

ALERT

Supreme Court Ruling on Medicaid Suits Limits Third Party Beneficiary Liability Under Federal Contracts

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Yesterday, in *Astra USA, Inc. v. Santa Clara County*, the Supreme Court issued an important decision rejecting a lawsuit against several government contractors by a plaintiff alleging that it was a third-party beneficiary of the contractors' agreements with the federal government. The lawsuit was filed by a health care provider that buys pharmaceuticals from manufacturers participating in the Medicaid Drug Rebate Program. As part of the rebate program, manufacturers must offer discounted prices to a specified set of health care facilities, most of which serve low-income patients or specific patient populations. The discounts are required by Section 340B of the Public Health Service Act, and the manufacturers' agreements to offer the discounts were memorialized in "Provider Pricing Agreements" with the Department of Health and Human Services.

Santa Clara County, which operates several health care facilities, sued nine manufacturers for allegedly charging more than the ceiling prices set by the statutory formulas specified in the Provider Pricing Agreements. In pursuing its claim, the county acknowledged that it was not party to the allegedly breached contracts, that no contract provisions allowed it to enforce price ceilings, and that no statute created a private cause of action for enforcing the price ceilings. Instead, the county argued that it was an intended third-party beneficiary of the Provider Pricing Agreements and thus could enforce the 340B-program price caps that these form contracts imposed on manufacturers.

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Government Contracts

The Supreme Court unanimously rejected Santa Clara County's suit, finding that third-party-beneficiary suits were inconsistent with the regulatory scheme created by the Public Health Service Act. The Court focused both on the absence of a private cause of action and on the content of the Provider Pricing Agreements—recitations of statutory obligations with "no negotiable terms." Because plaintiffs can enforce statutory provisions only through causes of action provided by statute, "[i]f 340B entities may not sue under the statute, it would make scant sense to allow them to sue on a form contract implementing the statute, setting out terms identical to those contained in the statute."

For the third-party beneficiaries to be able to sue, the Court explained, the contracts would had to have evidenced intent to allow such suits. In this case, the Court found the Ninth Circuit had erred by inferring intent solely from the references to the statute that the contracts were intended to serve.

Not only does this decision eliminate the prospect of duplicative and potentially contradictory litigation around the country, but it also may portend the Court's willingness to reject similar third-party-beneficiary suits against other federal contractors. Many government contracts include provisions like those in the 340B Provider Pricing Agreements—provisions that simply incorporate the unaltered text of statutes or regulations. If the rationale of *Astra USA* were extended, third parties could file suit alleging a government contractor's breach of those types of provisions only if a statute gave them a cause of action. The Court, in a footnote, noted that appellate courts have split on this broader question (with the Federal Circuit having rejected such suits) but did not offer any comments on which position might be right.