

Life Insurance & Annuities

Cozen O'Connor's clients depend on us to litigate issues and provide counsel in federal and state courts across the country and in all forms of arbitration and alternative dispute resolution.

Stranger-Originated Life Insurance (STOLI) and Other Secondary Market Issues

When it comes to this complicated category of litigation, Cozen O'Connor wrote the book on it — and is still doing so. The first STOLI case in the country to go to verdict was tried — and won — by a member of our team. The now-established rule that a life insurer that is the victim of fraud may void the policy and, under appropriate circumstances, retain the premium was also set in a case handled by one of our lawyers. In recent years, our team has been especially active and has continued to establish extensive and favorable insurable interest law and to validate policies manufactured by prominent STOLI “programs.” We also have been at the forefront in establishing the right of life insurers to challenge the validity of STOLI policies after the expiration of the contestability period. In addition, Cozen O'Connor represents insureds' estates and families seeking to recover STOLI death benefits that have been paid to large STOLI investors. For more details regarding our STOLI and secondary market experience, please click [here](#).

Structured Settlements

Cozen O'Connor lawyers have been especially focused on structured settlement issues — having successfully and efficiently litigated factoring cases in state and federal courts across the country on behalf of our annuity owner and issuer clients. For more details regarding our structured settlement experience, please click [here](#).

Class Actions

The Life Insurance & Annuities team frequently works with colleagues in our Class Action practice who bring a wealth of class action experience and technical expertise to our engagements on a variety of issues. For more details regarding the experience of our Class Action team, please click [here](#).

Life Insurance and Annuity Litigation and Counseling

For decades, lawyers on our team have counseled clients and litigated issues on a wide variety of insurance matters including, among others:

Bad Faith and Other Extracontractual Claims

Cozen O'Connor regularly litigates cases that include bad faith and other extracontractual claims — having handled these issues since the days when they were unusual to encounter. We know best how to manage preliminary motions, discovery, and trial to eliminate or reduce exposure and also assist insurance companies in identifying best practices to reduce exposure.

Brokers and Agents

Cozen O'Connor is experienced in the range of issues and litigation that can arise from agent/broker compensation disputes, improper policy placements, alleged mishandling of funds, fraud, and other misconduct by producers — be they brokers or agents. Our lawyers understand and know how to manage the tension that can exist between maintaining relationships with producers and not ending up with liability for their conduct.

Foreign Death Claims and Foreign Nationals



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Related Practice Areas

- Insurance Corporate & Regulatory

Our experience includes assisting life insurers in investigating and litigating claims arising from foreign deaths, which can present significant challenges for our clients. We also advise life insurers on the unique issues that can arise from the sale of policies to foreign nationals.

Identity Fraud

Cozen O'Connor lawyers have broad and deep experience identifying and combating the seemingly constantly evolving misuse of identity data (such as social security numbers, birth dates, addresses, and names) to improperly procure policies on lives different than those disclosed in applications. This experience includes the special issues that can be implicated in situations involving groups of policies, applicants, and putative insureds. In addition, our annuity company clients use this experience to identify and recover the improper receipt of annuity benefits after the deaths of annuitants.

Insurance Department Investigations and Proceedings

Cozen O'Connor advises life insurance and annuity companies and producers on responses to the range of issues that might be raised by or with regulators — everything from fraud reporting, to responses to policyholder complaints, to agent/broker issues and many other similar issues.

Lapses

Our lawyers have litigated and tried lapse issues cases for decades. We are thoroughly familiar with statutory requirements often advising clients on proper lapse procedures, including the impact of coverage protection guarantees, in the settings of individual policy issues. We also provide this assistance on a product-wide basis.

Material Misrepresentations

We counsel life insurers on claims arising from misrepresentations about age, health, financial, other insurance, and other material matters, including the frequently sensitive management of contestable claim investigations. When necessary, we litigate claims concerning such misrepresentations to successful conclusions.

Payment and Interpleader Issues

Our team regularly counsels clients on payment and beneficiary issues and, if necessary, files interpleader actions on behalf of life insurers, and, in those cases, our clients are routinely awarded attorneys' fees.

Policy Values and Cost of Insurance (COI) Issues

For decades, Cozen O'Connor has been on the front lines in counseling and defending life insurers in cases arising out of changes in premium rates and policy values. We are also familiar with the intersection of COI issues with STOLI issues, and the reality that a void STOLI policy cannot be the subject of a COI claim.

