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STRESS TEST YOUR CLIENTS' LIFE INSURANCE TO HELP THEM AVOID THE ATTRACTIVE IMPOSSIBILITY

By Richard M. Weber, CLU and Gordon A. Schaller, Esq.***

I. INTRODUCTION

Buying life insurance can present mixed emotions for clients faced with the daunting idea of mortality, but life insurance can be an effective estate planning tool to provide liquidity for bequests to family and charities, fund business succession, and create significant tax advantages. Properly arranged, life insurance can minimize estate tax, protect assets from creditors, and be a cost effective tool for clients to maximize investment return. Most people who purchase life insurance rely on their financial advisors to design a product to meet their objectives with a high degree of certainty. Many clients who are thinking about life insurance often start with their estate planner. Estate planners should have fundamental knowledge of the potential benefits, risks, tax advantages, and savings life insurance policies offer in order to properly counsel a client. Long term policies also require regular review and adjustments to make sure the policy continues to meet the client's objectives and risk tolerance.

Amidst an extraordinary range of products now available,[1] life insurance must meet a client's present circumstances while at the same time remain flexible enough to handle the inevitable life changes, investment vagaries, and the occasional policy shift in the Internal Revenue Code.

II. HISTORY OF LIFE INSURANCE PRODUCT DESIGN

When our parents bought life insurance, it was generally to create funds to provide income in the event the "bread winner" died prematurely. The policy choices were relatively simple: term insurance or whole life insurance. Term insurance had a premium that was "cheap" at the time of purchase, but got progressively more expensive as the "odds of dying" increased each year. Whole life insurance used a level and guaranteed premium that was "expensive" at the outset, but designed to last a lifetime without becoming unaffordable when you were likely to need it. Trillions of dollars of both types of insurance were bought - and paid death benefits - in the 20th century.

However, the life insurance industry was both blessed and cursed by technology that has generally transformed all of the financial services segments into a financial colossus with far too many product choices and far too little information about their benefits and risks. In the late 1970s, one of the first new life insurance products emerged, so-called flexible or indeterminate premium

(soon better known as "universal life") policies. Shortly after it was introduced, universal life began to garner a substantial market share. Universal life products seemed simple: pay an initial premium into the policy, and after sales and term insurance charges, fees and expenses were deducted, the balance of the premium went into a "cash value" account which earned a current rate of return (crediting rate) declared by the insurance company. Each month the insurance company's computer would credit any new payments from the policy owner, credit income earned in the last month, debit expenses, debit insurance (mortality) charges, and the result was the account value. The crediting rates were typically guaranteed to be no less than 4%, but as long-term bond yields reached 15% in the early 1980's, current policy crediting rates often reached 12-14%. Universal life seemed as simple as a bank book with a term "rider," and appeared to have significantly lower annual premiums compared to whole life policies.

However, the long-term ability of a universal life policy to remain effective for more than a few high interest rate years, never mind to and past life expectancy, was based on the ultimate balance of these credits and debits. When crediting rates were high, this seemed obvious. Of course, a 12-14% crediting rate wasn't guaranteed, and within a decade the average crediting rate was in the 7-8% range (similar to the 10-year U.S. Treasury Bond with which crediting rates closely tracked). Such scenarios highlighted the fact that "premiums" that had been calculated with the computerized illustration systems were not guaranteed - only the underlying minimum crediting rate and maximum policy expenses were guaranteed. Use of the word "premium" was potentially misleading, suggesting that if you pay a premium, as in whole life, the policy was guaranteed in all respects.[2] Such a calculated premium would have to increase significantly years later if actual crediting rates were substantially lower than the illustrated crediting rates. The low illustrated "premiums" demonstrated that consumers "… are drawn to the attractive impossibility versus the less attractive probability." [3]

As can be seen in Table 1, a $1 million universal life policy purchased by a healthy 33-year-old male in 1985 could have been illustrated at a variety of "premiums" depending on the current and assumed future crediting rate. It is unlikely that many purchasers would have paid $5,380 per year (calculated at an assumed 6%) while the policy was momentarily crediting 12%. However, when the policies are re-assessed 10 years later, with many crediting rates having dropped to 6%, substantial adjustments are necessary if the policy is to sustain until death.[4] If the purchaser had chosen what now appears to be the aggressively low premium of $2,543, the "premium" will need to increase more than threefold in order to *currently* assure sustaining to age 100 - the age most actuaries recommend to accommodate those who will live beyond their group's average age at death. By contrast, in 1985, the comparable guaranteed premium for a $1 million participating whole life policy was $13,895.

