

**Presented at PARMA February 2019**

**Are Structured Settlements Still  
Relevant (Using Structured  
Settlements To Close Claims)**

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GUIDE. GUARD. GO BEYOND.

# What Are Structured Settlements?

A SERIES OF TAX-FREE PERIODIC PAYMENTS  
SET UP AS PART OF A SETTLEMENT CONCLUDING  
A CLAIM

# Physical Injury Payments are 100% Tax-free

Internal Revenue Code, Sec. 104 (a) excludes from gross income:

“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.”

Also excluded are amounts received as workmen’s compensation for personal injuries or sickness.



# What Else is a Structured Settlements?

- ***Tools for evaluation and negotiation***
- Payments for benefits over time
- ***Designed to meet claimant's needs***
- Provides claimants with secure, predictable tax-advantaged income
- An alternative method for settlement negotiations
- ***Help facilitate negotiations***
- Programs are highly versatile, flexible, and can be customized

# Types of Cases to Consider

- Workers Compensation
- Auto
- Construction
- Premises Liability
- Product Liability
- Medical Malpractice
- Any Case involving a physical injury or sickness

# Types of Claimants to Consider

- Minors
- Incompetents
- Medicare Beneficiaries (MSAs)
- Claimants unable or unwilling to manage finances
- Cases involving future wage loss
- Cases involving future medical needs and costs
- Wrongful Death
- Catastrophic Injuries
- Can be an excellent option in almost any case

# Chronological Age v. Rated Age

- Actuaries calculate life expectancies based on claimant's medical history.
- Minor medical conditions, such as high blood pressure, may result in the life insurance company evaluating the claimant as if he/she were older than his/her actual age.
- The adjusted expectancy assigned to the individual is known as a rated age.
- Result: decreased cost for a lifetime annuity.

# Rated Age

Jane Chan

Chronological Age: 38

Rated Age: 68



Cost to purchase \$1,000/month for life, 10 years guaranteed,  
using chronological age **\$172,437**

Cost to purchase \$1,000/month for life, 10 years guaranteed,  
using rated age **\$126,132**

Difference of  
**\$46,305.00**



# Benefits of Rated Ages

- If dealing with a “stated” benefit, it will reduce the cost to the defense.
- If dealing with a stated amount to spend, it will increase the benefit to the claimant.
- If you get close in negotiations, it can help to **bridge the gap** between offer and demand.

### Proposal A for Jane Doe

<u>BENEFIT</u>	<u>COST</u>	<u>EXPECTED YIELD</u>
Cash Up Front:	\$50,000.00	\$50,000.00
Attorney Fees	\$75,000.00	\$75,000.00
PDA's Paid to Date:	\$75,360.00	\$75,360.00
<u>Jane Doe</u>		
Female, Date of Birth: 07/12/80		
<u>Monthly Income</u>		
To Begin one month from funding date.	\$390,580.00	\$774,000.00
\$1,500.00 per month for Life guaranteed 15 years.		
<b>TOTALS</b>	<b>\$590,940.00</b>	<b>\$974,360.00</b>

*Taxable Equivalent Yield = 5.17%*

*Rate Series = PL258 (1/24/2019)*

*Proposal Preparation Date: 2/5/2019*

*Proposal Purchase Date: 3/7/2019*

*This proposal is valid for 7 days from the proposal preparation date.*

*This proposal design is for illustration and planning purposes only, and is not valid or binding until verified with the appropriate life company quoting software.*

*Please refer to our disclosure/disclaimer statement at <http://ringlerassociates.com/disclosures>.*

**Proposal B for Jane Doe**

<u><b>BENEFIT</b></u>	<u><b>COST</b></u>	<u><b>EXPECTED YIELD</b></u>
Cash Up Front:	\$50,000.00	\$50,000.00
Attorney Fees	\$75,000.00	\$75,000.00
PDA's Paid to Date:	\$75,360.00	\$75,360.00
<u><b>Jane Doe</b></u>		
Female, Date of Birth: 07/12/80		
<u><b>Monthly Income</b></u>		
To Begin one month from funding date.	\$273,154.00	\$774,000.00
\$1,500.00 per month for Life guaranteed 15 years.		
<b>TOTALS</b>	<hr/> \$473,514.00	<hr/> \$974,360.00

*Taxable Equivalent Yield = 8.78%*

*Rate Series = PL258 (1/24/2019)*

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# MEDICARE

## 42 Code of Federal Regulations § 411.24

- CMS has a direct right of action to recover from any primary payer.
- CMS has a right of action to recover its payments from any entity, including a beneficiary, provider, supplier, physician, attorney, State agency or private insurer that has received a primary payment.
- The primary payer must reimburse Medicare even though it has already reimbursed the beneficiary or other party.
- If it is necessary for CMS to take legal action to recover from the primary payer, CMS may recover twice the amount of the amount of the Medicare primary payment.



