

**Pathway**

to the Settlement of a

**Catastrophic Injury**

# Today's Speakers

# Assess – Certified Case Care Manager



Barbara Greenfield, RN

First, we will hear from an RN about developing a Life Care Plan.

An expert such as a certified case care manager, an RN, or occupational therapist will be called upon early in the process to help draft a Life Care Plan for the plaintiff.

This will outline the current and future needs of the injured plaintiff and is instrumental in determining the settlement amount.

Barbara Greenfield is a Certified Case Manager CCMC® and a Certified Nurse Life Care Planner CNLCP®. Providing Life Care Plans for Plaintiff and Defense, Barbara specializes in Life Care Plans for victims of neuro trauma, multiple trauma, chronic pain, and chronic disease management.

# Quantify – Forensic economist



Karen Smith

Next, we will hear from a forensic economist about determining Present Cash Value.

A forensic economist will be called upon to determine the amount of money needed to provide for the needs of the plaintiff over the course of their lifetime.

Karen Smith is a forensic economist specializing in personal injury, wrongful death, medical malpractice and employment cases. She has over 32 years of experience and works on behalf of both plaintiffs and defendants.

# Remediate – Settlement consultant



Stan Schultz

Next, we will hear from a settlement consultant

The settlement consultant must be well versed with the five financial settlement options most acceptable to the Court approving the final settlement

They must understand that the factors of each litigation matter are unique and often require a hybrid approach using more than one of the settlement options.

Stan Schultz is one of the founding principals of Ibar Special Needs Trust Advisors (formerly Ibar Settlement Company), founded in 1984. He currently serves as the President and CEO of Ibar and has worked as a settlement consultant on over 2,000 cases, 800 of which are Special Needs or Settlement Trusts.

# Implement – Attorney



Randolph Sharon

Finally, we introduce an attorney; someone well-versed in estate planning and trust drafting should be employed to ensure the most appropriate vehicle is chosen for the funds and that a trust, if chosen, is written with the current and future needs of the beneficiary in mind. This can be quite complicated, and having an attorney with experience in drafting these kinds of trusts is critical.

Randolph M. Sharon has been an attorney for more than 39 years. His practice consists of a broad range of Trusts, Wills, estate planning and probate related matters. The primary emphasis of his practice is the establishment and administration of in excess of 500 Special Needs Trusts and Court established Settlement Trusts. Randolph represents numerous banks and financial institutions and Private Professional Fiduciaries, throughout Northern and Southern California, that serve as Trustees of Special Needs Trusts and Settlement Trusts. Randolph also assists many medical malpractice and personal injury plaintiff attorneys in connection with the establishment of Special Needs Trusts and Settlement Trusts.



**First things first**

## Key Objective:

Establish a clear path to secure **long-term financial vehicles and capable custodians** that will address the specific needs of a plaintiff with permanent catastrophic injuries.



# Attorney must be familiar with all aspects of the settlement process



How can the attorney best navigate the settlement process?



Who are the other key players?



When do each of these key players need to be brought in?

# Keep the plaintiff and their family involved



If possible, **include** the plaintiff and their family early in settlement process.



This can **preclude** a situation where plaintiffs feel rushed or un-informed while making a major long-term financial decision.



Provide plaintiff participants with information about their options early on – **give them time to learn and understand options** for more confident, informed decision-making.

# Explain the court's involvement



Early on, advise the plaintiff's family that **the Court must approve a settlement** and has **continuing oversight** for the plaintiff's lifetime.\*



After a case is approved by the Civil Court, it is transferred to the **Probate Court** for continued oversight.



In California, the Probate Court requires a **full accounting** at the end of the first year to **review every transaction** involving settlement funds.

\*In cases of minor or incompetent adult; competent adult with a catastrophic injury may not need court supervision.

# Accountings are on-going



After the first year, Probate Court requires **bi-annual accountings**, paid for by plaintiff's funds.



Accountings are typically complex and require the services of CPAs and probate attorneys well-versed in the safety **requirements of the Court** as well as state and federal filing requirements.



This process would be overwhelming for families already dealing with the rigors of caring for a disabled family member, other family members, and in many cases continuing their own professional career.

# The goal

The purpose of this seminar is to help both plaintiff and defense counsel reach an agreed upon solution to resolve the settlement of a personal injury matter involving catastrophically, permanently injured individuals.

There are several stages common to most successful settlements which we will describe in this presentation in greater detail.



# Bringing in a Mediator

Typically, a mediator is brought in during a personal injury dispute if both sides are willing to negotiate but are not close to reaching a resolution themselves.

A mediator can be brought in at various stages in the litigation process:

- At the very start of the process in hopes of reaching an amicable solution before a lawsuit has even been filed
- When initial negotiations between the two parties have reached an impasse, but before a lawsuit has been filed
- After a lawsuit has been filed but negotiations are still on-going and both sides are still far from a resolution
- When litigation is close to trial but both sides, often ordered by a judge, still seek to resolve the matter out of court

Once brought in, the mediator will need to rely on the input from various experts in addition to legal counsel from both sides to come to their determination

Mediation is often the preferred solution for all parties because it tends to be less expensive, less time-consuming, and offers less risk than litigation.

# The Key Players

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Certified Case Care Manager

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Forensic Economist

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Settlement Consultant

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Attorney specializing in probate and estate planning



# Examining the Case through the Key Players

*Economist often works closely with Case Care Manager in crafting their projections*

## Case Care Manager (CCM)

What are the plaintiff's injuries? What level of care, therapy, accommodations are required to meet the needs of the plaintiff?

## Economist

Based on the CCM's diagnosis, what is the present value (cost) of the various services, medical supplies, lodging, etc. needed over the plaintiff's lifetime?

