

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

In the Matter of the Petition of Seventh Amendment Holdings, LLC
for Judicial Approval of the Sale and Transfer of Structured
Settlement Payment Rights, pursuant to New York General
Obligations Law, 5-1707, et seq.,

Petitioner,

Index No.

v.

Metropolitan Life Insurance Company (“Annuity Issuer”),

Respondent.

VERIFIED PETITION

Petitioner Seventh Amendment Holdings, LLC (“Petitioner”) by and through its attorneys Rupp Baase Pfalzgraf Cunningham LLC, on notice to the interested parties and Respondent herein, respectfully alleges:

1. This is a special proceeding pursuant to New York Structured Settlement Protection Act, N.Y. Gen. Oblig. Law § 5-1701 et seq. (the “SSPA”), seeking approval of the sale and transfer of certain structured settlement payment rights due under a structured settlement agreement, in accordance with 26 U.S.C. § 5891 et. seq. and SSPA.

2. Petitioner is a domestic limited liability company duly authorized and existing under the laws of the State of New York, with offices at 737 Main Street, Buffalo, New York 14202. Petitioner is deemed a “Transferee” as said term is defined in GOL § 5-1701(t).

3. Upon information and belief, Joseph N. Virgilio is a competent adult individual currently residing in the State of Illinois. Mr. Virgilio is deemed a “Payee” as said term is defined in GOL § 5-1701(h) (the “Payee”)

4. Upon information and belief, at all times hereinafter relevant, Metropolitan Life Insurance Company (“MetLife”) was and is authorized to do business in the State of New York and is a “annuity issuer” as defined in GOL §5-1701(a) in connection with the structured settlement at issue in this proceeding.

5. Jurisdiction exists in the Supreme Court of the State of New York, County of Erie because Erie County is the county in which the Petitioner resides.

BACKGROUND

6. As a result of the settlement of his and his deceased wife’s personal injury claims, Payee became entitled to receive certain structured settlement payment rights which provided for a series of deferred cash payments and a large lump-sum payment under a “structured settlement” as that term is defined in GOL § 5-1701(1) and 26 U.S.C. § 5891(c)(1).

7. Upon information and belief, the Payee is widowed, has no minor children, and has no other dependents or beneficiaries under the structured settlement payment rights which are the subject of this proceeding. The name and identity of each of the Payee’s adult children is listed in Payee’s affidavit attached hereto as **Exhibit C**.

8. Upon information and belief, pursuant to I.R.C. § § 104 and 130 and 26 USC §§ 104 & 103, MetLife is responsible to make the payments provided for under the structured settlement.

9. Metlife funded and accomplished its obligations as the annuity issuer through the issuance of an annuity contract/policy number 86291FOR.

10. After several payments on the annuity, only a single payment remains. More specifically, pursuant to the terms of the structured settlement and annuity, the sole remaining payment remaining is a single lump-sum payment of One Million Dollars (\$1,000,000.00) due to Payee on June 15, 2015, after which time he shall no longer be entitled to any further payments under the structured settlement.

11. Pursuant to 26 U.S.C. §5891(a), any transfer of structured settlement payment rights pursuant to a transfer agreement entered into after July 1, 2002 subjects the transferee to an excise tax unless the transfer has been approved by, inter alia, a court of the state in which the Payee of the structured settlement is domiciled through the issuances of a “qualified order,” which is defined as an order pursuant to the terms of a statute regulating the transfer of structured settlement rights enacted by the state in which the Payee is domiciled or the settled case was litigated.

12. N.Y. Insurance Law § 3212(d) provides that any purported limitation upon transfer contained in an annuity contract funding a structured settlement is ineffective if the transfer has been approved pursuant to SSPA.

