COVID-19: Impact on the Life Settlement Market

As is the case with every industry, institution and society in the world, the longevity risk markets are trying to assess the impact of the COVID-19 pandemic.

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As with every industry, institution, and society in the world, the life risk markets are trying to assess the impact of the COVID-19 pandemic. The hope is that by knowing what has happened and is still happening, we may better understand what might happen.

Looking outward, uncertainty and no small measure of conflicting information abound. Looking inward to the life risk businesses, it seems that so far, it has generally fared better than many other industries. However, it is not as though this was planned, and the industry’s condition is not entirely unique.

The life settlement marketplace provides for an exchange of value between policy owners who want to sell their property and investors interested in buying it. Though the fundamental components of these exchanges are quite simple, the marketplace and the assets that trade within it have been misunderstood and misconstrued since the modern market’s early beginnings over three decades ago. The current socio-economic environment, driven by a global health crisis, does nothing to address the inaccurate perceptions of the business under which some of the public and the media continue to labor.

There are some in the media, and a handful within the industry itself, who have recently asserted that life settlement investors will reap windfall profits thanks to the pandemic.

The incorrect inference drawn is that because life settlement outcomes are tied to mortality, there is something wrong with the asset class and, by extension, the industry. These insinuations do not stand up to informed scrutiny.

Fundamental market attributes

To provide the proper context, a brief review of several foundational facts about the industry is required:

- Life insurance in the US (where nearly all life settlements originate) is property in the eyes of the law, and as such ownership of a life insurance policy is transferable, as is the case with many other forms of property.
- There is a small, but highly competitive, and regulated market for unwanted or unneeded property of this kind.
- The marketplace provides owners of policies with an alternative to the outright loss (also known as “lapse”) or surrender, often for less than market value, of their personal property.
- Engaging with the marketplace is a choice. Should policy sellers so choose, they can select a licensed and regulated intermediary to represent them.
- Institutional investors, including insurance businesses, pension funds, education-based endowment funds, and a host of other highly regulated professional investors bring capital to the marketplace to create competition, which benefits policy sellers.
- Sellers can use the proceeds of the sale of their unwanted or unneeded property in any way they choose.
- The life settlement marketplace provides a social benefit without which hundreds of millions of dollars in value owned by consumers would be lost every year. Even more value is lost by consumers who have no idea the market exists, and lapse or surrender policies for which the market would gladly have paid more.

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ELSA Conferences postponed until 2021
To expound on what is now canon in this market, a life settlement is a previously issued life insurance policy in which the owner and beneficiary change through the process of a regulated financial transaction. The transaction is usually the result of a competitive bidding process among buyers. Investors tend to be large, sophisticated, regulated financial institutions. After the policy is sold, it is still life insurance, and like all life insurance contracts, it pays benefits when the insured dies. However, that outcome generally occurs many years in the future, and the consumer is paid for their property based on its current market value when it is sold.

The amount paid for a policy is determined based on information that can take weeks to gather and assess. A critical factor affecting value is the life expectancy of the insured. As the primary driver of value, life expectancy is also the concept that causes the most confusion, and perhaps discomfort for those who do not understand it well. Life settlements require the estimation of life expectancy, but so do annuities, pension funds, and government entitlement programs. The difference is that the life settlement market openly discusses the concept as it relates to individuals (i.e. life settlements are a form of micro-longevity risk). Other, larger markets apply the same basic principles of taking structural exposure to life expectancy, but on a much larger scale, and the implications of shifts in life expectancy are not discussed in the same context.

The investor’s perspective
The estimation of individual human life expectancy is both science and art. In the life settlement marketplace, the individuals assessed are a subset of the general population with several unique characteristics. They are generally older and impaired – meaning their health is already compromised. They are also wealthier on average, although that is changing as the market grows and consumer awareness increases. Relatedly, they have access to, and use, high-quality healthcare more so than the general population.

Each of these properties presents one or another source of uncertainty, or risk factor, for investors seeking to reliably model future life expectancy. By another name, investors are risk managers, not speculators, and they do not deliberately choose to take more risk if it can be avoided for an appropriate cost. When assessing a policy for purchase, an asset manager must provide for these risk factors in their model, alongside an array of other such factors.

COVID-19 presents an entirely new risk factor about which little is known, with first-order impacts on mortality rates, and hence returns. It has prompted a veritable flood of observations and research globally, creating a monstrous challenge merely to digest this flow information and synthesize it into knowledge upon which one might rely to model the life expectancy of the narrow population of policy sellers.

