

APRIL 2024 SUBROGATION NEWSLETTER

Subrogating Pedestrian Accidents

Claims Journal recently reported on a new Ohio State University study which examines who is at fault when cars hit pedestrians shows that vehicle/pedestrian accidents occur much more frequently in certain environments than in others. The study showed that pedestrians were much more likely to be at fault when there was a high volume of cars moving at a faster speed. Taken by itself, this result is somewhat obvious and intuitive. However, the study also showed that more incidents occur and pedestrians are more likely to be at fault, in areas where crosswalks are fewer and farther apart. In busy urban areas, where crosswalks were plentiful, the study found that the vehicle driver was more likely to be at fault. The study focused on road design and the built environment which contributes to crashes. [Read more...](#)



SOMETHING OLD, SOMETHING NEW; SOMEONE BORROWED, SOMEONE TO SUE Workers' Compensation Subrogation and Employee Leasing Companies



At its core, workers' compensation subrogation is quite simple. Employee injured while at work receives workers compensation benefits. Carrier paying benefits recovers those benefits from anyone responsible for causing the injury other than the employer. As the saying goes, however, "Progress is man's ability to complicate the simple." Over time, exceptions, time limits, equitable prohibitions, made whole requirements, and politics have complicated workers' compensation subrogation in nearly every state. Nowhere is this complication for evident than in cases involving temporary employee, leased employee, and borrowed servant situations. It is not unusual for an employee to be subject to the direction and control of an entity other than his employer during the workday. [Read more...](#)

Texas Creates New Statute of Repose for Residential Construction Claims

For almost five decades Texas has had a single statute of repose which imposed a ten (10) year period for claims against architects, engineers, interior designers, landscape architects, builders, and construction contractors. Texas has imposed a ten-year statute of repose on suits against builders or contractors who construct or repair improvements to real property. It requires plaintiffs to file construction defect claims against a contractor that arise "out of a defective or unsafe condition of the real property or a deficiency in the construction or repair of the improvement" during the first 10 years after substantial completion of the project or improvement. Failure to do so bars the claim. [Read more...](#)



Verdicts and Settlements

New Orleans Sr. Associate Attorney, Louis H. Thomas III recently recovered on a case that involved claims for negligence and breach of bailment by the Treasure Island Hotel & Casino. The loss occurred in Las Vegas, Nevada as result of the theft of the insured's vehicle while it was parked at the Treasure Island Hotel. The insured valetted his vehicle with the hotel, and the vehicle was stolen from the Hotel's parking garage the next day. The Hotel initially denied the client's subrogation claim stating that when the insured elected to valet his vehicle, he agreed to release Treasure Island from any and all liability for theft, loss, damage, or destruction of his vehicle based on their "Parking Agreement" which was placed on the back of the Hotel's valet ticket.



The language in the hotel's Parking Agreement stated: "By leaving this vehicle with valet, the guest agrees that Treasure Island bears no liability and assumes no responsibility for money and/or personal articles left inside the vehicle, including, but not limited to, GPS devi[c]es, cellular phones, radar detectors, and luggage. Guest further agrees that Treasure Island is not responsible for any damage, theft, loss, or destruction of any property, absent gross negligence by Treasure Island." The Hotel relied on Nevada's Innkeeper liability statute as their basis for denying liability. NRS 651.010, provides that no hotel owner or keeper in Nevada shall be liable for theft, loss, damage or destruction or any property left in the room of any guest because of theft burglary, fire or otherwise in absence of gross neglect on the part of such owner or keeper.

However, Nevada's Innkeeper statute did not allow the hotel to evade liability for their negligence and the theft of our insured's vehicle while it was in their care. Two cases, *Tienda v. Holiday Casino, Inc.*, 109 Nev. 507, 509, 853 P.2d 106 (1993) and *Arguello v. Sunset Station, Inc.*, 127 Nev. 365, 371-72, 252 P.3d 206, 210 (2011) address the fact that Nevada's Innkeeper Statute does not apply to motor vehicles, and *Arguello v. Sunset Stations, Inc.*, specifically stated that the Nevada State Legislature neither contemplated nor intended for the statute to apply to the theft and/or damage to motor vehicles.

Louis drafted a demand citing the relevant case law and distinguished how the protection provided by Nevada's Innkeeper Statue did not extend to any losses caused by theft or damage to a motor vehicle. Once the third-party adjuster received the demand and had an opportunity to review documents to support the damages, he issued a settlement check for the full recovery amount of \$131,657.96.

The Subrogation Support Network Podcast



Tune in to the latest episode on the [Subrogation Support Network Podcast](#) as host, [Ashton Kirsch](#) is joined by Sally Bruch to discuss cannabis insurance.

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 Sarah "Sally" Fry Bruch

Sally Bruch is a senior counsel attorney. Sally's practice focuses on complex defense litigation as well as property and casualty, workers' compensation, automobile, and property loss subrogation cases throughout Wisconsin and across the country. Sally is also experienced in defending insurance companies and their insureds in complex litigation, and has defended numerous Wisconsin municipal government entities and their insurers in tort matters involving municipal immunity.



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Matthiesen, Wickert & Lehrer, S.C. Wishes Everyone A Blessed Easter!

Matthiesen, Wickert & Lehrer, S.C. would like to wish all of our clients and friends a very blessed Easter. While Easter means different things to different people, we celebrate the Good News which Easter represents. It is the fulfillment of the greatest Promise ever made – the celebration of the resurrection of Jesus Christ, the Son of God. To over two billion Christians around the world, this is the greatest event in history – an event which proclaims the greatest story that's ever been told. While we understand that not all of our readers recognize Easter in the same way and some not at all, we join in rejoicing with those who also recognize that there is no better news than the resurrection. It is a promise of a guarantee of a new life. We wish God's blessings on everyone during this Easter celebration.



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](#), [Facebook](#), [Instagram](#), [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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