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THE INSURANCE FEDERATION OF PENNSYLVANIA, INC.

Public Testimony

prepared for the

HOUSE JUDICIARY COMMITTEE

on

STRUCTURED SETTLEMENT PROTECTION

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GOOD MORNING, AND THANK YOU FOR THE OPPORTUNITY TO BE HERE. I AM SAM MARSHALL, PRESIDENT OF THE INSURANCE FEDERATION. THE FEDERATION IS A NON-PROFIT TRADE ASSOCIATION REPRESENTING INSURANCE COMPANIES OF ALL SIZES AND SHAPES THAT DO BUSINESS IN PENNSYLVANIA. AMONG OUR MEMBERS ARE INSURERS THAT USE STRUCTURED SETTLEMENTS TO SETTLE PERSONAL INJURY AND WORKERS COMPENSATION CLAIMS, AS WELL AS INSURERS THAT WRITE THE ANNUITIES USED TO FUND THESE STRUCTURED SETTLEMENTS.

I AM HERE TO SPEAK IN FAVOR OF STRUCTURED SETTLEMENT PROTECTION GENERALLY AND THE PROTECTIONS IN SENATE BILL 818 SPECIFICALLY. THIS MAY BE MORE BASIC THAN SOME OF YOU MAY NEED, BUT I'D LIKE TO START AT THE BEGINNING.

1. WHAT ARE STRUCTURED SETTLEMENTS?

STRUCTURED SETTLEMENTS ARE EXTENDED PERIODIC PAYMENTS USED TO PAY PERSONAL INJURY AND WORKERS COMPENSATION CLAIMS.

THEY ARE GENERALLY FUNDED THROUGH ANNUITIES SO AS TO GUARANTEE THAT THE MONEY PROMISED AT THE TIME OF THE SETTLEMENT IS THERE WHEN THE PAYMENTS ARE DUE, AND TO TAKE ADVANTAGE OF FEDERAL TAX POLICY THAT ENCOURAGES THE USE OF STRUCTURED SETTLEMENTS TO PAY THESE CLAIMS.

2. WHAT ARE FACTORING COMPANIES?

FACTORING COMPANIES ARE ENTITIES THAT SOLICIT CLAIMANTS OF STRUCTURED SETTLEMENTS BY OFFERING CASH FOR FUTURE PAYMENTS: THEY OFFER THE CLAIMANTS CASH IN EXCHANGE FOR THE CLAIMANTS' SIGNING OVER TO THEM THE PERIODIC PAYMENTS OF THE ANNUITIES.

NONE OF THIS CHANGES THE AMOUNT THE INSURER PAYS THROUGH THE ANNUITY, JUST THE LOCATION OF WHERE THE ANNUITY PAYMENTS GO. THESE TRANSACTIONS ARE ESSENTIALLY TRANSFERS - FOR MONEY - OF THE ANNUITY PAYMENTS.

3. WHY DO WE NEED A LAW TO COVER THESE FACTORING TRANSACTIONS?

WE NEED A LAW TO PROTECT BOTH THE CONSUMERS BEING SOLICITED BY FACTORING COMPANIES AND THE INSURERS FUNDING THE STRUCTURED SETTLEMENTS THAT THESE COMPANIES ARE BUYING.

I KNOW - SINCE WHEN DOES THE INSURANCE INDUSTRY WANT LAWS TO PROTECT CONSUMERS? THAT SOUNDS GOOD BECAUSE IT PANDERS TO A LOT OF PERCEPTIONS PEOPLE HAVE ABOUT INSURERS. BUT THE REALITY IS, WE ACCEPT EXTENSIVE REGULATION OF OUR INDUSTRY DESIGNED TO ENSURE THAT WE DEAL FAIRLY WITH CONSUMERS. THAT'S WHY THE INSURANCE DEPARTMENT AUDITS OUR MARKETING AND CLAIMS PRACTICES. THAT'S WHY WE HAVE LAWS LIKE THE UNFAIR

INSURANCE PRACTICES ACT, AND THAT'S WHY WE HAVE A SPECIAL "BAD FAITH" STATUTE THAT APPLIES TO INSURERS IN DEALING WITH THEIR INSUREDS.

