

**IN THE DISTRICT COURT OF APPEAL OF FLORIDA
THIRD DISTRICT**

CASE NO. 3D2021-1790
Lower Case No. 15-27940 CA 01

IDS PROPERTY CASUALTY INSURANCE COMPANY

Appellant,

v.

LA LEY RECOVERY SYSTEMS, INC. and

MSPA CLAIMS 1, LLC.

Appellees.

**APPELLEES' MOTION FOR REHEARING, AND REHEARING EN
BANC**

Appellees MSPA Claims 1, LLC ("MSPA") and La Ley Recovery Systems Inc. ("La Ley"), respectfully submit this Motion For Rehearing and Rehearing en banc pursuant to Florida Rule of Appellate Procedure 9.330(a)(2)(a) which provides: a motion for rehearing shall state with particularity the points of law or fact that, in the opinion of the movant, the court has overlooked or misapprehended in its order or decision. The motion shall not present issues not previously raised in the proceeding, and Florida Rule of Appellate Procedure 9.331(d)(1) which provides: "Within the time prescribed by rule 9.330, a party may move for an en banc rehearing solely on the grounds that the case or

issue is of exceptional importance or that such consideration is necessary to maintain uniformity in the court's decisions." This is a matter of exceptional importance because the Panel's decision directly conflicts with the Eleventh Circuit United States Court of Appeals' precedent in two published opinions and with five United States district court decisions.

This appeal concerns the validity of an assignment of claims from Florida Healthcare Plus (FHCP) to the Appellees, La Ley, and MSPA. Regarding this assignment, the Panel's opinion came to this incorrect conclusion:

However, because Florida Healthcare Plus was under receivership at the time and required the approval of the receiver before assigning its reimbursement rights, and because the receiver initially disputed the validity of the assignments, these assignments did not become effective until June 1, 2016, via a settlement agreement with the assignees.

The provenance and validity of the assignment has been exhaustively addressed in federal court. In stark contrast to the Panel's conclusion, the United States Eleventh Circuit Court of Appeals rejected the identical standing challenges based on the same exact assignment:

With respect to the purported cancellation of FHCP's assignment, FHCP [Florida Healthcare Plus] executed a

contract 'assign[ing] all of [its] rights' under the Medicare Secondary Payer Act to La Ley Recovery on April 15, 2014. Because nothing in this contract suggested that FHCP would retain an interest in its rights with respect to these claims that were assigned under the contract or that its rights with respect to these claims would revert to FHCP, the contract fully divested FHCP of such rights. On February 20, 2015, La Ley Recovery executed a contract "irrevocably assign[ing]" to MSPA "any and all" of La Ley Recovery's "claims, rights and causes of action set forth" in its contract with FHCP. This agreement transferred the claims under the Act that La Ley Recovery then possessed to MSPA. That FHCP went into receivership after concluding its contract with La Ley Recovery, and that FHCP's receiver sought to cancel the contract, had no effect on the chain of assignments. FHCP's receiver had no authority to claw back what FHCP had already irrevocably transferred.

(Emphasis is added.) *MSP Recovery Claims, Series LLC v. ACE Am. Ins. Co.*, 974 F.3d 1305, 1317-1318 (11th Cir. 2020)("Ace").

And in *MSP Recovery, LLC v. Allstate Insurance Co.*, 835 F.3d 1357 (11th Cir. 2016)("Allstate") the same court addressed identical standing challenges from IDS, the same defendant here, based on this very same chain of the same assignment:

MSPA Claims 1 is the assignee of FHCP's claims against IDS. IDS argues that the assignments were invalid and that MSPA Claims 1 therefore suffered no legally cognizable injury. Though IDS was the only defendant to raise the issue, its argument applies equally in all of these cases, because similar purported assignments occurred in each case. If IDS is correct that the assignments of the claims to Plaintiffs were invalid, then we must dismiss each of these cases for lack of jurisdiction.

Id. at 1357 (emphasis added). After de novo review, the Eleventh Circuit ruled that "FHCP assigned to Plaintiffs here a claim created by statute, one that is entirely separate from its contract with Medicare. Because FHCP did not assign its contract with the government, or any interest therein, the assignment is not prohibited by § 6305, and IDS's standing argument must fail." *Id.* at 1357. (Emphasis is added.)

