IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re LIFE SETTLEMENTS ABSOLUTE RETURN I, LLC, *et al.*, Debtors.[1]	Chapter 11 Case No. 17-13030 ( ) (Joint Administration Requested)

MOTION OF DEBTORS FOR ENTRY OF INTERIM ORDER (I) AUTHORIZING THE DEBTORS' USE OF CASH COLLATERAL, (II) AUTHORIZING DEBTORS TO CONTINUE PAYING INSURANCE PREMIUMS AND TO SATISFY CERTAIN OBLIGATIONS IN RESPECT OF THE INSURANCE POLICIES, AND (III) SCHEDULING A FINAL HEARING

Life Settlements Absolute Return I, LLC ("**LSAR**") and Senior LS Holdings, LLC ("**Senior LS**"), as debtors and debtors in possession in the above-captioned chapter 11 cases (each a "**Debtor**" and collectively, the "**Debtors**"), hereby submit this motion (the "**Motion**") for entry of an interim order, substantially in the form attached hereto as **Exhibit B**, (a) authorizing the Debtors' use of cash collateral, (b) providing certain adequate protection to the Secured Creditors (as defined herein), (c) authorizing, but not requiring, the Debtors to continue paying all insurance premiums related to the life insurance policies which are the primary assets of the Debtors' estates, (d) scheduling a final hearing to consider entry of an order granting the relief requested in the Motion on a final basis (the "**Final Order**", and together with the Interim Order, the "**Cash**

[1] The Debtors in these Chapter 11 Cases, together with the last four digits of each Debtor's federal tax identification number, are as follows: Life Settlements Absolute Return I, LLC (7992) and Senior LS Holdings, LLC (5731). The mailing address for the Debtors, solely for purposes of notices and communications, is: 2131 Woodruff Road, Suite 2100-117, Greenville, South Carolina 29607, with copies to Nelson Mullins Riley & Scarborough, LLP, c/o Shane G. Ramsey, 150 Fourth Avenue North, Suite 1100, Nashville, TN 37219 and Bayard, P.A., c/o Evan T. Miller, 600 N. King Street, Suite 400, Wilmington, DE 19801.

Collateral Orders"), pursuant to sections 105(a), 361, 363(b), and 363(c)(2) of chapter 11 of title 11 of the United States Code, §§ 101–1532, as amended (the "**Bankruptcy Code**")[2]. In support of this Motion, the Debtors rely upon and fully incorporate the *Declaration of Robert J. Davey, III In Support of Chapter 11 Petitions and First Day Motions* (the "**First Day Declaration**"), filed with the Court concurrently herewith. In further support of this Motion, the Debtors respectfully represent as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated as of February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Pursuant to Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "**Local Rules**"), the Debtors consent to the entry of a final judgment or order with respect to this Motion if it is determined that this Court would lack Article III jurisdiction to enter such final order or judgment absent the consent of the parties.

2. Venue of these Chapter 11 Cases[3] and this Motion is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

[2] The Debtors are in the process of investigating the validity of the Secured Creditors' prepetition liens on the Policies and, as a result, fully reserve their rights to later challenge, if appropriate, the secured status of any, or all, of the Secured Creditors. Nothing herein shall be construed as an admission as to the validity of any prepetition liens nor as a waiver of the right to later challenge such liens, all such rights being expressly reserved.

[3] All capitalized undefined terms used herein shall have the meanings ascribed to them in the First Day Declaration.

3. The statutory predicates for the relief requested herein are sections 105(a), 363(b), and 363(c)(2) of the Bankruptcy Code, Rules 2002, 4001, and 9014 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), and Local Rule 4001-2.

BACKGROUND

4. The history of the Debtors and the events giving rise to these Chapter 11 Cases are fully set forth in the First Day Declaration, which is hereby incorporated by reference.

5. As more fully set forth in the First Day Declaration, Debtor Life Settlements Absolute Return I, LLC ("**LSAR**") was formed as a special purpose vehicle to invest in life insurance policies (the "**Policies**") in the life settlement market. The Policies were issued by leading insurance companies to individuals who are generally wealthy and desire to sell their Policies and the related benefits, rather than surrender them to the issuing insurance company for less value (the "**Insureds**"). Upon purchasing a policy, the investor maintains such policy by paying the premiums and any related costs (collectively, the "**Premiums**") until the insured individual passes away. At such time, the investor, as the owner and beneficiary of the policy, is entitled to the death benefit proceeds.

The Debtors' Prepetition Capital Structure

A. The 2008 Transaction and the 2008 Notes

6. On June 12, 2008, LSAR entered into that certain Trust Indenture dated June 12, 2008 (the "**Indenture**") with Wells Fargo as Policy Administrator and Trustee, whereby LSAR issued preference notes in the principal amount of $40 million (the "**Preference Notes**"), mezzanine notes in the principal amount of $24 million (the

"**Mezzanine Notes**"), and residual notes in the amount of $110,222,499 (the "**Residual Notes**," and collectively with the Preference Notes and the Mezzanine Notes, the "**2008 Notes**"). The Indenture further authorized LSAR to incur credit pursuant to a credit facility in an amount no more than $15 million.

