

Chapter 7: Recent Developments in Chapter 7, Including Issues Concerning the Sale of Unusual Assets in a Chapter 7

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Suffolk University Law School
Boston, Massachusetts
January 16, 2012

PROGRAM AGENDA

CHAPTER 7 SESSION - SELLING UNUSUAL ASSETS
(AND RELATED EXEMPTIONS AND TAX CONSEQUENCES/CONCERNS)

- I. Real Estate Interests
 - A. Life Estates, Partial and Remainder Interests
 - B. Short Sales
- II. Insurance and Retirement Assets
 - A. Structured Annuities
 - B. Life Insurance (Term and Whole)
 - C. Anticipated Pension Plan Distributions
- III. Claims v. Third Parties
 - A. Personal Injury Awards
- IV. Debtor Interest in Entities
 - A. LLC Membership Interests
 - B. Beneficial Interest in Trusts
- V. Other
 - A. Intellectual Property
 - B. Liquor Licenses
 - C. Lottery Winnings
- VI. Q&A

PANELISTS

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STATE OF RHODE ISLAND
PROVIDENCE, SC.

SUPERIOR COURT

)
Amended Application for Court Approval of
)
Transfer of Structured Settlement Proceeds by and
)
between :)

_____)
)
by and
)
through STACY B. FERRARA
)
in her capacity as chapter 7 bankruptcy
)
trustee of the bankruptcy estate of
)
_____)

M.P. 11-5365

And)

PATRIOT SETTLEMENT RESOURCES, LLC)
_____)

NOTICE OF AMENDED APPLICATION FOR COURT APPROVAL OF
TRANSFER OF STRUCTURED SETTLEMENT PROCEEDS

PLEASE TAKE NOTICE that a hearing will be held on **December 15**, 2011
at 9:30 AM on the **Formal and Special Cause Calendar of the Providence County
Superior Court, 250 Benefit Street, Providence, RI 02903**, to consider an Amended
Application for Court Approval of Transfer of Structured Settlement Proceeds
("Amended Application") filed by Stacy B. Ferrara ("Trustee") in her capacity as chapter
7 trustee of the bankruptcy estate of _____

Pursuant to R.I. Gen. Laws § 27-9.3-6 the Trustee has enclosed the following
materials with this notice:

1. A copy of the Amended Application;
2. A copy of the transfer agreement which is attached to the Amended

Application as Exhibit C; and

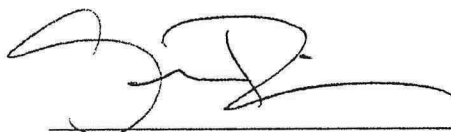
3. A copy of the disclosure statement required by R.I. Gen. Laws § 27-9.3-3 which is attached to the Application as Exhibit E.

Pursuant to 11 U.S.C. § 541 the Trustee is the payee of the Annuity, and in her capacity as chapter 7 trustee of [REDACTED] bankruptcy estate she has no dependents. Fratus, the original payee of the lump sum payments, has no dependents.

Any interested party is entitled to oppose, support, or otherwise respond to the Application by submitting written comments to the Court or by participating in the hearing. Any written objections to the Application should be filed with the clerk of the Superior Court, Providence County, 250 Benefit Street, Providence, RI 02903 and served upon counsel to the Trustee, Steven J. Boyajian, Boyajian, Harrington & Richardson, 182 Waterman Street, Providence, RI 02906.

STACY B. FERRARA, Trustee

By her Attorneys,



Steven J. Boyajian (#7263)
Boyajian, Harrington & Richardson
182 Waterman Street
Providence, RI 02906
Tel. (401) 273-9600
Fax. (401) 273-9605
steve@bhrlaw.com

Dated: November 4, 2011

COVER SHEET

**APPLICATION FOR COURT APPROVAL OF
TRANSFER OF STRUCTURED SETTLEMENT PROCEEDS**

Case Name:

