



A Structured Solution

An expert in resolving physical injury cases offers suggestions for recent accident victims

By Janet Rubin Fields

If you've been in an accident and are negotiating a lawsuit settlement, you are literally setting the foundation for your future. The decisions you make today, especially if your injuries are severe, may be the difference between financial security and instability as you get older.

America is experiencing its worst financial crisis in 50 years. Regardless of what happens next, there is no doubt that financial uncertainty is everywhere – and while we are unable to predict when the pendulum will swing, settling your case empowers you to control the result and manage the proceeds.

So with your settlement looming and the stakes so high, what do you do? For starters, be deliberate. The mediation process allows you to resolve built-up stress from the accident, prepare for a “new beginning” and plan for your financial future needs.

Second, consult with a financial expert experienced in helping those who have been injured in conjunction with the mediation. This provides the necessary knowledge to make an informed decision on whether to settle your case.

Financial planning is difficult even in the best circumstances and given today's uncertainties and your need for specialized care, you have little margin for error. Financial experts can help in two ways. First, they can create a detailed projection of your living, medical and rehabilitative needs. Second, they will probably have a good understanding of federal, state and private benefit programs for which you or your family may be eligible.

While the cost of medical and rehabilitation care continues to spiral upward at roughly twice the inflation rate, the U.S. stock market is at about the same level it was in 1998 – in other words, during a 10-year period, the annualized after-tax return is approximately zero. This imbalance can create the risk of a shortfall as you get older – and for many accident victims, this may have negative implications.

To minimize this, you can consider allocating funds into a “structured settlement”. A structured settlement, which must be set up prior to your final

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settlement, allows you to set up a payment stream tailored to your future needs. You can plan funds for future operations, rehabilitative care or equipment replacement such as a new wheelchair. These payments can be guaranteed for a specific period or for your life or even for the life of your spouse or child.

All payments are funded through a life insurance annuity, which means they are backed by multiple layers of state consumer protection regulation. That also means your payments aren't affected by world events or sudden economic changes.

In addition to the guaranteed income, the federal government makes a structure financially appealing by exempting your payments from taxes on income, interest, dividends and capital gains. Another benefit: If your payments are made irrevocably into a special needs trust, they are not counted against Medicaid and SSI income limits.

Many plaintiffs choose to combine these two advantages by working with a structured settlement consultant to create their payment stream.

Many structured settlement consultants have specialized expertise in designing payment streams that anticipate the medical and living needs of spinal cord injury victims and others.

Nevertheless, a structured settlement isn't always the full or complete solution. Successful settlements are achieved when a survivor knows they can receive six months or more of up-front cash for emergencies. Make sure you have this cash reserve established before you consider structuring any additional part of your settlement. Settlement amounts of less than \$10,000 may not deliver sufficient tax benefits to

justify the effort and may not create the incentive for a structure.

Most experienced neutrals in anticipation of settlement, will encourage the parties and their counsel to arrange for a professional consultant be present at mediation to help you decipher whether a structure is worthwhile to answer your questions on varied structured plans, their interest rates and tax benefits.

Finally, remember, this is the settlement of your case and the outcome affects your life just as the accident changed your life. Not only is it important to be financially secure for the future, I encourage plaintiffs to enjoy life and set aside a portion of their proceeds for a vacation or whatever else is on their "wish list."

As a mediator who has resolved thousands of cases during the past 11 years, I have had the occasion to observe survivors of many accidents. What is almost as tragic as the injuries sustained from an accident is when someone loses his or her one opportunity for guaranteed security due to poor financial decisions. The result of this, or even from bad timing or things outside their control, can be devastating.

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In 2008, Janet Rubin Fields was named a Top Neutral in California by the Daily Journal, "Best Lawyers in America" in Alternative Disputer Resolution and a Southern California "Super Lawyer." She is a mediator and arbitrator in Los Angeles and Orange Counties. More information about structured settlements can be found at: www.StructuredSettlement.info.