

## Preserving State Insurance Regulation...

- By interacting with Congress on issues of critical importance to insurance public policy
- By educating state lawmakers on the solutions to their insurance-market crises
- By fostering relationships between state legislators
- By asserting the primacy of state insurance regulation under the McCarran-Ferguson Act of 1945

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## INDUSTRY WEIGHS IN ON STOLI—OPEN DEBATE CONTINUES IN JULY

Interested parties from across the nation went toe-to-toe on issues related to stranger-originated life insurance (STOLI) at a six-hour, April 20 NCOIL meeting held by an NCOIL Subcommittee on Life Settlements. Representatives of life insurance, life settlement, and premium finance industries, as well as financial advisors and investors, weighed in on how STOLI should be addressed in an updated version of an NCOIL *Life Settlements Model Act* to be considered in July.

The meeting, held in Arlington, VA, provided an open forum for legislators and industry to brainstorm on the appropriate way to isolate the bad players in STOLI from legitimate transactions. Parties explained their proposals and discussed and debated amendments with Subcommittee members and other par-

ties (see pages 2 to 3 for further comments).

The Subcommittee will continue reviewing the model during a special July 18 session from 2 to 6 p.m., before the July 19 through 22 NCOIL Summer Meeting. Though the Subcommittee did not complete its examination of the model on April 20, lawmakers and interested parties were pleased with the progress and the open format of the discussion.

Issues addressed included the definition of a life settlement contract, premium finance lending, policy disclosures, and whether life settlements buyers should be included in the bill's scope. Legislators did not determine whether a two or five-year ban on policy settlements would be appropriate.

The NCOIL model, originally adopted in 2000, was amended in 2004 to address a growing life settlements market.

## NCOIL PEO MODEL NEARS FINISH LINE

As the Summer Meeting fast approaches, the NCOIL Professional Employer Organization (PEO) Working Group is winding up debate on a draft *Model Act Regarding Professional Employer Organizations in Workers' Compensation Insurance*. On an April 12 conference call, legislators discussed amendments to the model with interested parties and resolved to complete consideration this month and next with an expectation to recommend the model to the Workers' Comp Committee in July.

The draft would require that a PEO register with an appropriate state authority and that the experience rating of a PEO client remain with the client regardless of its relationship with the PEO.

Representatives of PEOs, insurers, actuaries, and the National Association of Insurance Commissioners submitted amendments following the NCOIL Spring Meeting regarding client-level rating, experience-reporting to a statistical organization, and the definition of a PEO.

### ON THE AGENDA: NCOIL SUMMER MEETING

Critical public policy issues scheduled for consideration include, among others:

- \* life settlements
- \* accreditation program and process for new standards
- \* federal efforts to preempt insurance oversight
- \* mega-catastrophe proposals and state land-use policies
- \* professional employer organizations (PEOs)
- \* guaranty fund reform
- \* ERISA and state authority, and long-term care insurance
- \* attorneys general and insurance policymaking

## POINT-COUNTERPOINT: LIFE SETTLEMENTS AND STOLI

NCOIL deliberations regarding emerging life settlements transactions and an NCOIL *Life Settlements Model Act* have featured vigorous testimony from various stakeholders.

For this edition of the NCOILetter, representatives of the life insurance, life settlements, and premium finance industries, as well as an academic and financial services contributor, were asked to respond to the following question:

*What is the appropriate way for legislators to isolate the bad players in Stranger Owned Life Insurance (STOLI) from legitimate industry transactions? Comments are below.*

**“While insurable interest laws exist in every jurisdiction in the nation, and insurance companies do their best to identify STOLI-related policy applications, it is simply impossible in a marketplace this large to monitor every transaction to assure it is legitimate.”—  
Frank Keating,  
ACLI**

### **Eliminate the Financial Incentives for STOLI**

*By Frank Keating*

The only practical way to attack stranger-originated life insurance is to eliminate the financial incentive for it. A five-year moratorium on life settlements that is clearly and narrowly targeted on STOLI transactions is the most efficient means of accomplishing this goal.

