LIFE SETTLEMENTS: LEGAL GAMBLING, PROPERTY RIGHTS, AND FREEDOM TO CONTRACT ARE INSUFFICIENT REASONS TO PERVERT THE PURPOSE OF LIFE INSURANCE

by

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I. INTRODUCTION

In the last ten years, financial schemes involving life insurance policies have become a big preoccupation of courts, state legislatures, and the Security and Exchange Commission (SEC). The facts of the following case heard in the United States District Court for the Central District of California[1] last year suggest some of the reasons why and are similar to the facts in many other cases.[2]

The case involves Doris Barnes, her husband Donald, and her son Gary.[3] Doris and Donald talked to an insurance agent who was authorized to sell Hartford policies, about buying a life insurance policy with the intent of selling it when it became effective.[4] The family created the Doris Barnes Family 2008 Irrevocable Trust which would be the owner and beneficiary of the policy, with Doris as the settlor of the trust, Donald as the beneficiary of the trust, and Gary as the trustee.[5] On the Barneses' behalf, the agent applied for an $8.75 million policy on Doris's life and had the family sign an application that stated Doris's net worth was more than $16 million and her annual income was $658,000.[6] In fact, Doris's net worth was less than $1million and she had a very small annual income.[7] The Barneses also stated on the application that they did not intend to sell the policy or to have a third party pay the premiums.[8]

Hartford issued the policy, the agent gave the Barneses money to make the first premium payment, and they paid it.[9] About two months later, a hedge fund paid Donald more than $345,000, he signed over his interest in the trust to the hedge fund, and Donald repaid the agent for the first premium payment.[10] This transaction describes a typical stranger-originated life insurance (STOLI) arrangement, the subject of numerous court cases,[11] recent legislation in almost every state,[12] a report by the SEC staff,[13] and much critical comment.

The purpose of this article is to explain why, in spite of arguments about government-sanctioned gambling, property rights, and freedom to contract, not only STOLI arrangements but, more importantly, life settlements in general, are not in the public interest and should be discouraged. None of the players in these transactions, not the insureds, not the families of the insureds, not the brokers, not the policy providers, not the hedge funds, not the retail investors, and not even the insurance companies that have lobbied strongly against life settlements, are worthy of support because none of their roles contributes to the common good. Instead, they all diminish the institution of life insurance that serves an important function for small businesses, young families, and ultimately taxpayers. They, along with all the regulation designed to prevent specific threats

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of the life settlement industry, also contribute to acceptance of the notion of wagering on the lives of strangers, an idea that has been appalling for centuries. In the last few years, in spite of increased litigation and poor general economic conditions, the industry has been gaining acceptance as a supplier of a legitimate financial product, paradoxically, in no small part, because of increased state regulation.

Because the background of life settlements and STOLI has been explored elsewhere,[14] this article will begin with just a brief discussion of the history of life insurance and insurable interest, viatical settlements, life settlements, and securitization. A description of recent cases will illustrate many of the problems with life settlements, and recent state legislation will indicate how politicians have dealt with this new financial instrument. Then there will be a discussion about how life insurance is related to gambling, property rights, and the freedom to contract, followed by suggestions for additional regulation. The article will conclude that states are being unwisely liberal in regulating life settlement transactions as are commentators who attempt to tinker around the edges of the transactions to make them less objectionable. If a financial product has no redeeming social value, then no amount of licensing and disclosure will address the basic problem of encouraging a new scheme that has no more purpose than any other gambling enterprise; however, this kind of gambling is couched in investment language, so it obfuscates the usual purpose of gambling as entertainment, the risk of significant financial losses, the encouragement of fraud, and the investors' wishes for the quick deaths of strangers.

II. LIFE SETTLEMENTS BACKGROUND

In modern times, we generally think of life insurance as protection for families against the risk of losing their breadwinners and for businesses against the risk of losing their most important participants.[15] It was business reasons that spurred the origin of life insurance in Europe in the late Middle Ages,[16] but almost immediately, people started using life policies to gamble on the demise of famous people.[17] This wagering activity became so popular, but so disreputable and distasteful, that many European cities banned the sale of life insurance policies,[18] and the English Parliament enacted the Life Assurance Act of 1774[19] which did not prohibit life insurance but, instead, initiated the doctrine of insurable interest.[20]

The goal of the 1774 Act, and of United States law since the nineteenth century, was to allow people to get the benefits of life insurance while eliminating the betting on human life it encouraged. The means of doing that was to require anyone purchasing a life insurance policy to have an insurable interest in the life being insured.[21] Generally, people have insurable interests in themselves and in those with whom they have personal or business relationships that make those lives more valuable than their deaths.[22] This sensible insurable interest rule is no longer working well to prevent wagering on strangers' lives because its requirements do not fit with the notion of life insurance policies as property that should be freely alienable. Once purchasers of life policies insuring themselves or others in whom they have an insurable interest own the policies, courts and state statutes permit assigning, e.g., by selling, the policies to someone with no insurable interest in the insured.[23] Once that legal transaction occurs, it creates a desire for the death of the insured. As soon as the insured dies, some stranger who is the policy owner can stop paying premiums and get the face value of the policy. The longer the insured lives, the longer the policy owner has to keep paying premiums, reducing the value of the policy proceeds. That circumstance should be just as distasteful today as it was in the Middle Ages. This article advocates a strengthening of the insurable interest doctrine in opposition to recent state statutes and recent court decisions.[24]

The idea of selling life insurance policies to strangers arose in response to a real public need. In the 1980s when HIV/AIDS patients were terminally ill with no jobs, high medical expenses, and life insurance premiums they could no longer afford, a viatical settlement allowed them to sell their policies to third parties for cash.[25] Because AIDS patients usually died very soon after diagnosis, these financial arrangements became very popular for the third party purchasers and for the financial companies arranging them.[26] But the success of the new viatical settlement industry waned when AIDS became treatable and AIDS sufferers started living longer.[27] So the industry shifted to buying life insurance policies insuring the lives of people with other terminal illnesses; then to buying policies of old people who were not terminally ill; then to encouraging older people to buy insurance policies for the express purpose of selling them to investors; and finally to bundling those policies together, securitizing them, and selling pieces of the bundles to investors.[28] Investors found these instruments of particular interest because they are not correlated with other traditional investments and, therefore, can act as a risk mitigation tool.[29]

Along the way, the industry changed its name from viatical settlements to life settlements in an effort to hide the uncomfortable association with death[30] and became a $35 billion financial industry.[31] Aside from being involved in a great deal of civil litigation, which is discussed in the next section, industry participants have also been involved in criminal proceedings. Although the fact of criminal actors in the life settlements industry may be no different from such behavior in other financial sectors, it is a warning for unsophisticated insureds and investors to beware. For example, Imperial Holdings, a publicly traded company that lends money to policyholders to pay premiums and buys life insurance policies, agreed to pay an $8 million penalty after the FBI raided its Boca Raton, Florida headquarters pursuant to an SEC filing accusing Imperial of misrepresenting the source of money for paying life insurance premiums and making other misrepresentations on life insurance policy applications.[32]

An example with a different kind of life settlements industry participant involved Provident Capital Indemnity Ltd. (PCI), an offshore company that provided financial guarantee bonds on life settlements, instruments that purportedly protected investors' interests in life insurance policies by paying death benefits if insureds outlived their projected life expectancies (LEs).[33] At the same time the SEC charged PCI with making material misrepresentations about their assets, credit rating, audits, and reinsurance access, the U.S. Attorney's Office and the Department of Justice had PCI's president and auditor arrested on seven counts of fraud.[34] They were accused of lying to sell $670 million of worthless guarantee bonds to thousands of investors in the United States and abroad.[35] They were both convicted: the president was sentenced to sixty years in prison; the auditor, to four and a half years.[36] The Department of Justice noted that many of PCI's investors lost their life savings because they relied on PCI's worthless guarantees.[37]

Even when life settlement industry participants are not involved in criminal behavior, the nature of their financial product should lead investors to be wary and cautious, and should lead legislators to reconsider regulations that encourage the industry. For example, the Himelsein Mandel Offshore Fund started its Cayman Islands life settlement vehicle in 2006.[38] Three years later the fund had $300 million invested in life insurance policies.[39] By 2010 the fund was having trouble paying the premiums to maintain the policies.[40] A year later with the face values of the policies approaching $1 billion, the fund was not receiving sufficient death benefits or new investments to cover premium payments and make payments to investors, and the fund was liquidated.[41] Most of the investors lost a substantial part of their initial investments after being told that they would receive annual returns of eighteen to twenty-two percent.[42] An industry participant noted that "'[y]ou needed constant cashflow in order to make the premium payments, . . . [a]nd if you couldn't get people to invest in your funds [during the financial crisis], you had no more of that cashflow."[43]

Although this kind of investment does have the potential of the death benefits for investors, the idea of needing a constant influx of new investors to pay expenses and interest to current investors is somewhat reminiscent of a Ponzi scheme. On the other hand, very large investment firms that were able to buy distressed portfolios of policies owned by a firm like HimelseinMandel at rock bottom prices, have seen annual gains as high as twenty-five percent.[44] This example suggests that life settlements are not an appropriate investment product for unsophisticated, retail consumers.

III. Life Settlements Litigation

Most of the litigation about life settlements are not criminal cases. They are civil cases about insurable interest[45] and incontestability clauses.[46]

A. Insurable Interest

In the *Barnes* case described in the introduction, Hartford asked the federal court to declare that the Barneses' life insurance policy was void *ab initio* because the Barneses bought the policy intending to participate in a STOLI transaction and Hartford issued the policy based on false information.[47] The court rejected Hartford's request for two reasons. First, although the California Insurance Code requires the owner of a life insurance policy to have an insurable interest in the life of the insured at the time the policy goes into effect,[48] thereafter, the policy can be transferred to anyone.[49] Furthermore, the court held that under California law, the intent of the policy purchaser to sell the policy is irrelevant to the issue of insurable interest, and all three members of the Barnes family, Doris herself, her husband Donald, and her son Gary, clearly had insurable interests in the life of Doris.[50]

Secondly, it was too late for Hartford to have the policy voided on the grounds of fraud because the policy contained an incontestability clause, as required by California law, that said that Hartford could not contest the policy after it had been in force for two years except for non-payment of the premium.[51]

The *Barnes* decision encourages fraud on the part of insureds, their families, and their agents, all of whom got something for nothing. The Barneses got $345,000 (minus their premium payment) for purchasing a life insurance policy based on lies. Their agents received fees for writing the policy and for arranging the sale of the policy to a hedge fund. The only positive outcome of the decision is it gave Hartford a wake-up call to do its due diligence in a timely manner before the contestability period runs out, instead of being complacent in the face of receiving very large premiums for issuing a very large life insurance policy.

Several months later the United States District Court in Delaware heard a case with similar facts and also decided it against the insurance company.[52] In that case Lawrence Rucker worked with Wayne Aery and Brad Friedman, the latter an agent of the Principal Life Insurance Company, to obtain a life insurance policy.[53] On his application Rucker said the policy was not going to be transferred to investors, and investors were not going to pay the policy premiums.[54] Rucker also submitted a confidential financial statement claiming an annual income of $425,000 and a net worth of $4.85 million when, in fact, his annual income was $120,000 and his net worth was substantially less than claimed.[55] Through advisors, Rucker created two trusts (although he acknowledged he did not understand anything about the trusts including their purpose[56]): the Lawrence Rucker 2007 Family Trust listing himself as settlor and beneficiary, the Christiana Bank as trustee, and a friend as trust protector; and the Insurance Trust listing himself as settlor, the Christiana Bank as trustee, and the Family Trust as beneficiary.[57] Principal then issued a $3.5 million policy naming the Insurance Trust as the beneficiary, and Aery gave Rucker $79,748.77 so he could pay the premium in that amount to Principal.[58]

While the insurance transaction was going on, Joseph Capital LLC, a brokerage that acts as a middleman between insureds and investors, created a Delaware statutory trust, GIII, for the purpose of buying the interests of beneficiaries of insurance trusts.[59] A month after Principal issued Rucker's policy, he sold the beneficial interest in the Insurance Trust to GIII, terminated the Family Trust, and repaid Aery.[60]

Like Hartford in the *Barnes* case, Principal sued to have the Rucker policy declared void for lack of an insurable interest and material misrepresentations.[61] The federal district court in this summary judgment case relied on two recent decisions of the Delaware Supreme Court on the issue of insurable interest, PHL Variable Insurance Company v. Price Dawe 2006 Insurance Trust[62] and Lincoln National Life Insurance v. Joseph Schlanger 2006 Insurance Trust.[63] As in *Barnes*, the Delaware Supreme Court held that an insured was not barred from selling his or her interest in a life insurance policy to a person without an insurable interest, but added the caveat, as long as the insured was the one who actually bought the policy, and the policy was not in actuality a mere wager.[64] A determinative fact is whether the insured paid the premiums.[65] In the Rucker case, the district court decided there was an issue of fact whether Aery just provided a loan for Rucker to pay the premium or whether providing the money was an inducement for Rucker to sell his policy in a wagering transaction.[66] Under Delaware law, unlike California law at the time of the Barnes transaction, the intent of the policy owner to buy a life insurance policy in order to immediately transfer it, is relevant to the insurable interest question, but the intent has to be accompanied by a financial inducement by a third party for the policy to be void.[67]

