

IN THE SUPREME COURT OF THE STATE OF DELAWARE

GWG DLP MASTER TRUST DATED	§	
03/01/06,	§	No. 110, 2025
	§	
Defendant Below,	§	Certification of Question of Law from
Appellant,	§	the United States District Court for the
	§	District of Delaware
v.	§	
	§	C.A. No. 23-584
ESTATE OF NORMAN FRANK, by	§	
its Executor, Harley Frank,	§	
	§	
Plaintiff Below,	§	
Appellee.	§	

Submitted: December 3, 2025

Decided: February 11, 2026

Before **SEITZ**, Chief Justice; **VALIHURA**, **TRAYNOR**, **LEGROW**, and **GRIFFITHS**, Justices, constituting the Court *en Banc*.

Upon certification of question of law from the United States District Court for the District of Delaware. **Certified Question Answered.**

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VALIHURA, Justice:

I. INTRODUCTION

On May 18, 2023, the Estate of Norman Frank (“the Estate”) filed a complaint in the Superior Court of the State of Delaware (the “Complaint”) under 18 *Del. C.* § 2704(b) (“Section 2704(b)”) seeking to recover the proceeds of a previously sold life insurance policy — one the Estate alleges was made in violation of 18 *Del. C.* § 2704(a).¹ Defendants GWG DLP Master Trust Dated 03/01/06 (“DLP Trust”) and Wells Fargo Bank, N.A. (“Wells Fargo”) removed the case to the United States District Court for the District of Delaware (the “District Court”).² Defendants moved to dismiss the Complaint on the bases that (1) Wells Fargo was an inappropriate defendant for the Section 2704(b) claim, and (2) the Section 2704(b) claim was barred by the applicable statute of limitations. On September 26, 2024, the District Court dismissed Wells Fargo, which left DLP Trust as the sole defendant.³

In our seminal decision *PHL Variable Ins. Co. v. Price Dawe 2006 Ins. Tr., ex rel. Christiana Bank & Tr. Co.* (“*Price Dawe*”), this Court held that a life insurance policy lacking an insurable interest is *void ab initio* and can never be enforced by a court.⁴ There,

¹ Appendix to Appellant’s Opening Brief at 6 [hereinafter A __] (GWG & Wells Fargo Opening Br. in Support of Mot. to Dismiss at 6).

² A2 (D. Del. Civil Docket No. 1:23-cv-00584-JLH at 1 [hereinafter D.I.]).

³ *Est. of Frank v. GWG DLP Master Tr. Dated 03/01/06*, 2024 WL 4298937, at *2 (D. Del. Sept. 26, 2024) [hereinafter *GWG MTD*].

⁴ *Price Dawe*, 28 A.3d 1059, 1067 (Del. 2011) (“Under Delaware common law, if a life insurance policy lacks an insurable interest at inception, it is void *ab initio*[.]”); *id.* (“A court may never enforce agreements void *ab initio*, no matter what the intentions of the parties.”).

we concluded that an insurer could challenge the validity of a policy under 18 *Del. C.* § 2704(a) notwithstanding the expiration of the policy’s contestability period.⁵

Price Dawe did not involve a challenge under Section 2704(b). Unlike a challenge to a policy raised by an insurer that has not paid the death benefits and seeks to avoid doing so (as in *Price Dawe*), a claim brought under Section 2704(b) is usually filed by the estate of the decedent and seeks to recover death benefits that have already been paid to the downstream beneficiary of the policy. Some courts have suggested that Section 2704(b) is not subject to a limitations period. On the other hand, 10 *Del. C.* § 8106(a) (“Section 8106(a)”) provides a three-year limitations period for causes of action “based on a statute.”

Because the parties agreed that our Court has never answered the question of what limitations period (if any) applies to a claim by an estate under Section 2704(b), and because the answer to that question appears to be dispositive of this case, the District Court suggested, *sua sponte*, that the question be certified to our Court.⁶ The parties subsequently

⁵ *Id.* at 1068.

⁶ *GWG MTD*, 2024 WL 4298937, at *2.

submitted a proposed question for certification,⁷ and the District Court, welcoming our guidance, ordered the following question to be certified to this Court:⁸

What is the statute of limitations, if any, applicable to a claim under 18 Del. C. § 2704(b)?⁹

Following the March 4, 2025 request from the District Court, we accepted the certified question and answer it as follows: a claim arising under 18 *Del. C.* § 2704(b) is subject to the three-year limitations period in 10 *Del. C.* § 8106(a).

