

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 825 Session of  
1999

INTRODUCED BY READSHAW, MICOZZIE, ADOLPH, DeLUCA, CIVERA,  
FICHTER, GODSHALL, NICKOL, SATHER, DEMPSEY, GLADECK, REINARD,  
GANNON, TANGRETTI, CHADWICK, BELFANTI, CLARK, COLAFELLA,  
CORRIGAN, DALEY, FRANKEL, HALUSKA, HARHAI, KAISER, LAUGHLIN,  
MARKOSEK, MAYERNIK, McCALL, ORIE, PETRARCA, PRESTON, RAMOS,  
RUFFING, SAINATO, SEYFERT, SHANER, STEVENSON, TRELLO,  
VAN HORNE, WALKO, WOGAN, WOJNAROSKI AND YOUNGBLOOD,  
MARCH 10, 1999

REFERRED TO COMMITTEE ON JUDICIARY, MARCH 10, 1999

AN ACT

1 Regulating certain transfers of structured settlement payments.

2 The General Assembly of the Commonwealth of Pennsylvania  
3 hereby enacts as follows:

4 Section 1. Short title.

5 This act shall be known and may be cited as the Structured  
6 Settlement Protection Act.

7 Section 2. Definitions.

8 The following words and phrases when used in this act shall  
9 have the meanings given to them in this section unless the  
10 context clearly indicates otherwise:

11 "Annuity issuer." An insurer, or subsidiary or affiliate  
12 thereof, that has issued an insurance contract used to fund  
13 periodic payments under a structured settlement.

14 "Applicable law." The laws of the United States, the laws of

1 this Commonwealth and the laws of any other jurisdiction under  
2 whose laws a structured settlement agreement was approved by a  
3 court or responsible administrative authority or whose law is  
4 designated in any "choice of law" provision in the structured  
5 settlement agreement.

6 "Dependents." Include a payee's spouse and minor children  
7 and all other family members and other persons for whom the  
8 payee is legally obligated to provide support, including  
9 alimony.

10 "Discounted present value." The fair present value of future  
11 payments, as determined by discounting such payments to the  
12 present using the most recently published applicable Federal  
13 rate for determining the present value of an annuity, as issued  
14 by the United States Internal Revenue Service.

15 "Favorable tax determination." With respect to a proposed  
16 transfer of structured settlement payment rights, any of the  
17 following authorities that is binding on the parties to such  
18 transfer and on the parties to the structured settlement  
19 agreement and any qualified assignment agreement and that  
20 definitively establishes that the Federal income tax treatment  
21 of the structured settlement for the parties to the structured  
22 settlement agreement and any qualified assignment agreement,  
23 other than the payee, will not be affected by such transfer:

- 24 (1) a United States Treasury regulation;
- 25 (2) a published ruling by the United States Internal  
26 Revenue Service;
- 27 (3) a private letter ruling by the United States  
28 Internal Revenue Service with respect to such transfer; or
- 29 (4) other controlling legal authority that is binding on  
30 the United States Internal Revenue Service.

1 "Financial hardship." The standard applicable to transfers  
2 of structured settlement payment rights based on judicial  
3 findings regarding the payees' and his or her dependents' needs,  
4 as required by section 3(3), provided, however, that if at the  
5 time the payee and the transferee enter into the transfer  
6 agreement, a hardship standard is contained in the United States  
7 Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1  
8 et seq.), or in a United States Treasury regulation adopted  
9 pursuant thereto then such standard shall control.

10 "Payee." A person domiciled in this Commonwealth who is  
11 receiving tax-free payments under a structured settlement and  
12 proposes to make a transfer of payment rights thereunder.

13 "Periodic payments." Payments made pursuant to a structured  
14 settlement agreement, including scheduled future lump sum  
15 payments.

16 "Qualified assignment agreement." An agreement providing for  
17 a qualified assignment within the meaning of section 130 of the  
18 Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1  
19 et seq.).

20 "Settled claim." The original personal injury or sickness  
21 claim or workers' compensation claim resolved by a structured  
22 settlement.

23 "Structured settlement." An arrangement for periodic payment  
24 of damages established by settlement or judgment in resolution  
25 of a settled claim.

26 "Structured settlement agreement." The agreement, judgment,  
27 stipulation or release embodying the terms of a structured  
28 settlement, including the rights of the payee to receive  
29 periodic payments.

30 "Structured settlement obligor." With respect to any

1 structured settlement, the party that has the continuing  
2 obligation to provide periodic payments to the payee under a  
3 structured settlement agreement or a qualified assignment  
4 agreement.

5 "Structured settlement payment rights." Rights to receive  
6 periodic payments under a structured settlement, whether from  
7 the settlement obligor or the annuity issuer, where the payee is  
8 domiciled in this Commonwealth.

9 "Terms of the structured settlement." Include, with respect  
10 to any structured settlement, the terms of the structured  
11 settlement agreement, the annuity contract, any qualified  
12 assignment agreement and any order or approval of any court,  
13 administrative agency or other governmental authority  
14 authorizing or approving such structured settlement.

15 "Transfer." Any direct or indirect sale, assignment, pledge,  
16 hypothecation or other form of alienation, redirection or  
17 encumbrance made by a payee for consideration.

18 "Transferee." The party acquiring or proposing to acquire  
19 structured settlement payment rights through a transfer.

20 "Transfer agreement." The agreement providing for transfer  
21 of structured settlement payment rights from a payee to a  
22 transferee.

23 Section 3. Conditions to transfers of structured settlement  
24 payment rights.

25 No transfer of structured settlement payment rights shall be  
26 effective and no structured settlement obligor or annuity issuer  
27 shall be required to make any payment to any transferee of  
28 structured settlement payment rights unless the payee has filed  
29 an application for the transfer and the application has been  
30 authorized in advance in a final order of a court of competent

1 jurisdiction, based on such court's express written findings  
2 that:

3 (1) The transfer complies with the requirements of this  
4 act and will not contravene other applicable law;

5 (2) not less than ten days prior to the date on which  
6 the payee first incurred any obligation with respect to the  
7 transfer, the transferee has provided to the payee a  
8 disclosure statement setting forth all of the following:

9 (i) The amounts and due dates of the structured  
10 settlement payments to be transferred.

11 (ii) The aggregate amount of such payments.

12 (iii) The discounted present value of such payments,  
13 together with the discount rate or rates used in  
14 determining such discounted present value.

15 (iv) The gross amount payable to the payee in  
16 exchange for such payments.

17 (v) An itemized listing of all brokers' commissions,  
18 service charges, application or processing fees, closing  
19 costs, filing or administrative charges, legal fees,  
20 notary fees and other commissions, fees, costs, expenses  
21 and charges payable by the payee or deductible from the  
22 gross amount otherwise payable to the payee.

23 (vi) The net amount payable to the payee after  
24 deduction of all commissions, fees, costs, expenses and  
25 charges described in subclause (v).

26 (vii) The quotient, expressed as a percentage,  
27 obtained by dividing the net payment amount by the  
28 discounted present value of the payments.

29 (viii) The amount of any penalty and the aggregate  
30 amount of any liquidated damages, inclusive of penalties,

1 payable by the payee in the event of any breach of the  
2 transfer agreement by the payee.

3 (3) The payee has established that the transfer is  
4 necessary to enable the payee to avoid financial hardship  
5 based on the extraordinary unanticipated and imminent needs  
6 of the payee or his dependents.

7 (4) The payee has received independent legal advice  
8 regarding the implications of the transfer.

