

## Stutman Law Curbs Attempts to Expand Made Whole Doctrine in Pennsylvania

Stutman Law was successful in curbing an attempt to expand the made whole doctrine in Pennsylvania in a case that dates back to 2001. The recently decided case of [Proff. Flooring Co. v. Bushar Corp., 2016 WL 7105899, 2016 Pa. Super. 274, Dec. 6, 2016](#) relates to a catastrophic fire that destroyed the Continental Business Center in Bridgeport, Pennsylvania and ruined or damaged seventy businesses. In the wake of the fire, a class action lawsuit along with numerous subrogation claims were filed against various defendants for causing and/or contributing to the spread of the fire. In 2008, after nearly seven years of litigation at both the trial and appellate levels, a class action settlement was consummated. Then, after Stutman Law petitioned the trial court to allow subrogated insurers to be paid from the settlement, a \$32 million settlement fund was established to pay damages incurred by all injured parties, including subrogated insurers. [Read more...](#)

## Getting Rid of a Thorn in the Side of Subrogation Professionals - PA Court Affirms That Workers' Compensation Insurer Can Sue on Behalf of Injured Worker

On February 10, 2017, a three-judge panel of the Pennsylvania Superior Court ruled in a published opinion captioned [Hartford Insurance Group on Behalf of Chen v. Kamara, et al., 2017 Pa Super 31 \(Feb. 10, 2017\)](#), that a workers' compensation insurer can sue a responsible third party in the name of an injured worker to recover the workers' compensation benefits it paid to the injured worker. This important opinion is the first appellate decision since *Domtar Paper* upholding the method by which a workers' compensation insurer can pursue recovery when the injured worker is either reluctant or unwilling to pursue the claim.

Almost two years ago, the Pennsylvania Supreme Court's pronouncement in *Liberty Mutual v. Domtar Paper* unintentionally gave opponents of subrogation some ammunition to challenge a workers' compensation insurer's attempt to recover benefits it paid to an injured worker from a responsible third party. *Liberty Mut. Ins. Co. v. Domtar Paper Co.*, 113 A.3d 1230 (Pa. 2015). In *Domtar*, the Pennsylvania Supreme Court upheld the dismissal of the complaint filed by the workers' compensation insurer ruling that it was "attempting to pursue its own subrogation claim" directly against the third party, rather than the claim of the injured party. The complaint in *Domtar* was dismissed because of procedural missteps, but the **opinion created case law that has been a thorn in the side of subrogation professionals** in Pennsylvania. However, as exemplified by the recent Superior Court opinion in *Hartford v. Kamara*, a careful reading of *Domtar* reveals that workers' compensation subrogation remains viable for insurers in Pennsylvania so long as specific procedural mandates are followed. [Read More...](#)

## Tree Damage Alert

Don't forget that the groundbreaking case of [Mercury Casualty Company vs. City of Pasadena](#) allows carriers to make recoveries for property damage caused when trees are toppled by high winds or other factors. If you have any questions regarding any claims from the recent storms in California, please feel free to contact Bob Stutman or Tim Cary at Stutman Law.

## Stutman Law Defeats Waiver of Subrogation Summary Judgment Motion Resulting in \$925,000 Recovery

Stutman Law recovered \$925,000.00 from contractors responsible for the failure of a flange on a large ductile iron water supply line in a hotel in New Hampshire. Stutman Law's investigation, including the use of metallurgical analysis and exemplar testing, established that the flange separated from the ductile iron supply line because the installers failed to follow the flange manufacturer's installation instructions. The defendant construction contractors argued that the plaintiff's claims were barred by a waiver of subrogation provision in the contract for the construction of the hotel and filed motions for summary judgment. Stutman Law argued that the waiver of subrogation did not apply to claims arising under policies covering the hotel after its "substantial completion." The court denied the defendants' motions for summary judgment finding that a genuine issue of material fact existed regarding whether the parties intended the waiver of subrogation provision to apply to policies covering the completed hotel. After losing their summary judgment motion, the defendants settled the case with Stutman Law. The court's opinion, *Continental Western Insurance Company v. Opechee Construction Corporation, et al.*, 2015 WL 5838408, can be found [here](#).

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