



Minet is a trusted Pan-African advisor dedicated to addressing the uncertainties of tomorrow by delivering comprehensive risk and human capital solutions today. As the largest Aon Global Network Correspondent, Minet benefits from access to a global network of over 50,000 colleagues across 120 countries, along with proprietary data, research, and analytics. This unique combination enables us to anticipate and manage risks effectively, providing our clients with a distinct and unrivaled advantage. For more information, visit www.minet.com, or connect with us on our social media channels:



SUBROGATION IN SHORT-TERM INSURANCE CONTRACTS

March 4th, 2025



The claims processing stage in an insurance contract is undoubtedly the most critical. The client is in a position of vulnerability as a result of loss and must be assisted efficiently and promptly to restore them to the financial position in which they were before incurring the loss. While the rights of the insured are paramount during the claims processing stage, the insurer's rights post-settlement of a claim are often a topic of debate. The principle of subrogation in short-term insurance policies comes into play in quite an interesting manner

after the insured party has been indemnified.

Being a corollary of the indemnity concept of insurance, subrogation in the legal context refers to when a party takes on the legal rights of another, especially substituting one creditor for another. It can also occur when one party takes over another's right to sue. In an insurance contract, there is effectively a substitution of rights in the sense that the insured's rights are placed on the part of the insurer, and the insurer receives compensation that would otherwise have been granted to the insured and can sue for said compensation. It is important to highlight that the nature of the rights do not change.

There are two types of subrogation, legal or equitable subrogation, as well as contractual or conventional subrogation. Equitable subrogation is granted under common law when one party has made payment on behalf of another and becomes entitled to recovery rights the other party has against a responsible third party. It essentially occurs in the absence of terms in a contract that provide for the right to subrogation. As a result of the settlement of claims, it is particularly common in insurance contracts, wherein the insurer will fulfil its obligations and settle a claim, then proceed to recoup the funds from a third party whose fault the claim would have been.

Subrogation cannot exist where the insured has no legal remedy against a third party. While there are losses the liability of which cannot be placed on any party, such as natural disasters, there are



some wherein a third party can be held solely responsible, such as motor vehicle accidents and negligent damage to property. Using the motor vehicle accident example, if a vehicle is deemed a write-off by an insurance company, it will typically pay out the claim to the full value of the vehicle and then recover against the party at fault.

In contrast, conventional subrogation occurs where subrogation rights are granted contractually. As opposed to equitable subrogation, the insurance contract contains terms that entitle an insurer, upon settlement of a claim, to seek recovery of the paid amount from the responsible third party. Conventional subrogation is narrower in scope because a contract cannot expand subrogation rights, only limit them. An example of conventional subrogation is an agreement of contracting parties to waive their rights of recovery. A waiver of subrogation is a contractual stipulation whereby an insured waives the right of their insurance company to pursue compensation from a third party. Subrogation plays a significant role in barring enrichment on the part of the insured, as they cannot claim from both the insurer and third party. The insured must therefore only be compensated to the extent of the loss, whether it is a partial or total loss. The insured cannot claim from their insurance policy and then proceed to seek damages from the third party.

I have gained experience as a claims officer within both an insurance company and an insurance broking firm and have witnessed an interesting intertwine of rights where subrogation was at play. In one of the motor claims, a vehicle was declared a write-off, and the client in question was against the idea of the insurer retaining the salvage, which legally belonged to the insurer. In the end, the client was indemnified, and the insurer proceeded to institute legal proceedings against the third party and recovered the claim amount in full. The client was then reimbursed for their excess/deductible amount, and the insurer kept their share of the claim. Insurance in my view remains one of the most interesting spheres within the legal fraternity.

Nkhala Molapo | Claims and Compliance Officer | Minet Lesotho

References:

- <https://www.law.cornell.edu/wex/subrogation>
- <https://www.irmi.com/term/insurance-definitions/equitable-subrogation>
- Ty McDuffey, J.D Insurance Law: What is subrogation action 2023 <https://www.findlaw.com/injury/accident-injury-law/insurance-law-what-is-a-subrogation-action.html>
- Julia Kagan, Conventional Subrogation: What it is, how it works, 2022 <https://www.investopedia.com/terms/c/conventional-subrogation.asp>
- Teper v McGees Motors (Pty) Ltd 1956 (1) SA 758
- <https://www.irmi.com/term/insurance-definitions/conventional-subrogation>
- Darrel v Tibbits (1880) 5 QBD 560 (CA)