# Consumers Are Winners in New York's Kramer Ruling

## But No Victory For STOLI


Steve Shorrock

By Steve Shorrock, ChFC, CLTC, FLMI

A recent decision by the New York Court of Appeals in "Kramer vs. Lockwood Pension Services, Inc. et al.[2]" has received a considerable amount of attention from both primary and secondary market participants. The case arose from an interlocutory appeal which posed the question:

"Does the New York insurance Law prohibit an insured from procuring a policy on his own life and immediately transferring the policy to a person without an insurable interest in the insured's life if the insured did not ever intend to provide insurance protection for a person with an insurable interest in the insured's life?"

In a 5-2 decision, the Court of Appeals held that New York statues regarding insurable interest did not prohibit such an action. In so holding, the court also rejected "on overwhelming textual and historical evidence" the insurance company's argument that New York insurance law requires "good faith" on the part of the insured, and that an insured's "intent" to transfer would invalidate the policy.

While the decision is a good one for the secondary market, it is not, as some have proclaimed, a victory for "STOLI" (stranger-originated life insurance). Although the Kramer case will no doubt be cited as a precedent in a number of current and future cases, the decision is binding only in New York. In the Life Settlement Act of 2009, the State of New York defined and prohibited "STOLI" and imposed criminal sanctions for participating in such a transaction. Similar language appears in the statutes of most states that regulate Life Settlements, along with a prohibition against settling a policy for two years (in some cases five years) after the policies' inception. The facts presented in the Kramer case suggest that the transaction, if it took place today, would violate S 7815 of that act and thus be illegal.

Legality notwithstanding, STOLI transactions do not make economic sense. Unless there is a substantial change in the health of the insured after the issuance of a policy to a "senior," the policy has no intrinsic value as a life settlement immediately after issue—or indeed after two years (or even five years). The Life Insurance Settlement Association (LISA) and its President, Russel Dorsett, my partner at Veris Settlement Partners, have been vocal in denouncing the practice and have been instrumental in promoting anti-STOLI legislation whenever Life Settlement related legislation is under consideration.

Given the bad fact pattern associated with the Kramer case, the more important finding was the Court's rejection of a "good faith" or "intent" standard. In their zeal to combat the perceived STOLI problem, a number of carriers have made the argument that an insured's state of mind at the policy's inception must somehow be determined and that an "intention" to sell the policy—rather than an agreement to do so—is sufficient to invalidate the policy. An "intent" standard would be impractical and unworkable, in addition to lacking a solid foundation in statute or precedent.

The real winner in the Kramer case is the consumer—the owner of an insurance policy which is no longer needed, wanted, or affordable. The Court's affirmation of the principle that an insurance policy should be treated as financial property which can be properly transferred to the benefit of the policy owner is important, not only to the confidence of investors in the asset class, but also to the intrinsic value proposition of life insurance FA

*Steve Shorrock is President of LifeVentures Corp, which designs new life insurance products and develops marketing concepts for agents, and Director of Veris Settlement Partners, a life settlement firm that brokers seniors' unwanted or unneeded life insurance policies plus Director of Planning 4 Longevity, a firm that helps people financially plan for their entire lifetime. You can reach him at his Northport, Long Island office at 631-239-6655 or steve@lifeventurescorp.com*

 