



Guest Column

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Subrogation In Marine Insurance

Subrogation is the right of the insurer on payment of loss to stand in the place of the assured and avail himself of his rights and remedies. It is immaterial whether this loss suffered by the assured be a partial or a total loss. The difference being that in case of a partial loss, the insurer assumes all the rights and remedies of the assured in respect of the cargo insured but not the title to the cargo whilst in the case of total loss of cargo the insurers are also entitled to take over the property in the goods, namely salvage. The English Marine Insurance Act, 1960 states "Where the insurer pays for a total loss, either of the whole, or in the case of goods of any apportionable part, of the subject matter insured, he thereupon becomes entitled to take over the interest of the assured in whatever may remain of the subject matter paid for, and he is thereby subrogated to all the rights and remedies of the assured in and in respect of that subject matter as from the time of the casualty causing the loss." The usual practice is to have letters of subrogation executed by the assured laying out the rights of the insurer and additionally binding the assured to lend his name to any proceedings that the insurer might take against the parties liable for the loss.

In one case, the insured abandoned the vessel and notice of abandonment was accepted by the insurer. The insurer paid the entire claim that, was a valued policy. Later, the assured recovered the entire amount and more. The question before the Court was whether the insurer was entitled to the additional amount received or was his claim limited to the loss paid? It was decided that the insurer was not entitled to the excess amount recovered. (The Livingstone, 130 Fed Rep. 746 (C.C.A. Second Cir)).

It is also to be noted that the insurer on subrogated rights will also have an entitlement to the freight not earned before the completion of the voyage but not on freight earned prior to the incident.

In case of an increased value policy, the position may differ in that if the original policy does not provide expressly or impliedly for additional insurance, then the increased value insurer cannot claim for salvage if the original insurer has laid claim to it. Wheat was shipped on the S.S. Glenorchy

from Port Arthur to Montreal. The seller insured the cargo and also bought increased value insurance that was above the c.i.f cost. On the loss of the cargo, both insurers presumed that they had subrogated rights. However, the Court was of the opinion that the latter insurer had no right to recover for any increase in value beyond that at the time and place of shipment. In short, the latter insurer, so far as it had insured an increase in value, was not entitled to recovery as they did not possess a right of recovery. The rationale was that the original insurer covered risk against damage and entitled to recover the value as such. However, the insurer that insured for increased value covered profits that may have been earned, and hence it would be impossible for both insurers to share by subrogation his right to recover for cargo damage alone.

It is generally concluded that an insurer will not have any subrogated rights against a co-assured. Of course, one has to look at individual contracts to draw a conclusion, but in cargo insurance it is mostly understood that no subrogated rights will lie against a co-assured.

The legal costs and expenses incurred by an assured before settlement of the claim is recoverable under the Institute cargo clauses. It provides that insurers will reimburse the assured for any charges properly and reasonably incurred in pursuance of the duty in order to ensure that rights against carriers and bailees are properly preserved and exercised. Where insurers take over from the assured, they will be responsible for all costs. The Act makes it clear that the insurers have subrogated rights only on payment of the claim and not prior. If the assured deems it fit to commence proceedings during the pendency of the claim, he has to make sure that the rights of the assured is protected. The assured may not simply make a settlement that recovers the uninsured portion to the prejudice of the insurer. In circumstances wherein the assured is not inclined to cooperate or is in breach of his subrogation obligations, the insurer has no option but to join the assured in proceedings against the third party to enforce their rights of subrogation.