



Structured Funding

Basics and Beyond
New and Not So New

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What is a Structured Settlement?

Type of damages settlement whereby Defendant agrees to make periodic payments to injured Plaintiff over his or her life. Commonly, such settlement consists of an initial lump-sum payment with future periodic payments funded with an annuity.

— Black's Law Dictionary (6th Ed.)



What is a Structured Settlement?

A settlement in which the defendant agrees to pay periodic sums to the plaintiff for a specified time.

— Black's Law Dictionary (7th Ed.)



What is a Structured Settlement?

Structured settlements are an innovative method of compensating injury victims. Encouraged by the U.S. Congress since 1982, a structured settlement is a **completely voluntary agreement between the injury victim and the defendant.**

Under a structured settlement, an injury victim doesn't receive compensation for his or her injuries in one lump sum. Rather, he will receive a stream of **tax-free payments** tailored to meet future medical expenses and basic living needs.

A structured settlement may be agreed to privately (for example, in a pre-trial settlement) or it may be required by a court order, which often happens in judgments involving minors.

— National Structured Settlements Trade Ass'n



What is a Structured Settlement?

An arrangement

(A) which is established by—

(i) suit or agreement for the periodic payment of **damages** excludable from the gross income of the recipient under section **104(a)(2)**, or

(ii) agreement for the periodic payment of compensation under any **workers' compensation** law excludable from the gross income of the recipient under section **104(a)(1)**, and

(B) under which the periodic payments are—

(i) of the character described in subparagraphs (A) and (B) of section **130 (c)(2)**, and

(ii) payable by a person who is a party to the suit or agreement or to the workers' compensation claim or by a person who has assumed the liability for such periodic payments under a **qualified assignment** in accordance with **section 130**.

— 26 USC § 5891



What is a Structured Settlement?

Payments promised to be made by the released party to the releasing party that will not be made all at once.

— Dick Risk



Transactions Creating Structure

- Claim resolved by suit or agreement
 - Injury or simply an obligation
 - Taxable or non-taxable
- Settlement agreement and release:
 - Claim converted to an obligation (debt) to make present and/or future payments
- Assignment of obligation:
 - Original obligor is released when future payment liability transferred to third party



