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LL.B THESIS

INTERVENTION AND JOINDER OF THIRD PARTY IN CIVIL INSURANCE CASES THE LAW AND THE PRACTICE

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Introduction

The idea to write on this title was conceived while I work in Ethiopian Insurance Corporation as an attorney. The area, which I work for, facilitates to observe practice of both Federal and Regional courts concerning the title.

The continuity of various ways of interpretation on similar provision forced me to know what the problem is. Ever since, I reached to conclusion that, the procedural provisions are in need of a clearance and want some relevant comments on the problem. This time, I become impressed and want to devote my time in externalizing my ambition. Based on this I try to collect relevant materials including court decisions.

With this great objective the thesis is prepared with four chapters. In these chapters the concept of intervention, joinder of third party and insurance in particular insurance of liability are dealt at length vis-a- vis the pertinent provisions of the Ethiopian Civil Procedure and Insurance laws.

The first chapter of the thesis is about the historical development of intervention and joinder of third party. It also gives meaning about what a party means in short and precise way.

The second chapter is about ground, requirement, and authorized person, Time of application, form and content of application for both intervention and joinder of third party. They are dealt independently.

Chapter three is the backbone of this thesis. In this part, in addition to meaning and purpose of liability insurance, the concept of direction of civil cases with the effect of both procedural provisions in light of insurance policies are mentioned exhaustively.

The final chapter is intended to show court practice on the area. The discrepancy how courts interpret the same fact, issue and provisions of the law are clearly pointed out.

Almost all parts of the thesis are prepared by using common law countries reference. Many of the references are taken from foreign practices in addition domestic laws of the country were used as a reference. Nevertheless, because our civil procedure is transplanted from a common law country 'India', using the common law countries practice as an illustration and for the sake of showing the real concept of the subject matter was, I believe, advisable and proper.

In preparing this thesis, decisions of the Oromia Court, and the Federal Court created difficulty to analyze. Difficulty arises because of the fact that decisions are not put clearly and are done in a very brief manner.

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I here by declare that this paper is my original work and I take full responsibility for any failure to observe the conventional rules of citation.

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CHAPTER ONE

1. General overview of Intervention, Joinder of Third Party and Parties in a Suit

1.1 Historical Development of Intervention and Joinder of Third party

Intervention and joinder of third party are two main procedural provisions, which allow third parties to be a party in a pending suit. The historical development of intervention was initially started in the civil, the ecclesiastical and the admiralty court in Louisiana (in Roman). At this time intervention was permitted only at the appeal stage.[1] the corpus Juries on the area describes that an appeal was permitted to "a person who has an interest in the case" or "for a person who has some good reason"[2]. Except these, no appeal and intervention was permitted.

The Yale law journal on the development of intervention indicates that, the concept was initially started in civil law Countries. The practice of intervention was not known to the common law countries[3]. Based on this concept the Roman law practice of intervention has more contribution for common law countries and survived with some limitation in the current modern civil procedure law[4].

In the development of intervention, a person was not permitted to intervene in a case concerning for each and every kind of a dispute. Its application was restricted on the will of the parties who want to intervene and the courts as well. By this fact courts were give an order of intervention to the intervener third party only in dispute concerning in rem. This proceeding in admiralty was early developed[5]. There was also possibility to intervene in a case concerning bankruptcy but any dispute concerning property was the area that intervention was widely applied.

In support of the idea that I mentioned above which is, the common law practice on intervention was influenced by the civil law practice, as an indication intervention is currently practicing in the courts of United States of America. The Roma law influenced the Louisiana practice and through this practice, the common law borrowed the concept of intervention from the civil law[6]. From this it can be deduced that the taking and giving of tradition on the concept of intervention is feasible.

The same is true for the development of joinder of third party. There was an intention that, since the main function of this procedural provision is to simplify legal litigation, having the provision was hopefully advisable. That is why writers on the area strongly argue that the concept of joinder of third party is designed to avoid multiple litigations by facilitating the joinder of third party[7]. So, even though the exact time and initial point for development of the concept of joinder of third party is not known, it can be argued that, because the purpose and function of intervention and joinder of third parties are similar and helpful for both courts and parties, their starting time and point seems same. (Analysis mine)

When we see the historical development of intervention and joinder of third parties in Ethiopia, it is hardly possible to have separate development of the two procedural provisions. This is because the current procedural law of the 1958 is adopted all at one time. Apart from this, it is true that we have no developmental base for such kind of procedural practice.

