

How much does that structured settlement *really* cost the defense?

Macomber v. Travelers Property and Casualty Corp., 261 Conn. 620 (2002)

A recent decision from the Supreme Court of Connecticut could be laying the framework to eliminate “rebating schemes” from the structured settlement industry. These “rebating schemes” grew out of the relationships between defense brokers and casualty companies. In order to capture business referrals from casualty companies, many defense-loyal structured settlement firms proposed rebating part of their commissions back to the casualty company or the casualty company’s life affiliate.

In the instant case, the plaintiffs Lisa Macomber and Kathryn Huaman, acting as guardian for a minor claimant, settled their personal injury claims for a combination of immediate cash payments and future periodic payments (i.e. a structured settlement annuity). *Macomber*, 261 Conn at 620. In both cases, Travelers Casualty, through its agents, represented a specific cash cost to Travelers Casualty to purchase the annuities, which were to provide the future payments. *Id.* at 621. The plaintiffs alleged that the Travelers Casualty “*misrepresented the fundamental nature and terms of those settlements by failing to disclose that certain alleged rebating and short-changing schemes used by the defendants reduced the actual cost and true value of the annuities provided to the plaintiffs.*” *Id.*

The “rebating scheme” worked as follows: Travelers Casualty enlisted the services of an insurance broker to arrange the purchase, from a life insurance company, of annuities to meet the terms previously agreed upon between the claimants and Travelers Casualty. *Id.* at 625. After the annuities were purchased, the life insurance companies paid the insurance broker a commission. *Id.* The insurance broker then paid between 25% - 75% of the commission back to Travelers Casualty. *Id.* at 625. This “rebating scheme” was never disclosed to the plaintiffs. *Id.* “*In January, 1998, Travelers Casualty entered into a similar arrangement with Ringler Associates, and with Wells and Associates (currently known as EPS Settlements Group), both of whom are not parties to this action.*” *Id.*

In addition to the rebating scheme, the plaintiffs further alleged that Travelers Casualty frequently spent less on its purchase of annuities than agreed, by overstating the present net worth of the annuities. *Id.* Huaman’s specific allegation stated that Travelers Casualty paid Travelers Annuity \$6,569.51 instead of the represented \$6,667.00. *Id.* at 627. The Supreme Court referred to this course of conduct as the “short-changing scheme.” *Id.* at 625.

Plaintiffs’ lawsuit included 10 specific causes of action: (1) breach of the implied duty of good faith and fair dealing; (2) breach of fiduciary duty; (3) breach of contract (alleged against Travelers Casualty only); (4) violation of the Connecticut Unfair Trade Practices Act (CUTPA); (5) violation of the Connecticut Unfair Insurance Practices Act (CUIPA); (6) fraud; (7) negligent misrepresentation; (8) civil conspiracy; (9) conversion; and (10) unjust enrichment. *Id.* at 627.

The trial court dismissed all counts stating that the plaintiffs failed to assert a legally cognizable injury stating that “they have not suffered any damage because they received the exact amounts which they agreed to and expected to receive under the structured settlement agreements . . .” *Id.* at 628. In response to this statement, the Supreme Court of Connecticut pointed out that the trial court “failed to consider that the payment plan that the plaintiffs had agreed to ‘was induced by a representation as to its cost, and that the cost was not accurately reported to the plaintiffs in good faith.’” *Id.*

The only issue before the Supreme Court was whether the trial court properly determined that the plaintiffs failed to allege any cognizable damages as set forth in their complaint; not whether plaintiffs could prove their claims. *Id.* at 629. The Supreme Court reinstated counts 3, 4, 6, 7, 8 and 10, and remanded the case to the trial court for further proceedings according to law. *Id.* at 653.

In nearly every case involving litigation over the represented value of a structured settlement, there are two constants: 1) the plaintiffs or their counsel did not hire or consult with their own structured settlement planner; and, 2) the defense adamantly argues and the courts almost always agree that “*the defendants did not owe the plaintiffs a single duty of loyalty characteristic of the relationship that exists between a principal and his agent.*” *Id.* at 639, Fn12. With this in mind, why, after fighting with the defense on nearly every issue, countering their experts with your own, and avoiding conflicts throughout your representation, would you hand over your client to the defense when it comes to structuring the settlement?



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This Fast Facts only provides an overview of the potential benefits of structuring taxable damage settlements. Consult your CPA and your settlement planner before accepting a structured settlement. Rates may have changed since the drafting of this article.