SNA
SPECIAL NEEDS ALLIANCE

Attorneys for special needs planning.

Striking a Balance with STRUCTURED SETTLEMENTS

Structured settlements, also known as annuities, provide funding for the settlement of plaintiff personal injury claims.

These structures can be a partial alternative to a lump-sum cash payment and provide a stream of income, periodically, typically on a monthly basis. In addition, the structure payments are 100 percent exempt from federal income tax. However, structure payments received directly by the individual will be considered income for programs such as Supplemental Security Income (SSI) and Medicaid and will cause a decrease or disqualification for these benefits. When choosing a structure, the plaintiff should consider the use of a special needs trust in coordination with the structure if maintaining government means-tested benefits is a concern.

Generally, a structured settlement provides payments for the lifetime of the individual. The life expectancy risk is shifted to the life insurance company from which the defendant purchases the structure. The structure typically will provide a guaranteed payout period so that the insurance company is obligated to make payments for the life of the individual, with some minimum number of payments guaranteed against the possibility of an early death. Structures are most effective in the context of an agreed settlement, such as a mediation. For example, if an agreement has been reached on the benefits due to an injured person in a medical malpractice case, then the defendant will agree to fund that amount even though the settling parties may still have very different opinions about the individual's reasonable life expectancy.

A structured settlement broker is an independent professional who will obtain quotes from several life insurance companies. The quotes are based on the totality of the medical conditions affecting the individual, not just those flowing from the alleged medical malpractice. During negotiations, the structured settlement broker will provide the parties with illustrations showing the cost to purchase the structure, the estimated payout over the lifetime of the individual, and the guaranteed payout.

Life insurance companies compete for this business, both in financial return and in providing an estimated "rated age" for the individual. For example, in an extreme case, an 8-year-old child can be given the life expectancy of a 75-year-old. This means that the insurer will make higher payments because it calculates the total life expectancy to be relatively short. (Payments will, nevertheless, continue for the life of the individual.)

Whether the structured settlement broker appears as a consultant to the defendant or to the plaintiff, he or she should be given access to all current medical underwriting information so the most favorable rated age can be obtained. It also is important that the parties, particularly the structured settlement broker, understand the injured person's reasonable life care needs. For example, if they require 40 hours of attendant care per week for 10 years, and then 60 hours per week thereafter for life, the periodic payments can be structured to meet these needs.

A structured settlement annuity is not always appropriate. However, in larger cases where there are sufficient monetary resources for an upfront cash payment and a structure, the structure can provide flexibility, with guaranteed payments for the life of the injured person, regardless of the investment outcome of the cash portfolio. In many cases, there should be a lump sum sufficient for immediate needs, such as a home, vehicle, vacation and repayment of debt. The mix of cash and structure should be tailored to the expected needs of the injured person – which should, in turn, be determined by taking advantage of available resources such as life care plans, financial advisors, structured settlement brokers, trustees and special needs trust counsel. A structured settlement assigned to a special needs trust prior to an individual's reaching the age of 65 will not affect eligibility for SSI; however, it may affect Medicaid eligibility in some states.

The best way to provide compassionate care and a comfortable life to your family member with special needs is to support your legal and financial decisions with reliable information and proven expertise. That's why America's finest disability attorneys are members of the Special Needs Alliance® (SNA).

As attorneys in the field of disability and public benefits law, we help to enhance your family member's quality of life. Every SNA member has the resources and legal expertise to help you maintain public benefits for your family member and develop effective estate plans and protect your assets.

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