

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D80793
G/jr

_____AD3d_____

Argued - October 16, 2025

FRANCESCA E. CONNOLLY, J.P.
CHERYL E. CHAMBERS
HELEN VOUTSINAS
ELENA GOLDBERG VELAZQUEZ, JJ.

2024-07339

OPINION & ORDER

Michele Trombetta, respondent,
v Eklecco Newco, LLC, et al., defendants;
ShelterPoint Life Insurance Company,
nonparty-appellant.

(Index No. 32206/22)

APPEAL by nonparty ShelterPoint Life Insurance Company, in an action to recover damages for personal injuries, from an order of the Supreme Court (Thomas P. Zugbie, J.), dated April 9, 2024, and entered in Rockland County. The order granted the plaintiff's motion to declare a lien of nonparty ShelterPoint Life Insurance Company invalid and unenforceable.

Saul Ewing LLP, New York, NY (Stephanie L. Denker and Amy S. Kline, pro hac vice, of counsel), for nonparty-appellant.

Neimark Coffinas & Lapp LLP (Hasapidis Law Offices, South Salem, NY [Annette G. Hasapidis], of counsel), for respondent.

VOUTSINAS, J.

This appeal concerns the impact of General Obligations Law § 5-335 on the ability of insurers to recover certain benefits they have paid out through subrogation. Specifically, this Court considers whether General Obligations Law § 5-335 operates to bar the recovery, in subrogation, of short-term disability benefits that nonparty ShelterPoint Life Insurance Company (hereinafter ShelterPoint) paid to the plaintiff herein. For the reasons set forth below, this Court

concludes that General Obligations Law § 5-335 does bar the recovery, in subrogation, sought by ShelterPoint. Accordingly, we affirm the order of the Supreme Court.

I. Factual and Procedural Background

The essential facts are not in dispute. On May 4, 2022, the plaintiff was injured as a result of a slip-and-fall accident in a parking lot owned and maintained by the defendants. At the time of his accident, the plaintiff was employed by nonparty 2343 Enzo Holdings, LLC, doing business as Enzo's of Arthur Avenue (hereinafter Enzo's). The accident did not arise out of the scope of the plaintiff's employment and, indeed, happened off-hours. Nonetheless, the plaintiff could not work as a result of the accident and sought to use the short-term disability benefits available to him. The short-term disability benefits were provided to him by Enzo's and underwritten by ShelterPoint.

On or about May 19, 2022, the plaintiff commenced this action to recover damages for personal injuries against the defendants for their negligent maintenance of the parking lot where the accident occurred. ShelterPoint placed a lien on the proceeds of any recovery obtained by the plaintiff in the amount of \$2,346, the amount of the short-term disability benefits it had paid to the plaintiff. On or about November 29, 2023, the action settled for \$125,000.

The plaintiff then, by order to show cause dated December 7, 2023, moved to declare that the lien was invalid and unenforceable pursuant to General Obligations Law § 5-335. In opposition, ShelterPoint argued that Workers' Compensation Law § 227 specifically permitted the lien and that liens authorized by Workers' Compensation Law § 227 are exempt from the antisubrogation provisions of General Obligations Law § 5-335.

In an order dated April 9, 2024, the Supreme Court granted the plaintiff's motion and declared the lien to be invalid and unenforceable. In so doing, the court held that General Obligations Law § 5-335 "clearly and unequivocally" prohibited short-term disability benefit liens. The court interpreted the phrase "workers' compensation benefits" as set forth in General Obligations Law § 5-335(c) to be a generic phrase pertinent to Article 2 "compensation benefits *only*" and not "disability benefits paid pursuant to Article 9, which are plainly not exempt from the antisubrogation provisions." The court further noted that "[t]he clear legislative intent of the anti-subrogation provisions of [General Obligations Law] § 5-335 undeniably evidences that the Legislature intended to preclude liens for worker's compensation benefits, but not disability

benefits.” The court held that if the Legislature intended the antisubrogation provision to “apply to both worker’s compensation and disability benefits,” the Legislature would have so stated in the statute.

ShelterPoint now appeals. ShelterPoint presents two related, yet distinct, contentions on appeal. The first is that Workers’ Compensation Law § 227, which is part of the section of the Workers’ Compensation Law that sets forth the short-term disability law, specifically permits ShelterPoint to recover the short-term disability benefits it paid to the plaintiff. The second is that because Workers’ Compensation Law § 227 specifically authorizes ShelterPoint’s lien, General Obligations Law § 5-335 cannot be read to bar that lien, since to do so would effectively nullify Workers’ Compensation Law § 227.

