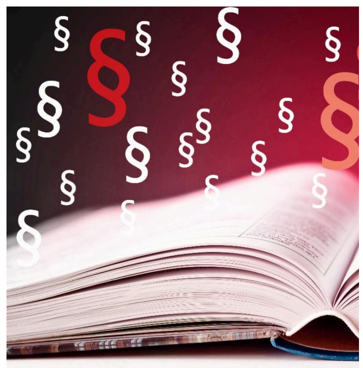
April 2026 Subrogation Newsletter



Sweating The Small Stuff: When A Small Florida Workers' Compensation Claim Becomes A Big Subrogation Disaster

Florida's workers' compensation system contains a hidden structural trap that can quietly destroy a carrier's subrogation rights, and a recent Florida First District Court of Appeal decision in *Estes v. Palm Beach County School District* lays it bare. Under state law, even minimal benefit payments, such as a handful of authorized medical visits or a small indemnity check, continuously toll the workers' compensation statute of limitations, keeping a claim alive for years. But those same payments do absolutely nothing to pause the two-year clock on the underlying civil negligence action.The result: a claim that looks too small to bother subrogating can silently evolve into a major loss while the window to pursue the responsible third party closes permanently.

Claims handlers must treat subrogation analysis as completely independent from claim severity. What starts as a chipped tooth or a minor soft-tissue strain can escalate into root canals, implants, or surgery, but by the time the claim matures into something financially significant, the tort claim may already be dead. The presence of third-party liability is the controlling factor, and that determination must be made immediately upon notice of loss. Carriers need a firm two-year diary from the date of the accident on any file involving a motor vehicle crash, defective product, or premises hazard, and that deadline must be treated as absolute, regardless of how quiet or inexpensive the claim appears in the meantime.

The Phantom Offset: Employer Fault, Kangaroo Courts and Attacks on Texas Workers' Compensation Subrogation

Texas workers' compensation carriers enjoy one of the strongest subrogation rights in the country: a mandatory "first money" reimbursement right that requires any third-party recovery to pay the carrier back before the injured employee sees a dime. But there's a narrow statutory exception called the Employer Responsibility Offset (ERO) that plaintiffs' attorneys have increasingly weaponized to gut those liens. Under Texas Labor Code § 417.001(b), a carrier's reimbursement can be reduced based on any percentage of fault a jury assigns to the employer, but only when there's been an actual trial, an actual verdict, and an actual judicial reduction of a judgment. Despite this well-established authority, a troubling pattern has emerged in Texas subrogation practice: plaintiffs' attorneys, often working in concert with defendants and liability carriers, attempt to orchestrate and manufacture employer fault after a case has settled in order to reduce or eliminate the workers' compensation lien through agreed fault allocations, stipulated negligence percentages, and hastily noticed post-settlement hearings designed to mimic a real trial.

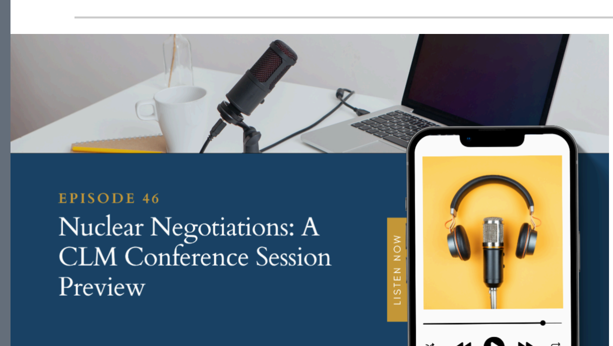
These manufactured fault schemes are legally invalid under Texas law, but they are devastatingly effective when carriers aren't paying attention. The carrier's absence provides an opportunity for plaintiff and defendant to orchestrate, cast, and unfold an entire production which casts the employer as the bad guy, and by the time the carrier learns what's happening, the case may already be structured to invite fault-allocation arguments. The solution is early and active intervention: subrogation counsel must get into the litigation before any settlement is reached, monitor for collusion between the employee and defendant, and educate the court that a phantom verdict conjured after a settlement has no legal effect on the carrier's rights whatsoever.

MWL Paralegals Spotlight Innovation at Proof Client Panel

At MWL, winning subrogation cases goes beyond courtroom strategy. Austin-based paralegals Michelle Tillery and Krista Churchwell highlighted this through recent beta-testing with Proof and by speaking on Proof's Client Interview Panel. Their panel discussion covered everything from managing client expectations to how improved interface design and clearer status indicators help high-volume firms communicate more confidently with clients.

While portions of the legal industry remain rooted in longstanding routines and practices, MWL is intentional about continuous improvement, consistently evaluating and adopting the latest technologies and innovations to elevate the quality and efficiency of its work product. By putting our paralegals, not just attorneys, at the center of that innovation, MWL is able to showcase how subrogation recovery runs deeper than legal expertise alone; it's built into the work of every member of the team.

🎙 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 claims experts **Amber Guenther** from Alliant Insurance Services and **Cortney Helfrich** from Wilbur Group, to discuss why negotiation is the most undervalued skill in claims, applicable to everything from subrogation recoveries to defense settlements. The panel discusses practical strategies, including the 70/30 rule (listen more than you speak), how to keep emotions out of high-stakes conversations, and why building relationships beats transactional approaches every time.

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