## Settlement Specialist

What are the court-approved options available for placing funds once a settlement is reached?

## Probate Attorney Specialist

Which of these options is best considering the circumstances and the needs of the plaintiff? Who should be involved moving forward?



**Assess**

**1**

# What is a Life Care Plan (LCP)?

A **dynamic document** that provides an organized, concise plan for current and future needs and associated costs for individuals who have experienced a catastrophic injury or have chronic health care needs.

Both defense and plaintiff counsel will need to hire their own experts.



# How is an LCP Developed\*?



\*The Life Care Plan methodology is somewhat dependent on the author.

# Using a Life Care Plan during the settlement process



To identify plaintiff's future medical, treatment, and care needs



To provide those findings for the economist's projections



To be considered in the development of a settlement plan

# Collaboration of the Life Care Plan



The life care planner is the initial driver of the collaboration with the other experts.



It is often challenging to coordinate the schedules of experts.

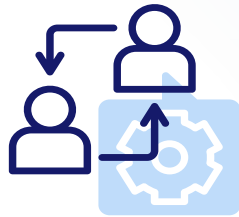


It is necessary to document the discussions for deposition testimony.

# Working with the Economist

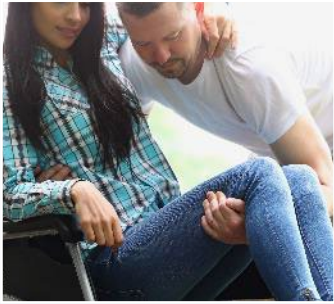


Providing a report that is easy to decipher.



Collaborate with the economist in their assessment for present cash value to ensure the costs and mathematics are accurate.

# Who the life care plan serves



The injured party and their family

## Attorneys

- Personal Injury and Medical Malpractice Attorneys
- Defense Attorneys
- Workers' Compensation Applicants attorney or Defense/Adjuster
- Divorce and Family Law Attorneys

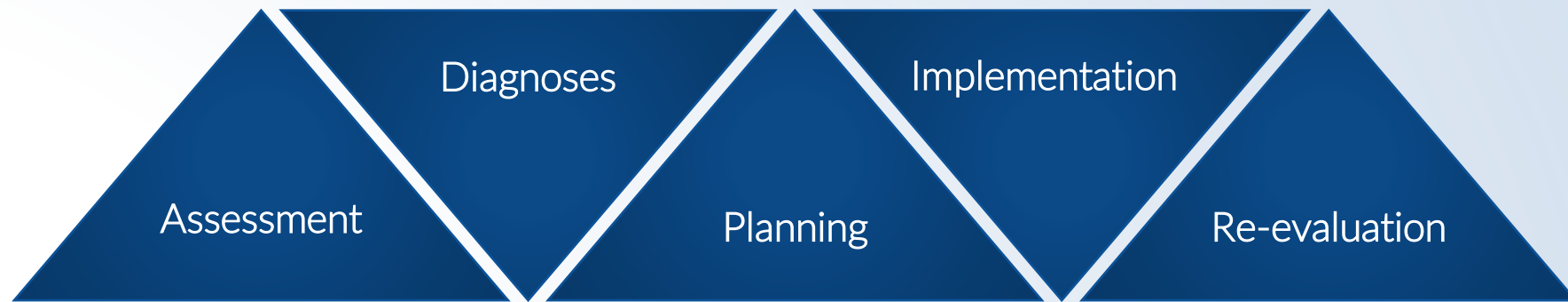
Settlement consultants

Case workers

Trustees and/or annuity underwriters

Economist putting together present value analysis

# Understanding the Nurse's life care planning process



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The Life Care Planning process depends on the professional developing it

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A nurse will develop the life care plan based on the nursing process

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Nurses provide **clinical judgments** concerning an undesirable human response, assess vulnerabilities, promote health.



# The nursing diagnoses are how nurses determine the client's functional needs

Nursing Diagnoses are categorized by either problem or Risk for a problem.

They are different from Medical Diagnoses. A nursing diagnosis is a diagnosis that nurses make based on their scope and clinical judgment to guide patient care.

Nursing and medical diagnoses are complementary and guide each other to create a holistic clinical story.



# Nursing diagnoses - examples:

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Impaired Memory

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Impaired Physical Mobility

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Dressing Self Care Deficits

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Risk for Falls

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Nurses understand critical areas of health concerns:  
breathing, elimination, thermoregulation, physical comfort,  
self-care, and skin integrity



# Components of the life care plan



Medical  
treatment



Diagnostics &  
procedures



Hospital/ER  
visits



Medications



In-home care



Equipment &  
supplies



Leisure &  
productive day  
activities



Transportation

# Implementation of the Life Care Plan

Used to guide mediators (jury) amount needed for future needs of injured party.

The funds recommended in the Life Care Plan may not be what is finally available for the injured party to utilize for their care needs.



**Quantify**

**2**

# Forensic economics covers – is not limited to

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The calculation of pecuniary damages in personal and commercial litigation

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The analysis of liability such as the statistical analysis of discrimination, the analysis of market power in antitrust disputes, and fraud detection;

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Other matters subject to legal review, such as public policy analysis, and business, property, and asset valuation.



# The role of an economist



Collect all necessary information



Calculate Present Cash Value using collected data



Produce economic report to be presented to interested parties

# The process





# The key players

- ▶ Vocational rehabilitation expert (if necessary)
- ▶ Life care planner
- ▶ Medical doctor who opines on life expectancy
- ▶ In cases of unusual occupations, a specialist in that area (i.e., entertainment industry)
- ▶ Economist
- ▶ In some cases, the plaintiff for details regarding employment & benefits

**Attorney acts as the Quarterback.** They will be contacting all the players and passing all information and files on to the experts.



