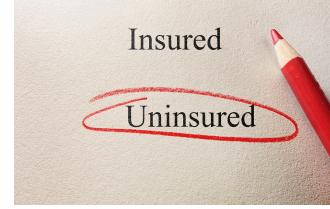


## January 2026 Subrogation Newsletter

### The Hidden Cost Of America's Uninsured And Underinsured Motorist Pandemic

America's growing population of uninsured and underinsured drivers isn't just a statistic — it's a hidden financial and emotional tax on responsible motorists and the insurance system that protects them. With more than 30 million vehicles on the road operated without meaningful liability coverage, the costs of accidents are increasingly absorbed by innocent drivers and their insurers rather than by the at-fault parties themselves. Minimal state minimum limits, rising repair and medical costs, and economic pressures that lead drivers to lapse coverage all compound this crisis, leaving law-abiding policyholders to shoulder higher premiums, deductibles, and claim severity. From a subrogation perspective, low or non-existent liability limits often render recovery efforts ineffective, thwarting one of the core mechanisms designed to assign financial responsibility where it belongs.



The societal consequences extend beyond dollars and cents: uninsured drivers are statistically more likely to engage in risky behaviors, flee accident scenes, delay care for injured parties, and remain difficult to hold accountable. Judges and lawmakers who fail to grasp the role of subrogation and robust financial responsibility laws inadvertently shift the accident burden from negligent drivers to those who follow the rules, eroding public confidence in the fairness of the system. Without significant reform of liability mandates, meaningful enforcement, and updated policy limits that reflect modern loss realities, this uninsured and underinsured motorist "pandemic" will continue to redistribute costs away from those who cause harm and deepen the financial strain on compliant drivers and insurers alike.



### Subrogation Waiver Prevents Insured From Recovering Deductible: Court Enforces Waiver of Subrogation Despite No Insurance Payout

In a striking reminder of how contract language can dramatically alter recovery rights, the Indiana Court of Appeals held that a waiver of subrogation barred a contractor from recouping its deductible costs even though no insurance payout was ever made. In *Bryan Builders, LLC v. Cincinnati Casualty Co.*, the court ruled that losses "covered by insurance" include those falling under a high deductible, meaning that boilerplate waivers commonly found in construction contracts can extinguish an insured's right to pursue reimbursement from other parties despite the insurer paying nothing. This decision underscores that the operative trigger is the scope of coverage, not the fact of payment.

And the consequences reach far beyond any single case. When medical expenses and wage loss vanish from civil pleadings by design, the lien disappears with them—leaving employers and carriers holding the bag for losses caused by negligent third parties. Premiums rise, experience modifiers spike, and municipalities and businesses end up subsidizing windfalls for employees and discounts for tortfeasors. New Mexico's statutory structure doesn't just allow these outcomes, it practically invites them. The only defense is an aggressive offense: early monitoring, early discovery, early objections, and early pressure on plaintiff's counsel and liability carriers to acknowledge the economic reality of the injury. In New Mexico, if subrogation counsel isn't involved from day one, they're already several moves behind in a game designed to make the lien disappear.

### Immunity Under Construction: The Ongoing War Over Pennsylvania's Statutory Employer Doctrine: *Yoder v. McCarthy Construction, Inc.*, 2025 WL 2981889 (Pa. 2025)



Pennsylvania's long-standing Statutory Employer Doctrine—a cornerstone of the state's workers' compensation system that shields qualifying general contractors from tort liability for injuries to subcontractor employees—was recently thrust back into the spotlight in *Yoder v. McCarthy Construction, Inc.* Under this doctrine, a general contractor that meets the five-factor McDonald test is deemed a "statutory employer" and enjoys immunity from personal injury claims, even if it never directly paid workers' compensation benefits for the injury. In October 2025, the Pennsylvania Supreme Court reaffirmed this historic immunity, rejecting calls to abolish or narrow it and leaving any policy changes to the legislature.

The ruling has ignited a heated policy debate in the commonwealth. Builder and contractor groups argue that maintaining broad statutory employer immunity controls costs and preserves industry stability, while trial lawyers and victims' advocates contend that it unjustly limits accountability and blocks full recovery for injured workers and their insurers. For subrogation professionals, this decision is especially significant: when statutory immunity applies, it often eliminates the possibility of a third-party tort recovery, leaving workers' compensation as the sole remedy and greatly impacting subrogation strategies in Pennsylvania construction matters.

### **Newly Expanded 50-State Guide to Documenting Workers' Compensation Future Credits**

We are pleased to announce our newly revised and significantly expanded edition of our "Documenting Workers' Compensation Statutory Credits" chart, one of the most frequently relied-upon resources on our website. This update goes well beyond a basic lien and reimbursement summary. It is designed to address the practical, real-world questions that arise after the settlement check clears and the file is "closed," but the workers' compensation exposure is not. While many jurisdictions recognize some form of future credit or "vacation," surprisingly few provide clear direction on how that credit is preserved, administered, and ultimately exhausted. The revised chart is intended to fill that gap by highlighting the procedural and operational mechanics that carriers, employers, and subrogation professionals must understand in order to avoid losing the value of a credit through poor documentation, missed filings, or post-settlement disputes that could have been prevented with proper planning.

To make the chart more usable and more directly tied to litigation and claims practice, we have reorganized every state into four categories that track the key issues subrogation practitioners face. The "Generally" section explains whether a jurisdiction recognizes a statutory future credit, how it is calculated, and whether it applies to indemnity, medical, or both. The "Procedure/Filing Requirements" section identifies whether special forms, approvals, notices, settlement submissions, or administrative steps are required to secure or preserve the credit, and where those materials must be filed. The "Burden of Proving Credit Exhaustion" section addresses a frequently overlooked issue: when the carrier suspends payments based on a credit, who must prove when the credit has been consumed and benefits must resume. Finally, the "Medical Expense Rate During Credit" section explores one of the least litigated but most financially consequential questions in this area, namely whether medical costs incurred during the credit period should be valued at retail billed rates or at the reduced fee schedule amounts that the workers' compensation system would ordinarily require. We invite you to review the revised chart and, as always, to contact us if you would like guidance on preserving and maximizing statutory credits as part of a comprehensive workers' compensation subrogation recovery strategy. The revised and greatly-expanded chart can be found [HERE](#).

### **Fresh From the Mic: The Subrogation Support Network's Latest Episode**



In this special crossover episode, host **Ashton Kirsch** sits down with **Jerrod Fussnecker**, Army veteran, former JAG officer, and host of the **Military Veterans in Law** podcast, for a powerful conversation about service, career transitions, and the surprising ways military experience aligns with insurance and subrogation work. They also break down what subrogation really is, why it matters, and how veterans looking for mission, teamwork, and purpose can find all three in this corner of the legal world.

Listen Now:



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