

NATIONAL COUNCIL OF INSURANCE LEGISLATORS
WORKERS' COMPENSATION INSURANCE COMMITTEE
2024 NCOIL SPRING MEETING – NASHVILLE, TENNESSEE
APRIL 12, 2024
DRAFT MINUTES

The National Council of Insurance Legislators (NCOIL) Workers' Compensation Insurance Committee met at The Sheraton Grand Nashville Downtown Hotel in Nashville, Tennessee on Friday, April 12, 2024 at 8:15 a.m.

Senator Lana Theis of Michigan, Chair of the Committee, presided.

Other members of the Committee present were:

Sen. Justin Boyd (AR)	Rep. Mark Tedford (OK)
Rep. Deborah Ferguson, DDS (AR)	Rep. Lacey Hull (TX)
Rep. Matt Lehman (IN)	Rep. Dennis Paul (TX)
Rep. David LeBoeuf (MA)	Rep. Tom Oliverson, M.D. (TX)
Rep. Brenda Carter (MI)	Del. Steve Westfall (WV)
Rep. Mike McFall (MI)	
Sen. Paul Utke (MN)	
Rep. Nelly Nicol (MT)	
Sen. Jerry Klein (ND)	
Rep. Tim Barhorst (OH)	
Sen. Bob Hackett (OH)	
Sen. George Lang (OH)	

Other legislators present were:

Asm. Tim Grayson (CA)	Rep. Mike Harris (MI)
Rep. Toby Overdorf (FL)	Rep. Jerry Neyer (MI)
Rep. Bruce Williamson (GA)	Sen. Michael Webber (MI)
Rep. Peggy Mayfield (IN)	Rep. Bob Titus (MO)
Sen. Mike Gaskill (IN)	Sen. Natasha Marcus (NC)
Sen. Beverly Gossage (KS)	Sen. Vickie Sawyer (NC)
Rep. Patrick Penn (KS)	Sen. Bill Gannon (NH)
Rep. Bill Sutton (KS)	Asm. Roy Freiman (NJ)
Rep. Sean Tarwater (KS)	Rep. Barbara Dittrich (WI)
Rep. Larry Bagley (LA)	Sen. Mary Felzkowski (WI)
Sen. Mark Huizenga (MI)	Del. Walter Hall (WV)
	Del. John Paul Hott (WV)

Also in attendance were:

Commissioner Tom Considine, NCOIL CEO
Will Melofchik, NCOIL General Counsel
Pat Gilbert, Director, Administration & Member Services, NCOIL Support Services, LLC

QUORUM

Upon a Motion made by Sen. Justin Boyd (AR), and seconded by Sen. George Lang (OH), the Committee voted without objection by way of a voice vote to waive the quorum requirement.

MINUTES

Upon a Motion made by Sen. Lang and seconded by Rep. Mark Tedford (OK), the Committee voted without objection by way of a voice vote to adopt the minutes of the Committee's November 16, 2023 meeting.

WORKERS' COMP ALTERNATIVES FOR INDEPENDENT CONTRACTORS

Brad Nail, Partner, Multi-State Gov't Relations at Converge Public Strategies, thanked the Committee for the opportunity to present on the topic of occupational accident insurance and stated that I've worked on occupational accident insurance products for both the insurers that underwrite them and for the policyholders that prospectively buy them in terms of filings and then creation of the products.

Michael Saporito, Sr. VP for Accident & Health at Zurich thanked the Committee for the opportunity to speak and stated that I have underwritten this product since 2007 and have led our team since 2011. What I wanted to accomplish today is to give a little bit of history to this product and help to demystify the product a little bit and then Mr. Nail is going to speak to more of the application of the product today. So, occupational accident insurance is in essence a work injury protection product for individuals that are not covered under statutory workers' compensation. Primarily, that would be independent contractors, you may also see individuals that are companies that have a number of employees less than the statutory requirement. This product actually has a genesis going back to the early 1980s. The Trucking Deregulation Act of 1980 caused a boom of independent owner/operators in the trucking industry growing from about 100,000 individuals to today about 350,000 individual owner/operators across the country. And those individuals generally are not covered under statutory workers' compensation. They are sole proprietors, some incorporate themselves, but generally, they are sole proprietors and they will work with trucking companies. What was identified is these individuals when they are injured at work, they generally were not able to afford workers compensation for themselves and they were not covered under workers compensation by the trucking companies that they worked with. So, the occupational accident product was created to help to address some of those needs.

The program will often be sponsored by, in the trucking world, the trucking company, and in today's world, there will be gig or sharing platforms that will sponsor a product. And these independent contractors can either purchase that product that's sponsored or they can go out into the open market and purchase a product from an association or other methods. Generally, what we'll see is that this product has four main components. You'll have an accidental death and dismemberment component that will provide benefits for their loved ones should somebody unfortunately pass away or be dismembered. There will be an accident medical expense component that will provide for the medical bills from that injury. And there will be a short term and long-term disability replacement benefit if they're unable to work. Some of the benefits of this product are that there's flexibility as far as how the rates are developed. We've seen it on a per month, per individual basis, percent of revenue basis, cost per mile. So, there's a lot of flexibility in how individuals can pay for this coverage. The product provides consistent benefits across all 50 states so there's no issues regarding jurisdiction in shopping for better benefits. It's consistent in that individuals that are injured can seek treatment from their own doctors, there's no direction of care, it's completely up to the individual and the doctors that they're comfortable with. And there are no deductibles or co-pays associated with this product. Ultimately, we found

in the trucking space that generally claimants are happy with the product and that the cost is generally substantially less than traditional workers' compensation. And ultimately, our goal is to make this Committee aware that this product exists and it really helps to fill a gap for individuals that would otherwise not have that benefit if they're injured.

