NEED, NOT GREED: THE ROLE OF STRUCTURED SETTLEMENTS IN AUSTRALIAN TORT LAW REFORM

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Abstract

This paper discusses the causes of the current liability insurance crisis in Australia. It summarises the part of the Western Australian and Commonwealth Governments' legislative response that deals with structured settlements. The paper concludes that structured settlements, which revolve around claimants' needs rather than being driven by greed, should logically become the norm for large claims.

INTRODUCTION: THE INSURANCE CRISIS

A combination of extraordinary circumstances caused a liability insurance crisis in the Australian market, resulting over several years from 2001 in a sharp increase in liability insurance premiums. The Reserve Bank of Australia ('RBA') commented that not only had the price of insurance risen markedly over the year to February 2002, but also the cost was expected to continue to increase.[1] According to the Insurance Council of Australia ('ICA'), the impact of rising premiums has been strong 'on small business, and in particular the tourism industry, local government, sporting clubs, volunteer and community groups.'[2] Guides WA, for example, experienced premium increases from $7,200 in 2001 to $36,000 in 2002 and then to $45,000 in 2003. The excess increased from $1,000 to $25,000 per claim over the same period. Some activities, such as caving, white-water rafting and motor rallies, are no longer covered.[3]

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[1] Reserve Bank of Australia *Reserve Bank of Australia Bulletin* February 2002, 55-56.

[2] Insurance Council of Australia Ltd *Public Liability Submission to Ministerial Forum* March 2002, 3.

[3] Anne Buggins 'Guides Struggle to Survive' *The West Australian* 18 Oct 2003, 6.

Causes of the Crisis

There are many factors that have impacted on the cost and availability of public liability insurance. Patrick Montgomery of law firm Deacons makes the point that the crisis cannot simply be "attributed to greedy claimants, greedy insurers, greedy lawyers, greedy State governments and generous Judges."[4] Nevertheless, Montgomery noted, there was a trend toward more (and larger) claims, and Western Australian MLA Mark McGowan also mentioned that one causal factor of the crisis is a steady increase in the number and size of negligence awards over the last decade or so.[5]

Greed and Judicial Generosity

Both the RBA[6] and the ICA[7] commented that community attitudes in Australia have changed over recent years, so people are more likely to make claims for injury. Increased claimant greed, the ICA contends, has been partly stimulated through rising standards of education among the general public and widespread media coverage of large awards. The ICA also sees changes to regulations affecting lawyers as a significant factor in the cost increases faced by the insurance industry. Greedy lawyers are now permitted to advertise and promote their services (as, of course, are altruistic insurers). They accept cases on a 'no-win, no-fee' basis and class actions have become increasingly common over the last decade or so.[8] Greed of governments should not be overlooked, with taxes accounting for about one sixth of total premiums paid.[9] The Law Institute of Victoria implies that greed on the part of at least one insurer, HIH, that had set out to dominate the Australian market and had succeeded in doing so, was a significant causal factor in the crisis.[10]

Without Parliamentary intervention, it seems that more and larger claims are likely to continue to occur. This is due not only to the greed factor but also to an apparent trend toward extensions to the scope of liability evident in a number of recent decisions, three examples of which are now outlined.

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[4] P Montgomery 'Update on public liability insurance and professional indemnity insurance cases - a personal view' *Deacons Insurance Update* Jul 2002 1-3, 2.

[5] *Hansard* (Legislative Assembly of Western Australia) 14 Aug 2002 94-98, 95.

[6] Reserve Bank of Australia *Reserve Bank of Australia Bulletin* February 2002, 55-56.

[7] Insurance Council of Australia Ltd *Public Liability Submission to Ministerial Forum* March 2002, 1.

[8] Insurance Council of Australia Ltd *Public Liability Submission to Ministerial Forum* March 2002, 8.

[9] Insurance Council of Australia Ltd *Public Liability Submission to Ministerial Forum* March 2002, 11

[10] Letter from Ian Dunn, CEO of the Law Institute of Victoria, to The Manager, General Insurance Unit, Department of Treasury, Canberra, 21 March 2002, 3 (available electronically at **http://www.liv.asn.au/news/pro_issues/livsubs/pli.pdf**, accessed 17 September 2003).

