

# **Subrogation**

# **Success**

## **Recognition, Investigation, Pursuit and Recovery**



# What Is Subrogation?

- Insurance contract
- Equitable subrogation
- Legal basis: Hold the ultimately responsible party liable for the damage caused

# Importance of Subrogation

- Bottom line
- Enhanced effectiveness of underwriting
- Social benefits to us all



# Imperatives of Early Investigation

- Time Bars
- Evidence Preservation
- Notice Requirements



# Time Bars

- Statutes of Repose (running from date work was done and/or date product was sold)
- Separate from and in addition to statutes of limitation
- Time based notice requirements
- Contractual limitations
- Special one-year statutes of limitation (e.g., car hitting building)



# Preservation of Evidence

- Avoid material change in condition of pertinent evidence
- Balance with need for clean-up/reduction of time element losses
- Coordinate with public sector authorities



# Preservation of Evidence (*cont'd.*)

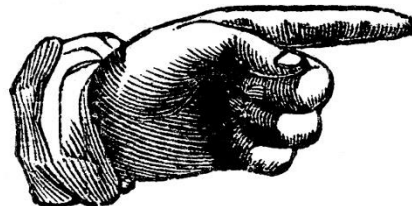
- Site exam vs. notice to potentially responsible parties
- Photographic/video documentation
- Evidence storage (grab it, tag it and bag it)
- Cost/benefit considerations for moderate sized losses



# Notice Requirements

- Applies to all potentially responsible parties
- Format
- Time limitation?
- Request for interviews: how to handle?
- Thorough documentation

Please Notice This





# Three Legged Stool

- Preservation of evidence (all relevant artifacts)
- Notice to potentially responsible third-parties
- Applicable time bars



# Procedural Considerations

- Evidence preservation;
- Notice to adverse parties;
- Determining potential time bars;
- Submitting/negotiating the recovery claim;
- Inter-company arbitration;
- Arbitration time requirements;
- Documentation to prove the subrogation claim (what to include and what not to include).



# Procedural Considerations *(cont'd.)*

- Litigation: Time bars;
- Complaint and Answer;
- Written Discovery;
- Depositions;
- Mediation;
- Trial.



# Overview of Legal Theories/Technical Foundation

- Negligence: duty, when violated, causes damage
- Strict products liability: focuses on product defect, not standard of care
- Breach of contract/warranty: similar remedies, but potential time limitations
- Statutory claims (Consumer Protection Acts)



# Overview of Loss Scenarios

- Non-weather water damage claims
- Fire losses – including spread/failure to prevent
- Structural claims: roofing and other building systems
- CAT losses



# Wide World of Water Damage Claims

- What are common non-weather water damage failure scenarios:
- Separated or cracked water line connectors;
- Brass alloy pipe ruptures;
- Water filtration systems (including in - refrigerator units);
- PVC and CPVC system failures;
- Others.



# Product Liability Targets

- Identify potentially responsible parties:
  - Sellers; manufacturers; wholesalers/importers; service/repair companies;
  - Special considerations: internet sellers; big box retailers;
- Product liability statutes of repose



# Contractors, Subcontractors, Design Professionals, Engineers

- Active negligence: Substandard installation, deficient design, incorrect specifications;
- Failure to prevent: Inspection, service, maintenance and repair work.





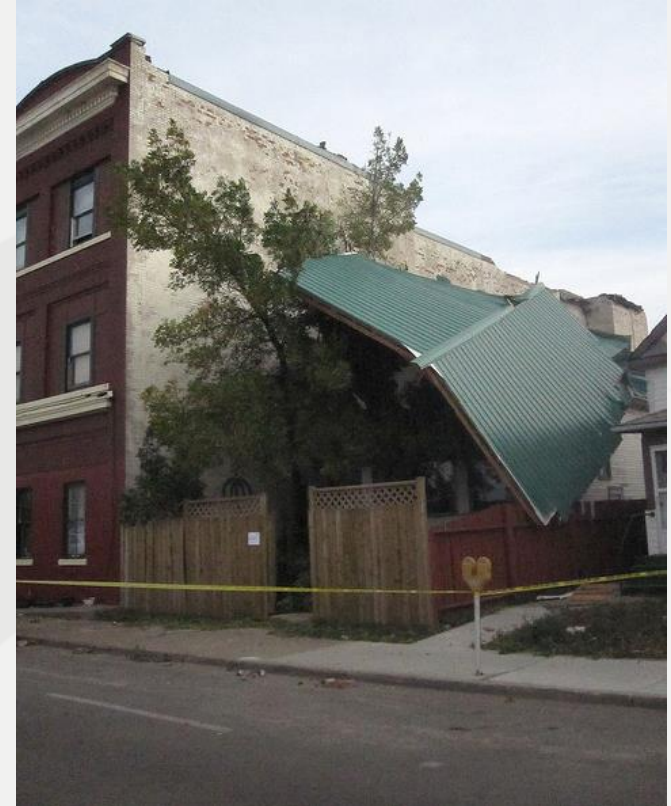
# Fire Losses

- Causation;
- Exacerbation;
- Prevention.



# CAT Losses

- Storm water/sewage system backups;
- Hurricane/wind driven rain events;
- Roof uplifts;
- Snow induced collapses.



# Case Study Number 1

- Mrs. Insured comes home to find water dripping from the first floor ceiling. She runs upstairs to check on the bathrooms, and finds that the flex waterline running from the water piping to the toilet tank has separated, and water is flowing out of the separated flex line onto the floor. She quickly and alertly closes the valve, stopping the flow of water, and calls her agent.



# Case Study Number 2

- Mr. Insured goes to the basement to throw in a load of laundry. He finds two inches of foul smelling, blackish water in the laundry room, which has damaged the sheetrock, furniture, and area rugs. He mops up the liquid and calls his agent.



# Subrogation Recognition

- Which represents better subrogation potential: Case Study 1 or 2?



# Case Study Number 3

- Mr. and Mrs. Insured spend a relaxing evening reading in front of a blazing fire in their living room fireplace. By 11:00 pm, the fire is out so they close the fire doors and retire upstairs. They are awoken in the early morning hours by their audible fire/smoke detector system. They rush downstairs to see the wooden mantle above the fireplace on fire with the flames spreading rapidly. They rush outside and call 911 for assistance.



# Case Study Number 4

- Mr. Insured buys an older home with beautiful original woodwork, in need of restoration. He goes to his local paint shop to get advice about what products to use. He returns home, removes the outdoor wooden shutters, takes them to the garage and sands them to remove the old, deteriorating stain. He then applies a first coat of linseed oil to the natural wood, using rags to apply the linseed oil, as instructed by the paint shop.



## Case Study Number 4 (*cont'd.*)

He throws the rags in a metal can, per instructions from the paint shop, and places them on the ground outside of the garage door so they will dry. He goes upstairs to bed and is awoken in the early morning hours by the audible alarm from his fire/smoke detector. He runs downstairs to find the garage door in flames, with the fire spreading rapidly to the upper floors. He calls 911.





# Case Study Number 5

Same as Number 4, but instead of linseed oil, Mr. Insured was advised by the paint shop to just apply stain. He still is awoken by the audible fire/smoke alarm in the early morning hours. He calls 911 and the fire is extinguished. He later views the tape from his outside security camera, and recognizes a kid from the neighborhood who appears to approach the outdoor trashcan and set paper in it on fire.



# Subrogation Recognition

Which is the better subrogation claim: 3, 4, or 5?

