



STRUCTURED SETTLEMENTS IN WORKERS' COMPENSATION CLAIMS: A CREATIVE APPROACH TO SETTLEMENT

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The structured settlement is a well-established and effective method for settling workers' compensation claims. Beyond the traditional use of the structured settlement for negotiations only, the structured settlement annuity is an excellent tool for evaluating exposures and building a strong settlement strategy before negotiations begin.

A UNIQUE APPROACH TO SETTLEMENT

A structured settlement is an alternative to a cash-only settlement, incorporating a combination of up-front cash and future periodic payments designed to meet specific needs of a claimant. This unique approach to claims settlement was established in 1983 by the United States Congress through revisions to the Internal Revenue Code and provide for these periodic payments to be paid to claimants on an income tax-free basis.

Settlement consultants help carriers and self-insured corporations settle cases creatively and often for less money than all-cash settlements. The services provided by settlement consultants are offered at no cost to the parties. Moreover, claimants value the tax advantages, flexibility and guarantees inherent in the structured settlement annuity.

COUNSEL AS SETTLEMENT ADVISOR

Appropriately, representatives from self-insured corporations and carriers look to Counsel for advice on settlement strategy, and Counsel is well-served by encouraging clients to include discussion of a structured settlement during the settlement evaluation stage. Including a structured settlement expert during the evaluation phase will help form a well-rounded settlement team and lead to broader discussions of strategy ideas and settlement funding options.

Does Your Client Want To Settle?

Before addressing the possibility of using the structured settlement tool, Counsel needs to determine if the client wants to settle the claim. Settling a workers' compensation claim puts a fixed cost on exposure and eliminates the uncertainty associated with an open claim, as well as ongoing legal or administrative costs. With a structured settlement, carriers and self-insured corporations transfer risk to life insurance companies that issue structured settlement annuities, while allowing the claimant to continue to receive ongoing payments for medical costs and living expenses.

CLAIM EVALUATION

The structured settlement annuity can be used during the settlement evaluation process, providing an additional method for evaluating present-day costs of existing workers' compensation benefits.

The life insurance companies that issue structured settlement annuities may evaluate mortality risk and determine if a claimant's life expectancy is reduced for any reason. A reduced life expectancy means lower annuity costs. This information helps carriers and self-insured corporations assess their exposure, evaluate their reserves and decide if it is appropriate to settle complex cases.

Age rating is one method of expressing the evaluation of an individual's life expectancy. Life insurance companies analyze a claimant's medical records and co-morbidities (i.e., hypertension, diabetes, smoking, etc.) to determine if the claimant has a reduced life expectancy. Following medical underwriting guidelines and based on a claimant's medical history and current health conditions, life insurance companies may determine that the claimant has a reduced life expectancy and issue a rated age.

Example of Age Rating and Impact on Present-day Cost

John's chronological age is 54, with a normal life expectancy of 26.3 years. After reviewing John's medical records, a life insurance company determines that, based on John's health conditions, he has a reduced life expectancy. The life insurance company issues a rated age of 61, meaning the life company has determined that John has the life expectancy of a 61-year-old male or 20.8 years; this is 5.5 years shorter than the normal life expectancy of a 54-year-old male.

How does the rated age translate to a lower settlement cost?

The life insurance company can offer the same annuity benefits at a lower annuity cost because they expect to make payments for a shorter duration of time due to the anticipated reduced life expectancy.

Example: Assume that John is currently receiving workers' compensation benefits of \$1,000 per month. The present-day cost of an annuity to provide \$1,000 per month for life, based on the normal life expectancy of a 54-year-old, is \$208,585. By contrast, the present-day cost to provide a lifetime annuity for a 61-year-old male is \$178,564. By utilizing a rated age, the employer will realize a total savings of \$30,000.

