No. 24-6801

United States Court of Appeals for the Ninth Circuit

AMERITAS LIFE INSURANCE CORP.,
Plaintiff-Appellant,

v.

WILMINGTON TRUST, NATIONAL ASSOCIATION,
AS SECURITIES INTERMEDIARY,
Defendant-Appellee.

On Appeal from the United States District Court
for the Central District of California
No. 2:24-cv-02437-SVW-RAO
The Honorable Stephen V. Wilson, Judge

BRIEF OF THE LIFE INSURANCE SETTLEMENT ASSOCIATION AS *AMICUS CURIAE* IN SUPPORT OF APPELLEE AND AFFIRMANCE OF THE DISTRICT COURT

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, counsel for *amicus* certifies the following:

Amicus does not have a parent corporation and no publicly held corporation owns 10% or more of its stock.

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INTEREST OF *AMICUS CURIAE* [1]

The Life Insurance Settlement Association (LISA) is the nation's leading trade association dedicated to promoting the ability of consumers to realize the full market value of their life insurance policies by selling those policies on the secondary market. Established in 1994, LISA has dozens of members who are all involved in the life settlement industry, including brokers, providers, investment firms, law firms, medical underwriters, consultants, actuaries, trustees, and escrow agents. LISA's members operate in every U.S. jurisdiction, including in the Ninth Circuit. LISA regularly files *amicus* briefs in cases that raise issues of significant concern to the life settlement industry. *See, e.g.*, *Estate of Beverly E. Berland vs. Lavastone Capital LLC*, 266 A.3d 964 (Del. 2021); *Sun Life Assurance Co. v. Wells Fargo Bank, N.A.*, 208 A.3d 839 (N.J. 2019); *Wells Fargo Bank, N.A. v. Pruco Life Ins. Co.*, 200 So. 3d 1202 (Fla. 2016); *Kramer v. Phoenix Life Ins. Co.*, 940 N.E.2d 535 (N.Y. 2010); *First Penn-Pac. Life Ins. Co. v. Evans*, 313 F. App'x 633 (4th Cir. 2009).

LISA respectfully submits its perspective on the practical, economic, and legal implications of this appeal. In particular, LISA explains the types of services and benefits that its members regularly offer consumers and responds to certain

[1] This brief is submitted with the consent of all parties. Pursuant to F.R.A.P. 29(a)(4)(E) and Local Rule 29.1, counsel for *amicus* affirm that this brief was not authored by any party's counsel in whole or in part.

arguments and characterizations made by the American Council of Life Insurers (ACLI), which filed an opposing *amicus* brief here. This appeal presents questions of considerable importance for the life insurance and life settlement sectors. LISA and its members believe it is useful for this Court to have a full and nuanced understanding of purpose, function, and benefits of life settlement markets. In light of Appellant's broad new theory of "insurable interests," LISA's members feel compelled to highlight how that theory could needlessly disrupt established markets and regulatory frameworks. Additionally, LISA and its members have an ongoing interest in the fair and consistent application of law to life settlement transactions throughout the United States.

SUMMARY OF THE ARGUMENT

The ability to transfer and sell life insurance, known as "life settlement," is a longstanding commercial practice that gives policyholders the option to monetize a valuable asset. Life settlement sales occur on a form of secondary markets that are regulated in almost every state. Before these secondary markets existed, the vast majority of life insurance policies simply lapsed or expired, resulting in no payout to the policyholder. A smaller proportion were turned in for a "cash surrender" payment directly from the insurance company, providing a small fraction of what a consumer might obtain through a life settlement.

Life settlement markets benefit consumers in several tangible ways. They provide liquidity while a policyholder is still living, which can be used for various purposes, such as supplemental retirement income, *inter vivos* gifts and donations, or medical care and expenses. Perplexingly, Appellant and their *amicus*, the American Council of Life Insurers (ACLI), suggest that life settlement somehow harms consumers. But the crux of their argument is that big insurance companies have long assumed that many consumers' policies will lapse or expire – so continuing those policies via secondary markets might reduce insurers' profits and influence their marketing decisions. While it is refreshingly candid for the industry to acknowledge its focus on profits, that does not reflect consumer welfare concerns.

Appellant and ACLI generally critique the life settlement industry and repeatedly insinuate that it constitutes a macabre "wager on human life." No amount of rhetorical flourish can obscure the fact that both life insurance companies and life settlement providers use actuarial estimates and probabilistic risk analysis to examine and price each life insurance policy. That is not macabre; it is just math. It is also no different from what life insurance companies themselves do.