Table 1

$1 Million Universal Life purchased in 1985 and reassessed in 1995 for 33-year-old male at Preferred Rating

	Initial Crediting Rate			
	12%	**10%**	**8%**	**6%**
Initial Premium	$ 2,543	$ 3,028	$ 3,870	$ 5,380
Illustrated Account Value - year 10	$ 15,429	$ 21,135	$ 30,501	$ 46,121
Actual Account Value - year 10	$ 11,816	$ 17,509	$ 28,732	$ 46,121
Revised Premium for current 6% crediting rate in 1995 to sustain policy to death	$ 8,160	$ 7,759	$ 6,969	$ 5,380

III. METAMORPHOSIS: VARIABLE UNIVERSAL LIFE

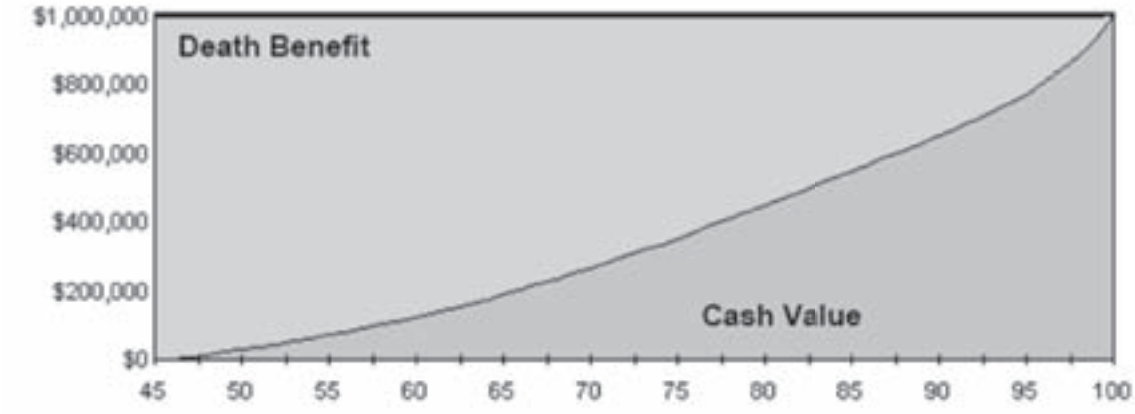
As interest rates began their long decline from the early 1980s through the early 2000s, traditional universal life sales declined. In response to a robust stock market, variable universal life became the next "big thing" in life insurance. As with universal policies, variable universal life allowed the owner to choose a "premium," and uniquely also to control the investment of the net account value. Assuming that the need for life insurance was lifelong, and the individual (or Trustee) purchasing the policy was investment savvy and tolerant of investment risk, this created an opportunity to capitalize on equity returns, which had significantly out-performed the fixed returns underlying whole life and universal life policies.[5]

Variable universal life had the unique attribute of allowing the policy owner to allocate premiums to one or more investment accounts, known as "separate accounts." Whole life and universal life are known as "general account" products in that the cash values are invested by the insurance company as part of its general funds. The concept of separate accounts operates much like a series of mutual funds, each of which has differing investment attributes. Modern VUL policies offer a wide array of investment styles, including hedge funds, commodities and real estate funds. Operating expenses and investment management fees are assessed against the accounts and the consumer needs to determine whether these loads are acceptable for this type of financial product. The separate account investments may be managed by the insurer or by an outside investment manager. Shifting from one separate account fund to another is generally permitted without cost. There are other variable life charges each month for the expenses of the insurance company and the mortality charges associated with the insured (sometimes referred to as "M&E" charges).

Variable life insurance policies are securities under federal law and subject to regulation by the Securities and Exchange Commission. Only agents who hold appropriate securities licenses may sell variable life policies and then only accompanied by a prospectus, registered with the SEC.[6] Since variable universal life is a security, the insurance company must determine that the policy is "suitable" for the buyer, that is, the policy must be appropriate for the buyer's financial situation. Insurance companies have generally been lax in their enforcement of suitability standards in connection with variable universal life, particularly with respect to the buyer's specific tolerance for risk in connection with the sustainability of a particular insurance product design.

