Testimony of
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To the House Insurance Subcommittee Regarding

House Bill 404
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3:00 p.m.

Thank you for allowing me to testify on House Bill 404. My name is Lawrence J. Rybka. I am President and CEO of ValMark Securities. Our firm is based in Akron, Ohio with 93 employees. Our firm serves as a specialty life insurance agency and broker-dealer for approximately 200 of the most respected insurance professionals in the U.S. Through these professionals, our firm has helped put in place almost $40 billion of insurance protection for families and businesses. About 5 years ago, ValMark added life settlements as a service for our clients and currently holds an Ohio life settlement broker's license. In the past 3 years we have conducted approximately 150 transactions involving policies with $300 million of face amount value.

While life settlements account for only 5% to 6% of ValMark's total sales, I have personally developed a high degree of knowledge in this area. I have co-authored an article on the subject of stranger originated life insurance (SOLI), *Free Life Insurance: Risks and Costs of Non-Recourse Premium Financing*; and I have moderated several national forums on the subject of settlements and SOLI. Also as a former board member of the Advanced Association of Life Underwriters (AALU), I was active in the debate of the merits of the NAIC vs. the NCOIL versions of legislation to correct abuses in the settlement business. I have seen first hand how various forms of "premium financing" are in fact disguised SOLI transactions. In the past few years, the financial professionals associated with ValMark have been asked by law firms and accounting firms to give a second opinion on dozens of proposed transactions involving abusive premium financing; many of these arrangements are proposed to charities as a means of raising money. Our firm has often provided the technical advice to aid these professionals to warn these clients and charities of the risks involved.

I, along with most reputable insurance professionals and industry trade associations (NAIFA, AALU, NALIBA and ACLI), strongly support the NAIC Model Settlement Act on which House Bill 404 is based. The settlement industry is in need of significant reform to protect consumers. The last 2 years have uncovered a series of documented abuses in the settlement industry that I have attached to my testimony that points to the need for corrective legislation contained in this bill (Attachment 2).

Distinction between Seasoned Policies and SOLI: There is a substantial difference in settling an existing policy and entering a transaction that has at its core purpose issuance of a policy that is intended to be sold. I agree with the lobbyist for Coventry that the advent of a secondary market for life insurance policies is a good thing. The type of life insurance products that has become most popular in today's market gives consumers the benefit of low guaranteed premiums. The tradeoff with this type of product is low cash value. Thus, when canceling, the policyholder typically receives little. The secondary market increases significantly – what the policy holders in poor health receive if they need to surrender their policy. It is for this reason that ValMark chooses to offer settlement brokerage service.

There is, however, a significant difference between selling an existing policy that was purchased to protect families and businesses and applying for a policy that is intended in ab initio to be sold. I can say with certainty that not a single one of the 150 policies we helped clients settle in the last 3 years would have been impacted by the provisions in this bill. The heart of this bill is not to prevent settlement of seasoned policies from being sold, but it does prevent a small group of unscrupulous insurance rogues and financiers from breeding policies that are intended to be sold from inception. To argue that this bill removes rights and planning options from those who purchased insurance for legitimate reasons is tantamount to arguing that the right to bear arms would be infringed upon if a law were passed preventing individuals from having their own nuclear howitzer.

Specific Provision of House Bill 404 That Will Benefit Ohio Citizens:

Our Insurance Commissioner, Mary Joe Hudson, gave testimony earlier this month about the benefits of this bill to Ohio. These benefits extend beyond preventing SOLI transactions. They would include:

- Increased standards for settlement brokers including education and bonding requirements. (Currently anyone with a life insurance license can obtain a settlement brokers license simply by applying at the state's Department of Insurance.) I believe that few insurance licensed individuals understand the significantly higher standard in being a broker who represents the client in the transaction, as opposed to the standard of agent who represents an insurance company. This bonding requirement and education will really clarify this higher standard that should be met with these transactions.

- A requirement that all bids be disclosed to consumers. This would prevent the risk of the very type of bid rigging alleged by the New York attorney general and the State of Florida against Coventry and unscrupulous settlement brokers in their filings.