Prompt Payment Statutes

Cozen O'Connor is experienced in the gamut of prompt payment statutes, ranging from applicability of such statutes, to their impact upon claims procedures and particular claims, to litigation of issues implicating prompt payment requirements.

Stranger-Originated Life Insurance (STOLI) and Other Secondary Market Issues

Cozen O'Connor attorneys are especially focused on the life insurance secondary market, and in

particular, on the related problems associated with Stranger-Originated Life Insurance (STOLI). We have been litigating these cases since the inception of STOLI litigation in 2007. Over the course of the past four years, we have obtained at least 10 summary judgment wins for our insurer clients establishing that policies — in the collective face amount of \$76 million — were void STOLI policies lacking an insurable interest, and that **no death benefits were payable**. These rulings include:

- *Sun Life v. U.S. Bank (Malkin)*: The Southern District of Florida ruled that no death claim proceeds were owed on a \$5 million policy that was found to be an illegal human life wager under Delaware law. Affirmed by the Eleventh Circuit in June 2017.
- *U.S. Bank v. Sun Life (Van de Wetering)*: The Eastern District of New York ruled in 2016 that no death claim proceeds were owed on a \$10 million policy that was found to be an illegal human life wager under Delaware law.
- *Sun Life v. Conestoga Trust Services (Collins)*: The District of Tennessee concluded that this policy was created and financed by investors, that the \$2 million policy was invalid, and that no death claim proceeds were owed under Tennessee law. Affirmed by the Sixth Circuit in April 2018.
- *Sun Life v. Wells Fargo Bank (Bergman)*: The District of New Jersey ruled that this \$5 million New Jersey policy on the life of a New York resident was originated and paid for by stranger-investors. Based on these facts, the district court found the policy to be a void human life wager under New Jersey law, and no death benefit was owed. On appeal, the Third Circuit certified issues to the New Jersey Supreme Court, which ruled, in a case of first impression in 2019, that STOLI policies are void *ab initio* under New Jersey law and that the potential for a limited refund of premiums paid was dependent upon the application of certain equitable factors.
- *Sun Life v. U.S. Bank (Sol)*: The District of Delaware ruled in 2019 that a \$10 million policy that was originated and funded through a non-recourse premium finance loan was a void STOLI policy under Delaware law and that no death benefit was payable.
- *Sun Life v. Wells Fargo (Corwell)*: The Northern District of Illinois in 2021 held that a \$5 million policy that was originated and funded through a non-recourse premium finance loan was a void STOLI policy under Illinois law and that no death benefit was payable.
- *Sun Life v. Wilmington Trust (Frankel and DeBourbon)*: In two companion cases, the Delaware Superior Court ruled in 2021 that two policies in the total face amount of \$19 million were void STOLI policies under Delaware law.
- *Columbus Life v. Wilmington Tr. Co.*, 2023 WL 1956868 (Del. Super. Ct. Feb. 13, 2023) (“*Kluener & Chisholm*”) (declaring two \$5 million policies void *ab initio* for lack of insurable interest under Delaware law because the policies were procured using non-recourse premium financing that the insureds had no obligation to repay and the insureds did not pay any of the premiums using their own money)
- *Columbus Life v. Wilmington Tr., N.A.*, 2023 WL 6813150 (D. Del. Mar. 21, 2023) (“*Cohen & Romano*”) (entering summary judgment in favor of insurer declaring two \$5 million life insurance policies procured through the same program as the void policies at issue in *Kluener & Chisholm* void *ab initio* for lack of insurable interest under Delaware law after investor did not contest the policies’ validity on summary judgment).

Our team has been successful in obtaining court rulings either entirely precluding or limiting the refund of premiums owed by our insurer clients on STOLI policies including, among many others, the 2009 Sixth Circuit decision in *Wuliger v. Manufacturers Life*, which was the first ruling in the United States precluding any such premium refund. Our lawyers were successful in the recent Delaware Superior Court decision and Delaware Supreme Court decision in *Geronta Funding v. Brighthouse Life Ins. Co.*, 284 A.3d 47 (Del. 2022).(*Seck*), which only required that a portion of premiums paid to be refunded.

