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Using Structured Settlements

Reduce Costs While Meeting Claimants' Needs

By Dennis Drexler

When resolving personal injury and workers' compensation claims, structured settlements offer claimants a sense of financial security through the use of a customized benefit

plan tailored to meet their individual needs. But beyond providing claimants with peace of mind, structured settlements also act as a valuable tool for claim professionals. By employ-

ing a structured settlement service to resolve personal injury and non-injury cases, claim professionals can reduce administrative and legal costs, cut the time it takes to settle claims, and

avoid the risks associated with going to trial.

Structured settlements are an important tool claim professionals can use to enhance the negotiation process. For example, the

use of a structured settlement can help bridge the gap between a settlement offer and demand, create an opportunity in a deadlocked negotiation, and shift settlement discussions from cash to providing for a claimant's financial needs on a long-term basis. Such settlements also expedite the removal of liability and legal obligations from a defendant's corporate books and transfers liability for future payments.

Using Structured Settlements

Structured settlements involve the payment of damages to an injured party over time. Some settlements can result from voluntary arrangements, as in the case of a pretrial settlement or, when they involve a minor, they may be court ordered. Other structured settlements involve no litigation at all, although at least part of the settlement must be promised for payment at some future point.

The payments may be scheduled for any length of time, even over the claimant's lifetime. Payments can be made according to the claimant's needs, using a fixed schedule of periodic or life-time payments, installments (e.g. monthly, quarterly, semi-annual, annual or bi-annual), future lump sum payments, or any combination of installment and/or lump sum payments.

Structured settlements typically are used to resolve "qualified" cases, or those involving physical injuries that are exempt from taxation based on IRS law. Such cases can include

claimants who are temporarily or permanently disabled, the guardianship of minors or persons with diminished mental capacity, claimants with limited financial management skills, severely injured claimants who may or may not have a shortened life expectancy, as well as wrongful death lawsuits.

Structured settlements increasingly are being used to resolve "nonqualified" or taxable cases that do not involve a physical injury. Such cases can include nonphysical injury claims, employment disputes, wrongful termination, sexual harassment, discrimination cases, construction defect, attorney fees, punitive damages, environmental claims, property damages, and lottery winnings.

When considering both qualified and nonqualified cases, claim professionals should use the following guidelines to determine whether or not a structured settlement is appropriate:

- The loss amount is greater than \$10,000 and there is an opportunity to defer some of the payments for three or more years
- Anytime a minor is involved and the loss is greater than \$5,000
- The claimant has concerns with security and would like to receive a steady stream of payments over a period of time
- The claimant has concerns with managing a large sum of money
- The claimant would like to shelter the settlement proceeds from future taxation on the earnings

Regardless of the type of claim, the age of an individual does not have a bearing on whether or not a structured settlement is offered. Many senior citizens find that structured settlements protect them from individuals who may prey upon them. Children, grandchildren and great grandchildren also can be left a legacy for use in education, wedding planning, a down payment on a home, etcetera. Moreover, structured settlements are not subject to the volatility of the markets and payments are fixed regardless of market fluctuation.

Partnering with the Structured Settlement Specialist

Structured settlement proposals require a team effort between the claim professional and the structured settlement specialist. The sooner the structured settlement specialist is brought into the claim, the better. By forming a partnership early in the process, the claim professional and structured settlement specialist can begin to gather information and make an informed decision on whether or not the claim is a candidate for a structured settlement.

A meaningful structured settlement meets as many of the claimant's needs as possible within the settlement range established by the claim professional. It is the claim professional's knowledge of the claimant that allows the proposal to be designed to fit the needs of the claimant and his or her family. As such, the claim professional is responsible for defining

each party's role during the initial strategy sessions. Once those roles are clearly defined, the structured settlement specialist attends all settlement conferences, mediations and meetings the claim professional deems appropriate.

It's important to note that structured settlement specialists are paid by the life insurance company upon the purchase of an annuity. That means all services offered by the structured settlement specialist are free of charge, which can present claim professionals with an important source of cost savings.

One such service includes the securing of age ratings, a technique designed to maximize annuity payments for the claimant. The process involves submitting medical records to insurance carriers to determine a "rated-age" for the prospective claimant. Take, for example, an injury victim with a biological age of 12. Upon review of the victim's medical records, actuaries at the insurance company may feel that due to the severity of the sustained injuries, the child's life expectancy is no longer that of someone who is age 12 but rather of someone who is age 30. As a result, the company offers to issue the annuity based on that "age-rated age," which translates into increased monthly payments to the annuitant since the insurer has based the payments upon a shorter life expectancy.

Other valuable services offered free of charge by structured settlement specialists include providing structured settlement

proposals with periodic updates and changes, providing quotes from multiple life insurance companies to maximize the annuity payments and security for the claimant, analyzing economist reports for future damages, providing present value figures, and testifying as an annuitist at trial.

Workers' Compensation Claims

Qualified workers' compensation claims also can be resolved using structured settlements. These cases include Medicare Set Asides (MSAs), total permanent disability cases involving wage differential, partial permanent disability cases with a value of \$50,000 or greater, occupational disease cases, and permanent total cases, as well as disputed cases such as those involving stress or heart attacks.

The administration of workers' compensation claims over the years has become increasingly more difficult and challenging to the claim professional. Even with jurisdictional changes within the statutes, the compensation laws still favor the injured worker. Sympathetic arbitrators and administrative law judges continue to rule in favor of the injured worker.

Issues such as modified



duty programs, medical treatment, rehabilitation, healthcare costs, ongoing temporary total disability payments, Medicare (CMS) involvement, and spiraling settlements all are driving up the cost of workers' compensation claims.

By utilizing a structured settlement, the claim professional and the structured settlement specialist can team up to produce a strategy which ultimately will save indemnity, medical, and expense dollars in the settlement of the claim.

Medicare Set-Asides

As outlined by the Center for Medicare Services (CMS) and federal law, Medicare set-asides (MSAs) are the consideration of Medicare's interest in the settlement of the medical portion of workers' compensation and liability claims. The law is designed to protect Medicare's interests in settling claims that may involve future medical expenses, and CMS has implemented strict and specific guidelines that must be adhered to in all MSA cases. Failure to abide by these regulations can result in harsh fines, other penalties, and legal exposure across numerous fronts.

Considering the complex processes, strict regulations, and harsh consequences for non-compliance involved with MSA cases, the use of a structured settlement can act as a key enhancement in workers' compensation settlement negotiations. As such, claim professionals should consider using structured settlements for all MSAs that are valued at \$25,000 and greater.

Moreover, structured settlements offer the possibility of substantial cost savings by capping future known and unknown medical exposure and reducing the life of the claim as well as its associated legal expenses—all of which could add up to savings between 40 and 60 percent.

Overall, claim professionals can realize considerable cost savings and

still meet the unique needs of claimants by utilizing a structured settlement. In addition to helping reduce administrative and legal costs, structured settlements can play a significant role in the negotiation process and achieve more timely settlements.

As time moves forward, structured settlements will continue to be an effective tool in settling

physical injury cases, and will continue to expand its presence in nonqualified cases as well as in workers' compensation claims. **CA**

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