AMICUS SETTLEMENT PLANNERS LLC

AMICUS MONTHLY WEBINAR SERIES

PLAINTIFF SETTLEMENT PLANNING

My Case Settled, Now What?

Handling the financial, legal, and tax issues that arise at the time of settlement, so you can focus on advocating for your clients.

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ABOUT US

A partner that works only with plaintiffs & plaintiff firms

Amicus Settlement Planners helps plaintiff firms handle settlement-related issues so they can focus on advocating for their clients.

We focus on the settlement-related **financial, legal, and tax needs** of injury victims, coordinating the moving pieces so nothing falls through the cracks.

We don’t charge for consultations. Attorneys, staff members, and plaintiffs can speak with us at no cost about their situation and possible settlement planning options.

OUR POSITION

Plaintiff-side only

We always work for the best interest of your clients, with no ties to adjusters or liability insurers.

OUR TEAM

Licensed attorneys, a CPA, and CFP® professionals

For 20+ years, our team has focused exclusively on helping plaintiffs plan for legal settlements.

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PLEASE NOTE

This is information, not advice

INFORMATION ONLY

This presentation is general information. It is not tax, legal, investment, or accounting advice, and attending it does not create an attorney-client relationship. The attorneys presenting are licensed to practice law but are not acting as your attorney. Amicus Settlement Planners, LLC is not a law firm.

BEFORE ACTING

You and your clients should do your own research and analysis, and consult your own tax, legal, and accounting advisers before taking any action based on this material.

HOW WE'RE PAID

Amicus Settlement Planners is compensated in connection with the settlement planning services and arrangements discussed today, including commissions paid by life insurance companies on structured settlement annuities. Annuity guarantees are subject to the claims-paying ability of the issuing insurer.

INVESTMENT ADVICE

Certain Amicus personnel are investment adviser representatives of Amicus Financial Advisors, LLC, a separate SEC-registered investment adviser not owned by Amicus Settlement Planners or its principals. Investment advisory services are offered only through Amicus Financial Advisors, LLC.

WHAT WE'LL COVER IN TODAY'S WEBINAR

Questions we often receive

01 What financial options do my clients have with their legal settlement?

02 When does a structured settlement or a settlement trust make sense?

03 What are options other than a blocked bank account for minors?

04 My client is on Medicaid and SSI. What happens to those benefits if I distribute funds?

05 What does Medicare's interest in the settlement require of us?

06 Which parts of a personal injury settlement are taxable?

07 I've heard about deferring my legal fee. How does that actually work in practice?

SECTION ONE

Dissipation Protection and Planning Tools

01

Why the client often needs protection, and how the right mix of tools helps the settlement last.

THE FANTASY VS. THE REALITY

Your client's expectations

AT SETTLEMENT, THE CLIENT THINKS:

“With this money, I’ll be set.”

18 MONTHS LATER, THE CLIENT ASKS:

“Why is the money gone?”

For most plaintiffs this is the largest sum they will ever hold. Without barriers, a recovery can disappear far faster than anyone expects. The good news: it's avoidable.

WHY IT MATTERS

Settlement recipients are not typical financial planning clients

01

Dissipation control is important

For many recipients this is the largest sum they'll ever receive. Protecting it is the priority.

02

Clients need barriers

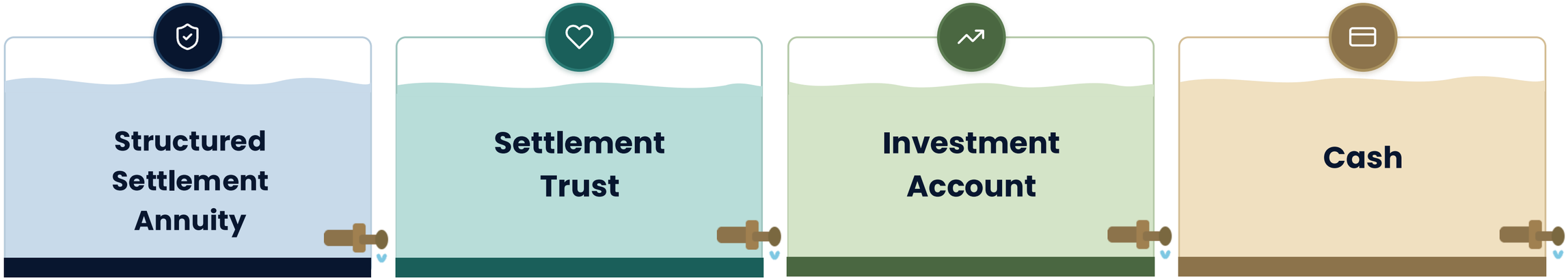
Healthy friction between the client and the full lump sum protects them from themselves and others.

