



LIFE SETTLEMENTS ALERT

FEBRUARY 9, 2012

## U.S. District Court Grants Summary Judgment in a Ruling That Reinforces California Law in Favor of Life Settlements

On February 6, 2012, in *Hartford Life & Annuity Ins. Co. v. Doris Barnes Family 2008 Irrevocable Trust, et al.*, the United States District Court for the Central District of California granted summary judgment on behalf of the Doris Barnes Family 2008 Irrevocable Trust and against Hartford Life and Annuity Insurance Company on all of Hartford's claims, including a claim that the policy at issue was void for lack of insurable interest and claims for fraud, fraudulent inducement, negligent misrepresentation, and conspiracy.

The case involved the sale, shortly after the policy was issued, of the beneficial interest in the Trust, which was formed to purchase the policy. Hartford sought a declaration that the policy was void for lack of insurable interest because the insured, Doris Barnes, obtained the policy with the specific intent to sell it right away. Hartford also sought damages against the Trust for fraud and conspiracy based on misrepresentations that were allegedly made in connection with the application for the policy.

In holding that the policy was not void for lack of insurable interest, the court rejected Hartford's claim that an insured's intent to sell a policy is relevant to insurable interest. Relying on the California insurable interest statutes and judicial opinions in *Lincoln Life and Annuity Co. v. Berck* (commonly referred to as *Teren*) and *Lincoln Nat'l Life Ins. Co. v. Gordon R. A. Fishman Irrevocable Life Trust*, the Court concluded: "The Insurance Code does not state or imply that the intent to sell a Policy in the future is relevant to whether one has an insurable interest. Rather, the Code

[▶ Comments/Questions](#)

[▶ Manage Subscriptions](#)

For more information about Orrick's Life Settlements practice, please contact:

[Stephen G. Foresta](#)  
Partner, Litigation  
New York  
(212) 506-3744  
[sforesta@orrick.com](mailto:sforesta@orrick.com)

[Khai LeQuang](#)  
Partner, Litigation  
Los Angeles  
(213) 612-2407  
[klequang@orrick.com](mailto:klequang@orrick.com)

Previous Alerts

[In Answering Certified Questions on Insurable Interest, Delaware Supreme Court Raises Many More](#)

[California Supreme Court Denies Review of Teren Decision, Enhancing Investor Position in Life Settlements](#)

plainly states that a policy may be transferred to one without an insurable interest after the policy goes into effect." The court also held that the recent amendments to Insurance Code sections 10110.1(d) and 10110.1(e) do not apply retroactively to policies that were issued before January 1, 2010.

In addition, the court held that a life insurance policy's incontestability clause bars an insurer from asserting a claim for damages more than two years after a policy is issued based on fraudulent or negligent misrepresentations in the application. The court observed that to allow an insurance company to bring an affirmative claim for fraud rather than contesting the policy itself "would strip incontestability clauses of almost all meaning." The court's holding thus protects policyholders from damages claims after a policy has become incontestable.

The Trust was represented by Orrick.

For more information on this case and its potential impact, please contact [Steve Foresta](#) or [Khai LeQuang](#).

Permission is granted to make and redistribute, without charge, copies of this entire document provided that such copies are complete and unaltered and identify Orrick as the author. All other rights reserved.

To ensure future delivery of Orrick communications, please add [publications@orricklawfirm.com](mailto:publications@orricklawfirm.com) to your safe sender list or address book.

You are receiving this communication because we believe you have an existing business relationship with Orrick or have previously indicated your desire to receive such communications. You may unsubscribe from future messages by adjusting [your subscription preferences](#) or be removed from all mailing lists by e-mailing [unsubscribe@orrick.com](mailto:unsubscribe@orrick.com).

IRS Circular 230 disclosure: To ensure compliance with requirements imposed by the IRS, we inform you that any tax advice contained in this communication, unless expressly stated otherwise, was not intended or written to be used, and cannot be used, for the purpose of (i) avoiding tax-related penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any tax-related matter(s) addressed herein.

This publication is designed to provide Orrick clients and contacts with information they can use to more effectively manage their businesses and access Orrick's resources. The contents of this publication are for informational purposes only. Neither this publication nor the lawyers who authored it are rendering legal or other professional advice or opinions on specific facts or matters. Orrick assumes no liability in connection with the use of this publication.

Orrick, Herrington & Sutcliffe (Europe) LLP is a limited liability partnership registered in England and Wales under number OC347108 and is a multinational practice of registered and foreign lawyers and English solicitors. The term partner is used to refer to a member of Orrick, Herrington & Sutcliffe (Europe) LLP. A list of members of Orrick, Herrington & Sutcliffe (Europe) LLP and their professional qualifications is open to inspection at our registered office, 107 Cheapside, London EC2V 6DN. Authorised and regulated by the Solicitors Regulation Authority. Orrick, Herrington & Sutcliffe (Europe) LLP or an affiliated undertaking has an office in Beijing, Berlin, Dusseldorf, Frankfurt, Hong Kong, London, Los Angeles, Milan, Moscow, New York, Orange County, Paris, Portland, Rome, Sacramento, Seattle, Shanghai, Silicon Valley, Taipei, Tokyo and Washington, D.C.

Attorney advertising. As required by New York law, we hereby advise you that prior results do not guarantee a similar outcome. 2012 Orrick, Herrington & Sutcliffe LLP, 51 West 52nd Street, New York, NY, 10019-6142, +1-212-506-5000.