Nos. 14-3725 and 14-3664

IN THE

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

OHIO NATIONAL LIFE ASSURANCE CORPORATION
Plaintiff-Appellee/Cross-Appellant
vs.

DOUGLAS W. DAVIS, individually and as Trustee, et al
Defendants-Appellants

and

STEVEN EGBERT
Defendant/Cross-Appellee

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION
No. 1:10-CV-02386
The Honorable Thomas M. Durkin

COMBINED RESPONSE AND OPENING BRIEF OF APPELLEE/CROSS-APPELLANT OHIO NATIONAL LIFE ASSURANCE CORPORATION

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CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 14-3664

Short Caption: Ohio National Life Assurance Corporation v. Douglas W. Davis, et al.

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party or amicus curiae, or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

The Court prefers that the disclosure statement be filed immediately following docketing; but, the disclosure statement must be filed within 21 days of docketing or upon the filing of a motion, response, petition, or answer in this court, whichever occurs first. Attorneys are required to file an amended statement to reflect any material changes in the required information. The text of the statement must also be included in front of the table of contents of the party's main brief. **Counsel is required to complete the entire statement and to use N/A for any information that is not applicable if this form is used.**

[ ] PLEASE CHECK HERE IF ANY INFORMATION ON THIS FORM IS NEW OR REVISED AND INDICATE WHICH INFORMATION IS NEW OR REVISED.

(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P 26.1 by completing item #3):

Ohio National Life Assurance Corporation

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

Smith | von Schleicher & Associates

(3) If the party or amicus is a corporation:

i) Identify all its parent corporations, if any; and

Ohio National Financial Services, Inc.

ii) list any publicly held company that owns 10% or more of the party's or amicus' stock:

Ohio National Financial Services, Inc.

Attorney's Signature: s/ Jacqueline J. Herring Date: December 9, 2014

Attorney's Printed Name: Jacqueline J. Herring

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ____ **No** X

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CERTIFICATE OF SERVICE

I certify that on December 9, 2014, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system:

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(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P 26.1 by completing item #3):

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i) Identify all its parent corporations, if any; and

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ii) list any publicly held company that owns 10% or more of the party's or amicus' stock:

Ohio National Financial Services, Inc.

Attorney's Signature: s/ Warren Sebastian von Schleicher Date: December 9, 2014

Attorney's Printed Name: Warren Sebastian von Schleicher

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** X **No** ____

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CERTIFICATE OF SERVICE

I hereby certify that on December 9, 2014, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

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JURISDICTIONAL STATEMENT

The jurisdictional statement in Defendants' Opening Brief is not complete and correct. The district court had jurisdiction over the parties and subject matter under 28 U.S.C. §1332. This suit involved a claim for declaratory judgment, equitable relief, and damages as a result of a stranger originated life insurance ("STOLI") scheme perpetrated by Defendants in an amount in excess of the federal jurisdictional limit of $75,000 excluding interest and costs, and complete diversity exists because this suit is between citizens of different states. (R.76 PageID#463 ¶10).[1] Plaintiff-Appellee/Cross-Appellant, Ohio National Life Assurance Corporation ("Ohio National"), is a corporation organized and existing under the laws of the State of Ohio with its principal place of business in Cincinnati, Ohio. Ohio National is a citizen of the State of Ohio. (R.76 PageID#461-462 ¶1).

Defendant-Appellant Douglas W. Davis, individually and as Trustee of the Shirlee Davis Irrevocable Life Insurance Trust, Theodore R. Floyd Irrevocable Life Insurance Trust, Robert S. Harris Irrevocable Life Insurance Trust, Mary Ann Harris Irrevocable Life Insurance Trust, and Charles M. Bonaparte Sr. Irrevocable Life Insurance Trust, resides in California and has been a citizen of the State of California since the commencement of this lawsuit. (R.76 PageID#462 ¶2). Defendant-Appellant Mavash Morady resides in California and has been a citizen of the State of California since the commencement of this lawsuit. (R.76 PageID#462 ¶3). Defendant-Appellant

[1] Citations to "R.__" are to the docket number of the document in the Record on Appeal. Additional citation to "…at __:__" is to deposition page and line number. Citations to "A__" are to the page number of the document contained in Ohio National's Appendix, and citations to "SA__" are to the page number of the document contained in Ohio National's Supplemental Appendix.

Paul Morady resides in California and has been a citizen of the State of California since the commencement of this lawsuit. (R.76 PageID#462 ¶4). Defendant/Cross-Appellee Steven Egbert, as Successor Trustee of the Charles M. Bonaparte, Sr. Irrevocable Life Insurance Trust, resides in San Clemente, California and has been a citizen of the State of California since the commencement of this lawsuit. (R.76 PageID#463 ¶8).

Defendant Shirlee Davis resides in Chicago, Illinois and has been a citizen of the State of Illinois since the commencement of this lawsuit. (R.76 PageID#462 ¶5). Defendant Theodore R. Floyd resides in Chicago, Illinois and has been a citizen of the State of Illinois since the commencement of this lawsuit. (R.76 PageID#463 ¶6). Defendant Christiana Bank & Trust Company, now known as "Christiana Trust, a division of Wilmington Savings Fund Society, FSB," ("Christiana Trust"), as Successor Trustee of the Shirlee Davis Irrevocable Life Insurance Trust, is a Delaware corporation with its principal place of business in Wilmington, Delaware. Since the commencement of this lawsuit Christiana Trust has been a citizen of the State of Delaware. (R.76 PageID#463 ¶7). Defendant Thomas M. Tice has claimed to be the Successor Trustee of the Robert S. Harris Irrevocable Trust and the "Mary Ann Harris Family Irrevocable Trust." Since the commencement of this lawsuit Thomas Tice has been a resident of California and a citizen of the State of California. (R.76 PageID#463 ¶9).

On February 7, 2014, the United States District Court for the Northern District of Illinois entered a Memorandum Opinion and Order ("Summary Judgment Order"), granting Ohio National's motion for summary judgment with respect to a declaratory judgment that the life

insurance policy issued by Ohio National insuring the life of Charles M. Bonaparte, Sr. ("Bonaparte Policy") is void *ab initio*, and finding that Douglas Davis, Paul Morady and Mavash Morady are liable to Ohio National for civil conspiracy, and Mavash Morady is liable to Ohio National for fraud and breach of contract. (A01-23). The Summary Judgment Order further granted in part the cross-motion for summary judgment filed by Steven Egbert and denied in part Ohio National's motion for summary judgment, with respect to the district court's determination that Ohio National must return to Steven Egbert premiums paid by him to maintain the Bonaparte Policy. (A01-23).

On October 24, 2014, the district court entered a Memorandum Opinion and Order ("Damages Order") and Judgment in a Civil Case ("Judgment"), entering judgment in favor of Ohio National and against Douglas Davis, Paul Morady and Mavash Morady, jointly and severally, in the amount of $725,666.56. (A24-50; A51). The Damages Order and Judgment granted Steven Egbert's request for entry of judgment against Ohio National in the amount of $90,644.38 for return of premium payments on the Bonaparte Policy. (A24-50; A51). On November 4, 2014, the district court entered Judgment for Ohio National against Christiana Trust declaring void *ab initio* the policy insuring the life of Shirlee Davis. (R.318).

On November 21, 2014, Douglas Davis, Paul Morady and Mavash Morady filed their Notice of Appeal from the Damages Order and Judgment entered on October 24, 2014, Case 14-3665. (R.320).

On December 5, 2014, Ohio National filed a Rule 41(a) Motion for Voluntary Dismissal of Certain Claims with Prejudice, pursuant to Fed. R. Civ. P. 41(a)(2), which the district court granted on December 12, 2014. (R.322; R.332). On December 5, 2014, 14 days after Douglas Davis, Paul Morady and Mavash Morady filed their Notice of Appeal, Ohio National filed its Notice of Appeal, Case 14-3664. (R.324).

In combination, the following Orders of the district court decided all issues, disposed of all claims, and supply the requisite finality for purposes of appeal: the February 7, 2014 Summary Judgment Order; the October 24, 2014 Damages Order; the October 24, 2014 Judgment; the November 4, 2014 Judgment; and the December 12, 2014 Notification of Docket Entry granting Ohio National's Motion for Voluntary Dismissal of Certain Claims with Prejudice. (A01-23; A24-50; A51; R.318; R.332).

Pursuant to Fed. R. App. P. 4(a)(2), Ohio National's Notice of Appeal became effective upon the district court's entry of the Docket Entry granting Ohio National's dismissal of claims with prejudice on December 12, 2014. (R.332).

On December 16, 2014, Douglas Davis, Paul Morady and Mavash Morady filed Appellants' Motion for Voluntary Dismissal of their initial appeal. (Case 14-3665, Doc.: 6-1). On December 18, 2014, the United States Court of Appeals for the Seventh Circuit issued its Notice of Issuance of Mandate dismissing the appeal filed by Douglas Davis, Paul Morady and Mavash Morady pursuant to Fed. R. App. P. 42(b). (Case 14-3665, Doc.: 8-2).

On December 16, 2014, Douglas Davis, Paul Morady and Mavash Morady filed Defendants' Amended Notice of Appeal from the Damages Order and Judgment entered on October 24, 2014, Case 14-3725. (R.334). The United States Court of Appeals for the Seventh Circuit has jurisdiction over Defendants' appeal pursuant to 28 U.S.C. §1291, and in accordance with Fed. R. App. P. 3 and 4

The United States Court of Appeals for the Seventh Circuit has jurisdiction over Ohio National's cross-appeal pursuant to 28 U.S.C. §1291, and in accordance with Fed. R. App. P. 3 and 4, including Fed. R. App. P. 4 (a)(2) and (a)(3), as a timely notice of appeal was filed in this matter on December 5, 2014.

ISSUES PRESENTED FOR REVIEW

1. Did the district court abuse its discretion in denying Douglas Davis's, Paul Morady's and Mavash Morady's Motion to Vacate, due to lack of procedural notice of summary judgment to *pro se* parties under N.D. Ill. Local Rule 56.2, summary judgment in favor of Ohio National and against Douglas Davis, Paul Morady and Mavash Morady for civil conspiracy and against Mavash Morady for fraud, where they failed to establish the required prejudice?

2. Did the district court correctly grant summary judgment to Ohio National and against Douglas Davis, Paul Morady and Mavash Morady for civil conspiracy, where the Moradys and Douglas Davis admitted that they intentionally acted in concert to procure life insurance policies without an insurable interest in violation of Illinois law but asserted that they did not "intend" to violate the law?

3. Did the district court correctly grant summary judgment to Ohio National and against Mavash Morady for fraud, where Mavash Morady admitted to knowingly making multiple false statements in life insurance policy applications and agent reports to cause Ohio National to issue life insurance policies without an insurable interest?

4. Did the district court correctly award attorneys' fees and costs to Ohio National as damages for Douglas Davis's, Paul Morady's and Mavash Morady's civil conspiracy and Mavash Morady's fraud and breach of contract, where Ohio National was compelled to initiate litigation against third parties to declare the policies void *ab initio* to curtail damages from the STOLI scheme?

5. With respect to Ohio National's cross-appeal, whether the district court erred in entering summary judgment to equitably award Steven Egbert return of premiums paid to Ohio National on the Bonaparte Policy, where the Bonaparte Policy lacked an insurable interest and was declared void *ab initio* and thus the parties are to be left where they are, and Steven Egbert failed to assert any claim to the premiums?

STATEMENT OF THE CASE

On April 16, 2010, Ohio National filed this lawsuit to obtain a declaratory judgment and damages as a result of a stranger originated life insurance ("STOLI") scheme perpetrated by Douglas Davis, Paul Morady, and Mavash Morady. (R.2; R.76). They procured five STOLI Policies from Ohio National with aggregate death benefits totaling $2.8 Million, without an insurable interest in the lives of the insureds, Charles Bonaparte, Theodore Floyd, Mary Harris,

Robert Harris, and Shirlee Davis. (R.76 PageID#464-465 ¶¶11-12). Paul Morady sold the beneficial interest in the Bonaparte Policy to STOLI investor defendant Steven Egbert, sold the beneficial interest in the Mary Harris and Robert Harris policies to a STOLI investor whose interests were managed by defendant Thomas Tice as Trustee, and sold the beneficial interest in the Shirlee Davis Policy to a STOLI investor whose interest was managed by defendant Christiana Trust as Trustee. (R.76 PageID#474 ¶36, PageID#486 ¶73, PageID#497 ¶110). Ohio National sought a declaratory judgment that the Policies were void *ab initio* for lack of an insurable interest, and damages resulting from the STOLI scheme. (R.2; R.76).

STOLI Conspiracy

The facts establishing Douglas Davis's, Paul Morady's and Mavash Morady's civil conspiracy are undisputed. In 2006, Douglas Davis, Paul Morady and Mavash Morady devised an "insurance program" to solicit applications for life insurance from senior citizens, acquire the beneficial interests in the life insurance policies through irrevocable trusts, and then sell the beneficial interests to investors at a profit. (SA03-06 ¶¶2-11, SA110-112 ¶¶2-11). Mavash Morady used her insurance agencies, American Pacific General Agency Inc. and APG Insurance Services (collectively "APG"), to offer "one-stop shopping" for potential insureds to apply for life insurance coverage, to obtain "financing" for premiums to be paid by her husband Paul Morady, and to sell the policies to investors. (SA03 ¶¶2-3; SA110 ¶¶2-3; R242-1 PageID#1647 at 52:8-53:12, PageID#1649-1650 at 60:4-20, 62:14-24). Their insurance program "niched in African-Americans." Paul Morady testified, "African-Americans have, by matter of fact, shorter life

expectancy than white Americans; therefore, the sale of their beneficial interest should be more attractive to them," meaning to investors. (SA05 ¶9; SA111 ¶9; R.242-2 PageID#1747-1748 at 144:12-146:7).

Under their plan, Douglas Davis, an attorney formerly licensed in California, solicited elderly African-Americans to apply for no less than $400,000 in life insurance coverage, accepting for the program only applicants who could not afford to pay the premiums. (SA04 ¶7; SA111 ¶7; R.242-4 PageID#1800 at 16:3-14, 17:21-23, PageID#1802 at 25:18-23). Douglas Davis drafted Irrevocable Trusts to be the owners and beneficiaries of the Policies, and appointed himself as Trustee. (SA05 ¶10; SA111-112 ¶10; R.242-4 PageID#1809 at 52:14-15, PageID#1815 at 74:10-75:13, PageID#1817 at 84:2-14, PageID#1821 at 98:1-24, PageID#1823 at 108:20-109:17, PageID#1825 at 116:8-22). Douglas Davis testified that he created the Irrevocable Trusts so he could control the Policies and facilitate the sale of the beneficial interests in the Policies. (SA05 ¶10; SA111-112 ¶10; R.242-4 PageID#1809 at 53:5-8). In spring 2007, Douglas Davis opened in Chicago a joint bank account with his mother, Shirlee Davis (a resident of Chicago), to operate as a pass through account to receive wire transfers from Paul Morady and then transfer the money out to Ohio National to pay premiums. (SA06 ¶11; SA112 ¶11; R.242-4 PageID#1804 at 30:7-16, PageID#1828 at 126:11-127:4).

Mavash Morady, on July 18, 2006, obtained her license to sell life insurance from the Illinois Department of Insurance so she could act as the insurance agent for applicants solicited by Douglas Davis. (SA04 ¶5; SA110-111 ¶5; R.242-1 PageID#1641-1642 at 27:16-18, 30:1-32:3;

R.242-5 PageID#1878). Effective October 16, 2006, she entered into a General Agent Contract with Ohio National to solicit and complete applications for Ohio National life insurance policies. (SA06 ¶12; SA112 ¶12; R.242-9; R.242-10). Mavash Morady signed and submitted falsified life insurance applications to Ohio National to obtain the Policies. (SA18-20 ¶¶39-43, SA29-31 ¶¶63-66, SA35-37 ¶¶74-79, SA39-43 ¶¶83-85, 89-92; SA117-118 ¶¶39-43, SA122-128 ¶¶63-66, 74-79, 83-85, 89-92; R.242-29 PageID#2182-2183, 2186; R.243-13 PageID#2601-2602, 2605; R.243-29 PageID#2349; R.244-3 PageID#3000; R.245-8 PageID#3200-3201, 3204). All of the applications she submitted to Ohio National were for policies in the STOLI "insurance program." (SA04 ¶7, SA48 ¶105; SA111 ¶7, SA132 ¶105; R.242-4 PageID#1800 at 15:2-17:23, PageID#1801 at 19:4-20:3, PageID#1813 at 67:1-17, PageID#1827 at 124:4-20).

Paul Morady paid the Policies' first annual premiums, acquired the beneficial interests in the Policies by purchasing the Irrevocable Trusts, and then marketed the beneficial interests in the Policies for sale to STOLI investors, including Steven Egbert. (SA17-18 ¶¶35-37, SA21 ¶46, SA27-28 ¶¶57-58, SA32-34 ¶¶68-70, 72, SA37-41 ¶¶80, 82, 87-88, SA43-45 ¶¶94-96, SA49-51 ¶¶107-110; SA116 ¶¶35-37, SA118 ¶46, SA121 ¶¶57-58, SA123-124 ¶¶68-70, 72, SA126-127 ¶¶80, 82, 87-88, SA129 ¶¶94-96, SA133-135 ¶¶107-110). Paul Morady used his company Security Pacific Premium Financing, Inc. ("Security Pacific") to facilitate payment of premiums. (SA04 ¶6; SA111 ¶6; R.242-2, PageID#1724 at 52:3-8).

Paul Morady offered to prospective STOLI investors inventories of dozens of policies on senior citizens, worth $9.4 Million in the aggregate, including multiple policies on the same

insureds, with the promise of an additional "$32 millions in the pipeline" for policies that did not yet exist. (SA49-51 ¶¶107-109; SA133-135 ¶¶107-109; R.245-19). He endeavored to keep the insureds out of his "private sale transactions" and conceal from them "how much is being paid here" to him. (SA51 ¶110; SA135 ¶110; R.245-22; R.245-33). He attempted to conceal from insurers the third-party ownership interest for two years in an effort to defeat the two year contestability period in the Policies, cautioning STOLI investors "not to make any changes during the two year contestability period" as it "may create a situation where the carrier to consider contesting this policy." (SA103 ¶¶6-8; SA143-144 ¶¶6-8; R.280-4 PageID#4206).

Bonaparte Policy

Charles Bonaparte was presented with Douglas Davis's, Paul Morady's and Mavash Morady's insurance program at a church meeting in Chicago. (SA13 ¶27; SA114 ¶27; R.242-14 PageID#1982 at 17:4-16). He was told "that anyone between the ages of 65 to 80, if you want to become a part of this program, we will compensate you for going in at – for the initiation of this insurance program." (SA13 ¶27; SA114 ¶27; R.242-14 PageID#1982 at 17:10-16). During the church presentation, Douglas Davis explained that Charles Bonaparte would be paid $4,000 to $6,000 for allowing his name to be used to obtain a policy on his life:

> All I was to receive from them using my name, insuring me, is about $6,000 to $4,000. That was my—that was my benefit. Other than that, nothing else. All they doing was using my name, insuring me, and I received a compensation for that part. That's all—I did not pay any premium.

(SA13 ¶27; SA114 ¶27; R.242-14 PageID#1983 at 18:12-19). Charles Bonaparte explained: "Let me make this clear. I did not apply for the insurance per se. I – What I did was, as an incentive for me to receive compensation because they wanted to insure me because of my good health to receive benefit for themselves. I didn't apply for the insurance." (SA14-15 ¶29; SA115 ¶29; R.242-14 PageID#2011 at 133:11-19).

To screen and select senior citizens for their program, Douglas Davis, Paul Morady and Mavash Morady obtained private health information about the senior citizens to calculate life expectancy to determine the re-sale value of prospective policies. On December 11, 2006, Charles Bonaparte signed "authorizations" authorizing Mavash Morady's agency APG to disclose his private information to "settlement providers" and "life settlement companies" even before he signed an application for an Ohio National policy. (SA15-16 ¶30; SA115 ¶30; R.242-15). The authorization states that the information was to be used "for the purpose of pursuing and/or completing the sale of life insurance policy(ies) of which I am the owner or which I am the insured." (SA15-16 ¶30; SA115 ¶30; R.242-15).

Charles Bonaparte signed two life insurance Applications dated April 26, 2007, one for a $400,000 policy from Ohio National and one for a $550,000 policy from AXA Equitable Life Insurance Co. (SA16 ¶31; SA115 ¶31; R.242-16; R.242-17). On April 26, 2007, Mavash Morady signed the Applications and submitted them to Ohio National and AXA Equitable, respectively. (SA16 ¶32; SA115-116 ¶32; R.242-16; R.242-17). Both Applications listed the owner and beneficiary of the applied-for policies as the Charles M Bonaparte Sr. Irrevocable Life Insurance

Trust, Douglas W. Davis Trustee ("Bonaparte Irrevocable Trust"). (SA16 ¶32; SA115-116 ¶32; R.242-16 PageID#2022-2023; R.242-17 PageID#2035). Charles Bonaparte signed the Bonaparte Irrevocable Trust one day later, on April 27, 2007, and Douglas Davis signed as Trustee on May 1, 2007. (SA16-17 ¶33; SA116 ¶33; R.242-21 PageID#2095-2096). On May 15, 2007, AXA Equitable issued a $550,000 policy on the life of Charles Bonaparte ("Bonaparte AXA Policy") naming the Bonaparte Irrevocable Trust as the Policy's owner and beneficiary. (SA17 ¶34; SA116 ¶34; R.242-22 PageID#2100).

On June 2, 2007, Charles Bonaparte signed an "Irrevocable Transfer of Beneficial Interest in Trust," irrevocably selling the entire beneficial interest in the Bonaparte Irrevocable Trust to Paul Morady's solely owned company Camden Investment Holdings, Inc. ("Camden Investment"), for a sale price of $13,750. (SA17-18 ¶¶35-36; SA116 ¶¶35-36; R.242-24 PageID#2135-2138). Paul Morady admitted that he "100 percent" owns and controls Camden Investment. (SA18 ¶36; SA116 ¶36; R242-2 PageID#1725 at 54:7-9). On June 5, 2007, Paul Morady wired $11,000 to pay Charles Bonaparte for participating in the insurance program, and $2,750 to pay Douglas Davis. (SA18 ¶37; SA116 ¶37; R.242-26; R.242-27).

On June 20, 2007, Ohio National informed Mavash Morady that a new life insurance application was required for Charles Bonaparte, because the prior application, which designated the Bonaparte Irrevocable Trust as owner and beneficiary, predated the formation of the Bonaparte Irrevocable Trust. (SA18 ¶38; SA116-117 ¶38; R.242-28). Charles Bonaparte and Mavash Morady signed a new Application for a $400,000 Ohio National life insurance policy,

dated June 20, 2007, designating the Bonaparte Irrevocable Trust as the applied-for policy's owner and beneficiary. (SA18-19 ¶39; SA117 ¶39; R.242-29 PageID#2182-2186).

