

# STOLI Fallout: Stepping Into the Post-Void

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The phenomenon of void ab initio life insurance policies has “spawned a host of thorny questions regarding the appropriate remedial response to the identification of a policy as STOLI.” The Supreme Court of Delaware succinctly identified the fundamental issue in its March 21 opinion in *Wilmington Trust, N.A. v. Sun Life Assurance Company of Canada*. Once a policy has been voided for lack of insurable interest, how will courts resolve the many questions that may result? The main questions in this case centered on the death benefit, the premiums paid, and any prejudgment interest on the premiums.

In an effort to avoid the use of stranger-originated life insurance policies for “human-life wagering,” the Supreme Court readily affirmed the trial court’s decision denying Wilmington Trust’s bid to secure death benefits on two life insurance policies issued by Sun Life. The policies were initially funded by third parties and ultimately acquired by Wilmington Trust as part of a portfolio of life insurance policies. Although Wilmington Trust countered, alleging that Sun Life suspected the policies might be STOLI but did not take any action, the court held firm with recent decisions that STOLI policies are void ab initio and can never be enforced.

However, it was not all good news for Sun Life, which also sought to retain the premiums paid on the policies, claiming that returning the premiums to Wilmington Trust, which had purchased the policies subsequent to their issuance, would reward the buyer for involvement in “a knowing STOLI investment.” The Supreme Court held that the trial court erred in applying the “automatic premium return” rule, under which premiums go back to the buyer once the policy is void, and remanded for the trial court to conduct a fault-based analysis in reconsidering its ruling on the premium return claim, including the claim for prejudgment interest.

The Supreme Court also offered guidance on the question of when any prejudgment interest should begin to accrue, recognizing the role prejudgment interest plays in “incentivizing parties to potentially illegal agreements to behave in good faith.” The court found that Wilmington Trust would

not be entitled to prejudgment interest predating its purchase of the policies, because Sun Life should not be responsible for interest on premiums paid by former owners of the policies.

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