United States Senate
Committee On Finance
Senator Max Baucus

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Comments:

Rev. Rul. 2003-115 Regarding the September 11th Victim Compensation Fund Provides No Precedent for a Single Claimant Qualified Settlement Fund to Undertake a Qualified Structured Settlement

Background. Rev. Rul. 2003-115 permitted the Special Master of the September 11th Victim Compensation Fund to make a compensation award in the form of periodic payments. The IRS held that no economic benefit or constructive receipt of a lump sum would result to the claimant if the claimant's tort claim and right to sue were fully alive at the time the claimant agreed to accept periodic payments, and the Special Master's award was in the form of periodic payments. Importantly, in order to qualify, the claimant never could have control over a lump sum.

Proponents of a single claimant QSF approach have argued that, by analogy to the situation addressed in Rev. Rul 2003-115, the claimant should not be treated as having economic benefit if he or she waives his or her right to a lump sum (i.e., is restricted only to receiving periodic payments) before cash is paid into the QSF established for his or her benefit. The following memorandum briefly explains why this analogy is inapposite and why Rev. Rul. 2003-115 offers no supporting precedent for the single claimant QSF approach.

- **The single claimant QSF approach is effectively the same as a cash lump sum settlement.**

Under the mechanics of the current tort claim/structured settlement process (as was the case in Rev. Rul. 2003-115), a "waiver of the right to a lump sum" takes the form of a settlement of the tort claim in exchange for periodic payments. But that is not what is being proposed in the case of a single claimant QSF. Effectively, the claimant would be simply demanding a lump sum, payable to the QSF established for his or her sole benefit, with the claimant and his or her handpicked representative later deciding whether or not to make an investment that will produce "periodic payments". No enforcement mechanism exists to force the claimant to follow through on a periodic payment arrangement. There are no effective sanctions the IRS can impose through a revenue ruling. If the claimant decides for whatever reason to forego periodic payments, he or she ends up no worse off from a tax perspective than having taken a lump sum recovery directly.

Also, by contrast to the way structured settlements are created today, no negotiation would occur between the two parties to the tort claim as to how best to match periodic payments to future needs. Thus, the single claimant QSF approach would represent a return to the days of cash-only negotiation.

- **The lump sum payment into the single claimant QSF triggers a taxable economic benefit to the claimant; Rev. Rul 2003-115 is not analogous.**

Rev. Rul. 2003-115 offers no comfort on economic benefit to the single claimant QSF situation. Unlike the single claimant QSF situation, under Rev. Rul. 2003-115, the claimant's tort claim and right to sue were fully alive at the time the claimant agreed to accept periodic payments, and the Special Master's award in settlement of that claim was in the form of periodic payments. No lump sum ever came under the effective control of the claimant.

By contrast, in the proposed single claimant QSF, there are no adverse or competing interests to those of the claimant when the lump sum is paid into the trust. The defendant's tort liability has been extinguished in exchange for payment of the lump sum. Although the trust is established pursuant to a court order, in the absence of any adverse interest, the limited role of

the court does not effectively limit the claimant's control of the funds in tho trust. There is nothing left to settle. The administrator of the trust is the plaintiff's handpicked advisor. The claimant in effect is "settling" with himself. All of the interests have merged in the claimant. The lump sum has come to rest in the trust under the effective control of the claimant. As discussed above, nothing will effectively prevent the claimant from taking a lump sum settlement out of the QSF. Thus, the proposed single claimant QSF approach simply is an investment of lump sum settlement proceeds, and the stream of future payments is not the payment of damages negotiated and agreed to under a tort settlement agreement and release. This situation is no different than the purchase of an investment by the claimant with his or her lump sum settlement.

- **The single claimant QSF approach will resurrect the very dissipation risks Congress intended to avoid in encouraging structured settlements**

In the single claimant QSF situation, the lump sum is under the effective control of the claimant. The claimant is free to decide what to do with the cash. As discussed above, no enforcement mechanism exists to force the claimant to follow through on a periodic payment arrangement. Thus, as with a typical lump sum recovery, a significant risk exists that the claimant may dissipate the cash in the QSF.

- **The single claimant QSF approach will significantly reduce the use of structured settlements**

An education process is needed to inform claimants and their counsel about the concept and benefits of a structured settlement. Industry experience demonstrates that when the claims community embraces and encourages the consideration of structured settlements in the negotiation process, claimants and their counsel are more willing to take the time and effort to work through the more complicated periodic payment approach. In our meeting with Treasury, a representative plaintiff's broker said his review of last year's files indicated that two-thirds of his calls from plaintiff's attorneys came because the defense had put a structured settlement offer on the table and the plaintiff side needed to respond.

The single claimant QSF approach consciously seeks to exclude the defense from the structured settlement negotiation process. If the defense is unable to participate in a negotiation that seeks to match payments and needs on a cost efficient basis, the defense will have no stake in the process and will correspondingly lessen its interest in helping to promote the use of structured settlements. Fewer structures of physical injury cases will result.

- **The single claimant QSF approach imposes significant new administrative burdens on the courts and the IRS.**

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October 8, 2003

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Mr. Eric Solomon
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Tax Legislative Counsel
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Re: Structured Settlements/Single Claimant Situations

Dear Greg, Eric, Helen and John:

Thank you for meeting with us on September 4th to discuss the tax issues involved in single claimant structured settlement situations. The following is a brief review of the issues discussed at our meeting. Also enclosed is a brief background memorandum on structured settlements and the economic benefit doctrine.

Use of QSFs (section 468B)

Section 468B trusts were designed fundamentally to encourage and facilitate settlements of mass tort claims and similar types of controversies. They permit defendants to achieve economic performance even though not all of the claimants have been identified and/or not all of their individual claims have been resolved. This allows defendants to take a current deduction of the settlement amount paid into the trust. Claimants do not realize a taxable economic benefit when the defendant pays the settlement amount to the QSF because the identity of claimants is frequently uncertain at that time and, even when they are known, the amount and allocation of their claims is undetermined -- i.e., the individual claims are not yet resolved.

In a single claimant context (as well as in those multiple claimant contexts where all of the claimants are typically family members and the amount of their damages is determined), there are no material contingencies left to be negotiated, and thus there is no

need for an intermediary trust to receive payment from the defendant.[1] In such situations, section 130(c) provides a means by which a *defendant* may purchase an annuity (pursuant to negotiations which precede a settlement) through a qualified assignment which protects both the annuity provider (assignee) and the claimant from adverse tax consequences.

