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**TESTIMONY OF  
RANDY DYER  
ON BEHALF OF  
THE NATIONAL STRUCTURED SETTLEMENTS TRADE ASSOCIATION**

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**REGARDING  
ASSEMBLY BILL 166  
THE STRUCTURED SETTLEMENT PROTECTION ACT**

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**BEFORE  
THE ASSEMBLY JUDICIARY COMMITTEE  
NEVADA HOUSE OF REPRESENTATIVES**

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**MARCH 21, 2003**

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ASSEMBLY JUDICIARY  
DATE: 3/21/07 ROOM: 3158 EXHIBIT 6  
SUBMITTED BY: RANDY DYER

My name is Randy Dyer. I am Executive Vice President of the National Structured Settlement Trade Association, headquartered in Washington, DC. Members of NSSTA work with the parties to a physical injury claim to help them put together a structured settlement that will resolve the case and provide long-term financial security for the injured victim and the victim's family.

The National Structured Settlements Trade Association (NSSTA) is an association composed of more than 500 members who negotiate and fund structured settlements of tort and worker's compensation claims involving persons with serious, long-term physical injuries.

Structured settlements have been widely used over the past two decades in Nevada and across the country to compensate seriously injured, often profoundly disabled, victims of torts and workplace accidents.

A lump sum recovery used to be the standard in personal injury cases. The injured victim then faced the daunting challenge of managing a large lump sum to cover the substantial ongoing medical and living expense for decades, even for a lifetime. All too often, the

lump sum swiftly eroded away. When the money was gone, the victim often was left still disabled and unable to work. In such cases, responsibility to care for this disabled person fell to the State Medicaid system and public assistance system.

Structured settlements provide a better approach. A voluntary agreement is reached between the parties generally through their counsel under which the injured victim receives damages in the form of a stream of payments tailored to the future medical expenses and basic living needs of the victim and his or her family from a well-capitalized, financially-secure institution. This process may be overseen by a court, particularly in minor's cases. Often this payment stream is for the rest of the victim's life to make sure that future medical expenses and the family's basic living needs will be met and that the victim will not outlive his or her compensation.

In essence, structured settlements constitute a private sector funding alternative to taxpayer-financed assistance programs to meet the ongoing, long-term medical and basic living needs of seriously injured victims and their families. Thus, structured settlements enable

seriously injured people to live with dignity and financial independence, free of reliance on government assistance.

Structured settlements have the strong support of the plaintiff's bar, the defense bar, judges, and mediators. They have worked very well over the past two decades in providing long-term financial security to injured people.

Over the past five years or so, there has emerged a new type of transaction, known as the "factoring" of structured settlement payments. In this transaction, settlement purchase companies cash out part or all of a structured settlement recipient's future payments in exchange for a lump sum now.

We in the structured settlement industry have been very concerned that the growth of this unregulated practice of structured settlement factoring threatens the very important public policies that underlie structured settlements, raises very important consumer protection concerns, and finally raises serious tax risks for the other parties to the original structured settlement.

These concerns over the unregulated practice of structured settlement factoring have been shared by State legislators across the

country, the U.S. Treasury Department, State Attorneys General, Members of Congress on a bipartisan basis, consumer groups, disabled victims groups, and bar groups.

State legislatures in some 35 States have passed legislation to protect structured settlements and regulate structured settlement factoring. In addition, the National Conference of Insurance Legislators (NCOIL), which is a group of State legislators from around the country with responsibility for insurance regulation in their home States, adopted model State structured settlement protection legislation.

I believe that the structured settlement industry and the factoring or settlement purchase industry both have come to recognize the strong need for oversight and regulation of structured settlement factoring transactions. Mr. Chairman and Members of the Committee, I am pleased to tell you that after five years of battling in State legislatures and in Congress, the structured settlement industry and the settlement purchase industry have finally hammered out an agreed package of Federal and State model legislation to protect structured settlements and to regulate structured settlement factoring.

I have attached to my written statement copies of this agreed Federal and State model legislation along with a joint letter of support for the legislation by the structured settlement industry and the settlement purchase industry.

