

I.R.S. ruling approves financial protection device for injured victims

By Richard G. Halpern

In a ruling with broad implications for financial planners, attorneys, and especially injured plaintiffs, the I.R.S. has approved a structured settlement plan using a trust funded by U.S. Government securities. The ground-breaking plan frees injury victims from relying on annuities, and is not vulnerable to institutional collapses, such as the failure of Executive Life of California that wiped out desperately needed income for scores of injured victims.

The device receiving approval from the I.R.S. is the United States Treasury Bond Structured Settlement Trust, developed by The Halpern Group, a New Jersey consulting firm. Rather than employing annuities to provide a long term income stream to injured plaintiffs in settlement of their claims against a defendant, this structured settlement uses U.S. Treasury Bonds, the only alternative to annuities allowed by U.S. Tax Law.

The ruling specifically approves the use of a trust as the assignment vehicle for a structured settlement, declaring that "an assignment of liability to [the trust as] assignee will be treated as a qualified assignment under section 130(c)." This refers to Section 130 of the Internal Revenue Code, the law which enhanced the structured settlement option for litigants. The Section permits the liable party to assign the liability to a third party (or legal entity) -- the "qualified assignee" -- who will then be fully responsible for making fixed periodic payments to the injured plaintiff. Until now, the only "qualified assignee" with explicit I.R.S. approval has been the corporate entities usually created by insurance companies to purchase annuities for plaintiffs. The I.R.S.'s approval of the trust makes possible, for the first time, a structured settlement that "cannot fail," in the words of Richard G. Halpern, who devised the U.S. Treasury Bond Structured Settlement Trust in 1992.

"The combination of U.S. Treasury Bonds as the qualified funding asset and a trust created for the purpose of serving as the qualified assignee eliminates all the risk usually associated with traditional annuity-based structured settlements," explains Halpern. "Annuities can fail, as they did with Executive Life and others; U.S. Treasury Bonds are backed by the government, so the safety of the funding asset is assured. Assignment corporations can fail and have, shifting ownership of the annuities back to the plaintiffs along with a potentially ruinous tax bill. The trust we devised cant fail, and preserves the tax-exempt status of the assets."

Structured settlements funded by annuities have declined in use and popularity since multiple annuity carrier failures in the early '90s. The I.R.S. ruling now gives the green light to attorneys and plaintiffs who would seek structured settlements if they could be protected from the uncertainties of corporate insolvencies. It also should raise serious questions for any attorney recommending an annuity-based structured settlement when a far safer alternative has been given government approval.

"It is so critical for injured plaintiffs to have a safe structured settlement option," says Richard Halpern. "Lump sum settlements are dissipated by the family 90% of the time, leaving injured plaintiffs in dire financial straits. This I.R.S. ruling is truly a godsend, because it means a plaintiff can receive a tax-exempt structured settlement to provide periodic payments to meet medical and other needs with absolute certainty, with no fear of external circumstances stopping or reducing the funds. It makes structured settlements safe again."