PROFITEERS OF DEATH

Match Dawson[*]

ABSTRACT

Brazenly operating within the illicit world of stranger-owned life insurance ("STOLI"), unscrupulous investors and colluding life insurance agents unapologetically engage in a calculated dance of fraud and deceit. With the skill of seasoned con artists, these "Profiteers of Death" prey upon the unsuspecting elderly community, strategically targeting senior assisted living facilities by dangling the golden carrot of easy money in exchange for unwittingly selling away their insurability for little more than copper pennies. Standing idle like salivating vultures, the Profiteers of Death make a mockery of legislative attempts to curb the illegitimate secondary market, perfectly exploiting regulatory deficiencies as they orchestrate their symphony of greed and net millions upon the elder-insured's death. In this illicit charade, morality takes a backseat to profit, and the Profiteers' shameless success serves only to illuminate their abusive scheme plagued by ethical bankruptcy and legislative shortsightedness. Case law is fraught with Profiteers prevailing on their twisted manipulation of long-standing insurance doctrines, serving as a damning indictment of legislative failures to uniformly codify even the most fundamental principles of insurable interest and incontestability. Unfortunately, those

* Match Dawson, J.D., AEP®, CTEP, GAFM (*Distinguished* Fellow), Assistant Professor of Law, St. Mary's University School of Law. I wish to express sincere gratitude to the editorial team at *Drexel Law Review* for their support and dedication to this Article, with special recognition to Editor-in-Chief, Carle Gould, for her exceptional professionalism. I also wish to thank my research assistant, Sydney Ramirez, for her invaluable contributions throughout the preparation of this Article. Lastly, and with the admiration of a loving son, I dedicate this Article to my Dad, whose service to his family and all the little lessons in life made this Article possible. Dad, thank you for showing us that not all heroes wear capes. In those quiet moments when you reflect on your life's journey, I hope you know that we all feel—"You done good." Let's raise our glasses to the wonderful days ahead.

succumbed to the perils of the Profiteers' snake oil must face the burden of a regulatory landscape where ambiguity reigns supreme and judicial interpretations resemble a game of legal roulette.

By examining pervasive secondary market abuse post anti-STOLI legislation and advocating for renewed state-wide codification of insurable interest and incontestability requirements, this Article contributes to the scholarly literature on insurance fraud and draws attention to egregious instances of fraud and manipulation that continue to undermine fundamental insurance principles. Through illuminating case examples, this Article underscores judicial inconsistencies and the detrimental impact of stranger-owned life insurance on elderly insureds, beneficiaries, and the broader industry. It concludes by advancing a model statute aimed at addressing the root cause of STOLI abuse necessary to mitigate the continued risks posed by the Profiteers of Death.

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INTRODUCTION

Stranger-Owned Life Insurance ("STOLI") stands as a testament to the intricate relationship between regulatory frameworks and the ingenuity of Profiteers seeking to exploit them. Despite legislative attempts to curtail STOLI abuse, the illicit secondary market remains strong, igniting debates surrounding insurable interest, incontestability, legislative efficacy, and the adequacy of traditional legal remedies in combating elder financial exploitation.

To appreciate the appalling nature of the Profiteers' strategy, an example of a common STOLI transaction may prove illuminating. Generally, four main parties are necessary to carry out the illicit scheme—an elderly but otherwise insurable applicant, a third-party Profiteer who lacks insurable interest but has available capital to pay sizeable insurance premiums, a colluding life insurance agent serving as the intermediary, and an unwitting insurer who issues the policy. The Profiteer and agent team up to market the scheme to unsuspecting insureds, commonly targeting elderly African Americans because of their shorter average life expectancy, terminally ill seniors, or those residing at assisted living facilities who are more susceptible to the idea of quick money due to living on fixed incomes.[1] Like experienced snake oil salesmen, the colluding duo will ask their target to apply for life insurance, marketing the scheme as "legal free insurance" with no risk or out-of-pocket cost.[2] To further incentivize the insured, the Profiteer will pay the unwitting

1. *See* Ohio Nat'l Life Assurance Corp. v. Davis, 803 F.3d 904, 906 (7th Cir. 2015) (finding the Profiteer, a former licensed attorney, "targeted elderly people because of their diminished life expectancies and African-Americans because the[ir] average life expectancy . . . is shorter than that of other Americans . . . ."); *see also* Horowitz, Securities Act Release No. 9620, Exchange Act Release No. 72729, Investment Company Act Release No. 31195, 2014 WL 3749703 (July 31, 2014) (finding Profiteer was a securities-licensed registered representative targeting terminally ill elderly individuals in hospice care or residing at assisted living facilities).

2. *See* Lincoln Nat'l Life Ins. Co. v. Calhoun, 596 F. Supp. 2d 882, 885 (D.N.J. 2009); *Davis*, 803 F.3d at 906.

victim a nominal upfront payment if they agree to participate.[3] The insured is also led to believe that upon the two-year contestability period expiring, the policy will be sold on the secondary market.[4] Once the sale closes, the insured will surrender the policy's death benefit to the purchaser and net a few hundred thousand dollars in return.[5] It seems like a pretty good deal for the insured—all they have to do is apply for life insurance, take a medical exam, and receive a windfall of cash just a few short years later.[6] Intentionally withheld from the deceptive sales pitch, however, is that the purchaser of the policy is the Profiteer who stands to net millions upon the insured's death.[7] One might ask why STOLI transactions are limited to the elderly or terminally ill? The answer is ominously simple: in order for Profiteers to turn a quick profit, the insured must die.[8]

At the heart of STOLI abuse lies the doctrine of insurable interest, a cornerstone principle dictating that a life insurance policy owner must possess a legitimate financial interest in the life of the insured.[9] Historically, insurable interest served as a safeguard against moral hazard, ensuring that life insurance policies are not used as speculative wagering contracts.[10] However, in the mishmash of judicial interpretations of post anti-STOLI legislation, the boundaries of insurable interest have

3. *Calhoun*, 596 F. Supp. 2d at 885; *Davis*, 803 F.3d at 906.

4. *Calhoun*, 596 F. Supp. 2d at 885.

5. *See* Life Prod. Clearing, LLC v. Angel, 530 F. Supp. 2d 646, 647–48 (S.D.N.Y. 2008).

6. *See infra* Section I.C.

7. *See Angel*, 530 F. Supp. 2d at 647–48.

8. *See Davis*, 803 F. 3d at 906.

9. With respect to life insurance, an insurable interest means a substantial interest engendered by love and affection in the case of persons related by blood, and a lawful and substantial economic interest in the continued life of the insured in other business-related cases. *See Insurable Interest*, BLACK'S LAW DICTIONARY (2d ed. 1910); BURTON T. BEAM & ERIC A. WIENING, FUNDAMENTALS OF INSURANCE PLANNING 6.10–.11, 16.5, G.24 (Walt Woerheide ed., 2d ed. 2007).

10. *See* Hinton v. Mut. Rsrv. Fund Life Ass'n, 47 S.E. 474, 476–78 (N.C. 1904); *see also* HOWARD M. ZARITSKY & STEPHAN R. LEIMBERG, TAX PLANNING WITH LIFE INSURANCE: ANALYSIS WITH FORMS 12.04, at *1 (2022), Westlaw LI WGL ¶ 12.04 (discussing that an insurance policy lacking insurable interest is a wagering contract).

become increasingly blurred, providing fertile ground for pervading STOLI abuse. Armed with a sophisticated understanding of regulatory ambiguities, Profiteers of Death employ intricate financial maneuvers and coercive tactics to implement their schemes through long-standing insurance principles built upon poorly-worded statutes, successfully preying on elderly victims ranging from unsophisticated insureds on fixed incomes to millionaires like Larry King.[11]

Despite anti-STOLI legislation emerging around 2015,[12] statutory effectiveness remains lacking. Traditional recourse mechanisms, such as policy rescission for want of insurable interest, fraudulent misrepresentations, or enforcement action against colluding parties, seemingly fall short in deterring the pervasiveness of the illicit secondary market.[13] The fragmented nature of legislative responses to STOLI schemes, and the lack of codifying a clear and uniform definition of insurable interest aimed to alleviate inconsistent judicial interpretations, serves as ground zero for regulatory reform that would have any meaningful impact on future STOLI prevention. This Article endeavors to explore the fundamental issues associated with insurable interest, incontestability, and the exploitation of legal loopholes by Profiteers. Through a critical examination of available legal remedies, anti-STOLI legislation, and illustrative cases, this

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11. Upon the advice of his life insurance agent, radio talk show host Larry King procured $15 million of newly issued life insurance. A week after the policies were issued, King sold them for nearly $1.5 million. Not understanding the negative consequences of the transactions, King later brought suit alleging breach of fiduciary duty, conspiracy, and unconscionability. *See* STEPHAN R. LEIMBERG, AM. L. INST., SP037, RECENT CASES, RULINGS, REGS, AND LEGISLATION IMPACTING ON LIFE INSURANCE IN ESTATE, FINANCIAL, BUSINESS, EMPLOYEE BENEFITS CHARITABLE, AND DIVORCE PLANNING 149 (2009); *The Larry King Case: How Not to Do a Life Settlement*, INSURE.COM (Dec. 7, 2009), https://www.insure.com/life-settlements/life-settlements-larry-king.html [https://perma.cc/6R3W-U9R2].

12. *See* Gen. Assemb. 1049, 216th Leg., Reg. Sess. (N.J. 2014) (proposing to amend insurance code defining stranger-owned life insurance as a prohibited transaction); *see also* H.R. 1007, 2017 Leg., Reg. Sess. (Fla. 2017) ("[C]ertain contracts, agreements, arrangements, or transactions relating to stranger-originated life insurance practices are void and unenforceable . . . .").

13. *See infra* Part IV.

Article seeks to shed light on the inadequacies of current regulatory frameworks to address the complex dynamics of pervasive STOLI abuse.

Beginning with a brief introduction of fundamental insurance principles, Part I discusses the law of large numbers, basic contractual elements of life insurance, and the highly contentious insurable interest doctrine. Part II addresses the illicit secondary market, providing an introduction to stranger-owned life insurance and distinguishing STOLI abuse from legitimate life settlements. Part II further discusses the Profiteers' need for secondary market expansion, why actuarial arbitrage is a necessary component for STOLI transactions, and how the advent of death bonds emboldened Profiteers. Part II concludes with a discussion of how non-recourse premium financing served as the catalyst for exponential growth. Part III examines early legislative attempts to curtail STOLI abuse, with particular emphasis on the National Council of Insurance Legislator's Model Act and federal attempts to define life settlements as a security. Part III concludes with a review of cases pre-anti-STOLI legislation, highlighting early success by Profiteers in their march to circumvent long-standing insurance principles. Part IV reviews cases post anti-STOLI legislation, intending to illuminate the ineffectiveness of current legislation to meaningfully curb future abuse. Part V examines traditional and nontraditional defenses to void STOLI policies, discusses how available remedies fail under the weight of weak insurable interest and incontestability regulations, and advances a model statute aimed at curtailing STOLI abuse. Finally, seeking to strengthen the regulatory framework and eliminate inconsistent judicial interpretations, this Article concludes by arguing two fundamental revisions are necessary to prevent forum shopping and the Profiteers' pervasive exploitation of statutory loopholes: (1) state-wide adoption of a clear, uniform definition of insurable interest and

(2) statutorily exempting STOLI policies from any contestability period.

I. THE FOUNDATION

Life insurance is a historical mechanism fashioned to meet the mutual benefit of the insured, the insurer, and the policy's beneficiaries. For this mechanism to work efficiently, certain finely balanced key principles must act in harmony—any subversion of these principles leads to a breakdown in the insurance market. Although an in-depth historical analysis of the life insurance industry is outside the scope of this Article, a basic understanding of these key principles will provide a better understanding of how STOLI transactions create a market imbalance, resulting in a rippling effect of fraud, abuse, and significant risk to unsuspecting participants and the broader pool of insureds.

A. Life Insurance—A Brief History

Our modern-day life insurance industry traces its roots to the early years of colonial settlements, where burial insurance was primarily supplied through Presbyterian ministries.[14] Today, the life insurance industry is filled with thousands of insurers, ranging from Fortune 100 companies to small independent carriers providing similar types of burial plans.[15] Even with

14. *See* ANNE OBERSTEADT, LARRY BRUNING, BRENDA CUDE, KRIS DEFRAIN, BRIAN FECHTEL, SHANIQUE HALL, DIMITRIS KARAPIPERIS, ANDREW MELNYK, REGGIE MAZYCK, GREG NIEHAUS, ERIC NORDMAN, BRUCE RAMGE, GUENTHER RUCH, KAREN SCHUTTER, DANIEL SCHWARCZ & JEREMY WILKINSON, NAT'L ASS'N OF INS. COMM'RS & THE CTR. FOR INS. POL'Y & RSCH., STATE OF THE LIFE INSURANCE INDUSTRY: IMPLICATIONS OF INDUSTRY TRENDS 1, 6 (Pamela Simpson ed., 2013); *see also* Mark Richard Greene, *Historical Development of Insurance*, BRITANNICA MONEY, https://www.britannica.com/money/insurance/Historical-development-of-insurance#ref13268 [https://perma.cc/S2TG-P4S6] (last visited Apr. 11, 2025) (describing the historical development of insurance in various countries).

15. *See* Dock Treece, *Best Burial Insurance of 2024*, U.S. NEWS, https://www.usnews.com/insurance/best-burial-insurance [https://perma.cc/TX9Y-S7FW] (Aug. 8, 2024) ("Burial insurance, sometimes called final expense insurance, is a type of whole life insurance designed to help cover the cost of a funeral or other end-of-life expenses.").

modern advancements, however, the fundamentals of insurance remain relatively unchanged. For the life insurance industry to remain vibrant, insurers must appropriately assess the risk of death—that is, to best determine when an insured is going to die and to price that time horizon accordingly. If done correctly, the insurer will profit.[16] If done incorrectly, the insurer may realize a loss.[17] To assess risk, underwriters will use a variety of pricing measures, including actuarial tables, mortality costs, and life expectancy modeling.[18]

Although life insurance is used for a variety of financial planning purposes, such as supplemental retirement income, the fundamental purpose of life insurance is to preserve a standard of living upon the insured's passing.[19] Purchasing life insurance is often viewed as one of the most unselfish acts an insured can do for those who are financially dependent on them.[20] By providing financial resources upon death, the insured is not only *insuring* their own life but also *ensuring* their surviving spouse can mourn without the unnecessary burden of financial concerns, and their children can remain in the same home, attend the same school, and stay engaged in familiar activities.[21] To provide these benefits, however, a healthy life insurance industry requires a sharing of risk.

16. *See* Sean Ross, *How Do Insurance Companies Make Money? Business Model Explained*, INVESTOPEDIA, https://www.investopedia.com/ask/answers/052015/what-main-business-model-insurance-companies.asp [https://perma.cc/HRN2-ZCEQ] (June 29, 2024).

17. *See id.*

18. *See* KENNETH BLACK, JR. & HAROLD D. SKIPPER, JR., LIFE AND HEALTH INSURANCE 29, 670–71, 703, 710, 840, 843, 850, 851 (13th ed. 2000); Julia Kagan, *Actuarial Life Table: What It Is, How It Works, FAQs*, INVESTOPEDIA, https://www.investopedia.com/terms/a/actuarial-life-table.asp [https://perma.cc/6L3Y-YDHA] (July 22, 2023).

19. *See* BEAM & WIENING, *supra* note 9, at 8.3, 10.4–.7; *see also* Amy Fontinelle, *Life Insurance: What It Is, How It Works, and How to Buy a Policy*, INVESTOPEDIA, https://www.investopedia.com/terms/l/lifeinsurance.asp [https://perma.cc/PY62-76JV] (Feb. 28, 2025) (explaining different forms of life insurance available).

20. *See* BEAM & WIENING, *supra* note 9, at 8.3–.4.

21. Life insurance accomplishes these goals by providing the beneficiary of the life insurance policy net death benefits upon the insured's passing. *See id.* at 6.10, 8.3–.4, 10.4–.6.

