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October 7, 2013

Insurance Department

Alleged STOLI Producers Found Guilty of Fraud and Other Criminal Charges

Earlier today, a jury in the United States District Court for the Southern District of New York found independent insurance producers Michael Bindow, James Kergil, and Mark Resnick guilty of mail and wire fraud, and conspiracy to commit those offenses. The jury also convicted Kergil and Resnick of conspiracy to obstruct justice.

Sentencing has been scheduled for January 15, 2014. The convicted defendants may face up to 80 years in prison.

During the 12 day trial, federal prosecutors argued that Bindow, Kergil, and Resnick lied to insurers to perpetrate the scheme and then lied again to cover it up. Based on the testimony of insiders and insureds, along with the defendants' own emails and other documents, prosecutors specifically argued that the defendants:

- recruited brokers to solicit elderly clients to serve as straw-buyers for the policies, with promises of large commissions to the brokers and payments to the clients upon the sale of the policies;
- submitted applications to insurers for more than \$100 million in life insurance, which grossly misrepresented the insureds' income and net worth and lied about the intent to sell the policies, the fact that the premium would be financed by third-parties, and that multiple policies were being applied for or had been issued in the name of the insured;
- recruited accountants and other professionals to submit bogus inspection reports and other documents purporting to verify the insureds' financials;
- conspired to thwart insurers' attempts to investigate the representations made in the policy applications and to disguise the source of premiums paid for the policies by wiring funds into insureds' accounts; and
- earned millions of dollars through commissions and in some

cases by arranging to cash in themselves on the death benefits upon an insured's death.

Insurance industry leaders Jim Avery, the former Vice Chairman and President of Individual Life Insurance for Prudential, and Mike Burns, a Senior Vice President at Lincoln Financial Group, also testified during the government's case in chief. Both testified about their companies' anti-STOLI policies, the harm to insurers that STOLI caused, and the measures the companies took to try to screen it out.

The evidence relating to the conspiracy to obstruct justice charges against Kergil and Resnick included alleged recorded calls that a scheme insider, who testified under a plea agreement, had with Kergil and Resnick, and testimony from an employee of the Apple computer store where Resnick allegedly had taken his computer to have the hard drive wiped clean. The alleged calls, which were recorded in cooperation with the FBI, involved discussions about Kergil's instruction to Resnick and the insider to destroy all records with Bindow's name on them and to wipe their computer hard drives clean.

Each of the defendants was separately represented by his own counsel, and none of the defendants took the stand in his defense. Instead, the defendants presented excerpts from approximately a dozen files for policies that the defendants submitted to the insurers and that supposedly contained STOLI red flags. Based on these documents, the defendants argued that the insurers were not deceived by the defendants' lies and that the scheme was profitable for all involved and not criminal activity. On rebuttal, the prosecutors introduced additional evidence from the insurer files showing that the insurers' attempts to investigate the STOLI red flags were met with more lies on the part of the defendants and their associates.

This criminal prosecution has already spawned at least one civil action by an insurer seeking to have a STOLI policy allegedly involving Resnick and Bindow declared null and void.



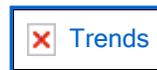
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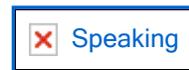
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