Mr. Nail stated that it's really been the growth of the gig economy in the last decade or so that has put occupational accident insurance back on I think the regulatory and legislative radar. This is the Workers' Compensation Insurance Committee, so I think we should ask the question, why isn't this just covered by workers' compensation? And well, workers' compensation first of all is statutory coverage, it is tied to employment. A significant component of it is the grand bargain where the employee has agreed not to sue the employer in exchange for the employer providing these benefits for injuries in the workplace. And I think it assumes a level of control over work conditions, over how work is performed to allow the employer to mitigate the risk. And that level of control does not really exist in the independent contractor relationships we're talking about. So, as we look for alternatives to how to insure for workplace injury, we start to look at occupational accident insurance and its success within the independent contractor trucking world from the '80s and forward as a model that can apply to gig economy workers today. Uber, DoorDash, Taskrabbit, and others, all have developed occupational accident programs to date and others I know are working on that as well. Mr. Saporito talked about some of the benefits, the typical program that I see offers \$1 million in medical benefits. Since it's not a statutory coverage, the benefits are not prescribed in statute, so it allows the companies to be a little creative. How you calculate lost wages for someone who works in a gig type job is different from traditional employment and what I have witnessed is that they are doing that to the benefit of the worker to try to get an accurate reflection of the wage loss that they're going to experience.

And then I would ask what are the public policy implications? What are the situations where this type of coverage and this type of insurance might be discussed in your legislatures? And I really have two situations for you. The first is that this type of insurance is not approved for sale yet in every state. In the programs that I've worked on, we were successful in getting approval in 41 states. So, there are still 9 states out there where this type of coverage is not available and it's typically because the Department of Insurance, even if they view the insurance positively, feel like their hands are tied by something in the statute that prevents them from approving this type of insurance. And so, it may very well be that someone is coming to you to talk about how the statute can be adjusted to permit this type of insurance to be sold in that limited number of states. And then the second situation where I think this might come to you folks is that some states are discussing worker classification for gig workers, and there are a number of issues involved in that discussion but work injury coverage tends to be one of them. We think occupational accident insurance will usually be the best option for work injury coverage for these types of workers. And we would like all of you to be well versed in this type of insurance. Our experience is when we introduce that topic in the legislatures, in the initial discussions over those types of bills, there's a lot of education to be done. People just aren't necessarily familiar with occupational accident insurance. So, to that end, we will always be available to you to answer your questions and provide you with more information. If these sorts of debates and discussions are going on in your states, please reach out to us and we can take any questions on this topic here and as I said, we'd love to be a resource to all of you here when you're back in your states.

Rep. Tom Oliverson, M.D., (TX), NCOIL President stated he appreciated the presentation and we were just sitting over here discussing this and learning a lot. So, as I understand it this doesn't provide any property coverage from an accident standpoint. This is solely for the worker. Can you give us just some idea because we're sitting over here wondering what's the cost of a 6 month premium or however you price it? What does a trucker have to pay to get coverage like

this? Mr. Saporito stated what we see generally, for example in trucking, is costs between \$100-\$150 per individual per month. Now, that will obviously vary based upon the characteristics of what's being hauled and past loss history, but that's generally a range that you'll see in the trucking industry. In the gig economy space those rates will be substantially lower because the risk is lower. Rep. Oliverson stated I think one of the interesting features about the gig economy versus the trucking industry is that if you're an independent contractor trucker, that's a full time job. If you're delivering for DoorDash, you're probably maybe doing that once or twice a week or whatever your free time is. So, are these policies essentially designed in a way that you can turn them on or off based on your activity, whether you're engaged in commerce or you're just driving the kids to school? Mr. Nail replied they are and I can give you an example actually on the pricing as well within the gig economy because this is where there's an opportunity to innovate because it's outside the statutory work comp scheme. In one of the products that I was working on, it provides work injury coverage for the entire time that the app is on and that they are engaged in activity on that particular company's app. The premium, and I think this is innovative, is only calculated on trip miles so, while you have a passenger in the vehicle. So, we're going to calculate the premium off of those miles but we're extending the coverage to the entirety because it's more predictable. And it was as low as less than two and a half cents per mile, so it was reasonable. Rep. Oliverson stated that's great, and are there any regulatory barriers that you're aware of in any of our states that prevent this coverage from being available? Mr. Nail said yes, like we said, we got the approval in 41 states and the ones that didn't, it tends to be either there's a little something in the statute that the Department of Insurance thinks precludes them from doing this or there may be something within the Department of Insurance's own practice relative to loss ratios or other elements there that we have to revisit.

