

JULY 2020 SUBROGATION NEWSLETTER

The Failed No-Fault Auto Insurance Experiment

In its widest sense, “no-fault insurance” is a term used to describe any auto insurance coverage under which policyholders are paid for personal injuries and property damage they sustain in accidents through their insurance company, regardless of fault. Not only is no-fault confusing and dysfunctional, it also contradicts basic American principles such as individual responsibility and accountability. By eliminating “fault”, the law treats good drivers and bad drivers the same. This weakens the deterrent effect of tort law. It also eliminates full compensation. In an effort to avoid the abuse of claims for pain and suffering and other non-economic damages, the experiment has thrown the baby out with the bathwater. [Read More....](#)



Repairing Vehicles Before Damages Can Be Inspected: Good Claims Practice or Spoliation?



Good first-party claims practice requires prompt repair of damaged vehicles. Cost-conscious and profit-minded auto insurers aggressively pursue subrogation upon being notified of a physical damage claim. They provide carriers for culpable tortfeasors with police reports, witness statements, and evidence of the claims damages they have paid. With increasing frequency, liability carriers are refusing to take such damage “evidence” at face value. Instead of simply paying the claim, they are arguing that promptly repairing the vehicle without giving them the opportunity to inspect and verify the damages is tantamount to spoliation and is a defense to the claim against them. But are such claims of “spoliation” legitimate? [Read More....](#)

New Jersey Says Workers’ Comp Carrier Gets Reimbursed Before Self-Insured Employer

In most states, laws and regulations governing subrogation and/or reimbursement rights of a workers’ comp carrier and its insured are virtually non-existent. Insurer claims for reimbursement from their insured and disputes over who gets reimbursed what, when there is a successful subrogation recovery, often hinge upon the parties’ rights under the policy. Because carriers file their individual deductible program with each state, no two are alike, and these agreements become very important in determining recovery rights. [Read More....](#)



Verdicts and Settlements

MWL was retained on an overspray-type loss matter involving vehicles stored at a vehicle storage lot. Defendant painting contractor was repairing a bridge on behalf of the Massachusetts DOT. The contractor denied liability claiming that it couldn’t be proven that the rust particles on the vehicles were from the bridge and were confident of their painting containment procedures and had evidence of same. The case was difficult because there was a scrap operation nearby that caused similar problems previously, sovereign immunity defenses were raised, and we encountered difficulty with the DOT. Experts were retained to analyze metal debris carried by the wind causing oxidation and rusting and they matched chemical composition of material from the bridge to material on the vehicles. MWL was able to obtain a \$280,000 recovery for our client.



Time Travel For The Insurance Industry

See [HERE](#) for a provocative 60-second video explaining why Matthiesen, Wickert & Lehrer views the handling of your subrogation claims - large and small - as time travel for the insurance industry. We help turn back the hands of time and attack the enemy of our industry - claims - utilizing our experience and expertise. Check it out!



Join MWL's LinkedIn Subrogation Support Network Group!

We welcome you to join our LinkedIn [Subrogation Support Network](#) Group! It is a community managed by Matthiesen, Wickert & Lehrer, S.C., that offers insurance professionals a place to interact, discuss subrogation insurance-related topics and issues, ask subrogation questions, and keep abreast of new developments and/or changes in the subrogation law for all 50 states. If you would like to join this LinkedIn group, please click [HERE](#).

We Are Social | Follow Us

We are asking our clients and friends to help us expand our social media presence by following our firm’s [LinkedIn](#), [Facebook](#), [Twitter](#), and [YouTube](#) pages. The legal face of insurance litigation in our industry seems to change almost daily. Following our social media pages will assist you in keeping up-to-date and informed on developments and changes in the law that effect the industry, which is key to obtaining the best results.

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