

## TABLE OF CONTENTS

Acknowledgments .....	xix
About the Author .....	xxi
Notice.....	xxiii
How to Use This Book .....	xxv
Introduction .....	xxxix

## CHAPTER 1

### SUBROGATION GENERALLY

§ 1.01 Elements .....	1-1
§ 1.02 Origins of Subrogation .....	1-3
§ 1.03 Types of Subrogation .....	1-5
[1] Contractual (Conventional) Subrogation .....	1-6
[2] Equitable (Legal) Subrogation.....	1-7
[a] Difference Between Subrogation and Assignment.....	1-8
[b] Roles of Equity.....	1-9
[3] Statutory Subrogation .....	1-15
[a] Workers' Compensation.....	1-15
[b] Hospital Liens .....	1-17
[c] Medicare.....	1-18
[d] Medicaid.....	1-20
[e] Medicare Advantage Plans.....	1-23
[f] Federal Employees Health Benefit Act (FEHBA).....	1-25
[g] Other Statutory Subrogation .....	1-25
§ 1.04 Purposes of Subrogation.....	1-26
§ 1.05 Anti-Subrogation Arguments .....	1-29

**TABLE OF CONTENTS**

**CHAPTER 2**

**SUBROGATION RIGHTS OF FULLY-INSURED AND  
SELF-FUNDED HEALTH PLANS**

§ 2.01	Generally .....	2-2
§ 2.02	History of Health Insurance and Managed Care .....	2-5
	[1] Early History .....	2-5
	[2] Employer-Sponsored Health Insurance .....	2-6
	[3] Health Maintenance Organizations (HMO's) .....	2-7
	[4] ERISA and Federal Regulation of Health Insurance .....	2-8
	[5] Patient Protection and Affordable Care Act (ACA) ...	2-10
	[a] Exchanges .....	2-12
	[b] Premium Subsidies .....	2-12
	[c] Lawsuits Challenging ObamaCare .....	2-13
	[d] The Future of ObamaCare .....	2-16
	[e] The Future of Private Health Insurance .....	2-16
	[f] Subrogation Under ObamaCare .....	2-21
§ 2.03	Types of Health Plans .....	2-22
	[1] Indemnity Plans .....	2-23
	[2] Preferred Provider Organization (PPO) .....	2-23
	[3] Health Maintenance Organization (HMO) .....	2-24
	[4] Point-of-Service Plan (POS) .....	2-26
§ 2.04	Multiple-Employer Plans .....	2-27
	[1] Single-Employer Plans .....	2-27
	[2] Multi-Employer Plans .....	2-27
	[3] Multiple-Employer Welfare Association Plans (MEWA) .....	2-29
	[4] Voluntary Employees' Beneficiary Association (VEBA) .....	2-37
	[5] Occupational Accident Plans .....	2-40
§ 2.05	Subrogation and Reimbursement Rights .....	2-42
	[1] Subrogation Rights .....	2-43
	[2] Reimbursement Rights .....	2-45
	[3] Standing in the Shoes of the Insured .....	2-46
	[4] Indemnity Versus Investment Contracts .....	2-47

## TABLE OF CONTENTS

	[5] No Multiple Recoveries.....	2-49
	[6] Subrogation Arises With Payment .....	2-50
	[7] Subrogation Against Municipalities .....	2-50
§ 2.06	Requirement to Join Subrogated Party .....	2-50
	[1] Wis. Stat. § 803.03 - Claims Arising by Subrogation.....	2-51
	[2] Is the Subrogated Party a Plaintiff, Defendant, or Other? .....	2-52
	[3] The Reverse - Must Subrogated Party Join the Insured? .....	2-53
	[4] The Need to Participate .....	2-53
	[5] What If You Are Not Joined?.....	2-53
§ 2.07	Notice to Subrogated Parties .....	2-54
§ 2.08	What Happens If the Plaintiff Loses at Trial? .....	2-55
§ 2.09	Made Whole Doctrine and Non-ERISA Health Plans ....	2-56
	[1] Garrity v. Rural Mutual Ins. Co.....	2-58
	[2] Rimes v. State Farm Mutual Auto. Ins. Co.....	2-58
	[3] What Does It Mean to Be “Made Whole”? .....	2-60
	[a] Basic Test.....	2-60
	[b] Contributory Negligence.....	2-60
	[4] All Damages .....	2-68
	[5] Attorney’s Fees.....	2-68
	[6] Where Plan Specifically Negates Made Whole Doctrine .....	2-69
§ 2.10	Common Fund Doctrine and Non-ERISA Health Plans .....	2-76
§ 2.11	Statute of Limitations Issues .....	2-78
§ 2.12	Indemnification Agreements .....	2-80
§ 2.13	Subrogated Party On Settlement Check: Is It Enough ....	2-81
§ 2.14	Subrogating Against Under/Uninsured Motorist Carriers .....	2-81
	[1] “...A Responsible Third Party...” .....	2-82
	[2] “...Any Party Who May Be Liable...” .....	2-83
	[3] “...Caused, or Is Liable for...” .....	2-83
	[4] Collateral Source Rules .....	2-83
	[5] Anti-Subrogation Laws.....	2-87
	[6] Summary.....	2-88

