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# THE STRUCTURED SETTLEMENT REPORT

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March 2000

Summit Settlement Services, Inc.

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## We're Listening

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The words "Listen, Listen, Listen" are as important to a negotiator as "Location, Location, Location" to a prospective property owner. Of our six senses, we believe that hearing is the most valuable asset in our business. Through active listening, we gain insightful information that improves our bargaining position.

It is fairly common to listen attentively to the first half of a speech, then tune-out momentarily to formulate a reply. Consequently we have missed hearing the entire second half of the communication. It is key to extract as much useful information as possible to improve our leverage during settlement negotiations.

Through listening to the financial objectives of the Plaintiff, we can craft a settlement that meets their individual needs. The following are a few real-life examples of how listening with our ears proved vital in gaining needed insight to settle a claim.

**CASE #1:** Plaintiff was a 59 year old male who suffered a

brain injury, was a dual below knee amputee diabetic with a failed kidney transplant, who resided in a long term care facility. The plaintiff was rated up to age 90 by numerous life insurers and the defense was offering a "life only" annuity.

The plaintiff was a divorced male, with several adult children. Although he wanted to take care of himself financially during his remaining years, he also wanted to ensure that a portion of his estate be handed down to his heirs.

**Solution:** Purchase two structured settlement annuities from qualified life insurers to provide monthly payments for the life of the Plaintiff, with the initial seven years guaranteed. Additional language was added to the release to allow of a commutation of the present value of the remaining guaranteed payments to his heirs upon the Plaintiff's demise. The Plaintiff died within one month of settlement, and the annuities were commuted and paid in the form of cash to his adult children.

**CASE #2:** Plaintiff was a 45 year old male with a brain injury. He had been married for

over 20 years to a 43 year old female. The Plaintiff had financial concerns about taking care of his wife after his death. The Plaintiff preferred to take less in terms of his monthly payment amount, if he could be assured that his surviving wife would be taken care of financially for the rest of her lifetime.

**Solution:** Purchase a structured settlement annuity that paid on a Joint and Survivor basis for the lives of both Mr. and Mrs. Plaintiff, with the first 25 years guaranteed. Mr. Plaintiff was satisfied that payments would continue for the duration of his wife's lifetime, and vice versa; but also, there would be a 25 year minimum guarantee period, payments would continue to be paid on a monthly basis to the estate of the last to die (creating an estate plan for their adult children).

**CASE #3:** Plaintiff was a divorced 32 year old female involved in an automobile accident, rendering her a quadriplegic. The Plaintiff's only living relatives were 2 siblings, and her parents. The plaintiff attorney indicated that the family's only concern was to

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“take care of the needs of the plaintiff for the remainder of her life.” The plaintiff attorney said, in effect, that the family had no desire to profit from the plaintiffs’ injuries (they didn’t need nor want to be the beneficiary of any remaining payments upon the demise of their daughter). Rather, they wanted all money to be paid to the Plaintiff during her lifetime to improve the quality of her life.

**Solution:** The settlement included monthly payments for the life of the Plaintiff. The Defendant elected to retain ownership of the annuity and included a long guarantee period on the monthly payments. Although the settlement was to make payments for the “life” of the Plaintiff, the Defendant named himself or herself as primary beneficiary upon the demise of the Plaintiff. Furthermore, the Defendant purchased a home for the Plaintiff to reside with her family for the remainder of her life. Upon the demise of the Plaintiff, the home reverts back to the Defendant.

**CASE #4:** The Plaintiffs were two minor children who lost their mother in a traffic fatality. The father filed a claim against their Uninsured Motorist Coverage. The Insurer offered a structured settlement through their in-house program. The plaintiff attorney contacted our office for analysis of the defense offer.

The Insurer was offering an “in-house” structure, but upon comparing the prices of commercial annuities, the periodic payments offered through the in-house program were insufficient. The plaintiff attorney, armed with the new information, went to the Insurer and demanded that they meet the rates of the highest rated insurer in the nation. The Insurer refused.

