

Recent Developments in Life Insurance Litigation

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STOLI

We reported in detail on developments in the case law and legislation addressing stranger-originated life insurance (STOLI) policies in past issues of *Expect Focus – Life, Annuity, and Retirement Solutions*. See [“New Jersey Springs Into Action: New Bill to Ban STOLI Policies,”](#) [“New Jersey Enacts Anti-STOLI Law,”](#) and [“State Law Steers STOLI Cases, Drives Federal Court Outcomes.”](#) A June 23, 2022, decision by the Eleventh Circuit Court of Appeals gets to the bottom of the STOLI debate in *Estate of Malkin v. Wells Fargo Bank*.

Phyllis Malkin purchased \$13 million worth of life insurance as part of a STOLI scheme. Berkshire Hathaway acquired one of the policies in 2013 and, after Malkin died in September 2014, received \$4 million in death benefits. Malkin’s estate sued Berkshire to recover the death benefits under section 2704(b) of Delaware’s Insurance Code, which allows an insured to sue “to recover such benefits from the person so receiving them” if a policy is made in violation of the insurable interest requirement. Berkshire countered that it was a bona fide purchaser under Delaware’s version of the Uniform Commercial Code and asserted a claim for unjust enrichment.

The district court ruled that the policy was void ab initio under section 2704(b) and that Malkin’s estate was entitled to recover the policy’s proceeds, reasoning that UCC-based defenses would gut the purpose and effectiveness of the insurable interest provision of Delaware’s Insurance Code. On appeal, the Eleventh Circuit held that the district court properly found the insurance policy void as an illegal STOLI policy. But, given the presence of novel issues of Delaware law, the circuit court certified two questions to the Delaware Supreme Court.

The Delaware Supreme Court ultimately advised (a) that UCC defenses were not available to a third-party purchaser of a contract deemed void under section 2704(a); and (b) that a party to an action under section 2704(b) could recover premiums that it paid on a void policy contract if it could prove entitlement under a viable legal theory. Applying the Delaware Supreme Court’s answers, the

Eleventh Circuit affirmed the district court's decision rejecting the UCC defenses but concluded that the district court erred by dismissing Berkshire's unjust enrichment counterclaim, remanding the claim for consideration of whether Berkshire could establish the elements of unjust enrichment.

Interpleader

In a July 1, 2022, decision in *Primerica Life Insurance Co. v. Woodall*, the Eighth Circuit Court of Appeals held that a life insurer's alleged "unclean hands" did not prevent it from using interpleader as a shield against liability. Before his death, the insured attempted to change the beneficiary on his life insurance policy to his new wife via a "multipurpose change form." The insured mistakenly filled out the wrong portion of the form, prompting the insurer to request further information. The insured never responded, and after his death, the insurer mailed claim forms to both his new wife and the previously named beneficiary, resulting in the submission of competing claims for the policy's proceeds. When the insurer sought to interplead the proceeds, the new wife counterclaimed for breach of contract, alleging the insurer had failed to timely pay the proceeds or to perform its obligations in good faith. The court concluded that, while both the insurer and insured "shared fault," the insurer's "missteps" did not rise to the level of unclean hands that would prevent it from taking advantage of interpleader.

Class Certification

On July 14, 2022, a Texas state appellate court reversed an order certifying a class action involving two equitable claims for relief, one for money had and received and the other for unjust enrichment.

In *American General Life Insurance Co. v. Dickson*, the insured purchased the life insurance policy on which the claims were based in 1985. For reasons not clear from the record, the insured named a bank as the policy's beneficiary and assigned the policy to the bank; he did not name a contingent beneficiary. The insured died in 1996, but neither the bank nor any of his successors filed claims for the policy's proceeds. Years later, the insurance company discovered the insured's name in the Social Security Death Master File and sent correspondence to his last-known address to locate beneficiaries before escheating the policy's proceeds to the state. The insurance company ultimately paid the policy's proceeds, plus statutory interest, to the insured's heirs, Anna Dickson and her sister, after they submitted claims and proof of death and the bank's successor assigned any interest it had in the policy to the insured's heirs. Dickson subsequently sued the insurance company, individually and on behalf of a putative class, claiming the company owed her interest from the date the insured's death was entered in the Death Master File, as opposed to the date she submitted her claim.

Dickson moved the court to certify a class of Texas residents to whom the company had paid death benefits during the class period based on the unjust enrichment and money had and received claims asserted. After a hearing, the trial court granted the motion. The appellate court reversed,

concluding that the trial court abused its discretion in granting class certification because Dickson failed to satisfy the predominance requirement. Noting that it had an obligation to perform a rigorous analysis and that the predominance requirement is a “particularly difficult” “hurdle to clear” when equitable claims are asserted, the appellate court concluded that the putative class’s equitable claims raised the question “whether equity and good conscience allowed [the insurer] to retain the earnings for its own account before beneficiaries of policyowners who purchased ... policies filed proofs of loss.” That question “in many cases could turn on individualized circumstances surrounding the reasons the individuals who had the right to pursue claims ... did not promptly file a claim after a policyowner’s death.” The appellate court also noted that the insurer’s equitable defenses — such as laches and unclean hands — would similarly turn on individualized inquiries into each class member’s knowledge, conduct, and experience.

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