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**PAPER: "PROTECTING INSURANCE CARRIERS'
SUBROGATION RIGHTS:
FIRST DOLLAR OUT ISSUES
AND PRO RATA AGREEMENTS" (2/99)**

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I. PURPOSE OF SUBROGATION

In an attorney's or adjuster's rush to turn fires, machinery failures, roof collapses, etc. into subrogation recoveries, they often lose sight of the purpose of subrogation. The purpose of subrogation is to recover money--not to spend it. Accordingly, early evaluation is key to ensure that a company does not "throw good money after bad" pursuing a questionable subrogation case or a very expensive one involving a low dollar loss.

Further, at the beginning of the evaluation process an adjuster and a subrogation attorney should evaluate the viability of subrogation in light of who has the first dollar out rights. Blindly pursuing subrogation without taking these rights into account can result in the carrier unwittingly funding a windfall recovery for its insured.

Consequently, all parties concerned should "brainstorm" regarding the viability of subrogation involving a particular loss and be sure to account for who is entitled to the first dollar out. This evaluation should always include budgeting the costs for investigation and weighing those costs against the likelihood of recovery and who has the priority to that recovery.

Obviously, the approach to subrogation in a commercial property loss or a sizeable worker's compensation payment to an employee injured by a product manufactured by a third party should be much different than subrogation arising out of a motor vehicle collision where the defendant has no insurance, is underinsured or has no assets.

Similarly, the approach to a subrogation case in which the insured has the right to first dollar out should be substantially different from the approach a carrier should take when the carrier is entitled to first dollar out rights. If it is unclear who has priority to the proceeds, the carrier should attempt to obtain a pro-rata agreement to clarify the rights. This allows a carrier to know what amounts it may potentially receive and fund the litigation accordingly. This approach ensures that the carrier is pursuing subrogation effectively and efficiently.

II. SUBROGATION RIGHTS

A. CREATION OF SUBROGATION RIGHTS

1. Subrogation Rights Pursuant to Common Law

The right to subrogation occurs when one party meets its obligation to make payment to a party who has suffered a loss, where the loss was caused by a third party who would have legal responsibility and, in all fairness, should have paid the party who suffered the loss. Courts recognize that it is good public policy to shift the cost for a loss from an insurer who is merely providing indemnity to the tortfeasor that caused the loss.

Accordingly, in most states subrogation rights arise automatically pursuant to common law when the payment is made. In Louisiana, subrogation rights are specifically provided by Codal article.

2. Subrogation Rights Created by Contract

Insurers provide themselves with additional protection of their subrogation rights by confirming them in their insurance policies. Most insurance policies contain a subrogation clause specifically giving the insurer a contractual right to subrogation. Further, prior to making payment pursuant to a policy, most insurers require that their insureds to execute a proof of loss, subrogation receipt or loan receipt. These documents contain language granting the insurance carrier a contractual right to subrogation.

All of these agreements give the insurer control of the litigation. In addition, they can require the insurer to pay for all expenses and fees incurred in the litigation. Under the general theory of subrogation, the subrogee of the party suffering the loss “stands in the shoes” of the person to whom it made payment. This means that the subrogee’s rights exist only to the extent of the subrogor’s (its insured’s) rights.

3. Loan Receipts

As one court described it, “a loan receipt is a device by which an insurance company can have its cake and eat it too.” Ketterman v. S.C. Farm Bureau Mut. Ins. Co., 302 S.C. 276, 395 S.E. 2d 187 (S.C. App. 1990).

Loan receipts are typically very short documents containing minimal language. In essence, a loan receipt is an agreement between the insured and its insurer, whereby the insurer pays for the loss as a “loan” and the insured promises to repay the “loan.” The agreement usually provides that repayment of the so called “loan” is contingent upon the insured’s recovery against a third party responsible for the loss.

Long ago, courts recognized the validity and troubled policy benefits of loan receipts. Indeed, when examining a loan receipt, the United States Supreme Court stated:

It is credible to the ingenuity of businessmen that an arrangement should have been devised which is consonant both to the needs of commerce and the demands of justice.

Luckenbach v. W.J. McCahan Sugar Refining Co., 248 U.S. 139 (1918).

In addition to loan receipts, companies utilize similar documents under a variety of names. These include subrogation receipts, proofs of loss and loss receipts.

