

APRIL 2022 SUBROGATION NEWSLETTER

Alabama Court of Appeals Denies Workers' Comp Subrogation Against Employer's UM/UIM Policy

O'Brien v. Mobile Pub. Lib., 2022 WL 829245 (Ala. App. 2022). Workers' compensation subrogation remains an intense struggle between the powers of good and evil; with insurance carriers attempting to preserve their rights to seek reimbursement of claim payments made necessary through the negligent acts of tortfeasors and the employee's attorney doing everything in his power to destroy those rights. Hanging in the balance of this tug of war is the reduction of the experience modifiers and ultimately workers' compensation premium reductions in coming years for businesses small and large throughout the country. Nowhere is this political and legal tug of war more evident than in the great state of Alabama.



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Kansas Court of Appeals Does About-Face Allowing Workers' Comp Subrogation Against UM/UIM Policies



Turner v. Pleasant Acres LLC, 2022 WL 815834 (Kan. App. 2022). On the same day as the Alabama Court of Appeals issued its ruling in *O'Brien v. Mobile Public Library*, attempting to curtail the rights of a workers' compensation carrier against uninsured or underinsured motorists' (UM/UIM) benefits, the Kansas Court of Appeals was doing exactly the opposite. For years, Kansas has not allowed a workers' compensation carrier to subrogate or recover its lien from benefits paid by an UM/UIM carrier. However, that position has been questioned and some argue it has been overruled based on recent case decisions.

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The Only Way To Increase Your Net Subrogation Recoveries

Subrogation Shortcuts Lead To Drastically Smaller Recoveries. For decades, the insurance industry have been paying special attention to the attorneys' fee line item in their claim department budgets and have been going to great lengths to find the perfect balance between keeping litigation fees and costs in check and maintaining high quality representation. Successful subrogation requires that the pointy end of the subrogation sword – a genuine threat of litigation – must always be hanging over your adversary's head. Value, experience, legal knowledge, availability, prompt and thorough reporting, and the willingness to strong-arm top dollar recoveries in every matter entrusted to it are the trademarks of a good litigation law firm. Everything else is smoke and mirrors. Successful subrogation requires the best – not the cheapest. There are no short cuts in life, and that includes subrogation.



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Webinar | Post-Montanile Tracing and Stop Loss 101

(Health Subrogation Webinar Series Part 4)

Setting up special needs trusts, ignoring mid-sized liens entirely, and tracing settlement funds through what seems like a game of three-card monte. Oh my! The post-Montanile wave of strategies can sound even more daunting than lions and tigers and bears. We all know that a self-funded ERISA plan needs to be prepared to act quickly to protect its rights, but what actions should it take exactly? Is it time to file suit? Who should be named? Is seeking a temporary restraining order or injunction a good idea?

This webinar will explain what to expect when opposing counsel starts to imply that they'll use a creative strategy to avoid a lien in the wake of Montanile. As a bonus, we'll be offering a refresher on how to respond to arguments about the impact of stop loss coverage on a self-funded ERISA plan's funding status, and the amount of its reimbursement interest.



Date: May 24, 2022
Time: 11:00 - 12:00 p.m. (CST)
Presenter: [Ryan Woody](#)
Presenter: [Nancy Case](#)
Presenter: [Catherine Dowie](#)
Cost: Complimentary

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Verdicts and Settlements

Coverage disputes are the second cousin to insurance subrogation, and the two often merge when handling subrogation claims. On April 8, 2022, MWL partner Eric Goelz tried and won a coverage dispute case involving a subrogation case being handled for an insurance client. The case was tried in Pierce County, Wisconsin. The case stemmed from an August 20, 2019 accident involving our client's tractor trailer being struck by the defendant, who was insured by Progressive Insurance. Our client paid \$113,000 in property damage.



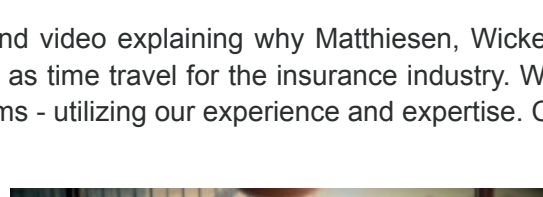
When presented with our subrogation claim, Progressive rescinded their policy claiming that their insured failed to disclose his girlfriend and her daughter as other drivers in his household when he applied for insurance. They additionally tried to claim the daughter's use was without consent. Progressive's insured had difficulty with all of the facts and issues from the point of his application right through trial. He agreed with Progressive's investigator about an address and to living with his girlfriend and her daughter at the time he applied for insurance. However, when the insured applied for the policy, Court records showed irrefutably that on the same day, he signed the application he was in a hearing wherein his (former) girlfriend secured a restraining order. The Court record showed that he had moved out some time before the hearing. The address on the application was the home of the applicant's sister which was different than the address shown on the accident report as both his and his girlfriend's daughter's. As it turns out, the couple reconciled months later and moved in together. He believed he had contacted with his agent about this but their records, while showing an interest in a change of address and showing that this question was cleared, did not show who cleared it or any new information on his residence. The agent testified that she did not go over the residency portion of the application but instead just asked him if everything was the same as when he had insured with them before.

On cross-examination, the Progressive investigator testified he never spoke with the agent, choosing instead to rely on another person in the same office who said that the section would have been reviewed and explained. Progressive never backed off of its rescission/denial and even claimed their insured should have notified them when he moved back in with his girlfriend and her daughter. Progressive continued to correspond with the girlfriend and her daughter at the address of the insured's sister, an address at which they never resided even though Progressive's investigator insisted she had confirmed by a report not included in their file materials. At trial, Eric was able to point out the glaring inadequacies in the investigation and the court found that there was no deception or misrepresentation ordering that the policy be reinstated and coverage provided.

This case demonstrates the frequent need for qualified subrogation counsel to also be ready to handle coverage disputes in order to recover claim dollars. If you have any cases involving denied coverage that need review, contact Eric Goelz at egoelz@mw-law.com.

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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