

The Dominant Thought

By  
Richard G.  
Halpern

## THE J.D. HANDICAP

### Logic Over Training in Settlement Negotiations

"Your brains are *mush*," intoned the imposing Professor Kingsfield to his trembling first year law students in *The Paper Chase*. Thus began an indoctrination in legal reasoning, a precise method of analysis and argument based upon definition, comparison, distinction, and an orderly step-by-step progression to a persuasive conclusion. Primed and trained by real-life Kingsfields, young attorneys leave law school as intellectual terrors, able to argue any opponent (at least one not similarly trained) into submission and surrender. Legal reasoning, the direct descendant of rhetorical techniques taught by Aristotle and Socrates, turns ordinary humans into superhuman weapons of advocacy whose special powers make them champions in the boardroom, the legislature, and many other battlefields, including, of course, the courtroom.

*But not at the negotiation table.* Legal reasoning, the very essence of the successful advocate, is not an asset here. It's a handicap. And to overcome that handicap, a trial attorney must understand how the dynamics of traditional legal reasoning clash with effective tactics in settlement negotiations.

That's what this column is about.

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AT LAST!

## THE PLAINTIFF- CONTROLLED STRUCTURED SETTLEMENT

### REVOLUTIONARY INNOVATION AVAILABLE JULY 1ST

It has long been a dilemma for both plaintiff and counsel: the plaintiffs long-term interests clearly suggest that a structured settlement is in order, but the only way to get one is to accept the defense's self-serving choice of product.<sup>1</sup> Too often, the end result is a structured settlement that is neither as safe nor as flexible as the plaintiff requires, but one that seems to be, in the final analysis, better than no settlement at all.

No more. After years of wrestling with this issue, the Halpern Group has developed the Plaintiff-Controlled Structured Settlement, or PCSS for short, available to plaintiffs and their clients on or about July 1, 1997.

Halpern Group president, Richard G. Halpern explains: "The Plaintiff-Controlled Structured Settlement permits plaintiffs to create their own structured settlement without any participation by the defense. In fact, the defense's cooperation is not asked for, sought, or wanted. The plaintiff can accept cash, and still achieve all the goals of a structured settlement using this exciting new approach.

How does the Plaintiff-Controlled Structured Settlement work? First, the plaintiff accepts the tax-exempt cash settlement and says goodbye to the defendant..., for good. Next, the Halpern Group creates a highly specialized trust (with a prominent national bank as Trustee) and funds it with the desired portion of the cash recovery.

Then the Trustee, using an exclusive, patent-pending investment formula devised by the Halpern Group, invests the trust funds so that they will benefit from future rising interest rates. The resulting structured settlement guarantees the principal for all time; produces a periodic payment stream geared to the plaintiffs needs; ensures the trust income will adjust to future higher interest rates and preserves spendthrift protection.

"This revolutionizes structured settlements," says Halpern. "The plaintiffs control their financial destiny, but they do not have to be involved in any investment decisions. Like traditional structured settlements, the income is still free of federal income tax. And there's another benefit: because they're not dealing with annuity brokers, there are no secret fees. The Halpern Group will reveal all fees."

The Plaintiff-Controlled Structured Settlement is the latest in a series of non-traditional structured settlement products developed by Halpern, including the Settlement Fund Management Trust, the U.S. Treasury Bond Structured Settlement Trust and others. Readers interested in learning the details of the PCSS should contact the Halpern Group at 1-800-524-1631.

<sup>1</sup> [See "How to Give Plaintiffs Control of Their Destiny (Settlement Strategist, Summer, 1996); "And We're Not Going to Take It Anymore (Settlement Strategist, Winter, 1997); "Defense Broker Conflict of Interest (Settlement Strategist, Summer, 1996)]

## ALL THIS, AND JUSTICE TOO

One of the side benefits of the new Plaintiff-Controlled Structured Settlement is that it hits defense insurance companies right where they live. After all, traditional annuity structured settlements were invented by the insurance industry to permit it to expend fewer dollars in settling cases while simultaneously collecting hidden fees for the annuities they offered injured plaintiffs in lieu of cash. Think about it: every time you agree to accept the defense's choice of an annuity product, you are making life easier for the very same parties responsible for your client's plight in the first place. With the Plaintiff-Controlled Structured Settlement, the jig is up: the insurance companies don't get to hold onto their cash, don't get to collect fees on annuities held by their subsidiaries, and, in short, get just what they deserve... the bill for damages.