APPLICATION TO TRANSFER PAYMENT RIGHTS

13. The Payee seeks to sell, assign, and transfer to Petitioner, the single remaining lump-sum payment under the structured settlement pursuant to the terms of a “transfer agreement” as defined in GOL § 5-1701(r) entered into on or about June 14, 2015. A copy of the Structured Annuity Purchase Agreement is annexed hereto as **Exhibit A**. It is a condition of the transfer agreement that the transfer be approved by a court and under pursuant to an order that must be recognized and honored by MetLife, the annuity issuer.

14. In this regard, the parties seek judicial approval, as authorized by the SSPA, for the proposed sale and transfer of the single remaining lump-sum payment of one million dollars (\$1,000,000.00), due and payable to Payee on or about June 15, 2015; or in the alternative, in the event that such payment has already been issued, that Payee be permitted to assign and Transfer such payment to Petitioner, nunc pro tunc as of June 15, 2015.

15. Upon information and belief, all disclosures required by GOL § 5-1703 have been made by providing Payee, not less than ten (10) days prior to the date on which Payee executed the transfer agreement, by regular mail and certified mail, return-receipt requested and/or postal office priority mail, the required disclosure statement in fourteen (14) point bold

type containing the statutory disclosures in plain language the information required by law, namely:

- (a) the amounts and due dates of the structured settlement payments to be transferred;
- (b) the aggregate amount of such payments;
- (c) the discounted present value of the payments to be transferred, which shall be identified as the “calculation of current value of the transferred structured settlement payments under federal standards for valuing annuities,” and the amount of the applicable federal rate used in calculating such discounted present value;
- (d) the price quote from the annuity issuer, or if such price quote is not readily available, then a price quote from two (2) other annuity issuers that reflect the current cost of purchasing a comparable annuity for the aggregate amount of payments to be transferred;
- (e) the gross advance amount and the annual discount rate, compounding monthly, used to determine such figures;
- (f) an itemized listing of all commissions, fees, costs, expenses, and charges payable by the Payee and the total amount of such fees;

- (g) the net advance amount including the statement: “The net cash payment you receive in this transaction from the buyer was determined by applying the specified discount rate to the amount of future payments received by the buyer, less the total amount of commissions, fees, costs, expenses, and charges payable by you”;
- (h) the amount of penalties or liquidated damages payable by the Payee in the event of any breach of the transfer agreement by the Payee; and
- (i) a statement that the Payee has the right to cancel the transfer agreement without penalty or obligation, no later than the third business day after the date the agreement is signed by the Payee.

16. Annexed hereto as **Exhibit B** are copies of said disclosure statements and proof of receipt of such notices.

17. In exchange for the proposed transfer and assignment, the Payee shall receive: (i) a single lump-sum payment of three hundred thousand dollars (\$300,000.00); and (ii) periodic payments thereafter, to wit, monthly payments in approximately the amount of seven thousand ninety dollars and ten cents (\$7,090.10) each, guaranteed by Petitioner for ten (10)

years, beginning on January 15, 2016. The final monthly benefit amount will be predicated and finalized based on pricing available in the market on the day of purchase.

18. The proposed transfer complies with all requirements and standards of the 26 U.S.C. § 5891 in that:

- (a) The proposed transfer is to be approved under authority of a qualified final judicial order;
- (b) Upon information and belief, the proposed transfer is in the best interest of the Payee for the reasons shown in his affidavit annexed hereto as **Exhibit C**;
- (c) Upon information and belief, the proposed transfer does not contravene any Federal or State statute or the order of any court or responsible administrative authority.

19. The proposed transfer complies with all requirements and standards of GOL §5-1701 et seq., in that:

- (a) It complies with all requirements of the SSPA;

- (b) For the reasons shown in Payee's affidavit (*see Exhibit C*), the proposed transfer is in the best interests of the Payee taking into account the welfare and support of Payee's dependents, if applicable, and the proposed transaction, including the discount rate used to determine the gross advance amount and fees and expenses used to determine the net advance amount is fair and reasonable;
- (c) 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 knowingly waived such advice in writing; and
- (d) Upon information and belief, the proposed transfer does not contravene any Federal or State statute or the order of any court or responsible administrative authority and both the transfer agreement and all disclosures are written in plain language and in compliance with GOL § 5-1702.

