

Second Opinions

It is considered standard practice in the medical industry to request a second opinion before proceeding with elective surgical procedures. How many of us would not get more than one quote when planning a major home improvement? Why would you not apply this same concept when preparing to spend time and money pursuing or defending a subrogation action?

A typical subrogation action is based upon an investigative report prepared either by an in-house or independent investigator. The insurance company that initiates a subrogation action must be prepared to spend tens of thousands of dollars in an attempt to recoup their loss. Considering all the money that is at stake, it would only make sense to be sure of your position before investing time and money.

A second opinion prior to initiating a subrogation action can provide many benefits, regardless of the results of the review. If the review affirms the conclusions of the original investigation and can find no flaws in the methodology of the investigation, then the subrogation action can proceed with the confidence that you have a strong case. On the other hand, if the review indicates that the conclusions of the original investigation can not be supported, or there are procedural issues that could be problematic, it would be best to know this prior to initiating legal action. It can be rather costly and embarrassing to lose a subrogation action that had serious technical or procedural flaws.

The review may find that the basic conclusions of the investigation were reasonable; however, there were procedural errors or shortfalls in the investigation. The investigation may not have been conducted in accordance with NFPA 921, Guide to Fire and Explosion Investigation and/or applicable ASTM standards. It is best to know this prior to starting legal action. It may be possible to perform follow-up work and correct the shortcomings of the original investigation. Even if this can not be done, decision makers are now in a position to know the merits and problems of the case. This allows for the opportunity to make informed, rational decisions.

If you are defending a subrogation action, you likewise want to understand the strengths and the weaknesses of the plaintiff's claims. Are the conclusions supportable and consistent with the physical evidence and witness statements? Are the investigators qualified to opine on the issues that they have raised? Have all reasonable alternate theories of causation been considered and evaluated? Knowing the answers to these questions can assist you in making an informed decision as to how to defend a subrogation claim or in the alternative, what steps to take to try to resolve the matter.

Getting a second opinion will cost money. In the long run, you will find that the money spent on second opinions is offset by an increase in the percentage of subrogation actions that come to a favorable conclusion.

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