

## **Tricks of the Trade: Tips for Settling Auto Claims with Pro-Se Defendants**

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***We are all aware that running an auto subrogation practice can be overwhelming, especially if it is a high-volume practice. There are many pitfalls to avoid and efficiency is key. Settlement is an essential component to being successful and efficient with auto subrogation claims.***

It helps reduce the costs of litigation and helps recover the insured's deductible in a more timely and efficient manner. However, reaching a settlement can be extremely difficult when your case involves an unrepresented tortfeasor. An increasing portion of auto subrogation claims involve a tortfeasor who drove without insurance, caused an accident, and is now unrepresented.

There are several challenges when individuals are faced with the responsibility of paying these types of claims. Those include their financial situation, lack of knowledge of how subrogation works, and lack of access to legal representation. Here are some helpful tips to remember when settling cases with an unrepresented tortfeasor:

### **The Detailed Demand Letter Geared Towards Settlement**

Perhaps something often overlooked, the demand letter is the very first opportunity to settle the case you have. Make it count! This is an opportunity for you to quickly establish a relationship with the tortfeasor that is professional and effective. The demand letter sets the tone going forward for all other negotiations and dealings with the tortfeasor and that tone can make or break your chance of settling your case. Coming across too strongly in a demand letter can cause many tortfeasors to become defensive, or worse: non-responsive. Coming across too friendly can cause some tortfeasors to feel as though they should push the boundaries with you. As such, you need to make sure the demand letter is crafted in such a way as to present the best possible version of your "settlement self" – be compassionate, yet assertive.

The demand letter mailed to each tortfeasor must be well-detailed, must mention the potential consequences of not responding, and must emphasize how important it is to begin a settlement discussion pre-judgment. The document should contain sufficient details, including your role in the process and why you are entitled to pursue the individual through subrogation. It is good practice to include the insured's name in the letter and to reference the accident, as well as the date, and approximate location of the accident.

It is helpful to spell out the potential consequences if no response is received within a certain time period. These consequences should be clearly outlined, and may include the intimation of a potential lawsuit that may result in a judgment which may adversely affect the individual's credit rating and may also result in a suspension of driving privileges. This full disclosure will adequately stress to the tortfeasor the importance of responding to the letter. Depending on the law in the jurisdiction, compliance with FDCPA regulations should be considered as well.

The letter should also urge the tortfeasor to respond with any additional information needed, such as possible insurance coverage he or she may have had on the vehicle at the time of the collision, or the name of counsel that he or she has retained to represent his or her interests in this case. The letter should suggest the possibility of setting up an installment agreement to make it easier to pay the amount owed. These small steps taken to craft a demand letter that is

both well-explained and one that encourages early contact with your office could prompt increased communication and settlement with unrepresented tortfeasors.

## **The Well-Trained Staff**

First and foremost, it is imperative to remind your staff that each and every contact with a tortfeasor is an opportunity to settle the case. Be professional, be courteous and be persuasive! The worst case scenario in dealing with uninsured tortfeasors is we never receive any contact with them, and end up with a worthless judgment that costs money to obtain. If you have any contact with a tortfeasor, take advantage of it! Having a well-trained staff with a good understanding of each file could be the most important part of settling auto subrogation claims.

Your staff should know the details of the accident and should be able to explain the damages being sought. This information should be easily and quickly obtained. Technology can be a huge asset here. The ability to quickly reference a file by name and be able to readily tell the details of a file quickly can establish your staff's authority, and allows your staff to focus more on the contact with the tortfeasor, and less on the details of the file. Your staff should be courteous and empathetic, and should be able to explain the process of subrogation and why your company is able to recover funds paid as a result of the accident the tortfeasor caused. In many settings, however, auto subrogation is processed at a high volume. To know the ins-and- outs of each file off-the-cuff is nearly impossible.

