

## **Eleventh Circuit Affirms Summary Judgment of Insurer in STOLI Case**

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In *Sun Life Assur. Co. of Canada v. U.S. Bank Nat. Ass'n*, the Eleventh Circuit recently clarified that where a life insurance policy lacks an insurable interest at its inception and is thus void *ab initio*, prejudgment interest accrues from the date of payment.

The case involved a \$5 million life insurance policy issued in 2006 on a woman in her mid-seventies. Two years later, U.S. Bank purchased the policy from the policy's funder and made premium payments on it until the insured's death in 2014. After U.S. Bank made a claim for benefits, Sun Life refused to pay, alleging that the policy constituted a "stranger originated life insurance" (STOLI) policy. Sun Life sought an order declaring the policy void *ab initio*, and U.S. Bank filed counterclaims seeking a return of all premium payments made pursuant to the policy. The District Court for the Southern District of Florida entered a judgment in favor of Sun Life as to its declaratory judgment claims and in favor of U.S. Bank as to its counterclaim seeking the return of premium payments. In a post-judgment order, the district court clarified that U.S. Bank was not entitled to an award of prejudgment interest on premium payments made after its 2008 acquisition of the policy.

On appeal, the Eleventh Circuit affirmed as to all issues except the district court's finding regarding prejudgment interest. The panel recalled the "general rule" in Delaware that "interest starts on the date when payment should have been made." Specifically, the panel disagreed with the district court's conclusion that U.S. Bank was not entitled to an award of prejudgment interest on the premium payments it made between 2008 and 2014. The panel distinguished the present STOLI case from those where a defendant insurer wrongfully refuses to pay. In those cases, the panel reasoned, prejudgment interest accrues from the date of the defendant's refusal to pay. However, the Eleventh Circuit clarified that "where, as here, the claimant seeks a refund of payments it never should have made, prejudgment interest accrues from the date of the claimant's payments." Therefore, the panel remanded for re-calculation of the amount of prejudgment interest due to U.S. Bank.

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