II. FACTUAL BACKGROUND

The following facts are undisputed:¹⁰ a life insurance policy was taken out on the life of Norman Frank. The policy was subsequently sold to an investor unrelated to Frank. Norman Frank died in 2018. On February 19, 2019, non-party Principal Life Insurance Company paid \$5,019,227.40 in death benefits under the policy to the then-beneficiary. On May 18, 2023, the Estate of Norman Frank filed its complaint in the Superior Court of the State of Delaware to recover the death benefits under 18 *Del. C.* § 2704(b). The Complaint alleged that the life insurance policy was procured in violation of 18 *Del. C.* § 2704(a). More particularly, the complaint alleged that the policy was “an illegal wager on the life of the insured and was procured as part of . . . [a stranger originated life

⁷ *Est. of Frank by Frank v. GWG DLP Master Tr. Dated 03/01/06, 2025 WL 2778520*, at *1 (D. Del. Mar. 4, 2025) (certifying the question of law) [hereinafter *GWG Certification*] (citing A4 (D.I. 34)).

⁸ *Id.* at *2.

⁹ *Id.*

¹⁰ *Id.* at *1; Supreme Court Rule 41(c)(iv), which concerns the certification of questions of law, provides that only those facts contained in the certification are actually part of the record. Supr. Ct. R. 41(c)(iv) (“The certification as filed shall constitute the record[.]”).

insurance] STOLI scheme in violation of, among other things, Delaware's strict constitutional, statutory, and common law prohibitions on wagering and insurable interest."¹¹

III. CONTENTIONS ON APPEAL

The parties agree that the "First Cause of Action" in Plaintiff's Complaint alleges a claim under 18 *Del. C.* § 2704(b), which provides as follows:

If the beneficiary, assignee or other payee under any contract made in violation of this section receives from the insurer any benefits thereunder accruing upon the death, disablement or injury of the individual insured, the individual insured or the individual's executor or administrator, as the case may be, may maintain an action to recover such benefits from the person so receiving them.¹²

Defendants assert that the statute of limitations for such a claim is three years because a claim under Section 2704(b) is an action "based on a statute" within the meaning of 10 *Del. C.* § 8106(a) or, alternatively, because a Section 2704(b) claim is most analogous to common law claims like unjust enrichment and constructive trust, both of which have three-year limitations periods.¹³ Defendants further contend that Plaintiff's claim is barred because it was filed more than four years after the date the claim accrued, which, according to Defendants, was the date the insurance benefits were paid.¹⁴

¹¹ A23 (Est. of Norman Frank Complaint ¶ 45 [hereinafter Complaint]).

¹² 18 *Del. C.* § 2704(b).

¹³ Section 8106 provides, in pertinent part, that "no action based on a statute . . . shall be brought after the expiration of 3 years from the accruing of the cause of such action[.]" 10 *Del. C.* § 8106(a).

¹⁴ A52 (GWG & Wells Fargo Opening Br. in Support of Mot. to Dismiss at 6 (citing A28 (Complaint ¶74))).

Plaintiff contends that a Section 2704(b) claim is not subject to any statute of limitations because of the strong public policy against insurance policies that lack an insurable interest or, alternatively, because 10 *Del. C.* § 8106(a) does not apply. Plaintiff also offers an alternative argument, namely that, notwithstanding the parties' agreement that the insurance proceeds in question were paid in 2019, the claim did not accrue until Plaintiff was appointed executor of the estate in 2023.

The parties agreed that our Court has never answered the question of what limitations period (if any) applies to a claim by an estate under Section 2704(b). The District Court observed that other courts have suggested in *dicta* that such a claim is not subject to a limitations period,¹⁵ but it recognized that Defendants had made a good argument that the claim is subject to the three-year limitations period that is in 10 *Del. C.* § 8106(a).

