



Ohio Bureau of Workers' Compensation Comprehensive Study

Cost Controls: Subrogation

Report 1.2

Deloitte Consulting LLP
Group 1
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Audit • Tax • Consulting • Financial Advisory.

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Executive Summary

Introduction

Measurement of subrogation effectiveness at Ohio Bureau of Workers' Compensation (BWC), as in all other environments, is challenged by the very nature of subrogation definition. Financial recoveries by BWC are dependent upon primary claimant settlements with third parties, and BWC interests are generally subordinate to those of claimants.

Deloitte Consulting LLP (Deloitte Consulting) conducted benchmarking of selected other states' legal standards for subrogation, interviewed key process constituents, identified leading industry practices and gaps in process, conducted summary analysis of BWC's Subrogation Tracker database to yield key performance indicators, and completed a claims review of 50 randomly selected claims.

At a high level, we offer the following findings and recommendations. Details and rationale for recommended actions are contained in text and exhibits in the report that follows.

Conclusions

Findings

- Ohio's governing legal standards for workers' compensation (WC) subrogation are generally not significantly different than those of eight peer states studied with respect to:
 - Statutes of limitation
 - Statutory rights to subrogation
 - Attorneys' fees
 - Recovery allocation
- There are distinctions among all but a high degree of commonality in enabling laws and regulations.
- The Subrogation Unit (SU) at BWC is generally effective in investigating cases upon referral, asserting BWC's right to recovery, referring to the Attorney General's office in appropriate cases, collecting funds and crediting employer experience. Staff is competent but challenged with large caseloads of 400 - 500 cases.
- The Subrogation program at BWC is well-documented. Training manuals and supporting materials are appropriate in content and use.
- Information technology support of subrogation is deficient. SU specialists are required to track and document cases in both the "V-3" general claims administration system and also in "Subrogation Tracker," a stand-alone Access database used only by the SU. The two systems are not interfaced, there is inadequate error-checking in Subrogation Tracker, toggling between the systems by subrogation specialists is inefficient and exposes claims to data integrity issues.

Recommendations

- Sufficient staff in the SU should be maintained such that specialists have a more reasonable caseload of 300 to 400 cases. With up to 500 cases, the current workload results in a reactive approach to many cases and compromises the ability to "get in front of" settlement negotiations.
- Subrogation claims administration should be integrated into the V-3 environment. Subrogation Tracker contains appropriate data fields for capture and should be replaced in V-3. Additional data fields pertaining to settlement offer details (e.g., settlement valuation worksheets, more robust reporting of offer and demand histories) should be considered.

The Deloitte Consulting team appreciates the time and effort dedicated by BWC constituents over the course of our discovery to help us understand the subrogation process.

The Situation

Task Background

RFP Task Reference	RFP Task Description	Task Category
Section 5.1.2 #8, page 13	Review and make written recommendations on the subrogation standards applied by the BWC. This review would include a review of legislation, the BWC subrogation collection process, the application of subrogation receipts to individual employer's experience, and the assigning of subrogated claims to individual employers.	Claims

As part of the BWC Comprehensive Study, the following report comprises Deloitte Consulting's deliverable of Section 5.1.2 Task #8 of the BWC's Request for Proposal (RFP).

The primary objectives for these subrogation-related tasks were to:

- Develop an understanding of the current state of subrogation at BWC
- Provide credible benchmarks of subrogation legal standards for comparison to other jurisdictions
- Document and validate the subrogation business process flow
- Identify industry-leading practices
- Identify gaps between current and leading practices
- Make improvement recommendations specific to identified opportunities

Methodology

Completion of our subrogation analysis involved the following activities:

- Key constituent interviews
- Data and documentation reviews
- Database queries and analyses
- Sample subrogation claims review
- Industry-leading practice comparisons
- Business process mapping
- Benchmarking of other "peer" state legal standards for subrogation

A variety of commercially available sources were referenced to establish benchmarks for BWC's subrogation program comparison.

Deloitte Consulting practitioners met and interviewed BWC's SU leadership, supervisor, and specialists to understand how cases are referred, assigned, and managed, and how subrogation recoveries are collected and referred to Actuarial for employer credit and experience rating calculation.

Based on interviews and reviews of BWC subrogation policies and procedures, we drafted subrogation business process flows of the current state. Drawing on our experience with other insurers and commercially available expert reference sources, we drafted leading industry subrogation practices and identified gaps between those and BWC's current processes.

Deloitte Consulting practitioners were granted access to the BWC's Claim Department's "V3" system and the SU's "Subrogation Tracker" Access database. We reviewed 50 selected claims to test compliance to stated standards, and to review the documentation of critical claim recovery actions. The sample was intended to provide a high-level comfort that what we were told in interviews was generally carried through in real practice. We have conducted queries of the Subrogation Tracker database containing approximately 13,000 records and have included relevant data extracts in tables that follow in this report.

Primary Constituents

- **Injured Workers** – Responsible for informing BWC of third-party actions and potential settlements
- **BWC Subrogation Unit** – Responsible for managing recoveries for third-party claims
- **BWC Actuarial** – Responsible for calculation of employer credits and experience adjustment
- **BWC Claims** – Responsible for referral to the Subrogation Unit
- **BWC Insured Employers** – Generally a passive role but can receive credit on loss experience that impacts rates
- **Ohio Attorney General's Office** – Responsible for representing BWC's interests in litigated cases
- **BWC Internal Audit** – Responsible for program performance measurement

Information and Data Gathered

Interviews

Deloitte Consulting practitioners conducted initial and several follow-up interviews with SU leadership and staff to understand the current business process, identify specific challenges, and to validate preliminary assumptions. The following individuals were very helpful in clarifying our many questions and responding to requests for data and documentation:

- Legal Counsel – Legal Operations
- Subrogation Accountant Supervisor – Subrogation Unit
- Assistant Director - Actuarial Department
- Underwriting Supervisor - Actuarial Department
- Technical Claims Specialist – Claims Department
- Internal Auditor – Internal Audit Division

Information/Data Request

Deloitte Consulting requested and received all data and documentation timely. We reviewed subrogation policies and procedures, staff training manual and supporting presentations, legislated subrogation standards, relevant Supreme Court rulings, individual claims in V3 Claims and Subrogation Tracker (on-site access), business process maps, and settlement value worksheets. Appendix A itemizes the information we received and reviewed.

Review and Analysis

Benchmarking

Our primary reference for legislated subrogation standards was “*Workers Compensation Subrogation in All 50 States*” by Gary L. Wickert, published by Juris Publishers, 2007. Information from this text is summarized and supplemented with available subrogation program standards and leading practice descriptions from the International Risk Management Institute, the U.S. Department of Labor, the U.S. Chamber of Commerce, industry conferences and presentations, and internal Deloitte Consulting experience.

Subrogation Legal Standards – State Comparisons

Deloitte Consulting compared Ohio's subrogation statutes and enabling legislation to eight other “peer” states in categories of key legal standards that govern potential third-party recoveries. The eight states include Pennsylvania, West Virginia, Illinois, Indiana, Kentucky, Michigan, New York and Washington. Deloitte Consulting collaborated with BWC SU leadership to define the comparative metrics of greatest interest. The comparison categories include:

- Statutes of Limitations
- Statutory Subrogation Rights
- Attorneys’ Fees and Costs
- Allocation of Recoveries

The descriptions that follow are not intended to be exhaustive analyses of other states’ laws, but a high-level overview of major comparable legal standards. In the text that follows, “Subrogees” refer to state funds, insurance carriers, and self-insured employers who have right to recovery in third-party actions.

Statutes of Limitations

The applicable statute of limitations establishes the timeframe within which legal proceedings must be initiated. The following table depicts readily available information with respect to allowable durations in major categories of typical legal actions.

Observations

Ohio generally has shorter durations of statutory limitations across most legal basis categories of third-party actions than several of the “peer” states. However, Ohio is consistent with five of the eight others (at two years) for personal injury claims, which comprise a large majority of BWC subrogation cases. Ohio is not unique in challenges related to constitutionality of subrogation-related statutes. Both Illinois and Kentucky courts have rendered unconstitutional decisions on statutes of limitations for product liability and real property claims, respectively.

STATUTES OF LIMITATIONS (in Years)	Ohio	Illinois	Indiana	Kentucky	Michigan	New York	Penn.	Wash.	West Virginia
Wrongful Death	2	2	2	**	3	3	2	3	2
Personal Injury	2	2	2	1, or ***	3	3	2	3	2
Property Damage	2	5	2	2	3	3	2	3	2
Medical Malpractice	1		2		3	2.5		3 *****	2
Product Liability		12 *	2		3	3		3	
Breach of Contract	15 (written)	5 oral 10 written		4 ****			4	6 (written)	
Real Property Claims		10		7 *****	6 *****		15	6	10

* Declared unconstitutional by Illinois courts

** Dependent on whether a representative is appointed to represent decedent's estate

*** Two years if motor vehicle involved in personal injury

**** Applies to expressed or implied warranty

***** Declared unconstitutional by Kentucky courts

***** Applies to claims against architect, engineer, or contractor

***** Or one year from date patient knew or should have known that condition was caused by the claimed act or omission

Statutory Subrogation Rights

Specific legislated guaranteed rights of subrogees are delineated with respect to responsibility for lien-filing, intervention in claimant-third-party actions, and recoverable amounts.

