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Social Issues

How companies make millions off lead-poisoned, poor blacks

By Terrence McCoy August 25

BALTIMORE — The letter arrived in April, a mishmash of strange numbers and words. This at first did not alarm Rose. Most letters are that way for her — frustrating puzzles she can't solve. Rose, who can scarcely read or write, calls herself a "lead kid." Her childhood home, where lead paint chips blanketed her bedsheets like snowflakes, "affected me really bad," she says. "In everything I do."

She says she can't work a professional job. She can't live alone. And, she says, she surely couldn't understand this letter.

[Freddie Gray's life a study in the effects of lead paint on poor blacks]

So on that April day, the 20-year-old says, she asked her mom to give it a look. Her mother glanced at the words, then back at her daughter. "What does this mean all of your payments were sold to a third party?" her mother recalls saying.

The distraught woman said the letter, written by her insurance company, referred to Rose's lead checks. The family had settled a lead-paint lawsuit against one Baltimore slumlord in 2007, granting Rose a monthly check of nearly $1,000, with yearly increases. Those payments were guaranteed for 35 years.

"It's been sold?" Rose asked, memories soon flashing.

She remembered a nice, white man. He had called her one day on the telephone months after she'd squeaked through high school with a "one-point something" grade-point average. His name was Brendan, though she said he never mentioned his last name. He told her she could make some fast money. He told her he worked for a local company named Access Funding. He talked to her as a friend.

Rose, who court records say suffers from "irreversible brain damage," didn't have a lot of friends. She didn't trust many people. Growing up off North Avenue in West Baltimore, she said she's seen people killed.

But Brendan was different. He bought her a fancy meal at Longhorn Steakhouse, she said, and guaranteed a vacation for the family. He seemed like a gentleman, someone she said she could trust.

One day soon after, a notary arrived at her house and slid her a 12-page “purchase” agreement. Rose was alone. But she wasn’t worried. She said she spoke to a lawyer named Charles E. Smith on the phone about the contract. She felt confident in what it stated. She was selling some checks in the distant future for some quick money, right?

The reality, however, was substantially different. Rose sold everything to Access Funding — 420 monthly lead checks between 2017 and 2052. They amounted to a total of nearly $574,000 and had a present value of roughly $338,000.

In return, Access Funding paid her less than $63,000.

‘They fall through a crack’

Rose, who spoke to The Washington Post on the condition that her full name not be used, had just tumbled into the little-noticed, effectively unregulated netherworld of structured settlements.

Traditional settlements are paid in one immediate lump sum. But these structured agreements often deliver monthly payments across decades to protect vulnerable recipients from immediately spending the money. Since 1975, insurance companies have committed an estimated $350 billion to structured settlements. This has given rise to a secondary market in which dozens of firms compete to purchase the rights to those payments for a fraction of their face value.

What happens in these deals is a matter of perspective. To industry advocates, the transactions get money to people who need it now. They keep desperate families off the streets, pay medical bills, put kids through school.

“What we do is provide equity for those people to buy homes,” said Access Funding chief executive Michael Borkowski. He said his organization had no reason to think Rose was cognitively impaired, pointing to her high school degree, driver’s license and written documents in her name. He said Access Funding has no record showing that Brendan, whom he praised for “the highest level of professionalism,” took Rose out to eat, and he disputed that she’d been promised a vacation. “We’re trying to bring better value to people,” Borkowski continued. “. . . We really do try to get people the best deals.”

But to critics, Access Funding is part of an industry that profits off the poor and disabled. And Baltimore has become a prime target. It’s here that one teen — diagnosed with “mild mental retardation,” court records show — sold her payments through 2030 in four deals and is now homeless. It’s here that companies blanket certain neighborhoods in advertisements, searching for a potentially lucrative type of inhabitant, whose stories recall the legacy of Freddie Gray.

