

AUGUST 2024 SUBROGATION NEWSLETTER

WHICH WORKERS' COMPENSATION "BENEFITS" CAN BE SUBROGATED?

Recovery of Case Management Costs, Medical Bill Audit fees, Rehabilitation Benefits, Utilization Review Costs, IME's, Nurse Case Worker Fees, Attorneys' Fees, and Other "Allocated" Loss Adjustment Expenses.

It's the question every claims professional and trial attorney claims to know but few fully understand. In addition to paying for medical expenses, death benefits, funeral costs and/or indemnity benefits for lost wages resulting from a compensable injury, workers' compensation insurance carriers also expend considerable dollars for case management costs, medical bill audit fees, independent medical exam (IME) fees, expert fees, rehabilitation benefits, third-party vendor costs, nurse case management fees, workers' compensation case attorneys' fees, and the like. They pay significant attorney's fees on permanency awards and incur other expenses in conjunction with the handling and adjusting of workers' compensation claims. Which of these benefits are recoverable in workers' compensation subrogation remains a point of considerable confusion and contention, and an article which discusses the nuances of this issue can be viewed [HERE](#). Subrogation professionals, lawyers, judges, and Administrative Judges are all equally confused on the law in this area, and very little clear guidance one way or the other can be found. [Read more...](#)



WHAT IF SUBROGATION WAS AS SIMPLE AS PUSHING A BUTTON?:

State Farm Fire & Casualty Company v. Moving & Storage, Inc., 2024 WL 1061574 (N.Y. Sup. Ct., 2024)



In one of our most widely-read articles, "[Ten Subrogation Mistakes Insurance Companies Keep Making](#)", the number one most prevalent and most costly mistake is waiting too long to involve subrogation counsel. It sounds like an MWL marketing pitch, and of course, in many ways it is. But it is also the truth. The dollars lost because claims with subrogation potential are referred to subrogation counsel mere weeks, days, or even hours before a statute of limitations or other deadline is about to expire, is almost incalculable. I refer not to cases in which subrogation potential is discovered late or notice of a pending third-party action filed by the insured or claimant is received late in the game. Rather, I refer to files in which subrogation potential is obvious, but a conscious decision is made to avoid incurring subrogation attorneys' fees or costs resulting in the wholesale avoidance of referring the file. Claims deteriorate with age and we see far too many files entrusted to us at the very last moment which contain literally dozens of identical demand letters – with little or no substance or subrogation "proof" to support them – sent to the third-party carrier every six weeks like clockwork for years, each a carbon copy of the one which preceded it. When the file is submitted to subrogation counsel with very little time left on the clock, there is frequently no opportunity to conduct a thorough investigation. Evidence has disappeared or been destroyed. Deadlines have passed. Lawsuits have been settled. Releases have been signed. Witnesses have vanished or been "reached" by the other side. Money has been lost. It is the number one subrogation-killer we have seen over the years, in terms of the volume of dollars lost and the number of claim files. [Read more...](#)

THE FUTURE OF AUTO SUBROGATION IS HERE:

Pursuing Claims Involving Automated Driving Systems

We are still years away from full implementation of true self-driving cars in the U.S., but each step we take dramatically complicates and changes the face of auto claims handling, vehicle repairs, and subrogation litigation. When catastrophic claims are paid as a result of a traffic accident resulting from a failure of an automated driving system and subrogation enters the picture, it is no longer a simple question of who had the right-of-way and who failed to yield. Products malfunction and computers fail. Simple auto subrogation has now entered the more complex and exponentially more expensive world of product liability. Automobile accident subrogation is rapidly changing, and the insurance industry will need to change with it. [Read more...](#)



The Subrogation Support Network Podcast



Tune in to the latest episode on the [Subrogation Support Network Podcast](#) as host, [Ashton T. Kirsch](#) is joined by MWL Shareholder, [Gary L. Wickert](#) to discuss becoming an expert in selecting and working with experts.

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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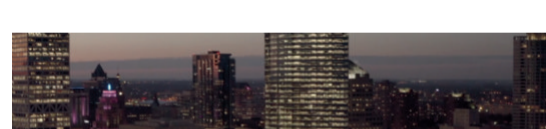
Gary L. Wickert is an insurance trial lawyer and shareholder with the law firm of Matthiesen, Wickert & Lehrer, S.C. Gary has nearly four decades of litigation experience and is regarded as one of the world's leading experts on insurance subrogation. He is the author of several subrogation books and legal treatises and is a national and international speaker and lecturer on subrogation and motivational topics.



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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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