

# **Characteristics of insurance contracts suitable to benefit value insurance settlements**

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## **Abstract**

Based on the economic substance of life settlement in US, I examined the possibility of benefit value insurance settlement about each insurance contract type. As a result, the following three conditions are proved to be necessary to exist for benefit value insurance settlement. First, from the viewpoint of insurable interest, the policyholder must be able to change the beneficiary to anyone when transferring an insurance contract to the unrelated third party. Second, the insured event must be most likely to occur during the policy period. Moreover, such situation must continue for certain period of time. Third, the concerned insurance contract must be one-claim-ending type of insurance contract.

## **1 . Introduction**

In the wide sense, the insurance settlement means transferring insurance contract to an unrelated third party for value, which can be classified into two types.

One is transferring insurance contract to an unrelated third party at death benefit value discounted by the interest rate and the future premium until

the insured person's death (hereinafter, *risk-adjusted value of benefit*<sup>1)</sup>, typically transacted in the United States (hereinafter, *benefit value insurance settlement*). In this case, the economic purpose of the transfer of the insurance claim right to the future insured event is concerned.

The other is transferring insurance contract with premium reserve to an unrelated third party at premium reserve value (hereinafter, *reserve value insurance settlement*), typically transacted in the United Kingdom and Germany where the target policies of life settlements are mainly limited to with-profits endowment contracts with fixed time to maturity (Gatzert, 2010, pp. 280, 282-287).

The purpose of this paper is to show the characteristics of insurance contracts suitable to benefit value insurance settlements, so reserve value insurance settlements are not concerned here, because it is not clear why benefit value insurance settlements are not transacted for property-casualty insurance contracts (e.g., fire insurance) nor accident-sickness insurance contracts of fixed benefit (e.g., illness insurance) but transacted only for life insurance contracts.

Little attention has been given to this point, although several researches for the economic effects of secondary market for life insurance policies have been made especially in recent years (Doherty and Schlesinger, 2000; Doherty and Singer, 2003a, 2003b; Deloitte and University of Connecticut, 2005; Daily, Hendel and Lizzeri, 2008; Zhu, 2009; Fang and Kung, 2010a).

First, the history and the economic substance of benefit value insurance settlements transacted in the United States will be mentioned. Without clear understanding of the economic substance, it is not possible to judge the

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1) I followed the naming 'risk-adjusted value of death benefit' in Doherty and Singer (2003a).

characteristics of benefit value insurance settlements (will be discussed in section 2). Next, with the economic substance of benefit value life settlements being made clear, the characteristics of the insurance contracts will be proposed concerning benefit value insurance settlements and the possibility of the benefit value insurance settlements for each insurance contract type will be examined (in section 3). Lastly, the conclusion will be stated (in section 4).

Incidentally, in this paper, it is supposed that the policyholder, who is concurrently the beneficiary, wishes to transfer his/her insurance contract not to a specific person who is in a constant relation with the policyholder but to an unrelated third party. Also, it is supposed that the insured person, who is concurrently the policyholder, agrees the transfer in legal form of either insurance settlement or transfer of insurance claim right.

## **2 . History and economic substance of benefit value insurance settlement in US**

### ***2 - 1 . History***

In 1980s, 'viatical settlement' became popular in the United States as a means to sell life insurance contract to the third-party investors. The policyholder of viatical settlement, who was concurrently the insured person, was chronically ill or terminally ill and expected remaining days were less than 2 years.<sup>2)</sup> Although the policyholder was able to cancel his/her contract, viatical settlement was meaningful because the price proposed by viatical settlement broker was much higher than the surrender value that would

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2) In 1993, National Association of Insurance Commissioners (hereinafter, NAIC) developed the Viatical Settlement Model Act.

have been paid by the issuing life insurance carrier which is the incumbent life insurance company.

The insurance carrier calculates the cash surrender value based on the premium fund and deducts the surrender charge.<sup>3)</sup> But, when the remaining days of the insured person are short, the market value of the life insurance contract becomes near the amount of death benefit which would be paid on the insured person's shortly-expected death. If the death is most likely in the near future, risk-adjusted value of benefit becomes the current value. The viatical settlement company calculates the price based on this value.