Before his April death after being severely injured in police custody, before this hollowed-out city plunged into rioting, the life of Freddie Gray was a case study in the effect of lead paint on poor blacks. The lead poisoning Gray suffered as a child may have contributed to his difficulties with learning, truancy and arrests — all of it culminating in a 2008 lead-paint lawsuit and a windfall of cash locked inside a structured settlement. By late 2013, Gray was striking deals with Access Funding.

People like Gray who have suffered lead poisoning as children are especially vulnerable to predatory transactions. Many are impulsive and mentally disabled, but not so much that the law regards them as incapable of acting on their own behalf, as long as they're 18 or older.

"A lot of them can barely read," said Saul E. Kerpelman, who estimates he has defended more than 4,000 victims of lead poisoning, nearly all of them black. "They have limited capacity. But they fall through a crack. If they were severely disabled enough, you could file a court petition to have a trustee manage their property. But they're not disabled enough."

Over the past two decades, state legislatures and the U.S. Congress have passed measures to protect vulnerable people selling structured settlements. In 2000, Maryland inked the Structured Settlement Protection Act, which enumerated a series of requirements. First, a seller must seek the counsel of an independent professional adviser. Then the proposed deal must go before a county judge, who decides whether that agreement reflects the seller's best interests.

But today, critics say, that measure is failing. "There are weaknesses and ways people can circumvent it," said Eric Vaughn, executive director of the National Structured Settlements Trade Association, which represents companies and lawyers working in the industry. "And these companies are getting around the intents of the law. . . . And when that happens, people get hammered."

A Washington Post review of thousands of pages of court records and interviews with industry insiders and eight victims of lead poisoning have revealed these loopholes in Baltimore.

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Access Funding, located in Chevy Chase, isn't the biggest player in the industry. But the company's court documents nonetheless illuminate the mechanics of this trade, as well as how little scrutiny it receives. The firm has filed nearly 200 structured settlement purchases in Maryland since 2013. A review of two-thirds of those cases, which primarily funnel through one judge's courtroom in Prince George's County Circuit Court, shows nearly three-fourths involved victims of lead poisoning.

Every case spells out the deal's worth. It lists the aggregate value of the lead victim's payments, their present value and the agreed purchase price. A random survey of 52 of those deals shows Access Funding generally offers to pay around 33 cents on the present value of a dollar. Sometimes, it offers more. And sometimes, much less. One 24-year-old lead victim sold nearly $327,000 worth of payments, which had a present value of $179,000, for less than $16,200 — or about 9 cents on the dollar. Another relinquished $256,000 worth of payments, which had a present value of $166,000, for $35,000 — or about 21 cents on the dollar.

Taken together, the sample shows Access Funding petitioned to buy roughly $6.9 million worth of future payments — which had a present value of $5.3 million — for around $1.7 million.

Presented with these findings, Borkowski said Access Funding doesn't target lead victims and that Baltimore's glut of lead-paint lawsuits has artificially inflated that aspect of its business. He said interested investors set the purchase prices, which are lower than the payments' present value because various factors — such as a life-contingency clause that stops payments if the holder dies — diminish their worth.

"When you get all the way until 2052, that's pretty far out there," he said, adding that his company, which does 80 percent of its work outside Maryland, survives only by offering better deals than other firms.

Still, Borkowski urged stricter legislation and more oversight. "These questions you raise touch on fundamental things we are going to be doing differently now," he said. "We want to secure ourselves in the future from any potential questions like this again, so we can say, 'No, that's not us.' "

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'They sucker you in'

The court proceeding that would alter the futures of Freddie Gray and his siblings took place an hour's drive south from their home in Baltimore, in the town of Upper Marlboro. At stake were hundreds of thousands of dollars, but none of the Grays attended the hearing.

The issue — and the company — was familiar to the presiding judge, Herman C. Dawson. Access Funding has petitioned his court more than 160 times since 2013 to purchase structured settlement payments. Dawson has approved those requests 90 percent of the time.

