

Equipping Settlement Planners with a New Talking Point for Attorney Clients

“What if the most successful
settlement is also the most
dangerous?”



Presented by Rachel McCrocklin, CTRO
Eastern Point Trust Company

What are we not going to do today?

- ▶ Make you tax experts
- ▶ Tell you that your attorney clients need to be tax experts
- ▶ Explain why “I am not a tax expert” isn’t enough

What we will do today...

- ▶ What willful blindness means for lawyers
- ▶ How ignoring tax issues can create liability
- ▶ Real cases where it went wrong
- ▶ How to avoid it — ethically and practically
- ▶ The role of the **Plaintiff Recovery Trust (PRT)**

Defining Willful Blindness in Legal Practice

- ▶ Willful blindness: deliberate avoidance of facts the lawyer suspects could affect a client's interests.
- ▶ Courts equate it with actual knowledge in malpractice and disciplinary contexts.
- ▶ Distinct from negligence — involves conscious disregard.
- ▶ Violates ABA Model Rule 1.1
 - ▶ A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.
- ▶ “Ignorance is no defense — deliberate avoidance of tax implications is treated as knowledge.”

Ethical Context



- ▶ Lawyers must recognize potential tax consequences of settlements.
- ▶ Duty to investigate or consult qualified experts.
- ▶ Failure to do so constitutes professional misconduct and malpractice exposure.
- ▶ Competent representation requires preparation and awareness of tax impact.
- ▶ An attorney who suspects tax implications but chooses not to investigate or consult a tax expert violates Rule 1.1.

Case Law — Ignoring Tax Implications Leads to Liability

- ▶ Philips v. Giles (1981, TX): Ignorance ≠ defense.
- ▶ Jalali v. Root (2003, CA): Liable for bad tax advice.
- ▶ Serino v. Lipper (2007, NY): Ignoring tax impact = malpractice.
- ▶ Bloostein v. Morrison Cohen (2018, NY): Inattention actionable.
- ▶ Commissioner v. Banks (2005, US): Plaintiffs taxed on full recovery.

Legal & Ethical Themes



- ▶ Courts emphasize that ignorance is no shield.
- ▶ Attorneys must anticipate tax implications, consult experts, and communicate risks.
- ▶ Failure to act = willful blindness → malpractice liability.

The Ethical Duty to Investigate and Advise

- ▶ Model Rule 1.1: Competence includes seeking expert help.
- ▶ Model Rule 1.4: Must explain risks to clients.
- ▶ Deliberately avoiding known risks violates both rules.
- ▶ Common issue: ignoring taxable elements in settlements.

Introducing the Plaintiff Recovery Trust (PRT)

- ▶ A proactive tool to prevent malpractice and fulfill ethical duties.
- ▶ Expert-supervised irrevocable trust for taxable settlements.
- ▶ Holds and manages proceeds to optimize after-tax recovery.
- ▶ Prevents willful blindness in tax-heavy cases.

How the PRT Works



- ▶ 1. Plaintiff assigns claim to trust before settlement.
- ▶ 2. Settlement proceeds paid into trust.
- ▶ 3. Attorney fees paid from trust (deductible).
- ▶ 4. Plaintiff taxed only on distributions.
- ▶ 5. Avoids double-tax outcome.

Ethical Impact of the PRT

- ▶ Incorporating a PRT = proactive competence.
- ▶ Shows attorney awareness of tax implications.
- ▶ Protects client recovery and reputation.
- ▶ Prevents claims of willful blindness or malpractice.

Case Integration Examples

- ▶ Philips & Jalali: Avoidable via PRT.
- ▶ Serino & Bloostein: Financial loss from ignoring deferral.
- ▶ Banks: PRT addresses fee taxation exposure.

Why This Makes You (the planner) a Valuable Asset

- ▶ You help attorneys fulfill their ethical duties under Rules 1.1 and 1.4
- ▶ You identify tax risks early — protecting both the client and the law firm
- ▶ You provide access to specialized tools (QSFs, PRTs) that improve outcomes
- ▶ You turn compliance into strategic advantage — preventing malpractice, preserving fees
- ▶ You strengthen relationships by making the attorney look competent, ethical, and proactive
- ▶ You become a trusted partner, not a vendor

