

STRUCTURED SETTLEMENTS AT A GLANCE

What is a structured settlement?

A structured settlement is a payment of a personal injury or wrongful death award in the form of periodic payments rather than in one lump sum. The payments may be scheduled for any length of time, even as long as the claimant's lifetime. Payments can be scheduled to meet future income needs such as college education, home purchase or retirement.

The payments are typically funded by annuities, reinsurance, or occasionally U.S. government obligations.

Benefits to the claimant:

- Allows the claimant a choice at settlement. Benefits can be received based on needs rather than a lump sum, which has to be invested at risk, incurring fees.
- No income tax on the payments received or on the interest earned on the settlement.
- Eliminates the risk of dissipating settlement funds.
- Maximum security since periodic payments are funded by annuities or reinsurance issued by the largest, most secure life insurance companies.
- Can help in estate planning.

Benefits to the defense:

- Helps bridge gaps between plaintiff and defendant.
- Provides an opportunity for indemnity savings over a cash settlement.
- Reduces litigation costs.
- Valuable tool in quantifying future damages even if a case ultimately settles for cash.
- Substandard age rating can significantly reduce settlement cost.

Relevant tax rules for liability cases:

Structured settlements involving bodily injury or death are excludable from the claimant's gross income under Section 104(a) (2) of the Internal Revenue Code. Structured settlements qualify for assignment of ownership under Section 130 of the Internal Revenue Code. This means that both the ownership of the annuity and the obligation to make future payments is assigned to a third party, usually a subsidiary company of the insurance company issuing the annuity.

Relevant tax rules for workers compensation:

Structured settlements involving workers compensation are excluded from the recipient's gross income under IRC Section 104(a)(1), and they qualify for assignment under Section 130 if the loss occurred after August 5, 1997. For workers comp losses prior to August 5, 1997, a reinsurance policy is typically used in place of an assignment.

Criteria for liability cases:

Since structures allow settlement funds to grow income tax-free and to be preserved to meet future financial needs, any liability case can be suitable for a structured settlement. However, the following are cases in which structures should always be considered:

- All cases involving minors or incompetent adults.
- All cases with a reserve or value of \$50,000 or more.
- All catastrophic cases including wrongful death, paralysis, brain damage, severe burns, or loss of limb

Criteria for workers compensation cases:

- Future lifetime indemnity or life pension.
- Future lifetime medical, particularly for a worsening or non-resolving condition.
- Cases involving lifetime indemnity or life pension venued in states that allow substitution of payor, insurance company can reduce reserve to zero.
- All cases open for more than three years.

For cases that cannot be settled it is possible to purchase an annuity to fund future indemnity and medical. The insurance company is the named payee and continues to make indemnity and medical payments to the claimant. Reserve can be substantially reduced.

Life insurance carriers and ratings:

American General, Berkshire Hathaway Life Insurance Company of Boston, Liberty Life Insurance Company, Metropolitan Life, New York Life, Pacific Life and Prudential are all life insurers that have met the criteria set forth by the National Conference of Commissioners on Uniform State Laws.

Funding a structured settlement

Once a case is settled, we will send a confirmation letter, which will include:

- Cover letter with instructions
- A check request with the address to which the check should be express mailed.
- A summary of the settlement as we understand it to be.

Settlement documentation:

We will prepare the approved and required settlement agreement and release and the qualified assignment. We will work closely with the defense and/or plaintiff counsel to prepare the documentation.

Documentation required to complete your file and to ensure prompt issuance of the annuity:

- Settlement agreement and release
- Qualified assignment
- Annuitant information
- If a minor or incompetent, court approval
- Trust documents if annuity payments are payable to a trust
- Birth certificate if lifetime payments are involved

Substandard age rating:

Structured settlements can provide significantly greater benefits at lower costs if the injured party suffers from a medical condition that reduces life expectancy. The medical condition does not need to be related to the accident involved in the claim. Medical records are submitted to the life insurance underwriters for an independent evaluation of future life expectancy. The underwriter comes up with an "age rating" which can range from the actual age of the claimant to an older age, reflecting a reduced life expectancy. The greater the difference between the actual age and rated age, the less expensive a lifetime benefit will be because the person is viewed as older. Benefits that are not life contingent do not qualify for an age rating since their pricing is based on a certain period of time or guaranteed lump sum payment. In order to obtain a substandard age rating, copies of certain medical records should be submitted to us, especially hospital discharge summaries, rehab admission and discharge reports, and records that refer to past or unrelated medical conditions.

Attendance at settlement conferences and mediations:

As a service to our clients, we attend settlement conferences and mediations free of charge and provide such services as requested by the client, which may include structured settlement proposals, lien negotiation and claim negotiation support.

Attorney fees:

The attorney fee portion of a settlement can be structured.