FACTORING COMPANIES, ON THE OTHER HAND, OPERATE WITHOUT ANY PARAMETERS. THEY ARE PUSHING PRETTY COMPLEX FINANCIAL TRANSACTIONS - TAKE A LOOK AT A FACTORING COMPANY'S PURCHASE AGREEMENT. THEY ARE DOING THIS WITHOUT ANY DISCLOSURES OR PROTECTIONS FOR CONSUMERS, AND WITHOUT ANY REGULATION OR JUDICIAL OVERSIGHT.

FOR CONSUMERS, THE PROBLEM IS ONE OF KNOWLEDGE AND DISCLOSURE: THEY NEED TO KNOW THE TRUE TERMS OF THE DEAL.

THE FACTORING COMPANIES SAY THEY ARE PERFORMING A VALUABLE SERVICE FOR CONSUMERS. THEY TRY TO PORTRAY THE CONSUMER PROBLEM AS ONE CREATED BY INSURERS AND TRIAL LAWYERS, WITH FACTORING COMPANIES THE PROTECTORS OF CONSUMERS WHO HAVE GOTTEN INTO BAD SETTLEMENTS. THEY TRY TO PORTRAY ANY MEANINGFUL REGULATION OF THEIR CONDUCT AS ANTI-CONSUMER.

DON'T BE DECEIVED. THE CONSUMER PROBLEM HERE IS A REAL ONE. ATTACHED TO MY TESTIMONY IS THE JANUARY ARTICLE FROM **U.S. NEWS AND WORLD REPORT**. IT CHRONICLES THE CONSUMER ABUSES THAT HAVE BEEN HAPPENING. CONSUMER PROTECTION IS NEEDED HERE - NOT TO PUT FACTORING COMPANIES OUT OF BUSINESS, BUT TO MAKE SURE THAT THESE TRANSACTIONS ARE FAIR ONES.

FOR INSURERS, THE PROBLEM IS MAINLY ONE OF TAX LIABILITY: THESE FACTORING TRANSACTIONS CREATE POTENTIAL TAX LIABILITIES FOR THE INSURERS WHO FUND THE STRUCTURED SETTLEMENTS.

WE NEED PROTECTION FROM THAT. OF COURSE, PROTECTING INSURERS HERE PROTECTS THE VIABILITY OF STRUCTURED SETTLEMENTS, WHICH IS GOOD FOR CONSUMERS: IF INSURERS CAN'T HAVE PROTECTION FROM POTENTIAL TAX LIABILITIES, THEY SIMPLY WON'T OFFER STRUCTURED SETTLEMENTS, OR WILL HAVE TO REDUCE THE AMOUNTS TO COVER THAT POTENTIAL LIABILITY.

4. WHY DO WE NEED THE PROTECTIONS IN SENATE BILL 818?

THE BILL MEETS THE NEEDS OF CONSUMERS AND INSURERS WHILE STILL ALLOWING FOR LEGITIMATE FACTORING TRANSACTIONS.

FIRST, THE BILL REQUIRES COURT APPROVAL OF ANY BUY-OUT, WITH THE CLAIMANT REQUIRED TO GET INDEPENDENT LEGAL ADVICE. THIS MATCHES THE REQUIREMENT PENNSYLVANIA HAS FOR LOTTERY WINNERS LOOKING TO SELL THEIR ANNUITIES. IT SEEMS INCONGRUOUS TO ME THAT WE WOULD GIVE GREATER PROTECTION AND SCRUTINY TO LOTTERY WINNERS THAN TO THOSE WHO HAVE BEEN INJURED.

SECOND, THE BILL REQUIRES FULL DISCLOSURE OF THE VALUE AND ESSENTIAL TERMS OF ANY BUY-OUT. THESE ARE SIMILAR TO THOSE

REQUIRED OF INSURERS OR BANKS WHEN THEY ENTER INTO COMPLICATED FINANCIAL TRANSACTIONS WITH CONSUMERS.