# Gathering information

Critical for the attorney to gather all information in a timely manner.

Good for economist to work with **vocational rehabilitation expert** before either have published their reports.

Economist may correct any potential mathematical errors in life care planner's report draft in which case, the Life Care Plan may have to revise.



# General information for all cases

1

Complaint

2

Vital statistics of plaintiff(s)

3

Opposing economist's report, file (excluding medical records) and deposition

4

Trial date and location

5

Mediation dates, discovery cut-off date, when depos need to be completed, settlement conference dates, deposition dates of the other damage experts

Past Medical Expenses: There is no economic analysis involved in this totaling of past bills. Have your office or a bookkeeper do this. It is not worth having a forensic economist perform this task.

# Incorporating information from Life Care Plan

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Life Care Plans from both plaintiff and defense experts

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Life expectancy analysis from both sides

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For specific purchases noted in life care plan, need to know if they are one-time purchases (and if so WHEN will they be purchased) or re-occurring purchases

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Specifics and timing on any required surgeries (if necessary) and any associated costs (follow up doctor's visits, physical therapy, prescription drugs, etc.)

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Economist can only project minimum and maximum

# Other areas of analysis may be necessary, depending on the plaintiff's age, employment history, and benefits

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Loss of earnings and benefits analysis

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Collateral Source Offset analysis

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Information for loss of household services



# Follow up questions with attorney

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Economist may have **questions** for attorney about assumptions and damage theory throughout the process

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Reduced life expectancy?

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Collateral sources?

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Include overtime?

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Possible promotions/training or education in process?

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Planned retirement date and reasons why?

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# Wrapping up

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Defense side economist always wants to review opposition's reports from all experts, files and depositions.

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After depositions, attorney should let economist know if anything in reports from vocational rehabilitation and life care planner have changed.

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From all of this, economist puts together **final report** and provides it to an attorney.



Remediate

3



# Settlement consultant

Must be well versed with the **five financial settlement options**.

They must understand that the factors of each litigation matter are unique and often require **a hybrid approach**.

Discuss the best options available **with the plaintiff**.

Once an option or options have been selected it is **difficult, if not impossible, to change or alter** the selection after court approval.



# There are 5 Court-approved options for placing settlement funds



Blocked Account



Guardianship  
Conservatorship



Structured Settlement



Special Needs Trust



Settlement Trust  
(3611-G Trust)

# We will examine 3 of the most common



Blocked Account



Guardianship  
Conservatorship



Structured Settlement




Special Needs Trust



Settlement Trust  
(3611-G Trust)

# We will examine 3 of the most common



Structured Settlement



Special Needs Trust



Settlement Trust  
(3611-G Trust)

The key difference between these trusts has to do with the need for public benefits.

# For each of these options, you will want to ask the following questions to determine the best fit:



How safe and secure are the funds?



Are the funds being prudently invested?



What level of accessibility is there to the funds?



Are the administrative fees reasonable?



What is the level of transparency and oversight?



What are the communication dynamics?



Is the plaintiff eligible for public benefits?

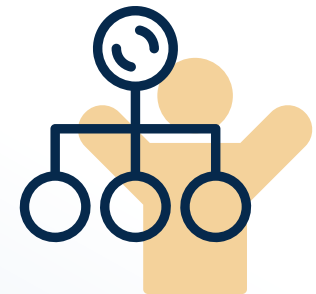


# Structured Settlement

# What is a Structured Settlement?

In the case of a Structured Settlement, a plaintiff agrees to receive a **portion of the settlement funds** from the defendant in future, periodic payments.

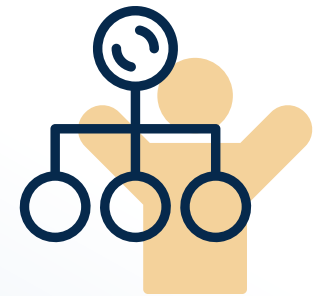
The defendant agrees to make the payments **in accordance with Section 130 of the Internal Revenue Code**, a copy of which is included as part of the appendix.



# How are the structured settlement payments funded?

There are only two funding vehicles that are compliant with Section 130 of the Internal Revenue Code. They are:

1. An annuity issued by a life insurance company
2. Direct obligations of the United States Treasury (i.e. bonds, notes or bills) or a combination of the two.



For several reasons, **the annuity option (or a combination of the two) is the more prevalent qualified funding asset** in use today in structured settlements, and for this reason the annuity will be the focus of this seminar regarding the Structure Settlement options.



# Exploration of the annuity option

An annuity is a contract issued by a life insurance company in which it agrees to make future payments in exchange for an amount (premium) paid.

The annuity contract must have an owner, either an individual or an entity such as a corporation, partnership, etc.

The plaintiff or their representatives cannot be the owner as that would constitute constructive receipt of the funds paid by the defendant to purchase the annuity and the payments paid to the Plaintiff would be subject to both Federal and State taxes as income.

# Exploration of the annuity option

The defendant or their insurance carrier do not want to be the owners as the continuing obligation to make future payments would remain on their balance sheets as a liability.

For this reason the issuing life insurance companies have created separate corporate entities which will take ownership of the policy and guarantee the future periodic payments through a process known as an Assignment of Liability Agreement.

# Benefit of Sub-standard Age Rating

It is a common practice for the annuity underwriting staff to review the plaintiff's medical records and based on their assessment, assign a modified age adjustment to the plaintiff

*Example:*

Male Child age 4

- \$246,420.00\* would provide a monthly benefit of \$1,000\* per month for the life of the child assuming a normal life expectancy of 83 years, with 30 years guaranteed
- This same child, rated to age 65, would receive \$1,243.83\* per month for life, with 30 years guaranteed at the same cost of \$246,420.00\*

# Asking our key questions as they relate to a Structured Settlement:



How safe and secure are the funds?



