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Your Guide to Pre-Settlement Funding

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YOUR GUIDE TO PRE-SETTLEMENT ADVANCES

What is a pre-settlement advance?



If you have hired an attorney to bring a lawsuit, and if you need cash now, you may be able to obtain a pre-settlement advance on your potential recovery in the lawsuit.

In a pre-settlement advance, you agree to give an investor a portion of any settlement or verdict that you might receive in your lawsuit in return for an immediate cash advance. The

advance is “non-recourse,” which means that **it is not a loan** and that you are required to repay the advance **only if you win your case**. If you win, your repayment will be the amount of the advance plus a fee. Of course, with a loan, you have to repay the lender no matter what. But with a pre-settlement advance, you only make a repayment if you win money in your lawsuit, and what you repay will never be more than what you win.

Why would I want a pre-settlement advance?

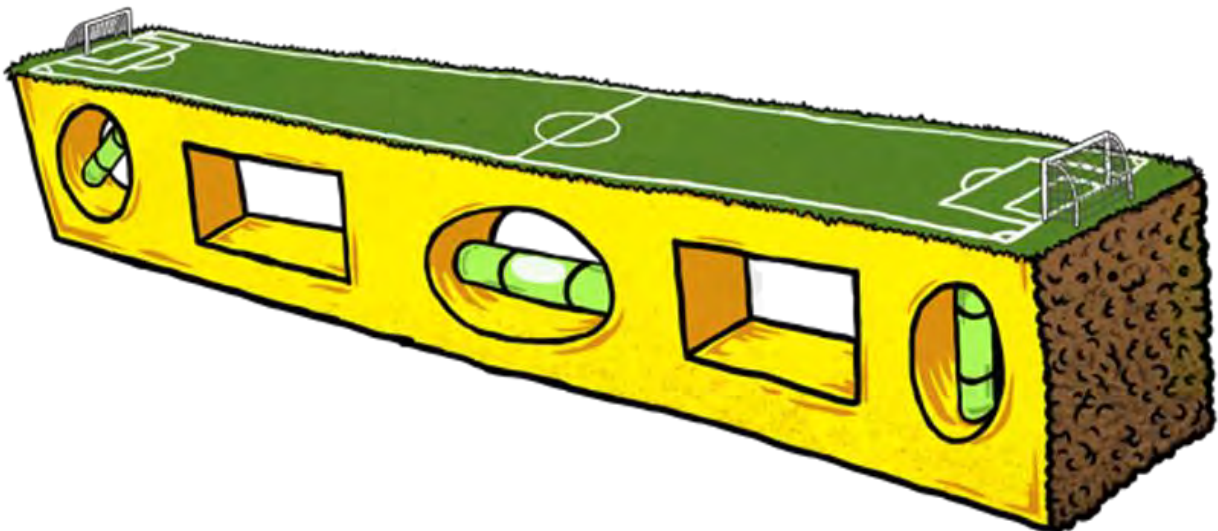
If you have been injured by the negligence or wrongful behavior of another person or a company, you know how costly the injury can be. Your injury can disrupt your life and your income. If it is a serious physical injury, it will lead to significant medical costs that your health insurance might not pay for. In addition, it is expensive to defend your rights and recover the money you lost. Even if your

attorney agrees to a contingent fee (where he is paid only if you win), pursuing a lawsuit can be costly.

Unfortunately, regardless of how deserving you might be, it can take a long time for you to recover money in a lawsuit. The average civil lawsuit takes 18 months from start to finish. Many injured people find themselves in a difficult position. They have suffered big losses and have to wait a long time to recover those losses. Of course, your daily expenses, your house payment, your car payment, and your children's needs can't wait.

In many cases, lawsuits tend to take longer when large sums of money are at stake and when the plaintiff (the person that starts the lawsuit) is virtually certain to recover. This might seem wrong, but it is caused by the role of insurance companies in lawsuits. Most people and virtually all companies have insurance policies that protect them from financial loss when they do something wrong. In most lawsuits, the defendant is assisted by an insurance company, which will pay the settlement or verdict, along with the fees for the defendant's lawyer. The insurance company may know that it is going to pay something, but it always prefers to pay less and to pay later. In fact, insurance companies know that the plaintiff is probably struggling financially, and they use that against the plaintiff by making low-ball settlement offers early in the case, hoping that the plaintiff will take a fraction of what he or she deserves, just to get out of financial trouble.

