



**BRAIN INJURY
ASSOCIATION
OF NEW JERSEY**

825 Georges Road, Second Floor
North Brunswick, NJ 08902
732.745.0200

www.bianj.org

Helpline: 1-800-669-4323

No Brain Injury is
Too Mild to Ignore,
or Too Severe to
Lose Hope

How Structured Settlements Protect Your Financial Future (But Watch Out for the “Fast Cash” Trap)

By William Garmer

Introduction

In 1973, Shirley Adams of Memphis, TN gave birth to a daughter, Tiffany, who was born with brain damage. After an investigation with their attorney, Mr. and Mrs. Adams determined that their daughter’s condition resulted from medical malpractice by the attending physician and the hospital.

In 1980, just prior to the case going to trial, the Adamses received a cash settlement of \$250,000 from the insurance companies of the doctor and hospital. Despite the attorney’s advice to invest this money prudently, Shirley says her husband put it into his construction company.

During the mid-1980s, that company incurred losses and Tiffany’s money was gone. By 1990, the Adamses separated and in 1993, they divorced. Tiffany, who lives with her mother, receives no child support.

But the story does not end there. In 1987, a manufacturing defect caused Tiffany’s wheelchair to roll into the street, where she fell down face first. She sustained severe facial injuries. This time, Ms. Adams insisted that the settlement she received from the wheelchair manufacturer be taken in something known as a “structured settlement.” This is an underutilized option available to individuals concerned about making their one-time settlement last a lifetime.

Instead of taking all the money up front and then figuring out how to invest it, Ms. Adams worked with her attorney and a financial expert to devise a long-term series of payments to meet Tiffany’s future needs. They took the money from the settlement and purchased an annuity that guaranteed them tax-free payments to meet Tiffany’s needs. Today, a decade after the 1989 structured settlement, Ms. Adams is convinced of the benefits the structured settlement has brought to her life.

Taking care of Tiffany is a full-time job and requires constant attention, not to mention the financial need,” she says. “My structured settlement protects Tiffany from other people taking advantage of her for the whole amount of the settlement.”

Guarding Your Financial Freedom

Large monetary judgments have become the most talked-about aspect of America’s legal system. These awards catch the media’s attention and they



BRAIN INJURY ASSOCIATION OF NEW JERSEY

825 Georges Road, Second Floor
North Brunswick, NJ 08902
732.745.0200

www.bianj.org

Helpline: 1-800-669-4323

No Brain Injury is
Too Mild to Ignore,
or Too Severe to
Lose Hope

are the subjects of well-known movies. This attention, however, overlooks a few crucial points.

1. Is the person who was injured really best served by taking a large, lump sum payment?
2. Is there any alternative to one payout?

These questions are particularly important when looking at the future well-being of individuals with brain injury, who frequently are physically impaired and require expensive long-term care. The reality is that many individuals with brain injury, especially the young and those unfamiliar with money management, may be poorly equipped to handle the problems of large cash payments. Family members, existing friends and unsavory “new friends” can attach themselves to the newly enriched individual—with devastating financial consequences.

That is why, in 1982, Congress passed legislation to ease the financial worries of these individuals and those who care for them. With bipartisan support, Congress added a provision to the federal tax code that offers an alternative choice to a large cash settlement called a structured settlement. This is a benefit that I and thousands of plaintiff attorneys have recommended to clients as one of the best ways to guarantee financial security and independence.

A structured settlement involves a trade-off. The individuals who were injured and/or their parents or guardians work with their lawyer and an outside broker to determine future medical and living needs, including upcoming operations, therapy and medical devices. In a structured settlement, an annuity is purchased and held by an independent third party that makes payments to the individual who has been injured. Unlike stock dividends or bank interest, these structured settlement payments are completely tax-free. Moreover, the annuity grows tax-free, and over time, this provides an after-tax rate of return that few investors could match.

There is another benefit, too. As Don McNay, President of The Prestwick Group, a leading settlement brokerage firm, puts it, “Serious injuries such as brain trauma create major legal, medical and emotional stresses. So when our brokers put together a structure, we do everything possible to make sure that these individuals do not ever have to worry about finances. That is a great relief to our clients and their parents or guardians.”

Beware the Pitch for "Cash Now!"

As a plaintiff attorney, my first concern is the long-term well-being of my clients – even after the final settlement. That is why I, and plaintiff attorneys around the country, increasingly have become concerned with the emergence of companies offering quick cash to individuals in exchange for



**BRAIN INJURY
ASSOCIATION
OF NEW JERSEY**

825 Georges Road, Second Floor
North Brunswick, NJ 08902
732.745.0200

www.bianj.org

Helpline: 1-800-669-4323

No Brain Injury is
Too Mild to Ignore,
or Too Severe to
Lose Hope

their long-term payment streams. You may have seen their advertisements—typically 30-second spots promising fast cash. This completely undermines the federal law creating structured settlement benefits and risks the well-being of thousands of individuals. I have seen cases in which people were convinced to sell more than \$100,000 in future payments for less than 50 cents per dollar.

Individuals with brain injury may be at particular risk from these companies' advertising. In Minnesota this year, Attorney General Michael Hatch announced that his top legislative effort was passage of a bill to stop abusive practices against persons with disability. He appeared with a 20-year-old individual with brain injury who had sold \$67,500 in structured settlement payments for about \$13,000. According to his attorney, that was barely one-third of the actual value. This summer, Minnesota Governor Jesse Ventura signed such a bill into law.

Other states also have taken notice. Besides Minnesota, nearly a dozen states have passed legislation protecting structured settlement recipients from abuses by these companies. This effort has received considerable support from consumer groups, disability advocates, trial lawyers and insurance companies. Several state attorneys general are investigating the practices of these firms.

The bottom line is that structured settlements are great tools to protect the long-term financial security of individuals with brain injury. I have recommended structures to my clients for years and never have had a client express regret. I also offer a warning to watch out for companies that try to buy structured settlements for quick cash. If you are thinking about cashing out your structured settlement, first contact your attorney. As we all know, if the deal sounds too good to be true, it probably is.

Bill Garmer of Savage, Garmer & Elliott, P.S.C. in Lexington, KY, limits his practice to representing consumers who have been injured, especially in product liability and medical malpractice cases. He is a member of the Board of Governors of the Association of Trial Lawyers of America. Garmer is also past chair of the council of state presidents of the Association of Trial Lawyers of America and past president of the Kentucky Academy of Trial Attorneys. He is adjunct professor of lawlitigation skills at the University of Kentucky College of Law and Fellow of the American College of Trial Lawyers. Garmer has been listed in The Best Lawyers in America since 1987.

This article was originally published in "TBI Challenge!," Volume 3, Number 5 in 1999. It is reprinted with permission from the Brain Injury Association of America.



**BRAIN INJURY
ASSOCIATION
OF NEW JERSEY**

825 Georges Road, Second Floor
North Brunswick, NJ 08902
732.745.0200

www.bianj.org

Helpline: 1-800-669-4323

*Additional information can be found at: Helpline: 1.800.444.6443
www.biausa.org*

**No Brain Injury is
Too Mild to Ignore,
or Too Severe to
Lose Hope**