

Lawyers should understand the steps involved in structured settlements

By JOSEPH HADUS

Structured settlements, given the proper set of circumstances, are an invaluable tool in the settlement of physical injury/physical sickness tort claims. However, with some attorneys there remains a degree of confusion and misunderstanding relating to the process.

Once verbal agreement has been reached on the terms of the settlement, there are four requirements to be completed sequentially as soon as possible in order to finalize the structured settlement and get the annuity policy issued. Steps 1, 2, and 4 should be done by a professional structured settlement consultant. Step 3 (Settlement Agreement and Release) can be completed by the consultant or, depending on your preference, by the attorney using the sample provided.

1) Premium Deposit. The defendant and/or insurance company's check for the annuity policy including the assignment fee should be issued as soon as possible, payable to the appropriate annuity company payee. Normally, these annuity rates are only guaranteed from seven to 10 days, although an extended rate lock-in is available at an additional cost. Deposit of these funds will lock in the annuity rate permanently.

It should be noted that this is an insurance function with no payments being made to the plaintiffs at this point. If there is any problem with the execution of the closing documents, the money is completely refundable.

2) Annuity Application. The structured settlement specialist must secure the necessary personal data on

the plaintiff in order to complete the formal annuity application. This would include full name, social security number, residence address and beneficiary for the guaranteed payments.

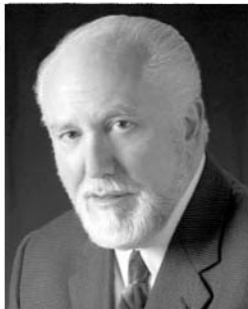
If there is a life contingency, a copy of the birth certificate is required. The plaintiff may designate an estate or a named individual as beneficiary. In any event, this designation must match up with that stated in the Settlement Agreement and Release.

3) Settlement Agreement and Release. This is the third step in the process and the structured settlement consultant should provide a sample standard settlement agreement for structured settlements. Although the parties to the suit will want to have their own release language to suit the specifics of the case, certain paragraphs should be followed verbatim since they contain the information required by the assignee insurance company to account for the structured settlement.

Note that the annuity issuer is the life insurance company that issues the policy and the assignee is the company that actually owns the policy. In order to avoid any possible problems after the fact, it is always advisable for the parties to submit unsigned draft copies prior to final execution so structured settlement consultant can get preapproval from the annuity carrier.

4) Uniform Qualified Assignment Agreement. This agreement transfers the obligation to own the annuity policy and guarantee the payments from the defendant and/or casualty insurer to the third-party assignee. The defendant insurance company/self-insurer executes this agreement as assignor; and afterwards, it is countersigned by the assignee insurance company.

It should be noted that only the future periodic payments are listed on this agreement



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Once the above sequence of events is completed, the annuity policy will be issued and the structured settlement is finalized. Essentially, this process assures that the necessary language is included in the closing documents to assure a tax-free structured settlement for the plaintiffs and a full and total release for the defendants through the use of an Assignment Agreement.

Congress has provided through Sections 130(c), 104(a)(2), and PL 97-473 of the Internal Revenue Code Special Rules for tax-free periodic payments. In addition, the obligation to guarantee the payments can be assigned to a financially sound, top-rated, major financial institution.

With a general understanding of what must be done and why, and through a working partnership with the structured settlement consultant, the mystery is taken out of the closing process and the attorneys are much better able to efficiently manage the case.

Joseph Hadus has 30 years experience in the casualty insurance/structured settlement area and is the president and founder of J. Hadus & Associates, Inc., which has its corporate office in Bingham