

Protecting People

TAX REFORM AND THE IMPACT OF STRUCTURED SETTLEMENTS

SYDNEY INSTITUTE
41 PHILLIP STREET, SYDNEY 2000
WEBSITE: www.sydneyins.org.au
PRESENTED 5.30PM, WEDNESDAY 14 FEBRUARY 2001

JUDIE STEPHENS LAW REFORM ADVOCATE, SYDNEY

Thank you, Sydney Institute for this important opportunity to present a real solution that will protect the most vulnerable in Australian Society

I quote our Prime Minister, Mr John Howard's comment in the Weekend Australian, 27 March 1999:

“Truly great Nations find ways to nurture their societies”

May I tell you my story?

I was forty-nine years of age on 27 November 1993. A businesswoman and relatively happy with my lot. On that morning, our family was totally shattered. My daughter, Amanda and her husband, Jay were killed in a motor accident. Their three children, Matthew (five), David (three) and Jackson (only three months) survived. Jackson sustained catastrophic injuries. He suffers from quadriplegia. He is brain damaged and visually impaired. Jackson is a wonderful little seven-year-old, we live very happily together and he is the delight of my life.

After the tragic accident and six months in hospital, Jackson came home to live with me. I provided his twenty-four hour care for in excess of two years and then I collapsed. In this major mess, I went to Court to attempt to get adequate interim payments for Jackson's twenty-four hour care.

What happens when a family is thrown apart? In our case, the social fabric of our family will never be the same again. It caused anger and blame. It has brought together my husband, Peter and I who are separated to share the parenting of Jackson. Peter is the one that makes it possible for me to do this work.

Jackson will be entitled to compensation for his injuries as others are in motor accidents, workers compensation and medical negligence. I speak for all the compensable victims in Australia.

From about January 1997 to January 1999, I went it alone. I looked within Australia for solutions to help people who are catastrophically injured. I pondered: Why should Structured Settlements be available by CHOICE in USA, Canada and the UK and not in Australia?

I read books, one in particular “Planning for the Future” by L Mark Russell. Showing ways of providing a meaningful life for a child with a disability after the death of their parents and carers.

Indeed, I was very concerned about what happens after a Court Case is completed and compensation is paid. Usually, a family is totally exhausted emotionally and physically by the trauma of providing care and holding it all together. How can we possibly expect a family to be able to make totally

accurate and long term successful financial decisions for the lifetime of their dearly loved and injured family member?

My long time friend is Danna Vale MP, Federal Member for Hughes. We have known each other for over 10 years and Danna met Jackson at his pre-school in her electorate. Danna embraces the Structured Settlement concept. Thank you Danna. She and I both understand the absolute importance of ensuring that our catastrophically injured people have the opportunity of lifetime indexed payments to pay for the injured person's care, rehabilitation and medical requirements. It was Danna who spoke personally with our Prime Minister and took us to his Advisers, Treasury and many other Federal and State Government Departments.

Another door opened early in 1999; I met Jane Ferguson who was setting up the Structured Settlement Group and Dr Richard Tjong, Chairman of United Medical Protection was the first Chairman of Group. There to my amazement, I realised that the parties that wanted Structured Settlements were the Plaintiffs and the Insurers from opposing sides, all of whom are members of the Structured Settlement Group.

- Australian Plaintiff Lawyers Association and the Insurance Council of Australia
- Australian Medical Association, Australian Association of Surgeons and United Medical Protection

These organisations and many others are members and each share **ONE** common interest to protect their injured.

David Bowen, General Manager of the Motor Accidents Authority, shares our vision and now is the Chairman of the Structured Settlement Group. It is thanks to the MAA for their financial support that the opportunity has been for Jane and I to continue our lobby and also the MAA paid for the drafting and publication the Structured Settlement proposal document which is also on www.daretodo.asn.au our community website.

What are we asking for? Good, honest and socially just Structured Settlements that have been embraced and are working well in the US, Canada and UK. When people receive common law compensation for personal injury they should be able to choose to receive a smaller lump sum plus periodic payments (which is a Structured Settlement) and it should be clear that no tax is payable upon receipt of each periodic payment.

