

# The Adjuster's Role in the Subrogation Investigation

## Subro Sessions Podcast

**Melissa Kenney:** Hello everyone, my name is Melissa Kenney, I am an associate here in the subrogation and recovery department at White and Williams, where I represent the subrogation interests of our insurance company clients, in connection with residential and commercial property damage claims. Those claims generally involve fire losses, water losses, construction defects, explosions, collapses, and of course, product failures.

And in today's episode, I'm going to discuss the role of the adjuster in the subrogation process, and more specifically what steps the adjuster can take at the outset of a claim to really maximize the potential for a successful subrogation recovery later on. Now for our listeners today, that may be new to the world of subrogation. Let me take a brief moment to explain what subrogation is.

It all starts with a loss of property casualty event occurs, could be a fire loss or a water loss. Following the loss, the insured will file a claim with his insurance carrier. The carrier will investigate the cause of the loss, and if they accept coverage and decide to pay the claim, then, through subrogation, the insurance company can step into the shoes of the insured, and pursue a claim from any negligent third parties that may have caused or contributed to the loss.

The process of subrogation really allows the insurance company to reclaim the money that they are paying out, for the insurance claim, by holding the wrongdoer financially responsible for the loss. So, how does the adjuster fit into this process? The adjuster is actually a very important person in the subrogation process because they are responsible for inspecting the site meeting with the insured, identifying damages, dealing with coverage issues and potential liability issues.

Identifying subrogation potential. And also dealing with scene preservation issues. So, from a subrogation standpoint, the adjuster does really have an important role because they're the main point of contact for the insured throughout the first party adjustment process, and they are typically the first person onsite on behalf of the insurance company.

So, whether you're dealing with a commercial loss or a resident loss, it's oftentimes the policy holders first time dealing with the property casualty event with the claim adjustment process, and that also means that it's probably the policy holders first experience with the subrogation process. So, at the outset, the assigned adjuster must really explain to the policy holder, what subrogation is, that investigation will be taken to determine if there's any subrogation, potential, meaning, are there any parties that may be liable for having caused the loss and the adjuster needs to also explain what that investigation will entail, because, more often than not, a subrogation investigation results in a delay in the insured being able to start repairs. So obviously the last thing on the insured's mind is whether the carrier is going to get their money back. So as a subrogation attorney myself, I always find it to be helpful when the adjuster provides an early explanation to the insured about what

subrogation is and that they may be hearing from me, that way there's no surprises down the line.

It's really best practice for the claims adjusters to develop a really good relationship with the insured, because at the end of the day, the insured's cooperation is really essential to a successful subrogation claim.

Now that we've talked about the importance of setting expectations early on and explaining the process and purpose of subrogation to the insured, I'm going to spend the next half of the episode, explaining what the adjuster can do during the initial scene examination to help build a great case for subrogation. So the adjuster is often the first person onsite on behalf of the insurance company, after the loss occurs, the actions taken by the adjuster during the initial scene examination can really have a great impact on the claims overall subrogation potential.

First and foremost, when the adjuster arrives on site, they should inspect the property in order to identify the origin of the loss, try to identify the suspected cause of the loss, and also to identify if there's any evidence that needs to be retained.

After inspecting the scene, the adjuster should collect as much information as possible, and that really starts with, you know, interviewing the insured, interviewing any witnesses, such as family members that may have resided in the property when the loss occurred or neighboring property owners. And then there's always public sector officials that may be onsite as well. A lot of times when you're dealing with high profile commercial property losses, public sector officials, including firefighters and police officers will be onsite, and that's a great opportunity for the adjuster to collect information from them.

After meeting and interviewing with witnesses and the insured, it's important to make sure that the adjuster collects their contact information and documents that in the claim file. This is because years down the line, the witness may be needed from a subrogation attorney, like me, to be interviewed, for additional information.

For losses occurring at a commercial property or rental properties, it's important for the adjuster to identify who owns the property and also, who may own the evidence that may have caused or contributed to the loss, it's possible that the insured is not the owner of that evidence and it's important for that to be identified early on so that we know if we have a legal right to retain it.

It's also a great opportunity while on site for the adjuster to request important information from the insured or the owner of the property. This can include lease documents, contracts, estimates, photographs, purchase documentation. If you're dealing with a loss that involves a product failure, maintenance records and service history records.

While onsite the adjuster should also take as many photographs as possible. This should be done before emergency mitigation and repairs take place. Property loss scene should really be treated as crime scenes. The adjuster should take photographs from every angle. They should be taking as many as possible in chronological order, starting at the exterior of the property and work their way inside.

They should also take pictures of any evidence that may have caused or contributed to the loss. It's possible that evidence can go missing. Therefore, those pictures that they take at the loss site can really come in hand, later on when we are trying to, you know, prove liability, or even prove damages. With respect to damages, photographs that the adjuster should take, should also include any items that are damaged, or not damaged, this can make or break a claim's value later on. I always suggest that the adjusters take pictures of big ticket items, such as expensive appliances or electronics, the HVAC units, this is all information that can be really useful later on when we're trying to make our case for subrogation against a negligent third party.

Another important thing for the adjuster to consider while they're onsite performing that initial scene examination is whether or not there's any surveillance cameras in the area that may have captured the loss. And this video footage could be at the subject's property, or it could be on a neighboring property.

When you're dealing with a residential property loss check for neighboring properties that may have Ring video doorbells. I've found that, Ring video has helped me proving careless smoking fires or showing where a fire started when we're dealing with, you know, total losses. Most commercial buildings have surveillance, video footage, cameras as well, but when it comes to this type of surveillance, video footage, there's typically a short window of opportunity to download or retrieve the footage that is on those cameras.

So, it's very important that the adjuster requests and retrieve a copy of that footage right away. After conducting interviews, identifying suspected cause of loss and identifying any evidence that may need to be retained, if it is determined that there is subrogation potential, then the adjuster should engage subrogation counsel if they haven't already done so, and they should also engage an expert.

We can, and we'll address expert retention in a future episode. But for purposes of this session, if you're an adjuster and you find yourself needing to retain an expert, it's important to consider what type of expert you need to retain, and this all depends really on the type of loss that you are dealing with.

So, if you have a fire loss, you want to retain a fire origin and cause investigator, if you have a fire loss that may have been electrical in nature, you want to retain, both a fire investigator and an electrical engineer. Key considerations, to consider when retaining an expert, are what type of loss is it and are any specialized experts needed?

After retaining an expert, if the expert is not able to get onsite right away. The adjuster will need to work with the insured to make sure that the scene is preserved until the appropriate expert can get onsite, and any potentially interested parties are given an opportunity to conduct their own origin and cause investigation at the site.

So, when we're dealing with a property loss that perhaps involves a product failure, we want to make sure that the product itself and the area of origin is being left in an unaltered state until both the expert can get there, and the interested parties can get there as well. So the adjuster should make every effort to maintain open communication with the insured, any

mitigation vendors, repair contractors, and also subrogation counsel to ensure that the scene is preserved while the subrogation investigation takes place.

As you can see the claims adjuster has a crucial role in the subrogation process. By setting expectations early on and taking steps, during the initial scene examination, the adjuster can help both the insurance companies and subrogation counsel build a great case for a successful subrogation recovery.

I want to thank you for joining me today, and I really look forward to hosting another episode in the future.