

**WORKERS' COMPENSATION SUBROGATION
IN ALL 50 STATES (4TH EDITION)**

**AUTHORED BY GARY L. WICKERT
PUBLISHED BY JURIS PUBLISHING, INC.**

TABLE OF CONTENTS

Acknowledgments. xi
About the Author.. . . . xiii
Notice. xv
How to Use This Book. xvii
Introduction. xxi

**CHAPTER 1
Workers' Compensation Generally**

§ 1.1 Elements. 1
§ 1.2 Federal Employment Compensation Act. 2
§ 1.3 Federal Employment Liability Act. 3
§ 1.4 Jones Act. 3
§ 1.5 Longshore and Harbor Workers' Compensation Act. 3
§ 1.6 Black Lung Benefits Act. 3

**CHAPTER 2
Statutory Subrogation Rights**

§ 2.1 State Statutes Dictate Subrogation Rights. 5
§ 2.2 Who Has Authority to File Third Party Action?.. . . . 9
§ 2.3 Joint Right to Pursue Third Party Action. 11
§ 2.4 Notice Requirements. 12
§ 2.5 Separate Time Frames for Filing Suit. 13
§ 2.6 Mandatory Joinder of Subrogated Party. 14
§ 2.7 Disability Benefits Laws. 14
§ 2.8 State Court Jurisdiction. 15
§ 2.9 Summary. 20

**CHAPTER 3
Allocating Third Party Recoveries**

§ 3.1 Non-Workers' Compensation. 21
§ 3.2 Workers' Compensation. 24
§ 3.3 Protecting the Lien. 25

§ 3.4	Carrier's Right to Recover Its Lien.	26
§ 3.5	Carrier's Right to Initiate or Participate in Third Party Litigation.. . . .	32
§ 3.6	Is an Intervention Necessary to Protect Your Lien?.. . . .	33
§ 3.7	Disadvantages of Intervening (Under Texas Law).. . . .	36
§ 3.8	Advantages of Intervening (Under Texas Law).	38
§ 3.9	Carrier Is Generally Subrogated to All Elements of Damage.. . . .	45

CHAPTER 4
Understanding Third Party Litigation Issues

§ 4.1	Attorneys' Fees.. . . .	47
§ 4.2	Apportionment Hearing.. . . .	49
§ 4.3	Attorneys' Fees Based upon Future Benefits/Medical Expenses.. . . .	50
§ 4.4	Costs and Expenses.. . . .	53
§ 4.5	Lien Reduction Statutes.	54
§ 4.6	Lien Priority Statutes.	57
§ 4.7	Made Whole Doctrine.. . . .	58
§ 4.8	What Does It Mean to Be "Made Whole".	?63
§ 4.9	Third Party Litigation.. . . .	66
§ 4.10	Conversion of Workers' Compensation Liens.	68
§ 4.11	Medicare Secondary Payer Issues.. . . .	71

CHAPTER 5
Who Are Third Parties?

§ 5.1	Subrogating against UM/UIM Benefits.	79
§ 5.2	Exclusivity of Workers' Compensation Act Bars Action against Employer.. . . .	85
§ 5.3	Intentional Acts.. . . .	85
§ 5.4	Dual Capacity Doctrine.. . . .	86
§ 5.5	Former Complying Employers.	87
§ 5.6	Joint Ventures.. . . .	88
§ 5.7	Where Injury Is Caused by Co-Employee.	89
§ 5.8	Where Third Party Is Also Insured by the Workers' Compensation Carrier (Anti-Subrogation Rule).	90
§ 5.9	No-Fault Automobile Insurance.	97

CHAPTER 6
Borrowed Servant Doctrine

§ 6.1	Defense to Third Party Liability.. . . .	99
§ 6.2	Consequences of Employee Being a Borrowed Servant.	101
§ 6.3	Equitable Subrogation Contribution Among Joint Insurers.. . . .	102

§ 6.4	Dual Employers.	102
§ 6.5	Staff Leasing Services and Temporary Employment Agencies.	104

