Protecting Your Client’s Wrongful Death Settlement Proceeds from Medicare

By Allan Galis and Dennis Keene

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TIP
When handling wrongful death claims involving Medicare liens, understand the law governing damages recoverable by the estate versus the heirs to maximize clients’ recoveries and to avoid dangerous pitfalls.

Where a person dies as a result of another’s negligence or fault, and that person received Medicare-subsidized health care related to the cause of the death, the Secretary of the Department of Health and Human Services (HHS), acting on behalf of the Medicare program, may seek reimbursement for the medical expenses from the decedent’s estate. In reality, this could mean depleting settlement funds that are rightfully the property of survivors who have no obligation or connection to Medicare. However, recent case law has clarified (and strengthened) the rights of survivors and provided guidance on how to protect wrongful death settlements from the reach of Medicare. This article discusses those developments and provides practical steps to protect your client’s wrongful death settlement from Medicare liens.

Medicare’s Shift from First to Second Payer
Medicare is a government-owned and operated insurance program, subsidized for the benefit of the elderly and the disabled. As originally enacted, Medicare was a primary payer in most cases. That is, it “generally paid for medical services, even when a recipient was also covered by another health plan or insurer.” However, in 1980, Congress sought to reduce Medicare’s rapidly increasing costs by shifting them from the Medicare program to private insurers. To do so, Congress enacted the Medicare Secondary Payer (MSP) statute as part of the Omnibus Reconciliation Act of 1980.
Under the MSP, Medicare became a secondary payer to other sources of payment, meaning that “if payment for covered services has been or is reasonably expected to be made by someone else, Medicare does not have to pay. In order to accommodate its beneficiaries, however, Medicare does make conditional payments for covered services, even when another source may be obligated to pay . . . ”. When it does so, Medicare is entitled to reimbursement for these conditional payments from other sources.

Notably, if the estate of a former Medicare beneficiary receives funds under a private tort settlement, Medicare may demand to be repaid for all conditional payments, less a reasonable amount for attorney fees. Under the “received payment” provision of that statute, Medicare can compel any entity—attorneys, physicians, private insurers, etc.—to reimburse those payments owed to the program that were paid to a beneficiary, such as a wrongful death victim’s estate. Moreover, the MSP creates a Medicare “super lien” in that Medicare’s right of recovery is superior to other entities’ rights. “Simply put, the MSP provides a direct action and subrogation rights for its secondary payments, and Medicare becomes automatically subrogated to any entity entitled to payment.”

Medicare’s priority cannot be taken lightly by personal injury litigators. In tort actions, Medicare may seek reimbursement of liens from the entire settlement amount (less attorney fees). Moreover, a party’s failure to reimburse Medicare in accordance with the MSP could result in double damages plus interest on the lien amount. Further exacerbating this risk is the fact that, at times, Medicare will simply refuse to provide information regarding its claimed lien amount until a settlement has been reached. In short, the Medicare reimbursement process can create significant considerations for attorneys and their clients. However, in the context of wrongful death cases, careful front-end planning in certain jurisdictions can protect settlements from Medicare claims.

State Split in Medicare Wrongful Death Reimbursement Models
As if the issues of “super liens” and personal liability were not harrowing enough, state wrongful death statutes differ in who has the right to claim certain expenses relating to a death, which further complicates matters with respect to Medicare’s right of reimbursement. In wrongful death cases, Medicare looks to state wrongful death law to determine when it may recover medical expenses. Although generalizations are not easy to draw among the many wrongful death models, they are capable of being grouped into two major classifications, namely, jurisdictions where the medical expenses are deemed to be a loss to the heirs/survivors (“independent claim” jurisdictions), and those where they are a loss to the estate (“consolidated claim” jurisdictions). An understanding of this state split is critical for navigating the Medicare reimbursement process in any given jurisdiction.

Independent claim jurisdictions. The majority of jurisdictions have adopted what the authors will refer to as the “independent claim” model. Typically in these states, the claims of survivors and the claims of the estate may be brought in one action, but the claims remain independent from one another. The survivors recover damages for their own losses, and not as beneficiaries of the estate. While the party bringing the action will frequently be the decedent’s personal representative, he or she only does so in the nature of a trustee for the benefit of the statutorily designated beneficiaries.