The June 20, 2007 Application and accompanying Agent's Report, signed and certified as accurate by Mavash Morady and submitted to Ohio National, falsely stated (i) Charles Bonaparte's net worth as $1.2 Million, which Charles Bonaparte testified was "false," (ii) his employment as "self-employed in real estate" when he is a high school custodian, and (iii) that the purpose of the insurance was for estate protection and mortgage. (SA18-20 ¶¶39-43; SA117-118 ¶¶39-43; R.242-29 PageID#2182-2186; R.242-1 PageID#1676 at 168:1-16, PageID#1677 at 172:10-173:9; R.242-14 PageID#1981 at 10:6-11, PageID#1996-1997 at 71:1-20, 73:24-75:12, 77:5-19; R.242-30 PageID#2194-2195).

Mavash Morady falsely represented to Ohio National that Charles Bonaparte was well-known to her, that she met and spoke with him, and that she accurately recorded his information. (SA19-20 ¶¶41-43; SA118 ¶¶41-43; R.242-1 PageID#1677-1678 at 172:10-174:16). She testified that she never met or spoke with Charles Bonaparte, that she did not record the information on the Application, and that she knew nothing about Charles Bonaparte. (SA20 ¶42; SA118 ¶42; R.242-1 PageID#1677-1678 at 172:10-174:16).

Mavash Morady falsely represented to Ohio National that Charles Bonaparte did not have and was not applying for any other life insurance. (SA18-19 ¶39; SA118 ¶39; R.242-29 PageID#2182-2186). She failed to disclose that just a few weeks before she submitted the Application to Ohio National, she submitted an Application to AXA Equitable, which was

approved for a $550,000 policy on Charles Bonaparte's life. (SA16-19 ¶¶32, 34, 39; SA115-117 ¶32, 34, 39; R.242-17; R.242-22 PageID#2100). Ohio National relied on the accuracy of the information on the Application and Agent's Report in issuing the Bonaparte Policy. (SA45-46 ¶¶97-99; SA129-130 ¶¶97-99; R.245-16 PageID#3263-3264 ¶¶2-5).

Mavash Morady's Contract with Ohio National included an "absolute prohibition against participation in any type of premium financing scheme involving an unrelated third party" and forbid her to submit to Ohio National any application "where you have reason to know or suspect that the premiums are being paid or financed by an unrelated third party with the expectation, probability or possibility that the policy will be transferred to such unrelated third party in payment of a loan of the premiums." (SA07-08 ¶14, SA10-11 ¶¶23-24; SA112 ¶14, SA114 ¶¶23-24; R.242-11 PageID#1957, 1962-1963; R.242-12). Mavash Morady knew that premiums for the Bonaparte Policy were to be paid by her husband Paul Morady, an unrelated third party. (SA12¶25; SA114 ¶25; R.242-1 PageID#1644 at 38:21-23, PageID#1648 at 55:7-56:3).

At the time of the June 20, 2007 Application, Paul Morady already owned the entire beneficial interest in the Bonaparte Irrevocable Trust through his June 2, 2007 purchase. Paul Morady therefore was the proposed owner and beneficiary of the applied-for Bonaparte Policy. Paul Morady, however, has no insurable interest in Charles Bonaparte's life. Paul Morady testified that he is not related to Charles Bonaparte, has no relationship with him, and never met or spoke with him. (SA48-49 ¶106; SA132-133 ¶106; R.242-2 PageID#1717 at 24:14-17, PageID#1734 at 93:22-24).

On July 5, 2007, the $400,000 Bonaparte Policy was delivered to Douglas Davis as Trustee of the Bonaparte Irrevocable Trust. (SA20-21 ¶44; SA118 ¶44; R.242-29 PageID#2155, 2189). On July 17, 2007, Paul Morady, using his company Security Pacific, wire transferred the first annual premium of $16,040 to Douglas Davis at his Chicago bank account, which Douglas Davis then wire transferred to Ohio National. (SA21-22 ¶46; SA118 ¶46; R.243; R.243-1; R.242-2 PageID#1758-1759 at 188:15-191:13; R.242-4 PageID#1828 at 129:2-24). In this way, it appeared that premiums were paid by the Trustee of the Bonaparte Irrevocable Trust in Illinois, when in fact premiums were paid by Paul Morady.

On July 17, 2007, Charles Bonaparte signed a second "Irrevocable Transfer of Beneficial Interest in Trust," irrevocably selling the entire beneficial interest in the Bonaparte Irrevocable Trust to Paul Morady's company Camden Investment. (SA22-23 ¶49; SA119 ¶49; R.243-2 PageID#2207-2210). However, Paul Morady already owned the entire beneficial interest in the Bonaparte Irrevocable Trust as of June 2, 2007.

On December 12, 2007, Douglas Davis sent to Charles Bonaparte a third "Irrevocable Transfer of Beneficial Interest in Trust" with flags directing Charles Bonaparte where to sign. (SA23 ¶50; SA119 ¶50; R.243-3 PageID#2240, 2266-2270). The third Irrevocable Transfer irrevocably sold the entire beneficial interest in the Bonaparte Irrevocable Trust – and therefore the entire beneficial interest in the Bonaparte Policy and Bonaparte AXA Policy – to defendant Steven Egbert. (SA24-25 ¶53; SA120 ¶53; R.243-5 PageID#2392-2395). Mavash Morady, in

violation of her Contract with Ohio National, acted as the "broker" in the sale to Steven Egbert. (SA25 ¶54, SA10-11 ¶¶23-24; SA120-121 ¶54, SA114 ¶¶23-24; R.243-5 PageID#2373-2374).

Charles Bonaparte signed the third Irrevocable Transfer on December 20, 2007 and returned it to Douglas Davis. (SA23-24 ¶¶51-52; SA119-120 ¶¶51-52; R.242-14 PageID#1989 at 43:1-6, PageID#2001 at 93:6-24). But Charles Bonaparte kept an unsigned duplicate of the Irrevocable Transfer document he received from Douglas Davis. Charles Bonaparte's duplicate copy of the Irrevocable Transfer recites on the first page that the sale of the beneficial interest is "for valid consideration," but does not specify the purchase price. (SA23-24 ¶51; SA119 ¶51; R.243-3 PageID#2266). The executed Irrevocable Transfer document produced by Steven Egbert contains a different first page from the document that Charles Bonaparte actually signed. Steven Egbert's copy of the Irrevocable Transfer recites on the first page that the sale of the beneficial interest is "for and in consideration of $69,512.00." (SA24-25 ¶53; SA120 ¶53; R.243-5 PageID#2392).

Another document Charles Bonaparte received from Douglas Davis and signed was identified in the notary's certification as an "Irrevocable Beneficial Interest Assignment." (SA27 ¶¶56-57; SA121 ¶¶56-57; R.243-3 PageID#2269; R.243-6 PageID#2479). That document was subsequently appended to a different document titled "Payment Instructions," which had not been provided to or signed by Charles Bonaparte. (SA27 ¶57; SA121 ¶57; R.243-6 PageID#2478-2479). The "Payment Instructions" states, "I hereby authorize and instruct you to pay the net assignment price of $69,512.00 for the assignment of my/our beneficial interest in the Charles M. Bonaparte Sr. Irrevocable Life Insurance Trust dates 04/27/2007 to as follows" by wire transfer to

Paul Morady's company Camden Capital Holdings, Inc. ("Camden Capital"). (SA18 ¶36, SA27 ¶57; SA116 ¶36, SA121 ¶57; R.243-6 PageID#2478-2479).

By switching the first page of the Irrevocable Transfer after Charles Bonaparte signed it and appending his signature to the "Payment Instructions," Douglas Davis and Paul Morady were able to conceal from Charles Bonaparte the true purchase price paid by Steven Egbert and re-direct payment of the purchase price to Paul Morady. Steven Egbert wire transferred the $69,512.00 purchase price into a bank account owned and controlled by Paul Morady. (SA28 ¶58; SA121 ¶58; R.243-6 PageID#2478-2479).

Floyd Policy

Theodore Floyd, like Charles Bonaparte, was presented with Douglas Davis's, Paul Morady's and Mavash Morady's insurance program at a church meeting. (SA28 ¶60; SA122 ¶60; R.243-11 PageID#2541 at 32:22-33:20). Like Charles Bonaparte, Theodore Floyd testified that he did not actually apply for life insurance from Ohio National. (SA28 ¶60; SA122 ¶60; R.243-11; R.243-11 PageID#2564 at 124:14-21).

On October 6, 2006, Theodore Floyd signed "authorizations" authorizing APG to disclose his private information to "settlement providers" and "life settlement companies," "for the purpose of pursuing and/or completing the sale of life insurance policy(ies) of which I am the owner or which I am the insured," even before Theodore Floyd signed an application for an Ohio National Policy. (SA28-29 ¶61; SA122 ¶61; R.243-12 PageID#2569-2571).

Theodore Floyd signed two life insurance Applications dated April 18, 2007, one for a $400,000 policy from Ohio National and one for a $600,000 policy from AXA Equitable. (SA29 ¶62; SA122 ¶62; R.243-13 PageID#2605; R.243-14 PageID#2615). He also signed a Theodore R. Floyd Irrevocable Life Insurance Trust, with Douglas Davis as Trustee ("Floyd Irrevocable Trust"). (SA29 ¶62; SA122 ¶62; R.243-18). Both Applications list the owner and beneficiary of the applied-for policies as the Floyd Irrevocable Trust. (SA29-30 ¶63; SA122 ¶63; R.243-13 PageID#2601-2602; R.243-14 PageID#2612-2613). On April 18, 2007, Mavash Morady signed the Applications and submitted them to Ohio National and AXA Equitable, respectively. (SA29-30 ¶¶62-63; SA122 ¶¶62-63; R.243-13 PageID#2605; R.243-14 PageID#2615).

The Application and accompanying Agent's Report, signed and certified as true and accurate by Mavash Morady and submitted by her to Ohio National, falsely stated (i) Theodore Floyd's net worth as $1.4 Million and annual income as $81,000, when Theodore Floyd testified that his net worth and annual income has never been near those amounts, (ii) his employment as a sales representative, when he was a retired journalist, and (iii) that the purpose of the life insurance was personal, estate protection, family income protection, and mortgage. (SA29-31 ¶¶63-66; SA122-123 ¶¶63-66; R.243-13 PageID#2601-2605; R.243-19 PageID#2668-2669; R.243-11 PageID#2537 at 17:2-14, PageID#2550-2551 at 68:7-70:3).

Mavash Morady falsely represented to Ohio National that Theodore Floyd was "Known Casually" to her, that she met and spoke with him, and that she accurately recorded his information. (SA29-31 ¶¶63-66; SA122-123 ¶¶63-66; R.243-13 PageID#2601-2605; R.243-19

PageID#2668-2669; R.243-11 PageID#2550 at 67:20-68:6; R.242-1 PageID#1674 at 159:19-160:2, PageID#1686 at 208:14-21). She testified that she never met or spoke with Theodore Floyd, that she did not record the information on the Application, and that she knew nothing about Theodore Floyd. (SA31 ¶65; SA122 ¶65; R.242-1 PageID#1674 at 159:19-160:2, PageID#1686 at 208:14-21).

Mavash Morady falsely represented to Ohio National that Theodore Floyd did not have and was not applying for other life insurance. She failed to disclose that on the same day she submitted the Application to Ohio National, she submitted an Application to AXA Equitable for a $600,000 policy on Theodore Floyd's life, which was issued on May 10, 2007. (SA29-31 ¶¶62-63, 67; SA122-123 ¶¶62-63, 67; R.243-14; R.243-20 PageID#2686).

Mavash Morady knew premiums for the Floyd Policy from Ohio National were to be financed by Paul Morady, yet she submitted the Application in violation of her Contract with Ohio National. (SA12 ¶25; SA114 ¶25; R.242-1 PageID#1644 at 38:21-23, PageID#1648 at 55:7-56:3). Ohio National relied on the accuracy of the information on the Application and Agent's Report in issuing the Floyd Policy. (SA45-46 ¶¶97-98, 100; SA129-131 ¶¶97-98, 100; R.245-16 PageID#3263-3265 ¶¶2-4, 6).

On May 18, 2007, Theodore Floyd signed an "Irrevocable Transfer of Beneficial Interest in Trust," irrevocably selling the entire beneficial interest in the Floyd Irrevocable Trust to Paul Morady's company Camden Investment, for a sale price of $15,000. (RSA32 ¶68; SA123 ¶68; R.243-21 PageID#2720-2723).

More than one month later on June 26, 2007, Ohio National issued the $400,000 Floyd Policy to Douglas Davis, Trustee of the Floyd Irrevocable Trust. (SA32-33 ¶69; SA123-124 ¶69; R.243-13). When the Floyd Policy was issued, Paul Morady owned the entire beneficial interest in the Floyd Irrevocable Trust pursuant to his May 18, 2007 purchase, and thus Paul Morady already owned the entire beneficial interest in the Floyd Policy. Paul Morady, however, has no insurable interest in Theodore Floyd's life. Paul Morady testified that he is not related to Theodore Floyd, has no relationship with him, and never met or spoke with him. (SA48-49 ¶106; SA132-133 ¶106; R.242-2 PageID#1717 at 24:18-21, PageID#1735 at 94:1-2).

On July 5, 2007, Paul Morady, using his company Security Pacific, paid the first premium for the Floyd Policy of $30,535.20 by wire transferring the premium payment to Douglas Davis's Chicago bank account, and Douglas Davis wire transferred the premium payment to Ohio National the following day. (SA33 ¶70; SA124 ¶70; R.243-23; R.243-24).

Paul Morady tried to sell his beneficial interest in the Floyd Policy as part of his "Inventory List" of life insurance policies for sale, but he failed to find an investor. (SA49-51 ¶¶107-109; SA133-135 ¶107-109; R.245-19; R.245-21). Paul Morady missed a premium payment for the Floyd Policy, and on March 10, 2010 the Floyd Policy lapsed. (SA33 ¶70; SA124 ¶70; R.243-25).

Mary Harris and Robert Harris Policies

Mary Harris and her husband Robert Harris learned of the Defendants' insurance program at a church presentation at which they were told that the program "was giving out free insurance for

senior citizens." (SA34-35 ¶73; SA124 ¶73; R.243-27 PageID#2760 at 30:5-17; R.243-28 PageID#2797 at 22:1-17).

Mary Harris signed two life insurance Applications on October 18, 2007, one for a $500,000 policy from Ohio National and one for a $500,000 policy from ING Security Life of Denver Insurance Company. (SA35 ¶74; SA124-125 ¶74; R.243-29 PageID#2849; R.244 PageID#2859-2866). She also signed a Mary Ann Harris Irrevocable Trust, with Douglas Davis as Trustee ("Mary Harris Irrevocable Trust"), identifying Robert Harris as beneficiary. (SA35 ¶74; SA124-125 ¶74; R.244-2 PageID#2950-2965). Both Applications listed the owner and beneficiary of the applied-for policies as the Mary Harris Irrevocable Trust. (SA35 ¶74; SA124-125 ¶74; R.243-29 PageID#2845-2846; R.244 PageID#2861).

On October 18, 2007, Robert Harris signed a life insurance Application for a $500,000 policy from Ohio National, and the Robert S. Harris Irrevocable Trust, with Douglas Davis as Trustee ("Robert Harris Irrevocable Trust"), listing Mary Harris as beneficiary. (SA35-36 ¶75; SA125 ¶75; R.244-3 PageID#2996-3000; R.244-4 PageID#3007-3008, 3021-3022). The Application listed the owner and beneficiary of the applied-for policy as the Robert Harris Irrevocable Trust. (SA35-36 ¶75; SA125 ¶75; R.244-3 PageID#2996-2997).

Mavash Morady signed the Applications and submitted them to Ohio National and ING Security Life. (SA35 ¶74; SA124-125 ¶74; R.243-29 PageID#2849; R.244-3 PageID#3000). In early September 2007, a month before the Applications were signed, Paul Morady offered the

prospective Harris Policies for sale to STOLI investors. (SA49-51 ¶¶107-108; SA133-134 ¶¶107-108; R.245-19).

The Mary Harris and Robert Harris Applications and accompanying Agent's Reports, signed and certified as true and accurate by Mavash Morady and submitted by her to Ohio National, falsely stated (i) Mary Harris's net worth was $900,000 and net annual income was $53,000, when Mary Harris testified that her annual income is less than $10,000 and her net worth has never been close to $900,000; (ii) Robert Harris's net worth was $1.1 Million and net annual income was $64,000, when he testified that his annual income has remained steady at approximately $20,000 for general construction work and his net worth was not $1.1 Million; and (iii) that the purpose of the Harris Policies was for personal, estate protection, family income protection and general financial needs. (SA36-37 ¶¶76-79, SA39-40 ¶¶83-85; SA125-127 ¶¶76-79, 83-85; R.243-29 PageID#2849; R.245; R.244-3 PageID#3000; R.245-1; R.243-28 PageID#2802 at 43:8-44:8; R.243-27 PageID#2754-2755 at 9:11-10-16, PageID#2766 at 56:8-17).

Mavash Morady falsely represented to Ohio National that Mary Harris and Robert Harris were well-known to her, that she met and spoke with them, and that she accurately recorded their information. (SA36-37 ¶¶77-79, SA39-40 ¶¶83-85; SA125-127 ¶¶77-79, 83-85; R.242-1 PageID#1674 at 160:3-161:2; R.243-27 PageID#2767 at 61:7-17). She testified that she never met or spoke with Mary Harris or Robert Harris, that she did not record the information on the Applications, and that she knew nothing about Mary Harris or Robert Harris. (SA37 ¶78,

PageID#3436 ¶84; SA125 ¶78, PageID#5049 ¶84; R.242-1 PageID#1674 at 160:3-161:2; PageID#1689 at 219:20-220:17, PageID#1691 at 229:4-12).

Mavash Morady knew premiums for the Harris Policies were to be financed by Paul Morady, yet she submitted the applications in violation of her Contract with Ohio National. (SA12 ¶25; SA114 ¶25; R.242-1 PageID#1644 at 38:21-23, PageID#1648 at 55:7-56:3). Ohio National relied on the accuracy of the information on the Applications and Agent's Reports in issuing the Harris Policies. (SA45-47 ¶¶97-98, 101-102; SA129-132 ¶¶97-98, 101-102; R.245-16 PageID#3263-3266 ¶¶2-4, 7-8).

On January 25, 2008, Robert Harris signed a "Trust Beneficial Interests Purchase and Sale Agreement" irrevocably selling the entire beneficial interest in the Mary Harris Irrevocable Trust to Paul Morady's company Camden Investment, for a sale price of $10,000. (SA37-38 ¶80; SA126 ¶80; R.245-2 PageID#3039-3041). Two months later on March 28, 2008, Douglas Davis and Mavash Morady signed the Policy Delivery Receipt for the $500,000 Mary Harris Policy issued by Ohio National. (SA38-39 ¶81; SA126 ¶81; R.243-29 PageID#2821, 2852).

When the Mary Harris Policy was delivered and became effective, Paul Morady already owned the entire beneficial interest in the Mary Harris Irrevocable Trust, and thus Paul Morady owned the entire beneficial interest in the Mary Harris Policy, despite having no insurable interest in Mary Harris's life. Paul Morady testified that he is not related to Mary Harris, has no relationship with her, and never met or spoke with her. (SA48-49 ¶106; SA132-133 ¶106; R.242-2

PageID#1717 at 24:22-25, PageID#1735 at 94:7-8). On March 31, 2008, Paul Morady paid the first premium of $7,194 for the Mary Harris Policy. (SA39 ¶82; SA126 ¶82; R.245.3).

On February 22, 2008, Mavash Morady signed the Policy Delivery Receipt for the $500,000 Robert Harris Policy issued by Ohio National, and Paul Morady paid the first premium of $14,298 on March 3, 2008. (SA40 ¶¶86-87; SA127 ¶¶86-87; R.244-3 PageID#2974, 3003; R.245-5). On March 10, 2008, Mary Harris signed a "Trust Beneficial Interests Purchase and Sale Agreement," irrevocably selling the entire interest in the Robert Harris Irrevocable Trust to Paul Morady's company Camden Investment, for a sale price of $10,000. (SA40-41 ¶88; SA127 ¶88; R.245-7 PageID#3115-3130).

In April 2008, Paul Morady sold the interests in the Mary Harris Irrevocable Trust and Robert Harris Irrevocable Trust to investor Capital Life Assets, Inc. Thomas Tice, the President of Capital Life Assets, was named Successor Trustee for the Trusts. (R.280-1 PageID#3958-3974, 4189-4191). The Mary Harris Policy and Robert Harris Policy lapsed in November 2010 and September 2010, respectively, when Thomas Tice ceased payment of premiums due to the present litigation. (SA39-40 ¶¶82, 87; SA126-127 ¶¶82, 87; R.245-4; R.245-6).

Shirlee Davis Policy

Shirlee Davis signed a life insurance Application dated April 23, 2007, for a $1,000,000 policy from Ohio National, listing the owner and beneficiary of the applied-for policy as the "Shirlee Davis Irrevocable Life Insurance Trust dated 1/12/2007," with Douglas Davis as Trustee ("Shirlee Davis Irrevocable Trust"). (SA41 ¶89; SA127-128 ¶89; R.245-8 PageID#3200-3204). Mavash

Morady signed the Application and submitted it to Ohio National. (SA41 ¶89; SA127-128 ¶89; R.245-8 PageID#3204). The Application and accompanying Agent's Report, signed and certified as true and accurate by Mavash Morady, falsely stated (i) Shirlee Davis was self-employed in real estate, when she testified that she was a retired computer operator since 1995 and worked part-time as an administrative assistant for an optometrist, (ii) Shirlee Davis's annual income as $140,100 when her tax returns reflect her income between $64,000-$69,000, and (iii) that the purpose of the life insurance was personal, estate protection, family income protection, general financial needs, and mortgage. (SA41-43 ¶¶89-92; SA127-128 ¶¶89-92; R.245-8 PageID#3200-3204; R.245-9 PageID#3212-3213; R.242-8 PageID#1904-1906 at 17:11-23:14, PageID#1916 at 63:11-64:3, PageID#1918 at 71:7-12, PageID#1923 at 90:4-93:6).

Mavash Morady falsely represented to Ohio National that Shirlee Davis was well-known to her, that she met and spoke with her, and that she accurately recorded her information. (SA42 ¶90; SA128 ¶90; R.245-9; R.242-1 PageID#1674 at 159:11-18; R.242-8 PageID#1908 at 31:5-12). Mavash Morady testified that she never met or spoke with Shirlee Davis, did not know her, and had not recorded the information on the Application. (SA42 ¶91; SA128 ¶91; R.242-1 PageID#1674 at 159:11-18).

Mavash Morady knew premiums for the Shirlee Davis Policy were to be financed by Paul Morady, in violation of her Contract with Ohio National. (SA12 ¶25; SA114 ¶25; R.242-1 PageID#1644 at 38:21-23, PageID#1648 at 55:7-56:3). Ohio National relied on the accuracy of the information on the Application and Agent's Report in issuing the Shirlee Davis Policy. (SA45-48

¶¶97-98, 103; SA129 ¶¶97-98, PageID#5054; R.245-16 PageID#3263-3264 ¶¶2-4, PageID#3266 ¶9).