B. SUBROGATION RIGHTS MAY EXTEND BEYOND A SUBROGEE'S PAYMENT

Many people assume that a subrogee is subrogated only to the extent of its payment and, therefore, can never recover more than it paid its insured. Numerous cases stand for this proposition. E.g., Southern Ins. Co. v. Progressive County Mut. Ins. Co., 708 S.W. 2d 549, 552 (Tex. App. -- Houston [1st Dist.] 1986, writ ref'd n.r.e.); McAllen State Bank v. Linbeck Construction Corp., 695 S.W. 2d 10, 24 n.5 (Tex. App. -- Corpus Christi 1985, writ ref'd n.r.e.); Phipps v. Fuqua, 32 S.W. 2d 660, 663 (Tex. Civ. App. -- Amarillo 1930, writ ref'd). While this is usually the rule, there are exceptions and the possibility of recovering more than was paid should always be examined.

An exception to the general rule limiting a subrogee's recovery to the extent of its payment is that a subrogee may recover attorneys' fees in excess of the subrogee's payment when a contract between the insured and tortfeasor would have allowed the insured to recover such fees. See Rushing v. International Aviation Underwriters, Inc., 604 S.W. 2d 239, 244 (Tex. Civ. App. -- Dallas 1980, writ ref'd n.r.e.).

Statutory penalties and punitive damages may also be recoverable by a subrogee. The San Antonio Court of Appeals has held that a subrogee that did not qualify as a "consumer" under the DTPA could not assume the consumer status of its insured. Trimble v. Itz, 898 S.W. 2d 370 (Tex. App. -- San Antonio, writ denied, per curiam, 906 S.W. 2d 481 (1995)).

The issue before the Trimble court, however, was not whether an insurer could never bring a DTPA claim in the name of its insured. Its holding was only that, if an insurer itself could not qualify as a consumer (because it had more than \$25 million in assets), it could not bring a DTPA claim. The Trimble court stated:

Nothing in our opinion today prohibits an insurer from pursuing a valid subrogation claim in a DTPA lawsuit brought by its insured/subrogor.

Further, in denying the writ per curiam, the Texas Supreme Court stated that "The Court neither approves nor disapproves of the court of appeals' discussions of such a trade practices act." Trimble, 906 S.W. 2d at 481; see also Northside Auto Storage v. Allstate Ins. Co., 684 S.W. 2d 185 (Tex. App. -- Houston [14th Dist.] 1984, no writ) (in Northside, the court did not reach this issue but noted that an insurance company's rights under the DTPA would only arise if the insured was a "consumer" for DTPA purposes.)

The possibility for punitive or liquidated damages pursuant to the common law or other consumer protection statutes should be explored. However, occasionally an insurance company will not wish to bring a claim for multiple or punitive damages, particularly where it issues a substantial number of CGL policies or is challenging the scope of such statutes in other litigation.

III. INSURED IS USUALLY ENTITLED TO FIRST DOLLAR OUT

In most types of cases most states allow the insured to receive the first dollar out of any recovery. The courts and commentators reason that since the insurance carrier received premiums commensurate with the risk, the insured should be entitled to be “made whole” before the insurance carrier is entitled to seek reimbursement.

Most courts have held that the insured is entitled to first dollar out. Magsipoc v. Larsen, 639 So.2d 1038, 1042 n.3 (Fla. App. 5th Dist. 1994) (citing Ortiz v. Great S. First & Cas. Ins. Co., 597 S.W.2d 342 (Texas 1980); Lyon v. Hartford Accident & Indem. Co., 480 P.2d 739 (Utah 1971); Westerndorf v. Stasson, 330 N.W. 2d 699 (Minn. 1983); Mimes v. State Farm Mut. Automobile Ins. Co., 316 N.W.2d 348 (Wis. 1982); Willard v. Automobile Underwriters, Inc. 407 N.E.2d 1192 (Ind. App. 1980)).

IV. STATUTES GIVING THE INSURANCE CARRIER FIRST DOLLAR OUT

Many states have statutes giving the insurance carrier first dollar out in a number of circumstances. These include first party payments for workers' compensation claims. See Section VII of this paper addressing workers' compensation subrogation. Statutes governing medical or health insurance benefits provided or paid by medical providers such as hospitals also create these rights (these are often titled “hospital liens”). Some of these statutes entitle the carrier to the first dollar out.

