

# ***EAST*** ***FACTS***

#00-02

*Structured Settlement Issues for Plaintiffs*

## **Have you been B.A.P.'ed???** **STRUCTURED SETTLEMENT SHENANIGANS**

The Hartford is one of the oldest, most venerable insurance institutions in the U.S. They began business in 1810 as Hartford Fire Insurance Company. They enjoy high ratings from the “big 5” rating agencies and services. But, like several other insurance groups at the turn of this century, they are attempting to generate profit from their personal injury claim settlements, possibly at a detriment to the injured party, and their own insureds.

The Hartford has created a new, internal, structured settlement program. Their Broker Assisted Program, referred to as “B.A.P.,” requires that on any personal injury claim settlement involving future payments funded with Hartford claim dollars, the claimant/injured party must accept Hartford Life (or Hartford Life and Accident company) as the sole obligor for the future promised payments. Their profit comes two ways: One, from “switching pockets” with the money used to purchase the future payments through annuities provided by a Hartford Life company. Two, by having 25% of the commissions normally paid on such transactions, paid to a Hartford company, Secured Benefits Services (SBS).

Accepting Hartford’s demand to structure only through their captive life companies is a negative for the claimant in at least four ways:

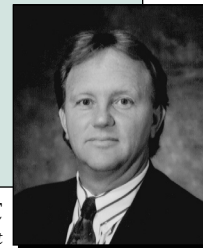
1. Your client is precluded from receiving possibly higher benefits from one of the twenty, or so, other companies that are eager to bid for their business. With market competition removed, Hartford Life does not have to compete with any of the other companies and their cost-cutting jumbo case discounts, daily rates, and rated ages.
2. Your client is denied the ability to diversify their risk by split-funding the future payments through two or more annuity carriers. The prudent man standard means that claimants should not place all of their eggs in any one basket.
3. Your client’s security may be reduced due to Hartford’s practice of having one of their property & casualty affiliates own their annuities. Neither The Hartford Life Insurance “Letter of Guarantee” nor Secured Creditor language in the assignment document are provided, removing two potential additional layers of protection for your client.
4. If Hartford’s demand comes with the additional condition that Hartford Life’s annuity will only be implemented by their chosen structured settlement broker, and that broker is released in the settlement agreement as an “agent” of the defendant and The Hartford, then your client (and ultimately their counsel) could be left holding the bag if there are problems with the construction of the settlement in the future.

Solution:

1. As a non-negotiable condition of settlement, tell The Hartford that your client must have their own structured settlement specialist, one that owes a fiduciary duty to them and not The Hartford.
2. As a non-negotiable condition of settlement, tell The Hartford that your client must be allowed full access to the entire annuity marketplace, through their specialist, so that competitive bidding may occur. Hartford can certainly be included in the bidding process, but not to the detriment of your client’s ability to diversify between as many companies as makes them comfortable.
3. If The Hartford refuses, consider asking the court to approve the establishment of a Qualified Settlement Trust to take the place of the defendants in the case. Once established, your client can then “settle out” with the Qualified Settlement Trust, and negotiate with a presumably less hostile entity for the benefits they need.

*Harry Fuehrer, Director of Structured Settlements for The Hartford, declined to be interviewed for this article. Details regarding The Hartford’s “B.A.P.” program were obtained from participating structured settlement brokers.*

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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