

MAY 2024 SUBROGATION NEWSLETTER

Depositions of Workers' Compensation Carrier Employees After Intervening in Third-Party Actions

Thin skin and subrogation do not go hand-in-hand. We are the crashers at every party and the uninvited guests that nobody wants to see show up when a personal injury suit has been filed. Trial lawyers believe we take money from the pockets of victims and defense lawyers believe that we make the cases they defend more difficult to resolve. Ours are the nuisance claims that are rejected out-of-hand because there simply are no consequences to doing so. And in workers' compensation third-party cases, we are an opportunity for defense counsel to bill a file by noticing and taking the deposition of a workers' compensation claims or subrogation professional who simply followed the law in paying benefits. Understanding how and why this phenomenon has seen an uptick in recent years goes a long way in formulating ways of responding to and handling situations where lawyers try to intimidate busy insurance company employees into perhaps compromising their statutory lien rights by demanding chunks of their precious time. [Read more...](#)



Pennsylvania Appellate Court Says Silent Lease Means Tenant Is Not Considered A Coinsured And Carrier Can Subrogate



The law in Pennsylvania regarding the ability of a landlord's property insurer to subrogate against a tenant whose negligence causes damage to the landlord's building has been very slow to develop. But they are quickly making up for lost time. Until recently, Pennsylvania had only one case speaking to this issue. In 1990, the Pennsylvania Superior Court held that if a lease requires the landlord to provide fire insurance, the landlord's carrier cannot subrogate against the tenant.

If the lease requires the tenant to obtain fire insurance, the landlord's carrier can subrogate. *Remy v. Michael D's Carpet Outlets*, 571 A.2d 446 (Pa. Super. 1990). It depended on the lease language. For twenty-nine years, Pennsylvania's courts gave us no further guidance on determining whether a tenant is a coinsured under his landlord's lease and, therefore, immune for a subrogation action by the landlord's insurance company. [Read more...](#)

HOW TO SUE YOURSELF AND WIN: Nuances of Subrogating Workers' Compensation Death Claims

The American horror film "Split", directed by M. Night Shyamalan, is a psychological thriller which centers on a bizarre antagonist with 23 separate personalities. Without spoiling the plot, suffice it to say that it focuses on the fact that there is something to the adage "mind over matter." They say that life imitates art. If you prefer Woody Allen's slant on it, "Life doesn't imitate art, it imitates bad television." Both statements appear to be true in a growing number of cases where personal representatives in death cases are actually being allowed to sue themselves in order to prosecute a wrongful death or survival action following the work-related death of an employee. It's enough to make your head spin. [Read more...](#)



Verdicts and Settlements

Jim Busenleener, managing partner of the New Orleans office, recently recovered \$185,000 in a Longshore and Harbor Workers' Compensation Act ("LHWCA") subrogation case where a gangway was not secured by the vessel crew properly and flipped, sending the claimant into the water and breaking his wrist. MWL represented both the claimant and the LHWCA carrier in the third party suit in the USDC-Western District of Louisiana against the vessel owner, and Jim was able to recover almost 40% more than the LHWCA lien.



The Subrogation Support Network Podcast



Listen in on the latest episode on the **Subrogation Support Network Podcast** as host, **Ashton Kirsch** goes over the new and fascinating topic of **Bomb Throwing Demands**. Host, 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. [Listen now...](#)

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.



Model Year 2022-2023 Snowmobiles equipped with PATRIOT BOOST Engines: The fuel line between the fuel rails can leak, posing a fire hazard.

Berkley Jensen Citronella 72-inch Outdoor Torches: The outdoor torch top can break open and/or fall off while lit, posing a burn hazard.

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!



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 professional guidance 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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