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Rhonda West
Regulatory Specialist
Delaware Department of Insurance
841 Silver Lake Boulevard
Dover, DE 19904
Via email to Rhonda.West@state.de.us.

RE: **Delaware State Senate Resolution 19 (2016)**

Dear Ms. West:

On behalf of the Life Insurance Settlement Association¹, we respectfully submit the following comments in response to the recently held Public Information Session to examine the secondary market for life insurance as outlined in Senate Resolution 19, and to address several of the specific resolutions outlined therein. We hope the information we provide is helpful as the Delaware Department of Insurance (DOI) and Delaware General Assembly explore options with respect to fair and balanced regulation of life settlements and the secondary market for life insurance in the State of Delaware.

Over the past twenty years, the secondary market has evolved from a nascent, and largely unregulated, viatical settlement market in the 1980's and early 1990's to a well-regulated life settlement market today, with 42 states regulating the modern marketplace. A life settlement provides significant benefits to individuals and families by paying seniors who sell their life insurance policy – rather than surrender – amounts that exceed the cash surrender values by an average of four to ten times. Tens of thousands of policyowners have sold their policies and have received billions of dollars in life settlement proceeds that have allowed them to live life with dignity, respond to medical and financial needs, provide for themselves and loved ones or reposition their investments and assets as life's circumstances and life cycles changed.

¹ The Life Insurance Settlement Association (LISA) is the nation's oldest and largest organization representing participants in the life settlement industry, with a current membership of more than 80 companies doing business in all 50 states, the District of Columbia, Puerto Rico and the U.S. Virgin Islands. The mission of LISA is to promote the development, integrity and reputation of the life settlement industry, to advance the highest standards of practice and professional development for the industry, and to educate consumers and advisors about a life settlement as an alternative to lapse or surrender of a life insurance policy. Since its inception, LISA has been the leader in promoting responsible legislation and regulation in the industry. Members and staff have contributed conceptual as well as detailed language to laws governing the industry in every regulated state. These efforts have resulted in improved public information and awareness while helping to create a competitive market place that serves consumers a valuable financial service. For more information, visit www.lisa.org.

We also note that no consumer complaints have been reported to the Delaware Insurance Department or to state insurance regulators nationwide over the past several years².

Delaware is among a minority of states that have not adopted life settlement legislation (at least since 2007). The State's current relevant laws only regulate viatical settlements (the sale of policies by individuals who have been diagnosed with a terminal or chronic illness, which has become a tiny part of the secondary market).

For several years, LISA and several secondary market entities were active in support of legislation to expand the regulation from only viatical settlements to all settlements. That legislation was based on the life settlement model act of the National Conference of Insurance Legislators (NCOIL) (much of which is also found in the National Association of Insurance Commissioners (NAIC) model) and on laws that had been adopted in a majority of states. The legislation supported by LISA was focused primarily on the sale of a policy by Delaware policyowners and to address concerns about Stranger-Originated Life Insurance (STOLI).³ LISA has not supported or opposed any other legislation during that time or thereafter.

We support public policy that reinforces the benefits of the life settlement market for consumers as a transparent and well-regulated transaction, while recognizing the bright line distinction between life settlements and STOLI.

Life Settlements – A Consumer-Friendly Alternative to Lapse or Surrender of a Life Insurance Policy

Senate Resolution 19 outlined the importance of life insurance, the impacts to consumers of policy lapse, and the benefits of a life settlement as an alternative to carrier-imposed cash surrender. Today's life settlement market operates in a well-developed and well-regulated industry where consumers and market participants find a safe, transparent and accountable transaction. Forty-two (42) states representing over 90% of the U.S. population protect consumers through comprehensive life settlement laws and regulations.

