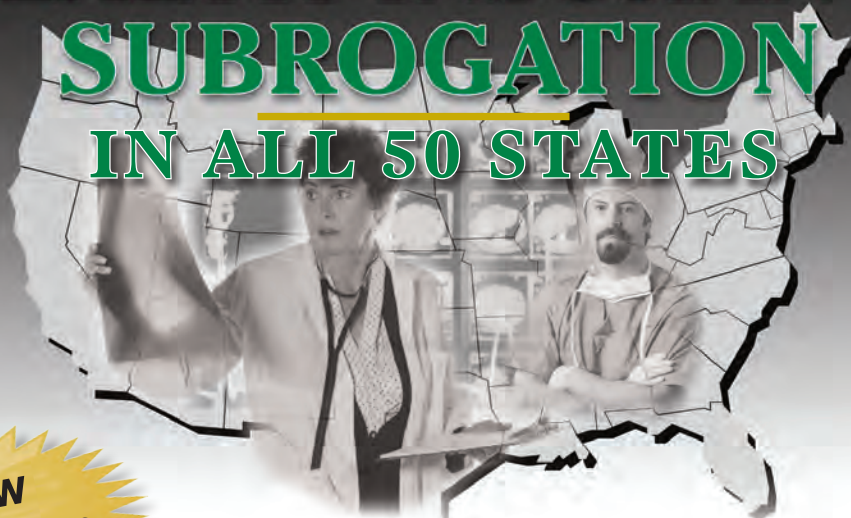
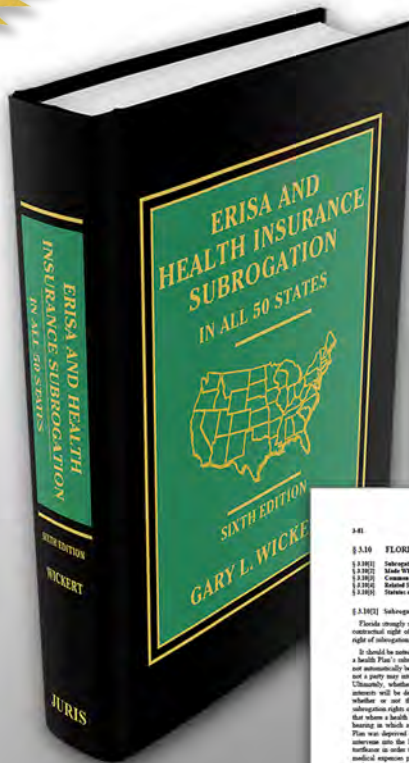


ERISA AND HEALTH INSURANCE SUBROGATION IN ALL 50 STATES



All New Sixth Edition



"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

CHAPTER 2 SUBROGATION RIGHTS OF FULLY INSURED AND SELF-FUNDED HEALTH PLANS

§ 2.01	Generally
§ 2.02	State of Health Insurance and Managed Care
§ 2.03	Early History
§ 2.04	Employee-Owned Health Insurance
§ 2.05	Health Maintenance Organizations (HMOs)
§ 2.06	ERISA and Federal Statutes of Health Insurance
§ 2.07	Future Protection and Affordable Care Act (ACA)
§ 2.08	Enquiries
§ 2.09	Problems Resolved
§ 2.10	Current-Challenging Questions

§ 2.10 FLORIDA § 2.10(f)

§ 2.10(f) Subrogation Rights
 § 2.10(f)(1) Main Text
 § 2.10(f)(2) Common Fund Doctrine
 § 2.10(f)(3) Mutual Subrogation Issues
 § 2.10(f)(4) Statute of Limitations

§ 2.10(f) Subrogation Rights

Florida strongly supports the subrogation rights of health plans. A contractual right of subrogation is recognized, as is its equitable right of subrogation.¹

It should be noted that even though Florida allows reimbursement of a health plan's subrogation reimbursement provisions, the Plan will not automatically be allowed to reimburse in every case. Whether or not a party may recover is left to the discretion of the trial judge (usually), whether or not a Plan can reimburse and protect its interests will be determined by the specific facts of the case and whether or not the case has taken efforts to subrogate the subrogation rights of the Plan.² However, at least one court has held that when a health plan was deprived of the right to participate in a hearing in which a settlement was judicially approved, the health plan was deprived of the process and actually did have a right to subrogate into the Plan beneficiary's third-party action against the tortfeasor in order to assert its statutory right of reimbursement for medical expenses paid and to be heard before the proceeds of the settlement were distributed.³

A Health Maintenance Organization (HMO) which provides benefits or payments to a Plan beneficiary injured by the acts of a

NEW - SIXTH EDITION AVAILABLE NOW!