03

Plan for dissipation avoidance

A plan is built deliberately to help the recovery last.

How Much of the Settlement Should We Put Into Each Tank?



STABILITY & PROTECTION

Provides a reliable stream of payments, guaranteed by the issuing insurer.

CONTROL & PURPOSE

Offers control, flexibility, and customized management.

GROWTH & OPPORTUNITY

Potential for growth to help outpace inflation.

LIQUIDITY & ACCESS

Quick access to funds for emergencies and immediate needs.

LESS FLEXIBLE ◀ ▶ MORE FLEXIBLE

LESS RISK OF LOSS ◀ ▶ MORE RISK OF LOSS

SECTION TWO

Structures, Trusts & Investments

02

A closer look at the four tanks, from the most protected to the most flexible.

THE CORNERSTONE TOOL

Structured settlement annuities

Periodic payments of damages for personal physical injury or physical sickness, generally excludable from income under IRC §104(a)(2).

Advantages

Income replacement

Reliable cash flow that can mirror lost wages or future needs.

Fixed or index-linked payment options

Choose fixed payments (or index-linked options with growth potential) and no direct market investment.

Dissipation protection

Payments are locked to a schedule, shielding the recovery.

Trade-offs

Modest returns

The guarantee comes at the cost of higher-growth potential.

Inflexible once established

Payment dates and amounts are fixed at the outset.

Factoring risk

Clients may be tempted to sell future payments at a discount.

Credit risk

Payments depend on the issuing insurer's financial strength.

FLEXIBLE PROTECTION

Settlement protection trusts & special needs trusts

Advantages

- **Liquidity**
  A trustee can make permitted distributions when needs arise.
- **Flexibility**
  Investment and distribution terms fit the client.
- **Dissipation protection**
  A trustee provides oversight and guidance.
- **Match duration to needs**
  The trust duration can be matched to client needs.

Trade-offs

Generally not guaranteed
Investments inside the trust carry market risk.

Fees and expenses
Trustee and administration costs apply.

IN SHORT

Trusts generally trade greater investment certainty for greater flexibility. Properly structured and administered special needs trusts can preserve Medicaid and SSI eligibility.

THE OTHER TWO TANKS

Investment accounts and cash

Investment account

- Stand-alone account: flexible, liquid, taxed like any brokerage account.
- Inside a settlement trust: growth plus a trustee's oversight.
- Taxable annuity: no structured settlement tax advantage, but more growth-oriented options.

Cash

- Immediate needs: debts, a vehicle, housing, the first year.
- An emergency reserve the client can reach quickly.
- The most flexible tank, and the easiest to lose.

GROWTH POTENTIAL

Market exposure can help the recovery outpace inflation over time.

MARKET RISK

Returns are not guaranteed, and account values can fall.

EASY TO REACH

Both tanks are easy to access, which is also what makes them easy to spend.

SECTION THREE

Minor's Cases

03

Minor settlements require careful planning, because the default options often create unnecessary dangers and limits.

THE DEFAULT PATHS

Default options for minors

Guardianship / Conservatorship

- **Court oversight:** Ongoing reporting and accountings may be required.
- **Limited flexibility:** Distributions may require court approval.
- **Administrative cost:** Legal, bonding, and other costs may apply.

Blocked account

- **Low-to-no interest**: the recovery barely grows, if at all.
- **Access to funds**: Depending on state law and the court order, funds may become available to the child at adulthood.
- **Court approval** may be required for distributions before adulthood.