On June 2, 2007, Douglas Davis and Mavash Morady signed the Policy Delivery Receipt for the $1,000,000 Shirlee Davis Policy issued by Ohio National, and Paul Morady paid the first premium of $36,726 on June 7, 2007. (SA43 ¶¶93-94; SA128-129 ¶¶93-94; R.245-8 PageID#3178, 3207; R.245-10). Six days later on June 13, 2007, Shirlee Davis signed an Irrevocable Transfer of Beneficial Interest in Trust, irrevocably selling the entire interest in the Shirlee Davis Irrevocable Trust to Paul Morady's company Camden Investment, for a sale price of $25,000. (SA43-44 ¶95; SA129 ¶95; R.245-15).

On September 28, 2007, Paul Morady sold the beneficial interest in the Shirlee Davis Irrevocable Trust to investor John Thomas Bridge and Opportunity Fund Trust, and Christiana Trust became the Successor Trustee of the Shirlee Davis Irrevocable Trust. (R.85 PageID#577 ¶110; R.240 PageID#1615 ¶1; SA44-45 ¶96; SA129 ¶96; R.245-15). On November 4, 2014, the district court declared the Shirlee Davis Policy void *ab initio*. (R.318).

The District Court Rulings

On February 7, 2014, the district court entered the Summary Judgment Order, granted Ohio National's motion for summary judgment, and declared that the Bonaparte Policy is void *ab initio* for lack of an insurable interest. (A01-23). The district court held that Douglas Davis, Paul Morady and Mavash Morady worked together to accomplish "a civil conspiracy to procure life insurance policies without an insurable interest." (A21). The district court found that "Mavash

Morady admitted facts at her deposition sufficient to show that she breached her contract with Ohio National and committed fraud." (A09-11, 22). On October 24, 2014, the district court entered the Damages Order and Judgment, entering judgment in favor of Ohio National and against Douglas Davis, Paul Morady and Mavash Morady, jointly and severally, for civil conspiracy and against Mavash Morady for fraud and breach of contract in the amount of $725,666.56. (A24-50; A51).

The Summary Judgment Order further granted in part the cross-motion for summary judgment filed by Steven Egbert and denied in part the motion for summary judgment filed by Ohio National, with respect to the district court's determination that Ohio National must return to Steven Egbert premiums paid by him to maintain the Bonaparte Policy. (A01-23). The Damages Order and Judgment granted Steven Egbert judgment against Ohio National in the amount of $90,644.38 for return of premium payments on the Bonaparte Policy. (A24-50; A51).

SUMMARY OF THE ARGUMENT

Illinois law prohibits STOLI policies as illegal wagering contracts on the lives of strangers. The undisputed and admitted facts establish that Douglas Davis, Paul Morady and Mavash Morady worked in concert to perpetrate a STOLI scheme and illegally procured five life insurance policies from Ohio National with aggregate death benefits totaling $2.8 Million, without an insurable interest in the lives of the insureds. Paul Morady acquired the beneficial interest in the Bonaparte Policy and Floyd Policy, even before these Policies were issued.

The district court correctly entered Judgment declaring the Bonaparte Policy void *ab initio* for lack of an insurable interest, and Judgment in favor of Ohio National and against Douglas Davis, Paul Morady and Mavash Morady for conspiracy and against Mavash Morady for fraud and breach of her Contract with Ohio National. The Moradys and Douglas Davis do not contest the district court's declaratory judgment that the Bonaparte Policy is void *ab initio* or the entry of Judgment against Mavash Morady for breach of her Contract. Their appeal is limited to the Judgment for conspiracy and fraud, and to one specific element of damages, namely the award to Ohio National of litigation expenses.

The Moradys and Douglas Davis contend that as *pro se* parties, they were entitled to receive notice of summary judgment procedures. The district court provided them ample opportunity to demonstrate the required prejudice, through counsel, by establishing an issue of fact that would preclude summary judgment. Their submissions consisted almost entirely of express admissions to precisely the facts required to support summary judgment in favor of Ohio National. They do not dispute their voluntary and intentional participation in the STOLI scheme, but contend that conspiracy requires specific intent to violate the law in addition to intent to engage in acts in furtherance of the conspiracy.

The intentional conduct required for civil conspiracy does not require knowledge of the law or specific intent to violate the law, but simply intent to engage in the acts establishing the conspiracy. The district court did not abuse its discretion in denying their motion to vacate the Summary Judgment Order for lack of prejudice. Nor did the district court err, based on the

undisputed facts and admissions, in entering judgment against the Moradys and Douglas Davis for conspiracy and against Mavash Morady for fraud. The district court correctly applied Illinois law to award damages to Ohio National for its litigation expenses, including attorneys' fees, caused by the STOLI scheme, which required litigation with third parties to obtain a judicial declaration that the illegally procured Policies are void *ab initio*.

However, the district court erred in entering Judgment awarding a refund of premiums to Steven Egbert for the Bonaparte Policy. Illinois law does not encourage and reward illegal wagering by offering a money-back guarantee to STOLI investors such as Steven Egbert who purchase policies that are void *ab initio*. When an unlawful life insurance contract is declared void *ab initio*, courts leave the parties where they are, with no refund of premiums to STOLI investors. The portion of the Judgment entered in favor of Steven Egbert for $90,644.38 should be vacated. Judgment should be entered for Ohio National to retain premiums for the Bonaparte Policy.

ARGUMENT

I. Illinois Prohibits STOLI Policies as Illegal Wagering Contracts.

Since the inception of life insurance in the 17th Century, the unscrupulous have sought to use life insurance as a way to gamble on death. When newspapers published the names of prominent citizens who were seriously ill, gamblers would place bets predicting their dates of death. Repulsed by this kind of gaming, Parliament passed the Life Assurance Act of 1774 declaring null and void any life insurance policy used for wagering by persons having no interest in the life of

the insured. (Life Assurance Act, 1774 Chpt. 48, 14 Geo 3, §1 (Eng.)). Thus was born the insurable interest requirement of modern insurance law.

In 1881, the Supreme Court condemned insurance contracts that wager on human life. *Warnock v. Davis*, 104 U.S. 775, 779 (1881). The Court proscribed stranger originated life insurance as "wager policies" that violate public policy "independently of any statute on the subject." *Id.* at 779. *Warnock* prohibited stranger originated life insurance, but went further and also prohibited assignments to third parties of properly procured policies. That rule was too broad because it prohibited viatical settlements, which serve an important social utility.

Thirty years later, the Supreme Court in *Grigsby v. Russell*, 222 U.S. 149 (1911) established the foundation for Illinois' common law prohibition on stranger originated life insurance. The Court held that a policy procured by a third party who has no interest in the insured's longevity lacks an insurable interest and is void *ab initio*. *Id.* at 155. Illinois courts "have uniformly held that one having no insurable interest in the life of another cannot procure a policy of insurance on such life, and the policy so procured is void at its inception." *Hawley v. Aetna Life Ins. Co.*, 291 Ill. 28, 125 N.E. 707, 708 (Ill. 1919) (citing *inter alia Warnock*, 104 U.S. 775; *Guardian Mut. Life Ins. Co. v. Hogan*, 80 Ill. 35 (Ill. 1875)). "The very meaning of an insurable interest is an interest in having the life continue, and so one that is opposed to crime." *Hawley*, 125 N.E. at 708 (quoting *Grigsby*, 222 U.S. at 154).

STOLI policies are illegal because they are dangerous to insureds. As Illinois' Director of Insurance, Michael McRaith, stated in testimony before the U.S. Senate:

> Clearly, stranger-owned life insurance, or STOLI, violates a fundamental policy, premised on the tenet that a stranger should not want you to die. Our lives, regardless of age, should not be commoditized, packaged, and traded on Wall Street, like credit default swaps.

(Testimony, Special Committee on Aging, United States Senate, April 29, 2009, see http://www.gpo.gov/fdsys/pkg/CHRG-111shrg51547/html/CHRG-111shrg51547.htm).[2]

STOLI wagering contracts are contrary to public policy because they give the investor a "sinister counter interest in having the life [of the insured] come to an end." *Grigsby*, 222 U.S. 149. Accord *Hawley*, 125 N.E. at 708. See also *Penn Mut. Life Ins. Co. v. GreatBanc Trust Co.*, 887 F.Supp.2d 822, 824 (N.D. Ill. 2012) ("Under Illinois law, a life insurance contract without an insurable interest is treated as a wagering contract.") (citing *Dresen v. Metro. Life Ins. Co.*, 195 Ill.App. 292, 293 (Ill. App. Ct. 1915)).

When a life insurance policy is obtained for legitimate purposes, the insured initiates the application process and designates a beneficiary of his own choosing, usually a family member or loved one. The owner of the policy has an interest in the longevity of the insured. But STOLI promoters and investors such as Douglas Davis, Paul Morady, Mavash Morady, and Steven Egbert have a financial stake in the insureds' early demise. Investors use the proposed insured as a straw man to obtain a life insurance policy purely as an investment in the insured's death. A STOLI investor procures a policy as a wager that the insured will die sooner rather than later, which minimizes premiums and increases the investor's profits.

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[2] Mr. McRaith currently serves as Director of the Federal Insurance Office of the U.S. Department of the Treasury.

An insured who properly procures a policy on his own life in good faith for his or his family's financial protection, and who names a beneficiary of his own choosing, may *subsequently* sell the policy "to one whom he, the party most concerned, is not afraid to trust" without violating insurable interest laws. *Grigsby*, 222 U.S. at 155; *Hawley*, 125 N.E. at 708. But an insured cannot disguise what is essentially a wagering contract by lending himself as a straw man to an investor who lacks an insurable interest: "[C]ases in which a person having an [insurable] interest lends himself to one without any, as a cloak to what is, in its inception, a wager, have no similarity to those where an honest contract is sold in good faith." *Id.* at 156.

Illinois law abhors the illegal practice of wagering on human life, and establishes insurable interest laws to protect the sanctity of human life. Under Illinois law, a policy procured by a person who lacks an insurable interest, or by an insured at the behest of a stranger as a cover for a wagering contract, is an illegal wagering contract void at inception. *Hawley*, 125 N.E. at 708. See also *LincolnWay Community Bank v. Allianz Life Ins. Co. of N. Am.*, No. 11-CV-5907, 2013 WL 5212750, at *3 (N.D. Ill. Sept. 17, 2013) ("Accordingly, STOLI contracts, as they have come to be called, are considered illegal and void from their inception.") (citing *Ill. State Bar Ass'n Mut. Ins. v. Coregis Ins.*, 355 Ill.App.3d 156, 821 N.E.2d 706, 712 (Ill. App. Ct. 2004)).

II. The District Court Correctly Entered Judgment in Favor of Ohio National.

The Moradys and Douglas Davis do not appeal the district court's declaratory judgment that the Bonaparte Policy is void *ab initio* for lack of an insurable interest or the entry of Judgment against Mavash Morady for breach of her Contract with Ohio National. They confine their appeal

to the Judgment in favor of Ohio National for conspiracy and fraud, and to a specific element of damages, namely the award of litigation expenses. They therefore waived any additional challenges to the Judgment. *Kmart Corp. v. Footstar, Inc.*, 777 F.3d 923, 932 (7th Cir. 2015).

A. The district court did not abuse its discretion in finding no prejudice from the lack of procedural notice under Local Rule 56.2.

After entry of the Summary Judgment Order, the district court set briefing for Ohio National to prove up damages, and Ohio National timely filed its Motion for Judgment on Damages ("Damages Motion"). (R.276; R. 277; R.278; SA101-109; R.300). After Ohio National filed its Damages Motion, attorney Richard Leng appeared on behalf of Paul Morady and Mavash Morady and filed a Motion to Vacate the Summary Judgment Order, which was adopted by Douglas Davis. (R.289; R.291). The Moradys and Douglas Davis argued that the Summary Judgment Order must be vacated due to failure to provide the procedural Notice to Pro Se Litigants Opposing Summary Judgment in N.D. Ill. Local Rule 56.2.

The Summary Judgment Order was a non-final order that resolved liability on some of the claims against some of the parties, but left other claims undecided and did not address damages. (A22-23). An order "that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties does not end the action as to any of the claims or parties and may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties rights and liabilities." Fed. R. Civ. P. 54(b). See also *Galvan v. Norberg*, 678 F.3d 581, 587 (7th Cir. 2012).

As part of the Damages Order, the district court denied Defendants' Motion to Vacate. (A35). The district court's decision on a motion for reconsideration of an interlocutory order is reviewed on appeal for abuse of discretion. See *Id.*; *Caisse Nationale de Credit Agricole v. CBI Indus., Inc.*, 90 F.3d 1264, 1270 (7th Cir. 1996). District courts have broad discretion to enforce or excuse compliance with local rules. *Lumpkins-Benford v. Allstate Ins. Co.*, 567 Fed.Appx. 452, 456 (7th Cir. 2014).

The purpose of the Local Rule 56.2 Notice is to ensure that *pro se* parties are aware of the opportunity to submit evidence in response to motions for summary judgment. Lack of notice under Local Rule 56.2 does not require reversal unless the nonmovant can establish that he "was prejudiced by the failure, that is that he could have established that there was a genuine issue of material fact, precluding the grant of summary judgment, if he had had a reasonable opportunity to submit affidavits." *Wicker v. Ill. Dept. of Pub. Aid*, 215 F.3d 1331, at *3 (7th Cir.), *cert. denied* 531 U.S. 971 (2000) (internal quotations omitted) (quoting *Sellers v. Henman*, 41 F.3d 1100, 1102 (7th Cir. 1994)). See *Santiago v. United Air Lines, Inc.*, 969 F.Supp.2d 955, 960 (N.D. Ill. 2013) ("[A] movant's failure to give the Local Rule 56.2 notice is without legal significance 'if no prejudice resulted.'") (quoting *Kincaid v. Vail*, 969 F.2d 594, 599 (7th Cir. 1992), *cert. denied*, 506 U.S. 1062 (1993)); *Timms v. Frank*, 953 F.2d 281, 286 (7th Cir.), *cert. denied*, 504 U.S. 957 (1992).

At the initial hearing on the Defendants' Motion to Vacate, the district court advised Attorney Richard Leng of the requirement that the Moradys and Douglas Davis establish

prejudice, and permitted them to submit supplemental briefing to address prejudice. (R.301 PageID#5877-5880).

With their supplemental briefing, the Moradys and Douglas Davis submitted (i) Declarations from Douglas Davis, Paul Morady, Mavash Morady, and Shane Rettberg; (ii) over 330 pages of documents; and (iii) Defendants LR56.1(b)(3) Response to Plaintiff's LR56.1 Statement, responding to Ohio National's Local Rule 56.1 Statement of Material Facts from its original summary judgment filing. (R.294; SA110-141, R.294-2 to R.293-14; R.299). Douglas Davis's, Paul Morady's, and Mavash Morady's LR56.1(b)(3) Response admitted 98 of Ohio National's 110 fact statements. The 12 denials provided no explanation, did not dispute the substance of the statements, or were unsupported by the exhibit cited or any specific reference to the record. (SA111 ¶7, SA114-115 ¶¶27-29, SA118-123 ¶¶43, 47, 52, 55, 66, SA130-132 ¶¶99, 100-101).[3] See *Perez v. Board of Educ. of the City of Chicago*, 576 Fed.Appx. 615, 616 (7th Cir. 2014) (Under N.D. Ill. L.R. 56.1, "responses to the movant's proposed facts may not include assertions of unrelated facts or legal arguments."); *Smith v. Lamz*, 321 F.3d 680, 683 (7th Cir. 2003) ("[A] mere disagreement with the movant's asserted facts is inadequate if made without reference to specific supporting material.").

In ruling on the Motion to Vacate, the district court expressly considered the evidence submitted by the Moradys and Douglas Davis, along with their Response to Ohio National's LR56.1 Statement of Material Facts. (A28, 32-35). The district court found that they failed to

[3] Defendants LR56.1(b)(3) Response to Plaintiff's LR56.1 Statement inaccurately re-phrases Ohio National's Fact Statements. (SA01-54; SA110-141).

establish any genuine issue of material fact that would alter the grant of summary judgment in favor of Ohio National. (A35). In their Opening Brief, the Moradys and Douglas Davis concede that the district court considered the evidence they presented. They simply disagree with the district court's ruling. (Def. Br. pgs. 7-18).

The Moradys and Douglas Davis fail to establish an abuse of discretion by the district court or any prejudice for lack of notice under Local Rule 56.2. All of their evidence to challenge summary judgment was presented to and considered by the district court in reaffirming summary judgment in favor of Ohio National. See *Tucovic v. Wal-Mart Stores East, L.P.*, 534 Fed.Appx. 562, 564 (7th Cir. 2013), *cert. denied* 134 S.Ct. 1883 (2014) ("At all events, lack of notice does not warrant reversal if the plaintiff still would have been unable to avoid summary judgment even with notice.") (citing *Timms*, 953 F.2d at 287).

B. The district court correctly entered summary judgment in favor of Ohio National for conspiracy.

The district court's grant of summary judgment in favor of Ohio National is reviewed *de novo*. *Gerhartz v. Richert*, 779 F.3d 682, 685 (7th Cir. 2015). Judgment can be affirmed on any basis in the record. *Id.* "Summary judgment is appropriate where there is 'no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.'" *Id.* (quoting Fed. R. Civ. P. 56(a)).

1. The undisputed facts establish the STOLI perpetrators' conspiracy to acquire the policies without an insurable interest.

Under Illinois law, a civil conspiracy occurs "when two or more people combine to accomplish, through concerted action, either an unlawful act or a lawful act in an unlawful manner." *Multiut Corp. v. Draiman*, 359 Ill.App.3d 527, 834 N.E.2d 43, 51 (Ill. App. Ct. 2005) (citation omitted). A civil conspiracy "may be inferred if parties pursue the same object by common means, one performing one part and another performing another part." *Id.* The parties do not dispute that Douglas Davis, Paul Morady, and Mavash Morady intentionally combined to implement an "insurance program" in Illinois to obtain Ohio National Policies and acquire the beneficial interests in the Policies. (Def. Br. pg. 7).

Douglas Davis (i) solicited insurance applicants through meetings at Chicago area churches, (ii) prepared the Irrevocable Trusts, naming himself as Trustee in order to control and facilitate the sale of the beneficial interests in the Policies, (iii) obtained signatures on the transaction documents transferring ownership of the beneficial interest in the Trusts, and therefore the Policies, to Paul Morady, and (iv) established a bank account that camouflaged and acted as Paul Morady's conduit for payment of the Policies' premiums. (SA04-06 ¶¶7, 10-11; SA111-112 ¶¶7, 10-11).

Mavash Morady became licensed in Illinois and signed a Contract with Ohio National to submit policy applications to Ohio National for the program. (SA04 ¶5, SA06 ¶12; SA110-112 ¶5, 12). She signed the Applications and Agent's Reports and submitted them to Ohio National in

order to obtain the Policies. She falsely stated that she knew and spoke with Charles Bonaparte, Theodore Floyd, Mary Harris, Robert Harris, and Shirlee Davis, and that she truly and accurately recorded their information. She misrepresented the insureds' net worth, annual income, employment, and reasons for applying for life insurance. She failed to disclose to Ohio National that the insureds had or had applied for other life insurance despite being the agent for other policies. (SA18-20 ¶¶39-43, SA29-31 ¶¶63-66, SA35-37 ¶¶74-79, SA39-43 ¶¶83-85, 89-92; SA117-118 ¶¶39-42, SA122-128, ¶¶63-66, 74-79, 83-85, 89-92). She violated her Contract by submitting Applications to Ohio National despite knowing that premiums would be paid and "premium financed" by her husband Paul Morady, and she acted as the broker for the sale of the Bonaparte Policy to Steven Egbert. (SA10-12 ¶¶23-25, SA25 ¶54; SA114 ¶¶23-25, SA120-121 ¶54).

Paul Morady paid the Policies' premiums and purchased the beneficial interest in the Trusts. (SA17-18 ¶¶35-37, SA21 ¶46, SA27-28 ¶¶57-58, SA32-34 ¶¶68-70, 72, SA37-41 ¶¶80, 82, 87-88, SA43-45 ¶¶94-96; SA116 ¶¶35-37, SA118 ¶46, SA121 ¶¶57-58, SA123-124 ¶68-70, 72, SA126-127 ¶80, 82, 87-88, SA129 ¶¶94-96). He acquired the entire beneficial interest in the Bonaparte Policy and Floyd Policy, even before the Policies were issued, and thereby acquired a financial interest in Charles Bonaparte's and Theodore Floyd's death. If Charles Bonaparte and Theodore Floyd had died the moment their Policies became effective, Paul Morady (as 100% owner of Camden Investment) would have owned the entire death benefit. Yet Paul Morady has no familial interest in Charles Bonaparte's or Theodore Floyd's longevity. (SA48-49 ¶106; SA132-133 ¶106).

Douglas Davis, Paul Morady, and Mavash Morady worked in concert to obtain Policies insuring the lives of Charles Bonaparte, Theodore Floyd, Mary Harris, Robert Harris, and Shirlee Davis through false representations on the Applications and Agent's Report on which Ohio National relied to issue the Policies. They procured the Policies for Paul Morady's personal investment portfolio for their own financial gain without any insurable interest in violation of Illinois' prohibition against wagering in life insurance. Their common goal – to obtain Ohio National Policies through misrepresentation and acquire the beneficial interest in the Policies – is an illegal wager on human life in violation of Illinois law.

2. The STOLI perpetrators' intentional acts satisfy the intent for conspiracy.

Douglas Davis, Paul Morady and Mavash Morady do not dispute the facts establishing that they intentionally committed the conspiratorial acts. Rather they erroneously contend that a claim for conspiracy requires a specific intent to violate the law in addition to intent to commit the acts, arguing they did not "intend" to violate the law. (Def. Br. pgs. 7-11).

The intentional conduct required for civil conspiracy does not require knowledge of the law or specific intent to violate the law, but simply intent to engage in the acts establishing the conspiracy. As explained by the Supreme Court, "an act may be 'intentional' for purposes of civil liability, even if the actor lacked actual knowledge that her conduct violated the law." *Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrich LPA*, 559 U.S. 573, 582-583 (2010). The Supreme Court has "long recognized the common maxim familiar to all minds, that ignorance of the law will not excuse any person, either civilly or criminally." *Id.* at 582 (internal quotation omitted). See also

Jones v. Board of Ed. of City of Chicago, 2013 IL App (1st) 122437, ¶22, 996 N.E.2d 1093, *app. denied*, 3 N.E.3d 796 (Ill. 2014) ("[I]t has long been the law that everyone is presumed to know the law and ignorance of the law excuses no one.").

