



Help Your Clients, Protect Your Practice

Plaintiffs attorneys should retain their own settlement consultants

It is important for the claimants to familiarize themselves with the settlement consultant, to ask questions, and to learn about different settlement design approaches well in advance of any settlement negotiations.



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By JOSEPH A. DIGANGI

Would it make sense for plaintiffs attorneys to rely on only defense experts opinions and advice when it comes to medical, economic, or liability issues? Why then, have plaintiffs attorneys been relying on a defense expert, the structured settlement broker, to handle the future payment aspects of their clients settlements for the last 20 to 25 years?

The perception was that the plaintiff side had to work through the defense side if a structured settlement was to be considered. Recent events demonstrate that relying solely on the defense broker, or avoiding structures completely, may be unwise for both the plaintiff and the attorney. The question is, how does a plaintiff's attorney protect the client from wasteful dissipation of settlement funds without exposing oneself to unpleasant malpractice lawsuits if the level of care is considered insufficient?

Statistics show that about 25 to 30 percent of all accident victims completely dissipate their judgments or settlements within two months of recovery, and 90 percent of them spend it all within five years. On many occasions, the plaintiff's attorney is brought back into the case by the disgruntled client in the form of a malpractice lawsuit alleging that the attorney could have, or should have, done a better job in protecting their clients financial future after settlement. How would you respond to any of the questions that typically are raised by unhappy, and eventually lawsuit minded former clients?

I thought it was a lot of money when we settled but it is gone already. Why didn't you recommend a structured settlement?

The defense never told us, or proved to us in writing, how much they were spend-

ing on my structured settlement benefits. I just found out that the amount spent on my settlement was less than you were told by the defense. Don't you owe me a refund on your attorney fee?

We didn't know that we would lose Medicaid benefits when we accepted the cash settlement. Shouldn't you have seen to it that our Medicaid benefits were protected?

I found out that my estate might not have been subject to estate taxes when I die if only my structured settlement had been handled differently. Why did this happen?

My structured settlement does not allow me the flexibility to make slight changes, even for an emergency. Since I don't have any upfront cash left, I need to break the structure to pay for medical bills etc. How come nobody told me there were other settlement options that offered spendthrift protection and flexibility?

I thought you and the defense broker said that the annuity payments would be 100 percent tax free. Why then, did I have to pay taxes on punitive damages that could have been avoided if the settlement documents had been worded differently?

How come we used the defense broker instead of getting our own? Didn't he have a conflict of interest? Couldn't we have gotten our own expert whose only loyalty was to me?

Standard Of Care

The standard of care described in Rule 1.1 of the American Bar Associations Model Rules of Professional Conduct states that, a lawyer shall provide competent representation to a client. Why then, do so many attorneys who would never think of relying on the defense counsel or an expert engaged by the defense, often and willingly allow the defense to dictate who will handle a struc-

