Best's Insurance Law Podcast

The Sudden Resurgence and Effectiveness of Structured Settlements in Claims Negotiations and Resolution - Episode #211

Posted: Wed. Jan. 31, 2024

Hosted by: John Czuba, Managing Editor
Guest Expert: Dan Finn of Finn Financial Group, LLC
Qualified Member in *Best's Insurance Professional Resources* since: 2017

FINN FINANCIAL GROUP
Helping you achieve stability in life

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*. We're pleased to have with us today Dan Finn Dan is the founder of Finn Financial Group, LLC a nationally recognized provider of structured settlements products and services, headquartered in Newport Beach, California.

Dan is a former claims adjuster, claims training coordinator, and claims manager. He is past President and Chairman of the Board of Directors for the National Structured Settlements Trade Association, located in Washington, DC.

Dan is also a CPCU, a Master Certified Structured Settlement Consultant, and a Retirement Income Certified Professional. Dan is also a published author for "The CPA Journal," "Claims Magazine," and "Plaintiff Magazine." Dan, we're pleased to have you with us again today.

Dan Finn: Thank you, John. Pleasure to be here.

John: Today's discussion is on the sudden resurgence and effectiveness of structured settlements and claims negotiations and resolution. Dan, for our first question today, claims departments have been utilizing structured settlements to negotiate and resolve personal injury claims now for decades.

Recently, it seems structured settlements have become even more popular than ever. Is that a fair observation?

Dan: That is absolutely a fair observation, John. 2023 was a banner year for the structured settlements industry. We're still waiting for 2023 year end totals, but we already know we're on target for our best year since structured settlements began, over 40 years ago.

We'll probably top about $8 billion this year, which is phenomenal considering there have only been nine years when we've ever been over $6 billion. Through the first three quarters of 2023, structured settlement premium and usage is up over 63 percent over 2022.

The number of successful structured settlements concluded is up 45.5 percent over that same period. This doesn't even count our non traditional structured settlement successes, like taxable damage structured settlements and certain market based structured settlements, two very critical growth areas for our industry.

John: Dan, what's driving this trend?

Dan: Several things. For starters, trial and mediation dates that had gotten pushed back due to COVID began flowing again. It took a few years, but there was a pretty meaningful logjam of claims that had been in limbo. Call it the COVID logjam relief. Claims are settling again.

Second, structured settlement interest rates have increased dramatically from their historic lows, to levels not seen since before the Great Recession. Because claims adjusters can make settlement offers significantly more attractive, the likelihood of resolving a claim within their established range increases.

It's true rates have pulled back some in recent weeks, but we're still light years ahead of where we were just a few years ago.

The third driver of increased structured settlement usage is something I'll call verdict driven expectations. Every time you turn around, it seems you're reading about another nuclear verdict that seemed unimaginable pre COVID.

With expectations sky high, structured settlements with these improved rates allow the defense to more easily package an offer that includes guaranteed, tax free future income that might approach their expectations.

Finally, traditional fixed rate annuities are no longer the only game in town. Several life markets and others have developed market based structured settlement options, which provide a guaranteed floor level of income but which can potentially increase based on the experience of an index the product is tied to.

The potential of these alternatives to outperform traditional fixed annuities is very attractive to those with a fear of missing out on stock market gains.

John: Dan, I can see this all, from a consumer standpoint, being beneficial. How does this help insurance carriers and defense attorneys?

Dan: Keep in mind, negotiating with structured settlements is not a zero sum game. Just because something's good for the plaintiff doesn't mean it's not good for the defense carriers or their insureds.

The expression win win has fallen out of favor in recent years, but it still rings true with structured settlements because you can pass along increased value to the plaintiff at no additional cost to the defense. Perhaps the most meaningful benefit to insurance carriers is the impact these improved rates have had on assessing the value of claims.

For instance, I recently went back to review a life care plan on a file I'm monitoring. It was originally assigned to me in 2020. Today, with the interest rate improvement, the present value of that same identical life care plan is now 27.6 percent less than it was just three years ago, which allows for more flexibility when negotiating the overall settlement.

When you can provide a guaranteed future income outlined in a life care plan for 27 percent less money, that frees up more of the authority allocated for negotiations to address other non economic portions of the claim which are harder to quantify.

John: Dan, we tend to think of structured settlements for minors, wage replacement, younger people, etc. Are there any other particular types of claims or situations that lend themselves particularly well to structured settlements in this environment?

Dan: Yes. A few come immediately to mind. You already mentioned a few of those that have remained constant since the dawn of the structured settlements industry. In addition to minors, fatalities, especially where the principal wage earner is killed, workers' compensation, and claims involving catastrophic injuries, where reduced life expectancy is indicated.

I'm forever amazed at how many claims professionals automatically assume "older" people won't be interested in structured settlements. By older here, let's just say someone over age 60.

While a structured settlement would probably not be appropriate for someone over age 85, let's say, someone in their 60s is very likely an excellent candidate for guaranteed, tax free income to complement their Social Security, pension income, and retirement account required minimum distributions.

In fact, guaranteed monthly income, in retirement, is ranked number one by 41 percent of the respondents in a recent annual survey of the Insured Retirement Institute. With today's interest rate climate, we're able to create settlement offers which include guaranteed monthly income, even over a reasonably short period of time, that is quite attractive. A few years ago, this just wasn't the case.

John: Dan, one final question today. Are there any areas claims managers and defense counsel might be overlooking where structured settlements might be valuable for them?

Dan: Yes. I'm going to focus here on three. Number one, limits cases. By offering a structured settlement in conjunction with a limits offer, not as a counteroffer to a limits demand, which could be viewed as a rejection of a limits demand, creating extra-contractual exposure, but rather as a supplement to your limits offer...

You potentially reduce the likelihood of any bad faith allegations and potentially save your insured from having to contribute any of their own assets toward a settlement.

Number two, verdicts. Assuming there are appealable issues involved, structured settlements can be an extremely valuable post verdict resolution tool.

Since it's probably safe to assume that at least one of the parties to a verdict is unhappy with the result, often the parties can craft a post verdict compromise for a sum that's less than the verdict but which creates guaranteed value above and beyond the verdict and the expectations.

Last but definitely not least is the area of employment practices liability and other litigation involving nonphysical injuries. While structured settlements are commonly used on claims involving personal physical injuries, like auto accidents, premises liability, and so on, claims involving personal non physical injury should not be overlooked.

Because non physical injury litigation results in settlements and awards that are fully taxable to the plaintiff, when the parties arrange to have the settlement or award paid out over time instead of all at once, as a one time, cash, lump sum up front, they spread out the tax liability as well.

This allows the plaintiff to move from a one time, disproportionately high tax rate to one that's more consistent with the size of the award. By allowing the plaintiff to keep more of their own recovery when they structure, the plaintiff can, quite literally, settle for less but walk away with more in their pocket.

I'm encouraging all my carrier clients to look very closely at all their taxable exposures, wrongful termination, breach of contract, whistleblower, anything like that, for opportunities to more cost effectively resolve these disputes.

John: Dan, thanks so much for joining us today.

Dan: My pleasure, John. Pleasure to be here.

John: You've just listened to Dan Finn of Finn Financial Group, LLC headquartered in Newport Beach, California. Special thanks to today's producer, Frank Vowinkel.

Thank you all for joining us for Best's Insurance Law Podcast. To subscribe to this audio program, go to our web page, www.ambest.com/professionalresources. If you have any suggestions for a future topic regarding an insurance law case or issue, please email us at lawpodcast@ambest.com.

I'm John Czuba, and now this message.

Transcription by CastingWords