

Pre-Trial Trusts & Guardianships

PLANNING
ANALYSIS
STRATEGY





WHAT IS A **PRE-TRIAL TRUST**?

The purpose of establishing a Pre-Trial Trust is to assist the plaintiff and plaintiff attorney in building a stronger case to put pressure on the defendant to settle cases for larger amounts. When you establish a Pre-Trial Trust, you can show the defense and the jury that you are ensuring that any award given to the plaintiff is protected from wasteful dissipation and will be distributed responsibly by an independent fiduciary.





PRE-TRIAL PROCESS¹

Pre-Trial Trusts may be approached two different ways, depending on the individual needs of the plaintiff and plaintiff attorney:

1

Use of a Trust. Have the plaintiff assign their litigation rights to Capital First as Trustee of their trust and substitute Capital First as the plaintiff on behalf of the injured party. This can help the plaintiff attorney in removing a plaintiff who they feel will not be a sympathetic party to the jury.

Use of Limited Guardianship. Have Capital First Trust Company appointed as Limited Guardian of the Plaintiff Property by the Court. This allows Capital First to control the rights to any settlement or verdict amount and allows Capital First to testify on behalf of the injured party. This may be used in conjunction with a trust or a conservatorship.

2

In the case of a minor, establishing a trust in conjunction with a Limited Guardianship of the Property allows the trust company to continue to manage the settlement funds beyond the age of majority, providing additional comfort for juries. An employee of Capital First may be listed as a witness for trial if necessary.

¹ Specific details of the process may vary, depending on each state's laws.

PRE-TRIAL TRUST CHECKLIST

- ***Draft Trust***

This lays the foundation for Capital First's involvement as the Trustee, giving Capital First standing to be inserted into the proceedings.

- ***Petition the Court to Assign Interest in Trust***

Once it can be demonstrated that Capital First owes a fiduciary duty to the plaintiff as Trustee, then plaintiff counsel may petition the Court to assign any interests in the litigation or settlement proceeds to the Trust for the plaintiff's benefit to ensure that any award given to the plaintiff is protected by an independent professional fiduciary. The Trust Document is attached to the petition as an exhibit for the Court.

- ***Establish Limited Guardianship***

This step may or may not be necessary, depending on the unique facts of the case. The petition may be filed separately, or a joint petition may be filed to appoint Capital First as the Limited Guardian of the Property and a parent or other third party as Guardian of the Person.

- ***Motion to Dismiss Claims and Substitute Party***

This step generally applies when the plaintiff is a minor or deemed to be problematic by the plaintiff attorney. The petition to dismiss the plaintiff's claims and substitute Capital First as party plaintiff removes a plaintiff who may not be seen as being sympathetic by a jury and replaces them with a plaintiff who is an independent fiduciary who will ensure that any award is protected from wasteful dissipation and will be distributed responsibly.

- ***Petition to Authorize Compromise of Claims***

If Capital First has been appointed by the Court as Limited Guardian of the Property or has been substituted as party plaintiff to the suit, this petition allows Capital First Trust to settle the suit on behalf of the plaintiff in its capacity as Trustee or as Limited Guardian of the Property.

- ***Capital First's Appearance in Mediation or Court***

A representative from Capital First Trust can attend mediation, settlement talks, or appear in court to testify as an expert witness at trial if necessary, with no cost to the plaintiff, plaintiff attorney, or trust.





**CASE
STUDIES**



Traumatic Brain Injury Caused by Trucking Accident: \$8.6M Settlement

A mother and her six-week-old child were hit head-on by an 18-wheeler, causing severe traumatic brain injury to the child. A special needs trust was established for the minor child, but his parents each had serious issues that would have arisen during trial: the father was recently released from prison, and the mother had a history of drug abuse and mental illness. Both parents agreed to dismiss their claims against the defendant and assigned their litigation rights to Capital First.

Capital First was then substituted in the proceedings as the plaintiff, and a representative of Capital First attended mediation. The case settled right before trial was set to begin, resulting in an award of \$8.6 million to the minor child.

The minor child's settlement is protected by the special needs trust. The minor child has made good developmental progress, with the funds being used to provide him with appropriate medical care and therapy.



**Medical Malpractice:
\$6.8M Settlement**

As a minor, the plaintiff was deprived of oxygen during surgery. The oxygen deprivation resulted in a permanent traumatic brain injury.

Since the child's mother was a single parent who had previous legal problems, Capital First was appointed as Guardian of the Minor's Property. At mediation, when confronted with a trustee as a plaintiff, the defendant settled the case for \$6.8 million to the minor child. A Special Needs Trust was established to preserve and supplement the child's SSI and Medicaid benefits.

After settlement, a home was purchased to help the child be closer to a special school that educates children with personal mental challenges. The trust pays for all the educational expenses, allowing the child to continue to attend a school equipped to meet the child's specialized needs. The child is currently enrolled in a University Stem Cell Research study and responding well to annual treatments.



Sexual Abuse Case: \$11M Settlement

As a minor, the plaintiff was repeatedly sexually abused by a youth minister. The trauma resulting from the repeated abuse resulted in the plaintiff's rocky transition into adulthood.

Before the trial started, the plaintiff created a trust and agreed to assign his litigation rights to the trust. Capital First Trust was then substituted into the case as the plaintiff.

A representative of Capital First attended the hearing, testifying that with the creation of the trust to hold the litigation rights, any funds awarded would be protected by the trust, providing for the plaintiff's lifelong needs and preventing any wasteful dissipation. Assured that Capital First as Trustee would prudently manage the funds, the jury awarded the plaintiff \$11M.

The client's settlement is protected by his special needs trust, and with the help of his trust officer, the client has made significant progress managing his trauma and preparing for his future.



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