THIRD, THE BILL REQUIRES A "FINANCIAL HARDSHIP" SHOWING. THIS ANSWERS THE TAX PROBLEMS RAISED BY THE TREASURY DEPARTMENT. IN FACT, THE HARDSHIP LANGUAGE IN THE BILL MATCHES THAT IN THE TREASURY DEPARTMENT'S PROPOSED LEGISLATION, AND THE BILL PROVIDES THAT IF A DIFFERENT FEDERAL STANDARD IS ULTIMATELY ENACTED, THAT LANGUAGE WOULD APPLY. THIS HARDSHIP STANDARD STILL RECOGNIZES THAT A CLAIMANT'S NEEDS MAY CHANGE, AND IT ALLOWS THAT CHANGE TO BE ADDRESSED BY A KNOWLEDGEABLE AND NEEDED "CASHING OUT."

FOURTH, THE BILL REQUIRES THE CONSENT OF THE INSURERS THAT ARE PARTIES TO THE STRUCTURED SETTLEMENTS,¹ BUT ONLY IF THE TRANSFER WOULD UPEND THE TERMS OF THE STRUCTURED SETTLEMENT. FURTHER, THE BILL STATES THAT INSURERS CANNOT UNREASONABLY WITHHOLD CONSENT,² AND THAT THEIR CONSENT IS NOT NEEDED ONCE A FAVORABLE TAX RULING IS IN PLACE.

5. WHAT'S THE CONTROVERSY ABOUT THE BILL?

FRANKLY, I DON'T THINK THERE IS A REAL CONTROVERSY HERE, AT LEAST NOT WHEN YOU LOOK AT THE REMARKABLY BROAD COALITION OF PEOPLE WHO SUPPORT THE BILL.

THE PENNSYLVANIA TRIAL LAWYERS ASSOCIATION SUPPORTS THE BILL. THAT'S THE GROUP THAT REPRESENTS THE CONSUMERS WHO ENTER INTO THE STRUCTURED SETTLEMENTS.

THE ATTORNEY GENERAL SUPPORTS THE BILL, IN FACT, HE CAME UP WITH AMENDMENTS IN THE SENATE THAT STRENGTHENED IT. THE RIDGE ADMINISTRATION HAS TAKEN A "NOT OPPOSE" STANCE.

THE HOSPITAL ASSOCIATION SUPPORTS THE BILL, THEY SEE IT AS HELPING TO PROTECT VICTIMS WHO USE STRUCTURED SETTLEMENTS TO RESOLVE MEDICAL MALPRACTICE CLAIMS.

GROUPS REPRESENTING THE DISABLED COMMUNITY SUPPORT THE BILL. YOU WILL HEAR LATER TODAY FROM TOM COUNTEE, THE EXECUTIVE DIRECTOR OF THE NATIONAL SPINAL CORD INJURY ASSOCIATION. AND NATIONALLY, SO DO CONSUMER GROUPS SUPPORT THE REFORMS IN THE BILL AND MORE; THEY INCLUDE SUCH GROUPS AS THE CONSUMER FEDERATION OF AMERICA AND THE NATIONAL INSURANCE CONSUMER ORGANIZATION.

THESE ARE ALL GROUPS THAT REPRESENT THE PEOPLE THE FACTORING COMPANIES CLAIM THEY ARE TRYING TO SERVE AND PROTECT FROM INSURERS. WELL, THE FACTORING COMPANIES MAY NOT WANT TO HEAR IT, BUT THESE GROUPS SUPPORT THIS BILL NOT BECAUSE OF SOME CONCERN FOR INSURERS, ^W BUT BECAUSE THE BILL ANSWERS THE PROBLEMS FACED BY CONSUMERS WHO COUNT ON STRUCTURED SETTLEMENTS TO MEET THEIR NEEDS.

EVEN J.G.WENTWORTH, THE LARGEST FACTORING COMPANY IN THE COUNTRY,^A AND THE ONLY ONE LOCATED IN PENNSYLVANIA,^W ACCEPTS THE BILL. SO MUCH FOR THE ARGUMENT THAT THE BILL IS AN ATTEMPT TO OUTLAW FACTORING TRANSACTIONS: THE MAJOR PLAYER IN THIS INDUSTRY ACCEPTS IT.

THE ONLY OPPONENTS OF THE BILL ARE A HANDFUL OF OTHER FACTORING COMPANIES. WE HAD SOME EXTENSIVE DEBATE IN THE SENATE, AND WE HAD SOME MEETINGS AND CORRESPONDENCE WITH THEM, SO I'M FAMILIAR WITH THEIR ARGUMENTS. SINCE I WON'T GET REBUTTAL TIME TODAY, I'D LIKE TO TOUCH ON THOSE ARGUMENTS NOW.

