

# Property Casualty 360

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## The Perks of Leveraging Structured Settlements In Claims

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*Editor's Note: The following article has been contributed by Brian M. Farrell, the former Director of Litigation Management for Aetna. Now retired, Farrell spent more than 44 years in the claims profession.*

Over the years, claims handling has undergone significant transformation. Specialization by line of business, regionalization of claims operation centers, and a far greater reliance on technology are just a few of the changes we in the claims world have experienced. The typical claims adjuster role today is geared to working at a desk and successfully leveraging technology. In the past, there were considerably more claims field office locations, with adjusters

spending significantly more time out of the office conducting all facets of claims handling face to face.

Unfortunately, as our world evolves, many claims professionals may not be taking advantage of time-tested tools used in the loss resolution process. This is especially true as it concerns the use of structured settlements. About a year ago, I was briefing the head of claims at a major casualty company concerning a high-value case on which I was brought on to review. As part of the settlement strategy, I recommended starting the negotiation with a combination of cash and a structured settlement.

“What’s a structured settlement?” he replied.

### **Why Incorporate Structured Settlements?**

There are several reasons for claims departments to incorporate structured settlements. Let’s start with reserving. Early involvement of a structured settlement consultant in the claims resolution process can assist the claims professional in his or her exposure analysis in order to establish accurate case reserves.

Underwriters and actuaries rely on claims to establish case reserves as timely and as accurately as possible. Poor reserving practices can lead to premiums that are too high or too low for a specific line or an entire book of business.

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This is a serious problem that directly impacts a casualty company's bottom-line profitability and ability to compete with other carriers.

### **Structured Settlement Consultants**

Accurate reserving is especially important for larger cases because these high exposure cases have more influence on premium pricing than do the smaller cases. During my 8 years as head of the Travelers' Major Claims department, I supervised more than 250 claims professionals. Approximately 80 percent of Travelers claim indemnity spend was on about 20 percent of our cases handled in the Major Case Unit. It is critical that the claims professional, using all the resources available, as accurately as possible, estimate the company's ultimate financial exposure on these high-exposure claims.

Structured settlement consultants are experts at understanding future medical and living costs, and can help with the damage evaluation. They can help claims professionals establish more accurate claims reserves through the pricing of future medical costs, by providing cost estimates of wage replacement while assisting with the coordination of public assistance benefits that may be at risk through a claims settlement. The structured settlement consultant can help align the costs to fund claims for future damages with future dollars.

In addition to timely and accurate indemnity reserving, there are also benefits in minimizing legal expense with the timely recognition of a case's value and, in many instances, settlement negotiations conducted sooner to thereby reduce discovery costs.

Another significant value a structured settlement consultant can provide is a rated age, or sub-standard age rating. Using a rated age can help to produce a benefit stream to reflect the future costs of medicals and wages at a cost we cannot provide otherwise.

Claims departments need a reminder. Structured settlement consultants are a no-cost resource that your claims team needs to leverage. What other expert is available to you at no cost? These consultants, who are paid a commission from the life insurance company that issues the structured annuity, offer expertise in quantifying damages and developing negotiation strategies. They can also handle the settlement paperwork.

### **When To Consider 'Structure'**

"What types of cases are best-suited for structured settlements?" is a question that inevitably arises. One answer is cases involving minors and those with brain damage. These are obvious ones, because the court may insist on a structured settlement as a condition of the settlement.

Beyond that, a claims professional should look at a structured settlement when confronted with a case where the demand includes future damages. In addition, claims should focus on cases involving total disability or when a future payout is likely to be greater than \$500,000. We should include that structures are utilized on cases of all sizes, with structures as low as \$15,000.

### **Application In Workers' Comp Cases**

Nowhere in claims is a structured settlement a more obvious win-win negotiating tool than with workers' compensation losses. Start with the nature of most states' workers' compensation systems. Typically, an insurer does not have to settle and can elect to pay the claim as mandated by statute and schedules that may

or may not fit the needs of the workers' compensation claimant. That said, most workers' compensation carriers prefer to settle claims. Capping medical inflation and the future unknown clearly carries a benefit for the carrier. Structured settlements provide a flexible tool to settle such claims.

Today, liability and workers' compensation carriers are required to report certain damage payments to Medicare, which does not allow a settlement that shifts future medical costs from a defendant or its insurer to Medicare or to the taxpayer.

Medicare's interests must be protected in any settlement involving a qualified Medicare beneficiary. The Medicare Set-Aside (MSA) is an insurance industry accepted and Medicare's recommended method to protect Medicare's interests and allow settlement of workers' compensation claims. I have also seen use of Set-Aside's used in the settlement of certain liability claims involving future medicals.

Here's the lesson for claims department: By using a structured settlement to fund the MSAs, you meet your obligation to Medicare and free reserves to use in other parts of the settlement, such as non-Medicare-covered medical expenses which are often roadblocks to settlement.

Let's say you have a reserve set on a claim for \$400,000. You consult with a Medicare specialist, who says that \$125,000 cash will be needed for an MSA. That effectively leaves \$275,000 to negotiate a settlement. If you structure the MSA, then the amount needed to protect Medicare could be as much as 40 percent less than cash or only \$75,000 (cash seed and annuity premium). So, instead of having \$275,000 to settle the claim, you now have \$50,000 more, which could mean the difference between settling a claim or not.

Finally, structures bring back creativity to the negotiating table. Most experienced claims professional know that providing a settlement offer that includes cash plus future annuity payments that protects the future needs of the claimant with guaranteed payments at the time those payments are needed is the best outcome of any claim and for all parties.

Cash plus a structured settlement designed by a structured settlement consultant leverages the claim professional's settlement autonomy, providing far greater flexibility and appeal than a lump sum cash offer. Structures can include a guaranteed payment period or a "second to die" option to help a spouse or child.

### **A Vital Reminder**

*We use structured settlements in our claim process because we believe that it's a massively valuable tool. It helps us get what every claims person cherishes: a closed file at the right price, where you feel good about the work you did and you've got an outcome that you think is right.*

That comes from a recent speech about claims operations delivered by Richard Woollams, Chief Claims Officer at AIG Commercial Insurance. Woollams' comments raise an important point about how to view structured settlements, namely that they are not just another financial investment.

A structured settlement is not designed to make the claimant rich. It is, however, designed to address the claimant's specific needs through tailored, tax-free income. The funding annuity is held by a well-capitalized, regulated institution and payments are backed by state guaranty associations (up to certain limits). Changes in the stock market are not going to affect a person's payment stream.

For the casualty company, the structured settlement offers the prospect of more accurate reserve allocations and ultimately the ability to move liabilities off our books. It also shows evidence of bargaining in good faith, a crucial legal standard in many states.

Faster case closure. Greater efficiency. Fewer reserve problems. Better legal protections. These are some of the many reasons why I have pushed structured settlements in claim work for more than four decades.

*Brian M. Farrell has spent more than 44 years in the insurance claims profession. He is formerly the Director of Litigation Management for Aetna and Vice President, Major Case Unit for Liability, Workers Compensation & Property Claims at Travelers.*

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