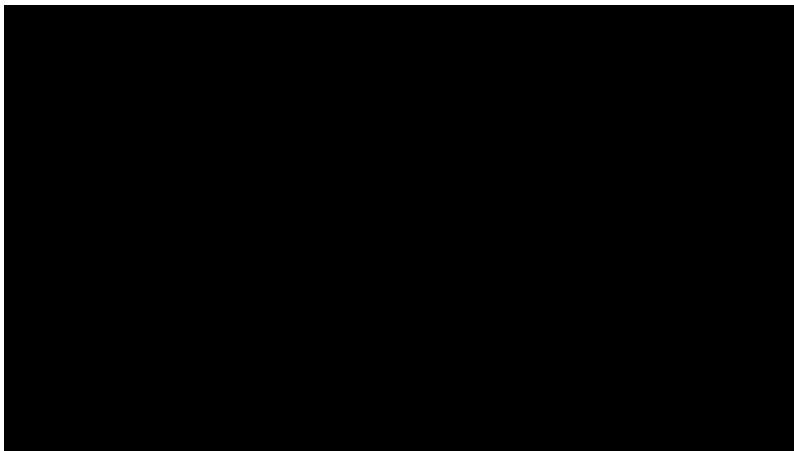


The Settlement Channel

Informed commentary, news and opinion on structured settlements and settlement planning

Lawyers: Consider Government Benefits in Personal Injury Settlement Negotiations



Plaintiffs in personal injury lawsuits are more likely to settle their cases than pursue the cases to jury verdicts. One thing that should be kept in mind during the negotiation of a settlement is the availability of government benefits and the possibility that a plaintiff may someday need one or more of them. However, a plaintiff's lawyer may not have government benefits in mind during the negotiation. California lawyer Jennifer Steneberg of the Dale Law Firm, PC explains why plaintiff's lawyers need to be thinking of government benefits.

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Jennifer Steneberg

There are several reasons, Steneberg explains, why government benefits should be kept in mind during a settlement negotiation. The obvious one is that a plaintiff might already be a public benefits recipient. If that is the case, the plaintiff's lawyer needs to assess the situation to determine the value of

government benefits in light of the settlement. It is necessary to look at the plaintiff's household and family and think about the long-term situation of the plaintiff.

Another possibility is that a plaintiff is newly disabled and is not yet receiving government benefits. In that situation, Steneberg says, the plaintiff's lawyer needs to make an assessment of whether government benefits will be a needed part of a plaintiff's financial and personal well-being.

Steneberg says that there are two areas of benefits to consider. First, there are cash assistance programs—such things as Social Security Disability Insurance (SSDI) or Supplemental Security Income (SSI), both administered by the Social Security Administration. There are also health coverage programs. These include Medicare and Medicaid. Beyond the health care benefits, Medicaid also provides some other support benefits, including in-home support. Some of these services could be very expensive if one had to purchase them privately. Protecting a plaintiff's financial eligibility using a special needs trust, perhaps, can be very important, as settlement benefits sometimes become exhausted rather quickly.

Eligibility to receive government benefits will depend on the specific benefit in question. For example, a person with a good work history may well become eligible for SSDI or some other disability insurance. As to those benefits, Steneberg notes, there is no eligibility

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Special needs require special attorneys.

requirement other than the disability itself. If those benefits are not available, the plaintiff might have to apply for SSI. Another need might be Medicaid benefits. Those benefits have a financial eligibility test that requires a low income in order to qualify. Also, an individual is often not allowed to have personal resources in excess of \$2,000.

A smart strategy for a plaintiff's attorney in such a situation is to team up with a special needs attorney early on in the settlement negotiation. The earlier, the better, Steneberg says, and certainly prior to the settlement conference. In this approach, the client's long-term needs can be taken into consideration, including reviewing a life care plan, if one has been prepared. The special needs attorney can help make everyone involved aware of benefits that might be available in the community that will be of benefit to the plaintiff. Also, it is important to structure the settlement so that adequate funds are available to cover immediate needs that a plaintiff and family might encounter. These might include home modification, adapted equipment, vehicles, and similar kinds of needs. The other issue is to be sure that an adequate cash flow is provided long-term for continuing needs.

Jennifer L. Steneberg is associated with the Dale Law Firm, PC in Pacheco, California. She is committed to advocating for persons with special needs, and she has spent much of her adult life working in the area of disability rights. She is also a member of the **Special Needs Alliance**. The Settlement Channel is a featured network of **Sequence Media Group**.

Posted on December 12, 2017 by Cecil Caulkins.

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