

Exposed at Last -

Defense Plots and Structured Settlement Deceptions: A Special Report

We have all heard the familiar parable about the six blind men who all fail to describe an elephant because the one part of the beast each touches—a tusk, the trunk, an ear—completely misleads him about the nature of the whole. And it is true: large and complex matters are impossible to understand when you are too close to them to see the whole, when you only deal with one part, or when your perception is distorted.

Nowhere is this more true than in the world of structured settlements. The plaintiff's bar must deal with structured settlements frequently, yet it has never seen the complete picture; indeed, there never seemed to be a compelling reason to seek out the complete picture. After all, weren't all parties, including injured plaintiffs, getting what they needed? For decades, the defense establishment and the insurance industry has benefited from this misconception. More to the point, it has carefully worked to perpetuate it. Plaintiff's attorneys haven't been able to perceive the true nature of structured settlements because they have been blinded-by deceit, distortion, and lies.

This special issue of *The Settlement Strategist*, perhaps the most important issue we have ever published, assembles all the pieces of the structured settlement "elephant" so you and your colleagues can at last see the whole beast.

And a beast it is.

What emerges is an industry created by the defense solely for the benefit of the defense, cynically using misinformation to line its pockets while feigning concern for the welfare of injured plaintiffs. An industry that over time has magically trained dedicated plaintiff's advocates—attorneys passionately opposed to everything insurance companies and corporate defendants stand for—to passively comply with its profitable schemes to the detriment of their clients.

No one is to blame for this deception except the industry that perpetuated it, and no trial attorney should reproach himself or herself for failing to perceive what was so effectively hidden. Even we, as plaintiffs' personal injury settlement consultants, failed to fully appreciate the implications of the facts exposed in these pages, despite our expertise in the field, until very recently. This is galling, to say the least (how many plaintiffs could have been spared unjust and unsafe settlements had we discerned and published the truth earlier?), but it is also proof of how effective and complex a deception this has been.

Here, then, is the elephant: the structured settlement system the defense doesn't want you to understand. Not a conspiracy, perhaps, but certainly with the impact of a conspiracy; not a plot, exactly, but as sinister as any plot could be. The good news is this: now that we know what the beast really looks like, we can overcome it.



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The Tort Reform Connection

Elsewhere in these pages is documented a disturbing story: how the insurance industry has used guile and deception to enlist the plaintiff's bar into unwitting support of an enrichment scheme, built on annuity-based structured settlements. That is bad enough. But worse still is this: those ill-gotten gains may be fueling the relentless attack on our civil justice system, one which has been successfully chipping away at the rights of injured victims to seek and achieve justice.

When I was in charge of developing and implementing member services for the Association of Trial Lawyers of America, we decided to implement an estate planning program using charitable remainder trusts. This would permit attorneys and possibly their clients to contribute to ATLA's educational activities while reaping other long-term benefits of estate planning (your alma mater probably has a similar program). There seemed to be no downside to launching such a program, and many advantages, so proposals were solicited and examined by a member task force.

A clear-cut winner emerged: a national financial firm with impeccable credentials. Nonetheless, the selected firm, its proposal, and ultimately the entire program, were shot down by the objections of some members of ATLA's Board. Why? Because a year before, the chosen firm had given a token contribution to a local tort reform effort. The principled argument that plaintiff's attorneys should not be paying fees to companies who support the enemies of the civil justice system held sway, even though ATLA, and its members, would have benefited greatly from the program.

Yet every time a plaintiff's attorney's injured client agrees to a defense-controlled structured settlement, the transaction directly supports the primary purveyors of tort reform, in the myriad ways described in this issue. Does that money (the enrichment of insurance companies through structured settlements constitutes tens of millions of dollars) go directly into tort reform efforts? No: but take it away, and those tort reform funds may have to be spent elsewhere. Take it away, and you've weakened the enemy. Take it away, and, like ATLA, you've taken a stand, one with some consequences behind it.

Time was when plaintiff's attorneys had little choice. You dealt with the defense (and lined its pockets, giving it more resources to use against you and the system of justice you stand for) or your client couldn't get a structured settlement. Now, thanks to the existence of The Halpern Group's Plaintiff-Controlled Structured Settlement, there is a choice.