9 (5) If the transfer would contravene the terms of the  
10 structured settlement:

11 (i) the transfer has been expressly approved in  
12 writing by:

13 (A) the payee, the structured settlement obligor  
14 and the annuity issuer; provided, however, that such  
15 payment may not be unreasonably withheld; and further  
16 provided that if at the time the payee and the  
17 transferee propose to enter into the transfer  
18 agreement, a favorable tax determination is in  
19 effect, or the transferee has agreed to indemnify the  
20 structured settlement obligor and annuity issuer for  
21 all liabilities in the event of an unfavorable  
22 Federal tax determination, then the approval of the  
23 annuity issuer and the structured settlement obligor  
24 shall not be required; and

25 (B) any court or responsible administrative  
26 authority that previously approved the structured  
27 settlement; and

28 (ii) signed originals of all approvals required  
29 under subparagraph (i) have been filed with the court  
30 from which the authorization of the transfer is being

1 sought, and originals or copies have been furnished to  
2 the payee, the structured settlement obligor and the  
3 annuity issuer.

4 (6) The payee has given written notice of the  
5 transferee's name, address and taxpayer identification number  
6 to the annuity issuer and the structured settlement obligor  
7 and has filed a copy of such notice with the court.

8 Section 4. Jurisdiction; procedure for approval of transfers.

9 The court of common pleas of the judicial district in which  
10 the payee is domiciled shall have jurisdiction over any

11 application as required under section 3 for a transfer of

12 structured settlement payment rights. Not less than 20 days

13 prior to the scheduled hearing on any application for

14 authorization of a transfer of structured settlement payment

15 rights under section 3, the payee shall file with the court and

16 serve on the transferee a notice of the proposed transfer and

17 the application for its authorization, including in such notice

18 a copy of the payee's application to the court, a copy of the

19 transfer agreement, a copy of the disclosure statement required

20 under section 3, notification that the transferee, the

21 structured settlement obligor or the annuity issuer is entitled

22 to support, oppose or otherwise respond to the payee's

23 application, either in person or by counsel, by submitting

24 written comments to the court or by participating in the hearing

25 and notification of the time and place of the hearing and

26 notification of the manner in which and the time by which

27 written responses to the application must be filed, which shall

28 be not less than 15 days after service of the payee's notice, in

29 order to be considered by the court.

30 Section 5. Discharge of structured settlement obligor and

1 annuity issuer.

2 Upon an appropriate judicial order approving an application  
3 for a transfer of structured settlement payment rights, the  
4 structured settlement obligor and annuity issuer shall be  
5 discharged from all liability for the payments and portions  
6 thereof transferred as to all parties except the transferee.

7 Section 6. No waiver; no penalties.

8 (a) Waiver.--The provisions of this act may not be waived.

9 (b) Penalties.--No payee who files an application for the  
10 transfer of structured settlement payment rights shall incur any  
11 penalty, forfeit any application fee or other payment, or  
12 otherwise incur any liability to the proposed transferee based  
13 on any failure of such transfer to satisfy the conditions of  
14 section 3.

15 Section 7. Construction.

16 Nothing contained in this act shall be construed to authorize  
17 any transfer of structured settlement payment rights in  
18 contravention of applicable law or to give effect to any  
19 transfer to structured settlement payment rights that is void  
20 under applicable law.

21 Section 8. Applicability.

22 This act shall apply to any application for the transfer of  
23 structured settlement payment rights under a transfer agreement  
24 sought on or after the effective date of this act, provided,  
25 however, that nothing contained in this act shall imply that any  
26 transfer under a transfer agreement reached prior to such date  
27 is effective or that any party is under any obligation to make  
28 transferred payments to the transferee of any such prior  
29 transfer.

30 Section 9. Effective date.



1 This act shall take effect in 60 days.

**HOUSE OF REPRESENTATIVES  
REPUBLICAN CAUCUS**

BILL SUMMARY

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DATE: 6/29/99

COMMITTEE: Judiciary

BILL NO.: HB 825

PRIME SPONSOR: Readshaw

PRINTER'S NO.: 883

PREPARED BY: Brian J. Preski

PHONE NO.: 2-6946

**A. PRELIMINARY SUMMARY:**

This legislation, through a freestanding enactment, establishes the "Structured Settlement Protection Act." Generally, this act seeks to require that a petition and court approval be obtained before a person can "sell" or transfer their rights to payment under an annuity or similar contract, that they are receiving pursuant to a structured settlement, to a third party. Usually, a settlement purchased in this manner is accomplished pursuant to a reduced value figure (i.e. so many cents to a dollar).

Specifically, this legislation establishes that no transfer of structured settlement payment rights shall be effective unless a petition approving such transfer has been entered by a court (the court of common pleas where the payee is domiciled) and has been based upon the following findings:

- (1) The transfer complies with the provisions of this act;
- (2) A recitation of:
  - (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 such payments, together with the discount rate or rates used in determining such discounted present value;
  - (d) the gross amount payable to the payee in exchange for the structured settlement payments;
  - (e) an itemized listing of all commissions, charges, fees and expenses payable by the payee or deductible from the gross amount otherwise payable to the payee;

(f) the net amount payable to the payee after all charges, etc.;

(g) the quotient, expressed as a percentage, obtained by dividing the net payment amount by the discounted present value of the payments;

(h) the amount of any penalty and the aggregate amount of liquidated damages payable by the payee in the event of any breach of the transfer agreement by the payee.

(3) The payee has established that the transfer is necessary to avoid financial hardship based upon extraordinary unanticipated and imminent needs of the payee or his dependents.

(4) The payee has received independent legal advice concerning the implications of the transfer of structured settlement payments.

(5) The payee, structured settlement obligor and the annuity issuer have expressly approved the transfer in writing.

(6) The payee has given written notice of the transferee's name, address and taxpayer identification number to the annuity issuer and the structured settlement obligor.

Once the court has entered an order approving the transfer, the structured settlement obligor and annuity issuer shall be discharged from all liability for the payments transferred as to all parties except the transferee.

As defined within this act, a structured settlement is "an arrangement for periodic payment of damages established by settlement or judgment in resolution of a settled claim."

The act is effective in 60 days and would apply only to transfers contemplated after the effective date.

#### B. EXISTING LAW:

##### Structured Settlements, generally

Structured settlements are extended periodic payments used in paying claims to make sure that the money will be there to meet the long-term needs of the claimant. They are funded through annuities to guarantee that the money promised at the time of settlement is there when the payments are due.

Federal tax law has recognized the value of structured settlements by exempting from taxation the inside build up that funds the annuity. The tax exemption does not apply if the payments are accelerated.

Factoring companies provide a service to claimants of structured settlements by offering a lump sum in place of the future payments. They offer cash up-front in exchange for the claimants' signing over to them the periodic payments of the annuities. The cash up-front is significantly less than the periodic payments would be if extended to the end of the payment plan. However, when faced with a financial hardship, the lump sum payment may be an attractive alternative to the payee.

For the insurers involved with the underlying annuity, this creates a potential tax liability. It is unclear whether the federal tax exemption will survive the accelerated payments through a "factoring transaction."

House Bill 825 addresses the potential tax liability issue and provides consumer protection for claimants. The financial hardship requirement was suggested by the United States Treasury Department to resolve the tax liability concern and is modeled after federal legislation.

#### Analogous Law

The only other analogous areas in which court approval of a settlement is required is with class action suits and those actions brought on behalf of a minor. Of these two, the minor's compromise provides the best analogy. In pertinent part, Pennsylvania Rule of Civil Procedure 2039 (relating to Compromise, Settlement, Discontinuance and Distribution) states:

Rule 2039. Compromise, Settlement, Discontinuance and Distribution

(a) No action to which a minor is a party shall be compromised, settled or discontinued except after approval by the court pursuant to a petition presented by the guardian of the minor.