In a recent webinar, jointly hosted by the London-based European Life Settlement Association (ELSA) and the Washington, DC-based Life Insurance Settlement Association (LISA), Mario Coniglio, Chief Operating Officer of MLF LexServ, one of the oldest and largest servicing platforms operating in the life settlement industry, presented data indicating the largest-ever increase in reported mortalities for a single month (April 2020) in the company’s history. These observations are tempered by an awareness that there is more uncertainty and volatility associated with the effects of COVID-19 on the population, elderly and otherwise, such that no one is yet able to definitively evaluate the impact of the pandemic on the life markets.

“COVID-19 presents an entirely new risk factor about which little is known, with first-order impacts on mortality rates, and hence returns.”
L2R2 Analysis

revealed. The truth is yet to be market in favor of retaining their life policy sellers fearful of COVID-19 driving it is also behavior that may tend to keep subconsciously. This is human nature, but consumer’s decision making, even if only (i.e., a higher risk of mortality) may alter a Self-perceptions of weak or declining health to create liquidity for themselves today. heirs years in the future against the desire weighing the desire to create liquidity for so at their discretion. This decision includes engage with the marketplace, and they do

Within the objective framework of applied underwriting models, the risk of survival, so to speak, is both much greater and far, far less well-understood than is the case with other impairments. Rather than favor the potentially additive effect on mortality rates, a prudent investor might adopt a cautious approach and recognize that the reliability of pricing models refined over many years of mortality observations has been immediately and materially diminished, only to improve again over multiple periods of observation. This hardly creates a set of conditions supporting predatory or unethical investment activity.

The behavioral dimension
While it may be the case that the effects of COVID-19 are more pronounced among the general population, from which most life settlements are selected, the life settlement population is a selected population. This brings to the investor additional risks associated with adverse selection. To explore one aspect of this, consumers who decide to sell their unwanted or unneeded life insurance property enter the marketplace knowing more about their health status than any other party involved. Individuals assess their situation before they engage with the marketplace, and they do so at their discretion. This decision includes weighing the desire to create liquidity for heirs years in the future against the desire to create liquidity for themselves today. Self-perceptions of weak or declining health (i.e., a higher risk of mortality) may alter a consumer’s decision making, even if only subconsciously. This is human nature, but it is also behavior that may tend to keep policy sellers fearful of COVID-19 driving their mortality to ignore the life settlement marketplace in favor of retaining their life insurance assets. The truth is yet to be revealed.

Even if investors knew far more than they do currently about reliably providing for the medical connections between COVID-19 and mortality rates in their analytic frameworks, they would still be stymied by the fact they know essentially nothing about new behavioral aspects of consumer selection and how policy holder behavior may be changed by the existence of the virus.

The wider context
Snap judgments as to the influence COVID-19 may have on this population risk being exposed is the very definition of ironic, through a repeat of history. The origins of the life settlement marketplace can be traced back to the viatical marketplace. At its naissance, an urgent social need initially precipitated philanthropy, and later a hybrid form of social impact investing, to address the needs of an at-risk population facing a new, unknown virus. However, the longer-term outcome associated with that now-defunct marketplace is a cautionary tale for anyone who thinks the current pandemic is likely to drive the life settlement marketplace. There is simply not enough information available, not enough time has passed, and not enough experience recorded and analyzed to assess what, if anything, COVID-19 means to the world, let alone the microcosm of life settlements. Even if it turns out COVID-19 results in significant and lasting increases in mortality rates, the more widespread and longer-term impact is likely to be manifested in the primary life insurance marketplace.

By extension the life settlement market would be affected, but the presence of competitive transaction mechanics in the marketplace would imply this should be no more or less meaningful in the moment than any other impairment. Investors should reward sellers fairly for the value of their policy taking into account factors relevant to their life expectancy, and logically, purchase prices for policies bearing extra risk from COVID-19 could rise. Where a policy contains extra risk, perhaps because so little is known about a risk factor like COVID-19, investors may require an additional premium for assuming said risk. Any anticipation that COVID-19 can result in lasting financial benefit for investors dissolves under the lens of fair return for risk assumed.

As this new risk factor challenges us all, we could do well to remember to chop wood and carry water. Our market is well placed to attend to the challenge and continue to provide seniors with fair alternatives for managing their financial position. Experience emerges. Models are updated. Markets evolve.
Upcoming ELSA Webinars

**WEBINAR**

**DATE:** Wednesday 7th October 2020

**TIME:** 10.30am ET/3.30pm BST

**HOSTED BY:** The European Life Settlement Association

**Perspectives from the Market**

**The Future for Life Risk, Challenges & Opportunities**

**SPONSORED BY** BroadRiver
Insurance-linked securitisation ("ILS") is well known as a way for the reinsurance market to transfer its exposures to natural catastrophe events (e.g. hurricanes, earthquakes, etc.) to the capital markets. The equivalent ‘Life ILS’ risks are extreme mortality or morbidity events relating to a global pandemic, as well as other types of life risks. In addition to such risk transfer, a lesser known – but equally important – role played by the Life ILS market is to provide liquidity to the life insurance industry through ‘Value of In-Force’, or VIF, financing. This article explores the background and development of the VIF financing market.

