IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

AMERITAS LIFE INSURANCE CORP., *Plaintiff*, v. WELLS FARGO BANK, N.A., as Securities Intermediary, *Defendant*.	:	**C.A. No.**

COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiff, Ameritas Life Insurance Corp. ("Ameritas"), by and through its undersigned counsel, hereby files and asserts this Complaint against Defendant, Wells Fargo Bank, N.A. ("Wells Fargo"), as Securities Intermediary, and alleges as follows:

PARTIES

1. Ameritas is a life insurance company incorporated under the laws of State of Nebraska with its principal place of business in the State of Nebraska. Ameritas is therefore a citizen of the state of Nebraska for purposes of diversity jurisdiction.

2. Defendant, Wells Fargo Bank, N.A., as Securities Intermediary, is a national bank with its main office in Sioux Falls, South Dakota, and its principal place of business located in California. Wells Fargo is therefore not a citizen of Nebraska for purposes of diversity jurisdiction.

JURISDICTION AND VENUE

3. This Court has subject-matter jurisdiction under 28 U.S.C. §1332 because there is an amount in controversy in excess of $75,000 exclusive of interest and costs; there is complete diversity of citizenship between plaintiff, Ameritas, a citizen of Nebraska, and defendant, Wells

Fargo, a citizen of a state(s) other than Nebraska; and there is an actual and ripe controversy between the parties.

4. Venue is proper in this judicial district under 28 U.S.C. §1391(b) because a substantial part of the events giving rise to the claims occurred in the District of New Jersey.

FACTUAL BACKGROUND

A. Stranger-Originated Life Insurance

5. A secondary market for life insurance has emerged whereby multi-million dollar life insurance policies have been manufactured, on the lives of senior citizen insureds, by and for the benefit of third-party investors who have no family relationship or other affiliation with the insureds. Such policies are commonly known as stranger-originated life insurance ("STOLI") policies.

6. While there are many variations, all STOLI schemes have one objective in common: to give investors with no insurable interest in the life of the insured a financial stake in the death of the insured.

7. For over 100 years, the United States Supreme Court and most states (including New Jersey, whose laws control here) have condemned such "wagering policies" as violating public policy because they create a "sinister counter interest" in the early demise of insureds. *Grigsby v. Russell*, 222 U.S. 149 (1911); *Warnock v. Davis*, 104 U.S. 775 (1881); *Trenton Mut. Life & Fire Ins. Co. v. Johnson*, 24 N.J.L. 576 (Sup. Ct. 1854).

8. Under New Jersey law, STOLI policies runs afoul of constitutional, statutory, and common law prohibitions against wagering contracts, as well as New Jersey's insurable interest requirement. Specifically, New Jersey's Constitution has prohibited wagering transactions since 1844. *See Nemtin v. Zarin, 577* F. Supp. 1135, 1137-41 (3d Cir. 1995) (outlining evolution of New Jersey law). The present New Jersey Constitution, adopted in 1947, prohibits "gambling of

any kind" unless authorized (and STOLI is not) by a majority of voters at a special election. N.J. Const., Art. IV, Sec. VII, par. 2. In 1951, the New Jersey Legislature also enacted statutes defining what constitutes a wagering or a "gaming transaction" and confirmed that such transactions are illegal. *See* N.J. Stat. Ann. § 2A:40-1 (declaring "gaming transactions" defined to include any "wagers . . . upon any lot, chance, casualty or unknown or contingent event" to "be unlawful"); § 2A:40-3 (declaring "gaming transactions" in violation of N.J. Stat. Ann. § 2A:40-1 to be "utterly void and of no effect"). New Jersey's public policy against wagering transactions is also furthered by its insurable interest statute. *See* N.J. Stat. Ann. § 17B:24-1.1a.