Rep. Matt Lehman (IN) thanked Mr. Nail and Mr. Saporito for their presentation and asked with workers' comp being, in many states, the sole remedy, meaning I can only go there to get my benefit, if I'm one of the gig drivers and I purchase this, have I waived my right to go after someone who might hit me in a car accident? Mr. Nail stated you have not. Rep. Lehman said in some states we have an issue with compliance with statutory work comp regulations which makes it sole remedy. So, if I'm in an auto accident as a truly covered work comp driver, my sole remedy is to go to the work comp policy. So, with this they would get access to both. Kind of the quote unquote, "work comp" but also the right to then sue. So, doesn't it kind of put work comp on its ear? Mr. Nail said well there are subrogation provisions and the ability to prevent double recovery exists within the policy terms itself. Mr. Saporito agreed. Rep. Lehman stated yes, but in work comp, it is my sole remedy, I can't sue my employer. So, I take whatever the benefit is statutorily. I can't go back and say I want \$5 million for that. But if I were in an auto accident I could sue for as much I want. So, I give that up if it's a work comp related incident, I don't give it up if it's not? Mr. Nail responded correct, in this scenario, you're receiving the benefits, you might treat it almost like a no-fault scenario where you're receiving these benefits but you have not given up your right to pursue an employer. In this case, it's not an employer, but you haven't given up your right to pursue if there are legal grounds, if there's a basis for it.

Sen. Mary Felzkowski (WI) stated really what you're doing is you're taking short term, long term, a small med policy, all policies that currently exist, but you're packaging them in a different form, am I correct? Mr. Saporito stated yes, I would say that in most cases those short-term, long-term policies are generally 24 hour in nature. Sen. Felzkowski asked so, you're not reinventing the wheel. These independent contractors could already purchase all of these products, but they would be annual products. So, all of this already exists in the marketplace. You're taking and packaging them in a form into what the gig worker needs. Mr. Nail said and doing it at scale that allows for pricing because I think the pricing attractiveness is a key element for where independent contractors might feel priced out in the marketplace. Sen. Felzkowski asked if

you're using the same contractual language, the same subrogation language, everything is still going to be in that, but it's more or less redesigned to fit a new class of worker that we haven't seen before. Mr. Nail said it's written in such a way to describe the activity.

Sen. Beverly Gossage (KS) stated I had the same question as Sen. Felzkowski, but I guess what I'm asking is how does it compare in price? So, one can buy a disability policy. One can buy an accident plan. But if you couple it together perhaps that would help with price and as far as buying each one of these individual products, do you know? Mr. Nail stated it certainly does help with the pricing when you bundle those together and when it's written at scale for a large number of workers who are engaged in the same activity versus just one sole person trying to approach an insurer to buy those types of policies.

Rep. Mark Tedford (OK) stated in my experience with these policies they're very flexible, it could be something that's a business expense, something that could be at a contractor's expense. Do you see many businesses try to make it a required expense for their independent contractors? Mr. Saporito said generally, in the trucking world it is required per the independent contractor operating agreement. In the gig economy I think it's still developing. And you'll see it sometimes required, sometimes not required.

Sen. Lang stated typically, is there a requirement from the employer or from the government? Mr. Saporito stated the requirement is generally from, in the trucking world, it would be the trucking company, in the gig world it would be the technology platform that would require it per contract. Sen. Lang stated thank you for bringing a private sector solution to the market in this regard. My question is, is this limited only to physical injury? Because an accident for a trucker on the highway could create PTSD for that individual. Is it limited just to physical? Or does it cover mental and emotional injuries as well? Mr. Saporito stated the product is flexible and generally, I will see benefits tied to mental anguish or if you need therapy sessions, or if you're unable to work because of mental challenges related to a past incident, it really just has to be validated by the treating physician in order to have that be a qualified disability.

Sen. Theis asked who are the 9 states and why would they be prohibited if these products are just merely being bundled and made more readily accessible? Are they not available in the 9 states where this is prohibited? Mr. Saporito responded with what I have seen of the states that do not allow the coverage, often it is a question of it's a valid group for the purposes of this type of insurance. You know, generally employer groups are allowed, association groups are allowed. But this is I'll say quasi-employee group and some states will not kind of allow that gray area to connect to a true employee group. Mr. Nail stated Mike's experience is the same as mine. It's a group insurance product and the disapproval tends to come from the technical requirements to form a group and buy insurance for the group. And we worked it and there are some states that just kind of threw up their hands and said we can't approve this as a group under our current scheme and I have the list of states I can provide to you.

STRUCTURED SETTLEMENTS 101

Sen. Theis said next on our agenda is a presentation focused on structured settlements. Before we begin, some brief background. NCOIL has an existing Model State Structured Settlement Protection Act, which you can view on your binders on page 25 and on the website and app as well. The model was amended during the summer of 2022 and since that time there were some requests to provide a presentation on the basics of structured settlements for those that may not be familiar with the product and laws surrounding them. Before we go further, I'll turn things over to the sponsor of those 2022 amendments, Sen. Paul Utke (MN), NCOIL Treasurer.

