

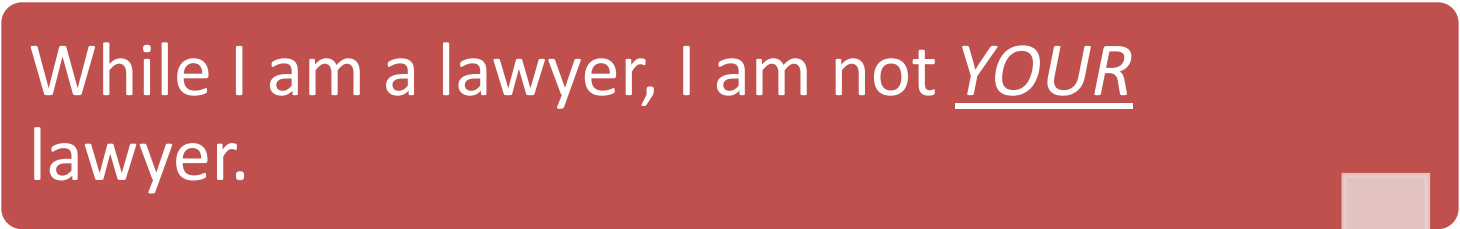
“Who am I?
Why am I here?”
~ Admiral James Stockdale

- John W. Taylor
- General Counsel for the Missouri Petroleum Storage Tank Insurance Fund (PSTIF)
- Subrogation: Show-Me the Money!!

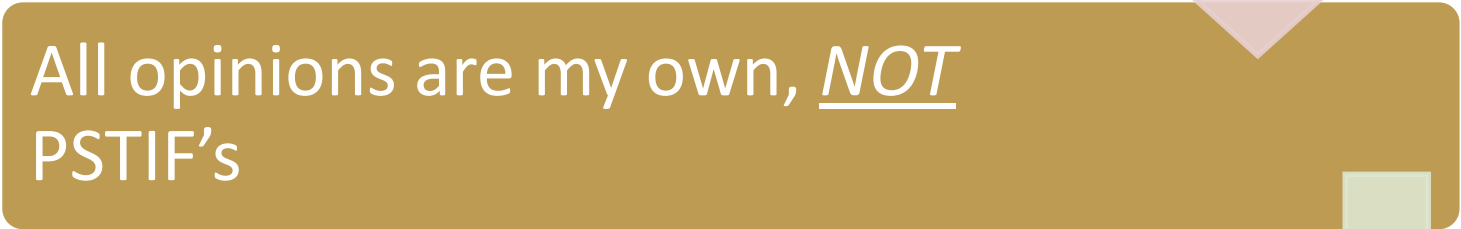


The Three Disclaimers:

While I am a lawyer, I am not YOUR lawyer.



All opinions are my own, NOT PSTIF's



Laws vary. Consult local counsel.



What is
Subrogation?

Subrogation
=
Substitution

Sources of subrogation rights:



