

Structured Settlements and the American Justice System

By William T. Robinson III

After 40 years practicing civil litigation, I can look back on many memorable cases. But the one that stands out more than any other involves a young mother in her early 30s who was the daughter of one of my oldest and closest friends. A lab technician misread her pap smear slide and that oversight was not detected until her cancer had spread. Treatment was futile. This young mother's prognosis was fatal.

I took her case against the national lab company and during settlement negotiations, what impressed me most was the concern that she and her husband had for the security and education of their two sons. That was their clear focus. She told me in confidence that she did not want to go to trial because that would leave things unresolved. She did not want to go to her grave without the knowledge that her sons would be financially secure.

That is why I brought in a structured settlement professional. He listened to her and also talked with her husband. He analyzed likely college education costs when the sons were supposed to graduate high school. He and I worked together not only on an appropriate settlement amount but also how to tailor those future payments so the children would gain the most benefit.

Probably the happiest day this young woman had in the months before she died was when that consultant and I presented the results of our efforts. In the end, her structured settlement ensured that her sons could be educated at any college in the country, with guaranteed payments beyond that to fund graduate schools.

For me, that case captures the essence of what structured settlements and structured settlement professionals do every day. When you have spent as much time at settlement conferences as I have, you realize that to a surprising extent, the focus often goes far beyond the initial settlement offer. It is about injured persons who have understandable anxieties about the future and who rely on their lawyers for guidance to help make their future secure.

I have believed for many years that the structured settlement is an important tool of negotiation. Actually, I would go further and suggest that trying to resolve a case involving injuries of any seriousness almost requires a structured settlement. I wouldn't go so far as to call it malpractice not to include a structured settlement, but it certainly would not be effective negotiating.

This advice about including structured settlements applies to both plaintiff and defense attorneys. Increasingly, it is the norm to have structured settlement professionals on both sides in a case. The reason, I think, is that attorneys are coming to understand the value of negotiations that include the time-value of tax-exempt payments. When you have a good structured settlement professional as part of your team, you have someone whose knowledge is right up there with us as lawyers, shoulder to shoulder.

That is generally because once the liability issue is resolved, the arguments about the value of a lost life or lost limb is generally very unpleasant and distasteful. But if the lawyer can move the negotiation to how those injuries or limitations can be dealt with going forward, he or she will put

the dialogue on a much better, more productive level. A structured settlement professional can help do that.

Justice Delayed?

No discussion of negotiated settlements would be complete without a warning about a larger issue. We have an emerging crisis that should be important to anyone concerned for the scales of justice. Here is a shocking fact from the National Center for State Courts: not a single one of our state court systems is funded with more than three percent of its state operating budget on an annual basis. Three percent for the third and co-equal branch of government! Eighteen states allocate less than one percent of their operating budget. This is a distressing situation and as president of the American Bar Association, I intend to do my best to change this during the coming year.

Look at some specifics: the great State of Georgia allocates only .78 percent of its entire state budget to the court system, including the entire prosecutorial system. New Hampshire Chief Justice John Broderick testified to the ABA that he closed New Hampshire's courts for a year for civil jury trials because there wasn't enough budget.

In the great State of Alabama, Chief Justice Sue Bell Cobb announced in May that state courts would be closed every Friday for the foreseeable future due to lack of funding. In New York, Governor Cuomo has just pushed through a budget reducing the allocation of funds to the state courts \$178 million. That has resulted in the discharge of more than 400 court personnel.

Our state courts are at the foundation of our constitutional democracy. The American public has to be heard on this tragedy. If there is no trial, there will be no verdict and likely no mediation. The injured party has no relief and the defendant loses the opportunity to be vindicated.

Judges do not have lobbyists. They cannot lobby legislators. Nobody speaks up for the courts so it is up to lawyers to meet this challenge. This is our responsibility as professionals to the American public.

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