Freddie Gray, awarded a structured settlement as a result of his lead-paint lawsuit, now wanted the same. "Being debt free will be a great help," said an affidavit that Gray signed. "It will take a lot of stress off of me and will help improve my credit rating so that I can make larger purchases in the future."

Gray had agreed to sell $146,000 worth of his structured settlement, valued at $94,000, to Access Funding for around $18,300. His sisters wanted almost the same exact deal, which in all would relinquish $435,000 of the Gray siblings' settlement — valued at around $280,000 — for about $54,000, or less than 20 cents on the dollar of its present-day value.

No one objected to the proposed deals. Dawson adjudicated the petitions, along with two other deals involving victims of lead poisoning, within three minutes, according to a recording of the hearing. "The matter is closed," Dawson said at the hearing. He declined to comment.

The Gray family, which signed six contracts with Access Funding, now burns with resentment. The kids were in a tough spot financially, stepfather Richard Shipley said. Shipley said he tried to dissuade them from taking the deal but failed. "They sucker you in. . . . They didn't know they were giving up so much for so little," he said. Now, he said, the lead checks have stopped, and Access Funding won't return their calls.

Access Funding, Borkowski said, has a "good" relationship with the Grays. "In fact, we have had dialogue since Freddie's passing in which we provided our condolences and sent flowers to the family," Borkowski wrote in an e-mail.

The path that led the Gray siblings into these deals began decades ago, inside a series of poorly maintained, lead-painted tenements in the neighborhood of Sandtown-Winchester, court records show.

"They told us to move out of the house," Shipley recalled one lead-paint inspector advising the family. But where could they go? Every house they lived in between 1988 and 1996 had lead paint. Each of the siblings' lead levels soared to at least 36 micrograms of lead per deciliter of blood. This was considered high then, when the city annually produced thousands of lead-poisoned children. It's considered even higher now. The Centers for Disease Control and Prevention today describes any level above 5 micrograms as "elevated," and on Tuesday, federal authorities pledged $3.7 million to eliminate what remains of Baltimore's lead-paint problem.

The study of lead's effects on the body remains an evolving science. Used as an artificial sweetener in ancient Rome, lead later became a cheap manufacturing additive. But lead never lost its sweetness — a poison candy irresistible to children. Scientists once assumed the body could withstand a fair amount of lead, which government authorities banned in residential paint in 1978. But researchers now say any trace of lead, which children absorb by eating paint chips and breathing paint dust, can cripple cognitive development.

The Grays eventually exhibited "neurocognitive deficits," records say. Psychologists also discovered those same "deficits" in Rose and her siblings. Her blood lead level reached 31 and inflicted "permanent and severe brain damage," according to court papers, severing her capacity to "enjoy a normal life."

So the Grays — as Rose did, as thousands of other families did — sued their landlord, settling in 2010. The Grays then decided on a course that six lead-paint lawyers say they often counsel clients to take. The Grays structured their settlements, an arrangement recommended by insurance companies, disability advocates and even Congress.

“I try to convince my clients that taking a structured settlement might be in their best interest,” Kerpelman said. “They have no experience managing money, are brain compromised, and history shows they’ll likely run through a large cash settlement in a short time.”

But poverty is expensive. Disability is expensive. Debt mounts. Forfeiting future payments for immediate cash can seem like a painful necessity.

That’s how 42-year-old Tarsha Simms recently reconciled her decision to sell a portion of her daughter’s settlement to Access Funding. “I do regret it,” Simms said. “But if it wasn’t for this deal, we would be on the street right now.”

To balance clients’ vulnerabilities with purchasing companies’ desire for profit, most state legislatures called upon county judges to decide the cases. But Maryland’s law, according to longtime structured settlement expert Craig Ulman, is “substantially weaker” than in most states. For example, it doesn’t require that settlement recipients appear in court, as Illinois’ law does. It also doesn’t make purchasing companies file their petitions in the seller’s county of residence, as in New York, Oregon and other states.