Are the funds being prudently invested?



What level of accessibility is there to the funds?



Are the administrative fees reasonable?



What is the level of transparency and oversight?



What are the communication dynamics?



Is the plaintiff eligible for public benefits?

# How safe and secure are the funds?



## Structured Settlement

The insurance companies' investments are reviewed by ratings services such as A.M. Best as well as by the insurance commissioners of the state in which they are domiciled. There is no Federal agency charged with review of an insurance company's financial viability.

In 1991 Executive Life of California and Executive Life of New York (operating under the First Executive Life Corporation umbrella) were the largest life insurance companies to enter bankruptcy. This failure was attributed to their heavy investment in high interest, high risk junk bonds.

# How safe and secure are the funds?

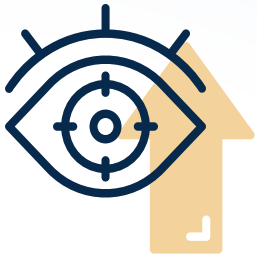


Structured  
Settlement

The annuity recipients including many personal injury settlement individuals were directly affected.

Ultimately several state insurance commissioners negotiated with other insurance companies to take over the payment obligations.

# Are the funds being prudently invested?



Structured  
Settlement

The annuity interest rate is permanently set at the time the annuity is purchased. Those investments used to fund the payments cannot be changed to take advantage of interest rate increases.

# What level of accessibility is there to the funds?



## Structured Settlement

The plaintiff receives payments as set forth in the settlement agreement and annuity contract. The plaintiff may not invade the annuity funds or alter the payment schedule without incurring significant losses and tax penalties.



# Are the administrative fees reasonable?



Structured  
Settlement

Other than the initial annuity placement commission, there are not any ongoing administrative fees.

# What is the level of transparency and oversight?



## Structured Settlement

The plaintiff and plaintiff's family do not have direct oversight of annuity funds and must rely on the oversight of the Insurance Commissioner's office of the state in which the life insurance company is domiciled.

# What are the communication dynamics?



Structured  
Settlement

Contact between the plaintiff and the life insurance company is typically limited to advising the company of any address changes to ensure that payments reach the appropriate destinations.

# Is the plaintiff eligible for public benefits?



Structured  
Settlement

Annuity payments will be counted as resources, potentially disqualifying the plaintiff from receiving certain public benefits unless those funds are paid into a Special Needs Trust.



# Special Needs Trust

# What is a Special Needs Trust?

Used to manage and protect the assets and resources of a person with special needs **without jeopardizing their eligibility for means-tested government programs** such as Supplemental Security Income (SSI) and Medi-Cal.

These programs have **strict income and asset limits**, and if an individual exceeds those limits, they may lose their eligibility for crucial benefits.



# What are the asset limits?

Currently limit for SSI is \$2,000 for individuals and \$3,000 for couples.

As of January 1, 2024, the asset limit for Medi-Cal has been removed entirely.

The Special Needs Trust acts as a **safe harbor for the assets** up to an unlimited amount and allows the beneficiaries to maintain their public benefits.

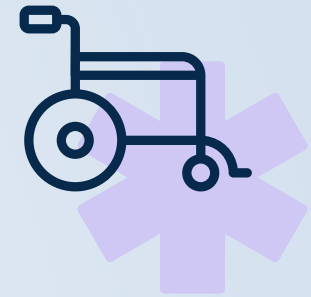


# What are the income limits?

Monthly earned income limit for SSI is \$1,550, or \$2,590 if you are blind.

Annual income limit for Medi-Cal is based on the Federal Poverty Level and depends on household size. For an individual the limit is \$20,783. For each additional person add \$7,425.

The plaintiff or their representative needs to discuss with a case manager for SSI and Medi-Cal to determine what impact earned income would have on their public benefits.





# Resources are used to supplement the beneficiary's needs, beyond what government programs provide

Below are some examples of a wide range of expenses not entirely covered by public benefits:

- Medical and dental care
- Education
- Therapy
- Assistive technology
- Transportation
- Quality of life enhancements such as vacations and entertainment



## Special Needs Trusts also offer some control and flexibility.

The settlor (often the parent or parents) who creates the Special Needs Trust can specify:

- How the funds should be used, who the trustee is, and other important details.
- This can provide **peace of mind** for the family that the individual with disabilities will have the financial support they need even after the settlor is no longer able to provide for them.



## There are different types of special needs trusts, including first-party and third-party trusts.

A first-party Special Needs Trust is funded with the beneficiary's own assets, such as a personal injury settlement.

A third-party Special Needs Trust is funded with assets belonging to someone other than the beneficiary, such as parents or grandparents.

The focus of today's seminar is on first-party SNTs.



# It's crucial to consult with an experienced attorney when setting up a special needs trust

The laws and regulations surrounding these trusts can be **complex and vary** from jurisdiction to jurisdiction.

An attorney specializing in special needs planning can help ensure that the trust is properly established and managed in a way that **maximizes its benefits for the individual** with special needs.

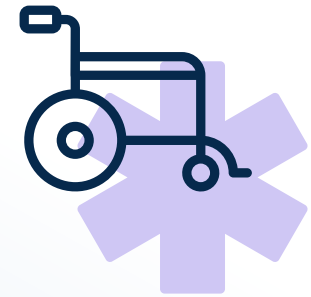
The attorney must advise the plaintiff that an SNT must contain an payback provision which goes into effect when the trust is terminated. Medi-Cal maintains a lien right against the trust for benefits it paid while the trust was in effect.