_____)
 _____)
 _____ by and through)
 STACY B. FERRARA in her capacity)
 as chapter 7 trustee of the bankruptcy)
 estate of _____)
 _____)
 and)
 _____)
 PATRIOT SETTLEMENT RESOURCES, LLC)
 _____)

MP No. 11-5365

Terms of Proposed Transfer:

Patriot Settlement Resources, LLC or its nominee ("Transferee") will pay \$96,915.00 to Stacy B. Ferrara in her capacity as chapter 7 trustee of the bankruptcy estate of _____ ("Trustee") immediately upon execution and delivery to the Transferee of a bill of sale or similar instrument transferring the Trustee's right to receive the following payments to the Transferee:

- \$40,000 due on or about April 1, 2013
- \$50,000 due on or about April 1, 2018
- \$100,000 due on or about April 1, 2023

Aggregate Amount of Purchased Payments: \$190,000

Discounted Present Value of Purchased Payments: \$149,687.10 at 3.0% interest

Gross Amount Payable to Seller: \$96,519.00 ("Purchase Price")

Itemization of Attorneys' Fees and Expenses to be Deducted from Purchase Price:

No attorneys' fees or expenses will be deducted from the Purchase Price. However, the Trustee's counsel will seek approval of compensation for services rendered in connection with the proposed transfer from the bankruptcy estate of _____. This compensation is subject to approval by the United States Bankruptcy Court for the District of Rhode Island in accordance with 11 U.S.C. §§ 330 and 503.

Net Amount Payable to Seller: \$96,519.00

Effective Annual Discount Rate: 9.145%

Net Amount = 64.48% of present value

Effective Interest Rate to be Paid by Seller: 9.53%

Original Personal Injury Case Underlying Structured Settlement:

C.A. No. 88- 2619

Nature of Injury: Injuries sustained in motor vehicle accident.

Amount and Terms of Structured Settlement:

The settlement of the referenced action called for an immediate cash payment of \$838,019.00 to [REDACTED]. In addition, [REDACTED] was entitled to receive the following periodic payments (which include the Lump Sum Payments to be transferred):

- \$25,000 at age 40
- \$30,000 at age 45
- \$35,000 at age 50
- \$40,000 at age 55
- \$50,000 at age 60
- \$100,000 at age 65
- \$10,000 on June 1, 2001
- \$10,000 on January 1, 2002
- \$11,000 on June 1, 2002
- \$11,000 on January 1, 2003
- \$12,000 on June 1, 2003
- \$12,000 on January 1, 2004
- \$13,000 on June 1, 2004
- \$14,000 on June 1, 2005
- \$18,500 on January 1, 2006

In addition, [REDACTED] is, and will remain, entitled to receive \$2,000 per month for life including a 3% annual increase in these payments commencing on December 1, 1993.

Purpose of Structured Settlement: The structured settlement was entered into in order to settle litigation concerning injuries sustained as a result of a motor vehicle accident.

Summary of Prior Applications for Court Approval of Transfer of Structured Settlement Proceeds (in Rhode Island and any other jurisdictions) including case number, terms of

proposed transfer (see page 1 of this Cover Sheet), disposition (granted or denied) and date of disposition:

The Trustee is not aware of any prior applications for transfer of the Lump Sum Payments or any other portion of the above described structured settlement other than a prior application submitted in this matter for approval of the instant proposed transfer. This amended application is submitted solely to correct certain procedural errors made in connection with the prior application and the substantive terms of the propose transfer are unchanged.

PROVIDENCE, SC.

SUPERIOR COURT

ADMINISTRATIVE ORDER NO. 2011-04

RE: ASSIGNMENT OF APPLICATIONS FOR COURT APPROVAL OF
TRANSFER OF STRUCTURED SETTLEMENT PROCEEDS

Effective February 21, 2011, any Application for Court Approval of Transfer of Structured Settlement Proceeds shall be assigned for hearing on the Formal and Special Cause Calendar in the county where the seller resides. Any application must be filed with the following uniform case caption:

"Application for Court Approval of Transfer of Structured Settlement Proceeds By and Between

(Insert Name of Payee)

