

SEPTEMBER SUBROGATION NEWSLETTER

DELAWARE COURT SAYS IT IS NOT BAD FAITH IF CARRIER CHOOSES NOT TO SUBROGATE *Patel v. State Farm, 2024 WL 3425787 (Del. Super. 2024)*

A Delaware court has thrown a small blanket of precedent over the smoldering embers of claims by some insureds with large deductibles that their insurance company is guilty of bad faith if it does not attempt to subrogate and recover the insured's deductible. On August 2, 2020, Praveen Patel's house located at 403 Derby Way, Wilmington, Delaware, sustained fire damage caused by a fire originating from a neighboring property located at 401 Derby Way, Wilmington, Delaware. Plaintiffs' homeowner's policy with State Farm Fire and Casualty Company carried dwelling coverage of \$1,450,900.00 with a 5% deductible amounting to \$72,545.00. Under the policy, State Farm reserves the right to seek subrogation. [Read more...](#)



PENNSYLVANIA COMP CARRIER RECOVERS FULL LIEN AFTER ADVISING PLAINTIFF'S COUNSEL THAT LIEN WAS MUCH SMALLER: *Janelle Newsome, Petitioner v. City of Philadelphia (Workers' Comp. Appeal Bd.), Respondent, 2024 WL 3406202 (Pa. Commw. 2024)*.



In a rare example of how strong a workers' compensation statutory lien can be, a Pennsylvania appellate court affirmed a ruling by a Workers' Compensation Appeal Board (WCAB) in which a workers' compensation carrier was allowed to recover its full \$45,530.48 lien out of the employee's \$675,000 third-party settlement, even after a claims adjuster for the carrier's TPA advised plaintiff's counsel that the lien was only \$14,210.69. The facts of the case are fairly straightforward. Janelle Newsome was a police officer with the city of Philadelphia in 2016 when she was hit on the head by a construction sign due to the negligence of the contractors who placed the sign. Newsome began receiving workers' compensation benefits under the Pennsylvania Workers' Compensation Act, and also retained an attorney to sue the contractors responsible for the injury. [Read more...](#)

MISSOURI'S ANTI-SUBROGATION POLICIES HAVE THEIR LIMITS: *Megown v. Auto Club Fam. Ins. Co., 2024 WL 675550 (Mo. App. 2024)*

In December we reported on the anti-subrogation climate in Missouri and the Court of Appeals decision in *Thomas v. Ramushi*, which held that, absent a "direct assignment", an insurer has no authority to seek a property subrogation payment from the tortfeasor without the insured's consent. That decision highlighted the important distinction between a subrogation clause contained in an insurance policy and a direct assignment of a cause of action. Without an assignment, an auto insurer has no authority to seek a subrogation payment from the tortfeasor without the insured's consent. When an insurer pays a property loss, its right to maintain a subrogation suit against the tortfeasor depends upon whether it receives from the insured an assignment of the whole claim as compared with merely rights of subrogation via the policy terms. If the insurer receives such an assignment, then it has the exclusive right to maintain the suit against the tortfeasor for the entire claim including any deductible, but if the insurer's rights are simply those of subrogation, then legal title remains in the insured, as does the exclusive right to bring the suit. [Read more...](#)



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.

Slide-in Electric Ranges: Front-mounted knobs on the ranges can be activated by accidental contact by humans or pets, posing a fire hazard.

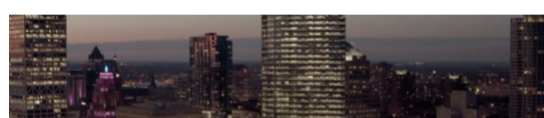
VARMFRONT Power Banks: The power banks can overheat, posing a fire hazard.

Mango Tangerine Scented Candles: The candle flame can spread from the wick to the wax causing a larger than expected flame, posing a fire 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!



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](#).

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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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