TRANEN CAPITAL

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Tranen Capital Newsletter | November, 2011
Performance Data as of 10/31/2011

The Tranen Alternative Investment Fund was up +2.73% for October, while the S&P 500 Index was up +10.93% and the Dow Jones Industrial Average rose +9.72% for the month.

Last month we wrote that the unresolved Greek bailout was clouding Europe's financial future and perhaps even shrouding its common currency in a state of uncertainty. To date, there is still no resolution as major players like Germany, France and the ECB dance around various options, and even minor players such as Finland and Slovakia could delay implementation of a resolution. Once the EU agrees on how to proceed with Greece, similar problems in other EU countries, specifically Italy, Portugal, Ireland, and Spain, will likely have to be addressed. Although Europe is creating uncertainty in financial markets, we can talk with certainty about various aspects of life insurance policies that are the basis of the life settlements market.

Three bedrock principles of life insurance policies that buttress the life settlements market are property law, insurable interest and intent. Let's comment on them in that order.

First, a life insurance policy is a unilateral binding contract, an asset, a type of property, and as such can be pledged, assigned, exchanged, gifted, sold or otherwise disposed of as the owner wishes. This has been an iron-clad right of policy owners over time. Although policies were sometimes transferred or "sold" between parties in the past, the transactions were limited and constrained by a regulation called the "transfer for value" rule. With the development of viatical settlements in the early 1980s due to the AIDS epidemic, and then life settlements in the late 1990s, a secondary market for life insurance policies became public and robust.

Second, life insurance law declares that everyone has an insurable interest in their own life in order to extinguish debts, fulfill obligations, make bequests and gifts or fund trusts and estates for various purposes that they have established. Others such as family members, business associates, creditors, dependents, trustees, or simply anyone with a relationship with an insured also may have an insurable interest in that insured. The first step in the underwriting process to issue a life insurance policy is to establish insurable interest.

Third, "intent" is a relatively new point of discussion that was essentially dormant until the emergence of the life settlements market, wherein certain parties attempted to challenge and perhaps overturn the sale of a life insurance policy for their own purposes. In both civil and criminal law, "intent" is very ambiguous, with an extremely high bar of proof. Recently, there has been some litigation attempting to use the insured's "intent" to void policy acquisition and resale. The courts have consistently ruled that an insured's or owner's "intent" to sell should not be considered in deciding whether to rescind a policy or void a sale once insurable interest is established and the application process to acquire the policy is determined to have been in order. See the sidebar commentary on the recent DeRose decision on this point.

Our readers may note that the DeRose decision effectively echoes that of the Kramer case, decided in 2010 in New York, which we discussed in a prior newsletter. The Court in Kramer held that a New York statute permitted "a person to procure an insurance policy and immediately transfer it to one without an insurable interest in that life, even where the policy was obtained for just such a purpose." The DeRose case affirms that the Court in the Kramer case made the correct decision. This Court decision puts Pennsylvania in line with New York, California, Arizona, Delaware, and Minnesota on this issue.

PENNSYLVANIA COURT SUPPORTS INVESTORS ON INTENT OF INSURED

A Pennsylvania Federal Court decision in the DeRose insurable-interest case has rejected the insurance carrier's position that an insured's intent to sell a policy to third-party investors at the time the policy was issued voids the policy.