The development of procedural law in general was started after modern courts were established in 1934 by proclamation No2/1934 (E.C). This proclamation contains vast information about procedure and process with steps[8]. In 1935 by proclamation No 33/1935 the first procedural law with 99 provisions for both civil and criminal cases was promulgated. It was considered as the base and a new approach for the procedural laws of Ethiopia. It is believed that the provisions were transplanted from the Indian procedural law[9]. After this, in 1943 by proclamation No155/1943 new procedural law for the

majesty court was issued. This was also adopted from the Indian procedural law[10]. On this regard Ato Abebe Mulat's article on a Journal u›KT¾G< •ÃK? S cu=Á ¾¦²ÒË entitled ¾õƒNwN?` Y' Y`¯ƒ ‹Óa‹ " ThhÁ-‡ shows us that, until the 1958 when the procedure law was adopted, vast amendments were taken place.

The current procedural law of 1958 is also transplanted from the Indian procedure law. Concerning about this, the above-mentioned Journal article indicates that all Indian provisions are not included; some are extracted. Nevertheless, during the adoption, there was no strong discussion held by the parliament and the public as well. This to some extent creates lack of understanding and variation on interpretation on the procedure. In addition to this, since there is no minute on this regard, judges have got the problem of consulting the intention of the legislator [11]. What is the reason to adopt the Indian law of procedure? is the question that can be raised in this regard. There is a presumption that at the time of the adoption there were some judges who were working at Federal High Court. These judges were nationals of England, because the Indian procedural law was taken from England, which is a common law country, they were skilled in common law and want to diversify the common law practice in Ethiopia. So to accomplish their desire they start to influence and play big role for the adoption of Indian procedural law[12]. (Translation mine)

Therefore in the Ethiopian context since the concept of intervention and joinder of third party are incorporated under the code and fails to have sufficient source on the area, there development is seen in conformity with all parts of the procedural law.

2. Intervention

2.1 Meaning

Obviously every word and term has its own definition. The definition could be given in terms of two ways i.e. literal or technical meaning. Literally the word intervention can be defined as an interference that may affect the interest of others[13].

As to the legal terminology of the term, more than one definition is given to the concept of intervention. But their difference is the way of expression otherwise the content seems similar. The definitions imply not only the meaning but also the purpose of the subject matter. Based on this the following is the one:

James Moor and Edward H.Levi define it as:

> *" Intervention is the procedural device where by a stranger can present a claim or defense in a pending action or in a proceeding incidental there to and become a party for the purpose of the claim or defense presented"*[14].

This definition gives us a clue that an intervener is a stranger; apply for a court to be a party in a pending action. So the definition has some information about how the process is going on, in what stage the application brought to the court and the status of the applicant after the application and permission. Seen from different perspective the definition seems meaningful.

On the other hand in Corpus Juris Securdum on Federal Civil Procedure the following definition is given. The definition reads as follows:

> *"An act or proceeding by which a third person is permitted to become a party to an action or proceeding between other persons for the purpose of hearing and determining at the same time all conflicting claims which may be made to the subject matter in litigations, the admission by leave of the court, of a person not an original party to pending legal proceedings, by*

which such person becomes a party there to for the protection of some right or interest alleged by him to be affected by such proceding"[15].

Comparing with the above definition this one seems wordy. As it is visible, each and every point about intervention is disclosed in a long way of expression. The main point that can be seen from this definition is, a person who wants to intervene in a suit must need and should prove whether he/she has a right or interest on the pending case. The first definition does not imply a person who wants to intervene need to have interest or right. But it can be presumed that a person who wants to be a party has some right and interest, even though, this is not clearly seen in the definition.

On the other hand in the book of American Juris Prudence intervention is defined in a short and precise way with a meaningful sense.

"The act by which a third party becomes a party in a suit pending between other persons"[16]

Even through the definition puts the term in general sense, it has broad meaning about when the application brought to the court and the status of the intervener after the application is some how touched by it.

The Blacks' law dictionary gives the following:

"The entry in to a law suit by a third party who, despite not being named a party to the action, has a personal stake in the out comes"[17]

All in all, even though the definitions given by different books and writers seem different in their expression, they seem supporting each other and are found in the same track. From this it can be noted that both writers and the practice on the area indicates the intervener is not primarily a true party in a dispute first but becomes a party while the litigation proceeds.

