

# Book Review: Daniel W. Hindert, Joseph J. Dehner and Patrick J. Hindert's STRUCTURED SETTLEMENTS AND PERIODIC PAYMENT JUDGMENTS

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Structured settlements are not new. At its root, a structured settlement is simply a settlement that calls for periodic payments made over time. In a structured settlement of a personal injury action, which is where structures began, the plaintiff generally receives payments monthly or annually, instead of receiving payment in one lump sum. There are tax as well as nontax advantages. The use of periodic payments in settlements has been gaining increased popularity since the 1970s.

In fact, they are now an established part of the practice of many personal injury lawyers. Similarly, structured settlements are becoming an increasing part of the work of defense lawyers. Tax lawyers often are asked to address the tax consequences of a structure.

In that regard, a copy of STRUCTURED SETTLEMENTS AND PERIODIC PAYMENT JUDGMENTS, written by Daniel W. Hindert, Joseph J. Dehner and Patrick J. Hindert and published by Law Journal Press, recently landed on my desk. Originally published in 1986, it is a looseleaf tome that the authors have updated frequently ever since.

## Lay of the Land

Falling open at nearly the center, the authors divide the book into two parts. The first half of the book comprises 15 chapters. The first two chapters provide a discussion of the history of structured settlements and a high-level review of the taxation of damage awards received by claimants. The more interesting chapters of the book follow. These chapters address

issues related to financing alternatives, the role of the plaintiff and defense counsel, case preparation, negotiation and closing and topics such as workers compensation and special needs trust. A major topic discussed throughout the book is the use of Code Sec. 468B qualified settlement trusts.

Later in the book, the authors discuss the specifics of factoring transactions, the Uniform Periodic Payment Settlements Act and a miscellany of state statutes, as well as different aspects of annuity testimony and the impact of social security. Many of these topics are frequently overlooked by practitioners and to my knowledge are not discussed in such detail elsewhere.

## Cleaning Things up

The authors provide an authoritative and practical approach to the subject, highlighting and alerting the reader to a number of traps for the unwary. A chapter I found especially interesting relates to environmental claims, a topic recently discussed in the M&A TAX REPORT. The authors discuss aspects of environmental personal injury actions, superfund cases and using a Code Sec. 468B qualified settlement fund in connection with environmental settlements.

Of specific interest is the authors' note that a Code Sec. 468B designated settlement fund must be established for the principal purpose of "resolving and satisfying" present and future claims. [Code Sec. 468B(d)(2)(D).] A Code Sec. 468B trust may not satisfy the "resolve and

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satisfy” requirement if there is “a ‘reopener’ provision which subjects the defendants to some remote or contingent liability.” [Hindert, Dehner & Hindert, *STRUCTURED SETTLEMENTS AND PERIODIC PAYMENT JUDGMENTS*, §13.05, at 13-10.] Where a potential reopening issue may exist, and a Code Sec. 468B trust is desired, the authors recommend obtaining an IRS ruling.

### **More Fertile Fields**

The second half of the book is composed of an appendix containing useful forms, including interrogatories, document requests, injury verdict forms, offer letters, settlement forms and attorney fee agreements. Many of these forms provide an excellent starting point for working with a structured settlement, but the authors warn that the structured settlement area can never be

considered a “fill-in-the-blank” practice area. I think that’s an especially appropriate caution in this area, since I’ve personally seen some lawyers give short shrift to this area, especially when it comes to Code Sec. 468B trusts. The authors correctly state that care must be taken to review all the aspects of a particular case and tailor an approach best suited for the client.

### **Conclusion**

This book goes a long way to provide a background and balanced review of the law in this area. A unique book on a unique subject matter, it is a well written and thorough treatment of the area. The book is available from Law Journal Press for \$195 at [www.lawcatalog.com](http://www.lawcatalog.com), by writing to Law Journal Press, 105 Madison Avenue, New York, NY 10016 or by calling (800) 603-6571.