MWL MATTHIESEN, WICKERT & LEHRER, S.C.
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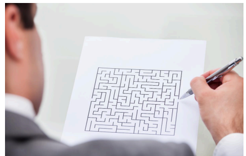
# March 2026 Subrogation Newsletter



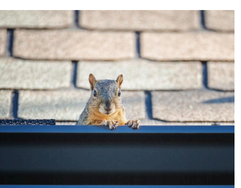
## Montana's Made Whole Maze: Navigating Subrogation After Johnson and Smith

Montana has long been one of the most restrictive subrogation jurisdictions in the country, requiring full compensation of an insured, including attorney fees, before a carrier may pursue recovery. A pair of recent decisions have reshaped the contours of that doctrine in opposite directions. In Johnson v. State Farm, the Montana Supreme Court clarified that the Made Whole Doctrine applies only to damages within the scope of the policy, not to losses the insurer never agreed to cover, restoring meaningful ground for category-specific subrogation after decades of near-total dormancy. Building on the earlier Van Orden framework, Johnson confirmed that a carrier need not wait until an insured is fully compensated for uncovered losses before pursuing recovery for the covered category of damage at issue. But a 2026 federal district court decision in Smith v. Health Care Serv. Corp. has introduced fresh procedural risk at the front end of the subrogation process. The court held that a vendor's lien letter asserting the existence of a subrogation claim and directing counsel not to release settlement funds plausibly constituted enforcement of subrogation rights before any made-whole determination, sufficient to survive a motion to dismiss for breach of contract and violation of Montana's Unfair Trade Practices Act. Taken together, the current landscape offers both restoration and restraint: carriers can now pursue subrogation in Montana on a category-specific basis, but must document their made-whole analysis before sending any communication that asserts, restricts, or conditions settlement proceeds.

## Utah Supreme Court Redefines Recoverable Medical Expenses In Tort Cases

The Utah Supreme Court has resolved a question that lingered for more than two decades: when a workers' compensation carrier seeks a future credit against a third-party recovery, the projected value of that future liability must be included in calculating its proportionate share of attorney fees and litigation costs. In HB Construction v. Labor Comm'n of Utah, the Court held that a carrier's "interest" in a recovery under Utah Code § 34A-2-106(5) encompasses both past benefits already paid and reasonably anticipated future exposure, and that its pro rata fee obligation must be satisfied before any future offset can be exercised.

The practical stakes are significant. In catastrophic injury cases where future medical costs dwarf the gross recovery, a carrier's proportionate share of fees may equal or exceed the total attorney fee pool, effectively requiring it to fund the entire cost of litigation. The decision builds on the framework established in Esquivel, closes the gap left open by Anderson, and puts adjusters and subrogation professionals on notice that future credits are not free: the larger the credit a carrier seeks, the greater its share of the cost of obtaining it.



## What's Chewing on Your Claim? Foreseeability and Solar Fire Loses

When a fire breaks out beneath a rooftop solar array after a rodent gnaws through electrical wiring, the instinct is to call it an act of nature and move on. Attorney Nicholas DeStefanis argues that instinct is wrong and expensive. Rodents are drawn to electrical wiring because their teeth never stop growing, and copper wire provides an ideal material for filing them down.

The solar installation itself compounds the risk: panels are mounted inches above the roof to allow airflow, creating a warm, sheltered cavity in colder months that is practically an invitation for pests. That combination of a known hazard and an installation method that amplifies it is the foundation of a foreseeability argument against the installer. The fix was straightforward and inexpensive: mesh screening around the panel perimeter, a product already sold specifically for that purpose. The broader lesson for subrogation professionals is that solar losses should never be written off as unavoidable environmental casualties. When an installer fails to account for a well-documented risk and omits a cheap, readily available safeguard, a presumed dead loss can become a viable recovery.

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

In this episode of the **Subrogation Support Network**, host **Ashton Kirsch** sits down with **Donnie Vaughn**, a 15-year claims professional and author of The AI Advantage in Claims, to unpack what AI actually means for claims teams—and why it's no longer optional to understand it. Donnie breaks down AI "101" in plain language, compares major tools, and explains how claims professionals can use AI to accelerate everyday work like drafting demands, improving written communications, and tightening workflows without sacrificing accuracy.

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