LIFE HAS ENOUGH GREAT MYSTERIES

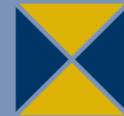
Structured Settlements need not be another of life's mysteries. At Henderson Structured Settlements we are committed to making the complex understandable. Let us help you acquire the expertise needed to make informed decisions on structured settlements.

Your Partners In Service®
Since 1981

Proud Sponsor of:

TOLL-FREE CANADA 1 800 263 8537
EMAIL henderson@henderson.ca

www.henderson.ca



{DEMYSTIFYING}

STRUCTURED SETTLEMENTS

Structured settlements may be defined in a number of ways. A frequently cited definition is the one offered by the Supreme Court of Ontario in *Yepremian v. Scarborough General Hospital*: "Structured settlements are a means whereby all or part of the damages are paid to a claimant by means of periodic payments rather than by means of a lump sum."

Quite simply, structured settlements are an alternative to the conventional lump-sum settlement; that is, they replace the traditional single payment with a series of periodic or annuity payments.

The origins of structured settlements may be traced to the 1950s. They first appeared in the United States in 1958 in the form of a structured judgment. Since then structures have been used extensively south of the border, the more prominent examples being the thalidomide cases of the 1960s and the Ford Pinto cases of the 1970s.

Structured settlements were first introduced to Canada in 1968 by virtue of these same American thalidomide cases. They did not, however, gain widespread popularity in this country until the 1980s, when they were formally accorded tax-free status by the government of Canada.

The most obvious motivation for settling injury claims by way of a structured settlement is found in the income tax treatment of compensatory damages for personal injury. While lump-sum damages are not subject to taxation, the income derived from investment is.

Consequently, so as to create an incentive to invest personal injury damages in something guaranteed and geared to the longer term (thereby minimizing the possibility of premature dissipation and reliance, perhaps, on government support), the government of Canada exempted structured settlement income from taxation, subject to the following conditions:

1. The damages to be invested must be in reference to a claim for personal injury or death.
2. The claimant and the casualty insurer must agree to settle by way of a structured settlement.
3. The casualty insurer must purchase a single premium annuity contract to produce the periodic payments in accordance with the settlement agreement.
4. The casualty insurer must be both the owner and annuitant (beneficiary) of the annuity contract.
5. The annuity contract must be non-assignable, non-commutable and non-transferable.
6. The casualty insurer must irrevocably direct that all payments be made to the claimant.
7. The casualty insurer must remain liable to make the periodic payments required by the settlement agreement.

A structured settlement may be put together any one of a number of ways. The variables to be contemplated in the formulation process are as follows:

1. amount to be invested;
2. term (i.e., how long the plan is to run);
3. commencement date of income (i.e., immediate or deferred);
4. frequency of payments (i.e., monthly, annual, etc.);
5. lump-sum payments, if any, and the timing of these;
6. level or indexed payments; and
7. guarantee period (to beneficiary).

So as to properly compare a structured settlement to other investment options, the following questions might 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 fully guaranteed to the recipient for the term of the structure)?
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 beneficiary*** (a structured settlement plan can be formulated to include this)?
6. Does your plan provide ***protection against the payment of taxes and/or capital gains*** upon your death (a structured settlement plan can be formulated to include this)?
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 ***no management fees***)?

Need more information? Please visit our website at www.henderson.ca or contact us directly at either 1-800-263-8537 or henderson@henderson.ca.

FREQUENTLY ASKED QUESTIONS

What is the rate of return or interest rate of a structured settlement?

This depends on the structure plan; that is, the interest yield of each structured settlement depends on its form (i.e., term, commencement date, frequency of payments, etc.). In general, the interest rate of a structured settlement mirrors other comparable safe, guaranteed investments (e.g., a Canada Savings Bond). The most significant difference is that the interest earned from a structured settlement is tax free.

More specifically, to match the tax-free interest rate of a structured settlement, you would have to earn a much higher rate of interest from another investment. That is, if you were in one of the higher income tax brackets in Canada, in the range of 40%, for example, you would have to earn approximately 8% guaranteed interest on a taxable investment to equal the 5% interest rate that may be produced by a structured settlement.

How secure is a structured settlement?

A structured settlement is one of the most secure investments available. A structured settlement is a life product. All of the life insurance companies that produce structured settlements in Canada meet the following requirements:

1. They are federally registered.
2. They have assets in excess of $25 billion.
3. They have significantly more assets than liabilities (i.e., a high Minimum Continuing Capital and Surplus Requirement).
4. They have a high insurance rating (i.e., a high insurance rating from, for example, Standard and Poor's Insurance Rating Services).

In light of the foregoing, the chance of any or all of these life companies defaulting is virtually non-existent. However, there are two additional levels of protection built into a structured settlement. They are Assuris (formerly CompCorp) and the casualty insurer. Assuris is, in effect, insurance on life insurance companies failing to meet their responsibilities. If any one or all of the life insurance companies participating in a structured settlement were to fail, Assuris would make the structured settlement payments up to a limit (see the Assuris website at *www.assuris.ca* for more details). If any one or all of the participating life insurance companies and Assuris, together, were unable to make the payments owed, the casualty insurer would then become liable to do so.

Why are there no fees charged by a structured settlement consultant/broker; how is a structured settlement consultant/broker paid?

No bill or management fee will ever be charged by us in reference to a structured settlement. We receive payment, in the form of commission, from the life insurance company or companies from which a structured settlement is purchased. What you see on a structured settlement payment schedule is what you will get, guaranteed and tax free.