



Diamonds in the Rough

*Subrogation in the Power
Generation Sector*

By Todd B. Denenberg, Esq.

Subrogation as a Profit Center

More than \$10B
in missed
subrogation
recoveries
annually

Subrogation
Net R.O.I. –
upwards of 800%

Subrogation
'Best Practices'
Program –
increases
recoveries by at
least 100% over
informal
recovery efforts

Subrogation is Evolving

Subrogation programs are growing,
especially in large and complex losses



A Best Practices Program will find
“Diamonds in the Rough”

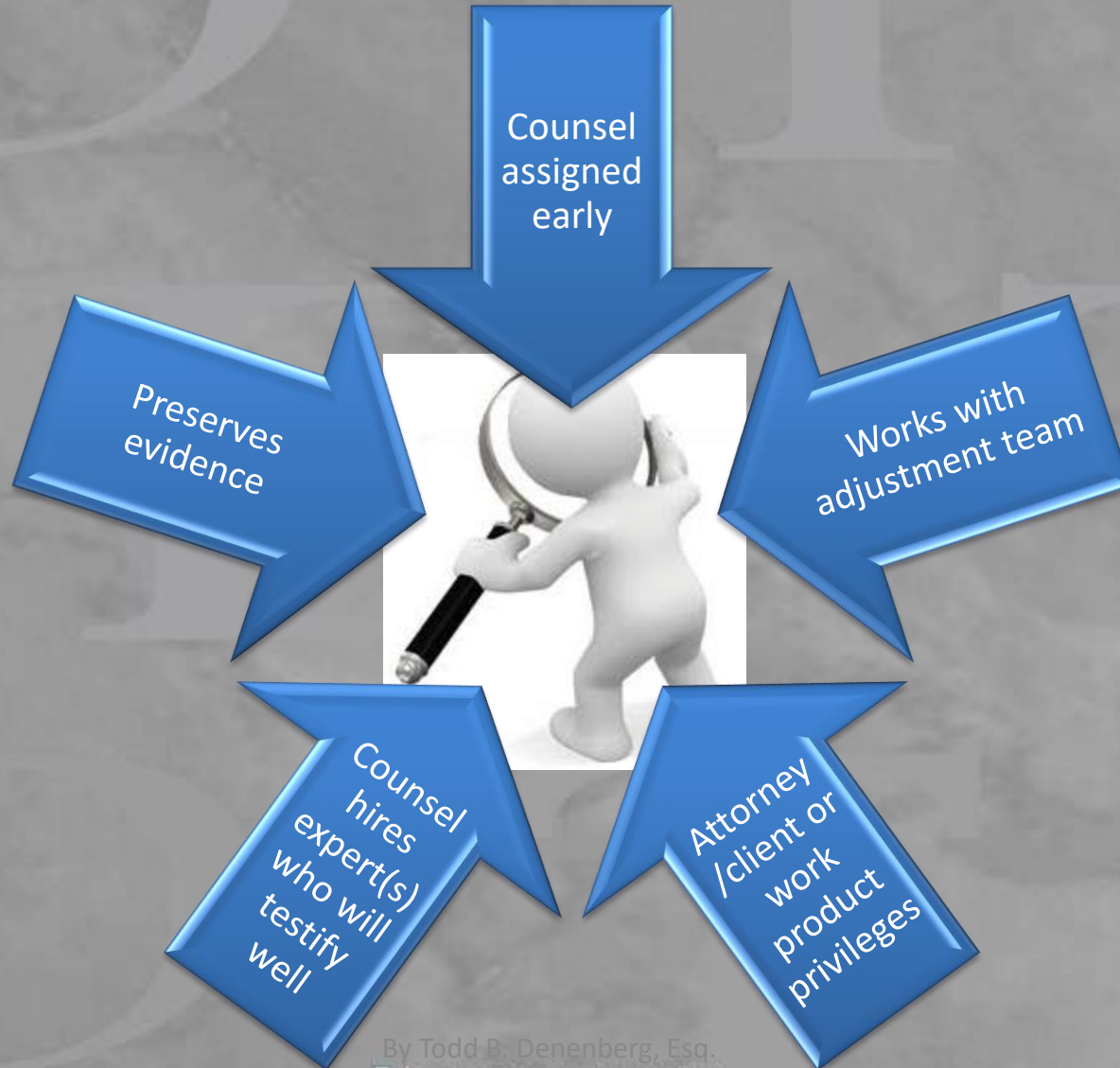
Best Practices Program - in a Nutshell



Why start one? Because “*You don’t know what you don’t know*”

- Large Losses – very difficult to determine recovery potential without expert investigation
- Even more difficult to evaluate recovery potential if investigation started in earnest *after* claim is resolved

