

STRUCTURED SETTLEMENTS. By John P. Weir. Carswell, 1984. Pp. xx, 283. (\$40.00).

Negotiating and documenting your first structured settlement can be a terrifying experience. There is a plethora of potential pitfalls, many of them not readily apparent to the lawyer unskilled in tax matters and annuities. The good counsel offered in John Weir's *Structured Settlements* is comforting and authoritative for both the lawyer trained in affairs of commerce and the less knowledgeable litigator.

The author begins by defining a structured settlement as "a complex contract between the parties . . . generally for the payment of a very large sum of money over a lifetime".¹ He then cites an American recommendation that the plaintiff's lawyer engage the services of a "business lawyer",² advice this reviewer has accepted several times. The availability of this text, however, may well eliminate the need for such services.

Weir has included a table that chronicles the treatment accorded structured settlements by our taxing authority.³ This table shows that a Revenue Canada tax ruling in July, 1979 opened the door for the resolution of personal injury litigation to the greater satisfaction of both parties. The substantial tax savings provided by this ruling furnishes an entirely new area for negotiation and exploitation by counsel familiar with these new concepts. However, Revenue Canada now requires considerable attention to documentary details and settlement protocols, particulars that were formerly treated with a studied indifference. The days when a structure was just a building are gone forever!

Structured Settlements fills a large void in the library and training of many personal injury lawyers. The book provides a clear and concise reference to a topic left uncovered by even the best seminars. The inclusion of a superb set of precedents and the recommendation of an advance ruling in every case⁴ are by themselves worth the price of the book. The author has also included a sample of the critical advance ruling that promises tax exemptions for all structured payments,⁵ as well as many other instructive forms⁶ and letters.⁷ In addition, there is a thoroughly researched chapter on funding medium alternatives,⁸ a term and field unknown to most.

It is difficult to fault this significant contribution to an endeavour of increasing complexity. The manual is comprehensive and valuable.

¹ P. 147.

² *Id.*

³ P. 107.

⁴ P. 115.

⁵ P. 202.

⁶ Pp. 155-75.

⁷ Pp. 205-42.

⁸ Pp. 35-85.

It does alert unwary counsel to the risks the plaintiff assumes by accepting a structured settlement. These risks include: 1) the life insurer may go bankrupt; 2) the casualty insurer may go bankrupt; and 3) the purchasing power of the Canadian dollar may be further compromised.

The manual does not, however, alert the reader to the further risks that: 4) Revenue Canada may not honour its ruling that the structured settlement is not taxable in perpetuity; and 5) a change in governments or government policy may adversely affect the tax advantages of a structured settlement. The prospects that some of these events may occur are remote. However, they remain risks only the plaintiff in a structured settlement accepts. If the risks are considered when determining the amount by which the final settlement must be discounted for the casualty insurer to extend its necessary co-operation, then the plaintiff cannot complain.

It should be noted that recent tax rulings⁹ require the casualty insurer to continue to guarantee the remaining payments of the life insurer. These requirements are intended to provide further protection for the plaintiff, as well as to favour Revenue Canada. The text merits purchase and study.

Any lawyer who commits his client to a structured settlement without considering the substance of this book, exposes his client, and quite possibly himself, to unconsidered risks which could be the subject of later litigation. This book is a bargain at any price for the lawyer negotiating a structured settlement. Don't leave home without it!

*Martin Wunder, Q.C.**

⁹ P. 148, n. 50.

* Of the Bar of Ontario.