And when you think about how these are the same companies that are pouring their ill-gotten gains into tort reform legislation, the result is twice as sweet. How did we ever let these guys talk us into their annuity-based structured settlements, anyway?

### Second Look

## NEW TAX PROVISIONS: PLAINTIFF'S COUNSEL BEWARE!

**By Steven Siegel**

*[From time to time, The Settlement Strategist will reprint articles that have continuing interest to our readers. This article is from the Autumn 1996 issue.]*

On August 20, 1996, President Clinton signed a new Tax Bill which has a major impact on **personal injury cases**. The Bill makes two major changes in cur means that there is universal agreement rent law, as follows:

1. Punitive damages will now be taxable in all personal injury cases, regardless of whether the damages are awarded as the result of *physical* or *non-physical personal injury*.
2. **Any** damages received for *non-physical personal injuries* will no longer be excluded from taxation. *Emotional distress* is specifically considered a non-physical injury or sickness. Accordingly, where the origin of a claim arises from a non-physical injury, such as in cases involving wrongful discharge, job or age discrimination, defamation, insurance bad faith, civil rights violations, business-related torts, etc., the damages recovered will no longer be free of federal income tax.

The new law applies to all payments made after August 20, 1996, even if the payments are made in accordance with an earlier settlement. However, the new tax law does not apply to amounts received under a written binding agreement, court

decree, or mediation award in effect on (or issued on or before) September 13, 1995.

The new tax law places serious burdens on plaintiff's attorneys. Clients in cases involving *non-physical injury* must now be advised that awards will result in **taxable income**. Failure to do so could give rise to malpractice claims.

In addition, careful attention will have to be paid to the precise wording of pleadings. For example, in a *sexual harassment* case, there may have been acts of unauthorized physical touching. This could lead to a battery claim which would be viewed as a physical injury. The legislative history of the new Tax Bill does attempt to limit plaintiff claims by stating that the term *emotional distress* includes physical symptoms such as insomnia, headaches, and stomach disorders, which may result from emotional distress. Even though these physical manifestations are injuries, if the origin of the claim in these cases is a *non-physical act* giving rise to the emotional distress, the recovery will be considered taxable.

Similarly, both pleadings and settlement agreements will have to be carefully drafted to make certain that allocations toward punitive damages are eliminated or minimized, with allocations to compensatory damages increased accordingly.

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## Helping Your Injured Client Through the Trauma of Settlement

**By Risa H. Lower**

A settlement conference is scheduled: another work day for you and your adversary. There will be few surprises; after all, you and your adversary are professionals. For your opponent on the defense, the case under discussion is business as usual, a routine challenge to be handled according to well-established formulas and experience. As for you, although your commitment is certainly more personal and you have vested financial interest in the outcome, any settlement conference is still a familiar scenario, one that you have played out many times over the years.

In this atmosphere it is easy to forget that what is comfortable and familiar to you is seen in a very different light by the most important characters in the drama: your clients, the injured plaintiffs and their families. For them this settlement conference may represent the difference between hope and a future filled with unrelenting suffering and poverty. These are seriously injured plaintiffs: they have lost limbs, or brain function, or fathers and mothers and children; they face grief and unbearable pain and financial hardship. Many have no insurance; many have lost jobs, if they ever had one. No settlement or jury verdict will ever be able to restore the rest that has been lost: health, family stability, opportunity, dignity, faith. To your clients, this settlement conference, this routine occurrence in the life of a trial attorney, represents a chance, perhaps the only chance, at justice. And it represents something else: the end of a nightmarish life experience and the promise of a new beginning. No matter how much you counsel them not to have unrealistic expectations, nothing you say can extinguish your plaintiff's gut feeling that the settlement conference means that closure is within reach.

In my eleven years of attending settlement conferences, I have learned that proactive steps must be taken to address the emotional and psychological needs of the injured plaintiff at this most critical time.

### **Time is the Enemy**

As the hour of the scheduled conference approaches, your client's anticipation

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# Helping Your Client Through Settlement

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and anxiety will become almost unbearable. Once they arrive, they are invited to wait, wait, and wait some more. Inevitably, one of the other parties is late. It is important that you do everything in your power to make sure that the late party isn't you because your client needs you for emotional support. Remember, without you there, the entrance of each new stranger is a catalyst for anxiety. Your client will search every face to determine friend or foe and will be nearly overcome by a feeling of powerlessness. Your presence at the earliest possible stage of the proceedings will greatly mitigate those feelings, or at least keep them under control.

