Insurable Interest

An Ancient Doctrine Confronts Modern Problems

By Bryan D. Bolton
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The ultimate inquiry should focus on whether the life insurance was purchased in good faith for the benefit of one having an insurable interest.

Life insurance was never designed for, and is not marketed by, the life insurance industry as an investment vehicle for third-party investors to wager on the lives of strangers. Nonetheless, the life insurance industry confronts increasing intrusion from third-party investors seeking to wager on the lives of others. As a result, the industry frequently grapples with questions of insurable interest.

If, for example, an individual purchases a life insurance policy for resale to an investor, the individual takes steps to effectuate that sale before policy issuance, and the sale is consummated promptly after issuance, then query whether an insurable interest existed at the time of issuance. The authors submit the answer is no, but the life settlement industry argues otherwise.

The life settlement industry contends an insurable interest would exist because the insured had an insurable interest in his or her life and the agreement of sale was consummated after policy issuance. The life settlement industry further argues the incontestability clause may be a defense to a claim of lack of insurable interest, which again the authors submit is in error.

Until recently, a dearth of case law existed responding to these relatively modern facets of the insurable interest doctrine. This article provides an overview of the economic forces at work in life insurance sales and purchases by third-party investors, a historical perspective of the insurable interest doctrine, analysis of the arguments commonly raised to avoid the consequences of that doctrine, and a framework for applying the doctrine of insurable interest to modern life insurance transactions.

Viatical Settlements and Related Financial Transactions

A viatical settlement involves the sale of a life insurance policy to a third-party investor for an amount less than the expected death benefit. The viatical settlement industry was essentially a by-product of the AIDS crisis. *See Life Partners, Inc. v. Morrison*, 484 F.3d 284, 287 (4th Cir. 2007).

Initially, the viatical industry provided a secondary market for AIDS sufferers looking to sell their life insurance policies. *See id.* The viator (typically the insured) was re-

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lieved from the obligation of continuing premium payments and received much needed cash that could be used for treatment or end of life expenses. *See id.* Investors assumed responsibility for the premium payments and received the death benefits. *See id.* These policies were considered "reliable investments" because AIDS sufferers typically had short life expectancies. *See id.*

The law does not permit a deliberate attempt to evade the insurable interest requirement.

Over the years, and as treatment for AIDS improved, the viatical industry expanded to include policyholders with other terminal illnesses, and eventually to include generally healthy senior citizens. *See id.* The viatical industry began using the term "life settlement" to refer to the sale of a policy by a relatively healthy, elderly person to a group of investors. Sales of life insurance policies to investors are growing rapidly, with an estimated $13 billion worth of life insurance sold to investors in 2005. *See* Holman W. Jenkins, Jr., *Life Insurers Face the Future, Grudgingly*, WALL ST. J., Aug. 9, 2006, at A11. This figure was up from $200 million in 1998 and is expected to reach $160 billion by 2030. *Id.*

Today, investors solicit, support, and encourage the purchase of life insurance by elderly individuals for the sole purpose of selling the policy. Indeed, some investment banks have groups dedicated to investing in life insurance policies. These investors engage in transactions commonly referred to as stranger-owned life insurance ("STOLI") or speculator-initiated life insurance ("SPINLIFE").

Although these transactions are markedly different from viatical or life settlements, two common denominators apply to all these transactions: (1) the person or entity receiving the policy benefits has no insurable interest in the life of the insured; and (2) the investors hope the insured dies before the purchase price, premiums paid, and administrative expenses exceed the death benefits.

Insurable Interest Requires Good Faith

Centuries ago, the doctrine of insurable interest was forged from the common law of England. *See Connecticut Mutual Life Ins. Co. v. Schaefer*, 94 U.S. 457, 460 (1876). Wagering policies—policies in which the owner has no interest in the matter insured, but only an interest in its loss or destruction—were prohibited as violating public policy. *See id.*

Thus, when a life insurance policy is purchased by someone without an insurable interest in the life insured, the policy "would constitute what is termed a wager policy." *Warnock v. Davis*, 104 U.S. 775, 779 (1881). Wagering contracts contravene public policy because they are "speculative contracts upon human life" and create a direct interest in the early termination of the life of the insured. *See id.* at 779, 782; *see also Grigsby v. Russell*, 222 U.S. 149, 154 (1911).

