

**HB**

**97**

22-LS0329\C  
Luckhaupt  
2/26/01

**CS FOR HOUSE BILL NO. 97( )**

**IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-SECOND LEGISLATURE - FIRST SESSION**

**BY**

**Offered:  
Referred:**

**Sponsor(s): REPRESENTATIVE FOSTER**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to the transfer of structured settlements."**

2 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

3 **\* Section 1. AS 09.68 is amended by adding new sections to read:**

4 **Sec. 09.68.200. Conditions to transfers of structured settlement payment**  
5 **rights and structured settlement agreements. (a) A transfer of structured**  
6 **settlement payment rights is not effective and a structured settlement obligor or**  
7 **annuity issuer is not required to make a payment directly or indirectly to a transferee**  
8 **of structured settlement payment rights unless, not less than 30 days before the date on**  
9 **which the payee first incurs an obligation with respect to the transfer, the transferee**  
10 **has provided to the payee, the structured settlement obligor, and the annuity issuer, a**  
11 **disclosure statement in bold type, no smaller than 14 points,**

12 (1) specifying the amounts and due dates of the structured settlement  
13 payments to be transferred;

14 (2) specifying the aggregate amount of the payments;

15 (3) specifying the discounted present value of the payments, together

1 with the discount rate used in determining the discounted present value;

2 (4) specifying the gross amount payable to the payee in exchange for  
3 the payments;

4 (5) specifying an itemized listing of all broker's commissions, service  
5 charges, application fees, processing fees, closing costs, filing fees, referral fees,  
6 administrative fees, legal fees, notary fees, and other commissions, fees, costs,  
7 expenses, and charges payable by the payee or deductible from the gross amount  
8 otherwise payable to the payee;

9 (6) specifying the net amount payable to the payee after deduction of  
10 all commissions, fees, costs, expenses, and charges described in (5) of this subsection;

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

13 (8) specifying the amount of any penalty and the aggregate amount of  
14 any liquidated damages, including penalties, payable by the payee in the event of a  
15 breach of the transfer agreement by the payee;

16 (9) containing a warning that there may be tax consequences for the  
17 payee resulting from the transfer and, if those tax consequences are known or can be  
18 reasonably ascertained, disclosing the consequences;

19 (10) containing a warning that the payee should obtain independent  
20 professional advice regarding the legal, tax, and financial implications of the transfer  
21 and, if the payee chooses to obtain that advice, specifying that the transferee will  
22 reimburse up to \$500 of those expenses.

23 (b) If a structured settlement was intended to benefit a dependent of the payee  
24 in addition to the payee, then a transfer of structured settlement payment rights is not  
25 effective without court approval of the transfer after a finding by the court that the  
26 transfer is in the best interests of the dependent.

27 (c) Nothing in AS 09.68.200 - 09.68.230 authorizes the transfer of structured  
28 settlement payment rights when the transfer is otherwise illegal or improper under the  
29 terms of the structured settlement agreement.

30 (d) A provision in a transfer agreement giving a transferee power to confess  
31 judgment against a payee is unenforceable to the extent the amount of the judgment

1 would exceed the amount paid by the transferee to the payee, less any payments  
2 received from the structured settlement obligor or the payee.

3 **Sec. 09.68.210. Jurisdiction; procedure for approval of transfers.** (a) The  
4 superior court where the action giving rise to the structured settlement was maintained  
5 or could have been maintained has jurisdiction over an application for approval under  
6 AS 09.68.200(b) of a transfer of structured settlement payment rights.

7 (b) Not less than 30 days before the scheduled hearing on an application for  
8 authorization of a transfer of structured settlement payment rights under  
9 AS 09.68.200, the transferee shall file with the court and serve on any other  
10 government authority that previously approved the structured settlement and all  
11 interested parties a notice of the proposed transfer and the application for its  
12 authorization. The notice must include

- 13 (1) a copy of the transferee's application to the court;  
14 (2) a copy of the transfer agreement;  
15 (3) a copy of the disclosure statement required under AS 09.68.200;  
16 (4) notification that an interested party is entitled to support, oppose, or  
17 otherwise respond to the transferee's application, either in person or by counsel, by  
18 submitting written comments to the court or by participating in the hearing; and  
19 (5) notification of the time and place of the hearing and notification of  
20 the manner in which and the time by which written responses to the application must  
21 be filed in order to be considered by the court.

22 (c) Written responses to the application must be filed within 15 days after  
23 service of the transferee's notice.

24 **Sec. 09.68.220. No waiver and no penalty.** (a) The provisions of  
25 AS 09.68.200 - 09.68.230 may not be waived.

26 (b) A payee who proposes to make a transfer of structured settlement payment  
27 rights may not incur a penalty, forfeit an application fee or other payment, or  
28 otherwise incur any liability to the proposed transferee based on the failure of the  
29 transfer to satisfy the conditions of AS 09.68.200 - 09.68.230.

30 **Sec. 09.68.230. Definitions.** In AS 09.68.200 - 09.68.230,

- 31 (1) "annuity issuer" means an insurer that has issued an annuity

1 contract to be used to fund periodic payments under a structured settlement;

2 (2) "dependent" means a payee's spouse or minor child or another  
3 family member or another person for whom the payee is legally obligated to provide  
4 support, including spousal maintenance;

5 (3) "discounted present value" means, with respect to a proposed  
6 transfer of structured settlement payment rights, the fair present value of future  
7 payments, as determined by discounting the payments to the present using the most  
8 recently published applicable federal rate for determining the present value of an  
9 annuity, as issued by the United States Internal Revenue Service;

10 (4) "independent professional advice" means advice of an attorney,  
11 certified public accountant, actuary, or other professional adviser

12 (A) who is engaged by a payee to render advice concerning the  
13 legal, tax, and financial implications of a transfer of structured settlement  
14 payment rights;

15 (B) who is not in any manner affiliated with or compensated by  
16 the transferee of the transfer except for the reimbursement available under  
17 AS 09.68.200; and

18 (C) whose compensation for providing the advice is not  
19 affected by whether a transfer occurs or does not occur;

20 (5) "interested parties" means the payee, a beneficiary designated  
21 under the annuity contract to receive payments following the payee's death or, if the  
22 designated beneficiary is a minor, the designated beneficiary's parent or guardian, the  
23 annuity issuer, the structured settlement obligor, and any other party that has  
24 continuing rights or obligations under the structured settlement;

25 (6) "payee" means an individual who is receiving tax-free damage  
26 payments under a structured settlement and proposes to make a transfer of payment  
27 rights under the structured settlement;

28 (7) "qualified assignment agreement" means an agreement providing  
29 for a qualified assignment as provided by 26 U.S.C. 130 (United States Internal  
30 Revenue Code), as amended through December 31, 1998;

31 (8) "settled claim" means the original tort claim or workers'

1 compensation claim resolved by a structured settlement;

2 (9) "structured settlement" means an arrangement for periodic payment  
3 of damages for personal injuries established by settlement or judgment in resolution of  
4 a tort claim or for periodic payments in settlement of a workers' compensation claim;

5 (10) "structured settlement agreement" means the agreement,  
6 judgment, stipulation, or release embodying the terms of a structured settlement,  
7 including the rights of the payee to receive periodic payments;

8 (11) "structured settlement obligor" means the party that has the  
9 continuing periodic payment obligation to the payee under a structured settlement  
10 agreement or a qualified assignment agreement;

11 (12) "structured settlement payment rights" means rights to receive  
12 periodic payments, including lump-sum payments, under a structured settlement,  
13 whether from the settlement obligor or the annuity issuer, where

14 (A) the payee or any other interested party is domiciled in the  
15 state;

16 (B) the structured settlement agreement was approved by a  
17 court in the state; or

18 (C) the settled claim was pending before the courts of this state  
19 when the parties entered into the structured settlement agreement;

20 (13) "transfer" means a sale, assignment, pledge, hypothecation, or  
21 other form of alienation or encumbrance made by a payee for consideration;

22 (14) "transfer agreement" means the agreement providing for transfer  
23 of structured settlement payment rights from a payee to a transferee;

24 (15) "transferee" means a person who is receiving or will receive  
25 structured settlement payment rights resulting from a transfer.