**TABLE OF CONTENTS**

**CHAPTER 3**

**HEALTH INSURANCE SUBROGATION  
LAWS IN ALL 50 STATES**

Introduction .....	3-1
§ 3.01 Alabama.....	3-3
§ 3.02 Alaska.....	3-15
§ 3.03 Arizona.....	3-23
§ 3.04 Arkansas.....	3-29
§ 3.05 California.....	3-37
§ 3.06 Colorado.....	3-59
§ 3.07 Connecticut.....	3-65
§ 3.08 Delaware.....	3-71
§ 3.09 District of Columbia.....	3-75
§ 3.10 Florida.....	3-81
§ 3.11 Georgia.....	3-89
§ 3.12 Hawaii.....	3-101
§ 3.13 Idaho.....	3-109
§ 3.14 Illinois.....	3-115
§ 3.15 Indiana.....	3-139
§ 3.16 Iowa.....	3-147
§ 3.17 Kansas.....	3-155
§ 3.18 Kentucky.....	3-163
§ 3.19 Louisiana.....	3-171
§ 3.20 Maine.....	3-183
§ 3.21 Maryland.....	3-189
§ 3.22 Massachusetts.....	3-199
§ 3.23 Michigan.....	3-207
§ 3.24 Minnesota.....	3-217
§ 3.25 Mississippi.....	3-225
§ 3.26 Missouri.....	3-229
§ 3.27 Montana.....	3-237
§ 3.28 Nebraska.....	3-247
§ 3.29 Nevada.....	3-253
§ 3.30 New Hampshire.....	3-259
§ 3.31 New Jersey.....	3-263

**TABLE OF CONTENTS**

§ 3.32 New Mexico ..... 3-277  
§ 3.33 New York ..... 3-283  
§ 3.34 North Carolina ..... 3-311  
§ 3.35 North Dakota ..... 3-317  
§ 3.36 Ohio ..... 3-325  
§ 3.37 Oklahoma ..... 3-339  
§ 3.38 Oregon ..... 3-345  
§ 3.39 Pennsylvania ..... 3-361  
§ 3.40 Rhode Island ..... 3-379  
§ 3.41 South Carolina ..... 3-383  
§ 3.42 South Dakota ..... 3-389  
§ 3.43 Tennessee ..... 3-393  
§ 3.44 Texas ..... 3-399  
§ 3.45 Utah ..... 3-421  
§ 3.46 Vermont ..... 3-427  
§ 3.47 Virginia ..... 3-431  
§ 3.48 Washington ..... 3-437  
§ 3.49 West Virginia ..... 3-443  
§ 3.50 Wisconsin ..... 3-447  
§ 3.51 Wyoming ..... 3-469

**CHAPTER 4**

**EMPLOYEE RETIREMENT INCOME SECURITY ACT  
(ERISA)**

§ 4.01 Introduction to ERISA ..... 4-2  
    [1] History of ERISA ..... 4-2  
    [2] Background ..... 4-3  
    [3] Enactment and Purpose ..... 4-5  
    [4] Scope of ERISA ..... 4-6  
    [5] Definitions - The Language of ERISA ..... 4-7  
    [6] Trust, Contract, and Labor Law Parallels ..... 4-9  
        [a] Trust Law ..... 4-9  
        [b] Contract Law ..... 4-11  
        [c] Labor Law ..... 4-12

