



New York's Anti-Subrogation Law and Health Insurance Carriers

The right to recover for previously reimbursed medical expenses has been governed in New York by CPLR 4545. Essentially, it prevents insured persons from "double dipping" and getting a double recovery when an expense is paid out by a health insurance carrier and also recovered through settlement or trial. Okay, that sounds fair.

But up until last November, the health insurance carriers of the world were trying to balance their books on the backs of injured people who frequently do not even have an adequate source of compensation for the pain and suffering. Victims frequently have to deal with limited auto or home owner policies that provide inadequate compensation. Now we have a new law, General Obligation Law § 5-335, effective November 12, 2009.

It was supposed to put an end to the greedy health insurers trying to come between the injured person and their fair compensation. It does help, and has been a fine addition to the arsenal we have to get money to our clients, but it has exceptions. A few such examples include government (Medicare and Medicaid) programs with statutory rights, workers' compensation, and certain Employee Retirement Income Security Act (ERISA) plans. So naturally, what do the health insurance carriers say? *Everyone* is ERISA-funded! Somehow they can come up with an angle to tie in an employer's plan and go after a victim's benefits.

It will be months, and indeed years, for the details to be worked out in court decisions, however you should be sure that if you are injured you have someone ready to do battle with the health insurance carriers after the jury comes in or a settlement is otherwise reached.

I remember the early years of ERISA. At the time I was attending law school at night and working for an insurance company where the law's moniker was commonly renamed Every Ridiculous Idea Since Adam. That was in the 1970s and it was basically meant to protect employees who moved from one company to another, or were let go right before retirement. Not surprisingly, the insurance lobby is trying to use it *against* employees.

If you are injured and have bills covered by health insurance via your employment, do not just accept the fact that the carrier has to be repaid. Very often it is well worth the fight!

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