Equity



Contract

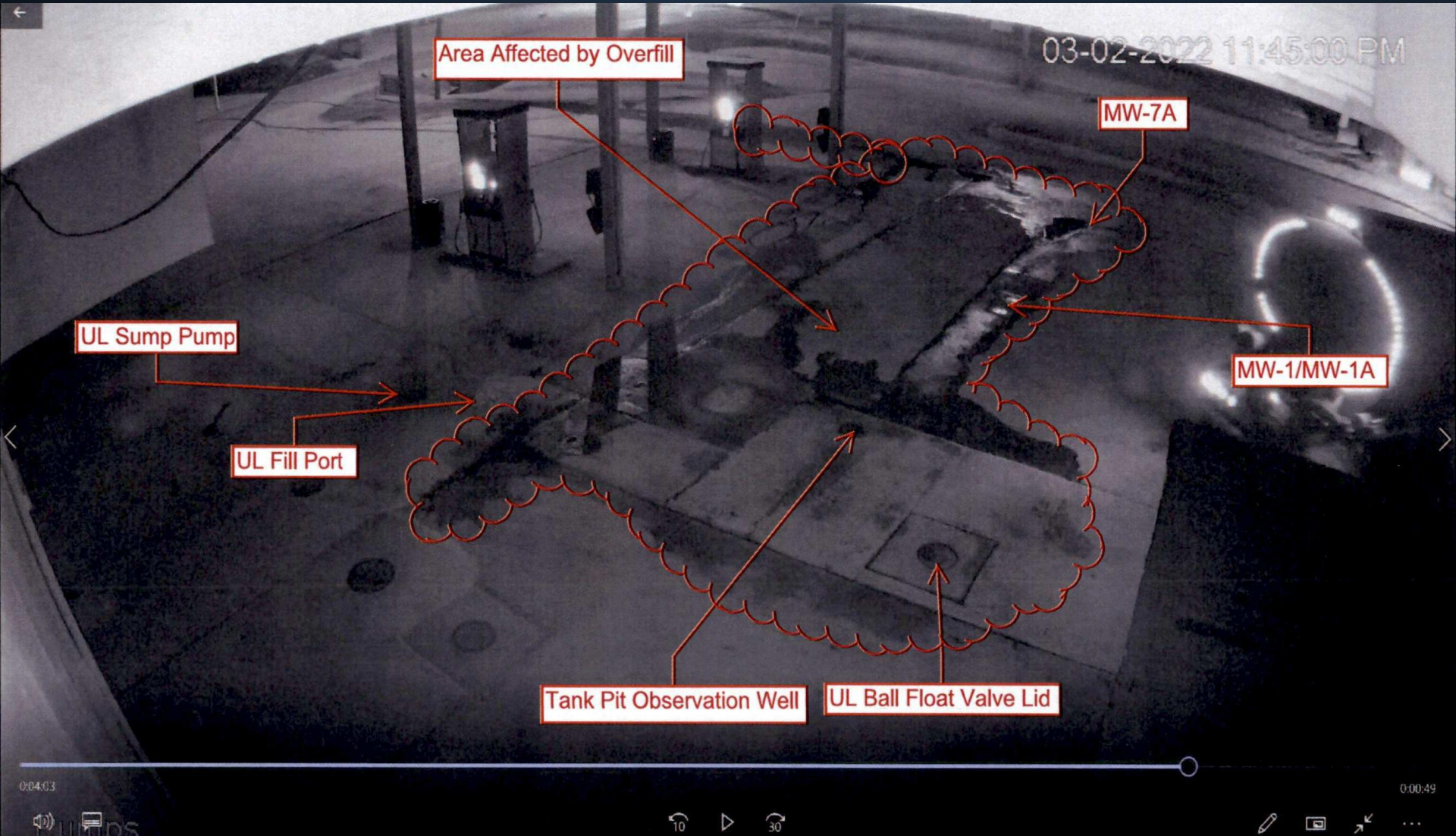


Statute (e.g., 25
Pa. Code §
977.40)



Section 977.40(a) – 'The
Fund, after any payment,
shall be subrogated to all
of the rights of recovery...'

EXAMPLE: FOODMART



Foodmart's Damages

DAMAGES

- Environmental consultant..... \$ 15,288.37

HOW PAID FOR?

- Foodmart's Deductible (OOP)(\$10,000.00)
- Reimbursed by PSTIF..... (\$ 5,288.37)
- Total Paid.....(\$15,288.37)

COSTS RECOVERED FROM TRANSPORTER

- Transporter's Insurance
Company.....\$15,288.37
- *Allocated as follows:
 - to PSTIF.....\$ 5,288.37
 - to Foodmart.....\$10,000.00

Refreshing Foodmart's Coverage Limit

PSTIF Coverage Limits

- \$1 million per occurrence / \$2 million aggregate

Policy Limits -	\$1,000,000
<u>Deductible -</u>	<u>\$ 10,000</u>
Available from PSTIF	\$ 990,000
<u>Foodmart Used</u>	<u>(\$ 5,288)</u>
Remaining Available from PSTIF	\$ 984,712

+ PSTIF Recovered from

<u>Transporter</u>	<u>\$ 5,288</u>
Available from PSTIF	\$ 990,000

EXAMPLE: PETE'S



Pete's Damages:

DAMAGES

- Environmental Consultant..... \$18,056.40
- Laboratory testing expenses..... \$ 587.50
- Dispenser Repair.....\$ 6,613.18
- Lost Fuel\$ 929.70
- Total Damages \$26,186.78

HOW PAID FOR?

- Pete's Deductible (OOP)..... (\$10,000.00)
- Pete's Other OOP (PSTIF ineligible).....(\$ 7,542.88)
- PSTIF Reimbursed.....(\$ 8,643.90)
- Total Paid.....(\$26,186.78)

COSTS RECOVERED FROM DRIVER

- Driver's Auto Liability Insurer.....\$25,000.00
- * Allocated as follows:
 - to PSTIF.....\$ 8,250.00
 - to Pete's.....\$16,750.00

WHY subrogate?



HOW to subrogate?



