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

By: R. Brian Fechtel, CFA, Agent & Founder, BreadwinnersInsurance.com © 2011

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

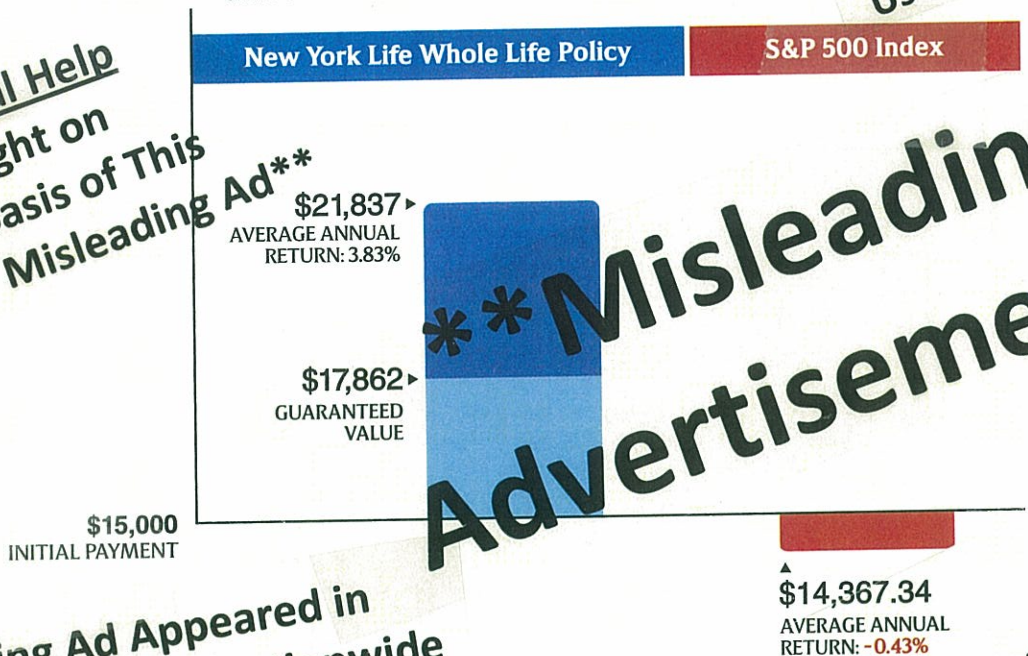
A recent New York Life advertisement in *Kiplinger's Personal Finance* (shown on the next page) compares the insurer's whole life insurance policies with investments. The ad's headline proclaims "Guaranteed growth and a lifetime of protection. No ifs, ands, or recessions." Rhetorically asking "How many 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

Misleading Advertisement ** See Article by Breadwinners' Insurance ** Misleading Ad

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.guaranteesmatter.com

NEW YORK LIFE
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

Text on Angle and/or With Asterisks Added by Breadwinners' Insurance

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 below[2].) 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 male[3], 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 $5039[4], 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 comparison[5], 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.

Besides such problems with the ad, knowledgeable life insurance professionals no doubt readily recognize NY Life's cherry-picked, aggressively funded policy as a Modified Endowment Contact (MEC). Somehow, though, the ad fails to inform consumers of this technical little detail, about which few would know. This fact, however, is enormously significant because MECs do not enjoy all of the tax privileges that traditional cash-value policies have. While the ad's fine print states that "Cash value is accessible through loans, which accrue interest, and surrenders," it fails to mention the inherently necessary fact when discussing MECs that loans and surrenders from MECs are taxable, and in fact also subject to a 10% surtax penalty if received before age 59 ½ . This omission of pertinent information about MECs, especially when the product being featured is a MEC, is akin to advertising a prescription drug with potential severe side-effects without mentioning such dangers.

