Bill as Introduced

HB 470 – AS INTRODUCED

1999 SESSION

99-0650
03/09

HOUSE BILL ***470***

AN ACT relative to settlement of personal actions.

SPONSORS: Rep. DePecol, Ches 14

COMMITTEE: Judiciary

ANALYSIS

This bill permits plaintiffs in personal injury or wrongful death actions to elect a structured settlement, and to designate a structured settlement broker and an entity to receive the structured payments.

Explanation: Matter added to current law appears in ***bold italics.***
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

99-0650
03/09

STATE OF NEW HAMPSHIRE

In the Year of Our Lord One Thousand Nine Hundred and Ninety-Nine

AN ACT relative to settlement of personal actions.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 New Section; Proceedings in Court; Judgments; Settlement of Personal Actions. Amend RSA 524 by inserting after section 6-a the following new section:

524:6-b Settlement of Personal Actions. In any action for personal injury or wrongful death where the parties have agreed to settlement, the plaintiff shall have the right to elect that all or part of the settlement proceeds be used to provide for structured periodic payments. Upon making such an election:

I. The plaintiff shall have the exclusive right to designate a structured settlement broker to place the structured settlement; and

II. The plaintiff shall have the exclusive right to designate the insurance company or other entity to which settlement proceeds, or any portion thereof, are to be paid to fund structured periodic payments.

2 Effective Date. This act shall take effect January 1, 2000.

Amendments

Rep. DePecol, Ches. 14
March 30, 1999
1999-0639h
03/09

Amendment to HB 470

Amend RSA 524:6-b as inserted by section 1 of the bill by replacing it with the following:

524:6-b Settlement of Personal Actions. In any action for personal injury or wrongful death where the parties have agreed to settlement, and where the parties have agreed that all or part of the settlement proceeds be used to provide for structured periodic payments, upon making such agreement:

I. The plaintiff shall have the exclusive right to designate a structured settlement broker to place the structured settlement; and

II. The plaintiff shall have the exclusive right to designate the insurance company or other entity to which settlement proceeds, or any portion thereof, are to be paid to fund structured periodic payments.

1999-0639h

AMENDED ANALYSIS

This bill permits plaintiffs in personal injury or wrongful death actions, where the parties have agreed to a structured settlement, to designate a structured settlement broker and an entity to receive the structured payments.

Hearing Minutes

HOUSE COMMITTEE ON JUDICIARY

PUBLIC HEARING ON HB 470

BILL TITLE: relative to settlement of personal actions.

DATE: March 3, 1999

LOB ROOM: 208 **Time Public Hearing Called to Order:** 1:10

Time Adjourned: 2:12

(please circle if present)

Committee Members: Reps. Mock, Peterson, Jacobson, Keans, Bergin, Dokmo, L. Jean, Rowe, Ford, Withee, Dudley, Piccon, Soltani, Woods, Wall, DePecol, J. Pratt, Craig, Lasky, Mitchell, Solow and Wood.

Bill Sponsors: Rep. DePecol

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

Rep. DePecol, sponsor, supporting
-Explained bill
-structured settlement: $100,000, $30,000 up front, $70,000 structured
-thought that the plaintiff should control structure
-as to interest-bearing accounts, investments, etc.
-responded to questions about some reasons for structured settlements
-thought that this bill would not prompt higher settlements

Martin Gross, attorney representing insurance industry
-did not openly oppose, but suggested that this bill be sent to sub-committee
-further explained the practice of structured settlements and their advantages and disadvantages
-structured settlement broker: places settlement in the market place to administer to best advantage that settlement
-this bill allows the plaintiff to pick the broker
-explained that if an insurance company has the annuity and someone else picks the annuity the insurance would be held liable
-if inclined to pass bill, it gives a very good definition of structured settlements
QUESTION – is there loss to insurance company in losing control? – A. I don't think so
-it is a misconception if the plaintiffs lawyer can get a better deal
QUESTION – Rep. Pratt – Monetary Consequences? Ask proponents
A. If it ain't broke – don't fix it

Kevin Dugan, NH Trial Lawyers Assn.
-likened Atty. Gross' testimony to a "bunch of hooey"

-explained again the how and why of a structures settlement
-cited reasons for the bill as insurance companies want to steer the annuities to there own subsidiary company
-7% to 8% interest therefore having a vested interest in where the annuity goes
-if plaintiff is bearing the risk of any annuity
-company going bankrupt the plaintiff should have the right to select same
-question about tax implications
-there is a definite tax advantage to an annuity
-no tax advantage if plaintiff gets cash to invest on his own
-if a person gets cash there is no requirement that it should go into an annuity
-responded to further questions
-Rep. Peterson suggested amending the bill to prohibit a satellite or subsidiary company from handling the annuity
-responded to further questions
-explained that if a company uses it's own subsidiary company that company may ear less interest to the plaintiff at an advantage to themselves

Respectfully submitted,

Rep. Loren J. Jean, Clerk

NOT SPEAKING - OPPOSING

Randy Dyer, 1720 15th st. NW, Washington DC , represening NSSTA
Lawrence A. Cohen, 14 Stiles Rd., Salem, Ringler Assoc.

SPEAKING - SUPPORTING

Kevin Duggan, 1819 Elm St., Manchester, representing NH Trial Lawyers Assn.
Rick Newman, NH Trial Lawyers Assn.
Jim Terlizzi, NASP, Washington DC, representing National Association of Settlement Purchasers

Sub-Committee Actions

HOUSE COMMITTEE ON JUDICIARY

SUBCOMMITTEE WORK SESSION ON HB 470

BILL TITLE: relative to settlement of personal actions.

DATE: 3/31

Subcommittee Members: Reps. Rowe, Pratt, Woods, Wall, Withee, Craig

Comments and Recommendations:

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, ITL, Re-Refer, Interim Study (Please circle one.)

Moved by Rep. Rowe

Seconded by Rep. Wall

Vote: 5-1

Motions: OTP, OTP/A, ITL, Re-Refer, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep. Dennis M. Withee
Subcommittee Chairman/Clerk

March 31

Amendment

Does the amendment change 470

Rowe — may change affect IRS status
citizens at risk [constructive receipt]

Wall — no tax implications b/c settlement is lump sum

DePecol — amendment if so client chooses

Mr. Gross — discusses his letter of 24 March explaining rule 111 (Supreme Ct)

Pratt — "fair reading of "exclusive right"
Gross → "exclusive right" can be waived
↳ worried about who's responsibility when things go wrong

Rowe → moved ITL
Wall → 2nd
- every — Rowe, Pratt, Woods, Wall
↳ Craig opposed — Withee

5-1

Sub-Committee Minutes

HOUSE COMMITTEE ON JUDICIARY

SUBCOMMITTEE WORK SESSION ON HB 470

BILL TITLE: relative to settlement of personal actions.

DATE: 3/8/99

Subcommittee Members: Reps.

Comments and Recommendations:

(See attached)

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, ITL, Re-Refer, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Motions: OTP, OTP/A, ITL, Re-Refer, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep.
Subcommittee Chairman/Clerk

Sub Committee Minutes

Mr. Newman — Third Paragr.

Defecd
↳ #3 fill out all the correct forms
amendment

Mr. Newman
↳ line 4 is a change

Mr. Gross
↳ settlement is a consentual thing. Once it's arrived at, Δ indifferent Why have a law

Mr. Newman — NH Practice §742 §743
to answer general questions

Rowe — gain & suffering no tax consequence
loss of profits = yes

Mr. Gross — compaind interest (return) would be taxed

To take benefit, W/Q&A can't touch plaintiff's lands

Mr Newman — currently insurance company can decide
(Trial) who s.s. is placed with

Mr. Gross — agreement is on the lump sum, not over
biopes (share the commission)

Mr. Newman — no protection for plaintiff if annuity company goes belly up

Gross — no in Δ ins. company interest to pick low rated company; indifferent to who because pays lump sum

Mr. Gross — does have interest if D uses a subsidiary
do you want to have the unwilling participant be on the hook w/ company has no relations with
Wants D to have protection if new annuity company goes belly

Mr. Newman — then if Mr. Gross correct tets make will is so if D picks, then they ~~are~~ be liable if company they pick ~~will~~ goes belly up.

Both attorneys asked for 2nd subcommittee hearing so they could both bring in ~~to~~ more witnesses

Mr Gross (responding to Mr Rowe)
↳ to take advantage of favorable tax advantages the money must go directly to designated "catcher" but can't touch P's hands.

John MacIntosh
NH BAR ASSN — line 4 or 5, gives P absolute right
Concerned over lack of definitions, ie "net settlement" and that ambiguity creates anxiety

Mr. Gross — settlements are regulated by Superior Ct. So be careful to be sure you want to do this

Mr. Newman — courts approve those dealing with minors

HOUSE COMMITTEE ON CHILDREN AND FAMILY LAW

SUBCOMMITTEE WORK SESSION ON HB 470

BILL TITLE: relative to settlement of personal actions.

DATE: 3/23/99

Subcommittee Members: Reps. (See attached)

Comments and Recommendations:

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, ITL, Re-Refer, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Motions: OTP, OTP/A, ITL, Re-Refer, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep.
Subcommittee Chairman/Clerk

Subcommittee HB 470

Mar. 23

Need for bill?
opposite sides of bill?
tax implications

Rick Newman
Kevin Duggan
bill provides injured plaintiffs with more security from themselves?
annuities are a regular part of settlements

Recently when parties settle the problem
defendant picks broker and/or annuity
↳ if Comp. fails, plaintiff is out
original insurance company not liable

P attorney not liable even if P picks annuity co.

if P takes cash then buys annuity benefits are taxable
if Δ buys annuity the benefits are not taxed
⇒ this is already in place for minors
NH Superior Court rules (see file)
guardian chooses, parent, or designee of Δ
ins. company

case this week
broker made mistake and because
of release even in cases of gross negligence

companies benefit:
- brokers kickback
- their subsidiaries

bear in mind
Structured settlements are by agreement

Jim Tessitore — NA (PRO) | Settlement Purchasers
↳ buy on open market

no # in this bill
~~*~~ here today ~~*~~ good public policy

he who bares the risk should have the choice

brokers inflate value of settlement

Mr. Martin Gross (con) — American Insurance Ass.
a different "preception"

Supreme Court Rule 111
↳ No affiliated companies

1/95 CJ of Superior Ct. — Supreme Ct. rules
sent letter saying that's not the practices

Larry Cohen (Salem) (con) - structured settlement broker for NH

we should not be mandating who chooses

1982 - tax
↳ only the physical injured should get tax free settlement

delicate tax benefits — lots of rules
fed law? { 1. Δ must purchase
2. P can't control funds

This bill would mandate brokers

There are ways to get plaintiff's broker is involved

Brokers are licensed and have E & O insurance

He is not paid by the Δ ins. company

There are certain times when plaintiff's are upset But that's rare

↳ they are deals (not rebates) for a broker's exclusivity

There is nothing in the bill to address

↳ tax benefits would go back to defendant

reserves practice

This bill tips scale for plaintiff's broker

ins. broker in on settlement process very early sometimes

Who does this bill benefit? — not plaintiff

* This bill eliminates defense broker competition

Randy Dyer — NSSTA (oppose)

5 billion in premium

parties are often on other sides

a similar bill came up in Florida + Texas

every since 1992 — US house commerce for med. malpractice

There are tax consequences

- tax treatments of all parties are tied together

Will this breach — constructive receipt
↳ bill probably doesn't breach
bill probably does breach economic benefit

REASON his lesson has opposed mandated structured settlements → should only be by agreement

choice of broker is negotiable

Vast majority of cases have only one broker
next largest — more than one broker — split comm.
rare case → powerbroker over powers others and takes the commission.