## TABLE OF CONTENTS

	[7] Federal Common Law .....	4-12
§ 4.02	What Is An ERISA Plan? .....	4-14
	[1] Self-Funded Plans Versus Insured Plans .....	4-17
	[2] Stop-Loss Coverage.....	4-22
	[3] General Rule to Determine Whether Plan Is ERISA-Covered.....	4-28
	[4] Safe Harbor Regulations.....	4-32
	[5] Plans Not Subject to ERISA.....	4-34
	[a] Government Plans and Church Plans .....	4-35
	[b] Trade Association Plans and Employees' Beneficiary Associations.....	4-36
	[c] Plans That Cover Owners and Not Employees.....	4-39
	[d] Multi-Employer Plans .....	4-39
	[e] Entities Not Engaged in Interstate Commerce .....	4-41
	[f] Subrogating Insured ERISA-Covered Plans .....	4-41
	[6] Other Plans Subject to ERISA.....	4-42
	[a] HMO Plans.....	4-42
	[b] Plans Administered by Employer.....	4-43
	[c] Occupational Accident Plans .....	4-43
	[7] What Constitutes the Plan?.....	4-47
	[a] Coverage Booklet.....	4-47
	[b] Summary Plan Description (SPD) .....	4-48
	[c] Wrap Documents.....	4-52
§ 4.03	Plan Subrogation Provisions.....	4-52
	[1] Subrogation Provisions .....	4-53
	[2] Reimbursement Provisions.....	4-54
	[3] Exclusionary Provisions.....	4-55
	[4] No Subrogation Language.....	4-56
	[5] Subrogation Receipts/Reimbursement Agreements .....	4-57
	[a] Subrogation Agreement Does Not Control .....	4-58
	[b] Subrogation Agreement Does Control.....	4-60

**TABLE OF CONTENTS**

**CHAPTER 5**

**ERISA PREEMPTION**

§ 5.01 Preemption, Saving and Deemer Clauses..... 5-2  
    [1] Preemption Clause..... 5-4  
    [2] Saving Clause ..... 5-9  
    [3] Deemer Clause..... 5-11  
§ 5.02 Two Types of Preemption -- Complete and Conflict ..... 5-15  
    [1] Complete Preemption (Narrow Preemption) ..... 5-18  
        [a] *Davila* Test ..... 5-22  
    [2] Conflict Preemption (Broad Preemption) ..... 5-22  
§ 5.03 ERISA Preemption of State Law Where Plan Is  
    Insured and Not “Self-Funded” ..... 5-26  
§ 5.04 When Does State Law “Relate to” an Employee  
    Benefit Plan? ..... 5-28  
§ 5.05 When Does State Law “Regulate Insurance”? ..... 5-36  
    [1] Health Maintenance Organizations (HMOs)..... 5-44  
§ 5.06 Preemption of State Court Judgments and Orders ..... 5-44  
§ 5.07 Erosion of Preemption..... 5-45

**CHAPTER 6**

**DEFENSES TO HEALTH INSURANCE SUBROGATION**

§ 6.01 Made Whole Doctrine ..... 6-3  
    [1] Made Whole Doctrine As Default Rule..... 6-4  
    [2] Applied To Self-Funded Plans..... 6-5  
    [3] Doctrine Affected By Reimbursement Provision .. 6-12  
    [4] Presumption Against Made Whole Doctrine ..... 6-14  
    [5] Made Whole Doctrine As Gap Filler ..... 6-15  
    [6] Effect of Plan Administrator’s Interpretation ..... 6-16  
    [7] Applicable Unless Negated By Plan Language ..... 6-16  
    [8] Federal Common Law ..... 6-21  
    [9] Definition of Made Whole..... 6-23  
    [10] Beneficiary Violates Cooperation Clause..... 6-24

