



## **Subrogation in Insurance**

If you have been injured in an accident that has resulted in damages, at some point you will undoubtedly hear the term "subrogation."

Subrogation issues surface when a person has been injured and someone other than the person or party at fault pays for all or some of the damages resulting from the injury. The insurer will usually pay for the costs of treating your injuries. However, after making payment (and sometimes even before they submit the payment) your insurer may contact you to discuss how the injuries occurred. The insurer is probably trying to determine if someone (other than you, the injured person) is fully or partially to blame for the injuries. The insurer may even try to determine if you are planning on suing another party for the injuries you have received. This represents the concept and reasoning behind insurance "subrogation."

### **What is insurance subrogation?**

Subrogation is the act of one party (insurer) claiming the legal rights of another (you the policyholder) that it has paid for losses. Not all types of insurance claims may be subrogated, thus as a policyholder you should consult your insurer to know which claims are subrogated. The most common type of claim that can be subrogated is property damage (buildings, motor vehicle).

For example: If you are involved in a motor vehicle accident where no one is injured, but the cars are damaged, say a taxi bumps into your car and you have a current and valid insurance policy; your insurer will pay to have your car repaired. Your insurer will then become "subrogated" meaning that your insurer will have the right to make a claim against the taxi driver who bumped your car.

In fact, if the taxi driver does not voluntarily pay for the damage, your insurer may even bring a lawsuit against the taxi driver, and your insurer may bring that claim in your name or your company's name, just as if you were bringing the lawsuit yourself.

### **Benefits of subrogation**

Subrogation can benefit you in a way as any claim recovered through the subrogation process goes to the insurance company hence reducing your claims ratio and the insurer keep your premiums lower. However, should your car be bumped every month, the insurers might classify you as a high risk client.

### **What is a waiver of subrogation?**

A waiver of subrogation is a contract or agreement that prevents your insurer to go after the drivers at fault as per the above example for payment. At time, the drivers at fault might propose for you to waive subrogation when he or she wants to settle the matter with you directly. You also may need to sign a waiver of subrogation to get direct payment from another person's insurance company. When you accept a waiver of subrogation from the driver at fault you are saying that your insurer should not go to the driver at fault's insurer to demand for refund. This will then mean that your insurer will have to pay the whole amount and settle the matter. However, this might increase your claims ratio with your insurer and your premium might increase.

Depending on the policy document, your insurer may not allow you to waive subrogation, and many will require you to notify them first before signing any waiver of subrogation. The result is that the risk of loss is agreed among the parties to transfer it to the insurers. The risk, once given to the insurers by the parties, is determined to stop there, without allowing the insurer to demand for a refund from the driver at fault's insurer. Therefore, as a policyholder you should ensure that you understand the terms and conditions of your own insurance policy before signing. Your

insurer, insurance agent or broker should assist you in understanding the subrogation process. Most importantly, when you as a policyholder sign contracts/agreements with the driver at fault, you will have to read and understand the terms and conditions of those contracts/agreements. As some of the contracts may include a "waiver of subrogation clause" to minimize lawsuits and claims among the parties and you need to make an informed decision. Remember the more your insurer pays out claims on your behalf, the higher your claims ratio and the higher your premiums.

### **Collateral Source in Subrogation**

Generally, a "collateral source" is a private entity, usually an insurer, or a government agency, which makes payments to a party who has a personal injury claim. Subrogation issues involve the question of which part of a settlement or jury verdict must be used to repay the collateral source for payments made to the injured party. At the heart of this issue is the concept that an injured party should not be allowed a "double recovery." It is believed that injured parties should recover for the actual damages they have incurred, but should not be allowed to profit from their loss.

For illustration purposes, when an employee is injured at work, usually some person other

than the employer bears some responsibility for causing the employee's injury. For workers' compensation purposes, that individual or entity is known as a third party. While the presence of a third party does not change who bears ultimate responsibility for compensating the employee for his or her work-related losses, subrogation allows an employer paying workers' compensation benefits to either step into the employee's place or participate with the employee in a lawsuit against the third party. The effect of subrogation is that the employee is only paid once for those amounts associated with medical expenses and wage loss that the employer has paid under workers' compensation. Any portion of an award in a lawsuit that includes amounts for losses paid by workers' compensation is refunded to the employer asserting the subrogation claim.

Understanding subrogation can be difficult. Failing to obtain such an understanding, however, may prove to be costly for an injured party.

**For any further questions or suggestion on subrogation, please contact the FSRA on 2 406 8000 or alternatively email us on [info@fsra.co.sz](mailto:info@fsra.co.sz)**