B. The Law of Large Numbers

Because life insurance is a pooled system into which thousands of insureds pay, insurance companies are able to provide death benefits for "pennies on the dollar."[22] It is this pooling of risk among a large and diverse group of insureds that serve as the foundation of a healthy life insurance industry.[23] In application, the law of large numbers pools together insured's premiums which offset the insurer's financial exposure when paying a death claim.[24] The larger the insured base, the less risk is imposed on the insurer for one death, resulting in lower premiums assessed against the broader pool of insureds.[25] By way of example, if a single individual was insured for $100,000, the insurer would have to charge an amount nearly equal to the death benefit to offset the substantially high risk. In essence, this would be equivalent to the insured self-insuring. Conversely, if ten thousand individuals were each insured for $100,000, the insurer would need to only charge each insured a small fraction of the death benefit because, statistically, the majority of those policies would never pay a death claim.[26] However, since STOLI policies are nearly certain to pay a death claim upon the insured's death, STOLI abuse undermines the law of large numbers. If an insurer must account for the risk exposure of undisclosed STOLI policies within a pool of issued policies,

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22. *Life Insurance Trust: Taking the Tax out of Life Insurance*, THE HARTFORD, https://www.thehartford.com/business-insurance/strategy/business-trusts-101/life-insurance-trust [https://perma.cc/4BMT-LKJK] (last visited Apr. 11, 2025).

23. *See* BLACK & SKIPPER, *supra* note 18, at 4–5, 26–27, 695.

24. *See* R.V.I. Guar. Co. & Subsidiaries v. Comm'r, 145 T.C. 209, 228 (2015) (describing how insurers pool "multiple risks of multiple insureds in order to take advantage of 'the law of large numbers'"); Rev. Rul. 2002-89, 2002-52 I.R.B. 984 ("Distributing risk allows the insurer to reduce the possibility that a single costly claim will exceed the amount taken in as premiums and set aside for the payment of such a claim. By assuming numerous relatively small, independent risks that occur randomly over time, the insurer smooths out losses to match more closely its receipt of premiums.").

25. *See* BEAM & WIENING, *supra* note 9, at 2.15; *see also* BLACK & SKIPPER, *supra* note 18, at 26–27, 643, 695, 715.

26. *See* BLACK & SKIPPER, *supra* note 18, at 26–27, 695.

premiums assessed against the remaining pools of insureds may be skewed, potentially leading to life insurance being cost-prohibitive to a large and diverse group of applicants and an increased risk of adverse selection.[27]

C. Pricing, Premiums, and the Application

Life insurance pricing involves an extremely complex system of actuarial tables and life expectancy determinations. In its most basic form, the life insurance process begins with an application where the insured provides certain representations, such as financial and health status.[28] The life insurance agent will review the application for completeness before submitting it to the insurer for underwriting review.[29] Typically, while the insurer begins the underwriting review, the agent will compile substantiating documents, such as the insured's third-party financial statements and medical records.[30] Additionally, the insured will be required to complete a medical screening, usually conducted in their home by a licensed health professional, which may include a blood draw, urine samples, and an EKG reading of the heart.[31] Once the medical testing and all required records have been underwritten, the insurer can begin pricing the policy for risk of loss.[32]

There are essentially three main components that determine an insured's premium. First, the insurer must price for the probability of loss—that is, the probability of the insured dying at or before the estimated life expectancy.[33] This is a function of age,

27. *See infra* Section II.C; Karen A. Clifford & Russel P. Iuculano, *AIDS and Insurance: The Rationale for AIDS-Related Testing*, 100 HARV. L. REV. 1806, 1817 (1987) (discussing how individuals with known mortality issues are more inclined to purchase life insurance as compared to healthy individuals).

28. *See* BLACK & SKIPPER, *supra* note 18, at 645–51, 663–64.

29. *See id.* at 665.

30. *See id.* at 663–65; *see also* BEAM & WIENING, *supra* note 9, at 2.16–.18.

31. BLACK & SKIPPER, *supra* note 18, at 664.

32. *See id.* at 634–36.

33. *See id.* at 29–30.

health history, and an actuarial analysis of how these factors fit within the industry's mortality tables.[34] Second, the insurer must determine the net amount at risk, which is the difference between the premiums received combined with the policy's estimated cash value and the proceeds to be paid on death.[35] The larger the net amount at risk, the higher the premium.[36] Lastly, time value of money must be determined in order for the death benefit's future purchasing power to be calculated as a present value figure.[37] Once these factors have been determined, the insured is provided with a sales illustration[38] that explains the policy's death benefit, premium requirements, and any cash accumulation.[39] If the terms of the insurance offer are acceptable to the insured, the insurance contract is printed and signed by the parties, premiums are paid, and the insurance coverage becomes payable in the event of death.[40]

D. The Insurable Interest Doctrine

The intensely litigated insurable interest doctrine is at the heart of STOLI abuse. Due to the failure of states to uniformly define insurable interest, Profiteers continue to exploit the inherent loopholes and ambiguity created by poorly worded

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34. *See Mortality Table*, BLACK'S LAW DICTIONARY (2d ed. 1910) ("Categorized by age and other factor[s] like occupation is data gathered on the rate of death among groups of people by insurance companies."); *see also* BLACK & SKIPPER, *supra* note 18, at 27–30, 634–37, 641–51, 667–75.

35. *Net Amount of Risk*, BLACK'S LAW DICTIONARY (2d ed. 1910) (defining net amount of risk as "[p]olicy face value minus accumulated policy reserve as an amount."); *see* BLACK & SKIPPER, *supra* note 18, at 693–96, 700–03, 712–16, 725, 734–35.

36. *See* BEAM & WIENING, *supra* note 9, at G.29, G.33.

37. *See id.* at 10.16–.19; *see also* BLACK & SKIPPER, *supra* note 18, at 712–16.

38. *See* BEAM & WIENING, *supra* note 9, at 10.19–.21, G.22 (explaining that a life insurance illustration is "a presentation or depiction that includes nonguaranteed elements of a life insurance policy over a period of years").

39. *See Cash Value Life Insurance Policy*, BLACK'S LAW DICTIONARY (2d ed. 1910) (defining cash value life insurance policy as a subaccount that offsets an insurance company's net amount at risk); *see also* BEAM & WIENING, *supra* note 9, at 8.5, 8.14, G.7 (explaining that policy cash accumulation is a savings element that may accrue within a permanent life insurance policy).

40. *See* RICHARD A. MARONE, A PRACTICAL GUIDE TO ESTATE PLANNING IN CONNECTICUT § 7.1 (3d ed. 2024), Westlaw 6828343.

statutes and judicial confusion.[41] Courts are left to their own mercy, often swayed by the convincing arguments plead by sophisticated Profiteers.[42] Understanding insurable interest helps illuminate how STOLI schemes undermine the basic insurance transaction and threaten the stability of the life insurance industry.

1. *What is Insurable Interest?*

Fundamentally, insurable interest is defined as the interest a person has in property that is insured.[43] In its most basic form, an owner has an insurable interest in property when loss or damage to it would cause that owner to suffer a financial loss.[44] Similar to all other forms of insurance, life insurance requires the insured to have insurable interest *at the time the policy is issued*.[45] Generally, a policy lacking insurable interest is void ab initio, or treated as having no legal effect from the beginning.[46] An individual has an unlimited insurable interest in himself,[47] as well as his spouse and children.[48] Certain business relationships can also give rise to an insurable interest.[49] For example, an employer may wish to insure a key employee who is essential to the workings of an organization. Insurable interest may also arise in secured transactions where a creditor may wish to

41. *See infra* Section III.D; Part IV.

42. *See* Sharo Michael Atmeh, *Regulation Not Prohibition: The Comparative Case Against the Insurable Interest Doctrine*, 32 NW. J. INT'L L. & BUS. 93, 95 (2011).

43. *See Insurable Interest*, *supra* note 9; BEAM & WIENING, *supra* note 9, at 6.10–.11, 16.5, G.24.

44. *See* BEAM & WIENING, *supra* note 9, at 6.10.

45. Mayo v. Hartford Life Ins. Co., 354 F.3d 400, 405 (5th Cir. 2004) (emphasis added) (quoting RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 2 (AM. L. INST. 1971)).

46. *See* Crum v. Jackson Nat'l Life Ins. Co., 880 S.E.2d 205, 207 (Ga. 2022) (internal citation omitted).

47. *Id.* at 211 (internal citation omitted).

48. *See* Peter Havenga, *The Requirement of an Insurable Interest in Life Insurance Contract*, 1999 J. S. AFR. L. 630, 632 (1999).

49. Susan Lorde Martin, *Corporate-Owned Life Insurance: Another Financial Scheme That Takes Advantage of Employees and Shareholders*, 58 U. MIAMI L. REV. 653, 653 (2004) (discussing how corporations purchase life insurance on the lives of key employees).

offset default risk by requiring the debtor to procure a life insurance policy equal to the amount of the indebtedness owed.[50]

Although insurable interest is not difficult to understand, its inherent ambiguity leads to significant litigation.[51] Like a derelict ship without a captain, the lack of state legislation and judicial congruency that clearly define when and how insurable interest is created emboldens Profiteers, colluding agents, and complicit insureds to exploit the system and overcome traditional third-party insurable interest challenges. Because life insurance is property capable of alienation,[52] the lack of codifying clear and unambiguous insurable interest regulation provides insureds with a valid and convincing legal argument of their fundamental right to sell their insurable interest to colluding Profiteers.[53] The relatively unrestricted transfer of insurable interest has allowed for exponential growth in the STOLI market, and attempts to restrict such transfers have been met with significant pushback.[54] Absent insurable interest, "an insurance policy becomes what the law denominates a wagering contract, and . . . in the interest of the best public policy, all such contracts must be declared illegal and void . . . ."[55] Seemingly, however, legislative attempts to get ahead of STOLI schemes are little more than a dog chasing its tail. When Profiteers are permitted to acquire life insurance policies without establishing insurable interest, two significant issues arise—(1) what happens if the insurer pays a death benefit on a policy that is subsequently held

50. *See* Froiland v. Tritle, 484 N.W.2d 310, 312 (S.D. 1992).

51. *See infra* Section III.D; Part IV.

52. *See* Grigsby v. Russell, 222 U.S. 149, 156 (1911) (discussing how life insurance is property investment and should retain the "ordinary characteristics of property").

53. *See infra* Section IV.D.

54. *See* Crum v. Jackson Nat'l Life Ins. Co., 880 S.E.2d 205, 210 (Ga. 2022) (providing historical analysis of the state's insurable interest developments intending to avoid wagering contracts and their subsequent repeal seemingly in favor of the free alienation of life insurance).

55. Hinton v. Mut. Rsrv. Fund Life Ass'n, 47 S.E. 474, 476 (N.C. 1904); *see* ZARITSKY & LEIMBERG, *supra* note 10, at *1.

to be void, and (2) who bears the burden in establishing insurable interest in the first place?[56]

2. *Problems with Insurable Interest*

Nearly thirty states have codified insurable interest statutes that allow an insured's estate to maintain recovery of benefits paid to a Profiteer who failed to establish insurable interest.[57] Although a step in the right direction, it fails to prevent the invalid STOLI policy from being issued in the first place, and it places undue hardship upon the insured's rightful beneficiaries who may be wholly unaware of the transaction. Further clouding the insurable interest issue is a lack of state-wide, uniform legislation defining who bears the burden to establish insurable interest and when. One could argue the insurer has the burden, given that it is under the compliance supervision of state insurance regulators and is the party most likely to argue the disputed STOLI policy should be void.[58] However, one may also argue the burden should rest with the insured, given that they are providing (sometimes fraudulent) information necessary for the insurer to issue the policy.[59] As it stands today, no clear duty appears evident, seemingly leaving an opportunity for Profiteers to exploit the industry.

Unfortunately, legislative attempts to codify insurable interest conventions failed to appreciate the creativity of Profiteers' legal acumen. In their attempt to regulate insurable interest, states neglected to consider the ensuing collateral damage

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56. ZARITSKY & LEIMBERG, *supra* note 10, at *1.

57. *See id.*; *see also* Stillwagoner v. Travelers Ins. Co., 979 S.W.2d 354, 358 (Tex. App. 1998) (holding that the Profiteer in receipt of death benefits holds them "for the benefit of those entitled by law to receive them").

58. *See* Pashuck v. Metro. Life Ins. Co., 188 A. 614, 617 (Pa. Super. Ct. 1936) (explaining how an insurance company denying benefits under a life insurance policy has the burden of showing the policy's beneficiary is not entitled to the benefits); *see also* ZARITSKY & LEIMBERG, *supra* note 10, at *1 ("The burden of proving a lack of insurable interest is upon the one who denies the right of the assignee to recover.").

59. *See* ZARITSKY & LEIMBERG, *supra* note 10, at *1, 17.

caused by sabotaging the insurer's lack of insurable interest argument—legislators unknowingly imposed a heightened evidentiary standard necessary for insurance companies to prevail.[60] As a particularly egregious example, an insurer was denied relief even though the complicit insured readily admitted they engaged in a STOLI transaction.[61] The facts are undisputed—prior to the life insurance policy being issued, the insured colluded with a life insurance agent to engage in a STOLI transaction with the intent to sell the policy after the expiration of the two-year contestability period, which the insured did.[62] Despite him admitting to the fraudulent scheme, the insurer lost on evidentiary grounds because it failed to properly allege that a third party intended to purchase the policy when it was first issued,[63] and therefore failed to state a claim capable of relief under the state's insurable interest statute.[64]

E. Policy Assignment

Central to the STOLI debate is whether life insurance has a fundamental property right capable of alienation. Outside of STOLI analysis, life insurance is recognized as personal property, vesting the insured with the right to dispose, transfer, or assign the policy at any time and without restriction.[65] A policy assignment is where the insured transfers their beneficial interest or ownership rights to a third party.[66] Given continued

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60. *See* Michael Lovendusky, *Illicit Life Insurance Settlements*, THE BRIEF, Spring 2011, at 46, 49 (discussing how the failure to sufficiently identify the Profiteer's involvement may be sufficient to overcome an insurer's complaint that a purported STOLI policy should be invalidated for want of insurable interest).

61. *See* Sun Life Assurance Co. of Canada v. Paulson, No. 07-3877, 2008 WL 451054, at *2 (D. Minn. Dec. 3, 2008).

62. *Id.* at *1–2.

63. *Id.* at *2.

64. *See id.*

65. *See generally* Grigsby v. Russell, 222 U.S. 149, 156 (1911) (holding that a provision contained in the policy doesn't hinder the rights of assignee lacking insurable interest and that a policy owner may assign the policy to a person, regardless of insurable interest).

66. *See* BEAM & WIENING, *supra* note 9, at 9.24–.25, G.3.

STOLI abuse, policy assignments should be reviewed with heightened scrutiny. There are two forms of assignment interest: (1) a collateral assignment and (2) an absolute assignment.[67] A collateral assignment is a transfer of interests to provide security for a loan.[68] Under this arrangement, a lender will receive limited rights in the policy, which may include a portion of the policy's cash value and the death benefit.[69] In the event of default, the lender can foreclose on the policy and receive the cash surrender value or continue to hold the policy and receive dividend payments.[70] Should the insured die prior to the release of the debt obligation, the lender would have priority to recover the amount of the indebtedness owed, plus any expenses in the care and disposition of the policy.[71] Any remaining death benefit would pass to other predetermined beneficiaries.[72] The second form of assignment is known as an absolute assignment.[73] This type of assignment precludes the insured, or any policy beneficiary, from receiving future benefits from the policy.[74] Absolute assignments have been commonly used for viatical

67. *See* Luxton v. United States, 340 F.3d 659, 662 (8th Cir. 2003) (discussing the difference between collateral and absolute assignments).

68. *Id.*

69. *See* Auburn Cordage, Inc. v. Revocable Tr. Agreement of Treadwell, 848 N.E.2d 738, 743 (Ind. Ct. App. 2006) (providing an example of a life insurance policy collateral assignment).

70. *Id.* at 742.

71. *Id.* at 743.

72. *Id.* at 752.

73. *See Absolute Assignment*, INSURENCEOPEDIA, https://www.insuranceopedia.com/definition/551/absolute-assignment [https://perma.cc/R7XD-HHDY] (Jan. 6, 2025) (defining an absolute assignment where all—not merely a portion of—benefits, liabilities, and/or rights are transferred by one party to another, without any pre-condition).

