

# Eleventh Circuit Reverses Dismissal of Insurer's Fraud and Racketeering Claims Against Premium Financer

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The Eleventh Circuit recently addressed the legal viability of federal racketeering, fraud, and declaratory relief claims by Sun Life against a premium finance company arising out of an alleged STOLI scheme, as well as the premium finance company's breach of contract counterclaims against the insurer under the insurance contracts issued by Sun Life.

According to Sun Life's complaint, Imperial Premium Finance engaged in a scheme to procure insurance policies through tortious and unlawful behavior, the crux of which was that:

- producers connected to Imperial falsely answered application questions about premium financing;
- after the policies were issued, Imperial concealed that it was making premium payments by "funnel[ing] [the] premium payments through the Bank of Utah and the Family Insurance Trust"; and
- Imperial deposited the funds for the insureds' policy payments into an account created at the Bank of Utah (in the name of the Family Insurance Trust), which then issued the payments to Sun Life.

Sun Life alleged that Imperial's procurement of the policies was concealed until it was too late for Sun Life to contest the validity of the policies. Sun Life sought a declaratory judgment that the policies were void ab initio and for damages under RICO, fraud, aiding and abetting fraud, conspiracy to commit fraud, and tortious interference with contractual relations. In response, Imperial asserted breach of contract counterclaims relating to the policy's incontestability clause and the policy's

rights-and-privileges clause, as well as a counterclaim for fraud. The district court dismissed all claims brought by the parties.

On appeal, the Eleventh Circuit affirmed in part and reversed in part. It vacated the district court's dismissal of Sun Life's RICO, RICO conspiracy, fraud, aiding and abetting fraud, and tortious interference with contractual relations claims. Specifically, the panel found that the district court erred in dismissing Sun Life's fraud and RICO claims to the extent such claims alleged a conspiracy between Imperial and the producers. Imperial had argued that any fraud-based claims relating to the policies constituted a "contesting" of the policies and were therefore barred by the incontestability clause. The panel rejected that argument, reasoning that "[w]here [...] a life insurer sues alleging that it was fraudulently induced to enter into a life insurance contract but does not seek any relief that would call into question the continuing viability of the policy, we do not think that the insurer 'contest[s]' that policy."

As to Imperial's claims, the Eleventh Circuit affirmed the district court's dismissal of the breach of contract claim relating to the rights-and-privileges clause and the fraud claim; but it vacated the district court's dismissal of the breach of contract claim relating to the incontestability clause, reasoning that "an incontestability clause, like nearly all contractual prohibitions, may allow for damages upon its breach.

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