



National Association of Subrogation Professionals

## Amicus Committee Update

### Arkansas and Washington

#### **Arkansas Subrogation Uncertain after Riley v. State Farm**

The Supreme Court of Arkansas recently ruled that no subrogation rights arise at all until there is a determination by a court (or through an agreement) that the injured party has been “made whole.” *Stephanie Riley v State Farm Mutual Automobile Insurance Company*, 2011 Ark. 256, No. 10-1220 (June 16, 2011).

In *Riley*, State Farm had paid its insured \$5,000 in medical benefits due to a car accident with a GEICO insured. Prior to making any benefit payments, State Farm sent GEICO a letter notifying them of their right to subrogation. Riley later settled her claim with GEICO for \$11,500, which issued one check payable to Riley and her attorney for \$6,500, and a second check payable to Riley, her attorney and State Farm for \$5,000.

Riley sent a letter to State Farm asserting that she had not been “made whole” by the settlement. State Farm responded that the \$11,500 settlement from GEICO was sufficient “to fully compensate Ms. Riley for her injuries” and agreed to reduce its recovery to \$3,000 (so as to reimburse for recovery expenses and fees). Riley nonetheless filed a declaratory judgment action and complaint against State Farm, alleging that the notice letter to GEICO violated the rules and that the subrogation recovery was premature without a court’s determination that Riley had been “made whole.” The trial court dismissed this count, ruling that State Farm had a valid but unenforceable subrogation lien under Arkansas law.

In reversing the trial court and reinstating the action, the Arkansas Supreme Court rendered a decision that will likely have a chilling effect on subrogation in Arkansas. It held that unless an agreement has been reached between an insured and its carrier, the “subrogation lien cannot arise, or attach, until the insured has received the settlement proceeds or damage award and until there is a judicial determination that the insured has been made whole.” The Court was clear in stating that the legal determination of made whole “must occur before the insurance company is entitled to recover in subrogation.”

The Riley decision addresses medical payments subrogation but the decision can be read to bar all subrogation rights unless and until you have a legal determination that the “insured” was made whole or the insured agrees they were made whole. Subrogation professionals with claims in Arkansas should review this case with legal counsel before embarking on any attempts to subrogate within the state.

### **Washington Department of Insurance Regulation (WAS 284-30-393): Subrogating Insurers required to Include Deductible in Demand**

As you are most likely aware from NASP previous reporting, the Washington Department of Insurance considered amending WAS 284-30-393, a regulation pertaining to deductibles. We report here that the amendments were adopted and the regulation became effective on July 6, 2011.

The regulation requires an insurer to include an insured’s deductible in a subrogation demand. The amended language allows for a recovery to be first directed toward an insured’s deductible “less applicable comparable fault.” For further information regarding the amendments to the regulation please see prior e-mail blast dated June 14, 2011, which is located on the NASP website [www.subrogation.org](http://www.subrogation.org).

Kammy Poff, Chair  
NASP Amicus Committee

Joseph Willis, Chair  
NASP StateNet Committee

NASP Staff Office  
Toll Free 800 574-9961  
[subrogation.org](http://subrogation.org)

NASP / Three Robinson Plaza / Suite 130  
6600 Steubenville Pike / Pittsburgh / PA 15205

