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# Subrogation Claims in South Carolina: Proper Parties to the Action

**James (Lee) Floyd, Attorney**
Direct Line: 803.255.0482
lfloyd@collinsandlacy.com

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An initial question when evaluating and bringing a subrogation claim is who are the proper parties to identify as bringing suit? While ordinarily a fairly simple question in most litigation, this issue creates numerous complexities when dealing with subrogation claims, and resolving these issues can have a substantial impact on the perceived value of a subrogation claim.

The impact of the named parties is apparent when you consider whether a jury will be directly informed that not only is insurance involved, but any award will be for the partial or complete benefit of an insurance company. Further, because South Carolina law firmly prohibits any reference to the existence of (or non-existence of) liability insurance, the jury will not expressly know whether the burden of an award will be placed on the defendant or the defendant's insurance carrier. This scenario can easily present a situation in which a jury perceives the case as one where a multi-million dollar insurance company is asking to recover damages from a small company or an individual. In short, the parties may present a picture of Goliath pursuing David.

While some issues remain unanswered in South Carolina, the following general rules exist for the proper parties for bringing a subrogation claim. Each depends upon the total amount of the loss the insurer has paid.

1) The insured alone may bring the claim: It appears that in most situations the subrogation claim may be brought exclusively in the name of the insured. In South Carolina, an insured is the only proper party to institute a subrogation claim where an insurer has not yet paid for the loss or disputes coverage depending on the outcome of the claim against the third party. While obvious in its reasoning, this rule has important implications: an insurer appears capable of always bringing a subrogation claim solely listing the insured as the plaintiff and still retains control over prosecution of the claim under the terms of the insurance policy. Using this rationale, there is no need to identify the plaintiff as "insurance company X as subrogee of" or similar language.

2) The insured and the insurer are both proper parties to the action: This approach has been recognized in South Carolina where an insurer pays only a portion of the insured's loss due to the actions of the defendant. This rule is consistent with South Carolina's recognition of equitable subrogation as automatic on a pro-rata basis.

3) The insurer may bring the action solely in its own name: An insurer may file a Complaint solely in its own name only where it is has paid the total loss. It is unclear, in South Carolina, whether this requires the insurer to have waived any amount due under the policy for the deductible or if this amount is excluded from calculating the total loss.

While this issue can be overlooked, determining the proper parties to Complaint in a subrogation claim may have significant ramifications on how the claim is presented to a jury and the perceived value of a claim. As it currently exists, South Carolina law appears to permit an insurer to institute a subrogation claim in solely the insured's name in most, if not all, circumstances. It appears that this approach may be underutilized or overlooked in current practice.

**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. 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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