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Details:

(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ...
PUBLIC HEARING - COMMITTEE RECORDS

2009-10

(session year)

Senate

(Assembly, Senate or Joint)

Committee on ... Small Business, Emergency Preparedness, Technical Colleges, and Consumer Protection (SC-SBEPTCCP)

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
  (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
  (**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

* Contents organized for archiving by: Gigi Godwin (LRB) (July/2011)

Senate

Record of Committee Proceedings

Committee on Small Business, Emergency Preparedness, Technical Colleges, and Consumer Protection

Senate Bill 513

Relating to: life settlements, granting rule-making authority, and providing a penalty.

By Senators Wirch, Vinehout, Risser, Erpenbach, Grothman, Lehman and Schultz; cosponsored by Representatives Barca, Toles, Richards, Soletski, Turner and Fields.

February 02, 2010 Referred to Committee on Small Business, Emergency Preparedness, Technical Colleges, and Consumer Protection.

February 3, 2010 **PUBLIC HEARING HELD**

Present: (4) Senators Wirch, Holperin, Hopper and Lazich.
Absent: (1) Senator Plale.

Appearances For

- Sean Dilweg — Commissioner, Office of the Commissioner of Insurance
- Robert Wirch — Senator, 22nd Senate District
- David Larson — NAIFA and American Family Insurance
- Sharon Brosnan — Thrivent Financial for Lutherans
- Connie O'Connell — Wisc. Council of Life Insurers

Appearances Against

- Jason Johns — Coventry
- Nat Shapo — Coventry

Appearances for Information Only

- None.

Registrations For

- Randall Schumann — Wisc Department of Financial Institutions, Division of Securities
- Bill Thompson — Catholic Knights
- Melvin Rambo — Equitable Reserve Association
- George Yanna — CEO, National Mutual Benefit
- Daniel Lloyd — Pres and CEO, Catholic Family Life Insurance
- Susan Callana — Northwestern Mutual
- Monica Groves Batiza — American Family Insurance
- Misha Lee — Sentry Insurance

Registrations Against

- Lena Taylor — Senator, 4th Senate District

Registrations for Information Only

- Jeanne Benink — AARP

February 16, 2010 **EXECUTIVE SESSION HELD**

Present: (5) Senators Wirch, Plale, Holperin, Hopper and Lazich.
Absent: (0) None.

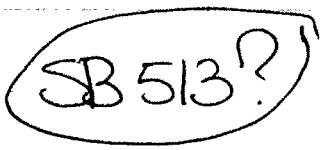
Moved by Senator Plale, seconded by Senator Wirch that **Senate Bill 513** be recommended for passage.

Ayes: (5) Senators Wirch, Plale, Holperin, Hopper and Lazich.
Noes: (0) None.

PASSAGE RECOMMENDED, Ayes 5, Noes 0

Michael Tierney
Committee Clerk

From: Jason Johns [mailto:jason@wiscls.com]
Sent: Wednesday, January 27, 2010 12:40 PM
To: Sen.Wirch
Subject: Life Settlement Regulation
Importance: High



Senator Wirch;

As you are more than likely aware, Commissioner of Insurance Sean Dilweg formed a sub-group to his Life Advisory Council at the end of 2008 to draft legislation that would establish regulation of the life settlement industry. I was appointed to this committee, along with two other representatives from the Life Settlement industry (Ron Kuehn on behalf of Timber Creek Financial, and Doug Head on behalf of the Life Insurance Settlement Association). Of the nine individuals appointed to the sub-group, we were the only representatives of the life settlement industry. Notwithstanding this, we felt optimistic that we could reach consensus on some hot button topics. However, after many meetings, discussion, and input by members of the sub-group this past year, we were disappointed to see that none of our input on the major items were incorporated in to the commissioner's draft legislation.

As a result of this, on behalf of my client, Coventry, we wish to express our opposition to the Commissioner's draft legislation. This does not mean we do not support regulation. We are more than willing to support draft regulation as long as it is done in a fair and concise fashion with all parties being able to contribute and be heard (the way a true legislative process was designed to do). We recognize that there is not much time remaining in this legislative session and would support pursuing compromise legislation in order to facilitate passage of regulation in a timely fashion. We would point your attention to the model act of the National Conference of Insurance Legislators which was drafted by your colleagues around the country and done so with input from all parties involved. We recognize that the NCOIL model act is not the perfect act, but it is definitely a much better starting point to begin negotiations than what is currently out there.

I have also been informed that it is a possibility that this legislation will be referred to your committee on Small Business, Emergency Preparedness, Technical Colleges and Consumer Protection at the request of Commissioner Dilweg. This does not make any sense to me as this is a bill relating to insurance, being introduced by the Insurance Commissioner, and will impact the life insurance policies of the people of Wisconsin. This is very clearly an attempt by the Commissioner's office to circumvent the appropriate committee (Insurance) that is chaired by Senator Taylor because she has indicated she would amend the bill in a way that the Commissioner did not want.

With all due respect to the Commissioner, the appropriate place for this legislation is the Insurance Committee. If you were to allow this bill to be referred to your committee, it is merely condoning the cherry picking of a

committee by an executive agency and would set a precedent of picking committees based on who will be the most friendly instead of the actual issue being legislated. I would hope that you and your colleagues in the Senate would see this as detrimental to the legislative process and will not allow it to happen.

If you have any questions feel free to contact me. I look forward to discussing this issue with you soon.

JASON E. JOHNS

Wisconsin Legislative Strategies, Inc.
14 W Mifflin St, Suite 206
Madison, WI 53703
(608) 255-5522


FORWARD
E PLURIBUS UNUM

Tierney, Michael

From: McGuire, Paula
Sent: Wednesday, January 27, 2010 1:03 PM
To: Tierney, Michael
Subject: FW: Life Settlement Regulation
Importance: High

SB 513?

From: Jason Johns [mailto:jason@wiscls.com]
Sent: Wednesday, January 27, 2010 12:40 PM
To: Sen.Wirch
Subject: Life Settlement Regulation
Importance: High

Senator Wirch;

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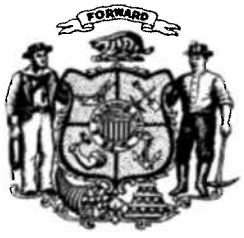
WISCONSIN STATE LEGISLATURE



LIFE INSURANCE SETTLEMENT ASSOCIATION

www.LISAssociation.org

SB 513

To: Wisconsin State Legislature
From: Doug Head, Executive Director- Life Insurance Settlement Association
Re: Opposition to LRB 4088/1 related to Life Settlements
Date: February 1, 2010

Honorable Members of the Wisconsin State Legislature;

I am writing to you on behalf of the Life Insurance Settlement Association (LISA) and our members in Wisconsin and around the country. I represented our members by serving on the working group that Commissioner Dilweg formed in 2008 to come up with recommendations for regulation of the life settlement market. I am compelled to address a troubling statement contained in the co-sponsorship memo for LRB 4088/1 that was sent out on Friday afternoon January 29th. With all due respect to the bill's author, Senator Robert Wirch (D)-Pleasant Prairie, we think perhaps he was misinformed as to exactly what transpired in the working group and wish to take this opportunity to clarify the following statement that was in the memo (verbatim):

> Wisconsin Insurance Commissioner Sean Dilweg convened a working group made up of representatives of life insurance and life settlement companies, insurance agents and consumer groups to recommend a regulatory structure for the growing life settlements market. This bill incorporates the recommendations of that group.

As an appointed member of that group, you need to know that neither I, nor other representatives of the life settlement companies that sat on the group would consider LRB 4088/1 as "the bill that incorporates the recommendations of that group".

First, only THREE (3) of the nine (9) representatives from the life settlement industry were appointed to this group, and were only appointed AFTER the Commissioner had convened members the life insurance industry in an effort to regulate OUR market. It is certainly troubling that the very market being regulated is so disproportionately represented in a committee that includes a majority of participants from a competitive industry.

Regardless, we participated in the meetings of the sub-group from December 2008-July 2009. We made numerous recommendations to the Commissioner and provided substantial written material that focused on the law and the flaws with the draft legislation. By contrast, the life insurance industry representatives did not, to our knowledge, produce a single piece of paper in support of their position. Specifically, no justification was set forth for choosing a five (5) year prohibition against individuals selling their life insurance policy on the life settlement market.

Our support is for a two (2) year prohibition. This is based on the established legal principle that an individual's life insurance policy becomes their property to do with what they choose after the initial two (2) year contestability period. This legal principle was set forth by your own Wisconsin Supreme Court almost 124 years ago in *Bassinger v. Bank of Watertown,* 67 Wis. 75 (1886), and re-confirmed by the United States Supreme Court in 1911 by *Grigsby v. Russell,* 222 U.S. 149 (1911).

It should be no surprise then, that LRB 4088/1 DOES NOT reflect recommendations of the "group". There was NEVER a formal vote among the group to adopt this draft legislation, and we, in fact, formally protested to the Commissioner our disagreement with the final "recommendations from the group".

1011 E. Colonial Dr Ste 500 - Orlando, FL 32803 - Phone: 407-894-3797 - Fax: 407-897-1325

Thus, you can imagine our dismay when we read the co-sponsorship memo for LRB 4088/1 and saw the claim that this represents the recommendations of the group. LISA, its members, and the other life settlement industry representatives wholeheartedly oppose LRB 4088/1.

It should be noted that there has NEVER been a single complaint or report of consumer harm regarding life settlement in Wisconsin. Across the nation, there has been only sixteen (16) since 2006, and of those sixteen, NONE have resulted in a SINGLE enforcement action or prosecution by an insurance regulator. By contrast, there have been almost 72,000 complaints lodged regarding life insurance and annuities. Makes one wonder why the insurers are so focused on regulating our industry when perhaps their efforts should be re-directed more internally.

LISA and Coventry, an active member which also participated in the subgroup, do, however, support regulation of the life settlement market, and we have never said otherwise. We have been supportive of most of the laws that have been adopted in the nation including, in 2009, new laws in the states of Illinois, California and New York. However, support legislation based on the widely adopted model act of the National Conference of Insurance Legislators (NCOIL), which, it must be noted, adopted an **entirely different** Model from the NAIC. Indeed, the NCOIL Model has been the basis of 19 of the past 26 state laws adopted in the nation in 2008 and 2009, including Illinois, California and New York.

