This is a response to the article entitled "Selling Subrogation Rights?" authored by Gerald P. Vargo, which appeared in the Fall 2005 issue of the Subrogator. This response is provided by Latitude Claims Services, a subrogation and recovery service provider, with experience with a "Purchase Program" for over six years.

The following are some points made by Mr. Vargo and editorial comment from the perspective of Latitude.

"After serious thought the (purchase) idea was rejected...because of the complications of 1) 'first dollar' vis a vis dealing with the insured's deductible and 2) the problems encountered when suit was necessary."

1) When a recovery is made and the insured did not previously receive a deductible refund, this company provides the refund in keeping with applicable state law and practices of the carrier. If there is additional uninsured loss, the insureds can opt to pursue on their own or reach agreement to have us pursue on their behalf. This issue has not been problematic during pursuit of recovery on files purchased from the carrier. Insureds may benefit from sale of subrogation/recovery rights, as the carrier may not have otherwise pursued recovery. Also, if the carrier practice is to issue a prorata refund based on recovery expense incurred, the refund may be greater, as carrier expense is usually less when recovery rights are sold. Obviously, deductibles are not an issue for self-insured entities that desire to sell their recovery rights.

2) The vast majority of claims purchased result in recovery via settlement or closure without recovery. Our position is that trial prospects are essentially the same, whether conducted by the carrier or service provider.

"The claim was sold specifically to avoid (carrier) employees non-productive use of time."

Concern for work time of employees may be a factor addressed by carriers and self-insured entities when considering the option to sell, but such concerns are not believed to be the sole determining factor. Other issues considered by potential sellers include early receipt of recovery dollars, reduction or elimination of allocated recovery expenses, and elimination of the risk of recovery pursuit. Sellers realize there may be occasional need for their employees to assist the purchaser during the recovery process.

"...the typical price paid for the debt is six to seven cents on the dollar."

There does not appear to be any specific industry data on this topic. Our experience is that most claims are purchased for an amount in excess of six to seven percent. Readers need to be aware that even smaller sale receipts represent greater recovery than may have been realized if the sale of rights agreement had not been made.

"...the purchase could not offer enough to pay the larger deductible."

When the purchase offer is less than the deductible, the carrier may not want to sell recovery rights. In such situations the carrier may choose to pursue recovery or close the file and advise the insured of their right to pursue deductible recovery on their own. No matter the purchase price, the insured can still pursue their deductible in tandem with the purchaser or on their own.

"The prospective purchaser, realizing that minimal, if any, cooperation from the most necessary witnesses (the insured and claim rep) would be forthcoming, coupled with the "first dollar" issue, deemed the purchase of subrogation rights not viable."
This is a decision for the purchaser to make. Potential lack of cooperation from insureds and witnesses is not considered prohibitive from the perspective of Latitude. Carriers and self-insured entities may feel an ethical obligation to cooperate after the sale of recovery rights. Such sellers may be motivated to cooperate because they want to maintain the sanctity of their relationship with the purchaser and continue to do business in the future on the premise of mutual good faith. Insureds are likely to cooperate when they have a pending uninsured loss. Although lack of cooperation from witnesses can be encountered by carriers, self-insured entities, and service providers, our experience has been very favorable on both purchased and non-purchased claims. If a seller establishes a practice of lack of cooperation and unfavorable results have been realized, future purchase offers may be reduced in kind.

"Lastly, if medical issues need to be dealt with at trial, the purchaser would have to bear the expense of subpoenaing a doctor/medical expert."

This issue has not been problematic for us. The purchaser takes the risk. The offer price reflects anticipated expenses of all types, including potential medical evidence and testimony. Avoidance of dealing with medical issues and related expense may be motivation for carriers and self-insured entities to consider sale of recovery rights.

"As most carriers are members of Arbitration Forums, Inc., or NAMIC, and to be a member one must be an insurance company or a self-insured fleet operator, a subrogation rights purchaser could not avail himself of this recovery remedy."

Latitude is a member of Arbitration Forums, Inc., and can file under their name as Applicant or Respondent on claims purchased from member carriers.

In summary, the purchase of claims with recovery potential is an expanding and evolving concept. When reasonable offers are made by service providers and pursuit is conducted in a professional manner, purchase programs provide a "win-win" situation for carriers, insureds, self-insured entities and service providers. Carriers and self-insured entities should consider the purchase option as part of their portfolio of recovery pursuit techniques, in an effort to reduce risk and maximize recovery potential.

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