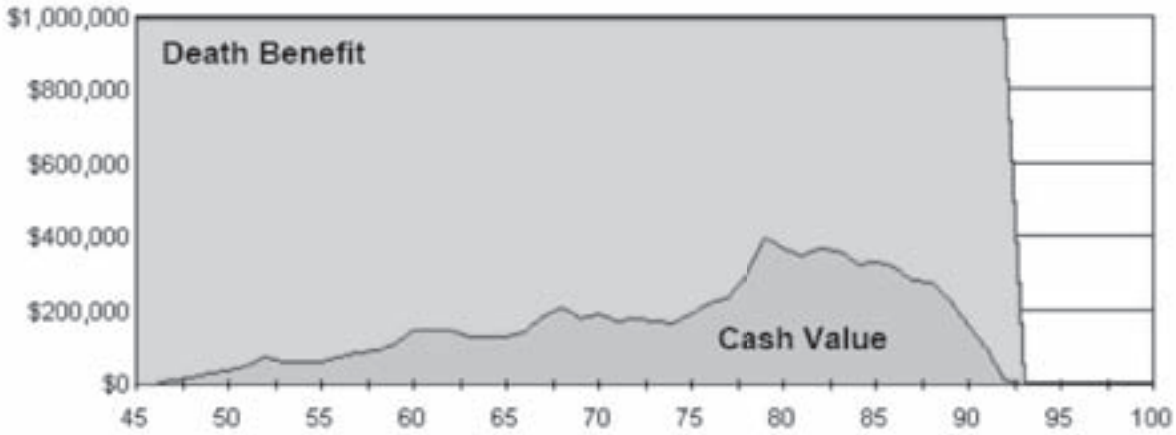
The "rising tide lifts all ships" stock market environment of the 1990s obscured an important technical issue in life insurance. On any given day, the death benefit is comprised of two parts: the accumulating cash value and the commensurately declining "net amount at risk." Net amount at risk equals the stated death benefit, minus cash value throughout the policy duration. Level premium whole life insurance was designed to affordably manage disastrously high risk charges at older ages by reducing the net amount at risk. Thus, increasing cash values and correspondingly decreasing net amounts at risk allowed a policy to affordably sustain to the death of the insured. This is illustrated in Graph 1.

Graph 1



Traditional universal life at least had an assurance of some guaranteed minimum return. However, variable universal life introduced an unforeseen consequence - negative growth in the form of the inevitable "downs" of the stock market. Graph 2 illustrates how randomly generated (but real) rates of return can affect the cash value of a variable universal life policy, and therefore the net amount at risk. This is the effect not considered by insureds and their advisors when the policy was acquired.[7]

Graph 2



IV. POLICY ILLUSTRATIONS

Universal and variable universal life product development would not have been possible to design - or sell - without the personal computer. In turn, it was the development of the variable universal life policy that finally demonstrated what can be an enormous difference between policy illustrations and actual policy performance.

The purpose of any policy illustration is to help the purchaser understand how the policy works, and to be able to distinguish between what is guaranteed and not guaranteed, including the premium.[8] With universal life policies (both interest-earning and investment-based), the premium has to be estimated based on certain assumptions regarding average crediting rates (always projected as constant, not undulating, returns) and the expected cost of insurance charges.

