

MATTHIESEN, WICKERT & LEHRER, S.C.

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MONTHLY ELECTRONIC SUBROGATION NEWSLETTER

MARCH 2008

TO CLIENTS AND FRIENDS OF MATTHIESEN, WICKERT & LEHRER, S.C.:

This monthly electronic subrogation newsletter is a service provided exclusively to clients and friends of Matthiesen, Wickert & Lehrer, S.C. The vagaries and complexity of nationwide subrogation have, for many lawyers and insurance professionals, made keeping current with changing subrogation law in all fifty states an arduous and laborious task. It is the goal of Matthiesen, Wickert & Lehrer, S.C. and this electronic subrogation newsletter, to assist in the dissemination of new developments in subrogation law and the continuing education of recovery professionals. If anyone has co-workers or associates who wish to be placed on our e-mail mailing list, please provide their e-mail addresses to Rose Thomson at rthomson@mwl-law.com. We appreciate your friendship and your business.

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INSURANCE SUBROGATION

NEW YORK ANTI-SUBROGATION BILL WOULD DESTROY ALL NON-STATUTORY SUBROGATION RIGHTS



As if notorious corporation-hunter and New York Governor Elliott Spitzer didn't have his hand in enough cookie jars, he has just undertaken to take another swipe at corporate America. This time it takes the form of an anti-subrogation bill which would eliminate subrogation and reimbursement rights unless they are provided by statute. The current N.Y. bill (S6806-A / A9806-A) again seeks to eliminate the insurer's right to recover through subrogation benefits which arise from a "claim founded on personal injury or wrongful death". The only rights exempted are those whose subrogation is based upon a statutory subrogation right. N.Y.'s bill would eliminate contractual subrogation anytime a claim involves or may involve personal injury. The proposed bill reads as follows:

§ 27. Section 4545 of the civil practice law and rules is amended by adding a new subdivision (e) to read as follows:

(e) No right of reimbursement for certain collateral source payments.

A collateral source payor which has made payment to a person who had a claim founded on personal injury or wrongful death shall have no right to seek reimbursement from either the plaintiff or the tortfeasor unless the right to seek said reimbursement is set forth by statute. When an action within the scope of this section settles, it shall be conclusively presumed that the settlement does not include any compensation for those losses or expenses that would have been deducted, pursuant to this section, from any verdict that the plaintiff might have obtained. By entering into a

settlement agreement, a plaintiff shall not be deemed to have taken an action in derogation of the non-statutory right of any person who supplied the collateral source payments; nor shall a plaintiff's entry into such agreement constitute a violation of any contract between the plaintiff and the person who supplied the collateral payments. Except where there is a statutory lien or statutory subrogation right, no defendant entering into such settlement shall be subject to a claim for reimbursement by any person who supplied the collateral source payments.

Typical of legislation crafted by legislators who do not understand the societal and cost-saving benefits of subrogation, but who are eager to see injured workers realize a double recovery at the expense of rising insurance premiums for the employing public, the proposed bill blindly limits any subrogation which isn't provided for by statute. On January 22, 2008, the bill was forwarded to the Finance Committee, and on February 21, 2008, it was amended slightly and resubmitted to the Finance Committee.

The bill can be traced at the following website: <http://public.leginfo.state.ny.us/menugetf.cgi>. Please contact Assembly representatives and express your concern for the damage such a bill will do to the economy and the devastating effect it will have in health care – where we are struggling to keep costs down and make every dollar stretch. You can locate State Assemblymen at <http://assembly.state.ny.us/> and State Senators at <http://www.senate.state.ny.us/senatehomepage.nsf/home?openform>.

Several important public policy justifications for the often confusing and misunderstood concept of subrogation resonate more than others with a populace ignorant of both the truth and the many benefits of subrogation.

One of the lynchpins underlying subrogation, and the one most cited by legal scholars and courts across the country in support of the concept, is the fact that it serves to prevent a double recovery by the insured, who would otherwise recover once from his or her insurance policy (first-party), and again from the tortfeasor's settlement or judgment (third-party). Allowing a double recovery to the insured is against public policy, as it allows a windfall to the insured, and results in two separate insurance policies paying for the same elements of damages. The public policy against allowing a double recovery has been echoed by American courts since the country was founded. In 1876, the U.S. Supreme Court had this to say:

“Compensation by the wrong-doer after payment by the insurers is not double compensation, for the plain reason that insurance is an indemnity; and it is clear that the wrong-doers are first liable, and that the insurers, if they pay first, are entitled to be subrogated to the rights of the insured against the insurers.” The Atlas, 93 U.S. 302 (1876).