## Preparing the Plaintiff

As the settlement conference begins, the plaintiff (or plaintiff and family) is invited to listen as the defense recites a litany of how it "understands their pain and wishes it could make them whole" , but that it "is an imperfect system and everyone will try the best they can despite the many weaknesses in the case" , and "though it is true that the plaintiff has suffered, there is a clear contributory negligence" , or "it was an act of God" or "pre-existing conditions were a mitigating factor", ad infinitum, blah, blah, blah. Next, the ever-sensitive attorney for the defense will gently tell the plaintiff how important it is to be reasonable and unemotional, and that they must understand that of course they are going to receive a fair and reasonable offer, and even though this offer will probably not meet their expectations, it really will be fair.

As the plaintiff's attorney, you have heard this insincere speech or speeches like it hundreds of times. Your injured plaintiff is hearing it for the first time, and it is unsettling, degrading and a little bit frightening. The message conveyed to the plaintiff is, "We know best. This is out of your hands." In the wake of a catastrophic injury, with so many aspects of life in doubt, the diminishment of your injured plaintiff is nearly complete: he or she feels reduced to the status of a powerless child. It is critical, therefore, that you make every effort to inoculate your client against these feelings, to prepare him or her for the defendant's self-serving and demoralizing rhetoric and to make it

clear that an injured plaintiff is not powerless in the settlement process.

## Fill the Silence

Following the defense attorney's speech, the plaintiff is typically asked to leave the conference room while the real negotiations begin, and will be led to another room in the court house or office or hotel. Sometimes there are magazines or a newspaper; sometimes there is a television; often there is nothing. (In a courthouse, one is lucky to have a room with a window in a door.) Now comes another round of waiting. Plaintiffs are never prepared for all of the waiting. At this stage, time passes as slowly as when you are waiting to learn the results of critical surgery on a loved one. Every second without news stimulates the imagination to anticipate a worst-case scenario. Even the most reasonable and rational client can become panicky and disoriented.

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**...the defense knows that as time drags on, the plaintiff begins to feel increasingly estranged from the process and is increasingly vulnerable to emotional impulses.**

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To combat this, I strongly recommend that plaintiff's counsel bring to the conference an experienced paralegal or legal assistant whose job is to stay with the plaintiff, explaining that the delay is usual and that everything is under control. With a competent companion to fill the silence, your injured plaintiff's anxiety can be controlled. It may be impossible to eliminate it entirely, but at least it will not be intensified during this difficult waiting period.

Filling the silence by providing reassuring company for the plaintiff counters a significant part of the defense's strategy. For the defense knows that as time drags on, the plaintiff begins to feel increasingly estranged from the process and is increasingly vulnerable to emotional impulses. As the plaintiff's thinking begins to slide in destructive directions, the risk of client-control problems for plaintiff's counsel increases dramatically. Frequently a panicking plaintiff will convince himself that

the case has become one in which the attorney's quest for a larger fee has taken precedence over the goal of just redress for the injuries suffered. Illogical, the results of hurt feelings and fear rather than clear perception, these thoughts are nonetheless disruptive to your attempts to reach a beneficial settlement. Making sure that a trained ally is helping your client pass the time is the best possible precaution you can take.

## Listening

It is crucial that the person who shares the seemingly endless hours with the plaintiff *listen*. I listen as plaintiffs vent their anger; I listen as plaintiffs cry. This is a time when plaintiffs are likely to share their most intimate thoughts about grief and pain. It is a moving experience to share their agony; it is a privilege, but it is also hard. I hear of children dying; I hear of loved ones who have abandoned them; I hear of shattered dreams and shattered lives. As they share the realities of their wounded existence, your clients are completing a necessary process that must take place as a part of closure. The presence of a compassionate and non-judgmental listener helps to create an atmosphere that addresses the plaintiff's needs and that is conducive to facilitating a settlement.

The role I play as a companion to plaintiffs during ongoing settlement negotiations can be duplicated by those in your office who possess familiarity with the case, and have a compassionate nature. But the role cannot be assigned to someone who is not prepared to put personal opinion and judgment aside. This is about the plaintiff, and the companion must be willing to share the plaintiff's pain. Your client will know immediately if you have provided a "baby sitter". It is not enough to merely provide answers. The important thing is to supply support and to reach out for another human being. If you find the right person on your team to fill this critical role in the settlement process you will know that inside the conference and out, you are providing your professional best. And you will also know that the only adversary you will have to face will be across the negotiation table.