Investment account volatility periodically produces negative returns, reducing the cash value of a variable universal policy and, simultaneously, increasing the net amount at risk. This technical issue is important to variable policies during the insured's younger ages of 25 - 60, but is absolutely critical at older ages when increasing net amounts at risk - exposed to increasingly higher costs of insurance - can create a fast-acting, negative domino effect. If the cash value declines 20% due to falling market values, the net amount at risk has to compensate. The reduced cash value will be debited for increasing insurance charges at older ages, further reducing the cash value and further exacerbating the negative spiral. Subsequent monthly investment returns - even if robust - will rarely be sufficient to stem the tide at older ages. For example, assume that a 60-year-old male purchased a $1 million variable universal life policy in 1990, with an annual premium of $15,050, and invested the account balances in the equivalent of an S&P500 index sub-account. The agent illustrated an average 12% return as a proxy for the average growth rate of the stock index. By the year 2000, when the insured was age 70, due to substantial gains of the stock market, the account value had increased to $139,500. This together with continued payment of the original "premium" and assumed continued 10% growth would be sufficient to sustain the policy until death. But by the year 2010, due to the volatility and actual negative returns of the stock market in this decade, and the increasing mortality charges as the insured progressed from age 70 to age 80, the account value had barely increased to $165,600, even though the insured had paid an extra $150,500 in premiums in this second 10-year period.[9] The 2010 account value together with payment of the original "premium" and assumed 12% growth in the future would not be sufficient to sustain the policy to the insured's life expectancy of 89; the policy would lapse at age 87. Significantly, Monte Carlo analysis, as discussed below, demonstrates there was only a 16% chance *at the commencement of the policy* that it would last to age 100.

Technology has created a dilemma for modern universal life insurance policies. Computers can account for daily investment fluctuations and monthly accounting of policy debits and credits, but policy illustrations, including in-force illustrations, are woefully constrained by tradition and regulation to project a constant return assumption (not to exceed 12% for VUL and not to exceed the current rate for UL) as far into the future as the client's age 100 or more. Similarly, scales of anticipated future insurance charges are projected into a distant future that may not support the experi-

ence of the previously sold policies. Thus, when policy illustration systems are used to calculate non-guaranteed premiums, the illustration of average rates of return (and scales of future insurance charges) disguises the potentially destructive reality of fluctuating account and net amount at risk values.

Fortunately, technology also offers a better way to visualize how variable universal policies work and to establish an initial premium funding level that forms a more reasonable expectation than that calculated by a conventional illustration system. This yields a more realistic (but non-predictive) starting point from which the advisor and client can then manage the policy over the many years it is likely to remain in force.

V. MONTE CARLO ANALYSIS

Statistical analysis can help determine the probability that a variable universal life policy will fulfill the client's expectations. This is done by comparing the conventional constant performance illustration with a random application of actual, volatile monthly returns of the last 50 or more years (a "Monte Carlo" analysis).

A simple example of Monte Carlo analysis takes the 600 monthly returns underlying the last 50 years (the number of years could be less or more based on a client's age) in the chosen asset allocation and applies them in a random order for each month the policy will be in effect to age 100. This yields one possible policy performance outcome - did the policy sustain to age 100 at a given "premium"? Now, repeat this process 1000 times (less than 20 seconds with a modern personal computer). This process produces a certain number of randomly calculated hypothetical illustrations in which the policy sustains to age 100; the remaining number of randomly calculated illustrations do not sustain to age 100. Suppose the result was 450 successful and 550 unsuccessful outcomes. Is it acceptable to the insured that there is only a 45% chance that the policy will pay the death benefit as expected by the insured acceptable? Virtually all clients would say "no." What is the minimum acceptable likelihood that the life insurance will do what was intended - pay the death benefit? Many would require a minimum of a 90% success ratio. Understanding the insured's risk tolerance for life insurance sustainability is a key factor in determining the "suitability" of the policy, as required by NASD rules. Reversing this approach, we can then determine the required "premium" either when the policy is acquired, or while it is in force, to achieve the desired 90% required success ratio.

VI. CASE STUDIES

Using these modern analytical tools, consider the following case studies for Harry Insured. Harry acquired a $10 million variable universal life insurance policy in 1990, when he was age 60. Because investment returns had been so robust in the last few years, Harry's insurance advisor illustrated an assumed average rate of return of 12% over the life of the policy and the $149,500 annual "premium" was thereby calculated by the agent's illustration system. The account value was directed into an 80-20 mix of stocks and bond sub-accounts. In 2009, after the disastrous stock market results, Harry, now age 80, asks his insurance advisor to provide an analysis of his policy. Based on the "in force" illustration the advisor provided from the insurance company, it was determined that the account value of the policy was $2,500,000. This didn't sound too bad until the advisor told Harry that he would have to increase his "premium" payment to $583,000 per year in order for the policy to have a 90% probability of sustaining to age 100 (this is sometimes referred to as a policy "remediation"). At the $149,500 premium funding level, the policy would lapse at age 87, given the high mortality charges applicable at these ages. Harry is very upset that the original insurance illustrations and the prospectus he received when he acquired the policy [10] did not indicate that negative returns could become a "double negative" when increasing net amount at risk charges are taken into account. Further, he is distressed to learn that from the outset there was less than a 20% chance that the policy would sustain to age 100 and less than a 50% chance at the outset that the policy would sustain to Harry's life expectancy of age 89.

