


January 2018

thinking

Connecting our Community with Current Issues

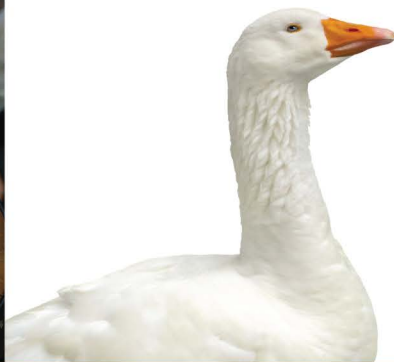


Religion in the Courtroom



Clients & Lawyers - Rights & Obligations

The Costs and Benefits of a Structured Settlement



Injured on the Job



Schmidt, Sethi & Akmajian
ATTORNEYS

azinjurylaw.com

Happenings

Matt Schmidt



Matt's charitable program Engage, which provides underprivileged kids the opportunity to play the fastest growing sport in America in a fun, free and safe environment, was a huge success this year. The program provided over 80 kids with their own rugby balls, water bottles, jerseys, bags and training, and over 40 kids with their own pair of cleats. The kids who participated wanted more, so the Old Pueblo Rugby Football program has extended the program this year by adding monthly clinics.

Ted Schmidt



Dean Marc Miller of the University of Arizona College of Law has asked Ted Schmidt to work with the Law School's new Director of Advocacy, Barbara Bergman to revamp the school's Advanced Trial Advocacy curriculum. Towards that end, Ted is directing a trial to be conducted by some of Tucson's best trial attorneys. The trial will be videotaped demonstrating every aspect of trying a civil lawsuit. It will serve as an important teaching tool for students attempting to master these trial skills. **Dev Sethi**, **Peter Akmajian** and **Matthew Schmidt** will all play major roles on the faculty to be filmed for this important new teaching video.

Dev Sethi



UNESCO has designated Tucson as a World City of Gastronomy. We are the only city in the United States to receive this honor and join Parma, Italy, Chendu, China, and seven other international cities on the list. Dev Sethi volunteers as pro bono counsel for the Tucson City of Gastronomy non-profit that supports this cultural recognition. This listing is forecast to significantly boost awareness of Tucson and tourism to our region.

Peter Akmajian



Peter has recently been appointed the national chair of the Access to Justice Committee of the American College of Trial Lawyers (ACTL). ACTL is an invitation only fellowship of exceptional trial lawyers of diverse backgrounds from the United States and Canada. The Access to Justice Committee fulfills ACTL's mission of providing pro bono legal services to persons in need all across North America. Peter has been dedicated to pro bono services throughout his career, and he is looking forward to this new challenge.

We are dedicated to providing the strongest representation for our clients in a wide range of cases involving serious injury or death. We are grateful for the opportunity to work with referring lawyers from Arizona and around the country. We appreciate the trust those lawyers have in allowing us to assist their clients. We welcome the chance to talk. If you have a case to discuss or simply want to know more about us, please visit our website.

azinjurylaw.com



Injured on the Job: Recovering More Than Just Workers Compensation Benefits

by Ted Schmidt

Virtually all on the job injuries are covered by workers compensation insurance in Arizona. This means, regardless of who might have been at fault in causing your injury you are entitled to recover much of your medical expenses and lost wages arising from the injury by making a worker's comp claim. This coverage is available to assure that folks injured in the workplace receive some compensation without having to prove who was at fault in causing the injury.

On the other hand, where a person or entity other than the employer has some degree of fault in causing your work injury, you are entitled to recover compensation for expenses, lost wages and pain and suffering from that individual or entity or more likely their liability insurance company.

Where you are able to recover

compensation in addition to the workers compensation payments you are receiving, the workers comp carrier has a lien for reimbursement out of that recovery for both past and future payments minus a fair reduction for the percentage of fault the employer may have had in causing the injury. In other words, the workers comp carrier can get reimbursed for what it is paying you to the extent you recover from a third party but if the employer's negligence also played some part in causing your injury, the comp carrier must reduce its claim for reimbursement commensurate with the percentage of fault attributable to the employer.

These principles were clarified in the recent case of *Twin City Fire Ins. Co. v. Leija*, 772 Ariz. Adv. Rep. 17 (App. Div. I, August 31, 2017). In this case Victor Leija fell three stories to his death while trying to secure window washing scaffolding on a building owned by the City of Glendale. OSHA found Leija's employer to have some fault in causing the death. Leija's workers comp carrier was obligated to pay the Leija family \$570,000.

