.Y.C.R.R. Section 216.6(d), an insurer shall inform the claimant in writing as soon as it is determined that there was no policy in force or that the insurer is disclaiming liability because of a breach of policy provisions by the policyholder. The insurer must also explain its specific reasons for disclaiming coverage.
20. Respondent for the time period 2006 to 2016:
  - a. misrepresented facts and policy provisions relating to coverage;
  - b. failed to acknowledge with reasonable promptness pertinent communications as to claims arising under its policies;
  - c. failed to attempt in good faith to effectuate prompt, fair, and equitable settlements of claims submitted in which liability had become reasonably clear; and
  - d. failed to refer in writing to a specific policy provision, condition, or exclusion in the policy that was the ground for denial of a claim, or by failing to provide a specific reason for disclaiming coverage.
21. Respondent's violations during the aforementioned time period contravened New York Insurance Law.

### VIOLATIONS

22. By reason of the foregoing,  
Respondent violated:  
Insurance Regulation No. 64, 11 NYCRR Section 216.3(b) and 216.6(d); and

New York Insurance Law Sections 2601(a)(1), (2), and (4).

**AGREEMENT**

**IT IS HEREBY UNDERSTOOD AND AGREED** by Respondent, its successors and assigns (on behalf of its agents, representatives, employees, parent company, holding company, and any corporation, subsidiary or division through which Respondent operates) that:

**CEASE AND DESIST**

23. Respondent shall cease and desist the practices found by the Department to have violated the Insurance Law and Regulations.

**OTHER INJUNCTIVE TERMS**

24. In order to comply with the requirements of Insurance Law Sections 2601, 3105, and 3203, Respondent shall adopt the following practices with respect to payment and investigation of contestable claims:
- a. Respondent, not beneficiaries or a policyholder's estate, bears the burden of investigating claims submitted within the contestable period;
  - b. Respondent may only contest a contestable claim on evidence of a material misrepresentation by the insured on the application for insurance, as provided in Insurance Law Sections 3105(a) and 3105(b)(1);
  - c. The materiality of a misrepresentation shall be whether, had the Respondent known the facts misrepresented, it would have refused to make such contract, as provided in Insurance Law Section 3105(b)(1);
  - d. A presumption of materiality of a misrepresentation shall arise in an action to rescind or defeat recovery, as provided in Insurance Law Section 3105(d);
  - e. If a contestable claim is incurred and there has been a change in the status quo, Respondent shall only obtain a rescission of the policy by prevailing in a court action or by all beneficiaries agreeing to rescission after being made aware of their rights to contest the rescission claim in an action.

## RESTITUTION

25. Respondent will correct the violations cited herein and demonstrate to the Department's satisfaction that it has initiated the necessary corrective action within 12 months from the date of Respondent's signing of this Consent Order. Respondent will also take all necessary steps to comply with the New York Insurance Law and Regulations with respect to its insurance products in the future. Within sixty (60) days from the Respondent's signing of this Consent Order, the Company shall provide to the Department a detailed remediation plan which provides restitution to policyholders or their beneficiaries, where applicable, for each violation set forth in paragraph 22 of this Consent Order (the "Violations"). The remediation plan is subject to the Department's approval in its sole discretion. The Department may, as a condition of its approval, impose additional remediation requirements to a plan if necessary to satisfactorily rectify the Violations.
26. For all identified contestable claims that the Respondent closed without payment, Respondent shall review and pay the face amount of each such policy plus interest dating from the date of death to the date of such payment, unless the Respondent determines, that the insured made a material misrepresentation in his or her application for such policy, as provided in Insurance Law Section 3105 and designates the claim for rescission.
27. The Third-Party Administrator ("TPA") described in paragraph 31 shall review the claim files designated by the Respondent for rescission and the TPA shall make the final decision before the Respondent formally rescinds the claims.
28. The TPA will make a determination pursuant to paragraphs 35, 36, and 37 of this Consent Order based on the Department's guidance and Respondent's policy provisions that either the Respondent has a valid basis to rescind each claim or the Respondent is required to pay each claim to the named beneficiary.
29. The Respondent agrees to be bound by the determination of the TPA.
30. Any payments described in paragraph 36 shall be reduced by any amounts already paid by Respondent to beneficiaries as premium refunds for rescinded policies.