In another similar case, a federal district court in Pennsylvania specifically distinguished Pennsylvania law from Delaware law applied in *Rucker*.[68] Explaining the Pennsylvania statute, the court concluded that any person may insure his or her own life for the benefit of anyone else, and any person may insure the life of another if the beneficiary of that policy has an insurable interest in the life of the insured.[69] Once that rule is observed, then the policy obtained can be transferred to anyone with no insurable interest requirement.[70] The court also noted that the statute makes no reference to "'intent of the parties'" or "'good faith'" either in purchasing or in transferring a life insurance policy.[71]

The United States Court of Appeals for the Fourth Circuit made a similar decision applying Arizona law but added an interesting explanation in dicta. In *First Penn-Pacific Life Ins. Co. v. Evans*,[72] the court described the insured as "commenc[ing] a fraudulent scheme to exploit the 'viatical settlement' industry."[73] He bought seven life insurance policies for a total of $8.5 million in coverage.[74] Then, falsely claiming he was terminally ill, he sold the policies to a viatical settlement broker.[75] The last of the seven policies was a $2 million policy he purchased from First Penn.[76] When First Penn discovered the fraud, it sued to have the policy rescinded on the ground that it was purchased without an insurable interest rendering the policy void ab initio.[77] Using the same reasoning as in the Pennsylvania case, the court held that the insured had an insurable interest in his own life despite his plan, at the time of purchase, to sell the policy to a third party with no insurable interest.[78] The court noted that there was no impermissible wagering on the insured's life, which would be a public policy violation,[79] because the third party was not involved in the purchase of the policy.[80] Oddly, the court opined that "evaluating insurable interest on the basis of the subjective intent of the insured . . . would inject uncertainty into the secondary market for insurance."[81] It is unclear why protecting the secondary market for life insurance policies was or should be a concern of the court.

Prior to the *Barnes* decision, the California legislature amended its insurance law to read that "[a]ny device, scheme, or artifice designed to give the appearance of an insurable interest where there is no legitimate insurable interest violates the insurable interest laws."[82] It is likely that a court would find transactions like the one in *Barnes* illegal under the new law; however, the amending act also provided that it would not apply retroactively, and the Barneses had entered into their life settlement contract before the act went into effect.[83] Further discussion of recent state legislation concerning life settlements is pursued in Section IV.

B. Incontestability Clauses

In *Barnes,* the court held that under California law "[i]ncontestability clauses are given broad effect and are strictly enforced . . . even in the face of gross fraud in procuring the policy."[84] English life insurance companies instituted the use of incontestability clauses in the mid-1800s because of public complaints that insurance companies would conveniently ignore misstatements by insureds on applications for policies and would then use those misstatements to avoid paying claims.[85] Justice Oliver Wendell Holmes noted that the purpose of the incontestability clause is "to create an absolute assurance of the benefit, as free as may be from any dispute of fact except the fact of death, and as soon as it reasonably can be done."[86]

In 1906 New York became the first state requiring incontestability clauses in life insurance policies,[87] and now almost all states require them.[88] The rule in New York, like the one in California, is strict about the incontestability period: after the incontestability period, an insurance company cannot assert the policy owner's fraud or lack of an insurable interest to void a policy.[89] The New York Court of Appeals characterized New York's rule as encouraging insurers to investigate its policyholders promptly, eliminating wagering contracts promptly, and supporting freedom of contract.[90]

In Michigan incontestability clauses are also strictly construed.[91] The Michigan Supreme Court held that by statute the only exceptions for contesting an insurance policy after the incontestability period are non-payment of premiums and violations of policy conditions that relate to military service during wartime.[92] The court noted that incontestability clauses operate as statutes of limitations that keep insurance companies from continuing to collect premiums and reap profits until they have to pay out on policies when they will refuse to do so charging fraud or lack of insurable interest.[93]

In contrast, the Delaware Supreme Court, and a majority of courts that have decided cases on the inviolability of incontestability clauses,[94] held that the incontestability period is contingent on the existence of a valid contract.[95] The Delaware court asserted that a "court may never enforce agreements void *ab initio*, no matter what the intentions of the parties," and life insurance policies procured by someone without an insurable interest at inception are void *ab initio*.[96] The court declared its rule as supporting its public policy against wagering.[97]

The problem with the majority's position is that it encourages insurance companies to avoid their due diligence responsibilities, to write policies for entities without insurable interests in the insureds, and to keep collecting premiums on those policies without complaint until deaths require payouts.[98] So, although the purpose for disallowing the incontestability clauses is to discourage wagering on lives, the majority approach, in fact, does just the opposite by creating no disincentive for insurance companies to sell such wagering policies. The viability of incontestability clauses is just one of the legal issues created by acceptance of life settlements as legitimate financial arrangements.

C. Remedies for Fraudulently Obtained Policies

Another legal issue arising from life settlement arrangements is the appropriate remedy when life insurance policies are obtained based on fraudulent information on the application for the benefit of investors with no insurable interest. Although it is clear that an insurance company does not have to pay a death benefit during the contestability period for a fraudulently obtained policy, it is not always clear what happens to the premiums that the insurance company has collected. In Minnesota, for example, the general rule is premiums must be returned if an insurance contract is rescinded, but premiums do not have to be returned if the contract is rescinded because the insured obtained the policy through fraud.[99]

The United States Court of Appeals for the Eighth Circuit, sitting in diversity in a case involving Minnesota law, held that PHL Variable Insurance Company did not have to return premiums it collected on a fraudulently obtained $10 million policy it issued on the life of Lucille Morello.[100] The policy was based on a financial statement claiming Morello had a net worth of almost $34 million and an annual income of $800,000 when, in fact, her net worth was about $800,000 and her annual income was about $30,000.[101] Certainly, to return the premiums to Morello's family would be to encourage fraud because it would teach the lesson that one should try to get away with receiving death benefits based on a fraudulently obtained policy, and if it does not work, you will get your premiums back – possible gain, no loss. On the other hand, because of such large discrepancies in assets claimed and assets owned, it is likely that PHL did not do reasonable due diligence, merely content to collect more than $500,000 in premiums.[102] When Morello died and her beneficiary made a claim under the policy, PHL did "a routine investigation" of Morello's tax returns and other documents and quickly discovered the fraud.[103] If insurance companies were not allowed to keep premiums obtained in this kind of situation, they would surely do due diligence before issuing policies, making it much more difficult for fraud to be perpetrated. The Eighth Circuit noted that it was compelled to follow the decisions of the Minnesota Supreme Court while acknowledging that the Minnesota court "likely did not anticipate or account for the complexities of modern-day structured finance."[104]

IV. Statutory Regulation

A. State

State legislatures, on the other hand, have been made well aware of life settlements and have attempted to prohibit the most egregious aspects of these financial arrangements. In so doing, however, states encourage life settlements in general. One life settlement firm notes on its web site that new state laws regulating life settlements are "a de facto endorsement of the life settlement option's rightful place in the marketplace."[105]

After *Morello*, Minnesota House members introduced a bill which provides that "[i]f a life insurance policy is deemed void, void ab initio, or otherwise terminated . . . on grounds other than nonpayment of premium, the owner of the policy or its [sic] designated representatives has [sic] to recover from the insurer all premiums paid on the policy plus any interest."[106] The bill contains an exception for an "owner of a life insurance policy who engaged in fraud in connection with the issuance of the policy."[107] In the last year, several states have been contemplating such legislation that would require insurance carriers to return premiums paid for policies deemed to be obtained based on fraudulent information.[108] The Delaware bill is similar to the one in Minnesota.[109] The South Dakota Senate bill is similar to the one in Minnesota but it does not even keep owners who committed fraud from getting their premiums back.[110]

These bills have been strongly supported by hedge funds that own portfolios of life settlements and want premiums returned to them even when the policies they own were obtained using falsified information on policy applications.[111] There are reports that Fortress Investment Group, a hedge fund with over $50 billion in assets under management including hundreds of millions in its life settlements portfolio, sent representatives to South Dakota in the middle of last winter to lobby in favor of the bill.

Hedge funds should not get their premiums back for policies obtained through fraud, neither should insureds or their families, nor should insurance companies that failed to do appropriate due diligence because they were delighted to sell policies and collect those premiums. The premiums should go into a fund similar to the one described in the Sarbanes Oxley Act of 2002.[112] The "fair funds for investors" section of the Act provides that civil penalties collected by the SEC should go into a fund for the benefit of victims of securities violations.[113] Similarly, premiums collected for policies obtained fraudulently and on which the carrier will not pay out a death benefit, should go into a fund to benefit victims of life settlements.

All states except Wyoming and Alabama have statutes that regulate viatical or life settlements to some extent.[114] Missouri, South Carolina, and South Dakota have the most minimal regulation. Those three states merely include "viatical settlement[s] or similar agreements[s]" in their definition of a "security" and regulate them as they would any other security with no specific requirements or prohibitions.[115] That is, perhaps, one reason why hedge funds focused their attention on South Dakota to get a law enacted regarding the return of premiums.[116]

Delaware, Massachusetts, Michigan, and New Mexico have statutes that regulate only viatical settlements; in a viatical settlement, as opposed to a life settlement, the insured (the viator) must have a "catastrophic, life-threatening or chronic illness or condition" in order to enter into the agreement to sell the life insurance policy to a third party.[117] Alaska's statute refers only to viatical settlements but, nevertheless, defines the viator as merely "the owner of a life insurance policy insuring the life of an individual who enters . . . a viatical settlement contract."[118]

Most other states' statutes specifically ban STOLI contracts and regulate life settlements by relying on either a model act developed by the National Conference of Insurance Legislators (NCOIL) or one developed by the National Association of Insurance Commissioners (NAIC) or a combination of both.[119] The details of these two model acts have been described and discussed elsewhere,[120] so this section focuses on specific state statutes and how the attempt to eliminate the worst aspects of life settlements actually encourages life settlement transactions.

New York legislation, for example, was effective as of May 2010 for life settlement contracts going forward.[121] It prohibits STOLI agreements,[122] but gives the state's imprimatur to other life settlements. The statute defines a life settlement contract as an agreement in which a life insurance policy owner receives compensation for transferring any part of the death benefit or ownership of the policy.[123] Under the statute, insureds must provide written consent for the release of their medical records, must notify the insurance company of the transfer, and must have the right to rescind the contract within fifteen days of receiving the compensation.[124] The statute prohibits arrangements that include buying a life insurance policy using the resources of someone without an insurable interest or agreeing to transfer ownership of the policy in violation of New York's insurable interest laws."[125] The statute also prohibits entering into a life settlement contract within two years of acquiring the policy with exceptions for severe illness, death of a spouse, divorce, retirement, and "extraordinary circumstances."[126] The two-year provision is part of the NCOIL Model Act and was strongly favored by the life settlements industry.[127] The NAIC Model Act, on the other hand, requires a five-year delay between the purchase of a policy and its sale to a third party, a provision that was vehemently opposed by the industry.[128]

Although the New York limits on life settlement transactions, particularly the two-year waiting period, certainly make fewer policies available for such deals, the industry is using the legislation to encourage seniors to participate in them. A brochure circulated by a life settlements industry organization starts by noting, "A life settlement is a lawful and regulated transaction under New York State law."[129] The North Carolina statute makes an attempt to limit this kind of advertising. It prohibits any life settlement advertisement from "[c]reat[ing] the impression that the . . . desirability, or advisability of [a provider's] contracts are recommended or endorsed by any government entity."[130] New York's statute does not contain such language in its section on advertising,[131] but it is not clear that such language would be an effective deterrent in any case.

The Minnesota statute provides a greater impediment to life settlements by prohibiting such arrangements within a four-year period after the purchase of a life policy if there was any agreement to sell the policy before the policy was issued; or if the policy premiums were funded by someone other than the insured or a person with an insurable interest, and the insured underwent a LE evaluation within eighteen months prior to the purchase of the policy.[132] A few other states also require longer periods between the issuance of a policy and its sale to a third party under conditions similar to those in Minnesota. The Nebraska, New Hampshire, and Ohio statutes prohibit entering into a life settlement contract within a five-year period, the amount of time required in the NAIC Model Act, from the purchase of the policy with the usual exceptions for negative life situations of the insured.[133] It is less likely the insured would want to pay premiums for four or five years and wait that long to receive payment for the policy.