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# HALPERN GROUP ADDS CHIEF OPERATING OFFICER AND SKADDEN TRUST SPECIALIST

Expanding its talent pool and gearing up for a rapidly increasing need for plaintiff-oriented structured settlement services, the Halpern Group has added impressive new personnel from the worlds of business and law.

Coming aboard as Chief Operating Officer is Joseph G. Gillespie, formerly president and C.E.O. of Boonton Electronics Corporation. Mr. Gillespie has an outstanding record of helping service-oriented businesses expand the scope of their activities and meet their growth potential.

"Joe will be taking over our day-to-day operations" explained Halpern Group President, Richard G. Halpern. "His arrival allows me to concentrate my time where it is most valuable: developing new structured settlement services, devising ways to meet the special needs of injured plaintiffs and working directly with members of the plaintiffs bar. Joe will help us usher in a new era for both the company and injured plaintiffs as we help them overcome the efforts of defendants and their insurance carriers to avoid liability and financial responsibility."

Gillespie received his M.B.A. from Columbia University and his law degree from Boston College. He had extensive experience as a litigator in the Armed Services before turning his attention to business. But why would a former Fortune 500 executive (his resume includes nine years of general management operations and planning responsibilities for Warner Lambert) join the Halpern Group?

"I believe in what it stands for", says Gillespie. "I was very impressed with the services the Halpern Group provides. It seemed to me that if I could make a contribution by bringing those services to a larger segment of the injured plaintiff population, I would be accomplishing something both significant and meaningful. That's my goal, that's what I'm here to do, and I intend to do it."

Much of the expanded activity of the Halpern Group will fall on the shoulders of attorney Jennifer L. Kraus, the new Halpern Group Vice President, Trusts and Taxation. Ms. Kraus comes from the Trusts and Estates Department of Skadden, Arps, Slate, Meagher and Flom, LLP. A graduate of Columbia Law School, she



Joseph G. Gillespie



Jennifer L. Kraus

is a member of the New York State Bar - and had been at Skadden, Arps since - 1994. Before studying law, Ms. Kraus was a systems analyst for American Management Systems, analyzing complex management information systems for international corporations.

Like Joe Gillespie, she was drawn to the Halpern Group by its mission. "My work at Skadden involved helping affluent professionals and other wealthy individuals plan their estates, using trust vehicles and the tax code to ensure that their finances would be safe, secure and sufficient for their future needs. When I first talked to Richard Halpern and he explained what his firm was all about, I became excited about the prospect of applying my expertise to the financial circumstances of injured plaintiffs... individuals whose need for financial security and safety was not merely a matter of prudent planning, but often a matter of survival.

"After all, I became a lawyer to help people. Working with the Halpern Group, I can make a real difference in the lives of people who have endured a lot of pain and hardship by helping to make certain that their settlements are secure."

Meanwhile, Halpern himself suggests that the addition of Gillespie and Kraus is just the beginning. "We're a national firm and there are many lawyers around the country who are just beginning to understand the need for our services. I think - you'll be seeing more change and expansion in our firm in the near future as we continue to improve, learn and communicate what we know.

## CLE AND THE HALPERN GROUP

One of the Halpern Groups major functions is to keep attorneys informed about new developments in structured settlements, related tax issues and settlement negotiations. This important objective has propelled the Halpern Group and its staff into the parallel universe of continuing legal education.

"Education is an essential part of our work", says Halpern Group President Richard G. Halpern. "It is impossible for the average plaintiffs attorney to keep abreast of all of the technical issues that may have a major impact on an injured client's structured settlement. Settlement-related topics are not as sexy or popular components of CLE programs as trial tactics, but they are just as essential, if not more so. Increasingly, CLE providers are beginning to recognize that fact and are coming to us for assistance."

CLE programs offered by Halpern Group staff include tax implications of structured settlements, malpractice issues for the plaintiffs attorney in the settlement process, and settlement negotiation strategy. In addition, Halpern Group Vice President and General Counsel Jack Marshall is a regular lecturer for state bar legal ethics programs.

