

ALERT

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GENERAL LITIGATION
News Concerning Recent Litigation Issues



NEW NEW YORK LEGISLATION N.Y.G.O.L. § 5-335 SAFEGUARDS SETTLING PARTIES FROM BENEFIT PROVIDER LIENS

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Thanks to new legislation, New York General Obligations Law § 5-335, there is a conclusive presumption that personal injury and wrongful death settlements do NOT include compensation for loss or expense paid by benefit providers, except those with a statutory right of reimbursement (i.e. Auto Personal Injury Protection/No Fault, Worker's Compensation, Medicare, Medicaid, ERISA, etc.). As a result of this new legislation, New York litigants will be more willing and able to settle cases, as they will not have to factor in the potential "after effect" of a benefit provider's lien. Hence, the defendant who would historically have been loath to settle, knowing he may next be sued by the plaintiff's health insurer to recover the outstanding lien, will now see no such obstacle to settlement. Likewise, a plaintiff who may historically have been unmotivated to settle for fear his health insurer would

thereafter swoop in and assert its lien, thereby swallowing up all or part of the settlement, will now be more motivated to settle. The "settlement incentive" effect of this legislation is furthered by the fact that it does not apply to judgments.

Liability insurers will benefit first and foremost as they will now effortlessly circumvent any common law obligation to reimburse private benefit providers by settling a case. Note, however, that the law does not preclude a benefit provider from joining in a pending action or initiating its own action prior to the injured party's suit.

This New York legislation went into effect November 12, 2009, and applies to any pending action not settled or adjudicated as of that date, as well as to future actions.

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