

Insurable Interest Found in Life Insurance Policies Procured by Investors Through Fraudulent STOLI Scheme

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The Florida Supreme Court recently held that life insurance policies procured by investors through a STOLI scheme did not violate Florida's insurable interest statute and could not be challenged after the two-year contestability period expired. In deciding *Wells Fargo Bank, N.A. v. Pruco Life Ins. Co.*, the court did not address the question of law certified to it by the U.S. Court of Appeals for the Eleventh Circuit: Whether a life insurance policy *without an insurable interest* can be challenged after the contestability period. The Eleventh Circuit had assumed that the underlying policies lacked an insurable interest, and the threshold question presented was whether the insurer could challenge the validity of the policies after the contestability period based on the absence of an insurable interest. The Florida Supreme Court did not agree that an insurable interest was lacking. It acknowledged that the facts in the underlying cases showed that the policies were acquired as part of a fraudulent STOLI scheme. Notably, the transactions were orchestrated by sales representatives offering "free insurance" and monetary compensation to the insureds; the insureds did not need, or intend to retain, the policies or pay premiums; the applications contained false statements about the insureds; and the insureds understood that the beneficial interest in the policies would eventually be transferred to a third party after the contestability period. Indeed, the Eleventh Circuit's statement of facts, incorporated in the Florida Supreme Court opinion, notes "[i]t was understood that [the insured's] daughter would not receive the death benefit from the policies and that any beneficial interest would eventually be sold to an investor with no insurable interest." The court nonetheless found that the policies satisfied Florida's insurable interest statute because, at inception, they named as beneficiaries individuals with an insurable interest (in both cases immediate family members). Having made that finding, the court held that Florida's incontestability statute—which had several exceptions, but none for STOLI schemes—prevented the insurer from challenging the policies' validity.

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