



Little, Meyers & Associates, Ltd.

Structured Settlements – Litigation Support

LMA Newsletter - March 2013



ALLSTATE CALLS IT QUILTS!

After nearly three decades in the structured settlement business, Allstate Life surprised the industry by announcing its imminent withdrawal from the structure marketplace. This move applies to both qualified and non-qualified cases. Allstate will continue to service all existing accounts, however.

A pioneer and innovator within the structured settlement industry, Allstate released a memorandum on February 20th informing brokers of this move. The decision followed a recent review into Allstate's products and distribution channels. It is unclear if Allstate will contemplate re-entering the structured annuity market in the future, but other companies have been known to do so (e.g., Berkshire Hathaway, Mutual of Omaha).

LMA would like to thank Allstate for its enormous contributions to the industry over the years. We wish all of the fine folks in the structured settlement department the very best in their future endeavors.

Allstate's exit notwithstanding, Little, Meyers & Associates can facilitate non-qualified structured settlements to resolve a wide range of non-physical claims, including divorces, structured sales, and oil & gas lease bonuses, as well as attorney fees.

AIG SURVEY HIGHLIGHTS NEED FOR CLIENT EDUCATION

A new consumer survey sponsored by AIG/American General emphasizes the need to educate injured persons and their families on structured settlements. Of the 1,000 people surveyed, 20% reported that they had a direct relationship with a personal injury case. Within that group, 64% of those who chose a lump-sum settlement said that their attorney did not inform them about the availability of structured settlements.

Attorneys can protect themselves from potential malpractice claims by counseling their clients on the nature and benefits of tax-free periodic payments. In recent years dissatisfied plaintiffs have successfully sued their former attorneys for failing to do so (e.g., *Grillo v Pettite*, No. 96-45090-92 (96th Tex. Dist. Mar. 23, 2001)). *Grillo* was a "shot across the bow" regarding the liability exposure associated with lump sum settlements. Lawyers are wise to have clients sign acknowledgment forms if they decline a structure, demonstrating that the client has been educated in this regard.

About LMA

Little, Meyers & Associates is a full-service structured settlement brokerage and legal consulting firm based in Cincinnati, Ohio.

LMA operates nationwide to resolve personal injury, wrongful death, workers' compensation, medical malpractice, and other tort-based disputes with expert analysis and innovative services.

LMA provides the following services:

- Structured settlements;
- Consulting on the taxation of settlements;
- Consulting on the impact of settlement proceeds on claimants' eligibility for government benefits (like Medicaid, SSI, etc.);
- Educating injured plaintiffs on behalf of their attorneys;
- Protecting attorneys from "failure to inform" professional liability claims; and
- Creating/administering 468B Qualified Settlement Funds (QSFs).

For more information please visit us at www.LMAsettlements.com or call us toll-free at 877-511-6642.



SMART Act to Benefit Plaintiffs, Defendants Alike

Earlier this year President Obama signed the "Strengthening Medicare and Repaying Taxpayers (SMART) Act" into law (H.R. 1845), bringing much needed change to the Medicare Secondary Payer (MSP) rules. The Act will improve the efficiency of the conditional payment recovery process in ways that will benefit injured plaintiffs and their lawyers, as well as claims payers.

Among numerous other provisions, the Act will establish:

- **Secure Web Portal** to access claims and conditional payment information in a timely fashion;
- **Timely Appeal Process/Timeline** for discrepancies/appeals;
- **Actuarial Threshold** for conditional payment reimbursement by the Centers for Medicare & Medicaid Services (CMS), where cost to recover exceeds expected reimbursement amount;
- **Statute of Limitations** (3 years) for CMS to bring conditional payment recovery actions.

In addition, the SMART Act requires CMS to amend the Mandatory Insurer Reporting (MIR) rules such that covered entities are no longer required to report Social Security numbers. Furthermore, the \$1,000 per day non-reporting penalty will become discretionary, not mandatory.

Although the rules implementing these changes are sure to be complex, this legislation is clearly a step in the right direction for the MSP process

CMS Announces Usage of CDC Life Table for MSA Calculations

As reported by Gould & Lamb of Bradenton, Florida, CMS will begin referencing the Center for Disease Control's Table 1: Life table for the total population: United States, 2008, for Workers' Compensation Medicare Set Aside (MSA) life expectancy calculations.

As such, CMS will apply the new life expectancy calculations to all new MSA proposals submitted to CMS, as well as cases reopened on or after January 19, 2013.

To view the table please visit: www.cdc.gov/nchs/data/nvsr/nvsr61/nvsr61_03.pdf

NEW STRUCTURED SETTLEMENT PRODUCTS / OPTIONS

As we move further into 2013, several new annuity products and payout designs have become available in our life markets:

- **Enhanced Attorney Fee Structure (EAFFS)** - an attorney fee structure using a variable fund to offer higher potential returns and a solution to the demand for shorter duration payments;
- **"Cash Refund" Annuity** - can create a Reversionary Interest to the Defendant/Insurer in the event that the claimant passes away prematurely. (Only available in approved Workers' Compensation cases);
- **"Bond-Type Payout" Option** - provides the claimant with a stream of payments for a certain period of time, followed by a lump sum equal to the total premium (cost) of the annuity. In addition to a return of principal, this payout option gives the claimant the ability to reinvest tax-free funds at a future date.

Please contact LMA for details

ALONG WITH TAX HIKES, FISCAL CLIFF LEGISLATION UNDERSCORES IMPORTANCE OF TAX PLANNING FOR ATTORNEYS, INJURED PERSONS

Although most Americans benefitted from the passage of the 2012 Taxpayer Relief Act (H.R. 8), the legislation increases income taxes for many high-income earners. The Act also increases the top estate, gift, and generation-skipping transfers rate from 35% to 40%. In addition, for individuals with adjusted gross income over \$400,000 (\$450,000 for joint filers), dividends and capital gains are now taxed at 20% (up from 15%). And despite the changes to the alternative minimum tax (AMT) with its incorporation of inflation adjustments, the AMT remains an important consideration for many.

These changes to our tax laws mandate careful attention to settlement planning and the use of Life Care Plan immunization, structured settlements, and commutation riders. And with regard to taxable settlements and attorney fees, the Act's provisions illustrate the utility of non-qualified assignments to defer income tax (rather than paying tax on the entire lump sum in the first year), while allowing the funds to grow tax-deferred



Little, Meyers & Associates, Ltd.

Tom Little, Esq. - Partner

Karen D. Meyers, MBA/JD, MEd, CPCU, FLMI, CLU, CSSC- Partner

Ben Taylor-Fabe, Esq. - Settlement Attorney

Jan Pook - Office Manager / Document Specialist

2651 Observatory Avenue • Cincinnati, Ohio 45208
Phone 513-871-8900 • Fax 513-871-9099

Edited by

Ben Taylor-Fabe, JD, CSSC
Settlement Attorney

