

Alert

November 16, 2020



“Retread” Blowouts Create Hazards for Investors

Recycled structured settlement payment streams have been the subject of much concern and scrutiny the past few years. These recycled payment streams are structured settlement annuity payments that were sold to a factoring company and that were then resold or assigned, typically by the factoring company, to another investor.

Sometimes these transactions are called “retreads.” And for good reason. The downstream investors, who are often unsophisticated non-accredited individual investors, may be left with no actual rights to the annuity payments and instead may be simply unsecured creditors of the factoring company — in which case these downstream investors are hoping and depending on the good faith and solvency of the factoring company to make good on these payments. Indeed, as explained below, recent litigation reveals related and severe risks to these downstream investors in the event they attempt to sell their payment rights to other downstream investors.

In *Genex Capital Corporation v. Seeley Capital Management Inc., John M. Bulbrook Insurance Agency, Inc., New England Annuity Associates LLC, Security Title Agency, Inc. and Loan Care, LLC*, Maricopa Co. AZ Superior Court, CV-2020-004958, Genex Capital Corporation (Genex), a structured settlement factoring company, brought suit against its alleged partner and distributor, John M. Bulbrook Insurance Agency, Inc. (Bulbrook), which allegedly acted on behalf of Genex to secure downstream investors to purchase the payment streams acquired by Genex in its factoring transactions. According to Genex, each of the investors was required to execute Genex’s Receivables Purchase Agreement (RPA), which allegedly prevented any further reassignment of the payment streams by the investors. Ironically (since Genex is a factoring company that buys annuity payments notwithstanding the existence of anti-assignment language in the underlying structured settlement contracts), Genex alleges that its anti-reassignment provisions were breached by the investors with the assistance of Bulbrook and its alleged alter ego, New England Annuity Associates LLC, (NEAA), and Seeley Capital Management Inc. (collectively, the defendants). Genex seeks consequential and punitive damages and alleges claims for tortious interference with contract, fraud, fraudulent concealment, and negligent misrepresentation. The defendants have responded to the allegations, and one of them also moved for a preliminary injunction to prevent Genex from reassigning these payment streams that they say are already owned by the downstream investors. Much to the chagrin of the defendants and the investors, however, the preliminary injunction motion was apparently filed too late — because, according to recent court filings, in response to the defendants allowing the periodic payment streams to be resold, Genex allegedly did the same thing (i.e., resold or assigned the periodic payment streams to other investors). Thus, each of the structured settlement payment streams has now gone from the payee to Genex; from Genex to the investor; and then from the investor to another investor. And now, Genex has allegedly sold or assigned those *same payments to yet a different investor!*

Not surprisingly, the defendants in the Genex suit are claiming foul, and Genex has also found itself as a defendant in at least one additional resulting case. In *Keefer v. Genex Capital Corporation et al*, Maricopa Co. AZ Superior Ct. CV-2020-013796, a married couple allegedly purchased factored structured settlement payment streams from Genex and then resold some of them to NEAA (which is one of the defendants in the Genex suit), which allegedly reassigned the payments to new investors. After receiving a notice of default from Genex, the Keefers and NEAA



Michael J. Miller

Chair, Life
Insurance &
Annuities

Co-Chair,
Software

mjmiller@cozen.com
Phone: (215) 665-4114
Fax: (215) 372-2347

Related Practice Areas

- Life Insurance & Annuities

allegedly attempted to rescind their deal. Nevertheless, it is unclear whether Genex will allow the Keefers to receive the payments they purchased, since according to the complaint, Genex has already resold at least some of the payments to others. The Keefers have sued Genex for breach of contract, unjust enrichment, and for a declaratory judgment.

The Genex cases confirm the potential hazards faced by individual investors who buy “retreads.” These investors run the risk that they will be deemed to be merely unsecured creditors with no actual annuity rights. Further, as the Keefers learned the hard way, if they seek to resell the payment rights they think they bought, a lot of bad things can happen, including (as they allege) the disaster scenario where the seller declares they are in breach and decides to again sell the same payment rights (whatever they are) to yet another investor.
