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## STRUCTURED SETTLEMENT UPDATE

Set forth below are summaries of three recent cases involving the sale of structured settlement payments. These cases illustrate the continued ability of insurers to successfully oppose the transfer of structured settlement payments and ensure continued protections for both themselves and the structured settlement payees. Copies of all of the summarized cases can be accessed by clicking on the case caption. Please feel free to reply with any comments, questions, or additional cases or materials you would like us to consider.

### [In Re: Mary Foreman \(2006 Ill. App. LEXIS 506, June 8, 2006\)](#)

Rapid Settlements obtained court approval of a transfer petition filed pursuant to the Illinois Structured Settlement Protection Act (the "Illinois Act"). The trial court granted the petition over the objection of the structured settlement obligor and annuity issuer but also struck from the transfer agreement Rapid's right of first refusal in the remaining unassigned structured settlement payments. The obligor and annuity issuer appealed the approval and Rapid appealed the court's decision to strike the right of first refusal.

The court of appeals reversed the trial court's approval. The court concluded that Illinois precedent compelled a denial of the transfer based upon the anti-assignment language contained in the structured settlement agreement, qualified assignment, and annuity. The court's reasoning began with a discussion of the development and reiteration of this precedent and proceeded to reject a contention that anti-assignment language was enforceable only when favorable tax treatment was implicated. The court also rejected the argument that 5891 and the Illinois Act invalidate anti-assignment language. To the contrary, the court ruled that,

in situations such as the present petition, the anti-assignment language in the structured settlement agreement should be given full effect, and approval of the transfer should be denied under the Illinois Act. Accordingly, the court reversed the trial court's approval and denied Rapid's petition.

### [In Re: Rapid Settlements \(2006 Wash. App. LEXIS 1119, June 5, 2006\)](#)

Rapid Settlements sought approval of two factoring transactions pursuant to the Washington Structured Settlement Protection Act (the "Washington Act"). Both petitions involved annuitants who lived in North Carolina, but were filed in Washington, the principal place of business for the annuity issuer involved in both transfers. The issuer objected to the transfers based upon violations of the Washington Act and the North Carolina Structured Settlement Protection Act, as well as the North Carolina Workers Compensation Act (the "NC WC Act") and the anti-assignment provisions contained in the settlement documents. Both transfers were approved over these objections. The matters were consolidated for the purposes of the annuity issuer's appeal.

The court of appeals reversed both trial court orders. The court first determined that, because the powers of attorney, rights of first refusal, and financing statements associated with the purchase agreements encumbered the annuitants' rights to all remaining payments due to them, those payments were "transferred" for the purposes of the Washington Act. As a result, Rapid would need to include in its disclosure statements, as transferred payments, all of the payees' remaining payments in order to satisfy the requirements of the Washington Act. However, because Rapid had included only the payments involved in the

respective transfers, the court ruled that Rapid's disclosure statements failed to meet the requirements of the Washington Act.

The court then rejected several arguments of the annuity issuer relating to how the effective date and liability limitations of the transfer agreements violated the Washington Act, and how court approval of one of the underlying settlements precluded court approval of the transfer. Notably, the court also rejected the objection that the transfer involving workers' compensation payments would violate the NC WC Act. The court concluded that, because the NC WC Act prohibited only the assignment of a "claim for compensation," and because the NC WC Act distinguished between claims and compensation, workers' compensation payments within the scope of the NC WC Act could in fact be assigned.<sup>1</sup>

Finally, the court considered whether the contractual prohibitions on assignment contained in the settlement documents of both matters rendered the transfers ineffective. The court concluded that, because the anti-assignment provisions were effective under the laws of both Washington and North Carolina, the assignments to Rapid were ineffective.

In Re: Theresa Fee (Pa. Ct. Com. Pl., No. 06 CV 1423, June 30, 2006)

The payee, in connection with a transfer to 321 Henderson, petitioned for approval of a typical factoring transaction. The court rejected the petition, concluding that the petition was not in the best interests of the payee and her dependants as required by the Pennsylvania Structured Settlement Protection Act (the "Pennsylvania Act"). The court's analysis first noted underlying concerns over the dissipation of settlement proceeds and the resulting obligations imposed upon public assistance programs that had predicated the enactment of 5891 and state structured settlement acts, including the Pennsylvania Act. The court then proceeded to analyze whether the transfer satisfied the requirements of the Pennsylvania Act. The court discussed the fact that the payee had previously assigned large portions of her structured settlement payments, was unemployed (although capable of employment), and had a history of quickly depleting her structured settlement payments and the lump sums that she received from her prior assignments. The court therefore concluded that the transfer was not in the best interests of the payee and denied the petition. This case serves as a reminder of the concerns surrounding the factoring market, and provides a good example of a court working to safeguard the interests of those protected by 5891 and state structured settlement acts.

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1. The distinction between claims and compensation certainly has not been universally adopted by courts addressing this issue. For example, the Superior Court of Maine denied a transfer of structured settlement payments involving workers' compensation payments because the Maine Workers' Compensation Act provided that "no *claims for compensation* under this Act are assignable[.]" In Re: Donald Richardson, 2005 WL 3804993 (Me. Super. Ct., Nov. 3, 2005) (emphasis added). Additionally, other state courts have denied transfers when the statutory language of the respective workers' compensation acts made clear that both claims and compensation were unassignable. See, e.g., J.G. Wentworth SSC L.P. v. SAFECO Life Ins. Co., 755 So.2d 138 (Fla. Dist. Ct. App. 1999); In re: Roger Dunn, 2006 Ind. App. LEXIS 996 (Ind. Ct. App., May 30, 2006).

## Structured Settlement Update

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