In the United States, the insurable interest requirement is a matter of state law and is generally governed by statute. *See, e.g.*, MD. CODE ANN., INS. §12-201 (2008). Although the precise definition of "insurable interest" varies by jurisdiction, as a general rule, a person has an insurable interest in the life of another when he or she reasonably expects "to receive pecuniary gain from the continued life of the other person and conversely, if he or she would suffer financial loss from the latter's death, regardless of whether such expectation is based upon the status of creditor of, or surety for, the insured, or from the ties of blood or marriage." Lee R. Russ, COUCH ON INSURANCE §41:17 (3d ed. 2007).

As a general rule, a person has an insurable interest in his or her own life. *See* COUCH ON INSURANCE §41:19. If an insurance policy is purchased by a person without an insurable interest in the life insured, then the policy is void *ab initio*. *See, e.g.*, *Paul Revere Life Ins. Co. v. Fima*, 105 F.3d 490, 492 (9th Cir. 1997); *Carter v. Continental Life Ins. Co., Inc.*, 115 F.2d 947, 948 (D.C. Cir. 1940); *Obartuch v. Security Mut. Life Ins. Co.*, 114 F.2d 873, 878 (7th Cir. 1940); *Aetna Life Ins. Co. v. Hooker*, 62 F.2d 805, 805–06 (6th Cir. 1933); *Beard v. American Agency Life Ins. Co.*, 550 A.2d 677, 688 (Md. 1988).

Generally, if an insurable interest exists at the time a policy is purchased, then the insured may later assign the policy to someone without an insurable interest. *See, e.g.*, *Grigsby*, 222 U.S. at 155; *see also McKee v. Penick (In re Al Zuni Trading Inc.)*, 947 F.2d 1403, 1405 (9th Cir. 1991) (noting insurable interest is determined at time policy is issued).

Although the law ordinarily recognizes an insurable interest in one's own life, the law does not permit a deliberate attempt to evade the insurable interest requirement. *See, e.g.*, *McKee*, 947 F.2d at 1405; COUCH ON INSURANCE §41:19. Indeed, "the rule is that 'any person has a right to procure an insurance [policy] on his own life and to assign it to another provided it be not done by way of cover for a wager policy.'" *Bankers' Reserve Life Co. v. Matthews*, 39 F.2d 528, 529 (8th Cir. 1930) (citation omitted). Whether a policy was procured and assigned as a "cover for a wager policy" ordinarily turns on whether the policy was procured in good faith.

The need for good faith in procuring the policy frequently is the focus of the insurable interest analysis. In *Connecticut Mutual Life Insurance Co. v. Schaefer*, 94 U.S. 457 (1877), for example, the Supreme Court held that, where life insurance is properly obtained by one with an insurable interest in the life of the insured, the policy does not later become invalid because the insurable interest ceases to exist. 94 U.S. at 463.

The Supreme Court focused on the purpose for procuring the policy. "The essential thing is, that the policy shall be obtained in good faith, and not for the purpose of speculating upon the hazard of a life in which the insured has no interest." *Id.* at 460. In *Schaefer*, the Court concluded the policy was valid because it was procured in good faith by a husband and wife and each had an insurable interest in the life of the other at the inception of the policy. *See id.* at 460–61, 463.

The Court further stated that "a colorable or merely temporary interest would present circumstances from which *want of good faith and intent to evade* the rule might be inferred." *Id.* at 461 (emphasis added).

