

Press Release

FOR IMMEDIATE RELEASE

November 18, 2010

NEW YORK COURT OF APPEALS AFFIRMS VALIDITY OF LIFE SETTLEMENTS
Appeals Court Determines State of New York Insurance Law Concerning Transferability of Life Insurance Policies

WASHINGTON, D.C. – The Institutional Life Markets Association (ILMA) today commended the New York Court of Appeals ruling on November 17, 2010, that an insured, Arthur Kramer, had discretion to name the beneficiaries of his insurance policies. The New York Court of Appeals addressed the question certified to it by the United States Court of Appeals for the Second Circuit.

“In analyzing New York’s insurable interest law the Court time and time again has noted that the language of the statute is unambiguous,” said Thomas Weinberger, a partner at Stroock & Stroock & Lavan LLP who serves as counsel to ILMA. “The court also noted New York’s insurable interest law allows for a policy to be assigned immediately after it is issued, and such freedom of assignment is not limited by other provisions of the law.”

ILMA participated in the suit by filing an amicus brief with the Court.

“We are pleased the Court accepted the position stated in ILMA’s amicus brief that the insured’s ‘own initiative’ means that the decision to obtain life insurance ‘be knowing, voluntary, and actually initiated by the insured,’” added Weinberger.

Background on the ruling:

The question before the Court was:

"Does New York Insurance Law §§ 3205 (b) (1) and (b) (2) prohibit an insured from procuring a policy on his own life and immediately transferring the policy to a person without an insurable interest in the insured's life, if the insured did not ever intend to provide insurance protection for a person with an insurable interest in the insured's life?"

In their opinion the Court stated, “We now answer in the negative and hold that New York law permits a person to procure an insurance policy on his or her own life and immediately transfer it to one without an insurable interest in that life, even where the policy was obtained for just such a purpose.”

The Court concluded by stating, “It is not our role ... to engraft an intent or good faith requirement onto a statute that so manifestly permits an insured to immediately and freely assign such a policy. Accordingly, the certified question should be answered in the negative.”

When addressing the plaintiff’s argument, the Court stated:

“There is simply no support in the statute for plaintiff and the insurers’ argument that a policy obtained by the insured with the intent of immediate assignment to a stranger is invalid. The statutory text contains no intent requirement; it does not attempt to prescribe the insured’s motivations. To the contrary, it explicitly allows for ‘immediate transfer or assignment’ (Insurance Law § 3205 [b] [1]). This phrase evidently anticipates that an insured might obtain a policy with the intent of assigning it, since one who ‘immediately’ assigns a policy likely intends to assign it at the time of procurement.”

A copy of the opinion issued by the court and ILMA’s amicus brief are available at <http://www.lifemarketsassociation.org/>.



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About ILMA:

ILMA is a not-for profit trade association focused on the longevity and mortality-related marketplace. By creating innovative capital market solutions, ILMA members seek to expand consumer choice in one of their most important assets - their life insurance. The Association is a leader in establishing best practices and in raising awareness about this growing and vital industry.

ILMA's MISSION is to expand and apply capital market solutions in life insurance, educate consumers that their insurance may be a valuable asset, expand consumer choices about how to manage it, and support the responsible growth and regulation of the industry. We believe that expanded consumer choice and full disclosure of all fees is good for the consumer and for the industry.