Importantly, in such states the right of recovery for medical expenses belongs to the estate, not the survivors. Moreover, some of these states have created carve-outs so that survivors and others may recover any out-of-pocket payments they made for the decedent’s medical expenses. Such out-of-
pocket payments have been denied in other states, particularly where there is no legal obligation to incur such expenses, the expenses are not incurred or paid by the beneficiary of the action, or there would be no liability in any event (as there would be a legal defense to the payment of the expenses). In short, there is no protection from Medicare’s entitlement in these instances.

The extent to which Medicare can reach into the pockets of survivors to satisfy its liens for medical expenses has long been a contentious issue. However, in Denekas v. Shalala, Medicare was dealt a significant blow to the enforceability of its reimbursement rights. In Denekas, at issue was the extent to which Medicare’s right to recovery for conditional payments could be reduced by an apportionment which incorporated certain nonmedical damages that were set by an arbitrator. The case arose out of a traffic accident that resulted in the death of the survivors’ father (after several months of hospitalization) and mother. An arbitrator fixed a sum for the children’s loss of consortium with regard to their mother—and therefore, in effect, with regard to their father; those amounts were subsequently included in an Iowa probate court allocation. HHS argued that when a settlement amount covers the claims of the beneficiaries and the claims of the survivors, Medicare’s right of recovery is superior to all other claims and that, to the extent state law required apportionment, it was preempted by federal law. The Denekas court disagreed with HHS and ruled that if a settlement covers both medical and nonmedical costs, Medicare’s reimbursement may be apportioned so as to reach only the portion of the settlement allocated to cover medical costs.

However, Denekas did not resolve the issue. District courts remained divided on whether such allocation was permissible, and, arguably, Denekas only applied where arbitration or another similar adversarial proceeding took place. Only recently has an appellate court weighed in on the issue in a case where no adversarial proceeding was held.

In Bradley v. Sebelius, the United States Court of Appeals for the Eleventh Circuit expressly recognized the distinction between an estate’s cause of action for medical expenses and the survivors’ separate claim for wrongful death without arbitration or other similar adversarial proceeding as in Denekas. There, the survivors of a decedent relative and the decedent’s estate sued for the wrongful death of the decedent under Florida’s wrongful death statute. The surviving children brought a survival action, but did not seek damages for medical expenses, which were only sought by the estate. The defendant settled with all plaintiffs, and the settlement was apportioned between the survivors and the estate by order of a state probate court wherein the plaintiffs simply petitioned the probate court for an equitable allocation, and served HHS on behalf of Medicare with the petition. However, HHS declined to take part in the probate court proceedings, citing only language contained in one of its many field manuals, and refused to honor the decision of the probate court. The district court agreed with HHS, and the issue on appeal was whether Medicare could ignore a probate court’s allocation and seek recovery for amounts that had been apportioned to survivors. The Eleventh Circuit overturned the district court’s decision and held that Medicare could only seek reimbursement from the portion of the settlement apportioned to the estate, and not from the settlement proceeds apportioned to the survivors.

Bradley and its progeny illustrate certain precautionary measures that can be taken to ensure that settlement proceeds are protected from Medicare. As a general rule, post-Bradley decisions have been clear that the plaintiff’s claim against the tortfeasor will define Medicare’s claim against the plaintiff.
Consequently, the safest course of action is to assert only the claim for the full value of the life on behalf of the survivors and never make any claim on behalf of the estate, including the survival action for medical expenses. During the internal Medicare appeals process, Medicare is likely to ask for copies of pleadings and relevant correspondence, so it is crucial that all such documents are clear and consistent from the beginning that no medical expenses are being sought.

Once settlement is reached, plaintiff’s counsel should appeal Medicare’s final demand, and negotiate with Medicare as to the appropriate allocation. In fact, a plaintiff must be sure to exhaust all administrative appeals with Medicare. Although this process can be time-consuming and labor-intensive, particularly given Medicare’s slow and sometimes redundant requests, it must be completed. Failure to exhaust administrative remedies will almost certainly result in dismissal in favor of HHS. Because negotiations may be futile, one should be prepared to seek a judicial apportionment of the agreement. Typically this will involve filing a motion requesting equitable determination of the survivors’ and estate’s rights, which will usually be filed in a probate court, but the appropriate court may vary depending on the jurisdiction. An example of this type of motion begins on page 9 of this PDF. In connection with this proceeding, formal service must be made upon HHS, and an evidentiary hearing should be requested to determine the allocation of damages.

