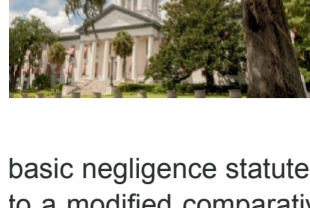


APRIL 2023 SUBROGATION NEWSLETTER

Sweeping Florida Tort Reform Bill Signed Into Law

What Every Subrogation Professional Should Know



On March 23, 2023, the Florida Senate passed a sweeping tort reform bill known as HB 837. The bill was signed into law by Gov. Ron DeSantis the very next day and becomes effective immediately. Some elements of the new bill will apply to all causes of action filed on or after March 24, 2023, while other elements will apply to all causes of action accruing on or after March 24, 2023. The new law turns on its ear just about every fundamental aspect of Florida tort law, from the basic negligence statute of limitations to transforming Florida from a pure comparative fault state to a modified comparative fault (51% bar) state. The Republican-controlled Senate voted 23-15 to pass the bill. One Democrat, Linda Stewart of Orlando, voted for the bill. Four Republicans — Jennifer Bradley of Fleming Island, Jason Brodeur of Sanford, Erin Grall of Vero Beach and Jonathan Martin of Fort Myers — voted against it. [Read more....](#)

In an effort to avoid the harsh effects of HB 837, trial lawyers rushed to the courthouse on the eve of its passage and electronically filed nearly 100,000 new civil lawsuits statewide—overwhelming Florida courts and all but ensuring civil litigation delays reminiscent of COVID days. A Channel 2 (WESH) television news report on the flooding of civil cases being filed can be viewed [HERE](#).

Attend the Webinar

HB 837: Florida's New Sweeping Tort Reform Bill

What Every Subrogation Profession Should Know

Tuesday, April 4 at 10:00-11:00 a.m. (CST). Presented by **Elizabeth Hernandez** and **Matthew Fricker**. Florida's new HB 837 is one of the most sweeping tort reform measures in decades, and more than 100,000 lawsuits filed on the eve of its passage have clogged Florida courts and could delay civil litigation in a way that makes COVID look like child's play. The new law became effective on March 24, 2023, and is applicable to all lawsuits filed on or after that date. The statute of limitations amendments, however, are only applicable to causes of action which accrue on or after March 24, 2023. In an effort to avoid the harsh effects of the change to modified comparative fault (which will dramatically affect more difficult cases), plaintiffs' lawyers have filed more than 70,000 lawsuits filed from March 18 to March 23. Tens of thousands of new third-party actions have been filed, creating a short thirty (30) day-time frame in which workers' compensation carriers must respond to any request for a subrogation lien amount or the carrier may be barred from claiming a subrogation lien in the matter. A subrogated insurance carrier can claim a subrogation interest for benefits paid against a third-party recovery, but may need to abide by the provisions in § 768.76 (6) in order to do so.

[Webinar Registration](#)

Subrogating Pedestrian/Crosswalk Injuries and Deaths

According to the Governors Highway Safety Association (GHSA), each day last year, twenty people were struck and killed by cars. Nearly 8,000 pedestrians were killed by vehicles in 2021 – an increase of 11.5%. This represents both an alarming public safety trend and a growing concern for the insurance industry. Every year approximately 76,000 pedestrians suffer injuries when they are struck by a moving vehicle. Beginning in 2016, America experienced a significant increase in the number of pedestrian fatalities, and in 2017 alone, there were nearly 6,000 pedestrian deaths in the U.S. Five states alone account for 43% of all pedestrian deaths—California, Florida, Texas, New York, and Arizona. [Read more....](#)



Illinois Court Latest to Signal that Covid-19 Virus Does Not Trigger Loss of Income Coverage Under CGL Policy



Some might say that subrogation and insurance coverage make strange bedfellows. But understanding the basics of insurance coverage is integral to an aggressive and holistic approach to subrogation across all lines of insurance. Without coverage there is no claim payment; and without a claim payment there is no subrogation. Understanding the cutting-edge issues in insurance coverage can help us prepare for an address subrogation issues and concerns when they should be addressed—immediately after a loss. This is especially true in cases involving environmental losses. [Read more....](#)