BPP - Benefits



BPP- Benefits

Manage:

Site and artifact inspections

Adverse party notification

Coordination of PRPs

Consistent reporting



Address contractual issues early:

Waiver of Liability

Waiver of Subrogation

Shortened Statutes of Limitation

BPP - Benefits

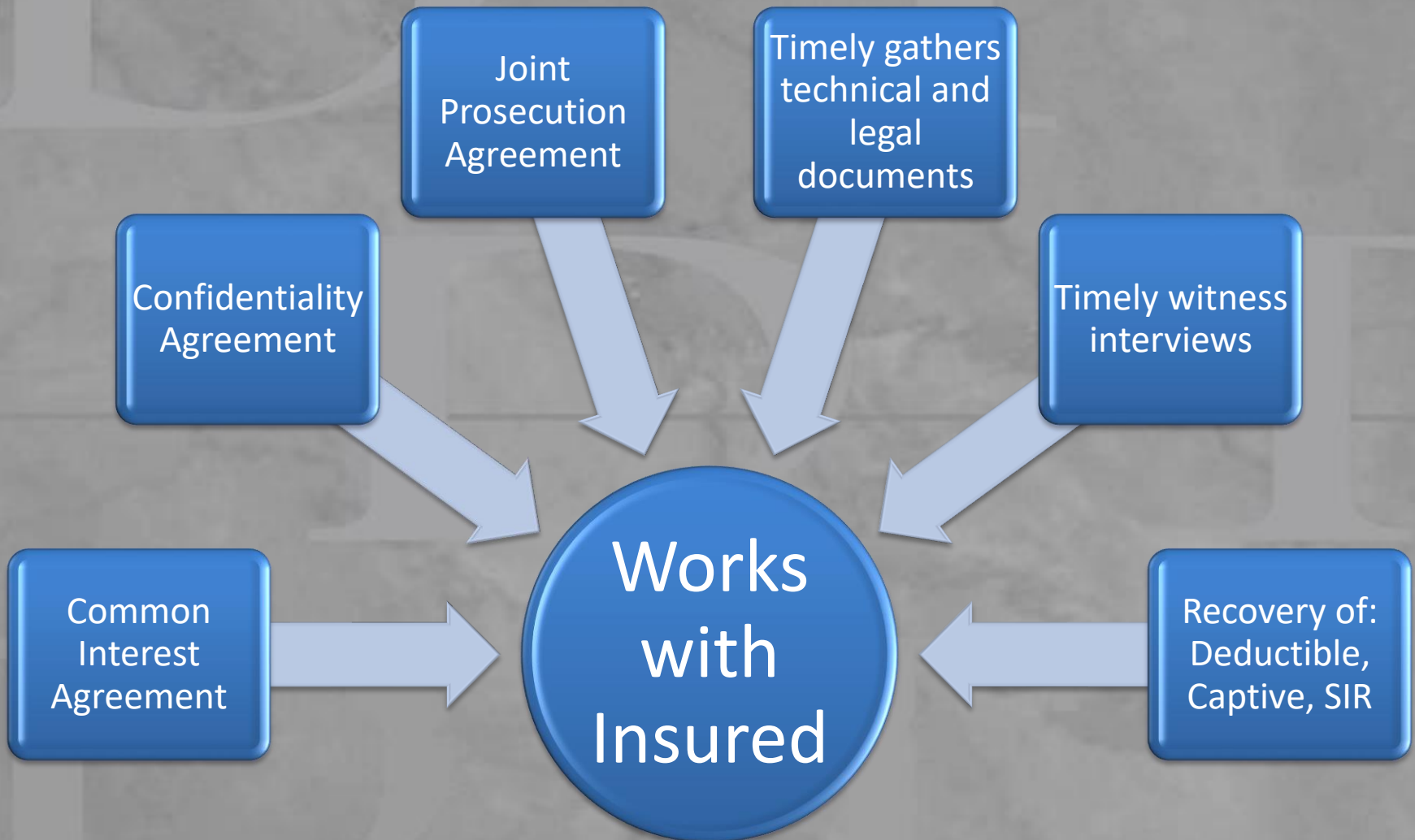


Works with regulatory agencies:

Balance forensic activities with need for prompt repair and only permit smallest 'subrogation footprint' possible



Benefits – Insured Relationship



Benefits – Avoids Common Pitfalls



Best Practices

So.

How does a Best Practices Program *make a difference* in the Power Generation sector?