7. In connection with its role as Policy Administrator under the Indenture, Wells Fargo (i) has physical possession of each Policy; (ii) receives and processes all life insurance carrier correspondence; and (iii) holds all of LSAR's cash for disbursement in accordance with the terms of that certain Policy Administration Agreement dated June 12, 2008 (the "**Policy Administration Agreement**").

8. The proceeds received from the issuance of the 2008 Notes were used to (i) purchase Senior LS and S&Y Life Settlements I, LLC (the original owners of certain of the Policies); (ii) purchase additional Policies; and (iii) fund various accounts necessary to service the Policies (such transaction referred to as the "**2008 Transaction**").

9. As of the Petition Date, the Preference Notes were held by Ensign Peak Advisors, Inc. ("**Ensign Peak**"), the Mezzanine Notes were held by (i) Attilanus ($8,600,000); (ii) The Eastman Retirement Assistance Plan Trust ($1,000,000); and (iii) Beaver County Pension Plan ($14,400,000), and the Residual Notes were held by Attilanus.

10. Pursuant to the Indenture, LSAR pledged, among other things, the Policies and the proceeds thereof to Wells Fargo to secure payment of the 2008 Notes and the Credit Facility (as defined below) issued by GERS (as defined below). As a result, GERS, Ensign Peak Advisors, Inc., The Eastman Retirement Assistance Plan Trust, and

Beaver County Pension Plan are potentially secured by the proceeds from the Policies (collectively, the "**Secured Creditors**").

11. Under the Indenture, the Preference Notes have limited priority over the Mezzanine Notes, while the Residual Notes are fully subordinated to the Preference Notes and the Mezzanine Notes (the Preference Notes and Mezzanine Notes are sometimes collectively referred to as the "**Senior Notes**").

12. Payment of the 2008 Notes is governed by the following "waterfall" set forth in the Indenture: (i) first, expenses of the Trustee and those related to administration of the trust; (ii) second, payments to the lender on the credit facility; (iii) third, interest payments, paid on a pro rata basis, to the Preference Note Holders; (iv) fourth, interest payments, paid on a pro rata basis, to the Mezzanine Note Holders; (v) fifth, payments of principal, on a pro rata basis, to the Preference Note Holders; (vi) sixth, payments of principal, on a pro rata basis, to the Mezzanine Note Holders; and (vii) seventh, payments, on a pro rata basis, to the Residual Note Holders.

13. The Senior Notes mature on June 10, 2018.

14. The Residual Notes do not have a maturity date.

B. The Credit Facility

15. Beginning in July 2009, in order to fund premium payments on the Policies, and as provided for in the Indenture, LSAR (as the borrower) and the Employees' Retirement System of the Government of the Virgin Islands ("**GERS**") and Attilanus (as lenders) extended a credit facility to LSAR, whereby Attilanus made an initial loan to LSAR in the principal amount of $500,000 and GERS made a loan to LSAR in the principal amount of $1,160,263 (collectively, the "**Credit Facility**").

16. On July 11, 2012, LSAR, GERS, and Attilanus entered into an Amended and Restated Loan Agreement, whereby GERS made additional loans to LSAR in an aggregate principal amount not to exceed $8,839,733, thus increasing LSAR's indebtedness to GERS under the Credit Facility to approximately $10 million.

17. The Credit Facility originally matured on July 10, 2017 (the "**Original Credit Facility Maturity Date**").

18. Prior to the Original Credit Facility Maturity Date, LSAR actively engaged GERS in negotiations regarding a workout of the Credit Facility. While LSAR was unable to achieve a workout of the Credit Facility, it did obtain an extension of the Original Credit Facility Maturity Date. On August 7, 2017, GERS agreed to extend the Original Credit Facility Maturity Date to December 31, 2017 (the "**Extended Credit Facility Maturity Date**"). In exchange for agreeing to this extension, GERS increased the interest rate on the Credit Facility from 15% to 17%.

The Debtors' Portfolio and Bank Accounts

19. The Policies are, by far, the most significant asset of these Chapter 11 Cases.

20. All of the Policies are held by Senior LS for the benefit of LSAR. LSAR is the sole member of Senior LS.

21. As of the Petition Date, LSAR's portfolio of Policies consisted of Policies on 44 Insureds. The Insureds have an average age of 85 years, with individual ages ranging from 67 years to 94 years. The value associated with these Policies is approximately $20.1 million, which is based on an allocation of the valuation set on December 31, 2016 from the actuarial valuation of LSAR's portfolio of Policies. It is

allocated on a straight-line basis (Face Amount / Total Benefit) x Portfolio valuation). The current portfolio value is determined based on the December 31, 2016 valuation, less activity in 2017 resulting from sales of certain Policies and benefits received.

