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Eight States Take a Portion of Punitive Damages

Money goes to the state general fund.

- Utah
- Georgia

The money goes into a special fund.

- Oregon
- Iowa
- Missouri
- Indiana

Proposal for money to go to the state general fund.

- California

Leaves it up to the judge to determine what percentage of the punitives go to the plaintiff, the attorneys and the state department of human services.

- Illinois

Had a statute but let it expire.

- Florida
- Kansas
- New York

Settlement News

Settlement News

Summer 2004

Structured Settlement Regs Issued by IRS

The IRS has issued final regs explaining how to report and pay the 40% excise tax imposed on purchasers who acquire structured settlements.

Under the regs, an excise tax return must be filed and the tax must be paid on or before the 90th day following the day the taxpayer receives structured settlement payment rights.

The regs give the IRS the authority to extend payment dates. They do not, however, address methods of determining the proper amount of

excise tax.

The regs reflect additions and changes to the Tax code made under the "Victims of Terrorism Tax Relief Act of 2001," Public Law 107-134.

Under that law, an injured party may receive the right to a stream of structured settlement payments as compensation for physical injuries or sickness or as workers' compensation. The party could then sell that right to the payments to a "factoring" company in exchange for a discounted lump sum payment. The factoring company is

then subject to excise tax.

The excise tax shall not apply if the transfer of structured settlement payments is approved in advance in a qualified order.

A number of states have passed Structured Settlement Protection Acts which generally require that a judge approve any proposed transaction between an injured person and a factoring company to ensure that the transaction is in the best interests of the injured person. See the list of these states on page 2.

Bankruptcy & the Workers' Comp Claimant

We seem to hear more frequently these days of self-insured employers who get into financial trouble and declare bankruptcy using Chapter 11 in order to reorganize their financial affairs. The plan from day one is to emerge from Chapter 11 with a stronger balance sheet and to continue as a solvent business.

Unfortunately, there may be danger for an employee of this company who was injured on the job, whose claim has been adjudicated and who is receiving workers' compensation (WC) benefits from the Chapter 11 self-

insured employer. Under current bankruptcy law, workers with open claims filed before the bankruptcy are considered unsecured creditors and must wait until the bankruptcy is resolved to be paid. In addition, doctors may refuse treatment since they don't know if they will be paid, and the cash benefits that the claimant finally does receive may be less than those due if there are insufficient funds in the estate. When the bankrupt employer is unable to meet his workers' comp obligations, the burden is shifted to other sources. If WC funds are not

available, the worker may have to seek benefits from other sources such as state welfare and other public programs, and the social security system.

Injured workers with claims still awaiting final adjudication at the time of the bankruptcy will also be adversely affected by the system. The automatic "stay" when a bankruptcy petition is filed prevents state WC administrative agencies from making determination on unresolved claims, resulting in liquidation of these claims by bankruptcy courts rather than in

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**Joseph H. Long, CSSC
President, Bridge Settlement Corporation**

*States which have passed
Structured Settlement Protection Acts:*

- Alaska
- Arizona
- California
- Connecticut
- Delaware
- Florida
- Georgia
- Idaho
- Illinois
- Indiana
- Iowa
- Kentucky
- Louisiana
- Maine
- Maryland
- Massachusetts
- Michigan
- Minnesota
- Michigan
- Mississippi
- Missouri
- Nebraska
- New Jersey
- New York
- North Carolina
- Ohio
- Oklahoma
- Pennsylvania
- Rhode Island
- South Carolina
- South Dakota
- Tennessee
- Texas
- Utah
- Virginia
- West Virginia

A Message from the President

Many employers are self-insured for their workers' compensation coverage. Sometimes the company is self-insured up to a certain dollar level and then buys excess insurance for any claims that exceed that amount. Other times, a workers' compensation insurer will write a policy that has a large deductible (like \$50-, \$100- or \$200,000) and the employer pays the first dollar amounts and then the insurer picks up the payments after the deductible is fully paid. The workers' compensation claims administration may be through a TPA (Third Party Administrator) or, if allowed by the state, the employer may self-administer. Keep in mind that workers' compensation is regulated by each state so that means the regulations in 50 states plus the District of Columbia are all slightly different. When an employer decides to become self-insured for workers' compensation, the employer must be approved by the Workers' Compensation Board or Division or Commission in the state where the employment exists. In many states, the State Workers' Compensation Regulators charge the self-insured employer an assessment which is a certain percentage of each benefit dollar paid to the injured worker. If a self-insured employer paid \$75,000 in wage and medical benefits on an employee's workers' compensation

claim and the assessment in that state is 10%, the total payments by the self-insured employer would be \$75,000 to the injured employee and \$7,500 to the State for its self-insured assessment payment.

