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Do you have a settlement Brain Trust?

FROM THE SETTLEMENT CONSULTANT (BROKER) TO THE ESTATE ATTORNEY, CPA AND FINANCIAL ADVISOR, CLIENTS RECEIVING A LARGE SETTLEMENT CAN REQUIRE A REAL TEAM TO MANAGE IT FOR A LIFETIME

As the attorney, you are the person your client relies on the most over the course of their case. With that trust comes a profound responsibility. The best way to support your client is to engage a team of specialized advisors – a Brain Trust, if you will – so that post-settlement, your client can transition to their "new normal" as seamlessly as possible. The necessary Brain Trust members will vary according to the facts of each case, so this article is simply intended to provide an overview of potential advisors to consider.

What is your client's mental state during settlement?

Studies have shown that the mind may be functioning at a 20 percent deficit when exposed to stress. Settling a case is highly stressful for a claimant; add to that the high-stakes implications of making irrevocable decisions, and disaster could be on the horizon. From the way the settlement is structured, to the various legal, tax and financial planning decisions triggered by a settlement, there is much to be done and much to be carefully considered. A Brain Trust is invaluable to your client and your business. Here are some of the experts you should consider engaging and questions you should be asking.

Settlement consultant

It is important to work with a consultant who truly understands your client's needs. There can be many pitfalls associated with engaging a "per case" broker with whom you do not have a relationship, not the least of which is the potential liability exposure for your firm. In my experience, many attorneys and even most financial planners are not fully informed when it comes to understanding the settlement consultant's role. Some envision a broker who facilitates an annuity arrangement, and the relationship ends there. However, making sure a client is adequately prepared for post-settlement life requires considering many variables and options, and is limited only by the ingenuity of the professionals who create it. In your search for a trusted settlement consultant, there are three important questions to ask:

How much to structure

Do they try to structure the entire net proceeds that your client is getting?

Everybody wants their money and they want it now, including the claimant and the settlement consultant. If the latter's only source of income is structured settlement annuities, then they might be tempted to "over-structure" the client. This could pose a conflict of interest. But the settlement consultant's priority should always be meeting the unique needs of the client and if that means that only a portion of the settlement proceeds

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should be structured, then so be it. Believe me when I say that if that need is not heard and respected, the odds are good that the client will sell their annuity within a few years. Be sure that your settlement consultant asks plenty of questions and/or reviews a life care plan to fully understand the claimant's needs.

It is important to note that a claimant need not have a million dollars in settlement proceeds to reap all the benefits a structured settlement provides. In 2017, Pacific Life reported an average case size of $166,000, Mutual of Omaha reported $135,650, and American General reported $176,964. The minimum amount required to fund a structured settlement varies by life company, and most will structure as little as $10,000.

Impact on government benefits

Does the settlement consultant know how to identify the possible loss of current and potential future government benefits?

The settlement consultant should be able to see the red flags and help to identify current and future government benefits that may be impacted by the acceptance of a lump sum cash settlement. If there are any, a trust attorney should be enlisted to assist in protecting benefit eligibility.

If a trust is utilized, there should be additional language in the settlement documents allowing the structure to be "commuted" into a lump sum for most cases. This approach allows the trust to reimburse Medicaid (Medi-Cal in California) or for the family to have funds available for estate taxes upon the claimant's death. Remember that a structured settlement is income tax-free, but not estate tax-free. If the commutation rider is not inserted, there will inevitably be a tax bill, and the claimant is rightfully going to look at you for not having considered the option of a commutation rider. If that happens, this is not a case where you can go back and correct your mistake. The cost-free option of commutation is offered only during the settlement of the case and must be included in the release.

If a client has a shortened life expectancy, the annuity options and commutation must be taken seriously into consideration with the ramifications if the client passes within a few short years. Everyone should understand how this works.

What options were considered?

Did the settlement consultant take the time to walk your client through all available settlement options?

Having a settlement planner work with the claimant early in the case can provide valuable benefits to you and your client. A settlement is often the biggest financial transaction of your client's life, and financial planning decisions are unique to each claimant. Early engagement of the settlement planner allows them the opportunity to assess the claimant's current and future needs, to present all available settlement options, and to help resolve any issues that may delay the claimant's receipt of the settlement proceeds. In addition to initial meetings, the settlement planner can also attend mediation or at the very least, remain on-call during the mediation to help answer any questions. Many decisions, such as electing to use a structured settlement, must be made before finalizing the settlement agreement.

Trust attorney

A trust attorney might be the most important professional in your Brain Trust because protecting government benefits is a world unto itself. To protect your firm from future liability exposure if your client is currently receiving or will receive government benefits in the future, it is best practice to suggest that your client meets with a trust attorney. The client needs to be educated by a professional who specializes in that area.