9. STOLI speculators often attempt to circumvent these laws by carefully constructing their transactions to hide the fact that the policies are not being procured to satisfy legitimate insurance needs, but instead as being procured as impermissible investments. For example, STOLI transactions are often structured such that the policy is owned by an insurance trust in an insured's name with a family member initially named as a beneficiary. However, courts applying New Jersey law, consistent with the majority rule, look beyond the mere form of a STOLI transaction and scrutinize the substance of the transaction to determine whether a transactions constitutes STOLI.

10. In *Sun Life Assur. Co. of Can. v. Wells Fargo Bank*, 238 N.J. 157 (2019) ("*Bergman*"), the New Jersey Supreme Court recently confirmed that, under New Jersey law, "STOLI policies are against public policy and are void *ab initio*, that, is from the beginning." In this regard, the Supreme Court in *Bergman* explained, among other things, that "a life insurance policy procured with the intent to benefit persons without an insurable interest in the life of the insured does violate the public policy of New Jersey, and such a policy is void at the outset." As the New Jersey Supreme Court further explained, (i) "STOLIs commonly involve life insurance

policies procured and financed by investors—strangers—who have no insurable interest in the life of the insured yet, from the outset, are the ultimate intended beneficiaries of the policy"; (ii) "[g]enerally, an investor funds a STOLI policy from the outset, which makes it possible to obtain a policy with a high face value"; (iii) in a STOLI arrangement, "[i]t is also common for an insured to buy the policy in the name of a trust and name a 'spouse or other loved one as the trust beneficiary'"; and (iv) "[i]f a third party without an insurable interest procures or causes an insurance policy to be procured in a way that feigns compliance with the insurable interest requirement, the policy is a cover for a wager on the life of another and violates New Jersey's public policy."

11. In *Bergman*, the trial court found that the policy lacked insurable interest, violated public policy, and was void *ab initio*, and this decision was then affirmed on appeal. 2016 WL 5746352 (D.N.J. Sept. 30, 2016), *aff'd* 779 F. App'x 927 (3d Cir. 2019).

B. <u>The Application for a $4 Million Life Insurance Policy</u>

12. In or around July 2006, Union Central Life Insurance Company ("Union Central") (a predecessor entity of Ameritas) received an application on New Jersey forms for a life insurance policy (the "Application") insuring the life of Frieda Silbiger (the "Insured"). A copy of the Application (with appropriate redactions) is attached as Exhibit "A."

13. The Application sought a $4 million life insurance policy, naming the "Freide Silberger Family B ILIT", dated July 5, 2006, (the "Trust") as the "owner" and "beneficiary" of the applied-for policy.

14. The Insured's grandson, Ben Zion Weiss, was the trustee of the Trust.

15. The Application identified the Trust as a New Jersey trust with an address at 15 Hawthorne Street, Lakewood, New Jersey 08701.

16. The Application was signed on July 11, 2006, in Lakewood, New Jersey by Ms. Silbiger as the insured, by Mr. Weiss as trustee of the trust, and by David Kohn as the producing broker.

17. The Application represented that the Trust would pay the premiums for the policy.

18. The Application represented that Ms. Silbiger's "Annual Unearned Income" was $400,000 and that she had a "Net Worth" of $14.5 Million.

19. The Application represented that the purpose for the insurance was "Estate Tax."

20. In connection with the Application, Mr. Weiss, on behalf of the Trust as owner, and Mr. Kohn as the producing broker, executed a "Statement of Policyowner and Agent Intent" on or about July 16, 2006.

21. By signing the Questionnaire, Mr. Weiss and Mr. Kohn represented that (i) they did not intend to assign or sell the applied-for life insurance policy; (ii) they had not spoken to any individual or company offering to pay for the insurance or offering "free" or "no cost" insurance; (iii) they did not complete or anticipate to complete any loan papers in connection with the purchase of the policy; (iv) the premiums were not being otherwise financed; (v) they had never sold a life insurance policy they owned to a third party.

22. On or about September 21, 2006, a letter was submitted to Union Central, purportedly from the Insured's accountant, Bernard Z. Chase, CPA. This letter stated that the Insured's real estate investments had an estimated market value in excess of $12M; the Insured had a total net worth of $14.5 million and annual unearned income of $400,000. The letter further advised that the Insured should purchase life insurance "for effective estate and tax planning purposes."

