SPC Guiding Case No. 74: The Jiangsu Branch of Ping An Property & Casualty Insurance Company of China, Ltd. v. Jiangsu Zhenjiang Installation Group Co., Ltd. (Insurer Subrogation Dispute)

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Unofficial English translation prepared for reference only. The official Chinese text prevails.

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Keywords

Civil / insurer's subrogation right / property insurance contract / damage by a third party to the subject matter insured / breach of contract

Holding

Where damage to the subject matter insured of the insured is caused by a third party's breach of contract, it may be determined to fall within the category of "damage by a third party to the subject matter insured" under Article 60, paragraph 1 of the Insurance Law of the People's Republic of China. Where the insurer accordingly exercises its subrogation right against the third party in accordance with the law, the people's court shall support it.

Basic Facts

On October 28, 2008, the insured, East China United Can Manufacturing Co., Ltd. ("East China Can Company") and East China United Can Manufacturing Second Co., Ltd. ("East China Can Second Company"), entered into a Construction Project Construction Contract with the defendant, Jiangsu Zhenjiang Installation Group Co., Ltd. ("Zhenjiang Installation Company"), agreeing that Zhenjiang Installation Company would be responsible for the relocation and installation of the insured's entire factory machinery and equipment. Article 38 of the "General Terms" in Part II of the Construction Project Construction Contract provided: "The contractor shall subcontract part of the contracted project according to the special terms, and sign a subcontract with the subcontracting unit; without the consent of the employer, the contractor shall not subcontract any part of the contracted project"; and "the subcontracting of the project shall not relieve the contractor of any responsibility or obligation. The contractor shall station corresponding management personnel at the subcontracting site to ensure the performance of this contract. Where any breach of contract or negligence by the subcontracting unit causes damage to the project or causes other losses to the employer, the contractor shall bear joint and several liability." Item (1) of Article 14 of the "Special Terms" in Part III of the Construction Project Construction Contract provided that "the contractor shall not subcontract the construction of this project." Article 40 of the "General Terms" provided: "Before the commencement of the project, the employer shall arrange insurance for the life and property of its own personnel and third-party personnel within the construction project and the construction site, and pay the insurance premiums"; "for materials transported to the construction site for use in the project and equipment to be installed, the employer shall arrange insurance and pay the insurance premiums"; "the employer may entrust the contractor with the relevant insurance matters, with the costs borne by the employer"; and "the contractor must arrange accident insurance for employees engaged in hazardous operations, and arrange insurance for the life and property of its own personnel and construction machinery and equipment within the construction site, and pay the insurance premiums."

On November 16, 2008, Zhenjiang Installation Company entered into a Project Subcontract with Zhenjiang Yamin Heavy Lifting Co., Ltd. ("Yamin Transport Company"), subcontracting the equipment lifting and

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transportation in the aforementioned contract to Yamin Transport Company. On November 20, 2008, with respect to the whole-factory relocation equipment installation project, East China Can Company and East China Can Second Company purchased installation project all-risks insurance from the Jiangsu Branch of Ping An Property & Casualty Insurance Company of China, Ltd. ("Ping An Insurance Company"). The insurance application recorded the insured as East China Can Company and East China Can Second Company, and clearly recorded that the contractor, Zhenjiang Installation Company, was not the insured. The column "insured items and insured amounts for material loss" in the application recorded "the insured amount for the installation project as RMB 177,465,335.56." Among the additional coverages, "Inland Transportation Extension Clause A" was also purchased, agreeing that the per-occurrence property loss indemnity limit was RMB 2 million. The insurance period was from November 20, 2008 to July 31, 2009. Attached to the application was a list of the machinery and equipment to be installed, including two SEQUA color printers with a combined original value of RMB 29,894,340.88. The insurance clauses attached to the application explained "Inland Transportation Extension Clause A" as follows: Upon agreement of both parties, in view of the fact that the insured has paid the additional premium as agreed, the insurance company is responsible for indemnifying the insured for losses caused by natural disasters or accidents during inland transportation of the insured property, within the territory of the People's Republic of China, from the place of supply to the construction site listed in the policy, excluding water and air transportation, provided that the insured property was properly packaged and loaded during transportation.

At approximately 10:30 a.m. on December 19, 2008, Jiang Yucai, a driver of Yamin Transport Company, driving heavy semi-trailer trucks with plates Su L06069 and Su L003, was transporting a color printer from the old factory area to the new factory area when, while turning, the steel wire rope on the vehicle broke, causing the color printer to tip over, slide, and fall to the ground and be damaged. After receiving the claim, Ping An Insurance Company determined a list of the damaged subject matter. After on-site inspection by the Traffic Patrol Police Detachment of the Zhenjiang Municipal Public Security Bureau, it was determined that Jiang Yucai bore full responsibility for the accident. Subsequently, East China Can Company, East China Can Second Company, Ping An Insurance Company, Zhenjiang Installation Company, and Yamin Transport Company jointly commissioned Fanhua Insurance Surveyors and Loss Adjusters Co., Ltd. ("Fanhua Survey Company") to survey the loss of the accident, and all agreed to accept the final adjustment result of Fanhua Survey Company. On March 9, 2010, Fanhua Survey Company issued a survey report, concluding that the cause of the accident was the fall-over of the equipment during transportation (an accident); the policy liability was established; the loss was assessed at a total loss of RMB 1,518,431.32 and a net loss of RMB 1,498,431.32; and the adjusted amount was RMB 1,498,431.32. Fanhua Survey Company charged Ping An Insurance Company a survey fee of RMB 47,900.

