

Waiver of Subrogation Rights

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When a LGIT member purchases physical damage coverage, LGIT is obligated to pay for repairs to the covered property, less any deductible amount, whether the member was at fault for the accident or not. If the member was not at fault for the damages, LGIT seeks reimbursement from the at-fault party. This is called subrogation. If the at-fault party refuses to pay for the member's damages, the only recourse is for LGIT to file a subrogation lawsuit.

As a legal concept, subrogation means "stepping into the shoes of another." By paying a member's claim, LGIT obtains the legal right from the injured member to sue the other party for damages incurred. This benefits members, as well as LGIT. Members share a portion of costs in property damage policies through the payment of their deductible. If a subrogation is successful, LGIT can then return a member's deductible amount.

A danger to be aware of is that some contracts have a **"waiver of subrogation"** clause. An example would be when a member

engages an independent contractor to perform maintenance work on a boiler system. Both the member and the contractor sign a written contract. It is a common industry practice for contracts by independent contractors to have a clause that waives subrogation rights to the extent that a party has insurance. This means that even if the independent contractor is at fault for the damage to the member's property, since the member has insurance coverage, neither the member nor LGIT can go after the at-fault party and make them pay for the damages. Being able to make the at-fault party monetarily responsible for the damages increases the costs not only for LGIT, but also for the member. The member will be unable to recover any deductible amount paid. The amount that LGIT pays out in claims also ultimately affects the rates that the member pays for the insurance. If LGIT is able to recover monies through subrogation, it will lower rates.

When reviewing a contract, a member should always check to see if there is a waiver of subrogation. A waiver of

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subrogation clause may be found in the “risk management,” “claims,” “indemnification,” or “insurance” sections of the contract. Rarely will the clause have its own heading, so the member should read the entire contract carefully. A member may be able to negotiate elimination of the clause from the contract,

once it is found. If the person negotiating the contract for the member is uncertain whether a waiver of subrogation clause exists in a contract, he or she should contact either their municipal attorney, or, alternatively, ask the Claims Services Department at LGIT to review the contract.

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