

SUBROGATION & LIENS:
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UT LAW SCHOOL 2024 CAR CRASH SEMINAR



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**The basis for the interest
or lien MATTERS; read the
statute, then the contract,
then the caselaw**



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Look at the **contract** documents. (For ERISA: both the plan **and summary plan description**). Apply contract law principles: construe ambiguities against maker, etc. "Accuracy is not a lot to ask."
Hansen v Continental Ins. (5th Cir. 1991)



Look at the **statute**. ERISA, workers' comp, hospital liens, Medicare, Medicaid, MCRA (VA) and other statutes have different rules. Different rules and words => specific court decisions applicable only to that statute.



The Courts may apply **equity** (estoppel, laches, fraud, etc.) to reform a plan (including ERISA): *Sullivan-Mestecky v Verizon and The Prudential*, E. Dist. NY, 06/01/2020, *Cigna Corp. v. Amara*, 563. U.S. 421 (2011). ERISA plans (but not beneficiaries) are limited to equitable relief, cannot seek relief at law, i.e., cannot sue for breach of contract; *Montanile* (2016).



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Texas' "anti-subrogation" rule:

An insurance company, having paid a loss to its named insured, **may not proceed against its own insured in a subrogation action**.

McBroome-Bennett Plumbing v Villa France & Westchester Fire Ins Co (Dallas 1974)

And yet: "the courts of no state have gone further in applying the doctrine of subrogation than has the court of this state" (Tex. 1895)

How can both be true?



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"**Subrogation**" is the "substitution of one person in the place of another with reference to a lawful claim, demand or right." *Black's*.



Plan steps into plaintiff's shoes and sues the tortfeasor directly to recover the plan's payments. "[I]n essence, subrogation is an **assignment**." COUCH ON INS § 222:54

Plan <= Tortfeasor

"**Reimbursement**" seeks money from its own insured [injured plaintiff] after the insured recovers from the tortfeasor or other responsible payer.



Plan <= Plaintiff <= Tortfeasor

Practical Application: Ch. 140 Civ Prac & Rem Code:

Regulates **insured** health, disability, occ injury; & **self-funded** state & local gov't plans § 140.002; **DNA to** w/c, M/Care, M/Caid or **self-funded** ERISA (BUT applies to stop loss ins)

1/3 1/3 1/3 of 3rd party recovery **if** not enough \$ § 140.005 (so give some to spouse/children to reduce that 1/3 to ins co; harder in med mal verdict b/c caps apply to non-eco.)

No subro to **children's** or **w/d** recoveries (but yes to **adults'** & **estate's** recoveries; § 140.005)

Common Fund/recovery cost sharing is statutory even if enough \$ to pay all claims



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