Rick Newman

NH victims will not lose tax advantage
Superior Ct.
look @ rule 111

CJ Nadeau was called 40 minutes ago
he did not recall the letter Mr. Gross offered to

Mr. Vim Terlizzi

today When plaintiff's broker is chosen it does not affect tax advantage

Kevin Duggan

↳ don't believe outsiders
there is a problem here

- Mr. Cohen is wrong about adverse tax advantages!

Martin Gross

grants plaintiff exclusive rights
intervenes in the marketplace

Before passing, MUST be VERY SURE
- no Something is wrong
- prevent consequences

Testimony

FILE COPY

COMMENTS ON HOUSE BILL 407

MARCH 23, 1999

IN ORDER TO FULLY APPRECIATE THE NEGATIVE EFFECT OF THIS PROPOSED LEGISLATION IT IS NECESSARY TO EXPLORE THE HISTORY AND PURPOSE OF TAX FREE STRUCTURED SETTLEMENTS.

FIRST AND FOREMOST A STRUCTURED SETTLEMENT IS AN ALTERNATIVE TO CASH. IT IS A STREAM OF PERIODIC ANNUITY OR TREASURY BOND PAYMENTS THAT HAVE BEEN GRANTED A UNIQUE TAX STATUS BY CONGRESS. TAX FREE ANNUITIES ARE AVAILABLE ONLY TO VICTIMS OF PHYSICAL INJURY.

THIS TAX FREE STATUS HAS BEEN DEVELOPED AND REFINED OVER THE PAST 20 YEARS VIA A CAREFULLY DRAFTED SERIES OF I.R.S. REGULATIONS WITH CONGRESSIONAL OVERSIGHT.

IT ALL BEGAN IN 1979 WITH I.R.S. REV. RUL. 79-220 AND CULMINATED IN THE PERIODIC PAYMENT SETTLEMENT ACT OF 1982 SIGNED BY PRESIDENT REAGAN.

SINCE THE TREASURY DEPARTMENT IS NOT KEEN ON LOSING ANY POTENTIAL TAX REVENUE, STRUCTURED SETTLEMENTS HAVE BEEN ASSAILED IN EVERY MAJOR PIECE OF TAX REFORM LEGISLATION. THEY HAVE WITHSTOOD THE SCRUTINY OF THE HOUSE AND SENATE AND, EXCEPT FOR A LIMITATION ON THEIR USE TO "PHYSICAL" RATHER THAN "PERSONAL" INJURY AND A PROHIBITION IN THE AREA OF PUNITIVE DAMAGES, STRUCTURED SETTLEMENTS HAVE SURVIVED ESSENTIALLY INTACT.

ONE OF THE REASONS THEY ARE SO VALUED BY CONGRESS AND THE ADMINISTRATION IS THAT THEY HELP PREVENT THE PLAINTIFF FROM DISSIPATING A STRAIGHT CASH SETTLEMENT. STUDIES HAVE SHOWN THAT THOSE WHO COME INTO RELATIVELY LARGE SUMS OF MONEY FROM LOTTERIES OR INJURY SETTLEMENTS TEND TO SPEND THEIR PROCEEDS MUCH MORE QUICKLY THEN THEY EVER INTENDED. SINCE MANY OF THESE SETTLEMENTS ARE TO PAY FOR ONGOING MEDICAL CARE, THE LOSS OF THESE FUNDS COULD GIVE RISE TO A GREATER DEPENDANCE ON MEDICAID OR OTHER STATE AND FEDERAL PROGRAMS. THUS THERE IS A BROAD SOCIAL PURPOSE BEHIND THE SPECIAL TAX STATUS THAT STRUCTURED SETTLEMENTS ENJOY.

BUT IN RETURN FOR THAT TAX FREE STATUS CONGRESS AND THE I.R.S. REQUIRES CERTAIN SPECIFIC RULES TO BE FOLLOWED.

1. **THE DEFENDANT MUST PURCHASE THE ANNUITY**. SINCE THE DEFENSE IS THE PURCHASER, WHOEVER BROKERS THE FUNDING ANNUITY IS BY DEFINITION THE DEFENSE BROKER. THE DEFENSE IS REQUIRED TO OWN THE ANNUITY UNLESS THEY ASSIGN THE OWNERSHIP TO A THIRD PARTY THROUGH A QUALIFIED ASSIGNMENT UNDER SECT 130 OF THE I.R.S. CODE.

2. **THE PLAINTIFF CANNOT HAVE THE ECONOMIC BENEFIT OF THE FUNDING AMOUNT**. IF THEY DID THE I.R.S. WOULD CONSIDER THE PLAINTIFF TO HAVE MADE A MERE INVESTMENT AND WOULD TAX ANY ANNUITY INTEREST. IN ESSENCE, THE ECONOMIC BENEFIT ELEMENT REQUIRES THAT A STRUCTURED SETTLEMENT MUST AT LEAST BE THE RESULT OF A MUTUALLY NEGOTIATED PROCESS. THIS MEANS THAT THE PLAINTIFF IS FREE TO EXPRESS PREFERENCES AS TO LIFE INSURANCE COMPANIES OR THE FORMAT OF THE PERIODIC PAYMENTS.

BUT THE SLOPE IS A SLIPPERY ONE. THE PROVISIONS AND REQUIREMENTS OF THE TAX LAWS SURROUNDING STRUCTURED SETTLEMENTS ARE TIME TESTED AND THEREFORE IT IS VERY IMPORTANT THAT THIS COMMITTEE CAREFULLY CONSIDER ANY NEGATIVE IMPACT THAT THIS PENDING BILL MAY HAVE ON THE CITIZENS OF NEW HAMPSHIRE.

THE SETTLEMENT OF PHYSICAL INJURY AND WORKERS' COMPENSATION CLAIMS HAVE ALWAYS BEEN AND CONTINUE TO BE THE RESULT OF A BILATERAL NEGOTIATION BETWEEN THE PARTIES. THIS BILL INVADES THE THE SANCTITY OF THE SETTLEMENT CONFERENCE. DURING THAT PROCESS THE DEFENDANT OFTEN ENGAGES AN INDEPENDENT STRUCTURED SETTLEMENT BROKER TO DEVELOP PROPOSALS THAT ATTEMPT TO MEET THE SPECIFIC NEEDS OF THE PLAINTIFF. FOR EXAMPLE, MONTHLY INCOME TO PAY ONGOING EXPENSES, DEFERRED SUMS FOR COLLEGE, A DOWN PAYMENT ON A HOME OR A RETIREMENT NEST EGG.

IT IS IMPORTANT TO NOTE THAT THE BROKER IS NOT PAID BY THE DEFENDANT BUT IS COMPENSATED BY THE LIFE COMPANY WHICH ISSUES THE ANNUITY CONTRACT. INCIDENTLY, THAT COMMISSION IS A FLAT 4% AND IS THE SAME FOR EVERY LIFE COMPANY. THE BROKER WILL SURVEY THE LIFE MARKETS TO DETERMINE WHICH OF THE COMPANIES ON THE APPROVED LIST OF THE DEFENDANT HAS THE BEST RATES. THE BROKER ALSO CONSIDERS ANY OTHER CRITERIA SUCH AS NEW HAMPSHIRE'S RULE 111. THE BROKER ALSO WORKS WITH THE PLAINTIFF, THE PLAINTIFF ATTORNEY AND ANY GUARDIAN AD LITEM THAT MAY BE PRESENT TO ASSURE THAT THE PLAN MEETS THEIR OVERALL OBJECTIVES.

THIS BILL WOULD HAVE THE EFFECT OF MANDATING THAT THE DEFENDANT USE THE SERVICES OF THE PLAINTIFF'S BROKER. WITHOUT CONSIDERATION OF WHETHER THAT TREADS ON THE ISSUE OF CONSTRUCTIVE RECEIPT, IT IS PLAIN THAT IT TREADS ON THE CONCEPT OF FREE AND OPEN NEGOTIATION BETWEEN THE PARTIES. FURTHERMORE, IT REQUIRES THE DEFENSE TO ABANDON ANY INTERNAL CRITERIA THEY MAY HAVE FOR THE SELECTION OF BROKERS AND ACCEPT THE CRITERIA OF THE PLAINTIFF. WHY WOULD THIS BODY WANT TO IMPLEMENT THE EXCLUSIONARY PROVISIONS OF THIS BILL ABSENT ANY CLEAR AND CONVINCING PROOF THAT THE CURRENT SYSTEM IS SERIOUSLY FLAWED. IN FACT THE CURRENT SYSTEM WORKS EFFICIENTLY.

IF THE PLAINTIFF ATTORNEY WISHES TO PROPOSE THAT HIS/HER BROKER BE UTILIZED TO PURCHASE THE ANNUITY, THEY CAN MAKE THAT REQUEST DURING NEGOTIATIONS. IN MY EXPERIENCE SOMETIMES THE REQUEST IS GRANTED, SOMETIMES NOT. IN ANY EVENT THE PLAINTIFF'S ADVISOR CAN MAKE RECOMMENDATIONS AND SUGGESTIONS WITHOUT HAVING TO BROKER THE ANNUITY PURCHASE. AT TIMES TWO BROKERS AGREE TO SHARE THE CASE. IT IS A FREE AND OPEN NEGOTIATION BY THE PARTICIPANTS.

JUST AS NEW HAMPSHIRE ATTEMPTS TO PROTECT ITS CITIZENS FROM THE POTENTIAL OF ANNUITY DEFAULT THROUGH THE IMPLEMENTATION OF RULE 111, SO TOO DEFENDANT INSURANCE CARRIERS EACH INDEPENDENTLY EVALUATE AND CREATE A LIST OF APPROVED LIFE INSURANCE COMPANIES THEY CONSIDER SUITABLE TO BE UTILIZED FOR THEIR STRUCTURED SETTLEMENTS.

THESE DEFENDANTS HAVE THIS RIGHT BECAUSE WERE THE ANNUITY COMPANY TO FAIL, EVEN WITH THE PROTECTION OF A QUALIFIED ASSIGNMENT, A COURT COULD DETERMINE THAT DUE TO A DEFECT IN THE PROCESS THE DEFENDANT STILL RETAINED A CONTINGENT LIABILITY. IN THE PROPOSED BILL THE DEFENDANTS ARE MANDATED TO USE A BROKER AND LIFE COMPANY OF THE PLAINTIFF'S CHOOSING. THIS WOULD RESULT IN DEFENDANTS LIKELY NEGOTIATING A HOLD HARMLESS PROVISION IN THE SETTLEMENT DOCUMENT SHIFTING ANY CONTINGENT LIABILITY TO THE PLAINTIFF. I AM NOT SURE THIS ELEMENT HAS BEEN FULLY CONSIDERED BY THE PROPONENTS OF THIS BILL.

AN ADDITIONAL ADVERSE CONSEQUENCE MAY BE A DECREASE IN THE USE OF THE STRUCTURED SETTLEMENT CONCEPT WHICH WOULD IN FACT BE A DETRIMENT TO THE INJURED CITIZENS OF NEW HAMPSHIRE.

DURING THE NEGOTIATION PROCESS, JUST AS THE PLAINTIFF CANNOT BE FORCED TO ACCEPT A STRUCTURED SETTLEMENT NEITHER SHOULD THE DEFENDANT BE FORCED TO OFFER ONE.