VIF financing stems from the fact that a portfolio of life policies represents an illiquid economic asset, namely the ‘VIF asset’. The VIF asset represents future profits or revenues associated with future premiums, future fee revenues or the release of future in-force technical reserves of the underlying life insurance portfolio. The VIF asset is normally referred to as the future profits of the life insurer that underwrites the policies, but other parties in the value chain can also be the beneficial owners of a VIF asset. For example, service providers might be paid ongoing fees and sales agents ongoing commissions over the lifetime of the insurance policies.

An owner of a VIF asset (the ‘sponsor’), whether it be a life insurer or another party in the value chain, might seek to initiate a VIF financing transaction to convert the illiquid VIF asset into a cash asset. There may be any number of business or strategic objectives for doing so, for example to finance new business, refinance of existing debt, or finance an acquisition. A VIF arrangement will typically incorporate some level of risk transfer relating to lapse, mortality or morbidity risk of the underlying portfolio. The extent of risk transfer will depend on a number of factors (e.g. the nature of the underlying portfolio and the structure of the transaction), and is normally determined on a case-by-case basis to meet the specific objectives.

Most VIF transactions are bespoke arrangements and can take a variety of forms, such as a reinsurance treaty, a swap, or a revenue sale agreement. Figure 1 illustrates a generic transaction structure, which has the following features. The sponsor enters into an agreement (e.g. reinsurance or a swap) with a Special Purpose Vehicle (“SPV”) in relation to the life insurance portfolio or its revenues. An upfront payment is made to the sponsor, for example a reinsurance ceding commission or swap payment, which in turn is funded through the issuance of securities (e.g. shares or notes) from the SPV to ILS investors. In this way, the SPV acts to transform the arrangement into investible securities for the investors. In return for the upfront payment, the SPV (and investors) receive ongoing payments in the form of premiums or receivables that are contingent upon the emergence of the relevant profits/revenues.
Evolution of the VIF market
The market for VIF transactions has evolved over the last 20 years in a number of ways, notably:

1. A shift from public issuances to private transactions; and
2. A shift in motivations from regulatory to liquidity drivers.

Each is considered below.

Shift from public to private
While the market was in its infancy in the early to mid 2000s, a number of publicly issued trades were executed in Europe and the US. These were often complex and costly for a sponsor to implement, hence often involved sizeable volumes, typically $200m or more. To improve marketability to a broad investor case, it was common practice for these securities to be covered by a monoline credit insurer acting as financial guarantor. During the global financial crisis, however, the main monolines went into bankruptcy and the value of the financial guarantee became worthless, impacting the tradability of a number of notes in issuance. Combined with a number of other factors, the secondary market pricing of such securities slumped (in some cases permanently) and the primary market largely disappeared for a number of years.

The majority of VIF transactions in recent years have tended to be private (or semi-private) in nature, written either by specialized Life ILS providers or traditional life reinsurers. Transaction structures are significantly more efficient than early deals, which in turn has opened up the VIF market to smaller players in the industry.

The decline in regulatory drivers
The prevailing regulatory environments in Europe and the US was a key driver of the early VIF transactions:

In Europe, under the old Solvency I regime, the statutory accounting basis generally did not recognize the full economic value of the VIF asset. This meant that VIF financing could be used to increase (cash) assets without introducing a liability (for the reason that the liability was contingent upon the emergence of the future profits that were not recognized). The effect was to significantly enhancing the reported solvency of the life insurer. The introduction of the current Solvency II framework now means that the VIF asset is – in most cases – recognized on the regulatory balance sheet, limiting the possibilities for European insurers to improve the capital position through a VIF arrangement.

In the US, reserve financing was a common means for life insurers to mitigate the reserving strain associated with prudent reserving requirements of term assurance business and secondary guarantees on universal life policies under regulations XXX and AXXX respectively. Rather than fund XXX/AXXX reserves with equity capital, it was common for life insurers to issue non-recourse notes as a funding mechanism, the cost of which was significantly cheaper than equity. The fallout of the financial crisis led to the demise of the XXX/AXXX securitization market and forced the development of other reserve financing solutions, including non-cash reinsurance structures.

Nowadays most VIF transactions are motivated by liquidity considerations, such as those mentioned at the start of this article. This tends to be true even where significant risk transfer is incorporated into the arrangement. In essence, VIF financing acts as a form of hybrid capital that sits naturally alongside more traditional sources of capital such as debt or equity. In deciding the most appropriate capital structure, a life insurer will aim to strike the balance of cost and quality, the latter broadly being the loss absorbing capacity and/or regulatory treatment of the capital. An optimal structure will in practice involve a combination of different types of capital. As the VIF financing market continues to evolve, its use is once again becoming more widespread.

