NORCOTT, J., with whom KATZ, J., joins, dissenting. I agree with the majority's conclusion that General Statutes § 52-225f does not act to invalidate antiassignment provisions as a general matter. I disagree, however, with the majority's determination that our common law, and § 322 of the Restatement (Second) of Contracts, give the plaintiff, Marco Rumbin, the freedom to ignore a validly executed, and freely made, antiassignment provision in order to transfer his right to payment under the structured settlement agreement. I therefore respectfully dissent.

I

I take no issue with the well settled precept of modern contract law that a ''contractual right can be assigned unless . . . the assignment is forbidden by statute or is otherwise inoperative on grounds of public policy, or . . . assignment is validly precluded by contract.'' 3 Restatement (Second), Contracts § 317 (1981).[1] Without this rule, which replaced the anachronistic common-law prohibition against the assignment of choses in action, ''our modern credit economy could not exist.'' 3 E. Farnsworth, Contracts (1990) § 11.2, p. 61. Certainly, the majority is correct when it notes that ''courts

[have] recognized the necessity of permitting the transfer of contract rights. . . . As a result, an assignor typically can transfer his contractual right to receive future payments to an assignee.'' (Citations omitted; internal quotation marks omitted.)

That said, the majority chooses to ignore a concept that is just as central to this court's jurisprudence, namely, a healthy respect for the power of independent persons to bargain for, or away, contractual provisions in the course of making a contract. This court repeatedly has emphasized that, absent fraud, duress, unconscionability, or other similar infirmity, courts are not in the business of remaking contracts to suit the changing whims of the contracting parties. See, e.g., *Robert Lawrence Associates, Inc.* v. *Del Vecchio*, 178 Conn. 1, 21–22, 420 A.2d 1142 (1979) (''whether provident or improvident . . . contracts voluntarily and fairly made should be held valid and [be] enforced in the courts''). As this court recently stated, ''[e]ven if the result of the fair and logical enforcement of unambiguous agreements seems unduly to burden one of the parties, we decline to embark a voyage into uncharted waters in which untrammeled and unrestrained judicial revisionism would depart significantly from an aspect of contract law upon which contracting parties reasonably can be assumed to have relied for many years.'' *Tallmadge Bros., Inc.* v. *Iroquois Gas Transmission System, L.P.*, 252 Conn. 479, 506, 746 A.2d 1277 (2000). Therefore, in spite of the aforementioned importance of contractual alienability, this court has a responsibility not to render unrecognizable the basic rules of contract law.

Bearing those competing concerns in mind, the general rule governing antiassignment provisions is that ''[a] contract term prohibiting assignment of rights under the contract, unless a different intention is manifested . . . gives the obligor a right to damages for breach of the terms forbidding assignment but does not render the assignment ineffective . . . .'' 3 Restatement (Second), supra, § 322. The crucial phrase in that rule—''unless a different intention is manifested''—is one that this court never has interpreted. The generally accepted view, however, is that this phrase encompasses a dichotomy between the *right* to assign, and the *power* to assign, and that only an antiassignment provision that restricts the latter will render any assignment made in spite of that provision invalid.

The dichotomy between the right to assign and the power to assign, which is the starting point of the majority's analysis, is one with which I do not disagree. The fundamental source of my dissatisfaction with the majority's reasoning is the standard that the majority opinion announces for judging whether an antiassignment provision restricts the right to assign or the power to assign. In my mind, that standard imposes on con-

tracting parties an illogical and arbitrary set contractual mantra that must be recited in order to draft a valid antiassignment clause.

As the majority notes, several courts, most notably those of New Jersey and New York, have adopted precise linguistic requirements relating to the manifestation of the intent necessary to render an assignment of rights ineffective. Those courts have held that '' '[t]o reveal the intent necessary to preclude the power to assign, or cause an assignment violative of contractual provisions to be wholly void, such clause *must contain express provisions that any assignment shall be void or invalid if not made in a certain specified way*.' '' (Emphasis added.) *Garden State Buildings, L.P.* v. *First Fidelity Bank, N.A.*, 305 N.J. Super. 510, 522, 702 A.2d 1315 (1997); accord *Bel-Ray Co.* v. *Chemrite (Pty.) Ltd.*, 181 F.3d 435, 442 (3rd Cir. 1999) (interpreting New Jersey law); *Pravin Banker Associates, Ltd.* v. *Banco Popular Del Peru*, 109 F.3d 850, 856 (2d Cir. 1997) (New York law); *Cedar Point Apartments, Ltd.* v. *Cedar Point Investment Corp.*, 693 F.2d 748, 754 (8th Cir. 1982) (Missouri law); *Pro Cardiaco Pronto Socorro Cardiologica, S.A.* v. *Trussell*, 863 F. Sup. 135, 137 (S.D.N.Y. 1994) (New York law); *Lomas Mortgage U.S.A., Inc.* v. *W.E. O'Neil Construction Co.*, 812 F. Sup. 841, 843–44 (N.D. Ill. 1993) (Illinois law); *Allhusen* v. *Caristo Construction Corp.*, 303 N.Y. 446, 450–51, 103 N.E.2d 891 (1952) (New York law).

