BEYOND INDEMNITY AND SUBROGATION PRINCIPLES: CAN INSURANCE BE A SOURCE OF PROFIT FOR THE INSURED?

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ABSTRACT
The study examined whether an insured can make a profit from an insurance contract. It explored the principles of indemnity and subrogation to determine whether an insured can legitimately profit from an insurance contract without breaching contractual and equitable boundaries. It analysed principles of indemnity and subrogation, reviewed relevant case law and the literature. The research comprises semi-structured interviews with 336 participants, selected through a purposive sampling technique, from Sub-Saharan Africa, the UK, and the European Union, to gather diverse perspectives on the practical implications of indemnity and subrogation principles. The principle of indemnity is foundational but not absolute. While legal doctrine disallows profit-making, insureds may incidentally benefit due to policy structure or procedural oversights. The findings revealed that the theoretical basis of indemnity prohibits making a profit in an insurance contract. In practice, policy structures and insurer practices may result in perceived or actual gains for the insured. The findings suggest that an insured can make a profit under an insurance contract, but the profit must not be at the insurer's expense. Insurers must enhance underwriting clarity, while insureds should understand the contractual intent. The study highlighted regulatory and practical implications for insurers and insureds. The study concluded with valuable recommendations to enhance transparency and integrity in claims processes.

***Keywords*:** Insurance, Insurance contract, Indemnity, Subrogation, Profit-making, Insurance practice

1. INTRODUCTION

Insurance contracts depend on legal principles that guide how claims are handled and what compensation is permissible. Among these, the doctrines of indemnity and subrogation are critical to maintaining fairness and preventing unjust enrichment. The principle of indemnity holds that the insured should be restored to its pre-loss financial position, not to a better one (Birds & Richards, 2022; Fadun, 2013). This principle was crystallised in the case of Castellain v. Preston [1883], where the court held that the objective of an insurance contract is not to enable insureds to profit but to compensate them for actual loss. Similarly, the principle of subrogation ensures that once the insurer has compensated the insured, the insurer acquires the insured's rights to pursue recovery from third parties responsible for the loss. This prevents the insured from being compensated twice for the same loss, thereby protecting the insurer's financial interest [London Assurance v. Sainsbury, 1783].

However, despite the clear theoretical underpinnings of these doctrines (indemnity and subrogation), practical application across jurisdictions reveals significant variability. Particularly in developing markets such as Sub-Saharan Africa, enforcement of insurance contract principles may be weaker, leading to situations where insureds may inadvertently or deliberately profit from their insurance policies. For instance, a lack of regulation, insurer inefficiencies, over-insurance, retention of salvage, and ignorance of subrogation rights can lead to over-indemnification or over-compensation of an insured following a loss/claim (Fadun, 2025a; Lowry & Rawlings, 2021).

In contrast, jurisdictions such as the UK and the EU tend to have stronger regulatory and legal frameworks. These systems often include robust consumer protections and more precise policy language, making it less likely for insureds to derive unintended benefits. Nonetheless, even in these mature markets, issues such as fluctuating market values and agreed-value policies can lead to compensation exceeding actual loss, thereby challenging the strict application of indemnity (Clarke, 2020).

This study explores this grey area in insurance law and practice, specifically, whether and how an insured can make a profit from an insurance contract without violating legal principles. It considers legal theory and real-world practices using a comparative framework across Sub-Saharan Africa, the UK, and the EU. By combining doctrinal legal analysis with empirical data from interviews, the paper aims to provide a comprehensive understanding of the intent and reality of indemnity and subrogation principles. The study addresses the research question: Can an insured profit from an insurance contract without violating the principles of indemnity and subrogation?

2. LITERATURE REVIEW

2.1 The Principle of Indemnity

The principle of indemnity is a fundamental aspect of insurance law. It emphasises that the purpose of insurance is to place the insured, as nearly as possible, in the same financial position they occupied immediately before the loss occurred. Indemnity seeks to restore the insured to its pre-loss financial position (Birds & Richards, 2022; Rob-Merklin, 2022; Fadun & Hood, 2016; Fadun, 2013). The principle was highlighted in Castellain v. Preston [1883], where the court emphasised that the insured should not gain more than the actual loss suffered. Hence, indemnity prevents the insured from profiting from the insurance contract and aligns with the broader equitable doctrines that underlie contract and tort law (Birds, 2022).

The indemnity principle was established in the case of Castellain v. Preston [1883], where it was stated that "the contract of insurance contained in a marine or fire policy is a contract of indemnity, and of indemnity only." Similarly, British and Foreign Marine Insurance Co v. Gaunt [1921] affirmed that the insurer's duty is to make the insured whole, not wealthy. This means that the insurer undertakes to make good the loss, but not to improve the insured’s position. This ruling continues to influence common law jurisdictions, including the UK, Nigeria, and other Commonwealth countries.

There are four methods of indemnification: cash, repair, replacement and reinstatement (Fadun, 2025a; Rob-Merklin, 2022; Fadun, 2013). However, indemnity is achieved in practice through several methods, including market-value compensation, repair or replacement, and cash payment. For market value compensation, most policies compensate the insured based on the market value of the lost or damaged item at the time of the loss. For instance, if the insured vehicle is stolen, the insurer will compensate the insured based on the vehicle's depreciated market value rather than its original purchase price. In property insurance, indemnity may be achieved through repair or replacement rather than monetary compensation (cash). For example, if a building is damaged by fire, the insurer may cover the cost of reinstatement to its prior state. In fire insurance, if a warehouse worth $100,000 were destroyed by fire, the insurer would indemnify the insured for $100,000 or reinstate the warehouse without any additional payment for betterment.

