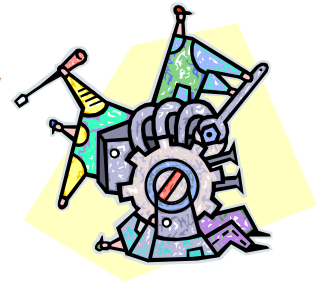
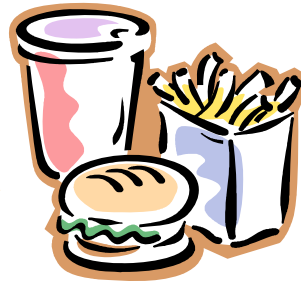
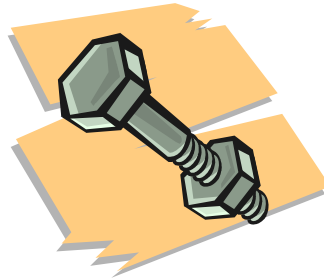




Risk Services Best Practices Bulletin Bulletin #3: Preservation of Evidence for Future Subrogation Claims

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When A Loss Occurs

Following an accident, after all life-safety issues have been addressed, the most important requirement is usually to preserve whatever evidence is available regarding the accident. This generally involves keeping/saving/storing/preserving all the evidence it is possible to keep/save/store/preserve and photographing/videotaping all evidence that may for some reason be perishable or subject to change. It also involves locating and interviewing witnesses to the accident and others who may be familiar with the conditions which gave rise to the accident.

All products — such as appliances, furniture, containers, medications, food, etc. — involved in the accident should be saved. Specific examination and testing is often required. The vehicles involved in a severe collision should be saved for inspection by experts. The cause of a motor vehicle accident can often be determined by an expert. Proper preservation and documentation of the evidence related to your claims may require experienced investigators and even the involvement of trained scientists and engineers.

When a loss occurs, whether it is an automobile, property, general liability, or workers' compensation claim, the entity that pays for the claim has the legal right to pursue collection against any potential parties that may be responsible for the loss. This action of recovery against a responsible third party is termed *subrogation*. In the case of the University of California's Self Insurance Programs, the University of California is contracted with a Third Party Claims Administrator (TPA) who is responsible for the investigation, settlement, and subrogation of claims covered under the Self Insured Programs.

Successful Subrogation Recovery

The cornerstone to every successful subrogation recovery is the proper collection and preservation of physical evidence, documents, and records. The TPA is responsible to ensure that the evidence is preserved, but in many cases the physical evidence, documents, or records do not exist because they were destroyed, lost, or altered. The destruction or loss of this evidence is termed *spoliation*. Spoliation of evidence may preclude or limit the TPA's ability to pursue a

subrogation claim against a responsible party, and in legal matters, spoliation may result in sanctions and adverse judgments against the University of California.

Physical Evidence

Physical evidence may include anything: a piece of machinery that an employee was using when an injury occurred, a chair that broke when an employee or visitor sat down, a dorm appliance that was in the area where a fire occurred, a pipe or valve that fails and causes water damage, etc. Documents or records that may be of importance included purchase receipts, manuals, service records and service agreements. This applies to electronically stored information too, such as e-mails and computer records.

After a Loss Occurs

After a loss occurs it is important that there is a chain of custody established and in some situations the entire scene may need to be preserved to allow for a thorough investigation and examination by outside experts. The term “chain of custody” refers to the tracking and documentation of the movement and location of physical evidence that has been preserved and retained from a loss scene. An accurately documented chain of custody proves that the evidence has not been lost, damaged, altered or tampered with since it was retained. It is also important that the TPA be notified of the loss immediately so that they can provide assistance and, if necessary, retain an expert that will aid in identifying, investigating and preserving any evidence that may be related to the cause of the loss.