# MATTHIESEN, WICKERT & LEHRER, S.C.

A FULL SERVICE INSURANCE LAW FIRM


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MONTHLY ELECTRONIC SUBROGATION NEWSLETTER MARCH 2012


**TO CLIENTS AND FRIENDS OF MATTHIESEN, WICKERT & LEHRER, S.C.:**

*This monthly electronic subrogation newsletter is a service provided exclusively to clients and friends of Matthiesen, Wickert & Lehrer, S.C. The vagaries and complexity of nationwide subrogation have, for many lawyers and insurance professionals, made keeping current with changing subrogation law in all fifty states an arduous and laborious task. It is the goal of Matthiesen, Wickert & Lehrer, S.C. and this electronic subrogation newsletter, to assist in the dissemination of new developments in subrogation law and the continuing education of recovery professionals. If anyone has co-workers or associates who wish to be placed on or removed from our e-mail mailing list, please provide their e-mail addresses to Jamie Breen at **jbreen@mwl-law.com**. We appreciate your friendship and your business.*

**IN THIS ISSUE....**



INSURANCE SUBROGATION

## REVICTIMIZATION:
## *Subrogation's Other Name*

**By Gary L. Wickert**

**Roger M. Baron & Anthony P. Lamb, *The Revictimization of Personal Injury Victims by ERISA Subrogation Claims*, 45 Creighton L. Rev. 325 (2012)**

The ubiquitous and unsubstantiated attacks on subrogation continue. This time, it appears in the form of a dubious law review article which not only denigrates and misconstrues the concept and purposes of subrogation, but takes a few pokes at me in the process. Its co-author, Roger Baron, is a professor at the University of South Dakota and long-time consultant for trial lawyers looking to destroy the subrogation rights of health insurance carriers and plans. The article – *The Revictimization of Personal Injury Victims by ERISA Subrogation Claims* – appeared in the February 2012 issue of the Creighton Law Review. It attacks the very concept of subrogation and refers to health insurance subrogation as a second victimization of insureds and plan beneficiaries rather than a legitimate right of recovery which has and will continue to help keep health insurance premiums in check and place the loss on the party ultimately responsible.

The author cites copiously to himself as authority for the faulty proposition that "both primary and secondary authorities have long recognized that subrogated recoveries are not reflected in rate determinations, but rather, are utilized as discretionary funds." He describes subrogation recoveries as a "windfall" and claims they are treated as a source of profit used for executive compensation or other "parochial" matters. Barron globs on to both the new *U.S. Airways v. McCutchen* Third Circuit decision, which for the first time, raised the unique and inapposite concept of "appropriate" equitable relief as meaning "fair" relief and the Eighth Circuit decision in *Admin. Comm. of Wal-Mart, Inc. v. Shank*, in which the seriousness of Ms. Shank's injuries garnered the attention of national media and trumped the legal subrogation rights of Wal-Mart, who later waived its subrogation interests altogether.

Shortly after *McCutchen* was decided, a Florida Federal District Court decision strongly criticized the Third Circuit's opinion and correctly pointed out that it was based entirely on a "dubious reading of recent Supreme Court decisions." In *Schwade v. Total Plastics, Inc*., 2012 WL 652481 (M.D. Fla. 2012), it notes that the *McCutchen* decision conflicts with the Eleventh Circuit opinion in *Zurich American Insurance Company v. O'Hara*. According to *O'Hara*, the term "appropriate equitable relief" smuggles into ERISA no free-floating equitable principle that operates in each case independently of ERISA's larger purpose and structure. *McCutchen* faults *O'Hara* for failing to ask whether the relief sought is "appropriate" under traditional equitable principles and doctrines. The Court in *Schwade* astutely points out that because every man's concept of equity varies, focusing on whether equitable relief is "appropriate" is antithetical to ERISA's purpose and context. It further cites to a Harvard Law Review article for the proposition that if a Plan cannot trust a Court to enforce a subrogation right, a Plan beneficiary cannot receive lower premiums or better benefits in exchange for pledging to repay the Plan for a tort recovery. According to *Schwade*, *McCutchen*'s dubious interpretation of four Supreme Court cases mistakenly expands a beneficiary's ability to avoid repaying an ERISA Plan with promptness and certainty.