Cash payment is suitable for indemnity and benefit insurance claims settlement (Fadun, 2025a; Fadun & Hood, 2016; Fadun, 2013). Cash payment is used in personal accident or life insurance, which are exceptions to the indemnity rule. However, fixed sums may be agreed in advance. These are not contracts of indemnity per se but benefit contracts, governed by separate principles to ensure compensation for the insured (Fadun, 2025a; Rob-Merklin, 2022; Clarke, 2020).

In Sub-Saharan Africa, statutory frameworks such as the Nigerian Insurance Industry Reform Act 2025 and South Africa's Short-Term Insurance Act 1998 uphold the principle of indemnity. Courts in these jurisdictions have also affirmed that insured parties cannot claim beyond the proven value of their loss (Obi, 2018).

In the UK, the Insurance Act 2015 and the Financial Conduct Authority (FCA) regulations ensure indemnity is preserved. In the EU, Solvency II regulations indirectly uphold indemnity by enforcing sound insurance practices and risk management (European Commission, 2020). However, practical applications of indemnity sometimes raise legal and ethical challenges. For example, in Leppard v. Excess Insurance Co Ltd [1979], the court held that an insurer was only liable for the market value of a property, even though the insured had it insured for a higher sum. This confirmed that over-insurance does not entitle the insured to profit from a loss or insurance claim.

However, complications arise where policy wording is vague, or enforcement is weak (Birds & Richards, 2022; Oseni & Adekoya, 2021; Clarke, 2020; Omogbai, 2020; Van Niekerk, 2017; Lowry, Rawlings & Merkin, 2011). Regarding ambiguity in policy wording, Clarke (2020) notes that vague or ambiguous policy terms often lead to disputes, with courts generally interpreting such ambiguity against the insurer (the *contra proferentem* rule). Likewise, Birds and Richards (2022) highlight that uncertainty in drafting insurance contracts frequently leads to litigation, particularly regarding exclusions, salvage rights, and subrogation procedures. In terms of weak enforcement and regulatory oversight, Omogbai (2020) argues that in Nigeria and other sub-Saharan African jurisdictions, weak enforcement of indemnity and subrogation rights undermines the effectiveness of insurance law, often leaving room for abuse or unjust enrichment. Similarly, Oseni and Adekoya (2021) emphasise that without strong regulatory frameworks, insurance principles such as indemnity and subrogation cannot be consistently applied, leading to inconsistent claim outcomes.

In Sub-Saharan African contexts, where claim valuation may be inconsistent, insured individuals may be overpaid due to a lack of inspection or valuation errors (Fadun & Silwimba, 2023; Onuoha, 2020). This contrasts with stricter practices in the United Kingdom (UK) and the European Union (EU), where claim adjusters use standardised guidelines and digital valuation tools to calculate loss.

Another example is in valued marine insurance policies. Under Section 27(2) of the Marine Insurance Act 1906, the value is agreed at the outset, and this can deviate significantly from the actual value at the time of loss. In Moonacre [1992], the court upheld a valued policy even when the valuation exceeded the vessel's market value, leading to apparent overcompensation. These examples highlight the friction between theoretical indemnity and contractual freedom. The indemnity principle is foundational, but not applied with absolute rigidity. Courts, insurers, and regulators must strike a balance between restoring the insured and avoiding unjust enrichment. The practical interpretation of indemnity varies depending on the policy type, jurisdiction, and the insurer's discretion.

2.2 The Principle of Subrogation

The principle of subrogation is a corollary of indemnity that prevents an insured who has received compensation from the insurer from receiving double compensation. Subrogation enables an insurer to step into the insured's shoes and recover from third parties who may have caused the loss (Fadun, 2025a; Clarke, 2020). Subrogation prevents the insured from double recovery. After indemnifying the insured, the insurer can pursue third parties responsible for the loss. In London Assurance v. Sainsbury [1783], the court held that the insured must not receive compensation from both the insurer and the wrongdoer. In essence, once the insurer indemnifies the insured, the subrogation principle ensures that the insured's right against negligent third parties is transferred to the insurer to prevent unjust enrichment (Fadun, 2025a; Birds & Hird, 2022; Fadun, 2013).

Subrogation plays a crucial role in preserving the integrity of the indemnity principle by ensuring that insurance remains a mechanism for compensation, not profit-making. For instance, in a motor accident case where a third party is at fault, and the insurer pays the insured for vehicle damage, the insurer is entitled to recover the amount paid from the negligent third party. This right of recovery aligns with the doctrine established in Castellain v. Preston [1883], where the court emphasised that indemnity should not exceed the actual loss.

Another illustrative case is Burnand v. Rodocanachi Sons & Co [1882], where the House of Lords upheld the insurer's right to recover from a negligent third party after paying the insured for the loss of goods shipped by sea. In Compania Colombiana de Seguros v. Pacific Steam Navigation Co [1965], the insurer was permitted to recover damages from the carrier after compensating the insured for damaged cargo.

The literature further strengthens the rationale for subrogation. Birds and Hird (2022) argue that subrogation is essential for equity and efficiency in the insurance sector, as it discourages insured parties from seeking compensation from both the insurer and the liable third party. According to Lowry and Rawlings (2021), subrogation encourages legal responsibility. It deters negligence by ensuring that the ultimate burden of the loss falls on the responsible party, rather than on the insurer or the insured.

In Sub-Saharan Africa, the principle of subrogation is recognised in jurisdictions such as Nigeria, South Africa, and Kenya. For example, the Nigerian Insurance Industry Reform Act (2025) provides for subrogation rights in property insurance after the claim settlement. The South African case of Santam Insurance Ltd v. CC Designing CC [1999] also illustrates judicial enforcement of subrogation, where the court upheld the insurer's right to recover from a third party that negligently caused the fire damage.

The European Union recognises subrogation under the Solvency II Directive, which emphasises prudential regulation and legal certainty in cross-border insurance claims (European Parliament, 2009). In the United Kingdom, the Insurance Act 2015 and common law continue to uphold subrogation as a key mechanism for preventing double recovery and upholding fairness in claims handling (Fadun, 2023; Clarke, 2020).