THIS COMMITTEE SHOULD ADDRESS A VITAL QUESTION: ***WHAT ABUSES ARE SO COMPELLING AS TO WARRANT INTERFERENCE WITH THE CURRENT PROCESS?***

MY EXPERIENCE IN HELPING TO IMPLEMENT HUNDREDS OF STRUCTURED SETTLEMENTS FOR THE PEOPLE OF NEW HAMPSHIRE OVER THE PAST 16 YEARS TELLS ME THAT THE STRUCTURED SETTLMENT PROCESS IN NEW HAMPSHIRE IS WORKING VERY WELL. THE PARTIES WHO HAVE BENEFITED HAVE BEEN THE FAMILIES OF INJURED PLAINTIFFS WHO HAVE RECEIVED THE LONG TERM PROTECTION OF THEIR SETTLEMENT ASSETS WHILE ENJOYING THE SIGNIFICANT BENEFIT OF TAX FREE INTEREST.

SO WHO REALLY BENEFITS FROM THE PROVISIONS OF H. B. 470?

1. NOT PLAINTIFFS, WHO MAY SEE THE TAX STATUS OF THEIR SETTLEMENT JEOPARDIZED.

2. NOT PLAINTIFF ATTORNEYS, WHO BY VIRTUE OF THEIR TOTAL CONTROL OF THE BROKER AND LIFE COMPANY SELECTION PROCESS MAY BE SADDLED WITH UNINTENDED CONTINGENT LIABILITY.

3. NOT DEFENDANTS,WHO LOSE THEIR ABILITY TO FREELY NEGOTIATE THE FORM AND SUBSTANCE OF THEIR CLAIM SETTLEMENTS.

4. IT APPEARS THAT THE ONLY PARTY WHO BENEFITS FROM H.B. 470 IS THE PLAINTIFF BROKER. UNDER THE GUISE OF TRYING TO FIX A SYSTEM THAT ISN'T BROKEN, THIS LEGISLATION EFFECTIVLY ELIMINATES ANY DEFENSE BROKER COMPETITION. I AM CONFIDENT THAT THIS COMMITTEE WILL SIFT THROUGH THE SMOKE AND DEFEAT THIS BILL.

LAWRENCE A. COHEN
RINGLER ASSOCIATES
14 STILES ROAD, SUITE 202
SALEM, NH 03079

FILE COPY

NATURALIZATION

110. In accordance with the United States Naturalization Act, final action upon petitions for naturalization shall be had only upon stated days, which are fixed by orders of the Court in the several counties.

History

References in text. Naturalization proceedings are now governed by the Immigration and Nationality Act of 1952, as amended, which is classified to 8 U.S.C. § 1101 et seq. and which repealed prior statutes governing the subject. Provisions governing filing of petitions for naturalization and conduct of investigations and hearings upon such petitions appear at 8 U.S.C. §§ 1445–1447.

New Hampshire Practice

Naturalization jurisdiction, see 8 U.S.C. § 1421.

PETITION FOR APPROVAL OF SETTLEMENT ON BEHALF OF MINORS

111. A. All petitions for approval of settlement of actions on behalf of minors shall be signed by the parent, next friend or guardian of the minor.

B. No settlement, the net amount of which exceeds $5,000.00, of any suit or claim brought on behalf of a minor by a parent or next friend shall be valid unless approved by the Court.

C. In any suit or claim on behalf of a minor or against a minor or in which a minor is interested, the net amount of the settlement of which exceeds $10,000.00, the Court shall require proof in the form of a certified statement from the Court of Probate that the guardian ad litem, parent, next friend, or other person who receives money on behalf of the minor whether through settlement, judgment, decree or other order, has been appointed guardian of the estate of such minor and is subject to the duties prescribed under RSA 464-A:26.

D. The petition shall contain the following information where applicable:

1. A brief description of the accident and of all the injuries sustained and the age of the minor.

2. An itemized statement of all medical expenses and special damages incurred by the minor.

3. The total amount of the settlement and whether any bills or expenses are to be paid out of the total settlement or are being paid in addition as part of the parent's claim. If the parent is being paid

anything directly, the petition should contain a statement of the total amount being paid to the parent and a specification of the items covered.

4. Whether the settlement was negotiated by counsel actually representing the minor.

5. A statement from the attorney for the minor as to whether there was medical payment insurance available to the minor and whether or not a claim has been made for said benefits or whether payment has been received.

6. A statement from the attorney for the minor as to whether any liens for medical providers have been asserted or are assertable and how the settlement would resolve those liens.

7. The net amount to be received on behalf of the minor.

8. A prayer that the settlement be approved.

E. The petition must be accompanied with the following material:

1. A photocopy of the minor's birth certificate.

2. An itemized statement from counsel detailing the nature of the work performed and the time spent on the case. An attorney's fee in excess of 25% of the settlement amount will not be ordinarily allowed unless upon good cause shown. In the event that counsel seeks an attorney's fee in excess of 25%, counsel shall file a motion requesting such an approval which motion shall contain the reasons for the request. A copy of that motion shall be provided to the next friend at least ten (10) days prior to the hearing or conference relative to approval of the settlement.

F. The Court will not authorize the next friend to settle the action or authorize the execution of releases and will not make any order respecting indemnity agreements, and the petition should make no such request.

G. The Court, upon its own motion, may appoint a guardian ad litem to represent the interests of the minor child and/or to review the proposed settlement. The fees of the guardian ad litem shall be paid by defendant.

H. In determining whether the net amount of a settlement exceeds $5,000.00 so as to authorize approval, all sums covering attorney's fees, court costs, and other expenses related to the claim, including medical expenses, are to be excluded, and the Court will not approve any settlement the net amount of which is of $5,000.00 or less.

I. The attorney, minor, parent, guardian, or next friend, will ordinarily be required to appear in all cases in support of the petition unless attendance has been excused by the Court upon prior motion of counsel or upon the Court's review of the file. In all cases where the minor has not actually been represented in the negotiation of the settlement, the minor, parent, and the next friend or guardian shall be required to appear with the attorney for the minor.

J. A full medical report, including a recent and detailed prognosis from the attending physician, will ordinarily be required. "Recent" shall mean a report dated not more than six months prior to the date of the filing of the petition for approval of a settlement.

K. The Court's order will ordinarily be in substantially the following form:

> Settlement approved. All medical bills and other approved expenses listed in the petition are to be paid. Counsel fees in the amount of $_____ allowed (if settlement was actually negotiated by counsel representing the minor). The balance, amounting to $_____, shall be paid over to _____, as guardian over the estate of the minor.
>
> Said funds shall, upon payment, be under the jurisdiction of the appropriate Court of Probate and shall be administered in accordance with the requirements of the Court of Probate. Any requests for withdrawal shall be addressed to the Court of Probate for its consideration.
>
> Approval is conditional upon compliance with this order with respect to payment of bills and deposit of the funds in accordance with this order.
>
> Counsel for the minor shall be responsible for the settlement funds until said funds shall have actually been deposited in the appropriate guardianship account pursuant to the terms of this order and pursuant to the terms of the guardianship.

L. In the event that the parties desire to enter into a structured settlement, which is defined as a settlement wherein payments are made on a periodic basis, the following rules shall also apply:

1. Counsel for the defendant shall provide the Court with an affidavit from an independent certified public accountant, or an equivalent professional, specifying the present value of the settlement and the method of calculation of that value.

2. A structured settlement must be funded by an annuity with an insurance company independent of the liability carrier, or of the

person or entity paying the settlement. The annuity insurance company shall meet at least the following criteria:

(a) The annuity carrier must be an insurance company licensed by the New Hampshire Insurance Commissioner to write annuity policies within the State of New Hampshire.

(b) The annuity carrier must have a minimum of $100,000,000.00 of capital and surplus, exclusive of any mandatory security valuation reserve.

(c) The annuity carrier must have one of the following ratings from two of the following rating organizations:

(i) A.M. Best Company: A+, A+g, A+p, A+r or A+s.

(ii) Moody's Investors Service Claims Paying Rating: Aa3, Aa2, Aa1 or AAA.

(iii) Standard & Poor's Corporation Insurer Claims-Paying Ability Rating: AA-, AA, AA+ or AAA.

(iv) Duff & Phelps Credit Rating Company Insurance Company Claims Paying Ability Rating: AA-, AA, AA+ or AAA.

(d) In addition to the requirement of subsection (c) immediately above, an annuity insurer must meet any other requirement the Court considers reasonably necessary to assure that funding to satisfy periodic-payment settlements will be provided and maintained.

(e) A qualified insurer issuing an annuity contract pursuant to a qualified funding plan under these rules may not enter into an assumption reinsurance agreement for the annuity contract without the prior approval of the Court and the owner of the annuity contract and the claimant having the beneficial interest in the annuity contract. The Court shall not approve assumption reinsurance unless the reinsurer is also qualified under these rules.

(f) The annuity insurance carrier and the broker procuring the policy shall each furnish the Court with an affidavit certifying that the carrier meets the criteria set forth in subsection (c) above as of the date of the settlement and that the qualification is not likely to change in the immediate future. The broker's affidavit shall also contain the following certification: "This determination was made with due diligence by the undersigned based on rating information which was available or should have been available to an insurance broker in the structured settlement trade."

(g) In the event that the parties to the action desire to place the annuity with a licensed insurer in New Hampshire which does

not meet the above criteria, the Court may consider approving the same, but only if the annuity obligation is bonded by an independent insurance or bonding company, licensed in New Hampshire, in the full amount of the annuity obligation.

(h) If a party shall seek to have a structured settlement funded by other than an annuity meeting the above criteria, the petitioner shall be required to obtain a guardianship over the estate of the minor, and the settlement shall be administered under probate.

(i) The Court reserves the right to require other reasonable security in any structured settlement if the circumstances should so require.—Amended March 8, 1985; January 19, 1994.

History

Amendments—1994. Amended rule generally. Pursuant to Supreme Court Order dated January 19, 1994, the amendment to this rule by this order was approved on a temporary basis.

—1985. Substituted "$1,500.00" for "$750.00" in two places and "excluded" for "executed" following "are to be" in the seventh paragraph.

[Page 79 follows]

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HB _____

STATE OF NEW HAMPSHIRE

In the year of our Lord One Thousand Nine Hundred Ninety-Eight

AN ACT

relative to settlement of personal actions.

Be it enacted by the Senate and House of Representatives in General Court convened:

1 New Chapter; Settlement of Personal Actions. Amend RSA by inserting after chapter 507-7:i the following new chapter:

507-7:j Settlement of Personal Actions.

In any action for personal injury or wrongful death where the parties have agreed to settlement, the plaintiff shall have the right to elect that all or part of the settlement proceeds be used to provide for structured periodic payments, in which event:

(1) The plaintiff shall have the exclusive right to designate a properly licensed and appointed structured settlement broker to place the structured settlement;

(2) The plaintiff shall have the exclusive right to designate the insurance company or companies to which settlement proceeds, or any portion thereof, are to be paid to fund structured periodic payments; and

(3) The plaintiff and the defendant, or the defendant's insurance company's representatives, shall execute a uniform qualified assignment or similar documents standard in the industry necessary to effectuate the structured settlement.