2.2 Significance

The main importance of procedure, particularly intervention is described under the historical and definition part of this thesis. On top of this, in a general sense procedure is used as a machine to secure the right and duty of a person, which are granted and described in substantive part of the law. That is why substantive laws with out procedural laws are taken as a house with no door and window. This indicates that with no doubt procedure governs the process of litigation. Moreover, it deals with the means and instrument by which those final substantive rights are to be attained. In addition procedure tells us the modes and conditions of the way one to the other. Obviously courts with out procedure are empty. They cannot do any work and have no power to keep justice.

Having the above classic purpose of Procedure in mind, it is possible and easy to have plenty of purposes of intervention one of them being protection of the interest of persons who are not yet a party in a suit. This means, starting from the beginning a person who prays the court to be in a suit must show what interest and right is affected by the decision given in his/her absence. Since courts are established to protect person's interest, they should not act contrary to this principle. So one-way of securing this right and interest is the proper use of intervention.

Besides, intervention tries to secure judicial economy, by reducing the number of cases coming to the court. This can be breached by either the court or by the parties in failing to exercise with the procedural meaning and purpose of the law. Such kind of failure affects not only the parties in dispute but also others who are not yet in a pending suit.

Writers on the area clearly point out that, significance of intervention have some role on promotion of justice administration, play role on shortening trial and participation in time saving, security as preventing multiplicity of suits, besides it helps to settle related controversies in one case[18].

The writer of this thesis believed that courts have an obligation in securing this significance of the procedural law. If parties exercise their right in accordance with legal requirement, then courts will achieve good result. The same is true for courts, since courts in doing their job (in giving decision in certain dispute) are above the disputed parties, if they fail to respect rights and interest of parties, plenty of disasters will be faced. It is true that those people who are not yet a party in a dispute are also affected by the problem made by the court. This is against the purpose of the law and contrary to the main aim of the law particularly for the concept of intervention.

3. Joinder of Third Party

3.1 Meaning

Comparing with intervention of party, the concept of joinder of third party does not have sufficient definition. As far as the writer of this thesis-concerned books, which I try to see on the area, fail to give the meaning of joinder of third party rather they give emphasis on what the purpose of this procedure is. Robert Allen Sedler, who wrote a reference on Ethiopian Civil Procedure, tries to describe the term. But this description has some relation with the purpose not with the meaning of the provision.

According to Sedler joinder of third party is described as:

> *"A method by which the defendant may bring another party in to the suit on the ground that if he, the defendant, is found to be liable to the plaintiff, the third party, called the third party defendant will be liable to him"*[19].

From this definition it is easy to say a third party is not welcomed in a suit with his\her full consent. It is a mandatory joinder. The only thing, which is necessary for the implementation, is the defendant's and the courts wish. Whether a party to be called or not in a suit is dependent on the application of the defendant and the permission of the court.

The Black's law dictionary also fails to give the original meaning of joinder of third parties it gives three types of terms[20]. Among these terms the first two are differentiated by hyphen. But their meanings are different. For the purpose of clarification, let us see them separately with their meaning:

> **Third party**: - *is a person who is not a party to a lawsuit agreement, or other transaction but issue some how implicated in it some one other than the principal parties.*
>
> **Third-party**: - *to bring (a person or entity) into litigation as third party defendant.*
>
> **Third-party defendant**: - *A party brought in to a lawsuit by the original defendant.*

Out of the three terms indicated above, the relevant one to the issue under consideration is the third one.

3.2 Significance

The surveying of the significance of joinder of third party has no difference with the mentioned purpose on intervention of parties. These two procedures are drafted to hit the target, judicial economy. The law desires to accomplish this goal. For such goal, these two procedures are in function both in civil law and common law countries. It could be safely concluded that these provisions with other types of the law are on target to secure judicial economy.

Having in mind the similarity on significance with intervention of parties, joinder of third parties has also the following purpose. It avoids multiple litigations by facilitating the joinder of parties[21]. The other crucial issue, which should not be forgotten, is that, the provision has some role on settlement of all claims involving the same transaction in a single suit[22].

On the way, the purpose of this procedure is to permit a defendant to bring a third party who was not the real party but is subject to a liability to the defendant arising out of the

claim on which the suit is based[23]. Some books while stating the significance of joinder of third party states that, the original defendant is permitted by the state law to bring third party to demand contribution or indeminification[24]. The same applies in Ethiopian. Art. 43(1) states that the third party defendant is called for contribution and indeminity[25]. Here the main question is that, is the third party defendant called only to contribute or indemnify? What is the real purpose of the term? What other rights are recognized under Art. 43? and its effect is going to be seen in the proceeding chapter. For the sake of this chapter, a person who is called in a suit is expected either to contribute or indemnify the defendant if he/she is found liable to the plaintiff.