I was recently working for a self-insured employer and thought that the self-insured assessment in that state was 16%. I prepared some spreadsheets for a presentation on a group of claims and at the meeting was told "that was just increased; the assessment is now 34.04%." WOW! To think that on the \$75,000 claim, the self-insured assessment would be \$25,530!

In our company we often use the slogan "We Can Help!" and that really fits here. The assessment only applies to open claims and if that \$75,000 claim had been settled with a structured settlement when the payments made totaled \$20,000 the total picture might have been: benefits paid - \$20,000, structured settlement cost \$40,000 & assessment cost \$6,808 for a total of \$66,808.00 instead of the \$100,530.00 that the claim costs now. In the settlement/structured settlement scenario, the injured employee would receive as much or more in benefits as he would in the first scenario and the employer would have saved \$33,722.00 in the overall cost.

We have settled 2029 workers' compensation

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Bankruptcy (cont.)

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the WC system. The parties and state WC agency officials may incur additional expenses by bringing and resolving these claims in an unfamiliar forum. Furthermore, bankruptcy judges are not usually knowledgeable about WC law, leading to outcomes that may not be in accordance with state WC statutes. Parties may be forced to appear in bankruptcy court and move to have the stay lifted – a process which carries its own

potential for cost and delay. On the other hand, if an employee is injured while the company is operating under Chapter 11, that claim is automatically deemed to be an administrative expense that receives priority for payment and is generally paid in the ordinary course of business.

A number of entities concerned with workers' comp issues, including the International Association of Industrial Accidents Boards and Commissions, the National

Council of Self-Insurers, several large self-insurers, state regulators, and the National Association of Attorneys General, have proposed amendments to current bankruptcy law that would give open WC claims priority. The amendments would treat future cash benefits as new, post-petition claims that arose when the payment was due or when the medical care was provided instead of the current system that treats the entire claim as accruing on

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Parents Often Fail to Plan Long Term Support for Kids with Special Needs

The U.S. Census Bureau reported in 2001 that 1 in 8 children ages six to 14 have some type of disability. Even more disturbing, the same report says that 30% of people aged 25-64 with a severe disability live in poverty compared with 8.3% of people without disability. If you are the parent, or you are working with the parent, of a child with disabilities, how do you ensure that child won't be one of the 30% living in poverty?

Government support helps but can't cover everything and the medical advances of recent years enable children with disabilities to live much longer than previously, often surviving their parents. The average life span of people with a developmental disability (such as mental retardation) is 66 years, triple what it was in the 1930s. The increase in life expectancy is stunning for people with Down syndrome—they live to 56 on average, two times their expected life span as recently as the 1980s. The U.S. has 650,000 adults over the age of 60 with developmental disabilities. This number is expected to double by 2030.

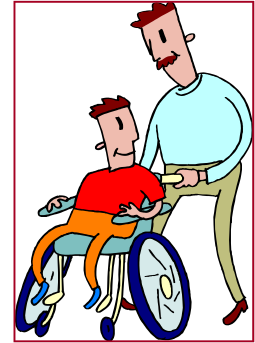
Financial and estate planning for families with children

with special needs is challenging. A poorly thought out plan could make the person ineligible for government benefits such as Supplemental Security Income (SSI) and Medicaid, perhaps worth hundreds of thousands of dollars a year. Generally, a disabled person can't own property worth more than \$2,000 and qualify for government benefits. So a cash gift to him could be disastrous.

To help meet a child's needs yet not jeopardize any government assistance for which he might be eligible, a parent may set up a "special needs trust." A special needs trust can also be funded with a settlement from a claim involving a physical injury. The assets in a special needs trust must not be in the name of the disabled person, and the trustee must have absolute discretion over when and how to spend the money. The trust shouldn't pay the beneficiary directly for anything (other than a modest allowance). Rather it should pay a third party, so as not to jeopardize government benefits. With attention to those details, the parent or other benefactor can have the money be used for amenities not covered by government

aid. The trust can also pay for basic needs like food, clothing and shelter but the beneficiary's SSI will then be reduced by up to one-third of the monthly benefit. Of course, the trustee must also pay that money directly to a third party (perhaps a grocery store or a landlord) and not to the beneficiary. MassMutual Financial Group and MetLife both have special programs to help families with children with disabilities. The MassMutual program is called Program for Special Care and its emphasis is providing financial planning in the event the person with a disability outlives the caregiver. MetLife has the Division of Estate Planning for Special Kids. Both programs offer information, specialists and financial solutions for people with disabilities and special needs and their families. We at Bridge Settlement work with special needs trusts regularly. If you have questions about them, please give us a call.