The concept of a “double recovery” is one that is easily understood by and does resonate with a public which is illiterate when it comes to legal concepts such as subrogation. It smacks of “fairness” and should be the poster child of any subrogation campaign aimed at winning the hearts of Americans on the subject. The notion that subrogation prevents the person ultimately responsible for causing injury or loss from evading responsibility for his or her actions is a valid policy justification for subrogation. However, the danger in relying on this justification alone is that the collateral source doctrine - a rule existing in most states which prevents the admission of trial evidence showing that the victim's damages were partially compensated by collateral sources such as insurance - is that the collateral source rule eliminates the risk of a tortfeasor evading responsibility. However, collateral source rules simultaneously emphasize the need to prevent a double recovery, which subrogation effectively accomplishes.

Let's also not sell the storied history of subrogation short. Subrogation is actually one of the oldest legal concepts in jurisprudence, having had its roots in Roman law. Under the reign of Emperor Hadrian (A.D. 177 - A.D. 138), Roman law began to shape the building blocks of subrogation. Suretyship began as an accessory contract and the concept known as *beneficium cedendarum actionum* (subrogation to the right of action of the creditor against the principal debtor or pro rata against the co-sureties) was later perfected

by Justinian himself. Our U.S. Supreme Court has supported and validated the concept and underlying justifications for subrogation since 1799. Even that is considered modern history considering subrogation is also one of the oldest concepts known to Anglo-American common law, and seems to have been formally established, also with regard to suretyship, in 1215 in the Magna Carta. It has a very long and proud heritage, but you wouldn't know that by the amount of public support it gets from our industry. NASP is a good start, but the industry itself must wake up to what is at stake.

Perhaps the most important societal justification for subrogation, however, is the fact that subrogation helps keep premiums lower for all Americans and reduces the burden of insurance on the public. This is something all Americans, whether Republican or Democrat, tort reformers or trial lawyers, can benefit from and agree on. The only problem is, we haven't done a good job of marshaling evidence in support of this fact, and have done an even worse job of communicating this benefit to the public. Courts have opined on the subject in a variety of ways, but at least with regard to workers' compensation, it has been put like this:

"This situation [before subrogation] was, in reason, imperfect; it served to bring to the employee more than his damages, which was, perhaps, not sound economy, and to make the insurance more burdensome to the insurer and hence more expensive to the employer and ultimately to the public than would have been the case had the amount recovered from the actual tortfeasor been applied first to the repayment of the amount of the compensation, and then the balance to the employee, to make him whole." Consolidated Underwriters v. Kirby Lumber Co., 267 S.W. 703 (Tex. Comm. App. 1924).

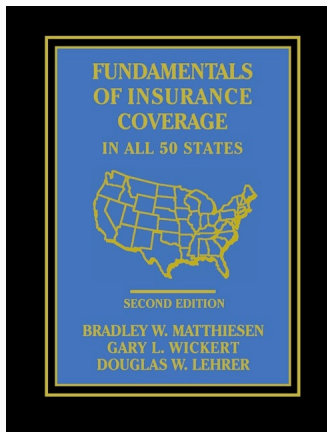
New York, the very state where this subrogation-killing statute is being considered, has modified its collateral source rule to allow evidence of collateral sources and then require a reduction of any jury award in the same amount, except where there is a right of subrogation right. Efforts to repeal the subrogation exception have produced testimonials from their own Superior Court to the virtues of subrogation. One is as follows:

"The terms of the statute clearly limit its reach to those plaintiffs who have or will be compensated by a collateral source. The intention behind §4545 is to prevent double recovery for the same injury, and thereby to reduce insurance premiums (5 Weinstein-Korn-Miller, N.Y. Civ. Prac. §4545.01, p. 45-612). If recovery in subrogation actions were limited by §4545, as defendants contend, the loss would be borne by the insured's insurer. By not limiting recovery, the insurer obtains reimbursement for monies it pays to its insured by passing the loss onto the tortfeasor and his insurer. In either case, the insured, limited by §4545(c), is compensated only once for his loss. The cost to the insurance industry as a whole is the same, except the tortfeasor's insurer will ultimately pay for the loss, placing the burden where it properly belongs. The goal of reducing insurance premiums is advanced by permitting full recovery in the subrogation action because the insurer is reimbursed by the tortfeasor rather than having to increase its own premiums to obtain reimbursement. Construing §4545 as limiting recovery in subrogation actions, does nothing to further the purpose of the legislation. Kelly v. Seager, 545 N.Y.S.2d 261 (N.Y. Sup. 1989).

The insurance industry is second to none when it comes to lobbying and public relations in many arenas. Unfortunately, subrogation is not one of them. Until that void is filled, it is up to us to make enough noise to be heard. At the time of this newsletter's printing, it's looking like this bill's anti-subrogation language may not be included in the final legislation. Nonetheless, we need to be heard and heard loudly, or the same issue will surface next year. Contact the New York lawmakers who considered this bad piece of legislature and reinforce in their minds that the subrogation-killing language is best left out of the final bill. Their own Superior Court recognizes the societal value of subrogation - surely, they can too.



