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STRUCTURED SETTLEMENTS

Helping claimants and their families achieve financial security.

For Structured Settlement Professional Use

EXECUTIVE SUMMARY

Structured settlements have played a role in helping physical injury claimants and their families for more than 30 years. Relieving individuals from the responsibility of managing significant sums of money, structured settlements deliver fixed streams of payments that can help address the ongoing needs of those involved in physical injury and wrongful death claims.

The federal government has established tax incentives that make this solution particularly effective. Structured settlements have been endorsed by attorneys, legislators, guardians ad litem, judges and disability advocates.

Despite these endorsements, there is a general lack of awareness regarding structured settlements. When presented with the option, most individuals select lump sum payments over structured settlements.

This newly updated paper is intended to increase the understanding and awareness of structured settlements. It looks at the benefits of structured settlements, comparing them to their lump sum counterparts and examining the advantages and distinctions.

For purposes of clarity, this paper focuses specifically on "qualified" structured settlements—those that qualify for favorable tax treatment.[1] It is worth noting, however, that structured settlements can also be used in situations other than physical injury or wrongful death claims. Nonqualified structured settlements—or those involving claims not resulting from personal physical injury or physical sickness, and as a result, not qualifying for tax-free status—can be used for attorney fees, employment disputes, discrimination cases, property damage claims, environmental torts, divorce settlements and more.

Of course, no one solution is appropriate for everybody, and there are potential disadvantages to consider. Some individuals may feel constrained by the defined schedule of periodic payments that structured settlements provide. For example, an individual who enters into a structured settlement and later seeks to purchase a home or other expensive item may not be able to accrue the necessary resources because he or she is unable to borrow against future payments under the settlement.

Also, if individuals are experienced, knowledgeable investors, they may be better served by accepting a lump sum settlement and investing it themselves. Further, there is the improbable scenario of an insurer becoming insolvent over time and defaulting on the agreed-to structured settlement payments.

However, these examples are the exceptions, and structured settlements have proven time and again to be an effective means for helping physical injury claimants and their families achieve long-term financial security.

[1] "Qualified" as meeting the requirements of paragraphs (1) or (2) of section 104(a) of the Internal Revenue Code.

INTRODUCTION

Structured settlements have proven to be an effective solution for compensating claimants in physical injury, wrongful death and workers' compensation claims.

Consisting of a tailored stream of payments designed to help meet physical injury claimants' ongoing financial needs, structured settlements are typically backed by an annuity from an insurance company. The amount and frequency of the payments are dictated by the claimants' present and future requirements, as well as their personal financial goals.

Made in lieu of, or in addition to, an immediate lump sum payment, structured settlements can be beneficial to claimants and defendants alike.

Offering financial security to physical injury claimants and their families, structured settlements are paid in preestablished installments over time, providing long-term, tax-free income. If properly arranged, structured settlements offer the potential of delivering greater benefits and a higher net return than lump sum payments.

Structured settlements can be agreed to privately—such as in a pretrial settlement between the claimant and defendant—or they can be decreed by court order, which is often required in legal judgments involving minors.

Payments, including growth on the original amount structured, are income tax-free to the claimant[2] and can be customized to meet the claimant's needs—such as medical costs, modified vehicles, educational expenses or basic living expenses.

This is an important facet of structured settlements, as each individual's requirements are distinctive, and structured settlements can be planned with consideration to the claimant's particular circumstances.

Further, structured settlements can protect claimants from dissipation—the potentially imprudent spending of settlement funds. The task of managing large sums of money can prove difficult for some individuals, particularly those dealing with a physical injury, disability or wrongful death.

"Structured Settlements are an effective tool to provide financial security—which most families desperately need after a serious accident or death."

—Nancy Starnes
VP, National Organization on Disability

[2] Pursuant to paragraphs (1) or (2) of section 104(a) of the Internal Revenue Code.
Quote courtesy of the National Structured Settlements Trade Association.

History of the structured settlements industry

1918

The Revenue Act of 1918 excluded personal injury awards from taxable income. Presently codified as Internal Revenue Code (I.R.C.) §104(a)(2).

1979

The IRS issued Private Letter Ruling 79-220, which provided that a recipient of a personal injury award paid as periodic payments may exclude the full amount of the payments from gross income under I.R.C. §104(a)(2), and that payments made to the estate after the recipient's death are also fully excludable from taxable income.

1983

The Periodic Payment Settlement Act of 1982 clarified that personal injury awards, whether paid as a lump sum or as periodic payments, are excluded from gross income. It further created I.R.C. §130 to allow defendants to transfer their future periodic payment obligations via a qualified assignment.