After all, *Exceptional Parent Magazine* says, "Financial planning is second in importance only to diagnosis and treatment."



Families of children with disabilities have special challenges in financial planning.

The life insurance industry has adopted new mortality actuarial tables for the first time since 1980 and, for the first time since 1858, the tables don't top off at age 100. The Society of Actuaries, which created the tables, raised the age limit to 120.

Message from the President (cont.)

(Continued from page 2)

claims with the use of a structured settlement since 1987, and so far in 2004 Bridge Settlement Corporation has settled 72 workers' compensation claims using a

structured settlement. We can save your company or your client serious claim money by stopping the assessment, stopping the expenses and settling those serious workers' compensa-

tion claims. In addition, our Los Angeles associate, Angel Viera, is bilingual and is minority certified and can work with Spanish-speaking claimants. As we said before, We Can Help!

NOTE

Medicare Secondary Payer Class Action Lawsuit Update at www.bridgesettlementcorp.com

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BSC Opens Buffalo Office

Mark W. Narby opened the Buffalo, NY, office for Bridge Settlement in 2003. Mark is a graduate of Fordham University and received his J.D. from the State University of New York at Buffalo Law School. He is a former Assistant District Attorney for Erie County and was in private practice with a law firm with offices in Buffalo and Jamestown, NY. Since 1995 he has worked in the financial services industry handling active asset management for personal clients. He and his wife have three hockey-playing sons and live in Orchard Park, NY.



Mark W. Narby, J.D.

Richard Cox joined Bridge Settlement in the summer of 2004. He is a 1991 graduate of SUNY-Fredonia and spent the first part of his career as a registered financial services rep for MetLife and then Provident Mutual. In 1995 he became a bodily injury claim rep for State Farm with concentration in handling law-suits for auto injury cases. He achieved the AIC designation in 2002 and has been involved with structured settlements since 2002. Rich and his two sons live in Williamsville, NY.



Richard M. Cox

Bankruptcy (cont.)

(Continued from page 2)
the date of injury. Those newly accrued benefits would be paid as an administrative expense, which is payable immediately and in full under the bankruptcy law. Pre-petition injuries and claims would be treated the same as post-petition injuries and claims. Giving workers' compensation the same priority as wages and benefits for working employees will substantially increase the likelihood that the bankrupt estate has enough funds to ensure their payment. In addition, by treating costs that occur after confirmation of a plan as claims that arise at that time, these changes will ensure that the claim for future WC benefits is not discharged by the plan. The amendments also would exempt workers' compensation proceedings from the bankruptcy stay for purposes of

liquidating the amount of the claim and resolving disputes over liability. Without this amendment, WC claims would remain subject to the normal bankruptcy processes. Creating an exemption from the stay for WC claims will expedite payment of claims and ensure that they are adjudicated and resolved by the WC system and not by a bankruptcy judge unfamiliar with workers' comp laws. Although some bankruptcy courts now lift the stay to allow the WC system to make determinations of compensability and the amount of benefits due, an express exemption from the stay will do so automatically and avoid the delays and costs inherent in litigating the issue. Ensuring that injured workers receive timely medical benefits will increase the likelihood that they can return to work as soon as possible. Ensuring that open

claims continue to be paid will help employers who are emerging from bankruptcy retain valuable workers who are temporarily on workers' compensation leave while they are recovering from their work injuries and/or lower their overall workers' comp expenses by reducing the ultimate cost of their open WC claims. It will also better preserve the morale of working employees, who will see that their employer is still interested in protecting them despite the bankruptcy filing. You may wish to monitor this effort through the website of the UWC-Strategic Services on Unemployment & Workers' Compensation, www.UWCstrategy.org. If you wish to comment on these efforts, please e-mail Eric Oxfeld, the president of UWC, at oxfelde@UWCstrategy.org.