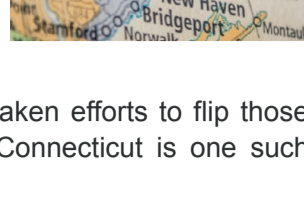


## JANUARY 2023 SUBROGATION NEWSLETTER

### Trial Lawyers Fail in Bid to Make Connecticut A Made Whole Nightmare

Trial lawyers have for years been threatening and filing class action lawsuits in multiple states in an effort to thwart their arch nemesis—subrogation. A growing list of states such as Montana, Washington, Arkansas, and New York have seen class actions and bad faith lawsuits filed simply because an insurance company made a subrogation demand or took some efforts to recover its subrogated interest before it was established that its insured had been made whole for all of its damages. Trial lawyers in other states have undertaken efforts to flip those state into anti-subrogation paradises by attempting the same thing. Connecticut is one such state. [Read more....](#)



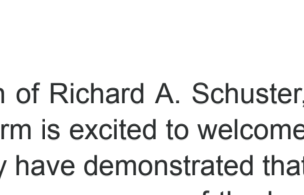
### Mixed Damages and Made Whole in Iowa: Unraveling Yarn to Effectuate Recovery



What you don't know can't help you. That is certainly the case in Iowa when plaintiff's attorneys claim no obligation to reimburse a carrier exists based on a general assertion that the insured was not made whole. This article deals with application of the Made Whole Doctrine under Iowa law when an insured sustains both personal injury and property damages as a result of an accident. [Read more....](#)

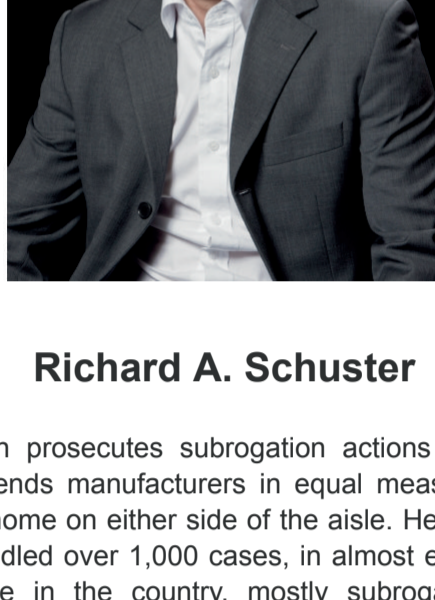
### Oklahoma Court of Appeals Rules That Workers' Compensation Carrier Can Subrogate Death Benefits

Oklahoma's workers' compensation laws have endured a long and tortured constitutional tug-of-war between trial lawyers and business advocates/subrogation professionals. In 2011, Oklahoma completely overhauled its workers' compensation laws, entitling the new legislation the "Workers' Compensation Code." Sections of the new Code were challenged and were found by the courts to be unconstitutional. [Read more....](#)



### Shareholder Announcement

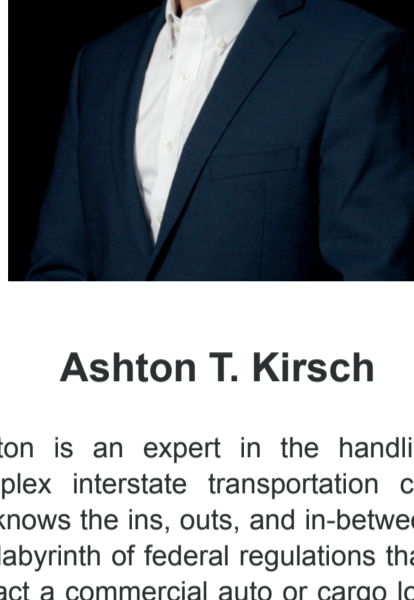
Matthiesen, Wickert & Lehrer, S.C. is pleased to announce the election of Richard A. Schuster, Esq. and Ashton T. Kirsch, Esq., to shareholder status in the firm. The firm is excited to welcome these two extremely talented attorneys as shareholders of our firm. They have demonstrated that they have the legal skills, dedication, and work ethic necessary to become an owner of the law firm, making them both extremely valuable to our firm and to our clients' success.