Nor do ACLI's arguments speak to the real issue in this case—whether term policies that have not yet been converted into permanent policies are uniquely incompatible with life settlement. But such policies have never been singled out or handled differently by regulators, insurance companies, or in laws passed by 45

states. This Court should resolve that limited issue narrowly and affirm the District Court. As a matter of contract law, statutory interpretation, and settled practice, a settled policy can be converted by its owner. Appellant and ACLI cite no relevant authority suggesting otherwise. Indeed, in the experience of LISA and its members, over the last two decades, insurance companies themselves treat post-settlement conversions as acceptable and routine, and have regularly processed such conversions and paid them out (as Ameritas did here). In 2011, the New York Department of Insurance, one of the nation's preeminent insurance regulators, wholly rejected the same arguments that Appellant and ACLI advance today, which the industry has since relied upon.

Appellant tries to sidestep all this in the hopes of establishing new precedent about "insurable interests." This argument simply ignores the well-established law and practice providing that converting a term policy to a permanent one does not create a new insurance contract. It is, rather, the continuation of a pre-existing policy. LISA respectfully urges this Court to consider the disruptive effects that Appellant's theory could have on established markets, existing practices, and state regulatory schemes.

At bottom, Appellant and ACLI are asking this Court to turn its broad theory into new law in order to curtail secondary markets and increase the profit margins of large insurance companies. This Court should decline that invitation.

ARGUMENT

This case involves narrow fact-specific and legal issues that this Court can and should resolve in a straightforward fashion by affirming the District Court. Nonetheless, Appellant and its *amicus* make novel arguments, some of which challenge the very legitimacy of life settlement markets. These policy-focused arguments are better directed to legislatures than to courts, but they are also incomplete and misguided. LISA and its members thus offer a fuller and more nuanced explanation of the purpose, functions, and benefits of life settlement markets.

I. LIFE INSURANCE SETTLEMENT MARKETS BENEFIT CONSUMERS

The basic purpose of life settlement is to allow consumers to monetize valuable assets—their life insurance policies—by selling them to third parties. *See generally*, LISA, *Why Life Settlements* (2025), https://www.lisa.org/why_life_settlements. The third party buys the insurance policy "for a cash payment that is less than the full amount of the benefit." National Association of Insurance Commissioners (NAIC), *Selling Your Life Insurance Policy: Understanding Life Settlements* at 1 (2025), https://content.naic.org/sites/default/files/publications-consumer-life-settlement.pdf. "The buyer . . . pays all future premiums and collects the full amount of the death benefit when the insured dies." *Id.*

Life settlement markets thus involve the sale of a recognized type of property. Over a hundred years ago, the Supreme Court rightly recognized that "it is desirable to give to life policies the ordinary characteristics of property"—including the right to alienation, since the unnecessary restriction of that right "diminish[es] appreciably the value of the contract in the owner's hands." *Grigsby v. Russell*, 222 U.S. 149, 156 (1911) (emphasis added). That logic remains foundational to secondary markets for life insurance to this day. *See, e.g.*, Washington State House Bill Report SSB 5196, *An act relating to adopting the life settlements model act* (Apr.7, 2009), https://lawfilesext.leg.wa.gov/biennium/2009-10/Htm/Bill%20Reports/House/5195-S%20HBR%20APH%2009.htm ("The United State[s] Supreme Court and the Washington Supreme Court have both recognized that a life insurance policy is property that can be sold by the owner. . . . The bill . . . protects property rights.") (emphasis added). Over a hundred years ago, the Supreme Court rightly recognized that "it is desirable to give to life policies the ordinary characteristics of property"—including the right to alienation, since the unnecessary restriction of that right "diminish[es] appreciably the value of the contract in the owner's hands." *Grigsby v. Russell*, 222 U.S. 149, 156 (1911) (emphasis added). That logic remains foundational to secondary markets for life insurance to this day.

The mechanics of the markets are fairly simple: A consumer contacts a licensed provider (buyer) who, either directly or through a licensed broker, offers a

quote, and if the consumer is interested, provides relevant legal documentation. Once the sale moves forward, the life insurance policy then transfers from the consumer to the third-party buyer, who maintains the premiums for the ensuing years and receives the ultimate disbursal from the life insurance policy. In many transactions and pursuant to applicable state law, brokers advise the seller to check all of their financial options before selling the asset and to consult guidance from the National Association of Insurance Commissioners before making a final decision. *See*, e.g., NAIC, *Selling Your Life Insurance Policy* (2025), https://content.naic.org/sites/default/files/publications-consumer-life-settlement.pdf.

