



The Challenge of Cost-Effectively Resolving Nuclear Verdicts and Catastrophic Cases

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Nuclear verdicts have continued to grow over the last several years, putting upward pressure on settlements, particularly when trying to resolve catastrophic injury cases. According to the most recent study by Marathon Strategies, nuclear verdicts rose 55% between 2015 and 2022.¹ In 2022

alone, there were 20 verdicts over \$100 million and four verdicts over \$1 billion.

The risk of an eight or nine-figure verdict is substantial, thus forcing settlement values to rise. Catastrophic injuries, often with extensive or lifetime medical care required, can quickly add up to eight figures.

Jurors are sensitive to this issue, often struggling with the rising cost of healthcare and financial troubles themselves, leading them to award higher verdicts. Compounding this is the public's general distrust of big businesses, insurance companies and hospitals, which can lead to verdicts intended to

punish rather than compensate. Together, these dynamics present a significant financial challenge for even the most skilled defense attorneys and claims professionals.

There are a number of strategies that counsel can deploy to mitigate this. One of the oldest techniques is a structured settlement annuity, a needs-based settlement offer that employs a fixed annuity to fund long-term needs such as medical care and income replacement. Needs-based negotiation, or horizontal negotiation theory, focuses on providing a settlement offer that meets the specific needs of the plaintiff, creating more flexibility in negotiations than the more traditional positional or vertical bargaining. Vertical bargaining usually starts off with the plaintiff demanding X while the defense counters with Y until the numbers overlap, or failing in that, proceeds to trial.

For the last 50 years, the majority of structured settlements utilized fixed annuities, given the strength of tax-free, guaranteed rates of return and the peace of mind for plaintiffs that predictability provides. In recent years, additional product options have been layered into the traditional tax-free annuity approach to keep pace with inflation and overall changes in the market. One such option is a market-based structured settlement that layers an indexed or equities option on top of a fixed annuity to enhance the settlement offer by combining guaranteed growth with higher potential returns. But why is that important?

When a plaintiff's attorney is contemplating a settlement for their client, one of the most critical considerations, particularly in catastrophic cases, is the economic sufficiency of the settlement amount. In other words, will this recovery be sufficient to take care of an injured person and their family? In the past, it was often a discussion of whether to choose cash and invest it in the market to offset medical inflation to provide for all of their future needs or choose the structured settlement and its guaranteed tax-free return. A key driver of high demands and higher verdicts in catastrophic cases is the impact of medical inflation. Utilizing data from the Bureau of Labor Statistics and the Bureau of Economic Analysis, an analysis by Peterson-KFF showed that the cost of medical care increased 121.3% between 2000 and 2024,² a significantly larger increase than overall inflation over the same period.

Thanks to the evolution of the structured settlement industry, this Hobson's choice no longer exists. A plaintiff can obtain a tax-free structured settlement that is the optimal blend for future medical and financial needs.

While the structured settlement annuity can provide low-risk payments that provide a set guaranteed return, the market-based structured settlement can address medical and general inflation and the potential for greater tax-free growth so that a lifetime of needs can always be met. This creates a value point or anchor for the negotiations by providing the actual cost to provide a lifetime of care or income replacement. Kevin Ogilby, chief growth officer of Prospera Market Strategies, a leading market-based structured settlement provider, summed it up this way, "Market-based structured settlements in the form of equity investments have a superior ability to provide growth and inflation protection because businesses have the ability to raise prices to protect their margins, innovate and increase productivity to enhance them, thus growing along with the economy. While fixed-rate annuities offer predictable consistency, alone they lack the structural growth necessary to outpace inflation and protect long-term purchasing power."

Blending the two options can take the same settlement dollars and stretch them much further than a cash or an annuity-only option can. A tax-free structured settlement that can protect from loss and provide growth enhances the settlement offer by providing more dollars without more cost. It creates an option for putting more money into the plaintiff's hands for their future needs without the defense having to spend more to provide it.

For example, consider John Doe, a 40-year-old male receiving a \$2 million settlement. Placing it into a lifetime annuity will provide him with a monthly income of \$9,000 and an expected payout over his lifetime of over \$3.3 million. This is a substantial level of security and makes for a compelling offer. Alternatively, if \$1 million were placed into an annuity and \$1 million into a market-based structure, the total payout goes from a projected range of \$6 million at the low end to \$10 million on the high end (based on market performance) with \$2 million guaranteed by the annuity. The monthly payments would increase over

time, keeping pace with both medical and general inflation, addressing one of the plaintiff's greatest fears – is this settlement enough? By providing a settlement offer that fully funds their future needs and won't be eroded by inflation, that obstacle to settlement and the reason they hold out for more money has been removed.

Which then would be the more compelling offer to get the case resolved? For some plaintiffs, security is paramount and the annuity more compelling; for other plaintiffs, higher returns and larger payouts are more important, and the market-based blend is more compelling. More options provide more opportunities to resolve the case at a cost the defense is willing to pay.

Catastrophically injured plaintiffs and their families face financial decisions of extraordinary complexity, often while managing trauma, ongoing medical care and an uncertain future. A blended structured settlement – combining guaranteed annuity payments with market-based growth – provides an attractive framework that serves both immediate and long-term needs. This is particularly important for minors, who cannot access funds until reaching the age of majority, and for adults under guardianship who require ongoing assistance managing their medical and financial affairs.

Modern settlement theory puts an injured person's need for economic sufficiency at the forefront in a much more holistic way. Blended structured settlements leveraging both market-based and annuity options provide defense counsel and claims professionals with a unique settlement tool to add significant additional financial value to the settlement offer without adding significant cost.

The successful settlement of a nuclear verdict or catastrophic case is difficult even in the most skilled hands. Leveraging a tool like market-based structured settlements that can cost-effectively meet all of a plaintiff's needs today and tomorrow can greatly increase the chance of a positive outcome for all.



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¹ Corporate Verdicts Go Thermonuclear, Marathon Strategies. <https://marathonstrategies.com/corporate-verdicts-go-thermonuclear-report/>

² Peterson-KFF Health System Tracker (2024). <https://www.healthsystemtracker.org/>