

Choice of Law Can Influence STOLI Outcomes

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The determination of which state's law governs in STOLI disputes often influences the outcome of the case. One question that divides courts is what type of misrepresentation justifies rescission. In entering judgment for the insurer after trial, the District of Minnesota recently found that misrepresentations about the insured's net worth were material in *PHL Variable Ins. Co. v. 2008 Christa Joseph Irrevocable Trust*. The court found the test for materiality in Minnesota was not whether it increased the risk of loss, but whether it substantially influenced the insurer's decision to provide coverage. The statements about the insured's net worth were "gross misrepresentations that were material to PHL's decision to issue the Policy" and as such entitled the insurer to both rescind the policy and to retain the premiums paid. Another question as to which state laws can widely differ is whether an incontestability provision will bar a declaratory judgment action brought after the period to seek a policy declared void *ab initio* has expired. The Southern District of Florida recently weighed in on this issue, diverging from the majority view and finding that the public policy underlying the incontestability statute weighed in favor of barring a challenge to the policy. In *Pruco Life Ins. Co. v. U.S. Bank*, the court opined that the purpose of the statute – to provide the insured with certainty while providing the insurer with a limited opportunity to discover fraud – would be furthered by its ruling. These cases reflect the obvious: that beyond the issue of the statutory and common laws of the various states on STOLI differing so greatly, there remains a fair amount of uncertainty within jurisdictions regarding STOLI law interpretation and application that makes predicting the outcome of such cases a continuing challenge.

