**NEW JERSEY SUPREME COURT RULES THAT STRANGER-ORIGINATED**

**LIFE INSURANCE POLICIES ARE INVALID AND VOID**

In New Jersey, it is illegal for anyone to procure an insurance policy on a stranger’s life for the sole purpose of reaping the benefits therefrom. Such policies are referred to as Stranger-Originated Life Insurance (STOLI). State law allows a life insurance policy to be obtained only if the benefits are payable to someone with an “insurable interest” in the person whose life is insured. In the recent case of Sun Life Assurance Company of Canada v. Wells Fargo Bank, the New Jersey Supreme Court addressed how that prohibition applies when a subsequent purchaser of a STOLI policy, not involved in the policy’s origination, seeks to recover under the policy.

The matter arose in April 2007 when the insurer received an application for a $5 million insurance policy on the life of Nancy Bergman. The application listed a trust as the sole owner and beneficiary of the policy. Ms. Bergman’s grandson signed as trustee. The other members of the trust were investors and strangers to Ms. Bergman. The grandson resigned as trustee shortly after the policy’s issuance and appointed the investors as successor co-trustees who then sold the policy in 2009. Ultimately, the policy came into the hands of the final policy holder through a bankruptcy settlement and that policy holder continued to pay the premiums.

Upon Ms. Bergman’s death in 2014, the final policy holder sought to collect the policy’s death benefits. The insurer declined to pay after uncovering evidence of fraudulent misrepresentation and sought a declaratory judgment in the United States District Court for the District of New Jersey claiming the policy was void at the outset (void ab initio). The policy holder counterclaimed for the policy’s $5 million face value or, alternatively, restitution for the premiums it paid.

The District Court concluded that this was a STOLI transaction and the policy was void. The court allowed the policy holder a return of its premiums on the basis that the policy holder was not part of the original fraud and the insurer would be unjustly enriched if it retained the premiums. Both parties appealed. After finding no dispositive New Jersey precedent, the United States Court of Appeals for the Third Circuit certified two questions to the Supreme Court of New Jersey. The first question was whether a life insurance policy that is procured with the intent to benefit persons without an insurable interest in the life of the insured violates New Jersey public policy and, if so, whether that policy is void ab initio. The second question was that if such a policy is void ab initio, is a later purchaser of the policy, who was not involved in the illegal conduct, entitled to a refund of any premium payments that it made on the policy?

Answering the first question in the affirmative, the Court held that a STOLI policy is illegal and void ab initio. The Court stressed the history of life insurance and the traditional disfavor shown to policies taken out by strangers to the insured. The Court specifically found that if a “third-party without an insurable interest procures or causes an insurance policy to be procured in a way that feigns compliance with the insurable interest requirement, the policy is a cover for a wager on the life of another and violates New Jersey’s public policy.” In response to the second question, the Court determined that a party may be entitled to a refund of premium payments it made on the policy depending on the circumstances. Those circumstances include a party’s level of culpability, its participation in or knowledge of the STOLI scheme or other “red flags.” The Supreme Court chose to rely on the District Court’s discretion to award the policy holder a return of the premiums which totaled close to $2,000,000.