

STRUCTURED SETTLEMENTS

Cashing in first-party benefits can be win/win for insurer, insured

By Charles E. Gluckstein

Cashing in first-party benefits has gained a tremendous impetus this past year. Insurers are now realizing that carrying larger reserves and the administration costs of managing first-party benefits is seriously affecting their bottom line profits.

On the other hand, in most cases, an insured is able to purchase rehabilitation and attendant-care benefits at a much lower rate if the supplier realizes that an insurance company is not being billed.

Accordingly, insurers feel both sides gain an advantage by settling accident benefits once the injuries have stabilized and are inviting counsel to settlement meetings and/or voluntary mediations.

vary considerably, especially when it comes to attendant-care expenses. Before considering cashing in benefits, a future care cost report should be prepared by a knowledgeable and respected



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expert in the field. Needs may change dramatically as the insured ages and the amount required for attendant care will probably increase unless the person is getting the maximum allowed under Form 1.

The cost of attendant-care reports is expensive. It is not uncommon for the lawyer of the insured and the insurance company to agree on an individual to prepare a joint report. It should be an individual and not a company that should be retained, as there could be a tremendous variance between individuals even within the same company that specializes in preparing these reports.

Structure vs. cash payout

In most catastrophic cases, especially where a brain injury is sustained, the insured is under a disability. The insurer becomes a trustee of the funds available and must monitor the expenditures carefully.

The insurer, therefore, in most cases will want to require the following in concluding any settlement of accident benefits:

1. That the insured has the capacity to give instructions and sign the necessary disclosure statement or is represented by a court appointed committee.
2. That a substantial portion of the settlement is structured so that the funds will not be dissipated.
3. That court approval be obtained when the insured is under a disability or under 18

Discount to insurer from actual cost of structure

It is now becoming common practice for insurers to demand a discount of anywhere between 10 to 25 per cent of future value of the future benefit entitlement. This is a matter of negotiation. The amount of the discount will

depend on a number of factors, some of which are as follows:

1. If there is a valid dispute and the insured is prepared to waive interest, a special award and/ or punitive damages;
2. The need of the insured for cash to pay off outstanding liabilities and/ or mortgage;
3. The desire of the insured to terminate the relationship with the insurer and the numerous insurance and Designated Assessment Centre (D.A.C.) examinations;
4. The desire on behalf of the insured to provide security for his family in the event of his death before the negotiated guarantee period ends.
5. If the insured has no needs outside of the amount he is getting on a regular basis and has no dependents to protect.

Insurer purchasing structure to replace benefits

In some instances where the insured's condition is stabilized and will not improve, some insurers are purchasing structures to replace the weekly benefits. Although this reduces the administration costs, the insurer does not get the benefit of a settlement whereby a discount could probably be negotiated. The insured continues to get the benefits on a regular basis but is unable to get the benefits that a settlement could bring. Therefore both lose an opportunity that they otherwise could have.

Reversion

In many cases the insurer is demanding a reversion of the benefits to the insurer in the event of the insured's premature death. This reversion is frequently a 20-year guarantee based on a two per cent inflation rate.

The cost of this reversion should be paid by the insurer in addition to the cost of the structure. The cost of this reversion could be as much as five per cent of the cost of the structure.

Most lawyers will refuse this

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CRISIS

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are reducing N.B. premiums by 25 per cent in response to the legislation. The Insurance Bureau of Canada (IBC) has suggested ... that Alberta should adopt a similar position. ... Clearly future victims' rights are in serious jeopardy," Lawson continued. "I would strongly encourage you to contact your MLA ... NOW to express your opinion on how these proposed changes will affect victims' (voters') rights."

term of settlement or at least insist on a "double reversion" whereby both the insured's estate or beneficiaries and the insurance company get the payments for the guaranteed period.

Design of structure

Structures can take almost any form depending on the needs of the insured. The lawyer should be very involved in the design of the structure to ensure that the client's needs are met.

Consultation with the structured settlement specialist and the insured should include such questions as:

- (1) amount of outstanding debts,
- (2) need for structural changes to premises,
- (3) amount required each year for medical and rehabilitation needs, including vehicles and assistive devices,
- (4) amount required for food and lodging,
- (5) education of children expenses, etc.

Therefore, a thorough budget should be prepared before it is finalized.

Conclusion

Sometimes the insured is already getting what is tantamount to a structure and has no needs outside of the benefits he is receiving. In that situation, the lawyer should resist any substantial discount from the actual cost of purchasing a structure to replace the benefits being received. However, in many other cases cashing in accident benefits can lead to a win/win situation for both the insured and the insurance company.

Every case must be approached differently and with caution. Placing a large amount in front of the insured may sound tempting, but if the proceeds are not managed carefully, the result can be disastrous. It is not inconceivable that a number of lawsuits will eventually emerge for improvident settlements.

Lawyers and insurance company representatives must approach the settlement of first-party benefits in a professional and well-thought-out manner.

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