In *Grigsby v. Russell*, 222 U.S. 149, the Supreme Court again addressed good faith

in analyzing the insurable interest requirement. The insured obtained a policy on his life and paid two premiums before needing money for surgery. *See id.* at 154. The insured sold his policy to a physician for $100. *See id.* The Court held the assignment of the policy was valid, noting the difference between instances when a person with an insurable interest helps to procure an illegal wagering contract and those cases where "an honest contract is sold in good faith." *See id.* at 156.

The Eighth Circuit succinctly summarized the Supreme Court authorities on insurable interest as follows:

> In short, the test is the good faith in taking out the policy for the benefit of one having an insurable interest. The crux is whether the policy was a wagering contract at the time it became effective as a contract. If, at that time, such assignment was contemplated by the insured, it is a wagering contract, otherwise it is not.

Bankers' Reserve Life Co., 39 F.2d at 529. Thus, for purposes of determining insurable interest when a person procures a policy on his or her own life, the question is whether the insured contemplated an assignment to an individual or entity lacking an insurable interest at the inception of the policy.

Efforts to Evade Insurable Interest Doctrine—Interest in Own Life Not Sufficient

Although an insured policyholder generally can designate whomever he or she wishes as beneficiary, if the beneficiary designation was not made in good faith, but simply as a ruse to evade the insurable interest requirement and sell the policy to a stranger, then the policy may still be void for lack of an insurable interest. Indeed, far from satisfying the insurable interest requirement, the beneficiary's transient interest in the policy may be additional evidence of a lack of good faith.

The decision in *Life Product Clearing, LLC v. Angel*, 530 F. Supp. 2d 646 (S.D.N.Y. 2008), is instructive on this point. In *Angel*, a 77-year-old retiree was advised by an insurance agent that he could procure a life insurance policy on himself and receive an immediate cash payment by transferring the policy to an investor. *Id.* at 648–49. The retiree created a trust, and on the same day applied for a $10 million life insurance policy. *Id.* at 649–50. The policy was issued with the trust as owner and beneficiary. *Id.* at 650. Six days later, the retiree transferred his beneficial interest in the trust to an investor ("LPC") in exchange for $300,000. *Id.* The retiree died five days later. *Id.* at 651. After an investigation, the insurer paid the policy death benefit to the trust. *Id.*

LPC filed a declaratory judgment action claiming the corpus of the trust. *Id.* The retiree's estate filed a counterclaim asserting the trust was void for lack of insurable interest. *Id.* LPC moved for judgment on the pleadings, arguing that the insured signed the policy application, could have retained the policy if he chose to, established the trust to hold the insurance, named the trust as the sole beneficiary of the insurance, and named himself as the sole beneficiary of the trust. *Id.* at 656. The court rejected the argument that these facts established, as a matter of law, that the retiree had an insurable interest in the policy at its inception.

The court, citing *Grigsby v. Russell*, 222 U.S. at 156–57, explained the Supreme Court's holding as follows: "[W]hile the lack of an insurable interest in the insured on the part of the assignee was not a bar to subsequent assignment, there must be an insurable interest in the first instance, as well as good-faith intent to obtain insurance for the benefit of one's family or business." *Angel*, 530 F. Supp. 2d at 653. The court further explained the requirement of good faith:

> Only one who obtains a life insurance policy on himself "on his own initiative" and in good faith—that is, with a genuine intent to obtain insurance protection for a family member, loved one, or business partner, rather than an intent to disguise what would otherwise be a gambling transaction by a stranger on his life—may freely assign the policy to one who does not have an insurable interest in him.

Id. at 653 (citations omitted).