**TABLE OF CONTENTS**

[11]	Does Not Affect Other Plan Duties .....	6-25
[12]	Effect of Exclusionary/Excess Language .....	6-26
[13]	Examples of Specific Plan Language .....	6-27
[14]	Treatment of Made Whole Doctrine By Circuit ....	6-28
	[a] 1 <sup>st</sup> Circuit.....	6-29
	[b] 2 <sup>nd</sup> Circuit.....	6-29
	[c] 3 <sup>rd</sup> Circuit.....	6-30
	[d] 4 <sup>th</sup> Circuit .....	6-31
	[e] 5 <sup>th</sup> Circuit.....	6-31
	[f] 6 <sup>th</sup> Circuit .....	6-32
	[g] 7 <sup>th</sup> Circuit .....	6-37
	[h] 8 <sup>th</sup> Circuit .....	6-37
	[i] 9 <sup>th</sup> Circuit .....	6-40
	[j] 10 <sup>th</sup> Circuit .....	6-44
	[k] 11 <sup>th</sup> Circuit .....	6-45
	[l] D.C. Circuit.....	6-47
§ 6.02	Common Fund Doctrine.....	6-49
	[1] Plan Language: “Out of Any Monies Recovered” and “All Rights of Recovery”.....	6-51
	[2] “Full Reimbursement” Language .....	6-51
	[3] Absence of Language Exempting Common Fund Doctrine .....	6-53
	[4] Plan Language Clearly Exempts Common Fund Doctrine .....	6-59
	[5] Effect of Plan Administrator’s Interpretation .....	6-61
	[6] Common Fund Doctrine Under Federal Common Law .....	6-61
	[7] Hourly Versus Contingent Fee .....	6-64
	[8] Notice of Litigation Requirement.....	6-64
	[9] Who May Raise Common Fund Claim?.....	6-65
	[10] Common Fund Doctrine Statutes.....	6-66
	[11] Treatment of Common Fund Doctrine By Circuit .....	6-72
	[a] 1 <sup>st</sup> Circuit.....	6-73
	[b] 2 <sup>nd</sup> Circuit.....	6-74
	[c] 3 <sup>rd</sup> Circuit.....	6-74
	[d] 4 <sup>th</sup> Circuit .....	6-74



## TABLE OF CONTENTS

	[e] 5 <sup>th</sup> Circuit.....	6-75
	[f] 6 <sup>th</sup> Circuit.....	6-76
	[g] 7 <sup>th</sup> Circuit.....	6-77
	[h] 8 <sup>th</sup> Circuit.....	6-78
	[i] 9 <sup>th</sup> Circuit.....	6-79
	[j] 10 <sup>th</sup> Circuit.....	6-81
	[k] 11 <sup>th</sup> Circuit.....	6-82
	[l] D.C. Circuit.....	6-84
§ 6.03	Recovery Priorities.....	6-84
	[1] Elements of Damages (Gerrymandering).....	6-84
	[2] Allocation of Recovery Among Beneficiaries.....	6-97
	[3] Wrongful Death / Survival Actions.....	6-101
§ 6.04	First Money Recovery Rights.....	6-106
§ 6.05	Subrogating For More Than Benefits Paid.....	6-106
§ 6.06	Priority Over Plaintiffs’ Attorney’s Fees.....	6-107
§ 6.07	Causation.....	6-109
§ 6.08	Reimbursement Rights.....	6-114
§ 6.09	Credit / Offset Against Future Benefits.....	6-116
	[1] Social Security Benefits.....	6-126
	[2] Veterans’ Benefits.....	6-129
	[3] Mistaken Payment of Benefits.....	6-129
§ 6.10	Summary Plan Description (SPD).....	6-130
	[1] Summary Plan Description vs. Formal Plan Document.....	6-134
	[2] Summary Plan Description and Plan Conflict.....	6-136
	[3] Plan Fiduciary’s Interpretation of Plan Language.....	6-144
	[4] Multiple Plan Documents – Conflicting Terms.....	6-153
§ 6.11	Medical Malpractice Recoveries.....	6-155
§ 6.12	Uninsured Motorist Benefits.....	6-157
§ 6.13	Med Pay and PIP Benefits.....	6-168
§ 6.14	No-Fault Insurance Laws.....	6-170
§ 6.15	Anti-Subrogation Laws.....	6-173
§ 6.16	Lien Reduction Statutes.....	6-178
§ 6.17	State Collateral Source Rules.....	6-179
§ 6.18	Laws Regarding Minors.....	6-185