This agreed State model legislation is very similar to the structured settlement protection legislation already enacted in 16 States and the model State legislation adopted by the National Conference of Insurance Legislators.

At the center of the agreed approach is a State court review process. The agreed State model legislation provides for State court review of all proposed factoring transactions to determine whether the proposed transaction is appropriate under the circumstances. In order for the factoring transaction to proceed, the reviewing court must find that the transaction is in the best interest of the structured settlement payee, taking into account the welfare and support of the payee's dependents, and that the transaction does not contravene other applicable statutes and court orders.

It is expected that structured settlement payee in Nevada would go to a local court which would review the proposed factoring

transaction under the Nevada structured settlement protection statute. Based on experience with the court review process in other States with structured settlement protection statutes already on the books, it is not expected that this process would be burdensome for the payee.

The agreed State model legislation provides important additional consumer protections for the structured settlement payee. The settlement purchase company must disclose the key terms of the transaction to the payee in advance. This disclosure includes the present value of the payments to be transferred as calculated under the Applicable Federal Rate used by the Internal Revenue Service for valuing annuities. The payee must be told to seek independent professional advice (and has sought or waived such advice). The payee is given a right to cancel the transaction within three days. No confessed or consent judgments may be used under the factoring agreement. Finally, the legislation confirms that it does not authorize factoring transactions that contravene other laws.

The agreed State model legislation also provides protections for the other parties to the original structured settlement in the event of



a subsequent factoring transaction, including indemnification by the settlement purchase company for any Federal tax cost.

In conclusion, the agreed State model legislation has been hammered out by the two sides after months of work. We in the structured settlement industry believe that the agreed State legislation ensures that the structured settlement serves its intended purpose of providing long-term financial security for injured people and their families, while enabling the structured settlement payee to get access to future payments if the court determines that such access is in the best interest of the payee and the payee's family.

Therefore, Mr. Chairman and Members of the Committee, the National Structured Settlements Trade Association, on behalf of the structured settlement industry, strong urges that the Nevada legislature enact at the earliest possible time in next year's session the agreed State model structured settlement protection legislation.

Mr. Chairman, thank you for giving me and the National Structured Settlements Trade Association this opportunity to present our views on this critically important issue.

## State Structured Settlement Protection Statutes

<u>State</u>	<u>Statute</u>	<u>Effective Date</u> <sup>1/</sup>
<b>Arizona</b>	2002 Ariz. Legis. Serv. 239	05/20/02
<b>California</b>	Cal. Ins. Code §§ 10134-10141 (as amended by 2001 Assembly Bill 268)	01/01/00 01/01/02
<b>Connecticut</b>	Conn. Gen. Stat. § 52-225f	10/01/98
<b>Delaware</b>	Del. Code Ann. Tit. 10, §§ 6601-6604	07/26/00
<b>Florida</b>	2001 Fla. Sess. Law Serv. Ch. 207	10/01/01
<b>Georgia</b>	Ga. Code Ann. §§ 51-12-70-77	07/01/99
<b>Idaho</b>	2001 Idaho Sess. Laws 299 <sup>2/</sup>	07/01/01
<b>Illinois</b> (predates NSSTA Models)	215 Ill. Comp. Stat. 5/155.34	01/01/98
<b>Indiana</b>	Ind. Code Ann. §§ 34-50-2-1 – 34-50-2-11	06/30/01
<b>Iowa</b>	2001 Iowa Legis Serv. 337	07/01/01
<b>Kentucky</b>	Ky. Rev. Stat. Ann. §§ 454.430, 454.431, 454.435	07/15/98
<b>Louisiana</b>	2001 La. Sess. Law Serv. 597	08/15/01
<b>Maine</b>	Me. Rev. Stat. Ann. tit. 24A §§ 601.25, 2241-46	___/___/99
<b>Maryland</b>	Md. Code Ann. Cts. & Jud. Proc. §§ 5-1101-5-1105	10/01/00
<b>Massachusetts</b>	Mass. Gen. Laws Ann. Ch. 231C, §§ 1-5	01/12/01

<sup>1/</sup> Statutes based on the NSSTA Models generally include a transition rule that specifies that the statute applies to transfers of structured settlement payment rights under transfer agreements (i.e., factoring agreements) entered into on or after a specified date, generally the same date on which the statute takes effect. For any statute that includes this transition rule, the effective date listed in this table is the date after which new transfer agreements will be subject to the statute. In other cases the effective date listed is the effective date of the statute itself.

