

test; and, he put Mr. Jacoby in segregation after the positive test results were returned.” As a threshold issue, Sheriff Mack disputes that Officer Arnold was even involved in the underlying investigation. Sheriff Mack notes that Officer Arnold was not listed anywhere on the relevant activity report, did not serve as the arresting officer, and did not make the decision to drug test Mr. Jacoby.

Even accepting Mr. Jacoby’s version of events, Officer Arnold’s presence on the hearing board was not a clearly established constitutional violation. Mr. Jacoby cites Redding v. Fairman, 717 F.2d 1105 (7th Cir. 1983), in support of his claim. For starters, a Seventh Circuit case cannot clearly establish law in the Eleventh Circuit. See Jenkins, 115 F.3d at 826 n.4. Leaving that issue aside for the moment, Redding actually hurts Mr. Jacoby’s argument. In Redding, the Seventh Circuit rejected a per se rule that disciplinary committee members “should not be defendants in pending lawsuits for damages instituted by the very persons over whom the committee sits in judgment.” Id. at 1113 (quotation omitted). The Court said that the “disqualification issue should be decided on a case-by-case basis” because “[i]f every named defendant in a prisoners’ rights lawsuit must be disqualified from sitting on the [disciplinary board], . . . [it] would vest too much control in a prisoner to determine the [board’s] make-up.” Id.

It’s true that Redding acknowledged that a prison official with “direct personal or otherwise substantial involvement, such as major participation in a . . . decision-making role” in the underlying investigation might be disqualified from a disciplinary board. Id. (quotation omitted). We agree that it would have been facially improper for an officer with a greater decisionmaking role, such as the arresting officer, to serve on the hearing board.

However, under Mr. Jacoby’s version of the facts, Officer Arnold had no decision-making role in his arrest. Officer Arnold merely escorted Mr. Jacoby to the drug test, waited with him during the test, then put him in disciplinary segregation. Mr. Jacoby has failed to demonstrate that Officer Arnold’s presence on the hearing board was a clearly established constitutional violation. Because he has not made such a showing as to either of his two procedural complaints, we affirm the District Court’s grant of summary judgment in favor of Sheriff Mack on this claim.

* * *

Because Mr. Jacoby is a pretrial detainee, his substantive and procedural due process claims fall within Bell’s ambit. We reiterate Bell’s holding that “a [pretrial] detainee may not be punished prior to an adjudication of guilt in accordance with due process of law.” 441 U.S. at 535, 99 S.Ct. at 1872. For this reason, we hold that Mr. Jacoby was entitled to the due process hearing he received before being punished for his misconduct while in jail. However, because Mr. Jacoby has failed to overcome Sheriff Mack’s qualified immunity defense on either of his claims, we affirm the District Court’s grant of summary judgment.

AFFIRMED.



**MSP RECOVERY, LLC,
Plaintiff-Appellant,**

v.

**ALLSTATE INSURANCE COMPANY,
Defendant-Appellee.**

MSP Recovery, LLC, Plaintiff-Appellant,

v.

Progressive Select Insurance Company, Defendant-Appellee.

MSP Recovery, LLC, Plaintiff-Appellant,

v.

Progressive Select Insurance Company, Defendant-Appellee.

MSP Recovery, LLC, Plaintiff-Appellant,

v.

Progressive Select Insurance Company, Defendant-Appellee.

MSPA Claims 1, LLC, Plaintiff-Appellant,

v.

IDS Property Casualty Insurance Company, Defendant-Appellee.

MSPA Claims 1, LLC, Plaintiff-Appellant,

v.

Infinity Auto Insurance Company, Defendant-Appellee.

MSP Recovery, LLC, Plaintiff-Appellant,

v.

Allstate Insurance Company, Defendant-Appellee.

No. 15-14353, No. 15-12398, No. 15-12402, No. 15-12403, No. 15-14355, No. 15-14356, No. 15-14790

United States Court of Appeals,
Eleventh Circuit.

(August 30, 2016)

Background: Health maintenance organization's (HMO) assignees brought actions

against personal injury protection (PIP) no-fault automobile insurers under Medicare Secondary Payer (MSP) Act to recover conditional payments made on behalf of injured persons to cover medical expenses in automobile accidents. After cases were consolidated, the United States District Court for the Southern District of Florida, Nos. 1:15-cv-21532-JLK, 1:15-cv-20213-UU, 1:15-cv-20208-UU, 1:15-cv-20616-FAM, 1:15-cv-21687-JLK, 1:15-cv-21504-JLK, 1:15-cv-20732-RNS, Robert N. Scola, Jr., J., 2015 WL 5638095, dismissed actions, and assignees appealed.

Holdings: The Court of Appeals, Anderson, Circuit Judge, held that:

- (1) assignee had standing to bring claim under MSP Act, and
- (2) contractual obligation, without judgment or settlement agreement from separate proceeding, could satisfy "demonstrated responsibility" requirement of private cause of action under MSP Act.

Vacated and remanded.

