

# Third Circuit Application of Certified Questions Confirms STOLI Policies Void in New Jersey

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We previously reported on the New Jersey Supreme Court's ruling on the validity of stranger-originated life insurance (STOLI) policies in the June 2019 issue of *Expect Focus – Life, Annuity, and Retirement Solutions*. In *Sun Life Assurance Company of Canada v. Wells Fargo Bank, N.A.*, a federal trial court originally concluded that a \$5 million policy taken out on the life of Nancy Bergman, which had a trust as owner and beneficiary and which was eventually sold by investors to Wells Fargo, violated New Jersey's statutory requirement that the policyholder have an insurable interest in the life of the insured. The Third Circuit Court of Appeals ultimately certified two questions to the New Jersey Supreme Court:

1. Whether STOLI policies violate the public policy of New Jersey and are thereby void ab initio; and
2. If the policy is void, is a later purchaser, who was not initially involved, entitled to a refund of premium payments?

The New Jersey Supreme Court answered the first question in the affirmative, finding that policies procured with the intent to benefit persons without an insurable interest in the life of the insured violate public policy and are void ab initio. In response to the second question, the court held that, depending on the circumstances, a party may be entitled to a refund of premiums paid on a void STOLI policy, particularly in the case of a later innocent purchaser of the policy.

Based on the New Jersey Supreme Court's answers to its certified questions, the Third Circuit recently affirmed the district court's finding that the Bergman policy violated New Jersey public policy. The Third Circuit held that the policy was procured with the intent of benefiting the investors in the policy rather than anyone with an insurable interest in Bergman's life. The Third Circuit also

agreed that allowing Sun Life to keep Wells Fargo's premium payments would be a windfall, as Wells Fargo was a later innocent purchaser of the policy and had no knowledge of the STOLI arrangement.

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