# Professional oversight is essential

There are many complexities in managing a Special Needs Trust as well as **reporting requirements of the court** and both state and federal tax entities.

The funds can be placed with a corporate entity (a bank trust department or trust company) or an individual (a private professional fiduciary) familiar with the administration of Special Needs Trusts and all their requirements.



# Asking our key questions as they relate to an SNT:



How safe and secure are the funds?



Are the funds being prudently invested?



What level of accessibility is there to the funds?



Are the administrative fees reasonable?



What is the level of transparency and oversight?



What are the communication dynamics?



Is the plaintiff eligible for public benefits?

# How safe and secure are the funds?

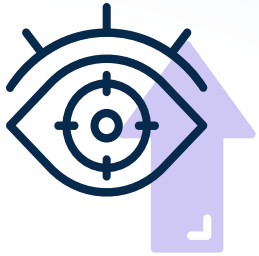


Special Needs  
Trust

By Federal law, funds that are held in trust within the trust department are separate from the funds in the rest of the bank, and therefore not available to creditors of the bank if there's an insolvency.

In 2008, PFF Bank and Trust was seized by the FDIC. Their special needs trusts were transferred without disruption to another corporate trustee which honored the original fee agreement.

# Are the funds being prudently invested?



Special Needs  
Trust

Funds are invested using a low risk diversified investment strategy. All investments made by the trustee are carefully reviewed by the Court every two years. In addition to focusing on the financial success of the trustee, the Court carefully examines the safety of the investments made.



# What level of accessibility is there to the funds?



Special Needs  
Trust

Funds may be accessed for the beneficiary's benefit at any time at the direction of the trustee.

# Are the administrative fees reasonable?



Special Needs  
Trust

Typically, an administrative fee of between 1.5 and 1.75% of the FMV of the SNT is charged by the trustee. If an individual (private fiduciary) is serving as trustee, they will also typically charge an hourly rate for their services. The attorney representing the trustee will also charge a fee to file the bi-annual accountings.

# What is the level of transparency and oversight?



## Special Needs Trust

As stated previously, the Court will retain oversight of the SNT. An Accounting Petition will be required after the first year, and bi-annual Accountings will be required thereafter.

In addition to Accountings, the beneficiary and their representatives receive from the trustee, regular (monthly or quarterly) detailed statements.

# What are the communication dynamics?



Special Needs  
Trust

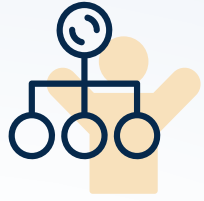
There is a very high level of communication and cooperation between the trustee, the advisory firm it employs, and the family of the plaintiff. This includes communication between the plaintiff/plaintiff's representatives with the advisor for requests made for the benefit of the beneficiary.

# Is the plaintiff eligible for public benefits?

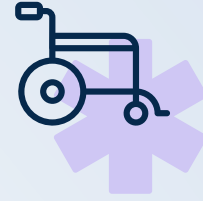


Special Needs  
Trust

The SNT serves as a safe harbor for an unlimited amount of assets without affecting eligibility for government benefits which can have strict asset and income limits.



## Structured Settlement



## Special Needs Trust

Tax-free annuity payments	Interest earned may be taxable
Interest rate permanently set	May take advantage of rate increases
Scheduled payments	Access at any time
No ongoing fees	Trustee and attorney fees
Oversight of Insurance Commissioner's office	Oversight of court
Very limited contact	High contact
May disqualify from benefits	Does not affect benefits



# Settlement Trust

# Funding a Settlement Trust

If the beneficiary does not require public benefits, a Settlement Trust is a less restrictive vehicle that can make disbursements without concern for the disqualification of public benefits.

Just as with a Special Needs Trust, the Settlement Trust is typically funded with a lump-sum payment made by the party responsible for the legal claim or dispute.

The funds are then held in the trust and managed by a trustee, who has a fiduciary duty to act in the best interests of the beneficiaries.





# Investing Settlement Trust funds

Funds held in a settlement trust receive professional investment management and have less cumbersome procedures for making disbursements than some alternatives.

One of the key benefits of a settlement trust is that it can provide long-term financial security for the beneficiary. By placing the assets in a trust, the trustee can invest the assets to generate income, which can be distributed to the beneficiary over time.



# Terms of a Settlement Trust

The terms of the Settlement Trust are set out in a trust agreement, which outlines the rights and responsibilities of the trustee, the beneficiaries, and any other parties involved in the trust.

The agreement will typically specify how the trust assets can be used, how distributions will be made to the beneficiaries, and how long the trust will last.



# Settlement Trust exclusively for minors

The law, as it is written, is ambiguous when it comes to using a settlement trust for an incapacitated adult, and establishing a settlement trust for such an adult may not be allowed by the court. Therefore, Settlement Trusts should only be thought of as an option for minors who do not require public benefits.

Because the beneficiary is not receiving public benefits there would be no Medi-Cal lien agreement against the trust once it is terminated.



# OBRA 93 Trust

Recent legislative changes in the state of California have caused attorneys to revisit *OBRA 93 Trust* as an option for clients with special needs

The elimination of asset limits for most public benefits in California have made OBRA 93 Trusts a newly appealing option for those looking to establish a trust for an adult client that has capacity and would prefer to manage their own affairs

Federal benefits programs, SSI in particular, still maintain strict asset limits, so for clients who want to keep these benefits, an OBRA 93 would not be preferable

SNTs are still preferable to OBRA 93 trusts for minors and incapacitated adults

**Implement**

**4**

# Who serves as the trustee of a Special Needs Trust?

The trustee can be **an individual** (including a family member or a private fiduciary) or a **corporate trustee** (bank or trust company).