1. Federal Courts ⇌3587(1)

Court of Appeals reviews district court's decision granting motion to dismiss de novo.

2. Federal Civil Procedure ⇌1772

To survive motion to dismiss, complaint must state claim to relief that is plausible on its face, meaning it must contain factual content that allows court to draw reasonable inference that defendant is liable for misconduct alleged.

3. Federal Courts ⇌2073, 2086

Federal courts have independent obligation to ensure that subject-matter jurisdiction exists to hear case, and dismissal is

warranted if court determines that it lacks jurisdiction.

4. Federal Civil Procedure ⇨103.2, 103.3

Under standing analysis, plaintiff who invokes federal court's jurisdiction bears burden to show (1) injury in fact, meaning injury that is concrete and particularized, and actual or imminent, (2) causal connection between injury and causal conduct, and (3) likelihood that injury will be redressed by favorable decision. U.S. Const. Art. 3, § 2.

5. Health ⇨556(4)

Health maintenance organization's (HMO) assignee had standing to bring claim under Medicare Secondary Payer (MSP) Act against no-fault automobile insurers that provided personal injury protection (PIP) benefits to recover conditional payments made on behalf of injured persons to cover medical expenses in automobile accidents, despite statute generally prohibiting assignment of contracts between federal government and third parties, where there was no allegation that anyone breached HMO's contract with federal government to offer Medicare Advantage plans, or that HMO transferred that contract or any interest in it to assignee. 41 U.S.C.A. § 6305(a); Social Security Act §§ 1862, 1862, 42 U.S.C.A. §§ 1395y(b)(2)(B)(ii), 1395y(b)(3)(A).

6. Administrative Law and Procedure ⇨431

Generally, considerable weight should be accorded to executive department's construction of statutory scheme it is entrusted to administer.

7. Health ⇨545

Contractual obligation, without judgment or settlement agreement from separate proceeding, could satisfy "demonstrated responsibility" requirement of private cause of action provided for by Medicare

Secondary Payer (MSP) Act. Social Security Act §§ 1862, 1862, 42 U.S.C.A. §§ 1395y(b)(2)(B)(ii), 1395y(b)(3)(A); 42 C.F.R. § 411.22(b).

8. Contracts ⇨1.7

Contract imposes obligations on parties immediately, without any involvement of courts.

9. Removal of Cases ⇨107(9)

When district court remands state law claims after declining to exercise supplemental jurisdiction, remand order is not based on lack of subject-matter jurisdiction, and thus is appealable. 28 U.S.C.A. § 1447(d).

Appeals from the United States District Court for the Southern District of Florida, D.C. Docket Nos. 1:15-cv-21532-JLK, 1:15-cv-20213-UU, 1:15-cv-20208-UU, 1:15-cv-20616-FAM, 1:15-cv-21687-JLK, 1:15-cv-21504-JLK, 1:15-cv-20732-RNS.

Beverly A. Pohl, Broad & Cassel, Fort Lauderdale, FL, Frank Carlos Quesada, MSP Law Firm, John H. Ruiz, Law Offices of La Ley con John H. Ruiz, Miami, FL, for Plaintiff-Appellant (Case No. 15-14353).

Suzanne Labrit, Tampa, FL, Rachel M. LaMontagne, Miami, FL, Shutts & Bowen, LLP, for Defendant-Appellee (Case No. 15-14353).

Beverly A. Pohl, Broad & Cassel, Fort Lauderdale, FL, Brian Cournoyer, MSP Law Firm, Gustavo Javier Losa, John H. Ruiz, Law Offices of La Ley con John H. Ruiz, Miami, FL, for Plaintiff-Appellant (Case No. 15-12398).

Betsy Ellwanger Gallagher, Michael C. Clarke, Kubicki Draper, Tampa, FL, Erick Dwayne Martin, Grumer & Macaluso, PA, Fort Lauderdale, FL, Neil Vijay Singh, Law Offices of Neil V. Singh, Lauderdale

Lakes, FL, for Defendant-Appellee (Case Nos. 15-12398 and 15-12402).

Beverly A. Pohl, Broad & Cassel, Fort Lauderdale, FL, Brian Cournoyer, Frank Carlos Quesada, MSP Law Firm, Gustavo Javier Losa, Rebecca Rubin-del Rio, John H. Ruiz, Law Offices of La Ley con John H. Ruiz, Miami, FL, for Plaintiff-Appellant (Case No. 15-12402).

Beverly A. Pohl, Broad & Cassel, Fort Lauderdale, FL, Brian Cournoyer, MSP Law Firm, Gustavo Javier Losa, Christine M. Lugo, Gino Moreno, Rebecca Rubin-del Rio, John H. Ruiz, Law Offices of La Ley con John H. Ruiz, Miami, FL, for Plaintiff-Appellant (Case No. 15-12403).

Betsy Ellwanger Gallagher, Michael C. Clarke, Kubicki Draper, Tampa, FL, Erick Dwayne Martin, Grumer & Macaluso, PA, Fort Lauderdale, FL, for Defendant-Appellee (Case No. 15-12403).