Prevailing life settlement regulation includes full transparency to the policy owner and includes numerous disclosures that help the consumer decide if they should sell their policy including risk disclosures (such as risks of taxation, claims of creditors and loss of government benefits) and disclosures to the consumer on ways to keep the policy in force. During the transaction, consumers are told of the amount of compensation paid to life settlement brokers, as well as the amount of the settlement versus the cash surrender value or accelerated death benefits that are available to the consumer at that time. Additional protections include adherence to applicable state and federal privacy laws, required licenses for life settlement brokers and providers, and the submission for approval of forms for life settlement contracts, disclosures, escrow agreements, and anti-fraud plans to ensure the policies they purchase have not been obtained and are not being sold illegally.

² NAIC Consumer Information System [Most Common Complaints by Reason for Complaint \(10/31/2016\)](#)

³ 2006: [HB 538](#); 2011: [SB 145](#);

Life settlements are a very safe, very secure transaction for seniors. According to the National Association of Insurance Commissioners, only one (1) consumer complaint involving a life settlement has been reported to state insurance departments in the past five years involving life settlements, and that one complaint was against an insurance company.

Life settlements are indeed a valuable alternative to the lapse or surrender of a policy, providing much needed resources to seniors in retirement who need to provide for themselves and their families. According to two national studies, the average life settlement pays policy owners an average of between four to 10 times more than the cash surrender value of a policy at the time of surrender⁴. In addition to a cash settlement, many life settlement companies now offer the ability of a senior to sell only a portion of their life insurance policy so that they can retain some death benefits for their loved ones and eliminate any need to pay future premiums.

Decisions concerning life insurance are among the most significant financial choices that consumers make in their lifetimes, but most Americans are unaware that the determinations they make about how to dispose of a policy are as important as those made at the time of initial purchase. According to the American Council of Life Insurers, every year millions of life insurance policies lapse or are surrendered by consumers – totaling nearly \$700 Billion annually. Although individuals – particularly seniors – may elect to drop their coverage because the insurance is no longer needed, today a growing number of seniors are being forced to abandon their life insurance policies because life insurance companies are increasing premiums on seniors years or decades after policy issuance.⁵

Recent studies show significant lapse rates among seniors who hold life insurance policies with additional studies illustrating a clear lack of knowledge by both consumers and their advisors as to their options, including a life settlement, with respect to a life insurance policy that is no longer needed, wanted or affordable. According to Conning Research, the amount of policies on seniors who lapse or surrender their policies and who would likely qualify for a life settlement exceeds \$180 billion annually⁶. Further, research conducted by the Insurance Studies Institute show that over 50% of seniors are unaware of the life settlement option and an astounding 90% of seniors who lapsed their policies would have considered selling their policy through a life settlement had they known the option was available.⁷

Recognizing a need for consumers to access the value of their lapsing or surrendering life insurance policies, NCOIL adopted the Life Insurance Consumer Disclosure Model Act⁸, which requires notice be provided to consumers over the age of 60 who are terminally or chronically ill or considering lapse or

⁴ US Government Accountability Office, [Report to the United States Senate Special Committee on Aging \(2010\)](#); London Business School, [Testing for Adverse Selection in Life Settlements: The Secondary Market for Life Insurance Policies \(2014\)](#)

⁵ Wall Street Journal, [Retirees Stung by 'Universal Life' Cost \(August 9, 2015\)](#); Wall Street Journal, [Surprise: Your Life-Insurance Rates Are Going Up](#) (December 4, 2015)

⁶ Conning Research, [2016: Life Settlements, Secondary Annuities, and Structured Settlements - Rate Increases Squeeze Returns](#).

⁷ Insurance Studies Institute, [Surveys of Seniors Reveal Roadblocks to Reliable Life Settlement Information \(2010\)](#)

⁸ NCOIL, [Life Insurance Consumer Disclosure Model Act \(2010\)](#)

surrender of their life insurance policy, notifying them of eight different alternatives to lapse or surrender, one being a life settlement. Thus far, six states have passed this or some other form of consumer disclosure laws to advise seniors of the alternatives to lapsing or surrendering a policy.

