



# Little, Meyers & Associates, Ltd.

Structured Settlements • Litigation Support

LMA Newsletter - 2013 Year-In-Review



## CONGRESSMAN JOHN LEWIS' STRUCTURED SETTLEMENTS CAUCUS GATHERS STEAM

Last summer U.S. Congressman John Lewis (D-GA) announced the formation of a new "Congressional Structured Settlements Caucus" in the U.S. House of Representatives. In launching the Caucus, Lewis distributed a "Dear Colleague" letter to all 435 members of the House encouraging them to join. Lewis wrote that *"the new Structured Settlements Caucus will highlight one of Congress' great bipartisan policy successes during the last 30 years. This Caucus will help educate the congressional community about the important role that structured settlements play in assisting injured victims in their lives with economic security, confidence and dignity after a serious physical injury."* The Caucus has been formally approved by Speaker of the House John Boehner (R-OH) and the House Administration Committee, and has already attracted a number of lawmakers to join its ranks.

Congressman Lewis is the Senior Chief Deputy Democratic Whip and serves on both the House Ways and Means Committee and the House Oversight Committee. The son of sharecroppers, Lewis has long been one of the nation's leading advocates for equal rights and non-violence. A Freedom Rider, he was beaten and arrested many times for challenging Jim Crow laws. Lewis is the only living "Big Six" leader of the American Civil Rights movement, and the sole surviving speaker from the 1963 March on Washington, DC, where 250,000 people came to hear Dr. Martin Luther King's famous "I have a dream" speech.

During his tenure in Congress, Rep. Lewis has been an ardent supporter of tax-free structured settlements. In 2010, Lewis gave a speech to the National Structured Settlements Trade Association (NSSTA) expressing his support for the concept. Noting that structures have been recognized and encouraged by the federal tax code since the early 1980s, Lewis stated that structured settlements *"are the right thing to do and a fair tax treatment for people who have fallen on hard times."* Lewis pledged his continued support for structured settlements as long as he is serving on the Ways and Means Committee.

This effort to educate our elected officials is particularly important at this juncture as some lawmakers are pushing for comprehensive Tax Reform, including U.S. Senator Orrin Hatch (R-UT) and Senate Finance Committee Chairman Max Baucus (D-MT), another long-time supporter of structured settlements.

Please email [btaylorfabe@LMAsettlements.com](mailto:btaylorfabe@LMAsettlements.com) for a full copy of Congressman Lewis' "Dear Colleague" letter.

## 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 consulting 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](http://www.LMAsettlements.com) or call us toll-free at 877-511-6642.



## Medivest Stresses Importance of Competency In Proper MSA Administration

In a December 5th email memorandum, Medivest Benefit Advisors of Oviedo, Florida emphasized the need to evaluate whether or not an injured individual is capable of managing his/her own Medicare Set-Aside (MSA) account in accordance with the rules set forth by the Centers for Medicare and Medicaid Services (CMS).

The memorandum explains that CMS requires an MSA to be administered by a "competent" administrator, thus raising the question: "who is competent to handle this duty?" Medivest argues that "An injured individual simply does not have access to the tools necessary to successful [sic] administer their own MSA such as updated fee schedules and a complete listing of Medicare-covered expenses." Medivest cautions that mismanagement of an injured claimant's MSA can result in a possible loss of their future Medicare coverage.

Ever since CMS began requiring MSAs, Little, Meyers & Associates has likewise strongly recommended professional administration to injured claimants due to the challenges that many individuals face in working through the labyrinth of provider and insurance billing practices. Professional administration ensures that the injured claimant is protected, their medical bills are properly paid at the appropriately discounted rates, and Medicare's interests are protected as required by the Medicare Secondary Payer Act.

## KAREN MEYERS DISCUSSES AFFORDABLE CARE ACT, COLLATERAL SOURCE RULE AT BAR/TRADE ASSOCIATION EVENTS

LMA's Karen Meyers continues to be active in the national discussion over the impact of the Patient Protection and Affordable Care Act (ACA) on the practice of personal injury law, structured settlements, and settlement planning.

On October 16th, Karen gave a seminar for the Cincinnati Bar Association (CBA) which provided critical information to attorneys, judges and mediators involved in the settlement of personal injury claims as the implementation of the ACA moves forward. The topics addressed included issues concerning insurance eligibility, Medicaid integration with the ACA, and required coverage of essential health benefits. Karen also spoke about potential changes to the Collateral Source Rule and current state-specific developments in that regard.

More recently, Karen was a participant in an ACA Panel discussion held on November 6th at the National Structured Settlements Trade Association (NSSTA) 2013 Fall Marketing Meeting in Dallas, Texas. Joined by other industry leaders, Karen spoke about the effect of the ACA on structured settlements, as well as preventive care (including family planning and related services), and the development of the state and federal health care exchanges.