Beverly A. Pohl, Broad & Cassel, Fort Lauderdale, FL, for Plaintiff-Appellant (Case No. 15-14355).

Nicole Tucker Melvani, Niels P. Murphy, Christen Elizabeth Luikart, Murphy & Anderson, PA, Jacksonville, FL, for Defendant-Appellee (Case No. 15-14355).

Beverly A. Pohl, Broad & Cassel, Fort Lauderdale, FL, Gustavo Javier Losa, John H. Ruiz, PA, John H. Ruiz, Law Offices of La Ley con John H. Ruiz, Miami, FL, for Plaintiff-Appellant (Case No. 15-14356).

Joshua D. Lerner, Jessica G. Lagos, Nicole Sieb Smith, Rumberger Kirk & Cald-

well, PA, Miami, FL, for Defendant-Appellee (Case No. 15-14356).

Beverly A. Pohl, Broad & Cassel, Fort Lauderdale, FL, Frank Carlos Quesada, MSP Law Firm, Miami, FL, for Plaintiff-Appellant (Case No. 15-14790).

Suzanne Labrit, Shutts & Bowen, LLP, Tampa, FL, Rachel M. LaMontagne, Shutts & Bowen, LLP, Miami, FL, for Defendant-Appellee (Case No. 15-14790).

Before ED CARNES, Chief Judge, ANDERSON, Circuit Judge, and TITUS,* District Judge.

ANDERSON, Circuit Judge:

These seven consolidated¹ cases present the question of whether a contractual obligation, without more (specifically, without a judgment or settlement agreement from a separate proceeding), can satisfy the “demonstrated responsibility” requirement of the private cause of action provided for by the Medicare Secondary Payer Act (the “MSP Act”). 42 U.S.C. §§ 1395y(b)(2)(B)(ii), (b)(3)(A). We hold that it can.

I. BACKGROUND

In 1980, Congress passed the MSP Act to reduce the costs of Medicare. Glover v. Liggett Grp., Inc., 459 F.3d 1304, 1306 (11th Cir. 2006). Prior to the Act’s passage, Medicare often acted as a primary insurer; that is, Medicare paid for enrollees’ medical expenses, even when an enrollee car-

* Honorable Roger W. Titus, United States District Judge for the District of Maryland, sitting by designation.

1. The following appeals were previously consolidated and set for oral argument before this panel on June 9, 2016: Nos. 15-14353, 15-14355, 15-14356 and 15-14790. Similarly, the following appeals were previously consolidated and set for oral argument in a different slot also before this panel on June 9, 2016:

Nos. 15-12398, 15-12402 and 15-12403. We sua sponte consolidate all of the appeals, and we dispose of all of them in this single opinion. Oral argument in all of these appeals was continued in two orders of this Court dated June 2, 2016. We unanimously determine that these appeals will be decided on the briefs without oral argument. See 11th Cir. R. 34-3(f).

ried other insurance that covered the same costs, or when a third party had an obligation to pay for them. The MSP Act, as its name suggests, changed that relationship so that Medicare acts as a secondary payer. “This means that if payment for covered services has been or is reasonably expected to be made by someone else, Medicare does not have to pay.” Cochran v. U.S. Health Care Fin. Admin., 291 F.3d 775, 777 (11th Cir. 2002). The MSP Act prohibits Medicare from paying for items or services if “payment has been made or can reasonably be expected to be made under a workmen’s compensation law or plan of the United States or a State or under an automobile or liability insurance policy or plan (including a self-insured plan) or under no fault insurance.” 42 U.S.C. § 1395y(b)(2)(A)(ii). If, however, a primary payer—in the parlance of the statute, a “primary plan”—“has not made or cannot reasonably be expected to make payment with respect to the item or service promptly,” Medicare may make a payment on the enrollee’s behalf, conditioned on reimbursement from the primary plan. Id. § 1395y(b)(2)(B)(i); see also Cochran, 291 F.3d at 777 (“In order to accommodate its beneficiaries, however, Medicare does make conditional payments for covered services, even when another source may be obligated to pay, if that other source is not expected to pay promptly.”).

We pause here to note that, though the MSP Act uses the term “primary plan” to describe entities with a primary responsibility to pay, that term covers more than just health insurance plans. The law defines a “primary plan” as “a group health plan or large group health plan, . . . a workmen’s compensation law or plan, an automobile or liability insurance policy or

plan (including a self-insured plan) or no fault insurance. . . .” 42 U.S.C. § 1395y(b)(2)(A).² Thus, it is clear that the defendants in this case—which are all personal injury protection no-fault carriers—are primary plans within the meaning of the MSP Act.