Case Study

Relatively
new facility

Operator
mistakenly
opened valve
A instead of
valve B

Valves are
part of Safety
Instrumented
System and
Distributed
Control
System

Operator
bypassed
safety
controls in
order to open
valve A

Hydrocarbons
escaped,
large loss

Case Study

Informal
decision by
the insured
that
operator
error was
the cause

Subrogation
counsel
involved

Counsel
retains
appropriate
experts

Experts shed
new light on
the *true*
causes of the
loss

Case Study

Analysis: Recovery Opportunity



- SIS/DCS/other safety and interlock systems in place should have *prevented* operator error, if properly designed and installed
- Damages incurred *prior* to operator error are not subject to comparative negligence of operator



Subrogation became viable

The Future of Subrogation

This example
is not an
isolated
situation

Power Generation - Scope in U.S.

Almost 7000
operational
power plants in
U.S. with at
least 1MW

(U.S. Energy
Information
Administration)



Sector Growth



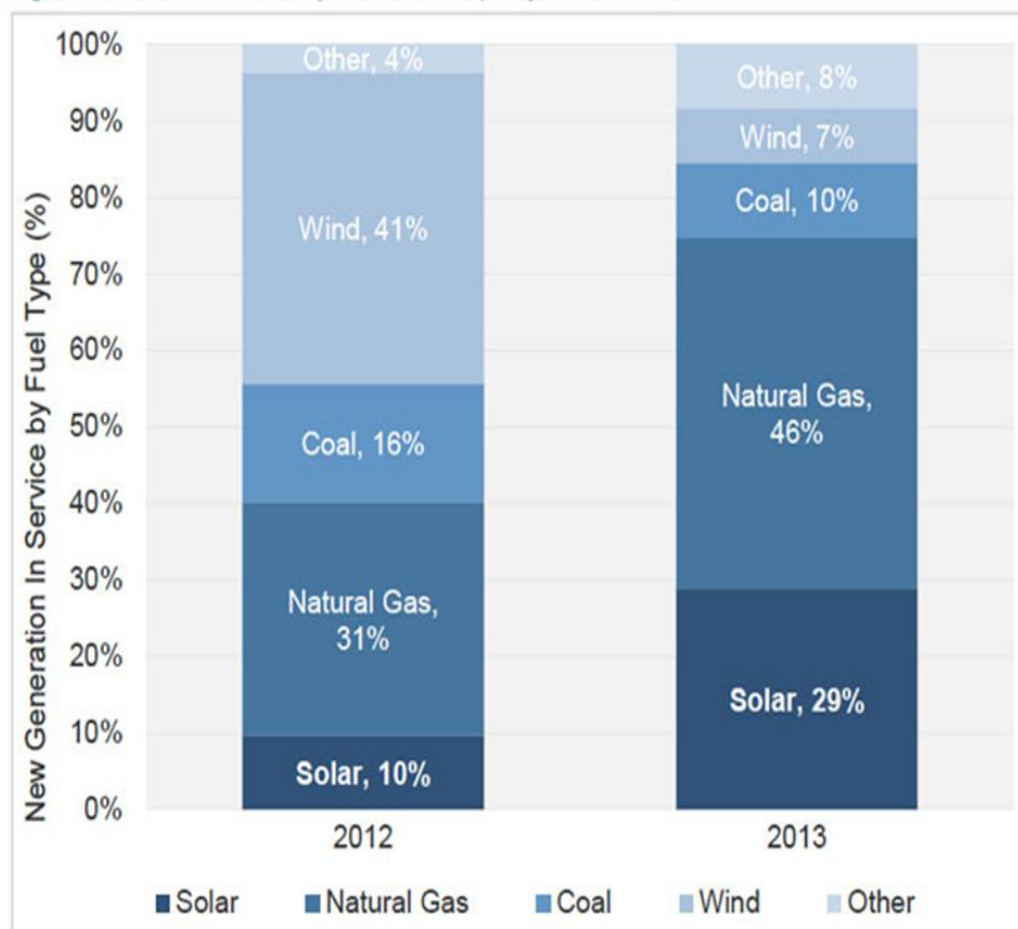
U.S. Executive Order: Reduce carbon emissions from power generation facilities
(June 2014 – whitehouse.gov)



