



## **Ensuring that Structured Settlements Meet Plaintiff Needs**

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Since large personal injury (PI) settlements must often last a lifetime, plaintiffs may receive some of their funds in the form of periodic payments from an annuity managed by an insurance company. This is known as a *structured settlement*. Lawsuits can take years to resolve, so clients and their attorneys are eager to finalize details. To save time, attorneys may ask structured settlement brokers—sometimes referred to as settlement planners—to work directly with families to determine how much money should be paid immediately and what should be distributed over time. Too often, this results in over-structured settlements, which in turn increases the possibility of insufficient liquidity for large purchases later on down the road. This is clearly a disservice to clients, who may not have understood the long term, practical impact of the structuring arrangement.

### **Many Factors**

The allocation of settlement funds should be based on a realistic life care plan that assesses current and long-term needs for health care, residential and transportation needs, and other supports and services. The allocation should take into account consumer debt that may have accrued while the suit was in progress. It should also analyze the role of means-tested public benefits, such as Medicaid and Supplemental Security Income (SSI), and the availability of services provided through community based waiver programs and similar supports. Each family's situation is unique and making bad assumptions can permanently affect the plaintiff's quality of life.

Settlement planners are often ill suited to this task, and asking them to work with families to develop a long term life care plan puts the settlement planners in the position of making recommendations that they're neither trained nor authorized to provide. For example, they're unlikely to fully understand the distribution restrictions by which special needs trusts (SNTs) are bound, and they will not be familiar with the programs and services that are available to support a plaintiff with disabilities in the community. They are typically unfamiliar with the differences in the law and rules in different jurisdictions. And, finally, settlement planners are paid commissions for the structured settlements they arrange, so there is a financial incentive to recommend a structured payment when leaving the funds

invested and otherwise available to the trustee may be an equally appropriate or superior option.

The best way to protect everyone involved is for PI attorneys to begin working with special needs planning attorneys and professional care managers as early as possible. Care managers are trained to understand an individual's changing medical and support needs, and can help develop realistic expectations about the future cost of services and supports which will not be covered by insurance or a publicly funded program. A special needs attorney will be knowledgeable about the role that public benefits are likely to play and what legal tools—such as SNTs and Medicare set-asides (MSAs)— may be required to protect eligibility. This information needs to be developed prior to a decision on how to allocate settlement funds. Too often, special needs planning attorneys are not consulted until after the settlement has been structured and within days of a filing deadline.

To be clear, structures can be an important part of financing a life care plan, especially in cases where fixed and ongoing payments are expected (such as paying private caregivers to supplement Medicaid-funded supports). But relying on the settlement planner to develop the life care plan and decide how the plan should be funded puts the cart before the horse.

PI attorneys have a responsibility to ensure that their clients are getting sound advice concerning structured settlements. Involving the right professionals at the right time protects clients' interests, while avoiding disputes with disgruntled clients who didn't understand what they were getting into.

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