California Coalition on Workers' Compensation
22ND ANNUAL CONFERENCE
LEGISLATIVE & EDUCATIONAL FORUM

STRATEGIC USE OF STRUCTURED SETTLEMENTS

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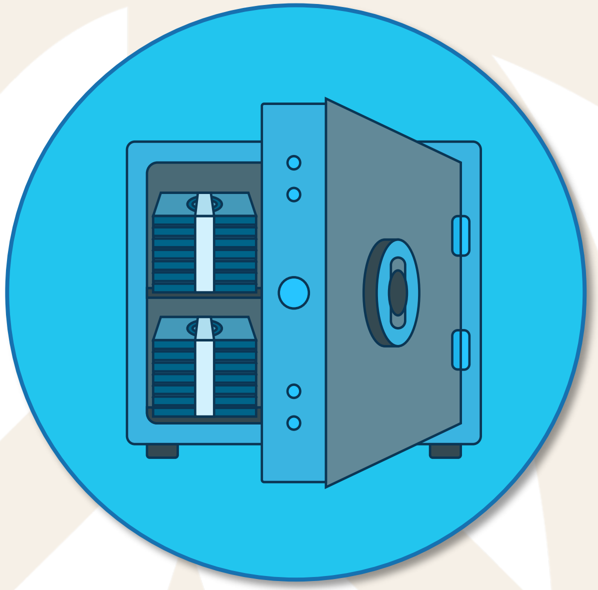
STRATEGIC USE OF STRUCTURED SETTLEMENTS

- What is a Structured Settlement
- Why Structures Matter
- How a Structure Helps the Claimant
- How a Structure Creates Value
- Triggers for Work Comp Referrals
- Negotiation Strategies Using Structures
- Answering Objections
- How a Structure Helps the Claims Professional
- Examples

WHAT IS A STRUCTURED SETTLEMENT?

A full-and-final claim settlement that provides tax-free, highly-secure, periodic annuity payments designed for the ongoing needs of the injured individual(s).



- ► Provides Financial Security and safety.
- ► Highly favored by CMS as well as most P&C organizations.
- ► Provides growth without Market risk- is safer - and provides more growth than a savings account

WHY STRUCTURES MATTER…

Structures Help Claim Settlement Evaluations

- Rated Age Analysis
- Demand Deconstruction
- Define & Clarify Actual Costs (PV)
- Claimant Needs Analysis
- Costs to Funds MSA and MCP’s

WHY STRUCTURES MATTER…

Develop Strategies for Negotiations

- Set Expectations for Discussions
- Design Relevant Proposals
- Negotiate with Structures Start-Finish
- Stress Unique Advantages
- Before, During, After Mediations

HOW A STRUCTURE HELPS THE CLAIMANT!

- ► **DELIVERS SECURITY. Tax-free, scheduled, secure income for a lifetime lost with a lump sum settlement.** Recession immune. Better return and more safety than a bank.
- ► **CREATES A LEGACY. Opportunity for inheritance** that avoids probate and estate taxes. Not possible with an open Workers' Compensation claim.
- ► **PROVIDES PEACEFUL POST-SETTLEMENT. Growth without Market risks,** costs, or bank worries. Preserve government assistance eligibility.

HOW A STRUCTURE CREATES VALUE…

Save Money

- 38% AVG on MSA's
- Empower "Demand Deconstruction".
- Secure early, customized negotiation strategy.

