RALPH FENIK FCIP
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JAMES S. MOORE LL.B., M.B.A., CSSC *
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PHIL R. THORPE B.Sc., FCIP, CSSC
CATHLEEN M. ALLEN CIP, CSSC
NADINE PARALOVOS B.Comm. (Hons), CIP
JOHANNA VANDERLEEUW B.A. (Hons), CIP
NATHAN KIKKERT B.Comm. (Hons), CIP
* ALSO A MEMBER OF THE NEW YORK BAR

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MARY ANNE REUEL CIP, CSSC
BRITTANY GILLINGHAM B.A., J.D.**
LAURA TUNSTALL B.A. (Hons), CIP
BRADLEY CANN B.A. (Hons)
CECIL L. PAULL CLU, CH.F.C., CFP
** ALSO A MEMBER OF THE UTAH BAR

BY E-MAIL

September 29, 2017

Director
Financial Institutions Division
Financial Sector Policy Branch
Department of Finance Canada
James Michael Flaherty Building
90 Elgin Street
Ottawa ON K1A 0G5
fin.legislativereview-examenlegislatif.fin@canada.ca

Dear Sirs/Mesdames:

RE: SECOND CONSULTATION PAPER ON THE FEDERAL FINANCIAL SECTOR - STRUCTURED SETTLEMENT AGREEMENTS (PAGE 25)

McKellar Structured Settlements Inc. ("McKellar") is Canada's oldest and largest structured settlement company. Our founder, Frank McKellar, worked closely with Canada Revenue Agency in the late 1970s and early 1980s to have periodic damage payments (a.k.a., structure payments) for personal injury claimants afforded tax-free treatment.

McKellar assists personal injury lawyers and casualty insurers with the settlement of the bodily injury and automobile no-fault claims of the profoundly injured. McKellar does so through its: (i) custom design of structured settlement plans to meet the life care needs of claimants; (ii) brokerage of its structured settlement plans amongst Canada's major life insurers (whose specialized annuities fund McKellar's structure plans), thereby helping to maintain an efficient and competitive structured settlement annuity market that provides the best available yield to every personal injury claimant; (iii) preparation of structure-compliant settlement documentation to ensure that the structure constituting requirements of Canada Revenue Agency ("CRA") are met; and (iv) free, lifetime client service to personal injury clients and their families.

For nearly 40 years, McKellar has delivered the foregoing services, functioning in a neutral, intermediary role amongst personal injury claimants, their lawyers, casualty insurers, and life insurers. As such, McKellar is uniquely positioned to comment on the different roles and skill sets of this, our stakeholder group.

If implemented, the structured settlement annuity proposal set out on page 25 of the Department of Finance's Second Consultation Paper on the Federal Financial Sector to allow casualty insurers to issue their own structured settlement annuities would deprive personal injury claimants of the unique aptitudes of the life insurers and structure brokers presently involved in the Canadian structure market, with the result that structured settlements would become less well-designed, less financially secure, less competitively priced, and less well-documented from a CRA compliance standpoint.

Specifically, the prospect of allowing casualty insurers to issue structured settlement annuities represents a dangerously superficial take on what is, in fact, a highly complicated, multifaceted tax specialty product offering, of which a specialized annuity forms but one component part. Casualty insurers do not have the skill set or absence of bias necessary to deliver, on their own, all aspects of the structured settlement product offering to personal injury claimants, for the following reasons:

- Structure brokers offer expert structure design services that are tailored to meet the unique circumstances of each personal injury claimant. Structure brokers draw upon years of experience when designing structures for the injured, which expertise is critical because, once implemented, structured settlements cannot be varied. Casualty insurers would be unable to offer an equivalent service;

- Once a structure option has been chosen and funded, structure brokers (who are licensed agents for all of the life insurers in the structure market) canvass all of the life insurers to secure the best yield possible for a claimant's structure, ultimately placing the structure funding premium with that life insurer offering the best return. This brokerage process is driven solely by serving the best interests of a claimant, and is without allegiance to any given life insurer. Conversely, there would be significant conflict of interest and competitiveness concerns were a casualty insurer to attempt to settle a claim on the basis of its own structured settlement annuity. In such instance, there would exist no competitive brokerage discipline to ensure that a claimant received the best rate of return on their structure;

- In order to receive tax-free treatment, structured settlements must be particularly described in the settlement documents resolving a claimant's claim. Structure brokers take a lead role in drafting the settlement documents concluding personal injury claims, in order so that the structure forming part of the settlement is not tainted from a tax compliance standpoint. Casualty insurers have no similar skill set;

- Casualty insurers, lacking in their own substandard mortality data and medical underwriting capabilities, are unlikely to be able to offer lifetime structured settlement annuities, which require an ability to perform impaired life underwriting (a capability unique to life insurers). As a consequence, casualty insurers would have a far more limited structured settlement annuity product offering than would life insurers;

- Most casualty insurers fall far short of the solvency and asset requirements to which life insurers are held, which would call into question the security of payment of casualty insurers' structured settlement annuities. Structured settlement annuities are intended to be a nearly risk-free payment source to severely disabled claimants who have no risk tolerance. Life insurers have the financial wherewithal to deliver on their structured settlement annuity obligations regardless of financial market conditions. Casualty insurers boast no equivalent financial strength;

- Assuris, a not-for-profit organization supported and run by the Canadian life insurance industry, protects personal injury claimants to the greater of $2,000.00 per month or 85% of their monthly structured settlement payments, in the event that the life insurer-issued specialized annuity funding their structure payments were to prematurely stop paying. In addition to the financial strength of the life insurers which issue structured settlement annuities, Assuris offers an exceptional guarantee of payment should a life insurer ever default on its structured settlement annuity payments. Were casualty insurers to be allowed to issue structured settlement annuities, in addition to their lesser financial strength (as compared to that of life insurers), neither would casualty insurers be able to offer claimants the further guarantee of payment afforded by an organization akin to Assuris; and

- Life insurers and structure brokers offer important after-sales service, free of charge to claimants with respect to a variety of structure-related needs, including banking assistance, beneficiary changes, and death claims processing. Casualty insurers have no equivalent skill set, nor can it necessarily be assumed that they would be prepared to acquire one, in order to provide claimants with equivalent after-sales service.

Casualty insurers, life insurers, personal injury lawyers, and structure brokers each play a critical and distinct role in the structured settlement process. However, none of these parties has the array of competencies necessary to undertake the roles performed by any of the other parties, and any attempt to do so will occur at the detriment of personal injury claimants.

McKellar wishes to thank the Financial Institutions Division for its consideration of the foregoing, the entirety of which is offered for the public record and attribution to McKellar. Moreover, McKellar would welcome the opportunity to make further submissions, either orally or in writing, to the Financial Institutions Division on structured settlements.

Yours very truly,

J. S. Moore

James S. Moore
jmoore@mckellar.com
JSM