

Civil Practice And Remedies Code

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civil practice and remedies code: **Workers' Compensation Subrogation In All 50 States - Fifth Edition** Gary L. Wickert, 2012-04-01 Workers' compensation subrogation continues to change and adapt, as trial lawyers prod its weak points and capitalize on confusing areas of the law. There have been numerous changes in workers' compensation statutes and case law in many states since the last edition. This edition includes an exhausting survey and detailed explanation of the crazy status of employer contribution in Illinois, which includes a step-by-step exposition of how contractual indemnity and the Kotecki cap play a role in expanded employer liability in Illinois workers' compensation subrogation cases. It covers the many nuances of Naig and Reverse-Naig settlements under Minnesota law, including an analysis of who has what burdens of proof and the effect such a settlement has on the remaining third-party case tried to a jury. In light of the landmark Missouri Court of Appeals decision in Robinson v. Hooker, the liability of co-employees in Missouri and surrounding states have been covered in greater detail. The concept of co-employee liability for acts which are intentional or committed outside of the course and scope of employment has been added in several states. New case law and explanations were added to the Texas chapter with regard to subrogating against UM/UIM policies, including arguments with regard to the efficacy of UM/UIM exclusionary policy language and the ability to subrogate against a UM/UIM

policy actually issued by the same carrier insuring for workers' compensation coverage. West Virginia completely revised their subrogation statute and created a new statute relating to the statutory employer status of primary contractors and subcontractors on construction sites, limiting when and how primary contractors can become legitimate third parties for purposes of subrogation. Chapter 7, Contractual Limitations to Subrogation has been completely overhauled to include new statutes and case law for every state to assist practitioners in determining the law applicable when there is an alleged applicable waiver of subrogation which might otherwise destroy subrogation. A new Chapter 12 has been added, which focuses on jurisdiction of workers' compensation third-party actions taking a broad look at 28 U.S.C. § 1441, which prohibits removal of cases arising under state workers' compensation laws. A carrier now has the ability to prevent cases from being removed from favorable venues in state court to less favorable federal court venues - an attractive option for plaintiffs' attorneys with whom subrogated carriers can negotiate with for stipulations and concessions on their subrogation interests in exchange for maintaining a case in state court. This edition also expands on which states do and do not hold workers' compensation to be primary. Combined with more than 100 new case decisions, this Fifth Edition is the most complete and up-to-date edition yet. Workers' Compensation Subrogation is the most complete and thorough treatise covering workers' compensation subrogation ever published. There are very few areas in which the laws of each state vary more and are applied as differently, then in the area of workers' compensation subrogation. This book is intended to introduce the workers' compensation claims handler, in-house counsel, and subrogation professionals to some of the more esoteric and complex subrogation issues encountered in today's workers' compensation insurance subrogation marketplace. It covers the following issues in all 50 states: • Allocating Third Party Recoveries • Attorney's Fees • Borrowed Servant Doctrine • Conversion of Workers' Compensation Liens • Costs and Expenses • Dual Capacity Doctrine • Equitable Subrogation/Contribution • Exclusivity Rule Barring Action Against Employer • How To Calculate Your Credit/Advance and How It Is Applied In Each State • Intentional Acts • Joint Ventures • Made Whole Doctrine As Applied To Workers' Compensation Subrogation • Necessity of Intervention • Lien Reduction Statutes • Staff Leasing Services and Temporary Employment Agencies • Statutory Subrogation Rights • Subrogating Against UM/UIM Benefits • Subrogating In Medical Malpractice Cases • Subrogating In Legal Malpractice Cases • Waivers of Subrogation • Who Qualifies As A Third Party • Other Workers' Compensation Subrogation-Related Issues In addition to being an excellent primer on workers' compensation subrogation, suitable for both the new subrogation professional and the seasoned veteran, the book also contains a detailed synopsis of the workers' compensation subrogation laws in each of the 50 states. It is a must for anyone with multi-state subrogation responsibilities. Complete with diagrams, references and thousands of footnotes, this is the most ambitious workers' compensation subrogation project ever undertaken. The following issues and topics are covered in detail for each of the 50 states: Statutory Subrogation Rights • Identifies the statutory authority for workers' compensation subrogation in that state. • Discusses the purpose/legislative intent of the statute. • Is an election necessary by the worker? • Who can bring a third party action (plaintiff, carrier, employer, or all of the above)? • When and must a third party action be brought? • What are the rights of a carrier to intervene in an existing third party action filed by a worker? • Will a worker's compensation carrier's subrogation interest be barred if not brought timely? Third Parties • Who can be sued as third parties in a third party action? • Can a co-employee be sued and under what circumstances? • Can an uninsured/underinsured carrier be a third party under the laws of that state? • Is there a dual capacity or borrowed servant doctrine which somehow affects the ability of a worker's compensation carrier to effectively subrogate? • What is the state's workers' compensation bar? • Are there any specific restrictions regarding subrogation against a subcontractor or an employee of a subcontractor in a construction situation? • Under what circumstances can the employer be sued? • Can a carrier subrogate to the benefits of a recovery in a legal or medical malpractice action? Allocation of Third Party Recovery • How and when does the carrier recover its subrogated interest? • Does the carrier recover past benefits only or also the