The rationale adopted by these courts is ''that contractual provisions limiting or prohibiting assignments operate only to limit a [party's] right to assign the contract, but not [its] power to do so, unless the parties manifest an intent to the contrary with specificity.'' *Bel-Ray Co.* v. *Chemrite (Pty.) Ltd.*, supra, 181 F.3d 442. In order to manifest that specific intent, ''the assignment provision must generally state that nonconforming assignments (i) shall be 'void' or 'invalid,' or (ii) that the assignee shall acquire no rights or the nonassigning party shall not recognize any such assignment.'' Id. Greatly favoring the free assignability of contractual rights, these courts have adopted the previously mentioned bright-line test for antiassignment clauses.

A number of jurisdictions that have considered the issue, however, have not been so insistent on the use of particular phraseology. Those courts simply have examined whether the prohibitive language employed by the parties was clear and unambiguous, and upheld the antiassignment clause when such language was used. See, e.g., *Grieve* v. *General American Life Ins. Co.*, 58 F. Sup. 2d 319, 324 (D. Vt. 1999) (antiassignment provisions were ''unambiguous, bargained-for contract terms''); *Parrish Chiropractic Centers, P.C.* v. *Progressive Casualty Ins. Co.*, 874 P.2d 1049, 1052 (Colo. 1994) (requiring antiassignment clause to ''specifically [prohibit] the assignment of rights''); *Antal's Restaurant* v.

Lumbermen's Mutual Casualty Co., 680 A.2d 1386, 1388 (D.C. App. 1996) (''courts generally 'will honor an anti-assignment clause in contracts when it contains clear, unambiguous language' ''); *Peterson* v. *District of Columbia Lottery*, 673 A.2d 664, 667 (D.C. App. 1996) (same); *Henderson* v. *Roadway Express*, 308 Ill. App. 3d 546, 720 N.E.2d 1108, 1110 (1999) (''the plain language . . . clearly indicates the parties intended to forbid [the assignment of rights]''); *Cloughly* v. *NBC Bank-Seguin, N.A.*, 773 S.W.2d 652, 655 (Tex. App. 1989) (''where a contract expressly states that a right to payment arising under it is non-assignable, full force and effect must be given to this provision''); *Portland Electric & Plumbing Co.* v. *Vancouver*, 29 Wash. App. 292, 295, 627 P.2d 1350 (1981) (''[w]hen a contract prohibits assignment in 'very specific' and 'unmistakable terms' the assignment will be void against the obligor'').[2]

In many of those cases the antiassignment language approved of bears little resemblance to the precise requirements set forth in the New Jersey and New York cases. For example, in *Portland Electric & Plumbing Co.* v. *Vancouver*, supra, 29 Wash. App. 294, the contract merely stated that ''[t]he Contractor shall not assign this contract or any part thereof, or any moneys due or to become due thereunder . . . .'' Yet, the Court of Appeals of Washington held that ''[t]he language in the subject contract is sufficient to prohibit any effective assignment of monies due . . . .'' Id., 295. A similar conclusion was reached by the Supreme Court of Colorado as to a contract that prohibited only the assignment ''of any interest'' in the contract. *Parrish Chiropractic Centers, P.C.* v. *Progressive Casualty Ins. Co.*, supra, 874 P.2d 1051. The court upheld that provision as preventing any effective assignment because ''[w]hen a contractual provision is clear and unambiguous, courts should neither rewrite it nor limit its effect by a strained construction.'' Id., 1055; see also *Cloughly* v. *NBC Bank-Seguin, N.A.*, supra, 773 S.W.2d 655 (Texas Court of Appeals upheld validity of clause that provided '' '[the plaintiff] shall not have the right to make any assignment or transfer any rights under this [a]greement' '').