In assessing whether a policy was procured with a view toward assignment, courts should consider "the intent of the insured... at the time the policy is procured." *Id.* at 654. In considering whether a particular transaction is a sham designed to evade the insurable interest requirement or a legitimate good faith assignment, the *Angel* court noted that courts will consider factors such as (1) whether the insured paid the policy premiums, and (2) the length of time the insured held the policy before assigning it. *Id.*

The *Angel* court recognized that the assignment of a life insurance policy to a stranger may be permissible, "but only if the initial acquisition of the policy was in good faith and there was no prior intent or agreement to transfer it to an otherwise disinterested investor." *Id.* at 656. "The law prohibits gaming the system to procure wager policies, regardless of the creativity of form." *Id.* The court concluded that the facts alleged in the counterclaim supported a plausible claim that the retiree intended to transfer the policy to LPC prior to procuring it, and that such a scheme could amount to "an impermissible attempt to circumvent the prohibition on wager policies." *Id.*

In another decision, the United States District Court for the Northern District of Ohio considered whether life insurance policies purchased with the intent to assign to a viatical settlement company were void *ab initio*. *See Wuliger v. Manufacturers Life Ins. Co.*, 2008 WL 397591 (N.D. Ohio Feb. 11, 2008). Although the court recognized the general right to procure insurance on one's own life, the complicating factor was the viators' predisposition to assign their policies in return for a fee. *Id.* at *8.

The court recognized the test for a wager contract articulated in *Bankers' Reserve Life*: "'The crux is whether the policy was a wagering contract at the time it became effective as a contract. If, at the time, such assignment was contemplated by the insured, it is a wagering contract, otherwise, it is not.'" *Id.* at *9 (quoting *Bankers' Reserve Life*, 39 F.2d at 529). In *Wuliger*, there was no dispute the viators procured policies in their own names with the intent of assigning the policies for a fee. *Id.* The court determined "the viators were merely a pass-through for the viatical broker and derived a financial benefit for their service of securing the policy." *Id.* The court concluded the policies were void *ab initio* because they were "tantamount to wagering contracts." *Id.* at *10.

Pre-Existing Agreement to Assign Not Required

In an effort to avoid the good faith require-

ment, the life settlement industry argues all life insurance policies issued to the insured as owner have an insurable interest unless, prior to issuance, the insured had a pre-existing contract to assign the policy to an investor. If this rule were adopted, then form would prevail over substance by allowing a person to subvert the insurable interest requirement simply by waiting to formalize the agreement of sale (or concealing the agreement of sale) until after the policy is issued. Adoption of this rule would also likely be a boon to the STOLI or SPINLIFE industry because, as a practical matter, investors never agree to purchase a policy until after issuance. Indeed, until a policy is issued, the investor has no idea what he or she is purchasing.

> The need for good faith in procuring the policy frequently is the focus of the insurable interest analysis.

This argument was considered in *Sun Life Assurance Co. v. Paulson*, 2008 WL 451054 (D. Minn. Feb. 15, 2008). In *Paulson*, the insurer sought to rescind a policy issued to an individual who allegedly intended to sell the policy to a third party after expiration of the policy's contestability period. *Id.* at *1. Predicting Minnesota law, the court determined "that the Minnesota Supreme Court would consider a life insurance policy void as against public policy if the policy was '*procured under a scheme, purpose, or agreement* to transfer or assign the policy to a person without an insurable interest in order to evade the law against wagering contracts.'" *Id.* at *2 (quoting 44 C.J.S. Insurance §353 (2007)) (emphasis added).

Although the court determined the "most important factor in determining the parties' intent" was whether the insured had a preconceived agreement to assign the policy, the court did not find this was the only relevant factor in determining the intent of the insured and did not preclude consideration of other factors. *Id.* at *2. Based on the "complaint's cursory allegations," the court simply concluded that ascribing intent to procure the policy for purposes of sale was "purely speculative." *Id.*

Paulson focused on the allegations of an agreement to sell because the complaint suggested this was the predicate for finding a lack of insurable interest. The court, however, explained that a lack of insurable interest also could be proven by a "scheme" to evade the insurable interest requirement and create a wagering contract. *See Paulson*, 2008 WL 451054 at *2. The *Angel* case similarly recognized that an agreement of sale prior to issuance is not the only means of proving a lack of good faith. *See Angel*, 530 F. Supp. 2d at 656 (noting initial acquisition of policy would be in good faith only if "there was no prior intent *or* agreement to transfer") (emphasis added). Thus, based on the law of insurable interest as stated in *Paulson* and *Angel*, when an insured embarks on a scheme to buy and sell a policy, and intends to do so at the time the policy is applied for, the policy is a wagering contract.

