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Recourse Claims in Norway

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November, 2015

The insurers' right to recourse/subrogation is regulated in the Tort law § 4-3 cf § 4-2. Translated directly, the provisions stipulate:

§ 4-2

(1) When damage is covered by insurance of material damage or other financial loss, the injured party may only direct his or her claim against the tort feasor if the damage is caused:
   a. With intent or gross negligence by the tort feasor
   b. In a professional capacity

(2) If the tort feasor has paid more compensation than this provision demands of him, he may claim the difference from the responsible insurer to the extent the damage is covered by insurance.

§ 4-3

If the insurer has compensated the injured party for material damage or other financial loss, the insurer may claim recourse from the liable party, if the injured party could have done so in accordance with
§ 4-2

The result is that the insurer is entitled to subrogate if the damage is caused with intent or gross negligence or in by the tort feasor in a professional capacity. This statute only applies directly and thereby serve to limit the right to subrogate when the insurance covers damage to property and other financial loss. Life insurance and liability insurance is excluded. In other areas of the law, the main rule is that the insurer may subrogate. This is an unwritten rule which has been developed through several land mark cases. In Rt. 1997 s. 1029 the Supreme Court stated:

"I will point out that it follows from general legal principles that the party who has paid another's liability, normally and as a starting point has the right to recourse. It is the exclusion of recourse that demands legal basis."

The Supreme Court has followed up and referred to this statement in other cases later on.

The Norwegian National insurance may not subrogate against another insurer, cf. the Tort law § 3-7.