Observations

Ohio is closely aligned with other benchmarked states with respect to general protections of rights to recovery and permissible intervention in securing settlements. All have automatic rights to recovery, with the noted exception of Pennsylvania whose rules specify that a carrier's rights are not self-executable. Other distinctions among states appear minor in the context of this analysis.

Ohio

WC subrogation unconstitutionality issues in Ohio were corrected in 4/03 to create a right of recovery in favor of the BWC and self-insured employers (subrogees). Claimants are required to reimburse subrogees from any third-party recovery. A separate right of subrogation by a subrogee also exists against a third party. Claimants are subject to requirements to notify subrogees of all third parties against whom the claimant has or may have a right of recovery. Subrogees' "liens," or subrogated interest, include past, present, and future costs paid by a subrogee on behalf of the claimant (including medical, rehab, compensation, and death benefits). No recovery by claimants is deemed final unless the claimant provides the subrogee with proper notice and reasonable opportunity to assert its subrogation rights. If notice is not given, or if a settlement excludes any amount paid by the subrogee, the third party and claimant are jointly and severally liable to reimburse the full value of the subrogation interest.

Illinois

Both a claimant and subrogee can file a third-party action. If the claimant has not filed suit within three months of before the statute of limitations expiration, the subrogee may file the third-party action. A claimant who has received a third-party judgment must reimburse the subrogee even if the subrogee has not filed a lien. A subrogee may intervene in a claimant filed third-party action. Subrogees are required to pay a pro rata share of all costs and reasonably necessary expenses, including legal fees, as part of any third-party recovery.

Indiana

If a claimant fails to file suit within two years, the subrogee has the right to sue in either its own name or the name of the worker within one year following the two-year statute of limitations. If a claimant files timely, he/she must give notice to the subrogee within 30 days of filing. A subrogee is not required to intervene in the third-party action to protect its statutory lien. Written consent by the subrogee is required for settlement.

Kentucky

Plaintiff claimants or their attorneys who file suits against third parties are required to notify subrogees of any awards received by claimants. Subrogees must retain counsel to intervene in third-party cases. Failure to intervene before settlement results in loss of the subrogee's rights and entitles the claimant to receive all settlement proceeds. The intervention requirement does not impose a duty on the subrogee to actively participate in the action, or to independently prove the claim against the third-party tortfeasor.

Michigan

A subrogee is entitled to a lien on any third-party recovery for wage loss and medical benefits. If the claimant does not file suit within one year of the injury, the subrogee has the right to pursue the action in the name of the claimant. Either party bringing suit is required to notify the other 30 days before initiating third-party action. Subrogees are allowed to recover the amount of benefits paid, and if the settlement is large enough, entitled to a credit against future benefits payable.

New York

Prior to award of WC benefits, or within six months thereafter, a claimant is entitled to bring a suit against a third party to recover tort damages. A subrogee has statutory rights to a lien against any net recovery for all benefits paid to claimant under WC law. The net recovery equals the gross settlement amount minus reasonable and necessary expenses, including legal fees incurred. Notice to the Compensation Commission and subrogee is required within 30 days of initiation of the third-party action. The subrogee assumes assignment of the cause of action where a claimant has failed to file within the statute of limitations, but must notify the claimant no less than 30 days before the statute of limitations expiration date.

Pennsylvania

A subrogee is permitted to bring an action directly against a third party and can sue to enforce its rights. A subrogee is allowed to intervene in a claimant's third-party action, but intervention is not required, nor is claimant notification, to preserve the subrogee's rights. A carrier's right to subrogation, however, is not self-executing and must be asserted. The subrogee must assert its claim within a reasonable timeframe after receiving notice of a third-party settlement. A release and settlement agreement must be approved by the WC administrative law judge, signed by both parties, and must specify the WC benefits paid by the carrier.

Washington

Claimants are required to advise subrogees of recovery amounts and associated costs and legal fees before settlement funds are disbursed. A claimant must complete a Third-Party Election Form for the Department of Labor & Industries to pursue a third-party action. If the claimant elects not to proceed, the cause of action is automatically assigned to the department (subrogee). In cases where claimants have elected not to sue, the Department may recover noneconomic damages in addition to WC lien amounts. Methods for distribution of recovery amounts are governed by whether a claimant, or the Department (or self-insured employer) has initiated the legal action. Generally, costs and attorney fees are divided proportionally between the claimant and the Department; the claimant gets 25% of the remaining award, and the Department gets the remainder up to full reimbursement of benefits paid. Any balance of the award over the Department's full reimbursement is paid to the claimant.

West Virginia

Whenever a claimant files a third-party action, there is an automatic subrogation lien upon all recoveries in favor of the subrogee. The subrogee is entitled to reimbursement of all medical and indemnity benefits paid as of the date of recovery by a claimant from a third party. Claimants (or their representatives) have a duty to give reasonable notice to subrogees after a claim is filed against a third party and prior to any disbursement of any recovery. Failure to protect the statutory rights of subrogees creates a cause of action for the subrogee to recover the full subrogation amount, to not pay the otherwise attorney fee deduction, and to recoup reasonable fees and costs associated with the cause of action.

Attorneys Fees and Costs

The following synopses describe basic parameters for how claimant attorneys recover legal fees and related costs from settlement award amounts, whether liens are subject only to benefits paid to date or include future benefits, and whether attorney fee calculation and cost recovery are determined by who (subrogee or claimant) initiates the third-party action.

Observations

As with all other benchmarked states, Ohio's primary claimant settlements are subject to deduction of claimant attorney fees by some method of allocation before the subrogation interest of BWC is determined. Consistent with most other states, Ohio has no specific, expressed provision for proportional sharing of legal fees and expenses incurred by the BWC.

Ohio

Gross recoveries by claimants are reduced by legal fees and expenses incurred by the claimant and his/her attorney to yield the net amount recovered. The net amount recovered is then subject to distribution by formula. No specific provision is in place to compensate legal fees or expenses incurred by BWC or self-insured employers.

Illinois

Subrogees are required to reimburse a proportionate share of legal fees and expenses related to the suit. The subrogee must also pay attorney's fees equal to 25% of gross recoveries. Gross recoveries include reimbursement of future benefits in addition to paid amounts. Claimant attorneys are not permitted to recover both 25% of the WC lien and the normal 33% of the full settlement. The proportional claimant expense reimbursed by the subrogee is calculated by dividing the WC lien amount by the total settlement amount.

Indiana

Subrogees must pay a proportional share of all costs and expenses and attorney's fees. These are "off the top" and apply to a subrogee's total recovery. Attorney fees are calculated at 25% in cases where no third-party action is filed and 33.3% if a suit is filed. These attorney fee percentages apply to both paid amounts and awards of future benefits.

Kentucky

A claimant attorney is entitled to legal fees in all cases, including where the subrogee intervenes and prosecutes the case. In cases where legal fees and expenses exceed the WC lien, the subrogee is not entitled to reimbursement.

Michigan

Subrogees are required to pay a proportional share of legal fees and expenses to claimant attorneys. Claimants are entitled to whatever amount is in excess of the WC lien after the lien and associated expenses are reimbursed.

New York

Reasonable and necessary expenses are apportioned between claimant and subrogee and are paid from settlement funds. Equitable apportionment of litigation costs is determined by the courts. In establishing legal fees where a settlement award exceeds the WC lien, the present value of future compensation benefits is included in calculation of attorney fees. The future benefits must be ascertainable and not speculative. Case law has held

that death benefits, scheduled loss of use, and permanent total disability are predictable. Nonscheduled permanent partial disabilities are considered too speculative for the subrogee to be held liable for associated attorney's fees.

Pennsylvania

Claimant attorneys can recover reasonable legal fees and costs from subrogees. Claimant attorneys recover fees and expenses before the subrogee's lien is satisfied. In structured settlement cases, calculation of the subrogee's lien and the value of an annuity is based on its cost, not its ultimate value.

Washington

Attorneys' fees and costs are divided proportionally between the claimant and the Department (or self-insured employer). In cases where a claimant initiates a third-party action, a subrogee's proportional share of costs and fees is calculated by dividing the gross recovery amount into the benefits paid amount and multiplying the resulting percentage by the actual incurred fees and costs. In cases where claimants elect not to proceed with a third-party suit, the cause of action is assigned to the subrogee, who is entitled to recover costs and attorneys' fees.

West Virginia

The subrogee's lien is subject to deduction of attorney fees and settlement costs. Acceptable deductions are negotiable in the settlement process.

Allocation of Recoveries

The descriptions that follow identify whether settlements include past paid benefits exclusively, or include the present value of future benefits, whether formulas are used in the allocation, how recoveries are applied, and whether noneconomic damages are reimbursable to the subrogee.

Observations

Ohio specifically provides for recovery of anticipated future benefits, as does Illinois and New York. Others, like Pennsylvania and West Virginia, limit recoveries to amounts paid. All provide some method of settlement apportionment among claimants, their attorneys, and subrogees, either by statute or by case.

