

Lewis Johs Avallone Aviles, LLP

LJ ALERT

General Obligations Law-Subrogation Rights

On November 18, 2009 Governor Patterson signed into law legislation which abrogates the right of a private insurer to subrogate against a settling defendant or plaintiff in a personal injury or wrongful death action. It will apply to all actions filed after November 18, 2009 and to all pending actions where there has been no trial or settlement.

The newly-created §5-335 of the General Obligations Law removes all liens and rights to subrogation or reimbursement against any party entering into a settlement in a civil lawsuit seeking the recovery of damages for bodily injury or death. The law does not affect subrogation rights for claims involving property damage. There are, however, two exceptions to this rather broad rule. First, the legislature has explicitly exempted subrogation claims seeking recovery of additional first party benefits that were provided under New York's no-fault statute. Additionally, the law does not eliminate a right to subrogation or reimbursement that emanates from a statute such as Medicaid liens.

In order to abrogate the rights of subrogation and/or reimbursement from a settling party, the law creates a conclusive presumption that a settlement does not include compensation for healthcare services, loss of earnings, or other economic loss that is covered by insurance. These statutory presumptions preclude an insurance carrier from recouping the funds from either party.

The law also provides that a plaintiff "shall not be deemed to have taken an action in derogation" of an insurance carrier's rights. Thus, a plaintiff's settlement of an action is deemed not to be a violation of the contract between plaintiff and a benefit provider as a matter of law.

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