1984

The National Structured Settlements Trade Association (NSSTA) was founded. NSSTA serves as the leading voice of the structured settlements industry.

1996

The Small Business Job Protection Act amended I.R.C. §104(a)(2) to limit the types of personal damages excludable from gross income to "personal physical injuries or physical sickness." It also eliminated the exclusion for punitive damages.

1997

The Taxpayer Relief Act of 1997 amended I.R.C. §130(c) to extend the use of qualified assignments for structured settlements in workers' compensation claims filed after August 5, 1997.

2006

Cumulative sales of structured settlement annuities surpassed $100 billion.

2013

The bipartisan Congressional Structured Settlement Caucus was formed to help educate members of Congress on the importance of structured settlements to people with serious injuries.

WHY STRUCTURED SETTLEMENTS?

Before the emergence of structured settlements, claimants in physical injury or wrongful death settlements were presented with one option: an immediate cash settlement in the form of a lump sum payment.

Along with this payment came the challenge of managing a large sum of money. Many claimants found they were unprepared to meet this challenge, and they spent their settlement funds quickly and negligently.

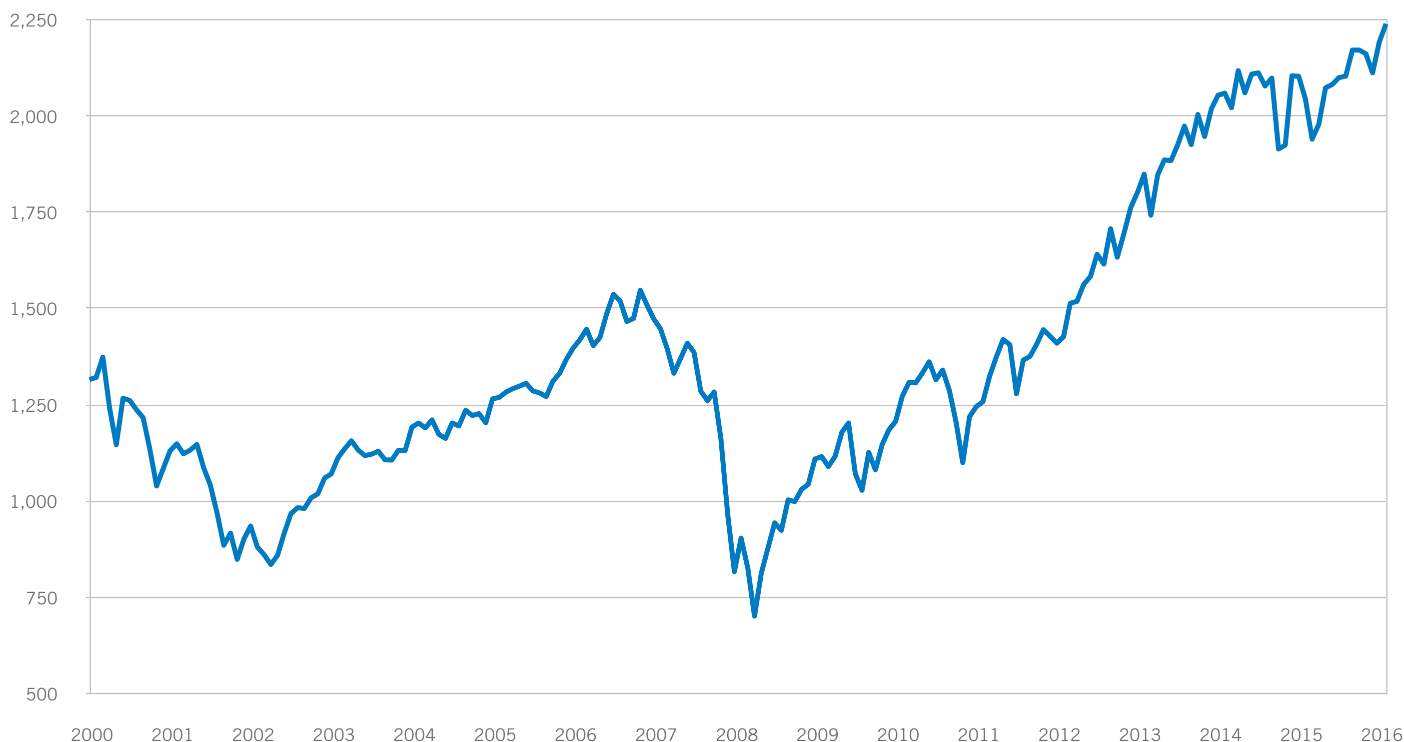
This mismanagement of settlement proceeds has been a point of concern in the physical injury/wrongful death settlement space for some time. Statistical data shows that injury claimants often dissipate their funds within just a few years of the settlement. In fact, in a 2013 survey of claimants who accepted a lump sum settlement more than three years ago, 30% thought they had less money remaining than they expected.[3]