THE STRUCTURED ALTERNATIVE

Option 1 for minors: a structured settlement annuity

Customizable payment schedule

Ability to stagger distributions. Popular options include college plans, annual payments, important milestones, etc.

Issued by rated insurers

Payments are funded by annuities from highly rated life insurers.

Tax-free growth in qualifying PI cases

Unlike a blocked account, the money grows, and for physical injury recoveries the payments, growth included, are generally excludable from income under IRC §104(a)(2).

Protects from early dissipation

Avoids handing a young adult the entire recovery in a single lump sum.

THE FLEXIBLE ALTERNATIVE

Option 2 for minors: a settlement protection trust

Customizable distribution standards

A trustee can approve distributions for health, education, support, and other appropriate needs.

Professional oversight

A trustee helps manage the funds and guide distributions for the period established by the trust.

Funds remain accessible

Unlike a blocked account or an annuity, trust assets can be used when needs arise.

Protects from early dissipation

Avoids handing an 18-year-old the entire recovery in a single lump sum.

SECTION FOUR

Government Benefits Issues

04

How a settlement can jeopardize a client’s needs-based benefits, and how to avoid it.

POP QUIZ

How much money can a client receive in a legal settlement before jeopardizing government benefits?

$2,000 + $1 = $2,001

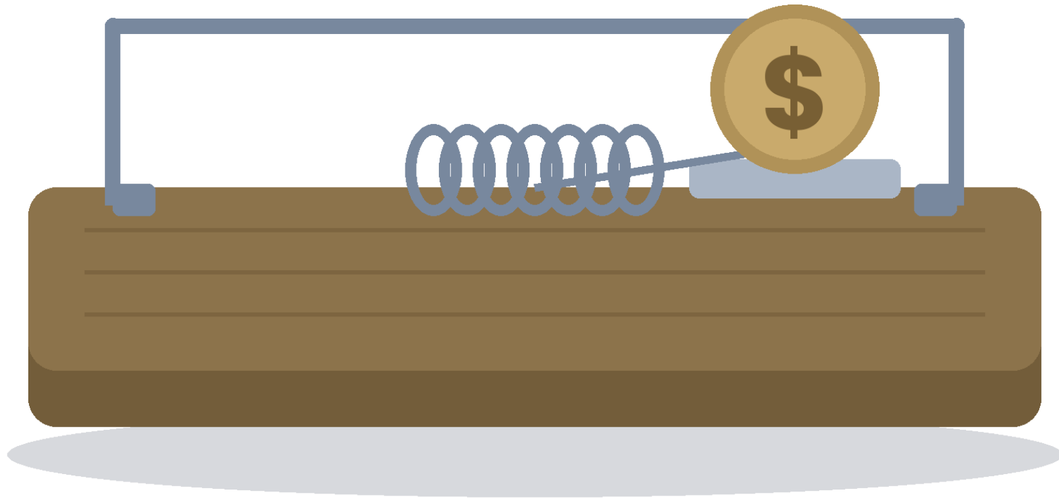
For SSI, countable resources above the $2,000 individual limit can cause ineligibility.

ADMIRAL ACKBAR, STAR WARS

"It's a trap."

Without proper planning, a settlement can disqualify a client from needs-based benefits.

The trap is avoidable, but only if you see it coming and plan in advance.



THE RULE

The asset-limit problem

$2,000

$2,000 SSI countable-resource limit

SSI recipients are generally limited to $2,000 in countable resources ($3,000 for a couple). Many disability- and age-based Medicaid programs also impose resource limits (often the same limit as SSI), although the rules vary by state and eligibility category.

Without proper planning, a settlement can jeopardize asset-tested benefits if it causes the recipient to exceed the applicable resource limit.

