

IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

|                                       |   |             |
|---------------------------------------|---|-------------|
| AMERITAS LIFE INSURANCE CORP.,        | ) |             |
|                                       | ) |             |
| Plaintiff-Appellant,                  | ) |             |
|                                       | ) |             |
| v.                                    | ) | No. 24-6801 |
|                                       | ) |             |
| WILMINGTON TRUST, N.A., as Securities | ) |             |
| Intermediary,                         | ) |             |
|                                       | ) |             |
| Defendant-Appellee.                   | ) |             |

**MOTION OF LIFE INSURANCE SETTLEMENT ASSOCIATION FOR  
LEAVE TO FILE BRIEF OF AMICUS CURIAE IN SUPPORT OF  
APPELLEE’S PETITION FOR PANEL REHEARING AND REHEARING  
EN BANC**

Pursuant to Federal Rule of Appellate Procedure 29(b)(2)–(3) and Ninth Circuit Rule 29-2(a)–(b), the Life Insurance Settlement Association (“LISA”) respectfully moves for leave to file the accompanying brief of amicus curiae in support of Appellee Wilmington Trust, N.A.’s Petition for Panel Rehearing and Rehearing En Banc.

**I. Interest of Amicus Curiae**

LISA is the largest trade organization in the secondary market for life insurance. Its members include licensed providers who purchase policies from insureds—predominantly senior citizens—in life settlement transactions, as well as licensed fiduciary brokers who assist consumers in obtaining fair value for their

policies. LISA has extensive knowledge of the common law and regulations governing the free alienation of life policies in the secondary market.

LISA and its members have a direct and substantial interest in this appeal. The panel's Opinion holds that when a life insurance policy that includes a contractual right to convert from term to permanent insurance is sold to a third-party investor, the investor's subsequent exercise of the conversion right creates a new policy that is void for lack of insurable interest. This ruling threatens to eliminate a significant strand of commerce for LISA's members, impair millions of dollars in term policies currently held on their books, and deprive countless senior citizens of the ability to realize value from their life insurance contracts.

## **II. Reasons Why an Amicus Brief Is Desirable and Relevant**

An amicus brief is desirable because LISA possesses specialized industry expertise and factual knowledge that is not available to the parties and that bears directly on the questions presented.

First, LISA can provide the Court with practical context regarding the economic impact of the Opinion on consumers. LISA's members estimate that 10% or more of all life settlements involve term policies with conversion rights. The ability to purchase an unconverted term policy—and later convert it to permanent insurance—allows investors to pay lower carrying costs during the term period, which in turn translates into higher offers to senior policyholders. By eliminating

this “buy and hold” transaction structure, the Opinion will reduce or eliminate settlement offers available to a substantial cohort of term policy owners who cannot afford to convert their policies themselves.

Second, LISA’s regulatory compliance experience provides unique insight into the origin of the conversion endorsement language on which the panel relied. The endorsement’s provisions relating the incontestability and suicide exclusion periods back to the issuance of the original term policy were not negotiated by the parties but were dictated by the Interstate Insurance Product Regulation Commission as a condition of regulatory approval. This regulatory origin undermines the panel’s application of the contract-interpretation canon *expressio unius* to conclude that the absence of an insurable-interest relate-back provision reflects the parties’ intent.

Third, LISA’s industry knowledge led it to investigate and discover that Ameritas appears to have omitted material portions of the contract from its Complaint—specifically, the original term policy application, which was in fact attached to and made part of the converted policy. This omission is directly relevant to the central legal question of whether the converted policy relates back to the original term policy.

These matters are squarely relevant to the disposition of the petition because they illuminate the practical consequences of the Opinion, provide nuanced regulatory compliance context and background overlooked by the Opinion, and

reveal important omitted material information bearing on the contractual relationship between the original and converted policies.

### **III. No Party's Counsel Authored This Brief**

Pursuant to Federal Rule of Appellate Procedure 29(a)(4)(E), LISA states that no counsel for any party authored this brief in whole or in part, no party or party's counsel contributed money intended to fund the preparation or submission of this brief, and no person other than LISA or its counsel contributed money intended to fund the preparation or submission of this brief.