Most significantly, in three recent cases, courts have upheld antiassignment provisions in structured settlement agreements in spite of the fact that the provisions did not contain the words ''void'' or ''invalid.'' See *Grieve* v. *General American Life Ins. Co.*, supra, 58 F. Sup. 2d 321 (provision stating ''nor shall [the plaintiff] or any Payee have the power to sell, mortgage, encumber, or anticipate the periodic payments'' valid to prevent assignment); *Johnson* v. *First Colony Life Ins. Co.*, 26 F. Sup. 2d 1227 (C.D. Cal. 1998) (provision stating that ''[the plaintiff shall not] have the power to sell or mortgage or encumber [any periodic payments]'' prohibited assignment); *Henderson* v. *Roadway Express*, supra, 720 N.E.2d 1109 (provision stating that '' 'the [p]laintiff [shall not] have the power to sell, mortgage,

encumber, or anticipate the Periodic Payments' " valid to prevent assignment).[3] In all three of these cases, the courts' main concern was the possible precedential effect of a decision "[lending the court's] approval to the voiding of unambiguous, bargained-for contract terms . . . ." *Grieve* v. *General American Life Ins. Co.*, supra, 324.[4]

Although the majority acknowledges the difference between these two schools of thought, the majority nevertheless decides to impose formulaic restraints on the language that contracting parties may employ to craft an antiassignment clause that limits the power to assign. This holding flies in the face of decades of our jurisprudence.

We long have held that "[t]he intention of the parties to a contract governs the determination of the parties' rights and obligations under the contract. . . . Analysis of the contract focuses on the intention of the parties as derived from the language employed. . . . Where the intention of the parties is clearly and unambiguously set forth, effect must be given to that intent." (Citations omitted.) *Levine* v. *Advest, Inc.*, 244 Conn. 732, 745–46, 714 A.2d 649 (1998). At the heart of that rule is our understanding that different parties may choose differing language in order to express their intent, but so long as the language employed clearly manifests their joint contractual will, we are bound to enforce the contract's terms.

In my opinion, this principle mandates against following the courts of New Jersey and New York in establishing a concrete formula that contracting parties must follow in order to write a valid antiassignment clause into a contract. Following a majority of the courts that have considered the issue, it would be preferable simply to hold that, so long as the language employed by the parties clearly and unambiguously establishes their intent to prohibit any assignment of rights under the contract, such an antiassignment clause will be valid and enforceable.

II

In the present case, I would conclude that the language of the antiassignment clauses contained in the settlement agreement and annuity contract[5] are sufficiently clear and unambiguous to allow them to be enforced.

It is well settled that we interpret contract language in accordance with "a fair and reasonable construction of the written words and . . . the language used must be accorded its common, natural, and ordinary meaning and usage where it can be sensibly applied to the subject matter of the contract." (Internal quotation marks omitted.) *Pesino* v. *Atlantic Bank of New York*, 244 Conn. 85, 91–92, 709 A.2d 540 (1998). "If the terms of [a contract] are clear, their meaning cannot be forced or

strained by an unwarranted construction to give them a meaning which the parties obviously never intended. . . . A court will not torture words to import ambiguity where the ordinary meaning leaves no room for ambiguity, and words do not become ambiguous simply because lawyers or laymen contend for different meanings.'' (Citations omitted.) *Downs* v. *National Casualty Co.*, 146 Conn. 490, 494–95, 152 A.2d 316 (1959).

The language employed in the antiassignment clauses at issue in the present case, when accorded its common and natural meaning, clearly and unambiguously prohibits the assignment of periodic payments. The settlement agreement provided in relevant part: ''It is understood and agreed that . . . [the plaintiff] may not assign, pledge or sell the consideration to any third party in consideration of the payments made and to be made by [the defendant Utica Mutual Insurance Company]. . . .'' The annuity contract provided in relevant part: ''No payment under this annuity contract may be . . . sold, assigned, or encumbered in any manner by the [plaintiff] . . . or any other recipient of the payment. . . .'' Each of these clauses contains simple, easily understood language that clearly prohibits the assignment of any of the periodic payments.[6]

In an attempt to call into question whether the plaintiff freely entered into these contracts, the majority notes that ''[a] review of the annuity contract in the present case reveals that it is a preprinted, standardized insurance contract in which the plaintiff was the named annuitant. It was not a contract arrived at by actual negotiation between the parties.'' That statement inexplicably ignores the status of the settlement agreement, which most likely *was* the product of negotiation between the plaintiff and the original insurer, and gives short shrift to the fact that the plaintiff *never* has claimed that *either* contract was one of adhesion.