And

M.P. No.:

(Insert Name of Transferee)"

In accordance with the provisions of the State Structured Settlement Protection Act, R.I.G.L. § 27-9.3-1 *et seq.*, as well as federal tax rules designed to encourage the use of structured settlements, court approval will be predicated upon the following findings and procedures:

1. The transferee has made the required disclosures to the payee in accordance with the provisions of R.I.G.L. § 27-9.3-3;
2. The transferee has filed with the Court and served on all interested parties, including the Department of Attorney General, at least forty (40) days prior to hearing: the application; the completed "Application for Court Approval of Transfer of Structured Settlement Proceeds"; the transfer agreement; disclosure statement required under R.I.G.L. § 27-9.3-3; listing of payee's dependents and ages; a copy of the original annuity agreement; and notice of the right to respond to the application and hearing date as particularized in R.I.G.L. § 27-9.3-6;
3. The transfer serves the best interests of the payee and the payee's dependents;
4. The payee has been advised in writing by the transferee to seek independent professional advice regarding the proposed transfer, and has either received such advice or has knowingly and in writing waived that advice; and
5. The transfer will not contravene the provisions of any applicable statute or the order of any court or other government authority.

Administrative Order No. 2011-4


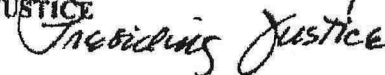
Page 2 of 2

No application filed after February 21, 2011, will be assigned for hearing unless it is filed in accordance with §§ 27-9.3-3 and 27-9.3-6 (see paragraphs 1 and 2 above) and is accompanied by:

- A. The attached "Application for Court Approval of Transfer of Structured Settlement Proceeds" cover sheet;
- B. A request to the court clerk, with appropriate case number, that the court file from the original personal injury case underlying the structured settlement accompany the application;
- C. A request to the court clerk, with appropriate case numbers, that the court files from any prior transfer applications filed in the Rhode Island Superior Court accompany the application; and
- D. A listing, with appropriate case numbers, docket sheets and orders of every prior transfer application filed with the courts of any other jurisdiction.

The Superior Court Justice assigned to hear the matter may, at his or her discretion, select and appoint an attorney from a pre-approved list of available *pro bono* counsel, to appear on the seller's behalf in order to appropriately advise the seller and the Court as to whether the proposed sale is in the best interests of the seller and his or her dependents. Such selection and appointment of counsel shall occur at a time sufficiently prior to the scheduled hearing to allow appropriate review and advice by such counsel, such that the scheduled hearing may be expected to proceed.

BY ORDER OF,


ALICE BRIDGET GIBNEY
PRESIDING JUSTICE


DATED: February 14, 2011

Attachment

COVER SHEET

**APPLICATION FOR COURT APPROVAL OF
TRANSFER OF STRUCTURED SETTLEMENT PROCEEDS**

Case Name: _____ C.A. No.: _____

Terms of Proposed Transfer: _____

Aggregate Amount of Purchased Payments: _____

Discounted Present Value of Aggregate Payments:

\$ _____ at _____ % interest

Gross Amount Payable to Seller: \$ _____

Itemization of Attorneys' Fees and Expenses to be Deducted from Purchase Price:

Item: _____ \$ _____

Item: _____ \$ _____

Item: _____ \$ _____

Item: _____ \$ _____

Item: _____ \$ _____

Total: \$ _____

Net Amount Payable to Seller: \$ _____

Effective Annual Discount Rate: _____ %

Net Amount = _____ % of Estimated Current Value of Payments

Effective Interest Rate to be Paid by Seller: _____ %

Original Personal Injury Case underlying Structured Settlement:

C.A. No.: _____

Nature of Injury: _____

Amount and Terms of Structured Settlement: _____

Purpose of Structured Settlement: _____

Summary of Prior Applications for Court Approval of Transfer of Structured Settlement Proceeds (in Rhode Island and any other jurisdictions) including case number, terms of proposed transfer (see page 1 of this Cover Sheet), disposition (granted or denied) and date of disposition