Case Study 1

Harry's own income and investments had so deteriorated that he could not afford to pay the extra premiums, so he allowed the policy to lapse. He dies in 2010 and his heirs, including his wife Wanda, are astonished to learn that there are no life insurance proceeds. This has been a common scenario over the last few years. Many insureds counted on their insurance policy as a life-long asset that would provide financial security to their spouses and children even if their other assets were subject to loss in bad markets. When faced with critical issues about how to spend and conserve cash, the future prospect of insurance proceeds is much less compelling than the need for current financial protection. However, there are things that Harry and his advisor should have considered, as discussed below.

Case Study 2

Harry has sufficient resources to pay the increased premiums. However, he had acquired the policy in a life insurance trust for the benefit of his children and grandchildren, and named his personal attorney, Larry Lawyer, as trustee. Larry had not spent any time understanding the insurance policy until he learned of the disastrous situation in 2009. In addition, Harry had used up his full lifetime gift tax exclusion on other estate planning initiatives and the gifts of premiums to the life insurance trust, in excess of the four annual exclusion gifts he made each year to the trust. Harry cannot make further gifts of increased premiums without paying gift tax of approximately 50% (35% in 2011 and 2012). Harry, like most people, resists the idea of paying gift tax during his life, even if it may be a good tax and financial strategy. Assuming there are no other sources of funds, Harry may have to make loans to the insurance trust to pay the premiums. Even if the loans could be made at a low interest rate, the insurance trust will repay Harry's estate from proceeds that would otherwise have been excluded from

Harry's taxable estate for federal estate tax purposes. If Harry lives to an old age, this will significantly reduce the net proceeds to the insurance trust. The result could also worsen as interest rates on the loans to the trust increase to avoid imputed interest.

Case Study 3

Harry cannot afford to pay the increased premiums and is considering his options. If he continues to pay the original $149,500 premium, the face value of the policy will have to be reduced from $10 million to $5 million in order to sustain the policy to age 100. He is considering selling the entire policy in the life settlement market, but has been advised that his then "normal" life expectancy of 132 months will likely result in no viable lump sum life settlement offers to buy his policy. He is also considering finding a private investor who would pay the excess premium in exchange for a portion of the death benefit. All of these are detrimental outcomes, especially if the policy is owned by a life insurance trust and, therefore, is excluded from Harry's taxable estate. The life settlement market has shrunk due to the collapse of credit markets, and the sale of a partial interest in a policy is problematic. A private investor may face legal hurdles regarding insurable interest,[11] and other barriers that insurance companies have erected to stem the tide of "stranger-owned life insurance."

All of these case studies yield very bleak results. Now consider the same facts, except that Harry Insured is age 45 when the $10 million variable life policy is issued in 1990. Following the same illustration design, the initial stated "premium" is $56,850. The same investment sub-accounts are used and by the year 2000, when Harry is now 55, the account value of the policy is $389,800. At this time, Harry engages an independent insurance consultant to evaluate the status of his policy. Using Monte Carlo analysis, the consultant determines that Harry's policy has only a 30% chance of sustaining to Harry's then life expectancy of age 87 and only a 15% chance of sustaining to age 100. The insurance consultant then determined the amount of premium that Harry would need to pay to have a 90% assurance that the policy would sustain to age 100, which was $145,900 per year. "Remediation" of Harry's policy in 2000 at age 55 is much easier and less expensive than doing so at age 65 or older. Harry thanked the consultant for this information, but did not take his advice. When Harry turns 65 in 2010, he decides that he should again contact the insurance consultant to evaluate his variable life insurance consultant to evaluate his variable life policy. The account value of the policy is then $468,000 (given the low premiums and poor stock market performance). The consultant determines that the policy is more vulnerable than in 2000. Now there is a 15% probability that the policy would sustain to Harry's life expectancy and virtually no likelihood that it would sustain to age 100. In addition, remediation of the policy to create a 90% probability of sustaining to age 100 would now require an annual premium of $224,100 going forward. Obviously the results are not as disastrous as when Harry is 15 years older, but still far from what the insured expected. These examples clearly illustrate how important it is to manage and review a variable life insurance policy regularly.