In order to be ready to explain why you are able to pursue the tortfeasor for the amount owed, you have to have a good summary of liability and damages in each file. For example, a good liability summary could sound like, "Insured was stopped at a stoplight at Maple Avenue and Cross Street when she was rear-ended by the tortfeasor. Tortfeasor cited for inattentive driving." While a lot of liability summaries would not be that simple, each summary should establish the rough location of the accident, the type of accident and any ticket that was issued to the tortfeasor may help establish negligence on their part, or even aid in the tortfeasor's recollection of the incident.

For damages, a line-item breakdown should be placed in the case summary that establishes what types of damages were paid and the exact amount of those damages. For example, while the total demand might amount to \$9,250, a detailed breakdown will better explain to a tortfeasor what exactly that number represents. In the line item breakdown, a good example, using the \$9,250 figure, could be "\$8,000 collision damages, \$500 deductible, \$500 car rental expense, \$250 towing charge." In addition to this, make sure to ascertain you have adequate documentation that supports the figure and clearly explains how much damage was caused in order for the tortfeasor to understand why they owe the sum of money.

After receiving a demand letter from an insurance company or law firm, the tortfeasor will likely be in a position of stress when he or she calls your office. It is important your staff is well-trained in customer service. This will include being courteous at all times, remaining calm in tense situations, and knowing how to deal with difficult people. This is especially important in a high-volume setting. Moreover, your staff must also be empathetic to the callers and understand the potential difficulties of their financial situations. Your staff must be able to explain to the individual why your company is able to recover money from them through subrogation. It is important to be able to lay out how the concept of subrogation works and your company essentially stands in the insured's shoes, having paid out damages for an accident the tortfeasor caused. Lastly, your staff should be well trained in settlement parameters and prepared to work within those parameters.

In sum, if the caller is treated respectfully by a well-informed staff member who can explain your company's role in the recovery process, this can lead to both increased settlement

agreements and a good working relationship with your company in the future.

### **The Well-Framed Settlement Agreement**

Most settlement agreements involve monthly payment arrangements between the insurance carrier and responsible party. While lump sum offers are always preferred, in the majority of auto cases where a tortfeasor drove without insurance, they are less likely to be offered. Once a payment arrangement is reached between you and the tortfeasor, it must contain sufficient language that will preserve your subrogation interest with minimal cost and time involved. In addition, once the payment arrangement is entered, your staff must have a good system in place to monitor payments and manage potential late payments.

The agreement you reach with the tortfeasor should contain language that preserves your right to file a confession of judgment for the full amount of the claim plus costs, less any payments made prior to default. This preserves your full claim amount, even if the payment arrangement was made for a lesser amount, in the event the tortfeasor fails to honor the agreement. Rather than having to hit the reset button and bring the tortfeasor back into court and incur more filing costs and spend more time litigating the claim, the judgment may be docketed with the court if sufficient confession language is contained within the document. A confession of judgment will be vital to protect your subrogation interest in payment agreements. Proper confession of judgment language may vary from jurisdiction to jurisdiction.

Once the agreement is signed with the tortfeasor, your staff must be able to closely monitor payments in order to stay on top of timely monthly payments; crucial to the efficiency of a high-volume setting such as auto subrogation. Obtaining a software program that tracks payments, sets reminders, and has the ability to save a log note on conversations with the tortfeasor, updates in the case, etc., is also important in order to ensure an efficient monitoring of the payments. With a good software program that tracks payments, you can set automatic diaries to send out late letters, notices of potential litigation, or reminders to docket a judgment or enforce a license suspension.

In subrogating auto claims against unrepresented people, it is important to have a well-trained staff and an efficient system of documentation and negotiation in place in order to settle cases in an equitable manner that will reach a fair resolution that is reasonable to both you and the tortfeasor. While there are many ways to maintain that system, putting in place a detailed demand letter geared towards settlement, having a good training program for your staff, keeping good timelines, and close attention to detail are some of the most crucial aspects of managing that system.