A pre-settlement advance can help you level the playing field against insurance companies because it gives you the financial resources you need to hold out for full value of the settlement you deserve.



Why would someone give me a pre-settlement advance?

You might wonder why an investor would give you a cash advance on your settlement or verdict if there is a chance that it won't be repaid because you might lose your case. Investors know that there are many plaintiffs who leave cash on the table when negotiating settlements with defendants and their insurance companies. They also know that a modest advance early in the case can make the difference between a small settlement and a big win. They know that, in most of the cases where they pay an advance, they will receive their money back plus a fee. Yes, they will lose their advances in some cases; but overall they will make a profit.



How is a “non-recourse advance” different from a loan?

Some people like to call pre-settlement advances “lawsuit loans,” or they compare them to payday loans. This is misleading. In a loan, the borrower always has to repay the lender the amount of the loan plus interest. When you take a loan, you are making a personal guarantee that you will repay the borrower. In a pre-settlement advance, the guarantee of repayment comes from the value of your lawsuit, not from you personally. When you receive a pre-settlement advance, you repay the investor only if you win your case or get a settlement. If you receive nothing from your lawsuit, you pay nothing back. And if you receive only a small settlement or recovery, the investor will be paid only if there is something left over after your lawyer has been paid.

How will the amount of my advance be determined?

Investors have different methods for determining how much money they are willing to advance. In general, investors calculate the amount of the advance as a percentage of their assessment of the total value of the case. A typical investor will advance between 10-15% of the estimated case value.

Investors often have very sophisticated and reliable methods for estimating the value of a lawsuit. Many investors have assembled extensive data about thousands of lawsuits from all over the United States. They use this data to compare the key characteristics of your case with other cases, and this comparison allows them to estimate the probable value of your case.

Investors consider a wide range of information about the cases they consider, but there are three factors that are particularly important: the plaintiff's damages, the defendant's liability, and the defendant's insurance.

Damages

Courts use the concept of "damages" to describe the monetary cost of your injuries. If the defendant is liable, it will have to pay the damages caused by your injuries. This will include damages you have already suffered and damages that you will suffer in the future, to the extent that they are caused by your injury. Damages can include all of the following things:

- Income lost as a result of your injury, including both actual lost income and lost earning potential in the future
- Expenses incurred as a result of your injury, including uninsured medical expenses
- Physical and emotional pain and suffering as a result of your injury

When estimating the value of your case, investors want to identify all of the damages that you could conceivably claim in a settlement or verdict.

Liability

A defendant is liable to pay for your damages if you prove that he or she violated the law and that the violation caused your injury. Sometimes proving these things is easy. For example, if you were rear-ended by another driver, that other driver is almost always going to be liable. In other cases, proving liability is more difficult because there are more questions about whether the defendant acted wrongfully or about whether his or her wrongful conduct caused your injury. When evaluating your lawsuit, investors assess how difficult it will be to prove your case and your chances of establishing liability.

Insurance



When you sue for damages, the value of the defendant's insurance policy generally determines how much you can recover. For example if you have \$100,000 in damages from an auto accident and the defendant's insurance policy limit is only \$50,000, the defendant's insurance company will only pay \$50,000. You have a right to the remaining \$50,000, but you will have to recover that

remaining amount directly from the defendant. If the defendant is not wealthy, it may be difficult to recover any amounts not paid by insurance. When investors have access to information about the defendant's insurance limits, they consider that in calculating the value of your lawsuit.

How long does it take to get an advance?

Once your application for an advance is approved, you can receive the money very quickly, usually within 24-48 hours. The amount of the advance can be sent directly to your bank account, or, if you prefer, you can be sent a check by an overnight delivery service, such as Federal Express.

The time between your application and approval can vary, depending on how far along you are in your lawsuit. As noted above, when reviewing your application, the investor will want to consider information about the economic and medical costs of your injury, the evidence you have to prove your case, and the insurance resources that the defendant has. All of this information is developed by your attorney during the pre-trial phase of your lawsuit. If the information is readily available at the time you apply, the investor's decision can be made quickly. If you are at a very early stage of the lawsuit and this information is not fully developed, the investor's assessment will take longer.