It should be an easy one.

Jack Marshall, Editor-in-Chief

The Perfect Plot

How the Insurance Industry Turned Victims' Pain Into Profit Using Structured Settlements

The only way to understand what the defense's structured settlements are really about is to look at where they came from.

Structured settlements were invented by the defense. The reason: to save money... to make a little look like a lot when claims had to be settled. They certainly weren't invented to help the plaintiff, to facilitate life planning, or to prevent dissipation. To be sure, these were, and are, all arguments made by the defense to push structured settlements on plaintiffs and their counsel; but the welfare of the injured was not a consideration in the development of this innovation.

Indeed, the injured suffered because of it. Using the time value of money, the

... if the defense saves money, the savings come at a plaintiff's expense.

defense could persuade plaintiffs to take their settlements in future periodic payments that could be purchased in the present at a considerable discount. The money saved by the defense was withheld from the plaintiff, which leads to a central truth that is indispensable to understanding structured settlements: if the defense saves money, the savings come at a plaintiff's expense.

The Inspiration

Although there was minimal and sporadic use of structured settlements before then, it wasn't until the 1970s that enterprising entrepreneurs realized that structured settlements would be a profitable business, with the liability insurance industry as the clientele. Again, the motive

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Defense Structured Settlements: Home of the Whopper



By Richard G. Halpern

Sad but true: some professions exist through lies, and there are businesses to which particularly seductive whoppers are as valuable as patents. The legal profession is one of the very few on the face of the earth that *prohibits* its members from lying. Attorneys may not engage in fraud, dishonesty, misrepresentation..., or even that favorite pastime of our elected officials, deceit. Our system of law is based upon the search for truth, after all. So it is no wonder that plaintiff's counsel have been vulnerable to the maneuvers of the structured settlement industry, an institution built, maintained, and nourished by lies.

Harsh words? In fact, not harsh enough. These lies are more than gentle deceptions, casual exaggerations, or even everyday weasel words: they are carefully considered weapons designed to make the plaintiff's bar accessories as the industry enriches itself to the detriment of injured parties.

Were this column the size of *War and Peace*, I might be able to discuss thoroughly all of the lies, large and small, that contribute to so much harm and deception. But I must content myself, for now, with five of the most egregious defense whoppers, beginning with:

1. Present Value Sleight of Hand

"Now you see it. Now you don't." You would think the one piece of information plaintiffs and their attorneys would have a right to in the settlement process would be the *cost* of the settlement modality. And you would be correct, except that the defense doesn't want the plaintiff to know the true cost. The defense wants to use "present value," a number based on the estimates of its annuity broker and subject to manipulations according to which assumptions are used. The defense also wants you and your

plaintiff to believe that "present value" is the same as cost, so if that misconception exists, the defense will do nothing to clarify it. This is what your state rules of professional responsibility describe as "deceit," i mpermissible conduct for an attorney. Deceit is nourishing a misconception without directly misstating the facts. Deceit is also presenting present value to a plaintiff as if it represented the cost of a structured settlement, which it isn't.

Why do they do this?

Power, plain and simple. Since the present value number is the end result of a calculation based on speculative variables, it can be adjusted by the defense to serve its purposes. If the plaintiff hears "cost when the defense says "present value, then conditions are perfect for a defense slam dunk: the plaintiff is making decisions based on misleading and defense-serving information. Of course, no plaintiff's counsel would ever recommend a course of action in a trial setting based on the other side's expert's analysis.

Cost vs. Present Value

Or, "Figures Don't Lie (But Liars Figure)

- On November 23, 1997 the cost of an annuity producing income of \$1,000 per month for 50 years (\$600,000) was \$198,395. This annuity had an internal rate of return of 6.0150/o. Discount factor is the same as rate of return, except working backwards from the income stream. You use the rate of return to determine what X amount of money will produce in income over the next 50 years; you use the discount factor to determine what needs to be invested today to produce Y amount of income over the next 50 years.
- Using the same variables (discount factor, desired income, and time span) the present value of this annuity will equal the cost.
- But ... if you assume a discount factor of 00/0, the present value on November 23, 1997 becomes \$600,000 (equal to the total payout).
- And if you assume a discount factor of 100,0000/0 per month, the present value is \$1.00.
- The cost is still \$193,395 on November 23, 1997.