The life settlement market provides a competitive alternative to the options offered by large insurance companies. Traditional life insurance policies can be either term or permanent policies. Term policies are issued for a set term of years, so long as the insured continues to pay premiums. If the insured dies during the term, then his or her beneficiaries receive the death benefit. If not, the policy expires. Permanent policies, as the name suggests, are not limited to a set term of years, and some term policies are convertible, meaning that they can be converted to permanent policies. Both term and permanent policies can lapse if an insured stops paying premiums. *See generally* New York Department of Financial Services, *Types of Life Insurance Policies* (2025), https://www.dfs.ny.gov/consumers/life_insurance/types_of_policies.

Insurance companies rely on expired or lapsed policies as a core part of their business model. The vast majority of life insurance policies, whether term or permanent, result in a lapse or expiration, which means that the insurance companies pay nothing to policyholders or beneficiaries. *See, e.g.*, Daniel Gottlieb and Kent Smetters, *Lapse-Based Insurance*, 111(8) The American Economic Review 2377, 2377 (Aug. 2021), https://www.jstor.org/stable/27086079 ("[M]ost term policies . . . lapse before death or the end of the term."). *See also id*. at 2381 ("[N]early 88 percent of universal life policies, a popular type of permanent insurance, do not terminate with a death benefit claim"); *id.* ("[F]or policies sold to seniors at age 65, 74 percent of term and 76 percent of permanent (universal life policies) never pay a claim"). According to Appellant's own *amicus*, in 2023 alone, upwards of 11 million life insurance policies, with a collective face value of $754 billion, lapsed or were surrendered—even though policyholders often spent decades paying premiums. *See* Am. Council of Life Insurers, *Life Insurers Fact Book 2024* tbls. 7.1, 7.4, 7.5 (2024), https://www.acli.com/-/media/public/pdf/news-and-analysis/publications-and-research/2024-fact-book/pub_07fb24_chapter_07_lifeinsurance.pdf. Similar rates of lapse and expiration persist year after year. *Id.*

Alternatively, some insurance providers offer a "cash surrender value" for certain policies. *See* 1 Bertram Harnett & Irving I. Lesnick, *The Law of Life and Health Insurance* §1.01 (2020) (Harnett & Lesnick) (cash surrender is "the sum that

the insured can get simply by surrendering . . . his policy to the insurance company"). Life settlement markets, on the other hand, offer much greater value to consumers. As the U.S. Securities and Exchange Commission highlighted, "policy owners sell their policies in the secondary market rather than allowing them to lapse or surrendering them to the insurance company for cash value to maximize their asset" Staff Rep. to U.S. Sec. & Exch. Comm'n, *Life Settlements Task Force* at 3 (July 22, 2010) (emphasis added).[2] In fact, life settlement sales tend to result in at least four times, and sometimes upwards of eleven times, the amount of the cash surrender value that consumers could receive from their life insurance companies.[3] This enhanced opportunity for consumers to monetize their assets is the natural result of

[2] *Accord* United States Government Accountability Office, *Life Insurance Settlements: Regulatory Inconsistencies May Pose a Number of Challenges*, Report to the Special Committee on Aging, U.S. Senate, GAO-10-775 (July 2010), https://www.gao.gov/assets/gao-10-775.pdf ("A policy owner with unneeded life insurance can surrender the policy to the insurer for its cash surrender value. Or, the owner may receive more by selling the policy to a third-party investor through a life settlement.") (emphasis added).

[3] *See, e.g.*, Afonso V. Januário & Narayan Y. Naik, *Empirical Investigation of Life Settlements: The Secondary Market for Life Insurance Policies* 18 (2014) (Januário & Naik), https://bit.ly/2RGk4Ms ("[W]e find that policyowners collectively receive an amount more than four times what they would have received had they surrendered their policies to their insurance companies."); *see also* Cameron Huddleston & Amy Danise, *Life Settlements Provide Escape Hatch When You Need Cash*, Forbes (last updated Mar. 28, 2021), https://bit.ly/3x0F6pk ("People typically get four to 11 times the cash surrender value of a policy[.]").

having a robust, competitive, and regulated market of secondary buyers and brokers who specialize in life settlement.[4]

There are several practical benefits to life settlement markets, depending on a given consumer's personal preferences and needs. Sometimes a life insurance policy outstrips its original purpose, so a consumer would prefer to sell it rather than maintain the policy for the rest of their life. For example, a consumer might have originally required life insurance for business, banking, or estate planning purposes. For example, many consumers purchase life insurance to ensure family income if they were to die while they still have dependent children. But once those circumstances change, the consumer may no longer need insurance for those purposes. *See, e.g.*, New York State Department of Financial Services, *Purchasing Life Insurance* at 1 (2025), https://www.dfs.ny.gov/system/files/documents/2025/03/Life-Insurance_2024.pdf ("Not everyone needs life insurance, and some may need life insurance only at certain times"); Nebraska Department of Insurance,