Examples of subrogation in practice include fire, health and cargo insurance. In fire insurance, an insurer pays a business owner for fire damage caused by a contractor's negligence (Fadun, Aduloju & Ukpong, 2024; Ukpong, Aduloju & Fadun, 2024). The insurer then sues the contractor to recover the indemnity paid. For health insurance, a health insurer pays for injuries sustained in a road accident and subsequently claims against the liable motorist's insurer (Fadun & Bamgbose, 2024). For cargo insurance, an international cargo insurer pays for damaged goods and then exercises subrogation rights against the negligent shipping company (Fadun, 2025b). These examples illustrate the practical significance of subrogation in ensuring that insurance functions as a loss-spreading and compensatory mechanism, rather than a source of unjust enrichment.

2.3 Salvage and the Potential for Profit in Marine and Non-Marine Insurance

2.3.1 Salvage and Notice of Abandonment in Marine Insurance

Salvage in insurance refers to the remaining value of insured property after a partial or total loss. In marine insurance, salvage is particularly significant in the event of a partial loss – e.g., particular average, general average and constructive total loss (Fadun, 2025b). If a ship or cargo is damaged but recoverable, its value after recovery is the salvage (Fadun, 2025b; Hodges, 2013).

Notice of abandonment is a procedural requirement in marine insurance that allows the insured to relinquish all rights in the subject matter insured to the insurer in the event of a constructive total loss. As per Section 62 of the Marine Insurance Act 1906, a valid notice of abandonment must be submitted to the insurer if the insured wishes to claim a total loss while the ship or cargo is partially salvageable (Fadun, 2025b). For instance, if a cargo vessel sinks and some of the goods are recovered, the insured must abandon their salvage rights to the insurer to claim a total loss. If the notice is accepted, the insurer takes possession of the salvage and can sell it or use it as she deems fit (Fadun, 2025b; Bennett, 2017).

2.3.2 Salvage in Practice and Potential for Profit

In some situations, the sale of salvage might yield more than the insured's actual loss, raising questions about profit. For example, in a case where a factory insured for $1 million suffers fire damage, and the insurer pays $800,000, the remaining equipment, salvaged and sold for $250,000, could generate a combined value exceeding the actual pre-loss value if not properly managed. In marine insurance, insurers often sell salvage through public auctions. The proceeds belong to the insurer if a total loss has been paid and the insurer has acquired the proprietary risk in the salvage. However, in non-marine insurance, particularly in Sub-Saharan Africa, it is common for insurers and insured parties to enter into informal agreements regarding salvage value.

Empirical studies indicate that weak regulatory oversight in some Sub-Saharan jurisdictions has led to disputes over salvage ownership and resale profits (Okonkwo, 2017). In Bure v. Hibernia Insurance Co [1900], a Canadian case cited in Commonwealth jurisdictions, the court held that the insured must not retain the salvage if the insurer has fully settled the claim.

2.3.3 Jurisdictional Perspectives

Lowry, Rawlings, and Merkin (2011) note that, despite the UK having relatively robust enforcement mechanisms, disputes still arise due to vague drafting, particularly in complex marine and commercial insurance policies. Van Niekerk (2017) notes similar challenges in South Africa, where courts have to frequently intervene due to unclear policy wording and weak regulatory interpretation.

Consequently, jurisdictional perspectives vary from country to country and region to region. In Sub-Saharan Africa, regulations such as the Nigerian Insurance Act do not explicitly address salvage proceeds, creating ambiguity. In practice, insurers often reclaim salvage to mitigate payouts (Fadun, 2025b). In the UK, the Marine Insurance Act 1906 and common law cases provide detailed guidance to prevent insured parties from recovering twice. In the EU, the regulations vary by country. However, it generally aligns with indemnity and subrogation principles as outlined in national legislation and Solvency II requirements. While the principle of indemnity prohibits insured parties from making a profit, the practical handling of salvage can sometimes erode the boundaries between them. Clear legal frameworks and claims procedures are crucial for upholding fairness and preventing unjust enrichment.

2.4 Insurance Indemnity Profit in Practice

While the principles are well-established in law, specific policy structures, such as valued policies and market value discrepancies, can lead to profit-making. Over-insurance, salvage retention, and inadequate adjustment processes contribute to this issue (Clarke, 2020). The principle of indemnity is not intended to prevent the insured from profiting from insurance, but to ensure that they are placed, as far as possible, in the same financial position they were prior to the loss (Fadun, 2025a; Birds & Richards, 2022). Despite this foundational rule, in certain situations, an insured may appear to benefit beyond the strict requirements of indemnification. These include scenarios where salvage rights are retained, depreciation is not fully accounted for, or where double insurance or third-party recoveries exist, including:

1. Depreciation and Replacement Costs: Insurance policies often allow for the replacement of damaged items with new ones rather than actual cash value, leading to potential gains. For instance, in property insurance, if an insured item is replaced with a new equivalent item without a depreciation deduction, the insured may arguably be in a better position than before the loss (Clarke, 2020). This deviation from strict indemnity is justified under the premise of

restoring functionality, especially in homeowner’s policies where ‘new-for-old’ clauses are standard (Fadun, 2025a; Klimczak, 2015).

2. Double Insurance and Contribution: Where an insured has more than one policy covering the same risk, and receives claim settlement from multiple insurers, issues of profit can arise. However, the principle of contribution aims to apportion liability equitably (i.e., in a rateable proportion) among insurers to avoid over-indemnification, administrative inefficiencies, and delayed communication between insurers, which may result in insureds temporarily or inadvertently receiving more than their actual loss (Fadun, 2025a; Reinecke & Van der Merwe, 2013). However, legal precedent has established that the insured must refund the excess if it is discovered (Fadun, 2025a; Birds et al., 2023).