Failure to take these precautions can cause serious problems. For example, in Benson v. Sebelius, the plaintiff, as the survivor and administrator of his mother’s estate, received a $90,000 settlement for a wrongful death and survival action that he had previously commenced in a Pennsylvania state court. In pursuing that action, the plaintiff expressly included his mother’s medical costs in his wrongful death claim. In the subsequent suit against HHS, the plaintiff, citing Denekas and Bradley, argued that Medicare could only recover from a settlement award received by a Medicare beneficiary’s estate, i.e., his mother’s estate, and because under Pennsylvania law his wrongful death settlement was not a part of his mother’s estate, Medicare could not seek reimbursement from the wrongful death settlement award. The court rejected this argument, noting that:

the rulings in Denekas and Bradley were limited to situations in which the plaintiffs had not claimed medical expenses in their wrongful death settlement, and because the plaintiff’s wrongful death settlement does appear to have included medical costs, the cases are inapposite. Nor do these cases in any way indicate that the MSP generally disallows [the Centers for Medicare and Medicaid Services] from seeking reimbursement from a survivor’s wrongful death settlement.

The MSP is clear: if a third party is responsible for injuring a qualified individual and Medicare pays for the resulting medical treatment, the payment is considered conditional and repayment to Medicare is required.

In short, the plaintiff should bear in mind that the scope of his or her claim against the tortfeasor will define Medicare’s claim against the plaintiff, be clear from the outset that he or she is not seeking medical damages on behalf of the estate, and not waver from that position.
“Consolidated claim” jurisdictions. Other states have adopted what the authors will refer to as the “consolidated claim” approach. Although there are variations on this approach, significant to this discussion are the statutes that permit damages for both the fatal injury and the death to be brought in a single action. Wrongful death statutes in these jurisdictions do not provide that the claim of the survivors and the claim of the estate are independent. In such states, the action is technically a survival to the estate’s cause of action, with death damages added. In true consolidated claim jurisdictions, death damages are measured by the loss to the estate and are recovered for the benefit of the estate. To the same effect, some statutes may provide that the decedent’s creditors have to be paid before any allocation can be made. Unfortunately, the reasoning of Bradley will probably not be as persuasive in true consolidated claim jurisdictions. However, attorneys in these states are not barred from taking the precautionary measures described above, for at least one of the true consolidated claim jurisdictions has ruled that Medicare is precluded from recovering from payments made to plaintiffs in a wrongful death action where they did not claim any medical expenses.

In consolidated claim jurisdictions, if a settlement can be protected from the grasp of Medicare, extra care must be taken to do so. Where the rights of the estate and the rights of the survivors are one and the same, the plaintiff may prejudice his or her rights if the cause of action cannot be split and he or she chooses to omit medical expenses from his or her complaint. For this reason, the plaintiff should make every effort to settle the case before filing suit. In such event, all settlement correspondence should be clear that medical expenses are not being sought. If presuit settlement cannot be achieved, or is not a realistic possibility due to an impending statute of limitations deadline, the attorney and his or her client may take a calculated risk and file a complaint clearly stating that no recovery for medical expenses is sought. The facts of a particular case may determine whether this risk is justified. For example, if recovery is expected to be low compared to the amount of damages incurred (e.g., because there is little insurance coverage), then the plaintiff may have little to lose by foregoing the possibility of recovering medical expenses.

As a practice pointer, counsel may want to get a signed, written acknowledgement of this risk from the client because there is a chance of prejudicing the client’s rights by filing a truncated action. Moreover, there is no guarantee that any of these tactics would protect settlement proceeds at all in true consolidated claim jurisdictions. Medicare generally may seek reimbursement of liens from the entire settlement amount, and because settlements of the survivors and the estate are necessarily combined in these states, those settlements are at a higher risk.

In short, the best that attorneys in consolidated claim jurisdictions may hope to do is to plan carefully at the negotiation and filing stages so that they are armed with the best possible arguments when Medicare becomes involved, even if those arguments are ultimately unsuccessful.