While I would love to cite myself as authority in my rebuttal of the Law Review article, as its own author does, it is the federal judge in *Schwade* whose common sense carries the day:

> *In any event (and most importantly), in exchange for the enjoyment of the plan's paying an immediate and near-certain benefit after an injury, a beneficiary bears the risk of a subsequent lawsuit against a third party. If the beneficiary's recovery pays both the plan and the beneficiary's lawyers and leaves a remainder, the beneficiary reaps the benefit. But the beneficiary undertakes the lawsuit at the risk that the lawsuit will generate less money for the beneficiary—especially, after the lawyers extract a fee, probably near forty percent—than the amount of money owed to the plan. If the beneficiary recovers a small amount, the plan bears no responsibility for the undesirable consequence of the beneficiary's choice to sue. Bearing the obligation to reimburse the plan, will a beneficiary struggle to find a lawyer willing to assume the risk of the suit? Probably not. And if the small size of the potential award leaves no attorney willing to share the beneficiary's risk, this merely shows that the beneficiary correctly chose an immediate and safe benefit from the plan rather than an uncertain tort award (and the cumbrous, enervating, and expensive machinery of litigation) as the means of paying his medical bill. Although perhaps imperfect in the arcane circumstance, ERISA is a salutary and stalwart aid to almost every beneficiary—unless the judges foul it up by tinkering.*

However, in the one-sided world of trial lawyers and their advocate, Mr. Barron, Plan beneficiaries should be allowed to enjoy all the benefits of immediate and certain benefits a health plan provides without the obligations of Plan reimbursement they have contracted for - all at the expense of all other Plan members or co-employees who must then bear the brunt of increased premiums. As the Court stated in *Schwade*, an ERISA Plan utilizes subrogation because recoupment of Plan expenditures is "crucial to the financial viability of self-funded ERISA plans." The responsibility of a participant to repay the Plan, even from a meager recovery, helps to maintain a manageable price for the Plan (and thus maintain the existence of the Plan). Consequently, ERISA avoids dictating the correct balance between each participant's responsibilities and the cost of a Plan.


Insurance is a plan of risk management or risk sharing. In an excellent Law Review article published in Mr. Barron's own Law Review, F. Joseph DuBray undemonizes subrogation by pointing out that for a certain price or "premium," a person or entity is offered an opportunity to share the costs of a defined possible economic loss or risk. This risk sharing is normally done with an insurance company or health Plan. Since the risk or loss covered by the insurance is in the future, the exact risk or loss is not known when the insurance policy or Plan is issued. Those who share the risk – the insurer and insured - view the risk as the probable amount of loss, and the amount of coverage and the premium for the insurance actually purchased are calculated on this unknown. Correct measurement and assessment of the loss potential is the very foundation of any system of insurance underwriting. This assessment is accomplished only through the careful analysis or prior experience with loss, costs of administration of the insurance, the application of probability, or the mathematics of chance, as well as the likelihood that any loss will be recouped through the vehicle of subrogation. The insured decides, before he pays the premium, how much of the potential loss he wishes to bear, when he decides on the limits of coverage desired and whether he wishes to purchase a contract of insurance that provides for subrogation.

Any negative financial implications of subrogation for the insured can be avoided by specifically requesting a policy without a subrogation or reimbursement clause. If subrogation recovery were not available for insurance companies - as is increasingly becoming the case in some states - the actual cost of insuring the past known risk would increase accordingly and the projected future costs would likewise have to be adjusted upward in the form of increased premiums. Subrogation costs not realized, or eliminated due to the erroneous application of equitable doctrines such as made whole or common fund, are reflected in and spread over future premiums among the issuing insurer and all of the insureds purchasing the same insurance. As a result, all who shared the risk during the time the claim was paid, and all who share the future risk, subsidize the reduction or elimination of subrogation recoveries or the payment to an insured that did not honor his or her subrogation agreement. It is here that the concept of "fairness" is appropriately applied.