The Leija family sued the City of Glendale and other third

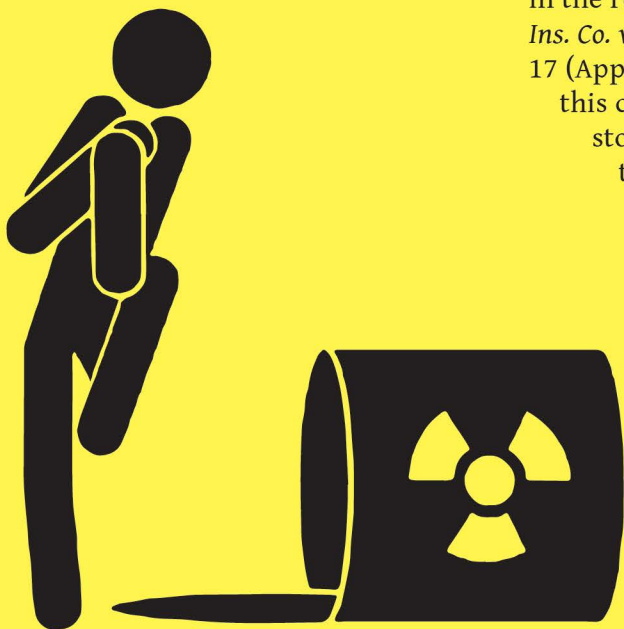


parties for their percentage of fault in causing Victor's death and settled with these defendants for \$1.6 million. The workers comp carrier sued to get full

reimbursement for the \$570,000 out of this settlement. The Leija family countersued arguing the amount they recovered in

settlement had been reduced by the employer's percentage of fault and that the comp carrier should be required to take the same reduction.

The Arizona Court of Appeals agreed with the Leija family. It found that an employee should not be forced to endure the combined effect of first having his or her award reduced by reason of the employer's fault, and thereafter have to satisfy a lien against this diminished recovery in favor of the employer and its carrier without a commensurate reduction. Accordingly, the Leija family was found to be entitled to a jury trial to determine an appropriate lien reduction equal to the proven percentage of fault to be apportioned against the employer. •



The Costs and Benefits of a Structured Settlement

by Dev Sethi

Personal injury settlement proceeds may be tax exempt. IRS Code §104(A) generally excludes from gross income money received for physical injury from settlement, whether paid as a lump sum or in periodic payments. This last provision allows our clients to consider a unique investment and financial planning mechanism commonly called a structured settlement or a structure.

While the initial proceeds of a personal injury settlement may be tax free, the investment income earned on the money is taxable. With the array of investment options and dangers that face anyone with assets, risk of loss or waste is also a concern.

A structured settlement is essentially an annuity purchased through the defendant at the time of resolution. The plaintiff never takes actual or constructive receipt of the funds. It must be agreed to and properly documented in the settlement agreement, and the mechanics of purchase must fit within the IRS' requirements. But with those formalities taken care of, a structured settlement can provide long-term benefits and peace of mind in the right situation.

A structure provides two main benefits. First, a guaranteed stream of income that is

A structure can provide a predictable stream of income not subject to the instability of the economy.

