

# **Florida Office of Insurance Regulation**

**Report of Commissioner, Kevin M. McCarty**



## **STRANGER-ORIGINATED LIFE INSURANCE ("STOLI") AND THE USE OF FRAUDULENT ACTIVITY TO CIRCUMVENT THE INTENT OF FLORIDA'S INSURABLE INTEREST LAW**

**January 2009**

## **Executive Summary**

Florida Insurance Commissioner, Kevin M. McCarty, conducted a public informational hearing on the issue of stranger-originated life insurance or “STOLI”, at the Capitol Building in Tallahassee, Florida on August 28, 2008. The Office of Insurance Regulation (“Office”) submits this report to the citizens of Florida based on the testimony and voluminous documentation presented before, during, and after the public hearing; a review of documents and reports in the public domain; and relevant court filings made within the State of Florida concerning alleged STOLI transactions.

The STOLI transactions discussed in this report involve a plan to **initiate, or originate** a life insurance policy for the benefit of investors who seek to profit by purchasing life insurance on a stranger. STOLI is a scheme designed to procure life insurance on individuals, often using fraudulent means such as misrepresentation, falsification, or omission of material facts in the life insurance application. This may entail misrepresenting the true net worth of the proposed insured to obtain large face value life insurance policies.

STOLI transactions are occurring in Florida and involve Florida seniors who are induced into obtaining life insurance policies they otherwise would not buy or need. STOLI policies are procured in a manner that circumvents the insurable interest laws by allowing persons with no insurable interest in the life of the insured at the time of purchase to obtain a policy for which they could not directly apply.

Based on the testimony presented, STOLI transactions may involve varying degrees of insurance fraud and the violation of laws that were intended to protect consumers.

Initially, this may appear to be a “victimless” crime. Seniors are compensated by “the strangers” to purchase life insurance, and the strangers often pay the insurance premiums for the seniors as well. Assuming the medical information is correct on the application, life insurers presumably collect adequate premium and make a normal profit. If the transaction turns out as planned, the stranger/investor eventually receives the life insurance pay-out tax free, which is preferable to other similar investments. The reason that all three parties (seniors, agents, stranger/investors) can simultaneously profit is due to one simple fact: life insurance proceeds are tax-exempt. However, even if seniors are compensated for their involvement in STOLI schemes, there may be other serious consequences for this population.

### **STOLI Transactions Harm Seniors:**

- Seniors may exhaust their life insurance purchasing capability and not be able to protect their own family or business.
- The incentives, especially cash payments, used to lure seniors to participate in STOLI schemes are taxable as ordinary income.
- Seniors may subject themselves or their estates to potential liability in the event the life insurance policy is rescinded by an insurer who discovers fraud.
- Seniors may encounter unexpected tax liability from the sale of the life insurance policy.
- The “free” insurance is not free and may be subject to tax based on the economic value of the coverage.
- Seniors have to give the purchaser, and subsequent purchasers, access to their medical records when they sell their life insurance policy in the secondary market so that investors know the health status of the insured. The investors want to know the “status” of their investment and how close they are to getting paid.

- STOLI may lead to an increase in life insurance rates for the over 65 population.

As is mentioned later in the report, many of these “negative” consequences may also be true for viatical settlements, which are legal in the state of Florida. However, there are some distinct differences between STOLI arrangements and viaticals. These differences include the intent of the person at the time of purchase, the purpose of the sale of the life insurance product to the secondary market, and the fact that some “strangers” encourage fraudulent misrepresentation on the life insurance application for STOLIs; seniors are encouraged to exaggerate their net worth on life insurance applications to obtain a larger pay-out.

Florida is a unique state with over 17.6% of its population over the age of 65 years.<sup>1</sup> From 1990 to 2000 the number of seniors residing in the state increased by 438,000, or 18.5%.<sup>2</sup> It is imperative that the State act to protect its seniors and all Floridians from becoming victims of fraudulent STOLI transactions.

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<sup>1</sup> U.S. Census Bureau, “The 65 Years and Over Population: 2000”, Census 2000 Brief, issued October 2001.  
<sup>2</sup> Id.

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## Background

### Life Insurance and Insurable Interest – Historical Perspective

From a historical perspective, stranger-originated life insurance and the issue of insurable interest are not new. Life insurance dates to ancient Rome where burial clubs covered the cost of members' funeral expenses and monetarily helped survivors. Modern life insurance started in late 17th century England as insurance for traders.

While serving as a means of risk-avoidance, life insurance also appealed strongly to the gambling instincts of England's burgeoning middle class. Gambling was so rampant that when newspapers published names of prominent people who were seriously ill, bets were placed at Lloyd's on their anticipated dates of death. Prior to the end of the 18<sup>th</sup> century, English courts permitted and enforced various gaming or wagering contracts made by persons who had absolutely no insurable interest in the life of another person.<sup>3</sup>

Consequently, to put an end to the use of life insurance contracts as wagering devices, the British Parliament in 1774 passed a statute<sup>4</sup> holding that any life insurance contract without an insurable interest in the life of the insured would henceforth be null and void.

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<sup>3</sup> Peter Nash Swisher, *The Insurable Interest Requirement for Life Insurance: A Critical Reassessment*, 53 Drake Law Review, 477 (2005).

<sup>4</sup> Life Assurance Act, 1774, 12 Geo. 3, c. 48, § 1 (Eng.). The Act provided in relevant part: Whereas it hath been found by Experience, that the making Insurances on Lives, or other Events, wherein the Assured shall have no Interest, hath introduced **a mischievous Kind of Gaming**: For Remedy whereof, be it enacted by the King's most Excellent Majesty, ... in this present Parliament assembled, and by the Authority of the same, That from and after the passing of this Act, no Insurance shall be made by any Person or Persons, Bodies Politick or Corporate, on the Life or Lives of any Person or Persons ... wherein the Person or Persons for whose Use, Benefit, or on whose Account such Policy or Policies shall be made, shall have no Interest, or by way of Gaming or Wagering; and that **every Assurance made, contrary to the true Intent and Meaning hereof**, shall be null and void, to all Intents and Purposes whatsoever. [Emphasis added].

During the 19<sup>th</sup> century and early 20<sup>th</sup> century, most American courts recognized the insurable interest requirement for life insurance policies, purportedly based on English common law precedent.<sup>5</sup> It is recognized today that an individual has an insurable interest as to his own life, body and health.<sup>6</sup> In addition, an insurable interest is founded on either a “love and affection” interest for persons closely related by blood or law, and, as to other persons, a lawful and substantial economic interest in the continued life, health, or bodily safety of the person insured.<sup>7</sup>

## **Public Policy Against Wagering on Human Life**

Until the recent development of viatical settlement arrangements, the legal system has shown a disdain for insurance policies that give positive incentives for the early death of the insured. For over 132 years American jurisprudence has generally agreed that mere wager policies--that is, policies in which the insured party has no interest whatsoever in the matter insured, will be considered void as they do not promote sound public policy.<sup>8</sup>

In 1876, the United States Supreme Court reviewed a case involving a life insurance policy procured by a husband and wife payable to the survivor on the death of either. Years later the couple divorced and upon the death of the former husband, the ex-wife tried to collect the life insurance benefit. The suit arose when Connecticut Mutual Life Insurance sued arguing that the ex-wife no longer had an insurable interest and should not receive the proceeds from the policy.<sup>9</sup>

In upholding the validity of the life insurance policy, the Supreme Court opined that:

It is well settled that a man has an insurable interest in his own life, and in that of his wife and children; a woman in the life of her husband; ... Indeed, it may be

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<sup>5</sup> Peter Nash Swisher, *The Insurable Interest Requirement for Life Insurance: A Critical Reassessment*, 53 Drake Law Review, 477 (2005).

<sup>6</sup> See Section 627.404, Florida Statutes (2008).

<sup>7</sup> Id.

<sup>8</sup> Connecticut Mut. Life Ins. C. v. Schaefer, 94 U.S. 457 (1876).

<sup>9</sup> Id.

said generally that any reasonable expectation of pecuniary benefit or advantage from the continued life of another creates an insurable interest in such life. And there is no doubt that a man may effect an insurance on his own life for the benefit of a relative or friend; or two or more persons, on their joint lives, for the benefit of the survivor or survivors.... **The essential thing is, that the policy shall be obtained in good faith, and not for the purpose of speculating** upon the hazard of a life in which the insured has no interest.<sup>10</sup> [Emphasis added].

The 1881 case of Warnock v. Davis<sup>11</sup> was perhaps one of the earliest stranger-originated, premium-financed, life insurance cases to come before the United States Supreme Court. In the Warnock case there was collusion between the insured and the party to be benefited by his death. In brief, the facts of the case involve a 27 year old tanner who applied for a \$5,000 life insurance policy on his own life and on the same day entered into an agreement with a entity known as the Scioto Trust Association to transfer nine-tenths of the face value to the trust upon his death and for the trust to pay his wife the remaining one-tenth (\$500).

The policy was issued the same day as the application and on the next day the tanner assigned the policy to the Scioto Trust Association which agreed to pay the premiums and all fees due on the policy. The tanner agreed to keep the Trust informed as to his residence and post-office address and to pay a \$6.00 fee and annual dues of \$2.50. The tanner died a little over a year after the policy was issued and his estate administrator, Warnock, sought to recover the life insurance proceeds that were paid to the Trust. In a ruling against the Trust retaining the life insurance policy proceeds (except for the sums already advanced/paid by the Trust), the U.S. Supreme Court stated:

**The assignment of a policy to a party not having an insurable interest is as objectionable as the taking out of a policy in his name.** Nor is its character changed because it is for a portion merely of the insurance money. To the extent in which the assignee stipulates for the proceeds of the policy **beyond the sums advanced by him, he stands in the position of one holding a wager policy.** The law might be readily evaded, if the policy, or an interest in it, could, in

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<sup>10</sup>

Id.

<sup>11</sup>

104 U.S. 775 (1881).

consideration of paying the premiums and assessments upon it, and the promise to pay upon the death of the assured a portion of its proceeds to his representatives, be transferred so as to entitle the assignee to retain the whole insurance money. [Emphasis Added].<sup>12</sup>

In the 1911 case of Grigsby v. Russell,<sup>13</sup> the Supreme Court clarified Warnock, concluding that an assignment is not automatically condemned when the assignee lacks an insurable interest, so long as there is no prior agreement to assign. Hence, the Court held that while the lack of an insurable interest in the insured was not a bar to subsequent assignment, there must be an insurable interest in the first instance, as well as a good-faith intent to obtain insurance for the benefit of one's family or business. The Court reiterated that "[t]he very meaning of an insurable interest is an interest in having the life continue."<sup>14</sup>

In 1939, the Florida Supreme Court in Knott v. State ex rel. Guaranty income Life Ins. Co.,<sup>15</sup> ruled in favor of then Insurance Commissioner W.V. Knott's denial to an insurer to issue a "special endowment benefit" stated that a wagering contract is against the public policy of the State of Florida.<sup>16</sup>

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<sup>12</sup> Id. at p. 4.

<sup>13</sup> 222 U.S. 149, 154-55, 32 S.Ct. 58, 56 L.Ed. 133 (1911).

<sup>14</sup> Id. at 155, 32 S.Ct. 58.

<sup>15</sup> 136 Fla. 184, 186 So. 788 (Fla.1939).

<sup>16</sup> The "Special Endowment Benefit" would have provided for payment of one thousand dollars upon the insured reaching the age of seventy or, upon his death, the same amount to the beneficiary. In addition... insured receives upon the death of each policyholder of his age and insured in the same year a sum equal to the ratio the face amount of the policy bears to the total of the face amounts of all policies in the same class. Thus if all policy holders in the same class except one should die before reaching the age of seventy years the sole survivor would have received his proportionate share on each death and the beneficiary of the first to die would have received only the first allotment. Id.

## **Florida's Insurable Interest Law**

Currently, Florida's insurable interest law, Section 627.404, Florida Statutes, attached to this report as **Appendix III**, does not require that an insurable interest exist after the inception date of coverage under the contract. Florida's insurable interest law was recently amended to clarify existing law.<sup>17</sup> Section 627.404, Florida Statutes states:

Any individual of legal capacity may procure or effect an insurance contract on his or her own life or body for the benefit of any person, but no person shall procure or cause to be procured or effected an insurance contract on the life or body of another individual unless the benefits under such contract are payable to the individual insured or his or her personal representatives, or to any person having, at the time such contract was made, an insurable interest in the individual insured. The insurable interest need not exist after the inception date of coverage under the contract. [Emphasis added].

Section 627.404(2)(b), Florida Statutes, lists nine categories in which an insurable interest as to life, health, or disability insurance are recognized to exist. For purposes of this Report, the categories are as follows:

1. An individual has an insurable interest in his or her own life, body, and health...
  2. An individual has an insurable interest in the life, body, and health of another person to whom the individual is closely related by blood or by law...
  3. An individual has an insurable interest in the life, body, and health of another person if such individual has an expectation of a substantial pecuniary advantage through the continued life, health, and safety of that other person...
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5. A trust, or the trustee of a trust, has an insurable interest in the life of an individual insured under a life insurance policy owned by the trust...

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<sup>17</sup> See Chapter 2008-36, Laws of Florida, approved by Governor Charlie Crist on May 28, 2008, and effective July 1, 2008.

6. A guardian, trustee, or other fiduciary, acting in a fiduciary capacity, has an insurable interest in the life of any person for whose benefit the fiduciary holds property...

## **Florida's Allowance for Viatical Settlements**

Florida allows viatical settlement agreements – the sale of life insurance policies to third-parties (with no insurable interest), before the life insurance policy matures. These transactions give cash to the insureds (often seniors) at a price discounted from the face value, but more than the surrender value. Viatical settlements grew in popularity in the late 1980s during the AIDS epidemic and were considered “humane” as they provided terminally ill patients with money prior to death. (Viatical settlements are also called life settlements.)

However, viatical settlement transactions feature many of the same elements as STOLI transactions. Viatical providers “wager” on human life, and initially focused on individuals with AIDS as these individuals died within short periods of time. Similar to STOLIs, viatical settlement purchasers have no insurable interest in the insureds and have a financial incentive for the death of the insured. They also receive these proceeds tax-free.

There are some distinct differences, however, especially as it relates to the timing of the insurable interest, and the intent of the person purchasing the life insurance policy. Life insurance later sold to viatical settlement providers was initially purchased in “good faith” as a life insurance policy, not an investment. Thus the insured had an “insurable interest” in his or her own life at the time of purchase (as do their beneficiaries), which complies with Florida’s insurable interest law. In these situations, the insured made the premium payments until the sale of the contract, and there is no pre-arrangement to sell the policy prior to the person becoming terminally ill. As importantly, there was

no encouragement of fraud to obtain abnormally large life insurance policies by the viatical settlement providers at the time of purchase.

## **Stranger-Originated Life Insurance – What it is and what it is not**

There are several definitions of stranger-originated life insurance or “STOLI”.<sup>18</sup> STOLI is a practice or plan to **initiate, or originate** a life insurance policy for the benefit of investors who seek to profit by purchasing life insurance on a stranger. STOLI policies enable the policy owners, usually the insured, to obtain cash by selling that policy to a stranger whose only interest is the early demise of the insured. STOLI is a scheme designed to procure life insurance policies on individuals, often using fraudulent means such as lying, misrepresentation or omission of material facts in the application, which may include misrepresentation of the true net worth of the proposed insured. Another facet is to encourage the insured to misrepresent the insurable interest of the intended policy owner to obtain a large face-value policy for the benefit of investors. Generally, the scheme involves the recruitment of senior citizens with high-net worth or those willing to misrepresent their net worth. At the public hearing held by the Office, one of the presenters, Marshall Jones, Esq., member of the Association for Advanced Life Underwriting (“AALU”), when asked whether the target was only the high-net worth seniors, responded:

It's always been anybody that can issue a policy, anybody over the age of 70 that can issue a policy. And what you're seeing, what you see visibly above the surface are the so-called legitimate deals where the target is the higher net worth

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<sup>18</sup> The National Conference of Insurance Legislators (“NCOIL”), defines STOLI as a “practice or plan to initiate a life insurance policy for the benefit of a third party investor who, at the time of policy origination, has no insurable interest in the insured.” See *NCOIL Life Settlements Model Act*, November 16, 2007.

Ohio has recently enacted legislation to protect consumers against STOLI transactions and defines STOLI as “a practice, arrangement, or agreement initiated at or prior to the issuance of a policy that includes both of the following: (a) The purchase or acquisition of a policy primarily benefiting one or more persons who, at the time of issuance of the policy, lack insurable interest in the person insured under the policy; (b) The transfer at any time of the legal or beneficial ownership of the policy or benefits of the policy or both, in whole or in part, including through an assumption or forgiveness of a loan to fund premiums.” Section 3916.01(W)(1), Ohio Revised Code.

person, where the approved plan gets issued because they think they're buying it for estate planning, but the real intent is to sell the policy two years from now.<sup>19</sup>

Seniors are: “wined and dined”; promised “free insurance”; told that they are in the situation of “heads, I win or tails, I can’t lose”; and promised cash or a profit for their participation in these schemes.<sup>20</sup> In some cases, seniors who have existing life insurance are encouraged to purchase additional policies solely for the purpose of resale to the STOLI promoters.<sup>21</sup> Seniors are induced into obtaining life insurance policies they otherwise would not buy or need.

Full disclosure to seniors regarding the tax implications and the maximization of the senior’s insurance capacity are rarely revealed by STOLI promoters.<sup>22</sup> Seniors are not told about misrepresentations made on their applications by an agent or broker involved in the scheme. Seniors are often coached to “properly” respond to the application questions to avoid alerting life insurance companies. STOLI promoters submit multiple applications to life insurance companies to maximize profits.

Scott Berlin, Senior Vice-President at New York Life, testifying at the August 28, 2008 public hearing, distinguished between traditional viatical settlements and STOLI:

[T]he difference is in the intent. If I own a policy, I have the right to assign it. That was made clear. I have the right to sell it. That was made clear. But the question is what is my intent at the time of the purchase. And if my intent is to

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<sup>19</sup> Transcript of Public Hearing - Appendix I, pp. 129 – 130.

<sup>20</sup> Appendix II – STOLI Promotional Materials.

<sup>21</sup> Appendix II– STOLI Promotional Materials. A very public example is the case of CNN’s Larry King’s lawsuit against insurance agent Alan Meltzer and Bethesda, Md.-based Meltzer Group Inc. alleging, among other things, that King was misled into purchasing a \$10 million policy on himself, which he promptly sold for \$550,000. King also sold an existing \$5 million policy for \$850,000 in cash. King’s suit alleged that the brokers were liable to him because he did not receive enough money for the policies, the brokers did not adequately advise him about his continuing life insurance needs and the unexpected tax consequences from the transactions. Larry King vs. Alan Meltzer, et al., Case No.: 07-cv-06813, filed October 24, 2007. The case settled during the summer of 2008; the details were not disclosed.

<sup>22</sup> Alan Jensen & Stephan R. Leimberg, Stranger-Owned Life Insurance: A Point/Counterpoint Discussion, 33 ACTEC J. 110, 110 (Fall 2007).

get around the insurable interest laws by setting up a creative scheme, I don't think that that should be allowed under Florida law.<sup>23</sup>

STOLI policies are procured in a manner as to circumvent the insurable interest laws. The sale of the policy is usually completed after the two-year contestability period has expired. This two-year period was established by law (Section 626.99287, Florida Statutes). This statutory provision does not forbid the sale within the two- year period, but provides that the viatical settlement contract is void or unenforceable by either party (subject to certain exemptions) during the contestability period. The exceptions are primarily for major life changes.

This two-year limited restriction period is designed to prevent wagering and fraud in life insurance policies. Since, by law, life insurers are limited to contesting the policy on the basis of fraud to that two-year window, STOLI promoters generally wait two years before selling the policy in the secondary market.

Generally, in a STOLI transaction, the promoters and investors will establish an irrevocable trust to obtain a premium finance loan, obtain an insurance policy on a senior, and pay the life insurance policy premiums for two years, i.e., the contestability period. The money needed to pay these premiums, which can amount to hundreds of thousands of dollars, is financed through various types of entities that can broadly be defined as “premium finance lenders.” Typically, these premium finance loans are non-recourse loans meaning the life insurance policy is the only collateral for the loan and the premium finance lender can only pursue collection of the collateral if there is a default.

Not all life insurance policies obtained by the usage of a non-recourse loan are STOLI transactions. The seniors are told of various options they may have at the end of the financing period. For example, they can: (1) pay off the loan amount (principal, interest and other associated expenses) and take the policy over themselves (this scenario is unlikely given the large amount of money paid for

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<sup>23</sup> Transcript of Public Hearing - Appendix I, p. 29.

the first two years of coverage); (2) allow or arrange for the sale of the policy to a viatical settlement provider and pay off the balance due to the lender and keep any residual monies, if any; or (3) default on the loan and turn the policy over to the lender. Seniors are told that in a default situation, the trust will then sell the policy and the seniors will receive a profit, less cost of the loan and interest. This arrangement appears to be beneficial to seniors as they enjoy life insurance “free” for two years and then after two years, collect a significant cash payment for his or her participation in the scheme.

It is important to note that life insurance is an asset and an important estate-planning tool. The sale or assignment of a life insurance policy to a “stranger” or third party, based on the policy owner’s major change of life circumstances, financial or otherwise, is NOT a STOLI transaction. The sale or assignment of a life insurance policy to a trust established by the owner of the policy for the benefit of his or her family or estate is also NOT a STOLI transaction. A typical viatical transaction where the owner of the policy has a terminal illness or major medical problems and seeks to sell the policy to obtain needed medical care or to enjoy his or her last days is NOT a STOLI transaction.

The Office is aware of at least three multi-million dollar federal lawsuits recently filed in Florida by several life insurers, licensed to conduct insurance business in Florida, suing to rescind alleged STOLI policies because the true nature of the transactions were allegedly misrepresented.<sup>24</sup> The life insurers in these lawsuits are suing all involved, including the trusts and the Florida seniors who may or may not have known the full nature their involvement in the alleged STOLI schemes.<sup>25</sup>

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<sup>24</sup> See AXA Equitable Life Insurance Company vs. Infinity Financial Group, LLC, et al., Case No.: 08-cv-80611, filed June 6, 2008 (case involves alleged STOLI transactions on five life insurance policies with a total face value of \$73 million). The AXA case is currently scheduled for trial in July of 2009 although a joint motion to stay the lawsuit was filed by the Plaintiff and some of the defendants and was granted by the federal judge until November 3, 2008 to narrow or resolve issues in the case); American General Life Insurance Company vs. Steven Brasner, Infinity Financial Group, LLC, et al., Case No.:08-cv-80855, filed August 4, 2008 (case involves alleged STOLI transactions on 2 policies with a \$10 million total face value); West Coast Life Insurance vs. Life Brokerage Partners, LLC, et al., Case No.: 08-cv-80897, filed August 13, 2008 (case involves alleged STOLI transactions on nine policies with a total face value of \$50 million).

<sup>25</sup> Id.

The Florida agents and brokers are also defendants in these lawsuits in which the life insurance companies are seeking refunds for millions of dollars paid in commissions.

## **The Public Hearing on STOLI**

Florida Insurance Commissioner, Kevin M. McCarty, conducted a public informational hearing (hereinafter “hearing”) on the issue of STOLI at the Capitol Building in Tallahassee, Florida on August 28, 2008. The hearing was broadcast throughout the state via television and the Internet and was recorded by the Florida Channel.<sup>26</sup> Presenters at the hearing included representatives of agents and brokers; life insurance companies; viatical settlement providers; life insurance finance companies; and staff of the Office of Insurance Regulation. An attorney, who represents consumers in lawsuits against their employers that have taken out life insurance on the employee without the knowledge and consent of the employee, also testified.<sup>27</sup> One of the key issues addressed at the hearing was the harm and victimization that arises from STOLI transactions, in addition to the public policy concerns regarding wager policies. From the beginning of the hearing, Commissioner McCarty queried the presenters on these core issues.

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<sup>26</sup> The video of the STOLI Public Hearing can be seen in its entirety on the OIR website: [www.FLOIR.com](http://www.FLOIR.com). Click on link “Stranger-Originated Life Insurance (STOLI)” to view video that has been divided into Parts 1, 2, and 3.

<sup>27</sup> These types of policies are generally referred to as “COLI” policies or company-owned life insurance or Corporate-owned life insurance. There is federal law on this matter. Known as the COLI Best Practices Act, this provision is designed to codify industry “best practices” regarding employer owned life insurance. The provision amends the Internal Revenue Code of 1986 to exclude from gross income the proceeds from certain company-owned life insurance. The employer owned death benefit proceeds will be considered eligible for exclusion from the employers’ income provided all the notice and consent requirements are met. See **Internal Revenue Code** section 101(j).

Florida’s insurable interest law recognizes COLI for key employees: “A business entity has an insurable interest in the life, body, and health of any of the owners, directors, officers, partners, and managers of the business entity or any affiliate or subsidiary of the business entity, or key employees or key persons of the business entity or affiliate or subsidiary, if consent is obtained in writing...” Section 627.404, Florida Statutes.

## **Seniors May Lose the Ability to Purchase Additional Life Insurance**

An individual has only a finite amount of "insurance capacity" on his or her life, and insurers may refuse to write additional insurance. Once a senior has life insurance on his or her life and then sells the policy, the senior may be unable to obtain more life insurance should a legitimate need for life insurance arise. At the STOLI hearing, Scott Berlin, Senior Vice-President at New York Life Insurance Company commented on this issue and stated:

One of the things that's not well understood among the senior community is that there's a certain amount of insurance you can get, that you can qualify for... You can't -- it's not just you can get as much as you want. And once you've bought that insurance and given it to somebody else, it doesn't free up that capacity for you to get more. There's only a certain amount of insurable interest on you based on your current status.<sup>28</sup>

STOLI promoters often do not discuss the insurance capacity issue with the seniors that they are trying to induce into applying for multi-million dollar life insurance policies. Bob Rubin, on behalf of AALU, addressed the issue in his comments at the hearing and stated:

[T]he consumer thinks that he's taking care of his estate planning, business succession plan, or accomplished some sort of estate planning...the reality in most cases is exactly the opposite...he now has a significant life insurance policy on his life, usually up to the maximum allowed or more than the maximum allowed by a particular life insurance company's financial underwriting guidelines. Since he has now used up his capacity, his insurance capacity, he'll be hard-pressed to purchase any more life insurance that will truly benefit his family for whatever the future circumstances might dictate.<sup>29</sup>

Attorney Joy Ryan representing insurer MetLife echoed the sentiments of those expressed by New York Life regarding the dangers to consumers presented by STOLI arrangements. Ms. Ryan stated, "consumers may not be aware that participating in these types of arrangements may exhaust their life insurance purchasing capability..."<sup>30</sup> As Stephan R. Leimberg, Esq. has reported, "[T]his

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<sup>28</sup> Transcript of Public Hearing - Appendix I, pp. 38 – 39.

<sup>29</sup> Transcript of Public Hearing - Appendix I, pp. 104 –105.

<sup>30</sup> Transcript of Public Hearing - Appendix I, p. 136.

insurability limit is constantly being pushed downward because fewer insurers are willing to accept the risk of ultra-large policies” coupled with the fear by life insurers of what will happen if more and more policies are retained indefinitely by investors.<sup>31</sup>

## **Seniors May Face Unexpected Tax Liability**

The incentives used by STOLI promoters to induce seniors to apply for life insurance policies and the STOLI transaction may create an unexpected tax liability for seniors. Stephan Leimberg, Esq., author and co-author of many books on estate, financial, and employee benefit and retirement planning, states “any incentive, such as a car, cash, trip, or other ‘gift’ to entice a person to purchase the policy, will be taxable to that person immediately as ordinary income.”<sup>32</sup>

In 2007, *Business Week*<sup>33</sup> published a cover story on the legal and public policy concerns involving STOLI transactions. Following the publication of that cover story, two senior members of the U.S. House Ways and Means Committee, Richard E. Neal and Phil English, wrote a letter, dated November 16, 2007, to Treasury Secretary Henry M. Paulson, requesting action by the Treasury Department to protect seniors from the unexpected tax liability of STOLI transactions.<sup>34</sup>

Representatives Neal and English raised questions regarding the tax liability on the transaction; promotional incentives; and cancellation of indebtedness (i.e. the non-recourse loan). Stating “STOLI transactions take advantage of the secondary market in life insurance settlements at the expense of elderly Americans who are left with an unexpected tax liability,” both Congressmen urged the Treasury Department to issue a notice or other form of public guidance outlining the potential tax

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<sup>31</sup> Stephan R. Leimberg, *Stranger-Initiated Life Insurance: Scorpion or Frog?* Mr. Leimberg is CEO of Leimberg Information Services, Inc.

<sup>32</sup> Alan Jensen & Stephan R. Leimberg, *Stranger-Owned Life Insurance: A Point/Counterpoint Discussion*, 33 ACTEC J. 110, 110 (Fall 2007)

<sup>33</sup> “Profiting From Mortality,” by Matthew Goldstein, *Business Week*, July 30, 2007.

<sup>34</sup> See Letter to Secretary Paulson, Appendix IV.

consequences of participating in a STOLI transaction.<sup>35</sup> The Office is not aware of any response to the letter from the Treasury Department.

Bob Rubin, on behalf of the Association for Advanced Life Underwriting (“AALU”), addressed the tax liability issue and stated:

Tax issues are glossed over. Most of the time these deals involve quite a bit of premium to be paid up front. Since the premium is borrowed, a substantial debt is unsecured. Since it's a non-recourse type of finance, what happens in two years when the policy is sold or given up or whatever and that debt is discharged? I'm not a CPA, but is that a discharge of debt issue?<sup>36</sup>

Currently the proceeds to the beneficiary of a life insurance policy are non-taxable. In response to Commissioner McCarty’s question of the potential of putting life insurance policies’ favorable tax treatment in jeopardy due to STOLI profiteers, Scott Berlin of New York life responded:

Well, I think that there is the risk that the IRS could look in and say, you know, life insurance isn't providing the purpose that it once did. It's now a vehicle for speculators to get rich. It's not for people to protect their families and their businesses so we're going to change the tax law. And I think that that would be a very bad outcome for both individuals and the industry.<sup>37</sup>

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<sup>35</sup> Id.

<sup>36</sup> Transcript of Public Hearing - Appendix I, pp. 105 – 106.

<sup>37</sup> Transcript of Public Hearing - Appendix I, pp. 31– 32.

## **Seniors Risk Substantial Liability if their Life Insurance Policy is Rescinded**

The relief sought by three multi-million dollar federal lawsuits recently filed in Florida by several life insurers include rescission of alleged STOLI policies because the true nature of the transactions were allegedly misrepresented.<sup>38</sup> Seniors that are lured into participating in STOLI schemes for financial gain are at risk of owing money when the fraudulent scheme is uncovered. As Bob Rubin stated at the public hearing:

The rescission of the policy should be the one issue that should really scare the consumer from never going near one of these transactions. Assume for a minute that the policy is rescinded. Big debt was incurred. The consumer received some money up front. He signed an indemnification clause. And further assume the life insurance company rescinds the policy. It wants the commissions it paid back, that same commission that was used to make the deal work in the first place. Guess who wants to be made whole? The promoter. Guess where they're going to try to get their money back, besides obviously the agent? The consumer. He signed an indemnification to make whole if something goes wrong. This is not a good place for the average consumer to be.<sup>39</sup>

The “free insurance” that may have been part of the incentive to participate in the STOLI scheme may be voided if the policy is rescinded based on fraud.

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<sup>38</sup> See AXA Equitable Life Insurance Company vs. Infinity Financial Group, LLC, et al., Case No.: 08-cv-80611, filed June 6, 2008 (case involves alleged STOLI transactions on 5 life insurance policies with a total face value of \$73 million). The AXA case is currently set for trial in July of 2009 although a joint motion to stay the lawsuit was filed by the Plaintiff and some of the defendants and granted by the federal judge until November 3, 2008 to narrow or resolve issues in the case); American General Life Insurance Company vs. Steven Brasner, Infinity Financial Group, LLC, et al., Case No.:08-cv-80855, filed August 4, 2008 (case involves alleged STOLI transactions on 2 policies with a \$10 million total face value); West Coast Life Insurance vs. Life Brokerage Partners, LLC, et al., Case No.: 08-cv-80897, filed August 13, 2008 (case involves alleged STOLI transactions on 9 policies with a total face value of \$50 million).

<sup>39</sup> Transcript of Public Hearing - Appendix I, pp. 107 – 108.

## **Proliferation of STOLI may cause increase in life insurance rates**

Based on the testimony presented at the hearing, STOLI transactions may lead to an increase in life insurance rates. Scott Berlin, Senior Vice-President at New York Life, responsible for the individual life business, raised concerns regarding the potential for an increase in life insurance rates due to the proliferation of STOLI:

And so I think that the victim in the long run is the purchasers of life insurance, for legitimate reasons. So some people can get rich today, there is that potential, there is the possibility of that potential today or at least it appears that way. But the ultimate result five years from now will be that the price of life insurance will go up, that arbitrage opportunity will get closed, and people who want to buy life insurance for legitimate reasons like estate planning and protecting their families will have to pay more for that insurance.<sup>40</sup>

Bob Rubin, Senior Vice-President and insurance advisor with Wachovia Insurance Services, testified on behalf of the Association for Advanced Life Underwriting (“AALU”). Mr. Rubin stated that he has been in the insurance business since 1985 and has lived in South Florida for over 35 years. He further stated that STOLI transactions are “reducing the availability of life insurance of people over the age of 70. There's less companies that are offering them. And the ones that are, they're charging more for it, making it harder to get.”<sup>41</sup>

In response to Commissioner McCarty’s question about the affect on price already seen in the market, Mr. Rubin responded:

Everybody reprices their products. I mean, company [sic] always reprice products, but they generally used to go down. Now they go up. You know, it's one of the few times that insurance costs have actually gone up.<sup>42</sup>

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<sup>40</sup> Transcript of Public Hearing - Appendix I, p. 32.

<sup>41</sup> Transcript of Public Hearing - Appendix I, p. 110.

<sup>42</sup> Transcript of Public Hearing - Appendix I, p. 110.

Attorney Marshall Jones echoed the concerns regarding the cost of life insurance for Florida seniors:

And so the policies that go through this stranger premium finance programs are policies where the insurance companies are almost guaranteed to lose...and the cost is going to be passed on to the average American...I've been in the insurance business since 1973. Life insurance costs historically have gone down because of improved mortality, because of improved efficiencies of administration, because of variable life products that allow you to realize a hundred percent of the net profit on the investments. Life insurance costs are going up for seniors because it's just impossible for the insurance companies to keep track of the newest deal on the street.<sup>43</sup>

Apart from supply and demand issues (STOLIs will increase the demand for life insurance products) the reason STOLIs may contribute to an increase in premiums is due to low levels of lapses and surrenders relative to other life insurance policies. Insurance companies profit on lapsed and surrendered life insurance (as opposed to paying the face amount of the policy on the death of the insured). STOLI transactions (as well as viatical settlement agreements) decrease the number of lapses and surrenders as the investors owning the policy have a financial interest in retaining the policy until the insured dies to collect their tax-free profits. Thus, the price of life insurance policies may increase over the long term.

## **Insurance Fraud and Other Violations of the Law**

Based on the testimony presented, it is clear that STOLI transactions may involve varying degrees of insurance fraud and the violation of laws that were intended to protect consumers. “The agent will know that if he puts truthful answers on these applications, the policy will generally not be issued by the life insurance company...and in order to make these deals larger, \$73 million, and more

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<sup>43</sup> Transcript of Public Hearing - Appendix I, pp. 122 – 123.

profitable for all involved, the client including, fudging of the numbers regarding net worth is generally done.”<sup>44</sup>

The current Florida Statutes are specifically aimed at insurance entities, insurance agents, insurance brokers, and consumers (seniors) signing the insurance applications. It is not clear the Florida Statutes on unfair trade practices directly apply to individuals (STOLI promoters) who are not party to the insurance application or insurance contract.

### **Section 627.409, Florida Statutes**

Section 627.409, Florida Statutes, deals with misrepresentation in an insurance application, including a life insurance policy. This section provides that “a misrepresentation, omission, concealment of fact, or incorrect statement may prevent recovery under the policy if the representation, omission, concealment, or statement is fraudulent or is material either to the acceptance of the risk or to the hazard assumed by the insurer or if the true facts had been known to the insurer, the insurer in good faith would not have issued the policy...or would not have issued it at the same premium rate or would not have issued a policy or contract in as large amount.” [Emphasis added].

