

## JULY 2022 SUBROGATION NEWSLETTER

### Rise In Pedestrian Accidents Presents New Subrogation Opportunities

A new analysis of pedestrian safety by the Governors Highway Safety Association (GHSA) reveals pedestrian accidents are sharply on the rise. In fact, the report reveals an average of 22 pedestrians per day were struck and killed by vehicles in the U.S. in 2020 and that number is on the rise. Claims adjusters and subrogation professionals should not assume that a pedestrian is at fault merely because they were struck while crossing the road. Society is changing and the burden and duty to avoid a collision is shifting to the driver of the vehicle.


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### Louisiana And New York Courts Becomes First To Confirm Liability For COVID-19 Shutdowns



These rulings have sent shivers down the spine of an already fragile insurance industry. But there are still further appeals in store for each of these decisions. The jury is still out. Should liability for government mandated COVID-19 shutdowns be dropped on the heads of CGL carriers, the concept and possibility of subrogation potential raises even more questions and concerns.

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### The Importance of Clarity In Subrogation Stipulations and Agreements

When claims adjusters, subrogation professionals, and/or subrogation lawyers document a settlement or stipulation with an insured's or employee's attorney regarding a subrogation interest, getting all the right words in the right order is only half of the job. If you are not aware of and thinking about the ramifications, options, and variables which are at play, chances are you will wish you had another opportunity to draft that stipulation or settlement agreement. Far too many learn the hard way.


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### Verdicts and Settlements

**Large FEHBA Lien Recovered In Full Despite Client Expecting Only 50%.** MWL Partner **Nancy Case** was engaged by an FEHBA plan for subrogation representation after the plan was approached by a law firm advising that they were retained to "negotiate the lien" on behalf of the plan member. The Federal Employee Health Benefit Act (FEHBA) is the federal employees' counterpart to ERISA in the private sector. The U.S. government sponsors more than 350 different health plans covering more than eight million federal employees, retirees, and beneficiaries through the FEHBA—a comprehensive statutory and regulatory scheme that establishes the Federal Health Benefits Program and governs a comprehensive program of health insurance for federal employees.



MWL was retained to handle the negotiations on behalf of the plan. The client advised Nancy that the settlement was "strictly confidential" and acknowledged that they would have to agree to a "proportionate reduction" amounting to 50% of the \$194,739.68 in payments they had made. Nancy pushed back appropriately, obtaining and requiring execution of a non-disclosure agreement regarding the settlement terms. In the course of digging and reviewing a voluminous claim file, MWL determined that the defense, as part of the settlement, technically agreed to be responsible to satisfy all liens, including our client's. MWL made an appropriate demand for enforcement of the literal terms of reimbursement pursuant to the terms of the plan and existing FEHBA law and was able to recover 100% of the full \$194,739.68 lien for the plan.

This case is an excellent reminder never to accept anyone else's lien reduction calculation as "fact." MWL adds tremendous value when assisting with lien negotiations when waivers are alleged or significant reductions are being demanded. If for any reason a reimbursement offer from a plan member doesn't seem right, engage us to evaluate and/or negotiate on your behalf. For questions regarding FEHBA and subrogation, contact Nancy Case at [ncase@mwllaw.com](mailto:ncase@mwllaw.com).

#### Webinar | Med Pay and PIP Subrogation 101



Med Pay and PIP Subrogation 101 is a one-hour presentation focused on the basic overview of subrogating Med Pay and PIP losses throughout the country. This webinar will focus on the applicable coverages, no fault laws, contractual and statutory subrogation provisions, the Made Whole Doctrine, the Common Fund Doctrine, and interstate conflicts of law.

**Date:** August 16, 2022  
**Time:** 10:00 - 11:00 (Central)  
**Presenter:** Mark A. Solomon  
**Cost:** Complimentary

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#### Webinar | Navigating No-Fault Benefits



(Health Subrogation Webinar Series Part 7)

Catherine Dowie, Nancy Case, and Michigan PIP expert Stephen Smith will walk you through the questions you should be asking, and sharing tips and tricks on how to deal with participants who try to retain no-fault benefits improperly, providers who are trying to overbill to avoid a fee schedule rate, and first-party carriers who refuse to acknowledge that terms specifying that your self-funded ERISA Plan is secondary to their coverage is enforceable. While this webinar will offer advice applicable across the country, we'll offer a deep dive into states with unique no-fault issues like Michigan, New York, New Jersey, and Florida.

**Date:** August 23, 2022  
**Time:** 11:00 - 12:00 p.m. (CST)  
**Presenter:** Nancy Case  
**Presenter:** Catherine Dowie  
**Presenter:** Stephen Smith  
**Cost:** Complimentary

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### 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 help 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.

- **Danby Free-Standing and Slide-in Electric and Gas Ranges.** Ranges can tip over when heavy weight is placed on an open oven door and the anti-tip-over bracket is not secured to the wall or floor. This can cause a tip-over hazard and risk of burn injuries from hot food or liquids.
- **Schneider Electric Electrical Panels.** Hazard: Thermal Burns and Fire Hazards. The load center can plug-on and cause thermal burns and/or fire hazards. Model(s) Affected: Square D QO Plug-On Neutral Center (recalled circuit breaker boxes were manufactured between February 2020 and January 2022, with date codes between 200561 and 220233).
- **Fugleman UT10E and UT10X Utility Terrain Vehicles.** Hazard: Overheating and Fire. The cockpit rear panel between the seats and the cargo bed can overheat and melt the plastic, which poses the risk of fire.

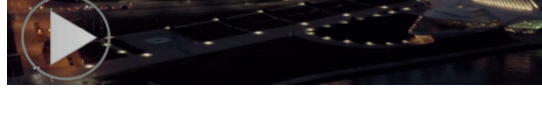
For information on additional product recalls, visit [The Latest Product Recall Guide | Envista Forensics](#). If you should need assistance with product liability cases or if you have any subrogation questions, please contact Gary Wickert at [gwickert@mwllaw.com](mailto:gwickert@mwllaw.com).

### 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!



MATTHIESEN, WICKERT & LEHRER, S.C.  
 America's Subrogation Law Firm



### Join MWL's LinkedIn Subrogation Support Network Group!

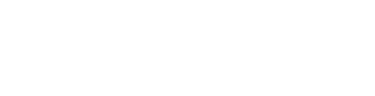
We welcome you to join our LinkedIn **Subrogation Support Network** Group! It is a community managed by Matthiesen, Wickert & Lehrer, S.C., that offers insurance professionals a place to interact, discuss subrogation insurance-related topics and issues, ask subrogation questions, and keep abreast of 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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