LRB 4088/1 is based on the discredited and widely rejected model legislation of the National Association of Insurance Commissioners (NAIC). The effort in LRB4088/1 to combine elements of the NCOIL model into the NAIC has also been discredited by your legislative colleagues. Just one year ago, the leadership of NCOIL issued a letter to the NAIC and to the chairman of every state insurance legislative committee explaining its objection to efforts to combine the NAIC and NCOIL Models, stating:

> NCOIL legislators reviewed the NAIC Viatical Settlements Model Act at the beginning of our process. We rejected the NAIC call for a five-year ban on a policyholder's ability to settle a policy and ultimately supported a model that protects existing individual property rights while also providing tools to substantially eliminate STOLI schemes. **NCOIL therefore, is adamant that the NAIC refrain from any suggestion that the NCOIL model is compatible with the NAIC model—as we have not in any way endorsed the concept of a combined model or certain provisions included in the NAIC model".**

LISA & Coventry recognize that on an issue such competing business interests are involved. But the legislature, in efforts to protect consumers in competitive markets, typically seeks to bring parties together to reach consensus. The Commissioner simply did not seek consensus. He has, instead, advanced a bill that has the effect of limiting competition for the profits of big insurance companies, to the detriment of consumers.

Senator Lena Taylor (D) - Milwaukee, Chairperson of the Senate Committee on Insurance, has indicated that she wishes to adopt legislation that protects Wisconsin consumers' property rights in their life insurance and protects consumers in a competitive market. She, as a legislator, knows that in order to reach an agreement, the life insurance and life settlement companies need to come together, along with input from the regulator. Senator Taylor will be shortly circulating a bill, based on consensus legislation adopted in Illinois and other states, based on the NCOIL Model, which reflects the goal of protecting consumers in Wisconsin.

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We would request and encourage that the other interested parties involved, including Commissioner Dilweg, follow Senator Taylor's lead in bringing parties together in order to assure that regulatory protections are put in place this legislative session for the people of Wisconsin.

To this end, LISA would respectfully request that you not sign on to LRB 4088/1 and instead become a co-sponsor of Senator Taylor's bill when it is circulated.

Thank you,

Doug Head
Executive Director- Life Insurance Settlement Association
doug@lisassociation.org

1011 E. Colonial Dr Ste 500 - Orlando, FL 32803 - Phone: 407-894-3797 - Fax: 407-897-1325


FORWARD
E PLURIBUS UNUM

Thrivent Financial for Lutherans

Appleton, Wisconsin • Minneapolis, Minnesota
Thrivent.com • 800-THRIVENT (800-847-4836)

To: Honorable Members of the Senate Committee on Small Business, Emergency Preparedness, Technical Colleges, And Consumer Protection

From: Sharon Brosnan
Government Affairs

Subject: Senate Bill 513, Relating to Life Settlements

Date: February 3, 2010

Thank you for allowing me the opportunity to speak on the issue of life settlements in Wisconsin.

My name is Sharon Brosnan, and I am a director of Government Affairs for Thrivent Financial for Lutherans.

Thrivent is the largest fraternal benefit society in the nation, and a major player in the individual life insurance market in the state of Wisconsin. Thrivent is not a typical life insurance company – as a fraternal benefit society, we are tax exempt and required to issue policies that only enure to the benefit of our insureds or their dependents. Our agents are not allowed to sell STOLI contracts or anything that smells remotely like STOLI. So why are we here? Why do we care what goes on in this market?

STOLI, or stranger-originated life insurance transactions, allows investors who are wholly unrelated to an individual to purchase life insurance on that person solely to profit from his or her death. The sooner the person dies, the higher the profit. In effect, STOLI allows investors to speculate on the insured's life. This practice disregards state insurable interest laws that mandate life insurance not be used for wagering on human life.

It is our belief that allowing the issuance of these policies is completely detrimental to the fundamental purpose of life insurance. Our industry was born out of the need to protect the families and loved ones of those purchasing the product. This kind of speculation, bundling of risk, and betting on how long someone will live totally upends the reason that life insurance exists. The end result is that life insurance premiums will go up, and it will become unaffordable to many people who wish to purchase it.

We have no problem with the legislature allowing legitimate policy owners to sell their policies in the secondary market when they decide they no longer want or need coverage, or whenever other legitimate needs arise. However, speculators whose only concern is profit should not be allowed to initiate and purchase life insurance on an individual they do not know and in whom they have no insurable interest. This is not a product that was developed to provide a quick buck for speculators – it is there to make sure that individuals and families are taken care of.

I'm sure you will hear from the life settlement companies how a 5-year prohibition on certain life settlement contracts is essentially an overall ban on ALL life settlements. This is a gross exaggeration. All this prohibition does is target those transactions with the hallmarks of STOLI – those who have had a mortality evaluation, which have an agreement to sell the policy after a specified period, or those which are paid for by premium financing – and allows all other types of settlements to go through. It in no way adversely affects consumers' ability to sell policies that were purchased for legitimate financial protection purposes but are no longer wanted or needed. The intent of the 5-year moratorium is to get at those policies which were initiated with the sole purpose of selling them.

Wisconsin has long been known as a state with strong consumer protection laws. Adopting this law would significantly add to this reputation.

Thank you again for the opportunity to speak on behalf of Thrivent. We believe this is an important piece of legislation to pass and appreciate all the efforts on the part of the Chair to make it happen.


FORWARD
E PLURIBUS UNUM

WCLI

Wisconsin Council of Life Insurers
Parrett & O'Connell, LLP
10 East Doty St. – Suite 621, Madison, WI 53703
Phone: 608-251-1968

MEMORANDUM

TO: HONORABLE MEMBERS OF THE SENATE COMMITTEE ON SMALL BUSINESS, EMERGENCY PREPAREDNESS, TECHNICAL COLLEGES, AND CONSUMER PROTECTION

FROM: CONNIE L. O'CONNELL,
WISCONSIN COUNCIL OF LIFE INSURERS

SUBJECT: SENATE BILL 513, RELATING TO LIFE SETTLEMENTS

DATE: FEBRUARY 3, 2010

The Wisconsin Council of Life Insurers, an organization representing both domestic and nondomestic life insurance companies licensed in Wisconsin, strongly supports Senate Bill 513 providing consumer protection in life settlement transactions.

The legislation specifically addresses a transaction known as stranger originated life insurance (STOLI). STOLI differs from legitimate life settlement transactions in that under STOLI an individual, almost exclusively a senior citizens, is induced to purchase a life insurance policy they otherwise would not buy. The senior citizen is often pitched that they are getting "free insurance" without an explanation of the consequences of the transaction. Then, the senior transfers the death benefit to an investor. The investor pays the premiums and waits for the insured to die. The sooner the senior dies, the higher the profit.

The potential harm to the senior citizen is significant. The individual may find that the payout received after selling the policy is less than expected due to fees and

commissions. The senior is probably not aware that the less they receive, the more the broker keeps so the broker has incentive to convince the senior that his or her policy is worth as little as possible. The commissions of brokers and intermediaries are as high as 30%, in addition to the commission they may receive on the sale of the policy. The compensation paid to the senior may be taxed as ordinary income and may impact eligibility for means tested government programs. The senior may not be able to purchase additional insurance to meet personal needs because they have reached their insurable capacity. In order to escape regulation, the agreement to purchase the policy after two years is not in writing. Therefore, there is no guarantee that the policy will be purchased or that the terms will remain the same. The payout may be less because of their improved health and life expectancy. The senior will not know who owns an interest in his or her death because companies often sell blocks of mortality futures to other investor groups. However, they can expect to receive telephone calls, as often as once a month, to determine if they are still alive.

Over a year ago, Insurance Commissioner Sean Dilweg launched a working group, known as the Life Settlement Subgroup, comprised of consumer, insurance, and settlement representatives to help him develop draft legislation to address STOLI. The insurance industry had two representatives, there were two consumer representatives, two insurance agents and three representatives of life settlement interests on the Subgroup. The committee met seven times to advise the Commissioner regarding legislation. The committee considered model acts developed by both the National Council of Insurance Legislators (NCOIL) and the National Association of Insurance Commissioners (NAIC). The bill before you is a result of that process.

SB 513 includes the following important components of the NCOIL Life Settlement Model Act: a definition of STOLI accompanied by a provision that makes engaging in STOLI schemes, including those involving a trust, unlawful; licensing requirements for providers and brokers; training requirements for brokers; reporting and contract approval requirements; and disclosures for consumers and investors.

The bill also includes a key component from the NAIC model, a limitation on the ability to sell an insurance policy that carries one or more "hallmarks" of a STOLI arrangement. This limitation was carefully crafted in order to allow legitimate life settlements but discourage manufactured/STOLI settlements.

An insured who purchases a policy that has one of these hallmarks (an agreement to sell the policy, a separate analysis of the purchaser's mortality, and premiums which are financed without any personal stake on the part of the purchaser) is required to wait at least five years to sell a policy. Even if a policy is initiated with one of the hallmarks, the five year limit does not apply if the individual has a hardship need to sell the policy such as bankruptcy, illness, divorce, etc. In an abundance of caution, the legislation includes rulemaking authority for the Office of the Commissioner of Insurance to identify additional hardship causes to allow earlier settlement of a policy that has the characteristics of a STOLI transaction. Further, an individual who purchased insurance for legitimate protection reasons will not be subject to this limitation.

We believe this targeted provision along with the consumer disclosure and other provisions will allow the legitimate life settlement market to continue to operate but will greatly discourage entities from the manufacture of life insurance policies for profit. Attached is a document submitted to all members of the OCI Life Settlement Subgroup on April 20, 2009 outlining the basis of our support for the five year limitation.

We believe this legislation is necessary to curb abusive life settlement transactions and to preserve fundamental insurance principles. We respectfully request that you support SB 513.


FORWARD
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Testimony of David Larson
In Favor of SB-513
Senate Committee on Small Business, Emergency Preparedness, Technical Colleges & Consumer Protection,

February 3, 2010

Good morning Senators. My name is David Larson and I am an American Family Insurance agent here in the Madison area and I am a member of NAIFA Wisconsin. Today I am testifying on behalf of American Family Insurance and on behalf of the 1,500 professional members of NAIFA Wisconsin. I also testify as a member of the Life Insurance Advisory Council, at the Office of the Commissioner of Insurance, a standing advisory body at OCI, and as a member of its subcommittee on Stranger Originated Life Insurance or "STOLI".

I approve of the bill you are hearing today and recommend that you move it forward in the legislative process without delay or significant change. As you have been informed, the bill before you is the work product of a broad based working group that included insurance companies, insurance agents, consumer representatives, staff at OCI and representatives of the settlement industry. As you may also know, the bill is drawn substantially, if not entirely from two national models developed by insurance regulators and insurance legislators, respectively. Thus, the bill before you represents hundreds of "people hours" of open deliberations in Wisconsin and thousands of hours of consideration with respect to the national models from which it is drawn. It is good protection for the people of Wisconsin.

And, by the way, as our group deliberated the many issues we considered, we did review the legislation passed by a number of states that have already moved forward on this issue, taking the best and leaving the rest for consumers and regulators in those other states to live with.