74. *See id.*; *see also* Tompkins v. Tompkins, 38 A.2d 890, 892 (N.J. 1944) (explaining the absolute assignment of a life insurance policy divests the insured of all interests in said policy).

settlement,[75] life settlements,[76] and for partial or complete satisfaction of loans.[77] When used appropriately, absolute assignments serve the needs of the insured and do not breach insurable interest laws.[78]

The inquiry into whether life insurance maintains the same characteristics of "property," and therefore the same rights, raises an interesting question: if life insurance is in fact a property right capable of free alienation, does insurable interest even have a place in the debate? Said differently, so long as insurable interest was established at the time of policy procurement, and given that insureds have a right of alienation, does it even matter if a third party lacking insurable interest is the ultimate recipient of the death benefits? Profiteers would certainly think so, seemingly believing that title to the policy was perfected upon its sale, resulting in the policy being made available for investment purposes and released from any insurable interest

75. *See* W. Coast Life Ins. Co. v. Life Brokerage Partners LLC, No. 08-80897-Civ, 2009 U.S. Dist. LEXIS 81650, at *35–36 (S.D. Fla. Aug. 11, 2009) ("[A] 'viatical settlement contract' is defined as 'a written agreement entered into between a viatical settlement provider . . . and a viator' that 'includes an agreement to transfer ownership or change the beneficiary designation of a life insurance policy at a later date . . . .' A 'viator' is defined as 'the owner of a life insurance policy.'" (internal citations omitted)).

76. *See* VT. STAT. ANN. tit. 8, § 3835(9)(A) (2024) ("'Life settlement contract' means a written agreement between a policy owner and a life settlement provider . . . establishing the terms under which compensation or anything of value is or will be paid, which compensation or value is less than the expected death benefits of the policy, in return for the policy owner's present or future assignment, transfer, sale, devise, or bequest of the death benefit or ownership of any portion of the insurance policy . . . .").

77. *See* William H. Danne, Jr., *Right of Creditor Beneficiary or Assignee of Insurance Policy on Life of Debtor to Excess Proceeds over Amount Owed on Debt*, 6 A.L.R. 6th 391 § 8 (2005); *see also* Am. Cas. Co. v. Rose, 340 F.2d 469, 471 (10th Cir. 1964) ("The courts have held, in conformity with the decisions cited, that by express and implicit understanding the assignee of a policy can be constituted the trustee of the insured's representatives for the amount of the policy in excess of the loan, security for which it was given." (internal citation omitted)); Butterworth v. Mississippi Valley Tr. Co., 240 S.W.2d 676, 680 (Mo. 1951) (explaining that the valid assignment of a life insurance policy vests all contractual rights in such policy to the creditor-assignee).

78. *See* Metro. Life Ins. Co. v. Woolf, 47 A.2d 340, 342 (N.J. 1946) (discussing that a life insurance policy is a "chose in action" and the insured is permitted to "make an absolute assignment of all such right, title and interest as he may have therein").

requirements.[79] If this were to hold true, as it seemingly does, Profiteers will continue to enjoy reasonable assurance that policies purchased after the two-year contestability period are free from traditional insurable interest defenses.

II. SECONDARY MARKETS

A. STOLI vs. Legitimate Life Settlements

Preliminarily, it is important to distinguish STOLI transactions from legitimate life settlements. In a traditional, legal life settlement transaction, investors purchase existing policies that are no longer of value to the insured.[80] In contrast, a STOLI transaction is when a Profiteer persuades an elderly or terminally ill person to acquire a policy who has no intent to protect their family but, instead, to receive a sizeable cash payment from the Profiteer shortly after policy issuance.[81] Notably, the key distinction between non-STOLI and STOLI policies is the timing of the insured's intent—a non-STOLI policy *might* be sold to an investor (i.e. a legal life settlement), where a STOLI policy is intended to be sold before it is even issued.[82] Intent is particularly important as it speaks directly to insurable interest. Unfortunately, the insurable interest doctrine is laden with patent ambiguity, causing a cascade of inconsistent judicial

79. *See* Lovendusky, *supra* note 60, at 48–49 (discussing whether the sale of life insurance "quiets" title, thus rendering the policy available for investment purposes).

80. *See* Wells Fargo Bank v. Lincoln Nat'l Life Ins. Co., No. 22CV907, 2023 WL 4850626, at *9 (M.D.N.C. July 28, 2023); *see also* Lincoln Nat'l Life Ins. Co. v. Calhoun, 596 F. Supp. 2d 882, 885 (D.N.J. 2009) (describing STOLI as a prearranged agreement between the insured and Profiteer to procure a life insurance policy that the insured was unlikely to purchase); Sun Life Assurance Co. of Canada v. Wells Fargo Bank, 208 A.3d 839, 848 (N.J. 2019).

81. *See Wells Fargo Bank*, 2023 WL 4850626, at *8.

82. *Id.* at *9; *see also Sun Life Assurance*, 208 A.3d at 848.

interpretations that illuminates legislative shortsightedness brighter than the Cape Hatteras Lighthouse.[83]

The National Council of Insurance Legislators ("NCOIL") defined STOLI as a "plan to initiate a life insurance policy for the benefit of a third party investor who, at the time of policy origination, has no insurable interest in the insured."[84] The insured would apply with a Profiteer-approved insurer with the understanding that the insured's beneficiaries would not ultimately receive the death benefits.[85] Once the life insurance policy was approved and issued, one of two things would occur: (1) the Profiteer would instruct the insured to take no action until the two-year contestability period expired in hopes of avoiding detection by the insurer,[86] or (2) the insured would immediately transfer all control and property rights of the policy upon the Profiteer paying the predetermined sales price, commonly using a trust to avoid detection in what's referred to as a "stealth transaction."[87]

STOLI transactions are marketed in a variety of ways. A typical scheme starts with an unscrupulous life insurance agent preying on elderly individuals with less-than-perfect health but who remain eligible to receive new insurance coverage.[88] With the skill of an experienced snake-oil salesman acting under an

83. Cape Hatteras Light Station is a lighthouse located in Buxton, North Carolina. *Cape Hatteras Light Station*, NAT'L PARK SERV. (Feb. 28, 2024), https://www.nps.gov/caha/planyourvisit/chls.htm [https://perma.cc/H5CK-DNPY]. The lighthouse was built in 1803, and it protects a hazardous section of the Atlantic coastline. *Id.*

84. *See* LIFE SETTLEMENTS MODEL ACT § 2Y (NAT'L COUNCIL OF INS. LEGISLATORS 2019).

85. *See infra* Section III.C; Part IV.

86. *See* Lovendusky, *supra* note 60, at 49 (discussing that, in some states, the two-year contestability period serves as a level of protection for Profiteers by barring an insurance company from denying benefits eligibility or rescinding a policy after two years from the date of policy procurement).

87. *See* United States v. Carpenter, 190 F. Supp. 3d 260, 264, 297 (D. Conn. 2016) (indicting defendant agent for his involvement in soliciting elderly insureds to participate in stealth STOLI transactions that were funded by a colluding financing entity via shell life insurance trusts in an attempt to avoid the insurer's detection of the fraudulent scheme).

88. *See* Stephan R. Leimberg, *Stranger-Owned Life Insurance: Killing the Goose That Lays Golden Eggs!*, TAXANALYSTS: VIEWPOINTS, May 2005, at 811, 815.

umbrella of fraud and deceit, the agent represents the get-rich-quick scheme to be a no-risk obligation and that all insurance costs are paid by a third party. In a veiled attempt to provide "customer service," the insured will be instructed to sign a blank application that the agent will complete later.[89] Unbeknownst to the insured, the agent has a blank canvas to misrepresent facts about the insured's health and net worth, thereby helping to ensure underwriting approval.[90] Commonly, the policy is placed into a trust that allows for easier assignment to the Profiteer outside of the insurer's compliance review.[91] On the application, the agent will misrepresent the policy's owner as the trust and its intended beneficiary as the insured's estate[92]—neither of which is true. Once the policy is issued and without the insurer's knowledge,[93] the insured is instructed to amend the trust language to assign the policy rights to the Profiteer, and in exchange, the insured receives a large cash payment.[94] The Profiteer will then be responsible for paying all ongoing premium payments and will realize a return on their investment when the insured passes away.[95] In one particularly egregious case, Leon Lobel, a retired butcher, entered into a STOLI transaction resulting in the issuance of a ten-million-dollar life

89. *See* Corrected Brief of Appellant at *5, Windsor Sec., LLC v. PHL Variable Ins. Co., No. 10CV-67, 2016 WL 536709 (10th Cir. Jan. 25, 2016) (arguing the insured signed a blank application and could not have known of the misrepresentations of the agent who completed the application).

90. *See id.*; *see also infra* Section III.D; Part IV.

91. *See generally* LIFE SETTLEMENTS MODEL ACT § 2Y (NAT'L COUNCIL OF INS. LEGISLATORS 2019) ("Trusts, that are created to give the appearance of insurable interest, and are used to initiate policies for investors, violate insurable interest laws and the prohibition against wagering on life."); *see also Carpenter*, 190 F. Supp. 3d at 264, 273 (discussing how appointing a trust as the owner and beneficiary of a life insurance policy requires heightened scrutiny to avoid stealthy STOLI transactions).

92. *See* Life Prod. Clearing, LLC v. Angel, 530 F. Supp. 2d 646, 649 (S.D.N.Y. 2008).

93. *See Carpenter*, 190 F. Supp. 3d at 264, 273; *see also Life Prod. Clearing, LLC*, 530 F. Supp. 2d at 650.

94. *See Life Prod. Clearing, LLC*, 530 F. Supp. 2d at 650.

95. *See id.* at 651.

insurance policy.[96] Under no uncertain terms, Lobel couldn't afford the near $400,000 annual premium required to keep the policy in force.[97] Relying on his agent's representation that the transaction was legal, Lobel procured the policy and immediately sold it, receiving $300,000 just a week after the policy was issued.[98] A short five days later, Lobel died.[99] His family got the short end of the stick paying taxes on the $300,000 payment, and the Profiteer happily walked away with close to $10 million in net death benefits.[100]

STOLI transactions disrupt the most basic principles of insurance—insurable interest and death claim probability. Because STOLI policies are in violation of insurable interest doctrines,[101] they are, in essence, restricted wagering contracts.[102] In a STOLI transaction, insurable interest does not rest with the insured and a legitimate beneficiary but rather with the insured and the Profiteer having an interest in making a quick profit.[103] Further, STOLI policies have a higher probability of paying a death claim,[104] causing substantial stress on an insurer's risk

96. *Id.* at 648–50.

97. *Id.* at 650.

98. *Id.*

99. *Id.* at 651.

100. *See id.* at 650–51.

101. *See* J. Alan Jensen & Stephan R. Leimberg, *Stranger-Owned Life Insurance: A Point/Counterpoint Discussion*, 33 ACTEC J. 110, 113 (2007) ("For a disposable plan to be enforceable, the original owner must have an insurable interest, which is then assigned to investors. Many disposable policy designs do not appear to have an insurable interest. If none is found to exist because of the design of the plan, the insurance contract itself may be void from inception.").

102. *See* Grigsby v. Russell, 222 U.S. 149, 154 (1911) (explaining that "[a] contract of insurance upon a life in which the [policyowner] has no interest is a pure wager that gives the [policyowner] a sinister counter interest in having the life come to an end"). *See also* Sun Life Assurance Co. of Canada v. Paulson, No. 07–3877, 2008 WL 5120953, at *5 (D. Minn. Dec. 3, 2008) (discussing how the requirement that a policy be issued to only those who have an insurable interest operates to prevent the prohibited "wagering" contracts).

103. *See* BARRY D. FLAGG, STRANGER-ORIGINATED LIFE INSURANCE: FREE INSURANCE? FOUND MONEY? A GOOD INVESTMENT? A SCAM? WHAT IS IT ANYWAY? 1 (2007).

104. *See* Susan Lorde Martin, *Betting on the Lives of Strangers: Life Settlements, STOLI, and Securitization*, 13 U. PA. J. BUS. L. 173, 190–91 (2010) [hereinafter Martin, *Betting on the Lives of Strangers*].

pricing, resulting in increased premiums assessed against traditional insured's.[105] Additionally, STOLI schemes may prevent the insured from obtaining future insurance due to the insured reaching their capacity limit.[106] However, the most worrisome issue is how STOLI transactions induce insurance fraud that is seemingly running rampant due to a lack of legislative action and judicial inconsistencies.[107]

In the early years of STOLI schemes, the Profiteers crawled. In order for them to run, there had to be a viable secondary market to sell and exchange their fraudulent policies. Until the late 1990s, no such market existed. That all changed once Wall Street got on board.[108]

B. Primary Market vs. Secondary Market

The fact that institutional investors found a way to profit from death is not surprising. In the world of finance, if it can be commoditized and securitized,[109] buyers and sellers will find the way. To profit on a large scale, Profiteers required a readily accessible market to serve as the mechanism for willing buyers

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105. *See* FLAGG, *supra* note 103, at 17–18 (describing how losses associated with STOLI plans may cause insurers to "change policy pricing to ensure their profitability").

106. *See Understanding the Dangers of Stranger Originated Life Insurance (STOLI)*, OHIO DEPT. OF INS., https://insurance.ohio.gov/companies/product-regulation-and-actuarial-services/resources/stranger-originated-life-insurance-stoli [https://perma.cc/ESY3-HST6] (last visited Mar. 27, 2025). *See also* Steven E. Chancy, Deborah L. Thorpe & Michael R. Tregle, *Senior Life Settlements: A Cautionary Tale*, *in* 7 SUPERVISORY INSIGHT 31 (2010).

107. *See* Maria Fleisher, Comment, *Stranger Originated Life Insurance: Finding a Modern Cure for an Age-Old Problem*, 41 CUMB. L. REV. 570, 577–79, 582 (2011) (describing the "significant[]" growth of the life settlements' market in the past decade, the lack of regulation, and incentives for brokers to engage in fraudulent activity).

108. *See* Martin, *Betting on the Lives of Strangers*, *supra* note 104, at 184–86 (discussing the development of the life settlements market, which included "about sixty companies" at the end of the twentieth century).

109. *See* Steven L. Schwarcz, *What Is Securitization? And for What Purpose?*, 85 S. CAL. L. REV. 1283, 1298 (2012) (defining securitization "as a transaction [where] a special purpose entity, such as a trust, (1) issues certificates, promissory notes, or other securities to investors; (2) uses the cash received from the investors to purchase mortgage loans or other similar assets on which payments are expected to be made; and (3) ultimately uses those payments, if and when received, to repay the investors.").

and sellers to acquire and dispose of policies the Profiteers were soliciting.[110] A primary market is the first opportunity for an investor to purchase the security instrument on an exchange—financial institutions obtain financing through debt or equity-based securities and the instruments are then underwritten to set the initial offering price for the public.[111] Conversely, a secondary market is where investors purchase securities from other investors, rather than from the issuing companies themselves.[112] Profiteers quickly realized their scheme would not be scalable in a primary market due to it solely consisting of the insured and a watchful insurer. However, a secondary market that provided a direct medium between the insured and the Profiteer, and Profiteers-to-Profiteers, would be the perfect mechanism to launch their fraudulent scheme.

The secondary market for life insurance developed in the late 1980s and was born from the demand for viatical settlements as an alternative to policy surrenders.[113] Viatical settlements were the early form of life settlements before brokerage firms discovered how to properly commoditize the life insurance industry.[114] Essentially, a life settlement is the secondary market sale of an insurance policy to a third-party investor for a lump sum purchase price.[115] Originally, viatical settlements

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110. *See generally* FLAGG, *supra* note 103, at 1–4 (discussing the STOLI market's characteristics).

111. This is a financial market in which newly issued securities are offered to the public. *See* James Chen, *Primary Market: Definition, Types, Examples, and Secondary*, INVESTOPEDIA, https://www.investopedia.com/terms/p/primarymarket.asp [https://perma.cc/U9JR-X83C] (Mar. 18, 2024).

112. This is a financial market where previously issued securities (such as bonds, notes, and shares) and financial instruments (such as bills of exchange and certificates of deposit) are bought and sold. *See id.*

113. *See* Daniel Keller, *Tax Implications of Stranger Originated Life Insurance*, PRAC. TAX L., Fall 2009, at 15, 17; *see also* Martin, *Betting on the Lives of Strangers, supra* note 104, at 174.

114. *See* Martin, *Betting on the Lives of Strangers*, *supra* note 104, at 174.

