

DECEMBER 2022 SUBROGATION NEWSLETTER

First Come, First Served: Subrogating Multiple Claims In Excess Of Policy Limits In All 50 States



Subrogation professionals are routinely faced with minimum limits scenarios which complicate otherwise straightforward subrogation cases. When a third-party liability carrier's insurance limits are insufficient to pay the claims of multiple claimants, the carrier must begin to assess the hierarchy of the claimants – how to slice the insured's pie. The carrier must also be familiar with the specific laws and procedures in their jurisdiction. [Read More....](#)

Illinois Supreme Court Limits Tenant “Implied Coinsured” Fiction To Subrogation Cases

The ability of a landlord's property insurer to subrogate against a tenant for property damage caused by the negligence of the tenant varies greatly from state to state and often hinges on the specific language of the lease involved. On November 28, 2022, the Illinois Supreme Court reversed the Court of Appeals, holding that the tenants were not insureds and, therefore, were not entitled to defense or indemnity. [Read More....](#)



Virginia Guts Ability Of Workers’ Compensation Carrier To Subrogate Via Special Arbitration



Nowhere in the subrogation world is the adage “*power of knowledge*” truer than in arbitrating workers’ compensation subrogation claims. For this reason, it is up to subrogation professionals to either be knowledgeable on state specific issues, or work hand in hand with national recovery counsel to expedite arbitration of even these smaller claims. [Read More....](#)

MWL Welcomes Darin G. Tabor To The Firm

MWL is pleased to welcome Darin Tabor, a new Sr. Associate Attorney, who brings a wealth of legal experience in the insurance industry. He joins the litigation team in our Santa Ana, California branch office, handling subrogation matters involving workers’ compensation, large loss property, auto insurance, and assisting with that office’s large docket of pending wildfire subrogation. Darin is licensed in California and is currently preparing to take the bar examination in New Hampshire, where he will help MWL with its growing book of New England subrogation. [Read More....](#)



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.

JBR Solutions Aduro Surge Protector: The Aduro surge protectors contain incorrect polarization and poorly soldered connections, posing shock and fire hazards.

2021 Polaris RZR Pro XP 4 Premium Recreational Off-Road Vehicles: A fuel leak can occur at the fuel pump assembly joint on the fuel tank in close proximity to a hot surface, posing a fire hazard.

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@mwll-law.com

Merry Christmas and Happy New Year!

Matthiesen, Wickert & Lehrer would like to thank our clients and local counsel for a wonderful year and wish you all a Merry Christmas, Happy Hanukkah, and a blessed Holiday Season. Regardless of what Christmas means to you, we hope your Christmas is full of holiday cheer shared with family and friends. For us at Matthiesen, Wickert & Lehrer, Christmas is just the beginning – a simple, yet wonderful reminder of Christ’s humble beginning as a human child in this world. It’s only a beginning because His birth merely set the stage for the power, glory, and salvation that would be revealed in His life, death, and resurrection come Easter morning. An important part of the holiday season is remembering those who make the holidays meaningful to us. We would like to wish you and your family all the happiness this season can bring and may it follow you throughout the coming year!



Upcoming Webinars



Uniquely Louisiana: Subrogating In The Bayou State

Tuesday, January 10th at 10:00 - 11:00 a.m. (Central). Presented by **James Busenlener**, managing partner of MWL’s New Orleans, Louisiana branch office. This webinar will cover the pitfalls unique to the only U.S. legal system based on civilian law and the Napoleonic Code and navigate you through property, auto, and workers’ comp subrogation in the Bayou State.

[Learn More](#)



California Medical Payment Reimbursement

Wednesday, February 1st at 11:00 - 12:00 p.m. (Central). Presented by **Katherine Sandoval**, managing partner of MWL’s Santa Ana, California branch office. This webinar will cover where reimbursement rights come from, how to give proper notice of reimbursement of medical payments, common defense seen during the recovery process, litigating medical payment recovery, among other topics.

[Learn More](#)

Verdicts and Settlements

Matt Fricker represented a workers compensation carrier with a lien of approximately \$286,000. The accident occurred during a building renovation and the insured was the general contractor. The employee was injured when an HVAC contractor failed to secure a section of duct that fell and landed on the employee. The employee sustained a severe traumatic brain injury. Attorney Fricker worked closely with the employer and the employee’s counsel to prove that the employer bore no fault for the accident. Following a trial in Dane County Circuit court, the jury found the HVAC contractor 100% at fault for the accident and awarded \$8.8M to the employee. As a result, the workers compensation carrier will recover its entire lien and receive a multi-million-dollar cushion against any future claims. The workers compensation carrier also recovered all the attorneys’ fees and expenses it incurred during the action.



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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