life annuity specialist

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NY Life Sued for Okaying Factoring Deals That Bilked Annuity Recipient of $11M

By Warren S. Hersch August 2, 2019

New York Life's headquarters in Manhattan.

New York Life was sued for allegedly failing to prevent the sale of steeply discounted structured settlement annuity payments to several factoring companies.

The case involves a man severely burned at the age of six who received an $11 million settlement. The agreement specified that the periodic payments he was supposed to receive couldn't be reassigned to another party.

The case could reignite a debate over the need for revised laws and rules to better protect people who receive structured settlement payments. Ten insurers are involved in the industry — **AIG**, **Allianz Life, MetLife, Lincoln, USAA** and others — that convert lump-sum payments from settled disputes into income streams.

"New York Life will fight this hard but that will also heighten state and federal officials' attention on the structured settlement transfer law at issue with Taylor's case and others like it," says **Peter Arnold**, a former deputy executive director at the **National Structured Settlements Trade Association**.

John Darer, a structured settlement consultant, says factoring companies' nefarious activities would be curtailed if their brokers had licenses that states could suspend or revoke.

"Life companies are getting penalized or potentially penalized for a lack of regulation of sales practices of the [factoring] companies to solicit people to sell their structured settlements in an aggressive and sometimes

potentially unlawful way," he says.

New York Life declined to comment on the case, according to a company spokesperson.

What the Complaint Says

The plaintiffs in the suit, **Louise** and **Phillip Taylor**, allege that New York Life and an affiliated company, New York Life Insurance and Annuity Corp., failed to discharge their responsibilities under the terms of the settlement.

John Darer, a structured settlement consultant

The agreement stems from a 1988 incident, when Louise Taylor turned on a defective space heater and an ensuing fire left her son, Terrence, with third-degree burns to more than 60% of his body, as well as the loss of fingers, toes and his right leg. The following year, the Taylors sought damages from the heater's manufacturer, **DeLonghi**. The company agreed to settle the case for $11 million, to be funded through the purchase of an annuity from New York Life.

Unusually, the settlement agreement contained a strict anti-assignment or "spendthrift" provision that prevented Terrence Taylor or "any other payee from having the power" to sell the income tax-free annuity's periodic payments. The settlement agreement even stipulated that the annuity be purchased from New York Life because of the company's financial strength and "stellar reputation," according to the complaint.

The agreement also let New York Life shift its payment obligations to a unit, New York Life Insurance and Annuity Co.

Starting in 2012, the complaint says, Terrence Taylor "fell prey to the high-pressure sales tactics" of several named factoring companies. Among them: **Blazingstar Funding**, **iSettlements**, **Highpoint Funding**, **Jay Gee** and **123 Lump Sum.**

Over a two-year period, he concluded 10 factoring transactions with the companies. Instead of receiving the $11 million stipulated in the settlement agreement, he got just $1.4 million, according to a *Washington Post* article accompanying the complaint. Including life-contingent payments that were due to end in 2042, the structured settlement had a lifetime expected payout of $31.5 million.

A Portsmouth, Va., circuit court known for rubber-stamping transfers or assignments of annuity payments received petitions for nine the 10 deals, the complaint states. The document adds that New York Life and New York Annuity received notice for each transfer petition.

The complaint alleges that the insurance companies understood that the transfer of payments violated the settlement agreement, most notably the anti-spendthrift clause. Yet, they consented to each of the factoring company's petitions.

New York Life had financial incentives for doing so, the complaint says. It notes that the insurer received fees from the factoring companies in exchange for their consent to each of the deals. The document adds that the insurer also invested in structured settlement securitizations with one factoring company that filed six petitions, bilking Taylor of $2.7 million.

The complaint adds that, after consenting to eight transfers without contacting Terrence Taylor or his parents, the insurer required Taylor to enter into a "stipulation" that purportedly called for him to waive the settlement agreement's anti-assignment language. And it hired a law firm, **Drinker Biddle**, to executive the stipulation on the carrier's behalf.

New York Life allegedly undertook these steps to insulate itself from liability by consenting to the factoring transactions.

Attorney Edward Stone

"There was very specific negotiated language in the settlement agreement, which was also signed by [Terrence Taylor's] parents because they were also injured in that fire," says attorney **Edward Stone**, who is representing the plaintiffs in the case. "They agreed to the annuity contract because they believed that New York Life would respect the terms of the settlement agreement. And New York Life didn't do it — period."

Experts' Take on the Case

Arnold says the case reflects a larger issue: that the 2002 federal law governing structured settlement transfers has been a failure. It's "long past time" for Congress to strengthen the law, he says, adding that it isn't providing the legal protection that the structured settlement industry expected when the members helped craft the law.

Among other provisions, the federal law mandates that structured settlements be court-approved and that transfers of annuity payments be in the best interest of sellers and their families or dependents.

Forty-nine of the 50 states also have structured settlement protection acts that "protect injury victims from the high-pressure sales practices, unconscionable discount rates, and aggressive collection practices of certain factoring companies," according to the complaint. The state statutes are based on a model law crafted by the **National Structured Settlements Trade Association** and the **National Association of Settlement Purchasers**.

Structured settlement broker Mark Wahlstrom.

Mark Wahlstrom, a structured settlement planner, thinks that current laws already provide payment recipients a "tremendous amount of protection." He adds that abuses could be reduced if structured settlement agreements provided for an independent financial advisor to counsel injury victims on the advisability of factoring transactions.

"We can be engaged to provide objective advice on these transactions because we truly are the experts," he says. "But we're precluded from that process; no one ever calls to ask us what we think about a deal."

Darer questions whether courts that approve factoring transactions pushed by unscrupulous companies should accept part of the blame.

“Is it fair to the life insurance company to have to absorb all the inefficiencies of the court system?” he asks. “Judges are supposed to be doing their jobs.”

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