The life insurance settlement market is skyrocketing, already estimated by some analysts to be \$80 billion, annually. While most of these transactions are proper, many are not. Unscrupulous STOLI promoters are undermining the market for legitimate life settlements by inducing senior citizens to purchase life insurance policies for the sole

purpose of selling them to investors. The April 23, 2007, edition of *BusinessWeek* shows how widespread these schemes are and how seniors can suffer from this practice.

Moreover, some STOLI promoters stand accused of suborning senior citizens to lie on life insurance policy applications about their intentions regarding settlement of their policies.

While insurable interest laws exist in every jurisdiction in the nation, and insurance companies do their best to identify STOLI-related policy applications, it is simply impossible in a marketplace this large to monitor every transaction to assure it is legitimate. Better tools are needed.

A carefully drawn five-year moratorium will remove much of the financial incentive for STOLI without placing undue enforcement bur-

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### **Stopping STOLI**

*By Stephan R. Leimberg, Esq.*

STOLI is an attempt to create the appearance of insurable interest, the illusion the insured is the real owner and thus enable a speculator to accomplish—by deceit and misdirection—what is not legally possible directly.

To Stop STOLI:

Define STOLI as, "Any creation of new insurance (manufacture of risk that didn't previously exist) with the intent (by plan or agreement in writing or otherwise) of assigning or shifting (directly or indirectly) policy death benefits to speculators who have no interest in the continued life of the insured."

Forbid a sale of a STOLI contract to the settlement market.

Mandate—with appropriate penalties for failure to comply—that both the insured and agent/broker disclose to the insurer any L.E. (life expectancy evaluation) and/or H.I.P.P.A. medical information release obtained from the proposed insured within a year prior to the application for the coverage in question.

Criminalize presenting or assisting or aiding or abetting false or misleading information in an insurance application.

Impose meaningful fines and penalties for rebating and financial inducements to purchase.

Impose a 5-year ban on settlements—but make it clear in a "Purpose of the Provision" statement—that the ban applies and is to be enforced ONLY in cases where the facts and circumstances indicate the coverage

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## Avoid Collateral Damage When Attacking STOLI

By Doug Head

Stranger Owned Life Insurance is a perfectly legitimate outcome of perfectly proper transactions. It is the end of all legitimate life settlements approved by law. Stranger ORIGINATED life insurance is another thing entirely. Unfortunately, confusion is common. Unfortunately, the improper issuing of life insurance also can result in eventual stranger acquisition of an improper stranger-originated policy.

The hallmarks of an improper stranger originated policy may not be clear to all insurers, but most have started to intensively focus on applications and insurable interest and LISA is

pleased to hear of their efforts. Effort in this area seems to go into analyzing the fact patterns that can allow insurers to challenge bad practice.

Legislators should allow insurers tools to properly underwrite and to require clearer information from applicants for insurance. Also, everyone involved should support advancement of consumer understanding and market awareness with new disclosures that will better educate all consumers about the settlement option when suitable. Settlements are not the creation of policies for sale. Settlements allow the option of being able to sell when a policy is properly acquired. That involves knowledge and recognition of the market, not hiding the facts it or misusing it.

Legislators

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## Insurable Interest Is the Key

By Scott Cipinko

NCOIL is charged with the mighty task of turning a ship headed in the wrong direction. The NCOIL *Life Settlements Model Act* is under consideration so legislators can isolate Stranger Initiated Life Insurance (SILI) without stifling the many legitimate transactions. The key is insurable interest. Unlike the NAIC, NCOIL must avoid the “magic bullet” theory that one can enforce the insurable interest law by killing certain types of loan transactions or retarding consumer rights for five years.

Legitimate life insurance premium finance transactions do not violate insurable interest. A premium finance lender must be permitted to take a

security interest in the collateral provided to secure the loan; if part of the collateral is the life insurance policy, then the lender may take a security interest in that. A collateralized security interest preserves and protects the underlying asset and its value, which, in turn, reduces the cost of the loan to the consumer. Consumers should be able to choose **how** they purchase their life insurance and should not be discriminated against. This is not a bona fide underwriting risk factor and thus, discrimination based on a loan may violate the Unfair Trade Practices Act.