PRACTICAL MATTERS



LEGAL MATTERS



Practical matters:



EVALUATION OF
LOSS



PRESERVATION OF
EVIDENCE



DOCUMENT,
DOCUMENT,
DOCUMENT



NOTICE TO
POTENTIALLY LIABLE
PARTIES



EXPERTS



ASTM E2733 –
STANDARD GUIDE



DEMAND LETTER(S)



FILING SUIT



Legal matters:

Proper parties to a subrogation claim?

Comparative Fault/Negligence – Pure or Modified?

Waivers of Subrogation?

Economic loss only or damage to other property?

Statutes of Limitations/Repose?

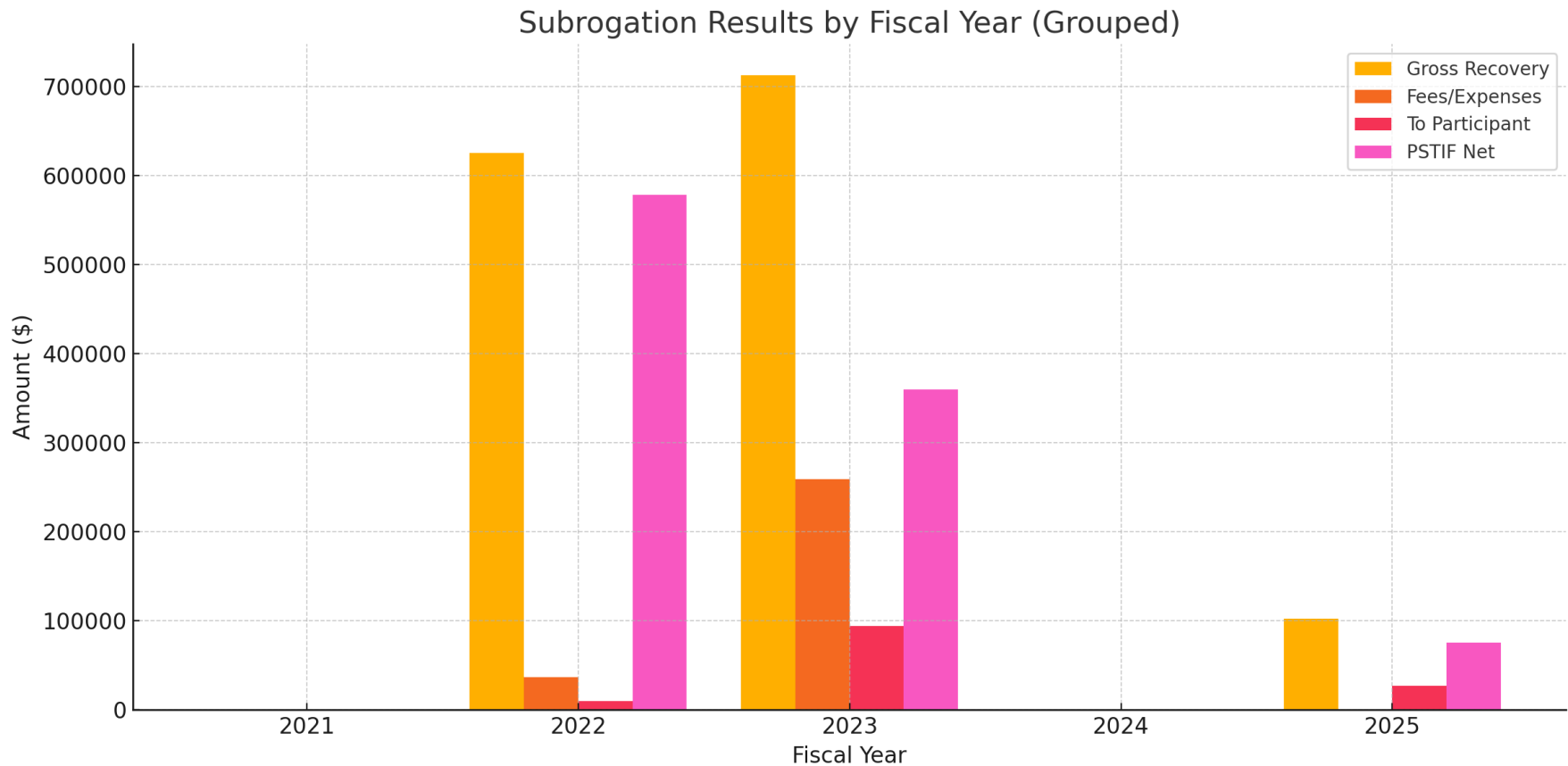
Made Whole Doctrine?

Spoliation of Evidence?

Joint Representation and Allocation Agreements?

Alternative to Subrogation?

Juice Worth the Squeeze?



Questions?

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