

## A Compelling Case for Judicial Education

Two recent coordinated decisions from the Pennsylvania Superior Court quashing appeals brought by factoring companies and their investors highlight not only the intent behind structured settlement protection acts, but also the unfamiliar role judges are thrust into when deciding petitions to transfer structured settlement payment rights. See *Jeffrey Barber v. Bruce Stanko, et al.*, 2021 PA Super 97, 2021 WL 1940513 (Pa. Super. Ct. May 14, 2021) (Appeals of Pinnacle Capital, LLC, Sempra Finance, LLC, Habitus Funding and Michael J. Pickett); *Zachary Barber v. Bruce Stanko, et al.*, 2021 PA Super 96, 2021 WL 1940516 (Pa. Super. Ct. May 14, 2021) (Appeal of Sempra Finance, LLC).

Structured settlements provide injured plaintiffs with long-term economic security by providing guaranteed tax-free income with built-in spendthrift protections. To further protect these vulnerable and often unsophisticated structured settlement payees from exploitation by third-party factoring companies, Pennsylvania adopted the Pennsylvania Structured Settlement Protection Act, 40 P.S. § 4001 *et seq.* (the Pa. SSPA). The Pa. SSPA is based on a model act, and a version of this model act has been enacted in almost all states. The Pa. SSP, like the other versions of the model act, contains numerous conditions that must be met in order for a judge to approve a transfer. Specifically, the petition must be filed where the payee is domiciled. 40 P.S. § 4004. In addition, express written approval of “any court or responsible administrative authority that previously approved the structured settlement” must be obtained. 40 P.S. § 4003(a)(5)(i)(B). The judge must also find that the transfer is in the “best interests of the payee.” 40 P.S. § 4003(a)(3).

In the case of Zachary Barber, when he was a minor, he was involved in an automobile accident that resulted in his mother’s death. His father, Jeffrey Barber, filed a wrongful death claim in the Court of Common Pleas of Allegheny County, Pennsylvania (the Allegheny County Court) on behalf of himself and Zachary. In settlement of the wrongful death action, Jeffrey received a lump sum payment, as well as various future lump sum and monthly payments through a structured settlement. As Zachary was a minor, his settlement had to be approved by the Allegheny County Court. On July 6, 2005, the Allegheny County Court approved a structured settlement for Zachary of approximately \$2,700,000 that would provide him with lump sums and monthly payments beginning when turned 18.

However, after depleting his own structured settlement through factoring transactions, Jeffrey Barber, as parent and natural guardian of Zachary, in 2012, entered into three, court-approved transfers in the Court of Common Pleas of *Butler* County, Pennsylvania wherein he assigned portions *Zachary’s* structured settlement payment rights. In connection with each of the petitions, not only did Zachary not have separate, independent representation, but the Butler County Court was not made aware of the July 2005 Allegheny County approval order.

In January 2020, shortly before his 18th birthday, Zachary learned of his father’s sale of over \$1.5 million of his payment rights and moved the Allegheny County Court on an emergency basis to enforce its July 2005 approval order, as well as for a declaration that the Butler County transfer orders were void. On January 31, 2020, in response to the allegations of Zachary’s motion, the Allegheny County Court entered an order providing that all structured settlement payments due Zachary were to be deposited with the Prothonotary of the Allegheny County Court. Thereafter, on June 22, 2020, the Allegheny County Court issued an order providing that the January 2020 order remained in full force and effect thereby effectively denying the pending motions to dissolve the January 2020 Order. The Allegheny County Court also entered an order coordinating a separate action brought by one of the factoring companies in Butler County to enforce its transfer order. In its Rule 1925(a) opinion, the Allegheny County Court explained that the January 2020 Order was issued “out of an abundance of caution for the sole purpose of safeguarding the minor’s funds until

Ingrid B. Hopkinson

Member

ibhopkinson@cozen.com  
Phone: (215) 665-4636  
Fax: (215) 701-2171

### Related Practice Areas

- Life Insurance & Annuities

this matter could be properly adjudicated.” The Allegheny County Court also expressed shock and concern regarding the allegations of violations of the Pa. SSPA, forum shopping, and fraud in connection with the transfer orders.

Finding that the January 31, 2020 Order was not a preliminary injunction but a continuing enforcement of the July 2005 approval order, the Superior Court found the June 22, 2020, order from which the appeal was taken, was not a final appealable order. In quashing the appeals brought by the factoring companies and their investors, the Superior Court affirmed that the Allegheny County Court was the proper forum to determine whether Zachary’s rights in the 2005 Settlement Approval Order were being protected or whether he had been taken advantage of by the defendants. In its decisions, the Superior Court noted that to make the required findings, the trial judge is necessarily relying on “the forthrightness and good faith of counsel to provide all the information available for the judge to make an informed decision on what is in the best interests of the plaintiff-payee to avoid fraud on the court.” Transfer petitions are generally unopposed with the payee seeking the transfer to receive a lump sum payment for what s/he considers is his/her best interest, whether it is or not, and the third-party factoring company wanting the matter approved so it can make the most money. In light of this, the trial judge is rarely provided with factual or economic information upon which to make a fully informed decision. According to the *Barber* court, structured settlement protection acts place the judge in “position of a guardian of a person who stands in the presumptive position of the defenseless recipient of a benefit. It is for the Court to determine, as a guardian would, on an independent basis, whether the transaction serves the best interests of an unsophisticated (if not incompetent) person” and “is to ensure that an otherwise financially defenseless and possibly injured individual would receive a regular, sustaining source of income.” *In re Jacobs*, 936 A.2d 1156, 1160 (Pa. Super. 2007).

The Superior Court further noted that, to ensure beneficiaries of structured settlement payments are protected, especially minors, the Pa. SSPA requires approval of the court that originally approved the settlement before any transfer of payment rights is effective. Pursuant to the Superior Court, such approval is especially important in the case of a minor because the court can determine if the transfer of payment rights would serve the minor’s interest and, if necessary, order a guardian to represent the minor’s interest.

These decisions support the importance of ensuring that judges have the information necessary to confirm not only that the procedural requirements of the applicable structured settlement protection acts are met, but also that they have sufficient facts from which to make a determination that the proposed transfer is in the payee’s best interest.

---

**Cozen O’Connor’s Life Insurance & Annuities group is available to discuss these issues.**