IV. STANDARD OF REVIEW

The question presented is an issue of law, which our Court decides *de novo*.¹⁶

¹⁵ See *Est. of Oristano by Tuchman v. Avmont, LLC*, 2024 WL 3876550, at *3 n.48 (Del. Super. Aug. 20, 2024) (“If the Court did address th[e] issue, . . . the Court would follow the reasoning in *Daher v. LSH Co.*, 2023 WL 4317029, at *2–3 (C.D. Cal. June 13, 2023). Under *Daher*, the Court would determine that the STOLI claim is not subject to 10 *Del. C.* § 8106 and that only the doctrine of laches could serve to block the Estate’s claim against Westgate.”); *Est. of Daher v. LSH Co.*, 2023 WL 4317029, at *3 (C.D. Cal. June 13, 2023) (“[Section] 8106(a)’s statute of limitations does not apply to § 2704(b) claims.”).

¹⁶ *Price Dawe*, 28 A.3d 1059, 1064 (Del. 2011).

V. ANALYSIS

I. *The Three-Year Statute of Limitations Under 10 Del. C. § 8106(a) Applies to a Claim Under 18 Del. C. § 2704(b).*

This Court resolves the certified question by holding that the three-year statute of limitations under Title 10, Section 8106(a) of the Delaware Code applies to a claim under Title 18, Section 2704(b). Section 8106(a) provides:

No action to recover damages for trespass, no action to regain possession of personal chattels, no action to recover damages for the detention of personal chattels, no action to recover a debt not evidenced by a record or by an instrument under seal, no action based on a detailed statement of the mutual demands in the nature of debit and credit between parties arising out of contractual or fiduciary relations, no action based on a promise, **no action based on a statute**, and no action to recover damages caused by an injury unaccompanied with force or resulting indirectly from the act of the defendant shall be brought after the expiration of 3 years from the accruing of the cause of such action; subject, however, to the provisions of §§ 8108-8110, 8119 and 8127 of this title.¹⁷

We conclude that a claim brought under Section 2704(b) is an “action based on a statute,” and the three-year limitations period established in Section 8106(a) therefore applies.

Our analysis begins with this Court’s decision in *Butler v. Butler*.¹⁸ In *Butler*, the Court construed the phrase “action based on a statute” as it appears in Section 8106(a) as referring to a civil action¹⁹ that meets both of the following criteria: (1) the action has the

¹⁷ 10 Del. C. § 8106(a) (emphasis added).

¹⁸ 222 A.2d 269 (Del. 1966).

¹⁹ *See id.* at 271 (“It seems apparent to us that the purpose of the 1947 amendment [of the Delaware Code that replaced a previous statute of limitations provision with Section 8106] might well have been to make the statutory law conform to the 1947 revision of the Superior Court Rules of Civil Procedure, . . . which abolished most of the common law forms of personal actions theretofore in use in Delaware, and replaced them with one form of action known as a civil action.”).

“object” of recovering either money or property;²⁰ and (2) the right to recover “is a new right created by statute, as opposed to a right enforceable by action in the courts which [sic] finds its roots in the common law.”²¹

An estate’s action asserting a claim under Section 2704(b) satisfies both criteria identified in *Butler*. First, such an action clearly has the object of recovering money — namely, the death benefit paid on a life insurance policy that lacks an insurable interest.²² The Plaintiff does not contend otherwise.

Second, we conclude that an estate’s right to recover the death benefit in an action under Section 2704(b) is also a “new right created by statute” under the second prong of *Butler*. In *Malkin* we stated that Section 2704(b) “codifies the longstanding common-law rule that, if the insurer pays the death benefit on a policy that lacks insurable interest, the

²⁰ *Id.* at 272. (“The application of [*Noscitur a sociis* and *Ejusdem generis*] therefore means that the phrase, ‘action based on a statute,’ refers only to such actions in which the object sought is either the recovery of money or property.”).

²¹ *Id.* The Court read the other phrases of Section 8106(a) as covering rights to recover money or property that were rooted in the common law. *See id.* (“[T]he unambiguous language of all other items [listed in Section 8106(a)] applies to actions in the nature of common law actions for the recovery of money or property”); *id.* at 271 (“[W]ith the possible exception of ‘an action based on a statute,’ all the categories enumerated in [Section 8106], would have been enforced prior to 1947 by the common law actions enumerated in [the predecessor to that section].”). Therefore, to ascribe further meaning to “actions based on statute” that set it apart from these other phrases, the Court concluded it must mean actions to recover money or property that arose under a statute rather than the common law.