2 Effective Date. This act shall take effect immediately upon passage.

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Uniform Qualified Assignment and Release

"Claimant"	Stephanie A. Weidner, Individually and as Parent and Next Friend of Duston Kyle Weidner
"Assignor"	Medical Mutual Insurance Company of Maine
"Assignee"	Allstate Settlement Corporation
"Annuity Issuer"	Allstate Life Insurance Company
"Effective Date"	

This Agreement is made and entered into by and between the parties hereto as of the Effective Date with reference to the following facts:

A. Claimant has executed a settlement agreement or release dated _____, 19___ (the "Settlement Agreement") that provides for the Assignor to make certain periodic payments to or for the benefit of the Claimant as stated in Addendum No. 1 (the "Periodic Payments"); and

B. The parties desire to effect a "qualified assignment" within the meaning and subject to the conditions of Section 130(c) of the Internal Revenue Code of 1986 (the "Code").

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the parties agree as follows:

1. The Assignor hereby assigns and the Assignee hereby assumes all of the Assignor's liability to make the Periodic Payments. The Assignee assumes no liability to make any payment not specified in Addendum No. 1.

2. The Periodic Payments constitute damages on account of personal injury or sickness in a case involving physical injury or physical sickness within the meaning of Sections 104(a)(2) and 130(c) of the Code.

3. The Assignee's liability to make the Periodic Payments is no greater than that of the Assignor immediately preceding this Agreement. Assignee is not required to set aside specific assets to secure the Periodic Payments. The Claimant has no rights against the Assignee greater than a general creditor. None of the Periodic Payments may be accelerated, deferred, increased or decreased and may not be anticipated, sold, assigned or encumbered.

4. The obligation assumed by Assignee with respect to any required payment shall be discharged upon the mailing on or before the due date of a valid check in the amount specified to the address of record.

5. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Nebraska.

6. The Assignee may fund the Periodic Payments by purchasing a "qualified funding asset" within the meaning of Section 130(d) of the Code in the form of an annuity contract issued by the Annuity Issuer. All rights of ownership and control of such annuity contract shall be and remain vested in the Assignee exclusively.

7. The Assignee may have the Annuity Issuer send payments under any "qualified funding asset" purchased hereunder directly to the payee(s) specified in Addendum No. 1. Such direction of payments shall be solely for the Assignee's convenience and shall not provide the Claimant or any payee with any rights of ownership or control over the "qualified funding asset" or against the Annuity Issuer.

8. Assignee's liability to make the Periodic Payments shall continue without diminution regardless of any bankruptcy or insolvency of the Assignor.

9. In the event the Settlement Agreement is declared terminated by a court of law or in the event that Section 130(c) of the Code has not been satisfied, this Agreement shall terminate. The Assignee shall then assign ownership of any "qualified funding asset" purchased hereunder to Assignor, and Assignee's liability for the Periodic Payments shall terminate.

10. This Agreement shall be binding upon the respective representatives, heirs, successors and assigns of the Claimant, the Assignor and the Assignee and upon any person or entity that may assert any right hereunder or to any of the Periodic Payments.

11. The Claimant hereby accepts Assignee's assumption of all liability for the Periodic Payments and hereby releases the Assignor from all liability for the Periodic Payments.

Assignor: Medical Mutual Insurance Company of Maine

By: _____

Title: _____

Assignee: Allstate Settlement Corporation

By: _____

Title: _____

Claimant: Stephanie A. Weidner, Individually and as Parent and Next Friend of Duston Kyle Weidner

Stephanie A Weidner

Approved as to Form and Content:

By: _____
Claimant's Attorney

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SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (the "Settlement Agreement") is made and entered into this _____ day of _____, 19____, by and between Stephanie A. Weidner, Individually and as Parent and Next Friend of Duston Kyle Weidner, a Minor

Recitals

A. The plaintiff has presented a claim against the above Defendants in the , arising from incidents which occurred on or about October 11, 1995 in New Hampshire. Plaintiff alleges that Duston Kyle Weidner suffered certain personal physical injuries and sickness as a result of certain negligent acts or omissions of Defendants, and seeks monetary damages as a result of those injuries.

B. Insurer is the liability insurer

C. The parties desire to enter into this Settlement Agreement in order to fully settle and discharge all claims which have, or might be made, by reason of the incident described in Recital A above, upon payment of the settlement amounts, the terms and conditions of which are set forth herein.

Agreement

The parties agree as follows:

1.0 Release and Discharge

1.1 In consideration of the payments set forth in Section 2, Plaintiff hereby completely releases and forever discharges Defendants and the Insurer from any and all

past, present or future claims demands, obligations, actions, causes of action, wrongful death claims, rights, damages, costs, losses of services, expenses and compensation of any nature whatsoever, whether based on a tort, contract or other theory of recovery, which the Plaintiff now has, or which may hereafter accrue or otherwise be acquired, on account of, or may in any way grow out of the incident described in Recital A above, including, without limitation, any and all known or unknown claims for bodily and personal injuries to Plaintiff, or any future wrongful death claim of Plaintiff's representatives or heirs, which have resulted or may result from the alleged acts or omissions of the Defendants.

1.2 This release and discharge shall also apply to Defendants' and Insurer's past, present and future officers, directors, stockholders, attorneys, agents, servants, representatives, employees, subsidiaries, affiliates, partners, predecessors and successors in interest, and assigns and all other persons, firms or corporations with whom any of the former have been, are now, or may hereafter be affiliated.

1.3 This release, on the part of the Plaintiff, shall be a fully binding and complete settlement among the Plaintiff, the Defendants and the Insurer, and their heirs, assigns and successors.

1.4 The Plaintiff acknowledges and agrees that the release and discharge set forth above is a general release. Plaintiff expressly waives and assumes the risk of any and all claims for damages which exist as of this date, but of which the Plaintiff does not know or suspect to exist, whether through ignorance, oversight, error, negligence, or otherwise, and which, if known, would materially affect the Plaintiff's decision to enter into this Settlement Agreement. The Plaintiff further agrees that she has accepted payment of the sums specified herein as a complete compromise of matters involving disputed issues of law and fact. Plaintiff assumes the risk that the facts or law may be other than she believes. It is understood and agreed to by the parties that this settlement is a compromise of a doubtful and disputed claim, and the payments are not to be construed as an admission of liability on the part of the Defendants, by whom liability is expressly denied.

5.2 The assignments shall be accepted by the Plaintiff without right of rejection and shall completely release and discharge the Defendants and the Insurer from the Periodic Payment obligations assigned to the Assignees. The Plaintiff recognizes that the Assignees shall be the sole obligors with respect to the Periodic Payment obligations, and that all other releases with respect to the Periodic Payment obligations that pertain to the liability of the Defendants and the Insurer shall thereupon become final, irrevocable and absolute.

5.3 New York Life Insurance Company will issue a Guarantee Agreement which guarantees the performance of the obligations assigned to New York Life & Annuity Corporation. Allstate Insurance Company will issue a Surety Bond which guarantees the performance of the Periodic Payment obligations assigned to Allstate Settlement Corporation.

6.0 Right to Purchase an Annuity

The Insurer, through its Assignees, will fund the liability to make the Periodic Payments through the purchase of annuity policies from New York Life Insurance Company for those Periodic Payments set forth in 2.2(a), and from Allstate Life Insurance Company for those Periodic Payments set forth in 2.2(b). The Assignees shall be the sole owners of the annuity policies and shall have all rights of ownership. The Assignees may have New York Life Insurance Company and Allstate Life Insurance Company mail payments directly to the Payee(s). The Plaintiff shall be responsible for maintaining a current mailing address for Payee(s) with New York Life Insurance Company and Allstate Life Insurance Company.

7.0 Discharge of Obligation

The obligations of the Assignees to make each Periodic Payment shall be discharged upon the mailing of a valid check in the amount of such payment to the designated address of the Payee(s) named in Section 2 of this Settlement Agreement.

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§742. Structured Settlements Generally

Within the last twenty-five years, the use of so-called "structured settlements" has become common. The term "structured settlement" has no precise meaning; however, the term is generally employed to describe a settlement which provides for a series of payments to a plaintiff over a period of years or over the plaintiff's life.[50] Since most defendants wish to close their files and terminate their exposure, one common element of structured settlements is a provision for the purchase of an annuity or annuities by the defendant.[51] Another common element of structuredsettlements is a provision for a cash payment to the plaintiff, which is frequently used to pay outstanding bills, liens, expenses of immediate medical care, and attorney's fees, and to provide a fund for use by the plaintiff.[52]

There are several reasons why structured settlements are attractive to both plaintiffs and defendants. From the plaintiff's perspective, the structure can greatly increase the apparent value of a settlement. If the plaintiff will require a certain amount of funds at future time, as for example a minor who will be beginning college, the structured settlement can usually be tailored to ensure the payment of the expenses at the appropriate time. If the plaintiff is a minor, or otherwise incompetent, the structured settlement eliminates the necessity for making of investment decisions by the plaintiff.

This advantage may, of course, be a disadvantage to a plaintiff able to properly invest or manage his assets. Moreover, any annuity available for purchase by a defendant would also be available for purchase by a plaintiff upon receipt of a lump sum distribution. In addition, since the plaintiff's attorney is generally unwilling to allow his fee to be spread over time, the negotiations for a structured settlement may well result in the attorney being placed in an uncomfortable bargaining position regarding the portion of the present payment which will be paid as his fee.

The singular advantage to structured settlements which, in many cases, outweighs all of the negative factors, is the tax treatment of the payments under such a settlement. If properly structured, the annuity payments will not be taxable to the plaintiff.

Despite the obvious tax advantages, structured settlements have become less favorable since 1985, as interest rates have declined. The amount of money which can be obtained from an annuity is, while historically speaking reasonably significant, far less than would have been obtained only a few years ago, when interest rates were much higher. Concern over a client's being "locked in" to an unreasonably low rate of return if a new round of inflation should occur[53] has led attorneys to be cautious in recommending such settlements.

§743. -Tax Aspects of Structured Settlements

The Internal Revenue Code provides that gross income does not include the amount of damages received on account of personal injuries except for punitive damages, and emotional

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distress damages in cases not involving physical injury.[54] The Internal Revenue Code specifically provides that, whether the damages are paid in a lump sum or are paid as periodic payments, they are not considered gross income.[55] In order to preserve the tax exempt status of the periodic payments, however, certain requisites must be met. First, the plaintiff cannot have a present right to receive a lump sum distribution.[56] Second, the plaintiff cannot be the owner of the annuity policy nor can he have any "incidents of ownership" of the annuity.[57] Third, the plaintiff cannot have the right to accelerate, defer, increase or decrease the amounts of the payments at a later date.[58] Fourth, the plaintiff cannot have the right to change beneficiaries of the annuity payments after the settlement.[59] Fifth, the plaintiff can have no greater rights than those of a general unsecured creditor.[60] Finally, the plaintiff cannot have the right to control or direct the investment of funds.[61]

The disclosure to the plaintiff of the costs of the annuity will not void the tax exempt status of any payments.[62] Indeed, in cases involving minors, a court will usually require such disclosure as a condition of approval.

E. Approval of Fees

§744. Generally

In 1986, as part of the so-called "Tort Reform Act' the legislature enacted RSA 508:4-e, "Contingent Fees,' which seemingly requires counsel to submit their bills to the Court for approval in "any action." The statute provides, in relevant part:

> At the time of settlement or judgment of any action, all counsel of record will submit to the court a complete review of all fees received for services for said action; and all costs accruing from said action including, but not limited to, fees paid to expert witnesses. All fees for actions, resulting in settlement or judgment of $200,000 or more, shall be subject to approval by the court.[63]

It is unclear what a "complete review" of fees received is. It is also unclear whether the statute applies to plaintiff's counsel and defense counsel, andwhether the court must approve fees in all cases, or only in personal injury cases involving settlements of more than $200,000.00. The Court has never interpreted the statute.