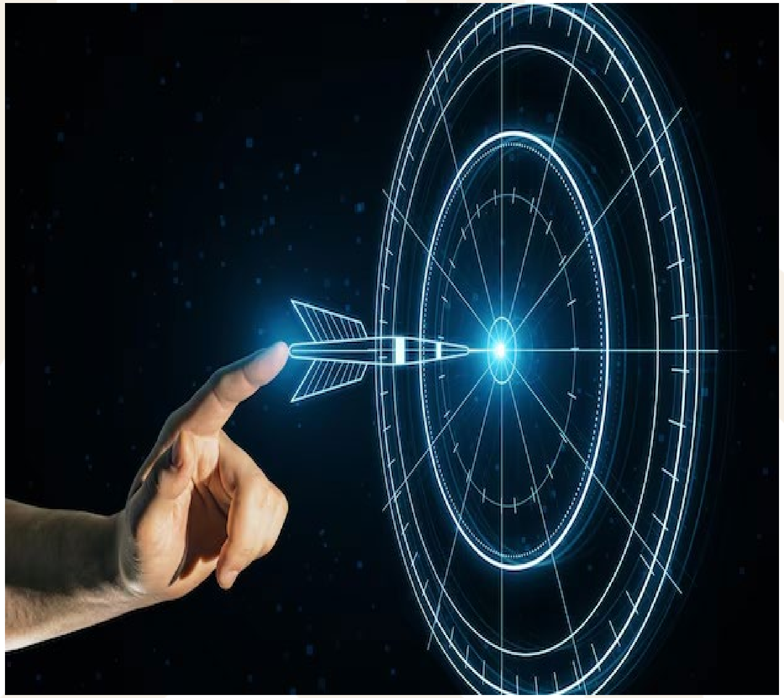
Provide Value to Claimant

- Ensure secure, ongoing income (90% exhaust lump sum in 3 years).
- Customized plan: Meet needs and wishes.
- Provide tax-free income immune to market risks.
- Safeguard public assistance eligibility.

Bridge the Settlement Gap

- Combine savings and value to create compelling proposal.
- Leverage us as free, strategic partner. We do the work.
- All offers should be made in the form of a structure.

TRIGGERS FOR WORK COMP REFERRALS…



Medicare Set Aside (MSA)

- LMSA's should be priced out with current & evolving CMS guidelines.

Life Care Plans/MCP's/Non-Covered Medical Expenses

- Rated ages can significantly reduce the cost of future medicals.

Indemnity Settlement

- Economic loss should have annuity pricing for a PV cost analysis.

Catastrophic Injury Cases

- TBI, Para, Quad, or cases with significant medical/economic damage.

Widow & Dependents Cases

- Cases where a widow may be interested in settlement.

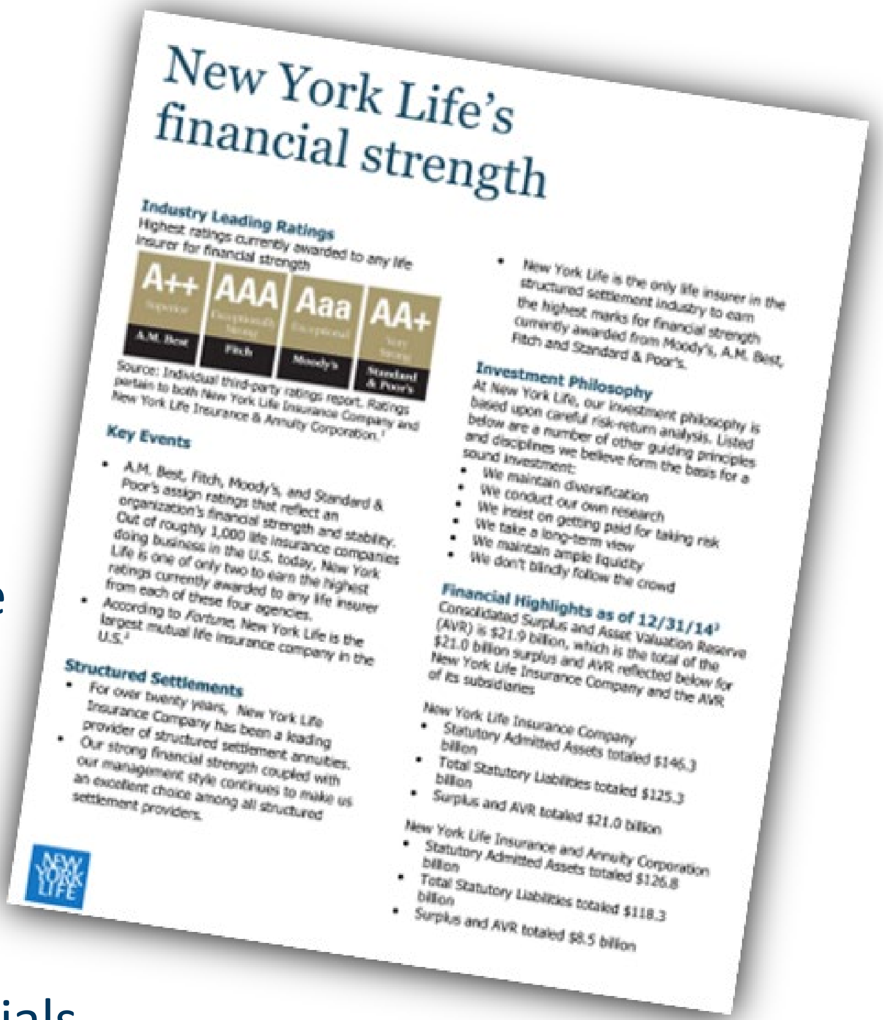
Life Pension & Future Medical Benefits

- Annuities can be used to secure savings.