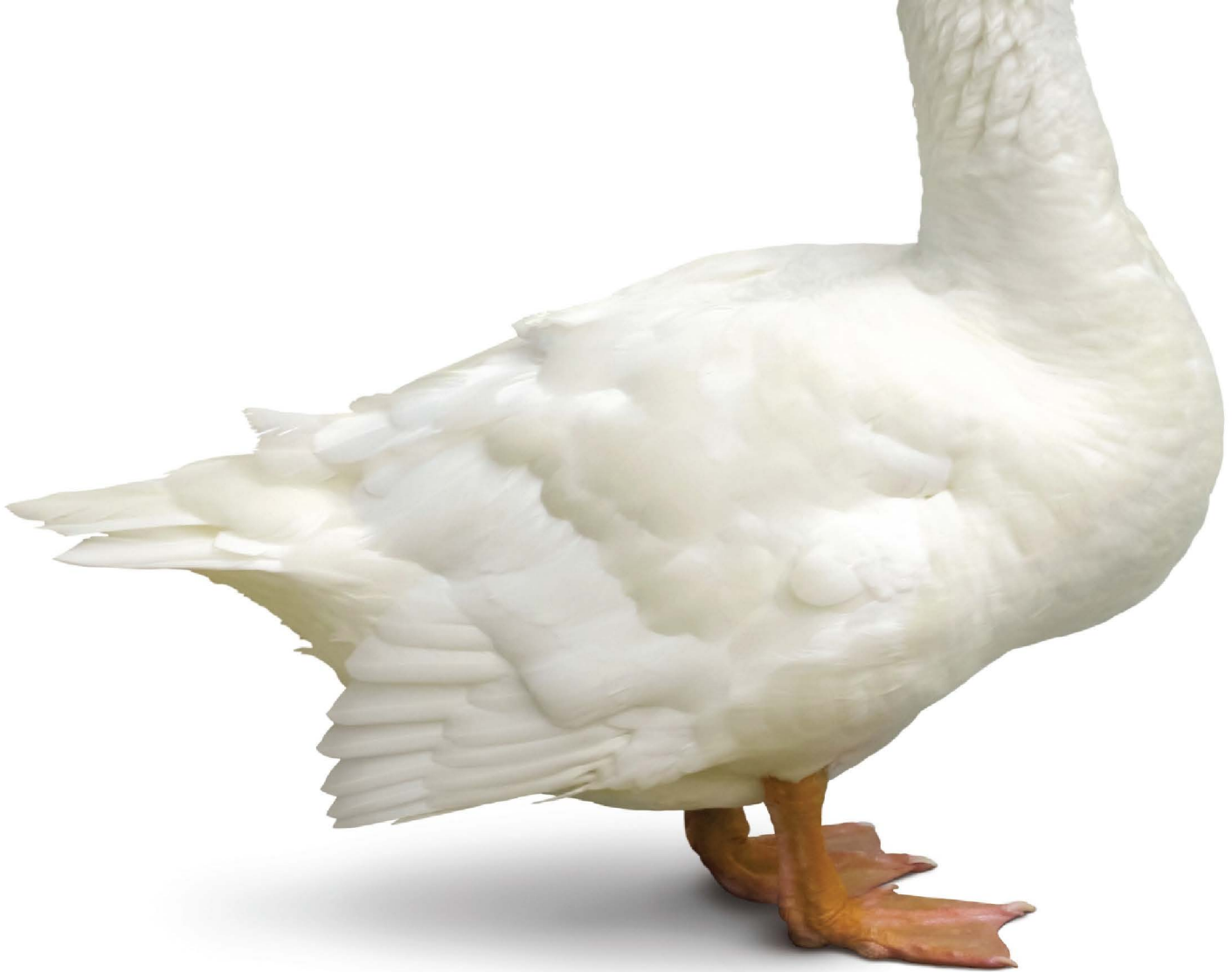
predictable and not subject to the movement of the market or the economy. Second, disbursements from the annuity, which are a combina-

tion of principal and gains, are tax free. The principal, which was tax free from the beginning, grows tax free and is distributed without creating a taxable event. This can be a powerful benefit, especially if there is a long time

horizon before money begins being distributed.

There are important risks that must be evaluated. A plaintiff must ensure that he knows





exactly how much money is used to purchase the annuity. Often defendants will present proposals that show the future payout – quickly moving past the true cost. But is the upfront dollars invested that must be the focus. View illustrations that focus on future payments skeptically.

The biggest drawbacks to the structured settlement relate to control. First, the money is invested in a defined benefit product at the outset. The payout is locked in at that moment. While a hedge against loss that limits gains in a hot market. Predictability, low risk, and favorable tax treatment result in a conservative rate of return. Second, the money is not liquid. Because the payout schedule was set at purchase, it cannot be accelerated. The money cannot be accessed in any manner other than what was originally agreed to at the time of purchase.