The fine print in the ad also states that "Cash value of a whole life insurance policy begins accumulating at the end of the first policy year." This is certainly not true for the featured policy.[7] It is also not for NY Life's **standard whole life policy for a 35 year old male** as there is no cash-value guaranteed at the end of even its second year. So this promise in the advertisement, one that is not supported by their policy's contractual guarantees, constitutes yet another misrepresentation. But in some ways what is even more troubling about this particular quoted statement than these darn, troublesome facts that highlight its falsity is that this unqualified and hardly truthful statement appears as a non-sequitur, that is, absent any contextual precursor in the ad's fine print. This last point could initially seem confusing or trivial, but it can only appear such to those who have never been faced with the challenge of explaining why a whole life policy has zero or a very low cash value in its first year. This text – that 'cash value begins accumulating at...' - is a prop to facilitate selling. Agents can cite such printed words to dismiss a consumer's concerns about a cash value policy's non-existent or low early years' cash values. After all, what ordinary consumer can successfully argue with such a printed statement? Those who know industry history can well recall NY Life's former chairman, Sy 'The Sly' Sternberg's most memorable quote that one can't tell the consumer about the policy's real costs because you won't get the sale.[8] For an agent to have home office prepared text that essentially asserts that **there cannot be cash value during** the policy's first year is a salesman's godsend. Welcome again to the life insurance industry, an industry that to date is built on financial muggings, and managed and regulated by the morally bankrupt and/or the criminally incompetent.

Finally, please also note that a 35 year-old male buyer of NY Life's standard $50,000 whole life policy, who for 20 years pays a $648 annual premium (total outlay $12,960), receives a guaranteed cash value of $12,269. Just to be unmistakably clear, he has not – according exactly to how NY Life calculates such - been guaranteed nor received any guaranteed growth, as a -0.52% average annual return does not constitute guaranteed growth to any individuals I know.

Moreover, unless NY Life can show that its average annual lapse rate on whole life policies is less than 3.5% - which I do not think they can - then less than half of their whole life policies are kept 20 years. Consequently, if the above standard whole life policy for 35 year-old males is typical of the insurer's policies across all ages, it is impossible to see how NY Life could even try to contend that their ad's proclamations of "Guaranteed Growth" and "Increases Every Year" were merely generalizations when the overwhelming experience of more than half of their whole life policyholders cannot possibly support such a statement.

The above facts would seem to compel the question: What was NY Life's management thinking? There is actually a quite simple, two-part explanation to, what some might otherwise perceive as, this mysterious example of management misconduct. First, **how a life insurer can claim to provide guaranteed growth each and every year and yet its policyholders are not guaranteed a gain after 10, or even 20, years: the company does so by ignoring the product's expenses.** And, second, there is nothing mysterious about NY Life's obvious avoidance of policy expenses; the life insurance industry has habitually been averse to disclosing product costs, its opposition is an epic story. Managerial misconduct to maintain and promote such flawed practices is legendary, and has never been constrained by ethical obligations. Documentation of such is there for anyone and all to read. For instance, ninety-six years ago, P. B. Armstrong wrote a book about the life insurance industry entitled, "A License to Steal." P. B. Armstrong was not just some uneducated thinker who really didn't understand financial matters; P. B. Armstrong was Jack Bogle's, the legendary founder of Vanguard, great grandfather. Professor Joseph Belth, who has written a monthly newsletter about such for the past thirty-five years, has provided even more extensive documentation of the industry's frauds.[9]

Until appropriate disclosure of whole life and other cash value policies comes to the life insurance marketplace, the life insurance industry and its agents will not only continue their fraudulent practices, they will never fulfill their mission or achieve their potential. But if costs/expenses can be ignored in making advertising claims about financial products, then every product might well have, or be so constructed or bifurcated that its marketers can proclaim it provides: Guaranteed Annual Growth. And then won't that usher in an era when everyone's and all of our nation's financial challenges can be so readily solved? All anyone and everyone will have to do is keep buying as fast as possible these amazing policies providing guaranteed growth every year! Bravo, New York Life, Bravo!