- Updated To Include All The Newest Case Law!
- Updated To Include Medicare, Medicaid, and Medicare Advantage Subrogation
- New Plan Language Recommendations!
- Complete Health Insurance Subrogation Laws In All 50 States
- Covers Application of ERISA In Every Federal Circuit

BY
GARY L. WICKERT

ERISA and Health Insurance Subrogation – In All 50 States, Sixth Edition

US \$225. ISBN 978-1-57823-499-8

1450 pages. 1 Hardcover Volume. Table of Authorities. Index. Published December 2016.

About the Author: Gary Wickert 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 topics. After 15 years as the youngest managing partner in the history of the 30-lawyer Houston law firm of Hughes, Watters & Askanase, L.L.P., Gary returned to his native Wisconsin in 1998 and co-founded the subrogation law firm of Matthiesen, Wickert & Lehrer, S.C. Gary oversees a National Recovery Program which includes a network of contracted subrogation law firms in all 50 states, Mexico, Canada, and the United Kingdom and boasts over \$500 million in recoveries and credits for more than 250 insurance companies. Licensed in both Texas and Wisconsin, Gary is double board-certified in both personal injury law and civil trial law by the Texas Board of Legal Specialization and is a dual board-certified Civil Trial Advocate by the National Board of Trial Advocacy (NBTA), for whom he has both written and graded the product liability questions contained on the NBTA national certification exam taken by trial lawyers around the country. For 33 years, Gary has served as an expert witness and insurance consultant on subrogation and insurance-related issues and has been consulted by insurance carriers, lawyers, and legislative bodies from several states. He is a licensed arbitrator and has attended more than 750 mediations in more than 30 different states. Gary has worked with the Texas Legislative Oversight Committee in rewriting their workers' compensation subrogation statutes, has served on the Board of the National Association of Subrogation Professionals, and has been cited as an authority on workers' compensation subrogation by several appellate courts, including the Texas Court of Appeals. He is one of only a few lawyers to have ever represented a subrogated carrier before the U.S. Supreme Court. Gary also writes a monthly column for the *Claims Journal Magazine* and CLM's *Workers' Compensation Magazine* entitled "The Road To Recovery."

What's new in the Sixth Edition?

The *Sixth Edition of ERISA and Health Insurance Subrogation In All 50 States* contains a great deal of new information, statutory amendments, and case decisions. It reflects the changing nature of health insurance subrogation and emphasizes the areas which have traditionally been weak spots in the subrogation professional's arsenal. Although health insurance subrogation has become unduly complex and confusing over the past several years, the *Sixth Edition* goes to great lengths to make the complex understandable, easily digestible, and useful. The book is suitable for both the inexperienced health insurance subrogation claims handler and the

seasoned veteran.

The *Sixth Edition of ERISA and Health Insurance Subrogation In All 50 States* has been completely rewritten and reorganized. Several chapters were added, removed, and consolidated due to new changes in the law.

The new chapters include:

Chapter 2 - Subrogation Rights Of Fully-Insured And Self-Funded Health Plans,

Chapter 4 - Employee Retirement Income Security Act (ERISA),

Chapter 6 - Defenses To Health Insurance Subrogation,

Chapter 7 - Litigating ERISA Claims,

Chapter 8 - Supreme Court Treatment Of § 502(A)(3) Actions,

Chapter 9 - Recovery Of Benefits Paid By Mistake,

Chapter 10 - Coordination Of Benefits,

Chapter 11 - Liability Of Plaintiffs' Counsel,

Chapter 12 - Medicare, Medicare Advantage, And Medicaid Subrogation,

and **Chapter 13 - Federal Employees' Health Benefit Act (FEHBA) Subrogation**

The *Sixth Edition* presents for the first time a detailed history of health insurance, including the trend toward employer-sponsored health insurance, the development of HMOs, ERISA, and the growth of federal regulation of health insurance, as well as the passage and effect of the Patient Protection and Affordable Care Act (ObamaCare). Also new is the inclusion of new law, broken down by federal circuit, on the subrogation of capitated HMO Plans. It also goes into great detail on how the 2009 Stimulus Bill (Title 13 of ARRA 2009) modifies HIPAA regarding privacy and security rules. The January 20, 2016 U.S. Supreme Court decision in *Montanile v. Board of Trustees of the National Elevator Industry Health Benefit Plan* is given considerable treatment and explanation in several chapters. A new chapter has been added to cover the fast-growing field of Medicare, Medicaid, and Medicare Advantage subrogation. It covers and explains all of the newest cases in this field, including *Collins v. Wellcare Healthcare Plans, Inc.*, *Care Choices HMO v. Engstrom*, *In re Avandia Mktg., Sales Practices & Products Liability Litigation*, and *Parra v. PacifiCare of Ariz., Inc.*

The *Sixth Edition* also contains a new section on the Fair Debt Collection Practices Act, providing a thorough treatment of both federal and state law fair debt collection laws, including summaries of the most significant case law dealing with what constitutes a "consumer debt" and whether and when subrogation

PRAISE FOR: *ERISA and Health Insurance Subrogation - In All 50 States* (continued from pg. 1)

"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.

must comply with fair debt collection practices requirements. It also delves into the role which the Federal Anti-Injunction Act plays when beneficiaries sue in state court to enforce the terms of an ERISA Plan, while the Plan files suit in federal court seeking an injunction against the state court action. It also expounds greatly on the ability of a “prevailing party” to recover attorney’s fees, when a party is considered to have “prevailed”, and how the fees are to be calculated.

The new *Sixth Edition* includes a summary of new Office of Personnel Management rules clarifying subrogation and reimbursement rights of health Plans established under the Federal Employee Benefits Program. It goes into detail with regard to the nature of wrongful death and survival actions from state to state, focusing on a health Plan’s right of subrogation and/or reimbursement based on the nature of the damages being sought. A new subsection was added to the Longshore and Harborworker’s chapter dealing with the lien and future credit rights of the LHWCA Special Fund. Chapter 11 has been rewritten, focusing specifically on the liability of plaintiff’s attorneys who settle tort cases without reimbursing a health Plan. Included in the rewritten chapter is an overview of the law in this area broken down by each federal appellate circuit. The new edition expands on, summarizes, and parses the various causes of action and avenues of potential recovery a subrogated Plan has directly against the plaintiff’s attorney who recovers a settlement and disburses the settlement proceeds without reimbursing the Plan. It also contains an expanded chapter on improving Plan language and includes many new suggestions and recommendations for sample Plan language.

About the Book:

ERISA and Health Insurance Subrogation In All 50 States 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 U.S. Supreme Court. Familiarity with the general trends within each of the 12 Federal Circuits is also cited. This book introduces 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.

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
- Anti-Subrogation Arguments

Non-ERISA Health Insurance Subrogation

- Common Fund Doctrine
- Contributory Negligence

- Indemnification Agreements
- Made Whole Doctrine
- Mandatory Joinder of Parties
- Releases and Settlement Checks
- Statutes of Limitations
- Subrogating Against Municipalities
- UM/UIM Carrier Recoveries

Summary of Health Insurance Subrogation In All 50 States

- Anti-Subrogation Statutes
- Collateral Source Rule
- Common Fund Doctrine
- Statutes of Limitations
- Contractual Subrogation Rights
- Equitable Subrogation Rights
- Interface with No-Fault Insurance Laws
- Limitation on Recovery
- Notice Requirements
- Rights of Reimbursement
- 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
- HMO Plans
- Multi-Employer Plans
- Occupational Accident Plans
- Reimbursement Agreements
- Rights of Subrogation Under ERISA
- Role of Plan Fiduciaries and TPAs
- Samples of ERISA Plan Language
- Self-Funded Plans Versus Insured Plans
- Stop-Loss Coverage
- Subrogation Receipts
- Trade Association Plans
- Trust, Contract and Labor Law Parallels
- Types of Subrogation Provisions