Once you are approved, you will be asked to sign a contract that will determine the conditions of the advance and the amount you will have to repay if you get a settlement or verdict. You should review this contract carefully and get legal advice about it. That legal advice can come from your attorney in the lawsuit and/or another attorney. It is worth taking the time to carefully review the contract before signing it.

How much will a pre-settlement advance cost me?

If you win a settlement or verdict, you will repay the amount of the advance plus a fee for the investor. Different investors determine their fees in different ways. The contract that you sign with the investor should clearly explain what the fee will be. If you don't understand what this additional fee is and how it is calculated, you should get advice and an explanation from an attorney.

In general, there are two ways that investors charge fees. Some investors charge a flat fee that is measured as a percentage of your settlement or verdict. For example, an investor might charge a fee of 10% of your settlement or verdict, regardless of how big or small that amount might be. In that situation, you would repay the investor the amount of your advance plus 10% of the amount of your

settlement or verdict. Other investors charge a fee that will vary, depending on the amount of time between the advance and the repayment. The longer your lawsuit continues, the more you will have to repay.

A variable fee can be calculated according to different methods. There is no standard method that all investors use. Most often, the fee will be calculated for a period of time. For example, the investor could set the fee as 10% of the advance for a three-month period. If your case settles within three months after you receive the advance, you would repay the amount of your advance plus 10%. If the case takes longer, the fee would be higher.

When you apply to any investor that uses a variable rate, you should make sure that you understand how the rate is calculated, and you should make sure that the contract you sign is consistent with your understanding of the rate. Most investors can give you a table or chart that will show you how much the fee will be at different times. Don't sign any contract until you understand and are comfortable with what the fee will be and how it will be calculated.



Along with the basic fee, some investors ask the plaintiff to pay for some additional costs, if there is a settlement or verdict. These additional fees could be related to the costs of processing your application, delivering the advance to you, and monitoring your lawsuit. These additional fees can sometimes be extensive, so you should be sure you understand what they are and how and when they will be charged to you. In particular, you should

understand whether these fees will be deducted from your advance or included in your repayment amount. Here again, you should consult with an attorney if you don't understand anything about the fees that an investor will charge you.

Can I get more than one advance if my lawsuit takes a long time?

It is possible to get more than one advance or to have your advance paid out in installments from a single investor. Each investor has its own policies and practices about these things, and you should raise any questions about multiple advances or installments before you sign your contract.

An investor might be willing to make additional installments if it concludes that your case has increased in value as it progresses. For example, the investor may make an initial estimate of value at the very beginning of the case and make an advance based on that estimate. If something happens later that increases your chances of winning or that increases the amount that you might win, the investor could be willing to make a new estimate and advance additional funds. An investor should be willing to tell you whether this is a possibility.

Another way to spread out your advance is to take it in installments. For example, if an investor is willing to advance \$10,000, it might be willing to pay the advance in monthly installments of \$1,000 each over a period of 10 months. This could be an advantage to you if you need the advance to cover a monthly expense, such as an automobile or credit card payment. If you receive the advance in installments, and if your case settles early, you could reduce the total amount of fees that you pay the investor. Here again, if you are interested in this, you should ask the investor about whether such an arrangement is possible, and you should be sure you understand how it will affect your repayment obligations before you sign the contract.

It is important to understand that most investors will not agree to give you an advance if you already have an advance from another investor. If you have received an advance from one investor and you think you qualify for additional funding, you can apply to another investor, but the second investor will probably require the first investor be paid off from the funds that it is advancing you.

What are my alternatives to a pre-settlement advance?

A loan is the alternative to a pre-settlement advance. Any loan involves some cost to you, including interest and other fees that the lender will demand. Of course,

when you take a loan, you have a legal obligation to repay the lender, regardless of whether your lawsuit succeeds.

Different kinds of loans have different costs. If you are considering any particular kind of loan as an alternative to a pre-settlement advance, you should make sure you understand the cost of that loan and compare it to the cost of an advance.