An Addendum To Summarize and To Briefly Explore a Few Important Related Subjects

Explanations of inconsistencies or prevarications can sometimes seem overly technical or confusing in their detailed analysis. I trust and certainly hope that has not been your experience with the above. The NY Life ad is not only inherently misleading, it is replete with false statements and material omissions. Moreover, the actual featured policy, legal literalists will be pleased to note, with its aggressive extra $14,352 additional lump sum premium, did not even provide guaranteed growth in its first two years. Again, 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 guaranteed annual growth each and every year.

For many, the story can end with the prior paragraph. For some others, though, there could be other aspects of this story worthy of further study. For instance, what might this ad indicate about the work and efforts of insurance regulators, financial journalists, consumer advocates, and insurance professors with respect to their vigilance of the life insurance marketplace. Furthermore, that such a blatantly misleading ad was produced by a large and heretofore positively-regarded life insurer, ought to cause all to wonder just how pervasive and rampant fraud is in the life insurance marketplace. It is rampant beyond your wildest imagination, but that argument can't be completely proven in a paragraph. For the moment, let it therefore suffice to note: While such allegations of rampant pervasive financial fraud can also often times be viewed askance or greeted by some with incredulity, especially when one believes that an industry regulated by 50 states and covered by presumably knowledgeable financial journalists could not possibly be so dysfunctional, a marketplace without appropriate disclosure is a marketplace primed for fraud. And, to this day, life insurance consumers have not been appropriately informed. Consequently, let's just very briefly review the vigilance of those purportedly serving the public interest.

Regarding the regulators, please note that the NY Life ad was undoubtedly seen by countless state insurance regulators. It was actually run many times and in several leading national magazines over the course of nearly two years. While you read above the quote from a NY regulator who needed to ask what was wrong with this ad, she unfortunately is hardly alone in her lack of knowledge; apparently, no other regulator recognized the ad's problems and sought to keep NY Life from running it. Sadly, what Harry Markopolos, the ignored Madoff whistleblower, has shown in his book, *No One Would Listen*, regarding the largely blind and incompetent SEC, is true in spades of insurance regulators.

This is not to say that all state insurance regulators are totally incomplete and blind. My friend Bill Carmello, NY State's Chief Life Actuary, who was mentioned above called me when assigned my complaint, actually conveyed NY State's regulatory response one week after his call, writing: "I reviewed the ad and had discussions with the insurer. My understanding is they are no longer running this ad and do not intend to run it again. We do not plan to take any regulatory action on the matter." This is actually the first time in 20 years that the New York State Department of Insurance has taken any appropriate action on my reports of marketplace misconduct and fraud. Indeed, although I believe Bill is a good man, the feeble and sanction-less NY State Department of Insurance's response is typical of and, in fact, further proof of the incredibly diseased nature of our nation's insurance regulatory system. White collar financial crime, although arguably the most destructive crime we face, goes virtually unpunished in America.

You've also seen above how a leading financial journalism organization – one that presumably understands, would recognize, and would refuse to publish an inherently misleading advertisement on a financial product – ran the misleading ad with its material falsities and omissions. The ad's problems were hardly esoteric or sophisticatedly subtle. Anyone who claims, as financial journalists do, to serve the public and to be at least somewhat knowledgeable about insurance should have discerned the problems with NY Life's ad. Although by definition serving as the fourth branch of government, financial journalists have never appropriately covered the life insurance industry. The general life insurance marketplace has always been and currently remains awash with absolutely pervasive and mind-boggling problems and frauds, and yet there have been no Pulitzer Prize winning series of articles on the industry.[10] Good coverage by financial journalist could have long ago solved the fundamental problems in the life insurance marketplace. These problems largely arise from inadequate and misleading information, and journalists, after all, are supposed to be in the information, not the corporate public relations, business.[11]

