

Beyond The Cab

The only safety management newsletter dedicated exclusively to addressing injury prevention and workers' compensation cost control for trucking companies.



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Recovering Your Money

Tom was a driver and was waiting to be loaded in the driver's lounge of a shipper when he was struck by a metal rack that had been hit by a forklift. William, another driver, slipped and fell down a flight of six ice-covered steps after making a delivery to a retail store. Yet another driver, Janet, was injured in a motor vehicle accident in which she was not at fault.

What do all of these incidents have in common? They were all workers' compensation claim and they all had the potential to be subrogated.

With respect to workers' compensation claims, "subrogation" is a process by which a third-party is held financially responsible for the medical and indemnity costs incurred by your workers' compensation carrier. It's made possible when negligence by a third-party can be proven to be the cause or a contributing factor in the incident, and is governed by the specific statutes in the state in which the claim was filed.



The topic of workers' compensation subrogation is something with which all employers should be familiar. However, because of the nature of the work, it's particularly important for those within the trucking industry to have a sound understanding of this topic.

Drivers spend relatively little time at your facility. The overwhelming majority of their time is spent either on the road, at a shippers or consignee's dock, or at some other commercial establishment, such as a truck stop, restaurant, truck wash or repair garage. While at those establishments, your drivers are exposed to hazards that are completely out of your company's control. For this very reason, claims within the trucking industry have a greater potential for subrogation than do claims involving individuals employed in a warehouse, manufacturing or retail setting, in which employees remain at their employers facility.

With this increased potential for subrogation comes increased responsibility for effective claims management. These responsibilities include identifying instances in which there is a potential for subrogation; notifying the insurance carrier of the subrogation potential; notifying the insurance carrier of your desire to pursue (or not pursue) subrogation; and providing the insurance company with evidence to support subrogation.

Because the potential for subrogation is greater in the trucking industry than in many other industries, trucking company safety directors and others involved in the workers' compensation claims reporting process should make it a standard practice to assess every claim to determine whether or not there's a possibility for subrogation. It should become a routine part of the claims reporting process for the person receiving the report to ask the necessary questions to determine if a third party may have some liability for the injury.

Did something that a third-party do (or fail to do) contribute to the incident? Was the malfunction or poor design of a product at least partially responsible for what happened? You will rarely answer these questions simply by soliciting enough information to complete the First Report of Injury Form. It requires questioning the employee not only about what happened and what conditions existed at the time of the incident. It requires digging to determine who was responsible for creating the hazard. If your inquiry points a finger at a third party, subrogation may be an option.

Sometimes the opportunity to subrogate a claim is evident, such as instances in which a truck driver is injured in a traffic accident that is the indisputable fault of the other vehicle's driver, and is substantiated by a police report. However, other times the determination of whether or not there's a case for subrogation is *as clear as mud*. When in doubt of whether there's potential for subrogation, err on the side that would benefit your company the most. Arm your workers' compensation insurance carrier with the information to pursue subrogation, and let them help you make that determination.

Not only may there be situations in which you are not certain whether or not a claim can be subrogated, there may also be situations in which you are confident that a claim can be subrogated, but don't want to pursue it. Insurance carriers that are accustomed to providing coverage to trucking companies realize that you may be hesitant to pursue subrogation in some instances, fearing that it may jeopardize a profitable business relationship that you have with a shipper. For this reason, it's important that you advise your insurance carrier of the business relationship that exists between your company and the company from which there is a potential to receive subrogation. In many instances, the insurance company will respect your wishes and not pursue subrogation. However, understand that failing to subrogate a claim means that the full cost of the claim will be reflected on your company's loss history, and therefore could have an impact on future workers' compensation premiums for several years.

If subrogation is to be pursued, the insurance company needs evidence to support the contention that a third party should be held financially liable. A letter from an insurance company to the owner of a truck stop suggesting that one of your drivers slipped and fell 2 months ago is not likely to get very far.

Much of the necessary information can be gathered by the driver at the time of the incident.

1. At a bare minimum, drivers should report the incident immediately to someone in a management position at the company at which the injury occurred and should document the name/title of that person.
2. If there were witnesses, drivers should document their names, and should obtain brief written statements if at all possible.
3. If an incident report was completed at the company at which the injury occurred, the driver should request a copy.
4. Furthermore, drivers should be encouraged to use the disposable cameras that most keep in their trucks to photograph the area in which they were injured.