### **IV. Conclusion**

For the foregoing reasons, LISA respectfully requests that the Court grant leave to file the accompanying brief of amicus curiae in support of Appellee's Petition for Panel Rehearing and Rehearing En Banc.

Dated: May 14, 2026

Respectfully submitted,

/s/ Nat Shapo

Nat Shapo  
KATTEN MUCHIN ROSENMAN LLP  
525 W. Monroe Street  
Chicago, IL 60661-3693  
(312) 902-5273  
nat.shapo@katten.com

*Counsel for Amicus Curiae Life Insurance  
Settlement Association*

### **CERTIFICATE OF SERVICE**

I hereby certify that on May 14, 2026, I electronically filed the foregoing motion with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the Appellate Electronic Filing System. All participants in the case are registered users of the system, and service will be accomplished by the system.

/s/ Nat Shapo

Nat Shapo  
KATTEN MUCHIN ROSENMAN LLP  
525 W. Monroe Street  
Chicago, IL 60661-3693  
(312) 902-5273  
nat.shapo@katten.com  
*Counsel for Amicus Curiae Life Insurance  
Settlement Association*

No. 24-6801

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IN THE  
**United States Court of Appeals for the Ninth Circuit**

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AMERITAS LIFE INSURANCE CORP.,  
*Plaintiff-Appellant,*

v.

WILMINGTON TRUST, N.A., as Securities Intermediary,  
*Defendant-Appellee.*

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

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**BRIEF OF AMICUS CURIAE LIFE INSURANCE SETTLEMENT  
ASSOCIATION (LISA) IN SUPPORT OF APPELLEE'S PETITION FOR  
PANEL REHEARING EN BANC**

Nat Shapo  
Katten Muchin Rosenman LLP  
525 W. Monroe Street  
Chicago, IL 60661-3693  
(312) 902-5273  
nat.shapo@katten.com

*Counsel for Amicus Curiae Life Insurance  
Settlement Association*

## DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, the Life Insurance Settlement Association, by and through its undersigned counsel, hereby certifies that it has no parent corporation and that no publicly held corporation owns 10% or more of its stock.

/s/ Nat Shapo

Nat Shapo

KATTEN MUCHIN ROSENMAN LLP

525 W. Monroe Street,

Chicago, IL 60661-3693

(312) 902-5273

nat.shapo@katten.com

*Counsel for Amicus Curiae Life Insurance  
Settlement Association*

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## SUMMARY OF ARGUMENT

The Life Insurance Settlement Association’s (“LISA”) expertise and experience bear on this appeal in three respects.

First, the ability to buy an unconverted convertible term life insurance policy (a “term policy”) lets LISA’s members pay lower term-life premiums for years before incurring the higher costs associated with universal-life insurance. These lower carrying costs translate into higher payouts to seniors and often are the only thing that makes a life settlement economically feasible. Under the Opinion’s rule—barring investors from converting term policies after purchase—offers will be fewer and lower, and many consumers will be left with no value at all.

Second, LISA’s regulatory-compliance experience shows that the converted Policy’s endorsement—which relates the incontestability and suicide exclusions back to the issuance of the original term policy—was not negotiated by the parties but dictated by regulators. The governing principle is therefore not the contract canon *expressio unius* but the rule that regulatory requirements relate back to the issuance of the original term policy. Because insurable interest is a regulatory requirement, it applies only at the inception of the term policy, not anew upon conversion.

Third, LISA’s experience with term conversions led it to question and investigate Ameritas’s repeated assertion that the Policy did not include the original

term policy application. Ameritas in fact appears to have removed the term application from the version of the Policy attached to its Complaint—a material omission in a case that turns on the relationship between the Policy and the contract from which it was converted.

### **STATEMENT REGARDING AUTHORSHIP AND FUNDING**

Pursuant to Federal Rule of Appellate Procedure 29(a)(4)(E), amicus curiae states that no counsel for any party authored this brief in whole or in part, no party or party’s counsel contributed money intended to fund the preparation or submission of this brief, and no person other than amicus curiae or its counsel contributed money intended to fund the preparation or submission of this brief.