NEGOTIATION STRATEGIES USING STRUCTURES

Analyze Needs

- Develop a strategy checklist, and timeline.
- Conduct a "needs analysis" to ensure you create enticing/relevant proposals.
- Send structure offers first, set the stage for use as the negotiations evolve.
- Life Carriers are highly rated, federally regulated, and more secure than a bank; and offer lifelong, economic security.



New York Life's financial strength

Industry Leading Ratings
Highest ratings currently awarded to any life insurer for financial strength

A++ Superior	AAA Exceptionally Strong	Aaa Exceptional	AA+ Very Strong
A.M. Best	Fitch	Moody's	Standard & Poor's

Source: Individual third-party ratings report. Ratings pertain to both New York Life Insurance Company and New York Life Insurance & Annuity Corporation.[1]

Key Events
- A.M. Best, Fitch, Moody's, and Standard & Poor's assign ratings that reflect an organization's financial strength and stability. Out of roughly 1,000 life insurance companies doing business in the U.S. today, New York Life is one of only two to earn the highest ratings currently awarded to any life insurer from each of these four agencies.
- According to *Fortune*, New York Life is the largest mutual life insurance company in the U.S.[2]

Structured Settlements
- For over twenty years, New York Life Insurance Company has been a leading provider of structured settlement annuities.
- Our strong financial strength coupled with our management style continues to make us an excellent choice among all structured settlement providers.

- New York Life is the only life insurer in the structured settlement industry to earn the highest marks for financial strength currently awarded from Moody's, A.M. Best, Fitch and Standard & Poor's.

Investment Philosophy
At New York Life, our investment philosophy is based upon careful risk-return analysis. Listed below are a number of other guiding principles and disciplines we believe form the basis for a sound investment:
- We maintain diversification
- We conduct our own research
- We insist on getting paid for taking risk
- We take a long-term view
- We maintain ample liquidity
- We don't blindly follow the crowd

Financial Highlights as of 12/31/14[3]
Consolidated Surplus and Asset Valuation Reserve (AVR) is $21.9 billion, which is the total of the $21.0 billion surplus and AVR reflected below for New York Life Insurance Company and the AVR of its subsidiaries

New York Life Insurance Company
- Statutory Admitted Assets totaled $146.3 billion
- Total Statutory Liabilities totaled $125.3 billion
- Surplus and AVR totaled $21.0 billion

New York Life Insurance and Annuity Corporation
- Statutory Admitted Assets totaled $126.8 billion
- Total Statutory Liabilities totaled $118.3 billion
- Surplus and AVR totaled $8.5 billion