Meaning: More natural gas fueled plants and less coal fueled plants

Natural Gas as Fuel – Growth

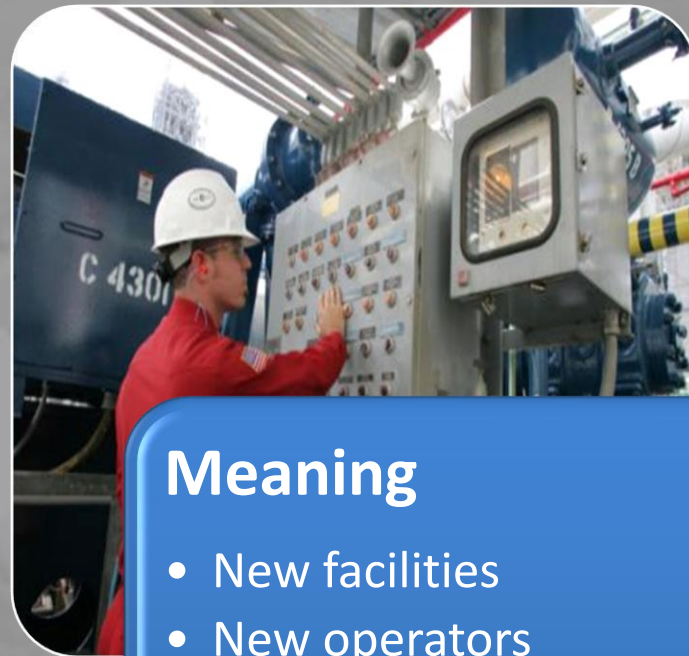
Figure 1.1 New U.S. Electricity Generation Capacity, 2012 vs. 2013



Natural gas accounted for 46% of the new capacity last year

Future growth: 73% of new plants will be fueled by natural gas (U.S. Dept. of Energy)

Growth - In The Field



Obvious boom in US

- 100 new plants and factories in the industry by 2017
- 40% job growth in past 6 years

Meaning

- New facilities
- New operators
- Re-tooled older facilities
- Push to increase production capacity
- Greater automation and process safety

Subrogation Impact

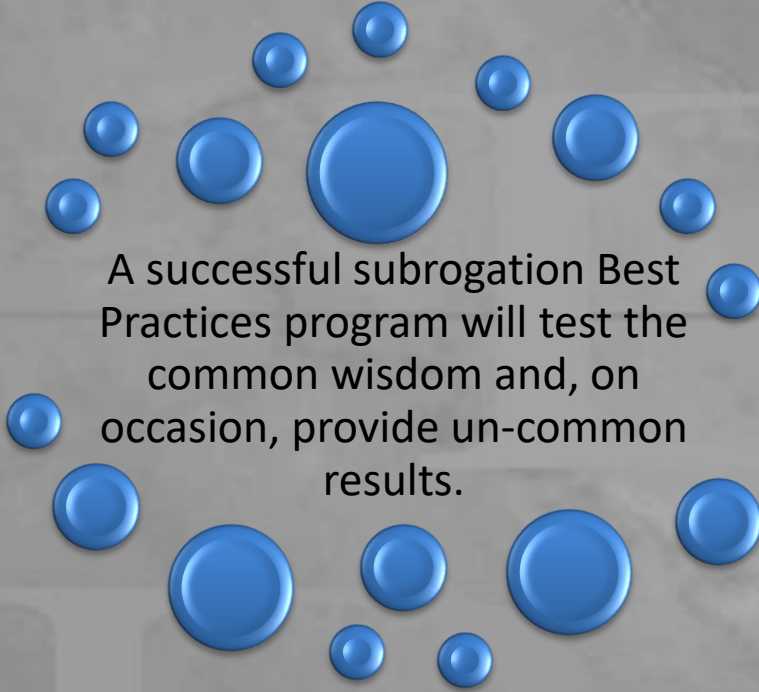
How does this growth impact subrogation?



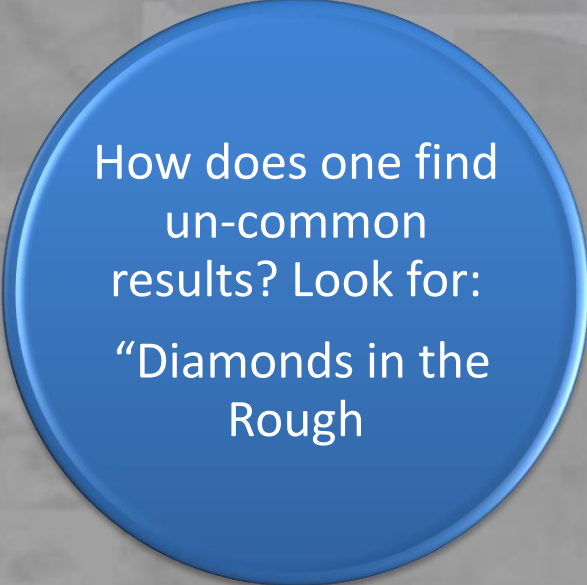
Our Experience: Doing root cause analysis, insured and others seem to *elevate* “operator error” and *minimize* other causes



CONCLUSION



A successful subrogation Best Practices program will test the common wisdom and, on occasion, provide un-common results.



How does one find un-common results? Look for:
“Diamonds in the Rough



Thank
you

We welcome your questions

Todd B. Denenberg, Esq.

co-author

Paul B. Hines, Esq.