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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**

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, strongly 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.

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