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MICHIGAN NO-FAULT UPDATE

When MSPA Exposure Attaches—And When It Doesn't: A Practical Takeaway for No-Fault Insurers

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KEY HOLDING

A healthcare provider cannot pursue double damages under the Medicare Secondary Payer Act ("MSPA") before an insurer's responsibility to pay has been established. The Michigan Court of Appeals *Bronson Healthcare Group, Inc v Conifer Insurance Company*, ___Mich App___ (2026) (entered Feb 2, 2026) held that a primary plan's responsibility must first be "demonstrated" before Medicare reimbursement obligations become enforceable through a private MSPA action.

The decision is significant for No-Fault insurers: Conditional payments – whether from Medicare or a Medicare Advantage Organization – do not alone trigger statutory liability and exposure to double damages in cases where a legitimate coverage dispute exists. MSPA exposure follows established liability but *does not* create it.

BACKGROUND: THE MEDICARE SECONDARY PAYER ACT (MSPA) AND ITS ENFORCEMENT MECHANISM

Congress enacted the MSPA to ensure that Medicare serves as a secondary payer when another insurer bears primary responsibility for an injured person's medical expenses. In circumstances where a group health plan, workers' compensation carrier, liability insurer, or No-Fault insurer is obligated to pay, Medicare is generally not intended to bear those costs.

In practice, however, questions regarding coverage are not always immediately resolved. Medicare may make conditional payments for otherwise covered medical expenses to avoid delay in necessary treatment.

The MSPA contains several mechanisms designed to protect Medicare's reimbursement rights. In addition to authorizing recovery by the federal government, the statute allows for a private cause of action permitting recovery of double damages in situations where a primary plan fails to timely satisfy its reimbursement obligations. In recent years, MSPA claims have increasingly been invoked as a litigation tactic in coverage disputes involving medical providers and No-Fault insurers.

The statute's enforcement provisions presuppose the existence of a responsible primary payer. *Bronson Healthcare Group, Inc v Conifer Insurance Company*, ___Mich App___ (2026) (entered Feb 2, 2026) addresses when that responsibility becomes sufficiently established to support a private MSPA action.

THE ISSUE PRESENTED IN *BRONSON*

The dispute between Bronson Healthcare Group and Conifer Insurance Company arose from treatment rendered to an individual who was injured while bartending at a local establishment. Bronson billed its expenses for the individual's medical care to the establishment's workers' compensation insurer, Conifer, who denied the claim on grounds that the individual was acting as a volunteer rather than an employee when they were injured. Medicare stepped in and made conditional payments for medical expenses, and while the coverage issue was being litigated, Bronson filed a separate lawsuit seeking recovery of double damages under the MSPA. The presiding trial court granted summary disposition in favor of Bronson, and Conifer appealed.

The Michigan Court of Appeals faced a straightforward question: May a provider sue for MSPA double damages before it is established that the insurer is actually responsible for payment?

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BRONSON'S DECISION: THE REQUIREMENT OF "DEMONSTRATED" RESPONSIBILITY

The Court of Appeals answered that question with a clear "no." Applying a plain-text reading of 42 USC § 1395y(b), the Court held that a primary plan's responsibility to pay must first be "demonstrated" before reimbursement obligations arise under the MSPA. This requirement operates as a condition precedent not only to Medicare's right of recovery, but also to a private cause of action for double damages. In other words, until responsibility is established – whether by judgment, settlement, or other recognized means – there is no actionable "failure" to reimburse Medicare within the meaning of the MSPA.

The Court also recognized the practical consequences of a contrary ruling. Allowing MSPA claims to proceed before coverage is resolved would effectively eliminate an insurer's ability to contest liability without incurring immediate statutory penalties. Coverage disputes would necessarily create parallel proceedings addressing the same underlying issue of responsibility, with an attendant risk of inconsistent outcomes. The Court ultimately reasoned that the MSPA was not intended to operate in this manner.

WHAT THIS MEANS FOR NO-FAULT INSURERS

Although *Bronson* arose from a workers' compensation claim, the Court's analysis applies broadly to any insurer operating as a "primary plan" under the MSPA. Coverage disputes are a routine feature of No-Fault practice, whether involving priority, residency, fraud, or policy exclusions affecting an insurer's responsibility to pay benefits. In many such cases, Medicare or a Medicare Advantage Organization may issue conditional payments while those disputes are ongoing. *Bronson* confirms that the existence of conditional payments does not alone trigger MSPA liability. Rather, the viability of a private MSPA claim depends on whether an insurer's responsibility to pay has been demonstrated, *i.e.*, legally established. For No-Fault insurers defending legitimate coverage positions, *Bronson* provides an important procedural safeguard. Once responsibility is demonstrated, however, the statute still imposes a duty to reimburse Medicare, and failure to do so in a timely manner may give rise to double damages.

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The Court took care to preserve this distinction. Its holding does not insulate insurers from MSPA liability where coverage is clear, or where a denial is asserted in bad faith. Under those circumstances, the statute continues to function as intended – as an enforcement mechanism ensuring that primary plans do not improperly shift costs to Medicare.

THE PRACTICAL TAKEAWAY

For claims professionals and coverage counsel alike, *Bronson* offers clarity to the once-muddied intersection of coverage litigation and MSPA exposure. It reinforces that the statute does not convert ordinary, good-faith coverage disputes into penalty-driven litigation, while preserving its role in cases where responsibility is established and payment is wrongfully withheld.

A well-supported coverage position remains an effective first line of defense, not only against underlying claims of contractual liability but against premature MSPA actions. At the same time, once a responsibility to pay has been demonstrated, prompt attention must be given to Medicare reimbursement obligations.

In an environment where MSPA claims are increasingly used as leverage in coverage disputes, *Bronson v Conifer* recalibrates the relationship between coverage litigation and MSPA exposure and serves as an important reminder that the MSPA follows liability but *does not* create it.

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MORE INFORMATION

Our team is available to discuss claim evaluation, motion strategy, and ongoing litigation. Please contact your MBL attorney with immediate questions or concerns.

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