<sup>2/</sup> Idaho H.B. 237 enacted structured settlement protection provisions as an amendment to the scope section, § 9-109, of Revised Article 9 of the Idaho Uniform Commercial Code. This unusual placement makes it unclear how and when the structured settlement provisions will apply.

<u>State</u>	<u>Statute</u>	<u>Effective Date</u>
<b>Michigan</b>	Mich. Comp. Laws. Ann., §§ 691.1191 – 691.1197	01/14/01
<b>Minnesota</b>	Minn. Stat. §§ 549.30 – 549.34	08/01/99
<b>Mississippi</b>	2002 Miss. S.B. No. 2912	08/01/02
<b>Missouri</b>	Mo. Rev. Stat. §§ 407.1060 – 407.1068	08/28/99
<b>Nebraska</b>	2001 Neb. Laws 55	01/01/02
<b>New Jersey</b>	2001 N.J. Sess. Law Serv. 139	08/02/01
<b>New York</b>	2002 Assembly Bill 6936-A, to be codified at N.Y. Gen. Obs. Law §§ 5-1701-1709	9/17/02 <sup>3/</sup>
<b>North Carolina</b>	N.C. Gen. Stat. Art. 44B §§ 1-543.10 – 1-543.15 and Art. 33 § 1-394.1	10/01/99
<b>Ohio</b>	Ohio Rev. Code. Ann. §§ 2323.58 – 2323.587	10/27/00
<b>Oklahoma</b>	2001 Okla. Sess. Law Serv. 70	11/01/01
<b>Pennsylvania</b>	40 Pa. Cons. Stat. Ann. §§ 4001-4009	04/11/00
<b>Rhode Island</b>	2001 R.I. Pub. Laws 01-226	08/13/01
<b>South Carolina</b>	2002 S.C. Pub. Laws 252	06/13/02
<b>South Dakota</b>	S.D. Codified Laws §§ 21-3B-1 – 21-3B-12	07/01/01
<b>Tennessee</b>	Tenn. Code Ann. Tit. 47, Ch. 18 §§ 1-7	06/23/00
<b>Texas</b>	2001 Tex. Sess. Law Serv. 96	09/01/01
<b>Utah</b>	2002 Utah S.B. 163, to be codified at Utah Code Ann. §§ 78-59-101-108	05/06/02
<b>Virginia</b>	Va. Code Ann. §§ 59.1-475-477 Va. Code §§ 59.1-475-477.1	07/01/99 07/01/01
<b>Washington</b>	2001 Wash. Legis. Serv. 178	07/22/01
<b>W. Virginia</b>	W. Va. Code §§ 46A-6H-1 – 46A-6H-8	06/11/99

<sup>3/</sup> Section 4 of the New York legislation states that it "shall take effect July 1, 2002"; but the legislation was not signed by the Governor until September 17.

June 11, 2001

The Honorable Max Baucus  
U.S. Senate  
Washington, D.C. 20510

The Honorable Charles Grassley  
U.S. Senate  
Washington, D.C. 20510

Dear Chairman Baucus and Senator Grassley:

Twenty years ago Congress established prudent public policy and law to provide long-term financial security for injured individuals and their families. It has served its purpose well. However, it is vital that Congress now adopt pending legislation that would clarify its intent concerning the future application of laws to ensure that people with disabilities and their families continue to be protected.

In 1982, Congress enacted legislation to facilitate structured settlements<sup>®</sup> for injured individuals and their families, that is, settlements paid out over a period of time to meet their basic living and medical needs. Over the past two decades, some recipients of structured settlements have opted, for various reasons, to replace their periodic payments with lump sum payments, and there is now concern about the impact of these transactions on them.