# Alaska House of Representatives

FEB 12 2001

Richard Foster  
P.O. Box 1630  
Nome, AK 99762  
907-443-5036  
Fax 907-2162



During Session  
State Capitol Rm. 410  
Juneau, AK 99801-1182  
907-465-3789  
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**Majority Whip**

**House Bill 97**

**"An Act relating to court approval of the purchase of structured settlements."**

## **Sponsor's Statement**

House Bill 97 was introduced to address a concern brought forward by some of the states trial lawyers.

Apparently firms have been contacting recipients of structure settlements and offering to buy those settlements for a small portion of their value. When a person living in a village is contacted, they may not fully understand the implications of the purchase and realize what they are giving up in terms of long term benefit versus a quick cash payoff.

This act would allow the reassignment of a structured settlement only after it had been approved by the courts and outlines the considerations that must be made before such a transfer is approved.

The specific provisions of the bill are outlined in the analysis provided by Legislative Legal Services.

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101

State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

FEB 12 2001

## MEMORANDUM

February 9, 2001

**SUBJECT:** Sectional Summary of HB 97

**TO:** Representative Richard Foster

**FROM:** Gerald P. Luckhaupt *GLP*  
Legislative Counsel

You have requested a sectional summary of the above-described bill. As a preliminary matter, please note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill - the bill itself is the best statement of its contents.

Section 1 of the bill creates AS 09.68.200 which provides that structured settlements may not be transferred without court approval of the transfer. The court may not approve a transfer unless

- the structured settlement arose from an action filed in Alaska or which could have been filed in Alaska or the payee of the structured settlement is domiciled in Alaska;
- the transfer complies with state and federal law;
- the transferee has provided a disclosure statement to the payee as required by proposed AS 09.68.200(a)(3);
- the transfer is in the best interests of the payee and the payee's dependents;
- the payee has received independent professional advice regarding the transfer;
- notice has been provided to the payer (the annuity issuer and obligor);
- choice of law forum that complies with proposed AS 09.68.200(a)(7) is included in the transfer agreement;
- transferee must indemnify the annuity issuer and obligor for all liability and costs.

Creates AS 09.68.210 which provides the procedure for approval of a transfer of a structured settlement.

Creates AS 09.68.220 which provides that the provisions of AS 09.68.200 - 09.68.230 may not be waived nor may a penalty be charged the payee if the proposed transfer does not meet the requirements of AS 09.68.200 - 09.68.230.

Creates AS 09.68.230 which provides definitions.

GPL:lmb  
01-042.lmb

from the year 2000 date change and caused directly or indirectly by a failure of an electronic computing device.

(f) In this section,

(1) "business" means a person or a for profit or a nonprofit entity engaged in a trade, service, profession, or activity with the goal of receiving a financial benefit in exchange for the provision of services, goods, or other property;

(2) "electronic computing device" includes any computer hardware or software, a computer chip, an embedded chip, process control equipment, or other information system that is used to capture, store, manipulate, or process data;

(3) "year 2000 date change" includes processing date or time data from, into, and between the Twentieth and Twenty-First Centuries, and leap-year calculations; in this paragraph, "processing" includes calculating, comparing, sequencing, displaying, and storing. (§ 2 ch 79 SLA 1999)

**Postponed repeal effective date.** — Under § 3, ch. 79, SLA 1999, this section is repealed January 1, 2006.

**Cross references.** — For effect of (c) of this section on Alaska Rule of Civil Procedure 23, see § 4, ch. 79, SLA 1999 in the 1999 Temporary & Special Acts.

**Effective dates.** — Section 6, ch. 79, SLA 1999

makes this section effective June 30, 1999, in accordance with AS 01.10.070(c).

**Editor's notes.** — Section 5, ch. 79, SLA 1999 provides that this section "applies to a cause of action arising from any failure described in" this section "that accrues on or after June 30, 1999 but before January 1, 2006."

**Sec. 09.65.270. Civil immunity related to the sale or transfer of a firearm.**

(a) A person may not bring a civil action for damage or harm caused by an individual for whom a federal firearm certificate was executed if the action arises from the execution of the federal firearm certificate by a public official with the authority under federal law to execute the certificate and the individual causing the damage or harm

(1) is the transferee of the firearm; and

(2) at the time the certificate is executed either

(A) has a permit to carry a concealed handgun issued under AS 18.65.700; or

(B) meets the qualifications imposed under AS 18.65.705(1) — (5) for obtaining a concealed handgun permit.

(b) In this section, "federal firearm certificate" means the certificate required on a federal "Form 1 (Firearms)," "Form 4 (Firearms)," or "Form 5 (Firearms)." (§ 1 ch 1 SSSLA 1999)

**Chapter 68. Miscellaneous Provisions.**

**Section**

20. Successive actions

30. Corporate sureties

40. Parties exempt from giving bond

60. Defense not prejudiced by assignment

**Section**

110. Civil liability for shoplifting

115. Bad check civil penalties

120. Definition of death

130. Collection of settlement information

**Sec. 09.68.020. Successive actions.** Successive actions may be maintained upon the same contract or transaction when a new cause of action arises under the contract. (§ 5.01 ch 101 SLA 1962)

**Revisor's notes.** — Formerly AS 09.65.020. Renumbered in 1994.

**Cross references.** — For related court rules, see Civ. R. 13(e) and 15(d).

**Sec. 09.68.030. Corporate sureties.** When, by the laws of the state or by a charter, ordinance, rule, or regulation of a political subdivision, municipality, public corporation, or by a board, body, organization, court, or judge, a recognizance, stipulation, bond, undertaking, or bail in an action, suit, proceeding, or matter conditioned for the faithful performance of an act or duty or for the doing of an act or thing is permitted or required to be given with one or more sureties, it is sufficient compliance if the instrument is

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# FISCAL NOTE

STATE OF ALASKA  
2001 LEGISLATIVE SESSION

BILL NO. HB 97

Revision Date/Time (Note if correction) _____	Dept. Affected _____
Title <u>Transfers of Structured Settlements</u>	BRU <u>Alaska Court System</u>
Sponsor <u>Rep. Foster</u>	Component <u>Trial Courts</u>
Requester <u>House Judiciary</u>	Component No. <u>768</u>

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

FUND SOURCE	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2001) cost: 0.0

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** *(Attach a separate page if necessary)*  
 House Bill 97 will require a superior court hearing for each transfer of a structured settlement that arose from an action filed in Alaska or one that could have been filed in Alaska or one where the payee of the settlement is domiciled in Alaska.  
 The court system does not anticipate a significant fiscal impact from the passage of HB 97 because the number of structured settlement transfers, and thus court hearings, is assumed to be relatively small. If this assumption turns out to be in error, the court system may return to the legislature for additional funding.

Prepared by: <u>Douglas Wooliver</u>	Phone <u>463-4750</u>
Division: <u>Alaska Court System</u>	Date/Time: <u>2/16/01 10:39 a.m.</u>
Approved by: <u>Stephanie Cole</u>	Date: <u>2/16/01</u>
Agency: <u>Alaska Court System</u>	

For distribution information, call the Governor's Legislative Office

# ALASKA STATE LEGISLATURE

## HOUSE JUDICIARY COMMITTEE

Representative Norman Rokeberg, Chairman  
Representative Scott Ogan, Vice-Chairman  
Representative John Coghill  
Representative Jeannette James  
Representative Kevin Meyer  
Representative Ethan Berkowitz  
Representative Albert Kookesh



State Capitol  
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Heather M. Nobrega  
Counsel to Committee

### MEMORANDUM

To: All Judiciary Committee Members

From: Heather Nobrega, Aide *JUN*  
House Judiciary Committee

Date: February 19, 2001

Re: Fiscal notes

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The following fiscal notes have been requested, but have not yet been received:

HB 102: Theft of Propelled Vehicles  
Department of Law  
Department of Public Safety  
Department of Administration-DMV & Public Defender's

HB 97: Purchase of Structured Settlements  
Department of Law

**LESSMEIER & WINTERS**

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**FEB 22 2001**

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February 20, 2001

Representative Ethan Berkowitz State Capital, Room 110 Juneau, Alaska 99801-1182	Representative Kevin Meyer State Capital, Room 404 Juneau, Alaska 99801-1182	Representative Scott Ogan State Capital, Room 108 Juneau, Alaska 99801-1182
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Re: HB 97 - Court Approval For The Purchase Of Structured Settlements

Dear Representatives Berkowitz, Meyer and Ogan.

