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Florida Department of Financial Services  
Office of Insurance Regulation  
Attn: Alyssa Lathrop  
200 East Gaines Street  
Larson Building, Suite 121  
Tallahassee, FL 32399

Re: Materials Responsive to Office of Insurance Regulation's September 20, 2013 Notice of Meeting/Workshop Hearing

Dear Sir or Madam:

I write on behalf of Fortress Investment Group ("Fortress") and in response to the Office of Insurance Regulation's Notice of Meeting/Workshop Hearing dated September 20, 2013. As set forth in the September 20 notice, the Florida legislature has charged OIR to "review Florida law and regulations to determine whether there are adequate protections for purchasers of life insurance policies in the secondary life insurance market to ensure that this market continues to exist for Florida seniors." Enclosed are materials that we believe will help OIR carry out this mandate.

As discussed below, the enclosed materials provide a balanced overview of the secondary life insurance market; the benefits of a robust secondary market for Florida seniors; the abusive practices that have destabilized the market for investors; and a sampling of legislative solutions that investors have introduced in Florida and other states to restore certainty to this important market.

- **Tab A: James Vlaho, *Are You Worth More Dead Than Alive?*, N.Y. TIMES, Aug. 10, 2012.** New York Times article provides a thoughtful and balanced overview of the pros and cons of the secondary market for life insurance.
- **Tab B: Sam Rosenfeld, *Life Settlements: Signposts to a Principal Asset Class* (Wharton Financial Institute Group, Working Paper No. 09-20, 2009).** This Wharton School paper evaluates the benefits of the secondary life insurance market for the public in general and senior citizens in particular. The author notes on page 24, for instance, that an individual can receive up to \$300,000 more for a \$2 million life insurance policy in the secondary market than if she sold it back to her insurer.



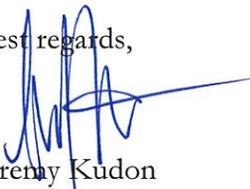
- **Tab C: Dafina Dunmore, *Our Take on the Secondary Market for Life Insurance*, Morningstar (June 16, 2006).** June 2006 Morningstar Report on the secondary market. Report notes that certain insurers, like MetLife, are “taking measures to reduce their exposure to this market,” while others, like Lincoln National and John Hancock, “experienced tremendous sales growth in [the first quarter of 2006] in universal life policies . . . a prime target for life settlements.”
- **Tab D: Excerpt from First Am. Complaint in *Wilmington Savs. Fund Soc’y v. PHL Variable Ins. Co.*, No. 2: 12-cv-04926 (C.D. Ca. Sept. 10, 2012).** This excerpt from a complaint filed on behalf of trusts that are owned by the California Public Employees Retirement System against Phoenix Life Insurance Company and certain of its subsidiaries (collectively “Phoenix”) alleges that Phoenix engaged in conduct that has substantially harmed investors in the secondary and tertiary life insurance market.
- **Tab E: Transcript from depositions of former Phoenix employees, Edward Humphrey and James Labar, in *California Judicial Council Coordination Proceeding No. Cord 4612 PHL Variable Ins. Co. Cases*.** Transcript of depositions taken of former Phoenix employees that detail the insurer’s efforts to write “non-recourse premium financing” and other policies in 2005 and 2006 without conducting appropriate underwriting. (Key testimony is highlighted.)
- **Tab F: *Defendant’s Motion for Reconsideration in Pruco Life Ins. Co. v. Brasner*, No. 10-80804, 2012 U.S. Dist. LEXIS 135169 (S.D. Fla. Sept. 21, 2012).** Motion presents evidence that Pruco Life was aware that one of its agents was engaged in fraud before investor purchased the life insurance policy at issue in the litigation and more than two years before Pruco sued to rescind the policy for lack of insurable interest.
- **Tab G: Chart of 2011 Life Insurance Policy Denial Rates for Certain Life Insurers.** This chart, which is based on information provided to the National Association of Insurance Commissioners, compares the 2011 denial rates for PHL Variable (a subsidiary of Phoenix) (20.87%), AXA Equitable (4.38%), Lincoln National Life Ins. Co. (2.28%), among others, compared to the industry average (.05%).
- **Tab H: *The Phoenix Companies, Inc., Current Report (Form 8-K) (Aug. 15, 2013).*** Phoenix admits in this SEC filing that it has been instructed by the Wisconsin and California insurance departments to rescind its 2010 cost of insurance rate increase.



- **Tab I: Sampling of legislation that would help provide certainty to the secondary and tertiary life insurance market.** Sampling of legislation introduced in Florida (2012), Delaware (2013), Minnesota (2013), and Connecticut (2012) that would require insurers return premiums on policies that are void ab initio due to lack of insurable interest, disclose whether a policy has an insurable interest within 90 days of request from policyholder, and/or disclose certain information to policyholders in connection with a proposed increase to a policy's cost of insurance rate.
- **Tab J: Editorial, *Consumers Deserve a Choice on Life Insurance*, TALLAHASSEE DEMOCRAT, Mar. 7, 2012.** Op-ed in support of 2012 legislation in Florida that would require insurers to refund premiums on policies that lack an insurable interest.
- **Tab K: Letter submitted by the Institutional Life Markets Association in support of premium return legislation introduced in Delaware in 2013.**
- **Tab L: Sampling of court decisions and statutes on insurable interest, premium return, and the interplay with the contestability period.** These decisions from federal courts in Florida, New York, and Delaware explain the rationale behind, among other things, requiring insurers to refund premiums on policies that lack insurable interest; limiting insurable interest challenges to the two-year contestability period; and ignoring evidence of subjective intent in determining whether an insurable interest existed when the policy was issued. Also included are statutes from Georgia and Alabama- both of which have been in force for decades- that require insurers to return premiums collected on rescinded policies.

Please don't hesitate to call Brian Ballard or Greg Turbeville, our registered lobbyists in Florida, or me at (212) 506-5343 if you have any questions regarding the enclosed materials.

Best regards,



Jeremy Kudon  
Partner

Orrick, Herrington & Sutcliffe LLP