

Part V

Insurer Lawsuits

Gloria Grening Wolk

All attorneys need to be aware of insurer lawsuits to cancel fraudulently obtained life insurance. Your client may be one of the perpetrators — a viatical company, its office staff, its sales agents, or the insured. Or your client may be one of the investor-beneficiaries who is named as a defendant since he or she would have profited from the fraud. There are implications for tax attorneys, for those who specialize in estate planning or family law or real estate. Now that several viatical companies have become international, investors are international.

Insurer lawsuits and viatical transactions are a recent phenomenon. In the early years of the viatical industry, insurers who discovered viatical fraud after the contestability period and attempted to rescind the policies found few courts that ruled in their favor. The most infamous ruling was in California: two courts refused to void a policy *ab initio* despite evidence that an imposter took the medical exam for the applicant.¹

Adverse rulings put insurers on notice that if they did not stop fraud early on, the ball would pass to the perpetrators. Perpetrators also had notice that there was little risk and much gain from fraud.

1. Many more cases are cited in *Viatical Settlements: An Investor's Guide*, by Gloria Grening Wolk, Bialkin Books, 1998.

Viatical Litigation Principles And Practice

Insurers went home to lick their wounds. They did not revise their underwriting procedures in regard to jet-issued policies, with the predictable result of widespread fraud. Not until it became apparent that viatical fraud was reaching into the billions did a few insurers begin to fight back.² They prepared the suits with greater diligence and committed the time and money necessary to achieve their objective.

Two of the successful suits are presented here. American General named as chief defendant James Capwill, C.P.A., currently in prison and awaiting trial on federal charges of fraud.³ Capwill, who served as escrow agent and trustee for Liberte Capital Group and Alpha Capital Group, first achieved notoriety in 1999 when these companies filed suit against Capwill, alleging that he embezzled nearly \$40 million from their premium escrow funds.

John Hancock filed several suits to cancel fraudulent policies. The complaint included here has particular significance since the insureds were not needy AIDS patients but greedy, healthy seniors who sold “wet-ink” policies.⁴ Separate suits were filed against an associated insurance agency, Unisys, and Future First Financial Group, then all three were combined. All policies were rescinded on February 21, 2002 by Judge Paul C. Huck.

Although a few states now require viatical companies to give notice to insurers when a policy is viaticated, this type of fraud is likely to increase in future years. Reporting requirements may prevent fraud by licensed companies, but do nothing to curb the practice by companies that are unlicensed. As is often the case, laws regulate the lawful.⁵

2. Among them: American Pioneer Life, West Coast Life, Interstate Assurance, Guardian Life, American General and John Hancock.

3. *US v. James A. Capwill*, 5:2001cr00471, N.D. Ohio (10/17/01) and *US v. James A. Capwill*, 6:2001m02093 (10/27/01).

4. Healthy seniors who do not disclose that their application for new insurance is with the intent of selling the policy. This violates the insurable interest requirement for issuance of insurance products. It is as if A and B were strangers to each other but A owned car insurance on a car owned by B.

5. A few states recently revised their insurance law to include “intentional fraud” as cause for voiding a life insurance policy.