

Minority Caucus

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Message from the Chair

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Greetings Caucus members!

We just wrapped up a phenomenal Winter Convention in Miami where AAJ had record attendance. Convention attendance is one of the ways we can stay in touch with each other and the important things happening in civil litigation. I hope that many of you were able to make it. I am told that AAJ outdid itself with the stellar CLEs, networking receptions, and the

closing party—did you hear Busta Rhymes performed? Only in Miami. I have to thank our Chair-Elect, Curtis Osborne, for filling in for me while I was stuck in snowy St. Louis. Thank you Curtis!

One of the things the Minority Caucus has implemented recently is member participation in a community service project during each convention. This convention was no exception. We participated in a book drive with the rest of AAJ by partnering with Books & Books to collect books for the South Point Elementary School Library in Miami. Together we collected over 100 books. It is always important to give back to the community, especially when we are on their soil, and donating books was a simple way to give a little back. Please be on the lookout for our next community service project, which will take place in San Francisco this summer. We certainly welcome participation from as many Minority Caucus members as possible.

Our other events included a reception with Public Justice and our Business Meeting. Our partnership with Public Justice allows us to simultaneously focus on the strengths of the Minority Caucus and Public Justice, while highlighting the unity between our two organizations. The work Public Justice does has a direct correlation to our work, but beyond that, their work is closely tied to the issues minorities face in their communities. Access to justice is a real issue for minorities. I hope that you will consider supporting the very important work Public Justice does.

If you would like to submit an article for consideration of inclusion in a future edition of "Drum Majors for Justice," please contact John Bey at John@beyandassociates.com.



Formerly the Association of Trial Lawyers of America (ATLA®)

What Allocation Firms May Not Tell You

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M I L E S T O N E

Moving forward



Engaging an allocation firm, while an important step in creating a Medicare Set-aside, is only one part of the process. For those individuals who have received settlements in Workers' Compensation or liability cases, allocation firms assess medical history and future needs to

develop a report that establishes the amount needed to fund a Medicare Set-aside (MSA) account. These reports, however comprehensive, may not consider certain factors which could lower the amount needed to fund the MSA.

Here are some of the elements that allocation firms may disregard:

- **VOLUNTARY PROCESS FOR REVIEW:** Through a series of memos and website notifications, the Centers for Medicare and Medicaid Services (CMS) has repeatedly stated that the requirement is to demonstrate adequate consideration of Medicare's interests, not to submit the proposed allocation for CMS review and approval. Even with CMS's increased efforts to streamline the review of MSAs, the review process can be cumbersome. A comprehensive approach to determining the appropriate Medicare Set-aside amount can be effective for your client, while still satisfying the requirement to consider Medicare's interests.
- **LIFE EXPECTANCY:** Life expectancy should be a major determining factor in assessing the future cost of care and therefore, the MSA amount. Higher rated ages (based on a number of health-related factors) equate to a shorter life expectancy, resulting in lower projected costs for future medical care. Effective January 19, 2013, CMS began using the Centers for Disease Control (CDC)'s 2008 United States Life Tables for Workers' Compensation MSA life expectancy calculations. Although CMS has released very little guidance for liability cases, establishing rated ages for your client remains an important step in helping them retain more of their recovery.
- **ESTIMATED GENERIC PRICING:** According to CMS, pharmaceutical pricing for Workers' Compensation cases is determined using the Average Wholesale Price (AWP) methodology. The AWP can be calculated using a number of methods, but the general result is a markup of the drug's actual cost. As there are no regulations for pharmaceutical pricing in liability cases, generic prescription medications can be substituted for brand name prescription medications, resulting in an overall lower Medicare Set-aside allocation.
- **STRUCTURED ARRANGEMENTS:** In Workers' Compensation cases that require future surgical care, the claimant can elect to receive a lump sum in an amount equal to the first expected surgery and/or replacement, and two years of annual payments. The remaining funds are then annuitized and divided as annual payments over the course of the client's life expectancy. If the claimant selects this option, once the payment for a given year has been exhausted, Medicare will cover any additional costs related to the work injury during that year. This approach can lower the lifetime MSA funding requirement significantly. A similar approach may be useful in a liability case as well.

Whether you are determining a Medicare Set-aside allocation for a Workers' Compensation or a liability case, apply common-sense best practices that prove you have adequately considered Medicare's interests. Employing a more holistic approach to determining the MSA allocation can help your client retain more of their recovery, while ensuring that Medicare's interests have been appropriately considered. ■

John T. Bair is a Founder and Member of Milestone Consulting, LLC, a comprehensive settlement planning and management firm. Milestone Consulting is proud to support the American Association for Justice in its mission to promote a fair and effective justice system. For more information, please visit www.milestoneeventh.com.