### THIRD PARTY ADMINISTRATOR

31. As soon as practicable, but no later than sixty days from the execution of this Consent Order, DFS shall select an independent TPA to review and administer the contestable claims review and restitution process, as provided in paragraphs 25 through 30 of this Consent Order. Respondent will retain the TPA after the Department's review and approval of the retainer agreement. Respondent shall be fully and solely responsible for all proper fees, expenses, and disbursements of the TPA in connection with the review and restitution process provided for in this Consent Order and the TPA's retainer agreement.
32. The TPA shall, as part of its operations, establish and maintain throughout the duration of its obligations pursuant to this Consent Order, multiple cost-free means for affected beneficiaries to contact it, including an electronic mail address, a website, and a toll-free telephone number.
33. Within thirty days after retention of the TPA, Respondent shall provide the TPA for its review all information in their possession, custody, or control, including but not limited to policy records and complete claims files, for all identified claims made within the contestable period for New York policies that the Respondent has designated for rescission.
34. The TPA may request from Respondent any information and data it reasonably believes it will need to fulfill its obligations under this Consent Order, and Respondent shall provide the requested information and data within seven days of receiving such a request from the TPA.
35. The TPA shall determine, according to the provisions and standards set forth in its retainer agreement, the following:
  - a. Which identified contestable claims were lawfully designated for rescission as noted above; and
  - b. Which identified contestable claims were unlawfully designated for rescission.
36. For claims that Respondent unlawfully designated for rescission as described in paragraph 35 the TPA shall determine the death benefit to be paid according to the policy. If records for contestable claims unlawfully designated for rescission are incomplete and it is not known whether payment was made, the claims shall be paid according to the policy. Benefits shall be reduced by any amounts already paid by Respondent to beneficiaries, and shall include interest as required by Insurance Law Section 3214(c).



37. The TPA shall also identify and locate the beneficiaries of all identified contestable claims Respondent unlawfully designated for rescission.
38. Within thirty days of the TPA's final determination of all amounts owed to affected beneficiaries, Respondent shall wire-transfer to the TPA the total amount owed by Respondent to the beneficiaries.
39. Within thirty days of receiving the wire-transfer described in paragraph 38, the TPA shall deposit in the facilities of the U.S. Post Office, for delivery by prepaid first-class mail to each beneficiary to whom Respondent owes payment, a check in the required amount payable to the individual beneficiary. All checks must be valid for six months. Such payment shall be accompanied by a letter from the Department, in the form annexed hereto as Exhibit A.
40. For any payment to a beneficiary that is returned to the TPA as undeliverable or not deposited within six months, the TPA shall conduct a reasonable search, as provided in its retainer agreement, for a current address. The TPA may cancel checks not deposited within six months. Should the search show a more current address, the TPA shall re-issue a check valid for six months in the amount of the returned or un-deposited check and send the reissued check to the more current address within fifteen days in the manner provided in paragraph 39. After doing so, no further action shall be required by the TPA to complete the mailing process.
41. In the event that a beneficiary does not cash his or her check before the expiration date of the check or the check was returned after the TPA re-posts the check as described in paragraph 43, the TPA shall follow all applicable provisions of the New York Abandoned Property Law, including all reporting, mailing, and remittance requirements.
42. The TPA shall provide reports to the Department as provided in the retainer agreement to confirm compliance with this Consent Order.
43. The TPA's obligations under this Consent Order are satisfied when the process described in paragraphs 35 through 42 is completed.

#### **MONETARY PENALTY**

44. Within seven (7) days of the execution of this Consent Order, Respondent shall pay a civil penalty of Four Hundred Thirty-Nine Thousand Dollars (\$439,000.00). Respondent agrees

that it will not claim, assert, or apply for a tax deduction or tax credit with regard to any U.S. federal, state or local tax, directly or indirectly, for any portion of the civil monetary penalty paid pursuant to this Consent Order.

45. The above referenced payment shall be payable to the New York State Department of Financial Services via electronic transfer in accordance with instructions provided by the Department.

#### **OTHER RELIEF**

46. Respondent submits to the authority of the Department to effectuate this Consent Order.
47. Respondent will cease and desist from engaging in any acts in violation of the New York Insurance Law and will comply with this and every other New York law.
48. Unless the Department consents, Respondent may not bring any claim, action, or proceeding against the TPA.
49. Respondent represents and warrants, through the signatures below, that the terms and conditions of this Consent Order are duly approved, and execution of this Consent Order is duly authorized.

#### **BREACH OF THE CONSENT ORDER**

50. In the event that the Department believes Respondent to be materially in breach of this Consent Order (“Breach”), the Department will provide written notice of such Breach to Respondent and Respondent must, within ten (10) business days from the date of receipt of said notice, or on a later date if so determined in the sole discretion of the Department, appear before the Department and have an opportunity to rebut the evidence, if any, of the Department that a Breach has occurred and, to the extent pertinent, to demonstrate that any such Breach is not material or has been cured.
51. The Respondent understands and agrees that Respondent’s failure to appear before the Department to make the required demonstration within the specified period as set forth in paragraph 50 is presumptive evidence of Respondent’s Breach. Upon a finding of Breach, DFS has all the remedies available to it under the New York Insurance Law, Financial

Services Law, or other applicable laws and may use any and all evidence available to DFS for all ensuing hearings, notices, orders, and other remedies that may be available under the New York Insurance Law, Financial Services Law, or other applicable laws.

