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moving through the Congress. On June 30, the CAFTA passed 53-45 in the Senate, the closest vote in the Senate in recent decades on a trade agreement. The House leadership is planning to bring the CAFTA to a floor vote before the August Congressional Recess. This vote should be very close. While history would suggest that trade agreements ultimately are approved as the Administration deals with sufficient members’ needs to secure passage, the CAFTA remains too close to call in the upcoming House vote.

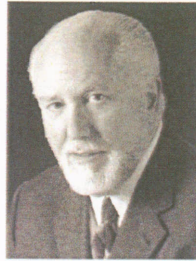
Terence Stewart is a principal at Stewart and Stewart, a firm representing companies, workers, governments and other entities on customs and international trade matters. He welcomes your questions about CAFTA and its potential impact for your clients.

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their own expenses to travel to New York to help their fellow citizens recover from this tragedy.

Monsees, Miller has offices in Kansas City and Springfield, Missouri and specializes in working with personal injury and wrongful death victims and their families. For more information, contact Timothy W. Monsees at (816) 361-5550.

Best Practices



An Insider’s Look at Structured Settlements
Avoiding Pitfalls – Seizing Opportunities: Conclusion

Joseph Hadus
J Hadus & Associates
– Structured Settlements

Large cash settlements pose significant challenges, especially for the plaintiff. In up to 90 percent of these large settlements, all the money is spent within five years. Structured settlements offer a path for the plaintiff and attorney to preserve the settlement and minimize the tax consequences. In this article we look at some of the potential pitfalls.

Dealing with the caps in tort reform.

Many states have already capped pain and suffering and this will likely occur at the national level, as well. To document long-term damages attorneys turn to future lost wages, medical expenses and pension benefits. In particular, attendant services can be a significant number. To determine an appropriate figure you will need a life care planner and economist with impeccable credentials to support future projections with solid statistical data.

New questions for attorney fee structuring.

Traditionally, the structuring of attorney fees has been treated as deferred compensation with the periodic payments subject to taxation as received. However, in 2004, the America Jobs Creation Act provided for new restrictions on deferred compensations arrangements. Subsequently, IRS Notice 2005-1 clarified Treasury’s interpretation to the collective relief of many, determining

that it does not apply to structured attorney fees. Therefore, annuity companies continue to underwrite attorney fee structuring.

Do you need your own broker?

Until recently in structured settlements only one side – the defense – provided the settlement expert. In response plaintiff attorneys are increasingly bringing in their own broker. Should you face judicial review of one of your settlements, you will want to show that you had your own consultant who has a fiduciary responsibility to you. It costs you nothing and gives you the comfort of knowing that you have an expert on your side shielding both you and your client.

When the defense says “no” to a structure.

If you have two or more claimants, you can still create a structured settlement arrangement with its tax-free advantages. With two claimants you can treat it under Section 468B of the Code (originally for mass torts). And Revenue Procedure 93-94 treats the designated funds as party to the suit. Thus, the defendant pays the full settlement amount into the designated settlement fund trust and gets a full release. Tax-free annuities can then be purchased without the participation of the defendant.

Employment cases, including buyouts, can be structured to the advantage of all parties.

Structured settlements can win for everyone. For the employee, the periodic

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payments are taxed as received, thereby reducing the tax rate. Via a non-qualified assignment agreement, the employer gets a full release at time of settlement with the accompanying tax write-off. Note: this arrangement cannot be used for future payments which are treated as wages subject to withholding.

Joseph Hadus is the Founder and President of J. Hadus & Associates, Inc. - Structured Settlements. His firm has specialized in providing comprehensive structured settlement services to attorneys throughout the country for the past 23 years, and he may be contacted at (800) 645-6420 or jhadus@aol.com.

RECAP

- Up to 90% of large settlements are spent within 5 years.
- Many states have capped pain and suffering judgements.
- The 2004 American Jobs Creation Act provided for new restrictions on deferred compensations.

Inside Your Practice



Covering Your Tail... From An Insurance Perspective

Lynda (Lynn)
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Professionals Direct

In my 16 years of serving attorneys in obtaining professional liability insurance, there have been two typical scenarios that I have been confronted with when discussing associate or partner changes within a firm. The first deals with an individual attorney who has decided to retire or change firms. The second deals with a firm that is considering hiring an attorney who has worked at one or more firms in the past. While these would appear to address different issues, there is one very important similarity that needs consideration irrespective of whether an individual attorney or firm is making the inquiry. That issue is whether there is or will there be insurance available to cover the attorney's past practice.

While you may think that so long as the attorney has always had insurance coverage, he/she will likewise continue to have coverage. That is not the case under today's claims-made policy form. The nature of a policy with claims-made coverage provides protection only if a claim is made and reported during the policy period. If the policy has expired and a claim is made and reported after the expiration date, there generally is no coverage in place to respond to such a claim.

So what happens to an attorney's coverage when he/she retires or changes firms?

It is important that there be no gap in coverage. In such instances, some insurance companies provide an individual extended reporting period (ERP) endorsement, commonly referred to as "tail coverage". This endorsement effectively extends the period for reporting claims that occurred as the result of services rendered during the policy period but not prior to the retroactive date of coverage. Depending on the reason for the change, the attorney may be offered tail coverage for a limited period of time—normally from 1 year to up to 7 years or even an unlimited period—for a certain percentage of the current policy premium. Importantly, if the attorney meets certain qualifications, he/she may be offered limited tail coverage at no charge if retiring from the practice of law. Alternatively, or in addition, the firm's insurance policy may define an *Insured* as an attorney who, while previously employed by the firm, is now no longer actively working for the firm. If that is the case, then so long as the firm continues to purchase insurance coverage with a policy that defines an *Insured* to include previously employed attorneys, the firm's insurance policy will very likely provide continuing coverage for the attorney who is retiring or leaving the firm. Note, that this coverage will normally only apply up to the date of separation from the firm, and there is a strict timeframe for purchasing tail coverage, often within 30 days from the date of separation. If the insurance company does not offer individual tail coverage the attorney must rely on the definition of *Insured* within the prior