

## NOVEMBER SUBROGATION NEWSLETTER

### LANDMARK WORKERS' COMPENSATION SUBROGATION DECISION IN NEVADA!

*AmTrust N. Am., Inc. v. Vasquez*, 2024 WL 4233423 (Nev. 2024)

On September 19, 2024, in one of the most pro-subrogation decisions in a generation, the Nevada Supreme Court has overnight turned Nevada into one of the most favorable states for workers' compensation subrogation. With the stroke of a pen, the court has done the following:



- Abandoned the “Breen Formula”—which it declared was “unworkable” and “no longer good law”;
- Ruled that workers' compensation carriers no longer have to pay any portion of employees' third-party attorneys' fees and litigation costs;
- Confirmed the importance of a carrier intervening and participating in a third-party action;
- Acknowledged the societal and economic importance of workers' compensation subrogation and the importance of protecting it;
- Reinstated the a carriers' subrogation rights against both economic damages and non-economic damages;
- Reaffirms that the employee's attorney, the employee, and the third-party liability carrier are all jointly and severally liable to the workers' compensation carrier for its lien;
- Continues to codify; and
- Simultaneously overruled *Breen v. Caesar's Palace*, 715 P.2d 1070 (Nev. 1986) and *Poremba v. Southern Nevada Paving*, 388 P.3d 232 (Nev. 2017), to the extent that either of them conflict with this decision.

The facts underlying this landmark decision are rather simple. [Read more...](#)

### SUBROGATING DAMAGE CAUSED BY SWAT AND POLICE ACTION OR BY ORDER OF GOVERNMENTAL AUTHORITY: *Baker v. City of McKinney, Texas*, 84 F.4th 378 (5th Cir. 2023)



On July 25, 2020, a man named Wesley Little showed up at the front door of Vicki Baker, who was a long time resident of McKinney, Texas. Little had a 15 year-old girl with him when he knocked on the door. Only Vicki's daughter, Deanna Cook, was home at the time. She recognized Little because he had previously done some work at the Baker residence. When they showed up Deanna knew that Little was on the run with the girl after seeing a post about it on Facebook that same morning. Deanna quickly claimed that she needed to go to the store and left, calling her mother and the police. [Read more...](#)

### ALABAMA ALLOWS LOSS OF USE DAMAGES FOR TOTALED “COMMERCIAL VEHICLE” FOR FIRST TIME: *Myers v. Alfa Mut. Ins. Co.*, 2024 WL 4522424 (Ala. App. Oct. 18, 2024)

Every day we see evidence of the continuing evolution of subrogation law across our country. In many respects, we are still pioneers in this industry, as subrogation wasn't pursued, respected, or sought after for many years, leaving many areas in our industry undecided by the courts and simply unknown. A good example of this is the state of the law in Alabama with regard to recovery of loss of use damages when a vehicle is damaged. The new Alabama Court of Appeals decision in *Myers v. Alfa Insurance Company* is only the latest subrogation decision to determine subrogation rights in a particular area for the first time. The basic rule for measuring physical damages to a motor vehicle under Alabama law is the difference in a vehicle's value before and after the accident. [Read more...](#)



### The Subrogation Support Network Podcast



Tune in to the latest episode on the [Subrogation Support Network Podcast](#) as host, **Ashton T. Kirsch** presents Negotiations 101: Part 2. 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.

### 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.



**Colsen-Branded Fire Pits:** Alcohol flames can be invisible and lead to flame jetting when refilling the fire pit reservoir. Flame jetting is a serious event that can occur while pouring alcohol, when fire flashes back to the alcohol container and suddenly propels alcohol out of the container and onto people nearby. Alcohol can also splash, spill or leak out of the fire pit reservoir during use, causing a flash fire that can spread and create larger hotter flames, that can escape the unit. Use of the recalled fire pits can lead to injury quickly and unexpectedly, causing burns in less than one second, that can be serious and deadly.

**Nub, Serie V, Cain, and Oliva branded Promotional Cigar Slim Lighters:** The recalled lighters do not have child-resistant mechanisms and were not tested to the federal regulatory requirements for child resistance. Young children under 5 years of age could ignite the lighters, posing fire and burn hazards.

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](mailto: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](#).

### 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](#), [Facebook](#), [Twitter](#), [YouTube](#), and [Instagram](#) 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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