

**ERISA AND
HEALTH INSURANCE
SUBROGATION
IN ALL 50 STATES**



GARY L. WICKERT

Erisa And Health Insurance Subrogation In All 50 States 3rd Edition

Léo Pomar



Erisa And Health Insurance Subrogation In All 50 States 3rd Edition:

ERISA and Health Insurance Subrogation in all 50 States - 5th Edition Gary L. Wickert, 2013-01-01 ERISA and Health Insurance Subrogation In All 50 States is the most complete and thorough treatise covering the complex subject of ERISA and health insurance subrogation ever published NEW TO THE FIFTH EDITION Updated To Include All The Newest Case Law Updated To Include Medicaid Subrogation and Preemption of FEHBA New Plan Language Recommendations Complete Health Insurance Subrogation Laws In All 50 States Covers The Application of ERISA In Every Federal Circuit The Fifth Edition of ERISA and Health Insurance Subrogation In All 50 States has been completely revised edited and reorganized This was partly to reflect the new direction recent case decisions have taken regarding health insurance subrogation as well as the crystallization of formerly uncertain and nebulous areas of the law which have now received some clarity An entirely new chapter entitled What Constitutes Other Appropriate Equitable Relief has been added and replaces the old Chapter 9 which merely dealt with Knudson and Sereboff The new edition introduces new state court decisions addressing the issue of causation and whether and when a subrogated Plan seeking reimbursement must prove that the medical benefits it seeks to recover were causally related to the original negligence of the tortfeasor An entirely new section was added concerning the subrogation and reimbursement rights of Medicare Advantage Plans a statutorily authorized Plan which provides the same benefits an individual is entitled to recover under Medicare This includes recent case law which detrimentally affects the rights of such Plans to subrogate Also added to the new edition is additional law and explanation regarding Medicaid subrogation including the differentiation between cost avoidance and pay and chase when it comes to procedures for paying Medicaid claims Significant improvements have been made to suggested Plan language which maximizes a Plan s subrogation and reimbursement rights The suggested language stems from recent decisions and developments in ERISA and health insurance subrogation from around the country since the last edition The new edition has been completely reworked both in substance and organization Recent case law has necessitated consolidation of several portions of the book and elimination or editing of others A new section entitled Liability of Plaintiff s Counsel has been added which provides a clearer exposition on the laws applicable and remedies available when plaintiff s attorneys and Plan beneficiaries settle their third party cases and fail to reimburse the Plan Also new to the book are recently passed anti subrogation measures such as Louisiana s Senate Bill 169 1881 which states that no health insurer shall seek reimbursement from automobile Med Pay coverage without first obtaining the written consent of the insured The new edition also goes into much greater detail on the procedures for and law underlying the practice of removal of cases from state court to federal court and the possibility of remand back to state court This includes the Federal Courts Jurisdiction and Venue Clarification Act of 2011 effective Jan 6 2012 which amended federal removal venue and citizenship determination statutes in very significant ways The new edition also delves into for the first time the role which the federal Anti Injunction Act plays when

beneficiaries sue in state court to enforce the terms of an ERISA Plan while the Plan files suit in federal court seeking an injunction against the state court action New case law and discussion on preemption of FEHBA subrogation and reimbursement claims have been added to Chapter 10 in the wake of new decisions regarding same **ERISA Basics** American Bar Association. National Institute,2009 **Current Publications in Legal and Related Fields** ,2009