### OTHER PROVISIONS

52. If Respondent defaults on any of its obligations under this Consent Order, the Department may terminate the Consent Order, at its sole discretion, upon ten (10) days' written notice to Respondent. In the event of such termination, Respondent expressly agrees and acknowledges that this Consent Order shall in no way bar or otherwise preclude the Department from commencing, conducting, or prosecuting any investigation, action, or proceeding, however denominated, related to the Consent Order, against Respondent or from using in any way the statements, documents, or other materials produced or provided by Respondent prior to or after the date of this Consent Order, including, without limitation, such statements, documents, or other materials, if any, provided for purposes of settlement negotiations.
53. The Department has agreed to the terms of this Consent Order based on, among other things, representations made to the Department by Respondent and the Department's own factual examination. To the extent that representations made by Respondent are later found to be materially incomplete or inaccurate, this Consent Order or certain provisions thereof are voidable by the Department in its sole discretion.
54. Upon the request of the Department, Respondent shall provide all documentation and information reasonably necessary for the Department to verify compliance with this Consent Order.
55. All notices, reports, requests, certifications, and other communications to the Department regarding this Consent Order shall be in writing and shall be directed as follows:

If to the Department:

New York State Department of Financial Services  
One State Street, 19<sup>th</sup> Floor  
New York, NY 10004-1511  
Attention: Laura Evangelista, Executive Deputy Superintendent for Insurance

If to the Company:

Globe Life Insurance Company of New York  
1020 Seventh North Street  
Liverpool, New York 13088  
Attention: Joel Scarborough, Senior Vice President and Associate General Counsel

With a copy to:

Sidley Austin LLP  
787 Seventh Avenue  
New York, New York 10019  
Attention: Ellen Dunn

56. This Consent Order and any dispute thereunder shall be governed by the laws of the State of New York without regard to any conflicts of laws principles.
57. Respondent waives its right to further notice and hearing in this matter as to any allegations of past violations up to and including the Effective Date and agrees that no provision of the Consent Order is subject to review in any court or tribunal outside the Department.
58. This Consent Order may not be amended except by an instrument in writing signed on behalf of all parties to this Consent Order.
59. This Consent Order constitutes the entire agreement between the Department and Respondent relating to the violations identified herein and supersedes any prior communication, understanding, or agreement, whether written or oral, concerning the subject matter of this Consent Order. No inducement, promise, understanding, condition, or warranty not set forth in this Consent Order has been relied upon by any party to this Consent Order.
60. In the event that one or more provisions contained in this Consent Order shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Consent Order.
61. Upon execution by the parties to this Consent Order, no further action will be taken by the Department against Respondent for the conduct set forth in this Consent Order, subject to the terms of this Order.

62. This Consent Order may be executed in one or more counterparts, and shall become effective when such counterparts have been signed by each of the parties hereto and So Ordered by the Superintendent of Financial Services.

GLOBE LIFE INSURANCE COMPANY OF NEW YORK

By: [Signature] Dated: JANUARY 21, 2019

Joel Scarborough  
Senior Vice President and Associate General Counsel

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

By: [Signature] Dated: 1/25/19

Laura Evangelista  
Executive Deputy Superintendent for Insurance

**THE FOREGOING CONSENT ORDER IS HEREBY APPROVED.**

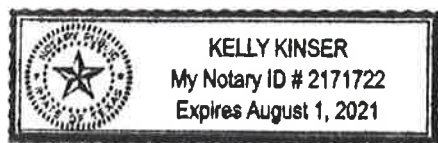
By: [Signature] Dated: 1/28/19

Maria T. Vullo  
Superintendent of Financial Services

State of Texas  
County of Collin

Sworn and subscribed before me on the 21 day of 2019,  
by Joel Scarborough.

[Signature]  
Notary Public's Signature



[Date]

[Beneficiary's Address]

Dear [Beneficiary],

You are receiving this notice pursuant to a settlement reached between Globe Life Insurance Company of New York ("Globe") and the New York State Department of Financial Services. The settlement concerns the contestable claims practices of Globe.

Records indicate that you are the beneficiary of a policy, [Globe Policy #####], that is affected by this settlement. We write to notify you that, pursuant to the settlement with the New York State Department of Financial Services, Globe is paying the face amount of this policy, plus interest dating from the policyholder's date of death. This amount may be reduced by amounts already paid as premium refunds for improperly rescinded policies.

This settlement was obtained by the New York State Department of Financial Services. Nothing in the settlement prevents or limits you from pursuing any right or remedy at law you may have or requires you to release any rights.

If you have any further problems regarding Policy [###], or if you have questions concerning this settlement or any refund provided, you can contact the New York State Department of Financial Services at 1-800-342-3736 and at [email address to be provided], or you may contact the Third Party Administrator, [name of TPA], that is administering this settlement at [toll-free number], [email address], or [website].

Sincerely,