

SEPTEMBER 2021 SUBROGATION NEWSLETTER

NFPA 921 Standards Have Changed: What Every Claims Adjuster Should Know

NFPA 921 is generally regarded as the standard of care in fire investigation. Technically its provisions are still simply guidelines, but they are considered authoritative and utilized by many courts when determining the sufficiency and admissibility of expert opinions. Compliance with these guidelines is considered necessary in order to prepare an admissible expert opinion. A lack of knowledge regarding changes to NFPA 921 is arguably the equivalent to a failure to satisfy the NFPA 1033 requirement that an investigator stay up to date on investigation methodology. It is important to vet your investigators by asking questions regarding NFPA 921 and NFPA 1033 to ensure they are up to speed on industry changes. In order to know what questions to ask, adjusters need to have a basic understanding of the new changes to NFPA 921 as well.



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Hawaii Workers' Compensation Subrogation At A Crossroads



We are at the precipice of a potential upheaval in workers' compensation recovery rights in the Aloha State. The Hawaii Supreme Court is about to decide whether equitable considerations and defenses to subrogation—such as the common law Made Whole Doctrine or Common Fund Doctrine—are to be applied to statutory workers' compensation liens. If the court decides they apply, effectively destroying workers' compensation reimbursement rights, the significant additional cost in the form of workers' compensation insurance premiums will fall squarely on Hawaii businesses, large and small.

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Arizona Eliminates Peremptory Challenges

Effective January 1, 2022, Arizona will become the first state to eliminate the use of peremptory challenges in jury selection in both criminal and civil trials—including the trial of subrogation cases. It isn't news to the insurance industry that many (if not most) people harbor certain resentments against insurance companies. If those biased jurors are allowed to sit on a jury in a subrogation case where the role of the insurance company is made known, the subrogated carrier will have a less than favorable chance of prevailing.



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MWL Welcomes Griffin S. Gross To The Firm

MWL is pleased to welcome **Griffin S. Gross** as a litigation associate in our Hartford, Wisconsin office. Griffin will be handling workers' compensation, property, and automobile insurance subrogation cases. Griffin graduated from Marquette University in Milwaukee, Wisconsin, where he received a B.S. in Accounting and received his law degree from Marquette Law School. Since graduating with his J.D., Griffin has worked as a trial lawyer with the La Fleur Law Offices in Milwaukee, where he obtained litigation and trial experience. On behalf of the partners, associates, legal assistants, and support staff here at MWL, we would like to welcome Griffin to the firm. We would also invite our clients and friends to introduce themselves to Griffin, who can be reached at ggross@mw-law.com.



Verdicts and Settlements

Attorney **Jim Busenlener** recently prevailed in an arbitration in which he was defending the manufacturer of an ice cream filler machine from a products liability claim. A worker at an ice cream plant in Arkansas had suffered significant injuries when she reached into the machine while it was operating, intending to grab some lids which had fallen into the machine near the heating mechanism. Rather than shut off the machine, she reached in and the machine caught her sleeve and pulled her hand into the heating mechanism. The claimant did not file a third-party claim of her own, but her workers' comp insurer which had paid benefits in excess of \$600,000 filed a Special Arbitration with Arbitration Forums, Inc. against the manufacturer's liability insurer, seeking payment of the forum limit of \$250,000. The workers' comp insurer argued that the lack of guards to prevent the worker from inserting her hands into that area of the machine constituted a clear defect, rendering the manufacturer strictly liable. Despite having no opportunity to inspect the actual machine, and no access to the plaintiff's expert report or other evidence due to arbitration rules limiting discovery, Attorney Busenlener was able to retain a qualified expert and obtain crucial information and evidence from the manufacturer and OSHA. Attorney Busenlener convinced the Panel that no product defect existed because the employer used this machine for at least five years but never requested that the manufacturer install guards, and the worker had intentionally placed her hands into the machine when she could have easily stopped it. The Panel ruled in the manufacturer's favor, and awarded no damages.



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](#), [Instagram](#) 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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