115. *Id. See also* Kelly J. Bozanic, Comment, *An Investment to Die for: From Life Insurance to Death Bonds, the Evolution and Legality of the Life Settlement Industry*, 113 PENN STATE L. REV. 229, 229 (2008).

were created in response to the Human Immunodeficiency Virus, the virus that causes AIDS.[116] Insureds who contracted the virus would reach the maximum payable benefit under their health insurance plans, or simply carried no health insurance at all, and needed an alternative source of capital to pay for their ongoing medical treatment.[117] Their shortened life expectancies[118] meant placement on the actuarial table[119] became substantially impaired. Although their life expectancies were significantly reduced, insurers were not permitted to increase the premiums charged on these impaired policies (to offset their risk), thereby increasing the present value of the death benefits.[120] Said differently, the closer an insured was to death, the higher the present value of that insured's policy was on the secondary market,[121] resulting in a greater internal rate of return

116. Bozanic, *supra* note 115, at 233. *See also* Martin, *Betting on the Lives of Strangers*, *supra* note 104, at 174.

117. *See* Martin, *Betting on the Lives of Strangers*, *supra* note 104, at 174 ("People with AIDS were suffering dire medical and financial circumstances to be followed by a sure and imminent death. The idea of viatical settlements developed to allow AIDS patients to sell their existing life insurance policies to strangers, who would pay for them immediately in exchange for receiving the death benefit."). *See also* Arthur Allen, *As They Lay Dying*, WASH. POST (Nov. 17, 1996), https://www.washingtonpost.com/archive/lifestyle/magazine/1996/11/17/as-they-lay-dying/2f788074-9f14-4ea2-acda-a8d19922695b/ [https://perma.cc/95L5-4T3B] (quoting an AIDS activist who described "the viatical industry" as "a last resort that allows people to buy things like medicine and food").

118. *See* TEX. INS. CODE ANN. art. 1111A.002(9) (West 2023) (defining life expectancy as the "mean number of months the insured . . . can be expected to live as determined by [the viatical or life settlement provider] considering medical records and appropriate experiential data").

119. *See* BLACK & SKIPPER, *supra* note 18, at 693–96, 700–03, 712–16, 725, 734–35 (explaining that actuarial tables are used to determine policy premiums after the medical review of the insured has been completed). Actuarial tables are also used to determine the ongoing cost to the insurance carrier as the pool insureds age. *Id.*

120. *See* Treas. Reg. § 1.401(a)(4)-12 (2022) ("Actuarial Present Value means the value as of a specified date of an amount or series of amounts due thereafter, where each amount is (1) Multiplied by the probability that the condition or conditions on which payment of the amount is contingent will be satisfied; and (2) Discounted according to an assumed rate of interest to reflect the time value of money.").

121. *See* Neukranz v. Conestoga Settlement Servs., LLC, No. 3:19-CV-1681-L, 2022 WL 19518462, at *3 (N.D. Tex. Nov. 23, 2022) (describing the primary factor of present value is the date of the insured's death).

for the investor.[122] The investor's return was realized in the form of the death benefits originally owed to the insured's beneficiaries that were, instead, diverted to the investor resulting from the sale.[123] Viatical brokers, who had relationships with investment firms, would broker a sale of the life insurance policy to an investment firm, transferring all rights under the policy[124] to the firm while simultaneously providing the terminally-ill insured with capital to pay their required medical expenses. Prior to the advent of viatical settlements, desperate insureds sought payment through "underground" investors ranging from family members who were persuaded to invest in their family member's death[125] to "representatives" of the La Cosa Nostra,[126] leaving the terminally-ill insured to not only worry about their ongoing medical issues, but whether they would become the recipient of an all-expenses paid trip to the Las Vegas desert.[127] Today, viatical settlements are much less common due to advancements in AIDS medicines.[128] In response to the illicit secondary market and to allow their insureds to retain the policy's

122. *See* TIFD III-E Inc. v. United States, 660 F. Supp. 2d 367, 373 n.15, 401 (D. Conn. 2009) ("Internal rate of return is defined as the discount rate necessary to make the net present value of a stream of future payments equal to zero.").

123. The investment being the purchase of the policy. *See Neukranz*, 2022 WL 19518462, at *3 (describing the investor's rate of return as the delta between the discounted price the investor paid plus ongoing premiums and the net death benefit received upon the insured's death).

124. *See generally* Grigsby v. Russell, 222 U.S. 149 (1911) (discussing brokering life insurance for profit).

125. *See* Eli Martin Lazarus, *Viatical and Life Settlement Securitization: Risks and Proposed Regulation*, 29 YALE L. & POL'Y REV. 253, 261 (2010).

126. *See* James O. Finckenauer, *La Cosa Nostra in the United States*, UNITED NATIONS ACTIVITIES (Dec. 6, 2007), https://www.ojp.gov/pdffiles1/nij/218555.pdf (describing "La Cosa Nostra" as a collection of American crime families that are also collectively referred to as "the mafia" and "the mob").

127. Fans of Robert De Niro's portrayal of a Las Vegas crime boss in the movie *Casino* will recall how he chose the Las Vegas desert to bury mob hits. *See also* The Associated Press, *Bodies Surfacing in Lake Meade Recall Mob's Time in Las Vegas*, NBC NEWS (May 10, 2022, 7:18 AM), https://www.nbcnews.com/news/us-news/bodies-surfacing-lake-mead-recall-mobs-time-las-vegas-rcna28070 [https://perma.cc/G8BQ-S2QK] (discussing how area drought lead to the discovery of human remains and reignited rumors of the mafia using the desert to dispose of bodies).

128. *See* Lazarus, *supra* note 125, at 255.

death benefit, most insurers allow terminally-ill insureds to draw against the available death benefit, instead of having to sell the policy outright.[129] Between the mid-1980s and late 1990s, the secondary market was relatively quiet in relation to the volume of life insurance policies issued and those being sought for viatical settlements.[130]

C. Profiteers' Need for Secondary Market Expansion

Insureds who were unaware that viatical settlements existed were left in a dire situation. Because viatical settlements required the insured to be terminally ill,[131] applying the viatical model to a long-term secondary market proved challenging. Until the adoption of a secondary market, life insurance companies held almost totalitarian power over the repurchasing of their policies, leaving insureds with essentially three options when a policy was no longer needed: (1) the insured could simply stop paying the required premiums and allow the policy to lapse, (2) the insured could surrender the policy and receive accumulated cash benefits, if any, or (3) elect to use the remaining cash value to purchase a paid-up policy with a reduced death benefit.[132] Effectively, failure to pay premiums until death is tantamount to renting insurance coverage, leaving the insured with no valuable equity.[133] Insurers historically price their

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129. *See* Wayne M. Gazur, *Death and Taxes: The Taxation of Accelerated Death Benefits for the Terminally Ill*, 11 VA. TAX REV. 263, 274 (1991) (providing a brief history on accelerated death benefit rides and discussing how the majority of states permit terminally ill insureds to draw against their death benefit); Denise M. Schultz, *Angels of Mercy or Greedy Capitalists? Buying Life Insurance Policies from the Terminally Ill*, 24 PEPP. L. REV. 99, 101 (1996); *see also* 28 TEX. ADMIN. CODE § 4.1102(a) (defining accelerated death benefit as a provision under a life insurance contract that "prepays all or a portion of the death benefit based on a long-term care illness, specified disease, or terminal illness").

130. *See* Keller, *supra* note 113, at 17.

131. *See id.* at 15–17; *see also* Schultz, *supra* note 129, at 118. Terminally ill policy owners could typically sell their policies within a diagnosis of less than or equal to twenty-four months of life remaining. *See* Schultz, *supra* note 129, at 118 n.137.

132. *See* MASS. GEN. LAWS ANN. ch. 175, § 144 (West 2024); Keller, *supra* note 113, at 17.

133. *See* Keller, *supra* note 113, at 17.

policies based, in part, on an assumed lapse rate,[134] and it is this historic function of actuarially-priced lapses that drives the life insurance industry's profit margin. STOLI policies dramatically skew actuarial risk due to their high propensity of being in force at the time of death and, thereby, claims eligible.[135] The math is simple—if fewer policies pay a death claim than the insurer estimated, it will enjoy a higher profit margin; if more policies pay a death claim than estimated, the insurer loses.[136] This is by no means a sympathetic acquiescence to the arguably excessive profits derived by modern-day insurers, but rather intended to illuminate how the non-STOLI insurance pool bears the burden of increased costs resulting from STOLI policies because insurers simply pass on the increased costs to the broader pool of insureds.[137]

The built-in safety valve protecting non-STOLI insureds against *immediate* premium increases is the secondary market not generally being available to insureds younger than sixty-five years of age,[138] thereby reducing the number of policies capable of entering the secondary market.[139] However, the STOLI market is, comparatively speaking, still in its infancy as compared to the decades-issued tranches of in-force policies.[140] At some point, the equilibrium between affordable premiums

134. U.S. SEC. AND EXCH. COMM'N, LIFE SETTLEMENTS TASK FORCE, STAFF REPORT TO THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION 13 (2010) [hereinafter SEC, LIFE SETTLEMENTS TASK FORCE REPORT].

135. *Id.*

136. *See Types of Life Insurance Policies*, N.Y. STATE DEP'T OF FIN. SERVS., https://www.dfs.ny.gov/consumers/life_insurance/types_of_policies [https://perma.cc/5XGE-Y87A] (last visited Apr. 14, 2025).

137. *See Understanding the Dangers of Stranger Originated Life Insurance (STOLI)*, *supra* note 106.

138. *See* Keller, *supra* note 113, at 17. However, insureds younger than sixty-five and terminally ill may have access to the secondary market. *See* Schultz, *supra* note 129, at 118.

139. *See* Keller, *supra* note 113, at 17 (explaining that STOLI schemes are targeted primarily to the elderly who have experienced declines in health and those who typically have life expectancies between six and twelve years).

140. *See id.* (explaining the emergence of viatical firms in the 1980s).

would, seemingly, be skewed once STOLI policies gradually begin to increase the percentage of paid death claims.

D. The Necessity for Actuarial Arbitrage

To be profitable, the secondary market requires a decline in an insured's health status from the date of policy issuance.[141] For example, *A* originally purchased a 5M life insurance policy and received a preferred health rating.[142] At this rating, *A*'s life expectancy was thirty-four years. However, three years later, when *A* turned sixty-seven, *A* developed diabetes and suffered a heart attack, producing a much shorter life expectancy. If *A* were to subsequently re-apply, they would receive a poor health rating.[143] This creates a health "spread," referred to as "actuarial arbitrage."[144] Actuarial arbitrage becomes evident when comparing the lower premiums charged for a preferred health rating against the substantially higher premiums charged for a substandard health rating.[145] This spread is a good deal for the investor—the investor receives the full benefits of an insured that is unhealthy with a shorter life expectancy while simultaneously enjoying the lower premiums charged for a significantly better health rating.[146] The greater the spread, the more the policy is valued on the secondary market because the insured is expected to die sooner; thus, the Profiteer doesn't have to allocate long-term capital resources to pay ongoing

141. *See Can I Sell My Life Insurance Policy?*, TEX. DEP'T OF INS., https://www.tdi.texas.gov/tips/can-i-sell-my-life-insurance-policy.html [https://perma.cc/LVU6-88C5] (last visited Apr. 14, 2025).

142. Common life insurance health ratings range from Preferred Select to Table Ratings (A-Z). Better ratings are reflected in lower cost of insurance due to the insurer enjoying a lower payment for a death claim. *See* Nupur Gambhir & Amanda Shih, *Understanding Your Life Insurance Health Classification*, POLICYGENIUS (Dec. 6, 2023), https://www.policygenius.com/life-insurance/what-are-life-insurance-classifications/ [https://perma.cc/JUD8-MS2A].

143. *See* Leimberg, *supra* note 88, at 813.

144. *See id.*

145. *See* Gambhir & Shih, *supra* note 142.

146. *See* Leimberg, *supra* note 88, at 813–14.

premiums.[147] When an insured's actuarial arbitrage is relatively high, the insured can expect to realize a higher sales price upon disposition of the policy.[148] Once Wall Street firms caught on, the influx of business became unsustainable, and a new market emerged—the secondary trading of life insurance.[149]

E. Securitizing Death – The Creation of the Death Bond

Until the early 2000s, life settlement transactions were mainly "on the book transactions." Investment firms held the required ongoing premium payments as a liability and the life insurance policy was reported as a credit offset—similar to local banks retaining real estate mortgages within their long-term investment portfolio.[150] National mortgage originators, however, do not keep the mortgage debt as a long-term investment but sell the liability and simply remain the servicing agent, charging a small percentage of the mortgagor's annual percentage rate as compensation.[151] Instead of selling each individual mortgage, which would require substantial administrative concerns and cause adverse selection[152] of the lower-risk mortgages, the

147. *See* Keller, *supra* note 113, at 17 ("The resulting impairment of the policies significantly increased their actuarial values."). *See also* Leimberg, *supra* note 88, at 813–14 (explaining the arbitrage process creates results from where the benefits become greater than the cost of life insurance premiums).

148. *See* Sachin Kohli, *Pricing Death: Analyzing the Secondary Market for Life Insurance Policies and Its Regulatory Environment*, 54 BUFF. L. REV. 279, 291 (2006) (discussing how an opportunity to profit exists for those insureds with less than normal health based on assumptions made by the insurer and how shorter life expectancies are correlated with rates of return).

149. *See* SEC, LIFE SETTLEMENTS TASK FORCE REPORT, *supra* note 134, at 5.

150. *See* Kohli, *supra* note 148, at 315.

151. Julia Kagan, *Mortgage Originator: Definition, What It Does, Types*, INVESTOPEDIA, https://www.investopedia.com/terms/m/mortgage_originator.asp [https://perma.cc/6KUK-TKBD] (Sept. 18, 2024).

152. *See* JAN M. GRAEBER, ACLI, THE IMPACT OF ADVERSE SELECTION ON LIFE INSURANCE PRODUCTS 12 (2022), https://legislature.vermont.gov/Documents/2022/WorkGroups/House%20Commerce/Genetic%20Testing/Witness%20Documents/W~Jan%20Graeber~Adverse%20Selection%20and%20Life%20Insurance%20Presentation~4-28-2022.pdf (discussing how a borderline-uninsurable applicant could receive insurer approval due to concealing or falsifying information about their actual condition or situation, and how doing so results in an 'adverse' effect on insurers because normal insurance premiums

mortgage originators would "pool" loans and sell them as a single unit.[153] By pooling loans, the mortgage originator was able to allocate high-risk loans that may otherwise be unsellable with low-risk loans that were highly sought by investors, a method known as "selling the crumbs with the cream," and the mortgage-backed security was born.[154] It's a rather unnerving and dastardly brilliant scheme—the mortgage originator captures the benefit of the profit from the loan origination and ongoing servicing fees while almost completely offsetting the risk of mortgage default onto unknowing participants in company-managed 401k plans.[155]

Once the life settlement industry gained momentum, the question was raised—if Wall Street could securitize mortgages, why couldn't they securitize death? The answer is they could, and they did. Life insurance-backed securities, also known as Death Bonds,[156] were created in much the same way as

are computed on the basis of the insured being in insurable-health. Also referred to as 'anti-selection').

153. *See* United States v. Gramins, 939 F.3d 429, 434–35 (2d Cir. 2019).

154. *See* Alfred W. Toennies, *The Securitization of Mortgages: An Institutional Real Estate Attorney's Perspective*, C426 ALI-ABA 161, 253 (discussing the development and pooling of loans to create mortgage-backed securities).

155. Mortgage banks are state-chartered temporary lenders who must sell the loans they originate because they do not have the long-term funding needed to hold them permanently. While mortgage banks always sell the mortgages they originate, they may retain the servicing under contract with the buyer. Where servicing is retained, borrowers continue to deal with the same firms that loaned them the money in the first place. Over the years, however, servicing has become quite concentrated among larger firms, and smaller mortgage banks today no longer service mortgages and, instead, are strictly engaged in the mortgage origination business. *See Why Do Most Lenders Sell Their Mortgages?*, MORTG. & RET. PROFESSOR, http://www.mtgprofessor.com/A%20%20Type%20of%20Loan%20Provider/why_do_most_lenders_sell_their_mortgages.htm [https://perma.cc/83SN-Q4NN] (June 30, 2009).