1. *Annetts v Australian Stations*[11]

In August, 1986, James Annetts, then aged sixteen, went to work for Australian Stations in a remote part of Western Australia. His parents, the applicants in this case, had sought and obtained assurances that James would be well cared for and properly supervised. In fact, he was sent to work alone as caretaker of a remote property. In December 1986, he went missing and it was reasonable to presume he was in grave danger. Police informed Mr Annetts of this by telephone and he collapsed.

There was a prolonged search for the boy, in which the applicants took some part. His blood-stained hat was found in January 1987. In April 1987 the body of the boy was found in the desert. He had died of dehydration, exhaustion and hypothermia. The applicants were informed by telephone. Subsequently Mr Annetts was shown a photograph of the skeleton which he identified as that of his son.[12]

The High Court of Australia held that psychiatric injuries suffered by Mr and Mrs Annetts were reasonably foreseeable consequences of the respondent's failure to properly care for their son as it had undertaken to do. This, together with the relationship between the Annetts and their son's employer, was sufficient to establish a duty of care toward the parents, despite the absence of direct perception or exposure to the immediate aftermath of the incident and of sudden shock

In neither of the cases presented before the Court does the outcome turn upon the application of what are sometimes described as the "control mechanisms" of "sudden shock" and "direct perception or immediate aftermath". In fact, to some extent both cases demonstrate that those concepts cannot serve as definitive tests of liability.[13]

Previously, it had been thought that at least one of these factors would have to have been present to establish liability at negligence.

2. *Cattanach v Melchior*[14]

The Melchiors, parents of a child conceived after his mother had undergone a sterilisation procedure, sued Dr Cattanach who had carried out that procedure. One remarkable feature of this case was that Dr Cattanach's liability did not arise through negligence in carrying out the

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[11] *Tame v New South Wales; Annetts v Australian Stations Pty Limited* (2002) 211 CLR 317.

[12] *Tame v New South Wales; Annetts v Australian Stations Pty Limited* (2002) 211 CLR 317 per McHugh J (at p336).

[13] *Tame v New South Wales; Annetts v Australian Stations Pty Limited* (2002) 211 CLR 317 per Gleeson CJ (at p333).

[14] *Cattanach v Melchior* (2003) 215 CLR 1.

sterilisation procedure (tubal ligation). Mrs Melchior (a registered nurse) had informed him that she had had her right ovary and fallopian tube removed some years before.

> When Dr Cattanach performed the tubal ligation, what he saw appeared consistent with that history. Accordingly, he attached a clip only to the left fallopian tube. ... It turned out that, contrary to her belief, her right fallopian tube had not been removed. The trial judge found that, by reason of certain aspects of her condition, it was not negligent of the doctor to have failed to observe that at the time of the sterilisation procedure. The finding of negligence was based upon a conclusion that Dr Cattanach had too readily and uncritically accepted his patient's assertion that her right fallopian tube had been removed, that he should have advised her to have that specifically investigated, and that he should have warned her that, if she was wrong about that, there was a risk that she might conceive. The case was decided as one of negligent advice and failure to warn.[15]

The relatively uncontentious features of the first instance judgment of the Queensland Supreme Court[16] were awards of approximately $A103,000 to Mrs Melchior for pain, suffering and past and future economic loss associated with the pregnancy and childbirth; and of $A3,000 to Mr Melchior for the loss of consortium. The contentious issue was that Mr and Mrs Melchior were jointly awarded approximately $A105,000 to meet the costs of caring for the unplanned child. It would be difficult to argue that it was not foreseeable that an unplanned pregnancy might follow an unsuccessful sterilisation procedure. The causal link between such a pregnancy and its financial consequences, including the costs of the upbringing of the child, is clear. The problem this case raised for medical practitioners and their insurers is that the costs of upbringing had been thought by many to be so remote from the physician's negligence as to be outside the scope of his or her duty of care.

In her judgment at first instance, Holmes J observed that "Australian authority on the extent to which damages may be awarded for the birth of a healthy child is scant."[17] Her honour reviewed decisions of both the Supreme Court of New South Wales[18] and of the House of Lords in England.[19] She noted that decisions of these Courts would ordinarily be highly persuasive[20] but that there was no "single, distinct line of reasoning to be discerned from either