Critics say such conditions can give rise to something called “forum shopping,” in which purchasing companies seek out less-scrutinous judges. Those firms “find the squeaky wheels, where things aren’t as enforced as much . . . and the judge simply looks at the affidavit,” said John Darer, who operates a blog monitoring the industry.

Petitions involving Maryland’s lead victims cluster in Montgomery, Howard and Prince George’s counties — anywhere but Baltimore City, the jurisdiction where most of those lead victims live. Access Funding says it has overwhelmingly filed in Prince George’s County because that’s where their attorney’s office is located.

Maryland’s court system also makes it easy to find the right clientele. Its case search puts lead-paint lawsuits into their own category, meaning a few keystrokes can call forth thousands of names. This unique confluence of factors constitutes the “perfect storm of bad stuff,” said Earl Nesbitt, executive director of the National Association of Settlement Purchasers.

But it isn’t bad for everyone. For the savvy operative, someone willing to travel deep into Baltimore’s poorest neighborhoods, this can be a lucrative trade.

And for a time, it was for Scott Blumenfeld.

An insider’s view

He likes risks. He's partial to large, shiny watches. He has played so much poker, peering over cards, shuffling chips, that he's developed carpal tunnel syndrome in his right arm and now wears a large, black brace. He drives a late-model blue Audi, which he says has made him nervous when driving through certain Baltimore neighborhoods at night to meet a lead-paint victim.

"I never roll up on someone without calling first," he said.

Blumenfeld, who has worked hundreds of settlement transfer contracts, said he never intended to get into this sort of work. He grew up in Rockville, got his undergraduate degree in Madison, Wis., then enteredthe University of Baltimore School of Law. While there, he says he met other law students who went on to form the legal foundation for some of the area's biggest structured settlement purchasing firms.

Many settled in one place, he said. "Around Bethesda, there's a whole concentration of these structured settlement companies, but no [settlement recipients] are in Bethesda. Zero. None. Like, I've never heard of one in Bethesda," Blumenfeld said."But they're not doing business with anyone in Bethesda. No one even in Montgomery County. It's all about Baltimore."

Blumenfeld's first role in the industry came in 2005, notarizing contracts for a Bethesda settlement purchasing company. Over the next five years, he rapped on doors in Baltimore's toughest blocks to secure hundreds of signatures.

In 2010, Blumenfeld became an independent professional adviser and started counseling sellers before their deals went to court. Maryland legislation holds that such a person — who can neither be paid by nor affiliated with a purchasing firm — must "render advice concerning the [deal's] legal, tax and financial implications." The sellers are supposed to pay their adviser.

Sounds complicated. It wasn't, Blumenfeld said. "I was doing most of them on the phone," he said. He asked whether they understood the "legal, tax and financial implications" of the deal. "It would take less than a minute. I didn't go over the terms of the contract. That wasn't my function. I don't think any of the other lawyers do that, or else they would never get any repeat business."

Charles E. Smith is another lawyer who does this work. A review of 52 Access Funding deals revealed that Smith worked as the independent adviser on every one. Smith entered the same letter in every case stating that the lead victim understood the deal's "legal, tax and financial implications" and that he was not "affiliated" with Access Funding. Borkowski said his company has no contractual or business relationship with Smith, declining to answer additional questions.

Smith said such transactions "represent an extremely small percentage of my practice. I have no business partnerships with any company in the structured settlement purchasing industry. . . . In all instances, I am directly contacted by the [settlement recipient.] . . . I'm not exactly sure how [they] come to me. . . . My independence is in no way compromised or at risk."

Critics condemned the practice of an independent adviser working deal after deal for the same company. "It's a total conflict of interest," lawyer Kerpelman said. "He's doing business for them and with them all the time. Imagine if he ever said, 'No, she can't read. She can't understand what she's signing.' " That partnership, he said, would evaporate.