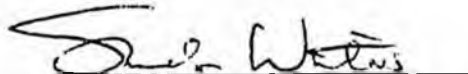
At the Judiciary Committee hearing on 2/19/01, I introduced myself as a lobbyist for State Farm Insurance Companies, and spoke briefly in support of HB 97 and the concept of court approval for transfer of structured settlements. As I mentioned, State Farm's concern with this legislation is the 20 day notice requirement prior to the court hearing. Notice to interested parties is obviously critical, but only meaningful if it provides enough opportunity to gather the necessary information, evaluate the situation, decide whether a response is necessary and prepare for the hearing. State Farm suggests that the notice requirement be changed to 30 days. This extra ten days should have no downside to any of the interested parties, but could be critical in allowing enough time to adequately respond. It is my understanding the sponsor, Representative Foster, is not opposed to this change. If you have any questions about this issue, please feel free to contact me and I will try to answer them.

Also, I realize there were quite a few unanswered questions raised at the hearing that you will be attempting to answer in the next weeks. If you believe State Farm can provide you any information, please do not hesitate to contact me and I will do my best to respond.

Sincerely,

LESSMEIER & WINTERS

By:

  
Sheldon E. Winters

cc: Representative Richard Foster  
Representative Norman Rokeberg, House Judiciary Committee Chairman

SEW/sgw

0015-006/Representatives-HB97.wpd



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## MONEY

### Settling for less

Should accident victims sell their monthly payouts?

BY MARGARET MANNIX

Orion 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, 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

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#### Also on the Web

The National Structured Settlements Trade Association promotes the use of structured settlements as a means of resolving injury, workers' compensation, and other claims using periodic payments.

National Underwriter, a publisher of insurance and financial planning information, examines the House's review of a structured settlement bill.

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 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 insurance 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 received 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 Wentworth, 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 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 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—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 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 garnisheed 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 reneging on their agreements.

In the end, the controversy over factoring companies comes down to a fundamental 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' advertisements 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 request 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. News**



**Offbeat**

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STRUCTURED FINANCIAL ASSOCIATES



FEB 19 2001

AL TAMAGNI, SR.  
Settlement Specialist

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Settlements Trade Association and National  
Association of Settlement Purchasers – 9/11/2000

Proposed  
**MODEL STATE STRUCTURED SETTLEMENT  
PROTECTION ACT**

**SECTION 1. TITLE.** This Act shall be known and referred to as the "Structured Settlement Protection Act."

**SECTION 2. DEFINITIONS.** For purposes of this Act--

"annuity issuer" means an insurer that has issued a contract to fund periodic payments under a structured settlement;

"dependents" include a payee's spouse and minor children and all other persons for whom the payee is legally obligated to provide support, including alimony;

"discounted present value" means the present value of future payments determined by discounting such payments to the present using the most recently published Applicable Federal Rate for determining the present value of an annuity, as issued by the United States Internal Revenue Service;

"gross advance amount" means the sum payable to the payee or for the payee's account as consideration for a transfer of structured settlement payment rights before any reductions for transfer expenses or other deductions to be made from such consideration;

"independent professional advice" means advice of an attorney, certified public accountant, actuary or other licensed professional adviser;

(f) "interested parties" means, with respect to any structured settlement, the payee, any beneficiary irrevocably designated under the annuity contract to receive payments following the payee's death, the annuity issuer, the structured settlement obligor, and any other party that has continuing rights or obligations under such structured settlement;

(g) "net advance amount" means the gross advance amount less the aggregate amount of the actual and estimated transfer expenses required to be disclosed under Section 3(e) of this Act;

(h) "payee" means an individual who is receiving tax free payments under a structured settlement and proposes to make a transfer of payment rights thereunder;

(i) "periodic payments" includes both recurring payments and scheduled future lump sum payments;

(j) "qualified assignment agreement" means an agreement providing for a qualified assignment within the meaning of section 130 of the United States

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Internal Revenue Code, United States Code Title 26, as amended from time to time;

(k) “responsible administrative authority” means, with respect to a structured settlement, any government authority vested by law with exclusive jurisdiction over the settled claim resolved by such structured settlement;

(l) “settled claim” means the original tort claim or workers’ compensation claim resolved by a structured settlement;

(m) “structured settlement” means an arrangement for periodic payment of damages for personal injuries or sickness established by settlement or judgment in resolution of a tort claim or for periodic payments in settlement of a workers’ compensation claim;

(n) “structured settlement agreement” means the agreement, judgment, stipulation, or release embodying the terms of a structured settlement;

(o) “structured settlement obligor” means, with respect to any structured settlement, the party that has the continuing obligation to make periodic payments to the payee under a structured settlement agreement or a qualified assignment agreement;

(p) “structured settlement payment rights” means rights to receive periodic payments under a structured settlement, whether from the structured settlement obligor or the annuity issuer, where –

(i) the payee is domiciled in, or the domicile or principal place of business of the structured settlement obligor or the annuity issuer is located in, this State; or

(ii) the structured settlement agreement was approved by a court or responsible administrative authority in this State; or

(iii) the structured settlement agreement is expressly governed by the laws of this State;

(q) “terms of the structured settlement” include, with respect to any structured settlement, the terms of the structured settlement agreement, the annuity contract, any qualified assignment agreement and any order or other approval of any court or responsible administrative authority or other government authority that authorized or approved such structured settlement;

(r) “transfer” means any sale, assignment, pledge, hypothecation or other alienation or encumbrance of structured settlement payment rights made by a payee for consideration; provided that the term “transfer” does not include the

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creation or perfection of a security interest in structured settlement payment rights under a blanket security agreement entered into with an insured depository institution, in the absence of any action to redirect the structured settlement payments to such insured depository institution, or an agent or successor in interest thereof, or otherwise to enforce such blanket security interest against the structured settlement payment rights;

(s) "transfer agreement" means the agreement providing for a transfer of structured settlement payment rights.

(t) "transfer expenses" means all expenses of a transfer that are required under the transfer agreement to be paid by the payee or deducted from the gross advance amount, including, without limitation, court filing fees, attorneys fees, escrow fees, lien recordation fees, judgment and lien search fees, finders' fees, commissions, and other payments to a broker or other intermediary; "transfer expenses" do not include preexisting obligations of the payee payable for the payee's account from the proceeds of a transfer;

(u) "transferee" means a party acquiring or proposing to acquire structured settlement payment rights through a transfer;

**SECTION 3. REQUIRED DISCLOSURES TO PAYEE.** Not less than three (3) days prior to the date on which a payee signs a transfer agreement, the transferee shall provide to the payee a separate disclosure statement, in bold type no smaller than 14 points, setting forth —

the amounts and due dates of the structured settlement payments to be transferred;  
the aggregate amount of such payments;  
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;  
the gross advance amount;  
an itemized listing of all applicable transfer expenses, other than attorneys' fees and related disbursements payable in connection with the transferee's application for approval of the transfer, and the transferee's best estimate of the amount of any such fees and disbursements;  
the net advance amount;  
the amount of any penalties or liquidated damages payable by the payee in the event of any breach of the transfer agreement by the payee; and  
a statement that the payee has the right to cancel the transfer agreement, without penalty or further obligation, not later than the third business day after the date the agreement is signed by the payee.

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#### SECTION 4. APPROVAL OF TRANSFERS OF STRUCTURED SETTLEMENT PAYMENT RIGHTS.

