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The Basics of Structured Settlements Following an Acquired Brain Injury (ABI)

An Acquired Brain Injury (ABI) is a life-changing event, often bringing about a great deal of future challenges, both medical and financial. Those with an ABI or their guardians are saddled with ongoing medical, rehabilitation, attendant care and housekeeping costs (to name only a few). These costs, in addition to the usual expenses such as food and housing, demand a great deal of disciplined financial planning for an individual with an ABI or their guardian to pay out of a lump sum settlement. The nature of a structured settlement, which pays a regular, guaranteed, tax-free income (with a built in rate of return), can greatly simplify financial planning, while providing financial security. These aspects make a structured settlement an attractive option to those expecting a personal injury settlement and facing a future with an ABI.

What is a structured Settlement?

A Structured Settlement is a tax-free alternative to a Lump Sum Settlement, whereby all or a portion of the damages are paid to an injured individual (or their guardian) by providing periodic payments rather than a single lump sum. A structured settlement is a special type of annuity purchased from one of five major Canadian Life

Insurance Companies. The annuity provides a guaranteed built-in rate of return. Structured settlements provide a financial return that is virtually risk-free, because there are three different organizations that guarantee the income will be paid: the Life Insurance Company that provides the annuity, a Canada-wide financial institution called Assuris which will step in and make payments if any Canadian insurance company fails, and the property and casualty insurer is still liable for making the payments if the Life Company and/or Assuris fails.

Below we have outlined the basic steps to a structured settlement for a personal injury case that involves an ABI. These steps begin prior to any settlement discussions, and ends with the placement of a structured settlement. **It is important to explore the option of structuring your settlement as early as possible, as the only opportunity to structure funds comes when the settlement is reached.** At that time, the individual (or their guardians) must choose between a lump sum settlement or a structured settlement, or a combination of taking part as a lump sum settlement and placing part into a structured settlement, which must be agreed to by all parties involved.



**By: Barry Chobotar,
Henderson Structured Settlements**

The first step, which should be taken prior to any settlement discussions, is to discuss the option of a structured settlement with your lawyer. Structured settlements are especially worth exploring if there are concerns about financial security, financial discipline, future earning capacity and high ongoing costs. Additionally, individuals or guardians who do not feel comfortable managing a large sum or facing investment risk should also consider the option of a structured settlement. At this stage, your lawyer can contact a structured settlement consultant who can work with you and your counsel to explore the options a structured settlement could provide. This process involves the creation of various structured settlement illustrations which explain the income payments that a structure could provide at different expected settlement amounts. These illustrations can also help with financial planning, or establishing total costs for ongoing expenses (medical, rehabilitation, etc.). This can sometimes involve the submission of medical documents, which can result in a higher return, if there is an expected reduction in life expectancy due to an individual's injuries. These total costs can also be useful at the mediation in supporting counsel's arguments for a settlement amount.

The second step, which takes place after the option to obtain a structured settlement has been discussed and approved by all parties and a settlement is approaching, is to finalize and select the desired structured settlement plan. Your structured settlement consultant and lawyer will work with you to look at your future financial needs and select the plan that works best for you. Structured settlements are very flexible and can take many forms, **however it is very important to be deliberate and careful about selecting a plan, as once a structured settlement is in place, it cannot be changed.**

Structured settlements are created by answering the seven following questions, in order to create the plan most suited to the injured individual:

1. What is the amount to be invested?
2. What is the term of the structured settlement (i.e. how long will the plan run)?
3. When is the income to commence (i.e. immediately or deferred into the future)?
4. What is the frequency of payments (i.e. monthly, annually, etc.)?
5. Will there be any lump-sum payments, and if so, when are they required?
6. Will the payments be level or indexed (i.e. at a fixed percentage (2%) or CPI)
7. Will there be a guarantee period to a secondary payee, and what length will this guarantee be?

The third step, once a final plan has been selected and a settlement has been reached, is to place (invest) the settlement funds into a structured settlement. This last step is performed by your structured settlement consultant, who requests the settlement funds from the party paying the damages, and performs a final brokerage, ensuring the best possible returns for your chosen structured plan. Your structured settlement consultant will then provide you and your lawyer with all

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the necessary documents and information regarding your structured settlement. Additionally, your consultant will assume an ongoing administrative responsibility to ensure the funds continue to flow as directed to the injured individual, their guardians, or a named secondary payee.

To properly compare a structured settlement to other investment options available, the following questions should also be asked of the person or persons providing financial advice:

1. What is the rate of return represented in your plan?
2. Is this a **guaranteed rate** of return for the entire period of the plan or merely an estimate? *(A structured settlement is guaranteed.)*
3. Is the income represented in your plan **tax-free**? *(Structured settlement income is absolutely tax-free.)*
4. Does your plan provide **guaranteed indexation** to offset inflation? *(A structured settlement plan can be formulated to include this.)*
5. Does your plan provide an additional **guarantee to a designated secondary payee**? *(A structured settlement plan can be designed to include this.)*
6. Does your plan provide **protection against the payment of taxes and/or capital gains** upon your death? *(Structured settlements can be formulated to provide this protection.)*

7. Is your plan judgment-proof? *(A structured settlement, effectively, is.)*
8. Are there any additional management fees with your plan? *(With structured settlements, there are none.)*

Reaching a settlement while recovering and adapting to an ABI is a difficult, stressful time for an injured person and their loved ones. Despite this challenging situation, it is vital to explore and research every settlement option, as that settlement will provide the financial foundation for the rest of their life. In providing risk-free, tax-free income with a built-in return, structured settlements can simplify financial planning post-settlement while eliminating anxieties about investment risk, while giving the injured party (and/or their guardians) an opportunity to focus on recovery and their enjoyment of life.♦♦

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