To clarify this tax treatment only a small amendment to the tax law is necessary. The periodic payments are calculated on a net of tax basis so it makes sense that no tax should be payable – just like when I lump sum is received, it should be tax free. A small taxation amendment is the solution. This tax treatment would **ONLY** apply where common law compensation was agreed to be paid in the form of a structured settlement at the time of settlement. There is no risk of it impacting upon other areas of tax law.

Yes, Jackson and I met with Senator Rod Kemp, Deputy Treasurer. We met with him and his entourage in Sydney. We know that this taxation policy is in his portfolio and we asked him on behalf of all compensable accident victims for a fair and just taxation system.

Kelvin Thomson, Shadow Assistant Treasurer has met with Jackson and I and he also embraces the concept of Structured Settlements. This is bipartisan; there has been no opposition from any political party, nor any politician.

Consider it from a Judges perspective! UK Judge quoted;

“I vividly remember meeting the mother of someone very like Tony who I had to advise some years after the settlement. I met her in the street and she told me that the one thing that had gone absolutely right over the intervening period was the structured settlement, the regular arrival of cheques without

worry of tax, without the worry of the retail price index going up. So from her, through me, you have a personal commendation of the advantages of this.”

Mr Justice Holland, Wells v Mehes

Indeed, it must be hard for Judges to put a ‘use by’ date on the life of a Plaintiff!

Let’s cast our thoughts back to recent Australian compensation stories that have caused great grief.

- Sydney Morning Herald, 5 August 2000, John Blake’s Progress - John Blakes’s compensation is disappearing fast.
- The Age Melbourne, June 2000, Geelong reels as another pillar of the community crumbles - Accident victim Tom’s \$6 million lump sum was supposedly invested by Frank DeStefano who gambled away his client’s moneys
- We now have a medical crisis in Australia. “Over 80% of claims arise from procedures carried out at public hospitals. Claims are escalating by 500% over the past five years. And 35 of every 1000 doctors in NSW are now facing lawsuits”. (Kerry Chikarovski, MP Press Release 13 February 2001) Structured Settlements are a tool that will assist those that are catastrophically injured to have their lifetime medical, rehabilitation and care needs paid. This is not the panacea but another tool to assist in the control of Professional Indemnity premiums paid by our Doctors and also caring for our most injured.

Think of people that you know who have received compensation. Was their settlement money well managed? Imagine that you were given your life savings today and you have to get it right. But of course, if you didn’t, you could fall into the social security network, medicare and charity. But you do have a second chance, if you waste your next pay packet, it is OK. For some people, it isn’t. Where there is big money, there is greed. Structured Settlements will protect our most vulnerable injured citizens.

For my grandson, Jackson, I want his care, rehabilitation and medical expenses paid for the rest of his life. He needs the promise of knowing that this will continue after I am gone. There is absolutely no desire for me to create wealth within our family because of Jackson tragedy. He needs what he needs. No more, no less. This is an important social justice plea on behalf of all compensable accident victims.

A friend of mine suggested the power of a website to assist our lobbying. We chatted over dinner and introductions were made to Professor Jane Cooper and Lois Burgess of Wollongong University. Our community website ***Dare to Do Australia*** has been set up and managed by the students. A great experience! I remember being invited to Parliament House and asked to speak to thank these people, I said, “*it is amazing that I can press a button and contact any or every Politician in Australia*”.

October 1999, a surprise! Australian Plaintiff Lawyers Association awarded me the Civil Justice Award for the work I am doing lobbying for Structured Settlements. People do watch – people do care.

I want to send this vital message to Government. I want those in positions of power to understand that Structured Settlements will make an enormous difference to the quality of life for accident victims. Surely, we must judge our Government by how they care for their most vulnerable, most injured and most needy victims. Here is the opportunity to bring about positive change.

A win for accident victims! A win for Government! And a win for every tax paying Australian!

