ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY

Columbus Life Insurance Co. v. Wilmington Trust NA,
CV-22-0202-CQ

PARTIES:

Plaintiff: Columbus Life Insurance Company (the "Insurer")

Defendant: Wilmington Trust, N.A., as securities intermediary

FACTS:

In 2003, the Insurer received an application for a "second to die" life insurance policy on husband and wife Howard and Eunice Peterson. The application listed the H & E Peterson Family Partnership LLLP as the owner and beneficiary of the policy. The Insurer issued a policy insuring the lives of Howard and Eunice for $2.5 million (the "Policy"). The premiums on the policy were consistently paid.

The Policy contained an incontestability clause which stated that the Insurer would "not contest this policy to the extent of the Specified Amount [of $2.5 million] after it has been in effect during both Insureds' lifetimes for two years from the Policy Date." The provision was consistent with A.R.S. § 20-1204, Arizona's incontestability statute which is reprinted below.

In October 2005, after the two-year incontestability provision had run, the ownership and beneficiary designations on the Policy were changed. In September 2013, those designations were changed again, this time to the defendant, Wilmington, who has acted since then as a securities intermediary (defined below) for the beneficial owner(s) of the Policy.

In 2018, Howard Peterson died. Eunice Peterson died in 2020. After her death, Wilmington submitted a claim for the death benefit under the Policy. The Insurer refused to pay.

In 2021, the Insurer filed a complaint against Wilmington in the Federal District Court for the District of Arizona. The complaint alleged that certain "institutional investors" had acted as "speculators" and had "pool[ed] large blocks of high-value life insurance policies into special purpose vehicles, such as tax-exempt entities or trusts, the interests of which were securitized and sold to other investors." The complaint alleged that it was speculators who obtained the Policy of insurance on the Petersons and that those speculators "did not have an insurable interest in the Petersons' lives and would not have been able to acquire the Policy had they not used the Petersons to generate the Policy in the first instance." The complaint sought a declaratory judgment that the Policy was "void *ab initio*," because it was "an illegal wagering contract that violated Arizona law," and because the Policy was "issued at the behest of individuals or entities" with "no insurable interest in the life of the insureds."

Wilmington answered the complaint and filed a motion for judgment on the pleadings. The motion argued that the claims for declaratory judgment failed "as a matter of law because Arizona law does not permit challenges to a policy's validity once the policy is incontestable." It contended that "the Policy's incontestability clause and the straightforward application of A.R.S. §§ 20-1217 and 20-1204 preclude Plaintiff's challenge to the Policy's validity." In response, the Insurer argued that because the Policy was a stranger-originated policy, it was "void *ab initio* under Arizona law, and thus, it [wa]s no contract at all."

The district court determined that it was an open question under Arizona whether the Insurer could challenge the validity of the Policy in light of the incontestability provision in the Policy and A.R.S. § 20-1204. The District Court thus certified the question listed below to this Court under Arizona Supreme Court Rule 27, and this Court accepted the certification.

QUESTION PRESENTED:

> Does Arizona law permit an insurer to challenge the validity of a life insurance policy based on a lack of insurable interest after the expiration of the two-year contestability period required by A.R.S. § 20-1204?

STATUTES:

A.R.S. § 20-1204 provides:

> There shall be a provision that the policy, exclusive of provisions relating to disability benefits or to additional benefits in the event of death by accident or accidental means, shall be incontestable, except for nonpayment of premiums, after it has been in force during the lifetime of the insured for a period of two years from its date of issue.

A "securities intermediary" is defined by A.R.S. § 47-8102(14) as "(a) A clearing corporation; or (b) A person, including a bank or broker, that in the ordinary course of its business maintains securities accounts for others and is acting in that capacity."

"Void *ab initio*" is defined as: "Null from the beginning, as from the first moment when a contract is entered into. • A contract is void *ab initio* if it seriously offends law or public policy, in contrast to a contract that is merely voidable at the election of one party to the contract."