



Insurance, Banks & Financial Services Bulletin



June 2009

Bricker & Eckler LLP

100 South Third Street
Columbus, Ohio 43215-4291

Phone 614 . 227 . 2300
Fax 614 . 227 . 2390
info@bricker.com
www.bricker.com

COLUMBUS | CLEVELAND
CINCINNATI-DAYTON

Sixth Circuit: Insurer Not Required to Return Premium On Void Policy

The Sixth Circuit Court of Appeals reversed a lower court ruling and held that under Ohio law, when a life insurance policy is void due to fraud, the insurer is not required to return premiums paid.

In *Wuliger v. Manufacturers Life Ins. Co.*, No. 08-3342 (6th Cir., May 28, 2009), the receiver of a now-defunct viatical investment company sought to void three life insurance policies issued by Manufacturers Life Insurance Company (MLIC). The insureds purchased the policies with the intent of selling them to investors, who had no insurable interest in their lives. These policies were part of a large scheme developed by Liberte. After both the scheme and Liberte itself failed, MLIC sought to void the policies. In response, the receiver sought the return of premiums on these policies in order to recoup some portion of investment money in Liberte Capital Group, the Ohio-based viatical investment company.

After determining that the receiver had standing to bring a claim for rescission, the Sixth Circuit reversed the district court's decision granting summary judgment to the receiver. After affirming that only the insurer may elect to rescind a policy based on fraud, the Court held that the insurer was not required to return premiums paid on a void policy. The Court rejected the receiver's assertion that the insured be allowed to "announce

the fraud and receive a refund on any premiums paid to date" and concluded that this would have the perverse effect of "allowing a defrauder [to] commit to paying premiums on his fraudulently procured policy knowing that if the premiums ever became unaffordable, he could declare his fraud and receive all of the previously paid premiums back." *Wuliger, supra*, at p. 13.

The Court further determined that the equitable defense of unclean hands would bar receiver's recession claim. Further, the Sixth Circuit ruled that the district court improperly concluded that the receiver was entitled to the return of premiums under the equitable theory of unjust enrichment. The receiver had argued that because Liberte did not have an insurable interest in the lives covered under the policies, the policies should never have been issued and so MLIC was unjustly enriched by the payment of premiums. The Sixth Circuit held that the premiums did not constitute a "benefit conferred," but instead were consideration for MLIC's contractual promise to insure the viators' lives. The court remanded to the district court with an instruction to enter summary judgment dismissing the action against MLIC.

Although the Sixth Circuit's decision may not be surprising to those familiar with life insurance litigation, it is notable for two reasons. First, in

This document has been prepared as a general reference document for informational purposes. The information contained herein is not intended to be and should not be construed as legal advice. Each circumstance should be considered and evaluated separately, and possibly with involvement of legal counsel.

Please contact Bricker & Eckler for permission to reprint this bulletin in part, or

reversing the District Court's decision, it overturned a troubling decision requiring the insurer – whom all parties agreed had no knowledge of the scheme involved – to refund premiums plus interest. Had that decision been affirmed, it would have had significant implications for many cases involving life insurance fraud of all types. Second, because there have been relatively few decisions interpreting Ohio law regarding life insurance, the Sixth Circuit's decision may be valuable precedent for future litigation

regarding alleged STOLI situations and a variety of rescission actions.

The full decision can be found at: <http://www.bricker.com/legalservices/industry/insurance/09a0187.pdf>.

For more information, please contact Faith M. Williams at 614.227.2374/fwilliams@bricker.com or Maggie F. Weber at 614.227.2382/mweber@bricker.com.

Insurance, Banks & Financial Services Group

Faith M. Williams
Chair
614 . 227 . 2374
fwilliams@bricker.com

Jeffery E. Smith
Vice-Chair
614 . 227 . 2352
jsmith@bricker.com

Mark Chilson
614 . 227 . 8826
cslagle@bricker.com

Natalie Trishman Furniss
614 . 227 . 8918
nfurniss@bricker.com

Stephen C. Gray
614 . 227 . 2329
sgray@bricker.com

Robert H. Katz
614 . 227 . 2397
rkatz@bricker.com

Donald R. Keller
614 . 227 . 2341
dkeller@bricker.com

Kevin M. Kinross
614 . 227 . 8824
kkinross@bricker.com

Jeffrey P. McSherry
513 . 870 . 6686
jmcsherry@bricker.com

Quintin F. Lindsmith
614 . 227 . 8802
qlindsmih@bricker.com

Miranda C. Motter
614 . 227 . 4810
mmotter@bricker.com

Terrence O'Donnell
614 . 227 . 2345
todonnell@bricker.com

James G. Petrie
614 . 227 . 2373
jpetrie@bricker.com

Nelson M. Reid
614 . 227 . 8812
nreid@bricker.com

Anne Marie Sferra
614 . 227 . 2394
asferra@bricker.com

Elisabeth A. Squeglia
614 . 227 . 2396
esqueglia@bricker.com

Kurtis A. Tunnell
614 . 227 . 8837
ktunnell@bricker.com

Maggie F. Weber
614 . 227 . 2382
mweber@bricker.com