“The majority of VIF transactions in recent years have tended to be private (or semi-private) in nature, written either by specialized Life ILS providers or traditional life reinsurers.”
introduction

As the world grapples with the novel Coronavirus pandemic, our industry is abuzz with increasing interest regarding pandemic-induced changes to overall mortality rates and possible effects on portfolio values and future purchases. Will pandemic deaths lead to new mortality tables? How are mortality rates in ‘hotspot’ states we hear about in the news – New York, California, and Florida, to name a few – compared against national averages? California, New York, and Florida are each a major focus for Life Settlement business. What about larger populations inside our market? Both Texas and Pennsylvania offer a large population, spread out in a variety of population densities. As pandemic-driven mortality changes are discovered and confirmed, we must be prepared as an industry to adjust our methodologies and account for these effects.

In this white paper, we examine national life settlement mortality rates leading into this pandemic, and how mortality rate data from California, Florida, and New York compare. We also look at two other states with large life settlement populations: Texas and Pennsylvania.

We are looking for a clear and consistent trend of increased mortality rates in these states during the months coronavirus appeared in the United States. A consensus among states’ data could mean we need to adjust our LE mortality underwriting to accommodate an increased mortality rate brought on by the novel coronavirus.
We calculated overall monthly mortality rates of a closed life settlement population from January/2017 through May/2020. This data was collected as of July, meaning that mortality data from June and beyond is likely not fully developed. The mortality rates were calculated by dividing observed deaths in a given month by the total population at the beginning of the month.

These results were then filtered to select CA, FL, NY, PA, and TX state data. We used these six data sets (1 national, 5 individual states) to graph the mortality rates for the three hotspot states, two high-population states, along with the national rates.

We focus on two years leading up to the pandemic through May of 2020.

Do the individual states’ mortality rates trend with national rates? Are they consistent? If they deviate, is there a demonstrable reason why? Finally, is there enough data to draw conclusions, and, if so, what are they?

We believe these charts will help identify trending changes to mortality from COVID-19. Once we examine each state’s data, we may need to look at less densely-populated states, as well as other states significant to the Life Settlement industry (e.g. Arizona).

It is important to note that we would expect the mortality rates to trend upward over time as the closed population ages.

The charts immediately show which of the five states compare are above, below, or in line with the national average.

California, Florida, and Pennsylvania are all trending above the national average, while New York and Texas trend lower than the national average. Pennsylvania and Florida both show remarkable spikes in 2020 as the pandemic goes on; New York and Texas, while both saw relative mortality rate spikes, remained under the national average.

California doesn’t appear to show a spike at all – more on that next.

“California, Florida, and Pennsylvania are all trending above the national average, while New York and Texas trend lower than the national average.”
Figure 1: National, CA, FL, NY, PA, and TX Mortality Rates from Jan 2018-May 2020 (Note Vertical Line at March 2020 When National Mortality Spike Began)

Figure 2: California Mortality Rates Contrasted Against National Rates from Jan 2018-May 2020 (Note Vertical Line at March 2020 When National Mortality Spike Began)
Visual Data

Figure 3: Florida Mortality Rates Contrasted Against National Rates from Jan 2018-May 2020
(Note Vertical Line at March 2020 When National Mortality Spike Began)

Figure 4: New York Mortality Rates Contrasted Against National Rates from Jan 2018-May 2020
(Note Vertical Line at March 2020 When National Mortality Spike Began)
Visual Data

Figure 5: Pennsylvania Mortality Rates Contrasted Against National Rates from Jan 2018-May 2020 (Note Vertical Line at March 2020 When National Mortality Spike Began)

Figure 6: Texas Mortality Rates Contrasted Against National Rates from Jan 2018-May 2020 (Note Vertical Line at March 2020 When National Mortality Spike Began)
Key Findings

State Trends Loosely Follow National Trend
With exceptions in a few data points, the trend lines of California, Florida, and New York generally follow the national trend (Refer to Figure 1); when the national trend rises, the CA/FL/NY trends tend to rise. When the national trend falls, the CA/FL/NY trends tend to fall.

Exceptions worth noting include New York and Texas, which consistently have lower mortality rates than the national average (Refer to Figure 4 and Figure 6). Florida (Figure 3), Pennsylvania (Figure 5), and California (Figure 2) consistently have a higher mortality rate than the national average.

When we look at rates from 01/2017, national, CA and FL rates are lower in 05/2020. NY rates are up.

From 01/2020 to 05/2020 we see all rates increase, but California’s rate of change is much lower than the national average AND those of the other hotspot states (More on that later).

