

## **Conflict of Interest: Structured Settlement Malpractice?**

*By Richard G. Halpern*

**Seeking to expand their client base, increasing numbers of structured settlement brokers that have previously worked exclusively or predominantly for the defense are now aggressively promoting their services to plaintiff's counsel.**

**Theirs is an invitation you must think hard about before accepting. It could well be an invitation to settlement malpractice. Because these firms derive the bulk of their income from liability carrier and self-insured clients, their natural conflicts of interest render them dangerous allies for injured plaintiffs.**

When the defendant's liability carrier is also a client of a defense structured settlement broker retained by the plaintiff, the broker is frequently required to obtain the carrier's permission to represent the client. Proper representation, however, is unlikely when the plaintiff is seeking help from the structured settlement broker to protect the plaintiff against the maneuvers of the liability carrier, who may enable the same broker to earn hundreds of thousands of dollars in yearly commissions... far more than the broker will earn from any plaintiff. A conflict likewise exists if the liability carrier is not a client of the plaintiff-retained structured settlement broker. That liability carrier is a potential client for the broker, and the broker will be naturally reluctant to foil the liability carrier's efforts to persuade the plaintiff to accept a potentially inadequate settlement. In fact, a defense structured settlement broker working for the plaintiff will often make a side arrangement with the defendant's structured settlement broker, promising to get the plaintiff to accept the defense broker's settlement proposal in return for a percentage of the commission. For many reasons, an annuity-based structured settlement may not be in the best interest of a particular plaintiff. However, the plaintiff's counsel who relies on a structured settlement broker with ties to annuity carriers will not be informed of this. Such a broker will not risk rejecting an annuity proposal or recommending any action against the economic interest of the structured settlement industry. Such an action could result in the loss of the broker's representation contracts with annuity carriers.

### **Asking the right questions**

To protect themselves and their clients from structured settlement brokers with strong ties to the defense, plaintiff's counsel must be able to answer these questions about any potential broker:

- Has this broker or firm been primarily occupied representing the interests of defendants and their liability carriers against the interest of plaintiffs? If so, is it likely that the broker will be able to reverse this orientation? Would this broker be willing to take the consequences of blocking a bad proposal from a major carrier, when that carrier has the power to substantially reduce the broker's access to large commissions in the future? Would this broker ever not recommend an annuity structured settlement, even in circumstances where it was against the plaintiff's best interests?
- If the defense structured settlement broker were required to stop dealing with one side or the other, are you confident that he or she would choose to stop working for the defense?

Common sense dictates that it is perilous for a plaintiff to rely on advice given by a party that depends upon the plaintiff's adversary for future income. This is the exact status of defense brokers now seeking plaintiffs as clients, and plaintiff's counsel must consider this carefully.