

Insurance and risk
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Mr. X and Mr. B are involved in a motor accident. Both parties believe that the other is at fault for the accident occurring. Mr. B believes that Mr. X is responsible for the damage to his motor vehicle and Mr. X believes that Mr. B is responsible for the damage to his motor vehicle. Fortunately for Mr. B, insurance was taken out for his motor vehicle through the Mr. B Family Trust (hereinafter referred to as the B family trust). In other words the insurance contract for this motor vehicle is with the B Family Trust and not in the name of Mr. B himself. However with Mr. B's motor vehicle needing repairs due to the extent of the accident, Mr. B submits a claim to the insurer for the damage to his motor vehicle. The insurer accepts Mr. B's claim and therefore Mr. B is indemnified by the insurer. Mr. B's motor vehicle is then repaired.

Mr. X is then sued by the insurer on behalf of Mr. B in order to recover the amount that was paid towards the repair of Mr. B's motor vehicle. Due to MR. B being indemnified a doctrine of subrogation is possible. Summons is therefore issued to MR. X with regard to this matter. Mr. X however is unsure if there is any justification for this action of subrogation. Mr. X also has no prior knowledge or experience with such a situation and therefore seeks legal advice as to how to proceed with this matter. This assignment will discuss the advice given to Mr. X with regards to if there are any grounds for a doctrine of subrogation as well as what actions Mr. X should take in respect of his defence. Another factor to be discussed is in whose name the insurer should be suing Mr. X. Furthermore it will be discussed if Mr. B does in fact possess insurable interest as well as whether the insurer was correct in indemnifying Mr. B for the repair of the motor vehicle with regards to

insurance law or if there was no cause for this act of granting indemnity. The principles involved

Insurable Interest

Insurable interest occurs when an individual seeks to insure an item that provides some sort of financial benefit and if the item were to suffer damage or loss the individual would also suffer a great loss. Upon insuring individuals it first has to be determined if the individual possesses insurable interest with the object to be insured or not. The insured needs to possess insurable interest at the time of contract being made and as well as when the loss is sustained.

A case that deals particularly with insurable interest is that of *Dimmitt v. Progressive Cas, Ins. Co.* In this case Dimmitt (the insured) owned a manufactured home which was destroyed in a snowstorm. Dimmitt therefore submitted a claim to Progressive Cas, Ins Co (hereinafter referred to as progressive) for the damages to the house. However due to the certificate of title of the home not being transferred into Dimmitt's name, Progressive denied the claim and alleged that Dimmitt had no insurable interest. Dimmitt alleges that since she had inhabited the home and owned the home she was entitled to insurable interest and should therefore be compensated for her losses, even though she did not file for the certificate of title for the home. The outcome of this case was though even though Dimmitt had not adhered to the law with regards to the title of the home, Dimmitt had suffered an actual loss due to the damage of the home. Dimmitt was therefore granted insurable interest. *Dimmitt v. Progressive Cas, Ins. Co, 2003 USA, 92 SW 3d 789, Missouri*
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Indemnity

Indemnity is regarded as one of the most vital principles of insurance law. Indemnity can be defined as placing the insured in the original position that the insured was in before the loss occurred. The insured cannot be placed within a better or worse position. It has to be one of the same as the original position. The commercial value of the item that has been insured should be recovered in the event of loss. The insured can be indemnified in many ways. These ways include cash payments which have to be equal to the value of the item lost, repair of the item or replacement of the item. After the insured has been indemnified a number of events may occur. These events include subrogation which will be discussed next. (Vivain, 2012) An example of a case which deals with indemnity is the case of *Watts v Allstate Indemnity Co.* In this case the plaintiff (insured) purchased car insurance from the defendant Allstate Indemnity Co (hereinafter referred to as Allstate). The insurance contract stated that Allstate will “ pay for direct and accidental loss to [plaintiff] insured auto...from a collision”. The plaintiff’s vehicle was then involved in a collision while being driven by the plaintiff’s wife.

The seatbelts in the motor vehicle restrained the driver and passenger which therefore caused them to sustain greater injuries than what should have been sustained. Due to the nature of the collision the vehicle was damaged and required repair. The plaintiff was quoted on the amount to repair the vehicle. This quotation was submitted to Allstate. Allstate approved the quotation and the vehicle was repaired. However after the repair was completed the plaintiff required that the seatbelts be checked and be replaced as well. Allstate refused to pay for this and the plaintiff regarded

this as breach of contract. This case portrays the principle of being granted indemnity as well as reasons for not granting indemnity. The main reason for indemnity not being granted regarding the seatbelts was that it was not stipulated within the insurance contract. *Watts v Allstate Indemnity Co*, 2011 USA, No. CIV. S-08/1877 LKK/GGH, Cal. This relates to the current case of Mr. B and Mr. X as it will be examined if there was a breach of contract with regards to granting Mr. B indemnity. Subrogation

Vivian (2012) defines subrogation as standing in place of the assured. In basic terms it means that one person may stand in place of another, therefore represent another person in the name of that person. The person that stands in place of someone else possesses all the rights of the person that is being represented possesses. Subrogation usually occurs once the insured has been indemnified and the insurer therefore tries to recover from the third party who was involved with the initial loss that had been suffered by the insured. If the insured were to be indemnified by the insurer and then still claim from the third party who was involved with causing the loss, the insured would be profiting twice. In this situation all principles of indemnity would be waived. However subrogation prevents this, "double profiting" from occurring. According to Vivian (2012: 9-15 of 55) in order for subrogation to occur the following requirements need to be met:

1. The insured needs to be indemnified by the insurer.
2. An insurance contract between the insured and insurer needs to exist.
3. The insured must be compensated for the loss suffered.
4. The insurer can only be subrogated to actions which the insured would have brought himself.