But Blumenfeld said perceived conflicts of interest weren't the only matters that discomforted him. "A 10-year-old does not have the mental ability to sell these payments, but you see this person is 20, but he has the mental brain capacity of a 10-year-old. . . . So does this annuitant have the ability to sell these payments?"

So Blumenfeld said he adopted a third and final role, this time as something of a broker. He shopped around clients between several purchasing companies, he said, to secure better deals. One client was lead victim Kevin Owens, who wanted to sell hundreds of thousands of dollars' worth of payments. He committed to Access Funding and other firms, but backed out of the Access Funding deal after Blumenfeld spoke with him. In a lawsuit dismissed in March, Access Funding accused Blumenfeld of interference with business practices and unjust enrichment.

Around that same time, the Maryland Attorney Grievance Commission accused Blumenfeld of employing a paralegal with a "substantial criminal history" whom an elderly client gave power of attorney. The board also alleged that Blumenfeld "failed to properly maintain trust account records" and client ledgers. It suspended him in July last year for at least six months for improper supervision and record maintenance.

Those legal issues have stalled Blumenfeld's work in the structured settlement industry, he said. But even now, he said he still wonders at opportunities missed. One person, especially, still crosses his thoughts. He tried to get in touch with him. He sent him letters.

But Blumenfeld never did connect with Vincent Maurice Jones Jr.

'They gave me pennies'

Sunlight spilled across the silent street in West Baltimore. But inside one of its few occupied homes, everything was dark. Black curtains hung across the windows. The living room was strewn with pawn slips and a pamphlet advising what to do upon suffering a gunshot wound. And anchoring its mantel was a cookie tin emblazoned with the words "Access Funding."

Vincent Maurice Jones Jr., who didn't graduate from high school, was playing video games upstairs in his bedroom. He quickly tired of questions.

What happened with Access Funding? “You feeling me, they got all that money, and I didn’t even get a lot.” How much money was in his settlement? “What settlement?”

Jones, 25, came of age in a house on Mosher Street, which today stands abandoned and boarded up. Lead paint so infested its interior that only a few walls were free of it, according to records filed in a lead-paint lawsuit that Jones settled in 2008. “Just a lead pit,” was what one Baltimore pediatrician called it in a deposition.

When Jones was 2 years old, his blood carried 16 micrograms — triple the level considered elevated — before shooting to 28. Then it dropped to 16 before rising to 22. Even at age 8, lead still coursed at high levels in his bloodstream. Soon, he was repeating grades, failing classes.

One psychologist, court records show, doubted his employability, citing his “severe learning difficulties.” He put his lifetime economic loss at more than $1.5 million. Another medical professional couldn’t determine whether Jones, who repeated several grades, was “severely disabled” or just “generally disabled.”

“His mother essentially handles his medical regimen, takes him to doctors and makes sure he gets his medications,” pediatrician Michael A. Conte said in a deposition. “She, obviously, takes care of all the financial matters. And she transports him, or his girlfriend transports him, when he needs to travel to places that involves more than just walking down the street.”

But an affidavit written by Access Funding and signed by Jones in 2013 said Jones wanted to sell $90,000 of his settlement for $26,000 to “purchase a vehicle.” The money, the affidavit said, would also be used to “look for work and also need furniture, clothes, school supplies for my young daughter.”

But Jones has a son, not a daughter. And Jones has never had a driver’s license. Within months of buying a Ford sedan, Jones collected four tickets for operating a vehicle without a license. That car today bakes in the sun, unused.

Months later, Jones struck another deal with Access Funding. This time, he signed two contracts. One relinquished $327,000 worth of future payments, with a present value of $179,000, for $16,000 in return. Another deal, later dismissed, offered $34,000 for a stream of payments that totaled $336,000 and had a present value of $195,000. In all, Jones seemed willingto sell $663,000 of his settlement for $50,000.