NOTICE TO INTERESTED PARTIES

20. Certain entities are deemed to be "interested parties" to this Petition as defined in GOL § 5-1701(f); pursuant to GOL § 5-1705(c), the "interested parties" are to be

served at least twenty (20) days prior to this Petition being heard with copies of said Petition and the Notice of Petition or order to show cause, as the case may be.

21. The Interested Parties noticed with this special proceeding are the Payee—who consents and joins in this application as evidenced by the transfer agreement and other papers consummated by and between Mr. Virgilio and Petitioner; and Metlife. Each has been given notice of this proceeding as required by the SSPA by the service of the within Order to Show Cause.

22. Upon information and belief, there are no irrevocable beneficiaries under the annuity contract to receive payments following the Payee's death, and no other party that has continuing rights or obligations under the structured settlement agreement.

DEPENDENTS

23. Upon information and belief, as outlined in his affidavit, Payee has no dependents, as all of his children are adults and not dependent upon him for financial support. *See Exhibit C.*

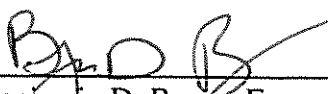
24. It respectfully is submitted that GOL § 5-1705(c) explicitly authorizes the filing of this matter by order to show cause.

25. In compliance with GOL § 5-1705(d)(iv), no previous application for the relief herein has been requested.

WHEREFORE, pursuant to GOL § 5-1701 et seq., Petitioner Seventh Amendment Holdings, LLC, respectfully requests that this Court issue an order approving the sale and transfer herein, based upon findings that: (i) the transfer is in compliance with the requirements of 26 U.S.C. § 5891 and GOL § 5-1701 et seq.; (ii) the transfer is in the best interest of the Payee, taking into account the welfare and support of the Payee's dependents (if applicable) and the proposed transaction, including the discount rate used to determine the gross advance amount and fees and expenses used to determine the net advance amount, is fair and reasonable; (iii) the Payee has been advised in writing by the Petitioner to seek independent professional advice regarding the transfer and has either received such advice or knowingly waived such advice in writing; (iv) the transfer does not contravene any applicable Federal or State statute or order of any court or other administrative or government authority; and (v) the proposed transfer agreement, disclosure, and related documents are written in plain language and in compliance with GOL §5-702 and, directing the annuity owner, and the annuity issuer, to recognize and honor the proposed transfer agreement to Petitioner, and to make payment of the structured settlement payments that are the subject of this proceeding to Petitioner, along with such other and further relief as the Court may deem just and proper.

Dated: June 15, 2015
Buffalo, New York

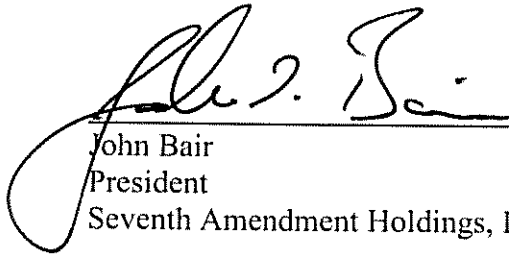
RUPP BAASE PFALZGRAF CUNNINGHAM LLC
Attorneys for Petitioner

By: 
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VERIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF ERIE)

John Bair, being duly sworn, deposes and says that he is the President of Seventh Amendment Holdings, LLC; that he has read the foregoing Verified Petition and knows the contents thereof; and that the same is true to his own knowledge, except as to those matters therein alleged to be upon information and belief, and as to those matters he believes them to be true.



John Bair
President
Seventh Amendment Holdings, LLC

Sworn to before me this
15th day of June, 2015



Notary Public

BENJAMIN D. BURGE
NOTARY PUBLIC-STATE OF NEW YORK
No. 02BU6259793
Qualified in New York County
My Commission Expires April 16, 20 16