CLM 2016
ORLANDO

2016 CLM Annual Conference
April 6-8, 2016
Orlando, FL

"Settlement Funds & Investment Risk"

"How New Technology and Models are Changing the Settlement Business"

I. Introduction

Carriers & TPA's: When negotiating a personal injury claim, adjusters, managers, and counsels try to evaluate many factors relevant to the circumstances of the case. There are factual discussions on the particulars of the accident, as well as an evaluation of the liability being assessed to each party. Medical and work loss records are gathered and examined, and future cost projections are made.

Claimants: Claimants also make settlement decisions based on a number of factors. They must determine their current and future medical needs, and how their injuries have affected their capacity to work. They must also take into account a host of other financial and emotional needs that may have been affected as a result of their injuries, and evaluate what type of settlement will meet their needs.

Risks: The risks that both parties face include whether to settle the case or not, how much the settlement should be, and the timing and costs associated with those decisions. Some of those decisions are fairly straightforward, especially on cases with more moderate damage components, or Work Comp cases with MSA considerations. However, many cases are quite diverse, with multiple layers of legal, financial, and emotional complexity.

Needs Analysis & Solutions: It makes sense then that an analysis of the factors associated with the claim decisions on both sides, and a correlation to their costs and risks, be thoroughly and creatively examined as part of the settlement process.

New Technology & Models: Today, more and more insurance carriers, TPA's, and self-insured's are finding renewed value 40 year old tools like structured settlements that now use new technologies and programmatic approaches to add significant and sustainable value and solutions to all the parties in the settlement process.

II. Set Up A Profile – What Are The Needs?

When researching and evaluating the damages portion of a claim, adjusters are usually very aware of the injures specific to the claim. However, they must also seek out and determine any pre-existing conditions, or non-accident related situations that are relevant to the claimant's overall condition and state of mind. These corollary factors can be highly influential in gaining the attention and consideration of relevant settlement offers by the claimants.

Part of this process is to gather medical details and economic loss information, to evaluate the accident- related damages. This includes pricing out life care plans, MSA's, economic loss reports, and other future damages components of the case. It is fairly common practice to look at these future damages in light of present value costs, and to evaluate the most efficient way of matching those needs to a guaranteed monthly or annual benefit stream. There are obvious cost savings associated with this analysis, as well as significant tax and security benefits to the claimants over time.

It is also critical to research, evaluate, and target other areas of impact or personal concern. Is the claimant married? Does the spouse work? Do they have children? Are college funds in place? Do they have investment accounts like 401k's or pension funds, and are they intact, underfunded, or dissipated? Do they have a mortgage, what is the status, are they in arrears or underwater? Do they have health coverage, is it private, or ACA? Do they have a long-term disability policy? Are future premiums for any of these accounted for in the settlement analysis?

This also brings up the issue of co-morbidity, or the simultaneous presence of two or more chronic conditions such as obesity, diabetes, hypertension, heart disease, and so on. If these are present in the medical profile of the claimant, it is usually beneficial to secure a substandard annuity rating. This applies to an individual whose life expectancy has been reduced by illness, trauma, pre-existing conditions, or family history. Many factors affect our life expectancy, in fact, almost everything we do, including our family history, affects our life expectancy and how annuities are priced.

The savings achieved through these substandard annuities provide tremendous leverage and advantage to both parties by either reducing the cost of specific case needs, or increasing the amount of particular benefits.

III. Claimants as Unique Investors

In a Litigation Management article titled "*The Psychology of Settlement: Unique Investors in a Rocky Economy*", the term "unique investor" was coined. Personal injury victims only have one chance to settle their claim. The funds they receive from that settlement must often last a lifetime, as compensation for the injuries sustained, their pain and suffering, and any future medical or economic needs. The settlement itself should attempt to consider and engage those needs, within the legal and business limitations of the case. Those funds should not be evaluated in light of traditional investment strategies, as these claimants are unique investors who cannot afford any investment risk or market volatility.

So why not speculate in the markets with the settlement funds? While the S&P Index has averaged about 10% over the last 90 years, its growth has been wildly inconsistent. Since 1926 there have been 26 negative return years in the S&P, and 65 positive years, or approximately 2 negative return years for each 7 year period. The market rises and falls, sometimes precipitously (remember 2008?), and the money in the market is subject to those flows.