This does not mean courts should find subjective intent alone sufficient to prove a lack of insurable interest. Insurable interest is lacking when, prior to policy issuance, the insured intends to sell the policy, the insured initiates a scheme to sell the policy, and the insured takes demonstrable and objectively verifiable steps toward selling the policy. The insured also must promptly carry the scheme through to fruition by actually selling the policy.

At least one court, however, reached a contrary conclusion. In *First Penn-Pacific Life Insurance Co. v. Evans*, 2007 WL 1810707 (D. Md. June 21, 2007), the insured engaged in a scheme to purchase and viaticate numerous life insurance policies, including a policy issued by First Penn. Shortly before issuance of the First Penn policy, the insured submitted a terminal illness certification form to his physician, altered his medical records to conceal the terminal illness form, applied for at least seven life insurance policies using different insurance agents, obtained $4 million of new life insurance, called and retained a viatical settlement broker to initiate the viatication process, viaticated two policies, and changed the First Penn policy to a 20-year term after learning it was easier to sell 20-year term policies to a viatical settlement company. *See id.* at **1–3.

Based on these facts, the court found the insured embarked on a scheme to viaticate numerous life insurance policies and intended to viaticate the policies at the time he applied for them. *See id.* at *4 n.7 ("I agree that the evidence shows indisputably that [the insured] planned to sell all or most of his life insurance policies at the time he applied for them...."). The court concluded, however, that "the scheme did not involve other parties working together with him to procure policies and immediately effect their assignment." *Id.* For this reason, the court concluded the First Penn policy was not void for lack of insurable interest. *See id.*

Although the viatical industry has argued that an agreement to transfer a policy before issuance is the *sine qua non* for finding a lack of insurable interest, the law imposes no such requirement. The law requires a lack of good faith. *See Bankers' Reserve Life*, 39 F.2d at 529 ("In short, the test is the good faith in taking out the policy for the benefit of one having an insurable interest."). Indeed, a policy validly taken out in good faith and without the intention to assign may be validly transferred after issuance.

A person intending to sell a life insurance policy no longer needs to prearrange the sale in order to effectuate a life settlement scheme. Indeed, in the age of viatical and life settlement companies, a ready market exists for life insurance policies. *See, e.g.*, "Settlement Forecast," http://www.habershamfunding.com/stl_forecast.html (predicting likelihood of purchase of life insurance policies based on risk and policy terms) (last visited June 8, 2008); *see also* http://www.peachtreelifesettlements.com/real_life_cases.asp (detailing risk and policy terms successfully transferred in secondary market) (last visited June 8, 2008).

Thus, one with no legitimate interest in protecting his or her dependents or otherwise managing risk may obtain a life insurance policy for the sole purpose of getting some quick cash by selling the policy to any number of entities willing to wager on human life. Requiring proof of a preconceived agreement of sale would only serve the interests of those intending to end-run the insurable interest requirement.

Incontestability Clause Is No Cure

In many states, life insurance policies become incontestable after a specified number of years. *See* Lee R. Russ, Couch on Insurance §240:14 (3d ed. 2005). Accordingly, after a policy has been in force for the requisite time, usually one to three years, the insurer cannot contest the validity of the policy, except on grounds excluded by the incontestability provision. *See id.* Parties seeking to evade the insurable interest requirement often invoke incontestability as a defense to a claim that a policy is void for lack of insurable interest.