You see? Present value can be anything the presenter wants it to be!

But the defense believes that you as a plaintiff's attorney have no reason to challenge it on this point, and a big son *not* to challenge it: your fee. Since defense-provided present values are usually higher than cost, if you base your fee on present value you may get more money. You will also be over-charging, because the present value presented by the defense is usually significantly more than the actual settlement. See how insidious this deception is? The defense believes it can pull you into the lie by making you a beneficiary of it. (They have even influenced certain state legislatures to enact statutes allowing contingent attorneys' fees to be based on present value rather than cost.)

Attempt to pierce the subterfuge, however, and you encounter the next whopper.

2. The Constructive Receipt Dodge

"I can't tell you the cost. That would be constructive receipt. This is the

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DEFENSE STRUCTURED SETTLEMENTS: Home of the Whopper

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defense equivalent of the old spy gag, "I could tell you, but then I would have to kill you." The difference is that while there may have been a kernel of truth behind the spy line, there is none behind this one. It is a naked ploy to avoid disclosing cost using the false theory that once the plaintiff has the true cost, he or she has taken "control" of the settlement, thus constituting constructive receipt under J.R.C. Section 130. Now if this were true, the periodic payments to the plaintiff would no longer be tax-exempt, which would certainly be a good reason for the defense not to disclose the cost. If it were true.

It isn't. The IRS never said this, implied it or intended it. *The defense made it up!* Indeed, the IRS has explicitly rejected this fantasy, in Private Letter Ruling 83-33035. That ruling responded to a clarification request on this point "because of... concern that your knowledge of the existence of cost of the annuity might cause you to be in constructive receipt

of that annuity." The IRS's answer? ..."[W]e conclude that disclosure by defendant of the existence, cost, or present value of the annuity will not cause you to be in constructive receipt of the present value of the amount invested in the annuity."

You can't be more plain than that... and this ruling, readily accessible, dates from May 16, 1983. The very fact that the defense has repeated the constructive receipt myth to thousands of plaintiffs since then is powerful evidence of the insurance industry's reliance on lies as a primary strategy in settlement.

3. The Imaginary Pay-Out

"Bait and switch:" it's one of the oldest swindles known to human civilization, and it's key to the defense's strategy in pushing your client into a structured settlement. In this common maneuver, you will be shown a pay-out to a normal life expectancy on an injured client with a very high age rating; let's say a three-

year-old client whose proper age rating is 82. So even though your client will probably live only a few years, the proposal projects a full life expectancy. The defense is counting on a passive plaintiff's attorney in order for this outrageous tactic to succeed, an attorney who does not determine an accurate age rating. It is trying to turn human nature to its advantage: guardians or parents who want to believe that an injured minor will live a normal life span... an attorney eager to wrap up a case with a big settlement figure. The tactic works all too often. Then once the papers have been signed, the defense buys a much cheaper annuity using the true age-rating, and pockets the difference.

4. The Money Management Shuffle

Remember Christmas clubs? Some banks would sell naive customers on putting money aside at no interest to make sure they had an extra account at the end of the year for Christmas gifts. *Mad Magazine*, in one of its old "Lighter Side Of..." features, had a perplexed bank patron querying a bank officer on this point, saying, "Your promotion says 'Our Christmas Club will make the holidays a little brighter!' I could do just as well putting my money in an old sock. How is your Christmas Club going to make my holidays brighter?" The officer's reply: "I don't know about *your* holidays, but it sure makes our holidays brighter!"

I think of this whenever the defense trumpets to the plaintiff that its structured settlement provides "professional money management." Sure it does... for the *annuity carrier's money!* The plaintiff receives a fixed income stream based on today's interest rates. There is nothing to manage for the plaintiff. But if the principal is invested so as to bring in more than the amount to be paid to the plaintiff, that benefit of "professional money management goes to the insurance company. This "professional money management" line is in fact an admission that the defense is going to make excessive money off of the plaintiff's settlement. It is presented in such a way as to intentionally

WHAT DOES THE HALPERN GROUP DO?

The Halpern Group consults to attorneys undertaking litigation on behalf of injured plaintiffs.

