

STOLI Policies Void in New Jersey

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The New Jersey Supreme Court recently held stranger-originated life insurance (STOLI) policies void as against public policy. In *Sun Life Assurance Co. of Canada v. Wells Fargo Bank, N.A.*, a \$5 million policy was taken out on the life of Nancy Bergman, with a trust as owner and beneficiary. The trust included investors who paid the policy's premiums. The investors became successor co-trustees, and authorized to sell the policy. The investors ultimately sold the policy, and, after a second sale, Wells Fargo acquired the policy.

The trial court concluded that the policy violated New Jersey's statutory requirement that the policyholder have an insurable interest in the life of the insured. On appeal, the Third Circuit certified two questions:

1. whether STOLI policies violate the public policy of New Jersey, and thereby are void ab initio; and
2. if the policy is void, is a later purchaser, who was not involved initially, entitled to a refund of premium payments.

The court concluded that STOLI policies were against public policy and void from the beginning. However, the court recognized that circumstances existed where a life policy sold to an investor would be enforceable. A key factor in the unenforceability of the policy here was the swift transfer of control to investors who had no insurable interest. The court stated that an incontestability provision would not bar a challenge to STOLI policies, which were contrary to public policy. Finally, the court found that, depending on the circumstances, a party may be entitled to a refund of premium payments made on a void STOLI policy. The court noted that a refund may particularly be appropriate for an innocent later purchaser of a STOLI policy.

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