(b) When a compromise or settlement has been so approved by the court, or when a judgment has been entered upon a verdict or by agreement, the court, upon petition by the guardian or any party to the action, shall make an order approving or disapproving any agreement entered into by the guardian for the payment of counsel fees and other expenses out of the fund created by the compromise, settlement or judgment; or the court may make such order as it deems proper fixing counsel fees and other proper expenses. The balance of the fund shall be paid to a guardian of the estate of the minor qualified to receive the fund, if the minor has one or one is to be appointed. The balance of the fund payable to the guardian of the estate may include a structured settlement underwritten by a financially responsible entity that . . .

(3) an agreement be executed providing for a structured settlement underwritten by a financially responsible entity that assumes responsibility for future payments. All moneys paid from the structured settlement during minority shall be paid into a restricted account . . . .

#### Constitutional Law

The Pennsylvania Constitution, Article 1, Section 17, states:

#### 17. Ex post facto laws; impairment of contracts

No ex post facto law, nor any law impairing the obligation of contracts, or making irrevocable any grant of special privileges or immunities, shall be passed.

#### Historical Court Decisions

Any law which enlarges, abridges, or in any manner changes the intention of parties as evidenced by their contract, imposing conditions not expressed therein or dispensing with performance of those which are a part of it, "impairs obligation of contract," regardless of whether the law affects the validity, construction, duration, or enforcement of the contract. Beaver County Building & Loan Ass'n v. Winowich, 187 A. 481, 323 Pa. 483, 1936; Beaver County Building & Loan Ass'n v. Winowich, 187 A. 921, 323 Pa. 483, 1936.

Amount of impairment of substantive obligation of contract is immaterial; any deviation from its terms, however slight, constitutes unconstitutional impairment. Beaver County Building & Loan Ass'n v. Winowich, 187 A. 481, 323 Pa. 483, 1936; Beaver County Building & Loan Ass'n v. Winowich, 187 A. 921, 323 Pa. 483, 1936.

Constitutional prohibition against impairing obligations of contract should not be read literally; it requires court to balance impairment against necessity of regulation and benefits to public good. Empire Sanitary Landfill, Inc. v. Com., Dept. of Environmental Resources, 684 A.2d 1047, 546 Pa. 315, Sup. 1996.

Statutes that are necessary for general good of public are constitutional under provision of State Constitution prohibiting laws impairing obligation of contracts, even if they incidentally affect existing contractual obligations. Empire Sanitary Landfill, Inc. v. Com., Dept. of Environmental Resources, 684 A.2d 1047, 546 Pa. 315, Sup. 1996.

Nothing but contracts such as involve property rights are protected by the clause against impairment of contracts, and mere political rights or privileges are not within its purview. Moore v. City of Pittsburgh, 98 A. 1037, 254 Pa. 185, Sup. 1916.

Judgment for amount due under contract remains "obligation of contract" which may not be affected by legislation which would impair the antecedent obligation of the contract on which it is founded. Beaver County Building & Loan Ass'n v. Winowich, 187 A. 481, 323 Pa. 483, 1936; Beaver County Building & Loan Ass'n v. Winowich, 187 A. 921, 323 Pa. 483, 1936.

Under system of division of governmental powers, the legislature cannot invade judiciary's province by interfering with judgments or decrees previously rendered. Pennsylvania Co. for Insurances on Lives and Granting Annuities v. Scott, 29 A.2d 328, 346 Pa. 13, Sup. 1942.

BJP:js

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

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**SENATE BILL****No. 818**Session of  
1999

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INTRODUCED BY HOLL, GREENLEAF AND CORMAN, APRIL 16, 1999

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SENATOR GREENLEAF, JUDICIARY, AS AMENDED, JUNE 8, 1999

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## AN ACT

1 Regulating certain transfers of structured settlement payments.

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3 hereby enacts as follows:

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5 This act shall be known and may be cited as the Structured  
6 Settlement Protection Act.

7 Section 2. Definitions.

8 The following words and phrases when used in this act shall  
9 have the meanings given to them in this section unless the  
10 context clearly indicates otherwise:

11 "Annuity issuer." An insurer, or subsidiary or affiliate  
12 thereof, that has issued an insurance contract used to fund  
13 periodic payments under a structured settlement.

14 "Applicable law." The laws of the United States, the laws of  
15 this Commonwealth and the laws of any other jurisdiction under  
16 whose laws a structured settlement agreement was approved by a  
17 court or responsible administrative authority or whose law is

1 designated in any "choice of law" provision in the structured  
2 settlement agreement.

3 "Dependents." Include a payee's spouse and minor children  
4 and all other family members and other persons for whom the  
5 payee is legally obligated to provide support, including  
6 alimony.

7 "Discounted present value." The fair present value of future  
8 payments, as determined by discounting such payments to the  
9 present using the most recently published applicable Federal  
10 rate for determining the present value of an annuity, as issued  
11 by the United States Internal Revenue Service.

12 "Favorable tax determination." With respect to a proposed  
13 transfer of structured settlement payment rights, any of the  
14 following authorities that is binding on the parties to such  
15 transfer and on the parties to the structured settlement  
16 agreement and any qualified assignment agreement and that  
17 definitively establishes that the Federal income tax treatment  
18 of the structured settlement for the parties to the structured  
19 settlement agreement and any qualified assignment agreement,  
20 other than the payee, will not be affected by such transfer:

21 (1) a United States Treasury regulation;

22 (2) a published ruling by the United States Internal  
23 Revenue Service;

24 (3) a private letter ruling by the United States  
25 Internal Revenue Service with respect to such transfer; or

26 (4) other controlling legal authority that is binding on  
27 the United States Internal Revenue Service.

28 "Financial hardship." The standard applicable to transfers  
29 of structured settlement payment rights based on judicial  
30 findings regarding the payees' and his or her dependents' needs,



1 as required by section 3(3), provided, however, that if at the  
2 time the payee and the transferee enter into the transfer  
3 agreement, a hardship standard is contained in the United States  
4 Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1  
5 et seq.), or in a United States Treasury regulation adopted  
6 pursuant thereto then such standard shall control.

7 "Payee." A person domiciled in this Commonwealth who is  
8 receiving tax-free payments under a structured settlement and  
9 proposes to make a transfer of payment rights thereunder.

10 "Periodic payments." Payments made pursuant to a structured  
11 settlement agreement, including scheduled future lump sum  
12 payments.

13 "Qualified assignment agreement." An agreement providing for  
14 a qualified assignment within the meaning of section 130 of the  
15 Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1  
16 et seq.).

17 "Settled claim." The original personal injury or sickness  
18 claim or workers' compensation claim resolved by a structured  
19 settlement.

20 "Structured settlement." An arrangement for periodic payment  
21 of damages established by settlement ~~or judgment~~, JUDGMENT OR ←  
22 DECREE in resolution of a settled claim.

23 "Structured settlement agreement." The agreement, judgment,  
24 DECREE, stipulation or release embodying the terms of a ←  
25 structured settlement, including the rights of the payee to  
26 receive periodic payments.

27 "Structured settlement obligor." With respect to any  
28 structured settlement, the party that has the continuing  
29 obligation to provide periodic payments to the payee under a  
30 structured settlement agreement or a qualified assignment

1 agreement.

2 "Structured settlement payment rights." Rights to receive  
3 periodic payments under a structured settlement, whether from  
4 the settlement obligor or the annuity issuer, where the payee is  
5 domiciled in this Commonwealth.