ERISA Preemption

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

Defenses To Health Insurance Subrogation

- Made Whole Doctrine
- Plan Cooperation Clause
- Self-Funded Plans
- Summary of Made Whole Doctrine by Federal Circuit
- Common Fund Doctrine
- As Effected by Plan Language

(Continued >)

- As Effected by Plan Administrator’s Interpretation
- Full Reimbursement Language
- Recovery Priorities
- Elements of Damages (Gerrymandering)
- Wrongful Death / Survival Actions
- Subrogating For More Than Benefits Paid
- Priority Over Plaintiffs’ Counsel Fees
- Credit/Offset Against Future Benefits
- Social Security Benefits
- Veteran’s Benefits
- Summary Plan Description (SPD)
- Plan Fiduciary’s Interpretation
- Multiple Plan Documents – Conflicting Terms
- Medical Malpractice Recoveries
- Med Pay and PIP Benefits
- No-Fault Insurance Laws
- Laws Regarding Minors
- Subrogating of Capitated HMO Plans
- Handling of “Reasonable Cash Value” Issue by Circuit
- Bankruptcy
- Bad Faith
- Fair Debt Collection Practices Act

Litigating ERISA Claims

- Persons Who Can Pursue Subrogation
- ERISA Jurisdiction
- Problem Circuits
- Causes of Action Under ERISA § 502(a)
- Constructive Trusts and Equitable Liens
- Restitution
- Declaratory Judgment Actions
- Administrative Exhaustion Requirement

Supreme Court Treatment of § 502(a) Actions

- History and Early Treatment
- *Great-West Life & Annuity Ins. Co. v. Knudson*
- *Sereboff v. Mid-Atlantic Medical Services, Inc.*
- *U.S. Airways v. McCutchen*
- *Montanile*

Recovery of Benefits Paid By Mistake

- Plan Language
- Legal Authority For Recovery
- Case Law on Recovery of Mistaken Payments
- Cases Denying Recovery of Mistaken Payments

Coordination of Benefits

- No-Fault Benefits
- Medical Insurance Policies
- UM/UIM Policies
- Other ERISA Plans
- Workers’ Compensation Claims

Liability of Plaintiffs’ Counsel

- Equitable Relief
- Breach of Contract
- Tortious Interference
- Implied Partnership
- Implied Contract With Law Firm
- Breach of Fiduciary Duty

Medicare, Medicare Advantage, and Medicaid Subrogation

- Medicare Advantage Subrogation
- Medicaid Subrogation

Federal Employees’ Health Benefit Act (FEHBA) Subrogation

- Federal Employees Health Benefits Act
- FEHBA Subrogation and Reimbursement
- FEHBA Preemption
- Administration of FEHBA Claims

HIPAA, Hitech, and Medical Privacy

- The Problem: Medical Privacy
- The Solution: HIPAA’s Privacy and Security Rules
- Health Information Technology for Economic and Clinical Health Act
- Disclosure of Protected Health Information in Legal Proceedings
- The Federal Services Modernization Act
- HIPAA and Workers’ Compensation Claims

www.jurispub.com • **JURIS** • 71 New Street, Huntington, NY 11743
 Telephone: 1-631-351-5430 • Fax: 1-631-673-9117 • Email: info@jurispub.com

Please Send Me: _____ copy(s) of ***ERISA and Health Insurance Subrogation-Sixth Edition*** @ **US \$225.**

Name: _____
 Firm/Company: _____
 Address: _____
 City/State/Country: _____
 Postal Code: _____
 Telephone: () _____
 Fax/E-Mail#: _____

Please charge my: MasterCard Visa American Express
 Account#: _____
 Exp. Date: _____ Cvc code: _____
 Signature: _____
 Please charge my Juris Account #: _____
 Please Invoice: _____
 I am enclosing a check for US\$ _____

Juris reserves the right to cancel orders arising from pricing or other errors. Prices are subject to change without notice. Taxes, shipping & handling fees may apply.

NYS Residents -Add applicable tax