The Panel's opinion completely ignores the well-reasoned and thorough de novo analyses conducted by the Eleventh Circuit -- on the same exact assignment chain. The opinion contains significant factual inaccuracies and misapplied the relevant laws in deciding to reverse the Order Certifying this matter pursuant to FRCP 1.220 (b)(1) and (b)(2). The factual errors can be summarized as follows:

Florida Healthcare Plus initially attempted to assign its reimbursement rights to La Ley in April 2014...; This is incorrect, there was an assignment on April to La Ley when FHCP had not entered into receivership.

"However, because Florida Healthcare Plus was under receivership at the time and required the approval of the receiver before assigning its reimbursement rights, and because the

receiver initially disputed the validity of the assignments these assignments did not become effective until June 1, 2016, via a settlement agreement with the assignees”;

The assignment dated April 15, 2014 to La Ley has never been determined to be ineffective by any court. In contrast, the Leon County Court in *In Re: the Receivership of Florida Healthcare Plus, Inc* case number 2014 CA 2762 entered a final judgment finding that this assignment to La Ley in April of 2014 was valid and enforceable. The 11th circuit US Court of Appeals did as well in *Ace*, and *Allstate*.

The Panel opined that “Under the law of the case doctrine, a trial court is bound to follow prior rulings of the appellate court as long as the facts on which such decision are based continue to be the facts of the case”. However, the facts were not the same as *IDS 1* and did not require the case to be dismissed and a subsequent motion to enforce mandate filed by IDS on March 21, 2019 was denied by this Court on June 18, 2019, Appellees’ Supplemental Appendix filed January 18, 2022 (“SA”) SA. at 137. Moreover, the 11th US Court of Appeals opined on the same exact assignment between the same exact parties pertaining to the same exacts universe of claims assigned that La Ley and MSP had a valid enforceable assignment.

This Panel further opined that:

“here, the material facts pertaining to MSPA’s standing are unchanged from the prior appeal; MSPA does not dispute that it was not the assignee of Florida Healthcare Plus’s reimbursement rights at the time of the original complaint. MSPA retorts that because La Ley would have had standing at the time of the complaint, and because MSPA shares an identity of interest with its assignors, the amended complaint adding La Ley as a party should relate back to the filing of the original complaint to confer standing upon both plaintiffs. However, the relation-back doctrine generally does not apply where a party is added, nor can a plaintiff without standing substitute another plaintiff, and even if permissible, neither addition nor substitution of a party can cure the original plaintiff’s lack of standing at the time of the complaint.”

Pg. 7, September 30, 2024 IDS Property Casualty Insurance Company v. MSPA Claims 1, LLC et. At. Opinion (“IDS II Opinion”).

This is incorrect, La Ley and MSP have always maintained that they have had valid enforceable assignment through a valid chain of assignments. La Ley simply stated that if the assignment from La Ley to MSP was invalid for lack of approval from the receiver which MSP has always maintained was unnecessary, that La Ley was named in the original complaint and IDS was fully aware of the chain of assignments and therefore the relation back doctrine allowed for an

amendment to add La Ley and treat the matter as if La Ley was the original Plaintiff.

These errors culminate with the Panel's incorrect conclusion that "these assignments did not become effective until June 1, 2016, via a settlement agreement with the assignees." IDS II Opinion at 4. This same exact assignment has been repeatedly addressed in no less than seven published federal decisions that concluded differently.¹

After *Allstate*, a host of federal district courts from the Southern District of Florida rejected the standing argument advanced by IDS here with regards to the same exact assignment from FHCP. See *MSPA Claims I, LLC v. Century Sur. Co.*, 2017 WL 998282, at *3, 2017 U.S. Dist. LEXIS 37040 *7 n.1 (S.D. Fla. March 15, 2017) (Gayles, J.) ("The Court finds that, based on recent Eleventh Circuit precedent and the rulings of other courts in this district, Plaintiff has standing. See *MSP Recovery, LLC v. Allstate Insurance Co.*, 835 F.3d 1351, 1358 (11th Cir. 2016) (addressing standing in seven consolidated cases with nearly identical facts as this matter and finding that "FHCP assigned to Plaintiffs. . . a claim created by statute" and that therefore Plaintiffs had standing"); accord *MSPA Claims I, LLC v. Nat'l Fire Ins. Co.*, Case No.