STOLI is a complex subject. The transactions are complex and become even more so when you begin to understand how they actually take place. This is a process akin to peeling an onion. Even as an insurance agent, it took me a while to get my arms around the full scope of these transactions which are sometimes hidden within complicated trusts with intentionally misleading names. And it would not be a stretch to say that what you find when you get down several layers is enough to make you cry.

The true stranger originated life insurance transaction is first and foremost an abuse of our senior population and an abuse of life insurance - a product that is the core of every financial plan. For the foundation of every good financial plan is to protect what you already have, and life insurance does that for the surviving spouse and children of every primary wage earner, the surviving partner of every small business and the employees left behind to pick up the pieces behind every sole proprietor. Please remember that life insurance is first and foremost for protection. It is not and should not be used as an investment and it is certainly not something that should be allowed to become the subject of a gamble, or a roll of the dice on the mortality of our senior citizens. The hallmark of a STOLI transaction is that the people who pay the premium

and collect the death benefit in the transaction do not know or care about the insured person and have nothing to lose if that person dies. In fact, they have everything to gain the sooner the insured does die. This, in and of itself, should cause you to realize these transactions are fundamentally flawed and an abuse of a product that is the bedrock of financial security for millions of our citizens.

As a participant in the process that produced this piece of legislation, I can assure you that the process was a careful and expansive investigation of the subject. It was open, and everyone's perspective was respectfully considered. I hope that you will take the opportunity before you and move Wisconsin into the column of states that are not a friendly market for those who would write life insurance policies with the sole intent to sit and wait for the insured to die quickly. I urge you to move this legislation as soon as you are able.

I would be happy to answer any questions.


FORWARD
E PLURIBUS UNUM

ACLI
Financial Security. For Life

MEMORANDUM

To: Senator Robert Wirch, Chair
Committee on Small Business, Emergency Preparedness, Technical Colleges, and Consumer Protection and Committee Members.

Date: February 3, 2010

From: John P. Gerni; Regional Vice President

Subject: SB 513: The Regulation of Life Settlements and Stranger Originated Life Insurance (STOLI)

This memorandum is submitted on behalf of the American Council of Life Insurers (ACLI), a national trade association comprised of over 300 member companies who writes approximately 90% of life insurance written in the United States and Wisconsin. We are very proud to include within our membership several Wisconsin based companies, including Northwestern Mutual Life, Thrivent Financial for Lutherans, American Family Life Insurance Company, CUNA Mutual, Humana Insurance Company, John Alden Life Insurance Company, Madison National Life, Members Life, National Guardian Life, Sentry Life, and Time Insurance Company.

While personal circumstances have kept me from personally testifying before the Committee, I am pleased to have the opportunity to submit these written comments in strong support for SB 513.

This proposal came from the OCI after many months of meetings and deliberations among interested parties within an OCI Committee where the OCI ultimately recommended the proposed legislation which incorporates provisions from the NAIC Viatical Settlements Model Law and the NCOIL Life Settlement Model Act. We are grateful to Commissioner Dilweg and his staff for recommending such a strong proposal that will not only effectively regulate the life settlement industry but will address a practice known as stranger-originated life insurance (STOLI).

STOLI is a practice where speculators circumvent insurable interest laws and abuse the vital social purpose of life insurance. A fundamentally important principle of life insurance since the 17th century, insurable interest stands for the proposition that at the time the life insurance is issued, the person who procures the policy, or causes the policy to be procured, must have a lawful and substantial economic interest in having the life of the individual insured continue, as distinguished from an interest that would only arise by, or would be enhanced in value by, the death of the insured.

Unfortunately, the insurable interest doctrine is being turned on its head by third party investors who procure the issuance of the life insurance policies on elderly people in whom the investors have no insurable interest, for the sole purpose of acquiring those policies and profiting from them at a later date. These schemes are increasing in number and sophistication and require immediate action on the part of public policy makers to protect senior citizens from the real and hidden perils of such transactions. For example, seniors may face unexpected taxes and fees, loss of insurance capacity and loss of privacy. In addition, promoters of these schemes may induce seniors to mislead insurers on policy applications.

American Council of Life Insurers 101 Constitution Ave, NW, Suite 700, Washington, DC 20001-2133

By way of example, one of the more prevalent forms of STOLI involves a life settlement company or broker approaching an elderly individual, pitching a program in which the individual could generate a profit from the sale of a life insurance policy insuring the individual's life without having to pay any premiums on the policy. The elderly individual obtains a non-recourse loan (secured only by the policy) arranged by the life settlement company that carries an exorbitant interest rate and is scheduled to mature 26 months after the date of issuance of the policy. Following the expiration of the two-year settlement moratorium in state law, the life settlement company assists the individual in selling the policy to financial investors, who repay the loan in exchange for ownership of the policy.

One of the most important provisions of SB 513 is the strictly limited five year moratorium on settlements such as these that are initiated by investors ultimately for their own profit, not for the benefit of the insureds and their beneficiaries. The bill targets these transactions without adversely impacting consumers' ability to sell policies that were purchased for legitimate financial protection purposes but are no longer wanted or needed. For example, the bill allows policyholders to settle their policies ***at any time*** if they experience a change in life circumstances, such as illness, loss of employment, divorce or death of the intended beneficiary. Additionally, the two year incontestability period found in existing Wisconsin law would allow settlement of most policy purchases (i.e., those where the policyholders use their own assets or traditional premium financing to purchase the policy, and where the policy has not been pre-evaluated for settlement).

What is the result of the five year moratorium? In transactions such as the one alluded to earlier, investors have to wait five years to get their hands on a policy that was initiated with the intent of settling it. This significantly reduces the economic incentives for STOLI transactions to occur, as investors will be far less likely to engage in these transactions if their investment dollars are tied up for five rather than two years, especially given that the target market for life settlements are seniors age 65 and older. An added benefit of this legislation is that it does not preclude any form of premium financing – it simply ensures that any such premium financing works primarily for the benefit of the insured, not the third-party investors. Ultimately, it is the elderly insurance consumer who stands to benefit from this legislation, which helps stop abusive transactions before they occur and before seniors are put in harm's way.

Wisconsin would become the 9th state to incorporate this 5 year language into its statute. Minnesota adopted a 4 year provision while Iowa, Ohio, North Dakota, Nebraska, Nevada, Oregon, West Virginia, and Vermont all have passed the five year language that is included in this bill.

Furthermore, we are pleased this legislation contains language that addresses the use of trusts and other vehicles by speculators as a means of cloaking the existence of insurable interest at policy inception. Developed and adopted by the National Conference of Insurance Legislators (NCOIL) after extensive discussion, this language is intended to address some of the more sophisticated schemes involving ownership of a life insurance policy by a trust that is controlled by and organized for the benefit of the third party investors, not the insured or insured's estate.

Additionally, we strongly support provisions in the bill that would make certain practices that are characteristic of STOLI transactions fraudulent settlement acts. Derived from the NCOIL Life Settlement Model Act, one such provision would prohibit the issuance, solicitation, or marketing of a policy for the purpose of or with an emphasis on settling the policy. Another would prohibit persons from concealing from an insurer when requested the fact that the prospective insured has undergone a life expectancy evaluation by a party other than the insurer in connection with the application, underwriting or issuance of the policy. These provisions, in conjunction with the targeted five year settlement moratorium on suspicious transactions, provide an effective framework for addressing STOLI while preserving policyholders' ability to sell their policies in the secondary market.

We thank you again for providing us with the opportunity to submit our comments in writing and we wish to personally thank you, Mr. Chair for sponsoring this bill that will not only effectively regulate the life settlement industry but more importantly, will protect seniors from abusive STOLI transactions.


FORWARD
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SPECIAL COMMITTEE
ON AGING

BANKING, HOUSING, AND
URBAN AFFAIRS

February 3, 2010

The Honorable Robert Wirch
Room 316, South
State Capitol
PO Box 7882
Madison, WI 53707-7882

SB 513?

Dear Senator Wirch:

In today's tough economic climate, millions of seniors have lost a significant part of their investments and retirement savings in a matter of months. For many, this means postponing retirement, or even returning to work in a difficult employment market often stacked against older workers. Needless to say, seniors are looking for ways to bolster their depleted savings during this challenging time.

Life settlements can be a worthy alternative for seniors who are considering the sale of their life insurance policy, as they offer a higher payment than the cash surrender value offered by the insurance company. However, selling one's life insurance policy is a complex transaction that can be fraught with possible hidden pitfalls. As with any industry that balloons over a short period of time, there are sales practices and regulatory loopholes that must be examined in the interest of seniors and consumers at large.

During an Aging Committee hearing I chaired last year investigating the life settlement market, several state regulators talked about the sales and marketing abuses they have seen at the hands of life settlement brokers, who in some cases receive exorbitant commissions. I am pleased that Wisconsin is working to implement legislation that would institute consumer safeguards against these abuses. Several initiatives included in your recently introduced life settlement bill, such as: a requirement that brokers must be licensed to sell life settlements; the establishment of training requirements to ensure that a broker demonstrates an adequate knowledge of life settlement transactions; the establishment of guidelines for sales, marketing and promotional materials; and the mandatory disclosure of certain risks, are vital to increasing quality and transparency in the life settlement market.

As states struggle to increase regulations and consumer protections, it is crucial that the federal role is made clear. In response to last year's hearing, the Treasury Department published tax guidance for people who sell their policies and the investors who purchase them, and the Securities and Exchange Commission developed an agency-wide Task Force to examine the practice of bundling life settlement policies on Wall Street. At my request, the U.S. Government Accountability Office is currently conducting a study to determine the size and scope of the life settlement market, including the securitization of those settlements, and the related issues affecting life settlement consumers.

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In closing, thank you for your leadership on this issue, I applaud your efforts to increase the transparency in the life settlement industry in Wisconsin and I hope we can continue to work together on this issue.

Sincerely,

Herb Kohl
Chairman
Senate Special Committee on Aging


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State of Wisconsin / OFFICE OF THE COMMISSIONER OF INSURANCE

Jim Doyle, Governor
Sean Dilweg, Commissioner

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SB 513?

Testimony of
Sean Dilweg, Commissioner of Insurance
Before the
Senate Committee on Small Business, Emergency Preparedness, Technical Colleges, and Consumer Protection
February 3, 2010

Thank you Senator Wirch and members of the Committee for conducting this hearing on this important piece of legislation.

Life settlements work in a similar manner to a viatical settlement. A life insurance policy is sold by a policyholder for an amount less than the stated death benefit, but generally more than any cash value that may have accumulated over the life of the policy. Investors purchase the policies, continue to make premium payments and collect the death benefit when the insured dies. Life settlement transactions create an investment vehicle with a financial interest in the death of the policy owner. The sooner a policy holder dies, the greater the return on the investment.

