

December 20, 2006 LLA Lunch and Learn Seminar

**WORKERS' COMPENSATION PRACTICE PITFALLS**

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**I. STATUTES OF LIMITATIONS/REPOSE**

- A. COMMUTATIONS AND C & Rs;
- B. MEDICAL BENEFIT CLAIMS;
- C. OTHER BARS/LIMITATIONS;
  - 1. 21 DAY NOTICE RULE;
  - 2. 120 DAY NOTICE RULE;
  - 3. 500 WEEK ENTITLEMENT LIMITATION;
  - 4. INTEREST FORFEITURE;
  - 5. YELLOW FREIGHT DEFENSE LIMITATION

**II. RETIREMENT ISSUES**

- A. VOLUNTARY RETIREMENT EQUALS SUSPENSION OF BENEFITS WITH BURDEN OF PROOF ON CLAIMANT TO ESTABLISH CONTINUING DISABILITY;
- B. INVOLUNTARY RETIREMENT SECONDARY TO INJURY EQUALS A CONTINUING PRESUMPTION OF WORK-RELATED DISABILITY WITH BURDEN OF PROOF ON THE EMPLOYER TO ESTABLISH JOB REFERRALS OR EARNING POWER/CAPACITY;
- C. PENSION OFFSETS
  - 1. DEFINED CONTRIBUTION PENSION PLANS;
  - 2. DEFINED BENEFIT PENSION PLANS (ACTUARIAL EXPERT TESTIMONY ALLOWED/REQUIRED);
  - 3. PROVE IT OR LOSE IT? TOTALLY OR IN PART?

#### **D. MISCELLANEOUS OFFSETS**

- 1. SHORT TERM/LONG TERM DISABILITY TO PERCENTAGE FUNDED BY EMPLOYER;**
- 2. UNEMPLOYMENT COMPENSATION BENEFITS;**
- 3. SOCIAL SECURITY OFFSET;**
- 4. OLD AGE/RETIREMENT ONLY (50% OF BENEFIT OFFSET) BUT THEN ONLY IF CLAIMANT NOT RECEIVING RETIREMENT BENEFITS AT TIME OF WORK INJURY;**
- 5. NO OFFSET FOR WIDOW/WIDOWER BENEFITS;**
- 6. FACTOR TO CONSIDER IN C & R CASE EVALUATION FOR OLDER CLAIMANTS**
- 7. OFFSETS/CREDITS ARE FOR GROSS AMOUNT OF BENEFITS, NOT NET**

#### **III. SOCIAL SECURITY ISSUES**

##### **A. WC OFFSET FROM SSDI BENEFITS;**

- 1. IN CASE OF C & R SETTLEMENTS PRO-RATE LUMP-SUM NET OF COUNSEL FEES (AND FUTURE MEDICAL BENEFITS) OVER CLAIMANT'S LIFE EXPECTANCY;**
- 2. INCLUDE SSDI WC PRORATION LANGUAGE IN EVERY C & R AGREEMENT, EVEN IF CLIENT NOT CURRENTLY RECEIVING SSDI;**
- 3. CONSIDER FILING FOR SSDI PRIOR TO OR PART OF A C & R SETTLEMENT TO CREATE A POTENTIAL "WIN/WIN" FOR BOTH THE CLAIMANT AND CARRIER**

##### **B. MEDICARE SET-ASIDE ARRANGEMENTS/TRUSTS**

- 1. CMS REVIEW THRESHOLDS ARE NOT A "SAFE HARBOR"**
- 2. CARRIER PAYMENT OF NONWORK-RELATED MEDICAL BENEFITS MAY MEAN CONDITIONS FOR WHICH PAYMENTS WERE MADE MUST BE COVERED IN A MSA;**

### **3. PRACTICE POINTERS**

**(a) HAVE CARRIER FUND VENDOR FOR FUTURE MEDICAL EXPENSE PROJECTION AND MSA;**

**(b) OBTAIN LETTER FROM CMS THAT MSA NOT REQUIRED;**

**(c) OBLIGATION OF CLAIMANT'S COUNSEL TO EDUCATE CLAIMANT ON MECHANICS OF A SELF-ADMINISTERED MSA TRUST;**

**(d) USE OF STRUCTURED SETTLEMENT/ANNUITY TO FUND MSA**

### **IV. MISCELLANY**

**A. FEE DISPUTES – SOME ARE WITHIN WCJ JURISDICTION AND SOME REQUIRE ADJUDICATION IN COURT OF COMMON PLEAS;**

**B. RECENT AMENDMENTS TO THE ACT;**

**1. MANDATORY MEDIATION;**

**2. LITIGATION TIME LINE;**

**C. IRE AS BAR TO EMPLOYER TERMINATION PETITION.**

### **V. CONCLUSION**

Add after "The balance shall be paid directly to the Claimant"

New paragraph:

The sum of \$ ~~30,000.00~~ <sup>37,000</sup> represents payment of all future wage and medical claims for workers' compensation. \$ 2000.00 represents future medical claims.