Sadly, Mr. Barron's Law Review article is more of an announcement to trial lawyers that he hasn't had any speaking engagements (according to his website) for over a year, than a learned dissertation on the merits of ERISA and health insurance subrogation. Setting the subrogation record straight remains a task equal in proportion to the fate of Sisyphus, whom mythology tells us the gods had condemned to ceaselessly rolling a rock to the top of a mountain, whence the stone would fall back of its own weight.

On February 28, 2008, Roger Barron and I engaged in a virtual debate over subrogation on the national radio program, *Radio Health Journal*, hosted by Reed Pence and broadcast on over 600 radio stations. The debate can be heard by clicking **HERE**.

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AUTOMOBILE INSURANCE SUBROGATION


## HAWAII PIP SUBROGATION:
### The Uncertainty Principle

The law of physics known as the "Uncertainty Principle" states that that the position and velocity of an object cannot be measured exactly, at the same time, even in theory. The reason for this is that any attempt to measure precisely the velocity of a subatomic particle, such as an electron, will knock it about in an unpredictable way, so that a simultaneous measurement of its position has no validity. Similarly, Hawaii Personal Injury Protection (PIP) subrogation is currently in such a vacuum, with trial lawyers and subrogation professionals both uncertain over and unable to measure the current state of the law. It was author R. Fitzhenry who once said, *"Uncertainty and mystery are energies of life. Don't let them scare you unduly, for they keep boredom at bay and spark creativity."*

If true, this means that PIP subrogation in Hawaii will never be mundane, and creatively asserting your rights of PIP subrogation with confidence can and will produce results.

PIP subrogation in Hawaii is in limbo. For many years, § 431:10C-307 gave PIP carriers a right of subrogation. In 1989, the Hawaii Legislature amended the statute to delete the words "Right of Subrogation." Act 83, S.B. No. 905. The House Committee on Consumer Protection and Commerce explained the reason for the amendment as follows:

> *The purpose of this bill is to clarify the intent and meaning of § 431:10C-307, Hawaii Revised Statutes, which is to reimburse the no-fault insurer for up to one-half of the maximum limits if the injured party recovered from the tortfeasor damages which duplicated the no-fault benefits already paid. This was also the original intent and meaning of its predecessor statute, § 294-7, Hawaii Revised Statutes.*
>
> ***
>
> *Your committee believes that this bill will clearly reflect the original intent and meaning…that the no-fault insurer's right to reimbursement is available only when the claimant actually receives damages from the tortfeasor which duplicate the no-fault benefits already paid, and that the insurer's right to reimbursement is solely enforceable against the insured claimant. Your Committee finds that it was always intended that § 431:10C-307, Hawaii Revised Statutes, provided such a right of reimbursement and not subrogation.* House SC Rep. 1739, 1989 *House Journal* at 1472-73.

Therefore, the new statute merely grants a PIP insurer the right to be "reimbursed" (not subrogated) 50% of the amount of no-fault benefits it has paid which are duplicated in a third-party recovery, up to the maximum limit defined in § 431:10C-103. Section 431:10C-307 currently reads as follows:

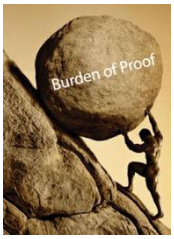
> ***§ 431:10C-307. Reimbursement of duplicate benefits.*** *Whenever any person effects a tort liability recovery for accidental harm, whether by suit or settlement, which duplicates personal injury protection benefits already paid under the provisions of this article, the motor vehicle insurer shall be reimbursed fifty per cent of the personal injury protection benefits paid to or on behalf of the person receiving the duplicate benefits up to the maximum limit.* Haw. Rev. Stat. § 431:10C-307 (replaced § 294-7)(*emphasis added*).