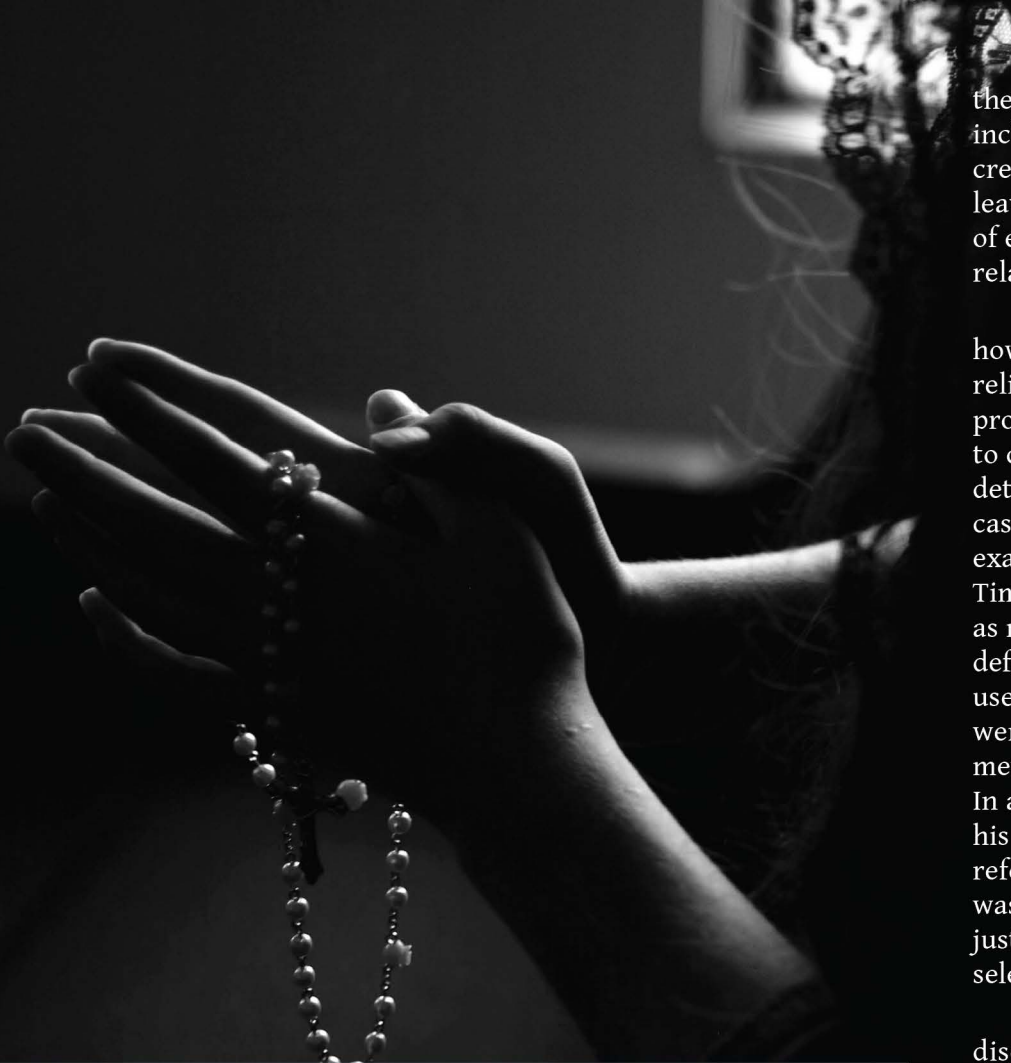
Early buyouts only pay a fraction of the potential value of this future stream of income.

It's likely you have seen late night commercials for JD Wentworth or other outfits with operatic bus passengers singing jingles to entice people to sell their structure. These companies buy future streams of income – the annuity – for a lump sum. The problem, of course, is that they pay a fraction of the full value of the asset.

Talking about the danger of these early buyouts is a large part of how we counsel clients considering a structured settlement.

Structured settlement products can be a valuable diversification tool, providing a unique benefit to injured victims. But their benefits

must be weighed against the illiquidity and relatively low growth rate. As in all aspects of investment, costs, fees, and other terms must be clearly and plainly presented for consideration. •



Religion in the Courtroom

by Matt Schmidt

The Arizona Rules of Evidence are designed to help the court officiate what information the jury is and is not allowed to hear. The primary purpose of the rules is to weed out unreliable information, or if unreliable information gets in, allow the opposing party an attempt to discredit it.

One lesser known (yet important) rule involves eliciting testimony from a witness of their religion or religious beliefs. Rule 610 of the Arizona Rules of Evidence does not allow evidence of someone's religious beliefs or opinions solely to support or attack his or her credibility. In *State v. Thomas*, it was inadmissible, fundamental error for the prosecutor to deliberately and repeatedly suggest the victim should be believed over the alleged rapist because she was a "very religious girl." 130 Ariz. 432, 636 P.2d 1214 (1981). The victim's credibility was also paramount to proving the prosecution's case.

This rule makes sense. Someone who affiliates with Christianity does not automatically make them an honest person; likewise, someone who does not believe in a god is not a pathological liar by association. Nevertheless, religion is a very powerful thing that can unfairly sway the weight a juror gives to certain testimony based on

the juror's own biases and beliefs. While including someone's religion to affect credibility can have unfair consequences, leaving religion and religious beliefs out of evidence is generally harmless as it relates to whether a witness is believable.

