

SETTLEMENT PLANNING SEMINAR

<u>Instructor:</u>	Joseph W. Tombs	<u>Office Phone:</u>	(806) 698-1122
<u>Email:</u>	tombs@amicusadvisors.com	<u>Cell Phone:</u>	(806) 548-0568
<u>Teaching Assistant:</u>	Matthew Brown	<u>Office Phone:</u>	(806) 698-1122
<u>Email:</u>	brown.matthewp@gmail.com	<u>Cell Phone:</u>	(954) 873-4155

If it is important that you speak to either of us, feel free to email or call us at any time.

REQUIRED TEXTS:

Structured Settlements and Periodic Payment Judgments, Hindert, Dehner, & Hindert, ISBN: 1588520374

GRADING:

Final course grades will be determined based on your average score on the online tests. An average score of 70% will be required to pass the course.

COURSE DESCRIPTION:

This course explores the theoretical and practical environmental framework of settlement planning. The most relevant parts of the legal and financial planning environment to settlement planning are discussed. Topics include: principles of financial planning, financial institutions, time value of money, trial procedure, property law, alternative dispute resolution, torts, wills & trusts, planning for incapacity, income and estate tax systems, investment principles, life insurance, annuities, and estate planning.

EXAMS AND PARTICIPATION:

Exams will be completed online. All exams are open book and must be done alone.

ASSIGNMENTS AND LECTURES:

Students are expected to complete the reading assignments, other assignments and view all of the slideshows and other information pertaining to a unit before taking the exam for that unit. Students are encouraged to attempt to “master the material” instead of just gaining exposure to it before attempting the exam.

SCHOLASTIC DISHONESTY: Students who violate University rules on scholastic dishonesty are subject to disciplinary penalties, including the possibility of failure in the course and dismissal from the University. Since dishonesty harms the individual, fellow students, and the integrity of the University, policies on scholastic dishonesty will be strictly enforced. We expect that each of you will follow an honor code and behave in accordance with the rules of the University. You are responsible for the information on this subject contained in the latest Bulletin of Texas Tech University.

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

SETTLEMENT PLANNING SEMINAR

Unit 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
 1. Who is the client?
 2. Engagement Letter
 - b. Gathering info
 1. Case details
 2. Medical records
 3. Medical underwriting
 4. Life care plan
 5. Other financial resources
 6. Budget needs
 - c. Setting client goals
 - d. Analyzing data
 1. What is net recovery?
 2. Preparation for mediation
 3. Cost per thousand market survey
 4. Medical underwriting
 5. Annuitized life care plans
 - e. Drafting and presenting settlement plan
 1. Executive summary of recommendations
 2. Implementation timeline & assignment of responsibilities
 3. Presentation of data (financial statements and other data)
 4. Summary of analysis (Sections of plan)
 5. Recommendations
 6. Appendices
 - f. Implementing the plan
 - g. Transitioning client to financial advisors

4. Client issues
 - a. Capacity
 - b. Financial experience
 - c. Minor issues

Unit 2. Qualified Structured Settlements

- 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
 - iii. 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 structured settlement annuity from a life company
- 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 – Can use qualified assignment can make the claimant a secured creditor;
- 13) Broker issues

- 14) Annuity testimony
- 15) Settlement negotiation tactics
 - A. mediation presentations
- 16) Factoring
- 17) Uniform Act – 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

Unit 3. Dissipation Risk, Attorney Malpractice, Ethics in Settlement Planning

Dissipation Risk

- 1) Assessing the risk
- 2) Dissipation planning tools
 - a. Trust solutions
 - i. Self settled spendthrift trusts
 - b. Structured settlements
 - c. blended approaches

Attorney Malpractice

- 1) Duty to inform of ability to structure (Grillo)
- 2) Using defense financial expert
- 3) Taxable damages advice
- 4) Government entitlements
 - a. Medicare set-asides
 - b. Improper language in settlement documents

Ethics in Settlement Planning

- 1) Conflicts of interest
- 2) Fee-Splitting
- 3) Defense broker issues
- 4) Government entitlement planning
- 5) Standards of Professional Conduct for Settlement Planners (SSP)
- 6) NSSTA Statement of Ethics and Professional Responsibility

Unit 4. Non-qualified Structured Settlements

1. Attorney's fees
2. Taxable damages
3. Other uses

Unit 5. Taxation of Damages

- 1) Types of Damages
 - a. Compensatory
 1. Economic
 - a. Lost earnings
 - b. Impaired future earnings
 - c. Medical costs
 - d. Property damage
 2. Non-Economic
 - a. Lost of consortium
 - b. Pain and suffering
 - c. Mental anguish
 - d. Loss of reputation
 - b. Punitive
 1. Bad faith
 - c. Collateral source rule
 - d. Non-physical injury claims
 1. Employment claims
 - a. False Imprisonment
 2. Discrimination claims
 3. Contract claims
- 2) IRC § 104(a)(1) – Exclusion of worker’s compensation awards
- 3) IRC § 104(a)(2) – Exclusion of damages for personal physical injury or sickness
 - a. Personal physical injury or sickness
 - b. 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
 1. Commutation
- 8) Alternative Minimum Tax
 - a. Attorney’s fees and expenses
 1. Non-taxable cases
 2. Banks & Banaitis Decision
 3. Employment related cases
- 9) Confidentiality Clauses (*Amos*)

Unit 6 - Government Entitlement Planning

- 1) Social Security (Old Age, Survivor, and Disability Insurance, OASDI)

- 2) Paying into the system
- 3) Eligibility and benefit
 1. Retirement
 2. Disability
 3. Survivor
 4. Family limitations
- 4) How benefits are calculated
- 5) Working after retirement
- 6) Taxation of benefits
- 7) Medicaid planning
- 8) Medicare set aside trusts
- 9) Supplemental security income
- 10) Special needs trusts
 - a. d(4)(a)
 - b. d(4)(c)

Unit 7. Factoring Structured Settlements

Unit 8. Qualified Settlement Funds