

***EQUITABLE SUBROGATION PRINCIPALS:
THE “MADE WHOLE” AND “FULL COMPENSATION” RULES***

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When an insurance company pays a claim to its insured, there are often occasions in which the insurer has the ability to recover some of the payment back, through subrogation,¹ from some third-party who or which caused the damage. Notwithstanding the availability of the insurer’s subrogated interest, that does not mean that the insurer will be able to recover all or any of the payment. This is true when the insured has its own uninsured claim against the at-fault third-party, especially when that claim is a substantial claim – either because of a sizable deductible or a significant uninsured amount.

Unfortunately, this “who gets what” situation can and often does create an important conflict between the insured’s recovery expectations and the insurer’s prospects to recoup some or all of its previous payment. That conflict becomes more and more pronounced in direct relation to the size of the available “recovery pie” (*i.e.*; the smaller the pie the bigger the dispute). When this situation exists, much like all cases where an insured is aligned against an insurance company, the prevailing legal principals allow the insured to recover its losses first.

¹ 3 David L. Leitner, Reagan W. Simpson, and John M. Bjorkman, Law and Practice of Insurance Coverage Litigation, § 42:2 n.1 (West Group 2005) (*quoting Black’s Law Dictionary* (1998) (“Subrogation is the substitution of one person in the place of another with reference to a lawful claim, demand[,] or right, so that he who is substituted succeeds to the rights of the other in relation to the debt or claim, and its rights, remedies, or securities.”)).