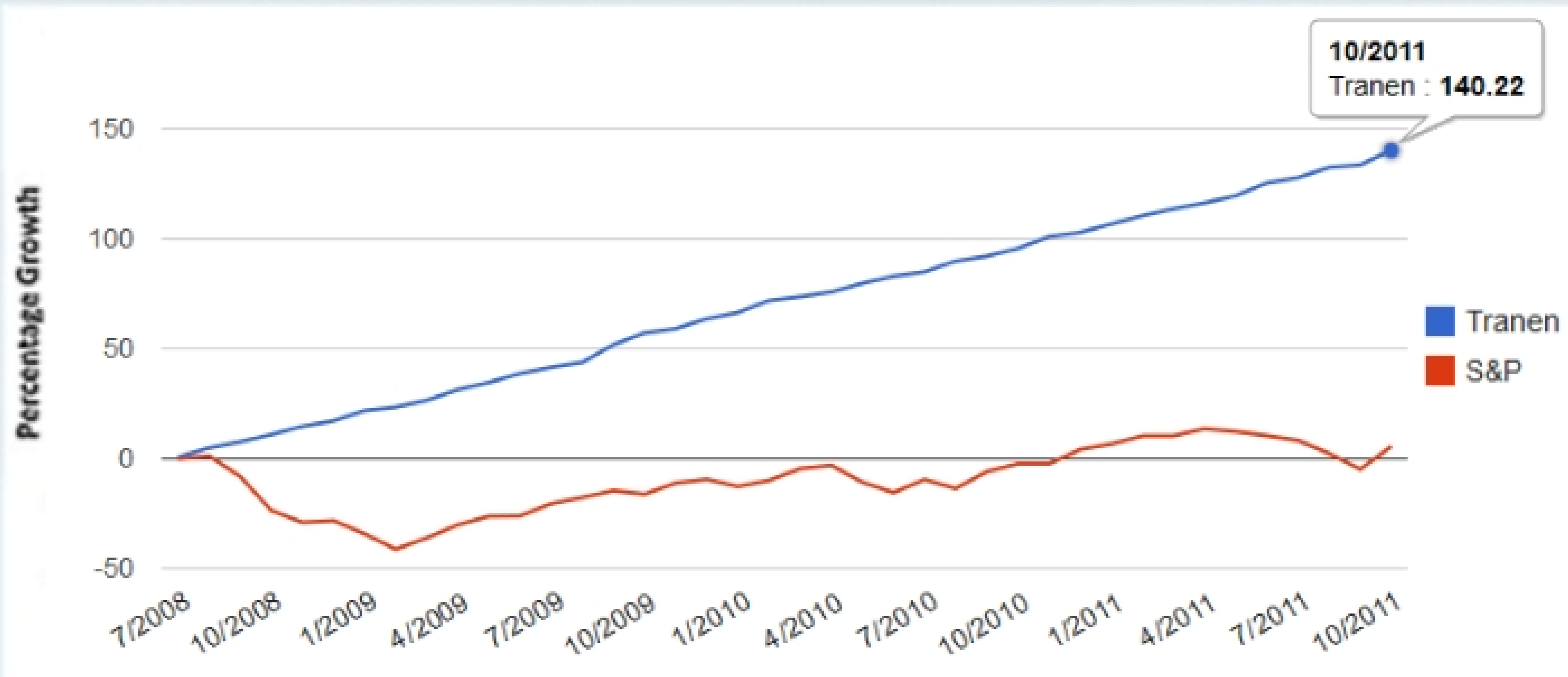
Interpreting Pennsylvania law, the Court held that the Pennsylvania insurance statute clearly defines the insurable interest requirement solely in terms of the relationship between the insured and the policy beneficiary at the inception of the policy. As long as there is "insurable interest" at inception, the policy is valid. The term "insurable interest" is defined as meaning, in the case of persons related by blood or law, an interest engendered by love and affection, and, in the case of other persons, a lawful economic interest or benefit in having the life of the insured continue, as distinguished from an interest which would arise only by the death of the insured.

Also noteworthy is the fact that the case involved "premium financing," where a third party loaned funds to pay the initial premiums on the policy. The Court saw nothing wrong with this practice, due to the fact that there was an insurable interest in the policy beneficiaries at the time of policy inception.

In addition, the Court said that "the statute explicitly states that 'no transfer of such policy or any interest thereunder shall be invalid by reason of a lack of insurable interest of the transferee in the life of the insured or the payment of premiums thereafter by the transferee' if an insurable interest existed at inception."

The Court also noted that the statute does not contain any language referencing the "intent of the parties" at inception or that the subsequent transfers of policies must be in "good faith." Even if the insured intended at the time of inception of the policy to transfer it to a third party, such intent is not relevant in determining the policy's validity. Nor did there have to be "good faith" on the part of the insured with respect to the subsequent transfer of the policy.

TRANEN CAPITAL INVESTMENT FUND PERFORMANCE VS. S&P SINCE JULY 2008



	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Year
2011	1.9	1.8	1.5	1.2	1.5	2.7	1.1	2.0	0.5	2.7			18.3% Compounded
2010	1.8	3.3	1.0	1.3	2.3	1.8	1.1	2.6	1.2	1.8	2.8	1.0	24.1% Compounded
2009	4.0	1.3	2.5	3.7	2.5	3.0	2.1	1.6	5.6	3.5	1.2	2.8	39.5% Compounded
2008	-	-	-	-	-	-	0.7	4.2	2.6	3.0	3.4	2.2	17.4% Compounded

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