6. WHAT ARE THE ARGUMENTS OR OBJECTIONS OF THE COMPLAINING FACTORING COMPANIES?

THEY START WITH THE PITCH THAT THEY CAN ACCEPT "85%" OF WHAT'S IN THE BILL. SOUNDS REASONABLE. UNFORTUNATELY, ONE MAN'S 85%^{percent} IS ANOTHER MAN'S 15%^{percent}. WHEN YOU LOOK AT THEIR OBJECTIONS, THEY REALLY WANT TO GUT MANY OF THE BILL'S PROTECTIONS - OR JUST MAKE SURE THAT NOTHING HAPPENS.

- REGULATE INSURERS

THIS IS MY FAVORITE: THE COMPLAINING FACTORING COMPANIES WANT THE BILL'S DISCLOSURES AND INDEPENDENT COUNSEL

REQUISITE TO APPLY WHEN GETTING INTO STRUCTURED SETTLEMENTS AS WELL AS WHEN GETTING OUT. THAT'S A RED HERRING - IF YOU CAN'T DEFEND YOUR ACTIONS, RAISE SUSPICIONS ABOUT OTHERS.

THE SHORT ANSWER - AND THAT'S ALL THIS DESERVES - IS TO REMEMBER THE REGULATORY AND JUDICIAL OVERSIGHT THAT APPLIES TO INSURERS, OVERSIGHT TOTALLY LACKING WITH FACTORING COMPANIES. IF FACTORING COMPANIES WANT TO BE SUBJECT TO THE SAME REGULATIONS - INCLUDING LICENSURE, OVERSIGHT OF FINANCIAL AND MARKETING PRACTICES AND RATE SETTING - AND IF THEY WANT THAT BAD FAITH STATUE TO APPLY TO THEM, TOO - WELL, MAYBE WE COULD TALK.

- ATTACK INSURERS AND EVERYBODY ELSE

THIS IS A COUSIN OF REGULATING INSURERS, AND IT PROBABLY SOUNDS BETTER. THE COMPLAINING FACTORING COMPANIES CLAIM WE WANT TO RESTRICT THEIR TRANSFERS BECAUSE IT COSTS US MONEY. HOW? WITH OR WITHOUT A TRANSFER, WE PAY THE SAME AMOUNT ON THE SAME SCHEDULE. YES, WE HAVE A POTENTIAL TAX LIABILITY, BUT THE AMOUNT OF THE SETTLEMENT REMAINS THE SAME.

THEY ALSO LIKE TO CLAIM THEY ARE PROVIDING A VALUABLE CONSUMER SERVICE BECAUSE SOME STRUCTURED SETTLEMENTS AREN'T A GOOD DEAL OR CAN BECOME OUTDATED. IN SOME INSTANCES, THEY CLAIM THESE SETTLEMENTS ARE A CONSPIRACY BETWEEN INSURERS, AGENTS AND TRIAL LAWYERS.

LET'S USE SOME LOGIC ON THIS ONE. NO FACTORING COMPANY OFFERS A CONSUMER MORE MONEY THAN HE GETS UNDER A STRUCTURED SETTLEMENT. JUST THE OPPOSITE: THE AMOUNT IS ALWAYS LESS, WITH ONLY THE TIMING BEING CHANGED. AND IF IT IS SUCH A CONSPIRACY, WHY DO DISABILITY AND CONSUMER GROUPS SUPPORT BILLS LIKE THIS ONE AND THE FEDERAL BILLS?

- **LIMIT COURT APPROVAL**

THE COMPLAINING FACTORING COMPANIES DON'T WANT COURT APPROVAL UNLESS THE ORIGINAL SETTLEMENT WAS ALSO APPROVED BY A COURT, OR UNLESS THE FACTORING TRANSACTION IS OVER \$25,000. WHAT THAT MEANS IS, THEY WANT TO EXCLUDE ABOUT 90% OF ALL FACTORING TRANSACTIONS FROM COURT APPROVAL.