[15] Ibid, per Gleeson CJ (at 12).
[16] *Melchior v Cattanach* [2000] QSC 285 (23 August 2000).
[17] Ibid (at 37).
[18] *CES v Superclinics (Australia) Pty Ltd* (1995) 38 NSWLR 47.
[19] *McFarlane v Tayside Health Board* (1999) 4 All ER 961.
[20] The final court of appeal from both the Supreme Court of Queensland and the Supreme Court of New South Wales is the High Court of Australia, from decisions of which there is no further appeal. The House of Lords is the final Court of Appeal in the English judicial system. Decisions of the High Court are binding on the Supreme Courts of all States. Decisions of Supreme Courts in other Australian states and of Courts of Appeal in other common law jurisdictions are persuasive rather than binding in a State Supreme Court.

case" so that she could "see no alternative but to distil from those decisions the reasoning which appeal[ed] to [her] as sound."[21] Her honour decided the case on grounds of principle rather than precedent. Holmes J applied the framework set out by the High Court of Australia in Perre v Arpand.[22] She concluded:

> The harm to the Melchiors, should sterilisation fail, was entirely foreseeable. Avoidance of it was not incidental to the surgery performed and the advice given by Dr Cattanach; it was the whole and direct point. Dr Cattanach knew, not only that negligence by him in the performance of those tasks was likely to harm their interests, but also, with some precision, the way in which their interests would be harmed, i.e. by the imposition of the financial burden of an additional child. There was no question of indeterminacy, either of the risk or the persons affected by it. Dr Cattanach was in a position of control. The knowledge that the excision of the fallopian tube could not be ascertained on laparoscopy, and that there was some heightened risk of conception as a result, was exclusively possessed by him. There was nothing the Melchiors could do in that situation to protect their own interests, and they were correspondingly vulnerable. There is no established freedom with which a decision in the Melchiors' favour as to the extent of the damages would interfere. Those are matters pointing to the conclusion that the Melchiors' economic loss should be made good; and one can, with regard to the same considerations, arrive at the conclusion that recovery is fair, just and reasonable.[23]

The inevitable appeal to the Queensland Court of Appeal was dismissed in a two-one split decision.[24] Leave was granted for an appeal to the High Court of Australia. In a four-three majority decision, that appeal was also dismissed.

3. *Presland v Hunter Area Health Service*[25]

Mr Justice Adams in the New South Wales Supreme Court held that a psychiatrist was liable for damage suffered by Mr Presland who, having been negligently discharged from hospital while mentally ill, murdered his brother's fiancee. Police took Mr Presland to hospital on the evening of Monday 3 July 1995 because he was behaving in a bizarre and violent manner. He was discharged during the day on 4 July and that afternoon, in a frenzied attack, he killed his brother's fiancee. Mr Presland was charged with murder but acquitted on the grounds of mental illness, detained in strict custody for some eighteen months and then released under conditions involving close supervision and significant constraints on his individual liberty.

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[21] *Melchior v Cattanach* [2000] QSC 285 (23 August 2000) (at 50).
[22] *Perre v Arpand* (1999) 73 ALJR 1190.
[23] *Melchior v Cattanach* [2000] QSC 285 (23 August 2000) (at 61).
[24] *Melchior v Cattanach* [2001] QCA 246 (26 June 2001).
[25] *Presland v Hunter Area Health Service* [2003] NSWSC 754.

In discharging Mr Presland, rather than detaining him as an involuntary patient, the psychiatric registrar at the hospital had not met the required standard of care. The standard was that that of an ordinarily skilled psychiatrist, despite the fact that the registrar was not yet fully qualified as a psychiatrist. In summing up the consequences of Mr Presland having been discharged when he ought not to have been, Adams J said:

> ... I have concluded that the plaintiff's fatal attack on Ms Laws and the personal and legal consequences which followed were both foreseeable and caused by the negligence of the defendants.
>
> The plaintiff is still a relatively young man, it is very likely that he will be subject to significant restraints on his freedom for the rest of his life. In one way or another he is alienated from his family and there is a heavy load of guilt. His time in prison on remand was terrifying nightmare. His incarceration as a forensic patient only slightly less so.[26]

Mr Presland was awarded general damages of $A225,000, with further amounts to cover vicissitudes and past economic loss, leading to a total award of $A369,300.

The trial judge's determination of the matter was overturned in the Court of Appeal of the Supreme Court of New South Wales,[27] largely because two of the Justices of Appeal (Sheller and Santow JJA) applied the common law principle that illegality or immorality will not ground a legal action.[28] Spigelman CJ, on the other hand, agreed with the trial judge that, Mr Presland's having been found not guilty of criminal conduct by reason of insanity, "the maxim *ex turpi non oritur actio* ... has no application in the circumstance of this case."[29] The leave of the High Court to appeal would be required and was not sought. The matter has now been considered by four Justices of the Supreme Court of New South Wales, two of whom have found for the plaintiff and two for the defendants.

