CONSTRUCTION INSURANCE

LIM WAN WEI

UNIVERSITI TEKNOLOGI MALAYSIA
CONSTRUCTION INSURANCE

LIM WAN WEI

A master’s research project report submitted in partial fulfilment of the requirements for the award of the degree of Master of Science in Construction Contract Management.

Faculty of Built Environment
Universiti Teknologi Malaysia

JUNE, 2010
DEDICATION

To my beloved mother and father

Thank you for Your Love, Guidance and Support
ACKNOWLEDGEMENT

Firstly, on the success of this master project, I would like to express my highest gratitude to my supervisor, Mr. Jamaluddin Yaakob for his guidance, advice and support.

Secondly, I am also indebted to all the lecturers of the course of Master of Science in Construction Contract Management, for their willingness to provide feedback and assistance, whether in the form of shared ideas, suggestions, comments, encouragement and guidance.

Lastly, I would like to thank family members and friends who have provided much needed support during the preparation of this project.
ABSTRACT

Subrogation means that a person who indemnifies another is entitled to step into the shoes of the person and take over whatever right he may have against third parties. But, it is found that the insurers are not always successful in their subrogation claims against the wrongdoer in the construction industry. Thus, in order to understand the insurers’ right of subrogation claim in construction contract, this master project has been carried out with the intention to identify circumstances that do not allow insurers to exercise their rights of subrogation. This project has been carried out mainly through documentary analysis of the relevant cases repeated in law journals, such as Malayan Law Journal, Singapore Law Report, Building Law Report, etc. Eighteen cases has been chosen to be analysed in accordance with the feature of right of subrogation against co-insured and the waiver of subrogation clauses in the standard forms of contract. The result showed that, in conjunction with insurance clauses, construction contracts do include provisions that require the insurance policies to be in the form of joint names of the employer, contractor, subcontractor and all related third parties. This would lead to the insurers not being able to exercise the usual rights of subrogation against any of the joint insured. Besides that, the construction contracts also require the insurance policies to contain cross liability or waiver of subrogation clauses. The clauses provide that the insurances carrier, after settling and paying a claim, cannot pursue the damage paid for by the insured parties’ insurance carrier. These effectively prevent an insurer from seeking recovery from the party at fault. So, where a loss has been caused by a subcontractor and the principal contractor seeked recovery, the insurer cannot pursue the claim from the subcontractor.
ABSTRAK