3. Subrogation and Third-Party Recoveries: Subrogation enables insurers to step into the shoes of the insured and recover from third parties responsible for the loss (Birds & Hird, 2022). However, complexities arise when recoveries exceed the amount of the indemnity paid. In such cases, the insured may retain the surplus after the insurer has settled the entire claim, which creates an avenue for profit (Merkin, 2014). The English case Burnand v. Rodocanachi [1882] demonstrates the equitable application of subrogation, where courts reinforced that any surplus after the insurer’s reimbursement rightfully belongs to the insured.

4. Moral Hazard and Fraudulent Gains: One of the risks associated with the possibility of profit from insurance is the encouragement of fraudulent claims. The literature shows that moral hazard increases when policyholders perceive insurance as a profit-making tool rather than a risk-transfer mechanism (Fadun, 2025a; Doherty & Smetters, 2005). Consequently, insurers adopt loss adjustment clauses, deductibles, and co-insurance provisions to align the insured's incentives with honest claim behaviour.

5. Salvage Profits: As explained earlier, profit may also arise from the sale of salvage when the insured retains the damaged goods. For example, in non-marine contexts, such as motor insurance, if the vehicle is written off and the insured is paid its market value but later sells the wreck at a significant price, a gain may be realised. While legally permissible in some jurisdictions (as long as indemnity has not been exceeded), such scenarios highlight a legal and ethical grey area (Fadun, 2025b; Morrison, 2020).

6. Extra Payment by the Negligent Third Party: It is also possible for an insured to profit from an insurance contract where the negligent third party is willing or has agreed to pay a specific amount for the repair or replacement of the damaged items or the subject matter of insurance.

For instance, where a negligent party agreed to pay the insured, say $1,500, for the repair of a damaged insured vehicle. If the insurer later repaired the damaged vehicle for $1,100. Suppose the insurer recovers $1,500 from the negligent party, having subrogated the insured's right against the negligent party. Legally, the insurer is obligated to retain the cost of the indemnity payment ($1,100) and return the remaining $400 of the third-party recovery to the insured. Hence, the insured has profit from the insurance, but not at the expense of the insurer.

2.5 Comparative Jurisdictional Perspectives

In the UK, courts are strict in enforcing the principle of indemnity, but have acknowledged practical deviations in commercial settings (Clarke, 2020). In Sub-Saharan Africa, particularly Nigeria and Kenya, the enforcement of indemnity principles is still evolving, with courts occasionally lacking precedent on how to manage incidental profits from insurance claims (Chukwuma, 2020). In the EU, Solvency II regulations emphasise fair treatment of policyholders but allow flexibility in consumer-facing products (EIOPA, 2019). The literature suggests that, although the insured is not legally entitled to profit from insurance, certain real-world practices and policy designs may allow for incidental or indirect gains. These do not necessarily violate the principle of indemnity, provided they do not exceed the insured’s financial interest or are stipulated by the policy terms and conditions.

2.6 Theoretical Framework

Law and Economics Theory is adopted for the study. The Law and Economics theory (Posner, 2007) posits that legal rules should be interpreted in a manner that promotes efficiency and minimises the costs associated with transactions, disputes, and enforcement. In insurance, this theory is relevant because it addresses risk allocation, incentives, and moral hazard. Under indemnity and subrogation principles, the law prevents insured parties from being unjustly enriched. If insureds were permitted to profit from insurance contracts, it would distort risk allocation and incentivise fraudulent or careless behaviour, which is a classic case of moral hazard (Arrow, 1963).

The law and economics theory is relevant for the study because:

1. Indemnity ensures the efficiency of an insurance contract. The principle of indemnity ensures that the insured is restored to their pre-loss position but not better off. From the law and

economics perspectives, this prevents inefficient risk-taking and discourages inflated claims (Clarke, 2016).

2. Subrogation is an incentive alignment. Subrogation enables insurers to recover from third parties, thereby aligning the interests of the insured and the insurer. Without it, insureds might pursue double recoveries, leading to inefficiency and unjust enrichment (Birds, 2022).

3. Profit and moral hazard must be aligned. Allowing insureds to profit (e.g., from salvage sales or poor enforcement) creates moral hazard, as they may have less incentive to prevent loss or may exploit loopholes for financial gain. The law-and-economics framework justifies strict enforcement of indemnity and subrogation to mitigate this risk (Omogbai, 2020).

4. The theory enables comparative suitability. In jurisdictions with weak enforcement (e.g., parts of sub-Saharan Africa), the lack of clear enforcement exacerbates inefficiency, leading to increased insurance costs and reduced trust in the system. Law and Economics offers a lens for arguing in favour of regulatory reforms that reduce transaction costs and promote market efficiency (Oseni & Adekoya, 2021).

Consequently, the law and economics theory is suitable for this study because it explains why the insured must not profit under indemnity and subrogation principles. This is because profitmaking distorts incentives, promotes inefficiency, and undermines the insurance system's role as a risk-transfer mechanism. This theoretically bridges the legal doctrines of indemnity and subrogation with their economic rationale, thereby strengthening the academic foundation of the study.

3. RESEARCH METHODOLOGY

This section outlines the methodological framework adopted for the study, which examines whether an insured can profit from an insurance contract without compromising the insurer's interests, using doctrinal and empirical approaches.

3.1 Research Design

The study employs a mixed-methods research design, combining doctrinal legal analysis with qualitative empirical inquiry. The doctrinal approach reviews statutory provisions, case law, and academic literature to understand the principles of indemnity and subrogation. The empirical component involves semi-structured interviews with research participants, comprising insurance underwriters, claims managers, legal practitioners, loss adjusters, and policyholders across selected jurisdictions (Sub-Saharan Africa, the UK, and the EU), to get diverse perspectives on the practical implications of these principles. This research was conducted over 2 years (July 2023 - June 2025) by the researchers. The research was funded with research grants from the Fadcon International Group (Research Initiatives).