²² *See* 18 *Del. C.* § 2704(b) (providing that if the beneficiary or other payee under a contract made in violation of the insurable interest requirement “receives from the insurer any benefits thereunder accruing upon the death . . . of the individual insured,” then the “individual’s executor or administrator, as the case may be, may maintain an action to recover such benefits” from the recipient); *see also, e.g., Wells Fargo Bank, N.A. v. Estate of Malkin*, 278 A.3d 53, 60 (Del. 2022) (stating that, under Section 2704(b), “if a death benefit is paid under an insurance policy that lacks an insurable interest, the estate of the insured may bring an action to recover the death benefit from the recipient.”).

estate may sue to receive that benefit.”²³ But that statement was a broad observation, made in a different context, where the requirements of Section 8106(a) were not at issue. *Butler* is specific and directs us to determine whether the statute in question vindicates a new right that was not enforceable at common law.²⁴ Examining the historical context more closely,²⁵ we have determined that, although the insurable interest requirement existed at common law,²⁶ there was no Delaware common law establishing that an estate had a right to sue to recover the death benefit paid on a policy that violated that requirement. Before the enactment of Section 2704(b) — and indeed until the 2021 *Berland* decision²⁷ — this Court had never addressed any issues relating to an estate’s claim under Section 2704(b). Before *Berland*, this Court’s decisions addressing insurable-interest issues as to life insurance

²³ *Malkin*, 278 A.3d at 61.

²⁴ *See Butler*, 222 A.2d at 272.

²⁵ *See generally Blue Beach Bungalows DE, LLC v. State*, __ A.3d __, 2025 WL 3768232, at *2, 17-18 (Del. Dec. 30, 2025) (evaluating the history, origin, and evolution of a statutory cause of action to determine whether it was “sufficiently analogous to a historic cause of action” that was entitled to a jury trial at common law).

²⁶ *See Price Dawe*, 28 A.3d 1059, 1072-73 (Del. 2011) (stating that, through enactment of Section 2704, the “General Assembly *codified the common law insurable interest requirement*” and “[a]lthough the insurable interest requirement is originally a creature of both state and pre-*Erie* federal common law, it is now codified in the Delaware Insurance Code” (citations omitted) (emphasis added)); *see also Lavastone Capital LLC v. Estate of Berland*, 266 A.3d 964, 967-68 (Del. 2021) (“For hundreds of years, the law has prohibited wagering on human life through the use of life insurance that was not linked to a demonstrated economic risk.”). Before the mid-18th century, “using insurance to bet on strangers’ lives” was “a popular English gaming activity.” Susan Lorde Martin, *Betting on the Lives of Strangers*, 13 U. PA. J. BUS. L. 173, 176 (2010). Later in that century, however, “the activity began to attract significant public hostility.” *Id.* Parliament responded by enacting the Life Assurance Act of 1774, which “created the concept of insurable interest,” prohibiting the issuance of life insurance policies that lacked insurable interest and limiting a beneficiary’s right to recover on a life insurance policy to the “amount of value of the interest of the insured in such life.” *Id.* at 176-77 (quoting the Life Assurance Act of 1774, 14 Geo. 3, c. 48 (Eng.)).

²⁷ *Berland*, 266 A.3d 964.

policies concerned insurers' obligations to pay, not estates' claims to recover proceeds that insurers did pay.²⁸

Moreover, it was not firmly established in the common law of other jurisdictions that an estate could sue to recover the full death benefit paid under a policy that lacked an insurable interest. Although the prohibition on life insurance policies with beneficiaries who lack an insurable interest is venerable, the precise contours of the prohibition are not universal.²⁹ Indeed, the United States Court of Appeals for the Sixth Circuit has recognized that “[t]he common law remedy for buying a life insurance policy without having an insurable interest in the life of the insured was to invalidate the policy.”³⁰ And in 1881, the United States Supreme Court recognized that if the insured and the person to whom

²⁸ *E.g.*, *Lincoln Nat'l Life Ins. Co. v. Joseph Schlanger 2006 Ins. Trust*, 28 A.3d 436 (Del. 2011) (answering the certified question of whether “a life insurer [can] contest the validity of a life insurance policy based on a lack of insurable interest after expiration of the two-year contestability period set out in the policy”); *Price Dawe*, 28 A.3d 1059, 1064-65 (Del. 2011) (same); *Baltimore Life Ins. Co. v. Floyd*, 94 A. 515 (Del. 1915) (affirming the Superior Court's decision in 91 A. 653, 655 (Del. Super. Ct. 1914) (rejecting the insurer's contention that its contract was void for lack of an insurable interest)).

