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Making Your Case: Adding structure to your settlements

by Kelly Wiese, Dolan Media Newswires

ST. LOUIS, MO -- You've labored for years over a complicated medical malpractice lawsuit. Your injured client and the hospital involved are this close to reaching a reasonable settlement. Now a consultant shows up and suggests using a structured settlement agreement. What should you do?

That depends partly on the client and the situation involved, but some lawyers find structured settlement agreements a useful tool - and they can work for both plaintiffs' awards and legal fees in a case.

James Malone, of the Malone Law Firm in Clayton, finds one of the biggest challenges is convincing a client to accept a structured settlement. Often, the client wants the entire settlement right away. Malone strongly urges his clients to accept a structured settlement annuity. That system provides money over a long period of time, often for the life of the client.

"I find them very useful," he said. "Obviously in bigger cases, they certainly become much more of a factor in deciding how you're going to resolve the case."

But even some smaller cases can benefit, he said, especially those involving minors or younger adults, where they may need money for living expenses for decades to come.

Attorneys and consultants say such arrangements are most common when the settlement is \$50,000 or more.

The best way to ensure a plaintiff's financial satisfaction is for the attorney to bargain with the insurance company about the annuity terms and then determine if the settlement is reasonable by comparing the market rates of other annuities, he said.

Such settlements have a key advantage for clients - the payments, whether achieved through settlement or court order, are tax-free under the Internal Revenue Service code in cases involving physical injury or illness.

They're especially helpful, Malone said, if a client is not sophisticated enough to wisely manage a large chunk of money at once, or has friends or family who might try to take advantage of the situation.

Punitive damage awards, however, are still taxable.

With a lump sum payment, on the other hand, the initial amount to compensate for the injury is tax-free but any earnings, such as investment gains or interest payments on that money, would be taxed.

But structured settlements are not for everyone.

Stephen Ringkamp, of the Hullverson Law Firm in St Louis, tries to avoid accepting structured settlements. He is wary of the insurance companies commingling structured settlements, which may benefit the insurance company but provide less security for the plaintiff.

Ringkamp looks for two things if he uses a structured settlement. He wants it to be paid from a dedicated trust, so that neither the client nor another entity could use the settlement for collateral. Also, if the agreement relies on a structured settlement company, he insists that a nationally accredited bank guarantee the company and the insurance agency. That way, if the settlement company or insurance company collapses, the plaintiff won't be affected because the bank will step in and continue making the payments.

According to an American Bar Association article, structured settlements became popular in the 1960s with the wave of lawsuits over Thalidomide. The medicine was given to pregnant women to help curb morning sickness but was later found to cause birth defects. As litigation surged, injured families sought a way to set up a stream of payments over a lifetime as it was likely the children, who needed special care, would outlive the parents.

From the defense perspective, Priscilla Gunn, of Rabbitt, Pitzer & Snodgrass, said structured settlements can be beneficial for both sides in a case. Often in high-value settlements, insurance companies will use a financial expert from a structured settlement company during mediation.

These experts can then create proposals and figure payments, helping all sides avoid trial.

To get the tax advantage, the injured client cannot actually own the annuity from which payments are made, so it's held by the company making the payments. The tax code also specifies that recipients cannot alter the amount of payments being received to qualify, and cannot borrow against future benefits. However, settlement consultants say, sometimes a court order will permit such a loan, but interest rates can be high.

Structured settlement consultant Tay Robinson advises attorneys on such agreements and regularly participates in mediation and settlement conferences. He says bringing in a consultant well-versed in such agreements is a good idea to help with details such as setting the amount of regular payments and selecting a company to hold the annuity and make the payments.

That's especially true for an attorney who handles such cases infrequently.

"Structured settlements are very useful in bringing parties together," said Robinson, president of Strategic Settlements in northern Kentucky. "It's that comfortability that provides the appeal."

Attorneys also can make use of structured settlements to handle their own legal fees due from physical injury cases, he explains.

Such an approach can offer an attorney tax advantages as well. That money then is taxed only upon receipt, rather than all of it up front. So tax bills can be deferred and spread out over several years.

It also can ensure a certain stream of income over time. That frees up a lawyer or firm to take on other complicated cases on a contingent-fee basis that may not be resolved for a while. This way, they know a set income is coming in to handle overhead and future litigation costs. Such income also can be deferred until retirement.