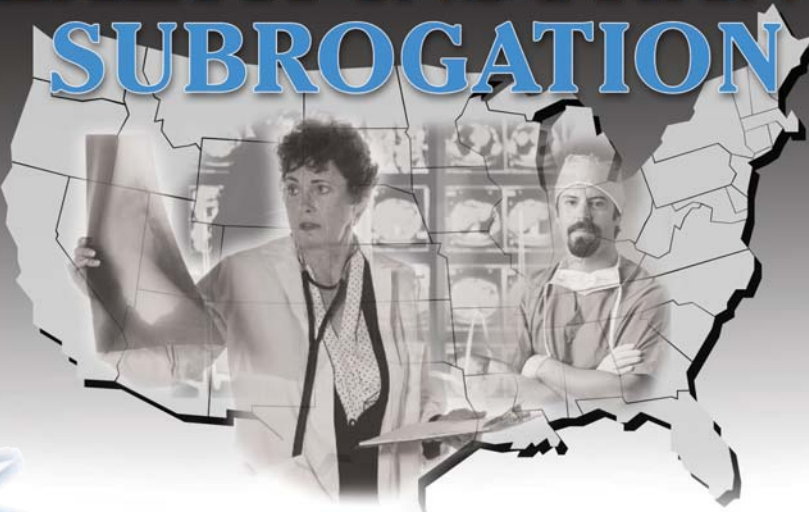


# ERISA AND HEALTH INSURANCE SUBROGATION



**All New  
2<sup>ND</sup> Edition  
for 2007**



**"This book is the bible on health insurance subrogation. No claims handler should be without it."**  
 - *Barbara McCoy*  
*Self-Insured Services Company (SISCO)*

**"This incredible book is the how-to guide for health insurance subrogation in all 50 states."**  
 - *Julia Chavarria*  
*PFL Life Insurance Company*



**NEW - SECOND EDITION AVAILABLE NOW!**

- Updated To Include All The Newest Case Law!
- Sereboff, Carillo, Popowski, and Knudson Updates!
- New Plan Language Recommendations!
- Complete Health Insurance Subrogation Laws In All 50 States
- Covers The Application of ERISA In Every Federal Circuit

BY  
**GARY WICKERT**

## ***ERISA and Health Insurance Subrogation - In All 50 States -2nd Edition***

**US \$210.** (Paper & Online) 1000 Pages. 1 Hardcover Volume. Table of Authorities. Index.  
**ISBN 1-57823-220-1**

### **About the Author:**

**Gary Wickert** is a partner with Matthiesen, Wickert & Lehrer, S.C. in Hartford, Wisconsin. Gary is an insurance trial lawyer and is regarded as one of the world's leading experts on insurance subrogation. He is the author of several subrogation books and legal treatises and is a national and international speaker and lecturer on subrogation and insurance motivational topics. Gary Wickert currently oversees a National Recovery Program which includes local counsel in all 50 states, Mexico and Canada. This program has served the subrogation needs of more than 150 insurance carriers, boasting more than \$250 million in recoveries and credits since 1983.

An author of many insurance articles, publications, and model Plan language for insurance underwriters and health insurers, Gary also organizes and presents subrogation lectures and seminars worldwide, and contributes to insurance publications for the National Association of Subrogation Professionals, the Association of Trial Lawyers of America, and the International Risk Management Institute, where he has served on a subrogation task force. He is also an exam writer and grader for the National Board of Trial Advocacy and is called on to testify as an expert witness on insurance issues such as subrogation, indemnity, and attorney's fees, having served as a past chairman of the Houston Bar Association's Fee Dispute Committee. Gary has also worked with the Texas Legislative Oversight Committee in connection with the Texas workers' compensation subrogation statute, and has been called on by legislatures in several states to provide oversight and input with regard to the drafting of subrogation law. Gary has served a member of the Board of Directors of the National Association of Subrogation Professionals for the past two years, and has served as National Director and Chairman on the NASP Regions Committee, as well as a member of the Amicus and Publications Committees. Gary represents the subrogation interests of numerous health insurers and health Plans in every jurisdiction within the United States.

### **What's New in the 2nd Edition:**

The Second Edition of ERISA And Health Insurance Subrogation marks a new era in health insurance subrogation in our country. The book encompasses, dissects, and explains all of the new state and federal case and statutory law which has been decided since the First Edition was published. A lot has changed! Much of the book had to be rewritten and reorganized in light of the landmark 2006 U.S. Supreme Court decision in *Sereboff v. Mid-Atlantic Medical Services*, which served as damage control and clarification of the confusion over and conflicting Circuit Courts of Appeals' treatment of the 2002 U.S. Supreme Court decision in *Knudson v. Great West Life & Annuity Ins. Co. v. Knudson*. Other significant case law, including the 11th Circuit *Popowski* and *Carillo* decisions, are also analyzed, explained, and applied. Suggested plan language improvements are even included to deal with the tsunami of changes which have affected health insurance law since the First Edition. Even pending litigation and possible Congressional action, which may affect health insurance subrogation in the coming years, is discussed and explained in the Second Edition - which is the most comprehensive and thorough treatment of this area of the law ever compiled.