Whether a policy is void or voidable is a critical distinction here because an incontestability clause or statute generally does not apply to a void policy. *See Nyonteh v. Peoples Sec. Life Ins. Co.*, 958 F.2d 42, 44 (4th Cir. 1992) ("An incontestability clause normally presupposes a valid contract; a determination that the contract was void thus renders the clause inapplicable."); *Crump v. Northwestern Nat'l Life Ins. Co.*, 45 Cal. Rptr. 814, 819 (Cal. Ct. App. 1965) ("Incontestability does not apply to a policy which is void *ab initio*. The invocation of an incontestability provision presupposes a basically valid contract."); Couch on Insurance §240:88.

A "void" contract is one that cannot be enforced because it never had any legal existence or effect and is incapable of ratification. A "voidable" contract, on the other hand, is one that could be ratified by the parties and subsequently enforced. *See* Restatement (Second) of Contracts §7 (1981). As a general rule, "when a contract is made in contravention of a statute, that contract is illegal and void." *See Yank v. Juhrend*, 729 P.2d 941, 944 (Ariz. Ct. App. 1986); *see also* Restatement (Second) of Contracts §§178, 179. Thus, a life insurance policy procured in violation of an insurable interest statute is void. *See Zurich Life Ins. Co. v. Zoo Stage, Inc.*, 186 Fed. Appx. 768, 769 (9th Cir. 2006); *see also* Couch on Insurance §41:1 ("In the absence of an insurable interest, an insurance contract is regarded as a void and unenforceable wagering contract.").

Nearly every jurisdiction that has considered whether an incontestability clause can breathe life into a policy lacking an insurable interest holds that a policy lacking an insurable interest is void and cannot be rendered valid by an incontestability provision. *See, e.g.*, *Paul Revere Life Ins. Co. v. Fima*, 105 F.3d 490, 492 (9th Cir. 1997); *Carter v. Continental Life Ins. Co.*, 115 F.2d 947, 948 (D.C. Cir. 1940); *Obartuch v. Security Mut. Life Ins. Co.*, 114 F.2d 873, 878 (7th Cir. 1940); *Aetna Life Ins. Co. v. Hooker*, 62 F.2d 805, 805–06 (6th Cir. 1933); *Kentucky. Cent. Life Ins. Co. v. McNabb*, 825 F. Supp. 269, 273 (D. Kan. 1993); *Commonwealth Life Ins. Co. v. George*, 28 So. 2d 910, 914–15 (Ala. 1947); *Home Life Ins. Co. of N.Y. v. Masterson*, 21 S.W.2d 414, 417 (Ark. 1929); *Bromley's Adm'r v. Washington Life Ins. Co.*, 92 S.W. 17, 18 (Ky. 1906); *Wharton v. Home Sec. Life Ins. Co.*, 173 S.E. 338, 339 (N.C. 1934); *Beard v. American Agency Life Ins. Co.*, 550 A.2d 677, 688–89 (Md. 1988); *Henderson v. Life Ins. Co. of Va.*, 179 S.E. 680, 692 (S.C. 1935).

As the insurable interest requirement is generally considered a matter of public policy, parties cannot, by agreement, create insurance without an insurable interest. A contract that is void because it violates public policy cannot be made valid by an incontestability provision. *See Obartuch*, 114 F.2d at 878; *Commonwealth Life Ins.*, 28 So. 2d at 915 ("[I]f the contract is against public policy the court will not lend its aid to its enforcement; that the parties to an illegal contract cannot by stipulating that it shall be incontestable, tie the hands of the court and compel it to enforce contracts which are illegal and void...."); *see also Home Life Ins.*, 21 S.W.2d at 417 ("The contract being one that was contrary to public policy, the defense that it was void is allowed, not for the sake of the defendant, but for the law itself.").

Moreover, depending on the language of the applicable incontestability provision, an insurer may further argue that the incontestability provision does not apply based on the plain language of the provision. The Arizona incontestability statute, for example, only applies to policies that have "been in force... for a period of two years." *See* Ariz. Rev. Stat. §20-1204 (2008). Since a void contract (*e.g.*, one lacking an insurable interest) has no legal existence or effect, Arizona's incontestability statute would not apply because such a policy was never "in force."