No direct or indirect transfer of structured settlement payment rights shall be effective and no structured settlement obligor or annuity issuer shall be required to make any payment directly or indirectly to any transferee of structured settlement payment rights unless the transfer has been approved in advance in a final court order or order of a responsible administrative authority based on express findings by such court or responsible administrative authority that —

- (i) the transfer is in the best interest of the payee, taking into account the welfare and support of the payee's dependents;
- (ii) the payee has been advised in writing by the transferee to seek independent professional advice regarding the transfer and has either received such advice or knowingly waived such advice in writing; and
- (iii) the transfer does not contravene any applicable statute or the order of any court or other government authority;

#### SECTION 5. EFFECTS OF TRANSFER OF STRUCTURED SETTLEMENT PAYMENT RIGHTS. Following a transfer of structured settlement payment rights under this Act:

The structured settlement obligor and the annuity issuer shall, as to all parties except the transferee, be discharged and released from any and all liability for the transferred payments;

The transferee shall be liable to the structured settlement obligor and the annuity issuer:

- (i) if the transfer contravenes the terms of the structured settlement, for any taxes incurred by such parties as a consequence of the transfer; and
- (ii) for any other liabilities or costs, including reasonable costs and attorneys' fees, arising from compliance by such parties with the order of the court or responsible administrative authority or arising as a consequence of the transferee's failure to comply with this Act;

Neither the annuity issuer nor the structured settlement obligor may be required to divide any periodic payment between the payee and any transferee or assignee or between two (or more) transferees or assignees; and

Any further transfer of structured settlement payment rights by the payee may be made only after compliance with all of the requirements of this Act.

#### SECTION 6. PROCEDURE FOR APPROVAL OF TRANSFERS.

An application under this Act for approval of a transfer of structured settlement payment rights shall be made by the transferee and may be brought in the [county] in which the payee resides, in the [county] in which the structured settlement obligor or the annuity issuer maintains its principal

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Settlements Trade Association and National  
Association of Settlement Purchasers – 9/11/2000

place of business, or in any court or before any responsible administrative authority which approved the structured settlement agreement.

Not less than twenty (20) days prior to the scheduled hearing on any application for approval of a transfer of structured settlement payment rights under Section 4 of this Act, the transferee shall file with the court or responsible administrative authority and serve on all interested parties a notice of the proposed transfer and the application for its authorization, including with such notice:

- (i) a copy of the transferee's application;
- (ii) a copy of the transfer agreement;
- (iii) a copy of the disclosure statement required under Section 3 of this Act;
- (iv) a listing of each of the payee's dependents, together with each dependent's age;
- (v) notification that any interested party is entitled to support, oppose or otherwise respond to the transferee's application, either in person or by counsel, by submitting written comments to the court or responsible administrative authority or by participating in the hearing; and
- (vi) notification of the time and place of the hearing and notification of the manner in which and the time by which written responses to the application must be filed (which shall be not less than [fifteen (15)] days after service of the transferee's notice) in order to be considered by the court or responsible administrative authority.

#### SECTION 7. GENERAL PROVISIONS; CONSTRUCTION.

The provisions of this Act may not be waived by any payee.

Any transfer agreement entered into on or after the effective date of this Act by a payee who resides in this state shall provide that disputes under such transfer agreement, including any claim that the payee has breached the agreement, shall be determined in and under the laws of this State. No such transfer agreement shall authorize the transferee or any other party to confess judgment or consent to entry of judgment against the payee.

No transfer of structured settlement payment rights shall extend to any payments that are lifecontingent unless, prior to the date on which the payee signs the transfer agreement, the transferee has established and has agreed to maintain procedures reasonably satisfactory to the annuity issuer and the structured settlement obligor for (i) periodically confirming the payee's survival, and (ii) giving the annuity issuer and the structured settlement obligor prompt written notice in the event of the payee's death.

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Settlements Trade Association and National  
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No payee who proposes to make a transfer of structured settlement payment rights shall incur any penalty, forfeit any application fee or other payment, or otherwise incur any liability to the proposed transferee or any assignee based on any failure of such transfer to satisfy the conditions of this Act

Nothing contained in this Act shall be construed to authorize any transfer of structured settlement payment rights in contravention of any law or to imply that any transfer under a transfer agreement entered into prior to the effective date of this Act is valid or invalid.

Compliance with the requirements set forth in Section 3 of this Act and fulfillment of the conditions set forth in Section 4 of this Act shall be solely the responsibility of the transferee in any transfer of structured settlement payment rights, and neither the structured settlement obligor nor the annuity issuer shall bear any responsibility for, or any liability arising from, non-compliance with such requirements or failure to fulfill such conditions.

**EFFECTIVE DATE.** This Act shall apply to any transfer of structured settlement payment rights under a transfer agreement entered into on or after the [thirtieth (30th)] day after the date of enactment of this Act; provided, however, that nothing contained herein shall imply that any transfer under a transfer agreement reached prior to such date is either effective or ineffective.

NATIONAL STRUCTURED SETTLEMENT  
TRADE ASSOCIATION

FEB 19 2001

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Notes/Comments:

Thank you for the opportunity to speak today. Enclosed is the most recent version of the Model Act which has been approved by the NSSTA as well as the National Association of Settlement Purchasers on 9/28/00.

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**TESTIMONY OF  
RANDY DYER  
ON BEHALF OF  
THE NATIONAL STRUCTURED SETTLEMENTS TRADE ASSOCIATION**

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**REGARDING**

**HB 97**

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**BEFORE**

**THE HOUSE JUDICIARY COMMITTEE  
ALASKA HOUSE OF REPRESENTATIVES**

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**FEBRUARY 19, 2001**

My name is Randy Dyer. I am Executive Vice President of the National Structured Settlement Trade Association, headquartered in Washington, DC. Members of NSSTA work with the parties to a physical injury claim to help them put together a structured settlement that will resolve the case and provide long-term financial security for the injured victim and the victim's family.

The National Structured Settlements Trade Association (NSSTA) is an association composed of more than 500 members who negotiate and fund structured settlements of tort and worker's compensation claims involving persons with serious, long-term physical injuries.

Structured settlements have been widely used over the past two decades in Alaska and across the country to compensate seriously-injured, often profoundly-disabled, victims of torts and workplace accidents.

A lump sum recovery used to be the standard in personal injury cases. The injured victim then faced the daunting challenge of managing a large lump sum to cover the substantial ongoing medical and living expense for decades, even for a lifetime. All too often, the

lump sum swiftly eroded away. When the money was gone, the victim often was left still disabled and unable to work. In such cases, responsibility to care for this disabled person fell to the State Medicaid system and public assistance system.

Structured settlements provide a better approach. A voluntary agreement is reached between the parties generally through their counsel under which the injured victim receives damages in the form of a stream of payments tailored to the future medical expenses and basic living needs of the victim and his or her family from a well-capitalized, financially-secure institution. This process may be overseen by a court, particularly in minor's cases. Often this payment stream is for the rest of the victim's life to make sure that future medical expenses and the family's basic living needs will be met and that the victim will not outlive his or her compensation.

In essence, structured settlements constitute a private sector funding alternative to taxpayer-financed assistance programs to meet the ongoing, long-term medical and basic living needs of seriously-injured victims and their families. Thus, structured settlements enable

seriously-injured people to live with dignity and financial independence, free of reliance on government assistance.

Structured settlements have the strong support of the plaintiff's bar, the defense bar, judges, and mediators. They have worked very well over the past two decades in providing long-term financial security to injured people.

Over the past three years or so, there has emerged a new type of transaction, known as the "factoring" of structured settlement payments. In this transaction, settlement purchase companies cash out part or all of a structured settlement recipient's future payments in exchange for a lump sum now.

We in the structured settlement industry have been very concerned that the growth of this unregulated practice of structured settlement factoring threatens the very important public policies that underlie structured settlements, raises very important consumer protection concerns, and finally raises serious tax risks for the other parties to the original structured settlement.

These concerns over the unregulated practice of structured settlement factoring have been shared by State legislators across the

country, the U.S. Treasury Department, State Attorneys General, Members of Congress on a bipartisan basis, consumer groups, disabled victims groups, and bar groups.

State legislatures in some 18 States already have passed legislation to protect structured settlements and regulate structured settlement factoring. In addition, the National Conference of Insurance Legislators (NCOIL), which is a group of State legislators from around the country with responsibility for insurance regulation in their home States, recently adopted model State structured settlement protection legislation.

I believe that the structured settlement industry and the factoring or settlement purchase industry both have come to recognize the strong need for oversight and regulation of structured settlement factoring transactions. Mr. Chairman and Members of the Committee, I am pleased to tell you that after three years of battling in State legislatures and in Congress, the structured settlement industry and the settlement purchase industry have finally hammered out an agreed package of Federal and State model legislation to protect structured settlements and to regulate structured settlement factoring.