SAME SOUP, SORTED

Sorting the government benefit alphabet soup

NEEDS-BASED · AT RISK

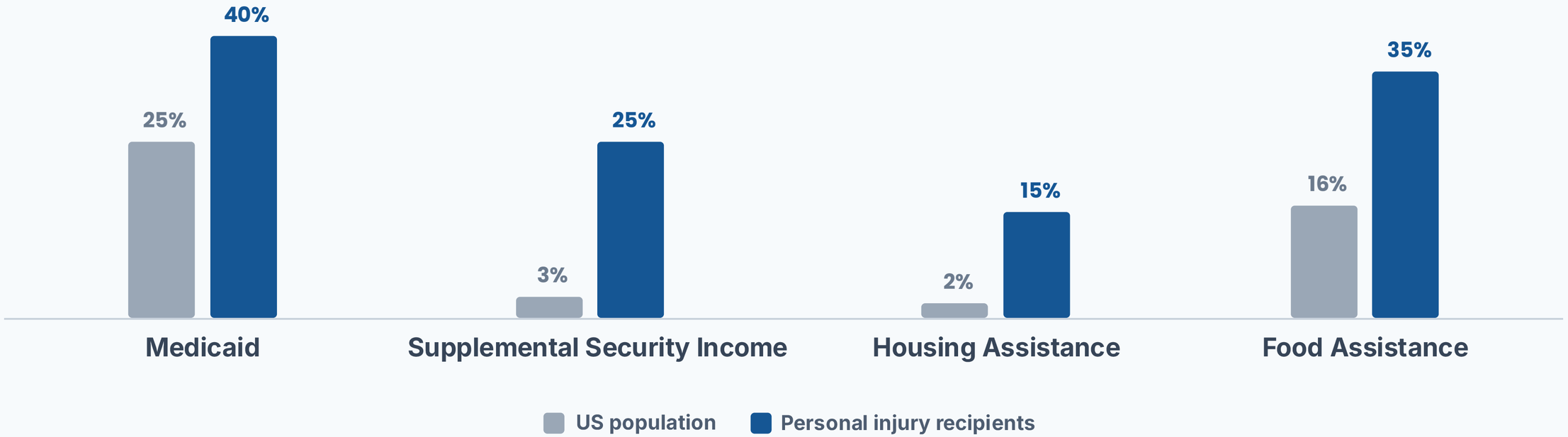
- SSI
- Asset-Tested Medicaid
- Section 8 / HUD
- TANF
- SNAP
- VA Pension / Aid & Attendance

NOT NEEDS-BASED · GENERALLY SAFE

- Medicare
- SSDI
- SS Retirement
- SS Survivor
- Most VA Benefits

THE DATA

Needs-Based Benefits Are Common in PI Settlements



Amicus's Government Benefit Assessment data from 3,000+ personal injury settlements. Percentages reflect the share of clients reporting each benefit. U.S. population figures are shown for comparison.

THE TOOLKIT

Options for preserving needs-based benefits

01

Set up a Special Needs Trust

Holds assets in an exempt trust that supplements existing government benefits.

02

Establish an ABLE Account

For eligible individuals, a tax-advantaged account for qualified disability expenses that can preserve benefits, subject to contribution and balance rules.

03

Spend Down Funds

Reduce assets to the resource limit by spending on exempt items the same month.

SECTION FIVE

Medicare & Medicare Set Asides

05

Medicare reimbursement obligations and future considerations at settlement.

WHAT THE SETTLEMENT TRIGGERS

What settlement triggers for Medicare

Conditional payments

- Medicare may seek reimbursement for conditional payments it made for care related to the claim.
- Get the conditional payment amount early and dispute unrelated charges.
- After settlement is reported, Medicare generally issues its formal recovery demand.

Liability set-asides

- Consider Medicare’s interests when resolving responsibility for future injury-related medical care.
- Unlike workers’ compensation, CMS has no formal review process for liability set-asides.
- There is no CMS-approved LMSA formula or universal allocation process.

NO ADMISSION REQUIRED

A settlement can trigger Medicare’s recovery rights even without an admission of liability.

60 DAYS

Medicare’s demand generally must be paid within 60 days of the demand letter.

PROCUREMENT COSTS

Attorney fees and costs can reduce Medicare’s recovery. Don’t overlook them.

SECTION SIX

Settlement Taxation

06

The default settlement tax rule, the exceptions, and potential tax pitfalls hiding inside personal injury cases.

THE RULE AND THE EXCEPTION

What's taxable in a settlement

THE RULE

IRC §61: general rule of inclusion

Settlement proceeds are generally included in gross income unless an exclusion or other tax rule applies.

