

STOLI Criminal Cases Against Agents May Be On Upswing

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With the latest New York federal indictment in an alleged \$100 million stranger-originated life insurance (STOLI) scheme, legal experts say this only may be the beginning of a criminal enforcement crackdown on a type of fraud that mainly has played out in civil courts.

Two major criminal cases now have been brought by what one attorney considers the two most active prosecutors' offices in the country for pursuing financial crime -- the U.S. Attorney's Office for the Southern District of New York in Manhattan and the U.S. Attorney's Office for the Eastern District of New York in Brooklyn.

In February 2011, the federal prosecutor in Brooklyn got an indictment against a ring of insurance agents in an alleged STOLI scam in which the prosecutor sought forfeiture of more than \$550 million. That case, in which five agents were arrested, including insurance executive Chaim Mayer Levobits of **Liberty Planning** in Monsey, N.Y., is pending. No trial date has been set yet.

In April 2010, a prosecutor in Palm Beach County, Fla., filed what was believed to have been the first criminal STOLI fraud case. The prosecutor brought a 22-count indictment against Steven Brasner of **Infinity Financial Group** for a scheme involving \$78 million in death benefits. In November, he received a five-year suspended sentence and seven years of probation. In January, his insurance license was permanently revoked by Florida's Department of Financial Services.

The latest indictment sought by the U.S. Attorney for the Southern District of New York in Manhattan, which was unsealed Feb. 16, said that three life insurance agents participated in a STOLI scam between 2006 and 2011. Each faces up to 80 years in prison in the five-count indictment.

The U.S. Attorney in Manhattan and the FBI announced the charges against Michael Bindow, owner of a Scarsdale, N.Y., insurance agency; James Kevin Kergil, an insurance agent in Peekskill, N.Y.; and Mark Resnick, an insurance agent in Orlando, Fla.

Bindow was released from jail on a \$750,000 bond while Kergil and Resnick were each freed on \$500,000 in bail, according to Carly Sullivan, a spokeswoman for the U.S. Attorney's Office in Manhattan. All have entered not guilty pleas.

They were charged with conspiring to defraud insurance companies by getting them to issue policies to straw buyers, although the actual owners were third-party investors. They also were charged with obstructing justice after learning of the criminal grand jury investigation from the FBI in June 2010.

"As alleged, these three insurance agents concocted an elaborate scheme, using straw buyers and third-party agents, to deceive life insurance providers into issuing policies to unintended beneficiaries," said Manhattan U.S. Attorney Preet Bharara, in a statement. "And when their scheme was unraveling, they allegedly sought to throw investigators off the trail by destroying documents and telling other individuals to lie."

The three agents earned millions of dollars in fees and arranged to buy the STOLI policies for themselves to gain the death benefits, the joint statement from the U.S. Attorney's Office and FBI said.

The insurance companies that were allegedly defrauded were **American General Life**, **Lincoln Financial Group**, **Security Mutual Insurance**, and **Union Central Life Insurance** and their subsidiaries.

The indictment identifies the straw buyers as a 76-year-old Orlando, Fla., man who bought a \$4 million policy from Lincoln; an 86-year-old woman from Cold Spring, N.Y., who bought a \$2 million policy from Security Mutual; and an 83-year-old woman from North Fort Myers, Fla., who obtained a \$3 million policy from Lincoln Financial and a \$3.5 million policy from Union Central.

The attorneys representing the three agents either denied the allegations against their clients or declined to comment.

"We dispute the allegations against Mr. Resnick," said JaneAnne Murray of **Murray Law** in New York who is defending Resnick. "We do intend to challenge whether the alleged conduct in this indictment is appropriately charged as a crime."

Richard Strassberg, an attorney with the law firm of **Goodwin Proctor** in New York who is representing Bindow, said in a statement that "Mr. Bindow intends to vigorously defend himself against these allegations and expects to be fully vindicated at trial."

Roger Stavis, an attorney with **Gallet Dreyer & Berkey** in New York who is representing Kergil, declined to comment.

Albert Pinzon, a life settlement attorney with the **Cozen O'Connor** law firm in New York, said he believes the latest case possibly reflects the start of a trend for prosecutors to pursue STOLI fraud cases as criminal matters.

He also pointed to the raid by federal authorities, including the FBI and U.S. Treasury Department, on **Imperial Finance** in Boca Raton, Fla., in September, in which truckloads of evidence was seized from the premium-finance company. The U.S. Attorney's Office in New Hampshire has been overseeing the case. Imperial said that authorities are looking at whether the firm or its employees made misrepresentations to carriers on policies.

"The government definitely has an ear to this sector," Pinzon said. "I don't think they exactly know what's going on."

He said he expects to see a few more similar lawsuits seeking criminal penalties. But it's unclear whether the trend will continue beyond that and if any of the suits will get traction, he added.