[4] *See generally* Federal Trade Commission, *Competition Counts* (2025), https://www.ftc.gov/advice-guidance/competition-guidance/competition-counts (a competitive market both "benefit[s] consumers by keeping . . . the quality and choice of goods and services high . . . . [and] also encourages businesses to offer new and better products."); Will Kenton, *What Is the Secondary Market? How It Works and Pricing*, Investopedia (Oct. 2, 2024), https://www.investopedia.com/terms/s/secondarymarket.asp ("Secondary markets are important for several reasons. First, they provide liquidity to investors. . . . [They] also give[] small traders a chance to participate in the market.").

Life Insurance Roadmap at 1 (2025), https://doi.nebraska.gov/sites/default/files/doc/ConsumerAlertLifeInsuranceRoadmapRevised.pdf ("You may find you no longer need as much, or any, life insurance as you age."). Nonetheless, the policies may have still accrued considerable value after years of the policyholders having paid premiums.

In fact, a life insurance policy may be one of the largest de facto assets that an individual owns,[5] and the ability to sell it can make a considerable impact on that person's financial circumstances and life. Life settlement can provide a significant source of funds and liquidity while policyholders are still living, which can be used for any number of practical purposes and living expenses. For example, the funds can provide supplemental retirement income, facilitate *inter vivos* gifts to charities or loved ones, or cover medical treatment and healthcare costs. *See generally* LISA, *Why Sell Your Life Insurance* (2025), https://www.lisa.org/content.asp?admin=Y&contentid=142. Particularly given the rising costs of health insurance, prescription drugs, and in-home care across America,[6] the funds derived from a life

[5] ACTEC Foundation, *The Importance of Treating Life Insurance as an Asset and Maximizing Value* (Mar. 2023), https://actecfoundation.org/podcasts/life-insurance-asset-selling/ ("Life insurance can be the largest unmanaged asset that a client owns . . .").

[6] *See generally* American Medical Association, *Trends in health care spending* (Apr.17, 2025), https://www.ama-assn.org/about/ama-research/trends-health-care-spending; Nicole Willcoxon, *Older Adults Sacrificing Basic Needs Due to Healthcare Costs*, Gallup (June 15, 2022), https://news.gallup.com/poll/393494/

settlement transaction can contribute to improved health outcomes by allowing consumers to afford more or better care.[7] In some instances, life settlement can also offer retirees added financial stability and the ability to engage in long-term financial planning in an orderly fashion. *See e.g.*, LISA, *A Step-By-Step Guide to Life Settlements* (June 16, 2021), https://www.lisa.org/article_content.asp?edition=1&section=2&article=17. In sum, life settlement markets offer consumers tangible benefits and useful options for an insurance product they have long paid for.

Appellant and its *amicus*, the American Council of Life Insurers (ACLI), gloss over all these benefits and instead try to imply that life settlement somehow hurts consumers, ACLI Br. 13-16. That is quite wrong. To start with, ACLI fails to acknowledge any of the ways that selling an insurance policy and obtaining funds from that transaction can be practically useful for consumers who may face liquidity needs, particularly later in life or when experiencing unexpected medical issues.

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older-adults-sacrificing-basic-needs-due-healthcare-costs.aspx. *See also* LISA, *Regulations Overview* (2025), https://www.lisa.org/regulations_overview ("Life settlements are now being endorsed by states as a valuable resource to individuals and governments in addressing the long-term care crisis in America. The ability to . . . save Medicaid hundreds of millions of dollars annually is a realization of the life settlement market's tremendous social benefits").

[7] Indeed, it would be peculiar as a matter of public policy to reach an outcome in this case that would mean that consumers are *less* able to fund things like their own medical expenses – to ensure that insurance companies have *more* of a profit margin. *See also infra* 11-12 (discussing insurers' stated concerns about profit expectations).

Instead, ACLI suggests that the sale of such policies in secondary markets can impinge upon insurance companies' economic assumptions and ultimate profit margins, which might indirectly affect decisions they make about products and pricing. That focus on profits is remarkably frank – but it is not an argument about consumer welfare. Indeed, ACLI stresses that insurance companies' business models depend on their aspiration that many consumers will lapse, i.e., they forget or cannot afford to continue paying their policy premiums. *See* ACLI Br. 14 ("Insurers [] price life insurance. . . . not only [based] on estimates of mortality, but also on projected lapse rates."). Likewise, as highlighted in *The American Economic Review,* "life insurance companies make positive earnings on clients who lapse and negative earnings on those who keep their policies. . . . Making a profit from policies that lapse is a taboo topic in the life insurance industry." Gottlieb, *supra*, at 2379. The net result, as described above, *supra* at 7, is that the vast majority of life insurance policies lapse or expire. Insurers therefore make zero payouts and consumers receive no benefits or payout after years of paying premiums. That may be contractually permissible, but it is hardly a pro-consumer result.