Viatical settlements have diminished in market after new medical drugs and treatments have been found for HIV/AIDS around 1998. The object of the transaction expanded to life insurance for aged insureds<sup>4)</sup> in general, and thus such transaction became to be called 'life settlement.'<sup>5)</sup> In case of life settlements for aged insureds which is called 'senior settlements,' usually the remaining days of the insured persons are more than 2 years, sometimes more than 10 years, and are shorter than average life expectancy.<sup>6)</sup> It seems

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3) Doherty and Singer (2003a) calls the value 'uniform health-independent surrender value.'

4) A research shows that most of the male insureds of life settlements are aged from 70 to 85 years old and most of the female insureds are aged from 75 to 85 years old (Life Policy Dynamics, 2009, p. 13).

5) In 2000, National Conference of Insurance Legislators (hereinafter, NCOIL) developed the Life Settlements Model Act, and in 2004 revised it. In 2001, NAIC expanded the range of the Model Act (see, note 2) to life settlements (Johnson, 2001).

6) Based on GAO's review of web sites of 29 different providers for life settlements, the providers are interested in buying policies where insured person's minimum life expectancy ranged from 2 to 4 years and maximum life expectancy ranged from 10 to 21 years (GAO, 2010, p. 37). Another research tells that life expectancies of 70% of insured persons, whose age is over 65, exceed 120 months where the life insurance contracts have been sold and securitized (A.M. Best, 2012, p. 7, Exhibit 5).

to be possible to say that life settlements became quite common substitute for surrender and lapse of life insurance contracts<sup>7)</sup> in the United States today.<sup>8)</sup>

## **2 – 2. Economic substance**

A benefit value life settlement usually takes a legal form of transfer of life insurance contract<sup>9)</sup> (in general, both the procedure of changing the policyholder accompanied by the transfer and the procedure of changing the beneficiary are accomplished at the same time). The assignment of the status of a contracting party is not merely the assignment of ‘chose in action’ (in this case, right to benefits), but also accepting debt and transferring other rights such as the cancellation right (Dobbyn, 2003, p. 100).

Therefore, because life settlement is one of the assignments of the status of the contracting parties (i.e., the policyholder and the issuing insurer), when transacting life settlement, either an agreement among the contracting parties and the assignee, or, an agreement among the policyholder and the assignee with the consent by the issuing insurer is indispensable in principle.

In this connection, for example, New York State provides a rule for life

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7) It is said that approximately 88% of the life insurance policies are surrendered or lapse without the death benefit being paid (Freedman, 2009).

8) There is no comprehensive data for the size of life settlements market. However, GAO’s survey shows 25 life settlement providers that were a part of licensed providers in two or more states reported purchasing policies, where the insureds have been expected to live more than 2 years, with a total face values of around \$5.50 billion (3,148 policies. 2006), \$9.03 billion (3,703 policies. 2007), \$12.95 billion (4,505 policies. 2008), \$7.01 billion (2,636 policies. 2009) (GAO, 2010, pp. 4, 35, 36).

9) Typical life settlement consists of two transactions: (1) life settlement contract which is the sale of life insurance policy by its policyholder to a life settlement provider, usually with the assistance of an agent and/or life settlement broker, and (2) the sale of the policy by the life settlement provider to an investor or investors. This article focuses on the above (1) transaction.

settlements (New York Insurance Law, Article 78: Life Settlement) which admits the life settlement within certain limitations.<sup>10)</sup> Furthermore, the law imposes an approval duty of the insurance contract transfer on the issuing life insurance carrier (New York Insurance Law § 7813(d)).<sup>11)12)</sup>

On the other hand, as for transfer of the insurance claim right, the consent by the issuing insurer is dispensable. The beneficiary can transfer the insurance claim right with only an agreement between the beneficiary and the assignee. The beneficiary can transfer his/her insurance claim right both before and after the insured event occurs (Jerry, 2002, pp. 371-372; Dobbyn, 2003, pp. 235-236).

Therefore, there is a significant legal difference between the transfer of

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10) During 2 year period commencing with the date of issuance of the policy, no person shall enter into life settlement contract, except that the policyholder or the insured person is terminally ill or chronically ill, the policyholder's spouse dies, the policyholder divorces, the policyholder retires from full time employment or involuntary ceases employment, and so on (New York Insurance Law § 7813(j)).

