Introduction and Historical Perspective

The issues regarding the value of industrial life insurance policies have been debated sporadically by different entities over many years but very little if any significant action was taken to seek redress for the affected policyholders. The United States Senate, Subcommittee on Antitrust, Monopoly and Business Rights of the Committee on the Judiciary, conducted hearings in March 1979. The National Association of Insurance Commissioners (NAIC) formed a working group to address many of the issues related to industrial life policies, sometimes referred to as debit life or burial insurance. This working group produced a December 1997 report proposing a number of recommendations to insurance departments and the insurance industry yet, little if any action was taken other than to form a follow-up Home Service Working Group which concentrated more on the delivery system than the value of the product being delivered.

The NAIC is a nonprofit, charitable and educational organization. Its one class of membership comprises commissioners, superintendents, directors and other officials charged with the responsibility of supervising insurance within each state, territory, or insular possession of the United States. The purpose of the NAIC is to protect the public interest, promote competitive markets and facilitate the fair and equitable treatment of insurance consumers. While each state is a member of the NAIC collectively, it is important to note that independent action must be taken by states to implement model acts. The work of these two bodies was limited to written reports and public awareness.
Industrial life insurance policies were identified in the early years as industrial because of their development in the 1870’s for English factory workers. It was introduced in the United States in the 1800’s (Wall Street Journal, 1998). Consequently, in the early years, most of these policies were sold in states with a high concentration of factory workers who due to the nature of their hazardous working conditions, were predicted to have a short life span. These workers did not have a choice in the type of insurance selected, as their employers enrolled them under payroll deduction to ensure that death benefits would be available to their families upon their untimely death.

Over a period of years, the sale of this product moved to non-factory workers and insurance agents began to concentrate on selling to predominantly low-income consumers due to the “so-called” inexpensive premiums and the door-to-door collection service. However, as improved products came on the market, agents and companies sold their better products to middle and upper income consumers who were most likely to be white and continued to sell the small value industrial life insurance to low income families, who were most likely to be nonwhite.

Nature of the Dispute

The dispute on the value and appropriate disclosure of industrial life insurance began more pointedly when the Consumer Advocate requested legislators to file a bill in 1997 entitled Industrial Life Insurance. This bill was filed to accomplish the following: 1) require insurance companies to provide an annual statement to policyholders, stating the total amount of premiums paid from inception of the policy, the cash value, and the
benefits payable upon death, 2) prohibit the future sales of industrial life insurance in the State of Florida, and 3) provide a secondary notice for policyholders 64 years of age and older. House and Senate sponsors introduced this bill after the Consumer Advocate provided comparative analyses of the industrial life insurance policies with ordinary life insurance policies. It was determined that the economic value of the coverage was not only negligible but unfairly discriminatory. Unfortunately, this is not a violation of Florida Statutes. For example, the majority of these policies cannot be deemed paid up until a consumer reached the age of 100; insurance companies can exercise their discretion in honoring the listed beneficiary and pay death proceeds to a different party; and unlicensed agents are allowed to market and service clients with industrial life insurance but not customers who purchase ordinary life insurance. Other concerns included the high percentage of policyholders paying more than the face value in premiums and the high pressure sales tactics in predominantly African American communities, resulting in multiple policies in one family. These factors, including marketing strategy, tended not to be present with other types of life insurance products.

Lobbyists representing insurance companies successfully blocked the passage of the bill for three consecutive years, 1997-2000. It is relevant to note that prior to the bill filing in 1997, agreement and suggestions were sought from all affected parties including insurance lobbyists. Their suggested changes were included in the final draft and subsequently filed. Some of these parties apparently changed their position about the agreement and support of the bill. Others still supported the bill but were noticeably silent at insurance committee meetings.
After a third try at passing the bill, the Department of Insurance and Consumer Advocate discussed future strategies to protect Florida’s consumers. One such strategy was to issue subpoenas to life insurance companies requesting certain records to be delivered to the Department or to be made available for on-site visit and physical examination.

