CARLTON FIELDS

STOLI Schemers Must Make Good on Damages Caused

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Followers of stranger-originated life insurance (STOLI) issues have likely read over the last few years about *Ohio National Life Assurance Corp. v. Davis* and the favorable results the insurer obtained in its action against STOLI transaction participants. After a previous decision allowed Ohio National to retain premium payments it received on four of the five insurance policies at issue, the insurer more recently prevailed in large part on a motion for judgment on damages. The court first held that the defendants who conspired to procure policies absent an insurable interest were jointly and severally liable to Ohio National for the $120,271 in commissions paid to the agent. The defendants sought to evade this liability by arguing that the insurer profited overall because it would retain aggregate premiums in excess of commissions paid. The court rejected any notion of off-set, reasoning that two distinct injuries were present, with each resulting in separate damages. The first injury – paying commissions for an insurance policy that was void *ab initio* – resulted in monetary damages in the amount of the commissions. Incurring the risk of paying death benefits constituted the insurer's second injury, for which retention of premiums was the appropriate compensation. The court also granted Ohio National's motion to recover certain attorneys' fees and costs. Because the defendants' unlawful acts caused the insurer to become involved in litigation with third parties (the policyholders) to obtain declaratory judgments that the policies were void *ab initio*, the insurer was deemed entitled to damages for expenses incurred in that litigation, which amounted to $605,395. Ohio National, however, lost on its motion for punitive damages. Emphasizing the absence of evidence that the defendants harmed, or intended to harm, the insureds, the court concluded that the defendants' deceptive conduct was not sufficiently outrageous to support punitive damages.

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