

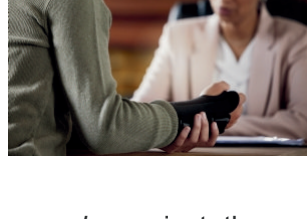
FEBRUARY 2024 SUBROGATION NEWSLETTER

Understanding The Difference Between Statutes of Limitations and Statutes of Repose

Subrogation professionals, like lawyers, must be constantly vigilant for deadlines, statutes of limitations, statutes of repose, and notice timelines which are set forth by the laws of the 50 states. Likewise, it is important to know and understand the differences between statutes of limitations and statutes of repose. They are both subrogation-killers. Statutes of limitations (SOL's) are laws that limits the maximum time frame during which legal proceedings – civil or criminal – may be filed. It specifies a time period for commencing suit on a given claim that begins to run, or is triggered, when the cause of action accrues. When a cause of action “accrues” generally depends on the particular state involved, but it is usually when an accident occurs or when a claimant “discovers” the resulting injury. While a statute of limitations takes effect when a claim arises, a statute of repose bars the bringing of a suit after a set period of time, regardless of whether an injury occurred, or a claim has arisen. [Read more...](#)



Workers' Compensation and the Intentional Act Exception to the Exclusive Remedy Rule



The *quid pro quo* premise underlying the social compromise known as workers' compensation is simple: an employee injured at work receives no-fault medical expenses and wage replacement indemnity benefits and, in exchange, the employer is given protection from employee lawsuits and a statutory right to be reimbursed from the tortfeasor who actually caused the work-related injury – sometimes referred to as subrogation. This is the employee's *exclusive remedy* against the employer, who enjoys immunity from tort liability for the injuries. The Exclusive Remedy Rule prevents injured employees from suing their employers and usually prevents culpable third parties from bringing a third-party action against the employer for contribution. Even though every state allows the employee to bring a lawsuit against “third parties” (persons or entities other than the employer or employee), workers' compensation benefits are the *sole remedy* available to the employee. If and when the employee makes a third-party recovery, the employer's workers' compensation carrier is granted a statutory right of subrogation and/or reimbursement of the benefits it paid. If that were the end of the story, however, this article would not be necessary. [Read more...](#)

TIMELINESS OF PROPERTY SUBROGATION SUITS IN LOUISIANA: A Back Door Around Prescription

Louisiana, with its short one-year tort statute of limitations (in Louisiana called prescription), catches many insurance subrogation professionals unaware. Some may assume that because suit was filed by another party involved in the accident or even by their own insured, the property subrogation claim will relate back to the time of filing of the original petition even if the property subrogation claim is filed after the running of the prescriptive date. It is not an unreasonable assumption, since that's the way it works for workers' compensation subrogation in Louisiana. A workers' compensation carrier can still intervene into a suit filed by its insured for personal injuries against a tort defendant; and the workers' compensation subrogation claim will not be prescribed because the carrier stepped into the shoes of its insured and the intervention will relate back to the time of filing of the original petition. That's not always the case with a property subrogation claim. [Read more...](#)



Verdicts and Settlements

New Orleans office managing partner, **James T. Busenlener**, recently recovered approximately \$250,000 on an occupational accident subrogation intervention in Texas, where plaintiff had challenged the client's right of recovery because the sole tort defendant was also the participating organization under the occupational accident policy. Plaintiff counsel argued that the occupational accident insurer could not subrogate against its own insured. Jim was able to convince plaintiff counsel that the participating organization was not an insured under the policy, and thus the client could subrogate against the tort recovery.



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 New Orleans branch office managing partner, **James Busenlener**, to discuss the duties of banks and consumers in the age of the modern scammer.

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 James T. Busenlener

James T. Busenlener is an insurance trial lawyer and managing partner of Matthiesen, Wickert & Lehrer, S.C.'s New Orleans branch office. Jim is licensed to practice law in Louisiana, Texas, and Pennsylvania, as well as numerous federal district and appellate courts. He has extensive experience representing domestic and foreign insurers. He also has a great deal of experience litigating large loss property and casualty subrogation cases.



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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.



Klein Tools Portable Rechargeable Power Stations: The top and bottom of the internal inverter boards of the power stations can overheat, posing fire and burn hazards.

BlendJet 2 Portable Blenders: The recalled blenders can overheat or catch fire and the blender blades can break off, posing fire and laceration hazards to consumers.

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.

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: The 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 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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