Competition is good for consumers, including in insurance markets. More broadly, it is a basic maxim of economics that the emergence of robust markets (including secondary markets) tends to improve competition and tighten profit margins, particularly in highly regulated industries with limited entrants and a

captive audience. Adam Smith wisely predicted as much over two centuries ago: "[w]hen the stocks of many rich merchants are turned into the same trade, their mutual competition naturally tends to lower its profit." Adam Smith, 1 *Wealth of Nations* Ch. 9 (1776).

ACLI argues the life settlement markets will "frustrate the reasonable expectations of insurers who wrote and priced those policies, often decades ago," ACLI Br. at 15. But ACLI wants to have it both ways in terms of whether life settlement is a new or old practice. *Compare with* ACLI Br. at 3 ("[T]his case is but the latest skirmish in an ongoing conflict between life insurers and the 'life settlement' industry that has been raging for over a decade.") (emphasis added). The truth is that life settlement markets have been around for years and are carefully regulated across the country. ACLI seems to be admitting that insurance carriers have not altered their actuarial pricing model in decades. If that is the case, then a ready solution would be to update their practices to reflect the current market and regulatory environment (which allows consumers to sell an existing life insurance contract) as opposed to the more monopolistic situation that existed in years past (i.e., *only* allowing lapse or surrender). The insurable interest requirement is simply not a doctrine designed to maximize the profits of insurance companies at all costs. *See generally* Jacob Loshin, *Insurance Law's Hapless Busybody: A Case Against the Insurable Interest Requirement*, 117 Yale L.J. 474 (2007).

All told, ACLI fails to identify any specific problems with the conversion of a life insurance policy that would be harmful to consumers. Its general critiques of the industry conspicuously reflect its dependence on lapse rates and focus on profit margins.

II. LIFE SETTLEMENT MARKETS ARE WELL-ESTABLISHED AND WELL-REGULATED IN NEARLY ALL STATES AND THIS COURT SHOULD BE CAREFUL NOT TO INADVERTENTLY DISRUPT THEM

In the hopes of establishing new precedent and encumbering life settlement markets, Appellant and ACLI advance a broad new theory of "insurable interests." If that were to become the law, it could have disruptive effects on existing commercial practices and regulatory frameworks. *Amicus* respectfully urges this Court to consider the collateral damage that theory could inflict beyond the specific parties involved here given the robust and well-regulated life settlement markets already in existence.

Although one might not know it from ACLI's brief, life settlement markets are well-established across the United States. *See generally* LISA, *Map of Regulatory Law* (2025), https://www.lisa.org/map_of_regulatory_law. For example, in "'2023, life settlement consumers received over $842 Million from the sale of their unwanted life insurance policies, more than 6 times the Cash Surrender Value (CSV), putting $707 Million more in seniors' pockets than they would have received from insurance carriers.'" LISA, *LISA Releases 2023 Market Data Collection Survey*

Results (May 7, 2024), https://www.lisa.org/blog_home.asp?Display=20. While this yields major benefits for consumers, it is still relatively small compared to the overall size of the life insurance market. According to ACLI, "the total amount of life insurance in force in the United States rose for the fifth consecutive year to a record $22.2 trillion in 2023." Khari Cook, *Impact Facts: Life Insurance in Force* (Dec. 10, 2024), https://impact.acli.com/impact-facts-life-insurance-in-force-2/. Life settlements thus annually constitute 0.003% of the total life insurance market – hardly the existential threat to the insurance industry that ACLI intimates.

Life settlement markets are also thoroughly regulated. To date, 45 states have enacted pro-consumer frameworks governing life settlement products, "affording approximately 90% of the United States population protection under comprehensive life settlement laws and regulations." LISA, *Regulations Overview* (2025), https://www.lisa.org/regulations_overview. "Twenty of those states follow or very closely follow the National Conference of Insurance Legislators (NCOIL) Life Settlement Model Act, representing almost 53% of the U.S. population." *Id.* These state laws contain a number of substantive protections and procedural requirements. For example, "[t]hirty of the regulated states have a statutorily mandated two-year waiting period [after an initial purchase of insurance] before one can sell their life insurance policy." *Id.*

> In addition, most states require that consumers receive all offers and counteroffers [regarding life settlements], [be informed of] alternatives to settlements, and risks related to taxation and government assistance, and also require[] the licensing of life settlement brokers and providers and the approval of forms for the life settlement contract, disclosures, and escrow agreements. Likewise, states require life settlement companies to adhere to applicable state and federal privacy laws and submit for approval anti-fraud plans to ensure that the policies they purchase have not been obtained and are not being sold illegally. These highlights ensure that this transaction is one of the most transparent and fully disclosed transactions in the insurance industry.