156. A security backed by life insurance is derived by pooling together a number of transferable life insurance policies. Similar to mortgage-backed securities, the life insurance policies are pooled together and then repackaged into bonds to be sold to investors. "Death bond is shorthand for a gentler term the industry prefers: life settlement-backed security. . . . Wall Street sees huge profits in buying policies, throwing them into a pool, dividing the pool into bonds, and selling the bonds to pension funds, college endowments, and other professional investors." Matthew Goldstein, *Profiting from Mortality*, BLOOMBERG (July 29, 2007),

mortgage-backed securities, with a few subtle nuances specific to life insurance. Where a mortgage-backed security is determined by the risk level of borrower default, the risk of a Death Bond is determined by "the mortality expectation of the insureds."[157] Today, Death Bonds may be readily purchased by institutional and private investors alike.[158]

F. *If STOLI Was the Match, Premium Financing Was the Gasoline*

In contrast to corporate investors participating in the legitimate life settlement market, Profiteers were traditionally individual investors with limited capital.[159] In the early years, securing additional capital was a constant source of frustration for Profiteers trying to finesse state insurance requirements.[160] Because state insurable interest laws typically required an insured to bear the cost of the initial premium payment,[161] this created an issue for many potential insureds who simply did not have

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https://www.bloomberg.com/news/articles/2007-07-29/profiting-from-mortality?. *See also* Bozanic, *supra* note 115, at 239 (discussing Wall Street's introduction of Death Bonds, also referred to as life-settlement backed securities).

157. Bozanic, *supra* note 115, at 239.

158. *See* CARLISLE MGMT., BEST PRACTICES TO ACHIEVING UNCORRELATED RETURNS 1 (2015) (discussing investment in open-ended life settlement funds). *See also* Michael Shari, *Life Settlements Are Settling in as an Alternative Asset Class*, GLOB. ASS'N OF RISK PROS. (Feb. 9, 2024), https://www.garp.org/risk-intelligence/market/life-settlements-240209 [https://perma.cc/Y8JB-K7WE] (discussing how life settlement pools are being incorporated into institutional investment funds).

159. *See* Peter Nash Swisher, *Wagering on the Lives of Strangers: The Insurable Interest Requirement in the Life Insurance Secondary Market*, 50 TORT TRIAL & INS. PRAC. L.J. 703, 745 (2015) (financing for life settlements typically came from institutional buyers). *See also* Kohli, *supra* note 148, at 286 (discussing how early funding was sourced to individual investors).

160. *See* Kohli, *supra* note 148, at 286–87.

161. Prior to the advent of STOLI schemes, insurance carriers underwrote insurance applications based on the attestation of representations disclosed in the insurance application and rarely requested documentation to substantiate income and net worth requirements. *But see* ZARITSKY & LEIMBERG, *supra* note 10, at *27 (discussing the state imposed duty to investigate information if there is a possibility of a STOLI scheme). Because the insurable interest laws required someone with an insurable interest to remit premiums, it was presumed that the policy owner had the financial capacity to pay the premium his estate was valued at as the representation stated on the application. *See* Swisher, *supra* note 159, at 707–08.

the necessary funds to put the policy in force. Further, many insureds lacked the required capital to pay the insurance premiums necessary to carry the policy past the two-year contestability period, when the secondary market opened widely and the insured could sell the policy.[162] Because life insurance could initially be used by insured-borrowers and the respective lender as the sole collateral, nonrecourse premium financing became a prevalent source of STOLI funding.[163] In a premium financing transaction,[164] a financing entity[165] is added as a party to the transaction, lending (to the insured) the premiums required to carry the policy past the two-year contestability period when the insured is able to dispose of the policy with little recourse by the insurer.[166] The lender would submit a collateral assignment to the insurer, securing the policy's settlement value, cash surrender value, and death benefits.[167] If the insured failed to repay the lender, the lender would simply foreclose on the policy, obtain all property rights, and either sell the policy on the secondary market to cover the loan or recover any remaining cash value and death benefits.[168] In most instances,

162. *See infra* Section III.D; Part IV.

163. *See* Kenneth Chin, Kramer Levin Naftalis & Frankel LLP, with Practical Law Finance, *Security Interests: Life Insurance Policies*, PRACTICAL L. PRACTICE NOTE 1-555-5414.

164. *See* TEX. INS. CODE ANN. art. 1111A.002(6) (West 2011) ("Financing transaction means a transaction in which a licensed provider obtains financing from a financing entity including secured or unsecured financing, a securitization transaction, or a securities offering that is either registered or exempt from registration under federal and state securities law.").

165. *See* TEX. INS. CODE ANN. art. 1111A.002(5) (West 2011) ("'Financing entity' means an underwriter, placement agent, lender, purchaser of securities, purchaser of a policy or certificate from a provider, credit enhancer, or any entity that has a direct ownership in a policy or certificate that is the subject of a life settlement contract whose principal activity related to the transaction is providing funds to effect the life settlement contract or purchase of a policy, and who has an agreement in writing with a provider to finance the acquisition of a life settlement contract.").

166. *See* Lovendusky, *supra* note 60, at 48.

167. *See* Chin et al., *supra* note 163.

168. *See* Jensen & Leimberg, *supra* note 101, at 130 (describing an agent-lender who sold "free" life insurance that was secured by a nonrecourse loan). The transaction was designed so that at the end of the two-year contestability period, the insured would be forced to allow the agent-lender to take the policy for payment of the loan. *Id.*

because the STOLI market was yielding such strong gains and the lenders viewed the collateral as wholly sufficient, the life insurance policy was the only source of collateral, providing the insured with a period of "free insurance."[169]

Fundamentally, insurance premium financing is a legitimate resource for cash-strapped insureds, enabling them to obtain much-needed insurance.[170] But when applying premium financing to STOLI schemes marketed as "free insurance," it created a perfect mixture of collusion, fraud, and deceptive trade practices. Because the policy serves as the only source of collateral for what could be hundreds of thousands of premium dollars, it is a convincingly good deal for both unsuspecting and complicit insureds. During the term of the loan, which generally lasts for the two-year contestability period, the insured is entitled to death benefits under the policy, minus any offset to repay the loan.[171] At the end of the first two years, the insured can either choose to repay the loan out-of-pocket and keep the policy, or, as marketed by Profiteers, simply sell the policy, payoff the lender, and keep the balance, sometimes exceeding one million dollars of net gain.[172]

G. Risks to Insureds

The greatest risk insureds face when participating in a STOLI transaction is lack of sufficient disclosure. As with most financial transactions, a participant must weigh the positive and negative components to ultimately arrive at a decision with which they feel most comfortable. When STOLI risks are not

169. *See* Lincoln Nat'l Life Ins. Co. v. Calhoun, 596 F. Supp. 2d 882, 885 (D.N.J. 2009).

170. *See* Lee Lytton, "*Save the Land from Uncle Sam": Using Life Insurance Premium Financing in Estate Planning*, 2 EST. PLAN. & CMTY. PROP. L.J. 421, 434 (2010) (distinguishing legitimate premium financing from STOLI transactions and providing an example of how a family farm facing liquidity concerns may use premium financing to procure life insurance to pay estate taxes).

171. *See* Jensen & Leimberg, *supra* note 101, at 111.

172. *See id.*; *Lincoln Nat'l Life Ins. Co.*, 596 F. Supp. 2d. at 885.

disclosed, the consequences to the insured can be severe. First, some insureds involved in a STOLI scheme don't understand they are participating in a fraudulent transaction.[173] Further, when completing a life insurance application, the insured is providing certain representations and is attesting to their veracity.[174] However, if the unscrupulous agent had the insured sign a blank application, the unsuspecting insured is unlikely to know what representations were even made.[175] Unbeknownst to the insured, the application is fraught with misrepresentations that the insured attested to when signing on the dotted line, potentially exposing the insured to criminal prosecution for defrauding an insurer[176] and violating insurable interest laws.

Insureds may also find themselves embroiled in civil litigation brought by the Profiteer. In one case, Claud Cypert, an elderly man, was sued by the Profiteer, New Stream Insurance, in a suit to recover all expenses paid by New Stream after Cypert was induced to enter into a STOLI transaction.[177] After careful review of the documents, Cypert raised concerns regarding a requirement that he endorse a 100% personal guarantee for the nearly $2 million loan used to procure the policy.[178] New Stream convinced Cypert that the guarantee was meaningless, would not be enforced, and was required only by the insurer.[179]

173. *See* Ohio Nat'l Life Assurance Corp. v. Davis, 803 F.3d 904, 910 (7th Cir. 2015) (believing the transaction to be legal, elderly insureds participated in a STOLI transaction solicited by a formerly licensed attorney and insurance agent).

174. *See* R. Marshall Jones, Stephan R. Leimberg & Lawrence J. Rybka, *'Free' Life Insurance: Risks and Costs of Non-Recourse Premium Financing*, 33 EST. PLAN. 3, 6 (2006).

175. *See* Jensen & Leimberg, *supra* note 101, at 122. *See also Lincoln Nat'l Life Ins. Co*, 596 F. Supp. 2d at 886 (discussing how the insured marked "no" on a certain question pertaining to the insured's intent to transfer the policy rights to a third party, causing the insurer to rely on the misrepresentations to its detriment).

176. *See* Jensen & Leimberg, *supra* note 101, at 115 (discussing how insurance fraud constitutes a misdemeanor in most states and can also be a felony crime in others).

177. Fleisher, *supra* note 107, at 590.

178. *Id.*

179. *Id.*

Shortly after the 2008 recession began, the secondary market value of Cypert's policy significantly declined and New Stream sought to recover the $2 million by way of the personal guarantee.[180]

Insureds also face potential tax consequences when engaging in a STOLI transaction, primarily in the form of inducements or discharge of indebtedness income.[181] When an insured is induced to purchase a life insurance policy, any benefit received from such inducement is taxed as ordinary income.[182] The second tax issue arises when a policy is procured by non-recourse premium financing. In the event the insurance policy could not be sold for a sufficient amount to repay the premiums loaned, any outstanding indebtedness discharged by the lender may be reported as taxable income,[183] thus leaving the unsuspecting insured with a heavy tax obligation and a realization that the premium financing scheme was never truly "non-recourse."[184]

STOLI schemes may also impair the insured's ability to sell their policy legitimately.[185] Because valid life settlements and fraudulent STOLI schemes utilize many of the same resources and are subject to the same regulations,[186] differentiating between them can be inherently difficult. So difficult, in fact, some state legislatures even attempted to ban all life settlements outright.[187] Lastly, STOLI schemes may also exhaust maximum

180. *Id.*

181. *See* Keller, *supra* note 113, at 21.

182. *See* 26 U.S.C. § 61 (2025) (defining gross income as all income derived from whatever source); *see also* Keller, *supra* note 113, at 21 (explaining that premiums paid on behalf of an insured during the first two years of a policy issuance may be taxable income).

183. Keller, *supra* note 113, at 21; *see* § 61.

184. *See* Keller, *supra* note 113, at 16, 21.

185. *See* Chancy et al., *supra* note 106, at 31.

186. *See id.* at 28. By way of example, valid life settlements and STOLI transactions are subject to state insurance codes and federal laws, and both require the services of insurance agents, insurers, life expectancy companies, third-party financing, and the secondary market. *See id.*

187. *See* S.B. 1543, 2012 S. Reg. Sess. (Cal. 2012).

insurance limits, thereby handcuffing the insured and restricting any ability to procure additional insurance for traditional uses.[188]

III. EARLY ATTEMPTS TO CURTAIL STOLI ABUSE

A. *The Model Act and State Legislation*

Although prohibition against wagering contracts had been well-settled, attempts to regulate the speculative nature of STOLI schemes began in 1993 when the National Association of Insurance Commissioners ("NAIC") began working on its first Viatical Settlement Model Act ("Model Act"),[189] shortly thereafter being adopted, in whole or in part, by states across the country.[190] The Model Act was seemingly intended to legitimize viatical settlements by formally repudiating STOLI transactions[191] and requiring a two-year waiting period between when a policy was originally sold and when it could be legally purchased by

188. *See* Chancy et al., *supra* note 106, at 31. By way of example, if an insured has a one million insurance limit and sells all one million to a Profiteer, the insured would be precluded from obtaining any additional insurance.

189. *See* Lovendusky, *supra* note 60, at 46.

190. *See* ARIZ. REV. STAT. ANN. § 20-443.02 (2008); ARK. CODE ANN. § 23-81-802 (West 2009); CAL. INS. CODE § 10113.1 (West 2009); CONN. GEN. STAT. ANN. § 38a-465 (West 2021); FLA. STAT. ANN. §§§ 626.9911(9) (West 2023), 626.99289 (West 2017), 626.99275(h) (West 2017); GA. CODE ANN. §§§ 33-59-2 (West 2010), 33-24-3(i) (West 2019), 13-8-2 (West 2016); HAW. REV. STAT. ANN. §§ 431C-2 (West 2012), 431C-42(1)(A)(x) (West 2012); IDAHO CODE ANN. § 41-1962 (West 2009); 720 ILL. COMP. STAT. ANN. 5/28-1 (WEST 2021); IND. CODE ANN. § 27-8-3-8 (West); KAN. STAT. ANN. § 40-5002 (West 2008); KY. REV. STAT. ANN. §§ 304.15-020 (West 2010), 304.15-717 (West 2010); LA. STAT. ANN. § 901 (West 1985); MINN. STAT. ANN. §§ 60A.0784 (West 2009), 60A.0786-7 (West 2009); N.H. REV. STAT. ANN. §§ 408-D:2, 12; N.J. STAT. ANN. § 17B:30B-18 (West 2020); N.Y. INS. LAW § 7815 (McKinney 2009); N.D. CENT. CODE ANN. § 26.1-33.4-01(7)(j) (West); OHIO REV. CODE ANN. § 3916.01 (West 2023); OKLA. STAT. ANN. tit. 36, §§ 4055.2, .11 (2022); OR. REV. STAT. ANN. §§ 744.318, 369 (West 2010); 40 PA. STAT. AND CONS. STAT. § 512 (West 2003); 27 R.I. GEN. LAWS ANN. § 27-72-2(9)(i)(A)(X) (West 2010); UTAH CODE ANN. §§ 31A-36-102, 113 (West 2010); VT. STAT. ANN. tit. 8, §§ 3835(18) (West 2014), 3844 (West 2010); WASH. REV. CODE ANN. § 48.102.006 (West 2009); WIS. STAT. ANN. § 632.69(g)(7) (West 2013).

191. *See* NCOIL LIFE SETTLEMENTS MODEL ACT (NAT'L CONF. INS. LEGISLATORS 2007); *see also* Lovendusky, *supra* note 60, at 46 (explaining the legitimizing effect of adopting the NAIC Model Act).

an investor lacking insurable interest.[192] Unfortunately, by legitimizing viatical settlements, the states handed STOLI Profiteers a crowbar to force their way into what was otherwise intended to be a legitimate secondary market.[193] Shortly after codifying the Model Act, the National Association of Insurance Commissioners began drafting a similar act regulating the burgeoning life settlement market, proposing to increase the waiting period to five years.[194]

In 2008, the NAIC, working in conjunction with the Securities and Exchange Commission and state legislators, sought to ban financed STOLI transactions outright by eliminating the allowance of non-recourse premium financing for certain types of insurance products, mainly cash value life insurance.[195] These organizations quickly realized that banning non-recourse financed STOLI programs is much harder said than done.[196] Using financing to procure insurance is not prohibited, and denying the insured from disposing of an inalienable right faced substantial concerns the *Grigsby* decision addressed.[197] By 2012, nearly thirty states had codified legislation regulating viatical and life settlements.[198] Adoption of the Model Act and the legislation that followed was a step in the right direction but did little to curtail STOLI abuse due to ambiguous statutory

192. *See* NCOIL LIFE SETTLEMENTS MODEL ACT § 11(N) (NAT'L CONF. INS. LEGISLATORS 2007); *see also* Heather Harris, *Life Insurance — Insurable Interest and the Freedom of Contract: Why Medicaid Settlement Legislation Cracks the Foundation of the Life Insurance Industry*, 38 W. NEW ENG. L. REV. 177, 187–88 (2016).

193. *See* Lovendusky, *supra* note 60, at 46.

194. *See* NAIC Viatical Settlements Model Act § 11(a) (NAT'L ASS'N INS. COMM'RS 2009); *see also* Harris, *supra* note 192, at 188.

195. *See* Martin, *Betting on the Lives of Strangers*, *supra* note 104, at 202–05.

196. *See* Grigsby v. Russell, 222 U.S. 149, 156–57 (1911); *see also* Lovendusky, *supra* note 60, at 51 (describing ways states have circumscribed these investments within the bounds of the law).