**MAKE SOME NOISE
FOR SUBROGATION!!**



NEW TREATISE SOON TO BE RELEASED!!!

FUNDAMENTALS OF INSURANCE COVERAGE IN ALL 50 STATES

*Authors: Bradley W. Matthiesen, Gary L. Wickert and Douglas W. Lehrer
Published By Juris Publishing, Inc., New York, New York*

We are pleased to announce that our fourth treatise is complete and will soon be released by our publisher. *Fundamentals of Insurance Coverage In All 50 States* is a unique compendium and overview of all aspects of insurance coverage law, in every state. The treatise utilizes and cites state and federal statutes, insurance regulations, and case law from every state as a framework for a unique and unprecedented treatment of this confusing and varied body of law. The book is designed specifically for insurance claims handlers and supervisors who have responsibility for or occasion to deal with coverage issues relating to third-party defense litigation, first-party claims litigation, and/or reservation of rights scenarios. In the past decade, the number of disputes between insurers and insureds over policy coverage, especially involving environmental pollution and exclusions, has increased exponentially. More and more insurance companies, faced with astronomical claims in these areas, have had to resort to meticulously enforcing coverage exceptions and exclusions in order to maintain profitability. The result has been a dramatic rise in coverage litigation. Millions of dollars have been spent by corporate America and the insurance industry to contest and litigate the obligation of insurers to defend or indemnify insureds held liable to other parties, the state or federal government for environmental impairment or other insurance obligations.

The goal of this book is to compile all relevant law, regulations and case decisions in these areas from all 50 states into one easy-to-understand and easy-to-use reference book – which should be the first place a company should turn to when coverage matters rear their ugly heads. While the book intentionally omits references to federal statutes, regulations or holdings based purely upon federal law, except where it's necessary to clarify issues of state law, it is a comprehensive treatment of all other aspects of coverage issues which the average claims professional might be expected to run across in any given situation.

The integrity of the insurance industry and its commitment to honoring legitimate claims for which it is contractually or legally responsible is offset by the industry's concomitant desire to avoid payment for claims and damages for which it is not contractually obligated and for which there is no insurance coverage. This primer on coverage law is perfect for the insurance professional whose responsibilities are not only spread across various lines of insurance, but across the whole of our continent as well. From the introduction of common issues and common rules to a discussion of coverage triggers, equitable relief, economic loss, property damage and a variety of policy exclusions, the book is intended to be the legal companion of anybody whose responsibilities take them, however frequently or infrequently, down the uncertain path of coverage denial and coverage litigation.

This one-of-a-kind treatise covers the following issues in all 50 jurisdictions:

- Understanding the Contract of Insurance
- Law Governing the Insurance Policy
- Tackling Ambiguity and Interpretation of Policies
- General Contract Rules for Interpretation

- Rights and Obligations of all Parties to the Insurance Contract
- Limitations of the “Construed Against the Drafter” Rule in all States
- The Extent of Risks and Coverages
- Good Faith and Fair Dealing – Bad Faith
- Basic Policy Defenses
- Cooperation of the Insured
- Failure to Pay Premiums
- Environmental Issues and Related Insurance Law

In addition to being an excellent and easy to understand primer on coverage issues and the basic insurance contract, the book is suitable for both the inexperienced claims professional and the seasoned veteran. It is also the perfect “starting point” for any research or litigation briefing by trial lawyers, defense counsel, or in-house insurance counsel. It is a must for anyone with multi-state responsibilities.

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

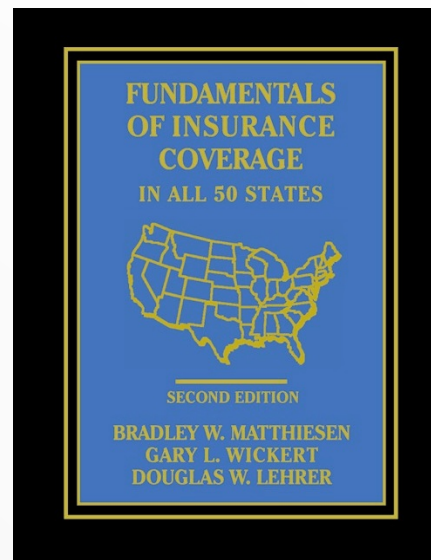
- I. The Contract of Insurance
 - A. Proving the Existence and Terms of Insurance Policies
 - B. Missing Insurance Policies
 1. Extent of the Burden of Proof
 2. Proof of Contents of Missing Policies
- II. Procedural Considerations
 - A. Law Governing the Insurance Policy
 - B. Direct Action Statutes
 - C. Statutes of Limitations
 1. Breach of Contract
 2. Tort—Bad Faith
- III. Construction and Interpretation
 - A. What Is an Ambiguity?
 - B. General Contract Rules for Resolving Ambiguities
 - C. Rule that Ambiguities are Resolved Against Insurer
 - D. Limits of “Constructions Against Insurer” Rule
- IV. Extent of Risks and Coverage
 - A. Insurable Risks
 1. Expectations of the Parties
 2. Liability Created by Statute
 - B. Insurability of Punitive Damages
 - C. Assignment and Transfer of Policies of Insurance
 1. Transfer of Insured Property
 2. Assignability of Policy
 3. Consent of the Insurer
 4. Exceptions to Consent Requirement
 5. Reorganizations and Acquisitions
- V. Rights and Obligations of the Parties
 - A. Duty of Insurer to Defend
 1. Trigger of the Duty
 2. Consequences of Failure to Defend