Illinois civil conspiracy law mandates that "[a] defendant who understands the general objectives of the conspiratorial scheme, accepts them, and agrees, either explicitly or implicitly to do its part to further those objectives is liable as a conspirator." *McClure v. Owens Corning Fiberglas Corp.*, 188 Ill.2d 102, 134, 720 N.E.2d 242, 258 (Ill. 1999) (internal quotation omitted) (quoting *Adcock v. Brakegate, Ltd.*, 164 Ill.2d 54, 64, 645 N.E.2d 888, 894 (Ill. 1994)). "While a civil conspiracy is based upon intentional activity, the element of intent is satisfied when a defendant knowingly and voluntarily participates in a common scheme to commit an unlawful act or a lawful act in an unlawful manner." *Adcock*, 645 N.E.2d at 894.

Liability for conspiracy requires intentional acts, but not the additional intent to violate the law. Douglas Davis, Paul Morady and Mavash Morady agreed and acted in concert to perpetrate the "insurance program" and acquired life insurance Policies without an insurable interest. Each committed intentional acts in furtherance of the conspiracy. Their claim that they did not intend to violate the law does not allow them to escape liability for conspiracy based on their intentional conduct. See *Jones*, 996 N.E.2d at 1099 ("[C]ourts take a dim view of educated professionals who attempt to excuse their illegal conduct by claiming ignorance of the law.").

In their Opening Brief, the Moradys and Douglas Davis argue that the "opinion letter they had commissioned from experienced insurance counsel" insulates them from liability for

conspiracy or creates an issue of fact that precludes summary judgment due to lack of intent. (Def. Br. pgs. 7-8). But the "opinion letter" purports to assess assignments of policies as collateral for debt, with all other proceeds from the policy death benefit being paid to the insured's designated beneficiaries. (R.294-3 PageID#5065-5066). The assignments described in the opinion letter bear no resemblance to the STOLI program perpetrated by the Moradys and Douglas Davis to solicit and procure the entire beneficial interest in life insurance policies. The opinion letter further advised the Moradys and Douglas Davis of the prohibition in Illinois against "procuring a life insurance policy by a person having no insurable interest in the life of the insured" from the Supreme Court's decision in *Grigsby*, 222 U.S. 149 and the Illinois Supreme Court in *Hawley*, 291 Ill. 28. (R.294-3 PageID#5068-5069).

In their sworn Declarations, Paul Morady and Douglas Davis additionally acknowledge that the letter addresses assignments as collateral *after* issuance of insurance policies, not *before* issuance of the policies, stating, "The opinion set forth that it was legal for seniors to sell their beneficial interest in their policies under the circumstances outlined in the program so long as the beneficial interests were not sold prior to the issuance of the subject policies." (R.294-6 PageID#5085 ¶2; R.294-5 PageID#5077 ¶2).

In their Opening Brief, the Moradys and Douglas Davis erroneously contend that the district court was "mistaken" about the facts. They assert Paul Morady purchased the Bonaparte Policy after it was issued. (Def. Br. pgs. 14-15). The undisputed documentary evidence refutes this unsupported contention and establishes a clear timeline demonstrating that Paul Morady

acquired the interest in the Bonaparte Policy before the Application had been submitted or the Policy issued.

Douglas Davis, Paul Morady and Mavash Morady admitted each of the following facts in the timelines for the Bonaparte Policy and Floyd Policy in Defendants LR56.1(b)(3) Response to Plaintiff's LR56.1 Statement. First, on April 27, 2007, Charles Bonaparte signed the Irrevocable Trust naming Douglas Davis as Trustee. (SA16-17 ¶33; SA116 ¶33). Second, on June 2, 2007, Paul Morady acquired *all* of the beneficial interest in the Irrevocable Trust through an assignment by Charles Bonaparte. (SA17-18 ¶¶35-37; SA116 ¶¶35-37). Third, on June 20, 2007, Mavash Morady signed and submitted the Application for the Bonaparte Policy, designating the Irrevocable Trust as owner and beneficiary. (SA18-19 ¶39; SA117 ¶39). Finally, five weeks later on July 17, 2007, the Bonaparte Policy became effective when Paul Morady paid the first annual premium. (SA21-22 ¶¶45-46; SA118 ¶¶45-46).

At the time Mavash Morady signed and submitted the Application to Ohio National for the $400,000 Bonaparte Policy, Paul Morady was the sole owner and beneficiary of the Irrevocable Trust, and therefore he was the sole owner and beneficiary of the Bonaparte Policy. Paul Morady, under the veneer of the Irrevocable Trust, applied for and obtained the $400,000 Ohio National Policy as a wager on Charles Bonaparte's life. If Charles Bonaparte had died the moment the Policy became effective, Paul Morady would have received the $400,000 death benefit.

The timeline for the Floyd Policy similarly demonstrates Paul Morady's acquisition of the interest in the Floyd Policy before the Policy issued. First, on April 18, 2007, Theodore Floyd

signed the Application and the Irrevocable Trust naming Douglas Davis as Trustee. (SA29 ¶62; SA122 ¶62). Second, also on April 18, 2007, Mavash Morady signed and submitted the Application for the Floyd Policy, designating the Irrevocable Trust as owner and beneficiary. (SA29 ¶62; SA122 ¶62). Third, on May 18, 2007, Paul Morady acquired *all* of the beneficial interest in the Irrevocable Trust through an assignment by Theodore Floyd. (SA32 ¶68; SA123 ¶68). Finally, six weeks later on July 6, 2007, the Floyd Policy became effective when Paul Morady paid the first annual premium. (SA33 ¶70; SA124 ¶70). If Theodore Floyd had died the moment the Policy became effective, Paul Morady would have received the $400,000 death benefit.

In their Opening Brief, the Moradys and Douglas Davis erroneously contend that the June 2, 2007 transaction involved only the interest in the Bonaparte AXA Policy and that the Bonaparte Policy was not "assigned" to Paul Morady until July 17, 2007. (Def. Br. pgs. 14-15). The June 2, 2007 assignment refutes their position. The assignment conveys to Paul Morady Charles Bonaparte's entire interest in the Irrevocable Trust and never mentions the Bonaparte AXA Policy. The title of the assignment is "Irrevocable Transfer of Beneficial Interest in *Trust*," and the assignment states that Charles Bonaparte "conveys and assigns to Assignee [Paul Morady] *all* of Assignor's rights, title, interest, powers, privileges and benefits created or reserved to Assignor in the Charles Bonaparte Irrevocable Life Insurance Trust." (SA17 ¶35; SA116 ¶35) (emphasis added). The May 18, 2007 Floyd assignment similarly conveys to Paul Morady *all* of the interest in the Floyd Irrevocable Trust. (SA32 ¶68; SA123 ¶68).

The assignments convey the interest in the Irrevocable Trusts, not in a specific life insurance policy. To conceal their third-party ownership in the policies, Defendants structured the transactions to convey interests in the Trusts rather than the Policies to avoid alerting Ohio National to suspicious changes in Policy ownership. The Policies themselves were not assigned, rather the interests in the Trusts were assigned, which encompassed ownership of and the beneficial interests in the Policies. The STOLI perpetrators cannot defeat summary judgment with erroneous facts refuted by their own transactional documents prepared by Douglas Davis. (R.242-4 PageID#1847 at 203:3-204:17). See *Carroll v. Lynch*, 698 F.3d 561, 565 (7th Cir. 2012) ("[N]othing requires the district court to disbelieve defendants' proffered evidence simply because Ms. Carroll – without proof – asserts it is false.").

The Moradys and Douglas Davis argue that STOLI policies are void *ab initio* based on contract law and there is no basis for tort liability for their conspiracy to illegally procure the Policies. (Def. Br. pg. 9). They failed to raise that argument before the district court and therefore waived the argument. See *O'Gorman v. City of Chicago*, 777 F.3d 885, 890 (7th Cir. 2015); *Puffer v. Allstate Ins. Co.*, 675 F.3d 709, 718 (7th Cir. 2012).

Moreover, the Moradys and Douglas Davis confuse the tort of conspiring to procure policies without an insurable interest with legally voiding a contract. Working in concert to procure life insurance policies without an insurable interest is not breach of a contract, it is a tort supporting liability for civil conspiracy. The district court properly entered summary judgment on conspiracy.

C. The district court correctly entered judgment in favor of Ohio National and against Mavash Morady for fraud.

Under Illinois law, fraud requires a "(1) false statement of material fact; (2) defendant's knowledge that the statement was false; (3) defendant's intent that the statement induce the plaintiff to act; (4) plaintiff's reliance upon the truth of the statement; and (5) plaintiff's damages resulting from reliance on the statement." *Connick v. Suzuki Motor Co., Ltd.*, 174 Ill.2d 482, 496, 675 N.E.2d 584, 591 (Ill. 1996).

In her Opening Brief, Mavash Morady argues that the sole basis for the fraud claim was her false statement "that the applicants had been interviewed by an agent." (Def. Br. pg. 16). The undisputed facts and Mavash Morady's extensive admissions at her deposition establish far more extensive fraudulent conduct.

Mavash Morady's admitted fraud includes: (i) falsely representing that no other life insurance policies had been applied for when she was the insurance agent for other high-value life insurance policy applications for the insureds; (ii) falsely stating in her Agent's Reports to Ohio National that the insureds were "well known" to her and that she personally saw the insureds, when she never met any of the insureds and did not know them at all; and (iii) falsely representing in her Agent's Reports the insureds' annual income, net worth, occupations, and the purpose for seeking life insurance. Mavash Morady admits each of these facts in Defendants LR56.1(b)(3) Response to Plaintiff's LR56.1 Statement. (SA09 ¶19, SA16-20 ¶¶31-32, 34, 39-43, SA29-31¶¶62-66, SA36-

37 ¶¶76-79, SA39-43 ¶¶83-85, 90-92; SA113 ¶19, SA115-118 ¶¶31-32, 34, 39-43, SA122-123 ¶¶62-66, SA125-128 ¶¶76-79, 83-85, 90-92).[4]

Mavash Morady admitted that she knew but she failed to inform Ohio National that her husband, Paul Morady, was financing the premiums for the Policies. (SA12 ¶25; SA112 ¶25). In fact, she was a Director of Camden Investment, Paul Morady's company that purchased the interests in the Policies, and acted as broker in the sale to Steven Egbert of the beneficial interest in the Bonaparte Policy. (SA18 ¶36, SA25 ¶54; SA116 ¶36, SA120-121 ¶54).

Her Contract imposed an "absolute prohibition against participation in any type of premium financing scheme involving an unrelated third party," stating (i) "An Ohio National agent may not, under any circumstances, participate in a premium financing arrangement involving any type of premium financing provided by an unrelated third party," (ii) "You may not submit an application to Ohio National where you have reason to know or suspect that the premiums are being paid or financed by an unrelated third party with the expectation, probability or possibility that the policy will be transferred to such unrelated third party in payment of a loan of the premiums," (iii) "If you are considering getting involved with an unrelated third-party premium financing arrangement involving an Ohio National policy, please do not do so," and (iv) "If you are contacted about participating in an unrelated third-party premium financing arrangement or if

[4] In response to Paragraphs 43 and 66, Mavash Morady admits to the testimony from Charles Bonaparte and Theodore Floyd establishing their net worth and occupations, but makes assertions, unsupported by the exhibits she cites, that Charles Bonaparte and Theodore Floyd provided different information during the application process. (SA118 ¶43, SA122-123 ¶66).

you have ever participated in one previously, please contact our General Counsel." (SA10-12 ¶¶23-24; SA114 ¶¶23-24). Mavash Morady testified that she was required to be familiar with these prohibitions and agreed to adhere to them. (SA10-12 ¶¶23-24; SA114 ¶¶23-24). She admitted these facts in Defendants LR56.1(b)(3) Response to Plaintiff's LR56.1 Statement. (SA114 ¶¶23-24).

In her Opening Brief, Mavash Morady makes the unsupported and incorrect statement that Ohio National "conducted home visits of the applicants." (Def. Br. pg. 17). No such "home visits" occurred. In her deposition, Mavash Morady acknowledged that it was her responsibility to verify the accuracy of the applications she submitted and that she understood Ohio National would rely on her to obtain accurate and complete information regarding proposed insureds. (SA08 ¶17, SA112-113 ¶17). She admitted this fact in Defendants LR56.1(b)(3) Response to Plaintiff's LR56.1 Statement. (SA112-113 ¶17).

She also incorrectly contends that Ohio National did not argue on summary judgment or submit fact statements regarding her fraudulent violation of the prohibition against submitting applications that involved premium financing. (Def. Br. pgs. 17-18). The record reflects that this issue was addressed in Ohio National's fact statements and briefing on summary judgment. (SA10-12 ¶¶23-24; R.247 PageID#3474; R.267 PageID#3846-3487).

Mavash Morady knowingly made multiple false statements with the intent that Ohio National rely on her statements to issue the Policies and pay her commissions. Ohio National issued the Policies in reliance on her false statements. (SA45-48 ¶¶97-104, SA129-132 ¶¶97-104).

Mavash Morady obtained commissions totaling $120,271.41 that she was not entitled to receive, and that Ohio National paid in reliance on the truthfulness and accuracy of the information on the Applications and Agent's Reports she signed. (SA45-48 ¶¶97-104, SA129-132 ¶¶97-104). Mavash Morady's admitted conduct establishes that the district court properly entered judgment in favor of Ohio National and against Mavash Morady for fraud.

III. The District Court Correctly Applied the Law in Awarding to Ohio National as Damages its Attorneys' Fees and Litigation Expenses.

A. The district court's damages award is reviewed *de novo*.

In the Damages Order and Judgment, the district court entered judgment in favor of Ohio National and against Douglas Davis, Paul Morady and Mavash Morady, jointly and severally, in the total amount of $725,666.56, consisting of $120,271.41 in damages for commissions paid on the STOLI policies and $605,395.15 in damages for litigation expenses to void the illegally procured STOLI policies. (A29, 42, 49-50; A51). The litigation expenses consist of $529,746 in attorneys' fees and $75,649.15 in costs. (A29, 42, 49-50; A51). The district court further held that Ohio National was entitled to retain any premiums paid by Paul Morady for the policies. (A22).[5]

In their Opening Brief, the Moradys and Douglas Davis do not contest the award to Ohio National of damages for commissions in the amount of $120,271.41 or the award to Ohio National of premiums paid by Paul Morady. They therefore waived any challenge to these awards.

[5] The Moradys and Douglas Davis twice incorrectly state that Paul Morady paid $437,731.18 in premiums. (Def. Br. pgs. 5, 20). Premiums paid by Paul Morady through Security Pacific on all five policies issued by Ohio National total only $105,464.20. (SA21-22 ¶46, SA33 ¶70, SA39-40 ¶¶82, 87, SA43 ¶94; SA118 ¶46, SA124 ¶70, SA126-127 ¶¶82, 87, SA129 ¶94).

Kmart Corp., 777 F.3d at 932. The sole contested item of damages is the award to Ohio National of its litigation expenses of $605,395.15. The district court's award of damages on summary judgment is reviewed *de novo*. *Gerhartz*, 779 F.3d at 685.

Mavash Morady's Contract with Ohio National specifies that it is governed by Ohio law. (SA06-07 ¶13; SA112 ¶13). Federal courts apply the choice of law rules of the forum state, and Illinois enforces contractual choice of law provisions. *Thomas v. Guardsmark, Inc.*, 381 F.3d 701, 704-705 (7th Cir. 2004). Damages for Mavash Morady's uncontested liability for breach of her Contract are therefore governed by Ohio law.

B. The district court correctly awarded attorneys' fees as damages.

Both Illinois and Ohio law provide that when a defendant's wrongful acts foment or require litigation with third parties to protect the plaintiff's interests, an exception is triggered to the "American Rule," which generally requires each litigant to pay its own fees. Instead, "attorney fees and costs incurred as a result of a defendant's conduct may be awarded as a form of damages." *Duignan v. Lincoln Towers Ins. Agency, Inc.*, 282 Ill.App.3d 262, 268, 667 N.E.2d 608 (Ill. App. Ct. 1996). See also *Fednav Intern. Ltd. v. Continental Ins. Co.*, 624 F.3d 834, 840 (7th Cir. 2010) (citing *Ritter v. Ritter*, 381 Ill. 549, 46 N.E.2d 41, 44 (Ill. 1943)); *Safelite Group, Inc. v. Zurich Am. Ins. Co., Inc.*, No. 2:12-cv-536, 2013 WL 3935052, at *8 (S.D. Ohio July 30, 2013).

Attorneys' fees are permitted as an element of damages because "'a tortfeasor should be held responsible for all of the natural and proximate consequences of his actions.'" *Fednav*, 624 F.3d at 840 (quoting *Champion Parts, Inc. v. Oppenheimer & Co.*, 878 F.2d 1003, 1006 (7th Cir. 1989)). "If

one consequence of the tortfeasor's actions is to involve a person in litigation with others, the expenses incurred in that litigation are held to be damages no less compensable than any other element of damage resulting from the tort." *Champion Parts*, 878 F.2d at 1006. As explained by the Illinois Court of Appeals, "'where the wrongful acts of a defendant involve the plaintiff in litigation with third parties or place him in such relation with others as to make it necessary to incur expense to protect his interest, the plaintiff can then recover damages against such wrongdoer, measured by the reasonable expenses of such litigation, including attorney fees.'" *Nat'l Wrecking Co. v. Coleman*, 139 Ill.App.3d 979, 982, 487 N.E.2d 1164, 1166 (Ill. App. Ct. 1985) (quoting *Ritter*, 46 N.E.2d at 44). Accord *Safelite Group*, 2013 WL 3935052, at *8 (citing *S&D Mech. Contrs., Inc. v. Enting Water Conditioning Sys., Inc.*, 71 Ohio App. 3d 228, 241, 593 N.E.2d 354, 363 (Ohio Ct. App. 1991)).

Through their STOLI scheme, Douglas Davis, Paul Morady and Mavash Morady procured the Policies from Ohio National, and Paul Morady sold interests in the Policies to third party investors. The illegal procurement of the Policies through the insurance program, and Mavash Morady's fraud and breach of contract, compelled Ohio National to retain counsel to initiate litigation involving third parties Steven Egbert, Thomas Tice, and Christiana Trust – the trustees or investor "owners" of four of the Policies – and to incur litigation costs and attorneys' fees in order to correct the damage caused by the conduct of the Moradys and Douglas Davis.

Litigation was required to obtain a judicial declaration that the Policies are void *ab initio* to protect Ohio National from liability on the illegally procured Policies' aggregate $2.8 Million

death benefits. The litigation mitigated potential damages and the consequences of the tortious acts of the Moradys and Douglas Davis to the costs of litigation rather than the full amount of the Policies' benefits, which may have been incurred if the Policies were not declared void. The litigation was required to protect Ohio National from accusations such as estoppel or unjust enrichment by the third parties in subsequent litigation to collect under the Policies, potentially many years in the future after the death of an insured, if Ohio National did not take prompt action to ensure the Policies were judicially declared void.

As correctly noted by the district court, "Davis and the Moradys do not dispute the accuracy of the $605,395.15 amount of attorney's fees and costs, or that it is reasonable." (A39). Douglas Davis and the Moradys admitted that Ohio National paid a total of $529,746.00 in attorneys' fees, that those fees were necessarily incurred in this litigation, and that the hourly rates charged are reasonable. (SA145-146 ¶¶17-19). They failed to dispute facts establishing Ohio National's litigation costs in the total amount of $75,649.15. (SA146 ¶¶20-22). The amount of Ohio National's reasonable attorneys' fees and litigation costs is thus established and admitted. See Fed. R. Civ. P. 56(e); *Delapaz v. Richardson*, 634 F.3d 895, 899 (7th Cir. 2011) ("Here, the district court relied on appellants' admission, as it was entitled to do. We, too, are entitled to rely on that admission, and are inclined to hold appellants to their 56.1 response.").

The total award to Ohio National for litigation expenses, $605,395.15, represents less than 22% of the Policies' $2.8 Million aggregate death benefits at stake due to the illegal STOLI scheme. Based on the undisputed facts, the district court properly awarded Ohio National its litigation

costs and attorneys' fees as compensatory damages for Ohio National's necessary involvement in litigation with third parties to protect against litigation and liability on the Policies' death benefits.

C. The Moradys and Douglas Davis fail to establish any basis for reversal of the damages award for attorneys' fees.

In their Opening Brief, the Moradys and Douglas Davis raise three arguments for reversal of the district court's award to Ohio National of the attorneys' fees portion of the damages for litigation expenses: (i) the court must leave the parties where they are because the Bonaparte Policy was declared void *ab initio*; (ii) attorneys' fees are only available as damages in actions for "protecting an interest in real estate;" and (iii) no distinction is made between fees for the declaratory judgment and the tort claims. (Def. Br. pgs. 19-22). None of those arguments was raised by the Moradys and Douglas Davis in the district court, and thus the arguments are waived on appeal. See *O'Gorman*, 777 F.3d at 890.

Nor do any of their arguments provide a basis for reversal of the district court's award of attorneys' fees as damages. The Moradys and Douglas Davis contend that damages for attorneys' fees cannot be awarded because the district court declared the Bonaparte Policy void *ab initio* and thus must "leave the parties where they have placed themselves." (Def. Br. pg. 22). But the district court did not award attorneys' fees as damages on a void contract or as a remedy for the declaration that the Bonaparte Policy is void *ab initio*. Rather attorneys' fees were awarded to compensate Ohio National for the expense of rectifying the consequences of the illegal STOLI program.

The Moradys and Douglas Davis proclaim that an award of attorneys' fees as damages is limited to cases protecting an interest in real estate, citing *Bussman v. Krizoe*, 166 Ill.App.3d 770, 520 N.E.2d 971, 974 (Ill. App. Ct.), *app. denied* 530 N.E.2d 240 (1988) and *Amoroso v. Crescent Private Capital, L.P.*, No. 02 C 1453, 2003 WL 22056345, at *3 (N.D. Ill. Aug. 29, 2003). While this limiting language inexplicably appears in *Bussman* and is perpetuated without explanation in *Amoroso*, no reasoning is provided to support this illogical limitation that is antithetical to the purpose behind allowing attorneys' fees as tort damages for the natural consequences of tortious conduct, and contrary to authority awarding attorneys' fees in cases that do not involve real estate.

The American Rule is not "intended to preclude a plaintiff from recovering losses directly caused by the defendant's conduct simply because those losses happen to take the form of attorneys' fees." *Sorenson v. Fio Rito*, 90 Ill.App.3d 368, 376, 413 N.E.2d 47, 50-51 (Ill. App. Ct. 1980). Rather injured parties should be permitted to recover the full amount of losses that result from the tortfeasors' acts. As explained in *Sorenson*, "Had the plaintiff been forced to hire an accountant to repair the damage caused by the defendant's conduct, she would undoubtedly have been entitled to recover the accountant's fee as an ordinary element of damages. There is no basis in logic for denying recovery of the same type of loss merely because the plaintiff required an attorney instead of an accountant to correct the situation caused by the defendant's neglect." *Id*. at 52. Similarly, there is no logical basis for denying recovery of attorneys' fees as damages if the tort does not involve real estate. The Moradys and Douglas Davis cannot evade the consequences of their tortious acts simply because the damage they caused required legal counsel to remedy. See

Diamond v. General Telephone Co. of Ill., 211 Ill.App.3d 37, 569 N.E.2d 1263, 1272 (Ill. App. Ct.), *app. denied* 580 N.E.2d 111 (1991) ("the American rule obviously is not intended to preclude a party from recovering losses directly caused by another party's wrongful conduct simply because those losses take the form of litigation expenses").