Finally, and briefly, note the story of University of GA Professor Brenda Cude. Professor Cude has served for years as one of the NAIC's Funded Consumer Representatives and also on the Board of Directors of the Insurance Marketing Standards Association (IMSA), an organization established by the life insurance industry following its sales misconduct scandals of the 1980s and 1990s. She is also an active member of the American Council on Consumer Interests, an organization with close ties to both the Consumer Federation of America and Consumers Union. Yet when the complete financial services history of the 20th century is written, IMSA will no doubt be irrefutably proven to have been an unmitigated fraud – failing to uphold its core principles and allowing insurers to claim membership without sufficient mandatory auditing and controls (see my August 2010 letter to IMSA's President and note that two months later IMSA announced that they were shutting down.) Previously, in 2008, I had testified to the NY State Department of Insurance about IMSA's defective and fraudulent practice of awarding "Good Housekeeping" seals of approval to insurers with illegal practices. While Professor Cude in her role as an NAIC Funded Consumer Representative can certainly not be held responsible for the terribly diseased NAIC, it would seem that one day she ought to account for her involvement as a Director of the fraudulent IMSA enterprise. Similarly, others who were involved with IMSA, such as one of AARP's Executives, and others who knew or should have known about Professor Cude's misguided involvement with

IMSA, could have and should have spoken up because as has famously been noted, "The Road to Auschwitz was paved with indifference."

All of which just demonstrates yet again the wisdom in the quality control expert, Professor Deming's advice that problems are fundamentally systemic and that to solve them you need to employ people who actually understand such problems, empower them with authority, encourage them in the relentless pursuit of improvement, and hold them accountable. In contrast, those in charge of the life insurance distribution system have never understood its problems, have merely been relentless in the exploitation of consumers, and have never been held accountable. Fortunately, the most essential step in fixing the fraud in the life insurance marketplace is providing appropriate policy disclosure, and now you know where you can obtain such.

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[1] Those knowledgeable about the life insurance industry's history may recognize that NY Life's ad is a modern day version of the industry's age-old misrepresentation that "Whole Life Insurance Provides an Inevitable Gain." In the past, proponents of whole life insurance always tried to substantiate this claim by showing that the death benefit exceeded the simple sum of the annual premiums. But like so many life insurance sales frauds, this misrepresentation violates the necessity that credible financial analysis and advice incorporate the implications of the time value of money. For anyone who cares about the financial literacy of Americans, NY Life's modern day version of the age-old "Inevitable Gain" is just an updated approach to prey upon consumer ignorance. Indeed, it is very similar to MetLife's marketing of life insurance during the 1980s and 90s as personal pensions without ever inform their clients that they were actually buying life insurance, which obviously entails not just investment returns as the "pension" salesmen described, but also insurance expenses. As I recall from when I was trained as an IMSA auditor (a story for another time),"Inevitable Gain" was labeled an explicitly prohibited presentation. It should not be at all surprising that NY Life, which dropped out of IMSA, has in essence resumed an IMSA prohibited presentation, or that the Insurance Department's Principal Insurance Examiner did not readily recognize this modern day "Son of Inevitable Gain" presentation; these organizations are not built according to Professor Deming's quality control specifications.

[2] Regarding my lack of accomplishment with my own reform activities, I cite an email Professor Belth, sent me last year. "Brian -- Have you read the 2010 book entitled *NO ONE WOULD LISTEN*, by Harry Markopolos [the Madoff whistleblower repeatedly ignored by the SEC and others]? If not, I suggest you do so. Happy Memorial Day! Joe." I informed Joe promptly that I had also very much enjoyed Markopolos's book. While Joe's email is testimony to our battle to be heard, what is personally most special about Joe's email is that it memorializes our many hearty conversations where we would share stories, Joe's dating back to the 1960s, of our own experiences with absolutely incompetent insurance regulatory organizations and financial journalists who have never demonstrated the capacity to put the spotlight on the life insurance industry's fundamentally-abusive practices.

In defense of the New York Department's countless instances of inaction over the nearly 20 years I have provided them with documentation of sales misconduct, please note that virtually no other parties I have contacted (such as other state insurance departments, financial journalists, or consumer organizations) regarding the pervasive problems in the life insurance industry have ever taken appropriate action. The President of the NAIC and the New York State Attorney General both ignored documentation of four clear fraudulent misrepresentations described in my January 2011 letter that is posted on www.BreadwinnersInsurance.com.