If your client is receiving needs-based government benefits and were to accept a cash lump sum settlement, the client may suffer a diminution or loss of those benefits. In fact, assets as little as $2,000 ($3,000 if married) can render an individual ineligible for certain benefits. Although needs-based benefits are modest – current Federal Supplemental Security Income (SSI) monthly maximums, for example, are $750 for an individual and $1,125 for a couple (slightly more in certain states) – millions of Americans rely on them to pay for basic food, shelter, and medical needs. Preserving access to these benefits frees up the settlement proceeds to pay for expenses above and beyond what the government will cover.

Bringing in an experienced trust attorney best serves the claimant, and it also serves the attorney's interests. If you briefly discuss the reality that they will lose their benefits, or they cavalierly say "I'll just pay for it out of my funds or Affordable Care Act Insurance (Obamacare)," add a disclaimer in your file stating that you referred them to a trust attorney and they chose not to do as you recommended.

Many attorneys and clients have erroneously assumed that the ACA insurance will be the answer to being able to have healthcare coverage at a reasonable premium. Although we all hope a medical insurance solution will come soon, keep in mind that even if the Affordable Care Act stays in place, your client may have a need for long-term care, which is something they *cannot* obtain without a private long-term care policy. Generally speaking, your disabled client will not be eligible for a private policy.

As you are creating your list of trust attorneys for your Brain Trust, it is important to ensure that your referring attorney is also familiar with setting up a Medicare Set-Aside (MSA) trust within the special needs trust. Housing an MSA inside a special needs trust is becoming more and more commonplace in liability settlements.

Estate planning attorney

In some cases, settlement proceeds can be considered as funds that have created an estate. As such, it is important to properly plan for the future of the client and their family. Most people do not set up their living trust, will, and healthcare directives, even though they know they

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should. A settlement brings those important documents to the forefront. Having an estate planning attorney on call is crucial to completing these documents promptly and making sure the client understands exactly what the documents mean.

Certified public accountant (CPA)

If the settlement includes funds that create an estate, and the client has not handled that much money before, it is important to recommend that they speak with a CPA. The larger the settlement, the more complicated the tax situation is likely to be. Though the client might already have a CPA, that CPA might not be accustomed to working with the amount of money the client receives from the settlement. The idea is for you to develop a relationship with a CPA who is well-versed in the nuances of tax law and who specializes in high-net-worth clients. All you are doing is introducing a list of names for a consultation, and in the end, it's up to the client to make a choice. If their case has any punitive damages or wages, there could be a tax liability to consider up front.

Furthermore, your client may find themselves in a higher tax bracket as a result of the settlement, and they need to understand the implications of that. They may also have made a few large purchases as a result of the settlement and need to understand what that means for their taxes and overall financial plan. The CPA and estate planning attorney may work side by side if the settlement funds are significant enough that there are estate concerns or if the client wants to gift funds to family members. Both experts will work closely with the final member of the Brain Trust, the financial advisor.

Financial advisor

Once the settlement documents are signed and the case funding comes in, the claimant eagerly awaits the funds. Unfortunately, so do a lot of vultures in the form of family and "friends." Additionally, the bank will usually have their internal advisor meet with the client the moment they deposit the funds into a bank account.

As their attorney, the client looks to you for advice. But as an attorney, your liability insurance may not cover financial advice. Not only should you not give financial advice, you should not *want* to give financial advice. It is crucial to the well-being of your client to make sure they get the advice of a financial planner who is well-versed in the technical side as well as the human side of life transitions like a major settlement.

Fortunately, there are plenty of competent financial advisors. The key is to develop a relationship with a handful whom you trust, and who understand the emotional component of money in transition. Once you have a solid list, recommend that the client meets with at least three of them. Clients decide on a financial advisor for any number of reasons. Your job is to feel confident knowing that any one of the advisors you recommend is capable of expertly handling both the technical and the human side of the client's case.

Working together

A single settlement can involve many factors: research on government benefits, a Special Needs Trust to protect those benefits; a fund to resolve medical liens; the actual structuring of payments; a financial plan that takes into account tax implications, long-term care and life insurance needs (and possibly even life insurance for a caregiver); and of course, estate planning. Can your practice and current Brain Trust manage your client's financial needs, their need for clarity of information and options, and their need to feel supported and confident in their decisions? If not, it is time to create your trusted team.

Having the right team in place makes your clients feel that you not only settled their case, but that you truly care about their well-being as they navigate this transition. What better way to encourage future referrals to your firm?

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