11) Generally in the United States, courts held that, absent an express clause to the contrary in the policy, the consent of insurer was not required for a fully effective assignment (Dobbyn, 2003, p. 239), but that the insurance company could forbid, by the terms of the policy, an assignment of a life insurance contract without the consent of the company (CJS, 1993, 45 § 474; Crawford, 1998, p. 282). However, many state laws which prescribes the life settlements impose the approval duty on the life insurance companies (e.g., New York Insurance Law § 7813(d); Cal. Ins. Code § 10113.3(d); New Jersey Statute 17B (Insurance), 30B (Viatical Settlements Act), 10c. Ref., NCOIL, Life Settlements Model Act § 11E; NAIC, Viatical Settlements Model Act § 11E).

As for the United Kingdom and some common law countries in Asia, see Appendix 1.

12) Moreover, 6 states (California, Kentucky, Maine, Oregon, Washington and Wisconsin) require insurance companies to inform the aged or chronically ill insureds, who are going to surrender life insurance policies for cash value or let the policies lapse entirely, about the option of life settlements (SEC, 2010, p. 7).

The lapse of life insurance contracts are driven by either income shocks, health shocks or bequest motive shocks. The bequest motive shocks plays more important role for old policyholders (Fang and Kung, 2010b).

insurance contract and the transfer of insurance claim right. However, the economic substance, which the policyholder and the assignee intend to perform by means of benefit value life settlement, seems not to be an assignment of the insurance contract but of the insurance claim right to the future insured event that is most likely to happen (Bozanic, 2008, p. 239).

Although risk-adjusted value of benefit of a concerned life insurance contract increases when the insured event becomes most likely to occur in the policy period, by a cancellation of the policy, this increased value cannot be realized and the surrender value is paid at the usual amount. To realize this increased risk-adjusted value of benefit, the policyholder can only but to transfer his/her life insurance contract excluding the case of application of accelerated death benefit.

Now, we face the reason for a legal form of the transfer of the insurance contract being usually adopted in benefit value life settlements in the United States, while economically, the insurance claim right to the future insured event most likely to happen is being transferred.<sup>13)</sup> The following are main reasons.

- (a) When the insurance event has not yet occurred, lapsing or cancellation of the insurance contract must be prevented until the insurance claim right occurs definitely by the occurrence of the insured event. Concretely, without the procedure of the change of the policyholder, there is a fear for the assignee of the insurance right that the policyholder, who is the assignor of the insurance claim right, may optionally cancel the insurance contract. And there is a fear that the insurance contract may lapse or be cancelled by the insurer with the

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13) Oppositely, when transferring insurance claim right after the insured event occurrence, to adopt a legal form of the transfer of insurance contract is not necessary because the situations like the above passage (a)-(c) does not exist.

premium non-payment.<sup>14)</sup>

- (b) When the insurance event has not yet occurred, the further change of the beneficiary must be prevented until the insurance claim right occurs definitely by the occurrence of the insured event. Concretely, without the procedure of the change of the policyholder, there is a fear for the assignee of the insurance right that the policyholder, the assignor of the insurance claim right, may change again the beneficiary from the assignee of the insurance claim right to a third person or policyholder himself.
- (c) When the insurance event has not occurred, the policyholder loan must be prevented not to decrease the amount of the insurance claim payment. If the balance of the policyholder loan exists, the issuing insurer offsets the concerned debt in case of death benefit payment.

To evade such defects of transfer of the insurance claim right to the future insured event most likely to occur, a legal form of transfer of the insurance contract is adopted. Even then, the economic substance (or the economical main purpose at least) does not always mean transfer of the insurance contract. Rather, it is supposed that most of benefit value life settlements in the United States are substantively the dealings themselves with the purpose of transferring to an unrelated third party the insurance claim right to the future insured event most likely to happen.

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14) In the United States, some state law prescribes that an assignee of life insurance contract may request the insurer to give notice of non-payment of any premium due (e.g., New York Insurance Law § 3211(e)), or that the insurer shall give notice of non-payment of any premium due to an assignee of life insurance contract (e.g., California Insurance Code § 10173.2).