- VI. Insurer's Duty of Good Faith and Fair Dealing
 - A. Insurer's Duty to the Insured
 - 1. Statutory Source/Unfair Claims Settlement Practices Act (Ala. Stat. § 27)
 - 2. Implied Covenant of Good Faith and Fair Dealing
 - 3. Conflict of Interest
 - B. Insurer's Duty to Third Party Claimants
 - 1. Implied Covenant of Good Faith and Fair Dealing
 - C. Insurer's Duty to its Excess Insurer

- VII. Policy Defenses
 - A. Cooperation
 - 1. Failure to Cooperate May Bar Coverage
 - B. Notice
 - C. Misrepresentation
 - 1. False Statements
 - 2. Materiality
 - 3. Intent
 - D. Breach of Warranty
 - E. Failure to Pay Premiums

- VIII. Environmental Issues and Insurance Law
 - A. Occurrence/Accidental Event
 - 1. Trigger of Coverage for Tort Claims
 - 2. Expected/Intended
 - B. Damages Because of Bodily Injury
 - C. Damages Because of Property Damage
 - D. Property Damage and Economic Loss
 - E. Policy Exclusions
 - 1. Insured's Owned Property Exclusion Clause
 - 2. Pollution Exclusion Clause



For ordering information, click on the below button to view the treatise's brochure or you can visit our website at www.mwl-law.com or our publisher's website at www.jurispub.com.



MWL'S INSURANCE AND SUBROGATION COLLEGE:

EDUCATION IS THE KEY TO SUCCESSFUL SUBROGATION

At Matthiesen, Wickert & Lehrer, S.C., we believe that education is the key to a successful recovery program. We also strongly believe that the more educated and well-trained our clients are, the easier and more productive we can be in terms of our subrogation representation and the results we can produce. MWL's Insurance and Subrogation College provides our clients and friends with an opportunity to receive the most up-to-date and functional training that claims handlers and insurance professionals can receive - usually offered conveniently at their own offices and for little or no cost. Where available, the insurance continuing education offerings below will be accompanied by continuing





education credit, applied for and obtained by MWL through the various state insurance departments and applicable insurance regulatory agencies. MWL also works closely with in-house counsel or TPA's engaged by clients, and coordinates with and/or supplements the training offered by in-house personnel.

The subrogation college curriculum and course descriptions below are current for the 2008 calendar year. With proper notice, topics or issues can be addressed in custom-made seminars. Seminars are usually free-of-charge to clients of MWL, but are also offered to non-clients at a nominal flat rate plus expenses. The key to subrogation in the new millennium is insurance and subrogation education and training. With 50 separate bodies of law to be familiar with, why not engage

the educational and training services of the leader in multi-state and national insurance litigation and gain confidence in knowing your insurance team is armed with the best education and training available. Our instructors are experienced insurance litigation and subrogation trial lawyers who make this complicated area of law, understandable, relevant, and easily digestible. Let us assist you in maximizing your subrogation recoveries and the effectiveness and efficiency of your recovery team. For information and possible costs associated with training and seminars, contact Jamie Breen at jbreen@mw-law.com or (800) 637-9176.

COURSE DESCRIPTIONS

WC – 101 Basics of Workers' Compensation Subrogation (2 hrs.)

With 50 separate bodies of workers' compensation law, this area of subrogation remains one of the most confusing and difficult to master. This introductory level course focuses on the basics of workers' compensation subrogation – Who can bring a third-party action? Who qualifies as a third-party? How is a recovery allocated once recovery is made? Is the carrier's lien reduced by the worker's attorney's fees and costs of litigation? How and when can the carrier receive a statutory credit for monies recovered by the worker, and a reserve take-down. Handouts include a summary of workers' compensation subrogation laws in all 50 states and a complimentary copy of *Workers' Compensation Subrogation In All 50 States*, our 1,300 page treatise published by Juris Publishing, Inc., considered the "bible" on this subject across the country.

WC – 201 Advanced Workers' Compensation Subrogation (2 hrs.)

