



Subrogation

Insurance Subrogation and Recovery

Conroy Simberg offers a highly successful and aggressive program in large loss insurance subrogation and recovery. We represent national insurance companies and smaller property and casualty carriers operating throughout the State of Florida. Our attorneys have decades of experience in the field of insurance law and are committed to working closely with our insurance industry clients to maximize subrogation recoveries from legally responsible third parties.

Delivering Timely and Accurate Reports and Evaluations

When clients work with our recovery and subrogation practice they can expect to be represented by a full-fledged legal team. We centralize the oversight of all activities on a recovery case with a single partner who is a seasoned trial attorney. This approach makes it easy for the claims handler to communicate with us about the status of a particular case as they have direct access to the partner at the firm who understands their individual case and is highly experienced in this practice area. At the same time, our 11 regional offices throughout the state of Florida and in Thomasville, Georgia allow us to efficiently and economically handle a recovery case no matter where it might be venued within the state.

The attorneys in our subrogation practice are familiar with insurance company policies and procedures and appreciate the importance of complying with clients' guidelines and reporting requirements. We are committed to meeting the demands of our clients and our firm has developed a standardized reporting and budgeting process to ensure that clients receive the information they need to make well-founded decisions in their case.

The legal team at Conroy Simberg is focused on providing our clients with timely and accurate evaluations of losses for subrogation and potential recovery. Our legal professionals carefully review each case, coordinating investigations and consulting with industry experts capable of analyzing damages and losses involving complex structural and engineering issues. We work to identify all potential responsible third parties and collaborate with our clients to design approaches aimed at securing a recovery as quickly and cost-effectively as possible.

Providing Experienced Legal Representation to the Insurance Industry

Subrogation often involves unique legal issues and rights that can vary dramatically from one jurisdiction to the next. With [11 offices](#) strategically located in Florida and Georgia, the legal professionals at Conroy Simberg are intimately familiar with the local laws and procedures governing subrogation and recovery cases. Our attorneys are seasoned litigators with extensive experience prosecuting subrogation actions in courts across the state, and we have proved very successful in securing recoveries for our clients in mediation and arbitration proceedings.

Conroy Simberg is proud of the reputation we have established for delivering sophisticated and innovative legal solutions. Since our inception in 1979, our firm has grown to approximately 150 attorneys providing highly skilled and personalized legal representation to the insurance industry. Our depth of experience in insurance law matters uniquely positions our firm to assist clients in the planning and prosecution of complex and large loss insurance subrogation actions.

Practice Highlights

- **We represented a commercial property company and its insurance carrier against a former tenant and its construction firm for significant property damage that occurred during a renovation.**

The insured owned a commercial property in a prime retail area that was leased by an international luxury brand. At the end of the lease, the tenant's construction contractor damaged and destroyed various aspects of the inside of the leased space that the tenant believed to be proprietary to their brand. The initial attorney representing the building owner's insurance company sent the file back, indicating that there was no chance of recovery because the lease between the tenant and the property owner contained a waiver of subrogation clause. The file was then sent to our office for a second opinion. After reviewing the file, we decided to place the matter in suit against the tenant's contractor, who was not a party to the lease. We believed it should have had knowledge that its actions that caused damage to the property were not the tenant's responsibility. We successfully defended a motion for sanctions, alleging the lawsuit was frivolous, and a motion for summary judgment. Subsequently, we were able to convince the defendant that it had significant exposure should this matter proceed to trial. The total amount paid to the insured for the loss was \$975,000.00; however, \$550,000.00 of that amount was for lost rent, which we did not believe could be attributed to the damages caused by the

construction company. So the total recoverable amount we believed to be at issue was \$425,000.00. The case settled for \$200,000.00, which was obviously a good result, considering the initial attorney indicated the file had no recovery potential. Additionally, \$60,000.00 of that settlement was paid by the tenant, which the initial attorney did not believe was a possible result based on the waiver of subrogation clause.

