

SUBROGATION & LIENS

University of Texas School of Law

2018 Car Crash Seminar

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



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



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Subrogation vs Reimbursement vs Assignment

Case law: “no meaningful difference between [subro or reimb].” *Wausau v Wedel* TxSCt 06 08 2018. BUT:

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, as of 01/01/2014

For insured health, disability, occ injury; & self-funded gov't plans (they all share in 1/3 if >1)

Does Not regulate w/c, M/Care or M/Caid

1/3 1/3 1/3 of 3rd party recovery (if atty)

No subrogation to PIP

No subrogation to UM/UIM if ptf or family bought 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.



CHILDREN: “Neither the next friend nor the parent of a minor child is authorized to ... throw away” the “substantial rights” of a minor child; *Lowery v. Berry*, 269 S.W.2d 795, 797 (Tex. 1954).

PERSONAL INJURY DAMAGES

PJC 15.5

PJC 15.5 Personal Injury Damages—Injury of Minor Child

QUESTION _____

PJC 15.5 includes elements of damages (e.g., loss of earning capacity and medical care expenses incurred before the age of majority) that reflect injuries to the minor, but that are not recoverable by the minor, the Committee felt that a revision was necessary



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"Subrogation and Liens"