

Structured settlements now available for injured plaintiffs

By Judie Stephens, Sylvania, NSW

My life changed dramatically on Saturday 27 November 1993. My daughter, Amanda, and son-in-law, Jay, tragically died in a motor vehicle accident leaving behind three tiny children - Matthew (five years), David (three years) and Jackson (three months). Jackson was catastrophically injured and lives with me. Until then, my life was fairly ordinary, I was relatively happy and never recognised that I would need to stretch myself beyond boundaries I never knew existed.

A few years after the accident, I started looking beyond the day-to-day care and wondering how people like Jackson, who would receive compensation, could manage their affairs for the rest of their life. I am fifty-seven and Jackson is eight. I recognise, as do many people who manage the affairs of those who are differently abled, what happens when I am gone. I looked at the alternatives that are available, both in New South Wales and other States, and wasn't impressed. I was in aware of Jon Blake and his Mum's terrible plight with the Protective Office. The papers

abound with sad stories of mismanaged, lost or stolen compensation.

Giving this much consideration, I discovered structured settlements were available in the UK, Canada and USA. About three years ago, I was put in touch with Jane Ferguson who at that time was putting together national associations from legal, medical and insurance backgrounds to form the

Structured Settlement Group. The first chairman was Dr Richard Tjong of United Medical Protection. This happened and we took the law reform journey together.

'What is a structured settlement?' A structured settlement is only available by choice of the plaintiff. It is an indexed income stream for life in the form of an annuity that will pay for care, medical and rehabilitation expenses. There is no income tax payable on the interest of the annuity. This may be in conjunction with a lump sum and is available only at time of settlement. Structured settlements have been embraced in UK, Canada and USA.

It was time to talk with our Federal Government. We went to Canberra and lobbied for two and half years. Many visits were made to my friend, The Hon. Danna Vale MP, Assistant Treasurer Senator Rod Kemp and informal discussions were held with Treasurer Peter Costello and the Prime Minister's Department. We also met with Treasury and Health. It was a long haul. It was bipartisan and made social sense. Our current medical crisis assisted our lobby.

Wednesday, 26 September 2000: a great victory. The Assistant Treasurer said in his press release:

The Assistant Treasurer, Senator Rod Kemp today announced that the Government will introduce legislative amendments designed to encourage the use of structured settlements for personal injury compensation.

Now plaintiffs have the opportunity to choose a structured settlement. People like Jackson, those who are catastrophically injured and those who may need to be protected from people who don't have the plaintiff's interest at heart. Let us stop and think. If most of us were to receive all our disposable income at one point of time, there

would be very few of us that could see it through to the end. Greed gravitates towards money.

In 1997, The Hon. Bryan Vaughan MLC, Chairman of the Law and Justice Committee said,

Throughout the course of the committee's inquiry, I have become increasingly convinced that the lives of those who are most seriously injured in motor vehicle accidents... can be significantly assisted by the increasing use of structured settlements.

I am convinced that the time has come for Australia to follow the lead of other common law countries - United Kingdom, Canada and United States and introduced structured settlements for the very seriously injured accident victims.

It has been my passion that structured settlements should be available and now they are. It is very important to share this good news with people who make decisions, including members at the Bar.

This year in May, I spoke in London with Lord Phillips, Master of the Rolls. He was very interested in what is happening in Australia. His comment to me, 'we feel here in Britain that we would like to ask each plaintiff why they choose not to have a structured settlement'. This month in the UK, there is a working party to look at these and other issues pertaining to structured settlements.

Readers may like to look at our evolving www.daretodo.asn.au community website. Here we share our story of Jackson's rehabilitation and legal journey. We hope this will assist others. The legal feature promotes our law reform advocacy for structured settlements.

From a plaintiff's perspective, structured settlements makes great sense. The defendant insurer knows that the money is going in the right direction. The judge has the terrible task removed of putting a 'use-by' date on the plaintiff's life.

So now to consider: do you know someone who would benefit from a structured settlement? I do?

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