Life insurers are taking action to “root out STOLI transactions”<sup>45</sup> by asking questions of the applicants for the policies such as those represented by Scott Berlin of New York Life Insurance Company at the hearing:

We are asking if there's intent to sell the policy, have you ever sold a policy before, and under what circumstances. We are looking carefully at the trust to make sure that everything is set up for the benefit of the insureds or of their beneficiaries. We're checking the ownership. We're continuously monitoring ownership, especially during the first two years of the contract, to make sure that the ownership is not changing to a life settlement company. And, you know,

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<sup>44</sup> Transcript of Public Hearing - Appendix I, p. 107.

<sup>45</sup> Transcript of Public Hearing - Appendix I, p. 40.

we're trying our best to discourage the use of life insurance in STOLI transactions.<sup>46</sup>

Testimony presented to the Office revealed that those who engage in STOLI transactions, as described in this report, violate Section 627.409, Florida Statutes, when individuals involved lie, omit facts, and make misrepresentations on the policy application to obtain life insurance policies for speculation. Currently there are no criminal penalties for violation of Section 627.409, Florida Statutes, and there are no specific civil penalties other than the life insurer commencing an action in court to rescind the policy.

AXA Equitable Life Insurance Company and American General Life Insurance Company have lawsuits pending in federal court in Florida over alleged STOLI transactions where these two insurance companies are asking the court to rescind policies. According to the OIR Market Share Report dated July 2007 (<http://www.floir.com/pdf/MarketShareLH2006.pdf>), these two companies account for over \$1.3 billion in premiums written in Florida for life insurance and annuity products and approximately 5% of the life insurance and annuity market in Florida. Both court cases allege that false representations by the insureds were made on the life insurance applications to obtain the policies.<sup>47</sup>

Attorney Marshall Jones, member of Association for Advanced Life Underwriting (“AALU”)<sup>48</sup> whose stated mission is to promote, preserve and protect advanced life insurance planning, stated at the hearing briefly how these fraudulent schemes are hatched:

So what they do is they will get a local agent. They'll go to an industry meeting and then they'll host a dinner. And they'll say, man, we can provide the funding. You just provide the people and we'll show you how to make millions. And it's

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<sup>46</sup> Id.

<sup>47</sup> AXA Equitable Life Insurance Company vs. Infinity Financial Group, LLC, et al., Case No.: 08-cv-80611, filed June 6, 2008 (case involves alleged STOLI transactions on 5 life insurance policies with a total face value of \$73 million). The AXA case is currently set for trial in July of 2009 although a joint motion to stay the lawsuit was filed by the Plaintiff and some of the defendants and granted by the federal judge until November 3, 2008 to narrow or resolve issues in the case); American General Life Insurance Company vs. Steven Brasner, Infinity Financial Group, LLC, et al., Case No.:08-cv-80855, filed August 4, 2008 (case involves alleged STOLI transactions on 2 policies with a \$10 million total face value).

<sup>48</sup> To learn more about AALU see their website at <http://www.aalu.org>.

very tempting. The agents then put themselves on the application. They're the front agent. They get a hundred percent of commission. That's what the insurance company thinks. They're the ones that are coached, coached in how to trick the insurance company. They're the ones that are then taught how to coach the senior person to lie on the application. See, now, we don't want you to lie, but we're going to have to coach you, because if you tell them everything, they're not going to issue the policy.<sup>49</sup>

Where STOLI transactions involve life insurance agents, agencies, or brokers, which are licensed by the Department of Financial Services (“DFS”), Sections 626.611, 626.6115, 626.6215, and 626.621, Florida Statutes, Florida law gives DFS the authority to suspend or revoke the license or appointment of any licensee, agency, or appointee on several grounds. These grounds include: willful misrepresentation of any insurance policy or willful deception with regard to any such policy; violation of any provision of the insurance code; knowingly aiding, assisting, procuring, advising, or abetting any person in the violation of the insurance code; unlawfully rebating; and using fraudulent or dishonest practices in the conduct of business under the license.

### **Unfair Insurance Trade Practices Act**

The Office heard repeatedly at the hearing that STOLI promoters entice seniors with the offer of “free insurance,” usually for the duration of the two-year contestability period. The offer of “free insurance” by an insurance company, insurance agent or insurance broker is a violation of the Unfair Insurance Trade Practices Act, specifically Section 626.9541(1)(n)(4), Florida Statutes, which states in part:

***(n) Free insurance prohibited.—***

4. Using the word "free" or words which imply the provision of insurance without a cost to describe life or disability insurance, in connection with the advertising or offering for sale of any kind of goods, merchandise, or services.

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<sup>49</sup> Transcript of Public Hearing - Appendix I, p. 125.

Additionally, a transaction where seniors are offered bonus money for signing on to the scheme or are given cars and cash, is a violation of Section 626.9541(1)(h), Florida Statutes, which states in part:

**(h) Unlawful rebates.--**

1. Except as otherwise expressly provided by law, or in an applicable filing with the office, knowingly:
  - a. Permitting, or offering to make, or making, any contract or agreement as to such contract other than as plainly expressed in the insurance contract issued thereon;
  - b. Paying, allowing, or giving, or offering to pay, allow, or give, directly or indirectly, as inducement to such insurance contract, any unlawful rebate of premiums payable on the contract, any special favor or advantage in the dividends **or other benefits thereon, or any valuable consideration or inducement whatever** not specified in the contract; [Emphasis added].

Further, STOLI transactions as described in this report (where misrepresentations are made on the insurance application) may violate Section 626.9541(1)(k), Florida Statutes, which states in part:

**(k) Misrepresentation in insurance applications.--**

1. Knowingly making a false or fraudulent written or oral statement or representation on, or relative to, an application or negotiation for an insurance policy for the purpose of obtaining a fee, commission, money, or other benefit from any insurer, agent, broker, or individual.
2. Knowingly making a material omission in the comparison of a life, health, or Medicare supplement insurance replacement policy with the policy it replaces for the purpose of obtaining a fee, commission, money, or other benefit from any insurer, agent, broker, or individual. For the purposes of this subparagraph, a material omission includes the failure to advise the insured of the existence and operation of a preexisting condition clause in the replacement policy.

The Unfair Insurance Trade Practices Act was recently amended with increased penalties for violation of the Act.<sup>50</sup> Now, anyone who violates any provision of the Act is subject to a fine in an amount not greater than \$5,000 for each nonwillful violation and not greater than \$40,000 for each willful violation.

The recent amendments to the Act have also created criminal penalties for three unfair insurance practices – “twisting”, “churning”, and willfully submitting fraudulent signatures on an application or policy-related document.<sup>51</sup> Twisting is knowingly making any misleading representations or incomplete or fraudulent comparisons or fraudulent material omissions of or with respect to any insurance policies or insurers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on, or convert any insurance policy or to take out a policy of insurance in another insurer. “Churning” is the practice whereby policy values in an existing life insurance policy or annuity contract, including, but not limited to, cash, loan values, or dividend values...are directly or indirectly used to purchase another insurance policy or annuity contract with that same insurer for the purpose of earning additional premiums, fees, commissions, or other compensation.

Although some STOLI transactions, as described within this report, may have “twisting and churning” components, STOLI is a unique and separate scheme that is not specifically addressed by this statute.

It is clear that the practices of STOLI promoters clearly violate the spirit of these laws which attempt to prohibit offers of “free” insurance, unlawful rebates, and misrepresentation on the insurance application.

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<sup>50</sup> Chapter 2008-66, §7, Laws of Florida, approved by Governor Charlie Crist on May 28, 2008, and effective July 1, 2008.

<sup>51</sup> Chapter 2008-237, §§5, 6, Laws of Florida, approved by Governor Charlie Crist on June 30, 2008, and effective January 1, 2009.

## **Regulation of STOLI in Other States**

The National Association of Insurance Commissioners (NAIC) and the National Conference of Insurance Legislators (NCOIL) have provided model legislation intended to be enacted by state legislatures that prohibit and/or deter STOLI transactions. The NAIC's *Viatical Settlements Model Act* was amended in June of 2007. NCOIL's *Life Insurance Settlements Model Act* was approved by NCOIL in November of 2007.<sup>52</sup> Several states have already adopted either the NAIC model, the NCOIL model or created a hybrid by combining the best of both models.<sup>53</sup>

There are also some key differences between the NAIC and NCOIL model acts. The NAIC Model Act establishes a five-year moratorium on the settlement of policies having STOLI characteristics; the NCOIL model does not contain a five-year moratorium but instead defines and bans STOLI practices.

## **Conclusion**

Florida is a unique state with over 17.6% of its population over the age of 65 years.<sup>54</sup> With over 2.8 million seniors in our state, it is imperative that we act to protect our seniors and all Floridians from becoming victims of fraudulent activity.

As insurance companies are becoming more sophisticated in uncovering these transactions, STOLI promoters are increasingly turning to encouraging fraud (misrepresentation on the insurance application) to obtain these policies. As importantly, it is the seniors that may be subject to financial liability if the policy is rescinded, or even subject to a tax liability for not declaring free insurance and

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<sup>52</sup> See NAIC/NCOIL Model Act Comparison Chart, Appendix V.

<sup>53</sup> See Ohio's anti-STOLI legislation, H.B. 404, effective September 11, 2008.

<sup>54</sup> U.S. Census Bureau, "The 65 Years and Over Population: 2000", Census 2000 Brief, issued October 2001.

the STOLI payment as ordinary income.

As Don Brown, a third generation life insurance professional and immediate past president of the Florida Association of Insurance and Financial Advisors, now known as NAIFA-Florida, an association of agents who sell life and health insurance policies, stated at the hearing:

If we allow human life to become a commodity, why not allow other insurance contracts to be commodities too. Why not allow people to buy or purchase excess coverage on properties of others as a profit tool, not for if the property burns but when it burns. And the question that we have to ask ourselves, if we lived in a home that was insured by some stranger that would profit from it, how well would we sleep at night? And that's a real concern.<sup>55</sup>

**This document has been prepared as a general reference document for informational purposes and the information contained herein is not intended to be and should not be construed as legal advice.**

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<sup>55</sup> Transcript of Public Hearing - Appendix I, p. 89.

# **APPENDIX I**

## 1 FLORIDA OFFICE OF INSURANCE REGULATION

2 AUGUST 28, 2008

3 PUBLIC HEARING

4 STRANGER OWNED LIFE INSURANCE  
5 (STOLI)

6 MS. DAWSON: If you are speaking today either as a  
7 scheduled speaker on the agenda or either as a member of  
8 the public addressing us, please be respectful to others,  
9 other companies. We will not have any sort of name calling  
10 or any sort of disrespectful conversation within the  
11 confines of this hearing. And if there are any questions  
12 about that, you can see me afterwards, but other than that,  
13 I'll go on ahead and turn it over to the commissioner to  
14 get started. Thank you.

15 COMMISSIONER MCCARTY: Thank you, Ms. Dawson. Good  
16 afternoon, everyone. My name is Kevin McCarty, the  
17 insurance commissioner for the Office of Insurance  
18 Regulation. I'll take this opportunity to welcome you to  
19 this informational hearing on stranger owned life insurance  
20 arrangements, more commonly known as STOLIs.

21 Present at the hearing today are representatives for  
22 consumers, industry agents, brokers, and other interested  
23 parties. I want to emphasize that contrary to what you may  
24 have heard or has been popularized in some of the trade  
25 journals, this is an informational hearing.

1           And we have a full agenda of speakers. And we will  
2 ask that you please adhere to the strict time limits in  
3 order to allow all interested parties and members of the  
4 public an opportunity to be heard on this important public  
5 policy issue.

6           Initially, I mentioned that this is a new product.  
7 Stranger owned life insurance arrangements are really an  
8 application of the life products -- life insurance in  
9 general. Our mission today is to solicit different  
10 viewpoints and look into the legal arrangements and tax  
11 implications as these products move more and more into the  
12 marketplace. Our ultimate goal is to determine if  
13 consumers benefit or potentially are harmed by these  
14 arrangements and determine what role at all the Office of  
15 Insurance Regulation should play with regard to these new  
16 products in the marketplace.

17           Before we begin, I'd like to start with just an  
18 overview of some of the issues involved. Over the last 20  
19 years, the line between insurance and banking and  
20 securities has really blurred. Now our investment products  
21 have indemnity features or hedge features to insure -- or  
22 limit losses. Conversely, insurance products such as  
23 universal life and equity index annuities offer some  
24 speculative gain and especially when surrendered for their  
25 cash value. The emergence of stranger owned life

1 arrangements may obscure these boundaries even further.

2 Life insurance has always been different than other  
3 types of insurance such as life or property. Generally,  
4 the policy holder has little interest in their own death  
5 but it's there for their beneficiaries, for them to be  
6 supported by the benefits from a life policy. To insure  
7 that others do not have an incentive to hasten the policy  
8 holder's death or to prevent potential fraud and deception  
9 in the industry, regulators developed the principle of  
10 insurable interest. Family members and even key business  
11 partners often met this definition.

12 In the 1980s, new financial arrangements emerged  
13 called viatical settlements. Viatical companies allowed  
14 terminally ill patients, usually those suffering from HIV  
15 or AIDS, to receive a portion of the death benefits while  
16 still living. These were sometimes viewed as an  
17 opportunity to make arrangements for expensive treatments  
18 or other things during their lifetime. The viatical  
19 situation, the original life policies, were purchased in  
20 good faith. Only a terminal illness and the need for money  
21 at the immediate time changed the need for the viatical  
22 arrangement.

23 Stranger owned life policies take us to another level.  
24 In arrangements now called life settlements, seniors are  
25 encouraged to purchase life insurance product with the

1 intention of selling those products to an outside party or  
2 stranger who really doesn't have an insurable interest.  
3 The outside party would potentially earn a profit after the  
4 demise of the senior. However, it's also true that the  
5 purchase of life insurance can be a legitimate estate  
6 planning tool.

7 I want to make something very clear. The Office has  
8 not made up their mind. We have no position with regard to  
9 that. I can tell you that a number of states around the  
10 country have taken a position and have gone through  
11 legislative -- either the NCOIL model or the NAIC model to  
12 limit the use of stranger owned life policies in their  
13 states. We're really here to gather information so that  
14 policy makers can have a factual basis to make the policy  
15 decisions regarding this very important public policy  
16 issue. With that, I'll turn it over to Mary Beth and you  
17 can go over our agenda.

18 MS. SENKEWICZ: Thank you, Commissioner. The agenda  
19 is fairly simple. In fact, we have just have a number of  
20 witnesses that have arranged beforehand with me to make  
21 some presentations. So I will just begin with our first  
22 witness, who will be testifying by telephone, Richard Gans,  
23 Esquire, who is representing the Florida Bar's Real  
24 Property, Probate, and Trust Law section, to testify about  
25 the new insurable interest law. Thank you, Rich.

1           MR. GANS: Thank you, Mary Beth. My name is Richard  
2 Gans. I'm an attorney in Sarasota, Florida, active in the  
3 Real Property, Probate, and Trust Law section of the  
4 Florida Bar and chair of the section's Estate and Trust Tax  
5 Planning committee.

6           One of the recent initiatives of the Tax Planning  
7 committee and the (indecipherable) section was a revision  
8 of the existing Florida insurable interest statute,  
9 627.404.

10           About three years ago, a case named Chawla came out of  
11 the district court in Virginia or Maryland -- I think it's  
12 Virginia applying Maryland law -- that gave pause to  
13 planners around the country that perhaps everything we  
14 thought we knew about insurable interest in the context of  
15 life insurance trusts might not be correct.

16           That spurred us here in Florida to take a look at our  
17 insurable interest statute. And in so doing, we found that  
18 the statute did not explicitly address the concern that the  
19 court raised about the insurable interest in life insurance  
20 trust concepts and frankly didn't really address much of  
21 anything at all.

22           The committee did a fairly extensive amount of  
23 research about the common law precedence for insurable  
24 interest in Florida and found there wasn't a whole lot and  
25 thought it was time, in addressing the Chawla issue, to

1 address the insurable interest statute as a whole.

2 In modifying the statute as we have, we've made it  
3 much more comprehensive than it was before. Our  
4 modification was intended simply to make statutory what the  
5 committee felt were very well accepted black letter  
6 insurable interest laws across the country and in Florida  
7 as well through its adoption of common law in the various  
8 states to the extent that the courts would adopt it. So  
9 the intention of the section and the committee was not  
10 really to plow new ground. Rather, it was to lend  
11 certainty to the concept of insurable interest in the  
12 varying contexts in which it arises. And it, again, sets  
13 forth what we all thought was some pretty basic rules.

14 Mary Beth, do you want me to go through any of the  
15 subsections in detail or what's your pleasure?

16 MS. SENKEWICZ: Could you just elucidate for us what  
17 was the issue in that case you referred to, the Chawla  
18 case?

19 MR. GANS: The Chawla case is a classic sort of bad  
20 facts making bad law case, but the issue in Chawla, as  
21 insurable interest is concerned, boiled down to whether,  
22 under the facts of that case, a trustee of a life insurance  
23 trust had an insurable interest under the circumstances in  
24 the life of a grantor. And the court -- the procedural  
25 aspects of the Chawla case are kind of screwy, and the

1 court actually ended up, I don't think, really ever ruling  
2 on that.

3 But the district court felt that in the context of the  
4 facts before it, that a life insurance -- that a trustee of  
5 a life insurance trust didn't have an insurable interest in  
6 the life of the grantor in that case. And that made  
7 everybody concerned that if that reading of the court was  
8 applied more broadly, then we'd have a bunch of life  
9 insurances trusts out there where the trustee doesn't have  
10 an insurable interest, which, you know, we all felt was  
11 probably a greatly unintended result.

12 MS. SENKEWICZ: Thank you. Yes, could you just  
13 briefly, then, go through the categories that you have  
14 established in the new law?

15 MR. GANS: Okay. I'm just going to briefly go down  
16 627.404. And, again, it states what we felt were sort of  
17 black letter concepts. Subsection 1 says anybody has an  
18 insurable interest in the -- well, I'm sorry. Subsection 1  
19 says that you have an insurable interest in yourself, but  
20 nobody who procures a policy without an insurable -- let me  
21 back up. I'm sorry. I'm trying to read this on the fly.

22 Subsection 1 states the general. Anybody has an  
23 insurable interest in his or her own life, but nobody who  
24 doesn't have an insurable interest is allowed to get an  
25 insurance contract on the life of someone else. It also

1 states the general rule that the insurable interest need  
2 not exist after the inception date of the coverage. So  
3 like most, if not all, other states, the time for testing  
4 insurable interest is when the concept is placed.

5 And then the statute, in subsection 2(b) goes on and  
6 lists the instances when insurable interest exists. First,  
7 you have an insurable interest in your own life, body, and  
8 health. An individual has an insurable interest in the  
9 life, body, and health of another person to whom the  
10 individual is closely related by blood or by law and in  
11 whom the individual has a substantial interest engendered  
12 by love and affection.

13 An individual as an insurable interest in the life,  
14 body, and health of another person if such individual has  
15 an expectation of a substantial pecuniary advantage through  
16 the continued life of that person and would suffer  
17 consequent substantial pecuniary loss by reason of the  
18 death of the insured.

19 subsection (b)4 is intended to lay the underpinning  
20 for an insurable interest in the context of cross-purchase  
21 agreements in businesses.

22 subsection 5 deals with the trust's insurable  
23 interests. It states that the trustee has an insurable  
24 interest in the life of the grantor, in the life of an  
25 individual closely related by blood or by law to the

1 grantor. In other words, in someone who the grantor  
2 himself would have an insurable interest but only if the  
3 insurance proceeds are primarily for the benefit of a  
4 person's having an insurable interest in the life of the  
5 grantor. That is the test in Maryland, that Maryland  
6 adopted as a result of the Chawla case. And we have  
7 adopted that in Florida.

8 A charitable organization has an insurable interest in  
9 the life of anybody who consents in writing to the  
10 acquisition of the policy. That's a verbatim almost  
11 carry-over from the prior statute.

12 Eight, a trustee, sponsor, or custodian of an ERISA  
13 plan or an employee benefit plan has an insurable interest  
14 in the life of the participant in the plan as long as the  
15 participant consents.

16 And then subsection 9 allows for a business to have  
17 insurable interest in key employees and key persons. And  
18 the definition of key employee and key person resorts to  
19 code section 101(j)(2)(A), sub ii. And then basically, you  
20 know, we're (indecipherable) rules under section 101.

21 Subsection 4 states that if the policy was placed  
22 without an insurable interest, then the insured or his or  
23 her PR may maintain an action to recover the benefits from  
24 the person receiving them. And there's a provision in  
25 there that requires that consent, the insured's consent is

1 always required in order to place an insurance policy, with  
2 a couple of narrow exceptions. And that's essentially,  
3 that's essentially it.

4 COMMISSIONER McCARTY: Mr. Gans, this is Kevin  
5 McCarty. In your explaining the new law, you said that the  
6 time for testing the concept of insurable interest is at  
7 the application? Is that correct?

8 MR. GANS: The time for testing it is when the  
9 insurance contract is bound.

10 COMMISSIONER McCARTY: When the -- okay.

11 MR. GANS: When the insurance is -- and I may not be  
12 using the right insurance buzzwords here, but when the  
13 insurance is put in effect, the insurable interest must,  
14 must exist at that time. So, for example, if I'm -- I can  
15 always get an insurance policy on my life. And then  
16 immediately thereafter, I could assign it to anyone whom I  
17 chose.

18 COMMISSIONER McCARTY: Okay.

19 MS. DAWSON: Mr. Gans, this is Susan Dawson. I have a  
20 question or two, perhaps a follow-up. In your putting this  
21 piece of legislation together, was there any consideration  
22 of how it would work in the STOLI context, whether it would  
23 prevent STOLI or -- what was your thinking on that?

24 MR. GANS: Our objective in the legislation was to be  
25 STOLI-neutral. I --

1           COMMISSIONER MCCARTY:  STOLI-neutral.

2           MR. GANS:  And this legislation is not intended to  
3 take a side on that issue one way or the other.

4           MS. DAWSON:  Okay.  Another question, kind of a  
5 follow-up there, looking at the new language in 627.404,  
6 which is the insurable interest section of the statute, the  
7 tail end of subparagraph 1 states insurable interest need  
8 not exist after the inception date of coverage under the  
9 contract.  So if the next day the insured decides or maybe  
10 had the intent the day before to resell or to sell the  
11 policy in a STOLI arrangement, you don't see that as  
12 indirectly violative of the statute?

13           MR. GANS:  Let me answer that question by saying this.  
14 I think the insurable interest laws of all the state  
15 statutes that I can remember reading have a provision like  
16 this.  And my understanding of the STOLI issue is that on  
17 the facts and the totality of the circumstances, it appears  
18 that, you know, there was a prearrangement that this would  
19 be done and the real party in interest isn't the insured  
20 who then goes on and assigns the policy but someone else.

21           And so on the face of the statute, the scenario that  
22 you've arrived at, you know, the answer is yes.  I mean, I  
23 can go out and get a policy of insurance today, and I can  
24 assign it to somebody tomorrow and that would be permitted  
25 under the statute.  Now, that's not to say -- and it's not

1 intended, you know, to be anything other than what it says.

2 MS. DAWSON: Okay. Thank you. I have no other  
3 questions.

4 COMMISSIONER McCARTY: When you drafted the  
5 legislation or proposed the drafting of the legislation,  
6 was this intended in terms of defining insurable interest  
7 or the timing for insurable interest to exist to be a  
8 statement of the current law in Florida or is that a --

9 MR. GANS: Yes.

10 COMMISSIONER McCARTY: Yeah, that's what I thought.  
11 Thank you very much. We appreciate your testimony.

12 MS. SENKEWICZ: Next, Commissioner, we're going to  
13 hear from OIR staff briefly reviewing our existing, what we  
14 still call the viatical law in Florida, from Susan Dawson.

15 MR. GANS: Mary Beth, can I ring off?

16 MS. SENKEWICZ: Oh, you may. I'm sorry, Richard.  
17 Thank you very much. I appreciate it.

18 MR. GANS: Thank you.

19 MS. SENKEWICZ: Bye-bye. Susan Dawson and Bernie  
20 Stoffel of the Office of Insurance Regulation. Who's going  
21 first? Susan.

22 MS. DAWSON: Thank you, Commissioner. I am going to  
23 just briefly mention a few of the statutes outside of the  
24 Viatical Settlement Act that are relevant within a STOLI  
25 context. This is not meant to be, you know, an

1 all-inclusive list, just a couple of statutes that would  
2 come into play in the STOLI context.

3 So within that STOLI context, the relevant Florida law  
4 includes, for example, section 627.404. Under Florida law,  
5 which we've kind of already touched on this section, any  
6 party purchasing life insurance must have an insurable  
7 interest in the person being insured. Florida's insurable  
8 interest law has already been touched on a little bit by  
9 Mr. Gans and he's already gone through the amendment so  
10 I won't duplicate that.

11 Another section that is relevant within a STOLI  
12 context is 627.409. And this section deals with  
13 misrepresentations when you take out an insurance, a life  
14 insurance policy. This section provides that a  
15 misrepresentation, omission, concealment of fact, or  
16 incorrect statement may prevent recovery under the policy  
17 if the representation, omission, concealment, or statement  
18 is fraudulent or is material either to the acceptance of  
19 the risk or to the hazard assumed by the insurer or if the  
20 true facts had been known to the insurer, the insurer in  
21 good faith would not have issued the policy or contract or  
22 would not have issued it at the same premium rate or would  
23 not have issued a policy or contract in as large amount.  
24 And this is very, a very critical section when it comes to  
25 STOLI arrangements, especially illegitimate, if you want to

1 call it that, STOLI arrangements.

2 where STOLI transactions involve life insurance agents  
3 or life insurance agencies which are licensed by DFS, the  
4 Department of Financial Services, this particular section  
5 applies, which is 627.611. 626 -- I'm sorry -- 626.611  
6 gives DFS, the Department of Financial Services, the  
7 authority to suspend or revoke the license or appointment  
8 of any licensee or appointee for several reasons.

9 One, if the licensee or appointment is willfully used  
10 to circumvent any of the requirements or prohibitions of  
11 the insurance code, if the licensee or appointee has  
12 willfully misrepresented any insurance policy or willful  
13 deception with regard to any such policy, if any licensee  
14 has fraudulently or used fraudulent or dishonest practices  
15 in the conduct of business under the license, they can be  
16 suspended or revoked by the Department of Financial  
17 Services. Fraudulent or dishonest acts in transactions  
18 related to viatical settlement contracts or for dealing in  
19 bad faith with viators can cause a licensee to lose their  
20 license in the state of Florida.

21 Other provisions of the Florida Insurance Code that  
22 would apply in the STOLI context include section 629.989,  
23 subparagraph 6. This is a requirement to report, and this  
24 is for any person, not just the licensee or a company or an  
25 agency, but it's a requirement for anyone, an employee or

1 anyone, for that matter, to report fraudulent insurance  
2 activity to the Division of Insurance Fraud.

3 Another applicable section in the STOLI context is  
4 basically all of the provisions, all of the applicable  
5 provisions, that is, of Chapter 626, part 9, which deal  
6 with the Unfair Insurance Trade Practices Act.

7 So those are just some of the sampling of different  
8 statutes that we have already on the books that may be  
9 applicable in the STOLI context. So I just wanted to  
10 briefly cover those. Those are all outside of the Viatical  
11 Settlement Act. And my colleague, Mr. Stoffel, will cover  
12 the Viatical Settlement Act specifically. And I'll just  
13 pass it on to him.

14 MR. STOFFEL: Thank you, Susan. My name's Bernie  
15 Stoffel. I'm the viatical section supervisor in the Office  
16 of Insurance Regulations' Specialty Product Administration  
17 business unit. And I'd just briefly like to touch on  
18 Florida's regulatory framework as it pertains to the  
19 viatical settlement industry in the state of Florida.

20 As we're aware, both the NAIC and the NCOIL have taken  
21 steps to prevent and deter STOLI type transaction  
22 arrangements in their model acts. Currently in Florida,  
23 the Viatical Settlement Act is Chapter 626, part 10, of the  
24 Florida statutes.

25 Under current law, the Office and its sister agencies

1 regulate various areas of or related to viatical  
2 settlements. For instance, the Office of Insurance  
3 Regulation regulates and licenses viatical settlement  
4 providers and registers and regulates life expectancy  
5 providers.

6 AS Ms. Dawson has indicated, the Florida Department of  
7 Financial Services regulates and licenses life agents who  
8 perform functions as a viatical settlement broker as  
9 defined under law. And also, the Division of Insurance  
10 Fraud is a law enforcement arm of the Department of  
11 Financial Services.

12 In addition to these agencies, the Florida Office of  
13 Financial Regulations regulates the other side of the  
14 transaction that's referred to as a viatical settlement  
15 investment. These are subject to Florida securities law  
16 under Chapter 517.

17 I would also like to point out that although there's  
18 various terms for these type transactions via whether it be  
19 viatical settlements, life settlements, or senior life  
20 settlements, and some states may differentiate and regulate  
21 one or both, Florida's Viatical Settlement Act does not  
22 make a distinction. And I think we're ready to proceed.

23 MS. SENKEWICZ: Great. Thank you both.

24 MS. DAWSON: Mr. Myers is by phone as well.

25 MS. SENKEWICZ: Yes. Our next witness is also

1           testifying by telephone. Michael D. Myers, Esquire,  
2           McClanahan and Clearman, LLP. Mike, thank you. You're on.

3           MR. MYERS: Thank you. And thank you, Commissioner,  
4           for having me and allowing me to appear by phone. My name  
5           is Mike Myers. I'm an attorney with the firm called  
6           McClanahan, Myers, Espey in Houston, Texas. And for the  
7           last, I think, 14 or 15 years I've been working on cases  
8           involving corporate-owned life insurance and bank-owned  
9           life insurance. I'm going to try and hit on some of the  
10          issues perhaps that may be relevant to the topic that you  
11          are discussing today.

12          The first thing I would like to say is I agree with  
13          Mr. Gans that Florida's statute concerning insurable  
14          interests, which was Senate bill 648, now your section  
15          627.404, is basically on all fours with statutes passed in  
16          other states and the common law of other states. And  
17          significantly, significantly what those statutes do in  
18          terms of insurable interests is they allow any person to  
19          buy a life insurance policy on their own life and designate  
20          whoever they choose as the policy beneficiary. That has  
21          not always been the circumstance in the United States.

22          In the 19th century, an insurable interest was  
23          required which fell under one of the old-timey common law  
24          categories, either a relative, a creditor, or a key  
25          employee. And the states would strictly hold life

1 insurance contracts to those beneficiaries.

2 During the early 20th century, there was a little bit  
3 of a change, and we recognized the right of any person to  
4 insure their own life and name the beneficiary of their  
5 choosing even if that beneficiary fell outside of the three  
6 categories, the close relative, the creditor, or the key  
7 employee.

8 And then during about the mid 20th century, most  
9 states adopted the ability of the insured person or the  
10 owner of the contract to assign it. And it sounds like in  
11 this context of life settlements, that is primarily what  
12 we're talking about, the ability of a person to buy a  
13 contract on their own life, designate whoever they want as  
14 the policy beneficiary, and then assign that contract to  
15 the beneficiary for money.

16 Historically, and I'm talking now about the late 19th  
17 century and early 20th century, it's interesting that  
18 people did use life insurance policies basically to secure  
19 their room and board, perhaps as they got infirm or  
20 elderly. And the situation would be something like this,  
21 where a person gets older, they need a place to live and  
22 care and support, they might name a distant relative as the  
23 beneficiary of the life insurance policy. And it was just  
24 a quid pro quo. You take care of me in my time of need,  
25 and when I die, you will be the beneficiary of my life

1 insurance policy.

2 It strikes me that these life settlements might not be  
3 too far off from that, varying only by degree in that now  
4 people may be selling their interest in their life  
5 insurance policies, but instead of getting room and board,  
6 care and support, they're just getting cash. So the use of  
7 the policies is not that far off from what we've seen in  
8 the ancient cases, but it does vary somewhat by degree.

9 The current statute, Florida statute, would not  
10 prohibit this as far as somebody naming the beneficiary. I  
11 haven't seen anything in there about assignment. And I  
12 believe that that raises some issues, your Honor, for your  
13 office to consider.

14 The key issues, I believe, that are going to be before  
15 you in coming to your regulations are going to be, number  
16 one, obviously is going to be informed consent. I think  
17 under any life insurance policy, the insured person needs  
18 to have full consent and full knowledge of the transaction  
19 that's taking place. And that was true in the cases  
20 involving corporate-owned life insurance and certainly  
21 should be true in your cases of life settlements.

22 But the interesting issue, I think, that's going to be  
23 before you, your Honor, is going to be how you handle  
24 assignments. If a person can buy a policy and then assign  
25 it to a stranger in exchange for money, that would appear

1 to be legal under Florida's law. The bigger question then  
2 becomes what about the assignee selling the policy and the  
3 policy going into a secondary market. For example, a  
4 broker comes in and says I found a buyer for your insurance  
5 policy and they'll pay you X amount of money. The insured  
6 person sells the policy to the buyer, but then can the  
7 buyer turn around and sell it to a different buyer.

8 That raises a whole lot of ethical issues and consent  
9 issues, because the person who sells their life insurance  
10 contract knows who the first buyer is going to be. And it  
11 may be somebody trustworthy. But they don't know who would  
12 then be the buyer in the secondary market. Might it be a  
13 business competitor or a former spouse. Your imagination  
14 could just run wild on how that would be -- how that would  
15 play out in practice.

16 The second issue I would ask your Honor for your  
17 agency to consider is you have a provision in your statute  
18 that ERISA participants can be the subject of an insurable  
19 interest or that the owner of a life insurance policy can  
20 have an insurable interest in an ERISA plan participant.  
21 Again, this raises the question, if the employer, let's  
22 say, can go buy life insurance on the employees with their  
23 written consent, what then happens if the employer wants to  
24 sell the policy.

25 And you really don't need to look any further than

1 your own state's borders. Winn-Dixie, for example, bought  
2 life insurance on 36,000 employees. Now, Winn-Dixie never  
3 got written consent from the employees and never told them  
4 about the corporate-owned life insurance policies. But  
5 assume they had. Assume that Winn-Dixie said we're going  
6 to take out insurance on your life, we want you to sign the  
7 consent form, the employees did so. Under the current  
8 Florida statute, that would mean that Winn-Dixie had the  
9 insurable interest necessary to buy the policies in the  
10 first place.

11 The question for you, your Honor, is going to be can  
12 then Winn-Dixie assign that contract to somebody else and  
13 do a stranger owned life insurance transaction to a  
14 secondary market. And that is where you're getting into a  
15 real gray area. And I have not seen anything on that.

16 So, your Honor, I would conclude by saying that I  
17 think these transactions are important for consumers.  
18 Elderly people often need to sell their life insurance  
19 contracts to be able to live, buy food, buy their medicine,  
20 pay their rent. Informed consent is obviously -- or a full  
21 and complete informed consent is paramount on that scale.  
22 But the issues you may be facing is what happens then if it  
23 goes into a secondary market and we have some people of  
24 dubious character purchasing those contracts. And that is  
25 an issue that I have not seen addressed anywhere else, your

1 Honor.

2 COMMISSIONER McCARTY: Thank you. Are there any  
3 questions?

4 MS. DAWSON: Okay. Thank you, Mr. Myers. We  
5 appreciate your presentation.

6 MR. MYERS: Thank you so much for having me. I  
7 appreciate it.

8 COMMISSIONER McCARTY: Okay.

9 MS. SENKEWICZ: Thank you. Next on our agenda is  
10 Scott Berlin of New York Life.

11 COMMISSIONER McCARTY: Good afternoon, Mr. Berlin.

12 MR. BERLIN: Good afternoon, Commissioner, members of  
13 the panel. Thank you very much for --

14 COMMISSIONER McCARTY: Are you on?

15 MS. SENKEWICZ: At the base of the microphone, I  
16 believe.

17 MR. BERLIN: Good afternoon. Thank you for giving me  
18 this opportunity to speak today. I hear the discussion  
19 that we've had so far. I think it's important for us to  
20 separate some of the concepts. I want to separate life  
21 insurance from life settlements from stranger owned life  
22 insurance. And then I want to talk a little about our  
23 policy preservation program, Access Plus. And I think it's  
24 important for us to define each of those things.

