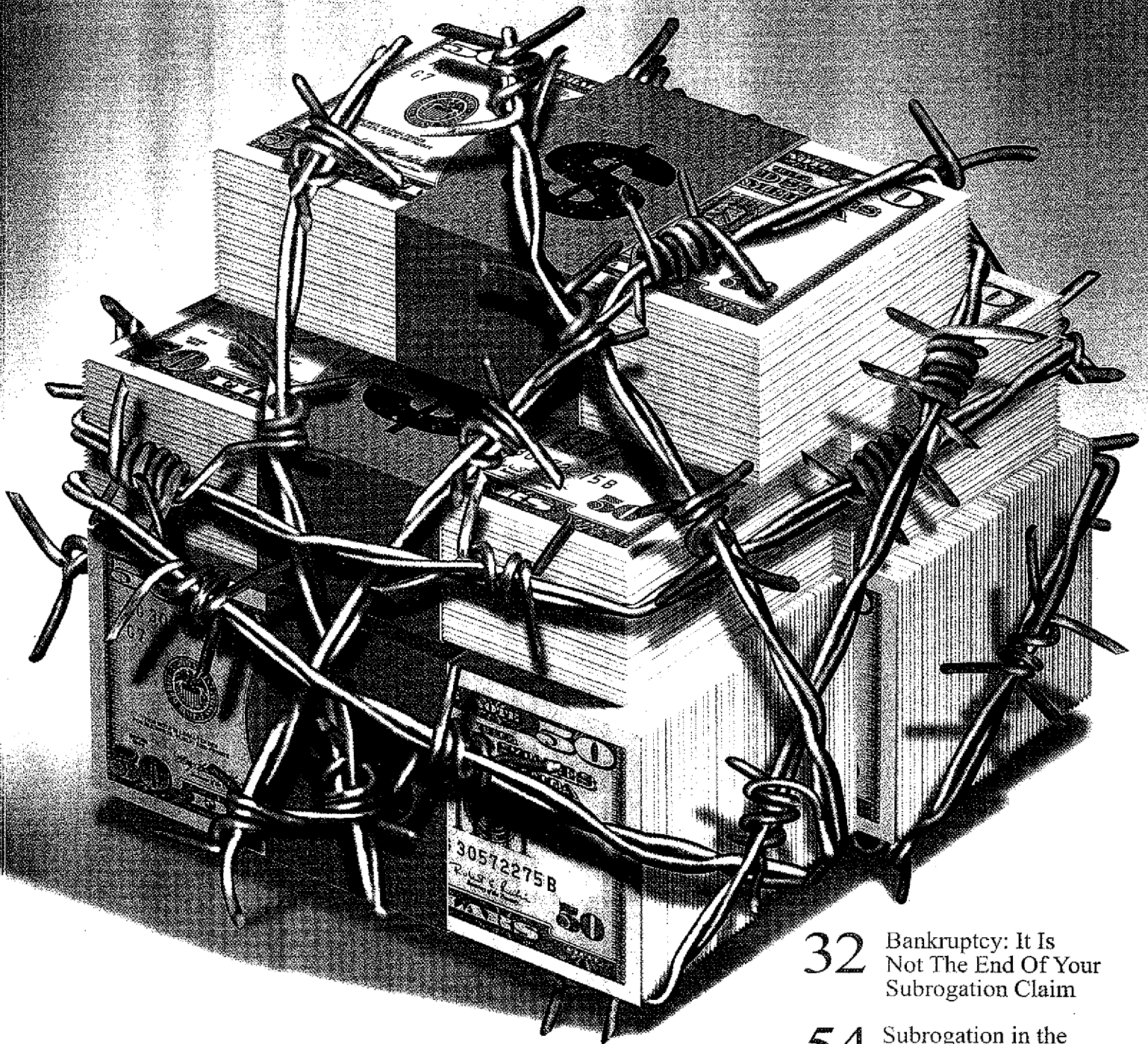


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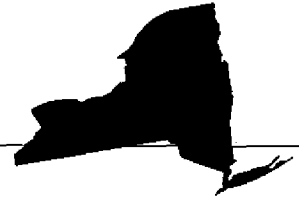


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Southern District of New York Holds New York Collateral Source Statute Does Not Abrogate Subrogation Rights

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New York, like many states, has a collateral source statute that prevents an injured party from recovering from a tortfeasor amounts that the injured party has already received from another source, such as insurance proceeds. (N.Y. C.P.L.R. 4545) CPLR 4545 requires a court to reduce any damages

awarded to a plaintiff by the amount the plaintiff has received from any collateral source.

Several insurers of property in and around the World Trade Center Complex are presently pursuing a \$5 billion subrogation action against companies alleged to have been negligent in per-

forming security checkpoint screening functions at the airports where the 9/11 flights originated. Last year, the defendants in this litigation filed a motion for summary judgment arguing that the New York collateral source rule set forth in CPLR 4545 operated as an absolute bar against these subro-

Several insurers of property in and around the World Trade Center Complex are presently pursuing a \$5 billion subrogation action against companies alleged to have been negligent in performing security checkpoint screening functions at the airports where the 9/11 flights originated.

gation claims. The defendants argued: 1) a subrogated insurer stands in the shoes of its insured and has only the rights held by the insured; 2) CPLR 4545 prevents an insured who has been fully compensated by its insurer from bringing claims against the tortfeasor; 3) therefore, a subrogated insurer likewise has no right to bring claims against the tortfeasor. Stated otherwise, the defendants argued that CPLR 4545 should be read as creating a complete and total bar to virtually all subrogation rights in New York.

In a written opinion issued in August of last year, Judge Hellerstein of the United States District Court for the Southern District of New York strongly rejected the defendants' argument Judge Hellerstein explained:

A subrogee assumes the rights of the subrogor as of the moment at which it, the insurer, makes the insurance payment to its insured. At that moment, the insured has not yet received the insurance payment, and so is not yet subject to the § 4545 setoff defense, for that defense follows and arises from the payment, as it works to avoid a duplicate recovery by the insured. Hence, the insurer takes its subrogation rights as they existed at the time of, and not after, the collateral source payment.

In reaching his decision, Judge Hellerstein also relied on CPLR 4545's legislative history. He concluded that

For these reasons, Judge Hellerstein held that CPLR 4545 did not affect insurers' subrogation rights, and thus the subrogated property insurer plaintiffs were not barred from pursuing their claims.

the purpose of CPLR 4545 was to prevent double recoveries for the same loss by an injured party. He stated that the doctrine of subrogation is well-established under New York common law, and that in order to disrupt such a foundational principle, a clear legislative intent is required. As Judge Hellerstein correctly found, such an intent was wholly missing in both the statute's language and legislative history.

For these reasons, Judge Hellerstein held that CPLR 4545 did not affect insurers' subrogation rights, and thus the subrogated property insurer plaintiffs were not barred from pursuing their claims.

This ruling is consistent with a similar ruling by the New York Court of Appeals earlier last year in *Fasso v. Doerr*, where the court stated, "nothing in the language or legislative history of CPLR 4545 indicates that the Legislature intended to alter the established rules of equitable subrogation." (12 N.Y.3d 80, 90 (2009)).

Judge Hellerstein's well-reasoned opinion should finally put to rest the argument that CPLR 4545 was intended to abrogate all subrogation rights in New York.

The reported opinion can be found at *In re September 11 Litig.*, No. 21 MC 101 (AKH), 2009 WL 2477753, at *8 (S.D.N.Y. Aug. 13, 2009).