

Maximizing Subrogation Claims: A Little Work Upfront Can Payoff in the End



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Practice Areas:

- Insurance Coverage
- Subrogation Litigation
- Products Liability
- Commercial Transportation

Two key elements in subrogation are attaining swift resolution of the claim and avoiding unnecessary activities before and during the lawsuit. Doing this can minimize the effort before a lawsuit is filed so that the claim can be settled or pursued as soon as possible in hopes of maximizing the return. However, this approach unfortunately can create a situation where a claim is not thoroughly investigated, and it can result in a low recovery, if any, on what otherwise may have been a valuable subrogation claim.

In subrogation, a little more work on the front end can help maximize a claim. Each case is different and the perceived value at the outset will dictate the amount of investigation and effort that is justified. Once a potential claim is identified, completing a thorough investigation and submitting a comprehensive demand package may increase the ultimate recovery and avoid unnecessary delays during the litigation. A good claim investigation (e.g., thoroughly documenting the scene and obtaining recorded statements from witnesses) will reduce the amount of effort required later to reconstruct the incident and will help prepare a case for trial.

A comprehensive subrogation package can also reduce unnecessary delays and potentially avoid litigation altogether. A good approach is to first consider the age old golden rule of "do unto others as you would do unto yourself." The materials should consist of the same materials that your insurance carrier would require to resolve a disputed claim. I am of the opinion that such a package should often include proofs of payment, photographs of the loss, any expert reports that may be available, and a simple statement of the facts along with an explanation of any unique or complex legal issues.

Remember this: If a potential subrogation claim has a sufficient value to consider pursuing it, then it should have sufficient value to justify a thorough investigation in the beginning. If litigation does happen, having comprehensive subrogation demand package materials together will enable the carrier and subrogation counsel to actively pursue the matter with the legitimate prospect of going to trial, and this could possibly prevent the case from dragging out unnecessarily over a period of months – and sometimes – years.

Subrogation side note:

If you are interested in learning more about subrogation, here are two previous posts on the subject.

"Subrogation in South Carolina Part II: Proper Parties to Action," South Carolina Insurance Law Blog

"Subrogation Claims in South Carolina," South Carolina Insurance Law Blog

About Lee Floyd

Lee Floyd is an associate practicing in insurance coverage and subrogation litigation, products liability, commercial transportation and professional negligence. He also performs pro-bono work for the office of the South Carolina Attorney General, serving as a special prosecutor in criminal domestic violence prosecutions. Greater Columbia Business Monthly recognized Lee as one of the 2012 Midlands Legal Elite in the area of insurance coverage. Lee graduated from Wofford College, and he received his Juris Doctor from the University of South Carolina. While in law school, he served on the Editorial Board for the South Carolina Law Review and participated in Moot Court. He also won the Roberts' Most Outstanding Research Paper Award. Lee worked as a law clerk for Collins & Lacy prior to joining the firm in 2007.

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