

FAST ***FACTS***

#99-01

Structured Settlement Issues for Plaintiffs

FACTORING COMPANY ABUSES

“Pssst.....hey buddy, want to sell your Structure?”

You have probably seen the ads on television or in print. Factoring companies with names like J.G. Wentworth, Stone Street Capital, Peachtree, etc. offering to provide post-settlement “cash-strapped” claimants a buy-out for their remaining structured settlement payments. On the face of it, this would actually seem to be a good thing, except that investigative media have uncovered tons of abuse. From excessive discount rates of 20 percent, 40 percent, 60 percent or more, to tales of folks subtly pressured to cash out their entire remaining annuity, when they initially sought just a smaller, partial buy-out to cover a one-time emergency.

Upon talking to several attorneys about this subject, they have told me that hearing and reading the stories of claimants abused by the “gray market” factoring companies has given them a negative feeling toward recommending that their clients consider structured settlements at all — especially in cases involving minors. In the words of one, “Why bother when the kid can just cash it all out the day she turns 18, and she is taken advantage of by rip-off artists? She takes a huge ‘haircut.’ ”

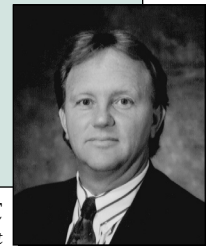
But not recommending and implementing a structured settlement for a minor means setting up a blocked account, or even a spendthrift trust. Either way, the minor’s initial funds are depleted from the additional up-front setup expenses and legal fees associated with this approach. Further, additional fees and expenses will be incurred every year until the age of majority or the trust is wound up, in the form of legal, accounting, administrative, trustee and investment costs. Obviously, this is not an attractive option either.

Here is what is being done to fix the problem. Recently, Rep. E. Clay Shaw (R-Fla.) and Pete Stark (D-Calif.) introduced the Structured Settlements Protection Act (HR 263), which would place an excise tax of 50 percent on the factoring companies for each and every transaction. Said Shaw, “This tax would, in effect, eliminate the market for this service and protect the victims from exploitation.”

Also making these transactions less attractive should be the class-action lawsuit filed in Pennsylvania against J.G. Wentworth, the nation’s largest purchaser of structured settlement payments. Jerry Magee, a resident of Magnolia, Miss., filed the lawsuit in the Court of Common Pleas, Philadelphia County [Oct. Term, No. 001552] “on behalf of himself and all others similarly situated.” It alleged, among other things, that the purchase or “advance funding” of his structured settlement payments actually constitutes a loan and that Wentworth failed to comply with federally-mandated disclosure requirements for consumer lending transactions. It also charged that such loans violate state usury laws.

And finally, just in case either or both of the above measures fail, we have added one simple phrase to the clause work in our suggested Settlement Agreement and Release forms, which should effectively block these abuses from ever being perpetuated on our clients again.

If you would like assistance in developing strategies for taking control of the structured settlement process, contact us. We can help. Phone us at (800) 666-5584 or (503) 699-8929, or visit our website at www.settlepro.com. Questions? Comments? Suggestions for future topics? E-mail us at meligan@settlepro.com



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