

Federal Judge Upholds 9/11 Insurers' Subrogation Rights

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A federal judge has upheld the right of numerous commercial property insurers who insured the World Trade Center Complex and many of its tenants to pursue over \$5 billion of subrogation claims against airlines, airline security companies, and others alleged to be responsible for the 9/11 terrorist attack. In his opinion, Judge Alvin Hellerstein of the United States District Court for the Southern District of New York denied a motion to dismiss all subrogation claims premised on the argument that the New York collateral source statute set forth at CPLR 4545 operated as a total bar to such claims.

Hellerstein wrote: "[T]he rule of law, now established by three decisions of New York's highest court, is that §4545 does not affect the subrogation rights of plaintiffs' insurers. The principle of subrogation is so embedded in the common law, and would be so radically affected, that a very clear legislative intent to disrupt it is required." Finding no such legislative intent, Hellerstein held that "§4545 did not affect insurers' subrogation rights."

Zelle Hofmann attorney Steven Badger, who serves on the Property Damage Plaintiffs' Executive Committee, stated that the opinion was not a surprise. "Judge Hellerstein's opinion is spot on. He clearly recognized that there was no support for the defendants' position, either in the statutory language itself or in the legislative history." Badger went on to state, "Accepting the argument would have required a finding that virtually all subrogation rights in New York had been eviscerated back in the 1980s, meaning that every subrogation action brought since that time should have been dismissed." Badger also noted, "Even the airlines' liability insurers had brought subrogation actions in New York during this period of time, including actions arising out of the 1993 World Trade Center bombing."

The 9/11 subrogation actions are consolidated in the Southern District with claims brought by numerous wrongful death and uninsured property damage plaintiffs. The first liability case is scheduled to go to trial on April 12, 2010. Judge Hellerstein's opinion can be found at 2009 WL 2477753.