

New York Life's Fraudulent Claim that its Whole Life Policies Provide Guaranteed Annual Growth, and What the Regulators Didn't Do About It

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Executive Summary

New York Life's claim that its whole life policies provide "guaranteed annual growth" is an intentional perversion of the truth in order to induce another to part with something of value. And that, by definition, is fraud. A whole life policy does not provide "guaranteed annual growth" unless the guaranteed investment returns exceed the guaranteed insurance expenses, and for typical whole life policies there are many policy years in which such returns do not exceed such expenses. The ad, in its avoidance of policy costs, follows the age-old pervasive deceptive practices that have characterized the life insurance industry for generations. The ad is also replete with multiple additional problematic aspects, including material omissions and statements contradicting New York Life's actual policy contracts. New York Life's ad is terribly deceptive and irrefutably indefensible.

That New York Life's ad ran in several leading national magazines for nearly two years - its fraud apparently going undetected by both insurance regulators, who no doubt saw it, and by these publications' own quality control and business section editors, some of the publications are in fact known as leading financial publications - should be a clear and strong warning about these organizations' professional competence, genuine knowledge about life insurance, and commitments to enforcing either legal or ethical standards. I recognize that the prior sentence will, at least initially or at first blush, hardly endear me to these possible allies in my efforts to reform the life insurance industry. But such stark truths, I am sorry, must be unequivocally stated and recognized if the public is to grasp the extent of the problems in the life insurance marketplace – a marketplace whose three leading products, life insurance, annuities, and long term care insurance, are all riddled with profound problems of sales misconduct arising from inadequate disclosure.

New York Life's Deceptive Advertisements

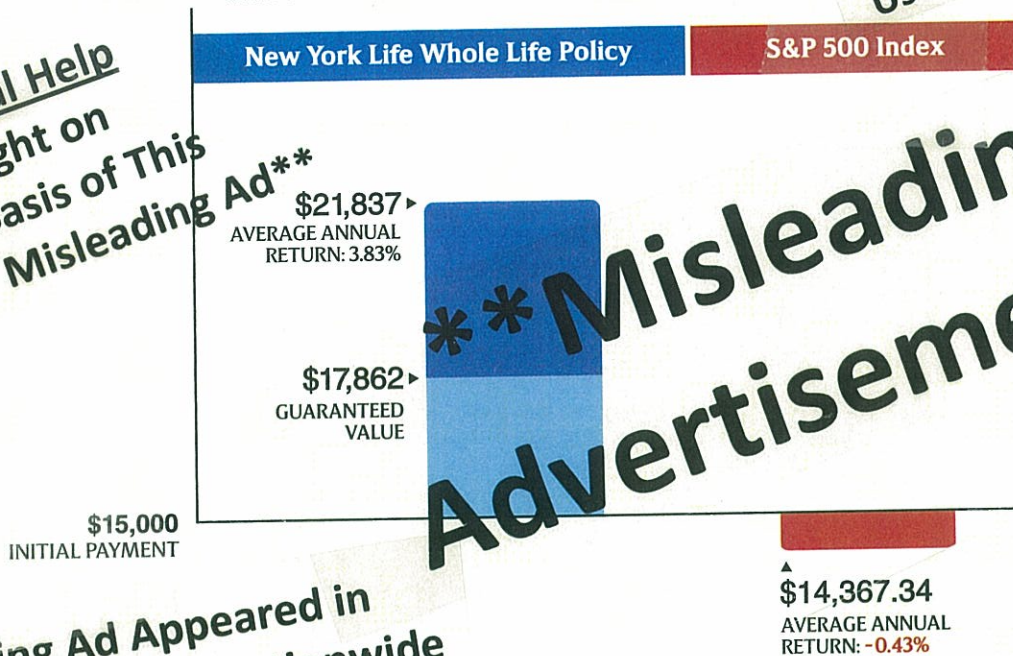
A recent New York Life advertisement in *Kiplinger's Personal Finance* (shown on the next page) compares the insurer's whole life insurance policies with investments. The ad's headline proclaims "Guaranteed growth and a lifetime of protection. No ifs, ands, or recessions." Rhetorically asking "How many of your investments increase in value year after year even during an economic downturn?" the ad answers, "The guaranteed cash value of whole life insurance from New York Life does, as it has every year..." Specifically, the ad shows a \$50,000 whole life policy issued in 2000 to a 35 year old male which guaranteed more than a \$2,800 gain by the policy's 10th

Guaranteed growth and a lifetime of protection. No ifs, ands, or recessions.