Advantages

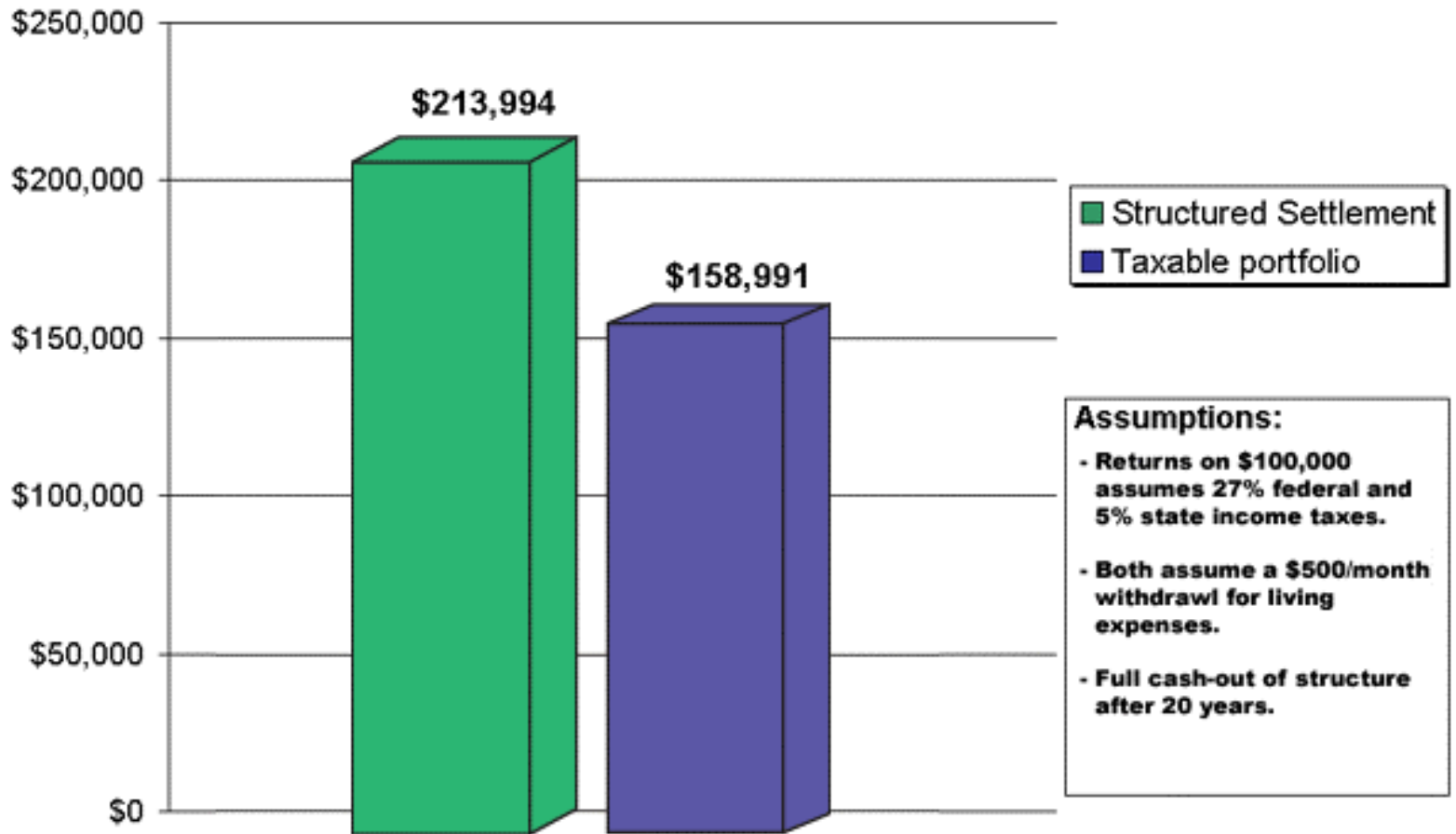
- Qualifying payments for physical injury, physical sickness or workers' comp are federal and state income tax-free
- Taxable payments — including attorney fees — may be deferred
- Settlement proceeds cannot be dissipated
- Benefits can be tailored to meet claimant's individual needs
- Payments can be increased to help keep pace with inflation



Advantages

- Fixed-size payments are guaranteed by one of our economy's strongest sectors
- No investment worries — you are insulated from the market
- Claimants will never outlive income when lifetime periodic payments are selected
- Periodic payments may survive bankruptcy
- Payments may be pledged if needs change, if court approves

Taxable Portfolio vs. Tax-Free Structured Settlement



Assumes 6 percent growth

Source: NSSTA



Perceived Disadvantages

■ Inflexibility

- Negated by congressional approval of factoring, if court approved, and increased competition by factoring companies

■ Higher risk tolerant claimants see relatively low interest rates as disadvantage

- Negated by availability of variable annuity



Code § 104

Code § 104(a) (excerpted) — In General: Except in the case of amounts attributable (and not in excess of) deductions allowed under section 213 (relating to medical, etc., expenses) for prior taxable year, **gross income does not include:**

- (1) amounts received under **workmen's compensation** acts as compensation for personal injuries or sickness;
- (2) the amount of any damages (other than punitive damages) received (whether by suit or agreement and **whether as lump sums or as periodic payments**) on **account of personal physical injuries or physical sickness**. . .

For purposes of paragraph (2), emotional distress shall not be treated as a physical injury or physical sickness. The preceding sentence shall not apply to an amount of damages not in excess of the amount paid for medical care (described in subparagraph (A) or (B) of section 213(d)(1)) attributable to emotional distress.



