



Workers' Compensation Subrogation



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Objectives

Through a partnership with insurance carriers, our primary goals are to: (1) increase subrogation opportunities and (2) maximize subrogation recoveries. In addition, we will aim to increase client awareness of cases by providing detailed and timely status reports, keep litigation expenses under control, “bundle” a resolution of the workers’ compensation cases if possible, and effectively prosecute the third-party case. All of this can be done at **no additional fee** to the insurance carriers, other than what the carriers would otherwise be required to pay the third-party attorneys pursuant to the applicable statutes.

The Initial Referral Process

The initial referral process is simple. A new file can be referred to us in any number of ways – it can be called in to our main number (215) 988-9400; it can be submitted electronically through our website (www.golkowhessel.com); it can be faxed to us on our one page Referral Form, or it can be sent via e-mail to jgolkow@golkowhessel.com or dhessel@golkowhessel.com.

We do not have any bright-line threshold requirement for case size. Our acceptance of a file for review depends upon a variety of factors, including the lien amount, case complexity and geographic location of the loss. In geographically convenient areas (most mid Atlantic states), we are generally able to handle cases with reserve amounts in excess of \$50,000. We are able to handle cases in virtually all states where the reserve exceeds \$100,000.

Rather than basing an assignment on lien or reserve amount, we typically ask clients to assign new matters based on **accident type** and **injury type**. We advise clients to refer any case involving a “serious injury”. “Serious injuries” include:

- Death
- Amputation or Dismemberment
- Multiple fractures
- Electrocutation
- Spinal cord injuries
- Brain or head injuries
- Burns
- Other permanent, potentially life-altering injuries

The classes of “accident types” that typically lead to subrogation opportunities include:

- Injuries involving products and industrial equipment
- Construction accidents
- Premises liability
- Motor vehicle accidents
- Assaults
- Fires and electrocution.



In summary, recognizing subrogation potential is an art, not a science. No absolute parameters can or should be set. If there is any doubt, send us the case. There is no charge for us to review a case. Additionally, we provide on-site training, free of charge, to educate your employees how to recognize subrogation potential.

Early Notification

It is critical for clients to refer us new matters for investigation as soon as possible after the accident occurs. This allows us to preserve evidence, interview witnesses while their memories are fresh, and increases our ability to enter into a partnership agreement with the worker's attorney. The importance of the Joint-Prosecution Agreement is described below.

Initial Investigation

Immediately after receiving a new file, we will conduct a preliminary review of the file materials, and conduct a basic investigation, to determine whether the file merits a more detailed investigation. If so, we will open a new file, contact all necessary witnesses, obtain relevant documents, and locate suitable experts (subject to your consent). In most cases, we are able to formulate an opinion concerning subrogation potential within 30 days, although some cases take longer.

The Joint-Prosecution Agreement

The hallmark of the subrogation program at Golkow Hessel, LLC is the "Joint Prosecution Agreement." In most instances involving larger subrogation losses, we will prosecute the case jointly with the injured worker's attorney (if there is one). This method insures the full and complete cooperation of the worker, which is often critical to prevailing in a case. Indeed, without the workers' cooperation, many cases would be difficult, if not impossible to prove. Our joint prosecution of the case also raises the overall value of the case. Because the lien is only a part of the recovery sought in the case (in addition to the worker's pain and suffering and other non-compensated losses), there is no cap on the recovery potential. This increases the overall value of the case, and quite often results in the carrier recovering most, if not all of the amount of its lien allowed by law - something unheard of in other sectors of the subrogation field.

Further, allowing us to prosecute the case on behalf of the worker and the carrier also ensures that the case will be litigated by attorneys who are experienced in complex third-party cases. This, in turn, ensures that Insurance carriers will receive honest and timely status reports. There will be no unfair pressure applied to Insurance carriers to compromise its lien at the end of the case.

Finally, prosecuting the case on behalf of the worker provides economic stability to the worker by giving him or her an opportunity to recover damages for pain and suffering - something not available in the workers' compensation system. In many states this "excess" recovery thereby



reduces or eliminates the carrier's future exposure ("future credit" or "holiday"). In many cases, the net recovery to Insurance carriers only represents a fraction of the overall value of our services.

No Additional Fee to Insurance Carriers for Our Involvement

Perhaps the most important and overlooked aspect of our program is this: **Our joint representation of the injured worker results in no additional fee to Insurance carriers.** In almost all states, the injured worker's attorney is entitled to an attorneys' fee from a portion of the lien recovery regardless of whether the insurance company actually hires that attorney. In cases where we are able to partner with the worker's attorney, we will work out an equitable fee split between the two law firms. This means that insurance carriers pay no additional fee for our involvement. In the rare case where we are unable to partner, we will close our file at no cost to you (other than for reimbursement of our expenses).

File Monitoring

In instances where the injured worker has an attorney who is not willing to jointly prosecute the case, we are available to either intervene or monitor the case on your behalf. This is typically done on an hourly basis. If we are unable to enter into a joint-partnership agreement, and you elect not to retain us on an hourly basis, we will close our file without charging you for our time regardless of the extent of our investigation. We will try our best to offer an hourly rate that is consistent with your rate structure.

Litigation Expenses

In order to increase our ability to partner with the worker's attorney (and thus significantly increase Insurance carriers' recovery ratio), it is usually necessary for Insurance carriers to fund the litigation expenses. At the conclusion of the case, Insurance carriers will be reimbursed for any expenses it advanced in excess of its pro rata share. Even if the insurance carriers were not actively involved in the cases, they would still be required to pay a pro rata share of costs at the time of recovery (in most states). Allowing the insurance carriers to be involved in the case ensures that litigation expenses are necessary and reasonable. All expenses exceeding \$500 will be pre-approved by the insurance carriers.

Reporting

Upon assignment, we will immediately acknowledge receipt. We will then provide an Initial Case Evaluation within 30 days. Detailed status reports will be provided every 90 days thereafter, in addition to other reports after meaningful events occur. Should you have different reporting needs, we can adapt accordingly.



Training Seminars for Your Employees

Golkow Hessel, LLC is available to provide training seminars for your employees at no charge to you. We can address virtually any topic you select, or create our own seminar with a focus on products liability, construction, premises liability, and other common claims. Simply contact us to arrange for a seminar.

Claims Reviews or “Scrubs”

In an effort to catch subrogation opportunities that may not have been identified, Golkow Hessel, LLC, is available to review your pending claims for subrogation potential that have not otherwise been identified. We will do this at no cost to you, at your office or ours. Feel free to contact us to set up a claims review.

Please feel free to contact us at:

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