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## WISCONSIN LEGISLATIVE COUNCIL

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### TRANSFER OF STRUCTURED SETTLEMENT PAYMENTS

Large Conference Room  
One East Main Street, Suite 401  
Madison, WI

July 31, 2014  
10:00 a.m. – 2:25 p.m.

[The following is a summary of the July 31, 2014 meeting of the Study Committee on Transfer of Structured Settlement Payments. The file copy of this summary has appended to it a copy of each document prepared for or submitted to the committee during the meeting. A digital recording of the meeting is available on our Web site at <http://www.legis.state.wi.us/lc>.]

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#### Call to Order and Roll Call

Chair Ott called the committee to order. The roll was called and a quorum was present.

COMMITTEE MEMBERS PRESENT: Rep. Jim Ott, Chair; Rep. Dana Wachs, Vice Chair; and Public Members Bruce Bachhuber, Michael Fitzpatrick, Benjamin Malsch, and Gerald Ptacek.

COMMITTEE MEMBER EXCUSED: Rep. Michael Schraa; Sen. Lena Taylor; and Public Members Catherine La Fleur and Elizabeth Nevitt.

COUNCIL STAFF PRESENT: Anna Henning and Brian Larson, Staff Attorneys.

APPEARANCES: Representative Joan Ballweg, Co-Chair, Joint Legislative Council; Terry C. Anderson, Director, Legislative Council Staff; April Southwick, Staff Attorney, Wisconsin Judicial Council; Honorable Gerald Ptacek, Circuit Court Judge, Racine County; Honorable Michael Fitzpatrick, Circuit Court Judge, Rock County; Earl Nesbitt, Executive Director and General Counsel, National Association of Settlement Purchasers; John McCulloch, National Marketing Director, EPS Settlements Group; and Brenda Bierman, Senior Claims Technical Specialist, Sentry Insurance.

## **Opening Remarks by the Joint Legislative Council**

Representative Joan Ballweg, Co-Chair, Joint Legislative Council, and Terry Anderson, Director of the Legislative Council Staff, welcomed the members of the study committee. They remarked upon the history of the Legislative Council and procedures followed throughout the study process.

## **Introduction of Committee Members**

Chair Ott welcomed the committee members and made introductory remarks. Upon the Chair's request, the members briefly introduced themselves.

## **Presentations by Legislative Council Committee Staff**

The committee heard presentations from the Legislative Council staff attorneys assigned to the study committee.

Anna Henning provided details regarding study committee procedures, including the deliberation and drafting process to be used by the committee, as well as examples of final work product that may be produced by the committee. Ms. Henning presented *Memo No. 1, 1998 Senate Bill 298, Relating to Structured Settlement Agreements (July 31, 2014)*, describing a proposal related to structured settlement transfers from the 1998-99 Legislative Session. Ms. Henning also presented several examples of television commercials that have been aired related to structured settlement transfers, which were projected on a screen for viewing by the committee.

Brian Larson provided an overview of the background paper, *Staff Brief 2014-06, Transfer of Structured Settlement Payments (July 24, 2014)*. Mr. Larson also commented on the committee's assignment, specifically the directive to consider "the ability of parents and guardians to enter into structured settlements on behalf of minor children." It appears likely this was also intended to refer to entering into structured settlement factoring transactions on behalf of minor children, and not only structured settlements. The committee was advised that it may consider both issues.

## **Presentation by April Southwick, Staff Attorney, Wisconsin Judicial Council**

April Southwick provided background information regarding the review of the topic of structured settlement transfers undertaken by the Wisconsin Judicial Council. The Judicial Council identified a need for a state statute regarding structured settlement transfers. However, because of the policy choices involved, it declined to create a bill draft for consideration by the Legislature. The Judicial Council wrote a letter to the Co-Chairs of the Joint Legislative Council recommending the formation of a study committee.

## **Presentations by Honorable Gerald Ptacek and Honorable Michael Fitzpatrick**

Judges Michael Fitzpatrick and Gerald Ptacek made presentations to the committee, which included a discussion of committee members, describing the structured settlement transfer process from their perspectives as circuit court judges. Judge Fitzpatrick observed that cases typically fit a pattern in which the buyer is represented by an attorney, who drafts the documents, and the seller is not represented. Judges encounter numerous challenges applying the current law in this area, leading to inconsistent application across the state.

