

MAY 2022 SUBROGATION NEWSLETTER

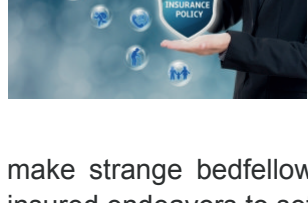
Subrogating Shifting and Falling Cargo Cases

MWL sees more than its fair share of subrogation cases involving work-related injuries caused by shifting and falling cargo. If a truck's cargo is not properly loaded or secured, the resulting workers' compensation claims can be significant. Cargo must be loaded and secured carefully, in conformity with federal regulations, and trailer doors must be opened cautiously or an employee can be injured or killed. Proving who was at fault can be challenging and prompt investigation must be a priority when a falling cargo case is received.



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Insurance Coverage And The Subrogation Professional

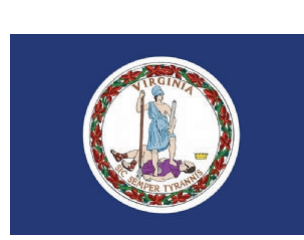


Subrogation professionals might read the title to this article and wonder what subrogation and the confounding labyrinth of insurance coverage might have in common. When a subrogation effort is stonewalled because the responsible tortfeasor's insurance carrier has issued a reservation of rights or even an outright denial of coverage, that is when true subrogation warriors rise to the occasion. Insurance coverage and subrogation certainly appear to make strange bedfellows, but coverage also sneaks into the subrogation bedroom when an insured endeavors to settle a case on its own, thereby affecting its insurer's subrogation rights.

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Virginia Court of Appeals Rejects Attempt To Limit Workers' Comp Carrier's Reimbursement To "Like Damages"

Stowers v. Georgia Pacific, LLC, 2022 WL 903486 (Va. App. 2022). Trial lawyers in Virginia have been trying for decades to convince that state's courts to rule that a workers' compensation carrier is not subrogated to non-economic damages awarded or recovered in a third-party tort action. On March 29, 2022, the latest such effort was turned away by the Virginia Court of Appeals.



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Matthiesen, Wickert & Lehrer, S.C. Welcomes Zeeshan Iqbal To The Firm



MWL is pleased to welcome Zeeshan Iqbal, a new litigation associate, to the firm's Santa Ana, California branch office. Zeeshan will primarily be handling property and casualty, workers' compensation, and automobile subrogation cases throughout California and the Pacific Northwest. He believes strongly in preparation and aggressive investigation of subrogation potential on behalf of a client as well as making every effort possible to resolve a matter before suit is filed. His goal is to win the case before the complaint is even filed. Zeeshan will provide support to one of the busiest branch offices within the MWL family. We look forward to the work ethic he brings to the firm, and eagerly welcome him to our growing family of subrogation professionals at MWL. We would also invite our clients and friends to introduce themselves to Zeeshan, who can be reached at ziqbal@mwllaw.com.

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Webinar | ERISA Subrogation 101: Back to Basics



(Health Subrogation Webinar Series Part 5)

We're taking a step back this month. Rather than diving deep into a couple of narrow topics, we'll be covering the fundamentals of setting up a subrogation file, common issues with opposing parties, and, most importantly, practical tips to streamline your cases and maximize recoveries. What key points should you be looking for in a Plan Document? How do you figure out the available sources of recovery? What law applies to the Plan's rights? Who is the Plan fiduciary and what does a Claims Administrator do? We'll review common issues with claims lists, and break down key cases and statutes that should be a part of your regular vocabulary.

Ryan Woody, Nancy Case, and Catherine Dowie will share some tips and tricks that you can add to your playbook no matter what stage of the file you are handling.

Date: June 21, 2022

Time: 11:00 - 12:00 p.m. (CST)

Presenter: Ryan Woody

Presenter: Nancy Case

Presenter: Catherine Dowie

Cost: Complimentary

[Click HERE To Register](#)

WHEN PRODUCTS FAIL: Monthly Product Recall Updates



According to the U.S. Consumer Product Safety Commission (CPSC), defective or unsafe products cause 29.4 million injuries and 21,400 deaths every year, resulting in an estimated \$700 billion in injuries, deaths, and property damage. Every one of those claim dollars represents subrogation potential if we know where and how to look for it. When a defective or unsafe product is involved, the fact that the product is or was subject to a recall announced by the CPSC or a voluntary recall by the manufacturer almost always is a big step in helping subrogation counsel meet their burdens of proof in order to recover subrogation dollars. Such recalls help establish a key element of proof in strict product liability cases; viz., that the product was defective when it left the manufacturer's possession and control. MWL has partnered with **Envista Forensics**—a global, multi-disciplinary, and highly-skilled forensic engineering partner trusted by insurance claims and consultants worldwide—to assist in the recognition of subrogation potential for our clients across the hundreds of new product liability subrogation cases entrusted to us each month. Below are some significant product recalls to be aware of.

- **Mercedes Benz ML, GL, and R-Class Vehicles from 2006 through 2012.** Mercedes-Benz is telling the owners of more than 292,000 vehicles in the U.S. to stop driving them due to a problem that could cause the brakes to fail. The German automaker is recalling the vehicles and says it will offer free towing so the owners can get them to a dealership for service. The recall covers certain ML, GL and R-Class vehicles from the 2006 through 2012 model years. Mercedes says in documents posted May 12, 2022, by the National Highway Traffic Safety Administration that moisture can get into a brake booster housing and cause corrosion. That can cause a vacuum leak, which would decrease brake performance.
- **Elite Comfort Solutions Nectar® Premier Mattresses.** Fails to meet federal flammability standards. Sold Exclusively at NectarSleep.com. 700 units affected.
- **Best Buy Insignia™ Air Fryers and Air Fryer Ovens.** The air fryers and air fryer ovens can overheat, posing fire and burn hazards. 635,000 units affected.
- **Santa Cruz Heckler 9 Electric Bicycles.** The latch mechanism that holds the battery in place can malfunction, causing the battery to dislodge from the frame and fall to the ground, posing a fall hazard to the rider. Additionally, the latch spring can cause additional wear on the battery housing over time, posing a fire hazard. 1,600 units affected.

For information on additional product recalls, visit [The Latest Product Recall Guide | Envista Forensics](#). If you should need assistance with product liability cases or if you have any subrogation questions, please contact Gary Wickert at gwickert@mwllaw.com.

Verdicts and Settlements

Rich Schuster recently recovered \$345,000 in settlement of an in-suit claim involving a fire at a cold storage facility. His client insured two businesses that owned/used the facility. The fire originated from a 50-year old semi-tractor. The semi had undergone a frame rail replacement approximately one year prior to the fire, and investigation revealed the battery cables had been secured using zip-ties after the frame rail replacement. Mr. Schuster pursued the company that had performed the frame rail replacement. Arcing from the cables, which eventually fell and contacted a cross member, caused the fire. The primary defendant was well defended by a prominent fire and explosion defense firm. After expert discovery, and a long delay perpetuated by the defendant being allowed to add parties after discovery, the case resolved at mediation.



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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