Karen regularly lectures about the Affordable Care Act at the Miami University Farmers School of Business, where she serves as an Assistant Visiting Professor. Among other credentials, Karen is the past chair of the Patient and Family Advisory Council at the Cincinnati Christ Hospital, and is active on its Ethics and Geriatric Service Committees. Karen also co-developed the Certified Structured Settlements Consultant (CSSC) designation program, which she presents annually through the University of Notre Dame Mendoza College of Business and NSSTA.

LMA will continue to report on important developments concerning the Affordable Care Act and how the law could impact the practice of personal injury law.

## CMS RELEASES NEW WCMSA REFERENCE GUIDE

As reported by the Centers for Medicare and Medicaid Services (CMS), an updated Workers' Compensation Medicare Set-Aside Arrangement (WCMSA) Reference Guide is now available for download on the CMS website. This new version documents the current WCMSA review process and provides more detailed information on the actions performed by the Workers' Compensation Recovery Contractor (WCRC). The new Reference Guide and a summary of its enhancements can be found at [www.CMS.gov](http://www.CMS.gov).

CMS is currently working on additional enhancements to the WCMSA process and promises to notify stakeholders of these proposed changes prior to their implementation.

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## ILLINOIS APPEALS COURT OVERRULES FACTORING TRANSACTIONS PROCURED BY FRAUD

On August 30, 2013, a three-judge panel of the Appellate Court of Illinois, Fourth District, ruled that several trial court orders previously entered under the Illinois Structured Settlement Protection Act (the "Illinois SSPA") were void because they were procured by fraud (see *Settlement Funding, LLC v. Brenston*, IL. App. (4th Dist.) No. 4-12-0869). Appellant Cathy Brenston had been the plaintiff in a medical malpractice action brought in Cook County that settled in 2003

through the use of a structured settlement annuity. In 2007 and 2008, Settlement Funding entered into factoring transactions with Brenston that were approved under the Illinois SSPA by the Circuit Court of Sangamon County. Thereafter, Ms. Brenston's attorney sought to void the SSPA transfer orders on the grounds that the Sangamon County Circuit Court lacked jurisdiction to approve them. However, the Circuit Court dismissed Brenston's petitions on procedural grounds.

The Appellate Court reversed, holding that the Circuit Court orders approving the transfer of Brenston's payment rights were procured by fraud on the court. The Appellate Court found that "because [the] settlement agreement contained an enforceable antiassignment provision, the trial court had a duty to enforce that provision . . . and it had no authority under the [Illinois SSPA] to approve Settlement Funding's petitions." Rather than challenging the validity or enforceability of the antiassignment provision, Settlement Funding "suppressed the existence of the provision in its pleadings before the Court." The Appellate Court found this to be a material omission by the factoring company. The case was remanded to the Circuit Court with instructions to "conduct a hearing to restore Brenston to the economic position she held prior to the legally ineffective transfer of her annuity payments, less any funds advanced to her."

The Brenston decision could have far-reaching implications for factoring transactions entered into pursuant to the Illinois SSPA.

### ATTORNEY PRACTICE TIPS: *Requesting a Refund from Medicare*

As personal injury lawyers know all too well, repaying Medicare for conditional payments can result in a significantly reduced net recovery for an injured Medicare beneficiary—or worse yet, no net recovery whatsoever. The Medicare Secondary Payer Statute (MSP) has a repayment formula that maximizes the return of funds to Medicare but largely fails to take into account the future well-being of the Medicare beneficiary (see 42 C.F.R. § 411.37(c); 42 C.F.R. § 411.37(d)).

Notwithstanding Medicare's often unfair application of the repayment regulations, there are a number of ways that an injured Medicare beneficiary can potentially increase his or her net recovery by requesting a refund from Medicare. Specifically, there are three seldom-used statutory methods under which a beneficiary may obtain a refund of part or all of the funds paid to the Medicare Secondary Payer Recovery Contractor (MSPRC) in satisfaction of Medicare's "Final Demand":

- 1) Requesting a "Financial Hardship" waiver from MSPRC under § 1870(c) of the Social Security Act (see 42 U.S.C. § 1395gg (c));
- 2) Requesting a "Best Interest of the Program" waiver directly from the Centers for Medicare and Medicaid Services (CMS) under § 1870(b) of the Act; and/or
- 3) Requesting a Compromise from CMS under the Federal Claims Collection Act (FCCA) (see 31 U.S.C. § 3711).

These strategies represent low-cost ways for injured plaintiffs to maximize their chances of preserving their settlement funds and mitigate the unforgiving nature of the MSP recovery process.



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