As part of its increased emphasis on continuing legal education, the Halpern Group is working with CLE Central, a new on-line service being developed to give

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# The Dominant Thought

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First, let's agree on what I mean by "legal reasoning. As your family and friends will explain to you, one of the habits of attorneys that drives their non-attorney friends nuts is what I call the "ABC" technique of discussing any issue, no matter how mundane. You know ... We should go to the Hungarian restaurant rather than 'El Tostido' because (a) it's closer, (b) it got a good review in the paper last week, (c) El Tostido is always crowded and won't take reservations, and (d) my ulcer is acting up." You talk this way because after Kingsfield and Co. have gotten through with you, your legal training has conditioned you to attack all problems in an orderly, progressively persuasive fashion. It is the advocacy model. In all probability, you began with the desired-result: you wanted to go to the Hungarian restaurant, not 'El Tostido'. To achieve that result, your goal was to make it unescapable by lining up a series of irrefutable facts that taken together make the Hungarian restaurant the only reasonable choice. A law professor described to me another way of looking at this process. "Legal reasoning," he said, "is the process of making a definition, and laying out a series of arguments that ensure that others have no choice but to accept that definition." In the above example, the definition is "The Hungarian restaurant is the best place to eat out tonight."

The ramifications of extending this approach to negotiations is profound. Why? Because it dictates the objective and process of negotiations as perceived by plaintiffs counsel. Legal reasoning *begins* with a conclusion, and proceeds with progressive arguments that lead to consensus that the conclusion must be correct. As we all

## CLE and the Halpern Group

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CLE providers access to the best and most innovative continuing legal education programs. One of the co-founders of CLE Central is Wanda Klayman, formerly a director of membership for the Association of Trial Lawyers of America. CLE Central's attractive web site includes articles from the Settlement Strategist as well as a link to the Halpern Group web site. Attorneys who visit CLE Central ([www.clecentral.com](http://www.clecentral.com)) will be able to identify exactly the type of program that they want to attend, review the credentials of presenters and contact the provider in order to register. Over the next few months, the site will also include registration for potential speakers and many other informative and interactive features.

"It's really amazing that there are so few CLE programs devoted to the complexities of settling a case," muses Halpern, "Ninety percent of all cases are settled, but the overwhelming majority of courses and materials are devoted to the ten percent that get to trial. Both in law school and out of it, instruction on the complexities of settling personal injury cases gets short shrift, with the result that, too often, injured plaintiffs come up short as well. We hope that by making informative and interesting programs available, the Halpern Group can help make trial lawyers as effective in settlement as they are in the courtroom."

know, this is how a brief is organized, and it is how a case is presented at court. It is very different from the scientific method, which begins with a hypothesis and systematically tests its validity. An attorney is not interested in de-constructing the conclusion that supports the client's case. And legal reasoning is very different from something else: it is very different from *problem-solving*. In fact, as a process it is almost the opposite, for in logical problem solving the solution is only reached *after* successive analysis of a particular problem and its components. The solution is the end of the process. In legal reasoning, it is the beginning. So the critical question is, what is a settlement negotiation? Is it an argument to be won, or a problem to be solved?

I won't keep you in suspense. The answer is that a negotiation is a problem, not an argument. And if you treat it as an argument (as lawyers are trained to do), *even if you win*, you may still have the problem. The only way to have a successful negotiation is to solve the problem: "How do we arrive at a just settlement that will meet the needs of the injured plaintiff?" Convincing the other side that your figure is fair, just, and consistent with similar cases doesn't do that.

Think of it this way: negotiation is a process of human interaction in which two or more parties simultaneously attempt to influence each other's thinking, while resisting the efforts of the other parties to influence their own thinking, until all participants reach an agreement on a particular action. A long career as a professional negotiator has taught me that

this description is correct, regardless of the topic being negotiated.

When you approach negotiation as an argument to be won, there is a real risk of "winning the battle but losing the war" - a Pyrrhic victory. This is because winning the argument -proving your number is "right" - doesn't necessarily further the objective of agreement. Why? Because the other side has its own realities and pragmatic considerations that dictate its position, issues quite separate from the facts in your persuasive argument.

The successful approach in negotiation is to *avoid* the argument, and deal with each side's realities. Attorneys like to argue, because they are trained to do it and they are good at it. But the negotiation table is not the place to prove rhetorical skills, and showing how smart you are accomplishes little. You must embark on a logical problem-solving exercise that proceeds like this:

1. **Set your goal.** Is it, "Convince the other side that we have a strong case?" No. Is it, "Get them to agree to X dollars?" No! The goal is ***to reach agreement on a just and fair settlement.***
2. **Identify the obstacles to reaching your goal.** Take an inventory of the factors standing in your way. Each is a sub-problem, needing to be solved.
3. **Devise and execute strategies to remove those obstacles.**

Once they are removed, you should have yourself a settlement.

