

## The “Physical” Requirement in IRC 104(a)(2)

IRC 104(2)(a), which excludes from taxable income certain amounts received on account of personal injuries, was amended by the Small Business Job Protection Act of 1996 to **limit the exclusion to “personal physical injuries or physical sickness.”** (Emphasis supplied.) This limitation applies to damages received after August 10, 1996.

The legislative history (H.R. Conf. Rep. No. 737 Cong., 2<sup>nd</sup> Sess. 301 (1996)) provides some guidelines for applying the limitation. In general, it looks to whether the primary injury is physical. If so, all resultant damages (except punitive damages) are excludable. **Damages for emotional distress, for example, are excludable if the emotional distress was caused by or resulted from a physical injury. Conversely, if the primary injury is not physical (for instance, if the tort was unlawful discrimination or libel), then the recovery is not excludable, even if the unlawful action causes emotional distress which in turn results in “insomnia, headaches, or stomach disorders.”** (Id., at 301) (Note that interest generally is not considered part of the damages.



## **Why Choose a Structured Settlement vs. lump**

- Payments are income tax free
- Claimants avoid risks of “alternative investments”
- Payments streams are custom tailored to the needs of the injured party

## Investment Comparison/Current Asset Class Performance

Item(s) from 4-01-2000 to 4-30-2010

Fund	Cumulative Return %	Annualized Return %	Max Front Load %	Max Back Load %	Gross Exp Ratio %	Amount at End of Period \$
● BarCap US Agg Bond TR USD	85.90	6.34	NA	NA	NA	18589.58
● DJ Industrial Average PR USD	0.79	0.08	NA	NA	NA	10079.37
● MSCI EAFE NR USD	11.42	1.08	NA	NA	NA	11142.09
● Russell 2000 TR USD	51.71	4.22	NA	NA	NA	15171.22
● S&P 500 TR	-4.87	-0.49	NA	NA	NA	9512.94
● USTREAS T-Bill Auction Ave 3 Mon	30.99	2.71	NA	NA	NA	13099.47

## Wall Street Journal Treasury Yield 05-19-2010

	Price Change	Yield %
<u>2-Year Note*</u>	-3/32	0.777
<u>10-Year Note*</u>	-5/32	3.370

\* at close

Scenario Summary  
for JOE SAMPLE

<u>Benefit Description</u>	<u>Inc%</u>	<u>Term</u>	<u>First Payment</u>	<u>Last Guar</u>	<u>Total Expected Benefits</u>	<u>Cost</u>
JOE SAMPLE - Certain and Life, \$1,000.00 Monthly		20 years	07/18/2010	06/18/2030	\$396,000.00	\$214,750.00
Benefit Totals:					\$396,000.00	\$214,750.00
Fees:						\$500.00
Total with Fees:						\$215,250.00

<u>Life Company</u>	<u>Total Expected Benefits</u>	<u>Total IRR</u>
<i>Allstate Life Insurance Company</i>	\$396,000.00	4.243%
<i>Allstate Life Insurance Company of New York</i>	\$396,000.00	4.243%
<i>American General Life Insurance Company</i>	\$396,000.00	4.193%
<i>American International Life Assurance Co of NY</i>	\$396,000.00	4.193%
<i>John Hancock Life Insurance Company</i>	\$396,000.00	3.165%
<i>John Hancock Life Insurance Company of New York</i>	\$396,000.00	3.165%
<i>Liberty Life Assurance Company Of Boston</i>	\$396,000.00	3.616%
<i>Metropolitan Life Insurance Company</i>	\$396,000.00	4.410%
<i>New York Life Insurance Company</i>	\$396,000.00	4.068%
<i>Pacific Life and Annuity Company</i>	\$396,000.00	4.131%
<i>Prudential Insurance Company of America</i>	\$396,000.00	4.486%
<i>Symetra Life Insurance Company</i>	\$396,000.00	4.399%

# SETTLEMENT PROPOSAL

JOE SAMPLE

Date of Birth: May 1, 1965  
Normal Life Expectancy: 33 Years

Proposal 1 JOE SAMPLE W BRAIN DAMAGE	<u>Cost</u>	<u>Guaranteed Benefits</u>	<u>Projected Benefits</u>
\$1,000.00 monthly for the life of JOE SAMPLE, guaranteed 0 years, beginning 1 month from purchase date.	\$115,581.00	\$0.00	\$396,000.00
	<u>\$115,581.00</u>	<u>\$0.00</u>	<u>\$396,000.00</u>
Assignment Fee:	\$250.00		
TOTAL	<u>\$115,831.00</u>	<u>\$0.00</u>	<u>\$396,000.00</u>

This proposal is valid until May 26, 2010

Internal Rate of Return: 11.050%

PRU

May 19, 2010

Structured Financial Associates  
Garret Wong  
548 Coastal Place  
Anchorage, Alaska 99501  
(907) 222 9802

# SETTLEMENT PROPOSAL

## JOE SAMPLE CHILD

Date of Birth: May 1, 1997

Normal Life Expectancy: 63 Years

Proposal 1 JOE SAMPLE CHILD-AIR CRASH	<u>Cost</u>	<u>Guaranteed Benefits</u>	<u>Projected Benefits</u>
\$20,000.00 annually, guaranteed 4 years, beginning June 1, 2015.	\$66,160.00	\$80,000.00	\$80,000.00
\$50,000.00 guaranteed lump sum payable May 1, 2022.	\$30,802.50	\$50,000.00	\$50,000.00
\$2,500.00 monthly for the life of JOE SAMPLE CHILD, guaranteed 20 years, beginning May 1, 2027, increasing at 3% compounding annually.	\$368,055.00	\$806,111.23	\$3,011,895.03
\$500,000.00 immediate cash payment.	\$500,000.00	\$500,000.00	\$500,000.00
	<u>\$965,017.50</u>	<u>\$1,436,111.23</u>	<u>\$3,641,895.03</u>
Assignment Fee:	\$250.00		
TOTAL	<u><u>\$965,267.50</u></u>	<u><u>\$1,436,111.23</u></u>	<u><u>\$3,641,895.03</u></u>

This proposal is valid until May 26, 2010

Internal Rate of Return: 5.245%

PRU

May 19, 2010

Structured Financial Associates

Garret Wong

548 Coastal Place

Anchorage, Alaska 99501

(907) 222 9802