THE STRUCTURED SETTLEMENT REPORT

December 2005 | *Summit Settlement Services, Inc.* | (888) 673-8853

"To Structure or Not to Structure, that is the Question"

Yes, a little play on words from Shakespeare's, Hamlet. Which is better and why (cash vs. structure)?

While recently catching up with a fellow structured settlement broker, he remarked that a number of his larger catastrophic cases were resolving for "all-cash" settlements (no structure whatsoever). I, too, just had a big seven-digit case go to cash. It is alarming to see an "all cash" settlement to a plaintiff who has suffered severe physical injuries and does not possess the investment savvy to financially manage his large settlement (my case involved a 43 old male, rated to age 67).

Ironically, the Enticements to Cash are the same as the Pitfalls to Cash. The biggest temptress is **control**. Cash settlements are driven by many things. Sometimes it's family and friends who have designs on the money or a distant financial planner "cousin" who appears out of nowhere offering unrealistic projections of double-digit returns. I have seen plaintiffs who are convinced that they can achieve higher **equity** and **growth** potential with the **liquidity** they desire. These plaintiffs believe that they will capture **improved interest rates** … when they materialize.

The truth is that these same plaintiffs run through their cash settlements at an alarming rate. Improved interest rates are not realized because the plaintiff lives larger-than-life, spending down his capital faster than the investment interest is earned. By taking the cash settlement, the plaintiff has constructively received the money and is no longer eligible for needs-based entitlements, such as Medicaid. The uninsurable plaintiff then loses his settlement proceeds to creditors when he defaults on loans or incurs large medical expenses.

Of course, not all of these things happen to any one plaintiff; but it is not uncommon for a plaintiff to experience multiple events. Plaintiffs fail to consider the risks associated with private investments such as those identified above. Unlike the old adage "the greater the risk, the greater the reward," a plaintiff cannot afford to risk his settlement on speculative investments as he does not have the ability to rejoin the workforce and replace lost income. Settlement monies must be safeguarded.

Time and time again, plaintiff attorneys recount stories of clients who have spent through their entire settlement proceeds and returned to their offices with the question, "Who can I sue next? I need more money!" The answer is no one.

Structures offer the plaintiff: 1) **guaranteed income** for life (he cannot outlive the investment); 2) **tax-free** payments forevermore; and, 3) the **security** of having the highest rated life insurance companies underwrite the annuity. The plaintiff is the annuity Payee and his heirs are the beneficiaries. He does not "own" the annuity and, therefore, cannot lose it. The structured annuity is intentionally set up to protect the plaintiff from himself and others/creditors.

<u>Structures equal **security**</u>.

<u>Cash equals **risk**</u>**.**

Here's something you may not have known.

Why is it that structured annuities provide a higher internal investment rate of return than regular old-fashioned single premium immediate annuities that you or I could buy for ourselves? The answer is that the settlement money used to fund the annuity retains its preferred tax-exempt status to the annuity carrier. <u>All interest earned</u> on the investments made by the annuity carrier to fulfill the periodic payment obligation of the annuity contract is received by the annuity carrier <u>tax-free</u>. A portion of the annuity carrier's good fortune is then passed on to the plaintiff by way of improved structured annuity rates. The annuity carrier's profit is realized on the spread (margin between the investment income earned and the portion paid out to the plaintiff).

Cash investments of equal security cannot and will not guarantee better after-tax results over a structured settlement annuity.

The plaintiff can<u>not</u> go out and purchase his own structured annuity. Both the preferred annuity rates and tax-exempt status of the payments are reserved for "qualified" tax treatment when it is a true structured settlement as part of a negotiated agreement between the plaintiff and defendant. It takes two to tango, folks. No one side can force the other to participate in a structured settlement.

"To Structure or Not to Structure, that is the question." The simple answer is that a structure should be presented during the negotiation of catastrophic cases and all cases involving minors. Ultimately, the case may resolve for an all-cash settlement or more commonly a part-cash/part-structure.

By structuring the settlement, we continue to protect the plaintiff over his entire lifetime. We eliminate the risk that the plaintiff will become destitute by willfully or recklessly spending down an all-cash settlement. Let's work together to ensure that the settlement meets its intended objectives by satisfying the plaintiff's future needs so that he may live out the rest of his years with dignity, self-respect, and financial independence.

Dorothy Scanlan Stevens

Certified Structured Settlement Consultant

SUMMIT SETTLEMENT SERVICES, INC.

----

317 No. El Camino Real
Suite 408
PO Box 231130
Encinitas, CA 92024

(888) 673-8853
(760) 944-0022

Dorothy@SummitSanDiego.com