I recognize that as a non-attorney, my declaration that the advocacy model is inappropriate for the negotiation table may chafe at some readers. But I also know how many of my attorney clients have confessed to me how uncomfortable they feel in settlement negotiations, how they are relieved to go to trial. I know how often I have to remind other attorneys to stop talking in negotiation settings (trying to win the argument) and to start listening to the other side (and to try to understand the problem).

Legal training is a wonderful thing, and legal reasoning applied through advocacy is a powerful tool. But there are many tasks the tool doesn't fit, and there are some where the tool is actually a detriment, a handicap. Negotiation is one of these. Resolve to use your logic and problem-solving skills instead, and you can overcome the J.D. handicap... for good.

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## Second Look: New Tax Provisions

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### Fees

Another problem for the plaintiff's attorney may arise in connection with his or her legal fee. The entire award payable to the plaintiff in these *non-physical injury cases* will constitute taxable income. Is the attorney fee a deductible expense? Even if the answer is yes, the deduction is subject to various tax law limitations, including the loss of deductions equal to two per cent of the plaintiff's adjusted gross income, and the possible reduction of the plaintiff's personal exemptions.

For example, assume a gross recovery of \$300,000 with an attorney's fee of \$100,000. The \$300,000 is gross income, but the maximum deduction for the legal fee is \$94,000 (\$300,000 X 2% = \$6,000; \$100,000 less \$6,000 = \$94,000). The tax on the \$204,000 of taxable income is approximately \$61,000 for an unmarried person, leaving the plaintiff with a net recovery of \$139,000 (\$300,000 gross recovery less \$100,000 attorney's fee less \$61,000 tax bill). This does not even take into account the possible impact of state income taxes, if any.

The problem is even worse if the IRS can argue that the attorney fee is non-deductible. This would be the case if the plaintiff's claim arose in a personal setting, not connected to employment, business or the production of income. In such a case, it is conceivable that the attorney's fees would not be deductible, so that the full \$300,000 would then be subject to federal income tax of approximately \$95,000, leaving the plaintiff with \$105,000, net of fees and federal taxes.

One of the mysteries surrounding the new tax law is how the IRS will distinguish an *emotional injury* from a *physical injury*. How much of a physical harm will be necessary to cross the line? What about cases where the claim is for the fear of injury arising from a physical procedure such as a breast implant, where no injury has yet to appear, and the entire claim focuses on the *emotional* harm arising from that fear? The legislative history offers no guidance on this point, but in an environment of hostility to plaintiff claims in general, is this now a "foot in the door" for the IRS to argue that settlements and verdicts in these cases give rise to taxable income? Only time, litigation and further IRS pronouncements will answer these questions.

### Structured Settlements

It is not permissible to use an assigned structured settlement in a case involving a *non-physical personal injury*. As a result of the new tax law, it may not be advisable to use any type of structured settlement in any cases involving non-physical personal injuries, emotional distress, and punitive damages. With taxation now required, the IRS is more likely than ever to rely on constructive receipt and economic benefit theories, and argue that the present value of the entire structured settlement is taxable income in the year the case is settled. This would require the taxpayer to pay, up front, an amount of taxes which may well exceed the amount of cash received from a structured settlement in the same year.

Again, plaintiff's lawyers are cautioned that allowing their clients to accept a structure in such a case could be grounds for a malpractice claim against the lawyer, should the potential tax expense for the

client not be properly explained. In these cases, a far preferable alternative would be to accept a cash settlement, place the funds into a reliable management trust, and pay whatever taxes are due, leaving the balance managed in accordance with the terms of the trust.

It is important to note as well what the new tax law does **not** do. That is, *where an action has its origin in a physical injury or physical sickness*, then **all damages** (other than punitive), even for *emotional distress*, will be treated as payments received on account of physical injury or physical sickness, whether or not the recipient of the damages is the injured party. These damages remain excludable from gross income. For example, damages (other than punitive) received by survivors on account of a claim of wrongful death arising from a physical injury will remain excludable from taxable income as under present law. In addition, damages (other than punitive) received by an individual on account of a claim for loss of consortium due to the physical injury or physical sickness of one's spouse are excludable from gross income.

## About The Halpern Group

The Halpern Group makes it possible for Plaintiff's attorneys to achieve structured settlements that serve the special needs of their injured clients.

To learn which Halpern Group settlement plan is best for your client, call 1- 800-524-1631 for materials.

If you're a plaintiff's attorney and are not on our subscription list, just call to receive *The Settlement Strategist*, at no cost, four times a year, as well as *The Halpern Letter*.