Id. See also 1 Harnett & Lesnick § 2.01 ("[a] majority of jurisdictions by common law or express statute" have sought to foster the life settlement market).

This appeal specifically examines whether a term life insurance policy can be sold and then converted, yet the multitude of states that have passed model legislation known as "Life Settlement Acts" have already made regulatory decisions about that issue. Those states could have chosen to exempt or specially classify certain term insurance policies that are not yet converted – but they chose not to. As the Supreme Court has repeatedly noted, a legislature "does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions—it does not . . . hide elephants in mouseholes." *Whitman v. American Trucking Ass'ns, Inc.*, 531 U.S. 457, 468 (2001). *See also Director of Revenue of Mo. v. CoBank, ACB*, 531 U.S. 316, 323 (2001) ("[I]t would be surprising, indeed," if Congress had effected a "radical" change in the law "*sub silentio*"). In this case, Appellant

essentially wants to rewrite the California Life Settlement Act, Cal. Ins. Code §§ 10113.1-10113.3, to provide something that simply is not there.

In fact, state regulators have long determined that life insurance companies cannot deny a request to convert a term policy just because it has been sold on a life settlement market. Specifically, the New York State Insurance Department was asked "[m]ay John Hancock Life Insurance Company of New York ('JHNY') deny Mrs. Marilyn Sopher's December 21, 2009 request to convert her convertible term policy on the basis that she intends to settle the converted policy?" ER-150 (Letter from Paul A. Zuckerman, Assistant Deputy Superintendent & Couns., State of N.Y. Ins. Dep't, to Nat Shapo, Esq. and James Corcoran, Esq. (Feb. 25, 2011)) (hereinafter "New York Insurance Department Letter"). Like Ameritas did in this case, John Hancock "assert[ed] that a converted policy is a new policy, triggering anew the insurable interest requirement." *Id.* The New York State Insurance Department absolutely rejected that theory and found that:

> No. JHNY may not deny Mrs. Sopher's December 21, 2009 request to convert her convertible term policy on the basis that she intends to settle the converted policy, because: 1) a conversion, to the extent that there is no increase in the death benefit, is a continuation of the policy being converted; 2) Mrs. Sopher is not prohibited by Insurance Law § 3205 [New York's insurable interest requirements] from converting the policy; and 3) the Legislature did not intend Insurance Law § 7813 or Insurance Law § 7815 [New York's law about Stranger-Originated Life Insurance (STOLI)] to limit otherwise legal conversions.

Id. Moreover, New York concluded that there was no concern about STOLI because:

> [i]n practice, a converted policy generally is not treated as a new policy, even where the policy uses the term "new policy" to refer to the converted policy. Instead, the general rule is that a term insurance policy that as a matter of contract right is convertible into another form, such as whole life [a form of permanent life insurance], is a continuation of the policy. *Aetna Life Ins. Co. v. Dunken*, 266 U.S. 389 (1924); 29-179 Appleman on Insurance § 179.10. Indeed, it has been a longstanding life insurance industry practice—with no objection from the Department—to consider conversions, to the extent that there is no increase in the death benefit of the policy, to be a continuation of the policy being converted, and to permit conversions without looking once again at whether an insurable interest exists with respect to the policy.

ER-152. Given New York's preeminent role as a state regulator, both the life settlement and the life insurance industries have been well aware of and have ordered their business practices around New York's 2011 letter, leading to nearly 15 years of stability in the markets and allowing consumers to gain the full value of their property rights. If this Court were to rule otherwise, it could unsettle existing commercial practices and reliance interests (and would mean that California insurance policies have less value and fewer rights than New York policies). It might also directly disadvantage California consumers: California owners of convertible term policies today enjoy a property right of resale in their assets which will be diminished if the District Court is reversed, because investors will no longer be willing to risk purchase of a term policy they cannot convert. *See Grigsby*, 222 U.S. at 156 ("[I]t is desirable to give to life policies the ordinary characteristics of property").

