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A Critical Tool for Resolution Professionals: Tips for Using Structured Settlements Effectively

The claims environment is increasingly competitive. Sluggish GDP growth means lowered premium expectations in the near-term even as flat or falling investments yields have sparked more insurance carrier consolidation. Accordingly, to Deloitte, insurers need to have a “laser focus” on expense optimization and claims performance.

At the same time, more than 70,000 insurance professionals retired in 2016. This combination of factors means that claims organizations can materially affect the performance of their organizations if they use the right tools at the right time to obtain optimal claim resolution outcomes.

CLM Advisors has conducted two industry surveys about the use of Structured Settlements. The first focused on the thoughts and observations of senior claim executives; the second surveyed more than 100 front-line claims professionals. I’d like to share some of the more salient observations as an introduction to our conversation today:

- Most claims professionals (54%) believe claims are more likely to settle when a structure is introduced;
- The average “success rate” is about 40%; more than half (51%) said they see value in getting a structure quote regardless of success rate;
- Claims professionals see the value of structured settlement products (almost 75% said they would personally use a structure if they were a plaintiff, claimant, or injured worker).

In addition, there is generalized agreement at both the front-line and executive levels that structures:

- Are effective in addressing future medical expenses and future wage loss;
- Are effective as negotiating tools both in terms of needs-based negotiation and bridging the gap; and

That being said, from the senior claims executives we spoke with:

- Most organizations (64% of the 2011 National Study; 90% of the 2014 NSSTA Survey) have a formalized structure “program”;
- Yet 70% of organizations do not measure how frequently they obtain quotes for structures
- Only 20% of organizations report having set objectives as to when a structure should be used or establish clear objective thresholds to prompt a required quote or referral;

And, importantly, few executives seem to be aware that using a structure can provide an average of 35% savings on Medicare Savings Accounts.

In today’s discussion we’ll revisit the issue of structures and their effectiveness from the perspective of several highly qualified experts – a senior claims executive, a well-known insurance defense attorney, and the president of the NSSTA. As you listen to their advice, give consideration to what changes and improvements can be made to your own use of structures, so as to maintain a competitive advantage in today’s environment.

Be the Front Line Advocate Espousing the Benefits of Structured Settlements

Defense attorneys are frequently in the position to interact with opposing counsel and set parameters for effective settlement negotiations. It is imperative that they exercise their role affirmatively and convey the benefits of using structured settlements, where advantageous to their clients, to achieve resolution of claims. Structured settlements afford tax benefits to plaintiffs that may not otherwise be available with plaintiff’s investment of a lump sum settlement payment. Structured settlements often afford pricing benefits to defendants that can free up greater settlement dollars to plaintiffs over time. More importantly, the use of structured settlements often forces the negotiations into more practical and real life considerations, from the plaintiff’s perspective, that facilitate resolution of cases.

Plan a Negotiation Strategy to Include Structured Settlements

The attorney must never underestimate the importance of prior planning for use of structured settlements. Consider and contemplate plaintiff’s life circumstances that may benefit from, or be amenable to, structured settlements. Undertake efforts to obtain information about plaintiffs that help better understand their needs or goals. Engage the expertise of a structured settlement company or consultant early in the process to assist in formulating ideas and proposals. Make allowances that account for plaintiff’s ability to provide for payment of attorney’s fees. Guard against the “easy out” response from plaintiff’s attorneys that plaintiffs are not interested in a structured settlement, and compel discussion of structured settlements by making it part of the negotiations. Force the plaintiff’s attorney, or mediator, to take the time to engage in a meaningful exchange of information that ensures that the benefits of structured settlements are considered.

Don't Screw Up the Ending

When a structured settlement is successfully achieved, ensure that the roles of each participant are identified to collaboratively conclude the settlement process. The plaintiff and plaintiff's attorney will need to provide information to facilitate applications for annuities and preparation of settlement documents. The structured settlement consultant should provide critical settlement language for favorable tax treatment and task deadlines to ensure the process is timely completed. The claims professional must issue payments in appropriate amounts and with prompt and proper delivery. Law firms must take the time to educate and guide attorneys in understanding structured settlements to avoid creating internal risk management issues.

Carriers want quick efficient resolution of claims with good financial outcomes. The perception is that the annuity process interferes with those goals. Many believe that using an annuity company will slow down a settlement and that you lose control of the process while the annuity is negotiated. Adjusters seem to see very little benefit from annuities.

These perceptions are far from the truth. Good annuity settlement planners are partners in the resolution process. They are experts in understanding the settlement process and more quickly to provide the paperwork and financials to move a settlement along. They are able to present annuities as an ideal option to resolve the claim working directly with the plaintiff and plaintiff attorney if necessary. Ultimately, an annuity will save the carrier time and money especially in the MSA process.

During this session you will learn to identify those cases that are suitable for disposition by structured settlement. Part of our discussion will include using structured settlements for cases as varied as those for minor plaintiffs to the funding of Medicare set-aside costs with a structured settlement annuity.

We will discuss the roles of the settlement planner and how he or she works with both the claim professional, defense and plaintiff attorney, and other stakeholders in the settlement process

You will learn that your settlement planner can do much more than simply "crunch numbers" for a structured settlement annuity. He or she will be able to help you identify a plaintiff's needs and "structure" a payment plan that meets those needs using a variation of funding annuities that could include lifetime income, lump sums, and structuring an attorney's fees.