VI-RADICAL

One viatical settlement company's alleged wrongdoing has the industry calling for reform

by Gip Plaster

After charging Justus Viatical Group with illegally obtaining and viaticating insurance polices and operating in the state without a license, Florida's insurance commissioner is attempting to toughen the state's laws regulating viatical settlement companies.

Terminally ill patients with life insurance policies can choose to sell them for a portion of their face values, often between 50 percent and 80 percent. The companies that handle the transactions are called viatical settlement companies and the process is called viatication.

Investors buy an interest in the policy from the settlement company and are designated its beneficiary. When the patient dies, the investors recover their investment plus the difference between the invested amount and the face value of the policy, minus a prearranged percentage that is retained by the settlement company.

If the company is reputable and the transaction is handled correctly, the principle cannot be lost. The amount of the return, however, is dependent upon the accuracy of the life expectancy prediction.

Half of U.S. states, including Florida, currently regulate the industry in some way and others are considering measures.

Pompano Beach, Fla.-based Justus Viatical Group was charged in January with getting insurance companies to issue life insurance policies to terminally ill patients and then buying the policies itself for resale to investors. The company is also accused of buying new policies from terminally ill patients who had already viaticated their policies.

According to the insurance commissioner's report, since the company had previously viaticated other policies for the clients, the company should have known that the client was not eligible to legally obtain more salable life insurance.

Justus is also charged with operating in the state without a license. Licenses are required by the state's existing legislation.

Life insurance applications ask medical questions, often including whether the applicant has AIDS or other terminal illnesses. Justus officials are accused of helping patients acquire life insurance when they knew the client was terminally ill and of viaticating policies they knew were illegally obtained. The company has been ordered to cease operation in Florida pending a hearing.

The company's telephone number in Florida is answered by a mortgage company that claims to be unrelated to Justus but located near its former office.

The numbers for Justus' offices in other states were also no longer operational. An e-mail inquiry to the company went unanswered.

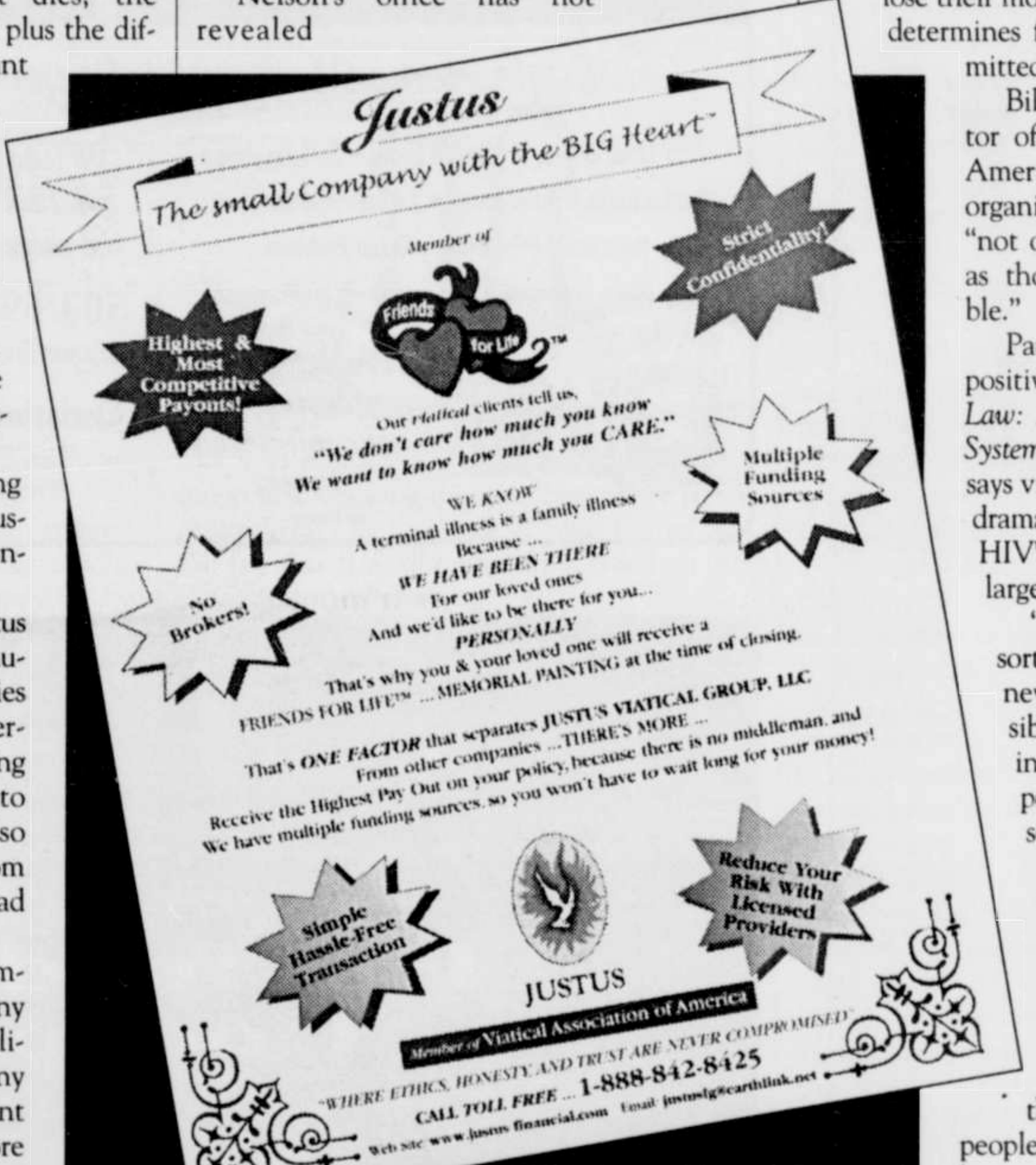
"The danger to the public is that insurance companies may not be able to meet their financial obligations, and as a result, rates will have to rise," says Bill Nelson, Florida's treasurer and insurance commissioner. "This kind of activity could cause serious losses and even threaten the solvency of an insurer."

