

The Principle of Subrogation in Indemnity Policies

If the client is a manufacturer who has hired a specialist transportation company to carry raw materials to his factory and an accident occurred due to the driver's careless driving, what ways would the client be able to claim for the damages? If a client got into an accident with a third party which led to the car being partially or completely damaged, how will the insurer recover the damages after the claim is paid? This article will explain the principle of subrogation, its relationship to the principle of indemnity, and provide practical examples demonstrating different circumstances that may occur where subrogation is exercised by the insurer.



Subrogation refers to the practice of substituting one party for another in a legal setting

The principle of subrogation applies when an insurer who has paid a claim wants to recover the damages from a third party who was at fault in the incident.

The subrogation principle basically permits the insurer to "step into the shoes of the client," when recovering the damages.



Subrogation supports the principle of indemnity

The principle of indemnity is applicable in most insurance contracts and is basically a promise

by the insurer to put the individual or business in the same financial position that they were in prior to the loss under the terms of the policy.

The link between the principle of indemnity and subrogation is ensuring that the insured is not compensated either beneath or above the loss which has occurred. If the insured was indemnified either beneath or above the true value of the loss this would mean that the purchase of the insurance contract is a gamble. This would be against public policy.

Depending on the value and method of recovery, both the client and insurer could pay each other.

For example, the client gets into a car accident for which the damages are USD 1,500. The insurer pays the claim and then exercises its subrogation rights against the third party held responsible for the damages by the court. The amount recovered is USD 1,800. The insurer will take into account the excess, the costs of recovery, and the amount recovered to determine the quantity to be paid to the client. Generally, at the very least the excess will be

returned to the client depending on the proportion.

Another example would be an event where the amount recovered is below the amount paid. The client's house is broken into forcefully and furniture worth USD 3,000 is stolen. The thief is caught and after the insurer has paid the claim, sues the thief for the damages to recoup the loss. The recovered amount is USD 2,800. The client would not owe the balance of USD 200 to the insurer regardless of the insurer's costs of recovery as it is the insurer's responsibility to assess the validity and accuracy of the claim amount.

The client's house is set on fire by a criminal who is captured by the police. The value of the damage is USD 100,000. The insurer pays USD 95,000. The client however manages to recover USD 6,000 from the criminal. The insured will have to pay USD 5,700 to the insurer which is proportionately correct.

It is important to note that the principle of subrogation is quite complex in its applications and that there are possibilities for some insurance contracts that the subrogation is waived by the insurer, however subject to payment of an additional premium. We advise our clients to contact us for more information on this principle. Please do not hesitate to visit our office or give us a call.