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Lawsuit Winners Assured Payments Will Continue

By **JOSEPH B. TREASTER**

As far as Eric Rabinowitz knew, there was no problem with the checks from an insurance company that he had been receiving since he was a teenager, for damage to his right eye. His limited vision prevented him from holding a regular job, and he depended on the insurance money to pay for his apartment and other expenses.

But a state official discovered in May that the regular payments to Mr. Rabinowitz, 39, and about 11,000 others — mostly New Yorkers — were in danger of being disrupted because of a chronic shortfall in a state fund created 15 years ago to cover the obligations of a failed insurance company.

The state official, Mark Peters, began contacting other insurance companies, including MetLife and State Farm, and persuaded them to ante up more than \$600 million. Gov. [Eliot Spitzer](#) said yesterday that the payments would keep flowing. These people “will receive their payments,” Mr. Spitzer said.

Mr. Peters, the deputy superintendent of an obscure agency known as the New York Liquidation Bureau, discovered the shortfall in a routine review of the agency’s records a month after he took office. The insurance fund needed \$2.1 billion to meet its obligations. But Mr. Peters found it had only \$1.4 billion. “It was a significant deficit, and it was only going to get worse,” Mr. Peters said in an interview.

Standing at the governor’s side yesterday at his Midtown offices, Mr. Rabinowitz and two others who rely on regular insurance checks said they learned that their money had been in jeopardy only when state officials phoned a few days ago to say the problem had been fixed.

Years ago, when his family settled with their doctor’s insurance company after an eye operation they said was botched, Mr. Rabinowitz said, “we had confidence that the state would back us up.”

“It’s refreshing,” he added, “to find out that the government really can come through.”

The insurance product used to pay Mr. Rabinowitz and the others is called an annuity. In settling claims for injuries from such things as

consumer products, car accidents and medical mistakes, defendants bought annuities from a national insurance company, Executive Life Insurance Company of New York, that promised to provide regular payments, often for life but sometimes for 25 years or so. Some annuities were also purchased to pay pension benefits.

Executive Life, and its parent, Executive Life Insurance of California, collapsed in 1991 and New York created a fund to meet the obligations of the annuities. It was that fund that New York officials discovered was in trouble.

Not immediately, but sometime in the years to come, the fund would not be able to provide the several thousand dollars a month that Mr. Rabinowitz has been receiving since his youth.

Others, including Cheryl Danto-Scanlan, 35, of Belle Harbor, Queens, would see their payments shrivel. Mrs. Danto-Scanlan was also at the governor's office yesterday. She was 8 years old and roller-skating across a street in Brooklyn when a speeding car struck her, nearly killing her. Now she is married with a child and working as a sign-language interpreter.

Philip Friedle's right leg was crushed in a conveyor belt when he was 13. Mr. Friedle, 39, of Mount Hope, N.Y., in Orange County, works for the state correction department. The money, he said, helped him pay medical bills and "buy a nice home in a nice neighborhood."

To cover the failed insurers' annuities, New York officials took the company's remaining assets and invested them in stocks and bonds. They expected the investments to yield about 10 percent a year; they earned 8 percent.

About half of the recipients, or about 5,500 people, were victims of accidents. They accounted for about 90 percent of the payments, Mr. Peters said. The remainder of the money has been going to pensions for retirees.

When Mr. Peters, who reports to the superintendent of insurance, went to the insurance companies to fill the gap that developed in the Executive Life fund, their first reaction was not to volunteer the money. "Everyone's initial reaction was essentially one of surprise," Mr. Peters said, "sort of, 'Why me?'"

The answer, as the insurers knew, was that New York and other states require the industry to make good on losses of insurance companies that fail.

[Frank Keating](#), the chief executive of the American Council of Life Insurers, said insurers were committed to seeing that the "steady streams of lifetime income" were delivered.

The insurers could have dodged the payments, industry experts said. But some of them would have wound up in court. Moreover, Mr.

Spitzer said that failing to make good on the annuities, which are a mainstay of the life insurance business, could have threatened “the long-term viability of the insurance companies to sell these things.”

For the insurance companies, Mr. Spitzer said, “it was not only the right thing to do, it was the wise thing to do.”

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