One version of life settlements, Stranger Originated Life Insurance (STOLI), where a life insurance policy is purchased by a third party without an insurable interest in the insured has been a growing problem in other states. Last year the United States Court of Appeals for the Sixth Circuit described STOLI transactions as "insurance fraud." The typical STOLI transaction begins when senior purchases insurance on his or her own life based on an understanding that he or she will sell the death benefits to the investors after the two-year contestability period has expired. The investors or a third-party broker usually arrange a non-recourse loan to pay the premiums during the first two years. Once the policy is transferred, the investors pay the premiums and receive the death benefits after the insured dies.

Life settlements are currently unregulated in Wisconsin. Wisconsin's existing viatical settlement statute is limited to life insurance policies that are sold by policyholders with terminal or life-threatening illnesses. These statutes served an important purpose for AIDS patients and others who were incurring large medical costs associated with their illnesses.

Since Wisconsin enacted Viatical Settlement legislation in 1995, the life settlements market, however, has seen tremendous growth. Currently, the industry has moved away from purchasing the policies of terminally ill patients to the purchase of life insurance policies from perfectly healthy individuals and then packaging those policies to sell as investments. In an October 2008 report, Conning Research estimated about $12 billion in face amount of life settlements changed hands in 2007, up from $6.1 billion in 2006. By 2012, Conning estimates that figure will approach $21 billion.

Some estimates have the industry growing to as much as $90 to $120 billion in the next decade.

States have been scrutinizing life settlement transactions, most recently in New York and Florida. Concerns those states have raised include issues of fiduciary interest to the policyholders, tax issues and the ability for seniors to acquire additional life insurance coverage, and of particular concern, the lack of adequate disclosure by life settlement providers and brokers to both policyholders and investors. Life settlements are also garnering attention from the federal level. The U.S. Senate Special Committee on Aging, chaired by Senator Herb Kohl, conducted a hearing last year entitled "Betting on Death in the Life Settlement Market - What's at Stake for Seniors." Senator Kohl followed up this hearing with a request to the General Accounting Office asking for the agency to review the current status of life settlement regulation in the states. The Securities and Exchange Commission has also assembled an agency wide task force to examine the life settlement industry.

Additionally, the life settlements industry has moved into an area that concerns me. Life settlement contracts are being bundled and sold as securities to institutional investors. As these contracts are packaged and sold as securities, my concerns become twofold. First, it is just this type of exotic investment vehicle that was at the center of the most recent financial crisis and current recession. Second, because securitization requires a large number of contracts in order for them to be packaged together, we have begun to see life settlements transactions that involve policies with smaller death benefit amounts. Until now, the ideal life settlement transaction involved wealthy individuals with life insurance policies with one or two million dollar death benefits. Recently however, we are seeing life settlement contracts on policies with $500, $250, and even $100 thousand death benefits.

The current economic downturn has made life settlements an alternative for some seniors attracted to the quick payout that a life settlement transaction offers leaving them with little or no life insurance coverage to protect their families. Seniors however, need to be aware of the impact that entering into a life settlement contract can have on them and their families, their tax situation and the life insurance coverage they are losing.

It is because of the fast-paced growth in this market and the potential impact on life insurance consumers, including seniors, that we recognized the need for additional regulation in the marketplace. My goal is to ensure that policyholders are protected and fully aware of the implications of entering into a life settlement contract.

Recognizing the need for additional regulation, in 2008, I convened a sub-group of OCI's Life Insurance Advisory Council to make recommendations for an updated statutory structure to address this changing market. The sub-group included consumer representatives, insurance companies, life insurance agents, life settlement companies (Coventry and Timber Creek Financial), members from the Life Insurance Settlements Association, and the American Council of Life Insurers. The sub-group had its first meeting on December 16, 2008.

Over the next six months the sub-group held seven monthly meetings discussing how Wisconsin should regulate life settlements. The sub-group heard presentations from life settlement companies and insurance companies. The group also reviewed laws and proposed legislation in other states and reviewed the tax implications of life settlement transactions. The group spent a number of months working over the draft recommendations that are represented in the bill before you.

While one might expect that the two sides wouldn't reach agreement on every issue, it was gratifying to see there was significant agreement on how the life settlements market should be regulated in Wisconsin. The subgroup was able to achieve consensus on about 90% of the provisions before you. The differences represent fundamental differences of opinion where no consensus would likely ever be reached. Where those differences remained, I have recommended statutory language for what I thought was in the best interests of life insurance policyholders.

The bill before you will update Wisconsin's viatical settlement statute. Currently 28 states have enacted life settlement legislation and 10 states have introduced legislation. Both the National Association of Insurance Commissioners (NAIC) and the National Conference of Insurance Legislators (NCOIL) have adopted model regulations on life settlements. The laws in the other states are based on either the NAIC or NCOIL model or a hybrid version including aspects of both models. This bill represents what I consider to be a combination of the best aspects of both models.

The major provisions of the bill will:

- Ban STOLI transactions.
- Provide a definition of life settlements, Stranger Originated Life Insurance, and fraudulent acts in the life settlement market.
- Require life settlement providers and brokers to be licensed by the Commissioner.
- Require brokers to meet training requirements that enable a broker to demonstrate an adequate knowledge of life settlement transactions and can competently discuss life settlements with policyholders. The required training includes a continuing education component.
    - Current viatical settlement license holders will have 6 months to update their educational requirements to the new requirements.
- Require specific disclosures to policyholders about the life settlement transaction.
- Require life settlement contracts and disclosures to be filed with and approved by the Commissioner
- Describe prohibited practices and regulate advertising.
- Include a five year prohibition on life settlement transactions, with financial hardship exceptions.

It is important to recognize that this legislation does not seek to prohibit legitimate life settlements. The bill will prohibit certain practices and set down specific guardrails for the marketplace. I believe this bill will protect and inform consumers and policyholders about life settlement transactions and their implications.

I want to thank the Committee for taking up this legislation, and Senator Wirch for sponsoring this legislation. If anyone has any questions I would be happy to answer them.


FORWARD
E PLURIBUS UNUM

To: Senate Committee on Small Business, Emergency Preparedness, Technical Colleges, and Consumer Protection
From: Jason E. Johns, on behalf of Coventry and the Life Settlement Association
Re: Opposition to SB 513
Date: February 3, 2010

Chairman Wirch and Members of the Committee;

We are here before you today to speak to opposition of LRB 4088/1 on behalf of Coventry and their national association, the Life Insurance Settlement Association (LISA). The Senior Vice-President of Government Affairs for Coventry and the Executive Director of LISA had both wished to appear at this hearing, but due to only receiving two days notice, it was a virtual impossibility.

With me is Nat Shapo, former Director of Insurance (Commissioner) for Illinois from 1999-2003, and who serves as outside counsel for both Coventry and LISA. Upon the conclusion of my testimony, Nat will discuss the substantive issues in regards to the language contained in SB 513, and thus I will ask that any questions you have in this regard be directed to him at that time. I will discuss the following:
Who Coventry is; What is a life settlement; The case for effective life settlement regulation in Wisconsin; And finally, a summary of our disappointment in the process of how SB 513 came before you today.

Who is Coventry?

- Coventry created the secondary market for life insurance in the U.S. By uniquely bridging insurance and capital markets, it pioneered the life settlement industry and opened a new class of longevity-based assets for institutional investors worldwide. The advent of a secondary market has created a free market for life insurance where policy owners can consider competing offers for their unwanted policies. As a result, consumers now have the power to capture the value contained in their life insurance policies and to put that value to the best possible use.

- Today, Coventry is a global financial services firm leading the development of robust longevity market. Its bold ideas, rigorous standards and deep expertise continue to open opportunities for consumers, professional advisors, and institutional investors alike.

- Based in Philadelphia with offices in London and Hong Kong, Coventry holds Standard & Poor's highest ranking (2004, reaffirmed 2006) and has been ranked #1 in the insurance category of the Inc. 500 listing of the fastest growing companies in America, The company has also been recognized as one of the best places to work in Pennsylvania.

What is a life settlement?
Simply, a life settlement is when a policy holder sells their life insurance policy on the life settlement market for an assessed value greater than the surrender cash value they would receive from their insurance company. To further expound, I would like to refer your attention to one of the handouts I have provided entitled **Facts About Life Insurance and Life Settlement Agreements.**

Coventry & LISA support effective life settlement regulation in Wisconsin and has in many other states where it has been enacted. SB 513, however, is not the appropriate legislation to do so. I wish to direct your attention to another handout I have provided entitled **The Case for Effective Life Settlement Regulation in Wisconsin.**

In summer of 2008 we became aware that Commissioner Dilweg had asked his Life Advisory Council and other members of the life insurance industry, to provide him with recommendations on how to regulate the life settlement market. Only upon arranging a meeting with him that summer and discussing our concerns did the Commissioner seek input from the life settlement industry on regulating OUR market. He subsequently formed a working sub-group to his Life Advisory Council that began meeting in December 2008. Commissioner Dilweg appointed nine members to this group that included life insurance and life settlement companies, insurance agents, and consumer groups. Of the nine, only three were from the industry being regulated. I myself was one of the three appointed representatives from the life settlement industry. Notwithstanding the disproportionate representation we had on the working group, we were hopeful that we could work to come up with recommendations to the Commissioner that fairly represented and protected our market.

The working group met on a monthly basis from December 2008-July 2009. The meetings often went 3-4 and sometimes 5 hours long. We had some heated discussion at times, but hammered out agreement on various items to recommend for the Commissioner. I would say that we were 90% in agreement on language to recommend when we concluded our last meeting. The other 10% involved language dealing with a 2 year prohibition on sale of life settlement versus a 5 year prohibition, and provisions dealing with disclosure of life settlement option to policy holders. The group agreed to disagree on these provisions and formally register our industry's conflicting positions with Commissioner Dilweg. We took no formal vote recognizing the "recommendations" of the group as consensus nor did we give any indication that we would not retain the right to oppose language that the Commissioner decided upon if we were in disagreement. On the contrary, we specifically stated to the Commissioner that if his language contained a 5 year prohibition against sale of policies on the life settlement market that we would indeed oppose the legislation.

Much to our dismay, the legislation that Commissioner Dilweg presented to the legislature that is before you today, SB 513, not only reflects a decision to support the insurers position of a 5 year prohibition, and their position on disclosure of life settlement option to policy holders, but of the 90% of language that we agreed upon, I would say that approximately only 20% remains. Thus, SB 513 does not "incorporate the recommendations of that group" as its co-sponsorship memo claimed.