23. In reliance upon the aforementioned materials and other supporting documents and information submitted to Union Central in connection with the Application, Union Central issued a policy with a $4 million death benefit (policy number U000034720) (the "Policy") with an issuance date of September 13, 2006, insuring the life of Ms. Silbiger with the Trust as owner and beneficiary.

24. On or about November 7, 2006, Ms. Silbiger as insured; Mr. Weiss on behalf of the applicant, the Trust; and Mr. Kohn as witness executed an Amendment of Application for Life Insurance in Lakewood, New Jersey.

25. Also on or about November 7, 2006, Mr. Weiss on behalf of the Trust as policy owner and Mr. Kohn as producing broker executed the Policy Delivery Receipt.

26. Also on or about November 7, 2006, the initial premium for the Policy was paid to Union Central via a check in the amount of $223,520. The check was drawn on an account with HSBC bank.

27. On or about April 29, 2009, the Trust changed the owner and beneficiary of the Policy to Legacy Benefits, LLC, identified as "Benefactor (financial)."

28. On or about June 10, 2009, Legacy Benefits, LLC, changed the owner and beneficiary of the Policy to HVBFF Life Receivables EuroTrust dated June 28, 2006.

29. On or about November 23, 2020, HVBFF Life Receivables EuroTrust changed the owner and beneficiary of the Policy to Wells Fargo Bank N.A., as Securities Intermediary, which is the current owner of record.

30. The insured died in or around March 2023.

C. <u>The Human Life Wager and Materially False Representations</u>

31. Upon receipt of the claim, Ameritas conducted an investigation of the Policy and claim.

32. Upon information and belief, the initial premiums paid for the Policy were not funded by the insured or any other person with an insurable interest in Ms. Silbiger's life, and instead, the premiums were funded by a group of investors who lacked an insurable interest in Ms. Silbiger's life, who were solicited by David Kohn to invest in the policy, and who were participating in a wager on her life so that they might profit (either by selling the Policy on the secondary market after two years or collecting the death benefit).

33. Upon information and belief, in furtherance of this human life wager, the Application and other documents (described above) in support of the Application contained materially false information which was intended to induce, and which did induce, Union Central to issue the Policy. Upon information and belief, there were materially false representations made regarding, among other things, (i) the lack of intent to sell the Policy; (ii) the lack of any premium financing; (iii) that the Trust would be the source of premium payments; and (iv) the Insured's finances and net worth.

34. Upon information and belief, the accountant who issued the letter regarding the Insured's income and net worth either did not exist or was not an accountant.

35. Union Central relied upon the accuracy of the information provided in the aforementioned and supporting documents and never would have issued the Policy had it known the truth.

36. The Policy in the present case also bears a striking resemblance to the policy in *Bergman*.

37. Both policies were a multi-million dollar universal life insurance policies, issued in the 2006-2007 time period, on the lives of elderly insureds.

38. Both policies were issued to New Jersey trusts and with the grandsons of the insureds as the trustees.

39. Both policies had the same producer (David Kohn).

40. Both policies had the same exact trust address in Lakewood, NJ (which is notorious for producing STOLI policies).

41. Both policies were initially funded by a check from the same bank (HSBC).

42. Both polices were issued on the basis of net worth and income information that came from purported accountants that either did not exist, were not accountants, and/or had no relationship with the insured.

43. Both policies were created using trusts that were based on the same trust agreement language.

COUNT I

DECLARATORY JUDGMENT—ILLEGAL HUMAN LIFE WAGERING CONTRACTS

44. Ameritas hereby incorporates by reference each and every averment contained in the preceding paragraphs as if set forth herein at length.

45. The Policy, which was applied for, issued, and delivered to the Trust in New Jersey, is governed by New Jersey law.

46. As set forth above, New Jersey has constitutional, statutory, and common law prohibitions against human life wagers, and the New Jersey Supreme Court in *Bergman* ruled that STOLI transactions are illegal and void *ab initio* under New Jersey law.