From the points mentioned above, it is simple to grasp that intervention and joinder of third parties have common feature in securing judicial economy. In both cases the main issue and big aim of the law is to shorten deliance and unnecessary non-procedural stage during the litigation. To avoid such problems the two procedural provisions share a common purpose.

4. Parties in a Suit

4.1 Meaning

Meaning of parties in legal litigation has wide importance. To say there is a dispute and to resolve the dispute, there must be conflicting persons. In all types of legal system it is mandatory to have at least two conflicting persons. But here a point that should not be set a side is there are certain instances, which are brought to courts without having two conflicting persons. In our country, Accelerated Procedure most of the time is brought by a single party (Art 300-314 of Civil Procedure). Out of this in all other cases, litigation is held at least with two parties.

Parties might be more than one. No limitation is imposed as to the number of party in a suit. In addition, it has some participating role to avoid conflicting decision and multiplication of lawsuit. It is often desirable that several parties should join as plaintiffs and defendants[26].

The common law practice on the subject matter stipulates that, civil proceeding cannot be conducted unless there are at least two different parties opposing each other[27]. This indicates that in common law practice to say there is a dispute, there is a need to have at least two parties.

Taking the above mentioned as little illustration about persons in a suit; let me present the meaning of parties in general:
The International Encyclopedia of Comparative Law while describing the concept of party in general states that:

> *"The person, body or organization named as plaintiffs as well as the person body or organization named as defendant in a law suit."*[28]

From this meaning it can be noted that with out analyzing the parties' status in a suit whether a plaintiff or defendant, a person whose name recorded in lawsuit is taken as a party.

4.2 Who are Parties?

It is not always true that only person who has right and interest in certain case is considered as the only party. Some times persons who have no right, interest and cause of action with the pending case might be taken as a party. Such instance is when a person whose name in a suit wrongly described. Until the court struck him/her from the record of the suit, he/she is presumed as a party[29].

So this gives us a clue that whether a person has real interest or to say a person is not a party, the requirement is proving whether the name is recorded in a suit or not. Our Civil Procedure Code on Art.33 (1) states that, any person capable under the law may be a party to a suit. Sub Art.2 of the article prohibits any plaintiff not to bring civil action unless he/she has vested interest in the subject mater. The reading of this article helps us to say a person in order to be called as a party being a plaintiff is not by itself sufficient. There should be some cause of action with the case and the defendant. If such instances

are not fulfilled the plaintiff will not be considered as a party and the question he/she brings to the court becomes voidable.

Internationally there is a principle that every person can be a party to civil proceeding.[30]The limitation of not exercising this right is lack of capacity to sue and be sued. The question of capacity has a relation with age, criminal conviction, unworthiness, or restriction imposed by domestic laws on both nationals and foreigners.

The term capacity to be a party is today everywhere conceived to follow from capacity to hold right and be liable to duties under substantive law[31]. The mere fact of attaining majority age does not amount the person is capable unless he/she holds right and duty. Our procedural law recognizes capacity as a requirement to sue or be sued.

The attainment of capacity is different from country to country. In Ethiopia a person who attained an age of 18 is presumed as capable person except in certain instances. In labour Proclamation No 377/96 Art. 89, a 14-year young person can conclude an employment contract. A person who reaches 16 year can conclude marriage. (Art.7 (2) of the Revised Family Law). In Penal Law a person who reached 9 years of age is capable to be sued. (Art 52, 53 of Penal Code).

A person who does not fulfill these requirements of the law has no right to be a party but has an option to proceed legal activities through his/her representatives. For such kind of instances there is a possibility to have a guardian or tutor. This practice is universally accepted because in principle no one is excluded from being a party but the difference is a person who fail to fulfill formality of the law are unable to conduct proceeding[32]. All legal systems provide for numerous cases in which assets are to be administered either by persons who are not personally interested or who are only partly interest in them[33].

