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The New Settlement Playbook: Why Mass Torts Are Moving Beyond Lump-Sum Recoveries

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Mass tort litigation and settlements are constantly evolving. Historically, mass tort cases often resolved qualifying claims through a lump-sum settlement payment. An emerging trend is for plaintiffs to receive their settlements in stages with multiple payments spread over several years.


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The BSA Bankruptcy: Distributing Recovery While the Estate Takes Shape

BSA's organizational structure consisted of three tiers. At the top, there is a nationwide entity (formerly known as BSA and now known as Scouting America). The next level down is something called Local Councils.

The next level down are individual scouting units (called Troops, Packs, etc.). Most scouting units hold their meetings at charter organizations, such as churches, schools, or community centers, which are not themselves part of scouting.

BSA's layered structure caused difficulty in assessing the total available assets and liability of the estate. This is primarily because the most valuable asset of the estate is liability insurance. Different scouting entities maintained different insurance policies, and insurers took differing positions regarding the scope of their obligations.

Accordingly, certain insurers have already contributed settlement funds to BSA's estate to buy back their policies, most notably Chubb for $800 million and The Hartford for $787million—while other non-settling insurers, including Allianz, Liberty Mutual, and Old Republic—continue dispute their liability and refuse to contribute. BSA's Settlement Trustee even commenced litigation against the non-settling insurers to increase the assets available to the Trust. See *Houser v. Allianz Global Risks US Insurance Co.*, No. 3:23-cv-01592-S (N.D. Tex. 2023).

BSA filed for bankruptcy in 2020. Since then, the case has taken a meandering appellate path through the Federal District Court for the District of Delaware, the Third Circuit Court of Appeals, and ultimately the United States Supreme Court. All of these appeals have caused the case to drag out for six years so far.

Because the trustee's litigation against the non-settling insurers remains ongoing, the Trust does not yet know the total assets it will ultimately have available to pay claimants. Likely because of the unique lifelong damage caused by childhood sexual abuse, BSA bankruptcy claimants have disproportionately high rates of homelessness and incarceration.

Consequently, getting settlement money into their hands as quickly as possible is of the utmost urgency in this case. This put the trustee in a bind: wait to distribute all settlement funding to claimants in one lump sum or distribute it in multiple payments over time as funding becomes available? The trustee opted for the latter.

First, the trustee assigned each claimant a proposed claim amount. Then the trustee paid each claimant a uniform percentage of that proposed claim amount. The trustee initially distributed 1.5% of most claimants' proposed claim amounts to them between 2024 and 2026 (four to six years into the litigation) and began distributing an additional 3.2% in 2026 (six years in).

The trustee had to wait before distributing 3.2% because those funds derived from the *Chubb* and *Hartford* settlements, which the trustee was unable to spend until all appellate proceedings finally came to pass in early 2026.

The benefit to claimants of the trustee making multiple settlement distributions in BSA is that it allows them to start receiving settlement funds before the total assets available to the estate are determined. This is especially important given that the case has dragged out for six years so far and that such a high percent of the claimants are homeless or incarcerated.

The Takeaways: Setting Expectations in an Evolving Settlement Landscape

In an ideal world, plaintiffs would receive full compensation in a lump-sum payment as quickly as possible, and defendants would achieve global peace at a settlement value they can support.

But when the total amount of settlement funds available to plaintiffs remains uncertain, then the calculus shifts, making it in plaintiffs' best interest to craft a deal to get some settlement money now while leaving the door open to future settlement money as circumstances allow.

This also benefits defendants/debtors because it allows them to achieve global peace sooner. Practitioners need to be realistic enough to recognize when a litigation reaches this point and creative enough to fashion a settlement framework that keeps distributing funds as they become available.

Most people are more familiar with single-event personal injury claims, such as car crashes, dog bites, and slip-and-falls, which are often resolved through a single lump-sum payment.

Mass tort litigation, however, often follows a different path. As multi-round settlement distributions become more common, plaintiffs' practitioners and their clients will benefit from early and ongoing discussions about the timing and potential structure of recoveries.

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