Other statutes permit the insurance carrier to recover on a pro rata basis. For example, Florida law recognizes a “pro rata recovery for the collateral source provider [medical insurance carrier] where the tortfeasor pays only part of the injured party's medical costs and expenses, and the insurer's payment under its contract, plus the recovery from the tortfeasor, do not cover the total amount of the insured's medical costs and expenses.” Magsipoc v. Larsen, 639 So.2d 1038, 1042 (Fla. App. 1994) (citing Fla. Stat. § 768(4)).

The statute specifically allows pro rata subrogation “if such claimant has recovered all or part of such collateral sources.” Id. (emphasis added).

Case law has made it clear that it is “irrelevant that the injured party [first party claimant] may not have been fully compensated for other kinds of damages, if that party has recovered any sums attributable to medical costs and expenses paid for by the collateral source provider.” Magsipoc, 639 So.2d at 1042.

Courts in other jurisdictions have followed this pro rata recovery principle in similar cases involving subrogation for medical/health insurance benefits. Payless Oil Co. v. Reynolds, 565 So.2d 737 (Fla. 2d 1990); Underwood v. Department of Health & Rehabilitative Services, 551 So.2d 522 (Fla. 2d 1989), rev. denied, 562 So.2d 345 (Fla. 1990).

V. **COURTS MAY IGNORE CONTRACTUAL LANGUAGE PROVIDING INSURANCE CARRIERS WITH FIRST DOLLAR OUT RIGHTS**

Despite the fact that a statute provides the carrier with first dollar out rights, caution is necessary. Courts have ignored statutes providing a carrier with first dollar out rights and held that the insured is entitled to first dollar out monies. E.g., Esparza v. Scott & White Health Plan, 909 S.W.2d 548 (Tex. App. Austin -- 1995, writ denied). In the Esparza case, the parents of a child who suffered injuries during birth, which ultimately lead to the child's death, settled a malpractice claim against a physician. The parents' health insurance carrier filed a subrogation intervention in the lawsuit seeking to recover the costs it paid for the child's medical care.

The Austin court of appeals held that the subrogation provision of the insurance contract providing that the insurer be fully reimbursed out of the first monies obtained did not override equitable principles of subrogation. The Court held that the health insurer was not entitled to full indemnification for the amounts it paid.

In analyzing the subrogation rights that an insurance contract can create, the court noted the following:

While an insurance contract providing expressly for subrogation may remove from the realm of equity the question of whether the insurer has a right to subrogation, it cannot answer the question of when the insurer is actually entitled to subrogation or how much it should receive.

Esparza, 909 S.W.2d at 551; see also, Duval County Ranch Co. v. Alamo Lumber Co., 663 S.W.2d 627, 637 (Tex. App. -- Amarillo 1983, writ ref'd n.r.e.); Shelter Ins. Co. v. Frohlich 498 N.W.2d 74, 79 (Neb. 1993).

VI. **STATUTES GIVING THE INSURED FIRST DOLLAR OUT**

When analyzing whether or not an insured is entitled to receive the first dollar out for its deductible or other insured damages, it is important to review the insurance statutes and all other statutes in a state. For example, the Texas Insurance Code regulates payment of the insured's deductible for claims involving a payment pursuant to an automobile policy. The Texas statute provides that if an insurance carrier makes a payment pursuant to an automobile policy, the insurance carrier must pursue recovery from the liable third party. The statute requires the insurance carrier to file suit no later than twelve months after payment of its insured's claim or the insurance carrier must pay its insured the insured's deductible.

Specifically, the statute provides:

- (a) This article applies to any insurer who delivers, issues for delivery, or renews a private passenger automobile policy of insurance in this state, including an interinsurance exchange, mutual, reciprocal, associations, Lloyd's, or other insurance.
- (b) Notwithstanding any other provision of this code, and except as provided by Subsection (c) of this article, if an insurer is liable to an insured for a claim, and such claim is subject to a deductible payable by the insured, and a third party may be liable to the insurer or the insured for the amount of the deductible, the insurer shall bring an action to recover the deductible against the third party not later than 12 months after payment of its insured's claim or pay the amount of the deductible to the insured.
- (c) Subsection (b) of this article does not apply if, not later than the earlier of 12 months after the date the insured's claim is paid or 90 days prior to the expiration of the statute of limitations for negligence actions, the insurer notifies the insured in writing that the insurer does not intend to pursue further collection actions against the third party and authorizes the insured to pursue further collection actions.
- (d) This article applies whether the third party who may be liable for the amount of the deductible is insured or uninsured.
- (e) This article is intended to encourage insurers to take appropriate and necessary steps to collect from third parties or their insurers. As used in this article, the phrase "bring an action" is intended to include various courses of action such as reasonable and diligent collection efforts, mediation, arbitration, or litigation against responsible third parties or their insurers.
- (f) The commissioner shall have authority to enforce this article and is authorized to promulgate and enforce reasonable rules and regulations as necessary for the accomplishment of the purposes of this article.

