

CLIENT ALERT

Supreme Court Denies Review of Third Circuit Decision That MA Organizations Have a Direct Right of Recovery Under the Medicare Secondary Payor (MSP) Act

April 16, 2013

On April 15, 2013, the U.S. Supreme Court denied certiorari to review a Third Circuit decision that Medicare Advantage Organizations (MAOs) have a direct right of recovery against primary payors under the Medicare Secondary Payer (MSP) Act, 42 U.S.C. § 1395y(b). The case is *GlaxoSmithKline LLC v. Humana Medical Plans, Inc.*, case number 12-690 in the U.S. Supreme Court.

The petition arose from a suit filed by Humana Medical Plan, Inc. and Humana Insurance Company (Humana), as an MAO, against GlaxoSmithKline, L.L.C. and GlaxoSmithKline plc (GSK). Humana's suit alleged that GSK was obligated to reimburse Humana for expenses it incurred covering insureds that were injured by GSK's diabetes drug, Avandia. Section 1395y(b)(3)(A) establishes "a private cause of action for damages (which shall be in an amount double the amount otherwise provided) in the case of a primary plan which failed to provide for primary payment (or appropriate reimbursement) in accordance with [the requirements of the MSP Act]." Humana alleged that GSK is a "primary payor" under the Medicare Secondary Payer statute and was obligated to reimburse Humana as a "secondary payor" MAO. The District Court dismissed the suit, holding that the Medicare Act did not provide MAOs with a private cause of action to seek such reimbursement.

A unanimous panel of the Third Circuit reversed and held that Section 1395y(b)(3)(A) unambiguously provides an MAO such as Humana a private cause of action against GSK, and that in any event, the Center for Medicare and Medicaid Services (CMS) validly construed the Act to permit a private right of action for MAOs. The Supreme Court's denial of certiorari means that the Third Circuit decision stands and that MAOs may strong precedent supporting recovery of Medicare-covered expenses from primary payors.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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