**Equal Access to Justice Act**

In a perfect post-Bradley world, upon being presented with a valid settlement apportionment, Medicare would stop its collection efforts. However, in the authors’ experience that is not necessarily the case. Medicare may force the plaintiff to exhaust administrative remedies even after it is obvious that no monies will be designated for the estate. Although Medicare’s intransigence probably cannot be avoided, Congress has provided a tool to hold Medicare accountable for such obstinacy—the Equal Access to Justice Act (EAJA). The EAJA provides for a discretionary award of attorney fees against the
government under federal common law if it can be proven that the government’s conduct was oppressive, vexatious, recalcitrant, or in bad faith, or the award is mandatory upon a showing that the government’s position is not “substantially justified.”

Because the Eleventh Circuit clearly ruled in Bradley that Medicare cannot recover from settlement funds allocated to the estate, Medicare, in a post-Bradley world, would have a difficult time justifying forcing a plaintiff to exhaust administrative remedies once a settlement has been apportioned. Indeed, the Bradley court described Medicare’s stubbornness as “a particularly troubling sub-issue” that “[flew] in the face of judicial and public policy.” Thus, although a practitioner may not have many tools to thwart the government’s collection efforts, one should be mindful of the leverage that may exist to force the government’s hand in resolving a wrongful death claim involving Medicare payments.

Conclusion
Regardless of the type of jurisdiction in which you practice, careful front-end planning can protect your clients’ wrongful death settlements from Medicare claims. Although it is impossible to predict every potential pitfall, the savvy practitioner does well to remember that the claim against the tortfeasor will define Medicare’s claim. Medicare lien issues should be identified as early as possible in the litigation process, and, to the extent possible, counsel should be clear and consistent in all correspondence and pleadings that damages are only sought for wrongful death on behalf of the survivors and that no claim of the estate, including any claim for medical expenses, is sought. Doing so will provide the strongest possible defense to keep settlement funds in the pockets of survivors following their loss of a loved one, instead of those of Medicare.

Notes
1. Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395 et seq., commonly known as the Medicare Act, established the Medicare program. For convenience, this article refers to this program as Medicare or HHS, as the context requires.
7. Seeid. § 411.37.
10. Yearout, supra note 3, at 126.
11. 42 C.F.R. § 411.24(c); see Kenneth Paradis, New Requirements for Medicare Set-Aside Arrangements, 18 J. WORKERS COMP. 31, 34 (2009) ("[T]he language used in these regulations does not limit Medicare’s recovery to funds specifically designated within a judgment award or settlement agreement to compensate for an individual’s medical expenses. . . . [N]early every dollar exchanged through a settlement or judgment award is fair game."). However, in virtually all wrongful death cases, Medicare’s right of recovery would be limited to the settlement amount under 42 C.F.R. § 411.37.


15. See, e.g., ARIZ. REV. STAT. ANN. § 12-613; Ark. Code Ann. § 16-62-102; COLO. REV. STAT. § 15-21-201; D.C. CODE § 16-2701; FLA. STAT. § 768.21; GA. CODE ANN. § 51-4-2; HAW. REV. STAT. § 663-3; 740 ILL. COMP. STAT. 180/2; IND. CODE § 34-23-1-2; KAN. STAT. ANN. § 60-1902; LA. CIV. CODE ANN. art. 2315.2; ME. REV. STAT. tit. 18-A, § 2-804; Mich. Comp. Laws § 600.2922; MINN. STAT. § 573.02; Miss. Code Ann. § 11-7-13; NEB. REV. STAT. § 30-810; NEV. REV. STAT. § 41.085; N.J. STAT. ANN. § 2A:51-4; N.M. STAT. ANN. § 41-2-3; N.Y. EST. POWERS & TRUSTS LAW § 5-4.4; N.C. GEN. STAT. § 28A-18-2; OHIO REV. CODE ANN. § 2125.02; OKLA. STAT. tit. 12, § 1055; OR. REV. STAT. § 30.020; R.I. GEN. LAWS § 10-7-2; S.C. CODE ANN. § 15-51-20; VA. CODE ANN. § 8.01-50; W. VA. CODE § 55-7-6; WIS. STAT. § 895.04; WYO. STAT. ANN. § 1-38-102. This list is not intended to be exhaustive, and although these states are generally considered “independent claim” jurisdictions, some of their wrongful death models may include features more commonly associated with “consolidated claim” models.