## TABLE OF CONTENTS

§ 6.19	Subrogation of Capitated HMO Plans.....	6-186
	[1] Handling of “Reasonable Cash Value” Issue By Circuit.....	6-188
§ 6.20	Bankruptcy .....	6-192
§ 6.21	Bad Faith .....	6-201
§ 6.22	Fair Debt Collection Practices Act (FDCPA) .....	6-204
	[1] FDCPA Violations .....	6-205
	[2] Federal Decisions and Laws .....	6-207
	[3] State Decisions and Laws .....	6-217

## CHAPTER 7

### LITIGATING ERISA CLAIMS

§ 7.01	Introduction .....	7-2
§ 7.02	Persons Who Can Pursue Subrogation.....	7-3
§ 7.03	Venue .....	7-9
§ 7.04	Parties Authorized to Bring Action .....	7-12
§ 7.05	ERISA Jurisdiction.....	7-13
§ 7.06	Removal .....	7-22
§ 7.07	Problem Circuits.....	7-38
§ 7.08	Abstention .....	7-41
§ 7.09	Intervention .....	7-43
	[1] State Court.....	7-43
	[2] Federal Court.....	7-46
§ 7.10	Rights of Recovery: Subrogation and Reimbursement.....	7-47
	[1] Recovery Rights Generally .....	7-47
	[2] Causes of Action Under ERISA § 502(a) ..	7-48
	[a] § 502(a)(1)(A).....	7-49
	[b] § 502(a)(1)(B).....	7-49
	[c] § 502(a)(2) .....	7-49
	[d] § 502(a)(3) .....	7-50
	[3] Plan Language Determines Subrogation Rights .....	7-52
	[4] Recovery Rights Under ERISA.....	7-52

## TABLE OF CONTENTS

§ 7.11	Injunctions.....	7-53
§ 7.12	Constructive Trusts and Equitable Liens.....	7-56
	[1] Central States v. McDougall.....	7-59
	[2] Equitable Lien By Agreement.....	7-62
§ 7.13	Restitution.....	7-63
§ 7.14	Declaratory Judgment Actions.....	7-69
§ 7.15	Special Needs Trusts.....	7-74
§ 7.16	Choice-of-Law Provisions.....	7-76
	[1] Conflict of Laws Generally.....	7-76
	[2] Choice-of-Law Provisions in Plan/Policy....	7-81
§ 7.17	Statutes of Limitations.....	7-88
§ 7.18	Right to Jury Trial.....	7-91
§ 7.19	Administrative Exhaustion.....	7-92
§ 7.20	Handling Plan Document Requests.....	7-94

## CHAPTER 8

### SUPREME COURT TREATMENT OF § 502(a)(3) ACTIONS

§ 8.01	History and Early Treatment.....	8-1
	[1] <i>Mertens v. Hewett Assocs.</i> , 508 U.S. 248 (1993) .....	8-2
	[2] <i>Reynolds Metal Co. v. Ellis</i> , 202 F.3d 1246 (9 <sup>th</sup> Cir. 2000).....	8-3
	[3] <i>Bauhaus (U.S.A.), Inc. v. Copeland</i> , 292 F.3d 439 (5 <sup>th</sup> Cir. 2002).....	8-5
§ 8.02	<i>Great-West Life &amp; Annuity Ins. Co. v. Knudson</i> , 534 U.S. 204 (2002).....	8-6
	[1] Why The Supreme Court Got It Wrong In <i>Knudson</i> .....	8-11
	[2] Uncertainty and Inconsistent Decisions Following <i>Knudson</i> .....	8-14
§ 8.03	<i>Sereboff v. Mid-Atlantic Medical Services, Inc.</i> , 547 U.S. 356 (2006).....	8-15
	[1] Difference Between <i>Knudson</i> and <i>Sereboff</i> .....	8-19

## TABLE OF CONTENTS

	[2] <i>Central States, S.E. &amp; S.W. Areas Health &amp; Welfare Fund v. Gerber Life Ins. Co.</i> .....	8-20
§ 8.04	<i>U.S. Airways v. McCutchen</i> , 133 S.Ct. 1537 (2013) .....	8-21
	[1] 3 <sup>rd</sup> Circuit Decision.....	8-22
	[2] U.S. Supreme Court Decision.....	8-27
	[3] District Court – On Remand .....	8-28
§ 8.05	Practical Application of the “Other Appropriate Equitable Relief” Issue.....	8-30
§ 8.06	<i>Montanile v. Board of Trustees of the National Elevator Industry Health Benefit Plan</i> , 135 S.Ct. 1700 (2015).....	8-33
	[1] Split Among The Circuits .....	8-37
	[2] <i>Airtran Airways v. Elem</i> , 767 F.3d 1192 (11 <sup>th</sup> Cir. 2014) .....	8-37