The sum of \$ ~~28,000.00~~ <sup>35,000</sup> represents all future wage claims for workers' compensation. This sum is compensation for impairment of the Claimant's earning power for the remainder of the Claimant's life. Out of this sum, the Claimant is paying \$ 7000.00 in attorney's fees. The Claimant will net the sum of \$ 28,000

The Claimant's remaining life expectancy (according to Arias, E. United States life tables, 2002. National vital statistics reports; vol. 53 no. 6. Hyattsville, Maryland: National Center for Health Statistics. 2004) is 282 months. Therefore, even though the above amount is paid in a lump sum, the Claimant's monthly workers' compensation benefit, for the purpose of determining the setoff by the Social Security Administration amounts to \$ 99.02 per month for 282

months, commencing the day of the written Decision granting the Compromise and Release. The commencement date represents the last payment of temporary total disability benefits. See Program Operation Manual Systems (POMS), Section D1 11501.235C (July 1986); *Sciarotta v. Bowen*, 837 F.2d 135, 140-141 (3d. Cir. 1987)

**Life Tables URL:**

**<http://www.cdc.gov/nchs/data/nvsr/nvsr53/nvsr/53-06.pdf>**

**Requires Adobe Reader download free at:**

**<http://www.adobe.com/products/acrobat/readstep.html>**

**SETTLEMENTS THAT REQUIRE A MEDICARE  
SET-ASIDE ALLOCATION AND CMS APPROVAL:**

If the claimant is currently a Medicare beneficiary and the total settlement is more than \$25,000.00

OR

If the settlement amount exceeds \$250,000 and the claimant has a reasonable expectation of becoming a Medicare beneficiary within thirty (30) months of the settlement date

**The factors to determine a reasonable expectation are:**

- Claimant has applied for Social Security Disability Benefits
- Claimant has been denied Social Security Disability Benefits but anticipates filing an appeal
- Claimant is in the process of appealing and/or refileing for Social Security Disability Benefits
- Claimant is (or will be) at least 62 years and 6 months old, 120 days from today
- Claimant has End Stage Renal Disease (ESRD) but does not qualify for Medicare based on ESRD

*For cases where the CMS review threshold is not met,  
CMS's interests must still be considered.*

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THE LIG GROUP, LLC, 361 State Road, P.O. Box 190, Barnesville, PA 18214

# THE LIG GROUP, LLC

*The Solution to the "Medicare Problem"*

Thank you for the opportunity to introduce our services. The LIG Group, LLC offers Medicare Set-aside Solutions for even the most complex cases. We understand the intricacies of a workers' compensation case and the complexities involved in settling a case when a Medicare Set-aside Arrangement is involved. Many times a case does not settle due to concern over obtaining CMS approval for the MSA. The LIG Group not only provides a medical review by a Board Certified Physician, but also provides a review by an experienced Workers' Compensation Attorney.

## **Medicare Set-aside Allocation and Submission to CMS that includes:**

- Review by an Experienced Workers' Compensation Attorney
- All necessary release forms
- Rated Age Life Expectancy
- Report of Projected Future Medical Treatment prepared by our Network of Physicians
- Entitlement Information
- Placement in Discounted Pharmacy Prescription plans available
- Retrieval and Submission of medical records for last 2 years (up to \$100 covered in flat fee)
- Retrieval and Submission of Medical Bill Payment History for last 2 years
- Submission to CMS
- Average 14 day turn around time
- Flat Fee of \$3,200

## **Medical Records Review**

(MSP compliance in cases that do not meet the CMS review threshold)

- Retrieve all related medical records (up to \$100 covered in flat fee)
- Report of Projected Future Medical Treatment prepared by our Network of Physicians
- Determine cost of future treatment
- Flat Fee of \$1300 for basic cases; Flat Fee of \$2000 for complex cases

*For more Information:*

Phone: 570-467-3764

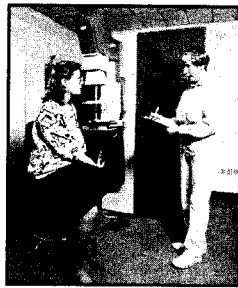
Fax: 570-467-3771

[www.LIGgroup-medicare.com](http://www.LIGgroup-medicare.com)

email: [LIG@LIGgroup-medicare.com](mailto:LIG@LIGgroup-medicare.com)

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# MEDICARE SETTLEMENT SOLUTIONS PLUS



# MSSP Services

## Medicare-set-aside (MSA) allocation

- Retrieve and provide all necessary release forms
- Retrieve and provide all related medical records for the last 2 years
- If medical record retrieval cost exceeds \$100.00 that cost will be billed in addition to set fee.
- Physician review of related medical records
- Provide a future treatment plan
- Determination of Rated Age as needed or life expectancy
- Create a life-care plan if necessary (additional fee)
- Retrieve and provide all related medical billings (last 2 years)
- Calculate future treatment costs
- Retrieve and provide settlement information
- Retrieve and provide custodial agreement, annuity or assignment information if applicable.
- Provide entitlement information (Medicare part A &/ part B)
- Determine Status of Social Security Disability and Medicare benefits
- Submit to Centers for Medicare and Medicaid Services (CMS)

