

Structured Settlement Update

Commonwealth of Massachusetts, Department of Industrial Accidents, denies a proposed assignment of workers' compensation payments.

Administrative Law Judge and Senior Judge Martine Carroll, of the Commonwealth of Massachusetts, Department of Industrial Accidents, flatly rejected a proposed transfer of workers' compensation payments, finding the transfer in direct contravention of the Massachusetts Workers' Compensation Act, as well as the Massachusetts Structured Settlement Protection Act.

According to the transfer petition, the payments at issue flowed from the settlement of a workers' compensation claim in 1983. Under the terms of the settlement, the payee receives monthly payments and is scheduled to receive lump sum payments in July 2009, July 2014 and July 2019. The factoring company sought to purchase the three remaining lump sum payments, which have a present value (utilizing the statutory discount rate of 4.2 percent) of approximately \$33,000, in exchange for a payment of \$16,000 to the payee. The effective interest rate of the proposed transfer was in excess of 21 percent.

After extensive briefing, oral argument and testimony from the payee, Judge Carroll denied the transfer on three separate grounds. First, Judge Carroll held the transfer would violate the Massachusetts Workers' Compensation Act, which provides that "[n]o payment shall be assignable or subject to attachment or be liable in any way for debts" except in certain enumerated situations, such as for payment of child support. The factoring company argued the Workers' Compensation Act should be read more expansively, such that only those transfers that are for the payment of "debts" are prohibited. Because the proposed transfer was not in satisfaction of a "debt," it was not prohibited. Judge Carroll firmly rejected this argument, recognizing that the legislative purpose of the Workers' Compensation Act is to uphold the "best interests of the employee" and to prohibit all assignments and transfers except as expressly authorized in the statute.

Second, Judge Carroll held that, even if the Workers' Compensation Act were not a bar, the transfer was not in the best interests of the payee as required by the Massachusetts Structured Settlement Protection Act. To that end, Judge Carroll found that the payee has resources to cover her monthly living expenses, and it is highly unlikely that her mortgagor would move to foreclose on her home "in the face of a sum certain becoming available [in July 2009] to take care of any amount owed."

Finally, Judge Carroll held that the transfer was not "fair, just and reasonable," concluding that "[t]he transfer would only put an additional \$6,000 in [the payee's] pocket in the

short term.” She added: “The greater-than-21 [percent] interest rate that the [proposed transfer] provides far exceeds that which would be levied on any arms-length negotiated loan in the open credit market.”

Judge Carroll fully rejected all aspects of the proposed transfer, solidifying the precedent that structured settlement payment rights stemming from workers’ compensation settlements are not transferable. The annuity issuer was represented by Gregory J. Star of Drinker Biddle & Reath LLP.

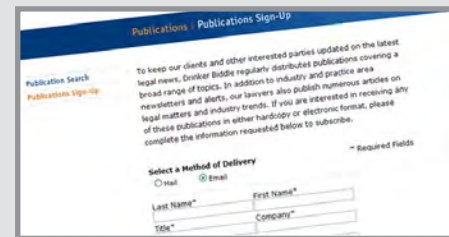
At Drinker Biddle, we are not only familiar with the legal issues involved in the context of this case, but we have also been addressing many other issues in the structured settlement arena for the past decade. If we can be of any assistance in answering further questions on this topic or resolving pending issues, please do not hesitate to contact Stephen R. Harris at Stephen.Harris@dbr.com or (215) 988-2806, or your regular Drinker Biddle contact.

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