On December 2, 2009, East China Can Company and East China Can Second Company issued a Claim Letter to Zhenjiang Installation Company, stating: "All losses caused by the accident should be borne jointly by your company and Yamin Transport Company. We have already reported the claim to the Zhenjiang Central Sub-branch of Ping An Property & Casualty Insurance Company of China, Ltd., with which the insurance was purchased. Once the loss amount is determined and the insuring company verifies and pays in advance, the rights and interests within the indemnity limit will be transferred by us to the insuring company for exercise. For the portion of insufficient indemnity, we will separately claim against your company and Yamin Transport Company."

On May 12, 2010, East China Can Company and East China Can Second Company issued to Ping An Insurance Company an indemnity receipt and rights transfer letter, recording: they had received the indemnity of RMB 1,498,431.32 paid by Ping An Insurance Company. They agreed to transfer all rights and interests in the subject matter insured under the above indemnity to Ping An Insurance Company, and agreed that Ping An Insurance Company could recover from the responsible party in its own name. Ping An Insurance Company then brought a lawsuit requesting the court to order Zhenjiang Installation Company to pay the indemnity and survey fee.

Judgment

On February 16, 2011, the Jingkou District People's Court of Zhenjiang City, Jiangsu Province rendered the civil judgment (2010) Jing Shang Chu Zi No. 1822: (1) Jiangsu Zhenjiang Installation Group Co., Ltd. should pay Ping An Property & Casualty Insurance Company of China, Ltd. Jiangsu Branch RMB 1,498,431.32 within 10 days after the judgment took effect; (2) Ping An Property & Casualty Insurance Company of China, Ltd. Jiangsu Branch's claim for payment of the RMB 47,900 survey fee was dismissed. After the first-instance judgment was pronounced, Jiangsu Zhenjiang Installation Group Co., Ltd. appealed to the Intermediate People's Court of Zhenjiang City, Jiangsu Province. On April 12, 2011, the Intermediate People's Court of Zhenjiang City, Jiangsu Province rendered the civil judgment (2011) Zhen Shang Zhong Zi No. 0133: (1) The civil judgment (2010) Jing Shang Chu Zi No. 1822 of the Jingkou District People's Court of Zhenjiang City was revoked; (2) Ping An Property & Casualty Insurance Company of China, Ltd. Jiangsu Branch's claims against Jiangsu Zhenjiang Installation Group Co., Ltd. were dismissed. After the second-instance judgment was pronounced, Ping An Property & Casualty Insurance Company of China, Ltd. Jiangsu Branch applied to the Higher People's Court of Jiangsu Province for retrial. On May 30, 2014, the Higher People's Court of Jiangsu Province rendered the civil judgment (2012) Su Shang Zai Ti Zi No. 0035: (1) The civil judgment (2011) Zhen Shang Zhong Zi No. 0133 of the Intermediate People's Court of Zhenjiang City, Jiangsu Province was revoked; (2) The civil judgment (2010) Jing Shang Chu Zi No. 1822 of the Jingkou District People's Court of Zhenjiang City was affirmed.

Reasoning

The effective judgment held that the focus issues in this case were: 1. whether the scope of application of the insurer's subrogation right is limited to the right to claim tort damages; and 2. whether Zhenjiang Installation Company could, on the ground that East China Can Company and East China Can Second Company had already purchased relevant property loss insurance, refuse the insurer's exercise of its subrogation right against it.

On the first focus issue. Article 60, paragraph 1 of the Insurance Law of the People's Republic of China provides: "Where an insured event is caused by a third party's damage to the subject matter insured, the insurer shall, from the date of paying the insurance benefits to the insured, subrogate, within the scope of the indemnity amount, the insured's right to claim compensation against the third party." That paragraph uses the expression "an insured event caused by a third party's damage to the subject matter insured," without limiting it to "an insured event caused by a third party's tortious damage to the subject matter insured." There is no legal basis for understanding the scope of the insurer's subrogation right as limited to the right to claim tort damages. From the perspective of legislative purpose, the institution of the insurer's subrogation right is designed to prevent the insured of property insurance from obtaining compensation from both the insurer and the third party by reason of the occurrence of the insured event, thereby gaining improper benefits in excess of the actual loss, and consequently increasing moral hazard. Understanding the "damage" in Article 60, paragraph 1 of the Insurance Law as referring only to "tortious damage" does not conform to the purpose of establishing the insurer's subrogation right. Therefore, the insurer's exercise of the subrogation right should be premised on the insured's right to claim compensation for damages against the third party, and such right to claim compensation may arise either from the third party's tortious act against the subject matter insured or from the third party's breach of contract, and should not be limited to the right to claim tort damages. In this case, Ping An Insurance Company exercised its subrogation right based on Zhenjiang Installation Company's breach of contract rather than its tortious act, and whether Zhenjiang Installation Company was at fault for the occurrence of the insured event had no effect on the handling of the case. Moreover, the Construction Project Construction Contract provided that "the contractor shall not subcontract the construction of this project." Therefore, Zhenjiang Installation Company's defense that it should not bear liability because it was not at fault for the occurrence of the insured event could not be established. Ping An Insurance Company's claim against Zhenjiang Installation Company was proper in subject and not improper.