- **We prevailed on behalf of two insurance companies and a construction company in a suit against a subcontractor. This claim actually involved two separate losses, both of which occurred during the same construction project. The class of loss were separate and in distinct locations of the job site involving six-figure damage claims.**

The first loss occurred at a military base while construction was under way. Our client was the prime contractor. Our claim was against the mechanical subcontractor that was responsible for flushing the chill water pipe for an HVAC system when a four-inch PVC pipe connection failed. The failure occurred in the mechanical attic above the fourth floor of the building. Unfortunately, the water ran for hours before it was discovered and it caused extensive damage to the premises.

Coverage was provided to the insured under a "shared market" policy. The insurance companies split the property exposures on this loss on a 50/50 basis. Despite the abundantly clear liability on the mechanical contractor responsible for this loss, its insurer made absolutely no offer to resolve the claim. Instead, it argued that under the construction contract and subcontract, and the language of the policy, it was an additional insured under that policy and thus could not be subrogated against. We were able to successfully defeat a motion based on this defense. It then became clear through discovery that the subcontractor was unable to dispute liability, or to place any comparative fault on the insured for its role in the startup of the HVAC unit. The total amount of the loss was calculated to be \$722,042.94. The case was eventually settled for \$400,000.00 without the need to spend an extensive amount of costs for inspections and discovery. The settlement will be split 50/50 between the insurance companies.

The second of the two losses involved a complex coverage issue. The shared market policy under which this loss was covered had an additional insured endorsement that may have been read broad enough include the putative tortfeasor - the general contractor - as an additional insured. Had this been the case, a subrogation/recovery action against this entity would have been barred. To further complicate matters, the general liability carrier of the general contractor was the same insurer as the one seeking recovery. After obtaining several coverage opinions, this matter was eventually settled for nearly \$400,000.00. This recovery came without the necessity of extensive litigation, and thus without significant procurement costs being incurred, thus maximizing the net recovery of the insurer.

- **We obtained a large recovery for a homeowners' insurance company against a condo development company.**

The insured owned a home with access to the beach. Directly adjacent to his property, a developer, along with several other defendants, began construction on a high-rise condominium. Due to the construction in close proximity to the home, the insured's residence sustained significant damage from falling debris and foundation issues from vibration of the massive construction. Prior to making a claim with the insurance company, the insured retained private counsel and filed his own lawsuit against the defendants. The lawsuit is currently still pending. At the same time, the insured's claim with the insurance company was resolved and the insured received \$553,000.00 for the damages and loss of use. Before we filed a motion to intervene and assume the insured's claim, we were invited to attend mediation between the insured and the defendants. The insured has asserted that he still has damages outside of those paid by the insurance company, which he intends to continue pursuing. The claim did not resolve at mediation; however, we have continued our negotiations with the defendants. We anticipate that with the resolution of a few minor matters between the insured and the defendants, we will be able to secure a settlement of approximately \$300,000.00 without ever having to file an action on behalf of the insurance company or incur any costs in this matter.

- **We secured a significant subrogation victory for a homeowners' insurance company against a condo association after previous legal counsel said it was not possible.**

The insured owned a penthouse unit in a building where the roof of his property was the same roof for the defendant's unit. The insured filed a claim with his insurance company for water intrusion into the unit that was allegedly caused by a failure of the roof, a common element of the building. The insurance company paid the insured \$592,626.90 for the loss. This file was initially assigned to another law firm on the company's panel counsel. That law firm sent the file back with the indication that there was no chance to make a recovery. Subsequently, the file was sent to our office to provide a second opinion. Although there were several issues that could have barred our ability to secure a positive recovery, we believed there was enough to warrant pursuing the matter. The following were just a few of the adverse issues that we faced with this claim: (1) A history of water intrusion into the insured unit from, allegedly, the same problems that went back to 1997; (2) A release signed by the insured in 2000 for water intrusion claims that allegedly released the defendant condo association for any future water intrusion claims; and (3) a Florida statute in place at the time of this claim that barred subrogation actions against condo associations. The condo association filed a motion for summary judgment seeking to have the case dismissed for all of the reasons addressed above. However, through discovery, we were able to survive the

summary judgment and convince the court that the issues were factual and required a jury's determination. As a result, we were able to establish that there was potential exposure to the condo association and settled the case for \$200,000.00. We were obviously pleased with this result, considering the various procedural and factual defenses that could have barred the entirety of the action and the fact that the file was previously rejected by another law firm.