

Syllabus for RSP Part 1: Settlement Planning Seminar

Contact Information:

Daniel Maxwell is the teaching assistant for the Settlement Planning Education Center. If you have any questions or comments, feel free to contact Daniel at any time.

Email: Daniel@SettlementEducation.com

Cell: (801) 951-0515

Course Description:

RSP Part 1: Settlement Planning Seminar explores the emerging profession of settlement planning. Topics include: settlement planning fundamentals, structured settlement annuities, controlling dissipation risk, factoring structured settlements, taxation of settlement issues, qualified settlement funds, ethics of settlement planning, and how to write a settlement plan.

Required Textbook:

Structured Settlements and Periodic Payment Judgments, Hindert, Dehner, & Hindert, ISBN: 978-1588520371

Grading:

This course will be graded on a pass/fail basis. In order to pass the course, you must successfully complete all of the requirements of each section.

Exams & Quizzes:

A score of at least 70% is required on all article quizzes and final exams.

Assignments & Lectures:

Students are expected to view the presentations, read the assigned articles, complete the reading assignments, and finish any other assignments before taking the final exam for that section. Students are encouraged to attempt to “master the material” instead of just gaining exposure to it before attempting the exam.

Course Structure:

RSP Part 1 is divided into six different sections. Each section has the same format:

- Presentations
- Articles & Quizzes
- Textbook Reading
- Assignments
- Final Exam

The course syllabus provides a general plan for the course; deviations may be necessary.

PART 1: SETTLEMENT PLANNING SEMINAR

Section 1: Introduction to Settlement Planning

- 1) Definition of settlement planning
 - a. Duration of settlement planning relationship
 - b. Settlement planning v. financial planning
 - c. Scope of settlement planning
- 2) Contents of a settlement plan
 - a. Cash flows forecast & analysis
 - b. Risk assessment
 - c. Investment plan
 - d. Insurance
 - e. Estate planning
 - f. Tax planning
 - g. Employee benefits
 - h. Liquidity needs
 - i. Retirement planning
 - j. Settlement tools
 - k. Government entitlements
 - l. Special needs
 - m. Settlement instructions
 - n. Control of case issues
- 3) Settlement planning process
 - a. Defining scope and nature of engagement
 - i. Who is the client?
 - ii. Engagement Letter
 - b. Gathering info
 - i. Case details
 - ii. Medical records
 - iii. Medical underwriting
 - iv. Life care plan
 - v. Other financial resources
 - vi. Budget needs
 - c. Setting client goals
 - d. Analyzing data
 - i. What is net recovery?
 - ii. Preparation for mediation
 - iii. Cost per thousand market survey
 - iv. Medical underwriting
 - v. Annuitized life care plans
 - e. Drafting and presenting settlement plan
 - i. Executive summary of recommendations
 - ii. Implementation timeline
 - iii. Assignment of responsibilities
 - iv. Presentation of data

- v. Summary of analysis
 - vi. Recommendations
 - vii. Appendices
 - f. Implementing the plan
 - g. Transitioning client to financial advisors
- 4) Client issues
- a. Capacity
 - b. Financial experience
 - c. Minor issues

Section 2: Dissipation Risk & Factoring

Dissipation Risk

- 1) Assessing the risk
 - a. Dissipation planning tools
- 2) Risk in financial planning vs. settlement planning
 - a. Investment risk
 - b. Dissipation risk
- 3) Sources of dissipation
- 4) Predicting dissipation
- 5) Trust solutions
 - a. Self-settled spendthrift trusts
 - b. Structured settlements
 - c. Blended approaches

Factoring

- 1) Factoring structured settlements
 - a. Overview of factoring structured settlements
 - i. Definition of factoring
 - ii. Reasons annuitants enter into these agreements
 - iii. Impact of factoring on settlement planning
- 2) History of structured settlements
- 3) Statutory requirements for factoring transactions
 - a. Best interest standard
 - b. Judicial hearing
 - c. Penalty for unapproved transactions
- 4) Predatory factoring practices

Section 3: Qualified Structures

- 1) Definition of structured settlement
- 2) Eligible Claims
 - a. 104(A)(1) – workers comp

