THE STRUCTURED SETTLEMENT REPORT

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A Plaintiff Cannot Settle for Cash Now and Structure Later

I received three separate telephone calls this past week from plaintiff structured settlement agents wanting to twist cash settlements into structures. The claims settled 2, 4 and 6 months ago. All cases were negotiated for cash by the plaintiff attorney and all parties signed mediator's settlement agreements for strictly a cash consideration. In one instance the money was already sitting in the plaintiff attorney's client trust account. Unfortunately, all cases involved minor children which probably should have been structured in the first part.

The plaintiff's annuity agent was contacting me, the defense consultant, at this late date in an effort to save the case from cash. This was simply not possible. When the parties negotiate for cash and they further memorialize their settlement into a written agreement wherein the plaintiff agrees to release the defendant for "x" dollars, then the plaintiff has placed himself in constructive receipt regardless of whether or not the money has actually changed hands.

Constructive Receipt

Constructive receipt is the doctrine that taxes income before the income is actually received, see Treasury Regulations §1.451-2(a), as follows: "General Rule. 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 noticed of intention to withdraw had been given. However, is not constructively received if the taxpayer's control of its receipt is subject to substantial limitations or restrictions."

Tax-free structured settlements are available only as part of a negotiated agreement of a bodily injury claim. No one side can force the other into a structured settlement. Both parties must agree to structure the claim.

Structured settlements were offered in two of the three above-referenced cases. In both occurrences, the plaintiff attorney rejected the structure and demanded cash. At plaintiff's insistence, the defense abandoned the structured approach to settling the case. One quick decision can last a lifetime. The cost to the plaintiff was that he had now lost the opportunity to have a tax-free structured settlement forever.

Plaintiff attorneys are increasingly being sued by their very own injured clients for failing to inform their plaintiff about the following: a) structured settlements; b) changes in their government benefits post-settlement; and, c) taxation of damages. Plaintiffs are more apt to squander all-cash settlements over structured settlements. They then look back to their plaintiff attorney for more money. If more money is unavailable, the plaintiff looks to "who's at fault, why isn't there more, maybe I didn't receive enough in the first place, who can I sue next?"

Avoid becoming a statistic and do what's right and responsible for our clients and society by properly structuring those claims that should be structured. All of our intentions should be in the best long-term interest of the injured party. Let's all work together to protect the injured plaintiff from himself and others who may not have his best interests at heart. Imagine how our decisions today will affect others' futures.

Check out our new website
www.SummitSanDiego.com

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