

**From:** Don Goode

**Sent:** Tuesday, May 11, 2010 8:03 AM

**To:** Don Goode

**Subject:** Feature: settlements spur some carriers to terminate producers or consider policy rescission

By [LINDA KOCO](#)

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Once a life policy has been settled, 50% of direct writing life insurers say their company procedure is to “terminate producers circumventing the system” and 33% say they would “consider rescinding the policy if it is sold,” according to a new report.

Brian Smith, president of the Life Settlement Institute, Hudson, Ohio, says that’s “anti-consumer,” but David N. Wylde, the current chairman of the subcommittee that issued the report, believes those same responses are “proactive” for the insurance companies.

The report is based on a survey a done by the life settlements survey subcommittee of the Society of Actuaries, Schaumburg, Ill. Released earlier this year, it drew responses from 19 direct writing carriers that have total individual life face amounts in force ranging from under \$50 billion to over \$500 billion. In many questions, such as the one above, respondents were able to indicate more than one selection.

Wylde, a research actuary at Transamerica Reinsurance, Charlotte, N.C., highlighted some of the key findings during a breakout session at a recent life insurance conference in Washington, D.C. The conference was sponsored by LIMRA, LOMA, SOA, and ACLI.

“Terminating producers for circumventing the system” is something that companies can do in response to life settlements, Wylde said. “It’s very proactive.”

If a company doesn’t want to see their policies being settled, he continued, it can “incentivize” producers away from trying to get life policies sold by taking this approach.

As for policy rescissions, Wylde noted that carriers do rescissions in the first couple of policy years—during the contestable period—if there is something “not right” about the transaction. Typically, he added, if a company looks at a block of settled policies, that usually happens in year three—and that is outside the contestable period, so “there is not much companies can do (to rescind) then.”

But Smith, when contacted by Settlement Watch about the survey findings, said that the two practices--producer termination and policy recession—are “inappropriate and without justification.” His organization seeks to foster knowledge of life settlements among insurance and financial planning professionals.

Consumers have had the right to sell their life policies since 1911, Smith says.

“Also, 39 states have legislation in place governing life settlements, and four states now require life insurance companies to notify consumers of life settlements when they send the consumer a lapse notice.”

That means “it is inappropriate to terminate producers who are providing their clients with appropriate guidance on life settlements,” he said. “And there is no legal justification for rescinding a life policy due to the fact that a legal life settlement takes place.”

In the SOA report, the researchers point out that survey data was collected in mid-2008. Financial conditions have changed significantly since then, they write, so overall financial repercussions from the economic downturn of last year might have affected the life settlement process, and individual conditions for some respondents may have changed, too.

In view of that timeline, Smith allowed that “possibly, the respondents were unaware of the current regulations on settlements that prohibit life insurance companies from interfering with the life settlement process.” A number of settlement laws and regulations have been updated or enacted since 2008, he added.

In the survey, the company strategy used by the most respondents (75%) was this: Once a life policy has been settled as a life settlement, the established procedure at the company is to “monitor beneficiary and policyowner changes.”

Wylde said insurers are not going to change marketplace behavior by monitoring. But he said the activity does mean the companies are enabling themselves "to know" what is going on.

The SOA report also identified other procedures that companies might follow once a policy is settled. These include monitoring term conversions, monitoring joint and last survivor policies (e.g., first deaths), monitoring experience, and repricing products at the older ages.

But a few respondents wrote comments on their surveys indicating that their own companies were not taking such steps. As one respondent put it: "Depending on timing of settlement, we may or may not do as checked." Another said: "Nothing formal yet, since our exposure is so small." Yet another said: "Too few to monitor any of these items."

Even so, the survey indicates that some companies, even in 2008, were taking steps to respond to exposure to life settlements.

For instance, 61% of 13 carriers said they had changed their pricing assumptions regarding lapses, as a result of exposure to life settlements. Some also changed pricing assumptions related to mortality (23%), guarantees (8%) and commissions (8%).

Furthermore, 15 carriers indicated their companies have integrated "protective mechanisms" into their sales and underwriting processes, said Wylde. The top four mechanisms they said their companies are using are: educate underwriters in identifying life settlement cases, ask a question of the application, monitor and control producer incentives and review trust agreements.