16. See FLA. STAT. § 768.21(6)(b); GA. CODE ANN. § 51-4-5(b); 740 ILL. COMP. STAT. 180/2; IND. CODE § 34-23-1-2(d); KAN. STAT. ANN. § 60-1903(c); ME. REV. STAT. tit. 18-A, § 2-804(b); Mich. Comp. Laws § 600.2922(6); Miss. Code Ann. § 11-7-13; Nev. Rev. Stat. § 41.085(5)(a); N.Y. Est. Powers & Trusts Law § 5-4.3(a); N.C. Gen. Stat. § 28A-18-2(b); OHIO REV. CODE ANN. § 2317.421; OKLA. STAT. tit. 12, § 1055(B); Or. Rev. Stat. § 30.020(2)(a); R.I. Gen. Laws § 10-7-5; Va. Code Ann. § 8.01-52(3); W. Va. Code § 55-7-6(c); Wis. Stat. § 895.04(5).

17. See FLA. STAT. § 768.21(5); OKLA. STAT. tit. 12, § 1055(B).


22. Id. at 1075.

23. Id. at 1077.

24. Id. at 1075.

25. Id. at 1079–80.

26. Id. at 1080.

28. See Zinman v. Shalala, 835 F. Supp. 1163, 1167 (N.D. Cal. 1995), aff’d, 67 F.3d 841 (9th Cir. 1995) (noting that Medicare will exercise its right of reimbursement only against damages found for medical expenses where the medical and nonmedical damages items are determined by judgment or an arbitration); see also Bradley, 2009 WL 2216580.

29. 621 F.3d 1330 (11th Cir. 2010).
30. Id. at 1330.
31. Id. at 1337.
32. Id. at 1335–34.
33. Id. at 1338.
34. Id. at 1335.
35. Id. at 1337.

36. See Hadden v. United States, 661 F.3d 298, 302 (6th Cir. 2011), cert. denied, 133 S. Ct. 106 (2012) ("[T]he scope of the plan’s ‘responsibility’ for the beneficiary’s medical expenses—and thus of his own obligation to reimburse Medicare—is ultimately defined by the scope of his own claim against the third party.").


39. Id. at 71.
40. Id. at 73.
41. Id. at 75 (citation omitted).

43. See generally supra note 42.
44. See Denekas v. Shalala, 943 F. Supp. 1073, 1080 (S.D. Iowa 1996) (holding that Medicare is precluded from recovering from payments made to plaintiffs in a wrongful death action where plaintiffs did not claim any medical expenses).

45. 42 C.F.R. § 411.24(c).
46. 28 U.S.C. § 2412.
47. Bradley v. Sebelius, 621 F.3d 1330, 1337, 1339 (11th Cir. 2010).
IN THE PROBATE COURT OF ___________ COUNTY
STATE OF ___________

IN RE:
ESTATE OF Decedent Y, DECEASED
Estate No. PRO XXXXXX

Motion For Equitable Determination Of Rights Regarding Compromised Sum Received In Settlement

COMES NOW Executor ________________ (Executor) of the Estate of Decedent Y, and files this Motion for Equitable Determination of Rights regarding Compromised Sum Received in Settlement, showing as follows:

1. ________________ is the Executor of the Estate of Decedent Y. He and the heirs of the estate (Heirs) reached a settlement of a wrongful death and survivor's claims made on their behalf against the at-fault party, ________________. Significantly, and for purposes of this Motion, under Georgia law it is the estate alone that has the right to recover medical expenses. See O.C.G.A. §§ 51-4-1 et seq. Executor and the Heirs agreed to accept the insurance policy limits of $75,000.00 in exchange for the execution of a release in favor of the defendant and his insurer. The settlement does not distinguish between amounts recovered for the Heirs' claim and the estate's claim.

2. Prior to Decedent Y's death, she incurred significant medical bills as a result of the accident that lead to her ultimate demise. The Medicare program now seeks reimbursement of $35,000.00 for its payment of those bills. The demand, however, exceeds the proportionate share the estate may recover based on the limited amount of settlement funds available. Under existing law, Medicare is not authorized to recover any settlement proceeds received by the Heirs because the Heirs' recovery does not include medical expenses. See Bradley v. Sebelius, 621 F.3d 1330 (11th Cir. 2010); Denekas v. Shalala, 943 F. Supp. 1073 (S.D. Iowa 1996) (holding that Medicare program is precluded from recovering from payments made to plaintiffs in a wrongful death action where plaintiffs did not claim any medical expenses).
3. Due to the independent and competing nature of the four (4) respective claims, and Medicare’s demand for reimbursement, Executor is in need of the Court’s equitable determination as to the rights of the estate and Heirs in regard to the compromised sum received in settlement.

