Opening Statement of Senator Herb Kohl
Special Committee on Aging Hearing
Betting on Death in the Life Settlement Market – What's at Stake for Seniors?
April 29, 2009

Good afternoon. I would like to thank everyone for being here today as we discuss the issue of life settlements.

In today's tough economic climate, millions of seniors have lost a big part of their retirement and investments in a matter of months. Unlike younger Americans, they do not have time to wait for the markets to rebound so they can recoup a lifetime of savings. For many, this means postponing retirement, or even returning to work in a difficult employment market often stacked against older workers.

Needless to say, seniors are looking for ways to bolster their sagging savings. Often they find that the most valuable asset they can afford to part with is their life insurance policy, which can have substantial cash value. New alternatives have become available for those who no longer have a need for their life insurance policy. One of them is the life settlement business, a burgeoning multi-billion dollar industry that has exploded in recent years.

Life settlements can be a worthy alternative for seniors who are considering the sale of their life insurance policy, and offer a higher payment than the cash surrender value offered by the insurance company. This afternoon we're here to inform seniors that selling one's life insurance policy is a complex transaction that can be fraught with possible hidden pitfalls.

Over the past nine months, Committee staff have interviewed many honest and competent players in this industry. But, as with any industry that balloons over a short period of time, there are sales practices and regulatory loopholes that need to be examined in the interest of seniors and consumers at large.

Several state regulators are here to talk about the sales and marketing abuses they have seen at the hands of life settlement brokers, who in some cases receive exorbitant commissions. Many states, including my home state of Wisconsin, are working to implement legislation or state regulations that would institute consumer safeguards. Initiatives include a requirement that brokers must be licensed to sell life settlements; the establishment of guidelines for sales, marketing and promotional materials; and the mandatory disclosure of certain risks.

For example, most seniors don't know that when they sell their policy, their health records can be passed off to multiple third parties as their policy is resold time and again. Most seniors are also unaware of what their tax liabilities are, or that they may be uninsurable in the future. Furthermore, most seniors may not know that they are participating in insurance fraud if they purchase life insurance with the intent of flipping it for a life settlement. Known as stranger-originated life insurance, or "STOLI," such scams have led to a spike in litigation since 2005. In Florida alone, insurers have filed three multi-million dollar federal lawsuits in the past year alleging that the true nature of the life insurance transactions were misrepresented.

We will also examine how life settlements are being bundled and used as sometimes risky investments by some of America's largest investment companies. We will hear about the risks associated with purchasing investments backed by life settlements, and explain why they are not generally considered suitable for non-institutional investors.

As states struggle to increase regulations and consumer protections, it is crucial that the federal role is made clear. I have sent a letter to the Internal Revenue Service (IRS) asking them to clarify the tax code with respect to life settlements, as the current lack of guidance may be creating loopholes. In a reply, Treasury Secretary Geithner stated that the agency will soon publish tax guidance for people who sell their policies and the investors who purchase them.

I have also asked the Securities and Exchange Commission (SEC) to state its position on whether life settlement investments should be considered securities, as most state regulators are treating them. Mary Schapiro, Chairman of the SEC, responded last night and clarified the SEC's jurisdiction over most aspects of life settlement transactions. She also assured me that they will look into the regulation of life settlement brokers.

Finally, I have asked the Government Accountability Office (GAO) study the current size and scope of the life settlement market and take a look at related consumer issues, as it is clear that the industry is in need of more transparency and regulation, and I may introduce legislation to address this.

Thank you, once again, to our witnesses. I now turn to Ranking Member Martinez for his opening statement.