25 By the way, I'm Scott Berlin, senior vice president at

1 New York Life, responsible for the individual life  
2 business. And we put together the Access Plus program,  
3 which is, I think, one of the reasons that we were asked to  
4 speak today.

5 Primary life insurance has historically been used to  
6 provide for families in their times of need, for  
7 businesses, for business continuation purposes, to make  
8 sure that businesses continue.

9 And the life settlement industry, the viatical  
10 settlement industry, as you mentioned earlier, came out of  
11 the AIDS epidemic when people needed to sell their policies  
12 to pay for medical bills and really cash in on the  
13 intrinsic value of their contract, which at the time when  
14 they were near death was a lot greater than the cash value  
15 of the contract.

16 The life settlement industry as it stands today is an  
17 extension of that, where seniors are incented to sell their  
18 policies or encouraged to sell their policies for the same  
19 reason, that as they approach -- if they are infirm, if  
20 they have a lower life expectancy, the policies typically  
21 have more intrinsic value than cash value.

22 But where we are today is to talk about stranger owned  
23 life insurance, or STOLI, which really was borne out of the  
24 life settlement industry. What stranger owned life  
25 insurance is, it's an ability for the speculators to

1 generate additional business, additional life settlement  
2 business. They don't need to find policies that are  
3 already written and encourage people to give up their  
4 insurance; they convince people just buy the insurance and  
5 then, you know, wink, wink, we'll take care of it in two  
6 years after the contestable period is covered.

7 COMMISSIONER MCCARTY: Do you think -- do you mind if  
8 I ask a question?

9 MR. BERLIN: Sure. Please.

10 COMMISSIONER MCCARTY: Do you think that is generated  
11 by the demand for more life insurance policies?

12 MR. BERLIN: I believe that the life settlement  
13 industry has bloomed and there are quite a number of  
14 players out there. And they feel a need to get a critical  
15 mass so they can have a pooling of mortality risk. And in  
16 order to do that, they need to generate business. So one  
17 way they do that is go after life insurance producers and  
18 convince them to encourage their clients to settle  
19 business. That may be one approach. Another approach is  
20 to generate new business, which is bought with the  
21 intention of settling, essentially creating an additional  
22 market for life settlements.

23 You know, I'm not an attorney so I hear a lot of the  
24 talk about the regs and the legislative issues. I'm an  
25 actuary by background so I take a little bit different

1 approach to this. My training, I learned about life  
2 insurance, I learned about insurable interest and what it's  
3 supposed to do. I think that at its base, it's supposed to  
4 take away the gambling aspect of life insurance. You're  
5 supposed to buy, you're supposed to only buy life insurance  
6 on those in which have you an insurable interest.

7           Somebody said, I think it was Mr. Myers said, somebody  
8 who you love, somebody you care about, or somebody who you  
9 have a financial interest in seeing stay alive. It  
10 shouldn't be about somebody in whom you have a financial  
11 interest in seeing them die. And that's really what the  
12 stranger owned life insurance has become. I do --

13           COMMISSIONER MCCARTY: Wasn't those same concerns  
14 there when policies were sold during the AIDS epidemic --  
15 well, during -- when somebody sold their policy for getting  
16 cash for medical treatment? Didn't we used to have the  
17 same kind of issues? You're selling it to someone who  
18 doesn't have an interest necessarily in your prolonging  
19 your life. As a matter of fact, the way they're  
20 structured, their advantage is for your early demise.

21           MR. BERLIN: Yeah. Again, separating life settlements  
22 from stranger owned life insurance, in the life settlement,  
23 the traditional viatical settlement definition, you have a  
24 policy that's been in force, and the individual is looking  
25 to get access to the value of that contract for a specific

1 need. Typically it's medical care in that case.

2 with the stranger owned life insurance, there was no  
3 needs for life insurance to begin with. There was no  
4 insurable interest. There was a fraudulent transaction to  
5 begin with because it was built around subverting the  
6 insurable interest laws of the state. And I think that  
7 that does put it in a different bucket.

8 COMMISSIONER MCCARTY: Oh, I do, too, that  
9 distinction.

10 MR. BERLIN: One of the things --

11 COMMISSIONER MCCARTY: One of them was purchased for  
12 the original purpose of insurance, which was to provide for  
13 beneficiaries, presumably, one of the many reasons you  
14 might buy insurance. And the other one, you're essentially  
15 manufacturing the policies for another person, for resale.  
16 But the concern in terms of having someone else have an  
17 interest in your policy that doesn't have an interest in  
18 your longevity is true in both of those cases.

19 MR. BERLIN: Correct.

20 COMMISSIONER MCCARTY: Okay.

21 MR. BERLIN: Correct. I think what the stranger owned  
22 life insurance does is, it creates that synthetic market  
23 for life settlements that wouldn't otherwise exist.

24 You know, just to go through once again what stranger  
25 owned life insurance is, typically, the speculator is

1           incen<sup>t</sup>ing the proposed insureds to buy the insurance. The  
2           inducements can include advertisements for free insurance.  
3           And often they are structured with two years worth of free  
4           insurance. Sometimes there's cash, a cash incentive paid  
5           to the proposed insured, which is similar to a bribe, to  
6           get them to write the insurance on their lives. The  
7           schemes are targeted at the elderly. Usually they have a  
8           high net worth.

9           So one point where I disagree with Mr. Myers, he  
10          mentioned that these contracts are for -- they're similar  
11          to the old viatical market because they're there for health  
12          and welfare and paying for food and rent and prescription  
13          drugs for the elderly, but I think that these are targeted  
14          toward the elderly and those in the high net worth segment.  
15          This isn't about paying for medical bills. This isn't  
16          about paying for food. This is about lining the pockets of  
17          speculators. From the outset, the speculators and the  
18          insured have --

19                COMMISSIONER McCARTY: You have very strong feelings  
20          on this, don't you?

21                MR. BERLIN: You can tell.

22                COMMISSIONER McCARTY: I mean, you could look at this,  
23          I mean, life insurance is also purchased for estate  
24          planning.

25                MR. BERLIN: Correct.

1           COMMISSIONER MCCARTY: And presumably that could be  
2 part of your estate planning, that you're -- just another  
3 way of obtaining cash for things in, you know, your senior  
4 years.

5           MR. BERLIN: I'm sorry. You mean, you mean purchasing  
6 the contract and then selling it within two years --

7           COMMISSIONER MCCARTY: Yeah.

8           MR. BERLIN: -- has a means to generate cash?

9           COMMISSIONER MCCARTY: Yeah.

10          MR. BERLIN: I think that that is a potential use for  
11 the insurance, but I think it becomes a fraudulent  
12 contract --

13          MS. DAWSON: Perhaps the key focus here is the  
14 intent --

15          MR. BERLIN: Exactly.

16          MS. DAWSON: -- at the time that you apply for the  
17 policy. And perhaps the most, you know, public case of a  
18 STOLI gone bad is the Larry King case, where brokers or  
19 agents, life agents approached him to purchase a  
20 \$10 million policy. And the purpose was for resale. And  
21 this is, you know, out there on the Internet. It's in the  
22 media public. It's very public. So I'm not saying  
23 anything that no, you know -- that we only have access to.  
24 And so this was a very public case. And I think that is  
25 probably what you're trying to get at.

1           You said you're not a lawyer. You're an actuary. But  
2           the key word there would be intent, what is the intent when  
3           you apply for the policy. Are you intending to resell it  
4           the next day, the next week, two years out, or is the  
5           intent to cover your family, who's going to need the  
6           coverage when you die. So I think that's the key word to  
7           use.

8           MR. BERLIN: I would absolutely agree with that. And  
9           I think that that, that is the distinction, really, between  
10          the traditional viatical settlement or life settlement and  
11          the STOLI. The difference is in the intent. If I own a  
12          policy, I have the right to assign it. That was made  
13          clear. I have the right to sell it. That was made clear.  
14          But the question is what is my intent at the time of the  
15          purchase. And if my intent is to get around the insurable  
16          interest laws by setting up a creative scheme, I don't  
17          think that that should be allowed under Florida law.

18          COMMISSIONER MCCARTY: Can I ask you a question?

19          MR. BERLIN: Sure.

20          COMMISSIONER MCCARTY: I guess I think it's hard to  
21          identify the victim. I mean, I would presume it would be  
22          the insurance company and presumably future policy  
23          purchasers if you have a lapse rate that's different or you  
24          have some changes in the actuarial tables, but to try to  
25          articulate a victim here, you've got a senior who's getting

1           some cash, presumably for their own benefit. The life  
2           insurance company is selling an insurance product that's  
3           sold in the secondary market. I mean, I guess for public  
4           policy makers, okay, I guess help me find the victim.

5           MR. BERLIN: Absolutely. I'm glad you went there  
6           because I was about to go there as well. There's this myth  
7           about lapses that we don't want to pay death claims. And,  
8           in fact, you know, when I get to it in a minute, just the  
9           opposite is true. At New York Life, we want to pay a claim  
10          on every policy we write. And the Access Plus program is a  
11          policy preservation program to encourage people to keep  
12          their coverage in force. So it's really quite the  
13          opposite.

14          The victim here, there's really two. Number one is if  
15          everything goes according to plan, that all seems well and  
16          good for the insured. They get some free insurance for a  
17          couple of years. They get a cash inducement. They sell  
18          the contract. And they had no out of pocket so it seems  
19          like a good deal as long as that transaction is above board  
20          and legitimate.

21          But there's a reason why we have insurable interest  
22          laws. And that's because we don't want people to take an  
23          unlawful interest in somebody else's life. And we all know  
24          that those kinds of things can happen where not everybody  
25          is legitimate. Not every transaction is legitimate. So

1           there is that possibility that the person who has an  
2           interest in your life and wants to see -- or really in your  
3           death could act on that. And so that -- you know, put that  
4           in the unlikely category, but it is a matter of public  
5           policy. That's why we have the insurable interest laws.

6           The second thing is, you know, life insurance provides  
7           a social purpose. It's there to help families. It's there  
8           to help businesses. It gets some tax-favored status from  
9           the government. And it's important that we don't treat it  
10          like a commodity to be traded on Wall Street. And I think  
11          that the more we bastardize the insurable interest laws to  
12          allow speculators to trade on life insurance -- and there  
13          are now, you know, policies out there, there are now  
14          securities out there like what happened in the subprime  
15          market, there are these secondhand insurance products, they  
16          call them SHIPs, they're out there trading, and I think  
17          that that has the potential to damage life insurance, life  
18          insurance for its primary purpose.

19                 I want to come back and talk about the lapse --

20                 COMMISSIONER MCCARTY: In fear of losing the tax, the  
21                 favorable tax treatment?

22                 MR. BERLIN: Well, I think that there is the risk that  
23                 the IRS could look in and say, you know, life insurance  
24                 isn't providing the purpose that it once did. It's now a  
25                 vehicle for speculators to get rich. It's not for people

1 to protect their families and their businesses so we're  
2 going to change the tax law. And I think that that would  
3 be a very bad outcome for both individuals and the  
4 industry.

5 Coming back to lapses, I'm going to come back to New  
6 York Life. You know, what if the lapse issue was correct.  
7 And in New York Life's case, it's certainly not correct,  
8 but the other victim here, and this is kind of a little bit  
9 further out down the road, if there's an arbitrage  
10 opportunity here that's being taken advantage of with the  
11 lapse rates, all it means is that ultimately arbitrage will  
12 be closed by prices going up. And so I think that the  
13 victim in the long run is the purchasers of life insurance,  
14 for legitimate reasons. So some people can get rich today,  
15 there is that potential, there is the possibility of that  
16 potential today or at least it appears that way.

17 But the ultimate result five years from now will be  
18 that the price of life insurance will go up, that arbitrage  
19 opportunity will get closed, and people who want to buy  
20 life insurance for legitimate reasons like estate planning  
21 and protecting their families will have to pay more for  
22 that insurance. So there's another victim.

23 Now, you know, we talked about lapses. I want to talk  
24 about the Access Plus program because New York Life's put  
25 together a program to offer an alternative to life

1 settlements. When I look at the life settlement industry,  
2 I don't think that there's anything illegal about viatical  
3 settlements. I don't think there's anything immoral about  
4 viatical settlements. But I do have two concerns.

5 And the two concerns I have with the industry today  
6 are, one, we've been talking about insurable interest.  
7 And, no, you don't need insurable interest after issue, but  
8 it certainly is preferable if you maintain the policy for  
9 yourself or for your beneficiaries rather than selling it  
10 to a stranger. That's certainly the preferable path.

11 And second of all, I think that there's a lot of value  
12 escaping from these contracts and going into the hands of  
13 brokers and the speculators, who are looking to make a very  
14 high profit margin on this business. Clearly, if somebody  
15 is looking to buy your contract from you, they're thinking  
16 they're going to make money on it, which means it's  
17 probably in your best economic interest to keep it, all  
18 right.

19 We understand at New York Life that some people, for  
20 whatever reason, don't want to keep their contracts, and  
21 that's why life settlements look attractive. When you  
22 compare the viatical settlement or the life settlement to  
23 the cash value of the contract, you can often get more in a  
24 life settlement. But when you compare it to the death  
25 benefit, you know, especially if you're infirm, you're

1 giving up a lot of value in the process.

2 So what we've done is we've created a program where  
3 you can borrow against the face amount of your contract in  
4 order to keep that contract in force. We may also even be  
5 able to offer you an amount of cash that you can take if  
6 you have immediate expenses that you want to cover. If  
7 you're in your last few years and you want to take a cruise  
8 around the world and that's what you need the money for, we  
9 can probably -- and we have a calculation that we do --  
10 offer you an amount that you can take out of your contract  
11 in addition to the cash value of the contract. The primary  
12 difference is that you keep the contract. The contract  
13 stays for you. The beneficiary, your beneficiary receives  
14 the death benefit of the contract less the amount of the  
15 outstanding loan.

16 So, really, it satisfies two objectives. Number one,  
17 there's no agent commission involved. There's no high  
18 profit margins involved. So most of the value of the  
19 contract is preserved for the owner and for the  
20 beneficiary.

21 COMMISSIONER MCCARTY: Is there a cost associated with  
22 the Access Plus?

23 MR. BERLIN: There's no fees. There is -- you are  
24 borrowing so there is an interest cost. But that's it.  
25 There's no fee. There's no loads. There's no commission.

1 So we preserve --

2 COMMISSIONER McCARTY: Is this available on all the  
3 insurance products?

4 MR. BERLIN: It's available in about 40 states right  
5 now. It's available on permanent insurance, 250,000 on  
6 face amount and up, age 65 and up, life expectancy of two  
7 to ten years. And the reason why two is because we have a  
8 terminal illness provision that covers you before two years  
9 where you wouldn't have to take advantage of this program.  
10 And ten because we need to see, you know, a change in  
11 health in order to make this program --

12 COMMISSIONER McCARTY: Do you have accelerated death  
13 benefits --

14 MR. BERLIN: For terminal illness?

15 COMMISSIONER McCARTY: For terminal illness.

16 MR. BERLIN: Correct. So this really satisfies both  
17 objectives. Number one, it provides the most value for the  
18 client. Now, in my example, let's say you had a million  
19 dollar contract and I lent you \$200,000 against that  
20 million dollars on day one. If the next day you die, your  
21 beneficiaries get the other 800,000. And that's the  
22 primary difference between Access Plus and a life  
23 settlement, where with a life settlement, if you die, the  
24 next day, the life settlement company gets the \$800,000.  
25 And I think that preserves, number one, which is the value

1 of the contract for the beneficiary. Number two, the  
2 contract stays in your name and goes to your beneficiary so  
3 there is no third party ownership involved. And I think  
4 that satisfies both of the objectives we tried to hit with  
5 the Access Plus. So --

6 COMMISSIONER MCCARTY: Very good. Go ahead.

7 MR. BERLIN: Go ahead, please, Mr. Commissioner.

8 COMMISSIONER MCCARTY: Go ahead. I thought you  
9 were --

10 MR. BERLIN: No, just I was going to wrap up. Just to  
11 wrap up, I think that, I think that life insurance provides  
12 a primary social purpose to our society. I think that life  
13 settlements, while there is a place for them, I think in  
14 the current state, they're suboptimal for most clients. I  
15 think the stranger owned life insurance certainly is an  
16 industry that was borne out of necessity from the life  
17 settlement companies to try to drive business and it's  
18 really a fraudulent approach to drive more business and  
19 subvert the insurable interest laws. And I believe the  
20 Access Plus program that we've put forth handles these  
21 objections and does it in a way that's very friendly to the  
22 policy owner.

23 COMMISSIONER MCCARTY: How long have you been offering  
24 this Access Plus?

25 MR. BERLIN: We designed it and developed it at the

1 end of 2006, but we've been studying a lot of the state  
2 laws and regs with my colleagues in New York to try to  
3 determine where it fits in. And we're now just rolling it  
4 out in 2008 in most states. And we're looking for approval  
5 in order to do so.

6 COMMISSIONER MCCARTY: You know, some folks might  
7 argue that it was the lack of products like Access Plus  
8 that initiated the need for viatical settlement companies  
9 to begin with.

10 MR. BERLIN: I think that there's probably some truth  
11 to that. Understand that the cash values on a life  
12 insurance contract, even traditional whole life insurance,  
13 the cash values are based on an average, all right. Even  
14 in whole life where the cash value is supposed to  
15 approximate the intrinsic value of the contract, it's based  
16 on an average. People who are less healthy have the same  
17 cash value as people who are very healthy, but on average,  
18 everybody's got a fair cash value.

19 COMMISSIONER MCCARTY: Right.

20 MR. BERLIN: What the viatical settlements do and the  
21 life settlements, they go after half or that segment of  
22 that population that's less healthy, understanding that  
23 there's more intrinsic value in that contract than there is  
24 in the cash value.

25 I would also say that some of the new contracts that

1 are out there, there's been a big push in the no lapse  
2 guarantee contracts in our industry, and those contracts  
3 have typically very little cash relative to the intrinsic  
4 value of the contract. And I think that that product kind  
5 of cries out for a program like Access Plus.

6 COMMISSIONER MCCARTY: Thank you very much.  
7 Appreciate it.

8 MS. DAWSON: Thank you, Commissioner. I have a couple  
9 of questions before --

10 COMMISSIONER MCCARTY: Sure.

11 MS. DAWSON: Before we let you go, I have a couple of  
12 questions. One, going back to the victim, the commissioner  
13 asked you basically, you know, where's the victim here,  
14 where's the harm. One of the issues that I've been reading  
15 about in regards to STOLI is the senior with the high net  
16 worth who enters into a STOLI arrangement, some of their  
17 complaints have involved the effect on insurance capacity.  
18 Do you want to -- can you address that?

19 MR. BERLIN: Thank you. Yes, that's a great point.  
20 And I think that's what happened in the Larry King case, is  
21 one of the things that's not well understood among the  
22 senior community is that there's a certain amount of  
23 insurance you can get, that you can qualify for, either  
24 because of -- there may be limitations due to just the size  
25 of our industry, and there may be limitations due to the

1 size of your net worth. You can't -- it's not just you can  
2 get as much as you want. And once you've bought that  
3 insurance and given it to somebody else, it doesn't free up  
4 that capacity for you to get more. There's only a certain  
5 amount of insurable interest on you based on your current  
6 status.

7 MS. DAWSON: And then you have a senior who may  
8 become, you know, sicker or, you know, more unhealthy as  
9 time goes by, and the likelihood of being able to get a  
10 large policy diminishes with their health status. So that  
11 is an issue.

12 MR. BERLIN: What people come to realize is that if  
13 they can get the insurance and a speculator stands to make  
14 a lot of money on owning that insurance, they come to  
15 realize that they're probably better off keeping that  
16 insurance. And then once they've entered into these  
17 transactions, they have often have very steep penalties for  
18 getting out on the back end. I can't go through all the  
19 specifics, but I think the interest rates are very high.  
20 There maybe penalties. I'm not sure.

21 MS. DAWSON: Okay. I have one further question and  
22 I'll let you go. On the front end, in terms of the  
23 application process, the questions to the person who's  
24 applying for the policy, what is New York Life doing, if  
25 anything?

1           MR. BERLIN: Well, we are actively trying to root out  
2 STOLI transactions so --

3           MS. DAWSON: What type of questions are you asking?

4           MR. BERLIN: We are asking if there's an intent to  
5 sell the policy, have you ever sold a policy before, and  
6 under what circumstances. We are looking carefully at the  
7 trust to make sure that everything is set up for the  
8 benefit of the insureds or of their beneficiaries. We're  
9 checking the ownership. We're continuously monitoring  
10 ownership, especially during the first two years of the  
11 contract, to make sure that the ownership is not changing  
12 to a life settlement company. And, you know, we're trying  
13 our best to discourage the use of life insurance in STOLI  
14 transactions.

15           Now, once somebody owns a policy legitimately and, you  
16 know, they want to sell it down the road, that's their  
17 option to do that.

18           MS. DAWSON: Thank you. I have nothing further.

19           MS. SENKEWICZ: Thank you, Scott.

20           MR. BERLIN: Thank you very much.

21           MS. SENKEWICZ: Next on our agenda is Curt Leonard,  
22 representing the American Council of Life Insurers, or  
23 ACLI.

24           MR. LEONARD: Thank you, Commissioner, Office of  
25 Insurance Regulation, for the opportunity to address you

1 all today in this public hearing. I've been listening to  
2 the testimony, and I'm going to try not to be redundant.  
3 Or if I am redundant, forgive me, but for the purposes of  
4 the record, there might be some things I need to repeat on  
5 behalf of the American Council of Life Insurers, just for  
6 the record.

7 ACLI does have 373 member companies. And 93 and 94  
8 percent of the life insurance premium and annuity  
9 considerations in the state of Florida are issued by the  
10 members of American Council of Life Insurers.

11 You know, we're here today -- and for the first time  
12 in my life, I'm actually maneuvering with reading glass at  
13 the podium. So I'm trying to use it as a prop as best I  
14 can. But hopefully it gives me some gravitas I haven't had  
15 before.

16 But anyway, you know, we're here today at the Office  
17 of the Insurance Regulation --  
18 (Inaudible comments and laughter)

19 MR. LEONARD: We're here today, obviously, because  
20 there's growing interest in Florida and nationwide in the  
21 issue of these variety of transactions that we refer to, as  
22 they were in the notice for the hearing, STOLI, IOLI,  
23 SPINLIFE, et cetera. All of these different transactions  
24 are best characterized by investors or speculators. And  
25 sometimes speculators is treated as being pejorative, but

1 it is what it is, speculators who are taking and  
2 circumventing insurable interest law to profit from the  
3 death of the insured at a later date.

4 And the reason you all are having to ask questions  
5 today and study this hard, I know you guys are trafficked  
6 in this at the NAIC and other places, is because this is  
7 not an easy issue because you are, Ms. Dawson, as you  
8 mentioned earlier, you are dealing with the issue of intent  
9 and trying to drill down on intent and in trying to come up  
10 with a resolution that does not jeopardize or place in  
11 jeopardy legitimate life settlement transactions but rather  
12 drill down on the manufacturing of life insurance policies  
13 that are, fundamentally, you've got people, interests that  
14 are trying to find a body with which to gain access to the  
15 life insurance contract and realize the death benefits.  
16 It's just that simple.

17 You can explain in 30 seconds or less the problem.  
18 Trying to come up with a solution is a whole different  
19 animal. Let me just quote here that, you know, what we're  
20 dealing with in insurable interest law, and this has been  
21 referred to, albeit briefly, earlier, is a fundamentally  
22 important principle of life insurance since the 17th  
23 century, and insurable interest stands for the proposition  
24 that at the time the life insurance policy is issued, the  
25 person who procures the policy or causes the policy to be

1           procured must have a lawful and substantial economic  
2           interest in having the life of that individual insured  
3           continue, as distinguished from interests that would  
4           have -- would only arise by or be enhanced by the death of  
5           the insured. And of course this -- when I say 17th  
6           century, this goes back to English common law.

7           These schemes, practices, transactions are increasing  
8           in number and sophistication. In other words, they're hard  
9           to keep up with, as you may have deduced from the material  
10          you've already received and reviewed. And we do suggest,  
11          American Council of Life Insurers, that the State of  
12          Florida consider doing something as soon as possible,  
13          whatever regulation or legislation, we'll leave that up to  
14          the regulators and legislature to determine.

15          However, as mentioned before, as far as victims go,  
16          speaking with the elderly, which right now is the target  
17          demographic, it may not always be, but right now it's the  
18          target demographic, seniors do face unexpected taxes and  
19          fees. We've had conversations with the IRS and the federal  
20          treasury and congressmen. And, frankly, they're working  
21          through this and trying to figure out what, if any, tax  
22          liabilities are out there for the elderly.

23          For example, if a person, an elderly benefits from,  
24          receives, executes a non-recourse premium finance loan,  
25          they could have a tax liability for the value of that loan

1 immediately. They're trying to sort that out. And the IRS  
2 is trying to figure out what, if any, interest the federal  
3 treasury has in this. Also, as you all are well aware, as  
4 is often in the case, in other transactions, the elderly  
5 may be induced to mislead insurers in the policy  
6 applications.

7 As I mentioned just a minute ago, as far as these  
8 transactions and schemes go -- and, again, I apologize if  
9 I'm being a little bit redundant but -- various practices  
10 include the use of non-recourse premium finance loans to  
11 induce the elderly to provide free insurance, which you  
12 will see in different advertisings and marketing  
13 efforts, where there's an understanding, an understanding,  
14 intent, that the policy will be settled in the secondary  
15 market at a later date, usually two years following the  
16 procurement of the policy, which, as you know, is the clock  
17 of the contestability period, or by the more pernicious use  
18 of trusts, which I made a comment earlier that it's getting  
19 more sophisticated in the use of trusts now and basically  
20 cloaking this transaction, is being utilized at an  
21 accelerating rate --

22 COMMISSIONER MCCARTY: And that's an alternative to  
23 premium financing, using a trust?

24 MR. LEONARD: You know, I'm not going to -- I don't  
25 think it's used in the alternative. I think how it's

1           executed -- again, these are sophisticated transactions.  
2           We've got a couple gentlemen with the AALU who are probably  
3           better at answering that question.

4           COMMISSIONER MCCARTY: Is there any legitimate purpose  
5           for premium financing a life insurance policy?

6           MR. LEONARD: Yeah, there is.

7           COMMISSIONER MCCARTY: Okay.

8           MR. LEONARD: Yeah, there is, absolutely. And I'll  
9           get to that in just a minute. So you've got the use of  
10          trusts and other instruments are being used. I had lunch  
11          and I've learned some new things today that I didn't know  
12          about six months ago about what's going on out there in the  
13          market as it relates to this.

14          Now, when I talked about the hard part of this issue  
15          is both the NAIC and the NCOIL, as you're well aware, but  
16          for the record, moved very aggressively last year to update  
17          and revise their life settlement models to address STOLI  
18          transactions, SPINLIFE transactions, et cetera. They came  
19          at it a couple different ways, but in both cases the debate  
20          was difficult. And a lot of people were involved and  
21          engaged in trying to come up with some good answers,  
22          because, again, it's never been the intent, at least of the  
23          American Council of Life Insurers, to doubt the legitimacy  
24          or to compromise legitimate life settlement transactions.  
25          We're trying to drill down on and get at these transactions.

1 that are designed, put together by very intelligent people  
2 to skirt the insurable interest law. Again, we're dealing  
3 with intent here and it's not easy.

4 NCOIL basically took a more traditional approach.  
5 NAIC actually finalized the update of their model in late  
6 June of last year.

7 COMMISSIONER McCARTY: (Inaudible)

8 MR. LEONARD: Yes, I know you are, Commissioner. And  
9 NCOIL came in. The National Counsel of Insurance  
10 Legislators addressed this issue later in the fall and they  
11 adopted their model version.

12 NAIC, what the NAIC, again, for the record and for the  
13 attendees behind me, what the NAIC tried to do is they  
14 tried to identify the DNA or the fingerprint, if you will,  
15 what's the red flag for these STOLI transactions. And the  
16 red flag, the fingerprint, the DNA, if you will, the  
17 signature was these non-recourse premium finance loans, and  
18 to a lesser degree premium finance loans. But the premium  
19 finance loans, they're not quite the attractive arrangement  
20 that non-recourse premium finance loans are. Basically,  
21 non-recourse premium finance loans is just what it is.  
22 There's no recourse due to the person taking out the loan.

23 what's left is the collateral value of the contract,  
24 the insurance contract. So that's where you get the free  
25 insurance from. The insured doesn't pay any premiums.

1       It's on loan. They don't make any payments. And then the  
2       understanding, wink, wink, nudge, nudge, directly or  
3       indirectly, verbally or written, is that after the two-year  
4       contestability period, they'll surrender the insurance  
5       contract and assigned beneficiaries. It will become  
6       settled.

7               NAIC went around and around this thing because, as you  
8       asked earlier, are there any legitimate reasons for  
9       non-recourse premium finance loans? Yeah, they're small,  
10      but typically you get small business owners or regular  
11      business owners or farmers who, ranch owners, et cetera,  
12      who are upside down financially. They've made investments  
13      in the short term. They've borrowed a lot of money.  
14      They've bought -- you know, farm equipment can cost between  
15      500,000 and a million dollars. If they have to improve  
16      their ranch with fencing, that can cost millions of  
17      dollars.

18             If you've got a small business and they bring in a  
19      whole new software vendor program for distribution, again,  
20      the owner might put up millions dollars. And all of a  
21      sudden, he's still -- he's got a wife and kids, et cetera,  
22      adult children. Maybe they plan to join the business. He  
23      really can't afford typical life insurance, so. But they  
24      run the numbers. They see at some point in time this guy  
25      is going to come out ahead on this, so they give them a

1 non-recourse premium finance loan for his life insurance.  
2 And those are the kind of people that need it. And it's  
3 for a season.

4 The NAIC, again, a lot of debate, as you are well --  
5 the Office is well aware. They went through Committee A  
6 twice. And what was arrived at for the purposes of the  
7 NAIC in going after the signature, if will you, the  
8 fingerprint, was there was a number of exceptions included.  
9 To what? Exceptions to the five-year waiting period.  
10 You'll hear people say the five-year ban, but that's not  
11 true. It's a five-year waiting period on settling a life  
12 insurance policy procured with a non-recourse premium  
13 finance loan. And if I can think of a cool acronym for  
14 that, I'll start using it, but right now, you're going to  
15 have to listen to that same phrase over and over and over  
16 again.

17 Anyway, the exceptions are pretty straightforward.  
18 And you all could probably recite them. But I can't. I  
19 think I'm close. But I know for divorce, bankruptcy,  
20 terminal illness, substantial or substantive changes in the  
21 living -- in the life-style or the capacity for the insured  
22 to continue to benefit from that loan, those exceptions are  
23 outlined. And then what's left is just getting the policy  
24 to settle it. And that's what we would argue.

25 And so the NAIC model, without -- what the NAIC tried

1 to do is not diminish the property right enjoyed and held  
2 by the insured and recognized by the courts but put a  
3 limitation, which state law is allowed to do. The courts  
4 have said the states do have governance and interest in  
5 regulating the practice of life settlements and make the  
6 insured wait five years.

7 And it's simple logic. There's nothing magical about  
8 five years. It's just, it's a number. Investors would  
9 rather -- they'll wait two years. They might not want to  
10 wait five, particularly when you're dealing with people  
11 that are 65 and older. There's nothing magical about that  
12 number and we freely admit it.

13 So that's what the NAIC did. But the NAIC, there's  
14 other elements to it, but what the NAIC tried to do is  
15 tunnel down into these arrangements and try to get out the  
16 nuts and bolts of it. And if you cut off the supply of the  
17 dollars, you're going to cut off the supply of these  
18 manufactured policies.

19 The NCOIL took a more traditional approach. I can  
20 actually read this bill and understand it pretty well,  
21 because what the NCOIL does is define stranger owned life  
22 insurance or define, you know, policies that should not be  
23 taken out and settled and says don't do it, it's that  
24 simple, which is the more traditional approach that state  
25 legislators take. They define a practice, define it as

1 fraudulent, illegal, unlawful, give a definition to it and  
2 say don't do it.

3 Also, the NCOIL, unlike the NAIC, NCOIL does address  
4 the trust issue, again, which is accelerating in the  
5 market. It does attempt to drill down on that. And also,  
6 the NCOIL model does look at the way life insurance is  
7 promoted and marketed to the elderly, elderly people over  
8 age 65, whatever term you want to use, and that you will  
9 see advertisers marketing materials that say free insurance  
10 and it's inferred directly or indirectly that this is  
11 something you're going to buy and you're going to settle  
12 and you're going to make a lot of money in the process.

13 So the NCOIL does address the marketing and  
14 advertising related to the promotion of manufactured life  
15 policies, which I did want to mention to you.

16 Both NCOIL and NAIC both moved quickly last year  
17 because the following guiding principle of life insurance  
18 was addressed there. Life insurance should not be a  
19 financial instrument exploited for the purpose of wagering  
20 on human life.

21 Now, here's the thing. I mean, I enumerated to you  
22 briefly earlier some of the consumer harms. Well, we  
23 say -- you say consumers in the Office of Insurance  
24 Regulation. We say insureds, customers, people that either  
25 have -- hold life insurance policies or we'd like them to

1 hold life insurances polices from our members companies.  
2 So, yeah, we don't want to see harm done to consumers on  
3 this issue, but as a matter of public policy, you know, the  
4 thing that I need to emphasize here today is we are life  
5 insurance companies. And what's important to us is the  
6 life insurance franchise. There's a reason we -- life  
7 insurance benefits are tax-free. There's a reason for  
8 that, which was enumerated earlier to you. This isn't  
9 funny. This is a big deal to us. It's kind of like who we  
10 are. Yes, widows, orphans, key businessmen, et cetera.  
11 Now charities. Florida statutes has recognized you can  
12 make an assigned insurable interest a charity, but the  
13 point is is that this is no small deal. And the life  
14 insurance companies, consumer harms aside, life insurance  
15 companies cannot allow or are very alarmed at the thought  
16 that life insurance become an investment commodity. That's  
17 not what we do. And that's not how we take our product to  
18 the consumers, the customers.

19 The other thing I'll mention, and this is just  
20 subjective, this is just me talking, but, you know, you  
21 don't have headlines about, you know, rogue life insurance  
22 companies out there. There's other financial instruments  
23 that get in trouble from time to time, but the bottom line  
24 is is when people take out life insurance, they have every  
25 confidence it's going to be paid. Their life insurance is

1 going to be paid. So we don't want to see that directly or  
2 indirectly in any way be remotely jeopardized by the  
3 commoditization of life insurance as an investment vehicle.

4 You know, I'll add also that the life insurance --  
5 life settlement industry, however you want to define it,  
6 also is jeopardized by STOLI transactions. As I've said  
7 twice before and I'll say it again, the American Council of  
8 Life Insurers and other interested parties, the AALU and  
9 NAIFA, et cetera, we do not have -- we fully recognize for  
10 the purpose of public policy that life settlements,  
11 viatical settlements are legitimate and credible and should  
12 be protected in the statute. And in trying solve this  
13 problem, those instruments should not be placed in  
14 jeopardy, again, which is why -- which makes this  
15 discussion difficult because you want to get it right. You  
16 need to be careful. But I think the life settlement  
17 industry, as they've allowed in other states, is that they  
18 have a vested interest in coming up with a solution as  
19 well.

20 ACLI supports creative legislation to address the  
21 artificial manufacturing of life insurance for the profit  
22 of speculators while concurrently protecting the efficacy  
23 of life settlements as traditionally understood.

24 Hold on just a second. Very quickly, do you want me  
25 to tell you what's been happening nationwide on this issue

1 state by state? I mean not what the states have  
2 individually done but just give you a quick rundown?

