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Yes, Virginia, there is Subrogation

...and it benefits us all, everyone!

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Subrogation may be one of the oldest legal concepts, dating back several hundred years to England's Equity Court, but lately it has been the subject of some controversy in the press. The insurance industry defines subrogation as an insurer standing in the shoes of the insured with respect to claims against those companies or individuals who are legally responsible for having caused harm or damage.

However, the concept of subrogation has come under fire in the press by those who do not completely understand it, suggesting that subrogation exists solely to take money out of the pocket of injured individuals and distressed insureds. Those articles are unfortunately designed to emphasize the most emotional issues for discussion, but fail to address the commercial and societal importance of subrogation.

Just as Editor Francis Pharcellus Church told young Virginia, those people "...are wrong. They have been affected by the skepticism of a skeptical age." In the case of subrogation, people have been affected not by physical age, but the age in which we live. Today's society is skeptical—skeptical of insurance companies. They are easy targets so many readers have little trouble getting behind an idea that faults insurance company practices.

The truth is that insurance carriers have many goals in subrogation—the most obvious being the recovery of losses paid to insureds. However, there are also many positive aspects of subrogation that go well beyond dollars. One of these which is often overlooked has a great benefit to society, and that is safety.

Why is it that the Federal Aviation Administration (FAA) investigates every airplane accident? Would you fly in an airplane if they did not? The FAA's goal is to understand how and why an airline mishap occurred and take every precaution to prevent further problems. The same principle applies to subrogation. We learn from our mistakes. But, what if subrogation did not exist? Who would investigate why an accident occurred and who would be held accountable?

Subrogation has the effect of making people and industries that create specific risks to others pay for harm caused by those risks. Our system of justice is built on the principle that one is responsible for his or her own actions. Subrogation supports that principle.

Let's assume that an insurer's subrogation pursuit identifies a potentially defective product. Upon notice from the insurer, the manufacturer may choose to make design changes, or an agency such as the Consumer Product Safety Commission (CPSC) may take action to require changes to be made.

Now, take away subrogation and what happens? Public officials may conduct a preliminary investigation, but they

do not have the resources to determine exactly why a loss occurred, and an insurance carrier would have no motivation to look any further. If subrogation rights did not exist, who would spend time and money to determine the cause? The manufacturer of a defective product would probably never be put on notice, the CPSC would never hear about the incident, and the potentially defective product would continue to be placed in the stream of commerce with no changes. Insurance carriers are in an optimal position to recognize and investigate defective products through their subrogation efforts.

Did you know that a subrogation investigator played a key role in identifying the Firestone tire tread separation problem, that subrogation was responsible for getting instantly recognizable warning labels put on linseed oil cans or that subrogation was instrumental in getting OSHA mandated back-up beepers on heavy equipment? Subrogation causes people and companies to change their behavior so that accidents are not repeated resulting in an increased level of safety.

Subrogation is no longer an afterthought. Insurance carriers, self insureds, and third party administrators are recognizing the importance of early intervention and subrogation education to their companies, to the insurance industry and to society.

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