

RIGHT OF SUBROGATION

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Law 19



**Stepping into the
shoes of others
(legally that is)**

SUBROGATION

What?

Where a party seeks to enforce the rights of another against a third party. In other words where a party steps into the shoes of another party to enforce that party's rights for its own benefit

When?

- Usually involves three parties
- Insurance policies
- Surety contracts

Why?

- Protects plaintiffs from a tortfeasor or breach of contract
- Expedites financial recovery
- Allows a person's insurance company to pay them for a loss directly
- Protects insurance companies and surety/guarantor parties

Subrogation- A little history

- First known use of the term subrogation was in Roman times where it was a term of constitutional law. It meant replacing one official or policy with another.
- English Courts of Chancery (Courts of Equity) were the first to use the term in its modern day meaning.
- Nowadays subrogation is an equitable doctrine that when a 3rd party pays a creditor the 3rd party assumes the creditor's rights against the debtor.
- Also where an insurance company pays for the loss of its insured and assumes their rights to sue the tortfeasor.

Types of Subrogation

Indemnity Insurance

An insurance company may have the right of subrogation as to the insured against the party that caused damages.

Law of Guarantees/Surety

A guarantor or surety may have the right of subrogation to the creditor rights against the principal debtor

Trust Creditors

A creditor of a trustee may be subrogated to the rights of the trustee to indemnity

Subrogation Example 1

Where Daisy goes to Sharky's Good-as-New Car Sales to purchase a brand new AMC Pacer and takes her BFF to co-sign the loan documents as surety. Daisy makes her payments for five months but does not pay any more. Sharky's then asks BFF to assume the payments as per the loan documents that she co-signed. As soon as BFF makes the first payment, BFF assumes a right of subrogation to step into the shoes of Sharky's to collect against Daisy.



Subrogation Example 2

Six months after Daisy and BFF scored that amazing deal, they are riding the Pacer along the beach and get T-boned at an intersection by Tex who happened to be texting at the time of the accident. Daisy filed a claim with her insurance company who paid her for the total loss of the Pacer within one month. The insurance company then exercised its right of subrogation and sued Tex and his insurance company to recover.



Waiver of subrogation



Waiver of subrogation

- Some insurance policies have a waiver of subrogation whereby the insurance company's ability to sue offending parties is restricted.
- This waiver of subrogation is typically requested by the insured
- This of course costs the insured more in premiums.
- The insurance company carries the entire loss
- Some construction contracts and property leases contain waivers of subrogation

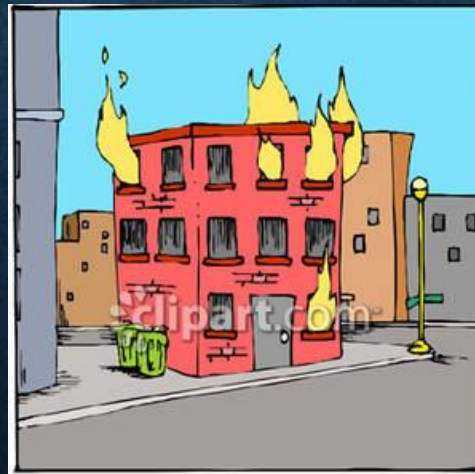
Waiver of subrogation

- Waivers of subrogation can be a double edge sword: They can make or break you.
- They are often misunderstood, thus caution needs to be exercised before agreeing to them.
- They often come into existence via contractual agreements.
- They may be a breach of contract in with the terms of your existing insurance policy.
- Before signing any contract with a waiver of subrogation clause it is a good idea to check with your insurance carrier

Waiver of subrogation

How they make you:

You are a tenant and the landlord has property insurance with a waiver of subrogation. You cause a fire. The landlord's insurance will cover the damages but cannot sue you afterwards because they waived that right to sue you.



Waiver of subrogation

How they break you:

You are a contractor and you have liability insurance. You enter into a contract with a subcontractor that includes a waiver of subrogation. A fire later starts due to subcontractor's negligence. Your insurance company will not pay your claim and leaves you to settle your score with the subcontractor on your own. In essence you committed the insurance company to something that they did not approve. You may also have breached the contract with your insurance company.

Questions?

Thank you so much for exploring the wonderful world of subrogation of rights with Hector and Demitree!