Fortunately, there is broad agreement upon a provision which supports state laws that address these concerns.—The benefits of this important legislation are directed at the individuals who are receiving structured settlement payments, and their families. The Senate Finance Committee favorably reviewed this legislative proposal in last year=s Chairman=s Mark, but the 106<sup>th</sup> Congress adjourned without completing action on this and other beneficial tax legislation. The groups below support the proposal and represent the disability community; the structured settlement companies, who provide these individuals with periodic payments; and the settlement purchase industry, who provide them lump sum payments to replace their periodic payments.

The groups below applaud Senator Baucus (D-MT), the original author of the current law, for taking the lead in advancing legislation in the Senate with the support of other Members of the Finance Committee. Congressmen Clay Shaw (R-FL) and Pete Stark (D-CA) have introduced the Structured Settlement Protection Act (H.R. 1514) in

The Honorable Max Baucus  
The Honorable Charles Grassley  
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the House which has already been cosponsored on a bipartisan basis by more than 20 members -- a majority -- of the Ways and Means Committee. The legislation ensures that structured settlements serve the purpose Congress intended of providing long-term financial security for structured settlement recipients and their families, while enabling them to get access to future payments if a State court review determines that it is in the best interest of the recipient, taking into account the need to support his or her family.

The disability community, the structured settlement industry, and the settlement purchase industry strongly urge you clarify Congressional intent and enact as soon as possible the proposal, as provided in the Structured Settlement Protection Act, to ensure that individuals who receive structured settlements and their families can continue to receive the settlement payments to which Congress has consistently believed they are entitled.

Sincerely,

American Association of People with Disabilities  
National Spinal Cord Injury Association  
National Structured Settlements Trade Association  
National Association of Settlement Purchasers  
United Cerebral Palsy

Easter Seals  
National Foundation of the Blind  
National Organization on Disability  
The Arc of the United States  
NISH

## RECENT COMMENTS REGARDING STRUCTURED SETTLEMENTS AND STRUCTURED SETTLEMENT FACTORING TRANSACTIONS

### Senator John Chafee:

*Structured settlements were developed because of the pitfalls associated with the traditional lump sum form of recovery in serious personal injury cases, where all too often a lump sum meant to last for decades or even a lifetime swiftly eroded away. Structured settlements have proven to be a very valuable tool. They provide long-term financial security in the form of an assured stream of payments to persons suffering serious, often profoundly disabling, physical injuries. These payments enable the recipients to meet ongoing medical and basic living expenses without having to resort to the social safety net. . . .*

*I am very concerned that in recent months there has been sharp growth in so-called structured settlement factoring transactions. In these transactions, companies induce injured victims to sell off future structured settlement payments for a steeply-discounted lump sum, thereby unraveling the structured settlement and the crucial long-term financial security that it provides to the injured victim. These factoring company purchases directly contravene the intent and policy of Congress in enacting the special structured settlement tax rules. [144 Cong. Rec. S11340 (October 2, 1998).]*

### Senator Max Baucus:

*Over the almost two decades since we enacted these tax rules [Internal Revenue Code Sections 104(a)(2) and 130], structured settlements have proven to be a very effective means of providing long-term financial protection to persons with serious, long-term physical injuries through an assured stream of payments designed to meet the victim's ongoing expenses for medical care, living and family support. Structured settlements are voluntary agreements reached between the parties that are negotiated by counsel and tailored to meet the specific medical and living needs of the victim and his or her family, often with the aid of economic experts. . . .*

*I now find that this careful planning and long-term financial security for the victim and his or her family can be unraveled in an instant by a factoring company offering quick cash at a steep discount. What happens next month or next year when the lump sum from the factoring company is gone, and the stream of payments for future financial support is no longer coming in? These structured settlement factoring transactions place the injured victim in the very predicament that the structured settlement was intended to avoid. [144 Cong. Rec. S11499-500 (October 5, 1998).]*

**Representative E. Clay Shaw, Jr.:**

*As long-time supporters of structured settlements and the congressional policy underlying such settlements, we have grave concerns that these factoring transactions directly undermine the policy of the structured settlement tax rules. The Treasury Department shares these concerns. [144 Cong. Rec. E1420 ([daily ed.] (July 24, 1998).]*

