



"Best Interest" Threshold Not Met

Judges Deny Request for Transfer of Structured Settlement Benefits

September 12, 2018 - When the average person hears "structured settlement," they often associate the term with TV commercials offering "CASH NOW!" for something they're led to believe is being withheld from some poor taken-advantage-of individual by an unscrupulous insurance company.

Most intuitively recognize these ads for the disingenuously self-serving sales pitches they are and understand these companies aren't just making public service announcements for the common good of society.

Imagine buying a \$100 bill for \$40 and then turning around and selling it for \$80 and you get some sense of how profitable this industry can be and why, in 2012, [Google's most expensive Adword](#) was "structured settlement."

Things Are Better, Yet Problems Remain

This "factoring" industry, as it's customarily called, has come a long way from the early days of structured settlement exploitation thanks in large part to the passage of Structured Settlement Protection Acts in many states and from increased competition among settlement purchasers.

Structured settlements have enriched the lives of many people over the past forty-plus years by providing guaranteed tax-free income to help them meet their ongoing care and support needs and helping them lead lives of dignity.

But there are legitimate situations where, despite the best of intentions when originally implemented, the terms of a structured settlement no longer seem appropriate for the injured party or their beneficiaries. In these instances, having the option to convert funds to immediate cash can be critical to adjusting to a new financial hardship and should be available.

But consumers shouldn't be fleeced in the process.

Meanwhile, In Pennsylvania



Chester County's (PA) *Daily Local News* reported in July how an unidentified plaintiff from the Penn State University sexual abuse scandal from a few years back had recently tried to convert some of his guaranteed future structured settlement payments to cash.



The unfortunate headline, "[Judge denies payout in PSU victim's case,](#)" might lead some to believe, incorrectly, the individual was being denied his share of the \$93 million settlement. Far from the case.

In truth, the plaintiff had previously compromised his litigation for \$1.0 million cash plus significant guaranteed future periodic payments for the remainder of his life. He was trying to sell his future payments for immediate cash at a steep discount.

Thanks to the [Structured Settlement Protection Act \(P.L. 1, No. 1\)](#), passed by the Pennsylvania General Assembly on February 11, 2000, structured settlement recipients have the right to pursue such transfers provided they can demonstrate the transaction is in their or their beneficiaries' best interest.

To say **Hon. William P. Mahon** was unmoved would be a massive understatement. He angrily refused to grant the petitioner's request considering, among other reasons, the man had earlier been denied a similar request by **Hon. Michael Salisbury** in Clinton County.

Judges tend to frown upon such "forum shopping" if they're aware of it.

The [National Structured Settlements Trade Association \(NSSTA\)](#) works with the National Judicial College, encouraging them to adopt an education program for state court judges focused on factoring transactions, according to Executive Director Eric Vaughn. NSSTA has also opened a dialog with the National Association of Attorneys General with the goal of improving judicial awareness of the factoring process.

I'm sure Judges Mahon and Salisbury do not reject all factoring requests that come before them. But it's reassuring to see they aren't merely rubber stamping a request for more money from a man with a family to support and a poor track record of making sensible decisions about money.

Protecting People from Themselves

In addition to vagueness and inconsistencies in the petitions themselves, one thing that seemed to irk the judges as much as anything was the knowledge that the petitioner " . . . had been awarded a \$1 million payout in addition to the settlement payments, **but had blown through that money in 18 months,**" according to the article.

Premature dissipation of settlement funds is an all-too-common occurrence. Though actual statistics are hard to come by (plaintiffs aren't usually eager to brag about their poor money management skills after they're broke), we know one thing for sure from observing behaviors of retirees and lottery winners:

[People who spread money out over time are happier](#)

[Lottery winning Swedes](#) understand the benefit of safe, secure structured settlement-like income and seem to have kicked the lottery curse.



Financial planners salivating over the prospect of investing your money might advise you otherwise, but there are enough good reasons to reject such advice and [take the annuity](#) whether it be a personal injury settlement, lottery winnings or retirement savings.

Plaintiff attorney advocates of structured settlements routinely express frustration when they secure a good settlement or verdict for their client only to learn they are broke after a short period of time thereafter. Structured settlements help prevent such undesirable outcomes.

Final Thoughts

Sexual abuse is about control. Plaintiffs involved in this type of litigation deserve special consideration. Having assisted far too many clients who needed to overcome the trauma of abuse by priests, teachers, coaches, coworkers, classmates, and, in one case, a grandparent, we've seen firsthand how structured settlements can help survivor plaintiffs regain some control over their lives by allowing them to choose how their financial futures will unfold.

We acknowledge that factoring of structured settlements is here to stay. We are generally opposed to the practice but accept there are times when a person may be better served by converting future payments to cash. We think these instances should be rare and are thankful for the laws in place which ensure the conversion cannot be hastily implemented.

If all judges scrutinized factoring requests as thoroughly as these judges did, I believe people would be less likely to initiate whimsical structured settlement transfer requests and the more predatory firms would ultimately lose market share.

And that would benefit everybody.

Thank you for the opportunity to be of service and best wishes for continued success in your personal and professional lives.

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