Upon conclusion of the working group's meetings, we were informed that Senator Lena Taylor had agreed to accept the Commissioner's bill in to her Committee on Insurance. This came as no surprise because this was the logical place for it to go. After all, it was being done at the request of the Commissioner of Insurance, for a bill that changes literally dozens of insurance codes, and regulates the sale of life insurance policies on the life insurance settlement market. Senator Taylor informed the Commissioner however, that she had disagreement with him over the 2 year versus 5 year prohibition. It was her feeling that the basis for a 2 year provision was firmly

established and recognized in U.S. case law and that she had not seen adequate justification to change that to a 5 year prohibition. Thus, she requested that the Commissioner change that provision or she would seek an amendment to do so in committee.

Less than a month ago Commissioner Dilweg informed Senator Taylor that he was requesting his bill to be referred to this committee rather than hers. With all due respect to Commissioner Dilweg and to you Chairman Wirch, as the author of SB 513, given that SB 513 keeps all provisions of the Commissioner's bill intact, the reason for requesting referral of an insurance bill to this committee is clear.

As such, we respectfully disagree with its referral to this committee. We also wish to express our disappointment with the recent procedural process pertaining to SB 513. Specifically, the fact that this bill was circulated for co-sponsorship last Friday afternoon at 430pm, with a short deadline of yesterday at 2pm, and being noticed for a public hearing only two days ago. This process has effectually prevented us from preparing as extensively as we would like to address regulation that vastly impacts our industry. Not to mention that the short notice for this hearing effectively denies the public citizen the chance to speak here today on legislation that will affect the sale of their personal property.

We are unaware of a single complaint or report of consumer harm regarding life settlement in Wisconsin. Nationally, in 2009, there were only 7 complaints registered, and since 2006 only 16, further of these 16 NONE have resulted in a single enforcement action or prosecution by an insurance regulator. By contrast, there have been almost 72,000 complaints lodged regarding life insurance and annuities. This is not an industry threatening imminent or proven public harm that needs to be regulated immediately . Our industry is well regulated in many states and employs best practices in the market. We support regulation in Wisconsin, but the legislature, in efforts to protect consumers in competitive markets, typically seeks to bring parties together to reach consensus, this has not happened here.

Senator Taylor, as Chairperson of the Committee on Insurance, has indicated that she wishes to adopt legislation that protects Wisconsin consumers' property rights in their life insurance and protects consumers in a competitive market. She will shortly be circulating a bill, based on consensus legislation adopted in our neighboring state of Illinois and signed in to law last summer, which reflects this goal. All sides of this debate including life insurance providers, life settlement companies, insurance agents, consumer groups, and the Director of Insurance, worked on the Illinois legislation for over 3 years. Everyone involved, including Coventry and LISA, had to give up some things in that bill in order to reach consensus, but consensus was achieved. Although we still have some issues with the Illinois law as enacted, we agreed to it. This it would be hypocritical of us to not agree to it here. The wheel should not have to be re-invented in Wisconsin subjecting you and your colleagues to years of negotiations. In the interest of consensus, and assuring effective protection of the consumer and their property rights, we would support Senator Taylor's legislation. We challenge our counterparts to do the same.

We respectfully request that this committee vote against SB 513 and allow the legislative process to produce regulation based on consensus such as that which will be reflected in Senator Taylor's bill.

Thank you,

Jason E. Johns
Wisconsin Legislative Strategies, Inc.
On behalf of Coventry and the Life Insurance Settlement Association

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Thank you,

Jason E. Johns
Wisconsin Legislative Strategies, Inc.
On behalf of Coventry and the Life Insurance Settlement Association

Facts about Life Insurance and Life Settlement Agreements

Consumers Truly Benefit from Life Settlement Agreements

- In 2006, life settlements provided on average ***409% more cash*** to the original insured than a policy's cash surrender value. *(2006 Data Collection Report by Life Insurance Settlement Association).*
- 42 states have recently passed legislation regulating life settlement agreements. ***33 states have chosen to allow consumers to enter a life settlement agreement after the 2 year contestability period (including Illinois and Michigan).*** Only 8 states have chosen to prohibit the consumer's sale of the policy until 5 years have passed from the policy's inception. *(Source Life Insurance Settlement Association).*
- The life settlement industry relies on licensed insurance agents to inform consumers of their right to consider life settlement as an option to either lapsing their policy or selling it back to their life insurance company. Many life insurance companies want to prohibit (by statute) their agents from advising the consumer about their life settlement rights.
- In 2007, 3,275,000 individual life insurance policies were in place in Wisconsin. *(Source: National Association of Insurance Commissioners Statistics).*
- In 2007, 10,826,000 individual life insurance policies and 19,962,000 group life insurance policies were purchased in the United States. There were 158,336,000 total policies in place in 2007. The ***face amount of life insurance policies purchased in 2007 equaled $2.9 trillion***. The face amount of all life insurance policies in force was $19.5 trillion in 2007. *(Source: National Association of Insurance Commissioners Statistics*).
- In 2007, ***approximately $12 billion worth of life insurance face values were purchased by life settlement companies***. *(Source: Conning Research & Consulting Report).*
- ***Life settlements accounted for only .0041% of the face amount of life insurance policies purchased in 2007***. Life settlements accounted for only .0006% of the face amount of all policies in force in 2007. Life settlement agreements represent a minuscule fraction of all life insurance transactions and will not materially affect either lapse rates or the cost of securing life insurance.
- Nearly ***50% of all life insurance policies lapse within 5 years*** of policy issuance, which substantially reduces the benefit payment obligation of life insurance companies. *(Source: 2005 Report by LIMRA International and the Society of Actuaries).*
- ***45% of all life settlement agreements involve policies that are less than 5 years old***. *(2006 Data Collection Report by Life Insurance Settlement Association). Consumers use life settlement agreements as a tool to manage their life insurance asset.*

The Case for Effective Life Settlement Regulation in Wisconsin

Life Settlements Are Important For Consumers

Life insurance is a valuable asset. Life insurance is property. However, prior to the development of the life settlement industry, consumers were not able to realize the full value of a policy.

Many consumers believe that they may only either:

(1) surrender their policy to their life insurer for cash value, or
(2) let their policy lapse, for no value.

A third alternative is to sell your policy for its market value. This is a "life settlement."

Life insurance is held up as an investment and self-compelled savings mechanism. Denying the consumer's right to sell, at the highest price available in the marketplace, diminishes the value of this investment to the consumer (policyholder).

Life Settlements are Not New

Life settlements are not new property rights. Rather, the right to sell one's life insurance policy has been recognized by both the U.S. Supreme Court and the Wisconsin Supreme Court for 100 years.

In 1911, the U.S. Supreme Court recognized the importance of preserving a consumer's right to sell his life insurance policy:

> "...To deny the right to sell except to persons having such an [insurable] interest is to diminish appreciably the value of the contract in the owner's hands." *Grigsby v. Russell*, 222 U.S. 149 (1911).

In addition, the Wisconsin Supreme Court first recognized a consumer's right to sell his policy in 1886:

> "There being no question but that the policy was originally obtained for the benefit of a person having an insurable interest in the life of the assured, the policy being upon the life of the assured himself, that the owner of such policy may thereafter lawfully assign the same to any person." *Bussinger v. Bank of Watertown*, 67 Wis. 75 (1886).

Prohibition and Elimination of Stranger Originated Life Insurance—But Not at the Price of Destroying the Life Settlement Industry is Needed

Despite the historical existence of life settlements, in recent years, as the business has grown, abuses have emerged. Specifically, Stranger Originated Life Insurance (STOLI) has emerged.

STOLI is when a third party, who lacks insurable interest, "rents out" an insured's insurable interest in her own life by arranging, *before policy inception*, and agrees (before the policy is in effect) to sell the policy to a party investor.

STOLI should be prohibited.

Regulations Must Preserve Property Rights and Protect Consumers' Property Rights

Anti-STOLI legislation should be guided by the following principles:

(1) Protecting the fundamental property right of a policyholder to assign his policy for its market value.
(2) Adequately defining and aggressively prohibiting STOLI; and
(3) Installing effective consumer protections in order to create an informed and responsible consumer in bona fide life settlement transactions

Any legislation in Wisconsin should effectively regulate life settlements and protects consumers by:

(1) clearly defining and prohibiting STOLI;
(2) including thorough consumer disclosures and protections;
(3) preserving the consumer's property rights; and
(4) including a 2-year prohibition on life settlements, which mirrors the 2-year contestability period in every state's insurance code.
(5) Allowing consumers to secure loans to purchase an insurance policy consistent with Wisconsin's current premium finance laws.

NCOIL MODEL ACT SECTION 10

Section 10. Disclosure to Insurer

[Drafting Note: The provisions in this Section pertaining to premium finance arrangements and disclosures may be inserted into a state's premium finance law. If so, it is recommended that the disclosures be made to the borrower and/or insured by a lender which takes the policy as collateral for a premium finance loan.]

A. Without limiting the ability of an insurer from assessing the insurability of a policy applicant and determining whether or not to issue the policy, and in addition to other questions an insurance carrier may lawfully pose to a life insurance applicant, insurance carriers may inquire in the application for insurance whether the proposed owner intends to pay premiums with the assistance of financing from a lender that will use the policy as collateral to support the financing.

1. If, as described in Section 2L, the loan provides funds which can be used for a purpose other than paying for the premiums, costs, and expenses associated with obtaining and maintaining the life insurance policy and loan, the application shall be rejected as a violation of the Prohibited Practices in Section 13 of this Act.
2. If the financing does not violate Section 13 in this manner, the insurance carrier:
   (a) may make disclosures, including but not limited to such as the following, to the applicant and the insured, either on the application or an amendment to the application to be completed no later than the delivery of the policy:

"If you have entered into a loan arrangement where the policy is used as collateral, and the policy does change ownership at some point in the future in satisfaction of the loan, the following may be true:

(i.) a change of ownership could lead to a stranger owning an interest in the insured's life;

(ii.) a change of ownership could in the future limit your ability to purchase future insurance on the insured's life because there is a limit to how much coverage insurers will issue on one life;

(iii.) should there be a change of ownership and you wish to obtain more insurance coverage on the insured's life in the future, the insured's higher issue age, a change in health status, and/or other factors may reduce the ability to obtain coverage and/or may result in significantly higher premiums;

(iv.) you should consult a professional advisor, since a change in ownership in satisfaction of the loan may result in tax consequences to the owner, depending on the structure of the loan;" and 20

(b) may require certifications, such as the following, from the applicant and/or the insured:

(i) I have not entered into any agreement or arrangement providing for the future sale of this life insurance policy;

(ii) My loan arrangement for this policy provides funds sufficient to pay for some or all of the premiums, costs, and expenses associated with obtaining and maintaining my life insurance policy, but I have not entered into any agreement by which I am to receive consideration in exchange for procuring this policy; and

(iii) the borrower has an insurable interest in the insured."

