



SETTLEMENT TRUST TRANSPARENCY

Numerous types of personal injury trusts have been created under the federal bankruptcy code and state laws to ensure that injured people can be properly compensated even if the defendant company ceases to exist. The “easy money” that flows out of these settlement trusts tends to attract unscrupulous players, who cheat the system or double-dip in order to increase their compensation.

The lack of transparency in the trust claims process makes cheating and double-dipping difficult to catch. In some instances, plaintiffs who file, or could file, claims with these settlement trusts may also seek compensation for their injuries through a second channel – lawsuits against solvent defendants in the courts.

By filing their personal injury trust claims after their lawsuits have concluded and otherwise hindering access to the exposure information presented to trusts, the plaintiffs’ bar is denying businesses an opportunity to fully and fairly defend themselves and giving plaintiffs a windfall. Equally problematic is that the double-dipping by plaintiffs and their lawyers is unfair to other personal injury victims because it depletes the corpus of the trust and could thus limit recovery by future plaintiffs.

Numerous New Jersey-based companies, including many small and medium sized businesses, are being hurt by the current lack of trust claims transparency. As a state with a strong manufacturing sector, New Jersey businesses stand to lose if double-dipping and fraud related to settlement trusts is not curtailed.

Several other states have passed legislation that would increase transparency in the settlement trust process to deter double-dipping and maximize fair compensation for injured parties. Such reforms:

- Require plaintiffs filing tort actions to disclose whether they have filed or anticipate filing a claim against a settlement trust;
- Direct the plaintiff to disclose any materials relevant to plaintiff’s parallel claims against the trust, for purposes of allocating liability for the plaintiff’s injury; and
- Ensure that any settlement trust recovery is setoff against any parallel recovery against a defendant at trial.

New Jersey should join the other states have passed, or are currently considering, legislation that would increase transparency and discourage fraud so that settlement dollars are available only to legitimately injured parties.