

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