22. The Policies were issued by the insurance companies listed on **Exhibit A** attached hereto (the "**Insurers**").

23. In connection with the Policies, the Debtors maintain the following bank accounts (the "**Bank Accounts**"):

a. Collection Account (Account 0500): The Collection Account is LSAR's central account whereby all collections from the sale of the Policies, death benefits received from the Policies, and investment income is deposited. Thereafter, funds from the Collection Account are transferred to the Premium Reserve Account (discussed below), and if additional funds are present, transferred to the Payment Account (discussed below).

b. Payment Account (Account 0501): Payments realized from the sale of the Policies, death benefits received from the Policies, and investment income are made to LSAR's creditors from funds available in the Payment Account.

c. Premium Reserve Account (Account 0502): Annual premiums for LSAR's Policies are paid from the Premium Reserve Account. LSAR is required to maintain two years in premium reserves to service premium payments for its Policies.

d. Litigation Account (Account 0504): The Litigation Account was initially established to make settlement payments related to litigation involving three insurance policies initially purchased by LSAR. However, the Litigation Account is no longer used by LSAR and can be terminated and closed.

e. Christiana Trust Account (1044): When Policies are sold, escrowed purchase funds from the buyers are released to this account. Fees and expenses related to the sale are paid from this account with the net proceeds remitted to LSAR's Collection Account, and then disbursed by Wells Fargo pursuant to the Indenture and Policy Administration Agreement.

24. The operation of the LSAR Collection Account, LSAR Payment Account, LSAR Premium Reserve Account, and LSAR Litigation Account (collectively, the "**Wells Fargo Bank Accounts**") is mandated and delineated in the Indenture. All funds held in the Wells Fargo Bank Accounts are held by Wells Fargo, as trustee under the Indenture, and distributed by Wells Fargo in accordance with the Indenture and Policy Administration Agreement. Notably, the Debtors do not have signature authority on the Wells Fargo Bank Accounts. LSAR merely provides payment instructions to Wells Fargo, who makes all disbursements and transfers between the Wells Fargo Bank Accounts in accordance with the Indenture and Policy Administration Agreement.

25. The Debtors, by use of the funds in the Bank Accounts, currently pay Premiums and other costs related to the Policies (the "**Policy Payments**") as they accrue from time to time and on a rolling basis in any given month.

26. As discussed in the First Day Declaration, pursuant to the terms of the Indenture, LSAR pledged, among other things, the Policies and the proceeds thereof to Wells Fargo to secure payment of the 2008 Notes and the Credit Facility issued by GERS. As a result, the Secured Creditors are potentially secured by the proceeds from the Policies.

27. The following chart contains a summary of the material terms of the Interim Order, in accordance with Bankruptcy Rule 4001(b)(1) and Local Rule 4001-2.[4]

[4] Capitalized terms used but not otherwise defined in the chart have the meanings ascribed to them in the Interim Order.

Material Terms	Summary of Material Terms	Para(s) of Interim Order
Cross Collateralization *Local Bankruptcy Rule 4001-2(a)(i)(A)*	None.	N/A
Findings Re Validity/Perfection/Debt Amount/Challenge Period *Local Bankruptcy Rule 4001-2(a)(i)(B)*	None.	N/A
506(c) Waiver *Local Bankruptcy Rule 4001-2(a)(i)(C)*	None.	N/A
Prepetition Secured Creditor Liens *Local Bankruptcy Rule 4001-2(a)(i)(D)*	None.	N/A
Provisions Deeming Pre-Petition Debt to be Postpetition Debt *Local Bankruptcy Rule 4001-2(a)(i)(E)*	None.	N/A
Disparate Treatment for Committee Professionals from the Debtors' Professionals *Local Bankruptcy Rule 4001-2(a)(i)(F)*	None.	N/A
Non-Consensual Priming *Local Bankruptcy Rule 4001-2(a)(i)(G)*	None.	N/A
552(b) Waiver *Local Bankruptcy Rule 4001-2(a)(i)(H)*	None.	N/A

Material Terms	Summary of Material Terms	Para(s) of Interim Order
Purpose for the Use of Cash Collateral *Bankruptcy Rule 4001(b)(1)(B)(ii)* *Local Bankruptcy Rule 4001-2(a)(ii)*	The Debtors seek authority to use Cash Collateral to maintain and continue prepetition practices with respect to the Policies by remitting to the Insurers the Policy Payments and paying certain prepetition and postpetition obligations with respect to the Policies as the Debtors deem appropriate, including any renewal, extension or replacement obligations, on an uninterrupted basis, in connection with prepetition or postpetition services rendered, on the same basis and in accordance with the same practices and procedures, as in effect prior to the date hereof.	¶ 2
Budget *Bankruptcy Rule 4001(b)(1)(B)(ii)*	Except as otherwise expressly provided in the Interim Order, Cash Collateral may be used at the times, in the amounts, and for the purposes identified in the cash collateral budget attached to the Interim Order as **Exhibit 1** (as may be amended as provided herein, the "**Budget**"). All Cash Collateral use must be in accordance with the terms of the Budget, subject to the variance provided in Paragraph 2 of the Interim Order.	¶ 2

RELIEF REQUESTED

28. By this Motion, and pursuant to sections 105(a), 363(b), and 363(c)(2) of the Bankruptcy Code, the Debtors request the Court enter an order (a) authorizing the Debtors' use of cash collateral, (b) approving the adequate protection to the Secured Creditors, (c) authorizing, but not requiring, the Debtors to continue paying all Premiums related to the Policies which are the primary assets of the Debtors' estates, (d) scheduling a final hearing to consider entry of an order granting the relief requested in the Motion on a final basis to consider the relief requested in this Motion and the entry of a final order and approving.

