

Robin & Peter on LIFE SETTLEMENTS



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100 Years of Life Settlements

On December 4, 1911, the United States Supreme Court decided the case of *Grigsby vs. Russell*, which is considered to be the legal basis for the life settlement industry today. The decision, written by the legendary Justice Oliver Wendell Holmes, Jr., ruled that the sale of a life insurance policy, that was validly obtained by someone with insurable interest, could be legally sold to a third party without insurable interest.

The facts of the case are similar to many life settlement situations we see today. John C. Burchard, had acquired a life insurance policy on his own life. Sometime later he fell ill and into financial difficulty. As a result, he could no longer afford the premium and needed cash for medical expenses. Dr. Grigsby bought the policy from Mr. Burchard for \$100 and took over paying the premiums. When Mr. Burchard died, his heirs contested the validity of the sale of the policy, arguing that the purchaser lacked insurable interest and they should be entitled to the proceeds.

The court ruled in favor of Dr. Grigsby saying that insurable interest was required only at the inception of the policy. The requirement of insurable interest on inception exists so that unrelated third parties would not be able to speculate or wager on the lives of others, especially without their knowledge or acquiescence. However the court reasoned that where a policy is validly issued to someone with insurable interest, the later sale of that policy does not carry with it the same dangers as a policy originated without insurable interest.

Furthermore, the court stated, "So far as reasonable safety permits, it is desirable to give to life policies the ordinary characteristics of property." Ordinary property can be bought and sold and to deny policy owners similar rights would be to significantly diminish the value of their life insurance policy.

It took almost another 90 years until the life settlement industry really came into being. The roots of the life settlement industry go back to the 1980s and the AIDs epidemic. When first discovered, the diagnosis was a death sentence. Afflicted patients generally had a life expectancy of only a few years or less. Like Mr. Burchard, they needed money for living and medical expenses and sold their life insurance policies to third parties so

that they could get immediate cash to live on and improve the quality of their drastically shortened lives. These policy sales, on people with a terminal illness, became known as viaticals.

As medical treatment for AIDs became more successful and insurers began adding Accelerated Death Benefit Riders to their policies, the need for viatical settlements dwindled. Instead, investors came to see the opportunity in buying policies on non-terminally ill insureds, that were about to be lapsed or surrendered, for amounts exceeding their cash surrender value. And so the life settlement industry was born.

Today, like one hundred years ago, people continue to suffer financial setbacks and have policies they no longer want, need, or can afford. A life settlement offers policy owners the opportunity to maximize the value of their property just as Justice Holmes envisioned. As you uncover clients who are about to lapse or surrender a policy, be sure to give us a call.

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