I have attached to my written statement copies of this agreed Federal and State model legislation along with a joint letter of support for the legislation by the structured settlement industry and the settlement purchase industry.

This agreed State model legislation is very similar to the structured settlement protection legislation already enacted in 16 States and the model State legislation adopted by the National Conference of Insurance Legislators.

At the center of the agreed approach is a State court review process. The agreed State model legislation provides for State court review of all proposed factoring transactions to determine whether the proposed transaction is appropriate under the circumstances. In order for the factoring transaction to proceed, the reviewing court must find that the transaction is in the best interest of the structured settlement payee, taking into account the welfare and support of the payee's dependents, and that the transaction does not contravene other applicable statutes and court orders.

It is expected that structured settlement payee in Alaska would go to a local court which would review the proposed factoring

transaction under the Alaska structured settlement protection statute. Based on experience with the court review process in other States with structured settlement protection statutes already on the books, it is not expected that this process would be burdensome for the payee.

The agreed State model legislation provides important additional consumer protections for the structured settlement payee. The settlement purchase company must disclose the key terms of the transaction to the payee in advance. This disclosure includes the present value of the payments to be transferred as calculated under the Applicable Federal Rate used by the Internal Revenue Service for valuing annuities. The payee must be told to seek independent professional advice (and has sought or waived such advice). The payee is given a right to cancel the transaction within three days. No confessed or consent judgments may be used under the factoring agreement. Finally, the legislation confirms that it does not authorize factoring transactions that contravene other laws.

The agreed State model legislation also provides protections for the other parties to the original structured settlement in the event of

a subsequent factoring transaction, including indemnification by the settlement purchase company for any Federal tax cost.

In conclusion, the agreed State model legislation has been hammered out by the two sides after months of work. We in the structured settlement industry believe that the agreed State legislation ensures that the structured settlement serves its intended purpose of providing long-term financial security for injured people and their families, while enabling the structured settlement payee to get access to future payments if the court determines that such access is in the best interest of the payee and the payee's family.

Therefore, Mr. Chairman and Members of the Committee, the National Structured Settlements Trade Association, on behalf of the structured settlement industry, strong urges that the Alaska legislature enact at the earliest possible time in next year's session the agreed State model structured settlement protection legislation.

Mr. Chairman, thank you for giving me and the National Structured Settlements Trade Association this opportunity to present our views on this critically important issue.

Agreed to by National Structured  
Settlements Trade Association and National  
Association of Settlement Purchasers -- 9/11/2000

Proposed  
**MODEL STATE STRUCTURED SETTLEMENT  
PROTECTION ACT**

**SECTION 1. TITLE.** This Act shall be known and referred to as the "Structured Settlement Protection Act."

**SECTION 2. DEFINITIONS.** For purposes of this Act--

(a) "annuity issuer" means an insurer that has issued a contract to fund periodic payments under a structured settlement;

(b) "dependents" include a payee's spouse and minor children and all other persons for whom the payee is legally obligated to provide support, including alimony;

(c) "discounted present value" means the present value of future payments determined by discounting such payments to the present using the most recently published Applicable Federal Rate for determining the present value of an annuity, as issued by the United States Internal Revenue Service;

(d) "gross advance amount" means the sum payable to the payee or for the payee's account as consideration for a transfer of structured settlement payment rights before any reductions for transfer expenses or other deductions to be made from such consideration;

(e) "independent professional advice" means advice of an attorney, certified public accountant, actuary or other licensed professional adviser;

(f) "interested parties" means, with respect to any structured settlement, the payee, any beneficiary irrevocably designated under the annuity contract to receive payments following the payee's death, the annuity issuer, the structured settlement obligor, and any other party that has continuing rights or obligations under such structured settlement;

(g) "net advance amount" means the gross advance amount less the aggregate amount of the actual and estimated transfer expenses required to be disclosed under Section 3(e) of this Act;

(h) "payee" means an individual who is receiving tax free payments under a structured settlement and proposes to make a transfer of payment rights thereunder;

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Settlements Trade Association and National  
Association of Settlement Purchasers - 9/11/2000

(i) "periodic payments" includes both recurring payments and scheduled future lump sum payments;

(j) "qualified assignment agreement" means an agreement providing for a qualified assignment within the meaning of section 130 of the United States Internal Revenue Code, United States Code Title 26, as amended from time to time;

(k) "responsible administrative authority" means, with respect to a structured settlement, any government authority vested by law with exclusive jurisdiction over the settled claim resolved by such structured settlement;

(l) "settled claim" means the original tort claim or workers' compensation claim resolved by a structured settlement;

(m) "structured settlement" means an arrangement for periodic payment of damages for personal injuries or sickness established by settlement or judgment in resolution of a tort claim or for periodic payments in settlement of a workers' compensation claim;

(n) "structured settlement agreement" means the agreement, judgment, stipulation, or release embodying the terms of a structured settlement;

(o) "structured settlement obligor" means, with respect to any structured settlement, the party that has the continuing obligation to make periodic payments to the payee under a structured settlement agreement or a qualified assignment agreement;

(p) "structured settlement payment rights" means rights to receive periodic payments under a structured settlement, whether from the structured settlement obligor or the annuity issuer, where --

(i) the payee is domiciled in, or the domicile or principal place of business of the structured settlement obligor or the annuity issuer is located in, this State; or

(ii) the structured settlement agreement was approved by a court or responsible administrative authority in this State; or

(iii) the structured settlement agreement is expressly governed by the laws of this State;

(q) "terms of the structured settlement" include, with respect to any structured settlement, the terms of the structured settlement agreement, the annuity contract, any qualified assignment agreement and any order or other approval of any court or responsible administrative authority or other government authority that authorized or approved such structured settlement;

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Settlements Trade Association and National  
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(r) "transfer" means any sale, assignment, pledge, hypothecation or other alienation or encumbrance of structured settlement payment rights made by a payee for consideration; provided that the term "transfer" does not include the creation or perfection of a security interest in structured settlement payment rights under a blanket security agreement entered into with an insured depository institution, in the absence of any action to redirect the structured settlement payments to such insured depository institution, or an agent or successor in interest thereof, or otherwise to enforce such blanket security interest against the structured settlement payment rights;

(s) "transfer agreement" means the agreement providing for a transfer of structured settlement payment rights.

(t) "transfer expenses" means all expenses of a transfer that are required under the transfer agreement to be paid by the payee or deducted from the gross advance amount, including, without limitation, court filing fees, attorneys fees, escrow fees, lien recordation fees, judgment and lien search fees, finders' fees, commissions, and other payments to a broker or other intermediary; "transfer expenses" do not include preexisting obligations of the payee payable for the payee's account from the proceeds of a transfer;

(u) "transferee" means a party acquiring or proposing to acquire structured settlement payment rights through a transfer;

**SECTION 3. REQUIRED DISCLOSURES TO PAYEE.** Not less than three (3) days prior to the date on which a payee signs a transfer agreement, the transferee shall provide to the payee a separate disclosure statement, in bold type no smaller than 14 points, setting forth —

(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 gross advance amount;

(e) an itemized listing of all applicable transfer expenses, other than attorneys' fees and related disbursements payable in connection with the transferee's application for approval of the transfer, and the transferee's best estimate of the amount of any such fees and disbursements;

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- (f) the net advance amount;
- (g) the amount of any penalties or liquidated damages payable by the payee in the event of any breach of the transfer agreement by the payee; and
- (h) a statement that the payee has the right to cancel the transfer agreement, without penalty or further obligation, not later than the third business day after the date the agreement is signed by the payee.

