

roundtable DISCUSSIONS

From New Loss Through Trial

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ROUNDTABLE DISCUSSIONS PROVIDE THE OPPORTUNITY TO SHARE IDEAS AND DEVELOP GAME PLANS FOR SUBROGATION CASES. THESE DISCUSSIONS CAN BE INVALUABLE, BECAUSE THEY PROVIDE THE OPPORTUNITY FOR ADDITIONAL SETS OF EYES AND EARS TO REVIEW A MATTER. HOWEVER, IF SOME THOUGHT IS NOT GIVEN TO THE "PROCESS," THE BENEFITS OF A ROUNDTABLE DISCUSSION MAY NOT BE FULLY ACHIEVED.





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The “process” includes determining when to have a roundtable discussion, how to conduct the discussion

and who to include in the discussion. Whether you realize it or not, you engage in some form of roundtable discussions everyday. Roundtable discussions may be formal, where meeting invites are sent out, but can be more informal, where you simply poke your head into a colleague’s office to discuss an issue. With

that it mind, the purpose of this article is to identify issues that should be considered when planning a formal roundtable discussion at the various stages of the new loss investigation, as well as during the litigation.

How often do you play phone tag trying to reach just one person during the course of any given week? Now think about trying to find a time and date to schedule a meeting with a larger group. Everyone’s time is valuable, so when planning a roundtable discussion it is essential to pick the right stage of the

investigation or litigation to schedule the discussion.

The New Loss

When a new loss occurs, the first few days are extremely hectic. Typically, efforts are being taken on various fronts to ensure that the fire scene is secure, evidence is not being disturbed and the appropriate experts are being retained. Simultaneously, facts are being gathered and potential responsible parties are being identified. This is generally a fluid process, so it may not be practical to conduct formal roundtable discussions to keep up with the hectic pace that a



new loss brings. However, decisions made at the early stages of a new loss can ultimately play a large role in the success of a subrogation claim. Therefore, it is important to decide when issues related to the new loss investigation warrant a formal roundtable discussion. Obviously, every organization has professionals in place who are trained and qualified to make decisions on a daily basis. Accordingly, it is not suggested that a roundtable discussion occur before any significant decisions are made. However, when handling a complex large loss, it may be worthwhile to conduct a roundtable discussion after the facts have been gathered, but before the fire scene has been released. This will allow for participants in the discussion to be provided with all of the pertinent factual information, so they can add informed opinions to the discussion. Holding this meeting before the loss scene is released will ensure that the scene is still available for further investigation, should new avenues of recovery be presented.

Speaking of fire scenes, how many conversations have you had where someone is trying to describe the fire scene? It can be really helpful to utilize photographs during the roundtable discussion.

Of course, just having the photographs in front of you will not always be sufficient because it is often difficult to identify the items in the photograph. In this regard, you may want to consider having your expert participate in the discussion and prepare a power point presentation to guide the participants through the loss scene. With the technology available, this can be accomplished via a phone conference where the participants are all able to view the presenter's computer screen. Even when this is not possible, simply being able to have all members of the conference viewing the same photograph will add clarity to what can be a complex and confusing conversation.

The Litigation

A pre-suit roundtable discussion can be valuable for determining whether a lawsuit should be filed. In addition, if a decision to litigate is made, then this time can also be used to plan the litigation strategy. This is also the opportunity for insurance professionals and attorneys to discuss the facts and the legal issues that may arise during the litigation, as well as determining which legal theories to pursue. Typically, the subrogation adjuster and the assigned attorney pos-

sess the most knowledge about the case. The pre-suit roundtable is the perfect opportunity to obtain feedback and suggestions from others who can provide a fresh perspective.

Although there will likely be numerous discussions between the subrogation professional and the subrogation attorney during the litigation, a roundtable discussion should take place as the trial date approaches. Perhaps here more than anywhere else, it is important to get as many points of view and opinions as possible, because at trial you are going to need to convince a jury to agree with your position. A great way to prepare for the challenge is to obtain as much feedback as possible from as broad a group as possible; the jury will likely consist of individuals with different backgrounds, levels of education and experiences.

How Should the Roundtable Operate?

This may seem like a simple question, but the truth of the matter is that a roundtable discussion can quickly become unproductive if everyone is talking but no one is listening. It may be helpful to send out an agenda in advance of the discussion. First and foremost,

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everyday. Roundtable discussions may be formal, where meeting invites are sent out, but can be more informal, where you simply poke your head into a colleague's office to discuss an issue.

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the agenda should set forth the purpose and goals to be accomplished during the roundtable discussion. An agenda will give participants the opportunity to review the topics and goals in advance; which may result in additional subjects being addressed. An agenda will not only ensure that the most critical issues are discussed, but will also ensure that smaller issues are not ignored or forgotten. The agenda should also include time for an open forum discussion. This will let all participants know in advance to give some thought to new ideas or suggestions they may have, and also to simply let participants know that new ideas are welcomed and encouraged during the discussion.

Multitasking has become the norm in our business practices, but during roundtable discussions multitasking can be more of a hindrance than a benefit. With a large group of people it is important to stay focused on the objectives and discussion points. Accordingly, this may be the time to shut down Outlook, set aside the cell phone and let others know that the meeting should not be interrupted. This will ensure that all participants are focused on the issues at hand.

Who Should Participate in the Roundtable Discussion?

Each organization will likely be able to identify the key employees that should participate in roundtable discussions to discuss a new loss investigation or subrogation litigation. However, consideration must be given to including other individuals who you may not think, at first glance, to include. Although the subrogation department may be responsible for the ultimate outcome of a case, there will likely be other individuals whose involvement may be vital to the success of the case.

For example, you should include the first party adjuster, whose primary responsibility was adjusting the claim; not evaluating the claim for subrogation purposes. This is generally the individual who has had the most contact with the insured. This individual may have information or even observations regarding the insured that the group may want to consider as it plans its litigation strategy.

If the roundtable discussion concerns the new loss investigation, it may be beneficial to have the experts participate. This should not be limited to the cause and origin investigator, but also any additional experts who have been

retained for the purpose of investigating the loss. There also may be a benefit to conducting separate roundtable discussions with each retained expert so no one expert dominates the discussion. This also gives the group the opportunity to evaluate the expert's ability to present opinions, answer questions and defend their opinions, which provides for an additional layer of vetting to ensure that the right expert has been retained. An expert's participation will also ensure that the information being presented to the group is as accurate as possible, since the expert is likely the individual who conducted a substantial portion of the investigation.

Although there may be certain individuals you believe should be included in the discussion, you should be cautious when including third parties (i.e. experts, independent adjusters, etc...) because



their involvement or presence may result in the waiver of applicable privileges. Therefore, consideration should be given to the topics addressed while these third parties are involved. It may be necessary to discuss some issues outside the presence of these third parties.

As trial approaches, it may be beneficial to include employees from other departments in the discussion. As we previously discussed, the case will ultimately be tried before a jury that will likely consist of individuals with varied

backgrounds so including others that do not handle subrogation on a daily basis may provide new ideas, or just as important, confirm that the focus is on the right areas. This is can be a great opportunity to assess both the merits and deficiencies in your case; which may prove invaluable in the trial preparation process.

Conclusion

As discussed, roundtable discussions occur on some level every day. The benefits of these discussions are self-evident,

as the collective knowledge of the group will always be greater than the knowledge of a single individual. There are no stringent rules to follow when conducting roundtable discussions. However, the above principles will assist you in conducting an efficient and effective roundtable discussion. If the roundtable discussions are conducted using these principles, these discussions can be a positive part of the subrogation recovery process that can lead to a beneficial subrogation recovery.