

OCTOBER 2021 SUBROGATION NEWSLETTER

Which Workers' Compensation Benefits Can Be Subrogated?

It's the question every claims professional and trial attorney claims to know but few fully understand. In addition to paying for medical expenses, death benefits, funeral costs, and/or indemnity benefits for lost wages resulting from a compensable injury, workers' comp carriers also expend considerable dollars for case management costs, medical bill audit fees, independent medical exam (IME) fees, expert fees, rehabilitation benefits, third-party vendor costs, nurse case management fees, workers' comp case attorneys' fees, and the like. They pay significant attorney's fees on permanency awards and incur other expenses in conjunction with the handling and adjusting of workers' comp claims. Which of these benefits are recoverable in workers' comp subrogation remains a point of considerable confusion and contention.



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Court of Appeals Rejects Carrier's Challenge To Settling Around Workers' Compensation Lien



Moreci v. Scaffold Solutions, Inc., 2021 WL 4397397 (Calif. App. 2021). A valiant effort by a California workers' compensation carrier to make it more difficult for an employee to argue employer fault and settle around a workers' compensation carrier's statutory lien and right of reimbursement fell on deaf ears recently, when the California Court of Appeals rejected the notion that the workers' compensation carrier has adequate standing to challenge the employee's attorney from assuming the defense of the carrier's subrogation action which remained after the employee and the defendant settled around the carrier's subrogation interests. California remains a state in which it is necessary to engage subrogation counsel to protect workers' compensation subrogation liens.

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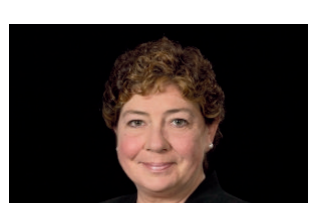
Wisconsin UM/UIM Carrier Cannot Reduce Payments By Amount Of Reimbursed Workers' Compensation Benefits

Secura Sup. Ins. Co. v. Est. of Huck, 2021 WL 4449249 (Wis. App. 2021). A new Wisconsin Court of Appeals decision has ruled that an uninsured/underinsured (UM/UIM) auto insurance carrier cannot reduce UM/UIM payments to its insured by the amount of workers' compensation benefits the insured received, if the insured had to reimburse those benefits to the employer or subrogated workers' compensation carrier.



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MWL Welcomes Constance Smith To The Firm



MWL is pleased to welcome **Constance A. Smith** as a senior litigation associate in our Santa Ana, California branch office. Constance's practice will focus on all lines of subrogation with an emphasis on medical malpractice. Constance boasts an undergraduate degree from the University of Florida in Gainesville, Florida, where she received her Bachelor of Science in Nursing. Before attending law school, she worked 13 years as a Registered Nurse. Constance graduated *cum laude* from St. Mary's University Law School in San Antonio, Texas. We look forward to utilizing the vast amount of nursing and medical experience and insight Constance brings to the firm, including her extensive medical malpractice litigation experience. On behalf

of the partners, associates, legal assistants, and support staff here at MWL, we would like to welcome Constance to our firm. We would also invite our clients and friends to introduce themselves to Constance, who can be reached at csmith@mwllaw.com.

Webinar | Which Workers' Comp "Benefits" Can Be Subrogated?

In addition to paying for medical expenses, death benefits, funeral costs, and/or indemnity benefits for lost wages resulting from a compensable injury, workers' comp carriers also expend considerable dollars for case management costs, medical bill audit fees, IME fees, expert fees, rehabilitation benefits, third-party vendor costs, nurse case management fees, workers' comp case attorneys' fees, and the like. Which of these benefits are recoverable in workers' comp subrogation remains a point of considerable confusion for subrogation professionals, lawyers, judges.

This webinar walks through the law in an assortment of states regarding whether and when such payments can be recovered. And when there is no law, the attendees will learn how to craft arguments in favor of doing so anyway.



Date: December 2, 2021
Time: 10:00 - 11:00 a.m. (CST)
Presenter: **Gary L. Wickert**
Co-Presenter: Emily N. Bates
Cost: Complimentary

[Click HERE to Register For Webinar](#)

Introduction to Matthiesen, Wickert & Lehrer, S.C.



Ashton Kirsch will be presenting a brief introduction to MWL and outline the premier services that we provide our clients on November 16, 2021 at 10:00 -10:30 a.m. (CST). If you or your company are new to MWL and have considered working with our firm, then this will be a great opportunity for you to get to know more about us. Ashton will introduce you to our national recovery program and explain why our unique practice allows you to maximize subrogation recoveries. Ashton will be available for a brief Q/A following the presentation. To learn more or to register for this presentation, click on the below link.

[Click HERE To Register For Webinar](#)

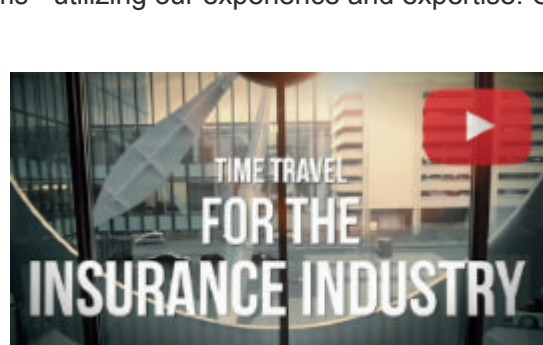
Verdicts and Settlements

Katherine Sandoval, the managing partner of our California office, recently settled a case in which the employee was killed and our client was paying out death benefits. Initially, there was a claim that there was no coverage because the policy did not allow travel outside of the 250-mile perimeter, but we were able to uncover the policy and find an MSC-90 endorsement for \$750,000. The entire \$750,000 was tendered over to both the Estate for the Decedent's and our Client. Katherine was able to broker a settlement in which we recovered more than \$225,000, plus a release of liability for all future payments that our client would have had to made. For questions on California subrogation, please contact Katherine at ksandoval@mwllaw.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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