**Richard A. Schuster**

Rich prosecutes subrogation actions and defends manufacturers in equal measure, at home on either side of the aisle. He has handled over 1,000 cases, in almost every state in the country, mostly subrogation matters involving fires and product liability defenses for manufacturers. His ability to communicate in Mandarin Chinese has been an advantage on both sides.

[Read More](#)

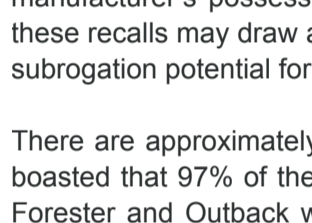


**Ashton T. Kirsch**

Ashton is an expert in the handling of complex interstate transportation claims. He knows the ins, outs, and in-between of the labyrinth of federal regulations that can impact a commercial auto or cargo loss. In fact, he has been retained by other attorneys around the nation to serve as an expert on both the MCS-90 Endorsement and Carmack Amendment.

[Read More](#)

### WHEN PRODUCTS FAIL: Monthly Product Recall Updates

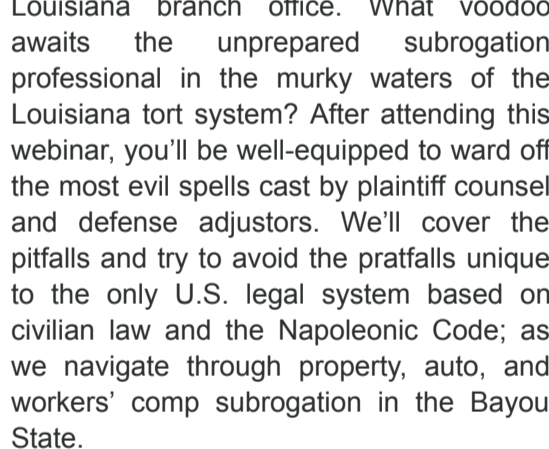


According to the U.S. Consumer Product Safety Commission (CPSC), defective or unsafe products cause 29.4 million injuries and 21,400 deaths every year, resulting in an estimated \$700 billion in injuries, deaths, and property damage. Every one of those claim dollars represents subrogation potential if you 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 that the product was defective when it left the manufacturer's possession and control. MWL strongly believes that notifying our clients about these recalls may draw attention to possible subrogation potential and assist in the recognition of subrogation potential for our clients.

There are approximately 290 million cars on the road in the U.S. Two short years ago, Subaru boasted that 97% of the Subarus bought in the last ten years are still on the road. The Subaru Forester and Outback were on the list of cars most likely to make it past 200,000 miles. Last month, Subaru of America, Inc. announced it was recalling 271,000 Ascent sport utility vehicles with model years between 2019 to 2022 due to increased fire risks and urged owners to park their vehicles outside until repairs are completed. The Ascent is a mid-sized crossover SUV with three-row seating and is sold in some markets as the Subaru Evoltis. Subaru has warned owners to park the vehicle away from structures and outside of garages and to avoid leaving the vehicle unattended while the engine is running. It appears that a wiring connection may have a production-related defect that can result in a fire while the heater is in operation. Excessive heat can result in the melting of the ground terminal and surrounding components. The cause of the problem was a production tool which failed to properly tighten heater ground bolts; and this problem was corrected on April 29, 2022 with the introduction of new tightening tools. [Read more....](#)

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](mailto:gwickert@mwll-law.com).

