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Proper Planning Is Necessary to Protect Your Child's Settlement

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When your child is born with preventable birth defects due to medical malpractice, or suffers a catastrophic injury which leads to a lifelong disability, the resulting lawsuit can often take years. The end result of this long and arduous process will hopefully be a settlement or jury award which is designed to compensate your child for his injury.

Even when the lawsuit is successful, the settlement often is not nearly enough to provide your child with the care and financial support he needs throughout his life. In these cases, it is important that the settlement is structured in such a way that it will allow your child's caregiver to access the settlement funds while at the same time allowing him to qualify for important government benefits like Supplemental Security Income (SSI), Medicaid and Section 8 housing that will provide for his ongoing living expenses and care.

The following are several key points to consider before finalizing your child's settlement.

1. Structures may not be the answer, or the whole answer.

Typically upon the settlement of a personal injury case, the plaintiff will be offered a so-called "structure." A structured settlement is a stream of income or "annuity" rather than a lump sum payment.

These are offered for a number of reasons. They pay out a set amount of money over the course of many years, guaranteeing the victim some source of income for a long period of time. It protects the settlement from being quickly depleted and there are tax benefits which can make the investment return better than your child would receive from a typical bond portfolio.

However, your child may need a large lump sum payment to retrofit your home to accommodate his special needs, or to purchase necessary medical equipment. Or your child may need to pay for college several years down the road. In either case, tying your child's entire settlement up in an annuity with fixed monthly or yearly payments may ensure a steady stream of income, but it won't meet your child's needs.

In addition, structured settlements by themselves would typically make your child ineligible for public benefits. However, a structured settlement payable to a special needs trust can gain your child the benefits of a structured settlement and still maintain his eligibility for public benefits.

2. Not all supplemental needs trusts are the same.

Another key point to remember is that the settlement funds belong directly to the accident victim, not his or her family (although parents of an accident victim may have their own derivative claim - see number 4). Because the settlement is your child's money, it must be placed into a special kind of trust, called a (d)(4)(A) or "Payback" Trust, in order for your child to qualify for SSI and Medicaid. Likewise, any income from your child's investments (like the ones discussed above) that is not spent on his care will also typically flow into this trust.

A (d)(4)(A) Trust must be created by a parent, grandparent or court and can be used to supplement any government benefits your child may receive during his lifetime. This may sound the same as any other supplemental needs trust that you or your relatives may create for your child's benefit, but there is one important difference. In order to meet SSI and Medicaid requirements, a (d)(4)(A) Trust must contain a provision *requiring that, upon the beneficiary's death, the trust pay back the state from the trust funds for any medical expenses paid for by Medicaid over the life of the trust beneficiary.* A qualified special needs planner will help you avoid the SSI and Medicaid pitfalls when drafting and funding a (d)(4)(A) Trust.

3. A settlement needs to last.

One of the biggest conflicts between parents and the independent trustees who administer their child's settlement is over access to trust funds. Sometimes parents do not keep in mind that a child's injury settlement will be his only source of income and security for the rest of his life. It's easy to see the often large settlement as a windfall which needs to be spent as soon as possible on all of the things a child, or sometimes the child's family, may want. Buying that house with a pool you've always wanted may seem like a good idea now, but it won't help your child 40 years later when he needs to pay for a specialized surgical procedure or to purchase in-home health care not provided by Medicaid.

Forging a relationship from the very beginning with a special needs planner can focus a family on the reality of having a child who is technically a millionaire, but who is going to require a large amount of care for the rest of his life. The special needs planner can also work with the private trustee to smooth over conflicts and mediate in times of crisis.

4. Be careful with your own funds.

A child's assets and income are not the only things the government looks at when determining if he is eligible for benefits. Often a parent's income is also taken into the equation, in a process known as "deeming". While a settlement may be perfectly structured, via annuities, trusts, and other investments, to provide the right amount of income to keep a child eligible for benefits, a parent's income could throw the entire plan out of balance.

This is especially true if the parent receives an award through their own derivative lawsuit based on their child's injury. In these cases, even a little extra income from a parent's settlement could cause the loss of important government benefits for their child. Since this area of the law is constantly changing, it is important to communicate early and often with a professional who knows the best way to maintain your income, as well as your child's.

5. Your personal injury attorney may not be a special needs or a settlement planner.

Personal injury attorneys are trained to pursue your child's rights when he is injured and to obtain the best possible settlement for your child. But while most personal injury attorneys may have some idea of how to handle settlement funds in order to ensure that a victim obtains government benefits, the majority probably don't have the special training necessary to properly protect the settlement in the way that works best for the child.

Therefore, your first step, which you should take before you approach a settlement, is to contact and begin working with a qualified special needs planner who can work with the personal injury attorney throughout the settlement process to protect your child's valuable government benefits.

If your child is in the process of negotiating a personal injury or medical malpractice settlement, [click here](#) to get in contact with a special needs planner who can guide you through the settlement and ensure your child's well being over his entire life.

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