The "maximum limit" referred to in the statute is defined in § 431:10C-103 as:

> *The total personal injury protection benefits payable for coverage under § 431:10C-103.5(a), per person on account of accidental harm sustained by the person in any one motor vehicle accident shall be $10,000, regardless of the number of motor vehicles or policies involved.* Haw. Rev. Stat. § 431:10C-103.

Section 431:10C-103.5, referred to in the definition of "maximum limit," includes the following:

> *(c) Personal injury protection benefits shall be subject to an aggregate limit of $10,000 per person for services provided under this section. An insurer may offer additional coverage in excess of the $10,000 aggregate limit for services provided under this section, or as provided by rule of the commissioner*. Haw. Rev. Stat. § 431:10C-103.5.




The burden of proving duplication is on the PIP carrier. However, the reimbursement of PIP benefits is not allowed against UM/UIM benefits. *Sol v. AIG Hawaii Ins. Co.,* 875 P.2d 921 (Haw. 1994). In fact, the legislature clearly stated its intent to disallow the subrogation rights of the no-fault carrier against "optional additional" coverage. *Id*. Even if the insured purchases no-fault (PIP) coverage for an amount in excess of the statutory maximum, the insurer will only be entitled to reimbursement of 50% of the no-fault benefits paid. *Id*.

Therefore, looking only at the above statutes, it can be argued that a PIP carrier is entitled either to: (1) reimbursement of only $5,000 maximum (50% of the maximum aggregate limit); or (2) 50% of whatever

limits the policy happens to provide by way of additional coverage. However, that is only the beginning of the confusion.

Section 431:10C-307 also conflicts with the "Covered Loss Deductible" statute found at § 431:10C-301.5, which provides that any bodily injury recovery is "reduced by $5,000 or the amount of PIP benefits incurred, whichever is greater, up to the maximum limit." Haw. Rev. Stat. § 431:10C-301.5. In the late 1990s, a move toward holding down auto insurance premiums combined with tort reform efforts and § 431:10C-301.5 (Covered Loss Deductible [CLD] Statute) was enacted. Section 431:10C-301.5 provides as follows:

> ***§ 431:10C-301.5. Covered loss deductible.*** *Whenever a person effects a recovery for bodily injury, whether by suit, arbitration, or settlement, and it is determined that the person is entitled to recover damages, the judgment, settlement, or award shall be reduced by $5,000 or the amount of personal injury protection benefits incurred, whichever is greater, up to the maximum limit. The covered loss deductible shall not include benefits paid or incurred under any optional additional coverage or benefits paid under any public assistance program. Id.*

This conflict has not been resolved under Hawaii law. The "maximum limit" referred to in the conflicting statutes is defined in § 431:10C-103 as $10,000 per person. Haw. Rev. Stat. § 431:10C-103. Arguably, 50% of PIP benefits paid in excess of $10,000 should be reimbursed to the PIP carrier, although such reimbursement is rarely done in Hawaii. Others argue that § 431:10C-307 limits reimbursement to 50% of the maximum amount, or $5,000. Third-party suits of less than $5,000 are not allowed. Therefore, if medical expenses are between $5,000 and $10,000, PIP benefits are subtracted from the verdict amount. *State Farm v. Gepaya,* 978 P.2d 753 (Haw. 1999).

This CLD Statute is interpreted by trial lawyers and the Hawaii Association for Justice as requiring up to a $10,000 deduction from any personal injury settlement or judgment, effectively eliminating any PIP subrogation or reimbursement rights, because the portion of the recovery "duplicating" PIP benefits is effectively removed from the recovery. They feel that when you deduct the CLD, there are no PIP benefits duplicated in the recovery subject to reimbursement under § 431:10C-307. Yet, there is some disagreement as to whether the CLD removes only up to the $10,000 maximum limit from the recovery, or removes a larger amount in cases where the PIP carrier carried additional coverage in excess of the $10,000 aggregate limit.

