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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"

Every day we see evidence of the continuing evolution of subrogation

FOR FIRST TIME: Myers v. Alfa Mut. Ins. Co., 2024 WL 4522424 (Ala. App. Oct. 18, 2024)

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**



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),

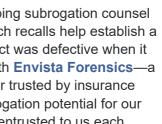
shareholder with the law firm of Matthiesen, Wickert & Lehrer, S.C. Ashton has been with MWL's Hartford office since 2015, concentrating his practice on litigation of subrogation cases involving

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

defective or unsafe products cause 29.4 million injuries and 21,400 deaths every year, resulting in an estimated \$700 billion in injuries,

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 Forensicsglobal, 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 burning 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.

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@mwl-law.com.

Nub, Serie V, Cain, and Oliva branded Promotional Cigar Slim Lighters: The recalled

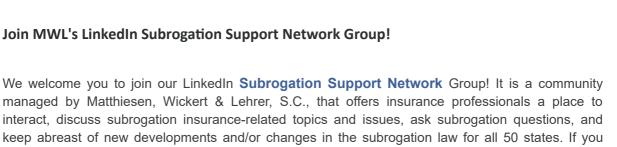
Lehrer views the handling of your subrogation claims - large and small - as time travel for the insurance industry. We

help turn back the hands of time and attack the enemy of our industry - claims - utilizing

Time Travel For The Insurance Industry

See **HERE** for a provocative 60-second video explaining why Matthiesen, Wickert &

our experience and expertise. Check it out! Join MWL's LinkedIn Subrogation Support Network Group! would like to join this LinkedIn group, please click HERE.



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