

Summary of Lecture 8

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Types of Legal Settlements

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When most people think of a legal settlement, they picture a defendant writing a single check to a plaintiff and closing the matter for good. In reality, settlements can take many forms — from structured payment plans spread over decades to strategic statutory offers governed by federal procedural rules. Understanding these mechanisms is essential for anyone navigating civil litigation.

This document explores two key settlement types: **structured settlements**, which allow defendants to pay plaintiffs in installments rather than a single lump sum, and **statutory offers of settlement** under FRCP Rule 68, which create powerful incentives for plaintiffs to accept reasonable offers before trial. Both reflect the law's broader preference for negotiated resolution over prolonged courtroom battles.

Structured Settlement

Defendant pays plaintiff in increments — typically a large upfront sum followed by regular payments monthly or yearly.

Statutory Offer of Settlement

A defendant's formal offer that, if refused and the plaintiff wins less at trial, strips the plaintiff of the right to recover post-offer court costs.

Federal Rules of Civil Procedure

All federal civil cases are governed by the FRCP. District Courts may also add their own supplementary rules on top of these.

Structured Settlements: How They Work

The traditional notion of a settlement is that the defendant pays the plaintiff some amount and the matter is brought to an immediate and final close. This, however, is not always the case. Structured settlements allow defendants to compensate plaintiffs significantly without demanding an immediate, potentially crippling, single payment. Instead, payments are spread over time — often for the remainder of the plaintiff's life.

Example — Billy v. Treeland, Inc.: Billy, a roofer with 15 years of experience, loses his footing when the sole of his boot comes loose and falls off the roof while on a job. He sues the boot manufacturer, Treeland, Inc., claiming design and manufacturing defects caused the sole to come loose. Because doctors say he will live in pain for the rest of his life and will never regain sufficient flexibility to return to roofing, he seeks **\$10 million** in compensatory and punitive damages.

Treeland, concerned that an adverse ruling would set a precedent exposing them to tremendous liability, initiates negotiations. The parties quickly reach an agreement: Billy receives **\$500,000 upon execution** of the settlement agreement, plus full payment of all medical bills to date. In addition, Treeland agrees to pay Billy **\$100,000 per year for the next 20 years**, and **\$50,000 per year** after that for the rest of his life.

\$500K

Upfront Payment

Paid upon execution of the settlement agreement, plus all medical bills covered.

\$100K

Annual (20 Years)

Yearly payments to Billy for the first 20 years following the settlement.

\$50K

Annual (Lifetime)

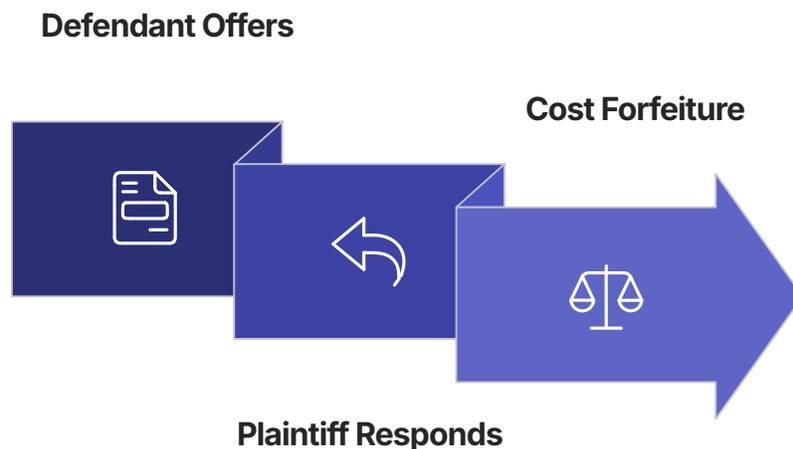
Ongoing yearly payments for the remainder of Billy's life after the initial 20-year period.

Interestingly, an entire industry has sprung up around structured settlements. People can sell their rights to future payments in exchange for a lump sum — the same model offered by entrepreneurs to lottery winners who prefer a large payment today over guaranteed payments for years to come.

FRCP Rule 68: Statutory Offer of Settlement

Another special type of settlement involves **FRCP Rule 68** — also known as a "Rule 68 settlement" or "statutory offer settlement." It is important to note that FRCP 68 applies *only* to civil cases in federal court, though many states have enacted similar rules in their own codes of civil procedure.

Rule 68 ("Offer of Judgment"), paraphrased in plain English, works as follows: Any time more than 10 days before trial begins, a defendant may make a written settlement offer. The plaintiff then has **10 days to accept in writing**, after which either party files the offer and notice of acceptance with the court. If the plaintiff rejects the offer, the defendant may make a new one. Critically, if the plaintiff rejects all offers and later wins at trial but receives a judgment *less favorable* than the defendant's offer, the plaintiff must pay all costs incurred after the date the offer was made. Key cases interpreting this rule include *Marek v. Chesny*, 473 U.S. 1 (1985), and *Basha v. Mitsubishi Motor Credit of Am., Inc.*, 336 F.3d 451 (5th Cir. 2003).



At its heart, Rule 68 reflects a general policy that favors and encourages negotiated settlements. The law looks kindly upon those who manage to see through their differences and agree to settle rather than pursue a protracted court battle to its bitter end.

Rule 68 in Action: Gabrielle v. Daniel

The mechanics of Rule 68 become clearest through a concrete example. Consider the following scenario, which illustrates how a rejected statutory offer can dramatically affect a plaintiff's ultimate recovery — even when she wins at trial.

Example — Gabrielle v. Daniel: Gabrielle sues Daniel for breach of contract, seeking **\$15,000 plus all costs and attorney's fees**. The case is properly brought in federal District Court, so Rule 68 applies. Trial is set for **July 1**. On **June 16**, Daniel serves Gabrielle with a properly drafted written offer to settle for **\$10,000**. By **June 26**, Gabrielle has not responded — meaning she did not accept within the 10-day window. The case proceeds to trial on July 1. Judgment is entered in Gabrielle's favor, but she is awarded only **\$8,000**.

Because the \$8,000 judgment is less favorable than Daniel's \$10,000 offer — which Gabrielle rejected — she is **unable to recover costs and attorney's fees incurred after June 16**, the date the offer was made. She may still recoup costs incurred prior to that date, but the financial penalty for rejecting a reasonable offer is significant.



This outcome underscores Rule 68's core purpose: to give plaintiffs a meaningful incentive to accept favorable settlements rather than gamble on a larger award at trial. Whether in satisfying contractual obligations or encouraging parties to resolve disputes efficiently, the law consistently rewards those who negotiate in good faith and reach agreement — rather than pursuing every last dollar through prolonged litigation.