6 "Terms of the structured settlement." Include, with respect  
7 to any structured settlement, the terms of the structured  
8 settlement agreement, the annuity contract, any qualified  
9 assignment agreement and any order, DECREE or approval of any  
10 court, administrative agency or other governmental authority  
11 authorizing or approving such structured settlement. ←

12 "Transfer." Any direct or indirect sale, assignment, pledge,  
13 hypothecation or other form of alienation, redirection or  
14 encumbrance made by a payee for consideration, PROVIDED, ←  
15 HOWEVER, THAT THIS SHALL NOT APPLY TO A BLANKET SECURITY  
16 AGREEMENT USED TO SECURE A LOAN ORIGINATING FROM A FEDERAL OR  
17 STATE-CHARTERED LENDING INSTITUTION. ANY TRANSFER MADE OR AGREED  
18 TO UNDER THIS ACT SHALL BE CONSIDERED TO BE A CONSUMER  
19 TRANSACTION.

20 "Transfer agreement." The agreement providing for transfer  
21 of structured settlement payment rights from a payee to a  
22 transferee.

23 "Transferee." The party acquiring or proposing to acquire  
24 structured settlement payment rights through a transfer.

25 Section 3. Conditions to transfers of structured settlement  
26 payment rights.

27 (A) PETITION.--No transfer of structured settlement payment  
28 rights shall be effective and no structured settlement obligor  
29 or annuity issuer shall be required to make any payment to any  
30 transferee of structured settlement payment rights unless the ←

1 payee has filed an application for the transfer and the ←  
2 application has been authorized in advance in a final order of a  
3 court of competent jurisdiction, based on such court's express  
4 written findings A PETITION REQUESTING SUCH TRANSFER AND THE ←  
5 PETITION HAS BEEN GRANTED BY FINAL ORDER OR DECREE OF A COURT OF  
6 COMPETENT JURISDICTION BASED ON SUCH COURT'S EXPRESS WRITTEN  
7 FINDINGS that:

8 (1) The transfer complies with the requirements of this  
9 act and will not contravene other applicable law.

10 (2) Not less than ten days prior to the date on which  
11 the payee first incurred any obligation with respect to the  
12 transfer, the transferee has provided to the payee a  
13 disclosure statement setting forth all of the following:

14 (i) The amounts and due dates of the structured  
15 settlement payments to be transferred.

16 (ii) The aggregate amount of such payments.

17 (iii) The discounted present value of such payments,  
18 together with the discount rate or rates used in  
19 determining such discounted present value.

20 (iv) The gross amount payable to the payee in  
21 exchange for such payments.

22 (v) An itemized listing of all brokers' commissions,  
23 service charges, application or processing fees, closing  
24 costs, filing or administrative charges, legal fees,  
25 notary fees and other commissions, fees, costs, expenses  
26 and charges payable by the payee or deductible from the  
27 gross amount otherwise payable to the payee.

28 (vi) The net amount payable to the payee after  
29 deduction of all commissions, fees, costs, expenses and  
30 charges described in subclause (v).

1 (vii) The quotient, expressed as a percentage,  
2 obtained by dividing the net payment amount by the  
3 discounted present value of the payments.

4 (viii) The amount of any penalty and the aggregate  
5 amount of any liquidated damages, inclusive of penalties,  
6 payable by the payee in the event of any breach of the  
7 transfer agreement by the payee.

8 (3) The payee has established that the transfer is  
9 necessary to enable the payee to avoid financial hardship  
10 based on the extraordinary unanticipated and imminent needs  
11 of the payee or his dependents.

12 (4) The payee has received independent legal advice  
13 regarding the implications of the transfer, including  
14 consideration of the tax ramifications of the transfer.

15 (5) If the transfer would contravene the terms of the  
16 structured settlement:

17 (i) the transfer has been expressly approved in  
18 writing by:

19 (A) the payee, the structured settlement obligor  
20 and the annuity issuer; provided, however, that such  
21 approval may not be unreasonably withheld; and  
22 further provided that if at the time the payee and  
23 the transferee propose to enter into the transfer  
24 agreement, a favorable tax result is in effect, then  
25 the approval of the annuity issuer and the structured  
26 settlement obligor shall not be required; and

27 (B) any court or responsible administrative  
28 authority that previously approved the structured  
29 settlement; and

30 (ii) signed originals of all approvals required

1 under subparagraph (i) have been filed with the court  
2 from which the authorization of the transfer is being  
3 sought, and originals or copies have been furnished to  
4 the payee, the structured settlement obligor and the  
5 annuity issuer.

6 (6) The payee has given written notice of the  
7 transferee's name, address and taxpayer identification number  
8 to the annuity issuer and the structured settlement obligor  
9 and has filed a copy of such notice with the court.

10 (B) NOTICE.--PRIOR TO ENTERING INTO ANY AGREEMENT TO MAKE A ←  
11 TRANSFER UNDER THIS ACT, THE PAYEE SHALL BE PROVIDED WITH A  
12 WRITTEN NOTICE ON A SEPARATE SHEET THAT CONTAINS THE FOLLOWING,  
13 IN BOLD PRINT AND AT LEAST 12-POINT TYPE:

14 IMPORTANT NOTICE: YOU ARE STRONGLY URGED TO CONSULT WITH  
15 AN ATTORNEY OR ACCOUNTANT WHO CAN ADVISE YOU OF THE  
16 POTENTIAL TAX CONSEQUENCES OF THIS TRANSACTION.

17 Section 4. Jurisdiction; procedure for approval of transfers.

18 The court of common pleas of the judicial district in which  
19 the payee is domiciled shall have jurisdiction over any  
20 ~~application~~ PETITION as required under section 3 for a transfer ←  
21 of structured settlement payment rights. Not less than 20 days  
22 prior to the scheduled hearing on any ~~application~~ PETITION for ←  
23 authorization of a transfer of structured settlement payment  
24 rights under section 3, the payee shall file with the court and  
25 serve on the transferee a notice of the proposed transfer and  
26 the application for its authorization, including in such notice  
27 a copy of the payee's ~~application~~ PETITION to the court, a copy ←  
28 of the transfer agreement, a copy of the disclosure statement  
29 required under section 3, notification that the transferee, the  
30 structured settlement obligor or the annuity issuer is entitled

1 to support, oppose or otherwise respond to the payee's  
2 ~~application~~ PETITION, either in person or by counsel, by ←  
3 submitting written comments to the court or by participating in  
4 the hearing and notification of the time and place of the  
5 hearing and notification of the manner in which and the time by  
6 which written responses to the ~~application~~ PETITION must be ←  
7 filed, which shall be not less than ~~±~~ 20 days after service of ←  
8 the payee's notice, in order to be considered by the court.

9 Section 5. Discharge of structured settlement obligor and  
10 annuity issuer.

11 Upon an appropriate judicial order approving an ~~application~~ A ←  
12 PETITION for a transfer of structured settlement payment rights,  
13 the structured settlement obligor and annuity issuer shall be  
14 discharged from all liability for the payments and portions  
15 thereof transferred as to all parties except the transferee.

16 Section 6. No waiver; no penalties.

17 (a) Waiver.--The provisions of this act may not be waived.

18 (b) Penalties.--No payee who files an ~~application~~ A PETITION ←  
19 for the transfer of structured settlement payment rights shall  
20 incur any penalty, forfeit any application fee or other payment,  
21 or otherwise incur any liability to the proposed transferee  
22 based on any failure of such transfer to satisfy the conditions  
23 of section 3.

24 SECTION 7. PENALTY. ←

25 A VIOLATION OF THIS ACT SHALL BE DEEMED A VIOLATION OF THE  
26 ACT OF DECEMBER 17, 1968 (P.L.1224, NO.387), KNOWN AS THE UNFAIR  
27 TRADE PRACTICES AND CONSUMER PROTECTION LAW.

28 Section 7 8. Construction. ←

29 Nothing contained in this act shall be construed to authorize  
30 any transfer of structured settlement payment rights in

1 contravention of applicable law or to give effect to any  
2 transfer to structured settlement payment rights that is void  
3 under applicable law.