In an earlier survey, 57% of those who took a lump sum reported that their entire settlement amount was depleted.[4]

Structured settlements can safeguard claimants against dissipation and eliminate the risk and worry associated with managing a large sum of money. When you consider that the financial markets have experienced significant declines twice in the past 16 years (see Exhibit 1), you can see how reassuring the consistent income stream of a structured settlement can be—particularly to an individual who has been seriously injured or disabled.

Exhibit 1: Market Volatility 2000-2016

S&P 500 Index (^SPX)—Index Value



[3] Source: 2013 Prudential Structured Settlements Claimant Survey.

[4] American General Life Companies Structured Settlement Survey Report, 2012.

In addition to this protection against dissipation, structured settlements:

- Provide income tax-free periodic payment streams designed to meet the individual needs and circumstances of claimants and their families
- May include a lifetime payment stream to help mitigate the risk of claimants outliving their assets
- Offer increased financial security, as the periodic payments are funded by an annuity contract issued by a highly rated life insurance company or through an obligation of the United States[5]
- May lead to quicker settlements and avoid the risk and expense associated with a jury trial
- May lessen expenses associated with resolving the claim

What's more, structured settlements may offer rates of return comparable to traditional investment vehicles such as fixed income investments. As stated previously, the payments received from a properly designed structured settlement are income tax-free, while the investment income earned from a lump sum settlement can be fully taxable. Accordingly, over time an appropriately designed structured settlement has the potential of resulting in a larger overall net return than a lump sum payment.

To gauge the value of this tax exemption—keeping in mind the rate of return on a structured settlement is guaranteed—one must compare the rate of return a lump sum settlement must achieve to match the same rate of return as an income tax-free structured settlement. As the chart below indicates, a lump sum settlement recipient in the 28% tax bracket would have to invest at a 5.56% net rate of return to achieve the same earnings a structured settlement recipient would achieve using an annuity with a 4% rate of return.

STRUCTURED SETTLEMENT INTERNAL RATE OF RETURN	15% TAX BRACKET	25% TAX BRACKET	28% TAX BRACKET	30% TAX BRACKET	33% TAX BRACKET	35% TAX BRACKET
3%	3.53%	4.00%	4.17%	4.29%	4.48%	4.62%
4%	4.71%	5.33%	5.56%	5.71%	5.97%	6.15%
5%	5.88%	6.67%	6.94%	7.14%	7.46%	7.69%
6%	7.06%	8.00%	8.33%	8.57%	8.96%	9.23%
7%	8.24%	9.33%	9.72%	10.00%	10.45%	10.77%

[5] Pursuant to Internal Revenue Code section 130(d), an annuity contract or any obligation of the United States government may be used to fund a structured settlement.

DESIGNING THE STRUCTURED SETTLEMENT PAYMENT PLAN

Structured settlement payment plans are customized to meet the individual needs and circumstances of physical injury claimants and their families.

A structured settlement should be considered an option in most cases involving personal physical injury or physical sickness, but they are particularly appropriate for cases involving:

- Temporary or permanent disability
- Wrongful death—especially in situations where surviving family members require monthly or annual income
- Workers' compensation
- Minors or incapacitated adults (courts generally do not allow disbursements directly to these individuals)
- Claimants who are uncomfortable or unfamiliar with managing money

A structured settlement consultant—a licensed professional who specializes in structured settlements—should be engaged in the settlement negotiations early to assist in designing a plan that meets the claimant's needs. A structured settlement consultant may be brought into the negotiations by the claimant, the insurer/self-insured or both. With structured settlements, claimants may wish to fund future educational expenses, enhance their retirement funds, address medical expenses or provide for their overall financial well-being. Based on the claimant's input and unique needs, the structured settlement consultant can tailor the payment plan to accommodate nearly any scenario.

To achieve income tax-free status under the Internal Revenue Code, structured settlement payment plans must be determined before the settlement is finalized, with the timing and amount of each payment clearly established. In addition, once the dates and amounts of each payment have been agreed to, the claimant may not increase or decrease the payment amounts, or accelerate or defer the payment streams.[6]

Payment plans may include an up-front, lump sum payment that can be used to cover attorney fees and other expenses, with the rest paid bi-weekly, monthly, quarterly, semi-annually or annually.[7] Payments can be scheduled for a designated period, or for the claimant's lifetime. Future lump sum payments can also be included to address large costs yet to come. Ongoing payments can also be in level amounts or include a cost-of-living adjustment that is prearranged to address anticipated increases in medical costs and basic living expenses.