On a related note, those seeking to avoid the insurable interest doctrine often invoke case law applying incontestability provisions to policies procured by fraud. A policy lacking an insurable interest, however, is not analogous to a policy procured by fraud. Unlike a policy void for lack of an insurable interest, a policy procured by fraud is voidable. *See, e.g.*, *Nyonteh*, 958 F.2d at 44–45; *see also* Couch on Insurance §82:24. Thus, cases applying incontestability provisions to policies procured by fraud are inapplicable to policies lacking an insurable interest.

> The beneficiary's transient interest in the policy may be additional evidence of a lack of good faith.

Only two states—Michigan and New York—have held that a policy lacking an insurable interest is subject to an incontestability provision. *See Bogacki v. Great-West Life Assur. Co.*, 234 N.W. 865, 866–67 (Mich. 1931); *New England Mut. Life Ins. Co. v. Caruso*, 535 N.E.2d 270, 273–75 (N.Y. 1989). When *Bogacki* was decided, Michigan did not have an insurable interest statute but did have an incontestability statute. The court held the public policy supporting the incontestability statute must prevail over the common law. *See Bogacki*, 234 N.W. at 866–67. Thus, in states that have enacted an insurable interest statute, the analysis in *Bogacki* is inapplicable. *See Beard*, 550 A.2d at 690 (declining to follow *Bogacki* because Maryland, unlike Michigan, has insurable interest statute indicating strong public policy underlying insurable interest requirement).

In *New England Mutual Life Insurance Company v. Caruso*, the Court of Appeals of New York recognized that New York was not in conformity with the weight of authority in other states, but declined to overrule New York precedent. *See* 535 N.E.2d at 271. Notably, the court concluded that a policy lacking an insurable interest was not void under New York law. *See id.* at 273. Other jurisdictions, of course, have no such precedent and have not adopted the holdings of *Bogacki* or *Caruso*.

Waiver and Estoppel Inapplicable

A policy void for lack of an insurable interest cannot be rendered valid by an insurer's action or inaction. *See, e.g., Kentucky Cent. Life Ins.*, 825 F. Supp. at 273 ("Waiver and estoppel do not bar plaintiff from raising the defense of lack of insurable interest."); *Rubenstein v. Mutual Life Ins. Co. of N.Y.*, 584 F. Supp. 272, 279 (E.D. La. 1984) (same); *Beard*, 550 A.2d at 688 (same); *Home Life Ins.*, 21 S.W.2d at 417 ("Since it is the law which, upon grounds of public policy, pronounces the policy to be void, the doctrine of estoppel has no application."); COUCH ON INSURANCE §41:7. These authorities generally follow the same rationale as the cases examining the application of incontestability provisions to policies lacking an insurable interest. The doctrines of waiver and estoppel cannot breathe life into a void policy lacking an insurable interest because such a contract violates public policy.

Conclusion

In the context of modern viatical, STOLI, and SPINLIFE transactions, evaluating and determining the existence of an insurable interest at the time of policy issuance is difficult. The ultimate inquiry, however, should focus on whether the life insurance was purchased in good faith for the benefit of one having an insurable interest. No single fact can or should be determinative in this good faith analysis because the variety of schemes to evade the doctrine is essentially infinite.

In evaluating the insured's good faith and in determining the presence of insurable interest at the time of issuance, courts should consider whether: (1) the insured had a legitimate economic reason for purchasing the policy; (2) the purchase was prompted by a third-party investor or its agents; (3) steps were taken by the insured before issuance of the policy to effectuate the sale or transfer; (4) the timing of the transfer is consistent with purchasing the policy for re-sale; (5) the insured contributed more than a token premium payment; (6) a formal or tacit agreement to sell the policy existed before issuance; and (7) the insured was negotiating to sell the policy before issuance.

After considering these factors, a court should be able to determine whether the life insurance was purchased in good faith for the benefit of someone with an insurable interest. FD