Code § 130

- (c) “Qualified assignment” means any assignment of liability of periodic payments as damages or workers’ compensation:
- (1) If assignee assumes **liability** from a person who is a **party** to the suit or agreement; and
 - (2) If:
 - (A) payments fixed and determinable as to time and amount
 - (B) payments cannot be accelerated, deferred, increased or decreased by recipient
 - (C) assignee’s obligation is no greater than assignor’s, and
 - (D) payments are excludable under **104(a)(1) or (2)**

Recipient may have rights greater than general creditor

- (d) “Qualified funding asset” means annuity or obligation of U.S. Committee report: **No constructive receipt or economic benefit**



Constructive Receipt

Constructive receipt is the doctrine that taxes income before it is actually received. It is explained in Treasury Regulations § 1.451-2(a):

“Income although not actually reduced to a taxpayer’s possession is constructively received by him in the taxable year during which it is credited to his account, set apart for him, or otherwise made available so that he may draw upon it at any time, or so that he could have drawn upon it during the taxable year if notice of intention to withdraw had been given. However, income is not constructively received in the taxpayer’s control of its receipt is subject to substantial limitations or restrictions.”



Economic Benefit

Under the principle generally known as “economic benefit,” the creation by an obligor of a fund in which the **taxpayer has vested rights** will result in immediate inclusion by the taxpayer of the amount funded. A “fund” is created when an amount is irrevocably placed with a third party, and a taxpayer’s interest in such fund is “vested” if it is nonforfeitable. This is a common law doctrine, attributable to the landmark case *E.T. Sproull v. Comm’r*, 16 T.C. 244 (1950), *aff’d* 194 F.2d 541 (6th Cir. 1952).



Structure Milestones

- First used in 1970s by liability insurers to save money
- Rev Rulings 77-230, 79-220, 79-313
- Periodic Payment Settlement Act of 1982
- Nat'l Structured Sett. Trade Ass'n (NSSTA) formed in 1984
- Weil litigation in early 1980s
- Rebating proliferation in late 1980s
- Insolvency of Executive Life et al in 1990s
- Amendment to section 104 in 1996
- Amendments to section 130 in 1988 and 1997
- Joint Committee on Taxation report of 1999
- Addition of section 5891 in 2001
- Era of unprecedented litigation in early 2000s
- Product innovations in late 1990s and early 2000s
- Expanded use of qualified settlement fund (QSF) in 2000s
- Formation of Society of Settlement Planners in 2001



Early Structures

- Invented by liability insurers in 1970s
- Purchased annuities to fund obligation created in settlement of tort claims
- P&C company remained liable
- Economic performance not satisfied
- Liability remained on the insurer's books
- Gave rise to development of marketing schemes, i.e., exclusives, secrecy, *quid pro quos*, protection of "haves"
- Cost of periodic payments undisclosed
- Prior to Tax Reform Act of 1986



Early Revenue Rulings

■ 77-230

- Government tort claim settlement for injury at U.S. facility
- Reversionary trust established by government
- Payments excluded from recipient's gross income

■ 79-220

- Monthly damage payments to single claimant
- Insurance company purchased and owned annuity
- Full amount excluded, not just discounted present value
- Payments made to estate after death also excluded under § 104
- **No constructive receipt or economic benefit**

■ 79-313

- Disability benefit annual payments for 50 years
- Payments increased 5% per year
- Entire amount excludable from gross income



Periodic Payment Settlement Act

- Provides statutory certainty to tax treatment
- Codified Revenue Rulings
 - 77-230, 79-220, 79-313
- Amended section 104(a)(2)
 - Whether by lump sum or periodic payments
- Replaced section 130
 - Any amount received for assuming liability is excluded
 - Must purchase annuity or obligation of U.S.
 - Purchase must be within 60 days
 - Payments must be excluded under section 104(a)(2)
- Effective January 1, 1983



NSSTA Formed in 1984

- National Structured Settlements Trade Ass'n:
 - Promote utilization through:
 - Public advocacy
 - Legislative action
 - Educational programs
 - Support use of structures as a way to satisfy the immediate and long term economic needs of personal injury victims and their families
- Membership includes:
 - Life insurance companies (providers)
 - Brokerages (producers) (individuals non-voting)
 - Liability insurers (users) (non-voting)
 - Associates (non-voting)
- Business Practice and Standards Resolution, 1988
- Statement of Ethics, 1997, not to be enforced