**** Beware of Agent's Continued Use of this Ad ****

Value After 10 Years
New York Life \$50,000 Whole Life Policy and the S&P 500 Index (9.30.00 – 9.30.10)

**** Seek Legal Help If You Bought on The Basis of This Misleading Ad ****



**** Misleading Advertisement ****

**** Misleading Ad Appeared in Leading Publications Nationwide**

**** Be Very Wary Of ****

How many of your investments increase in value year after year even during an economic downturn? The guaranteed cash value of whole life insurance from New York Life does, as it has every year for the past 155 years. And in each of those years, New York Life has paid dividends to our policyholders in addition to the returns we guarantee. It's a secure way to help meet your financial goals while providing the protection of life insurance and significant tax-deferred savings. And it's the most selfless gift you can give your family. For more information, talk to your New York Life agent. Or, visit www.guaranteematter.com



THE COMPANY YOU KEEP®

The chart shows the difference in accumulation after ten years' time of the cash value of the whole life product versus the index's rate of return. The whole life policy was purchased in 2000 for a 35-year-old, non-smoking male; \$648 annual premium plus \$14,352 lump sum payment for paid-up additional insurance. Return is net of annual premium obligation. Results may vary depending on age, class, and gender. The 3.83% average annual rate of return and \$21,837 cash value shown reflect the increase in the policy's total cash value. "Guaranteed growth" refers to the sum of the guaranteed cash value of both the base policy and the paid-up additional insurance minus the initial payment (\$2,862). Dividends are not guaranteed. Cash value is accessible through loans, which accrue interest, and surrenders. Both reduce the total cash value and death benefit, and unpaid loan interest could result in the policy lapsing. Cash value of a whole life insurance policy begins accumulating at the end of the first policy year. Guarantees are dependent upon the claims-paying ability of the issuer. This chart also shows the hypothetical historical performance of a \$15,000 investment, which tracks the returns of the S&P 500 index. S&P 500® is a trademark of the McGraw-Hill Companies, Inc. The S&P 500 is an unmanaged index and is widely regarded as the standard for measuring large-cap U.S. stock market performance. Returns reflect reinvestment of all income and capital gain distribution, and an investment cannot be made directly into an index. Past performance is not indicative of future results. In Oregon, the Whole Life policy form number is 208.50.27. The form number for the OPP Rider is 208-330, which is a general form number and not specific to the state of Oregon. (Exp. 1/11) © 2010 New York Life Insurance Company, 51 Madison Avenue, New York, NY 10010

anniversary, and has actually provided a 3.83% average annual return over the past 10 years. It graphically contrasts this with the S&P 500 Index's -0.43% average annual return over this period. Clearly, NY Life wants consumers to think that its whole life insurance policies provide returns that are attractive, and that its whole life policies provide guaranteed growth year after year.

I informed my friend Mike Maffei, the Chief of the Life Insurance Division of the NY State Department of Insurance, that the ad is misleading, mentioning as well that its fine print contains at least one blatant misrepresentation. New York insurance regulations – just like every other state's regulations I've ever reviewed - require that all communications with consumers "shall be truthful and not misleading in fact or in implication. The format and content of [all communication] shall be sufficiently complete and clear so that it is neither misleading nor deceptive, nor has the capacity or tendency to mislead or deceive." The test of whether such a communication or advertising is misleading is based upon the impression or impact it has upon an ordinary person, that is, one not knowledgeable about insurance.

