

## **What Every Personal Injury Attorney Needs To Know**

Its not just automobile drivers, doctors, and hospitals that end up on the hook when they make mistakes. Personal injury attorneys can also. Although PI attorneys are reputed to know how to pay attention to details, as they were taught in law school, sometimes they make mistakes. And when they do, they may suffer the consequences . . . big time! Consider two cases.

### **Attorney Who Received Settlement Funds Must Reimburse Medicare**

Recently a federal district court ruled that Medicare is entitled to recover its share of a Medicare recipient's personal injury settlement directly from the recipient's attorney. U.S. v. Harris (U.S. Distr. Ct., N.D. West. Va., No. 5:08CV102, March 26, 2009).

James Ritchea, a Medicare beneficiary, was injured when he fell off a ladder that he had purchased from a retailer. Because he was a Medicare beneficiary, Medicare paid medical bills that totaled more than \$22,000 that were submitted to Medicare on behalf of Mr. Ritchea for medical services due to the accident.

Later, Mr. Ritchea and his wife retained attorney Paul J. Harris to sue the ladder retailer, alleging that the retailer was liable for Mr. Ritchea's injuries. Eventually, the case was settled for \$25,000. Despite having forwarded details of the settlement payment to Medicare, neither Mr. Ritchea nor Mr. Harris responded to a notice that Medicare was entitled to \$10,253.59 from the settlement proceeds.

The United States of America sued the attorney, Paul Harris, in federal district court to recover Medicare's share of the settlement proceeds. The United States argued in a motion for summary judgment that the federal Medicare Secondary Payer Statute (MSPS) expressly authorized Medicare to recover its share of the settlement proceeds directly from Mr. Harris.

The U.S. District Court, ruled that as a matter of law, Medicare is entitled to reimbursement directly from Mr. Harris because the MSPS allows recovery "from any entity that has received payment from a primary plan," including the plaintiff's PI attorney.

Moral of the case: attorneys who handle personal injury cases need to know that their knowledge and expertise in personal injury law will not protect either their client or themselves when it comes to dealing with Medicare (or, for that matter, when any other governmental benefit program such as Medicaid or SSI is or could be involved). When Medicare has or will eventually pay medical bills that arise out of the injury, the PI attorney ought to consult with a professional who can assist with setting up a Medicare Set-Aside arrangement that will comply with the requirements of the Medicare Secondary Payer provisions of the federal statutes.

For the full text of this decision, go to: <http://ecf.wvnd.uscourts.gov/cgi->

[bin/show\\_public\\_doc?2008cv0102-16](http://www.cms.hhs.gov/MLNProducts/downloads/MSP_Fact_Sheet.pdf). For a Fact Sheet on MSP issues published by the Centers for Medicare and Medicaid Services (CMS), type: [http://www.cms.hhs.gov/MLNProducts/downloads/MSP\\_Fact\\_Sheet.pdf](http://www.cms.hhs.gov/MLNProducts/downloads/MSP_Fact_Sheet.pdf).

## **Two Attorneys Pay \$4.1 Million To Settle Loss Of Benefits Claim**

Christina Grillo settled a personal injury case in 1991 for a lump sum upon the advice of her personal injury attorney. She later sued the attorney and guardian ad litem for malpractice.

Ms. Grillo alleged that the defendants: (a) failed to consult competent experts concerning a structured settlement, and (b) failed to plan to preserve her SSI and Medicaid eligibility. Ms. Grillo alleged that a structured settlement with a “special needs trust” would have protected her personal injury settlement from dissipation, provided tax benefits, and protected her SSI and Medicaid benefits.

The case was settled by all defendants for a combined sum of \$4.1 million. Grillo v. Henry, 96-145090-92 (96th Dist. Ct., Tarrant Co., Texas.); and Grillo v. Pettiette, et al., 96-167943-96 (96th Dist. Ct., Tarrant Co., Texas).

Moral of this case: personal injury attorneys should consult with knowledgeable professionals who can help design a plan to preserve the Medicaid and SSI eligibility of their severely injured clients. For more information on how to prevent the dissipation of personal injury awards by protecting a client’s eligibility for governmental benefits, go to <http://www.specialneedsalliance.org>.

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