Weil Litigation

- *Weil Ins. Agency v. Manufacturers Life Ins. Co.*, 815 F. Supp. 1320 (N.D. Cal. 1992)
 - Several plaintiff brokers sued several annuity issuers and defense brokerages base on defense-only policy
 - Summary judgment for defendants
 - Ninth Circuit upheld, finding:
 - “While exclusion of a competitor may be a prerequisite for finding that a refusal to deal violates antitrust laws, it is not enough to sustain a finding of antitrust injury...antitrust laws are concerned about injury to competition, not competitors”***

Legal Econ. Evaluations, Inc. v. Metro. Life Ins. Co., 39 F.3d 951 (9th Cir. 1994)



Weil Litigation

Cont'd

- *Manufacturers Life Ins. Co. v. Superior Ct.*, 895 P.2d 56, 58 (Cal. 1995)
 - Broker sued life insurer, other insurers, competing insurance brokers, trade associations and officer of competing brokerage
 - Sought to recover for violations of several state antitrust acts by boycotting the broker's business
 - Supreme Court of California, *en banc*, affirmed appeals court:
 - 1) Unfair Insurance Practices Act does not exempt a life insurance company from antitrust laws of Cartwright Act and unfair business practice laws of Unfair Competition Act; and
 - 2) Cause of action for unfair competition is not prohibited



Rebating Proliferation

- Marketing plans based on rebating
- LeBoeuf, Lamb, Leiby & MacRae Study in 1989
 - Commissioned by NSSTA
 - Assessed laws of New York, Illinois, Connecticut, Texas
 - Rebating generally illegal if it reduces cost to purchaser
 - No conscious effort by state regulators not to enforce
 - Subtlety of transaction keeps them unaware
 - Recommended information campaign
 - NSSTA rejected the recommendation
- Result has been a proliferation of rebating



Rebating Confirmed

“It is interesting to note that these types of commission sharing or reduced commission agreements are routine in the structured settlement industry. A significant number of the large casualty carriers, self insured’s [sic.] and insurance agencies have or have had these types of arrangements. Likewise, the majority, if not all of the national structured settlement firms are parties to these types of agreements ...”

Letter from Robert J. Blattenberg, President and Chief Executive Officer, Ringler Assocs., to Thomas McCormack, Vice President, National Claims, Chubb & Sons, Inc. (June 25, 2002)



Rebating Confirmed

Cont'd

“...including EPS, SFA, Cambridge Galaher, Pension Company, Settlement Planning, American Settlements, Diversified Settlements, Financial Settlements, Brant-Hickey Associates, Settlement Associates, and The Alliance. Last year these firms along with Ringler accounted for in excess of 70% of the structures arranged by independent brokers.”

Letter from Robert J. Blattenberg, President and Chief Executive Officer, Ringler Assocs., to Thomas McCormack, Vice President, National Claims, Chubb & Sons, Inc. (June 25, 2002)



Insolvency of Executive Life

- Heavy investment in junk bonds
- Rates had been more competitive than rest
- California insurance commissioner forced insolvency in early 1990s
- Purchased by consortium called Aurora Life
- Liability insurers pressured to buy supplemental annuities to keep well
- State insurance guaranty funds also supplemented
- Other carriers failed in this time period, *viz*, Monarch Capital, Confederation Life
- Rating services revamped criteria, i.e., A.M. Best, S&P



Amendment to Code § 104

- Small Business Job Protection Act of 1996
 - Added “physical” to injury or sickness requirement
 - Removed punitive damages from exclusion
 - Origin-of-the-claim rule in committee report
- Codified Supreme Court Rulings:
 - Damages based on Age Discrimination in Employment Act (ADEA) claim not excluded, *Schleier v. Comm’r*, 115 S. Ct. 2159 (1995)
 - Punitive damages awarded in physical injury lawsuit not excluded, *O’Gilvie v. U.S.*, 519 U.S. 79 (1996)