Likewise, several states have adopted or are considering adoption of legislation which advises applicants for Medicaid for long-term care that they can sell their policies as an alternative, thus deferring, even for a short time, the need to qualify for Medicaid for long-term care.⁹

Life Settlements, the Secondary Market and Stranger-Originated Life Insurance

An ongoing effort by life insurance carriers, in an attempt to suppress the life settlement market and secondary market for life insurance, has been to equate legitimate life settlement transactions with stranger-originated life insurance (STOLI). LISA wants to be very clear in setting forth distinctions between the life settlements and stranger-originated life insurance (STOLI).

A life settlement is defined as the sale of an in-force life insurance policy by policyowners (viators) through regulated life settlement transactions to a licensed life settlement provider. As previously stated, over 90 percent of the U.S. population lives in the 42 states with life settlement laws, so this corpus of transactions is well-defined.

The secondary market for life insurance can be defined as the ownership of life insurance by investors who, while not having an insurable interest in the life insured under the policy, lawfully own such policies. The ownership by secondary market investors comes about through some form of sale of a life insurance policy from the original owner to the investor. A life settlement is, indeed, a subset of this secondary market, but not all secondary market transactions are life settlements. There are investors who own life insurance policies that were not the subject of a life settlement. These owners have obtained the policies through transactions involving parties that are expressly exempt from state life settlement laws, such as other settlement providers, banks and certain insurers and lenders, and certain trusts and financing entities, as well as through subsequent transactions of blocks of policies in a “tertiary market.” These transactions cannot be, and should not be, referred to as life settlement transactions or the policies owned by these investors considered life settled policies.

STOLI – stranger-originated life insurance – is an acutely accurate definition in and of itself. A STOLI policy is a life insurance policy that was illegally procured—originated—in violation of insurable interest laws, often involving fraud or deception in the application or initiation of the policy. Many STOLI schemes of the mid-2000’s involved the manufacturing of life policies using premium finance loans as a “cloak” for a wager, or a trust or other structure as a “straw man”, disguising the true ownership of the policy in order to deceive insurers, resulting in the policies being issued. **The illegal conduct occurs at the inception/origination of the policy and, as such, STOLI is neither a secondary market transaction nor a life settlement transaction.**

⁹ [In Plain Sight: An Important Tool for Advisors with Clients in Need of Long-Term Care \(2016\)](#)

LISA and the majority of life settlement market participants have been clear in their efforts to prevent and detect STOLI and to advocate for the business practices and laws that target the elimination of STOLI. Policies procured in violation of insurable interest laws harm all parties involved, including secondary market investors, at least as much as insurance companies. STOLI schemes seek to make these defective policies undetectable from insurers and life settlement companies.

Any examination of law or regulatory enforcement, or criminal or civil litigation involving STOLI schemes concludes that the illegal conduct occurs at the initiation of the policy. These enforcement and litigation matters show that life settlement transactions are NOT the subject of such actions. Rather, it is the scheme to deceive the insurance company at the time of application of the policy that is at issue. **Simply put, STOLI is not a secondary market transaction. STOLI is not a life settlement. And, life settlements are not a form or type of STOLI.**

Delaware Supreme Court Decision on Insurable Interest

In 2011, the Delaware Supreme Court handed down a decision affirming the property rights associated with life insurance and the core rule of insurable interest. In the rulings, *PHL Variable Ins. Co. v. Price Dawe 2006 Insurance Trust, et al.*, C.A. No. 10-964 (Del. 2011) and *Lincoln National Life Insurance Co. v. Joseph Schlanger 2006 Insurance Trust, et al.*, C.A. 09-506 (Del. 2011), the High Court held that an insured has a common law property right to purchase a policy on his own life and sell it for market value, provided, of course, that procurement of the policy is not part of a straw purchase pursuant to a prior agreement to resell to an investor. According to the Court, “[The] secondary market allows policy holders who no longer need life insurance to receive necessary cash during their lifetimes,” emphasizing that the secondary market is “perfectly legal”, “highly regulated” and “provides a favorable alternative to allowing a policy to lapse, or receiving only the cash surrender value.”

