

MSP Recovery Is Steadfast in Its Pursuit of Victory for Health Maintenance Organizations

MSP Recovery Law Firm, a specialist in Medicare Secondary Payer (“MSP”) recovery services, recently prevailed against National Fire Insurance Company’s attempts to dismiss its case in *MSPA Claims I, LLC v. National Fire Insurance*, currently before the United States District Court for the Southern District of Florida.¹ National Fire Insurance unsuccessfully argued that MAO’s lack sufficient knowledge of the payments made and that an MAO does not have a private cause of action under the MSP laws. Despite their attempts to convince the court otherwise, the court held that MSPA Claims 1 sufficiently stated a private cause of action under the MSP law, and that National Fire Insurance had sufficient knowledge of the payments, wherein reimbursement to the MAO was required.²

The court heavily relied on the United States Court of Appeals for the Eleventh Circuit’s recent decisions in *Humana Medical Plan, Inc. v. Western Heritage*³ and *MSP Recovery, LLC v. Allstate Insurance Company*⁴ ruling in favor of MSP Recovery Law Firm. In *Western Heritage*, the Eleventh Circuit held that an MAO has a private cause of action under the MSP Act for payments made that should have been paid by a liability insurer.⁵ Additionally, in *Allstate*, the same appellate court held that the “MSP Act’s private cause of action does not require any sort of relationship (contractual or otherwise) with the government (or anyone else) as a prerequisite to suit.”⁶

As such, the court held that as the complaint “alleges that the [e]nrollee settled her claim for personal injury,” the MAO “adequately pled the defendant’s responsibility as primary payer.”⁷ Further, since the Eleventh Circuit determined that the “insurer that pays second is in the superior position to prevent an erroneous or misdirected payment,” the MAO adequately pled the liability insurer’s knowledge of payment.⁸

Upon the Southern District Court’s independent review of the Report and Recommendation, it affirmed and adopted the Report’s analysis and holding to deny the liability insurer’s motion to dismiss. In this case, MSP Recovery not only clarified an MAO’s rights under the MSP Act, but set precedent that will benefit Health Maintenance Organizations for years to come.

¹ *MSPA Claims I, LLC v. Nat’l Fire Ins. Co. of Hartford*, Case No. 16-cv-20531 (S.D. Fla. 2016).

² *Nat’l Fire Ins.*, Case No. 16-cv-20531, at (D.E. No. 28, pp. 11, 13).

³ *Humana Med. Plan, Inc. v. W. Heritage Ins. Co.*, 832 F.3d 1229 (11th Cir. 2016).

⁴ *MSP Recovery v. Allstate Ins. Co.*, 2016 U.S. App. LEXIS 15984 (11th Cir. Aug. 30, 2016).

⁵ *Nat’l Fire Ins.*, Case No. 16-cv-20531, at (D.E. No. 28, p. 16); see *W. Heritage Ins. Co.*, 832 F.3d at 1236.

⁶ *Nat’l Fire Ins.*, Case No. 16-cv-20531, at (D.E. No. 28, p. 16); see *Allstate Ins. Co.*, 2016 U.S. App. LEXIS 15984, at *1358.

⁷ *Nat’l Fire Ins.*, Case No. 16-cv-20531, at (D.E. No. 28, pp. 11, 13).

⁸ *Nat’l Fire Ins.*, Case No. 16-cv-20531, at (D.E. No. 28, p. 13).