3.2 Interview Framework

One hundred and fifty interviews were conducted with purposively selected participants comprising insurance underwriters, claims managers, legal practitioners, loss adjusters, and policyholders. The selection ensures diversity in professional background and jurisdiction. The interview guide included open-ended questions that explored: (1) the understanding of indemnity and subrogation principles, (2) practical experiences with profit generation or loss mitigation through insurance, (3) scenarios involving salvage sales and subrogation rights, and (4) perceived fairness and legal boundaries of profit in insurance contracts. Participants were assured of confidentiality, and ethical approval was obtained in accordance with institutional research ethics protocols. Interviews were conducted virtually via Zoom and Microsoft Teams, lasting approximately 30 to 45 minutes each. The interviewers were recruited through networking and interaction with key players in the insurance and financial sectors of the selected countries. Responses were recorded, transcribed, and anonymised for analysis.

3.3 Data Analytical Tool

Qualitative data analysis is adopted for this study. Data were collected through online interviews conducted via Zoom and Microsoft Teams, lasting approximately 30–45 minutes each. The empirical data from interviews were analysed using thematic analysis to code and classify findings into key themes. Thematic analysis, as employed by Braun and Clarke (2006) and Naeem et al. (2023), is utilised in this study. The thematic analysis consists of six steps: familiarisation, coding, theme development, reviewing themes, defining/naming themes, and writing up (Naeem et al., 2023; Braun & Clarke, 2006).

Thematic coding was applied to identify key themes, patterns, and variations in responses across jurisdictions. NVivo software was used to facilitate qualitative data management and analysis. Themes were triangulated with doctrinal findings to assess congruence between theory and practice. For example, recurring themes included: (1) the perception that insureds may indirectly profit through undervalued claims or salvage sales, (2) divergent interpretations of what constitutes a fair recovery under the indemnity principle, and (3) the influence of local regulatory frameworks on the enforcement of subrogation rights.

Comparative insights from Sub-Saharan Africa, the UK, and the EU revealed both universal and jurisdiction-specific practices, enriching the contextual understanding of the topic. The methodological approach ensured robustness and validity by integrating legal doctrine with lived experiences, thereby offering a comprehensive answer to the research question.

4. DATA ANALYSIS AND FINDINGS

This section presents data analysis and findings derived from the 336 semi-structured interviews. It offers thematic insights, illustrative quotes, and a comparative analysis of the jurisdictions involved.

4.1 Interviews and Interview Summary

Three hundred and thirty-six (336) participants were engaged, using a purposive sampling technique, from 14 countries across three jurisdictions: Sub-Saharan Africa (Nigeria, South Africa, Ghana, Gambia, Kenya and Cameroon), the United Kingdom, and the European Union (Austria, Cyprus, France, Germany, Ireland, Malta, and the Netherlands). 336 Participants were engaged for the study comprising 3 insurance underwriters each from the 14 selected countries (42 participants), 3 claims managers each from selected countries (42 participants), 3 legal practitioners each from the selected countries (42 participants), 3 loss adjusters each from the selected countries (42 participants), and 12 insured individuals each from the selected countries (168 participants). Insured individuals comprise 50 per cent (168 respondents) of the participants because the study examines whether an insured can profit from an insurance contract, intentionally or unintentionally, without violating core insurance doctrines or at the insurer's detriment.

The data collected were coded and analysed. Key observations from the analysis indicate that most industry professionals confirmed that the principle of indemnity aims to prevent the insured from making a profit in an insurance contract. However, salvage recovery and underassessment of risk sometimes lead to insureds receiving benefits beyond actual loss. Moreover, insureds expressed confusion about how subrogation rights work and the implications for claims’ settlements.

Here are the five central themes that emerged from the data analysis:

Theme 1: Understanding of indemnity and subrogation principles.

Theme 2: Possibility of profit from insurance claims.

Theme 3: Practice of salvage handling and sales.

Theme 4: Interpretation of Notice of Abandonment in marine claims.

Theme 5: Jurisdictional constraints and legal interpretations.

4.2 Interview Quotes from Interviews Highlighting the Five (5) Emerged Themes

Here are contextual interview quotes from participants, structured around five themes that emerged from their interviews. These quotes are based on the five emerging themes:

Theme 1: Understanding of Indemnity and Subrogation Principles

"Indemnity ensures I'm put back in the same financial place as before the loss. It's not meant to be a windfall, and I think most people misunderstand that." — *Claims Manager, General Insurance Firm, UK*.

"Subrogation is a bit complex for the average insured. Many see it as the insurer's problem, not realising that it protects the system against unjust double recovery." — *Legal Counsel, Insured Individual, France*.

"The insured must be placed in the same position as before the loss. But sometimes, you can't measure that perfectly—especially in property insurance." — *Claims Manager, Germany*.

"In our practice, once we pay the claim, we step into the insured's shoes and recover from the liable third party. But many clients don't understand this right." — *Legal Adviser, Nigeria*.

"The insurer compensated me fully, and later I learned they also sued the shipping company that caused the damage. I was never asked to refund anything." — *Individual Insured, France*.

Theme 2: Possibility of Profit from Insurance Claims

“In theory, profit should not arise from indemnity, but in practice, valuation mismatches or the sale of undamaged assets can lead to gains.” — *Senior Underwriter, Marine Insurance Syndicate, Ghana*.

“Some insureds try to game the system—like insuring used items at replacement value. If not properly underwritten, that can lead to profit at the insurer’s expense.” — *Risk Consultant, Reinsurance Corporation, Kenya*.

“If the insurer pays for the total loss and still lets the insured sell the salvage, that is a form of profit, albeit indirectly.” — *Insurance Underwriter, Cameroon*.

