

THE LIFE SETTLEMENTS REPORT

NEWS, INFORMATION, AND ANALYSIS OF THE SECONDARY MARKET FOR LIFE INSURANCE

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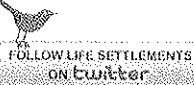
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Judge Cites Kramer Insurable-Interest Case in Discovery Issue

Posted December 06, 2010 10:34AM PST

In what may be an inkling of what is yet to come, a court ruling on a discovery motion in a beneficial-interest case went against the insurer after the judge cited the decision in the Arthur Kramer insurable-interest case.

Henry Pitman, a judge with the U.S. District Court for the Southern District of New York, ruled Thursday against **Principal Life Insurance Co.** in a case involving a \$5 million life insurance policy taken out by the late Dr. Fletcher Johnson.

Principal sought to compel insurance agent Steve Lockwood to produce documents in 12 other suspected stranger-originated life insurance (STOLI) schemes he allegedly took part in.

On Nov. 17, New York's highest state court held that a person can take out a policy on his or her own life and immediately transfer it to whomever the person wanted even if it was never intended to provide insurance protection for someone with an insurable interest in the insured's life. The 5-2 decision by the New York state Court of Appeals in the \$56.2 million Kramer case is considered a major victory for the life settlement market.

"Even if I construe [Principal's] counterclaims to allege a scheme or conspiracy among Johnson, Lockwood and others to conceal the purpose for which the policy was procured, i.e., a STOLI transaction, and that Lockwood's intent is attributable to Johnson, such a scheme would not affect the validity of the policy," Pitman said.

Thus, he said the documents on the other policies are immaterial and denied Principal's request to compel their production.

Tab Rosenfeld, an attorney with the law firm of **Rosenfeld & Kaplan** in New York who represents the Fletcher Johnson trust and trustee Robert Bernstein, said the decision showed that the judge did not want to permit the carrier to delve into Lockwood's intent in working with the insured.

"This is an example of the fact that insurance companies won't be able to use the argument of lack of insurable interest into trying to expand the scope of discovery in an effort to void policies that are legal and enforceable," he said.

Principal had refused to pay the death benefits in the case, asserting it was a STOLI scheme. The policy was issued on Johnson in 2007 when he was 76. Shortly after the policy was issued, it was transferred to the trust. Johnson died about 16 months after the policy was issued.

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