Best’s Insurance Law Podcast

How Developments in Structured Settlements Affect Today’s Insurance Claims Environment - Episode #183

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John Czuba: Welcome to "Best's Insurance Law Podcast," the broadcast about timely and important legal issues affecting the insurance industry. I'm John Czuba, Managing Editor of *Best's Insurance Professional Resources*.

Today's guest is Dan Finn, founder of Finn Financial Group, a boutique-structured settlement and income strategy firm located in Newport Beach, California serving clients across the United States.

Dan is a former claims adjuster, training coordinator, and claims manager who now helps claims professionals and attorneys meet their structured settlement and future income needs. A published author with teaching, training, and lecturing experience, Dan is the past President and Chairman of the Board of the National Structured Settlements Trade Association. He's a CPCU Master Certified Structured Settlement Consultant and a Retired Income Certified Professional.

Dan, we're very pleased to have you with us on our show again today.

Dan Finn: Great. Thanks, John. Nice to be here.

John: Today's discussion is "Structured Settlements -- Current Challenges in Overcoming Obstacles." Dan, for our first question, structured settlements have a well-established history of providing long-term financial security to injured people when resolving their personal injury claims. Yet, they don't seem to be as universally valued as in the years past. Why is that?

Dan: For starters, John, it seems people don't perceive risk the same way they may have in the past. They take more chances with their security. Add to this the perception that interest rates are "too low" and the allure of Wall Street's seemingly endless bull market and people just seem to think they can do better.

With respect to the market, however, it truly is an apples-to-oranges conversation. With the market on steroids like we've seen, there's perhaps this natural tendency to undervalue the importance of guaranteed income when compared to speculative market returns.

That's a shame because survey after survey reveals that guaranteed income is highly prized in general, outside of the personal injury arena, Social Security, pensions, etc., things like that. The resistance to structures may ultimately be just a distraction to avoid talking about actual needs.

The truth is that highly secure guaranteed income, especially lifetime income, will never really go out of style. Add to that the tax advantages of structured settlements, which are tax-free for physical injuries, tax-deferred for non-physical injuries, and it seems clear that many objections are just reactive, without giving enough thought to the bigger picture.

By the way, when people say interest rates are "too low," it's important to ask, "Compared to what?" The truth is structured settlements are superior to any other available option of similar risk.

John: Dan, obviously, structured settlements impact claims. How do claims professionals and their counsel overcome any resistances out there?

Dan: I think it's important to make sure the focus remains on the injury and the need for future security. Because demands often include life care plans, which outline lost future income and future medical needs, properly addressing those needs is crucial to properly caring for the injured party.

What better way to address these future needs? A single lump sum, which can be invested, mismanaged, rapidly dissipated, or embezzled by a caretaker, or a stream of guaranteed fixed income secured by the claims-paying ability of some of the most highly rated life insurance companies in America?

I'd argue that anyone who negotiates solely on the basis of a lump sum of cash, instead of insisting that those funds, those future incomes needs, are being met with future dollars, is doing a disservice to the injured party.

This takes the whole low-interest-rate concern out of the discussion altogether. Add to this the fact that there are now structured settlement options that are linked to market performance and their argument becomes even more hollow.

John: How do structured settlements compare to someone investing on their own?

Dan: They're apples and oranges, as I mentioned earlier. They can certainly do better. They can do better if they invest on their own, but they can also lose money faster on their own too.

People who invested in the market right before the Great Recession sure didn't fare too well in its immediate aftermath. Besides, we don't have any way of knowing what people really do with their funds once a claim settles for cash. There's a lot of anecdotal evidence that suggests to us that they ultimately never invest, making their resistance merely a red herring.

John: How do personal injury claims impact someone having control over their future?

Dan: The structured settlements and having control aren't mutually exclusive. Claimants are often active in their own plan design. The whole point of a structured settlement is to help claimants reclaim control of their future. Usually, structured settlements are designed with a plaintiff's stated future needs in mind.

