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Subrogation May Determine Who Pays Debts

Q: What is subrogation, exactly?

A: Subrogation is an old legal doctrine that has to do with substituting one person (or entity) for another in the settling of a debt or claim. The purpose of subrogation is to make sure that a debt is paid by the person (or entity) who should ultimately be responsible for it. Subrogation also gives certain rights to the substituted person (or entity) who takes responsibility for the debt or claim.

Q: I've seen the term "subrogation" in my insurance policy. How does subrogation apply to an insurance claim?

A: Subrogation frequently arises in the context of insurance claims. When you buy auto insurance, the insurance company gives you a policy that says what will be covered in case you are involved in an accident that causes personal injury or property damage. Let's say, however, that you are involved in an accident that was not in any way your fault and was not caused by your negligence. Instead, the damage was caused entirely by the other driver. In such a case, your insurance carrier can collect full reimbursement from the insurance carrier of the driver who was at fault. In this way, subrogation has to do with equity, and in this instance, it allows your insurance carrier to "step into your shoes" and, on your behalf, collect reimbursement against the other driver, who was the actual negligent party.

Q: What if there is more than one person who caused the damage?

A: In a civil "tort" lawsuit, a "plaintiff" brings legal action "for damages" against one or more persons (or entities) whose action has caused suffering or harm. Subrogation regularly arises in tort lawsuits involving multiple defendants stemming from a single incident or transaction. Torts involve any civil wrong against a person or property. They can range from automobile accidents, product liability claims and medical malpractice situations to claims of defamation, nuisance or even emotional distress.

Frequently, a plaintiff may be able to collect an entire judgment against only one defendant under the rules of "joint and several liability." This means that, even if several people shared responsibility for the harm, any one of them can be held liable for the entire amount of the damages. Subrogation may allow a single defendant who got stuck paying the whole amount of the damages to seek reimbursement from the other defendants.

Q: If I am injured in an accident that was someone else's fault, can my doctor collect from that person to cover my medical bills?

A: Yes. It's possible for medical providers and insurers who have given you medical care and treatment or paid your medical bills to pursue their subrogation rights so that the person who caused your accident will be held responsible for those bills.

Q: How does subrogation work in business situations?

A: Business contracts, including construction contracts, often contain subrogation clauses and provisions. It is common for project owners to place subrogation clauses in agreements for work involving contractors, subcontractors, architects, builders or other professionals. In such a situation, the subrogation clause can shift risk and potentially place reimbursement burdens on your shoulders, which you would not otherwise expect. For this reason, you should always review and analyze such clauses carefully and consider consulting with a qualified attorney before signing.

Contracts may also include “waiver of subrogation clauses.” If your contract includes a waiver clause and you waive your subrogation rights in a contract, you won’t be able to seek reimbursement from the other party to the contract, even if that party is at fault.

Q: How can I protect my subrogation rights?

A: The doctrine of subrogation is widely considered to be a highly technical area of law, and often is applied to very complex situations. Do not miss an opportunity to obtain reimbursement through subrogation, and always read the terms of a subrogation clause carefully. When in doubt, contact an attorney with knowledge in this convoluted area of the law so you can protect and defend your rights.

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This “Law You Can Use” consumer information column was provided by the Ohio State Bar Association. It was prepared by Andrew L. Smith, a senior associate attorney in the Cincinnati office of Smith, Rolfes & Skavdahl Company, LPA.

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