So many changes have taken place that the book had to be literally rewritten and reorganized. Although health insurance subrogation has become unduly complex and confusing over the last five years, the Second Edition goes to great lengths to make the complex understandable, and easily digestible and useful for both practicing lawyers and the inexperienced health insurance subrogation claims handler and other subrogation professionals. For the first time since 2002, health insurance subrogation professionals can spend less time reacting to the drive-by confusion and damage inflicted by the *Knudson* decision - a case which should never have been appealed in the first place - and more time focusing on maximizing health plan recoveries in both state and federal court. The Second Edition contains a

### **PRAISE FOR**

#### **"ERISA and Health Insurance Subrogation"**

"A difficult and confusing subject made simple. If you have health insurance subrogation responsibilities, you need this book." -**Loren Smith**, *Kelly, Smith & Murrah, P.C.*

"When I entered the unsettled world of occupational accident plan subrogation, this book helped me find the answers."  
-**Beth Cipollo**, *Cambridge Integrated Services Group, Inc.*

"As a lawyer, I can tell you that this book is essential to maximizing our clients' subrogation recoveries. Don't settle another subrogation claim without it."  
-**David Gagliardi**, *Cambridge Integrated Services Group, Inc.*

"Every lawyer and claims adjuster responsible for subrogation should get a copy of this book before handling another health insurance file."  
-**Daniel J. Offenbach**, *Leahy, Eisenberg & Fraenkel, Ltd.*

"This book is the bible on health insurance subrogation. No claims handler should be without it."  
-**Barbara McCoy**, *Self-Insured Services Company (SISCO)*

"This incredible book is the how-to guide for health insurance subrogation in all 50 states."  
-**Julia Chavarria**, *PFL Life Insurance Company*

rewrite of Chapter 10, with an expanded easy-to-understand explanation of the complicated interplay between state and federal court jurisdiction as it applies to a plan's rights of subrogation and reimbursement. In short, the Second Edition is the best resource on ERISA and health insurance subrogation to be found anywhere. No claims handler, plan administrator, subrogation professional, or lawyer should be without it.

### **About the Book:**

***ERISA and Health Insurance Subrogation*** is the most complete and thorough treatise covering the complex subject of ERISA and health insurance subrogation ever published. Unlike most areas of insurance litigation/subrogation, health insurance subrogation requires the subrogation professional to be familiar not only with applicable state law and the many vagaries and nuances of health insurance subrogation within each state, but also the treatment of health insurance subrogation through ERISA, as applied by Federal District Courts, Federal Appellate Courts, and the United States Supreme Court. Familiarity with the general trends within each of the 12 Federal Circuits is also cited. This book is intended to introduce the health insurance claims handler, in-house counsel and subrogation professional to the complex and challenging world of health insurance subrogation in today's insurance subrogation marketplace. It covers the following issues in all 50 states and every federal circuit:

**The following issues and topics are covered in detail for each of the 50 states and all Federal Circuits:**

### ***Types of Subrogation***

- Conventional (Contractual) Subrogation
- Legal (Equitable) Subrogation
- Statutory Subrogation
- Difference Between Subrogation and Assignment
- Role of Equity
- Hospital Liens
- Medicare
- Other Statutory Subrogation Rights

### ***Non-ERISA Health Insurance Subrogation***

- Common Fund Doctrine
- Contributory Negligence
- Indemnification Agreements
- Indemnity Versus Investment Contracts
- Made Whole Doctrine
- Mandatory Joinder of Parties
- Medical Subrogation Generally
- Releases and Settlement Checks
- Statutes of Limitations
- Subrogating Against Municipalities
- Under/Uninsured Motorist Carrier Recoveries

### ***Complete Summary of Health Insurance Subrogation in All 50 States***

- Anti-Subrogation Statutes
- Collateral Source Rule
- Common Fund Doctrine
- Complete Statutes of Limitations

- Contractual Subrogation Rights
- Equitable Subrogation Rights
- Historical Treatment of Health Insurance Subrogation
- Interface with No-Fault Insurance Laws
- Limitation on Recovery
- Notice Requirements
- Rights of Reimbursement
- Rights of Subrogation
- Statutory Subrogation Rights
- Treatment on Made Whole Doctrine
- Wrongful Settlement