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NEW HAMPSHIRE RULES OF PROFESSIONAL CONDUCT
ADOPTED JANUARY 16, 1986
EFFECTIVE FEBRUARY 1, 1986

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CLIENT-LAWYER RELATIONSHIP

Rule 1.1. Competence

(a) A lawyer shall provide competent representation to a client.

(b) Legal competence requires at a minimum:

(1) specific knowledge about the fields of law in which the lawyer practices;

(2) performance of the techniques of practice with skill;

(3) identification of areas beyond the lawyer's competence and bringing those areas to the client's attention;

(4) proper preparation; and

(5) attention to details and schedules necessary to assure that the matter undertaken is completed with no avoidable harm to the client's interest.

(c) In the performance of client service, a lawyer shall at a minimum:

(1) gather sufficient facts regarding the client's problem from the client, and from other relevant sources;

(2) formulate the material issues raised, determine applicable law and identify alternative legal responses;

(3) develop a strategy, in collaboration with the client, for solving the legal problems of the client; and

(4) undertake actions on the client's behalf in a timely and effective manner including, where appropriate, associating with another lawyer who possesses the skill and knowledge required to assure competent representation.

Rule 1.2. Scope of Representation

(a) A lawyer shall abide by a client's decisions concerning the objectives of representation, subject to paragraphs (c), (d) and (e), and shall consult with the client as to the means by which they are to be pursued. A lawyer shall abide by a client's decision whether to accept an offer of settlement of a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.

(c) A lawyer may limit the objectives of the representation if the client consents after consultation.

(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent. A lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

(e) When a lawyer knows that a client expects assistance not permitted by the Rules of Professional Conduct or other law, the lawyer shall advise the client regarding the relevant limitations on the lawyer's conduct.

Rule 1.3. Diligence

(a) A lawyer shall act with reasonable promptness and diligence in representing a client.

(b) Performance by a lawyer is prompt and diligent when:

(1) it is carried out in the manner and within the time parameters established by the agreement between the client and the lawyer; however, the lawyer may not rely upon the terms of an agreement to excuse performance which is not prompt and diligent in light of changes in circumstances, known to the lawyer, which require adjustments to the agreed upon schedule of performance.

(2) in all other matters of representation, it is carried out with no avoidable harm to the client's interest nor to the lawyer-client relationship.

Rule 1.4. Client Communications

(a) A lawyer shall keep a client reasonably informed regarding the status of a matter and promptly comply with reasonable requests for information.

(b) A lawyer shall explain the legal and practical aspects of a matter and alternative courses of action to the extent that such explanation is reasonably necessary to permit the client to make informed decisions regarding the representation.

(c) A client is reasonably informed when information relevant to the protection of the client's interest is provided at an appropriate time and in an appropriate manner.

Rule 1.5. Fees

(a) A lawyer shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee. The factors to be considered in determining the reasonableness of a fee include the following:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly.

(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer.

(3) the fee customarily charged in the locality for similar legal services.

(4) the amount involved and the results obtained.

(5) the time limitations imposed by the client or by the circumstances.

(6) the nature and length of the professional relationship with the client.

(7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and

(8) whether the fee is fixed or contingent.

(b) When the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation.

(c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by law or these rules. A contingent fee agreement shall be in writing and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal, litigation and other expenses to be deducted from the recovery, and whether such expenses are to be deducted before or after the contingent fee is calculated. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

(d) A lawyer shall not enter into an arrangement to charge or collect any fee in a domestic relations matter, the payment or amount of which is contingent.

(e) A lawyer shall not enter into an arrangement to charge or collect a contingent fee for representing a defendant in a criminal case.

(f) A division of fee between lawyers who are not in the same firm may be made only if:

(1) the client consents to employment of the other lawyer after a full disclosure that a division of fees will be made;

(2) the division is made in reasonable proportion to the services performed or responsibility or risks assumed by each; and

(3) the total fee of the lawyers is reasonable.

(g) Notwithstanding the foregoing, a former partner or associate may receive payments pursuant to a separation or retirement agreement.

Rule 1.6. Confidentiality of Information

(a) A lawyer shall not reveal information relating to representation of a client unless the client consents after consultation, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in paragraph (b).

(b) A lawyer may reveal such information to the extent the lawyer reasonably believes necessary:

(1) to prevent the client from committing a criminal act that the lawyer believes is likely to result in death or bodily harm or substantial injury to the financial interest or property of another; or

(2) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client.

Rule 1.7. Conflict of Interest: General Rule

(a) A lawyer shall not represent a client if the representation of that client will be directly adverse to another client, unless:

(1) the lawyer reasonably believes the representation will not adversely affect the relationship with the other client; and

(2) each client consents after consultation and with knowledge of the consequences.

(b) A lawyer shall not represent a client if the representation of the client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests, unless:

(1) the lawyer reasonably believes the representation will not be adversely affected; and

(2) the client consents after consultation and with knowledge of the consequences. When representation of multiple clients in a single matter is undertaken, the consultation shall include explanation of the implications of the common representation and the advantages and risks involved.

Rule 1.8. Conflict of Interest: Prohibited Transactions

(a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to the client unless:

(1) the transaction and terms in which the lawyer acquires the interest are: (i) fair and reasonable to the client, and (ii) agreed to by the client after consultation;

(2) the client is given a reasonable opportunity to seek the advice of independent counsel in the transaction; and

(3) the client consents in writing to the essential terms of the transaction.

(b) A lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client consents after consultation and with knowledge of the consequences.

(c) A lawyer shall not prepare an instrument giving the lawyer or a person related to the lawyer as parent, child, sibling, or spouse any substantial gift from a client, including a testamentary gift, except where the client is related to the donee.

(d) Prior to the conclusion of representation of a client, a lawyer shall not make or negotiate an agreement giving the lawyer literary or media rights to a portrayal or account based in substantial part on information relating to the representation.

(e) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:

(1) a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; and

(2) a lawyer representing an indigent client may pay

court costs and expenses of litigation on behalf of the client.

(f) A lawyer shall not accept compensation for representing a client from one other than the client unless:

(1) the client consents after consultation;

(2) there is no interference with the lawyer's independence of professional judgement or with the client-lawyer relationship; and

(3) information relating to representation of a client is protected as required by Rule 1.6.

(g) A lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, or, in a criminal case, an aggregated agreement as to guilty or nolo contendere pleas, unless each client consents after consultation, including disclosure of the existence and nature of all the claims or pleas involved and of the participation of each person in the settlement.

(h) A lawyer shall not make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless permitted by law and the client is independently represented in making the agreement, or settle a claim for such liability with an unrepresented client or former client without first advising that person in writing that independent representation is appropriate in connection therewith.

(i) A lawyer related to another lawyer as parent, child, sibling or spouse shall not represent a client in a representation directly adverse to a person who the lawyer knows is represented by the other lawyer except upon consent by the client after consultation regarding the relationship.

(j) A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client, except that the lawyer may:

(1) acquire a lien granted by law to secure the lawyer's fee or expenses; and

(2) contract with a client for a reasonable contingent fee in a civil case.

Rule 1.9. Conflict of Interest: Former Client

A lawyer who has formerly represented a person in a matter shall not thereafter:

(a) represent another person in the same or a substantially related matter in which the client's interests are materially adverse to the interests of both unless the former client consents after consultation and with knowledge of the consequences; or

(b) use information relating to the representation to the disadvantage of the former client except as Rule 1.6 would permit with respect to a client or when the information has become generally known.

Rule 1.10. Imputed Disqualification: General Rule

(a) While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rule 1.7, 1.8(c), 1.9 or 2.2.

(b) When a lawyer becomes associated with a firm, the firm may not knowingly represent a person in the same or a substantially related matter in which that lawyer, or a firm with which the lawyer was associated, had previously represented a client whose interests are materially adverse to that person and about whom the lawyer had acquired information protected by Rules 1.6 and 1.9(b) that is material to the matter.

(c) When a lawyer has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated lawyer unless:

(1) the matter is the same or substantially related to that in which the formerly associated lawyer represented the client; and

(2) any lawyer remaining in the firm has information protected by Rules 1.6 and 1.9(b) that is material to the matter.

(d) A disqualification prescribed by this Rule may be waived by the affected client under the conditions stated in Rule 1.7.

Rule 1.11. Successive Government and Private Employment

(a) Except as law may otherwise expressly permit, a lawyer shall not represent a private client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee, unless the appropriate government agency consents after consultation. No lawyer in the firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter unless:

(1) the disqualified lawyer is screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(2) written notice is promptly given to the appropriate government agency to enable it to ascertain compliance with the provisions of this rule.

(b) Except as law may otherwise expressly permit, a lawyer having information that the lawyer knows is confidential government information about a person acquired when the lawyer was a public officer or employee, may not represent a private client whose interests are adverse to that person in a matter in which the information could be used to the material disadvantage of that person. No lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter unless:

(1) the disqualified lawyer is screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(2) written notice is promptly given to the adverse party to enable that person to ascertain compliance with the provisions of this rule.

(c) Except as law may otherwise expressly permit, a lawyer serving as a public officer or employee shall not:

(1) participate in a matter in which the lawyer participated personally and substantially while in private practice or nongovernmental employment, unless under applicable law no one is, or by lawful delegation may be, authorized to act in the lawyer's stead in the matter; or

(2) negotiate for private employment with any person who is involved as a party or as attorney for a party in a matter in which the lawyer is participating personally and substantially.

(d) As used in this rule, the term "matter" includes:

(1) any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties; and

(2) any other matter covered by the conflict of interest rules of the appropriate government agency.

(e) As used in this Rule, the term "confidential government information" means information which has been obtained under governmental authority and which, at the time this Rule is applied, the government is prohibited by law from disclosing to the public or has a legal privilege not to disclose, and which is not otherwise available to the public.

Rules 1.11A. Conduct of Lawyer-Officials

(a) Definitions. As used in this rule:

(1) lawyer-official means a lawyer actively engaged in the practice of law, who is a member of the governmental body;

(2) government body means any state or local governmental agency, board, body, council or commission; and

(3) interest means a direct, personal and pecuniary interest, individually or on a client's behalf, in a matter which is under consideration by the governmental body of which the lawyer-official is a member.

(b) No lawyer-official shall:

(1) participate in any hearing, debate, discussion or vote, or in any manner otherwise attempt to influence the outcome of a matter in which he or she has an interest;

(2) utilize information obtained in such a capacity for his or her own personal benefit or that of his or her clients or the clients of the firm with which the lawyer-official is associated;

(3) appear on behalf of a client before any governmental body of which the lawyer-official is a member or whose members have been appointed by the governmental body of which the lawyer-official is a member;

(4) accept anything of value from any person or organization when the lawyer-official knows or reasonably should know that the offer is for the purpose of influencing the lawyer-official's actions or decisions;

(5) use his or her official position to influence or to attempt to influence any governmental body to act in favor of the lawyer-official or the lawyer-official's clients or clients of the firm with which the lawyer-official is associated.

(c) Other lawyers in the firm with which the lawyer-official is associated may not appear on behalf of clients before the governmental body of which the lawyer-official is a member, or any governmental body whose members have been appointed by the body of which the lawyer-official is a member, unless the lawyer-official publicly disqualifies himself or herself and refrains from participation in the matter in accordance with paragraph (b)(1) of this Rule, and otherwise

conducts himself or herself with respect to the matter in accordance with paragraph (b) of this Rule.