As discussed in part I of this dissent, three courts that recently have considered structured settlement agreements containing similar prohibitive language have held that the language in question prevented assignment. See *Grieve* v. *General American Life Ins. Co.*, supra, 58 F. Sup. 2d 321 (''nor shall [the plaintiff] or any Payee have the power to sell, mortgage, encumber, or anticipate the periodic payments''); *Johnson* v. *First Colony Life Ins. Co.*, supra, 26 F. Sup. 2d 1227 (''[the plaintiff shall not] have the power to sell or mortgage or encumber [any periodic payments]''); *Henderson* v. *Roadway Express*, supra, 720 N.E.2d 1109 (' 'the [p]laintiff [shall not] have the power to sell, mortgage, encumber, or anticipate the Periodic Payments' '').

In my view, the similarity between the language at issue in the present case, and the language at issue in *Grieve*, *Johnson* and *Henderson*, militates against the majority's conclusion. Unlike the requirements imposed by the courts of New Jersey and New York, neither the

antiassignment clauses in those three cases, nor the clauses at issue in the present case, make use of the words "void" or "invalid." Yet, the language of all of those clauses unmistakably is couched in terms plain and common enough to provide clear guidance as to the parties' intent to prohibit assignment. I conclude, therefore, as did the court in *Henderson*, that "the plain language of the settlement agreement clearly indicates the parties intended to forbid [the plaintiff] from assigning his periodic payments." *Henderson* v. *Roadway Express*, supra, 720 N.E.2d 1110.

This conclusion is buttressed, in the present case, by the language of § 322 (2)(c) of the Restatement (Second) of Contracts, which provides that "[a] contract term prohibiting assignment of rights under the contract . . . *is for the benefit of the obligor*, and does not prevent the assignee from acquiring rights against the assignor or the obligor from discharging his duty as if there were no such prohibition." (Emphasis added.) The Restatement, although cognizant of the need for free transfer of contractual rights, also recognizes, and approves of, the desire of obligors to protect their financial interests. As noted in comment (a) to § 322 of the Restatement, "[a] term in a contract prohibiting assignment of the rights created may resolve doubts as to whether assignment would materially change the obligor's duty . . . or it may serve to protect the obligor against conflicting claims and the hazard of double liability."

Although in the present case the trial court concluded that "[Safeco] . . . has not offered evidence of danger of suffering adverse tax effects as a result of the transfer nor is there other evidence of any detriment to it," that conclusion is irrelevant. As the court in *Henderson* noted, "[m]ore important than whether or not these tax concerns are real or will actually arise is the fact that the parties implemented the antiassignment provisions with these concerns in mind." *Henderson* v. *Roadway Express*, supra, 720 N.E.2d 1113; accord *Johnson* v. *First Colony Life Ins. Co.*, supra, 26 F. Sup. 2d 1229 n.4 ("[i]t appears that [uncertainty over adverse tax consequences] is what defendants wished to eliminate by including the nonassignability clause").

In the present case, Safeco may, or may not, suffer a detrimental change in its tax position as the annuity issuer as a result of the proposed transfer. Even if, however, the anticipated change for the worse never ensues, the antiassignment clauses were included to forestall that possibility. Therefore, unless the clauses are waived by Safeco, they exist as a safeguard against such adverse potential future consequences, and must be enforced.

III

I am not unmindful of the conflicting jurisprudential

interests raised by this case. Nor am I unaware of the straitened financial circumstances that may lead persons to trade future contractual rights for money in the here and now. Nevertheless, while I agree that the free assignability of contractual rights is an objective that this court should attempt to promote, free assignability is not the only, or even the paramount, jurisprudential consideration that necessarily must bear on our decision in the present case. Just as important is the need for this court to announce and adhere to a policy of promoting the evenhanded enforcement of fairly made and entered-into contracts, even if adherence to this policy causes hardship under a particular set of facts. Certainly, such a policy is preferable to a decision which will "lend [this court's] approval to the voiding of unambiguous, bargained-for contract terms in order to enable [the intervening plaintiff, J. G. Wentworth] to profit . . . from [the plaintiff's] financial distress." *Grieve* v. *General American Life Ins. Co.*, supra, 58 F. Sup. 2d 324.

Accordingly, I dissent.