#### SECTION 4. APPROVAL OF TRANSFERS OF STRUCTURED SETTLEMENT PAYMENT RIGHTS.

(a) No direct or indirect transfer of structured settlement payment rights shall be effective and no structured settlement obligor or annuity issuer shall be required to make any payment directly or indirectly to any transferee of structured settlement payment rights unless the transfer has been approved in advance in a final court order or order of a responsible administrative authority based on express findings by such court or responsible administrative authority that —

- (i) the transfer is in the best interest of the payee, taking into account the welfare and support of the payee's dependents;
- (ii) the payee has been advised in writing by the transferee to seek independent professional advice regarding the transfer and has either received such advice or knowingly waived such advice in writing; and
- (iii) the transfer does not contravene any applicable statute or the order of any court or other government authority;

#### SECTION 5. EFFECTS OF TRANSFER OF STRUCTURED SETTLEMENT PAYMENT RIGHTS. Following a transfer of structured settlement payment rights under this Act:

- (a) The structured settlement obligor and the annuity issuer shall, as to all parties except the transferee, be discharged and released from any and all liability for the transferred payments;
- (b) The transferee shall be liable to the structured settlement obligor and the annuity issuer:
  - (i) if the transfer contravenes the terms of the structured settlement, for any taxes incurred by such parties as a consequence of the transfer; and
  - (ii) for any other liabilities or costs, including reasonable costs and attorneys' fees, arising from compliance by such parties with the order

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of the court or responsible administrative authority or arising as a consequence of the transferee's failure to comply with this Act;

(c) Neither the annuity issuer nor the structured settlement obligor may be required to divide any periodic payment between the payee and any transferee or assignee or between two (or more) transferees or assignees; and

(d) Any further transfer of structured settlement payment rights by the payee may be made only after compliance with all of the requirements of this Act.

#### SECTION 6. PROCEDURE FOR APPROVAL OF TRANSFERS.

(a) An application under this Act for approval of a transfer of structured settlement payment rights shall be made by the transferee and may be brought in the [county] in which the payee resides, in the [county] in which the structured settlement obligor or the annuity issuer maintains its principal place of business, or in any court or before any responsible administrative authority which approved the structured settlement agreement.

(b) Not less than twenty (20) days prior to the scheduled hearing on any application for approval of a transfer of structured settlement payment rights under Section 4 of this Act, the transferee shall file with the court or responsible administrative authority and serve on all interested parties a notice of the proposed transfer and the application for its authorization, including with such notice:

- (i) a copy of the transferee's application;
- (ii) a copy of the transfer agreement;
- (iii) a copy of the disclosure statement required under Section 3 of this Act;
- (iv) a listing of each of the payee's dependents, together with each dependent's age;
- (v) notification that any interested party is entitled to support, oppose or otherwise respond to the transferee's application, either in person or by counsel, by submitting written comments to the court or responsible administrative authority or by participating in the hearing; and
- (vi) notification of the time and place of the hearing and notification of the manner in which and the time by which written responses to the application must be filed (which shall be not less than [fifteen (15)] days after service of the transferee's notice) in order to be considered by the court or responsible administrative authority.

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**SECTION 7. GENERAL PROVISIONS; CONSTRUCTION.**

(a) The provisions of this Act may not be waived by any payee.

(b) Any transfer agreement entered into on or after the effective date of this Act by a payee who resides in this state shall provide that disputes under such transfer agreement, including any claim that the payee has breached the agreement, shall be determined in and under the laws of this State. No such transfer agreement shall authorize the transferee or any other party to confess judgment or consent to entry of judgment against the payee.

(c) No transfer of structured settlement payment rights shall extend to any payments that are life-contingent unless, prior to the date on which the payee signs the transfer agreement, the transferee has established and has agreed to maintain procedures reasonably satisfactory to the annuity issuer and the structured settlement obligor for (i) periodically confirming the payee's survival, and (ii) giving the annuity issuer and the structured settlement obligor prompt written notice in the event of the payee's death.

(d) No payee who proposes to make a transfer of structured settlement payment rights shall incur any penalty, forfeit any application fee or other payment, or otherwise incur any liability to the proposed transferee or any assignee based on any failure of such transfer to satisfy the conditions of this Act.

(e) Nothing contained in this Act shall be construed to authorize any transfer of structured settlement payment rights in contravention of any law or to imply that any transfer under a transfer agreement entered into prior to the effective date of this Act is valid or invalid.

(f) Compliance with the requirements set forth in Section 3 of this Act and fulfillment of the conditions set forth in Section 4 of this Act shall be solely the responsibility of the transferee in any transfer of structured settlement payment rights, and neither the structured settlement obligor nor the annuity issuer shall bear any responsibility for, or any liability arising from, non-compliance with such requirements or failure to fulfill such conditions.

**EFFECTIVE DATE.** This Act shall apply to any transfer of structured settlement payment rights under a transfer agreement entered into on or after the [thirtieth (30th)] day after the date of enactment of this Act; provided, however, that nothing contained herein shall imply that any transfer under a transfer agreement reached prior to such date is either effective or ineffective.

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106th CONGRESS

1st Session

H.R. \_\_\_\_\_

\_\_\_\_\_  
IN THE HOUSE OF REPRESENTATIVES OF THE UNITED STATES

\_\_\_\_\_  
\_\_\_\_\_) introduced the following bill; which was read twice  
and referred to the Committee on \_\_\_\_\_

\_\_\_\_\_  
**A BILL**

To amend the Internal Revenue Code of 1986 to impose an excise tax on persons who  
acquire structured settlement payments in factoring transactions, and for  
other purposes

*Be it enacted by the Senate and House of Representatives of the United  
States of America in Congress assembled,*

**SECTION 1. SHORT TITLE; AMENDMENT OF 1986 CODE.**

(a) **SHORT TITLE.**—This Act may be cited as “The Structured  
Settlement Protection Act”.

(b) **AMENDMENT OF 1986 CODE.**—Except as otherwise expressly  
provided, whenever in this Act an amendment or repeal is expressed in terms of an  
amendment to, or repeal of, a section or other provision, the reference shall be  
considered to be made to a section or other provision of the Internal Revenue Code of  
1986.

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**SECTION 2. IMPOSITION OF EXCISE TAX ON PERSONS WHO ACQUIRE STRUCTURED SETTLEMENT PAYMENTS IN FACTORING TRANSACTIONS.**

Subtitle E is amended by adding at the end thereof the following new chapter:

**"CHAPTER 55 – STRUCTURED SETTLEMENT FACTORING TRANSACTIONS**

**"Sec. 5891. Structured Settlement Factoring Transactions.**

**"Sec. 5891. STRUCTURED SETTLEMENT FACTORING TRANSACTIONS.**

**"(a) IMPOSITION OF TAX.—**There is hereby imposed on any person who acquires directly or indirectly structured settlement payment rights in a structured settlement factoring transaction a tax equal to 40 percent of the factoring discount as determined under subsection (c)(4) with respect to such factoring transaction.

**"(b) EXCEPTION FOR COURT-APPROVED TRANSACTIONS.—**

**"(1) IN GENERAL.—**The tax under subsection (a) shall not apply in the case of a structured settlement factoring transaction in which the transfer of structured settlement payment rights is approved in advance in a final court (or where applicable, responsible administrative authority) order, judgment, or decree—

**"(A) finding that such transfer—**

**"(i) does not contravene any statute or the order of any court or responsible administrative authority, and**

**"(ii) is in the best interest of the payee, taking into account the welfare and support of the payee's dependents, and**

"(B) issued—

"(i) under--

"(I) a statute enacted by the State (or a possession of the United States or the District of Columbia) in which the structured settlement payee is domiciled, by a court of such State, or

"(II) in the absence of such a statute in the payee's State of domicile, a statute enacted by the State (or possession or District of Columbia) in which a party to the structured settlement (including an assignee under a qualified assignment under section 130) or the company issuing the funding asset for the structured settlement is domiciled or has its principal place of business, by a court of such State or by a court of the State in which the structured settlement payee resides, or

"(ii) where applicable by reason of exclusive jurisdiction over the underlying action or proceeding that was resolved by means of the structured settlement, by the responsible administrative authority.

"(2) COURT ORDER DISPOSITIVE.—A final court (or responsible administrative authority) order, judgment, or decree described in paragraph (1) shall be treated as dispositive for purposes of the exception to the excise tax provided in this subsection.

"(c) **DEFINITIONS.**—For purposes of this section—

"(1) **STRUCTURED SETTLEMENT.**—The term 'structured settlement' means an arrangement—

"(A) established by—

"(i) suit or agreement for the periodic payment of damages excludable from the gross income of the recipient under section 104(a)(2), or

"(ii) agreement for the periodic payment of compensation under any workers' compensation act that is excludable from the gross income of the recipient under section 104(a)(1), and

"(B) where the periodic payments are—

"(i) of the character described in subparagraphs (A) and (B) of section 130(c)(2), and

"(ii) payable by a person who is a party to the suit or agreement or to the workers' compensation claim or by a person who has assumed the liability for such periodic payments under a qualified assignment in accordance with section 130.