The firm identifies the impediments placed in the way of just settlement by the defense, and devises creative ways to remove them. During the settlement process, this translates into an unmatched record of using negotiation strategy expertise to extract the best offers from the defense, effectively countering the efforts of liability carriers or corporate risk management personnel.

The Halpern Group is also the nation's leading innovator in non-annuity structured settlement alternatives that maximize safety, security, and flexibility.

These include:

- The revolutionary Plaintiff-Controlled Structured Settlement (currently patent-pending).
- The U.S. Treasury Bond Structured Settlement Trust, the first and only such trust to receive IRS approval.
- The Settlement Fund Management Trust, the ultra-flexible and versatile alternative to structured settlements.

For a full information packet on any of the above Halpern Group services, or to discuss how the firm can assist with a specific case or settlement, call
1-800-524-1631.

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DEFENSE STRUCTURED SETTLEMENTS: Home of the Whopper

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mislead plaintiffs into believing that they are getting something they are not.

Ah, but if that "professional money management" is not so astute? Then the carrier may fail, leading to seizure by the insurance commissioners and the possibility of a reduced benefit stream for the rest of the plaintiff's life.

With defense-controlled structured settlements, the only proper way for plaintiffs to regard the defense's "professional money management" is to fear it. It can only benefit the life insurance company, and the only thing it can bestow on a plaintiff is either the predetermined income stream, or financial hardship.

5. Risk is Safety

"War is Peace." George Orwell's 1984 totalitarians perfected a chilling system of institutionalized lies in which the population was confused into believing that things were their exact opposites. The defense is practicing the same technique when it tries to sell your plaintiff on an annuity-based structured settlement by explaining that its Section 130 assignment of liability provides enhanced security. The truth is often *exactly the opposite!* The assignment of liability takes the defendant off the hook, of course: the settlement agreement transfers the obligation to pay to the assignee, and relieves the defense of liability and responsibility forever. But this is the real twist: the plaintiff, by approving the assignment, often has agreed to let the defense replace an insurance company with billions in assets with a shell corporation having a small fraction of those assets. The chances of the liable party going under, thus jeopardizing the plaintiff's future, may be vastly increased.

Orwell didn't use "Risk is Safety." Maybe even his totalitarian truth-twisters couldn't say that one with a straight face.

Does this exhaust the parade of whoppers? Not a chance... and more are being uncovered all the time, like the "customer service pledge" recently being used by Allstate to lure injured plaintiffs into foregoing legal representation [ATLA

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Advocate, November 1997, Vol. 23, No. 9, "States Outlaw Allstate Pledge."] That's the insurance industry. If they were witnesses, you could impeach them with ease. If they were applying for a job, their credentials wouldn't check out. You'd

never buy a car from them, or let them be treasurer of your charitable organization.

It's time to stop trusting them to safeguard your client's future. It's time to stop trusting them, period.

Structured Settlement Kickbacks

How They Work, and Why You Should Care

If you're looking for evidence of kickbacks in the structured settlement business, look at those "approved" lists of brokers that some insurance companies maintain. Think about it: what is the purpose of that list? To reward brokers with good manners? Nice teeth? A sterling reputation? A demonstrated concern for the best interests of injured clients?

The "approved" list is obviously a way for insurance companies to bring business to particular brokers.

Here's the next question: *why* would an insurance company want to give business to a particular broker? Married to the insurance company Chairman's favorite daughter, perhaps? Maybe the broker maintains a household full of foster children? No, the insurance company wants a particular broker because getting that broker may mean money for the insurance company. Perhaps he works for a structured settlement firm owned by the insurance company. Perhaps he will place the annuity with a company affiliated with the insurance company. But in many cases, the benefit is even more direct. In many cases, the broker is giving a percentage of his commission to the insurance company that pushed his services on the plaintiff. A kickback.

The kickback system became entrenched years ago. A broker wanting more structured settlement business offered to rebate 25% of his 4% commission on any structured settlements sent his way. Some competing brokers pushed the kickback up to 50% of the commission. As competition among brokers became intense, not providing a "rebate sometimes became a real handicap. The insurance companies had their "approved"

lists, and brokers left off of it found their options severely limited. Some insurance companies, to their credit, refuse to play this game, but for those that do, it is one way to make a profit off of structured settlements.