VIII. TRUST-OWNED LIFE INSURANCE

Much has been written in recent years concerning the fiduciary duties of the trustee of a life insurance trust.[12] In general, the Uniform Prudent Investor Act (UPIA) provides the general standard of care for management as follows:

> (a) A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.[13]

The UPIA continues by articulating specific circumstances the trustee should consider:

> (b) A trustee's investment and management decisions respecting individual assets must be evaluated not in isolation but in the context of the trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the trust.[14]

The comments to Section 2(b) direct the trustee to focus on the proper balance between risk and return appropriate to the circumstances of the trust, and corresponds to the Restatement of Trusts 3d:[15]

> **Risk and return**. Subsection (b) also sounds the main theme of modern investment practice, sensitivity to the risk/return curve. See generally the works cited in the Prefatory Note to this Act, under "Literature." Returns correlate strongly with risk, but tolerance for risk varies greatly with the financial and other circumstances of the investor, or in the case of a trust, with the purposes of the trust and relevant circumstances of the beneficiaries.[16]

Most states have adopted the UPIA,[17] many with modifications designed to protect the trustee of a life insurance trust (ILIT).[18] For those many states that have not expressly exonerated the ILIT trustee, the trust instrument often does so. In all other cases, the ILIT trustee owes the fiduciary investment management duties prescribed by the UPIA or other state law. Thus, the trustee needs to be aware of an appropriate risk analysis of the trust's primary asset - life insurance - in terms of the purpose of the trust - that proceeds will be payable at the death of the insured. As suggested above, the "tolerance for risk" with respect to most life insurance policies is very low in most cases, since the primary purpose is to provide death proceeds as a significant part of the insured's financial and estate plan. This necessarily requires a clear understanding of the risks, as well as the rewards, of volatile returns at the time of purchase of the policy. It also necessitates continuing review of the investment of variable life cash values, not only in general, but in light of the impact on the sustainability of the policy to death.

While state law and the trust instrument may permit the trustee to delegate certain fiduciary responsibilities,[19] the only logical delegee of the duty to review and advise as to the viability of the variable life insurance product is the insurance agent. However, the agent typically has been as unaware of the potential pitfalls of volatility inside variable life insurance as the ILIT trustee and the insured. The trustee is also generally required to monitor the agent's performance as a condition of the delegation.[20] The principal source of information and the technical skill to assist the consumer and the insurance agent previously has been the insurance company. Now such advice can be obtained from independent insurance consultants as well.

VIII. CONCLUSION

Properly designed and managed life insurance is unique in its ability to deliver cash when it is needed the most. As life insurance has evolved over the last 30 years there has been much confusion about the difference between guaranteed, contractual policy provisions and the appearance of a substantially more aggressive "promise " through an accompanying illustration. This often yields the "attractive impossibility." Purchasers of life insurance for lifelong needs have been confused with an array of product choices that are not analyzed in comparison with the policy owner's insurance style. Insurance style is closely analogous to investment style, where an investor determines his or her risk tolerance, timeframes, risk/reward sensitivities, and basic asset allocation. An individual in her late 60s is unlikely to be as aggressive in her investment portfolio as her 40-year old daughter, and the type of life insurance policy she buys for estate planning purposes is unlikely to meet her needs and sensitivities if it requires undue and often underappreciated risk.

A final note: reconciling conventional illustrations with reality

Traditionally, regulation and the illustration systems available from carriers force universal, variable universal, and equity index universal life policy illustrations to be out of sync with reality - in other words - the type of volatility seen in virtually all asset classes over the last 10 years. The use of average rates of return to calculate values and/or funding premiums disguises the negative effect of precipitously increasing net amounts at risk at older ages. The technology exists for understanding the probability of a life insurance policy delivering on the client's expectations. It should be adopted by carriers and agents as a tool to stress test existing policies and to avoid new policies that promise only "an attractive impossibility" rather than "a less attractive probability."