²⁹ *See Warnock v. Davis*, 104 U.S. 775, 781-82 (1881) (acknowledging conflicting decisions as to a third-party assignee's right to retain death benefits on a life insurance policy for which the assignee had no insurable interest); *see also* COUCH ON INSURANCE § 41:22 (3d ed.) (“The prevailing, although not the universal, rule is that in the absence of a statute to the contrary, a person competent to contract has an insurable interest in their own life and may insure their life for the benefit of another, who has no insurable interest, without contravening public policy. This rule carries the proviso however that the transaction be free from collusion and not intended to circumvent the public policy against wagering contracts.” (footnote omitted)); *id.* § 41:23 (stating that, “[i]n a number of jurisdictions, the requirement has been imposed, by judicial decision or statute, that the beneficiary of a life policy have an insurable interest in the life of the insured or be related to the insured in a stated degree of kinship,” and that “[i]n states that follow this minority rule, the beneficiary is barred from retaining the proceeds of the policy even though the insured procured the policy in good faith and unknown to the beneficiary and that the proceeds become payable to the estate of the deceased.” (footnote omitted)).

³⁰ *Sun Life Assurance Co. of Canada v. U.S. Bank Nat'l Ass'n*, 839 F.3d 654, 656 (6th Cir. 2016).

proceeds would be paid were “alike culpable” in fraudulently evading the insurable-interest requirement, courts would “refuse to interfere with the results of their action.”³¹

Thus, in more recent decades, legislatures have enacted statutes providing various remedies for violating the prohibition against life insurance policies that lack an insurable interest.³² The law “concerning who has a right to bring an action to enforce the substantive prohibition against such policies” varies among jurisdictions.³³ For example, as explained by the United States Court of Appeals for the Second Circuit, New York has a statute, similar to Section 2704(b), that permits an estate to bring an action to recover death benefits paid under a policy procured in violation of the insurable-interest requirement,³⁴ while “California courts have long held that ‘*the insurer* is the only party who can raise the question of insurable interest, and . . . if the insurer waives the question of interest and pays the money to the named beneficiary, or into court, neither the personal representative nor the creditors can claim the proceeds on that ground.’”³⁵ To discourage STOLI schemes, Wisconsin law permits courts to require insurers to pay death benefits on policies from policyholders without an insurable interest to “someone other than the person to whom the

³¹ *Warnock*, 104 U.S. at 781.

³² *See Sun Life*, 839 F.3d at 656 (“[I]n 1975 the Wisconsin legislature, while retaining the common law principle forbidding the purchase of a life insurance policy by one who lacked an insurable interest, changed the remedy from cancelling the policy to requiring the insurer to honor its promise.”).

³³ *2004 Stuart Moldaw Trust v. XE. L.I.F.E., LLC*, 374 Fed. Appx. 78, 81 (2d Cir. 2010).

³⁴ *Id.*

³⁵ *Id.* (quoting *Jenkins v. Hill*, 96 P.2d 168, 170 (Cal. Dist. Ct. App. 1939)) (alteration in original).

policy is designated to be payable, who is equitably entitled thereto.”³⁶ This might not include the insured’s estate in cases where the decedent willingly participated in the STOLI scheme.³⁷

Delaware is among the jurisdictions that—by statute—have given estates a right to enforce the insurable-interest requirement. In 1968, the General Assembly adopted Section 2704(b), conferring standing³⁸ on estates and “establishing a ‘statutorily-created remedy’ for the procurement of a life-insurance policy in violation of the insurable-interest requirement.”³⁹ For all these reasons, we conclude that Section 2704(b) created a “new right” for estates to recover death benefits paid on life insurance policies that lack an insurable interest under Delaware law. Thus, under *Butler*, the three-year statute of limitations in Section 8106(a) applies to claims brought under Section 2704(b).

