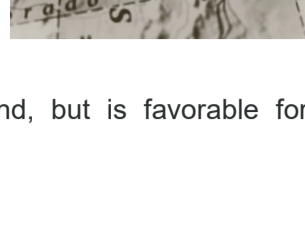


JUNE SUBROGATION NEWSLETTER

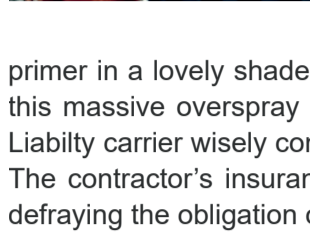
COLORADO SUPREME COURT DENIES DOCTOR'S EFFORTS TO REDUCE DAMAGES UNDER COLLATERAL SOURCE RULE

Scholle v. Ehrichs, 2024 WL 1710169 (Colo. 2024)

An April 22, 2024 decision by the Colorado Supreme Court considered the confusing interplay between Colorado's statutory Collateral Source Rule and medical malpractice actions under the Health Care Availability Act (HCAA). Specifically, the Court addressed the question of whether the "contract exception" to the collateral source statute applies in a medical malpractice case where the defendant doctor seeks to reduce the damages awarded by a jury. The decision rendered on April 22, 2024 is not easy to understand, but is favorable for subrogation. [Read more...](#)



Subrogating The Growing Epidemic of Overspray Clams



A few years ago, a contractor working near MWL's Santa Ana, California office was spraying a structure with epoxy primer, one of the hardest paints to remove. Nearby and downwind of the construction area was an auto auction facility getting ready for the weekend's auction. The lot contained 752 new and used vehicles. Wind coming out of the south blew the overspray across a four-block area, covering 975 cars, including all of the cars in the auto auction lot, with epoxy primer in a lovely shade of dark red. Multiple buildings and other property was also damaged in this massive overspray incident. The damages exceeded \$4.5 million and the Garagekeepers' Liability carrier wisely contacted MWL to conduct an investigation and track down the perpetrator. The contractor's insurance company had only \$3 million in limits, but that went a long way in defraying the obligation of our client. [Read more...](#)

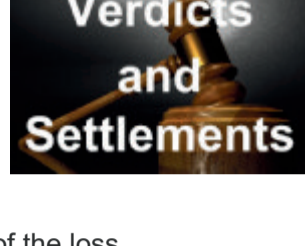
SUBROGATION SAVOIR-FAIRE: What You Don't Know Can Hurt You

Oh, that it wasn't so, but today's world of insurance claims adjusting, subrogation, and civil litigation rewards the ability of one party to take advantage of what the other party doesn't know. A civil trial is known as an "adversary proceeding" because it pits two or more opponents against one another with regard to a legal conflict, contest, or dispute. The American system of civil justice becomes a factual search for the truth and the application of law to that truth. If one party is unaware of the law, including each and every legal claim, defense, exception, argument, loophole, and opportunity available, they are at a distinct disadvantage. The real tragedy is that the loser in this battle of knowledge often remains ignorantly unaware why they lost. [Read more...](#)



Verdicts and Settlements

MWL recently recovered on a significant homeowners' subrogation case that involved a large oak tree that fell on an insured's home from the neighboring property in Jackson, Mississippi. The home suffered severe damage to its roof, floors, exterior and interior structure, and foundation and required extensive repairs. The neighboring landowner's insurance carrier initially denied the client's subrogation claim, citing the Act of God defense, on the basis that the tree was healthy and only fell due to heavy winds and rain that occurred the day of the loss.



However, Associate Attorney, [Brianna Law](#), did extensive research and drafted a demand letter relevant case law that clarified that the Act of God defense is only available to landowners who did not have reason to have notice of the possibility that a tree could fall, and that a landowner cannot hide behind this defense when a tree is noticeably defective or hazardous and falls from the foreseeable effects of storms, winds, or ice.

The demand went into great detail, citing historical weather data that showed that the maximum wind speeds reported on the day of loss never exceeded 17 mph (which the National Weather Service's Beaufort Wind Scale classifies as a "moderate breeze") and included data that reported even small trees with less established roots would not be blown over until winds speeds reached at least 55 mph, let alone a large oak tree that is meant to withstand high winds. The demand also showed that there was significant evidence proving that the tree was not healthy, but was instead diseased and decaying, and that the neighboring landowner knew this fact. Once the third-party adjuster received the demand and had an opportunity to review the documents supporting the damages, they issued a settlement check for the full ACV amount of the loss, totaling over \$270,000.

MWL Welcomes Two New Associates!



Wesley B. Hazen
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 Sr. Counsel
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MWL is pleased to welcome Wesley Hazen as a new Associate Attorney in the firm's Austin, Texas branch office! He graduated from the University of Oklahoma College of Law, where was active within numerous student organizations and served as Managing Editor of the Oil and Gas, Natural Resources, and Energy Journal. Wes has endeavored to develop his legal skills and pursue just compensation for clients: predominately in the plaintiff's personal injury area of law. He is thrilled to join MWL as he continues to develop his litigation skills while also pursuing optimal outcomes for clients.

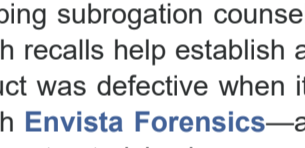
MWL is pleased to welcome Nicholas DeStafanis as a new Sr. Counsel Attorney in the firm's Hartford, Wisconsin office! He received his undergraduate degree from the University of Wisconsin-Milwaukee, and his J.D. from the University of Wisconsin in Madison and an advanced law degree, LL.M., from the University of Florida. Nick came to MWL with significant subrogation experience in the areas of property loss and product liability, having litigated matters in both state and federal courts. Nicholas is licensed in Wisconsin, where he will assist MWL with its growing book of nationwide subrogation litigation.

[Attorney Profile](#)

[Attorney Profile](#)

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.



Commercial Refrigerators with Seacop Compressors: The recalled commercial refrigerators with Seacop Compressors can fail in a manner causing the compressor to overheat, posing a fire hazard.

Frigidaire and Kenmore Smooth-top Freestanding Electric Ranges: Depending on the model, the surface heating elements can: 1) turn on spontaneously without being switched on; 2) fail to turn off after being switched off; or 3) heat to different temperatures than selected. This poses fire and burn 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.

The Subrogation Support Network Podcast



Tune in to the latest episode on the [Subrogation Support Network Podcast](#) as host, [Ashton Kirsch](#) is joined by special guest, [Raven Jelinski](#), an associate attorney with MWL. Listen in as they discuss the interesting factors of miss dig claims.

Host
Ashton T. Kirsch

Special Guest
Raven R. Jelinski

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.

[Raven R. Jelinske](#) is an associate attorney at MWL's Hartford, Wisconsin office. Raven received her undergraduate degree from the University of Mississippi where she was a member of the Sally McDonnell Barksdale Honors College, and her J.D., *cum laude*, from the University of Massachusetts where she was the recipient of numerous awards, including the Leader for Justice Award, the Delta Theta Phi "Most Outstanding Student in the Nation" Award, and the Louise M. Goodrum Unsung Hero Award – among others.



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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 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 & 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 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.