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**Who:** *Carton v. B&B Equities Group, LLC, et. al.*, No. 2:11-CV-00746.

**What:** Recently, a Nevada Federal Court permitted two investors who financed the premiums on seven STOLI policies to pursue a claim for unjust enrichment against the carriers who accepted the premiums.

The lawsuit arises out of the plaintiffs' attempts to recover \$700,000 they invested in financing the premiums for seven illegal STOLI policies. According to the pleadings, the plaintiffs allege they were unaware that they were investing in illegal STOLI policies and that they were assured by defendant B&B Equities Group, LLC that their investment in "life insurance premiums" was "legal and secure."

The plaintiffs, having not received "their principal or the guaranteed interest on their investment" filed suit against the defendants, which included American General and Aviva. The Plaintiffs' claims against the carriers are for unjust enrichment arguing that the carriers were unjustly enriched when they received and retained premium payments on STOLI policies that they knew or should have known were issued without insurable interests. The insurers filed motions to dismiss the unjust enrichment claims arguing, among other things, that: (1) there can be no unjust enrichment where the contracts were fully-performed (i.e., because the policies were voided/lapsed there were no continuing obligations); and that (2) the insurers lacked knowledge of the STOLI scheme and its agents/brokers' knowledge of the underlying STOLI scheme cannot be imputed to them because knowledge is not imputed where the agents act in collusion with a third party to defraud the insurer and the actions are outside the scope of the agents authority.

The Court denied the insurance companies motions to dismiss permitting the plaintiffs' to pursue a claim for unjust enrichment against the defendant carriers holding that: (1) the facts of the case do not support the contention that the contracts were fully-performed; and (2) regardless of actual or imputed knowledge, if it can be shown that the carriers should have known the policies lacked insurable interests they were unjustly enriched. The Court held that if the plaintiffs can prove that the underlying facts were such that the carriers should have been "on at least inquiry notice that they were issuing policies to parties with uninsurable interests," then the carriers were unjustly enriched by accepting premiums on these policies.

**When:** September 10, 2013

**Where:** U.S. District Court, District of Nevada