- b. 104(A)(2)- personal injury for nontaxable damages
 - c. Non-qualified claims
 - i. Taxable damages
 - ii. Attorney fees
- 3) Single premium immediate annuity
 - a. Rated ages – medical underwriting
 - b. Insolvency issues
 - i. State guarantee funds
 - ii. Regulatory protections
 - c. Benefit structure
 - i. Unequal payments permitted
 - ii. Lifetime payment
 - 1. Single life
 - 2. Joint lives
 - ii. Guarantees
 - 1. Refund
 - 2. Period certain
- 4) Process –
 - a. Defendant assumes obligation for periodic payments
 - b. Qualified assignment
 - c. Qualified assignment from a 468(B) fund
 - d. Assigns obligation to assignment company
 - e. Assignment company buys annuity
- 5) History of structured settlements
- 6) Advantages and disadvantages of periodic payments
 - a. Protection from creditors
 - b. Guaranteed payments/lifetime payments
 - c. Flexibility to meet anticipated needs
 - d. Freedom from management
 - e. Tax free growth
- 7) Reinsurance agreement
- 8) Commutation riders
- 9) Drafting of settlement documents
- 10) Settlement agreement and release
 - a. Qualified assignment
 - b. Dismissal
- 11) Constructive receipt Issues
- 12) Secured creditor status
- 13) Broker issues
- 14) Annuity testimony
- 15) Settlement negotiation tactics
 - a. Mediation presentations
- 16) Factoring
- 17) Uniform periodic payment of judgments act
- 18) Periodic payment in environmental cases
- 19) Structuring from a QSF

- 20) Structuring workers compensation claims
- 21) Jumbo Rates and Daily Rates
- 22) Taking control from defense
- 23) Full-Market Survey
- 24) Settlement Documents
 - a. Court order approving settlement and dismissal

Section 4: QSFs, Non-Qualified Structures, and Other Options

Qualified Settlement Funds

- 1) IRC § 468B – Qualified Settlement Funds
 - a. QSF v. DSF
 - b. Requirements
 - c. Single claimant issue
 - d. Mechanics of setting up a QSF
 - e. Mechanics for administering a QSF
 - f. QSFs and structured settlements
 - g. QSFs and governmental entitlements
 - h. QSFs and income tax planning

Non-Qualified Structures

- 1) Attorney's fees
- 2) Taxable damages
- 3) Other uses

Section 5: Taxation of Damages and Ethics of Settlement Planning

Taxation of Damages

- 1) Types of Damages
 - a. Compensatory
 - i. Economic
 - 1. Lost earnings
 - 2. Impaired future earnings
 - 3. Medical costs
 - 4. Property damage
 - ii. Non-Economic
 - 1. Lost of consortium
 - 2. Pain and suffering
 - 3. Mental anguish
 - 4. Loss of reputation
 - b. Punitive
 - i. Bad faith
 - c. Collateral source rule

- d. Non-physical injury claims
 - i. Employment claims
 - 1. False Imprisonment
 - 2. Discrimination claims
 - 3. Contract claims
- 2) IRC § 104(a)(1) – Worker’s comp
- 3) IRC § 104(a)(2) – Physical injury or sickness
 - a. Origin of the claim
 - b. Personal physical injury or sickness
 - c. Punitive damages
- 4) IRC § 130 – Qualified Assignments
- 5) IRC § 468B – Qualified Settlement Funds
 - a. QSF v. DSF
 - b. Requirements
 - c. Single claimant issue
 - d. Mechanics of setting up a QSF
 - e. Mechanics for administering a QSF
 - f. QSFs and structured settlements
 - g. QSFs and governmental entitlements
 - h. QSFs and income tax planning
- 6) IRC § 5891 – Factoring
- 7) Estate taxation of damages
 - a. Structured settlements
 - i. Commutation
- 8) Alternative Minimum Tax
 - a. Attorney’s fees and expenses
 - i. Non-taxable cases
 - ii. Banks & Banaitis decision
 - iii. Employment related cases
- 9) Confidentiality Clauses (Amos)

Ethics of Settlement Planning

- 1) Conflicts of interest
 - a. Fee-Splitting
 - b. Defense broker issues
 - c. Government entitlement planning
 - d. SSP Board Code of Ethics
 - e. NSSTA Code of Ethics

Section 6: How to Write a Settlement Plan

- 1) How to draft a comprehensive settlement plan
 - a. Contents of a settlement plan
 - i. Cover page
 - ii. Letter to client

- iii. Client engagement letter
- iv. Table of contents
- v. Other introductory materials
- vi. Client profile
- vii. Goal summary
- viii. Listing of assumptions
- ix. Executive Summary
- x. Financial statements
- xi. Core content areas
- xii. Cash flow projections
- xiii. Government benefits analysis
- xiv. Dissipation analysis
- xv. Investment analysis
- xvi. Retirement planning analysis
- xvii. Tax planning analysis
- xviii. Risk management and insurance
- xix. Implementation plan
- xx. Appendices

2) Settlement planning case study