A wealth of information and documentation was reviewed during the examination of American General’s records. It was during this review that rate books were discovered reflecting different sets of unit prices for nonwhite and white policyholders. In each case the premiums were higher for nonwhite, in some cases up to 33% more, than for white policyholders. This obviously was a surprising revelation for the on-site investigate team. American General confirmed that the higher premiums were still being collected, some thirty plus years after the Civil Rights Act of 1964, which prohibited discriminatory contract pricing based on race. Because of the magnitude of the workload, (approximately 32 life insurers sold industrial life insurance or had paid up policies in Florida), the Department decided to prioritize its caseload and American General became a priority. In addition, American General held 46% of the industrial policies in Florida.

Consequently, the nature of the dispute was what if any remediation would be provided to the industrial life policyholders. The second aspect of the dispute was if remediation is appropriate, how much and in what way could it be accomplished.


**Principle Parties**

The principle parties to the dispute included the American General Insurance Company, the class action lawyers, the Florida Department of Insurance, representing policyholders in Florida. These parties were primarily responsible for negotiating an agreement to avoid the expensive costs associated with resolving disputes in court. The secondary parties included additional insurance companies with the same type of insurance in Florida. Approximately 10 companies represented 98% of the Florida market. Originally, this dispute was limited to protection for Florida policyholders but due to media coverage of the discovery of the race based premiums; the dispute gained the interest of other states. Subsequently, consumers, companies, and lawyers nationwide became parties to the dispute. The most effective way for the states to become involved was through the National Association of Insurance Commissioners. Since there is no federal oversight over state insurance departments, the NAIC coordinated the involvement of other states with the Florida negotiation team.

The American General Life and Accident Company made the first move by indicating their desire to discuss the issues and to determine if an agreement could be reached to avoid expensive court costs and a lengthy time frame for settling the case. The Department of Insurance was also eager to reach consensus to start initial talks. In addition, class action lawyers who at the time were considering filing a class action lawsuit, which they eventually did, were invited by the Department to join the negotiations. This was done primarily to ensure that consumers represented by the
Department would receive the same or additional benefits as those represented by class action lawyers. Furthermore, the class action lawyers had accumulated a wealth of information, including depositions, interviews, and investigative materials. The Consumer Advocate had conducted a public hearing and a survey of companies in addition to compiling pertinent consumer complaints, both phone and written, detailing problems associated with the marketing, service and purchase of industrial life insurance. A graphic video on the tactics by agents in the State of Arkansas was a constant reminder that regulators must take steps to assist consumers. It was determined that all three parties preferred to reach a settlement without going to court, therefore the goal of providing remediation was synonymous. The process and terms by which remediation would be extended was at the core of the settlement talks.

Case History

The development and implementation of the settlement took approximately one year, commencing in the spring of 2000. The distribution of refunds and enhancements of benefits are scheduled for completion by March 2001, even though certain options will remain available after this date. The primary purpose of the settlement talks was to outline a plan of action to extend benefits to policyholders who purchased industrial life insurance. The remediation plan would address race based premiums, premiums paid above the face value of the policy, multiple policies, cost savings associated through bank draft or mail in premium payments, lapsed policies, complaints regarding agent deception and abuse, and refunds to beneficiaries where death benefits had already been paid.
The initial talks included approximately 15-20 individuals representing the three interested parties. Lawyers dominated the make up of the negotiating team. American General hired a local law firm to assist with the negotiations and later hired a lobbyist to participate and serve as spokesperson during caucus deliberations. Two Department of Insurance actuaries participated in parts of the discussions to interpret reserves and financial data. While most of the meetings were scheduled in Tallahassee, the parties met at neutral sites and private caucus rooms were available for separate discussions. (See Illustration I - interests and issues of the parties)

As mentioned earlier, all parties were eager to craft an amenable settlement. While the respective parties did not share an advanced agenda, each group clearly had envisioned how they believed the dispute could be most amicably resolved. Therefore, the initial steps included identifying areas that were critical to the success of the talks. These included cash refunds with interest and roll back in premiums for race based premium charges, benefit enhancements for policyholders who paid two times and over the face value of the policy, and a complaint resolution procedure with a neutral party.