4 Section 9. Applicability. ←

5 This act shall apply to any ~~application~~ PETITION for the ←  
6 transfer of structured settlement payment rights under a  
7 transfer agreement sought on or after the effective date of this  
8 act, provided, however, that nothing contained in this act shall  
9 imply that any transfer under a transfer agreement reached prior  
10 to such date is effective or that any party is under any  
11 obligation to make transferred payments to the transferee of any  
12 such prior transfer.

13 Section 10. Effective date. ←

14 This act shall take effect in 60 days.

**HOUSE OF REPRESENTATIVES**  
**REPUBLICAN CAUCUS**

BILL SUMMARY

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<u>COMMITTEE:</u> Judiciary	<u>DATE:</u> 6/29/99
<u>PRIME SPONSOR:</u> Holl	<u>BILL NO.:</u> SB 818
<u>PREPARED BY:</u> Brian J. Preski	<u>PRINTER'S NO.:</u> 1184
	<u>PHONE NO.:</u> 2-6946

A. PRELIMINARY SUMMARY:

This legislation, through a freestanding enactment, establishes the "Structured Settlement Protection Act." Generally, this act seeks to require that a petition and court approval be obtained before a person can "sell" or transfer their rights to payment under an annuity or similar contract, that they are receiving pursuant to a structured settlement, to a third party. Usually, a settlement purchased in this manner is accomplished pursuant to a reduced value figure (i.e. so many cents to a dollar).

Specifically, this legislation establishes that no transfer of structured settlement payment rights shall be effective unless a petition approving such transfer has been entered by a court (the court of common pleas where the payee is domiciled) and has been based upon the following findings:

- (1) The transfer complies with the provisions of this act;
- (2) A recitation of:
  - (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 such payments, together with the discount rate or rates used in determining such discounted present value;
  - (d) the gross amount payable to the payee in exchange for the structured settlement payments;
  - (e) an itemized listing of all commissions, charges, fees and expenses payable by the payee or deductible from the gross amount otherwise payable to the payee;



(f) the net amount payable to the payee after all charges, etc.;

(g) the quotient, expressed as a percentage, obtained by dividing the net payment amount by the discounted present value of the payments;

(h) the amount of any penalty and the aggregate amount of liquidated damages payable by the payee in the event of any breach of the transfer agreement by the payee.

(3) The payee has established that the transfer is necessary to avoid financial hardship based upon extraordinary unanticipated and imminent needs of the payee or his dependents.

(4) The payee has received independent legal advice concerning the implications of the transfer of structured settlement payments.

(5) The payee, structured settlement obligor and the annuity issuer have expressly approved the transfer in writing.

(6) The payee has given written notice of the transferee's name, address and taxpayer identification number to the annuity issuer and the structured settlement obligor.

Once the court has entered an order approving the transfer, the structured settlement obligor and annuity issuer shall be discharged from all liability for the payments transferred as to all parties except the transferee.

A violation of this act shall be deemed to be a violation of the Unfair Trade Practices and Consumer Protection Law (act of December 17, 1968 (P.L.1224, No.387)).

As defined within this act, a structured settlement is "an arrangement for periodic payment of damages established by settlement or judgment in resolution of a settled claim."

The act is effective in 60 days and would apply only to transfers contemplated after the effective date.

#### B. EXISTING LAW:

##### Structured Settlements, generally

Structured settlements are extended periodic payments used in paying claims to make sure that the money will be there to meet the long-term needs of the claimant. They are funded through annuities to

guarantee that the money promised at the time of settlement is there when the payments are due.

Federal tax law has recognized the value of structured settlements by exempting from taxation the inside build up that funds the annuity. The tax exemption does not apply if the payments are accelerated.

Factoring companies provide a service to claimants of structured settlements by offering a lump sum in place of the future payments. They offer cash up-front in exchange for the claimants' signing over to them the periodic payments of the annuities. The cash up-front is significantly less than the periodic payments would be if extended to the end of the payment plan. However, when faced with a financial hardship, the lump sum payment may be an attractive alternative to the payee.

For the insurers involved with the underlying annuity, this creates a potential tax liability. It is unclear whether the federal tax exemption will survive the accelerated payments through a "factoring transaction."

Senate Bill 818 addresses the potential tax liability issue and provides consumer protection for claimants. The financial hardship requirement was suggested by the United States Treasury Department to resolve the tax liability concern and is modeled after federal legislation.

#### Analogous Law

The only other analogous areas in which court approval of a settlement is required is with class action suits and those actions brought on behalf of a minor. Of these two, the minor's compromise provides the best analogy. In pertinent part, Pennsylvania Rule of Civil Procedure 2039 (relating to Compromise, Settlement, Discontinuance and Distribution) states:

Rule 2039. Compromise, Settlement, Discontinuance and Distribution

(a) No action to which a minor is a party shall be compromised, settled or discontinued except after approval by the court pursuant to a petition presented by the guardian of the minor.

(b) When a compromise or settlement has been so approved by the court, or when a judgment has been entered upon a verdict or by agreement, the court, upon petition by the guardian or any party to the action, shall make an order approving or disapproving any agreement entered into by the guardian for the payment of counsel fees and other expenses out of the fund created by the compromise, settlement or judgment; or the court may make such order as it deems proper fixing counsel fees and other proper expenses. The balance of the fund shall be paid to a guardian of the estate of the minor qualified to receive the fund, if the minor has one or one is to be appointed. The balance of the fund payable to the guardian of the

estate may include a structured settlement underwritten by a financially responsible entity that . . .

(3) an agreement be executed providing for a structured settlement underwritten by a financially responsible entity that assumes responsibility for future payments. All moneys paid from the structured settlement during minority shall be paid into a restricted account . . . .

#### Constitutional Law

The Pennsylvania Constitution, Article 1, Section 17, states:

#### 17. Ex post facto laws; impairment of contracts

No ex post facto law, nor any law impairing the obligation of contracts, or making irrevocable any grant of special privileges or immunities, shall be passed.

#### Historical Court Decisions

Any law which enlarges, abridges, or in any manner changes the intention of parties as evidenced by their contract, imposing conditions not expressed therein or dispensing with performance of those which are a part of it, "impairs obligation of contract," regardless of whether the law affects the validity, construction, duration, or enforcement of the contract. Beaver County Building & Loan Ass'n v. Winowich, 187 A. 481, 323 Pa. 483, 1936; Beaver County Building & Loan Ass'n v. Winowich, 187 A. 921, 323 Pa. 483, 1936.

Amount of impairment of substantive obligation of contract is immaterial; any deviation from its terms, however slight, constitutes unconstitutional impairment. Beaver County Building & Loan Ass'n v. Winowich, 187 A. 481, 323 Pa. 483, 1936; Beaver County Building & Loan Ass'n v. Winowich, 187 A. 921, 323 Pa. 483, 1936.

Constitutional prohibition against impairing obligations of contract should not be read literally; it requires court to balance impairment against necessity of regulation and benefits to public good. Empire Sanitary Landfill, Inc. v. Com., Dept. of Environmental Resources, 684 A.2d 1047, 546 Pa. 315, Sup. 1996.

Statutes that are necessary for general good of public are constitutional under provision of State Constitution prohibiting laws impairing obligation of contracts, even if they incidentally affect existing contractual obligations. Empire Sanitary Landfill, Inc. v. Com., Dept. of Environmental Resources, 684 A.2d 1047, 546 Pa. 315, Sup. 1996.

Nothing but contracts such as involve property rights are protected by the clause against impairment of contracts, and mere political rights or privileges are not within its purview. Moore v. City of Pittsburgh, 98 A. 1037, 254 Pa. 185, Sup. 1916.