### **3. Propriety of benefit value insurance settlements for each insurance contract type**

In the United States, benefit value insurance settlements are dealt with life insurance contracts. However, neither property-casualty benefit value insurance settlement nor accident-sickness benefit value insurance settlement seems to be transacted.<sup>15)</sup> The transfer itself of the insurance claim right to the future insured event is not limited to life insurance contract theoretically, and, as discussed in the preceding section, the economic substance of most of benefit value life settlements in the United States is transferring the insurance claim right to the future insured event most likely to occur to an unrelated third party.

It is supposed that no study has ever been examined on this issue except the requirement of the insurable interest. Therefore, I will attempt to examine the reason why benefit value insurance settlement concerns neither property-casualty insurance contract nor accident-sickness insurance contract of fixed benefit. In the examination, I will contrast those insurance contracts with life insurance contract with which insurance settlement is dealt.

#### ***3 - 1 . Insurable interest requirement***

It is supposed that insurable interest requirement obstructs benefit value insurance settlements for property-casualty insurance contract (Bozanic, 2008, p. 253). That is, insurable interest of the insured person must exist at least at the time of the insured event for property-casualty insurance

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15) Rather, in New York State, the assignment of accident death benefit is prohibited (New York State Regulations, 11 NYCRR 380 (Regulation 148) § 380.9(a) (2)).

contract in the United States (CJS, 1993, 44 § 220; Dobbyn, 2003, pp. 92-94) as well as other countries.<sup>16)</sup> Concerning property-casualty insurance contract such as fire insurance contract, the economic demand for benefit value insurance settlement between the policyholder and the unrelated third party does not exist because, even if the unrelated third party becomes the assignee of the insurance claim right, he/she cannot receive the benefit for lacking the insurable interest at the occurrence of the future insured event. Thus, the insurable interest requirement is the important factor which obstructs the economic demand for property-casualty benefit value insurance settlements.

On the other hand, concerning life insurance contract (including accident-sickness insurance of fixed benefit), the insurable interest does not obstruct the assignment of the insurance contract because the insurable interest is constantly not required. The reason for the possibility of the assignment of life insurance contract in the United States is, with an exception of contract inception (Jerry 2002, 317-318; Dobbyn 2003, 99-100),<sup>17)</sup> that the insurable interest is not required at the time of the insured event.<sup>18)</sup> Thus, regarding

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16) However, in New Zealand, insurable interest is not required for property-casualty insurance (Insurance Law Reform Act 1985 (Public Act 1985 No. 117) § 7), and also in Australia (Insurance Contract Act 1984 § 17).

17) In the United States, lacking the insurable interest at the inception of the life insurance contract constitutes a pure “wager policy” and the contract is void because it is against the public policy. See, *Connecticut Mutual Life Insurance Co. v. Schaefer*, 94 U.S. 457, 460 (1876). As for some common law countries on the Pacific Rim, see Appendix 2.

18) But STOLI is generally prohibited under the insurable interest laws of the states in the United States. SOLI or STOLI (stranger-originated life insurance) emerged around 2003, which is generally the origination of a life insurance policy for the benefit of the person who has no insurable interest at the issuance of the policy. Then the Model Act of NAIC and NCOIL were revised to prohibit the STOLI in 2007. At present, New York State also prohibits STOLI (New York Insurance Law § 7815(c)(d)), but STOLI do not include lawful life settlement

the assignment of a life insurance contract, the majority of courts favor free transfer of insurance contracts to unrelated third parties (*Grigsby v. Russell*, 222 U.S. 149, 155–156 (1911); *Mutual Life Insurance Co. v. Allen* (Mass. 1884); *Hammers v. Prudential Life Insurance Co. of America*, 216 S.W.2d 703 (Tenn. 1948); *Butterworth v. Mississippi Valley Trust Co.*, 240 S.W.2d 676 (Mo. 1951); *First Penn-Pacific Life Insurance Co. v. Evans*, unpublished, 4CA (2009); *Kramer v. Phoenix Life Insurance Co.*, N. Y. Court of Appeals, No. 176 (2010); Jerry, 2002, pp. 326–327; Dobbyn, 2003, pp. 101–102).<sup>19)</sup> Furthermore, in continental law countries, the insurable interest is not required with respect to life insurance contract; instead, the consent of insured person is needed.