Best presented after WC-101, this advanced class gets into the most complex, yet equally important aspects of workers' compensation subrogation - contractual limitations to subrogation, waivers of subrogation, indemnity and hold harmless issues, statutory employer defenses, exclusive remedy rule exceptions such as the dual capacity doctrine and intentional act exceptions, just to name a few. Additional subjects covered are subrogating medical and legal malpractice, conversion of liens, application of the made whole doctrine, employer contribution actions, traps and pitfalls in construction settings, and borrowed servant and staff leasing industry issues. Handouts include a summary of workers' compensation subrogation laws of all 50 states, summary of construction litigation laws of all 50 states, and a complimentary copy of *Workers' Compensation Subrogation In All 50 States*, our 1,300 page treatise published by Juris Publishing, Inc., considered the "bible" on this subject across the country.



WC – 301 Extraterritorial Subrogation (1 hr.)

This course can be presented before or after WC-101 and/or WC-201. In today's multi-state and global economy, it is commonplace for employees hired and situated in State A to travel to State B and get injured there, and subsequently receive benefits under State A or perhaps even State C. The interplay between the laws of multiple states presents not only a complicated and confusing scenario for the most experienced

subrogation professional, but also a unique opportunity to finesse the application of subrogation law from the state in which the third-party suit is filed, which may offer negative drawbacks likely to result in a greatly reduced recovery or no recovery at all. Specific examples of actual cases are discussed and resolved using the conflict of law rules of the forum state in which the suit is filed. Simply knowing that extraterritorial subrogation is a potential issue in any one claim can make the difference between a full recovery and no recovery at all. Handouts include a summary of extraterritorial subrogation laws in all 50 states.

WC – 401 Subrogation Investigation In Workers' Compensation Claims (2 hrs.)

Routine investigation in workers' compensation claims rarely focuses on the issues and facts that truly need to be nailed down in order to substantiate third-party liability. This is because the myriad of potential third-party issues facing subrogation professionals are deflating and can involve legal issues beyond their expertise. This session looks at the nuts and bolts of investigating workers' compensation losses, and how and when to focus on particular issues - including product liability, borrowed servant, warranty, evidentiary, and contractual issues. This session focuses on helping the subrogation professional or vendor effectively investigate work-related injuries at the most critical stage of a workers' compensation subrogation claim. Handouts will be provided.

HE – 101 Introduction to ERISA and Health Insurance Subrogation (2 hrs.)

This course serves to introduce a claims or subrogation professional to the basic concepts of health insurance subrogation and the many legal issues it envelops. From non-ERISA to insured ERISA to fully self-funded ERISA plans, this course familiarizes the student with health care subrogation, beginning with basic concepts and premises to an overview of the interplay between ERISA's preemption, saving and deemer clauses. Students learn how to read and understand plan language, and are introduced to the concepts of subrogation and reimbursement in the health insurance plan context. Handouts include a complimentary copy of *ERISA and Health Insurance Subrogation In All 50 States*, our 1,000 page treatise published by Juris Publishing, Inc., considered the "bible" on this subject across the country.



HE – 201 ERISA Preemption (2 hrs.)

Preemption is the key to why subrogating ERISA-covered employee welfare benefit plans is different and more powerful than ordinary insurance subrogation, and understanding preemption is the key to successful ERISA subrogation for your recovery team. This course delves into the nuances of ERISA's preemption, saving and deemer clauses. It looks at what they mean, which state laws are preempted, and why. Often over-simplified by trial lawyers, even a basic understanding of this complicated subject will give the insurance professional a distinctive advantage in negotiating recovery of benefit payments made by your plan. Specific state laws are reviewed to determine which laws are preempted and which are not. Handouts include a complimentary copy of *ERISA and Health Insurance Subrogation In All 50 States*, our 1,000 page treatise published by Juris Publishing, Inc., considered the "bible" on this subject across the country.

HE – 301 Subrogating Fully-Insured and Non-ERISA Plans (1 hr.)

Not all employee welfare benefit plans are ERISA-covered, and many ERISA-covered health plans are not self-funded. It is just as important for subrogation professionals to know and understand how to effectively and efficiently pursue subrogation and/or reimbursement rights of a non-ERISA or fully-insured ERISA plan, as it is to be familiar with the mechanics of ERISA itself. This course addresses the vagaries of subrogating these "red-haired step-children". Many trial lawyers do not realize or believe that fully-insured ERISA plans should enjoy the many benefits of ERISA preemption, even though they do not enjoy the broad preemption rights of self-funded plans. Subrogation professionals will be trained in the nuances of subrogating fully-

insured plans, which may be able to avoid harmful state laws where the laws do not “regulate insurance”, as well as those involving non-ERISA plans, which may enjoy state laws which allow the parties to a health plan to contract around such harmful state laws. Handouts include a lengthy treatise entitled “*The Red-Haired Step-Children: Subrogating Fully-Insured ERISA and Non-ERISA Employee Welfare Benefit Plans*”, along with a complimentary copy of *ERISA and Health Insurance Subrogation In All 50 States*, our 1,000 page treatise published by Juris Publishing, Inc., considered the “bible” on this subject across the country.