The mechanics of the reimbursement process are set out in the statute as follows. The law requires a primary plan to reimburse Medicare “if it is demonstrated that such primary plan has or had a responsibility to make payment with respect to such item or service.” 42 U.S.C. § 1395y(b)(2)(B)(ii). The statute proceeds to explain how that responsibility may be demonstrated:

responsibility for such payment may be demonstrated by a judgment, a payment conditioned upon the recipient’s compromise, waiver, or release (whether or not there is a determination or admission of liability) of payment for items or services included in a claim against the primary plan or the primary plan’s insured, or by other means.

Id. This is the demonstrated responsibility requirement; in other words, Medicare may obtain reimbursement from a primary plan if it demonstrates that the primary plan “has or had a responsibility” to pay for the item or service. To facilitate recovery of these payments, the law provides for a right of action by the United States, for double damages, against “any or all entities that are or were required or responsible” to make payment under a primary plan. Id. § 1395y(b)(2)(B)(iii).

In addition to the right of action by the United States, Congress created a private cause of action against a primary plan that fails to provide for primary payment. Id. § 1395y(b)(3)(A). Like the cause of action

2. In 2003, Congress expanded the definition of the term “primary plan” further, to specify that “[a]n entity that engages in a business,

trade, or profession shall be deemed to have a self-insured plan if it carries its own risk.” 42 U.S.C. § 1395y(b)(2)(A).

provided to the United States, the private cause of action also permits the plaintiff to recover double damages. *Id.*³

A. Factual and Procedural History

The seven consolidated cases in this appeal all involve attempts by assignees of a health maintenance organization (“HMO”) to recover conditional payments via the MSP Act’s private cause of action. The facts relevant to the issues raised on appeal are similar in each case. Plaintiffs MSP Recovery LLC (“MSP Recovery”) and MSPA Claims 1, LLC (“MSPA Claims 1”) are firms that obtain claims for reimbursement under the MSP Act from HMOs that offer Medicare Advantage Plans. Defendants are all insurance companies that provide personal injury protection (“PIP”) no-fault insurance to automobile owners and operators in Florida. In each case, a person covered by a defendant’s PIP no-fault insurance policy was injured in an automobile accident. Each such insured was also enrolled in a Medicare Advantage Plan provided by Florida Healthcare Plus (“FHCP”), an HMO. FHCP made conditional payments on behalf of the injured persons to cover medical expenses in each accident. FHCP assigned its claims under the MSP Act, and Plaintiffs are the current assignees. Plaintiffs allege that, under the MSP Act, FHCP was a secondary payer, and Defendants were primary plans with obligations to pay some of their insureds’ medical costs. Defendants’ responsibility to pay, Plaintiffs assert in their complaints, is demonstrated by the insurance contracts the injured persons entered into with De-

endants. Plaintiffs filed suit in the Southern District of Florida seeking double damages under 42 U.S.C. § 1395y(b)(3)(A).

All of the consolidated cases were dismissed. In each case, the district court relied on our opinion in Glover v. Liggett Group, Inc. In a case in which the defendant was an alleged tortfeasor, Glover held that a primary plan’s responsibility to pay must be demonstrated before the plaintiff files a claim under the MSP Act. 459 F.3d at 1309. When the primary plan’s responsibility to pay arises from tort liability, we held in Glover, liability might be demonstrated by a judgment or settlement, but the tortfeasor’s liability cannot be “demonstrated” through the MSP Act claim itself. Id. In other words, a federal lawsuit under the MSP Act cannot serve as a substitute for determining liability via a standard tort claim; the tortfeasor’s responsibility to pay must be independently established. The courts below held that the requirement we established in Glover—that a primary plan’s responsibility to pay be demonstrated through a judgment or agreement separate from the MSP claim—applies even when the primary plan’s alleged responsibility to pay is contractual, as it is in these cases, rather than the result of tort liability. The primary plan’s alleged responsibility to pay in these cases is contractual because responsibility to pay is determined by construction of the PIP no-fault insurance policies issued by Defendants to each insured, whose medical expenses were conditionally paid by Plaintiffs’ Medicare Advantage Organization predecessors. Accordingly, because Plaintiffs did not obtain a judgment on the insurance contracts pri-

3. However, it is important to note that the private right of action created by subsection (b)(3)(A) does not provide for a qui tam action, whereby a private person might bring a lawsuit on behalf of the government. Rather, the MSP Act’s private cause of action “merely enables a private party to bring an action to

recover from a private insurer only where that private party has itself suffered an injury because a primary plan has failed to make a required payment to or on behalf of it.” Woods v. Empire Health Choice, Inc., 574 F.3d 92, 101 (2d Cir. 2009).

or to bringing their MSP Act claims, the district courts dismissed Plaintiffs' suits for failure to state a claim. Plaintiffs urge us to hold that Glover applies only when the responsibility to pay arises from tort, and that alleging the existence of a contractual obligation to pay suffices to demonstrate a primary payer's responsibility under the MSP Act private cause of action.