Again, the insurable interest obstructs property-casualty benefit value insurance settlements. However, there must be other factors that obstruct benefit value insurance settlements except life settlements because no benefit value insurance settlement has been heard of concerning accident-sickness insurance contract of fixed benefit where insurable interest was unnecessary different from property-casualty insurance. Thus, for the further reasons for the lack of benefit value settlement of property-casualty insurance and accident-sickness insurance, I propose the following conditions in the following subsections 3-2 and 3-3.

### ***3 – 2. Continuation of condition of future insured event that is most likely to occur***

In benefit value life insurance settlement, the life settlement company calculates the economical value of the concerned life insurance contracts

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contracts as permitted by the Article 78 (Life Settlements) of New York Insurance Law unless such contracts are for the purpose of evading regulation (New York Insurance Law § 7815(b)).

19) As for insurable interest in the United Kingdom and Canada, see Appendix 3.

based on the insurance claim right to the future insured event that is most likely to occur. Viatical settlement is dealt with life insurance contracts when the insured person's remaining days are short, i.e., it is medically clear that the insured person is going to die during the policy period. Also, concerning senior settlement, most popular for benefit value life settlements today, the occurrence of the insured event, the death of the insured person, is definite within several years or about ten years during the policy period.<sup>20)</sup>

However, generally, such a situation as the insured future event occurs most likely during the policy period is hardly supposed for both property-casualty insurance contracts and accident-sickness insurance contracts.

For example, regarding fire insurance, the insurance event may or may not occur during the policy period. Furthermore, it is almost impossible to transfer insurance contract when a fire breaks out. The insured event may not be the fire itself of the subject matter of insurance but it may be the occurrence of the damage to the subject matter from the fire. Both matters are likely to occur at the same time and thus it is impossible, in the very meantime from the break out of the fire until the occurrence of the damage, to transfer the fire insurance contract to an unrelated third party at the amount of money near the due amount of the fire insurance claim.

For another example, regarding accident insurance that provides fixed amount operation benefit, generally, the occurrence of the insured event is not certain during the policy period even if it is unlimited. Also, the seriousness of the injury of the insured is not certain. Again, it is impossible to transfer insurance contract when an accident happens on the insured person. Let us assume the case where the insured person is seriously injured

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20) Whole life insurance and universal life insurance always satisfies this requirement, because the insured event always occurs during the policy period. And the renewable term insurance has the similar feature.

and needs surgery. During the time between the accident and the actual surgery, it is unlikely to transfer the accident insurance contract to an unrelated third party at the amount of money which is near the due amount of the claim.

Therefore, concerning property-casualty insurance contracts and accident-sickness insurance contracts, it is difficult to assume a situation that the insured future event is to occur most likely in the future policy period. And even under such situation, there is not enough time: to find a possible assignee by the policyholder or by an insurance settlement broker; to perform the legal, medical or physical, financial and actuarial due diligence by the possible assignee; to negotiate the terms and conditions, including the price, of the assignment contract; and then to transfer insurance contract to the unrelated third party. Therefore, as for such insurance contracts, insurance settlement to realize increased risk-adjusted value of benefit is not transacted. If the insured event occurred definitely, the policyholder no longer had to transact benefit value insurance settlement and was able to just transfer insurance claim right (see, section 2(a)-(c)).

However, there is one exception concerning hospital benefit for long-range hospitalization or operation benefit for non-urgent surgery.<sup>21)</sup> If long-range hospitalization is scheduled or non-urgent surgery is planned, the policyholder has enough time to negotiate with the assignee and transfer the insurance contract before the future insured event occurs.<sup>22)</sup>

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21) But, in case of the symptom which does not require the urgent operation, because the insured person may have the discretion whether or not to undergo an operation, it is not suitable for insurance settlement or for the transfer of the operation benefit.

22) Even if the policyholder has enough time, because, in general, the amount of the hospital benefit or operation benefit is not much enough for assignment, both benefit does not seem to be dealt with for the transfer.

