

How to Force the Defense to Accept a Structured Settlement That Serves the Plaintiff's Interests, Not Their Own

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We have been receiving increasing numbers of calls from plaintiff's attorneys who are justifiably nervous about the structured settlements being offered by defense brokers, and who want to know how they can protect their clients. Our answer is to urge them to take control, to insist on the plaintiff's choice of broker and product. For it is an erroneous assumption (the result of years of insurance industry misinformation) that the defense must choose the structured settlement modality. It's the plaintiff's future, and the plaintiff's choice.

Here is how you can ensure that your client gets to exercise this choice.

Once you have agreed upon the amount of the settlement and the cost to the defense, send this letter:

Dear (Defense Counsel / Claims Person):

We have already agreed to both your total cost of settlement as well as to the fact that this cost includes the funding of a structured settlement for my client.

We are aware that the defendant prefers to dictate the structured settlement product and broker; however, if you desire to execute an IRC Section 130 Assignment of Liability that would release you from all future legal responsibility, my client must be permitted to make the choice of the structured settlement broker and product. This is both logical and necessary, because my client will bear all the risks, and the defendant or liability carrier none, if there are any problems in the future.

We therefore require that the final settlement documentation designate _____ as the structured settlement broker and _____ as the settlement product. The plaintiff, of course, assumes all responsibility, risk, and liability for any future loss resulting from this arrangement. For your protection, we will include the following clause in either the Settlement Agreement and Release or the Court Order:

"The parties to this Settlement Agreement acknowledge and affirm that the choice of structured settlement broker and vehicle were conditions of settlement imposed by the plaintiff during the negotiations and thus the plaintiff shall bear full responsibility for the consequences of these choices."

We would not be fulfilling our duty to our client if we permitted the defense to dictate the structured settlement product and broker while leaving our client without any recourse if either choice proves unwise. This would be the case, as you will not assume unconditional and total responsibility for either annuity company failure or IRS disapproval of a defective treasury bond structure. Accordingly, if you insist on your choice of broker and product, be advised that we will not permit an assignment of liability under IRC Section 130, and will require the posting of a surety bond, to be issued by an insurance carrier bearing the highest safety ratings available, totally independent of yourself, in order to guarantee the safety of the structured settlement. This would constitute an additional expense to you in the settlement of this claim, as it would be prompted solely by your failure to act in good faith.

Should you agree to the structured settlement we demand, our client would then be a secured creditor of a trust with one of the nation's leading banks as trustee, holding only United States Treasury obligations earmarked specifically for my client and in which my client is granted a security interest.

If you agree to our terms, we will agree to an IRC Section 130 Assignment of Liability. If you do not agree, you will remain as the obligor to my client and will have to keep your file open for the life of the structured settlement. Further, should it be of any importance to you or your company, insured or client,

the obligated party paying for the structured settlement will not be entitled to a current tax deduction under IRC Section 461(h) for the funding cost.

You can avoid these problems by agreeing to use _____ as broker and _____ as the settlement vehicle. The language above and in the Assignment Agreement exonerates you and/or your insured from any responsibility for our choice.

We appreciate your prompt attention to this issue.

Sincerely,

(Attorney)

This letter will not make your adversary happy. It will, however, protect your injured client --something the defense has not taken into consideration in trying to dictate its structured settlement terms.