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New Jersey Supreme Court Hears Life Settlement Case

One question is whether a policy purchased for 'strangers' is void from the start.

By Allison Bell | February 05, 2019

A New Jersey Supreme Court case could affect investment firms that buy life insurance policies from life settlement companies without verifying how the policies came to exist.

Sun Life Assurance Company of Canada, an arm of Sun Life Financial Inc., and an arm of Wells Fargo & Company are battling over the fate of a \$5 million

“stranger-originated life insurance” (STOLI) policy.

(Related: [Life Settlement Players Face Legal Showdown](#)

(<https://www.thinkadvisor.com/2019/01/28/life-settlement-players-face-legal-showdown/>)

A trust controlled by Nancy Bergman’s grandson bought the policy in 2007, with Nancy Bergman named as the insured, and unrelated investors paying the premiums, according to a court case summary.



New Jersey Justice Lee Solomon (Photo: New Jersey Supreme Court)

A life settlement company, SLG Life Settlements LLC, acquired the policy from the trust in 2009. SLG Life Settlements later transferred the policy to LTAP. Wells Fargo ended up holding the policy, and paying the policy premiums, after LTAP went bankrupt.

Nancy Bergman died in 2014. Sun Life concluded that the policy had been obtained through fraud and declined to pay the death benefits, according to the case summary.

Sun Life is arguing that, under New Jersey law, buying a life insurance policy for the sole purpose of selling the policy to a party with no insurable interest in the life of the insured is illegal wagering, and that such a policy is void from the beginning. The company says it should get to keep all of the premiums paid, without having to pay the death benefits.

Wells Fargo is arguing that New York state should apply, that it obtained the policy in good faith, and that it would be unfair for Sun Life to decline to pay the death benefits after collecting premium payments for years.

Oral Arguments

The New Jersey Supreme Court held oral arguments on the case Jan. 29 and posted a video recording of the oral arguments Monday.

Charles Vinicombe, a lawyer representing Sun Life, argued that the Bergman “policy” is an example of illegal wagering, not a valid insurance contract, and that the arrangement was invalid from the beginning.

The New Jersey viatical settlement law, which governs the sale of in-force life policies, does not apply in this case, because, from Sun Life’s perspective, no valid life insurance policy ever existed, Vinicombe told the court.

Justice Lee Solomon asked Vinicombe, “Does equity matter? ... Does your company get to keep the premiums, keep the policy, and get a windfall?”

“We believe that, under New Jersey law, the rule is that the court leaves the parties to an illegal contract where they find them, even if there’s a subsequent purchaser,” Vinicombe said.

Jule Rousseau, the lawyer for Wells Fargo, said Sun Life has been relying on New Jersey laws that apply solely to wagering, and that those laws do not apply to life insurance policies.

“The highest court in New Jersey has said, over and over, that a life insurance policy is a contract, not a wager,” Rousseau said.

Rousseau said he found **one New Jersey court opinion, dating back from before 1897, in which the court held that New Jersey does not require the purchaser of a life insurance policy to have an insurable interest in the life of the insured.**

Rousseau also argued that, in part because New Jersey has not adopted the life settlement law other states have adopted, New Jersey has not addressed how long a consumer has to hold a life insurance policy before the consumer can sell the policy through a valid life settlement transaction.

Justice Anne Patterson asked what would happen to the New Jersey life settlement market in general if the court adopted Sun Life’s reasoning about wagering. She wondered whether siding with Sun Life on the wagering question might not lead to the conclusion that all life settlements in New Jersey amount to illegal wagering.

Resources

A link to a summary of the case is [available here](https://www.njcourts.gov/attorneys/assets/opinions/webcast/a_49_17.pdf) (https://www.njcourts.gov/attorneys/assets/opinions/webcast/a_49_17.pdf).

A link to a video recording of the oral arguments is [available here](http://hls.yorkcast.com/ondemand/njj/20190129/a_49_17.mp4?sami=https://njcourts.gov/public/assets/webcast/srt/20190129/a_49_17.srt) (http://hls.yorkcast.com/ondemand/njj/20190129/a_49_17.mp4?sami=https://njcourts.gov/public/assets/webcast/srt/20190129/a_49_17.srt).

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