CHAPTER 7
Contractual Limitations to Subrogation

§ 7.1	Waiver of Subrogation.	115
§ 7.2	Efforts to Amend Waivers of Subrogation.	124
§ 7.3	Does Insured’s Waiver of Subrogation Rights Prevent a Carrier from Recovering Workers’ Compensation Lien?.	125
§ 7.4	Prohibition of Subrogation against Insureds.	127
§ 7.5	Subrogation against Additional Insured.	127
§ 7.6	Subrogating against Third Party Indemnified by Insured.	130
§ 7.7	Pre-Loss Waiver.	131
§ 7.8	Post-Loss Waiver.	132
§ 7.9	Elements of Effective Waivers of Subrogation.	133
§ 7.10	Scope of Waiver of Subrogation.	135
§ 7.11	Use of Waiver in Claim Settlement Negotiations.	136

CHAPTER 8
Extra-Territorial Subrogation

§ 8.1	Extra-Territorial Subrogation.	137
§ 8.2	Conflicts of Law.	143
§ 8.3	The Larson Rule.	164
§ 8.4	Restatement (Second) of Conflict of Laws.	167
§ 8.5	Full Faith and Credit.	171
§ 8.6	Extra-Territorial Reciprocity Agreements.	174
§ 8.7	The “Payable under This Chapter” Issue.	176

CHAPTER 9
Longshore and Harbor Workers’ Compensation Subrogation

§ 9.1	Statutory Subrogation Rights.	182
§ 9.2	Third Parties.	182
§ 9.3	Allocation of Third Party Recovery.	185
§ 9.4	Attorneys’ Fees and Costs.	188
§ 9.5	Statutory Credit.	188
§ 9.6	Related Issues.	190
§ 9.7	Summary.	192
§ 9.8	Longshore and Harbor Workers Terms and Definitions.	192

CHAPTER 10
Hiring Subrogation Counsel

§ 10.1	Subrogation Clearing House..	202
§ 10.2	Evaluating and Monitoring Local Counsel.	203
§ 10.3	Instant Access to Individual State Subrogation Law..	203
§ 10.4	Centralized Reporting..	203
§ 10.5	Cost Containment..	204
§ 10.6	Dealing with Only One Counsel.	204

CHAPTER 11
Workers' Compensation Subrogation Laws of All 50 States

§ 11.1	Alabama..	209
§ 11.2	Alaska.	239
§ 11.3	Arizona..	251
§ 11.4	Arkansas.	263
§ 11.5	California.	285
§ 11.6	Colorado.	331
§ 11.7	Connecticut.	357
§ 11.8	Delaware.	373
§ 11.9	District of Columbia.	383
§ 11.10	Florida.	395
§ 11.11	Georgia.	425
§ 11.12	Hawaii.	451
§ 11.13	Idaho.	465
§ 11.14	Illinois..	479
§ 11.15	Indiana..	509
§ 11.16	Iowa.	531
§ 11.17	Kansas..	541
§ 11.18	Kentucky.	565
§ 11.19	Louisiana.	595
§ 11.20	Maine..	621
§ 11.21	Maryland.	633
§ 11.22	Massachusetts..	649
§ 11.23	Michigan..	667
§ 11.24	Minnesota.	689
§ 11.25	Mississippi.	721
§ 11.26	Missouri.	733
§ 11.27	Montana..	751
§ 11.28	Nebraska.	769
§ 11.29	Nevada.	783

§ 11.30	New Hampshire.	813
§ 11.31	New Jersey.	825
§ 11.32	New Mexico.	845
§ 11.33	New York.	855
§ 11.34	North Carolina.	887
§ 11.35	North Dakota.	909
§ 11.36	Ohio.	923
§ 11.37	Oklahoma.	945
§ 11.38	Oregon.	961
§ 11.39	Pennsylvania.	977
§ 11.40	Rhode Island.	1005
§ 11.41	South Carolina.	1019
§ 11.42	South Dakota.	1035
§ 11.43	Tennessee.	1049
§ 11.44	Texas.	1067
§ 11.45	Utah.	1117
§ 11.46	Vermont.	1135
§ 11.47	Virginia.	1149
§ 11.48	Washington.	1167
§ 11.49	West Virginia.	1187
§ 11.50	Wisconsin.	1201
§ 11.51	Wyoming.	1227
Table of Other Authorities.		1237
Table of Cases.		1239
Table of Statutes.		1365