

Insurance law attorney Jared Stolz comments on Sun Life Assurance v. Wells Fargo Bank, a recent New Jersey opinion

The case questioned whether New Jersey law would permit a life insurance policy issued under unusual circumstances. Jared Stolz explains.

FLEMINGTON, NEW JERSEY, UNITED STATES, June 17, 2019 /EINPresswire.com/ -- The New Jersey Supreme Court recently reviewed a life insurance-related matter. The case questioned whether New Jersey law would permit, or declare void ab initio, a life insurance policy issued under unusual circumstances.

Insurance law attorney [Jared Stolz](https://jaredstolz.law.blog/), Esq. provides his view about Sun Life Assurance Company of Canada v. Wells Fargo Bank, N.A., a recent decision from the Supreme Court of New Jersey, in a new comment. The complete article will be available on Mr. Stolz' blog at <https://jaredstolz.law.blog/>

"[A] group of investors paid for a life insurance policy through a trust. The insured was a stranger to them. When the policy was issued, the insured's grandson was the beneficiary. About five weeks later, the trust was amended and the strangers who invested in the policy became its beneficiaries. In short, the insurable interest requirement appeared to have been satisfied at the moment the policy was purchased, but the plan from the start was to transfer the benefits to strangers soon after the policy was issued."

There were other frauds involved at the outset as well. The insured, Nancy Bergman, was a retired middle school teacher. The policy was taken out with an inspection report that listed Ms. Bergman's annual income as \$600,000 and net worth at \$9.235 million. In truth, her income was around \$3,000 per month and net worth was between \$100,000 and \$250,000. She also represented that she had no other life insurance policy, when in reality, she had over five policies for a total of \$37 million. Nonetheless, Sun Life issued a \$5 million policy in July 2007.

In 2009, the trust, which was now in control of the investors and changed to name the investors as beneficiaries, sold the policy to a company named LTAP for \$700,000. Then Wells Fargo took possession of the policy in bankruptcy settlement in 2011. Wells Fargo estimated that it paid about \$1.9 million in premiums, both directly and in the form of loans to LTAP.

Ms. Bergman passed away in 2014 and Wells Fargo sought to collect. After discovering the sordid history of the policy, Sun Life denied the claim and filed suit in federal court to have the



Jared Stolz, insurance lawyer in New Jersey

policy declared void ab initio. Wells Fargo countersued for the \$5 million payout or, in the alternative, for refund of the premiums. District court declared the policy void ab initio as a STOLI (Stranger Originated Life Insurance) policy, but ordered a refund of the premium as to avoid a windfall to Sun Life. Both parties appealed.

The Third Circuit, noting that no New Jersey case law directly addresses this issue, certified two questions to the New Jersey Supreme Court:

(1) Does a life insurance policy that is procured with the intent to benefit persons without an insurable interest in the life of the insured violate the public policy of New Jersey, and if so, is that policy void ab initio?

(2) 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 they made on the policy?

First, the Court addressed whether Sun Life can challenge the policy considering that the policy contains an Incontestability Clause, which provides that policy may not be challenged later than two years after its issuance, except for nonpayment of premium. The Court held, that as many other states do, that a policy that is void ab initio as against public policy is not bound by the incontestability clause. Therefore, Sun Life could validly assert the claim.

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*Jared Stolz, insurance lawyer
in New Jersey*

Another consideration for the Court was that sale of life insurance policy to a third party without insurable interest, though regulated, is legal under New Jersey law. What is known as a viatical settlement, it is “[a] transaction in which a terminally or chronically ill person sells the benefits of a life-insurance policy to a third party at a discounted value in return for a lump-sum cash payment.” The law, however, prohibits the sale of life insurance policy to a person without insurable interest for two years after the policy is issued with limited exceptions. The Court adopted the explanation of the Second Circuit that “[a] key

difference between non-STOLI and STOLI policies . . . is simply one of timing and certainty; whereas a non-STOLI policy might someday be resold to an investor, a STOLI policy is intended for resale” before it is issued.”

The Court concluded that STOLI policy is indeed against New Jersey public policy. “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.” The Court went on to hold that a policy issued against public policy is void ab initio.

As to Wells Fargo's entitlement to refund of the premiums, the Court adopted a nuanced



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approach. "In the context of a void STOLI policy, the fact-sensitive approach outlined by Williston and adopted in the above cases is sound. To decide the appropriate remedy, trial courts should develop a record and balance the relevant equitable factors. Those factors include a party's level of culpability, its participation in or knowledge of the illicit scheme, and its failure to notice red flags. Depending on the circumstances, a party may be entitled to a refund of premium payments it made on a void STOLI policy, particularly a later purchaser who was not involved in any illicit conduct."

The case is Sun Life Assurance Company of Canada v. Wells Fargo Bank, N.A., (A-49-17)

About J. Elliott Stolz, Esq.

[Jared Elliott Stolz](#) is an attorney in New Jersey, focusing on insurance law and litigation. He is the managing partner of Stolz and Associates. Jared Stolz received his undergraduate education at Drew University in Madison, New Jersey and graduated with honors from Seton Hall University School of Law. [Jared E. Stolz](#) has been the managing partner of Stolz and Associates since 2004, specializing in providing individual and customized attention to insurance carriers needs on substantial coverage disputes. Mr. Stolz has nearly two decades of experience in the insurance industry and strives to offer the clients a combination of tried and true legal analysis along with tactic, brought to it by today's technology, with a focused eye on expenses. He has represented prominent clients in numerous noteworthy cases with published opinions and has published and given seminar on insurance law topics.

Bio on law firm website:

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