

# SPECIAL REPORT

## Working with Litigators to Protect Personal Injury Settlements

Personal injury settlements or awards often do not pay for all of the injured person's medical and care expenses and replace the individual's lost lifetime income. This failure is due to a number of factors, including compromises of claims involving questionable negligence, limited resources or limited insurance coverage of the tortfeasor, medical liens, and fees and costs associated with the litigation. Coordination of the settlement or award with eligibility for government benefit programs, such as Supplemental Security Income (SSI) or Medicaid, can be essential to helping the injured person adjust and sustain as much as possible an independent life.

Due to their expertise with the eligibility requirements of government benefit programs, elder law attorneys assist personal injury attorneys with the coordination of the settlement or award with the injured person's eligibility for government benefit programs.

Federal and state laws authorize the use of d(4)(a) and d(4)(c) trusts to protect the SSI and Medicaid eligibility of injured persons under the age of 65. These trusts must be irrevocable and contain a payback feature for Medicaid benefits received when the recipient beneficiary dies.

Based upon our experience, Oast & Hook suggests that the personal injury attorney consult with an elder law attorney early in the case in order for the personal injury attorney to learn about the impact of the settlement or award on the eligibility of the injured person to receive government benefits. This will free the personal injury attorney's time to better focus on proving the case, and to help comfort and support the injured person.

The elder law attorney can also help the personal injury attorney with the following:

- Avoid liability to the personal injury attorney for failure to effectively apply for and manage private and public benefits after receiving the settlement or award.
- Interpret rules for public benefit programs, which change constantly.
- Address issues involving Medicare and Medicaid liens that do not require notice and may impose personal liability to the personal injury attorney and the injured person.
- Because the injured person may not continue to live in the same state, build flexibility into the settlement or award to maintain the

injured person's eligibility for government benefits if the injured person moves to another state.

The elder law attorneys at Oast & Hook are experienced in assisting personal injury attorneys and their clients with the coordination of the settlement or award with the client's eligibility for government benefit programs.

### **ABOUT THIS DOCUMENT**

This document is not intended as a substitute for legal advice. It is distributed with the understanding that if you need legal advice, you will seek the services of a competent Elder Law attorney. While every precaution has been taken to make this document accurate, we assume no responsibility for errors or omissions, or for damages resulting from the use of the information in this Explanation.

Reprint permission is granted only for educational purposes with appropriate citation to Oast & Hook, P.C.

Oast & Hook also publishes the *Oast & Hook News*, which is archived in searchable format on our web site. If you would like to be added to the distribution list for this newsletter, or if you need additional information concerning this Explanation, you may contact us by emailing or calling:

Oast & Hook, P.C.  
Tel: 757-399-7506  
Fax: 757-397-1267  
mail@oasthook.com

**Oast & Hook, P.C.**  
**[www.oasthook.com](http://www.oasthook.com)**

---

521 Middle Street Mall  
Portsmouth, Virginia 23704  
Tel: 757-399-7506  
Fax: 757-397-1267

295 Bendix Road, Suite 170  
Virginia Beach, Virginia 23452  
Tel: 757-399-7506  
Fax: 757-397-1267