### ***ERISA-Covered, Self-Funded Employee Medical Benefit Plan Subrogation***

- Allocation of Recovery Among Beneficiaries
- Church Plans
- Exclusions from ERISA
- Federal Common Law
- Gerrymandered Settlements
- Government Plans
- History and Scope of ERISA
- HMO Plans
- Multi-Employer Plans
- Occupational Accident Plans
- Recovery Priorities
- Reimbursement Agreements
- Reimbursement Rights
- Rights of Subrogation Under ERISA
- Role of Plan Fiduciaries and Third Party Administrators
- Sample ERISA Plan Language
- Self-Funded Plans Versus Insured Plans
- Stop-Loss Coverage
- Subrogation Receipts
- Summary Plan Descriptions
- Trade Association Plans
- Trust, Contract and Labor Law Parallels
- Types of Subrogation Provisions

### ***Preemption***

- Complete Preemption
- Conflict Preemption
- Erosion of Preemption
- Preemption, Savings and Deemer Clauses
- State Law Relation to Employee Benefit Plans

### ***Made Whole Doctrine Under ERISA***

- As Effected by Plan Administrator's Interpretation
- As Effected by Settlements
- Effected by Reimbursement Provisions
- Made Whole Doctrine as Default Rule
- Plan Cooperation Clause
- Presumptions Against Made Whole Doctrine
- Self-Funded Plans
- Specific Plan Language Involving Made Whole Doctrine
- Summary of Made Whole Doctrine by Federal Circuit

### ***Common Fund Doctrine***

- Absence of Plan uage.
- As Effected by Plan Language

(continued)

- As Effected by Plan Administrator's Interpretation
- Common Fund Doctrine under Federal Common Law
- Full Reimbursement Language
- Who May Raise Common Fund Claims

**Other ERISA and Preemption Issues**

- Anti-Subrogation Statutes
- Collateral Source Rules
- Common Fund Doctrine Statutes
- Lien Reduction Statutes
- Federal Common Law
- Federal Employee's Health Benefit Act
- Laws Regarding Minors
- Medical Malpractice Recoveries
- No-Fault Insurance Laws
- Other State Statutes
- Regulation of Insurance Tests
- State Collateral Source Rules

**Conversion of ERISA Subrogation Interests**

- Breach of Fiduciary Duty
- Breach of Plan Terms
- Effective Release
- Implied Partnership
- Jurisdiction
- Plaintiffs' Attorney's Ethical Considerations
- Recovery of Same
- Tortious Interference
- Unjust Enrichment

**Enforcing Subrogation Rights Under ERISA**

- Authority Under ERISA Plan
- Case Decisions
- Persons Who Can Pursue Subrogation
- Statutory Authority for ERISA Enforcement
- Venue

**Analysis & Application of Knudson and Sereboff Decisions**

- Knudson confusion made clear
- Treatment of *Knudson* in each federal circuit
- Detailed explanation of *Sereboff* decision
- Practical ramifications of *Sereboff*
- Plan language changes needed as a result

**Intervention and Jurisdiction**

- Abstention
- Broad View
- Intervention
- Jurisdiction
- Narrow View
- Removal
- State Court Jurisdiction After *Knudson*
- Statutes of Limitation

**Improving Plan Language**

- Examples of Good Plan Language
- Examples of Poor Plan Language
- Improving Plan Language to Maximize Subrogation Recoveries
- Plan language changes recommended in light of *Sereboff* and *Knudson*

WHEN YOU PURCHASE/SUBSCRIBE TO MOST JURISNET PUBLICATIONS  
YOU WILL RECEIVE COMPLETE AND FULLY SEARCHABLE ACCESS TO IT  
VIA OUR ONLINE DATABASE, **JURISPUB ONLINE**.

UPON PROCESSING OF YOUR ORDER YOU WILL RECEIVE WITH YOUR INVOICE A USERNAME  
AND PASSWORD THAT WILL ALLOW YOU ACCESS TO THE WORK VIA THE INTERNET.

For further information on this publication, including the complete  
Table of Contents, visit our Online catalog at: [www.jurispub.com](http://www.jurispub.com)



**Juris Publishing, Inc.**

71 New Street, Huntington, NY 11743

Telephone: 1-631-351-5430

Fax: 1-631-673-9117

Email: [info@jurispub.com](mailto:info@jurispub.com)

**Please Send Me:** \_\_\_\_\_ copy(s) of *ERISA and Health Insurance Subrogation-2nd Edition* @ US \$210.

Name: \_\_\_\_\_

Firm/Company: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Country: \_\_\_\_\_

Postal Code: \_\_\_\_\_

Telephone: \_\_\_\_\_ ( ) \_\_\_\_\_

Fax/E-Mail#: \_\_\_\_\_

Please charge my:  MasterCard  Visa  American Express

Account #: \_\_\_\_\_

Exp.Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Please charge my Juris Account #: \_\_\_\_\_

Please Invoice: \_\_\_\_\_

I am enclosing a check for US\$ \_\_\_\_\_

*NYS Residents -Add applicable tax*