Hotspot State Trends do NOT Trend Together
CA/FL/NY ALL show a mortality rate increase in 2020 (as does the national mortality rate).

Both CA and FL show mortality rate decreases between 01/2020 and 05/2020. Only NY shows a mortality rate higher 05/2020 than 01/2020. Note this higher rate is still lower than the national average.

Refer to Table 1. We calculated the spike in April mortality compared to both March and the entire first quarter 2020 (the latter should see lesser statistical fluctuations and is therefore more credible). While California saw no mortality rate spike in 2020, the national life settlement mortality rate rose by over 30%; the Florida rate rose by nearly 30%, and New York (while still under the national rate) saw their rates climb past double their pre-pandemic average.

Pennsylvania, another state with an already higher-than-average mortality rate, saw its rate increase almost 50%.

Headlines Betray the Data
Our intent is not to diminish the seriousness of this pandemic, but to put it in objective perspective. The United States has seen profound effects from the novel coronavirus but not all of those effects impact mortality.

We were not surprised to see NY mortality spike in April, given its reputation as a COVID hot spot.

Texas, another large state with mortality rates usually under the national average (Figure 6), still saw increased mortality rates in April, but they overall managed to “flatten their curve,” with numbers still under the pre-pandemic national average.

California, a state with overall higher mortality rates than the national average, did not experience a spike in April.

The peak mortality rate for 2020 (so far) occurred in April, but we cannot draw any meaningful conclusions until more data becomes available.

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Table 1: 2020 Mortality Rates (x1000) and Comparisons

<table>
<thead>
<tr>
<th></th>
<th>Mortality Rate</th>
<th>CA Mortality Rate</th>
<th>FL Mortality Rate</th>
<th>NY Mortality Rate</th>
<th>TX Mortality Rate</th>
<th>PA Mortality Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Q1</td>
<td>4.933</td>
<td>6.027</td>
<td>6.351</td>
<td>2.460</td>
<td>3.715</td>
<td>5.792</td>
</tr>
<tr>
<td>Jan</td>
<td>4.697</td>
<td>5.955</td>
<td>6.063</td>
<td>2.349</td>
<td>5.556</td>
<td>3.826</td>
</tr>
<tr>
<td>Feb</td>
<td>5.029</td>
<td>6.199</td>
<td>5.670</td>
<td>2.827</td>
<td>3.000</td>
<td>5.286</td>
</tr>
<tr>
<td>Mar</td>
<td>5.073</td>
<td>5.926</td>
<td>7.328</td>
<td>2.204</td>
<td>2.580</td>
<td>3.863</td>
</tr>
<tr>
<td>Apr</td>
<td>6.669</td>
<td>5.958</td>
<td>8.150</td>
<td>5.380</td>
<td>3.883</td>
<td>8.277</td>
</tr>
<tr>
<td>Apr/Mar Spike</td>
<td>131.44%</td>
<td>100.54%</td>
<td>111.22%</td>
<td>244.09%</td>
<td>150.52%</td>
<td>214.26%</td>
</tr>
<tr>
<td>Apr/Q1 Spike</td>
<td>135.19%</td>
<td>98.86%</td>
<td>128.32%</td>
<td>218.69%</td>
<td>104.52%</td>
<td>142.91%</td>
</tr>
</tbody>
</table>
It is too early to determine whether the Q1 peak is likely to continue, or if deaths will fall back to their trend line. We must remain vigilant as federal and state policies are created to control the novel coronavirus. Comparing state mortality breakouts and pandemic policies (e.g., mandatory mask/quarantine orders, assisted living lockdowns, etc.) will help us understand how COVID-19 affects insured mortality rates.

Our investigation has not yielded a consensus from the data; we cannot yet determine if the spike we observed in April is just that – a spike – or a lasting trend. It typically takes a number of months for most of the deaths to be reported and our data was swept in July, suggesting data beyond April may not be complete. Further, state data, being smaller sample sizes, exhibit statistical fluctuations that could mask or exacerbate the underlying trends.

Key Takeaways

• 2020 has already seen a 10-year record for national mortality rate (6.6%). This increase can be attributed to a variety of factors, among them COVID-19 as well as an aging population. Mortality rate trends have been increasing over the past decade.

• Our investigation of mortality impacts must be driven by data, not headlines. COVID-19 is contributing to life settlement deaths in an environment that was already seeing rising mortality rates, and we can expect more random fluctuations as we inspect smaller samples (state data vs. national data).

• We should monitor state policies, especially in states with high concentrations of LS insureds. States that have “flattened the curve” for hospitalizations/infections/deaths should also be reviewed.

• We do not yet understand the all long-term effects COVID-19 will have on our insureds, and Predictive Resources will not conflate reactive and hasty changes with proactive adjustments. The data does not conclusively show whether this is a spike, or if it’s the beginning of a permanent mortality increase. At the time of this writing, there are states still processing and disclosing updated mortality numbers, so it’s possible the numbers we’re using now can change, too. We will continue to collect and process information as it is released, inspecting data for an emerging pattern.