Rules 1.12. Former Judge or Arbitrator

(a) Except as stated in paragraph (d), a lawyer shall not represent anyone in connection with a matter in which the lawyer participated personally and substantially as a judge or other adjudicative officer, arbitrator or law clerk to such a person, unless all parties to the proceeding consent after consultation and with knowledge of the consequences.

(b) A lawyer shall not negotiate for employment with any person who is involved as a party or as attorney for a party in a matter in which the lawyer is participating personally and substantially as a judge or other adjudicative officer, or arbitrator. A lawyer serving as a law clerk to a judge, other adjudicative officer or arbitrator may negotiate for employment with a party or attorney involved in a matter in which the clerk is participating personally and substantially, but only after the lawyer has notified the judge, other adjudicative officer or arbitrator.

(c) If a lawyer is disqualified by paragraph (a), no lawyer in a firm with which the lawyer is associated may knowingly undertake or continue representation in the matter unless:

(1) the disqualified lawyer is screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(2) written notice is promptly given to the appropriate tribunal to enable it to ascertain compliance with the provisions of this rule.

(d) An arbitrator selected as a partisan of a party in a multi-member arbitration panel is not prohibited from subsequently representing that party.

Rule 1.12A. Part-time Judge

A lawyer who regularly serves as a part-time judge may not practice in the Court where he or she serves as a part-time judge.

Rule 1.13. Organization as Client

(a) A lawyer employed or retained to represent an organization represents the organization as distinct from its directors, officers, employees, members, shareholders or other constituents.

(b) If a lawyer for an organization knows that an officer, employee or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a violation of law which reasonably might be imputed to the organization, and is likely to result in material injury to the organization; the lawyer, in determining how to proceed, shall given due consideration to the seriousness of the violation and its consequences, the scope and

nature of the lawyer's representation, the responsibility in the organization and the apparent motivation of the person involved, the policies of the organization concerning such matters and any other relevant considerations. The measures taken shall be designed to minimize disruption of the organization and the risk of revealing information relating to the representation to persons outside the organization. Such measures may include:

(1) asking reconsideration of the matter;

(2) advising that a separate legal opinion on the matter be sought for presentation to appropriate authority in the organization; and

(3) referring the matter to higher authority in the organization, including, if warranted by the seriousness of the matter, referral to the highest authority that can act in behalf of the organization as determined by applicable law.

(c) When a matter has been referred to the organization's highest authority in accordance with paragraph (b), and that authority insists upon action, or refuses to take action, that is clearly a violation of a legal obligation to the organization, or a violation of law which reasonably might be imputed to the organization, and is likely to result in material injury to the organization, the lawyer may take further remedial action that the lawyer reasonably believes to be in the best interest of the organization. Such action may include revealing information relating to the representation or the organization only if the lawyer reasonably believes that:

(1) the highest authority in the organization has acted to further the personal or financial interests of members of that authority which are in conflict with the interests of the organization; and

(2) revealing the information is necessary in the best interest of the organization.

(d) In dealing with an organization's directors, officers, employees, members, shareholders or other constituents, a lawyer shall explain the identity of the client when it is apparent that the organization's interests are adverse to those of the constituents with whom the lawyer is dealing.

(e) A lawyer representing an organization may also represent any of its directors, officers, employees, members, shareholders or other constituents, subject to the provisions of Rule 1.7. If the organization's consent to dual representation is required by Rule 1.7, the consent shall be given by an appropriate official of the organization other than the individual who is to be represented, or by the shareholders.

Rule 1.14. Client Under a Disability

(a) When a client's ability to make adequately considered decisions in connection with the representation is impaired, whether because of minority, mental disability or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client. The client's impairment shall also be considered in determining the adequacy of consultation.

(b) A lawyer may seek the appointment of a guardian or take other protective action with respect to a client, only when the lawyer reasonably believes that the client cannot adequately act

in the client's own interest.

Rule 1.15. Safekeeping Property

(a)(1) Property of clients or third persons which a lawyer is holding in the lawyer's possession in connection with a representation shall be held separate from the lawyer's own property. Funds shall be deposited in one or more clearly designated trust accounts in accordance with the provisions of the New Hampshire Supreme Court Rules. All other property shall be identified as property of the client, promptly upon receipt, and safeguarded.

(2) Records shall be maintained by the lawyer of the handling, maintenance and disposition of all funds and other property of the client at any time in the lawyer's possession from the time of receipt to the time of final distribution and shall be preserved for a period of six years after final distribution of such funds or other property or any portion thereof. The lawyer shall maintain the minimum financial records specified in the New Hampshire Supreme Court Rules and shall comply with every other aspect of those Rules.

(b) Upon receiving funds or other property in which a client has an interest, a lawyer shall promptly notify the client. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client any funds or other property that the client is entitled to receive.

(c) When in the course of representation a lawyer is in possession of property in which both the lawyer and another person claim interests, the property shall be kept separate by the lawyer until there is an accounting and severance of their interests. If a dispute arises concerning their respective interests, the portion in dispute shall be kept separate by the lawyer until the dispute is resolved.

Rule 1.16. Declining or Terminating Representation

(a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

(1) the representation will result in violation of the rules of professional conduct or other law;

(2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or

(3) the lawyer is discharged.

(b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if withdrawal can be accomplished without material adverse effect on the interests of the client, or if:

(1) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;

(2) the client has used the lawyer's services to perpetrate a crime or fraud;

(3) a client insists upon pursuing an objective that

the lawyer considers repugnant or imprudent;

(4) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled, provided that a lawyer shall not withdraw from employment until he has taken reasonable steps to avoid foreseeable prejudice to the rights of the client, including giving due notice to his client, allowing time for employment of other counsel, delivering to the client all papers and property to which the client is entitled in complying with applicable rules and laws;

(5) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or

(6) other good cause for withdrawal exists.

(c) When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee that has not been earned. The lawyer may retain papers relating to the client to the extent permitted by other law.

COUNSELOR

Rule 2.1. Advisor

In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation.

Rule 2.2. Intermediary

(a) A lawyer may act as intermediary between clients if:

(1) the lawyer consults with each client concerning the implications of the common representation, including the advantages and risks involved, and the effect on the attorney-client privileges, and obtains each client's consent to the common representation;

(2) the lawyer reasonably believes that the matter can be resolved on terms compatible with the clients' best interests, that each client will be able to make adequately informed decisions in the matter and that there is little risk of material prejudice to the interests of any of the clients if the contemplated resolution is unsuccessful; and

(3) the lawyer reasonably believes that the common representation can be undertaken impartially and without improper effect on other responsibilities the lawyer has to any of the clients.

(b) While acting as intermediary, the lawyer shall consult with each client concerning the decisions to be made and the considerations relevant in making them, so that each client can make adequately informed decisions.

(c) A lawyer shall withdraw as intermediary if any of the clients so requests, or if any of the conditions stated in paragraph (a) is no longer satisfied. Upon withdrawal, the lawyer shall not continue to represent any of the clients in the matter that was subject of the intermediation.

Rule 2.3. Evaluation for Use by Third Persons

(a) A lawyer may undertake an evaluation of a matter affecting a client for the use of someone other than the client if:

(1) The lawyer reasonably believes that making the evaluation is compatible with other aspects of the lawyer's relationship with the client; and

(2) The client consents after consultation and with knowledge of the consequences.

(b) Except as disclosure is required in connection with a report of an evaluation, information relating to the evaluation is otherwise protected by Rule 1.6.

ADVOCATE

Rule 3.1. Meritorious Claims and Contentions

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.

Rule 3.2. Expediting Litigation

A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.

Rule 3.3. Candor Toward the Tribunal

(a) A lawyer shall not knowingly:

(1) make a false statement of material fact or law to a tribunal;

(2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed

by opposing counsel; or

(3) offer evidence that the lawyer knows to be false. If a lawyer has offered material evidence and comes to know of its falsity, the lawyer shall take reasonable remedial measures.

(b) The duties stated in paragraph (a) continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by Rule 1.6.

(c) A lawyer may refuse to offer evidence that the lawyer reasonably believes is false.

(d) In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer which will enable the tribunal to make an informed decision, whether or not the facts are adverse.

Rule 3.4. Fairness to Opposing Party and Counsel

A lawyer shall not:

(a) unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act;

(b) falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;

(c) knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists;

(d) in pretrial procedure, make a frivolous discovery request or fail to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party;

(e) in trial, allude to any matter that the lawyer does not reasonable believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of an accused; or

(f) request a person other than a client to refrain from voluntarily giving relevant information to another party unless:

(1) the person is a relative or an employee or other agent of a client; and

(2) the lawyer reasonably believes that the person's interests will not be adversely affected by refraining from giving such information.

Rule 3.5. Impartiality and Decorum of the Tribunal

A lawyer shall not:

(a) seek to influence a judge, juror, prospective juror or other official by means prohibited by law;

(b) communicate ex parte with such a person except as permitted by law; or

(c) engage in conduct intended to disrupt a tribunal before which the lawyer is appearing in his or her professional capacity.

Rule 3.6. Trial Publicity

(a) A lawyer shall not make an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication if the lawyer knows or reasonably should know that it will have a substantial likelihood of materially prejudicing an adjudicative proceeding.

(b) A statement referred to in paragraph (a) ordinarily is likely to have such an effect when it refers to a civil matter triable to a jury, a criminal matter, or any other proceeding that could result in incarceration, and the statement relates to:

(1) the character, credibility, reputation or criminal record of a party, suspect in a criminal investigation or witness, or the identity of a witness, or the expected testimony of a party or witness;

(2) in a criminal case or proceeding that could result in incarceration, the possibility of a plea of guilty to the offense or the existence or contents of any confession, admission, or statement given by a defendant or suspect or that person's refusal or failure to make a statement;

(3) the performance or results of any examination or test or the refusal or failure of a person to submit to an examination or test, or the identity or nature of physical evidence expected to be presented;

(4) any opinion as to the guilt or innocence of a defendant or suspect in a criminal case or proceeding that could result in incarceration; or

(5) information the lawyer knows or reasonably should know is likely to be inadmissible as evidence in a trial and would if disclosed create a substantial risk of prejudicing an impartial trial.

(c) Notwithstanding paragraphs (a) and (b)(1)-(5), a lawyer involved in the investigation or litigation of a matter may state without elaboration:

(1) the general nature of the claim or defense;

(2) the information contained in a public record;

(3) that an investigation of the matter is in progress, including the general scope of the investigation, the offense or claim or defense involved and, except when prohibited by law, the identity of the persons involved;

(4) the scheduling or result of any step in litigation;

(5) a request for assistance in obtaining evidence and information necessary thereto;

(6) a warning of danger concerning the behavior of a person involved, when there is reason to believe that there exists the likelihood of substantial harm to an individual or to the public interest; and

(7) in a criminal case:

(i) the identity, residence, occupation and family status of the victim and the accused;

(ii) if the accused has not been apprehended, information necessary to aid in apprehension of that person;

(iii) the fact, time and place of arrest; and

(iv) the identity of investigating and arresting officers or agencies and the length of the investigation.

Rule 3.7. Lawyer as Witness

(a) A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness except where:

(1) the testimony relates to an uncontested issue;

(2) the testimony relates to the nature and value of legal services rendered in the case; or

(3) disqualification of the lawyer would work unreasonable hardship on the client.

(b) A lawyer may act as advocate in a trial in which another lawyer in the lawyer's firm is likely to be called as a witness unless precluded from doing so by Rule 1.7 or Rule 1.9.

