<u>In re Marriage of Rothrock (159 Cal.App.4th 223, 70 Cal.Rptr.3rd 881)</u>

The Court held that personally injury settlement using an insurance annuity were not income for purposes of child support, if the payments were due to personal injury and none of the payments are agreed to be for lost past or future wages.

This case is a further refinement of personal injury payments and adds to *IRMO: Heiner* (2006) 136 Cal.app.4th 1514. In *Heiner* the court held that a *lump sum* personal injury settlement is not income for purposes of child support. The court stated that the lump sum settlement was "undifferentiated and unallocated" and "any attempt to allocate [Heiner's] recovery among all the elements of his damages would be pure speculation".

Heiner was a lump sum settlement. The current case involved a structured personal injury settlement in the form of an insurance annuity paying Mr. Rothrock $1,700 per month for life, beginning August 1, 1990 with 20 years guaranteed.

Mrs. Rothrock argued that §4058(a)(1) of the Family Code states that annual gross income includes annuities, workers' compensation benefits and interest.

The Court in Rothrock took this argument a step further and stated that §4058's definition of income is based on the Internal Revenue Code's (IRC) definition. It went further and stated that under §104(a)(2) IRC damages for personal injury are excludable from gross income because they correspond to a "return of capital", i.e., they make the injured party whole.

Mr. Rothrock had suffered serious brain injury. The Court felt there was no question that the annuity payments were being made due to personal injury. The agreement undifferentiated the payments and there was no other documentation that would refute the payments were for personal injury.

The case goes on to discuss the "tax advantages" of a structured settlement. Under §104(a)(2) a lump sum payment would be excludable from income. However, if these funds were then invested there is no question the return from these investments would taxable. In contrast, under a structured settlement all payment are considered damages received on account of personal injury.

The Court also concluded that the annuity payments Rothrock received did not meet the definition of California law, "the gain or recurrent benefit that is derived from labor, business, or property or from any other investment of capital".

Finally the Court stated that a structured settlement using an annuity, like a lump sum payment may be income for purposes of child support if the settlement agreement expressly or impliedly labeling a portion of payments for lost past or future wages, however, the person challenging an undifferentiated settlement agreement bears the burden of proof.