Automobile Insurance Subrogation in All 50 States - Second Edition Gary L. Wickert,2014-11-01 Automobile Insurance Subrogation In All 50 States is the most thorough comprehensive and ambitious anthology of subrogation related legal information and insurance resources ever put to paper It is the last and most anticipated of the subrogation trilogy and a book which will serve as the bible for any insurance company writing personal lines or commercial auto policies It is destined to become the standard work and reference for attorneys insurance companies and subrogation industry professionals Every year there are more than 7 million auto accidents in the United States with a financial toll of more than 300 billion Nearly 3 million people are injured and 42 636 people are killed In the overwhelming majority of these accidents there is at least one party at fault For virtually every one of these accidents a policy of automobile insurance provides some sort of claim payments or benefits In the vast majority of those claims one or more insurance policies and or applicable state law grants the insurer a right of subrogation against a negligent third party whose carelessness caused the accident This book is the bible on subrogating those claims This book covers the nuts and bolts of auto subrogation in all 50 states covering every topic imaginable including PIP Med Pay UM UIM property claims deductible reimbursement no fault subrogation and more It surveys the laws of every state and provides descriptions of every type of auto coverage imaginable as well as the statutory case law and regulatory authority governing every aspect of auto subrogation If you have subrogation responsibility involving auto claims you need this book It universally covers issues which are indelibly interwoven into the business of auto insurance including a complete treatment of the laws of all 50 states and the District of Columbia relating to Basic and Statutory Subrogation Rights Mandatory vs Optional Insurance Coverage No Fault Laws PIP Mini Torts and Loss Transfer Laws Tort Limitations Medical Payments Coverage and Subrogation Uninsured Underinsured Motorist Coverage and Subrogation Collision Property Subrogation Release of Tortfeasor by Insured Accord and Satisfaction Accepting Partial Payments from Tortfeasor Made Whole Doctrine Common Fund Doctrine Economic Loss Doctrine Deductible Recovery and Reimbursement Collateral Source Rule Contributory Negligence Comparative Fault Seat Belt Laws and Defenses Rental Cars Loaner Vehicles and Test Drivers Bailment Parking Lot Liability Negligent Entrustment Facing Multiple Claims In Excess of Liability Policy Limits Conflict of Laws Interstate Subrogation Recovery of Attorney s Fees and Costs Statutes of Limitations It is a complete treatment A to Z of virtually every issue which the insurance claims or subrogation professional will face in the area of automobile insurance It is like no legal treatise ever written and promises to be the most used reference in any insurance company **Legal Information Buyer's Guide and Reference Manual** Kendall F. Svengalis,Rhode Island LawPress,2008

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,2006-07 **Martindale-Hubbell Law Directory** Martindale-Hubbell, 2002-03 **BNA Pension & Benefits Reporter**
Workers' Compensation Subrogation In All 50 States - Fifth Edition Gary L. Wickert, 2012-04-01 Workers compensation subrogation continues to change and adapt as trial lawyers prod its weak points and capitalize on confusing areas of the law There have been numerous changes in workers compensation statutes and case law in many states since the last edition This edition includes an exhausting survey and detailed explanation of the crazy status of employer contribution in Illinois which includes a step by step exposition of how contractual indemnity and the Kotecki cap play a role in expanded employer liability in Illinois workers compensation subrogation cases It covers the many nuances of Naig and Reverse Naig settlements under Minnesota law including an analysis of who has what burdens of proof and the effect such a settlement has on the remaining third party case tried to a jury In light of the landmark Missouri Court of Appeals decision in Robinson v Hooker the liability of co employees in Missouri and surrounding states have been covered in greater detail The concept of co employee liability for acts which are intentional or committed outside of the course and scope of employment has been added in several states New case law and explanations were added to the Texas chapter with regard to subrogating against UM UIM policies including arguments with regard to the efficacy of UM UIM exclusionary policy language and the ability to subrogate against a UM UIM policy actually issued by the same carrier insuring for workers compensation coverage West Virginia completely revised their subrogation statute and created a new statute relating to the statutory employer status of primary contractors and subcontractors on construction sites limiting when and how primary contractors can become legitimate third parties for purposes of subrogation Chapter 7 Contractual Limitations to Subrogation has been completely overhauled to include new statutes and case law for every state to assist practitioners in determining the law applicable when there is an alleged applicable waiver of subrogation which might otherwise destroy subrogation A new Chapter 12 has been added which focuses on jurisdiction of workers compensation third party actions taking a broad look at 28 U S C 1441 which prohibits removal of cases arising under state workers compensation laws A carrier now has the ability to prevent cases from being removed from favorable venues in state court to less favorable federal court venues an attractive option for plaintiffs attorneys with whom subrogated carriers can negotiate with for stipulations and concessions on their subrogation interests in exchange for maintaining a case in state court This edition also expands on which states do and do not hold workers compensation to be primary Combined with more than 100 new case decisions this Fifth Edition is the most complete and up to date edition yet Workers Compensation Subrogation is the most complete and thorough treatise covering workers compensation subrogation ever published There are very few areas in which the laws of each state vary more and are applied as differently then in the area of workers compensation subrogation This book is intended to introduce the workers compensation claims handler in house counsel and subrogation professionals to some of the more esoteric and complex subrogation issues encountered in today s