Rev. Proc. 93-34

Prior to the issuance of Rev. Proc. 93-34, IRC section 130 appeared to prohibit QSFs from making qualified assignments under IRC section 130 because the 468B trusts were technically not a "party to the suit or agreement" (the defendant having been dismissed). The sole purpose of Rev. Proc. 93-34 was to permit qualified assignments from section 468B trusts in mass tort situations *where a trust is needed* to accept the defendant's settlement payment and to administer the funds until the individual claims are resolved. Without this relief, the utility of section 468B trusts was limited simply to permitting defendants a deduction for paying a negotiated settlement amount prior to the removal of all contingencies. Trustees could not, without such technical clarification, provide claimants with periodic payment structures that carried with them tax-advantaged treatment to the annuity provider, the assignee and the claimant. Rev. Proc. 93-34 was *not* written to address situations in which a single claimant is involved. There is no reason to believe that the IRS had single claimant situations in mind when it issued Rev. Proc. 93-34 since a QSF served no purpose in that context, and the appropriate tax treatment was already available through the combination of sections 104(a)(2) and 130.

Economic Benefit

The economic benefit doctrine generally applies when funds are irrevocably set aside for a taxpayer's benefit and there are no material contingencies (other than the passage of time) to the taxpayer's right to receive payments. In a single claimant situation, once the defendant has satisfied its obligation, there is no doubt concerning who will benefit or by how much. That is not so in the mass tort and similar contexts, because -- even though the defendant has made payment and is absolved from further liability -- competing claims must be resolved, allocations may need to be negotiated to settlement, and other yet-to-be-determined claims may still exist.

In a single claimant situation, section 130 provides the means, a "qualified assignment," by which a defendant may assign its obligation to an assignee without tax detriment to the assignee or the claimant. In that instance, the economic benefit passes to the claimant only as he receives periodic payments. However, if a lump sum payment is first made to the claimant, he or his agent cannot then purchase an annuity and receive the same tax advantaged treatment that section 130 accords. See Rev. Rul. 76-133, 1976-

[1] For the purposes of this discussion, multiple-claimant situations where settlement amounts between the defendant and each claimant have been determined prior to any payment by the defendant should be considered equivalent to single-claimant situations.

1 C.B. 34; Rev. Rul. 65-29, 1965-1 C.B. 59. Similarly, a payment of funds for the sole benefit of the claimant, against which no material contingencies stand, confers an economic benefit on the claimant, notwithstanding that the payment may be made to a trust. Where the only purpose of the trust is to benefit a single claimant, there is no question that the funds will be paid exclusively to the claimant without material condition or contingency. Absent statutory intervention in such a situation, the economic benefit doctrine applies and it is not possible for a section 468B trust to make a "qualified assignment." The claimant will be taxed on the investment income component of each annuity payment and the assignment will be taxable to the assignee/insurer.

A determination that the economic benefit doctrine does *not* apply to transfers to 468B trusts in a single claimant context would likely create significant deferral opportunities for tort settlement situations outside of the personal physical injury realm. For example, a plaintiff wishing to defer taxation on the taxable proceeds of a property-related tort settlement could request that the settlement amount be placed in a 468B trust, rather than being paid to him directly. The defendant would be entitled to an immediate deduction for the full amount of the settlement, whereas the plaintiff would be taxed only as amounts were actually paid to him out of the trust. The trust would be not be taxed on receipt of the settlement amount, and would be taxed only on the investment earnings in the trust.

Additionally, a finding of no economic benefit in the 468B context may have implications that could apply in other situations. This could include, for example, the tax treatment of a nonqualified deferred compensation plan for executives, which often involves a funding arrangement. Under current interpretations of the application of the economic benefit doctrine, such an arrangement results in deferred recognition of income (and of the employer's deduction) only if it represents an "unfunded, unsecured" obligation of the employer. If an arrangement is "funded" in some manner, the funding arrangement must be subject to the claims of the employer's creditors, such as in the case of a so-called "rabbi trust" (see Rev. Proc. 92-64), in order to avoid income recognition of vested entitlements. The Service has consistently taken the view that other types of funding arrangements that are not subject to the claims of creditors (such as so-called "secular trusts"), or that have features that neutralize the credit risk (such as accelerated payouts or funding that is triggered upon the occurrence of certain events) would result in the current recognition of income under the doctrine of economic benefit or under the principles of section 83. By analogy, a liberal interpretation of the use of 468B trusts in single claimant situations could be seen to weaken the Service's position in this area.

Insurance Industry Stability

As we discussed, there is no substance to the claim that plaintiffs or their brokers need to control the choice of annuity providers in structured settlement situations because of concerns over the safety, security and long-term viability of the life insurers selected by the defendants. Both parties have a common interest in selecting annuity providers that will meet their obligations. (Please see the attached list of annuity providers with whom our client, The Pension Company, principally deals). The life insurers who

provide these annuity products are subject to strict state regulation which the federal tax system should not be employed to monitor.

As a matter of policy, it is precisely because the periodic payments achieved in structured settlements are so secure that Congress saw fit in the early 1980's to provide tax-advantaged treatment to encourage their use. Indeed, as a measure of its continuing concern, Congress recently passed an excise tax on the practice of "factoring" -- conversion into a lump-sum payment -- of structured settlements.[2]

Negotiating Leverage

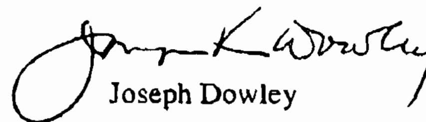
Plaintiffs, through their lawyers and brokers, have the ability to influence the choice of annuity providers in settlement negotiations because plaintiffs are not compelled to settle unless they are satisfied with all of the terms, including the choice of annuity provider. Defendants continue to retain an interest in achieving the most efficient means of delivering the settlement's provisions. Through this dynamic tension there exists today a fairness and balance in the process which would be upset if plaintiffs' trusts were to be solely responsible for the selection of annuity providers.

In adopting current law, Congress intended that claimants be provided with an incentive to choose payment streams that would reduce the risk of loss of benefits through poor management of settlement funds. Professionally designed structured periodic payments provided under a plan agreed to by both parties were seen as a way of insuring that the claimant's losses did not ultimately become the responsibility of taxpayers. Contrary to some claims, the system provided by Congress has worked remarkably well for over two decades and should not be altered by skewing the tax system so that either plaintiffs or defendants gain a decided negotiating advantage. Unfortunately, this is what would happen if 468B trusts were permitted to be used in single claimant situations.