3 COMMISSIONER McCARTY: Quickly.

4 MR. LEONARD: Yeah. Yeah, yeah. I'll try not to  
5 stutter or stammer.

6 COMMISSIONER McCARTY: State by state?

7 MR. LEONARD: Huh? Well, you know, I'll do my horse  
8 race call voice, okay? The NAIC model was enacted in North  
9 Dakota, Nebraska. It's pending in Illinois and it's  
10 pending in Alaska. The NCOIL model or -- you know,  
11 understood that there are tweaks and changes to the models.  
12 NCOIL was adopted in Arizona, Connecticut, Hawaii, Indiana,  
13 Kansas, Maine. It's pending in California and moving  
14 forward. It was passed by the House. The ACLI supports  
15 it. The NAIC/NCOIL hybrid, which is where legislatures try  
16 to attempt to cobble together the best elements of both  
17 NCOIL model bills --

18 COMMISSIONER McCARTY: Of course, some would say the  
19 worst of both but --

20 MR. LEONARD: Yes, sir. Yes, there is disagreement;  
21 you're right -- in Iowa, Ohio, and West Virginia. D.C. has  
22 their own variant product that's pending final  
23 consideration. Considered but not enacted was Alabama,  
24 Georgia, Louisiana, Massachusetts, Minnesota, New York,  
25 North Carolina, South Carolina, and Vermont. And what's

1 WA? Washington? Yeah. Okay.

2 And then out of the blue, it was vetoed in Rhode  
3 Island. Who knows. I don't know the story behind that.  
4 It was enacted in Rhode Island and then vetoed. So that  
5 really surprised the American Council of Life Insurers, how  
6 many states took up this issue one way or another. There  
7 was a lot of interest in this issue by regulators and  
8 legislators. I can go on and on, really.

9 COMMISSIONER MCCARTY: No. No, you lost me at  
10 Washington. Listen --

11 MR. LEONARD: You had me at hello.

12 COMMISSIONER MCCARTY: You made a comment earlier  
13 about your concern about the commoditization of the  
14 insurance products, but you have to admit that the  
15 insurance industry has been making life products more like  
16 investment products anyway. I mean, there's been a  
17 blurring of the line of banking and investments and  
18 annuities, et cetera. I mean, this isn't really a surprise  
19 since products have been moving --

20 MR. LEONARD: Frankly, I'm shocked. No, go ahead.

21 COMMISSIONER MCCARTY: But your products have been  
22 morphing more and more into products that look more like  
23 securities banking than it does in, you know -- it's not  
24 like we have a bright line anymore of just a, you know,  
25 term life product. And if there's -- in any other part of

1 the marketplace where there's an arbitrage, the market  
2 (inaudible) they figure out a way -- that was the -- so why  
3 would it be different in life insurance?

4 MR. LEONARD: Well, you know, we are dealing with the  
5 genius of the capital markets here, no question about it.  
6 And, yeah, life insurance companies and financial companies  
7 are looking at every way they can to meet the needs, the  
8 estate planning needs, the financial needs of the  
9 customers.

10 You know, what's changed in the market, you've got to  
11 remember, sometimes it gets lost in the conversation, is  
12 the infamous baby boom generation. And we've got people in  
13 their 50s, 60s, 70s, they're swelling into that age group  
14 with a lot of money and so it's forced the market to be  
15 strong and be a lot more sophisticated and aggressive in  
16 what kind of financial options they offer the insureds, the  
17 customers, the citizens.

18 The problem we've got is specifically with life  
19 insurance and that they're always has been a standard of  
20 insurable interest in all the states and the fact that you  
21 want to have people taking out life insurance and having  
22 that person continue to live. And with the artificial  
23 manufacturing of life insurance, what you have are people  
24 that are manufacturing life insurance, and they have an  
25 interest in that person dying sooner than later.

1           COMMISSIONER McCARTY: But you don't, I mean, you  
2 don't have a problem with the assignee not having an  
3 interest in the longevity of the insured.

4           MR. LEONARD: Say again.

5           COMMISSIONER McCARTY: You don't have any problem with  
6 traditional viaticals?

7           MR. LEONARD: No.

8           COMMISSIONER McCARTY: So then you don't have a  
9 problem with a stranger owning your life policy.

10          MR. LEONARD: Yeah, I think that, again --

11          COMMISSIONER McCARTY: Well --

12          MR. LEONARD: -- you know, what we're driving at is  
13 basically where we've got speculators and investors going  
14 out and finding bodies to (inaudible).

15          COMMISSIONER McCARTY: But you have a problem with the  
16 manufacturing?

17          MR. LEONARD: Yes, sir (inaudible).

18          COMMISSIONER McCARTY: But not with a stranger owning  
19 the life policy?

20          MR. LEONARD: (Indecipherable) I mean, it's been  
21 outlined by Mr. Berlin, you know, if you've got people that  
22 have had a policy for 20 or 30 years, while we might  
23 quibble on whether or not that's the best option for  
24 them --

25          COMMISSIONER McCARTY: Right, right.

1           MR. LEONARD: -- you know, an estate planner would,  
2 obviously. In some cases, it may be. But when you've got  
3 policies being originated and manufactured strictly for the  
4 purpose of selling them in two years plus one day, yeah, we  
5 have a problem with that.

6           COMMISSIONER McCARTY: Okay.

7           MR. LEONARD: Yeah, and, you know, I try not, when I  
8 talk on this, I try not to sound really moralistic about  
9 it, because I understand these are very sophisticated  
10 instruments. There's a lot of other very sophisticated  
11 financial instruments on this, but for us, you know, for us  
12 and for our purposes, this is indeed a bright line.

13          COMMISSIONER McCARTY: But just for my own personal  
14 clarification, once again, you don't have a problem with a  
15 stranger owning the life policy. The problem is the  
16 manufacturing and the victim is ultimately going to be  
17 future policy holders, I presume -- I glean from your  
18 testimony, because in some way you're going to have -- this  
19 is going to work its way, this cost will work its way and  
20 affect future policy holders with higher premiums.

21          MR. LEONARD: Yes.

22          COMMISSIONER McCARTY: Thank you.

23          MR. LEONARD: And that was mentioned earlier by  
24 Mr. Berlin so I didn't feel like it was needed to go over  
25 that again.

1 MS. DAWSON: Commissioner, I have a question. In  
2 relation to what Florida should do, you started out your  
3 presentation with we've got to do something right away or  
4 immediately.

5 MR. LEONARD: What do you expect me to say? This is a  
6 problem.

7 MS. DAWSON: What would you recommend? And briefly.

8 MR. LEONARD: What would I recommend?

9 MS. DAWSON: What would be your recommendation?

10 MR. LEONARD: You know, for the purposes of Florida  
11 law, and of course watching this issue unfold throughout  
12 the nation, I would encourage the Office of Insurance  
13 Regulation to both look at the NCOIL and NAIC models and  
14 look at the provisions related to the STOLI transactions  
15 obviously in particular but also transparency in the  
16 transactions, the marketing, all those things.

17 COMMISSIONER MCCARTY: Right.

18 MR. LEONARD: And we've got provisions in both models  
19 that we would recommend for OIR to review for consideration  
20 in the legislature, but, again, you know, we've got kind of  
21 two different things going on here. You've got NCOIL who  
22 defines it and says don't do it. But, again, this is a  
23 moving target, if you will, in that it keeps morphing.

24 But on the other hand, the NAIC kind of goes at the  
25 nuts and bolts of the gears of how this thing works and how

1 the money gets in there and changes all the ordinary  
2 incentives that you'd find in a life insurance transaction.  
3 Commissioner, do you have any other questions? I'll be  
4 glad to--

5 COMMISSIONER McCARTY: So you would advocate a hybrid  
6 approach, then, in Florida?

7 MR. LEONARD: I think that's a good place to start.

8 COMMISSIONER McCARTY: And especially since the NAIC  
9 model really doesn't address the trust issue, which is --

10 MR. LEONARD: Yes, sir.

11 MS. SENKEWICZ: (Inaudible)

12 COMMISSIONER McCARTY: Right, right, is a problem.  
13 Okay. Thank you very much for your testimony. Appreciate  
14 it.

15 MR. STOFFEL: If I could --

16 COMMISSIONER McCARTY: Sure.

17 MR. STOFFEL: Curt, I had one quick question here.  
18 Kind of sitting back and listening with respect to, you  
19 know, the state enacting legislation to prohibit these  
20 types of transactions, I was kind of curious if  
21 underwriting guidelines or practices have made their ways  
22 to your members' companies and to what extent they may be  
23 ferreting out STOLI type transactions and they're not  
24 issuing policies.

25 And also with respect to your -- if you could maybe

1 expound just a little bit with your comment about cloaking  
2 of transactions with the intent to get policies issued and  
3 not maybe disclosing full and accurate facts with respect  
4 to the policies, was that by insureds, agents, other  
5 individuals? If you could, just kind of --

6 MR. LEONARD: Well, I think when I used the cloaking,  
7 I think my reference earlier was in reference to the use of  
8 trusts to execute these transactions. So that's where some  
9 of the shielding is occurring. What was the other part?  
10 That was kind of a three-part --

11 MR. STOFFEL: Yeah, it was multi-part there. I  
12 apologize for it. The other one was with respect to, you  
13 know, without -- you know, with legislation being put  
14 forth --

15 MR. LEONARD: Right.

16 MR. STOFFEL: -- to try to address these, I was  
17 curious about your member companies undertaking  
18 underwriting practices with respect to looking at stuff and  
19 possibly not issuing a policy. I'm not aware if -- just to  
20 make a decision on whether or not to issue a policy, not  
21 rescind it, whether or not, you know, you need a statutory  
22 basis or not if that could just be in accordance with your  
23 underwriting practices and business plans.

24 MR. LEONARD: Well, the NAIC models -- excuse me --  
25 the NAIC and NCOIL models, we're talking, ACLI proper is

1 talking to regulators throughout the country. And I know  
2 the companies -- and this is all part of a matrix of  
3 efforts on the part of ACLI companies to stop these  
4 transactions -- the companies are looking at their  
5 underwriting practices and reviewing them. I know  
6 companies are trying to get approved forms for the purpose  
7 of when they're asking the proposed insured questions, as  
8 Scott Berlin mentioned earlier, I believe, where, you know,  
9 have you been approached, you know, to settle a policy,  
10 have you had a life expectancy done by a little lab down  
11 the street, you know, that's kind of a red flag, you know.

12 You know, so anyway, so, yeah, the companies, I can't  
13 speak too specifically because they all have their own way  
14 of approaching this. And of course there's limitations of  
15 what kind of information we can get from other companies  
16 due to antitrust, but all that to say we view, the member  
17 companies view NCOIL, NAIC, any other ideas, like New York  
18 or other states, D.C. are looking at this thing, as part of  
19 a larger matrix. They're doing a lot of different things  
20 to limit these transactions as best they can without  
21 unfairly penalizing somebody who's 65 years or older who'd  
22 just like to get a life insurance policy.

23 COMMISSIONER MCCARTY: We're going to take a  
24 ten-minute break. We'll resume here at 2:30. And thank  
25 you very much.

1 (Recess)

2 (Mr. Head's opening remarks were not audibly recorded)

3 MR. HEAD: -- talked about inception, manufacturing,  
4 creation. Maybe we should call it SMALL, stranger,  
5 stranger manufactured annuities for life or something like  
6 that. We have a lot of acronyms floating around here. And  
7 one of the terrible things about the dialogue nationally  
8 has been that there is confusion about stranger ownership,  
9 which is what results in, as you pointed out, Commissioner  
10 McCarty, in any settlement, a viatical settlement or a life  
11 settlement, results --

12 COMMISSIONER McCARTY: Right.

13 MR. HEAD: -- in stranger ownership and --

14 COMMISSIONER McCARTY: And we all agree that there's a  
15 legitimate purpose for viatical settlements.

16 MR. HEAD: And there's a legitimate purpose there.  
17 And so -- and everybody has agreed on that. So there's a  
18 lot of room for agreement here. I think that,  
19 unfortunately, as we've gone through the process, the  
20 benefits of the settlement market and the changing economic  
21 circumstances sometimes lead to fights between people who  
22 want to do business traditional ways and creative new  
23 approaches to markets, to serving consumers, to bringing  
24 value to consumer, to consumers in what they're buying.

25 We began in an era when there had been about five

1 years of endlessly declining life insurance sales. And we  
2 believe that part of the problem was that consumers had  
3 begun to conclude that the value wasn't there. When they  
4 realized that secondary markets might be able to assure  
5 them a value down the road, understanding of that secondary  
6 market, we believe, led to increased policy sales. And we  
7 believe that in some case there have been abuses, but  
8 essentially, increased policy sales result from an  
9 understanding by consumers of the secondary market.  
10 Institutional capital has come in to assist consumers in  
11 understanding that value that is there and to help to us  
12 buy policies.

13 There was a time when you, Commissioner, and I were  
14 first discussing some of these issues many years ago when  
15 there was a terrible problem with private investment in  
16 this industry, a problem which was sort of referred to by  
17 the testimony from the gentleman from Texas who had  
18 experience with and was concerned about what I will call  
19 the tertiary market, the subsequent investment market, but  
20 we believe that that problem has been eliminated.  
21 Securities laws are addressing it. There's no need to  
22 address it in insurance law.

23 We are interested in working with our partners in the  
24 industry, the life insurance companies and others, in  
25 stopping inappropriate issuing of life insurance policies,

1 stranger originated, stranger manufactured life insurance.  
2 But it doesn't occur in the secondary market. It occurs in  
3 another realm entirely, and that is somewhere before  
4 issuing of the policy.

5 The law is entirely clear and the insurable interest  
6 law that you recently passed has helped to clarify it. "At  
7 origin" was the term the gentleman from the Florida Bar  
8 used, the policy has insurable interest. And subsequent to  
9 that, as people suggested, the day after, people under the  
10 insurable interest law can assign the policy for value. In  
11 fact, sometimes they do it because of loan transactions  
12 related to manufacturing enterprises and other things like  
13 that. We see corporations assigning value of keyman  
14 policies to cover debts and other things like that. It's  
15 been used forever and it adds value to the life insurance  
16 product. We are totally in favor of that.

17 However, in the unique environment of Florida's  
18 viatical Settlement Law, which Bernie went over, the  
19 discussion becomes one of only doing it after two years,  
20 because we all recognize that there were some early abuses  
21 in which people were assigning policies immediately upon  
22 receiving them. And we sought to stop that. We believe  
23 that the Florida law addresses that already.

24 Now, in addition to making clear that stranger  
25 originated life insurance occurs when a speculator

1 convinces an insured to take out a policy on his or her own  
2 life as a straw purchase for the benefit of the investor,  
3 we have some other issues to address. We oppose that  
4 activity. We have long opposed that activity. And we want  
5 to be clear that we oppose that activity.

6 However, we frequently find ourselves spilling over in  
7 the rhetorical arguments into talking about the fact that  
8 the secondary market exists and that becomes the objective  
9 of the attack, not the manufacturer of policies. In fact,  
10 in some --

11 COMMISSIONER McCARTY: But you do see the potential,  
12 particularly in Florida's senior market, of potential  
13 victimization of our senior population by offers of free  
14 insurance, et cetera?

15 MR. HEAD: Yes.

16 COMMISSIONER McCARTY: Would you support making that a  
17 criminal offense?

18 MR. HEAD: I would support certainly a whole lot more  
19 clarity in what we're talking about when we're talking  
20 about free insurance --

21 COMMISSIONER McCARTY: Okay. If we're talking about  
22 misleading seniors with their financial planning, would  
23 you --

24 MR. HEAD: I'm a little reluctant to spill into  
25 criminal offenses on anything, because our jails are

1 already packed and they're very expensive, but to the  
2 degree that we can discourage such activity, I am totally  
3 with you.

4 COMMISSIONER MCCARTY: Well, I can promise you,  
5 criminalization will discourage it.

6 MR. HEAD: Yes. We also want to make sure that we  
7 understand what's really going on in the market today. The  
8 prevalent practice is for insurers and agents and sometimes  
9 with the understanding of people involved in the settlement  
10 community to work on what we call carrier-approved  
11 programs. These are programs where everybody involved is  
12 aware that there may be a settlement, that the settlement  
13 may occur under a variety of circumstances, but the  
14 controlling individual, the person in charge of the  
15 decision, is the person who obtained the policy in the  
16 first place as the original owner.

17 Now, if that person understands that there is value in  
18 his policy -- let's talk about the rancher that was talked  
19 about a little while ago that has a premium financed policy  
20 and he finds -- he says, well, I'm going to get this policy  
21 and I'm going to cover it for the first four years -- first  
22 three years because then my situation is going to turn  
23 around, what happens if that rancher happens to be a  
24 developer in Florida or an Enron stockowner in Florida who  
25 suddenly finds that their situation is not what they

1 thought it is -- it was, finds it out a year, two years,  
2 three years after they obtain the policy. And the  
3 circumstances have a way in Florida, as we know very well  
4 and as you are all too aware, we have storms, circumstances  
5 change rapidly. To use the advertising slogan of one major  
6 insurer, "Life comes at you fast." In that circumstance,  
7 people ought to have options. And so we are absolutely  
8 interested in, you know, having those options on the table.

9 There has been some talk about the NAIC model and the  
10 NCOIL model. I would suggest that the current Florida law  
11 works. It stops the activity that we all want to  
12 discourage. And we believe the insurable interest is quite  
13 clear. We think that is essentially nonexistent today.

14 COMMISSIONER MCCARTY: Is it your testimony that you  
15 don't believe there are stranger originated policies in  
16 Florida?

17 MR. HEAD: I don't -- I think there are stranger  
18 originated policies that have been issued in the past that  
19 are out there. But I don't think that there is an ongoing  
20 problem of strangers originating policies on seniors in  
21 Florida.

22 Now, what there is is a failure to understand the  
23 rights of consumers in a lot of situations. Examples are  
24 all kinds of situations where we assert to consumers that  
25 they're going to get lots of support in understanding the

1 value of their policy, but then the agents find that they  
2 can't even talk with consumers or that there's a corporate  
3 prohibition on talking with consumers about a settlement  
4 option --

5 COMMISSIONER MCCARTY: If I could demonstrate to you  
6 that there were stranger originated policies or that  
7 currently are going on, would you support some legislation  
8 to curtail that activity?

9 MR. HEAD: Yeah, and we'd want to see the details of  
10 the process, because we want the sale of policy at  
11 inception to -- under inappropriate circumstances to stop.  
12 But we don't sell life insurance. We buy --

13 COMMISSIONER MCCARTY: Okay. Well, just assume for  
14 the moment that I could demonstrate to you that there  
15 was -- we have an issuance of stranger owned -- stranger  
16 originated policy and they are being manufactured. Would  
17 you support either the NCOIL or the NAIC model to alleviate  
18 that problem? And if not, why wouldn't you support  
19 criminalizing that practice?

20 MR. HEAD: I would support the NCOIL model, which does  
21 speak to criminalizing the practice and to punishing the  
22 inappropriate practice. I can't support the NAIC model  
23 because I think it's an ill-conceived attack on broad  
24 consumer rights.

25 COMMISSIONER MCCARTY: Gotcha. Okay.

1           MR. HEAD: So our focus is going to continue to be on  
2 protecting consumer rights. There's one thing I want to  
3 mention that lots of consumers are running into and that is  
4 the fact that they cannot know of this option. We have got  
5 to do something to stop the kind of practice that scares  
6 people and discourages people from selling policies that  
7 are totally appropriate for them to sell when they have  
8 that option and when it is available to them.

9           I'm going to be fascinated by the development of the  
10 Access Plus program, which I gathered from your reaction  
11 has not yet been approved. The New York Life Access Plus  
12 program has not yet been approved in Florida. Probably  
13 because it runs into the problem of how and what consumers  
14 are able to benefit from the program, how it will work.  
15 But if it can work, it sounds an awful lot like  
16 company-generated life settlements, to me, and I'm going to  
17 have to have more education on how it differs and how it is  
18 not encompassed within the current Florida law and --

19           MS. SENKEWICZ: Well, I think one difference is the  
20 number of fingers in the pie.

21           COMMISSIONER McCARTY: (Inaudible) not profitable. I  
22 mean, what does the consumer get for the insured?

23           MR. HEAD: Pardon me?

24           COMMISSIONER McCARTY: What's the benefit of their  
25 contract if you have it on a secondary market and then it's

1 sold again and bundled and sold to investors? I mean, it  
2 seems to me, then, it would be more cost effective to do it  
3 from the insurance company.

4 MR. HEAD: well, obviously I would say that for any  
5 insured individual, if the product is so valuable as that,  
6 everybody ought to be buying a whole lot more life  
7 insurance and I would certainly encourage that. It's a  
8 great product and we want to see it come to market. And if  
9 it's valuable to us, it's valuable to consumers.

10 I would suggest that, just finally, in closing, that  
11 there is a lot of discussion about the -- in our industry  
12 about the market behavior of our friends in the life  
13 insurance industry. And I've got a package to give you at  
14 the end of the hearing where I have a lot more information  
15 on that issue as well as the issue of having consumers  
16 fully understand that life insurance is, as you said,  
17 Commissioner, more than just for the death benefit. It is  
18 an industry which has developed a whole lot of benefits  
19 that are valuable to insure the owner of the policy that go  
20 far beyond the insurance alone.

21 COMMISSIONER MCCARTY: Now, and just to make sure that  
22 I'm clear on your testimony, and I don't want to put words  
23 in your mouth --

24 MR. HEAD: Uh-huh.

25 COMMISSIONER MCCARTY: -- but if I were able to

1 demonstrate to you that we have an ongoing problem with  
2 deception of seniors or stranger originated policies, you  
3 would support the passage of the NCOIL model in Florida?

4 MR. HEAD: Working with our partners in the life  
5 insurance industry, we would support passage of something  
6 pretty close. There's been a number of clarifications to  
7 the NCOIL model.

8 COMMISSIONER MCCARTY: How close are we here,  
9 Mr. Head?

10 MR. HEAD: Well, we do think that the definition of  
11 STOLI in the NCOIL model reaches into arenas that are  
12 not appropriate.

13 COMMISSIONER MCCARTY: Okay. All right.

14 MR. HEAD: There's some tiny, little language in  
15 there. Be happy to get you revisions.

16 COMMISSIONER MCCARTY: Okay.

17 MR. HEAD: I would say that there's a great bill that  
18 we'll be happy to support, I think, in toto in California  
19 that has just passed through their assembly. And we  
20 believe it's on the way to the governor's desk or will be  
21 soon, that both the life insurers we have agreed upon, and  
22 it could probably be a model for a national agreement to  
23 address all of the issues that we've seen.

24 MR. STOFFEL: I had a quick question for you, Doug.  
25 In your opening statement, you had mentioned that you

1 support the insurable interest at the time of the inception  
2 of the policy. What -- and I'm not sure and you can maybe  
3 clarify this for me, but what, with respect -- is LISA's  
4 position or your position with the, you know, with the  
5 aspect of the NCOIL Act and the NAIC, which speak to  
6 intent, you know, you know, the intent at the time of the  
7 inception of the policy, you know, to, you know, to sell  
8 that policy?

9 MR. HEAD: We believe that it is impossible to educate  
10 consumers and provide them with information that the  
11 secondary market does exist and not have some consumers  
12 understand that they might sell a policy in a couple of  
13 years. And we think that is their right. That  
14 understanding does not mean intent. And if it is the sole  
15 intent or if the marketing materials go solely to "you're  
16 going to buy this to sell it," that is improper behavior.  
17 But an understanding of the consumer of their rights is not  
18 improper.

19 If my 87-year-old father, who approached me a few  
20 months ago and said, you know what, I think I would like to  
21 give a million dollar life insurance policy to my preferred  
22 charity, and I say, well, how would you do that. Well, I  
23 can get a loan to fund a policy to give to that charity  
24 upon my demise, and it's probable that it will be a better  
25 deal for me and a better deal for them than the other

1 assets that I might give them on my demise.

2 And, you know, that kind of informed consumer is a  
3 good customer for life insurance and a good customer  
4 because who knows what the premiums are going to be. He's  
5 still chopping wood, you know. It could be he'll live to  
6 107. But the understanding of the consumer of his options  
7 is a good thing. It doesn't mean intent.

8 COMMISSIONER MCCARTY: Okay. Thank you very much,  
9 Mr. Head.

10 MR. HEAD: Thank you.

11 MS. SENKEWICZ: Our next witness is Scott Cipinko,  
12 representing the Life Insurance Finance Association.

13 MR. CIPINKO: Good afternoon and thank you for this  
14 opportunity. For the record, I'm Scott Cipinko, executive  
15 director of the Life Insurance Finance Association. And I  
16 have to admit, I feel kind of strange talking to you about  
17 this, because we've been in the rooms together for so long  
18 and talked about all these things. So I apologize. And  
19 some of this is just basically for the record. But I  
20 grew --

21 COMMISSIONER MCCARTY: (Inaudible)

22 MR. CIPINKO: Well, yeah, okay. I grew up in the life  
23 insurance business. My dad was an agent and I was an agent  
24 and I'm still licensed but -- so I still consider myself in  
25 the life insurance business and that's why when the Life

1 Insurance Finance Association was created and I was working  
2 at the law firm and they suggested that I take over the  
3 association -- this part of the business really facilitates  
4 the purchase of life insurance. And it existed, it's  
5 existed for decades. It existed outside of anything else  
6 that has come after it. So the whole concept of the  
7 secondary market, certainly of STOLI, this pre-dated all of  
8 that. And there is a definite need -- and I want to thank  
9 the other speakers -- because I think we all agree that  
10 there is a need for this type of product because there are  
11 circumstances when people do need life insurance and  
12 frankly they can't afford it because of cash flow.

13 In my private practice, I worked on a case where a  
14 gentleman was involved in real estate. And his mother was  
15 the brains behind the operation. She was 80 years old.  
16 And he knew that if, God forbid, she were to die, he would  
17 have to hire someone to take over the business for him.  
18 And he was highly leveraged. They had tens of millions of  
19 dollars in real estate, but their cash flow was almost very  
20 little because, you know, you buy the property and then you  
21 mortgage the property and leverage the property. And  
22 frankly, they didn't have the cash to buy the life  
23 insurance policy for mom now. In that particular case, she  
24 wasn't healthy enough to buy the policy, so they weren't  
25 able to do it. But it was a situation that opened my eyes.

1 Just like with the agribank where the farmers don't have  
2 the cash flow to get the goods, but they will eventually  
3 and they pay it off at the end of harvest.

4 So our real issue is to keep this part of the  
5 industry, the facilitating part of the industry for  
6 purchase available and to make sure that people can do the  
7 things that they need to by securing the financing. And  
8 that was one of the problems that we had with the NAIC  
9 model and frankly somewhat with the NCOIL model, the  
10 concept of the, quote, unquote fingerprint. The  
11 non-recourse loan in the situation, those two situations  
12 that I just mentioned, that's not a fingerprint for  
13 anything other than the fact that these people need a  
14 non-recourse loan to buy a life insurance policy. And the  
15 issue is really cash flow for people like that. And it's  
16 also an issue of --

17 COMMISSIONER McCARTY: Why do you need a recourse loan  
18 to buy a life insurance policy?

19 MR. CIPINKO: Well, in a situation like this, what you  
20 have is you have someone who doesn't have enough money to  
21 pay, let's say, the large amount of premium on a death  
22 benefit because they don't have the cash flow. For  
23 instance, you may have to liquidate a portfolio in order to  
24 protect a portfolio. Again, it's not everybody that  
25 does --

1           COMMISSIONER McCARTY: why does it have to be  
2 non-recourse?

3           MR. CIPINKO: well, because realistically what you're  
4 talking about is just like if you buy a refrigerator, if  
5 you were to default on the refrigerator, they take the  
6 refrigerator. They don't take your house. That's a  
7 non-recourse loan. Same thing with your automobile.  
8 They're going to go after the car. They're going to take  
9 the car. It's a non-recourse loan. Banks do this all the  
10 time.

11           It's just because of the quote, unquote, fingerprint  
12 that was put on it during the NAIC hearings. No one ever  
13 thought about it that way before. There was nothing  
14 nefarious about it, and there are many other types of loans  
15 in the marketplace that are non-recourse.

16           But just in connection with the life insurance policy,  
17 no one asks why you have to get a loan to buy the  
18 refrigerator. No one asks why you need to get the loan to  
19 buy the car. They do it because they don't have the cash  
20 for it, but they have the need. And that's really why  
21 there's non-recourse loans. And all we're asking is that  
22 they remain available.

23           And the problem that we've seen is there's been a  
24 chilling effect on the market. The non-recourse loans are  
25 almost not available anymore, frankly, because not that the

1       lenders won't do it but because life insurance companies  
2       have looked at it and said there's a fingerprint. And  
3       that's a problem because there are people who legitimately  
4       cannot buy a life insurance policy because of their  
5       situation. Sometimes it's they've got -- seniors who have  
6       money that is tied up in stocks or bonds or things of  
7       longer type investment. They just don't have the cash  
8       flow. Again, it's not --

9                COMMISSIONER McCARTY: It's also a possibility that it  
10       is an indicator --

11               MR. CIPINKO: Oh, absolutely.

12               COMMISSIONER McCARTY: -- of a stranger initiated --

13               MR. CIPINKO: It can be. But let me just explain  
14       something that is lost here. Let me give you a  
15       hypothetical. A senior needs a \$10 million life insurance  
16       policy but hears about STOLI. And let me tell you the  
17       biggest, the biggest way that STOLIs have been advertised  
18       has been by the discussions of STOLI. I've heard people in  
19       my family who talk about STOLI who don't even know what  
20       life insurance is.

21               My sister every year calls me and asks me what does  
22       this mean. It's your statement. It's a universal life  
23       statement. And there are nonforfeiture values. And I've  
24       got to explain it. She talked to me about what is STOLI.  
25       How come I hear about this STOLI. I almost fell off my

1 chair.

2 But the 72-year-old person, let's say, wants, has a  
3 \$10 million need for a life insurance policy and hears  
4 about the concept of STOLI, they can very easily go to  
5 their agent, pay cash for six months or a year's worth of  
6 life insurance policy, and as soon as they get that policy  
7 in cash, they can sell it. You don't need to finance a  
8 policy to create a STOLI to buy a life insurance policy to  
9 sell it. So I guess the question is then at that point,  
10 you know, there's the issue of intent.

11 COMMISSIONER MCCARTY: Yeah, but a lot of what we're  
12 talking about is representations made to apparently  
13 well-heeled seniors, that they're getting something for  
14 nothing. They don't have to put any money out.

15 MR. CIPINKO: Right.

16 COMMISSIONER MCCARTY: And if you don't have to put  
17 any more money out, it's probably more of an indicator of a  
18 problem with the insurable interest.

19 MR. CIPINKO: And I agree with you. And I think that  
20 there -- and as I've said at the NAIC and as I said at  
21 NCOIL, you have the tools to take care of that with the  
22 Unfair Trades Practices Act and with advertising. And with  
23 underadvertising, if someone's advertising free insurance  
24 and it's not free insurance, you've already got a hammer,  
25 and I'd ask you to please use it. I'm just saying that

1 first we should do no harm. And before we do some of the  
2 things that we did, there are issues in the NAIC model.  
3 The NAIC is a camel. It's a horse by committee. It's not  
4 good. It creates more problems in the market --

5 COMMISSIONER MCCARTY: Easy. I was on that committee.

6 MR. CIPINKO: I understand. But you've heard me say  
7 that. You've heard that direct quote. It's nothing new.  
8 But by the same token, you weren't -- in a situation like  
9 that, there are problems -- although I like the NCOIL model  
10 better, there are problems with the NCOIL model as well.  
11 And certainly going forward, we look forward to working  
12 with you on that.

13 Nothing's perfect. All I'm asking that we don't kill  
14 a very important segment of the insurance industry, which  
15 this is, just like I wouldn't ask you to stop anyone from  
16 getting a car loan.

17 I just think that it's very -- you have our best  
18 practices and you have our mission statement, so I'd ask  
19 that those be put into the record and certainly to hold the  
20 record open in the event that something else comes up but  
21 I --

22 COMMISSIONER MCCARTY: We'll hold the record open.

23 MR. CIPINKO: And I do want to thank you very much for  
24 this opportunity. And I really do -- you know, I used  
25 to -- we used to call it blue badge, as a regulator, but

1 I -- you know, with the Department in Illinois. I  
2 appreciate what you did and I appreciate what you do. And  
3 I know that you're not doing anything because you hate the  
4 insurance industry or you hate the premium finance industry  
5 or you hate the settlement industry. I know you're trying  
6 to do what you think is right. And the work that you do at  
7 the NAIC, the hard work that you do, the travel you do for  
8 absolutely no pay, it's, you know -- I always say, I  
9 absolutely say this, you know what it is, it's voluntary  
10 work, except for unlike your house of worship, there is no  
11 afterlife. I mean, basically what you do is you go for the  
12 good of the party, you travel around the whole country, you  
13 stay away from family and friends, and then you still come  
14 home. And guess what the bonus is? You still have work to  
15 do. So I really appreciate it. Thank you for all the work  
16 that you do. And we may not agree, but we can agree to  
17 disagree.

18 COMMISSIONER MCCARTY: Thank you.

19 MR. CIPINKO: Okay. Thank you.

20 MS. SENKEWICZ: Thank you, Scott. Okay. The next  
21 witness is Tom Brooks of the Institutional Life Markets  
22 Association. Mr. Brooks.

23 MR. BROOKS: Thank you very much. Also known as those  
24 evil people who buy these policies or finance the purchase  
25 of these policies. Thanks very much for allowing me to

1 appear here today on behalf of the Institutional Life  
2 Markets Association. ILMA was established by a consortium  
3 of the world's leading institutional investors and  
4 intermediaries. ILMA supports appropriate regulation and  
5 legislation of the life settlement industry and has adopted  
6 guiding principles that emphasize transparency and  
7 disclosure in the life settlement industry.

8 ILMA also has adopted a life settlement transaction  
9 disclosure statement that has been adopted as an approved  
10 form by almost all states that regulate the life settlement  
11 industry. Both the guiding principles and the disclosure  
12 statement are attached to this statement for your  
13 information.

14 As you know, as we've talked about today, STOLI is a  
15 phrase or concept, no offense, that does not appear as a  
16 phrase or concept, I think, in the NAIC Viatical Model  
17 Settlements Act. During the lengthy debate over several  
18 meetings and conference calls by the NAIC Life A Committee  
19 about revisions to its act, STOLI did surface and was  
20 discussed, but the NAIC, in my view, did not address the  
21 concept known as STOLI.

22 In the final model act, there is nothing contained  
23 therein that explicitly relates to concerns about STOLI or  
24 what if anything should be done to address this concept,  
25 not withstanding the five-year waiting period and all the

1 exceptions thereto, what some would also call a ban on life  
2 settlements.

3 And I don't have it at my fingertips, but I think even  
4 the chairman of, at that time of the Life A Committee  
5 suggested that the NAIC Viatical Model Act did not address  
6 STOLI.

7 In a simultaneous tract, the National Congress of  
8 Insurance Legislators also developed a model. And like the  
9 NAIC model, NCOIL discussed and debated various proposals  
10 over a year's time and on November 16th of 2007 adopted the  
11 model act.

12 The NCOIL model does contain a definition of STOLI and  
13 a prohibition of engaging in STOLI transactions. However,  
14 the NCOIL definition of STOLI is problematic. The  
15 definition was not discussed or approved at the NCOIL Life  
16 Insurance and Financial Planning Committee when it  
17 discussed and approved the model on November 15th. The  
18 language that ultimately became part of the NCOIL model  
19 only surfaced a few minutes before the NCOIL executive  
20 committee met on the 17th to approve the NCOIL model that  
21 previously had been approved by its subcommittee.

22 Consequently, there was no time for either the  
23 interested parties or the members of the NCOIL executive  
24 committee, in my view, to properly evaluate the STOLI  
25 language that was committed at the last minute for

1 consideration by the executive committee. And because of  
2 the subsequent acknowledgment by members of the executive  
3 committee, some members of the executive committee of  
4 NCOIL, of the imperfect STOLI definition contained in the  
5 NCOIL Model Act, at least ten states have adopted or are  
6 considering adoption of a STOLI definition that does not  
7 use the definition that was contained in the NCOIL model  
8 act. There's some variations thereof, but it's not exactly  
9 the same and then some important distinctions to be had  
10 there.