Why should you care? Certainly kickbacks are unethical, and in many professions illegal; still, if your client gets the structured settlement agreed upon, what's the problem?

There are two problems. The first is that the kickbacks are one more manifestation of the defense changing and manipulating the terms of the settlement after the plaintiff has signed off. In this regard, it belongs to the family of maneuvers that includes post-settlement underwriting, in which the insurance company gets a better buy on the annuity *after* the settlement has been agreed upon by the plaintiff, and pockets the difference. In both cases, the plaintiff's money finds its way back to the other side. The route is different, but the result is the same.

Both transactions also take place after the settlement agreement, when you are powerless to protect your client. Make no mistake: any funds kicked back to the insurance company are rightfully part of the plaintiff's settlement, covertly channeled into the coffers of the party that was supposed to be paying, not receiving. That's wrong.

There is only one way to be absolutely certain that some post-settlement flimflam isn't going to take place after you've agreed to a defense-controlled structured settlement.

Don't agree to a defense-controlled structured settlement.

THE PERFECT PLOT

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was profit. If there was a need being addressed, it wasn't the plaintiff's need for a settlement arrangement that protected against dissipation or tax consequences. The need that spurred this product was the need for members of the insurance industry to minimize their obligations as a result of their tort-feasor clients' wrongdoing. Structured settlements presented a way to accomplish this, and the insurance industry embraced it... gingerly. Their apparent concern: what was to stop plaintiffs from structuring their own settlements?

Here's what: a custom-made law

Deep in darkened offices, exchanging technical concerns and schmoozing the Congressmen and Senators, lawyers and lobbyists for the insurance industry began in the early Eighties to execute a plan

What was to stop plain tiffs from structuring their own settlements?

that was brilliant in conception. Its goal: pass a law that put the defense in the driver's seat for all structured settlements. Force plaintiffs to use insurance industry products. Mask the blatant self-serving nature of the law by linking it to a tax break. Finally, avoid setting off any alarms with the public, consumer watchdog organizations or Congress by including an alternative to annuities -- U.S. Treasury Bonds -- in the bill. (After all, the defense still had to approve everything, so it wasn't a real option anyway.)

The structured settlement community hired a tax attorney to write the bill to its specifications. Then it was done: the Periodic Payment Settlement Act of 1982. The era of defense controlled structured settlements had been locked in... seemingly forever.

Success

Plaintiffs and their attorneys responded with great enthusiasm and a singular lack of suspicion. Why not? It was a time of soaring interest rates, with double-digit inflation just beginning to come down. The tax-free income was

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too good to pass up, especially with top tax brackets at 70 percent. The awful statistics on plaintiff dissipation of large cash

The defense could choose the broker and product that best served the defense's interests.

awards were just becoming known, and annuities seemed to be dissipation-proof. And, of course, they were safe.

The plot had been carried through without a hitch. Now the defense was in complete control of the structured settlement process, ensuring huge savings. ("Your plaintiff insists on a million dollars? Let's do this: we'll compromise on the amount and she compromises on the timing. It's the safest thing for her, too. We've got a perfect product, and our broker will work everything out. Agreed?") Since the defense had to agree to any structured settlement and since the plaintiff and plaintiff's counsel had neither the contacts nor the expertise to present an alternative it was fool-proof. The defense could choose the broker and product that best served the defense's interests. In some cases, that meant channeling business to liability carriers' fully- owned life insurance companies who would issue the annuities and collect the fees. U.S. Treasury Bond structured settlements wouldn't present a viable option until the 1990s.

It was a complete victory. The defense had used its ingenuity to turn structured settlements into a cash cow, with plaintiffs following the script without protest.

Where was the plaintiff's bar while this was happening?

The Fog Lifts

The plaintiff's bar was doing what it thought was its job: zealously representing injured plaintiffs, and leaving the complexities of tax law and financial plan- fling to experts who dealt in these boring necessities for a living. The defense establishment counted on this inattention; it was a linchpin of the entire plan. Plaintiff's attorneys would defer to the defense's financial expertise. Yes, they

would certainly attempt to perform due diligence and satisfy themselves that the annuity companies were secure, but they would have neither the time, expertise or motivation to do more.

