

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.



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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.”

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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

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- **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).”



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

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