

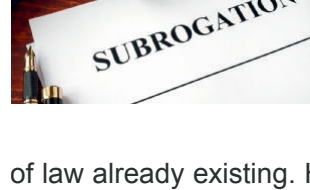
FEBRUARY 2023 SUBROGATION NEWSLETTER

Subrogation and the Gig Industry: Workers' Compensation Subrogation, PEO, and Employee Leasing Companies

The "gig economy" is the labor market that relies on temporary and part-time positions filled by independent contractors, leased employees, and freelancers, rather than full-time permanent employees. Threading the needle of workers' compensation through the labyrinth of borrowed servant, employee leasing, OCIP/CCIP and payroll service companies as they obfuscate the once-clear picture of who is an employer and who is an employee, seemingly requires an advanced degree or graduate-level training. It's no wonder that so many subrogation dollars are missed in this \$200 billion gig economy. [Read more....](#)



Nationwide "Made Whole" War Being Waged On Subrogation



Until recently, the Made Whole Doctrine had not been applied outside the context of a bankruptcy proceeding in Connecticut. However, the Connecticut Supreme Court has given us a clue as to how it will treat this issue in the future. It has ruled that while a right of true contractual subrogation may be provided for in a contract, the exercise of that right will have its basis in general principles in equity, rather than in contract, which will be treated as merely a declaration of the principles of law already existing. However, the discussion in *Wasko v. Manella* regarding the Made Whole Doctrine was considered dicta and wasn't binding. [Read more....](#)

Subrogating "Dog Fright" Cases

One insurance company – **State Farm** – has referred to dog bites as a "serious public health problem." In 2018 alone, one carrier paid \$90 million in claims on roughly 3,500 dog bite incidents. According to the Insurance Information Institute, dog bites and other dog-related injuries accounted for an astonishing one-third (1/3) of all homeowner's liability claim dollars paid out in 2017, costing almost \$700 million. This isn't chump change any more, and subrogation professionals need to take a serious look at pursuing subrogation in even some of the smaller dog bite cases – although most dog bite cases aren't all that small, as it turns out. [Read more....](#)



MWL Welcomes Steve Smith As New Partner



MWL is pleased to announce that **Stephen A. Smith** has become a partner with the firm. Steve is in his 13th year of practice and joined MWL in 2015. His practice focuses on insurance litigation and subrogation, including automobile, property, workers' compensation, and product liability. Prior to MWL, Steve worked with J. Peterman Legal Group, Ltd. (f/k/a Blommer Peterman, S.C.) in Brookfield, Wisconsin. Steve attended the University of Oklahoma, where he received his B.A. in political science and minor in German. He is an avid Sooners fan. He received his J.D. from Oklahoma City University School of Law, and also studied at International House LGS Sprachschule in Freiberg, Germany, where he received his Zertifikat Deutsch (ZD) for German proficiency.

Steve is licensed in and admitted to practice in Illinois, Minnesota, and Wisconsin, as well as all federal courts in Wisconsin, Illinois, and Indiana. He brings an unusual breadth and depth of multi-state litigation and subrogation experience to the MWL team. Steve was selected to the 2021 Wisconsin Rising Stars list by the Wisconsin Super Lawyers Magazine, a prestigious distinction given only to the top 2.5% of lawyers in the State. Steve is one of the country's leading authorities on Michigan no-fault and his admittance to the bars of Minnesota and Michigan mean that he oversees a large number of subrogation cases in those complex states. Please join us in welcoming Steve as the firm's newest partner. He can be reached at ssmith@mw-law.com.

Upcoming Events & Webinars



HCAA's Executive Forum

Join Shareholder, Ryan Woody, on February 21st at 11:00 - Noon (PST) at the HCAA's Executive Forum 2023 at the Bellagio Hotel in Las Vegas, NV for a panel discussion on "Avoiding Risky Fiduciary Breaches That Could Become Very Costly for You and Your Clients."

[Register Now](#)



New Client Introduction

Tuesday, February 28, at 10:30-11:00 AM (CST). Join Shareholder, Ashton Kirsch, who will present a brief intro to Matthiesen, Wickert & Lehrer, S.C. and outline the premier services that we provide to our clients, giving you an opportunity to get to know more about us.

[Register Now](#)

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.

BISSELL Cordless Multi-Surface Wet Dry Vacuums: The circuit board inside the vacuum's battery pack can overheat and smoke, posing a fire hazard.

Taylor and Finch Six-Wick Scented Candles: The product can combust while lit causing the glass container to break, posing fire and injury hazards.

Hot Chocolate Pots: The hot chocolate pots are mislabeled as microwave safe. If microwaved, the metallic paint on the pots can spark, 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@mw-law.com.

Verdicts and Settlements

James Busenlener, an insurance trial lawyer and Managing Partner of MWL's New Orleans branch office, recently recovered \$300,462.32 of a \$450,693.48 Pennsylvania workers' compensation lien where liability and causation were hotly disputed. A worker was hit in the head by a heavy rope on a construction site by an unidentified contractor. The workers' compensation claim had recently settled for \$195,000, but the claimant had not received the settlement and the state workers' compensation commission had not yet approved the settlement. Plaintiff's counsel argued the workers' compensation settlement could not be included in the lien. James was able to get the settlement amount included in the workers' compensation lien and recover it from the third party settlement. If you have any questions regarding these types of claims, contact James Busenlener at jbusenlener@mw-law.com.



Time Travel For The Insurance Industry

See [HERE](#) for a provocative 60-second video explaining why Matthiesen, Wickert & Lehrer explaining 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](#), [Instagram](#), [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.