The negotiations were generally scheduled for two-three days at a time. Conflict did arise over the changing policy counts provided by American General. Part of the challenge faced by American General was the age of the policies, some dating back to the 1930’s and the fact that the policies were largely obtained through a purchase of two large Florida companies with data that pre-dated their use of computers.
The second controversial topic was the Department of Insurance insistence on cash reimbursements to be mailed to policyholders and that a minimum amount should be established for reimbursement regardless of the actual overage paid. The talks hit a roadblock on this point because the company had earlier insisted that cash refunds were not on the table for consideration. The Executive Vice President and General Counsel for American General discontinued the discussions and stated that he was really disappointed that things did not work out but there was no longer a reason to remain in the meeting. It is estimated that Department of Insurance had achieved 85% of its agenda at this time. Needless to say, there was grave disappointment over the possibility that the parties could not reach an agreement. There was zero communication for a few weeks between the Department of Insurance and American General. However, the class action lawyers continued their dialogue with the company. The local law firm offered to assist in bringing the parties back to the table. Obviously, the Department had serious concerns with this stalemate and that discussions were continuing with the class action lawyers, even though the Department invited them to the talks. Through phone calls and other contacts, arrangements were made to resume the talks after about eight weeks.

**The Agreement/Conditions of Settlement**

After numerous discussions, phone conversations, and review of available data, an agreement was drafted to start formalizing the discussions and identifying the details of what would become a final settlement. It was agreed that the clients represented by the class action lawyers would receive the same benefits as any other policyholder.
Conditions of the Settlement

American General Life and Accident Insurance Company

• Settlement must be nationwide (agreement will be binding on all states)

• Florida must obtain agreement from enough states representing 67% of the In-force policies within 15 days, after the signed consent order

• Florida is designated the Primary Regulator Negotiator

• Policyholders opting out of the settlement cannot exceed 2%

• Court in the jurisdiction of the State of Tennessee must approve settlement

• Contents of the settlement must remain confidential until the company makes Its first public announcement (may impact financial reserves)

• Company waives its right to an Administrative Hearing

Florida Department of Insurance

• An immediate order to stop collecting race based premiums

• Cash refunds not less than $150

• Enhanced death benefits for premiums in excess of face value

• Reduced premiums for customers who elect bank draft or direct mail

• Extension of applicable benefits to beneficiaries of deceased policyholders

• Refine system to notify policyholders of unclaimed benefits before Submitting to the state as unclaimed property

• Provide opportunity to reinstate lapsed policies

• Provide a complaint resolution process with a neutral party

Class Action Lawyers

• Agree with the terms and conditions set forth

• Policyholders represented by class action lawyers

To received the same benefits as other policyholders in the state

NOTE: Condition of the court was the scheduling of a Fairness Hearing – Anyone could File appropriate documents with the court supporting or opposing the Agreement. The judge would determine the validity of such and ruled accordingly.
At this stage of the negotiations, the National Association of Insurance Commissioners (NAIC) became a party to the talks. The contact with the states, including seeking the states approval for Florida to serve as the primary negotiator, was coordinated through the NAIC. This approval was accomplished through a telephone conference call by NAIC staff and President. Some states have few if any of these type policies in their state and were therefore not affected. A roll call was made of the states on the line and the overwhelming majority voted to have Florida continue to work on their behalf toward a settlement. Many of the states’ representatives made it clear, however, that this did not mean that they were obligating themselves to terms of the settlement or the consent order once it was formalized.

