



Foreign Insurers' Right to file Subrogation Claims in Israel New Supreme Court Judgement

A very important precedent was rendered on 13th December 2021 by the Supreme Court which finally determined that a foreign insurer, not admitted and not licensed in Israel, has a subrogation right.

This new precedent has changed the legal situation in Israel with respect to this material issue.

The right of a foreign insurer to file a subrogation claim has been questioned several times by Israeli Courts. The subrogation right of an insurer is determined by Section 62 of the Israeli Insurance Contract Law - 1981. The reasoning raised in several rulings opposing subrogation actions by foreign insurers has been that the Insurance Contract Law applies to **"an insurer"** as defined in the Control of Financial Services (Insurance) Law – 1981, which refers only to an Israeli insurer licensed to write insurance business in Israel or a foreign insurer with a license to operate in Israel.

The leading decision on this issue, until recently, was CC 53025-11-14 in the matter of VIG Vienna Insurance Group (**VIG**). The District Court ruled in the VIG matter that a foreign insurer, which is not licensed in Israel, is precluded from filing a subrogation claim pursuant to Section 62 of the Israeli Insurance Contract Law.

On 13th December 2021, the Supreme Court (in CA 206/20 Teva Pharmaceuticals Ltd. vs. Ayalon Insurance Company Ltd.) handed down a comprehensive precedent and determined, contrary to the VIG ruling, that **a foreign insurer has a right to file a subrogation claim in Israel even if it is not admitted or licensed to write insurance business in Israel.**

The Court emphasized that an insurer's right of subrogation is based on the important principle of unjust enrichment, i.e. that the tortfeasor should

not benefit from the fact that the injured party purchased an insurance. Furthermore, the Court also stressed out that the right of subrogation is an important factor in the pricing of the insurance. Thus, it is an important consideration of the insurance industry.

In addition, it is important to give insurers an incentive to pay insurance benefits by acknowledging their potential recovery from the tortfeasor.

The legal and regulatory requirement under the Control of Financial Services (Insurance) Law, which applies to insurers, who transact insurance business in Israel, was not aimed to protect the tortfeasors and enable them to avoid their liability, merely because the insurer is foreign.

The Supreme Court determined that if the insurance contract is governed by the Israeli Law, the foreign insurer is entitled to file a subrogation claim pursuant to Section 62 to the Insurance Contract Law. If the insurance contract is not governed by the Israeli Law, the foreign insurer is entitled to file a subrogation claim by virtue of the principles of unjust enrichment.

Summary-

The last word in this important issue has been said by the Supreme Court - foreign insurers have legal right to file subrogation claims in Israel, whether they are admitted or licensed in Israel or not, and regardless the question if the policy is subject to the Israeli law.

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