

**STRUCTURED SETTLEMENT ANNUITIES AND THE
N.C. LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION**

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From the perspective of the North Carolina Life and Health Insurance Guaranty Association, Senate Bill 780, enacted by the 2009 General Assembly, did not accomplish its basic purpose of expanding coverage to structured settlement annuity payees. We concur. An additional amendment will be required to assure that annuity payees who are residents of North Carolina have the protection of the Guaranty Association.

The Life and Health Insurance Guaranty Association was created in Article 62 of Chapter 59 of the General Statutes to provide protection for North Carolina residents who are beneficiaries of life and health insurance policies and individual annuities in the event a member insurer becomes insolvent. Prior to the enactment of Senate Bill 780, the Association provided coverage for the owner of a structured settlement annuity who was a resident of North Carolina or had its principal place of business in North Carolina. Coverage was for an aggregate of \$300,000 for all benefits of each individual owner regardless of the number of policies owned by the person.

Structured settlement annuities are frequently used in personal injury and workers' compensation settlements to pay the settlement amount, in whole or part, at a subsequent date by lump sum or a stream of periodic payments. Unlike a typical annuity, the owner of a structured settlement annuity is not the annuitant or payee under the annuity policy. The owner of a structured settlement annuity generally is an insurance carrier or an employer or their assignee. The owner in these circumstances frequently is not located in North Carolina and will own a number of annuity contracts that, in the aggregate, greatly exceed \$300,000.

Under the previous law, before enactment of Senate Bill 780, North Carolina residents who were payees of structured settlement annuities were not protected by the Guaranty Association if the annuity owner was not located in North Carolina, and had greatly reduced protection if a resident owner owned multiple annuities. Senate Bill 780, when introduced, addressed both of these problems by putting resident payees of structured settlement annuities on the same footing as resident owners of typical annuities. What the original bill did was substitute the annuitant payee, if a North Carolina resident, for the owner of a structured settlement annuity as the person covered by the Guaranty Association in the event of the insolvency of the insurer. Coverage for each annuitant or payee under the annuity would have remained at the aggregate of \$300,000 regardless of the number of annuity policies from the particular insolvent insurer in which the individual is a payee. The language in Senate Bill 780, when introduced, was consistent with the language in the laws of other states, including Virginia, and with the Life and Health Insurance Guaranty Association Model Act that has been adopted by the National Association of Insurance Commissioners.

The language in Senate Bill 780 that substituted the “payee” for the “owner” of a structured settlement annuity as the person covered by the Guaranty Association was retained in the bill that was enacted by the General Assembly. However, the General Assembly added a new subdivision (5) to subsection (d) of N.C. Gen. Stat. 58-62-21, limiting the benefits for which the Association is liable. It reads as follows:

(5) With respect to any one contract holder of a structured settlement annuity, one million dollars (\$1,000,000) for all benefits, including cash values.

In its attempt to expand the dollar coverage for structured settlement annuities, the General Assembly did so by referring to “any one contract holder” and thus introduced back into the statute a limitation for structured settlement annuities again apparently based on the aggregate annuities of “any one contract holder” or “owner.”

Introduction of this new additional language undermined the basic purpose of Senate Bill 780 to expand existing coverage to settlement annuity payees. Now, even though structured settlement annuity payees, who are residents of North Carolina, are covered by the statute, the extent of their protection is capped by a total of the annuities owned by an annuity owner, who could own many annuities, with a value far in excess of \$1,000,000. There is an argument that the legislative intent was to give equal coverage by the Guaranty Association for structured settlement annuity payees. However, this is not the position of the Guaranty Association and this question, therefore, will not be resolved until enactment of additional legislation substituting in subsection (d)(5), the term “payee” for the present “contract holder.”

There are, of course, steps which may be taken to protect the injured employee when a structured settlement annuity is included in a settlement agreement. The settlement agreement may provide, for example, that the purchase of the annuity or an assignment of the annuity to make future periodic payments will not relieve the self-insured employer or the insurer in the workers’ compensation claim of its own liability for the payment of the periodic payments and that its liability to make each periodic payment is discharged only upon receipt by the injured employee of the payment.

Another option is to fund future periodic payments by funding the payments through the purchase of structured settlement annuity contracts from two or more separate life insurers.

Finally, the financial strength of a life insurance company issuing a structured settlement annuity contract should be reviewed. A full summary of financial strength and claims-paying history ratings are readily available for each of the life insurers issuing structured settlement annuity contracts. A structured settlement consultant should be able to provide a thorough summary of the ratings for all of the pertinent ratings agencies and also provide audited financial information on these insurers. Appendix E contains an example of this information available for an insurer licensed to sell annuities.

Appendices

- A. Session Law 2009 – 448 (Senate Bill 780), An Act to Expand Coverage Under the Insurance Guaranty Association With Respect to Structured Settlement Annuities for Matters Involving Personal Injury or Illness
- B. October 16, 2009 N.C. Department of Insurance Notice Concerning Coverage Limitations and Exclusions Under the N.C. Life and Health Insurance Guaranty Association Act
- C. “Structured Settlement Guidelines”, from Lawyers Structured Settlements, Lawyers Insurance Agency
- D. Frequently Asked Questions, from Lawyers Structured Settlements, Lawyers Insurance Agency
- E. Example of summary of financial strength of an insurer issuing structured settlement annuity contracts