HE – 401 Understanding and Applying *Knudson*, *Sereboff* and *Carillo* (1 hr.)

The United States Supreme Court has thrice interpreted the meaning of “appropriate equitable relief” as used in § 502(a)(3); first, in *Mertens v. Hewitt Associates*, 508 U.S. 248 (1993), then, in *Great-West Life & Annuity Ins. Co. v. Knudson*, 534 U.S. 204 (2002), and, most recently, in *Sereboff v. Mid Atlantic Medical Services, LLC*, 126 S. Ct. 1869 (2006). These cases are three of the most important subrogation decisions ever to be decided by the United States Supreme Court are also the most difficult to understand. This course makes these complex cases understandable, and then teaches the attendee to apply that new understanding to routine subrogation files across all 50 states and all federal appellate circuits. Handouts include a complimentary copy of *ERISA and Health Insurance Subrogation In All 50 States*, our 1,000 page treatise published by Juris Publishing, Inc., considered the “bible” on this subject across the country.

HE – 501 Occupational Accident and Multiple-Employer Plan Subrogation (1 hr.)

Occupational Accident Plan benefits are routinely mistaken for workers’ compensation benefits resulting in confusion and reduced recoveries or no recovery at all. This course focuses on teaching subrogation professionals what an Occupational Accident Plan is, how and when it’s ERISA-covered and can utilize the benefits of traditional employee welfare benefit plans and includes a detailed strategy on handling and negotiating with trial lawyers bent on destroying subrogation rights involving such plans. Handouts include a complimentary copy of *ERISA and Health Insurance Subrogation In All 50 States*, our 1,000 page treatise published by Juris Publishing, Inc., considered the “bible” on this subject across the country.

HE – 601 Improving Your Health Plan Language (1 hr.)

Quite frequently, the subrogation and reimbursement rights of a health plan or insurance policy are only as good as the subrogation and/or reimbursement language it contains. ERISA itself grants no rights of recovery, but only provides the plan and plan participant the right to contract for the terms of providing insurance. Plan language is the key to defeating the made whole doctrine, the common fund doctrine, and motions to dismiss for lack of subject matter jurisdiction. Plan language is the benchmark by which the Supreme Court determines which rights a plan is and isn’t entitled to have. This course reviews the significance of even minor variations in plan language, and can be the stepping stone for working with underwriting or management toward revision of plan language as is necessary. Handouts include a complimentary copy of *ERISA and Health Insurance Subrogation In All 50 States*, our 1,000 page treatise published by Juris Publishing, Inc., considered the “bible” on this subject across the country.

HE – 701 Avoiding the Made Whole and Common Fund Doctrines (1 hr.)

The equitable doctrines of made whole and common fund are perhaps the most ill-understood and erroneously applied concepts in all of subrogation. Trial lawyers’ organizations consistently misunderstand these affirmative defenses to subrogation and courts around the country regularly misapply them to contractual subrogation rights as opposed to simple equitable subrogation rights. This course provides an overview of the doctrines themselves and takes a critical look at the plan language necessary to overcome their application in all federal circuits. This course assists ERISA plan subrogation professionals in avoiding these doctrines by preempting state laws which apply them, and assists those who handle non-ERISA and fully-insured plans understand the variety of state laws which still allow a plan to contract around the

application of these doctrines. Handouts include a complimentary copy of *ERISA and Health Insurance Subrogation In All 50 States*, our 1,000 page treatise published by Juris Publishing, Inc., considered the “bible” on this subject across the country.

HE – 801 Advanced ERISA and Health Insurance Subrogation (2 hrs.)

If it isn’t covered in HE–101 through HE–102, it will be covered in this course. This is the advanced version of HE-101 and makes understandable perhaps the most confusing area in all of subrogation. This course covers subjects such as jurisdiction, conflict and complete preemption, “regulation of insurance”, and the interplay between health insurance subrogation and workers’ compensation laws, no-fault automobile insurance laws, lien reduction statutes, collateral source rules, and a number of state anti-subrogation statutes. The course also discusses subrogating against uninsured motorists benefits, coordination of benefits, constructive trusts, and HIPAA. Handouts include a complimentary copy of *ERISA and Health Insurance Subrogation In All 50 States*, our 1,000 page treatise published by Juris Publishing, Inc., considered the “bible” on this subject across the country.

PR – 101 Investigation and Subrogation of Large Fire Losses (2 hrs.)

From small residential fires to catastrophic industrial explosions – successful subrogation in fire losses begins the moment 911 is dialed. This course focuses on the investigation and preparation of a fire subrogation case, with particular emphasis on product liability. Investigation checklists, cause and origin experts, such as mechanical, electrical and chemical engineers. Getting the right expert, at the right price, and having them ask the right questions at the right time, are critical to successful subrogation. Handouts will be provided.



