

April 29, 2015

The Honorable Jim Ott  
Chair, Judiciary Committee  
Wisconsin State Assembly  
Room 317 North  
State Capitol  
P. O. Box 8953  
Madison, WI 53708

**Re: Assembly Bill 129**

Dear Representative Ott:

On behalf of the National Structured Settlements Trade Association ("NSSTA") I strongly endorse Assembly Bill 129 as it would be amended by Assembly Amendment 1, which you and Representative Dana Wachs have offered (as thus amended, "Amended AB 129").

I also want to take this opportunity to commend you and Representative Wachs and all of the other members of the Legislative Council Study Committee on Transfer of Structured Settlement Payments for your hard work, openness and thoughtfulness in developing this important legislation.

NSSTA is a national organization dedicated to promoting use of structured settlements to resolve damage claims and workers' compensation claims involving physical injuries. Its membership comprises licensed insurance brokers, life insurers, property and casualty insurers, and lawyers, life care planners and other professionals involved in negotiating and implementing structured settlements.

More than 17 years ago NSSTA drafted the first model legislation regulating structured settlement factoring transactions. Since then NSSTA and its members have worked to enact structured settlement protection acts ("SSPAs") based on the model legislation in most of the 48 States that have adopted such legislation. John McCulloch, an NSSTA board member and Vice President of EPS Settlements Group, one of the nation's premier structured settlement brokerage firms, participated in meetings of the Joint Legislative Council Study Committee.

Amended AB 129 is based upon the model legislation originally drafted by NSSTA, but it incorporates improvements reflecting 17 years' worth of experience under the SSPAs of

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other States. Its enactment will assure that when a factoring company seeks to acquire structured settlement payment rights from a settlement recipient in Wisconsin, the transaction will be subject to review and approval – or disapproval – by the Circuit Court in the county in which the settlement recipient is domiciled. The Circuit Court will be able to apply Wisconsin standards, and it will be in a position to make a well-informed judgment about whether the proposed transfer is, or is not, in the best interest of the settlement recipient and his or her dependents.

As legislators in other States (and in Congress) have recognized, structured settlement recipients who are persuaded to sell off their future payment rights too often are left to fall back on the social safety net. The protections provided for in Amended AB 129 thus will benefit both Wisconsin settlement recipients and Wisconsin taxpayers.

NSSTA regrets that because of conflicting commitments it will not be able to send a representative to testify at this week's meeting of the Assembly Judiciary Committee; but please inform the Committee that we strongly support enactment of Amended AB 129. If we can answer any questions by phone or e-mail, please let us know.

Very truly yours,

A handwritten signature in black ink that reads "Eric Vaughn". The signature is written in a cursive style with a long horizontal line extending to the right.

Eric Vaughn  
Executive Vice President

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Written Statement of National Association of Settlement Purchasers Regarding AB 129

Wisconsin is one of only two states that does not have a structured settlement transfer statute. In accordance with Federal law (26 USC 5891) a transaction involving the sale, assignment, pledge, or transfer of future structured settlement payment rights is subject to a 40% excise tax unless that transaction is court approved under an “applicable state statute,” in which case the excise tax is not imposed. An “applicable state statute” is defined under Federal law to mean a statute enacted in the state where the payee (the payee is the individual who is receiving structured settlement payments under a structured settlement) is domiciled that provides for court approval of the transfer OR, if no such statute has been enacted in the state where the payee is domiciled, a statute enacted in the state where the structured settlement obligor (the party obligated to make the future structured settlement payments) or the annuity issuer (the insurance company that has issued an annuity to fund the obligation of the structured settlement obligor to make the future structured settlement payments) is domiciled.