I. Debtors' Use of Cash Collateral

29. Section 363(a) of the Bankruptcy Code defines cash collateral, which

includes, *inter alia*, deposit accounts, whether existing before or after the commencement of a case under the Bankruptcy Code.

30. As such, the Bank Accounts may constitute cash collateral of the Secured Creditors.

31. Section 363(c) further provides as follows:

> (1) If the business of the debtor is authorized to be operated under section 721, 1108, 1203, or 1304 of this title and unless the court orders otherwise, the trustee may enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing.
>
> (2) The Trustee may not use, sell, or lease cash collateral under paragraph (1) of this subsection unless –
>
> (A) each entity that has an interest in cash collateral consents; or
> (B) the court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provision of this section.

11 U.S.C. § 363(c)(1)–(2).

32. Notwithstanding the objection of a party with an interest in cash collateral, pursuant to section 363(e), the court may authorize the use of cash collateral if such creditor's interest in the cash collateral is adequately protected.

33. The Debtors' use of the Bank Accounts under the circumstances of these Chapter 11 Cases is authorized pursuant to section 363(c) of the Bankruptcy Code.

34. As set forth below, the Secured Creditors' interest in the Bank Accounts is adequately protected inasmuch as the use of the Bank Accounts to make the Policy Payments is necessary to keep the Policies in effect, which is the sole means by which the Secured Creditors can realize any payment on their claims.

35. The principal purpose of adequate protection "is to assure that the lender's economic position is not worsened because of the bankruptcy case." *In re DeSardi*, 340 B.R. 790, 804 (Bankr. S.D. Tex. 2006). A secured creditor is "not entitled to adequate protection payments without a showing of economic depreciation." *In re Immenhausen Corp.*, 164 B.R. 347, 352 (Bankr. M.D. Fla. 1994) (citing *United Savings Ass'n v. Timbers of Inwood Forest Assoc., Ltd.*, 484 U.S. 365, 369-73 (1988)). The interest in property that is entitled to protection is value of the collateral securing such claim. *Id.* It follows therefore that where a secured creditor's interest and the value of the collateral is not diminishing by its use, sale or lease, the secured creditor's interest is adequately protected. *Id.*

36. The Bankruptcy Code does not explicitly define adequate protection, but does provide a non-exclusive list of the means by which a debtor may provide adequate protection, including other relief resulting in the indubitable equivalent of the secured creditor's interest in such property. *See* 11 U.S.C. § 361. Because the term "adequate protection" is not defined in the Bankruptcy Code, the precise contours of the concept are necessarily determined on a case-by-case basis. *See, e.g., In re Swedeland Dev. Grp. Inc.*, 16 F.3d 552, 564 (3d Cir. 1994) (citing *In re O'Connor*, 808 F.2d 1393, 1396–97 (10th Cir. 1987)); *In re Martin*, 761 F.2d 472, 474 (8th Cir. 1995) (same); *In re Senior Care Props., Inc*., 137 B.R. 527, 528 (Bankr. N.D. Fla. 1992) (same); *In re Family Place P'ship*, 95 B.R. 166, 171 (Bankr. E.D. Cal. 1989); *In re Mellor*, 734 F.2d 1396, 1400 (9th Cir. 1984); *see also* S. Rep. No. 95-989, 95th Cong., 2d Sess. 54 (1978) and H.R. Rep. No. 595, 95th Cong., 2d Sess. 339 (1978) (acknowledging that the statute confers upon

"the parties and the courts flexibility by allowing such other relief as will result in the realization by the protected entity of the value of its interest in the property involved.").

37. Preserving the value of the collateral against the decline in value that would result from a precipitous liquidation is a crucial factor to consider in making an adequate protection determination. *In re Snowshoe Co. Inc.*, 789 F.2d 1085, 87 (4th Cir. 1986) (affirming 364(d) financing order where trustee reported that the collateral would lose from 50% to 90% of its value if operations ceased); *In re Ralar Distribs., Inc.*, 166 B.R. 3, 6 (Bankr. D. Mass. 1994), *aff'd* 182 B.R. 81 (D. Mass.), *aff'd* 69 F.3d 1200 (1st Cir. 1995).

38. Accordingly, to meet the general rehabilitative purpose of chapter 11, which requires that debtors have the ability to access their cash to operate, the Debtors request authority to use the Bank Accounts.

