

The Balancing Act of Small Subrogation Claims



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Handling small subrogation claims is all about the “netback.”

If you are a subrogation supervisor or adjuster responsible for deciding the best way to handle small balance subrogation claims, you know your options are limited. The balancing act between collecting the full balance and controlling expenses can be exhausting. However, if the decision is based upon the amount you “netback,” you will minimize your costs while maximizing your recovery.

“Netback” is the number that impacts your bottom line - it is the real number you have in the bank after all recovery expenses are paid. When our clients ask our advice on tackling these issues, we tell them if they are fully informed about their options, the balancing act and decision-making can actually be quite simple.

Determining a proper file for subrogation is basically a combination between company philosophy and balancing various competing interests. An insurer should consider many factors.

First, consider the monetary value of the file. Contrary to what you might expect, attempting to subrogate the small files will actually dramatically increase your overall recovery. It is all a matter of what to outsource and where to focus your employees’ time and attention internally.

A second factor to consider is the type of file and the strengths and weaknesses of any liability issues. The collection of an automobile file is vastly different than the collection of a non-automobile property file. For example, even within the automobile industry, a case of assured clear distance is vastly different than a case with a citation against the insured. Another example is in health claims, where a file with ideal facts and plan language is vastly different than a file with bad facts and bad plan language. Again, it is not necessary to close the file when there is a less than ideal liability situation. Instead, you can outsource those cases and turn your attention to those that resolve a little faster and more successfully.

The key here is to train the claims adjusters and subrogation staff to identify a file that is more easily collected from one that is not. Even if you determine the initial assessment was incorrect, you can always choose to close or outsource it when the difficulties in a file become apparent. That way, your time is not being consumed by more complicated files, and you can instead spend your time on auditing procedures that allow you to identify missed subrogation opportunities in closed or new files.

Once you have identified your files with subrogation potential, you have several options. Let’s review them.

1) DO NOTHING DESPITE THE SUBROGATION POTENTIAL

There are various factors to consider in determining whether to

close a file instead of pursuing subrogation. These are based on a) the value of the claim; b) percentage of liability; c) collectibility of the wrongdoer; d) whether insurance is available; e) the ability to locate the wrongdoer and any potential witnesses; and, f) any company policies or philosophies that exist, such as making every effort to return the deductible to the insured. We have found that some companies will make a small effort to collect the file, through a few collection phone calls and then will shut down the file if they have made the decision not to outsource. Remember that the top performers in the 2004 NASP Benchmarking Survey regarding insurers’ practices were those who had a lower balance threshold when subrogating and maximized recovery on even the small files. Many do this by a combined approach of working in-house and outsourcing the rest.

2) COLLECTION EFFORTS THROUGH AN IN-HOUSE SUBRO STAFF OR LEGAL DEPARTMENT

In-house subrogation is best utilized when maximizing the resources to obtain the best return. Most departments are not large enough to handle the volume of complex cases insurance companies will likely accrue. Therefore, most insurers find the in-house staff works best when they focus their efforts on the files that provide the best return. Some examples include an insurer working the files where insurance is available as opposed to uninsured or a small number of large balance files with clear liability instead of numerous small balance files or those with questionable liability.

Even attempting to manage large balances through promissory notes or payment arrangements can be costly due to the large maintenance costs of tracking and depositing the monthly payments. These files are ideal for outsourcing to a vendor to monitor the payment schedule and pursue payment in full immediately when a wrongdoer misses a payment.

The 2004 NASP Benchmarking Survey also states that the average amount of time an insurer should work a file internally is approximately 100 days. If no collection has been obtained in that time, good results can be obtained from outsourcing because it provides a new “voice” and “name” to the wrongdoer, even if there is no intent to file suit. This conveys that you mean business.

3) OUTSOURCING

When deciding whether or not to outsource, there are some general rules that you can follow. Do not be afraid to outsource files that have the lowest recovery potential. Again, those insurers having the best success are handing off the more complicated files, including those with low balances, and focusing their efforts on the ones that are easier to collect. Some insurers are even outsourcing their arbitration filings when the volume is substantial or when staffing is temporarily low due to issues such as medical leave. The 2004 NASP Benchmarking Survey indicates that a file that is valued under \$10,000 should be outsourced.

