

NEWS UPDATE

Factoring—My Two Cents:

I am out-and-about mixing, meeting and working with attorneys constantly. I have interactions with numerous attorneys every day. As a rule, they have varying degrees of knowledge about, and most have opinions about, structured settlements. They *all*, however, have strong feelings about factoring companies. You know, the “*It’s my money and I want it now*” people.

I’m often asked by attorneys what I can do to help them squash injured folks’ ability to cash-in their structures. My usual response to that is a polite “not too much,” and that surprises people. I’m not trying in any way to be flippant or disrespectful, nor am I advocating for wholesale cashing-in of structures by any means. In certain instances, the ability to invade their structure could be a matter of financial life or death for these people. But often, if someone wants to cash-in their structure, they are most likely doing so because their structure plan was poorly built to begin with.

Many times, injured folks and their families are put into straight monthly payments that give them no flexibility to pay for unplanned expenses. Often, these plans are built by the Property & Casualty’s structure broker who has no access to the plaintiffs at all. Those brokers know only what their files say, the information that was provided to them by the claims adjusters or defense attorneys on the case.

Many cases for the traumatically injured are not set up using Commutation Riders, which allow the structured settlement company to pay a lump sum payment to the estate upon the death of the annuitant. Without a Commutation Rider, those families are forced to receive monthly payments for long periods of time, when they no longer need those payments for the deceased’s needs. The list of ill-fitting plans goes on and on. This, I would argue is a major reason people choose to cash-in their structures.

I’m definitely not saying there aren’t just people who want the cash value of their structure “now,” as the ads say, but I would argue the majority of those who cash in wouldn’t do so if they had structure plans that made sense and allowed them the flexibility to meet unexpected future cash needs.

When meeting with the injured folks and their families, I get to know them. I get to know their hopes and fears. And, then I give them homework: I tell them to climb into bed that night and think about all of the expenses, all the what-ifs, all the possibilities of bills they could incur, or the ones they already **know** they’ll incur that have the potential to make them lose sleep. My clients come back with amazing laundry lists of items.

The plans I build include periodic lump sums down the road *just in case*, to refill their savings accounts, or keep as rainy day money. They may include payments for property taxes for the houses they pay off at settlement, HOA annual fees, and homeowners insurance payments. They may include vacation money, travel money, college money for the children, deferred benefit streams that act like a retirement fund. I’ve had families build in money for braces for their kids, first cars, Christmas money, school clothes, prom money, senior trip money. I even had one client who built-in funds to pay for an annual religious feast, which runs her \$4,000 per year! I have hundreds of examples of very personalized plans that my clients have had me build. Some choose straight monthly payments, but **many** of them do not. Many of them build plans with numerous benefit streams that will come to them for the rest of their lives at specific times for specific expenses. They don’t **feel** locked-in.

Another component in the factoring argument is that of the Structured Settlement Protection Act, signed into law by President George W. Bush in 2002. There is much confusion surrounding what this act does. The main purpose of this legislation is to have a court in the annuitant’s jurisdiction decide if cashing-in some or all of their structure is “in their best interest.” It gives the annuitant an escape hatch, of sorts, with a judge’s oversight. Who would enter into an investment that has absolutely no way out in case of emergency? Honestly...would **you**?

In a press release, dated June 1, 2012, David Miller, CEO of J.G. Wentworth – the largest factoring company in the United States – described a study his company had just conducted:

“The study findings confirm what we have long suspected: In the vast majority of instances, structured settlements fulfill their intended purpose of meeting the current and anticipated financial needs of accident victims and their families.”

The study also showed that:

- “87.2% of structured settlement holders have made no previous attempt to learn more about the option of selling payments.”
- Fewer than “6.5% of structured settlement payment recipients sell their payments for a lump sum of cash.”
- On average, structured settlement holders wait “over 8.5 years before they sell any portion of their settlements.”

Those findings are contrary to the fears that I’ve heard many attorneys express recently. I’m hopeful that, given the press release data and my view from the structured settlement trenches, attorneys will ponder this a little more deeply and not use the thought of their clients potentially selling their structure down the line, even if the possibility is remote, as a reason they don’t give them the chance to hear about them. I’m also hopeful that giving their clients a potential “out” down the road is actually a service, not a sin. Above all, I’m advocating for the chance to help your client set-up a structure in a way that makes them never need the services of a factoring company. Wouldn’t we all sleep better at night?



Kelly Ramsdale is President of Kelly Ramsdale & Associates in Denver, Colorado. She advises plaintiff attorneys and their clients in medical malpractice, wrongful death, products liability, aviation, auto bodily injury, trucking cases, sexual molestation/assault, civil rights and wrongful termination/age discrimination cases. She travels extensively to not only attend mediations, but to personally meet with the injured parties and their families all over the United States. She has been involved in the Columbine High School cases, the 9-11 Victims’ Compensation Fund and Pan Am Flight 103 (Lockerbie) cases. She works with many highly renowned firms across the country.