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## Elder Law/Trusts & Estates

# Settling a Personal Injury Claim While Providing Comprehensive Counsel

Many special needs cases begin with a personal injury that resulted from medical malpractice or some other tragic event. Often, these injuries result in civil suits with the potential for large settlements. In creating a strategy



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to best benefit a client once he or she receives an award, a consultation with a personal injury attorney and an elder law, estate planning, and/or special needs attorney can be very helpful to determine the best strategy.

After all of the effort expended on behalf of the client in order to obtain the best possible settlement given the facts and circumstances surrounding a particular claim, it is important that the personal injury attorney finalizes the representation as effectively as it began. Once the settlement or trial award is secured, the advice of an attorney versed in elder law, estate planning, and/or special needs planning can allow a personal injury plain-



tiff to preserve his or her settlement assets long into the future.

### Medical Coverage and Expenses

Often there are sizable medical expenses or liens that need to be addressed as the result of a personal injury claim. These expenses are typically assessed during the negotiation process as they will have an impact on the client's net proceeds. While identifying, addressing, and negotiating these issues is often time consuming and frustrating, it is critical that they are resolved prior to accepting the settlement.

Following the resolution of the personal injury claim, the type of medical coverage and services that the plaintiff receives or is eligible to receive is especially important as such individuals are often disabled or have some type of preexisting condition. Their disabilities and preexisting condition limit their health care coverage. In addition to basic health insurance, personal injury plaintiffs may come to rely on expensive medications and physical therapy to help them recover from injuries. Determining whether the personal injury plaintiff has sufficient medical coverage is important,

as there are common misconceptions surrounding the types of injuries that government programs actually cover.

While personal injury attorneys may not be familiar with the types of services and benefits to which their disabled clients may be entitled, the attorney should direct the client to seek advice regarding entitlement benefits. It must be determined what types of benefits or services the disabled individual is already receiving or may be entitled to receive in order to protect the settlement and maintain eligibility for critical benefits.

Clients who receive Medicaid, for example, need to ensure that assets and income remain below the requisite allowances as determined by Medicaid. These clients should seek the counsel of an elder law attorney to shelter as much of their income and assets as possible.

### Medicare Secondary Payor Act

Medicare is a federal health insurance program designed for individuals over the age of 65 or who are determined to have a permanent disability.<sup>1</sup> Medicaid is a joint federal and state program that provides health

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