Ohio

Recovery allocation is governed by formula for both settled and tried cases. Claimants receive an amount that is calculated as uncompensated damages, divided by the sum of the subrogation interest plus uncompensated damages, multiplied by the net amount recovered. Subrogees recover according to the following formula: subrogation interest divided by the sum of the subrogation interest plus uncompensated damages, multiplied by the net amount recovered. If the subrogee and claimant can't agree on an equitable distribution, they may use binding or nonbinding alternate dispute resolution, or either party may file for an administrative conference.

Illinois

Twenty-five percent of a subrogee's reimbursed lien is deducted as attorney's fees, regardless if the claimant has agreed to a higher contingency fee with his/her attorney. Any excess over and above lien amounts and attorney fees accrue to the claimant. Subrogees can recover both past benefits paid and the present value of future benefits. A WC carrier is not subrogated to a claimant's spouse's loss of consortium claim. If a subrogee's lien exceeds that of the third-party recovery by the claimant, the subrogee is entitled to the entire recovery minus attorney's fees and statutory costs. Subrogees' liens are not reduced by percentages of fault of the employer or tortfeasor.

Indiana

If claimants recover a settlement or judgment, then any amount recovered is paid to satisfy the subrogee's interest in satisfaction of its lien, subject to paying its pro rata share of necessary costs and expenses. A judgment or settlement by a claimant inures to the benefit of the subrogee in all cases. A claimant cannot negotiate a settlement with a third party to which the subrogee is not a party. If a claimant receives a judgment for less than the lien, the claimant must choose between collecting the judgment and repaying the subrogee's lien, or assigning all rights to the subrogee and continuing to receive WC benefits.

Kentucky

The subrogee retains rights to recover WC payments made to claimants and claimants have rights to any other damages for which the tortfeasor third party may be liable. This prohibits any double recovery by the claimant. Subrogation interest is confined to actual WC benefits paid and does not include credit toward future benefits, nor subrogation rights to damages not covered by WC (e.g., noneconomic damages). The allocation of recoveries that aren't subject to subrogee's lien are questions of fact. "Make Whole" provisions afforded to claimants can reduce subrogee recoveries due to comparative fault attributed to employers. In cases where legal fees and expenses exceed the lien, the subrogee is not entitled to recovery.

Michigan

Subrogees are reimbursed for all benefit amounts paid up to the settlement minus recovery expenses. Award balances are paid to claimants and are treated as advance payment by a subrogee for any future benefits owed. WC liens are not allowed on any recovery against the claimant's spouse for loss of consortium.

New York

Subrogee liens are against the net recovery of the claimant. Net recoveries equal gross settlement amounts minus legal fees and reasonable and necessary expenses. If agreement is not reached on apportionment of expenses, the claimant may apply to the court to decide. If the subrogee obtains the recovery, settlement or award amounts first reimburse past and future WC lien amounts, then two-thirds of the excess belongs to the claimant after deducting expenses. Claimants must receive written consent from subrogees or approval from the court for any settlement that is less than the WC lien amount.

Pennsylvania

Subrogees' rights to recovery are limited to WC paid benefits only; there is no allowable recovery for noneconomic damages. Claimants cannot avoid the statutorily guaranteed subrogee liens by apportioning awards to non-economic damages (e.g., pain and suffering) in replacement of lost wages. If a subrogee's lien is not satisfied by the third-party recovery, and no future indemnity payments are owed, the claimant is not entitled to recover any part of the settlement until the lien is satisfied. Contributory negligence by the claimant does not reduce the lien.

Washington

If the claimant initiates the third-party action, reasonable costs and legal fees are shared proportionally by the claimant and Department (or self-insured employer). The Department may petition the court to determine reasonableness of costs. Claimants receive 25% of the balance of the award unless parties agree to a lesser amount. The subrogee is then paid the balance of the recovery only up to full reimbursement of benefits paid. Any balance remaining goes to the claimant.

West Virginia

Subrogees retain rights to recover all medical and indemnity benefits paid up to the date of third-party recovery. Claimants and their attorneys can be sued by a subrogee for the full amount of a lien and any costs associated with the litigation if they fail to protect the subrogee's rights or try to convert the lien.

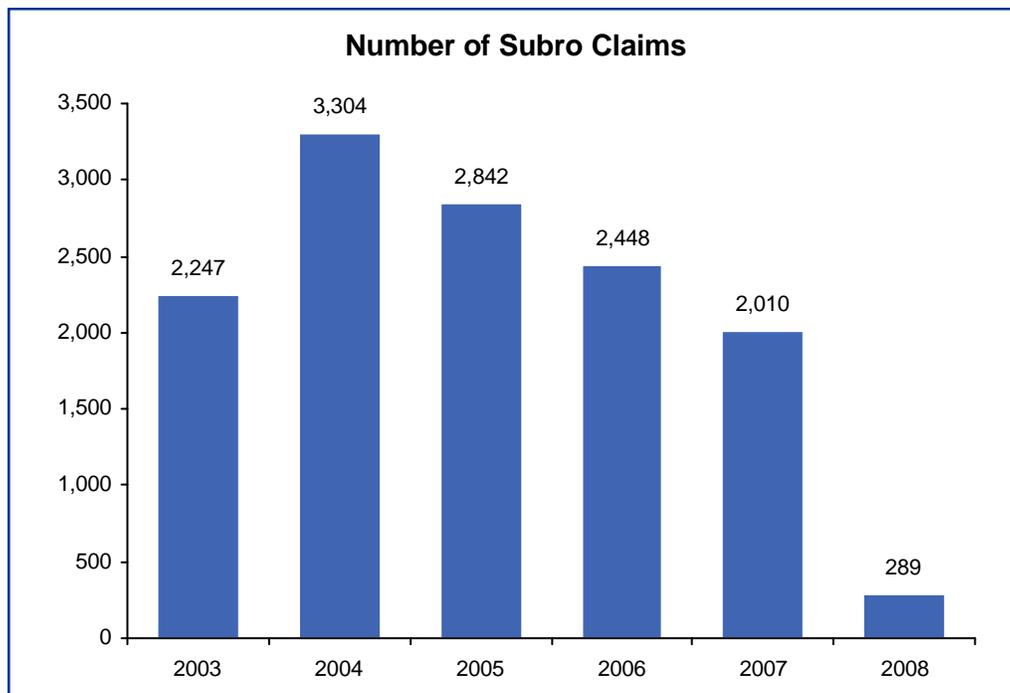
Analysis

Deloitte Consulting conducted database queries on BWC's Subrogation Tracker database to yield summary results across a variety of measurements.

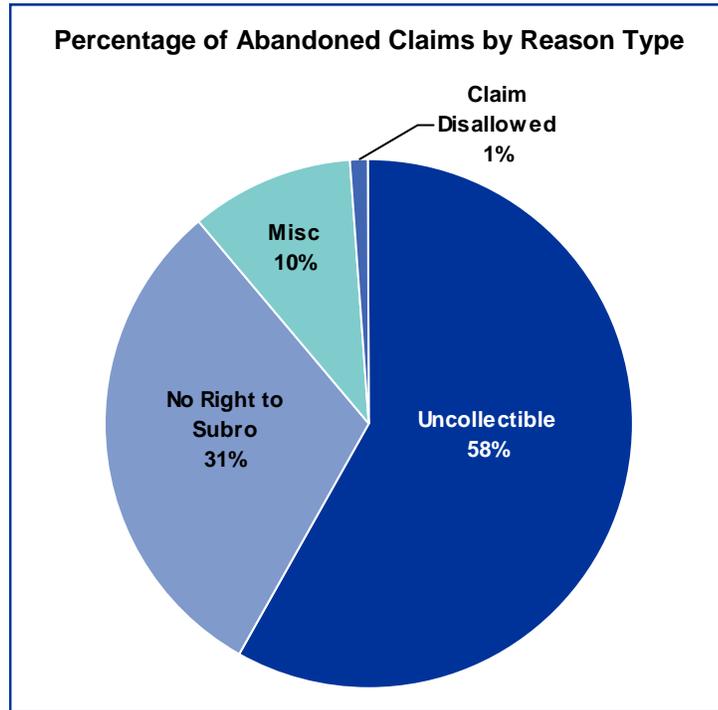
13,140 claims were resident in BWC's Subro Tracker MS Access database as of the final date of our on-site subrogation claims review. All analyses that follow include all cases up to April 15, 2008.

- The 2003 start year reflects the law change that addressed the Supreme Court of Ohio's decision that language within the statute was unconstitutional; the law change allowed for resumption of WC subrogation by BWC and employers, subject to new rules and regulations.
 - The 13,140 claims in Subro Tracker include all cases referred to the SU for investigation and management.