**United States Department of the Treasury:**

*Congress enacted favorable tax rules intended to encourage the use of structured settlements -- and conditioned such tax treatment on the injured person's inability to accelerate, defer, increase or decrease the periodic payments -- because recipients of structured settlements are less likely than recipients of lump sum awards to consume their awards too quickly and require public assistance . . .*

*These "factoring" transactions directly undermine the Congressional objective to create an incentive for injured persons to receive periodic payment as settlements of personal injury claims. [General Explanations of the Administration's Revenue Proposals, Fiscal Year 1999 Budget of the United States Government, February, 1998.]*

**Illinois Representative David Leitch:**

*I'm just very concerned about the people who are being victimized by these people who are taking a very, very deep discount in these settlement amounts, and who are then left penniless without resources in the future. [Illinois House Debate Transcript, April 10, 1997.]*

**Thomas H. Countee, Jr., Executive Director of the National Spinal Cord Injury Association:**

*Over the past 16 years, structured settlements have proven to be an ideal method for insuring that persons with disabilities, particularly minors, are not tempted to squander resources designed to last years or even a lifetime.*

*This is why the National Spinal Cord Injury Association is so deeply concerned about the emergence of companies that purchase payments intended for disabled persons at drastic discount. This strikes at the heart of the security Congress intended when it created structured settlements. The practice of buying the payments of injured parties in exchange for only 50 or 60 cents per present-value dollar strikes me as abusive and inappropriate. [September 8, 1998 Letter to Sen. William Roth.]*

**Editorial: "Settlements Should Last":**

*[E]ven if the lump sum paid to the claimant [by a factoring company] is not quickly squandered on some form of immediate gratification, it is certain to disappear more quickly than the original benefit. That can put claimants between a rock and a hard place: They likely still have sizable expenses but no source of adequate income to cover them. . . .*

*Where does that leave them -- especially if circumstances of their claim have left them unable to earn a living? In all likelihood, at the doorstep of the taxpayer who finances Medicare, Medicaid and public assistance programs. [Business Insurance, August 10, 1998.]*

**Chicago Trial Lawyer Robert A. Clifford:**

*I represent many people who are hurt or disabled through no fault of their own.*

*They are victimized once in an accident. The greater tragedy for them can come later when they are victimized again, this time by slick discounters.*

*Other than the initial injury, I can't think of anything worse. ["Stream of payments shields some injury victims from unwise decisions, maximizes compensation," Chicago Daily Law Bulletin, April 25, 1998.]*

**Former Chicago Bar Association President, Philip H. Corboy**

*Spawned to purchase payment streams from lottery and power ball winners, the aggressive hucksters known as factoring companies have now moved into the structured settlement business. Their targets, injured persons and surviving spouses and children, are not the beneficiaries of windfalls. The dismantlement of structured settlements is their aim. This destructive course of action has bonded bitter adversaries on tort reform, tort trial lawyers and the insurance industry, in a fight to regulate this cottage industry.*

*Tort trial lawyers are unequivocally antagonistic to this enterprise. This secondary market preys upon the most vulnerable of our clients. If these structured settlement beneficiaries did not require protection and were not susceptible and potentially gullible, they would have no need for structured settlements. It is precisely because the temptation to squander all or some of a large sum of money is often irresistible that structured settlements were obtained. [ABA Journal, May, 2000]*



THE WHITE HOUSE READIES ITS DEFENSE

**Brazil Roils  
Global  
Markets**

**When  
Accident  
Victims  
Settle for  
Fast Cash**

**The Pope's  
Poignant  
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**The Revival  
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**Russia's  
Winter of  
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# U.S. News

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JANUARY 25, 1999

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## The Internet Stock Bubble

**When will it pop?**



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# News You Can Use

## Settling for less

*Should accident victims sell their monthly payouts?*

BY MARGARET MANNIX

**O**rlan Olson has had his share of hard knocks. When he was 3 years old, a dog bite caused him vision and neurological problems, as well as injuries requiring plastic surgery. In his teens, he dropped out of high school and wound up homeless. But he had hope. On his 18th birthday, the Minneapolis man was to start receiving the first of five periodic payments totaling \$75,000 from a lawsuit stemming from the dog attack. He received the first installment of \$7,500, but the money didn't last long.

