

STOLI Policies Cancelled, Insurers Retain Premium

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Two federal appellate courts have affirmed, on different grounds, the cancellation of large life insurance policies that were alleged to be stranger originated life insurance (STOLI), permitting the issuing insurers to retain the premium paid for the policies. In *Ohio National Life Assurance Corp. v. Davis*, the court affirmed the district court's ruling that a policy was STOLI, illegal, and void *ab initio* under Illinois law. The court found the policy, which was owned by a trust, was used "to hoodwink Ohio National." The applicants never paid any amount and the policy was, from the beginning, controlled by third-parties that intended to sell it to investors. The insureds were "the defendants' puppets and the policies were bets by strangers on the insureds' longevity," the court said. Declining to order the return of premium paid, the court followed the general rule of leaving the parties where they placed themselves with respect to an illegal contract, but also affirmed summary judgment in favor of the insurer on a civil conspiracy claim under which it recovered the commissions it paid and its costs and attorneys' fees in obtaining a declaration that the policy was illegal. In *PHL Variable Ins. Co. v. Sheldon Hathaway Family Ins. Trust*, the court found a policy on an elderly insured with an initial premium of \$200,000 fit the STOLI model. All premiums were financed, and the policy was pledged as collateral for the premium loan. However, the policy was cancelled on summary judgment, due to a material misrepresentation of the applicant's net worth in the application, which was relied on by the insurer. Rejecting claims that the insurer had waived the right to rescind, the court affirmed the insurer's retention of the premium paid to return the insurer to the position it was in prior to the policy's issuance, since the commissions paid exceeded the premium paid.

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