The official reason stated in the two spring 2014 affidavits was puzzling. Jones, who had just bought the house he and his mother share using money from a structured-settlement deal, hadn’t needed to pay rent for months. But he signed an affidavit compiled by Access Funding saying he intended “to purchase [a] down payment on a house. Because I am currently unemployed, renting is expensive and detracts from my ability to provide suitable housing for myself and my dependent.” The other affidavit said: “Renting is an expense I no longer wish to incur.”

Burkowski, Access Funding's chief executive, said he could only speculate as to what happened. "We take what is told to us," he said. "These are people, respectable people who have honest needs. If they say they need a house, it's not Access Funding's position to challenge what that client is representing to us. We're trying to help these people."

It's help that Jones said he could have done without. "The whole thing's a scam," said Jones, claiming Access Funding made up why he needed the money. "All that money I got is gone. They gave me pennies."

So Jones has decided to fight. He's working with an attorney who's considering litigation against Access Funding. And he's not the only one.

Tears, then litigation

"There it is," Rose said, pointing at a large structure looming just blocks from where the CVS burned during the Freddie Gray protests. This is where her lead-painted, childhood house once stood. "They knocked it down," Rose said. "It's gone now."

It was a Saturday afternoon, and West Baltimore was alive with funeral processions. The city had just undergone its bloodiest month in four decades — 43 shot dead — and Rose pulled out her phone to show a grisly image of a dead black man making the rounds on Facebook. "He got killed over nothing," she said.

Rose said she hates it here. She doesn't want to stay long. The funeral processions remind her of everything she was happy to leave behind when her family bought a large home just outside Baltimore with settlement money. The move brought her within a few miles of Heritage High School, where she secured the diploma she now calls her greatest achievement.

That accomplishment, Rose said, now feels far away. One afternoon, she suddenly began to cry. She often tells people she's "not dumb." She just needs a little extra time to understand things. But right now, saddled by the weight of decisions made and contracts signed, she felt less sure of that conviction.

Believing she still had money, Rose in March again tried to sell some settlement payments. But the petition, filed in April, was later dismissed when it emerged that all her money was gone. It was around that time that she also stitched together what had happened with Access Funding. In May, she called lawyers to see whether anything could be done.

In early June, Rose sued Smith, the attorney who had worked as Rose's independent adviser in the Access Funding deal. Smith "has signed at least 40 identical or substantially similar letters under similar circumstances in other petitions where Access Funding was seeking a transfer of a structured settlement," states the lawsuit, filed in Baltimore City Circuit Court. The lawsuit, filed by attorneys Raymond Marshall and Brian Brown, accuses Smith of legal malpractice and intentional misrepresentation.

It says Smith failed to disclose his ongoing relationship with Access Funding to Rose and neither met her in person nor inquired about her intellectual capabilities. “No reasonable attorney acting on behalf of Rose would have recommended the proposed transaction,” it says.

Smith argued in court papers that Rose’s lawsuit is “fundamentally inconsistent” with her earlier position and warrants dismissal. Rose, he said, signed a contract stating her desire to sell the payments. She signed an affidavit saying she’d spoken to an independent adviser. “A party who signs a contract is presumed to have read and understood its terms,” the response stated. “. . . This general rule applies even where the individual signing the document is ‘functionally illiterate.’ ”

Rose now works for a local home care service, providing companionship to an elderly woman, she said. In between shifts and helping her brother with his kids, she said she tries not to think about what has happened to her settlement. Still, she said she feels hunted, “like a target or something.”

Settlement purchasing companies, she said, pester her with phone calls and letters. Just the other day, Rose said she opened the mailbox and there was a letter from Access Funding. It promised her fast money. All Rose had to do was pick up the phone and call.

Terrence McCoy covers poverty, inequality and social justice. He also writes about solutions to social problems.

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