

**A Study of the Procedure and Covenant of Insurance
Subrogation from The Aiolos: With an Analysis of Real Party in
Interest Rule**

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Abstract

This study explores the procedure of insurance subrogation and effect of exclusions with comparative law approach. Due to the difference between common law and civil law subrogation systems as well as popularity of exclusions and covenants, many ambiguities and conflicts are incurred in subrogation dispute. This issue can be found in the leading case *The Aiolos* and recent important judgements in Taiwan. This study has the following findings. First, under the application of real party interest principle in the U.S. law, the insurer should claim in his own name. This result is similar to the legal assignment theory in Taiwan. However, many exceptions have been developed in the U.S., and thus such tendency is worth the consideration for Taiwan. Secondly, in order to solve controversies more efficiently, it is recommended to expand the effect of litigation intervention. Third, covenants such as subrogation receipt are critical in practice, but their interpretation should not adhere blindly to the language employed and thus against the true intent of the parties. The existing and conflicting opinions of courts in Taiwan may cause more controversies and detriments to the operation of subrogation. The opinion of the Taiwan High court is recommended for reconsideration, because it is believed to be unclear, over-conservative, and against the purpose of such clauses. Finally, it is recommended to carefully

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distinguish the ideas and terms of different legal families to adjust the fundamental cause of controversies and discrepancies.

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