Rule 3.8. Special Responsibilities of a Prosecutor

The prosecutor in a criminal case shall:

(a) refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause;

(b) make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel;

(c) not seek to obtain from an unrepresented accused a waiver of important pretrial rights, such as the right to a preliminary hearing;

(d) make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal; and

(e) exercise reasonable care to prevent investigators, law enforcement personnel, employees or other persons assisting or associated with the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under Rule 3.6.

Rule 3.9. Advocate in Nonadjudicative Proceedings

A lawyer representing a client before a legislative or administrative tribunal in a nonadjudicative proceeding shall disclose that the appearance is in a representative capacity and shall conform to the provisions of Rules 3.3(a) through (c), 3.4(a) through (c), and 3.5.

TRANSACTIONS WITH PERSONS OTHER THAN CLIENTS

Rule 4.1. Truthfulness in Statements to Others

In the course of representing a client a lawyer shall not knowingly:

(a) make a false statement of material fact or law to a third person; or

(b) fail to disclose a material fact to a third person when

disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6.

Rule 4.2. Communication with Person Represented by Counsel

In representing a client, a lawyer shall not communicate about the subject of the representation with a party the lawyer knows to be represented by another lawyer in a matter, unless the lawyer has the consent of the other lawyer or is authorized by law to do so.

Rule 4.3. Dealing with Unrepresented Person

In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding.

Rule 4.4. Respect for Rights of Third Persons

In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

LAW FIRMS AND ASSOCIATIONS

Rule 5.1. Responsibilities of a Partner or Supervisory Lawyer

(a) Each partner in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct.

(b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.

(c) A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if:

(1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved, or

(2) the lawyer is a partner in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Rule 5.2. Responsibilities of a Subordinate Lawyer

(a) A lawyer is bound by the Rules of Professional Conduct notwithstanding that the lawyer acted at the direction of another

person.

(b) A subordinate lawyer does not violate the Rules of Professional Conduct if that lawyer acts in accordance with a supervisory lawyer's reasonable resolution of an arguable question of professional duty.

Rule 5.3. Responsibilities Regarding Nonlawyer Assistants

With respect to a nonlawyer employed or retained by or associated with a lawyer;

(a) a partner in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;

(b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

(c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner in the law firm in which the person in employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Rule 5.4. Professional Independence of a Lawyer

(a) A lawyer or law firm shall not share legal fees with a nonlawyer, except that:

(1) an agreement by a lawyer with his or her firm, partner or associate may provide for the payment of money, over a reasonable period of time after his or her death, to his or her estate or to one or more specified persons;

(2) a lawyer who undertakes to complete unfinished legal business of a deceased lawyer may pay to the estate of the deceased lawyer that proportion of the total compensation which fairly represents the services rendered by the deceased lawyer; and

(3) a lawyer or law firm may include nonlawyer employees in a retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement.

(b) A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.

(c) A lawyer shall not permit a person who recommends, employs, or pays him or her to render legal services for another to direct or regulate his or her professional judgment in rendering such legal services.

(d) A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if:

(1) a nonlawyer owns any interest therein, except that

a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;

(2) a nonlawyer is a corporate director or officer thereof; or

(3) a nonlawyer has the right to direct or control the professional judgment of a lawyer.

Rule 5.5. Unauthorized Practice of Law

A lawyer shall not:

(a) practice law in a United State jurisdiction where doing so violates the regulation of the legal professional in that United States jurisdiction; or

(b) assist a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law.

Rule 5.6. Restrictions on Right to Practice

A lawyer shall not participate in offering or making:

(a) a partnership or employment agreement that restricts the rights of a lawyer to practice after termination of the relationship, except an agreement concerning benefits upon retirement; or

(b) an agreement in which a restriction on the lawyer's right to practice is part of the settlement of a controversy between private parties.

PUBLIC SERVICE

Rule 6.1. Pro Bono Publico Service

A lawyer should render public interest legal service. A lawyer may discharge this responsibility by providing professional services at no fee or a reduced fee to persons of limited means or to public service or charitable groups or organizations, by service in activities for improving the law, the legal system or the legal profession, and by financial support for organizations that provide legal services to persons of limited means.

Rule 6.2. Accepting Appointments

A lawyer shall, at a reasonable request of a tribunal, accept appointment by that tribunal to render public interest legal service to a person and shall not seek to avoid such appointment, or any other appointment by a tribunal to represent a person, except for good cause, such as:

(a) representing a client is likely to result in violation of the Rules of Professional Conduct or other law;

(b) representing the client is likely to result in an unreasonable financial burden on the lawyer; or

(c) the client or the cause is so repugnant to the lawyer

as to be likely to impair the client-lawyer relationship or the lawyer's ability to represent the client.

Rule 6.3. Membership in Legal Services Organization

A lawyer may serve as a director, officer or member of a legal services organization, apart from the law firm in which the lawyer practices, notwithstanding that the organization serves persons having interests adverse to a client of the lawyer. The lawyer shall not knowingly participate in a decision or action of the organization:

(a) if participating in the decision would be incompatible with the lawyer's obligations to a client under Rule 1.7; or

(b) where the decision could have a material adverse effect on the representation of a client of the organization whose interests are adverse to a client of the lawyer.

Rule 6.4. Law Reform Activities Affecting Client Interests

A lawyer may serve as a director, officer or member of an organization involved in reform of the law or its administration notwithstanding that the reform may affect the interests of a client of the lawyer. When the lawyer knows that the interests of a client may be materially affected by a decision in which the lawyer participates, the lawyer shall disclose that fact but need not identify the client.

INFORMATION ABOUT LEGAL SERVICES

Rule 7.1. Communications Concerning a Lawyer's Services

A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it:

(a) contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement, considered in light of all the circumstances, not materially misleading;

(b) is likely to create an unjustified expectation about results the lawyer can achieve, or states or implies that the lawyer can achieve results by means that violate the rules of professional conduct or other law; or

(c) compares the lawyer's services with other lawyers' services, unless the comparison can be factually substantiated.

Rule 7.2. Advertising

(a) Subject to the requirements of Rule 7.1, a lawyer may advertise services through public media, such as a telephone directory, legal directory, newspaper or other periodical, outdoor, radio or television, or through written communication not involving solicitation as defined in Rule 7.3.

(b) A copy or recording of an advertisement or written communication shall be kept for two years after its last dissemination along with a record of when and where it was used.

(c) A lawyer shall not given anything of value to a person for recommending the lawyer's services, except that a lawyer may pay the reasonable cost of advertising or written communication permitted by this rule and may pay the usual charges of a not-for-profit lawyer referral service or other legal service organization.

(d) Any communication made pursuant to this rule shall include the name of at least one lawyer responsible for its content.

Rule 7.3. Regulation of Solicitation

(a) In soliciting professional employment, a lawyer shall not coerce or harass a prospective client and shall not make a false or deceptive statement or claim.

(b) A lawyer shall not solicit professional employment if:

(1) the lawyer knows or reasonably should know that the physical, mental, or emotional state of the prospective client is such that there is a substantial potential that the person cannot exercise reasonable judgment in employing a lawyer; or

(2) the prospective client has made known to the lawyer a desire not to be solicited.

(c) A lawyer may not solicit professional employment from a prospective client with whom the lawyer has no family or prior professional relationship, by mail, in person or otherwise, when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain. The terms "solicit" and "solicitation" include contact in person, by telephone or telegraph, by letter or other writing, or by other communication directed to a specific recipient, but do not include letters addressed or advertising circulars distributed generally to persons not known to need legal services of the kind provided by the lawyer in a particular matter, but who are so situated that they might in general find such services useful.

The prohibition in paragraph (c) shall not apply to (1) a written solicitation of professional employment to a prospective client in connection with business or commerce carried on or anticipated to be carried on by such prospective client or (2) a solicitation by a non-profit organization actually engaged in litigation as a form of political expression or association and only in connection with such litigation. A lawyer shall retain a copy of any written solicitation and mailing list for a period of two years. All mailings will be clearly labelled "Advertising."

(d) Nevertheless, if success in asserting rights or defenses of the lawyer's clients in litigation in the nature of a class action is dependent upon the joinder of others, a lawyer may accept employment from those the lawyer is permitted under applicable law to contact for the purpose of obtaining their joinder. This rule does not prohibit a lawyer or a partner or associate or any other lawyer affiliated with the lawyer or the lawyer's firm from requesting referrals from a lawyer referral service operated, sponsored or approved by a bar association or from cooperating with any other qualified legal assistance organization.

Rule 7.4. Communications of Fields of Practice

A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law. A lawyer shall not state or imply that the lawyer is a specialist except as follows:

(a) a lawyer admitted to engage in patent practice before the United States Patent and Trademark Office may use the designation "patent attorney" or a substantially similar designation;

(b) a lawyer engaged in admiralty practice may use the designation "admiralty," "proctor in admiralty" or a substantially similar designation; and

(c) a lawyer who is certified as a specialist in a particular field of law or law practice by the New Hampshire Supreme Court may hold him or herself out as such, but only in accordance with the rules prescribed by that authority.

Rule 7.5. Firm Names and Letterheads

(a) A lawyer shall not use a firm name, letterhead or other professional designation that violates Rule 7.1. A trade name may be used by a lawyer in private practice if it does not imply a connection with a government agency or with a public or charitable legal services organization and is not otherwise in violation of Rule 7.1.

(b) A law firm with offices in more than one jurisdiction may use the same name in each jurisdiction, but identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.

(c) The name of the lawyer holding a public office shall not be used in the name of a law firm, or in communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm.

(d) Lawyers may state or imply that they practice in a partnership or other organization only when that is the fact.

MAINTAINING THE INTEGRITY OF THE PROFESSION

Rule 8.1. Bar Admission and Disciplinary Matters

An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:

(a) knowingly make a false statement of material fact; or

(b) fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to the lawful demand for information from an admissions or disciplinary authority, expect that this Rule does not require disclosure of information otherwise protected by Rule 1.6.

Rule 8.2. Judicial and Legal Officials

(a) A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer or public legal officer, or of a candidate for election or appointment to judicial or legal office.

(b) A lawyer who is a candidate for judicial office shall comply with the applicable provisions of the Code of Judicial Conduct.

Rule 8.3. Reporting Professional Misconduct

(a) A lawyer having knowledge that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects shall inform the appropriate professional authority.

(b) A lawyer having knowledge that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authority.

(c) This Rules does not require disclosure of information otherwise protected by Rule 1.6, or information received by members of the New Hampshire Bar Association during the course of their work on behalf of the Professional Continuity Committee.

Rule 8.4. Misconduct

It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) state or imply an ability to influence improperly a government agency or official; or

(e) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.

Rule 8.5. Jurisdiction

A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction although engaged in practice elsewhere, within a United States jurisdiction.

FILE COPY

HOUSE BILL 361 AS AMENDED

In order to be legally binding, all civil actions in law or equity, instituted or resolved other than by the court, shall be signed by the parties (clients) unless the parties are unavailable. In such case the parties legal representative shall sign on behalf of the clients and provide the court with a sworn statement describing his authority in full, the circumstances by which the client is unavailable for signature and that the client is fully aware of the terms and conditions of the settlement.

This bill shall take effect January 1, 2000

The bill as proposed was the product of bad drafting and the sponsor offered no evidence that this was other than a one instance problem. But I was out voted, not the first time, and I offer this suggestion.