workers compensation insurance subrogation marketplace It covers the following issues in all 50 states Allocating Third Party Recoveries Attorney s Fees Borrowed Servant Doctrine Conversion of Workers Compensation Liens Costs and Expenses Dual Capacity Doctrine Equitable Subrogation Contribution Exclusivity Rule Barring Action Against Employer How To Calculate Your Credit Advance and How It Is Applied In Each State Intentional Acts Joint Ventures Made Whole Doctrine As Applied To Workers Compensation Subrogation Necessity of Intervention Lien Reduction Statutes Staff Leasing Services and Temporary Employment Agencies Statutory Subrogation Rights Subrogating Against UM UIM Benefits Subrogating In Medical Malpractice Cases Subrogating In Legal Malpractice Cases Waivers of Subrogation Who Qualifies As A Third Party Other Workers Compensation Subrogation Related Issues In addition to being an excellent primer on workers compensation subrogation suitable for both the new subrogation professional and the seasoned veteran the book also contains a detailed synopsis of the workers compensation subrogation laws in each of the 50 states It is a must for anyone with multi state subrogation responsibilities Complete with diagrams references and thousands of footnotes this is the most ambitious workers compensation subrogation project ever undertaken The following issues and topics are covered in detail for each of the 50 states Statutory Subrogation Rights Identifies the statutory authority for workers compensation subrogation in that state Discusses the purpose legislative intent of the statute Is an election necessary by the worker Who can bring a third party action plaintiff carrier employer or all of the above When and must a third party action be brought What are the rights of a carrier to intervene in an existing third party action filed by a worker Will a worker s compensation carrier s subrogation interest be barred if not brought timely Third Parties Who can be sued as third parties in a third party action Can a co employee be sued and under what circumstances Can an uninsured underinsured carrier be a third party under the laws of that state Is there a dual capacity or borrowed servant doctrine which somehow affects the ability of a worker s compensation carrier to effectively subrogate What is the state s workers compensation bar Are there any specific restrictions regarding subrogation against a subcontractor or an employee of a subcontractor in a construction situation Under what circumstances can the employer be sued Can a carrier subrogate to the benefits of a recovery in a legal or medical malpractice action Allocation of Third Party Recovery How and when does the carrier recover its subrogated interest Does the carrier recover past benefits only or also the present value of future benefits which it owes under the Workers Compensation Act of that state Is there a formula used to determine how a third party recovery is allocated What happens to the total recovery and how is it applied Can a carrier recover benefits paid by a third party or recovered in a third party action which relate to loss of consortium or non economic damages such as pain and suffering mental anguish or punitive damages Does the employer s negligence reduce the recovery by the worker or carrier Attorneys Fees Costs Can the plaintiff s attorney recover attorneys fees and or costs out of the carrier s subrogated recovery and under what circumstances How are attorneys fees and costs handled if the carrier is also represented by subrogation counsel intervenes into the third party

action and actively represents its interest What if the carrier isn't represented Can a plaintiff's attorney recover attorney's fees based on the value of past benefits only or will he be able to recover attorney's fees based on the future benefits credit recovered by the carrier Must a carrier bear its proportionate share of expenses as many states require and what does that really mean Credit Advance Can a carrier take a vacation from paying workers compensation benefits once a worker makes a third party recovery How is the credit calculated under state law Does the carrier have to do anything special to obtain the credit such as filing with the Workers Compensation Commission Does the carrier get a credit toward future compensation benefits it owes or does it actually get to collect the present value of the future benefits it owes and still be obligated to pay the scheduled benefits in the future Statutes of Limitation What are the applicable statutes of limitation or statutes of repose that may be applicable to third party subrogation actions Related Subrogation Issues Are there any other issues or statutes which affect a worker's compensation carrier's right of subrogation such as the made whole doctrine common fund doctrine or anti subrogation statutes Are there any lien reduction statutes such as those existing in Indiana which affect a worker's compensation carrier's right of recovery Does the state have any no fault laws which complicate workers compensation subrogation involving an automobile accident such as exist in Michigan and Colorado What are the carrier's options if the worker and his attorney simply refuse to repay a worker's compensation carrier's lien after settling a third party action If the worker fails to repay the carrier is there a cause of action for conversion of a carrier's subrogation interest or may the carrier still proceed against the third party tortfeasor to recover its subrogation interest