[1] See, e.g., *Settlement Funding, LLC* v. *Jamestown Life Ins. Co.*, 78 F. Sup. 2d 1349, 1355–56 (N.D. Ga. 1999) ("assignment of contract rights is allowed unless prohibited"); *Grieve* v. *General American Life Ins. Co.*, 58 F. Sup. 2d 319, 322 (D. Vt. 1999) (same); *Johnson* v. *First Colony Life Ins. Co.*, 26 F. Sup. 2d 1227, 1229 (C.D. Cal. 1998) (same); *Parrish Chiropractic Centers, P.C.* v. *Progressive Casualty Ins. Co.*, 874 P.2d 1049, 1052 (Colo. 1994) (same); *Peterson* v. *District of Columbia Lottery*, 673 A.2d 664, 667 (D.C. App. 1996) (same); *New Holland, Inc.* v. *Trunk*, 579 So. 2d 215, 217 (Fla. App. 1991) (same); *Goldberg Realty Group* v. *Weinstein*, 669 A.2d 187, 191 (Me. 1996) (same); *American Employers' Ins. Co.* v. *Medford*, 38 Mass. App. 18, 22, 644 N.E.2d 241 (1995) (same); *Vetter* v. *Security Continental Ins. Co.*, 567 N.W.2d 516, 521 (Minn. 1997) (same); *Great Southern National Bank* v. *McCullough Environmental Services, Inc.*, 595 So. 2d 1282, 1287 (Miss. 1992) (same); *Special Products Mfg., Inc.* v. *Douglass*, 159 A.D.2d 847, 849, 553 N.Y.S.2d 506 (1990) (same); *Kraft Foodservice, Inc.* v. *Hardee*, 340 N.C. 344, 347, 457 S.E.2d 596 (1995) (same); *Winegar* v. *Froerer Corp.*, 813 P.2d 104, 107 (Utah 1991) (same); *Berschauer/Phillips Construction Co.* v. *Seattle School District No. 1*, 124 Wash. 2d 816, 829, 881 P.2d 986 (1994) (same); see also 3 E. Farnsworth, Contracts (1990) § 11.2, p. 61 ("[t]oday most contract rights are freely transferable").

[2] Similarly, a number of courts, although not expressly setting out a test for the validity of antiassignment provisions, nevertheless have upheld such provisions as a general matter. See, e.g., *Larese* v. *Creamland Dairies, Inc.*, 767 F.2d 716, 718 (10th Cir. 1985) (antiassignment clauses valid, bargained for provisions); *Cheney* v. *Jemmett*, 107 Idaho 829, 832, 693 P.2d 1031 (1984) ("[p]rovisions in bilateral contracts which forbid or restrict assignment . . . without the consent of the obligor have generally been upheld as valid and enforceable"); *Augusta Medical Complex* v. *Blue Cross of Kansas*, 230 Kan. 361, 367, 634 P.2d 1123 (1981) (assignment barred where contract expressly prohibits); *Wilkie* v. *Becker*, 268 Minn. 262, 267, 128 N.W.2d 704 (1964) (same); *Forsythe* v. *Elkins*, 216 Mont. 108, 114, 700 P.2d 596 (1985) (same).

[3] Compare the prohibitive language employed in those three cases with the language in the settlement agreement in *Settlement Funding, LLC* v. *Jamestown Life Ins. Co.*, 78 F. Sup. 2d 1349 (N.D. 1999). In that case, the fact that the settlement agreement denied *only* the injured persons the right to "accelerate, defer, increase or decrease the amount of [the payments]" was held not to prohibit assignment. Id., 1357.

[4] The majority attempts to characterize these three cases as being consistent with the modern approach disfavoring limitations on the assignability of contractual rights. That characterization ignores the fact that all three of the cases uphold the validity of antiassignment clauses that do *not* contain the words "void" or "invalid." It is true, as the majority notes, that the clauses in all three cases make use of the word "power." In my view, however, that choice does not reflect a rigid limitation on the language that

contracting parties may employ to prevent the assignment of contractual rights. Rather, it is evidence of those courts' adherence to one of the bedrock principles of contract law, namely, a court's responsibility not to ''ignore the parties' clear intentions to incorporate [a] bargained-for provision.'' *Henderson* v. *Roadway Express*, supra, 720 N.E.2d 1113.

[5] The settlement agreement provided in relevant part: ''It is understood and agreed that . . . [the plaintiff] may not assign, pledge or sell the consideration to any third party in consideration of the payments made and to be made by [the defendant Utica Mutual Insurance Company]. . . .''

The annuity contract provided in relevant part: ''No payment under this annuity contract may be . . . sold, assigned, or encumbered in any manner by the [plaintiff] . . . or any other recipient of the payment. . . .''

[6] Without offering any cogent rationale for so doing, the majority considers only the antiassignment clause contained in the annuity contract. I fail to understand why the plaintiff, who was, after all, a party to the settlement agreement, should not be bound by its terms. The majority ducks this issue with the offhand statement that ''the only relevant antiassignment provision in this case is the one in the annuity contract, the only agreement to which [the defendant Safeco Life Insurance Company] is a party.'' The majority fails to explain, however, why that is the case.