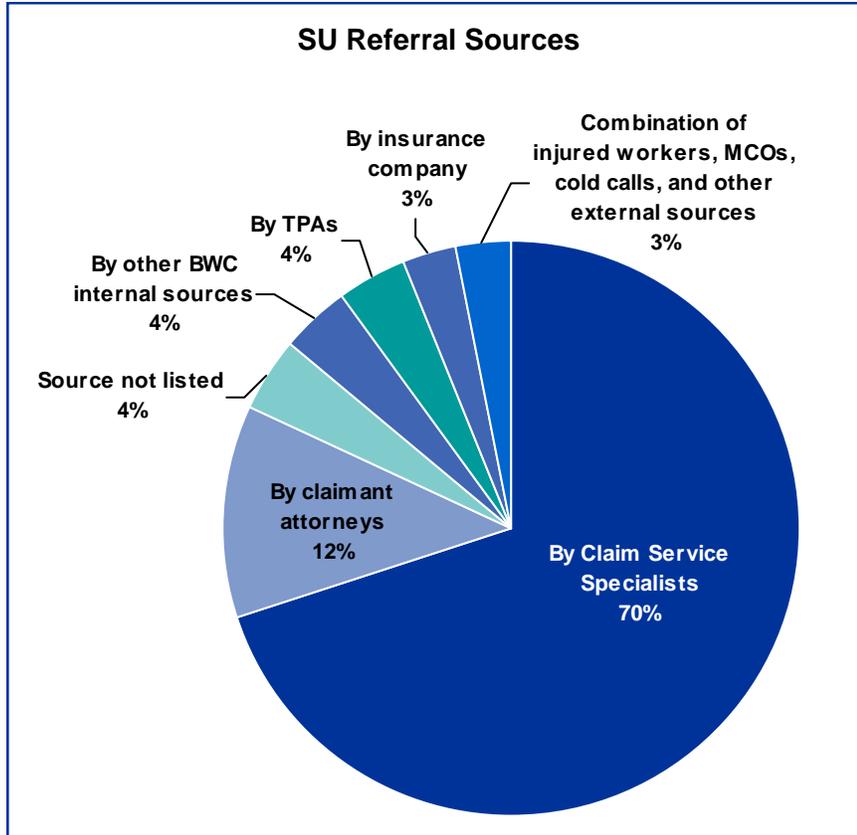
Date of Injury	# Subro Claims
2003	2,247
2004	3,304
2005	2,842
2006	2,448
2007	2,010
2008	289
Total	13,140



- Many of these claims were dismissed or abandoned by the SU unit for a variety of legitimate reasons:
 - 945 claims were abandoned upon first review by the SU for “No Right to Subrogate”
 - 1,743 claims were deemed “Uncollectible”
 - 314 claims were not pursued for “Miscellaneous” reasons
 - 42 claims were not pursued for a “BWC Claim Disallowed” designation

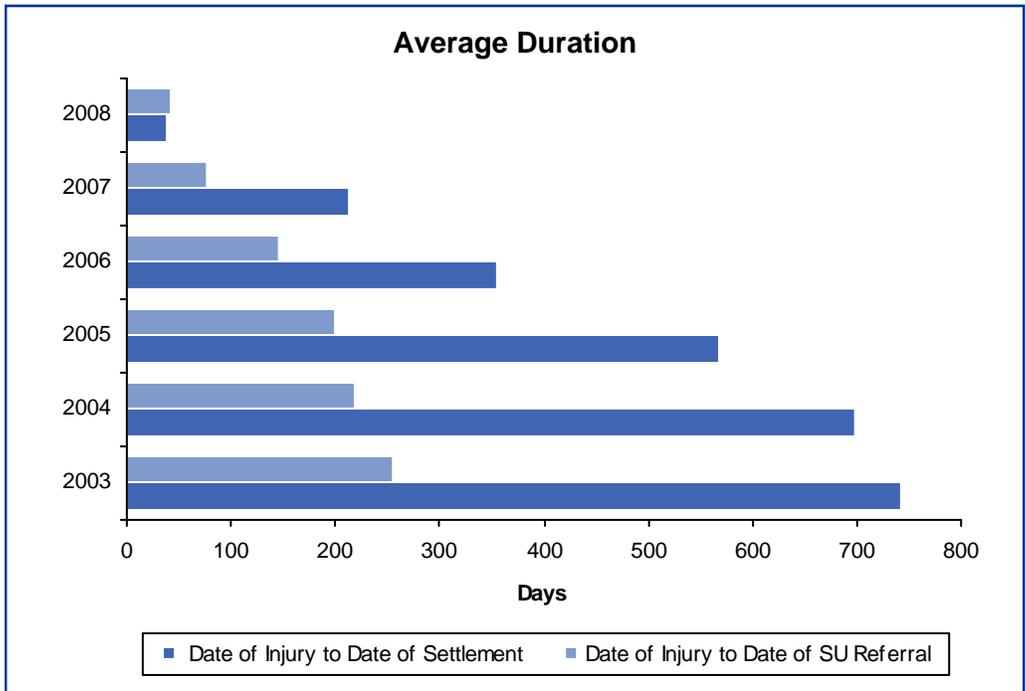


Case referrals to the SU come from multiple sources, primarily through internal channels but also from external sources. Over the six-year measurement period, the following chart represents percentages of cases referred by various sources:



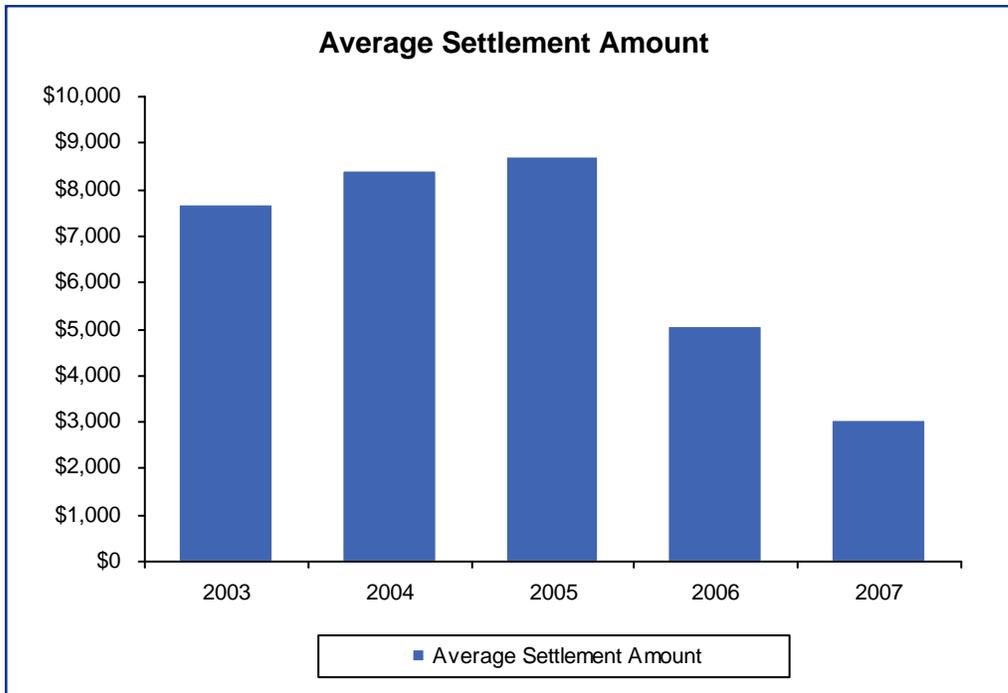
Deloitte Consulting tracked cycle times between multiple dates to yield “life of claim” metrics, including dates of injury, dates of referral to SU, and dates of settlement. The following table yields average durations (in days) between critical actions. Numbers in more recent years reflect the relatively long latency involved in settling subrogation claims.

	Date of Injury to Date of SU Referral	Date of Injury to Date of Settlement
2003	256	742
2004	218	698
2005	199	568
2006	146	355
2007	77	213
2008	42	38
Total	183	599



Subrogation recovery amounts generally average between \$5,000 and \$8,000. The following table tracks average settlement amounts by accident year. As above, lower numbers in more recent years reflect latency and open claims with potential pending settlements yet uncollected.