Ask a financial planner if they will certify or guarantee stated returns into the future… they will not. They will say that past performance is no indication of future returns. A structured settlement annuity will guarantee those stated future returns, and exactly match the stated medical and economic needs of the claimant.

Matching claimant and case needs to available settlement funds, within the legal and financial constraints of the case, and securing their preservation, continuation, and relevance into the future – is both a sound business approach to settling claims, and a methodology to make negotiations more relevant and personalized. All of this hopefully leads to a more creative and efficient settlement process.

IV. New Technologies & Models

Insurance carriers, TPA's, and self-insured's are combining new structured settlement technologies and models with the basic premise of matching claimant needs with available settlement funds. These new technologies include the use of data mining, needs-matching claimant and case profile algorithms, and indicative analytics, that provide more accurate and more relevant settlement solutions designed to make the settlement process more efficient, programmatic, and sustainable.

New analysis tools like the Compass system and the Chronograph transform complex math into intuitive, customizable, interactive and graphical estimates. These types of systems harness advanced technologies into a single, simple process for accurate, efficient, and successful settlements. These technologies are now readily available 24/7 to adjusters, supervisors, managers, and defense counsels, for real-time evaluation, interactive analysis, and negotiations.

Moreover, the more these systems are utilized, the more indicative their settlement analysis becomes. As the database grows, the analysis of trends and results begin to formulate systematic solutions, the impact of which can become profound.

This new model also redefines the traditional stand-alone independent broker, into a single enterprise Case Advocate, intent on assisting the defense team in exploring all relevant settlement options and techniques, with a diverse team of experts within the same corporate entity. Through the use of the technologies mentioned above, as well as tight service level agreements with clients, the new Case Advocate model brings an increased level of sophistication, flexibility, data analysis, service, and expertise to the process.

Sample Process (to be customized for each party):

- Early identification of cases that are being considered for settlement, where the case facts and profile point to the likelihood that these tools and techniques will assist all parties in the settlement of the claim.
- The gathering and evaluation of relevant case data, needs metrics, claimant profile, case strategy, etc.
- Early and often financial analysis of those needs, in relation to settlement resources and liability analysis
- Analysis of non-claim related needs that are not part of the damages evaluation for case value, but are nonetheless of great concern and impact to the claimant and their families
- Collaboration on settlement strategies amongst all relevant parties.

V. Post Settlement Considerations

In Worker's Compensation and Liability cases, professional administration assists claimants in managing their medical treatment and spend after the case settles. Through professional administration, claimants have access to sophisticated bill review & PPO technologies, and discounts through pharmacy benefit management and durable medical equipment networks that help them through the complex healthcare maze.

Many claimants may be cautious to settle their future open medical due to concerns with managing care, saving & extending funds, and complying with complex rules & requirements. Professional administration is a cost-effective tool that alleviates many of those concerns for the claimant allowing the claims professional to successfully settle their case by providing the claimant with a beneficial service.

When structured settlements are used in conjunction with professional administration, claimants are guaranteed they will have annual funding for their medical injury for the rest of their lives. It provides a sense of comfort for claimants, while ensuring the professional administration company will continue to have a stream of annual medical funds to support the claimants' ongoing medical treatment.

VI. Case Size & Value Considerations

According to many industry stats, less than 5% of available personal injury tort claims settled are done so using structured settlements – despite the tremendous list of advantages to all parties in the settlement process, including: time value of money, financial planning, tax-free payments, substandard underwriting, guaranteed security, protection of government benefits, and so on.

Why? In practice, many structure brokers seek higher payout cases, not wanting to take the time and effort to work early and often on cases of all sizes in a unified, programmatic, and collaborative approach with their clients. As a result, many younger adjusters have not grown up using this approach, and many experienced adjusters handling large case volumes simply don't have the time to chase down brokers willing to work early and often on cases, regardless of size or value.

It should also be noted that many highly rated life insurance companies offering structured settlement annuities have fairly case minimums. That is a lot of dog bite, slip & fall, auto, and workers compensation cases. Structured settlements work no matter what the case size or circumstance, and can be used as a systematic settlement tool to help all the parties in the claim process.

VII. Conclusions

In growing fashion, insurance carriers, TPA's, and self-insured's are combining these new settlement technologies and models, with some tried & true techniques and products, to form a more efficient, programmatic, and sustainable approach to resolving claim disputes. It may be an old wives tale that you can't teach old dogs new tricks, but these changes in technology and operating models are leading to a resurgence of a settlement tool that has been helping to bring claim parties together for a long time.