

Founder's Forum: Behind the Scenes

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Some of the most interesting work I have done involves workers' compensation and health insurance subrogation. It is work that I do as an attorney, but is not the classic legal work we all think of when we imagine litigation files. It is work done quietly, and sometimes not so quietly, behind the scenes. In many respects it is some of the best work I do in terms of helping my clients obtain recoveries.

I am currently involved on a very large workers' compensation subrogation claim where I have spent the last two years working up a case and at the same time trying to convince three different law firms to handle the plaintiff's case. Although I could bring this lawsuit directly in the name of my insurance client or the employee, I know the real value in the case will only be realized if I am working with and can "tag" on to the plaintiff's case. I have hired and released one expert after finding a more qualified expert at one of the NASP annual conferences. I have had many heart-to-heart talks with potential plaintiff's firms. I have participated in a mock jury trial to evaluate the case. I have worked with my client to structure various joint participation agreements with the plaintiff's firms. All of this was done for one purpose, to move this case forward with the best chance for success. All of this was done before this matter was ever placed into suit. Yet it is all crucial for the handling of this particular case.

Just recently, one of the firms has agreed to take the case and work with me. A casual observer looking from the outside may only see that this matter is placed into suit two and a half years after the incident. They would have no idea how much work has been done in the background to get this case off the ground. But often times that is what we do. We work in the background getting all the pieces in place.

On many health care subrogation files I have played a key role in getting the plaintiff and defendant involved in serious negotiations. Often times the defendant feels more comfortable talking to me about settlement than the plaintiff. I can almost play the role of mediator in certain circumstances. This does not mean that the defendant will not try to give me a "haircut" at the end of the negotiations, but I can play a key role in getting the parties to negotiate at all.

Attorneys play a unique role in these types of cases. We clearly have the right in most states to participate in the litigation process to protect our client's interests. We also have an ability to play a key role behind the scenes helping to build our cases and helping to move the matters forward towards a resolution. This is where our creative abilities come into play. I heard a great comment at this year's NASP Conference in Austin. One subrogation professional observed that defense claims people have their agendas set by the other side. Their daily activities revolve around responding to others. Subrogation professionals set their own agendas. We create activity and can actively set the pace of a pending dispute. That is why I always say that the best subro people are creative and persistent. When dealing with these behind the scenes issues we are in the realm of the possible that is not taught in law school. Creativity and persistence are at a premium. We are only limited by our imagination and our thorough knowledge of the case, the law and the parties. Our work behind the scenes is often the difference between success and failure.

Jeff Baill is a nationally recognized attorney and consultant in the field of subrogation. He has focused his practice in the area of subrogation for over twenty-five years. Jeff is the managing partner at the Law Firm of Yost & Baill in Minneapolis. In addition to being the Founder and Past President of NASP, he is the Past President of a prominent United Way Agency and currently serves on the board of the USTA Northern Section.

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