

How to Fight a STOLI Scheme: Court Rulings Offer Clues

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Two recent court decisions provide potential road maps for insurers in the fight against Stranger-Originated Life Insurance (STOLI) schemes. *Ohio Nat'l Life Assurance Corp. v. Davis* involved a STOLI scheme so obvious that four of the five policies at issue were allowed to lapse or were no longer contested. However, the defendant resisted Ohio National's summary judgment claim that the fifth policy was void at inception, arguing that the insured bought the policy at his own behest and could keep the insurance if he desired. In response, Ohio National successfully argued to the Northern District of Illinois that the insured never owned the death benefit because the date of his policy application was later than the date he transferred his interest in his life insurance trust to defendants. *In Vasquez v. ReliaStar Life Insurance Co.*, ReliaStar, suspecting a STOLI scheme, rescinded a policy based on misrepresentations of fact in the application. The owner-beneficiary trust argued that these misrepresentations were not material because they did not "affect the risk assumed" by the insurer: namely, her health or death. The Texas Court of Appeals disagreed, concluding that **the real risk assumed by an insurer is the risk it will have to pay death benefits, so any information provided in the policy application that impacted whether the insurer decided to provide coverage, and how much, could be material.** ReliaStar **proved that** all information in the policy application fit this description by relying on its financial underwriting guidelines as well as testimony from its underwriters. These cases suggest that, in the fight against STOLI, insurers should pay careful attention to the timeline of events surrounding the policy application and trust ownership, and that their underwriting guidelines should specify how the policy application information impacts coverage decisions.

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