

## [Insurers File Motion to Dismiss Government's Medicare Reimbursement and Double Damages Claims from \\$300 Million Settlement](#)

Posted on June 23, 2010 by [Barger & Wolen LLP](#)

By [David J. McMahon](#) and [Donielle Colich](#)

On June 10, 2010, Defendant liability insurers for global manufacturing company Solutia, Inc. filed their [Reply Brief](#) in support of a motion to dismiss two counts in the complaint filed by the federal government in *United States v. James Stricker, et al.*, Case No.CV-09-02423-KOB (“*Stricker*”).

The Reply is the latest in a multitude of briefings filed with the United States District Court for the Northern District of Alabama in the *Stricker* litigation, which arises from the government’s [complaint](#) to recover Medicare conditional payments that were made to approximately 907 Medicare beneficiaries involved in a \$300 million class action liability settlement (the “*Abernathy* Settlement”).

In its Complaint, the government alleges that the insurers had an obligation under the Medicare Secondary Payer (“MSP”) Statute, [42 U.S.C. § 1395y\(b\)\(2\)](#), to make primary payments for services provided to Medicare beneficiaries, for which Medicare had conditionally paid. The federal regulations implementing the MSP Statute, in particular [42 C.F.R. § 411.25](#), require settling parties, their counsel, and their insurers to notify Medicare of any settlement, judgment, award or other payment that was made when the case was resolved.

The government asserts that none of the parties to the *Abernathy* Settlement notified it of the settlement and failed to reimburse Medicare for conditional payments made on behalf of plaintiff beneficiaries. Two counts of the Complaint specifically seek reimbursement of Medicare’s conditional payments and double damages from the insurers, defined as “primary plans” under the MSP Statute, for their alleged failure to provide for primary payment or appropriate reimbursement of these conditional Medicare payments.

In support of their motion to dismiss, the insurers assert that the government failed to file suit within either of the potentially applicable three-year or six-year statutes of limitations. The insurers also dispute the government’s claims due to the fact that the government provided no specifics as to individual Plaintiff Medicare beneficiaries (i.e. the identity of beneficiaries, the physical injuries suffered, any medical treatments).

The *Stricker* lawsuit reinforces Medicare’s published statutory recovery rights and insurers potentially liability for reimbursement of conditional payments even where insurers have previously paid out the settlement proceeds. It also illustrates the importance of early case investigation as to potential plaintiff Medicare beneficiaries and serves as a warning to counsel and insurance carriers that the government’s lenient collection efforts under the MSP Statute are a thing of the past. If parties fail to account for Medicare’s interests, they may lose their right to appeal the conditional payment amount, and the government may be entitled to seek double damages from insurers.