³⁶ WIS. STAT. ANN. § 631.07(4); *Estate of Mechling v. U.S. Bank Nat’l Ass’n*, 2025 WL 2300761, at *17 (D. Conn. Aug. 8, 2025) (explaining the policy behind Wisconsin law, stating: “in enacting Section 631.07(4), the Wisconsin legislature chose a specific remedy to deter STOLI policies: rather than invalidating the policy, it ‘require[ed] the insurer to honor its promise.’ In so doing, ‘[t]he legislature reasoned that ‘the best way to discourage insurers from issuing insurance policies to persons without insurable interest is to make them [the life insurance companies] pay if they do, not to permit them freely to issue such policies knowing that they have a good public policy defense [the unenforceability of gambling contracts] that lets them off the hook whenever a loss occurs.’ (alterations in original) (quoting *Sun Life*, 839 F.3d at 655-56)).

³⁷ *Mechling*, 2025 WL 2300761, at *17 (“Here, even construing the evidence in the light most favorable to the Estate, [the decedent] and his wife were willing participants in the alleged STOLI scheme, and thus his Estate cannot recover the proceeds of the allegedly illegally obtained Policies.”); see also *See Sun Life*, 839 F.3d at 656.

³⁸ *Wells Fargo Bank N.A. v. Estate of Malkin*, 278 A.3d 53, 61 (Del. 2022).

³⁹ *Id.* at 60 n.18 (quoting *Lavastone Capital LLC v. Estate of Berland*, 266 A.3d 964, 974 (Del. 2021)).

Applying the three-year limitations period under Section 8106(a) is also consistent with public policy. The Estate contends that applying a limitations period to a claim under Section 2704(b) is inconsistent with this Court’s statements that we “never enforce” STOLI contracts or allow “illegal human life wagers to pay off.”⁴⁰ But there is a clear difference between enforcing a STOLI contract and applying a statute of limitations. A court’s enforcement of a contract flows from the contract itself; a claim for breach of contract invokes the court’s power to hold the parties to their agreement and place them in the positions they would have held if the contract had been performed.⁴¹ By contrast, when a court applies a statute of limitations, it simply observes a procedural bar. Moreover, a Section 2704(b) claim, by its very nature, is not a claim to enforce the illegal insurance contract, which has already been “performed” (to the extent a void contract can be performed) by the payment of the premiums and the death benefit. In *Frankel* and other cases in which this Court eschewed “enforcement” of life insurance policies lacking an

⁴⁰ Response Brief of Plaintiff-Appellee at 35 [hereinafter Answering Br.] (citing *Wilmington Trust Nat’l Ass’n. v. Sun Life Assurance Co. of Canada*, 294 A.3d 1062, 1072, 1074 (Del. 2024) [hereinafter *Frankel*], *as revised*, (Mar. 21, 2023); *Malkin*, 278 A.3d at 65, 69; *Est. of Barotz by Barotz v. Vida Longevity Fund, L.P.*, 2022 WL 16833545, at *11 (Del. Super. Nov. 9, 2022), *aff’d sub nom., Vida Longevity Fund, LP v. Est. of Barotz*, 320 A.3d 212, 2024 WL 3176344 (Del. June 26, 2024) (TABLE)).

⁴¹ See *Paul v. Deloitte & Touche, LLP*, 974 A.2d 140, 146 (Del. 2009) (“Contract damages ‘are designed to place the injured party in an action for breach of contract in the same place as he would have been if the contract had been performed. Such damages should not act as a windfall.’” (quoting *Huggins v. B. Gary Scott, Inc.*, 1992 WL 179482, at *1 (Del. Super. June 25, 1992))); *Enforce*, Black’s Law Dictionary (12th ed. 2024)(“[e]nforce: (1) To give force or effect to (a law, etc.); to compel obedience to. (2) Loosely, to compel a person to pay damages for not complying with (a contract).”); 1 Williston on Contracts § 1:1 (4th ed.) (“[contracts are] intended to enforce the expectancy interests created by the parties’ promises so that they can allocate risks and costs during their bargaining. The goal of contract law is to hold parties to their agreements so that they receive the benefits of their bargains.”).

insurable interest, the insurer had not paid the death benefit and a beneficiary sought to cause the insurer to perform.⁴² Here, by comparison, applying the limitations period does not enforce a contractual promise — there is no unperformed promise to enforce.

