

NEW MEXICO INJURY ATTORNEY BLOG

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Community Property Issues in New Mexico Personal Injury Lawsuits

Personal injury lawsuits can often take a very long time. They are often highly stressful on a marriage for a number of reasons. Many times, the injured person is in significant pain following an injury. This can cause a lot of marital friction. In addition, the injured person many times cannot work causing serious financial strain on the marriage. Finally, the injuries will on occasion severely interfere with the intimate relations of the couple. All these strains can lead to divorces in the middle of a personal injury lawsuit or soon thereafter.

The question that arises is whether the personal injury verdict or settlement is community property in New Mexico. The answer is partly yes, mostly no. A personal injury lawsuit results in compensation for damages associated with the individual's injuries. These damages include compensation for the physical injuries as well as the pain and suffering associated with those injuries. In a nutshell, compensation for physical injuries and pain and suffering are not community property. The damages are awarded to compensate the individual for injuries personal to the individual.

However, personal injury settlements also often include amounts for damages beyond the physical damages and pain and suffering. They typically will include damages for medical expenses (past and future) and lost earnings (past and future). These can be far more difficult to classify.

For medical expenses, the classification of the recovery is dependent upon the source of funds for those medical expenses. If the medical expenses were paid out of community funds, then the recovery for medical expenses is community property. However, if the medical expenses were paid from insurance, then the bulk of the recovery for medical expenses is not community property.

The calculation becomes more complex in the case of future medical expenses. Certainly, any medical expenses incurred after the marriage would be separate property. The issue would be complicated in a case where the divorce is pending, or not yet begun, at the time that future medical expenses are awarded. This would require a calculation of the separate portion of those medical expenses still remaining at the time of the divorce, whenever that might occur. This is something that would be addressed in a Marital Settlement Agreement in the property division, or by

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trial if necessary. It might require the assistance of an expert in accounting or annuities to properly classify the community portion of the settlement.

Lost income is accounted for in much the same way. Any income during the marriage is community property. Therefore, any losses of income accrue to the community. As such, compensation for these losses is also community property. Again, the real complication arises in considering future lost wages. In cases of serious personal injury, the future lost income may represent the vast majority of any settlement or verdict. This is particularly so when the injured person is no longer able to work at all. The calculation of future lost income can be somewhat complicated. In a nutshell, however, future lost earnings involves a calculation of the individual's expected future income over the remainder of his or her working life based upon a variety of factors that indicate income potential. The resulting figure is then amortized back to the present for the calculation of future lost wages.

Clearly, income earned following a divorce is **separate property**. Income following a legal separation is also separate. Again, the timing of the divorce is critical. If the divorce occurs prior to the final verdict or settlement, then future lost income is clearly separate property and not an issue. If the divorce occurs following the verdict or settlement, then the lost wages will be apportioned according to the date of divorce.

Other complications occur as well. In many cases, the personal injury funds end up getting commingled with other community property such as home improvement projects. This sort of commingling can seriously complicate the allocation of the personal injury verdict or settlement between community and separate property.

The bottom line is that anyone involved in personal injury litigation should consider these issues very carefully if the marriage is on the rocks. The issues can become quite complicated and convoluted. Consultation with an attorney, both **family law** and **personal injury**, would be well advised to avoid any possible unpleasant surprises in the division of the verdict or settlement as community property.

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