THE EXCEPTION

IRC §104(a)(2): physical injury or sickness

Damages received on account of personal physical injuries or physical sickness are excluded from income, other than punitive damages.

ⓘ Which rule applies depends on the origin and nature of the claim, not just the label in the settlement agreement.

WATCH FOR THESE

The taxable pieces of a non-taxable case

01

Punitive damages

Generally taxable, even when the underlying compensatory damages are excluded.

02

Interest

Pre- and post-judgment interest is taxed as interest income, separate from the damages.

03

Emotional distress alone

Generally taxable unless attributable to physical injury; an exception may apply for medical expenses for emotional distress that were not previously deducted.

The settlement agreement is the most important tax document in the file. The client carries the burden of proof, and a well-drafted allocation is key evidence.

SECTION SEVEN

Attorney Fee Deferrals

07

Planning that can shift when a contingent fee is taxed, if it's set up before settlement.

FOUNDATION & TIMING

Deferral must be set up before the case is finalized

Tax-law foundation

- In *Childs v. Commissioner* (1994), the Tax Court held that attorneys who agreed before settlement to annuity-funded periodic payments were taxed when paid in the future.
- The *Childs* framework involved contingent legal fees.
- A properly structured deferral is intended to postpone tax until payments are received.

Critical timing rules

- Must avoid constructive receipt and current economic benefit.
- If the fee has been paid to the attorney or the firm, including into a trust account, it is generally too late to defer that fee.
- Complete the deferral before the settlement becomes binding and before the fee is earned or unconditionally payable; as a conservative practice, before the release is signed.

DEFERRED TAXATION

A properly structured deferral is intended to move legal fee income into future tax years.

TAX BRACKET PLANNING

Spreading income across years may reduce income tax brackets.

KNOW THE RISK

Deferrals carry **tax and audit risk**. The IRS has taken contrary positions on some arrangements and has an active examination campaign on deferred legal fees.

General information only, not tax or legal advice. Attorney fee deferral involves unsettled tax law. Amicus is compensated in connection with these arrangements. Consult your own CPA and independent tax counsel before deferring any fee.

THREE WAYS TO DEFER

Three ways to defer contingent legal fees

Childs involved annuity-funded deferred contingent fees. Arrangements that differ materially from the Childs facts require separate tax analysis.

01 ANNUITY-BASED

Structured Settlement Annuity

Mechanics: annuity from a major life insurer; amount and payout schedule set before the settlement is finalized
Benefits: fixed or market-linked return
Note: modest returns; dates and amounts lock once established; payments depend on the insurer's claims-paying ability.

02 MARKET-BASED

Deferred Compensation Plan

Mechanics: a nonqualified deferred compensation arrangement with a third-party administrator. The attorney holds an unsecured contractual right to future payments.
Benefits: payments are based on investment performance rather than a fixed rate.
Note: Returns are not guaranteed; election must be made before the fee is earned and the release is signed; loans against deferred amounts are not recommended; these arrangements, particularly when loans are involved, have received IRS scrutiny and generally carry more tax risk than structured settlement annuities.

03 LIFE INSURANCE-BASED

Executive Benefit Plan

Mechanics: combines fee deferral with split-dollar life insurance and an executive-benefit plan.
Benefits: potential long-term income and a death benefit; tax treatment depends on the plan and policy structure and is not guaranteed.
Note: the most involved setup and highest complexity of the three; health and financial underwriting apply.

General information only, not tax or legal advice. Attorney fee deferral involves unsettled tax law. Amicus is compensated in connection with these arrangements. Consult your own CPA and independent tax counsel before deferring any fee.

LET'S TALK

Questions?

A reminder of the ways we can help with your cases:

Structured Settlement Annuities

Financial Planning & Investment Management

Trusts & Annuities for Minors

Settlement Trusts

Government Benefits Preservation

Special Needs Trusts

Attorney Fee Deferral Solutions

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HAVE QUESTIONS? PLEASE REACH OUT

Are you dealing with any of these issues right now?

Book a free call to discuss your specific case.

Scan to Book a Call

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NEXT SESSION

Wednesday, October 21
12:00 pm MT
Deferring Contingent Fees

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