

A large silhouette of a construction site is set against a cloudy sky. A tall crane stands on the right side. In the foreground, a large, stylized dollar sign (\$) is superimposed over the construction structure. The background shows various construction elements like scaffolding, ladders, and workers in silhouette.

MARKET-BASED STRUCTURED SETTLEMENTS: A POWERFUL SETTLEMENT TOOL

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STRUCTURED SETTLEMENTS ARE EVOLVING

Settlements that are “structured” through a combination of cash and future periodic payments continue to be a reliable method for resolving personal physical injury and workers’ compensation cases. In fact, over the last 15 years, structured settlements have become the primary settlement method for the resolution of workers’ compensation cases that involve post-settlement Medicare obligations. And in the liability area, structured settlements are an important tool in the settlement of a wide array of matters, including those involving catastrophic injuries and injuries to minors.

The foundation of a traditional structured settlement plan is typically a single-premium annuity issued by a highly rated life insurance company. These settlement annuities provide secure compensation for future medical and long-term financial needs. Other tools can be useful in structuring settlements for people whose needs can extend well into the future, including future medical management accounts, trusts and now, periodic payments with market-based returns.

INNOVATION AND TRANSFORMATION

The parties involved in the settlement process – on both sides of the negotiation table – are always looking for ways to resolve

matters creatively, while still providing protection for their respective clients. Claims professionals and attorneys are turning to settlement professionals to provide creative and effective tools to evaluate and meet the future needs of plaintiffs at the time of settlement. As a result, the settlement consulting practice is evolving to provide new financial tools to assist their respective clients.

For many years, casualty insurance companies – large and small – had internal structured settlement programs that were managed in coordination with affiliated life insurance companies. Following settlement, the affiliated life insurance companies issued the annuities that provided the periodic payments included in the terms of settlement. These programs, while successful, often created a cookie-cutter approach to settlement plans that did not foster creativity or imagination. As these programs have become less prevalent, the settlement consulting practice is experiencing a shift in priorities and direction, with a renewed focus on innovation.

THE RESULT: THE SETTLEMENT CONSULTING INDUSTRY IS MATURING

Settlement professionals are no longer simply “structured settlement brokers” providing a one-dimensional product to comply with the corporate mandates of casualty insurance companies. Settlement professionals are becoming innovative and responsive, and their services are expanding and becoming more diverse. They have become advisors, consultants and planners. They bring expertise to both sides of the settlement table.

Companies that operate in this segment are also evolving. As noted above, the primary financial instrument to provide future periodic payments has been a single premium immediate annuity. When structured properly, these annuities provide payments to claimants on a tax-free basis based on provisions found in sections 104 and 130 of the Internal Revenue Code. The life insurance companies that provide traditional settlement annuities have also innovated recently, within the boundaries of IRS rules.

Other companies are emerging and developing new methods to meet the demand for innovation and creativity. One new product that we will review in this article is the Growth Structured Settlement from Assura Trust.

THE GROWTH STRUCTURED SETTLEMENT: A MARKET-BASED SOLUTION

As the need for a broader, more holistic settlement approach has emerged, Assura Trust partnered with the Vanguard investment management company to introduce the market-based Growth Structured Settlement. The Growth Structured Settlement relies on Vanguard’s LifeStrategy Growth Fund (VASGX) to deliver tax-free payments in coordination with tax-free settlement annuity payments. The Growth Structured Settlement can be particularly useful for cases involving people whose needs extend beyond 20 years, where growth and inflation protection are important. The payments are timed to meet life needs, occurring monthly, annually, etc., like a traditional structured settlement.

How does it work?

Just like a tax-free structured settlement funded by an annuity, the Growth Structured Settlement is set up to pay for a specific time frame, with payments made on specific dates, monthly, annually, etc.

Key Benefits of the Growth Structured Settlement:

- Tax-free income
- Market-based growth for the claimant/plaintiff
- Full and final release for the defendant
- Low risk to the claimant/plaintiff
- Structured payments allowing for preservation of funds

When should it be used?

There are many situations where the Growth Structured Settlement might be helpful to resolving cases. Below are two examples.

Birth Injury Case: A young child who has experienced a birth injury will have financial needs that will last throughout his lifetime. He will need his settlement funds for steady growth to keep up with inflation and the increasing cost of living. The Growth Structured Settlement would allow a family in this circumstance to create a settlement plan that will deliver market-based growth and tax-free payments.

Workers’ Compensation Settlement: The Growth Structured Settlement was recently utilized in the negotiation and settlement of a workers’ compensation matter. The insurance carrier decided to settle the indemnity portion of the claim and leave the

medical portion open. The injured worker, a 39-year-old male, was receiving \$4,700 per month in indemnity benefits. The parties decided to use \$1,700,000 as the present-day settlement amount, allocating the funds equally between the traditional settlement annuity and the Vanguard fund:

- The settlement annuity would pay **\$2,615** per month for life with a 40-year guarantee. The guaranteed return is \$1,188,000.
- With the Vanguard fund, we targeted a payout of **\$4,200** per month for 40 years. Using 5.5% hypothetical growth, the total payout would be \$1,990,141.
- Combined, this injured worker could receive **\$6,815** per month, with a potential payout of \$3,178,141 over 40 years.
- As of the date of this writing, the average annual return for the Vanguard LifeStrategy Growth Fund was 8.60% since its inception on September 30, 1994.

A settlement option that combines lifetime income from a highly rated life company with income derived from a Vanguard fund offers a holistic solution that delivers security and market-based growth.

LOOKING AHEAD

The settlement consulting profession will continue to evolve to meet the needs of the various stakeholders that participate in the settlement process – from evaluation through funding. Whatever role you play in the process, encourage your settlement professional to be creative and explore the numerous settlement products and programs that are emerging during this transformational time.



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