Some insurance companies offer joint and survivor life annuities depending on the nature of the settlement. For non-life contingent payments—payments made regardless of whether the claimant is living—structured settlements can allow designated beneficiaries to continue receiving the future payments tax-free in the event of the claimant's premature death.

The following are examples of structured settlement payment plans:

- In cases involving minors, the settlement can be structured to provide for expenses during childhood, subsequent disbursements for college or other educational expenses, and additional payments during the claimant's adulthood—even into retirement.
- In cases involving individuals with long-term special needs, the settlement can be structured in such a way as to pay for rehabilitation or permanent care facility expenses later in life, and provide for disbursements to purchase medical equipment or modified vehicles. The settlement can also include a cost-of-living adjustment to help cover future increases in these expenses.

[6] Internal Revenue Code section 130(c)(2).
[7] Check with the individual life insurance company for underwriting guidelines.

HYPOTHETICAL CASE ILLUSTRATION: A STRUCTURED SETTLEMENT PROVIDES PEACE OF MIND

Anthony, a 45-year-old husband and father, was seriously injured in an accident, and he was forced to take time off from his job at a manufacturing company. When his case was settled, he had to make an important decision: whether to receive a lump sum payment or a structured settlement.

Anthony was living the American dream. He had a good job, a loving family, a nice home and an extremely bright future. But when an accident left Anthony partially disabled and unable to work for a period of time, his financial outlook suddenly became very uncertain.

Fortunately, Anthony was able to settle his physical injury case, and he was presented with the choice of receiving his payment as a lump sum or in the form of a structured settlement. With the help of a structured settlement consultant, Anthony weighed his options and determined that a structured settlement was the smart choice for his family.

With the structured settlement, all payments Anthony receives are tax-free. There are no trust expenses or ongoing management fees, and he receives full payments even though he has returned to work.

What's more, the structured settlement allows Anthony to customize future payments to assist with his family's anticipated monthly expenses and educational costs.

Here's how Anthony structured his physical injury settlement to address his present and future requirements:

$300,000 SETTLEMENT	
Attorney Fees	$100,000
Cash at Settlement	$15,000
Structured Settlement	$185,000
Benefits	$500 per month for 20 years guaranteed with 3% cost-of-living-adjustment to assist with monthly expenses (years 1–20) $15,000 per year for four years guaranteed to assist with son's college tuition (years 5–8) $50,000 lump sum at retirement (year 20)
Total Guaranteed Structured Settlement Payments	$271,222.25 **(includes income tax-free growth of $86,222.25)**
Total Value of Settlement	**$386,222.25**

Note: Based on a 3.51% internal rate of return.

STRUCTURED SETTLEMENT TRANSACTION

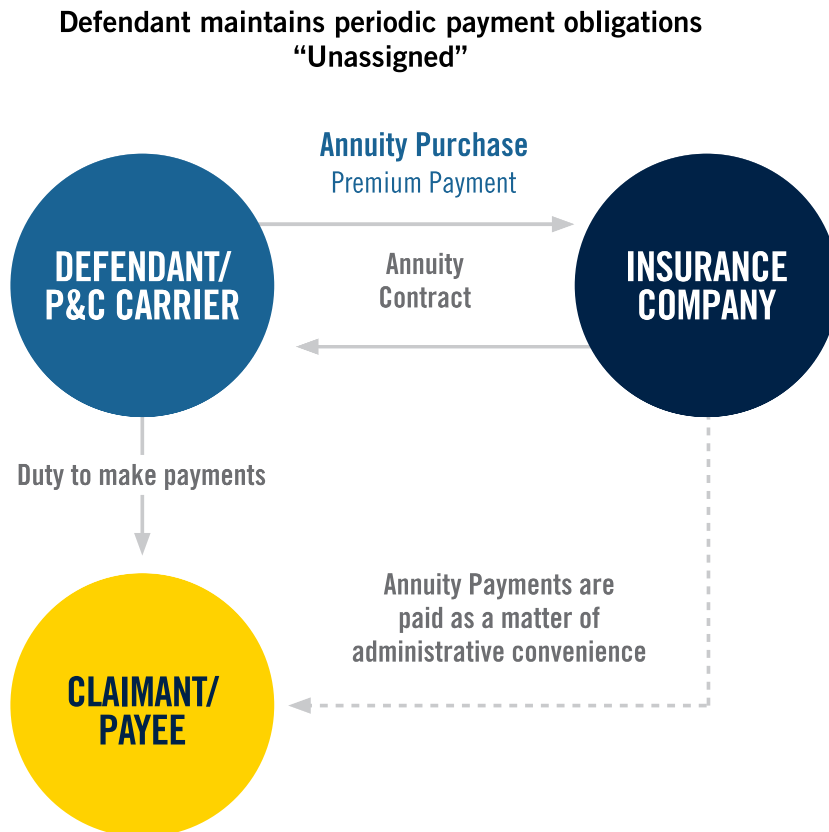
When a settlement is reached on the benefits due to a physical injury claimant (which can take place prior to, during or after a lawsuit), the defendant agrees to fund a stream of payments that will meet the claimant's needs.