Sen. Utke stated, as mentioned I did sponsor the amendments here in 2022. I also sponsored the legislation that we passed the same year in Minnesota. The amendments that we had before us or that are being talked about is an exact mirror to what was passed in Minnesota. So, as we have those discussions going forward here today that's kind of what we'll be talking about. But, over the last year or so there have been some calls to re-open this model. I've had conversations with both sides and others. And at this time, it's not my plan or our plan to reopen it, but I think it is good to have discussions. We always learn from conversations and we can see what we might want to entertain in the future. And so, I look forward to what everybody's got here today. The one thing that I would just like to remind people is that as we saw when we talked about this two years ago both in Minnesota and even when it was proposed here, conversations can get a little in-depth and a little heated and I would just ask that as we go forward here today that we be respectful to everybody and make this an educational process so that we can all learn more about this from both sides why there might be a request to add further definitions to things and maybe why we don't want to add those definitions. So, I look forward to our conversations here today and let's see what we can learn on this model act.

Sen. Theis said before we get started I'd like to reiterate what Sen. Utke just stated regarding maintaining civility and decorum. I realize we got into our jobs because we're very passionate about what we do and we just need to make sure that we maintain that civility. We don't have to agree on everything, but we can disagree respectfully.

Susan Stauss, Member, Cozen O'Connor (on behalf of the National Structured Settlement Trade Association (NSSTA)) thanked the Committee for the opportunity to speak and stated with me today is Sally Greenberg, CEO of the National Consumer League and we're both here to have a conversation along with others to educate you all on structured settlements and why the NSSTA, the trade association, believes that the model should be amended and perhaps maybe sooner than typically would happen on an NCOIL agenda, meaning typically model acts get reviewed every 5 years and we understand that we're asking for this to be done a little bit earlier than that, but we really believe that in what has been happening and what has been going on throughout the country there's a need to actually revisit the issue. So, I understand from speaking to some of you that structured settlements may not be all that familiar to everybody. Generically speaking, a structured settlement is when there is a personal injury or wrongful death lawsuit and it is settled, and instead of taking a lump sum payment, the injured party takes periodic payments over time. So, they'll get monthly payments for 30 years and then perhaps guaranteed for life, they'll also get some lumpsum payments over life. And the entire point of the structured settlement is to ensure that the injured party has money and income over time to account for their injuries and perhaps their inability to work again or work at a reduced rate. So, the money is really designed, it's tax free, it is designed to protect this injured party for their future. Structured settlements have been around for quite a long time and NSSTA, the trade organization, drafted the Model Structured Settlement Protection Act. That was then adopted by NCOIL and it is now the model act. And it has been amended over many years and recently there have been a lot of negative issues in the press that we're going to talk about. My trade association is comprised of insurance companies, and producers, and insurance professionals. The industry's goal is to promote and maintain the establishment of structured settlements. This is the insurance company and the producers. This is their product. This is a brand name. This is something that we do not want to have negative publicity about.

And sometimes, and I know some of you have heard this, I think what you hear if you hear structured settlements is perhaps the television commercials with the jingle, "it's my money I want it now". That's what we're talking about. The jingle about the structured settlement is actually created by a factoring company. And so, structured settlements are future payments for

the injured party and then in the early '90s, factoring companies came into the mix. And factoring companies are the company behind that jingle on television. Factoring companies buy future streams of injured parties periodic payments and in exchange they give them a lump sum payment, often a heavily discounted lump sum payment in exchange. That means that the future payments paid by the insurance company will no longer go to the payee, that money will now go to the company who bought the payments. And the injured party will have received the lump sum at the time, but once that lump sum is dissipated, if they've sold their future payments there is no more income for them. So obviously the public policy behind this is also significant. I've been doing this since 2001 and I've worked with others on the other side all these years and there are many factoring companies that I would say do the right thing. That look at these issues similarly as I do. But there are enough factoring companies, it's an almost a \$9 billion industry, out there that we have to ensure that the laws protect the injured party, and the laws protect the insurance companies that are involved, and the product that we're talking about, the actual structured settlement. Factoring came into play in the early 1990s and in the late 1990s in order to curb factoring abuses the model act was created. The model act is designed to give states guidance as to what should be included in their particular structured settlement protection act. I spent the better part of my career helping states across the country enact their own model act. I'm very proud to say that all 50 states and Washington D.C. all now have their own model structured settlement protection act.

The NCOIL model act has served as a blueprint for all the state structured settlement protection acts. Historically, and unfortunately, I venture to say even now that model act lags behind what we are seeing in states changing their own model acts. And the reason for that is plentiful. There has been massive negative publicity over the years about the factoring industry. There have been exposes written, and they will be talked a little bit about soon, in The Washington Post, the Minnesota Star Tribune, the McClatchy Media articles down in South Carolina, and they've really brought a negative kind of connotation when you hear structured settlements. If you Googled structured settlements right now, the first thing you're going to get is a factoring company. The biggest factoring company out there, that's the first thing you're going to get if you Google what a structured settlement is. Not that it is tax-free payments meant to provide for the injured party. You're going to get a company who buys that injured party's payments. So, while there have been changes to the model act, we believe that the model act should set the gold standard, that states are looking to the model act to see whether or not their own act is up to par. And while states can obviously go ahead and do that, what I've been seeing is what I would call a domino effect, which is unfortunate. What we would hope to not have is we had a horrible expose written in the Washington Post, a state changed their model act. There were blistering articles in the Minnesota Star Tribune, Minnesota changed its model act. There was a horrible expose written in the McClatchy Media, South Carolina changed its act. And what I would say is, I would not want to wait for the next bad expose about structured settlements to get another state and one by one have a domino effect in each state. If the model act takes this head on and we really ensure that the model act encompasses everything that we'd like to see in it, then we have a chance of all the states looking at the model act and saying, "you know what, we're going to change to make that" instead of waiting for these horrible exposes. And I'm going to talk about briefly the four amendments that we're talking about. I would also say that I would like to think that they're not controversial. And the reason why I say that is because what we're promoting benefits the injured victim. It benefits my constituency which is the insurance companies and the producers. And it also benefits the factoring industry because when these deals are completed and the law is changed the way the new laws have been coming out, it would be much more difficult to unwind one of these transactions which behooves everyone. The amendments that we're proposing are not that controversial. But we'll talk about them in a minute. I'm going to turn it over to Ms. Greenberg for a moment to talk a little bit about the consumer aspect of this.