Once again, we thank you for generously sharing your time with us. Please feel free to contact either of us at (212) 259-6300 (Stuart Odell) or (202) 862-1034 (Joseph Dowley) should you have any questions.

Sincerely,

Stuart Odell



Joseph Dowley

[2] See IRC section 5891

STRUCTURED SETTLEMENTS AND SINGLE CLAIMANT FUNDS

Sanctioned as a tax-advantaged vehicle by Congress in 1983, structured settlements have become increasingly popular over the last several decades as a means of settling personal injury claims. These vehicles allow a claimant to receive as a tax-free settlement periodic payments over his or her lifetime, rather than a lump sum payment. Internal Revenue Code ("Code") sections 104 and 130 work in tandem to facilitate the use of these vehicles for periodic payments of compensatory awards for physical injury or sickness by allowing the assignee of an obligation to pay damages to a claimant to receive the payment made for assuming the assigned obligation tax-free, and providing that the full amount of the annuity payments, including the portion constituting investment earnings, are tax-free to the claimant.

Code Sections 104, 130 and 468B

Section 104(a) of the Code provides that an individual's gross income does not include (1) amounts received under workmen's compensation acts as compensation for personal injuries or sickness, or (2) the amount of compensatory damages, *whether by lump sum or by periodic payments*, for physical injuries or sickness.

Section 130 provides that money received by an assignee (such as an annuity provider) in exchange for an agreement by such assignee to assume "a liability to make periodic payments as damages" is excludible from the assignee's gross income if:

1. the assignee assumes such liability from a person who is a party to a suit or agreement (the "Defendant");
2. the payments subject to such assignment are fixed and determinable as to amount and time of payment and cannot be accelerated, deferred, increased or decreased by the recipient claimant;
3. the assignee's obligation on account of the personal injuries or sickness are no greater than the obligations of the assignor Defendant; and
4. the payments are excludible from the gross income of the recipient claimant under clause (1) or (2) of Code section 104(a).

Thus, Code sections 104 and 130 in concert allow a Defendant (or more typically, the Defendant's insurer) to purchase an annuity for the benefit of a claimant without the annuity provider being taxed on receipt of the lump sum paid by the Defendant and without the claimant being taxed on any portion of the annuity payments.

In general, an otherwise deductible expense cannot be deducted until economic performance has occurred.[1] Section 468B was added to the Code in 1986, to allow a defendant in a mass tort action to claim an immediate income tax deduction for a payment into a "designated settlement fund ("DSF"), whether or not the members of the class and the amounts payable to such members had been determined,[2] and by regulation this provision was extended to a broader class of controversies by making the payment to a "qualified settlement fund ("QSF").[3]

Prior to the issuance of Revenue Procedure 93-34 in 1993, it appeared that a DSF or QSF could not enter into a "qualified assignment" under Code section 130 because they were not technically a "party to the suit or agreement" as required by Code Section 130. However, in 1993 the Internal Revenue Service (the "Service") issued Revenue Procedure 93-34, 1993-2 C.B. 470, which held that a DSF or QSF *will be considered* a party to the suit or agreement, and thus can make a "qualified assignment" under Code section 130, if (i) the claimant agrees in writing to such assignment; (ii) the assignment is made with respect to a claim on account of personal injury or sickness, (iii) each funding asset purchased by the assignee in connection with the assignment relates to a liability to a single claimant, (iv) the assignee is not related to the defendant and (v) the assignee does not control and is not controlled by the QSF or the DSF.[4] By so holding, the Service has facilitated the use of structured settlements in mass tort and similar actions that utilize DSFs and QSFs.

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[1] Under the judicially mandated "all events" test (now inscribed in Code section 461(h)(4)), an expense could not be deducted until all of the events have occurred that determine the fact of the liability and the amount of such liability can be determined with reasonable accuracy. [Judicial cites] In 19[84], Code Section 461 was amended to provide that the "all events" test will not be treated as met until economic performance has occurred.

[2] Code section 468B provides generally that economic performance will be deemed to occur (and thus a deduction will be allowed to the defendant taxpayer assuming the other conditions to deductibility are met) when payment is made to a DSF. A DSF is a fund (i) established by court order, (ii) administered by persons a majority of whom are independent of the defendant taxpayer; (iii) established for the principal purpose of resolving and satisfying present and future claims against the defendant taxpayer arising out of <u>personal injury, death or property damage</u> and (iv) under the terms of which the defendant taxpayer may not hold a beneficial interest in the income or corpus.

[3] Section 468B(f) authorizes the issuance of regulations that would apply Code section 468B to funds other than DSFs provided the payments therefrom are intended to resolve "present and future claims against the taxpayer." Regulations issued pursuant to that delegation provide that Code section 468B will apply in the case of payments to a QSF. A QSF is a fund, account or trust that is (i) established pursuant to the order of, or is approved by, certain governmental authorities and is subject to the continuing supervision of such governmental authorities; (ii) established to "resolve or satisfy *one or more contested or uncontested claims* that have resulted or may result from an event (or related series of events) that has occurred and that has given rise to *at least one claim asserting liability*" and (iii) either a trust under state law or its assets are otherwise segregated from other assets of the defendants. Code section 468B(b); Treas. Reg. § 1.468B-2 (italics added.)

[4] The revenue procedure also provided that all of the requirements of Code section 130 must otherwise be met with respect to such assignment.

Application of the Economic Benefit Doctrine to Structured Settlements

Although a lump sum award for physical injury or sickness itself is not taxable to the claimant pursuant to Code section 104, any earnings derived from an annuity purchased by the claimant with the lump sum would be taxable to the claimant under the rules applicable to annuities (see Rev. Rul. 76-133, 1976-1 C.B. 34; Rev. Rul. 65-29, 1965-1 C.B. 59; Code § 402(b); and Code § 72). An assignment to an annuity provider of the obligation to pay an award deemed already received by the claimant would not constitute a "qualified assignment" under section 130 because one of the conditions to a qualified assignment – that all of the payments to the claimant are tax-free – would not be met.