Once the periodic payment plan has been agreed upon by the parties, an annuity contract is purchased to fund the payments under the structured settlement. This can be accomplished in one of two ways:

In the first scenario, the defendant—often a property and casualty insurance company—decides to maintain the periodic payment obligation, and funds it by purchasing an annuity from a life insurance company, thereby offsetting its obligation with a matching asset.

The annuity matches the periodic payments as set forth under the terms of the settlement agreement. These types of cases are "unassigned," meaning the property and casualty insurance company retains the ongoing settlement liability obligations—along with ownership of the annuity—and directs the annuity issuer to send payments directly to the claimant. Exhibit 2 illustrates the mechanics of an "unassigned" structured settlement transaction.[8]

Exhibit 2: Unassigned Structured Settlement Transaction



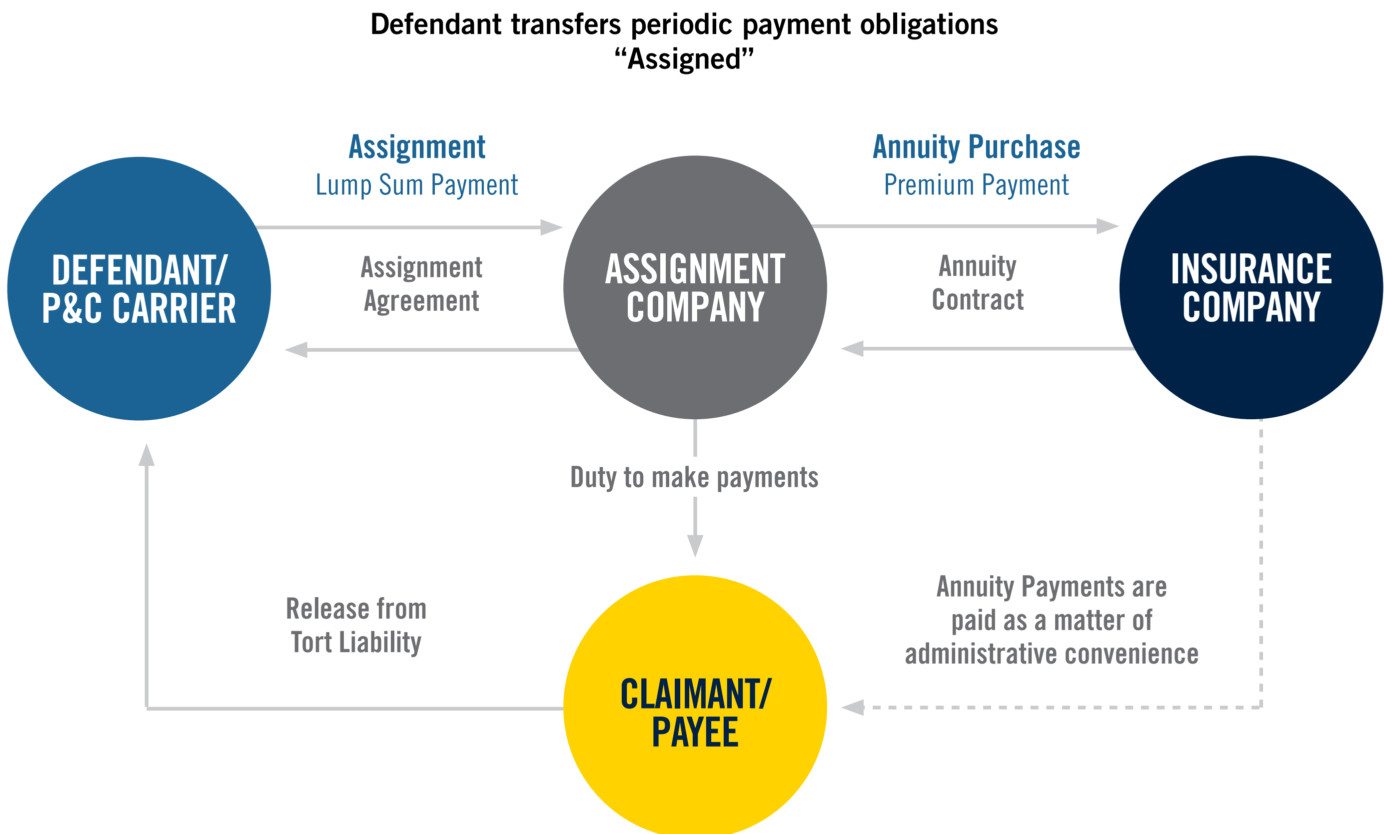
[8] Check with the individual life insurance company for underwriting guidelines.