So when Olson saw a television ad for a finance company named J. G. Wentworth & Co. that provided cash to accident victims, he saw a way to get his life back on track. He agreed to sell his remaining future payments of \$67,500 to Wentworth for a lump sum of \$16,100. "I needed money," says Olson, now 20 years old. "If I could get the money out like they were saying on TV, I wouldn't have to worry about being on the street anymore." Within six months, however, Olson had spent all the money and was living in a car. He now wishes he had waited for his regular payments.

Olson may be financially unsophisticated, but he is also caught up in a burgeoning, and unregulated, new industry that specializes in converting periodic payments into fast cash. Also known as factoring companies, these firms can be a godsend to accident victims, lottery winners,



**JERRY MAGEE** Mississippi accident victim sold his payments for quick cash. Today he has only regrets.

and others who have guaranteed future incomes but need immediate funds. But like a modern-day Esau trading his inheritance for a bowl of soup, the unwary consumer may be selling future sustenance for cheap. A growing number of federal and state legislators, as well as several attorneys general, contend that factoring companies charge usurious interest rates,

fail to properly disclose terms, and take advantage of desperate people. "It's unconscionable," says Minnesota Attorney General Mike Hatch. "They are really preying upon the vulnerable."

**Frittering away.** Critics further allege that factoring companies undermine the very law that Congress passed to help beneficiaries of large damage awards. In 1982, seeking to prevent accident victims from frittering away large sums intended to provide for them over their lifetimes, Congress instituted tax breaks for those who agreed to receive their money over a period of years. But now, contends Montana Sen. Max Baucus, a sponsor of that legislation, the careful planning that goes into the structuring of these payments "can be unraveled in an instant by a factoring company offering quick cash at a steep discount."

A number of advanced-funding companies compete for their share of future payments that include more than \$5 billion in structured settlements awarded each year. The largest buyer is Wentworth, handling an estimated half of all such transactions. Based in Philadelphia, the firm began by financing nursing homes and long-term-care facilities. In 1992 it started buying

PHOTOGRAPHY BY  
THOMAS W. BROENING FOR USN&WR



**CHRISTOPHER HICKS** Wentworth sued the Oklahoma man for the entire amount of his payments. "They make you think you are doing the right thing . . . , but you are really messing up your life."

settlements that auto-accident victims were owed by the state of New Jersey. Since then, Wentworth has completed more than 15,000 structured-settlement transactions with an approximate total value of \$370 million.

The deals work like this: A structured-settlement recipient who wants to sell, say, \$50,000 in future payments, will not

get a lump sum of \$50,000. That's because, as a result of inflation, money scheduled to be paid years from now is worth less today. Formulas based on such factors as inflation and the date that payments begin are used to determine the "present value" of the future payments. The seller is, in essence, borrowing a lump sum that is paid back with the in-

surance company payments. The interest on the borrowed sum is called the "discount rate."

Wentworth and other advanced-funding companies say they are providing a valuable

service because structured settlements have a basic flaw: They are not flexible. Consumer needs change, they note, and a fixed monthly payment does not. Wentworth points to an Ohio woman who sold the company a \$500 portion of her monthly payments for six years when her bills were piling up and her home mortgage was about to be foreclosed. She re-

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ceived instant cash of \$21,000, at a discount rate of 15.8 percent. The customer, who did not wish to be identified, says she is grateful to Wentworth for advancing her the money when her insurance company would not. "The insurance companies just don't understand," she says. "When I needed their help, they were not there." Likewise, a New York quadriplegic, who also did not want to be named, says he secured funds from Wentworth at a 12 percent discount rate to expand his own business and, as a result, is more successful than ever. "It was definitely worth it for me," he says.

But other customers are not as satisfied. New York City resident Raymond White lost part of one leg when he was struck by a subway train in 1990. A lawsuit led to a settlement that guaranteed White a monthly payment of \$1,100, with annual cost-of-living increases of 3 percent. In 1996, White, who did not have a job, wanted cash to buy a car and pay medical bills. So he turned to Went-

13-page contract or in the 25 other documents Wentworth required him to sign. Wentworth says it has been revising its documents to make them easier to understand.