In both civil law and common law countries administrators handle the right of incapable person. In common law this administrators are taken as a party and equal with a person who has interest in a certain legal proceeding. This is because the representatives hold the

legal estate, while those whom the administration is ultimately to benefit are beneficiaries holding the equitable interest[34]. This all indicates that apart from holding right and interest, if a person lacks capacity he/she is not granted a right to bring legitimate relief in court. These requirements of the law are taken as cumulative.

4.3 Real Party in Interest

All persons who are recorded in a suit have no equal right and interest. As an illustration the real party in interest is a wide right. It can be named as one who has a real, actual, material, or substantial interest in the subject matter of the action as distinguished from one who has only a nominal, formal or technical interest[35]. A person who fulfills these interests is taken as having a real interest and named as real party in interest.

In United States of America Federal Courts, a real party in interest is termed as the one who, under applicable substantive law has the right sought to be enforced or the legal right to bring the suit[36].

The concept of real party in interest is purely related to procedural and not substantive law. The view of the concept of party, with no difference, is widely applicable to many system[37]. The common law legal system approach describes that regardless of who own the beneficial right, title or interest, every action is prosecuted in the name of the person whose legal right, title or interest is invaded[38]. This right is supported by the rule made by the England Chanceries, which states that, actions must be prosecuted in the name of the real party in interest[39].

The purpose of considering real party in interest can be mentioned in various ways. In general sense it helps to enable those directly interested in the subject matter of the litigation to maintain the action, to enable persons to bring any question of right in their own name[40]. In addition if only real controversies are presented, and the judgments when entered will be binding and conclusive, and so that the defendant will be saved from further harassment of other claimants to the same demand[41].

From these points it is possible to reach to a conclusion that litigation can be conducted not only by a person who has real interest in a case but also agents or representatives can made litigation on behalf of incapable persons. Books, which are written, on the area indicate that without looking whether the party is a plaintiff, defendant, intervener or third party joinder, if the name of the person is recorded in the suit then he/she is taken as a party. No further requirement is needed to have full status of a party.

Chapter Two

2. Intervention and Joinder of Third Party in Civil Cases

2.1 Intervention of Parties

2.1.1 Grounds for Intervention

It is not a hidden fact that one cannot be a party in a suit without a cause of action. Like I mentioned in the previous chapter, intervention is one of a mechanism for such kind of instances. Since this is done by the personal wish of the stranger, it is known as voluntary intervention. Even though all system recognizes the involvement of third party in a pending suit, the procedure itself imposes some conditions[1]. With these conditions courts may allow the stranger to be a party.

This concept of intervention can be categorized in to two. It might either be an absolute right or a permissive matter[2]. Both categories have their own conditions. The only difference could be, the conditions might be different from country to country. This is because the conditions are enacted in the domestic law of a particular country. In United States of America an absolute right of intervention is in effect, when the countries statutory only confers an unconditional right to intervention[3]. On the other hand permissive intervention is allowed if and only if the application brought by the intervener has common question of law and fact[4].

From the mentioned general illustration one can understand that the domestic law of a particular state with some condition and exception secures the ground for intervention. Beside there are certain requirements, which are dealt bellow.

2.1.1.1 Requirements for Intervention

Laws are drafted to secure persons right and duties. It has its own target. To accomplish such target it seeks certain requirements to be fulfilled. To mean, certain rights and duties becomes in effect when a particular entity or person is in due course of using it. The same is true for both interventions as of right (absolute intervention) and permissive intervention.

In principle, in intervention as of right, every person is entitled and secured to the right of intervention[5]. In U.S.A this right will have effect when one of the following materializes[6].

> -*When the statutes of the United States of America confers unconditional right to intervene.*
> -*When the representation of the applicants interest by existing parties is or may be inadequate and the applicant is or may be bound by a judgment in the action; or*
> -*When the applicant is so situated as to be adversely affected by a distribution or other disposition of property which is in the custody or subject to the control or disposition of court.*

These requirements are not mentioned exhaustively they seem inclusive. In some instances, failure to come with in the precise bound of the mentioned requirement does not necessarily bar intervention if there is a sound reason to allow[7]. This indicates that for the permission to intervene in a suit the three are the main but not the only.

