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October 7, 2014

Representative Jim Ott
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Attorney Anna Henning
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**Re: 2014 Legislative Council Study Committee on
Transfer of Structured Settlement Payments**

Dear Chairman Ott and Attorney Henning:

This letter concerns the most recent draft of the Bill on structured settlement payments which will be discussed at the Committee meeting on October 9, 2014.

As I mentioned previously, I was unable to make the September meeting since my wife and I were in Italy for eleven days on a vacation. The October 9th date of the next meeting was one that did not work well for me since, on October 9 and one-half the day on October 10, I will be in an evidentiary hearing in a criminal case in which there will be approximately ten witnesses. I had hoped that the parties would reach an agreement on the outstanding issues, but they have not done so. Therefore, I will have to go forward with that hearing starting in the morning of October 9. As a result, I will not be able to attend the October 9 Committee meeting in person. However, I can be on the phone for a time starting at 9:00 so as to take part in at least some of the Committee meeting. If phone appearances are allowed, I would appreciate it if Ms. Henning would send me the call-in information.

Since I will not be able to attend the entire meeting in person or on the phone, I thought it best to note some of my thoughts about the current draft of the Bill. My comments concern, exclusively, procedures since policy decisions and substance of this new law are best left to the Legislature.

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DEFINITIONS

One of the first questions noted in the latest draft of the Bill is whether a large number of terms should be defined at the beginning of the statute. Defining terms is always a good idea. By doing so, the intent of the Legislature is made clearer to the Courts. Defining terms also allows greater efficiency in the Courts as both the Judge and the parties have a better understanding of the substance of the law. Therefore, I am in favor of defining as many terms as possible.

Having said that, I am unsure about one of the definitions. Specifically, Sec. 895.65(12) mentions a "Responsible administrative authority." I am not sure what that means and I am not aware that any such administrative authority exists in this State. For that reason, unless I am missing something, it may be that the term should be removed from the Bill.

DISCLOSURE

Next, there is a question in the Comment after Sec. 895.66. I think it is a good idea to have the disclosures state that the attorney for the company does not represent the consumer. This is, inevitably, something that a Judge will ask at a hearing if it is not made clear in the written materials. I think the company will want that clear, as well, so there are no possible claims made later by a consumer against the company's attorney.

USE OF "MAY"

Section 895.67(2)(a) uses the word "may." The current draft has a Comment wondering whether the use of the word "may" is appropriate. I believe using that word is best since it gives more discretion to the Court, and the definition of "best interest" lays out some considerations. Overall, I think this is a good way to handle a difficult drafting situation.

OVERALL FINANCIAL CONDITION

Looking at Sec. 895.67(2) and 895.67(3)(a), I noted that the issue of "overall financial condition" is mentioned in subpart (3)(a) but not in subpart (2). My suggestion is to have the question of the overall financial condition in subpart (2) and not keep it exclusively in (3)(a). In this way, it will be clear that a Judge is able to take up that issue regarding all persons who might come before them, and not just persons who are adjudged incompetent or minors.

GUARDIANS AD LITEM

Section 895.67(3) concerns persons who are minors or incompetent. If they are minors or incompetent, then, under Wisconsin law, a Judge is required to appoint a guardian ad litem. Should that issue be dealt with in the statute?

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BURDEN OF PROOF

Section 895.70(4), in effect, puts the burdens of proof and production on the company. That is a good idea and it is well drafted.

I am sending a copy of this letter to my colleague, Judge Ptacek, so he is aware of my comments. I would be interested in his thoughts on my suggestions.

Thank you for your assistance and I look forward to speaking with you at least briefly on Thursday morning at 9:00 by telephone.

Yours very truly,

/s/

Michael R. Fitzpatrick
Circuit Court Judge

/amw

cc: Honorable Gerald Ptacek (*via e-mail*)