Best Practices for Settlement Planners & Attorneys

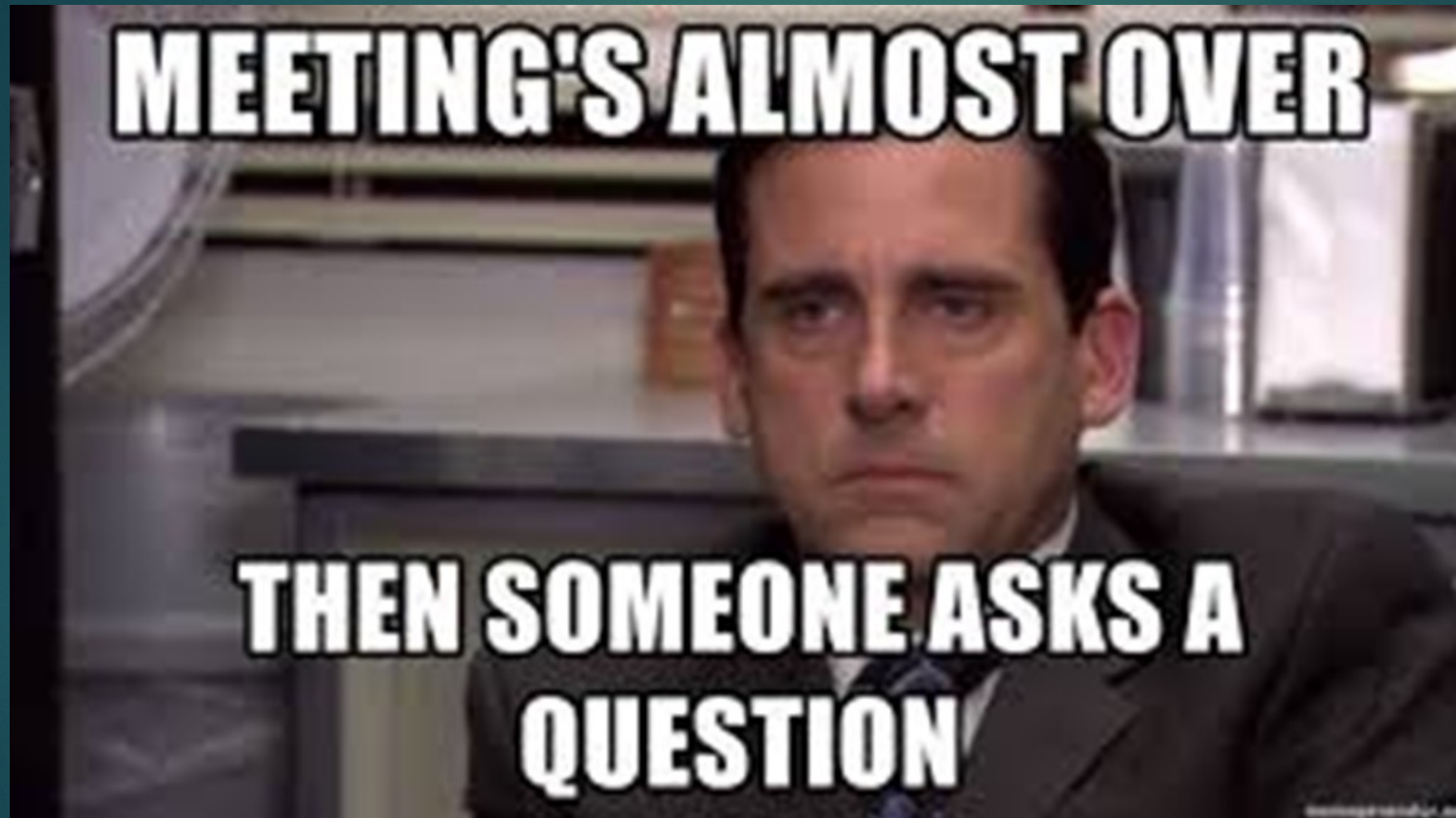
- ▶ Assess tax impact pre-settlement.
- ▶ Partner with QSF/PRT experts early.
- ▶ Document advice and client understanding.
- ▶ Use PRTs to demonstrate diligence.

Closing Takeaways



- ▶ Willful blindness = liability and ethical violation.
- ▶ Competence = awareness, investigation, consultation.
- ▶ PRTs mitigate risk, increase recovery, and show diligence.
- ▶ “The greatest risk in settlement practice is the risk you refuse to see.”

Questions?



Contact & More

- ▶ Rachel McCrocklin
- ▶ Chief Trust Officer, Eastern Point Trust Company
- ▶ ✉ rachel.mccrocklin@easternpointtrust.com
- ▶ 🌐 www.easternpointtrust.com

Helpful Links

Scan these QR codes for useful information on our innovative trust solutions or to connect with us to book a free consult to see if our solutions are right for you.



Avoid Unnecessary Taxes!



Scan me!



Book A Free Consult