Technically, reimbursement of PIP benefits under § 431:10C-307 has not been eliminated and is still permissible. However, if the maximum reimbursement is limited to 50% of the $10,000 maximum limit defined by statute, then the PIP carrier is limited to a maximum reimbursement of only $5,000 under any circumstances. This creates cost-effectiveness problems for subrogation professionals whose recovery is also subject to reduction for attorney's fees under § 431:10C-211(b), which provides:

> *(b) A person who has effected a tort recovery, whether by suit or settlement, and who is sued by the insurer to recover fifty per cent of the personal injury protection benefits paid, under § 431:10C-307, may be allowed reasonable attorney's fees and reasonable costs of suit.* Haw. Rev. Stat. § 431:10C-211(b).

Therefore, carriers subrogating PIP benefits in Hawaii arguably must: (1) get over the hurdle of showing the tort recovery "duplicates" PIP benefits; (2) reduce it's $5,000 recovery to compensate the plaintiff's attorney for having tried, but failed to destroy their PIP subrogation rights; and (3) overcome the argument that the CLD Statute has already removed all PIP benefits subject to reimbursement from the tort recovery. If the PIP carrier has paid benefits in excess of $10,000, the 50% recovery increases exponentially and makes recovery more feasible for the carrier. However, all of this is assuming that the CLD Statute does not destroy the rights of reimbursement as argued by trial lawyers.

There is no current Hawaii legal authority supporting the argument posited by trial lawyers that the CLD Statute destroys our statutory right of reimbursement under § 431:10C-307. However, even if the court eventually buys into this argument, if the PIP carrier has paid out more than the $10,000 aggregate limit as defined by § 431:10C-103.5 and referenced in the CLD Statute itself, the 50% reimbursement statute

also references similar "aggregate limit" language when it says the PIP carrier shall be "reimbursed 50% of the PIP benefits paid to or on behalf of the person receiving the duplicate benefits up to the maximum limit." So, while we can expect trial lawyers to argue that whatever amount is allowed for reimbursement is also deducted under the CLD Statute, they won't be able to offer any support for their position.

Any effort to gerrymander or structure a settlement in such a way as to defeat "duplication" of PIP benefits is not allowed under Hawaii law. Hawaii maintains that an insured should not be permitted to abrogate the PIP carrier's statutory right of reimbursement by the mere labeling of the tort recovery in the release. *First Ins. Co. of Hawaii, Ltd. v. Jackson*, 678 P.2d 1095, 1100 (Haw. App. 1984), *rev'd on other grounds*, *Grain Dealers Mut. Ins. Co. v. Pacific Ins. Co., Ltd*., 768 P.2d 226 (Haw. 1989). In addition, § 431:10C-307 (formerly § 294-7) imposes on the insured an obligation of good faith under objective standards in the settlement and release of his tort claim so that his insurer's statutory right of reimbursement will not be cut off without a legitimate reason. *Jackson,* supra.

The best PIP reimbursement argument is that there is simply no legal authority eliminating their right of reimbursement under § 431:10C-307, notwithstanding the CLD Statute. All trial lawyers can do it is argue that it is "unfair" that their recovery has been reduced by the amount of PIP benefits paid, so they shouldn't have to further reduce their recovery by reimbursing the PIP carrier the benefits it has paid. However, even that argument has holes if you do the math. Assuming $10,000 in PIP benefits are paid and a $50,000 tort recovery, which includes medical expenses as damages, the $50,000 tort recovery is reduced by $10,000 so the claimant recovers only $40,000, in addition to the $10,000 he benefitted from as a result of the PIP benefits paid by the carrier. To allow the claimant to avoid repayment of the PIP benefits means he recovered medical expenses which he never had to pay. Equitably, the carrier which paid the PIP benefits should be allowed reimbursement of the $10,000 they paid, which would make everybody whole.

PIP subrogation in Hawaii is dormant partly because of the confusion underlying the interplay between these statutes and partly because even if trial lawyers lose in their CLD Statute, the most PIP carriers are likely to recover is 50% of $10,000 ($5,000), which is likely to be reduced by 1/3 for attorney's fees. So, the cost-benefit analysis involves determining whether or not the cost of defeating the CLD Statute outweighs the arguable maximum reimbursement of $3,333.