**Change of address.** While the factoring transaction itself is complex, the transfer of payments is simple. The structured settlement recipient instructs the insurance company to change his or her address to that of the factoring company. The check remains in the recipient's name, and the factoring company uses a power of attorney, granted by the recipient, to cash it.

This roundabout method is used because insurance companies say structured payments should not be sold. Most settlement contracts

**RAYMOND WHITE** After losing a leg in a subway accident, the New Yorker was guaranteed \$1,100 every month. He gave up future payments totaling \$198,000 in exchange for \$54,000.

worth, selling portions of his monthly payments for the next 15 years in six different transactions.

Altogether White gave up future payments totaling \$198,000. He received a total of \$54,000 in return, but the money, which he used for living expenses, is now gone. He bought a car, but it has been repossessed. He bought a plot of land in Florida, but lost it to foreclosure. With debts mounting, he now relies partially on public assistance to get by. "Unfortunately I was so overwhelmed with debt and striving for a better life that I went along with it," says White. "In reality, what I was doing was accumulating more debt for myself."

Some Wentworth customers say they might have realized the repercussions of their transactions had the contracts been clearer about the long-term costs. Jerry Magee of Magnolia, Miss., who has filed a class action suit against the company, is one of them. In a mortgage contract, for instance, lending laws require that consumers see their interest rate and the total amount of money they will be paying over the life of the loan. By contrast, Magee's lawyer says, neither the effective interest rate nor the total amount of the transaction was clearly spelled out in the

specify that payments cannot be "assigned," and the Internal Revenue Service says that payments "cannot be accelerated, deferred, increased or decreased." Selling payments, the insurance companies say, amounts to accelerating them. And that may threaten the claimant's tax break. Insurance companies say that if their annuitants start selling their payments, the social good that justifies the tax break disappears. Ironically, they make this argument even though some insurance companies themselves are now making counteroffers to factoring companies, accelerating payments to their own claimants. Berkshire Hathaway Life Insurance Co., for example, recently offered a claimant a lump sum of \$59,000, beating Wentworth's offer of \$45,000. The IRS has not formally addressed the tax issues, but the U.S. Department of the Treasury has recommended a tax on factoring transactions to discourage them.

Insurance companies also worry about

having to pay twice. Last year, a judge ruled an insurance company was obligated to pay a workers' compensation recipient his monthly payments because the factoring transaction he entered into was invalid under Florida's workers' compensation statute. For their part, the factoring companies argue that even though the claimants do not own the annuities—



he insurance companies do—the factoring companies can buy the “right to receive” the payments.

Insurance companies are getting wise to these factoring deals—CNA, a Chicago-based insurer, noticed that annuitants from all over the country were changing their addresses to Wentworth’s Philadelphia post office box—and some are trying

to stop the transactions. Some insurance companies, for example, refuse to honor change-of-address requests or redirect the payments back to the annuitant after the deal is done. But redirecting a payment can cause serious consequences for the claimant. In Wentworth’s case, the company has each customer sign a clause called a “confession of judgment,” which

allows the factoring company to sue customers quickly for default when their payments are not received; customers also waive the right to defend themselves.

Christopher Hicks, a 20-year-old accident victim from Oklahoma City, learned the effects of that clause the hard way. In 1997, Hicks signed over to Wentworth half of his \$2,000 monthly payments for the next 32 months and \$1,500 for the 26 months after that. In exchange, Hicks received \$37,500, which he admits he quickly spent on furniture, clothes, and other items. When Wentworth failed to receive a check from the insurance company that pays Hicks the annuity, it secured a judgment against him for the *entire* amount of the deal—\$71,000.

**No clue.** To collect, Wentworth garnished Metropolitan Life, meaning that Metropolitan Life was supposed to start sending Hicks’s monthly checks to Wentworth. It did not—the company won’t say why—and Hicks, who was supposed to be getting \$1,000 back from Wentworth, was left with nothing. “When the money stopped, I had no clue what was going on,” says Hicks, who had to rely on family and friends until the two companies settled their differences in court. Hicks now wishes he had never gotten involved with Wentworth. “They make you think you are doing the right thing in the long run,” says Hicks, “but you are really messing up your life.”