II. Legal Analysis

This appeal presents this Court with the opportunity to address, for the first time, the interaction between the Workers’ Compensation Law provisions requiring companies to provide short-term disability benefits and the General Obligations Law provisions stating that insurance companies may not recover, through subrogation, the amounts an insurance company pays to an injured worker as short-term disability benefits.

A. Understanding the Workers’ Compensation Law

The Workers’ Compensation Law, first enacted in 1914, “is the State’s most general and comprehensive social program, enacted to provide all injured employees with some scheduled compensation and medical expenses, regardless of fault for ordinary and unqualified employment duties” (*Balcerak v County of Nassau*, 94 NY2d 253, 259). The short-term disability benefit provisions of the Workers’ Compensation Law have “an entirely different history and purpose” (*Matter of Richardson v Fiedler Roofing*, 67 NY2d 246, 251). The short-term disability benefit provisions of the Workers’ Compensation Law were enacted by the Legislature in 1949 to provide “short-term weekly benefits to employees for sickness or disability” that do not arise out of the scope of employment (*id.*). The short-term disability benefits provisions of the Workers’ Compensation Law are “broad in concept and general in terms” and “designed to assist the employee of the State who suffered disability by bridging the gap between the Workers’ Compensation Law and the Unemployment Insurance Law” (*id.* [internal quotation marks omitted]). As opposed to the Workers’ Compensation Law, “the Disability Benefits Law contains no requirement that the cause

of a disability arise out of and in the course of employment. It contemplates a broad social coverage to protect the employee against the hazard of sickness and disability which interfere with and prevent his [or her] continuance in active employment which can occur and do occur both within and outside of working hours” (*id.* at 252, quoting *Matter of Flo v General Electric Co.*, 7 NY2d 96, 99).

B. Workers’ Compensation Law § 227

Workers’ Compensation Law § 227 provides, in relevant part, in subdivision (1), that

“If an employee entitled to disability benefits under this article be disabled by injury caused by the negligence or wrong of a third party, such employee need not elect whether to take such disability benefits or to pursue his [or her] remedy against such third party, but may take his [or her] benefits under this article.

“The carrier liable for payment of disability benefits under this article or the chairman in case of benefits paid under section two hundred seven or two hundred thirteen shall have a lien on the proceeds of any recovery from such third party, whether by judgment, settlement or otherwise, after the deduction of reasonable and necessary expenditures, including attorneys’ fees, incurred in effecting such recovery, to the extent of the total amount of disability benefits provided by this article and paid, and to such extent such recovery shall be deemed for the benefit of such carrier or the chairman.”

This case requires this Court to interpret the statutory language of Workers’ Compensation Law § 227 in order to determine whether ShelterPoint had the right to recover, through subrogation, the short-term disability benefits it paid to the plaintiff. We hold that while Workers’ Compensation Law § 227 does provide insurers with the right to recover short-term disability benefits paid through subrogation, the insurer’s right to recover is conditional, limited to circumstances where the injured worker’s recovery can be deemed for the benefit of the insurer.

In interpreting a statute, this Court’s “primary consideration is to ascertain and give effect to the legislature’s intent” and “[t]he plain language of the statute is the clearest indicator of legislative intent” (*Tumminia v Staten Is. Univ. Hosp.*, 241 AD3d 17, 26 [alteration and internal quotation marks omitted], quoting *People v Schneider*, 37 NY3d 187, 196). “When the plain language of the statute is precise and unambiguous, it is determinative” (*Matter of Cheron v Simon*, 216 AD3d 767, 769 [internal quotation marks omitted]). In interpreting the Workers’ Compensation Law, we are mindful of the fact that the Workers’ Compensation Law is “remedial in nature and must be construed liberally to accomplish the economic and humanitarian objects of the act” (*Matter*

of *Richardson v Fiedler Roofing*, 67 NY2d at 252 [internal quotation marks omitted]).

Here, the plain language of Workers' Compensation Law § 227 limits the subrogation right of a short-term disability insurer to circumstances where the judgment or settlement received by the injured worker "shall be deemed for the benefit" of the insurance company or the Workers' Compensation Board. Put another way, an insurer may recover the short-term disability benefits paid when a judgment or settlement compensates the plaintiff for lost income in order to prevent an injured worker from, in effect, receiving double compensation.