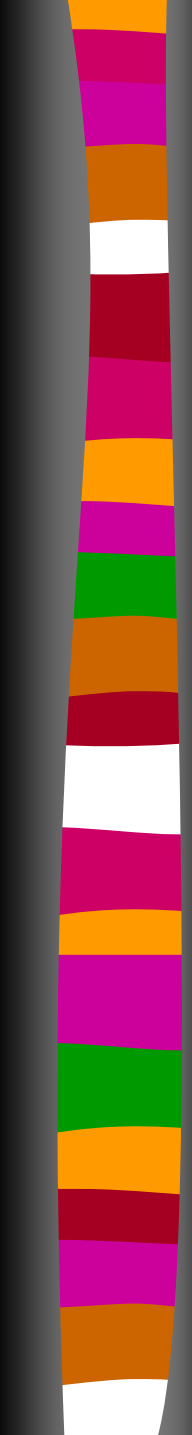
Amendments to Code § 130

- 1988: Replaced prohibition against recipient having rights greater than general creditor
- 1997: Added the phrase “or as compensation under any workmen’s compensation act” and insertion of reference to Code subsection 104(a)(1)



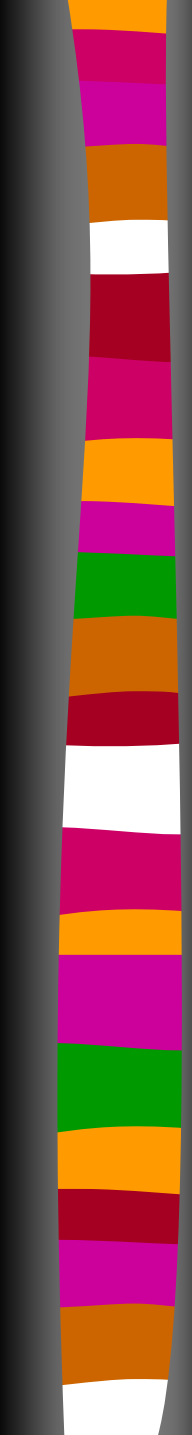
Joint Committee on Taxation

- JCX-15-99 to accompany factoring bill which eventually became Code § 5891
- First public policy statement on reasons for structured settlements
- Provides “subsidy” to encourage settlement in periodic payments rather than lump sum
- To prevent injury victim from relying on public benefits
- Denial of opportunity, thus, is in violation of public policy



“If a recipient chooses a lump sum settlement, there is a chance that the individual may, by design or poor luck, mismanage his or her funds so that future medical expenses are not met. If the recipient exhausts his or her funds, the individual may be in the position to receive medical care under Medicaid or in later years under Medicare. That is, the individual may be able to rely on Federally financed medical care in lieu of the medical care that was intended to have been provided by the personal injury award.

Joint Comm. on Taxation, Tax Treatment of Structured Settlement Arrangements (JCX-15-99) (1999) pt. III, available at <http://www.house.gov/jct./x-15-99.htm>



“Such a ‘moral hazard’ potential may justify a **subsidy to encourage the use of a structured settlement arrangement in lieu of a lump sum** payment to the recipient, to reduce the probability that such individuals need to make future claims on these government programs. Under the structured settlement arrangement, by contrast to the lump sum, it is argued that because the amount and period of the payments are fixed at the time of the settlement, the payments are more likely to be available in the future to cover anticipated medical expenses”

Joint Comm. on Taxation, Tax Treatment of Structured Settlement Arrangements (JCX-15-99) (1999) pt. III, available at <http://www.house.gov/jct./x-15-99.htm>



Addition of Code § 5891

- Attached to Victims of Terrorism Tax Relief Act of 2001
- Product of compromise between structured settlement industry and factoring companies
- Imposes 40% tax on transactions unless approved, in advance, by court
- State must have corresponding statute
- “Best interest” test is mandated
- Insurance industry slow to acknowledge



