

Settlement Planning in Large Personal Injury Cases

In 1981 I shifted my career from life insurance and employee benefit sales to settlement consulting. I have had the opportunity to design structured settlement annuities and specialized trust funds on hundreds of cases working with settlement professionals and their clients. I am writing this article to highlight the advantages of combining structured settlement annuities and trust funds on large or complex cases. I invite you to contact me on any case you have where some of the ideas I outline here can help you.

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Piece of Mind

Settling your personal injury case usually relieves stress; but proper financial planning going forward brings *piece of mind*. It is clear financial planning for the victims of a serious injury or survivors in a death case is different from regular financial planning. First, the needs are new and different. Second, the financial resources are new and different. Here are some of the terms that apply: Social Security disability income and/or survivor benefits, workers' compensation benefits, medical insurance, Medicare, Medicaid, disability income, structured settlement annuities, trust funds, settlement proceeds, personal care giver, home remodeling, employee benefit, life insurance, various therapy sessions, new medications, equipment, case workers, state benefits, family helpers, "normal" living expenses, and the list goes on. . .

Coordinating these elements with your settlement opportunities produces the best outcome for you and your loved ones. When your plan is in place, *piece of mind* returns.

Settlement Trust Funds

A settlement trust fund is a tailor-made investment account for the injured person, controlled by a trust agreement and managed by a trustee. The trustee can be either an individual or a corporation. The trustee has two broad duties: the first is to manage the investments in the fund and the second duty is to manage the requirements in the trust agreement supporting the injured person's needs. The trustee has a fiduciary duty to always do what is in the best interest of the beneficiary(s).

In most cases, a professional corporate trustee is preferable to an individual trustee since the opportunity for mismanagement or conflicts can be avoided. If a trustee has to say "no", I want it to be someone other than a family member. Professional corporate trustees have been trained to work with these accounts and their experience and service in many areas are very valuable for the injured person and his or her family.

The trust company hires, trains and manages its trust officers who work with the injured person as trust beneficiary and his or her family. The trust officer can help the injured person with budgeting, medical care expense management, housing options and special care needs, etc. A family member, guardian or trusted advisor may be chosen to assist the trust officer when dealing with the injured person.

The Trust Agreement

The trust agreement is the contract that defines all aspects of the trust arrangement. It lists the duties of the trustee and describes what expenses are eligible for payment.

The purpose of the trust is to help the injured person financially and at the same time manage the account and preserve its value for the maximum benefit over time. In other words, "don't spendthrift the trust account unnecessarily". The trustee usually makes payments directly to the vendor of services rather than to and through the injured person. This guarantees the payments aren't improperly spent.

The trust needs to be flexible. It is designed to make benefit payments if and when the funds are needed. The trust may make regular payments to cover living expenses and still has the flexibility to change the amount and/or timing of these payments as conditions change.

Counseling is a major part of my work. The injured person and his or her family need to understand the various options to include in the trust agreement. I work through the planning process with the injured person(s), personal injury attorney, spouse, parent, guardian, trust officer and the party chosen to draft the trust agreement.

Structured Settlement Annuities

In most large cases, we recommend a structured settlement annuity partner with a trust fund to best serve the needs of the injured person. This annuity is a life insurance company product that provides pre-scheduled, guaranteed, income tax-free payments custom-made to meet the injured person's needs. The annuity can make payments to the injured person and/or a trust. The money invested in the annuity is not subject to trustee fees since the annuity is owned by a separate owner (qualified assignee). Please check out my website (www.davidbrackettinc.com) under the "for injury victims" section for more information.

Case Examples

Listed below are two examples of cases where a structured settlement annuity and trust account are working together to help the injured person.

Minor Settlement - Brain Injury Case

The Trust Agreement / This twelve-year old was severely injured in a car accident. He is doing "well" but his mental stability and learning disabilities make his education challenging. We set up a trust account and structured settlements for him with court approval. We deposited \$100,000 into the trust account right away. The trust can pay for special counseling, therapies, tutoring and any medical expenses not covered by insurance. After graduation from high school the trust can pay for post-high school education or college if he continues his education. On the other hand, this child might be better served having the trust provide other benefits for him such as income for living expenses, a car (if he can get his license), or later, funds for housing. Of course, any medically related expenses will be covered, including the cost of medical insurance.

Annual annuity payments start at age 18. Payments are guaranteed to age 50, or his lifetime, whichever is longer. The annuity also provides large lump sums payable to the trust at age 18 and 30. These funds are available to cover education, if needed, or be invested for other needs such as housing, transportation, vacations, marriage and/or special therapies. In this case, we directed all annuity payments to the trust.

Structured Settlement Annuity Can't Be Sold / Directing the structured settlement annuity payments into the trust assures that the injured person can't sell his annuity benefits to the after-market. Selling future payments at a huge loss to the annuity purchasers only occurs when the annuity is not flexible enough to meet the injured person's needs. The trust fund is flexible. Therefore, there should be no need to sell the annuity.

Disabled Workers' Compensation Settlement

In this case, the injured person, age 48, suffered serious injuries in a fall while working. He experienced brain injuries, some paralysis and severe orthopedic injuries too. He settled his workers' compensation claim and also recovered damages from the employer and a third-party defendant. We designed this settlement using structured settlement annuities and trust combination to manage his medical expenses. He was collecting Social Security disability income payments and was on Medicare. We created a *Medicare Set Aside Account* funded with cash and an annuity to replace and pay his Medicare eligible expenses related to his work injury. Next, we set up a support trust for him and his family. The trust pays his conservator living expenses and personal attendant care costs. The trust has adequate resources to cover all of his medically related bills not covered by the Medicare Set Aside Account. A large portion of his regular payments come from an annuity that flows into the trust income tax-free and free of trustee fees. This allows the trustee to manage these payments with other available assets and incomes when distributing funds to the injured person and service providers. His wife provides many care services for him and is paid a salary from the trust. The trust also purchased life insurance on her, protecting her husband if she dies early. We also settled her claim with a separate structured settlement annuity.

In this case, we made sure the annuity payments are paid for his lifetime. In addition, if he dies before the end of twenty years, payments continue to his family. The trust account can also accept any additional claim settlements, inheritance, or other infusions of cash. Finally, we recommend the family re-work their wills.

I love working with settlement professionals and their clients on complex cases. It's a privilege for me to help an injured person achieve the best results possible. We focus on the facts in a case – but it's the *piece of mind* that outlasts everything else.

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