39. In these Chapter 11 Cases, the Secured Creditors are adequately protected because without the use of the Bank Accounts, it is extremely unlikely that the Debtors can remain in business and successfully reorganize. If the Policy Payments are not made, the Policies will lapse and the Secured Creditors will no longer have any source of repayment on their claims. Thus, the Debtors must be permitted to preserve the value of the Policies if the Secured Creditors are to receive any payment on their claims.

40. Based on the foregoing, the Debtors respectfully submit that entry of an Order authorizing the interim use of cash collateral and scheduling a Final Hearing to approve the use of cash collateral on a final basis is necessary and appropriate.

II. The Debtors' Ability to Continue Making Policy Payments

41. Section 363(b)(1) of the Bankruptcy Code provides that "[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. §363(b)(1). If the debtors' determination to use estate assets represents a reasonable business judgment, the bankruptcy court should approve such use. *In re Weatherly Frozen Food Group, Inc.*, 149 B.R. 480, 482-483 (Bankr. N.D. Ohio 1992) (a section 363 sale may be authorized when a sound business purpose dictates such action); *see also In re Del. & Hudson Ry. Co.*, 124 B.R. 169, 175-76 (D. Del. 1991) (section 363 of the Bankruptcy Code requires that the debtor's decision be supported by a "sound business purpose"); *In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (Bankr. D. Del. 1999).

42. Once a debtor articulates a valid business judgment, "the business judgment rule 'is a presumption that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action was in the best interests of the company.'" *In re Integrated Res., Inc.*, 147 B.R. 650, 656 (S.D.N.Y. 1992) (quoting *Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985)); *In re Engman*, 331 B.R. 277, 289 (Bankr. D. Mich. 2005) (the business judgment rule creates a presumption in favor of the fiduciary). The business judgment rule has vitality in chapter 11 cases and shields a debtor's management from judicial second-guessing. *Integrated Res.*, 147 B.R. at 656.

43. Additionally, section 105(a) of the Bankruptcy Code empowers the Court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. §105(a). The "doctrine of necessity" functions in a

chapter 11 reorganization as a mechanism by which the bankruptcy court can exercise its equitable power to allow payment of critical prepetition claims not explicitly authorized by the Bankruptcy Code. It is well established that a bankruptcy court has authority to authorize payment of prepetition claims where the payment of such claims is necessary to facilitate reorganization. For example, under the "necessity of payment" doctrine, a bankruptcy court can exercise its equitable powers to permit the payment of prepetition claims of those parties whose goods or services are critical to the debtor's reorganization. *See In re Eagle-Picher Indus., Inc.*, 124 B.R. 1021, 1023 (Bankr. S.D. Ohio 1991) (supporting principle that bankruptcy court can authorize payment of prepetition claims where such payment is necessary to survival of debtor); *In re SIS Corp.*, 108 B.R. 608, 609-10 (Bankr. N.D. Ohio 1989) (recognizing that courts may authorize payments on account of prepetition claims "premised upon overriding practical and policy reasons); *In re Structurelite Plastics Corp.*, 86 B.R. 922, 931-932 (Bankr. S.D. Ohio 1988) (agreeing in "principle that a bankruptcy court may exercise its equitable powers under section 105(a) to authorize payment of prepetition claims where such payment is necessary to permit the greatest likelihood of survival of the debtor and payment of creditors in full or at least proportionately") (citation omitted); *see also In re Lehigh & New England Ry. Co.*, 657 F.2d 570, 581 (3d Cir. 1981) ("[I]f payment of a claim which arose prior to reorganization is essential to the continued operation of the railroad during reorganization, payment may be authorized even if it is made out of corpus."); *In re Boston & Maine Corp.*, 634 F.2d 1359, 1382 (1st Cir. 1980) (recognizing the existence of a judicial power to authorize trustees to pay claims for goods and services that are indispensably necessary to the debtors' continued operation); *In re Columbia Gas Sys.*,

171 B.R. 189, 191-92 (Bankr. D. Del. 1994) (necessity of payment doctrine is applicable where "payment is essential to continued operation of business"); *In re Ionosphere Clubs*, 98 B.R. 174, 175-176 (Bankr. S.D.N.Y. 1989) (stating that the rationale of the necessity of payment rule corresponds with the paramount goal under chapter 11 of reorganizing the debtor and that section 105(a) allows the bankruptcy court to "authorize the payment of prepetition debt when such payment is needed to facilitate the rehabilitation of the debtor") (citation omitted).

44. The Policies are the Debtors' only significant assets, and in order to preserve the value of these assets, the Debtors must continue to make the Policy Payments. As discussed above, the Debtors currently make the Policy Payments on each Policy as they accrue from time to time and on a rolling basis in any given month. Each month, the Debtors call Insurers and review annual statements and prepare and submit a report to Wells Fargo to make Policy Payments to the Insurers in the ordinary course of business. Wells Fargo then remits the Policy Payments to the designated Insurer from available funds in the Bank Accounts. Typically a given Policy is paid three months of its cost of insurance on a quarterly basis from its anniversary date. Anniversary dates vary from policy-to-policy and this results in a staggered payment schedule throughout the year.