Nelson wants to strengthen Florida's existing viatical law, which was passed two years ago to require licensing of companies and to give the state the authority to run criminal background checks on company officers.

The proposed changes would require that certification of life expectancy be done only by a "qualified professional," and that companies provide fuller disclosure in advertising. The proposed legislation would also prevent insurance agents whose licenses have been revoked from working for a viatical company.

"We are witnessing a troublesome trend in what is a relatively new but growing viatical industry," Nelson says. "That's why I think we need legislation to protect consumers now."

Nelson's office has not revealed whether the illegal activity involved clients with HIV and AIDS. Because the clients are named in the report, divulging their medical conditions would violate the law, according to Dan McLaughlin, the press secretary for the insurance commission.



This Justus Viatical Group ad appeared in the November 1998 *A&U* magazine

W. Scott Page—the owner of a viatical settlement company in Fort Lauderdale, Fla., and the president of the National Viatical Association, one of two trade associations that represent the industry—says Justus dealt primarily with people with AIDS. He says he had previously notified the insurance commission that Justus was operating in the state without a license.

"It's about time the department did something," Page says. "They were aware of the situation with Justus over a year ago."

The viatical industry is often seen as a humanitarian venture, and some see the deception of which Justus is accused as a sort of Robin Hood strategy to take money from the pockets of the insurance industry and put it in the hands of terminally ill people who need it for final expenses or to fulfill lifelong dreams. Page disagrees.

The practice, he says, jeopardizes the insurance industry. He has little sympathy for the clients who lie on applications, even if they are encouraged to do so by a viatical company.

"They know they're committing fraud," he says, noting that some patients may feel they will die before the deception is discovered.

Legislation should be passed, he adds, to prevent viatical companies from purchasing policies that they know have been obtained by lying and to prevent policies from being viaticated during the two-year contestability period immediately after they are purchased.

While some companies now claim to specialize in viaticating contestable policies, the buyers who invest in these policies could lose their money if the insurance company determines fraud or deception was committed and refuses to pay the claim.

Bill Kelley, the executive director of the Viatical Association of America, the industry's other trade organization, says his association is "not opposed to regulation as long as those regulations are responsible."

Paul Crockett, an openly HIV-positive lawyer and author of *HIV Law: A Survival Guide to the Legal System for People Living with HIV*, says viatical companies have had "a dramatic impact on people with HIV" and that the industry is largely misunderstood.

"The whole industry was a sort of radical concept because never before had it been permissible for strangers to hold an insurable interest in another person's death, for obvious reasons," he says.

Crockett says he tends to be somewhat sympathetic toward the clients because they may be acting out of desperation.

"You can't justify fraud, but neither can you ignore the intense financial pressure people with HIV can labor under," he says.

Bryan Freeman, owner of the decade-old Atlanta-based viatical settlement company Benefits America and a board member of VAA, says terminally ill people do not have to lie to get life insurance that can then be viaticated.

"I would recommend that people buy guaranteed issue life insurance," he says.

Such policies are more expensive and the full death benefit is graded in over two or three years. The beneficiary would only receive a refund of the premiums paid plus interest if death occurs within the first two or three years after the policy is issued. After that time, the full face value would be paid upon death.

Freeman says he has worked closely with the National Association of Insurance Commissioners to create model legislation that commissioners can recommend to their legislatures. The association is now in the process of creating a revised model law. A draft of the proposed law is available at the organization's Internet site at www.naic.org.

Half of states have laws to protect people who sell policies, but most do not protect investors.