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The True Value of a New York Medical Indemnity Fund Settlement

By Simon Rossetter

First, a little background is needed regarding the New York State Medical Indemnity Fund or “Fund.” The Fund was created pursuant to Chapter 29 of the Laws of 2011. Per the New York State Department of Health Website, “*The Fund is designed to pay all future costs necessary to meet the health care needs of plaintiffs in medical malpractice actions who have received either court-approved settlements or judgments deeming the plaintiffs’ neurological impairments to be birth-related.*” While there are a lot of differing opinions on whether the Fund has been a benefit or detriment to plaintiffs, this article will not touch on this subject and is written solely as an informative piece regarding how to ensure you and your clients are fully aware of the value of their settlement prior to their case being settled. The basic premise of the Fund is that the portion of your client’s settlement that would be allocated for future medical expenses, if you were to win a jury award, should be allocated to the Fund as part of the settlement.

We at Creative Capital have been involved in many of these cases either prior to settlement, during the settlement negotiations, or after the settlement amount has been determined. We have seen many different approaches by defendants to settle these matters, and the most important information we provide to our attorney clients is to be prepared prior to settlement negotiations as you would in any other aspect of your case. A Fund settlement consists of two settlement values, the first is the settlement amount and the second is the settlement cost. The settlement amount is the total amount that both parties agree to settle the case for. This is the amount that is used to calculate your attorney’s fee pursuant to the medical malpractice sliding scale. The settlement cost is how much the defendant is actually going to pay. The difference between these two amounts is how much is being allocated to the Fund for your client’s future medical needs.

Example

As an example, a \$1,000,000 settlement with \$10,000 in disbursements and a 50% allocation to the Fund would result in a settlement cost to the defendant of \$617,750 with \$235,500 in attorney’s fees and your client would net \$372,250. This is a big difference from a standard medical malpractice case in New York where a \$1,000,000 settlement with \$10,000 in disbursements would result in \$235,500 in attorney’s fees and \$754,500 net to your client. You will notice that your attorney’s fees are exactly the same for a Fund settlement or

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Non-Fund Medical Malpractice settlement. The only amount that changes is your client's net. It is important to understand the difference between the settlement amount and the settlement cost to a defendant, which is why many of our clients utilize our services to calculate these values prior to and during settlement negotiations.

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The more factors that are added to the equation, the greater the effect on the bottom line for your clients.

The other variable that can affect your client's net settlement is the percentage that is allocated to the Fund. As was mentioned in the first paragraph, this percentage is the amount of the settlement that is attributable to your client's future medical needs. We have seen this percentage range from 5% to 50% depending on the severity of an infant's injuries. Referring back to the same example above, if the allocation to the fund is reduced from 50% to 10%, it has a great impact on your client's net settlement and the settlement cost to the defendant. The settlement amount of \$1,000,000 remains the same, as does the \$10,000 in expenses and \$235,500 in attorney's fees, but the net to your client increases to \$678,050 and the settlement cost to the defendant rises to \$923,550. This is an increase to your client of \$305,800. The example above is a very simple case that does not involve other factors such as claims of other family members (e.g., the mother) of which none of their settlement is attributable to the Fund. The more factors that are added to the equation, the greater the effect on the bottom line for your clients.

Our Approach

These Fund cases also require specific language that is needed for your Infant's Compromise Order and settlement documents. This language is instrumental in ensuring that your client can be admitted into the Fund. Our legal department, under the direction of Martin Jacobson, Creative Capital's General Counsel, will work closely with you to ensure that this process is done correctly. Creative Capital offers our services to calculate the settlement value of your case and prepare the settlement documents *free of charge*. If you have a Fund case that you have previously settled or are in the process of settling, please feel free to contact us.

Simon Rosseter is a Structured Settlement Associate at Creative Capital Inc., with over 8 years experience working with plaintiffs and attorneys to help resolve lawsuits. He specializes in designing unique structured settlement proposals that meet each client's specific needs and is an expert on New York State Medical Indemnity Fund cases. Simon is also a liaison with the life companies in order to maximize each client's benefit.



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