The draft NAIC model act is overly onerous, will hurt consumers and does not address insurable interest. Though the two-year carve out for certain policies is a worthy con-

*(continued on page 4)*

## VIEW FROM THE HILL: TERRORISM DEBATE TAKES HOLD

Those who favor extending the Terrorism Risk Insurance Program (TRIP) are crusading to make a new backstop more long-term—as long, for some, as forever. At an April 24 hearing of the House Financial Services Capital Markets Subc., Chair Paul Kanjorski (D-PA) said it may be appropriate to include nuclear, chemical, biological, and radiological attacks in an updated plan, as private insurers are ill-equipped to cover them. He also expressed interest in adding

group life/domestic terrorism to the mix.

Except for consumer groups, most at the table agree on the need for an extension, but the look of it is unclear. Bipartisan leadership in both chambers seem committed to continuing and expanding the backstop, but Republican rank-and-file is more reluctant—preferring ways to increase private market capacity.

Complicating the issue is recent dissension within the industry regarding retention levels. The

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**“Legislators should not create new laws on settlements to try to deal with an old issue and many decades of court decisions on insurable interest and underwriting.**

**Isolating bad actors will be the responsibility of underwriters doing their job....”—Doug Head, LISA**

**SAVE THE DATE**

**NCOIL  
Summer  
Meeting &  
Seminar**

**July  
19 through 22,  
2007**

**Seattle,  
Washington**

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# NCOIL

## ELIMINATE

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dens on already overstretched state insurance departments. Life insurance policyholders would be barred from settling their policies for five years after the effective date, unless they purchased the policy using their own funds or face a specified change in life circumstances—such as illness, unemployment or the death of the beneficiary.

Policyholders who purchased their

life insurance legitimately would be not be harmed by this moratorium. But forcing STOLI investors to wait five years for their payoff will deter the practice of purchasing life insurance *solely* for the purpose of settlement.

*Mr. Keating is president and CEO of the American Council of Life Insurers, based in Washington, DC.*

## STOPPING

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was originated with the intent to sell the policy. Through broad exceptions, prohibit *only* what must be stopped, i.e., transactions intended—through *whatever* form—to serve as a cover for a deliberate violation of a state's insurable interest law.

State that the provisions above supplement rather than supersede

existing insurable interest law.

STOLI is a perversion of three socially useful tools: life insurance, premium financing, and life settlements that, like fire, matches, and gasoline, must not be allowed to combine.

*Mr. Leimberg is CEO of Leimberg Information Services, Inc., based in Bryn Mawr, PA.*

## AVOID

*(continued from page 3)*

should not create new laws on settlements to try to deal with an old issue and many decades of court decisions on insurable interest and underwriting. Isolating bad actors will be the responsibility of underwriters doing their job and reporting improper practices to regulators. Most of the public assumes, rightfully, that this practice is in place and that their advisors are following

the law. Current laws covering the issuance of policies, when enforced, are sufficient to address the real “origination” issues. Legislators should continue to encourage enforcement and give concerned insurers and the public tools to identify bad practice in the origination of policies.

*Mr. Head is exec. director of the Life Insurance Settlement Assoc., based in Orlando, FL.*

## INSURABLE

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cept, the model act falls short of what is needed to fully protect consumer interests.

While some of the more proactive carriers are doing a good job of differentiating between legitimate and illegitimate transactions, some have taken the inquiries too far and used them to

discriminate against consumers based on whether the policy is financed. We trust that with continued vigilance by all parties this will no longer be the case.

*Mr. Cipinko is executive director of the Life Insurance Finance Association, based in Marietta, GA.*

## VIEW

*(continued from page 3)*

American Insurance Assoc. (AIA) announced an agreement with the Coalition to Insure Against Terrorism that would accept TRIP's current mandate that companies cover the first 20 percent of claims before triggering the backstop. The Nat.'l Assoc. of Mutual Insurance Companies (NAMIC) and Property Casualty Insurance Assoc. of America

(PCI), which represent more small and mid-sized insurers than AIA, swiftly criticized the agreement as premature, reiterating their long-standing argument that a lower retention is critical to the well-being of smaller companies that, they note, write the bulk of U.S. terrorism coverage.

TRIP expires on December 31. The debate is far from over.