When asked for the companies' current approach to the life settlement market, 55% said they have no current plans to become involved, said Wylde. But 27% said they plan to investigate future involvement, 9% plan to establish a separate business unit, and 9% plan to actively purchase policies as an investment.

[The SOA Life Settlements Survey Report is available here](#)

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**From:** Don Goode  
**Sent:** Monday, June 14, 2010 2:21 PM  
**To:** Don Goode  
**Subject:** WSJ - Lawyer's Heirs Fight Insurers in \$56 Million Policy Intrigue

## Lawyer's Heirs Fight Insurers in \$56 Million Policy Intrigue

By [MARK MAREMONT](#) And [LESLIE SCISM](#)

Days after New York attorney Arthur Kramer died unexpectedly at age 81, members of his family seated in a lawyer's office were told that in his final years, he had taken out \$56.2 million in life insurance.

There was a catch: They weren't the beneficiaries.

Mr. Kramer had bought seven large life-insurance policies and quickly arranged a sale of the right to claim the benefits. Investors, not relatives, would collect upon the death of the prominent attorney, the co-founder of law firm Kramer Levin Naftalis & Frankel and brother of playwright Larry Kramer.

Alice Kramer (right) is disputing the legitimacy of the sale to investors of the life insurance benefits of her late husband Arthur Kramer (center), shown with his brother Larry Kramer at a charity event in 2007.

Arthur Kramer's widow, Alice, refused to give the investors a death certificate. And soon she filed suit making an unusual assertion. Her late husband, she alleged, had arranged deals with investors that skirted a state "insurable interest" law, which says people can't procure life insurance on someone they aren't close to. Because his arrangement violated that law, she argued, the \$56 million should go to the Kramer estate.

Investors cried foul, saying Kramer family members had agreed to let the investors be the beneficiaries and had been paid for this. Rather than stick to a bargain, said an investor called Life Product Clearing LLC in a federal-court filing, "the Kramers decided instead to savage the late Arthur Kramer's memory and reputation by falsely alleging that this legal giant had spent the last years of his storied life engaging in fraudulent and illicit 'insurable-interest' schemes."

If lawsuits had slogans, the investor continued, "this one's would be 'Dad was a crook—and could we please have the money?'"

The case set off a legal firestorm involving five courts, three insurance companies and investors including [Credit Suisse](#) Group. New York state's highest court has agreed to decide a key issue. Insurers and lawyers are watching the case closely.

Lawyers battling the Kramers say the family isn't likely ultimately to collect anything close to \$56 million; a document one investor unearthed appears to have weakened the family's case. Still, lawyers say a New York Court of Appeals ruling in Ms. Kramer's favor could give her enough leverage to force a settlement giving the estate part of the insurance proceeds.

### How the Deal Worked

The widow of New York lawyer Arthur Kramer seeks for his estate the proceeds of life insurance policies that he took out on himself but that were sold to investors. [See steps in the transaction.](#)



Such a ruling also could put in doubt the status of hundreds of giant investor-owned life-insurance policies that were taken out in New York or have other ties to New York, and could have influence in other states.

Ms. Kramer and lawyers for the family declined to comment.

The Kramer case is among the most significant of several hundred wending their way through courts nationwide as families, insurers and investors sort out the legal wreckage from a now-collapsed boom in the market for life-insurance policies purchased by investors.

From 2004 to 2008, tens of thousands of older people sought to make some fast cash by taking out multimillion-dollar policies on their own lives and flipping these to brokers, who resold them to investors like hedge funds and investment banks. The initiative often came from commission-hungry insurance agents, who in some cases paid older people to take out the policies and then misrepresented the seniors' health or wealth to insurance companies. The boom ended for reasons including new state laws, revised actuarial tables and fading investor interest after the 2008 financial crisis.

Insurance companies have gotten courts to unwind some of these policies. But the legal framework isn't simple. Although state laws generally prohibit taking out life insurance on someone without having a stake in the person's well-being, other laws and legal precedents treat life-insurance policies as property that may be sold.

The question before the New York Court of Appeals: Does state law prohibit taking out a policy on your own life and immediately transferring the rights to an investor, never intending the policy as protection for your loved ones? Ms. Kramer takes the position that such a transaction, which is what she says her husband did, is unlawful.