The core of this bill is aimed at preventing SOLI transactions. The Commissioner did an excellent job of outlining what these transactions are. For purposes of brevity, I will not re-characterize the mechanics of these transactions. (The

article that I co-authored and also Attachment 2 provide examples of how these transactions operate.) I would like to turn the balance of my comments to why, in my experience, these transactions are bad for the public and the insurance industry:

1. These transactions definitely increase the cost and difficulty of obtaining coverage for older Americans. Our firm has a staff of 24 people who directly aid our insurance professionals in the process of helping their clients obtain coverage. We process several thousand applications a year with over 2 dozen carriers. All of these carriers have added additional forms and questions that attempt to uncover the underhanded shell game that attempts to hide the true nature of most premium financing transactions.

    - In our own firm, we have added additional personnel to help with the extra paperwork that the carriers have added to protect against this business. I estimate the additional costs to our operations run $100,000 a year.

    - We also see transactions involving clients over the age of 65 taking anywhere from 10-12 additional business days to complete with trust owned life insurance. The additional forms, questions and paperwork not only delay the issuance of legitimate policies but also create additional complexity for clients.

    - SOLI transactions drive up the cost of insurance for all other policyholders. For a healthy 70 year-old male, the cost of permanent insurance has increased 3% to 6% percent in the last 4 years. At the same time, costs for younger ages have gone down. Actuaries who price these products have pointed to SOLI transactions as a culprit for this cost increase.

2. In these premium finance transactions, unethical insurance agents are often completing questions on the applications for insurance for these insured that put the insureds at risk for insurance fraud. They know that truthful answers (especially as to intent to settle policies or use investor money) will cause rejection of applications. Thus older insureds, through the actions of these agents, may be putting themselves at risk for answering questions dishonestly and be subjected to insurance fraud and risk of rescission.

3. The policies the settlement industry obtained though SOLI transactions have been part of several frauds that have cost investors billions of dollars. I refer to both the bankruptcy case involving Ritchie Capital and the SEC pending case against Lydia Capital. In a much smaller matter, I was personally asked to help a

small private school attempt to recover hundreds of thousands of dollars lost to one of these schemes in 2007. A company that calls itself Endowment for the 21st Century approached this school and promised that if they used money from their endowment, they could insure grandparents and subsequently sell these policies and receive a very good return. These promises did not materialize; and as a result, the school lost half of their endowment. We have seen at least a dozen other proposals like this one. Fortunately, we have been able to educate these investors and charities of the risk before they lost money. This legislation will help dry up the market for the Charlatans who prey on investors and charities.

4. These transactions often evade protection of securities law because they are conducted under the guise of an insurance licensing and in spite of the fact that some of the money is put up by investors/lenders. Many of the transactions I have reviewed are based on wild promises and are predicated on deception of both investors and insurance companies. These transactions continue to occur because there are large commissions generated at their inception.

HB 404 shifts the burden of proving settled policies are legitimate to the settlement companies:

Under current law, insurance companies operate at a disadvantage in detecting SOLI transactions. Even if they ask numerous questions on the application or try to check trust language, SOLI promoters use a labyrinth of documents and financing to hide the true intended beneficiary. They must not only uncover these transactions but also act to rescind them within 24 months. This bill shifts the burden of proof to the settlement company for policies settled in the first 5 years – to show that the policies offered for settlement within 5 years were paid for with client money. The loud opposition by some in the settlement industry comes because they know that this mechanism will be effective in preventing these transactions and decrease the number of policies that they can pass to investors.

I thank you for the time to express my strong support for this bill. I am proud to identify myself as a second generation insurance professional. I feel very good about how life insurance can be used for legitimate purposes to protect families and businesses. I also think that with proper disclosure, settlements can provide valuable options for those who buy insurance products. HB 404 will go a long way in both protecting consumers in Ohio and give strong notice to those who seek to abuse life insurance products and that this State will not tolerate their actions.