Recent legislative action in Arizona illustrates how legislators' thinking has evolved and the effect it can have on the industry. In 2008 the Arizona legislature enacted a statute prohibiting STOLI.[134] It prohibits "initiat[ing] a life insurance policy for the benefit of a person or entity that lacks an insurable interest . . . at the time of policy origination," and is about two pages long.[135] A new statute entitled "Life Settlements" will go into effect in Arizona on October 1, 2013.[136] It is about twenty-one pages long.[137] Most recent state life settlement statutes are between twenty and thirty pages long. As in most of them, the new Arizona statute provides that insureds may not enter into life settlement contracts within two years of the issuance of policies with exceptions similar to those in the New York statute.[138]

The Arizona law requires any provider or broker of life settlement contracts to be licensed[139] and to provide "a detailed plan of operation" that includes "an antifraud plan."[140] The provider or broker must tell the insured in writing that the insurance company may offer alternatives to life settlements, that the proceeds of a life settlement may be taxable and subject to creditors' claims, that the insured may rescind the agreement within fifteen days, and that the broker may contact the insured every three months, if the insured's life expectancy is more than one year, to determine the insured's health, or every month if the insured's life expectancy is one year or less.[141] With that provision the statute hints at the more sordid aspects of these transactions; imagine being called every month by someone checking to see if you had died yet!

The statute specifically provides that the Director of Insurance "may investigate suspected fraudulent life settlement acts and persons engaged in the business of life settlements."[142] Many statutes have specific sections on advertising, specifically outlawing the use of the word "free" to "cause an owner to reasonably. believe that the insurance is free for any period of time."[143] The Tennessee statute has prohibited the following terms in life settlement advertising as "false and misleading on their face:" "secure," "safe," "backed by state law," "low risk," "guaranteed," "excellent return."[144] Arizona's prospective statute suggests legislators there, like legislators in almost all other states with similar statutes, had a great deal of concern about promoters of life settlement agreements engaging in fraud and encouraging insureds and investors to enter into transactions that were not appropriate for them. If these arrangements, in addition to perverting the purpose of life insurance, are so risky and susceptible to fraud, one has to suspect that heavy political lobbying by the industry has been the primary impetus to state regulation that, in effect, makes these transactions legal and seemingly acceptable. For example, legislators who were instrumental in preparing the NCOIL Model Act received substantial contributions from life settlement companies.[145]

All states that have adopted either the NAIC or the NCOIL model acts or a combination of the two require that life settlement brokers and providers be licensed by the state[146] but they do not require licensing of the companies that provide estimates of the LEs of policies' insureds.[147] Only Florida and Texas require these companies to register with the state insurance department and provide information about their work.[148] It is these underwriters who minimize or maximize the longevity risks that life settlement investors undertake. Underestimates of the LEs of insureds can mean losses for investors, so more regulatory attention should be paid to the way they go about their business.[149]

B. Federal

The only federal regulation that applies to life settlements are securities laws, and only variable life insurance contracts are securities.[150] Most life settlement arrangements are based on whole life or universal life policies which are not variable so they do not qualify as securities;[151] however, if the policies are bundled and sold in fractional shares, or securitized, then they are securities under federal securities law.[152]

In 2009, Mary Schapiro, then chairman of the SEC, wrote to Senator Kohl, chairman of the Senate's Special Committee on the Aging, that the SEC would study whether the SEC had to change the way it regulated life settlements,[153] and in July 2010 the SEC's Life Settlements Task Force issued its report.[154] The report recommended that Congress amend federal securities laws to include life settlements,[155] that Congress should regulate life expectancy underwriters more strictly,[156] and that the SEC should monitor both public and private securitizations of life insurance policies.[157]

There would certainly be more clarity and protection for consumers if Congress enacted federal restrictions and obligations for the life settlement industry that applied to the entire country instead of the piecemeal state-by-state regulation that now exists. In the meantime, the SEC has pursued dozens of life settlement firms that were allegedly violating securities laws.[158]

Last year the SEC sued Life Partners Holdings, Inc. in federal District Court for the Western District of Texas.[159] Life Partners is a publicly traded company in the business of brokering life settlements.[160] In the typical transaction, Life Partners sells fractional interests in a life insurance policy to a group of investors.[161] The total purchase price paid by investors covers the amount paid to the insured, the premium payments required to maintain the policy while the insured is alive, transaction costs, and profit for Life Partners.[162] One of the main risks that investors face in this kind of transaction is the longevity risk associated with the life of the insured: investors will pay more for a policy when the LE of the insured is short because they will have to pay fewer premiums and will collect the death benefit sooner.[163] Therefore, accurate LE estimates are critical to this endeavor.

The SEC accused Life Partners of, *inter alia*, knowingly using "materially underestimated LEs in order to inflate its revenues."[164] Instead of using an experienced actuary to determine LEs, Life Partners used one of its partners who had no actuarial training and did no research into methods used by life settlement underwriters.[165] Over an approximately ten-year period, ninety percent of Life Partners policies exceeded the LE, and Life Partners failed to disclose that information to investors or in its public filings with the SEC.[166] To protect the public from fraudulent activities, the SEC sought a permanent injunction against Life Partners and a disgorgement of its "ill-gotten gains."[167] Five years before the SEC filed its complaint, the Colorado Securities Commission had already filed an action against Life Partners, and to settle that suit, the company agreed to pay $12.8 million to refund money to investors with interest and to take back their interest in 524 policies.[168] Nevertheless, in the following two years, company partners sold $11.8 million of Life Partners stock without disclosing any information about its use of materially short LEs.[169]

The details of the Life Partners case[170] illustrate the incentives to cheat investors in life settlement transactions and the ease with which it can be accomplished. For legislators to legitimize these transactions by regulating them instead of prohibiting them, there should be strong arguments for encouraging life settlements to make up for all the negatives associated with them.

V. LEGAL PRINCIPLES THAT SUPPORT LIFE SETTLEMENTS

There are several basic legal principals that suggest people should have the right to sell their life insurance policies to third parties with no insurable interest in their lives, and third parties should have the right to gamble on the lives of others. In thinking about these principals, it is important to remember that no rights are absolute; all can be overcome by more important interests.

A. Freedom to Contract

Freedom to contract is a basic concept of the legal system in the United States.[171] Nevertheless, the freedom to contract has always had limits.[172] Even Samuel Williston[173] recognized that the freedom to contract should be balanced against other social welfare interests.[174] Courts have refused to enforce contracts that were unconscionable or fraudulent or were entered into by a party who had insufficient capacity or was coerced or was at a bargaining disadvantage.[175] Reasons for imposing limits have been varied, but one is to protect people from their poor decisions when the result will not be in the public interest.[176] This paternalistic approach is controversial because it prefers the notion of the common good above the freedom to contract, but it is an approach that has been accepted in many contexts including securities regulation.[177]

When courts refuse to enforce contracts because they violate public policy, courts generally balance the public interest in freedom to contract against some other public interest.[178] Because the notion of "public interest" or "public policy" is vague and can be subjective, courts will look to legislative actions or legal precedent to determine what a state's public policy is.[179] Courts have been careful to note that "public policy" is not merely the subjective personal preferences of judges, but depend on policies adopted in constitutions, statutes, and common law.[180]

As the section on state regulation indicates, most states have statutes regulating life settlements, specifically outlawing STOLI and providing detailed prescriptions for other life settlement contracts. The details suggest that legislators are very concerned about the possibility of fraud and overreaching in these contracts, but they have nevertheless been persuaded that these arrangements should be legal. Unfortunately, in creating these statutes, no matter how many provisions they contain to limit the possibility of elderly insureds or investors being taken advantage of, legislators are encouraging life settlement arrangements. The statutes indicate that state public policy supports the enforcement of life settlement contracts. After centuries of public policy holding wagering contracts on the lives of strangers to be abhorrent, most states have now created statutes that indicate betting on how soon strangers will die is approved by the government and society at large.

B. Alienability of Property

It is common to think of property as a bundle of rights, one of which is alienability, "the power of disposition and sale."[181] As Justice Holmes noted in *Grigsby v. Russell,*[182] "it is desirable to give to life policies the ordinary characteristics of property."[183] Based on those principles, courts have reasoned that owners of life insurance policies should be able to transfer them to others.[184] Life settlements depend on these notions that life insurance policies are property, and property rights include the right of alienability. Those ideas would suggest that when people buy life insurance policies, they should be able to sell them to others who would then be entitled to the death benefits when the insureds die.[185]

Although property rights are not absolute and are often restricted, the right of owners to transfer, sell, or dispose of their property is so important that legislatures and courts have to provide very clear and cogent reasons when placing restrictions on that right. The strongest argument for restricting property's alienability is to serve the public interest.[186] That is the argument that produced the insurable interest requirement for purchasing life insurance. It was not in the public interest in the Middle Ages to promote financial arrangements in which people are worth more to strangers dead than alive, and it still is not. Life insurance should be issued on purchasers themselves who want to protect their families or businesses or by those families or businesses who have loving or financial reasons for valuing the lives of the insureds.

Courts have balanced these rights and interests by applying the insurable interest requirement only to the initial purchase of the policy; after it is purchased it can be sold to anyone.[187] Courts have also balanced property rights with the public interest in prohibiting contracts that are wagers on lives of strangers by voiding only those life policies for which, before purchase, the policy owner and a third-party purchaser had a mutual intent to buy and sell the policy; mere intent to sell on the part of the policy owner was not sufficient to void the policy.[188]

Perhaps in attempting to achieve the proper balance, courts have given too much weight to the alienability of life insurance policies. There are many situations where the public interest requires limiting an individual's right to transfer property: blackmail, cybersquatting, ticket scalping, selling human organs, selling babies, making gifts in contemplation of bankruptcy.[189] The disadvantages of life settlements suggest that regulation should impose greater limits on the right to sell life insurance policies to third parties with exceptions for insureds in major life-altering situations. One limit, that would not prohibit life settlements but would mitigate against fraud and securitization, would allow the sale of life insurance policies to parties without an insurable interest but would require that a certain percentage, perhaps fifty percent, of beneficiaries have an insurable interest. That restriction would limit the interest of investors in the policies and would make it more difficult for the policies to be securitized.

C. Gambling Is Legal

Gambling has never been looked on favorably in the United States or throughout the world.[190] It has been illegal in most forms in most of the United States for most of the twentieth century, but by mid-century, exceptions to the bans started to appear.[191] The New York State Constitution, for example, has a general prohibition against gambling but lists exceptions, including state lotteries to support education, betting on horse racing to provide government revenue, bingo to benefit religious and other not-for-profit organizations.[192]

States became more amenable to various gambling enterprises because they were a source of revenue for the government.[193] The gaming that the federal and state governments fought hardest against was on-line poker, presumably because it was not a money maker for government treasuries.[194] In 2006 Congress enacted the Unlawful Internet Gambling Enforcement Act[195] which, in effect, prohibited online gambling by U.S. citizens but included exceptions permitting states to allow intrastate online gambling.[196] Earlier this year, New Jersey became the third state to legalize online gambling.[197] Although New Jersey's governor had been opposed to legalizing on-line gambling, budget shortfalls apparently caused a turnaround in his thinking.[198] The governor has estimated increased tax revenue of $200 million in the first year of legal on-line gambling.[199] One can anticipate other states also embracing on-line gambling as they contemplate budget deficits.

With governments' increased interest in legalizing gambling, the temptation might exist to analogize to life settlements to find them more acceptable. That would be a mistake. On the other hand, asserting that life settlements are just another garden-variety investment is equally wrong. The risks of encouraging poker playing or investment in a start-up company are unrelated to the risks of having strangers bet on the imminence of strangers' deaths by buying tranches of pools of life insurance policies.[200] The differences are twofold: first, life settlement transactions create the moral hazard of investors or gamblers benefitting from the deaths of strangers, always an abhorrent and dangerous idea; and second, life settlement transactions pervert the purpose of life insurance and increase the costs to traditional life insurance policy users. In addition, it is easy for poker players to understand the risks of playing the game; the same is not true for investors in life insurance policies. For example, not only individual investors, but firms in the industry were shocked when calculators of mortality tables increased the life expectancies of most groups.[201] That means that investors have to keep paying premiums longer, if not wiping out all gains when the insureds finally die and death benefits are paid, then certainly decreasing returns, perhaps significantly.