45. The cost to service premium payments on the Policies over the next two years is approximately $7.9 million and the cost to fund the ongoing operations of the fund is approximately $20,000 to $25,000 per month.

46. The Debtors intend to maximize the value of its assets for the benefit of their estates by maintaining the Policies in full force and effect during the pendency of

these Chapter 11 Cases. The Policy Payments are an ordinary business activity performed by the Debtors since the first acquisition of the Policies. If the Debtors were to discontinue the Policy Payments to the Insurers, the Policies would lapse, and the Debtors would have no ability to reorganize, as they would lose their only major asset. Indeed, the proceeds received by the Debtors from the Policies represent the only source of funds by which the Debtors can satisfy the claims of their Secured Creditors. Consequently, the continued remittance of the Policy Payments for both prepetition and postpetition amounts due and owing is essential to preserving the value of the Debtors' estates and constitutes activity by the Debtors in the ordinary course of business that is in the best interests of the Debtors and their creditors.

47. Accordingly, the Debtors request authority to continue to remit the Policy Payments to the Insurers on a postpetition basis and in the ordinary course of the Debtors' business.[5]

48. If any of the Policies, or any other agreement, policy, or contract described herein or pursuant to which the Debtors may rely upon to make the Policy Payments, is deemed an executory contract within the meaning of section 365 of the Bankruptcy Code, the payment of the Policy Payments is not intended to, and shall not constitute, a

[5] The Debtors do not believe the Policy Payments are claims against the Debtors' estates because payments to maintain insurance policies generally are not considered to be "claims" for purposes of the Bankruptcy Code. *See, e.g., Mullen v. United States*, 696 F.2d 470, 472 (6th Cir. 1983) ("the debtor is not liable to the insurance company for repayment; the amount owed is merely available to the company for setoff against any benefits that become payable under the policy" and "[a]s such, the loan will not be a claim (it is not a right to payment) that the company can assert against the estate; nor will the debtor's obligation be a debt (a liability on a claim) that will be discharged..."); *see also Orleans Parish v. New York Life Ins. Co.*, 216 U.S. 517, 30 S. Ct. 385, 54 L. Ed. 597 (1910) (where an insured's advance from the reserve fund of his insurance policy did not give rise to a debtor-creditor relationship); *In re Villarie*, 648 F.2d 810, 812 (2d Cir. 1981) (citing *In re Vanhook*, 3 Bankr. Ct. Dec. (CRR) 1, (S.D.N.Y. 1977) (Babitt, B.J.)) (where an annuitant's withdrawal from the savings account of his annuity fund did not give rise to a debtor-creditor relationship).

postpetition assumption of such contract. The Debtors intend to review each of the Policies and related agreements to determine if any are executory contracts within the meaning of section 365 of the Bankruptcy Code. To the extent such contracts are executory, the Debtors will undertake an analysis of whether, in their business judgment, such contract(s) should be assumed or rejected. The Debtors expressly reserve all of its rights under the Bankruptcy Code with respect to such issues.

REQUEST FOR FINAL HEARING

49. Pursuant to Bankruptcy Rule 4001(b)(2) and Local Rule 4001-2(c), the Debtors request that the Court set a date for the Final Hearing and fix the date and time prior to the Final Hearing for parties to file objections to the relief requested by this Motion.

IMMEDIATE RELIEF IS NECESSARY TO AVOID IMMEDIATE AND IRREPARABLE HARM

50. Bankruptcy Rule 6003 provides that the relief requested in this Motion may be granted if the "relief is necessary to avoid immediate and irreparable harm." Fed. R. Bankr. P. 6003. The Debtors submit that for the reasons already set forth herein, the relief requested in this Motion is necessary to avoid immediate and irreparable harm to the Debtors.

NOTICE

51. Notice of this Motion has been given to (a) the Office of the United States Trustee for Region 3, serving the District of Delaware; (b) the parties included on the Debtors' list of largest unsecured creditors; (c) the parties included in the Debtors' proposed creditor matrix filed with their petitions; (d) the holders of the Preference

Notes; (e) the holders of the Mezzanine Notes; (f) the holders of the Residual Notes; (g) GERS; (h) Wells Fargo; and (i) all parties who have filed a notice of appearance and request for service of papers pursuant to Bankruptcy Rule 2002. As this Motion is seeking first-day relief, notice of this Motion and any order entered hereon will be served on all parties required by Local Rule 9013-l(m). In light of the nature of the relief requested herein, the Debtors respectfully submit that no further notice of this Motion is required. The Debtors submit that, under the circumstances, no other or further notice need be given.

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CONCLUSION

The Debtors respectfully request that this Court enter an order, substantially in the form attached hereto as **Exhibit B**, (a) authorizing the Debtors' interim and final use of cash collateral and (b) authorizing, but not requiring, the Debtors to continue remitting all Policy Payments and any other amounts due related to the Policies which are the most significant assets of the Debtors' estates and to satisfy certain obligations in respect thereof, and granting such other and further relief as the Court deems just and proper.