197. *See Grigsby*, 222 U.S. at 156.

198. Lovendusky, *supra* note 60, at 51.

definitions of "insurable interest" that resulted in widespread judicial confusion.[199]

B. Attempts to Define Life Settlements as a Security

Profiteers have benefited from federal and state regulators failing to uniformly define life settlements as a security. Determining whether an instrument is a security has been a significant source of litigation since the passing of the Federal Securities Act of 1933 (the "33 Act").[200] Broadly defined, a "security" is an instrument that could be sold as an investment.[201] The fundamental characteristic of a security "is an investment 'premised on a reasonable expectation of profits to be derived from the . . . efforts of others.'"[202] Notably missing from the 33 Act is life insurance.[203] In late 2009, the Securities and Exchange Commission ("SEC") created a taskforce to determine whether a life settlement met the definition of a security, ultimately making that recommendation in the 2010 staff report.[204]

The United States Supreme Court held that the definition of a "security" under the 33 Act was to be interpreted broadly, noting that many types of instruments would fall within the ordinary concept of a security, including stocks and bonds, along with the countless schemes devised by those who seek the use of other's money on the promise of profits.[205] The Court also held that instrument(s) known as a security have the same meaning for the purpose of application under the Federal

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199. *See id.* at 49.

200. *See generally* United Hous. Found. v. Forman, 421 U.S. 837, 847–48 (1975) (discussing the need for courts to determine what falls within the category of security).

201. *See* Securities Act of 1933, 15 U.S.C. § 77b(a)(1).

202. Firth v. Lu, 103 Wash. App. 267, 273 (2000) (quoting *Forman*, 421 U.S. at 852).

203. *See* § 77b(a)(1). *See also* § 77c(a)(8) (the Act does not apply to "[a]ny insurance or endowment policy or annuity contract or optional annuity contract, issued by a corporation subject to the supervision of the insurance commissioner. . . .").

204. *See* SEC, LIFE SETTLEMENTS TASK FORCE REPORT, *supra* note 134, at 39.

205. *See* Marine Bank v. Weaver, 455 U.S. 551, 555–56 (1982).

Securities Act and the Exchange Act.[206] In perhaps the most clarifying case to date, the Court held that a four-part test is used to determine whether a financial instrument rises to the level of a security.[207] Later known as the *Howey* Test, a financial instrument is a security if the investor (1) made an investment of money, (2) in a common enterprise, (3) with an expectation of profits, (4) based solely on the efforts of others.[208] However, the issue of whether a life settlement is a security remains open for debate.[209]

Despite twenty-two states defining life settlements as a security,[210] courts remain split on the issue, resulting in a mishmash of inconsistent rulings causing confusion and uncertainty within the life insurance industry.[211] The U.S. District Court for the Northern District of Illinois held that a life settlement meets the first part of the *Howey* Test, but fails the second, and thus a life settlement does not qualify as a security.[212] In Texas, the Texas Supreme Court held that life settlements are securities under the state's securities act.[213] In reaching its decision, the

206. *See Forman*, 421 U.S. at 849; Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

207. *See* Sec. & Exch. Comm'n v. W.J. Howey Co., 328 U.S. 293, 298 (1946).

208. *Id.*

209. *See* SEC, LIFE SETTLEMENTS TASK FORCE REPORT, *supra* note 134, at 39.

210. *See* ARIZ. REV. STAT. ANN. § 44-1801.27(a) (2024); ARK. CODE ANN. § 23-42-102 (West 2019); CAL. CORP. CODE § 25019 17(A)(xiii) (West 2001); DEL. CODE ANN. tit. 6, § 73-103(a)(23) (West 2023); FLA. STAT. ANN. § 517.021(23)(w) (West 2023); GA. CODE ANN. § 10-5-2(31)(E) (West 2020); IDAHO CODE ANN. § 30-14-102(28)(e) (West); KAN. STAT. ANN. § 17-12A102(28)(E) (West); KY. REV. STAT. ANN. § 292.310 (West 2010); ME. REV. STAT. ANN. tit. 32, § 16102.28 (West); MICH. COMP. LAWS ANN. § 451.2102c(c) (West 2009); MISS. CODE ANN. § 75-71-102(28) (West 2010); MONT. CODE ANN. § 30-10-103(24)(a)(xvi) (West 2023); NEB. REV. STAT. ANN. § 8-1101(15) (West 2023); N.H. REV. STAT. ANN. § 421-B:1-102(29)(D)(ii) (2023); N.D. CENT. CODE ANN. § 10-04-02 (West 2021); OHIO REV. CODE ANN. § 1707.01(B) (West 2021); OKLA. STAT. ANN. tit. 71, § 1-102.32e (West 2022); TENN. CODE ANN. § 48-1-102(21)(A) (West 2023); Life Partners, Inc. v. Arnold, 464 S.W.3d 660, 684 (Tex. 2015); UTAH CODE ANN. § 61-1-13(1)(ee)(i)(R) (West 2023); WIS. STAT. ANN. § 551.102(28) (West 2021).

211. *See* SEC, LIFE SETTLEMENTS TASK FORCE REPORT, *supra* note 134, at 39.

212. Zang v. All. Fin. Servs. of Ill., Ltd., No. 08 C 3370, 2010 WL 3842366, at *4–5 (N.D. Ill. Sept. 27, 2010) (holding that a life settlement failed to satisfy the second prong because it was not a common enterprise).

213. Life Partners, Inc. v. Arnold, 464 S.W.3d 660, 686 (Tex. 2015).

court examined whether a life settlement satisfied the fourth prong of the *Howey* test, questioning whether profits from a life settlement were based solely on the efforts of others.[214] The court turned to the Eleventh Circuit for guidance, adopting the analysis in *SEC v. Mutual Benefits Corporation*[215] where the court applied a flexible interpretation of "based solely on the efforts of others," holding that the Profiteer's assistance with policy procurement, negotiating prices, and ongoing policy monitoring was sufficient to trigger *Howey's* fourth prong.[216]

Federal courts do not fare much better, with some decisions adopting the flexible interpretation finding that life settlements fall under the securities umbrella,[217] while other decisions disagree that life settlements satisfy the "common enterprise" prong under the *Howey* Test and, thus, are not securities.[218]

Determining whether a life settlement is a security can have substantial consequences for those engaging in STOLI transactions. Security transactions are regulated by the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, and the Investment Company Act of 1940.[219] If the sale of a life insurance policy is a security transaction, any life insurance agent and Profiteer engaged in the sale, solicitation, or brokering of STOLI policies would be subject to a fiduciary standard, thereby imposing harsh penalties for fraud and

214. *Id.* at 681; *see also* Sec. & Exch. Comm'n v. W.J. Howey Co., 328 U.S. 293, 301 (1946).

215. *See* Sec. & Exch. Comm'n v. Mut. Benefits Corp., 408 F.3d 737, 742 (11th Cir. 2005).

216. *See Arnold*, 464 S.W.3d at 682–845.

217. *See, e.g.*, Wuliger v. Eberle, 414 F. Supp. 2d 814, 824 (N.D. Ohio 2006) (the promoter's selection of the policy is critical to the investor's expectation of profit and thus satisfied the "efforts of others" prong); *In re* Trade Partners, Inc. Investors Litig., No. 1:07-MD-1846, 2008 WL 3992168, at *8 (W.D. Mich. Aug. 22, 2008).

218. *See* Zang v. All. Fin. Servs. of Ill., Ltd., No. 08 C 3370, 2010 WL 3842366, at *4–5 (N.D. Ill. Sept. 27, 2010); Sec. & Exch. Comm'n v. Tyler, CIV.A.3:02 CV 0282 P, 2002 WL 32538418, at *4–5 (N.D. Tex. Feb. 21, 2002).

219. Sec. & Exch. Comm'n, *The Laws That Govern the Securities Industry*, INVESTOR.GOV, https://www.investor.gov/introduction-investing/investing-basics/role-sec/laws-govern-securities-industry [https://perma.cc/Y7Q8-EZ5R] (last visited Apr. 14, 2025).

misrepresentations, which may include enforcement action, disbarment, disgorgement, and criminal prosecution.[220]

C. Howey *Test Deficiencies*

For STOLI policies to be held as a security, the transaction must satisfy the four prongs of the *Howey* test. As examined below, the test itself is inherently imperfect, leaving room for STOLI transactions to escape negative regulatory enforcement and judicial rulings.

(1) *An investment*: in a STOLI transaction, the insured does not invest any capital; instead, they receive funds from the Profiteer in exchange for the policy's sale.[221] Consequently, the Profiteer's payment of money may be seen as satisfying the first prong of the *Howey* test, but what of the other party to the transaction? Does an insured who is knowingly participating in the scheme avoid penalties under state and federal securities laws? It appears so.[222]

(2) *Expectation of Profit*: when a Profiteer acquires a life insurance policy, the purchase price must, inevitably, be less than the death benefit if the Profiteer is to realize a net gain after accounting for investment risk, cost of ongoing premiums to ensure the policy remains in force at the time of the insured's death, and other management expenses.[223] Conversely, the insured also has an expectation of profit by receiving a lump sum exceeding any out-of-pocket premiums the insured may have paid.[224] This

220. *See* 17 C.F.R. § 240.10b-5 (2024) (in connection with the purchase or sale of any security, Rule 10b-5 prohibits the making of any untrue statement of material fact or omitting any material fact that would cause any statement to be misleading).

221. *See* Jensen & Leimberg, *supra* note 101, at 111; *see also* Life Prod. Clearing, LLC v. Angel, 530 F. Supp. 2d 646, 650 (S.D.N.Y. 2008).

222. *See generally* Brian T. Casey & Ryan J. Last, *State Securities Acts Compliance Issues for Tertiary Market Life Settlement Policy Traders*, 55 REV. SEC. & COMMODITIES REGUL. 243, 243 (Dec. 14, 2022) ("The tertiary market for nonfractionalized life insurance policies that are not variable life insurance policies is largely unregulated.").

223. *Id.* at 243–44, 243 n.1.

224. *See id.* at 243–44, 46.

arrangement would certainly satisfy the second prong of the *Howey* test.[225]

(3) *Common Enterprise Investment:* the third prong of the *Howey* test is where the analysis seems to break down. In applying the common enterprise prong, none of the three common enterprise formulations seem applicable. In a STOLI transaction, the Profiteer is the sole investor, and strict vertical commonality requiring risk correlation between the Profiteer and the insured is nonexistent.[226] Once the policy is sold, the insured's side of the transaction concludes, and the Profiteer bears all ongoing risk.[227] Further, there is no broad vertical commonality where the Profiteer's profit realization hinges on the any expertise of the insured.[228] The insured is seemingly nothing more than a vessel to procure life insurance. Consequently, it appears a true application of the third prong proves helpful to Profiteers and insureds involved in STOLI transactions.[229]

(4) *Profits Derived Solely From the Efforts of Others*: notably, the Eleventh Circuit's decision in *Mutual Benefits* has not been universally adopted by other federal judicial circuits.[230] Although the Supreme Court in *Howey* emphasized the essential work to generate profits must be carried out "solely" by the efforts of others,[231] *Mutual Benefits* relies on the dissenting opinion in *Life Partners*, reasoning that a "clean distinction between a promoter's activities prior to his having use of an investor's money and his activities thereafter" is not required.[232] Conceding that post-purchase activities may more easily satisfy the third prong, the court noted that "significant pre-purchase

225. *See id.* at 246.
226. *Id.* at 247; *see* Sec. & Exch. Comm'n v. W.J. Howey Co., 328 U.S. 293, 298–301 (1946).
227. Casey & Last, *supra* note 222, at 247.
228. *Id.*
229. *See id.*; *see W.J. Howey Co.*, 328 U.S. at 299.
230. Casey & Last, *supra* note 222, at 247.
231. *Id.*; *W.J. Howey Co.*, 328 U.S. at 301.
232. Sec. & Exch. Comm'n v. Mut. Benefits Corp., 408 F.3d 737, 743 (11th Cir. 2005).

managerial activities undertaken to insure [t]he success of the investment may also satisfy [the] *Howey* [test]."[233] However, in contrast to *Life Partners*, where the insurer was not found to have engaged in significant post-purchase services, *Mutual Benefits* involved a company that fractionalized life insurance policies and was undertaking substantial post-purchase efforts for investors.[234] As previously stated, however, once the sale of a STOLI policy concludes, there is no ongoing relationship between the Profiteer and the insured.[235] Most importantly, the insured's expectation of profit is not based on any post-purchase activities of the Profiteer.[236] Even if analysis under the *Howey* Test would necessarily require the Profiteer to be the "investor" and the insured to be the "seller," the fourth prong of the *Howey* test is not likely satisfied.[237]

D. Survey of Cases Pre-Anti STOLI Legislation

The following cases illustrate the challenges courts faced when interpreting the insurable interest doctrine and incontestability protections under varying state statutory authority prior to the adoption of anti-STOLI legislation. By exploiting collective judiciary confusion, as the following cases illustrate, sophisticated Profiteers were able to circumvent long-established insurance conventions.

1. Lincoln National Life Insurance Company v. Gordon R.A. Fishman Irrevocable Life Trust

In *Lincoln National Life Insurance Company v. Gordon R.A. Fishman Irrevocable Life Trust*, the insurer sought a declaratory judgment that third parties unlawfully acquired several

233. *See* Casey & Last, *supra* note 222, at 247; *Mut. Benefits Corp.*, 408 F.3d at 743.
234. *Mut. Benefits Corp.*, 408 F.3d at 740; *see* Casey & Last, *supra* note 222, at 247.
235. *See* Casey & Last, *supra* note 222, at 247.
236. *See id.*
237. *Id.*

disputed policies pursuant to a misrepresented STOLI scheme.[238] In 2005, the insurer issued policies totaling $30 million in death benefits, initially procured by the insured individually but later transferred to an irrevocable trust.[239] The colluding agent represented that the scheme would provide the insured with a large cash payment, the premiums would be financed by a non-recourse loan, and that a trust would own the policies, seemingly to evade detection by the insurer.[240] The agent also offered to pay the insured $100,000 for each new client referred to him.[241] After the policies were issued, the lender filed with the insurer a limited assignment that pledged the policies as collateral for the non-recourse premium financing loans.[242] Despite recognizing that defendant-Profiteer found a loophole in the state's law barring STOLI policies,[243] the court nonetheless held that insurable interest was established at the time the policies were applied for, and due to state law recognizing that an insurance policy may be pledged as a security assignment without impacting the determination of insurable interest, it was compelled to award defendant-Profiteer's motion for summary judgment.[244]

2. Kramer v. Phoenix Life Insurance Company

In *Kramer v. Phoenix Life Insurance Company*, the widow of her deceased husband brought action against the insurers, Profiteers, and originating life insurance agent, seeking to have the death proceeds of the alleged STOLI scheme paid to her.[245] As

238. Lincoln Nat'l Life Ins. Co. v. Gordon R.A. Fishman Irrevocable Life Tr., 638 F. Supp. 2d 1170, 1170–71 (C.D. Cal. 2009).

239. *Id.* at 1170–71, 1173–74.

240. *Id.* at 1172–73.

241. *Id.* at 1173.

242. *Id.* at 1175.

243. *Id.* at 1179.

244. *Id.* at 1179–80.