Accident Year	Average Settlement Amount
2003	\$7,699
2004	\$8,400
2005	\$8,703
2006	\$5,043
2007	\$3,058
2008	
Total	\$7,593



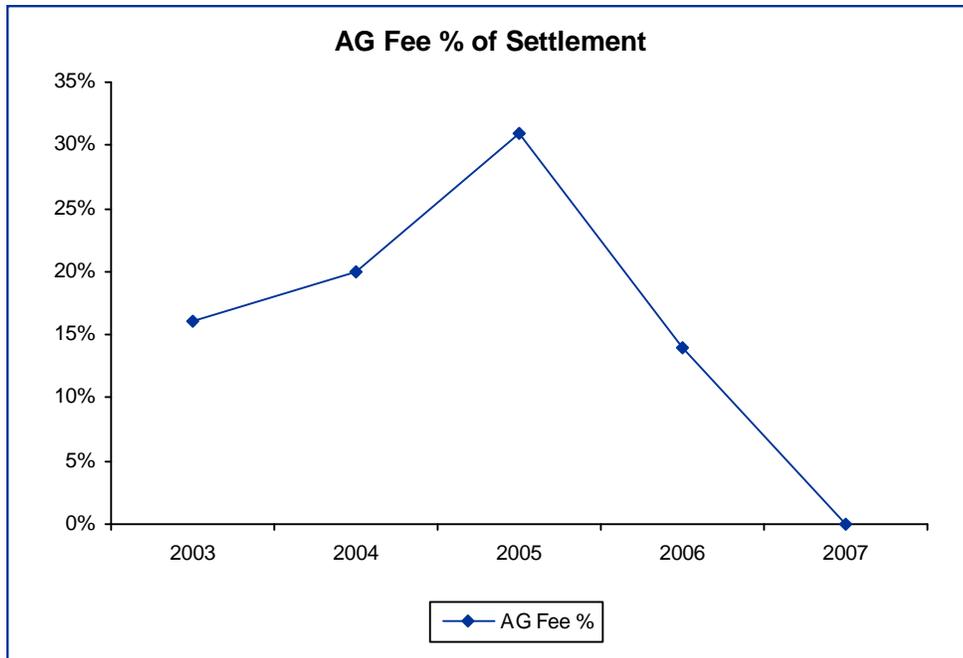
The subrogation process involves negotiation of settlement offers and demands, and final settlement amounts are subject to adjustment by many variables (e.g., size of claimant primary case settlement, ability to collect, expected funding of future benefits). The following table depicts BWC's average "final offers" compared to actual amounts recovered in cases where multiple negotiation of offers and demands were evident. The small variations between final offers and actual recoveries demonstrate strong SU performance in final settlement valuation.

Accident Year	Average of Settlement Amount	Average of Final Settlement Offer
2003	\$23,476	\$21,792
2004	\$12,689	\$16,658
2005	\$25,994	\$26,667
2006	\$17,962	\$17,927
2007	\$8,132	\$8,132
2008		
Average All Years	\$18,749	\$19,930



All litigated subrogation claims, and others of particularly high value, are referred by BWC to the Attorney General's (AG) office for handling. The AG, in turn, refers to outside counsel for selected claims. AG costs incurred on behalf of BWC are paid out of settlements. The following table delineates average AG fees, average settlement amounts, and percentage of average AG fees to average settlement by accident year. Low percentages in more recent years reflect latency and settlements in process as described above.

Accident Year	Average AG Fee	Average Settlement Amount	AG Fee %
2003	\$1,228	\$7,699	16%
2004	\$1,695	\$8,400	20%
2005	\$2,707	\$8,703	31%
2006	\$695	\$5,043	14%
2007		\$3,058	0%
2008			
Total	\$1,799	\$7,593	24%

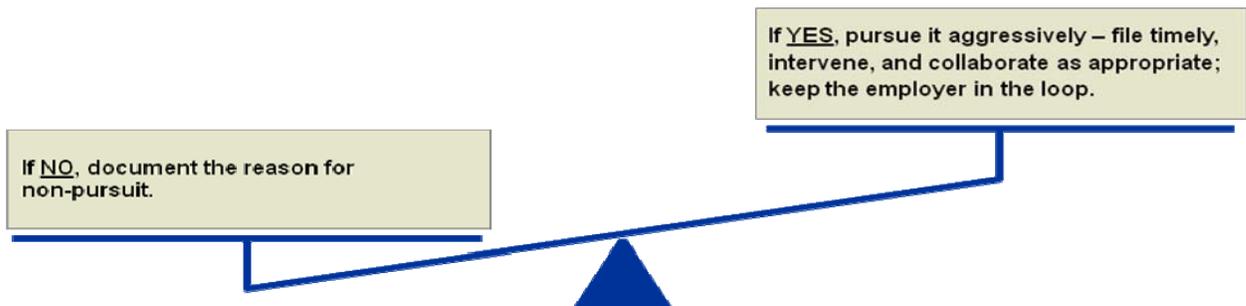


All of the above metrics offer ROI at a program level for subrogation. BWC is encouraged to track these measurements on an ongoing basis. Given the general lack of control over the primary litigation process, these should not be used on an individual basis to measure subrogation specialist performance.

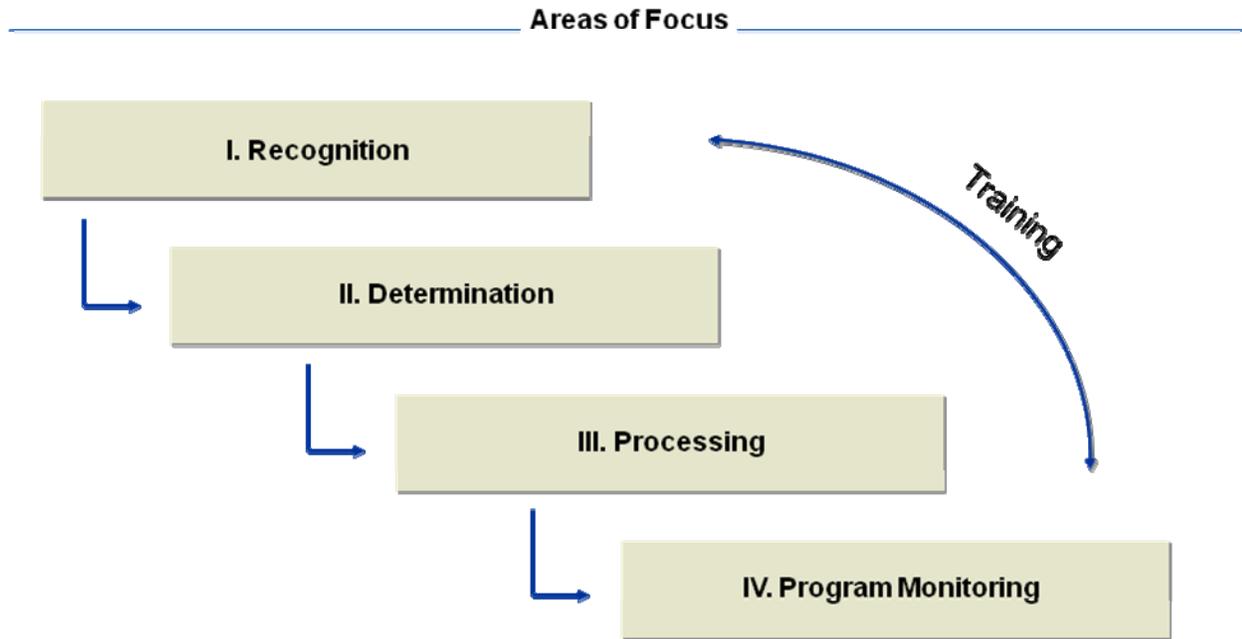
Industry Leading Practices

To Subrogate or Not to Subrogate?

- Estimate resources required to successfully make the case
 - Attorney time, effort, and fees
 - Expert testimony (e.g., engineers, physicians, rehab specialists, life care planners)
- Value of paid and projected claimant benefits
- Value and strength of third-party action (case law in jurisdiction, experience with similar claims, claimant attorney expertise, etc.)
- Make the business case to your insured about whether to pursue subrogation or not
 - Estimate loss adjustment expenses
 - Estimate recovery based on contributory negligence
 - Do it early to align expectations



Subrogation Industry Leading Practices



The following charts identify subrogation leading practice components and where Deloitte Consulting believes BWC stands relative to each on a strong-to-weak scale. Shaded circles depict Deloitte Consulting’s view of BWC’s position relative to subrogation industry leading practices. Many of these observations are largely subjective in nature and are based on comparisons of our industry experience to our knowledge of BWC’s programs for subrogation.

strong weak

I. Recognition	
	Recognition of subrogation potential upon initial claim investigation
	Thorough investigation of claim and claimant characteristics
	Evaluation of recovery sources (e.g., civil case, Second Injury Fund qualification)
	Preservation and development of evidence (e.g., medical documentation, life care plans)
	Referral to qualified subrogation specialist
	Technology enablement/data mining
	CSS/CR training to facilitate identification of subrogation opportunities
	Refined business rules to identify appropriate medical/indemnity subro opportunities

II. Determination

	Receive and review of all referrals
	Investigate validity and financial basis of referral
	Confirm recovery sources
	Manage compliance to statutory requirements
	Evaluate “contributory fault” by both employer and employee
	Calculate or otherwise negotiate settlement of lien
	Allocate subrogation recoveries to claim
	Identify recovery sources
	Establish estimates of future spend

III. Processing

	Maintain appropriate case load
	Timely assertion of rights and updated liens as indicated
	Application of resources determined by case value and complexity
	Documentation of payment history by type: Medical, Indemnity, Rehab, Expense, Legal; BWC/IC findings and awards and Permanent Disability ratings
	Communicate subrogation milestones with CSS/CRs
	Refer to Attorney General for litigation and collection, as required
	Recoveries are credited and posted to individual claim files
	Recoveries are credited to employer loss experience
	Timely receipt of settlement agreements

 strong  weak

III. Program Monitoring

	Electronic diary review including supervisory review
	Management reporting of subrogation effectiveness – calculation of ROI
	Train and reinforcement of subrogation opportunities with CSS/CRS
	Manager audit of claims on a regular basis

Conclusions

Findings

Overall, BWC's subrogation program aligns well with other jurisdictions, and the Bureau's SU performs its assigned functions consistent with industry standards. The SU is challenged with high caseloads and lack of effective technology enablement of routine functions.