• We will not change how we calculate LEs – for now! This pandemic adds another challenging variable to our calculus, but we cannot effectively or accurately factor it into LE calculations until we see persistent indicators showing COVID-19 and its long-term effects on mortality.
The E-SIGN Modernization Act of 2020, which U.S. Sens. John Thune (R-S.D.), Jerry Moran (R-Kan.), and Todd Young (R-Ind.) introduced last month as S.4159 in the Senate’s Commerce, Science, and Transportation Committee, is a welcome proposed change to the Electronic Signatures in Global and National Commerce Act (ESIGN).1

ESIGN recently clocked its 20th anniversary in June 2020 and was a key piece of legislation that Congress enacted during the dotcom heyday, which legitimized electronic signatures, electronic contracts and electronic delivery of written consumer disclosures as well as satisfying record retention laws through electronic records storage. While Congress is now considering a fourth COVID-19 pandemic economic stimulus legislative package, many business leaders hope that the E-SIGN Modernization Act of 2020 will find its way in there too.

Unlike the original ESIGN law, however, this federal law does not preempt and defers to the state-based Uniform Electronic Transactions Act (UETA), which 47 states have adopted.2 Thus, ESIGN only applies when federal laws are in play and in the few states without UETA (Illinois, New York and Washington). There remains a possible preemption of some of California’s enactment of UETA.

While the core concepts and requirements of ESIGN and UETA are substantially similar, one of the primary differences between these two laws is their treatment of “consumer disclosures” that are required to be provided by a business to a consumer in writing (with or without a signature) under another law. Typically, these other laws are regulatory laws requiring the provision of written consumer protection disclosures by a product or service provider such as under banking, insurance and securities laws.

UETA (in its model form) does not distinguish between consumer disclosures and other electronic records. However, ESIGN mandates a specific process for obtaining a consumer’s consent for electronic delivery of consumer disclosures. A key element of the process is that before a consumer disclosure can be provided in electronic form, thus making it equivalent to having been provided in written form, is that a consumer must, first, "consent[] electronically, or confirms his or her consent electronically, in a manner that reasonably demonstrates that the consumer can access information in the electronic form that will be used to provide the information that is the subject of the consent."3

This requirement is often times referred to as the “consumer reasonable demonstration” requirement of ESIGN.

This requirement means that a consumer signing in wet ink in paper consenting to receive electronic delivery of required consumer disclosures is insufficient. This same requirement makes it extremely burdensome for a consumer to consent (electronically by voice) over the telephone to receive documents via electronic delivery, unless the consumer also confirms receipt of a record sent via electronic means as part of that consent process.
The likely original intent of this requirement as gleaned from the legislative history was to protect the consumer by providing some evidence of the consumer’s ability to receive delivery of electronic records, which, in effect, is a test run of the e-delivery process. So, for example, if a consumer disclosure were to be delivered via an email, the provider would establish a pre-delivery process whereby the consumer would receive an email to confirm his or her ability to receive, open and read the sample email. Others have interpreted the consumer reasonable demonstration such that it can be satisfied (a) if the consumer electronically confirms his or her consent that he or she can receive the soon to be delivered electronic consumer disclosure by merely clicking and therefore transmitting an affirmation to that effect, or (b) by merely including a statement in the broader consumer’s electronic consent to sign electronically and receive electronic records that the consumer acknowledges (and agrees) having the ability to access information in the electronic form in which the consumer disclosure will be delivered.

Seventeen of the UETA states have incorporated into their enactment of UETA the consumer reasonable demonstration requirement, although it is not part of the model UETA. Thus, the E-SIGN Modernization Act would not completely ameliorate this requirement on a national basis. Presumably, in those states that have incorporated only by reference the provisions in ESIGN mandating the reasonably demonstration element, the element may fall away automatically if ESIGN is in fact amended.

For the other states that recite the consumer reasonable demonstration requirement in their respective enactments of UETA, the reasonable demonstration element may survive, or be preempted by ESIGN.

So what is the practical consequence of the failure to satisfy the consumer reasonable demonstration requirement? Under ESIGN, there is no consequence, unless provided by the underlying consumer protection law. From a regulatory compliance perspective, the applicable business would have failed to deliver the consumer disclosure in written form as required by applicable regulatory law, which would create exposure for incurring fines or other regulatory penalties. Also, in the context of a class action lawsuit, even though the consumer disclosure may have been actually provided, albeit in electronic form, there would be the possibility that it could be excluded from evidence, meaning it was never delivered to the consumer and the consumer never received notice of the statements intended to apprise him or her of the relevant protective information or rights. In the case of a consumer product or service that is not subject to regulatory oversight per se, but for which a written consumer disclosure is Nonetheless required, only the latter risk exists where there is a private right of action.