Limiting damages for attorneys' fees to actions "protecting an interest in real estate," is contrary to the weight of Illinois and Seventh Circuit authority recognizing the availability of attorneys' fees as damages for a variety of tort claims, including breach of contract, breach of fiduciary duty, and intentional interference with contract. See *Duignan*, 667 N.E.2d at 613 (upholding award of fees in breach of fiduciary duty action); *Bituminous Cas. Corp. v. Commercial Union Ins. Co.*, 273 Ill.App.3d 923, 931, 652 N.E.2d 1192, 1198 (Ill. App. Ct. 1995) (upholding award of attorneys' fees in breach of insurance contract action); *Nat'l Wrecking Co.*, 487 N.E.2d at 1166 (fees awarded in connection with breach of contract and interference with contract).

The Moradys and Douglas Davis fail to distinguish or even acknowledge this substantial contrary authority, including authority cited by the district court and Ohio National. Their undeveloped one-sentence argument that is contrary to the weight of authority fails to provide a basis for reversal of the district court's Judgment. See *Ball v. City of Indianapolis*, 760 F.3d 636, 645 (7th Cir. 2014); *Puffer*, 675 F.3d at 718.

Nor can the Moradys and Douglas Davis obtain reversal of the damages award with vague accusations that unspecified distinctions should be drawn between fees for the declaratory judgment and the tort and contract claims. Ohio National satisfied its burden on summary

judgment with the facts admitted by the Moradys and Douglas Davis. The Moradys and Douglas Davis failed to identify any portion of Ohio National's claimed damages for attorneys' fees and litigation expenses that they contend should not be awarded, and thus failed to establish any genuine issue of fact. See *O'Gorman*, 777 F.3d at 890; *Fednav Intern.*, 624 F.3d at 841 ("[A] party has waived the ability to make a specific argument for the first time on appeal when the party failed to present that specific argument to the district court, even though the issue may have been before the district court in more general terms.").

The Moradys and Douglas Davis assert that all of the Policies except the Bonaparte Policy had lapsed and therefore "there was no risk that Ohio would have to pay benefits on any of the lapsed policies." (Def. Br. pg. 21). But at the time the lawsuit was filed on April 16, 2010, four Policies were still in effect, including the Bonaparte Policy, Shirlee Davis Policy, Mary Harris Policy, and Robert Harris Policy. After the lawsuit was filed and discovery commenced, Thomas Tice, the trustee for the investor in the Mary Harris and Robert Harris Policies ceased paying premiums and allowed the Harris Policies to lapse in September 2010 and November 2010. (SA39-40 ¶¶82, 87; SA126-127 ¶¶82, 87). Christiana Trust, the trustee for the investor in the Shirlee Davis Policy, opposed and litigated Ohio National's claim to declare the Policy void *ab initio* throughout discovery until abandoning its position at the time of summary judgment briefing. (R.240). Steven Egbert vigorously opposed Ohio National's declaratory judgment claim throughout the litigation and summary judgment briefing.

The same discovery and evidence required to demonstrate the lack of an insurable interest necessary to declare the Policies void *ab initio* also establishes the STOLI conspiracy and Mavash Morady's fraud and breach of contract. Ohio National has not sought and was not awarded attorneys' fees and costs subsequent to the summary judgment ruling declaring the final policy void *ab initio*. (A40; A51). The Moradys and Douglas Davis fail to show any error in the district court's award of damages to Ohio National for its reasonable attorneys' fees.

D. The Moradys and Douglas Davis fail to establish any basis for reversal of the damages award for costs.

The Moradys and Douglas Davis argue that an award of litigation costs as damages must be limited to costs taxable by the clerk under 28 U.S.C. §1920 and must be obtained under Fed. R. Civ. P. 54. (Def. Br. pg. 22). But the district court awarded litigation expenses to Ohio National as damages for the tortious conduct, not as an award of prevailing party costs under Fed. R. Civ. P. 54. Prevailing party costs may also have been recoverable under §1920, but Ohio National is not precluded from recovering its litigation expenses as damages. When awarded as damages, the award of costs is not dictated by Rule 54 or §1920. See Fed. R. Civ. P. 54(d)(2)(A) (exempting fees and expenses that are "an element of damages"); *Fednav Intern.*, 624 F.3d at 840 n.3 ("Care must be taken to distinguish between the rule prohibiting the recovery of attorney fees from the losing party by the prevailing party in litigation and the rule allowing the recovery of attorney fees incurred in litigation with third parties necessitated by defendants' wrongful act."); accord *Nalivaika v. Murphy*, 120 Ill.App.3d 773, 458 N.E.2d 995, 997 (Ill. App. Ct. 1983).

The Moradys and Douglas Davis further failed to make any argument in the district court specifying a distinction between recoverable and non-recoverable costs, and therefore waived any argument on appeal. (Def. Br. pg. 23). *O'Gorman*, 777 F.3d at 890. The Moradys and Douglas Davis fail to establish any basis for reversal of the award of damages to Ohio National for litigation expenses.

IV. The District Court Erred in Awarding Premiums for the Bonaparte Policy to Steven Egbert.

No party, including Steven Egbert, appealed the district court's declaratory judgment that the Bonaparte Policy was procured without an insurable interest and is therefore void *ab initio*. (A13-14). Illinois law does not encourage and reward STOLI investors such as Steven Egbert by offering a money-back guarantee on their illegal investments and returning premiums paid. The district court erred in entering summary judgment in favor of Steven Egbert for premiums of $90,644.38. The district court's decision is reviewed *de novo*. *Gerhartz*, 779 F.3d at 685.

A life insurance policy that lacks an insurable interest is an illegal wagering contract that is void *ab initio*. *Grigsby*, 222 U.S. at 155-156; *Ill. State Bar*, 821 N.E.2d at 712. "A contract that is void *ab initio* must be treated as though it never existed; no provision can be enforced." *Penn Mut.*, 887 F.Supp.2d at 830 (citing *In re Marriage of Newton*, 2011 IL App (1st) 090683, 955 N.E.2d 572 (Ill. App. Ct. 2011)). "Enforcement of the illegal contract makes the court an indirect participant in the wrongful conduct." *Kedzie & 103rd Currency Exchange, Inc. v. Hodge*, 156 Ill.2d 112, 619 N.E.2d 732, 738 (1993).

When a contract is illegal, courts will not restore the parties to their pre-contract position and order the return of premiums. "[O]rdering return of the premiums would be, in effect, ordering rescission as a remedy for a contract that never existed. But … under Illinois law, rescission presumes the existence of an otherwise valid and enforceable contract and therefore cannot be the proper remedy when a contract is void *ab initio*." *Penn Mut.*, 887 F.Supp.2d at 831. When an unlawful life insurance contract is declared void *ab initio*, "courts will leave the parties where they are" with no refund of premiums to the STOLI investors. *Penn Mut. Life Ins. Co. v. GreatBanc Trust Co.*, No. 09 C 6366, 2012 WL 2074789, at *4 (N.D. Ill. June 8, 2012). See also *LincolnWay*, 2013 WL 5212750, at *4 ("[I]f a contract is declared illegal at its inception, then courts will leave the parties where they are.").

Leaving the parties where they are after declaring the Bonaparte Policy void *ab initio* requires that premiums paid for the Bonaparte Policy remain the property of Ohio National. See *Penn Mut.*, 887 F.Supp.2d at 830 (when a contract is illegal courts do not "undo what has been done") (internal quotation omitted) (quoting *Sellers v. Phillips*, 37 Ill.App. 74, 76 (Ill. App. Ct. 1890)).

Steven Egbert never filed a counterclaim seeking restitution based on unjust enrichment during the 2 ½+ years the case was pending in the district court. Despite the lack of any equitable claim by Steven Egbert, the district court invoked equity as the basis to return premiums to Steven Egbert. (A18). While acknowledging that restitution may be "foreclosed by the claimant's inequitable conduct," the district court reasoned that Ohio National "merely alleges that Steven Egbert did not sufficiently investigate whether there was an insurable interest at the time the

Bonaparte Policy was issued." (A19-20) (internal quotation omitted). The district court held that because Steven Egbert was not liable for procuring the Bonaparte Policy, "there is no basis for the Court to find that it would be just for Ohio National to retain the premiums Egbert paid." (A20).

Based on the record before the district court, Steven Egbert is not entitled to equitable relief. "[O]ne seeking equitable relief cannot take advantage of his own wrong or, as otherwise stated, he who comes into equity must come with clean hands." *Monahan v. Village of Hinsdale*, 569 N.E.2d 1182, 1189 (Ill. App. Ct. 1991). While Steven Egbert postures as an innocent purchaser of the Bonaparte Policy, his testimony and admissions demonstrate that he is a STOLI investor engaged in the business of purchasing life insurance policies and wagering on the death of strangers. He disregarded known false statements in the policy Application. To acquire the Policy's death benefit he violated the Trust's terms and made false statements. He waited for the contestability period to expire to try to insulate the policies from challenge before marketing policies to other STOLI investors for profit.

In December 2007, Steven Egbert purchased policies with a combined death benefit of $3.55 Million, including the Bonaparte Policy, the Bonaparte AXA Policy, and the Floyd AXA Policy. (SA28 ¶59; SA59 ¶59). Before he purchased the Bonaparte Policy and Bonaparte AXA Policy, Steven Egbert reviewed the Ohio National Application and knew of the false statement that Charles Bonaparte had not applied for or obtained any other life insurance. (SA72 ¶15; SA91 ¶15; SA17-19 ¶¶34, 39; SA57-58 ¶¶34, 39). Steven Egbert disregarded the known false statements in the Application and purchased the Bonaparte Policy.

Steven Egbert admitted that he performed no investigation to determine whether the Bonaparte Policy was procured without any insurable interest, and he has no scruple against purchasing policies that lack an insurable interest because he is "in that business." (SA71¶¶8-11; SA85-89 ¶¶8-11; R.243-4 PageID#2308 at 97:5-8, PageID#2330 at 186:1-6). Steven Egbert selected the Bonaparte Policy from a list of policies for sale by Paul Morady, and purchased multiple policies as a hedge against the risk that some insureds might outlive his projections. (SA72 ¶14; SA90-91 ¶14; R.243-4 PageID#2292-2293 at 36:12-37:12).

Steven Egbert violated the provisions of the Irrevocable Trust. He acquired the interest in the Bonaparte Irrevocable Trust, and therefore the Policies, through an assignment. (SA23-25 ¶¶51-54; SA58-59 ¶¶51-54). The Irrevocable Trust expressly prohibits any assignment of the beneficial interest, yet Steven Egbert accepted the assignment in violation of the Trust. (SA69-70 ¶4; SA84 ¶4; R.242-21 PageID#2078). The Irrevocable Trust prohibits the trustee from self-dealing and personally benefitting from the Trust assets. (SA70 ¶5; SA84-85 ¶5; R.242-21 PageID#2078). But Steven Egbert purchased the Irrevocable Trust and became its trustee specifically to obtain for his personal profit the death benefit under the Bonaparte Policy. Steven Egbert testified: "As trustee of the trust, I was assuming that the – the benefit would come to the trustee and that it would be my discretion as to where those proceeds go." (SA75 ¶23; SA94 ¶23; R.243-4 PageID#2297 at 53:17-19). The Irrevocable Trust required that the Trust be administered "from a physical location within the State of Illinois," yet Steven Egbert testified that he failed to comply. (SA75 ¶24; SA94-95 ¶24; R.242-21 PageID#2081; R.243-4 PageID#2288 at 17:9-19).

Steven Egbert made false representations in the assignment, stating that he was either "an investment fund" or "a subsidiary or other affiliate under the control of, or under common control with, an investment fund." (R.243-5 PageID#2394). Steven Egbert testified that he was "neither" and has never owned, managed, or had any involvement in any type of investment fund. (R.243-4 PageID#2287 at 15:9-11, PageID#2317 at 133:17-24).

The Irrevocable Trust identifies as its beneficiary the "Charles M. Bonaparte Sr. Living Trust" ("Bonaparte Living Trust"), and Steven Egbert purportedly purchased the interest from the Bonaparte Living Trust. (SA16-17 ¶33, SA25 ¶54; SA57¶33, SA59 ¶54; R.242-21 PageID#2067; R.243-5 PageID#2373-2374). But Steven Egbert testified that he had never seen a Bonaparte Living Trust, and did not know whether the trust exists or was ever created. (SA73 ¶16; SA91-92 ¶16; R.243-4 PageID#2313 at 119:21-120:3).

Steven Egbert testified that he deliberately waited for the two year contestability period to expire before attempting to resell the Bonaparte Policy, because he understood that Ohio National was not able to contest the policy after two years if "for whatever reason there was something wrong with it." (SA76 ¶26; SA95-96 ¶26; R.243-4 PageID#2320 at 146:9-25).

Steven Egbert subsequently rejected offers to purchase the Bonaparte Policy because "there's no way" he would receive a profitable sale price so he decided "to ride it out" (and wait for Charles Bonaparte's death). (SA76-77 ¶27; SA96-97 ¶27; R.243-4 PageID#2325 at 167:3-19). Even after he became aware through this litigation, particularly following Charles Bonaparte's deposition on November 9, 2010, that the Bonaparte Policy was illegally procured, Steven Egbert

continued to press his illegal investment and pay premiums for the STOLI policy for more than three years.

The Bonaparte Policy is void *ab initio* and Illinois law holds that the parties should be "left where they are" with premiums remaining the property of Ohio National. Steven Egbert never asserted a claim to the premiums, and the record before the district court does not support an equitable award in his favor. The district court erred in granting summary judgment awarding premiums to Steven Egbert.

CONCLUSION

The district court correctly entered summary judgment in favor of Ohio National and against Douglas Davis, Paul Morady and Mavash Morady for conspiracy and in favor of Ohio National and against Mavash Morady for fraud, and properly awarded attorneys' fees and litigation expenses as damages resulting from the STOLI scheme. The district court's entry of Judgment in favor of Ohio National should be upheld.

However, the district court erred in its award to Steven Egbert of $90,644.38 in premiums paid for the Bonaparte Policy. The portion of the Judgment entered in favor of Steven Egbert should be vacated. Judgment should be entered for Ohio National to retain premiums for the Bonaparte Policy.

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(a)(7)(C), the undersigned counsel for Plaintiff-Appellee/Cross-Appellant Ohio National Life Assurance Corporation certifies that the foregoing brief:

(i) complies with the type-volume limitation of Fed. R. App. P. 28.1(e) because it contains 16,446 words including footnotes and excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii); and

(ii) complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type styles requirements of Fed. R. App. P. 32(a)(6) and Cir. R. 32(b) because the brief has been prepared in a proportionally spaced typeface using Microsoft Office Word 2010 in 12-point Minion Pro.

By: */s/ Jacqueline J. Herring*
Attorney for Plaintiff-Appellee/Cross-Appellant

COMBINED RULE 30(a) AND RULE 30(b) APPENDIX

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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

OHIO NATIONAL LIFE ASSURANCE CORPORATION ,

Plaintiff,

v.

DOUGLAS W. DAVIS, INDIVIDUALLY AND AS TRUSTEE OF THE SHIRLEE DAVIS IRREVOCABLE LIFE INSURANCE TRUST, THEODORE R. FLOYD IRREVOCABLE LIFE INSURANCE TRUST, ROBERT S. HARRIS IRREVOCABLE LIFE INSURANCE TRUST, MARY ANN HARRIS IRREVOCABLE LIFE INSURANCE TRUST, AND CHARLES M. BONAPARTE, SR. IRREVOCABLE LIFE INSURANCE TRUST; CHRISTIANA BANK & TRUST COMPANY AS SUCCESSOR TRUSTEE OF THE SHIRLEE DAVIS IRREVOCABLE LIFE INSURANCE TRUST; STEVEN EGBERT AS SUCCESSOR TRUSTEE OF THE CHARLES M. BONAPARTE, SR. IRREVOCABLE LIFE INSURANCE TRUST; MAVASH MORADY; PAUL MORADY; SHIRLEE DAVIS; THOMAS M. TICE; AND THEODORE R. FLOYD,

Defendants.

No. 10 C 2386

Judge Thomas M. Durkin

MEMORANDUM OPINION AND ORDER

Ohio National Life Assurance Corporation alleges that Douglas Davis, Paul Morady and Mavash Morady conspired to procure life insurance policies from Ohio National for people in whose lives Davis and the Moradys do not have an insurable interest, i.e., Davis and the Moradys have no interest in the insureds continuing to live. R. 76. Ohio National moves for summary judgment on its claims that Davis

and the Moradys are liable for civil conspiracy under Illinois law, and that Mavash Morady is liable for fraud under Illinois law and breach of her agency contract with Ohio National, which is governed by Ohio law. R. 241. Ohio National also moves for summary judgment on its claim for a declaration that the policies were void *ab initio*—i.e., they never came into existence because Davis and the Moradys procured the polices without an insurable interest in the lives of the insureds—such that Ohio National may keep the premiums paid on the policies. R. 241. Paul Morady has filed a cross-motion for summary judgment arguing that the policies are valid and that he is not liable for civil conspiracy. R. 263. Steven Egbert, who purchased one of the policies from Paul Morady and who Ohio National named as a defendant in order to retain the premiums Egbert has paid on the policy he bought, has also filed a cross-motion for summary judgment arguing that the policy he owns is valid, or, in the alternative, seeking return of the premiums he has paid. R. 248; R. 249. For the following reasons, Ohio National's motion, R. 241, is granted except that Ohio National must return the premiums Egbert paid; Egbert's motion, R. 248; R. 249, is granted to that extent, and otherwise denied; and Paul Morady's motion, R. 263, is denied.

Background

As an initial matter, the Court notes that Paul Morady failed to file a statement of material facts pursuant to Local Rule 56.1, and Davis and Mavash Morady failed to file any papers in opposition to Ohio National's motion. Ohio National asks the Court to deem Davis and the Moradys to have admitted Ohio

National's statement of facts, R. 267 at 2-3, because Local Rule 56.1 provides, "All material facts set forth in the statement required of the moving party will be deemed to be admitted unless controverted by the statement of the opposing party." The Court agrees that Davis and the Moradys have admitted Ohio National's factual allegations by failing to properly contest them. *See Cracco v. Vitran Exp., Inc.*, 559 F.3d 625, 632 (7th Cir. 2009). Ohio National's summary judgment motion on the claims against these three defendants is granted on this basis alone. The Court is cognizant of the fact that Paul Morady filed his opposition papers and cross-motion pro se. But, as the Court discusses below, even accepting the facts as Paul Morady states them in his brief, the Court finds that there is no genuine dispute as to any material fact regarding Paul Morady's liability.

I. The "Program"

Davis is an attorney and estate planner who gave estate planning seminars at churches in Chicago to "middle-class and upper-middle-class African-American seniors." R. 242-4 at 16:3-4. Davis testified that beginning in 2004 or 2005, he and Paul Morady—who Davis knew because their children went to school together, R. 242-4 at 14:16–15:1—"worked together" on "a program" in which Davis "worked as a trustee for potential investors" and "Morady agreed that he would assist . . . to the extent that some of the potential insure[d]s needed any assistance in obtaining financing for some of the insurance policies." R. 242-4 at 14:8-14. Paul Morady also testified that he could help the potential insureds "sell their interests if they wish to." R. 242-2 at 17:15-16.

Davis testified that he explained to his seminar attendees that a life insurance policy is an asset that can be sold, and the primary reason people chose to participate in the program he and Paul Morady devised was to sell their life insurance interests. R. 242-4 at 62:18–63:11, 67:16-18. Davis testified that he explained to potential participants in the "program" that he would help them (1) set up a trust to hold the life insurance policy, (2) apply for the insurance policy, (3) sell the beneficial interest in the policy, (4) find a buyer to purchase the beneficial interest, and (5) arrange for completion of the sale. R. 242-4 at 63:24–64:14. Davis testified that only people who required financing to afford the insurance were part of the program, R. 242-4 at 17:21-23, 64:21–65:18, and that a balloon payment on the financing notes would come due after two years, at which point the insured would "probably have to sell" the insured's interest in the policy. R. 242-4 at 65:15-18.

In early 2006, Davis and Paul Morady traveled to Chicago together. R. 242-2 at 14:1-5, 15:15-19. Paul Morady testified that the purpose of that trip was to give him an opportunity to research the possibility of financing insurance premiums in Illinois and for Davis to introduce him to "potentially mutual clients," as Davis is originally from Chicago and has friends and family there. R. 242-2 at 14:4-5, 14:16-18, 16:1-5.

On July 18, 2006, Paul Morady's wife, Mavash Morady, obtained a license to sell life insurance in Illinois. R. 242-5 at 11. She testified that she planned to get

business in Illinois from people for whom Davis acted as a trustee. R. 242-1 at 31:2-10, 31:20–32:3. She became an Ohio National agent on October 16, 2006. R. 242-9.

On August 9, 2006, Paul Morady registered an entity called Security Pacific Premium Financing with the Illinois Secretary of State, with himself as the sole owner, chairman, and chief executive officer. R. 242-6 at 2; R. 242-2 at 26:13-23, 52:3-8.

At issue in this case are life insurance policies Ohio National issued for the following five people: (1) Charles M. Bonaparte, Sr., R. 242-29; (2) Theodore R. Floyd, R. 243-14; (3) Shirlee Davis, R. 245-8; (4) Mary Ann Harris, R. 243-29; and (5) Robert S. Harris, R. 244-3. Davis signed and prepared irrevocable life insurance trusts[1] for each of these policies and had all five individuals sign documents permitting Mavash Morady to apply for the policies with Ohio National on their behalf. *See* R. 242-4 at 75:11-13, 80:15–81:8, 84:2-8, 89:12–91:9; R. 246 ¶¶ 31-33, 62-63, 74-77, 89-90. Additionally, all five individuals financed the premiums on their policies through Paul Morady's Security Pacific Premium Financing company. *See* R. 242-18; R. 243-15, R. 245-3; R. 242-2 at 221:23–222:12; R. 245-5; R. 245-10. For all five individuals, however, Paul Morady never transferred funds directly to any of the five insureds; instead he transferred the funds to Davis as trustee or Mavash Morady's company American Pacific General Agency, who then paid Ohio National's

[1] "An irrevocable life insurance trust is a non-amendable trust that is both the owner and beneficiary of one or more life insurance policies. Upon the insured's death, the trustee invests the insurance proceeds and administers the trust for one or more beneficiaries." John J. Gallo, *The Use of Life Insurance in Estate Planning: A Guide to Planning and Drafting*, 33 Real Prop. Prob. & Tr. J. 685, 729 (1999).

premiums. *See* R. 242-18; R. 243-15; R. 245-10; R. 245-3; R. 245-5. All five individuals eventually sold the beneficial interests in their trusts to Camden Investment Holdings, Inc., *see* R. 242-24; R. 243-21; R. 245-12; R. 245-2; R. 245-7, an entity wholly owned by Paul Morady. R. 242-2 at 54:7-9; R. 242-25. Other than Shirlee Davis, who is Douglas Davis's mother, none of these five individuals had any relationship with Davis beyond the transactions at issue in this case, and none of the five individuals ever heard of, let alone met, the Moradys. *See* R. 243-11 at 68:3-6; R. 243-27 at 44:13-15; R. 243-28 at 72:11-13, 70:13-16; R. 242-8 at 31:5-15; R. 242-14 at 52:1-5, 72:2-10.