¹¹ Ironically, the Panel quotes the United States seventh Circuit Court of Appeals at length.

16-20531, Dkt. No. 28 (S.D. Fla.), adopted, *Nat'l Fire Ins. Co.*, 16-cv-20531, Dkt. No. 34 (S.D. Fla.), (Moreno, J.) (“[T]he Eleventh Circuit found that the assignment of claims from FHCP, an MAO, to MSP Recovery were valid and gave MSP Recovery standing to assert claims under the MSP Act.”) (“*Nat'l Fire I*”); *MSP Recovery LLC v. Allstate Ins. Co.*, Case No. 15-cv-21532, Dkt. No. 54 (S.D. Fla.), adopted, *Allstate Ins. Co.*, 15-cv-21532, Dkt. No. 57 (S.D. Fla.) (King, J.) (“[T]he Eleventh Circuit’s recent decision . . . is more significant to the standing issue in this case and difficult for Defendant to overcome.”); *MSPA Claims 1, LLC v. Infinity Auto Ins. Co.*, 2017 WL 2733789, at *3 (S.D. Fla. 2017) (“Infinity”), adopted, *Infinity Auto Ins. Co.*, Case No. 15-cv-21504, Dkt. No. 58 (S.D. Fla.) (King, J.) (“Defendant mistakenly rehashes the same arguments as” those Allstate made in the Eleventh Circuit.”) *See also State of Florida, ex rel. Dep’t of Fin. Servs. v. Florida Healthcare Plus, Inc.*, No. 2014-CA-2762 (“In Re: the Receivership of Florida Healthcare Plus, Inc.”), Order Dated Dec. 10, 2014, at 13 (Fla. 2d Cir. Ct. 2014) (granting FHCP's receiver the authority to "cancel[]," but not rescind, contracts).

This is a matter of exceptional importance because the Panel’s opinion directly conflicts with the Eleventh Circuit United States Court

of Appeals' precedent in two published opinions and with five United States district court decisions. Even though the second basis for an en banc review addresses conflict within this District, uniformity with the federal courts within this District's geographic limits is salutary and serves this purpose as well. As stated by the Florida Supreme Court in *Chase Fed. Sav. and Loan Ass'n v. Schreiber*, 479 So. 2d 90, 93 (Fla. 1985): "The en banc process now authorized for the district courts is designed to help the district courts avoid conflict, assure harmonious decisions within the courts' geographic boundaries, and develop predictability of the law within their jurisdiction."

It is perplexing that the Panel completely ignored and disregarded the federal decisions regarding the same issue of fact and of law. These decisions were extensively cited in the answer brief. [See Answer Brief at pp.32-34.] It is respectfully submitted that the two opinions of the Eleventh Circuit, a federal appellate court whose geographic boundaries coincide with this Court's, merit considerable respect. Unlike other cases that deal with similar issues or similar facts, this case presents the unique situation where seven federal courts dealt with the exact same assignment.

In *IDS Prop. Cas. Ins. Co. v. MSPA Claims 1, LLC.*, 263 So. 3d 122 (Fla. 3d DCA 2018) ("*IDS 1*"), the court made an incorrect finding that now taints the analysis in the instant appeal. Specifically, the panel in *IDS 1* concluded that: "The record indicates that the first assignment and the two subsequent assignments required the approvals of Florida Healthcare Plus. These approvals did not occur until the Receiver for Florida Healthcare Plus entered into a settlement agreement with the three assignees on June 1, 2016." *IDS 1 at 125.*

This finding is fundamentally flawed, whether it was due to a scrivener's error or a misinterpretation of the record. The Eleventh Circuit's review in *Ace* and *Allstate* addressed this exact issue, concluding that the April 15, 2014, assignment from FHCP to La Ley Recovery did not require any such approval, even if later assignments involved consent from the receiver (which that court found they did not). It is counterintuitive and legally nonsensical to assert that the initial assignment from FHCP required the approval from the very party who granted the assignment, or of a receiver that was appointed much later.

