

## SEPTEMBER 2023 SUBROGATION NEWSLETTER

### WHEN LANDLORD'S CARRIER SUBROGATES AGAINST TENANT IN DELAWARE, READ THE LEASE: *Donegal Mut. Ins. Co. v. Thangavel*, 2023 WL 4605076 (Del. 2023)

Across the country, landlord/property owners' insurance carriers' efforts to subrogate against tenants who cause damage to the owners' property has become a heavily-litigated issue—with mixed results. The ability of a landlord's property insurer to subrogate against a tenant for property damage caused by the negligence of the tenant depends on which state the loss occurs in and the nature and language of the lease involved. There are generally three different approaches. [Read more...](#)



### What Subrogation Adjusters Should Know About No-Pay, No-Play Laws



Most states now have mandatory car insurance laws that require all drivers to have some type of insurance. New Hampshire is the last of the 50 states which does not require mandatory automobile liability insurance. Wisconsin was second to last, but as of June 1, 2010, Wisconsin now mandates that drivers purchase auto liability insurance. Wis. Stat. § 344.62 (2010). Florida does not require bodily injury liability insurance, but it is a no-fault state. Compulsory insurance laws are an effort to keep insurance premiums at a lower cost for everyone. However, a growing problem is how to enforce these laws and give an incentive for everyone to follow compulsory insurance laws in their particular state. "No Pay, No Play" statutes are intended to help enforce these mandatory insurance laws by penalizing those who drive without insurance. In many states, the percentage of drivers without liability insurance is approaching, and even in some cases exceeding, 25%. This creates quite a financial burden on the state and on the families of victims involved in accidents with uninsured drivers. [Read more...](#)

### Made Whole Doctrine Class Action Suits and Bad Faith Litigation Continue to Threaten Subrogation Claims

One of the most successful weapons trial lawyers have discovered in combatting subrogation across the country has been the Made Whole Doctrine. It requires an insured to be fully compensated for damages (i.e., to be "made whole") before the insurer is entitled to recover in subrogation from the at-fault third party tortfeasor. This "equitable" rule is applied passively in some states and aggressively in others. In Arkansas, for example, before subrogation can be pursued, an insurer must establish that the insured has been made whole. Even worse, the state of Washington decision in *Kosovan v. Omni Insurance Company*, holds that a bad faith claim and a claim for violation of the Consumer Protection Act are both warranted when the PIP carrier attempts to subrogate its PIP payment before the insured is made whole. This case further illustrates that these are very treacherous times for subrogation in Washington and it appears there are no limits to which trial lawyers are not willing to travel down the anti-subrogation rabbit hole. To make matters worse, Washington recently recognized a vehicle owner's third-party claim for residual diminished value damage, or "stigma damage", which is the loss of value of an automobile that remains after it is completely and professionally repaired. This means there is almost always going to be uninsured damages the insured is owed when a carrier attempts to subrogate. It is as though courts are willing to throw away a key mechanism by which insurance premiums for small businesses across the country are kept in check. [Read more...](#)



### The Subrogation Support Network Podcast



Tune in to the latest episode on the [Subrogation Support Network Podcast](#) as host, **Ashton Kirsch** is joined by Vice President at **Thornton Tomasetti**, Joseph Simeo, to discuss construction defect claims in subrogation.

#### Host Ashton T. Kirsch

Ashton T. Kirsch is an insurance litigation attorney and shareholder with the law firm of Matthiesen, Wickert & Lehrer, S.C. Ashton has been with MWL's Hartford office since 2015, concentrating his practice on litigation of subrogation cases involving large loss casualty, commercial auto, transportation and cargo, and workers' compensation. He has built and grown the MWL commercial auto and cargo/transportation group into the thriving sector of our firm's subrogation practice.



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#### Special Guest Joseph Simeo

Joseph Simeo is the Vice President at **Thornton Tomasetti**, an independent organization of engineers, scientists and architects who collaborate from offices worldwide. Thornton Tomasetti optimizes the design and performance of structures, materials and systems for projects of every size and level of complexity. Joe is a licensed architect with over 30 years of professional experience in a wide range of building types and in all facets of the architectural process.



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### Security Footage May Have Captured Origin of Hawaii Wildfires

The island of Maui, Hawaii was the unfortunate victim to catastrophic wildfires on August 8, 2023. Sources say that throughout the day/night of August 8, several brush fires were ignited all over the island of Maui including the towns of Lahaina, Kula and in upcountry Maui. The climate conditions of the island caused the fires to move rapidly and uncontrollably, leading to the worst wildfire disaster in the United States for over a century. Conditions on the island for the previous months had created a dangerously high chance of fire. As a result of Hurricane Dora passing to the South of the island, Maui was experiencing sustained winds of 50mph and gusts of up to 90mph. The island had also been amid a drought spanning back to May of 2023, and had sustained low humidity during this time. These conditions amplified the effects of the fires. Once they started, there were prime ignition materials and conditions to spread the blaze uncontrollably throughout the island, leading to horrific destruction. [Read more...](#)



### 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 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 professional 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

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