Trial lawyers in Hawaii will tell you that there is an "uneasy peace" between liability carriers and PIP carriers with regard to PIP subrogation. The uncertainty and potential cost-ineffectiveness of PIP subrogation, combined with the fact that doctors prefer the reimbursement rates from health plans over those of PIP or Medicare, means that Hawaii sees relatively little PIP subrogation. This means that the likelihood of seeing a resolution to the ambiguity and uncertainty in this area any time soon is relatively small. Everybody is used to the fact that if you are a Bodily Injury carrier, you simply get a $10,000 credit on every claim. Not much more thought is given to the forgotten reimbursement rights of PIP carriers. If more PIP carriers pushed the issue, it might bring the matter to a head. Section 663-10 of the Hawaii Statutes requires the court to determine the validity of any claim of a lien against a judgment or settlement, and carriers should insist on intervening to protect that right.

Matthiesen, Wickert & Lehrer, S.C. is actively arguing in numerous cases in favor of PIP subrogation in Hawaii. It is a situation where a little pressure could turn the tide. If you have Med Pay or PIP subrogation needs anywhere within North America, please contact Gary Wickert at **gwickert@mwl-law.com.**

## INSURANCE SUBROGATION

### DEDUCTIBLE REIMBURSEMENT AND ECONOMIC LOSS DOCTRINE CHARTS REVISED

#### Updated Charts Available On Our Website Now!

Matthiesen, Wickert & Lehrer, S.C. has completely revamped and rewritten two or the most popular and frequently linked subrogation charts on its website: the *Deductible Reimbursement In All 50 States* chart, as well as the *Economic Loss Doctrine In All 50 States* chart.

**DEDUCTIBLE REIMBURSEMENT**. Most automobile insurance policies require their insured to pay a deductible when a claim is made. If the auto carrier is successful in subrogating a particular loss against a third party and makes a recovery of its claim payments, the issue often comes up as to what portion, if any, of the insured's deductible must or ought to be reimbursed to the insured. The law of each state differs with regard to the obligation of the insurer to reimburse its insured the deductible in a particular claim, as well as the amount to be reimbursed. Trial lawyers are circling to take advantage of the confusion and pounce on any violations or patterns of discrepancy. As a result, it is more important than ever to be familiar with the state-to-state nuances of deductible reimbursement so as to simultaneously comply with existing state laws and regulations yet still maximize subrogation recoveries for the benefit of your insureds.


In the world of subrogation, the issue of how much of an insured's deductible must be reimbursed to the insured after a carrier makes a successful subrogation recovery remains a perplexing and confusing issue for subrogation professionals. It rivals ERISA preemption in health insurance subrogation and the no-fault laws of certain states as being the most confusing and least understood area of subrogation. Even experienced subrogation professionals and lawyers simply get it wrong when it comes to understanding and employing the law surrounding the obligation of a subrogated carrier to reimburse an insured a deductible.

Subrogation professionals often assume that if a state employs or recognizes the "Made Whole Doctrine," then the insured must be totally reimbursed for its out-of-pocket deductible and any uninsured losses before a carrier can subrogate. Unfortunately, this over-simplistic view and application of the Made Whole Doctrine is not only erroneous, but also results in reduced subrogation recoveries for carriers across the country. Surprisingly, the obligation of an insurer to reimburse some or all of its insured's deductible has very little to do with the Made Whole Doctrine in most states.

Class action suits against insurance companies for failing to reimburse deductibles are becoming commonplace. The recent class action suits in *Chandler v. State Farm Mut. Auto. Ins. Co.,* 2010 WL 938113 (9th Cir. 2010) or *Harnick, et. al. v. State Farm Mut. Auto. Ins. Co.,* 2009 WL 579378 (E.D. Pa. 2009) are only a few examples. Not only is a clear understanding of when and how much of a deductible should be reimbursed critical to avoiding such traps, it also is a key to improving subrogation recoveries and the bottom line. The new Deductible Reimbursement Chart can be viewed **HERE**.

