

INTRODUCTION OF A REVISION TO
THE STRUCTURED SETTLEMENT
PROTECTION ACT

HON. E. CLAY SHAW, JR.

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 6, 2000

Mr. SHAW. Mr. Speaker, today I introduce a revised version of the Structured Settlement Protection Act, which I had introduced earlier in this Congress along with my colleague Mr. STARK and a broad bipartisan group of co-sponsors constituting a majority of the Ways and Means Committee. The revised legislation I am introducing today, again joined by Mr. STARK, will bring a final resolution to the issue known as "factoring" of structured settlement payments.

I am a long-time supporter of the use of structured settlements to compensate victims of physical injuries. Structured settlements constitute a private sector funding alternative to taxpayer-financed programs to meet the ongoing, long-term medical and living needs of seriously-injured victims and their families. Structured settlements enable these injured people to live with dignity, free of reliance on government. For these reasons, Congress adopted special tax rules to encourage the use of structured settlements to provide long-term financial security to injured victims and their families.

The legislation I am introducing today addresses concerns that have been raised over the "factoring" of structured settlement payments, in which the structured settlement recipient sells future payments for cash. The legislation protects the Congressional policy underlying structured settlements by providing that a stiff excise tax would be imposed on a factoring transaction unless a State court approves the transaction in advance upon a finding that the factoring transaction is in the best interests of the victim, taking into account the welfare and support of the victim's dependents, and a further finding that the transaction does not contravene applicable statutes and court orders.

This legislation has been agreed to by the National Structured Settlements Trade Association (NSSTA) on behalf of the structured settlement industry and the National Association of Settlement Purchasers (NASP) on behalf of the factoring industry. I submit for the record a joint letter of support for this legislation from NSSTA and NASP.

An identical structured settlement protection provision has been included in S. 3152, the "Community Renewal and New Markets Act of 2000", introduced on October 3 by Senate Finance Committee Chairman ROTH and co-sponsored by a bipartisan group of 15 Members of the Senate Finance Committee. The structured settlement protection provision in Chairman ROTH's package has been scored as essentially revenue neutral.

Enactment of this legislation—which is part of an overall package of Federal and State legislation which has been agreed to by the two sides in the debate—will bring a final resolution to all of the issues surrounding structured settlement factoring. I strongly urge the enactment of this important legislation as soon as possible.

Re Agreement between the National Structured Settlements Trade Association and the National Association of Settlement Purchasers on Proposed Legislation Covering Transfers of Structured Settlement Payments.

SEPTEMBER 13, 2000.

Hon. BILL ARCHER,
*Chairman, Committee on Ways and Means,
House of Representatives, Washington, DC.*
Hon. WILLIAM V. ROTH, Jr.,
*Chairman, Committee on Finance, U.S. Senate,
Washington, DC.*

DEAR MESSRS. CHAIRMEN: The National Structured Settlements Trade Association (NSSTA) and the National Association of Settlement Purchasers (NASP) have agreed on the concepts and language of the attached package of Federal and State legislation that would protect the Congressional policy underlying structured settlements and would regulate transfers of structured settlement payments to companies in the business of acquiring future structured settlement payments from recipients in exchange for a lump sum. These transfers are sometimes referred to as structured settlement "factoring" transactions.

The Federal and State measures are each necessary components of a single legislative package. (Legislative language for the Federal and State measures is attached.) Under the agreed approach, the States are given the consumer protection role. The proposed State legislation provides for court review of all proposed factoring transactions to ensure that a proposed transaction is appropriate under the circumstances. Specifically, in order for the transaction to proceed, the reviewing court must find that the transaction is in the best interest of the 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.

The Federal measure protects the Congressional policy underlying structured settlements by providing that a stiff excise tax would be imposed unless the requisite State court approval is obtained under a State structured settlement protection statute requiring findings that a transfer is in the best interest of the payee, taking into account the welfare and support of the payee's dependents, and that the transfer does not contravene applicable statutes and court orders. The Federal measure would also assure that the parties to a structured settlement are not subject to adverse tax treatment in the event of a later transfer of payments under that settlement.

The Federal measure is similar to H.R. 263, sponsored by Reps. Clay Shaw (R-FL) and Pete Stark (D-CA) and co-sponsored by a broad bipartisan majority of the House Ways and Means Committee, and S. 1045, sponsored by Sens. Max Baucus (D-MT) and the late Sen. John Chafee (R-RI) and co-sponsored by a total of 6 Members of the Senate Finance Committee.

The State measure is complementary to the Federal measure. The State measure lays out the process for court approval of proposed transfers of structured settlement payments, including required disclosures to the payee and protections for the other parties to the structured settlement. Legislation similar to the State measure has been enacted in 16 States, and the National Conference of Insurance Legislators (NCOIL) has recently adopted a Model Structured Settlement Transfers Protection Act that closely resembles the State measure. The prospect of the Federal excise tax—which (following a transition period) would be payable by the company acquiring the payments from the structured settlement recipient in any trans-

fer that has not received State court approval—will provide important impetus for enactment of the necessary State legislation in the remaining States (and enactment of conforming changes in States that have already enacted legislation) and for compliance with the State regulatory regime in light of the multi-state nature of structured settlement payment transfers.

Federal tax legislation that addresses only the issue of tax certainty for the parties to the structured settlement would be detrimental to our common objective of reaching a final legislative resolution of all of the issues surrounding transfers of structured settlement payments. Accordingly NSSTA and NASP would oppose the enactment of Federal tax legislation in this Congress which addresses only the tax certainty issue.

NSSTA and NASP respectfully request that you work with Reps. Shaw and Stark, Sens. Baucus and Grassley, and other members of the Ways and Means and Finance Committees to enact the attached Federal measure this year in order to achieve a final resolution of the issues surrounding transfers of structured settlement payments.

Sincerely,

National Association of Settlement Purchasers on behalf of its members, Singer Asset Finance Company L.L.C., Settlement Capital Corporation, J.G. Wentworth S.S.C., L.P., Settlement Funding LLC, d/b/a Peachtree Settlement Funding, Stone Street Capital, Inc., and other NASP members.

National Structured Settlements Trade Association, on behalf of its members.

The undersigned settlement purchasers, although not members of NASP, hereby confirm that they concur in and agree to comply with and support the undertakings made by NASP in the foregoing letter:

Metropolitan Mortgage and Securities Co. Inc.

JOHN E. CHAPOTON,
*Vinson & Elkins
L.L.P., representing
NASP.*

JOHN S. STANTON,
NANCY GRANESE,
*Hogan & Hartson
L.L.P., representing
NSSTA.*

HONORING ISABELLA "BELLE"
CUMMINS

HON. GEORGE W. GEKAS

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 6, 2000

Mr. GEKAS. Mr. Speaker, I rise today at the close of the 106th Congress to remember an outstanding individual who was a native of my own state of Pennsylvania and a friend to me and many of my colleagues, Isabella "Belle" Cummins. Belle tragically passed away in May of this year.

Belle was a familiar sight around the halls of the Capitol, where she served as staff counsel to the House Judiciary Committee from 1987 to 1991. During this time she was instrumental in gaining the passage of a national apology to Japanese-Americans for their internment during World War II. In 1991, Belle joined with former Representative Peter Kyros to establish the firm of Kyros and Cummins, where she promoted biomedical research causes until her untimely passing. She was an expert on administrative law, social security, and tort reform as well.