There is nothing in the record to indicate that the compensation received by the plaintiff included a recovery for lost wages. The complaint filed by the plaintiff sought to recover damages only for pain and suffering, not lost wages, and neither party contends that the settlement included any compensation for lost wages. Given that the plaintiff neither sought nor received compensation for lost wages in connection with this action, the settlement funds cannot be deemed for the benefit of ShelterPoint within the meaning of Workers' Compensation Law § 227, and accordingly, the Supreme Court properly invalidated ShelterPoint's lien on that basis alone.

While recent appellate precedent on this issue is scarce, past decisions on short-term disability cases are instructive. In those cases, the amount of short-term disability benefits recoverable through subrogation was limited to the statutorily mandated amount of short-term disability benefits. Any excess coverage obtained by the worker was "not intended to constitute disability benefits in the sense that they are reachable by its subrogation and reimbursement procedures" (*Smith v Equitable Life Assur. Socy. of U.S.*, 19 AD2d 563, 564, *aff'd* 13 NY2d 969; *see Travelers Ins. Co. v Voigt*, 36 AD2d 1011). Accordingly, insurers' recovery in subrogation was limited to the statutory amount mandated by law, which was the amount "deemed" to be for the benefit of the carrier. Any recovery by an injured worker in excess of the statutory minimum was not recoverable through subrogation. Similarly, in the present case, settlement funds that were not for the purposes of compensating the plaintiff for lost wages cannot be deemed to be for the benefit of ShelterPoint.

C. The Application of General Obligations Law § 5-335

As noted, ShelterPoint argues that because Workers' Compensation Law § 227 authorizes its lien, General Obligations Law § 5-335 cannot be read to bar that lien, since to do so would effectively nullify Workers' Compensation Law § 227. Contrary to ShelterPoint's contention,

however, even assuming that Workers' Compensation Law § 227 applied to the instant recovery by plaintiff, General Obligations Law § 5-335 operates to bar the lien. We hold that Workers' Compensation Law § 227 and General Obligations Law § 5-335 can be read together in a way that harmonizes both statutes and gives effect to the intent of the Legislature in both instances.

1. The Plain Language of General Obligations Law § 5-335

General Obligations Law § 5-335 provides, in relevant part, in subdivision (a) that

“When a person settles a claim, whether in litigation or otherwise, against one or more 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 an insurer. By entering into any such settlement, a person shall not be deemed to have taken an action in derogation of any right of any insurer that paid or is obligated to pay those losses or expenses; nor shall a person's entry into such settlement constitute a violation of any contract between the person and such insurer.

“No person entering into such a settlement shall be subject to a subrogation claim or claim for reimbursement by an insurer and an insurer shall have no lien or right of subrogation or reimbursement against any such settling 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 insurer.”

General Obligations Law § 5-335 further provides in subdivision (c) that “[t]his section shall not apply to a subrogation or reimbursement claim for recovery of benefits provided by Medicare or Medicaid, specifically 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.”

In applying General Obligations Law § 5-335 to the benefits provided by ShelterPoint, this Court must first look to the plain language of the statute. As noted above, the Court's “primary consideration is to ascertain and give effect to the legislature's intent” and “[t]he plain language of the statute is the clearest indicator of legislative intent” (*Tumminia v Staten Is. Univ. Hosp.*, 241 AD3d at 26 [alteration and internal quotation marks omitted]).

The subdivisions of the statute at issue herein are subdivisions (a) and (c). The plain language of these subdivisions is unambiguous and specifically precludes ShelterPoint from recovering the benefits it paid the plaintiff out of the personal injury settlement proceeds.

The operative language of subdivision (a) provides that “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 an insurer.” The language of this subdivision is simple, clear, direct, and unambiguous, stating that any settlement received by an injured person presumptively does not include payment for lost earnings. Here, there is no dispute that the benefits paid to the plaintiff by ShelterPoint were for lost earnings, and therefore, any recovery subrogation lien is barred by General Obligations Law § 5-335.