II. STANDARD OF REVIEW

[1, 2] We review a district court's decision granting a motion to dismiss *de novo*. Hill v. White, 321 F.3d 1334, 1335 (11th Cir. 2003). "To survive a motion to dismiss, a complaint must state a claim to relief that is plausible on its face, meaning it must contain factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Bishop v. Ross Earle & Bonan, P.A., 817 F.3d 1268, 1270 (11th Cir. 2016) (internal quotation marks omitted).

III. DISCUSSION

A. Standing

[3, 4] Before proceeding to the merits of this appeal, we address whether Plaintiffs have standing to bring this suit. The Constitution confines federal courts' jurisdiction to "cases" and "controversies." U.S. Const. Art. III, § 2. "[T]he core component of standing is an essential and unchanging part of the case-or-controversy requirement of Article III." Lujan v. Defs. of Wildlife, 504 U.S. 555, 560, 112 S.Ct. 2130, 2136, 119 L.Ed.2d 351 (1992). Federal courts have an independent obligation to ensure that subject-matter jurisdiction exists to hear a case, and dismissal is warranted if a court determines that it lacks

jurisdiction. In re Trusted Net Media Holdings, LLC, 550 F.3d 1035, 1042 (11th Cir. 2008). "[T]he irreducible constitutional minimum of standing contains three elements." Lujan, 504 U.S. at 560, 112 S.Ct. at 2136. A plaintiff who invokes the jurisdiction of a federal court bears the burden to show "(1) an injury in fact, meaning an injury that is concrete and particularized, and actual or imminent, (2) a causal connection between the injury and the causal conduct, and (3) a likelihood that the injury will be redressed by a favorable decision." Granite State Outdoor Adver., Inc. v. City of Clearwater, 351 F.3d 1112, 1116 (11th Cir. 2003). The standing issue in the instant case concerns the first element: injury in fact.

Defendant IDS Property Casualty Insurance Company ("IDS") argues that Plaintiff MSPA Claims 1 lacks standing to bring suit because it has suffered no legally cognizable injury. IDS points out that any cause of action in the seven consolidated cases originally belonged to FHCP. 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.

MSPA Claims 1's complaint alleges that the causes of action it asserts initially belonged to FHCP, and that MSPA Claims 1 obtained the claims through a series of assignments.⁴ IDS's argument that these

4. Defendants also argue that the private cause of action provided by the MSP Act does not extend to Medicare Advantage Organizations such as FHCP. Defendants' argument is fore-

closed by our recent decision in Humana Medical Plan, Inc. v. Western Heritage Insurance Co., 832 F.3d 1229, 1236–37, No. 15–

assignments were invalid relies on the fact that Medicare Advantage Organizations like FHCP must enter into a contract with the federal government to offer Medicare Advantage Plans. IDS points out that federal law generally prohibits assignment of contracts between the federal government and third parties. Therefore, IDS argues, assignment of the claim was barred by a federal statute. The anti-assignment statute reads:

The party to whom the Federal Government gives a contract or order may not transfer the contract or order, or any interest in the contract or order, to another party. A purported transfer in violation of this subsection annuls the contract or order so far as the Federal Government is concerned, except that all rights of action for breach of contract are reserved to the Federal Government.

41 U.S.C. § 6305(a).

[5] The assumption underlying IDS's argument appears to be that a Medicare Advantage Organization's standing to bring a claim under the MSP Act is derivative of its contractual relationship with Medicare. It is unclear why IDS believes that to be the case. Plaintiffs' MSP Act claims are not claims on FHCP's contract with the government, and there is no allegation that anyone has breached such a contract. 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. FHCP's contract with Medicare simply permits it to provide insurance plans that offer Medicare benefits. The contract does not provide for any special right of recovery under the private cause of action of the MSP Act. There is no allegation that FHCP transferred that contract, or any interest in the contract, to

MSPA Claims 1. MSPA Claims 1 did not undertake to do anything that FHCP is obligated to do under its contract with the government, nor did MSPA Claims 1 obtain any rights against the federal government. Rather, 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.

B. Demonstrated Responsibility

The primary issue in these consolidated cases is the operation of the demonstrated responsibility provision of the MSP Act. The text of the MSP Act, however, is remarkably abstruse. Therefore, we begin our discussion of the merits with a comprehensive review of the structure of the private cause of action before analyzing the application of that particular provision.

1. Structure of the MSP Act Private Cause of Action

The text of the private cause of action provided for by the MSP Act is challenging to parse. It reads:

There is established a private cause of action for damages (which shall be in an amount double the amount otherwise provided) in the case of a primary plan which fails to provide for primary payment (or appropriate reimbursement) in accordance with paragraphs (1) and (2)(A).