*The Ethical Edge, Inc., Pleasant Hill, CA
** Jeffer, Mangels, Butler & Mitchell LLP, Irvine, CA

1 The different insurance products are discussed and compared by other authors, See, e.g., Zaritsky & Leimberg, Tax Planning with Life Insurance (2d ed., 1998 and Supp. Nov. 2010) Chapter 1; Lee & Wilkey, 827-2nd T.M., Life Insurance - A Practical Guide for Evaluating Policies, § III.

2 The use of the term "premium" in illustrations was not directly attributable to the insurance industry. Regulators, concerned that these policies would be sold as investments, mandated the use of the term "premium" even though the amount paid into the policy was a guess based on the assumption that current factors - especially interest rates and insurance charge schedules - would remain unchanged for the next 40, 50 or 60 years.

3 To paraphrase Aristotle's *Rhetoric*.

4 Life expectancy for the 33 year old is age 87, which is the age at which one-half of the original group of very healthy 33 year olds are presumed to have died, but one half of that group are presumed still alive. Thus, it is critical for the policy to sustain to death whenever it might occur, not merely life expectancy.

5 From 1926 through 2006, total equity returns of Large Cap stocks (comparable to the S&P500) reflected a 10.4% compound annual rate of return contrasted to a 5.5% compound annual return for long-term U. S. Government Bonds. Ibbotson 2006 Stocks, Bonds, Bills & Inflation (SBBI) Yearbook (Valuation Edition).

6 Sample prospectuses from major insurance companies can now be viewed online. See, e.g., Prudential Life, www.prudential.com; Pacific Life, www.pacificlife.com; Midland National Life Insurance Company, www.mnlife.com. Most of these websites link to the actual SEC filing that underlies that prospectus, which is filed on Form N-6.

7 See, however, Lyons & Kaplan, *Managing Volatility in Variable Life Insurance* (June, 1998) Trusts and Estates, p. 68, for an early article warning of the effects of stock market volatility on variable life insurance.

8 Introduction to National Association of Insurance Commissioners (NAIC) Model Policy Illustration Regulations adopted December 1996 and promulgated to the 50 State Departments of Insurance. By early 2000, all states had adopted illustration regulations largely similar to the Model.

9 In fact, the policy account would need to be at least $284,000 at age 80 in order for the policy to be "on the curve" and appropriately reducing net amount at risk toward the goal of providing a sufficient policy death benefit for as long as the insured lives.

10 Due to the investment risk, variable universal life is, in effect, a securities contract, regulated by state and federal securities law. It can only be sold by a properly licensed agent and only with a prospectus that adequately describes the risks.

11 Note, however, that a New York Court of Appeals, at the direction of the Second Circuit Court of Appeals, recently ruled that New York's insurable interest rules didn't prohibit an insured from buying a policy on his or her own life and thereafter immediately transferring the policy to a person who has no insurable interest, even if the insured never intended to provide insurance protection for himself or herself, or for a person with an insurable interest. *Kramer v. Phoenix Life Insurance Company* (2010) 2010 NY Slip Op. 8376.

12 See, e.g., Harris & Prince, *The Problem with Trusts Owning Life Insurance* (May, 2003) Trusts and Estates; Whitelaw & Weber, *Trust-Owned Life Insurance: Risk Management Guidance for Fiduciaries* (Sept., 2005) 32 Estate Planning Journal 14; Ballsun, Collins & Jurkat, *Trustee Administration of Life Insurance* (Spring, 2006) 31 ACTEC Law Journal 280.

13 Uniform Prudent Investor Act, drafted by the National Conference of Commissioners on Uniform State Laws, Annual Conference, Chicago, IL, July 29-August 5, 1994 (hereinafter "UPIA"), § 2(a).

14 UPIA, § 2(b).

15 Rest.3d Trusts, § 227(a).

16 UPIA, Comments to § 2.

17 E.g., Cal. Prob. Code, §§ 16045-16054.

18 E.g., Md. Code Ann., § 15-114(c).

19 UPIA, § 9; Rest. 3d Trusts, § 227(c); Cal. Prob. Code, §16052.

20 Ibid.