## CHAPTER 9

### RECOVERY OF BENEFITS PAID BY MISTAKE

§ 9.01	Generally .....	9-1
§ 9.02	Plan Language.....	9-2
§ 9.03	Legal Authority For Recovery .....	9-3
§ 9.04	Case Law Discussing Recovery of Mistaken Payments.....	9-7
§ 9.05	Cases Denying Recovery of Mistaken Payments .....	9-15
§ 9.06	Summary.....	9-18

## CHAPTER 10

### COORDINATION OF BENEFITS

§ 10.01	Generally .....	10-1
§ 10.02	Coordination With No-Fault Benefits.....	10-2
§ 10.03	Coordination With Medical Insurance Policies .....	10-12
§ 10.04	Coordination With UM/UIM Policies.....	10-14
§ 10.05	Coordination With Other ERISA Plans .....	10-15

## TABLE OF CONTENTS

§ 10.06	ERISA Jurisdiction in Coordination Cases.....	10-19
§ 10.07	NAIC Group Coordination of Benefits Model Regulation.....	10-22
§ 10.08	Coordination of Benefits and “Other Appropriate Equitable Relief”.....	10-25
§ 10.09	Reimbursement From Workers’ Compensation Claims .....	10-27
	[1] State-Specific Handling of Issue .....	10-30

## CHAPTER 11

### LIABILITY OF PLAINTIFFS’ COUNSEL

§ 11.01	Introduction.....	11-1
§ 11.02	Liability of Plaintiffs’ Counsel Generally.....	11-2
	[1] Equitable Relief .....	11-3
	[2] Breach of Contract .....	11-9
	[3] Tortious Interference.....	11-18
	[4] Implied Partnership.....	11-25
	[5] Implied Contract With Law Firm.....	11-26
	[6] Breach of Fiduciary Duty.....	11-27
	[7] Equitable Lien By Agreement.....	11-28
§ 11.03	Plaintiffs’ Counsels’ Ethical Considerations .....	11-31
§ 11.04	Liability of Plaintiffs’ Counsel By Circuit.....	11-32
	[1] 1 <sup>st</sup> Circuit.....	11-34
	[2] 2 <sup>nd</sup> Circuit.....	11-34
	[3] 3 <sup>rd</sup> Circuit.....	11-34
	[4] 4 <sup>th</sup> Circuit.....	11-34
	[5] 5 <sup>th</sup> Circuit.....	11-35
	[6] 6 <sup>th</sup> Circuit.....	11-37
	[7] 7 <sup>th</sup> Circuit.....	11-38
	[8] 8 <sup>th</sup> Circuit .....	11-41
	[9] 9 <sup>th</sup> Circuit.....	11-44
	[10] 10 <sup>th</sup> Circuit.....	11-45
	[11] 11 <sup>th</sup> Circuit.....	11-45
	[12] D.C. Circuit .....	11-46