Cozen O’Connor also represents insureds’ estates and families in the recovery of death benefit

proceeds under the common law and state recovery acts, which generally provide that an insured's estate is entitled to recover, from an investor, any death benefit payments that the investor received from a life insurer on a void STOLI policy. Cozen O'Connor understands how these investors originated these STOLI policies, and we know how to prove the invalidity of these policies in court. Over the course of the past few years, we have won a number of significant summary judgment victories for our estate and family clients. These favorable rulings include:

- *Estate of Malkin v. Wells Fargo Bank, N.A.*, 379 F. Supp. 3d 1263 (S.D. Fla. Mar. 29, 2019), *aff'd in part, vacated in part, and questions certified* by 998 F.3d 1186 (11th Cir. 2021) ("*Estate of Malkin*") (\$4 million STOLI policy found void and family awarded all proceeds plus interest)
- *U.S. Bank, N.A. v. Estate of Albart*, No. 2020-CA-0762, 2023 WL 7491131 (Fla.Cir.Ct. Oct. 23, 2023) ("*Albart*") (\$10 million STOLI policy found void and family awarded all proceeds plus interest)
- *Estate of Barotz v. Vida Longevity Fund*, No. N20C-05-144 EMD CCLD, 2022 WL 16833545 (Del. Super. Ct. Nov. 9, 2022) ("*Barotz I*") (\$5 million STOLI policy found void and family awarded all proceeds plus interest)
- *Estate of Martha Barotz v. Martha Barotz 2006-1 Ins. Trust et al.*, No. N20C-04-126 EMD CCLD, 2023 WL 8714990 (Del. Super. Ct. Dec. 18, 2023) ("*Barotz II*") (\$8 million STOLI policy found void and family awarded all proceeds plus interest) (on appeal)
- *Estate of Diamond v. U.S. Bank, N.A.*, No. 502021CA004791XXXXMB, 2023 WL 6392688 (Fla.Cir.Ct. Sept. 15, 2023) ("*Diamond*") (\$7.8 million STOLI policy found void and family awarded all proceeds plus interest)

Cozen O'Connor tracks existing STOLI litigation, and in fact, the vast majority of existing STOLI cases are *our* cases. We also monitor the various publications that report on these issues. Over the years, our lawyers have collected a great deal of knowledge on this market and its participants and tendencies. To be clear, no one knows these STOLI litigation issues better than the lawyers at Cozen O'Connor.

Structured Settlements

The lawyers at Cozen O'Connor have been especially focused on structured settlement issues — having successfully and efficiently litigated factoring cases in state and federal courts across the country. After the enactment of Section 5891, we implemented new strategies for handling the increased volume of structured settlement factoring transactions. For several clients, our team also developed programs that offer payees the possibility of commuting their structured settlements.

We have been active in the National Structured Settlements Trade Association (NSSTA) for more than 20 years. A number of our lawyers have served as co-chairs of the NSSTA Legal Committee and are speakers at virtually every NSSTA meeting. We currently serve as outside general counsel to NSSTA.

Although the litigation landscape for factoring transactions has changed over the years, when factoring transactions violate the applicable Structured Settlement Protection Acts (SSPA's), our team has opposed these transactions on behalf of our annuity owner and issuer clients. We also routinely assist clients with all of the various disputes and issues that arise from the thousands of structured settlement annuities that our clients own and/or issue. These include matters relating to special needs trusts, estates, contingent beneficiaries, underpayments, overpayments, insurer insolvencies, minors, accelerations, commutations, tax planning, bankruptcy, and tax disputes.

Suspicious Deaths

Cozen O'Connor is regularly hired to assist life insurers around the country in reacting to, and litigating when necessary, death claims that raise questions such as the role of an imposter; missing persons; insufficiency of proof of death; suicides; and Slayer's Acts.

Other Insurance, Life Insurance, and Annuity Experience

The lawyers at Cozen O'Connor produce successful results with respect to products and case types that span the entire spectrum of the industry. The financial exposures presented by the cases, issues, and products we have managed have ranged from nine-figures down to small face amounts.

We have a proven track record of successfully defending insurer and annuity issuer clients in class actions. These cases arise in the context of all of our various areas of experience. We analyze these cases early looking for the most effective and efficient exits — often proving that these cases should be dismissed at their early stages.

Many of our lawyers have experience with complex RICO cases. Indeed, because we know both insurance and RICO issues so well, we are especially well-suited to assist our insurer clients in these matters. For one example, in *Luzerne County Retirement Board v. Makowski, et al.*, we obtained summary judgment for an insurer client on a \$45 million RICO claim in the U.S. District Court for the Middle District of Pennsylvania.

Cozen O'Connor also routinely engages with numerous state insurance regulators and state guaranty associations concerning life insurance and annuity issues.

For a number of clients, the lawyers on our team have designed internal policies, protocols, and procedures — including for underwriting, policy administration, and claims handling — that are designed to avoid litigation.

