

The Fiduciary Gap

Why a strong result still needs protection after the case is over.

A case can be won. The number can be negotiated. The paperwork can be signed. And the outcome can still unravel if nobody is clearly responsible for what has to hold after the money moves.



This advanced briefing explains the fiduciary gap, where it opens, and why trial attorneys need it covered before the file is treated as closed.

Let's talk before your next settlement is finalized.

What the fiduciary gap is

The fiduciary gap is the space that opens when a settlement moves from legal victory to post-settlement design and administration, but no fiduciary is clearly responsible for protecting what happens next.

It often appears at the exact moment the case feels finished. The attorney has done the hard work of building the case and securing the result. The client assumes the remaining decisions are being handled by people operating under the same duty of care. The handoff feels normal. The file feels close to closed.

But that is where the gap can open.

Why attorneys miss it

The fiduciary gap is easy to miss because the number creates a false sense of completion.

Once the recovery is agreed to, the remaining questions can start to look administrative rather than strategic. Responsibility becomes fragmented. One person is looking at the product. Another is looking at payout timing. Another is looking at trust paperwork. Someone else is handling benefits. Everyone is touching a piece of the outcome, but no one is clearly responsible for whether the full strategy holds together.

That is not a minor oversight. It is a structural weakness.

Why it matters

Every meaningful settlement still crosses three areas:

- **benefits preservation**
- **legal tax structures**
- **trust administration**

If those areas are handled in pieces rather than architected together, the recovery may be complete on paper but still exposed in practice.

That is why the fiduciary gap matters. It is not just a gap in communication. *It is a gap in responsibility at the exact point where strategy still has consequences.*

TRUST ADMINISTRATION

By Michele Fuller | The Settlement Architect

What the fiduciary gap exposes

Once the handoff happens without clear fiduciary ownership, the three areas become vulnerable in different ways.

Benefits Preservation

A recovery can unintentionally disrupt Medicaid, SSI, or other means-tested benefits if no one is evaluating the settlement with those consequences in view before funds are distributed.

Legal Structures

A settlement can be finalized without the right legal structures fully considered. Allocation decisions, tax consequences, and structural options that needed review may no longer be as flexible once key decisions are locked.

Trust Administration

The file can appear closed while the long-term protection is still weak. If no one is clearly responsible for trust oversight and fiduciary administration, the recovery may not be durable.

What closes the gap

The fiduciary gap closes when settlement planning counsel is brought in while strategy still has room to work — before release terms are final, before funds are distributed, and before long-term administration is treated as someone else's problem.

That changes the role of settlement planning from product selection to outcome protection. It means the settlement is evaluated across all three areas together, the legal strategy and financial consequences are coordinated, and the attorney can move toward closure knowing the outcome was designed to hold, not just negotiated to conclusion.

BOTTOM LINE

The issue is not whether the case was won. The issue is whether the outcome will still hold after the case is over.

A settlement is not just a number. It is a strategy across benefits, legal tax structures, and trusts.