

Med-Mal Cases Suited for Structured Settlements

ANNUITIES CAN BE COMPARED TO BENEFITS OF STEADY JOB

By JOHN DARER

Plaintiffs in medical malpractice cases are generally good candidates for structured settlements because such cases often involve a need to replace future income loss, a concomitant loss of future benefits such as retirement plans and a need to finance future medical needs or cash flow needs. Structured settlements are fully customizable and annuities can be individually tailored to provide money in amounts and at times desired for the benefit of plaintiffs of any age, their dependents or even fund a scholarship or memorial fund.

Five American life insurers that issue structured settlement annuities—Metropolitan Life, Prudential, New York Life, Pacific Life and an AIG subsidiary, United States Life Insurance Co. for the City of New York—have been in business since the 19th century. Liberty Mutual, backer of structured annuity issuer Liberty Life Assurance Co. Boston, founded in 1912, is America's predominant workers' compensation insurance company. United of Omaha was established in 1926 and National Indemnity Co., one of three Berkshire Hathaway entities used to fund structured settlements, was founded in 1940.

Low interest rates have not deterred the use of structured settlements, which are seen as a core financial and settlement planning tool. "Low" is all relative when you consider risk profile and comparable choices within that risk profile. Although still down from its historic high, structured settlement industry production has actually grown over the past few years. While "plain vanilla" still sells, in recent years, an index-linked structured settlement payment has been in-

athletes do you know who get those kinds of deals? Most get four- to five-year deals and a few of the elite may get 10.

If you qualify for such a "job," there are a lot of options.

Job 'Qualifications'

- 1) You have suffered a personal physical injury or physical sickness and have filed a claim or lawsuit against a third party; or
- 2) You are on a workers' compensation claim, or
- 3) You are a survivor of someone who has died in an air crash, car accident, construction accident, as the result of medical malpractice or a defective product and are plaintiffs in a wrongful death lawsuit or claim, and
- 4) Your lawsuit or claim has not yet settled and you have not executed a release of liability.

Choose Your Employer(s)

- Berkshire Hathaway
- Liberty Life Assurance
- Metropolitan Life
- National Indemnity Co.
- New York Life
- Pacific Life and Annuity Co.
- Pacific Life Insurance Co.
- Prudential Insurance
- United of Omaha
- United States Life Insurance Co.

Negotiate Income Increase

Generally, structured settlement payments rise from 1 to 5 percent per years, but with an allocation to Pacific Life's Index Linked Annuity Payment Rider, payments can increase based on year-over-year

be longer), which can guarantee that the income from your "job" passes to your beneficiaries.

- You can name and change beneficiaries, unless you are a minor in which case you simply have to wait until you reach the age of majority in your state before making any changes.



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allocation and distribution of the settlement, how are you covering this important topic?

Colleges expect 20 percent of the assets in a bank account or a trust in a child's name to be paid toward the expected family contributions (EFC) for tuition costs. So a large asset value could negatively affect or disqualify a child from receiving financial aid. For example, setting aside parental assets, a child with \$150,000 sitting in an account from a medical malpractice settlement may have to pay \$30,000 of that toward the expected family contribution. Spreading the payments out via a structured settlement can be helpful to mitigate this problem.

Wrongful Birth Cases

In these types of cases, which are often filed by the medical malpractice lawyers, the use of periodic payment reinsurance or a nonqualified assignment in such cases where there is no "physical injury" may offer relief through tax deferral.

Some try to position structured settlements as an "either/or" decision between a structured settlement and a lump sum of cash. But that is neither realistic nor prudent. There is clearly a lot to think about in resolving your clients' cases. Enter the structured settlement and settlement planning experts. Consider involving such experts before a case settles so that you can go into negotiations knowing all your options. ■

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roduced and in the future there may be an option to have deferred lump sums purchase income streams at the annuity issuer's then current rates.

Settlement Benefits

Structured settlement payments are not subject to stock market fluctuations. Stability and predictability is an important component of any portfolio, particularly where there are ongoing needs. Even if a plaintiff is an expert investor, or has access to a competent financial adviser, it would not be prudent to place their entire nest egg at risk. The insurance companies that fund your client's settlements are legally required to maintain reserves to help ensure they have adequate funds to pay claims. The obligation of insurers to set appropriate reserves is designed by legislation to promote financial stability of insurance companies and protect the public. It is therefore prudent for your clients to "set reserves," to promote stability and protect themselves and their dependents, if applicable.

Structured settlements are, figuratively speaking, a recession-proof "job" that one can never be fired from. How would you like to have a job that provides you guaranteed income for a fixed term of years, or for life, and which protects you from being fired, does out annual raises and protects you

changes in the S&P 500 index, with a 5 percent cap and no downside. Plaintiffs can choose terms when they accept the "job."

No Paycheck Deduction

Medical malpractice structured settlements generally involve physical injury, physical sickness or a wrongful death. In such cases, no federal, state or local income taxes, Social Security, Medicare or unemployment taxes come out of your income under current tax law. The value of the tax advantage increases with the tax bracket.

Nobody Will Fire You

• Unable to handle things as fast as you used to? Don't sweat it. If you elect to take the lifetime "job" when you settle your case, and you don't transfer your rights to the structured settlement payments, per the Connecticut General Statutes and federal law, you can never be fired.

• You can transfer your "job," or part of it, to a willing buyer, but in order for such structured settlement transfer to be effective, a judge must approve it as being in your best interest and that of your dependents. If you transfer part of your "job," you will have to take a "pay cut."

In Case of Death

• You can dial a guaranteed period of your

Personal Injury • Medical Malpractice • Product Liability • Nursing Home Negligence



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