Background: The Property Right In Alienating A Life Insurance Policy

- The Wisconsin Supreme Court recognized property rights which allow consumers to take out polices on their own lives for whatever purpose they desire. "There being no question but that the policy was originally obtained for the benefit of a person having an insurable interest in the life of the assured, the policy being upon the life of the assured himself, that **the owner of such policy may thereafter lawfully assign the same to any person**." *Bussinger v. Bank of Watertown*, 67 Wis. 75 (1886).

- *Bussinger* followed *St. John v. American Mutual*, 13 N.Y. 31 (1855), whereby life policies are freely alienable property: **"[W]ithout the right to assign, insurances on lives lose half their usefulness**. ... I am not aware of any principle of law that distinguishes contracts of insurance upon lives, from other ordinary contracts, or that takes them out of the operation of the same legal rules which are applied to and govern such contracts. Policies of insurance are choses in action; they are governed by the same principles applicable to other agreements involving pecuniary obligations."

- The U.S. Supreme Court later explained: "[L]ife insurance has become in our days one of the best recognized forms of investment and self-compelled saving. So far as reasonable safety permits, **it is desirable to give to life policies the ordinary characteristics of property. ... To deny the right to sell ... is to diminish appreciably the value of the contract in the owner's hands**." *Grigsby v. Russell*, 222 U.S. 149 (1911).

- After being followed by the Wisconsin Court in *Bussinger*, the New York high court explained that under bedrock common law, property rights in life insurance policies include not just resale but lending against market value. *Steinback v. Diepenbrock*, 158 N.Y. 24 (1899) ("sound public policy would seem to require that the payee should be permitted to treat it as he may any other chose in action and **go to the best market he can find, either to sell it or borrow money on it**").

- That includes a non recourse loan where the policy's value is used to secure its purchase. *Reed v. Provident*, 190 N.Y. 111 (N.Y. 1907) ("it appears that all of the insurance was procured in pursuance of the contract between [the lender], the assured, and his children. ... [The lender] was to be compensated by the repayment from the proceeds of the policies of the amount of his advances of premiums, or assessments, with interest.... [A] person may insure his own life and provide in the contract of insurance that the money shall be payable to any one whom he may appoint, or assign the policy to.... The assured was a debtor for the premiums paid by [the lender] to maintain the insurance on his life.").

Purchasing With Intent to Later Resell is a Property Right – Not STOLI

- STOLI is stranger **originated** life insurance (not stranger *owned* or *oriented* life insurance): A person without insurable interest purchasing a policy, or an insured making a phantom purchase for one without insurable interest – where the insured was

never the true purchaser of the policy.

- But taking out a policy with knowledge of its resale value and a general intent to settle is the exercise of a property right. The U.S. Supreme Court, above, held that "it is desirable to give to life policies the ordinary characteristics of property." Purchasing an asset with an eye toward resale—as with houses, cars, stocks, and jewelry – is the most fundamental of "ordinary characteristics of property." Thus the Oregon Supreme Court explained 81 years ago that a policy owner has "the same right to dispose of it as ... a horse, or an automobile, or any other personal property." *Lyman v. Jacobson*, 128 Or. 567 (1929).

- *Bussinger* explains that STOLI occurs "where it was evident the original policies were taken out for the benefit of the persons to whom they were immediately assigned, and who in fact paid the premiums on the policy from the beginning."

- Modern courts applying these rules validate policies purchased by insureds with general intent to later resell. *See First Penn v. Evans*, 2007 WL 1810707 (D.Md.) ("I agree that the evidence shows indisputably that Moore planned to sell all or most of his life insurance policies at the time he applied for them.... Once a policy has been issued, **it is an asset of the insured and he or she is free to sell it**. *See, e.g., Grigsby, 222* U.S. at 156-57."). The Fourth Circuit Court of Appeals, ratified this decision, and explained that "evaluating insurable interest on the subjective intent of the insured at the time the policy issues, as [the insurer] would have us do, would be unworkable and **would inject uncertainty into the secondary market for insurance**." *First Penn v. Evans*, 2009 WL 497394 (4th Cir. 2009). *Sun Life v. Paulson*, 2008 WL 451054 (D.Minn. 2008) ("[T]he complaint alleges that at the time [of policy issuance], 'Paulson intended to sell it at the conclusion of the contestability period.' ... The complaint, however, does not allege that a third party intended to purchase the ... Policy at the time of its procurement.").

Competition In The Life Insurance Marketplace

- The secondary market, simply put, provides alternatives for consumers which allow them to use competition to their benefit in order to challenge what has been recognized by the courts as the issuing insurer's monopoly over setting resale value of life policies. The *Steinback* case, discussed above, held: "It would substantially **confine him to such terms as the company issuing the policy should choose to make with him, if he should be limited in his choice of a purchaser** to the party having an interest in the continuance of the life of the assured."

- Despite well over a century of precedent creating the property right, resale of life policies was relatively rare and there was no institutional secondary market until the widespread promotion of universal life policies. Since they are not permanent and have no investment component, term policies are not a likely subject of settlement, and whole policies generally offer a cash value reasonably close to the policies' market value.

- Universal policies are cheaper than whole life and have an investment component, but, as a leading life insurer actuary wrote in 2000 as the secondary market was beginning to

grow: "Some permanent policies are being sold with grossly inadequate cash values" – meaning that "[t]he vast majority of policyholders who lapse their policies before death are the 'losers.'" Life settlements simply represent a market response to the institutional problem of cash surrender value being far less than market value. **"The current environment suggests that if an issuing company does not provide fair value, policyholders will proceed directly to a secondary market--presumably, a viatical company--to get a better deal."**

The Guiding Principles Of Insurance Regulation

- OCI's mission statement says simply: "OCI performs a variety of tasks to protect insurance consumers and **ensure a competitive insurance environment**." That is precisely what the secondary market provides, and we respectfully suggest, as discussed below, that the five year ban (and other provisions) in the current settlements draft directly violate this core promise. These provisions would codify as state policy the perpetuation of a monopoly on the valuation of life insurance policies and stifle the market's ability to sort out competition between interest groups—directly the opposite of what government regulation is supposed to do.

- One of the other main functions of the OCI is: "Assisting insurance consumers with their insurance problems." As far as we know, there have been no or virtually no complaints to the OCI regarding secondary life insurance market transactions.

The Concept Of An NAIC/NCOIL Hybrid Is Irrational

- After NAIC refused to work with NCOIL in a joint process on a settlements model, NCOIL considered the substance of the NAIC Model and categorically rejected it. Statements by NCOIL members included:

    - The NCOIL Life Settlements Subcommittee argued that "[t]he **NAIC Proposals** five year ban on life settlements from policy inception and ban on so-called non-recourse premium financing ... **fall short of our two core goals, which are preventing investors from manufacturing life insurance policies and ensuring that we do not 'impair, or interfere with Life Settlements or Viatical Settlements.'"**

    - Georgia Sen. Ralph T. Hudgens stated that the NAIC "imposed **unprecedented restrictions on the right of assignment of life insurance in lieu of encouraging carriers to underwrite for insurable interest and of enforcement of other insurance laws which already protect against wagering policies**."

    - Kentucky Rep. Robert R. Damron and current NCOIL President lamented that the NAIC model "is anti-consumer and is unacceptable because it impairs legitimate life settlements and rolls back private property rights while doing nothing about STOLI."

- NCOIL President Damron explained with respect to the NAIC's signature five year ban on life settlements: **"A five year ban impairs property rights by banning life settlements and legitimate premium finance arrangements. The tie between the waiting period on life settlements and [the statutory two year] contestability [period] is fundamental."** He explained that the ACLI has proposed "extending the contestability period to five years," expressed his "disbelief" at this position, and opposed **"this rollback of a consumer protection which dates back nearly a century. Thus, the stakes on the five year ban are high for consumers' property rights."**

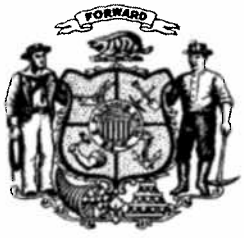
- NCOIL recently formally objected to the notion that the NAIC and NCOIL Models could properly be combined, since it considered its Model a rejection of the NAIC Model and the two models' key provisions irreconcilable. Its Nov. 26, 2008 letter stated: "NCOIL legislators reviewed the NAIC *Viatical Settlements Model Act* at the beginning of our process. We **rejected the NAIC call for a five-year ban on a policyholder's ability to settle a policy and ultimately supported a model that protects existing individual property rights while also providing tools to substantially eliminate STOLI schemes**. ... [O]ur organizations have not developed a joint bill, despite a March 2007 NCOIL request that the NAIC delay final action on its model act and continue a dialogue with legislators, and the fundamental elements of the proposals are drastically different. NCOIL, therefore, is adamant that the NAIC **refrain from any suggestion that the NCOIL model is compatible with the NAIC model**—as we have not in any way endorsed the concept of a combined model or certain provisions included in the NAIC model."

Wisconsin Should Use NCOIL, Not NAIC, As A Starting Point

- Wisconsin should reject the flawed NAIC approach and instead use the NCOIL Model, or one of its progeny, such as the recently enacted California legislation, which had the support of all major stakeholders, as a base. These bills have the blessing of legitimacy and are far more appropriate starting points than the NAIC Model, which does not.

- This is what the ACLI said in its Sept. 3, 2008 press release about the California bill, which rejected NAIC, accepted NCOIL with friendly amendments: "S.B. 1543 is based on a model law developed by the National Conference of Insurance Legislators (NCOIL), which is the association of state representatives and senators with insurance oversight responsibilities. ... 'A remarkable coalition emerged on behalf of S.B. 1543. We were joined by major consumer groups, such as the American Association of Retired Persons (AARP), as well as leaders in the life settlement industry in support of vital legislation to protect senior citizens from unscrupulous STOLI schemes. We urge Governor Arnold Schwarzenegger to sign S.B. 1543 into law to provide California seniors the peace of mind they deserve,' said Brad Wenger, CEO of the Association of California Life and Health Insurance Companies (ACLHIC)."


WISCONSIN STATE LEGISLATURE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State of Wisconsin
Department of Financial Institutions

Jim Doyle, **Governor**

Lorrie Keating Heinemann, **Secretary**

SENATE COMMITTEE ON SMALL BUSINESS

EMERGENCY PREPAREDNESS, TECHNICAL COLLEGES, AND CONSUMER PROTECTION

Public Hearing on 2009 Senate Bill 513

Wednesday, February 3, 2010

Room 400 Southeast Capitol

Members of the Committee:

On behalf of the Wisconsin Department of Financial Institutions, Division of Securities, we appreciate the opportunity to provide the Committee with this letter in support of 2009 Senate Bill 513 relating to life settlements which was developed by the Wisconsin Office of the Commissioner of Insurance ("OCI").