But, when needing long-range hospitalization, it may be possible to transfer an

### ***3-3. One-claim-ending type of insurance contract***

Concerning property-casualty insurance contracts and accident-sickness insurance contracts, the transfer of the insurance contract to realize increased risk-adjusted value of benefit seem not to be transacted. This is true even if the situation is assumed that the insured event is most likely to occur during the policy period and is also assumed that enough time exists to transfer insurance contract to an unrelated third party. A beneficiary may try to transfer accident-sickness insurance claim right to hospital or operation benefit to an unrelated third party (see, above mentioned 3-2), but the policyholder who is concurrently the beneficiary would not transfer the insurance contract.

For one reason, it does not usually take long until the insurance claim right of the assignee fixes definitely after the insured event (maybe several days or weeks). The assignee does not need to take steps of the insurance contract transfer (see, above mentioned 2-2(a)-(c)).

For another reason which is much more important, concerning accident-sickness insurance, the insured person, concurrently the beneficiary, may sometimes wish to transfer only his/her insurance claim right to an unrelated third party, and not the insurance contract itself. He/she may suffer from a different injury or disease in the future and may claim the hospital or operation benefit of the insurance contract. Therefore, the policyholder of the accident-sickness insurance does not transfer the

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accident and sickness insurance contract for the purpose of transferring the hospital benefit in the future. In the United States, based on GAO's review of the web sites of the life settlement providers, they seemed to be interested in buying life insurance policies which minimum face amount range from \$25,000 to \$1 million (GAO, 2010, p. 37). However, another research for the actual transactions of life settlement shows that the transferred life insurance policies which face amount under \$499,000 occupy only 13% in number in 2008 (Life Policy Dynamics, 2009, p. 6).

insurance contract.

Generally speaking, concerning life insurance contract, the insured event is the death of the insured person. The insured event occurs only once (or nil) during the policy period. Once the insured event occurs, another insured event never happens. If the insured event occurs, the life insurance contract ends its role (legally, the insurance contract ends automatically or lapses). Therefore, when transferring death benefit claim right, the policyholder, whether he/she is concurrently the beneficiary or not, does not hesitate to adopt the legal form of transferring the life insurance contract itself. It is more likely when it is easier to transfer and/or at more expensive price he/she can sell the life insurance contract (see, above mentioned 2-2(a)-(c)). In other words, concerning insurance contract where the insured event occurs only once (or nil) during the policy period and the contract itself terminates at the occurrence of the insured event (hereinafter, *one-claim-ending type of insurance contract*), the assignment of the insurance contract, when the future insured event is most likely to occur<sup>23)</sup>, has the same economic meaning to the assignment of the insurance claim right.

On the other hand, concerning property-casualty insurance contract and accident-sickness insurance contract, the insured event may occur twice or more times during the policy period. Therefore, when transferring the insurance claim right, the beneficiary refuses the legal form of transferring the insurance contract. This is the different issue from insurable interest of property-casualty insurance contract (see, above mentioned 3(1)). In this way, economically, where the insured event may occur twice or more times during the policy period (hereinafter, *multi-claim type of insurance contract*), and where the insured future event is most likely to occur, the assignment

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23) Whole life insurance and universal insurance always meets this condition.

of the insurance contract differs definitely from the assignment of the insurance claim right.

Very exceptionally, it is possible to assume a one-claim-ending type of insurance contract for property-casualty insurance or accident-sickness insurance as well as life insurance. The examples are: a marine insurance contract with total loss only condition which automatically terminates when the insured vessel or cargoes are damaged to total loss; and an accident insurance contract with the condition of limited coverage of the insured person's injured death which automatically terminates when insured person dies. These two insurance contracts are one-claim-ending type of insurance contracts. If it is possible to assume a situation that the future insured event is most likely to occur in the policy period and that there is enough time to transfer insurance claim right to an unrelated third party, the legal form of transferring insurance contract may be adopted to realize the economic purpose of transferring the insurance claim right, excluding the problem of insurable interest of property-casualty insurance. However, such a situation can hardly be assumed.

#### 4. Conclusion

Based on the economic substance of benefit value life settlements in the United States (mentioned in section 2), I have examined the possibility of benefit value insurance settlement, that is the insurance settlement where the economic purpose is transferring of the insurance claim right to the future insured event to an unrelated third party at increased risk-adjusted value of benefit, referring to each insurance contract type (mentioned in section 3).