The Delaware Court’s opinion was issued in response to certified questions it received from the Delaware federal court involving two cases where there were allegations that the policies were procured pursuant to an arrangement under which they "would be immediately transferred to an unrelated third party investor" and where the insured and his trust "were used as straw men to allow [that investor] ... to conceal a wager on [the insured's] life."

The Supreme Court’s ultimate conclusion is that when an investor has "a pre-negotiated arrangement with the insured to immediately transfer ownership, the policy fails at its inception for lack of an insurable interest." This is unacceptable, says the Court, because "if that third party uses the insured as an instrumentality to procure the policy, then the third party is actually causing the policy to be procured."

Rejecting the pleadings of the American Council of Life Insurers, the Court held that an insured taking out a policy on his or her own life cannot violate insurable interest laws merely because he or she intends to someday sell his or her policy, stating that “the insured’s subjective intent for procuring a life insurance policy is not the relevant inquiry. The relevant inquiry is who procured the policy and whether or not that person meets the insurable interest requirements.”

The Delaware Supreme Court's decision protects the property rights of life insurance consumers in procuring a policy and reaffirms that intent is irrelevant in evaluating insurable interest.

Senate Resolution 19 (2016)

Concerning the specific resolutions contained within Senate Resolution 19, LISA states the following:

First Resolution: Delaware life insurance policyowners benefit from the existence of a well-regulated and robust secondary market for life insurance. Investors who participate in the secondary market, either as direct purchasers or otherwise, should have certainty in their investments. We reiterate that there is a clear and understandable distinction, as has been laid out herein and as made clear by the Delaware Supreme Court, between the lawful and regulated secondary market, including life settlements, and Stranger-Originated Life Insurance.

Second Resolution: Some insurance companies have acted to thwart the secondary market for life insurance, including life settlements, through a variety of acts that have harmed Delaware consumers, including actions related to the payment of benefits to owners of life insurance policies that were sold in the secondary market. Investors in such policies should be protected against such actions.

Third Resolution: LISA generally supports policies or rules whereby owners of life insurance policies – whether the original owners or any lawful secondary market owner of a policy – do not have to endure expensive and unnecessary litigation due to the actions of insurers relative to the payment of benefits to such owners. We reserve endorsement of any specific legislation until such time as such legislation is introduced in the Delaware General Assembly or otherwise proposed.

Fourth Resolution: LISA supports legislation that establishes modern regulation for life settlement transactions in Delaware, based on legislation adopted pursuant to the NCOIL Life Settlements Model Act and previously supported in the Delaware General Assembly. LISA would consider supporting other legislation which protects investors in the ownership of life insurance policies through the secondary market for life insurance as being consistent with the goal of providing for the benefit of Delaware consumers.

Conclusion

Thank you for this opportunity to present this information to the Department of Insurance regarding the adequacy of protections for purchasers of life insurance policies in the secondary life insurance market to ensure that this market continues to exist for Delaware seniors.

HARRIS B. MCDOWELL, III
STATE SENATOR
1ST District



SENATE
STATE OF DELAWARE
411 LEGISLATIVE AVENUE
DOVER, DELAWARE 19901

COMMITTEES
Children, Youth & Families,
Chair
Energy & Transit, Chair
Finance, Chair
Banking
Ethics
Executive
Health & Social Services
Insurance
Judiciary
Permanent Rules

The Hon. Karen Weldin Stewart
Delaware Department of Insurance
841 Silver Lake Blvd
Dover, DE 19904

Dear Insurance Commissioner Stewart:

There is a misnomer out there that the secondary market for life insurance isn't important to Delaware or the General Assembly. Insurers argue that a bill that would create certainty in the market for Delaware seniors, that has been voted out of every committee in which it has ever been heard, has no merit. Nothing could be further from the truth.