They suggested that a state statute would be of benefit. The statute should contain clear standards, or guideposts, for judges to apply, and perhaps a list of factors to consider. They recommended that the statute should attempt to avoid placing the judge in the role of an advocate, which conflicts with a judge's responsibilities under the judicial code of conduct. Judge Fitzpatrick and Judge Ptacek suggested that the statute address procedural issues, such as who will pay costs and whether the state should be made a party, as well as evidentiary issues related to presumptions, evidence, and the burden of proof. Judge Ptacek stated that concerns related to protection of the best interests of the purchasers must be balanced against the principle of freedom of contract.

## **Presentation by Earl Nesbitt, Executive Director and General Counsel, National Association of Settlement Purchasers**

Earl Nesbitt provided testimony representing the National Association of Settlement Purchasers (NASP), a trade association for companies who participate in the secondary market to purchase structured settlement payments from payees. Mr. Nesbitt explained the history of the negotiations between stakeholder groups, including NASP and the National Structured Settlements Trade Association (NSSTA). The negotiations resulted in a compromise embodied in what became the National Conference of Insurance Regulators (NCOIL) Model Act. Mr. Nesbitt provided details about aspects of the secondary market, including pricing and discount rates, which are based on factoring and actuarial calculations. He spoke in support of the federal law and the adoption of the NCOIL Model Act by the states. He suggested that by requiring all transfers to be court-approved, the system has brought needed and appropriate regulation to the secondary market, but that NASP does not support the version of the act represented by the 1998 Wisconsin bill described in Memo No. 1.

Mr. Nesbitt indicated that NASP supports enactment of the NCOIL Model Act in Wisconsin. He described the features of the NCOIL Model Act and provided information regarding how it has been implemented by the states. He said that the use of the best interest standard is appropriate because it ensures compliance with the federal law and that requiring a hearing is appropriate. However, he said that payees prefer not to have to disclose private information in public documents, and also prefer the financial advice provision to be an admonishment, not a requirement.

**Presentation by John McCulloch, National Marketing Director,  
EPS Settlements Group**

John McCulloch provided testimony representing the perspective of NSSTA, a trade association representing stakeholders in the primary market. NSSTA fully supports the NCOIL Model Act. Mr. McCulloch also suggests that the state consider amending certain provisions of the model act. He provided the committee with a document indicating certain proposed changes (the "Revised Model Act"). Footnotes identify the sources of the changes, which are based on experiences and amendments that have been made in other states. Mr. McCulloch described the features of the Revised Model Act and provided information regarding the implementation of its provisions in the states. He described challenges facing payees and said that, in every case, there is a reason the payee was put into a structured settlement. Mr. McCulloch provided an overview of the benefits of a statute in protecting payees from transferring payments in cases where it should not be considered appropriate. He said an in-person hearing is important, as are efforts to provide judges with information that will be helpful in determining the best interests of the payee.

In response to questions, Mr. McCulloch discussed additional issues with the committee members, including issues related to the primary and secondary markets, and the potential interaction of Medicare and other areas of law with proceedings regarding structured settlement transfers.

**Presentation by Brenda Bierman, Senior Claims Technical Specialist,  
Sentry Insurance**

Brenda Bierman described the structured settlement transfer process from her perspective as a claims technical specialist at an insurance company. She explained the steps in the claims process that may occur from resolution of a claim via structured settlement, through a factoring transaction, to the redirection of the transferred payments. Ms. Bierman provided background information about the role of the annuity issuer in the transactions and clarified the roles of the other parties involved. She confirmed points made in earlier testimony regarding the need to protect payees because of an information imbalance in certain cases.

**Discussion of Committee Assignment**

After the conclusion of the presentations, Chair Ott led a discussion of the committee assignment. It was generally agreed that the state would benefit from the passage of a statute regarding structured settlement transfers, and that the committee would proceed with preparation of a draft bill. Among other suggestions, committee members stated they would consider options for provisions regarding payees who are minors or incompetent persons, including persons who are borderline incompetent, as well as the repayment of past-due child support and other obligations. Chair Ott suggested that requiring a payee to personally appear might be an effective way to judge competency.

### **Plans for Future Meetings**

The next meeting will be held on September 11, 2014, in the Capitol, at 9:00 a.m.

### **Adjournment**

Chair Ott thanked the committee members for their attendance. The meeting was adjourned at 2:25 p.m.

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