As a result, although Mr Presland's case appears to be concluded, the law in Australia on the issue of medical negligence in such cases is far from settled. No doubt this leaves insurers in a similar state when it comes to assessing premiums required for medical indemnity insurance!

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[26] *Presland v Hunter Area Health Service* [2003] NSWSC 754 (at 172-173).

[27] *Hunter Area Health Services v Presland* [2005] NSWCA 33.

[28] "*Ex turpi causa non oritur actio.*"

[29] *Presland v Hunter Area Health Service* [2003] NSWSC 754 (at 19).

The Business Cycle and Investment Returns

McGowan described the historical cycle during which liability insurance premiums varied.[30] The cycle normally consisted of a 'hard' market, when premiums were high, that usually lasted for about a year, followed by a 'soft' market, with lower premiums, for about two years. The cycle was largely determined by capital availability and investment results. McGowan pointed out that the preceding seven or eight years had seen an unusually sustained soft market, with comparatively low premiums, partly because of intense competition, but also due to high investment returns over that period. According to the ICA, however, nett returns on shareholders' funds in the general insurance industry averaged less than two percent per annum over the financial years ending 30 June 1993-2000 inclusive. Clearly, high investment returns were being used to meet expenses and claims, rather than filtering through to shareholders. Although the return in the 2000-2001 financial year was around eight percent, this was distorted by the fact that HIH Insurance was operating during the period but did not report, due to its collapse in early 2001.[31] Shareholders are now demanding higher returns on their investments and there is a corresponding need to return premiums to a more commercially realistic level after the prolonged soft market of the late 1990s.[32]

Supply and Demand

Capital in the insurance market, like any other commodity, is subject to the law of supply and demand. High demand initially leads to high prices (and hence in this instance high premiums). Eventually, supply rises to meet demand and prices tend to fall. This is the underlying reason for the cycle noted by McGowan,[33] who also described the impact on investment markets of the 11 September 2001 terrorist attacks on the World Trade Centre. The RBA made the point that this, at something over $US35 billion, was likely to be the largest single-event loss ever recorded.[34] The total of these claims represents an amount of capital that is no longer available to the reinsurance market. The collapse of the HIH Insurance Group earlier in 2001 has also had a major impact on capacity in the Australian liability market. According to the Law Institute of Victoria, HIH had captured 35 to 40 percent of the liability insurance market.[35] The ignominious exit of such a major player is bound to severely constrict capacity. Even the loss

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[30] *Hansard* (Legislative Assembly of Western Australia) 14 Aug 2002 94-98, 94-95.

[31] Insurance Council of Australia Ltd *Public Liability Submission to Ministerial Forum* March 2002, 4.

[32] P Montgomery 'Update on public liability insurance and professional indemnity insurance cases - a personal view' *Deacons Insurance Update* Jul 2002 1-3, 2.

[33] P Montgomery 'Update on public liability insurance and professional indemnity insurance cases - a personal view' *Deacons Insurance Update* Jul 2002 1-3, 2.

[34] Reserve Bank of Australia *Reserve Bank of Australia Bulletin* February 2002, 55-56, 55.

[35] Letter from Ian Dunn, CEO of the Law Institute of Victoria, to The Manager, General Insurance Unit, Department of Treasury, Canberra, 21 March 2002, 3 (available electronically at **http://www.liv.asn.au/news/pro_issues/livsubs/pli.pdf**, accessed 17 September 2003).

associated with the Sydney storms of 1999 has been said to be a factor in the sharp increases in liability insurance premiums experienced in 2002.[36] A proliferation in high-risk recreational activities has also led to increased demand.[37]

RESPONSES BY GOVERNMENTS

Commonwealth, State and Territory Ministers and the President of the Australian Local Government Association or their representatives met on six occasions from early 2002 'to discuss ongoing reforms to improve the availability and affordability of liability insurance.' All jurisdictions have implemented a range of reforms that are said to 'already [be] translating into greater availability and price stability in insurance.'[38]

McGowan noted that the Civil Liability Act (2002) was part of the package of such reforms instigated by the Western Australian Government. He said:

