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The *WRNewswire* is created exclusively for AALU Members by insurance experts led by Steve Leimberg, Lawrence Brody and Linas Sudzius. The *WRNewswire* provides timely reports and commentary on tax and legal developments important to AALU members, clients and advisors, delivered to your inbox as they happen.

TOPIC: District Court Denies Summary Judgment to Insurer in STOLI-like Case

CITE: [*American General Life Insurance Company v. Diana Spira 2005 Irrevocable Life Insurance Trust, Aaron Azrylewitz, as Trustee, and Simon Spira*](#), No. 08-cv-06843 (U. S. D. C., S.D. NY).

SUMMARY: In a STOLI-like case an application on the life of Diana Spira, an 83-year-old woman, for \$5,000,000 was made to General American on November 5, 2005. On the application, statements were made regarding the insured's net worth and income. American General issued the policy on December 15, 2005. Mrs. Spira died on June 7, 2007, within two years of issue. The claim was investigated and the net worth and income on the application were not verified. As a result, American General filed suit asking for summary judgment to have the policy void *ab initio*. The owner of the policy countersued for summary judgment to have the claim paid. The judge denied both motions.

BACKGROUND: On November 5, 2005, Aaron Azrylewitz, as Trustee of the Diana Spira 2005 Irrevocable Life Insurance Trust, applied to American General for a \$5,000,000 policy with a \$356,000 annual premium. The application stated that Mrs. Spira had annual income, earned and unearned, of \$600,000, and a net worth of \$13,000,000. The application also indicated that there were policies issued by New York Life between 1991 and 1999 totaling \$1,850,000 of face amount. The purpose of the new policy was "for estate taxes". Both the insured and the trustee signed the application. The application stated that: "I have read the above statements or they have been read to me. They are true and complete to the best of my knowledge and belief."

American General's "concierge group" that specialized in "high-value" policies, so classified because the premiums are high, handled the underwriting. At least in principle, American General and the concierge group followed underwriting guidelines developed by its reinsurer, Swiss Re. The guidelines support issuance of policies with up to a face

value of approximately 50% of the net present value of an insured's estate's expected net worth at the time of death.

During the course of underwriting, Infolink, a third-party vendor, generated an "Amplified Inspection Report." In a financial section of the report it stated that Diana provided joint financial information with rental income of \$600,000. The report noted that the applicant "denied to provide specific personal assets," even while estimating her net worth as \$15,000,000 to \$18,000,000. General American subsequently ordered a second report from another third-party vendor, LabOne. The income and asset figures were reported over the telephone by Simon, Diana's husband, with Diana supposedly present in the background. The only income noted was \$19,200 in unearned income. In other unearned income rows (dividends, interest, net rentals) the report used the term "declined." The term was again used in the stock/bonds and cash rows while noting \$1,000,000 in real estate and \$12,000 in cars. The report showed no liabilities and \$1,212,000 in the total net worth row. Both the income and net worth were substantially less than what was reported on the application.

After Mrs. Spira's death, Simon Spira and two grandsons were interviewed in person on August 29, 2007. They were unable to verify the income and net worth figures on the application. In a subsequent deposition Simon testified that neither he nor Diana had a net worth of \$13,000,000 in 2005. He said their net worth was far less than the estimates on the application, which he said were inaccurate. He testified that he had less than \$2,000,000 in his safe at that time and no assets except "with the children." He also testified that he and his wife had no more than \$100,000 in income since 2000, and he appeared to be including both earned and unearned income.

Using a \$3,000,000 net worth at time of issue, the Swiss Re guidelines would support issuance of no more than \$2,700,000. The parties disputed how closely or how much American General followed the Swiss Re guidelines.

RESULT: Summary judgment is used only if it can be proven that—based on all the facts—there is no need for a trial. As pointed out in the decision, the criterion for determining the applicability of summary judgment is:

The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to summary judgment as a matter of law.

Additionally, the adverse party cannot produce admissible facts to contest the assertion.

The court found that it was clear that the defendants had provided false information that would have supported American General's assertions. However, because American General did not have to (and had not in the past) make underwriting decisions based strictly on the Swiss Re guidelines, it could not *prove* that it would have acted otherwise based upon the information at hand.

Since American General could not prove that the claim should be paid based on the facts at hand, its motion for summary judgment was denied, and the case has been set for trial.

RELEVANCE: Professional life insurance agents who work in the estate planning marketplace should:

- Make every attempt to verify the information on the application and provide that information in a cover letter to the underwriter. Financial statements from a disinterested third party (e.g., CPA) should be obtained if available.
- Remember that the producer is responsible for verifying the accuracy of the information to be used in underwriting.
- Be aware of the issuing company's underwriting guidelines.

An agent's failure to follow these rules may result in aggravation, lawsuit or other unexpected result.

Additionally, when an agent submits a case to underwriting, that agent's credibility is very important. If the underwriter respects the agent, the process will typically go smoothly. If not, there will be bumps in the road. In some cases companies will not take business from certain agents. In other cases where there is a history of a geographic concentration of questionable applications, an insurance company may decline to write policies on proposed insureds in that area.

Finally, sometimes the issuance of a policy is a business decision by the carrier rather than a purely underwriting one. Insurance companies do look at high-premium cases differently. It appears in the *Spira* case that American General may have ignored some red flags. Whether it can prevail in a trial remains to be seen.

WRNewswire # 14.12.11 was written by Richard Harris of [Richard Harris LLC](#).

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