NEW YORK LIFE

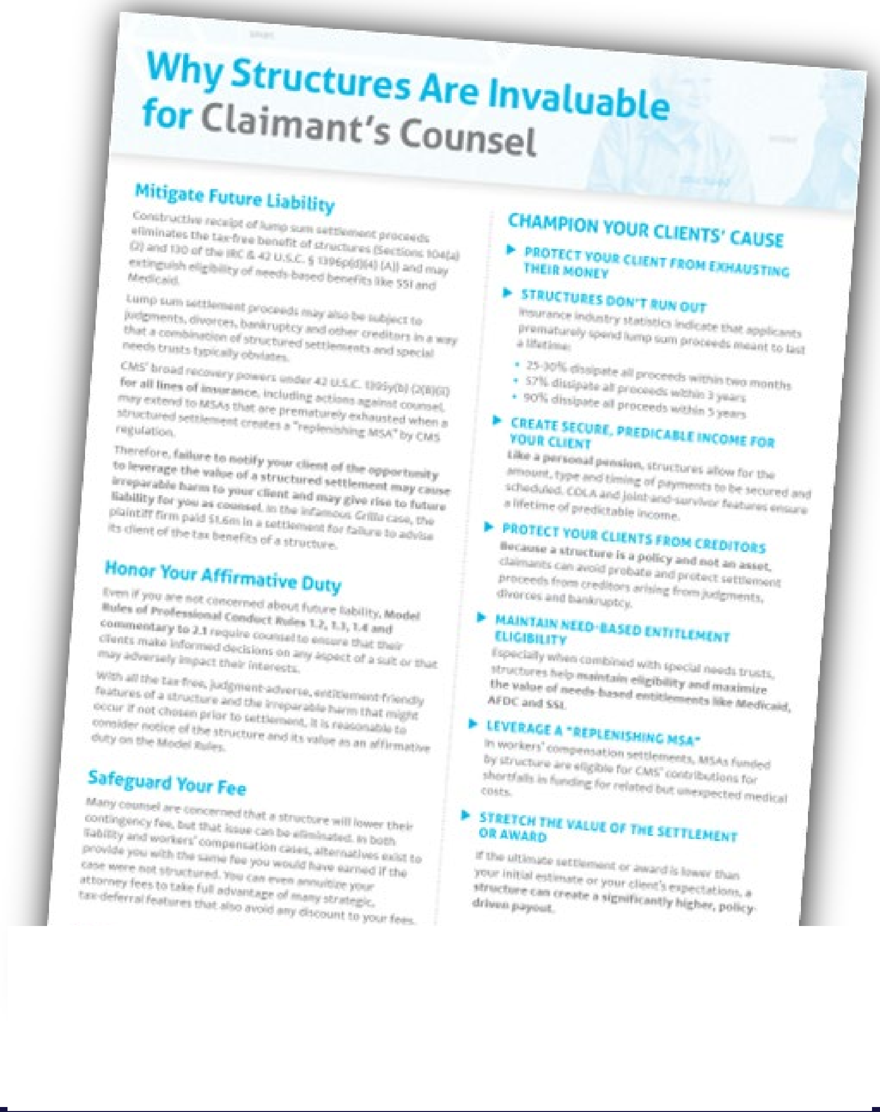
Listen to the Claimants

- Hear what they are telling you.
- Examine deposition for clues.
- Talk to their attorney about family & financials.

NEGOTIATION STRATEGIES USING STRUCTURES

Educate & Negotiate

- **NEVER ask plaintiff's counsel if they are interested in a structure - the answer will usually be NO!**
- They only want to negotiate with cash (& calculate fees).
- They are uncomfortable explaining structures to their clients & do not always grasp the advantages.
- Customized Annuity designs may appeal to the claimant at a lower cost than counsel wants to settle.
- If your settlement offer includes a structure - plaintiff counsel MUST share it with the claimant.



Why Structures Are Invaluable for Claimant's Counsel

Mitigate Future Liability

Constructive receipt of lump sum settlement proceeds eliminates the tax-free benefit of structures (Sections 104(a)(2) and 130 of the IRC & 42 U.S.C. § 1396p(d)(4)(A)) and may extinguish eligibility of needs-based benefits like SSI and Medicaid.

Lump sum settlement proceeds may also be subject to judgments, divorces, bankruptcy and other creditors in a way that a combination of structured settlements and special needs trusts typically obviates.

CMS' broad recovery powers under 42 U.S.C. 1395y(b)(2)(B)(ii) **for all lines of insurance**, including actions against counsel, may extend to MSAs that are prematurely exhausted when a structured settlement creates a "replenishing MSA" by CMS regulation.

Therefore, **failure to notify your client of the opportunity to leverage the value of a structured settlement may cause irreparable harm to your client and may give rise to future liability for you as counsel.** In the infamous Grillo case, the plaintiff firm paid $1.6m in a settlement for failure to advise its client of the tax benefits of a structure.

Honor Your Affirmative Duty

Even if you are not concerned about future liability, **Model Rules of Professional Conduct Rules 1.2, 1.3, 1.4 and commentary to 2.1** require counsel to ensure that their clients make informed decisions on any aspect of a suit or that may adversely impact their interests.

With all the tax-free, judgment-adverse, entitlement-friendly features of a structure and the irreparable harm that might occur if not chosen prior to settlement, it is reasonable to consider notice of the structure and its value as an affirmative duty on the Model Rules.

Safeguard Your Fee

Many counsel are concerned that a structure will lower their contingency fee, but that issue can be eliminated. In both liability and workers' compensation cases, alternatives exist to provide you with the same fee you would have earned if the case were not structured. You can even annuitize your attorney fees to take full advantage of many strategic, tax-deferral features that also avoid any discount to your fees.

