



Little, Meyers & Associates, Ltd.

Structured Settlements - Litigation Support

LMA Newsletter - May 2013



MAX BAUCUS TO RETIRE FROM SENATE IN 2014

On April 23, U.S. Senator Max Baucus (D-MT) announced that he will not run for re-election in 2014, concluding a political career that spanned over four decades. First elected to the Senate in 1978, the senior Senator from Montana has served as chairman of the influential Senate Finance Committee for over eight years.

During his tenure in the Senate, Baucus was an original sponsor of the bipartisan legislation authorizing tax-free structured settlements as a means of assuring continuing income to injury victims and minimizing the risk that lump sum recoveries will be dissipated. As the concept of structured settlements has evolved, Baucus has been a stalwart advocate of the industry, and a supporter of efforts to regulate "secondary market" factoring companies.

We at LMA would like to extend our sincere gratitude to Senator Baucus for his decades of service to the people of Montana and the United States, as well as his contributions to the structured settlement industry. We wish him and his family the best.

CMS RECOGNIZES STRUCTURED SETTLEMENTS IN MEDICARE SET-ASIDES

As reported by Doug Brand and Doug Shaw of Medivest on the National Structured Settlements Trade Association (NSSTA) April 5th Guest Blog, the Centers for Medicare and Medicaid Services (CMS) recently published *The Workers Compensation Medicare Set-Aside Arrangement (WCMSA) Reference Guide*, an 88-page document which consolidates 26 prior memos and alerts issued since 2001.

Notably, the new reference guide makes clear both that WCMSAs can continue to be funded with structured settlements, and that medically underwritten rated ages can continue to be used.

The guide is a helpful response to industry calls for clearer guidance from CMS on the WCMSA program. The new reference guide is available at <http://www.cms.gov/Medicare/Coordination-of-Benefits/WorkersCompAgencyServices/Downloads/March-29-2013-WCMSA-Reference-Guide-Version-13.pdf>.

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.

In addition to consultation on structured settlements, LMA provides the following services:

- Consulting on the taxation of settlements;
- Consulting on the impact of settlement proceeds on eligibility for government benefits;
- 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.



SPECULATION CONTINUES OVER EFFECT OF OBAMACARE ON PERSONAL INJURY LAW

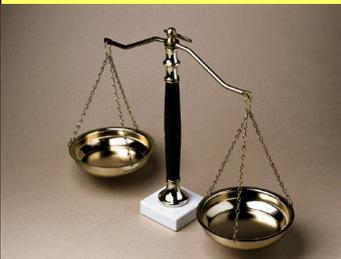
As 2014 draws nearer, commentators continue to debate how some provisions of the Patient Protection and Affordable Care Act (ACA) will affect the practice of PI law, as well as settlement planning.

Without question, the ACA will do a great deal to improve access to medical care for many injury victims. However, some experts speculate that the law will complicate the already difficult task of calculating the value of a PI case.

Among numerous other predictions, some commentators contend that the health insurance reforms contained in the ACA will:

- Significantly reduce PI damage awards (and Life Care Plan projections) by reducing the cost of injured persons' future medical expenses;
- Lead to the abrogation/modification of the Collateral Source Rule (which excludes evidence of collateral source compensation at trial) by undermining the justifications for keeping the Rule; and
- Expand the role of the Life Care Planner in analyzing PI damages, as they must determine which health care and living expenses will be covered by the ACA's minimum insurance requirements.

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KAREN MEYERS SPEAKS AT TRADE ASSOCIATION EVENTS

LMA's Karen Meyers has been hitting the speaking circuit in recent weeks, giving seminars at both the National Structured Settlements Trade Association (NSSTA) and Society of Settlement Planners (SSP) 2013 annual meetings.

Most recently, Karen spoke at the SSP Annual Conference held in Las Vegas from May 5-7. Karen gave a presentation entitled *"To Trust or Not to Trust – That is the Question,"* covering various questions regarding the use of trusts in the construction of an optimal settlement plan. This topic is of particular importance given the ever-evolving issues concerning the Affordable Care Act and government assistance benefits.