To begin with, I have proposed that the following three conditions are

necessary to exist for benefit value insurance settlements. At the same time, these conditions become the characteristics of insurance contracts appropriate for benefit value insurance settlements. First, from the viewpoint of insurable interest, the policyholder must be able to change the beneficiary (in case of property-casualty insurance, the insured) to anyone, such as the assignee or whom the assignee specifies, when transferring the insurance contract to the unrelated third party. Second, to transfer the insurance claim right or the insurance contract to an unrelated third party at increased risk-adjusted value of benefit before the occurrence of the insured event, the insured event must be most likely to occur during the policy period. Moreover, such situation must continue for a certain period of time for investigation and negotiation necessary to conclude a settlement. Third, the concerned insurance contract must be one-claim-ending type of insurance contract when replacing the transfer of the insurance claim right with the transfer of the insurance contract.

Then, I have attempted to adapt the three conditions to concrete types of insurance contracts.

Regarding property-casualty insurance contracts, it is usually supposed that benefit value insurance settlement cannot be taken place from the viewpoint of insurable interest. Even if the insurable interest requirement does not obstruct insurance settlement, the reasons, which obstruct accident-sickness insurance settlement as following, also obstruct property-casualty insurance settlement.

Regarding accident-sickness insurance contracts, there is not enough time to transfer the insurance contract at increased risk-adjusted value of benefit to an unrelated third party. It is rare that the situation continues for a certain period of time, where the future insured event is most likely to occur during the policy period. Moreover, even if such a situation continues for a

certain period of time, it is not suitable for benefit value insurance settlement since most of the accident-sickness insurance is multi-claim type. Therefore, it is difficult to suppose benefit value insurance settlement of accident-sickness insurance to be actually transacted.

On the other hand, regarding life insurance contracts, there is a possibility that all such situations exist. The situations are that the insurable interest is not necessary when transferring life insurance contract (also in the United States), and that life insurance is one-claim-ending type satisfying the third condition I have mentioned. Therefore, benefit value insurance settlement becomes possible if the future insured event is most likely to occur and also the situation continues for a certain period of time.<sup>24)</sup>

## Appendices

### *Appendix 1*

In the United Kingdom, an assignment of a life insurance contract with a written notice to the insurer is effect in law (Law of Property Act 1925 § 136, Policies of Assurance Act 1867 § 1, 3), and it is also assignable in equity (Legh-Jones et al., 2008, pp. 712-718). Similarly, in Singapore and in Malaysia, a life insurance contract is assignable either by Policies of Assurance Act or by Civil Law Act (Singapore) § 4(8) or Civil Law Act (Malaysia) § 4 (3) in law, and also assignable in equity (Soe, 2006, pp. 109-113).

### *Appendix 2*

Also in Singapore and in Malaysia, the life insurance contract without the

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24) And then, insurance settlement can be actually formed if death benefit amounts considerable.

insurable interest at the inception of the contract is void (Singapore Insurance Act § 57(1) (a), Malaysia Insurance Act 1996 § 152(1)). And so is it in the countries in the Southeast Asia region which laws are largely based on the English principle (As for English principle, see, Life Assurance Act 1774 (U. K.) § 1, *Dalby v India and London Life Assurance Co.* (1854) 15 C.B. 365) (Soe, 2006, pp. 43-44).

In Canada, though the life insurance contract without the insurable interest at the inception of the contract is void, state laws prescribe the written consent by the insured person as the exception of insurable interest condition (e.g., Ontario State Insurance Act § 178(2)(b), Civil Code of Québec § 2418).

In Australia, on the contrary, insurable interest is not necessary for life insurance contract now by the amendment in 1995 of the Insurance Contracts Act 1984 (Insurance Contracts Act 1984 § 18). Much earlier in New Zealand, the requirement of insurable interest for life insurance contract has been abolished according to Insurance Law Reform Act 1985 (Public Act 1985 No. 117) § 6.

### ***Appendix 3***

In the United Kingdom, a life insurance contract is freely assignable and the assignee does not need to have insurable interest (Legh-Jones, Birds and Owen, 2008, p. 176; Merkin, 2010, pp. 777-778).

Also in Canada, the assignee of a life insurance contract does not need to have insurable interest (David and Weir, 2002, pp. 84-85; e.g., Ontario State Insurance Act § 178(1)) except in Québec (Civil Code of Québec § 2418).

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