

INSURER CANNOT OFFSET PARTICIPANT'S DISABILITY BENEFITS BY SETTLEMENT PROCEEDS – NEW YORK STATE ANTI- SUBROGATION LAW NOT PREEMPTED BY ERISA

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Employee Benefits

Salvatore Arnone, a New York resident, was seriously injured in an accident and began collecting long-term disability benefits under a plan sponsored by his employer and insured by Aetna. He sued those allegedly responsible for his injuries in New York state court and settled the lawsuit for \$850,000. Following the settlement, Aetna drastically reduced Arnone's disability benefits, citing a plan provision allowing the offset of "other income benefits."

Arnone sued Aetna to recover the offset benefits, relying upon a New York state anti-subrogation law, N.Y. Gen. Oblig. Law §5-335 ("Section 5-335"), which provides that personal injury settlements are "conclusively presumed" not to include "any compensation for the cost of health care services, loss of earnings or other economic loss" that "have been or are obligated to be paid or reimbursed by an insurer." Aetna's defense consisted primarily of two prongs: (1) that ERISA preempted application of Section 5-335; and (2) that the plan's choice of Connecticut law forbade the application of Section 5-355.

The Second Circuit reversed the district court's judgment for Aetna. The panel held that Section 5-335 regulates insurance, and is saved from preemption by ERISA's clause exempting from preemption, "any law of any State which regulates insurance."

Finding Aetna's choice of law provision "insufficient to bind this court to apply the full breadth of Connecticut law", the Second Circuit limited its application to the interpretation of the language in the insurance contract. As no term of Section 5-335 purported to "construe" the plan, the panel held Aetna's choice of law provision was inapplicable.

Ruling in Arnone's favor, the Second Circuit held that "[S]ection 5-335 provides a legal rule of proof, external to any plan documents, regarding personal injury settlements...around which the parties cannot contract." Section 5-335 prohibited Aetna's offset action as a matter of law, thereby rendering its offset decision arbitrary and capricious. *Arnone v. Aetna Life Ins. Co.* (2nd Cir. 2017)