The defense had done its job well, because the plaintiff's bar never made the key logical syllogism:

- Every law promoted and drafted by the defense community has been designed, implemented, and executed to take advantage of plaintiffs, and
- Structured settlements were created by a law promoted and drafted by the defense community, thus
- Structured settlements were designed, implemented and executed to take advantage of plaintiffs!

Things began to change, however, things that have refocused the plaintiff's bar's attention and jeopardized the defense's well-worked scheme. In the wake of insurance company collapses and seizures of recent years, annuities are no longer seen as safe enough for injured plaintiffs. Treasury Bond structured settlements now present a real option.

As a result of the saturation advertising by Wentworth, Stonestreet Capital and other so-called "after market purchasing companies, a successful plaintiff

... annuities are no longer seen as safe enough for injured plaintiffs

now can find a company who will willingly take his or her periodic payments in exchange for a lump sum, which in turn can be dissipated. Starting with the ABA's 1983 revision of the Model Rules of Professional Conduct, the standard of care for attorneys has changed. Few now believe that a plaintiff can receive competent representation from counsel who is unschooled in structured settlement options, or who does not obtain expert assistance on the topic.

Perhaps most important of all, the facts are finally coming into the light. For the defense's master plot that depended on keeping plaintiffs and their attorneys in the dark, that may be fatal.

What's Wrong With This Picture?

Find the Ironies, Conflicts and Red Flags In the Defense's Structured Settlement Proposal

The scenario leading up to a defense-controlled structured settlement is often like one of those detailed pictures that you find in children's magazines. We all remember them: drawings of scenes with clocks numbered backwards and houses floating a foot off the ground, a mouse chasing a cat and the moon shining in the daytime. Our job was to spot all the errors, and it could be tricky. Some of the more clever drawings appeared to be completely normal at first glance, and you had to look closely.

Here are some strange things to look for as you play "What's Wrong With This Picture?" in structured settlement discussions with the defense.

The insurance company that has fought your client's attempted recovery and interests at every step suddenly wants to control how that recovery should be managed.

It is a little like the picture of the mouse chasing the cat. This abrupt shift in orientation doesn't make sense, at least for the plaintiff. Why, in light of past behavior, would you trust these people?

The insurance company demands, as a condition of settlement, release from all future liability, including liability for picking a flawed structured settlement vehicle.

This one is easy to spot, much like the moon shining in the daytime. It should start the red flags waving and the alarm bells ringing.

Even though it has offered many opinions about the tax treatment of the proposed structured settlement, the defense wants you to sign the Section 130 qualified assignment agreement which asserts, in some situations, that the structured settlement provider has made no representations as to the tax treatment of the proposed transaction.

What's wrong with this picture? As with the previous example, everything

points to one conclusion: your client isn't being educated on the best and safest way to manage the settlement. Your client is getting a sales pitch, one in which the facts may have very little to do with the representations being made.

The defense insists it has the right to choose the structured settlement vehicle and broker.

Like the backwards numbered clock, this makes no sense on its face. It's the plaintiff's future at stake; why should the defense have

Why, in light of past behavior, would you trust these people?

any say in critical decisions like this? Their claim that "it is our money and that they "want to work with people they know and trust for their own protection is blatantly disingenuous. Why? Because they still insist upon a full release and thus have no risk. Yet the defense's imaginary prerogative of choosing vehicle and broker has mysteriously survived, the remnants of an earlier time when structured settlements were only available from the defense. There's only one reason the defense wants to choose the structured settlement and broker: profit. And the defense's profit does not belong in the plaintiff's structured settlement picture.

The defense wants to fund the structured settlement with a life insurance company annuity.

Fact: in today's financial climate, annuity carriers can and will fail, exposing injured plaintiffs with annuity-based structured settlements to potentially horrific financial hardship. Yet the liability carrier will still insist on relief from any future liability if its chosen annuity carrier goes the way of the Executive Life Companies. It wants all the risk to stay with the plaintiff, and will vehemently oppose more secure structured settlement options because these do not afford the defense the same financial benefits.

The defense wants the plaintiff to use its designated structured settlement broker.