### **STATEMENT OF INTEREST OF AMICUS CURIAE**

Pursuant to Federal Rule of Appellate Procedure 29(a), amicus curiae Life Insurance Settlement Association (“LISA”) respectfully submits this brief by leave of the Court. LISA is the largest trade organization in the secondary market for life insurance. Its members include licensed providers who purchase policies from insureds—usually senior citizens—in life settlement transactions,<sup>1</sup> and licensed fiduciary brokers who assist consumers. LISA has extensive knowledge of the

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<sup>1</sup> Sometimes others with insurable interest take out the policy on the insured, but for ease of reference and because it was the case here, this brief will refer to the insured and owner interchangeably.

common law and regulations governing the free alienation of life policies in the secondary market.

Because to “deny the right to sell . . . is to diminish appreciably the value of the contract in the owner’s hands,” *Grigsby v. Russell*, 222 U.S. 149, 156 (1911),<sup>2</sup> courts have long recognized property rights in owning life policies, which are fostered today by regulation that includes licensing requirements and robust consumer protections. *See* Life Settlement Act, Cal. Ins. Code §§ 10113.1 et seq.

The modern life settlement market competes against the little-to-no cash surrender amounts offered by insurers on term and universal life products. Since 2020 alone, the market has paid consumers—mostly seniors—over \$4.5 billion<sup>3</sup> for policies that would otherwise have been canceled or surrendered to the issuing carrier. That sum represents enormous value for individuals in or entering retirement.

By filing this brief, LISA’s members advocate not only for their clients’ property rights but also against the harm the Opinion’s rule would inflict on their

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<sup>2</sup> *See also Cook v. Cook*, 111 P.2d 322, 326 (Cal. 1941) (“insurance policies [are] freely alienable, although the transferee or legatee had no insurable interest”).

<sup>3</sup> Donna Horowitz, *Life Settlement League Tables: Sales Plummet in '24*, The Deal, at 9-10 (Jun. 9, 2025) (attached hereto as Exhibit 1); Coventry, *2025 Life Settlement League Table Report* (Apr. 16, 2026) (attached hereto as Exhibit 2). From 2020 to 2024, the market paid consumers \$3.88 billion (\$848.13M + \$715.01M + \$823.58M + \$841M + \$647.64M) and in 2025 paid an additional \$652 million, totaling over \$4.5 billion.

own business, by impairing millions of dollars of term policies currently held on purchasers' books if it is illegal to convert them.

## **ARGUMENT**

### **I. Many Consumers Only Receive Value Because The Investor Can Later Convert**

LISA members estimate that 10% or more of their life settlements involve term policies carrying a contractual right to convert to permanent insurance—usually universal life—without underwriting, at the owner's election. These transactions take different forms.

In one common method (“pre-settlement”), a senior nearing the end of a term policy's conversion period, who cannot afford the higher premiums charged for universal life, shops the contract as an alternative to letting it lapse for nothing (term policies have no cash value). With an offer in hand, the consumer converts before the window closes and then transfers the converted policy to the buyer, whose underwriting and purchase price assumed the higher universal-life premiums. The record reflects no dispute over the legality of pre-settlements.

Another approach (“buy and hold”) involves an owner whose convertible policy has years left before its term expires, but who seeks a life settlement because he no longer needs the coverage or can no longer afford it. Because the conversion period remains open, the investor can offer more than in a pre-settlement transaction—reflecting the lower projected carrying costs of extended term

premiums and the embedded option to convert later. The Opinion makes this transaction illegal.<sup>4</sup>

The Opinion agreed “that the conversion privilege formed part of the ‘benefit’ of [the insured’s] ‘original bargain’ when entering the Term Policy,” but distinguished between pre-conversion and buy-and-hold transactions. In the former, it explained, “[n]othing prevented [the insured] from exercising the conversion privilege himself, thereby realizing this benefit, for he had an insurable interest in his own life,” while in the latter the investor “had no such interest.” Opinion at 6 n.5.

As a practical matter, however, that distinction fails for many term-policy owners, whom the Opinion’s rule will prevent from realizing the full—or in many cases, any—benefit of their contracts. Policies with higher premiums are worth less to investors than policies with lower future costs, so consumers benefit more when buy and hold is available. Many insureds who previously sold to buy-and-hold investors would have received no offer at all if their policies could only have been underwritten as pre-conversions with higher carrying costs. For instance, in a recent transaction, a LISA member paid the insured \$20,000 for a \$300,000 term policy—

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<sup>4</sup> In the instant matter, the buyer apparently converted the policy itself shortly after acquisition, presumably based on the assumption that such conduct was legal (no authority having previously found to the contrary), but the Opinion’s rule would eliminate property rights in longer term buy and hold transactions described herein.

a purchase possible only as a buy-and-hold. Under the Opinion’s rule, that consumer would have received nothing, because the policy had no value as a pre-conversion.