Judgment for amount due under contract remains "obligation of contract" which may not be affected by legislation which would impair the antecedent obligation of the contract on which it is founded. Beaver County Building & Loan Ass'n v. Winowich, 187 A. 481, 323 Pa. 483, 1936; Beaver County Building & Loan Ass'n v. Winowich, 187 A. 921, 323 Pa. 483, 1936.

Under system of division of governmental powers, the legislature cannot invade judiciary's province by interfering with judgments or decrees previously rendered. Pennsylvania Co. for Insurances on Lives and Granting Annuities v. Scott, 29 A.2d 328, 346 Pa. 13, Sup. 1942.

BJP:js

# Settling for less

*Should accident victims sell their monthly payouts?*

BY MARGARET MANNIX

**O**rion Olson has had his share of hard knocks. When he was 3 years old, a dog bite caused him vision and neurological problems, as well as injuries requiring plastic surgery. In his teens, he dropped out of high school and wound up homeless. But he had hope. On his 18th birthday, the Minneapolis man was to start receiving the first of five periodic payments totaling \$75,000 from a lawsuit stemming from the dog attack. He received the first installment of \$7,500, but the money didn't last long.

So when Olson saw a television ad for a finance company named J. G. Wentworth & Co. that provided cash to accident victims, he saw a way to get his life back on track. He agreed to sell his remaining future payments of \$67,500 to Wentworth for a lump sum of \$16,100. "I needed money," says Olson, now 20 years old. "If I could get the money out like they were saying on TV, I wouldn't have to worry about being on the street anymore." Within six months, however, Olson had spent all the money and was living in a car. He now wishes he had waited for his regular payments.

Olson may be financially unsophisticated, but he is also caught up in a burgeoning, and unregulated, new industry that specializes in converting periodic payments into fast cash. Also known as factoring companies, these firms can be a godsend to accident victims, lottery winners,



**JERRY MAGEE** Mississippi accident victim sold his payments for quick cash. Today he has only regrets.

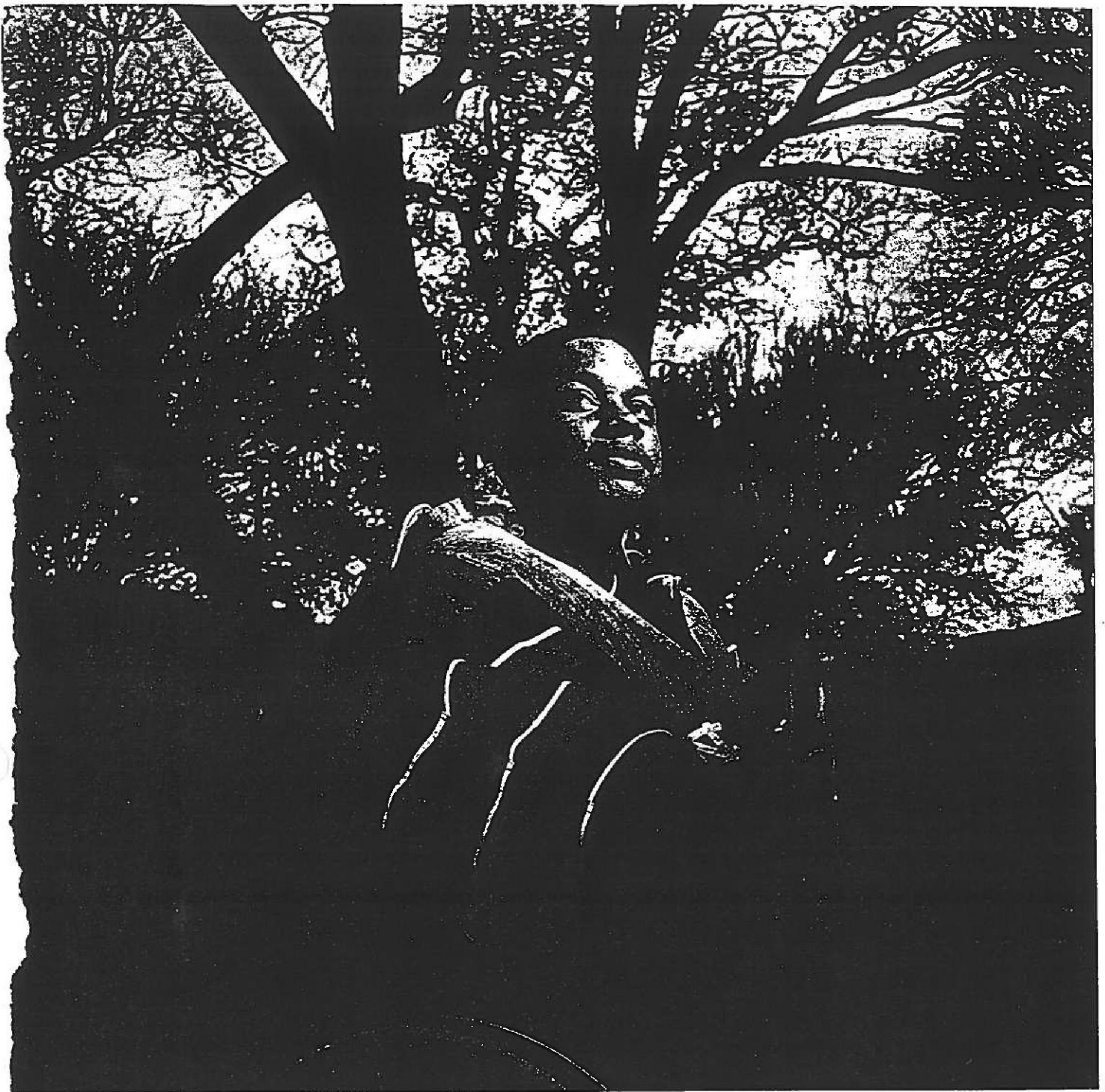
and others who have guaranteed future incomes but need immediate funds. But like a modern-day Esau trading his inheritance for a bowl of soup, the unwary consumer may be selling future sustenance for cheap. A growing number of federal and state legislators, as well as several attorneys general, contend that factoring companies charge usurious interest rates,

fail to properly disclose terms, and take advantage of desperate people. "It's unconscionable," says Minnesota Attorney General Mike Hatch. "They are really preying upon the vulnerable."

**Frittering away.** Critics further allege that factoring companies undermine the very law that Congress passed to help beneficiaries of large damage awards. In 1982, seeking to prevent accident victims from frittering away large sums intended to provide for them over their lifetimes, Congress instituted tax breaks for those who agreed to receive their money over a period of years. But now, contends Montana Sen. Max Baucus, a sponsor of that legislation, the careful planning that goes into the structuring of these payments "can be unraveled in an instant by a factoring company offering quick cash at a steep discount."

A number of advanced-funding companies compete for their share of future payments that include more than \$5 billion in structured settlements awarded each year. The largest buyer is Wentworth, handling an estimated half of all such transactions. Based in Philadelphia, the firm began by financing nursing homes and long-term-care facilities. In 1992 it started buying

PHOTOGRAPHY BY  
 THOMAS W. BROENING FOR USN&WR



**CHRISTOPHER HICKS** Wentworth sued the Oklahoma man for the entire amount of his payments. "They make you think you are doing the right thing . . . , but you are really messing up your life."

settlements that auto-accident victims were owed by the state of New Jersey. Since then, Wentworth has completed more than 15,000 structured-settlement transactions with an approximate total value of \$370 million.

The deals work like this: A structured-settlement recipient who wants to sell, say, \$50,000 in future payments, will not

get a lump sum of \$50,000. That's because, as a result of inflation, money scheduled to be paid years from now is worth less today. Formulas based on such factors as inflation and the date that payments begin are used to determine the "present value" of the future payments. The seller is, in essence, borrowing a lump sum that is paid back with the in-

surance company payments. The interest on the borrowed sum is called the "discount rate."