In the second and most common scenario, pursuant to Internal Revenue Code section 130(c), the defendant enters into a qualified assignment of the periodic payment obligation. The assignment is considered "qualified" because the settlement proceeds are excluded from income taxes under paragraph (1) or (2) of section 104(a) of the Internal Revenue Code, and the liability to make periodic payments is assigned pursuant to Internal Revenue Code section 130.

In a qualified assignment, the defendant transfers, or "assigns," the liability and responsibility of making periodic payments to a third-party assignment company. The assignment company—typically an affiliate of the life insurer providing the annuity—requires that the defendant pay an amount sufficient to purchase an annuity, which then funds the periodic payment obligation.[9] Once the assignment is executed, the defendant has no further liability to make the periodic payments. The assignment company purchases the annuity from a life insurance company to fund its obligation to make the periodic payments and directs the annuity issuer to send payments directly to the claimant. Exhibit 3 illustrates the mechanics of an assigned structured settlement transaction.[10]

It is important to note that, in accordance with the Internal Revenue Code, a claimant may not own nor control the annuity contract. As discussed, if the claimant accepted a lump sum payment to settle a personal physical injury or physical sickness claim, the lump sum would be income tax-free, but the claimant would have to pay income taxes on any income earned on the investment of the lump sum. Taking ownership or control of the annuity contract would be the equivalent of the claimant receiving a lump sum payment. Accordingly, the annuity is owned by either the defendant/property and casualty company or the assignment company (in the event of an assignment). The claimant has a right to receive the future periodic payments as they become due.

Exhibit 3: Assigned Structured Settlement Transaction



[9] The assignment company may charge a one-time nominal assignment fee.
[10] Check with the individual life insurance company for underwriting guidelines.

THE STRUCTURED SETTLEMENT MARKETPLACE

Since its inception in the 1970s, the structured settlement marketplace has generated over $150 billion in cumulative premiums through 2016.[11]

From $150 million in premiums in 1979, the structured settlement marketplace expanded to over $4 billion in premiums in 1999.[11] Between 2000 and 2008, the industry saw significant growth, with sales of structured settlement annuities climbing steadily to a peak of $6.4 billion.[12] As with most financial industries, the structured settlements market was affected by the economic downturn of 2008 to 2012 and experienced a decline in sales. However, 2013 saw a resurgence in transactions (see Exhibit 4), and the industry has seen year-over-year growth through 2016. With consumer demand for future income protection expected to remain strong, the industry outlook is positive.

However, a general lack of awareness among claimants and attorneys continues to impact growth in the structured settlement marketplace—and precludes claimants from the benefits and security structured settlements can provide.

