

## NOVEMBER SUBROGATION NEWSLETTER

### ARIZONA SUPREME COURT ELIMINATES COMMON LAW DRAM SHOP ACTIONS: *Torres v. JAI Dining Services (Phoenix), Inc.*, 2023 WL 6801025 (Ariz. 2023)

On October 16, 2023, the Arizona Supreme Court in *Torres v. JAI Dining Services (Phoenix), Inc.*, ruled that the Arizona constitution does not protect common law dram shop actions, and thus, the legislature, by enacting a statutory dram shop claim, eliminated the then-existing common law dram shop cause of action. This means that in order for a victim of an intoxicated individual to successfully pursue a dram shop action against a licensee who serves alcohol to an intoxicated individual, that individual must be “obviously intoxicated” under the terms of the statute. Arizona’s Dram Shop Act is a statute which provides that a licensee who serves alcohol to an obviously intoxicated patron or a minor can be held liable for resulting damages and injuries. [Read more...](#)



### DELAWARE SUPREME COURT REVERSES ITSELF: Allows Workers' Compensation Subrogation of UIM Benefits



The ability of a workers' compensation carrier to subrogate against and/or seek reimbursement from a recovery made from a third-party tortfeasor responsible for causing the employee's work-related injuries is universally recognized across the country as a major tool for holding down workers' compensation premiums for large and small businesses and employers. Whether or not this right of subrogation extends to medical malpractice recoveries, legal malpractice settlements or uninsured and/or underinsured motorist benefits paid under an auto policy, depends on the jurisdiction. Until 1993, Delaware allowed a workers' compensation carrier to subrogate against uninsured motorists' benefits recovered under a policy paid for by the employer. Even then, this was only the case when the policy belonged to the employer. Delaware public policy has never allowed a workers' compensation carrier to subrogate against the employee's own uninsured motorists' policy where the employee's uninsured motorists' policy expressly prohibits application of underinsured motorists' coverage to a claim by a workers' compensation carrier, and where that employee specifically contracted for underinsured motorists' coverage for himself and his family. [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 MWL's Sr. Associate Attorney, [Ana Zabalgoitia](#), to discuss artificial intelligence and its impact on the law.

#### 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 Ana L. Zabalgoitia

Ana L. Zabalgoitia is a senior litigation associate with Matthiesen, Wickert & Lehrer, S.C.'s Austin, Texas branch office. Ana is licensed in Texas and New Mexico and has been litigating heavily in both states since 2017. Ana primarily handles insurance defense cases. Her insurance defense experience has taught her preparation is the key to success in the courtroom and the jury doesn't know the strength of the plaintiff's case until they've heard the defense.



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### Happy Thanksgiving From Matthiesen, Wickert & Lehrer, S.C.

Thanksgiving has its historical roots in both religious traditions and cultural celebrations that go all the way back to the storied feast in the fall of 1621 in Plymouth Colony. This uniquely American holiday of Thanksgiving might never have made it to the dining room table. A celebration of family, food and football, the tradition of a festive, harvest-time meal evolved from a letter penned by one of the settlers named Edward Winslow:



*“Our harvest being gotten in, our governor sent four men on fowling, that so we might after have a special manner rejoice together, after we had gathered the fruits of our labors; they four in one day killed as much fowl, as with a little help beside, served the Company almost a week, at which time amongst other Recreations, we exercised our Arms, many of the Indians coming amongst us, and amongst the rest their greatest king Massasoit, with some ninety men, whom for three days we entertained and feasted, and they went out and killed five Deer, which they brought to the Plantation and bestowed on our Governor, and upon the Captain and others.”*

The harshness of life in Plymouth Colony reminds us that life wasn't meant to always be pleasant or easy. Yet we have so much to be thankful for. America is blessed. Our freedom of speech, assembly, and expression enable us to voice our concerns and advocate for peace. We have access to education, healthcare, and economic opportunities that are often luxuries in war-torn regions. For everyone at Matthiesen, Wickert & Lehrer, Thanksgiving is far more than a special day on the calendar. We are each reminded to live a life of thanksgiving for each day we are given, thankful to God for all His blessings, for the richness of family and friends, and for the country which provides us with our freedom and protection of our liberty. Even in the midst of misfortune we can find time and reason to give thanks. Join us this Thanksgiving in giving thanks in the words of Ralph Waldo Emerson: *“For each new morning with its light, for rest and shelter of the night; For health and food, for love and friends; for everything Thy goodness sends.”*

### 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](#), [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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