Given the need for more streamlined and easier methods of remote e-commerce in the current pandemic environment, which is likely to have a long-term effect, the time is now right for Congress to remove ESIGN’s current consumer reasonable demonstration requirement ambiguity.

However, a complete solution for nationwide businesses will likely require the applicable UETA states’ legislatures to adopt similar remedial legislation. Removal of this element will not relieve regulated entities from the burden of showing actual delivery of electronic records.

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— L2R2 Business

“Georgia law is less clear as to what constitutes an unlawful wagering contract when a life insurance policy is lawfully taken out on an insured’s own life, but later assigned to a third party without an insurable interest.”

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17 U.S.C. §§ 7001 et seq.
15 U.S.C. § 7002(a)
15 U.S.C. § 7001(c)(1)(C)

The high death toll and tragedy associated with the Covid-19 outbreak cannot be downplayed, but the current crisis may also have potentially significant impact for some insurers with the wider industry set to learn some important lessons.

As Winston Churchill once said, “Never let a good crisis go to waste”.

For example, the confirmation that commingling non-life and life risks at policy level poses a challenge from a risk and operational management standpoint, also if done unwillingly. Since pandemic life/health risk is finding its “silent” way into non-life programmes, it is conceivable that the P&C insurance industry will want to contractually scope pandemic risk out of their policies.

The pandemic risk awareness should instead drive a much wider pandemic hedging market on the life/health (re)insurance side, where related risk management skills naturally sit.

The second very important lesson is on protection gap. We all knew already how this poses serious questions marks on the resilience of our economies and our lives to external factors. The lack of appropriate hedging infrastructure, however, has now clearly revealed even more how fragile our society is on the pandemic front.

The nature of pandemic risks gives all of us a massive challenge to solve: its global profile translates to a potentially far greater sum-at-risk than all the other insurable risks and, similarly to natural catastrophe events, it presents the typical financial/insurance inclusion challenges, having governments implicitly playing the role of as insurer of last resort. That’s why public-private partnerships (PPP) are one of the effective ways to address the issue. On one side PPP entities can provide governments with best in class insurance risk management expertise, distribution networks, claims management infrastructure, as well as being an important partner to share risks with. On the other side, they allow private insurers to offer peak-risk insurance products that they would realistically not be able (or willing) to risk-manage otherwise.

The positive potential of PPP has already been successfully tested on the non-life side, where it has been applied globally across risks such as natural disasters, extreme weather conditions, terrorism and, in some very limited cases, also life/health risks.

Pandemic risk poses an additional challenge though. Although some PPP have successfully involved capital markets in their derisking activities in the past, the lion’s share of their risk hedging is often placed with the international reinsurance industry.

Unlike on the natural catastrophe front where, at least in the very short term, events are not directly correlated across countries and regions, pandemic risk presents us with a different picture. If all major countries were to set up a hedging pool for their national pandemic risks, the reinsurance community would end up facing several very correlated pools for practically identical risk.
Not to forget that, given the link between pandemic events and financial markets, reinsurers would expect a pandemic event to hit their regulatory capital ratio through the asset side as well — adding therefore an additional negative impact.

Stated alternatively, reinsurers would face a peak risk that, as it happens for other insurance peak risks, need the involvement of other (deeper) pockets: capital market investors.

Extreme mortality and pandemic risks structures have historically been mostly ignored by capital markets for a mix of reasons: low risk-adjusted returns (often around 1-2 percent before expected loss), rating (or leverage) requirements (to bring the unlevered return to the minimum threshold) and relatively small risk notional (because of the low risk perception by the general public and by governments).

If the risk has not materially changed, the market has. Pandemic risk is now seen as a key risk to manage at national and international level and, unless Governments intend to retain the bulk of the risk, the natural market equilibrium will require capital markets to play a key role as risk taker.

Involving capital market investors on life/health insurance derisking could be seen as a challenging process by many. Of course, this adds complexity as it brings different structuring requirements to the table, but history teaches us that this can successfully be done. Going immediately to the public fixed income market would probably face a high risk of failure, since fixed income investors traditionally do not have the required actuarial skills to easily assess innovative insurance risk transactions.

Of course, having an external consultant/risk modeller’s analysis would smooth the process. Still the lack of internal capabilities would deter the vast majority of fixed income investors from committing to the space. The market has however witnessed a fast-growing niche of investors with the right skills to be able to originate, structure and analyse pandemic risk: life ILS investors. Investors that focus on life and health risks and act with a capital markets mindset.