Plus, other than court-ordered settlements for minors, it's extremely rare when a structured settlement does not include sufficient cash up front to meet the claimant's immediate and shorter-term needs.

Many times, structured settlement cash flows are coordinated to feed into some form of trust. We see special needs trusts, grantor settlement preservations trusts, etc. Those are seeded by a cash component.

The trust companies I know and whose opinions I value most will tell you that any trust that's over-funded with cash is one of the worst things a person can do. Having a structured settlement alongside a cash component invested in the market can provide the best of both worlds.

John: Dan, there's a lot of talk these days about qualified settlement funds and claims impacts. Can you talk a little bit about what types of challenges there are with those?

Dan: Sure. Qualified settlement funds were originally conceived as a way to efficiently resolve class action, mass tort, and similar multi-party litigation. Think of those massive lawsuits involving tens or even hundreds of thousands of plaintiffs that settle for millions, even billions of dollars.

On a products liability lawsuit, for instance, you might have multiple manufacturers, distributors, merchants, and a long list of others being sued. There could be dozens or more defendant carriers and self-insured entities contributing to an agreed aggregate settlement or a jury verdict.

Section 468B of the Internal Revenue Code establishes the guidelines for establishing something called a qualified or designated settlement fund, QSF, usually, for short. The QSF, once established, exists as an intermediary, if you will, creating a safe harbor between the defendants and the plaintiffs to preserve the tax benefits for the claimants while allowing the lawsuit to resolve for the defendants.

Because it often takes time to determine allocation of settlement proceeds between numerous plaintiffs -- remember, there could be hundreds of plaintiffs or more -- sometimes requiring court intervention, it's really impractical for a case to remain open for a process that can be very time-consuming. The parties execute a settlement agreement whereby the defense pays its entire settlement sum into a QSF in exchange for a full release. They're done.

They're out of the picture. Later, once the settlement allocations are determined, each plaintiff can individually receive their share of the settlement by executing individual releases with the QSF standing in the shoes of the original defendant. The tax treatment of their settlement is preserved. They can then decide how they want their settlement proceeds distributed. They're free to choose cash, a structured settlement, or often a combination of both.

John: If these structured or these qualified settlement funds work for lawsuits involving numerous parties, are there any reasons why it wouldn't work for a single person or plaintiff?

Dan: That may be the million-dollar question because the IRS has refused to address this issue specifically every time it's teed up. Because of that, the long-held consensus view on the subject remains that a QSF was never intended to be used merely as a tax haven for a single plaintiff to achieve later tax-favored end results and is, therefore, disallowed.

Thus, under this view, the single plaintiff QSF is an improper application of this section of the code because it violates certain tax doctrines, constructive receipt and economic benefit, to name a few.

Critics of this view argue that because the text of the law allows for "one or more claimants," there's no reason to preclude using a QSF for a single plaintiff. There's not really much time to get into too detailed a discussion about the merits of either side's position, but it is telling that most life insurance carriers will not accept funds stemming from a single plaintiff QSF.

John: Dan, are there any other final practice pointers for our audience to keep in mind when negotiating with structured settlements claims or overcoming resistance out there?

Dan: One thing I'd like to remind everyone is that you don't need a claimant or plaintiff attorney's permission to offer a structured settlement.

Any settlement offer which includes a structured settlement proposal that's based on stated or perceived future needs represents a very well-thought-out claim evaluation and demonstrates a commitment to doing right by the injured party and their family. If the focus remains on the stated needs of the injured party, chances of a successful structured settlement outcome are more likely.

Also, one thing I've noticed during negotiations phases that's worth mentioning. Sometimes, when a plaintiff attorney or mediator says no to a structured settlement, they really mean not yet. If a structured settlement is appropriate, I'd suggest continuing to offer them, even if there seems to be some initial resistance.

John: Dan, thank you so much for joining us again today.

Dan: My pleasure, John. Thanks for having me.

John: You've just listened to Dan Finn, founder of Finn Financial Group. Special thanks to today's producer, Frank Vowinkel.

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I'm John Czuba, and now this message.

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