Save Your Settlement
Injury Settlement Planning Attorneys

Don’t Put All of Your Eggs in One Basket - When a Special Needs Trust is not the Only Answer

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The majority of injury cases that settle involve a living plaintiff with long term disabilities. This person will need a variety of supports throughout his/her lifetime through a combination of sources which include the net settlement funds and various government benefits.

Many people involved in the settlement process immediately refer to the use a statutory Special Needs Trust in order to maintain government benefits eligibility for the injured plaintiff. On the surface this makes sense. The typical scenario goes like this: Injured person receives lump sum settlement from injury case. He/she has a long-term disability that may be expensive now or in the future. So, many practitioners leap to the conclusion that a Special Needs Trust is needed immediately upon settlement of the case. The person is disabled right? So, let’s make sure he/she maintains his/her eligibility for important government benefits such as SSI and Medicaid by placing the settlement funds into a Special Needs Trust since those trust funds are not counted towards the financial eligibility requirements for these programs.

Unfortunately, this type of thinking is akin to the “government benefits tail wagging the whole planning dog.” Even if a person has a long-term disability, the use of a Special Needs Trust must be thoroughly analyzed before making the leap to fund the entire settlement into this trust. Having handled many personal injury settlements involving hundreds of millions of dollars of funds, I can tell you with certainty the number one reason to take a hard look at this situation is to preserve options in the future - because things change. And to the personal injury attorney, this means giving your client more options and informing them that they have a choice so that the client doesn’t contact you years later with a malpractice claim for not disclosing those other options.

Here’s just one scenario mistake I see injured plaintiffs and their lawyers make in frequently (or at least they were unaware of another option):

A plaintiff who is disabled but does not yet require ‘round the clock medical care costing hundreds of thousands of dollars per year receives an injury settlement and places the funds in a traditional Special Needs Trust because he is “disabled” and is worried about preserving government benefits eligibility. However, as most people in this area know, the Special Needs Trust someday must pay back to the State dollar for dollar all amounts expended for the disabled trust beneficiary upon either the death of the trust beneficiary or the early termination of the trust.

Let's say in our scenario that although the life care plan for future custodial care indicated millions of dollars over the person's lifetime, he is not anywhere near that level of care at the time of settlement nor does it appear he will be there in the next few years. This is the critical time to consider NOT setting up a Special Needs Trust and instead using a different type of trust that does NOT have a payback to the State in the future. Or, utilize a Special Needs Trust for only a small portion of the settlement and a different type of trust to hold the bulk of the funds that can be passed onto other family members in the future without paying back the State. Imagine how you'd feel when you settled a million dollar case for a plaintiff in his early 20's and placed his funds entirely in a Special Needs Trust. Then, 15 years later (or more) he calls you on the phone and says that he's terminating the trust and found out that a huge portion (or all) of the funds placed in the trust are now going to go back to the State. What if there had been another option?

Well, in the right scenario, there is another option. Imagine this second option where that same plaintiff only uses a portion of his settlement funds to fund a Special Needs Trust which pays for his care for five years following the settlement of his injury case. After that, he can reapply for all government benefits (and by the way can still keep other benefits during this period) and the balance of his settlement funds will never be repaid to the State and can be used by the plaintiff or passed on to family, charity or others at the client's discretion.

The big difference is whether the plaintiff chooses to pay for some of his own care for up to 5 years following settlement and saving the rest of his money or having to pay back the State for his care costs for the rest of his life. Now you know there is another option and all injured clients should be given the choice when making the biggest financial decision of their lives at settlement. Call us for a complimentary evaluation of your injury case to see if it is appropriate for this planning technique. And if you're now recalling other cases in which you've already set up Special Needs Trusts for clients that might fit this scenario, it's not too late to fix it.

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

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