### Attend Our Webinars

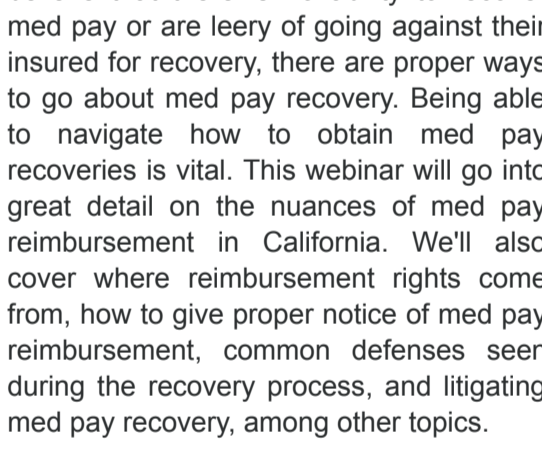


#### Uniquely Louisiana: Subrogating in The Bayou State

**Tuesday, January 10 at 10:00-11:00 a.m. (CST).** Presented by **James Busenlener** and **Brianna Law**, both with MWL's Louisiana branch office. What voodoo awaits the unprepared subrogation professional in the murky waters of the Louisiana tort system? After attending this webinar, you'll be well-equipped to ward off the most evil spells cast by plaintiff counsel and defense adjusters. We'll cover the pitfalls and try to avoid the pratfalls unique to the only U.S. legal system based on civilian law and the Napoleonic Code; as we navigate through property, auto, and workers' comp subrogation in the Bayou State.

This webinar provides 1.0 general TX CE credit and is free to attend.

[Learn More](#)



#### California Medical Payment Reimbursement

**Wednesday, February 1 at 11:00-12:00 p.m. (CST).** Presented by **Katherine Sandoval**, managing partner of MWL's California branch office. While many believe that there is no ability to recover med pay or are leery of going against their insured for recovery, there are proper ways to go about med pay recovery. Being able to navigate how to obtain med pay recoveries is vital. This webinar will go into great detail on the nuances of med pay reimbursement in California. We'll also cover where reimbursement rights come from, how to give proper notice of med pay reimbursement, common defenses seen during the recovery process, and litigating med pay recovery, among other topics.

This webinar provides 1.0 general TX CE credit and is free to attend.

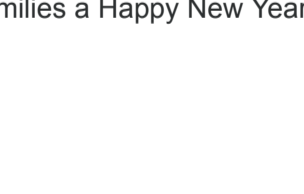
[Learn More](#)

### Do you live in or near the Costa Mesa, California area?

If you live in or near the Costa Mesa, California area, please join us on January 18th from 2:30 - 6:00 p.m. (PST) for two CE presentations (CA credit) followed by Happy Hour at Maggiano's Little Italy! **Andrew Bennett**, Principal Consultant, Fire/Explosion at Envista Forensics, will be presenting *Best Practices for Fire Investigations & Property Subrogation*. **Katherine Sandoval**, the managing partner of MWL's California branch office, will be presenting *Litigation of a Fire Loss/Deposition Introduction & Best Practices*. To get more information on this event and/or reserve your spot, click [HERE](#).

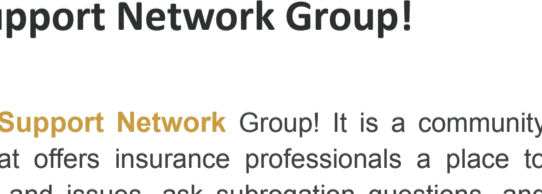
### Happy New Year from MWL!

This past year has been one for the books! The insurance industry faced new challenges on the frontiers of cyber security, technology platforms, growing government regulation and oversight, new and healthy Insurtech growth and competition, usage-based insurance models, and even certain model cars that appear to have been designed so that they could easily be stolen. Then there was Hurricane Ian, Nicole, and Fiona. And, of course, the COVID-19 pandemic magnified all these challenges. Increased complexity of subrogation laws and other recovery challenges reflect increased workloads, human capital obstacles, and hybrid working environments. Our industry witnessed unprecedented class action attacks on subrogation efforts from all quarters to intimidate us into recovering less and putting more into the pockets of trial lawyer and their clients. The good news is that MWL has been there for you, and we will be there to help you meet the challenge of increasing subrogation recoveries in 2023. From all of us here at MWL, we want to thank our clients for the work we never take for granted. We wish you and your families a Happy New Year and a prosperous and joyous 2023.



### 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.