The **rules and regulations** concerning Special Needs Trusts **are very complex** and for that reason it is recommended that a professional with expertise in the administration of Special Needs Trusts serve as the trustee.

One common mistake is to have a family member who has no experience in the administration of Special Needs Trusts serving as trustee. This can lead to serious negative consequences including the loss of benefits and surcharges against the trustee.

The **court will require a bond** for any individual. Accordingly, if that family member does not have good credit, then they may not be bondable and may not be able to serve as trustee.

# Corporate trustees (Banks)

Banks charge a fee based on a percentage of the assets of the trust.

The amount charged by the bank will vary from one bank to the other but are approximately 1.5% of the value of the assets of the trust each year.

Most if not all banks require a minimum amount going into the trust.

Accordingly, depending on the size of the trust, the option of a bank serving as trustee may not be available.



# Individual trustee (Private Professional Fiduciary)

Many times, the court will appoint a Private Professional Fiduciary (a person licensed by the State to serve as a fiduciary in trust, conservatorship, guardianship and probate matters) who has expertise in administering Settlement Trusts or Special Needs Trusts.

An individual trustee will typically have an hourly-based fee.





# Bank vs. individual



A bond is not required.

There is typically not a separate investment fee (in addition to the trustee fee of 1.5%)

Accordingly, depending on the circumstances of the case, the administrative expenses (the total of the bond expense, investment fee and trustee's fee) may be less with a bank than an individual serving as trustee.



The court will require a bond (typically 0.5% or less depending on the size of the trust).

There will typically be a separate investment fee in addition to the trustee's fees (typically 1.0% or more of the value of the trust).

An hourly fee is typically charged on top of the bond and investments fees

# Ongoing maintenance of beneficiary

It's important for an attorney to find the right solution/vehicle/custodian for the well-being of their client for the **rest of their life**, making sure you're handing your client off into capable hands.

Having the proper custodian for your trust is critical to ensuring the longevity of the assets and meeting the needs of the beneficiary.

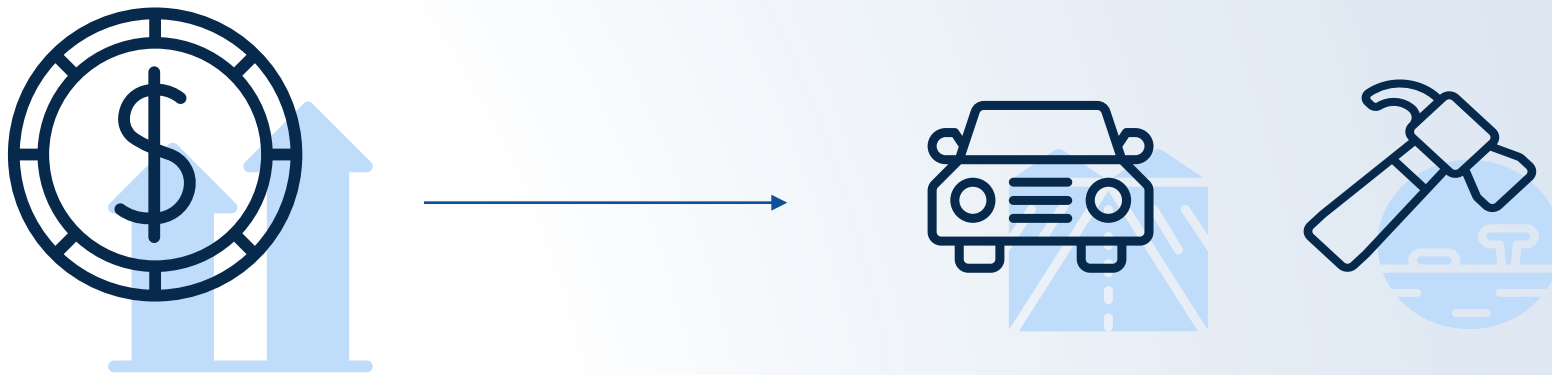
While **individuals** may be more intimately involved in the day-to-day needs of the beneficiary, they **may lack the financial knowledge to grow or maintain the trust assets**.

Individual trustees have a finite lifespan, while corporate trustees do not.



# Other options for trust funds

For smaller settlement awards, another option is to simply spend the money for the plaintiff (for instance, using the money on the purchase of a vehicle or expenses concerning a home) rather than paying for the expenses associated with the creation and administration of a Settlement Trust or Special Needs Trust.



# Special Needs Trust or Settlement Trust: Which one?

It depends on the circumstances of the case and typically, a Settlement Trust is only available for a plaintiff who is under the age of 18.

If the plaintiff is receiving or will receive governmental need-based benefits, there will generally be a loss of benefits if the money is not placed in a Special Needs Trust.

If the only government benefits involved are entitlement programs such as SSDI and Medi-Cal, which have no resource limits, then a Special Needs Trust may not be necessary.



# Special Needs Trust or Settlement Trust: Which one? (cont.)





Until recently, there would be a loss of Medi-Cal benefits if the plaintiff had assets of more than \$2,000 (certain assets are exempt, for instance, a home or vehicle).

Beginning January 1, 2024, California has eliminated the asset test for eligibility for Medi-Cal, yet for purposes of determining eligibility for other needs-based governmental assistance (i.e., SSI), the plaintiff may not have assets of more than \$2,000.