One of Mike's assistants, a Principal Insurance Examiner with a long tenure, wrote back, "To better address your concerns, can you explain why you feel the advertisement is misleading?¹ Also, can you point out the language in the fine print that is offensive?" I replied that I'd be glad to answer such questions, but only in a public forum. My history of interacting with the Department over approximately 20 years has left me weary. Whenever I had previously informed them of bad practices in the life insurance marketplace, they had never taken any effective action. Consequently, I recently decided in an effort to try yet another new approach to hold them accountable – and to thereby possibly finally be effective in fostering reform – to only have future conversations and communications with the Department in public and witnessed by concerned others. (For some perspective about both the department's historic inaction and my own prior ineffectiveness, please see footnote below².) It seems my curt response in this instance caused some change, as three weeks later the Department's Chief Actuary, Bill Carmello, another longtime business friend, called to inform and good-naturedly 'thank' me for his new assignment: personally handling my complaint about NY Life's ad.

The natural and obvious initial questions that arise in reviewing the ad are: 1) What does guaranteed annual growth mean to you, or to an ordinary consumer, and do NY Life's whole life policies actually provide such every year? 2) What rate of return do you think a NY Life whole life policy bought in 2000 has provided over the past 10 years? 3) Are there aspects of the ad which are misleading, untruthful, or have a tendency or capacity to mislead?

To begin to answer the last question first, please note that the very policy NY Life chose to feature, what they label as a \$50,000 whole life policy on a 35 year old male³, is extraordinarily exceptional because its first year premium is \$15,000! (A whopping 30% of its stated death

benefit!) Probably not even one half of 1% of NY Life's whole life policies are funded with such an enormous premium, that's how atypical and unusual the featured policy is. Moreover, such an enormous premium has an extraordinary impact upon a policy's rate of return – a fact about which ordinary consumers are unaware, and to which the ad's fine print incredibly neglects to even allude. The ad's relevant text merely states, "Results may vary by age, [health] class, and gender," neglecting this most obvious factor, the impact upon the advertised "Results" of the featured policy's extraordinarily large premium. This material omission provides a classic example of Peter Druckers' legendary admonition that often the most important thing to understand in communication is what is not being stated.

The indisputable facts, however, are that a standard (not one supped-up with a \$15,000 premium) NY Life \$50,000 whole life policy on a 35 year-old male has a \$648 annual premium and provides absolutely no guaranteed growth or gain after 10 years. Its guaranteed cash-value after 10 years is only \$5039⁴, or as NY Life surely knows and, using their policy assessment or performance measurement methodology, could have shown, means a -4.6% average annual return. Clearly, NY Life cherry-picked the policy whose performance they chose to feature. Such is like if GM touted the resale value of a Cadillac by using a car driven in a summer blockbuster film by Sharon Stone or Mila Kunis in a scene culminating with the windows getting steamed-up and subsequently sold at a charity auction for 125% of its original sticker price. With respect to financial product advertising, cherry-picking and material omissions are practically by definition inherently misleading, but the case against NY Life's ad is even stronger, much stronger.

After all, the ad specifically suggests that – unlike many investments recently – a NY Life whole life policy provides guaranteed annual growth. That's simply not true. Let's recall when discussing investments, since NY Life introduced the comparison⁵, what guaranteed annual growth means to an ordinary person. I think all would agree that it means that if one had \$X on, say, January 1, 2004, that he would have at least \$X+1 on January 1, 2005. NY Life's standard whole life policy's guaranteed cash value at the end of year 4 is \$880 and at year 5 is \$1,480. That apparent \$600 increase, however, is predicated upon the annual premium of \$648 having been paid from the insured's pocket. In other words, had the policyholder chosen to fund the premium internally – as was similarly done in the policy featured in the advertisement – there would not only have been no guaranteed growth in the policy's value, there would have actually been an approximate 10% decline, as the policy's net value at the end of year 5 would have been approximately \$795.⁶ The simple, hardly-difficult-to-comprehend truth is that for whole life policies there are many years where guaranteed investment returns do not exceed guaranteed costs, and hence do not provide any guaranteed annual growth. If life insurers can advertise that a whole life policy provides 'guaranteed annual growth every year' when such purported growth comes from dollars taken from the policyholder's own pocket, then the meaning of such words has been shredded.