There has been considerable controversy over whether a payment by a Defendant to a QSF established for the benefit of a single claimant should be treated as the equivalent of the claimant having received a lump-sum payment pursuant to the "economic benefit" doctrine. Under the "economic benefit" doctrine, a cash basis taxpayer may be taxed on funds that it has not actually received provided (1) those funds are irrevocably set aside for his benefit, (2) those funds are beyond the reach of the payor's general creditors and (3) the taxpayer's right to receive those funds is not subject to any material contingencies. *See Drysdale v. Commissioner*, 277 F.2d 413 (6th Cir. 1960); *Sproull v. Commissioner*, 16 T.C. 244 (1955), *aff'd per curiam*, 195 F.2d 541 (6th Cir. 1952).[5][6]

Under the economic benefit doctrine, if a Defendant places a lump-sum payment into a Section 468B trust for a single claimant, a taxable economic benefit would appear to be conferred on the claimant upon the initial transfer to the trust because (1) the funds are irrevocably set aside for the claimant's benefit when they are transferred to the trust, (2) the funds are beyond the reach of the Defendant's creditors and (3) the claimant's right to receive the funds in the trust is not subject to any material contingency.[7]

There is no reason to believe that the economic benefit doctrine does not apply to transfers to 468B funds. There is no express override of the economic benefit doctrine in Code section 468B or the Regulations thereunder, nor is an express override necessary in a prototype QSF since DSFs, and QSFs, are designed to settle mass tort claims and

[5] In *Sproull*, an employer irrevocably transferred $10,500 into a trust for the sole benefit of the taxpayer. In the ensuing two years the entire amount was paid to the taxpayer pursuant to the terms of the trust document. The Court held that the entire amount was taxable in the year of the transfer to the trust because the taxpayer derived an economic benefit from it in that year. The employer had relinquished all control, and the taxpayer had an absolute right to the funds which the trust was to apply for his sole benefit; and the taxpayer's right to the funds was not contingent.

[6] The theory of these cases and the economic benefit doctrine in general is that if funds are irrevocably set aside for the benefit of a taxpayer, the taxpayer is deemed to have received income at the time the funds are set aside equal to the amount so set aside. The taxpayer's right to the monies need only be irrevocable, not necessarily assignable, for the doctrine to apply. *See Pulsifer v. Commissioner*, 64 T.C. 245 (1975).

[7] The same is true in a multi-claimant situation if all of the claimants are known and the amount of their claims is not in dispute. Thus, for example, if the funds transferred to the 468B fund are to compensate an injured child and his parents and the claims of each have been established, the economic benefit doctrine would be equally applicable.

similar-type proceedings, where the economic benefit doctrine does not apply to the transfer to the funds because the right of any particular claimant to a portion of the funds and/or the identity of all the claimants is not settled at the time the funds are established.

Private Letter Ruling 2001-38-006 (May 7, 2001), by clear negative inference, recognizes the application of the economic benefit doctrine to a transfer to a QSF where there is no uncertainty as to the entitlement to the transferred funds. While the ruling held that the economic benefit doctrine did not apply to the funds placed in the QSF in question, its holding was based on the fact that the taxpayer's right to receive those funds was subject to certain contingencies that made the doctrine inapplicable rather than on the proposition that it does not apply to transfers to QSFs in general.

Applicability of Economic Benefit Doctrine to Single-Claimant Settlement Funds

Some tax advisors argue that a single claimant should not be taxed under the economic benefit doctrine when funds are placed in a QSF because the U.S. Department of the Treasury ("Treasury") implicitly authorized such a result when it provided that a QSF must be established to "resolve or satisfy *one or more contested or uncontested claims* that have resulted or may result from an event (or related series of events) that has occurred and that has given rise to *at least one claim* asserting liability." Treas. Reg. § 1.468B-1(c)(2) (emphasis added). There are several flaws in this argument, however. First, if this is an appropriate reading of the regulation, it is inconsistent with the underlying statute. Code section 468B(f), which authorizes the issuance of regulations with respect to QSFs, allows such regulations only with respect to funds that are "established for the principal purpose of resolving and satisfying *present and future claims*," without preceding the emphasized words with "one or more" or "at least one," thereby suggesting under similar reasoning to that employed by these tax advisors that section 468B would be available only to funds that are set up to satisfy the claims of more than one party. The law is quite clear that a regulation which is inconsistent with the plain meaning of the statute under which it is written is invalid.

More importantly, however, even if Treasury intended to approve of single-claimant QSFs, Code section 468B addresses the deductibility of the payment by the Defendant to the trust and not the taxability of that payment to the beneficiary of the trust. In fact, the Regulations specifically provide that "[w]hether a distribution to a claimant is includible in the claimant's gross income is determined by reference to the claim in respect of which the distribution is made and as if the distribution were made directly by the transferor." Treas. Reg. § 1.468B-4. Although this regulation addresses the taxability of distributions by the trust rather than the taxability of the transfer to the trust, it confirms that ordinary principles of tax law should be applied in determining the taxation of claimants, rather than any special rules applicable to QSFs.

Consequences of allowing the use of 468B funds to circumvent the economic benefit doctrine

A determination that the economic benefit doctrine does not apply to transfers to QSFs or DSFs could unduly liberalize the use of QSFs and DSFs as vehicles for tax deferral in circumstances outside of structured settlements of single person personal

injury claims and like circumstances and open the door to potential abuse. For example, a corporation entering into a settlement with a claimant not involving physical injuries or sickness (therefore not tax-exempt under Code section 104) could, pursuant to the settlement, make a lump sum payment into a QSF and get a current deduction. The payment would not be taxable to the QSF[8], and if the economic benefit doctrine did not apply to impose current taxation on the claimant, the claimant would not be taxable until he or she received funds from the QSF.[9] This not only creates an asymmetrical result outside the context of structured settlements but it permits the claimant to get the benefit of investing pre-tax dollars (at the Treasury's expense) whereas in any ordinary circumstances he or she would only be able to invest after-tax dollars.

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[8] Code § 468B(b)(3)(A).

[9] The QSF would be taxable on investment earnings at the maximum rate applicable to trusts. Code § 468B(b)(1).