"(2) **STRUCTURED SETTLEMENT PAYMENT RIGHTS.**—The term 'structured settlement payment rights' means rights to receive payments under a structured settlement.

"(3) **STRUCTURED SETTLEMENT FACTORING TRANSACTION.**—The term 'structured settlement factoring transaction' means a transfer of structured settlement payment rights (including portions of structured settlement payments) made for consideration by means of sale, assignment, pledge, or other form of encumbrance or alienation for consideration; provided that such term shall not include (i) the creation or perfection of a security interest in

structured settlement payment rights under a blanket security agreement entered into with an insured depository institution in the absence of any action to redirect the structured settlement payments to such institution (or agent or successor thereof) or otherwise to enforce such blanket security interest as against the structured settlement payment rights, or (ii) a subsequent transfer of structured settlement payment rights acquired in a structured settlement factoring transaction.

"(4) **FACTORING DISCOUNT.**--The term 'factoring discount' means an amount equal to the excess of (i) the aggregate undiscounted amount of structured settlement payments being acquired in the structured settlement factoring transaction, over (ii) the total amount actually paid by the acquirer to the person from whom such structured settlement payments are acquired.

"(5) **RESPONSIBLE ADMINISTRATIVE AUTHORITY.**--The term 'responsible administrative authority' means the administrative authority which had exclusive jurisdiction over the underlying action or proceeding that was resolved by means of the structured settlement.

"(d) **COORDINATION WITH OTHER PROVISIONS.** --

"(1) **IN GENERAL.**--In any case where the applicable requirements of sections 72, 104(a)(1) and (2), 130, and 461(h) were satisfied at the time the structured settlement was entered into, the subsequent occurrence of a structured settlement factoring transaction shall not affect the application of the provisions of such sections to the parties to the structured settlement (including an assignee under a qualified assignment under section 130) in any taxable year.

"(2) **NO WITHHOLDING OF TAX.**--The provisions of section 3405 regarding withholding of tax shall not apply to the person making

the payments in the event of a structured settlement factoring transaction.

(c) **CLERICAL AMENDMENTS.**—The table of chapters for subtitle E of such Code is amended by adding at the end the following new item:

"Chapter 55. Structured settlement factoring transactions."

### **SEC. 3. EFFECTIVE DATE.**

(a) **IN GENERAL.**—The amendments made by sections 1 and 2 of this Act (other than the provisions of section 5891(d) of the Internal Revenue Code of 1986 as adopted by this Act) shall be effective with respect to structured settlement factoring transactions (as defined in section 5891(c) of the 1986 Code as adopted by this Act) entered into on or after the thirtieth day following the date of enactment of this Act.

(b) **TRANSITION RULE.**—In the case of a structured settlement factoring transaction entered into during the period beginning on the thirtieth day following the date of enactment of this Act and ending on July 1, 2002, no tax shall be imposed under section 5891(a) of the 1986 Code where—

(1) the structured settlement payee is domiciled in a State (or possession of the United States or the District of Columbia) which has not enacted a statute providing that the structured settlement factoring transaction is ineffective unless the transaction has been approved by a court (or where applicable, responsible administrative authority) order, judgment, or decree finding that such transaction (a) does not contravene any statute or the order of any court (or responsible administrative authority) and (b) is in the best interest of the structured settlement payee or is appropriate in light of a hardship faced by the payee, and

(2) the person acquiring the structured settlement payment rights discloses to the structured settlement payee in advance of the structured settlement factoring transaction the amounts and due dates

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of the payments to be transferred, the aggregate amount to be transferred, the consideration to be received by the structured settlement payee for the transferred payments, the discounted present value of the transferred payments including the present value as determined in the manner described in section 7520 of the 1986 Code, and the expenses required under the terms of the structured settlement factoring transaction to be paid by the structured settlement payee or deducted from the proceeds of such transaction.

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Settlement Specialist

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# WHAT IS A STRUCTURED SETTLEMENT?

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**National Structured Settlements Trade Association**

## WHAT IS A STRUCTURED SETTLEMENT?

Historically, money paid because of a personal injury law suit has been paid in the form of a lump sum at the time of settlement. This kind of payment, especially in very large catastrophic injury cases, places the claimant (or the family) in the position of managing a large sum of money which is intended to provide for a lifetime of medical and income needs. Most people are not experienced in handling large sums of money. As a result, the money often is spent quickly, leaving little or nothing to cover future needs of a seriously injured person. In order to create a more stable financial basis for the claimant, structured settlements were developed.

By definition, a STRUCTURED SETTLEMENT is the payment of money for a personal injury claim where at least part of the SETTLEMENT calls for future payment. The payments may be scheduled for any length of time — even as long as the claimant's lifetime, and may consist of installment payments and/or future lump sums. Payments can be in fixed amounts or they can vary. The schedule is STRUCTURED to meet the financial needs of the claimant.

These arrangements may be voluntary, as in a pre-trial settlement, or they may be required by law or a court order, as in a settlement involving a minor. The defendant may agree to make future payments or it may purchase an annuity contract from a life insurance company to fund the payments. Annuity contracts have been the preferred way of funding because of their pricing and flexibility for settlement design. An alternative, however, is a trust fund which invests only in United States treasury obligations. These trusts add the safety of investment in obligations issued by the U.S. Government.

There are some important benefits to the claimant in structuring the settlement:

1. The claimant receives money when it is needed. Instead of receiving a lump sum which has to be invested at risk, and managed for a fee, the money is paid out over time, better correlated with the actual need for funds.
2. The claimant does not have to pay income tax on the payments received, which includes an "internal buildup" of funds over time. A lump sum received also would be tax-free, but most later income from investing that money would be taxable.

Here is an example of how a structure might look when compared to a lump sum settlement. (Assume that the claimant is a man, age 45)

	TOTAL GUARANTEED	TOTAL EXPECTED
Single payment at settlement	\$200,000	? (Depends on how the money is invested, and the taxes on its earnings)
<u>or, for about the same cost</u>		
\$1300 per month for life with 20 years guaranteed	\$312,000	\$536,000 (Assuming a normal life expectancy)

In this illustration, money is received for as long as the claimant lives, with the first 20 years of payments made whether or not the claimant is alive. The total expected payments are tax-free.

In almost every bodily injury situation, a structured settlement should be considered. A more detailed description of these arrangements follows.

## WHEN TO CONSIDER STRUCTURES:

- \* For cases involving the following situations:
  1. Temporarily or permanently disabled plaintiffs/claimants;
  2. Plaintiffs/claimants with limited investment or financial management skills;
  3. Guardianship cases, including minors or incompetents;
  4. Wrongful death cases where the surviving spouse and/or children need monthly or annual income;
  5. Severe injury, especially with shortened life expectancy, or mental incompetency.
  
- \* For plaintiffs with specific needs such as:
  1. Significant ongoing medical expenses;
  2. Rehabilitation or permanent care facility expenses;
  3. Deferred payments for college funds, retirement, down payment on a home, or mortgage payment;
  4. Replacement of monthly/annual income or supplemental income.
  
- \* Other types of cases to consider (these cannot be assigned, see qualified assignments):
  1. Workers Compensation claims;
  2. Personal injuries other than physical injury.

## ADVANTAGES TO THE CLAIMANT/PLAINTIFF:

1. Income — tax-free guaranteed payments;\*
2. Avoids risk of mismanagement — insurance industry statistics show that about 25 to 30% of all accident victims completely dissipate their judgments or settlements within two months of recovery, and 90% of them spend it all within five years;\*\*
3. Avoids expense and worry with regard to financial loss — provides a secure, low-risk source of money;
4. Convenience of regular payments designed to meet the individual plaintiff's needs;
5. Claimant can receive more money over time than a lump sum settlement;
6. Competitive with other rates of return — see Internal Rate of Return illustration which shows before tax rate-of-return required to match the benefits offered by a structure;
7. Helps avert risk, expense and delay of going to trial;
8. Transfers the risk of outliving one's income to a life insurance company;
9. Benefits may be made higher if injury decreased life expectancy.

