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NY Law Permits Sale Of STOLI Policies, Court Rules

By **Pete Brush**

Law360, New York (November 17, 2010) -- New York law permits a person to procure an insurance policy on his or her life and then sell it to a hedge fund, bank or other investor, even when the policy is obtained just for that purpose, New York's highest court ruled Wednesday in a closely watched stranger-originated life insurance case.

The 5-2 decision in the New York Court of Appeals represents a defeat for plaintiff Alice Kramer, the widow of Arthur Kramer, who helped found law firm Kramer Levin Naftalis & Frankel LLP.

Alice Kramer filed a federal suit in 2008 seeking to collect on more than \$56 million in policy proceeds sold off to investors in a deal engineered by her late husband.

The ruling also represents a setback for Phoenix Life Insurance Co. and Lincoln Life & Annuity Co. of New York, the insurers who issued the policies in question.

Alice Kramer's suit, which sparked a series of other claims, argued that such a setup violates the "insurable interest rule" in New York state insurance law.

The state court got the question after an interlocutory appeal in the U.S. District Court for the Southern District of New York was issued to the U.S. Court of Appeals for the Second Circuit in September 2009. The appeals court in turn certified the question to the New York Court of Appeals.

The statute in question, New York Insurance Law Section 3205, defines the term "insurable interest," which is at the heart of Alice Kramer's suit.

"There is simply no support in the statute for plaintiff and the insurers' argument that a policy obtained by the insured with the intent of immediate assignment to a stranger is invalid," a majority of the court ruled in an opinion penned by Judge Carmen Beauchamp Ciparick. "The statutory text contains no intent requirement; it does not attempt to

prescribe the insured's motivations."

The law allows for "immediate transfer or assignment," the majority wrote, and even anticipates that an insured might obtain a policy with the intent of assigning it.

"If our legislature had intended to impose such a limitation, it could easily have done so," the majority added.

A dissent penned by Judge Robert S. Smith, however, argued that when an insured purchases a policy on his own life "for no other purpose than to facilitate a wager by someone with no insurable interest, the transaction is unlawful" under New York common law.

Attorney Tab K. Rosenfeld of Rosenfeld & Kaplan LLP, who represents Lockwood Pension Services Inc. and its principal Steven Lockwood, said Wednesday that "the court of appeals got it right."

Lockwood, who brokered the transactions on behalf of the late Arthur Kramer, is a defendant in remaining breach of contract claims in the the litigation brought by Alice Kramer and in cross-claims brought by insurers.

"The practices of Steve Lockwood were legal and in accordance with the plain language of the statute," Rosenfeld said Wednesday.

Rosenfeld added Wednesday his client intended to bring his own claims at a later date because he was terminated for cause by his insurance industry clients over the transactions, which according to Wednesday's ruling were proper.

The policy proceeds are currently being held in trusts pending the outcome of the litigation. Proceeds from the policies were assigned to Tall Tree Advisors Inc. and other investors, including banks, some of whom are not parties to the litigation.

District Judge Deborah A. Batts, presiding in the New York federal court, now must apply Wednesday's ruling to the litigation.

Phoenix Life is represented by Patrick J. Feeley of Dorsey & Whitney LLP.

Lincoln Life is represented by Michael J. Miller of Drinker Biddle & Reath LLP.

Kramer is represented by Andrew A. Wittenstein of Friedman & Wittenstein PC.

Lockwood Pension Services is represented by Rosenfeld & Kaplan LLP.

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The case is Kramer v. Phoenix Life Insurance Co. et al., case number 176, in the New York Court of Appeals.

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