11 So when we're looking at whatever it is that's STOLI  
12 or whatever we think it is, as everyone has said today, we  
13 just have to be very, very careful as to what we're talking  
14 about. And when you're drafting, from my past experience,  
15 in drafting legislation and dealing with this, you have to  
16 be explicit. "May" and "shall" are different. A comma  
17 here, a semicolon there make a big difference. Wherever  
18 you use the words "at inception," at what part of the  
19 phrase makes a big difference. And those are issues that  
20 the various states have discussed and talked about when  
21 they dealt with this definition, when they considered it in  
22 their legislations.

23 Is a STOLI definition necessary? Is it necessary to  
24 incorporate this definition in the state's viatical  
25 settlement laws? First, no law should exclude or prohibit

1 the legitimate sale of a life insurance policy by an owner  
2 to another party. And I think that has been acknowledged  
3 throughout today. It is well settled law that a life  
4 insurance policy is an asset that can be sold by an owner  
5 for a variety of reasons.

6 If an owner has purchased a life insurance policy and  
7 taken out a loan to finance the premiums, that is a  
8 legitimate financial transaction that occurs every day in  
9 this country. These types of premium finance transactions  
10 should not be prohibited by a state's life settlement or  
11 viatical settlement laws.

12 Insurers should be the first line of defense in  
13 preventing a violation of a state's insurable interest  
14 laws. They cannot not, however, reject an application just  
15 because the policy is premium financed. In the application  
16 for insurance, the carrier has broad authority to ask  
17 questions of an applicant that can ferret out any concerns  
18 as to whether the policy is for the benefit of one who has  
19 an insurable interest in the insured. In particular, if  
20 the concern over a STOLI type transaction is an issue, the  
21 carrier can delve deeply into the purpose of the  
22 application.

23 For example, if the applicant is over a certain age  
24 and the policy benefits exceed a certain amount or there is  
25 a question of whether the insurance is appropriate for the

1 applicant, these should be flags for the carrier to  
2 investigate the application further. And if the carrier  
3 determines that the application contains false statements  
4 or that certain laws have been violated, like insurable  
5 interest, by the applicant in the application process, the  
6 carrier can and should deny the application initially or  
7 within the two-year contestability period if such  
8 violations are subsequently revealed.

9 COMMISSIONER MCCARTY: Can I ask you a question? Is  
10 premium financing one of the flags they can look at?

11 MR. BROOKS: They can but not as much as others  
12 because banks, small banks, community banks, providers,  
13 premium finance agencies in New York and other states where  
14 they're specifically regulated do this all the time, and it  
15 is a common financial practice.

16 COMMISSIONER MCCARTY: Okay.

17 MR. BROOKS: If the definition of STOLI is adopted as  
18 part of Florida's viatical settlement law, it should not  
19 prevent premium financed arrangements to facilitate the  
20 acquisition of insurance by the applicant. And likewise,  
21 an insurable interest need not exist, as was stated by  
22 Mr. Gans earlier today, after the inception date of the  
23 coverage under an insurance contract in accordance with  
24 Florida insurable insurance law in order to ensure that the  
25 consumer has an unfettered right to sell his property, his

1 policy, in accordance with state law. Thank you. I'd be  
2 happy to answer any questions you might have.

3 COMMISSIONER MCCARTY: Any questions? Thank you.  
4 Mr. Brooks. Appreciate it.

5 MR. BROOKS: Thank you very much.

6 MS. SENKEWICZ: Thank you. Our next scheduled witness  
7 is Don A. Brown, the immediate past president of the  
8 Florida Association of Insurance and Financial Advisors.

9 MR. BROWN: Good afternoon. I do have to admit I'm a  
10 little nervous, about as nervous as a cat by a sushi bar.

11 MS. SENKEWICZ: We're not that bad.

12 MR. BROWN: I typically speak to families or small  
13 business owners so to speak in front of this group is --

14 COMMISSIONER MCCARTY: Just consider us part of the  
15 family.

16 MR. BROWN: Part of the family. Thank you,  
17 Commissioner. And I really do appreciate the opportunity  
18 to speak. My name is Don Brown. I'm a third generation  
19 life insurance professional. Immediate past president, as  
20 she had mentioned, of the Florida Association of Insurance  
21 and Financial Advisors, now known as NAIFA-Florida.  
22 NAIFA-Florida is an association of agents who sells primary  
23 life and health insurance policies around the state of  
24 Florida. I am here representing our members. And I'm also  
25 here as a concerned citizen.

1 I'm speaking today in regards to STOLI, SPIN, IOLI, or  
2 any other name that this new creation has. And I'm here  
3 not to speak about premium financing. I'm not here to  
4 speak about life settlements. Because in the right place,  
5 done properly, they can benefit people, just like life  
6 insurance can. But I'm hear to talk when people use it for  
7 ulterior purposes and with the wrong intent. And STOLI at  
8 that point can do more harm than good.

9 As an insurance agent, I know that my job is to visit  
10 and help families to protect their livelihood, to keep a  
11 roof over their head, food on the table, and the families  
12 in their own world when a parent dies. I work with  
13 business owners to ensure that those businesses have  
14 continuity after their death. I also help people with  
15 their estate tax planning liabilities so that the families  
16 can keep what they've worked so hard to build and pay the  
17 taxes as well.

18 Insurable interest in life insurance policies is  
19 something that I feel should be held scared. There's no  
20 reason why a life insurance contract should become a  
21 wagering tool, as it does with STOLI, SPIN, or what other  
22 names we can use.

23 I want to read something that was in a recent -- or I  
24 recently read from a Palm Beach Post article. And it was  
25 talking about STOLI. The statement says this: South

1 Florida is a gold mine for the new insurance investment  
2 market because of its large population of wealthy senior  
3 citizens who no longer need life insurance policies or who  
4 are willing to have one purchased on them for profit.

5 That person was talking about profit to the agent who  
6 made the commission on the sale, made a commission on the  
7 secondary sale, and then of course those investors and the  
8 life settlement companies when the person dies.

9 First off, I've never known a death benefit or life  
10 insurance to be an investment. I was taught early on that  
11 life insurance was not an investment. It was a protection  
12 vehicle with an investment element. And I feel that that  
13 is an important issue to remember.

14 Knowing life insurance is a financial tool that serves  
15 the public good and is designed to indemnify families and  
16 businesses for economic loss at the death of a mom or dad  
17 or of a business owner and life insurance allows those left  
18 behind to continue living in their own world and in the  
19 comfort that they have known, I feel that it's important  
20 that the insurable interest be protected.

21 I know firsthand. My brother-in-law at the age of 45  
22 passed away. My sister was able to raise her three  
23 children. They went to college and now have their own  
24 careers and have also bought life insurance. My sister  
25 didn't have to depend on anyone financially. And her kids

1 were well protected. My brother-in-law purchased the life  
2 insurance for the right reasons and it worked.

3 This is what life insurance is supposed to do. It's  
4 for people that need it, not for profit, not for wagering  
5 on the life of another or a stranger. And maybe wagering  
6 is not a good word. It's a sure bet that the insured will  
7 die sooner than later.

8 I believe that STOLI is a harm and is a harmful  
9 contract to our insurance profession. If allowed, it will  
10 knock the very foundation of the insurance contract and the  
11 concept of insurable interest. If we allow human life to  
12 become a commodity, why not allow other insurance contracts  
13 to be commodities too. Why not allow people to buy or  
14 purchase excess coverage on properties of others as a  
15 profit tool, not for if the property burns but when it  
16 burns.

17 And the question that we have to ask ourselves, if we  
18 lived in a home that was insured by some stranger that  
19 would profit from it, how well would we sleep at night?  
20 And that's a real concern.

21 There are many unknowns about STOLI. And I mean the  
22 originated, not the investor owned, because that's the real  
23 deal, is where a policy has been originated for the purpose  
24 of being settled at a future date. What concerns me is  
25 what the gentleman said in the Palm Beach Post, insurance

1 investment --

2 COMMISSIONER MCCARTY: But don't you think there are  
3 investment components to life insurance policies? What  
4 about a whole life policy?

5 MR. BROWN: A whole life policy has a value element in  
6 it, but it's not the sole purpose for a person to buy it.  
7 The purpose of life insurance first and utmost, at least  
8 the way I was taught by my father, is protection first and  
9 accumulation second. That's how I was taught.

10 COMMISSIONER MCCARTY: Okay.

11 MR. BROWN: If Congress -- one of the concerns that I  
12 have is with the words investment. And the last thing we  
13 want is the federal government looking at all insurance,  
14 life insurance as an investment. If Congress did this --  
15 and I can tell you, just on cash value alone, there's over  
16 \$1.5 trillion in cash value. Now, the number on death  
17 benefit is substantially more than that. If they look, and  
18 they have, the Taxation Commission looked at it, and they  
19 didn't consider it tax-deferred buildup. They considered  
20 it lost revenue. Now, how much would they consider lost  
21 revenue of death benefits of insurance policies if they do  
22 consider them as an investment? The taxes would be huge.  
23 The possibility of my brother-in-law having the policy that  
24 he did might not have existed.

25 Someone spoke earlier of the lapses that policies are

1 designed with. And that's designed to keep premiums down.  
2 And if these things are allowed to grow, premiums will  
3 increase. And what good is that.

4 There are other dangers to the senior citizens. The  
5 loans can be taxable. They could have an additional need  
6 for life insurance and go to buy life insurance and find  
7 out that they don't have the capacity for life insurance.  
8 It's a big issue. It's a big issue.

9 As I prepared this, I reviewed my client files. And  
10 it's not only my clients but my father and my uncle. Like  
11 I said, third generation, over a hundred years in the  
12 business. I reviewed how many clients I have that have  
13 access insurance available or capacity available. And I  
14 could tell you I could be a wealthy man if greed were my  
15 motivation.

16 However, I was taught by my father that life insurance  
17 is not a commodity and people are not commodities. The  
18 purpose of life insurance is to keep families in their own  
19 world and without financial worries and it's not a tool for  
20 profit.

21 Please do not weaken the insurable interest in life  
22 insurance for the greed of a few and the detriment of  
23 public good. I thank you again for the opportunity to  
24 speak before you on this very important issue. Thank you.

25 COMMISSIONER McCARTY: Just for my own clarification,

1 so you're not opposed to stranger owned, it's just stranger  
2 originated?

3 MR. BROWN: Well, when you say that, it --  
4 unfortunately, in our side of the table or in our business,  
5 stranger owned insurance would be that, would be originated  
6 for the purpose of being sold afterwards --

7 COMMISSIONER McCARTY: But you see there's a need or  
8 there was a need or clearly was a market demand over time  
9 for the ability for people to viaticate their contracts.

10 MR. BROWN: Oh, absolutely. And I'm glad you  
11 mentioned that, because, I'm trying to think, you know,  
12 when the AIDS epidemic was at an all-time high --

13 COMMISSIONER McCARTY: And the insurance industry was  
14 not very responsive.

15 MR. BROWN: And I will tell you what had happened. I  
16 got a call from employees of a certain company that the  
17 company provided them life insurance. And they said, you  
18 know, we know we have a privilege to convert these  
19 policies. And I said, yes, you do. But we'd been in  
20 contact with this gentleman. And they gave me the name of  
21 the gentleman. And he is buying these policies from me.  
22 Well, of course I started shaking like a leaf, because I  
23 said what is this, you know. It was something relatively  
24 new to me.

25 I called our company and they researched it. And the

1 company said this is a legitimate thing. These people were  
2 ill. They had no beneficiaries to leave their money to.  
3 They took the money that this gentleman was willing to pay  
4 for their policies to try to make themselves better.

5 So I see that there is a legitimate use for that type  
6 of thing. What I can't see is originating a policy and 25  
7 months after it's been originated to be sold for greed.  
8 And that's the bottom line.

9 Life settlements have a purpose. If I was a business  
10 owner and I sold my business and I didn't need the  
11 insurance to protect that business, I should have the right  
12 to be able to sell that to someone but not to speculate and  
13 not to set it up as a speculation tool so that others can  
14 become wealthy at the cost of everyone in this room,  
15 because whoever needs insurance in this room will  
16 eventually pay if this isn't controlled and kept, you know,  
17 within limits.

18 COMMISSIONER MCCARTY: Would you support legislation  
19 with regard to STOLI?

20 MR. BROWN: Our association supports the NAIC model.  
21 And that's the thing. We feel that that is the best one.  
22 I could tell you that when you asked the gentleman of New  
23 York Life what the companies are doing, last week I took an  
24 application with one of the companies. I looked the other  
25 day on the insurance department to see how many companies I

1 was licensed with and it's quite a few.

2 But I took an application with a company. And there  
3 were six or seven questions -- I wish I would have brought  
4 it -- six or seven questions, that if a person did what  
5 they're supposed to, the company would know if this was  
6 going to be sold after two years. They would know.

7 COMMISSIONER MCCARTY: Unless you make  
8 misrepresentations.

9 MR. BROWN: Unless the agent makes misrepresentations.  
10 There are questions as to intent of the agent, the intent  
11 of the consumer, any knowledge that there is a potential to  
12 do this and also if there's financing. And if there's  
13 financing, what's the interest rate. Who's financing it.  
14 And one of the things that I loved in this questionnaire  
15 was is there anyone else evaluating your health risk.  
16 Because that's another consideration for these STOLI things  
17 to be effective, if the person is --

18 COMMISSIONER MCCARTY: If an agent --

19 MR. BROWN: -- marginally healthy.

20 COMMISSIONER MCCARTY: If an agent makes factual  
21 misrepresentations to an insurance company for the purpose  
22 of issuing the policy, would you favor criminalizing that  
23 activity?

24 MR. BROWN: It depends on to what degree. You know  
25 that when the annuity situation came up, we worked hard to

1 maintain what we thought was a pretty good thing with some  
2 severe penalties. Unfortunately, we didn't get to where we  
3 wanted to as an association. We don't want bad actors in  
4 our business.

5 You know, as far as this gentleman saying that he  
6 doesn't know of any these activities going on, open your  
7 eyes because these things are happening. I hate to say  
8 that. When life settlement companies are rejecting 60  
9 percent of what's being sent to them, it's going on. You  
10 know, if you don't want to open your eyes to it, it's a sad  
11 statement. But at the end of the day, the ones that are  
12 going to pay the price is everyone else, the people that  
13 most need insurance.

14 MS. DAWSON: You mentioned -- I have a question if  
15 you're --

16 COMMISSIONER McCARTY: Certainly.

17 MS. DAWSON: -- Commissioner. You mentioned that  
18 there's greed involved.

19 MR. BROWN: Absolutely.

20 MS. DAWSON: And surely the amount of the commissions  
21 that are paid to the agents for engaging in these  
22 transaction are quite large.

23 MR. BROWN: Absolutely.

24 MS. DAWSON: In fact, I'm aware of a lawsuit in South  
25 Florida where there are five policies involved. And the

1 total, the face value of the policies is 73 million. So  
2 we're not dealing with a small amount of money.

3 MR. BROWN: Right, they're not.

4 MS. DAWSON: So for five policies you've got a face  
5 value of 73 million. The commission, the commission for  
6 three individuals that were involved in these transactions,  
7 and it's a STOLI-related or STOLI-originated issue,  
8 stranger originated issue life insurance, the total  
9 commission was \$2.8 million for five policies. So in light  
10 of the huge number -- the huge amount of the commissions,  
11 would you be supportive of legislation that limited or  
12 totally nullified the commissions in the stranger  
13 originated life insurance context?

14 MR. BROWN: I'll tell you, and this is the position  
15 our association holds, and it's not to get involved in  
16 commission issues. It's something that --

17 COMMISSIONER McCARTY: That's probably healthy for  
18 you.

19 MR. BROWN: Yeah. We're not a union. We're a  
20 federation. So to get involved in situations of commission  
21 contracts is not right. But I'm kind of shocked that the  
22 commission was as little as you mentioned.

23 MS. DAWSON: Really?

24 MR. BROWN: Yes.

25 MS. DAWSON: Wow.

1           MR. BROWN: With that amount of death benefit, I can  
2 only assume that the premiums would be sizable. Surprised  
3 the commission was as little as you mentioned.

4           MS. DAWSON: Well, some people would consider \$2.8  
5 million --

6           MR. BROWN: And I do, too. I'd be out on my boat if  
7 that were the case. But, again, I've made the decision  
8 that I'm a public servant in what I do for my living. And  
9 I'd hate to see that be eroded by the greed of people  
10 wanting to get rich on a peripherally -- a peripheral idea.  
11 Let's leave it at that. Thank you again for --

12           COMMISSIONER McCARTY: Thank you very much.  
13 Appreciate your testimony.

14           MS. SENKEWICZ: Our next witness is Bob Rubin,  
15 American Association of Life Underwriters.

16           COMMISSIONER McCARTY: Hello, Mr. Rubin.

17           MR. RUBIN: How are you, sir?

18           COMMISSIONER McCARTY: Doing well, thank you.

19           MR. RUBIN: I'd like to correct the record first.  
20 It's the Association for Advanced Life Underwriting.

21           MS. SENKEWICZ: Sorry.

22           MR. RUBIN: That's okay. It's written down here  
23 wrong. It's not a big deal.

24           I was going to not deviate from my remarks, my  
25 prepared remarks, but there's been a lot of stuff said

1 here, so I'm just going to do it a little bit throughout,  
2 but I was told to talk about what's going on in the  
3 trenches and what's really going on in the marketplace. So  
4 I'm going to do that.

5 But my name is Bob Rubin. I'm the senior vice  
6 president and insurance advisor with Wachovia Insurance  
7 Services. But I'm not here representing the bank. I'm  
8 here representing AALU. I've been in this business since  
9 1985. I've lived in South Florida for over 35 years. I've  
10 been an active member of AALU for many, many years. And  
11 I've been very involved in this STOLI debate.

12 And I think over the past ten years or so, with  
13 Wachovia, I've placed billions of dollars of face amount of  
14 insurance for all the right reasons. I've never  
15 participated in a STOLI transaction. I mentioned I almost  
16 did once. And, you know, as I said, we do the insurance  
17 for the right reasons.

18 But as a producer in South Florida working within the  
19 environment that I work within, I get calls from other  
20 advisors regularly as to a potential STOLI transaction.  
21 And I decided to sort of write out exactly what happens.  
22 And so you'll hear this.

23 Someone -- without exception, the calls generally go  
24 like this. Someone at the country club, church, or out for  
25 dinner approached me about a deal in which I get free

1 insurance -- they always say that, free insurance -- money  
2 either up front or in two years, generally guaranteed in  
3 one form or another, and all I have to do is take a medical  
4 exam and sign some papers.

5 Now, I should put a little context in this in that  
6 generally it's another advisor's client, whether it's  
7 somebody at the bank or outside, and asking me to talk to  
8 these people because they're interested in doing this and  
9 will I try to talk them out of it. That's the context in  
10 which this generally happens.

11 The gentleman generally says I really want to do this  
12 deal, but since my advisor wasn't so sure about it, he  
13 wanted me to talk to you since you're the expert. Okay.  
14 They then run through the deal. I've generally heard it  
15 before. Usually it's some sort of variance in the free  
16 insurance scheme, sometimes as a charitable event,  
17 sometimes it doesn't. In the last couple years, it's  
18 gotten more convoluted as they make it -- just shroud it  
19 and hide what the real true purpose of it is.

20 I then generally run through the reasons why they  
21 wouldn't shouldn't do the deal: Breaking insurable interest  
22 laws, possibly committing fraud, discharge of debt issues,  
23 overall tax, federal tax issues, signing documents they do  
24 not understand. They generally want me to read them and  
25 then give them advice as to what they should do.

1 I tell them I'm not an attorney. They should probably  
2 hire an attorney. It would be a pretty good idea. That  
3 just generally doesn't happen, unfortunately. The  
4 conversation generally spirals downward into that I'm too  
5 conservative. I don't offer this type of product or  
6 I don't like it for whatever reason. So at this point,  
7 greed generally takes over and they'll make a greedy,  
8 emotional decision and rationalize it later.

9 As an aside, I stopped taking these calls about a year  
10 ago. I just couldn't handle it anymore. You talk about --

11 COMMISSIONER MCCARTY: Can you quantify how many of  
12 these you've had --

13 MR. RUBIN: These calls? I used to get them monthly.  
14 I haven't done any in the last year. I just, I stopped  
15 taking them. It wasn't worth it. I have --

16 COMMISSIONER MCCARTY: The emotional distress of it  
17 all.

18 MR. RUBIN: No, because it's the same outcome. I  
19 mean, what I was going to go to next as far that I am the  
20 victim in this.

21 COMMISSIONER MCCARTY: Right.

22 MR. RUBIN: And I have a very close friend of mine  
23 who's a very well known, nationally known estate planning  
24 attorney in South Florida, lectures nationally, actually,  
25 internationally, and lot of estate planning attorneys are

1 brought in to look at these transactions. And they then  
2 will bring up basic liability themselves as they opine on  
3 these transactions. He has stopped doing it. He just will  
4 not even talk them anymore. He's just sick of it. There's  
5 so many people in the marketplace. To say that it's not  
6 going on anymore is just not true. I mean, we're just  
7 tired --

8 COMMISSIONER MCCARTY: That's the point I'm trying to  
9 get to.

10 MR. RUBIN: We're tired of this stuff. It's just  
11 ridiculous. As a legitimate producer, I'm in competition  
12 every day with producers in the marketplace. I'm a  
13 capitalist, all right, but -- competition is good, but  
14 there must be a level playing field. I'm the victim here.  
15 You talk about victims. And I don't practice victimology  
16 or anything, but when I'm presenting a sale, the most  
17 difficult part of my job is explaining or justifying the  
18 cost. What I must do, I have to explain the value versus  
19 the cost. Well, if my competitor is offering so-called  
20 free insurance, how can I compete against that? You can't  
21 do that.

22 So the STOLI promoters and producers hoodwink and  
23 convince consumers that they're not just receiving life  
24 insurance, but they're also taking care of their estate  
25 planning needs. This is extremely offensive to me. There

1 are many problems with this issue, and I'll try to cover as  
2 many as I can.

3 The first fallacy is that the thing is free. We've  
4 talked a lot about that today so I'm not going to go into a  
5 lot of detail, but it was also my -- it was my  
6 understanding that we as agents are not allowed to say that  
7 insurance is free, period.

8 COMMISSIONER MCCARTY: That is correct.

9 MR. RUBIN: Okay. So, I mean, I remember -- I took my  
10 test in '85, but I still think I remember that.

11 MS. DAWSON: It's still the law.

12 COMMISSIONER MCCARTY: Just as true today as it was in  
13 1985.

14 MR. RUBIN: Okay. Well, I've never spoken to a  
15 consumer and I've never heard a promoter talk about this  
16 that it wasn't described as free, so without an exception  
17 on that. And I'm offended by that. I just am. And I'm in  
18 this marketplace every day.

19 Now because of the pressure that everybody is being  
20 put on it, they hide it, obscu -- I can't even say the  
21 word. They complicate it. They just make things -- they  
22 have all these different levels in there, but they're just  
23 hiding the same thing at the end of the day. They've added  
24 items such as a letter of credit, which doesn't cost  
25 anything, by the way. And as working for a bank, we charge

1 for letters of LCs. Partial refundable collateral or some  
2 other type subterfuge. They use terms such as the consumer  
3 having skin in the game when in reality the consumer  
4 doesn't. He does not have skin in the game.

5 They talked about non-recourse loans. Well, again,  
6 I'm not a banker, but I sit next to bankers and I have for  
7 over ten years now. And banks generally are not going to  
8 loan money to somebody without any ability to get that  
9 money back with some sort of collateral, whether it's a  
10 line of -- whether it's your personal guarantee. So when  
11 we talk about what's true non-recourse, true, true  
12 non-recourse means there's absolutely no way for that  
13 lending institution to get back what they lended out.

14 well, in this case, non-recourse, what everybody talks  
15 as non-recourse, so we're clear on it, the recourse is just  
16 the insurance policy. It's not their house. It's not a  
17 car. It's not anything else but the ability for that  
18 lending institution to get back that policy. Well, if --  
19 well, would you guys do non-recourse loans if they don't  
20 have the ability to get back the insurance policy? It's a  
21 question you might want to ask.

22 You know, it's funny, I've done a few general, regular  
23 premium financed transactions. They generally are somewhat  
24 difficult to do because as you go -- as you incur a debt  
25 and the interest starts accumulating and the person lives

1 too long, at some point in time, the cost of the interest  
2 is greater than the premium that you otherwise would have  
3 bought if you didn't have the finance in place. So the  
4 person has to be very old and you have to the right set of  
5 circumstances for a traditional premium financed  
6 transaction to work.

7 So now they're saying, well, there's more and more  
8 premium finance. But premium finance didn't exist until  
9 the life settlement business came in the market. Until it  
10 did, it wasn't there. I mean, you saw a little bit of it.  
11 But now?

12 Second, and this is the part that is tough for me, the  
13 consumer thinks that he's taking care of his estate  
14 planning, business succession plan, or accomplished some  
15 sort of estate planning or estate equalization to benefit  
16 his children or his grandchildren, whatever the traditional  
17 estate planning might be.

18 The reality in most cases is exactly the opposite  
19 because usually the insured lives more than the two years  
20 and the consumer might or might not end up with some moneys  
21 as a result of doing the transaction, that is what it is,  
22 but he now has a significant life insurance policy on his  
23 life, usually up to the maximum allowed or more than the  
24 maximum allowed by a particular life insurance company's  
25 financial underwriting guidelines.

1           Since he has now used up his capacity, his insurance  
2 capacity, he'll be hard-pressed to purchase any more life  
3 insurance that will truly benefit his family for whatever  
4 the future circumstances might dictate.

5           To continue the subterfuge, a trust is generally set  
6 up with him as the insured, a trust as generally the owner.  
7 His children or grandchildren are the beneficiaries of the  
8 trust for a period of time. He's signed a lot of  
9 important-looking papers. He's taken a medical exam. A  
10 life insurance policy is issued. Representations were made  
11 through the process as to how this is good for the family.  
12 He thinks everything is taken care of. Okay.

13           Now, I can tell you, I do complicated estate planning  
14 cases. It's a year-long process. It's not that simple of  
15 a process. The client is putting his trust in you that  
16 you're doing the right thing for him, you know, taking care  
17 of his family. You know, he's taking a lot of things --  
18 "He's just going to do the right thing," and that's just  
19 not always happening.

20           Tax issues are glossed over. Most of the time these  
21 deals involve quite a bit of premium to be paid up front.  
22 Since the premium is borrowed, a substantial debt is  
23 unsecured. Since it's a non-recourse type of finance, what  
24 happens in two years when the policy is sold or given up or  
25 whatever and that debt is discharged? I'm not a CPA, but

1 is that a discharge of debt issue? That's something for  
2 you guys to answer.

3 Since a lot of these deals have in the past involved  
4 money up front, a lot of those deals you don't really see  
5 that much, but I still hear of them in the country club  
6 communities. They're still being talked about. So the  
7 deals that are involving money directly up front or in the  
8 back end, isn't that a potential violation of our rebate  
9 laws.

10 In these agreements that are signed by the consumer,  
11 there are generally language that indemnifies the promoter,  
12 funder, and or agent, generally it's sometimes not the  
13 agent, from any liabilities. I can assure you that most  
14 people who sign these documents don't have any idea that  
15 this language is present.

16 And these transactions, agents, unethical agents, I'm  
17 going to say that, unethical agents, complete the  
18 application for the consumer, who generally sign a blank  
19 application.

20 Now, I will say I've been doing this a lot of years,  
21 and life insurance companies, the application process is  
22 very difficult sometimes. I mean, I have trouble sometimes  
23 filling out an application. There's a lot of things on an  
24 application that should be left blank. And how is the  
25 consumer ever going to know whether it should be or

1 shouldn't. And I understand that. So in all fairness to  
2 the consumer, I see why he would be a little confused  
3 there.

4 But the agent should know. And the agent should know  
5 the truthful answers on the -- I'm sorry. The agent will  
6 know that if he puts truthful answers on these  
7 applications, the policy will generally not be issued by  
8 the life insurance company. We've heard that today. And  
9 in order to make these deals larger, \$73 million, and more  
10 profitable for all involved, the client including, fudging  
11 of the numbers regarding net worth is generally done.  
12 We've all heard about this. I mean, there's lots of  
13 lawsuits about that.

14 This kind of inaccurate incompleteness of the  
15 application puts the consumer at risk of answering the  
16 questions dishonestly and subjecting themselves to  
17 allegations of fraud, misrepresentation, or what would be  
18 really hard would be the rescission of the policy. And I  
19 know that companies don't like to rescind policies. They  
20 don't want to hurt the policy holders, but we're going down  
21 that road. We're already hearing about that.

22 The rescission of the policy should be the one issue  
23 that should really scare the consumer from never going near  
24 one of these transactions. Assume for a minute that the  
25 policy is rescinded. Big debt was incurred. The consumer

1 received some money up front. He signed an indemnification  
2 clause. And further assume the life insurance company  
3 rescinds the policy. It wants the commissions it paid  
4 back, that same commission that was used to make the deal  
5 work in the first place.

6 Guess who wants to be made whole? The promoter.  
7 Guess where they're going to try to get their money back,  
8 besides obviously the agent? The consumer. He signed an  
9 indemnification to make whole if something goes wrong.  
10 This is not a good place for the average consumer to be.  
11 And as a side note, the agent that sold the policy is in a  
12 pickle also.

13 I mean, I've recently heard testimony -- not testimony  
14 but a presentation from Giuliani's, from an attorney at  
15 Giuliani's from AALU this spring that described what  
16 happens when these policies, when they start the rescision.  
17 I don't want to be anywhere near anything like. It was a  
18 pretty ugly scenario. You lose your E&O coverage. It's  
19 all sorts of bad stuff.

20 However, I must admit that once, a few years back, on  
21 behalf of a very good client, I seriously explored a STOLI  
22 transaction, even taking applications and having the client  
23 take the medical exam. During a part of the process I was  
24 rationalizing to myself that this was good for the client.  
25 There was also a charitable angle to this particular

1 transaction because -- so I further rationalized how it's  
2 helping a charity, a local hospital.

3 At the end of the day, I decided, along with the  
4 client, that the transaction just wasn't right. It just  
5 didn't pass the smell test. I'm not a lawyer. I'm not an  
6 actuary. But when you do something for a long time, you  
7 say this just isn't right. The only people who were  
8 winning were the promoter and myself. I would have made  
9 almost a million dollars in that transaction. And I just  
10 walked away from it.

11 The truth is, that if there was not a high commission  
12 on these transactions, they would go away. As you've heard  
13 today, there are many risks that producers took in  
14 promoting, performing, and effectuating these transactions,  
15 and I hear in the field a lot of them are now worried.

16 I haven't even spent any time on the unintended --  
17 none of us have spent any time on the unintended  
18 consequences. It's just a couple we should know about.  
19 We've talked about driving up the cost of insurance for  
20 everyone. Additional paperwork that must be completed  
21 during the underwriting process, it's getting brutal. I  
22 mean, the paperwork that we have to fill out is out of  
23 control. There is significant additional time in the  
24 underwriting process. When you guys talk about rooting out  
25 potential deals, well, that takes time. So now the

1 underwriting process doesn't take a week. It takes a  
2 month.

3 MS. DAWSON: Do you do monitoring after the  
4 application is -- after the policy is issued as well during  
5 that two-year period?

6 MR. RUBIN: Do I do it? Or does the company do it?

7 MS. DAWSON: Does the company do it.

8 MR. RUBIN: I hear yes, but I would have nothing to do  
9 with that.

10 MS. DAWSON: Okay. Okay. I thought you knew.

11 MR. RUBIN: Well, I hear stuff, but I don't have it  
12 firsthand.

13 COMMISSIONER MCCARTY: He has no personal knowledge.

14 MR. RUBIN: Right. Thank you, Commissioner. It's  
15 also reducing the availability of life insurance of people  
16 over the age of 70. There's less companies that are  
17 offering them. And the ones that are, they're charging  
18 more for it, making it harder to get.

19 COMMISSIONER MCCARTY: So you're saying it's already  
20 affected the price?

21 MR. RUBIN: Oh, yeah. Everybody reprices their  
22 products. I mean, company always reprice products, but  
23 they generally used to go down. Now they go up. You know,  
24 it's one of the few times that insurance costs have  
25 actually gone up.

1           It's added difficulty in servicing our clients'  
2 policies because insurance companies -- when we service a  
3 policy, a lot of times we'll order what's called an in  
4 force illustration. I don't know if you've ever heard of  
5 an in force illustration. Well, if you go to any of the  
6 major companies and a lot of the minor companies, you used  
7 to be able to get an in force illustration in a day. And  
8 sometimes you have to run four or five or six to figure out  
9 what you want to do to service it. Some companies now take  
10 three or four weeks to get in force illustrations. Well,  
11 that's hurting us. That's hurting the consumer. Because  
12 the consumer wants to know what's going on and I can't  
13 service the policy for him.

14           These transaction are generally not good for the  
15 consumer, the insurance companies, and the honest agents.  
16 I am not an expert on how to actually fix the issue, so if  
17 you're going to ask me about NCOIL or you're going to ask  
18 me about NAIC, I'm going to say, Commissioner McCarty, all  
19 that great work you do and traveling without pay and all  
20 that great stuff, thank you for doing that. So you all are  
21 going to have to figure that out. So I'm going leave it to  
22 the lawyers and I'm going to leave it to everybody to  
23 figure it out, but I'm just telling you that I feel very --  
24 what's that?

25           COMMISSIONER MCCARTY: I was just going to say, that's

1           how we got into this mess to begin with, we left it to the  
2           lawyers.

3           MR. RUBIN: Well, we won't quote Shakespeare, now,  
4           okay? I feel very good about how life insurance is used  
5           for legitimate purposes to help citizens and businesses of  
6           our great state of Florida. I feel that with your help,  
7           this problem could be put to rest. And I thank you for  
8           your time.

9           COMMISSIONER MCCARTY: Very well done. Any questions?  
10          Thank you for those very insightful comments. I do want  
11          to, just for the record, establish that while Florida, I  
12          voted for the NCOIL model, it wasn't -- I will admit  
13          readily that it's less than perfect -- excuse me. The NAIC  
14          model, not the NCOIL model. And so we supported it because  
15          we believed it was the best product that was going to be  
16          able to be generated at that time and thought it was  
17          important to get something out.

18          But we will certainly stipulate that there's a better  
19          camel out there, I guess, but -- and I looked -- there are  
20          elements obviously with the NAIC model, particularly the  
21          fact that it doesn't even address the issue of trusts.  
22          There's a big gaping hole in this -- as this, you know,  
23          marketplace evolves and, you know, so that a number of  
24          transactions that would not even be addressed. So we would  
25          certainly, when we do address this, if we decide to address

1 this issue, we would certainly want to look at the best  
2 practices approach across the country to ensure that our  
3 seniors particularly are protected.

4 The integrity of the issuance of policies and the  
5 importance of the life insurance market, we agree that even  
6 though you didn't say nice things about us traveling around  
7 the country, we agree that life insurance is a critical  
8 part of the family planning and the financial planning for  
9 Florida families. And we want to protect the integrity of  
10 that process. Okay.

11 MS. SENKEWICZ: Thank you. Our last scheduled witness  
12 before we get to the speaker cards is James Marshall, also  
13 representing AALU.

14 COMMISSIONER MCCARTY: Are you a committed capitalist  
15 too?

16 (Inaudible comments and laughter)

17 MR. JONES: I'm a strong supporter of the free  
18 enterprise system, of course.

19 (Inaudible comments)

20 MR. JONES: For the record, I'm Marshall Jones,  
21 J-O-N-E-S. My uncle is James Marshall. And my mother's  
22 maiden name is Marshall.

23 MS. SENKEWICZ: I apologize. Your name was given to  
24 me by --

25 MR. JONES: Given to you verbally. I understand. And

1 Curt and I just met today. I'm a member of AALU and  
2 because of that, I was contacted, perhaps because I helped  
3 write an article about stranger owned life insurance that  
4 appeared in Estate Planning magazine, it will be in your  
5 handout, I coauthored it with an attorney named Steve  
6 Weinberg out of Philadelphia. And the question was free  
7 life insurance, risks and costs of non-recourse premium  
8 financing. And that article was out of date almost as soon  
9 as it was published. There have been so many variations of  
10 stranger owned life insurance that we can't keep up with  
11 them.

12 And what Florida needs and what the other state  
13 insurance departments need is a champion to help protect  
14 seniors from stranger premium financing.