VI. Reining in the Life Settlement Industry

A. Insurance Companies

In most of the cases described in the litigation section above and in hundreds of other cases, insurance companies sued life insurance trusts claiming they were victims of insurance fraud and asking to have the policies they issued rescinded and seeking to keep the premiums they collected.[202] In the last two years or so investors have been suing insurance companies for fraud claiming that they sold large policies to old people knowing they would be resold to investors.[203] Investors have also been suing insurance companies for negligent misrepresentation and contract breach when the insurers refused to pay policy proceeds and to return pre-paid premiums to third party owners of policies after the insureds died.[204] There is not much evidence yet of the success of these lawsuits in deterring carriers from writing these policies. Even though insurers know that elderly people are buying policies in order to sell them, they have a strong incentive to ignore that information because sales earn large commissions for the companies' agents, and when the insureds die, the companies have had success in rescinding the policies and keeping the premiums.[205]

In *Pruco Life Insurance Company v. Brasner*,[206] for example, Brasner was an insurance broker for Pruco and other carriers.[207] He earned a $195,337.76 commission and the broker agency earned a $34,858.25 commission[208] when he sold a $10 million Pruco life insurance policy to Arlene Berger who did not need life insurance but was glad to have it free for two years.[209] Berger knew that the policy would eventually be owned by a third party, after the two-year contestability period, who would collect the death benefit after she died.[210] All the information supplied to Pruco about Berger's assets was false, but Pruco issued the policy.[211] The first premium payment of $81,871.75 was made by Coventry as administrator of a Bank of America non-recourse loan although the payment to Pruco was a cashier's check that looked as though it came from Berger.[212] When the incontestability period expired, Lavastone, represented by Wells Fargo, paid $1.048 million (which included a fee for Coventry and reimbursement of its premium payments) to acquire the Berger policy from Coventry,[213] and Brasner paid Berger $172,828.86.[214] Pruco asked the federal District Court for the Southern District of Florida for a declaratory judgment that the Berger policy was void ab initio because there was no insurable interest at its inception.[215] The Florida court, citing *Rucker*, concluded that because Berger never paid any premiums for the policy and agreed that she did not want life insurance, the policy was "an illegal wagering contract," and therefore void.[216] The court also held that Pruco did not have to return the premiums paid on the wagering contract.[217] This case illustrates the operational risk investors in life settlements take because of the threat of litigation, its expense and outcome. It should discourage investors from participating in these financial arrangements. On the other hand, this case also discourages carriers from doing due diligence before writing policies because if the policies turn out to have been obtained based on fraudulent information, the carriers get to keep premiums they have collected without ever having to pay out a death benefit.

Insurance companies have argued against the sale of life insurance policies to third parties because they count on a certain number of policies lapsing in figuring out the premium costs.[218] Some policyholders decide to stop paying their premiums when they no longer need life insurance protection or they can no longer afford the premiums; insurance companies never have to pay out on those policies after years of collecting premiums. Companies will offer payouts to policyholders who no longer want to pay premiums, but not as much as life settlement companies offer.[219] With fewer policies lapsing, premiums will be higher for young families and small business owners who need the insurance for basic financial protection.[220] Representatives for the life insurance industry have claimed that they do not engage in "lapse rate arbitrage," underwriting policies with the expectation that policy owners will stop paying premiums before the insureds die.[221] Although companies may not make lapse predictions on an individual basis, they use statistics about the number of policies that actually do lapse to price their life insurance products.[222]

Although life insurance companies oppose life settlements, they also provide the policies for those arrangements by encouraging consumers to purchase whole life policies (and its variants) instead of term insurance. Term life insurance is a pure insurance product: the insured pays premiums (often for a five-year term) that are much lower than those for other types of policies; if the insured does not die within the term and does not renew the policy for a new term, the policy no longer has any value.[223] Term life insurance resembles other insurance products like car insurance, for example. If you do not incur any damage or liability with your car during the term of the policy, you get no return for the premiums you have paid. Insurance companies prefer to sell whole life policies or universal life policies that combine insurance with an investment component because they make a great deal more money doing so. Consumers prefer to buy it because they can get something back for the premiums they are paying even if they have not yet died. Purchasers of whole life policies do have the advantage of having the cash value of the policy grow tax deferred.

If most people did what made the most economic sense, they would buy term life insurance and invest the money they save from lower premiums in other investment products.[224] But the insurance industry maintains a well-paid sales force, and it can offer whole life policies with tax advantages that are not available in other financial products.[225] The interest that builds up in a life insurance policy is similar to interest on a savings account in that it can be withdrawn at any time using a policy loan.[226] Commentators have argued that this tax benefit is not only inefficient but inequitable because generally it is wealthier people who own life insurance policies.[227] Furthermore, if life insurance becomes merely another investment, there is no reason for it to be given favorable tax treatment.[228]

Nevertheless, the industry is so large and powerful, it is highly unlikely that Congress will change any of its perquisites. During 2009 the life insurance industry contributed almost three percent of U.S. gross domestic product, jobs in every state for a total of 2.5 million, and close to $400 billion in economic output.[229] The industry also contributes substantially to political campaigns and spends large sums on lobbyists.[230]

It is notable that not all insurance companies are against life settlements. Some insurance companies are actively encouraging the purchase of life insurance policies for sale to third parties.[231] American International Group (AIG), for example, is among those securitizing those policies into bonds know as collateralized death obligations, death bonds, or blood pools.[232] It is worth remembering that as part of the 2008 economic collapse, the federal government lent about $85 million dollars to AIG because it was "too big to fail" after its financial products unit incurred losses from its credit default swaps insuring losses from subprime mortgages.[233]

B. "Securitizers"

The problems with securitizing life insurance policies are similar to those that caused the mortgage debacle, but worse. Agents and brokers make their money by obtaining the policies and selling them to a bundler. Commissions paid to brokers and other financial professionals can be as high as thirty percent.[234] After the sale, the agents and brokers no longer have any relationship to the policies or the insureds or the investors, so the agents and brokers have a big incentive to disregard any problems (like fraud) they may encourage or that may result.[235] Just as with mortgages, institutions selling the product should continue to have responsibility for what they have sold.[236] What is worse for investors of securitized life insurance policies is that, unlike investors in securitized mortgages, there is no tangible asset that assures at least some value to the investment.[237] Furthermore, whereas in the mortgage situation, securitization may create additional capital for more mortgage lending to potential homeowners, securitizing existing life insurance policies will not create more life insurance policies.[238] That increases the incentive to encourage old people to buy life insurance policies they do not need in order to maintain the supply of policies. The result can be an industry based on phony financial instruments.

As of 2009, life settlements were an approximately $35 billion industry.[239] The industry in the United States has a trade association, the Life Insurance Settlement Association (LISA);[240] a bi-weekly newsletter, The Life Settlements Report;[241] international conferences,[242] and on-line services for trading life insurance policies.[243] The industry also has a presence in some European countries.[244] In Germany, for example, the trade association BVZL was created in 2004 to support the development of the industry and has about thirty member companies that operate in life insurance secondary markets.[245] There are also life settlement firms in the United Kingdom,[246] Ireland, and Luxembourg.[247]

The result of having an industry that supports so many people is a big incentive to "find" more policies and to encourage investors some of whom may not understand the product being sold. The Financial Services Authority (FSA)[248] in the United Kingdom has issued a guidance banning the marketing of life settlements to retail customers in the UK because it found them to be "complex, high-risk products that are not suitable for the vast majority of retail clients."[249] This is the first time the FSA has ever banned the sale of a financial product to retail investors.[250] While government regulation in the

United States focuses on protecting the insureds and eliminating fraud in obtaining policies, there are also many risks for investors making it difficult for a non-professional investor to do the due diligence required for informed investing. Therefore, distinguishing between retail investors and hedge funds and other sophisticated institutional investors is a realistic way of regulating life settlement investing.

The most significant risk for investors is valuation risk.[251] Estimating the value of a portfolio of life insurance policies can be very subjective, and there are examples of portfolio failure due to erroneous valuation.[252] For example, longevity risk is subject to miscalculation because insureds can live longer than expected[253] which means investors will have to continue paying premiums for an extended period, reducing, or perhaps eliminating, profits when the insureds eventually die and the death benefits are paid.[254] There are reports that underwriters who determine LEs regularly underestimate them.[255] It is, of course, in a life settlement company's interest to sell policies belonging to insureds with short LEs, so the company has an incentive to encourage underwriters to err in that direction.[256] Actuaries who use statistics to determine risks and do not evaluate LEs of insureds, have noted that an LE value is just a weighted average of possible outcomes and is not a realistic predictor of how long any particular individual will live.[257] If an underwriter uses an inappropriate mortality table or incorrectly rates an individual insured's mortality risk, the result can be very detrimental to a life settlement investor.[258] For example, mortality tables for the purpose of life settlements are different from those used for purchasers of life insurance policies.[259] Insureds selling their policies into the secondary market have higher income levels which correlates with longer LEs; if life settlement underwriters use a mortality table prepared for initial purchasers of life insurance, life settlement investors will receive an inaccurately low assessment of the LE risk of their investment.[260]

Other risks for investors in life settlement funds include liquidity risk because cash outflows to pay premiums and fund redemptions occur regularly, whereas cash inflows from death benefits and new investments are unpredictable; policy availability risk; operational risks including litigation that can cost more than the death benefits; credit risk caused by the possible failure of the insurance carriers that underwrite the policies; and regulation risk because of changes in state and federal laws.[261]

VII. Conclusions

Life settlements undermine the purpose of life insurance, to protect families and businesses when the family breadwinner or business backbone dies. That purpose also addresses interests of the community at large that might have to undertake some of the families' or businesses' losses if they do not have the safety net of life insurance. Life settlements will make life insurance premiums higher for families and businesses that want to buy policies for legitimate purposes, perhaps pricing them out of the market.

Life settlements encourage old people, investors, insurance brokers and agents to commit fraud in spirit, and often in fact, by participating in the purchase of life insurance policies with the intent of their being sold to third parties who have no insurable interest. Subverting the insurable interest requirement defeats a centuries-old doctrine created to permit the insurance industry to provide a useful service to families and businesses while defeating those who would gamble on the lives of strangers, a nasty arrangement that creates "a sinister counter interest in having the li[ves] come to an end."[262]

State insurance regulators and the federal government, perhaps under expanded powers of the Consumer Finance Protection Bureau,[263] should educate people about several issues related to life settlements. First, young families and small businesses should know that many financial planners recommend term life insurance as the cheapest way to protect against economic hardship in the event of unforeseen death.[264] When the family or business is no longer dependent on the insured, the policy can be dropped and no further premiums have to be paid. Congress would also encourage the purchase of term insurance instead of whole life if it eliminated tax preferences for life insurance over other investment vehicles.

Second, older people with impaired health and whole life policies should know that studies show that the death benefit of their policies will exceed the value of their life settlement, even after taking their premium payments into consideration.[265] The insureds will maximize their estate value if they use other assets to maintain their policies.[266] If they do not have sufficient assets to pay the premiums, their beneficiaries who assist them in doing so will reap a return that will probably be better than other investment options.[267] Even if the insured has to take a loan to pay premiums, beneficiaries will generally be better off than if the policy had been surrendered or sold to a life settlement company.[268] For insureds with no estate planning interests, there can always be exemptions from life settlement requirements for exigent circumstances.

State and federal regulators should also regulate underwriters more strictly requiring detailed disclosures of LE models, tables, and methods used. Many investors have been duped because the LEs of the insureds have been underestimated.

Insurance companies should do their due diligence before issuing life policies for millions of dollars instead of gladly accepting large premiums and figuring that in the case of fraud they can refuse to pay the death benefit and perhaps keep the premiums anyway. In addition to the low, and unattractive, surrender value that carriers offer, they should offer loan plans so that insureds can keep paying premiums with principal and interest being repaid from the death benefit.

Perhaps the most effective action carriers can take to thwart life settlements is to require that at all times at least fifty percent of beneficiaries have an insurable interest in the life of the insured.[269] Of course, state legislation could also strengthen the insurable interest requirement by enacting such a requirement, but it is not likely that state legislators would do so.

Some commentators have been very careful to criticize STOLI arrangements while warning that regulation should not eliminate life settlements.[270] However, little or no reason is given for supporting these arrangements. The only general benefit to consumers is for people with whole life insurance who are undergoing a major life change such as severe illness, or family loss, or business loss, and for those people regulation makes exceptions. They can sell their policies; however, there will be so few of those situations that there will not be enough policies to securitize them, and that removes a major financial abuse. There is nothing to be gained by turning life insurance into a financial product that creates wealth for financiers who merely move money around perverting the purpose of life insurance.

Footnotes

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[1]Hartford Life & Annuity Ins. Co. v. Doris Barnes Family 2008 Irrevocable Trust, No. CV 1–7560 PSG, 2012 WL 688817 (C.D. Cal. Feb. 3, 2012).

[2]*See, e.g.*, Financial Life Serv., LLC v. N. Bergman Ins. Trust, 2011 WL 4434176 (E.D. N.Y. June 27, 2011) (concerning alleged stranger-originated life insurance (STOLI) policy purchased with funds from outside investors) ; Lincoln Nat'l Life Ins. Co. V. Schwarz, No. CIV.A. 09-03361 FLW, 2011 WL 2357828 (D. N.J. June 9, 2011) (not for publication) (concerning alleged stranger-originated life insurance (STOLI) policies and lack of insurable interest); Lincoln Life & Annuity Co. of New York v. Berck, 2011 WL 1878855, at *2 (Cal. App. May 17, 2011) (concerning STOLI for which insured falsely represented net worth as $46.4 million and annual income as $3 million when true amounts were less than $50,000 and not more than $333.23 per month, respectively); PHL Variable Ins. v. Charter Oak Trust, No. HHDCV 106012621S, 2011 WL 1288599 (Conn. Super. Mar. 9, 2011) (concerning alleged stranger-originated life insurance (STOLI) policies and material misrepresentations on applications to insurance company).

