As a proud sponsor of New York Trial Academy's CLE presentation "The End Game" I hope you garnered some information which will help you aid your clients in the future. Since I did not have an opportunity to present, I'd like to point out some very important issues that were not addressed. Knowledge of these issues afford you the knowledge necessary to identify conflicts of interest and the gaps they cause in plan design.

Three major issues come to mind: taxation, administrative fees, and management fees. As a financial professional who administered trusts for a living, I can tell you that once you get through the legal documentation of setting up the trust, you enter my area of expertise.

Failure to account for these finance/ accounting issues dooms even the most well-intended plan to failure or results in a poor design. Why?

Taxation is a simple graduated process for individual accelerates inside a trust. The increase from the minimum tax rate of 10% to the highest tax rate of 37% occurs above $12,750.00 income level. Reliance on capital appreciation to sustain future consumption constitutes a misjudges of the true impact of taxation on realized return. Realized return often expressed as tax equivalent yield (TEY) declines further with the following two issues.

Administration arguably the essential reason for the use of trust for injured clients present possible conflicts of interest. Where the taxation and use of a trust as a sheltering entity occur either as a result of or based on need? The administration of the trust though necessary offers the administrator multiple income streams which can lead to excessive expense or direct how the funds are utilized by the client.

The administration fee varies base on model used and dictate of the administration company. Administration fees based on assets range from 1.5 -2.5%. Two cautionary issues here. One, the cost a non-deductible expense reduces return dollar for dollar (see grid below). Second, If the fee is based on assets then actively restricting outflows directly benefits the administrator which might create a conflict of interest.

Another form of administration expense option uses a fee schedule. A list of services with corresponding fee. This option requires careful analysis to determine what the client would require and the true cost of administering the fee. We replace the asset conflict of interest with one of based on assessing charges. Both options warrant an educated eye to identify the what, where and how your client will be impacted.

Finally, management fees which usually run in excess of 2%, no longer retains deductible expense status, and represents a dollar for dollar reduction of return bears careful scrutiny. If the manager fails, as most do, to produce "Alpha" (positive excess returns" then those fees equal wasted money to the client.

Financial analysis tools and strategies exist to extrapolate the best course of action for your client's asset allocation. However, understanding value per unit of return requires intensive knowledge obtained by managing client assets through multiple business cycles. Absent this experience the practioner leaves unwarranted gaps in plan design leaving your client exposed to future hardship.

The true impact of these three issues on a settlement plan design only becomes apparent when you look at the hard numbers (see below). Even using a rate of return that corresponds to a 100% equity allocation the portfolio fails to cover a traditional 5% trust distribution model. I would never suggest that an injured client even approach this aggressive an allocation.

		Old Regime	New Regime
		$1,000,000.00	$1,000,000.00
Return	10.00%	$100,000.00	$100,000.00
Administration	1.50%	$15,000.00	$15,000.00
Management	2.00%	$20,000.00	$20,000.00
Tax	37.00%	$24,050.00	$37,000.00
		$59,050.00	$72,000.00
		$1,040,950.00	$1,028,000.00
		4.10%	2.80%

Hiring a settlement consultant with experience managing trusts alleviates your obligation to know the minutia of trust doctrine. However, understanding the conflict of interest areas would be of important to you when evaluating proposal.

https://www.irs.gov/pub/irs-drop/rp-18-57.pdf