As a result, currently if a Wisconsin payee desires or needs liquidity relative to his/her future structured settlement payment rights, typically a declaratory judgment action will be filed in Wisconsin seeking court approval of the transaction in accordance with a structured settlement transfer statute enacted in another state. Thus, transactions involving Wisconsin payees are subject to the laws of other states and Wisconsin courts are called upon to apply the laws of other states to such transfers. This can complicate these transactions and lead to uneven results. It would be beneficial to all of the parties to such transactions (the payees and the transferees) and Wisconsin courts, if Wisconsin enacted its own statute to be applied to a transaction involving Wisconsin citizens. AB 129 accomplishes this goal.

The National Association of Settlement Purchasers (NASP) was pleased to be invited to participate in the Joint Legislative Council study committee chaired by Representative Ott relating to structured settlement transfers. The legislative and public members of the joint study committee gave careful thought and consideration to this subject. NASP was also pleased to be able to discuss this subject in Wisconsin with a number of different parties interested in this subject matter.

Ultimately, the study committee recommended a bill for Wisconsin, which has been introduced as AB 129. Certainly, NASP had input into AB 129, and that was appreciated by our members. NASP is a trade association that represents the interests of parties involved in the Secondary Market for structured settlements, including funding companies, attorneys involved in these transfers, servicing companies, financial institutions that provide capital for such transactions, etc. Moreover, NASP members work with payees all around the country everyday on such transactions and therefore takes seriously its commitment to insure (i) that statutes relating to such Secondary Market transactions are focused on the payee; (ii) that payees are

provided with clear and sufficient information (in disclosure statements) relating to such transactions so that they make an informed choice about their property rights and financial assets; (iii) that payees are admonished to consider consulting with a professional advisor relating to such transactions; and (iv) that all payees have liquidity options, subject to court approval, in the context of a court proceeding that is efficient and cost-effective.

AB 129 is based, in large part, on a model structured settlement transfer statute promulgated by the National Conference of Insurance Legislators (NCOIL Model) several years ago. The NCOIL Model, or a bill that is based on the NCOIL Model, has been enacted in approximately 35 to 40 states around the country. Additionally, transfer statutes in another 10 to 13 states, although deviated from the NCOIL Model, include many of the most important aspects of the NCOIL Model. Some degree of uniformity is important, as the Federal excise tax bill, 26 USC 5891, and the NCOIL Model were designed to be complimentary and constitute an interlocking scheme of State and Federal legislation. These transactions often involve and/or affect parties from multiple states (i.e. the payee from Wisconsin, the transferee from Florida, the structured settlement obligor from New Jersey, the annuity issuer from Illinois, etc.) Therefore, it is important and desirable for some degree of uniformity amongst state transfer statutes. Although AB 129 does not follow the NCOIL Model exactly, it incorporates many of the most important provisions and concepts of the NCOIL Model and, most importantly, will constitute an applicable state statute under Federal law. That is extremely important, as it is important to all of the parties to a Secondary Market transaction in Wisconsin that a court order issued in accordance with AB 129 constitute an appropriate state order under Federal law in order to fall within the safe harbor provisions of the Federal excise tax law, as a transaction that is subject to the Federal excise becomes economically infeasible.

AB 129 includes the following important provisions and concepts:

- Requires detailed, written disclosures setting forth the main financial terms of the transaction be provided to the payee at least 5 days before the payee signs a binding contract relating to the transfer of his/her structured settlement payment rights.
- Requires court approval of the transaction in a proceeding where the focus of the court's review is the best interest of the payee.
- Details the effects of a transaction on other parties, including the structured settlement obligor and the annuity issuer, and insures that such parties may rely on the court order in making the payments which have been transferred.
- Sets forth the procedure to be employed by the court and the parties in such transactions.
- Includes other consumer protection provisions.

Because AB 129 is consistent with Federal tax law relating to structured settlement transfers and provides a process and procedure whereby Wisconsin payees will have liquidity

options relative to their future structured settlement payment rights, subject to court review, NASP does believe that the Wisconsin Legislature should enact AB 129.

National Association of Settlement Purchasers

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