



WISCONSIN LEGISLATIVE COUNCIL

TRANSFER OF STRUCTURED SETTLEMENT PAYMENTS

Room 225 Northwest
State Capitol
Madison, WI

September 11, 2014
9:00 a.m. – 2:45 p.m.

[The following is a summary of the September 11, 2014 meeting of the Study Committee on the 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.>]

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; Rep. Michael Schraa; Sen. Lena Taylor; and Public Members Bruce Bachhuber, Catherine La Fleur, Benjamin Malsch, Elizabeth Nevitt, and Gerald Ptacek.

COMMITTEE MEMBER EXCUSED: Public Member Michael Fitzpatrick.

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

APPEARANCES: Fredric Kolb, Professor, University of Wisconsin-Eau Claire; Victor Harding, Attorney, Warshafsky Law Firm; and Gretchen Viney, Clinical Professor, University of Wisconsin Law School.

Approval of the Minutes of the July 31, 2014 Meeting

The committee members unanimously approved the minutes of the July 31, 2014 meeting.

Presentation of Materials by Legislative Council Committee Staff

Ms. Henning described the materials that had been distributed to the committee members. She noted that the Wisconsin Legislative Council bill draft that was distributed is for discussion only and is based on the model act created by the National Structured Settlements Trade Association and the National Association of Settlement Purchasers in 2000.

Mr. Larson described Memo No. 2, relating to governmental interests in structured settlement factoring transactions.

Presentation by Fredric Kolb, Professor, University of Wisconsin-Eau Claire

Professor Kolb addressed financial considerations relating to the transfer of structured settlements. He described two core questions that he believes the committee should consider: (1) Will conditions be in place to assure that a person seeking to sell his or her rights to payments under a structured settlement is able to make a well-informed decision?; and (2) Is the market sufficiently liquid to allow for a fair valuation? He also presented examples of purchase prices for structured settlement annuities available for sale to investors.

Professor Kolb made several recommendations regarding the transfer of structured settlement payments. First, he suggested that an online video, containing various background information regarding the financial implications of transferring a structured settlement, be developed to be viewed by persons considering selling their rights to payments under a structured settlement. Second, he recommended that the committee compile data showing market prices for structured settlement annuities, together with amounts actually paid to persons selling their rights to payments under structured settlements. Finally, he recommended that the committee explore the possibility of asking the State of Wisconsin Investment Board (SWIB) to evaluate and make offers on proposed transfers of structured settlements.

In response to questions, Professor Kolb emphasized the need for adequate transparency and competition in the secondary market for structured settlement payments. He recommended that a person seeking to sell his or her rights to payments under a structured settlement be required to obtain financial advice.

Presentation by Victor Harding, Attorney, Warshafsky Law Firm

Mr. Harding described the history regarding the use of structured settlements and discussed considerations made when plaintiffs agree to structured settlements. During the question and answer period following Mr. Harding's presentation, Judge Ptacek mentioned that it would be helpful to courts to have some insight into the reasons why a person originally agreed to a structured settlement. Mr. Harding agreed but discussed practical reasons why a plaintiff's attorney is able to provide only limited assistance to a court considering a structured settlement many years after it was created.

Discussion of Committee Assignment

The committee used WLC: 0011/P1 as a guide during its discussion. The committee first discussed SECTION 3 of the bill draft, relating to disclosures that a person seeking to purchase rights to payments under a structured settlement (“transferee”) must make to the person selling such rights (“payee”). The committee discussed the following changes to that section of the draft, for consideration at the next committee meeting:

- Increase the timeline for mandatory disclosures from three days to five business days.
- Add disclosures related to the following:
 - The discount rate for the transaction.
 - A statement that a transfer of structured settlement payments has financial consequences, that a payee is admonished to obtain independent professional advice regarding a proposed transfer, and that the transferee’s attorney does not represent the payee.
 - The effective annual interest rate for the transaction, written in the following format: “YOU WILL BE PAYING THE EQUIVALENT OF AN INTEREST RATE OF __% PER YEAR.”
 - A price quote from the original annuity issuer or price quotes from two other annuity issuers that reflect the current cost of purchasing a comparable annuity for the aggregate amount of payments to be transferred.

Regarding the last additional disclosure listed above, committee members discussed the question of who should be required to pay for a price quote. There was general agreement that a provision based on New York’s law should be added for the purpose of further discussion.

Presentation by Gretchen Viney, Clinical Professor, University of Wisconsin Law School

Professor Viney described her experience and perspective as a guardian ad litem (GAL) for many years, and as an author of several publications relating to guardianship in Wisconsin. She stated that she believes that attorneys who serve as GALs for minors lack authority to advocate in favor of structured settlements for minors. She also noted that in Wisconsin, consideration of a “best interest” standard is typically paired with appointment of a GAL. In response to questions from committee members about the use of that standard, she emphasized that if a best interest standard must be applied in judicial review of transfers of structured settlement payments, then it is important for the law to provide factors for courts and GAL to consider.

Continued Discussion of Committee Assignment

The committee continued its discussion of WLC: 0011/P1. Regarding SECTION 4, relating to judicial approval of structured settlement transfers, committee members tentatively agreed that a list of four or five factors should be provided with respect to judicial consideration of the standard “in the best interest of the payee, taking into account the welfare and support of the payee’s dependents.” Committee members suggested that the factors address the following issues: whether the payee understands the financial ramifications of the transaction; an assurance that the payee was not coerced; the financial terms of the transfer; and the existence of certain financial considerations in which the state may have a special interest, such as a child support or restitution order or delinquent taxes. Committee members also suggested that a “catch all” consideration be included. In addition, committee members suggested that funds that are part of a valid Medicaid special needs trust or a Medicare set aside should be expressly excluded from the types of payments for which a Wisconsin court may approve a transfer. Members agreed that additional considerations should apply in cases in which the payee is a minor or incompetent. In those cases, committee members suggested that the physical and mental health of the payee and the payee’s financial situation should be taken into account.

Committee members next discussed SECTION 6 of the bill draft, relating to procedures for judicial review of structured settlement transfers. Committee members noted that “application” may not be the appropriate term for the filing for court approval. The committee directed Legislative Council staff to confer with the Director of State Courts regarding the appropriate term and case classification. Committee members also tentatively agreed that a payee should be required to appear in person at a hearing for court approval of a transfer, unless the court finds that appearance using audiovisual technology is appropriate. In addition, the committee discussed requiring that a payee submit an affidavit to the court stating whether the payee is in arrears regarding payments owed under a child support or restitution order. It was suggested that a form affidavit could be developed.

Finally, committee members agreed that worker’s compensation benefits should be excluded from the types of payments for which a court may approve a transfer.

Adjournment

Chair Ott thanked the committee members for their attendance and announced that the next meeting of the committee will be on October 9, 2014. The meeting was adjourned at 2:45 p.m.

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