Era of Unprecedented Litigation

- *Macomber v. Travelers, et al*
- *Lyons v. Med. Malpractice Ins. Ass'n*
- *Grillo v. Pettiette, et al* and *Grillo v. Henry*
- *Stafford v. Allstate*
- *Coppedge v. State Farm*
- *Crutchfield v. Ringler*
- *Walters v. Peerless, et al*
- *McMickle v. Pension Co., et al*
- *Pacheco v. Clark*
- *Liberty, et al v. Estate of Scottie S. Barnett, et al*
- *Structured Settlement Svcs, et al v. PLICO, et al*
- *Risk, et al v. Allstate*



Macomber v. Travelers, et al

- On remand from Connecticut Supreme Court: 804 A.2d 180 (Conn. 2002)
- Reinstated: breach of contract, violation of state unfair trade practices act (including unfair insurance practices), fraud, negligent misrepresentation, civil conspiracy and unjust enrichment
- “Rebating scheme” and “short-changing scheme” are actionable
- Defendant or insurer must not only provide payments as promised but must also spend what it represented as the cost



Macomber v. Travelers, et al

Cont'd

- New Britain (Conn.) Dist. Superior Ct., CV-99-0496761-S Complex Litigation Docket
- Motion for class certification filed June 6, 2003
- Objection filed by defendants June 27, 2003
- Reply filed July 8, 2003, hearing held



Lyons v. Med. Malpractice. Ins. Co.

- Boy had developed bacterial meningitis at age 3
- Settlement of medical malpractice claim at age 8, including life-contingent payments; had been assigned rated age of 54
- Total “present day value” of settlement represented in agreement as \$940,180 on million dollar policy limit; broker had offered to increase “value” by using different interest rate
- Actual value was \$265,635 less, all due to overstatement of annuity cost



Lyons v. Med. Malpractice. Ins. Co.

Cont'd

- All original defendants dismissed, except plaintiff's own attorney, who settled for about \$1.2 million
- Reinstated liability insurer as defendant; remanded to trial court; 286 A.D.2d 711, 730 N.Y.S.2d 345 (2d Dept. 2001)
- Contractual privity exists in a settlement, and intentional or negligent misrepresentation of an annuity's cost by the defense constitutes fraud



Grillo v. Pettiette & Grillo v. Henry

- Girl injured at birth; settled medical malpractice lawsuit for \$2.5 million; *Juniker, et al. v. Harris Hospital-Methodist*, 352d Dist. Ct, Tarrant Co., Texas, No. 352-82502-84
- Girl not expected to live beyond infancy; section 142 trust created; funds dissipated mostly on medical care
- Sued original trial attorneys for: no structure, no plaintiff's advocate structured settlement specialist during settlement transactions, no rated age, no lifetime annuity, no Medicaid Disability Trust



Grillo v. Pettiette & Grillo v. Henry

Cont'd

- *Grillo v. Pettiette*, et al, 96th Dist. Ct., Tarrant Co., Texas, No. 96-145090-92
- Collected additional \$1.6 million from trial attorneys
- Sued guardian ad litem for same causes
- *Grillo v. Henry*, 96th Dist. Ct., Tarrant Co., Texas, No. 96-167943-97
- Collected additional \$2.5 million from guardian ad litem



Stafford v. Allstate

- Jefferson Co. (Tex.), 172nd Dist., E-166795
- Class certification hearing held in early 2004
- Allegations:
 - Violation of Texas Deceptive Trade and Practices-Consumer Protection Act and violation of Texas Insurance Code
 - Violations of Texas Free Enterprise and Antitrust Act of 1983
 - Civil conspiracy
 - Unjust enrichment
 - Conversion



Coppedge v. State Farm

- Travis Co. (Tex.), 53rd Dist., GN-200735
- Causes almost identical to Stafford case
- Dismissed on motion for summary judgment on “satisfaction and accord” theory that fraud was covered in release
- Judge admitted lack of understanding
- Appeal pending



Crutchfield v. Ringler

- Samuel Crutchfield killed in vehicle accident
- Broker made error in structured settlement presentation
- Next day broker informed that settlement would not be honored
- Filed in Louisiana state court; removed to U.S. District Court on diversity, Civ. Action No. 01-2720 (E.D. La.)