Crediting of employer experience with subrogation recoveries appears consistent with BWC stated policies. The following process is prescribed:

- Subrogation collections are entered by the SU in the Rates and Payments System.
- The Risk Department then initiates the employer credit process by dividing the amount of the recovery collected by the total unlimited claim cost to yield a percentage of claim cost reduction (subrogation credit percentage).
- Total costs associated with the particular claim are reduced by the subrogation credit percentage subject to some limitations:
 - If the claim is at maximum value, the subrogation credit percentage is applied to the maximum value.
 - The subrogation credit percentage is adjusted annually based on updated claim costs.
 - If a Handicap Award exists, the claim cost is first reduced by Handicap Award amount and then by the subrogation credit percentage.

We have identified two primary opportunities for improving subrogation operations:

- Caseloads of up to 500 claims for a SU specialist compromise abilities to proactively manage cases, and
- Use of two separate claim administration systems (V-3 and Subrogation Tracker) by SU staff creates inefficient workflows and yields exposure to data integrity issues. Subrogation Tracker is an Access database that lacks functionality to wholly manage claims. SU staff maintains claim notes in Subrogation Tracker and claim diaries in V-3. Subrogation Tracker also lacks adequate internal auto-error checking features. For example, we found one claim in our review that included a \$100,000 difference between two settlement amount data fields, on two different screens, on the same claim. This was the only major issue identified in our claim review.

Our claim review revealed no consistent patterns of poor practice. Aside from staffing and technology considerations, most of our identified gaps between current and leading industry practices are relatively minor in the context of the overall program, and recommendations are generally of a "fine-tuning" nature. Subrogation business process maps depicting the current state, industry leading practices, and gaps/challenges are contained in Appendix C of this report.

Secondary opportunities for improvement include the following:

- Exposure exists to miss identification of potential subrogation opportunities of auto-adjudicated, medical-only claims. Although robust business rules have been installed that "red flag" specific diagnoses, and claim and claimant characteristics that prompt a review, limited exposure still remains to refer otherwise appropriate cases.
- The Insurance Services Office (ISO) claim search process appears inconsistent between claims service specialists (CSSs) and subrogation unit specialists. CSSs generally complete initial requests but we found instances where the search was not conducted before referral to the SU. All SU Specialists have on-line access to ISO, while CSS's ISO search capabilities have recently been limited to a select few.
- Invalid referrals to the SU consume specialists' time in documenting reasons for not pursuing subrogation.
- BWC does not always receive timely notification of settlements or signed Settlement Agreements. Caseloads impact specialists' ability to manage these situations.

- There is limited calculation of ROI by the SU. Management reporting is largely limited to activity-based metrics (e.g., number of referrals and settlement amounts by region). These can be supplemented with additional measurements contained in the Analysis section of this report.
- Data mining is limited to fields contained in the V-3 system and Subrogation Tracker database. Opportunities exist to use text mining in V-3 to supplement existing business rules governing subrogation referral to the SU.

Performance Assessment

We assessed the performance of the Ohio workers' compensation system compared to these four overarching themes: Effectiveness & Efficiency; Financial Strength & Stability; Transparency; and Ohio Economic Impact. Each broad study element (Ohio Benefit Structure; Pricing Process; Cost Controls; Financial Provisions; and Actuarial Department Functions & Resources) is reviewed with these themes in mind to develop a performance assessment of the current state. Our performance assessment is made on each element in the context of its contribution to supporting the overarching themes.

For these performance assessments, the following scoring method applies:

	Strongly supports system performance
	Supports system performance
	Some support for system performance
	Some opportunity for system performance change/enhancement
	Significant opportunity for system performance change/enhancement

Based on this scoring method, here is the performance assessment for the Cost Controls area of Subrogation:

	Effectiveness & Efficiency	Financial Strength & Stability	Transparency	Ohio Economic Impact
Overall Subrogation Indication				

Peers and Industry Standards Considered

Peers: 8 State Comparison – OH, IL, IN, KY, MI, NY, WA, WV
 Referenced Standards – State Laws, Industry Leading Practices
 References – Commercially available studies (e.g., Juris Publishing, International Risk Management Institute, U.S. Chamber of Commerce, U.S. Dept. of Labor), industry conference & internal insurance practice sources

Recommendations

The following recommendations address the opportunities identified above, listed in prioritized order:

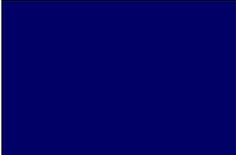
- **Maintain staffing to ensure subrogation specialist caseloads do not exceed 400.** A subrogation caseload of approximately 250-300 files is a more effective target.
- **Build functionality in V-3 to manage subrogation claims.** It will increase efficiency in process and mitigate data integrity issues.
- **Establish a more robust set of program performance metrics.** As a secondary recommendation, more robust performance metrics will help to track and monitor subrogation outcomes. See data in the Analysis section of this report for more detail.
- **Investigate utilization of text mining to augment existing business rules for subrogation referral.** Another secondary recommendation considers the use of text mining to identify additional claims for potential referral to the subrogation unit.

Impact

- The impact (high, moderate, or low) of these recommendations as they relate to the overarching themes is shown in the following table:

	Effectiveness & Efficiency	Financial Strength & Stability	Transparency	Ohio Economic Impact
Limit caseloads to no more than 400				
Build functionality in V-3 to manage subrogation claims				
Establish a more robust set of performance metrics				
Investigate utilization of text mining				

Legend

High Impact	Moderate Impact	Low Impact	No Impact	Adverse Impact
				

The Deloitte Consulting team is available to clarify or amplify any issues raised in this report. We express our appreciation for BWC process constituents' time, effort, and guidance in completing this integral task of our comprehensive study.

Appendix A – Deliverable Matrix

Group 1 Study Elements

Pricing Process
Statewide Rate Level
1) Data
a) Data quality and reliability
b) Experience period
c) Credibility
d) Payroll information
e) Paid versus incurred data
2) Methodology
3) Use of Reserves
4) ELR Comparison
5) Other
Class Ratemaking
1) Private Employer
2) Public Employer Taxing District
3) Rating Rules and Laws
Experience Rating
1) Grouping of employers for experience rating
2) Individual Experience Rating
3) Use of MIRA II
4) Possible Alternatives
Self-Insurance
1) Approval Process
2) Return to BWC
Programs
1) Premium Discount Program
2) Drug Free Workplace Program
3) Safety Council Program
4) One Claim Program
Alternative Pricing Methods

Cost Controls
Subrogation
\$15,000 Medical Only Program
Salary Continuation

Financial Provisions
SIEGF
1) Sufficiency Requirements
2) Contribution Calculation Methodology
3) SIEGF Assessments
4) Surplus Fund Assessments

Pricing Process Areas

Statewide Rate Level	Tasks Involved
1) Data a) Data quality and reliability b) Experience period c) Credibility d) Payroll information e) Paid versus incurred data	1. Review and make written recommendations with regard to the private employer premium and public employer taxing district rate calculations. This review would include a complete analysis of the rating program including but not limited to the experience period, the credibility tables used, loss information including quality and reliability of the data, payroll information, the off-balance calculation, the expected loss rates, the grouping of employers for experience rating, the use of reserves in the rate calculation, the payroll inflation factors, rating rules and laws, the transparency of the rate making process, and all rating calculations. This analysis should compare the BWC's rating calculation to industry standards, other state insurance funds and monopolistic state insurance funds, actuarial ratemaking principles as promulgated by the Casualty Actuarial Society, and the Actuarial Standards of Practice promulgated by the Actuarial Standards Board of the American Academy of Actuaries.
2) Methodology	
3) Use of Reserves	12. Review and make written recommendations on the reserving methodology used in the rate making process. This evaluation would include a review of the current MIRA reserving system, an evaluation of the new MIRA II Reserving system expected to be implemented in 2008 and alternative reserving methodologies that can be incorporated into the BWC experience rating system which will make the system more transparent. This evaluation would include the practice of reducing reserves due to certain compensation payments or the nonreserving of claims due to certain injury types.
4) ELR Comparison	24. Conduct a study of the loss rates and base rates of the Ohio BWC as compared to other states. This study would evaluate the trends in Ohio as compared to industry peers.
5) Other	1. See above.

