

DECEMBER 2021 SUBROGATION NEWSLETTER

Subrogating Automated Driving Systems And Autonomous Vehicle Failures

When catastrophic claims are paid as a result of a traffic accident resulting from a failure of an automated driving system (ADS) and subrogation enters the picture, it is no longer a simple question of who had the right-of-way and who failed to yield. Products malfunction and computers fail. Simple auto subrogation has now entered the more complex and exponentially more expensive world of product liability. Automobile accidental subrogation is rapidly changing, and the insurance industry will need to change with it.



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Montana Supreme Court Suggests Insurer May Have Pre-Suit Duty To Reveal Liability Policy Limits



Every day, billions of dollars worth of insurance liability claims are negotiated between claims professionals. The more information you have, and the less your adversary has, the greater your advantage. When negotiating a liability or subrogation claim, knowing the policy limits the tortfeasor has in its liability policy is information you cannot afford to negotiate without. And when you don't have it, the entire process comes to a standstill. A brand-new Montana Supreme Court decision has sounded off—sort of—in the nationwide debate over whether a liability insurer has a duty to provide liability policy limits to a third-party claimant when liability is reasonably clear.

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Subrogation And The Sudden Emergency Doctrine

It's happened at least once to every subrogation professional. A significant claim file involving an auto accident in which liability appears to be a lock, suddenly goes into a tailspin when the other side denies the claim because the tortfeasor suffered a heart attack or blacked out as a result of some sudden medical emergency. You inquire into the law and learn that almost every state will avoid imposing liability where an auto accident is the result of a sudden and unforeseeable physical incapacity. What should you do?



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Matthiesen, Wickert & Lehrer, S.C. Welcomes Sarah E. Byrom To The Firm

Matthiesen, Wickert & Lehrer ("MWL") is pleased to welcome a new litigation associate, **Sarah E. Byrom**, to the firm's Austin, Texas branch office. Sarah is licensed to practice law in Texas and California. Sarah will primarily be handling property and casualty, workers' compensation, and automobile subrogation cases throughout Texas, Oklahoma, and New Mexico, and will be assisting MWL's Los Angeles branch office as needed. She believes strongly in preparation and aggressive investigation of subrogation potential on behalf of a client before suit is filed. When Sarah isn't working, she enjoys playing guitar, getting outdoors for hikes and swimming, and going on adventures with her dog, Rodeo. Sarah will provide additional experience to one of the busiest branch offices within the MWL family. We look forward to the experience and work ethic Sarah brings, and eagerly welcome her to our growing family of subrogation professionals at MWL. On behalf of the partners, associates, legal assistants, and support staff here at MWL, we would like to welcome Sarah. We would also invite our clients and friends to introduce themselves to Sarah, who can be reached at sbyrom@mwllaw.com.



Merry Christmas and Happy New Year!!



Matthiesen, Wickert & Lehrer would like to thank our clients and local counsel for a wonderful year and wish you all a Merry Christmas, Happy Hanukkah, and a blessed Holiday Season. Regardless of what Christmas means to you, we hope your Christmas is full of holiday cheer shared with family and friends. For us at Matthiesen, Wickert & Lehrer, Christmas is just the beginning – a simple, yet wonderful reminder of Christ's humble beginning as a human child in this world. It's only a beginning because His birth merely set the stage for the power, glory, and salvation that would be revealed in His life, death, and resurrection come Easter morning. An important part of the holiday season is remembering those who make the holidays meaningful to us. We would like to wish you and your family all the happiness and prosperity this Season can bring and may it follow you throughout the coming year!

Verdicts and Settlements

Indiana law presents unique challenges to subrogation efforts, including the Indiana Lien Reduction Statute, which can decimate a subrogation interest if not prepared for and defended against. In a recent Indiana case handled by MWL's **Stephen Smith**, the employee was knocked from a ladder on his truck, causing his legs to become trapped in the axles of the truck which struck him. The employee later died from his injuries. Occupational accident death benefits were paid, including \$50,000 in survivor benefits which, according to Indiana's probate statute, I.C. § 29-1-14-1, "inure to the exclusive benefit of the widow or widower as the case may be, and to the dependent children..." In a rather unique defense, the parties also argued that Indiana's probate statute, barred subrogation claims against the "estate" not filed within 9 months of the employee's death. Steve rebutted this argument through the text of the wrongful-death statute, I.C. § 34-23-1-1, as well as caselaw distinguishing damages in a wrongful-death proceeding from assets of a decedent's estate. Ultimately, the trial court ruled in favor of the subrogated carrier which was vital in securing a recovery on the occupational accident subrogation lien.



Webinar | Subrogating California Wildfire Claims

Wildfire loss subrogation involves protecting the rights of insurance carriers whose insureds suffered property damage or even bodily injury as a result of a wildfire that was caused by the negligence or recklessness of a third party. This webinar will take you through the steps to handling fire loss subrogation from the beginning. It will help identify who the typical insureds and defendants are in wildfire loss claims, what experts you should consult with when investigating the scene of the fire, what inverse condemnation is and what it means for your case, what the potential causes of action are in a complaint, how to handle motions to remove the action to federal court, how to conduct discovery, and how to protect the insured's subrogation rights. This course will benefit claims professionals of all levels of expertise.



Date: February 10, 2022
Time: 11:00 - 12:00 p.m. (CST)
Presenter: Katherine Sandoval
Presenter: Zahra Aziz
Cost: Complimentary

[Click HERE](#)
To Register For This Webinar

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.

