

# EAST FACTS

#99-04

## Structured Settlement Issues for Plaintiffs

### Fireman's Fund Structured Settlement Profit Center

If you have ever been involved in a claim settlement with "the Fund" and wondered why they fought so hard to control the placement of the funding vehicle for your client's structured settlement payments, you may want to read this.

Several years ago, Fireman's Fund instituted its own structured settlement program, and here's how it works. The Fund has a list of "approved brokers;" that is, structured settlement brokers who have agreed to certain terms in exchange for being allowed access to Fireman's Fund claim files, and, presumably, the opportunity to implement (sell) annuities:

- 1) The approved broker can quote only Fireman's Fund's "approved" list of annuity carriers, comprised of the following: AllLife (AIG), Aegon, Allstate, Berkshire Hathaway (not really active at this time), CNA, GE Capital, Hartford, Metropolitan, and New York Life. Once the approved broker has quoted a proposal from the approved annuity carrier, Fireman's Fund has reserved the right to "meet or beat" the proposal by self-funding your client's future payments directly from its casualty company coffers.
- 2) If Fireman's Fund keeps the future payment obligation by paying it out of its casualty company's checkbook (we'll call it the "direct obligation product"), the approved broker is paid a 3 percent commission by the Fund. If Fireman's Fund allows its approved broker to place the future payment obligation with one of the approved annuity carriers, the approved broker keeps 2.5 percent of the commission, and kicks back, or rebates, 1.5 percent to Fireman's Fund's wholly-owned subsidiary, the Structured Settlement Company.

There are several problems with Fireman's Fund's profit center as it relates to claimants and plaintiffs. First, the Fireman's Fund approved list of annuity carriers, currently numbering eight active companies, precludes your client from receiving market-competitive bids from the other, often more highly rated, 13 annuity carriers active in litigation annuities.

Second, it has weighted its rebate / kickback arrangement so as to give incentive to its "approved brokers" to sell the Fireman's Fund direct obligation product, which may (or may not) have property and casualty guaranty association coverage (there is no life and health guaranty since the Fund is not a life insurance company). In the event that Fireman's Fund develops problems in meeting payment obligations to your client, there may not be California Insurance Guarantee Association (CIGA) coverage available behind these obligations, as Fireman's Fund has represented in both written and oral communications. Correspondence between California Sen. Quentin Kopp and executives at CIGA, dated from July 7 to December 3, 1998, shows a multitude of questions regarding CIGA's coverage extending to the Fireman's Fund direct obligation product in the event of insolvency. This stands in stark contrast to the 50 state life and health guarantee associations potentially backstopping the 21 annuity carriers currently available to fund the future periodic payment streams of claimants willing to reject Fireman's Fund's clumsy attempt at self-enrichment.

Third, if your client accepts Fireman's Fund's direct obligation product for funding of their future periodic payments, they become a general creditor of Fireman's Fund. In any insolvency / conservatorship, priority in liquidation can be extensively litigated. Policyholders and secured creditors are given preference to general creditors. A security interest in the annuities is granted to claimants by the majority of the 21 annuity carriers available for litigation annuities.

And finally, at the time your client, and yourself, executes the settlement agreement, Fireman's Fund, its insured, its experts, assigns and agents (which includes its so-called "approved brokers"), are released from any and all liability if things don't work out as they have planned.

The question becomes, with regard to Fireman's Fund and its internally-funded direct obligation future payment product, "Why risk it?" Clearly, compared to the secured creditor status available from most annuity carriers, along with various corporate parent guarantees, keep well agreements, life and health association guarantees, as well as having their own structured settlement specialist with \$5 million of professional liability insurance, your client may be "exchanging a date with the prom queen for one with a pig in lipstick." At the very best, you are buying a "pig in a poke," since there are more questions than answers regarding the Fund's product.

If you would like assistance in developing strategies for taking control of the structured settlement process, contact us. We can help. Phone us at (800) 666-5584 or (503) 699-8929, or visit our website at [www.settlepro.com](http://www.settlepro.com). Questions? Comments? Suggestions for future topics? E-mail us at [meligan@settlepro.com](mailto:meligan@settlepro.com)



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### Structured Settlement Services for Plaintiffs

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