S T A T E O F N E W Y O R K

7828--A

2013-2014 Regular Sessions

I N A S S E M B L Y

June 5, 2013

Introduced by M. of A. WEINSTEIN -- read once and referred to the Committee on Judiciary -- reported and referred to the Committee on Codes -- reported and referred to the Committee on Rules -- Rules Committee discharged, bill amended, ordered reprinted as amended and recommitted to the Committee on Rules

AN ACT to amend the general obligations law, in relation to protecting parties to the settlement of a tort claim from certain unwarranted lien, reimbursement and subrogation claims

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

Section 1. Legislative intent. The legislature finds that the resolution and settlement of certain types of claims have been impeded as a result of health insurers' attempts to intervene into pending litigation, as well as similar attempts to institute subrogation and reimbursement actions against litigants. As a result, settlement of claims made by accident victims and others are imperiled and prevented, thus causing undue burdens and pressures upon the court system. In addition, defendants in such actions are being subjected to claims made by health insurers, exposing them to additional liability.

Chapter 494 of the laws of 2009 was enacted to add a new subdivision 4 to section 5-101 of the general obligations law and to add a new section 5-335 of the general obligations law "in relation to protecting parties to the settlement of a tort claim from certain unwarranted lien, reimbursement and subrogation claims". However, one federal court, the United States District Court for the Eastern District of New York, in Wurtz v. Rawlings Co., LLC, 2013 WL1248631 (E.D.N.Y), has held that this legislation was preempted to the extent it applies to any insured employee benefit plan covered by the Employee Retirement Income Security Act of 1974, as amended (ERISA). The instant legislation is intended to make clear the original purpose of sections 5-101 and 5-335 of the general obligations law which is to ensure that insurers will not be

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

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able to claim or access any monies paid in settlement of a tort claim whether by way of a lien, a reimbursement claim, subrogation, or otherwise so that the burden of payment for health care services, disability payments, lost wage payments or any other benefits for the victims of torts will be borne by the insurer and not any party to a settlement of such a victim's tort claim. This law is specifically directed toward entities engaged in providing health insurance, thus falling under the "savings" clause contained in ERISA, which reserves to the states the right and the ability to regulate insurance.

S 2. Subdivision 4 of section 5-101 of the general obligations law, as added by section 7 of part F of chapter 494 of the laws of 2009, is amended to read as follows:

4. As used in section 5-335 of this article, the term ["benefit provider"] "INSURER" means any [insurer, health maintenance organization, health benefit plan, preferred provider organization, employee benefit plan] INSURANCE COMPANY or other entity which provides for payment or reimbursement of health care expenses, health care services, disability payments, lost wage payments or any other benefits under a policy of insurance or AN INSURANCE contract with an individual or group.

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

S 5-335. Limitation of [non-statutory] reimbursement and subrogation claims in personal injury and wrongful death actions. (a) When a [plaintiff] PERSON settles [with] A CLAIM, WHETHER IN LITIGATION OR OTHERWISE, AGAINST one or more [defendants in an action] OTHER PERSONS for personal injuries, medical, dental, or podiatric malpractice, or wrongful death, it shall be conclusively presumed that the settlement does not include any compensation for the cost of health care services, loss of earnings or other economic loss to the extent those losses or expenses have been or are obligated to be paid or reimbursed by [a benefit provider, except for those payments as to which there is a statutory right of reimbursement] AN INSURER. By entering into any such settlement, a [plaintiff] PERSON shall not be deemed to have taken an action in derogation of any [nonstatutory] right of any [benefit provider] INSURER that paid or is obligated to pay those losses or expenses; nor shall a [plaintiff's] PERSON'S entry into such settlement constitute a violation of any contract between the [plaintiff] PERSON and such [benefit provider] INSURER.

[Except where there is a statutory right of reimbursement, no party] NO PERSON entering into such a settlement shall be subject to a subrogation claim or claim for reimbursement by [a benefit provider] AN INSURER and [a benefit provider] AN INSURER shall have no lien or right of subrogation or reimbursement against any such settling [party] PERSON OR ANY OTHER PARTY TO SUCH A SETTLEMENT, with respect to those losses or expenses that have been or are obligated to be paid or reimbursed by said [benefit provider] INSURER.

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

(C) THIS SECTION SHALL NOT APPLY TO A SUBROGATION OR REIMBURSEMENT CLAIM FOR RECOVERY OF BENEFITS PROVIDED BY MEDICARE OR MEDICAID, SPECIF-

ICALLY AUTHORIZED PURSUANT TO ARTICLE FIFTY-ONE OF THE INSURANCE LAW, OR PURSUANT TO A POLICY OF INSURANCE OR AN INSURANCE CONTRACT PROVIDING WORKERS' COMPENSATION BENEFITS.

S 4. This act shall take effect immediately and shall apply to all settlements entered into on or after November 12, 2009.