

Recommendations to the 2014 Legislative Council Study Committee on Transfer of Structured
Settlement Payments

Fredric Kolb, September 11, 2014

Prefatory Comment: It is my opinion that in essence there are two core issues/questions that the committee must keep in the forefront of any deliberations:

- A. Will conditions be in place to assure that the payee is able to make a well-informed decision?
- B. Is the market sufficiently deep (liquid) to allow for a fair valuation?

My recommendations are intended to move the answers to those questions towards the affirmative.

- I. Recommendations for Policies Applying to the Original Approval of a Structured Settlement
 - 1. That an online video presentation be developed and website maintained that would address the following topics among others with a requirement that those considering a structured settlement would view the video and confirm doing so to the court:
 - a. What is a structured settlement?
 - b. What are the advantages of a structured settlement?
 - c. What are the disadvantages of a structured settlement?
 - d. If I move from Wisconsin will my rights or the answers to these questions change?
 - e. Is it possible to use the structured settlement as collateral for a loan?
 - f. Is it possible to sell parts or all of my structured settlement payments, and if so what are the conditions that need to be met?
 - g. Do I need to get permission from others before I can sell parts or all of my structured settlement?
 - h. Who buys structured settlements?
 - i. If I want to sell a structured settlement who can I turn to for expert advice?
 - j. If I sell all or parts of a structured settlement how will the amount of money I receive compare with what is paid by the final buyer in the process?
 - k. What are the tax consequences of selling parts of or all of my structured settlement?
 - l. Is there a period over which the sale of parts or all of my structured settlement can be rescinded (undone)?

2. After having watched the video presentation, that the potential payee would have a meeting with a financial expert/adviser to discuss the proposed settlement options and resolve any questions. The financial expert/adviser will send a letter to the plaintiff attorney confirming the meeting and outlining issues discussed and will express any concerns. The letter will be included in the file reviewed by the Court.
3. If the potential payee decides to pursue a structured settlement then he/she will provide a written statement to the Court explaining why he/she feels that the structure is appropriate and superior to a lump sum settlement.
4. Items 2 and 3 above will be reviewed by the Court for the purpose of approving or not approving the settlement, and will be preserved as a resource to be considered if at a later point the payee wishes to sell parts of or all of the structured settlement.

II. Recommendation Related to A Possible Area of Study for the Committee:

That the committee compile data (perhaps 15-20 examples) showing the final market prices of structured settlements offered for sale to retail customers paired with the amounts actually paid to the payees. If the amount paid by the final purchaser (retail customer) is viewed as the market value of the structured receipts, then the ratio of payment to the payee relative to the market value can be seen clearly by those analyzing the process. This would be useful in approaching the issue of how much oversight is needed for these transactions. The prices to the "retail" market are available on websites such as IN-FORCE. The amounts paid to payees are not as easily obtained but hopefully Mr. Earl Nesbitt, Executive Director and General Counsel, National Association of Settlement Purchaser could be a helpful source to the committee in obtaining that data.

III. Recommendation Related to Possible Legislation for the Transfer of Structured Settlement Payments:

That the committee approach the State of Wisconsin Invest Board (SWIB) to explore the possibility that as part of its "Invest in Wisconsin" initiative that SWIB make it a practice to evaluate and make an offer on the proposed transfers of structured settlements which are brought before Wisconsin courts. These offers would of course have to meet the Board's fiduciary responsibility to the funds it manages, but in doing so, the Board would be providing the courts and the citizens of Wisconsin with a realistic market valuation of the structured settlements. As financial assets, structured settlements share many of the characteristics of the category of "Public Fixed Income" which is already part of the SWIB "Invest in Wisconsin" initiative. It may well be that the Board currently does hold purchased structured settlements in its portfolio, but here the proposal is that in each case where the courts would evaluate a transfer proposal, the courts could rely upon a bid from the SWIB.

SWIB is involved with Wisconsin businesses ranging from small, family-owned companies to billion-dollar manufacturers shipping worldwide. Some Wisconsin investments occur as part of our everyday investment activity in the national and global markets because Wisconsin businesses participate in these markets. Other investments in Wisconsin are made because SWIB staff make special efforts to look at some of the excellent investment opportunities around the state. As with all SWIB holdings, these investments are done within the context of the Board's fiduciary responsibility to the funds we manage. <http://www.swib.state.wi.us/InvestWisc.aspx>