

4576

2011-2012 Regular Sessions

I N S E N A T E

April 12, 2011

Introduced by Sen. BONACIC -- (at request of the Office of Court Administration) -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

AN ACT to amend the general obligation law, in relation to the limitation of non-statutory reimbursement and subrogation

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Section 5-335 of the general obligations law, as added by
2 section 8 of part F of chapter 494 of the laws of 2009, is amended to
3 read as follows:

4 S 5-335. Limitation of non-statutory reimbursement and subrogation
5 claims in personal injury and wrongful death actions. (a) When a plain-
6 tiff settles with, OR OBTAINS JUDGMENT AGAINST, one or more defendants
7 in an action for personal injuries, medical, dental, or podiatric malp-
8 ractice, or wrongful death, it shall be conclusively presumed that the
9 settlement OR JUDGMENT does not include any compensation for the cost
10 of health care services, loss of earnings or other economic loss to the
11 extent those losses or expenses have been or are obligated to be paid or
12 reimbursed by a benefit provider, except for those payments as to which
13 there is a statutory right of reimbursement. By entering into any such
14 settlement OR BY SEEKING OR OBTAINING SUCH JUDGMENT, a plaintiff shall
15 not be deemed to have taken an action in derogation of any nonstatutory
16 right of any benefit provider that paid or is obligated to pay those
17 losses or expenses; nor shall a plaintiff's entry into such settlement
18 OR RECOVERY OF SUCH JUDGMENT constitute a violation of any contract
19 between the plaintiff and such benefit provider.

20 Except where there is a statutory right of reimbursement, no party
21 entering into such a settlement OR OBTAINING SUCH A JUDGMENT shall be
22 subject to a subrogation claim or claim for reimbursement by a benefit
23 provider and a benefit provider shall have no lien or right of subroga-
24 tion or reimbursement against any such [settling] party, with respect to

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 those losses or expenses that have been or are obligated to be paid or
2 reimbursed by said benefit provider. EXCEPT WHERE THERE IS A STATUTORY
3 RIGHT OF REIMBURSEMENT, A BENEFIT PROVIDER SHALL NOT BE PERMITTED TO
4 INTERVENE IN AN ACTION FOR PERSONAL INJURY, MEDICAL, DENTAL, OR PODIA-
5 TRIC MALPRACTICE, OR WRONGFUL DEATH, FOR THE PURPOSE OF ASSERTING A
6 SUBROGATION CLAIM OR CLAIM FOR REIMBURSEMENT WITH RESPECT TO SUCH LOSSES
7 OR EXPENSES.

8 (b) This section shall not apply to a subrogation claim for recovery
9 of additional first-party benefits provided pursuant to article fifty-
10 one of the insurance law. The term "additional first-party benefits", as
11 used in this subdivision, shall have the same meaning given it in
12 section 65-1.3 of title 11 of the codes, rules and regulations of the
13 state of New York as of the effective date of this statute.

14 S 2. This act shall take effect immediately and apply to all actions
15 commenced and all actions pending on such date.