# Case Study

# Personal Injury Settlement Case Study

			
Medical injury	Permanent paraplegia	Severe cognitive issues	Eligible for public benefits

- 4 year old child
- The child was left permanently injured and will require full-time care for the remainder of his life
- His life expectancy was estimated at 76.8 years

# Life Care Plan Developed by RN/Case Care Manager

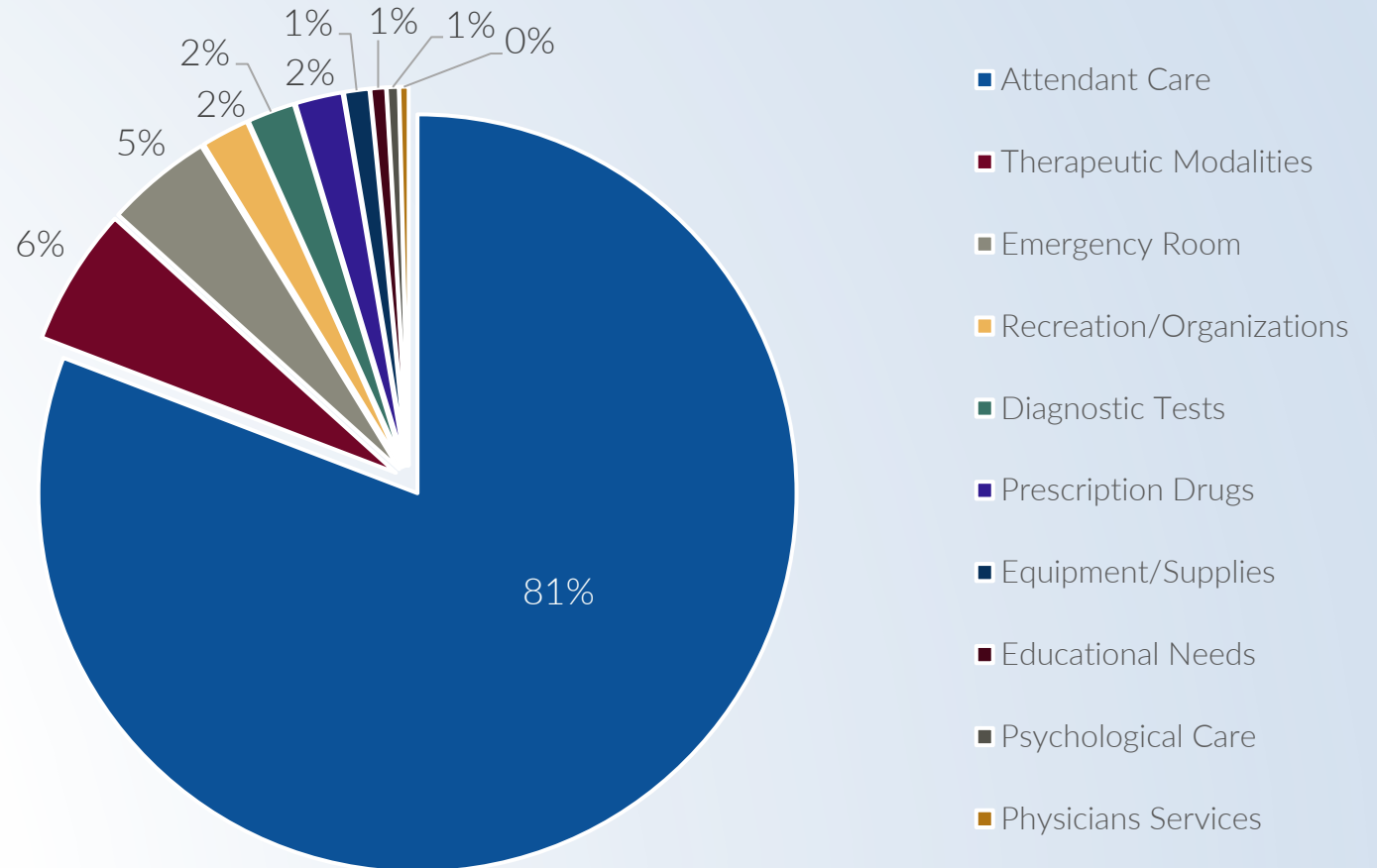
- Based on the diagnosis, the certified expert developed their Life Care Plan to determine the likely costs that the plaintiff would require over the course of their lifetime
- Costs were broken into buckets
- In this case, the total cost included in the life care plan was:

**\$14.4 million**



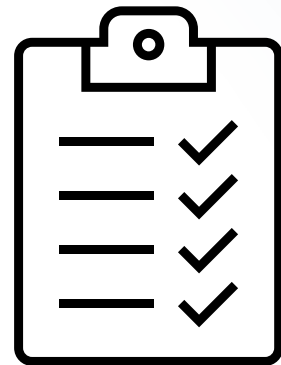
# Life Care Plan

- Of the costs included in the Life Care Plan, 81% are comprised of attendant care services
- This is typical in a case of catastrophic injury