The Opinion as written would therefore wipe out substantial consumer wealth in the future by stripping insureds of the full benefit—or, frequently, any benefit—of their term policies’ original bargain, while substantially impairing investments in millions of dollars of term policies currently held by LISA members that they purchased with the good faith understanding they could later convert.

## **II. As A Regulatory Requirement, Insurable Interest Relates Back To The Term Policy’s Issue Date**

LISA’s compliance experience suggests that the Opinion overlooked the regulatory origin of the Policy’s conversion endorsement’s limits on contestability and suicide challenges, treating them instead as negotiated terms governed by contract canons. The endorsement was substantively identical to the “individual term life insurance policy standards” required by the Interstate Insurance Compact, through which Ameritas filed its form contract for regulatory approval. *See* Dkt. 35-1 at 2<sup>5</sup> (request for judicial notice of Ameritas’s “Filing . . . regarding the policy form of the New Policy at issue . . . for approval with departments of insurance.”); Dkt. 35-2 (showing that the filing was made through the Interstate Compact). The Compact requires that any convertible policy “shall provide that the incontestability

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<sup>5</sup> All citations to “Dkt.” refer to the docket in the proceedings in the District Court for the Central District of California, Case No. 2:24-cv-02437.

and suicide provisions attributable to the coverage converted will run from the date of the original policy.”<sup>6</sup>

This effectively answers the panel’s question about the incontestability and suicide provisions: “Why do those dates run from 2004?”<sup>7</sup> The dates ran from 2004 because regulators dictated and essentially drafted the provisions. Interpretive rules built for bargained-for terms—such as *expressio unius*, see Opinion at 5 n.4—are therefore misplaced. Because the Compact’s rules show that regulatory requirements governing convertible policies relate back to the issuance of the original term policy, insurable interest—which, like the incontestability and suicide exclusions, is a regulatory requirement not chosen by the parties—should likewise be measured as of the issuance of the term policy.

The Conversion Endorsement’s silence on insurable interest does not support a contrary inference. Because the term policy included terms memorializing the

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<sup>6</sup> See Value Plus Universal Life Policy, Policy No. U00024926A (attached hereto as Exhibit 3) at PDF page 34, Form ICC16 CE 10-16, Conversion Endorsement (“[T]he suicide exclusion and incontestability provisions of this policy will be deemed to run from the date of issue of the converted or exchanged coverage for those amounts of insurance and benefits previously in force . . . .”); ER-114 (same); Interstate Ins. Prod. Regulation Comm’n, *Individual Term Life Insurance Policy Standards*, § 3(F) (Apr. 3, 2026), <https://www.insurancecompact.org/standards/record-adopted-standards/individual-term-life-insurance-policy-standards>.

<sup>7</sup> United States Court of Appeals for the Ninth Circuit, *Ameritas Life Insurance Corp. v. Wilmington Trust*, National Association Oral Argument Recording, at 40:05 (Feb. 9, 2026), <https://www.ca9.uscourts.gov/media/video/?20260209/24-6801/>.

incontestability and suicide time periods, the converted policy had to clarify whether and how they still applied. Insurable interest is different because it applies only at policy inception and is never included as a prospective contract term. Instead, insurable interest is established through the answers given to application questions regarding the owner's and beneficiaries' relationship to the insured. The application is then attached to the contract, which—because insurable interest is required only at the moment of issuance—need not contain a specific term pertaining to insurable interest. *See, e.g.,* Cal. Ins. Code § 10113; *300 DeHaro St. Invs. v. Dept. of Hous. & Cmty. Dev.*, 75 Cal. Rptr. 3d 98, 111 (Cal. Ct. App. 2008) (“all contracts necessarily and implicitly incorporate all applicable laws in existence when the contract is entered”). That the endorsement is silent on insurable interest therefore reflects the nature of the requirement and not an implicit limitation on relation back.

