

## Large Secondary Market Transaction Allegedly Gone Awry

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Friday, May 22, 2015

In a complaint filed last week in the United States District Court for the Southern District of New York, Plaintiff Britannia, LLC sued Avon Capital, LLC and Tranen Capital Alternative Investment Fund, Ltd. in connection with a purchase agreement in which Avon allegedly promised to purchase from Britannia the beneficial interests in 49 life insurance policies representing \$393.75 million in death benefits.

The dispute arose over Avon's alleged failure to pay the \$17.4 million purchase price for the policies. The complaint alleges that Britannia and Avon entered into a purchase agreement on December 14, 2011, whereby Britannia agreed to sell its beneficial interest in 49 trust-owned policies to Avon for \$17.4 million. The capital for Avon's purchase was to be provided by Tranen Capital Alternative Investment Fund, pursuant to a separate agreement. The complaint alleges that Tranen is a limited corporation formed in the British Virgin Islands, with its principal place of business in the British Virgin Islands.

According to the complaint, when Tranen was unable to secure the necessary capital to timely close the transaction, Britannia agreed to four subsequent modifications of the purchase agreement. Britannia ultimately ended up delivering title and "necessary documentation" to transfer its beneficial interests in the policies to Avon and Tranen, but Avon and Tranen failed to make payments according to the agreed upon schedule. Britannia therefore brought suit for breach of contract based on Avon and Tranen's alleged failure to make the payments required under the purchase agreements and modifications. Britannia seeks compensatory damages in connection with the alleged breach of contract.

In connection with one of the modifications to the purchase agreement, Avon and Tranen agreed to accept "certain premium funding obligations" in order to "maintain the policy assets" while the transaction was pending. The beneficial interests in the 49 policies appear to have been transferred to "a fund in which Avon has an interest" and the remainder to Tranen. The complaint indicates that Tranen's assets were to be held by its security intermediary, Christiana Bank & Trust.

Tranen Capital Alternative Investment Fund Ltd. is currently in liquidation. It appears that liquidators were appointed pursuant to an order of the Eastern Caribbean Supreme Court in the High Court of Justice in the British Virgin Islands, which took effect on July 23, 2014. According to the website of an accounting firm reporting on the liquidation, Tranen had been party to various litigation matters that alleged "a variety of irregularities in relation to [Tranen], its management and its affairs."

The complaint is silent as to the current status of the subject life insurance policies. Given Tranen's alleged financial difficulties, certain of the policies may have already lapsed or may be in lapse pending status. Carriers can expect that while Tranen is in liquidation, efforts will be made to maximize the liquidation estate for the benefit of Tranen's creditors and shareholders.

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