The Estate argues that Delaware’s strong policy against wagering on human life still reaches circumstances in which the policy has already been paid. The Estate cites *Malkin* and *Barotz*, two decisions that also concerned Section 2704(b) claims and involved downstream beneficiaries attempting to retain the benefits from STOLI policies by asserting various affirmative defenses.⁴³ In both cases, the courts held the affirmative defenses asserted did not apply,⁴⁴ and the Estate highlights certain language stating that public policy requires that STOLI schemes “never pay off.”⁴⁵ The Estate reads this language to mean that courts are precluded from accepting any defense that would ultimately result in downstream beneficiaries retaining wagering proceeds. But this argument is explicitly foreclosed by *Malkin* itself. In *Malkin*, we recognized that Section 2704(b) does not preclude all defenses or counterclaims that a downstream purchaser might

⁴² See *Frankel*, 294 A.3d at 1072 (“a court order requiring Sun Life to pay the policies’ death benefits to Wilmington Trust would, in effect, enforce the illegal STOLI policies in violation of Article II, Section 17 of the Delaware Constitution and the State’s strong public policy against human-life wagering. Such a remedy would fly in the face of our repeated avowals that enforcement of a STOLI policy is not an option.”); *Price Dawe*, 28 A.3d 1059, 1068 (Del. 2011) (“[A]n insurer can challenge the enforceability of a life insurance contract after the incontestability period where a lack of insurable interest voids the contract.”).

⁴³ See *Malkin*, 278 A.3d at 56; *Barotz*, 2022 WL 16833545, at *10.

⁴⁴ *Id.*

⁴⁵ *Barotz*, 2022 WL 16833545, at *10 (quoting *Est. of Malkin v. Wells Fargo Bank, N.A.*, 379 F. Supp. 3d 1263, 1279 (S.D. Fla. 2019), *aff’d in part and question certified sub nom. Est. of Malkin v. Wells Fargo Bank, NA*, 998 F.3d 1186 (11th Cir. 2021), *certified question answered sub nom. Wells Fargo Bank, N.A. v. Est. of Malkin*, 278 A.3d 53 (Del. 2022)).

assert against an estate.⁴⁶ Thus, in *Malkin* we envisioned that, in some circumstances, a downstream beneficiary *could* defend itself from a Section 2704(b) claim. Statutes of limitation provide one such circumstance. The relevant inquiry in *Malkin* was not whether the successful defense would leave the downstream beneficiary with the proceeds — if that were the test then virtually *no* defense would be permissible (contrary to our express determination in *Malkin* that Section 2704(b) does not foreclose all defenses). Instead, *Malkin* states that:

in the absence of express statutory language to the contrary, a statute conferring a cause of action on one party does not supersede common law defenses or counterclaims that the other party might assert. Rather, courts must look to the elements of the common-law defenses or counterclaims asserted — and, where appropriate, the public policy underlying the ban on human-life wagering — to decide the viability of such defenses or counterclaims to an estate's action under Section 2704(b).⁴⁷

In applying that jurisprudence to statutes of limitation as a defense, we first recognize that the General Assembly knows how to exempt claims entirely from time bars and has done so in specified contexts, yet it has not done so for Section 2704(b). Second, in terms of policy, although the policy interests in combating STOLI schemes are strong, so too are the policy concerns that underpin statutes of limitation. Statutes of limitation promote justice by ensuring timely litigation and protecting against stale claims, as to which evidence may have been lost and witnesses' memories faded.⁴⁸ The application of

⁴⁶ *Malkin*, 278 A.3d at 61-62.

⁴⁷ *Id.* at 62-63.

⁴⁸ *Dow Chem. Corp. v. Blanco*, 67 A.3d 392, 395 (Del. 2013).

the three-year statute of limitations here balances that interest with the interest in preventing human-life wagering.

Moreover, an estate’s time-unlimited right to bring a claim under Section 2704(b) is not necessary to prevent human-life wagering.⁴⁹ The Estate contends that certain “practical concerns” associated with the STOLI market create special challenges that warrant no limitations period. The Estate outlines various methods STOLI participants use to actively conceal their identities and the illegal nature of their activities.⁵⁰ However, recognizing the applicability of a statute of limitations does not leave an estate helpless against these tactics or frustrate the possibility of bringing a claim in time. Not only have many estates brought timely claims in STOLI cases,⁵¹ but estates also have access to multiple judicial tools and doctrines that can assist them in confronting STOLI actors. For example, equitable tolling,

⁴⁹ As discussed, other jurisdictions have determined that other approaches effectively enforce the prohibition against human life wagering. *See, e.g., supra* notes 32, 36-37 & accompanying text (discussing Wisconsin law); Martin, *supra* note 26, at 213 (arguing that California’s law permitting only the insurer to raise the issue of insurable interest is “preferable as a STOLI deterrent” to a rule permitting the estate to recover).