# Present Cash Value determined by Economist

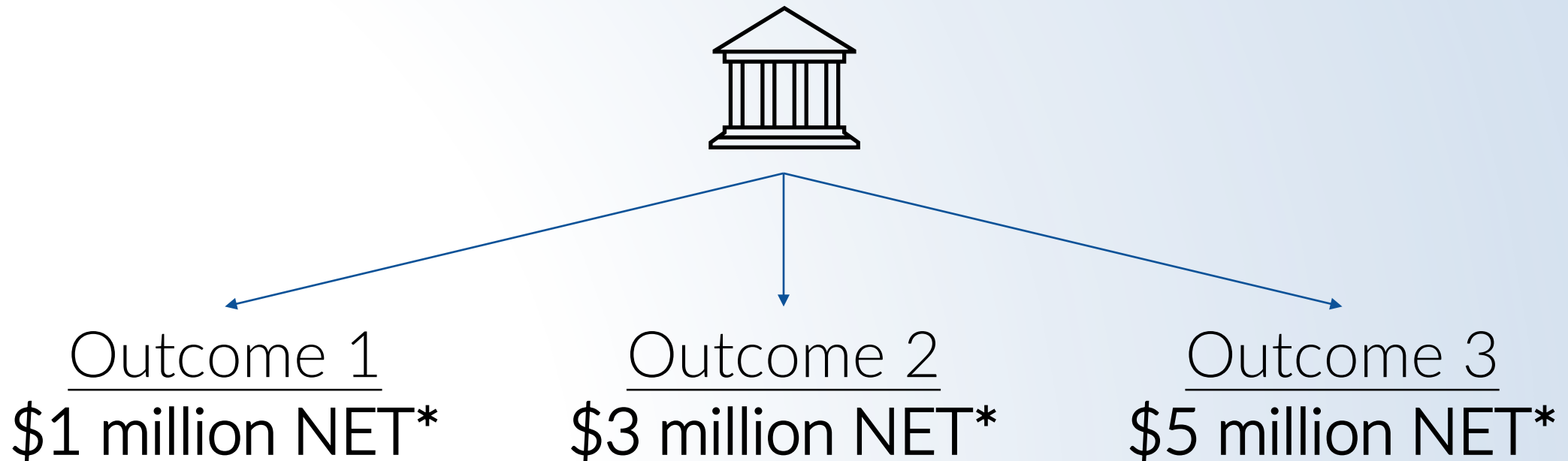
- The Economist looks at each category, calculates total lifetime cost, and applies growth discount rates to determine the total Present Cash Value
- Based on Life Care Plan, the Economist determines that the Present Cash Value in this case is \$10.5 million



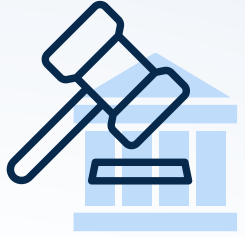
\$10.5 million

# Final Award Determined in Settlement Process

- Based on the Economist's projections, a final award amount will be agreed upon during the settlement process.
- For our example we will look at three potential outcomes:



\*Amount to plaintiff after all fees, litigation costs, and liens are paid



## Recommended settlement option: Scenario 1

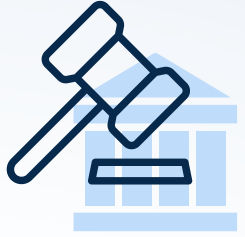
**\$1MM NET**



Place \$1MM into court-supervised\* Special Needs Trust (SNT)

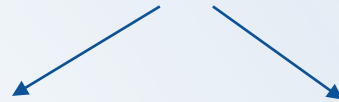
- Family may access the funds to meet the needs of the plaintiff which are not covered by public benefits (SSI, Regional Center, Medi-Cal).
- With an award this size, public benefits will need to be relied upon more heavily, as the trust alone will not be able to cover all the plaintiff's care-related expenses
- Purchasing a home in some states may not be financially feasible with an award of this size
- Due to the high cost of ongoing in-home attendant care, placing the beneficiary in a facility may need to be considered; having a family serve as caregiver while receiving compensation through IHSS (in-home supportive services) may also be a more feasible option to help preserve the trust

\*All settlements involving a minor are required to be approved by and supervised by the court

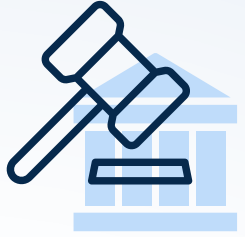


## Recommended settlement option: Scenario 2

**\$3MM NET**



- Place \$2.5MM into court-supervised Special Needs Trust
- With a trust this size, there will be more flexibility to purchase large ticket items like a house and a van for the plaintiff
- Public benefits will still need to be utilized, with the trust providing supplemental assistance to improve the plaintiff's quality of life
- Place \$500K into a deferred lifetime monthly annuity
- Benefits will commence once plaintiff turns 18, while earning interest in the meantime
- Payments will be made directly into the Special Needs Trust
- These annuitized payments will help replenish the trust over time, ensuring the funds will not run out over the plaintiff's lifetime



## Recommended settlement option: Scenario 3

**\$5MM NET**

- Place \$4MM into court-supervised Special Needs Trust
- Trust will be able to purchase a home and other large ticket items for plaintiff
- Public benefits can still be utilized to preserve trust funds
- Place \$500K into a deferred lifetime monthly annuity
- Benefits will commence once plaintiff turns 18, while earning interest in the meantime
- Payments will be made directly into the Special Needs Trust
- Place \$500K into an immediate lifetime monthly annuity
- Payments will be made directly into the Special Needs Trust
- Annuity payments will replenish trust funds in the time before deferred annuity starts paying out

# Additional Resources

# Resources

## Economists

National Association of Forensic Economists:

<https://www.nafe.net/PersonifyEbusiness/Home>

## Life Care Planners/Nurses

NANDA (formerly North American Nursing Diagnosis Association)

<https://nanda.org/>

American Association of Nurse Life Care Planners

<https://www.aanlcp.org/>

The American Academy of Physician Life Care Planners

<https://aaplcp.org/About/About.aspx>

## Settlement Consultants

Professional Fiduciary Association of California (PFAC)

<https://pfac-pro.org/>

National Structured Settlements Trade Association

<https://nssta.com/>

Society of Settlement Planners

<https://www.societyofsettlementplanners.com/>

## Attorneys

California Lawyers Association

<https://calawyers.org/>

National Association of Estate Planners & Councils

<https://www.naepc.org/>



# Key Takeaways

# Key Takeaways

## Plaintiffs



Involve all key players early and leverage their expertise to ensure client's future needs are met



Weigh your options based on award judgement amount and client needs



Keep good communication with your clients and their families

Questions?