Tex. Rev. Civ. Stat. ann. art. 21.79G.

VII. WORKERS' COMPENSATION SUBROGATION

Many insurance carriers or self-insured employers are reluctant to pursue subrogation involving workers' compensation payments or payments made to workers injured on the job. This reluctance stems from the fact that many companies have found workers' compensation subrogation to produce a low rate of return given the time and money invested. Workers' comp subrogation is not something to be pursued automatically without giving a particular case careful

consideration. Generally, the employee, and especially the employee's attorney, resent it when an insurance carrier or employer seeks to recoup payments, which the employee feels were due to him exclusively. During settlement negotiations, usually the mediator and all other parties put pressure on the subrogating carrier/company to reduce its workers' compensation lien substantially. Sometimes even judges exhibit hostility towards the workers' compensation intervenor because they view it as a development that makes it more difficult to get the case resolved and off their docket.

This antipathy towards workers' comp subrogation has developed for a number of reasons. Texas, like most states, recognizes the collateral source rule. Generally, this rule means that the wrongful tortfeasor is not entitled to have the damages for which it is liable reduced by the insurance payments the plaintiff received. This rule gives a windfall to the plaintiff. Many people believe that since a personally injured plaintiff generally will not be able to sue for his attorney's fees and must pay his attorney out of the gross settlement, that the plaintiff deserves such a windfall. Despite a carrier's statutory rights, this philosophy carries over into the workers' compensation subrogation arena. Further, people often believe that the insurance carrier has already made a profit by collecting premiums commensurate with the liability risk. They believe that the carrier should not be able to reduce the recovery for a plaintiff and its insured, who may not be made whole since the Plaintiff will owe a substantial contingent fee payment to her attorney.

Finally, workers' comp subrogation is made more difficult by the fact that in many states, the attorney for the personally injured plaintiff may be entitled to receive a contingent attorney's fee out of the recovery made by the workers' compensation carrier. This usually occurs when the workers' compensation carrier's attorney does not take an active role in the litigation. However, it can even occur when the carrier/company hires its own attorney to pursue subrogation. This legal principle makes workers' comp subrogation less palatable for some carriers because they fear that a significant portion of the carrier's records may be taken by the injured worker's attorney. Accordingly, many good attorneys are reluctant to accept workers' compensation cases on a contingent basis.

These situations are not insurmountable. A properly designed workers' compensation subrogation program can provide a significant return on a carrier's or employer's investment of time and expenses--if it is properly managed. There are several keys to implementing a successful workers' compensation subrogation program. The first of these is to hire on experienced professionals in the industry to establish and oversee a program. A Risk Manager with a background in litigation and insurance law is helpful. Utilizing attorneys experienced in subrogation law in particular and insurance law in general, is also a must. This experience is crucial because not all workers' compensation subrogation cases (indeed, not all subrogation cases) should be handled in a "cookie cutter" fashion. Given the pressure to cut the carrier's lien and other difficulties in worker's comp subrogation cases, it is important for a carrier to know what cases are worth pursuing and how aggressively they should be pursued.

An early analysis from an experienced subrogation attorney and Risk Manager is important so that a realistic budget for the litigation can be established. Some cases are not worth pursuing and others are worth pursuing only with a limited budget. A workers' compensation subrogation program that pursues all cases aggressively or all cases "half-heartedly" will usually not be as successful as a program that carefully targets and aggressively pursues the good cases and judiciously decides whether or not to pursue small or very expensive cases.

A. Using the Injured Employee's Attorney to Pursue Subrogation

Some carriers pursuing workers' compensation subrogation have hired the attorney representing the worker. Occasionally, attorneys are receptive to this arrangement. Some people believe that such an arrangement is advantageous for a carrier because the plaintiff's attorney is already familiar with the facts of the case and expenses incurred can be split between the carrier and the personally injured plaintiff.