For years, I have sponsored legislation that would protect innocent investors who have participated in the secondary or tertiary life insurance market. I have done so not because it will benefit any particular investor, but because it will benefit the tens of thousands of Delaware seniors who own life insurance policies that they may no longer want or need.

There is no debate that Delaware seniors benefit from a robust secondary market for life insurance. Studies like that issued by the Wharton Business School have shown that seniors who sell their unneeded policies into the secondary market can get a significantly greater return than if they turn it back into the insurer who issued the policy. That is money that can be spent in Delaware on retirement, long-term or hospice care, on a grandchild's education, or can be used to allow a senior to stay in their home. An uncertain secondary market for life insurance hurts Delaware seniors.

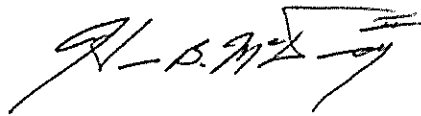
For too long Delaware has had its head in the proverbial sand on this issue. Our state is one of only five in the country that does not have life settlement legislation on the books. As a result of having no checks on insurers who are seeking to erode the secondary market, a wave of unfair cost of insurance increases have hit not just investors but all policy holders.

Cost of insurance increases used to be extraordinary measures only done in the most extreme cases. In fact the first carrier to issue a cost of insurance increase in an effort to undermine the secondary market, hadn't previously done so in its 150 year history. A cost of insurance increase allows a carrier to unilaterally increase rate a policy holder pays every month, sometimes by as much as 100%. But because the law does not allow a carrier to discriminate against classes of policyholders they can't issue cost of insurances increases on just investor owned policies. And because one carrier got away with it, other carriers are now following suit. That means that Delaware seniors could see their monthly insurance premium increase for no reason. And unlike other forms of insurance, life insurers aren't required to seek approval or give notice to the state before it increases rates. The issue has grown so

bad that the New York Department of Financial Services recently issued proposed regulations to reign in unfair cost of insurance increases.

I urge the department to take seriously its mission of evaluating how we can create certainty for Delaware seniors who want to sell their unneeded life insurance policies. The Department should suggest ways to curb unfair cost of insurance increases and promote transparency and oversight in the process. While some would rather we believe this is just a fight between large companies we can't forget that Delaware seniors are affected by higher insurance costs and fewer alternatives to sell their policies. It is our duty to ensure they are protected.

Sincerely,

A handwritten signature in black ink, appearing to read "H. B. McDowell III". The signature is stylized and includes a large, sweeping flourish at the end.

Harris B. McDowell III
State Senator, District 1



Leah J. Walters
Regional Vice President, State Relations

November 28, 2016

Ms. Rhonda West
Regulatory Specialist
Delaware Department of Insurance
841 Silver Lake Blvd.
Dover, DE 19904
Rhoda.West@state.de.us

RE: Senate Resolution 19

Dear Ms. West,

The American Council of Life Insurers (ACLI) is a Washington, D.C.-based trade association with approximately 300 member companies operating in the United States and abroad. ACLI advocates in federal, state, and international forums for public policy that supports the industry marketplace and the 75 million American families that rely on life insurers' products for financial and retirement security. ACLI members offer life insurance, annuities, retirement plans, long-term care and disability income insurance, and reinsurance, representing more than 90 percent of industry assets and premiums. Learn more at www.acli.com.

238 ACLI member companies provide financial and retirement security to Delaware families, providing \$187 billion in total life insurance coverage. ACLI members account for 91 percent of this total life insurance coverage and paid \$4 billion to Delaware residents in the form of death benefits, matured endowments, policy dividends, surrender values and other payments in 2014. Senate Resolution 19 (SR19) is very important to our member companies and as such we submit the following comments.

Senate Resolution 19 provides that the Delaware Department of Insurance examine the secondary market for life insurance and make recommendations to the 149th General Assembly. The Florida Office of Insurance Regulation conducted a similar study in December, 2013 and per their report "based on the materials submitted and testimony provided, there appear to be adequate protections for purchasers of life insurance policies in the secondary life insurance market to ensure that the market continue to exist." The Florida study further provides that "there is a significant concern that enacting these legislative changes may have the unintended consequence of encouraging STOLI and fraud."

