

## TRANSFERS IN THE TIME OF CORONA

### How the Covid-19 Pandemic Has Affected Structured Settlement Transfers in the Northeast

By [Michael A. Green, Esquire](#), Green, Silverstein & Groff, LLC

The world has changed significantly since COVID-19 hit the United States in February and March. Litigating proposed structured settlement transfers has been affected like everything else. I and my firm have been doing transfer work in Pennsylvania and New Jersey since 2002. I thought it would be useful to provide a “down and dirty” view of what is different and what remains the same where I and the other lawyers in my office practice. However, after giving it some thought, I thought it would be even more valuable to survey some of my friends and colleagues in (primarily) the Northeast to get a broader view of what is happening.

#### BRIEF BACKGROUND AND A FEW QUALIFIERS

In the context of this article and at its most basic level, structured settlements are personal injury settlements where a person (the “Payee”) becomes entitled to receive payments in the future as part of a negotiated settlement of injuries suffered in an accident. These future payments can be issued monthly, yearly or in lump sums – it depends on the agreement at the time of settlement between the Payee and the party paying the settlement. These future payments are made through an annuity purchased for the benefit of the Payee – the Payee does NOT own the annuity itself.

In the 1990s, an industry developed where companies were buying people’s rights to future annuity payments in exchange for an immediate lump sum. As one relative parroted back to me when I tried to explain the business, it’s a variation on Wimpy’s “I would gladly pay you Tuesday for a hamburger today.” People who needed money immediately now had a way to monetize their right to future payments. This was (and remains) very valuable to people who seek lump sums for things such as the down payment on a house, to go to school, to buy a reliable vehicle, to invest in a business and more.

However, problems began to develop. Some payees made transactions and claimed they were swindled or that they didn’t understand what happened. Others sold the same stream of payments to two different companies (I was involved in this kind of litigation in the 90’s). The industry, which was providing a valuable service to those seeking liquidity, was in trouble.

Beginning around the turn of the 21<sup>st</sup> century, regulation began and states began to pass Structured Settlement Protection Acts. Basically, these laws are consumer protection statutes. While the laws vary from state to state, all states require clear disclosures of the payments to be sold and the lump sum to be received and all states require that a judge approve a proposed transfer before it will be effective. In the overwhelming majority of the states, the judge must make an explicit finding that a transfer is in the Payee’s best interests as a condition of approving the transfer.

There have been twists and turns over the years but the purpose of this article is to let you know what is happening now. I am focusing on the Northeast quadrant of the United States because we find that Northeastern courts generally view these transfers similarly. I and my hyperlinked colleagues will be happy to provide a more nuanced view on our particular states – please feel free to reach out to us directly.

#### PENNSYLVANIA - by [Michael A. Green, Esquire](#)

Pennsylvania courts have reopened and all 67 counties appear to be processing transfers. Some counties are holding hearings remotely. Some are holding hearings in person. (Both Pennsylvania and New Jersey require the Payee to appear at the hearing in some form or fashion.) In most counties in Pennsylvania, transfer petitions are assigned by the county court system to one of a panel of judges and then you are subject to that judge's calendar and particular requirements. We have seen no significant change in how long it takes to get a hearing or the tone of transfer hearings when they occur.

While a Payee's pressing economic situation remains a compelling reason why judges may approve a transfer, we have not found that judges are significantly more or less likely to approve a proposed transfer on the basis of some kind of society-wide financial panic. By contrast, we are reminded of a hearing in early 2009 during the Great Recession when a judge, unsure about whether to approve a transfer, said, "Well, I wouldn't want to be waiting for future payments from AIG . . . "

#### NEW JERSEY - by [Michael A. Green, Esquire](#)

New Jersey courts appear to be working entirely remotely and all hearings right now appear to be remote. We have been able to reach court personnel by phone when necessary but things can get wonky. One judge recently scheduled a hearing to be held through the remote service Microsoft Teams. While our office had no problem connecting, technology can be a challenge for some Payees. We have not seen any court rule adversely because a Payee "merely" dialed in instead of participating by video.

#### CONNECTICUT – by [Douglas M. Evans, Esquire](#)

After a long delay, Connecticut Courts are open for business, and are now regularly handling civil cases by remote access using Microsoft Teams. Prior the COVID era, Connecticut Courts were holding hearings on transfer cases only on Mondays. Now, courts in each of our judicial districts will conduct hearings on settlement transfers on any day of the week the court's schedule permits. Each court is afforded a limited number of Microsoft Teams licenses, which has resulted in some delays in getting transfer cases scheduled.

Connecticut judges continue to scrutinize settlement transfers, but appear to be more sensitive to the fact that people have been unable to work during the COVID-19 pandemic. Payees still need to establish good reasons for transferring their funds, and that the transfer is in his or her best interests. Poor video and audio connections due to weak internet signals can make hearing more difficult.

