



## Structured Settlement Approved Lists:

Why They Are Bad for the Plaintiff and Plaintiff Attorney, and  
What Can Be Done To Protect Your Client

Hello everyone, Jack Meligan here, President of Settlement Professionals. I want to talk today about **approve lists and why approve lists, as promoted by casualty companies in the settlement of cases involving structured settlements, are a very bad deal for the plaintiff** and by extension the plaintiff attorney.

There are two types of approved lists that you need to be aware of.

The first approved list is an *approved list of annuity brokers*. With this approved list, the casualty company has an approved list of defense oriented annuity brokers that they will work with and allow the plaintiff to work with.

The second type of approved list is an *annuity issuer approved list*. In essence it is the insurance companies that the casualty company defendant will let the plaintiff pick from when it is time to pick a company to fund their annuity payments.

Let me cover the first one...

### Approved List of Brokers

The **approved list of brokers** is bad for you and your client, because it sets up a situation where the defense broker has perhaps an exclusive arrangement, or to make the approved list with the casualty company, has had to agree to help push that casualty companies agenda.

- What agenda is that?

Casualty companies like to try to turn this into a profit center if they can. As a structured settlement works its way through a case, the casualty company would like to find some way to benefit from that.

- How do they benefit?

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It could be a ***direct kick-back or rebate***, which is legal in California and Florida I believe as long as the defense broker is offering the same rebate to all of his clients.

The other way they can benefit is if they have an internal program that says, “*We have a wholly owned, affiliated, life insurance company that issues annuities and we want the claimant to place their structured settlement annuity with our wholly owned affiliate or a very limited list of other carriers.*”

I’ll give you some examples shortly, but going back to the approved list of brokers, when a defense-oriented structured settlement broker has agreed to represent the casualty company’s interests, he’s agreed to their agenda whatever it may be. If their agenda includes a rebate or kick-back, whether disclosed or not, the broker is essentially agreeing to that agenda.

Many of you that work with me know that I’m big on getting the defense brokers, that I’m asked to work with in putting a structure together for a client, to ***disclose to us whether there is a rebate or kick-back.***

- Why do I think that’s important?

Because no one likes to give money away and I don’t think these defense brokers are any different than I am. They don’t like the fact that they’ve got to give a percentage of their earnings off the placement of the funding vehicles in one of these cases to a casualty company. I think it sets up a situation potentially for a defense broker to look for a way that he can get that rebate or kick-back back to his client without it coming out of his commission.

- How can he do that?

He might be able to do it by creating a savings on the annuity through an ***interest rate arbitrage***. In other words, committing the annuity with the personal injury claimant before they’ve actually locked in the price, and in the interim of time that occurs between the date the plaintiff agrees to a set of payments and the dates that this other agreement is executed, there might be interest rate changes.

If there are interest rate changes that are interest rate improvements, which would lower the cost of the annuity... meaning instead of requesting \$100,000 or \$1,000,000 to fund an annuity package, maybe the defense broker only needs to request \$90,000, \$900,000 or \$950,000.

Those are probably extreme examples, but you get the picture.

I’m maintaining that it is possible that the defense broker could point to that savings to the client and say, “*there’s your rebate or kick-back*”.

We maintain at SPI that those types of savings should adhere to the ***benefit of the injured party***. After all, the tax code that creates this exemption for these payments doesn’t mention casualty companies. It mentions us, the taxpayers.

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When we get injured we get an exemption from income for these payments, and I believe rightfully so it should benefit the injured party.

### Approved Annuity Company Lists

With regard to the issue of approved annuity company lists, the problem with this is it is a violation of all our constitutional right to freedom of choice.

I'm a big constitutionalist, which some of you know. I happen to think it is a great document and we should listen to the founding fathers and their wisdom. They believed in freedom of choice, which is one of the founding planks of the United States of America.

I think these approved lists deny claimants the freedom of choice, the freedom to choose the company that will be responsible to them for their payments in the future.