STRUCTURING MEDICARE SET-ASIDES

In recent years, the structured settlement has been especially effective in the evaluation, negotiation and settlement of claims that involve Workers' Compensation Medicare Set-Aside Agreements (WCMSA). The structured settlement is an excellent tool to illustrate how future Medicare-covered medical expenses can be provided for, thus helping claimants protect their eligibility for Medicare benefits. Moreover, it allows carriers and self-insured corporations to settle these claims with minimal risk, knowing that they have provided a thoughtful post-settlement financial plan for claimants to manage their medical treatment. Further, structured settlement-funded WCMSAs help claimants effectively manage their WCMSA funds.

Additionally, structured settlements can provide significant savings on WCMSAs. Purchasing a structured settlement annuity costs less than funding a WCMSA with a lump sum of cash.

A STUDY OF SETTLEMENTS INVOLVING MSAS

Structured Financial Associates, Inc. has participated in the handling of more than 800 claims involving WCMSAs for a large national insurer. Of those 800 claims, 427 were successfully structured with a combination of cash and structured settlement annuity. Prior to utilizing structured settlements, this insurer would typically settle claims involving a WCMSA with a lump sum settlement. The exposure and lump sum settlement value on these 427 claims was \$50,628,100. In contrast, the present-day cost to settle and fund the WCMSAs with up-front cash (seed funding) and a structured settlement annuity was \$31,753,100, a savings of \$18,875,000 (37%).

The Centers for Medicare and Medicaid Services (CMS) accepts WCMSAs that are funded by annuities, and funding can be modified to match final CMS determinations. Settlement consultants also collaborate with Medicare compliance experts and companies that provide professional administration to ensure that the MSA is funded and managed properly.

CREATIVE SETTLEMENT PLANNING

In addition to the numerous ways to use the structured settlement in various aspects of the settlement process, it is important to remember the fundamental value of the structure: Creative settlement planning to resolve challenging cases.

Negotiating the settlement of a workers' compensation matter on a cash-only basis is challenging, and cash is one-dimensional. Using a structured settlement presents a unique opportunity for claimants to convert existing wage compensation benefits into a revised payment plan to meet their short- and long-term financial needs. Claimants can receive a lump sum of cash plus annuity payments that are secure and income tax-free. The parties have flexibility to design annuity payments for life or for a certain amount of time, and to occur weekly, monthly, annually, or periodically in lump sums at pre-determined milestones.

Settlement of a Death Benefits Case

A consultant with Structured Financial Associates, Inc. was recently invited by Counsel for a self-insured employer to participate in the evaluation and settlement of a death benefits claim, and the experience exemplifies the importance of assembling a productive settlement team.

The claimant, a surviving spouse, was receiving bi-weekly benefits of \$1,475. The employer's reserve was set at \$825,000.

Counsel for the employer included a structured settlement expert in the evaluation of the employer's exposure, and it was determined that the present-day cost of a lifetime structured settlement annuity to replace the current benefits was slightly less than the third-party administrator's evaluation of the exposure.

Counsel collaborated with the settlement consultant on a letter to the claimant, including a request to meet in-person to discuss settlement and a few settlement proposals that included both immediate cash and annuity payment ideas. When the parties met, Counsel explained the reasons the employer wanted to settle. The spouse's questions were answered, and settlement options were reviewed. Input from the decedent's spouse led to the creation of other structured settlement options for her review. It was clear that the spouse was ready to settle, and a settlement plan was designed and accepted.

Ultimately, the claimant accepted a settlement plan that included an immediate \$25,000 lump-sum, plus lifetime annual payments of \$18,461. The annual annuity payments included a 30-year guarantee so that if the claimant died, the remaining unpaid annual installments would be payable to her daughter as her beneficiary. The settlement plan had a present-day total cost of \$750,000, significantly lower than the employer's reserve of \$825,000, and included a guaranteed payout of over \$1,130,000.

MANAGING THE FINAL RESOLUTION

Following settlement, a settlement consultant assists the parties – Counsel, risk managers, claims handlers, claimants – to bring the claim to final closure, including finalizing settlement documents and gaining approval from the workers' compensation board or commission. After settlement, there are no ongoing legal or administrative costs, and the case is settled and permanently closed.

The structured settlement is an excellent tool for building a strong settlement strategy, evaluating exposures and resolving workers' compensation claims.



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