Ms. Greenberg thanked the Committee for the opportunity to speak and stated I am here because I believe representing the consumer advocacy community, that structured settlements are a pro consumer protection issue and factoring companies are too often predatory actors. So, structured settlements provide injured individuals with financial independence. After hearing from Ms. Stauss a bit now you have some history on the anatomy of a structured settlement and it's easy to understand why and how structured settlements provide financial independence and security to the injured and often disabled individuals. They provide personal injury victims with a planned, dependable cash flow to cover their long-term medical and basic living needs. And structured settlements serve a strong public policy of providing relatively unsophisticated and many times uneducated injury victims with secure streams of future periodic payments. Thereby, they ensure that these people are not left destitute and relying on public funds to support them. Abuse of practices in the structured settlement factoring industry take advantage of structured settlement payees. Many structured settlement payees suffer from cognitive impairments and other mental health issues that render them incapable of understanding the terms or consequences of factoring transactions. The Minneapolis Star Tribune, which is my hometown paper, and so I was very proud to see that my hometown paper had a series of articles reporting that factoring companies go to great lengths to find people who receive settlements. They swamp them with checks, calls, ads, gift cards, sometimes hotel rooms. One company, Catalina Structured Funding sent out thousands of flyers each week. In March 2021 a Minnesota customer received three realistic looking checks totaling \$4,500 each and so called, 90-day COVID-19 assistance from Catalina. And on the back of the checks, in the fine print, Catalina noted that funds were actually an advance that would be released only if the recipient signed a contract selling some of his future payments to the firm.

Another company, Access Funding, instructed agents to call potential clients 9 to 10 times a day for at least 3 days after making initial contact. The South Carolina Sun News issued a series of articles that also remarked on the aggressive marketing tactics of factoring companies. One payee, the reporter spoke with, said these people are like roaches with the constant phone calls, checks, and gift cards. And in 2015 the Washington Post detailed how a factoring company in a very long series published in the Post was able to befriend marginalized structured settlement payees treating them to fancy meals, gift cards, promises of vacations, and thereby convinced hundreds of lead poisoned poor African American individuals to enter into factoring transactions. The proposed amendments to the NCOIL model act will strengthen consumer protections. The NCOIL model act and the state structured protection acts are consumer-based legislation. I am here today to advocate for the changes to the NCOIL model act that will strengthen protections for consumers but particularly the class of consumers most vulnerable to the predatory nature of the factoring industry. Since the NCOIL model act serves as a model upon which state legislatures rely when amending state specific laws, amending the model act is vital. And I would like to think that if the good people of Minnesota agreed to amend their law, that would be a good model for the rest of the country.

I should explain one aspect of what happens so that it will put in context the amendments that we're seeking. When an injured party decides that they would like to sell their future payments to a factoring company, the model act requires basically a mini court procedure. So, there is a legal document that is filed by the factoring company with the court. It's called a transfer petition. They file it with the court. The court sets a hearing date. And at the hearing the factoring company and hopefully most states require that the payee actually, the injured party, show up in the courtroom. In the courtroom the court is supposed to listen to testimony and make a determination as to whether the sale of the future payments by the injured party to the factoring company is actually in the best interest of the payee. So, an injured party decides I don't want to wait, I'm going to sell 10 years of my monthly payments to a factoring company. The factoring

company files a transfer petition, the transfer petition sets a hearing date with the court. then there's a court hearing. What we found, and I can tell you from firsthand experience I have been to hundreds of these hearings. I can tell you that judges often are stuck. They don't understand this body of law and what they're supposed to do. They don't have clarity I think they would say about what best interest actually means. I've also held judicial education panels across the country with the Judiciary because judges are begging to know what questions to ask. And what information they should be asking about this injured party and whether or not this sale to the factoring company makes sense. So, that's kind of the court proceeding that governs each one of these transactions. So, the amendments that we're seeking, the first one very simply is a list of factors that the judges can consider when the payee is in front of them. This is not new, other states have this list of factors. California, Minnesota, South Carolina, and other states already have the factors. The judge is clearly not limited to these factors, they're just suggestions. I can tell you that judges don't know that maybe they should ask "have you ever sold your money before?" because eliciting that answer to that one question may allow the judge to learn that the payee has sold 14 previous times. So, the amendments are that we would like the court to have factors to determine what best interest actually is. We'd also like the court to have discretion to appoint an attorney ad litem. Perhaps the judge doesn't have time and these are often set for ten minute hearings so maybe the judge doesn't have time to get the information he or she needs to make a best interest finding. If the court's allowed to appoint an attorney ad litem who can work with the payee and find out why the payee wants to sell their money and if it makes sense, we would like the court to have that ability. We would also like to have enhanced protections about the harassment and the phone calls, and the gift cards, and all of the kind of nefarious things that certain factoring companies employ to get these people to sell their payments. And the last amendment we're hoping to do is have an affidavit from a payee to explain whether they've sold payments before and why they're selling their money and what is the reason for selling their money. I know this is a lot of information. I gave you all the slides. I knew we weren't going to get through them today. But we really just wanted to open the dialogue about the necessity to make these changes sooner than later.