Dated: December 29, 2017
Wilmington, Delaware

BAYARD, P.A.

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Proposed Counsel to the Debtors and Debtors in Possession

EXHIBIT A

Insurers

Accordia Life & Annuity
American General Life Insurance Company
Athene Annuity & Life New York
AXA Equitable Life Insurance Company
Banner Life Insurance Company
Canada Life Financial
Hartford Life and Annuity Insurance Company
John Hancock Life Insurance Company
Lincoln Benefit Life Company
MetLife Insurance Company
Mutual of Omaha Life Insurance Company
Nationwide Insurance Company
Pacific Life Insurance Company
Phoenix Life Insurance Company
Pioneer Mutual Life Insurance
Prudential Financial
ReliaStar Life Insurance Company
Sun Life Financial
The Lincoln National Life Insurance Company/Lincoln Life & Annuity Company of New York
Transamerica Life Insurance Company
Universal Life Insurance Company
West Coast Life Insurance/Protective Life Insurance Company

EXHIBIT B

Proposed Interim Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re LIFE SETTLEMENTS ABSOLUTE RETURN I, LLC, *et al.*, Debtors.[1]	Chapter 11 Case No. 17-13030 ( ) (Joint Administration Requested) **Related D.I.:** _____

INTERIM ORDER (I) AUTHORIZING THE DEBTORS' USE OF CASH COLLATERAL, (II) AUTHORIZING DEBTORS TO CONTINUE PAYING INSURANCE PREMIUMS AND TO SATISFY CERTAIN OBLIGATIONS IN RESPECT OF THE INSURANCE POLICIES, AND (III) SCHEDULING A FINAL HEARING

Upon the Motion (the "**Motion**")[2] of Life Settlements Absolute Return I, LLC and Senior LS Holdings, LLC (each, a "**Debtor**" and collectively, the "**Debtors**") for the entry of an order (a) authorizing the Debtors' interim and final use of cash collateral, (b) authorizing, but not requiring, the Debtors to continue paying all insurance premiums related to the life insurance policies which are the primary assets of the Debtors' estates pursuant to sections 105(a), 363(b), and 363(c)(2) of chapter 11 of title 11 of the United States Code (the "**Bankruptcy Code**"), and (c) scheduling a final hearing; and it appearing that the Court has jurisdiction over this matter; and upon consideration of the Motion and the First Day Declaration; and this Court having jurisdiction to consider the

[1] The Debtors in these Chapter 11 Cases, together with the last four digits of each Debtor's federal tax identification number, are as follows: Life Settlements Absolute Return I, LLC (7992) and Senior LS Holdings, LLC (5731). The mailing address for the Debtors, solely for purposes of notices and communications, is: 2131 Woodruff Road, Suite 2100-117, Greenville, South Carolina 29607, with copies to Nelson Mullins Riley & Scarborough, LLP, c/o Shane G. Ramsey, 150 Fourth Avenue North, Suite 1100, Nashville, TN 37219 and Bayard, P.A., c/o Evan T. Miller, 600 N. King Street, Suite 400, Wilmington, DE 19801.

[2] All capitalized terms used herein but not defined shall have the meanings given them in the Motion.

Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334, and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated as of February 29, 2012; and consideration of the Motion and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to the parties listed therein, and it appearing that no other or further notice need be provided; and this Court having reviewed the Motion and determined that the Debtors' use of cash collateral and the Debtors' continued payment of the insurance premiums and the satisfaction of certain obligations in respect of the Policies is in the best interests of the Debtors, their estates, and their creditors; and it appearing that notice of the Motion was good and sufficient under the circumstances and that no other or further notice need be given; and upon the record herein; and after due deliberation and good and sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED.

2. Pursuant to Bankruptcy Code Sections 105(a), 363(b), and 363(c)(2), the Debtors are authorized to use cash collateral on an interim basis, and the Debtors are authorized, but not required, to maintain and continue prepetition practices with respect to the Policies by remitting to the Insurers the Policy Payments and paying certain prepetition and postpetition obligations with respect to the Policies as the Debtors deem appropriate, including any renewal, extension or replacement obligations, on an uninterrupted basis, in connection with prepetition or postpetition services rendered, on

the same basis and in accordance with the same practices and procedures, as in effect prior to the date hereof, and in accordance with the Budget attached hereto as **Exhibit 1** (subject to a 10% variance for each line item), so as to adequately protect the Secured Creditors by preserving the value of the Policies. Nothing in this Order shall be construed as a judgment as to the validity of any prepetition liens nor as a waiver of any party's right to later challenge such liens, all such rights being expressly reserved.

3. Nothing in this Interim Order shall be construed to require the Debtors to remit the Policy Payments to the Insurers.

4. Nothing contained in this Interim Order or in the Motion is intended to be or shall be construed as (i) an admission as to the validity of any claim against the Debtors, (ii) a waiver of the Debtors' or any appropriate party in interest's rights to dispute any claim, or (iii) an approval or assumption of any agreement, contract, program, policy, or lease under section 365 of the Bankruptcy Code. Likewise any payment made pursuant to this Interim Order is not intended to be, and shall not be construed as, an admission to the validity of any claim or a waiver of the Debtors' rights to subsequently dispute such claim.