The Panel now relies on this same flawed interpretation, further compounding the error instead of correcting it. Rather than recognizing

the comprehensive analysis conducted by the Eleventh Circuit, which thoroughly evaluated the implications of the receivership and affirmed standing, this panel has chosen to perpetuate its prior mistake and to ignore the federal decisions altogether. Judicial comity, as recognized in *Kittel v. Kittel*, 194 So. 2d 640 (Fla. 3d DCA 1967), should guide this Court to respect the Eleventh Circuit's conclusions rather than diverging from them without any announced reason. Unlike what the Panel stated at pg. 3 of the opinion, "Florida Healthcare Plus Initially attempted to assign its reimbursement rights to La Ley in April 2014, and La Ley in turn assigned its rights to MSPA in February 2015" (emphasis added) there was not an attempt to assign, but instead an actual assignment of rights as FHCP was not yet in receivership.

The opinion creates unnecessary confusion. Even if the opinion completely ignores the federal cases, they are published and they exist. They should be addressed in some fashion and not simply ignored. Federal case law as to standing is at least persuasive. *Southam v. Red Wing Shoe Co.*, 343 So. 3d 106, 111 (Fla. 4th DCA 2022) See also *Carnival Corp. v. Carlisle*, 953 So. 2d 461, 465 (Fla. 2007) citing *Skelly Oil Co. v. Jackson*, 1944 OK 179, 194 Okla. 183, 148 P.2d 182, 185 (Okla. 1944) ("[D]ecisions of lower federal courts

are persuasive and usually followed unless a conflict between the decisions of such courts makes it necessary to choose between one or more announced interpretations.").

Even if this Court is not bound by the Eleventh Circuit's rulings, it should at least consider them out of respect and judicial comity. This is especially true here because the Panel has crafted a dramatic change in settled law and thus violated the long-standing principle of uniformity. Florida courts have long recognized that "[t]he rule of judicial 'comity' has reference to [the] principle in accordance with which courts of one state or jurisdiction will give effect to laws and judicial decisions of another state, not as a matter of obligation, but out of deference and respect." *Kittel v. Kittel*, 194 So. 2d 640 (Fla. 3d DCA 1967).

It is remarkable that the Panel failed to give any weight to the fact that the Eleventh Circuit had before it all relevant information regarding the FHCP receivership. The March 21, 2016, supplemental authority letter from Allstate to the Eleventh Circuit highlighted the receivership order and argued that it should impact MSPA's standing [See Answer Brief footnote 32 at pp.33.] MSPA responded comprehensively, demonstrating that the assignment predated the receivership and

remained valid. The Eleventh Circuit, after careful consideration, ruled that MSPA maintained standing. Yet, the Panel's opinion disregards those conclusions, opting instead to repeat arguments that have already been thoroughly addressed and rejected by the federal appellate court.

Moreover, no order was ever entered by the receivership court in Leon County (the original court with jurisdiction over this issue and the parties) declaring that La Ley or MSPA did not have a valid enforceable chain of assignments. The receiver's attempt to enjoin La Ley Recovery's collection efforts culminated in a settlement (SA. at 181) —not in a finding that the assignment was void or that it needed any validation. Ignoring this history in favor of an oversimplified narrative undermines the judicial thoroughness that these matters deserve. While this case doesn't present the type of case that the Florida Supreme Court is required to accept jurisdiction on, it is certainly one that is compelling where this Court would be in direct disagreement with the 11th Circuit United States Court of Appeals. Correcting this glaring mistake of fact and law would avoid protracted litigation and create uniformity.

The Panel's decision doubles down on a flawed interpretation of the receivership's impact on standing. This results in an interpretation that is not only legally unsound but also strained, hypertechnical and inconsistent with federal precedent, risking further confusion in this area of law.

To make matters worse, at pg. 7 of the Opinion, the Panel states that "MSPA does not dispute that it was not the assignee of Florida Healthcare Plus's reimbursement rights at the time of the original complaint." That is patently false. MSPA vehemently disagrees with that assertion and has not only taken that position in this Court, but in every other case before the 11th Circuit Court of Appeals cited above. Why the Panel opined otherwise is baffling.