Crutchfield v. Ringler

Cont'd

- Damages and relief sought:
 - Specific performance of settlement contracts, or
 - Damages to compensate for losses suffered from breaches of contract
- Deposition of another Ringler broker who “knew or should have known” settlement proposal was in error
- Set for trial September 9, 2002; settled one week prior to trial



Walters v. Peerless, et al

- Ronald N. Walters was member of West Virginia House of Delegates and a structured settlement broker
- Introduced bill to “prohibit the restraint of trade which results from the undisclosed rebate, or ‘kick-back,’ ... to be placed on the insurer’s ‘approved list,’ and prohibit ... the practice of the liability insurer actually paying less than the consumer has contracted for... .”
- Terminated by his employer, Diversified Settlements, owned by Peerless and Liberty



Walters v. Peerless, et al

Cont'd

- Filed in Kanawha County, West Virginia, March 21, 2002, alleging felonies, including intimidation of and retaliation against public officers, violation of other state statutes; Kanawha Co. Cir. Ct. Civil Action No. 02-C-768
- Liberty and Diversified removed to federal district court on diversity
- Case was settled for confidential amount
- “NSSTA and its allies” claim credit for defeat of legislation, refused to account to membership for acts



McMickle v. Pension Co., et al

- Tarrant Co. (Tex.), 17-198061-03
- Defendants:
 - The Pension Company
 - Pension Financial, Inc.
 - Michael Herald (defense broker)
 - Medical Protective Finance Corporation
 - Medical Protective Insurance Services, Inc.
 - Smith, Rose, Finley, Harp & Price, P.C. (law firm)
- Illegal rebating agreement alleged
- Misrepresentation to annuity issuer as broker
- Conversion of brokerage fee



Pacheco v. Clark

- Santa Fe Co. (N. Mex.) D0101-CV-2002-00855
- CNA breached settlement agreement reached at mediation “by unilaterally requiring that plaintiff use CNA to structure the settlement”
- Finding plaintiff:
 - Has right to choose annuity company
 - Has right to choose broker
 - Suffered a loss of monthly payments
 - Incurred attorney fees and costs
 - Broker should be paid expert witness fee



Liberty, et al v. Est. of Barnett, et al

- Interpleader filed in U.S. Dist. Ct. (E.D. Mo.), 1:04CV00001TCM
- Physical injury case on husband's accident settled in 1988 included periodic payments, 20 C&L, lumps
- Subsequent factors:
 - Divorce
 - Beneficiary designations made without both parties' consent
 - Sale of payments by ex-husband to J.G. Wentworth
 - Death of ex-husband
- Liberty asking court to determine proper payee(s)
- Counterclaims against Liberty:
 - Payments should be until second death
 - Annuity value overstated at time of settlement
 - Undisclosed commissions paid to defense brokerage



Struct Sett Svcs, et al v. PLICO, et al

- Comanche Co. (Okla.) Dist. Ct., CJ-2004-201
- Defendants:
 - Physicians Liability Ins. Co. of Oklahoma (PLICO)
 - C.L. Frates & Co. (administrator for PLICO)
 - The Mangelsdorf Companies (brokerage)
- Causes of action:
 - Tortious interference with contract and business relationships
 - Conspiracy
 - Defendants contend it is PLICO's money and they can select whoever they choose
 - Plaintiff contends that, once tendered, it is plaintiff's money, giving plaintiff the right to designate broker



Risk, et al v. Allstate, et al

- Filed as federal question and on diversity with amount in controversy over \$75,000, 04CV-333E (M) (N.D. Okla.)
- Termination in violation of public policy (for writing to the U.S. Attorney General that certain practices of the U.S. Department of Justice were in violation of statutory and decisional authority)
- Violation of 36 O.S. § 1220 by not allowing participation as a structured settlement representative in settling claims for Allstate Companies



