



## Introduction to Property and Casualty Subrogation

Presented by:  
Gary L. Wickert  
Matthiesen, Wickert & Lehrer, S.C.



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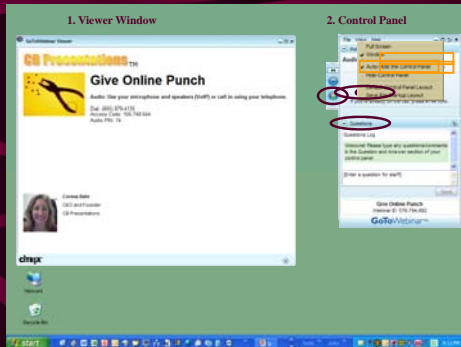
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## GoToWebinar Attendee Interface



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## Property and Casualty Insurance

### ➤ Property Insurance

#### – Personal Insurance

- Covers personal property and health
- Home, auto, other personal insurance

#### – Commercial Insurance

- Covers buildings and structures – real property
- Covers personal property of business and others

#### – Casualty Insurance



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## Property and Casualty Damages

### ➤ Building (Real Property)

- Repair Cost
- Replacement Cost
- Actual Cash Value
- Fair Market Value

### ➤ Contents (Personal Property)

### ➤ Additional Living Expenses

### ➤ Loss of Rents / Loss of Use / Business Income



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## Subrogation Generally

### ➤ Elements of Subrogation

### ➤ Origins of Subrogation

### ➤ Types of Subrogation

- Contractual (Conventional) Subrogation
- Equitable (Legal) Subrogation
- Statutory Subrogation

### ➤ Purpose of Subrogation

### ➤ Anti-Subrogation Arguments



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## Typical Subrogation Clause

*"If we pay a claim under your policy, we will take over your right to recover that amount from any other person or organization. You agree to cooperate with us and not do anything that will interfere with our chances of recovery."*



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## Recognizing Subrogation

- Requires training and experience
- Must put on Plaintiff's hat
- Understanding of tort law
- Prompt recognition and action required



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## Subrogation Investigation

- Why investigate?
- How to investigate?
- When to investigate?
- Investigation goals:
  - Preserve evidence / avoid spoliation
  - Recognize subrogation
  - Identify key players, targets, witnesses
  - Coverage issues (arson, exclusions, etc.)
  - Determine damages
  - Notice issues
  - Eliminate alternate causes of loss



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## Picking Up Pebbles



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## Product Liability

- Design Defect
- Manufacturing Defect
- Marketing Defect
- Identify and preserve product
- Chain of custody



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## Products Liability (cont.)

- Manufacturing Defect: When the product bends, breaks, fails, leaks, ignites, explodes or does something different than as designed.
- Design Defect: Product does conform to its plans and specifications, but design itself renders product unreasonably dangerous.
- Marketing Defect: Seller fails to warn of product dangers or provide instructions for safe use of the product.



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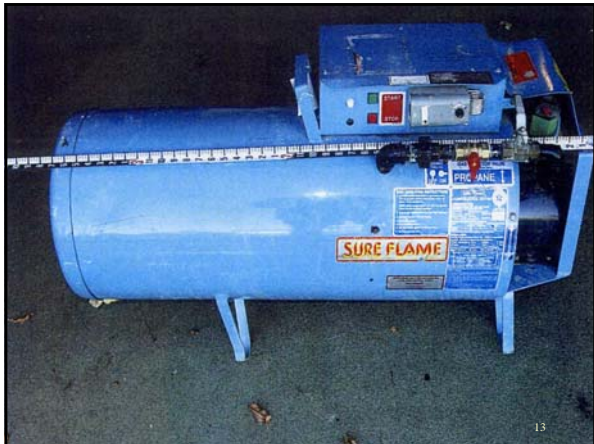
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### SURE FLAME<sup>®</sup>

#### CONSTRUCTION HEATER

Model **S405**      Serial No.  

**SPECIFICATIONS**

Gas:	Propane or Natural Gas	
Capacity:	400,000 Btu/h maximum	
Orifice Size:	42 OMS x 18	
Electrical Rating:	115 V, 60 Hz, 12 A, single phase	
Temperature Rating:	-30°F minimum	
Gas:	Inlet Pressure	Manifold Pressure
	Max (WC)	Min (WC)
Propane	14"	7"
Natural	12"	7"

Minimum inlet pressure is for purpose of input adjustment.

**INSTALLATION**

Position heater properly, on a horizontal surface, before use.

Clearance required for combustibles:

Outlet:	Inlet:
12 ft	2 ft
Top:	Sides:
5 ft	2 ft

Minimum clearance required to LP Gas containers:

Outlet:	Sides:
20 ft	6 ft

FOR YOUR SAFETY

Do not use this heater in a space where gasoline or other liquids having flammable vapors are stored or used.

The hose assembly shall be protected from traffic, building materials, and contact with hot surfaces both during use and while in storage.

This heater is for indoor use only. Adequate ventilation must be provided. Not for use with ductwork.