## MEDICARE

DETERMINE CLAIMANT'S MEDICARE STATUS  
GUIDELINES:

65 years old?

Off work for 30 months or more due to disability?

On SSDI (Social Security Disability Income) for 24 months or more?

REPORT!

NO "SAFE HARBOR"

NO DOLLAR THRESHOLD



# MEDICARE

## MSA ALLOCATION

Must be in good faith

Sample language:

“The parties have taken Medicare’s interests into account and set aside \$800 for Medicare-eligible claim-related expenses”

Sample language:

“The parties have taken Medicare’s interests into account and set aside \$20,000 as an initial deposit and annual lifetime payments of \$4,325 commencing within one year of settlement for Medicare-eligible claim-related expenses”



## Medicare Set-Aside Options

**LUMP SUM MSA:** Lump Sum MSA: \$130,618  
Cost to fund \$130,618

### STRUCTURED MSA

Seed MSA: \$29,986  
Premium: \$58,625\*  
Cost to fund \$88,611

\*\$4,193/yr for life

Expected lifetime payout: \$130,618

# Illustration of Present Cost of Home Health Care

<b><u>BENEFIT</u></b>	<b><u>COST</u></b>	<b><u>LIFETIME YIELD</u></b>
\$6,085.00 per month for life starting on 8/15/2009 (Expected Lifetime 11.7 yrs)*	\$425,903.00	\$827,560.00
	<b><u>\$425,903.00</u></b>	<b><u>\$827,560.00</u></b>



# Minor Claimants

OBJECTIVE SETTLEMENT ADVISORS

**RINGLER**   
 Everybody Wins  
 (714) 899-0100  
 Fax (714) 899-2037

## Proposal I for Minor Claimant

<u>BENEFIT</u>	<u>COST</u>	<u>GUARANTEED YIELD</u>
<b>Attorney Fees - 25% of Total Cost</b>	\$10,000.00	\$10,000.00
<b><u>Minor Claimant</u></b>		
Female, Date of Birth: 08/08/15		
<b><u>Education Fund – Annual Payments for 5 Years Guaranteed:</u></b>		
\$10,125.94 per year guaranteed 5 years starting at Age 18 on 8/8/2033.	\$30,000.00	\$50,629.70
<b>TOTALS</b>	\$40,000.00	\$60,629.70

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# When to Use Structured Settlements



## Medicare Set-Aside Cases

The Medicare Secondary Payer law (42 USC 1395y) requires taking Medicare's interests into account for post-settlement claim-related expenses.

A structured settlement is the only way to reduce this carve-out to present value.

## When to Use Structured Settlements



All cases where the claimant will benefit from ongoing tax-advantaged payments

- Ongoing medical expenses
- Income replacement
- Financially unsophisticated claimant

## Public Needs Programs – SSI and Medicaid Special Needs Trust

- Structures can be used to protect a claimants public benefits eligibility
  - Annuity payments designed to keep claimant under income limits
  - Funding a Special Needs Trust to make sure eligibility for SSI and Medicaid is preserved
    - Keeps the administration fees (based on Corpus of trust) low, and defers taxable amounts

# Why Use Structured Settlements Advantages for the Claimant

- Payout can be timed to match time of need
- *All payments for physical injuries (initial settlement + earned interest) are tax free*
- Guaranteed payments are fixed; principal cannot be lost
- ***Fluctuations in the market or interest rates do not affect the payments***
- ***No fee professional management-- Claimant need not manage the funds***
- Payment cannot be dissipated
- ***Rates of return are very competitive***
- Payments are made by a major life insurance company

# Why Use Structured Settlements

## Advantages for Defense

- No Direct Fee To Any Party- Good Litigation Management
- Experienced Settlement Assistance
- Enhances Negotiations
- Bridge Gap Between Offer And Demand
- Savings Through “Rated Age”
- Helps Break Deadlocked Negotiations
- Reduces Legal Fees & Allocated Expenses
- Mitigates likelihood of Medicare reimbursement liability
- Provides A Socially Responsible Settlement

## Advantages to Mediators/Court

- Provides An alternative negotiation strategy
- Can appeal directly to need of claimants
- Eliminates obligation to oversee fund management
- Eases burden in friendly judgments
- Overall benefits to society

## Bring The Broker To Settlement Meetings To:

- Provide Information
- Present the structure
- Answer questions
- Re-quote the case
- Help promote the structure
- Ensure tax code compliance
- Be the “good cop”
- Be the “bad cop”



# Finalizing the Structured Settlement

- Copy of Approved C&R with Structured Settlement Addendum or Settlement Agreement and Release
- Assignment document
- Claimant's proof of birth (life annuities)
- Claimant's Social Security Number
- Claimant's address
- Attorney contact information
- Prompt funding

Thank you!

Questions?

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