THE COURT APPROVAL STANDARD ISN'T OUR CREATION. IT COMES DIRECTLY FROM THE LOTTERY LAW, WHERE IT HASN'T BEEN A PROBLEM FOR CONSUMERS OR THE COURTS OR FACTORING COMPANIES. WITHOUT IT, THE BILL'S PROTECTIONS FOR CONSUMERS ARE MEANINGLESS: SINCE FACTORING COMPANIES ARE NOT REGULATED OR AUDITED OR MONITORED BY THE STATE, HOW ELSE CAN YOU KNOW IF THEY ARE COMPLYING WITH THE BILL?

- **EXEMPT "LOANS"**

THE FACTORING COMPANIES WANT TO CREATE A LOOPHOLE - EXEMPT THEIR TRANSACTIONS IF THEY ARE SET UP AS "LOANS" WITH THE

ANNUITY PROCEEDS PAYING OFF THE LOAN. NICE TRY - BUT IT LEAVES INSURERS WITH THE SAME POTENTIAL TAX LIABILITY, AND IT LEAVES CONSUMERS WITHOUT THE BILL'S PROTECTIONS.

- EASE UP ON THE FINANCIAL HARDSHIP STANDARD

THE COMPLAINING FACTORING COMPANIES WANT TO SOFTEN THE FINANCIAL HARDSHIP STANDARD BY REPLACING IT WITH A "BEST INTEREST" STANDARD.

THE ARGUMENT WE HEARD IN THE SENATE WAS THAT THE HARDSHIP STANDARD IS TOO RESTRICTIVE: IT WOULD KEEP, AND I QUOTE FROM THE FACTORING COMPANIES, THE "RICHEST GUY IN TOWN" FROM CASHING OUT ON HIS STRUCTURED SETTLEMENT, OR THE OLD GUY WHO WANTS TO TAKE HIS GRANDKIDS TO DISNEY WORLD.

BUT LET'S GET REAL: THE RICHEST, (OR THE OLDEST), GUY IN TOWN DOESN'T ENTER INTO A STRUCTURED SETTLEMENT IN THE FIRST PLACE. AND FACTORING COMPANIES AREN'T MARKETING TO THE RICHEST GUY IN TOWN ANYWAY. AT LEAST ACCORDING TO ONE FACTORING COMPANY, THE AVERAGE INCOME OF THEIR CLIENTS IS \$20,000 - INCLUDING WHAT THEY GET FROM THE STRUCTURED SETTLEMENT.

NOW, I PERSONALLY BELIEVE THE HARDSHIP STANDARD IS THE BETTER ONE, AND I'M NOT ALONE ON THIS: SO DOES THE U.S. TREASURY DEPARTMENT, THE PLAINTIFF'S BAR AND THE DISABILITY

AND CONSUMER GROUPS. THE FACTORING COMPANIES SAY THOSE OTHER GROUPS WOULD BE OKAY WITH A LESSER STANDARD - BUT THOSE OTHER GROUPS AREN'T SAYING THAT.

THE POINT IS, THIS STANDARD IS NOT AN INSURANCE INDUSTRY CREATION. IT'S THE TREASURY DEPARTMENT'S PROPOSAL. AS THAT IS THE AGENCY IN CHARGE OF TAX POLICY, IT MAKES SENSE TO STAY WITH THIS STANDARD AS A SAFE HARBOR FOR THOSE OF US FACING POTENTIAL TAX LIABILITY. AND REMEMBER, THE BILL AUTOMATICALLY CHANGES TO WHATEVER STANDARD IS ULTIMATELY ADOPTED IN WASHINGTON.

- DO AWAY WITH INSURER VETO POWER

THAT'S A CATCHY PHRASE, BUT IT IS INACCURATE. AGAIN, SENATE BILL 818 REQUIRES AN INSURER'S CONSENT TO A TRANSFER OF A STRUCTURED SETTLEMENT ONLY IF THE TRANSFER VIOLATES THE TERMS OF THAT SETTLEMENT - AND THE INSURER CANNOT UNREASONABLY WITHHOLD IT.