Wentworth makes liberal use of confession-of-judgment clauses even though they are illegal in consumer transactions in the company’s home state of Pennsylvania. The Federal Trade Commission also bans the clauses as an unfair practice in consumer-credit transactions. The clauses *are* allowable in business transactions in Pennsylvania if they are accompanied by a statement of business purpose. So in each case Wentworth certifies that the agreements “were not entered into for family, personal, or household purposes.”

Such language is used in affidavits despite cases like that of Davinia Willis, a 24-year-old resident of Richmond, Calif., who entered into a transaction with Wentworth in 1996 to stop her house from being foreclosed upon and to repair wheelchair ramps—clearly, she says, personal uses. In a class action lawsuit against the company, she cites the confession of judgment as one reason why the contract is “illegal, usurious, and unconscionable.” Wentworth says the clauses are necessary to keep its customers from renegeing on their agreements.

In the end, the controversy over factoring companies comes down to a funda-

mental disagreement over the definition of their business. The factoring companies say they are not subject to usury or consumer-credit disclosure laws because they are not, in fact, lenders. "We don't make loans," declares Andrew Hillman, Wentworth's general counsel. "We buy assets." But some state attorneys general say these transactions differ very little, if at all, from loans and perhaps should be classified as such. That way, says Shirley Sarna, chief of the New York attorney general's consumer fraud and protection bureau, the law could prevent factoring companies from charging discount rates that she says in some cases have exceeded 75 percent. Wentworth says its average rate is 16 percent, and several factoring companies insist their rates would be much lower if insurance companies did not make it expensive for them to complete the deals. "By getting the insurance companies to process the address changes, it would overnight transform our discount rates from high teens to the single digits," says Jeffrey Grieco, managing director of Stone Street Capital, an advanced-funding firm in Bethesda, Md.

Who is right and who is wrong is being hammered out in courtrooms and statehouses across the country. The insurance companies were heartened last summer when a Kentucky judge denied four of Wentworth's garnishment actions, saying the purchase agreements the customers signed were neither valid nor legal. But other courts have ruled differently.

In Illinois, a new state law says that structured settlements can be sold as long as a judge approves the transaction. Wentworth notes that more than 100 such sales have been approved. At the same time, several state attorneys general are examining the factoring industry's practices. "You have got to worry about people who have a debilitating injury," says Joseph Goldberg, senior deputy attorney general for Pennsylvania. "The injury is never going away and they have no real means of income and probably no means of employment. . . . If they give that monthly payment up, it could have serious consequences." Voicing similar concerns, disability groups like the National Spinal Cord Injury Association, which now refuses to accept factoring companies' ad-



**DAVINIA WILLIS** California woman sold her payments to prevent a home foreclosure. She is suing Wentworth claiming "illegal and usurious" terms.

vertisements in its magazine, are warning members about the hazards of cashing out. The association is "deeply concerned about the emergence of companies that purchase payments intended for disabled persons at a drastic discount," says its executive director, Thomas Countee.

While opinions are divided about the validity of factoring transactions, both sides agree that regulation of the secondary market is necessary. As in Illinois, Connecticut and Kentucky have passed laws requiring a judge's approval of advanced-funding deals, as well as fuller disclosure of costs. Faced with mounting criticism, Wentworth this week will announce its pledge to submit every re-

quest for purchase of a settlement to a court for approval. Other states are expected to address the issue this year, and in Congress, Rep. Clay Shaw, a Florida Republican, has reintroduced a measure that would tax

factoring transactions.

The factoring companies respond to all these efforts by also calling for better disclosure from the primary market—the insurance companies, attorneys, and brokers that set up the structured settlements in the first place. Factoring companies argue that structured settlements are not always as generous as they are represented to be. "We challenge insurance companies and their brokers to take the same pledge," said Michael Goodman, Wentworth's executive vice president.

Whatever the outcome of the debate, consumers thinking about selling their future payments are well advised to take a hard look at what they are getting into. ■