[3]*Hartford Life*, 2012 WL 688817, at *1.

[4]*Id.*

[5]*Id.*

[6]*Id.*

[7]*Id.*

[8]*Id.*

[9]*Id.*

[10]*Id.* at *2.

[11]*See, e.g.*, William A. Chittenden III et al., *Recent Developments in Health, Life, and Disability Insurance*, 46 TORT TRIAL & INS. PRAC. L.J. 403, 432 (2011) (noting prevalence of cases about STOLI and insurable interest); *see also* PHL Variable Ins. Co. v. Abrams, No. 10 CV 521 BTM, 2012 WL 10686 (S.D. Cal. Jan. 3, 2012) (insurance company alleging life insurance policy purchased for benefit of third party without insurable interest)

[12]*See* Part IV.

[13]*See* note 147 and accompanying text.

[14]*See, e.g.*, Maria Fleisher, *Comment, Stranger Originated Life Insurance: Finding a Modern Cure for an Age-Old Problem*, 41 CUMB. L. REV. 569 (2010-11); Jared Heady, *Note, Regulating the Secondary Market for Life Insurance: Promoting Consistency to Maximize Utility*, 62 RUTGERS L. REV. 849 (2010); Eli Martin Lazarus, *Note, Viatical and Life Settlement Securitization: Risks and Proposed Regulation*, 29 YALE L. & POL'Y REV. 253 (2010); Susan Lorde Martin, *Betting on the Lives of Strangers: Life Settlements, STOLI, and Securitization*, 13 U. PENN. J. BUS. L. 173 (2010); Franklin G. Monsour, Jr., *STOLI and Intent: The Feeling's Mutual, but It's Starting not to Matter Anyway*, 19 CARDOZO J. INT'L & COMP. L. 679 (2011); Jason J. Ruen, *Comment, Selling Your Death: Why Investor-Owned Life Insurance Should Be Regulated as a Security*, 51 S. TEX. L. REV. 1065 (2010).

[15]*See, e.g.*, Abbie Crites-Leoni & Angellee S. Chen, *Money for Life: Regulating the Viatical Settlement Industry*, 18 J. LEGAL MED. 63, 76 (1997) (noting basic purpose of life insurance policies to protect families financially upon death of insured, not to be used during life of insured).

[16]*See* GEOFFREY CLARK, BETTING ON LIVES: THE CULTURE OF LIFE INSURANCE IN ENGLAND, 1695-1775 13-14 (1999) (noting origin of life insurance in fifteenth century in Mediterranean cities because of risk to slave cargo on ships).

[17]*Id.* at 14.

[18]*Id.* at 14-16.

[19]14 Geo. 3, c. 48 (Eng.).

[20]*See id.*, Preamble, §§ 1, 3 ("Whereas it hath been found by experience that the making of insurances on lives . . . wherein the assured shall have no interest[,] hath introduced a mischievous kind of gaming[,] . . . no insurance shall be made . . . on the life . . . of any person . . . wherein the person . . . for whose . . . benefit . . . such policy . . . shall be made, shall have no interest, or by way of gaming or wagering. . . . and in all cases where the insured hath interest in such life . . . no greater sum shall be recovered . . . from the insurer . . . than the amount of value of the interest of the insured in such life.") For a discussion of insurable interest, see Peter Nash Swisher, *The Insurable Interest Requirement for Life Insurance: A Critical Reassessment*, 53 DRAKE L. REV. 477 (2005); Martin, *supra* note , at 177-80.

Although common wisdom is that the insurable interest rule was created to eliminate the incentive for gamblers to murder the strangers on whose lives they bought insurance policies, some note that the more important reason was that speculative investing in policies was destabilizing early insurance markets. Joanna Benjamin, *The Narratives of Financial Law*, 30 OXFORD J. LEGAL STUDIES 787, 813 (2010).

[21]*See* Warnock v. Davis, 104 U.S. 775, 779 (1881) (holding that life insurance policies purchased by one without an insurable interest in the insured are against public policy because they are "mere wager[s], by which the party taking the policy is directly interested in the early death of the [in]sured." *See also* Grigsby v. Russell, 222 U.S. 149, 154 (1911) (Justice Holmes noting that "contract of insurance upon a life in which the insured has no interest is a pure wager that gives the insured a sinister counter interest in having the life come to an end").

[22]For a detailed explanation of state statutes and common law describing insurable interests, see Martin, *supra* note 14, at 177-80.

[23]*See, e.g.*, ALA. CODE § 27-14-3(e)(2009); CAL. INS. CODE § 10110.1(d) (West 2009); GA. CODE ANN. § 33-24-3(d) (2009); KANS. STAT. ANN. § 40-453 (2009); OKLA. STAT. tit. 36, § 3604(C)(4)(g) (2009); Lincoln Nat'l Life Ins. Co. v. Gordon R. A. Fishman Irrevocable Life Trust, 638 F. Supp. 2d 1170, 1179 (C.D. Cal. 2009); Ficke v. Prudential Ins. Co., 202 S.W.2d 429, 431 (Ky. Ct. App. 1947); *Grigsby*, 222 U.S. at 155; Connecticut Mut. Life Ins. Co. v. Schaefer, 94 U.S. 457, 462-63 (1876).

[24]*But see* Jacob Loshin, *Insurance Law's Hapless Busybody: A Case against the Insurable Interest Requirement*, 117 YALE L.J. 474 (2007) (arguing for elimination of insurable interest doctrine).

[25]Life Partners, Inc. v. Morrison, 484 F.3d 284, 287 (4th Cir. 2007); Kelly J. Bozanic, Comment, *An Investment to Die for: From Life Insurance to Death Bonds, the Evolution and Legality of the Life Settlement Industry*, 113 PENN. ST. L. REV. 229, 233 (2008); Eryn Mathews, Notes and Commentaries, *STOLI on the Rocks: Why States Should Eliminate the Abusive Practice of Stranger-Owned Life Insurance*, 14 CONN. INS. L.J. 521, 523 (2008)**;** Marlene Y. Satter, *Bonds. Death Bonds*, INVESTMENT ADVISOR, Nov. 2009**,** at 115. "Viatical" comes from "viaticum," an ancient Roman term referring to a purse containing money and provisions for a trip. *Morrison*, 484 F.3d at 287.

[26]*Morrison*, 484 F.3d at 287; David W. Dunlap, *AIDS Drugs Alter an Industry's Math; Recalculating Death-Benefit Deals*, N.Y.TIMES, July 30, 1996, at D4.

[27]Carl T. Hall, *Viatical Firm's Stock Hit Hard*, S.F. CHRON., July 18, 1996, at C1.

[28]Dunlap, *supra* note 26, at D1; Martin, *supra* note 14, at 186-87, 192-93.

[29]Michael Lovendusky, *Hedging Risk Using Life Settlements*, ALI-ABA COURSE OF STUDY § 1.6, Nov. 3-4, 2011.

[30]Sachin Kohli, Comment, *Pricing Death: Analyzing the Secondary Market for Life Insurance Policies and Its Regulatory Environment*, 54 BUFF. L. REV. 279, 281, 297-99 (2006). Life insurance companies, which oppose life settlements, continue to refer to them as death bonds, blood pools, and collateralized death obligations. Lovendusky, *supra* note 29, at Appendix.

[31]Matthew Heller, *You Bet Your Life*, CAL. LAWYER, Apr. 2012, *available at* www.callawyer.com/clstory.cfm?eid=921395. *But see* Terence John Brunau, *Betting on Death or Just Cashing In?: Taking a Look at the Life Settlement Industry through the Lens of Kramer v. Phoenix Life Insurance*, 25 QUINNIPIAC PROBATE L.J. 210, 212 (2012) (calling life settlements a $20 billion industry).

[32][32]Jeff Ostrowski, *Boca Raton-Based Imperial Holdings Says It Won't Face Criminal Charges*, PALM BEACH POST, Apr. 30, 2012, *available at* www.palmbeachpost.com/money/boca-raton-based-imperial-holdings-says-it-won't-face-criminal-charges; Brian Bandell, *Criminal Probe of Imperial Holdings Targets Life Insurance Financing*, SOUTH FLA. BUS. J., Jan. 9, 2012, *available at* www.bizjournals/southflorida/news/2012/01/09/criminal-probe-of-imperial-holdings-targets-life-insurance-financing.

[33]Press Release, SEC, SEC Charges Offshore Company in Massive Life Settlement Bonding Fraud (Jan. 19, 2011), *available at* www.sec.gov/news/press/2011/2011-15.htm.

[34]Press Release, Dep't of Justice, Provident Capital Indemnity, Its President and Auditor charged in $670 Million Fraud Scheme (Jan. 19, 2011), *available at* www.justice.gov/opa/pr/2011/January/11-crm-075.html.

[35]*Id.*

[36]Press Release, Dep't of Justice, President of Costa Rican Company Sentenced to 60 Years in Prison for Half-Billion Dollar Fraud Scheme with Thousands of Victims Worldwide (Oct. 23, 2012), *available at* www.justice.gov/opa/pr/2012/October/12-crm-1275.html; Larry O'dell, *NJ Accountant Sentenced to 4½ Years in Fraud Case*, BLOOMBERG BUSINESSWEEK, Nov. 30, 2012, *available at* www.businessweek.com/printer/articles/142866?type=ap.

[37]Press Release, Dep't of Justice, President of Costa Rican Company Sentenced, *supra* note 36.

[38]*End of the Road for Himelsein Mandel Vehicle*, HEDGE FUND ALERT, Mar. 28, 2012, at 1, *available at* www. hfalert.com.headlines.php?hid=156673.

[39]*Id.*

[40]*Id.*

[41]*Id.* at 6.

[42]*Id.*

[43]*Id.*

[44]*Fortress Draws a Crowd for Death Benefits*, HEDGE FUND ALERT, May 11, 2011, at 1, *available at* www. hfalert.com.headlines.php?hid=151417.

[45]*See, e.g.*, Lincoln Nat'l Life Ins. Co. v. Snyder, 722 F. Supp. 2d 546 (D. Del. 2010); Principal Life Ins. Co. v. Mosberg, No. 09-22341, 2010 WL 2509634 (S.D. Fla. June 18, 2010); West Coast Life Ins. Co. v. Harry Esses 2007-1 Ins . Trust, No. 09-2761, 2010 WL 1644799 (D.N.J. Apr. 22, 2010).

[46]*See, e.g.*, Berkshire Settlements, Inc. v. Ashkenazi, No. 09-cv-0006, 2011 WL 5974633 (E.D.N.Y. Nov. 29, 2011); PHL Variable Ins. Co. v. U.S. Bank Nat'l Ass'n, No. 10-1197, 2010 WL 3926310 (D. Minn. Oct. 4, 2010); Lincoln Nat'l Life Ins. Co. v. Joseph Schlanger 2006 Ins. Trust, 28 A.3d 436 (Del. 2011).

[47]Hartford Life & Annuity Ins. Co. v. Doris Barnes Family 2008 Irrevocable Trust, No. CV 1–7560 PSG, 2012 WL 688817, at *2 (C.D. Cal.).

[48]CAL. INS. CODE § 286 (West 2008).

[49]CAL. INS. CODE § 10110.1(a) (West 2008).

[50]Hartford Life & Annuity Ins. Co. v. Doris Barnes Family 2008 Irrevocable Trust, 2012 WL 688817, at *5 (C.D. Cal.). Lincoln Life & Annuity Co. v. Berck, No. D056373, 2011 WL 1878855 (Cal. App. May 17, 2011) **Error! Main Document Only.**(unpublished) (review denied Aug. 31, 2011), is another case with facts and outcome similar to those in *Barnes*, but notable for its strong dissent by Judge Aaron. In *Berck*, the son of Jack Teren set up a trust to be the beneficiary of a life insurance policy obtained by Jack. *Id.* at *1. In his insurance application, Jack claimed a net worth of $46.4 million and an annual income of $3 million when, in fact, his net worth was less than $50,000 and his monthly income was $1,333.23. *Id.* at *2. Lincoln issued policies on the life of Jack with a total death benefit of $20 million and annual premiums of $909,000. *Id.*

Jack's son transferred his interest in the trust to LPC, a limited liability company that bought and managed life insurance policies for investors, in exchange for a $600,000 payment to him and premium payments to Lincoln. *Id.* at *1-*3. The court held that the policies were enforceable because Jack had an insurable interest in his own life as did his son, the original beneficiary of the trust. *Id.* at *9. The court noted the change in California statutes that would make the Teren arrangement unenforceable, but held that the new law could not be applied retroactively. *Id.* at *8.