#### DELAWARE – by [Nancy D. Green, Esquire](#)

The court procedures differ in the three counties in Delaware and they appear to be changing on a daily basis. In general, the courts are trying to avoid personal contact and are conducting hearings remotely. Recent hearings in Sussex County, Delaware have been via telephone, only. Ultimately, however, it is up to the specific commissioner or judge to whom the case is assigned. There has been no change in the ease of obtaining a hearing date in Delaware, and, at least in Sussex County, the court seems to have eased its first and third Friday hearing date rule.

DISTRICT OF COLUMBIA – by [Elyse L. Strickland, Esquire](#)

During the Covid 19 shutdown, it was very difficult to file a Petition. That has now loosened up and we have been able to file electronically again. DC has a very large Court with more than 50 judges (and even more senior judges). It is up to each individual judge to schedule his or her own docket, assign hearing dates and many have his or her own requirements for Petitions. All hearings are remote. The Judges are more often requiring proof of service on the seller *to be filed* 20-days before the hearing. That means that we have to work harder to get seller acknowledgments of service. We often see Judges setting hearings pretty far in the future, but we have been able to successfully file motions to get hearing dates within about 40 days of filing.

MARYLAND – by [Elyse L. Strickland, Esquire](#)

Since the entry of the new Structured Settlement Protection Act in Maryland in October 2016, any company who wants to buy the right to receive structured settlement payments must register with the Office of the Attorney General. There are currently nine companies who are registered (although three of those companies are related). The registration process has proceeded in a more efficient manner since the Act, with the registration requirement, was first passed. We also now have more independent professional advisors who are willing to become involved in these cases. In all counties the hearings are conducted remotely by video and we rarely encounter difficulties. In my opinion, the new Act which requires many more disclosures than before gives Judges more assurances when they are considering the entry of an order.

MASSACHUSETTS - by [Douglas M. Evans, Esquire](#)

Massachusetts courts were successful in establishing access to courts by remote access soon after COVID-19 lockdowns were ordered by the Governor, but only for cases that were considered emergency in nature. Those standards have since been relaxed, and several District Courts that are now regularly hearing cases by Zoom or telephone. Some of the District Courts are not equipped with the proper licenses and technology to hold hearings in civil matter by Zoom or other electronic means. There are limitations on Zoom licenses and reduced staff in Court houses, and as a result, securing confirmed hearing dates has been difficult and when assigned, often subject to change at the last minute.

Massachusetts judges continue to conduct thorough hearings on settlement transfers, and appear to be even more open to approving transfers given the economic climate created by the coronavirus.

NEW YORK – by [Luigi Brandimarte, Esquire](#)

Yes, New York courts are open for business!

Since the New York judiciary imposed a moratorium on the filing of new “non-essential” matters, including structured settlement and lottery prize transfers, in March 2020, Sacco & Fillas, LLP was able to utilize its dedicated structured settlement and lottery prize department, resources and creativity to still file new transfer matters, receive hearing dates, conduct hearings via remote/virtual platforms and receive approvals from the courts. Remote/virtual platforms utilized are Zoom, Skype and Microsoft Teams (which New York Courts will primarily use now and going forward). As months passed and into the present, in-person hearings have increased; while some courts located in North, Central and

Western New York counties have a greater chance of in-person hearings, most to all courts located in New York City and adjoining counties continue to conduct hearings via various remote/virtual platforms.

No matter the platform for the hearing and no matter how unprecedented these times are, Sacco & Fillas is prepared and well-equipped to navigate, expeditiously and successfully, all transfer matters throughout the Courts in New York and New Jersey.

OHIO – by [Steven W. Mastrantonio, Esquire](#)

There has been no consensus among Ohio's 88 counties on how to handle hearings during the COVID "era." While initially most courts had continued all hearings and held new filing in abeyance, today cases can be filed without delay and a hearing date can be obtained within 30 to 60 days. The method of the hearing varies from court to court with many courts opting for Zoom or Skype video hearings, some opting for telephonic hearings, and a smaller percentage of courts opting for in-person hearings. Smaller counties seem more comfortable with having in-person hearings. The expected timetable for other courts to go back to in-person hearings is on or after January 1, 2021.

COVID hasn't necessarily improved the chances of success of approval but in some cases it has provided a justification for the need for the money. In more than one instance it was an essential part of presentation which resulted in an approval.

VIRGINIA - by [Elyse L. Strickland, Esquire](#)

Virginia transfer petitions can be timely filed without any problem and the Virginia Courts have no extra requirements. Some of the counties are conducting the hearings remotely and some are requiring in-person appearance. As a reminder, no Virginia proceedings are "on the record." That means that if you would like a transcript or the insurance company is requiring a transcript, we need to know that in advance and hire a court reporter to take down the testimony. Another idiosyncrasy in Virginia is that the Courts require the original signature of all parties on the order. Some Courts have been allowing electronic signatures during Covid.

Many thanks to Doug, Nancy, Elyse, Luigi and Steve for their help with this summary. Please let any of us know if you have any questions.

We wish you good health and hopefully an end to such turbulent times.

- Mike