These five individuals have also testified that either they did not believe that they were actually purchasing a life insurance policy or that they were never provided with a policy or payment. Bonaparte testified that he did not believe that he would actually receive a life insurance policy, but instead knew he was being paid simply to apply for the policy. Specifically, Bonaparte testified, "I knew from the very beginning that I was not going to be . . . the beneficiary of the program. All I was to receive for them using my name . . . is about $6,000 to $4,000." R. 242-14 at 18:12-15. Bonaparte also testified, "What I did was, as an incentive for me to receive compensation because they wanted to insure me because of my good health to receive benefit for themselves. I didn't apply for the insurance. A program was presented to us and I enrolled in the program. . . . I enrolled in the program because they said they give you compensation for signing up." R. 242-14 at 133:14-24. Additionally, Bonaparte testified that he did not know anything about a trust in his

name. R. 242-14 at 79:15–80:8, 88:14–89:10. Floyd testified that he never authorized Davis or anyone else to obtain an insurance policy on his life, and stated, "If I did, I didn't know what I was doing." R. 243-11 at 85:3-11. Robert and Mary Harris testified that they applied for "free" life insurance but that they never received a policy or payment or any communication about their application. R. 243-27 at 35:6-7, 33:9-16.[2]

Additionally, all five of the insureds sold their interests in their life insurance trusts before or very shortly after the life insurance policies for which they had applied purportedly took effect. Bonaparte signed an Ohio National application on April 26, 2007, and created his life insurance trust on April 27. R. 242-16. On June 2, 2007, Bonaparte transferred his interest in his life insurance trust to Camden. R. R. 242-24 at 12. On June 20, Ohio National informed Mavash Morady that Ohio National required a new application because the trust had been formed after the original application. R. 242-28. That same day, Bonaparte signed a new application with Ohio National. Davis and Mavash Morady received the policy on July 5. R. 242-28 at 33. And on July 17, 2007, Bonaparte signed another document purporting to transfer his interest in his life insurance trust for $6,000. R. 243-2.

Then on December 20, 2007, Bonaparte signed yet another document purporting to assign his interest in his life insurance trust to Steven Egbert for "valid consideration." R. 243-3 at 48; R. 242-14 at 93:6-20. The copy of this

[2] Shirlee Davis testified that she believed she was purchasing a life insurance policy with her husband as beneficiary, but that she was unaware that her son Douglas Davis had become the beneficiary prior to the policy being sold.

document that Steven Egbert produced states that the assignment was for "consideration of $69,512." R. 243-5 at 50-53. The assignment Bonaparte signed was then appended to a "payment instructions" document that instructed Egbert to pay the $69,512 to Camden, Paul Morady's company. R. 246 ¶ 57; R. 243-6 at 4-5; R. 243-4 at 48-51.

On April 18, 2007, Floyd signed an Ohio National application and created his life insurance trust. R. 243-13 at 34. On May 18, 2007, Floyd transferred his interest in his life insurance trust to Camden. R. 243-21 at 12. Davis and Mavash Morady received the policy on June 26, 2007. R. 243-13 at 2.

On October 18, 2007, Robert and Mary Ann Harris signed separate Ohio National applications and created separate life insurance trusts for themselves respectively. R. 243-29 at 36; R. 244-2; R. 244-3 at 34; R. 244-4. On January 25, 2008, Robert Harris transferred his interest in Mary Ann's life insurance trust to Camden. R. 245-2 at 6. Davis and Mavash Morady received Mary Ann Harris's policy on March 28, 2008. R. 243-29 at 2.

On April 23, 2007, Shirlee Davis signed an Ohio National application and created her life insurance trust. R. 245-8 at 34. On June 2, 2007, Davis and Mavash Morady received Shirlee Davis's policy. R. 245-8 at 37. On June 13, 2007, Shirlee Davis sold her interest in her life insurance trust to Camden. R. 245-12.

Procuring these individuals to apply for life insurance and financing the purchase of their policies was a lucrative "program" for Paul Morady. Taking the Bonaparte policy as an example, Paul Morady paid Bonaparte $6,000. R. 246 ¶ 49.

Paul Morady also paid the first premium on this policy of $16,040. R. 243. Paul Morady then sold the Bonaparte policy to Egbert for $69,512, for a potential net profit of $47,472. Egbert bought the Bonaparte policy with the hope that the price he paid for it and the premiums he would pay to maintain it in the future would not exceed the death benefit. *See* R. 243-4 at 32:3–33:20.

II. Mavash Morady's Conduct

In addition to alleging that Davis and the Moradys conspired to procure invalid life insurance policies, Ohio National alleges that Mavash Morady's conduct constituted fraud and a breach of her agency contract with Ohio National. Mavash Morady has not filed papers in opposition to Ohio National's motion, and thus, the Court grants Ohio National's motion for summary judgment against Mavash Morady as unopposed.[3]

In any event, Mavash Morady admitted facts at her deposition sufficient to show that she breached her contract with Ohio National and committed fraud. Among other provisions, the agency contract with Ohio National that Mavash Morady signed, R. 242-1 at 88:23–89:11, 97:2-9, 117:18-21, required her to:

- comply with all laws and regulations, R. 242-11 at 5;
- obtain accurate and complete information on the application for insurance and report all other known information which may be pertinent to the risk, *id.* at 7;
- obtain the information from the proposed insured in person, *id.*;

[3] Mavash Morady was at one time represented by counsel but is now proceeding pro se. Paul Morady's opposition papers contain arguments in defense of Mavash Morady, but Paul Morady is not Mavash Morady's attorney, and thus, statements Paul Morady makes in his court filings cannot be attributed to Mavash Morady.

- complete [and] sign the application as the witnessing agent, *id.*; and
- not, under any circumstances, participate in a premium financing arrangement involving any type of premium financing provided by an unrelated third party, R. 242-12 at 2-3.

Contrary to these provisions in her contract, Mavash Morady testified that she (1) did not meet with any of the insureds in person or obtain information from them in person, R. 242-1 at 159:2-3, 159:11-13, 159:19-20, 160:3-4, 160:15-16; (2) failed to personally verify the accuracy of the information, R. 242-1 at 150:13-15, 170:1-5, 229:23–230:2; (3) signed but did not complete the applications, R. 242-1 at 110:22–111:2; (4) did not personally deliver any of the policies to any of the insureds, R. 242-1 at 112:10-12; and (5) knew that the policies were premium financed, R. 242-1 at 38:21-23, 41:22-24, 56:16-23. Thus, Mavash Morady has admitted that she breached her agency contract, and the Court grants Ohio National's motion for summary judgment on that claim.

Ohio National also seeks summary judgment on its claim that Mavash Morady's actions constituted fraud. Under Illinois law, the "elements of common law fraud are: (1) a false statement of material fact; (2) defendant's knowledge that the statement was false; (3) defendant's intent that the statement induce the plaintiff to act; (4) plaintiff's reliance upon the truth of the statement; and (5) plaintiff's damages resulting from reliance on the statement." *Connick v. Suzuki Motor Co., Ltd.*, 675 N.E.2d 584, 591 (Ill. 1996). Mavash Morady admits that she knew that the policies were premium financed and that she signed the applications without meeting the insureds or taking any action to verify the false information

contained in the applications she submitted to Ohio National. Thus, Mavash Morady has admitted that she made false statements in order to induce Ohio National to issue the policies. These admissions are sufficient for the Court to grant Ohio National's motion for summary judgment on its fraud claim against Mavash Morady.[4]

III. The Issues on These Motions

Four of the five policies are no longer at issue. Defendant Christiana Bank, trustee of the Shirlee Davis Irrevocable Life Insurance Trust, stipulated to entry of judgment voiding the Shirelee Davis policy *ab initio* and awarding premiums paid to Ohio National. R. 240. Defendant Thomas Tice, trustee of the Robert S. Harris and Mary Ann Harris Irrevocable Life Insurance Trusts, decided to cease paying premiums and allowed the policies to lapse. R. 247 at 2. Paul Morady was never able to sell the Floyd policy and that policy lapsed for failure to pay premiums. *Id.* The Bonaparte policy was assigned to Egbert for which Egbert paid Camden—Paul Morady's company—$69,512. Since the other four policies have either lapsed or are no longer contested, the focus of Ohio National's motion and the cross motions of Paul Morady and Egbert is the status of the Bonaparte policy, which Egbert

[4] Under Illinois law a breach of contractual promise, i.e., a false promise of future conduct, "without more" does not constitute fraud. *See Shaw v. Hyatt Int'l Corp.*, 461 F.3d 899, 901 (7th Cir. 2006); *Firstar Bank, N.A. v. Faul*, 2001 WL 1636430, at *4 (N.D. Ill. Dec. 20, 2001). In other words, for a defendant to be liable under both theories of breach of contract and fraud the defendant must have breached the contract in a fraudulent manner. Here, Mavash Morady was not merely mistaken or negligent in failing to submit accurate information to Ohio National, but knew that she was either lying to Ohio National or intentionally failed to verify material information so that Ohio National would issue the policies. Thus, Mavash Morady is liable for both fraud and breach of contract.

purportedly bought from Paul Morady, and whether Paul Morady is liable for civil conspiracy.

Legal Standard

Summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). The Court considers the entire evidentiary record and must view all of the evidence and draw all reasonable inferences from that evidence in the light most favorable to the nonmovant. *Ball v. Kotter*, 723 F.3d 813, 821 (7th Cir. 2013). To defeat summary judgment, a nonmovant must produce more than "a mere scintilla of evidence" and come forward with "specific facts showing that there is a genuine issue for trial." *Harris N.A. v. Hershey*, 711 F.3d 794, 798 (7th Cir. 2013). Ultimately, summary judgment is warranted only if a reasonable jury could not return a verdict for the nonmovant. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

Analysis

I. The Insurance Policy

Illinois law prohibits a person who has "no insurable interest in the life of another [from] procur[ing] a policy of insurance on such life." *Hawley v. Aetna Life Ins. Co.*, 125 N.E. 707, 708 (Ill. 1920); *see also PHL Variable Ins. Co. v. Robert Gelb Irrevocable Trust*, 2010 WL 4363377, at *3 (N.D. Ill. Oct. 27, 2010) ("Illinois law 'forbids one person who has no interest in the continuance of the life of another from

speculating on that life by procuring a policy of insurance.'" (quoting *Colgrove v. Howe*, 175 N.E. 569, 571 (Ill. 1931)). An "insurable interest is an interest in having the [insured's] life continue." *Hawley*, 125 N.E. at 708. A policy procured without an insurable interest "is void at its inception." *Id.* This rule is "grounded in public policy" intended to minimize circumstances in which a person has an "'interest in having the life come to an end.'" *Bajwa v. Met. Life Ins. Co.*, 776 N.E.2d 609, 617 (Ill. App. Ct. 1st Dist. 2002) (quoting *Grigsby v. Russell*, 222 U.S. 149, 154-55 (1911)).

Paul Morady argues that the Bonaparte policy is valid because Bonaparte "procured" the policy "at [his own] behest," and he had "the option of keeping the life insurance should [he have] desire[d] to do so." R. 263 at 11-12. This argument might have had some force if Bonaparte had ever owned the policy after Ohio National issued it. But the evidence shows that Bonaparte sold his interest in the policy before a final application was submitted on his behalf, let alone before Ohio National actually issued the policy. Bonaparte transferred his interest in his life insurance trust (which held the policy) to Paul Morady on June 2 but did not apply for the life insurance policy until June 20. Davis and Mavash Morady signed a receipt for delivery of the policy on July 5, and Paul Morady paid the first premium due on July 17. As Ohio National puts it, "If Charles Bonaparte had died the moment the Bonaparte Policy became effective, Paul Morady . . . would [have] own[ed] the $400,000 death benefit." R. 247 at 12. A life insurance policy that would never have paid out money to Bonaparte's estate or his beneficiaries cannot have

been procured to benefit Bonaparte or his beneficiaries. Rather, the timing of the transfer of Bonaparte's interest in his life insurance trust makes clear that Davis and the Moradys procured the Bonaparte policy with the intent to transfer it to Paul Morady. Thus, the Bonaparte policy is contrary to Illinois law and is void *ab initio*.[5]

Egbert cites *Kramer v. Phoenix Life Ins. Co.*, 940 N.E.2d 535 (N.Y. 2010), to argue that it is permissible for a person to take out a policy on his own life with the intent that he will then sell the beneficial interest. Besides the fact that *Kramer* applies New York law that is not at issue here—which in addition, has since been amended, *id.* at 549 n.5—*Kramer* is inapposite. In *Kramer*, the insured named his children as beneficiaries. *Id.* at 546. After the insured had applied for and received the policy, the insured's children—not the insured himself—sold their beneficial interests. *Id.* Here, by contrast, Bonaparte himself sold his life insurance policy before a final application for the policy had been submitted on his behalf.

Paul Morady and Egbert also both argue that even if the Bonaparte policy was procured in violation of Illinois law, Ohio National's claim is barred by the policy's two-year incontestability period. Under Illinois law, insurers must bring an action to rescind a life insurance policy within two years of issuing it. *See* 215 ILCS 5/224(1)(c). But in ruling on Egbert's motion to dismiss, R. 86, the Court (Kendall,

[5] Notably, this reasoning is equally applicable to the Floyd policy based on the following timeline of events: (1) on April 18, 2007, Floyd signed an Ohio National application and created his life insurance trust, R. 243-13 at 34; (2) on May 18, 2007, Floyd transferred his interest in his life insurance trust to Camden, R. 243-21 at 12; and (3) Davis and Mavash Morady received the Floyd policy on June 26, 2007, R. 243-13 at 2.

J.) has already held that "an incontestability provision cannot stand in the way of the insured seeking to rescind a policy for lacking an insurable interest." R. 120 at 12 (*Ohio Nat. Life Assur. Corp. v. Davis*, 2011 WL 2680500, at *7 (N.D. Ill. July 6, 2011) (citing cases)). Neither Paul Morady nor Egbert has made an argument as to why the Court's prior reasoning was incorrect, and the Court sees no reason to reconsider its earlier ruling on this issue.

Egbert also tries a waiver argument of a different type by arguing that Ohio National "has waived its right to contest the fact that the policy is void ab initio" for two reasons: (1) "a policy of insurance cannot be avoided by the insurer on the ground of facts which were known to the agent," and (2) Ohio National has "recognized the continued validity of the policy" by retaining the premiums Egbert has paid. R. 249-2 at 10-11. Both of these points, however, assume that Ohio National seeks to "avoid," or rescind, a validly existing policy. But this is not a correct characterization of Ohio National's claim or the facts. Instead, as the Court discussed above, Ohio National argues, and the Court has found, that the policy was procured by Davis and the Moradys without an insurable interest, and thus, is void *ab initio*, meaning that it "is treated as though it never existed." *Ill. State Bar Ass'n Mut. Ins. Co. v. Law Office of Tuzzolino*, ___ N.E.2d ___, 2013 WL 6157417, at *6 (Ill. App. Ct. 1st Dist. Nov. 22, 2013); *see also Jensen v. Quick Int'l*, 820 N.E.2d 462, 466-67 (Ill. 2004) ("[R]escission presumes the existence of an otherwise valid and enforceable contract."); *Penn Mut. Life Ins. Co. v. Greatbanc Trust Co.*, 887 F. Supp. 2d 822, 828 (N.D. Ill. 2012) (holding that rescission is not a proper remedy when an

insurance policy is found to be void *ab initio* because it was procured without an insurable interest).

Egbert's argument incorrectly assumes that Mavash Morady's fraudulent conduct is the basis for Ohio National's claim that the policy is void. Based on that incorrect assumption, Egbert contends that because Mavash Morady was Ohio National's agent and Mavash Morady knew about the fraud, that knowledge can be imputed to Ohio National. But fraud is a basis to void a contract that is voidable, which is a claim that would be barred by an incontestability provision. Presumably for this reason Ohio National does not allege fraud in order to avoid the policy. Rather, Ohio National argues, and the Court agrees for the reasons stated earlier, that the Bonaparte policy was against public policy from the start and never came into existence. Thus, Mavash Morady's knowledge of the fraud is irrelevant to the validity of Ohio National's claim.

Egbert's line of argument continues that if rescission is not an adequate basis to require Ohio National to return the premiums he has paid, the Court should force Ohio National to return the premiums as a matter of equity. Ohio National argues, to the contrary, that the Court should "leave the parties where they are with no refund of the premiums" because the policy was void *ab initio*. R. 247 at 15. In making this argument, Ohio National relies heavily on Illinois law reviewed in a recent case from this district (Tharp, J.) in which the court addressed this issue and "[d]eclin[ed] to make *any* order with respect to the premiums" because "'[e]nforcement of [an] illegal contract makes the court an indirect participant in the

wrongful conduct,'" and "'in the case of illegal contracts the courts would not, on one hand, undo what has been done, nor on the other, perfect what has been left unfinished.'" *Penn Mut. Life Ins. Co. v. Greatbanc Trust Co.*, 887 F. Supp. 2d 822, 830 (N.D. Ill. 2012) (quoting *Kedzie & 103rd Currency Exchange, Inc. v. Hodge*, 619 N.E.2d 732, 738 (Ill. 1993), and *Sellers v. Phillips*, 37 Ill. App. 74, 76 (1st Dist. 1890)) (emphasis added). On this authority, Judge Tharp reasoned that the mere fact that the insurance company had collected premiums on a policy that was void *ab initio* was an insufficient basis to order the insurance company to return the premiums. *Penn Mut. Life*, 887 F. Supp. 2d at 830. The Court agrees with this reasoning and will not order Ohio National to return Egbert's premiums merely because the Bonaparte policy is void *ab initio*.

In *Penn Mutual*, however, Judge Tharp also did not declare that the premiums rightfully belonged to the insurance company. *Penn Mut. Life*, 887 F. Supp. 2d at 831. Rather, the court went on to say that the premium-payer's counter-claim for unjust enrichment remained to be decided despite the fact that the policy was void *ab initio*, and the court reserved judgment on that issue. *Id.* at 832.[6] Here, Egbert's answer included a general affirmative defense that Ohio National's "claims are barred by . . . equitable doctrines," R. 121 at 48, but it did not include an express unjust enrichment counter-claim. Nevertheless, in his brief, Egbert requested leave to file a counter-claim for unjust enrichment. R. 249-2 at 15 n.3. Moreover, Ohio

[6] The parties in Penn Mutual stipulated to dismissal before the court rendered an opinion on the unjust enrichment claim. *See Penn Mut. Life*, 09 C 6129, Dkt. No. 201 (N.D. Ill. Apr. 3, 2013).

National has raised the question of whether it is equitable for Ohio National to retain the premiums by asking to the Court for a declaration to that effect while disclaiming any right to rescission. But absent rescission, the only basis for the Court to declare that Ohio National is the legitimate owner of the premiums is for the Court to hold as a matter of public policy that it is equitable for an insurance company to retain premiums paid on a policy that is void *ab initio*. Thus, since both Ohio National and Egbert have raised and addressed the issue of whether it is equitable for Ohio National to retain the premiums Egbert paid, the Court will also address it.

The parties have not cited Illinois authority directly on point, nor has the Court found any. In general, to state a claim for unjust enrichment, "a plaintiff must allege that the defendant has unjustly retained a benefit to the plaintiff's detriment, and that defendant's retention of the benefit violates the fundamental principles of justice, equity, and good conscience." *HPI Health Care Servs., Inc. v. Mt. Vernon Hospital, Inc.*, 545 N.E.2d 672, 679 (Ill. 1989). Additionally, the Restatement (Third) of Restitution and Unjust Enrichment § 32 provides as follows:

> A person who renders performance under an agreement that is illegal or otherwise unenforceable for reasons of public policy may obtain restitution from the recipient in accordance with the following rules:
>
> (1) Restitution will be allowed, whether or not necessary to prevent unjust enrichment, if restitution is required by the policy of the underlying prohibition.
>
> (2) Restitution will also be allowed, as necessary to prevent unjust enrichment, if the allowance of restitution will not defeat or frustrate the policy of the underlying

> prohibition. There is no unjust enrichment if the claimant receives the counter performance specified by the parties' unenforceable agreement.
>
> (3) Restitution will be denied, notwithstanding the enrichment of the defendant at the claimant's expense, if a claim under subsection (2) is foreclosed by the claimant's inequitable conduct.

Here, there is no dispute that Ohio National has "retained a benefit to [Egbert's] detriment." According to the Restatement, the pertinent questions then are whether restitution of the premiums to Egbert would "frustrate the policy of the underlying prohibition," and whether restitution "is foreclosed by the claimant's inequitable conduct."

Restitution here would not frustrate the policy against procurement of a life insurance policy without an insurable interest. Although Ohio National emphasizes the fact that Egbert has admitted that he frequently trades in the secondary life insurance market, such activity is not against Illinois law or policy. Illinois prohibits convincing a person to apply for a life insurance policy with the intent to immediately sell it. But a policy purchased for an "insurable interest"—i.e., to provide future monetary benefit for a person who otherwise has an interest in maintaining the insured's life—may subsequently be assigned to a person without such an interest. *See* 215 ILCS 5/245.1 Thus, requiring Ohio National to return Egbert's premiums would not reward conduct that Illinois law and policy is designed to prohibit.

Additionally, Ohio National does not allege, and the evidence in the record does not suggest, that Egbert was complicit in the "program" perpetrated by Davis

and the Moradys. Ohio National merely alleges that Egbert did not sufficiently investigate "whether there was an insurable interest at the time the Bonaparte Policy was issued." R. 259 ¶ 10; *see generally id.* ¶¶ 13-27. Without any allegation or evidence that Egbert is liable for procuring the Bonaparte policy, there is no basis for the Court to find that it would be just for Ohio National to retain the premiums Egbert paid. Accordingly, Ohio National must return the premiums it received from Egbert.

As for Paul Morady, as the Court will discuss below, he is liable for civil conspiracy in connection with procuring the policies at issue. Thus, Ohio National may retain any premiums paid by Paul Morady.

II. Civil Conspiracy

Under Illinois law, a "civil conspiracy occurs when two or more people combine to accomplish, through concerted action, either an unlawful act or a lawful act in an unlawful manner." *Multiut Corp. v. Draiman*, 834 N.E.2d 43, 51 (Ill. App. Ct. 1st Dist. 2005). A "defendant who understands the general objectives of the conspiratorial scheme, accepts them, and agrees, either explicitly or implicitly to do its part to further those objectives . . . is liable as a conspirator." *McClure v. Owens Corning Fiberglas Corp.*, 720 N.E.2d 242, 258 (Ill. 1999).

