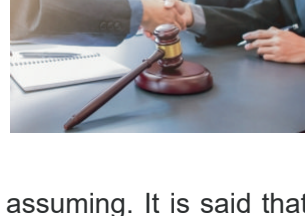


DECEMBER 2023 SUBROGATION NEWSLETTER

When Cases Settle: Release Language, Indemnity, Hold Harmless, and Other Concerns

The bane of any subrogation professional's existence is the dreaded release. It is no coincidence that when Zeus uttered the words, "Release the Kraken!" in the 1981 fantasy adventure film *The Clash of the Titans*, he chose the word "Release." The meme itself connotes setting loose utter destruction on one's enemy—a description which can be woefully accurate to describe the potential aftermath of signing releases which are overbroad and contain terms, conditions, and obligations which a subrogated carrier has no business agreeing to or assuming. It is said that releases and settlement agreements "use a thousand words when ten would do" and there is a good reason for that. [Read more...](#)



Florida and Kentucky Wrestle with Matching Requirements in Homeowners' Replacement Cost Claims



One of the most difficult and confusing issues to deal with in the world of homeowner's insurance property claims is the obligation to repair or replace an insured's damaged property with "material of like kind and quality" or with "similar material." When damage caused by fire, smoke, water, hail, or other causes results in a small portion of a home being damaged (e.g., shingles, siding, carpet, cabinets, etc.), whether and when a carrier must replace non-damaged portions of a building in order for there to be a perfect match of materials remains a point of contention—and fraud. This issue is of great importance in the world of claims and insurance underwriting because "matching" the replacement of a slightly damaged section of roof or flooring which necessitates replacing items which are not damaged greatly increases the cost of insurance. The problem of partial replacement is especially troubling where the damaged siding or shingles have been discontinued, making it virtually impossible to properly match. [Read more...](#)

Who Has to Pay for a Fraudulent Check? Duties of Banks and Consumers in the Age of the Modern Scammer

When it comes to personal transactions, the modern-day consumer would be hard pressed to remember the last time they wrote a check. In fact, for many of us, our checkbooks are likely collecting dust in some deep corner of a forgotten desk drawer, if we even have a checkbook at all. However, checks are very much still the go to payment method for many small businesses and insurance companies. While the modern age of technological advancements has provided financial institutions with the ability to replace the expensive and time consuming method of human verification with online automated tools to combat and protect against fraud, the same technological advancements have created new ways for criminals and scammers to manipulate checks to avoid those systems, allowing check fraud to skyrocket. Reports of check fraud nearly doubled from 2021 to 2022, following an already striking 23% increase from 2020 to 2021. With the introduction of more advanced methods of check fraud like check washing, many consumers and small businesses now face anxiety about the financial risk they face in the event they fall victim to this fraud. Who will be responsible for the financial losses sustained by the account holder? [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.



Style Selections 42-inch-wide Infrared Quartz Electric Fireplaces: The electric fireplaces can overheat, posing a fire hazard.

ZLINE 30-inch, 36-inch and 48-inch RG gas ranges: The oven of the gas ranges can emit dangerous levels of carbon monoxide (CO) while in use, posing a serious risk of injury or death from carbon monoxide poisoning.

Lenovo USB-C Laptop Power Banks: The power bank's internal screws can come loose, causing a short circuit and overheating of the lithium-ion battery, posing a fire hazard. Do not put lithium-ion batteries in the trash or battery recycling boxes found at various retail and home improvement stores. They can cause fires and explosions if they are damaged or crushed and are a hazard when thrown in the trash.

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.

MWL Welcomes Lance T. Jones to the Firm



Matthiesen, Wickert & Lehrer, S.C. is pleased to welcome **Lance T. Jones** as a new associate attorney focusing on subrogation litigation in our Hartford, Wisconsin office! Lance received his undergraduate degree from the University of Texas at Austin, and his J.D. from the St. Mary's University School of Law. Lance is licensed in Wisconsin, where he will help MWL with its growing book of nationwide subrogation litigation. Lance is a practicing Catholic who loves spending his free time with his wife, Teresa, and infant daughter, Marietta Rose. When he's not busy being a father and husband, Lance enjoys reading philosophy, writing fiction, and keeping up to date on the latest in world events and international relations. A native of Texas, Lance decided to practice law in Wisconsin to be closer to his new family and will hopefully grow used to the unforgiving Wisconsin winters.

Merry Christmas & Happy New Year

Matthiesen, Wickert & Lehrer would like to thank each and everyone of our clients and local counsel for a wonderful year and wish you all a Merry Christmas, Happy Hanukkah, and a blessed Holiday Season. As this season is upon us, our thoughts turn gratefully to those who have made our success possible. Regardless of what Christmas means to you, we hope your Christmas is full of holiday cheer shared with family and friends. For us at MWL, Christmas is just the beginning – a simple, yet wonderful reminder of Christ's humble beginning as a human child in this world. It's only a beginning because His birth merely set the stage for the power, glory, and salvation that would be revealed in His life, death, and resurrection. An important part of the holiday season is remembering those who make the holidays meaningful to us. We would like to wish you peace, joy and prosperity this season and throughout the coming year!



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 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.

MATTHIESEN, WICKERT & LEHRER, S.C.
 Hartford, WI ❖ New Orleans, LA ❖ Santa Ana, CA ❖ Austin, TX
 Jacksonville, FL ❖ Boston, MA
 Phone: (800) 637-9176
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