15 I'm a supporter of life settlements. We use life  
16 settlements routinely when our clients reach the point  
17 where they can no longer afford their insurance, no longer  
18 need their insurance, or simply no longer want their  
19 insurance. There's no point in canceling a policy when you  
20 can get a higher value.

21 And the concern that I have was identified the first  
22 time that I participated in a life last settlement,  
23 approximately 2003. We identified three purchasers of the  
24 policy. And this, I believe, was before Florida instituted  
25 its current guidelines to have only qualified institutional

1 life settlement providers. But back then, it was kind of a  
2 wild west. Anybody could sell a policy.

3 And we found a consultant who monitored the policies  
4 after they were issued. And his job was to call the  
5 doctor's office, get to know the nurse on a first-name  
6 basis, and know when the person in her 70s or 80s went to  
7 the doctor and contact the doctor's office afterwards and  
8 say, well, how did Mary's exam go. Oh, she's going great.  
9 well, that's too bad.

10 But this person was a very objective person and he  
11 asked who our quotes were from. And he, it turned out that  
12 he already had all the information on our client. And he  
13 told us her life expectancy. And we said, well, the best  
14 offer is from this company. And he says I wouldn't take  
15 that offer. I said why not. He says, well, they'll buy  
16 your client's policy, but they don't have enough funding.  
17 Their profit then comes in selling your policy to others,  
18 and they sell them to individuals. And some of those  
19 individuals have been known, in my opinion, this was his  
20 opinion, to have connection to drug uses. We thought -- I  
21 mean drug cartels. We thought this was pretty amazing, but  
22 we decided, but we decided to accept it as realistic.

23 April of 2007, Miami District Court revealed that  
24 Columbian drug money is being laundered through life  
25 settlements. And in your handouts, I've included an

1 article on money laundering that discusses that and other  
2 examples of money laundering that have been discovered with  
3 life settlements.

4 So I applaud what Florida is doing to make certain  
5 that life settlements are done through institutions that  
6 protect the confidentiality of the insured and that the  
7 persons monitoring the policies in those institutions have  
8 no financial incentive other than to -- in the person's  
9 demise.

10 I had some prepared remarks. And they are over there  
11 in that. And rather than going through those prepared  
12 remarks, if you want to scan through them at any point  
13 afterward or during while I'm talking to see if I've missed  
14 anything, but this whole thing reminds a little bit of my  
15 favorite uncle from Tennessee. I grew up in Ohio and moved  
16 here 25 years ago. I was the city kid who to go to the  
17 farm once a year.

18 And my uncle Jack didn't finish high school, but he  
19 was a smart man. And he would watch the prices of beef on  
20 the trading. He ordered the wall street Journal and  
21 studied it. And when beef prices were going to be up, in  
22 his opinion, he would buy calfs and feed those calfs for a  
23 couple of years and then harvest them, lead them to  
24 slaughter.

25 what's happening with seniors is that they are being

1 enticed to let a stranger premium financing group buy, help  
2 them buy a policy so that two years later they become just  
3 another investment for a hedge fund or for a group of  
4 investors. And it's just the wrong thing to do, to have  
5 what I call stranger premium financing, which I consider to  
6 be totally different from traditional premium financing.

7 Kevin asked a question early on, he said is the use of  
8 a trust an alternative to life insurance premium  
9 financing -- I mean to life settlements. It's not an  
10 alternative so much to premium financing as to life  
11 settlements.

12 In your handout, you'll see where I've blocked out the  
13 name of the individual from Florida, Florida agent, but  
14 this Florida agent, you'll find copies of letters where  
15 they wrote checks from the agency to the 73-year-old man,  
16 provided letters and said, here's \$200 to reimburse you for  
17 the cost of making a \$200 gift to the new trust that we've  
18 written for you, so that the insurance company will think  
19 that you've bought this for estate planning purposes.  
20 Another letter says, here's a check for \$3,100. Please  
21 deposit it and write your personal check to the trust  
22 company, so it will look like you paid for the trust to be  
23 prepared when actually the lender, the stranger premium  
24 finance lender, had the trust prepared. You'll find a  
25 letter in there that says I guarantee you that if you will

1 accept this policy at closing, meaning when you buy the  
2 policy, we will immediately purchase it from you for 3  
3 percent of the face amount.

4 COMMISSIONER McCARTY: How did you get possession of  
5 these documents?

6 MR. JONES: Well, because I have a law degree but  
7 don't practice law, I'm just an over-educated insurance  
8 agent, I'm retained on a routine basis by estate planning  
9 attorneys. When the clients come to them and say, I've got  
10 this stack of documents, I'm qualified to buy a \$3 million  
11 policy, and I get free insurance for two years, it seems  
12 like a great deal, what do you think, and the attorney has  
13 no clue and so they hire me on an attorney/client privilege  
14 basis to review these documents and advise them.

15 And to my knowledge, most of the time, the clients  
16 decide not to do it, primarily -- not because it's a good  
17 deal. It's a great deal for them because they do get free  
18 insurance. They are playing a lottery game and they're  
19 assuming that they won't get caught. And until recently,  
20 it was like rolling at a roulette table except you'd win 99  
21 times out of a hundred. Today maybe you're going to win  
22 maybe 70 times out of a hundred or 60 times out of a  
23 hundred. The odds are getting slimmer, but they're still  
24 very much in favor of the stranger financier getting away  
25 with it. So that's how I ended up reviewing these

1 contracts.

2 So the client went to a seminar. And you'll see a  
3 copy of the seminar materials. And the outline says this  
4 is an opportunity to take advantage of your hidden asset,  
5 your unused insurance capacity. And if it's going to be  
6 held at a, you know, at the retirement home, they'll say,  
7 you don't want to buy any more life insurance, do you. And  
8 the answer of course is no because people who grew up in  
9 the great depression didn't have money for life insurance.  
10 And now that they're older, they just want to, you know,  
11 get by. They don't want to buy more life insurance. So  
12 you don't want to buy insurance, but we have a deal for  
13 you. We'll pay you to buy it. We'll even give you free  
14 insurance. Then you can sell it two years later and you  
15 get to split the profits with us.

16 But increasingly, life settlements are not the  
17 ultimate result of these transactions. A huge percentage  
18 of these policies are being purchased with loans where the  
19 lender hopes that the client will default on the loan so  
20 that at the end of two years, they've got a loan of 500,000  
21 or 2 million that's funded this policy. Because it's very  
22 expensive to fund a \$5 million or \$10 million policy on a  
23 75- or 85-year-old person. So they've got a \$2 million  
24 loan out there. And they were promised that they'd make a  
25 \$400,000 or \$500,000 profit. So they go back to the agent

1 that sold them the policy and the agent goes to the life  
2 settlement market and the offer comes in at 1.5 million.  
3 Now they've got a problem maybe because they owe two  
4 million. They never planned on having to keep the loan  
5 going, pay interest, refinance, pay off the note. Their  
6 only option is death, premature death, which will repay the  
7 note, or sell the policy for profit.

8 In all of the approved programs, I believe that these  
9 approved programs where the insured supposedly has skin in  
10 the game are really disguised non-recourse loans. They are  
11 disguised as stranger premium financing programs where  
12 there's really no risk. And here's how it works. The  
13 client is ready to sell the policy for 2 million and keep  
14 or share the profit with everything above 2 million and  
15 discovers he's only getting a million and a half. And he  
16 signs a personal guarantee that says I owe \$500,000 if I  
17 walk -- if I, just, you know, if I can't come up with the  
18 money to pay it back, the 25 percent liability on that 2  
19 million.

20 well, in the materials, you'll see I quote an agent's  
21 e-mail to an attorney where he says we will -- you don't  
22 have to worry about the 25 percent guarantee. You have not  
23 posted any collateral. We've relied on the life expectancy  
24 value of the policy for collateral. We believe the life  
25 expectancy value will be always be greater than the loan

1 balance. But if we're wrong and you get out two years from  
2 now and we make a request for collateral because the life  
3 settlement market has gone soft because of all the bad  
4 deals going through it, if the life settlement market has  
5 gone soft and you cannot sell your policy for a profit and  
6 we ask you to post collateral, read paragraph X and it will  
7 say that you have 30 days to post collateral. Just ignore  
8 the request for collateral. That will trigger an event of  
9 default. We will then take the policy ownership in full  
10 satisfaction of your obligation. You will never have to  
11 post collateral if you don't want to.

12 And so the client says I get two years of free  
13 insurance. I get the expectation of selling my policy for  
14 a profit. But if I can't sell it for a profit, I can still  
15 walk away even though I've tricked the insurance company  
16 into thinking I'm liable for 25 percent of the debt. That  
17 is the situation we're running into now.

18 So the stranger premium financing deals are hoping the  
19 client will default so that they can become the owners and  
20 not have to purchase the policy for its fair market value  
21 through a life settlement. Okay? They're getting it at  
22 huge discount when you default.

23 And the notes, the example that I was talking about  
24 for the seminar was attended by over 200 people. The  
25 outline says one in two will qualify. It's probably more

1 like three out of ten will qualify for the program, because  
2 the stranger premium finance programs are designed to game  
3 the system.

4 If Susan, who obviously is not 75 years old, if Susan  
5 had a slight health issue that would cause her to -- the  
6 life expectancy people to think that she might die  
7 prematurely but we can find, we can shop your policy to 20  
8 companies and get some company to come in and say, oh,  
9 okay, she's preferred, now we can game the system. We get  
10 the very lowest cost life insurance, and we'll fund it from  
11 a financier that expects you to die prematurely.

12 And so the policies that go through this stranger  
13 premium finance programs are policies where the insurance  
14 companies are almost guaranteed to lose, and the ultimate  
15 funders, the hedge funds, the institutions in Europe or  
16 Southeast Asia or somewhere in the United States, they're  
17 the ones that are going to profit, and the cost is going to  
18 be passed on to the average American.

19 And as Bob Rubin mentioned, the average cost of life  
20 insurance for the policies over the age of 70 has gone up  
21 five to seven percent since 2003. I've been in the  
22 insurance business since 1973. Life insurance costs  
23 historically have gone down because of improved mortality,  
24 because of improved efficiencies of administration, because  
25 of variable life products that allow you to realize a

1 hundred percent of the net profit on the investments. Life  
2 insurance costs are going up for seniors because it's just  
3 impossible for the insurance companies to keep track of the  
4 newest deal on the street.

5 So use of a trust as an alternative? Yeah, they're  
6 using a trust and they're selling the beneficial interest.  
7 If my attorney's client had taken the recommendation, he  
8 would have sat down with the agent. The agent would have  
9 said here's your \$3 million AXA policy, which I described  
10 in the note. Here's our check for \$90,000, 3 percent of 3  
11 million, payable to you. We're buying the beneficial  
12 interest in your trust. AXA -- if he had gone through with  
13 this deal, he would have walked away with 90,000. The  
14 stranger investors would have written a check for the  
15 initial premium to the trust, and the trust would have sent  
16 a check in to AXA. AXA would have thought that the  
17 client's family insurance trust was the owner of the  
18 policy. And 20 years from now or ten years from now when  
19 he died, they would have paid the death benefit to the  
20 trust thinking that they were helping a family.

21 The client walked away because he had a wife with --  
22 who was in excellent health and he did want not to saddle  
23 her with the risk of litigation and the cost and stress of  
24 litigation after his death by his fraud. So he decided to  
25 walk away. He said all of my friends are telling me I'm an

1 idiot to do this. He said there were over 200 at this  
2 seminar in Florida. We were treated to a lovely dinner and  
3 theater, and a theater engagement afterward, and almost all  
4 of my friends signed the paperwork to see if we qualified.  
5 And everybody that qualified is going through with the  
6 deal. Tell me why I shouldn't go through with it also.  
7 And he decided not to because he wanted to protect his wife  
8 from the risk of litigation when the insurance company says  
9 this was a fraudulent act. It was -- a policy was void ab  
10 initio, void from the beginning. There's no two-year  
11 contestability period if there was never a life insurance  
12 contract. And the paper trail is so clear that the  
13 insurance company should not pay the death benefit if they  
14 can discover it. But that then undermines our trust in the  
15 insurance industry.

16 When Bob or I or Don or any agents sells a life  
17 insurance policy, all of our lives we said we're not like  
18 health insurance. We're not like property casualty  
19 insurance. It's very simple. Tell the truth. Buy the  
20 policy. Don't commit suicide within two years. And after  
21 that you don't have to worry about them questioning your  
22 intent. You don't have to worry. When you die, we'll make  
23 sure the money is there. And if they delay it for a few  
24 weeks, you're going to get interest on your money until you  
25 receive it.

1           If you have put it on the situation and say catch us  
2 if you can, it doesn't help. You're only going to catch a  
3 few. Five policies. Big deal. I'm talking about weekly  
4 seminars with hundreds of people. And that's just one  
5 producer group. This thing is a monster. And each monster  
6 has a thousand tentacles. There are agents out there who  
7 are on the "do not issue" list in different states because  
8 they are known to be so closely associated with stranger  
9 premium financing.

10           So what they do is they will get a local agent.  
11 They'll go to an industry meeting and then they'll host a  
12 dinner. And they'll say, man, we can provide the funding.  
13 You just provide the people and we'll show you how to make  
14 millions. And it's very tempting.

15           The agents then put themselves on the application.  
16 They're the front agent. They get a hundred percent of  
17 commission. That's what the insurance company thinks.  
18 They're the ones that are coached, coached in how to trick  
19 the insurance company. They're the ones that are then  
20 taught how to coach the senior person to lie on the  
21 application. See, now, we don't want you to lie, but we're  
22 going to have to coach you, because if you tell them  
23 everything, they're not going to issue the policy.

24           (Indecipherable) I would love to sell non-recourse  
25 premium financing, because if I can go to a bank and borrow

1           it at 8 percent and I can go to premium financing and  
2           borrow it at 8 percent, it's wonderful if I don't have to  
3           pay it back, right? If I run into a problem, I won't have  
4           to pay it back. Just walk away. But every time I've  
5           looked at one of these deals, I found it's impossible to  
6           sell the policy without lying. The agent has to lie and  
7           the client has to lie. The seniors don't think they're  
8           lying. They're just omitting material omission. The  
9           seniors don't realize that one-third of the way or  
10          two-thirds of the way through that stack of closing  
11          documents is an indemnification provision. Okay.

12                     For my 73-year-old client who attended that seminar,  
13           he was indemnifying the promoter, the lender, the agent,  
14           the trust company for any material omission or misstatement  
15           that he made. And he's not smart enough to know all of the  
16           things that might be treated as fraudulent. He just thinks  
17           he's getting a little bit of, you know, something that's a  
18           good deal. And he's been assured that after two years  
19           there's no risk.

20                     And you were asking earlier, what about following up  
21           after the policy is issued. In many cases it's so  
22           difficult to track it down, and if you do identify it after  
23           the two years, now what are your chances? The stranger  
24           premium financing companies, these stranger investors, are  
25           in a win, no lose situation. They co-opt seniors into

1 committing fraud. They insulate themselves from liability  
2 by being two or three persons removed. If the fraud  
3 succeeds, they make a huge profit because, remember,  
4 they've gamed the system. If the fraud gets detected after  
5 the fact, the insurance company is required to return all  
6 the premiums to them. They don't lose. They either win  
7 big or they don't lose. So it's bad deal. It's just a bad  
8 deal.

9 One of the things that I would really encourage is if  
10 we have a Florida champion the way that they went in and  
11 shut down these Ponzi scheme of the Mutual Benefits Life  
12 Settlement Association --

13 COMMISSIONER MCCARTY: That was us.

14 MR. JONES: That's exactly right. That's the sort of  
15 thing, in my opinion, that's the sort of thing that should  
16 be aggressively pursued, because what we want to do is we  
17 want to cut off the head, not cut off a tentacle. If you  
18 cancel one agent, they're going to have two more appointed  
19 next week. So if you cut off the head, you would go to the  
20 person that you identify who is suddenly doing huge amounts  
21 of insurance. Maybe it's a law firm that sends out the  
22 letter announcing that they're partnering with an insurance  
23 group to help you sell your unused insurance company. You  
24 secure their records and you trace the e-mail back to where  
25 is the funder. Then you found out who do they write the

1 policies with. Then you identify the agents. Then you go  
2 back through that trail. But cut off the head of the  
3 supplier.

4 Intent, it's such a tough thing to do. A five-year  
5 lookback provision goes after the supplier, not the dealer  
6 on the street, because the five-year lookback provision  
7 makes it too risky to offer non-recourse premium financing  
8 when this 75-year-old person has a life expectancy of less  
9 than ten years. It's too risky. They just won't do it.  
10 You won't have the rancher getting a non-recourse loan when  
11 the rules say that you have to wait five years if you don't  
12 post any collateral, you bought it with the probability of  
13 your going to sell is it.

14 If I have a 72-year-old client who cannot afford a  
15 \$10 million policy, chances are we'll find a way to get him  
16 a term insurance policy. That's protection. Nobody in his  
17 right mind with financial problems should be buying a  
18 permanent policy when they're in their 70s if they don't  
19 have the money to pay for it.

20 The exit strategy for these premium financing,  
21 stranger premium financing deals is death, death or turn it  
22 over to the investors. Traditional premium financing  
23 always has a good exit strategy. And traditional premium  
24 financing is the right thing to do. And if you pass a good  
25 law that tries to shut down the bad stranger premium

1 financing, then if there's a good business purpose for  
2 having non-recourse loans, they will reappear and the  
3 insurance companies will say fine because they're  
4 comfortable that the policies are being bought for the  
5 right purposes.

6 COMMISSIONER MCCARTY: That was very compelling  
7 testimony. We greatly appreciate you taking time and  
8 sharing that with us, your information with us. Questions?

9 MS. DAWSON: I do have a question. Regarding some of  
10 the workshops or the seminars that you discussed --

11 MR. JONES: Uh-huh.

12 MS. DAWSON: -- I don't know if you attended or if you  
13 just heard from others who have attended, but my question  
14 is the target. Is the target the high net worth seniors  
15 that we've been hearing about who are coaxed into buying  
16 these multi million dollar policies, or is the focus  
17 starting to shift away from the high net worth to maybe,  
18 you know, somewhat rich but not quite in the million-dollar  
19 range?

20 MR. JONES: It's always been anybody that can issue a  
21 policy, anybody over the age of 70 that can issue a policy.  
22 And what you're seeing, what you see visibly above the  
23 surface are the so-called legitimate deals where the target  
24 is the higher net worth person, where the approved plan  
25 gets issued because they think they're buying it for estate

1 planning, but the real intent is to sell the policy two  
2 years from now.

3 There's always, even from the very beginning, there  
4 have been the undercurrent of agents who find the premium  
5 financing source of non-recourse financing. And then  
6 they're going to get any warm body that they can use to  
7 apply for the insurance. My friend Steve Weinberg told me  
8 that he did use Google Earth to see where the  
9 multimillionaire lived in South Florida who's the insured  
10 in one of the suits that's been recently filed. And so he  
11 looked up the lawsuit and he Googled Earth on this person.  
12 The person lives in a trailer park with rusted out RV's.  
13 He doesn't own the trailer park. He lives in it.

14 Four years ago, the Labelle (sp.) case, where the  
15 person that was a Florida resident, retired from New York,  
16 that man had a net worth of about \$150,000 and the agents  
17 lied on the application and got \$10 million of insurance  
18 issued on his life. It's not -- it's always been any warm  
19 body they can approved by some groups. And then the  
20 legitimate groups are trying to protect themselves from  
21 liability by not directly lying. They want to coax the  
22 senior into doing the lying for them.

23 MS. DAWSON: Okay. Thank you.

24 COMMISSIONER MCCARTY: So are you supporting the  
25 particular legislation --

1           MR. JONES: I forgot to tell you, yes, I am. I'm  
2 supporting the five-year type lookback. I think that's an  
3 excellent way to help cut off supply rather than focusing  
4 on trying to catch as you can, because with a five-year  
5 lookback, if you put strong legislation in force then shift  
6 the burden to the insurance companies and say, okay, guys,  
7 now it's your job, similar to where if I defraud you out of  
8 a million dollars and then over the next couple of years I  
9 start shifting my assets into asset-protected  
10 circumstances, and now three or four years from now you  
11 discover I defrauded you, Florida says I have the burden of  
12 proof to show that I did that for legitimate purposes as a  
13 presumption, a rebuttable presumption I was attempting to  
14 defraud you.

15           I think that same five-year lookback should apply when  
16 stranger premium financing circumstances exist. And I do  
17 agree in criminalizing, a hundred percent, because, I tell  
18 you why, 2.3 million, that would be many years' income for  
19 me.

20           MS. DAWSON: 2.8, actually.

21           MR. JONES: 2.8 million. Big deal. All right. That  
22 would be multiple my annual income.

23           MS. SENKEWICZ: (Inaudible)

24           COMMISSIONER MCCARTY: Many, many, many years for me.

25           MR. JONES: But if you catch the agent and terminate

1 the agent, he'll still have his three houses and his jet.  
2 One of my former friends or associates got involved in this  
3 stuff, knew that there was no errors and omissions  
4 insurance when he got sued. Built up a \$5 million defense  
5 fund. Criminal penalties would be great.

6 COMMISSIONER McCARTY: Do you think the -- what about  
7 addressing the issue of the trusts and in the NAIC model?

8 MR. JONES: I don't -- I haven't read the model --

9 COMMISSIONER McCARTY: Maybe we can work with you on  
10 that. Thank you very much again. Appreciate it.

11 MS. SENKEWICZ: Thank you, Commissioner. That  
12 concludes our prepared presentations. We do have a few  
13 speakers cards. In the interest of time, since we're past  
14 our appointed hour, I would ask that the statements be  
15 brief. Traci Kratish, do you wish to speak?

16 MS. KRATISH: Thank you. Traci Kratish, general  
17 counsel of Cambridge Financing Company, one of the premium  
18 finance companies in the state.

19 Commissioner, earlier you asked Mr. Leonard if there  
20 was ever a legitimate purpose to premium financing. And  
21 I'd like to address that now. I think we all know the  
22 obvious purposes behind premium financing. It prevents an  
23 insured from having to liquidate assets, change estate  
24 planning, impair their financial condition and of course it  
25 fuels an industry of insurers, agents, and lenders.

1           But I think the most important distinction is that  
2           between legitimate financing company and illegitimate and  
3           stealth financing companies. I obviously consider  
4           ourselves to be a legitimate financing company. We are a  
5           recourse program, but we stay away from any non-recourse  
6           deals. We work in conjunction with carriers and have  
7           probably the most approved carrier program around --

8           COMMISSIONER McCARTY: You premium finance life  
9           insurance policies?

10          MS. KRATISH: Yes, sir.

11          MS. SENKEWICZ: In Florida?

12          COMMISSIONER McCARTY: In Florida?

13          MS. CRADDISH: Not in Florida. Our parent company is  
14          in Florida, but we have premium financed outside of Florida  
15          and are of course always looking to move into Florida.

16          COMMISSIONER McCARTY: So you're not premium financing  
17          in Florida?

18          MS. KRATISH: Not currently in Florida.

19          COMMISSIONER McCARTY: Are you financing these  
20          transactions and not using a premium finance company?

21          MS. KRATISH: Only using a premium financing company.

22          COMMISSIONER McCARTY: All right. So you're not doing  
23          any transactions in Florida?

24          MS. KRATISH: Correct. We believe the key in the  
25          premium financing industry is education, educating the

1 public and educating the agents about the best practices in  
2 the industry. We only do business with agents who have  
3 attended our school on premium financing or have sat  
4 through an in depth telephone or webinar seminar conference  
5 on how to premium finance. We've turned away business. We  
6 only maybe finance 25 percent of what comes in the door.  
7 No policy is financed without a personal call from myself  
8 or my associate counsel. And we actually have covered bad  
9 deals being sold out there by the agents.

10 We work with the carriers on numerous occasions. We  
11 disclose to carriers that a deal was sold as a stealth  
12 plan. We've terminated relationships with agents and we've  
13 refused to finance business.

14 With regard to having skin in the game, our program is  
15 one of the few where the client does have skin in the game.  
16 We've collected on the additional collateral that's been  
17 posted. And we will continue to collect on the additional  
18 collateral that's been posted in the future in the event  
19 that the loan is not paid in full at the end of the term.

20 We're not a program that this is something for  
21 nothing. When you're looking for a red flag, I would urge  
22 you not to look at premium financing as the only red flag.  
23 If you regulate the premium financing agency, the only  
24 companies that are going to comply are going to be  
25 legitimate ones like us. We are going to continue to have

1 the stealth deals and those deals that fail to disclose on  
2 the carrier application that they are, in fact, premium  
3 financing. And I would you urge to seek out ways to locate  
4 and identify those deals. Thank you.

5 COMMISSIONER McCARTY: Thank you.

6 MS. SENKEWICZ: Justin Erikson? Is Mr. Erikson here,  
7 wish to testify? Bonnie Bashon (sp.)

8 MS. BASHON: (Inaudible)

9 MS. SENKEWICZ: Thank you, Bonnie. Joy Ryan?

10 MR. RYAN: Commissioner, members of the panel, I'm Joy  
11 Ryan on behalf of MetLife, the largest life insurer in the  
12 United States based on life insurance in force. I would  
13 like to add for the hearing record that MetLife shares the  
14 comments of New York Life and ACLI stated earlier. MetLife  
15 serves as the co-chair of the ACLI task force on stranger  
16 owned life insurance.

17 MetLife commends the office for holding this hearing  
18 and conducting fact-finding regarding the abuse of  
19 insurance practices such as strange originated life  
20 insurance, or STOLI. MetLife has participated in the  
21 national debate over the development of both the NAIC and  
22 the NCOIL models as well as state legislative hearings  
23 across the country.

24 They are most concerned about the danger to consumers  
25 by the STOLI arrangements. For example, the sale of life a

1 insurance is a taxable transaction, a fact of which the  
2 insured may not understand or be aware of. There could be  
3 negative tax treatment of life insurance if these types of  
4 transactions are allowed to continue.

5 In addition, there are limits on the amount of life  
6 insurance a person can take out on themselves, and  
7 consumers may not be aware that participating in these  
8 types of arrangements may exhaust their life insurance  
9 purchasing capability and for their own insurability.

10 MetLife shares the concerns among state regulators  
11 that the emerging practice of STOLI poses a real and  
12 growing threat to consumers. And we look forward to  
13 working with you to preserve the value of life insurance as  
14 a family safety net and financial planning tool. Thank you  
15 for the opportunity to speak to you.

16 COMMISSIONER McCARTY: Thank you, Ms. Ryan.

17 (Inaudible comments)

18 MS. SENKEWICZ: Thank you. For those of you who did  
19 testify, if you had written comments that you have not yet  
20 submitted to the Office, I would encourage you to do so and  
21 anyone else who would like to submit written comments for  
22 the record. On the agenda, it does list Bernie's e-mail at  
23 the address at the office as the person to whom to submit.  
24 And the record will be kept open until September 28th.  
25 Thank you.

1           COMMISSIONER MCCARTY: Before we conclude, I'm going  
2 to ask Mr. Leonard, if you don't mind, we've -- first of  
3 all, thank you for suggesting we host this hearing. I  
4 think it's been very beneficial.

5           MR. LEONARD: Thank you, Commissioner. One comment I  
6 wanted to make, some members of the audience were a little  
7 mystified when life settlements representatives suggested  
8 there weren't any problems in Florida under current law as  
9 it relates to what I'll call STOLI transactions.

10           I've been involved in this debate and discussion in  
11 four different states and of course in D.C. with ACLI  
12 headquarters. And I think what they're referring to, and  
13 I'll explain why, what they're referring to is a problem at  
14 procurement, at what we call the nanosecond, the inception  
15 of the policy, that the person who is taking insurance  
16 contract at inception does, in fact, have insurable  
17 interest.

18           What we're all trying to get at is practice, scheme,  
19 intent. So when they said, well, we're not so sure about  
20 the NCOIL definition word for word. Other people said we  
21 have concerns about commas and it's all very important,  
22 prepositions, what they're talking about, I ran into this  
23 very conversation in North Carolina, was they tried to  
24 denude the NCOIL definition of the language that  
25 contemplates a scheme, a practice, phraseology such as

1 written or a verbal understanding directly or indirectly  
2 procured by a third party.

3 So when they talk about, and I just wanted this on the  
4 record, when they talk about having problems, minor  
5 problems with the NCOIL definition, what they're talking  
6 about is the broadening of the discussion and for the  
7 purposes of governing these transactions, they're trying to  
8 drill it all the way back to the inception, the nanosecond  
9 when the policy is taken out, which of course is already,  
10 would be a violation in insurable interest.

11 That's why a life settlement company representative  
12 last year in South Carolina with a straight face could tell  
13 the committee you already have law that prohibits this from  
14 taking place. what he was talking about was South  
15 Carolina's insurable interest law at inception. The whole  
16 point of this conversation and the reason the NAIC and  
17 NCOIL had to go at this is because these transactions are  
18 being shape, cobbled together, and devised to skirt the  
19 insurable interest law by having a verbal, written,  
20 directly or indirectly, an arrangement, a practice, a  
21 series of acts where that policy is understood to be  
22 settled or transferred ownership after two years.

23 COMMISSIONER McCARTY: Thank you, Mr. Leonard. That  
24 concludes our testimony today.

25 MR. HEAD: (Inaudible)

1           COMMISSIONER McCARTY: I know. I apologize. I  
2 shouldn't have -- we're not debating the issues here today.  
3 If you want to add, augment the record --

4           MR. HEAD: If he's going to cite what I --

5           COMMISSIONER McCARTY: Listen, listen, we're not,  
6 Mr. Head, we're not going get into this debate. If you  
7 want to go ahead and add it to the record, it will be added  
8 to the record.

9           MR. HEAD: We'll add it to the record.

10          COMMISSIONER McCARTY: Okay. Because we'll just have  
11 an ongoing debate. Again, I want to thank everything for  
12 taking time, particularly our capitalist friends who had to  
13 travel from South Florida and take time out of their busy  
14 schedules. But your testimony was compelling. I thank all  
15 of the contributors and again invite you to send additional  
16 comments for the record.

17          And I apologize, Mr. Head. I did not mean to cut you  
18 off, but I will. I thought we were just going to have some  
19 concluding remarks with regard to the issue and didn't mean  
20 to precipitate a debate. And I will promise you ample  
21 opportunity to augment the record. Thank you, sir.

22          (Hearing concludes)

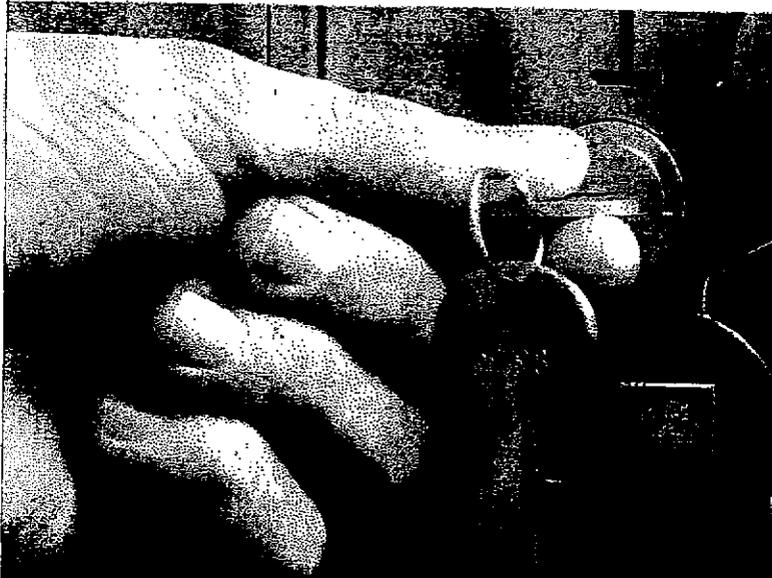
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# **APPENDIX II**

From the Wednesday, Oct. 15, 2008, Palm Beach Post

A black and white photograph of a hand holding a key. The hand is positioned on the left side of the frame, with the index finger pointing towards the right. The key is held between the thumb and index finger. The background is dark and textured.

Unlock the value of  
your life insurance.

[ EVEN IF YOU DON'T HAVE ANY ]

## FREE Premium Financed Life Insurance & Life Settlement Conference

**Tuesday, October 21, 11 a.m. – 1 p.m.**  
Ruth's Chris Steakhouse, Palm Beach Gardens

Qualified participants include anyone aged 70 years or older,  
with a net worth of at least \$3 million OR a life insurance policy.

Complimentary lunch will be served.

Reservations are required and seating is limited.

### Find out how you can:

Buy a life insurance policy with **NO**  
out-of-pocket costs

Sell your life insurance policy for up to 20%  
or more of the face value

Greatly reduce your current life insurance costs

Donate to charity without using your own money

Get more than the cash value for your unwanted  
life insurance

Date: March 14, 2008  
To: Dinner Guest  
From: CLU, ChFC, AEP  
Re: Non-Recourse Life Insurance Premium Finance

---

There is much opportunity in the non-recourse premium finance life insurance market. Below is a brief summary of the transaction. I am also enclosing our brochure which contains an insert describing these programs.

There are several programs currently available with slightly different qualifications and terms. The target age range is 68-83, with late 70s working best. The general idea of all the programs is to finance a life insurance policy on you and/or your spouse. After two years, you would sell the policy to a life settlement company for a profit, unless, of course, you chose to keep the insurance for your own personal needs.

As an example, with one of the most popular programs, an Irrevocable Trust is created (no cost) to purchase a policy from XYZ Life Insurance Company. A loan is made from the lending organization to your trust to fund the insurance policy. The loan is made on a non-recourse basis with only the life insurance policy serving as collateral. A lien is taken against the policy after funding in the form of a collateral assignment.

At the end of two years the insured has the option to:

- ◆ Take over the policy personally by paying off the loan amount
- ◆ Have us broker the sale of the policy on the secondary market on their behalf. Once the policy is sold, the loan plus interest is repaid and the remaining profits are paid to you, although a few of the programs split the profits after loan fees.
- ◆ If the insured dies during the initial two years, the outstanding principal plus accrued interest is simply repaid out of the death benefit and the remaining death benefit goes to the insured's trust income tax free and potentially estate tax free, depending on the ownership of the trust.

There are several reasons why a life settlement funder has an interest in purchasing a life insurance policy for more than the underlying policy cash surrender values. First,

the life settlement funder views the policy differently than just its cash value. The funder is viewing the transaction more from the perspective of a bond maturing (the death benefit). So the funder is almost always willing to pay substantially more than the cash value. Because of this, the lending organization is almost always in a position to be able to recoup their premiums and interest and therefore not need to rely on a more traditional recourse financing arrangement of cash values plus other collateral. Based on their analysis, they select the cases that have the strongest likelihood to produce a profit for the insured and therefore the lending group.

The insured is in a situation of "heads, I win or tails, I can't lose." Of course, there is no guarantee of a profitable sale but even then, the insured had no money invested.

As mentioned earlier, you do have the ability to take over the policy personally at the end of two years. Obviously in this case, the premiums paid and interest would need to be repaid. But this could be extremely valuable in the event your health changed for the worse, or if you felt you later had a personal need and were unable to obtain new coverage at a reasonable price.

One should keep in mind that attempting to write such a letter of explanation is difficult at best. There are several programs, and each program has its own nuances. And, obviously, one's own medical and underwriting results will vary, not only compared to other people, but within each of the programs as well. Ideally, we will receive approval by several, and you would choose your preference.

I am enclosing the preliminary paperwork that needs to be completed and signed. All of the forms are preliminary and not binding on you or any insurance carrier. We are merely trying to get insurance offers and then we seek to obtain offers from various financing programs. Once we receive your completed paperwork, we will schedule a medical service company to call you to arrange a free brief medical at your convenience (usually can be done in your home).

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## Stop Paying Premiums

A great many of our clients have completely eliminated paying any life insurance premiums, but have still maintained their same level of coverage. This is due to a new insurance strategy that is evolving, and David M. Jones is at the forefront. We have established relationships with multiple life settlement companies that actively pursue and purchase life insurance policies from clients over the age of 70.

### Recent Case Example

#### **Before Life Settlement / Repurchase:**

Face Amount of Insurance: \$4,000,000

Annual Premium: \$44,000

Cash Surrender Value: \$489,000

#### **Policy Sale and Repurchase:**

Policy Sale Price: \$1,000,000 (\$511,000 more than the Cash Surrender Value)

The \$1,000,000 from the sale was paid to the new carrier (which in this case happened to also be the old carrier) and a new policy was issued.

