

Appellate Courts + STOLI = Mixed Results

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In recent years, federal district courts addressing claims and defenses with respect to stranger-originated life insurance (STOLI) schemes have reached a variety of results. Accordingly, federal appellate courts have increasingly been called upon to resolve issues such as the interplay between various insurable interest and incontestability requirements. The Eight Circuit Court of Appeals recently reversed the trial court ruling that a STOLI policy was *void ab initio* based on an insured's intent. In *PHL Variable Insurance Co. v. Bank of Utah*, the district court declined to not follow the majority view, holding that an insurer may challenge a policy for lack of insurable interest beyond the contestability period, based on a finding that the insured intended, from inception, to transfer the policy to a third-party with no insurable interest in the insured's life. **The Eight Circuit, further predicted that, applying Minnesota common law, the Minnesota Supreme Court would find that the insurable interest requirement is met when a person purchases insurance on his own life, regardless of any intent to transfer the policy.** In reaching its decision, the Eighth Circuit distinguished the substantial body of persuasive case law from other jurisdictions by noting that, unlike many other states, Minnesota did not adopt an insurable interest statute until 2009 and, in any event, that statute (Minn. Stat. §§ 60A.078 *et seq.*) was prospective and did not apply to the underlying policy which was issued in 2007. When recently given the opportunity to consider similar issues under Florida law, the Eleventh Circuit Court of Appeals certified the questions to the Florida Supreme Court. In *Pruco Life Ins. Co. v. Wells Fargo Bank, N.A.*, the Eleventh Circuit examined two conflicting district court opinions—one following the majority position that where the underlying policy was fraudulently obtained, it was *void ab initio* from inception and the incontestability provision did not bar the insurer's challenge and the other ruling that the lack of an insurable interest renders an insurance policy merely voidable (as opposed to *void ab initio*). Noting a nationwide split and the absence of clear guidance from Florida courts, the Eleventh Circuit requested a determination from the Florida Supreme Court as to whether (1) an insurer can challenge an insurance policy as being *void ab initio* for lack of the insurable interest under Florida's insurable interest statute beyond the expiration of the two-year contestability period and (2) if so, whether Florida's insurable interest statute requires an individual with the required insurable interest to procure the insurance policy in good faith. Thus, STOLI issues still largely turn on applicable state law—even when the challenge makes its way to federal court.

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