

Don't wait until the money arrives to consult with a Settlement Planning Attorney...

By Julian E. Gray, CELA
February 2014

Frequently, we are contacted by personal injury plaintiffs' attorneys because a case has been settled and there are various planning considerations that go far beyond the actual agreement on the settlement amount. While there are some planning techniques that can be accomplished at the 11th hour, getting the Settlement Planning Attorney involved at the outset of the case can provide numerous benefits to the plaintiff, his or her family, and reduce liability exposure to the plaintiff's lawyer.

Let's review some of the issues and benefits of consulting with a Settlement Planning Attorney while the plaintiff's attorney is building his case:

1. **It doesn't cost the plaintiff or her lawyer anything to review the situation.** We frequently field phone calls and emails from plaintiffs' lawyers to ascertain an informal opinion on planning options. We realize that plaintiffs awaiting a settlement do not typically have the funds to pay for lawyers. Therefore, we work with clients through their attorneys to be compensated only if the case settles. In this way, both the plaintiff and her attorney do not incur additional financial exposure in the event the case does not produce compensation.
2. **Hiring an "expert" is part of providing the client with the best result.** Plaintiffs' attorneys hire all sorts of experts during the course of investigating and presenting a case to the court. Even if a favorable settlement is reached, is the result really optimal for the client if the post settlement planning has not been designed by an expert in planning, including public benefits? It is also helpful to have the Settlement Planning Attorney "on board" for consultation with the plaintiff's attorney to provide guidance on how the acceptance of the settlement may affect the plaintiff or his family *before* striking a deal with the defendant.
3. **It takes time to understand the plaintiff and family situation.** Every client's situation is unique. In order to understand the best post-settlement plan for the client, we must understand that client's personal and family situation, goals for the future, material desires, medical needs and living arrangements. This is accomplished through personal interviews and research by the Settlement Planning Attorney, which can take weeks or months to develop.
4. **It takes time to verify which government programs the plaintiff or family are receiving or may be eligible to receive.** Many injured clients are already receiving some sort of benefits through a government agency. Unfortunately, these clients may not be aware of the specific program they are enrolled in or other programs they may be entitled to. Inquiries with the client as well as various government agencies such as Social Security and the Department of Public Welfare will yield valuable information. An analysis based upon the client's financial situation and future healthcare needs must be performed to determine current and future options for government based assistance to enhance the lifestyle of the client.

5. **It takes time to deal with government agencies.** Many of the maneuvers that are required post-settlement involve third party government agencies and the time frame for government response can be lengthy. Whether an approval by DPW of a Special Needs Trust or CMS review of a Medicare Set Aside fund, there is lead time involved that can take weeks or months. Moreover, some post-settlement plans require court approval, which can further delay the case.
6. **Avoid constructive receipt of funds, malpractice and delays.** The timeframe of the arrival of settlement funds to the plaintiff's attorney is not always forecasted accurately. While the attorney may be holding the client's funds in escrow temporarily, this mere possession of funds can result in "constructive receipt" by the injured party, which may jeopardize the continuing financial eligibility for various government programs. This can result in liability to the plaintiff's attorney and delays in "re-starting" benefits to the injured party once they are terminated.

In summary, just as careful preparation is required to represent an injured party in a liability action, equal preparation is required to plan for the receipt and use of settlement funds even in a modest recovery. Various legal, financial, tax, public benefits and lifestyle issues must be considered in advance of settlement. Since most liability cases take a year or more to develop, there is plenty of time to consult a Settlement Planning Attorney in advance to discuss the options and educate the plaintiff and his or her family rather than scrambling at the last minute to address important decisions that will affect the injured client for a lifetime.

The attorneys at Julian Gray Associates have assisted numerous personal injury attorneys, their clients and families throughout Western Pennsylvania to maximize their clients' results. For a no obligation, confidential discussion of a pending matter, please contact Julian at 412-458-6000 or visit SaveYourSettlement.com