#### **After Life Settlement / Repurchase:**

Face Amount of New Insurance: \$4,000,000

The process of a Life Settlement program is very straight forward. We generally ask the client to take one medical exam, as we always have. Then, we get bids from life insurance companies for new coverage. At the same time, we also solicit "bids to purchase" their old policy from lifetime settlement firms. These companies pay an average of 50% more than the cash surrender value.

We then take the proceeds of the policy sale and pay the new life insurer. Because of the higher up-front payment (due to selling the old policy), we are able to significantly lower or eliminate the premium on a new policy. Most clients keep the same face amount of insurance but are paying much less.

Surprisingly, the results can be magnified even further when a husband or wife (or both) who are being insured have a medical problem. Because, in that case, the purchase price of the old policy is generally higher. Quite frankly, the older and more unhealthy a client is, the greater the payment from the settlement company.

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## ARE YOU 72 YEARS OF AGE OR MORE? YOU MAY BE ELIGIBLE TO MAKE \$40,000!!

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Reply to: [serv-869768754@craigslist.org](mailto:serv-869768754@craigslist.org) <sup>(2)</sup>

Date: 2008-10-07, 11:07AM EDT

We work with an investment company that buys life insurance policies. If you are 72 years of age or older, we try to get you approved for a life insurance policy. If you get approved, we find investors that want to buy the policy and then pay you for letting them invest in you.

All you do is complete a short application with authorization to release your medical records. The underwriter will get your last 5 years of medical records from your doctor(s). If your records are ok and you are healthy, we submit the paperwork to the insurance company. If they approve you, then we would see how much the hedge fund is willing to pay for your policy. That amount depends on your age and health and that will determine how much money you would receive.

You will get paid the day the policy starts. The investors pay all the premiums and they own the policy. They are the owner, you are the insured. When the insured passes away, the estate will still receive 10% of the value of the policy.

is a WIN-WIN situation!

All you do is fax in the short application to see if you can get approved and you may make \$40,000. There are absolutely no costs or other obligations to you what so ever.

We, of course can not guarantee you will get approved, but it is absolutely worth a try.

For more information, please send me an e-mail.

Thank you.

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## SENIOR CITIZENS 72 YEARS OF AGE + A CHANCE TO MAKE 40k + (PARKLAND)

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Date: 2008-09-03, 7:19PM EDT

This posting is designed for Senior Citizens over the age of 72. Our offices work in direct contact with investors and investment companies that purchase life insurance policies for Senior Citizens. Here is a brief description of how this works.

As a Senior Citizen who has attained the age of 72 years of age and older, our office will attempt to have that individual, or individuals receive approval for a life insurance policy as a whole. The requirements are that the individual or individuals fill out a simple HIPPA form, allowing for the insurance company underwriter to obtain up to 5 years of medical history from the personal doctor or doctors that the individual or individuals see on a regular basis.

Once those records are obtained, and it determined that the individual or individuals are in good health, the insurance company then determine approximately how much particular Hedge Fund investors are willing to pay for a policy. The amount they pay, will strictly depends on the individual or individuals age, health, personal wealth, etc.

The individual or individuals will receive their money immediately upon the start of the policy. The beauty of this policy is that the chosen investors pay all the premiums and they own the policy. The Hedge Fund becomes the owner of the policy itself. When the individual or individuals who are insured pass away, the estate and survivors will receive 10% of the cash value of the policy itself.

The only requirement is that the individual or individuals fax back the HIPPA form we will send you, and our office will take it from there and begin the formal application process.

There are no guarantees, of course, that the individual or individuals will be approved, but our offices will go to bat for them and do all that we can to try and obtain approval.

The process is simple, and if approved, the individual or individuals can make \$40,000.00 or more. There is no hidden fees, no cost at all to apply, and no scams involved. This is a legitimate, nationwide program that is starting to soar. Finally, there is a way for Seniors to make upfront money, just by obtaining a policy on themselves.

Please email us with any questions, any concerns, and for an application. We respond immediately to all requests.

Thank you for your trust and thank you in advance for your business.

We look forward to hearing from you.

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# Obtain \$2 Million in Life Insurance at NO COST, Click to Learn How! (Anywhere)

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Did you Know the World's Largest Most Reputable Banks are Willing to Cover ALL EXPENSES for Substantial Life Insurance Policies in Exchange for A Portion of the Benefit?

Learn How to Secure \$2-5 Million Dollars for your Family's Financial Future at NO-COST!

Click Below to Learn More About this Amazing New Program...



**Get a Bank to Pay Your Life Insurance Premiums For You!**

We have secured a commitment from the world's second largest private bank to pay 100% of your life insurance premiums forever!

In return they receive a portion of the benefit. Do you think your estate would benefit from an additional 2 or 3 Million Dollars at No Cost?

If so Click Here to find out the details immediately.

Protect the ones you love!

Call Now To Speak To a Policy Specialist  
**1 (866) 949-4PFI**  
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Premium Financing

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## Multi Million Dollar Life Insurance for Qualified People (Palm Beach)

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Date: 2008-10-04, 3:00PM EDT

Multi Million Dollar Life Insurance for Qualified People: AT NO COST TO YOU

We have a program which will allow Qualified People over 65 years of age, to obtain an insurance policy. Your Premiums can be paid through our Private Investors or Financial Programs of ours.

A Smart Investment for all challenging economic times

- Location: Palm Beach
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## 65 or Older? Need CASH? No Investment!

posted: September 26, 2008, 03:19 PM

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No investment and no risk. Apply for a life insurance policy with premium financing. If you meet the minimum qualifications you may receive from \$50,000 to \$300,000 with the sale of the policy immediately after closing.

Non-recourse life insurance premium financing plans give seniors the opportunity to secure significant amounts of additional life insurance with virtually no out-of-pocket expense.

The policyholder can sell the policy in the aftermarket and use the proceeds to pay off the loan. Excess sale proceeds are retained by the policy owner.

Example: Joe, an 82 year old man, holds a life policy with a face amount of \$5,000,000. The policy has a cash surrender value of just \$2,500. With the sale of the policy he walks away with almost \$698,000

**THERE IS NO INVESTMENT, YOU NEVER WRITE A CHECK, YOU NEVER PAY ANY FEES**

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# APPENDIX III

CHAPTER 2008-36

Committee Substitute for Senate Bill No. 648

An act relating to insurable interests; amending s. 627.404, F.S.; providing definitions; providing for the requirement of an insurable interest in an insured at the time of an insurance contract; providing for actions by the insured to recover benefits under such a contract paid to a person lacking such an interest at the time such contract was executed; requiring the consent of the person insured for certain contracts; providing exceptions; providing applicability; providing intent; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 627.404, Florida Statutes, is amended to read:

627.404 Insurable interest; personal insurance.—

(1) Any individual of legal capacity may procure or effect an insurance contract on his or her own life or body for the benefit of any person, but no person shall procure or cause to be procured or effected an insurance contract on the life or body of another individual unless the benefits under such contract are payable to the individual insured or his or her personal representatives, or to any person having, at the time such contract was made, an insurable interest in the individual insured. The insurable interest need not exist after the inception date of coverage under the contract.

(2) For purposes of this section, the term:

(a) "Business entity" includes, but is not limited to, a joint venture, partnership, corporation, limited liability company, and business trust.

(b) "Insurable interest" as to life, health, or disability insurance includes only the following interests:

1. An individual has an insurable interest in his or her own life, body, and health.

2. An individual has an insurable interest in the life, body, and health of another person to whom the individual is closely related by blood or by law and in whom the individual has a substantial interest engendered by love and affection.

3. An individual has an insurable interest in the life, body, and health of another person if such individual has an expectation of a substantial pecuniary advantage through the continued life, health, and safety of that other person and consequent substantial pecuniary loss by reason of the death, injury, or disability of that other person.

4. An individual party to a contract for the purchase or sale of an interest in any business entity has an insurable interest in the life of each other party to such contract for the purpose of such contract only.

5. A trust, or the trustee of a trust, has an insurable interest in the life of an individual insured under a life insurance policy owned by the trust, or the trustee of the trust acting in a fiduciary capacity, if the insured is the grantor of the trust; an individual closely related by blood or law to the grantor; or an individual in whom the grantor otherwise has an insurable interest if, in each of the situations described in subsection (5), the life insurance proceeds are primarily for the benefit of trust beneficiaries having an insurable interest in the life of the insured.

6. A guardian, trustee, or other fiduciary, acting in a fiduciary capacity, has an insurable interest in the life of any person for whose benefit the fiduciary holds property, and in the life of any other individual in whose life the person has an insurable interest so long as the life insurance proceeds are primarily for the benefit of persons having an insurable interest in the life of the insured.

7. A charitable organization meeting the requirements of s. 501(c)(3) of the United States Internal Revenue Code, as amended, has an insurable interest in the life of any person who consents in writing to the organization's ownership or purchase of that insurance.

8. A trustee, sponsor, or custodian of assets held in any plan governed by the Employee Retirement Income Security Act of 1974, 29 U.S.C. ss. 1001 et seq., or in any other retirement or employee benefit plan, has an insurable interest in the life of any participant in the plan with the written consent of the prospective insured. An employer, trustee, sponsor, or custodian may not retaliate or take adverse action against any participant who does not consent to the issuance of insurance on the participant's life.

9. A business entity has an insurable interest in the life, body, and health of any of the owners, directors, officers, partners, and managers of the business entity or any affiliate or subsidiary of the business entity, or key employees or key persons of the business entity or affiliate or subsidiary, if consent is obtained in writing from the key employees or persons before the insurance is purchased. The business entity or affiliate or subsidiary may not retaliate or take adverse action against any key employee or person who does not consent to the issuance of insurance on the key employee or key person's life. For purposes of this subsection, a "key employee" or "key person" means an individual whose position or compensation is described in s. 101(i)(2)(A)(ii) of the Internal Revenue Code of 1986.

~~(3)~~(4) An insurer shall be entitled to rely upon all statements, declarations, and representations made by an applicant for insurance relative to the insurable interest which such applicant has in the insured; and no insurer shall incur any legal liability except as set forth in the policy, by virtue of any untrue statements, declarations, or representations so relied upon in good faith by the insurer.

(4) If the beneficiary, assignee, or other payee under any insurance contract procured by a person not having an insurable interest in the insured at the time such contract was made receives from the insurer any benefits thereunder by reason of the death, injury, or disability of the insured, the insured or his or her personal representative or other lawfully acting agent

may maintain an action to recover such benefits from the person receiving them.

(5) A contract of insurance upon a person, other than a policy of group life insurance or group or blanket accident, health, or disability insurance, may not be effectuated unless, on or before the time of entering into such contract, the person insured, having legal capacity to contract, applies for or consents in writing to the contract and its terms, except that any person having an insurable interest in the life of a minor younger than 15 years of age or any person upon whom a minor younger than 15 years of age is dependent for support and maintenance may effectuate a policy of insurance on the minor.

(6) For purposes of this section, the signature of the proposed insured, having capacity to contract, on the application for insurance shall constitute his or her written consent.

(7) This section does not apply to any policy of life insurance to which s. 624.402(8) applies.

~~(2) A charitable organization that meets the requirements of s. 501(c)(3) of the Internal Revenue Code of 1986, as amended, may own or purchase life insurance on an insured who consents to the ownership or purchase of that insurance.~~

Section 2. The amendments to s. 627.404, Florida Statutes, made by this act are intended to clarify existing law.

Section 3. This act shall take effect July 1, 2008.

Approved by the Governor May 28, 2008.

Filed in Office Secretary of State May 28, 2008.

# **APPENDIX IV**

**Congress of the United States**  
**Washington, DC 20515**

November 16, 2007

The Honorable Henry M. Paulson  
Secretary, United States Department of Treasury  
1500 Pennsylvania Avenue, NW  
Washington, DC 20220

Dear Mr. Secretary:

We are writing to request your assistance with a serious tax issue impacting unsuspecting elderly Americans. The issue relates to a life insurance product known as Stranger-Originated, or Stranger-Owned, Life Insurance ("STOLI"). STOLI transactions take advantage of the secondary market in life insurance settlements at the expense of elderly Americans who are left with an unexpected tax liability. *Business Week* recently devoted its cover story to the legal and public policy concerns raised by products that wager on the life expectancy of elderly Americans.

From the information we have received, there are currently several variations of the product being marketed. For example, some arrangements use a life insurance trust to procure the policy. However, in each case the key to the transaction is an elderly individual, often with a high net worth. In a typical STOLI transaction, an elderly individual, on average 80 years old, is marketed a policy that claims to provide millions of dollars of "free" insurance coverage on his or her life. We understand that these policies are aggressively marketed, and, in certain cases, the individual receives an expensive dinner voucher or cruise as part of the promotion.

In a typical transaction, the individual "purchases" the policy with a non-recourse premium loan, secured only by the policy's value on the secondary market. The loan is generally financed by the promoter or a lender obtained by the promoter. The terms of the non-recourse loan vary, but in most cases the loan term is two to three years. In certain transactions the individual also receives an upfront cash payment. In almost all cases, the insured is unable to pay off the loan and interest on maturity and is therefore economically compelled to sell the policy. Before such sale, if the insured dies during the term of the policy, the death benefit is paid to their heirs after the loan and interest are repaid.

If the proceeds of the sale of the policy exceed the remaining loan premium and interest, the insured receives the excess proceeds. At this point, the policies are sold on a secondary market. The investor becomes the owner of the policy and receives the proceeds on death of the insured. It is clear from the outset that the terms and pricing of the policies all but guarantee that the insured will be economically compelled to settle the policy, and the investor will receive the proceeds on the death of the individual. As reported by *Business Week*, promoters have also begun to create a third market in "death bonds" based on the investor insurance pools.

State legislators, regulators, and industry groups have questioned whether STOLI transactions satisfy the fundamental requirement that the owner of the policy have an insurable interest consistent with state law and public policy. From the outset, the parties to the transaction contemplate that the policy will be settled at the end of the term, with the investor receiving the death benefit. After the policy is settled, the investor's interest is enhanced on death of the individual, rather than on the insured's continued life. Thus, STOLI policies are similar to the wager policies considered against public policy and rejected by the Supreme Court in Warnock v. Davis, 104 U.S. 775 (1882).

While we acknowledge that the state law treatment of a STOLI policy is not within the jurisdiction of the Department of Treasury, the federal tax consequences to the insured on the settlement of a STOLI transaction have been the subject of increasing commentary and concern. Depending upon the structure, the transaction can be classified as a "split-dollar life insurance" arrangement as defined in Treas. Reg. §1.7872-15. The rules concerning cancellation of indebtedness income may also come into play on settlement of the policy. In certain cases, the terms for the initial arrangement may not qualify as true indebtedness, thus exposing the insured to income inclusion. Also, depending upon the value of the promotional incentive or cash payment, the insured could be taxed on the value of the promotion received. Depending upon the structure of the product promoters may also be liable for information reporting.

Our concern with STOLI policies is not intended to inhibit the ability of individuals to legitimately settle life insurance policies. Rather, we seek Treasury's assistance in notifying elderly taxpayers of the adverse tax consequences of investing in a product that is in fact "too good to be true." We recommend that Treasury issue a Notice or other form of public guidance outlining the potential tax consequences of participating in a STOLI transaction. While we recognize that STOLI products can take various forms that potentially alter the tax treatment, we believe that guidance could be crafted to address these variations.

We appreciate your attention to this important matter and look forward to working with you to resolve this issue of importance to the American taxpayer.

Sincerely,



Richard E. Neal, Chairman  
Select Revenue Measures Subcommittee  
House Committee on Ways and Means



Phil English, Ranking Member  
Select Revenue Measures Subcommittee  
House Committee on Ways and Means

# **APPENDIX V**

## NAIC/NCOIL Model Act Section-by-Section Comparison Chart

<b>Section 1. Short Title (NAIC)/Section 1. Short Title (NCOIL)</b>	
NAIC Viatical Settlements Model Act	<p>This Act may be cited as the Viatical Settlements Act.</p> <p>Includes a drafting note that states may elect to use terminology referring to life settlements rather than viatical settlements.</p> <p>Also, in Section 2A, a drafting note is included stating that, throughout this document, text related to investments in viatical settlements is in brackets. It should be considered for inclusion in states where securities regulators do not regulate the investment side of the transaction or adapted for inclusion in the securities code.</p>
NCOIL Life Settlements Model Act	<p>This Act may be cited as the Life Settlement Act.</p> <p>Includes a drafting note defining stranger-originated life insurance (STOLI).</p>
<b>Section 2. Definitions (NAIC)/Section 2. Definitions (NCOIL)</b>	
<b>A. Advertising (NAIC)/A. Advertisement (NCOIL)</b>	
NAIC Viatical Settlements Model Act	<p>"Advertising" means any written, electronic or printed communication or any communication by means of recorded telephone messages or transmitted on radio, television, the Internet or similar communications media, including film strips, motion pictures and videos, published, disseminated, circulated or placed directly before the public, in this state, for the purpose of creating an interest in or inducing a person to [purchase or] sell, assign, devise, bequest or transfer the death benefit or ownership of a life insurance policy pursuant to a viatical settlement contract.</p>
NCOIL Life Settlements Model Act	<p>Defined in a similar manner.</p>
<b>B. Broker (NCOIL)</b>	
NAIC Viatical Settlements Model Act	<p>Defines "viatical settlement broker" in Section 2M in a similar manner as the definition of "broker."</p>
NCOIL Life Settlements Model Act	<p>"Broker" means a person who, on behalf of an owner and for a fee, commission or other valuable consideration, offers or attempts to negotiate life settlement contracts between an owner and providers. A broker only represents the owner and owes a fiduciary duty to act according to the owner's instructions and in the best interest of the owner, notwithstanding the manner in which the broker is compensated. "Broker" does not include an attorney, certified public accountant or financial planner retained in the type of practice customarily performed in their capacity to represent the owner whose compensation is not paid directly or indirectly by the provider or any other person, except the owner.</p>

<b>B. Business of viatical settlements (NAIC)/C. Business of life settlements (NCOIL)</b>	
NAIC Viatical Settlements Model Act	"Business of viatical settlements" means an activity involved in, but not limited to, the offering, soliciting, negotiating, procuring, effectuating, purchasing, investing, financing, monitoring, tracking, underwriting, selling, transferring, assigning, pledging, hypothecating or in any other manner, acquiring an interest in a life insurance policy by means of a viatical settlement contract.
NCOIL Life Settlements Model Act	Defined in a similar manner as an activity involved in, but not limited to, offering to enter into, soliciting, negotiating, procuring, effectuating, monitoring, or tracking, of life settlement contracts.
<b>C. Chronically ill (NAIC)/D. Chronically ill (NCOIL)</b>	
NAIC Viatical Settlements Model Act	"Chronically ill" means: (1) being unable to perform at least two activities of daily living (i.e., eating, toileting, transferring, bathing, dressing or continence); (2) requiring substantial supervision to protect the individual from threats to health and safety due to severe cognitive impairment; or (3) having a level of disability similar to that described in paragraph (1) as determined by the Secretary of Health and Human Services.
NCOIL Life Settlements Model Act	Defined in a similar manner.
<b>D. Commissioner (NAIC)/E. Commissioner (NCOIL)</b>	
NAIC Viatical Settlements Model Act	"Commissioner" means the insurance commissioner of this state.  Drafting note states use the title of the chief insurance regulatory official wherever the term "commissioner" appears.
NCOIL Life Settlements Model Act	Defined in a similar manner.
<b>E. Financing entity (NAIC)/F. Financing entity (NCOIL)</b>	
NAIC Viatical Settlements Model Act	"Financing entity" means an underwriter, placement agent, lender, purchaser of securities, purchaser of a policy or certificate from a viatical settlement provider, credit enhancer, or any entity that has a direct ownership in a policy or certificate that is the subject of a viatical settlement contract, but: (a) whose principal activity related to the transaction is providing funds to effect the viatical settlement or purchase of one or more viaticated policies; and (b) who has an agreement in writing with one or more licensed viatical settlement providers to finance the acquisition of viatical settlement contracts. "Financing entity" does not include a non-accredited investor or a viatical settlement purchaser.
NCOIL Life Settlements Model Act	Defined in a similar manner.

<b>G. Financing transaction (NCOIL)</b>	
NAIC Viatical Settlements Model Act	No similar definition.
NCOIL Life Settlements Model Act	"Financing transaction" means a transaction in which a licensed provider obtains financing from a financing entity including, without limitation, any secured or unsecured financing, any securitization transaction, or any securities offering which either is registered or exempt from registration under federal and state securities law.
<b>F. Fraudulent viatical settlement act (NAIC)/H. Fraudulent life settlement act (NCOIL)</b>	
NAIC Viatical Settlements Model Act	"Fraudulent viatical settlement act" includes: (1) acts or omissions committed by any person who, knowingly or with intent to defraud, for the purpose of depriving another of property or for pecuniary gain, commits, or permits its employees or its agents to engage in acts as specified; (2) in the furtherance of a fraud or to prevent the detection of a fraud, any person who commits or permits its employees or its agents to commit or permit certain enumerated acts as specified; (3) embezzlement, theft, misappropriation or conversion of monies, funds, premiums, credits or other property of a viatical settlement provider, insurer, viator, insurance policy owner or any other person engaged in the business of viatical settlements or insurance; (4) recklessly entering into, negotiating, brokering, otherwise dealing in a viatical settlement contract, the subject of which is a life insurance policy that was obtained by presenting false information concerning any fact material to the policy or by concealing, for the purpose of misleading another, information concerning any fact material to the policy, where the person or the persons intended to defraud the policy's issuer, the viatical settlement provider or the viator; (5) facilitating the change of state of ownership of a policy or certificate or the state of residency of a viator to a state or jurisdiction that does not have a law similar to this Act for the express purpose of evading or avoiding the provisions of this Act; or (6) attempting to commit, assisting, aiding or abetting in the commission of, or conspiracy to commit the acts or omissions specified in this subsection.
NCOIL Life Settlements Model Act	Defined in a similar manner except NCOIL definition does not include the specific provisions in paragraphs (4) and (5). Also, the NCOIL definition includes an act to enter into any practice or plan which involves STOLI.
<b>G. Life insurance producer (NAIC)/K. Life insurance producer (NCOIL)</b>	
NAIC Viatical Settlements Model Act	"Life insurance producer" means any person licensed in this state as a resident or nonresident insurance producer who has received qualification or authority for life insurance coverage or a life line of coverage pursuant to [insert reference to applicable producer licensing statute, with specific reference to a life insurance or equivalent line of authority].
NCOIL Life Settlements Model Act	Defined in a similar manner.

<b>I. Insured (NCOIL)</b>	
NAIC Viatical Settlements Model Act	No similar definition. Defines the term "viator" in Section 2T.
NCOIL Life Settlements Model Act	"Insured" means the person covered under the policy being considered for sale in a life settlement contract.
<b>J. Life expectancy (NCOIL)</b>	
NAIC Viatical Settlements Model Act	No similar definition.
NCOIL Life Settlements Model Act	"Life expectancy" means the arithmetic mean of the number of months the insured under the life insurance policy to be settled can be expected to live as determined by a life expectancy company considering medical records and appropriate experiential data.
<b>L. Life settlement contract (NCOIL)</b>	
NAIC Viatical Settlements Model Act	Defines the term "viatical settlement contract" in Section 2N, which is defined similarly in some aspects to the definition of "life settlement contract," but not in others. It does not include specific language found in the NCOIL definition that includes the transfer for compensation or value of ownership or beneficial interest in a trust or other entity that owns such policy if the trust or other entity was formed or availed of for the principal purpose of acquiring one or more life insurance contracts, which life insurance contract insures the life of a person residing in this state within the definition of "life settlement contract."

NCOIL Life Settlements Model Act	<p>"Life settlement contract" means a written agreement entered into between a provider and an owner, establishing the terms under which compensation or any thing of value will be paid, which compensation or thing of value is less than the expected death benefit of the insurance policy or certificate, in return for the owner's assignment, transfer, sale, devise or bequest of the death benefit or any portion of an insurance policy or certificate of insurance for compensation, provided, however, that the minimum value for a life settlement contract shall be greater than a cash surrender value or accelerated death benefit available at the time of an application for a life settlement contract. "Life settlement contract" also includes the transfer for compensation or value of ownership or beneficial interest in a trust or other entity that owns such policy if the trust or other entity was formed or availed of for the principal purpose of acquiring one or more life insurance contracts, which life insurance contract insures the life of a person residing in this state. "Life settlement contract" also includes: (a) a written agreement for a loan or other lending transaction, secured primarily by an individual or group life insurance policy; or (b) a premium finance loan made for a policy on or before the date of issuance of the policy where: (i) the loan proceeds are not used solely to pay premiums for the policy and any costs or expenses incurred by the lender or the borrower in connection with the financing; or (ii) the owner receives on the date of the premium finance loan guarantee of the future life settlement value of the policy; or (iii) the owner agrees on the date of the premium finance loan to sell the policy or any portion of its death benefit on any date following the issuance of the policy. "Life settlement contract" does not include: (a) a policy loan by a life insurance company pursuant to the terms of the life insurance policy or accelerated death provisions contained in the life insurance policy, whether issued with the original policy or as a rider; (b) a premium finance loan, as defined herein, or any loan made by a bank or other licensed financial institution, provided that neither default on such loan nor the transfer of the policy in connection with such default is pursuant to an agreement or understanding with any other person for the purpose of evading regulation under this Act; (c) a collateral assignment of a life insurance policy by an owner; (d) a loan made by a lender that does not violate [insert reference to state's premium finance law], provided such loan is not described in Paragraph (1) above, and is not otherwise within the definition of life settlement contract; (e) an agreement where all the parties [i] are closely related to the insured by blood or law or [ii] have a lawful substantial economic interest in the continued life, health and bodily safety of the person insured, or are trusts established primarily for the benefit of such parties; (f) any designation, consent or agreement by an insured who is an employee of an employer in connection with the purchase by the employer, or trust established by the employer, of life insurance on the life of the employee; (g) a bona fide business succession planning arrangement: (i) between one or more shareholders in a corporation or between a corporation and one or more of its shareholders or one or more trust established by its shareholders; (ii) between one or more partners in a partnership or between a partnership and one or more of its partners or one or more trust established by its partners; or (iii) between one or more members in a limited liability company or between a limited liability company and one or more of its members or one or more trust established by its members; (h) an agreement entered into by a service recipient, or a trust established by the service recipient, and a service provider, or a trust established by the service provider, who performs significant services for the service recipient's trade or business; or (i) any other contract, transaction or arrangement from the definition of life settlement contract that the commissioner determines is not of the type intended to be regulated by the Act.</p>
<b>M. Net death benefit (NCOIL)</b>	
NAIC Viatical Settlements Model Act	No similar definition.

NCOIL Life Settlements Model Act	"Net death benefit" means the amount of the life insurance policy or certificate to be settled less any outstanding debts or liens.
<b>N. Owner (NCOIL)</b>	
NAIC Viatical Settlements Model Act	Defines the term "viator" in Section 2T, which is defined similarly to the definition of "owner".
NCOIL Life Settlements Model Act	"Owner" means the owner of a life insurance policy or a certificate holder under a group policy, with or without a terminal illness, who enters or seeks to enter into a life settlement contract. For purposes of this article, an owner shall not be limited to an owner of a life insurance policy or certificate holder under a group policy that insures the life of an individual with a terminal or chronic illness or condition except where specifically addressed. "Owner" does not include: (1) any provider or other licensee under this Act; (2) a qualified institutional buyer as defined in Rule 144A of the federal Securities Act of 1933, as amended; (3) a financing entity; (4) a special purpose entity; or (5) a related provider trust.
<b>O. Patient identifying information (NCOIL)</b>	
NAIC Viatical Settlements Model Act	No similar definition.
NCOIL Life Settlements Model Act	"Patient identifying information" means an insured's address, telephone number, facsimile number, electronic mail address, photograph or likeness, employer, employment status, social security number, or any other information that is likely to lead to the identification of the insured.
<b>H. Person (NAIC)/R. Person (NCOIL)</b>	
NAIC Viatical Settlements Model Act	"Person" means a natural person or a legal entity, including, without limitation, an individual, partnership, limited liability company, association, trust, or corporation.
NCOIL Life Settlements Model Act	Defined in a similar manner.
<b>I. Policy (NAIC)/P. Policy (NCOIL)</b>	
NAIC Viatical Settlements Model Act	"Policy" means an individual or group policy, group certificate, contract or arrangement of life insurance owned by a resident of this state, regardless of whether delivered or issued for delivery in this state.

NCOIL Life Settlements Model Act	Defined in a similar manner.
<b>Q. Premium finance loan (NCOIL)</b>	
NAIC Viatical Settlements Model Act	No similar definition.
NCOIL Life Settlements Model Act	"Premium finance loan" is a loan made primarily for the purposes of making premium payments on a life insurance policy, which loan is secured by an interest in such life insurance policy.
<b>S. Provider (NCOIL)</b>	
NAIC Viatical Settlements Model Act	Defines the term "viatical settlement provider" in Section 2P, which is defined similarly to "provider".
NCOIL Life Settlements Model Act	"Provider" means a person, other than an owner, who enters into or effectuates a life settlement contract with an owner. "Provider" does not include: (1) a bank, savings bank, savings and loan association, credit union; (2) a licensed lending institution or creditor or secured party pursuant to a premium finance loan agreement which takes an assignment of a life insurance policy or certificate issued pursuant to a group life insurance policy as collateral for a loan; (3) the insurer of a life insurance policy or rider to the extent of providing accelerated death benefits or riders under [refer to law or regulation implementing or accelerated death benefits provision] or cash surrender value; (4) any natural person who enters into or effectuates no more than one agreement in a calendar year for the transfer of a life insurance policy or certificate issued pursuant to a group life insurance policy, for compensation or anything of value less than the expected death benefit payable under the policy; (5) a purchaser; (6) any authorized or eligible insurer that provides stop loss coverage to a provider, purchaser, financing entity, special purpose entity, or related provider trust; (7) a financing entity; (8) a special purpose entity; (9) a related provider trust; (10) a broker; or (11) an accredited investor or qualified institutional buyer as defined in respectively in regulation D, rule 501 or rule 144A of the federal securities act of 1933, as amended, who purchases a life settlement policy from a provider.
<b>T. Purchased policy (NCOIL)</b>	
NAIC Viatical Settlements Model Act	Defines the term "viaticated policy" in Section 2S, which is defined similarly to "purchased policy" and to "settled policy" in Section 2W in the NCOIL model.

NCOIL Life Settlements Model Act	"Purchased policy" means a policy or group certificate that has been acquired by a provider pursuant to a life settlement contract.
<b>U. Purchaser (NCOIL)</b>	
NAIC Viatical Settlements Model Act	Defines the term "viatical settlement purchaser" in Section 2R, which is defined, in some aspects, similarly to "purchaser." The definition of "viatical settlement purchaser" in Section 2R specifies that it does not include: (a) licensee under this Act; (b) an accredited investor or qualified institutional buyer as defined, respectively, in Rule 501(a) or Rule 144A promulgated under the Federal Securities Act of 1933, as amended; (c) a financing entity; (d) a special purpose entity; or (e) a related provider trust.
NCOIL Life Settlements Model Act	"Purchaser" means a person who pays compensation or anything of value as consideration for a beneficial interest in a trust which is vested with, or for the assignment, transfer or sale of, an ownership or other interest in a life insurance policy or a certificate issued pursuant to a group life insurance policy which has been the subject of a life settlement contract.
<b>J. Related provider trust (NAIC)/V. Related provider trust (NCOIL)</b>	
NAIC Viatical Settlements Model Act	"Related provider trust" means a titling trust or other trust established by a licensed viatical settlement provider or a financing entity for the sole purpose of holding the ownership or beneficial interest in purchased policies in connection with a financing transaction. The trust shall have a written agreement with the licensed viatical settlement provider under which the licensed viatical settlement provider is responsible for ensuring compliance with all statutory and regulatory requirements and under which the trust agrees to make all files related to viatical settlement transactions available to the commissioner as if those records and files were maintained directly by the licensed viatical settlement provider.
NCOIL Life Settlements Model Act	Defined in a similar manner.
<b>W. Settled policy (NCOIL)</b>	
NAIC Viatical Settlements Model Act	Defines the term "viaticated policy" in Section 2S, which is defined similarly to "settled policy" and to "purchased policy" in Section 2T in the NCOIL model.

NCOIL Life Settlements Model Act	"Settled policy" means a life insurance policy or certificate that has been acquired by a provider pursuant to a life settlement contract.
<b>K. Special purpose entity (NAIC)/X. Special purpose entity (NCOIL)</b>	
NAIC Viatical Settlements Model Act	"Special purpose entity" means a corporation, partnership, trust, limited liability company or other similar entity formed solely to provide either directly or indirectly access to institutional capital markets: (1) for a financing entity or licensed viatical provider; or (2) (i) in connection with a transaction in which the securities in the special purpose entity are acquired by the viator or by "qualified institutional buyers" as defined in Rule 144 promulgated under the Securities Act of 1933, as amended; or (ii) the securities pay a fixed rate of return commensurate with established asset-backed institutional capital markets.
NCOIL Life Settlements Model Act	Defined in a similar manner.
<b>Y. Stranger-originated life insurance or STOLI (NCOIL)</b>	
NAIC Viatical Settlements Model Act	No similar definition.
NCOIL Life Settlements Model Act	"Stranger-originated life insurance" or "STOLI" is a practice or plan to initiate a life insurance policy for the benefit of a third party investor who, at the time of policy origination, has no insurable interest in the insured. STOLI practices include but are not limited to cases in which life insurance is purchased with resources or guarantees from or through a person, or entity, who, at the time of policy inception, could not lawfully initiate the policy himself or itself, and where, at the time of inception, there is an arrangement or agreement, whether verbal or written, to directly or indirectly transfer the ownership of the policy and/or the policy benefits to a third party. Trusts, that are created to give the appearance of insurable interest, and are used to initiate policies for investors, violate insurable interest laws and the prohibition against wagering on life. STOLI arrangements do not include those practices set forth in Section 2L(2) of this Act.
<b>L. Terminally ill (NAIC)/Z. Terminally ill (NCOIL)</b>	
NAIC Viatical Settlements Model Act	"Terminally ill" means having an illness or sickness that an reasonably be expected to result in death in twenty-four (24) months or less.
NCOIL Life Settlements Model Act	Defined in a similar manner.

**M. Viatical settlement broker (NAIC)**

NAIC Viatical Settlements Model Act

“Viatical settlement broker” means a person, including a life insurance producer as provided for in Section 3 of this Act, who working exclusively on behalf of a viator and for a fee, commission or other valuable consideration, offers or attempts to negotiate viatical settlement contracts between a viator and one or more viatical settlement providers or one or more viatical settlement brokers. Notwithstanding the manner in which the viatical settlement broker is compensated, a viatical settlement broker is deemed to represent only the viator, and not the insurer or the viatical settlement provider, and owes a fiduciary duty to the viator to act according to the viator’s instructions and in the best interest of the viator. The term does not include an attorney, certified public accountant or a financial planner accredited by a nationally recognized accreditation agency, who is retained to represent the viator and whose compensation is not paid directly or indirectly by the viatical settlement provider or purchaser.

NCOIL Life Settlements Model Act

Defines the term “broker” in Section 2B, which is defined similarly to “viatical settlement broker.”

