

# PRACTICE DIRECTION- STRUCTURED SETTLEMENTS

## THIS PRACTICE DIRECTION SUPPLEMENTS CPR PART 40

### STRUCTURED SETTLEMENTS:

- 1.1 A structured settlement is a means of paying a sum awarded to or accepted by a claimant by way of instalments for the remainder of the claimant's life. The payments are either funded by an annuity from an insurance company or, where the party paying is a government body, by payments direct from that body.
- 1.2 The agreed sum which purchases the annuity or provides for payments (including any sum to be retained as capital for contingencies) is based on the sum offered or awarded on a conventional basis, less an amount representing the tax benefits obtained by the structure.
- 1.3 This type of order may be used both on settlement of a claim and after trial where the judge has found in favour of the claimant. In the latter case the claimant or his legal representative should ask the judge:
  - (1) not to provide for entry of judgment,
  - (2) to state the total amount to which the judge has found the claimant to be entitled, and
  - (3) for an adjournment to enable advice to be sought as to the formulation of a structured settlement based on that amount.
- 1.4 Where a claim settles before trial, an application should be made in accordance with CPR Part 23 for the consent order embodying the structured settlement to be made, and for the approval of the structured settlement where the claimant is a child or patient<sup>1</sup>.
- 1.5 If the claimant is not a child or patient, the consent order may be made without a hearing.
- 1.6 Where a hearing is required and as the annuity rate applicable to the structure may only remain available for a short time, the claimant's legal representative on issue of his application notice, should immediately seek an early date for the hearing.
- 1.7 At such a hearing the court will require the following documents and evidence to be filed not later than midday on the day before the hearing is to take place:
  - (1) Counsel's or the legal representative's opinion of the value of the claim on the basis of a conventional award (unless approval on that basis has

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<sup>1</sup> for the definition of child or patient see Part 21.

already been given or the judge has stated the amount as in paragraph 1.3(2) above),

- (2) a report of forensic accountants setting out the effect of a structured settlement bearing in mind the claimant's life expectancy and the anticipated cost of future care,
- (3) a draft of the proposed structure agreement,
- (4) sufficient information to satisfy the court that -
  - (a) enough of the agreed sum is retained as a contingency fund for anticipated future needs, and
  - (b) the structured settlement is secure and the annuities are payable by established insurers,
- (5) details of any assets available to the claimant other than the agreed sum which is the subject of the application, and
- (6) where the claimant is a patient, the approval or consent of the Court of Protection.

1.8 To obtain the approval of the Court of Protection the claimant's legal representative should lodge the documents and information set out in paragraph 1.7(1) to (5) above together with a copy of the claim form and any statements of case filed in the proceedings in the Enquiries and Acceptances Branch of the Public Trust Office, Stewart House, 24 Kingsway, London WC2B 6JH by midday on the fourth day before the hearing.

1.9 If an application for the appointment of a receiver by the Court of Protection has not already been made:

- (1) two copies of the application seeking his appointment (form CP1),
- (2) a certificate of family and property (form CP5), and
- (3) a medical certificate (form CP3)

should be lodged at the same time as the documents and information mentioned in paragraph 1.8 above. Forms CP1, 3 and 5 may be obtained from the address set out in paragraph 1.8.

1.10 Wherever possible a draft order should also be filed at the same time as the documents in paragraph 1.7 above.

1.11 Examples of structured settlement orders are set out in an Annex to this practice direction which may be adapted for use after trial or as the individual circumstances require. It should be noted that the reference in the second paragraph of the Part 2 - structured settlement order to the "defendant's insurers" means the Life Insurer providing the annuity on behalf of the defendant.

- 1.12 Where it is necessary to obtain immediate payment out of money in court upon the order being made, the claimant's legal representatives should:
- (1) contact the officer in charge of funds in court at the Court Funds Office at least 2 days before the hearing, and arrange for a cheque for the appropriate sum made payable to the insurers or government body to be ready for collection,
  - (2) notify the court office the day before the hearing so that the court is aware of the urgency, and
  - (3) bring to the hearing a completed Court Funds Office form 200 for authentication by the court upon the order being made.

# ANNEX

## PART 1- STRUCTURED SETTLEMENT ORDER

(Order to settle for conventional sum and for an adjournment to seek advice on the formulation of a structured settlement)

Title of Claim

UPON HEARING (Counsel/solicitor) for the claimant and (Counsel/solicitor) for the defendant

AND UPON the defendant by (Counsel/solicitor) having undertaken to keep open an offer of £..... in full and final settlement of the claim and the claimant having undertaken to limit the claim to £.....

AND UPON the claimant's solicitors undertaking to instruct appropriate advisers to advise upon a structured settlement and to use their best endeavours promptly to make proposals to the defendant's solicitors as to the most equitable formulation of a structured settlement and after to seek (further directions/approval) from the court if necessary

IT IS ORDERED that this claim is adjourned with permission to both parties to apply in respect of the further hearing relating to further directions providing for a structured settlement as undertaken by the claimant's solicitors and that these proceedings be reserved to the (trial judge) unless otherwise ordered

AND IT IS ORDERED that the costs of these proceedings together with the costs relating to any proposal for a structured settlement be (*as ordered*).

## PART 2- STRUCTURED SETTLEMENT ORDER

(Order giving effect to and approval of a structured settlement)

Title of Claim

UPON HEARING (Counsel/solicitor) for the claimant and (Counsel/solicitor) for the defendant

AND the claimant and defendant having agreed to the terms set forth in the Schedule to this order in which the claimant accepts the sum of £..... (*overall sum*) in satisfaction of the claim of which the sum of £..... is to be used by the [defendant's insurers for the purchase of an annuity][defendant for the provision of the appropriate payments]

AND UPON the Judge having approved the terms of the draft minute of order, the agreement and the schedule to this order

AND UPON the claimant and the insurer (*name*) undertaking to execute the agreement this day

## BY CONSENT

## IT IS ORDERED

(1) that of the sum of £..... (*total sum in court*) now in court standing to the credit of this claim the sum of £..... be paid out to (*insurers/payee*) on behalf of the defendant for the purchase of an annuity as specified in the payment schedule to this order

(2) (*other relevant orders*)

( ) that all further proceedings in this claim be stayed except for the purpose of carrying the terms into effect

( ) that the parties have permission to apply to carry the terms into effect

**SCHEDULE**

(*Attach draft agreement and set out any other terms of the settlement*)