HEATERS SHALL BE USED IN ACCORDANCE WITH THE LOCAL AND NATIONAL INSTALLATION CODES AND SHALL BE INSTALLED AND MAINTAINED BY A QUALIFIED SERVICE PERSON.

ANSI Z43.7-2000  
Const. Htg.

### SURE FLAME<sup>®</sup> PRODUCTS

MADE IN MEXICO      Kalamazoo, MI 49001      1-800-451-7777

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### Selecting and Hiring Experts



- When to hire expert?
- Choosing an expert
- Cause vs. origin
- Electrical/Mechanical/Chemical/Civil Engineer
- Accident reconstruction / Human factors
- Reports
- Expert databases / Referral companies
- Being an expert in choosing an expert
- Budget and cost-effectiveness

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### Fire and Explosion Cases



- Investigation is key
- Cause and origin – investigation protocol
  - NFPA 921
- First origin, then cause
- Fire spread cases
- Fire response liability
- Sprinkler systems / burglar and fire alarms
- Eliminate other causes
- Limitation of liability



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## Inland and Ocean Marine

- **Inland Marine**
  - Not an Oxymoron
- **Ocean Marine**
  - Ocean Cargo and Hull Insurance
- **Notice of Claim Requirements**
- **Limitation of Liability**
  - Marine
  - Ocean Marine



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## Cargo Claims

- **Ocean Shipments**
  - COGSA (Carriage of Goods by Sea Act)
- **International Air Carriage**
  - Contract of Carriage (Air Waybill)
  - Carrier's Tariff
  - Warsaw Convention
- **Domestic Air Carriers**
  - Virtual Insurer of Goods in Transit
  - Limitation of liability



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## Subrogating Against God

- **Natural Disasters**
  - Hurricanes
  - Floods
  - Wildfires
  - Hailstorms
  - Ice Storms
  - Windstorms
  - Lightning
  - Roofing Subrogation



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## Great Flood of 1993

- Upper Mississippi River Basin
- Worst natural disaster in USA (cf. Katrina)
- \$20 billion damage
- Affected 9 states
- 50 people died
- One flood in Kenosha, WI



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Wednesday, April 10, 1996

**LOCAL**

## Insurers seek repayment for loss of autos to flood

**By Dave Backmann**  
Staff Writer

A group of companies that insure Subaru of America Inc. is seeking \$11.2 million from the Union Pacific Railroad for the loss of 1,371 autos to flood waters in 1993 while the cars were parked at the former Bain Station shipping yard.

The insurance companies had paid Subaru for the loss of the compact, Legacy models, then filed a federal lawsuit in Milwaukee in January 1995 to recover their cost.

Gary Wickert, a Houston lawyer representing the insurers, said \$2.775 million has been collected from the other defendants in the lawsuit: Centerport Inc., Veals Inc. and Port Services Co. Those companies in part owned and operated the shipping yard.

**“Is it prudent for business people to park \$225 million worth of cars there (in flood plain)?”**

Gary Wickert, lawyer

cuss the amount of the railroad's offers.

"By law, we can seek the total amount from the railroad." "This property was in a flood plain, but for some administrative-bureaucratic reason the city of Kenosha didn't recognize it as being in a flood plain."

"When the city of Kenosha an-

raphy and now local officials have trouble discerning what parts are officially flood plain, Wickert said.

"The city of Kenosha says, 'Yeah, it's a flood plain, but we don't know where it is.' The question is: 'Is it prudent for business people to park \$225 million worth of cars there?'" Mark Davis, a Union Pacific spokesman, said he could not comment on the matter because litigation is pending.

Wickert is looking for witnesses who would testify that flooding occurred each year at the 194-acre gravel lot bordered by highways 50 and K and the Chicago & North Western and Soo Line railroad tracks.

The Union Pacific purchased the Chicago & North Western last year.

"We have conducted an extensive hydrological survey of the



# Subrogation Recovery

**\$ 7,275,000**



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## Electrical Fires

- **Electrical engineer**
- **Electrical wiring**
- **Electrical equipment and appliances**
- **Site examination protocol**
- **Identify electrical contractor / builder**
- **Evidence of “unusual electrical activity”**
- **Notice and preservation of evidence**
- **Identifying defendants / third parties**



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## Bailment

- Bailor / Bailee
- Elements
- Presumption of negligence
- Exculpatory clauses
- Limitation of liability



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## Obstacles to Property Subrogation

- Made Whole Doctrine
- Economic Loss Doctrine
- Statute of Limitations
- Statute of Repose
- Governmental Liability
- Subrogation Waiver / Exculpatory Clause
- Landlord / Tenant Implied Coinsured
- Insured Cooperation



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## Practical Tips and Summary

- Subrogation Is An Investment
- Take Investigation Seriously
- Tag Large Losses For Additional Investigation
- Strive To Be Cost-Effective
- Who Else Owns This Loss?
- Think Subrogation



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Matthiesen, Wickert & Lehrer, S.C.  
(800) 637-9176  
[www.mwl-law.com](http://www.mwl-law.com)  
Nationwide Subrogation  
Low Hourly/Contingent Fees



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