Mark Freitag, director of strategic affairs and chief legal officer for **Living Benefits Financial Group** in Minneapolis, said he's not surprised criminal charges are starting to be filed in STOLI cases given the extent of coverage the cases get in general-circulation newspapers.

He said he would hate to have been a defendant in the case who knew the indictment was hanging over him since 2010.

"When the feds start coming after you, they have a phenomenal conviction rate. They only pick cases they can win," he said.

"You look at Brasner, you look at this one, you look at Imperial. It used to be private, civil litigation between insurance companies and investors and maybe agents and now it's turning into federal criminal investigations against various parties. This really raises the stakes," said Larry Rybka, president of **ValMark Securities**, an Akron, Ohio-based broker-dealer that represents policy sellers.

He said the cases could have a good impact on the industry.

"It keeps all the sleezeballs out. They'll all be wearing striped suits," Rybka said.

Rybka, who previously gave a report on STOLI lawsuits at a conference of the American Council of Life Insurers, which represents major carriers, said as of the end of last year, about 400 such cases had been filed nationwide.

Steven Sklaver, an attorney with **Susman Godfrey** in Los Angeles who defends clients in STOLI cases, said the latest indictment appears as if the U.S. Attorney's Office is acting as a "stalking horse" for the carriers.

"No one condones misrepresentations (on insurance applications) or obstruction of justice, but the indictment goes much further than that and asserts an entire narrative that is a critique of the entire life settlement industry, not just STOLI, which everyone knows is lawful," he said.

Sklaver said he doesn't understand why the indictment discusses difficulties that carriers may suffer when investors choose to optimize premiums and pay the minimum due to keep policies in force in contrast to insureds who pay more than necessary.

"These are contractual rights carriers offer to customers," he said. "... Now you've got the government alleging harm. That seems a civil matter, nothing the government should get involved in."

Sklaver said he also was concerned that the indictment fails to understand that under a previous law in New York before the life settlement law took effect in 2010, insureds could take out STOLIs, or policies for the purpose of immediately flipping them to investors.

Tom Hetherington, an attorney with the law firm of **Edison McDowell & Hetherington** in Houston, Texas, who represents carriers in STOLI cases, doesn't buy Sklaver's premise that federal authorities are favoring insurance companies.

"I think that's ridiculous to suggest that the U.S. Attorney's (Office) in New York is acting on behalf of anyone," he said.

"This is an action that proves once again, not only the (insurance) industry, but law enforcement takes very seriously the abuse of seniors," he said.

He said the case reflects the importance of ensuring that there's a legitimate insurable interest in the sale of all policies.

Ross Albert, an attorney with **Morris, Manning and Martin** in Atlanta who previously worked in enforcement for the Securities and Exchange Commission, also doesn't buy Sklaver's assessment that the New York authorities are favoring the life insurance industry over the life settlement industry.

"I don't think (the federal prosecutor) is trying to end the life settlement industry," he said.

Albert said, however, that he believes that the federal authorities are picking cases that they think will have the maximum impact in stopping a problem that they believe is large and growing. He said they also apparently believe the civil litigation isn't working and that putting people in prison and fining them will be more of a deterrent.

He said the U.S. Attorney's Offices in Manhattan and Brooklyn are considered the most active in the country as far as pursuing complex financial fraud cases. He said most U.S. Attorney's Offices with fewer resources shy away from these types of cases.

J. Bruce Maffeo, a criminal defense attorney for Cozen O'Connor in New York, said there's always a thin line on whether a case is prosecuted as a civil or criminal matter.

"If you credit the allegations in the indictment, which is only an accusation, there's no problem seeing how this is a crime. Whether they can prove it remains to be seen," he said.

Maffeo, who 22 years ago worked for the U.S. Attorney's Office in Brooklyn for 10 years, said he doesn't regard it as any surprise that criminal prosecutors would look at such STOLI cases considering the proliferation of civil cases on the issue.

At the same time, he said "they're not in the business of converting civil complaints to criminal indictments for the hell of it. They're doing it because they feel they have compelling evidence."

Ira Lipsius, a life settlement attorney with **Lipsius-Behhaim Law** in Kew Gardens, N.Y. who consults for defense attorneys in STOLI cases, said he considers the case "very weak."

He particularly pointed to the part that said when insurers issue policies they take into consideration that wealthy people will live longer because they have better access to health care than lower income people. He said insurance

companies base their actuarial calculations on a standard mortality table that looks at peoples' health, not their incomes.

But he said the obstruction of justice charge in which the defendants allegedly tried to destroy evidence after learning of the criminal investigation makes it a stronger case for prosecutors.

"That's the danger for these guys. They can serve time for obstruction," Lipsius said.

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