Additionally, at NSSTA's Annual Meeting in Palm Springs, California held from April 17-19, Karen presented a four-hour continuing education course concerning annuity basics, suitability standards and regulations, particularly with regard to the senior population.

While at the NSSTA Annual Meeting, Karen also awarded certificates to those who completed NSSTA's Certified Structured Settlement Consultant (CSC) industry designation program held at the University of Notre Dame's Executive MBA Program in November 2012.

AS HANCOCK EXITS STRUCTURE BIZ, MUTUAL OF OMAHA STEPS BACK IN

Echoing a move by Allstate earlier this year, John Hancock Life Insurance Company recently announced its plans to withdraw from the structured settlement marketplace. In a March 4th memorandum, Hancock wrote that the decision followed the company's implementation of a "series of strategic shifts to best position itself for future growth and the protection of millions of in-force policyholders and other beneficiaries." LMA would like to thank all of John Hancock's wonderful employees for their expert assistance over the years.

Hancock's move comes as Mutual of Omaha continues the process of re-entering the structure business. On April 11th, Omaha announced the launch of its website for settlement consultants and support personnel. Its broker quoting software remains in development at this time, however.

Although we are sorry to see John Hancock go, LMA is pleased to welcome Mutual of Omaha back to the growing array of highly-rated structured settlement providers.

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SPECULATION CONTINUES OVER EFFECT OF OBAMACARE ON PERSONAL INJURY LAW (CONT. FROM PAGE 2)

ATTORNEY HEADS UP: DON'T MAKE MSA DETERMINATION HARDER THAN IT ALREADY IS

A recent case decided by a U.S. District Court in Mississippi demonstrates the imprudence of asking a Court to rule on the requirement of a Medicare Set-Aside (MSA). *Stephen Welch v. American Home Assurance Company, et al.*, 2013 U.S. Dist. LEXIS 25948 (D. Miss. 2013) involved the settlement of both workers' compensation and liability cases stemming from a workplace injury to the plaintiff's elbow. The parties had negotiated a global settlement agreement, one of the terms being that the federal court would determine both the necessity and amount of an MSA pursuant to the Medicare Secondary Payer (MSP) Act.

After holding an evidentiary hearing, the district court judge determined that an MSA was indeed necessary, and determined that \$278,019.08 would adequately protect Medicare's interests. Remarkably, the Court itself acknowledged that, had the case been submitted to the Centers for Medicare and Medicaid Services (CMS) under its own well-established review guidelines, CMS would have likely accepted a set-aside amount of just \$174,762.85.

Also noteworthy (but hardly surprising) was the U.S. Attorney's assertion that the Department of Health and Human Services was not a party to the action, and hence effectively not bound by the district court's decision.

This case also involved an analysis and determination by the Court on whether the plaintiff was competent to self-administer his MSA account. LMA will address the issue of self-administration in a future newsletter.

The *Welch* case highlights the importance of pre-settlement strategic planning, consultation with third party experts and administrators, and appropriate communication with CMS.

Several professional associations have recently focused on these issues in member conferences and periodicals, including the Society of Settlement Planners (SSP), the Academy of Special Needs Planners (ASNP), and the National Academy of Elder Law Attorneys (NAELA).

Additionally, these topics are addressed in a number of recent scholarly papers and law review articles, including:

- Rebecca Levenson, *Allocating the Costs of Harm to Whom They are Due: Modifying the Collateral Source Rule After Health Care Reform*, 160 U. Pa. L. Rev. 921 (2012);
- David Lillesand, *The Impact of the Affordable Care Act on the Practice of Special Needs Law* (Materials from the Sixth Annual Meeting of the Academy of Special Needs Planners) (2012); and
- Joshua Congdon-Hohman and Victor A. Matheson, *Potential Effects of the Affordable Care Act on the Award of Life Care Expenses*, College of the Holy Cross, Department of Economics, Faculty Research Series (Paper No. 12-01) (2012).



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