In many states, a remedy for a policy found to have been wrongly taken out would be to void it, with premiums returned. But laws in New York and a few other states have a quirk that's potentially lucrative to families of the deceased: The laws allow the estate to file an action for the insurance proceeds.

Ms. Kramer isn't the only heiress to make such a claim. Days before Mr. Kramer's January 2008 death, a federal judge in New York ruled in a case involving a butcher-store owner who had taken out a \$10 million policy on his own life, promptly flipped it to investors for \$300,000, then died a month later. His daughter claimed the \$10 million should go to her because investors were impermissibly wagering on her father's life.

The investors said the deal was legal and they were entitled to the proceeds. But in a blow to them, the judge said the matter should be sorted out at a trial. In a preliminary ruling, he said under New York law it was permissible to sell a life-insurance policy immediately after taking it out only if the policy had been taken out in good faith, with no prior intent or agreement to transfer it to an investor. After his ruling, the parties settled.

Mr. Kramer co-founded his law firm, Kramer Levin, in 1968, and helped build it into a powerhouse that now has 375 lawyers. He grew wealthy and had homes in New York, California and Stamford, Conn.

He retired in the mid-1990s to start a money-management firm and was joined by his son, Andrew Kramer. Associates and clients describe the senior Mr. Kramer as a sophisticated investor. "We used to have a lot of fun talking about stocks and trading and investing ideas," says Melinda Reach, a former technology-stock analyst. "He seemed to really enjoy finance."

Around 2004, Mr. Kramer began talking with Martin Fleisher, a former associate at his law firm, about financial strategies involving life insurance, according to people familiar with the matter. Mr. Fleisher introduced Mr. Kramer to an insurance broker, Steven G. Lockwood, a former pension attorney at Wachtell, Lipton, Rosen & Katz.

According to those familiar with the matter, for more than a year Messrs. Kramer and Lockwood explored variations on a theme: Mr. Kramer would put down little or no money but would achieve some sort of financial reward for his children. The two eventually settled on a then-popular strategy involving the purchase and resale of large life-insurance policies, for a quick gain.

From June to November 2005, Mr. Kramer took out seven policies on his own life, through three companies. Initially, the \$56 million in benefits was payable to family trusts, with three of Mr. Kramer's adult children variously named as trust beneficiaries.

Such trusts are often used by the wealthy for estate planning. But in this case, Ms. Kramer's suit asserts, the trusts were used in an elaborate arrangement to mask a quick transfer of the rights to the insurance benefits.

Her suit, in federal court in Manhattan, states that neither Mr. Kramer nor his children ever paid any premiums on the policies and were never the true beneficiaries, because Mr. Kramer directed the children to assign their trust interests to "stranger" investors, which they did.

The "strangers": investors rounded up by Mr. Fleisher, some of them via Life Product Clearing, an entity he founded.

People familiar with the transactions say the investors, who included Mr. Fleisher himself, paid about \$760,000 to Mr. Kramer's children to take the children's place as trust beneficiaries. Such a sale of a trust's beneficial interest typically isn't reported to insurance companies.

The investors, via the trusts, paid the first two years' premiums on the policies—several million dollars. Two years is also the length of a "contestability" period during which insurance companies can comb for misrepresentations on applications. After that, they generally can't challenge a policy's validity in New York and some other states.

In 2007, two years after the policies were taken out, the initial investors sold six of the policies to other investors for \$9 million, pocketing a tidy profit, according to investors' filings and people with knowledge of the deals.

A sale of policies does require notification of insurance companies. But by then, their period for contesting the policies had passed.

Old friends of Mr. Kramer say the lawyer loved such complex maneuvers. "That's Kramer," says Maurice Nessen, an original partner at Kramer Levin. "That he took out and then sold those policies—that kind of shrewd dealing was Kramer."

In January 2008, Mr. Kramer became disoriented while skiing at Sun Valley, Idaho. A friend helped him get home to Connecticut. He died two weeks later of a stroke. His untimely death appeared to turn the policies into a windfall for investors.

But six weeks later, his widow filed suit against various parties demanding that proceeds of the policies be paid to her as representative of the estate, of which she was executor.