The evidence shows, and Davis and the Moradys admit, that they worked together to procure life insurance policies from people in whose lives they possessed no insurable interest. The Court has already discussed that the policies were procured without an insurable interest. The undisputed evidence also shows that

Davis and the Moradys worked together to accomplish the following: (1) procure individuals at churches in Chicago to apply for insurance policies; (2) apply for insurance policies with Mavash Morady as agent; (3) finance the purchase of the policies through Paul Morady's company; and (4) arrange for the policies to be sold or assigned to another of Paul Morady's companies. These facts constitute a civil conspiracy to procure life insurance policies without an insurable interest.

Paul Morady argues that "the goal of the . . . program was to allow middle class African Americans to be able to use life insurance as an asset." R. 263 at 17. But regardless of any purported altruistic motivations, procuring or encouraging people to buy life insurance "to use it as an asset" is illegal in Illinois when the person doing the procuring plans to buy the policy.

Paul Morady also argues that he only financed the purchase of the policies and did not own them, and the insureds always had the option to retain the policy. The documentary evidence belies this contention. Paul Morady purchased each of the policies, and in most cases this transfer took place *prior* to Ohio National ever issuing the policy. Furthermore, all of the insureds required financing to purchase the policies, and none of them had the means to retain the policies beyond the balloon payment date that always came due within two years. Paul Morady, as the person responsible for the terms of the financing, made certain that the insureds would eventually be forced to sell the policies to him. Thus, the uncontested facts

show that Paul Morady engaged in a conspiracy to procure life insurance policies without an insurable interest in the insureds.[7]

Conclusion

For the foregoing reasons, Ohio National's motion, R. 241, is granted, and Steven Egbert's motion, R. 248; R. 249, and Paul Morady's motion, R. 263, are denied to the extent that the Bonaparte policy is declared void *ab initio*. Ohio National's motion is granted, and Paul Morady's motion is denied, to the extent that Douglas Davis, Paul Morady and Mavash Morady are liable for civil conspiracy to procure the Bonaparte and Floyd policies, and Mavash Morady is liable for fraud and breach of contract. Ohio National's motion is denied, and Steven Egbert's motion is granted, to the extent that Ohio National must return any premiums Egbert paid on the Bonaparte policy. Ohio National's motion is granted, and Paul Morady's motion is denied, to the extent that Ohio National may retain any premiums Paul Morady paid Ohio National.

A status conference is scheduled for February 21, 2014, at 9 a.m., at which the parties should be prepared to discuss how to proceed with the following claims that Ohio National's motion did not address: Count II against Davis for fraud;

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[7] Paul Morady also argues that stranger originated life insurance policies were not illegal in Illinois until 2009 when the legislature passed such a statute. R. 263 at 16. But as the Court has already discussed at length, such conduct has been prohibited by common law for many years. Conduct made illegal by common law is sufficient to form the basis of a civil conspiracy. *See, e.g.*, *Edalatdju v. Guaranteed Rate, Inc.*, 748 F. Supp. 2d 860 (N.D. Ill. 2010) (denying motion to dismiss claim for civil conspiracy for common law fraud); *Ill. Non–Profit Risk Mgmt. Ass'n v. Human Serv. Center of S. Metro–East*, 884 N.E.2d 700, 711 (Ill. App. Ct. 4th Dist. 2008) ("[Defendants] failed to adequately allege their underlying claim of common-law fraud, and thus their conspiracy claim fails as a matter of law.").

Count III against Davis for violation of the Illinois Consumer Fraud and Deceptive Business Practices Act; Count V against Davis for unjust enrichment; and Count VI against Shirlee Davis and Theodore Floyd for civil conspiracy. Absent another reasonable suggestion, a prompt trial date will be set. The parties should also be prepared to discuss the procedure for calculation of damages on the claims decided by this Order.

ENTERED:

Thomas M Durkin

Honorable Thomas M. Durkin
United States District Judge

Dated: February 7, 2014

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

OHIO NATIONAL LIFE ASSURANCE CORPORATION ,

Plaintiff,

v.

DOUGLAS W. DAVIS, INDIVIDUALLY AND AS TRUSTEE OF THE SHIRLEE DAVIS IRREVOCABLE LIFE INSURANCE TRUST, THEODORE R. FLOYD IRREVOCABLE LIFE INSURANCE TRUST, ROBERT S. HARRIS IRREVOCABLE LIFE INSURANCE TRUST, MARY ANN HARRIS IRREVOCABLE LIFE INSURANCE TRUST, AND CHARLES M. BONAPARTE, SR. IRREVOCABLE LIFE INSURANCE TRUST; CHRISTIANA BANK & TRUST COMPANY AS SUCCESSOR TRUSTEE OF THE SHIRLEE DAVIS IRREVOCABLE LIFE INSURANCE TRUST; STEVEN EGBERT AS SUCCESSOR TRUSTEE OF THE CHARLES M. BONAPARTE, SR. IRREVOCABLE LIFE INSURANCE TRUST; MAVASH MORADY; PAUL MORADY; SHIRLEE DAVIS; THOMAS M. TICE; AND THEODORE R. FLOYD,

Defendants.

No. 10 C 2386

Judge Thomas M. Durkin

MEMORANDUM OPINION AND ORDER

Ohio National Life Assurance Corporation brought this action alleging that Douglas Davis, Paul Morady, and Mavash Morady conspired to procure life insurance policies from Ohio National for people in whose lives Davis and the Moradys do not have an insurable interest, i.e., Davis and the Moradys do not have customarily insurable relationships with the insureds (e.g., spousal or familial). R.

76. The Court previously granted Ohio National's motion for summary judgment on its claims of civil conspiracy against Davis and the Moradys, and for fraud and breach of contract against Mavash Morady, and denied Paul Morady's cross motion for summary judgment on those claims. R. 275 (*Ohio Nat'l Life Assurance Corp. v. Davis*, 2014 WL 500539 (N.D. Ill. Feb. 7, 2014)). In granting Ohio National's motion, the Court also found that the insurance policies at issue were void *ab initio*—i.e., never came into existence because Davis and the Moradys procured the polices without an insurable interest in the lives of the insureds—such that Ohio National may keep the premiums paid on the policies, except for those premiums paid by Steven Egbert who purchased one of the policies from Paul Morady. *Id.*

At the Court's instruction, Ohio National has now filed a motion for judgment on damages. R. 277. Additionally, Paul Morady—who opposed Ohio National's summary judgment motion pro se—has joined with his wife, Mavash Morady, to retain counsel and file a motion to vacate the Court's summary judgment order. The Moradys argue that the Court should vacate its summary judgment order because Ohio National failed to comply with Local Rule 56.2, which required Ohio National to advise the Moradys of the requirements of Federal Rule of Civil Procedure 56 and Local Rule 56.1. R. 289. The Moradys have also opposed Ohio National's motion for judgment on damages. R. 295. Davis filed notices stating that he joins the Moradys' filings. R. 291; R. 299. Egbert requests that the Court enter judgment awarding him the premiums he paid to Ohio National. R. 288. For the following reasons, the Court

denies the Moradys' motion to vacate, and enters judgment in favor Ohio National in the amount of $725,666.56, and in favor of Egbert in the amount of $90,644.38.

Background

I. Procedural History

Ohio National filed this action more than four years ago on April 16, 2010. R. 2. Paul Morady entered an appearance pro se on February 4, 2011. R. 100. An attorney entered an appearance for Mavash Morady on June 18, 2010, R. 25, but was granted permission to withdraw on December 1, 2011. R. 149.

Even though neither of the Moradys was represented by counsel as of December 1, 2011, their current counsel, Richard Leng, appeared in Court on behalf of the Moradys at a hearing on June 12, 2012. *See* R. 293; R. 207. Leng, however, did not formally enter an appearance. *Id.* Instead, Leng sought permission to represent the Moradys for the limited purpose of defending them at their depositions. *See* R. 293 at 7:15-19. The Court denied this request. *Id*. The Court set a briefing schedule for dispositive motions at the hearing Leng attended, *see id.* at 7:20-22, and Ohio National filed its summary judgment motion four months later on October 12, 2012. R. 241.

Despite not having entered an appearance, during the four months between the June 12 hearing and Ohio National's filing of its summary judgment motion on October 12, Leng filed documents on the Moradys' behalf on three separate occasions. *See* R. 202-03; R. 215; R. 234-35. Leng did not again file any documents or

attempt to appear on the Moradys' behalf until appearing for the purpose of filing the Moradys' motion to vacate that is at issue now.

Paul Morady filed a request for an extension to respond to Ohio National's summary judgment motion, which Mavash Morady signed. R. 250. Paul Morady also filed documents in opposition to Ohio National's motion—styled as a cross-motion for summary judgment—including a memorandum of law, a declaration from Davis, and Paul Morady's own declaration. *See* R. 263. Paul Morady did not file a response to Ohio National's statement of material facts, but he did include a "Statement of Facts" in his memorandum of law. *Id.* at 4-7. Mavash Morady never responded to Ohio National's motion for summary judgment beyond joining Paul Morady's filings. R. 266. Other than the declaration from Davis that Paul Morady filed, Davis did not file any papers in opposition to Ohio National's motion.

The Court granted Ohio National's motion for summary judgment, "even accepting the facts as Paul Morady states them in his brief." R. 275 at 3 (*Ohio Nat'l*, 2014 WL 500539, at *1). The Court held that Paul Morady's account of the relevant events was not contrary to the evidence in the record showing that the original insureds transferred their interests in their life insurance trusts to Paul Morady's company prior to Ohio National issuing the policies, "mak[ing] [it] clear that Davis and the Moradys procured the [policies] with the intent to transfer [them] to Paul Morady," and then sell them on the secondary market. R. 275 at 14 (*Ohio Nat'l*, 2014 WL 500539, at *5). The Court also found that Davis and the Moradys made admissions at their depositions (and in the case of Paul Morady, in his court filings)

sufficient to grant summary judgment to Ohio National on its claims of conspiracy against the three defendants, and breach of contract and fraud against Mavash Morady. The Court rejected Paul Morady's defense that his motives were altruistic and legal, because "regardless of any purported altruistic motivations, procuring or encouraging people to buy life insurance 'to use it as an asset' is illegal in Illinois when the person doing the procuring plans to buy the policy." R. 275 at 21 (*Ohio Nat'l*, 2014 WL 500539, at *9).

In support of their motion to vacate, the Moradys filed a document titled "Defendants LR56.1(b)(3) Response to Plaintiff's LR56.1 Statement," R. 294-1, which responds to the statement of material facts that Ohio National filed in support of its motion for summary judgment. The Moradys describe this document as "defendants proposed Rule 56.1(b) response on liability," R. 294 at 1, and it is purportedly signed by Davis, although his actual signature does not appear on the document and the document was filed using Leng's electronic filing credentials. This document (R. 294-1) is intended to show that had the Moradys been sufficiently informed of their obligations on summary judgment they would have demonstrated genuine disputes of material fact. This document, however, misstates a number of Ohio National's statements of fact, and admits all but twelve of Ohio National's statements of fact. *See id.* ¶¶ 7, 27-29, 43, 47, 52, 55, 66, 99-101.

II. Premiums and Damages

At the outset of this litigation, Ohio National deposited with the Clerk of the Court $437,731.38 in premiums received on the insurance policies at issue in this

case, to be held in escrow. R. 32. The Court held that Ohio National may keep any of the premiums paid by Paul Morady, Mavash Morady, or Davis, but ordered Ohio National to return to Egbert any premiums he paid. *See* R. 275 at 22 (*Ohio Nat'l Life*, 2014 WL 500539, at *9). Ohio National and Egbert have agreed that the amount Ohio National must return to Egbert is $90,644.38. R. 281.

Additionally, the following facts relevant to potential damages in this case are undisputed: (1) Ohio National paid Mavash Morady $120,127.41 in commissions related to the sale of the insurance policies at issue in this case, R. 294-1 ¶ 104; (2) Ohio National incurred and paid $529,746 in attorneys' fees pursuing this action, R. 295-1 ¶ 17; and (3) Ohio National paid the following additional amounts of money in pursuing this action: $26,565 for expert witness fees; $32,806.42 in deposition costs; $9,056.11 in costs for document subpoenas and production; $3,172.11 in costs for service of process; $2,646.85 in investigation costs; and, $1,402.66 in other litigation costs, including copying, service of filings, and preparation of court copies, R. 295-1 ¶¶ 20-21. These fees and costs are supported by records from the law firm representing Ohio National. *See* R. 280-14.

Analysis

I. Motion to Vacate

The Moradys argue that the Court should vacate its grant of summary judgment to Ohio National because Ohio National failed to comply with Local Rule

56.2.[1] Local Rule 56.2 requires "any party moving for summary judgment against a party proceeding pro se [to] serve and file as a separate document, together with the papers in support of the motion," a notice explaining the procedures for complying with Federal Rule of Civil Procedure 56. Nevertheless, a failure to comply with Local Rule 56.2 does not require reversal of a court's grant of summary judgment "'unless there is reason to believe that the [non-movant] was prejudiced by the failure, that is that he could have established that there was a genuine issue of material fact, precluding the grant of summary judgment, if he had had a reasonable opportunity to submit affidavits.'" *Wicker v. Ill. Dep't of Public Aid*, 215 F.3d 1331, at *3 (7th Cir. 2000) (quoting *Seller v. Henman*, 41 F.3d 1100, 1102 (7th Cir. 1994)); *see also Timms v. Frank*, 953 F.2d 281, 286 (7th Cir. 1992) ("The question of prejudice is relevant [because] if [the non-movant] could not have avoided summary judgment if she had received adequate notice, there would be no point in remanding."); *Santiago v. United Air Lines, Inc.*, 969 F. Supp. 2d 955, 960 (N.D. Ill. 2013) ("[A] movant's failure to give the Local Rule 56.2 notice is without legal significance 'if no prejudice resulted.'" (quoting *Kincaid v. Vail*, 969 F.2d 594, 599 (7th Cir. 1992))).

Ohio National's primary argument against the Moradys' motion to vacate is that "[n]o prejudice exists for lack of LR56.2 Notice when the *pro se* party's 'actions

[1] Davis is an attorney, so to the extent he intends to join the Moradys' motion to vacate, the Court rejects that request because attorneys, even those representing themselves, are not pro se plaintiffs for the purposes of Local Rule 56.2. *See Godlove v. Bamberger, Foreman, Oswald, & Hahn*, 903 F.2d 1145, 1148 (7th Cir. 1990) ("Ordinarily, we treat the efforts of *pro se* applicants gently, but a *pro se* lawyer is entitled to no special consideration.").

reveal that she knew what she had to do to oppose this motion.'" R. 309 at 5 (quoting *Timms*, 953 F.2d at 286). Ohio National argues that Paul Morady's filings in opposition to summary judgment evince an understanding of his obligations under Rule 56, and that he "exercised [his] right to submit evidence by filing Declarations." R. 309 at 5. The quote from *Timms* upon which Ohio National bases this line of argument, however, is not a holding of the court, but a recitation of a party's argument in that case. The contention that a pro se party who "knew what she had to do to oppose" summary judgment is not prejudiced by a lack of notice under Local Rule 56.2, is not an accurate statement of the law and is not a sufficient basis to deny the Moradys' motion to vacate. Furthermore, it is undisputed that the Moradys did not receive the notice required by Local Rule 56.2 and that they failed to properly respond to Ohio National's statement of material facts. On this basis, and giving the Moradys the benefit of the doubt as pro se plaintiffs (despite the evidence on the docket that they had regular contact with counsel leading up to the filing of Ohio National's summary judgment motion), the Court assumes that the Moradys were not adequately informed as to how to proceed on summary judgment. The relevant question then is not whether the Moradys' were prejudiced in that their knowledge of proper procedure under Rule 56 was lacking, but whether the Moradys were prejudiced in that they "could have established that there was a genuine issue of material fact" if they had properly complied with Rule 56 and Local Rule 56.1. *See Wicker*, 215 F.3d 1331, at *3 (quoting *Sellers*, 41 F.3d at 1102).[2]

[2] Ohio National also cites *Morris v. City of Chicago*, 545 Fed. App'x 530 (7th Cir.

A. Paul Morady's Conduct

The Moradys argue that they were prejudiced by Ohio National's failure to provide them with the notice required by Local Rule 56.2 "in that they did not have an opportunity to present material facts that would have precluded summary judgment on the conspiracy count against Paul Morady and Douglas Davis . . . and the fraud count against Mavish Morady." R. 294 at 1. Specifically, the Moradys cite a legal opinion that Paul Morady commissioned, which he believed demonstrated the legality of his plan with Davis to finance life insurance policies. The Moradys contend that Paul Morady's reliance on this legal opinion demonstrates that he had no intent to violate the law. *Id.* at 2.

The Moradys' argument, however, ignores the Court's statement that in granting summary judgment to Ohio National the Court "accept[ed] the facts as Paul Morady state[d] them in his brief." R. 275 at 3 (*Ohio Nat'l*, 2014 WL 500539, at *1). Paul Morady already argued in his opposition to Ohio National's motion for summary judgment that he thought that his "program" to finance life insurance was legal based on the fact that he "obtained a legal opinion from a reputable Illinois law firm prior to doing so." R. 263 at 17. Although Paul Morady did not submit a

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Nov. 15, 2013), in which the court held that "flawed notice" did not prejudice the non-movant who "submitted a variety of documents to oppose summary judgment." *Id.* at 532. But in *Morris* it was undisputed that the movant supplied the pro se non-movant with notice—albeit "flawed" notice—and the question was whether that flawed notice was sufficient. The court held that the non-movant's filings were evidence that the non-movant had been sufficiently notified of how to properly oppose a summary judgment motion. Here, it is undisputed that the Moradys received no notice at all, so the extent or adequacy of Paul Morady's filings in opposition to summary judgment is not relevant to whether the Moradys suffered prejudice.

copy of this opinion with his papers on summary judgment, the Court considered and rejected Paul Morady's defense that he thought his actions were legal and that his intention was to "allow middle class African Americans [sic] to be able to use life insurance as an asset." R. 263 at 17. As the Court held in granting summary judgment to Ohio National, "regardless of any purported altruistic motivations, procuring or encouraging people to buy life insurance 'to use it as an asset' is illegal in Illinois when the person doing the procuring plans to buy the policy," as the evidence undisputedly shows Paul Morady intended to do. R. 275 at 21 (*Ohio Nat'l*, 2014 WL 500539, at *9). The Moradys cannot establish prejudice by pointing to facts and arguments that the Court already considered in the light most favorable to Paul Morady.

Moreover, to the extent the Moradys seek to have the Court reconsider its holding regarding Paul Morady's intent (a motion which would be barred by the 28-day deadline for reconsideration imposed by Federal Rule of Civil Procedure 59(e)), that motion is denied. The Moradys' argument that the legal opinion Paul Morady obtained shows that he did not have the requisite intent to be liable for civil conspiracy conflates two distinct objects of Paul Morady's intent. It may be that Paul Morady did not intend to break the law, but that is generally irrelevant to determining whether he intended to commit actions sufficient to make him liable for civil conspiracy. *See Jones v. Bd. of Educ. of City of Chi.*, 996 N.E.2d 1093, 1099 (Ill. App. Ct. 1st Dist. 2013) ("[I]t has long been the law that everyone is presumed to know the law and ignorance of the law excuses no one."); *see also Jerman v.*

Carlisle, McNellie, Rini, Kramer & Ulrich, LPA, 559 U.S. 573, 582-83 (2010) ("Our law is . . . no stranger to the possibility that an act may be 'intentional' for purposes of civil liability, even if the actor lacked actual knowledge that her conduct violated the law."). It is true that a "defendant who *innocently* performs an act which happens to fortuitously further the tortious purpose of another is not liable under the theory of civil conspiracy." *McClure v. Owens Corning Fiberglas Corp.*, 720 N.E.2d 242, 258 (Ill. 1999). But Paul Morady does not dispute the Court's findings that he intended to commit the acts that the Court found constituted a civil conspiracy. *See* R. 275 at 20-22 (*Ohio Nat'l*, 2014 WL 500539, at *8-9 (citing *McClure*, 720 N.E.2d at 258 (A "defendant who understands the general objectives of the conspiratorial scheme, accepts them, and agrees, either explicitly or implicitly to do its part to further those objectives . . . is liable as a conspirator."). Since Paul Morady intentionally committed acts that constitute a civil conspiracy, the Moradys' allegation that Paul Morady did not intend to break the law is of no moment.

B. Mavash Morady's Conduct

Additionally, the Moradys argue that Mavash Morady was prejudiced by Ohio National's failure to provide her with the Local Rule 56.2 notice because Mavash Morady did not have the opportunity to "advise[] [the Court] that Ohio [National] permitted Mavash Morady to delegate the application process to [one of her] employee[s] who was accredited by Ohio [National]," and that the Ohio National guidelines Mavash Morady admitted to violating "were issued before [she] became an agent." R. 294 at 4. Even if the Moradys are correct that Mavash Morady

was permitted to "delegate the application process," this does not change the fact that Mavash Morady admitted that she knew that the insurance policies at issue were premium financed, *see* R. 242-1 at 38:21-23, 41:22-24, 56:16-23, in violation of Ohio National's policy. *See* R. 242-12 at 2-3. By submitting the insurance policy applications to Ohio National, Mavash Morady falsely stated that the applications were in compliance with Ohio National's requirements. Mavash Morady knew these statements were false and she made these false statements in order to induce Ohio National to issue the insurance policies. These policies were then purchased and sold by Paul Morady through his company Camden Investment Holdings, for which Mavash Morady served as a director. Mavash Morady's new allegation that Ohio National permitted her to delegate work to her employees does not alter any of these undisputed facts about Mavash Morady's false representation that the insurance policies were not premium financed, and would not have altered the Court's ultimate grant of summary judgment in Ohio National's favor. Thus, Mavash Morady suffered no prejudice from Ohio National's failure to provide her the notice required by Local Rule 56.2.

Therefore, the Moradys' motion to vacate the Court's grant of summary judgment in Ohio National's favor is denied.

II. Motion for Judgment on Damages

A. Actual Damages

Ohio National seeks $120,271.41 in commissions it paid to Mavash Morady as damages for her breach of contract and fraud, and as damages for Davis and the

Moradys' conspiracy to procure life insurance policies without an insurable interest. As part of this conspiracy, Mavash Morady breached her agency contract with Ohio National and committed fraud by submitting applications for the insurance policies at issue in this case knowing that the applications contained false information. The evidence shows that Ohio National would not have paid Mavash Morady the commissions for the insurance policies she procured along with Davis and Paul Morady if Ohio National knew that Mavash Morady lied about how the policies were procured, because Ohio National's business practices prohibit issuing stranger-originated and premium-financed policies. *See* R. 242-12 at 2. Since Ohio National would not have paid the commissions but for Mavash Morady's breach of contract and fraud, Ohio National's payment of the commissions was the "direct and natural consequence" of (1) Ohio National "acting on the faith of" Mavash Morady's fraudulent representations and (2) Mavash Morady's breach of her agency contract with Ohio National. *See Roboserve, Inc. v. Kato Kagaku Co., Ltd.*, 78 F.3d 266, 273-74 (7th Cir. 1996) (stating the definition of compensatory damages for fraud under Illinois law); *Micrel, Inc. v. TRW, Inc.*, 486 F.3d 866, 878 (6th Cir. 2007) (stating the definition of compensatory damages for breach of contract under Ohio law).[3] And because Mavash Morady's actions were in furtherance of her conspiracy with Davis and Paul Morady, Ohio National's payment of the commissions was also a direct and natural consequence of the actions of Davis and Paul Morady as members of the conspiracy with Mavash Morady. Thus, Ohio National suffered actual damages in

[3] Illinois law governs the fraud claim and Ohio law governs the breach of contract claim.

the amount of the commissions it paid Mavash Morady, and Davis and the Moradys are jointly and severally liable to Ohio National in the amount of $120,271.41.