ACLI respectfully suggests that the Florida study should be considered and followed by the Delaware Department of Insurance. The state of Florida has 18.5 million people and has more seniors than any other state (17.5% per the 2010 Census). They conducted a six-month study and considered many issues and potential legislation involving the secondary life insurance market. In their study, they conclude that there appears to be adequate protections for purchasers of life insurance policies in the secondary market and they made no recommendations for legislative action at the time.

A public hearing was held on November 22, 2016 to discuss the SR19 and one secondary company testified (Jeremy Kudon of Fortress Investment Group). No testimony was presented by the secondary market that would indicate that Delaware seniors cannot sell their life insurance policies in Delaware. Nor was there any testimony that would indicate that there is any uncertainty in the Delaware life settlement market. Per the Life Insurance Settlement Association (LISA) website, Delaware has 9 life insurance settlement providers and 5 life settlement brokers available for Delaware consumers to sell their life insurance policies. When compared to the 17 licensed viatical settlement providers available in Florida, there doesn't appear to be an availability issue in Delaware. In addition, according to a 2015 TheStreet article (Secondary Life Insurance Market Picks Up Pace as Seniors Cash In, by Gregg Greenberg), the secondary market for life insurance policies is robust.

For the past five years, legislation has been introduced in Delaware that would require life insurance companies to return all premiums paid on a life insurance policy to the owner if the life insurance policy is rescinded or otherwise void if it was fraudulently procured by an individual who does not have an insurable interest. During this time, it became very clear that the legislation was aimed at one specific company by another company. The life insurance industry objected to the legislation for several reasons, but most importantly, we don't want Delaware to become the dumping ground for illegal STOLI policies that are written in other states but transferred to Delaware via a Delaware trust.

The Delaware courts have adequately handled STOLI legislation over the past few years and we believe they should continue to handle these very limited, fact specific cases. Most recently, The United States District Court For The District of Delaware issued a Memorandum Opinion (dated April 9, 2014) on the very issues raised in SR19 in the Wilmington Savings Fund Society v. PHL (i.e. Phoenix) lawsuit. The District Court allowed the declaratory judgment claim to continue with regard to the issue of "insurable interest;" it stated that the Plaintiff did properly set forth an amount of damages when it sought the return of all premiums; and it provided that it was too early to determine whether the evidence will be sufficient to justify the amount of damage being sought. All matters that should continue to be handled by the courts.

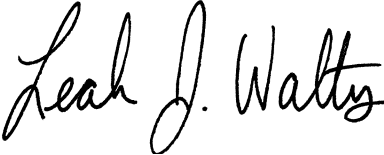
During the November 22, 2016 public hearing testimony was presented by Fortress regarding cost of insurance rate increases and lapse rates for seniors with which we strongly disagree. With regard to life insurance lapse rates, according to a 2016 study, lapse rates are at a 20 year low (<http://www.lifehealthpro.com/2016/07/05/report-life-insurance-policy-lapse-rates-at-a-20-y?t=life-products&page=2&slreturn=1480354066>). Regarding cost of insurance rate increases, the life insurance industry would be happy to meet with the Department of Insurance to discuss these approved products. This issue has not been raised as a concern of the secondary life insurance market before

Ms. Rhonda West
November 28, 2016
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and is an issue that is not specific to seniors or the secondary life insurance market. Accordingly, we respectfully suggest that this issue is outside the scope of SR19.

In conclusion, the ACLI respectfully suggests that there is no evidence to support submitting legislation to the 149th General Assembly for consideration in 2017 involving the secondary market for life insurance.

Sincerely,

A handwritten signature in black ink that reads "Leah J. Walters". The signature is written in a cursive style with a large, stylized "L" and "W".

Leah J. Walters