42 U.S.C. § 1395y(b)(3)(A). One difficulty in understanding the text stems from the fact that a primary plan is only liable when it fails to pay "in accordance with" paragraphs (1) and (2)(A). The ambiguity

arises because the demonstrated responsibility requirement at the heart of this case is contained in neither of the paragraphs referenced in the private cause of action provision. That is, the demonstrated responsibility requirement is not contained in either paragraph (1) or in paragraph (2)(A). Rather, the demonstrated responsibility requirement is contained in paragraph (2)(B). However, this lack of clarity in the statute need not detain us in this case. Our Glover decision has already held that the demonstrated responsibility requirement is incorporated as a prerequisite to pursuit of the private cause of action. See Glover, 459 F.3d at 1308–09 (holding that a plaintiff pursuing the private cause of action must satisfy the demonstrated responsibility requirement). The Glover court explained that the demonstrated responsibility requirement was incorporated as a prerequisite because the private cause of action language references paragraph (2)(A), which in turn references paragraph (2)(B). See also Humana, 832 F.3d 1229, 2016 WL 4169120, at *6 (“Although paragraph (2)(A) does not expressly obligate primary plans to make payments, the defined term ‘primary plan’ presupposes an existing obligation (whether by statute or contract) to pay for covered items or services. Therefore, a primary plan ‘fails to provide for primary payment (or appropriate reimbursement) in accordance with paragraph[] . . . (2)(A),’ when it fails to honor the underlying statutory or contractual obligation.”) (internal citation omitted).

We turn, then, to answer the question: Have Plaintiffs adequately demonstrated Defendants’ responsibility for payment by alleging an obligation pursuant to the insurance contracts, or must Plaintiffs first obtain a judgment against Defendants by

suing for enforcement of those contracts prior to bringing suit under the MSP Act?

2. Application of the Demonstrated Responsibility Provision

The MSP Act permits demonstration of a primary plan’s responsibility to pay “by a judgment, a payment conditioned upon the recipient’s compromise, waiver, or release (whether or not there is a determination or admission of liability) of payment for items or services included in a claim against the primary plan or the primary plan’s insured, or by other means.” 42 U.S.C. § 1395y(b)(2)(B)(ii). The question before us is whether the phrase “by other means” permits demonstration of responsibility by a contractual obligation. Defendants argue that it does not; they urge us to hold that Glover’s demand for a “separate adjudication or agreement” applies when the defendant’s responsibility derives from contract as well as from tort. Plaintiffs argue that a contractual obligation is among the “other means” by which the statute permits demonstration of responsibility, and that no separate adjudication or agreement (in addition to the contract) is necessary.

This issue has been addressed in regulations issued by the Centers for Medicare and Medicaid Services (“CMS”) interpreting the MSP Act. The implementing regulations specify that a primary payer must reimburse Medicare “for any payment if it is demonstrated that the primary payer has or had a responsibility to make payment.” 42 C.F.R. § 411.22(a). The regulations explicitly list the means by which responsibility for payment may be demonstrated, including a judgment or “other means, including but not limited to a settlement, award, or contractual obligation.” Id. § 411.22(b).⁵ The regulations thus spe-

5. That subsection of the regulations reads, in

its entirety:

cifically permit demonstration of responsibility by means of a contractual obligation.

[6] “Generally, considerable weight should be accorded to an executive department’s construction of a statutory scheme it is entrusted to administer . . .” Chevron U.S.A. Inc. v. Nat. Res. Def. Council, Inc., 467 U.S. 837, 844, 104 S.Ct. 2778, 2782, 81 L.Ed.2d 694 (1984). If a statute is silent or ambiguous with respect to a certain issue, we proceed to ask whether the executive’s construction of the statute is permissible. Gulfoast Med. Supply, Inc. v. Sec’y, Dep’t of Health & Human Servs., 468 F.3d 1347, 1351 (11th Cir. 2006) (citing Chevron, 467 U.S. at 842–44, 104 S.Ct. at 2781–82). Here, the statutory phrase “other means” is ambiguous: it is not apparent from the text of the statute alone which “other means” Congress intended to allow. And a contractual obligation seems to us to be an eminently reasonable method of demonstrating responsibility.

Defendants do not claim that the interpretation of the statute provided in the regulations is unreasonable. Instead, they fall back on their primary argument: that the existence of a contract does not necessarily demonstrate responsibility. They point out that PIP insurance contracts do not promise payment or reimbursement for all medical expenses, and they argue that it is possible that Plaintiffs seek to recover for injuries not covered under their policies. In other words, Defendants argue that a contract can demonstrate responsibility, but only once it is reduced to a judgment or settlement.

(b) A primary payer’s responsibility for payment may be demonstrated by—

- (1) A judgment;
- (2) A payment conditioned upon the beneficiary’s compromise, waiver, or release (whether or not there is a determination or admission of liability) of payment for

[7, 8] We disagree, and our disagreement underscores an important difference between tort liability and contractual obligations. It is a fundamental principle of contract law that a contract imposes enforceable rights and obligations: “The heart of ‘contract’ is thus found both in its promissory nature and in its enforceability . . . [O]nce a contract is entered, the parties’ rights and obligations are binding under the law . . .” 1 Williston on Contracts § 1:1 (4th ed.). A contract imposes obligations on the parties immediately, without any involvement of the courts. While a lawsuit may be necessary to enforce a contract in the event of a breach, the obligations created by the contract exist as soon as it is executed. By contrast, an alleged tortfeasor has no obligations until he is adjudged liable. In a similar vein, demonstrating responsibility by means of a “judgment” necessarily presupposes a separate proceeding in which that judgment was obtained. On the other hand, the term “contractual obligation” in the CMS regulations presupposes only the existence of a contract.

