

Mitigating Damages in Hospitality Litigation Through Technical Uses of Structured Settlements

Where some degree of liability exists and the emphasis is on containing damages, risk managers, defense attorneys and structured settlement consultants working together, can develop litigation and negotiation strategies to mitigate damages.

- In Bodily Injury Litigation
 - Structured Settlements Used to Analyze and Annuitize Cost of Life Care Plans
 - Replicate Future Lost Wages on an After Tax Basis
 - Pay for future medical care
 - In Mediations or Settlement Discussions, shift focus on tangible elements of Special Damages as opposed to positional bargaining
- In Employment Litigation (Wrongful Termination)
 - Unlike personal injury, where awards are non-taxable, awards for employment discrimination are taxable as income.
 - While these cases do not qualify for tax free future periodic payments, under IRC Sec. 130, non qualified annuities can be used by the defense to pay claimant future periodic payments
 - Rather than being taxed (both State and Federal) on the entire award in the year of settlement, defense can place a portion of settlement proceeds into a non qualified annuity, allowing full amount to earn interest and taxation only in the year it is paid to claimant.
 - Because of the obvious benefit to claimant (which can only be conferred by defendants), this can be used in negotiations resulting in saving to defense

- Workers Compensation cases
 - An employer or carrier can reduce long term financial exposure on serious injury claims.
 - Can set up a separate medical account funded by structured annuities to address employees future care
 - Transfers mortality and investment risk for long term claims to the life company
 - reinsurance cases, can reduce the carrier's reserves on long term retained claims
 - Can reduce the cost, by as much as 30%-50%, of funding Medicare Set-Aside obligations