

MARCH 2022 SUBROGATION NEWSLETTER

What Do You Really Know About Your Subrogation Counsel's Cybersecurity?

What do you really know about the strengths and weaknesses of the cybersecurity measures taken by the subrogation counsel and recovery vendors you engage to assist with subrogation recoveries? The average cost of a data breach involving healthcare data is now \$9.42 million per incident; and ransomware attacks are averaging \$4.62 million per incident. Cyber attackers have actively begun turning their sights on insurance companies and law firms. You are only as secure as your weakest link; and that weak link might be the lawyers you entrust to handle your subrogation claims. It is vitally important that insurance companies ask the question that they dread asking and many law firms dread answering: "Is our data secure?"



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Hawai'i Supreme Court Rules In Favor Of Workers' Compensation Subrogation



Workers' compensation carriers doing business in Hawai'i held their collective breathe for 2021 waiting on the Supreme Court to decide whether it would incorporate the common law Made Whole Doctrine to workers' compensation liens. The case, *Moranz v. Harbor Mall, LLC* had been silently before the State's highest court since May 13, 2021, and was submitted without oral argument and without any amicus briefs. The case concerned subrogation practitioners because

the Court of Appeals decided that equitable considerations and defenses were inapplicable to statutory workers' compensation liens. On January 11, 2022, we received great news! The Hawai'i Supreme Court handed workers' compensation subrogation a much-needed victory.

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Pennsylvania Reneges Once Again On Social Bargain Of Workers' Compensation Subrogation

A March 10, 2022, Pennsylvania Superior Court appellate decision underscores why the cost of workers' compensation insurance for small businesses is the highest in the northeast United States. The decision confirmed the carrier has no right to seek a recovery, nor can it force an employee to seek recovery to satisfy a workers' compensation statutory lien. The constant tug of war subrogation professionals witness and struggle with is between employers/small businesses in a state and that state's trial lawyer lobby. Trial lawyers tirelessly attack subrogation rights because it consumes valuable dollars that could be going to their clients instead of the "rich" insurance companies. But we must remember the history of workers' compensation subrogation and the purposes it fulfills.



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MWL Welcomes Frank G. Mackoul II To The Firm



MWL is pleased to welcome **Frank Mackoul II**, a new senior litigation counsel, to the firm's Jacksonville, Florida branch office. Frank brings a wealth of litigation and trial experience to MWL as well as a rather unique and useful background. Frank is a U.S. Marine Corps Veteran. He served two combat tours of duty in Iraq as an Assault Helicopter pilot. He was awarded two Air Medals for successfully completing over 100 flying combat missions. Additionally, he was an Instructor Pilot teaching Advanced Aerodynamics to incoming, military flight students where he was awarded the Navy/Marine Corps Commendation Medal and named Flight Instructor of the Year. Frank will be an invaluable addition to the firm's aviation subrogation section. Frank will provide additional experience to one of the fastest growing branch offices within the MWL family. We look forward to the experience and work ethic Frank brings to the firm, and eagerly welcome his contribution to our growing family of subrogation professionals here at MWL.

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Webinar | Understanding Form 5500s, Responding to 1024 Document Requests, and Addressing Arguments on Plan Delivery



(Health Subrogation Webinar Series Part 3)

If you've made sure your plan has strong subrogation and reimbursement terms, opposing counsel will be eager to put you to your proof on whether the plan is "truly" self-funded, and whether every piece of paper the sponsor has ever touched unambiguously proves that. Does your plan need to amend its prior tax filings or prove that it physically put a copy of the Plan Document in a specific participant's hand? Tune in to find out.

This webinar will explain how to respond to requests for documents and how to explain the importance of those documents to opposing counsel. Unlike the informational session he attended, we'll cover the entire 5500, not just box 9.

Date: April 26, 2022
Time: 11:00 - 12:00 p.m. (CST)
Presenter: **Ryan Woody**
Presenter: **Nancy Case**
Presenter: **Catherine Dowie**
Cost: Complimentary

[Click HERE To Register](#)

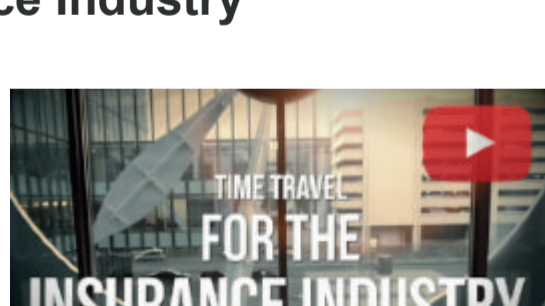
Verdicts and Settlements

Jim Busenlener, managing partner of MWL's New Orleans office, recently recovered \$225,000 for reimbursement of a Louisiana workers' compensation lien where liability was questionable and tort counsel for the claimant threatened to drop the case shortly before trial unless the lien was completely waived. By intervening and being active in the third-party case, Jim was able to call plaintiff counsel's bluff and show that the workers' compensation carrier was ready to try the third-party case, if necessary; resulting in an advantageous settlement. Jim also recently recovered \$680,500 in reimbursement of a Texas workers' compensation lien where a pipeline rupture caused an explosion, injuring a worker. Two different pipeline companies were potentially at fault, but one was the beneficiary of a contractual waiver of subrogation. Jim was able to successfully navigate the waiver and obtain a full recovery.



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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