PR – 201 Subrogating Against God (1 hr.)

The nemesis of most insurance companies is the natural disaster. Hurricanes and floods have enough destructive potential to put many insurance companies out of business. With no obvious subrogation potential or third party liability, these claim payments are seemingly money down the drain. However, tireless investigation, creativity, and research can reveal recovery potential in even the most tragic of 100-year storms. This course focuses on how to investigate and ferret out third-party recovery potential where none seems to exist. Rainstorms, hurricanes, wind storms, tornados, and the like, have traditionally been chalked up as “Acts of God”. After Hurricane Katrina, however, the nation is on notice to be prepared for the worst of the worst. Failure to be prepared may lead to third-party potential. If liability is there, this course will help you find it. Handouts will be provided.

PR – 301 Understanding the Economic Loss Doctrine (1 hr.)

Fire or other damage to a motor vehicle, industrial machine, motor home or other product is a common occurrence resulting in billions of dollars of insurance claim payments. Subrogating against a manufacturer for a defect which causes that loss inevitably runs head on into the buzz saw known as the Economic Loss Doctrine. This course thoroughly reviews what this doctrine is, how it affects subrogation and liability claims, and how to avoid its devastating effects. Specific examples and a survey of the economic loss doctrine’s application in all 50 states are included. Handouts will be provided.

PR - 401 Landlord/Tenant Subrogation In All 50 States (1 hr.)

Each year, tenants start billions of dollars worth of fires which destroy apartments, condominiums, retail stores, and industrial complexes. But the road to recovery from the negligent tenants by the subrogating

carrier for the landlord is loaded with trips, traps, and pitfalls. In many states, exculpatory language, waivers of subrogation, and common law prohibitions, which declare a tenant to be an implied co-insured of the landlord's carrier, all present significant obstacles to making recoveries. This course surveys the laws of all 50 states regarding these issues, and reviews proper investigation and subrogation techniques for maximizing recoveries where none seemingly exist. Handouts include a survey of the law regarding implied co-insureds in landlord/tenant situations for all 50 states.

SU – 101 Recognizing Subrogation Potential and Third-Party Liability (2 hrs.)

Far too many subrogation professionals come from liability and casualty backgrounds and naturally carry with them a defense-oriented myopia regarding third party liability. Trained to see most claims as frivolous in nature and skeptical about liability as a default, they are in need of this course, which is basically a first year law school torts class condensed into two hours. Theories of liability and the basic concepts of negligence and causation are discussed, and fact scenarios in which third party liability is traditionally overlooked or ignored are reviewed. Handouts include a tort and negligence handout and various articles.



SU – 201 Defeating the Made Whole Doctrine (1 hr.)

It is ironic that subrogation's biggest nemesis is also the area of American jurisprudence which carries with it the most false premises and the largest lack of understanding. Defeating a rule which is seemingly impossible to overcome and yet serves to totally eliminate subrogation potential guaranteed to insurance carriers by contract, the made whole doctrine has metastasized into a cancer upon the entire field of subrogation, spreading to areas it was never intended to touch, such as workers' compensation. This course breaks down the basics of the doctrine in a variety of jurisdictions, and teaches theories and tactics that can be used to defeat the doctrine, or avoid its application from the very start. Handouts will be provided.

SU – 301 Motor Vehicle Laws and Liability (1 hr.)

According to the National Highway Traffic Safety Administration, there are 18,000 vehicle accidents every day in the United States, which breaks down to 750 every hour, or 13 every minutes. In 2002, 42,815 people were killed in motor vehicle crashes and 2,926,000 people were injured. This makes deaths from motor vehicle accidents the leading cause of death for people ages 2 to 33. Also in the same year, drinking and driving caused 17,419 traffic deaths, representing 41% of total traffic fatalities. Experts estimate one out of every three Americans will be involved in an alcohol-related automobile accident in their lifetime. The economic cost of motor vehicle accidents in America is more than \$50 billion annually. This course reviews basic motor vehicle laws and the subrogation of automobile accidents. The development of an auto accident case is tracked from its occurrence through trial. Also included in this course are discussions on negligent entrustment, dram shop liability, and product defects which result in accidents or aggravated injuries in an accident. Handouts will be provided.

ID - 101 Interpreting Insurance Contracts (2 hrs.)

