Little, Meyers & Associates, Ltd.

Structured Settlements • Litigation Support

LMA Newsletter - *2014 Summer News Roundup*

INDEX-LINKED PAYMENT RIDER NOW AVAILABLE FOR STRUCTURED SETTLEMENT ANNUITIES

Pacific Life Insurance Company recently introduced a brand new Index-Linked Annuity Payment Adjustment (*"ILAPA"*) Rider for its structured settlement annuity product. The ILAPA Rider offers claimants and attorneys the potential for increased payment amounts while maintaining the current benefit level. The potential for increased payments is based on positive movement of the S&P 500® index, a market capitalization-weighted index of 500 companies in leading industries of the U.S. economy.

By adding this optional rider to a structured settlement annuity, periodic payments can increase based on positive S&P 500 index returns over each 12-month Index Measurement Period, subject to an annual maximum of 5%.

Furthermore, the annuity payments will *never decrease*, regardless of market or economic conditions. Thus, if the S&P 500 index has a negative or zero return, there is no reduction to the periodic payment amount.

Earlier this summer LMA staff attended Pacific Life's Structured Settlement Administrative Conference in Nashville, Tennessee to learn the ins and outs of this new product offering, including historical S&P index return data and information on how the ILAPA rider compares to the traditional, *fixed* annual cost of living adjustment ("COLA").

Contact LMA today for a Client Brochure and/or annuity illustration with the ILAPA Rider.

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 or call us toll-free at 877-511-6642.

UPDATED M.S.A. REFERENCE GUIDE FUNDAMENTALLY CHANGES BEST PRACTICES IN WORKERS' COMPENSATION SETTLEMENTS

On June 3, 2014, the Centers for Medicare and Medicaid Services ("CMS") released Version 2.2 of its Workers' Compensation Medicare Set-Aside ("WCMSA") Reference Guide, representing the fourth version published by CMS. The most striking update to the Guide concerns Section 4.1.4 (entitled "Hearing on the Merits of the Case"). That Section provides that—where parties to a workers' compensation ("WC") settlement identify which proceeds of the claimant's award represent *non-medical* damages (as opposed to *medical* damages)—**and** that allocation is approved on the merits by a court or equivalent adjudicator (e.g., a state WC board/commission)—CMS will honor that allocation. Significantly, this means parties can now further limit their exposure on the Medicare Set-Aside ("MSA") issue. Meanwhile, the traditional WCMSA report (which only calculates medical expenses) is no longer sufficient as it can result in parties overfunding a WCMSA, thereby increasing parties' exposure.

The addition of Section 4.1.4 to the Guide could fundamentally change how parties resolve WC claims. In the past, when an employer or carrier received an MSA report which contained a prohibitively high MSA figure, the parties were essentially stuck. Faced with the apparent conclusion that the *entire* MSA amount would need to be funded as part of any WC settlement and being advised that they must "consider and protect Medicare's interest," the parties often would not close future medicals. Instead, they would close the *indemnity* portion of the WC claim while leaving medicals open.

And while that remains an option, CMS has now provided an available and compliant alternative. Instead of the MSA figure driving the amount needed to complete a settlement, parties can now agree on a settlement figure, *then* calculate that portion of the award for medicals versus non-medicals. When such analysis is conducted pre-settlement, one can easily see how a potential settlement value affects the MSA obligation which results.

With its issuance of the updated Reference Guide, CMS has provided the WC industry crucial guidance with respect to WCMSAs. The astute practitioner will be sure to incorporate the allocation concept into every WC situation that needs to be resolved. Based on this new CMS instruction, a traditional MSA report is no longer an acceptable tool in the Medicare Secondary Payer compliance context. Instead, an effort to resolve a WC claim should address both an analysis of future cost of care needs *and* an analysis of the non-medical component of the claim (using state-specific WC statutes to identify factors such as disability rating, body part, number of weeks allowed and dollars per week).

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CONGRESSIONAL STRUCTURED SETTLEMENTS CAUCUS HOLDS INAUGURAL MEETING

On March 5, the historic, bi-partisan Congressional Structured Settlements Caucus held its inaugural meeting on Capitol Hill.

The Caucus was established in an effort to educate the congressional community on the vital importance of structured settlements, and featured the telling theme, "Focus on the Health and Welfare Needs of Injured Victims."

Assembled by Rep. John Lewis (D-GA) and co-chaired by Rep. Jim Sensenbrenner (R-WI) and Rep. Jim Langevin (D-RI), the Caucus emphasized the critical role that structured settlements play in helping personal injury victims and their families experience financial security and peace of mind.

The Caucus welcomed congressional staffers, disability advocates and industry leaders to a spirited discussion of structured settlements and the many advantages these solutions offer. The ultimate goals of the Caucus are to expand the base of congressional support; educate new members of Congress on structured settlements; and both promote and protect structured settlements.

Sections 104 and 130 of the Internal Revenue Code state that damages paid due to personal physical injury, sickness or death are excluded from an individual's income tax. This is vitally important, as protecting the long-term economic security of personal injury victims can help preserve their settlements and avoid the need for public assistance.

LMA encourages supporters of structured settlements to reach out to your congressional representative and ask him or her to join the Caucus.

CALIFORNIA VOTERS TO CONSIDER RAISING CAP ON MEDICAL MALPRACTICE AWARDS

This November, California voters will vote on whether to raise a four-decade-old cap on pain-and-suffering awards in medical malpractice lawsuits, which was originally set in 1975 and is not indexed to inflation.

Proposition 46, the "Medical Malpractice Lawsuits Cap and Drug Testing of Doctors" Initiative, is on the November 4, 2014 ballot in California as an initiated state statute. Supporters of the initiative successfully collected hundreds of thousands of signatures in order to place the measure on the ballot.

If approved by voters, the initiative will:

- Increase the state's cap on damages that can be assessed in medical negligence lawsuits to over $1 million from the current cap of $250,000;
- Require drug and alcohol testing of doctors and reporting of positive tests to the California Medical Board;
- Require the California Medical Board to suspend doctors pending investigation of positive tests and take disciplinary action if the doctor was found impaired while on duty;
- Require health care practitioners to report any doctor suspected of drug or alcohol impairment or medical negligence;
- Require health care practitioners to consult state prescription drug history database before prescribing certain controlled substances.

The measure, if approved, would create the first law in the United States to require random drug testing of physicians. The proposed legislation comes in the wake of growing concern about over-prescription of addictive pain medications, including among doctors themselves.

Opponents of the measure, including insurance companies and medical groups, argue that lifting the existing $250,000 cap would cause health care costs to rise even further than their current levels, as doctors would be forced to spend more on malpractice insurance.

Remarkably, California Governor Jerry Brown (D) could be in the position to modernize the same legislation he enacted in his first term in office nearly 40 years ago, as voters must also decide whether to reelect Brown to a fourth term in office when they head to the ballots on November 4th.

Governor Brown, now 76, signed the original Medical Injury Compensation Reform Act (MICRA) into law in 1975 in response to doctors who complained about medical malpractice awards being too high. If MICRA was pegged to inflation, the cap would now be set at $1.1 million, according to Ballotpedia.org. Conversely, $250,000 in 2014 would have been $57,600 in 1975.

California Chief Justice Donald Wright (left) swearing in Brown as Governor of California on January 6, 1975

"JerryBrownInauguration1975" by Sacramento Bee - http://media.sacbee.com/smedia/2010/11/05/17/s252-jerry_brown09.standalone.prod_affiliate.4.jpg (Picture #47 at http://www.sacbee.com/2010/11/05/3163547/gov-jerry-brown-then-and-now.html).

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