Pricing Process Areas - continued

Class Ratemaking	Tasks Involved
1) Private Employer	<p>1. Review and make written recommendations with regard to the private employer premium and public employer taxing district rate calculations. This review would include a complete analysis of the rating program including but not limited to the experience period, the credibility tables used, loss information including quality and reliability of the data, payroll information, the off-balance calculation, the expected loss rates, the grouping of employers for experience rating, the use of reserves in the rate calculation, the payroll inflation factors, rating rules and laws, the transparency of the rate making process, and all rating calculations. This analysis should compare the BWC's rating calculation to industry standards, other state insurance funds and monopolistic state insurance funds, actuarial ratemaking principles as promulgated by the Casualty Actuarial Society, and the Actuarial Standards of Practice promulgated by the Actuarial Standards Board of the American Academy of Actuaries.</p>
2) Public Employer Taxing District	
3) Rating Rules and Laws	

Pricing Process Areas - continued

Experience Rating	Tasks Involved
1) Grouping of employers for experience rating	6. Review and make recommendations to enhance the equity of the experience-rating system and the resulting rates (public and private), including, but not limited to, discounts and dividends. This review would include analysis of the Drug Free Workplace program, the One Claim Program, the Premium Discount Program, the group rating program, and the safety council program. The analysis should include a study of the cost effectiveness of each program and an evaluation of each program with respect to industry standards.
2) Individual Experience Rating	
3) Use of MIRA II	
4) Possible alternatives	

Pricing Process Areas – continued

Self-Insurance	Tasks Involved
1) Approval Process	19. Evaluate the selection criteria used for self-insured employers. This evaluation would include the application of rules and laws in determining the employer's ability to manage and fund a self-insured program. The analysis will include suggestions for the financial evaluation performed upon application and the use of guarantees and securities to protect the Self-Insured Guaranty Fund (SIEGF).
2) Return to BWC	18. Evaluate the BWC rules, laws, policies and procedures for rating an employer who is self-insured and desires to return to the state insurance fund. This evaluation would include the experience modifier selected, the use of self insured experience, and the future liability for Ohio.

Pricing Process Areas – continued

Programs	Tasks Involved
1) Premium Discount Program	6. Review and make recommendations to enhance the equity of the experience-rating system and the resulting rates (public and private), including, but not limited to, discounts and dividends. This review would include analysis of the Drug Free Workplace program, the One Claim Program, the Premium Discount Program, the group rating program, and the safety council program. The analysis should include a study of the cost effectiveness of each program and an evaluation of each program with respect to industry standards.
2) Drug Free Workplace Program	
3) Safety Council Program	
4) One Claim Program	

Pricing Process Areas – continued

	Tasks Involved
Alternative Pricing Methods (Described throughout)	35. Identify methods of rate setting and reserving, in addition to those already contemplated otherwise in the RFP that the administrator could use to make the rate setting and reserving process more transparent for employers and employees.

Cost Controls Areas

	Tasks Involved
Subrogation	8. Review and make written recommendations on the subrogation standards applied by the BWC. This review would include a review of legislation, the BWC subrogation collection process, the application of subrogation receipts to individual employer's experience, and the assigning of subrogated claims to individual employers.

Cost Controls Areas – continued

	Tasks Involved
\$15,000 Medical Only Program	22. Conduct a study on the payment of salary continuation by employers in lieu of temporary total compensation. This study would include an evaluation of the reserve calculation to determine if the premium collected by the BWC is appropriate for the liability presented and an evaluation to determine if salary continuation is a cost effective for employers. Conduct a study on the \$15,000 medical only program. This study would include an evaluation of the reserve calculation for claims in this program and an evaluation to determine if the premium collected by the BWC is appropriate, and if the program is a cost effective program for employers.

Cost Controls Areas – continued

	Tasks Involved
Salary Continuation	<p>22. Conduct a study on the payment of salary continuation by employers in lieu of temporary total compensation. This study would include an evaluation of the reserve calculation to determine if the premium collected by the BWC is appropriate for the liability presented and an evaluation to determine if salary continuation is a cost effective for employers. Conduct a study on the \$15,000 medical only program. This study would include an evaluation of the reserve calculation for claims in this program and an evaluation to determine if the premium collected by the BWC is appropriate, and if the program is a cost effective program for employers.</p>

Financial Provisions Areas

SIEGF	Tasks Involved
1) Sufficiency Requirements	20. Evaluate the SIEGF sufficiency requirements and recommend criteria to be used for determining the methodology for the Administrator to establish self insured employers contributions to the SIEGF pursuant to Ohio Revised Code 4123.351. This analysis would include analysis of the BWC's historical funding of the SIEGF and recommendations for funding the SIEGF particularly whether the fund should be pre-assessment or post-assessment.
2) Contribution Calculation Methodology	
3) SIEGF Assessments	11. Review and make written recommendations with regard to assessments for self-insured employers for the surplus fund and for the Self-Insuring Employers' Guaranty Fund. This review would include an analysis on the loss history used for the calculation, the paid compensation basis, the projected payout, and the methodology used to calculate the assessment rates. 19. Evaluate the selection criteria used for self-insured employers. This evaluation would include the application of rules and laws in determining the employer's ability to manage and fund a self-insured program. The analysis will include suggestions for the financial evaluation performed upon application and the use of guarantees and securities to protect the Self-Insured Guaranty Fund (SIEGF).
4) Surplus Fund Assessments	

Appendix B – Data and Documentation

An inventory of key BWC and other source reference documents used in our analysis is highlighted below.

Legislative/Legal Standards

- Supreme Court of Ohio – Slip Opinion No. 2008-OHIO-546, GROCH ET AL. v. GENERAL MOTORS CORPORATION ET AL.
- Ohio's Revised Code: Title XLI Labor & Industry, Chapter 4123.931 Subrogation Rights
- Ohio BWC: Summary Overview of Subrogation Statutes
- *“Workers Compensation Subrogation in All 50 States,”* by Gary L. Wickert, published by Juris Publishers, 2007
- International Risk Management Institute (IRMI): Analysis of WC Subrogation, Copyright 2007, Topical Summaries of Suits Against Third Parties, Waiver of Subrogation, Statutory Legal & Insurance Framework, State Subrogation Sample Wordings, WC Lien Recoveries & Impact on Third Parties, Provision of Recovery from Others, Sequence of Subrogation Action

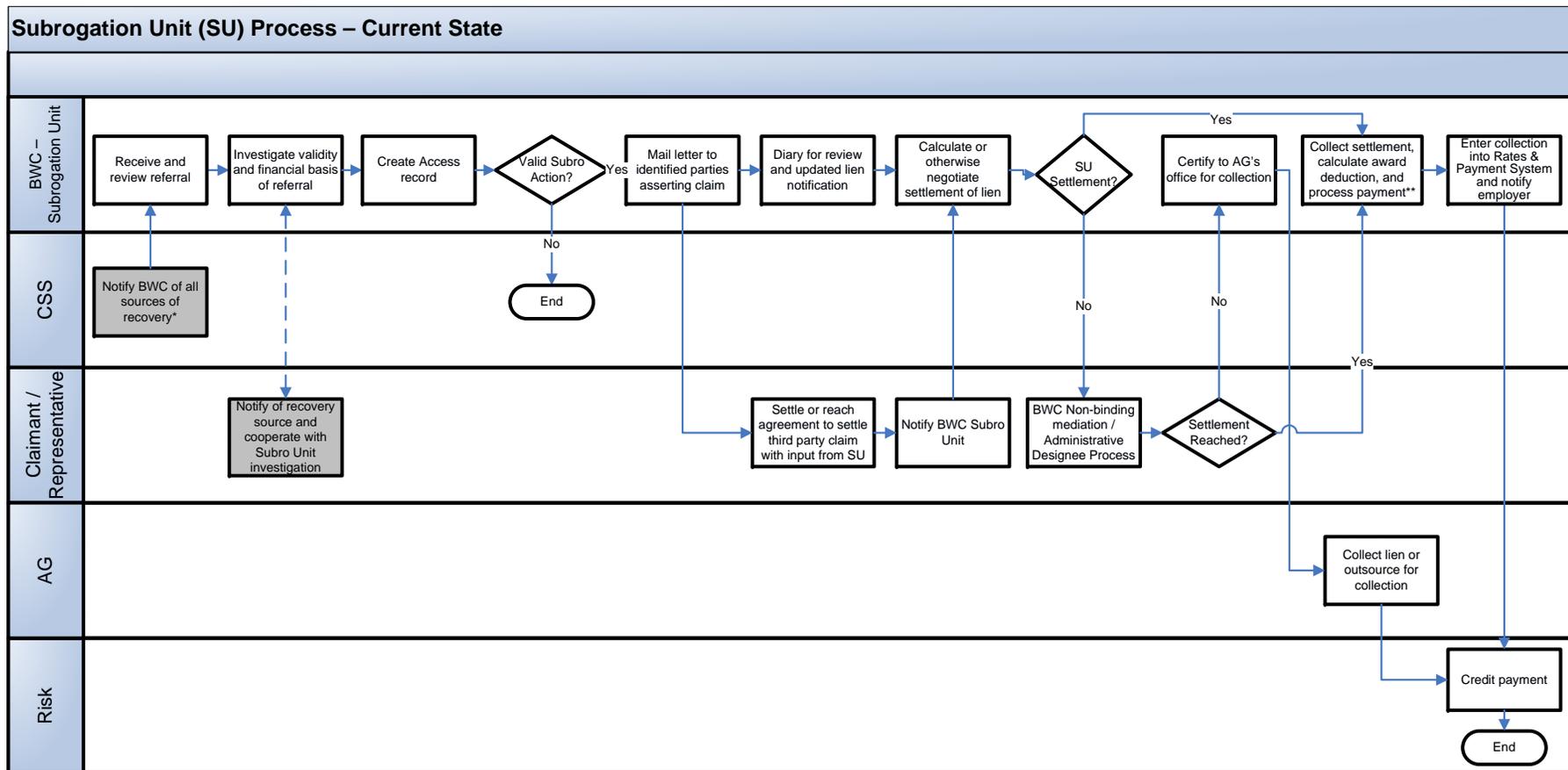
Subrogation Program and Process Documentation

