Subrogation and Liens in Personal Injury Cases

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THE CAR CRASH SEMINAR

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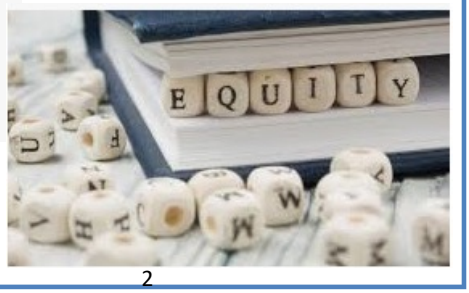
Three ways in which a subrogation interest or lien can be granted/affected:



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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 does not contain a subrogation provision but 29 U.S.C. §1024(b)(4) requires subrogation or reimbursement to be in the Summary Plan Description to be enforceable and limits plans to equitable relief. Workers' comp, hospital liens, Medicare, Medicaid, MCRA (VA) and other statutes have their own rules, leading to 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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The contract language re the subro interest or lien MATTERS; when in doubt, read the instructions

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Equity REFORMS but does not CREATE a subrogation interest: "The Supreme Court of Texas … in *Matagorda County* … 'declin[ed] to recognize an implied-in-fact, an implied-in-law, or an equitable reimbursement right outside of the insurance policy's provisions.' *Excess Underwriters at Lloyd's, London v. Frank's Casing Crew & Rental Tools, Inc.*, 246 S.W.3d 42, 45 (Tex. 2008)." *Charla Aldous v. Darwin National Assurance Company*, No. 16-10537-CV0 (5th Cir. 03/16/17).

The 5th Circuit declared "we will not rewrite the contract to grant Darwin rights beyond those it included in the contract." (fn 11). *Id.*

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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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Title search: Subrogation and Liens in Personal Injury Cases

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"Subrogation and Liens"