My focus has been positive but there is one major negative aspect. Federal Treasury gave inaccurate and incomplete information to our Politicians. Amazing, our bean counters can't count beans! They said, "*Structured Settlements would cost the Government money*".

Richard Cumpston's Actuarial Report dated February 2000 clearly shows us all the potential costs and savings from Structured Settlements. Thank you Richard. When Structured Settlements are implemented....

- The saving estimate for Social Security is between 2 million and 4.1 million per annum.
- The Government Health care savings are between 4.5 and 9 million.
- The tax on the interest of lump sums would present a loss of 2.6 million to 5.2 million.
- The net savings to the Government and the Australian Taxpayer on Structured Settlements would be 3.9 to 7.9 million annually. What a saving!

New Years Day at Centennial Park was fun for me! I spoke to our Prime Minister, Mr Howard and Mrs Howard. On shaking hands, I introduced myself and there was no recognition from Mr Howard until I said, "*Structured Settlements*" and he said, "*I know*" and smiled. I have this and other photos to share with you today.

Only last week, there was a timely achievement Zurich, a forward thinking Third Party Insurer, successfully agreed to a Structured Settlement, ***without the vital taxation amendment***. This was approved under Section 81 of the Motor Accidents Act 1988. The Plaintiff was in a motor vehicle accident in 1998, he has vegetative tetraplegia, the medical evidence said, "*he had a life expectancy of zero to fourteen years*". If our medical experts are at such odds, it makes it a very difficult task judicial system. This gentleman will have his care, medical and rehabilitation needs paid for life. Zurich cared for their client. The Plaintiff legal advisers also cared for their client. However it was Zurich who funded this settlement for a person who does not have a long life expectancy. So the Plaintiff will not be bothered with tax BUT the insurer will still have to make the payments. You can see the importance of the tax amendment so people can buy a regular income stream that is indexed to the CPI. This will pay for their needs until they die. Zurich and all Structured Settlement supporters want every injured Plaintiff to be justly compensated for life without being a burden on any system, individual or family.

Yesterday, Kerry Chikarovski, MP Leader of the Opposition in NSW said, "*Doctors were leaving our public hospitals because they could no longer afford the cost of the rising insurance premiums*". Chris Hartcher MP, Shadow Attorney General embargoed the discussion paper, "*Medical Negligence: Reform or Restructure?*" Indeed Structured Settlements are part of the solution.

When I took Jackson to meet Senator Rod Kemp in July 1999, I said, "the compensable accident victims in Australia will welcome a YES whenever you are prepared to give it. But if you dare to give us NO, we will keep on, keep on and keep on until you give us a YES".

To conclude, let me tell you a story. I was in Manly once and there was a man who threw some stones on the ground, runes he called them. He said, Judie, something is going to happen to you. If you look inwards it will not be good; you must go beyond the boundaries that you've known. I had no idea what he meant.

After the accident, for the first two years I was very, very sad. I thought life was too hard to live for Jackson and I. I was totally exhausted. But once things fell into place in a better fashion, I saw beyond our own tragedy. That made my life much better. Jackson adds to my life a quality that no one else could. First of all he is a child; he is not an invalid person. When people first meet Jackson you can see them step back. I absolutely love him and living with him.

When we get structured settlements, and we will, I would like to work in education for lawyers, plaintiffs and defendants and with people similar to help work out the best way to use them. A structured settlement is not for everybody. It is not an absolute solution for all, but it will be for some. It is a much better way for our catastrophically injured people. Remembering things go terribly wrong with a lot of money. So we need to look at a secure solution and the promise that the indexed income stream continues regularly.

I don't get paid for my law reform advocacy work. In fact, it's cost me thousands of dollars. Coming tonight cost me \$300. I had to get someone to help me write the paper and it took me about two days. And I had to think about it, because you're educated people, you're decision-makers. So I had to make my quarter of an hour speaking with you 0effective. It was worth every cent. Thank you everybody. I wish you well in whatever you do and, you know, throw your stones - go beyond your own boundaries.

Community website: www.daretodo.asn.au

Judie Stephens
Sydney, Australia
Mobile 0419 393 393