### **III. Ameritas's Pleading Omits Controlling Information From The Contract**

By explaining that “A copy of the New Policy (omitting the application) is attached as Exhibit C,” Ameritas's Complaint effectively represented to the Court that the only thing Ameritas removed from the attached policy was the February 8, 2024 conversion application. ER-27.<sup>8</sup> In LISA's experience, converted policies

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<sup>8</sup> *See also id.* (referencing “the Conversion Application” before stating that the attached policy “omit[s] the application,” singular).

attach both the conversion application and the original term application.<sup>9</sup> So LISA gathered converted Ameritas policies from its members, which confirmed Ameritas’s usual practice of attaching both applications. LISA then asked Wilmington whether its files included a copy of the converted Moghadam policy. That contract (attached hereto as Exhibit 3) does in fact attach—and thus make part of the Policy—both the conversion application signed in 2024 and the term policy application from twenty years earlier.

Whether the term application was attached to the Policy is highly material. Ameritas told this Court that “The Value Plus Universal Life policy does not attach, and does not purport to incorporate, the Individual Term Life Insurance policy,” Opening Br. at 12, and told the District Court that “the policy does not implicitly, uh, incorporate any previous policy or application.” ER-235. And, citing Cal. Ins. Code § 10113 and the incomplete copy of the contract attached to its Complaint, Ameritas argued below that the “New Policy . . . includes ‘this policy,’ attached

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<sup>9</sup> LISA was also suspicious because it monitors STOI litigation across the country, where Ameritas’s counsel’s filings have been questioned. *See* Memorandum Opinion, *Est. of Nicholas A. Mastroianni, Sr. v. U.S. Bank Nat’l Assoc.*, Case No. 24-1040, Dkt. 80 at 17-19 (D. Del. Feb. 4, 2026) (finding brief filed by law firm with 23 STOLI cases in the District to be “marked by false and misleading assertions of fact and missing and inaccurate citations,” announcing that the court “will not as a matter of course grant pro hac vice motions for lawyers from the . . . law firm,” and “also requir[ing] . . . counsel . . . to show . . . good cause why they should not be sanctioned”).

endorsements, and ‘the attached copy of the application,’ but not the Old Policy or its application from 2004. . . . The only reference the New Policy makes to the Old Policy is within a Conversion Endorsement.” ER-172.

The Court adopted Ameritas’s arguments about the integration clause and Cal. Ins. Code § 10113, but the contract the Court reviewed and applied was not the actual contract between the parties. That the term application was in fact attached to the Policy changes the analysis. *See* Cal. Ins. Code § 10113 (“nothing shall be incorporated therein by reference . . . unless the same are indorsed upon or attached to the policy”). Ameritas’s apparent removal of the term application from the contract presented to the courts bears directly on the central question in this case—whether the converted policy relates back to the original term policy.

The need for reconsideration is urgent. The Opinion is already being invoked beyond this case: within one week of this Court’s decision, John Hancock cited it in the Southern District of New York to support a counterclaim seeking to void a converted policy and defeat a putative class action. *See* Tr. of Bench Ruling, *Zaben, LLC v. John Hancock Life Ins. Co. of N.Y.*, No. 23-cv-8178, at 21–25 (S.D.N.Y. Mar. 26, 2026) (attached hereto as Exhibit 4). Although the district court rejected that argument, the insurer has indicated its intent to appeal, confirming that insurers will continue to press the Opinion as persuasive authority unless this Court grants rehearing. That risk is especially acute because Ameritas’s counsel repeatedly

characterized the issue at oral argument as one of first impression, making the Opinion a likely template for insurers seeking to void converted policies nationwide.

### **CONCLUSION**

For the foregoing reasons, amicus curiae Life Insurance Settlement Association respectfully requests that the Court grant Appellee's petition for panel rehearing, or, in the alternative, for rehearing en banc.

Dated: May 14, 2026

Respectfully submitted,

*/s/ Nat Shapo*

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Nat Shapo  
KATTEN MUCHIN ROSENMAN LLP  
525 W. Monroe Street, Chicago, IL 60661-  
3693  
(312) 902-5273  
nat.shapo@katten.com

*Counsel for Amicus Curiae Life Insurance  
Settlement Association*

**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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