In the alternative, even if MSPA Claims 1, LLC did not have standing at the time of filing (which it did), the relation back doctrine should and does apply to La Ley Recovery Systems, Inc. The Court is bound by the prior ruling in *Estate of Eisen v. Philip Morris USA, Inc.*, 126 So. 3d 323 (Fla. 3d DCA 2013). In *Eisen*, this Court held that under certain circumstances, amendments to a complaint that add a party are permitted and shall relate back to the date of the original complaint. *Id.* at 336. The *Eisen* court found that the trial court abused its discretion

in denying plaintiff's motion to substitute a proper nominal plaintiff in place of a nominal plaintiff who lacked capacity to sue. *Id.* Specifically, the *Eisen* court held that an original plaintiff's lack of capacity to sue did not bar the application of the relation-back doctrine to permit substitution of a new nominal plaintiff, where: (1) the "timely-filed action gave the defendants fair notice of the legal claim and the underlying allegations"; (2) there was "an identity of interest between the original and substituted plaintiff"; (3) "the amendment [did not] cause[] any prejudice to the defendants"; and (4) the amendment to substitute plaintiffs did not "create a 'new' cause of 3 action." *Id.* at 330; see also *Kumar Corp. v. Nopal Lines, Ltd.*, 462 So. 2d 1178, 1183 (Fla. 3d DCA 1985) (holding that "where a plaintiff is either the real party in interest or is maintaining the action on behalf of the real party in interest, its action cannot be terminated on the ground that it lacks standing."). The *Eisen* decision is binding on this Panel and supports Plaintiffs' position that it is proper to add a party plaintiff in this circumstance. Under the Third District Court of Appeal's reasoning in *Eisen*, adding LA LEY as a plaintiff is proper in this case because: (1) IDS had fair notice of the claims asserted and the underlying allegations in MSPA's complaint; (2) there is identity of interest between LA LEY and MSPA—as both

parties at one point owned claims from FHCP through a common chain of assignments, including the claim asserted in MSPA’s complaint; (3) IDS will not be prejudiced by the addition of LA LEY; and (4) adding LA LEY does not create a new cause of action. See *Eisen*, 126 So. 3d at 330; *Kumar*, 462 So. 2d at 1183 (holding that “[t]he basic purpose of rules requiring that every action be prosecuted by or on behalf of the real party in interest is merely ‘to protect a defendant from facing a subsequent similar action brought by one not a party to the present proceeding and to ensure that any action taken to judgment will have its proper effect as res judicata....’”). *Eisen* is binding. Following *IDS 1*, LA LEY undisputedly had standing at the inception of litigation. Below is a timeline of the pertinent events to determine whether LA LEY has standing:

Date	Event
April 15, 2014	FHCP assigns claims, including M.A. claim to LLR.
December 1, 2014	LLR assigns claims to MSP Recovery (without written approval from the Receiver).
February 11, 2015	MSP Recovery assigns M.A. claim to MSPA (without written approval from the Receiver).
December 2, 2015	MSPA files original complaint against IDS.
June 1, 2016	LLR, MSP Recovery, and MSP entered into a settlement agreement with the Receiver, wherein the Receiver acknowledged and consented to La Ley’s prior assignments.

There can be no dispute that IDS was on notice of the chain of assignments and the entities in which possessed them since the

inception of the litigation. The original complaint filed on December 2, 2015 contained the assignments within the body of the complaint at paragraphs 61-64. Those paragraphs read as follows:

C. Assignments

61. Pursuant to an assignment agreement, FHCP assigned all of its subrogation claims, recovery, and reimbursement rights to La Ley Recovery Systems, Inc., a Florida corporation (“La Ley Recovery”). The agreement provides as follows:

[i]t is the intent of the parties to assist each other in the implementation of a system whereby [FHCP] and/or any entity it has contracted to recover, shift and/or bill on a service for all medical services and/or medications, diagnostic test or any amount it is obligated to pay to/or on behalf of any member or other liability that can be legally collected through an **assignment** of any kind and/or through Medicare and/or Medicaid rights and/or by State and/or Federal statute of any kind and/or any right of any nature whatsoever that exists now or in the future. By way of this agreement, [FHCP] appoints, directs, and otherwise **assigns** all of [FHCP’s] rights as it pertains to the rights pursuant to any plan, State or Federal statute whatsoever directly and/or indirectly for any its members and/or plan participants.

