

MARCH 2024 SUBROGATION NEWSLETTER

PENNSYLVANIA SUPERIOR COURT WILL RECONSIDER ITS OWN DECISION ON LANDLORD/TENANT SUBROGATION: *Mut. Benefit Ins. Co. v. Koser*, 2023 WL 8360563 (Pa. Super. 2023), reargument granted, opinion withdrawn, 2024 WL 174472 (Pa. Super. Jan. 17, 2024)

Subrogation professionals are seeing more cases involving a landlord's carrier wanting to subrogate against a negligent tenant who caused damage to the leased premises. The ability of a landlord's property insurer to subrogate against a tenant for property damage caused by the negligence of the tenant depends on which state the loss occurs in and the nature and language of the lease involved. There are generally three different approaches. [Read more...](#)



OHIO SUPREME COURT SAYS THAT MEDICAL MALPRACTICE STATUTE OF REPOSE APPLIES TO WRONGFUL DEATH AND DERIVATIVE CLAIMS: *Everhart v. Coshocton County Memorial Hospital*, 2023 WL 8939848 (Ohio Dec. 28, 2023)



In Ohio, while the usual statute of limitations for both personal injury and property damage is two (2) years, § 2305.113 provides that an action for medical malpractice must in all cases be filed within four (4) years from the date that the medical negligence occurred. If the basis of the claim is discovered in the 3rd year and could not have been discovered earlier, the plaintiff is given 1 year from the date discovery to file suit. This statute of repose does not apply to claims for foreign

objects left inside the body. Ohio's medical malpractice statute of repose has not been without its controversy. In 1987, the Ohio Supreme Court ruled, in two separate decisions, that Ohio's medical malpractice statute of repose violated the Ohio Constitution. [Read more...](#)

5th CIRCUIT SAYS NO SUCH THING AS AN UNDERINSURED VEHICLE WHEN IT COMES TO DIMINUTION IN VALUE PROPERTY CLAIMS IN MISSISSIPPI: *Watkins v. Allstate Prop. & Cas. Ins. Co.*, 2024 WL 135458 (5th Cir. 2024)

A recent 5th Circuit Court of Appeals decision interpreting Mississippi insurance law has ruled that an automobile insurance carrier can exclude diminished value claims from its underinsured motorist coverage. In *Watkins v. Allstate Property & Casualty Insurance Company*, Kimberly Jones (insured by Safeway Insurance Company) negligently crashed into a vehicle driven by Kenan Watkins (insured by Allstate), resulting in physical damage to Watkins' vehicle. Safeway paid Watkins \$24,314.25 of its \$30,000 property limits for the repair costs to his vehicle. However, Watkins' vehicle also allegedly sustained \$13,545 in diminished value as a result of the collision. Safeway tendered the remaining \$685.75 of its limits toward Watkins' diminished value claim, but Watkins' filed an underinsured motorist claim with his own carrier, Allstate. Allstate denied Watkins' diminished value claim, relying upon a provision in its policy that excludes "any decrease in the property's value, however measured, resulting from the loss and/or repair or replacement." [Read more...](#)



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 Partner Attorney, [Lee Wickert](#), to discuss downtime claims.

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

Lee R. Wickert

Lee R. Wickert is a partner attorney in our Austin, Texas branch office. Lee's practice focuses on insurance litigation, subrogation, workers' compensation, health insurance and ERISA, automobile insurance, property and casualty, and insurance coverage. Lee is licensed to practice in Texas and Wisconsin. Lee is also co-author of "[Fundamentals of Insurance Coverage in All 50 States – Sixth Edition](#)", published by Juris Publishing, Inc. in New York.



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Uncovering the Cause:

Texas Wildfires Linked to Downed Power Lines owned by Xcel Energy



The wildfires in the Texas Panhandle are already the largest fire in state history, resulting in two deceased, burning more than 1,059,570 acres, countless livestock loss, and over 500 structures damaged. The fire has still not been completely contained at the time of writing this article – and the damages are expected to increase. This is the crucial moment for insurance companies to be proactive in the preparation of their subrogation claims. [Read more...](#)

MWL New Orleans Branch Celebrates 10th Anniversary!

MWL's New Orleans branch office recently celebrated its 10th anniversary. We opened the doors of the New Orleans office back in February, 2014 with MWL Partner [Jim Busenleener](#) as its only attorney. Jim has been the managing partner of the branch ever since. Gary Wickert and Jim have known each other almost as long as Gary has known Lisa, his wife of 34 years. Jim and Gary worked together when Gary was a partner at Hughes, Watters & Askanase in Houston, Texas. Things have been busy at this branch ever since. Jim is licensed in Texas and Louisiana, and has over 30 years of insurance subrogation, defense and coverage experience. The NOLA Branch has grown and currently includes two associate attorneys ([Louis Thomas](#) and [Brianna Law](#)), a paralegal (Lindsay Gilthorpe) and a senior legal assistant/branch office coordinator (Nancy Gray). The NOLA office handles MWL's large subrogation docket in the Mid-South and Gulf Coast regions; including workers' compensation subrogation, large loss property subrogation, trucking occupational accident and Longshore. The attorneys have particular experience with accidents arising out of oilfield and maritime work sites; including interpretation of defense and indemnity agreements and waivers of subrogation in master service agreements. The NOLA Branch also handles MWL's Louisiana insurance defense practice, state-wide. This was MWL's first branch office and we are very proud of its success, even if nobody there has been able to explain why statutes of limitations are called prescriptions in that state. Since New Orleans, MWL has added offices in Santa Clara, California, Jacksonville, Florida, and Boston Massachusetts. Congratulations to our NOLA branch members!



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 anti-substantive 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.



BISSELL® brand Multi Reach Hand and Floor Vacuum Cleaners: The vacuum's battery pack can overheat and smoke, posing a fire hazard.

Gas-powered Grass Trimmers: Incorrect wiring in the ignition module on the recalled grass trimmers can cause an electrical spark or arcing, posing a fire hazard if gas is on or near the unit.

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@mwl-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!



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.

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 us 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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