Wentworth and other advanced-funding companies say they are providing a valuable

service because structured settlements have a basic flaw: They are not flexible. Consumer needs change, they note, and a fixed monthly payment does not. Wentworth points to an Ohio woman who sold the company a \$500 portion of her monthly payments for six years when her bills were piling up and her home mortgage was about to be foreclosed. She re-

ceived instant cash of \$21,000, at a discount rate of 15.8 percent. The customer, who did not wish to be identified, says she is grateful to Wentworth for advancing her the money when her insurance company would not. "The insurance companies just don't understand," she says. "When I needed their help, they were not there." Likewise, a New York quadriplegic, who also did not want to be named, says he secured funds from Wentworth at a 12 percent discount rate to expand his own business and, as a result, is more successful than ever. "It was definitely worth it for me," he says.

But other customers are not as satisfied. New York City resident Raymond White lost part of one leg when he was struck by a subway train in 1990. A lawsuit led to a settlement that guaranteed White a monthly payment of \$1,100, with annual cost-of-living increases of 3 percent. In 1996, White, who did not have a job, wanted cash to buy a car and pay medical bills. So he turned to Went-

13-page contract or in the 25 other documents Wentworth required him to sign. Wentworth says it has been revising its documents to make them easier to understand.

**Change of address.** While the factoring transaction itself is complex, the transfer of payments is simple. The structured settlement recipient instructs the insurance company to change his or her address to that of the factoring company. The check remains in the recipient's name, and the factoring company uses a power of attorney, granted by the recipient, to cash it.

This roundabout method is used because insurance companies say structured payments should not be sold. Most settlement contracts

**RAYMOND WHITE After losing a leg in a subway accident, the New Yorker was guaranteed \$1,100 every month. He gave up future payments totaling \$198,000 in exchange for \$54,000.**

worth, selling portions of his monthly payments for the next 15 years in six different transactions.

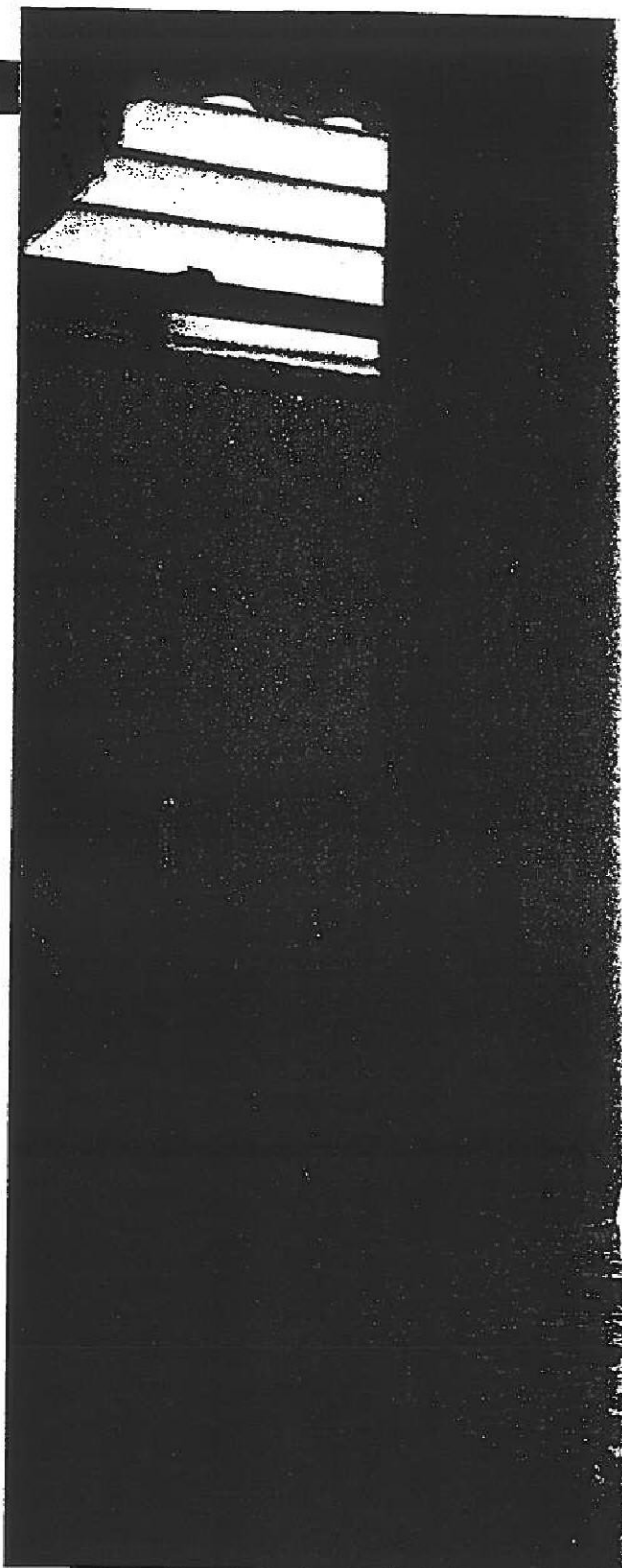
Altogether White gave up future payments totaling \$198,000. He received a total of \$54,000 in return, but the money, which he used for living expenses, is now gone. He bought a car, but it has been repossessed. He bought a plot of land in Florida, but lost it to foreclosure. With debts mounting, he now relies partially on public assistance to get by. "Unfortunately I was so overwhelmed with debt and striving for a better life that I went along with it," says White. "In reality, what I was doing was accumulating more debt for myself."

Some Wentworth customers say they might have realized the repercussions of their transactions had the contracts been clearer about the long-term costs. Jerry Magee of Magnolia, Miss., who has filed a class action suit against the company, is one of them. In a mortgage contract, for instance, lending laws require that consumers see their interest rate and the total amount of money they will be paying over the life of the loan. By contrast, Magee's lawyer says, neither the effective interest rate nor the total amount of the transaction was clearly spelled out in the

specify that payments cannot be "assigned," and the Internal Revenue Service says that payments "cannot be accelerated, deferred, increased or decreased." Selling payments, the insurance companies say, amounts to accelerating them. And that may threaten the claimant's tax break. Insurance companies say that if their annuitants start selling their payments, the social good that justifies the tax break disappears. Ironically, they make this argument even though some insurance companies themselves are now making counteroffers to factoring companies, accelerating payments to their own claimants. Berkshire Hathaway Life Insurance Co., for example, recently offered a claimant a lump sum of \$59,000, beating Wentworth's offer of \$45,000. The IRS has not formally addressed the tax issues, but the U.S. Department of the Treasury has recommended a tax on factoring transactions to discourage them.

Insurance companies also worry about

having to pay twice. Last year, a judge ruled an insurance company was obligated to pay a workers' compensation recipient his monthly payments because the factoring transaction he entered into was invalid under Florida's workers' compensation statute. For their part, the factoring companies argue that even though the claimants do not own the annuities—



allows the factoring company to sue customers quickly for default when their payments are not received; customers also waive the right to defend themselves.

Christopher Hicks, a 20-year-old accident victim from Oklahoma City, learned the effects of that clause the hard way. In 1997, Hicks signed over to Wentworth half of his \$2,000 monthly payments for the next 32 months and \$1,500 for the 26 months after that. In exchange, Hicks received \$37,500, which he admits he quickly spent on furniture, clothes, and other items. When Wentworth failed to receive a check from the insurance company that pays Hicks the annuity, it secured a judgment against him for the *entire* amount of the deal—\$71,000.

