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Can a Personal Injury Settlement be Divided as a Marital Asset in a Massachusetts Divorce?

By James M. Lynch | September 12, 2016

Personal Injury | Divorce | Division of Assets

Massachusetts personal injury attorney and divorce lawyer James M. Lynch explains how personal injury settlement proceeds are divided in Massachusetts divorce cases.



Under Massachusetts law, the proceeds of a personal injury suit are “undeniably” part of a party’s “divisible estate” for divorce purposes. In [Dalessio v. Dalessio \(1991\)](#), the Supreme Judicial Court remarked that “the husband’s proceeds from the personal injury suit undeniably would have been part of his divisible estate had he not exchanged them for an annuity. The character of the proceeds as property within his § 34 assignable estate does not change simply because he used them to purchase an annuity.”

Notably, the [Dalessio](#) court held personal injury award damages for lost future income are plainly divisible under Massachusetts law:

The husband’s final argument in this regard is that, if nothing else, the judge erred in including within the husband’s divisible estate so much of the lawsuit proceeds as compensated the husband for his future loss of earning capacity and his future medical expenses, because those proceeds represent compensation for events theoretically occurring after the divorce. The husband asks us to follow certain other States that have considered this question and hold that only those proceeds compensating the husband for losses occurring before the divorce can be assigned to the wife.

We decline to do so. ... [I]n the analogous area of pension benefits, it is clear that — in appropriate circumstances, and under the version of § 34 applicable to this case ... — a judge does not err in including within a spouse’s assignable estate a percentage of the spouse’s future pension benefits, even if that percentage includes benefits that are not specifically attributable to the period of the marriage.

In short, [Dalessio](#) makes clear that personal injury settlement proceeds fall squarely within the definition of “marital assets” under Massachusetts law.

Hanify Decision: Even Potential Settlements are Divisible Assets

[Dalessio](#) expanded on the Court’s previous holding in [Hanify v. Hanify, 403 Mass. 184, 187-188 \(1988\)](#), in which the SJC unambiguously declared that even a *potential* personal injury settlement is a divisible asset under Ch. 208, s 34:

The husband in this case has an enforceable, ripened, and pending claim for money damages. The damages include claims for income and assets lost during the marriage. The loss affected both spouses. Recovery of this loss should be considered an asset under § 34, because such recovery replaces monies that would have benefited both spouses had the alleged legal wrong not occurred.

The [Hanify](#) Court similarly held that basing the divisibility of a lawsuit on the timing and structure of a settlement would simply empower claimants to manipulate settlement outcomes to avoid the division of assets:

The fact that a lawsuit is still pending at the time of divorce does not alter this result. A contrary decision would merely “place the claimant in the position of manipulating the claim so as to ‘liquidate’ it after divorce and thus have the power to determine whether it is included in marital property.” ... In our view, “if the claim for a compensation award accrues during the marriage, the award is marital property regardless of when received.” We therefore affirm the judgment awarding the wife an interest in the pending lawsuit.

Today, [Hanify](#) remains black letter law in Massachusetts. Indeed, the case was recently cited with approval in [Adams v. Adams, 459 Mass. 361, 376 \(2011\)](#), in which the SJC noting that an “interest in [a] pending lawsuit is [a] ‘chose in action’ and ‘[c]hoses in action, rights and other interests, the benefits of which may be receivable now and in the future’ attributable to marital estate”) quoting [Hanify v. Hanify, 403 Mass. 184, 187-188 \(1988\)](#). **[Editor’s note:** For those keeping track at home, a ‘chose in action’ is a ‘proprietary right in

personam, such as a debt owned by another person, a share in a joint stock company, or a claim for damages in tort.” See Black’s Law Dictionary 275 (9th ed. 2009).] [Hanify](#) was cited again by the Massachusetts Appeals Court as good law in [Canisius v. Morgenstern \(2015\)](#).

Other states, such as New York, have taken a [different view on whether personal injury settlements are divisible property in a divorce](#). In Massachusetts, however, the law could not be clearer: a personal injury settlement can and will be divided as a marital asset in a divorce.

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