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MAXIMIZING PRODUCTION IN HANDLING QUESTIONABLE SUBROGATION CLAIMS

Summary/Description:

When we avoid tasking employees with time-consuming claims, company productivity is increased. Maximum profitability correlates with proper claims assessment - what to keep and what to outsource.

This session provides the following skillset:

- I. Increasing Internal Productivity: How to eliminate Non-productive Tactics
- II. Intelligent Claims Assessment: Which Claims to outsource; when and where to place them
- III. Adding agencies or law firms to a recovery strategy; Deciding which to use

The most important goal of this session is to provide information on how to assess your current situation and make adjustments to increase recoveries and drive your Department's success.

Overview

Most internal departments are not large enough to handle the volume of UM, small-balance, and complex claims that require additional time and expertise to overcome denial and stalling tactics. Insurers should be aware that the world of subrogation is a balancing act containing many competing interests. Maximizing productivity is a matter of deciding which claims to keep in-house and which to outsource. Collecting the full balance while controlling expenses must be measured against cost effectiveness. These factors, combined with company philosophy, will determine whether or not a file is right for subrogation.

Carriers with the top scores for maximizing recovery have achieved success through a combined approach of working highly probable recovery claims in-house and outsourcing time-consuming accounts.

I. INCREASE COLLECTION RESULTS THROUGH AN EFFECTIVELY TRAINED IN-HOUSE SUBRO STAFF

In-house subrogation units are most useful if the company provides the training and resources necessary to maximize results. There is no need to close files that contain less than a maximum liability. The key is to educate the subro staff and adjusters in differentiating between easily recoverable and complex claims. If the initial assessment proves to be incorrect, the account can always be revisited for future options. When you eliminate complicated, time-consuming, accounts you will allow your staff the flexibility for better auditing and increase the time for identifying missed subrogation opportunities in new and closed files.

Overcoming denials and stall tactics

This section will provide tips to overcome denial and stalling tactics by digging deep into the file to extract the weak points in the other carrier's position. Searching for the "undisclosed" reasons that could be contributing to the carrier's reluctance to pay will increase production. If payment in full is not probable,

offer to compromise for less than 100% if necessary. Be aware of the negligence theory for the state where the claim occurred, remembering the 51% rule in states with comparative negligence.

Denials

If the other carrier admits coverage but denies your claim, ask for the denial in writing. Adjusters will often deny liability or coverage verbally but will pay the claim if you force them to put their position in writing. Request specific reasons for denial of the claim and evaluate what factors they are using to support their position, such as witnesses, the point of impact, or debris on the road. Are these stronger than your supported position?

Stalling

The carrier may be stalling to investigate problems with the agent and the business he is writing. Perhaps they have had other situations involving his claims. The adjuster may be covering up mistakes made while reviewing the file. Request a supervisor or another adjuster to audit the file if you are not satisfied with the negotiations. A fresh set of eyes will view the loss from a different perspective and may notice an error or an omission. Aside from the Agent, the insurer may have a problem with their insured. Claim their reservation of rights. Ask to assist in putting the two parties in touch with each other if necessary.

As a subrogation adjuster, always be aware of when the Statute of Limitations expires on every claim you are working. A carrier may be intentionally stalling in hope that you will not notice that the claim will soon expire.

Outsmart the other adjuster, analyze files and use the facts that work in your favor.

Look for ways to sway the evidence and work the file like an Attorney preparing his case for court. In denial and stalling situations the carrier may be aware of other exposure factors that you do not know. Always ask for full and complete information. The other carrier will not volunteer this information if you do not ask. This includes asking for recorded statements from the other party. The initial description of loss may have been reported differently than the account contained in your files. Something may have been disclosed to the other carrier but not to his insurer.

Other issues may exist such as non-permissive use, intentional acts, criminal use, product liability, or excluded drivers. A thorough investigation of the claim may reveal the existence of these issues.

Do I subrogate or close the file? Questions to consider:

Ask the other carrier if they are going to subrogate for their damages. If not, why not? Did they not make payments? Do they feel they do not have a claim against your insured?

Does the carrier have a policy or history of rejecting claims where liability is not clear? These claims may be candidates for escalation. Evaluate the claim for arbitration, mediation or litigation - all successful methods that stimulate payment from other adjusters.

Finally, be aware of the Insurer's status. Is the Insurer having financial trouble, considering going out of business or into receivership? Determine this by contacting the state's department of insurance.

II. PROBLEMATIC CLAIM FACTORS

Internal productivity increases when efforts focus on easily collectible files and hand off the more complicated accounts – the ones with the lowest potential for recovery.

The dollar amount of the claim is a major consideration. Contrary to what you might expect, attempting to subrogate small balance claims can dramatically increase your overall recovery when you utilize intelligent outsourcing. Your wise outsourcing decisions will lead to the most efficient use of your staff's time and attention. A critical factor in this decision lies in analyzing the netback return. The money you keep after you have paid your recovery expenses is your "Netback" – Your BOTTOM LINE.

Another factor to consider is the type of file and the strengths and weaknesses of liability issues. The recovery of an automobile file is vastly different from the collection of a non-automobile property placement. Claims involving assured clear distance are vastly different from a case containing a citation against the insured. Another example is a property claim, where the case scenario between the opposing parties is vastly different as to fault, especially without expert opinions.

It is not necessary to close the file when there is a less than perfect liability situation. A productive alternative is to outsource those files and invest your time in claims that you can resolve quickly with little effort. The key here is to train the staff to identify the readily collectible accounts. Even if you determine the initial assessment was incorrect, you can always choose to close or outsource it when the difficulties in a file become apparent. In accomplishing this goal, you can instead spend your time on auditing procedures that allow you to identify missed subrogation opportunities in closed or new files.