- BWC Fact Sheet – Understanding Subrogation
- BWC Legal Division Subrogation Unit – Subrogation Training Manual
- BWC Policies and Procedures for: Subrogation and Settlement, Subrogation Referral to BWC Law, Subrogation Checklist, Investigation and Gathering Evidence for Subrogation, Subrogation Referral and Subrogation Recovery
- BWC SU current process workflows
- Gates McDonald Subrogation Training presentation of 5/4/05

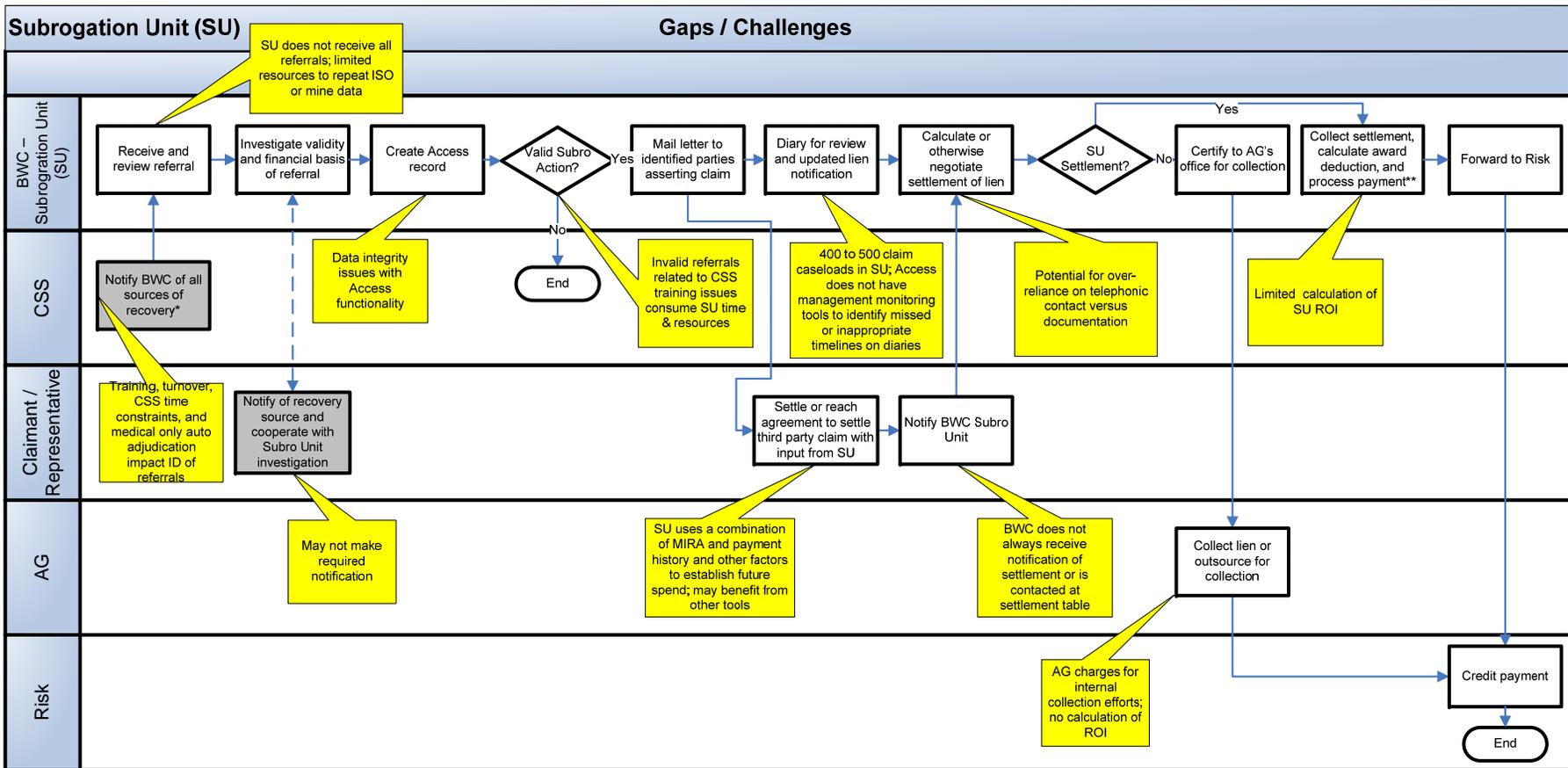
Data

- BWC Subrogation Tracker database
- BWC on-site access to V-3 Claims administration system
- BWC SU management reports on statewide subrogation referrals and recoveries
- Deloitte Consulting Access database for detailed review of 50 claims

Appendix C – Subrogation Business Process Maps

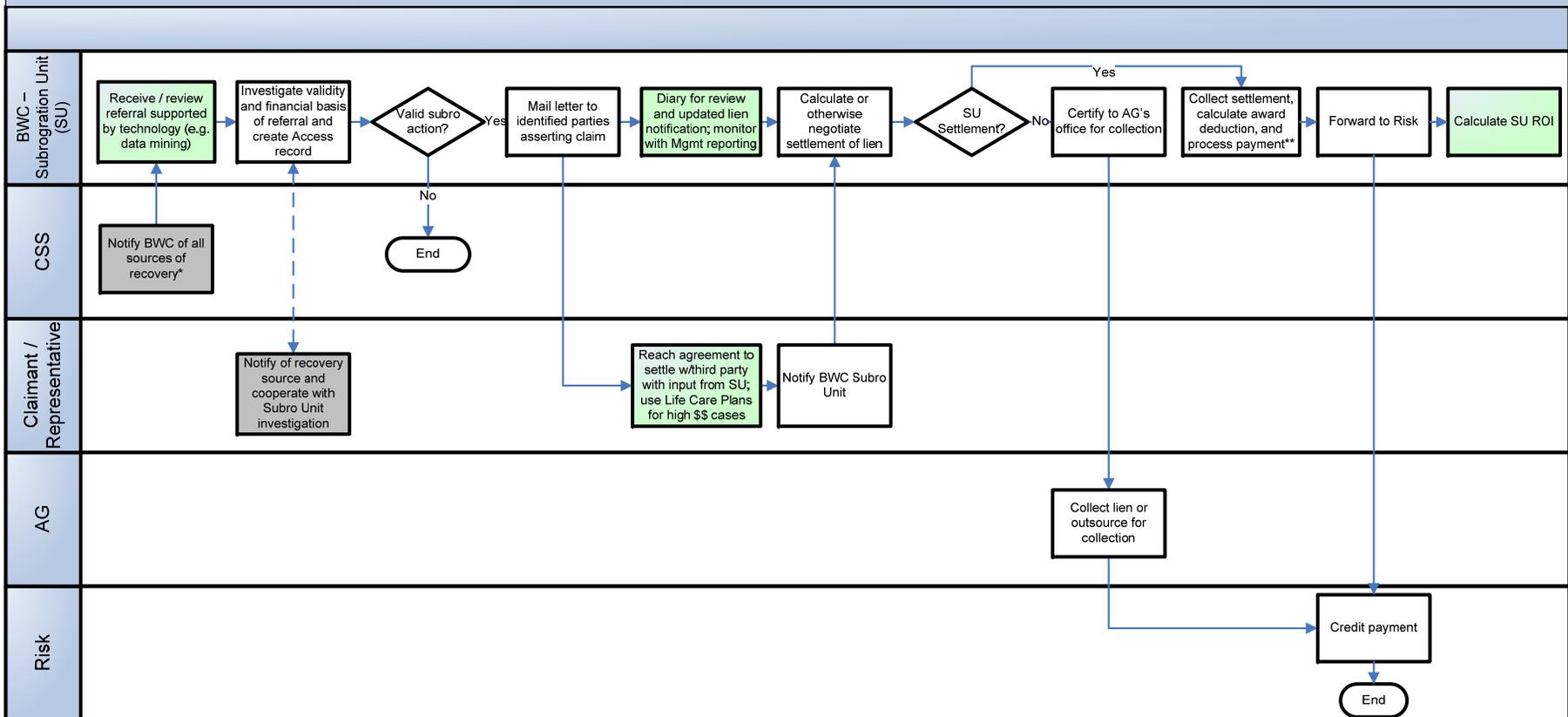


*Notification may also be made by employer, employers' attorney, TPA, or insurance company. The legal responsibility for notification falls to claimant.
 **Includes establishment of trust account where indicated



*Notification may also be made by employer, employers' attorney, TPA, or insurance company. The legal responsibility for notification falls to claimant.
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Subrogation Process (SU) - Best Practice



*Notification may also be made by employer, employers' attorney, TPA, or insurance company. The legal responsibility for notification falls to claimant.
 **Includes establishment of trust account where indicated

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