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CasePrepPlus

Editor:
Robert S. Rosborough IV

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Summarizing recent significant
New York appellate cases

Must a victim of a crime be physically injured before they will qualify for compensation as a “crime victim” under New York’s Son of Sam Law? The Third Department recently addressed that question, holding that a police officer who was present during a shooting inside a precinct and suffered emotional, but not physical, harm still qualified as a “crime victim” entitled to compensation from the shooter. Let’s take a look at that opinion and what else has been going on in the New York appellate courts over the last week.

SECOND DEPARTMENT

INSURANCE LAW, SUBROGATION, SHORT-TERM DISABILITY BENEFITS

Trombetta v Eklecco Newco, LLC, 2026 NY Slip Op 04222 (2d Dept July 1, 2026)

Issue: **Does General Obligations Law § 5-335 bar the recovery, in subrogation, of short-term disability benefits that an insurance company paid to the plaintiff?**

Facts: After plaintiff was injured in a slip-and-fall in a parking lot owned by defendant, he sought short-term disability benefits from his employer because his injuries rendered him unable to work for a period of time. The employer paid the short-term disability benefits, which were underwritten by its insurer, ShelterPoint Life Insurance Company.

Plaintiff thereafter commenced this personal injury action against defendant, and ultimately agreed to settle the claim for $125,000. “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.” Following the settlement, plaintiff moved to vacate ShelterPoint’s lien, arguing that “the lien was invalid and unenforceable pursuant to General Obligations Law § 5-335,” which generally bars subrogation liens against personal injury settlements, except for, as relevant here, workers’ compensation benefits. “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.”

Supreme Court granted plaintiff’s motion, holding 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 ‘the 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.”

Holding: The Appellate Division, Second Department affirmed. This case, the court noted, gave it “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.” Distinguishing between the two different benefit schemes for workers’ compensation benefits and short-term disability benefits, the court explained that while workers’ compensation benefits are intended to provide benefits to employees injured within the course of their employment, short-term disability benefits have a much wider application. “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.”

Addressing ShelterPoint’s argument 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 court held 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.” And a recovery is for the benefit of the insurer, the court explained, when “a judgment or settlement compensates the plaintiff for lost income in order to prevent an injured worker from, in effect, receiving double compensation.” “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."

The court further held that "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." The court reasoned, "[t]he operative language of subdivision (a) [of General Obligations Law § 5-335] 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."

Additionally, the court explained, "[t]he 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."

Thus, the court concluded that General Obligations Law § 5-335 does not "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 [*sic*] by the insurer, not the injured party."

THIRD DEPARTMENT

SON OF SAM LAW, CRIME VICTIM RECOVERY

***Matter of New York State Off. of Victim Servs. v Williams*, 2026 NY Slip Op 04248 (3d Dept July 2, 2026)**

Issue: May a person who does not suffer a physical injury as a result of the commission of a crime qualify as a "crime victim" under New York's Son of Sam Law, which would entitle them to compensation from the criminal?

Facts: "In February 2020, respondent entered a police station, drew a gun and opened fire, wounding a police lieutenant." Vanessa Belle was a police officer on duty in the station at the time of the shooting, and spoke with the respondent just before he opened fire. Respondent was convicted of two counts of attempted murder and sentenced to 23 years to life in prison. While respondent was in prison, he became entitled to participate in a class action settlement that would award him a $189,300 payment. The New York State Office of Victim Services notified Ms. Belle of respondent's award, and she advised that she intended to bring a claim against respondent seeking "damages for psychological and emotional injuries she sustained as a result of respondent's crime."

The Office of Victim Services then commenced this proceeding under "Executive Law § 632-a, commonly known as the Son of Sam Law, seeking a preliminary injunction to preserve the settlement funds. Supreme Court . . . granted petitioner's request for a temporary restraining order freezing those funds until joinder of issue. Following a hearing at which respondent appeared pro se, Supreme Court . . . determined that Belle was not a 'crime victim' within the meaning of Executive Law § 632-a (1) (d) because she did not satisfy the definition of 'victim' in Executive Law § 621 (5), which, as relevant here, encompasses 'a person who suffers personal physical injury as a direct result of a crime.' The court dismissed the petition and vacated the temporary restraining order."

Holding: The Appellate Division, Third Department reversed, holding that Belle qualified as a "crime victim" under the Son of Sam Law, even though she did not suffer a physical injury during the commission of the crime, and an injunction against dissipation of respondent's settlement funds was warranted. The court explained that contrary to Supreme Court's interpretation, "[t]he structure and language of Executive Law § 632-a (1) (d) demonstrate that its reference to 'the victim of a crime' does not incorporate the definition of 'victim' in Executive Law § 621 (5)," which requires a physical injury to qualify. Rather, the court held, "in addition to 'the victim of a crime,' a 'crime victim' under the Son of Sam Law includes 'the representative of a crime victim . . .' and 'a good Samaritan.'" It follows therefore, the court reasoned, that "'the victim of a crime' under Executive Law § 632-a (1) (d) (i) is not confined to persons who suffer physical injury."

The Son of Sam Law, the court further explained, "advances the related but independent policy of preventing convicted persons from retaining the profits of their crimes or substantial sums of money while leaving those they harmed uncompensated. To that end, the Legislature went to great lengths to provide avenues to allow crime victims to be compensated for their losses. The Legislature did not explicitly limit the losses recoverable from the profits of a crime or the funds of a convicted person under Executive Law § 632-a to only those sustained by physically injured victims. Thus, in our view, incorporating Executive Law § 621 (5)'s physical-injury requirement into the Son of Sam Law's definition of 'crime victim' is inconsistent with the Legislature's intent."

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