Jun-28-2004 10:15am From-FINANCE COMMITTEE DEMS 202-228-3804 T-258 P.013/025 F-479

		Ratings			
Life Insurance Company	Assets	A. M. Best	Fitch	Moody's	Standard & Poors
Allstate Life Insurance Company	$49,828,440,000	A+, Class XV		Aa2	AA+
Allstate Life Insurance Company of New York	$4,361,166,000	A+, Class VIII		Aa2	AA+
American General Life Insurance Company	$20,832,014,000	A+, Class XV	AA+	Aa1	AAA
American International Life Assurance Company of New York	$7,962,836,000	A++, Class IX		Aaa	AAA
First Colony Life Insurance Company	$13,329,727,000	A++, Class XII		Aa2	AA
G.E. Capital Assurance Company	$30,672,615,000	A+, Class XV		Aa2	AA
G.E. Capital Life Assurance Company of New York	$4,108,839,000	A+, Class VIII		Aa2	AA
Hartford Life Insurance Company	$87,121,877,000	A+, Class XV	AA	Aa3	AA
John Hancock Life Insurance Company	$69,341,547,000	A++, Class XV	AAA	Aa3	AA
Metropolitan Life Insurance Company	$200,525,216,000	A+, Class XV	AA+	Aa2	AA
New York Life Insurance Company	$81,993,463,000	A++, Class XV	AAA	Aa1	AA+
Travelers Insurance Company	$55,274,525,000	A++, Class XV	AA+	Aa1	AA

National Structured
Settlements
Trade Association

May 10, 2004

Gregory F. Jenner
Acting Assistant Secretary (Tax Policy)
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Washington, DC 20220

Donald L. Korb
Chief Counsel
Internal Revenue Service
1111 Constitution Avenue, N.W.
Washington, DC 20224

RE: Guidance Regarding Use of a Single Claimant Trust Under I.R.C. § 468B to Undertake a "Structured Settlement"

Dear Messrs. Jenner and Korb:

I am writing on behalf of the National Structured Settlements Trade Association (NSSTA), the association of the structured settlements industry, to strongly oppose the issuance of any guidance that would allow a § 468B trust established for the benefit of a single claimant to undertake a structured settlement qualifying under I.R.C. § 130. Any such guidance, if issued, would significantly reduce the use of structured settlements to resolve the claims of physically injured claimants, and would thereby undermine the longstanding legislative policy to promote structured settlements. In addition, such guidance would effectively overturn the economic benefit doctrine and constitute a renunciation of clear and longstanding published positions of Treasury and the I.R.S.

NSSTA is composed of more than 500 members throughout the country, who negotiate and fund structured settlements of tort and worker's compensation claims involving persons with serious long-term physical injuries. NSSTA represents the entire structured settlements industry. Its members include: the structured settlement brokers who work with plaintiff counsel and defense counsel to develop, negotiate, and implement the structured settlement for the injured victim; the life insurance companies that fund the structured settlements through annuities; the property and casualty companies that enter into the structured settlement with the injured plaintiff to resolve his or her physical injury claim; and various plaintiff and defense attorneys and economists active in the structured settlement field.

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Background

Prior to the advent of structured settlements, a lump sum recovery was the traditional form of recovery in personal injury cases. The injured victim then faced the daunting challenge of managing a large lump sum to cover substantial ongoing medical and living expenses for decades, even for a lifetime. All too often, this lump sum swiftly eroded away. When the money was gone, the victim was left still disabled and still unable to work. In such cases, responsibility to care for this disabled person fell to Medicaid and the public assistance system.

Structured settlements provide a private sector funding mechanism to help ensure that the ongoing, long-term medical and basic living needs of seriously-injured tort victims and their families are met. Structured settlements provide such victims and their families with long-term financial security through an assured stream of payments tailored to the victim's needs throughout his or her lifetime. Thus, structured settlements enable seriously-injured, often profoundly disabled people to live with dignity and financial independence, free of reliance on government-financed assistance programs and interference.

For these reasons, Congress has adopted with broad bipartisan support special tax rules in I.R.C. §§ 130 and 104(a)(2) that have been in place for more than two decades to encourage the use of structured settlements to provide long-term financial security to injured victims and their families.

Structured settlements are voluntary arrangements reached through negotiation and compromise between the two parties. The injured claimant has a choice whether or not to take a structured settlement, and generally about a third of the injured victims who are offered a structured settlement take it. The other two-thirds of those offered a structure take the cash lump sum.

The negotiation of a structured settlement takes place within a framework that provides multiple layers of protection for the claimant:

- State insurance licensing and regulatory requirements apply. The structured settlement annuity issuer is subject to licensing and regulation under State insurance laws, and the transaction must comply with the Federal tax rules governing structured settlements. The annuity is subject to review and approval by the State insurance regulator. Structured settlement brokers are licensed by State insurance regulators.

- The Federal tax law in Code section 130 lays out requirements for the terms and funding of the structured settlement.

- Industry experience is that claimants in serious physical injury cases are represented by counsel in structured settlement negotiations, and

most often both parties are receiving independent advice from their own structured settlement brokers.

- Industry practice is to provide the claimant and counsel with a detailed factual presentation regarding the cost of various components of the settlement, including the annuity cost and total future payout for the structured payments. Industry practice also is to spell out the annuity cost as part of the settlement offer. Plaintiff's counsel has to know the cost of the structured settlement annuity in order to calculate the attorney's fee, which must be determined on the basis of the present value of the settlement.

- A significant number of tort cases involving structured settlements are now settled under watchful eye of a mediator.

The current approach to structured settlements has the strong support of the plaintiff's bar, the defense bar, judges, mediators, and groups representing persons with disabilities such as the American Association of People with Disabilities and the National Council on Disability.

The Proposed Single Claimant Trust Approach
<u>Will Significantly Reduce the Use of Structured Settlements</u>

In addition to the benefit of providing long-term financial security for the claimant, the current approach to structured settlements helps to resolve tort cases by focusing settlement discussions on what damages the claimant actually has suffered, and how best to match periodic payments to meet those future needs, rather than on an arbitrary lump sum payment for an injury. During negotiations, with the assistance of the structured settlement brokers, life care planners for future medical needs, and economic experts for future income needs, the parties construct piece-by-piece at the settlement table a stream of future periodic payments that will address the injured party's needs for future medical care and living expenses, and his or her family's needs for support and future education.

This current approach to structured settlements in which both sides participate in negotiating periodic payments matched to needs promotes a resolution of the claim on the basis of fair compensation to the claimant and cost efficiency to the defense and the tort system.

The experience of the tort system is that well more than half of all personal injury claims are resolved through cash settlements. Cash settlements simply are easier to understand, measure, and implement. The simple fact is that an education process is needed to inform injured claimants and their counsel about the concept and benefits of a structured settlement. Industry experience further demonstrates that when the claims community embraces and encourages the consideration of structured settlements in the negotiation process, plaintiffs and their counsel are more willing to take the time and effort to work through the more complicated periodic payment approach,

and more cases settle with a structure, providing long-term financial security to the claimant and his or her family.