1. Using the Employee's Attorney to Pursue Subrogation May Create a Conflict of Interest

Generally, such an arrangement is not in the carrier's best interest for many reasons. First, conflicts of interest can be present or develop over time, which would make it inappropriate for the employee's attorney to undertake dual representation. It puts the attorney representing the personally injured plaintiff in a very difficult ethical situation. Arguably, the attorney's representation of both the injured worker and the carrier or the company presents that attorney with an irreconcilable conflict of interest. If the carrier/employer is entitled to first dollar out, the employee's attorney should not be involved in deciding how the employee and the carrier/employer will divide any recovery. The inherent differing interests on this issue puts the attorney in an untenable position because both are deserving of advice and aggressive representation regarding the negotiation of such issues as who will control the litigation and how any future recovery and expenses will be shared.

Joint representation would be especially inappropriate where the plaintiff's personal injury lawyer is also representing the plaintiff in his workers' compensation claim against the insurance carrier. If that claim is not completely resolved a conflict would exist. In addition, even if the workers' comp claim has been resolved, if there is any possibility that a bad faith lawsuit against an insurance carrier arising out of the workers' compensation claim could develop there would be a potential conflict. Similarly, after workers' compensation claims are resolved, workers sometimes file a workers' compensation retaliation lawsuit (for example, Chapter 451 of the Texas Labor Code) or a cause of action under the Americans with Disabilities Act ("ADA") or the equivalent under a State Commission of Human Rights (for example, the Texas Commission of Human Rights Act). Even if the injured worker's attorney has no plans to represent the employee in any retaliation or disability discrimination claim, the attorney may have received confidences and secrets from the injured worker and/or the employer. If so, it

might be inappropriate for the attorney to undertake dual representation in a lawsuit against a third party.

Second, even if the conflict can be resolved, many times the attorney representing the personally injured plaintiff regularly sues insurance companies and her first loyalty will usually lie with the plaintiff. In such cases, the carrier's interests may not be fully represented.

Third, many attorneys representing the employee will demand that the carrier advance all costs, which could lead to the insurance carrier financing risky and expensive litigation. To the extent that cost savings is a significant consideration, this benefit can be obtained even if the carrier hires its own attorney. The cost savings can be achieved through a joint prosecution agreement whereby the subrogating entity and the attorney for the personally injured employee agree to split the expenses. This arrangement reduces costs while allowing the subrogating party to have its own attorney to provide it with undivided representation.

2. Risks of Hiring the Employee's Attorney to Pursue Subrogation

Merely relying on the plaintiff's personal injury lawyer and riding her "coat tails" involves additional risk. As noted, workers' comp subrogation is derivative of the employee's claim. In most states, a workers' compensation carrier will have no greater rights than the injured employee. If the employee's attorney does not pursue the case properly, the carrier's/employer's rights will be prejudiced.

For example, when an injured employee's lawyer ignored a case and did not prosecute it, a court dismissed the employee's lawsuit for failure to prosecute. The workers' compensation carrier appealed, arguing that its claim should not be dismissed. A Texas court held that the insurance carrier's workers' comp claim was "derivative" and, consequently, when the injured employee's claim was defeated, the carrier's claim was likewise defeated. Smith v. Babcock & Wilcox Const. Co., Inc., 915 S.W.2d 22, 27 (Tex. App.--Austin 1994), reversed on other grounds, 913 S.W.2d 467, 468 (Tex. 1996) (addressing the merits of the injured workers attorney's motion to reinstate, the court reversed the trial court's refusal to reinstate the case).

B. Hiring Separate Counsel to Pursue Subrogation

A properly designed workers' compensation subrogation program includes retention of a subrogation attorney who works for and is loyal to the subrogating entity. Separate representation insures the subrogating carrier or company does not relinquish its right to control its claim and the litigation strategy beneficial to it. The importance of the subrogating entity retaining control over litigation tactics and strategy is a very important benefit. A subrogating entity that has first dollar out lien rights is in a powerful position and the timely exercise of that power can put the subrogating entity in a tremendous bargaining position.

Finally, a carrier or employer that regularly employs its own attorney to handle subrogation matters likely will have better quality control. It allows the carrier to work with

someone on a repeated basis to judge their performance and results as opposed to various personal injury plaintiffs' lawyers with whom the carrier or employer may have no familiarity or repeat affiliations.