Risk, et al v. Allstate, et al

Cont'd

- Violation of sections 1,2 and 7 of Sherman Antitrust Act and sections 2(a), 3 and 7 of the Clayton Act
- Violation of 79 O.S. § § 201-212 by creating different pricing to purchasers of same product by using “approved representative,” lessening competition, creating monopoly and price controls



Product Innovations

- Payment increases indexed to CPI
- Variable annuity as funding asset
- Insurance reassumption agreements
- Offshore assignments
- Liquidation provisions



Expanded Use of QSFs

- Codified at 26 USC § 468B in 1986, referring to Designated Settlement Fund
- Rules published at 26 CFR § 1.468B in 1993, referring to Qualified Settlement Fund
- Rev. Proc. 93-34 published in 1993, confirming that DSF or QSF may make section 130 qualified assignment as “party”
- Industry invented theory that “economic benefit” doctrine is triggered with single claimant
- Skadden, Arps, Slate, Meagher & Flom, LLP, request to Treasury and IRS for published guidance



Society of Settlement Planners

- Need arose for plaintiff advocacy group, as NSSTA demonstrated its defense bias
- Formed in 2000 to include brokers, plaintiff attorneys, trust attorneys, product providers, etc.
- Focus is on broader aspect of settlement planning, rather than on periodic payments



Effects of Bankruptcy

- In re: *Monarch Capital Corp.*, 130 B.R. 368, 376 (Bankr. D. Mass. 1991), 25 CBC2d 751, finding that payees under assigned structured settlements had “exclusive and unfettered rights” to annuity payments, with priority over bankrupt assignee’s unsecured creditors; annuities held by life insurance company for settlement payments considered property of payee



Effects of Bankruptcy

- *Georgia ex rel. Oxendine v. Confederation Life Ins. and Annuity Co.*, Fulton Cty. Ga. Sup. Ct. No. E-31337, Final Order Approving and Confirming Plan of Rehabilitation . . . Conclusions of Law ¶ 10 (July 18, 1995), holding that each structured settlement claimant has, through CLIAC (the insolvent assignee), a special claim to and a paramount equitable interest in the structured settlement annuity contract funding CLIAC's obligations to such structured settlement claimant



Effects of Bankruptcy

- In re: *Belue*, 238 B.R. 218 (S.D. Fla. 1999), finding that Florida had opted out of federal exemptions and, under Florida law, annuity proceeds are exempt
- In re: *Alexander*, 227 B.R. 658 (N.D. Tex. 1998), finding that annuity proceeds are exempt under 11USC § 522(b)(2) applying Art. 21.22 of Texas Ins. Code
- In re: *Brooks*, 2000 Bankr. Lexis 212 (W.D. Mich.), finding that bankruptcy will not discharge the debt if the intent is to defraud settlement purchasers from recovering the amount they advanced



Effects of Bankruptcy

- In re: *Gilmore*, No. 01-00571-R, Bankr. N.D. Okla., July 25, 2002, holding that assignment of payments sold to J.G. Wentworth, contrary to anti-assignment provision in settlement, was invalid



Attorney Fee Structures

- Works like non-qualified deferred compensation plan
- Can work to avoid highest tax brackets by spreading out income over several years
- Can work to mollify impact of alternative minimum tax (AMT) on client for taxable damages in majority view jurisdictions
- Qualified assignment under Code § 130 is on theory that excluded payments under § 104(a)(1) or (2) may be assigned in client's name and paid to attorney as a convenience to client in satisfaction of fee



Attorney Fee Structures

- *Childs v. Comm’r*, 103 T.C. 634 (1994), *aff’d* 89 F.3d 856 (11th Cir. 1996), rejected IRS argument that payments are property of attorney under § 83
- Alternative arrangements through reinsurance assumption agreements and offshore non-qualified assignments



Conclusion

- Structured settlements should always be considered whenever the circumstances warrant
- They are complex and have been used improperly by the defense in ways that can harm your client
- Always engage the services of a structured settlement specialist with a duty to your client
- Never rely on the adversary