Judge Aaron vehemently asserted that the court's decision undermined California's insurable interest requirement designed to prevent wager contracts. *Id.* at *9. She noted that Jack testified that he was unaware that the documents he signed were applications for life insurance. *Id.* at *12. She concluded that "a mere signature on an application for life insurance does not and cannot, in itself, irrefutably establish that the policy is supported by a legitimate insurable interest. *Id.* at *14.

[51]*Barnes*, 2012 WL 688817, at *6.

[52]Principal Life Ins. Co. v. Lawrence Rucker 2007 Insurance Trust, No. CIV.A. 08-488-MPT, 2012 WL 2401717 (D. Del.).

[53]*Id.* at *1.

[54]*Id.*

[55]*Id.* at *2.

[56]*Id.* at *6-7.

[57]*Id.*

[58]*Id.*

[59]*Id.*

[60]*Id.*

[61]*Id.* at *1.

[62]28 A.3d 1059 (Del. 2011).

[63]28 A.3d 436 (Del. 2011).

[64]*Principal Life*, 2012 WL 2401717, at *4 (citing Price Dawe, 28 A.3d at 1068).

[65]*Id.* at *5-6.

[66]*Id.* at *6.

[67]*Id.*

[68]Principal Life Ins. Co. v. DeRose, No. 1:08-CV-2294, 2011 WL 4738114, at *7 n. 15 (M.D. Pa. Oct. 5, 2011).

[69]*Id.* at *4 (quoting 40 PA. CONS. STAT. § 512).

[70]*Id.*

[71]*Id.* at *5.

[72]313 Fed. Appx. 633 (4th Cir. 2009) (unpublished per curiam opinion).

[73]*Id.* at 634.

[74]*Id.* at 635.

[75]*Id.*

[76]*Id.*

[77]*Id.*

[78]*Id.* at 636.

[79]*Id.*

[80]*Id.*

[81]*Id.*

[82]CAL. INS. CODE § 10110.1(e) (West 2010).

[83]**Error! Main Document Only.**2009 Cal. Stat. Ch. 343, § 8.

[84]*Barnes*, 2012 WL 688817, at *6 (quoting John Hancock Mut. Life Ins. Co. v. Greer, 77 Cal. Rptr. 2d 48 (1998)).

[85]New England Mut. Life Ins. Co. v. Doe, 710 N.E. 2d 1060, 1061-62 (N.Y. 1999).

[86]*Id.* at 1062 (quoting Justice Holmes in Northwestern Mut. Life Ins. Co. v. Johnson, 254 U.S. 96, 101-02 (1920)).

[87]*Id.* The first insurance company in the United States to put uncontestability clauses in its life insurance polices was the Manhattan Life Insurance Company in 1864 to use as a sales tool. Erin Wessling, *Contracts–Applying the Plain Language to Incontestability Clauses–Kersten v. Minn. Mut. Life Ins. Co.*, 27 WM. MITCHELL L. REV. 1253, 1256 (2000).

[88]Wessling, *supra* note 87, at 1257.

[89]New England. Mut. Life Ins. Co. v. Caruso, 535 N.E. 2d 270, 271 (N.Y. 1989); *see also* Settlement Funding, LLC v. AXA Equitable Life Ins. Co., No. 09 CV 8685 HB, 2011 WL 1097635, at *1 (S.D.N.Y. Mar. 21, 2011) (incontestability clause barred AXA from challenging policy's validity).

[90]*Caruso*, *supra* note 89, at 274-75.

[91]Bogacki v. Great-West Life Assur. Co., 234 N.W. 865 (Mich. 1931).

[92]*Id.* at 865 (citing MICH. COMP. LAWS § 9100(147) (1922)).

[93]*Id.* at 866.

[94]*See, e.g.*, Obartuch v. Security Mut. Life Ins. Co., 114 F.2d 873, 878 (7th Cir. 1940) (incontestability clause cannot be used in contract that is void ab initio); Ohio Nat'l Life Assurance Corp. v. Davis, No. 10 C 2386, 2011 WL 2680500, at *7 (N.D. Ill. July 6, 2011) (incontestability provision does not apply to wagering contracts)

[95]Commonwealth Life Ins. Co. v. George, 28 So. 2d 910, 912–14 (Ala. 1947); Home Life Ins. Co. v. Masterson, 21 S.W.2d 414, 417 (Ark. 1929); Harris v. Sovereign Camp Woodmen of the World, 31 Ohio Law Abs. 317 (Ct. App. 1940); Price Dawe, 28 A.3d at 1066-67 (citing Beard v. Am. Agency Life Ins. Co., 550 A.2d 677, 689 (Md. 1988)); Lincoln Nat'l Life Ins. Co. v. Joseph Schlanger 2006 Ins. Trust, 28 A.3d 436 (Del. 2011); Wood v. New York Life Ins. Co., 336 S.E.2d 806, 811–12 (Ga. 1985); Charbonnier v. Chicago Nat'l Life Ins. Co., 266 Ill. App. 412 (1932)); Bromley's Administrator v. Washington Life Ins. Co., 92 S.W. 17 (Ky. 1906); Goodwin v. Fed. Mut. Ins. Co., 180 So. 662, 665 (La. Ct. App. 1938); Ludwinska v. John Hancock Mut. Life Ins. Co., 178 A. 28, 30 (Pa. 1935); Henderson v. Life Ins. Co. of Va., 179 S.E. 680, 692 (S.C. 1935).

[96]Price Dawe, 28 A.3d at 1067.

[97]*Id.*

[98]*See, e.g.*, Lincoln Nat'l Life Ins. Co. v. Schwarz, No. CIV.A. 09-03361 FLW, 2011 WL 2357828, at *4 (D. N.J. June 9, 2011) (not for publication) (defendant trustees of life insurance trust alleging that insurance company knew, or could have known, all the financial circumstances of insured but, in widespread practice, chose to sell life insurance policies on lives of elderly people, and encouraged such sales, disregarding insureds' financial condition in hopes that policies would lapse for failure to pay premiums and companies could keep premiums without providing any benefits); American Gen'l Life Ins. Co. v. Ellman Savings Irrevocable Trust, No. CIV.A. 08-5364 MLC, 2010 WL 5253611, at *6 (D. N.J. Dec. 17, 2010 (court finding that insurance company knew policy was STOLI plan but did not rescind policy until death benefit had to be paid).

[99]Taylor v. Grand Lodge A.O.U.W., 105 N.W. 408, 411 (Minn. 1905).

[100]PHL Variable Ins. Co.v. Lucille E. Morello 2007 Irrevocable Trust, 645 F.3d 965, 970 (8th Cir. 2011).

[101]*Id.* at 967.

[102] *Id.* at 968.

[103] *Id.*

[104] *Id.* at 970.

[105] Amrita Financial, *Life Settlement Legislation Does More Than You Think*, at www.amritafinancial.com/blog/life-settlement-legislation-does-more-than-you-think (last visited Aug. 17, 2012).

[106] H.F. 2794, 87th Sess., 2d Reg. Sess. (Minn. 2012).

[107] *Id.*

[108] Elizabeth D. Festa, *Life Insurers Fight Hedge Fund Legislation*, LIFEHEALTHPRO, Feb. 21, 2013, *at* www.lifehealthpro.com/2013/02/21/life-insurers-fight-hedge-fend-legislation.

[109] H.R. 87, 147th Gen. Assemb. (Del. 2013).

[110] Sen. 134, 88th Sess. (S.D. 2013).

[111] Festa, *supra* note 108.

[112] Sarbanes-Oxley Act of 2002, Pub. L. No. 107-204, § 308, 116 Stat. 745, 784 (codified at 15 U.S.C. § 7246 (Supp. V 2005)).

[113] *Id.*

[114] The closest Alabama and Wyoming come to addressing life settlement issues is that both states have insurable interest statutes and Alabama's specifically requires an insurable interest when the policy becomes effective but not when the loss occurs. ALA. CODE § 27-14-3 (2012); WYO. STAT. ANN. § 26-15-102 (2012).

[115] MO. REV. STAT. § 409.1-102(28)(E) (2012); S.C. CODE ANN. § 35-1-102(29)(E) (2012); S.D. CODIFIED LAWS § 47-31B-102(28)(E) (2012). South Dakota also has an administrative rule on viatical settlements that incorporates the North American Securities Administration Association, Inc. (NASAA) "Guidelines Regarding Viatical Investments" by reference but notes that settlements not conforming with those guidelines may be given waivers or exceptions. S.D. ADMIN. R. 20:08:07:31(2) (2012).

[116] Festa, *supra* note 108.

[117] DEL. CODE ANN. tit. 18, § 7508(a)(2) (2012); MASS. GEN. LAWS ch.175, § 213 (effective Apr. 8, 2013)); MICH. COMP. LAWS § 550.521(g) ("terminal illness or condition"); N.M. STAT. ANN. § 59A-20A-2(G)

[118] ALASKA STAT. § 45.55.990(8) (2012).

[119] *See, e.g.*, R. Leimberg, *Stranger Originated Life Insurance (STOLI): What Counsel (and What Every Advisor) Must Absolutely Positively Know!*, ADVANCED ESTATE PLANNING TECHNIQUES 573, 629 (2009) (outlining provisions of model acts); Susan Lorde Martin, *Betting on the Lives of Strangers: Life Settlements, STOLI, and Securitization*, 13 U. PENN. J. BUS. L. 173, 200-03 (2010) (describing differences and similarities of two acts and discussing state statutes based on them); Boris Ziser, *Another Active Year in the Life Settlement Industry*, 14 J. STRUCTURED FIN. 52 (2008) (describing some similarities and some differences).

[120] *Supra* note 119.

[121] N.Y. INS. LAW §§ 7802, 7813, 7815 (2010).

[122] *Id.* § 7815(a). STOLI agreements are defined as arrangements facilitating the purchase of life insurance policies "for the intended benefit of a person who, at the time of policy origination, has no insurable interest in the life of the insured." *Id.*

[123] *Id.* § 7802(k)(1).

[124] *Id.* §§ 7813(a), (c), (g)(1).

[125] *Id.* § 7815(a).

[126] *Id.* § 7813(j)(1).

[127]NATIONAL CONFERENCE OF INSURANCE LEGISLATORS LIFE SETTLEMENTS MODEL ACT § 11(N)(1) (2007); Peter Molinaro, *At Last! Comprehensive Life Settlement Legislation in New York*, INS. ADVOCATE, Nov. 30, 2009 (noting that NCOIL was more acceptable to life settlement industry), *at* www.insurance-advocate.com/At-last-Comprehensive-Life-Settlement-Legislation-in-New -York.

[128]VIATICAL SETTLEMENTS MODEL ACT § II(A) (2009).

[129]Life Insurance Settlement Association, *What Is a Life Settlement?*, *available at* www.lisa.org/files/orgDoc/NY-brochure.v6.4.pdf (last visited Aug. 17, 2012).

[130]N.C. GEN. STAT. § 58-58-260(f)(9) (2010).

[131]N.Y. INS. LAW § 7809 (2010).

[132]MINN. STAT. § 60A.0785(1) (2009).

[133]NEB. REV. STAT. § 44-1110(1) (2010); N.H. REV. STAT. ANN. § 408-D:12(II) (2010) (5-year requirement unless insured has negative life situation or insured paid premiums form own assets and did not have prior agreement to sell policy, then insured can sell policy two years after issuance); OHIO REV. CODE ANN. § 3916.16(B) (West 2009).

[134]ARIZ. REV. STAT. ANN. § 20-443.02 (2012).

[135]*Id.* at § 20-443.02(A).

[136]ARIZ. REV. STAT. ANN. § 20-3201 through 20-3215 (to be codified after Sept. 30, 2013).

[137]*Id.*

[138]*Id.* § 20-3211 (exceptions for terminal illness, death of spouse, divorce, retirement, physical or mental disability). *See also* COLO. REV. STAT. § 10-7-610 (2009).

[139]*Id.* § 20-3202(A).

[140]*Id.* § 20-3202(E).

[141]*Id.* § 20-3204.

[142]*Id.* § 20-3207(A).

[143]*Id.* § 20-3211(U)(8); *see also* TEX. INS. CODE ANN. § 1111A.011(c)(2) (2011) (prohibiting use of "free," and "no cost" in advertising purchase of life insurance policy); VT. STAT. ANN. tit. 8, § 3846(a)(6) (2010) (prohibiting use of "free," "no cost" et al. in advertising purchase of life insurance policy).

[144]TENN. CODE ANN. § 56-50-113(d) (2010).

[145]Jim Connolly, *State Legislators Got Contributions from Life Settlement Firms*, LIFEHEALTHPRO, Oct. 28, 2007, *at* www.lifehealthpro.com/2007/10/28/state-legilators-got-contributions-from-life-settlement-firms.

[146]*See, e.g.*, CONN. GEN. STAT. § 38a-465a (2011) (licensing of life settlement providers and brokers); GA. CODE ANN. § 33-59-3 (2009) (license and registration requirements for life settlement brokers and providers).