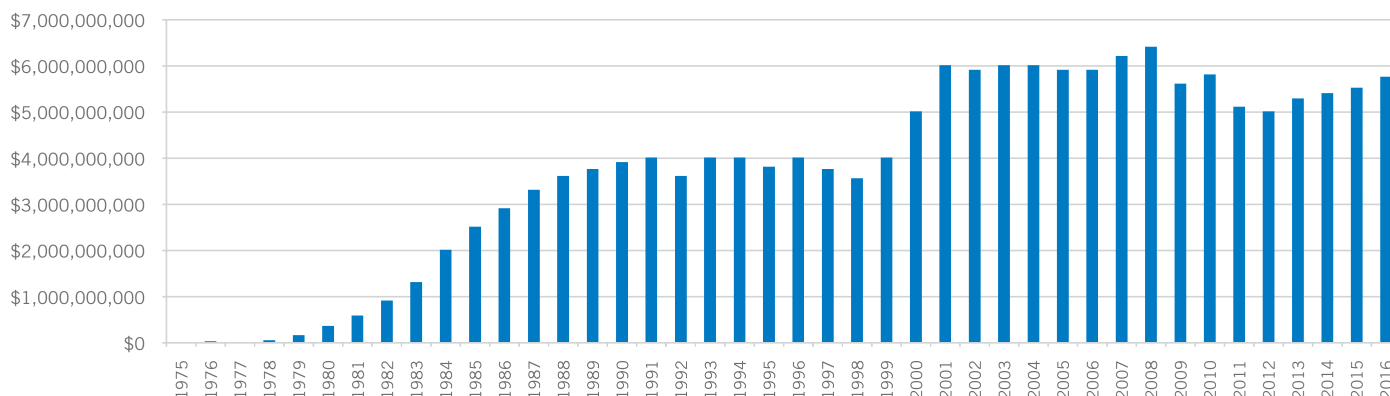
Most claimants have limited knowledge of the settlement options available to them, and tend to look to their attorney for guidance. A 2013 survey revealed that attorneys are extremely influential and affect decision-making within the realm of personal injury and wrongful death litigation. In fact, more than two-thirds of claimants who chose structured settlements became aware of the option through their attorneys, with 58% saying their attorney was most influential in their decision to choose a structured settlement.[13]

As such, attorneys have numerous opportunities to inform claimants about the advantages of structured settlements. Nonetheless, appreciation of structured settlements among the legal community remains low.

These findings are consistent with a prior survey in which individuals with no connection to a personal injury case were presented with two hypothetical personal injury scenarios. Without being educated on the differences between lump sums and structured settlements, 65% chose a lump sum. Conversely—after survey respondents became more educated on the differences—73% indicated they would have selected a structured settlement, while only 27% would have chosen a lump sum.[14]

These findings highlight a significant opportunity to educate both attorneys and claimants by providing them with more structured settlement information and resources. With heightened awareness and understanding, more physical injury, wrongful death and workers' compensation claimants might avail themselves of the many advantages of a structured settlement.

Exhibit 4: Structured Settlement Industry Sales 1975–2016



[11] Sources: 1975–1998, Quarterly Summary of the United States Settlement Annuity Provider Premium, Melissa Evola Price, February 2014; 1999–2016, LIMRA Quarterly U.S. Individual Annuity Reports.

[12] LIMRA Quarterly U.S. Individual Annuity Reports.

[13] Source: 2013 Prudential Structured Settlements Claimant Survey.

[14] American General Life Companies Structured Settlements Survey Report, 2012.

CHOOSING A STRUCTURED SETTLEMENT PROVIDER

When selecting a structured settlement provider, it is important to evaluate the company's financial strength and stability, as well as a number of other qualities, such as its:

- Conservative, fixed income asset management approach
- History of life insurance expertise
- Dedication to service, quality and excellence
- Long-term commitment to the marketplace
- Product features
- Underwriting guidelines

Of course, competitive pricing and the strength of the brand should also factor into the decision-making process.

The annuity company selected should be among the strongest life insurance firms in the industry, with high ratings from these independent rating agencies: A.M. Best Company, Standard & Poor's, Moody's Investors Service and Fitch Ratings. While ratings should not be the sole determining factor in the decision, they should play a key role. In effect, the chosen company should demonstrate:

- Superior financial strength
- Outstanding credit ratings
- A reputation for customer service
- A track record of being a top-level provider in the structured settlement marketplace.

Insurance companies that issue structured settlement annuities are subject to strict regulation by the states in which they do business. State insurance regulations require annuity providers to be solvent and able to meet their claims-paying obligations. The insurers must maintain required capital and reserves, and they are periodically evaluated by the independent rating agencies. Each of the following state-mandated safeguards are intended to help enhance an insurer's ability to pay claims and protect policyholders:

- **Statutory reserves:** State-mandated reserves that insurance companies must hold, either as cash or marketable investments. Represents the estimated amount needed to fund future policyholder benefits.
- **Cash flow testing:** Evaluates an insurer's ability to meet its contractual obligations under a variety of market environments.
- **Minimum risk-based capital:** Assets in excess of the amount required to fund all liabilities. Ensures stakeholders will still receive payments in the event of insolvency.

In addition, insurance companies may hold excess capital and surplus, providing another layer of financial protection against economic volatility.

THE FACTORING MARKET

Factoring transactions occur when recipients of structured settlement payments agree to transfer the right to future payments to a third party in return for an immediate, discounted lump sum payment.

Structured settlement payment plans are designed to meet the current and future financial needs of physical injury claimants and their families. Occasionally, circumstances change, and the claimants believe that the agreed-upon payment plan no longer meets their needs.

