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NEWS & EVENTS

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Traub Lieberman Team Wins Affirmation of Summary Judgment in Lawsuit Filed Under Medicare Secondary Payer Act

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On February 23, 2023, the Eleventh Circuit affirmed two district court orders granting summary judgment in favor of insurers in lawsuits filed under the Medicare Secondary Payer Act ("MSP Act"). The Eleventh Circuit ruled that the MSP Act does not preempt an insurance policy's one-year claim filing deadline or the presuit notice requirement under the Florida PIP Statute. Traub Lieberman Partners Scot Samis, Ashley Kellgren, Michael Kiernan and Bradley Guldalian, and Associate Brandon Christian represented Covington Specialty Insurance Company in the consolidated appeal.

In the Covington appeal, the plaintiff sued the insurer on behalf of a putative class of Medicare Advantage Organizations (or their assignees) who allegedly paid accident-related medical expenses on behalf of Medicare beneficiaries that had also asserted claims against the insurer's insureds. The plaintiff sought double damages under the MSP Act's private cause of action. In support of its claims, and to demonstrate its standing to sue, the plaintiff pled a single "representative claim" of a Medicare beneficiary who filed suit against the insurer's insured as a result of a slip-and-fall incident. The plaintiff contended that it was an assignee of a Medicare Advantage Organization that paid for the slip-and-fall claimant's accident related medical expenses that should have been paid by the insurer. To establish the insurer's responsibility to pay under the MSP Act, the plaintiff relied on the medical payments coverage included in the commercial general liability policy issued by the insurer, which required medical expenses to be incurred and reported to the insurer within one year from the date of the accident.

The federal district court judge granted summary judgment in favor of the insurer, finding there was no evidence showing the insurer was responsible for the slip-and-fall claimant's accident related medical expenses as a primary payer under the MSP Act because the medical expenses were not reported to the insurer within one year from the date of the accident, as required under the medical payments coverage. The district court rejected the plaintiff's argument that the insurance policy's one-year claim filing deadline is preempted by the MSP Act.

In the consolidated appeal, the Eleventh Circuit affirmed the district court's ruling that the MSP Act does not preempt the one-year claims filing deadline in the insurance policy. The Eleventh Circuit rejected the plaintiff's argument that the policy's filing deadline is preempted by a three-year claims-filing period in the MSP Act because the statutory provision only refers to actions by the United States, not Medical Advantage Organizations, and the statutory preemption clause only applies claims-filing deadlines in employer group health plans. Accordingly, the Eleventh Circuit found "no basis to infer that the provision preempts a claims-filing deadline in a no-fault or general liability policy." In reaching this conclusion, the Eleventh Circuit reiterated its holding in an earlier MSP Act case that "an alleged primary payer may assert any valid contract defense in arguing against its liability."

The Eleventh Circuit's entire opinion is available at the following link:
https://media.ca11.uscourts.gov/opinions/pub/files/202112439.pdf

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