

## Reminder to Review Health Plan Subrogation and Reimbursement Language Before It's Too Late

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A recent case from the U.S. Court of Appeals for the Ninth Circuit serves as a reminder to employers to review the subrogation and reimbursement language in their group health plan documents. In this case, a motion picture industry health plan provided that a participant must reimburse the plan from any amount recovered from a third party who was responsible for the injury. If a participant fails to reimburse the plan from a third-party recovery, under the terms of the plan, the amount of unreimbursed benefit payments is deducted from future benefit payments made on behalf of such participant by the plan. In accordance with the plan's provisions, when one of the plan's participants failed to reimburse the plan from a third-party recovery, the plan began deducting the unreimbursed amount from future benefit payments. The participant and other covered family members sued. A federal district court granted summary judgment in favor of the participant and covered family members, concluding the plan could not enforce the plan's subrogation and reimbursement language (the plan's "self-help" remedy). However, the Ninth Circuit disagreed and instead ruled that (i) contractual defenses could not defeat the clear and unambiguous terms of the plan and (ii) the self-help remedy did not violate or undermine ERISA. The Ninth Circuit then reversed and remanded the case with instructions for the district court to enter summary judgment in favor of the plan.

This case emphasizes the importance of clear and comprehensive subrogation and reimbursement language in group health plan and SPD documents. Employers are encouraged to review this language to ensure it contains all legally permissible rights and protections for the plan under ERISA, including the clear authority to offset future benefit payments when appropriate.

The opinion in *Mull et al. v. Motion Picture Industry Health Plan et al.* is available [here](#).