Brian Dear, General Counsel for the National Association of Settlement Purchasers (NASP) stated he appreciated the opportunity to speak. Our organization is the sole trade association for participants in the secondary market for structured settlements. Over the last 25 years our organization has participated in every state legislature and in Congress helping to craft the laws that govern these transactions to ensure adequate consumer protections while also permitting these transactions to be available for individuals for whom they are appropriate and valuable. NASP has long been a supporter of NCOIL, of this Committee's work, and the model act. NASP has advocated in state legislatures across the country to adopt the model act at great financial expense to our membership. Over the past several years we have worked with NCOIL to strengthen consumer protections contained in the model resulting in the amendments of the model act in July of 2022. The model act was originally scheduled for review in July of 2021 on the normal five-year cycle. That review was extended so committee members could consider the final bill adopted by the Minnesota Legislature in 2022. The 2022 amendments to the model act included strengthened consumer protections previously adopted in Louisiana, Nevada, and Georgia requiring the registration of companies to do business in the state, to create numerous prohibited acts by companies, and creating the ability for courts to revoke the right of bad actors to do business in those states. The model act requires cases involving individuals seeking to transfer a portion of their structured settlement to be filed in the county of their residence and for individuals to personally appear before the court, allowing the judge to review the facts of the cases and the merits of the needs for the transfer. These provisions eliminate forum shopping by bad actors which led to some of the issues we've seen in other states. These amendments also importantly adopted some but not all of the provisions from the recently adopted Minnesota

Structured Settlement Protection Act. Minnesota's act was one of the first in the nation, adopted in 1999 before there was a federal law that governed these transactions. And unfortunately, Minnesota never updated its act with the NCOIL model when the Star Tribune articles were published which led to the legislation in 2022.

During the legislative process, we spent time on the ground in St. Paul. We learned what the issues were in Minnesota so that we could properly address them. The resulting legislation addressed many of the issues which were specific to Minnesota. Minnesota specific provisions include as Ms. Stauss mentioned, the inclusion of best interest factors which were taken directly and codified from a Minnesota court of appeals opinion. There was already existing case law that's where those factors came from in Minnesota, we codified them so the judges were crystal clear what Minnesota law was. The need for the provisions specifically permitting the appointment of attorney advisors was unique to Minnesota because unlike other states the state judiciary is limited in their ability to swiftly appoint guardian ad litem. To address this unique situation the attorney advisor provision was included in the Minnesota act. Following the passage of the Minnesota legislation the model act was amended in 2022 to include several provisions from Minnesota. Specifically including the provisions addressing and severely limiting transactions involving minors. The committee in our opinion wisely left out provisions which addressed specific to Minnesota out of the model act. In 2023, our industry unfortunately faced negative media attention in South Carolina which resulted in the state adopting essentially a carbon copy of the Minnesota act. Unfortunately, at that time South Carolina's act contained a fatal variance from the NCOIL model act which permitted bad actors in the state to forum shop transactions to a specific judge who failed to adequately examine transactions. Had South Carolina adopted the model act in its entirety with a requirement that cases be filed in the county of residence of the payee, or the individual involved in the transaction and personally appear before the judge it is likely that the vast majority of the issues that were the subject of the media attention in South Carolina would not have occurred. The common theme in Minnesota, South Carolina, and in the 2010s in Maryland was that none of these states at the time the issues arose had the NCOIL model act in place. We believe if they had there would have been a different story, or no story at all.

NASP has been leading the efforts in the state legislatures across the country to update the state acts with the NCOIL model. We support and advocate for strengthened consumer protections contained in the 2022 amendments to the model act. NASP is actively seeking to drive out bad actors from the marketplace in which we operate. And the new provisions of the 2022 amendments are helping us do just that. We do not however support the NSSTA's request to reopen debate on the model act mid cycle to wholesale replace the model act with the act recently passed in Minnesota. As discussed previously many of the provisions addressed in the Minnesota act codified Minnesota case law. The Committee adopted portions of the Minnesota act which were appropriate such as the provisions limiting minor transactions. We believe it is premature to essentially copy and paste Minnesota's law into the model act now. Just last Thursday, legislation was introduced in Minnesota, Senate File 5338 which seeks to create a study by the Attorney General in the Minnesota Supreme Court to determine the impact of the changes of the 2022 Minnesota law and to report back to their legislature on how that act is operating and to see if it's being effective, and what modifications can be further made to that bill. So, clearly Minnesota is still reviewing the issue. While we believe it is premature to adopt changes to the model act at this time, we do not believe it is premature for the industry participants to begin a dialogue on potential improvements to the model act when it is scheduled to come back for review in 2026. In the past, our organization and the NSSTA have worked together to improve the marketplace. The original NCOIL model act was mutually agreed to between our organizations. Unfortunately, we have not seen that spirit of cooperation under its