47. Upon information and belief, the Policy was, from the outset, intended as a wager on Ms. Silbiger's life by stranger investors who were hoping to cash in on the Policy by either selling the Policy for a profit on the investor market or collecting the death benefit upon Ms. Silbiger's death.

48. Upon information and belief, the Policy is an illegal human life wager under New Jersey law because the Policy was taken out with the intent to benefit stranger investors lacking an insurable interest in the insured's life and because stranger investors procured the Policy and funded the initial premium on the Policy. *See Bergman*, 238 N.J. 157 (New Jersey Supreme Court holding that "a life insurance policy procured with the intent to benefit persons without an insurable interest in the life of the insured does violate the public policy of New Jersey, and such a policy is void at the outset."); *id.* (explaining that (i) "STOLIs commonly involve life insurance policies procured and financed by investors—strangers—who have no insurable interest in the life of the insured yet, from the outset, are the ultimate intended beneficiaries of the policy"; and (ii) "[g]enerally, an investor funds a STOLI policy from the outset, which makes it possible to obtain a policy with a high face value").

49. Accordingly, Ameritas seeks, and is entitled to, a declaratory judgment declaring that the Policy is illegal and a void *ab initio* human life wager under New Jersey law.

COUNT II

DECLARATORY JUDGMENT – LACK OF INSURABLE INTEREST

50. Ameritas hereby incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth herein at length.

51. Upon information and belief, although the transaction was structured to attempt to feign technical compliance with New Jersey's insurable interest statute, N.J. Stat. Ann. § 17B:24-1.1a, by establishing the Trust in the insured's name as the initial owner of the Policy, the Policy lacks an insurable interest and is void *ab initio* because the Policy was taken out with the intent to benefit stranger investors lacking an insurable interest in the insured's life and stranger investors procured the Policy and funded the initial premium on the Policy. *See Bergman*, 238 N.J. 157

(New Jersey Supreme Court holding that "a life insurance policy procured with the intent to benefit persons without an insurable interest in the life of the insured does violate the public policy of New Jersey, and such a policy is void at the outset."); *id.* (explaining that (i) "STOLIs commonly involve life insurance policies procured and financed by investors—strangers—who have no insurable interest in the life of the insured yet, from the outset, are the ultimate intended beneficiaries of the policy"; (ii) "[g]enerally, an investor funds a STOLI policy from the outset, which makes it possible to obtain a policy with a high face value"; (iii) in a STOLI arrangement, "[i]t is also common for an insured to buy the policy in the name of a trust and name a 'spouse or other loved one as the trust beneficiary'"; and (iv) "[i]f a third party without an insurable interest procures or causes to an insurance policy to be procured in a way that feigns compliance with the insurable interest requirement, the policy is a cover for a wager on the life of another and violates New Jersey's public policy.").

52. Accordingly, Ameritas seeks, and is entitled to, a declaratory judgment declaring that the Policy lacks an insurable interest and is void *ab initio* under New Jersey law.

PRAYER FOR RELIEF

WHEREFORE, Ameritas respectfully requests the entry of an Order by this Court as follows:

A. Declaring that the Policy is void *ab initio*;

B. Awarding Ameritas attorneys' fees and costs associated with seeking this judgment, as determined by the Court; and

C. Awarding Ameritas such further relief as this Court deems appropriate.

Dated: April 5, 2023

COZEN O'CONNOR, P.C.

/s/ Philip J. Farinella

Philip J. Farinella, Esq. (239742017)
Michael J. Miller, Esq. (032821991)
Joseph M. Kelleher, Esq. (040602009)
Duncan R. Becker, Esq. (365102021)
1010 Kings Highway South
Cherry Hill, NJ 08034
pfarinella@cozen.com
mjmiller@cozen.com
Jkelleher@cozen.com
Dbecker@cozen.com

Attorneys for Plaintiff, Ameritas Life Insurance Corp.