CARLTON FIELDS

Federal Appellate Courts Address Stranger-Oriented Policies with Mixed Results

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Federal appellate decisions concerning stranger-oriented annuity (STOA) and life insurance (STOLI) transactions are infrequent, making the First and Ninth Circuit's decisions this winter particularly interesting. In one action, the Ninth Circuit affirmed a grant of summary judgment for the trust, finding that at the time the life insurance policy was issued, the son had an insurable interest in his mother's life, and thus, the policy was supported by an insurable interest despite the fact that the family had a pre-existing intent to transfer the policy. Further, the Court rejected the insurer's contention that the insured was not insurable up to $8.75 million, holding that an individual has an unlimited insurable interest in her own life. In *Western Reserve Life Assurance Co. of Ohio v. ADM Assoc. LLC*, the First Circuit certified the following questions to the Rhode Island Supreme Court related to a STOA scheme devised by Joseph Caramadre: (i) If the owner and beneficiary of an annuity with a death benefit is a stranger to the annuitant, is the annuity infirm for want of an insurable interest?, and (ii) Does a clause in an annuity that purports to make the annuity incontestable from the date of its issuance preclude the maintenance of an action based on the lack of an insurable interest? In *Western Reserve*, the insurer sued for rescission and a declaratory judgment, and the trial court dismissed the complaint and amended complaint. The First Circuit was unsure how Rhode Island state courts would characterize a variable annuity for purposes of its insurable interest laws, and also how those courts would handle a potentially void policy that fell outside the contestability period.

Related Practices

Life, Annuity, and Retirement Litigation