current leadership but we hope that will change. The NSSTA were notably absent in the legislative process in Minnesota in which NASP spent hours upon hours meeting with bill sponsors and interested parties in the state to address the problems in Minnesota. And they were also absent during the year long process that NCOIL adopted the amendments in 2022. The secondary marketplace for structured settlements exists in large part because structured settlements themselves while a good product is not a perfect one. Our industry exists as Americans seek and need liquidity when the original structured settlement no longer meets their financial needs. Secondary market transactions are a vital tool for people with structured settlements when they need to utilize it. Our customers come from all walks of life. Additionally, as a practitioner in this marketplace, I have seen who our customers are over the past two decades. Overwhelmingly, the folks who are seeking funds in these transactions are doing so to buy a home, to start or grow a business, to obtain transportation, to get out of debt, or to help with an immediate financial crisis usually caused by recent job loss. The majority of our customers are receiving structured settlements not as a result of an injury to themselves but are receiving structured settlements as a result of a wrongful death of a loved one. And those customers who have been injured have in large part recovered from those injuries before they come to us to seek a transaction. These are the folks we want to do business with. Our members, just as much as everyone else, want to ensure that minors and folks who have cognitive issues have all the protections in the world on these transactions. And realistically to discourage them from entering these transactions at all. We hope to work with all stakeholders over the next few years to see how the current updated statutes are operating, to review the report from the Minnesota legislature in 2025, and to improvements of the model act under the next review cycle in 2026.

Rep. Deborah Ferguson, DDS (AR), NCOIL Immediate Past President asked since the structured settlement is tax free income, what happens when a company like yours buys that out? Does the person then have to pay tax on the lump sum you give them? Mr. Dear stated no, the amount to be paid to the payee is still a tax free asset. So, they're not paying taxes on any of the proceeds. So, if a person's involved in a transaction to raise funds for a down payment on a home, whatever amount they're agreeing to receive from one of our member companies is the amount they'll be receiving. It still retains its tax free status.

Rep. Ferguson said I don't see a limit on the amount of money you're allowed to make on the transaction in our structured bill. What amount typically does your company or these companies keep? Mr. Dear said this industry at this point is quite hyper competitive. There are a number of players in the marketplace. They fiercely compete. There is a common misconception that our member companies are making massive amounts of money on these transactions which is just simply not the case. Companies compete against each other. They try to outbid each other for business for these customers. And with all of these transactions we are obviously subject to the interest rate environment. So, when interest rates go up unfortunately the interest rate on our transactions go up. During the period of time during the pandemic, it was not uncommon for deals to be done at 4% or actually probably closer to 5%, 6%, 7% on guaranteed transactions as far as what the discount rate would be on these transactions. Currently, that's obviously higher as with all things. So, it's a common misconception that our member companies are making a ton of money on these transactions, it's simply not the case. I haven't seen an interest rate under 15% in the last probably two years, they go up to 25%.

Rep. Ferguson asked what do these companies do with the annuity once they buy it? Do they continue to draw it as a structured settlement? Or do they cash in the annuity? How does that work? Mr. Dear responded saying with all of these products there are end investors who are seeking to basically use these. They're basically investor classes who purchase these assets

from our originating companies. Often they're pension funds or other similar type product funds that are looking to buy these as secondary class assets from our member companies.

Sen. Theis stated I am curious are the issues that Ms. Stauss was describing happening in Minnesota? You used that as your kind of defense of the legislation. Mr. Dear stated just to clarify, in the Minnesota articles there were a number of issues that were raised. Some of the judges in Minnesota did voice some of the concerns. Basically, there was some confusion about the Minnesota court of appeals article that included the best interest factors. Some judges for some reason appeared to read that as that they didn't have a guidebook on how to address that. In our opinion, they misread what that opinion said. So, it was codified in Minnesota specifically that court of appeals decision to make sure that the judges knew here are what the courts have decided in that state of the factors you should look at.

Ms. Stauss stated just to clarify one thing that Mr. Dear mentioned earlier, NSSTA was heavily involved in the Minnesota legislation. We worked directly with Legal Aid to actually draft the legislation and had a lot of input with the same amendments that we're seeking here today to put into the Minnesota legislation. That said, I don't think we need to focus solely on Minnesota. Yes, it was recent, yes it has all the things that we would like to have included in the model act. So, does South Carolina. Again, both of them were as a result of these blistering exposes. California also has the best interest factors that we're talking about that allow judges to look at a list of things and give the judges some sense of what kind of questions they should be asking to get the information. In terms of the other things that we're asking for each amendment is not solely limited to Minnesota or South Carolina. There's a whole host of states that have each of the four bolded items that we're talking about. Other states have also adopted those. And the point here is we're talking about the model act. The model act is all encompassing and has the best of the best. Then states really can't go wrong when they look back to the model act and say how can we be better? The model act should be the gold standard. How can we be like the model act? And that's simply what we're trying to do here.

Sen. Theis thanked the presenters and said I would like to express my personal concern about the contracting with respect to minors. The idea that they would be subject to something that they most definitely cannot understand is very concerning and I believe requires significant oversight.