> Tort law reform that creates a fairer and more predictable legislative environment, alongside the adoption of better risk management practices, should improve the cost and availability of insurance. ... tort law reform will not alleviate the pressure on community organisations and business overnight, but by creating more certainty and predictability in the insurance market, it should slow the rate of increase of public liability premiums, contain claims costs for the future and help to change social and legal attitudes towards the assumption of and liability for risk. This in turn should attract more private insurers into the market and [lead to] the offer of more affordable insurance products related to personal injury claims.[39]

Structured Settlements under Western Australian Legislation

The Civil Liability Act 2002 (WA) allows parties to an action to agree that damages may 'be paid in the form of periodic payments funded by an annuity or other agreed means.'[40] An agreement of this type is called a structured settlement. The Court is empowered to order damages to be paid according to the terms of a structured settlement 'even though the payment of damages is not in the form of a lump sum.'[41] These provisions can reduce the risks and uncertainties inherent in the application of the once and for all rule, under which 'damages

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[36] P Montgomery 'Update on public liability insurance and professional indemnity insurance cases - a personal view' *Deacons Insurance Update* Jul 2002 1-3, 2.

[37] Insurance Council of Australia Ltd *Public Liability Submission to Ministerial Forum* March 2002, 10.

[38] *Joint Communiqué, Ministerial Meeting on Insurance Issues*, Adelaide, 6 August 2003, 1.

[39] *Hansard* (Legislative Assembly of Western Australia) 14 Aug 2002 94-98, 95.

[40] Civil Liability Act 2002 (WA), s14.

[41] Civil Liability Act 2002 (WA), s15(2).

for one cause of action must be recovered once and forever, and (in the absence of any statutory exception) must be awarded as a lump sum.'[42] Of this rule, Lord Justice Scarman said 'There is really only one certainty; the future will prove the award to be either too high or too low.'[43] Ernst and Young[44] explain that structured settlements can prevent beneficiaries who might have difficulty in managing lump sums from dissipating their funds and becoming dependant on public health and welfare. These arrangements also allow insurers to closely align the flow of funds to the actual needs of the beneficiaries.

Taxation Provisions in respect of Structured Settlements

As part of a coordinated national response to tort law reform, the taxation provisions in respect of structured settlements were varied in Federal Government legislation,[45] the effect of which is described below.

Qualifying annuities and lump sums paid under structured settlements have been exempted from income tax. Previously, only that component of an annuity that represented the return of the capital used to purchase the annuity was exempt. The part of the annuity that represented investment returns was assessable as income in the hands of the annuitant. The legislation specifies that qualifying annuities must be purchased from life insurance companies or State Insurers pursuant to structured settlements. To qualify for the exemption, annuities must be purchased with funds payable as compensation for personal injury. The claim must be based on the commission of a wrong against the claimant or on a right created by statute, but must not be employment-related. The funds used to purchase the annuity must be monies that would have been tax-exempt if paid direct to the beneficiary.

Importantly, earnings on the assets held by the life insurance company or State Insurer to fund annuities issued pursuant to structured settlements are to continue to be tax-exempt. The effect of this arrangement is, of course, to enable the payment of a larger annuity in return for a given purchase price than would be available if these investment earnings were subject to taxation in the hands of the life insurance company.

The minimum term of each annuity must be ten years during the life of the annuitant, or for the annuitant's lifetime. Payment must be to the person injured, to a trust in his or her favour, or to his or her reversionary beneficiaries or estate in the event of his or her death during a guaran-

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[42] See *Todorovic v Waller - Jetson v Hankin* (1981) 150 CLR 402 per Gibbs CJ and Wilsin J at p412.
[43] Lim Poh Choo v *Camden and Islington Area Health Authority* (1980) AC 174 at p183.
[44] Ernst and Young *Australian Sports Commission Insurance Report* January 2003.
[45] Taxation Laws Amendment (Structured Settlements and Structured Orders) Act 2002.

teed minimum payment term.[46] The total amount of all annuities payable under any structured settlement must equal or exceed a guaranteed minimum amount, being the amount of an age pension, including supplement, payable[47] as at the date of the structured settlement. This guaranteed minimum level of support is indexed annually according to the All Groups Consumer Price Index (CPI). Subject to the minimum level of support, annuities may provide for incremental variations, either of a set percentage or according to one of two indices: the CPI or the increase in adult average weekly ordinary time earnings.