There are several factors to consider once you have identified claims with subrogation potential:

- Dollar amount of the claim
- Liability scenario
- Personal situation of adverse party
- Probability of recovery
- Possible involvement of another carrier
- Ability to locate adverse party or witness
- Need for skip tracing
- Ability to find assets
- Time spent versus potential outcome
- Do you have the adequate time necessary to work the claim?

Benchmarking studies state that the average amount of time an insurer should work a file internally is approximately 90 days. A claim should be outsourced if not resolved within this period. You will benefit from the alternate perspective provided by a third party. A new voice implies the threat of escalating action, demonstrating that you are determined to recover the account.

III. OUTSOURCING OPTIONS

In addition to outsourcing unproductive claims, carriers also choose to place claims with established payment plans and promissory notes to save the administration costs of tracking and depositing the monthly payments. These files are ideal for outsourcing because the vendor takes on the responsibility of monitoring the payment schedule and pursue broken payment plans. Lastly, providers can report debtors to the Credit Bureaus when payment agreements backed with signed promissory notes are broken.

Critical items to consider in your search for the right Vendor:

- Successful record of performance handling products similar to yours
- Client services support to answer questions and concerns as they occur
- Electronic transfer of data and claim placement
- Secure infrastructure to protect data both en route and while residing in-house
- 24/7 remote system access for you to monitor what is happening on your files
- Performance reporting to track claims and evaluate performance. (i.e., Acknowledgments, Remits, Status, Batch and Closure reports)

The following section will help you to decide whether an agency or law firm is your best outsourcing option.

Outsourcing to an Agency

Companies with a “No Suit” philosophy make the decision to use an agency a simple one. These carriers have made a corporate decision to avoid extending resources towards litigation expense. Other carriers may elect to use an agency first, taking advantage of the vendor’s expertise to generate a rapid revenue stream without the extra cost of litigation. The Vendor can then forward pending claims to a law firm for further review or recommendations as to suitability.

Note that there are vendors which offer both agency and legal services, performing collection services on a nationwide basis and handling your accounts from start to finish. They execute a One Source Solution under one roof with a single point of contact, saving you valuable time and money due to reduced administrative costs.

When choosing an agency, key factors to consider include:

- Industry referrals
- Recovery rates for files in a 6-12- month period
- Training and quality assurance
- Automation capabilities of the vendor
- Security tools to protect data in transfer and while residing in house
- Compliance with client standards and federal and state laws
- Fully insured and nationally licensed
- Use of scoring and predictive dialers
- Skip tracing and asset search capabilities
- Remote access to monitor files online
- Legal support

Outsourcing through a Law Firm for Suit

Many insurers use external counsel to work their stubborn subrogation files. It is strongly recommended that you only send accounts to a law firm when you have the actual intent to file suit to obtain a judgment, or when the complexity or size of a loss warrants a more detailed investigation, or one protected by privilege.

When deciding whether to sue, some carriers use the 10% rule. If court costs exceed 10% of the account balance, it is not usually worth suing unless you have absolute facts concerning liability or knowledge of assets to increase collectability. If the court costs are lower than 10% of the balance, filing suit is an excellent tool to discover other avenues that will get the wrongdoer to pay.

Attorney's fees and litigation expenses can be substantial, and therefore the first consideration is often the recoverable amount at issue. Attorney's fees may be contingent or hourly, or a hybrid of both.

Complexity of Issues and Investigation: An attorney is often the best person to oversee investigation into the cause and origin of the loss, to retain and communicate with experts, and to ensure that the subrogation investigation efforts are protected (to the extent possible) by the attorney-client privilege or as attorney work product. An attorney should also be able to identify deadlines such as statutes of limitations as well as shorter claims periods, not to mention contract provisions affecting the rights of the parties.

Preservation of Evidence: Even the best subrogation case can be spoiled by the loss of critical evidence. Attorneys will place adverse parties on notice of the loss and ensure preservation of evidence, while discerning what evidence will be relevant later.

Another consideration when deciding whether to sue is the cost of experts to assist in proving your case. If an expert has been retained to write a report, the expenses are not always final. The expert will probably charge an hourly fee to testify on video or at trial. An additional expert may be required to prove medical expenses, whether or not the incident occurred as the parties remember, or to testify regarding an industry standard.

The cost of potential counterclaims is another concern when determining whether to file suit. Some companies have no fear of counterclaims; others are very reluctant to file suit under the threat of a counterclaim. Companies often base these decisions on whether in-house counsel is present to defend the claims or company philosophy. However, the benefits of obtaining a judgment can often outweigh the costs. It allows you to accrue and collect interest from the date of judgment. This can often be a significant amount of money otherwise not obtainable. This interest is like "gift money," far exceeding the court costs used to obtain the judgment. This provides for a greater "netback."

Obtaining a judgment enables one to request a credit bureau report on the wrongdoer, gathering asset information regarding collectability. The credit report provides a better opportunity to execute on the judgment, providing options that include wage garnishments and bank attachments.

A good relationship with your chosen attorney can be extremely beneficial. Attorney firms can be a valuable resource in providing training on subrogation issues, obtaining updates on new laws or regulations, and in the recommendation of experts with substantial trial experience. An attorney will provide counsel when complex matters such as spoliation or bankruptcy arise.

Conclusion: The world of subrogation is a balancing act with many areas of competing interests. Be mindful of your company's directives and analyze your numbers to determine the procedure that provides the greatest "netback," to ensure your Department's overall success.