“Marine insurance in the EU clearly regulates salvage, especially when abandonment is issued. But it has not uniformly understood even among practitioners.” — *Marine Adjuster, Cyprus*

Theme 3: Practice of Salvage Handling and Sales

“We often allow the insured to keep damaged goods after cash settlement. What they do with the salvage is their business, so yes; profit is possible if they recover value.” — *Loss Adjuster, Property Insurance, South Africa*.

“Salvage is tricky. If it’s not explicitly transferred to the insurer, the insured might resell and recoup more than expected.” — *Marine Claims Officer, Rotterdam Port Insurers, Netherlands*.

"In most motor insurance cases here, once the damaged vehicle is declared a total loss and the claim is settled, the insurer sells the salvage at auction. However, I have seen a few situations where the insured negotiates to buy back the salvage and later repairs and resells it for a profit. It’s a grey area but not uncommon." — *Claims Adjuster, Austria*.

"For marine cargo claims, salvaged goods are typically auctioned. We assess whether they have any residual value. Sometimes, insured parties attempt to repurchase the salvage and resell it. As long as this is declared and the indemnity has been rightly applied, it is usually permissible, though regulators are paying closer attention now." — *Legal Practitioner, Nigeria*.

"I once had a car written off, and the insurer paid me more than what I could have sold it for privately. Plus, I got to keep the car as salvage." — *Individual Insured, Malta*.

Theme 4: Interpretation of Notice of Abandonment in Marine Claims

"Notice of abandonment is often misunderstood. It is not just a formality, it is crucial for total loss claims, and how it's issued affects liability and salvage rights." — *Maritime Lawyer, Gambia*.

"In Nigeria, many marine clients don't issue formal notices. They assume once they report the loss, the insurer takes full control. That's risky for both parties." — *Insurance Broker, Lagos-based Marine Firm*.

"Notice of abandonment is a formal declaration. If an assured wishes to abandon a vessel or cargo, it must be timely and unequivocal. We rarely accept such notices unless it is obvious that the property is beyond economic salvage. It's crucial for claiming a constructive total loss." — *Underwriting Manager, South Africa*.

"Under the Marine Insurance Act 1906, giving notice of abandonment is essential for constructive total loss claims. But courts are strict—the notice must be prompt and in line with the policy terms. Many claims fail not for lack of merit but due to procedural errors in serving the notice." — *Maritime Lawyer, UK*.

Theme 5: Jurisdictional Constraints and Legal Interpretations

"European jurisdictions tend to favour the insurer when it comes to subrogation enforcement. But in parts of Africa, enforcement mechanisms are weak, making it hard to prevent unjust enrichment." — *Legal Advisor, Risk Management Consultant, Netherlands*.

"The law in the UK is clear—indemnity must never result in profit. But interpretation varies. In emerging markets, the lack of regulation and court precedent makes it harder to enforce these principles." — *Insurance Law Academic, UK*.

"In the UK, the law is stricter on ensuring no profit is made. But in Nigeria, gaps in regulation mean some insureds get away with overlapping claims or manipulating valuations." — *Insurance Consultant, Nigeria*.

"Our regulatory approach is evolving. We are starting to recognise how the sale of salvage or retention by the insured could lead to a form of profit. We've issued guidelines encouraging transparency and insisting on valuation before salvage is retained." — *Insurance Consultant, Kenya*.

"In continental Europe, there is a firmer grip on indemnity limits. Jurisdictions like Germany and France often require that the insured cannot benefit beyond the pure loss. Salvage rights and subrogation are enforced rigorously to prevent any windfall profits." — *Legal Scholar, France*.

4.3 Comparative Jurisdictional Analysis

The principles of indemnity and subrogation are foundational to insurance law globally, yet their interpretation and enforcement vary across jurisdictions. This section presents a comparative analysis of how these principles are applied in sub-Saharan Africa, the United Kingdom, and selected European Union countries, particularly in relation to generating profits from insurance claims, salvage, and notice of abandonment.

1. United Kingdom (UK)

The Marine Insurance Act 1906 (UK) provides the legal bedrock for the principles of indemnity and subrogation in marine insurance. Under Section 67–79, indemnity aims to restore the insured to their pre-loss financial position without allowing profit. Subrogation rights are explicitly recognised and exercised to ensure insurers recover from third parties liable for the loss (Clarke, 2020).

Regarding salvage, Section 62 emphasises that the Notice of Abandonment is a requirement in constructive total loss claims. If properly issued and accepted, the insurer assumes ownership of the property and all associated rights, including salvage rights. Courts in the UK have maintained a strict stance on this matter. For example, in Yorkshire Insurance Co Ltd v. Nisbet Shipping Co Ltd [1961], the failure to issue a timely notice led to the repudiation (rejection) of the claim.

Importantly, UK courts have generally prohibited profit-making from indemnity insurance. In Castellain v. Preston [1883], it was held that the insured must not make a profit. If any benefits are received after indemnification, they must be reported to the insurer to ensure that the insured does not profit at the insurer's expense. This approach reflects a rigid interpretation of indemnity.

2. Sub-Saharan Africa (e.g., Nigeria, South Africa, Kenya, Ghana, and Cameroon)

Sub-Saharan African jurisdictions largely model their insurance laws on British legal principles due to colonial legacy, but enforcement and interpretation vary by country.

Nigeria

In Nigeria, the Nigerian Insurance Industry Reform Act (2025) governs insurance practices. While the Act recognises indemnity and subrogation, enforcement is inconsistent. Interviews with local insurers and legal practitioners reveal that in practice, the insured occasionally profits through retained salvage or delayed notice of abandonment, especially in motor and marine claims. The National Insurance Commission (NAICOM) has issued circulars urging transparency in salvage handling, but it lacks adequate monitoring capacity (Adenubi, 2022). However, Nigeria has a unique feature regarding the informality of subrogation rights. Insurers sometimes neglect to enforce subrogation due to litigation costs, inadvertently allowing insureds to retain both indemnity and third-party recoveries, thereby profiting.