**N. Viatical settlement contract (NAIC)**

<p>NAIC Viatical Settlements Model Act</p>	<p>(1) "Viatical settlement contract" means a written agreement between a viator and a viatical settlement provider or any affiliate of the viatical settlement provider establishing the terms under which compensation or anything of value is or will be paid, which compensation or value is less than the expected death benefits of the policy, in return for the viator's present or future assignment, transfer, sale, devise or bequest of the death benefit or ownership of any portion of the insurance policy or certificate of insurance. (2) "Viatical settlement contract" includes a premium finance loan made for a life insurance policy by a lender to viator on, or before or after the date of issuance of the policy where: (a) the viator or the insured receives on the date of the premium finance loan a guarantee of a future viatical settlement value of the policy; or (b) the viator or the insured agrees on the date of the premium finance loan to sell the policy or any portion of its death benefit on any date following the issuance of the policy. (3) "Viatical settlement contract" does not include: (a) a policy loan or accelerated death benefit made by the insurer pursuant to the policy's terms; (b) loan proceeds that are used solely to pay: (i) premiums for the policy; (ii) the costs of the loan, including, without limitation, interest, arrangement fees, utilization fees and similar fees, closing costs, legal fees and expenses, trustee fees and expenses, and third party collateral provider fees and expenses, including fees payable to letter of credit issuers; (c) a loan made by a bank or other licensed financial institution in which the lender takes an interest in a life insurance policy solely to secure repayment of a loan or, if there is a default on the loan and the policy is transferred, the transfer of such a policy by the lender, provided that the default itself is not pursuant to an agreement or understanding with any other person for the purpose of evading regulation under this Act; (d) a loan made by a lender that does not violate [insert reference to state's insurance premium finance law], provided that the premium finance loan is not described in Paragraph (2) of this subsection; (e) an agreement where all parties (x) are closely related to the insured by blood or law or (y) have a lawful substantial economic interest in the continued life, health and bodily safety of the person insured, or are trusts established primarily for the benefit of such parties; (f) any designation, consent or agreement by the insured who is an employee of an employer in connection with the purchase by the employer, or trust established by the employer, of life insurance on the life of the employee; (g) a bona fide business succession planning arrangement: (i) between one or more shareholders in a corporation or between a corporation and one or more of its shareholders or one or more trust established by its shareholders; (ii) between one or more partners in a partnership or between a partnership and one or more of its partners or one or more trust established by its partners; or (iii) between one or more members in a limited liability company or between a limited liability company and one or more of its members or one or more trust established by its members; (h) an agreement entered into by a service recipient, or a trust established by the service recipient, and a service provider, or a trust established by the service provider, who performs significant services for the service recipient's trade or business; or (i) any other contract, transaction or arrangement exempted from the definition of viatical settlement contract by the commissioner based on a determination that the contract, transaction or arrangement is not of the type intended to be regulated by the Act.</p>
<p>NCOIL Life Settlements Model Act</p>	<p>Defines the term "life settlement contract" in Section 2L, which is defined similarly in some aspects to the definition of "viatical settlement contract," but not in others.</p>

<b>O. Viatical settlement investment agent (NAIC)</b>	
NAIC Viatical Settlements Model Act	An optional definition. "Viatical settlement investment agent" means a person who is an appointed or contracted agent of a licensed viatical settlement provider who solicits or arranges the funding for the purchase of a viatical settlement by a viatical settlement purchaser and who is acting on behalf of a viatical settlement provider. (1) A viatical settlement investment agent shall not have any contact directly or indirectly with the viator or insured or have knowledge of the identity of the viator or insured. (2) A viatical settlement investment agent is deemed to represent the viatical settlement provider of whom the viatical settlement investment agent is an appointed or contract agent.
NCOIL Life Settlements Model Act	No similar definition.
<b>P. Viatical settlement provider (NAIC)</b>	
NAIC Viatical Settlements Model Act	(1) "Viatical settlement provider" means a person, other than a viator, who enters into or effectuates a viatical settlement contract with a viator resident of this state. (2) "Viatical settlement provider" does not include: (a) a bank, savings bank, savings and loan association, credit union or other licensed lending institution that takes an assignment of a life insurance policy solely as collateral for a loan; (b) a premium financing company making premium finance loans and exempted by the commissioner from the licensing requirement under the premium finance laws that takes an assignment of a life insurance policy solely as collateral for a loan; (c) the issuer of the life insurance policy; (d) an authorized or eligible insurer that provides stop loss coverage or financial guaranty insurance to a viatical settlement provider, purchaser, financing entity, special purpose entity or related provider trust; (e) a natural person who enters into or effectuates no more than one agreement in a calendar year for the transfer of life insurance policies for any value less than the expected death benefit; (f) a financing entity; (g) a special purpose entity; (h) a related provider trust; (i) a viatical settlement purchaser; or (j) any other person that the commissioner determines is not the type of person intended to be covered by the definition of viatical settlement provider.
NCOIL Life Settlements Model Act	Defines the term "provider" in Section 2S, which is defined, in some aspects, similarly to "viatical settlement provider".
<b>Q. Viatical settlement purchase agreement (NAIC)</b>	
NAIC Viatical Settlements Model Act	Optional definition. "Viatical settlement purchase agreement" means a contract or agreement, entered into by a viatical settlement purchaser, to which the viator is not a party, to purchase a life insurance policy or an interest in a life insurance policy that is entered into for the purpose of deriving an economic benefit.
NCOIL Life Settlements Model Act	No similar definition.

<b>R. Viatical settlement purchaser (NAIC)</b>	
NAIC Viatical Settlements Model Act	(1) "Viatical settlement purchaser" means a person who provides a sum of money as consideration for a life insurance policy or an interest in the death benefits of a life insurance policy, or a person who owns or acquires or is entitled to a beneficial interest in a trust that owns a viatical settlement contract or is the beneficiary of a life insurance policy that has been or will be the subject of a viatical settlement contract, for the purpose of deriving an economic benefit. (2) "Viatical settlement purchaser" does not include: (a) licensee under this Act; (b) an accredited investor or qualified institutional buyer as defined, respectively, in Rule 501(a) or Rule 144A promulgated under the Federal Securities Act of 1933, as amended; (c) a financing entity; (d) a special purpose entity; or (e) a related provider trust.
NCOIL Life Settlements Model Act	Defines the term "purchaser" in Section 2U, which is defined, in some aspects, similarly to "viatical settlement purchaser".
<b>S. Viaticated policy (NAIC)</b>	
NAIC Viatical Settlements Model Act	"Viaticated policy" means a life insurance policy or certificate that has been acquired by a viatical settlement provider pursuant to a viatical settlement contract.
NCOIL Life Settlements Model Act	Defines the terms "purchased policy" in Section 2T and "settled policy" in Section 2W. Both are defined in a similar manner as "viaticated policy."
<b>T. Viator (NAIC)</b>	
NAIC Viatical Settlements Model Act	"Viator" means the owner of a life insurance policy or a certificate holder under a group policy who resides in this state and who enters or seeks to enter into a viatical settlement contract. For purposes of this Act, a viator shall not be limited to an owner of a life insurance policy or certificate holder under a group policy insuring the life of an individual with a terminal or chronic illness or condition except where specifically addressed. If there is more than one viator on a single policy and the viators are residents of different states, the transaction shall be governed by the law of the state in which the viator having the largest percentage ownership resides or, if the viators hold equal ownership, the state of residence of one viator agreed upon in writing by all the viators. "Viator" does not include: (1) any licensee under this Act, including a life insurance producer acting as a viatical settlement broker pursuant to this Act; (2) a qualified institutional buyer as defined, respectively, in Rule 144A of the federal Securities Act of 1933, as amended; (3) a financing entity; (4) a special purpose entity; or (5) a related provider trust.
NCOIL Life Settlements Model Act	Defines the term "owner" in Section 2N, which is similar to the definition of "viator".

**Section 3. License and Bond Requirements (NAIC)/Section 3. Licensing Requirements (NCOIL)**

NAIC Viatical Settlements Model Act	Every person operating as a settlement broker or provider shall obtain a license from the insurance commissioner of the state of residence of the viator. Every person operating as a settlement investment agent shall obtain a license from the insurance commissioner of the state of residence of the settlement purchaser. The licenses must be renewed annually. Insurance producers licensed at least one year and attorneys, certified public accountants and accredited financial planners are permitted to operate as settlement brokers without having to obtain a license. Insurers are held harmless from errors or omissions of viatical settlement brokers and providers. The commissioner shall investigate applicants for licenses for provider operational plans; competence and trustworthiness; reputation, experience and training; financial responsibility; standing in the state of the licensee's domicile; and satisfaction of anti-fraud plans. Financial responsibility shall be evidenced through either a surety bond executed and issued by an insurer authorized to issue surety bonds in the state or a deposit of cash, certificates of deposit or securities or any combination thereof in the amount of \$250,000. Any surety bond issued shall be in the favor of the state and shall specifically authorize recovery by the commissioner on behalf of any person in the state who sustained damages as the result of erroneous acts, failure to act, conviction of fraud or conviction of unfair practices by the viatical settlement provider or broker. The commissioner shall accept, as evidence of financial responsibility, proof that financial instruments in accordance with the model act's requirements have been filed in one state where the applicant is licensed as a viatical settlement provider or broker. Viatical settlement brokers shall complete on a biennial basis 15 hours of training. However, a life insurance producer who is operating as a viatical settlement broker is not subject to this requirement.
NCOIL Life Settlements Model Act	Similar provisions. However, the NCOIL model act does not include a bond requirement as evidence of financial responsibility.

<b>Section 4. License Revocation and Denial (NAIC)/Section 4. Licensing Suspension, Revocation or Refusal to Renew (NCOIL)</b>	
NAIC Viatical Settlements Model Act	<p>The commissioner may refuse to issue, suspend, revoke or refuse to renew the license of a viatical settlement provider or broker if the commissioner finds: (1) material misrepresentation in the application; (2) the licensee or any officer, partner, member or key management personnel has been convicted of fraudulent or dishonest practices, is subject to a final administrative action or is otherwise shown to be untrustworthy or incompetent; (3) the viatical settlement provider demonstrates a pattern of unreasonable payments to viators; (4) the licensee or any officer, partner, member or key management personnel has been found guilty of, or has pleaded guilty or <i>nolo contendere</i> to, any felony, or to a misdemeanor involving fraud or moral turpitude; (5) the viatical settlement provider has entered into any viatical settlement contract that has not been approved pursuant to this Act; (6) the viatical settlement provider has failed to honor contractual obligations; (7) the licensee no longer meets the requirements of initial licensure; (8) the viatical settlement provider has assigned, transferred or pledged a viaticated policy to a person other than a viatical settlement provider licensed in this state, viatical settlement purchaser, an accredited investor or qualified institutional buyer, financing entity, special purpose entity, or related provider trust; or (9) the licensee or any officer, partner, member or key management personnel has violated any provision of this Act.</p> <p>The commissioner may suspend, revoke or refuse to renew the license of a viatical settlement broker or a life insurance producer operating as a viatical settlement broker if the commissioner finds that the viatical settlement broker or life insurance producer has violated the provisions of this Act or has otherwise engaged in bad faith conduct with one or more viators.</p>
NCOIL Life Settlements Model Act	Similar provisions. However, the NCOIL model act provides for license denial, revocation or nonrenewal if the provider demonstrates a pattern of unreasonably withholding payments to policy owners. The NAIC model act provides for the same action if a viatical settlement provider demonstrates a pattern of unreasonable payments to viators.
<b>Section 5. Approval of Viatical Settlement Contracts and Viatical Settlement Disclosure Statements (NAIC)/Section 5. Contract Requirements (NCOIL)</b>	
NAIC Viatical Settlements Model Act	Prior approval of the commissioner is required for all viatical settlement contract and disclosure statement forms. The forms must meet the requirements of Sections 8, 10, 13 and 14B of the Act. At the commissioner's discretion, the commissioner may require the submission of advertising material.
NCOIL Life Settlements Model Act	Similar provisions for contracts and disclosure statement forms. The NCOIL model act also includes a provision prohibiting an insurer from requiring an owner, insured, provider or broker to sign any form, disclosure, consent, waiver or acknowledgement as a condition of responding to a request for verification of coverage or in connection with the transfer of a policy pursuant to a life settlement contract unless it has been expressly approved by the commissioner for use in connection with life settlement contracts in the state.

**Section 6. Reporting Requirements and Privacy (NAIC)/Section 6. Reporting Requirements and Privacy (NCOIL)**

NAIC Viatical Settlements Model Act	Viatical settlement providers must file an annual report with the commissioner on or before March 1 containing such information as the commissioner may prescribe by regulation. Individual transaction data or data that could compromise the privacy of personal, financial or medical information of the viator or insured shall be filed on a confidential basis. Except as otherwise allowed or required by law, a viatical settlement provider, viatical settlement broker, viatical settlement investment agent, insurance company, insurance producer, information bureau, rating agency or company, or any other person with actual knowledge of an insured's identity, shall not disclose that identity as an insured or the insured's financial or medical information to any other person unless the disclosure: (1) is necessary to accomplish a transaction regulated by the Act and prior written consent of the viator and insured has been obtained; (2) is provided in response to an investigation or examination by the commissioner or any other governmental officer or agency or pursuant to the requirements of Section 14C; (3) is a term of or a condition to the transfer of a policy by one viatical settlement provider to another; (4) is necessary to permit a financing entity, related provider trust or special purpose entity to finance the purchase of policies by a viatical settlement provider and the viator and insured have provided prior written consent; (5) is necessary to allow the viatical settlement provider or broker or their representatives to make authorized contacts with the viator to determine his or her health status; or (6) is required to purchase stop loss coverage or financial guaranty insurance.
NCOIL Life Settlements Model Act	Similar provisions. However, the NCOIL model act includes some differences. For any policy settled within 5 years of policy issuance, each provider must file with the commissioner on or before March 1 of each year a statement containing the information prescribed by the commissioner by regulation. At a minimum, the annual statement must specify the total number, aggregate face amount and life settlement proceeds of policies settled during the immediately preceding calendar year, together with a breakdown of the information by policy issue year. The statement shall also include the names of the insurance companies whose policies have been settled and the brokers that have settled such policies. Any provider that willfully fails to file an annual statement or willfully fails to reply within 30 days to a written inquiry by the commissioner concerning the annual statement, shall, in addition to other penalties, be subject to a penalty of up to \$250 per day of delay not exceeding \$25,000 in the aggregate for each such failure.

**Section 7. Examination or Investigations (NAIC)/Section 7. Examination (NCOIL)**

NAIC Viatical Settlements Model Act	<p>The commissioner may examine a licensee and investigate persons engaged in the business of viatical settlements as often as the commissioner in his or her discretion deems appropriate. Any findings of fact and conclusions reached pursuant to an examination become <i>prima facie</i> evidence in any subsequent legal or regulatory action. Licensees shall retain for five years copies of records and documents related to Act requirements, including proposed and executed contracts, purchase agreements, underwriting documents, forms, applications, checks, and documents relating to funds transferred, deposited or released. Documents retained by persons beyond the five years must be produced upon request of the commissioner. Licensee examinations shall be warranted and defined in scope. They shall observe the guidance of the NAIC <i>Examiners Handbook</i> or other appropriate guidelines. Licensees shall provide to examiners timely, convenient and free access to all materials relating to its assets, business and affairs. Refusal to cooperate in an examination is grounds for suspension or non-renewal of license. The commissioner may issue subpoenas, administer oaths and examine persons under oath, and petition the judiciary to compel appearance, testimony and production of evidence. Failure to comply with a relevant court order is punishable as contempt of court. The commissioner may retain professional examination assistance as needed, the reasonable cost of which shall be borne by the licensee.</p> <p>Examiners shall file with the commissioner a verified report within 60 days following the completion of the examination. The commissioner shall transmit the report to the licensee permitting a written submission or rebuttal within 30 days. Names and individual identification data for all viators shall be considered private and confidential information and shall not be disclosed by the commissioner unless required by law. Examination information is not subject to subpoena or discovery or admissible in evidence in a private civil action if it is obtained in the course of investigating the financial condition or market conduct of a licensee. The commissioner may use the documents, materials or other information in the furtherance of any regulatory or legal action brought as part of the commissioner's official duties. Regulatory, examination and NAIC personnel are not permitted to testify in private civil action concerning materials obtained or reviewed during examination. However, such materials or reports may be disclosed to other state and regulatory officials agreeing to protect confidentiality requirements of the Act.</p> <p>An examiner may not have a conflict of interest with, or interest in, the licensee subject to examination. However, this does not automatically preclude an examiner from being a viator, an insured in a viaticated insurance policy or a beneficiary in an insurance policy that is proposed to be viaticated.</p> <p>The cost of examinations may be determined and assessed pursuant to law. No liability or cause of action arises from the conduct of examinations performed in good faith pursuant to the Act.</p> <p>The commissioner may investigate suspected fraudulent viatical settlement acts and persons engaged in the business of viatical settlements.</p>
NCOIL Life Settlements Model Act	Similar provisions.

**Section 8. Advertising (NCOIL)**

NAIC Viatical Settlements Model Act

See Section 13 of the NAIC model act.

NCOIL Life Settlements Model Act

A broker, or provider licensed under the Act, may conduct or participate in advertisements in the state. Such advertisements shall comply with all advertising and marketing laws or rules and regulations promulgated by the commissioner that are applicable to life insurers or to brokers, and providers licensed under the Act. The advertisements must be accurate, truthful and not misleading in fact or by implication. No person or trust shall: (1) directly or indirectly, market, advertise, solicit or otherwise promote the purchase of a policy for the sole purpose of or with an emphasis on settling the policy; or (2) use the words "free", "no cost" or words of similar import in the marketing, advertising, soliciting or otherwise promoting of the purchase of a policy.

**Section 8. Disclosure to Viator (NAIC)/Section 9. Disclosure to Owners (NCOIL)**

NAIC Viatical Settlements Model Act

A viatical settlement provider or broker must disclose ten varieties of information to a viator upon his or her application for a policy settlement. These disclosures are intended to alert the viator to obligations that might arise from the settlement, as well as a change in status of rights and protections that might occur from the settlement. These disclosures must occur by the time the settlement application is signed by all parties. A disclosure must be provided that the viator has the right to rescind the settlement contract before the earlier of 60 days from its execution or 30 days of receipt of the viatical settlement proceeds. The rescission is effective only if both notice of the rescission is given and the viator repays all of the proceeds and any premiums, loans and interest paid on account of the viatical settlement within the rescission period. The disclosures include notice that proceeds shall be sent to the viator within three business days after the provider has received written acknowledgment from the insurer that the policy interest has been transferred and a beneficiary designated. The viator must also learn that, following the execution of the settlement contract, the viator may be contacted by a settlement provider licensed in the state of the viator’s residence -- or by a provider’s authorized representative – as often as once very three months if the insured has a life expectancy of more than one year from settlement, or once every month if the insured’s life expectancy is less than a year. The disclosure to the viator shall include distribution of a brochure describing the process of viatical settlements. The NAIC’s form for the brochure shall be used unless another form is developed and approved by the commissioner.

A viatical settlement provider shall also disclose six additional types of information to the viator no later than the viatical settlement contract is signed by all parties. These disclosures shall be conspicuously displayed in the contract or in a separate document and provide the following information: (1) the affiliation, if any, between the viatical settlement provider and the issuer of the policy to be viaticated; (2) the name, business address and telephone number of the viatical settlement provider; (3) any affiliations or contractual arrangements between the viatical settlement provider and the viatical settlement purchaser; (4) if an insurance policy to be viaticated has been issued as a joint policy or involves family riders or any coverage of a life other than the insured under the policy to be viaticated, the viator shall be informed of the possible loss of coverage on the other lives under the policy; (5) state the dollar amount of the current death benefit payable to the viatical settlement provider under the policy or certificate; and (6) state whether the funds will be escrowed with an independent third party.

A viatical settlement broker shall also separately disclose to the viator an additional five types of information in writing no later than the viatical settlement contract is signed by all parties. These disclosures establish *broker* contact information and affiliations between the broker and others connected with the settlement. The broker must also provide a full, complete and accurate description of all offers, counter-offers, acceptances and rejections relating to the proposed viatical settlement contract. Also, they include disclosure of the amount and method of calculating the broker’s compensation and, where any portion of the settlement compensation is taken from a proposed settlement offer, the total amount of the offer and the percentage of the offer comprised by the broker’s compensation.

The insured shall be notified in writing of any transfer of ownership or change in beneficiary designation made by a settlement provider with regard to the settled policy within 20 days. This is to inform the insured who is literally holding a contract on his or her life. Numerous viatical settlement provider disclosure responsibilities toward viatical settlement purchasers not otherwise provided in state or federal law also are established. These disclosures are intended to improve consumer protections for settlement investors. Invalidation of a settlement purchase agreement by the purchaser within three days of receiving the disclosures is permitted.

NCOIL Life Settlements Model Act	Similar provisions. Except some of the time frames are different such as the time frame for rescinding a life settlement contract. Also, there is a required disclosure regarding a requirement that providers and brokers print separate signed fraud warnings on their applications and life settlement contracts. There is also a required disclosure regarding the possibility that a change in ownership could limit the insured's ability in the future to purchase future life insurance.
<b>Section 9. Disclosure to Insurer (NAIC)/Section 10. Disclosure to Insurer (NCOIL)</b>	
NAIC Viatical Settlements Model Act	Prior to initiation of a plan, transaction or series of transactions, a viatical settlement provider or broker must fully disclose to an insurer a plan, transaction or series of transactions, to which the viatical settlement broker or provider is a party, to originate, renew, continue or finance a life insurance policy with the insurer for the purpose of engaging in the business of viatical settlements at anytime prior to, or during the first 5 years after, issuance of the policy.
NCOIL Life Settlements Model Act	<p>Provisions are not similar.</p> <p>Without limiting the ability of an insurer from assessing the insurability of the applicant and determining whether to issue a policy, and in addition to other questions an insurer may ask an applicant, an insurer may inquire in the application 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.</p> <p>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 policy and loan, the application shall be rejected as a violation of Section 13 of the Act. If the financing does not violate Section 13 in this manner, the insurer: (a) may disclose to the applicant and the insured at application or at the time of an amendment to the policy, but no later than the delivery of the policy, certain statements regarding the potential ramifications of such a loan arrangement where the policy is used as collateral and the policy does change ownership at some point in the future to satisfy the loan; and (b) make require certain certifications from the applicant and/or the insured such as: "I have not entered into any agreement or arrangement providing for the future sale of this life insurance policy; 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 the borrower has an insurable interest in the insured."</p>

**Section 10. General Rules (NAIC)/Section 11. General Rules (NCOIL)**

NAIC Viatical Settlements Model Act

A viatical settlement provider entering into a viatical settlement contract must first obtain: (a) if the viator is the insured, a written statement from a licensed physician that the viator is of sound mind and free of undue influence in entering into a settlement; and (b) a document in which the insured consents to release of medical and other personal information. Within 20 days after the viator executes all of the documents necessary to transfer any rights under the policy or within 20 days of entering into any agreement to viaticate the policy, the viatical settlement provider shall give written notice to the insurer that the policy has or will become a viaticated policy. Insurer verification of insurance also is provided. The insurer must indicate whether it intends to investigate insurance contract validity or the possibility of fraud within 30 days.

Prior to or at the time of execution of the viatical settlement contract, the viatical settlement provider shall obtain a witnessed document in which the viator consents to the viatical settlement contract, represents that the viator has a full and complete understanding of the viatical settlement contract, that he or she has a full and complete understanding of the benefits of the life insurance policy, acknowledges that he or she is entering into the viatical settlement contract freely and voluntarily and, for persons with a terminal or chronic illness or condition, acknowledges that the insured has a terminal or chronic illness and that the terminal or chronic illness or condition was diagnosed after the life insurance policy was issued.

The viator may rescind the settlement contract within 60 days from execution or 30 days of receipt of proceeds by the viator. This right of rescission is conditional on certain actions, including timely repayment of viatical settlement proceeds received. Death of the insured during the rescission period is deemed to rescind the settlement contract, subject to timely repayment of any proceeds received, among other requirements.

Viatical settlement purchasers are also provided rights to rescind a viatical settlement investment contract within three days of receiving mandated disclosures.

Time frames for fund transfers and transaction responsibilities of viatical settlement providers, viators, escrow agents, related provider trusts, are established. Failure to pay a viator funds due in timely fashion permits a viator to invalidate the settlement. A viatical settlement provider or broker licensed in the state of the viator's residence -- or a broker's or provider's representative -- is authorized to contact the viator every three months to ascertain his or her health status if the insured has a life expectancy of more than one year from settlement, or every month if the life expectancy is less than one year. Viatical settlement providers and brokers are responsible for the actions of their authorized representatives.

<p>NCOIL Life Settlements Model Act</p>	<p>The NCOIL model act includes similar provisions. However, the NCOIL model act includes additional provisions such as a provision specifically prohibiting an insurer from unreasonably delaying effecting the change of ownership or beneficiary with any viatical settlement contract lawfully entered into in the state or with a resident of the state. Also, the NCOIL model act provides for a shorter rescission period.</p> <p>In addition, this section in the NCOIL model includes provisions similar to the provisions included in Section 11 of the NAIC model act. The NCOIL model act provides for a 2 year prohibition on settling a policy unless the owner certifies to the provider that: (1) the policy was issued upon the owner’s exercise of conversion rights; or (2) the owner submits independent evidence that one or more of the following conditions have been met within the 2-year period: (a) chronic or terminal illness; (b) disposal of ownership interests in a closely held corporation; (c) death of the spouse; (d) divorce; (e) retirement; (f) physical or mental disability; or (g) personal bankruptcy or insolvency.</p>
<p><b>Section 11. Prohibited Practices (NAIC)/Section 13. Prohibited Practices (NCOIL)</b></p>	
<p>NAIC Viatical Settlements Model Act</p>	<p>It is a violation to enter into a viatical contract prior to policy application or for 5 years from its issuance. However, a viator can certify to a provider that certain conditions warrant policy settlement regardless of this prohibition.</p> <p>The Model Act in this section limits different transactions in one of four ways depending on their circumstances. It prohibits <i>absolutely</i> any person from entering into a viatical settlement contract prior to the application for or issuance of a policy. It allows the settlement of an insurance policy <i>at any time</i> for circumstances of personal hardship including: (1) chronic or terminal illness (i.e., genuine viatical settlements); (2) death of the spouse; (3) divorce; (4) retirement; (5) physical or mental disability; or (6) personal insolvency.</p> <p>It permits the settlement of insurance policies after <i>two years</i> if: (1) The policy owner posts cash or collateral for a loan against the policy or limits the loan to the net cash surrender value of the policy; (2) there is no agreement evidencing intent to settle the policy prior to two years from policy issuance; and (3) there has been no evaluation of the insured or the policy for settlement prior to two years from policy issuance. It permits the settlement of all other insurance policies <i>five years</i> after policy issuance because these policies do not satisfy any of the other provisions that would permit settlement prior to five years.</p> <p>Copies of the independent evidence required to establish the hardship permitting immediate settlement of a policy shall be sent to the insurer. If the settlement provider submits the required evidence and viator certification to the insurer, it is deemed to conclusively establish satisfaction of the requirements of this section. Upon receipt of a properly completed request for change of ownership or beneficiary of a policy, the insurer shall confirm within 30 days that the change has been effected or otherwise specify why the changes cannot be processed. An insurer shall not unreasonably delay such policy change or otherwise interfere with a lawful viatical settlement contract.</p>

NCOIL Life Settlements Model Act	<p>The provisions of this section do not mirror the NAIC model act. They are similar to the provisions in Section 12 of the NAIC model act. This section in the NCOIL model act also includes additional provisions not found in Section 12 of the NAIC model act, such as: (1) a provision prohibiting any person from issuing, soliciting, marketing or otherwise promoting the purchase of an insurance policy for the purpose of or with an emphasis on settling the policy; and (2) a provision prohibiting any person from entering into a premium finance agreement with any person or agency, or any person affiliated with such person or agency, pursuant to which such person shall receive any proceeds, fees or other consideration, directly or indirectly, from the policy or owner of the policy or any other person with respect to such policy that are in addition to the amounts required to pay the principal, interest and service charges related to policy premiums pursuant to the premium finance agreement or subsequent sale of such agreement; provided, further, that any payments, charges, fees or other amounts in addition to the amounts required to pay the principal, interest and service charges related to policy premiums paid under the premium finance agreement shall be remitted to the original owner of the policy or to his or her estate if he or she is not living at the time of the determination of overpayment.</p>
<b>Section 12. Prohibited Practices and Conflicts of Interest (NAIC)</b>	
NAIC Viatical Settlements Model Act	<p>The section provides that it is a fraudulent viatical settlement act, with respect to any viatical settlement contract or insurance policy: (1) no viatical settlement broker knowingly shall solicit an offer from, effectuate a viatical settlement with or make a sale to any viatical settlement provider, viatical settlement purchaser, viatical settlement investment agent, financing entity or related provider trust that is controlling, controlled by, or under common control with such viatical settlement broker; or (2) no viatical settlement provider knowingly may enter into a viatical settlement contract with a viator, if, in connection with such contract, anything of value will be paid to a viatical settlement broker that is controlling, controlled by, or under common control with such viatical settlement provider or the viatical settlement purchaser, viatical settlement investment agent, financing entity or related provider trust that is involved in such viatical settlement contract.</p> <p>The commissioner may require by regulation that viatical settlement providers file all viatical settlement promotional, advertising and marketing materials prior to entering into a viatical settlement contact. Viatical settlement marketing materials expressly referencing that insurance is “free” are prohibited. Any marketing material reference that would cause a viator to reasonably believe insurance is free constitutes a violation under the Act. A life insurance producer, insurer, viatical settlement provider or broker or viatical settlement investment agent may not make any statement or representation to the applicant or policyholder in connection with the sale or financing of a life insurance policy in effect that the insurance is free or without cost to the policyholder for any period of time unless provided in the policy itself.</p>
NCOIL Life Settlements Model Act	<p>The NCOIL model act does not have a similar section. However, portions of Section 12 of the NAIC model are similar to provisions in Section 13 of the NCOIL model act.</p>

<b>Section 13. Advertising for Viatical Settlements [and Viatical Settlements Purchase Agreements] (NAIC)</b>	
NAIC Viatical Settlements Model Act	The purpose of this section is to provide prospective viators and viatical settlement purchasers with clear and unambiguous statements in the advertisements of viatical settlements and to assure the clear, truthful and adequate disclosure of the benefits, risks, limitations and exclusions of any viatical settlement contract or viatical settlement purchase agreement bought or sold. This purpose is intended to be accomplished by the establishment of guidelines and standards of permissible and impermissible conduct in the advertising of viatical settlements to assure that product descriptions are presented in a manner that prevents unfair, deceptive or misleading advertising and is conducive to accurate presentation and description of viatical settlements through the advertising media and material used by viatical settlement licensees. The specific provisions in this section carry out these purposes.
NCOIL Life Settlements Model Act	See Section 8 of the NCOIL model act for specific advertising requirements.
<b>Section 14. Fraud Prevention and Control (NAIC)/Section 14. Fraud Prevention and Control (NCOIL)</b>	
NAIC Viatical Settlements Model Act	Fraudulent settlement acts, interference with the provisions of the model act, and participation of convicted felons in the business of viatical settlements are prohibited. Warnings must be included in viatical settlement contracts, applications and viatical investment contracts that the presentation of false information is a crime. Persons having knowledge or even reasonable suspicion that a fraudulent viatical settlement act has been or will be committed must report such information to the commissioner in a manner prescribed by the commissioner. In the absence of malice, a person furnishing such information is immune from civil liability or a cause of action if the information is provided to or received from: (1) the commissioner or the commissioner's employees, agents or representatives; (2) federal, state or local law enforcement or regulatory officials or their employees, agents or representatives; (3) a person involved in the prevention and detection of fraudulent viatical settlement acts or that person's agents, employees or representatives; (4) the NAIC, NASD, NASAA or their employees, agents or representatives, or other regulatory body overseeing life insurance, viatical settlements, securities or investment fraud; or (5) the life insurer that issued the policy covering the life of the insured. Furnished information is confidential and insulated from discovery or subpoena. Viatical settlement providers and brokers must have viatical settlement antifraud initiatives in place reasonably calculated to detect, prosecute and prevent fraudulent viatical settlement acts. This provision specifies what these antifraud initiatives must include. Antifraud plans submitted to the commissioner are considered privileged and confidential and are not be considered a public record or subject to discovery or subpoena in a civil or criminal action.
NCOIL Life Settlements Model Act	Similar provisions.

<b>Section 15. Injunctions; Civil Remedies; Cease and Desist (NAIC)/Section 15. Injunctions; Civil Remedies; Cease and Desist (NCOIL)</b>	
NAIC Viatical Settlements Model Act	Injunctive relief is provided for a violation of any provision of the Act or any regulation implementing the Act in addition to other penalties and enforcement authority. A person damaged by another violating the Act may bring a civil action against that person. A violation of the Act relating to settlement purchasers renders the purchase agreement voidable. The commissioner may issue a cease and desist order against a person violating the Act, any regulation or order adopted by the commissioner or any written agreement entered into with the commissioner. Civil penalties and restitution may be imposed upon a person violating the Act in addition to the penalties and other enforcement provisions of the Act. A person convicted of a violation of the Act constituting misdemeanor or felony theft shall pay restitution to persons aggrieved, in addition to a fine or imprisonment, but not in lieu of imprisonment. The enforcement provisions and penalties apply to viator only if the viator commits a fraudulent settlement act.
NCOIL Life Settlements Model Act	Similar provisions.
<b>Section 16. Penalties (NCOIL)</b>	
NAIC Viatical Settlements Model Act	No equivalent section.
NCOIL Life Settlements Model Act	It is a violation of the Act for any person, provider, broker or any other party related to the business of life settlements, to commit a fraudulent life settlement act. For criminal liability purposes, a person that commits a fraudulent life settlement act is guilty of committing insurance fraud and is subject to additional penalties under the state's law regarding insurance fraud. The commissioner is given authority to impose a civil penalty and the amount of the claim for each violation upon any person, including persons and their employees licensed under the Act, who has committed a fraudulent life settlement act or violated any other provision of the Act. The license of a person licensed under this Act that commits a fraudulent life settlement act shall be revoked for a specified period.
<b>Section 16. Unfair Trade Practices (NAIC)/Section 17. Unfair Trade Practices (NCOIL)</b>	
NAIC Viatical Settlements Model Act	Violation of any provision of the Act, including the commission of a fraudulent viatical settlement act, constitutes an unfair trade practice, as provided in a state's unfair trade practices act, subject to the penalties contained in that Act.
NCOIL Life Settlements Model Act	Similar provision.

<b>Section 17. Authority to Promulgate Regulations (NAIC)/Section 12. Authority to Promulgate Regulations; Conflict of Laws (NCOIL)</b>	
NAIC Viatical Settlements Model Act	The commissioner may: (1) promulgate regulations to implement the Act; (2) establish standards for evaluating reasonable viatical settlement contract payments to viators who are terminally or chronically ill; (3) establish licensing requirements, fees and standards for continued licensure of viatical settlement licensees; (4) require a bond or other mechanism for financial accountability for viatical settlement providers and brokers; and (5) adopt rules governing the relationship and responsibilities of all entities during the viatication of a life insurance policy or certificate.
NCOIL Life Settlements Model Act	Similar provisions. Provides authority for the commissioner to promulgate regulations to implement the provisions of the Act. Also, provides for conflict of law provisions in the situation where there is more than one owner of the policy who live in different states and the situation where the provider who enters into a life settlement contract in a state with an owner who is a resident of another state. If there is a conflict in the laws that apply to an owner or a purchaser in any individual transaction, the laws of the state that apply to the owner shall take precedence and the provider is required to comply with those laws.
<b>Section 18. Severability (NAIC)</b>	
NAIC Viatical Settlements Model Act	If any portion of this Act or any amendments thereto, or its applicability to any person or circumstance is held invalid by a court, the remainder of this Act or its applicability to other persons or circumstances shall not be affected.
NCOIL Life Settlements Model Act	No equivalent section.
<b>Section 19. Effective Date (NAIC)/Section 18. Effective Date (NCOIL)</b>	
NAIC Viatical Settlements Model Act	This Act shall take effect on [insert date]. A viatical settlement provider, viatical settlement broker [or viatical settlement investment agent] transacting business in this state may continue to do so pending approval or disapproval of the provider, broker [or investment agent's] application for a license as long as the application is filed with the commissioner by [insert date].
NCOIL Life Settlements Model Act	Permits a provider lawfully transacting business in the state prior to the Act's effective date to continue to do so pending approval or disapproval of that person's licensing application as long as the application is filed no later than 30 days after the commissioner publishes an application form and provider licensing instructions. While the application is pending, the applicant may use any form of life insurance contract that has been filed with the commissioner pending the commissioner's approval. The applicant must generally comply with all other requirements of the Act.  Similar provisions are provided for brokers.

1/02/2008

This chart does not constitute a formal legal opinion by the NAIC staff and should not be relied upon as such. Every effort has been made to provide correct and accurate information to assist the reader in targeting useful information. For further details, the NAIC Viatical Settlements Model Act and the NCOIL Life Settlements Model Act should be consulted.