The operative language of subdivision (c) provides that “this section shall not apply to a subrogation or reimbursement claim . . . pursuant to a policy of insurance or an insurance contract providing workers’ compensation benefits.” As noted above, the short-term disability benefits ShelterPoint paid to the plaintiff are considered separate and distinct from workers’ compensation benefits. Here, again, the language of this subdivision is clear, direct, and unambiguous, carving out an exception to the bar on insurers’ ability to recover benefits paid in certain instances where statutes provide for subrogation rights, but not all such instances.

Contrary to ShelterPoint’s contention, it cannot be concluded that the effect of General Obligations Law § 5-335 is to render Workers’ Compensation Law § 227 a nullity. As noted, the right of an insurer to recover disability or workers’ compensation benefits paid through subrogation is not absolute. It is contingent upon whether the benefits may be deemed for the benefit of the insurer. Here, General Obligations Law § 5-335 can be harmonized with Workers’ Compensation Law § 227 by understanding that, by operation of General Obligations Law § 5-335, short-term disability benefits that are paid to an insured worker may not be deemed for the benefit of the insurer given the public policy determination of the Legislature that the cost of the benefits should ultimately be born by the insurer, not the injured party.

This Court notes that the legislative intent of both statutes are, in fact, consistent with each other. As noted above, the Workers’ Compensation Law is to be “construed liberally to accomplish [its] economic and humanitarian objects” (*Matter of Richardson v Fiedler Roofing*, 67

NY2d at 252 [internal quotation marks omitted]). Here, the economic and humanitarian objectives of both statutes is to ensure that the risk of lost wages is not ultimately shouldered by the worker but by the insurance company that has received premium payments for its assumption of the risk. Nor is it inconsistent for the Legislature to have carved out an exception for workers' compensation benefits but not short-term disability benefits. ShelterPoint's argument is based, in part, on its argument conflating short-term disability benefits with workers' compensation benefits. However, as noted above, short-term disability benefits are separate and distinct from workers' compensation benefits. General Obligations Law § 5-335 clearly carves out exceptions to the antisubrogation rule for specific statutes that permit recovery through subrogation, such as Medicare, Medicaid, no-fault insurance, and workers' compensation benefits, but not short-term disability benefits.

Accordingly, in light of the absence of any provision in General Obligations Law § 5-335 providing that short-term disability benefits were not intended to be included in the antisubrogation provisions of the statute, this Court cannot supply one (*see Matter of Diegelman v City of Buffalo*, 28 NY3d 231, 237 ["we cannot by implication supply in a statute a provision which it is reasonable to suppose the Legislature intended intentionally to omit because the failure of the Legislature to include a matter within the scope of an act may be construed as an indication that its exclusion was intended"]) [internal quotation marks omitted]).

2. The Legislative History of General Obligations Law § 5-335

In any event, even if the language of General Obligations Law § 5-335 was not clear and unambiguous, the legislative history of General Obligations Law § 5-335 demonstrates that the short-term disability benefits provided by ShelterPoint are not covered by the antisubrogation provisions in the statute.

In 2009, the Legislature enacted General Obligations Law § 5-335 in an effort to protect plaintiffs and defendants from what the Legislature saw as unwarranted liens, reimbursement claims, and subrogation claims by insurers (*see* Assembly Mem in Support, Bill Jacket, L 2013, ch 516 at 6). The goal of the 2009 bill was to ensure that health care services, lost earnings, or other economic losses that were obligated to be paid by insurance companies were paid by those companies and not taken from settlements received by injured plaintiffs (*see id.*).

In 2013, the Legislature determined that General Obligations Law § 5-335 needed to be amended following a decision of the United States District Court for the Eastern District of New

York (*see Wurtz v Rawlings Co.*, 933 F Supp 2d 480 [ED NY], *revd on other grounds* 761 F3d 232 [2d Cir]), which found that the Employee Retirement Income Security Act of 1974 (ERISA) (29 USC § 1001 *et seq.*) preempted General Obligations Law § 5-335, permitting Medicaid insurers to recover benefits through subrogation (*see* Assembly Mem in Support, Bill Jacket, L 2013, ch 516 at 6). The Legislature then amended General Obligations Law § 5-335 to clarify that the antisubrogation provision did not apply to instances where the right to subrogation was provided for in specific statutes, such as ERISA, no-fault insurance, and workers' compensation benefits (*see id.*), but otherwise served to preclude the recovery of benefits paid through subrogation.

The stated legislative intent in the bill that amended General Obligations Law § 5-335 provided that:

“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” (2013 NY Assembly Bill A7828, 2013 NY Senate Bill S5715).