Life ILS funds are the first key gear to bring capital markets’ derisking potential to national pandemic risk pools. Is this going to be enough to cover a serious global effort to reduce the insurance gap? Clearly not, because of the still limited size in the context of global pandemic risk and because ILS funds in general aim at delivering uncorrelated returns to their investors, requiring therefore appropriate sizing for a risk (such as pandemic) that financial markets are correlated to. Still, life ILS funds are a very important first step in the right direction. With a successful track-record of tested ILS-driven capital market transactions, generalist investors (that can bring very sizable pockets and are less concerned about correlation) will be more attracted by the asset class, providing therefore the risk capacity the pandemic challenge requires.

Governments need this and we all, on the insurance, reinsurance and capital markets sides, owe our society an effective, actionable and scalable solution to protect our future.
The life settlements population represents a unique cohort of individuals who may experience greater vulnerability to COVID-19 than the broader U.S. public. The population skews significantly older, with a median age about 86.5 years old, and represents a different comorbidity profile than the broader U.S. public. This article summarizes some of the Longevity Holdings Data Science Team’s research on the net impact of the pandemic on the life settlements population.

By far, age is the most significant single predictor of mortality for individuals with COVID-19. A study conducted by the CDC COVID-19 Response Team found the mortality risk for patients over 85 was 100 times greater than for patients between 20 and 44.

Most of the life settlements population falls within this highest risk cohort (85+), suggesting the settlements population is highly vulnerable to the disease. This CDC analysis identified lower and upper bound estimates of the case-fatality rate. Using the lower bound estimate, the age-weighted case-fatality rate for the U.S. population is 0.92%. For life settlements, the age-weighted rate is 7.93%, 8.6 times greater than the broader U.S. population.

Using the upper bound CDC estimate, the age-weighted rate is 1.96% for the U.S. population and 20.48% for life settlements, a 10.5 multiple increase. This analysis estimates a mortality rate within life settlements 9-10 times that of the greater U.S. population.

Figure 1. Comparison of Population to Estimated Case-Fatality Rate

In addition to age, comorbidities increase an individual’s mortality risk to COVID-19. An early analysis from China still offers some of the clearest results to date on comorbidities. The comorbidities included in the study were hypertension, diabetes, cardiovascular disease, chronic respiratory disease, and cancer. Of the included comorbidities, cardiovascular disease had the greatest mortality risk (10.5% case-fatality rate). The study included point-estimates of the case-fatality rates. We added confidence intervals using a Poisson model.

The net comorbidity profile of life settlements is likely higher than the broader senior population. According to the study, cardiovascular disease represents the greatest risk among the comorbidities, and it is twice as common in life settlements as among U.S. seniors (38% vs. 19%). Hypertension and male gender each have about 19% higher incidence rates in life settlements. In comparison, the comorbidities of diabetes, chronic respiratory disease, and smoker have about 6%, 9%, and 5% lower incidence rates in life settlements.

It is not clear how the higher comorbidity profile will interact with the older age profile of the life settlements population since age and comorbidities are not independent factors. There is an obvious correlation as comorbidities tend to accumulate as one gets older. In addition, in our experience, the impact of comorbidities on life expectancy declines with age. Nevertheless, these comorbidities will likely be an important factor in determining which subpopulations will be most impacted by the pandemic.

Finally, we computed an “equal-risk” life settlements COVID-19 mortality estimate, which assumes that life settlement insureds experience the same mortality risk as the average citizen in their county of residence. By comparing the equal-risk estimate to observed excess deaths in life settlements, we can compute an empirical net mortality risk factor for the population.

Actual mortality data shows the first indications of a rise in mortality caused by the pandemic. We analyzed this year’s observed deaths for excess mortality – i.e. deaths above the historical average, which are likely caused directly or indirectly by the pandemic. Due to reporting delay, data after April 4th was deemed incomplete. Mortalities for weeks ending March 28th and April 4th will likely also be adjusted up as more data comes in.
We estimated the excess deaths for the week ending April 4th by comparing the total number of deaths in that week to both the previous week and the maximum week so far this year. Using this approach, excess mortality in the week ending April 4th was an estimated 29%-83% or 26-52 deaths. The equal-risk expected excess deaths for the same week was 4.3.

Taking the ratio of raw to expected excess deaths, we estimate a total risk factor for the life settlements population of 6-12x. This is a crude – we believe, conservative – estimate. It suggests, however, that socio-economic advantages may not have as powerful of a protective effect as might be expected. This is because the actual mortality data implies a risk factor similar to our age-based estimate of 9-10x.

In this article, we looked at how age and comorbidities might increase mortality rate for life settlements from COVID-19 and compared that to early raw mortality data. We recommend an abundance of caution when interpreting information related to COVID-19 outcomes since there are still many unknowns. We will continue our analysis as more information becomes available.

It will be posted to our blog at itm21st.com.