**ECONOMIC LOSS DOCTRINE.** At the same time, the Economic Loss Doctrine (ELD) is a confusing and pervasive court-developed doctrine that has been slowly and insidiously eating away at viable subrogation opportunities. More and more frequently we see vehicle fires resulting from product defects, motor homes burning up while the insured's on vacation, expensive machinery catastrophically failing at a cost of millions, and other losses involving product defects which result in significant insurance claims. Left to its own devices, the ELD would eliminate all of these frequently-seen scenarios from subrogation candidacy. However, it doesn't have to be this way.

The ELD is adopted by a majority of U.S. states and jurisdictions. In its traditional form, the rule prohibits a tort recovery (negligence, strict liability, etc.) when a product defect or failure causes damage to itself, resulting in only economic loss, but does not cause personal injury or damage to any other property other than itself. It is now more important than ever for subrogation professionals to be sure they understand when the ELD applies and when it doesn't.

The ELD is full of exceptions and loopholes for the subrogated carrier to take advantage of - assuming it is aware of them. New developments in numerous states on exceptions to the applicability of the ELD, such as component part exception, privity requirements, consumer transaction exception, public policy exception, fraud and misrepresentation exception, service contract exception, special relationship exception, and the sudden and calamitous failure exception, provide loopholes for subrogation professions to avoid the harsh application of the ELD. The new Economic Loss Doctrine Chart can be viewed **HERE**.

# MATTHIESEN, WICKERT & LEHRER, S.C. WELCOMES SEVERAL NEW ATTORNEYS AND PARAGLEGALS

Matthiesen, Wickert & Lehrer, S.C. is proud to announce the addition of several new lawyers and paralegals. We appreciate the continued trust and confidence our clients have shown in our abilities to maximize their subrogation recoveries anywhere within North America, and the increased recovery business entrusted to us has necessitated the addition of several experienced new employees. Please help us in welcoming them.

## ATTORNEYS

**April K. Toy.** April joined our firm as an experienced litigator specializing in insurance litigation, products liability and subrogation. April obtained her Bachelor of Arts in English Literature from San Francisco State University and her law degree from Marquette University Law School. During law school, April served as a judicial intern to Justice Annette Ziegler of the Wisconsin Supreme Court and clerked for a large Wisconsin insurance company. A St. Thomas Moore Scholar all three years in law school and the recipient of the CALI Award of Excellence, April participated in Marquette Law School Moot Court Association and competed in the National Environmental Law Moot Court competition. April previously worked as an insurance litigator with the Hills Legal Group, where she worked on products liability, complex litigation, commercial subrogation, common carrier, automobile, premises, insurance coverage, and worker's compensation matters. April's practice within MWL focuses primarily on subrogation, worker's compensation and insurance litigation. She is admitted to practice before all Wisconsin State Courts as well as the United States Circuit Court for the Eastern District of Wisconsin. She is a member of the Hispanic National Bar Association, Wisconsin Bar Association, and the Wisconsin Defense Counsel. April is also an accomplished salsa dancer and thoroughly enjoys all forms of the arts and theater.

**Aaron D. Plamann.** Aaron comes to MWL with seven years of litigation experience and is a mechanical engineer with design experience. This unique combination of talents will help our firm tackle the growing number of product liability subrogation cases entrusted to us by our clients. Aaron was formerly with Stewart & Hafferman as in-house trial counsel for Zurich North America, as well as Turner & Flessas, S.C., where he oversaw millions in recoveries for his clients and developed an expertise in dealing with the intricacies of Medicare settlements. Aaron is a graduate of Marquette University Law School after having received his Mechanical Engineering degree at Milwaukee School of Engineering, where he still serves on their Institutional Review Board in reviewing research to protect human subjects. He is admitted to practice before all Wisconsin State Courts as well as the United States Circuit Court for the Eastern District of Wisconsin and the 7th Circuit Court of Appeals. Aaron's litigation experience, along with his mechanical engineering skills, will be a valuable resource for MWL as we assist our clients with product liability, technical subrogation, and insurance litigation matters. In his free time, Aaron enjoys cooking, traveling, listening to live music, and participating in athletic activities. Aaron is an avid slow-pitch softball pitcher, golfer, and he enjoys riding his road bicycle.

