

# Are Structured Settlements Still Relevant? (Using Structured Settlements to Close Claims)

Presentation for:



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# What Are Structured Settlements?

A SERIES OF TAX-FREE PERIODIC PAYMENTS

SET UP AS PART OF A SETTLEMENT

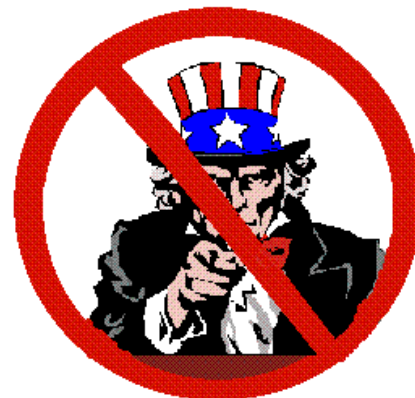
CONCLUDING A CLAIM

# 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 Settlement?

- ***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





# 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.*

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# Medicare

## 42 Code of Federal Regulations § 411.24



- CMS has 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



## Determining 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 interest into account and set aside \$800 for Medicare-eligible claim-related expenses”

Sample Language:

“The parties have taken Medicare’s interest 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:	<u>\$130,618</u>
Cost to Fund:	\$130,618

## Structured MSA:

MSA Seed Fund:	\$29,986
Annuity Premium:	<u>\$58,625</u>
Cost to Fund:	\$88,611

\*\$4,193 per year for 24 years if living  
Expected lifetime payout: \$130,618.00

**This would provide a reduction in cost of roughly 32% off the gross MSA allocation amount.**

# Illustration of Present Cost of Home Health Care

## Monthly Income

(HHC @ \$575.23 daily)

To Begin one month from funding date.

\$17,496.58 per month for Life.

\$3,065,633.31

\$4,286,662.10

# Minor Claimants

OBJECTIVE SETTLEMENT ADVISORS



## Proposal I for Minor Claimant

<u>BENEFIT</u>	<u>COST</u>	<u>GUARANTEED YIELD</u>
Attorney Fees - 25% of Total Cost	\$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 a Structured Settlement

- Any Case that Involves a Medicare Set-Aside
- Cases with Ongoing Medical Expenses
- Income Replacement
- Financially unsophisticated claimants
- All cases where the claimant will benefit from ongoing tax-advantaged payments

## Public Needs Programs – SSI, Medicaid & Special Needs Trust

- Structures can be used to protect a claimant's 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

# 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
- Payments are made by a major life insurance company

# Advantages for Defense

- No direct fee to any party – good litigation management
- Experienced Settlement Assistance
- Enhances Negotiations
- Bridge Gap Between Offer and Demand - Helps Break Deadlocked Negotiations
- Savings Through “Rated Age”
- 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 the needs of claimants
- Eliminates obligation to oversee fund management
- Eases burden in friendly judgments
- Overall benefits to society

# Bring the Broker to Settlement Meetings

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

# Finalizing the Structured Settlement

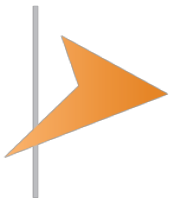
- Copy of Approved C&R with Structured Settlement Addendum or Settlement Agreement and Release
- Assignment document
- Claimant's proof of birth (life annuities)
- Claimant's Social Security Number
- Claimant's address
- Attorney contact information
- Prompt funding



# END PRESENTATION

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