The Insurer stated that the only way they would give the plaintiff the value of the “structured settlement” (tax-free payments) would be to stick with the in-house program.

**Solution:** The plaintiff attorney took the two proposals to the Judge and explained the situation. The Judge gave some harsh words to the Insurer (who had a duty to protect the Plaintiff, its Insured), and ordered the Insurer to purchase the commercial annuity through an A+ (Superior), Financial Class Size XV annuity carrier. The Insurer objected, but nonetheless entered into a qualified assignment and was removed from liability. The Plaintiffs received the highest possible investment rate of return from a quality life insurer (far larger than the original settling insurer).

*A note from the author: In-house programs are set up exclusively to send business from the Property and Casualty Company to their Life Subsidiary. In theory, I do not object to this relationship.*

*However, whenever the P&C company refuses to give the Plaintiff a fair and reasonable investment rate or return, you have to question their motives. By demanding that the annuities be placed in-house, the P&C company avoids paying a commission that is typically built in to the price of the annuity. The Insurer continues to increase the profit margin by keeping the annuities in-house and often offer a paltry investment rate of return to the Plaintiff. Why then, shouldn’t their rates be more in line with the commercial insurance markets? Their bottom-line (profit) is the only possible answer.*

*The Insurers are demonstrating bad faith by placing their own business interests above the interests of their insured Defendant.*

**CASE #5:** The Plaintiff was a 46 year old female amputee. Her settlement included a large sum of cash, which she predominately wanted to invest into real estate (in the late 1980s). At mid-life, the Plaintiff felt that through private investments, she would make a higher investment rate of return than what the annuity was offering.

**Solution:** The Plaintiff took the lion’s share of the settlement proceeds in the form of up-front cash. We were, however, able to convince the Plaintiff to allow us to structure a monthly stipend to take care of her future living expenses.

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We successfully included a structured settlement annuity that provided \$3,700/mo for life with 20 years guaranteed, increasing 3% compounded annually.

Today, the Plaintiff receives \$5,122 per month. These payments will continue to increase at 3% per annum and pay for the rest of her life. In a recent discussion with the Plaintiff, she indicated that within 7 years she had exhausted all of her cash settlement and the structure was the only thing she had left. She said, "If I knew then what I know now, I would have structured a whole lot more of the settlement."

The Plaintiff took a complete 180° turn from her original settling position. Now, she says, "The structure was the best thing that ever happened to me."

The old adage, "Hindsight is 20/20," is true in this instance. We hear similar stories like this year after year.

**SUMMARY:** Structured settlements are tailored to fit the needs of each individual Plaintiff. The structure would include sufficient up-front cash, i.e., for the purchase of an auto/home, plus future payments that may include guarantee periods, COLAs, commutation riders, college tuition funds, estate development lump sum payments, retirement plans, and/or joint and survivor

annuities. When it comes to creating the structured settlement of your dreams, you are only limited by your own imagination (and, of course, settlement dollars). Our goal is to help you resolve your claim (listening to the little clues can be extremely insightful).

Structured settlements continue to be the only investment that provides "tax-free" payments for the "life" of the claimant. Structures avoid the volatility that exists in today's domestic and global markets, and protects the Plaintiff from the following "big three" risks:

1. Claimant lives beyond his/her financial mean by spending the principal;
2. With the best of intentions, family and friends borrow money and fail to repay the loans; and/or,
3. Claimant outlives the principal, regardless of prudent money management.

Over 90% of all Claimants dissipate cash settlements within the first five years. The reason is rarely bad investments but rather the first two risks listed above.

When discussing the financial aspects of a physical injury claim, include an expert who works exclusively in the development of structured settlements. Structures provide a lifetime of financial security. We all want to avoid hearing of

the Plaintiff that has run out of money and has no means of support to pay for his medical and living expenses.

The negotiator's most valuable asset is his "ears." We are listening, are you?

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