

Federal Court of Appeals Deems Policies STOLI, Refuses to Order Return of Premiums

December 23, 2015

Upon determining that certain Ohio National life insurance policies were stranger originated life insurance (STOLI) under Illinois law, the Seventh Circuit Court of Appeals, in *Ohio National Life Assurance Corp. v. Davis*, affirmed the entry of summary judgment in favor of an insurer, holding that the policies at issue were void *ab initio*. The five policies at issue were placed in trusts upon issuance for sale to investors, with the insureds receiving compensation for enrolling in “a program,” frequently being unaware they were applying for insurance. The court held the policies to be STOLI because they were initiated, paid for, and controlled by someone who lacked an insurable interest in the life of the insured and there was an intention at the time the policies were issued to transfer the formal ownership of the policies in the future to someone who lacked such an interest. In such circumstances, the court stated, parties normally “will be left where they have placed themselves with no recovery of the money paid for illegal services.” Ohio National was thus required to return funds (\$91,000) paid by one “innocent” defendant, but the court refused to order the return of funds paid by parties that were complicit in the STOLI scheme, whether or not they realized the scheme’s illegality. Finally, the court affirmed an award of damages to Ohio National of \$726,000—the amount of the commissions it paid to the complicit agent and its attorneys’ fees and expenses paid in contesting the policies.

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