[3] For the record, the policy in the advertisement did NOT have a $50,000 death benefit. It was actually significantly larger because of the policy's specially-selected extra large premium. Talk about a gang of executive nincompoops, NY Life can't even shoot straight in describing the product. As anyone knowledgeable about life insurance could tell you, the ad's featured whole life policy's $14,352 lump sum additional premium had to significantly increase this whole life policy's initial death benefit; few, if any, ordinary consumers would know this fact.

[4] The **standard** NY Life whole life policy's guaranteed cash surrender values and simple cumulative premiums for the policy's first 10 years and selected years thereafter are shown below. Just for clarity sake, notice that the "guaranteed growth after 20 years is a NEGATIVE $691. Please note that I am well aware that such simplistic analysis ignores the value of the death benefit protection over the 20 years. That is almost precisely my point because it was NY Life whose one-dimensional claims about the product distort the product and are therefore misleading. For 20 years I have advocated that life insurers properly market their products by properly explaining both of policies' fundamental components: costs as well as investment returns.

Policy Years	1	2	3	4	5	6	7	8	9	10	20	30
Guaranteed Cash Value End of Policy Year	-	-	346	880	1,480	2,157	2,852	3,564	4,294	5,039	12,269	20,920
Simple Cumulative Premiums	648	1,296	1,944	2,592	3,240	3,888	4,536	5,184	5,832	6,480	12,960	19,440

[5] Following the life insurance industry's sales practices scandals of the 1980s and 1990s, many insurers for years avoided presenting cash-value life insurance as an investment because some court had declared that life insurance was not an investment. The issue before the court concerned the marketing to nurses of whole life insurance policies as supplemental personal pensions where the agent and insurer failed to inform the consumer that they were actually buying a life insurance policy. To fail to inform a consumer that they are buying life insurance when they are buying life insurance as an investment is unquestionably wrong. But the court erred in asserting that life insurance is not an investment. Insurers, wishing the sales practices scandals were over, accepted the court's proclamations outside of its expertise, and never challenged or sought correction of the fact that a life insurance policy can be an investment. For anyone interested in history, this reversion to prior practices that became discredited is most interesting.

[6] This can be a somewhat mathematical discussion, but funding the 5th year's premium with a policy loan with NY Life's 5.63% loan rate would result in a year-end policy debt of (1+0.0563) * 648 = 684 which subtracted from the guaranteed $1480 results in a 5th year net cash-value of $795, an $85 decrease during the 5th year. While it is true that a cash-value policy is built upon a guaranteed minimum rate of return, it is also built upon guaranteed insurance-related costs. And to talk about a policy, the total policy itself, providing guaranteed annual growth is, in my judgment, intrinsically misleading because it is omitting the policy's inherent costs components. If financial products can be advertised where one element is ignored so that another element can be misleadingly touted, then we're headed to an economy where charlatans and fraudsters will live like kings. Again, to argue that an "investment" has guaranteed growth because it can take any needed funds from your pocket to offset any losses or expenses could be to lead to ridiculous redrafting of all financial product prospectuses so that they can all tout "guaranteed growth."

[7] The ad's shown policy's cash value increases before the end of the first year because if the policy had been surrendered in the middle of the first year, there would have been cash value. So obviously, there is some accumulation of cash value before the end of the first year. The ad's statement "Cash value of a whole life policy begins accumulating at the end of the first year," is a blatant misrepresentation when this ad labels the NY Life policy as "New York Life Whole Life Policy" and "New York Life $50,000 Whole Life Policy." Not only is the fine print text untrue, it is also overly broad because such a generalization, even if it were true for all of New York Life's own products, is not true for all other insurer's whole life products, and therefore had to be qualified, or else it is in violation of insurance laws prohibiting misrepresentations and making inaccurate statements regarding competitors' products.