## ADVANTAGES TO THE DEFENDANT/INSURER:

1. Earlier settlements — including assistance by structured settlement brokers with negotiations and settlement documents;
2. Reduced litigation costs;
3. May assign future liability;
4. Avoids risk and expense of a jury trial;
5. Can make low policy limits more attractive by making payments over time.

\* Check with your own tax advisor for confirmation

\*\* The Rutter Group, Ltd. from Flahavan, Rea, Kelly & Tencer, "California Practice Guide: Personal Injury" (TRG 1992) Ch. 4

## “QUALIFIED ASSIGNMENTS”

The defendant (or his/her liability insurance company) may transfer the responsibility to make the future payments to a third party by means of a “qualified assignment.” The assignment is referred to as “qualified” because, if done properly, it qualifies for special tax treatment. The assignee then takes care of making the payments. This process relieves the defendant of further responsibility for the payments and also transfers the administration and record keeping responsibilities. The assignment company specializes in these activities, and may offer additional financial security.

## OTHER USES OF PERIODIC PAYMENTS:

Although the concept of periodic payments has usually been applied to personal injury claims, there are other situations where payout obligations can be made on a periodic basis.

### Property Loss Claims:

Periodic payments may be an excellent means of satisfying the claims of home owner groups, or others who are seeking reimbursement for construction defect claims. Instead of receiving a single large sum, payments are made over time in order to more closely match the time when repair costs are incurred.

## ENVIRONMENTAL CLAIMS AND POLLUTION LIABILITY:

This area offers the greatest potential for the use of periodic payments outside of personal injury claims. From the superfund designated sites to the thousand of potential municipal and local sites, there is a need for clean-up funding.

When determination has been made that liability for pollution exists, and the terms for clean-up have been established and quantified, the future costs can be funded with an annuity or similar funding agreement offered by a life insurance company. By this means, the potentially responsible party can pay for its future obligations on a more economically efficient basis. It can also turn over to the life insurance company the administrative responsibilities of making the payments.

NOTE: The tax treatment of these alternative uses of structures is not necessarily the same as for the personal injury cases. A qualified tax expert should be consulted before any investment decisions or annuity purchases are made.

## RELEVANT TAX RULES:

Structured settlements are governed by the Federal Internal Revenue Code (IRC) and offer tax advantages to the claimant and the assignee.

Section 104(a)(2) of the IRC states that compensation received on account of personal injury or sickness is exempt from gross income whether received in a lump sum or in periodic payments. The reason most often cited as justification for this exemption is that the claimants are merely being compensated monetarily for what they have lost physically or otherwise, and the payments are not a gain for the claimant. If the claimant invests these payments, the interest earned will be taxed. A structure, however, provides more money over time, and all payments received are tax-free.

Revenue Ruling 79-220 interprets Section 104(a)(2) and sets out the criteria that must be met in order to qualify for tax-exempt status under the law. The basic requirement is that the claimants can have no control over the investment that funds the periodic payments. They have only the right to receive future payments.

The Periodic Payment Settlement Act of 1982 gave statutory certainty to various tax rulings concerning personal injury damages paid by periodic payments. It also created Section 130 of the IRC.

Section 130 allows the party accepting the assignment of responsibility for future periodic payments to exclude the amount received for the assignment from gross income to the extent of the amount used to purchase specified funding vehicles. The process is called a "qualified assignment," and the funding vehicle is called a "qualified funding asset."

Section 130 is very specific regarding the requirements necessary to establish a qualified assignment:

1. The assignee assumes the liability from a party to the suit or agreement;
2. The payments are fixed and determinable;
3. The payments cannot be accelerated, deferred, increased or decreased, or otherwise changed after the agreement is reached;
4. The assignee's obligation is no greater than the obligation of the assignor;
5. The periodic payments are excludable from the recipient's gross income under Section 104(a)(2);
6. The injury must be a physical sickness or injury;
7. A qualified funding asset (an annuity or U.S. Government obligation) must be purchased.

## SECURED CREDITOR:

Under a structured settlement, the IRC allows the claimant to have no more than a general creditor's interest in the assets of the defendant, to the extent of the future payments. If the liability to make the payments is assigned to a third party, however, the IRC permits the claimant to have a greater interest, i.e., a secured interest. This interest is secured by the annuity or U.S. government obligation purchased by the assignment company to fund its future obligations to the claimant. Should the assignment company fail to pay, the claimant, as a secured creditor, can become the owner of the assets which fund his/her payments. This ensures that the assignee's other creditors cannot use the assets to satisfy their claims against the company. Note that this secured interest applies to the assignment company, not to the life insurance company that issued the annuity contract.

Although the Internal Revenue Service has not ruled on the tax status of payments once an annuitant assumes ownership of the annuity, it is possible that a portion of subsequent amounts received would be subject to ordinary income taxation.

## CONCLUSION:

A structured settlement is a proven, effective solution for the needs of personal injury claimants. Claims professionals, plaintiff attorneys, judges and defense attorneys advocate the use of structured settlements because they effectively meet a claimant's needs for security, as well as provide more benefits over time than a single, lump sum settlement. In addition, the periodic payment concept can be applied to a variety of other situations.

There are many other features of structured settlements that are worthy of consideration. If you would like additional information about structured settlements, please contact the Structured Settlement Consultant who provided you with this brochure, or the National Structured Settlement Trade Association at (202) 797-5108.

### INTERNAL RATE OF RETURN COMPARISONS

The chart below demonstrates how much interest the self investor would have to earn to equal the payout of a non-taxable structured settlement. The tax brackets refer to the recipient's federal income tax level. The figures do not include state income taxes, which would make the differences even greater.

STRUCTURE RETURN RATE	15% TAX BRACKET	28% TAX BRACKET	31% TAX BRACKET	36% TAX BRACKET
5.00%	5.88%	6.94%	7.25%	7.81%
6.00%	7.06%	8.33%	8.69%	9.38%
7.00%	8.23%	9.72%	10.14%	10.94%
8.00%	9.41%	11.11%	11.59%	12.50%
9.00%	10.60%	12.52%	13.12%	14.06%

# ALASKA STATE HOUSE OF REPRESENTATIVES

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Room 416

## REPRESENTATIVE JOHN COGHILL

Date: February 22, 2001  
To: Representative John Coghill  
From: Rynnieva Moss, Legislative Aide  
Re: Structured Settlements

A handwritten signature in cursive script, appearing to read "Rynnieva Moss".

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I have reviewed HB 97 and have discussed your concerns with Jerry Luckhaupt. He has agreed to attend the sub-committee meeting.

There are several ways to address this but probably the most logical would be for the competent adult participants to be provided the information required in Sec. 09.68.200(a)(3) fifteen days prior to the scheduled signing of the buy out by the factoring company. This would be the informed consent provision. There would be a fifteen day cooling off period for the payee to reviewed all the particulars of the sell out and to get legal advice. If the payee determines that he wants to enter the agreement after that point, there would be no need to get a court approval. Mr. Luckhaupt said he pointed out in committee yesterday, the court would be hard pressed telling an able minded person he or she could not enter into such an agreement.

The second part of the issue is, would the agreement be in the best interest of a child recipient of the structured settlement or a recipient who is a vulnerable, incapacitated, or mentally handicapped adult? While a guardian has a fiduciary responsibility in this type of case, an appearance before a judge on the matter prior to selling the structured settlement would prevent the need for civil action when all the assets are gone and there is no way to recoup them.

It should be mentioned that this particular piece of legislation is not the model legislation provided by NSSTA. Jerry Luckhaupt composed this bill largely with language from a California statute and some language from Minnesota law.

Structured settlements are appealing to insurance companies in settling a case because while they can pay the settlement in annual payments, they can write off the entire settlement in the first year. A \$1,000,000 settlement may be structured for twenty years at \$50,000, the company can write off the \$1,000,000 the first year, invest \$950,000 and draw interest on the investment.

There are several income tax considerations on the part of the payee that come with a structured settlement. Congress passed legislation to make income from a structured settlement tax free, but when a factor company purchases structured settlements, the payee must pay taxes on the buyout total. In addition the factor company is levied a tax penalty for purchasing the structured settlement. This penalty is passed on to the payee.