Moreover, adopting Defendants’ interpretation would render meaningless the statutory phrase “by other means,” as well as the specific reference to contractual obligations in the regulation. Defendants’ reading of the law “is thus at odds with one of the most basic interpretive canons, that a statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant.” Corley v. United States, 556 U.S. 303, 314, 129 S.Ct. 1558, 1566, 173 L.Ed.2d 443 (2009) (internal quo-

items or services included in a claim against the primary payer or the primary payer’s insured; or

(3) By other means, including but not limited to a settlement, award, or contractual obligation.

42 C.F.R. § 411.22(b).

tation marks and brackets omitted). If Defendants are correct that a judgment or settlement agreement is always a prerequisite to suit under the MSP Act, then there are no “other means” that may demonstrate responsibility, and that part of the statute is superfluous. Additionally, Defendants’ preferred interpretation renders the reference in the regulations to contractual obligations entirely inoperative. If Defendants are correct that a contract must always be reduced to a judgment, then a “contractual obligation” can never demonstrate responsibility; only a judgment can. The regulations envision demonstrating responsibility with a judgment or settlement from a separate proceeding. If a contractual obligation, absent such a judgment or settlement, cannot demonstrate responsibility to pay, then the reference to judgments and settlements would be sufficient. There is no purpose at all for listing a contractual obligation as a means of demonstrating responsibility. Requiring that such a contractual obligation be reduced to a judgment renders superfluous the phrase “by other means.”

This line of reasoning is entirely consistent with Glover. In Glover, we concluded that responsibility must be demonstrated by “a separate adjudication or agreement.” 459 F.3d at 1309. An insurance contract is, of course, a separate agreement, and permitting demonstration of responsibility via a contractual obligation is therefore consistent with our holding in Glover. Glover was decided in the tort context, and the “agreement” the Glover panel likely had in mind was a settlement agreement. But a settlement agreement is just a type of contract. So if Defendants are correct that a contractual obligation alone cannot demonstrate responsibility, then, presumably, even the beneficiary of a settlement agreement has not demonstrated responsibility until he has sued for breach of the settlement agreement, prevailed, and obtained a

judgment. Given the explicit references in the text of the law to settlements and waivers as means of demonstrating responsibility, Congress clearly did not intend the result Defendants request. The plain language of the MSP Act indicates that at least some contractual obligations—namely, settlement agreements—are sufficient to demonstrate responsibility. We see no reason that other types of agreements—such as insurance contracts—should be treated differently.

We hold that a contractual obligation may serve as sufficient demonstration of responsibility for payment to satisfy the condition precedent to suit under the MSP Act. This does not relieve Plaintiffs of their burden to allege in their complaints, and then subsequently prove with evidence, that Defendants’ valid insurance contracts actually render Defendants responsible for primary payment of the expenses Plaintiffs seek to recover. And Defendants may still assert any valid contract defense in arguing against their liability. We hold only that a contractual obligation may satisfy the demonstrated responsibility requirement, not that the existence of a contractual obligation conclusively demonstrates liability under the MSP Act’s private cause of action.

3. Policy Maximums

Defendants IDS and Infinity Auto Insurance Company (“Infinity”) argue in the alternative that, even if Plaintiffs’ insurance contracts are sufficient to demonstrate Defendants’ responsibility to pay, Plaintiffs’ claims still fail because their complaints show that Defendants no longer have a responsibility to pay. Defendants’ argument is grounded in the fact that Plaintiffs’ insurance policies provided for a maximum of \$10,000 in benefits. Defendants claim that any responsibility they had to pay was exhausted once the policy

maximums were reached, which may have occurred in some of these cases. Plaintiffs respond that the statute requires repayment whenever a primary plan “has or had a responsibility to make payment,” 42 U.S.C. § 1395y(b)(2)(B)(ii) (emphasis added), and that Defendants are therefore liable if they ever had a responsibility to make a payment, even if they subsequently paid out the maximum benefits available under the policies.⁶

The district courts to which these arguments were presented did not reach them, instead dismissing the cases solely on the grounds that Glover barred liability. On remand, we leave it to the district courts to decide this issue in the first instance.⁷

C. Remand of State Law Claims

In one of the consolidated cases, MSP Recovery, LLC v. Allstate Insurance Company, No. 15-14790, the district court remanded Plaintiff MSP Recovery’s supplemental state law claims after dismissing the MSP Act claim, which was the only federal claim in the case. MSP Recovery asks that, if we vacate the dismissal of its MSP Act claim, we reinstate its state law claims. Defendant Allstate Insurance Company agrees that that is the proper course of action.