THE COMPLAINING FACTORING COMPANIES SAY THIS IS TOO HARSH, THAT INSURERS WILL NEVER GIVE CONSENT. HOGWASH. FIRST, AS A GENERAL MATTER OF CONTRACT LAW, ONE PARTY TO A CONTRACT CAN'T UNILATERALLY CHANGE IT - THAT'S WHAT IS CALLED A VIOLATION. IT ISN'T ~~HARSH~~ TO REQUIRE THAT BOTH PARTIES TO A CONTRACT AGREE TO ANY CHANGES - IT'S COMMON SENSE.

SECOND, THE BILL REQUIRES THAT THE INSURER CANNOT UNREASONABLY WITHHOLD ITS CONSENT, A LIMIT ON INSURERS FOUND IN NO OTHER STATE WITH A CONSENT REQUISITE. THE FACTORING COMPANIES SAY WE WILL NEVER GIVE CONSENT. THEY OBVIOUSLY DON'T KNOW OUR REGULATORY SYSTEM OR OUR TRIAL BAR. OF COURSE, IF A JUDGE THINKS AN INSURER IN A PARTICULAR CASE IS ACTING REASONABLY IN WITHHOLDING CONSENT, MAYBE IT IS.

THIRD, THE CONSENT REQUISITE GOES AWAY ONCE THE TAX ISSUE IS RESOLVED, EVEN IF THE TRANSFER VIOLATES THE TERMS OF THE SETTLEMENT. SO WE ARE OUT OF THE PICTURE ONCE THE TAX ISSUE IS RESOLVED, NO MATTER WHAT LANGUAGE WE PUT IN THE STRUCTURED SETTLEMENT AGREEMENT. OF COURSE, ALL THE CONSUMER PROTECTIONS WOULD STILL APPLY.

- THERE REALLY IS NO TAX PROBLEM

DAVE LOWMAN IS HERE TO GIVE A TAX LAWYER'S EXPERTISE, BUT LET ME TAKE A QUICK STAB AT A LAYMAN'S ANALYSIS.

STRUCTURED SETTLEMENTS ARE GENERALLY FUNDED BY AN INSURER PURCHASING AN ANNUITY, WITH THE ANNUITY INSURER THEN MAKING THE PAYMENTS TO THE CLAIMANT. THE IRS, AT SECTION 104 OF THE INTERNAL REVENUE CODE, SAYS THOSE PERIODIC PAYMENTS ARE TAX-EXEMPT FOR THE CLAIMANT WHO IS COLLECTING UNDER WORKERS COMPENSATION OR A PERSONAL INJURY SETTLEMENT.

IT ALSO SAYS, AT SECTION 130 OF THE CODE, THAT THE INCOME THE ANNUITY INSURER GETS WHEN THE ANNUITY IS BOUGHT IS ALSO TAX-EXEMPT - SO LONG AS THE ANNUITY PAYMENTS ARE NOT ACCELERATED, AND SO LONG AS THEY GO ONLY TO CLAIMANTS WHO QUALIFY UNDER SECTION 104.

WITH FACTORING AGREEMENTS, THE PAYMENTS HAVE ARGUABLY BEEN ACCELERATED, AT LEAST AS TO THE CLAIMANT - AND THE ANNUITY INSURER IS ARGUABLY (BUT UNINTENTIONALLY) NO LONGER MAKING PAYMENT TO A SECTION 104 CLAIMANT, SINCE THE MONEY IS GOING TO THE FACTORING COMPANY.

THAT'S THE TAX EXPOSURE FOR INSURERS: IT IS HARD TO CLAIM THAT YOU FIT WITHIN THE SECTION 130 EXEMPTION WHEN THE PAYMENTS HAVE BEEN ACCELERATED AS TO THE ORIGINAL CLAIMANT, AND WHEN THE NEW PARTY GETTING THE MONEY - THE FACTORING COMPANY - IS NOT A SECTION 104 CLAIMANT, THE TWO CONDITIONS SET FORTH IN SECTION 130 FOR THE TAX EXEMPTION.

OF COURSE, THE SIMPLEST WAY OF EXPLAINING THE TAX EXPOSURE IS TO QUOTE FROM THE TREASURY DEPARTMENT'S MARCH 18 STATEMENT ON THIS: "THE ADMINISTRATION BELIEVES THAT THE FACTORING TRANSACTION UNDERMINES THE PURPOSE OF THE SPECIAL FAVORABLE TAX RULES APPLICABLE TO STRUCTURED SETTLEMENTS."