FEE: \$3200



## Medical-records review

- Retrieve all related medical records
- Conduct physician review and establish future-treatment plan
- Determine cost of future treatment

FEE: Basic: \$1300, Complex: \$2000

(MSP compliance in cases that don't meet CMS thresholds)

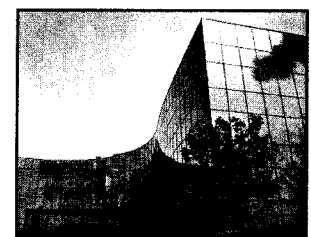


## Life-care plans

- Provide free quote as necessary

## Structured settlement services

- Trusts
- Annuities
- Special-needs trusts for clients currently on Medicare



299 Cherry Blossom Drive • Southampton, PA 18966  
215.396.2577 • 215.396.2507 fax  
[www.medicaresettlement.com](http://www.medicaresettlement.com)



**PLEASE RETURN COMPLETED FORM TO:**

Medicare Settlement Solutions Plus  
 299 Cherry Blossom Drive  
 Southampton, PA 18966  
 215-396-2577  
 215-396-2507 fax

**BENEFICIARY INFORMATION**

NAME: \_\_\_\_\_ MALE \_\_\_\_\_ FEMALE \_\_\_\_\_ DATE OF BIRTH: \_\_\_\_\_  
Last First MI  
 ADDRESS: \_\_\_\_\_ PHONE: \_\_\_\_\_  
Street City State Zip  
 SOCIAL SECURITY #: \_\_\_\_\_ DATE OF INJURY: \_\_\_\_\_ CLAIM NUMBER: \_\_\_\_\_  
 INJURY DESCRIPTION: \_\_\_\_\_

**CLAIM INFORMATION**

EMPLOYER: \_\_\_\_\_  
 ADDRESS: \_\_\_\_\_ PHONE: \_\_\_\_\_  
Street City State Zip  
 FAX: \_\_\_\_\_ EMAIL: \_\_\_\_\_

WORKERS COMPENSTION INSURANCE CARRIER: \_\_\_\_\_  
 ADDRESS: \_\_\_\_\_ PHONE: \_\_\_\_\_  
Street City State Zip  
 ADJUSTER'S NAME: \_\_\_\_\_ EXT.: \_\_\_\_\_  
 FAX: \_\_\_\_\_ EMAIL: \_\_\_\_\_

DEFENSE ATTORNEY: \_\_\_\_\_ FIRM NAME: \_\_\_\_\_  
 ADDRESS: \_\_\_\_\_ PHONE: \_\_\_\_\_  
Street City State Zip  
 FAX: \_\_\_\_\_ PARALEGAL: \_\_\_\_\_ EMAIL: \_\_\_\_\_

CLAIMANT ATTORNEY: \_\_\_\_\_ FIRM NAME: \_\_\_\_\_  
 ADDRESS: \_\_\_\_\_ PHONE: \_\_\_\_\_  
Street City State Zip  
 FAX: \_\_\_\_\_ PARALEGAL: \_\_\_\_\_ EMAIL: \_\_\_\_\_

PHYSICIAN: \_\_\_\_\_ PRACTICE NAME: \_\_\_\_\_  
 ADDRESS: \_\_\_\_\_ PHONE: \_\_\_\_\_  
Street City State Zip  
 FAX: \_\_\_\_\_ EMAIL: \_\_\_\_\_

- |  |   |     |    |
|--|---|-----|----|
| 1. Has claimant applied for, been denied and/or appealing Social Security Disability benefits? |   | Yes | No |
| 2. Is claimant currently receiving Social Security Disability benefits?                        |   | Yes | No |
| 3. Is claimant currently a Medicare Beneficiary?   |   | Yes | No |
| 4. Have the releases been sent to the claimant?  |   | Yes | No |
| 5. Has the claim been settled?   | If yes, amount: \$ _____                  | Yes | No |
| 6. Has rated age been obtained?  | If yes, please provide all documentation. | Yes | No |
| 7. Are there any controverted issues?  | If yes, please provide all documentation. | Yes | No |
| 8. Entitlement information:  | Part A _____ Part B _____                 | Yes | No |

**INTERNAL USE**

Claimant Attorney:

HIPPA Release  
 Copy of Settlement Agreement  
 List of Treating Physicians

CMS Release  
 Proposed Settlement Date  
 Medical Records on File

HICN #  
 Type of Settlement: Lump/Structured

Treating Physician:

2 Years Medical Records  
 Summary - Description of Injury

ICD-9 Code  
 Current Treatment Plan

Future Treatment Plan

WC Insurance Carrier:

2 years Paid Billings (Medical & Indemnity)