62. La Ley Recovery, subsequently, assigned its FHCP subrogation claims, recovery and reimbursement rights to MSP Recovery, LLC, a Florida limited liability company (“MSP Recovery”). That assignment indicates as follows:

LA LEY RECOVERY SYSTEMS, INC. (“La Ley Recovery Systems”), for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, does by these presents, assign, sell, transfer, convey, and set over to MSP RECOVERY, LLC., (“Assignee”), its successors and assigns, all rights, title and interest in and to the agreement (the “Agreement”) entered by and between La Ley Recovery Systems and Florida Healthcare Plus, Inc., on April 14th, 2014, as it relates to the recovery of claims of member, M.A., and related documents evidencing a security interest, liens or other security interests or encumbrances executed, filed and/or created in conjunction with collateral securing the Agreement. This Assignment is made without recourse or warranty except as referred to herein. The assignor has assigned this claim(s), pursuant to the underlying agreement but also assigns all causes of action to Assignee as it relates to M.A. This assignment shall encompass all of the rights from La Ley Recovery Systems and/or FHCP assigned to La Ley Recovery Systems by that Agreement dated on April 14th, 2014.

63. MSP Recovery assigned all of the subrogation claims, recovery, and reimbursement rights it received from La Ley Recovery to the Plaintiff, MSPA Claims 1, LLC (“MSPA Claims 1”). The assignment from MSP Recovery to MSPA Claims 1 provides:

“MSP RECOVERY LLC. (“MSP Recovery”), for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, does by these presents, assign, sell, transfer, convey, and set over to MSPA Claims 1, LLC., (“Assignee”), its successors and assigns, all rights, title and interest in and to the agreement (the “Agreement”) entered by and between La Ley Recovery Systems and Florida Healthcare Plus, Inc., on February 11th, 2015, as it relates to the recovery of claims of member, M.A., and related documents evidencing a security interest, liens or other security interests or encumbrances executed, filed and/or created in conjunction with collateral securing the Agreement. This Assignment is made without recourse or warranty except as referred to herein. The assignor has assigned this claim(s), pursuant to the underlying agreement but also assigns all causes of action to Assignee as it relates to M.A. This assignment shall encompass all of the rights from MSP Recovery, La Ley Recovery Systems and/or FHCP assigned to La Ley Recovery Systems by that Agreement dated on February 11th, 2015”

64. Accordingly, Plaintiff, MSPA Claims 1, acquired and now possesses all of FHCP’s subrogation rights to pursue and recover all medical claims, bills, and expenses FHCP provided on behalf of its MA Enrollee from and against any entity that is liable as a primary payer, including the Defendant.

Appellant's Appendix filed August 26, 2019 at 1.

Throughout this litigation, IDS argued that MSPA could not have had standing at the inception of litigation because LA LEY never got approval from FHCP or the Receiver to assign the claims to MSP Recovery—and later, MSPA—before this case was filed. This Court agreed. However, this does not mean that none of the parties in the chain of assignments had standing, it simply means that the entity that had standing at the specific moment in time when this case was filed was LA LEY. IDS does not (and cannot) dispute that a valid assignment occurred between FHCP and LA LEY. Therefore, if—in accordance with the IDS Appellate Decision—MSPA was not vested with standing until June 1, 2016 (the date the Receiver consented to the assignments), then LA LEY must have had standing when the original complaint was filed on December 2, 2015. IDS has now argued that neither MSPA nor LA LEY had standing when the original complaint was filed. But IDS cannot have it both ways. Either (1) MSPA had standing after the assignment from MSP at the time the original complaint was filed (Plaintiffs' original position) or (2) LA LEY had standing when the original complaint was filed because the assignment to MSP, and subsequently to MSPA, still needed approval prior to filing

the original complaint (IDS's original position). The Panel held that because the two subsequent assignments needed approval and "[t]hese approvals did not occur until the Receiver for Florida Healthcare Plus entered into a settlement agreement with the three assignees on June 1, 2016," MSPA did not have standing on December 2, 2015 (when the original complaint was filed). *IDS 1* at 125 (Fla. 3d DCA 2018). This means that LA LEY would have had standing when the original complaint was filed and, for the reasons already set forth above, can be added now.

Not only did the Panel miss on its findings regarding standing, but it also analyzed and applied the wrong law. Contrary to what IDS argued leading the panel to error (IB. at 32), the record is clear that although the Second Amended Complaint is based on the same underlying claims, it only seeks declaratory relief based on IDS' common course of conduct in regarding its treatment of claims that involve an insured who is also a Medicare beneficiary. Specifically, Plaintiff's Second Amended Class Action Complaint (Amended as of April 1, 2019 clearly and unambiguously states as follows:

VI. CAUSES OF ACTION

Count I - Declaratory Relief

Plaintiffs hereby incorporate by reference the allegations of paragraphs one (1) through thirty-four (34) above as if fully set forth herein, and further allege:

35. This is an action against Defendant IDS for declaratory relief pursuant to Chapter 86, Florida Statutes, and does not seek monetary damages.