THE FACTORING COMPANIES QUOTE A FORMER TREASURY DEPARTMENT OFFICIAL THEY RETAINED TO SAY WE WORRY TOO MUCH.

BUT CURRENT TREASURY DEPARTMENT OFFICIALS ARE CALLING THIS A TAX PROBLEM - AND THEY ARE THE ONES, NOT INSURERS, WHO ARE PROPOSING A 50% TAX AND A FINANCIAL HARDSHIP STANDARD TO LIMIT FACTORING TRANSACTIONS. IT IS EASY TO MINIMIZE SOMEBODY ELSE'S TAX EXPOSURE - BUT WHEN IT IS YOUR OWN, YOU HAVE TO LISTEN TO THE TREASURY DEPARTMENT.

DAVE WILL GIVE YOU MORE DETAILS ON THIS, AND HE CAN TALK ABOUT SOME RECENT DEVELOPMENTS AT THE IRS, BUT THAT'S THE CORE OF IT: THESE FACTORING TRANSACTIONS CLEARLY GO AGAINST THE TAX POLICY THAT LED TO STRUCTURED SETTLEMENTS, AND THE IRS DOESN'T LIKE IT. MY EXPERIENCE IS THAT WE BECOME AN EASY TARGET FOR ANGRY REGULATORS.

- THIS IS REALLY A WASHINGTON PROBLEM

THIS IS A COUSIN TO THE TAX PROBLEM: THE FACTORING COMPANIES SAY, IF INSURERS ARE WORRIED ABOUT FEDERAL TAX LIABILITY, WAIT FOR THE FEDERAL GOVERNMENT TO DO SOMETHING.

BUT THAT DOESN'T DO ANYTHING FOR THE CONSUMER, AND IT DOESN'T DO ANYTHING FOR THE INSURER IN THE INTERIM - EXCEPT NEEDLESSLY PUT THE INSURER AND THE CONSUMER AT ODDS. OF COURSE, THIS WOULD NOT BE THE FIRST TIME PENNSYLVANIA HAS SET UP PROTECTIONS IN ADVANCE OF WASHINGTON - WITNESS LAST YEAR'S MANAGED CARE REFORM AND MENTAL HEALTH PARITY LAWS. SOMETIMES THAT'S THE ONLY WAY TO GET WASHINGTON TO ACT.

- THE BILL IS JUST TOO ONEROUS

YES, SENATE BILL 818 MAY BE TOO ONEROUS FOR SOME FACTORING COMPANIES - WHO WANT ONLY TO CONTINUE IN AN ENVIRONMENT WITH NO PARAMETERS, NO REGULATION, NO OVERSIGHT AND NO PROTECTIONS FOR THOSE THEY DEAL WITH.

BUT THE BILL IS NOT ONEROUS FOR CONSUMERS. IT GIVES THEM PROTECTIONS THEY NEED, AND ITS CORNERSTONES OF DISCLOSURE AND COURT APPROVAL HAVE BEEN SHOWN TO WORK IN PENNSYLVANIA. THE BILL ALSO PROVIDES PROTECTIONS THAT INSURERS NEED FROM A POTENTIAL TAX LIABILITY.

IN THE END, THE BEST CASE I CAN MAKE FOR THE BILL IS TO ASK WHAT YOU WOULD DO TO AN INSURER WHO, A COUPLE OF YEARS AFTER ENTERING INTO A STRUCTURED SETTLEMENT WITH A CLAIMANT (WHO PROBABLY HAD A LAWYER), CALLED UP THE CLAIMANT AND SAID, "HOW ABOUT SOME QUICK CASH - AND DON'T WORRY, NOBODY IS EVER GOING TO KNOW THAT WE ARE DOING THIS OR WHAT THE TERMS ARE?"

THIS IS A GOOD BILL THAT FAIRLY, THOROUGHLY AND EFFICIENTLY PROTECTS ALL PARTIES, INCLUDING THE FACTORING COMPANIES WHO WANT TO LEGITIMATELY SERVE CONSUMERS, NOT JUST ENGAGE IN PREDATORY PRACTICES. I HOPE YOU GIVE IT FULL CONSIDERATION AND STRONG SUPPORT.