4. Executor calculated his determination of an appropriate pro rata share of the available funds based on (a) the specific facts and nature of the claims; (b) the interplay of each claim as a proportion of its contribution to the full value of the claim (assuming the full value of the claim was obtainable); and (c) the recommended distribution of the settlement funds. Executor is prepared to present testimony for the Court relating to the recoverable amount of medical expenses based on the formula enunciated in Bradley, supra.

5. Executor submits that the settlement proceeds recovered be divided based on the type of damages recoverable and as a percentage of the full value of the claim:

<table>
<thead>
<tr>
<th>ESTATE’S CLAIM</th>
<th>Full Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Funeral Expenses</td>
<td>$7,610.19</td>
</tr>
<tr>
<td>Medical Expenses</td>
<td>$45,000.00</td>
</tr>
<tr>
<td>(Medicare Lien)</td>
<td></td>
</tr>
<tr>
<td>Total Estate’s Claim:</td>
<td>$52,610.19</td>
</tr>
</tbody>
</table>

6. Executor calculated the “full value” of the Heirs’ claim based on jury verdict and settlement research of wrongful death claims. See, e.g., Beam v. Kingsley, 255 Ga. App. 715 (2002) (upholding award of $2,584,000 predominantly for pain and suffering where decedent could be heard gasping for breath as he drowned in own blood following a collision); TGM Ashley Lakes, Inc. v. Jennings, 264 Ga. App. 456 (2003) ($2,500,000 for pain and suffering); Dept of Human Res. v. Johnson, 264 Ga. App. 730 (2003), aff’d, 278 Ga. 714 (2004) ($1,000,000 for pain and suffering). Based on this research, Executor determined that the “full value” of the claims of the Heirs is $1,000,000:

<table>
<thead>
<tr>
<th>HEIRS’ CLAIMS</th>
<th>Full Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Heir A</td>
<td>$333,000.00</td>
</tr>
<tr>
<td>Heir B</td>
<td>$333,000.00</td>
</tr>
<tr>
<td>Heir C</td>
<td>$334,000.00</td>
</tr>
<tr>
<td>Total Heirs’ Claim:</td>
<td>$1,000,000.00</td>
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</tbody>
</table>
### PERCENTAGE TO TOTAL VALUE OF CLAIMS

<table>
<thead>
<tr>
<th>Claim</th>
<th>Amount</th>
<th>Percentage to Total Value</th>
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</thead>
<tbody>
<tr>
<td>Estate’s Claim</td>
<td>$52,610.19</td>
<td>5%</td>
</tr>
<tr>
<td>Heirs’ Claim</td>
<td>$1,000,000.00</td>
<td>95%</td>
</tr>
<tr>
<td>Total Value:</td>
<td>$1,052,610.19</td>
<td>100%</td>
</tr>
</tbody>
</table>

7. Therefore, Executor determined that the limited net settlement funds ($75,000.00 minus allocable attorney fees of 25% and costs), should be divided as identified in the table below:

### ALLOCATIONS AMONG VARIOUS INTERESTS

<table>
<thead>
<tr>
<th></th>
<th>Allocation</th>
<th>Percentage</th>
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<tbody>
<tr>
<td>Amount of Net Settlement</td>
<td>$56,048.50</td>
<td>100%</td>
</tr>
<tr>
<td>Medical Expense Recovery</td>
<td>$2,242.00</td>
<td>4%</td>
</tr>
<tr>
<td>Funeral Expense Recovery</td>
<td>$560.42</td>
<td>1%</td>
</tr>
<tr>
<td>Heirs’ Recovery (Three Combined Claims)</td>
<td>$53,246.08</td>
<td>95%</td>
</tr>
</tbody>
</table>

8. Based on the formula adopted and applied in *Bradley*, the amount of the recovery that should be allocated toward medical expenses is $2,242.00, or 4% of the available recovery.

9. In the interest of notifying all interested parties, Executor is serving the U.S. Department of Health and Human Services, Office of General Counsel, with this Motion and solicits its input as to the allocation.

Respectfully submitted this ______________ day of ______________, 20____________.

LAW FIRM

______________________________
Attorneys for the Estate of Decedent Y