[8] NY Life's Chairman Sy 'The Sly' Sternberg said, "The life sale is a very difficult sale. People have to talk about their mortality, about how much money they really need. It's very complicated. If right in the middle of this discussion, you throw in 'And by the way, there's a 55% commission [not counting bonuses, expense allowances, and compensation for other field management and renewals]' You won't get the sale….." NY Life, which in its advertising proclaims that it has financial strength, integrity, and humanity, refers to itself as: "The Company You Keep." Having now read its former Chairman's quote, you may better understand why an agent I know refers to NY Life instead as "The Company That Gives You the Creeps." When an insurer's management can be so blatantly disrespectful of or blithely indifferent to the prerequisites of fairness and economic competition, its policyholders should really shudder.

[9] Unbeknownst to me, Professor Belth, upon noticing earlier copies of the NY Life ad run in late 2009, had actually corresponded with NY Life in early 2010, writing an article about such in his award-winning newsletter, *The Insurance Forum*, in March 2010. While I consider Joe a good friend, and have learned much from him, Joe's professorial manner sometimes results in pedantic presentations and inarticulate arguments. Joe's article, for instance, describes the mathematics of the IRR calculations, was entitled "A New York Life Advertisement Incorporating a Questionable Comparison," and ends with a 250 word quote from NY Life in response to Joe's concluding statement "Because the advertisement raises a number of important questions, I asked [NY Life] to discuss the company's objective in running the advertisement." NY Life's concluding final quote informed Joe's readers, "The feedback on the ad from our agents in the field has been quite positive, including that the ad is prompting calls from consumers for meetings…." Clearly, Joe's letters to NY Life and his article failed to persuade anyone to discontinue the ad as the ad I observed in *Kiplinger's* ran nearly a year after Joe's article. As a piece of advocacy, my friend Joe's article was seriously deficient and flawed; it never made the necessary point that a product touted as an investment - as the ad does for NY Life's whole life policy – cannot claim to provide guaranteed annual growth every year when guaranteed expenses often annually exceed guaranteed investment returns. It's just that simple. But it's got to be stated. I include these footnoted thoughts, not to be critical, but to provide insight regarding how problems can seemingly endlessly persist. Some problems persist, not because they are unsolvable, but because of many other possible reasons; such as, those fighting them are ineffective, those responsible for solving them are irresponsibly unresponsive, and a variety of other reasons. My point again is not to be critical, it is to help everyone learn from these incidents; in particular, those who count on others to advocate on the public's behalf, need to assess such advocates' actions, methods, and complete efforts.

[10] The only thing close to such coverage was a series of articles in *The New York Times* on the abuse of military personnel by life insurers and their agents during the Iraq War. Although the problems identified in the article were similar to the problems in the general life insurance marketplace, no effort was made to ever broaden the story. The story of abusive sales practices apparently only became topical because of the Iraq War; the life insurer's abuse of military service personnel was not all that different from the industry's age-old abuse of the general public, but no one

reporting about the abuse chose to pursue such, nor did Congress which investigated these insurers abusive practices ever endeavor to broaden its inquiry. Bravo, Congress, Bravo.

[11] Any and all financial journalists and/or publishers who have a different opinion regarding their, 'the fourth branch of government's', coverage during the past 40 years are invited to submit articles which they think effectively reported upon the fundamental problems in the life insurance marketplaces. I would be happy to assemble a panel of industry authorities to provide constructive feedback upon such coverage. The sad truths are: 1) as many financial journalists who I count as friends have admitted, their understanding of the life insurance industry and its products is seriously inadequate and 2) that the fundamental problems in the industry and its marketplace have persisted because of the media's toleration of the industry's inadequate disclosure practices, which effective coverage of such could have solved this pervasive and terribly costly national problem decades ago. Whether this toleration was wittingly or unwittingly is irrelevant to my point. Again, I make these observations not to be mean, but to speak the truth as I see it, and to state it plainly and without sugar-coating because to do otherwise would be to diminish its potential impact. And, America, facing the humungous financial problems it faces these days, needs its financial journalists to perform, to really perform. The political world and its coverage may be a circus; the financial world can't afford such.