There should be no illusion about the result of guidance allowing a § 468B trust established for the benefit of a single claimant to undertake a structured settlement. Such guidance would represent a return to the days of a cash-only negotiation – namely, a lump sum settlement negotiated in cash. There would be no negotiation between the two sides as to how best to match periodic payments to future needs to satisfy those needs on a cost efficient basis. The claimant would be back to simply demanding a lump sum, payable to the trust established for his benefit. If the defense is unable to participate in a negotiation that seeks to match payments and needs on a cost efficient basis, the defense will have no stake in the process and will correspondingly lessen its interest in helping to promote the use of structured settlements. The practical reality born of industry experience is that, as a result, fewer physical injury cases will be settled on the basis of a structured settlement.

Use of structured settlements is likely to diminish under the proposed single claimant trust approach for another reason. Once the lump sum cash amount is placed in the single claimant trust, all of the risks of dissipation of that lump sum appear – precisely the result that the structured settlement tax rules were seeking to avoid. In introducing the legislation that originally enacted the structured settlement tax rules, Sen. Max Baucus (D-Mont.) pointed to the concern over squandering of a lump sum recovery by claimants or their families:

> "In the past, these awards have typically been paid by defendants to successful plaintiffs in the form of a single payment settlement. This approach has proven unsatisfactory, however, in many cases because it assumes that injured parties will wisely manage large sums of money so as to provide for their lifetime needs. In fact, many of those successful litigants, particularly minors have dissipated their awards in a few years and are then without means of support." [*Congressional Record* (daily ed.) 12/10/81, at S15005.]

Unlike the mass tort situation, in the proposed single claimant trust there are no adverse or competing interests to those of the claimant at the time the lump sum is paid into the trust. All of the interests have merged in the claimant. The lump sum is under the effective investment control of the claimant. Indeed, the Skadden Arps request indicates that the single claimant trust should have *9 months* to decide what to do with the lump sum.

Holding a lump sum for any length of time, the claimant or his advisors could well fall prey to the siren call of other investment vehicles promising a higher return but also higher risk. In addition, there would be all of the other risks of dissipation that arise when someone receives a large lump sum. Even though shifting the lump sum in the trust to these other uses or investments would lose the tax-free character of future pay-outs, history shows that with a lump sum in hand the temptation is likely to be too great in a significant number of cases, such that recoveries are likely to be prematurely

dissipated, potentially putting further stress on Medicaid and other government programs. Only the current, well-tested structured settlements approach provides the spendthrift protection qualities of negotiated periodic payments that match future needs over the lifetime of the injured individual.

Accordingly, it is NSSTA's considered view that approving the proposed use of a single claimant trust to undertake a "structured settlement" in fact will significantly reduce the use of structured settlements and the marketplace for them.

The Proposed Single Claimant Trust Approach is Counter to the Structured Settlement Tax Rules Adopted by Congress and to the Longstanding Published Positions of Treasury and the I.R.S.

The structured settlement tax rules under I.R.C. §§ 130 and 104(a)(2) enacted by Congress lay down a bright line path for the individual claimant situation that has worked very well for over two decades. Under Code section 130, the tortfeasor (and its liability insurer) and the claimant agree on a stream of periodic payments in settlement of the tort claim. Such periodic payment liability then is assigned by the defendant (and its insurer) to an assignee (typically a single purpose affiliate of a life insurer) which purchases from its affiliated life insurer the annuity necessary to fund its periodic payment obligation to the claimant.

Both the House and Senate Committee Reports on the enactment of the Code section 130 assignment provision expressly make clear that the person making the qualified assignment is to be the tortfeasor or its liability carrier, not a trust established for the benefit of a single claimant: "Thus, an assignment by either *the person originally liable (the tortfeasor)* or by that person's insurance company generally would be covered by the new provision [section 130]." (House Rept. No. 97-832, *supra,* at 4; Senate Rept. No. 97-646, *supra,* at 5)[emphasis added].

In enacting the structured settlement tax rules, Congress stated: "This provision is intended to codify, rather than change, present law. Thus, the periodic payments as personal injury damages are still excludable from income only if the recipient taxpayer is not in constructive receipt of or does not have the current economic benefit of the sum required to produce the periodic payments. *See* Rev. Rul. 79-220 and Rev. Rul. 77-230." (House Rept. No. 97-832, 97th Cong., 2d Sess. (1982), at 4; Sen. Rept. No. 97-646, 97th Cong., 2d Sess. (1982), at 4).

In Rev. Rul. 79-220, the I.R.S. held that where the plaintiff and defendant had agreed to settle a personal injury claim on the basis of the defendant's promise to make future periodic payments, the full amount of such payments constituted tax-free damages under Code section 104(a)(2). 1979-2 C.B. 74. This was because the plaintiff "had a right to receive only the monthly payments and did not have the actual or constructive receipt or the economic benefit of the lump sum amount" that was invested by the defendant to yield that monthly payment. *Id.*, at 74. The Service reasoned that the plaintiff "had no right to the discounted present value of the monthly income (the discounted value of which, at date of settlement, was less than the total monthly

payments to be provided) or to control the investment of that amount." *Id.* The defendant possessed the ownership rights in the annuity, including the right to change the beneficiary.

By contrast, the I.R.S. stated in Rev. Rul. 79-220, "if a lump-sum damage payment is invested for the benefit of a claimant who has actual or constructive receipt or the economic benefit of the lump-sum payment, only the lump sum payment is treated as damages within the meaning of section 104(a)(2) of the Code." *Id.*, at 75.

The question here is whether under the proposed single claimant trust approach, the claimant has actual or constructive receipt or the economic benefit of the lump sum paid by the settling defendant into the trust in extinguishment of its tort liability. Unlike the mass tort situation addressed in the Rev. Proc. 93-34 (to which Skadden Arps tries to attach itself) in the proposed single claimant trust there are no adverse or competing interests to those of the claimant when the lump sum is paid into the trust. The defendant's tort liability has been extinguished in exchange for payment of the lump sum, and he has gone home. Although the trust is established pursuant to a court order, in the absence of any adverse interest, the limited role of the court does not effectively limit the claimant's control of the funds in the trust. There is nothing left to settle. The administrator of the trust is the plaintiff's broker or some other hand-picked advisor. The claimant in effect is "settling" with himself. All of the interests have merged in the claimant. The lump sum has come to rest in the trust under the effective control of the claimant. The claimant is deciding by himself where the funds are to be invested and what form the payout should take. The funds are in the claimant's control.

Thus, the proposed single claimant trust approach simply is an investment of lump sum settlement proceeds, and the stream of future payments is not the payment of damages negotiated and agreed to under a tort settlement agreement and release. This situation is no different than the purchase of an investment by the claimant with his or her lump sum settlement.