Robert H. Rowe
3/17/99

SULLOWAY & HOLLIS, P.L.L.C.
COUNSELORS AT LAW

REPLY TO: CAPITAL OFFICE
FAX NO: (603) 224-2557
E-MAIL: mlg@sulloway.com

March 24, 1999

FILE COPY

Honorable John M. Pratt, Chair
Subcommittee on HB 470
House Judiciary Committee
Room 208, Legislative Office Building
Concord, New Hampshire 03301

Re: HB 470 - relative to settlement of personal actions

Dear Representative Pratt and members of the Subcommittee:

This will follow up my undertaking at the Subcommittee's work session of March 23, 1999, to provide the Subcommittee with copies of correspondence relating to the current effectiveness of Superior Court Rule 111, paragraph L.2, purporting to require that structured settlements involving minors must be funded by an annuity with an insurance company "independent of the liability carrier . . . ." At the hearing, the proponents of HB 470 asserted that the Bill would merely have a similar effect.

Superior Court Rule 111 was approved by the Supreme Court on a temporary basis effective January 19, 1994 and was referred to the Court's Advisory Committee on Rules for consideration whether the temporary amendment should be made permanent. The Supreme Court's Advisory Committee on Rules took up consideration of the temporary rule in the Fall of 1994. Among other provisions, the "independence" requirement of Rule 111, paragraph L.2 was specifically evaluated by the Advisory Committee. Subsequently, the Advisory Committee voted to change paragraph L.2 to eliminate the "independence" requirement and to provide merely that if the annuity carrier is affiliated with the liability carrier, the annuity carrier must be separately capitalized, licensed and regulated, and must have a separate financial rating. Following a further public hearing, the Committee maintained the new language. However, final action on the revised rule was held up for other reasons not having to do with that issue.

Because this change was important and had not been controversial, the Clerk of the Supreme Court, Howard J. Zibel, wrote to Chief Justice Nadeau of the Superior Court to inform him of the change. Mr. Zibel's letter was dated December 19, 1994 and suggested to Chief Justice Nadeau that he might wish to communicate information about the change to the Justices of the Superior Court for their use in considering the terms of proposed structured minors

CAPITAL OFFICE
9 Capitol Street
P.O. Box 1256
Concord, NH 03302-1256
Tel: 603-224-2341

Public Affairs Affiliate
S&H/Murphy Inc.
2 Eagle Square
Concord, NH 03301
Tel: 603-228-2966

settlements, while the temporary Rule 111 remained under consideration by the Advisory Committee and the Supreme Court. A copy of Mr. Zibel's letter is attached for your reference.

Following Chief Justice Nadeau's receipt of Mr. Zibel's letter, Judge Nadeau issued a Memorandum to Superior Court Justices, dated December 20, 1994 in which he sent along a copy of Mr. Zibel's letter, asked the other Justices to note that the new version would not prohibit an annuity carrier to be affiliated with the liability carrier and asked the Justices to take the changes into consideration when acting on petitions for settlements of minors' cases. Judge Nadeau was kind enough to supply me with a copy of his Memorandum and a copy of it is also attached.

To this date, the Supreme Court has not taken further action to determine whether temporary Superior Court Rule 111 should be made permanent. I do not know the reason for that, but given Mr. Zibel's 1994 letter to Chief Justice Nadeau and Chief Justice Nadeau's follow-up Memorandum to the other Justices of the Superior Court, since that time I have been under the impression that the "independence" requirement would not be strictly enforced because it did not reflect the considered recommendation of the Supreme Court Advisory Committee. In light of all this, it would not seem appropriate for your subcommittee to assume that the "independence" requirement of Superior Court Rule 111, paragraph L.2 represents the considered judgment of either the Superior Court or the Supreme Court.

I hope the enclosures provide satisfactory support for the information I provided to the Subcommittee. I am sending copies of this letter to Chief Justice Nadeau, to Supreme Court Clerk Howard Zibel and to Attorney Kevin Dugan for their information.

As always, I sincerely appreciate the Subcommittee's patient consideration.

Yours very truly,

Martin L. Gross

MLG/bw
Enclosures
cc: Joseph P. Nadeau, Chief Justice
Howard J. Zibel, Clerk
Kevin F. Dugan, Esquire

Superior Court of New Hampshire

Joseph P. Nadeau
Chief Justice

99 North State Street
Concord, N.H. 03301
Tel: 271-2030

M E M O R A N D U M

TO: SUPERIOR COURT JUSTICES

FROM: CHIEF JUSTICE JOSEPH P. NADEAU

DATE: DECEMBER 20, 1994

RE: SUPERIOR COURT RULE 111

I am enclosing a copy of a letter from Howard Zibel relating to Superior Court Rule 111. Please note the new version will not prohibit an annuity carrier to be affiliated with the liability carrier. The annuity carrier must just be separately capitalized, licensed, and regulated, and have a separate financial rating.

Will you please read Howie's letter and take the changes into consideration when acting on petitions for settlements of minors' cases.

J.P.N.

nb

enc

pc: Howard J. Zibel

RECEIVED

DEC 2 0 1994

N.H. Supe[illegible] Court

THE STATE OF NEW HAMPSHIRE
SUPREME COURT
ADVISORY COMMITTEE ON RULES

Honorable David A. Brock, Chairman
Honorable Robert L. Cullinane
Henry F. Goode
Alice B. Guay
Honorable John R. Maher
Jack B. Middleton, Esquire
Honorable Joseph P. Nadeau
Edward E. Shumaker, III, Esquire
Raymond W. Taylor, Esquire

Frank Rowe Kenison
Supreme Court Building
Concord, N.H. 03301
(603) 271-2646
TDD Access:
Relay NH 1-800-735-2964

Howard J. Zibel, Secretary

December 19, 1994

Hon. Joseph P. Nadeau, Chief Justice
Superior Court Center
99 North State Street
Concord, NH 03301

Re: Superior Court Rule 111

Dear Chief Justice Nadeau:

Martin Gross of the Sulloway firm has asked that I write to you regarding the status of the above rule. The temporary rule that is currently in effect was adopted on January 19, 1994. It contains a provision in section L.2 that a structured settlement must be funded by an annuity with an insurance carrier independent of the liability carrier. Attorney Gross and several others provided comments to the rules committee objecting to this provision.

In response to these comments, the rules committee has voted to change section L.2 such that if an annuity carrier is affiliated with the liability carrier, the annuity carrier must be separately capitalized, licensed and regulated, and must have a separate financial rating. The change has gone to public hearing before the rules committee, and following the hearing, the committee has maintained the new language in section L.2, which in the revised version is currently at section K.2(a). The rule, however, has been held up for other reasons, not having to do with this issue. I anticipate that the rule will be reported to the supreme court with the revised language in section K.2(a) intact.

You may wish to communicate this information to the justices of the superior court for their use in considering the terms of

proposed structured minors' settlements while the temporary Rule 111 remains effective and while the rule remains under consideration by the rules committee and the supreme court.

Very truly yours,

Howard J. Zibel

HJZ/slf

cc: Martin L. Gross, Esq.

Voting Sheets

HOUSE COMMITTEE ON JUDICIARY

EXECUTIVE SESSION on HB 470

BILL TITLE: **relative to settlement of personal actions.**

DATE: 4/21/99

LOB ROOM:

Amendments:

Sponsor: Rep. OLS Document #: 1999-0639h 9-2

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, ITL, Re-Refer, Interim Study (Please circle one.)

Moved by Rep. J. Wood

Seconded by Rep. A. Piccoli

Vote: 9-3 (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Re-Refer, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote: (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE:

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Loren J. Jean, Clerk

JUDICIARY 1999 SESSION

House Bill # 470

Public Hearings _____ Executive Session 4/21/99

COMMITTEE REPORT: OTPA (9-3)

	YEAS	NAYS
Mock, Henry P, Chairman		✓
Peterson, Andrew R, V Chairman		
Jacobson, Alf E		
Keans, Sandra B	✓	
Bergin, Peter F		
Dokmo, Cynthia J		
Jean, Loren J, Clerk		
Rowe, Robert H	✓	
Ford, Nancy M		✓
Withee, Dennis J		
Dudley, Terri C		
Picconi, Al J	✓	
Soltani, Tony F		
Woods, Phyllis L	✓	
Wall, Janet G	✓	
DePecol, Benjamin J	✓	
Pratt, John M		✓
Craig, James W		
Lasky, Bette R	✓	
Mitchell, McKim W	✓	
Solow, Martha S		
Wood, Jane	✓	
TOTAL VOTE	9	3

Appeared in Favor | Appeared in Opposition

Committee Report

MAJORITY
COMMITTEE REPORT

COMMITTEE: **Judiciary**

BILL NUMBER: **HB 470**

TITLE: relative to settlement of personal actions.

DATE: April 22, 1999 CONSENT CALENDAR YES ☐ NO ☒

☐ OUGHT TO PASS

☒ OUGHT TO PASS WITH AMENDMENT

☐ INEXPEDIENT TO LEGISLATE

☐ RE-REFER

☐ REFER TO COMMITTEE FOR INTERIM STUDY
(Available only in second year of biennium.)

STATEMENT OF INTENT
(Include Committee Vote)

A structured settlement is an amount payable to an injured party, in settlement of a law suit, that provides for structured periodic payments rather than one large sum. An investment of the agreed-upon sum is normally made in an annuity. There are various cases when this is preferable, especially where there are ongoing or recurring expenses. An injured adult may need to be covered over a long period of time. (Children are covered under a different statute.) If a structured settlement is agreed upon through the court process, the interest earned on the investment is not taxable. This is an added benefit to the injured party (the plaintiff, who filed the law suit). This legislation would give the plaintiff the exclusive right to choose or designate a structured settlement broker (the one who will actually invest the injured party's money. The plaintiff would also have the exclusive right to designate the insurance company or other entity to which settlement proceeds, or any portion thereof, are to be paid to fund structured periodic payments. The committee felt that the plaintiff should have the option to choose, giving the injured party greater control over his/her financial future. The legislation is basically consumer protection for the injured party. Presently, they normally rely on the defendant's insurance company, which may choose a subsidiary to be its broker. This arrangement usually results in "kick-back" payment to the insurance company. Most of the members questioned the motives of the insurance company. They could offer a deal with a high interest rate but with a company not very stable. The plaintiff would be more likely to choose a highly rated company, in an effort to minimize the risk involved.
Vote 9-3.

Rep. Jane Wood
FOR THE MAJORITY

Original: House Clerk

cc: Committee Bill file

USE ANOTHER REPORT FOR MINORITY REPORT

MINORITY
COMMITTEE REPORT

COMMITTEE: **Judiciary**

BILL NUMBER: **HB 470**

TITLE: relative to settlement of personal actions.

DATE: April 21, 1999 CONSENT CALENDAR YES ☐ NO ☒

☐ OUGHT TO PASS

☐ OUGHT TO PASS WITH AMENDMENT

☒ INEXPEDIENT TO LEGISLATE

☐ RE-REFER

☐ REFER TO COMMITTEE FOR INTERIM STUDY
(Available only in second year of biennium.)

STATEMENT OF INTENT
(Include Committee Vote)

In the judgement of the minority of the committee, the effect of this bill, if passed, would be either (a) to decrease dramatically the number of structured settlements arrived at through the normal plaintiff/defendant negotiation process, causing a corresponding increase in the number of cases going to trial, or (b) to lower significantly the dollar amount of structured settlements which defendants will offer to plaintiffs. Either result harms the very people structured settlements they were designed to serve.

Rep. John M. Pratt
FOR THE MINORITY

Original: House Clerk
cc: Committee Bill file

USE ANOTHER REPORT FOR MINORITY REPORT