TABLE OF CONTENTS

CHAPTER 12

MEDICARE, MEDICARE ADVANTAGE, AND  
MEDICAID SUBROGATION

§ 12.01 Medicare Advantage Subrogation.....	12-2
[1] Medicare Generally .....	12-2
[2] Medicare Advantage Plans .....	12-3
[3] Medicare Secondary Payer Statute .....	12-6
[4] Enforcement of Medicare Secondary Payer Law By Medicare Advantage Organizations.....	12-10
[a] Right To Charge .....	12-10
[b] Private Cause of Action Under Medicare Secondary Payer Act.....	12-15
[i] <i>In re Avandia Marketing, Sales Practices             and Products Liability Litigation</i> , 685 F.3d 353 (3 <sup>rd</sup> Cir. 2012).....	12-16
[c] Case Law Extending Private Cause of Action....	12-18
[i] <i>Michigan Spine and Brain Surgeons,             PLLC v. State Farm</i> , 758 F.3d 787 (6 <sup>th</sup> Cir. 2014).....	12-18
[ii] <i>Humana v. Farmers Texas County Mutual</i> , 2014 WL 8388619 (W.D. Tex. 2014).....	12-19
[iii] <i>Collins v. Wellcare</i> , 73 F. Supp.3d 653 (E.D. La. 2014).....	12-20
[iv] <i>Humana Med. Plan, Inc. v. W. Heritage             Ins. Co.</i> , 94 F. Supp.3d 1285 (S.D. Fla. 2015).....	12-23
[v] <i>MSP Recovery, LLC v. Allstate Ins. Co.</i> , 2015 WL 5638095 (S.D. Fla. 2015).....	12-24
[vi] <i>Cariten Health Plan, Inc. v. Mid-Century             Ins. Co.</i> , 2015 WL 5449221 (E.D. Tenn. 2015).....	12-25
[vii] <i>Humana, Inc. v. Medtronic Sofamor             Danek U.S.A., Inc.</i> , 2015 WL 5695888 (W.D. Tenn. 2015).....	12-26
[5] Medicare Advantage As A Defendant.....	12-27
[a] Removal.....	12-27

## TABLE OF CONTENTS

[b] Exhaustion of Administrative Remedies .....	12-29
§ 12.02 Medicaid Subrogation .....	12-32
[1] Medicaid Generally .....	12-32
[2] Subrogation.....	12-32
[3] Payer of Last Resort .....	12-34
[4] <i>Arkansas Dept. of Health and Human Service v. Ahlborn</i> , 547 U.S. 268 (2006).....	12-35
[5] Relevant Case Law .....	12-36
[6] Congressional Action.....	12-39

## CHAPTER 13

### FEDERAL EMPLOYEES' HEALTH BENEFIT ACT (FEHBA) SUBROGATION

§ 13.01 Federal Employees Health Benefits Act (FEHBA) .....	13-1
§ 13.02 FEHBA Subrogation and Reimbursement .....	13-3
[1] New Office of Personnel Management (OPM) Rule .....	13-3
§ 13.03 FEHBA Preemption .....	13-6
[1] Generally .....	13-6
[2] Conflict Preemption (Broad or Ordinary Preemption) .....	13-9
[a] Other Case Law .....	13-13
[3] Complete Preemption (Narrow Preemption) .....	13-17
[a] Other Case Law .....	13-20
[4] Preemption of Made Whole Doctrine and Common Fund Doctrine .....	13-26
§ 13.04 Administration of FEHBA Claims .....	13-28

## CHAPTER 14

### HIPAA, HITECH, AND MEDICAL PRIVACY

§ 14.01 Introduction .....	14-1
§ 14.02 The Problem: Medical Privacy .....	14-2
§ 14.03 The Solution: HIPAA's Privacy and Security Rules.....	14-2

## TABLE OF CONTENTS

[1] Privacy Rule .....	14-3
[2] Protected Health Information (PHI) .....	14-4
[3] Covered Entities .....	14-4
[4] Permitted Uses and Disclosures .....	14-5
[5] Business Associates .....	14-6
§ 14.04 HITECH: The Health Information Technology for Economic and Clinical Health Act.....	14-8
§ 14.05 Disclosure of Protected Health Information (PHI) in Legal Proceedings.....	14-10
§ 14.06 The Federal Services Modernization Act (FSMA).....	14-13
§ 14.07 HIPAA and Workers' Compensation Claims.....	14-14
§ 14.08 Summary .....	14-16

## CHAPTER 15

### HIRING SUBROGATION COUNSEL

#### APPENDICES

A-1 Form 5500 – Annual Return/Report of Employee Benefit Plan.....	A-1
A-2 29 U.S.C. § 1003 – Coverage .....	A-5
A-3 29 U.S.C. § 1144 – Other laws .....	A-7
A-4 Geographic Boundaries of United States Courts of Appeals and United States District Courts .....	A-11
A-5 29 U.S.C. § 1102 – <i>Establishment of Plan</i> .....	A-13
A-6 29 U.S.C. § 1132 – <i>Civil enforcement</i> .....	A-15
A-7 Curriculum Vitae of Gary L. Wickert.....	A-25
Table of Cases .....	TC-1
Table of Statutes .....	TS-1
Table of Other Authorities.....	TOA-1