To an attorney, this one should be as obvious as the house floating a foot off the ground. Nothing is more dreaded by attorneys than conflicts of interest; in fact, there are no less than three extensive rules in the ABA's Model Rules of Professional Conduct that address themselves to the issue (Rules 1.7, 1.8, and 1.9). Basic to them all is the principle of loyalty: you can't properly represent the interests of one client if you are loyal to another with adverse interests.

Yet the defense would have your client accept the advice of its broker, who depends on the liability carrier for income, has a vested interest in selling its product, and who has no reason in the world to sacrifice a lucrative business relationship to your client's best interests. This is a conflict of interest so blatant that the most inexperienced lawyer would recoil from it in a legal setting.

Well, it's just as blatant a conflict in this setting. The defense's broker has only one product to present, and will try to show how it will meet the plaintiff's needs... even if it can't. If the broker was truly working for the plaintiff (and loyal to the plaintiff), he would help the plaintiff determine which structured settlement vehicle meets those needs. The conflict works against the welfare of your client, just as the defense intended.

Spotting these elements in the defense's structured settlement picture is far from child's play. It is crucial to understanding the manipulation and cynicism that infuses the defense's approach to structured settlements, and the degree to which it is calculated to benefit the defense at the expense of the plaintiff. As with the misnumbered clock, the cat-chasing mouse, the daylight moon and the floating house, they don't make sense in the real world, the real world of your client's needs.

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What Should Plaintiff's Counsel Do?

By reading and thinking about the various practices described in this issue, you've already taken a giant step toward ending the defense's manipulation of plaintiffs and structured settlements for its own benefit. Keeping the plaintiff's bar in the dark was always the cornerstone of the insurance industry's strategy.

One thing you should *not* do is abandon the use of structured settlements altogether.

One thing you should not do is abandon the use of structured settlements altogether.

There is nothing wrong with the concept of using periodic payments to realize tax advantages and avoid dissipation; indeed, it is critical that plaintiffs' settlements be protected. The objective is to take control of the structured settlement, avoiding the insurance industry's shenanigans, or to find a viable alternative.

Here are the alternatives to defense-controlled structured settlements.

BANKS. Some of the very largest national banks have professional money managers who are familiar with the special investment needs of injured plaintiffs, and are experienced in handling their settlements. Absent this experience, banks are not a safe option.

FINANCIAL PLANNERS. Financial planners with a significant background in addressing the special considerations of tort victims can lead the plaintiff through legal and financial complexities of managing a large settlement.

CONSULTANTS. Not to be coy, we think the best approach is to seek alternatives to defense-controlled structured settlements devised by experienced settlement consultants with undisputed loyalty to the plaintiff. That is, of course, what The Halpern Group does. Our most recent solution, the *Plaintiff-Controlled Structured Settlement*, was designed specifically to address all of the problems raised by defense-controlled structured settlements. With the PCSS, the defense writes a check, and it is out of the transaction; no approval, no control, no monkey business. The Halpern Group's *U.S. Treasury Bond Structured Settlement Trust*, the only such structured settlement

with IRS and Congressional approval, also avoids many of the pitfalls of defense-control led structured settlements. Its drawback is that the defense must still approve it. We also offer the *Settlement Fund Management Trust*, an investment and management plan implemented by the plaintiff *after* settlement. While not a structured settlement, it accomplishes many of the same objectives, and provides maximum flexibility.

The final thought is this: there *are* alternatives, and good ones. Now that you have the whole story, there is no reason to be swayed by deceptive tactics and feigned concern for the plaintiff's welfare. There is no need to allow the defense to play with your plaintiff's money, cutting deals and receiving pay-offs.

You can make certain that the era of the defense-controlled structured settlement ends here.

It shouldn't have taken this long, but better late than never.

"Prudential Securities Accused in Futures Fraud"

"Florida Regulators Investigate Met Life"

"Best Lowers Safeco Rating"

These are a sampling of recent headlines relating to the questionable practices and dubious financial health of the insurance industry. There are many more. The stories behind the headlines are meticulously followed by The Halpern Group staff. They provide vivid and recurring warnings that trusting these companies and their representatives is risky business... and riskier still for injured plaintiffs.

You can follow this tell-tale headline trail on the recently redesigned Halpern Group web site at:

www.halperngroup.com.