



SUBROGATION IN B.C. - A CLAIMS HANDLER'S CHECKLIST

By John Vamplew & Franco Cabanos

Initial Scene Investigation

- Witnesses*
 - Early cooperation of the Insured is vital to a successful subrogation down the road
 - Identify key witnesses (e.g. neighbours, emergency services, employees, etc.)
 - Obtain statements from key witnesses (include contact information and e-mail addresses)
 - Photographs*
 - Take photographs (more is better)
 - May assist in proof of claim where evidence is disposed of
 - In MVA claims, include both close-up and full view photographs of any accident-skid marks
 - Experts*
 - Identify what expert witnesses are needed
 - Will joint destructive testing be required?
 - Assess if and when experts will need to attend the scene of the loss (e.g. In some instances, such as fire losses and serious motor vehicle accidents, it may be advisable to have experts on scene immediately after the loss)
 - Physical Evidence*
 - Identify what is the key physical evidence (this may require consultation with your experts)
 - Preserve the physical evidence (e.g. take possession of it or have your expert take possession)
 - Photograph physical evidence, ensuring any identifying marks are depicted (e.g. serial numbers, batch numbers, etc.)
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- If others have taken the physical evidence (e.g. police, fire department, other party), put them on notice that they are to preserve the physical evidence and perform no destructive testing
- In MVA cases pay particular attention to the preservation of black box data, which provides details respecting speed, RPM's, driver inputs, braking, seatbelt use, etc.

After the Initial Scene Investigation

- *Documents*
 - Obtain any applicable documents including contracts, leases, invoices or maintenance records
 - Obtain any applicable insurance policy documents
 - Video surveillance from a surrounding location
- *Identify possible defendants*
 - Determine full legal names of possible defendants and place them on notice
 - Where the loss is construction-related, identify the names of all developers, general contractors, sub-contractors, architects, engineers, etc.
 - Where the loss relates to a failed product, identify the product vendor, the manufacturer and all distributors and suppliers in the product's supply chain
- *Identify limitation periods*
 - Municipalities and regional districts are subject to short notice and limitation periods:
 - Within two months of the loss, provide notice of a claim in writing to a municipality or regional district
 - The limitation period to commence an action against a municipality or regional district can be six months (depending on the nature of the claim). Consult legal counsel to confirm the applicable limitation period
 - A two-year limitation period applies to most (but not all) tort claims in B.C. Consult legal counsel to confirm the applicable limitation period
- Re-evaluate whether you have the appropriate experts to prove a subrogated claim. Consult with legal counsel as to what experts may be needed

Pursuing the Subrogated Claim

- *Assess subrogation potential*
 - Conduct critical analysis of your theory of liability and the evidence in support of that theory
 - Consider defences that the potential defendant(s) may raise relating to standard of care and any contractual limitations
 - Consult legal counsel to discuss prospects of success of a subrogated claim
- *Assess recoverability*
 - Identify if the potential defendant(s) have liability insurance
 - If there is doubt as to whether a potential defendant(s) has liability insurance, consider whether the potential defendant(s) has assets or reside in the jurisdiction
- *Managing the Insurer File*
 - Be cautious about what is recorded as notes to the file by the claims handler may be produced as part of litigation
 - Privilege may be asserted over the “subrogation” file, but not likely over the “first party” file.
 - Instructions and other communications to experts, adjusters and other third parties should be clear as to whether dealing with subrogation (or potential litigation) or first party claims
- *Retain legal counsel to commence subrogated action*
 - Counsel should be retained at least one month prior to the expiry of the limitation period
 - Provide legal counsel with a complete copy of the claims handler’s file

For further information on subrogation in British Columbia, please feel free to contact:

Franco Cabanos
604 891 7250
fcabanos@wt.ca

or

John Vamplew
604 891 7224
jvamplew@wt.ca