present value of future benefits which it owes under the Workers' Compensation Act of that state? • Is there a formula used to determine how a third party recovery is allocated? • What happens to the total recovery and how is it applied? • Can a carrier recover benefits paid by a third party or recovered in a third party action which relate to loss of consortium, or non-economic damages such as pain and suffering, mental anguish, or punitive damages? • Does the employer's negligence reduce the recovery by the worker or carrier? Attorneys' Fees/Costs • Can the plaintiff's attorney recover attorneys' fees and/or costs out of the carrier's subrogated recovery and under what circumstances? • How are attorneys' fees and costs handled if the carrier is also represented by subrogation counsel, intervenes into the third party action and actively represents its interest? • What if the carrier isn't represented? • Can a plaintiff's attorney recover attorneys' fees based on the value of past benefits only or will he be able to recover attorneys' fees based on the future benefits/credit recovered by the carrier? • Must a carrier bear its proportionate share of expenses as many states require, and what does that really mean? Credit/Advance • Can a carrier take a vacation from paying workers' compensation benefits once a worker makes a third party recovery? • How is the credit calculated under state law? • Does the carrier have to do anything special to obtain the credit, such as filing with the Workers' Compensation Commission? • Does the carrier get a credit toward future compensation benefits it owes or does it actually get to collect the present value of the future benefits it owes and still be obligated to pay the scheduled benefits in the future? Statutes of Limitation • What are the applicable statutes of limitation or statutes of repose that may be applicable to third party subrogation actions? Related Subrogation Issues • Are there any other issues or statutes which affect a worker's compensation carrier's right of subrogation, such as the made whole doctrine, common fund doctrine, or anti-subrogation statutes? • Are there any lien reduction statutes, such as those existing in Indiana, which affect a worker's compensation carrier's right of recovery? • Does the state have any no-fault laws which complicate workers' compensation subrogation involving an automobile accident, such as exist in Michigan and Colorado? • What are the carrier's options if the worker and his attorney simply refuse to repay a worker's compensation carrier's lien after settling a third party action? • If the worker fails to repay the carrier, is there a cause of action for conversion of a carrier's subrogation interest or may the carrier still proceed against the third party tortfeasor to recover its subrogation interest?

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civil practice and remedies code: **Representing Yourself in Federal Court** United States District Court, Northern District of California, 2017-08-04 This Handbook is designed to help people dealing with civil lawsuits in federal court without legal representation. Proceeding without a lawyer is called proceeding pro se, a Latin phrase meaning for oneself, or sometimes in propria persona, meaning in his or her own person. Representing yourself in a lawsuit can be complicated, time consuming, and costly. Failing to follow court procedures can mean losing your case. For these reasons, you are urged to work with a lawyer if possible. Chapter 2 gives suggestions on finding a lawyer. Do not rely entirely on this Handbook. This Handbook provides a summary of civil lawsuit procedures, but it may not cover all procedures that may apply in your case. It also does not teach you about the laws that will control your case. Make sure you read the applicable federal and local court rules and do your own research at a law library or online to understand your case. The United States District Court for the Northern District of California has Clerk's Offices in the San Francisco, San Jose and Oakland courthouses. Clerk's Office staff can answer general questions, but they cannot give you any legal advice. For example, they cannot help you decide what to do in your lawsuit, tell you what the law means, or even advise you when documents are due. There are Legal Help Centers in the San Francisco, Oakland and San Jose courthouses where you can get free help with your lawsuit from an attorney who can help you prepare documents and give limited legal advice. This attorney will not be your lawyer and you will still be representing yourself. See Chapter 2 for more details.

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