



## November 2025 Subrogation Newsletter

### **Avoiding HIPAA Headaches: How HIPAA Affects Workers' Comp Subrogation and Third-Party Recoveries**

HIPAA confusion is one of the most common—and most avoidable—roadblocks in workers' compensation subrogation. Many professionals assume they need a signed release at every stage of a claim, slowing down investigations and delaying recovery efforts. This article breaks down exactly when HIPAA applies, when it doesn't, and why workers' comp carriers operate under a very different set of rules than traditional health plans.



By separating myth from reality, we outline the key moments where a release is truly required and where carriers can freely use existing claim records to build a third-party case. Whether you're managing claims, pursuing subrogation, or supporting recovery strategy, this guide offers straightforward explanations and practical tips to keep your workflow efficient—and your recoveries on track.



### **New Jersey Decision Puts Another Nail In The Coffin Of Med Pay Subrogation**

In New Jersey, the long-running battle over subrogating "Med Pay" benefits just took a huge hit. In *Progressive Garden State Insurance Company v. Allstate New Jersey Insurance Company*, the state's Appellate Division held that Med Pay benefits are subject to the collateral-source statute (N.J.S.A. § 2A:15-97). Therefore, an insurer who pays them has no right to recover them from a tortfeasor unless the Legislature steps in.

While Med Pay functions much like no-fault PIP in some respects, the court ruled it is distinct, not covered by the PIP subrogation statute, and cannot be treated as a recoverable benefit. Even contractual arbitration agreements among insurers don't override the statutory bar. The upshot: for now, in New Jersey, Med Pay subrogation claims face an almost certain dead end unless and until the law changes.

### **Montana Supreme Court Narrows the Made-Whole Doctrine**

Montana just rewrote one of the toughest subrogation rules in the country—and the change is big. For decades, the state's broad made-whole doctrine shut down recovery unless an insured was compensated for every imaginable loss. But in *Johnson v. State Farm*, the Montana Supreme Court finally narrowed that barrier, holding that the doctrine applies only to losses the insurer actually agreed to cover. Suddenly, uncovered items like miscellaneous property losses or attorney's fees no longer kill subrogation before it starts. By tying "made whole" to the policy's boundaries, not the insured's entire universe of damages, the Court has opened doors that were long bolted shut. For insurers used to treating Montana as a dead end, this decision gives them a real reason to take a second look.



### **MWL Launches New Jersey Branch Office!**

Matthiesen, Wickert & Lehrer, S.C. ("MWL") is proud to announce the opening of its new subrogation office in New Jersey. For decades, MWL has represented workers' compensation carriers, auto carriers, self-insured companies, third-party adjusting companies, and subrogation vendors throughout the Northeast. We have handled property, marine, fidelity, cyber, auto, health, and workers' compensation subrogation cases across the region. In recent years, however, the volume of challenging New Jersey PIP, auto, property and workers' compensation subrogation work in the Garden State has increased exponentially, as has our overall subrogation caseload throughout New England. This growing demand for our services has necessitated the opening of a new branch office. The New Jersey office enhances our ability to handle subrogation matters throughout New Jersey, New York, Pennsylvania, Maryland, and the entire northeastern corridor.



If you have New Jersey, New York, Pennsylvania, or northeastern U.S. subrogation needs—from workers' compensation to property, marine, fidelity, and cyber recoveries—referring subrogation files to MWL is quick and simple. You can access our website's file referral feature by clicking on the "Refer A File" button on our homepage. Our file referral forms are designed to ask the right questions so that we can hit the ground running once we receive your file, and all data transferred is secure and encrypted.

The subrogation professionals at MWL look forward to handling your northeastern U.S. recovery needs, along with recovery work throughout North America.

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



In this episode, your host Ashton Kirsch teams up with Subro Sense host Aaron Jacobs for a deep dive into something most people don't realize happens behind the scenes: true collaboration between subrogation firms. Together, they unpack how attorneys from different organizations coordinate strategies on market-share claims, large-loss commercial property cases, and product failures. This episode offers an honest look at how cooperation, not competition, is driving better recoveries and shaping the industry.

Listen Now:



MATTHIESEN, WICKERT & LEHRER, S.C.  
Hartford, WI • New Orleans, LA • Irvine, CA • Austin, TX  
Jacksonville, FL • Milltown, NJ  
Phone: (800) 637-9176