The DFI-Division of Securities administers the Wisconsin Securities Law which regulates the offer and sale of securities to persons in Wisconsin, and licenses investment professionals such as securities broker-dealers, sales agents and investment advisers who have Wisconsin customers.

The insurance aspects of life settlements covered by this legislation essentially involve the regulation of the purchase of life insurance policies from individual policyholders, as well as the licensing requirements for the brokers and providers who effectuate such purchases from policyholders. However, and separate from the insurance aspects of life settlements, the resale to investors of acquired policies constitutes the sale of investment securities that falls within the jurisdiction of the WI Securities Law.

In that regard, language in the WI Securities Law currently is applicable to the resale of acquired insurance policies to Wisconsin investors/purchasers as constituting investment securities in the form of "viatical settlement investment(s) or similar agreement(s)" [which "similar agreements" would include life settlements]. See the definitions in sections 551.102(28) and 551.102(32) of the WI Securities Law.

As noted in the bill's LRB Analysis, the legislation changes (from "viatical settlement" to "life settlement") the terminology currently in the Wisconsin Insurance Law covering "the sale of a life insurance policy by the owner of the policy for an amount less than the death benefit but greater than the cash surrender value." The change in the terminology reflects the reality that the "viatical settlement" terminology – which was initially created and used in the late 1980s and 1990s for situations involving persons having the AIDS virus (which at that time was considered a terminal illness) selling their insurance policies to raise cash for medical and related expenses – has been superseded by a new, developing business model in which persons (seniors) that do not have a terminal illness, sell their policies to intermediaries ("providers") who resell the policies as investments.

That new business model is now referred to as "life settlements," [although it would still include within its definition, situations involving a catastrophic or life-threatening illness or condition (including AIDS and HIV)]. The National Association of Insurance Commissioners recognized the need to update the various state insurance laws to reflect the life settlement business model, and developed model legislation for that purpose -- which model legislation a number of other states already have adopted, and which OCI has used in developing Senate Bill 513.

Because Senate Bill 513 repeals and replaces the "viatical settlement" terminology in the various Wisconsin Insurance Law provisions, it is necessary to similarly amend our Wisconsin Securities Law provisions -- which currently contain that same viatical settlement terminology (and which also contain citations to the definition of viatical settlement in section 632.68(1)(e) that is repealed under the legislation) -- to reflect such repeals and recreations being made in the bill to the Wisconsin Insurance Law. Accordingly, we support the amendments to sections 551.102(17)(d), 551.102(17(e), 551.102(28)(intro.) and 551.102(32) of the Wisconsin Securities Law contained in Senate Bill 513.

Also, because like OCI, the DFI-Division of Securities is a regulatory agency, the Division would like to take this opportunity to favorably acknowledge certain insurance policyholder protection elements contained in the legislation, some of which parallel equivalent investor protection elements of the Wisconsin Securities Law.

In particular:

1. The extensive licensing and training requirements for persons selling life settlements [in sections 632.69(2) & (3)] comports with securities agent licensing and qualification requirements under the WI Securities Law.
2. The comprehensive listing of the types of conduct that can provide a basis for OCI's suspension or revocation of a life settlement license [in section 632.69(4)] parallels WI Securities Law securities license revocation authority.
3. The emphasis in the legislation on the comprehensive disclosures required [in section 632.69(8)] to be made to policy owners as well as the insured under the policy, parallels equivalent full disclosure requirements under the WI Securities Law applicable to the sale of securities to WI investors.
4. The Fraud Prevention and Control provision [in section 632.69(15)] requires that any person engaged in the business of life settlements who has knowledge or a reasonable belief that a violation has been committed of either that anti-fraud provision or a prohibited business practice provision under sub. (13), must inform the OCI.
5. Under the bill, a policy can only become the subject of a life settlement within a 5-year period from the date of issuance of the policy under certain limited conditions.
6. Under the bill, a provider or broker must inform the owner of the policy that is the subject a life settlement that the broker represents the owner exclusively and owes a fiduciary duty to the owner. There is an equivalent fiduciary duty responsibility present in the context of a securities investment adviser's relationship with an advisory client.

For the above reasons, we urge the Committee to approve 2009 Senate Bill 513 and secure its passage by the full Senate on this important regulatory issue that impacts Wisconsin residents.

* * * * *

WCLI
April 20, 2009

WHY FIVE YEAR LIMIT

Almost everyone agrees that stranger originated life insurance (STOLI) is inappropriate. However, there is considerable disagreement regarding when a transaction is considered a STOLI transaction and how to curb abuses. Elements of the settlement industry have become adept at creating transactions where each individual piece appears legitimate but the effect of the transaction as a whole is STOLI - the individual obtains a life insurance policy with the intent to sell it on the secondary market. They have also been successful at hiding STOLI transactions in trust agreements and other vehicles. It is important that measures be taken to inhibit these types of arrangements.

Wisconsin Insurance Commissioner, Sean Dilweg, created a subcommittee to advise him regarding appropriate legislation to address this issue. This committee includes representatives of the life settlement industry, life insurance community and consumer representatives. The primary starting point for advisory committee discussions has been legislation adopted in states that largely relied on a model drafted by the National Assoc Association of Insurance Commissioners (NAIC).

When the NAIC started drafting its model act to curb STOLI abuses, the Commissioners wanted to find a mechanism to allow legitimate life settlements but discourage manufactured/STOLI settlements. The result is a narrowly crafted proposal that, under certain circumstances, limits a policy with the characteristics of STOLI from being sold on the secondary market for five years.

In order to narrowly target the five-year limit to STOLI, the first challenge was to identify the characteristics of STOLI transactions. It was found that there are three common elements in the sale of an insurance policy that is likely to be sold to stranger investors: nonrecourse financing, settlement guarantees and life expectancy evaluations.

The first element is nonrecourse financing. Under the typical arrangement, life insurance agents or financing companies provide the potential insured with a two year nonrecourse financing loan to pay the premium on the insurance. This allows the individual to purchase the insurance without making any premium payments. The collateral for the loan is the insurance policy itself. At the end of the loan period, the insured has the option of paying off the loan, selling the policy in the life settlement market or losing the policy. However, the terms of nonrecourse financing make paying off the loan very unattractive. Nonrecourse premium financing programs generally expect to earn at least a compounded 13 to 18 percent return for the investors. The high interest rates and other fees make it cost prohibitive to pay off the loan. The option for repayment is available in order to give a cloak of legitimacy to the transaction, not to encourage repayment. Because lower cost financing is generally available, the use of nonrecourse financing in and of itself gives some indication of the intention not to keep the policy.

The second indicia of a STOLI transaction is an agreement or understanding with any other person to guarantee the liability of the loan or to purchase, or stand ready to purchase, the policy. Such arrangements are an obvious indication of the intent to settle. By guaranteeing payment of the loan, there is barely even a façade of the policyholder paying for and originating the policy. An agreement to settle is an obvious sign that the policy is initiated in order to transfer to someone else.

The third common element of a STOLI transaction is an independent life expectancy evaluation. This occurs when the prospective insured undergoes an evaluation by a person or entity other than the insurer in connection with the issuance of the policy. The life expectancy evaluation allows the settlement company to consider the likelihood that the potential insured will die sooner than the general mortality tables used by the life insurer to price the policy. If an individual's expected life span is less than expected given their age and other factors, they are a good investment.

In order to assure a targeted impact of the legislation, the NAIC further limited the applicability of the five year limitation. Under the NAIC model, even if STOLI characteristics are present, the limit does not affect the rights of individuals with a good faith need to access their policy (death of spouse, divorce, disability, bankruptcy, loss of job or chronic or terminal illness). In order to assure that good faith needs are met, the Wisconsin Office of the Commissioner of Insurance asked representatives of the life settlement industry, insurance community and consumer representatives to consider whether additional circumstances should be added to the list of exceptions. Although the committee was unable to identify additions to the list, it was recommended that OCI be provided with rule making authority to add additional circumstances if they are identified in the future.

Under the resulting proposal, traditional life insurance policies purchased with an individual's own funds are not impacted by the five year limitation. Policies that have the hallmarks of STOLI can generally not be sold during the first five years after policy inception. However, even policies with STOLI characteristics can be sold during this time period if there is a good faith need to access the resources. After five years, any of these policies can also be sold.

The Wisconsin Council of Life Insurers strongly supports Commissioner Dilweg's efforts to curb STOLI abuses. Without providing any objective and verifiable data or even a detailed explanation, the life settlement industry has contended that the five year requirement creates a chilling effect on the life settlement industry. We contend there is no reason to expect a chilling effect on legitimate life settlement transactions, and our review of data relating to the growth and profitability of the life settlement industry even in the wake of recent legislation in this area indicates that the industry is robust and expanding. Moreover, reliance upon the two year incontestability clause before a policy may be settled has been ineffective in curbing STOLI abuses. A recent study conducted by Life Policy Dynamics entitled "Life Settlement Market Analysis" illustrates that nearly half of all policies were settled within four years, which validates the support for the NAIC five year restriction. This Model provision, which was unanimously adopted by the NAIC, is a narrowly defined, carefully crafted restriction that is reasonable and necessary to stop STOLI. Accordingly, we urge the OCI to require support for such a broad and conclusory assertion as that put forth by the life settlement providers. In

addition, the life settlement industry representatives have rejected the five year period on the grounds that a policyowner's property right is inviolate. We of course recognize and support our policyowners' property rights in their insurance contracts; that right is a fundamental component of the value that our products provide. However, we strongly disagree with the reliance on a property rights argument as a means to suggest the five year requirement is not appropriate, especially when weighed against society's substantial interest in preventing groups of strangers from wagering on human life. An owner's right to sell or assign an insurance policy does not justify protecting those who lack an insurable interest in an insured's life and seek the issuance of a life insurance policy for their own financial gain.


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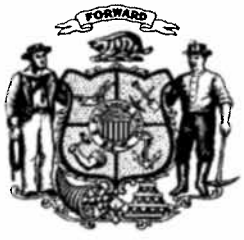
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WISCONSIN STATE SENATE

P. O. Box 7882 Madison, WI 53707-7882

February 3, 2010

Honorable Fred Risser
President, Wisconsin State Senate
Room 220 South
State Capitol
Madison, WI 53707

HAND-DELIVERED

To the Honorable Senate President Risser,

We are writing to voice our serious concerns and objection to the referral of LRB 4088/1 or SB 513 to Committee on Small Business, Emergency Preparedness, Technical Colleges, and Consumer Protection. In our review of the legislation, which regulates the life settlement industry, the bill makes various changes to the statutes in securities law, income and franchise taxes, and the insurance chapters, with minor changes in the military affairs and tax appeals chapters.

