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Subject: **Estate of Deceased Bank Employee Brings Class Action Lawsuit Against Citibank for Proceeds of BOLI Policies**

Major References: [*Complaint in Barofsky v. Citibank, N.A., Case No. 2:09-cv-637, \(D. Nev. Apr. 9, 2009\)*](#)

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Daniel Barofsky, the husband and representative of the estate of Karen Barofsky, who was a Citibank customer service representative until her death in April 2007 from metastasizing lung cancer, brought suit within the past month against Citibank for the proceeds of a bank-owned life insurance allegedly purchased by the bank on his wife's life. Barofsky claims that Citibank had no insurable interest in his wife's life under South Dakota law, which is said to be similar to the laws in a number of other states, including Nevada, where Citibank's headquarters are located. Barofsky also seeks certification of a class consisting of the estates of all deceased Citibank employees in those states.

The facts, as alleged in the complaint, include the following:

As part of a typical bank-owned life insurance (BOLI) arrangement, Citibank insured the lives of its employees and named itself policy beneficiary. According to reports filed by Citibank with the Federal Financial Institutions Examination Council, for the period ending March 31, 2006, Citibank possessed \$2.2 billion in life insurance assets. Since that date, Citibank's life insurance assets have increased, to \$4.1 billion for the period ending December 31, 2008.

Karen Barofsky worked for Citibank in Sioux Falls, South Dakota as a customer service representative who dealt with credit cards and student loans. She was employed by Citibank at the time it began placing insurance policies on its employee's lives. Based on the dates that Citibank purchased insurance on its employees' lives and the date Karen passed away, her husband believes that Citibank had a policy on Karen's life and received the policy benefits after she died. He alleged that he made inquiries to Citibank and that Citibank refused to disclose whether it had taken out a policy on Karen's life.

South Dakota law states that no person shall procure or cause to be procured any insurance contract upon the life or body of another individual unless the benefits under the contract are payable to the individual insured or a personal representative, or to a person having, at the time when the contract was made, an insurable interest in the individual insured. According to the Complaint, statutes enacted in Alaska, Arizona, Florida, Hawaii, Idaho, Louisiana, Montana, Nevada, New Mexico, Oklahoma, Washington and Wyoming are similar. The benefits of Citibank's BOLI policies were not payable to the individuals insured or their personal representatives.

South Dakota law and the laws of the other named states also provide that an insurable interest exists only in close relatives or when a lawful and substantial economic interest in having the life, health, or bodily safety of the individual insured continue, as distinguished from an interest which would arise only by, or would be enhanced in value by, the death, disability or injury of the individual insured. In the absence of an insurable interest, these laws give the insured person's representative a right of action to recover the benefits paid under the policies to the unlawful beneficiary.

Per the Complaint, Citibank did not have an insurable interest in Karen's life or the lives of any of its employees in Alaska, Arizona, Florida, Hawaii, Idaho, Louisiana, Montana, Nevada, New Mexico, Oklahoma, South Dakota, Washington or Wyoming. Because of this, the BOLI policies allegedly violated the laws of those states, and, also pursuant to those laws, the estates of Citibank employees or former employees who died while insured by a Citibank policy allegedly are entitled to all of the death benefits Citibank received from the BOLI policies on their decedents' lives.

The plaintiff requested certification of a class comprised of these estates, which certification would allow the class action to go forward on behalf of the class.

In their request for relief, the plaintiff and members of the class asked for a final judgment (i) declaring that Citibank did not have the necessary insurable interest in the life of Karen Barofsky or the decedents of the estates comprising the class and (ii) awarding the plaintiff and members of the putative plaintiff class all benefits that Citibank received from the BOLI policies, as well as for attorneys' fees and costs.

To the best of our knowledge Citibank has not yet filed an answer in this case. We will provide a report to you when answer is filed and the nature of that answer—for example, whether it asserts that the employer-employee relationship creates an insurable interest based on the South Dakota law standard of substantial economic interest in the continued life of the insured.

Any AALU member who wishes to obtain a copy of the complaint in *Barofsky v. Citibank, N.A.* may do so through the following means: (1) use hyperlink above next to "Major References," (2) log onto the AALU website at www.aalu.org and enter the *Member Portal* with your last name and birth date and select *Current Washington Report* for linkage to source material or (3) email Anthony Raglani at raglani@aalu.org and include a reference to this *Washington Report*.

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