

False Assumptions

By Jeffrey M. Baill, Yost & Baill, LLP



Recently I was invited by an insurance client to attend a meeting at their office with over 75 of their panel counsel from around the country. I was one of two subrogation attorneys to be part of the event. The rest of the attorneys were defense attorneys. The program was designed to get everyone on the same page regarding the company's philosophies and priorities. In addition, it was a great opportunity to meet and build connections between the company and its lawyers.

One of the programs featured at the event focused on resolving cases on an expedited basis. Since almost all of the lawyers present were from the defense side of the house, this meant resolving cases with the plaintiffs as soon as practical. Many different strategies were discussed on how that could be accomplished.

While listening to the presenters, I could only think about the countless discussions I have had with subrogation attorneys inside and outside of my office. We all have come to believe and assume that every defense attorney just cares about dragging out their cases to maximize their attorney's fees. While that may be true for some attorneys, it became clear to me from this program that many carriers may actually be focused on the opposite. They want to reduce costs and get to resolution as quickly as is

reasonable given the facts and circumstances of the case. In fact, they keep track of how fast their firms are getting to resolution compared to their peers. It is a management priority.

This means that the assumption many of us have made over the years is off base. While there may be rogue counsel out there, and companies who are not on top of managing their defense counsel, it now seems clear to me that most sophisticated companies are interested in early resolution where reasonable.

The impact for us in the subrogation world is obvious. We need to figure out what it is that the defense wants in order to be in a position to resolve claims. We need to find that out and then get them what they need to be in a position to settle the case. This does not mean that all claims can be resolved short of trial; however, we do know that most claims will be settled. If the defense wants to settle claims, and we want to settle claims, the only thing preventing that from happening is a failure to communicate about what each party needs to get to that point. As the plaintiff, with the biggest incentive to get the claim resolved, I submit that the burden is on us to make that happen.

Assumptions are the birthplace of miscommunication. They lead to actions that distract us from our real goals. We need to start each case with the understanding that both sides have a claim to resolve and truly wish to do so. If the facts on the ground prove otherwise, then we push our case to trial. But if the premise is correct, that both sides want a resolution, then any false assumptions can distract us from being effective in achieving our goals.

Jeffrey M. Baill is the Managing Partner of Yost & Baill, LLP, and the Founder and Past President of the National Association of Subrogation Professionals (NASP)