Workers' Compensation Subrogation

Gary L. Wickert, Juris Publishing, 2002-01-01 1 Looselaf Volume 600 Pages Table of Authorities Index Updated Annually or When Needed Workers Compensation Subrogation is the most complete and thorough treatise covering workers compensation subrogation ever published There are very few areas in which the laws of each state vary more and are applied as differently than in the area of workers compensation subrogation This book is intended to introduce the workers compensation claims handler in house counsel and subrogation professionals to some of the esoterica more complex subrogation issues encountered in today's workers compensation insurance subrogation marketplace It covers the following issues in all 50 states Allocating third party recoveries Attorney's fees Borrowed Servant Doctrine Conversion of workers compensation liens Costs and expenses Dual Capacity Doctrine Equitable subrogation contribution Exclusivity Rule barring action against employer How to calculate your credit advance and how it is applied in each state Intentional acts Joint Ventures Made Whole Doctrine as applied to workers compensation subrogation Necessity of Intervention Reduction Statutes Staff leasing services and temporary employment agencies Statutory subrogation rights Subrogating against UM UIM benefits Subrogating in medical malpractice cases Subrogating in legal malpractice cases Waivers of subrogation Who qualifies as a third party and Other workers compensation subrogation related issues In addition to being an excellent primer on workers compensation subrogation suitable for both the new subrogation professional and the seasoned veteran The book

also contains a detailed synopsis of the workers compensation subrogation laws in each of the 50 states It is a must for anyone with multi state subrogation responsibilities Complete with diagrams references and thousands of footnotes this is the most ambitious workers compensation subrogation project ever undertaken The following issues and topics are covered in detail for each of the 50 states Statutory Subrogation Rights Identifies the statutory authority for workers compensation subrogation in that state Discusses the purpose legislative intent of the statute Is an election necessary by the worker Who can bring a third party action plaintiff carrier employer or all of the above When and must a third party action be brought What are the rights of a carrier to intervene in an existing third party action filed by a worker Will a worker s compensation carrier s subrogation interest be barred if not brought timely Third Parties Who can be sued as third parties in a third party action Can a co employee be sued and under what circumstances Can an uninsured underinsured carrier be a third party under the laws of that state Is there a dual capacity or borrowed servant doctrine which somehow affects the ability of a worker s compensation carrier to effectively subrogate What is the state s workers compensation bar Are there any specific restrictions regarding subrogation against a subcontractor or an employee of a subcontractor in a construction situation Under what circumstances can the employer be sued Can a carrier subrogate to the benefits of a recovery in a legal or medical malpractice action Allocation of Third Party Recovery How and when does the carrier recover its subrogated interest Does the carrier recover past benefits only or also the present value of future benefits which it owes under the Workers Compensation Act of that state Is there a formula used to determine how a third party recovery is allocated What happens to the total recovery and how is it applied Can a carrier recover benefits paid by a third party or recovered in a third party action which relate to loss of consortium or non economic damages such as pain and suffering mental anguish or punitive damages Does the employer s negligence reduce the recovery by the worker or carrier Attorneys Fees Costs Can the plaintiff s attorney recover attorneys fees and or costs out of the carrier s subrogated recovery and under what circumstances How are attorneys fees and costs handled if the carrier is also represented by subrogation counsel intervenes into the third party action and actively represents its interest What if the carrier isn t represented Can a plaintiff s attorney recover attorneys fees based on the value of past benefits only or will he be able to recover attorneys fees based on the future benefits credit recovered by the carrier Must a carrier bear its proportionate share of expenses as many states require and what does that really mean Credit Advance Can a carrier take a vacation from paying workers compensation benefits once a worker makes a third party recover How is the credit calculated under state law Does the carrier have to do anything special to obtain the credit such as filing with the Workers Compensation Commission Does the carrier get a credit toward future compensation benefits it owes or does it actually get to collect the present value of the future benefits it owes and still be obligated to pay the scheduled benefits in the future Related Subrogation Issues Are there any other issues or statutes which affect a worker s compensation carrier s right of subrogation such as the made whole doctrine common fund doctrine or anti subrogation

statutes Are there any lien reduction statutes such as existing in Indiana which affect a worker s compensation carrier s right of recovery Does the state have any no fault laws which complicate workers compensation subrogation involving an automobile accident such as Michigan and Colorado What are the carrier s options if the worker and his attorney simply refuse to repay a worker s compensation carrier s lien after settling a third party action If the worker fails to repay the carrier is there a cause of action for conversion of a carrier s subrogation interest or may the carrier still proceed against the third party tortfeasor to recover its subrogation interest

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