CHAMPION YOUR CLIENTS' CAUSE

- **PROTECT YOUR CLIENT FROM EXHAUSTING THEIR MONEY**
- **STRUCTURES DON'T RUN OUT**
  Insurance industry statistics indicate that applicants prematurely spend lump sum proceeds meant to last a lifetime:
  - 25-30% dissipate all proceeds within two months
  - 57% dissipate all proceeds within 3 years
  - 90% dissipate all proceeds within 5 years
- **CREATE SECURE, PREDICABLE INCOME FOR YOUR CLIENT**
  Like a personal pension, structures allow for the amount, type and timing of payments to be secured and scheduled. COLA and joint-and-survivor features ensure a lifetime of predictable income.
- **PROTECT YOUR CLIENTS FROM CREDITORS**
  Because a structure is a policy and not an asset, claimants can avoid probate and protect settlement proceeds from creditors arising from judgments, divorces and bankruptcy.
- **MAINTAIN NEED-BASED ENTITLEMENT ELIGIBILITY**
  Especially when combined with special needs trusts, structures help **maintain eligibility and maximize the value of needs-based entitlements like Medicaid, AFDC and SSI.**
- **LEVERAGE A "REPLENISHING MSA"**
  In workers' compensation settlements, MSAs funded by structure are eligible for CMS' contributions for shortfalls in funding for related but unexpected medical costs.
- **STRETCH THE VALUE OF THE SETTLEMENT OR AWARD**
  If the ultimate settlement or award is lower than your initial estimate or your client's expectations, a **structure can create a significantly higher, policy-driven payout.**

ANSWERING OBJECTIONS…

- We’re not interested in a structure.
- **I only negotiate with cash; we’ll talk structures later after we’ve settled.**
- It’s too complicated.
- **I have my own structure broker .**
- I just want all the cash.
- My client can do better investing on his own.
- I referred my client to a financial planner.
- My client is too old for a structure.
- **Interest rates are too low.**

HOW A STRUCTURE HELPS THE CLAIMS EXAMINER

- **CREATES SAVINGS.** Provide every penny in future needs at **38% average savings on future medical, wage replacement & other damages.**

- **CLOSES MORE CLAIMS FOR LESS. Bridge the settlement gap in negotiations. Bring value no one else can provide. Add a free settlement expert too.**

- **MAKES A POSITIVE DIFFERENCE.** Help create a better future for injured worker/plaintiff. **Do well by doing good.**

EXAMPLES

An MSA

A Cat Claim

*** Structures take large sums of money and make them SMALL and also take small sums of money and make the LARGE ***

EXAMPLE 1

STRUCTURING THE MSA

Total MSA allocation = $198,000

Initial seed deposit = **$60,000**

CMS often requires the seed to include:

•first surgery amount,

•plus two years of annual medical expenses.

Claim Background Injured Worker

•58-year-old truck driver

•Lumbar fusion surgery

•Chronic pain management

•Future injections, medications, and possible revision surgery

•Medicare eligible within 30 month

Structured Settlement Quote	**Cost**
Seed deposit	$60,000
Annuity purchase cost	$72,000
Total carrier cost	$132,000
Total Benefit received by Injured Worker	**$198, 000**

***Summary** – showcases the power behind structured MSAs

CMS Sees:

"$198,000 fully funded."

Carrier/TPA/Employer Sees:

"We closed the claim for $132,000. – **A savings of $66,000!!**

Worker Sees:

"Guaranteed future medical protection."

Structures & Professional Administration go together like Peanut Butter & Jelly!!

EXAMPLES…

CAT CLAIM

Claim Summary - Demand: $6 million

- Catastrophic Manufacturing Amputation
- 31-year-old factory worker
- Partial dominant-hand amputation
- Multiple reconstructive surgeries
- Permanent inability to return to trade work

Structured Settlement Design

Cash lump sum	$350,000
Monthly lifetime income	$8,000/month guaranteed life
Prosthetic replacement fund	$80,000 every 7 years
Home modification fund	$100,000
Age 55 retirement payment	$500,000
Age 65 retirement payment	$750,000

Carrier Funding Cost: Approximately **$2.8M**

Estimated Lifetime Payout: Potentially **$6M+**

Strategic Purpose: This structure addressed:

- lifetime wage loss
- inflation concerns
- future prosthetics
- and retirement replacement.

* Because the worker was so young, lifetime exposure drove the settlement value dramatically upward. PV & using a rated age drastically decreased the cost to settle.

QUESTIONS

THANK YOU