Professional Financial Management for the Personal Injury Victim: Investment Trusts

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Introduction

While structured settlements are often the cornerstone of a financial plan for a personal injury victim due to their tax free status and ease of customization, there are needs that sometimes can't be met by a structured settlement annuity. For example, in some cases life insurance is needed on a parent's life to pay for the care he or she provides for a disabled child in the event of his or her death. Sometimes a Special Needs Trust or Pooled Trust needs to be established to protect public benefits. Other times, a personal injury victim needs someone to help with investments and generally manage their financial affairs. This article will focus on the latter need which can be met with an investment trust managed by a professional trustee.

Needs Assessment & Profile

In some cases, there may be a large amount of the personal injury lawsuit proceeds that needs to be liquid. There are many reasons for needing liquidity. The primary need for liquidity is for things that can't be predicted such as unforeseen medical expenses. In order to determine an allocation of settlement proceeds to liquid investments versus annuitization with a structured settlement, a needs analysis must be done. Someone who needs support income and money for routine medical care can have those needs met with a tax-free structured settlement annuity. If the victim has large uncertain medical needs, the money must be kept in a highly liquid adaptable investment.

The profile of someone who needs a structured settlement annuity is a person that needs spendthrift protection, future needs are highly certain, mid to high tax bracket, has a medical condition that allows for "age rating" and needs a lifetime income stream or an income stream for a specified amount of time. The profile of someone who needs an investment trust is someone who needs custom money management, needs assistance with their financial affairs, has future needs that are not certain or are event contingent, needs liquidity in the event special needs arise and is in a low tax bracket. While this sounds like two mutually exclusive profiles, it is not. Oftentimes, the same individual fits both profiles and needs integration of an investment trust with a structured settlement.

Risks of Going it Alone

Sending a personal injury victim out of your office with a large amount of cash can have disastrous financial consequences for the victim. Oftentimes, they go to a bank or financial advisor who may tie up their money, invest it improperly or not effectively manage it for tax purposes. Worse yet, the money could be lost entirely due to mismanagement. Take the case of Parnell Augustine who received a 2.1 million dollar settlement after a horrifying 1997 motorcycle accident that left him a paraplegic. *See NY Post Article titled "Nest Egg Was Blown on Dot Com Stocks" (7/01***)**. Mr. Augustine received the lump sum in January 2000 and immediately handed it over to Bryan Patrice, the son of a family friend, who worked at the Great Neck office of the Josephthal & Co. brokerage house. Patrice invested Augustine's money in risky tech stocks that tanked when the dot.com bubble burst. In a short nine months, only $12,000 was left of Augustine`s 2.1 million.

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Instead of going to a financial advisor or a bank that is not used to dealing with personal injury victims or their risk tolerance, I recommend clients consider an investment trust with a professional trustee managing their assets who has experience dealing with personal injury victims. The primary reason I suggest this option is because you have a professional advisor who has a **fiduciary duty** to the victim. One of the most important responsibilities of a corporate trustee is to carefully manage trust assets in the best interest of the beneficiary, so that the purposes and goals of the trust can be successfully achieved. You do not find this duty with a bank or a financial advisor.

Other reasons for establishing an investment trust are it enables the victim to have custom money management. It prevents the victim from squandering their settlement proceeds and ensures that the settlement proceeds are used for the purposes intended (if an irrevocable trust with a spendthrift provision is included). It also ensures that money is available in amounts and in times when needed most. The Investment Trust Agreement contains a basic estate planning component in that the client can name an account beneficiary and bypass their probate estate. The investment trust can be set up to pay bills directly to a third party. If the victim finds it difficult to pay his own bills or is unable to do so for any reason, the trust company can work with the family to set up the bills to be paid from the investment trust account. I have seen situations where everything from the nursing bill to the electric bill comes to the trust company and they pay them directly. Most times there is no additional cost for this service.

A structured settlement can fund into an investment trust and all of the financial management can be coordinated by the trust company. The trust company will typically provide the victim with all other standard trust services including monthly or quarterly statements, internet access to the trust, and the preparation of an annual tax letter. Most trust companies charge between 1.25 - 1.5% as an annual trustee fee which includes all of the aforementioned services. The corporate trustee establishes a long term relationship with the victim. It gives the victim someone to work with for the long term that can step in and completely manage his or her financial affairs should that become necessary. Having a trusted fiduciary arrangement is very important for most personal injury victims to help them find their way financially after they receive their personal injury lawsuit proceeds.

Representative Cases

A trust (investment or irrevocable) can oftentimes be used in place of a guardianship. Most courts will dispense with the need for a guardianship if there is a trust in place with a corporate trustee and the trust is irrevocable. This gives the parent or guardian more flexibility and extra control. It alleviates the reporting requirements and costs usually associated with an ongoing guardianship. It also allows for control of the money post age of majority. For example, a child only receives money if he is attending college and the money is disbursed directly to the educational institution. Similarly, if a victim is legally incompetent a trust is a good alternative to a guardianship for all of the aforementioned reasons. If an irrevocable trust is necessary, the trust needs to be drafted by an attorney with spendthrift provisions.

While the investment trust is great for minors or incompetents, it is appropriate for anyone that needs personalized money management and/or the financial management services. In a recent case I was involved in, the victim was a man is his late sixties who was a quadriplegic as a result

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of a fall. He is married and his wife had been handling their financial affairs. Their son had been and continues to be involved in helping them manage their affairs. However, he has his own family and business to run. They decided to move forward with an investment trust managed by Mass Mutual Trust Company.

They wanted a custom managed portfolio and needed assistance with their financial affairs. They also wanted a mechanism for their assets to be transferred and managed for their heirs. The investment trust could meet all of these needs plus give them liquidity and flexibility for the future. The trust company could eventually step in and manage all of their financial affairs for them in the future if and when that becomes necessary. Also, if the victim's wife passed away before him, he knew the trust company could step in and arrange for the care he needed and continue to manage the financial affairs. Without this arrangement, their son would have to deal with this difficult task.

Conclusion

While the investment trust arrangement makes a tremendous amount of sense in the foregoing situation, it also makes sense for nearly anyone who receives a sizeable personal injury recovery that needs help managing the money or has unpredictable needs that will have to be met in the future as a result of their injuries. A settlement planner can help evaluate clients for suitability for different investment products such as structured settlements, investment trusts and life insurance that can be specially tailored to a personal injury victim's needs. Employing a settlement planner early on to work with the client can mean the difference between a sound financial plan for the personal injury proceeds or winding up like Mr. Augustine who lost almost his entire 2.1 million dollar settlement.

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