Legal Services Advocacy Project

July 13, 2022

VIA EMAIL
The Honorable Bob D. Hackett
Chair, NCOIL Workers' Compensation Committee
Senate Building
1 Capitol Square, 1st Floor
Columbus, OH 43215
sd10@ohiosenate.gov

The Honorable Henry B. Zuber, III
Vice Chair, NCOIL Workers' Compensation Committee
Room 402-C
P. O. Box 1018
Jackson, MS 39215
hzuber@house.ms.gov

    Re: **Proposed Amendments to NCOIL Model Structured Settlement Protection Act**

Dear Senator Hackett, Representative Zuber:

The Legal Services Advocacy Project (LSAP) respectfully writes to strongly urge that if the NCOIL Workers' Compensation Insurance Committee adopts a version of the NCOIL Model Structured Settlement Protection Act ("SSPA") that incorporates amendments based on the recent Minnesota SSPA amendments, it adopt **ALL** of the Minnesota amendments, not just the amendments promoted by structured settlement factoring companies. LSAP is a statewide division of Mid-Minnesota Legal Aid, providing policy advocacy on issues affecting low-wealth Minnesotans, children, seniors, and Minnesotans with disabilities in legislative and administrative forums.

At its July 15, 2022 meeting, your Committee is scheduled to consider amendments to the NCOIL Model SSPA based on amendments to the Minnesota SSPA, Minn. Stat. §§ 549.30 - 549.34, recently enacted. *See* 2022 Minnesota Sess. Laws, Ch. 62 (H.F. No. 3768). As one of the advocates for structured settlement payees in Minnesota, LSAP and allied organizations worked extensively with insurance industry representatives, with the National Association of Settlement Purchasers ("NASP")(which represents many of the larger structured settlement "factoring" companies) and with the bill authors, Representative Erin Koegel and Senator Paul Utke, in negotiating the Minnesota SSPA amendments.

The catalyst for those amendments was a series of articles published by the Minneapolis Star Tribune in October 2021. The articles ("Desperate, Then Offered Quick Cash," "Judges Hampered by Doubts, Vague Laws," "Relentless Tactics Target Wary Sellers" and "In Guardians, Victims Gain Potent Advocate") are available at https://www.startribune.com/unsettled. In grim detail, they revealed serious abuses perpetrated by structured settlement "factoring" companies, both in Minnesota and elsewhere, and highlighted some of the ways in which those abuses have been addressed in the SSPAs of other States. Building on safeguards enacted in other States, the just-passed Minnesota bill will give Minnesota structured settlement payees and their families the protections they need and deserve.

We are surprised and disappointed to see that although they are based on the recent Minnesota SSPA amendments, the proposed amendments to the NCOIL Model would omit nearly all of the essential new protections for structured settlement payees that have been enacted in Minnesota.

For example:

- The proposed NCOIL Model amendments would <u>omit</u> Minnesota SSPA amendments that prohibit factoring companies from (i) harassing structured settlement payees; (ii) soliciting transactions by offering payees checks and documents that look like checks; (iii) attempting to acquire options or rights of first refusal covering payment rights that a payee might choose to sell in the future; and (iv) referring payees to ostensibly independent professional advisers whose advice may not actually be independent.

- The proposed NCOIL Model amendments would <u>omit</u> Minnesota SSPA amendments requiring that in determining whether a proposed transfer of payment rights serves the best interests of a structured settlement payee, a court must specifically consider whether settlement payments "were intended to cover future income or losses or future medical expenses" and "whether the payee has means of support aside from the structured settlement to meet these obligations."

- The proposed NCOIL Model amendments would <u>omit</u> Minnesota SSPA amendments that authorize, and in some cases require, that a court, in deciding whether to approve a proposed transfer of structured settlement payment rights, appoint an attorney "to make an independent assessment and advise the court whether the proposed transfer is in the best interest of the payee."

- The proposed NCOIL Model amendments would <u>omit</u> Minnesota SSPA amendments that require disclosure to parties and the courts of <u>all</u> prior transfers to the proposed transferee as well as, after reasonable efforts, disclosure of all prior transfers to other transferees.

While omitting these and other protections for structured settlement payees and their families, the proposed NCOIL Model amendments would supplement the existing NCOIL Model by imposing new registration and bonding requirements on factoring companies and by prohibiting certain aggressive forms of competition between factoring companies – changes favored by large factoring companies and promoted by NASP.

*If the Workers' Compensation Insurance Committee adopts a version of the NCOIL Model SSPA that incorporates amendments based on the recent Minnesota SSPA amendments, the Committee should adopt a version that incorporates **ALL** of the Minnesota amendments, not just the amendments promoted by structured settlement factoring companies.* Payees in <u>every</u> state deserve the same protections when transferring structured settlement payment rights that Minnesota consumers now enjoy. If the Committee endorses and the NCOIL Executive Committee supports the proposed selective incorporation of Minnesota SSPA amendments, the amended NCOIL Model SSPA would become a prototype for legislation that would countenance the same kinds of abuses that the Minnesota amendments are designed to curtail. Model legislation intended to protect vulnerable structured settlement payees would make it easier for factoring companies to exploit them.

Thank you for considering LSAP's views.

Sincerely,

Ron Elwood

Ron Elwood
Supervising Attorney

Cc: Thomas B. Considine, NCOIL CEO, tconsidine@ncoil.org
     William Melofchik, NCOIL General Counsel, wmelofchik@ncoil.org
     The Honorable Paul Utke and Workers' Compensation Committee Members