

SUBROGATION & LIENS

University of Texas Law School
Car Wrecks Seminar 2017

Judy Kostura
JUDGE, KOSTURA & PUTMAN, P.C.

JUDGE, KOSTURA & PUTMAN, P.C.
ATTORNEYS AT LAW



Before handing over your client's money to health plans and hospitals ... learn the rules.



JUDGE, KOSTURA & PUTMAN, P.C.
ATTORNEYS AT LAW



Subrogation vs Reimbursement vs Assignment

Case law: “terms are interchangeable.” They are not!

BAM! Blue, Aldous and Malouf & \$114M jm for Hill.

Aldous v Darwin Nat'l Assurance Co: 5th cir, 03/16/17:

“Darwin, get off your Nat'l Ass and sue the third party, because your subro interest vs 3rd party is **not** a right of reimb against your own insured.”



Ch. 140 Civil Prac. & Rem. Code

Effective 01/01/2014

For insured health, disability, occ injury; & self-funded gov't plans

Not w/c, not M/Care, not M/Caid

1/3 1/3 1/3 of 3rd party recovery

No subrogation to PIP
No subrogation to UM/UIM if ptf or family purchased it
No subro to children's or w/d recoveries



- **Rule 1. Who is the Plaintiff in relationship to the subrogation interest or lien asserted?**



child



Employee participant;
injured spouse; derivative
claimant



Wrongful death or estate

Be consistent, be strategic.

Wrongful death cases and ERISA:

In the Matter of Boisseau, U.S. District Court, Northern District of New York, (CV-00549-LEK-ATB Jan. 30, 2017)

“The probate exception operates as a bar to the exercise of federal jurisdiction, and there is no carve out for cases arising under ERISA. See *Carpenters’ Pension Tr. Fund-Detroit & Vicinity v. Century Truss Co.*, No. 14-CV-11535, 2015 WL 1439868, at *6 (E.D. Mich. Mar. 27, 2015) (finding that where the probate exception applies, the court lacks jurisdiction to consider ERISA preemption); *In re Estate of Lewis*, 128 F. Supp. 2d 573, 574 (N.D. Ill. 2001) (same).”

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](http://utcle.org/elibrary)

Title search: Subrogation and Liens

Also available as part of the eCourse

[2017 The Car Crash eConference](#)

First appeared as part of the conference materials for the
2017 The Car Crash Seminar session

"Subrogation and Liens"