Amicus encourage this Court to carefully scrutinize and ultimately reject Appellant's novel argument that would attempt to use the courts to do what legislators and regulators have rejected – and which would unnecessarily disrupt life settlement markets and the customers and service providers that depend on them.

III. THE OTHER ARGUMENTS BY APPELLANT AND ITS *AMICUS* ARE MISGUIDED

In service of their broad new theory of "insurable interests," ACLI and Ameritas advance several other contentions that are fundamentally incorrect for three key reasons.

First, ACLI repeatedly insinuates that life settlement is a macabre undertaking that relies upon a "wager on human life." ACLI Br. 1, 4, 14, But no amount of rhetorical flourish can obfuscate the fact that *both* life insurance companies and life settlement providers rely on actuarial estimates and probabilistic risk analysis to examine and price each life insurance policy.[8] That is not macabre; it is math. Nor is there anything inherently exploitative or improper about providing secondary

[8] *See, e.g.*, *Compare* Actuarial Standards Board, Actuarial Standard of Practice No. 48, *Life Settlements Mortality* at 8 (Dec. 2013), https://www.actuarialstandardsboard.org/wp-content/uploads/2014/02/asop048_1751.pdf ("The life settlements market is highly dependent on actuarial expertise."), *with* NAIC, *Role of Actuaries in Insurance* (Apr. 29, 2024), https://content.naic.org/insurance-topics/role-of-actuaries-in-insurance ("Actuarial expertise is crucial in the insurance industry, as it ensures sound financial management, appropriate risk pricing, and compliance with regulatory requirements. . . .").

markets for life insurance contracts.[9] As outlined above, these markets simply give consumers options as to whether and how they can monetize their assets.[10]

It is especially odd for ACLI to argue that selling a life insurance policy to a third party is bad, while simultaneously insisting that "borrow[ing] against" it, ACLI Br. 8, is good when the policyholder is borrowing from the insurance company. There is no meaningful financial difference between the two. ACLI cannot have it both ways.

More broadly, the history of life insurance underscores that there was a time when life insurance was generally perceived as macabre and distasteful. *See generally* Viviana A. Zelizer, *Human Values and the Market: The Case of Life Insurance and Death in 19th-Century America*, 84(3) Am. J. Sociology 591, 591 (Nov. 1978), https://www.jstor.org/stable/2778256 ("The financial evaluation of a man's life introduced by the life insurance industry was initially rejected by many as

[9] Indeed, there has been consumer-friendly regulation of life settlement markets for twenty years, with few complaints to state regulators about exploitative products. ACLI contends that "the life settlement industry adopted questionable practices such as inducing the elderly to borrow money to purchase high face-value policies . . . ." ACLI Br. at 14. But that is not correct; LISA is not aware of any of its members that have prompted consumers to buy high-value policies. Rather, it was contracted agents and brokers of certain life insurance carriers who introduced this practice. Many insurance companies were aware of the practice, and in fact, created specific products for the purpose of allowing it, such as "carrier approved" financing programs. This increased insurers' annual premium intake and profits substantially.

a profanation which transformed the sacred event of death into a vulgar commodity. By the latter part of the 19th century, the economic definition of the value of death became finally more acceptable, legitimating the life insurance enterprise."). With appropriate regulation and competition, however, we now rightly see insurance as a useful market and product; life settlement should be viewed through a similar lens.

Second, ACLI's overheated rhetoric about life settlement markets is all the more perplexing because it concedes that "there is no dispute that Wilmington Trust lawfully acquired the existing term life policy," ACLI Br. 13. That is quite right, since over a century ago the Supreme Court recognized that a policyholder may "transfer" a policy "to one whom he . . . is not afraid to trust." *Grigsby*, 222 U.S. at 155. If Appellant's broad arguments were to gain traction in this Court, it would flout *Grigsby*'s warning that to "deny the right to sell" is "to diminish appreciably the value of the [life insurance] contract in the owner's hands." *Id.* at 156.

ACLI's concession underscores that this appeal is not about whether life settlement markets are good or bad. Rather, it is about a narrow issue of the timing of converting term policies to permanent ones. As a matter of history, policy conversions have been around since at least the Supreme Court's decision in *Aetna Life Ins. Co. v. Dunken*, 266 U.S. 389 (1924), and likely as far back as the 1800s.

And as a matter of contract law, conversions are almost always continuations of existing policies, not the initiation of new ones. Most term policies explicitly state

that key provisions of the converted policy (i.e., contestability and suicide) will be measured from the issue date of the original term policy, which clearly indicates it is a continuation of the original policy. *See, e.g.*, Ameritas, *Ameritas FLX Living Benefits Term Life Insurance, Agent Guide* at 9 (2017) ("The suicide and incontestability periods of the new policy will be measured from the issue date of this policy."), https://www.rfb-inc.com/uploads/common/Ameritas-FLX-Living-Benefits-Agent-Guide.pdf.