[9] An order remanding a case for lack of subject-matter jurisdiction is not reviewable on appeal. 28 U.S.C. § 1447(d). However, when a district court remands state law claims after declining to exercise supplemental jurisdiction, the remand order is not based on a lack of subject-matter jurisdiction. Carlsbad Tech., Inc. v. HIF Bio, Inc., 556 U.S. 635, 641, 129 S.Ct. 1862, 1867, 173 L.Ed.2d 843 (2009). Thus,

6. In their brief, Plaintiffs do concede that they cannot recover more than twice the policy limits.

the remand order in this case is appealable. Additionally, where there is a basis for federal jurisdiction, the district court must exercise its supplemental jurisdiction over related state law claims unless a statutory exception applies. See Palmer v. Hosp. Auth. of Randolph Cty., 22 F.3d 1559, 1569 (11th Cir. 1994). Accordingly, once Plaintiff’s MSP Act claim is reinstated, the district court is required to exercise its supplemental jurisdiction over the related state law claims. Because the dismissal of the MSP Act claim—a claim over which the district court had federal question jurisdiction—was in error, remand of the supplemental state law claims was also in error. We therefore vacate the district court’s remand order as well as the order of dismissal.

For the same reasons, we vacate the implicit discretionary dismissals of the state law claims in three of the other consolidated cases: MSP Recovery v. Allstate Insurance Company, No. 15-14353; MSPA Claims 1, LLC v. IDS Property Casualty Insurance, No. 15-14355; and MSPA Claims 1, LLC v. Infinity Auto Insurance Company, No. 15-14356. See Snow ex rel. Snow v. City of Citronelle, 420 F.3d 1262, 1271 (11th Cir. 2005) (“Because we reinstate Snow’s federal claims, we must vacate the discretionary dismissal of the state-law claims, but we express no opinion on the merits of those claims.”).

IV. CONCLUSION

For the reasons discussed above, we hold that a plaintiff suing a primary plan under the private cause of action in the MSP Act may satisfy the demonstrated responsibility prerequisite by alleging the

7. IDS has also moved for sanctions on the grounds that some of these appeals are frivolous because IDS has paid out the policy maximums. IDS’s motion is denied.

existence of a contractual obligation to pay. A judgment or settlement from a separate proceeding is not necessary. The judgments of the district courts in these cases are vacated, and the cases are remanded for further proceedings not inconsistent with this opinion. VACATED and REMANDED.



Christopher L. PARKER, Marwa Mousa, individually and on behalf of others similarly situated, Eduardo Zeitone, Angel Luis Lazo-Perez, Erik Bartenhagen, et al., Plaintiffs-Appellees,

v.

AMERICAN TRAFFIC SOLUTIONS, INC., et al., Defendants,

City of Apopka, City of Aventura, Village of Bal Harbour, City of Boca Raton, City of Boynton Beach, City of Brooksville, Town of Campbellton, City of Clermont, City of Clewiston, City of Cocoa Beach, City of Coral Gables, City of Coral Springs, Town of Cutler Bay, Town of Davie, City of Daytona Beach, City of Doral, Village of El Portal, City of Florida City, City of Fort Lauderdale, City of Green Cove Springs, City of Groveland, City of Gulfport, City of Haines City, City of Hallandale Beach, City of Hialeah, City of Hialeah Gardens, Hillsborough County, City of Hollywood, City of Holly Hill, City of Homestead, Town of Juno Beach, City of Kenneth City, Town of Key Biscane, City of Lakeland, City of Lauderdale Lakes, City of Maitland, Manatee County,

City of Margate, Town of Medley, City of Miami, City of Miami Beach, City of Miami Gardens, City of Miami Springs, City of Milton, City of New Port Richey, City of North Bay Village, City of North Miami, City of North Miami Beach, City of Ocoee, City of Oldsmar, City of Opa-Locka, Orange County, Town of Orange Park, City of Orlando, Osceola County, City of Palatka, Palm Beach County, City of Palm Coast, City of Pembroke Pines, Village of Palm Springs, City of Port Richey, City of Sarasota, City of South Pasadena, City of St. Petersburg, City of Sunrise, Town of Surfside, City of Sweetwater, City of Tamarac, City of Temple Terrace, City of West Miami, City of West Palm Beach, City of West Park, Defendants-Appellants.

No. 15-13721

United States Court of Appeals,
Eleventh Circuit.

Date Filed: 08/31/2016

Background: Plaintiffs filed class actions against red-light camera vendors, state department of revenue, and various local governments alleging that red-light camera programs violated state law. After suits were consolidated, the United States District Court for the Southern District of Florida, No. 1:14-cv-24010-FAM, Federico A. Moreno, J., 2015 WL 4755175, denied local governments' motion to dismiss. Local governments filed interlocutory appeal, and plaintiffs moved to dismiss appeal and for sanctions.

Holdings: The Court of Appeals, Julie Carnes, Circuit Judge, held that:

- (1) order denying local governments' motion to dismiss was not immediately appealable under collateral order doctrine, and