[147]SEC, LIFE SETTLEMENTS TASK FORCE STAFF REPORT 35-36 (2010).

[148]FLA. STAT. § 626.992 (2009); 28 TEX. ADMIN. CODE § 3.1703 (2009).

[149]SEC, *supra* note 147, at 43 (recommending more regulation of life expectancy underwriters by states and Congress).

[150]SEC, *supra* note 147, at vi.

[151]SEC, *supra* note 147, at vi.

[152]SEC, *supra* note 147, at 23 n. 96.

[153]Letter from Mary L. Schapiro, Chairman, U.S. Sec. & Exch. Comm'n, to Senator Herb Kohl, Chairman, S. Special Comm. On Aging, (Apr. 28, 2009), *in* MAJORITY STAFF OF S. SPECIAL COMM. ON AGING, 111TH CONG., LIFE SETTLEMENTS: RISKS TO SENIORS – SUMMARY OF COMM. INVESTIGATION, app. II at 10-11 (2009).

[154]SEC, *supra* note 147.

[155]SEC, *supra* note 147, at vii.

[156]SEC, *supra* note 147, at ix.

[157]SEC, *supra* note 147, at viii.

[158]*See, e.g.,* In re John Thomas Capital Mgmt. Group LLC, Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Sections 15(b)(4), 15(b)(6) and 21C of the Securities Exchange Act of 1934, Sections 203(e), 203(f), and 203(k) of the Investment Advisors Act of 1940 and Section 9(b) of the Investment company Act of 1940 and Notice of Hearing (Mar. 22, 2013) (alleging, *inter alia*, false information provided to investors regarding evaluator of present values of policies and value of policies owned by company), *available at* www.sec.gov/litigation/admin/2013/33-9396.pdf; SEC v. Provident Capital Indemnity, Ltd. No. 3:11-cv-045 (E.D. Va. Jan. 19, 2011), Litigation Release No. 22332 (Apr. 16, 2012) (holding misrepresentations by auditor for reinsurance company which provided guarantee bonds on life settlements promising to pay policies' death benefits if insureds lived beyond LEs, misled investors), *available at* www.sec.gov/litigation/litreleases/2012/lr22332.htm.

[159]SEC v. Life Partners Holdings, Inc., Complaint (W.D. Tex. Jan. 3, 2012), *available at* www.sec.gov/litigation/complaints/2012/comp-pr2012-2.pdf.

[160]*Id.* at 2.

[161]*Id.*

[162]*Id.*

[163]*Id.*

[164]*Id.*, at 3.

[165]*Id.*, at 3-4.

[166]*Id.*, at 4. The average LE predicted by Life Partners for its policies over one five-year period was 3.8 years; its average for that period should have been at least eight years longer. *Id.*, at 12-13.

[167]*Id.*, at 7. Between 2006 and 2011, Life Partners brokered life settlements that brought the company $400 million in revenue. *Id.*, at 14.

[168]*Id.*, at 18.

[169]*Id.*, at 6.

[170]*Id.* (available in its entirety at www.sec.gov/litigation/complaints/2012/comp-pr2012-2.pdf).

[171]*See, e.g.*, Chambers Dev. Co. v. Passaic County Utilities Auth., 62 F.3d 582, 589 (3d Cir. 1995) (freedom of contract is fundamental concept of our entire legal structure and includes freedom to make bad bargain); City & County of Denver v. District Court of Denver, 939 P.2d 1353, 1361 (Colo. 1997) (right of parties to contract freely is well-developed part of our jurisprudence); Braye v. Archer-Daniels-Midland Co., 676 N.E.2d 1295, 1303 (Ill. 1997) (public policy in Illinois favors freedom to contract).

[172]Adam J. Hirsch, *Freedom of Testation/ Freedom of Contract*, 95 MINN. L. REV. 2180, 2189 (2011); Sternaman v. Metro. Life Ins. Co., 62 N.E. 763, 764 (N.Y. 1902) (power to contract can be restricted by public policy).

[173]Reporter for the First Restatement of Contracts and author of the five volume treatise The Law of Contracts (1922).

[174]Mark L. Movsesian, *Formalism in American Contract Law: Classical and Contemporary,* 12 IUS GENTIUM 115, 136 (2006).

[175]*See, e.g.,* Santos v. City of Fall River, No. 10-11894-NMG, 2013 WL 1187103, at *7 (D. Mass. Mar. 19, 2013) (refusing to enforce employment contract that shows "an unconscionable effort to bind a successor [employer] and . . . a lack of good faith); Jones v. Star Credit Corp., 298 N.Y.S.2d 264, 265 (Sup. Ct. 1969) (refusing to enforce credit purchase of freezer because of "concern for the uneducated and often illiterate individual who is the victim of gross inequality of bargaining power").

[176] Hirsch, *supra* note 172, at 2190-91; *see, e.g.*, Heyde Cos., Inc. v. Dove Healthcare, LLC, 637 N.W.2d 437, 440 (Wis. Ct. App. 2001) (refusing on public policy grounds to enforce contractual no-hire provision that restrains trade in labor market).

[177] Thomas Lee Hazan, *Filling a Regulatory Gap: It Is Time to Regulate Over-the-CounterDerivatives*, 13 N.C. BANKING INST. 123, 131, 134 (2009).

[178] *See, e.g.*, Beacon Hill Civic Ass'n v. Ristorante Toscano, Inc., 662 N.E.2d 1015, 1017 (Mass. 1996) (noting that contracts are void when the "public interest in freedom of contract is . . . outweighed by public policy").

[179] *See, e.g.*, W.R. Grace & Co. v. Rubber Workers, 461 U.S. 757, 766 (1983) (holding that "for a contract to be invalidated on public policy grounds, '[s]uch a public policy ... must be well defined and dominant, and is to be ascertained by reference to the laws and legal precedents and not from general considerations of supposed public interests' "); Genzyme Corp. v. Fed. Ins. Co., 622 F.3d 62, 69 (1st Cir. 2010) (refusing to void contract on public policy grounds because public policy rationale was not supported by state statutory or case law).

[180] Terrien v. Zwit, 648 N.W.2d 602, 608-09 (Mich. 2002).

[181] *See, e.g.*, Hiller v. County of Anoka, 529 N.W.2d 426, 429 (Minn. Ct. App. 1995) (contemporary principle of property ownership includes free alienability); Lee Anne Fennell, *Adjusting Alienability*, 122 HARV. L. REV. 1403, 1405 (2009) ("alienability one of the standard incidents of ownership"); Susan Etta Keller, *The Rhetoric of Marriage, Achievement, and Power: an Analysis of Judicial Opinions Considering the Treatment of Professional Degrees as Marital Property*, 21 VT. L. REV. 409, 438-39 (1996) (discussing theories of property by Thomas Grey and George Thompson).

[182] 222 U.S. 149, (1911).

[183] *Id.* at 156.

[184] *Id.*; Lincoln Nat'l Life Ins. Co. v. Gordon R.A. Fishman Irrevocable Life Trust, 638 F. Supp. 2d 1170, 1177 (C.D. Cal. 2009) ("'an interest in the life or health of a person insured must exist when the insurance takes effect, but need not exist thereafter or when the loss occurs.' . . . Thus, once purchased, a policy is freely alienable"); Sun Life Assurance Co. v. Paulson, No. CIV.A. 073877DSDJJG, 2008 WL 5120953, at *5 (D. Minn. Dec. 3, 2008) ("court determines that the Minnesota Supreme Court would find that the mutual intent requirement strikes the appropriate balance between prohibiting wagering contracts and giving life insurance policies 'the ordinary characteristics of property,' including free alienability").

[185] *See, e.g.*, Robin S. Weinberger & Peter N. Katz, *What Does Betty White Know about Life Settlements?* LIFEHEALTHPRO, June 18, 2012, *available at* www.lifehealthpro.com/2012/06/18/what-does-betty-white-know-about-life-settlements?/ (authors, both life settlement industry workers, asserting that Betty knows that options for life insurance policies should be same as for any other property).

[186] Keller, *supra* note 181, at 440; Susan Rose-Ackerman, *Inalienability and the Theory of Property Rights*, 85 COLUMBIA L. REV. 931, 932 (1985) ("some forms of inalienability do have valid public policy justifications"); McKean v. Warburton, 919 So. 2d 341, 344 (Fla. 2005) (property freely alienable as long as not contrary to public policy).

[187] *See, e.g.*, *Lincoln*, 638 F. Supp. 2d, *supra* note 184, at 1177; Lewis v. Reed, 192 P. 335 (1920).

[188] *See, e.g.*, *Sun Life*, 2008 WL 5120953, *supra* note 184, at *5; Lawrence v. Travelers' Ins. Co., 6 F. Supp. 428, 430 (E.D. Penn. 1934).

[189] Fennell, *supra* note 181, at 1405; Rose-Ackerman, *supra* note 186, at 950.

[190] Thomas Lee Hazan, *Filling a Regulatory Gap: It Is Time to Regulate Over-the-CounterDerivatives*, 13 N.C. BANKING INST. 123, 125 (2009); Stephen J. Leacock, *Lotteries and Public Policy in American Law*, 46 J. MARSHALL L. REV. 37, 40 (2012).

[191] Christine Hurt, *Regulating Public Morals and Private Markets: Online Securities Trading, Internet Gambling, and the Speculation Paradox*, 86 B.U. L. REV. 371, 374 (2006).

[192] N.Y. Const. art. I, § 9.

[193] Hurt, *supra* note 191, at 375.

[194] Ryan D. Hammer, *Does Internet Gambling Strengthen the U.S. Economy? Don't Bet on It*, 54 FED. COMM. L.J. 103, 118-19 (2001); Hurt, *supra* note 191, at 375 (noting that on-line gambling had foreign hosts and, therefore, resulted in no tax revenue and competition for on-shore gambling enterprises that were revenue-raising).

[195]31 U.S.C. 5361-67 (2006).

[196]31 U.S.C. 5362(10)(B) (2006).

[197]2013 N.J. Sess. Law Serv. Ch. 27 (West) (amending N.J. STAT. ANN. § 5:12-95.17). Nevada and Delaware have also enacted legislation that permits on-line gambling. *Christie Signs N.J. Internet Gambling Bill into Law*, NPR, Feb. 27, 2013, available at www.npr.org/2013/02/27/173025336/christie-signs-n-j-internet-gambling-bill-into-law

[198]Ryan Hutchins, *N.J. Moving at Dizzying Pace to Implement Online Gambling*, STAR-LEDGER, Mar. 3, 2013, available at http://blog.nj.com/politics_impact/print.html?entry=2013/03/nj_moving_at_dizzying_pace_to.html.

[199]*Id.*

[200]For a description of the securitization of life insurance policies, see Martin, *supra* note 14, at 192-93 (recounting how bankers bundle hundreds or thousands of life insurance policies into bonds and divide bonds into tranches with different levels of risk and return).

[201]Christopher Westfall, *Life Settlements Industry Next on the Chopping Block*, CBS NEWS, June 11, 2009, *available at* www.cbsnews.com/2102-505123_162-33041299/life-settlements-industry-next-on-the-chopping-block.

[202]*See, e.g.*, Leslie Scism, *Insurers Sued over Death Bets*, ONLINE.WSJ.COM (Jan. 2, 2011), http://online.wsj.com/article/SB10001424052748704543004576052190231428096.html.

[203]*Id.* Two of these cases were coordinated in the Santa Barbara County Court in California where the court created a complex case management plan to organize the ensuing proceedings. Complex Case Management Order, PHL Variable Ins. Co. Cases, Judicial Council Coordination Proceeding No. CORD 4612 (Cal. Super. Ct. Aug. 4, 2010).

[204]Wells Fargo Bank Northwest, N.A. v. Amer. Gen'l Life Ins. Co., No. 10-1327(FLW), 2011 WL 1899338 (D. N.J. May 19, 2011); Settlement Funding, LLC v. AXA Equitable Life Ins. Co., No. 09CV8685(HB), 2011 WL 1097635,(S.D.N.Y. Mar. 21, 2011).

[205]Scism, *supra* note 202.

[206]No. 10-80804-CIV-COHN/SELTZER (S.D. Fla. Nov. 14, 2011) (Judicial Order).

[207]*Id.* at 2.

[208]*Id.* at 7.

[209]*Id.* at 2-3.

[210]*Id.* at 3.

[211]*Id.* at 4,7.

[212]*Id.* at 5, 7-8.

[213]*Id.* at 11.

[214]*Id.* at 9.

[215]*Id.* at 11.

[216]*Id.* at 18-20.

[217]*Id.* at 26.