5. Nothing in this Order shall be construed as prejudicing the Debtors' rights to dispute or contest the amount or basis of any claims asserted against the Debtors' estates related to the Policies.

6. If any of the Policies, or any related contract or agreement pursuant to which the Debtors may rely on in order to pay, or cause to be paid, the Policy Payments, is deemed an executory contract, the relief granted hereby shall not be deemed an

assumption of any such contract pursuant to section 365 or any other provision of the Bankruptcy Code.

7. Nothing in this Interim Order or the Motion is intended or shall be construed to constitute relief from the automatic stay pursuant to section 362 of the Bankruptcy Code.

8. The Debtors are hereby authorized and empowered to take such actions as may be necessary and appropriate to implement the terms of this Interim Order.

9. The Court shall retain jurisdiction over any matters arising from or relating to the implementation and interpretation of this Interim Order.

10. The hearing to consider entry of an order granting the relief requested in the Motion on a final basis shall be held on _____, **2018 at __:00 _.m. (EST)**; and any objections to entry of such order shall be in writing, filed with this Court, and served upon (i) counsel to the Debtors, (ii) the Secured Creditors, (iii) the U.S. Trustee, and (iv) counsel for any statutory committee appointed in these Chapter 11 Cases, in each case so as to be received no later than **4:00 p.m. (EST) on _____, 2018**.

Dated: _____, 2018
Wilmington, Delaware

_____
UNITED STATES BANKRUPTCY JUDGE

Exhibit 1

Budget

Cash Forecast Summary - As of 12/29/17	1/5/2018	1/12/2018	1/19/2018	1/26/2018	2/2/2018	2/9/2018	2/16/2018	2/23/2018	3/2/2018	3/9/2018	3/16/2018	3/23/2018	3/30/2018	4/6/2018	
week ending	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Total Forecast
I. Beginning Case and Receipts															
1.) Beginning Cash	8,281,223														$ 8,281,223
2.) Policy Sales		330,769	330,769	330,769	330,769	330,769	330,769	330,769	330,769	330,769	330,769	330,769	330,769	330,769	4,299,997
3.) Death Benefits															-
															-
															-
Total Cash	$ 8,281,223	$ 330,769	$ 330,769	$ 330,769	$ 330,769	$ 330,769	$ 330,769	$ 330,769	$ 330,769	$ 330,769	$ 330,769	$ 330,769	$ 330,769	$ 330,769	12,581,220
II. Operating Disbursements															
4.) Insurance Premium Payments	82,000	82,000	82,000	82,000	82,000	82,000	82,000	82,000	82,000	82,000	82,000	82,000	82,000	82,000	1,148,000
5.) CVA Corp Policy Administration Services	16,000				16,000				16,000					16,000	64,000
6.) Wells Fargo Trust Administration Services	2,917				2,917				2,917					2,917	11,668
7.) Wells Fargo Administration Services	2,083				2,083				2,083					2,083	8,332
8.) All Other	4,000				4,000				4,000					4,000	16,000
															-
															-
															-
Total Operating Disbursements	107,000	82,000	82,000	82,000	107,000	82,000	82,000	82,000	107,000	82,000	82,000	82,000	82,000	107,000	1,248,000
Operating Net Cash Flow	$ 8,174,223	$ 248,769	$ 248,769	$ 248,769	$ 223,769	$ 248,769	$ 248,769	$ 248,769	$ 223,769	$ 248,769	$ 248,769	$ 248,769	$ 248,769	$ 223,769	$ 11,333,220
III. Non-Operating Disbursements															
9.) Debtor's Bankruptcy Counsel Fees and Expenses										60000				46000	106,000
10.) Debtor's DE Bankruptcy Counsel Fees and Expenses										26400				18400	44,800
11.) US Trustee Fees													16,650		16,650
12.) Miscellaneous	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	28,000
13.) Debtor's Accountant Fees and Expenses										35,000					35,000
															-
															-
Total Non-Operating Disbursements	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	97,000	2,000	2,000	18,650	48,000	$ 230,450
Net Cash Flow	**$ 8,172,223**	**$ 246,769**	**$ 246,769**	**$ 246,769**	**$ 221,769**	**$ 246,769**	**$ 246,769**	**$ 246,769**	**$ 221,769**	**$ 151,769**	**$ 246,769**	**$ 246,769**	**$ 230,119**	**$ 175,769**	**$ 11,102,770**
Cumulative Net Cash Flow	$ 8,172,223	$ 8,418,992	$ 8,665,761	$ 8,912,530	$ 9,134,299	$ 9,381,068	$ 9,627,837	$ 9,874,606	$ 10,096,375	$ 10,248,144	$ 10,494,913	$ 10,741,682	$ 10,971,801	$ 11,147,570	11,147,570