ACLI's claim that there is no insurable interest when a term policy is converted is thus baseless. *Amicus* is not aware of a single case holding that a converted policy is void due to lack of an insurable interest, and Appellee rightly points out that Appellant failed to cite any authority on this point. *See* Answering Br. 1, 26. As a matter of practice, *amicus* have seen firsthand that the conduct of insurers is inconsistent with ACLI's legal arguments. In the collective experience of LISA, over the last twenty years, insurance companies have regularly converted life insurance policies after transfer. If converting a settled life insurance policy was so nefarious and illegal, as Appellant intimates, then presumably insurance companies would have refused to process such conversions in the first place.[11]

[11] Appellant's and ACLI's suggestion that a converted term life insurance policy is categorically new and separate from the pre-converted policy could have adverse tax, reinsurance, and regulatory implications. *See generally* FINRA, *Should You Exchange Your Life Insurance Policy?* (Jan. 23, 2024), https://www.finra.org/investors/insights/should-you-exchange-your-life-insurance-policy ("The Internal

Third and finally, ACLI argues that allowing a conversion in this case "would allow investors to skirt the insurable interest requirement when taking out new policies on individuals for investment purposes." ACLI Br. 5. Not true. Life insurance that is truly new at the time of origination requires that "insurable interest must exist both at the time insurance is applied for and the time any policy is issued." ACLI Br. 6 (citation omitted). But a converted life insurance is not a "new policy" according to longstanding insurance practices and traditions – as described above and as the District Court rightly found, ER 12. A converted term policy remains contractually connected to the original term policy. It is normally issued with the same rating without further under-writing, even if the insured's health has declined significantly. *See, e.g.*, Progressive, *Can you switch from term to whole life insurance?* (2025), https://www.progressive.com/answers/converting-term-to-whole-life-insurance/ ("If you have convertible term life insurance, you can typically convert it to a whole life policy without going through the underwriting process again. This generally means you won't have to answer health questions or complete a medical exam."); North American, *Term Conversion Explained* (May 31, 2023), https://www.northamericancompany.com/plan-for-tomorrow/term-conversion-

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Revenue Service allows you to exchange an insurance policy that you own for a new life insurance policy insuring the same person without paying tax on the investment gains earned on the original contract . . . . But this benefit comes with some important strings.").

explained ("A term conversion is often much easier than purchasing a brand new policy because the majority of insurance companies let you convert without requiring underwriting again.").

Appellant tries to blur the lines here by muddling stranger-***originated*** life insurance (STOLI) and stranger-***owned*** life insurance. *See* ACLI Br. 11-12. Stranger-owned life insurance involves the valid assignment of a preexisting and bona fide insurable interest. Stranger-originated insurance, on the other hand, refers to a policy that was procured by a third-party at the outset and so may not involve an insurable interest. But the industry has long understood the clear distinction between these circumstances. *See also* New York Insurance Department Letter, ER-156 ("STOLI only arises at the time the policy is originally procured. . . . [T]he issuance of the converted policy [], where the face amount of the policy is the same as the policy being converted, is not the issuance of a 'new policy' but rather an extension of the existing policy, albeit in a different form and with different terms. No new insurance is being purchased."). STOLI may be illegal, but it has nothing to do with life settlement.

For all the reasons laid out by Appellee, Answering Br. 19-47, Appellant's other merits' arguments miss the mark. The District Court rightly held that an insurable interest was not required at the time of conversion, that a converted policy

constitutes a continuation of the original policy, and that certain ambiguities in this specific contract should be construed against the drafter. ER 18-19.

At bottom, Appellant and ACLI are asking this Court to develop new law in order to curtail life settlement markets and maintain or enhance insurers' profits. This Court should decline that invitation.

CONCLUSION

This Court should affirm the District Court.

June 4, 2025

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the word limit of Federal Rule of Appellate Procedure Rule 32(a)(7)(B) and because it contains 6,133 words, excluding the portions exempted by Federal Rule of Appellate Procedure 32(f), and Circuit Rule 32-1. The brief also complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5) and (6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman font.

Dated: June 4, 2025

/s/ John Paul Schnapper-Casteras
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CERTIFICATE OF SERVICE

I hereby certify that on June 4, 2025, this brief was filed electronically with the Clerk of the Court for the U.S. Court of Appeals for the Ninth Circuit through the Court's CM/ECF system. I certify that all participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

Dated: June 4, 2025

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