Many Insurers Overlook Advantages of Subrogation

by Gary L. Wickert and Stan. F. Nelson

PERSPECTIVE

Subrogation is an often overlooked but excellent strategy for recouping insurance losses, and it tends to be underutilized for two reasons. The first is the basically defensive mindset of the insurance industry. Insurance companies tend to think about protecting themselves against attack, rather than about actively seeking out solutions that benefit their bottom line.

Subrogation calls for insurance companies to think like plaintiffs, and this isn’t something they’re used to doing. In fact, historically the insurance industry often has done little more than pay lip service to its subrogation rights. Companies often send a notice to a potential third-party tort-feasor but don’t follow up.

Second, insurance companies often are shoddy in their investigation of a case’s subrogation potential. For instance, in 1989 a 22-year-old electrician’s apprentice was standing on a ladder’s third rung while installing a ballast in a fluorescent light fixture at a Houston health care facility. The young man received an electrical shock and fell backward off the ladder. The accident left him brain damaged and a spastic quadriplegic. His employer’s workers’ compensation carrier quickly paid out seven-figure benefits and was faced with catastrophic reserves.

A preliminary investigation by the claims handler revealed that the young man had failed to turn off the power to the electrical grid on which he was working. Although the investigation was still in its infancy, the claims handler marked the file “no subrogation potential” because he assumed that the injured person had been at fault. Subsequently, however, a full-service subrogation firm was brought into the investigation. Its research revealed that the electrical grid had been designed and installed in a way that made it impossible to shut off power in entire sections of the building without also cutting off power to critical care facilities. There even had been incidents in which journeymen electricians received shocks after their request to shut off certain power grids was denied.

A subrogation suit was hastily filed on the evening before the statute of limitations was to run out. The carrier eventually recovered $1.5 million in satisfaction of its lien and an additional statutory credit of more than $5 million.

Cases like this aren’t unusual. In fact, three of our largest subrogation recoveries came in cases where the files read, “No subrogation exists!”

Proactive, aggressive subrogation programs and policies make sense for major insurance companies, third-party administrators, small claims handling offices and insurance agencies alike. Increasingly, clients and insureds are calling for the recovery of every possible dollar, and subrogation is an effective way to respond to this demand.

A strong subrogation strategy has four basic elements.

First, it’s necessary to educate claims handlers, adjusters and agents about the importance of subrogation. It’s often a good idea to send employees to accredited continuing-education seminars on subrogation, where they learn not only how to recognize subrogation opportunities, but what actions to take that will maximize any subrogation potential.

Employees need to be reminded that in many types of subrogation, more is at stake than the actual dollars collected. For instance, in workers’ compensation subrogation, the real value of subrogation may lie in the extent to which it may allow a large reserve write-down.

Some employees may not feel it’s important to know about the benefits of subrogation. How, for instance, do you convince defense-minded claims managers, whose only aim is to keep their department’s costs down, that it’s actually in their interest to implement an aggressive subrogation plan? The answer is by encouraging them to look at the bigger picture. Remind them that every dollar recovered erases a dollar paid out and not only increases the profitability of their own depart-
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