One of the major considerations when determining whether to outsource a file is the amount of time it takes to prepare the files to be sent to the vendor. Depending on the technology you have available, some vendors will make this preparation easier by communicating electronically in a paperless fashion.

If a vendor is confident that they are doing the best work available, they will encourage you to audit their performance

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through secured technology that allows you to easily monitor what is happening on each file. Additionally, a good vendor will make their numbers and liquidation rates available for you to evaluate regularly or even provide the results to potential clients so you can compare them to other competitors. You not only want to consider the fee for each of the vendors, but, more importantly, you should consider the success rate that each vendor has in the different areas of the country and different types of law.

But even if you decide you want to outsource, you have the option to outsource to either an agency or a law firm. Some hints on how to make this decision are below.

A) Outsourcing to an Agency with No Suit

Company philosophy often plays a major role in whether to use an agency or a law firm. Sometimes the insurer makes the decision that it does not want to extend resources towards the expenses of litigation like court costs or expert fees.

When choosing an agency, measure the liquidation rates for the files within a 12-month period, which vary from state to state. In addition, when choosing an agency, consider the automation of the vendor, such as use of a predictive dialer, and the ability to monitor the file, like viewing your files in process online.

B) Outsourcing Through a Law Firm with Suit

Many insurers use external counsel to work their small subrogation files. Often, the more successful insurers average a lower number of attorneys on their pre-approved list in order to control costs. Some law firms are capable of doing the job of an agency as well as suing the file, so some insurers have decided to use law firms to handle their files from start to finish. This can save time, which can be crucial when wrongdoers are on the run. However, we do not recommend that you send the files to a law firm unless you have a general intent to sue the files in order to obtain judgment.

We have often found that a lawsuit is the best way to force an insured wrongdoer or a carrier to step up to the plate when it comes to paying a subrogation claim. The legal process tends to uncover insurance and assets where none were previously thought to exist. In addition, the wrongdoer may name a third party to collect against and increase your chances of recovery because they realize that there is no more time to play games.

When deciding whether to sue, we recommend using the 10% rule - if court costs exceed 10% of the balance of the file, it is not usually worth suing unless you have ideal facts concerning liability and knowledge of assets to increase collectibility. If the court costs are lower than 10% of the balance, filing suit is an excellent tool in discovering many ways to get the wrongdoer to pay.

Another cost to consider when deciding to sue is the cost of experts to assist in proving your case. If you have already retained an expert to write a report, the expert expenses are not always over. The expert will probably charge an additional fee to testify hourly on video or at trial. Additionally, a separate expert may be required to prove medical expenses are related to the incident, to prove an accident occurred the way the parties remember or to testify as to a standard in an industry.

The cost of any potential counterclaims is also something to keep in mind when determining whether to sue a file. While some companies have no fear of counterclaims, others are very reticent to file suit when a counterclaim is threatened. This is usually based on the insurer's philosophy and whether they control their costs by having in-house counsel defend those claims.

However, the benefits of obtaining a judgment can often outweigh the costs. Obtaining a judgment allows you to accrue and collect interest from the date of judgment. This can often be a significant amount of money that is not otherwise obtainable. Thus, this interest is like "gift money" which far exceeds the court costs used to obtain the judgment. This provides for a greater "netback."

Another benefit of obtaining judgment is that a credit bureau report can now be requested on the wrongdoer in order to obtain further information regarding collectibility. The obtaining of the credit report provides a better opportunity to execute on the judgment including wage garnishments and bank attachments.

Having a good relationship with attorneys that you regularly use can also be beneficial, because you can use those attorneys as a resource. For example, attorneys can provide training on subrogation issues, obtain updates on the law, recommend experts with strong trial experience and provide guidance when difficult issues such as spoliation or bankruptcy arise.

An insurer may also have a general interest in suing a type of file in order to develop favorable law in an area that is not insurance-friendly. For example, since the 6th and 9th Circuits are notoriously difficult to subrogate in the health arena, an insurer may prefer to use a law firm that can take the case to trial when they have a good set of facts.

Obviously, the world of small subrogation is a balancing act, with many areas of competing interests, and insurers need to be mindful of that. While keeping your company's philosophies in mind, keep analyzing your numbers to determine the procedure that provides the most "netback," and you will continue to see the subrogation department be a huge success.