Her suit came shortly after the ruling in the butcher's case, which had raised the possibility that families might get the proceeds of life-insurance policies owned by investors.

After Ms. Kramer filed her suit, two of the insurance companies, Phoenix Cos. and a unit of Lincoln National Corp., refused to pay out on the policies.

In turn, three investors that had acquired policies alleged breach of contract against insurers and various members of the Kramer family.

One investor, Credit Suisse, appeared to have an ace in the hole. A Credit Suisse unit had bought five of the policies in 2007, about two years after they were issued. Credit Suisse produced documents appearing to show that Alice Kramer herself had signed off on the sale of those policies.

According to a Credit Suisse filing in Connecticut probate court in Stamford, Ms. Kramer and her husband warranted that the family owned the rights to the policies at the point of Credit Suisse's purchase and that nobody other than the family had paid the premiums.

That statement, Credit Suisse said, contradicted Ms. Kramer's lawsuit assertion that the family never truly owned the policies or paid any premiums.

Ms. Kramer in 2007 also agreed in writing not to challenge Credit Suisse's right to the policy proceeds, the investment bank said.

Credit Suisse has reached a confidential settlement with family members involving three policies that total \$18.2 million, which were underwritten by the Transamerica unit of Aegon NV. Aegon was part of the settlement, which included two policies Credit Suisse had reassigned to a unit of Wells Fargo & Co.

Ms. Kramer and Credit Suisse appear to have reached some kind of agreement on two other policies, totaling a similar amount, \$18 million; according to an affidavit filed in New York court, Ms. Kramer said she wouldn't object if the underwriter of those policies, Phoenix, paid that sum to Credit Suisse.

But Phoenix maintains no one should get the proceeds. It has said in court filings that Ms. Kramer's effort should be rebuffed because the state law she is suing under didn't envision situations where a patriarch worked with investors to originate a life-insurance policy.

In case Phoenix doesn't pay, Credit Suisse has a claim against the Kramer estate. If upheld, the claim could put quite a dent in the estate, which probate documents pegged at \$33.7 million after Mr. Kramer's death.

The status of two remaining policies, totaling \$20 million, remains hotly contested by the interested parties.

Resolution of the sprawling litigation is on hold, pending the New York Court of Appeals' ruling on the underlying question of whether the policies were illegal from the start.

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## Regulators Rein In Murky Life Policies

By **LESLIE SCISM**

The life-insurance business was good to Steven M. Brasner for much of the past decade, so good that he and his wife named their motor yachts after it. Their first, a 34-footer, they christened "Preferred Risk." Its 50-foot replacement: "STOLI on the Docks."



Palm Beach County Sheriff's Office

Steven Brasner's police mugshot.

While it rings of vodka, STOLI also stands for "Stranger-Originated Life Insurance"—controversial policies that older people take out and then sell to investors. The investors pay the premiums and collect proceeds when the original owner dies. Mr. Brasner was a sales agent who specialized in such policies. In the years before the financial crisis, he connected aging retirees in need of money with cash-flush hedge funds eager for offbeat investments.

Times are different now. In April, Florida authorities arrested Mr. Brasner on 22 counts of alleged grand theft, fraud and other offenses tied to \$78 million of policies that earned him nearly \$2 million in commissions. The state accuses him of lying to insurers about applicants' financial status and their reasons for buying the coverage. If convicted, the 44-year-old could land in jail for decades.

Mr. Brasner has pleaded not guilty and will "zealously defend" against the allegations, says Mark Eigarsh, his attorney. The agent "passionately maintains his innocence" and "eagerly awaits his opportunity" to present his side in court, he says. Mr. Brasner declined to comment.

Meanwhile, the Florida agent is a defendant in civil suits filed by insurers seeking to void many of the policies, and by investors who allege they lost money buying now-worthless policies. The litigation has taken a financial toll: Last year, the Brasners surrendered their 50-foot yacht to a lender. And the agent is acting as his own lawyer in some of the civil suits, in which he denies the allegations.

Mr. Brasner's reversal of fortune is part of a post-bubble crackdown by state authorities, aimed at the middlemen who played a crucial role in filling the pipeline for stranger-originated policies. In a frenzy that bears some similarities to the subprime-mortgage debacle, billions of dollars of stranger-