- How does the approved list do that?

*The approved list seeks to limit the personal injury victim's choices.* Let me give you some examples. I'm going to go ahead and name names there's no reason to hide them.

#### Example #1: Hartford Casualty

In the case of **Hartford Casualty**, Hartford seeks to make sure that the plaintiff's **only choice** is the choice of Hartford Life Insurance Company. I have nothing against Hartford Life Insurance Company. I think they're a great company. They have good ratings. They are very solid and have been around for a long time. They are definitely one of the companies, when we've included an annuity as the foundation of a settlement plan; they are one of the companies we go to for bids on the plaintiff's package.

What I object to is Hartford Casualty saying to a client of mine, you will use Hartford Life and you will use **only** Hartford Life... or you will take cash or see you in court.

*That is a denial of the plaintiff's right to choose.*

The other problem with that extreme example is that it *denies the claimant the ability to diversify the risk* by picking two or more companies to split up and divide their annuity benefits so they have some diversification.

That's called *observation of the prudent man rule*. A prudent man does not put all of his eggs in one basket, no matter how gold plated.

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So that is an issue with the approved list of annuity companies that you are going to run into out there, and an extreme one. Hartford is a company that is very aggressive about pushing the annuity business to their wholly owned life insurance affiliate, Hartford Life.

They're certainly not the only one, there are others out there...

### Example #2: AIG

AIG is another example. American International Group, a company with at last count somewhere between 90-100 insurance companies in their fleet. Certainly, if they are not the biggest, they must be one of the biggest insurance conglomerates in the entire world... and the biggest in the United States.

AIG's program is lined out so they have an approved list of only four other annuity issuers who they have (I believe) *hand-selected*. This allows them the best opportunity to have their own company, which is American General (the big Texas company with excellent ratings and excellent people) win the bid and issue the annuity.

I have no problem with American General Life. They are somebody we have seen win a lot of bids on structured annuities in our client's settlement plans. We have no problem with that; they are an excellent company.

Again, the problem we see is that the client is limited to the choice of only AIG, Allstate, New York Life, Hartford and Pacific Life... In addition, AIG is sometimes given what's called a '*right of last refusal*' where American General can come in and meet or beat the best quote to presumably take the entire annuity and write it all with themselves.

There is a buzz concept in the casualty industry called '*asset retention*'. These casualty companies and the fleets they are a part of, want to retain assets. If they can switch pockets from one company in the fleet to the other (from the casualty company to the life company) they have maintained almost *no net change to the financial statement of the conglomerate*.

So yes, they have a vested interest in trying to force the claimant to use their life company by saying this will be the only company to use.

*Those are some of the reasons why approved lists are bad for plaintiff's.*

**For a discussion of strategies to defeat approved lists,  
please call me at 800-666-5584**

## Approved Lists

### How do you become aware of an improved list when settling a case?

You're usually not going to hear about it at the mediation, or at the time of settlement, *unless you press the casualty company for that information.*

➤ When does it become exposed?

An approved list becomes exposed when you come to someone like me and say, "*Jack, we've settled this case and as part of the negotiation the defendant has their own structured settlement broker and, even though you're the settlement planner for our client, it was agreed at mediation that we would have our expert work with their expert and we need you to talk to the other side's expert.*"

My response is, "*Fine I'll do that, were there any other conditions presented at the time of settlement with regard to this particular issue?*"

Often times attorneys will respond that there are not, because they are unaware of these roadblocks.

I will go ahead contact the defense broker and ask him for some disclosures.

I *ask him if there's a rebate or kick-back arrangement* contractual between him, his company, or any affiliate to the casualty company, or any affiliate.

I want that disclosure so I can disclose it back to you and your client.

I also want to *ask if there is an approved list*. Are we limited in our choices out there? If our client decides they want to take advantage of a structured settlement annuity as part of their settlement plan are we limited in the companies that we can go out and solicit bids from on behalf of our client?