Sen. Utke thanked everyone and stated as we all see it's a topic that's not just going to go away anytime soon because there are important things yet to discuss. It all started three years ago in Minnesota with the newspaper article that just highlighted how outdated our policy was at the time. And it's been talked about it and that's what made it come to the forefront at that point and it got addressed. But it's also we're dealing with money and we all know when we're dealing with money there's challenges because there's people out there always trying to get one step ahead and scam somebody. So, that's the reason that I think the conversations around the structured settlements will be something that probably won't be forgotten about anytime soon just because there's always a bad actor out there trying to take advantage of somebody and none of us want that to happen. We're all in it for the best interest of the people that are going through this, for whatever reason they might want to sell their settlements. I look forward to further discussions as these years proceed. I'm sure everybody involved will stay in touch with us. So, we will continue to learn more and see if at some point there is something we should look at. But at this point I just thank you for letting us have this conversation. Sen. Theis stated she appreciated the discussion. If anybody has any questions or concerns or ideas related to this topic please reach out to myself, Sen. Utke or NCOIL staff.

OVERVIEW ON EXPERIENCE RATINGS AND THE SUBROGATION PROCESS

Sen. Theis stated that last on our agenda is an overview on experience ratings in the subrogation process. This topic actually relates to a bill that was introduced by Rep. Lehman which you can see in your binders on page 38 and on the website and app.

Rep. Lehman stated that we've talked about this issue here before. I actually filed a bill but we did not move the bill in Indiana but I think it needs some discussion. And that gets around without getting too deep in the weeds when someone has an accident, going back to kind of the sole remedy, you go to workers comp, workers comp pays that claim. Let's say it's an auto accident. So, I didn't cause the accident, I'm not responsible but my employee has a \$500,000 loss. That now hits my modification. When they do the experience modification I'm going to pay for that with an increase in my premium over the next three years. There's a trail and you're in there. But it's the next three years I'm going to pay for that. If they're successful in their subrogation, so they go to subrogation, they get the money from the person who actually hit my employee and they are made whole. My concern was always how does the employer, the insured, end up getting back their money they paid in that additional premium because of the experience modification? It also tosses in the issue of a lot of contracts are based on bidding on your experience mod. You can't bid a contract if you're over 1.0. And so again, if I'm not responsible for that we're allowing a kind of an artificial loss to my mod affecting me on bidding. So, I've talked with the National Council on Compensation Insurance (NCCI) about this in the past. They have some regulations about going back as the carriers and recalculating those mods but subrogation doesn't have a timeframe. So, if subrogation's 5 years from now, and I'm made fully whole and I go back and recalculate two years I'm really going to miss probably two years of the experience mod. So, I really think we need that and NCCI can address this what's the solution. I think some states have said, you just have to go back and recalculate regardless which is kind of what Indiana we're attempting to do. So, I'm just curious how NCCI as kind of the regulator of all things workers comp, will weigh in on this.

Tim Tucker, Washington Affairs Executive, Regulatory Division for NCCI thanked the Committee for the opportunity to provide a brief overview of the impact of subrogation and other recoveries on workers compensation experience modification factors. Of course, Rep. Lehman did a great job of talking about some of the impacts that he has seen in Indiana. NCCI maintains a portion of the infrastructure of the workers compensation system for 38 states. Those are proposed rules they're filed with the states and approved by state insurance regulators. Our rules are just that, they're proposed. Some states have deviated as what is being proposed by Rep. Lehman in Indiana. There're two aspects of this issue that need to be understood as it relates to our infrastructure. The first is our statistical rating plan. And the second is our experience rating plan. Those two plans as I mentioned are filed and approved in each NCCI state. So, essentially for each policy period and for every policy we receive reports that include audited payroll, premium, and claims. And we receive those on an annual basis. The first three years of those reports are used to calculate an experience modification factor. And that is recalculated each year using the current and two preceding years. So, what happens when there's a recovery either through subrogation or through a another fund such as a second injury fund, NCCI rules in both our staff plan and our experience rating manual require that the carrier file a correction report. That report reflects the recovery that was made again through subrogation or another fund or other third-party. With that correct report we go back and correct the mod of the current year and past two years. And we'll do that for the first five years of that policy. Beyond that there is no subrogation. But we found that most subrogation's occur within that five year window. So, the other aspect here is to understand that there is a mechanism to address this within our rules. States have deviated as I've discussed with Rep. Lehman, and he is well

aware. So, we propose this framework. But certainly, states are free to adjust that and some have.

ANY OTHER BUSINESS

Rep. David LeBoeuf (MA) stated I would like to propose a future discussion in this Committee related to workers' compensation and fraud particularly in the construction industry. Back in 2009, NCOIL adopted some model legislation around protections and worker compensation qualifications for contractors and workers in that industry. But we are seeing a couple of challenges, at least in my area related to fraud in regard to certain contractors misrepresenting their payroll to companies and creating premium fraud or labor brokers that are actually not getting insurance. They're presenting that they have workers compensation insurance, getting it for a short term period and then we find out later on that they actually do not have coverage and the worker is lost. And so, it puts a competitive disadvantage for those companies and those contractors that are doing the right thing.

ADJOURNMENT

Hearing no further business, upon a motion made by Sen. Utke and seconded by Rep. Lehman, the Committee adjourned at 9:30 a.m.