The next challenge was to finalize an agreement that could be shared with the states since a key condition of finalizing the settlement was securing the signatures on a consent order from enough states reflecting 67% of the in-force policies in the class within 15 days. The time frame agreed upon was not realistic in view of the number of contacts to be made, the differences in state insurance laws and the appropriate individual authorized to sign consent orders. In addition, a holiday and popular vacation time of the year increased the difficulty in meeting the deadline. With phone calls and direct contacts by the Department of Insurance and the urging of the President of the NAIC, the parties were able to received the signatures of enough states to effectuate the terms of the agreement.
The settlement terms were then upgraded from a Florida agreement to a nationwide settlement. Class action notice packets were mailed immediately after the court approved the plan. These mailings obviously required increased staffing at both the Department of Insurance and Rust Consulting, a firm hired by American General, to respond to the media and handle customer service calls.

**Outcomes**

The parties were pleased with the outcome of the negotiations. In reviewing the accomplishments since the initial talks began, the negotiations were handled successfully. The benefits provided to consumers included a variety of enhancements to their present coverage. The following benefits were extended to the policyholders:

- Rollback of premium payments
- Free additional insurance
- Settlement payment (beneficiaries had been paid)
- Additional discount on premium payment
- Premium certificate
- Complaint resolution access
- Consolidation of Policies
- Cash payment of $150 or more (race based)
- Consolidation of policies
- Reinstatement options

Note: See Illustration II – General Benefit Package
The process was open and yielded the results intended. While there were some disagreements and delays in talks, all parties came to an amicable solution. Due to statutory language in the industrial life statute, this method of resolving the complaint was the preferred, least costly and most beneficial to the consumers.

**Conclusions**

This negotiation team clearly showed how issues could be resolved without engaging in a lengthy court fight. The accomplishments were phenomenal given the time frame to reach an agreement with so many affected parties. However, if this same team were called upon again, a number of changes would be made to enhance the process.

First, a facilitator would have been useful in helping to steer the meeting and keep the parties focused through the periods of disagreements and particularly the walk out which caused a delay in formalizing the agreement. Secondly, the Department of Insurance consented to an almost impossible goal by agreeing to a 15-day time frame to secure the states’ agreements. The challenges of state by state insurance regulation and identifying appropriate individuals authorized to sign a 97-page agreement was daunting. Thirdly, the Department of Insurance should have reviewed and approved the public relations program for the policyholders. Despite the amount of money spent by American General to notify and inform policyholders, the Department supplemented the American General's budget, as the initial program was not designed to target the customers who owned such policies. The grassroots work was done at the states expense.

The election year atmosphere and the media also became a part of challenges confronted by the team. The NAIC proved to be an effective tool in bringing the states
together and urging their support of Florida. Occasionally, Congress threatens to take
over the regulation of insurance and the then President of the NAIC warned the states that
“now is the time to show that you can get something done as a team.” Ironically, the
NAIC itself must engage in similar dialogue to bring states together on crucial
nationwide issues. During the time of the talks Senator John McCain, who was running
for President, and Chairman of the Oversight Committee on Insurance issues, discussed
the possibility of conducting hearings on the volatile issue of race based premiums. The
Ohio Insurance Commissioner volunteered to discuss the efforts made by the states in
anticipation of a potential conflict. Congressional hearings were not scheduled.

The work of this team will be beneficial in negotiating settlements in the future
with the remaining insurance companies. It will also be critical to continue to bring to
the attention of state legislators the discriminatory provisions in the Florida Statues and
the adverse impact on their constituents. The willingness of a major insurance company,
with almost half of its industrial life business in Florida, to come forward and agree to
provide remediation to its policyholders is noteworthy and powerful. This should indeed
send a message to the remaining companies with such blocks of business that entities
with different roles can work together for the benefit of customers without expensive
legal battles that are so often associated with insurance companies.

Perhaps one of the most important points to make is that the Department of
Insurance and American General have improved their working relationship and become
very familiar with their respective roles in serving the same customer. Again, this was
truly a phenomenal accomplishment?
REFERENCES


Florida Statutes: Section 626.790, Section 627.451, Section 627.5015.


Note: The writer of this report had the unique opportunity to participate in all negotiation and settlement talks. Some occurred during conference calls with states and their respective insurance commissioners. Therefore, a significant amount of the narrative is gained from personal experience.

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