Testimony of Robert Rubin, CLU, ChFC

Hi my name is Bob Rubin. I am a Senior Vice President and Insurance Advisor with Wachovia Insurance Services. However, I am here in my capacity as Florida State Chairman of the Association of Advanced Life Underwriting. I am not representing Wachovia in this testimony. I have been in the insurance and financial services business on a full time basis since 1985. I have been a resident of this great state since I was 12 years old. I care deeply about what happens in our state. For the past 9 years I have worked for Wachovia in South Florida helping put into place billions of face value of life insurance helping families and business take care of their loved ones, employees and others.

As an active member of the Association of Advanced Life Underwriting I have been active in the debates regarding Stranger owned life insurance, Investor owned life insurance or whatever you want to call it. For purposes of my testimony I will call it STOLI. As a producer in South Florida I have received multiple calls from other advisors asking me talk to their clients that have expressed an interest in going through with a STOLI transaction.

Without exception the calls went like this.
1. Someone at the country club, church, or out for dinner approached me about a deal in which I get free insurance (they always say that), money either up front or in 2 years (generally guaranteed in one form or another) and all I have to do is take a medical exam and sign some papers.
2. I want to do this deal and since my advisor wasn't so sure about it and wanted me to talk to you since you are the expert.
3. They run through the deal. Usually it's some sort of variance on the "free insurance" scheme, sometimes it has a charitable bent to it, sometimes not.
4. I generally run through the reasons they shouldn't do the deal. Breaking insurable interest laws, possibly committing fraud, discharge of debt issues, overall tax issues, signing documents they do not understand. They generally want me to read them and give them advise. I advise them I am not an attorney and tell them to consider hiring one to review the documents. Never happened to my knowledge with anyone I spoke to.

5. The conversation generally denigrates into I'm too conservative, I don't offer this type of product or I don't like it or whatever reason. At this point greed takes over and they will make a greedy emotional decision and rationalize it later.
As an aside I stopped taking those calls last year.

As a long time insurance professional with a Chartered Life Underwriter and Chartered Financial Consultant designation from the American College, as a father who wants his children to follow him into the business, as a person who is trying to do the right thing by my clients on a daily basis I take offense to STOLI.

As a legitimate producer , I am in competition every day with other producers in the market place. I am a capitalist. Competition is good. But there must be a level playing field. When I am presenting a sale the most difficult part of my job is explaining the cost. I must do what I can to explain value versus cost. If my competitor is offering so called "free" insurance how can I compete against that? STOLI promoters and producers hoodwink and convince consumers they not just receiving free life insurance but also taking care of their estate planning needs. This is extremely offensive. There are many problems with this issue. I will try to cover as many as I can.

The first fallacy of the STOLI producer is their representation that the insurance is free.

It is my understanding that we, as agents are not allowed to say that insurance is free. Period. Well, almost every consumer who has participated in these deals thinks they are getting something for nothing. As a legitimate producer I am offended by that. Now, because of the pressure around the country promoters now obfuscate or complicate the presentation and process to hide the "free" part. They add items such as a letter of credit (which doesn't cost anything), partial refundable collateral, or some other such subterfuge. They like to use terms such as the consumer having "skin in the game". When in reality the consumer doesn't.

Second, the consumer thinks he has taken care of his estate planning, business succession planning, or accomplished some sort of estate equalization to benefit his children and grandchildren. The reality is exactly the opposite. In most cases, if the insured(s) live more than the two years the consumer might or might not end up with some money but not with the insurance. He now has a significant life insurance policy on his life, usually up the maximum allowed by a particular life insurance companies financial underwriting guidelines. Since he has used up his insurance capacity he will be hard pressed to purchase anymore life insurance that will truly benefit his family.

To continue the subterfuge, a trust is set with him as the insured, his children or grandchildren as the beneficiaries of the trust, he has signed a lot of important looking papers, he's taken a medical exam, a life insurance policy is issued, representations were made throughout the process how good this is for his family. He thinks everything is taken care of. How wrong he is.

Tax issues are glossed over. Most of the time these deals involve quite a bit of premium to be paid up front. Since the premium is borrowed a substantial debt is incurred. Since it is a non-recourse type of finance what happens in two years when the policy is sold and the debt is discharged? I am not a CPA but is that not a discharge of debt issue?

Since a lot of these deals involve money paid directly to the client either up front or on the back end isn't this a potential violation of Florida's rebating laws?

In the agreements that are signed by the consumer there is generally language that indemnifies the promoter, funder and/or agent from any liabilities. I can assure you most people signing these documents don't have any idea this language is present.

In these transactions unethical agents complete the application for the consumer who generally signed a blank application. These agents know that truthful answers on the application will cause the policy not to be issued by the life insurance company. In order to make the deal larger and more profitable for all involved (client included) fudging of the numbers regarding net worth is done. This kind of inaccurate completion of the application puts the consumer at a risk o f answering the questions dishonestly and subjecting themselves to allegations of fraud and rescission of the policy.

The rescission of the policy is the one issue that should scare the consumer from never going near one of these transactions. Assume for a minute that the policy is rescinded. That a big debt was incurred, that the consumer received some money up front. That he signed an indemnification clause. And further assume the life insurance company rescinds the policy and wants the commission it paid back. That same commission that was used to make this deal work. Guess who wants to be made whole? The promoter. Guess where they're going to go to get their money back. The consumer. He signed an indemnification that he will make whole if something goes wrong. This is not a good place for the average consumer to be. As a side note the agent who sold the case is also in a pickle in this situation.

I must admit that once a few years back on behalf of a very good client I seriously explored a STOLI transaction even taking applications and having the client take a medical exam. During a part of this process I was rationalizing to myself that this was good for the client. There was a charitable angle to this particular transaction so I further rationalized how I was helping a charity, a local hospital. At the end of the day I decided along with the client that this transaction just wasn't "right". The only people who were winning were the promoter and myself.
The truth is if there was not a very high commission on these transactions they would go away. As you've heard today there are many risks that producers took in promoting, performing and effectuating these transactions. Most are now worried.

I haven't even spent any time on the unintended consequences of these transactions.

1. Driving up the cost of life insurance for everyone.
2. Additional paperwork that must be completed during the underwriting process to help the companies identify the problem.
3. Significant additional time in the underwriting process. Sometimes adding weeks to the process.
4. Reducing the availability of life insurance for people over age 70.
5. Added difficulty in servicing our client's policies because the insurance companies inforce illustration departments are inundated with requests for service in regard to these deals thereby crowding out legitimate service requests.

These transactions are not good for the consumer, the insurance companies or honest agents.

I am not an expert in how to actually fix this issue but can tell you with honesty, conviction and experience you need to take action to make these transactions go away. I will leave it to the lawyers and other industry experts to figure that out. I thank you for your time in listening to an agent in the "trenches" who has to deal with this problem. I feel very good about how life insurance is used for legitimate purposes to help citizens and business of our great state of Florida. I feel that with your help this problem can be put to rest. Thank you.

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