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UPCOMING EVENTS

- Portland Drive
- Vegas Drive
- Spring BOG
- New Orleans Drive

## From the Chair: Answering the Bell

By Christopher Nace, Chair

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Wow! What an election cycle. Not only did the American people re-elect Barack Obama to the presidency, but they also increased the pro-civil justice majority in the U.S. Senate by two seats. The 2012 Election Cycle had the potential to be

devastating to the civil justice system, the plaintiffs' bar and, most importantly, our clients. In addition to the White House being up for grabs, there were 23 pro-civil justice system Senators up for re-election against 10 senators who have exhibited hostility toward victims of negligence. To borrow a term from Bill Clinton, the civil justice system was facing some bad arithmetic.

Even in the face of this bad math, the civil justice system came out ahead. The re-election of Barack Obama assures that corporate-America will not run roughshod over individuals. Perhaps more importantly, the American electorate sent 25 pro-consumer Senators back to Washington. Even in states that Mitt Romney carried, such as North Dakota and Indiana, Americans elected pro-consumer candidates Heidi Heitkamp and Joe Donnelly to the U.S. Senate. With the gavel remaining in Harry Reid's hands as majority leader of the Senate, our families and the families of our clients can feel comfortable that the court-house door will remain open for victims to seek redress for injuries which were no fault of their own.

Make no mistake about it: AAJ and the New Lawyers Division deserve congratulations for these outstanding results.

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# Justice for All: Plaintiff Advocacy in Settlement Planning

By John T. Bair

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M I L E S T O N E  
*Moving forward*



I was recently reflecting upon AAJ's mission,

*"[...] to promote a fair and effective justice system—and to support the work of attorneys in their efforts to ensure that any person who is injured by the misconduct or negligence of others can obtain justice in America's courtrooms, even when taking on the most powerful interests."*

As a plaintiff-focused settlement planner, I wholeheartedly support this mission. One area in which the "fair and effective justice system" is

lacking, though, is in the settlement planning space. As U.S. citizens, we all have the right to representation in a court of law, so why should the standard of justice be any different for a decision as important as representation by a settlement broker?

As a response to an increased need for consumer protection in the settlement industry, Bill H.R. 4022, "Structured Settlement Claimants' Rights Act of 2012" was introduced in February 2012 by U.S. Representatives Brian Higgins [D-NY], Bruce Braley [D-IA], and Kathy Hochul [D-NY].

The bill will amend Title 28 of the United States Code to read that the court shall inform the plaintiff of the right to representation. It sets up a simple, regulatory framework in which confidential settlement negotiations, which are voluntary, allow for the development of structured settlements. H.R. 4022 permits the concept of a structured settlement to be introduced to the plaintiff in a positive light, which is often not the case.

## SOLE RELIANCE ON THE DEFENSE BROKER

When I first entered the settlement planning industry over a decade ago, defense brokers controlled the decision-making for both defendants and plaintiffs. Recognizing that trial bars and plaintiffs were underserved, I actively pursued opportunities to represent these groups and help them achieve fair settlements. In cases involving structured

settlements, these insurance solutions were developed with transparency and disclosure.

There are a number of reasons why relying solely on the defense broker is a mistake for the plaintiff. The defense broker is an agent of the property and casualty insurance company or the multi-national corporate defendant, and their duty lies in protecting those companies and serving as a part of their "defense" team. It is well known that property and casualty programs establish "approved" lists of companies from which your plaintiff must select a company, unless you negotiate otherwise. Defense brokers are powerless to have an effect on this as it is their clients' mandate in establishing structures in conjunction with their settlements. Why do they care? A long history of steering, rebating and abuse surrounding the placement of insurance and the commissions associated with it has existed, as demonstrated in *Spencer v. Hartford* (2010) and *Lyons v. Medical Malpractice Insurance Association* (2001).

Let's examine a sampling of the duties expected of defense brokers:

- 1 Attend mediation in order to present future value scenarios that guarantee the plaintiff monies over time that will cost the defense less to settle.
- 2 Use rated ages to present evidence to the mediator that a significant reduction in life expectancy exists, and therefore their carrier client will not be motivated to pay for care required by life care plans at or near mortality.

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