Part of our process is, not only to solicit those bids, but to try to work the market and these companies so we *get the best possible deal for the client* with the highest rated companies. It is essential to work them against each other and have them engage in a bidding process for the business. That is part of what we do here. So we want to know if there's a limitation.

It is amazing to me that at the mediation the attorney is told it is as simple as having me, the plaintiff's settlement planning expert, work with the defendant's structured settlement broker.

Then I talk to the defendant's structured settlement broker and the real truth comes out.

There may be a rebate, although it is becoming less frequent where we actually run into that. They are largely going by the wayside, which is a good thing, but it is still an important question we need to ask.

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More importantly, what we still run into are these approved lists.

I would maintain if the defendant *did not reveal the existence of a limited approved list* of annuity issuers that the claimant could access if they desired a structured settlement, that is a *material condition of settlement*.

To reveal it afterwards is tantamount to re-opening the negotiations on your case. If you would have known there was going to be a limitation (since that was a condition they wanted to place on the settlement) the plaintiff perhaps would have asked for something in exchange.

*For example*, maybe the plaintiff should receive more money since their choices are being limited.

However, if the disclosure happens after the mediation, and settlement has essentially been agreed to, the claimant has been denied the opportunity to ask for more money.

Many plaintiff attorneys believe that this is an attempt to re-open the negotiations and they flatly suggest to the defendant that it is not going to happen.

The negotiations are final. There will be no limitation. What often ensues is disagreement, argument, and sometimes even litigation over the issue.

### **The way around all of this is simple**

*First*, you need to get these disclosures at the time of settlement,

How do we do that?

We maintain that your best strategy always is to **negotiate on the basis of the dollar amount that will settle the case**. That is the way plaintiff attorneys have negotiated cases for years and that is the way they often like to negotiate them.

*At that final offer for the defendant*, before you accept it is when you want to *turn the acceptance into a vehicle* for getting all of your conditions and your client's conditions on the table... and hopefully getting the defendant to come up with their conditions at the same time.

*That final offer should be accepted in a format* that should say something to the affect that, "The plaintiff agrees to sign for a combination of cash plus future periodic payments (if any) details to follow within 14, 30 days" (or some other arbitrary number) "All of which will cost the defendant's (x) dollars, the agreed upon settlement amount."

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**Further**, that statement should say, “*The plaintiff has their own structured settlement or settlement planner, which will be the settlement planner that represents the plaintiff, and the only individual that will represent the plaintiff. There will be no limitations on the companies the claimant can access for bids on their package if they should decide they need a structure.*”

*If they decide they need a structure, the defendant casualty company agrees to execute any and all documents to effectuate that settlement.”*

(Please contact me for the exact wording for your client’s case)

**This should be in writing** in a mediation memorandum, settlement statement, or even a letter. It is best if it happens right at the mediation and everybody signs onto it right there.

**In addition**, we have suggested a couple of other conditions, including one that says, “*If the claimant dies before the settlement agreement is executed, the settlement is final, the defendants are not going to dispute it and they are going to pay the money anyway.*”

We call this our *stipulation of settlement* clause work.

Of course the phrases above are generic examples, so be sure to contact us for the exact clause work to insert.

We have all of this clause work here in digital format and I can email it to you if you would like to have a copy of it for reference or use in a case. My email address is [Meligan@settlepro.com](mailto:Meligan@settlepro.com).

We would be happy to supply it to you and help you implement it.

It is a great strategy and a great way to get all of this out in the open so it can be ***negotiated at the time of settlement***, and ***not become an obstacle to settlement later***.

That is it for today.

That is why approved lists are a bad thing for plaintiff’s and the plaintiff attorney. In addition, you now have a strategy to work around this situation and turn lemons into lemonade.

## Approved Lists

For more information on approved lists and other roadblocks that may occur during the financial aspects of the settlement, feel free to contact me anytime at:

800-666-5584

or

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