In this situation, it has been the longstanding published position of the I.R.S. that the claimant has realized the economic benefit of the lump sum payment of damages and is subject to tax on the earnings from the investment of such lump sum. *See, e.g.*, Rev. Rul. 83-25, 1983-1 C.B. 116 in which the I.R.S. held that the claimant "will be treated as the owner of a trust created for the minor's benefit by court order as a result of a personal injury suit filed on the [claimant's] behalf." *Id.*, at 117. Under court order, the lump sum damage payment was made into the registry of the court and was then transferred to a trust for the benefit of the claimant, with the court designating a corporate trustee. There, as in the proposed single claimant trust approach, there were no competing interests in the trust proceeds, and all of the interests merged in the claimant.

The I.R.S. ruled that the claimant "has received the economic benefit of the amount of damages paid into the registry of the court." *Id*, at 117. The Service reasoned that, "As the owner of the damages awarded, [the claimant] is considered the grantor of the trust to which the damages were transferred. Because under the provisions of the trust, the income and corpus of the trust will be distributed to [the claimant] or held

and accumulated for future distribution to [the claimant] at the discretion of a nonadverse party, [the claimant] will be treated as the owner of the trust pursuant to section 677(a) of the Code." *Id.* There were no "adverse" parties "having a substantial beneficial interest in the trust that would be adversely affected by the exercise or nonexercise of a power which the person possesses respecting the trust." *Id.* [citing Code section 672(a)].

Similarly, in Rev. Rul. 76-133, 1976-1 C.B. 34, the claimant was held taxable on the earnings from a lump sum payment of damages that was "paid into the registry of the court for the sole use and benefit of the taxpayer" and thereafter was transmitted by the court clerk to a savings institution in the name of the taxpayer for deposit in a certificate of deposit.

The I.R.S. should have a strong interest in avoiding any erosion of this clear distinction under its longstanding authorities between a lump sum settlement – still the prevalent form of tort recovery – and a structured settlement predicated upon the promise of future periodic payments. Serious erosion in the current law taxation of lump sum recoveries is sure to occur if the I.R.S. starts down the path to which Skadden Arps beckons.

The Revenue Service should be similarly wary of adopting a set of tax principles for structured settlements that are flatly inconsistent with the tax principles applied in the executive nonqualified deferred compensation arena. If published guidance were to be issued that there is no tax effect where a lump sum is paid into a trust in which all interests have merged in the taxpayer and over which the taxpayer has investment control, tax advisors would rush to devise arrangements that would expand these new rules into deferred compensation.

Evidently recognizing this fatal economic benefit problem, Skadden Arps tries to wave it off by arguing that the economic benefit doctrine does not apply to structured settlements. (June 19, 2003 letter to Treasury and I.R.S.). Skadden Arps asserts that "[t]he economic benefit doctrine does not apply to disqualify an otherwise qualified assignment under section 130." In looking for support of this assertion, Skadden points to the 1988 amendments to section 130 as evidence that "Congress' intent was to make clear that these economic benefit concepts do not apply in determining whether there is a qualified assignment for purposes of section 130."

Unfortunately for such an assertion, it is too late. The economic benefit already has occurred, before one ever reaches the stage of a section 130 assignment. The lump sum payment by the defendant has come to rest in the trust in which all of the interests have merged in the claimant and over which the claimant has investment control, before an assignment can ever be made.

Further, the 1988 changes to Code section 130 do not wave economic benefit out the door even with respect to a qualified assignment under section 130. In 1988, Congress reasoned that "Recipients of periodic payments under structured settlement arrangements should not have their rights as creditors limited by provisions of tax law." (House Rept. 100-795, 100th Cong., 2d Sess. (1988), at 541). Accordingly,

Congress amended Code section 130(c) simply to provide that the granting by the assignee to the claimant of a security interest in the assignee's annuity funding the assignee's obligation to make future payments does not disqualify the assignment. *See* House Rept. 100-1104, Vol. II, 100th Cong., 2d Sess. (1988) (Conference Report), at 171.

This narrow change made by Congress to provide the claimant with a security interest in the annuity as against the assignee in the highly unlikely event of a subsequent default by assignee provides no support for ignoring the clear economic benefit realized by the claimant under the proposed approach under which a lump sum effectively comes to rest in a trust for the benefit of a single claimant, long before the question of an assignment by the trust is ever reached.

In summary, the proposed single claimant trust approach would constitute a major rewriting by revenue procedure of the statutory structured settlement tax rules adopted by Congress as well as a renunciation of clear and longstanding published positions of Treasury and the I.R.S.

Rev. Proc. 93-34 Was Intended to Apply to the Mass Tort Situation, Not the Single Plaintiff Case

In requesting guidance that the proposed approach of a trust holding a lump sum for the benefit of a single plaintiff should later be able to enter into a "structured settlement", Skadden Arps attempts to rely on the provisions of Rev. Proc. 93-34, 1993-2 C.B. 470 which authorized a mass tort settlement fund established under I.R.C. § 468B to enter into structured settlements. (Skadden Arps letter to Treasury and I.R.S., dated June 19, 2003).

As detailed in our July 24, 2003 letter, NSSTA, on behalf of the structured settlement industry, was the principal proponent of the issuance of Rev. Proc. 93-34 to clarify that section 468B settlement funds in mass tort cases could enter into section 130 qualified assignments and thereby make structured settlements available to claimants in mass torts. NSSTA worked with Treasury and the IRS over the course of almost a year to address the issues raised by the guidance to be provided by Rev. Proc. 93-34 and thus has a unique historical and practical perspective as to its intent and policy basis.

NSSTA sought the guidance reflected in Rev. Proc. 93-34 in the wake of several widely-publicized mass tort cases, most notably the collapse of an overhead walkway at a Kansas City hotel and a fire at a hotel in Puerto Rico that both produced major casualties. At the time, Treasury and the IRS were drafting regulations to implement Code section 468B with respect to designated and qualified settlement funds. The structured settlement industry believed that the strong policy reasons for use of structured settlements in the individual tort case applied equally in the mass tort situation.

However, there was uncertainty about whether the section 468B settlement fund – at the time a relatively new, unfamiliar, and hybrid-sort of mechanism – in a mass tort would qualify as a valid assignor that could enter into a section 130 qualified assignment. The question was whether the section 468B settlement fund qualified as "a

party to the suit or agreement" within the meaning of Code section 130(c)(1) in the mass tort situation. Accordingly, NSSTA sought guidance from Treasury and the IRS that such a mass tort section 468B settlement fund – where multiple claimants have diverse and competing interests in the available settlement proceeds – would so qualify, so that claimants in mass torts could receive structured settlements. Rev. Proc. 93-34 was the result of that request for guidance.