245. Kramer v. Phoenix Life Ins. Co., 940 N.E.2d 535, 537 (2010).

early as 2003, the colluding life insurance agent solicited the deceased, an elderly and seemingly sophisticated individual, to engage in numerous STOLI transactions with several insurers, resulting in a collective death benefit of $56 million being issued.[246] To shield the scheme from the insurers' watchful eyes, the deceased established two trusts and named his adult children as the beneficiaries.[247] Ultimately, the trusts were funded with the disputed insurance policies.[248] Shortly after the two-year contestability expired, one of the deceased's children assigned their trust interest to defendant-Profiteers.[249] At no point did the insured or his children pay any premiums, nor were any of the children true beneficiaries.[250]

Following the insured's death in 2008, his widow refused to provide copies of the death certificate to any of the Profiteers, instead choosing to file suit alleging the policies violated the state's insurable interest law and that she was the rightful beneficiary.[251] The insurers argued that an individual who purchases life insurance with the intent of immediately assigning the policy is void for lack of insurable interest.[252] The court looked to the plain meaning of the insurable interest statute, which read:

> [A]ny person of lawful age may on his own initiative procure . . . a contract of insurance upon his own person for the benefit of any person, firm, association or corporation. Nothing herein shall be deemed to prohibit the immediate transfer or

246. *Id.*
247. *Id.*
248. *Id.*
249. *Id.*
250. *Id.*
251. *Id.* at 538.
252. *Id.*

> assignment of a contract so procured or effectuated.[253]

So long as the insured had insurable interest at the time of policy procurement, the court interpreted legislative intent to allow the insured's immediate assignment to a Profiteer lacking insurable interest.[254] Holding both the widow and the insurer failed to establish the insured lacked insurable interest at the time of policy issuance, the court answered in the negative and found for defendant-Profiteers.[255]

3. Lincoln National Life Insurance Company v. Inzlicht-Sprei

In *The Lincoln National Life Insurance Company v. Inzlicht-Sprei*, plaintiff-insurer filed an interpleader action to resolve competing claims over a disputed policy.[256] As defendants, the insured's estate and the Profiteer both moved for summary judgment, each arguing they were entitled to the death benefit.[257]

In 2008, the elderly insured worked with colluding insurance agents and Profiteers to acquire life insurance totaling $20 million in death benefits.[258] As typical of STOLI schemes, the agent and Profiteers represented that the insured would not be responsible for paying any premiums and that they would secure non-recourse premium financing to carry the policy through the two-year contestability period with the goal of selling the policy thereafter.[259] This STOLI transaction was

253. *Id.* at 539.
254. *Id.* at 541–42.
255. *Id.* at 536–37, 542.
256. Lincoln Nat'l Life Ins. Co. v. Inzlicht-Sprei, No. 16-CV-5171, 2020 WL 1536346, at *7 (E.D.N.Y. Mar. 31, 2020).
257. *Id.*
258. *Id.* at *1.
259. *See id.*

particularly egregious, reserving to the Profiteer 95% of either the policy's death benefits or sales proceeds.[260]

In 2016, the insured died, and the various parties seeking payment of the death proceeds filed claims.[261] Representing the insured's estate, the executor argued they were entitled to the death benefit because the policy originated as a STOLI transaction and is, therefore, void under state law.[262] The court disagreed, citing state law that allows a person to purchase an insurance policy and immediately transfer it to someone who does not have insurable interest in the life of the insured, *even if the policy was procured for that very purpose*.[263] Not finding the representative's argument persuasive, the court dismissed the estate's motion and held for the Profiteer.[264]

4. Sun Life Assurance Company of Canada v. Paulson

Sun Life Assurance Company of Canada v. Paulson[265] illustrates another typical STOLI case that undermines the insurable interest doctrine. Beginning in 2002, complicit insured, John Paulson, was alleged to have procured thirty life insurance policies totaling over $80 million in death benefits.[266] After the two-year contestability period had expired, Paulson sold three of his policies to separate Profiteers for a large cash payment.[267] One of the insurers, Sun Life, issued seven of the disputed policies and, upon discovering Paulson's scheme, sought to void the policies for want of insurable interest, arguing that Paulson had fraudulently obtained the policies with the intent to sell them at the

260. *See id.* at *2.
261. *Id.* at *6.
262. *Id.* at *6, *14.
263. *Id.* at *16 (emphasis added).
264. *Id.* at *17.
265. *See* Sun Life Assurance Co. of Canada v. Paulson, No. 07-3877, 2008 WL 5120953, at *2 (D. Minn. Dec. 3, 2008).
266. *Id.*
267. *Id.* at *1.

conclusion of their contestability periods which violated the state's insurable interest doctrine and, therefore, the policies' incontestability clause was not enforceable.[268] Not finding Sun Life's argument convincing, the court held that in order for a policy to be void ab initio, Sun Life would have to establish that Paulson entered into a contractual agreement to sell the policy to a Profiteer prior to issuance of the policies.[269] Because Sun Life failed to meet this burden, the court held for Paulson.[270] This case illustrates one of the easiest ways Profiteers have been able to circumvent the insurable interest laws. By simply creating a "wink-wink" sales arrangement, no formal contractual agreement exists for substantiating evidence, thereby resulting in the presumption that the insured indeed established insurable interest in themselves at the time of policy issuance.

These cases illustrate how the insurable interest doctrine failed to prevent STOLI programs prior to the adoption of anti-STOLI legislation. Seemingly, the greatest collateral damage from these cases is the precedent of requiring insurers to establish some prearranged agreement between the insured and a Profiteer prior to the policy being issued.[271] In doing so, insurers were placed at a significant disadvantage in their attempts to adjudicate disputed policies. To avoid issues with the insurable interest law, the insured could simply argue that, at the time the policy was issued, they had an intent to use the policy for traditional purposes and cannot be held accountable for simply changing their minds.

268. *Id.*
269. *Id.* at *4–5.
270. *Id.* at *6.
271. *See id.* at *1, *4.

IV. SURVEY OF CASES POST ANTI-STOLI LEGISLATION—THE ILLICIT SECONDARY MARKET REMAINS STRONG

Around 2007, state insurance regulators began to adopt anti-STOLI legislation.[272] However, despite legislators' attempts to curtail STOLI abuse, the following cases illustrate how Profiteers continue their crusade to usurp fundamental insurance conventions and the unfortunate reality that anti-STOLI legislation has done little to discourage Profiteers from continuing their abusive schemes.

A. AEI Life, LLC v. Lincoln Benefit Life Company

In *AEI Life, LLC v. Lincoln Benefit Life Company*, the insurer issued the disputed policy with an approximate death benefit of $6 million.[273] Since the date of policy issuance, all premiums were timely remitted to the insurer.[274] The initial owner of the policy was a trust, which named the insured's son as the sole beneficiary.[275] Shortly before the policy was issued, the Profiteer wired $1 million to the trust's bank account.[276] A few months after the two-year contestability period expired, the policy was ultimately sold to the Profiteer.[277] The insurer argued the policy was procured fraudulently and was unenforceable due to lack of insurable interest.[278] Advancing a bona fide purchaser for value argument, the Profiteer sought a declaratory judgment that the policy was enforceable under the state's two-year contestability statute that prohibits insurers from challenging lack

272. Kevin C. Glasgow & Nicolas A. Novy, *JIFA: Life Insurance Wagering Contracts and Identity Fraud: A Deadly Combination*, COAL. AGAINST INS. FRAUD (Feb. 12, 2024), https://insurancefraud.org/publications/jifa-life-insurance-wagering-contracts-and-identity-fraud-a-deadly-combination/ [https://perma.cc/VZ73-RBFU].

273. AEI Life, LLC v. Lincoln Benefit Life Co., 225 F. Supp. 3d 136, 141 (E.D.N.Y. 2016).

274. *Id.*

275. *Id.*

276. *Id.*

277. *Id.*

278. *Id.*

of insurable interest upon expiration of the contestability period.[279] Despite the insurer proving that the policy was fraudulently purchased, the court found for the Profiteer, holding that state law barred an insurer from circumventing the harsh two-year contestability rule.[280]

B. Columbus Life Insurance Company v. Wilmington Trust, N.A.

In *Columbus Life Insurance Company v. Wilmington Trust, N.A.*, the insurer sought judgment declaring the disputed policy void ab initio due to lack of insurable interest.[281] In 2003, the insurer issued a nearly $3 million policy naming the insured's family partnership as the beneficiary,[282] who paid the premiums through the two-year contestability period.[283] Shortly thereafter, the policy was sold to defendant-Profiteer.[284] Upon the insured's death in 2020, the Profiteer filed a death claim for benefits under the policy.[285]

In 2021, the insurer filed suit, alleging the policy was purchased as part of a STOLI scheme.[286] In its response, the Profiteer argued that state law precluded the insurer from challenging the policy beyond the two-year contestability period.[287] Because no precedent had existed to determine whether lack of insurable interest may be challenged after expiration of the contestability period, the court granted review.[288]

Applying a plain reading of the state's incontestability statute, the court solidly affirmed the statute's effect as a complete

279. *Id.*
280. *Id.* at 149–50.
281. *See* Columbus Life Ins. Co. v. Wilmington Tr., N.A., 532 P.3d 757, 759 (Ariz. 2023).
282. *Id.* at 758.
283. *Id.*
284. *Id.* at 758–59.
285. *Id.* at 759.
286. *Id.*
287. *Id.*
288. *Id.*

bar to policy challenges after two years from the date of issuance, reasoning that any other interpretation would drain the policy's validity "of its sole exception: nonpayment of premiums."[289] To ensure no confusion over statutory interpretation remained, the court further noted that the insurer's attempt to void the policy ab initio would eviscerate the insured's remedy provided under the statute.[290]

Acknowledging that a decision in favor of the Profiteer may leave loopholes for unscrupulous STOLI abuse, the court surprisingly held for the Profiteer and seemingly left blame upon the feet of the state legislature, noting that it is not the court's duty to inject its own policy but to confine itself to statutory interpretation.[291]

C. Columbus Life Insurance Company v. Wells Fargo Bank, N.A.

In *Columbus Life Insurance Company v. Wells Fargo Bank, N.A.*, the court had to decide whether a policy issued solely for the purpose of selling is void under state law.[292] Sometime around early 2005, the colluding insured learned that his friend made extra money by simply selling a newly issued policy to a Profiteer.[293] Seeking quick cash, the insured was introduced to a life insurance agent who helped to procure the policy using a two-year premium financing scheme, with no upfront costs or liability to the insured.[294] In his sales pitch, the unscrupulous life insurance agent represented that upon loan maturity, the insured could simply surrender the policy to the lender in full

289. *Id.* at 761.
290. *Id.*
291. *Id.* at 762.
292. Columbus Life Ins. Co. v. Wells Fargo Bank, No. 21-CVS-0052, 2023 WL 3243965, at *1 (N.C. Super. May 4, 2023).
293. *Id.*
294. *Id.* at *1–2.

satisfaction of the loan.[295] Ultimately, an application was submitted, whereby the insured represented he was to be the owner, his estate was the intended beneficiary, and the purpose of the insurance was for personal and family protection.[296] Critically absent was any mention that the initial premiums would be funded through a colluding lender[297]—egregiously, the insured misrepresented that the policy would not be premium financed.[298] Two years after the policy was issued, the policy was sold on the secondary market, ultimately to the highest bidder, and netted the insured over $200,000.[299]

In 2021, the insurer brought suit seeking declaratory judgments that the policy was an illegal wagering contract and that it was void for lack of insurable interest.[300] Although the insured testified that he had not been in the market for life insurance, had no desire to name his wife or children as beneficiaries, and had no intention to pay the premiums himself, repay the loan, or retain the policy,[301] the court held for the Profiteer. Affirming that a "life insurance policy is a form of property . . . that, once lawfully issued, . . . can be assigned or sold to any third party—for investment purposes or otherwise,"[302] the court clarified the state's insurable interest rule: a policy is "void as a wagering contract only where there is evidence of an agreement—*prior to the policy's issuance*—that the policy would be assigned to a third party *and that the third party participated in that agreement*."[303] Because the Profiteer was not involved prior to or at the time of policy issuance, the insurer failed to satisfy the

295. *Id.* at *2.
296. *Id.*
297. *Id.*
298. *Id.* at *3.
299. *Id.* at *4.
300. *Id.* at *5.
301. *Id.* at *2.
302. *Id.* at *7.
303. *Id.* at *11 (emphasis added).

necessary requirements to void the policy, and it was held as legally valid.[304]

D. Pacific Life Insurance Company v. U.S. Bank, National Association

In *Pacific Life Insurance Company v. U.S. Bank, National Association*,[305] seeking declaratory relief from the Florida Southern District court, a California-based insurer brought suit to set aside a twenty-million-dollar policy arguing (1) Profiteers induced the Florida-domiciled to acquire the policy and (2) the Profiteer lacked insurable interest when the policy was purchased.[306] Principally based in California, Defendant-Profiteer sought dismissal on procedural grounds, arguing the Profiteer's solicitation of the policy in California was not sufficient to vest personal jurisdiction in the southern district of Florida.[307] Seeking guidance from *Estate of Seymour Krinsky v. The GIII Accumulation Trust*,[308] where the court held merely servicing a life insurance policy was not sufficient to render personal jurisdiction, the court held the insurer failed to demonstrate any meaningful evidence that would bring defendant-Profiteer under the provisions of Florida's long-arm statutes,[309] thus granting defendant-Profiteer's motion to dismiss.[310]

V. REMEDIES

Because the insurer is the ultimate arbiter, it stands as the first line of defense against STOLI schemes. In fact, insurers

304. *Id.*

305. Pac. Life Ins. Co. v. U.S. Bank, Nat'l Ass'n, No. 23-CV-20262, 2023 WL 5747710 (S.D. Fla. Sept. 6, 2023).

306. *Id.* at *1.

307. *See id.* at *4.

308. *See id.* (citing Est. of Seymour Krinsky v. GIII Accumulation Tr., No. 22-80059-CIV (S.D. Fla. May 25, 2022)).

309. *See id.*

310. *See id.*

have a legal duty to establish insurable interest at the time of policy issuance.[311] Although seasoned Profiteers and colluding life insurance agents are well versed in how to circumvent the system, clearer questions on the policy application regarding the insured's intent and more exhaustive phone interviews may help the carrier uncover an emerging STOLI transaction. Specifically, the insurer would be well advised to require both written and oral representations regarding the insured's intent with the policy. For example, the insurer should clearly ask the insured if they have contemplated or discussed premium financing with any party, been presented with marketing or sales material regarding life settlements, been advised they will receive "free insurance," or if they have been offered any financial incentive to apply for the policy. If the insured fails to disclose or misrepresents information to the carrier, the carrier is in a much better position to have the court void the policy once the STOLI scheme is uncovered.[312] However, uncovering a STOLI transaction during the application period can remain difficult even with probing questions.[313] Another best practice is for the insurer to continually investigate the status of policies after they have been issued, looking for potential red flags that should be immediately addressed or, at a minimum, continue to be tracked.[314] For example, the insurer should be looking for any transfers of the policy to a trust shortly after policy issuance, a strong indicator that the policy is part of a STOLI "stealth" transaction.[315]

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311. *See* Francis M. Dougherty, *Insurer's Tort Liability for Wrongful or Negligent Issuance of Life Policy*, 37 A.L.R. 4th 972 (1985).

312. *See id.*

313. *See, e.g.*, United States v. Carpenter, 190 F. Supp. 3d 260, 264, 287 (D. Conn. 2016), *aff'd sub nom.* United States v. Bursey, 801 F. App'x 1 (2d Cir. 2020) (reviewing the difficulties in discovering a STOLI transaction despite efforts to expose the "red flags" of a STOLI transaction).

314. *See id.* at 264.

315. *See id.*

With the increasing use of technology in the insurance industry, using blockchain analysis to detect suspicious patterns or transactions commonly associated with STOLI schemes may help to identify bad actors.[316] By tracing the flow of funds and identifying unusual activity, insurers can gather evidence to support claims of fraudulent conduct.[317] Similarly, insurers can leverage AI algorithms to analyze vast amounts of data and potentially detect anomalies indicative of STOLI activity.[318] By using machine learning techniques, insurers may be able to identify red flags such as unusual policy owner behavior, atypical transactional patterns, or inconsistencies in financial information.[319] This proactive approach may allow insurers to intervene early and mitigate the risks posed by a suspected STOLI transaction.

Because there is a presumption of insurable interest when the initial premium is paid by the insured, insurers should also be watchful for small initial premium payments, followed by a large payment that pays off the annual balance due. In many STOLI transactions, the insured will pay the minimum initial premium to bind coverage to support insurable interest, which is later followed by the Profiteer's payment after the policy was sold.[320]

States also share a responsibility to protect their citizens from insurance abuse and fraud.[321] Regarding STOLI abuse, this

316. *See* Kara P. Pike, Fran Roggenbaum & Fred Garsson, *Big Data and Algorithms Are Revolutionizing the Insurance Industry?*, PULSE: PARTING THE CLOUDS FOR 2023, Winter 2023, at 1, 8–10.

317. *See id.*

318. *See* NAT'L ASSOC. OF INS. COMM'R, CAUSALITY ACTUARIAL AND STATISTICAL (C) TASK FORCE REGULATORY REVIEW OF PREDICTIVE MODELS 2 (2022).

319. *See generally What Is Fraud Detection and Why Is It Needed*, FRAUD, https://www.fraud.com/post/fraud-detection [https://perma.cc/Y3P7-58N6] (last visited Apr. 14, 2025) (discussing the applicability of various forms of fraud detection).