Finally, for many years we have been recognized by our insurer clients for identifying new developments and exposures in the insurance industry. We devote a significant amount of time and energy to educational presentations, hosting seminars, and publishing articles on issues of interest to the insurance industry. Our lawyers have developed numerous white papers and multi-state surveys on important life insurance and annuity issues.

Experience

Won summary judgment on behalf of the defendant insurer in a dispute over a large life insurance policy. The federal district court found that the policy had been properly rescinded due to material misrepresentations in the application regarding the insured's medical history. The plaintiff beneficiary's claims for breach of contract, bad faith, and violations of the state's Unfair Claims Practices Act all failed, and the insurer had not waived its right to rescind.

In a dispute over a \$1 million life insurance policy that had been canceled by the policyowner prior to his death, obtained dismissal of the plaintiff/beneficiaries' claims for negligence, constructive fraud and fraudulent inducement, and unjust enrichment at the motion to dismiss stage. Won at the summary judgment stage on the remaining claim for breach of contract. The result was affirmed on appeal by the U.S. Court of Appeals for the Fourth Circuit.

Obtained a seminal ruling from the Delaware Supreme Court in a closely watched case, with the Court holding that neither STOLI investors nor their securities intermediaries can claim immunity under the UCC and setting a high bar for an investor seeking restitution for premiums paid. *Wells Fargo v. Estate of Malkin*, — A.3d—, 2022 WL 1671966 (Del. May 26, 2022).

Obtained summary judgment for plaintiff life insurance carrier, with the court finding that the carrier was not obligated to pay the death benefit on a \$5 million policy because it was a stranger-originated life insurance (STOLI) policy lacking insurable interest that was void *ab initio* under Illinois law as an illegal human-life wager. The investor policyholder also brought breach of contract and bad-faith counterclaims against the carrier, which the court dismissed on summary judgment. *Sun Life*

Assurance Company of Canada v. Wells Fargo Bank, N.A., et al., 17-cv-0658, 2020 WL 150364, 2020 U.S. Dist. LEXIS 55350 (N.D. Ill. March 30, 2020).

Won summary judgment on behalf of the defendant-insurer in a material misrepresentation case in which the plaintiff beneficiary sought to collect on a \$1 million life insurance policy following the death of the insured. The federal district court found that the insurer client properly rescinded the policy based on the insured's misrepresentation on the policy application that he had not been advised to discontinue alcohol use. Significantly, in reaching this ruling, the court held that the insurer did not waive its right to assert additional misrepresentations not specifically mentioned in the rescission letter.

Secured a trial victory for the insurer in a viatical/stranger-originated life insurance policy dispute in which the insurer sought a declaration voiding the policy, and an investor in the policy filed a counterclaim seeking damages of approximately \$1.5 million. At the conclusion of the five-day bench trial, the court ruled in the insurer's favor on the claims and counterclaims, finding that the policy was void *ab initio* as an illegal human life wager and that the investor lacked an insurable interest.

Secured a unanimous ruling from the Supreme Court of the State of New Jersey that stranger-originated life insurance policies are void from inception under New Jersey law. In this case, the policy at issue was purchased by an individual with an insurable interest in the insured's life, but ownership was quickly transferred to strangers as per a prior agreement. The matter came to the state high court via certified questions from the U.S. Court of Appeals for the Third Circuit.

Won summary judgment in a case of first impression in which the court held that a two-year suicide exclusion in a life insurance policy approved under the Interstate Insurance Product Regulation Compact (IIPRC) was enforceable. In securing this win, the team overcame the beneficiary's arguments that the IIPRC's delegation of authority to the Interstate Insurance Product Regulation Commission to adopt standards governing the content of covered policies that would supersede any conflicting state statute was an impermissible delegation of legislative authority under the Colorado Constitution, that the IIPRC violated the state constitution's equal protection and freedom from special legislation provisions, and that requisite notice was not given before the two-year suicide exclusion standard was adopted. This was the first case in which a federal court construed the IIPRC and directly addressed whether an interstate compact that is not congressionally approved may delegate authority to an interstate body to promulgate regulations that trump conflicting state law.

In a case of first impression under Tennessee law, lawyers in our Life Insurance and Annuities Group secured a ruling on summary judgment that our client did not have to pay a death claim on a \$2 million life insurance policy to a secondary market investor that was originated via a stranger-originated life insurance scheme. This result was affirmed by the U.S. Court of Appeals for the Sixth Circuit, and the U.S. Supreme Court denied the plaintiff's petition for certiorari.
