

Defense-Allied Brokers: No Laughing Matter

By Richard Halpern

"You might be a redneck if ... you consider your license plate personalized because your father made it".

Comedian Jeff Foxworthy has turned observations like these into a thriving industry while making millions of people laugh. As with most humor of this stripe, the laughs come from the fact that the observation is undeniably true, yet the listener had never focused on it before.

I've been thinking about a similar series called "You know your structured settlement consultant is tied to the defense if ..." The problem is, it isn't funny. It's scary. Because the chances are, your structured settlement consultant *is* tied to the defense. And if so, the laugh may be on you and your injured clients.

Why?

The peril is this: if your broker is tied to the defense, he knows that his duty is to the defense and its interests. When he proposes a structured settlement for your client, he is not proposing the structured settlement because it addresses the needs of your client. He is proposing what he is proposing because having your client accept his plan benefits his client: the liability carrier. Interestingly, the broker doesn't feel any obligation to look out for your injured client's welfare, and he's quite right: he has none. If he did, he would be in a bind, with a true conflict of interest.

But, you may argue, why does there have to be a conflict of interest? Can't a structured settlement proposal be in the best interests of both the liability carrier and the plaintiff?

I'll take a deep breath and forego impulsive answers like "Don't get me started!" and "You've got to be kidding!" to point out:

- The defense only makes money off of a structured settlement if it's an annuity. Annuities involve a real risk of commercial collapse, whereas other structured settlements do not. Annuity structured settlements can be broken by aftermarket buyers, leaving your client with a devalued lump sum and no protection.
- The future income of the broker depends on keeping his primary client...the insurance company...happy. Is it likely that any broker would risk this to present a better option to the plaintiff, to whom he owes no duty at all?
- The defense is your client's *adversary*. If it could, it would avoid any redress for your client, regardless of such annoyances as fault, responsibility, justice and compassion. Why would your adversary's ally *ever* give a thought to your client's best interest?
- This is an industry that prior to being sued for anti-trust violations in 1991, refused to issue brokerage contracts to any broker who worked on the plaintiff's side. Is that compatible with a "win-win" philosophy?

The bottom line is that you cannot, must not, rely on the advice of a defense broker. How can you tell if your broker is one? Look closely: there's been a proliferation of advertising by firms claiming "plaintiffs structured settlement services". Every one I've investigated is, first, a blatant imitation of Halpern Group material (that's fine; the sincerest form of flattery, after all) and second, a sham.

These are defense-tied operations wearing sheep's clothing. So with my apologies to Jeff Foxworthy, here's my list:

"You know your structured settlement broker is tied to the defense if:"

... he does any work for the defense. The reason's simple: defense work is a long-term income proposition. The broker works for your client once. Who do you think gets priority?

... he sells annuities. Historically, annuity carriers have refused to offer their products through plaintiff consultants; out of loyalty to the defense community. Remember, selling litigation annuities is synonymous with giving profits back to the defense.

... he offers off-the-shelf "one size fits all" defense-designed products, rather than flexible, custom-designed products aimed at the special needs of individual injured plaintiffs.

"... more than three dogs are killed when his porch collapses".

Actually that last one doesn't mean you have a defense broker.

It means you have a redneck defense broker.