As NSSTA reasoned in its October 1, 1992 request for guidance:

> "[A]ll of the policy justifications underlying the use of periodic payment of damages for physical injuries that have led to the enactment of section 130 apply with equal force to an injured claimant seeking recovery in a mass tort situation as to an injured claimant in a traffic accident who files suit on an individual basis and can now clearly avail himself of the section 130 periodic payment mechanism." (pp. 1-2).

Furthermore, as NSSTA's request for guidance noted, the availability of structured settlements would serve the interests of both the section 468B settlement fund and the claimants in the mass tort situation:

> "From the perspective of a claimant who has suffered a substantial physical injury, he or she should not be deprived of the benefits of periodic payments simply because the injury was suffered as part of a mass tort. From the fund's perspective, the ability to enter into periodic payment arrangements is likely to facilitate the resolution of claims in the mass tort situation, particularly in the case where substantial physical injuries have been suffered that will require medical care and other compensation well into the future." (p. 8).

Thus, the situation that Rev. Proc. 93-34 was intended to address was the mass tort situation. In the individual tort claimant situation, there was no such need for guidance because the defendant (or its liability carrier) making the section 130 qualified assignment clearly was "a party to the suit or agreement" under Code section 130(c)(1), and hence the claimant in an individual tort situation clearly could avail himself or herself of the section 130 periodic payment mechanism already. Therefore, Rev. Proc. 93-34 was not intended to address the situation of a single claimant. [1]

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[1] Some have sought to argue that the reference in Treas. Reg. § 1.468B-1(c)(2) to establishing a qualified settlement fund "to resolve or satisfy one or more contested or uncontested claims" recognizes the existence of a single claimant qualified settlement fund. In fact, this provision was included to answer the question as to whether all of the claims in a mass tort had to be asserted before the fund could be established, or whether an initial claimant such as the class representative in the suit could be used to establish the fund before the other claimants come forward: "One commentator requested that the final regulations clarify whether all potential claims must be asserted before a fund, account, or trust satisfies the requirement of § 1.468B-1(c)(2). In response to this comment, the final regulations clarify that even a single claim satisfies this requirement." T.D. 8459, 1993-1 C.B. 68, 70.

In summary, the well established Code section 130 rules had already laid down a bright line path for the individual claimant situation. With the issuance of Rev. Proc. 93-34 addressing the mass tort situation, the effort was complete to make structured settlements available to all injury victims.

The Asserted Rationale for the Requested Guidance Approving the Proposed Single Claimant Trust Approach Has Been Discredited as False and Misleading

The Skadden Arps request for guidance approving the proposed single claimant trust approach cited concerns over the financial health of the life insurance company annuity issuers in the structured settlement industry as the reason for Treasury and the I.R.S. to act favorably and urgently. Skadden asserted: "The failure of a number of insurance companies and the financial weakness of others have led to concerns about the safety, security and long-term viability of traditional annuity-based structured settlements. These concerns have resulted in the use of qualified settlement funds in many structured settlements today to ensure that the assets needed to fund the future periodic payments to the claimant will be secure." (June 19, 2003 letter to Treasury and I.R.S.)

Congress directed in Code section 130 that structured settlements are to be funded by an annuity issued by a State regulated insurance company or Treasury obligations. Annuities are used to fund the great bulk of structured settlements because of the annuity's strong financial security and its flexibility to tailor the payment stream to the specific needs of the injured victim and his or her family as well as to provide payments for the victim's lifetime. The past two decades have shown that the marketplace dictates that only the most financially secure life insurance companies are used to fund structured settlements.

Three different independent rating companies provide perspective on this topic. A.M. Best, Moody's, and Standard and Poors all provide comparative ratings of corporations around the globe. It is their independent assessment that every life insurance company provider of structured settlement annuities is of a very high caliber. Their ratings are detailed in our July 24, 2003 letter as follows.

A.M. Best's ratings of the 18 life insurance companies in the structured settlement business are:

Rating	Count	Group
Superior	12	Secure
Excellent	6	
Very Good	0	
Fair	0	Vulnerable
Marginal	0	
Weak	0	
Poor	0	

Standard and Poors sees the industry as set out below:

Rating	Count	Group
Extremely Strong	2	No simple label
Very Strong	10	
Strong	5	
Good	0	
Marginal	0	Vulnerable
Weak	0	
Very Weak	0	
Not rated by S&P	1	

Moody's Investor Services has a similar distribution:

Rating	Count	Group
Exceptional	0	Secure
Excellent	12	
Good	4	
Adequate	0	
Questionable	0	Vulnerable
Poor	0	
Not rated by Moody's	2	

The important lesson from these lists is that none of the three rating firms rates even one of the life insurance companies in the "vulnerable" category. In fact, none is even in the lowest category within the "secure" grouping.

Ironically, since the tax rules governing structured settlements require that they be funded by annuities or Treasury obligations, the qualified settlement funds that are the subject of the Skadden Arps letter typically use the very same "traditional annuity-based structured settlements" whose "safety, security and long-term viability" the letter purports to question.

Thereafter, in an October 28, 2003 letter to your predecessors, Skadden Arps recanted its proffered rationale for guidance approving the single claimant trust: "We did not intend for our prior submission to cast doubt on the fiscal solvency of the insurance industry. We regret that it has been interpreted in that manner."

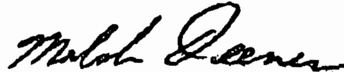
Conclusion

The National Structured Settlements Trade Association strongly opposes the issuance of any guidance that would allow a trust for a single claimant to be used under Code section 468B to undertake a structured settlement qualifying under Code section 130. Any such guidance, if issued, would significantly reduce the use of structured settlements to resolve the claims of physically injured claimants, thereby undermining the longstanding legislative policy to promote structured settlements. In addition, such guidance would effectively overturn the economic benefit doctrine and constitute a renunciation of clear and longstanding published positions of Treasury and the I.R.S.

We would very much appreciate the opportunity to discuss our very serious concerns with you and will be contacting you to seek such a meeting.

If you have any questions, please call me or our counsel John Stanton, Hogan & Hartson L.L.P. (202/637-5704).

Sincerely,



Malcolm Deener
President

cc: Eric Solomon, Deputy Assistant Secretary – Regulatory Affairs
Department of the Treasury

Helen Hubbard, Tax Legislative Counsel
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