



**Service:** MSPA (Medicare Secondary Payer Accreditation)  
**Module:** LEARNING MODULE 5  
*Landmark Medicare Secondary Payer Case Law*  
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### **Summary**

In Module 5 of the MSPA certification program, Heather Sanderson and Brendon De Souza provide an overview of landmark Medicare Secondary Payer (MSP) case law, illustrating how legal decisions shape MSP compliance and enforcement. This module explores the differences between statutes, regulations, and memoranda, followed by a review of significant cases impacting conditional payments, set-asides, and liability settlements.

**Understanding the Legal Framework:** The module begins with a discussion of primary and secondary authorities in MSP compliance. Statutes and regulations, such as the MSP Act, carry the force of law and are binding. Memoranda and guides, like the WCMSA Reference Guide, serve as administrative guidance but lack binding authority. Courts have occasionally challenged these secondary sources when they overreach the boundaries of enabling legislation.

**Conditional Payment Recovery and Limitations:** The case *U.S. v. Stricker* highlights the statute of limitations for Medicare's recovery rights. It underscores the importance of timely addressing conditional payments to avoid lawsuits or barred claims. Similarly, *Harris v. U.S.* demonstrates Medicare's authority to recover payments from multiple parties, including attorneys and insurers, emphasizing the breadth of recovery mechanisms available under the MSP Act.

**Medicare Set-Asides (MSAs) and Liability Settlements:** Cases such as *Big R. Towing, Inc. v. Benoit* delve into the complexities of liability Medicare Set-Asides (LMSAs), a less defined area of MSP compliance. This case shows courts stepping in to determine appropriate set-aside amounts when administrative guidance is lacking. These decisions stress the need for careful, case-by-case consideration of LMSAs in settlements involving future medical expenses.

**State Law vs. Federal Law in MSP Cases:** The *Caldera* case examines the interplay between state workers' compensation laws and federal MSP requirements. It establishes that Medicare cannot enforce recovery against parties not deemed responsible under applicable state law, demonstrating how state and federal statutes can coexist without conflict.



**Private Medicare Plans and Double Damages:** Cases such as *In re Avandia* and *Western Heritage v. Humana* solidify the rights of private Medicare Advantage plans to pursue double damages for unreimbursed conditional payments. These rulings align private plans' recovery rights with those of traditional Medicare, further extending the MSP Act's reach.

**Practical Implications and Compliance Strategies:** The module emphasizes the importance of accurate reporting and proactive management of conditional payments and MSAs. Settlement agreements must explicitly address Medicare's interests to avoid post-settlement disputes or enforcement actions. Key takeaways include the need for ongoing education, compliance with both federal and state laws, and staying informed about evolving case law.

This session provides invaluable insights into MSP compliance through real-world applications of case law. By understanding these legal precedents, stakeholders can better navigate the complexities of MSP obligations and protect themselves against potential liabilities.

### **Learning Objectives**

1. Understand the distinctions between statutes, regulations, and memoranda in the context of the Medicare Secondary Payer (MSP) Act.
2. Analyze how landmark case law has shaped the interpretation and enforcement of MSP compliance obligations.
3. Examine the implications of specific case rulings on conditional payment recovery and Medicare Set-Aside (MSA) requirements.
4. Recognize the interplay between federal law and state statutes in MSP-related disputes.
5. Apply key principles derived from MSP case law to everyday claims handling and compliance strategies.

### **Primary Takeaways**

1. MSP case law emphasizes the importance of timely addressing Medicare's conditional payment recovery rights, as failure can result in lawsuits or time-barred claims.
2. Landmark cases demonstrate Medicare's authority to recover funds even in complex settlement scenarios, including its super lien rights.
3. Courts have upheld strict adherence to administrative appeal processes before federal intervention in Medicare disputes.



4. Medicare Advantage and Part D plans possess private causes of action, including double damages, paralleling traditional Medicare recovery rights.
5. Ambiguities in liability Medicare Set-Asides (LMSAs) require careful case-by-case analysis to ensure compliance and prevent legal exposure.

### **Course Outline**

- 1) Foundations of MSP Legal Framework
  - a) Overview of Primary and Secondary Authorities
    - i) Statutes: Binding laws passed by Congress (e.g., MSP Act).
    - ii) Regulations: Government-implemented rules in the Code of Federal Regulations.
    - iii) Memoranda: Administrative guidance without the force of law.
  - b) MSP Case Law Categories
    - i) Conditional payment recovery.
    - ii) Statute of limitations and enforcement mechanisms.
    - iii) Medicare Set-Asides (MSAs) and liability settlements.
- 2) Landmark MSP Case Law
  - a) Conditional Payment Recovery
    - i) U.S. v. Stricker: Highlighted the importance of the statute of limitations in Medicare's recovery efforts.
    - ii) Harris Case: Expanded Medicare's ability to seek recovery from multiple entities, including attorneys and insurers.
  - b) Medicare Set-Asides (MSAs)
    - i) Big R. Towing, Inc. v. Benoit: Addressed LMSA requirements in liability settlements.
    - ii) Tomlinson v. Landers: Reinforced the need for pre-settlement agreements on Medicare reimbursement.
  - c) Medicare Advantage Plan Recovery Rights
    - i) In re Avandia: Affirmed double damages recovery for private Medicare plans under MSP.
    - ii) Western Heritage Case: Broadened the scope of recovery to include private plans.
  - d) State Law vs. Federal Law
    - i) Caldera Case: Established that state law may limit recovery responsibilities when there is no federal conflict.
- 3) Practical Implications
  - a) Compliance Strategies
    - i) Proactively addressing conditional payments and liens.



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- ii) Ensuring detailed settlement language to avoid post-settlement disputes.
  - b) Anticipating Future Trends
    - i) Potential for new guidance on LMSAs.
    - ii) Increasing litigation involving private Medicare plans.
- 4) Conclusion
  - a) The Role of Case Law in MSP Compliance
  - b) Application of Legal Principles in Claims Handling

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