[218]*Betting on Death in the Life Settlement Market–What's at Stake for Seniors: Hearing Before the S. Special Comm. on Aging*, 111th Cong. (Apr. 29, 2009), *available at* 2009 WLNR 8154364 (noting that "[i]n life insurance, pricing accounts for the probability of death, surrender and lapse."). *But see* DELOITTE CONSULTING LLP & UNIV. OF CONN., THE LIFE SETTLEMENTS MARKET - AN ACTUARIAL PERSPECTIVE ON CONSUMER ECONOMIC VALUE 12 (2005), *available at* www.quatloos.com/uconn_deloitte_life_settlements.pdf (asserting that lapse is a key actuarial assumption that takes into consideration that impaired insureds, the targets of life settlement companies, are more likely to maintain policies so life settlements do not have a significant impact on policy pricing). The Deloitte study, which is eight years old, does not take

into consideration the policies that will be purchased by reasonably healthy old adults (if they were severely impaired carriers would not issue policies) for the purpose of selling them in two years to third party investors, policies that will not lapse.

[219]U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-10-775, REPORT TO THE SPECIAL COMM. ON AGING, U.S. SENATE, LIFE INSURANCE SETTLEMENTS–REGULATORY INCONSISTENCIES MAY POSE A NUMBER OF CHALLENGES 1 (2010); Darwin Bayston, *Baby Boomers Will Drive the Life Settlement Industry over the Next 15 Years*, LISA BLOG (Oct. 8, 2012), http://blog.lisainstitute.org/author/dbaystonlisa-org/ (asserting that U.S. GAO reported that life settlements provided an average of seven times more than a life insurance policy's surrender value).

[220]Eli Martin Lazarus, *Viatical and Life Settlement Securitization: Risks and Proposed Regulation*, 29 YALE L. & POL'Y REV. 253, 261 (2010); Brooks Magratten, *Anti-STOLI Regulation,* ALI-ABA CONFERENCE ON INSURANCE AND FINANCIAL SERVICES LITIGATION, May 5-6, 2011.

[221]Matthew Heller, *You Bet Your Life*, CAL. LAWYER, Apr. 2012, *available at* www.callawyer.com/clstory.cfm?eid=921395.

[222]Franklin L. Best Jr., *Securitization of Life Insurance Policies*, 44 TORT TRIAL & INS. PRAC. L.J. 911, 915 (2009); Hanming Fang & Edward Kung, *How Does Life Settlement Affect the Primary Life Insurance Market?* Nat'l Bur. Econ. Research, Working Paper No. 15761 (2010), *available at* *http://www.mit.edu/files/5329;http://www.nber.org/papers/w15761.pdf?new_window=1; Robert B. Smith, Reconsidering the Taxation of Life Insurance Proceeds through the Lens of Current Estate Planning*, 15 VA. TAX. REV. 283, 289 (1995) (noting that carrier bets that policy will lapse before insured dies or that by the time of death, policy premiums and earnings will be sufficient to pay death benefit).

[223]Martin, *supra* note 14, at 182-83.

[224]Mell J. Lacy, *Life Insurance as a Function of Estate Planning for the Military Member*, 17 AIR FORCE L. REV. 1, 45 (1975); Martin, *supra* note 14, at 182-83 n. 61.

[225]Robert B. Smith, *Reconsidering the Taxation of Life Insurance Proceeds through the Lens of Current Estate Planning*, 15 VA. TAX. REV. 283, 287 (1995).

[226]Martin J. McHahon, Jr., *Individual Tax Reform for Fairness and Simplicity: Let Economic Growth Fend for Itself*, 50 WASH. & LEE L.REV. 459, 481 (1993).

[227]*Id.* at 481-82.

[228]Andrew Verstein, *Bad Policy for Good Policies: Article 9's Insurance Exclusion*, 17 CONN. INS. L.J. 287, 346-47 (2011).

[229]ERNST & YOUNG, CONTRIBUTIONS OF THE LIFE INSURANCE INDUSTRY TO THE U.S. ECONOMY: EMPLOYMENT AND HOUSEHOLD INCOME 1, 7-8 (2012).

[230]INSURANCE, OPENSECRETS.ORG–CENTER FOR RESPONSIVE POLITICS, *at* www.opensecrets.org/industries/indus.php?ind=F09 (last visited Apr. 29, 2013) (noting that in 2011-12, New York Life Insurance made political contributions of $2,451,033; Massachusetts Mutual Life Insurance, $1,415,274; MetLife, $1,236,454; and in 2012 American Council of Life Insurers paid $5,742,684 to lobbyists).

[231]Richard A. Booth, *Sex, Lies, and Life Insurance*, 6 VA. L. & BUS. REV.403, 412 (2012).

[232]*Id.* at 414, note 14 and accompanying text.

[233]Matthew Karnitschnig et al., *U.S. to Take over AIG in $85 Billion Bailout; Central Banks Inject Cash as Credit Dries Up*, WALL ST. J., Sept.16, 2008.

[234]*Seniors Beware: What You Should Know about Life Settlements*, FINANCIAL INDUSTRY REGULATORY AUTHORITY (FINRA), July 30, 2009, *available at* www.finra.org/investors/protectyourself/investoralerts/.

[235]Franklin L. Best Jr., *Securitization of Life Insurance Policies*, 44 TORT TRIAL & INS. PRAC. L.J. 911, 912 (2009).

[236]Lovendusky, *supra* note 29, at 8.

[237]Lovendusky, *supra* note 29, at 8-9.

[238]Lovendusky, *supra* note 29, at 8-9.

[239]Heller, *supra* note 221, at .

[240] Information is available at www.lisa.org.

[241] Information is available at www.dealflowmedia.com.

[242] This year's International Life Settlements Conference in London is the 5th annual conference run by Deal Flow Media and is meant for investors, investment bankers, hedge fund managers, providers, brokers and attorneys. Information is available at www.dealflowmedia.com/conferences/international_life_settlements_2013/. The 19th Annual Spring Life Settlement Conference run by LISA was in May 2013 in Las Vegas, and the 19th Annual Fall Life Settlement & Compliance Conference is in October, 2013 in Orlando, Florida. Information is available at www.lisa.org.

[243] Cantor Insurance Group, at www.cantor.com/brokerage_services/life_markets/8544622.html (operating LexNet, an electronic marketplace for trading life settlements.) (last visited Apr. 24, 2013); LifeSetListings, at http://lifesetlistings.com/about (providing online multiple listing service for secondary market sale of life insurance policies) (last visited May 14, 2012).

[244] *See, e.g.*, Press Release, BVZL (Bundesverband Vermögensanlagen im Zweitmarkt Lebenversicherungen e. V. - International Secondary Market for Life Insurance), Comment on the BAC Investigation, Sept. 9, 2011, www.bvzl.de/Newsletter/2011_11/intern_gb_01.pdf.

[245] BVZL International Secondary Market for Life Insurance, Home Page, www.bvzl.de/index.php?language=de (last visited Apr. 15, 2013).

[246] The UK retail market for life settlements is estimated at £1 billion. Natalie Holt, *FSA Confirms Plans to Ban Promotion of Traded Life Settlements*, MONEY MARKETING, Apr. 25, 2012, at www.moneymarketing.co.uk/regulation/fsa-confirms-plans-to-ban-promotion-of-traded-life-settlements.

[247] Alexander Braun, Nadine Gatzert & Hato Schmeiser, *Performance and Risks of Open-End Life Settlement Funds*, 79 J. RISK & INS. 193, 197 (2012).

[248] The FSA is an independent non-governmental body created by the Financial Services and Markets Act 2000, c.8 (U.K.). FSA Who Are We?, FSA, *available at* www.fsa.gov.uk/about/who (last visited May 23, 2012).

[249] FSA Factsheet for Investment Advisers, FSA, *available at* www.fsa.gov.uk/smallfirms,resources/factsheets/pdfs/ (last visited Apr. 15, 2013); FSA Confirms Traded Life Policy Investments Should Not Generally Be Promoted to UK Investors, *available at* www.fsa.gov.uk/library/communication/pr/2012/041.shtml; Natalie Holt, *FSA Confirms Plans to Ban Promotion of Traded Life Settlements*, MONEY MARKETING, Apr. 25, 2012, at www.moneymarketing.co.uk/regulation/fsa-confirms-plans-to-ban-promotion-of-traded-life-settlements

[250] Brooke Masters & Lucy Warwick-Ching, *FSA Warns on 'Toxic'Life Settlement Funds*, FIN. TIMES, Nov. 28, 2011, *available at* www.ft.com/cms/s/0/7a3bb084-19b4-11e1-ba5d-00144feabdc0.html

[251] Braun, et al., *supra* note 247, at 216.

[252] Braun, et al., *supra* note 247, at 218.

[253] Kelly v. Legacy Benefits Corp., No. 104485/10, 2012 WL 952122, at *1 (N.Y. Sup. Mar. 12, 2012) (noting that "'[v]iatical settlements can be risky investments' primarily because no one can predict with absolute certainty the timing of any insured's death").

[254] Braun, et al., *supra* note 247, at 218.

[255] Braun, et al., *supra* note 247, at 218. Actuaries uses statistics to determine risks and prices. Underwriters evaluate individuals to decide in which risk class an individual falls.

[256] See notes 146-49 and accompanying text.

[257] STUART SILVERMAN & DANIEL THEODORE, MILLIMAN, HOW MORTALITY VOLATILITY WILL AFFECT YOUR PORTFOLIO 1 (Oct. 2007) (Milliman is one of the world's largest providers of actuarial services.), *available at* http://publications.milliman.com/research/lirfe-rr/how-mortality-volatility-will-affect-your-portfolio

[258] *Id.* at 2.

[259]PAUL SIEGERT, INSURANCE STUDIES INSTITUTE, EVOLUTION OF LIFE EXPECTANCIES IN THE LIFE INSURANCE SECONDARY MARKET . . . CURRENT TRENDS AND NEW DEVELOPMENTS 3 (Aug. 4, 2010), *available at* www.insurancestudies.org/wp-content/uploads/2010/08/ISI_Evolution-of-Life-Expectancies_LifeInsuranceSettlementSeries_VI1.pdf.

[260]*Id.*

[261]Braun, et al., *supra* note 247, at 218-21;FSA Factsheet, *supra* note 249.

[262]Grigsby v. Russell, 222 U.S. 149, 154 (1911) (quoting Justice Oliver Wendell Holmes). Although the "sinister" implications of life insurance may seem archaic, they are, in fact, the subject of crimes to this day. For example, earlier this year, a Washington, D.C. judge found a substantial probability that Claire Rice shot and killed her cousin in order to receive the proceeds of two insurance policies she had taken out on his life without his knowledge. Penny Ray, *Prosecutors Allege Claire Rice Murdered Cousin, Anthony, over Life Insurance Policies*, HOMOCIDE WATCH D.C., Mar. 20, 2013, *at* http://homicidewatch.org/2013/03/20/prosecutors-allege-claire-rice-murdered-cousin-anthony-over-life-insurance-policies/. Last year, an upstate New York man was accused of murdering his son to collect life insurance money. Ray Levato, *Sheriff: Seneca County Man Murdered Son to Collect Life Insurance Money*, WHEC.COM, Nov. 26, 2012, *at* www.whec.com/news/stories/s2846474.shtml. In 2010, in an infamous story, the 74-year-old mother-in-law of the former head of Conseco, Inc.was found dead, fully-clothed in her bathtub, after her 36-year-old "social companion" had bought a $15million life insurance policy on her life. Leslie Scism & Mark Maremont, *Life, Death and Insurance: Indiana's $15 Million Mystery*, WALL ST. J., Apr. 12, 2010, at A1. The companion had taken out a loan with an interest rate of 17% to pay the $387,000 in annual premiums. *Id.* The woman died three days before the loan's due date. *Id.* Although the Indianapolis police worked it as a murder case, they finally concluded the death was accidental. *Id.*

[263]12 U.S.C. § 5491 (2010) (creating the Bureau "which shall regulate the offering and provision of consumer financial products or services under the Federal consumer financial laws").

[264]Neal Frankle, *4 Life Insurance Policies You Should Never Buy*, MONEY - US NEWS, July 12, 2012, *at* http://money.usnews.com/money/blogs/my-money/2012/07/12/4-life-policies-you-should-never-buy; Martin, *supra* note 14, at 182 n. 61.

[265]DELOITTE CONSULTING LLP & UNIV. OF CONN., THE LIFE SETTLEMENTS MARKET - AN ACTUARIAL PERSPECTIVE ON CONSUMER ECONOMIC VALUE 1 (2005), *available at* www.quatloos.com/uconn_deloitte_life_settlements.pdf.

[266]*Id.* at 2, 6, 10.

[267]*Id.*

[268]*Id.* at 11.

[269]Franklin L. Best Jr., *Securitization of Life Insurance Policies*, 44 TORT TRIAL & INS. PRAC. L.J. 911, 931 (2009).

[270]*See, e.g.*, Maria Fleisher, *Stranger Originated Life Insurance: Finding a Modern Cure for an Age-Old Problem*, 41 CUMBERLAND L. REV. 569, 617 (2010-11) (laws should regulate the secondary market not drive it to extinction).