We are seriously concerned that this bill has not been referred to the Committee on Judiciary, Corrections, Insurance, Campaign Finance Reform, and Housing in an effort to circumvent meaningful policy discussion and compromise on this issue. As you are well aware, the rules of the Senate call for referral of proposals to the "appropriate" committee which is a term defined only by your discretion. We are rightly concerned and question how the committee of referral is appropriate for a bill that so heavily involves itself in the life insurance industry and practices.

We respectfully ask in bipartisan fashion, that you contact Chairman Wirch and seek the referral of the bill to the appropriate committee. Our legislative process is a standard that we all mutually hold dear and wish to honor. We remain available to discuss this matter with you at your earliest convenience.

Sincerely,

LENA C TAYLOR
Chair, Committee on Judiciary, Corrections, Insurance, Campaign Finance Reform, & Housing
Housing

RANDY HOPPER
Member, Committee on Judiciary, Corrections, Insurance, Campaign Finance Reform, &

LCT:RH:emp

cc: Members, Committee on Small Business, Emergency Preparedness, Technical Colleges, & Consumer Protection
Members, Committee on Judiciary, Corrections, Insurance, Campaign Finance Reform, & Housing
Senate Majority Leader Russ Decker
Senate Minority Leader Scott Fitzgerald

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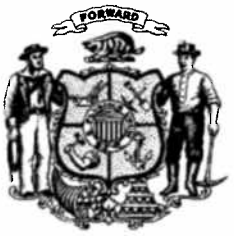

Tierney, Michael

From: Sen.Taylor
Sent: Tuesday, February 09, 2010 10:15 AM
Subject: Co-sponsorship of LRB 4060: Regulating Stranger Originated Life Insurance and Life Settlements DEADLINE:Monday, February 15th, 3pm

Attachments: Drafting Instructions - LRB 4060.pdf

TO: Legislative Colleagues
FROM: Senator Lena C. Taylor
DATE: February 9, 2010
RE: Co-sponsorship of LRB 4060: Regulating Stranger Originated Life Insurance and Life Settlements

DEADLINE: Monday, February 15th, 3pm

Colleagues:

As chair of the Senate Committee with jurisdiction over matters of Insurance, I am introducing legislation that will prohibit Stranger Originated Life Insurance (STOLI) transactions to protect consumers and also regulate the life settlement transactions. STOLI is defined as a life insurance policy that is purchased by a third party without an insurable interest in the insured and is against public policy. Life Settlement transactions are the legal sale of a life insurance policy, by the policy owner, on the secondary life settlement market (at a rate averaging 15-25% above surrender cash value). This occurs when a policy owner decides that they no longer wish to own their life insurance policy. Their other legal options include letting the policy lapse, or surrendering it back to the insurance company at its cash value. Although OCI has indicated that there has never been a report of consumer harm in Wisconsin involving the sale of life settlement transactions, they are not currently regulated in the state. It is the goal with this legislation to assure that no consumer harm happens in the future by putting regulation in to place to protect the consumer and at the same time their property rights

NATIONAL MODELS AND COMPROMISE LEGISLATION

The two major insurance policy bodies, NCOIL (National Conference of Insurance Legislators) and the NAIC (National Association of Insurance Commissioners) have each issued model legislation on this issue. Each model bill has components that are favored by the life insurance industry or the life settlement industry. However, neither bill by itself is a compromise that has been concurred in or supported by both industries. Rather, the effect of each bill, if enacted, moves a state to favor one industry over another.

Currently introduced in the Legislature is SB 513 that is firmly based on the NAIC model and greatly favors the position of life insurance companies while negatively impacting the business of the life settlement industry, and, more importantly, restricts consumer choice as to what they can do with their policy during the first 5 years after policy inception.

The legislation that I am introducing is neither the NCOIL (supported by the life settlement industry) nor the NAIC model (supported by the life insurance industry). As a committed policymaker I do not believe that we should favor either industry over the other, but rather try to strike a consensus among them. That is our charge and one I do not take lightly. This bill is a consensus, based on legislation passed and enacted in 19

other states and is identical to legislation enacted by our neighbor to the south, Illinois. Both industries sat down with each other there along with the Director of Insurance and formed this legislation. Being a compromise bill, it includes sections that each industry favors and sections they oppose. In the end, however, each industry was heard and a consensus was reached. They way it should also be in Wisconsin.

EXAMPLES OF COMPROMISE IN OUR LEGISLATION

The full details of this bill are included in the below attachment. However, the most significant piece of compromise centers on the issues of disclosure and the 2 year versus 5 year prohibition on the sale of life insurance policies from time of inception.

The Life Insurance industry seeks extensive disclosures to consumers of what a life settlement transaction is, what it means to their insurability for future policies, what it means to their beneficiaries, and requires strict guidance to life settlement brokers (usually life insurance agents) on how to proceed with the sale of a person' policy on the life settlement market. The Life Settlement industry agrees that disclosures are necessary for consumer protection, but feel that the extent of what the insurers seek is too burdensome and unnecessary.

The Life Settlement Industry seeks a 2 year prohibition on the sale of life insurance policies. This is based on 140 year precedent in Wisconsin case law, and 100 year old precedent in U.S. Supreme Court law recognizing that after the standard 2 year contestability period of a life insurance policy it becomes the property of the insured to do with what they so choose (a bedrock rule followed in every state). The Life Insurance industry seeks a 5 year prohibition to deter STOLI, as although STOLI occurs at the inception of a life insurance policy, the hope of these bad actors is that the person (usually an elderly or sick person) will die within 5 years. Thus, the Life Insurance companies contend that by imposing a 5 year prohibition on all life settlement sales it will make STOLI transactions less desirable to bad actors.

Our compromise legislation includes the extensive disclosure requirements that the Life Insurance industry seeks as we agree that the more disclosure and information a consumer has before selling their policy is a good thing. However, I feel that SB 513, which is patterned after the NAIC model, is not the best, most comprehensive way to protect the consumer. This legislation is.

The NAIC's own funded consumer representatives have harshly criticized the 5 year ban and the unusual and corrupted process by which the NAIC adopted its model. Birny Birnbaum, Executive Director of the Center for Economic Justice, stated the five year ban:

> **"is a terrible proposal. It not only takes away from fundamental consumer rights of ownership and disposition of policies, but also does not address the issue of stranger-owned life insurance. It will be a 'nuclear bomb for the secondary market'. One of the things, that is a concern, is that regulators are letting insurance companies kill the secondary market without a policy debate. It reinstalls a monopoly for insurers."**
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> **"Birny Birnbaum, NAIC Funded Consumer Representative (...reiterated his previous testimony that the proposed five-year ban on life settlements would hurt the legitimate secondary market without resolving the STOLI problem. He did not see much of an impact on the STOLI market in extending the ban on life settlements from two years to five years."**—NAIC minutes, Dec, 10, 2006
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> **"Once a policy is lawfully obtained, and it is beyond the normal two year incontestability period, it is the property of the consumer. For example, once a consumer buys a car, that consumer can sell the car or do anything they wish with it. Imagine a law that said you could only sell your car back to the original dealer for the first five years!"**—NAIC Funded Consumer Representative Bill Newton, May 3,

2006

This compromise legislation includes a 2 year prohibition of the sale of life insurance policies that the Life Settlement industry seeks. It is my feeling that century old case law should not be ignored when determining when a life insurance policy becomes the property of the owner to be done with what they wish, thus protecting the consumer's property rights in life insurance. The Wisconsin Supreme Court, in *Bussinger v. Bank of Watertown*, 67 Wis. 75 (1886) the majority opinion stated;

> **"There being no question but that the policy was originally obtained for the benefit of a person having an insurable interest in the life of the assured, the policy being upon the life of the assured himself that the owner of such policy may thereafter lawfully assign the same to any person."**

The United States Supreme Court said in the case of *Grigsby v. Russell*, 222 U.S. 149 (1911);

> **"To deny the right to sell except to persons having such an (insurable interest) interest is to diminish appreciably the value of the contract in the owner's hands."**

It is an insurance industry fact that almost 50% of life insurance policies lapse within the first 5 years of issuance. It is usually during consideration of allowing their policy to lapse that a policy owner is informed of the life settlement option. If a 5 year prohibition were enacted in to law, the effect would be an anti-competitive monopoly by the life insurance industry over what happens to that policy and the only options a consumer would have would be to let their policy lapse back to the insurance company, surrender it to the insurance company at cash or less than cash value, or re-structure their policy to make it more sustainable by the consumer. In addition, a 5 year prohibition would significantly depreciate the value of the consumer's policy on the life settlement market, which unfairly denies the consumer realizing the true potential of their life insurance as an asset. By enacting a 2 year prohibition in conjunction with extensive disclosure we keep consumer choice intact -- A win/win for the consumer.

This compromise legislation also includes an explicit definition of what STOLI is and a prohibition of it at any time. STOLI is a completely separate issue from life settlements and as such BOTH the Life Insurance industry and the Life Settlement industry support language defining and prohibiting STOLI. An explicit prohibition and definition of STOLI is a more fair and balanced way of getting to the bad actors, instead of a 5 year prohibition on all life settlement transactions which would ensnare the good along with the bad.

LEGISLATIVE PROCESS ON THE STOLI ISSUE

As the Legislature moves forward on this issue, this compromise legislation is offered as the right way to proceed. I do not believe in speeding legislation through the houses that will heavily impact the viability of one industry for the enrichment of another. Further, the consumer is best protected when we spend adequate time and reason together about policies and create sound law. The Wisconsin State Journal Editorial Board agrees and stated their concerns with the speeding of legislation through the houses in an opinion they wrote in the February 4, 2010 edition entitled "Slow down, rethink secrecy bills".

Other states have spent years debating this issue and there is no consensus among us and among the industries affected by SB 513 that it is the appropriate bill. It is alarming that in what could amount to less than two weeks, a piece of legislation (SB 513) that vastly impacts dozens of insurance codes and consumer rights may be available for a full vote on the Senate floor.

Protecting the consumer is not served by rushing through a bill, just for the sake of having something pass before the end of session, nor does taking years to pass legislation protect the consumer. Luckily for us, we have good consumer protection law to look to in Illinois and 19 other states, which is also a consensus among

the industries affected. This bill reflects this.

This bill will circulate for a time and the draft will be released as soon as it is available. We have provided drafter's instructions for your review. If you have any questions, please feel free to call.

If you wish to cosponsor please contact my office at 6-5810 or reply to this email by Monday, Feb 15th at 3pm.

Drafting
ıstructions - LRB 40.