

Notice of Plaintiff Broker of Record

August 12, 2004

Mr. Defense Attorney
Smith, Smith & Smith
1234 W. Defense Drive
Big City, IL 00000

Re: Jones v. Defendant

Dear Defense Attorney:

[Opening Comments]

As a part of any settlement which may be reached in this matter, we may be wishing to structure a portion of the settlement for the plaintiff.

Our next comments in this letter do not imply that we are anticipating trouble with [defendant's insurer(s)]. However, we have experienced trouble with other insurance companies when we have asked for a structure, but the insurance company has made very thinly veiled attempts to gain financial advantage by attempting to control the structured settlement placement. This has led to lengthy delays while these issues were resolved. We raise these issues in advance to avoid trouble with [insurer].

We have a broker who represents the plaintiff. He has worked directly with the plaintiff in helping them select a format for the structure and in selecting the best rates from financially qualified companies. This broker also advises us on tax issues and assists in the creation and review of requisite settlement documentation.

We are designating the broker, Charles J. Derenne of Premier Settlement Services, Inc., to set up the plaintiff's structured settlement. We will give [defendant] a release and we will then agree to a qualified assignment of the structure to the assignee of the annuity company selected by the plaintiff. This will remove [insurer] completely from this matter with a full release.

Some insurance companies attempt to say that they will dictate the annuity company. Unless [insurer] is willing to assume the role to become the entity to directly pay the future periodic payments and not be fully released until those structured payments are all made, and unless they are further willing to meet the best bid our broker can obtain for the structured payments, [insurer] cannot insist on naming themselves or an affiliated company as the provider of structured payments.

Some insurance companies attempt to dictate the broker to place the annuity. This is a thinly veiled attempt to get the annuity premium and/or commissions back to an affiliated company. This is bad faith, pure and simple. Often in these cases, the release attempts to release this broker from liability, thus absolving the broker from a breach of his fiduciary duties to be independent, from all the advice and statements which we have relied upon from this broker.

[Insurer] has to allow the broker to be independent from them and we have a broker who represents us so there is no conflict by the broker in getting the best annuity rates and terms for the plaintiff's structure. This broker is also able to provide specialized information and assistance to the plaintiff to protect the plaintiff's structure. We not only will not release this broker, but the brokers who work on our cases know that we are relying on them for this specialized information and we intend to hold them liable in the event their advice is not up to professional standards.

Any attempt of [insurer] to dictate the annuity company or broker, or any attempt to release the broker or otherwise control the structured settlement, would be an act of bad faith, attempting to link the settlement of this case to the interaction of a person who is not selected by the plaintiff and who does not represent the plaintiff but who has a long association with defendants and defendant insurers and who will not act independently to (a) advise the plaintiff on the best structured form, rates, tax issues and documentation and (b) will try to place the plaintiff's annuity and/or rebate commissions with some insurance affiliate of the liability company.

As a final note, it is my custom to not add to a release an additional release to the insurance company for bad faith in settlement. In fact, I think it is bad faith to ask for such a release along with the release for the underlying claim. A claim for bad faith is a separate claim, with separate facts, from the demand of this claim. I do not release the bad faith issues unless they are negotiated and are the subject of additional consideration. I have found that some attorneys throw in the bad faith language into every release and then seem shocked when I strike it.

I trust that by raising these issues early we will avoid any problems.

Regards,

Plaintiff Attorney

