

Below is a brief summary of the Teren trial and the appeal:

On April 27, 2006, Lincoln originally issued two life insurance policies—Nos. LP5543920 and LP55441541—in the total face amount of \$20 million insuring the life of Jack Teren with the Jack Teren Trust as the owner and beneficiary. On May 18, 2006, Lincoln sent the Teren Trust an Endorsement for Policy LP5541541 changing the issue, effective, and policy date from April 27, 2006 to May 15, 2006.

In the Teren case, there was an agreement between Jack Teren, his son Elliot Teren, and Life Products Clearing, LLC (“LPC”) to sell the beneficial interest in the Jack Teren Insurance Trust to LPC not only before the Teren Policies were in force, but before the defendants Jack Teren and Jonathan Berck, as trustee of the Teren Trust, even submitted the Application for the Teren Policies to Lincoln. LPC was formed in 2005 for the business of acquiring life insurance policies on behalf of investors and managing portfolios of policies. LPC is owned by Martin Fleisher and Stephen Lockwood. The Application for the Teren Policies was submitted to Lincoln on March 30, 2006. No later than March 1, 2006, the opportunity to purchase the beneficial interest in the Teren Trust and/or the Teren Policies was brought to the attention of Martin Fleisher, the principal member of LPC, by Adam Goldberg. Fleisher describes Goldberg as an “intermediary” affiliated with whom he has worked on approximately 20 policy investments. Fleisher characterized Goldberg as a “lookout for those policies” and when Goldberg found something that seemed attractive, he would email Fleisher because he knew that Fleisher was in the business of acquiring beneficial interests in insurance trusts. According to Fleisher, there often was vigorous demand for “attractive” policies—policies attractive to investors.

At trial, Lincoln was able to persuade the Court (it was a non-jury trial) that the policies were void ab initio because they lacked an insurable interest at inception. Further, as the policies were in their inception a wager, the court ordered that Lincoln was permitted to retain all premium that had been paid prior to the inception of the litigation. The trial court based its decision primarily on the evidence which proved that the Teren policies were procured with the sole purpose of being sold to stranger investors on the secondary market for life insurance.

Unfortunately, the trial court's decision was reversed on appeal. In a 2-1 decision, the majority that the policies were supported by an insurable interest for two reasons. First, the court relies upon the Fishman case for the proposition that the court could not look behind the transaction to determine what was really going on and the fact that Jack signed the application and that his son was named a beneficiary of the trust was dispositive. Second, the court relies upon California's 2010 adoption of amendments to the insurance code making this type of trust transaction illegal as demonstrating that it was legal before the statute was effective. There was a dissent which takes on and shoots down each point in the majority decision and it almost poetic in articulating the reasons why these types of wagering transactions violate California public policy.

A few quotes from the dissent:

"This case presents a perfect example as to why courts must have the authority to go beyond the signature and determine whether, in fact, there was a legitimate insurable interest";

"the majority undermines the public policy behind" the insurable interest requirement; "it is the Trust [rather than Lincoln] that attempts to rewrite California law";

"[t]he trial court was well within its authority to inquire as to whether the policies were in fact supported by a legitimate insurable interest at the time they were issued, and, specifically to determine who, in fact, 'took out' the policies on Jack Teren's life";

"[t]he trial court's findings establish that Jack Teren was, in reality, merely a 'shill' who fit the needs of the investors";
"{a}s Lincoln correctly notes, 'courts frequently disregard the

labels and characterizations of transactions by the participants and determine the true nature of the transaction";

{t]he unmitigated gall that the Trust exhibits in making this argument [that Teren's signature on the application is dispositive] is truly breathtaking"; and

"[t]he trial court's findings [which the "Trust does not dispute"] lead to the inescapable conclusion that the policies at issue are in fact classic prohibited 'wager contracts' in every sense of the word."

Therefore, in spite of the strong dissent, the Teren policy as ultimately deemed valid by the California intermediate appellate court. The California Supreme Court declined review.