The integrity of the insurance industry and its commitment to honoring legitimate claims for which it is contractually or legally responsible is offset by the industry's concomitant desire to avoid payment of claims and damages for which it is contractually obligated and for which there is no insurance coverage - this has caused a dramatic rise in coverage litigation. In order for a claims professional to maintain profitability, it is imperative to know how an insurance contract is constructed and how to interpret it. This is an introductory course for



insurance claims professionals who have responsibility for or occasion to deal with coverage issues relating to third-party defense litigation, first-party claims litigation and/or reservations of rights scenarios. It provides a general overview of the construction and interpretation of basic insurance contracts, including the duties and obligations of the insurer and insured and the contractual relationship that exists between them, general terms and conditions, common issues faced in interpreting insurance contracts, proving the existence and terms of insurance policies, missing insurance policies, ambiguities, and the factors most courts will look at to evaluate the rights and duties of insureds and insurers. Handouts include a complimentary copy of *Fundamentals of Insurance Coverage In All 50 States*, our new 1,152 page treatise published by Juris Publishing, Inc.

ID - 201 Uninsured and Underinsured Motorist Insurance (1 hr.)

In most states, UM and UIM insurance coverage issues continue to result in protracted litigation. This seminar will assist you in understanding these issues and how to combat them. We begin with reviewing the history of UM and UIM coverage and then addresses topics such as who is an insured, what is an uninsured and underinsured motor vehicle, contractual provisions, legal state of stacking and reducing clause provisions and a carrier's rights of subrogation against a UM/UIM insurance policy. Handouts will be provided.

ID - 301 Insurer's Duty to Defend (1 hr.)

An understanding of an insurer's duty to defend is central to understanding the obligations and duties of any insurance company. This seminar discusses how to determine if an insurance policy exists, an insurer's duty to defend, when an insurer's duty to defend is triggered, consequences of a failure to defend, the excess insurer's duty to defend, and extinguishing the duty to defend. Also discussed are options available to an insurance company when coverage is contested. Handouts include a complimentary copy of *Fundamentals of Insurance Coverage In All 50 States*, our new 1,152 page treatise published by Juris Publishing, Inc.

ID - 401 Bad Faith Litigation (1 hr.)

A majority of states have adopted the tort of first-party bad faith. This course will review the elements of bad faith claims including damages available to an insured who is successful in pursuing such a claim. Additional topics covered are insurer's duty of good faith and fair dealing, conflict of interest, insurer's duty to third-party claimants, insurer's duty to its excess insurer, tort actions, policy defenses, and recommendations and strategies for handling claims so as to avoid allegations of bad faith. Handouts include a complimentary copy of *Fundamentals of Insurance Coverage In All 50 States*, our new 1,152 page treatise published by Juris Publishing, Inc.

ID - 501 Insured's Duties and Responsibilities (1 hr.)

When a claim is made against an insured, certain obligations of that insured arise for coverage to be extended. This seminar looks at the obligations of an insured in the context of first-party or third-party claims, the insured's duty to cooperate, failure to cooperate, notice requirements, misrepresentations, breach of warranty and failure to pay premiums. Handouts include a complimentary copy of *Fundamentals of Insurance Coverage In All 50 States*, our new 1,152 page treatise published by Juris Publishing, Inc.

ID - 601 Coverage Issues (2 hrs.)

In the past decade, the number of disputes between insurers and insureds over policy coverage has increased exponentially. Millions of dollars have been spent by corporate America and the insurance industry to contest and litigate the obligation of insurers to defend and indemnify insureds held liable to other parties,

the state or the federal government for environmental impairment and other insurance obligations. This seminar looks at some of the more common coverage issues as well as a summary of how courts have dealt with these conflicts. Additional topics covered are expectations of the parties, insurable risks, assignment and transfer of insurance policies, consent of the insurer, reorganizations and acquisitions, liability created by statute, insurability of punitive damages, burden of proof, ambiguities and the general rules for resolving ambiguities. Handouts include a complimentary copy of *Fundamentals of Insurance Coverage In All 50 States*, our new 1,152 page treatise published by Juris Publishing, Inc.

ID - 701 Automobile Liability Insurance (1 hr.)

Automobile accidents result in the largest number of claims nationwide. This seminar reviews many of the areas that are frequently litigated in the venue of automobile liability insurance coverage. Topics to be discussed include "permissive use", "ownership, maintenance, and use", "loading and unloading" and "occupying" of vehicles. Typical automobile coverage topics will also be reviewed. Handouts will be provided.

ID - 801 Fire and Property Insurance (1 hr.)

Property insurance coverage does not deal with the duty to defend and indemnify an insured but rather with the loss to an insured's own property. Other topics discussed are the types of property coverage available to an insured, what perils are covered, trigger of coverage, damages and equitable relief, property damage and economic loss, and typical property insurance exclusion clauses. Handouts will be provided.

ID - 901 Contribution Litigation (1 hr.)

Whenever there is more than one tortfeasor involved in causing the personal injury or property damage of another, a determination must be made as to the causal negligence of all parties. Once that determination is made, contribution claims may result in reimbursement to an insurance company for payments made on behalf of an insured. This seminar will discuss topics such as when to file a contribution claim as well as the elements necessary to establish such a claim. Handouts will be provided.



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