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MAY 2023 SUBROGATION NEWSLETTER

What Artificial Intelligence Has to Say About the Societal **Benefits of Insurance Subrogation**

ChatGPT is an AI chatbot developed by OpenAI and its prototype was launched in November of last year, and quickly garnered attention for its detailed responses and articulate answers across many domains of knowledge. It is built on OpenAl's "Generative Pre-Trained Transformer 3" (GPT-3) language model and has been fine-tuned (an approach to transfer learning) using both supervised and reinforcement learning techniques. MWL logged on to ChatGPT in an



effort to see what it could teach us about insurance subrogation. We gave it the following instructions: "Please write a 500-word essay on the societal benefits of insurance subrogation and how subrogation is handled by insurane companies." Read the essay it composed...

Most insurance claims professionals understand that, as opposed to

UIM Coverage and the "Floating Layer" Theory



uninsured motorist (UM) coverage, which pays damages to an insured who is involved in an accident with an uninsured driver, underinsured motorist (UIM) coverage is automobile insurance coverage which protects an insured involved in an accident with a tortfeasor who doesn't have liability limits sufficient to cover the insured's damages. The insured's UIM coverage steps in to cover the remainder (hopefully) of the insured's damages. Some states require UIM coverage, while more require UM coverage. What can be confusing, however, is that there are—within the body of law regulating

and applying UIM coverage—two distinct approaches to UIM coverage in the U.S., depending on the state or jurisdiction. Read more.... "UNDER DEDUCTIBLE" SUBROGATION & THE DEDUCTIBLE

REIMBURSEMENT: Helping Insureds Battle the Cost of Insurance Insurance policy deductibles and subrogation make strange

bedfellows. Most property and automobile insurance policies require that the insured pay a deductible—an out-of-pocket payment the insured is required to pay toward a covered loss before the insurance company kicks in with its own claim dollars. Some policies allow the insured to select a deductible, with the higher deductible policies usually having lower premiums because the smaller claims are absorbed with the insured's deductible. Deductibles serve a dual purpose: they save the insurance company the administrative and overhead cost of processing smaller claims, and



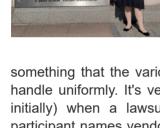
simultaneously help keep insurance premium costs lower. At the same time, one of the chief purposes of subrogation is also to help keep the cost of insurance premiums low by recovering the claim dollars from the responsible tortfeasor. Despite their similarity in purpose, subrogation and deductibles don't always mix very well when the insurance carrier is pursuing a third-party tortfeasor via subrogation. Read more.... **Verdicts and Settlements**

Matthiesen, Wickert & Lehrer, S.C. Partner, Stephen Smith, recently resolved a workers' compensation lien for over \$2000,000 on a slip-

and-fall loss where an employee fell on ice while walking in a parking lot. There were no known witnesses to the loss. Recovery was obtained, in part, by developing argument that depression in the parking lot was a hazardous condition and exception to subjectforum's harsh application of natural-accumulation rule which provides that premises owners generally owe no duty to either remediate or warn against natural accumulations of ice or snow. For questions regarding subrogation, contact Steve at ssmith@mwl-law.com. Sr. Associate Catherine Dowie Argues to the Eighth Circuit



MWL Sr. Associate, Catherine Dowie, was recently in St. Louis to argue to the Eighth Circuit Court of Appeals for a case that presents



Court of Appeals

coverage requirements, and who the proper defendant(s) are in ERISA denial of benefits cases. That third issue – who can be sued when a plan participant disagrees with a coverage decision - is something that the various federal courts of appeal are regularly confronted with, but don't all handle uniformly. It's very common in ERISA cases for multiple entities to be named (at least initially) when a lawsuit gets brought. Catherine frequently handles cases where a plan participant names vendors, network administrators, independent review organizations, and third party administrators, sometimes without even naming the Plan or its sponsor. This lawsuit in this

interesting issues, including federal preemption, what coverage is required under the Affordable Care Act's Emergency Services'

coverage he is entitled to under the terms of his benefit plan. Some circuits read ERISA as only authorizing a cause of action under § 502(a)(1)(B) against the health Plan itself. Others allow suit against a Plan Sponsor, or even a Third-Party Administrator, like the client in this case. This case was in the Eighth Circuit Court of Appeals, which has previously addressed this issue, and concluded that plan participants do not have standing to seek relief against former third-party administrators. Hall v. LHACO, Inc., 140 F.3d 1190 (8th Cir. 1998). Catherine argued, as the District Court had already found, not only that the Plan's coverage decision was appropriate under its terms and the applicable federal law, but also that the plaintiff has no standing to pursue the client, because the client is a former Third-Party Administrator who no longer works with the plaintiff's self-funded health plan. Because the client no longer works with this particular benefit plan, it no longer has any ability to reprocess the medical claims at issue, which is the relief the plaintiff would be entitled to in this case if he prevailed. MWL is looking forward to the Court's decision to give some added guidance in this interesting area of ERISA litigation.

matter was brought under § 502(a)(1)(B) of ERISA, which allows a plan participant to clarify what



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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



MATTHIESEN, WICKERT & LEHRER, S.C.

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.

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