



Injured Infants and Structured Settlements - Understanding the NYS Medical Indemnity Fund (MIF)

By Rhys Andersen

Your Team at Creative Capital understands the complexities when resolving a case involving an injured child. Our unique and holistic approach ensures attorneys and their clients are educated and prepared throughout the settlement process.

One area of expertise our clients have come to rely on is preparing and explaining Medical Indemnity Fund (or MIF) settlement calculations, before, during and after settlement negotiations. We often attend mediation (currently via video conference) to assist with the MIF calculations. We will also discuss structured settlements with your client, preferably via a video conference, so that we can explain the available options. We typically recommend a structure providing monthly payments for life (especially for severely injured and incapacitated plaintiffs), often with annual payment increases to adjust for growth in the cost of living. An IRS approved index linked structured settlement annuity is also available to provide future inflation protection.

Medical Indemnity Fund Background

The MIF was created pursuant to Chapter 29 of the Laws of 2011. Per the New York State Department of Health Website, “The Fund was designed to provide a funding source for future health care costs of plaintiffs in medical malpractice actions who have suffered birth-related neurological injuries as the result of medical malpractice during a delivery admission, and are ‘qualified plaintiffs’ as defined in the law.” When you settle a case for a plaintiff who will be submitted for enrollment into the MIF, the portion of the client’s settlement that would be allocated to future medical expenses if you were to win a jury award should be allocated to the MIF as part of the settlement.

MIF Calculations Prior to Settlement

We have seen a wide range of approaches used by defendants to settle these matters. The information we provide to our attorney clients enables them to be prepared prior to settlement negotiations as they would be in any other aspect of their case. A MIF settlement consists of two settlement values, the first is the Total Settlement Amount (TSA) and the second is the Defendant’s Settlement Cost (DSC). The TSA is the total amount that both parties agree to settle the case for, but this amount is not paid in full by the defense. It is, however the amount used to calculate your at-

WHAT OUR CLIENTS SAY

“We have been very fortunate to work with Creative Capital over the past decade in all facets of our structured settlements. Their guidance has proved to be invaluable. Since our practice encompasses birth related injuries where children have been catastrophically injured, we have come to rely on Creative Capital’s team including Marty, Morris, Charles and Rhys who have a sophisticated understanding of the Medical Indemnity Fund (MIF) and craft structured payment streams for infants based upon lifetime care and economic projections. We look forward to many more years of working together with Creative Capital, and are proud to endorse them as a leader in their field.”
- The Jacob Fuchsberg Law Firm

torney's fee pursuant to the medical malpractice sliding scale. The DSC is the actual amount that the defendant is paying. The difference between these two amounts is how much is being allocated to the Fund for your client's future medical needs. The portion of your fee on the settlement allocated to the MIF will be paid by the defense.

EXAMPLE

A \$2,000,000 settlement with \$20,000 in disbursements and a 50% allocation to the MIF would result in a DSC of \$1,174,000 with \$348,000 in attorney's fees. Your client would net \$806,000. This is a significant difference from a standard medical malpractice case in New York where a \$2,000,000 settlement with \$20,000 in disbursements would result in \$348,000 in attorney's fees and \$1,632,000 net to your client.

You will notice that your attorney's fees are the same for a MIF settlement or Non-MIF settlement. The only amount that changes is your client's net. It is important to understand the difference between the TSA and the DSC, which is why many of our clients utilize our services to calculate these values prior to and during settlement negotiations.

The other variable that can affect your client's net settlement is the percentage that is allocated to the MIF. As was mentioned previously, 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 neurological injuries and the projected future medical care needs of the child. 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 TSA of \$2,000,000 remains the same, as does the \$20,000 in expenses and \$348,000 in attorney's fees, but the net to your client increases to \$1,466,800 and the DSC rises to \$1,834,800. This is an increase to your client of \$660,800.

MIF Calculations Post Settlement

Another approach to MIF calculations is that the defendant may agree to settle a case with a specific cost which they are willing to contribute to the settlement. The mediation statement in these situations may or may not specify an allocation to the MIF. Once plaintiff's counsel has their exact disbursements and a proposed allocation to the MIF, the total settlement can be calculated.

EXAMPLE

If a case is settling for a DSC of \$2,000,000.00, with \$20,000.00 in disbursements, and a 50% allocation to the MIF, the total settlement amount comes to \$3,501,818.18. For this example, there would be \$498,181.82 in attorney's fees, and a \$1,481,818.18 net to your client. The calculations involved in finding the total settlement amount based on a fixed settlement cost requires backing into the TSA to find the number that allows the DSC to equal the desired settlement cost (in this example \$2,000,000.00). Since the attorney's fees (and therefore the amount received by your client) are calculated based on the TSA, it is important to make sure the total settlement is calculated correctly.

Our Legal Approach

These MIF cases also require specific language that is needed for your Infant's Compromise Order and settlement documents. This language will be helpful in assisting you in getting your client admitted into the MIF. Our legal department, under the direction of Martin Jacobson, Creative Capital's General Counsel, and Lana O'Brien, Associate General Counsel, along with Sr. Paralegal Laurie Cohen and paralegals Allison Blonski and Lisa Hudak, will work closely with you to ensure that this process is done correctly.

The Creative Approach

Creative Capital offers our services to help you establish the TSA of your case and prepare the settlement documents free of charge. Our expertise in the area of structured settlements involving minors is recognized by many of New York's top trial firms. See what one of our clients had to say by clicking here. If you have a MIF case that is in the process of settling, or if you would like Your Team at CCI to assist you in achieving the best possible settlement for your client, please contact us.

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