Consequently, the 1990s saw the advent of a new, secondary market in the structured settlement industry. Known as the "factoring" market, it allowed some claimants to relinquish all or a portion of their agreed-upon structured settlement benefits in return for an immediate, discounted lump sum payment.

Congress began regulating the sale of income tax-free structured settlements to third parties in 2001 to help safeguard physical injury claimants from jeopardizing their financial future by relinquishing the future value of their benefits for a lesser lump sum.[15] This legislation resulted in Internal Revenue Code section 5891.

Section 5891 requires an order from a court of law within the state in which the annuitant resides, in agreement with that state's Structured Settlement Protection Act. If there is no Structured Settlement Protection Act in the state in which the annuitant lives, then a court order can be obtained in the state where the insurance company is domiciled, in accordance with the Structured Settlement Protection Act in that state. Underscoring the critical need to protect recipients of structured settlement payments, this section imposes a 40% excise tax on purchasers of structured settlement payment rights ("factoring companies") that fail to obtain a qualified order in compliance with the applicable state Structured Settlement Protection Act. This excise tax is essentially a penalty tax, charged on the profit earned by the factoring company from said transactions.

All states (with the exception of New Hampshire) have enacted a Structured Settlement Protection Act. These acts require the factoring company to provide certain disclosures to the structured settlement payee and obtain advanced judicial approval of the transfer of structured settlement payment rights.[16]

In 2017, the Consumer Financial Protection Bureau issued a letter warning structured settlement payees about factoring transactions. Since the structured settlement payee is receiving an amount that may be significantly less than the present value of the future income stream, when considering entering into a factoring transaction, the structured settlement payee should seek guidance from a financial advisor and/or attorney of their choosing. The tax consequences of the transaction should be fully understood, and the firm purchasing the settlement should be fully researched. Its reputation, soundness and history of complying with laws should be confirmed. In addition, other options for obtaining funds should be considered carefully by a structured settlement payee before "selling" their structured settlement payment rights.[17]

[15] Victims of Terrorism Relief Act, 2001.
[16] Structured Settlement Factoring Audit Technique Guide (ATG), IRS.gov, audit revised 2009.
[17] Consumer Financial Protection Bureau, "Ask CFPB," consumerfinance.gov, updated June 7, 2017.

THE FUTURE OF STRUCTURED SETTLEMENTS

Increasing awareness of the value of structured settlements among attorneys, judges, mediators and legislators is critical to ensuring that structured settlements continue to be effective in providing for the long-term financial needs of physical injury claimants.

Legal professionals, in particular, are key influencers of the decisions made by physical injury claimants. Expanding the knowledge and appreciation lawyers and judges have of structured settlements is critical to the industry's future success.

Looking ahead, other factors that could impact the structured settlement marketplace—and, more importantly, the financial security of physical injury claimants—include federal tax reform, tort reform and other regulatory changes.

As the federal government shifts its focus to federal tax reform, it is important that members of the U.S. Congress are familiar with structured settlements and understand the value these arrangements provide to physical injury claimants and their families.

Recognizing this need, Congressman John Lewis (D-GA) and Congressman Jim Sensenbrenner (R-WI) formed the bipartisan Congressional Structured Settlement Caucus to educate members of Congress on the importance of structured settlements to people with serious injuries.

This caucus—and the concerted education and awareness campaigns aimed at members of Congress and facilitated by industry advocates such as the National Structured Settlements Trade Association (NSSTA)[18] and the American Association of People with Disabilities (AAPD)[19]—will be central to safeguarding the tax preference of structured settlements.

CONCLUSION

Structured settlements remain an effective solution to ensure payments that are tailored to meet the ongoing financial needs of physical injury claimants. Structured settlements offer advantages over lump sum payments alone because, when structured appropriately, they:

- Provide income payments that may be exempt from federal and state income taxes
- Offer protection against reductions due to interest rate or economic changes
- Are designed to deliver a stream of income for a predetermined period of time
- Are straightforward—there are no large sums of money to manage or investment decisions to make
- Can be cost- and time-effective (settlements are often reached before litigation takes place)

Structured settlements offer additional levels of protection because they are funded by life insurance companies, which in turn are regulated by insurance commissioners in all 50 states.

Proven to be a secure source of future income, structured settlements are likely to remain attractive to claimants, defendants and financial professionals.

[18] The National Structured Settlements Trade Association promotes the use of structured settlement annuities as a funding vehicle for physical injury claims, workers' compensation and other types of claims.
[19] The American Association of People with Disabilities is dedicated to promoting equal opportunity, economic power, independent living and political participation for people with disabilities.

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