If you do borrow money instead of taking an advance, you have two basic alternatives: borrow using your own assets and borrow using the lenders assets. If you use your own assets, your costs will usually be lower. For example, you can take money out of a savings account or borrow against a retirement account or pension. These loans usually have relatively low costs, but they may also affect how much tax you have to pay. If you borrow from a retirement account and don't repay on time, there can be significant tax penalties from state and federal taxing authorities. Similarly, you can re-finance your home mortgage or take out a home equity loan or line of credit. Here again, these loans tend to have relatively lower



costs, but there can be serious consequences if you don't repay them on time. You could also borrow from a bank or other lender, taking a personal loan or a cash advance from a credit card. These loans are usually more costly than loans based on your own assets, and they can involve high interest rates and other lending fees.

What is a “broker” and should I use one to find a pre-settlement advance?

A broker can help you find an investor that offers a pre-settlement advance on terms that work for you. Brokers are familiar with dozens of investors and know their requirements for an advance. Relying on a broker can be an efficient way to find an investor who is a good match for your needs. Of course, brokers don't work

for free. They charge a fee for their services, and some or all of that fee is usually paid by you as part of the contract for your advance. If you are thinking of working with a broker, ask about his or her fees before agreeing to work with him or her. In addition, if you contact someone about a pre-settlement advance, and if you are unsure about who that person works for, ask if he or she is a broker or a direct representative of the investor.

Can I pay back my advance before my case settles?

In general, you can repay your advance before you receive a settlement or verdict according to the terms of the contract you made with your investor. You can save some fees by repaying early, but you should keep in mind that you won't have to repay at all if your case is unsuccessful. As with any other aspect of the pre-settlement advance process, you should understand the costs, benefits, and risks of repaying early before you decide to do so.

What happens if I lose my case?

If you lose your case, you don't have to repay your investor. The money you receive from the investor is a non-recourse advance. The investor's right to repayment depends on the outcome of your lawsuit, not on your personal promise. If the lawsuit does not produce a recovery, the investor cannot demand repayment.

Will my chances of winning my case be affected if I get a pre-settlement advance?

Getting a pre-settlement advance will probably not have any effect on the results of your lawsuit, but it can strengthen your bargaining position and give you additional resources to help you fight for your rights. In some courts, the defendant may be permitted to ask you if you have received a pre-settlement advance, but the financing of your case is not something that a jury would be told. In many situations, it could actually help your bargaining position if the defendant knows you have received an advance; the defendant and/or its insurance company will know that you are not desperate for money and won't necessarily take the first offer for a settlement. The defendant may be

motivated to offer you more money sooner if it knows that you have the resources to stick with your case for the long haul.

How will the investor be repaid from my settlement?

Once your attorney has received payment on a settlement or verdict, he or she will deposit it into a special account for client funds. Your attorney is responsible for determining which bills and costs to pay, and in which order. As a general rule, that order of payment is as follows:

1. The attorney's fees and any costs paid on your behalf.
2. Liens imposed by state or federal law, such as unpaid child support or unpaid taxes.
3. Repayment of the pre-settlement advance.

Under the laws of some states, unpaid medical bills may be paid after state and federal liens and before the repayment of the pre-settlement advance.

After these obligations have been repaid, any remaining amount will be paid to you.



Why was my application denied?

Every investor has its own criteria for deciding when to grant an application for a pre-settlement advance, and only the investor itself can explain the reasons for any particular decision about an application. In general, however, investors will decline to invest in a lawsuit if they believe that the chances of recovery are not high enough. If an investor decides not to grant your application, that decision does not mean that you will not win your lawsuit.

In addition, there are a couple of common explanations for why advances are not granted. First, investors might be discouraged about the total value of your case if you have had prior accidents that caused injuries similar to the ones you're currently suing about. Second, if you have already received an advance from another investor and the new investor concludes that it will cost too much to pay off your previous investor.

How should I decide whether to apply for a pre-settlement advance?



This guide has identified many of the factors that are relevant to a decision about applying for a pre-settlement advance. You should consider all of those factors, especially the costs and benefits of the advance and any other financing options, and make the decision that is best for you. Getting expert advice from an attorney or other professional is always a good idea, as well.

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