This intent is further supported by a memorandum from the New York State Division of the Budget, which stated that the bill “clarifies that any type of settlement for personal injury or wrongful death is presumed to not include compensation for losses or expenses that are covered by an insurance company. This clarification would remove an insurer's ability to claim reimbursement or subrogation from the settlement” (Division of the Budget Bill Mem, Bill Jacket, L 2013, ch 516 at 8).

In addition, the New York State Assembly's Memorandum in Support of Legislation stated in the “Summary of Provisions of Bill”:

“This bill would provide for the following:

1) It will now be conclusively presumed that, except with respect to Medicare, Medicaid, Automobile No-Fault or Workers' Compensation payments for which there is a statutory right of reimbursement, the money paid in settlement of any personal injury or wrongful death action did not include compensation for the losses

or expenses that were or will be paid by an insurer; and

2) Except for those payments made by Medicare, Medicaid or an insurer providing Workers' Compensation benefits for which there is a statutory right of reimbursement, no defendant that enters into a settlement with the personal injury or wrongful death plaintiff shall be thereafter subject to any insurers' claim for subrogation or reimbursement" (Assembly Mem in Support, Bill Jacket, L 2013, ch 516 at 6).

"It is fundamental that a court, in interpreting a statute, should attempt to effectuate the intent of the Legislature" (*Oak Beverages, Inc. v D.G. Yuengling & Son, Inc.*, 245 AD3d 93, 96, quoting *Patrolmen's Benevolent Assn. of City of N.Y. v City of New York*, 41 NY2d 205, 208). While, as noted above, the first step in effectuating the intent of the Legislature is the plain language of the statute, "the legislative history of an enactment may also be relevant and is not to be ignored, even if words be clear" (*People v Badji*, 36 NY3d 393, 399 [internal quotation marks omitted]). "In a manner consistent with the text, we may look to the purpose of the enactment and the objectives of the legislature" (*Lubonty v U.S. Bank N.A.*, 34 NY3d 250, 255).

Here, the legislative history plainly demonstrates that the Legislature intended to include short-term disability benefits, such as those provided by ShelterPoint, in the antisubrogation provisions of General Obligations Law § 5-335. These provisions in the legislative intent further support this Court's conclusion that ShelterPoint may not recover the short-term disability benefits it has paid out through subrogation.

D. The Second Circuit Order in *Arnone v Aetna Life Ins. Co.*

Moreover, while not binding on this Court, this Court finds persuasive the order of the United States Court of Appeals for the Second Circuit in *Arnone v Aetna Life Ins. Co.* (860 F3d 97 [2d Cir]). *Arnone* is instructive to this Court's conclusion in two ways. First, the *Arnone* court recognized that, prior to the settlement being finalized, "[the] workers' compensation insurance carrier exercised its statutory right to impose a lien against the proceeds of the settlement, requiring [the plaintiff] to reimburse the carrier for the workers' compensation benefits paid him" (*id.* at 102). Following the satisfaction of that lien, *Arnone* sought to have a lien of Aetna Life Insurance Company (hereinafter Aetna) removed, arguing that Aetna had withheld those benefits as "other income benefits" and that those benefits had been provided by workers' compensation. *Arnone* argued that Aetna's offset was therefore barred by operation of General Obligations Law § 5-335.

The court agreed (*see Arnone v Aetna Life Ins. Co.*, 860 F3d at 106).

While a federal court's interpretations of New York law are not binding on a New York court (*see Tumminia v Staten Is. Univ. Hosp.*, 241 AD3d at 26), it is clear that *Arnone*, which is one of the only other courts to consider this issue, supports the conclusion that the short-term disability benefits provided to the plaintiff are separate and distinct from workers' compensation benefits, precluding recovery of those paid benefits through subrogation.

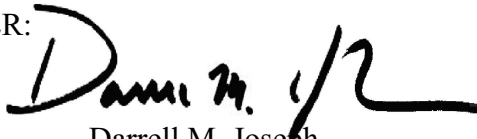
III. Conclusion

Accordingly, the order of the Supreme Court is affirmed.

ORDERED that the order is affirmed, with costs.

CONNOLLY, J.P., CHAMBERS and GOLDBERG VELAZQUEZ, JJ., concur.

ENTER:


Darrell M. Joseph
Clerk of the Court