Likely Efficacy of Structured Settlements

In discussing the likely impact of structured settlements on the insurance crisis, it is logical to look at the three broad headings under which the factors contributing to the crisis were grouped.

1. Greed and Judicial Generosity

On structured settlements, the ICA comments

> Although there are no statistics to support it, experience suggests they have an interesting psychological effect in depressing motivation to claim for general damages: the expectation of an annuity is not as strong an incentive as a lump sum.[48]

Interesting though this observation is, it would be more useful and perhaps more convincing if some detail of the experience (such as where and when it was acquired) had been provided. Accepting the comment at face value would lead to the conclusion that, where structured settlements are employed, claimant greed is likely to exert less pressure on liability insurance providers.

McGowan said of structured settlements that they 'will help ensure that payments support the ongoing welfare of the injured person.'[49] The Federal Parliament also took this view, saying that the use of such agreements allowed damages 'to be more closely aligned with an injured person's actual needs.'[50] Cost to Federal revenue of the taxation arrangements outlined above is anticipated to stabilise at $20 million per annum after the new system has been in operation

[46] The annuity may provide for a period (of up to 10 years from date of settlement) during which the residual value of payments that would otherwise have been made to an annuitant who dies during that period will be paid to his or her estate or norminated beneficiary.

[47] Under the Social Security Act 1991 (Cth).

[48] Insurance Council of Australia Ltd Public Liability Submission to Ministerial Forum March 2002, 20.

[49] Hansard (Legislative Assmbly of Western Australia) 14 Aug 2002 94-98, 97.

[50] Commonwealth Senate Taxation Laws Amendment (Structured Settlements) Bill 2002 Revised Explanatory Memorandum, 6.

for 20 years.[51] Clearly, at least at Federal level, government greed is abating. In the end, need rather than greed may drive structured settlements, and these agreements may reduce the pressure (and opportunity) for judicial generosity.

2. The Business Cycle and Investment Returns

Structured settlements require the purchase of annuities and the providers of annuities in turn need to use suitable investments to underpin their liabilities to annuitants. The investments selected, given the long-term nature of the liabilities, are themselves likely to be reasonably stable and conservative, at least if the traditional investment practices of life insurance companies continue to be followed.[52] If structured settlements become a widely used option, particularly where larger claims are involved,[53] this is likely to create a large pool of investment funds. The long-term, stable investment pool created by the traditional approach may remove some volatility from capital markets and therefore reduce the amplitude of the business cycle.

3. Supply and Demand

It is difficult to predicting the impact of structured settlements on capital supply within the general insurance market. However, there has traditionally been a close nexus between life and general insurers. Often life and general insurers are related, either with one as a subsidiary of the other or with both being subsidiaries of a holding company. It is possible, in these circumstances, that the retention of capital within these ownership structures will ease the supply and demand pressures that would otherwise build up as a consequence of investment decisions being made at arms length by individual beneficiaries of lump-sum awards.

Conclusion

Tort law reform in Australia presents both opportunity and threat to the insurance industry. The threat comes about through the propensity of some legislators to demand that Government take action to both reduce common law rights of claimants and force insurers to reduce premiums.[54] The availability of structured settlements presents the industry with a significant opportunity.

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[51] Commonwealth Senate Taxation Laws Amendment (Structured Settlements) Bill 2002 Revised Explanatory Memorandum,4.

[52] Andrew Formica and Geoffrey Kingston 'Inflation Insurance for Australian Annuitants' (1991) 16(2) AJM 145-164. Life insurance companies tend to build reserves, rather than relying on portfolio managementm to underpin the guarantees they provide.

[53] See *Hansard* (House of Representatives of Australia) 6 Jun 2002 3286. The expectation is that these agreements are likely to be employed in settlement of large, rather than small or moderate, claims.

[54] See speech by Ms Jann McFarlane Hansard (House of Representatives of Australia Main Committee) 18 September 2002 6702.

Structured settlements are devices that respond to need, rather than greed. The likely outcome of a well though out structured settlement is peace of mind for the beneficiary, who can be confident that the settlement will replace income lost and meet additional expenses incurred due to injury suffered through the negligence of another. That is in accordance with the underlying principles of tort law, which aim to restore the injured party to the position that he or she would have enjoyed but for that negligence. Seen in that light, lump sum settlements are an aberration and structured settlements should become the norm. Whether or not they will do so remains to be seen.

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