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Application of Theory

From the above situation that has occurred between Mr. B and Mr. X it is vital that Mr. X receives valuable advice as to the manner in which he should proceed with dealing with this matter of subrogation. All the facts surrounding the incident, insurance law and legislation need to be fully established before a decision can be made. In terms of insurance law the first thing that needs to be established is whether Mr. B does in fact possess insurable interest with regards to the motor vehicle and if the insurer was therefore correct in indemnifying him. The second thing that needs to be established is if the insurer can claim through subrogation.

The motor vehicle that Mr. B was driving at the time of the accident is not insured in his name. It is insured though the B family trust. In terms of insurable interest Mr. B does not possess any insurable interest with regards to the motor vehicle. The reason for this is because Mr. B himself is not insured it is not possible for him to possess any form of insurable interest. As mentioned in the above theory an object is only insured if the individual insuring the object possesses insurable interest. The B family trust however possesses insurable interest as the motor vehicle is insured in the name of the B family trust. The insurance contract is between the B family trust and the insurer and not between Mr. B and the insurer.

With regards to Mr. B being indemnified the aspect of whether the B family trust has in fact suffered a loss or not needs to be established. In this situation the B family trust has suffered no loss due to the damage of the motor vehicle. There is no relationship between the B family trust and the

motor vehicle in this instance. Mr. B has suffered a loss due to the damage of the motor vehicle but because the insurance contract is between the B family trust and the insurer, Mr. B has no reason to be indemnified. The B family trust should have been indemnified instead however in this instance since no loss was suffered by the B family trust, indemnity is not necessary at all. Even though theoretically Mr. B should have not been indemnified, indemnity has been granted. In order for subrogation to occur the requirements for subrogation need to be considered. Firstly Mr. B has been indemnified. It can also be said that Mr. B has been fully compensated for his loss as the motor vehicle has been repaired. However the issue of a valid insurance contract between the insured and insurer is in question. The insurer is currently suing Mr. X on behalf of Mr. B. However it needs to be noted once again that the insurance contract is between the B family trust and the insurer.

Therefore the insurer cannot sue Mr. X in the name of Mr. B. It should be on behalf of the B family trust. Since the B family trust has not been indemnified there are no grounds for subrogation. Finally due to the B family trust being the insured party, the B family trust has no reason to sue Mr. X and therefore are not bringing on the action of subrogation, therefore the insurer cannot either. From this it can be concluded that all the requirements of subrogation have not been met and therefore the doctrine of subrogation cannot come into effect within this situation. A similar case to the case above is that of *Manderson T/A Hillcrest Electrical v Standard General Insurance Co.*

Manderson T/A Hillcrest Electrical (hereinafter referred to as *Manderson*), the plaintiff, employed X to carry out secondary business duties such as

repairing domestic appliances for customers. X supplied the vehicle and Manderson insured X's vehicle. X's vehicle including repair tools inside the vehicle were stolen. Manderson therefore submitted a claim to Standard General Insurance Co (hereinafter referred to as Standard), to be indemnified for the loss of the vehicle. Standard however declined this request as the aspect of whether Manderson possessed insurable interest with regards to the vehicle came into consideration.

Manderson responded by saying that insurable interest did exist on his part because he would be losing business profits as well as the goodwill of the business due to the incident in which X would not be able to carry out the business functions. Standard responded by saying that X was the only party involved who had suffered a loss. The case of determining insurable interest is a vital one as this will ultimately determine if the plaintiff will be indemnified for the loss or not. This case is very similar to that of Mr. B as there are some similar underlying principles. Manderson was theoretically the insured and should have therefore been indemnified but due to the underlying circumstances surrounding the theft of the vehicle the judge came to a judgement that was in favour of Standard, thus Manderson was not indemnified. Insurable interest with regards to Mr. B is also under question and therefore the granting of indemnity needs to be reconsidered and if possible reversed. *Manderson T/A Hillcrest Electrical v Standard General Insurance Co*, LTD 1996 (3) SA 434 (D).

A case which involves subrogation is that of *State Farm Automobile*

Insurance Company v. Halstead. In this case the plaintiff (State Farm

Automobile Insurance Company (hereinafter referred to as State Farm)), filed <https://assignbuster.com/insurance-and-risk-management-iia-assignment-essay-sample/>

a doctrine of subrogation against Halstead. Halstead was involved in a motor vehicle collision with Kaatz (the insured). The collision was caused due to motor negligence on Halstead's part and therefore Kaatz was fully indemnified for the damage to his motor vehicle by State Farm. State farm alleges that Kaatz has been fully compensated and that there exists a valid contract of insurance between the two parties. For these reasons State Farm concludes that they have become subrogated to the rights of Kaatz and are therefore suing Halstead. On these grounds the judge awarded a judgement in favour of State Farm. This case illustrates the requirements that were dutifully fulfilled so that a doctrine of subrogation could be filed as opposed to the case of Mr. B and Mr. X where the requirements for subrogation were not fulfilled. State Farm Automobile Insurance Company v. Halstead, 2011 USA, No E049760, Cal.

Conclusion

Due to the consideration of the various principles involved, insurance law and other cases reviewed it can be concluded that the insurer should not be able to claim from Mr. X through the doctrine of subrogation and therefore Mr. X should not be sued. With this information that has come to light Mr. X should present this in court and therefore appeal to waive the right of subrogation by the insurer.

Reference List

Books

Vivain, RW. (2012). Insurance and Risk Management IIA, Johannesburg:

Marsh and McLennan Cases

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Manderson T/A Hillcrest Electrical v Standard General Insurance Co, LTD

1996