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# Traub Lieberman Team Obtains Summary Judgment in Favor of Insurer in Class Action Lawsuit Involving Medicare Secondary Payer Act

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On July 12, 2021, the United States District Court Southern District of Florida affirmed and adopted the Magistrate's Report and Recommendation granting summary judgment in favor of an insurer defended by Traub Lieberman Partners Michael K. Kiernan and Bradley Guldalian, and Senior Associate Ashley Kellgren. The summary judgment was entered as to both counts in a purported class action lawsuit alleging claims under the Medicare Secondary Payer Act ("MSP Act"). Specifically, 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 claimants who had also asserted claims against the insurer's insureds. 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 now defunct Medicare Advantage Organization that allegedly paid for the representative claimant's accident related medical expenses that should have been paid by the insurer. In order to establish the insurer's responsibility to pay under the MSP Act, the plaintiff relied on the medical payments coverage included in commercial general liability policies issued by the insurer. The plaintiff sought double damages under the MSP Act private cause of action.

On summary judgment, the Traub Lieberman team successfully argued that the plaintiff could not point to any evidence demonstrating that the insurer had any responsibility to pay any sums of money with respect to the representative claim. In doing so, the Magistrate and District Court Judge rejected the plaintiff's various arguments that Section 111 reporting rendered the insurer a primary payer, that the MSP Act preempted the conditions of the insurance policy and that the insurer failed to exhaust administrative remedies. Ultimately, the Magistrate and District Court Judge concluded that the insurer was never required to make a payment under the policy's medical payments coverage in the first place because the plaintiff failed to present any testimony or evidence that it complied with the policy requirement that medical expenses are incurred and reported to the insurer within one year from the date of the accident. As such, the medical payments coverage was never implicated and, thus, the insurer was not a "primary payer" as contemplated by the MSP Act. In light of these findings, the District Court entered summary judgment in favor of the insurer on the plaintiff's MSP Act private cause of action and breach of contract claim. The plaintiff has since appealed Magistrate and District Court Orders to the United States Court of Appeals for the Eleventh Circuit.

**[Read the Final Judgment here.](#)**

**[Read the Report and Recommendation on Pending Motions for Summary Judgment here.](#)**