

SESSION PREVIEW

Navigating Unfriendly Terrain

By Christina Bramlet

Many states currently have in place statutes that preclude insurers from exercising their right to subrogate in certain instances. Legislators often fail to grasp the societal and monetary benefits of subrogation, which include keeping health-care premium costs down so that benefits can be offered to a wider swath of employees.

That being the case, the threat of still more anti-subrogation laws being instated looms rather large. Moreover, the bad publicity generated from cases such as *Wal-Mart v. Shank* may partially fuel the persistent argument made by the plaintiffs' bar and injured parties to further limit insurers' rights to recoup expenses.

"There is a definite push around the country for more anti-subrogation laws," said Lance K. Oliver, who has provided valuable insights while serv-

ing as a session speaker at the NASP annual conference for more than six years.

"There are movements in Pennsylvania, New York, and Ohio, just to name a few. The fact is that certain non-ERISA plans won't be able to subrogate."

So what does this mean for attorney's litigating in anti-subrogation



▲ Lance Oliver

states? During today's session titled, "Health-Care Subrogation in the Wild West – The Gold Rush: Understanding Recoveries in Today's Anti-Subrogation States," Oliver, a managing partner at Memphis-based Lawrence & Russell, LLP, will dispense some advice. He'll take attendees on a journey through the underlying factors that led to anti-subrogation laws in some states and emphasize the importance of developing a firm understanding as to how each anti-subrogation state operates. Attendees also will learn about legisla-

tion currently being proposed.

"In mid-July, the New York Senate passed an anti-subrogation bill, which many subrogation professions had been opposing for several years," Oliver said. "This was the first time in the past four or five years where the Senate has been able to pass the anti-subrogation bill. For subrogation in New York, this is not a good development, as the Senate had blocked the legislation previously."

"Also, Governor Patterson has showed support and has encouraged the Senate to take up and consider this bill," Oliver continued. "His support for this legislation marks a change in his previous position regarding the anti-subrogation bill. The current bill remains to be passed by the New York Assembly. If a special session is not called by Governor Patterson this year and, hence, the bill

does not pass, then it will have to start over again in the Senate."

A central focus of the presentation will be accurately determining when a statute applies to a plan (and when they are immaterial to a subrogation attorney's case) and creating an approach accordingly. One way Oliver plans to drive home noteworthy concepts is by soliciting audience participation in an interactive game called "The Gold Rush." Attendees will watch video clips and respond to trivia questions about the best and worst money-makers to date.

The fun begins at 12:45 p.m. in Colorado Hall B. ■

AT-A-GLANCE

- ▶ **Session Title:** Health-Care Subrogation in the Wild West – The Gold Rush: Understanding Recoveries in Today's Anti-Subrogation States
- ▶ **Presenter:** Lance K. Oliver, Managing Partner at Lawrence & Russell, LLP
- ▶ **Location:** Colorado Hall B
- ▶ **Time:** Today at 12:45 p.m.