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Summer School

Many of my long-time clients and readers know that I am part of an extensive family comprised of many in-laws and many more nieces and nephews. One dear nephew, now a highly successful and wonderful father of two, had difficulty getting through high school. His grades were never anything to brag about, he resisted attempts at tutoring or any other academic help. With this as well-known background, one brother-in-law proclaimed at a family cookout “Hey Andy (name changed to protect me)! I had no idea you loved school so much!” To which Andy grumbled back: “What the heck are you talking about?” Thus teeing up the Uncle’s punchline: “I figured you must love it as you always go to summer school.” Result: hilarity and epic food fight.

The reason I mention this is that recently we have been noticing some rather basic errors being made by some structure brokers and the attorneys they work with. To someone not familiar with the intricacies of the structure transaction, it *looks* straightforward and simple. While we strive to keep things as simple as possible, there are detailed aspects that must be adhered to otherwise trouble is sure to follow. So, in honor of my nephew “Andy” let’s commence “Structured Settlement Summer School.” The syllabus is as follows:

- A structured settlement provides an injured plaintiff with guaranteed tax-free future payments increased by investment earnings for some set period of time or for the life of the plaintiff.
- The payments must be “fixed and determinable”¹ at the time of the settlement, meaning the future payments must be articulated and contained in the controlling closing documents (settlement agreement and release, court orders, and the like).
- All parties to the settlement must agree to and sign off on these terms: the amount, timing, date, and duration of the future payments. The institution agreeing contractually to make the future payments, their value/cost of the future payments and the terms under which these payments shall be funded by the defense.
- Funding of settlement annuities must come from a settling defendant or defendants, and not from a plaintiff attorney’s escrow account. Failure to do so risks the plaintiff being determined to be in constructive receipt of the settlement proceeds, thereby eliminating the ability of the plaintiff to receive tax-free future payments.²
- The language used to establish a traditional tax-free structured settlement, though

¹ Internal Revenue Code Section 104(a)(2)

² https://en.wikipedia.org/wiki/Constructive_receipt

standardized, must be drafted with great care. All parties must have the opportunity to review, and approve of said language before anything is submitted to the court for approval and implementation.

- Each structure brokers' duty is to their respective client; the first best use of their expertise is to carefully guide the transaction to resolution while balancing the above requirements with their clients' policies and procedures.

Whether via attempts at expediency, through negligence, or subterfuge, we have been seeing substandard work brought into cases by parties to remain nameless that at times has brought the process of bringing the case to a conclusion to a screeching halt. In these cases, everyone and I mean everyone gets upset and after all the yelling dies down the mistakes must still be corrected.

It is for these reasons that I urge everyone involved in a structure transaction to take a beat, remember the basics, and be sure to get things right. I offer my expertise along with the dedicated staff of JMW Settlements to guide all referred cases to an amicable – and correct – resolution.

Do you have a case that calls for a structured settlement? Would you like to see that things are done right the first time? Contact Frank C. Kilcoyne, CSSC at Frank.Kilcoyne@jmwsettlements.com or call 800-544-5533. I am here to help.