C. Contractual Issues Impacting Workers' Comp Subrogation

Contractual waiver of subrogation is part of negotiated contracts involving construction work, oilfield service work and other types of work involving subcontractors, temporary workers and the like. Many companies and/or their insurance carriers negotiate for a waiver of subrogation clause. Such clauses are not always contained in the contract, but may be contained in an insurance policy or certificate of insurance.

For example, an oil company hired a contractor to drill a well for it and obtain workers' comp insurance to cover its workers. The workers' compensation carrier for the drilling contractor issued a certificate of insurance pursuant to which the carrier purported to waive its right to subrogate for any payments it made to the drilling contractor's employee. The clause was upheld and barred the subrogation. National Union Fire Ins. Co. of Pittsburgh v. Pennzoil Co., 866 S.W.2d 248 (Tex. App.--Corpus Christi 1993, no writ).

Carriers with bargaining power may wish to insist that such clauses not be included in contracts or insurance policies involving work that they do.

D. Strategy and Tactics for Pursuing Workers' Comp Subrogation

Given the pressure to have the insurance carrier cut its lien, many insurance carriers operate on the periphery. They intervene long after the litigation has commenced or right before trial or a mediation. This belated involvement increases a resentment felt by the plaintiff, the plaintiff's attorney, the mediator and possibly the court toward the carrier's position. This resentment usually translates into difficulties and a lower recovery.

While perhaps not in the "cat bird seat," an entity actively pursuing workers' compensation subrogation is in a commanding position. When it is clear a third party is responsible for the injury to an employee, the company or its carrier should aggressively pursue litigation. The subrogating entity can refuse to reduce its lien or agree to reduce its lien only minimally. Actively pursuing subrogation puts the carrier/employer in the best position to maximize its recovery. It totally eliminates the best argument that an injured worker can make as to why the carrier should cut its lien substantially. Specifically, it eliminates the argument that the carrier has done nothing, is along for a "free ride" and is unjustifiably seeking "found money." It may also reduce the amount of attorney's fees that a court (where applicable) may award to the injured employee's attorney out of the carrier's subro recovery.

When a carrier actively pursues the case from the beginning, it can point out that its efforts were just as responsible for the results obtained as was the injured worker's. It can also stress that it put its time and money at risk by prosecuting the case aggressively. Indeed, when

anyone requests the carrier to cut its lien, it provides the carrier with a very strong argument that it is more entitled to settlement funds than the injured worker because the carrier is just as responsible for the settlement monies being offered and, where applicable, has a statutory right to be fully compensated before the injured plaintiff receives any money.

VIII. CONSIDERATIONS FOR PRO RATA AGREEMENTS

Even when the state law provides that an insurer is entitled to a first dollar out, a carrier should carefully consider entering into a pro rata agreement with the insured. Entering into a pro rata agreement has a number of advantages. First, it insures that the carrier and its insured present a “united front” when making a claim or pursuing a lawsuit. Further, it protects the carrier, who likely will be taking the lead or handling and paying for the prosecution of the case. Even if the parties have an oral agreement regarding a pro rata agreement, it is critical for this agreement to be confirmed in writing.

No one standard pro rata agreement is applicable to all situations. A pro rata agreement needs to address the specifics of an individual case.

Some of the issues that can be addressed in a pro rata agreement include the following:

- A. Complete control of the handling of the litigation
- B. Payment of litigation expenses
- C. Determining the amount of the insured’s uninsured loss for purposes of the lawsuit
- D. Determining the amount of the insured’s loss for purposes of pro rata sharing
 - issue: “fluff damages”
 - “If you are greedy you may end up needy”
- E. Right to control the settlement demands and communications with defendants
- F. Control of the settlement of all or part of the claims
- G. Guarantee if one party refuses to accept settlement offer
- H. Joint control or sole control of this settlement issue
- I. Confirm cooperation of witnesses
- J. Delineation of the scope of the pro rata agreement
 - No tax advice
 - Opportunity to withdraw/escape clauses
- K. Confirm signature
- L. Define total recovery
- M. Detail deductions for attorney’s fees and expenses
- N. Define pro rata and give an example
- O. Joint representation issues
- P. Right of attorneys to withdraw
- Q. “Merger Clause”
- R. Notices to clients

IX. CONCLUSION

The adjusters are on the front line

- They are the most important part of the investigation
- Their early actions determine potential for success
- Their input is not simply helpful, but essential to successful subrogation