⁵⁰ The Estate specifically highlights concerns that STOLI participants use methods like claim release agreements between the insured and the estate to make the latter erroneously believe it has no right to action. Answering Br. at 41 n.18 (citing *Barotz*, 2022 WL 16833545, at *11). The Estate also emphasizes the fact that deliberately complicated ownership schemes, and the use of banks as protective intermediaries, serve to conceal beneficiaries’ identities. *Id.* at 41-42 (citing *Malkin*, 278 A.3d at 58-59).

⁵¹ *See, e.g.,* Complaint ¶ 50, *Est. of Greenberg v. Life Vehicle, LLC*, No. N24C-11-106 (Del. Super. Nov. 8, 2024) (filed within three years); Complaint ¶ 39, *Est. of Winrow v. Obra Capital*, No. N24C-12-078 (Del. Super. Dec. 6, 2024) (same); Complaint ¶ 129, *Est. of Levine v. Wells Fargo Bank*, No. N25C-02-340 (Del. Super. Feb. 12, 2025) (same); Complaint ¶ 65, *Est. of Glotzer v. Wilmington Trust N.A.*, No. N25C-04-056 (Del. Super. Apr. 7, 2025) (same); Complaint ¶ 31, *Est. of Rubin v. Wilmington Trust, N.A.*, No. N24C-07-032 (Del. Super. July 3, 2024) (same); Complaint ¶ 107, *Est. of Lee v. Life Trading Trust*, No. N24C-10-418 (Del. Super. Oct. 29, 2024) (same).

in cases where warranted, can be utilized to address alleged concealment of STOLI schemes. And, where appropriate, the doctrine of fraudulent concealment may also be available to address the effects of STOLI participants seeking to actively mislead claimants.⁵² Claimants can also use discovery tools to trace what information they need when they are faced with “John Doe” beneficiaries obfuscating their identities through banks and multiple transactions. Finally, Section 2704(a) offers a preliminary level of protection from the success of STOLI schemes through the insurers, who are not obligated to pay the death benefits on policies that lack an insurable interest.⁵³ Therefore, public policy does not prevent the application of a limitations period to Section 2704(b) claims.

VI. CONCLUSION

We answer the certified question as follows: A claim arising under 18 *Del. C.* § 2704(b) is subject to the three-year limitations period in 10 *Del. C.* § 8106(a). The Clerk of the Court is directed to transmit this opinion to the United States District Court for the District of Delaware.

⁵² Under Delaware’s doctrine of fraudulent concealment, “a statute of limitations . . . can be ‘disregarded when a defendant has fraudulently concealed from a plaintiff the facts necessary to put [the plaintiff] on notice of the truth.’” *LGM Holdings, LLC v. Schurder*, 340 A.3d 1134, 1146 (Del. 2025) (alteration in original) (quoting *In re Tyson Foods, Inc.*, 919 A.2d 563, 585 (Del. Ch. 2007)). “Under this doctrine, a plaintiff must allege an affirmative act of ‘actual artifice’ by the defendant that either prevented the plaintiff from gaining knowledge of material facts or led the plaintiff away from the truth.” *Id.* at 1146-47 (quoting *Tyson*, 919 A.2d at 585). Fraudulent concealment is designed to “to disallow a defendant from taking advantage of his own wrong in preventing a plaintiff from [filing] a timely suit in the courts.” *Id.* (alteration in original) (quoting *Allen v. Layton*, 235 A.2d 261, 265 (Del. 1967)).

⁵³ See *Wells Fargo Bank, N.A. v. Est. of Malkin*, 278 A.3d 53, 60 (Del. 2022) (“Of course, the insurance company is not obligated to pay the death benefit of a STOLI policy and may refuse to do so.”). Other jurisdictions rely on the insurer’s initiative alone. See *supra* notes 33, 35.