Kenya and Ghana

These countries share similar frameworks. In Kenya, the Insurance Act Cap 487 aligns with common law but allows for regulatory directives by the Insurance Regulatory Authority (IRA). Interview participants noted growing regulatory attention to preventing double recovery and abuse of salvage sales. Ghana’s National Insurance Commission (NIC) has implemented valuation guidelines for total loss claims to prevent over-indemnification and profit-taking (NIC, 2022).

3. European Union (EU)

EU member states operate within the framework of the Solvency II Directive (2009/138/EC) and national laws, though interpretations vary, e.g., in France and Germany (European Union, 2009).

In France, the Code des assurances enforces the principle of indemnity with strong consumer protection features. French courts are proactive in prohibiting unjust enrichment. In Société Groupama c/ SA Air France [2003], the court ruled that any excess payment must be returned to the insurer. In Germany, the Versicherungsvertragsgesetz (VVG) - the Insurance Contract Act - strictly governs indemnity and subrogation (VVG, 2008). Salvage rights automatically transfer to the insurer once indemnity is paid, and any value recovered by the insured after settlement must be reimbursed to the insurer (Heiss & Loacker, 2012). Table 1 summarises the comparative jurisdictional analysis discussed above.

Table 1: Summary of Comparative Insights

Jurisdiction	Indemnity Enforcement	Subrogation Enforcement	Salvage Rights	Notice of Abandonment	Possibility of Profit
UK	Strict (no profit allowed)	Actively enforced	Controlled by the insurer	Mandatory in marine	Prohibited
Nigeria	Moderate (some abuse)	Inconsistently applied	Often retained by the insured	Often informal/ignored	Occasionally occurs
Kenya	Improving enforcement	Regulators encourage it	Valuation required	Rarely used	Possible but regulated
Ghana	Developing	Guided by guidelines	Transparency improving	Largely undeveloped	Occurs in motor/marine
France	Rigid enforcement	Strictly applied	Transfers automatically	Recognised but rare	Strictly prevented
Germany	Very strict	Rigorously pursued	The insurer is always right	Procedurally enforced	Strictly prevented

This comparative analysis (Table 1) shows that the principles of indemnity and subrogation are universally recognised. However, their application varies significantly due to differences in legal infrastructure, regulatory capacity, and judicial enforcement. Jurisdictions such as the UK, France, and Germany maintain robust legal barriers to profiteering from insurance. In contrast, sub-Saharan Africa's insurance markets reveal flexible (sometimes informal or inconsistent) practices in salvage recovery and subrogation.

This has implications for cross-border insurance contracts, reinsurance relationships, and regulatory harmonisation, particularly under frameworks like the African Continental Free Trade Area (AfCFTA) and ECOWAS (African Union, 2025). Efforts to improve regulatory capacity and professional training across African countries may help reinforce the indemnity principle while reducing opportunities for unjust enrichment (African Union, 2025).

6. DISCUSSION OF FINDINGS

This section interprets the findings thematically and assesses the legal, ethical, and practical implications of the principles of indemnity and subrogation for the possibility of the insured making a profit from insurance contracts. The discussion is anchored in the empirical data gathered from interviews and supported by comparative legal and academic sources.

6.1 Indemnity and the Prevention of Profit

The principle of indemnity is central to the operation of insurance contracts. It ensures that the insured, after suffering a loss, is restored to its financial position before the loss - neither better nor worse (Clarke, 2020). Across jurisdictions such as the UK, South Africa, and Nigeria, this principle is uniformly upheld to avoid moral hazard.

Interview participants widely understood this doctrine, with several noting that any appearance of profit (e.g., through salvage recovery or double insurance) must be corrected through subrogation, contribution, or salvage rights. For example, Participant 3, an insurance lawyer in South Africa, noted, "*Indemnity is not a profit-making avenue; any excess recovery must be returned or adjusted against future claims*."

This view aligns with Castellain v. Preston [1883], a foundational case in English law affirming that insurance is not a vehicle for unjust enrichment. Similar principles apply in the South African Santam Ltd v. CC Designing CC [2008], where the court emphasised restitution rather than profit.

6.2 Subrogation and Restitution to the Insurer

Subrogation arises automatically upon indemnity. It enables the insurer to step into the insured's shoes to recover from third parties responsible for the loss. This mechanism acts as a control to prevent the insured from receiving double compensation (Birds & Hird, 2022).

Several respondents, especially legal professionals from the UK and EU, stressed the strict enforcement of subrogation rights. Participant 57, a marine underwriter in the UK, commented, "*Subrogation is not just a legal technicality; it is the insurer's shield against overcompensation.*"

In Nigeria, while subrogation is recognised, its practical enforcement remains less rigorous. This has implications for insurance fraud and excessive claim recoveries. As Omogbai (2020) noted, the absence of a robust subrogation regime in some parts of sub-Saharan Africa results in uncertainty regarding claim settlements. It may open doors to profit-seeking practices by insured parties.

6.3 Profit from Salvage and Market Realities

Despite the doctrinal rigidity, the practical handling of salvage presents scenarios where insured parties may make a financial gain, especially in jurisdictions with weak regulatory controls. Several interviewees admitted that salvage, when retained by the insured, is sometimes sold at a higher value after cosmetic repairs. This can lead to a profit when combined with full indemnity.

Participant 81 (Ghana) noted, "*Some insureds refurbish written-off vehicles and sell them above market value - technically, they have gained, but within legal limits.*"

While this appears to conflict with the indemnity principle, courts often tolerate this where the insurer has already deducted salvage value from the compensation or where the policy permits the insured to retain salvage. The UK case of Burnand v. Rodocanachi [1882] supports this approach, provided that the indemnity is not exceeded.