There are exceptions to this rule, however. If the evidence of someone's religion plays a legitimate role in proving an aspect of the case unrelated to credibility, and the evidence is not determinative of the outcome of the case, the court is likely to allow it. For example, referencing someone as "Father Tim" was not related to credibility as much as it was to identifying the defendant; likewise, references to the use of altar boys in an in-house chapel were admissible to establish defendant's method of seducing children in his home. In another case, one defendant justified his conduct in abusing a woman by referencing his religion, the prosecution was allowed to show that his religious justification was inconsistent and selective.

Most of the case law in Arizona discussing Rule 610 involves criminal actions as opposed to civil. For example, can an injured plaintiff who was passionate about her religion and an active member of her church testify about how her injury has limited her ability to participate in church related activities; can she testify that her lack of participation in such activities has caused depression because she doesn't feel as close to God? Can a defendant challenge a plaintiff's failure to mitigate his damages because his religious beliefs prevent him from receiving certain types of treatment or medication? Based

If someone's religion plays a role in proving an aspect of a case, the court is likely to allow it.

on current rulings, the evidence of both scenarios should generally be allowed due to its relevance in proving damages; the evidence is also more aligned with activities

as opposed to beliefs or opinions. Under these scenarios, however, the length a witness can go explaining what their religion is, or how an incident has affected their "relationship with a higher force," is a slippery slope. •



Clients & Lawyers

-Rights & Obligations

by Peter Akmajian

Lawyers sue on behalf of injured clients, but lawyers themselves may be sued when they have committed malpractice and have damaged a client.

In addition, lawyers are subject to regulation and discipline by the Arizona Supreme Court. If lawyers do not follow specific ethical rules, they may be disciplined.

This article will explore the basics of these topics and suggest things clients can do to protect their rights.

LEGAL MALPRACTICE

Like other professionals, lawyers are held to the “standard of care”, meaning they must act reasonably and competently. Failure to do so causing damage results in liability.

Legal malpractice can occur many ways, including failure to meet important deadlines like the statute of limitations or the failure to act diligently in preparing a case for trial.

Most of the time, if a client sues a lawyer, the client must have a legal expert—generally another lawyer qualified in the area in question—to testify that the lawyer breached the standard of care.

Many but not all lawyers carry malpractice insurance. The website of the State Bar of Arizona (www.azbar.org) indicates whether a lawyer has insurance.

ARIZONA’S LAWYER DISCIPLINE SYSTEM

Lawyers are bound to follow ethical rules, or ERs. The ERs are also on the Bar’s website. In general, the rules require lawyers to act honestly, competently, diligently and free of conflicts of interest.

Persons with concerns and complaints about lawyers can voice such complaints through the website and/or by calling the Bar at 800-319-0514 x7280.

Depending on the facts and circumstances, client complaints may result in a Bar investigation, formal proceedings and possibly discipline.

Lawyer discipline can be as serious as disbarment for severe offenses. Other disciplinary possibilities are suspension for specified periods, public reprimand, probationary terms and private admonishment.

Again, the website will tell you if a lawyer has been disciplined.

HOW CAN YOU PROTECT YOURSELF?

First, be a proactive client. Ask questions. Don’t be shy. Insist on timely responses. Seek a second opinion if you are dissatisfied.

If your lawyer fails to act properly, then by all means contact the State Bar. This is your right as a client. Sometimes the State Bar can help solve the pending problem.

If the lawyer has irrevocably cause damaged through neglect or otherwise, then a legal malpractice case may be the proper remedy. You should consult independent counsel as soon as you believe you may

have a legitimate legal malpractice case because, just like any other case, the statute of limitations applies.

The bottom line is that clients have the right to a competent and diligent lawyer who acts in the clients’ best interests. You also have the right to hold accountable any lawyer who fails in these duties. •

***You have the right to a
competent and diligent
lawyer who acts in
your best interests.***



**1790 East River Road, Suite 300
Tucson, Arizona 85718**

PRSTD STD
U.S POSTAGE
PAID
TUCSON, AZ
PERMIT NO. 653



Our Attorneys:

*Dev Sethi, Matt Schmidt,
Ted Schmidt & Peter Akmajian*

*Exclusively representing
individuals in significant
injury and wrongful death
matters.*

We are dedicated to providing the strongest representation for our clients in a wide range of cases involving serious injury or death. We are grateful for the opportunity to work with referring lawyers from Arizona and around the country. We appreciate the trust those lawyers have in allowing us to assist their clients. We welcome the chance to talk. If you have a case to discuss or simply want to know more about us, please visit our website.



azinjurylaw.com
520.790.5600



Are you interested in our thinking? Call 520.545.1674 to receive your own copy of our newsletter or email ialmazan@azinjurylaw.com.