

# SUBROGATION & LIENS Personal Injury Cases

UT LAW CLE


THE UNIVERSITY OF TEXAS

TEXASLAW

2020

## CAR CRASH SEMINAR

August 27–28, 2020

 Live Webcast

KOSTURA & PUTMAN, P.C.  
ATTORNEYS AT LAW



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



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## Rule 1. Read.



## Rule 2. What kind of interest or lien asserted?

**Subrogation** vs **Reimbursement** vs **Assignment**

Case law: “no meaningful difference between the two.” *Wausau v Wedel* TxSCt 06 08 2018. BUT:

BAM! Blue, Aldous and Malouf & \$114M jm for Hill.  
*Aldous v Darwin Nat’l Assurance Co* 5<sup>th</sup> Cir, 03/16/17:

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

- **Rule 3. Who is the Plaintiff in relationship to the subrogation interest or lien asserted?**



child



Employee participant; or injured spouse; or derivative claimant



Wrongful death or estate

Start early. Be consistent. Be strategic.

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### Ch. 140 Civil Prac. & Rem. Code

For **insured** health, disability, occ injury; & **self-funded** state & local gov't plans (not self funded ERISA)

**Not** w/c, not M/Care, not M/Caid (see separate rules)

1/3 1/3 1/3 of 3<sup>rd</sup> party recovery if not enough \$

No subrogation to PIP

No subrogation to UM/UIM if ptf or family purchased it

No subro to children's or w/d recoveries (but yes to parents' and estate's recoveries)



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"Subrogation and Liens"