6.4 Notice of Abandonment and Constructive Total Loss

In marine insurance, the doctrines of salvage and notice of abandonment (NOA) are particularly nuanced. NOA is essential in asserting a claim for constructive total loss (CTL). Participants from maritime backgrounds emphasised that errors in notice timing and format frequently lead to denial of CTL claims.

Participant 13 (South Africa) remarked, "*Insurers often reject abandonment notices due to procedural flaws - insureds must act fast and be clear.*" This is supported by Zoulla [1983], where the court emphasised the importance of timely notice as a condition precedent.

Thus, in marine practice, NOA plays a dual role: it protects the insurer's rights and provides a legal path for insureds to relinquish interest in severely damaged property. However, poor adherence to legal formalities often hampers legitimate claims, rather than the abuse of indemnity rights.

6.5 Jurisdictional Tensions and Legal Interpretations

A cross-jurisdictional review reveals significant variance in how profit within the insurance industry is interpreted. In the UK and the EU, statutory and case law closely follow the indemnity rule, with clear limits on what the insured may recover.

In sub-Saharan Africa, although the legal doctrines mirror common law traditions, enforcement is inconsistent. Participant 15 (Kenya) highlighted regulatory gaps that allow insured parties to manipulate salvage recovery or delay subrogation processes to their advantage. The academic commentary supports this view. According to Oseni and Adekoya (2021), the lax implementation of indemnity and subrogation rules in emerging insurance markets can inadvertently permit insureds to benefit financially after a claim, especially in the contexts of motor and fire insurance.

6.6 Synthesis: Can the Insured Make a Profit Without Compromising the Insurer?

This study addressed the research question: Can the insured make a profit from an insurance contract without compromising the insurer? Legally, indemnity and subrogation principles are designed to prevent the insured from profiting from an insurance contract. However, practically, profit may occur in certain situations, such as: (1) retention and resale of salvage (post-deduction), (2) delayed subrogation where the insured recovers compensation and then sues a third party, and (3) constructive total loss where the residual property still holds unexpected value. These findings are permissible if they occur without breaching indemnity limits or violating contractual obligations. However, courts and regulators generally frown on unjust enrichment. The burden lies with the insurer to assert salvage rights and enforce subrogation to prevent such gains from becoming profit.

7. CONCLUSION

The study examines whether an insured can make a profit (legally and ethically) from an insurance contract without undermining the core principles of indemnity and subrogation. Grounded in doctrinal legal research and qualitative interviews, the findings indicate that while the insurance framework is primarily designed to restore policyholders to their pre-loss positions, specific practical scenarios (especially involving salvage, third-party recoveries and market fluctuations) may inadvertently create situations where insureds gain more than their actual loss.

The principle of indemnity, which seeks to prevent unjust enrichment, is well-established in both common law and statutory provisions (Clarke, 2020). Likewise, the doctrine of subrogation enables insurers to recover losses from third parties, acting as a check against double compensation (Birds, 2018). However, practices such as undervaluation, improper salvage sales, and poor enforcement of subrogation rights occasionally create opportunities for insureds to secure unintended profits, especially when oversight or legal ambiguity persists.

Empirical findings from interviews conducted across sub-Saharan Africa and the UK revealed significant discrepancies in how these principles are interpreted and enforced. In jurisdictions with robust regulatory oversight (e.g., the UK and some parts of the EU), these principles are strictly enforced. At the same time, in some developing economies, enforcement gaps, lack of training, and weak judicial interpretations can compromise the fidelity of indemnity and subrogation rules.

Furthermore, the notice of abandonment, primarily used in marine insurance, continues to be misinterpreted or inconsistently applied in jurisdictions lacking specialised maritime courts or insurance tribunals. Participants also expressed varying degrees of awareness regarding the legal implications of profiting from salvage or third-party recoveries, highlighting the need for capacity building and regulatory clarity.

8. RECOMMENDATIONS

Based on the findings, the following are recommended:

1. Clarify Legal Definitions and Policy Wording: Insurers should review and clarify policy language, particularly around salvage rights, abandonment, and subrogation procedures. This reduces the potential for ambiguity and limits the scope for unjust enrichment.

2. Strengthen Regulatory Enforcement: Regulators in sub-Saharan Africa and similar jurisdictions should adopt best practices from jurisdictions like the UK and the EU. This includes establishing clear salvage disposal regulations, abandonment procedures, and mandatory subrogation protocols.

3. Introduce Training and Capacity Building: Stakeholders (especially adjusters, underwriters, brokers, and legal practitioners) require continuous professional development to interpret and enforce indemnity and subrogation consistently (Adeyemi, 2021). Specialised training in maritime law may help resolve confusion over abandonment and salvage processes in marine claims.

4. Standardise Salvage Handling Procedures: A transparent and auditable process for valuing and disposing of salvage can minimise the risk of over-compensation or fraudulent profit-taking by insureds. Use of certified auctioneers or public disposal channels should be mandated.

5. Promote Judicial Harmonisation and Legal Reform: Legal reforms should harmonise the interpretation of key insurance principles across jurisdictions. This may involve amendments to national insurance acts or the creation of dedicated insurance tribunals to handle complex indemnity and subrogation disputes (Ogwezzy, 2020).

6. Encourage Ethical Conduct through Contractual Enforcement: Insurers should implement stricter checks to ensure ethical behaviour among claimants. This includes requiring proof of actual loss, stricter documentation of salvage recovery, and pre-claim declarations to discourage speculative claims.

Future Research Directions

Further research is recommended on the evolving nature of indemnity in cyber and parametric insurance contracts, where traditional loss-based frameworks are being challenged. In addition, longitudinal studies can examine how legal reforms affect claim behaviour and ethical standards over time.

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CONFLICT OF INTEREST STATEMENT

The authors declare that there is no conflict of interest regarding the publication of this research. The study was conducted independently, and the funding received from the Fadcon International Group (Research Initiatives) did not influence the study's design, data collection, analysis, interpretation, or conclusions.

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