B. Set-Off

Davis and the Moradys also argue that "Ohio National [must] deduct the profit it made on the policies from its commission expense," and that because the premiums Ohio National retained are greater than the commissions it paid, "Ohio National has no actual damages." R. 295 at 7. Davis and the Moradys cite no authority for this theory of damages. Nevertheless, it is true that in Illinois "'[a]n injured person is entitled to one full compensation for his injuries, and a double recovery for the same injury is against public policy.'" *Ill. Sch. Dist. Agency v. Pacific Ins. Co. Ltd.*, 571 F.3d 611, 615 (7th Cir. 2009) (quoting *Eberle v. Brenner*, 505 N.E.2d 691, 693 (Ill. 1987)). Additionally, "[t]o prevent double recovery by plaintiffs, defendants are entitled to a reduction in damages—sometimes called a 'setoff'—to offset any amounts that the plaintiff already has collected from other sources in compensation for the same injury." *Ill. Sch. Dist. Agency*, 571 F.3d at 615-16 (citing *Eberle*, 505 N.E.2d at 693).

Davis and the Moradys perceive there to be only one bad act in this case—Davis and the Moradys' conspiracy to induce Ohio National to issue the stranger-originated and premium-financed policies—by which Ohio National was damaged in the amount of the commissions, and from which Ohio National gained in the amount of retained premiums. Their characterization of the case, however, fails to accurately identify the injuries and damages. Contrary to Davis and the Moradys'

argument, the fact that Ohio National paid commissions for an insurance policy that was void *ab initio* is an injury *itself*, and the damage resulting from that injury is the monetary amount of the commissions. In addition to the injury of paying the commissions, Ohio National was also injured by having incurred risk of paying death benefits (although none were ever paid out). In compensation for that injury, Ohio National has retained some of the premiums paid on the policies. There is no off-set here because the amount of the commissions and the retained premiums serve as compensation for two distinct injuries—i.e., payment of the commissions, and assumption of the policies' risks, respectively. Thus, Ohio National is entitled to both keep the premiums and recover the commissions.

C. Attorney's Fees and Costs

In addition to the commissions it paid Mavash Morady, Ohio National seeks damages in the form of attorney's fees and costs in the amount of $605,395.15. Ohio National acknowledges that, absent a statute to the contrary, a prevailing party must bear its own attorney's fees and costs. Ohio National argues, however, that this case falls within an exception to the general rule which provides that a plaintiff may collect attorney's fees and costs from a defendant "'where the wrongful acts of a defendant involve the plaintiff in litigation with third parties or place him in such relation with others as to make it necessary to incur expenses to protect his interest.'" *Fednav Int'l Ltd. v. Continental Ins. Co.*, 624 F.3d 834, 840 (7th Cir. 2010) (quoting *Ritter v. Ritter*, 46 N.E.2d 41, 44 (Ill. 1943)). Ohio National contends that this exception is applicable here because the conspiracy among the Moradys and

Davis to procure insurance policies without an insurable interest (and Mavash Morady's fraud and breach of contract in furtherance of that conspiracy) forced Ohio National to sue Egbert and the other policy holders to "protect [its] interest," *Ritter*, 46 N.E.2d at 44, by seeking to void the policies to ensure that Ohio National would not be required to pay the total of $2.8 million in death benefits provided for by the policies. *See* R. 278 at 6. Ohio National reasons because the Moradys and Davis "'involved'" Ohio National in litigation with Egbert and the other owners of the insurance policies, "'the expenses incurred in that litigation are . . . damages no less compensable than any other element of damage resulting from the tort'" committed by Davis and the Moradys. R. 278 at 5 (quoting *Champion Parts, Inc. v. Oppenheimer & Co.*, 878 F.2d 1003, 1006 (7th Cir. 1989)); *see also Fednav*, 624 F.3d at 840 (The Seventh Circuit has "noted that the 'theory behind this exception is that a tortfeasor should be held responsible for all of the natural and proximate consequences of his actions.'" (quoting *Champion Parts*, 878 F.2d at 1006)).

Davis and the Moradys do not dispute the accuracy of the $605,395.15 amount of attorney's fees and costs, or that it is reasonable. Instead, Davis and the Moradys contend that "[n]o fees are sought for third party litigation," so the exception to the general rule is not applicable. R. 295 at 3. But, as Ohio National points out, this is an incorrect description of the case, since in addition to Davis and the Moradys, Ohio National also sued Egbert and the other policy holders to obtain a declaratory judgment that the policies were void *ab initio*. Indeed, Ohio National's greatest monetary interest in this case was to ensure that Ohio National would not

have to pay out the $2.8 million in total death benefits due under the policies, which could only be accomplished by suing Egbert and the other policy holders. All of the fees and costs Ohio National seeks were incurred in obtaining the declaration on summary judgment and settlements during the course of the litigation with the policy holders other than Egbert. Notably, Ohio National does not seek fees or costs for any litigation expenses incurred after the Court issued the declaratory judgment, meaning that all the fees and costs Ohio National seeks were expended in pursuit of the declaratory judgment.

Further, the fact that Ohio National sued Egbert and the other the policy holders in the same action as Davis and the Moradys does not mean that Ohio National cannot recover fees and costs attributable to its litigation with Egbert and the other policy holders. Illinois appellate courts have affirmed fee awards in very similar circumstances. For instance, in *Duignan v. Lincoln Towers Insurance Agency, Inc.*, 667 N.E.2d 608 (Ill. App. Ct. 1st Dist. 1996), the plaintiff sued in the same action both the insurance broker from whom the plaintiff purchased car insurance, and the insurance company that issued the policy the plaintiff purchased. The broker contacted the insurance company to cancel the policy without authority from the plaintiff, and the insurance company refused to cover subsequent damage to the plaintiff's car. The court awarded the plaintiff the attorney's fees the plaintiff incurred in suing the insurance company as damages to be paid by the broker because fees and costs were an "expense . . . directly attributable to [the broker's] actions." *Id.* at 613. The court explained, however, that

once the insurance company settled and the broker was the sole remaining defendant, the plaintiff could no longer collect fees and costs incurred for the litigation beyond that point. *Id.*

Similarly, in *National Wrecking Co. v. Coleman*, 487 N.E.2d 1164 (Ill. App. Ct. 1st Dist. 1985), the court held that the plaintiff could state a claim for attorney's fees and costs against one of the two defendants the plaintiff sued in the same action. The plaintiff sued both a former client for breach of contract and an advisor to the client for interference with contract. The court held that the attorney's fees the plaintiff incurred in suing its former client for breach of contract were the "natural consequence" of the client's advisor's alleged interference with the contract. The court reasoned that the plaintiff could seek an award of fees as damages against the client's advisor because "[i]t is implicit that [the advisor's] alleged interference with [the plaintiff's] contract with [its client] would probably result in an ensuing action by [the plaintiff] against [its client] for the breach of that contract." *Id.* at 1167.

The *Duignan* and *National Wrecking* decisions show that under Illinois law "[i]t is irrelevant whether [plaintiffs] request[] their attorney fees in a separate tort action." *Goldstein v. DABS Asset Manager, Inc.*, 886 N.E.2d 1117, 1121 (Ill. App. Ct. 1st Dist. 2008). What is relevant is whether the attorney's fees at issue were incurred in order to litigate against the defendant as opposed to a third party. *See id.* (counterclaim for attorney's fees where defendant argued that the primary claim constituted a breach of fiduciary duty was impermissible regardless of whether the

counterclaim is considered a "separate action"). Thus, a plaintiff's decision to go on the "offensive[]" against two defendants at the same time does not destroy the plaintiff's opportunity to collect attorney's fees as damages from the defendant who caused the plaintiff to litigate against the other defendant, because "it [is] not for the defendant to dictate what course the plaintiff should take to remedy the evil which had been wrongfully brought upon him, so [long] as the remedy adopted was . . . [a] legal one." *National Wrecking*, 487 N.E.2d at 1167.

Additionally, whether the attorney's fees and costs Ohio National seeks as damages are reasonable is a decision within the Court's discretion. Davis and the Moradys, however, have not challenged the reasonableness of the amount of fees and costs Ohio National seeks. It is not the Court's responsibility to make a party's argument for it. *See Costello v. Grundon*, 651 F.3d 614, 639 n.7 (7th Cir. 2011) (quoting *Vaughn v. King*, 167 F.3d 347, 354 (7th Cir. 1999) ("It is not the responsibility of this court to make arguments for the parties."). Thus, the Court will not reject Ohio National's claim for fees and costs as unreasonable.[4]

Therefore, the Court grants Ohio National's motion for damages in the amount of $605,395.15 in attorney's fees and costs.

[4] Davis and the Moradys also oppose an award of fees and costs as premature under Federal Rule of Civil Procedure 54 and 28 U.S.C. § 1920. Both of these provisions, however, pertain to prevailing party fees and costs, whereas here—as the Court has discussed—Ohio National seeks fees and costs as an element of damages. Moreover, the Court directed Ohio National to file this motion at this time and in this form. *See* R. 300 at 6-7, 9-10, 14. Thus, Ohio National's motion is not premature.

D. Punitive Damages

Ohio National also seeks punitive damages from Davis and the Moradys. The Illinois Supreme Court has held that punitive damages "are not favored in the law, and the courts must take caution to see that punitive damages are not improperly or unwisely awarded." *Slovinski v. Elliot*, 927 N.E.2d 1221, 1225 (Ill. 2010). Because the purpose of a punitive damages award is to "punish and deter," they may only be awarded for "conduct involving some element of outrage similar to that usually found in crime. The conduct must be outrageous, either because the defendant's acts are done with an evil motive or because they are done with reckless indifference to the rights of others." *Loitz v. Remington Arms Co., Inc.*, 563 N.E.2d 397, 415-16, 427 (Ill. 1990). "To determine whether punitive damages are appropriate, the trier of fact can properly consider the character of the defendant's act, the nature and extent of the harm to the plaintiff that the defendant caused or intended to cause and the wealth of the defendant." *Slovinski*, 927 N.E.2d at 1225. Further, punitive damages "may be awarded when the defendant's tortious conduct evinces a high degree of moral culpability, that is, when the tort is committed with fraud, actual malice, deliberate violence or oppression, or when the defendant acts willfully, or with such gross negligence as to indicate wanton disregard of the rights of others." *Id*. Yet, "deceit alone cannot support a punitive damage award." *Home Sav. and Loan Ass'n of Joliet v. Schneider*, 483 N.E.2d 1225, 1228 (Ill. 1985). "Illinois courts . . . insist that plaintiffs must establish not only simple fraud but gross fraud, breach of trust, or other extraordinary or exceptional circumstances clearly showing malice

or willfulness." *Europlast, Ltd. v. Oak Switch Sys., Inc.*, 10 F.3d 1266, 1276 (7th Cir. 1993). Such "malice or willfulness" is generally demonstrated by an "inten[t] to financially damage" the plaintiff. *See Roboserve, Inc. v. Kato Kagaku Co., Ltd.*, 78 F.3d 266, 276 (7th Cir. 1996).

In seeking punitive damages, Ohio National emphasizes that "Illinois law abhors the illegal practice of wagering on human life," and that stranger-originated life insurance policies "are illegal because they are morally repugnant and dangerous to insureds." R. 278 at 12. Ohio National also notes that Davis and the Moradys "deliberately targeted African American [sic] senior citizens . . . specifically because [they] believed [that demographic has] shorter life expectancies." *Id.* Ohio National's argument, however, both paints a false picture of the harm Davis and the Moradys' conduct actually caused in general, and improperly attempts to focus the Court's attention on the insureds in particular, who are not plaintiffs in this case. Although procuring life insurance without an insurable interest is illegal because it raises the specter of a person having an "'interest in having [another's] life come to an end,'" *Bajwa v. Met. Life Ins. Co.*, 776 N.E.2d 609, 617 (Ill. App. Ct. 1st Dist. 2002) (quoting *Grigsby v. Russell*, 222 U.S. 149, 154-55 (1911)), there is no contention here that Davis or the Moradys were plotting anything so nefarious. In fact, the evidence shows that Davis and the Moradys hoped to relieve themselves of any connection with the policies they procured, and the insureds themselves, as soon as possible by selling the policies for profit. As much as Ohio National would like to paint Davis and the Moradys as the vilest of predators because they

supposedly "have a sinister financial stake in the insureds' early death," that is an inaccurate description of the bad acts for which Davis and the Moradys are liable. Despite Davis and the Moradys' admission that they "targeted" African-American senior citizens, there is no evidence in the record that Davis and the Moradys intended to harm the insureds. In fact, the evidence indicates that some of the insureds made money from their transactions with Davis and the Moradys. *See* R. 242-14 at 7 (19:12–20:10) (Bonaparte—one of the original senior citizens "targeted" by Davis and the Moradys—testified that he received an amount somewhere between $4,000 and $6,000 for applying for the life insurance policy).

Since there is no evidence that Davis and the Moradys harmed, or intended to harm, the insureds, and the insureds are not plaintiffs in this case, the purpose behind protecting potential insureds from stranger-originated life insurance policies is not present here. And since that threat is not present, it will not be a factor in the Court's analysis of whether punitive damages are warranted. Rather, the Court focuses on the harm Davis and the Moradys' caused Ohio National to determine whether punishment or deterrence is warranted. Davis and the Moradys are liable for conspiring to induce Ohio National to issue life insurance policies Ohio National would not have otherwise issued, in a manner contrary to public policy. Ohio National was not harmed because Davis and the Moradys participated in the secondary life insurance market—which is not illegal—but by their conspiracy to

deceive Ohio National.[5] It is this conspiracy, and not the public policy fears justifying the prohibition on stranger-originated life insurance policies, that is the appropriate target of any punishment and deterrence in this case.

Having stripped away Ohio National's argument that "a sinister financial stake in the insureds' early death" is the appropriate focus of the Court's attention, it becomes clear that Davis and the Moradys' conspiracy to deceive Ohio National is not so outrageous that punitive damages are warranted. The actions by Davis and the Moradys are certainly objectionable and illegal, but they do not evince an "inten[t] to financially damage" Ohio National. Ohio National does not allege that the conspiracy caused it actual damages beyond the commissions it paid Mavish Morady. Further, Ohio National does not allege that the life insurance policies it was induced to issue were any riskier than the policies Ohio National issues in the regular course of its business. Hypothetically, Davis and the Moradys could have lied about factors directly relevant to Ohio National's risk of loss on the policies, such as the insureds' health or age. This would have increased Ohio National's risk of loss and been evidence that Davis and the Moradys intended to harm Ohio National in particular. Instead, Davis and the Moradys failed to inform Ohio

[5] The Court is of course aware that neither Davis nor Paul Morady has been found liable for fraud. Nonetheless, they are both liable for conspiracy to procure life insurance policies without an insurable interest, and Mavash Morady's fraud and breach of contract were committed in furtherance of the conspiracy to which Davis and Paul Morady were parties. Thus, the element of deception Mavash Morady added to the conspiracy is also attributable to Davis and Paul Morady to the extent that the Court must "consider the character of the defendant[s'] act[s], [and] the nature and extent of the harm to the plaintiff that the defendant[s] caused or intended to cause," in determining whether punitive damages are warranted for their conduct. *See Slovinski*, 927 N.E.2d at 1225.

National that they had procured the policies without an insurable interest and that the policies were premium financed. There is no evidence in the record, however, that these factors increased Ohio National's risk, and that Davis and the Moradys' conspiracy to misinform Ohio National about these factors caused an injury to Ohio National beyond the commissions it paid Mavash Morady. The evidence *does* show that Ohio National will not issue policies with such characteristics—most likely because they increase the chance that the policies will lapse for failure to pay premiums, and that Ohio National might become involved in litigation like this case. But Ohio National will be compensated for the commissions on the policies and the expenses of this litigation. Without evidence in the record that Davis and the Moradys falsified health or other information relevant to the insureds' life expectancies, thereby increasing Ohio National's risk of paying death benefits before the paid premiums had created a profit for Ohio National on the policies, the Court cannot say that Ohio National was subject to any greater risk than it already assumes in the regular course of its business.

Without such increased risk to Ohio National, the Court cannot find that Davis and the Moradys "intended to financially damage" Ohio National, and punitive damages are not warranted absent such intent. *See Roboserve*, 78 F.3d at 276 ("What the record lacks is some indication that [the defendants] intended to financially damage [the plaintiff]. Without such evidence, the malice, wantonness or grossness that under Illinois law must characterize conduct justifying the imposition of punitive damages is absent."). The actions of Davis and the Moradys

are nothing more than "garden variety" deceit in the business context that courts have found does not warrant punitive damages. *Id.* ("Rather than evidence of outrageous conduct, what emerges from a review of the facts is a picture of a highly competitive marketplace with sophisticated advocates on all sides jockeying for position and profit. [The defendant] indeed played loose with its contractual obligations and was less than candid—and may even have lied—about its present actions and future plans."); *see also Boyd v. Tornier, Inc.*, 656 F.3d 487, 497 (7th Cir. 2011) ("[The defendant] engaged in a fraudulent business strategy with sophisticated business partners. It may have realized that [the plaintiffs] could be affected financially by its misrepresentations, but it was acting in the business arena with parties that were capable of protecting themselves. This falls short of reckless indifference. Moreover, though tortious and objectionable, [the defendant's] conduct was not outrageous. Bad consequences resulted for [the plaintiffs], and they will be compensated for their losses."); *Europlast, Ltd. v. Oak Switch Sys., Inc.*, 10 F.3d 1266 (7th Cir. 1993) (manufacturing company liable to its parts supplier for breach of contract and tortious interference was not liable for punitive damages where manufacturing company decided not to buy the parts supplier, and instead breached the parts contract and purchased another parts supplier company). Generally, when courts award punitive damages for deceitful or fraudulent conduct, the circumstances are akin to a "con-man" stealing from unsuspecting individuals. The personal interactions and the actual monetary loss they cause are what make the conduct outrageous and deserving of punitive damages. *See Kapelanski v.*

Johnson, 390 F.3d 525, 531 (7th Cir. 2004) (phony investment scheme perpetrated on individual investors); *Jannotta v. Subway Sandwich Shops, Inc.*, 125 F.3d 503, 512 (7th Cir. 1997) (corporate representatives "made a series of utterly false representations in order to induce [an individual landlord] to execute [a] lease"); *West v. Western Cas. and Sur. Co.*, 846 F.2d 387, 392 (7th Cir. 1988) (employer lied to employee about options for protecting legal rights after workplace accident); *Future Envtl., Inc. v. Forbes*, 2014 WL 3026485, at *2 (N.D. Ill. July 3, 2014) (truck driver fraudulently used fuel credit card provided by his employer to sell fuel to third parties for profit); *Levy v. Markal Sales Corp.*, 643 N.E.2d 1206, 1214 (Ill. App. Ct. 1st Dist. 1994) (two of three individuals who were the sole shareholders of a company conspired to use the assets of the company to form and run a new company without the third partner's knowledge). Here, by contrast, Davis and the Moradys conspired to deceive Ohio National, but Ohio National is a sophisticated business entity that was induced into arms-length business agreements. The deceit is illegal, and Ohio National has recovered for its injuries. However, this sort of bad business dealing is not so outrageous that punitive damages are warranted.

Conclusion

For the foregoing reasons, (1) the Moradys' motion to vacate the Court's grant of summary judgment in Ohio National's favor, R. 289, is denied, and (2) Ohio National's motion for judgment on damages, R. 277, is granted to the extent that judgment is entered in favor of Ohio National and against Davis and the Moradys, jointly and severally, in the amount of $725,666.56 (comprised of $120,271.41 in

damages in the form of commissions paid to Mavash Morady, plus $605,395.15 in damages in the form of attorney's fees and costs expended in seeking the declaratory judgment), and denied to the extent that the Court will not grant Ohio National punitive damages.

Additionally, judgment is entered in favor of Egbert and against Ohio National in the amount of $90,644.38. The Clerk of the Court is directed to release the funds in escrow in this case in the amount of $90,644.38 to Steven Egbert, to satisfy the judgment against Ohio National. The Clerk of the Court is also directed to release the remainder of the funds in escrow in this case, plus the accrued interest, and minus the registry fee, to Ohio National. Ohio National should submit an Internal Revenue Service Form W-9 to the Clerk of the Court to secure the release of the funds.

ENTERED:

Thomas M Durkin

Honorable Thomas M. Durkin
United States District Judge

Dated: October 24, 2014

IN THE UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF ILLINOIS

Ohio National Life Assurance Corp.
Plaintiff(s)
v.
Douglas W. Davis, et al
Defendant(s)

Case No. 10 C 2386

JUDGMENT IN A CIVIL CASE

Judgment is hereby entered (check appropriate box):

☐ in favor of plaintiff(s)
and against defendant(s)
in the amount of $,

which ☐ includes pre–judgment interest.
☐ does not include pre–judgment interest.

Post-judgment interest accrues on that amount at the rate provided by law from the date of this judgment.

Plaintiff(s) shall recover costs from defendant(s).

☐ in favor of defendant(s)
and against plaintiff(s)

Defendant(s) shall recover costs from plaintiff(s).

☑ other: Judgment is entered in favor of Ohio National and against Douglas Davis, Paul Morady, and Mavash Morady, jointly and severally, in the amount of $725,666.56. Judgment is entered in favor of Stephen Egbert and against Ohio National in the amount of $90,644.38.

This action was *(check one)*:

☐ tried by a jury with Judge presiding, and the jury has rendered a verdict.
☐ tried by Judge without a jury and the above decision was reached.
☑ decided by Judge Thomas M. Durkin a motion for judgment on damages.

Date: 10/24/14

Thomas G. Bruton, Clerk of Court
/s/ S. Newland, Deputy Clerk

CIRCUIT RULE 30(d) STATEMENT

Pursuant to Circuit Rule 30(c) and (d), the materials required by parts (a) and (b) of Circuit Rule 30 that were not included in the appendix of the appellant are included in this appendix.

By: */s/ Jacqueline J. Herring*
Attorney for Plaintiff-Appellee/Cross-Appellant

CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of April 2015, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the CM/ECF system. I certify that all participants in the appeal are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

By: */s/ Jacqueline J. Herring*
Attorney for Plaintiff-Appellee/Cross-Appellant