



Difference Between Warranty, Service Contract & Insurance

&

Subrogation/Loss Recovery

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Warranty, Service Contract & Insurance

What is a Warranty?

- Magnuson-Moss Warranty Act (federal law)
 - Enacted in 1975
 - Speaks to variety of items including limited written warranties
 - Consumer protections from misleading and deceptive representations
 - Contemplates third-party warrantor
 - Disclosure requirements
- State Law
 - May add additional requirements or limitations
 - Prohibition on third-party warrantor

Limited Warranty:

- Included in the cost ("benefit of the bargain") of the product and offered by a party in the chain of distribution
- Repairs or replaces vehicle due to defective parts, mechanical or electrical breakdown and includes the cost of labor. Does not cover external perils causing loss
- Chain-of-custody (exert some value or expertise over product)
- Types of warranties: automobile, consumer electronics, appliances etc...

What is a Service Contract?

Key Characteristics:

- Sometimes referred to as “extended warranty”
- Can cover same, less or more than underlying warranty
- Always for a fee or additional cost (legally referred to as “consideration”)
- Typically a third-party obligor/promisor that indemnifies for the loss
- ADH

Applicable Law:

- Governed by state law
- NAIC Model Act
- 38 states (approx.) adopted version of Model Act
- Why does a service contract look a lot like insurance?
- FL – specialty insurers. (Chapter 634)

Service Contracts:

- For a charge, repairs, replaces or maintains vehicle (or product) when the vehicle (or product) fails due to operational or structural reason as a result of a defect in materials or workmanship or normal wear and tear.
- Can be for automobiles, consumer electronics, appliances, water/sewer lines etc....

Financial Responsibility Requirements:

- Obligor registrations
- Contractual Liability Insurance Policy (full reimbursement and failure-to-perform)

What is Insurance?

According to the International Risk Management Institute (IRMI), insurance is defined as “a contractual relationship that exists when one party (the insurer) for a consideration (the premium) agrees to reimburse another party (the insured) for a loss to a specified subject (the risk)(caused by designated contingencies (hazards or perils).”

A few Characteristics:

- 1) Premium charge to consumer (or business) – usually calculated by an actuary designed to cover insurer's expected losses and profit.
- 2) Shifting of liability to a third-party
- 3) Covered loss cannot be expected or intended – “fortuitous event”)
- 4) Insurable Interest (e.g., risk of financial loss)

Subrogation/Loss Recovery

What is Subrogation?

IRMI defines **subrogation** as follows “The assignment to an insurer by terms of the policy or by law, after payment of a loss, of the rights of the insured to recover the amount of the loss from one legally liable for it.”

Sample Subrogation Clause:

“Subrogation. In the event of payment under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee, who shall execute all documents required and shall do all acts that may be necessary to secure such rights and to enable the Company to effectively bring suit to enforce such rights.”

<https://www.lawinsider.com/clause/subrogation>

Why is Subrogation Necessary?

3 Main Reasons:

- 1) Public Policy – The U.S. is built on the concept that every individual should be held responsible for injuries or losses to others
- 2) Litigation Timeline – Costly and expensive to seek legal retribution, allows quick payment to aggrieved party
- 3) Lowers insurance premiums – forcing wrongdoer to ultimately pay, lessens the premium load

Examples (Based on time & availability)

Thank you for participating
This presentation is based on articles:

- <https://www.irmi.com/articles/expert-commentary/warranty-service-contract-insurance>
- <https://www.irmi.com/articles/expert-commentary/what-is-subrogation>

Questions?