Subrogation Rental Car Company Physical Damage and Loss of Use Claims

Automobile rentals is a \$29 billion industry and constitutes a significant portion of the transport sector in America. In 2018, there were 2,212,925 rental vehicles on U.S. roads. There are six million auto accidents in the U.S. every year, and rental cars are involved in a significant portion of those accidents. To make matters worse, rental cars experience a higher collision rate per registered vehicle than non-rental cars. The number of rental cars on the roads is expected to increase in the coming years, and along with it the number of collisions. Insurance claims and subrogation professionals necessarily become involved in the majority of these losses and it is imperative that they be familiar with the growing regulations within the car rental industry when it comes to the car rental company recovering its losses from either the renter or third-party tortfeasor responsible for causing the loss. [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.

STIHL Incorporated Docking Stations: The docking station's printed circuit board can short circuit when exposed to moisture, posing a fire hazard.

Sunbeam Queen Size Heated Blankets: The recalled heated blankets can overheat, posing fire and burn hazards.

2021-2023 Sportsman 450 and 570 All-Terrain Vehicles (ATVs): An improperly assembled wiring harness can contact the brake line and/or vehicle frame during use which can result in a loss of the use of the front brakes and/or fire, posing fire and crash hazards.

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.

Welcome to the Firm Matthew R. Greider

Matthew Grieder joined MWL recently as a litigation associate with the firm's Austin branch office. He will be handling automobile, property and casualty, and workers' compensation subrogation cases throughout Texas and the South Central states of Oklahoma and New Mexico. Matt is anxious to take advantage of the firm's nation-wide collegiate atmosphere which allows him to draw from the strengths of lawyers, paralegals, and legal assistants from five other branch offices across the country. On behalf of the partners, associates, legal assistants, and support staff here at MWL, we would like to welcome Matt. We would also invite our clients and friends to introduce themselves to Matt, who can be reached at mgreider@mwllaw.com.



Verdicts and Settlements

Jim Busenener, managing partner of MWL's New Orleans office, recovered in federal court in Louisiana against an insurance agency that had negligently listed the incorrect build date of the residence in a homeowners insurance policy application. The error caused MWL's insurer client to approve the application without triggering an inspection in the underwriting process. The home subsequently sustained covered damages in a hurricane, resulting in payments of over \$193,000 by the insurer. Jim filed suit against the agency to recover the insurance payments, arguing that the policy application would never have been approved if the correct build date had been listed. The agency argued that the insured signed the application and had a duty to catch the error, and that the insurer could have inspected the property regardless of the listed age. Jim was able to recover 88% of the loss amount (\$170,000) by arguing that the agency was going to owe contractual attorney fees if the matter proceeded to trial and resulted in a judgment against the agency.



RCV, ACV and the Depreciation of Labor



Trial lawyers are filing bad faith class action suits against insurance companies across the country in rapid fashion based on alleged wrongful depreciation of labor costs in their calculation of Actual Cash Value (ACV) in property loss claims. They smell blood in the water given the turmoil and lack of clear guidance from state to state regarding when or whether an insurer can withhold depreciation for labor in determining Actual Cash Value. In a recently example, on

February 8, 2023, Daniel and Betty Grawe filed a class action complaint against Trumbull Insurance Company—a subsidiary of The Hartford—in the U.S. District Court for the District of Connecticut. The lawsuit, filed on behalf of the Grawes and others similarly situated, alleges that Trumbull has been calculating replacement cost value (RCV) property claims inappropriately, and that "hundreds of thousands" of insureds in 15 states have been underpaid millions of dollars. The complaint alleges that Trumbull used Xactimate—an insurance claims estimating software—to calculate a deduction for the \$1,000 deductible plus an additional amount of \$1,504.70 holdback for depreciation, resulting in a net payment of only \$8,802.81. In the handling of RCV claims, Xactimate allows for the depreciation of materials only, or the depreciation of both materials and labor. [Read more....](#)

[RCV/ACV Reference Chart](#)

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 Group: Subrogation Support Network

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](#), [Instagram](#), [Facebook](#), [Twitter](#), 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.