**No clue.** To collect, Wentworth garnished Metropolitan Life, meaning that Metropolitan Life was supposed to start sending Hicks's monthly checks to Wentworth. It did not—the company won't say why—and Hicks, who was supposed to be getting \$1,000 back from Wentworth, was left with nothing. "When the money stopped, I had no clue what was going on," says Hicks, who had to rely on family and friends until the two companies settled their differences in court. Hicks now wishes he had never gotten involved with Wentworth. "They make you think you are doing the right thing in the long run," says Hicks, "but you are really messing up your life."

Wentworth makes liberal use of confession-of-judgment clauses even though they are illegal in consumer transactions in the company's home state of Pennsylvania. The Federal Trade Commission also bans the clauses as an unfair practice in consumer-credit transactions. The clauses *are* allowable in business transactions in Pennsylvania if they are accompanied by a statement of business purpose. So in each case Wentworth certifies that the agreements "were not entered into for family, personal, or household purposes."

Such language is used in affidavits despite cases like that of Davinia Willis, a 24-year-old resident of Richmond, Calif., who entered into a transaction with Wentworth in 1996 to stop her house from being foreclosed upon and to repair wheelchair ramps—clearly, she says, personal uses. In a class action lawsuit against the company, she cites the confession of judgment as one reason why the contract is "illegal, usurious, and unconscionable." Wentworth says the clauses are necessary to keep its customers from renegeing on their agreements.

In the end, the controversy over factoring companies comes down to a funda-



the insurance companies do—the factoring companies can buy the "right to receive" the payments.

Insurance companies are getting wise to these factoring deals—CNA, a Chicago-based insurer, noticed that annuitants from all over the country were changing their addresses to Wentworth's Philadelphia post office box—and some are trying

to stop the transactions. Some insurance companies, for example, refuse to honor change-of-address requests or redirect the payments back to the annuitant after the deal is done. But redirecting a payment can cause serious consequences for the claimant. In Wentworth's case, the company has each customer sign a clause called a "confession of judgment," which



mental disagreement over the definition of their business. The factoring companies say they are not subject to usury or consumer-credit disclosure laws because they are not, in fact, lenders. "We don't make loans," declares Andrew Hillman, Wentworth's general counsel. "We buy assets." But some state attorneys general say these transactions differ very little, if at all, from loans and perhaps should be classified as such. That way, says Shirley Sarna, chief of the New York attorney general's consumer fraud and protection bureau, the law could prevent factoring companies from charging discount rates that she says in some cases have exceeded 75 percent. Wentworth says its average rate is 16 percent, and several factoring companies insist their rates would be much lower if insurance companies did not make it expensive for them to complete the deals. "By getting the insurance companies to process the address changes, it would overnight transform our discount rates from high teens to the single digits," says Jeffrey Grieco, managing director of Stone Street Capital, an advanced-funding firm in Bethesda, Md.

Who is right and who is wrong is being hammered out in courtrooms and statehouses across the country. The insurance companies were heartened last summer when a Kentucky judge denied four of Wentworth's garnishment actions, saying the purchase agreements the customers signed were neither valid nor legal. But other courts have ruled differently.

In Illinois, a new state law says that structured settlements can be sold as long as a judge approves the transaction. Wentworth notes that more than 100 such sales have been approved. At the same time, several state attorneys general are examining the factoring industry's practices. "You have got to worry about people who have a debilitating injury," says Joseph Goldberg, senior deputy attorney general for Pennsylvania. "The injury is never going away and they have no real means of income and probably no means of employment. . . . If they give that monthly payment up, it could have serious consequences." Voicing similar concerns, disability groups like the National Spinal Cord Injury Association, which now refuses to accept factoring companies' ad-



**DAVINIA WILLIS California woman sold her payments to prevent a home foreclosure. She is suing Wentworth claiming "illegal and usurious" terms.**

vertisements in its magazine, are warning members about the hazards of cashing out. The association is "deeply concerned about the emergence of companies that purchase payments intended for disabled persons at a drastic discount," says its executive director, Thomas Countee.

While opinions are divided about the validity of factoring transactions, both sides agree that regulation of the secondary market is necessary. As in Illinois, Connecticut and Kentucky have passed laws requiring a judge's approval of advanced-funding deals, as well as fuller disclosure of costs. Faced with mounting criticism, Wentworth this week will announce its pledge to submit every re-

quest for purchase of a settlement to a court for approval. Other states are expected to address the issue this year, and in Congress, Rep. Clay Shaw, a Florida Republican, has reintroduced a measure that would tax factoring transactions.

The factoring companies respond to all these efforts by also calling for better disclosure from the primary market—the insurance companies, attorneys, and brokers that set up the structured settlements in the first place. Factoring companies argue that structured settlements are not always as generous as they are represented to be. "We challenge insurance companies and their brokers to take the same pledge," said Michael Goodman, Wentworth's executive vice president.

Whatever the outcome of the debate, consumers thinking about selling their future payments are well advised to take a hard look at what they are getting into. ■

U.S. Congress, House of Representatives  
Ways & Means Committee  
July 13, 1999 Hearing on Financial Freedom Act of 1999  
Transcription of Colloquy on Structured Settlements

MR. HOUGHTON: Mr. Chairman, earlier in the year you asked the Oversight Subcommittee to hold a hearing on proposals to impose an excise tax on the sale of structured settlements. We held a hearing on March 18 and received testimony from representatives of both the providers of structured settlements and the factoring companies who buy them.

The hearing brought into focus legitimate concerns about whether consumers are adequately protected, but it was difficult to find a tax policy question amid the charges and counter-charges. I'm not sure the tax code is the best place to legislate consumer protections. This is typically the province of state legislatures.

I understand that model legislation has been developed. It seems to me that we should put both sides on notice that they need to make sure consumer protections are enacted at the state level.

CHAIRMAN ARCHER: I share your reservations about trying to regulate these practices through the tax code. However, I am aware of the problems that have arisen in this area. While I have not included a provision on structured settlements in the Chairman's mark, I think it would be appropriate to reconsider addressing in this Committee the consumer problems related to the factoring of structured settlements if these problems have not been addressed at the state level by the beginning of the next Congress.

There has also been some concern expressed about the income tax consequences of structured settlement factoring transactions. I understand that the Service has recently issued a private letter ruling with respect to the consequences for the beneficiary. Mr. Lubick, can we ask Treasury's help in getting some formal guidance on the income tax consequences of factoring transactions for both the beneficiaries and the providers of structured settlements?

SECRETARY LUBICK: The questions of the tax treatment of the disabled person was quite easy. It's covered by the Code. It is unlikely that we can give legislative guidance with respect to the other parties to the factoring transaction. It is very hard for us to construe the statute to resolve that to give some favorable tax treatment that is being sought by those other parties. What we're concerned about in this area is that the rules under Section 130, which you enacted to give favorable treatment to the structured settlement, were done for the purpose of protecting the victims who receive settlements. The basis for enacting that was that the favorable tax rules were designed to preserve the injured party's inability to take a lump sum so that the funds would not be dissipated. It seems, therefore, that since the tax

rule was put in for the purpose of protecting the injured party, that it is appropriate to go with the provision that was introduced by Mr. Shaw to achieve that goal and deal with the problem of allowing factors to invade that protection. That was the purpose of the original statute. I think it's unlikely that the states are going to be able to deal with that problem in any significant way. It seems to us that if you're going to try to solve the problem of protecting the injured party through the tax system, then you ought to insure that that protection subsists.

CHAIRMAN ARCHER: So you basically then are supportive of a new excise tax as provided for in the bill.

SECRETARY LUBICK: We supported Mr. Shaw's bill.

CHAIRMAN ARCHER: Thank you very much. Does any other member wish to . . .

Transcription made from CSPAN. Hearing is posted to CSPAN website