## PARALEGALS

**Erica Karch.** Erica Karch graduated from MATC in 2009 with an Associates Degree and Certificate in Paralegal Studies. Prior to MWL, she was employed at Pleas Williams, S.C. specializing in insurance defense and at WaterStone Bank in their legal department handling foreclosures. Erica's specialties at MWL include auto subrogation, as well as insurance defense, with a focus on medical record review and summarization. She is currently finishing up her Bachelors Degree in psychology at the University of Milwaukee. In her free time, she enjoys going on hikes with her fiancée and two dogs, running website

EatMKE, which is an insider's look at the Milwaukee area food scene, and playing rugby for the Oconomowoc Women's Rugby Football Club.

**Lisa Tanin.** Lisa Tanin graduated from UW-Milwaukee in December 2010 with a Bachelor of Arts with a double major in communications and organizational administration. Prior to MWL, she was employed at Pitman, Kyle, Sicula & Dentice as their settlement specialist paralegal. This position helped to develop her specialty in medical subrogation, analysis of medical claims and liability in personal injury cases, the negotiation, mediation, litigation, and settlement process, along with the handling of Medicare claims. In her spare time, she enjoys taking her dog, Bungee, (Great Pyrenees/Irish Wolfhound mix) for walks to the park. She also studies ballet, plays guitar, and loves football. She hopes to go to her first Green Bay Packer game this year.

**Lisa Bane.** Lisa Bane graduated in 1983 from Drake University, Des Moines, Iowa, with her Bachelor of Science Degree in Business Administration, with a major in marketing. In 2006, she graduated from Bryant & Stratton College, in Wauwatosa, Wisconsin, with her Paralegal Studies Associate Degree. Lisa was previously employed at Deutch & Weiss, LLC, where she was a paralegal responsible for insurance defense, subrogation and small and large claims litigation and at Duffey & Associates, S.C., where she was a paralegal responsible for personal injury and workers' compensation litigation. Lisa does a lot of volunteer work, including assisting the Family Law Self-Help Clinic Training, is a co-chair on the Hartford, Wisconsin Elementary Music Committee where she works with the School Board and Superintendent to expand their music program, is on the Hartford, Wisconsin Elementary Gifted and Talented Steering Committee where she reviews and assists with the development of the Student Curriculum Enrichment Programs, and is a teacher's assistant for the Hartford, Wisconsin Gifted and Talented Third Grade Research Project and Fifth Grade Computer Lab.

## UPCOMING EVENTS

**April 3, 2012** – Gary Wickert will be presenting a live webinar on *"Texas Automobile Subrogation*" from 10:00 - 11:00 a.m. (CST). This webinar is approved for 1.0 Texas CE credits and is free to clients and friends of MWL. A registration link will soon be on our website homepage, but you can click on the "Register Now" button to the right to register.


**May 9-12, 2012** - MWL will be exhibiting at the *7th Annual Claims Education Conference* in Napa Valley, California. Jamie Breen will be at Exhibit Booth 12 so stop by our booth if you plan on attending this conference and introduce yourself. For more information on this conference, please go to **www.claimseducationconference.com**.

**July 18-19, 2012** – MWL will be exhibiting at the *32nd Annual National Workers' Compensation and Occupational Medicine Conference* in Hyannis, Cape Cod, Massachusetts. Jamie Breen will be at Exhibit Booth 10 so stop by our booth if you plan on attending this conference and introduce yourself. For more information on this conference, please click **HERE**.

**November 11-14, 2012** – MWL will be exhibiting at *NASP's 2012 Annual Conference, "Cirque du Subro",* in Las Vegas, Nevada. Jamie Breen will be at Exhibit Booth 103 so stop by our booth if you plan on attending this conference and introduce yourself. For more information on this conference, please go to **www.subrogation.org**.