320. *See* Life Prod. Clearing, LLC v. Angel, 530 F. Supp. 2d 646, 650 (S.D.N.Y. 2008).

321. *See generally* McCarran-Ferguson Act, 15 U.S.C. § 1011 (1945) (obligating states to regulate insurance fraud).

duty is heightened due to Profiteers and colluding agents targeting the state's elderly population.[322] State regulations primarily seek to avoid STOLI transactions by punishing the colluding agent with fines or license suspension.[323] In particularly egregious situations, the enforcement action may result in permanent revocation of the agent's license or imposing criminal penalties.[324] One limitation to state enforcement action, however, is that it is closed to private individuals wishing to seek redress.[325] Thus, injured insureds and insurers cannot rely on regulatory action to provide any meaningful remedy, although the injured party may gain some satisfaction knowing the colluding agent has been fined or barred from the industry. Another deficiency with legislative remedies is that insurance regulations, namely insurable interest and incontestability statutes, are codified on the state level.[326] When uniform insurable interest and contestability protections are lacking, Profiteers simply circumvent strict anti-STOLI legislation by carrying out their scheme in "pro-STOLI" states that seemingly permit the unfettered assignment of policies to those lacking insurable interest.[327]

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322. *See, e.g.*, *Life Prod. Clearing*, 530 F. Supp. 2d at 648 (discussing how STOLI schemes target the elderly); TEX. HUM. RES. CODE ANN. § 48.002 (West 2015) (Texas elder protection statute).

323. *See* TEX. INS. CODE ANN. art. 101.105 (West 2009).

324. *See* TEX. INS. CODE ANN. art. 4001.159 (West 2005) ("[T]he department may suspend or revoke the temporary appointment powers of an agent, insurer, or health maintenance organization if, after notice and opportunity for hearing, the department determines that the agent, insurer, or health maintenance organization has abused appointment powers."); *see also* TEX. INS. CODE ANN. art. 101.106 ("(a) [a] person . . . who intentionally, knowingly, or recklessly violates Section 101.102 commits an offense. (b) An offense under this section is a felony of the third degree.").

325. *Cf.* TEX. INS. CODE ANN. art. 101.103 (West 2023) (the commissioner may seek remedies for violative conduct, not individual persons).

326. *See* 15 U.S.C.A. § 6701 (West).

327. *See* Brian Donovan & Damien Marshall, *Betting on Strangers' Lives: A Brief Look at How Different States Are Scoring the Insurable Interest vs. Incontestability Provision Debate*, KING & SPALDING (Feb. 4, 2021), https://www.jdsupra.com/legalnews/betting-on-strangers-lives-a-brief-look-1815416/ [https://perma.cc/NZC6-VFCS].

Although criminal prosecution is rarely sought, the cloud of criminal culpability may prove dissuading for those contemplating a STOLI transaction. In particularly egregious cases, the state attorneys general or insurance regulator, in conjunction with federal authorities, may prosecute individuals violating state and federal securities laws.[328] The National Association of Insurance Commissioners and the National Conference of Insurance Legislators Life Settlement Acts declared STOLI to be punishable as a felony crime,[329] although only twenty states adopted this updated Model Act.[330] Notably, the Model Act holds that "[a]ny person who knowingly presents false information in an application for [life] insurance[,]" or has engaged in stranger-owned life insurance, "is guilty of a crime" and may be subject to prosecution.[331] As of the date of this Article, however, research for this Article failed to produce any meaningful results where the Model Act was consistently used for criminal prosecution.

A. Examination of Nontraditional Defenses

1. Uniform Commercial Code

Profiteers take many forms. Not surprisingly, collusive premium finance lenders portray themselves as legitimate creditors. On the surface, STOLI lenders appear to be issuing valid loans—interest is charged, loan terms are memorialized in a promissory note, and the lender will remit an assignment to the insurer to collateralize the policy. The lender's scheme, however, is quickly uncovered when no real enforcement action is

328. *See* Jensen & Leimberg, *supra* note 101, at 115.

329. *See* NAIC VIATICAL SETTLEMENTS MODEL ACT § 11(a) (NAT'L ASS'N INS. COMM'RS 2009); NCOIL LIFE SETTLEMENTS MODEL ACT § 11(n) (NAT'L CONF. INS. LEGISLATORS 2007).

330. *See* NCOIL LIFE SETTLEMENTS MODEL ACT § 11(n), 14(b)(1) (NAT'L CONF. INS. LEGISLATORS 2007); *Regulations Overview*, LISA, https://www.lisa.org/regulations_overview [https://perma.cc/9UFB-BVAM] (last visited Apr. 14, 2025).

331. NCOIL LIFE SETTLEMENTS MODEL ACT § 14(b)(1) (NAT'L CONF. INS. LEGISLATORS 2007).

sought after the expiration of the two-year contestability period.[332] Instead of pursuing the insured-borrower for repayment, the lender simply forecloses on the policy, subsequently becoming the owner and beneficiary entitled to all policy benefits upon the death of the insured.[333]

The Uniform Commercial Code ("UCC") incorporates meticulously crafted guidelines designed to avoid fraud and ensure the prompt settlement of financial transactions, which would undoubtedly be helpful in combating STOLI financing. Article 9 of the Code governs nearly all security interest transactions[334] yet, perplexingly, the Code largely excludes life insurance as a viable security interest.[335] California, however, is an exception, providing that third-party loans may be governed by Article 9.[336] Nonetheless, even if an insurer could successfully argue that Article 9 governs a premium financed STOLI policy and, therefore, the Profiteer would be bound by the Code, the UCC expressly immunizes them if they successfully argue their status as a non-colluding securities intermediary.[337] Further, if a Profiteer fails to secure immunity, notably absent from the Code are exemptions pertaining to the *initial purchaser*[338] of a policy, whether the purchase occurs by way of sale or foreclosure.[339] Article 8 of the UCC further provides that "[a]n action

332. *See* Kalyn Johnson, *Life Insurance Contestability Period*, EFFORTLESS INS., https://www.effortlessinsurance.com/life-insurance-contestability-period/ [https://perma.cc/FUA3-NFZ9] (Nov. 24, 2024).

333. *See* Swisher, *supra* note 159, at 726.

334. Andrew Verstein, *Bad Policy for Good Policies: Article 9's Insurance Exclusion*, 17 CONN. INS. L.J. 287, 289 (2011); *see also* U.C.C. § 9-109(a)(1) ("[T]his article applies to: (1) a transaction, regardless of its form, that creates a security interest in personal property. . . .").

335. *See* U.C.C. § 9-109(d)(8) ("[T]his article does not apply to: . . . a transfer of an interest in or an assignment of a claim under a policy of insurance . . . .").

336. *See* CAL. COM. CODE § 9109(d)(8) (West 2015); *see also* Verstein, *supra* note 334, at 342.

337. *See* U.C.C. § 8-115:1 (7 HAWKLAND U.C.C.); Wells Fargo Bank v. Est. of Malkin, 278 A.3d 53, 66–67 (Del. 2022).

338. "Initial purchaser" is defined here as the first party to acquire ownership rights in the policy after policy issuance.

339. *See* U.C.C. § 8-115:1 (7 HAWKLAND U.C.C.).

based on an adverse claim to a financial asset . . . may not be asserted against a bona fide purchaser who acquires a security entitlement . . . for value and without notice of the adverse claim."[340] To all appearances, the Code fails to provide any meaningful protection against STOLI abuses. There is, however, one more arrow in the UCC quiver: collusion. The Code also expressly exempts a lender from successfully exercising its rights under a security instrument where the lender is found to have participated in collusion.[341] Seemingly, it would be exceedingly difficult for Profiteers, whether as a soliciting purchaser or a foreclosing lender, to escape a finding of collusion. Any other interpretation of the UCC would effectively immunize every STOLI transaction and render Article 8 meaningless.

Furthermore, Section 2-206 of the UCC addresses requirements for contracts involving the sale of goods,[342] but its principles can be applied analogously to other types of contracts, including insurance policies. Because STOLI schemes involve a speculative and one-sided arrangement where the insured stands to benefit financially without providing any valid consideration in return, insurers may argue policy avoidance due to insufficient consideration.[343] Under Section 2-302 of the UCC, insurers may also assert that the STOLI arrangement is unconscionable.[344] The imbalance of power and the exploitative nature of STOLI schemes, where vulnerable elderly insureds are induced into purchasing large insurance policies for the Profiteer's financial gain, would seemingly rise to unconscionability under accepted UCC conventions. Nonetheless, courts seem reluctant to meaningfully engage in any potential remedies under the UCC, instead preferring to remain handcuffed to the states'

340. DEL. CODE ANN. tit. 6, § 8-502 (West 1997).

341. *See* U.C.C. § 8-115.

342. *See* U.C.C. § 2-206.

343. *See* DEL. CODE ANN. tit. 6, § 3-303 (2024).

344. *See* DEL. CODE ANN. tit. 6, § 2-302 (2024).

increasingly weak insurable interest and incontestability statutes.

2. *Unclean Hands*

Unclean hands is an equitable doctrine requiring that a "suitor in equity must come into court with clean hands."[345] The doctrine is discretionary and may be invoked by the court when it appears the claimant seeking relief "engaged in misconduct connected with the relief it seeks."[346] This means that a claimant who participates in a fraudulent scheme is precluded from seeking recovery for injuries that arise out of the same transaction.[347] When applied to STOLI policies, unclean hands may provide insurers and non-colluding insureds a defense against policy enforcement. Clearly, colluding insureds and Profiteers who engaged in a premediated arrangement to acquire life insurance without establishing legitimate insurable interest, and with the intent to sell the policy after its issuance, should be precluded from seeking enforcement of the death benefit upon the insured's death and from seeking claims of policy validity after culmination of the sale. However, research for this article did not produce a single instance of unclean hands preventing STOLI abuse.

3. *Doctrine of Estoppel*

Equally troublesome in curtailing STOLI abuse, the doctrine of estoppel is "where one party has by his representations or his conduct induced the other party to a transaction to give him an

345. *See* Ameritas Life Ins. Corp. v. Wilmington Tr., N.A., No. CV 19-18713, 2022 WL 4596718, at *5 (D.N.J. Sept. 30, 2022); *see also* Brief of Respondent, Scott v. Hartford Life and Annuity Ins. Co., No. ED 101682, 2014 WL 6711192, at *18 (Mo. App. Nov. 20, 2014) ("[I]t is well settled that a court of equity will not aid a plaintiff who comes into court with unclean hands . . . [t]hus, one who has engaged in inequitable activity regarding the very matter for which he seeks relief will find his action barred by his own misconduct.").

346. *Ameritas*, 2022 WL 4596718, at *5.

347. *See* Est. of Barotz v. Martha Barotz 2006-1 Ins. Tr., No. N20C-04-126, 2023 WL 8714990, at *4 (Del. Super. Ct. Dec. 18, 2023).

advantage which it would be against equity and good conscience for him to assert, [and] he will not in a court of justice be permitted to avail himself of that advantage."[348] The doctrine of estoppel has not proven to consistently temper Profiteers' attempts to circumvent insurable interest requirements. In the context of STOLI schemes, the Profiteers' argument goes like this: because the insurer accepted premiums and thereby benefited from doing so, establishing insurable interest is immaterial, so the insurer should be estopped from denying benefit eligibility. Some states have agreed to precluding insurance companies from arguing lack of insurable interest as a defense to denying payment of death claims when they've accepted premiums from non-insureds.[349] This has been helpful for Profiteers, particularly those engaged in stealth transactions where a trust is the named beneficiary and the trustee has relied on the insurer's actions to its detriment.[350]

B. Proposed Model Statute

Given that a few simple revisions to incontestability and insurable interest statutes would serve as a near complete bar to STOLI abuse, legislators' failure to do so is rather perplexing. New York's statutes serve as perfect illustrations of glaringly obvious regulatory deficiencies, which read:

> [a]ny person of lawful age may on his own initiative procure or effect a contract of insurance upon his own person for the benefit of *any* person, firm, association or corporation."[351] The statute further clarifies that "[n]othing herein shall be deemed to

348. Union Mut. Ins. Co. v. Wilkinson, 80 U.S. 222, 233 (1871).

349. *See* ZARITSKY & LEIMBERG, *supra* note 10, at *2.

350. *See* Est. of Daher v. LSH Co., No. CV 21-03239, 2023 WL 4317029, at *1 (C.D. Cal. June 13, 2023); ZARITSKY & LEIMBERG, *supra* note 10, at *2.

351. N.Y. Ins. Law § 3205(b)(1) (McKinney 2024) (emphasis added).

> prohibit the *immediate* transfer or assignment of a contract so procured or effectuated."[352]

Reconciling the state's insurable interest statute with its incontestability statute illuminates how judicial interpretation perpetuates the Profiteers' exploitation of the regulatory loophole, stating any: "policy shall be incontestable after being in force during the life of the insured for a period of two years from its date of issue . . . except . . . for nonpayment of premiums . . . ."[353]

A plain reading of the statutes leads to an absurd conclusion—so long as insurable interest is established at the time of policy issuance, nothing restricts the insured from immediately assigning the policy to a Profiteer lacking insurable interest. Further, even if the insurer could establish the policy was procured with the sole intent to sell it immediately after the date of issue, the two-year contestability restriction serves as a complete bar to any insurer's traditional voidability defense.[354]

However, simply adding language requiring any subsequent purchaser or transferee to have insurable interest in the insured may result in an unintended consequence—barring legitimate life settlement transactions. As discussed, the fundamental difference between STOLI transactions and legal life settlements is timing of the insured's intent.[355] Because legitimate life settlement investors would never have insurable interest in the insured, statutory authority must clearly define when insurable interest is required and under what circumstances a policy may be voided. The glaring solution appears grounded in revising the incontestability statute. For example, the revised statute may read:

352. *Id.* (emphasis added).
353. N.Y. Ins. Law § 3203(3) (McKinney 2024).
354. *See* Lovendusky, *supra* note 60, at 49.
355. *See* Wells Fargo Bank v. Lincoln Nat'l Life Ins. Co., No. 1:22-CV-907, 2023 WL 4850626, at *9 (M.D.N.C. July 28, 2023).

> The policy shall be incontestable after being in force during the life of the insured for a period of two years from its date of issue . . . except upon any of the following to occur: (1) nonpayment of premiums or (2) the policy was procured *with the intent* to benefit any person, firm, association, or corporation lacking an insurable interest in the insured.

By doing so, the language would permit insurers to void policies upon a finding the insured originally procured the policy with the intent to sell it, while protecting the legitimate secondary market by allowing an insured who no longer needs their policy to appropriately dispose of it.

Because a complicit insured could simply argue they changed their mind with regards to the policy's intended purpose, establishing intent would, of course, be facts and circumstances dependent looking to the tell-tale signs of STOLI transactions—the insured failed to remit any out-of-pocket premiums, the insured procured the policy with the assistance of a Profiteer, premium financing was used to pay all or a majority of the premiums, the policy was transferred to a trust shortly after policy issuance, and whether the policy was shopped on the secondary market upon expiration of the two-year contestability period.[356] Adding the proposed additional language would add significant weight to the statute and provide insurers with a viable defense to void the policy for want of insurable interest.[357]

356. *See* United States v. Carpenter, 190 F. Supp. 3d 260, 270 (D. Conn. 2016); United States v. Bursey, 801 F. App'x 1, 5 (2d Cir. 2020).

357. *See, e.g.*, N.Y. Ins. Law § 3203 (McKinney 2024), as a model statute for the proposed language.

CONCLUSION

Stranger-owned life insurance continues to pose a significant threat to the stability and integrity of the life insurance industry, undermining its core principles and placing unwitting victims at risk. Unfortunately, the creation and legitimization of the life settlement industry served as the source of its own undoing, allowing Profiteers to leverage a legally viable secondary market to execute their fraudulent schemes. Despite efforts to enact laws targeting STOLI practices, inconsistencies among states to clearly define insurable interest and adopt protective contestability statutes have rendered these measures wholly inadequate, leading to forum shopping and highlighting the urgent need for uniform legislative action that effectively closes the loopholes Profiteers so easily exploit for speculative gain. Only upon the concise drafting and purposeful adoption of a new regulatory framework may the industry work towards a more resilient and trustworthy life insurance market that serves the needs of insureds, beneficiaries, and the legitimate secondary market.