

Why Everyone Should Consider a Trust Protector when Settling a Personal Injury Case

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One of the most common discussions I have with new clients establishing a trust for a disabled person revolves around the choice of a trustee. The conversation goes like this:

(Client) “I want to have my friend or sister be my trustee.” Okay, so, ask your friend or sister some questions to assess their ability to act as a trustee of your close friend or family member’s entire net worth:

- Have you ever been a trustee?
- Do you have any formal training in acting as a fiduciary for another?
- What is your background in public benefits law (SSI, SSD, Medical Assistance, Medicare), tax planning, accounting, investment management and advocacy for people with disabilities?”

What client really means is that she does not trust the big bank or trust company to act as her trustee, even though she really has no experience dealing with a corporate trustee. There are some great corporate trustees out there and some not so great ones. So, how do you satisfy the client’s disdain for giving up control to a corporate trustee versus handing her money over to a novice trustee who will almost certainly blunder in the myriad of technical issues related to trust management?

Enter the “Trust Protector” (or Trust Advisor in some jurisdictions). The Trust Protector is a very powerful player in the trust arrangement. The Trust Protector basically watches over the trust to make sure things go the way they were intended.

So, back to our scenario. The Injured plaintiff has the corporate trustee do its job and handle the money to take care of the plaintiff but the plaintiff appoints her sister or friend (or any other trusted person) to act as Trust Protector. Thus, if the plaintiff is unhappy with the corporate trustee (i.e. not doing its job), then the Trust Protector can dismiss the corporate trustee and replace it with another one with little controversy and legal action.

When I mention this scenario to most clients, they become much more comfortable knowing that they are staying in control and the threat of potential removal keeps the corporate trustee more attentive to the client's needs. Frankly, if you work with a good corporate trustee, this should never be an issue anyway. However, at a time when a person is at the end of a long road of settling a case and emotions are running high, building trust with a corporate entity is a challenge for many clients. Knowing a trusted person is in their corner to help out if the trustee relationship goes sour makes a big difference in accepting this new partnership.

What does this mean for the plaintiff's attorney? Take a look at the next Special Needs or other trust placed in front of you. For whom is it written? Your physically and emotionally damaged plaintiff who will never get back to a normal life? Or is it written for the trust company so that regardless of the trustee's behavior (heard of "for cause"?), the plaintiff would have to climb a legal mountain to oust the corporate trustee (all at costs to your client in legal fees for the trust company litigation, and their possible anger directed at you).

I'm guessing that no personal injury lawyers ever get complaints from past clients about their trustee's lack of responsiveness, etc., 😊 so maybe this is a moot point in your practice. But, having a Trust Protector in your trust documents is now the standard of the industry and should be discussed and implemented prior to signing the trust documents. There's simply no reason not to either name a Trust Protector or reserve the right to do so in the future.

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 us at 412-458-6000 or visit SaveYourSettlement.com

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