36. Whenever Plaintiffs and the Class pay for Defendant IDS's insureds' accident-related medical items and services in the State of Florida, Defendant IDS pursuant to Section 627.736(4), Florida Statutes, must alert Plaintiffs and the Class of its primary obligation to ensure the proper coordination of benefits.

37. A bona fide present controversy exists between Plaintiffs, the Class, and Defendant IDS concerning the proper interpretation of Section 627.736(4), Florida Statutes, and the parties' respective rights and obligations thereunder as it relates to the obligations of the Defendant IDS.

Appellant's Appendix filed August 26, 2019 at 1.

The fact that the previous class certification was based, in part, on the same evidence of IDS' common course of conduct, does not transform the declaratory relief Appellees are currently seeking, into the previously sought claim for damages. In addition, the fact that primary payer coordination of benefits may ultimately result in a reimbursement claim, just means that the MSP laws are working as Congress intended. See *W. Heritage*, 832 F.3d at 1234 (Medicare is "an entitlement of last resort, available only if no private insurer [is]

liable.”). Appellees seek a declaration determining whose position regarding IDS’ obligations is correct. Here, there is a bona fide dispute that requires a declaration of the parties’ rights. The Panel not only allowing, but ultimately accepting IDS to essentially rewrite the complaint and transform its clear allegations into a case for damages was inappropriate. The prayer for relief speaks for itself and could not be more unambiguous:

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for a judgment and the following relief against Defendant IDS, certifying this action pursuant to Rule 1.220(b), appointing Plaintiffs to represent the Class defined herein, and appointing the undersigned law firm as class counsel:

- a. For a declaratory judgment under Count I declaring the parties’ respective rights and obligations under Section 627.736(4), Florida Statutes, and otherwise applicable law, including, but not limited, to an explanation of Defendant IDS’s affirmative duty to: (a) determine whether its insured are entitled to Medicare benefits under Part C to enable the proper coordination of benefits; (b) must alert Medicare Payers of its primary obligation; and (c) prevent Medicare Payers from paying for accident-related medical items and services for which Defendant IDS has a primary obligation;
- b. For an award requiring Defendant IDS to pay Plaintiffs attorneys’ fees and costs pursuant to Section 627.428, Florida Statutes; and
- c. Such other relief as the Court deems fair and reasonable.

Conclusion

The Panel's decision to reject the Eleventh Circuit's guidance not only undermines the proper application of legal principles but risks creating inconsistent interpretations that are untenable. The Eleventh Circuit's rulings, grounded in a thorough analysis of the entire record, clearly support MSPA's standing. The Panel's divergence from those conclusions represents an unnecessary departure from established law. Moreover, the Panel allowing IDS to effectively rewrite Plaintiff's complaint and accepting that version as true is clear error.

For these reasons, Appellee respectfully requests that the Court grant rehearing and/or rehearing en banc to correct these significant legal errors and ensure consistency with federal law.

WHEREFORE, Appellees MSPA Claims 1, LLC, and La Ley Recovery Systems Inc., respectfully requests that this Court grant the motion for rehearing and/or rehearing en banc.

I express a belief, based on reasoned and studied professional judgment, that the case or issue is of exceptional importance.

Dated: October 24, 2025. Respectfully Submitted,

MSP Recovery Law Firm
3150 S.W. 38th Ave., 11th Floor
Miami, FL 33146
Tel: 305-614-2222

By: /s/ John H. Ruiz
John H. Ruiz
Fla Bar No. 928150
jruiz@msprecoverylawfirm.com
serve@msprecoverylawfirm.com

Ryan H. Susman
Fla Bar No. 1010444
rsusman@msprecoverylawfirm.com

Armas Bertran Zincone
4960 SW 72nd Ave.
Miami, FL 33155
Tel: 305-461-5100

By: /s/ J. Alfredo Armas
J. Alfredo Armas
Fla Bar No. 360708
alfred@armaslaw.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of October 2024, a true and correct copy of the foregoing was served through the Florida E-Filing Portal on all counsel of record.

By: /s/ John H. Ruiz
Fla Bar No. 928150