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On the second focus issue. Zhenjiang Installation Company raised that Article 40 of the General Terms of the construction project construction contract signed between the employer and it provided that the equipment to be installed was to be insured by the employer, who would pay the insurance premiums. From that agreement, it could be seen that, with respect to the factory relocation and the dismantling and installation of equipment, the employer and Zhenjiang Installation Company jointly agreed to arrange insurance; although the insurance premiums were borne by the employer, the agreement was reflected in the contract terms of both parties, meaning that the costs were borne by both parties, or in other words, Zhenjiang Installation Company had already made concessions on the insurance costs within the general contracting costs. With respect to the business insured by the employer with Ping An Insurance Company, the contractor should also be the insured. Regarding Zhenjiang Installation Company's above defense, Article 12, paragraphs 2 and 6 of the Insurance Law respectively provide: "The insured of property insurance shall, at the time of the occurrence of the insured event, have an insurable interest in the subject matter insured"; and "insurable interest refers to the interest legally recognized in the subject matter insured held by the policyholder or the insured." Accordingly, different subjects may have different insurable interests in the same subject matter insured, may insure different insurance categories corresponding to their insurable interests with respect to the same subject matter insured, form different insurance contracts, and obtain insurance protection within their respective insurable interests, thereby realizing the purpose of using the insurance system to diversify their respective risks. Since the employer and the contractor have different insurable interests in the subject matter insured, only by separately insuring property insurance categories corresponding to their insurable interests can they obtain corresponding insurance protection, and the two cannot be substituted for each other. The employer, East China Can Company and East China Can Second Company, as the owners of the subject matter insured, purchased installation project all-risks insurance based on the ownership insurable interest they held in the subject matter insured, aimed at diversifying the risk of damage to or loss of the subject matter insured, which was property loss insurance in nature; the "Inland Transportation Extension Clause A" purchased as additional coverage provided that "the insurance company is responsible for indemnifying the insured for losses caused by natural disasters or accidents during inland transportation of the insured property, within the territory of the People's Republic of China, from the place of supply to the construction site listed in the policy, excluding water and air transportation," and that additional coverage was also property loss insurance in nature. Zhenjiang Installation Company was not the owner of the subject matter insured and did not enjoy an ownership insurable interest; as the contractor, it enjoyed a liability insurable interest in the subject matter insured. If it wished to have the liability for damages that might arise during construction transferred to the insurer, it should purchase relevant liability insurance, and could not use the employer's property loss insurance to exempt itself from the liability for compensation it should bear. Second, the employer did not recognize the contractor's status as the insured; the Installation Project All-Risks Insurance Application recorded the insured as East China Can Company and East China Can Second Company, and clearly recorded that the contractor, Zhenjiang Installation Company, was not the insured. Therefore, Zhenjiang Installation Company's defense that "with respect to the business insured by the employer with Ping An Insurance Company, the contractor should also be the insured" could not be established. The Construction Project Construction Contract clearly provided that "materials transported to the construction site for use in the project and equipment to be installed shall be insured by the employer, who shall pay the insurance premiums" and that "the subcontracting of the project shall not relieve the contractor of any responsibility or obligation; where any breach of contract or negligence by the subcontracting unit causes damage to the project or causes other losses to the employer, the contractor shall bear joint and several liability." It can be seen that the employer never expressed an intention to exempt the contractor's liability for compensation within the scope of insurance indemnity, and the two parties did not agree to exempt the contractor's liability for compensation within the scope of insurance indemnity. Third, after the occurrence of the insured event, the insured actively claimed against the contractor and issued a rights transfer letter to Ping An Insurance Company. Based on the above circumstances, Zhenjiang Installation Company's claim, on the ground that it also had an

insurable interest in the subject matter insured and that the owners of the subject matter insured, East China Can Company and East China Can Second Company, had already purchased property loss insurance, to exempt itself from the liability for damages for breach of contract it should bear toward the two can companies under the construction project construction contract, and thereby to refuse Ping An Insurance Company's exercise of the subrogation right, had no legal basis and was not supported.

The judgment was rendered as above for the foregoing reasons.

Relevant Legal Provisions

Article 60, paragraph 1 of the Insurance Law of the People's Republic of China.

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