The concept of permissive intervention on the other hand is dependent on proving whether there is a common question of law or fact. But it is totally changed when the England and Ireland intervention practice is seen[8]. In these countries an outsider is permitted to produce application to the court only in the following cases:

-In case of representation, where the intervener is member of the class which the plaintiff claims to represent and also who protest against such representation

-Where the intervener's propritory rights are directly affected

-Action for specific performance of contracts where third parties have an interest in the question how the contract is to be performed

These points are written exhaustively. No indicator to say it is inclusive. This tells us that, in England and Ireland, if an intervener fails to show some cause of action from the mentioned requirement, the applicant will not have right to be a party in a suit. As to the practice among the three, since the concept of intervention is widely applied in admiralty action in rem, (remembering the discussion held in chapter one of this thesis) among the three types of voluntary intervention the second one which is about property case has vast importance in the application of intervention[9].

Comparing the requirement with the U.S, the practice in U.S grants wide right to an intervener than in England and Ireland. This is because the rules in U.S give recognition for additional requirements to be a party in a suit[10]. But this will have effect when the applicant shows that there is common question of law and fact. Moreover, the application submitted to the court must be produced timely[11].

The Ethiopian procedure on intervention fails to categorize intervention either as of right or permissive. But the reading of the article indicates that, the procedure seems the hybrid of both categories. This is because in the Ethiopian context, to permit an intervener to be in a suit and to call third party in a suit proving the interest of the stranger and the defendant either affected or not is enough.

Art. 41 in its sub article 1 states the following "any person interested in a suit between other parties is allowed to intervene". This article infers that to allow a stranger in a suit, unless the stranger shows his/her interest is affected, intervention is hardly possible. In addition, even though the article permits third party intervention when the intervener's

interest is affected, it does not demarcate what kind of breach on interest is taken as a requirement. So to have a clear meaning of what an interest is, it is better to define the term.

In Corpus Juris Securdum the term 'Interest' is termed as:

> *One which must be directly affected legally by the adjudications in the case*[12].

Taking this term to the issue under consideration, if a person is directly affected legally by the adjudication in the case, then it can be concluded as his/her interest is affected and must be permitted to intervene in the case. The permission is not required to weight extent of interest. This means considering whether the breach of the interest is a real or an ordinary is not required. Robert Allen Sedler's stand on the area is not far from the point I mentioned above. He states that, intervention is proper if it is proved that the intervener will gain or loss by the direct legal operation of the judgment to be rendered in the suit between other parties[13]. He also saw the concept of interest with insurance case. An Insurer who admits its liability and wants to be in a suit has also an interest[14].

These all gives us an idea that, in Ethiopian Civil Procedure, the implementation of intervention has direct connection with person's interest which is breached or affected by another parties. The law needs no other requirements.

2.1.1.2 Who are Authorized for the Application?

Since a person is a manger for himself/herself, every activity concerning him/her is presumed to be made by oneself. This is because in principle, for example in Ethiopia, every person is capable to do what he/she has to do unless the person is declared incapable (Art. 192 and Art. 196(1) of the Civil Code of Ethiopia). The causes for incapacity are age, insanity, infirmity or unworthiness (Art.193 of Civil Code). All these persons are required to represent an agent for their right. Among such right one is right of intervention in a civil case. This right can be exercised either by the person him/her self or by agents. In Ethiopian context there are certain instances which legal activities are conducted by representatives. This type of action is recognized under (Art. 38 of the Civil Procedure Code). It may read as follows:

Where several persons have the same interest in a suit, one or more of such persons may sue or be sued or may be authorized by the court to defend on behalf or for the benefit of all persons so interested on satisfying the court that all persons so interested agree to be represented.

This part of the procedure has some similarities with the Indian Law. In India there are cases, which are handled by representatives. This type of right is recognized in their Civil Procedure as Representative Suit[15]. To implement this right the following need to be satisfied:

-Parties must be numerous

-Parties must have same interest in a suit

-Court's permission must obtained

-Notice must be given to the parties whom it is proposed to represent.

Our Procedural law fails to go deep to the bottom, it simply permit suits to be made by representatives.

Apart from this a government is legally permitted to intervene in civil cases. The public prosecutor has a right to intervene when justice so requires. Exceptionally in the following four cases the prosecutor is duty bound to intervene with out parties' initiation (Art.42 of Civil Procedure Code)

These cases are:

-*When the case is related to civil status (Art.116, 122,156, of Civil Code)*

-*When the case is related to incapacity (Art. 234,345,377 of Civil Code)*

-*When the case is related to marriage (Art.18 of the Revised Family Code)*

-*When the case is related to bankruptcy (Art. 975,978, 980,998, 1008 and 1017 of commercial code).*

In these cases the government has an interest. Because interest is prerequisite for intervention, it is permitted to intervene in civil cases. Based on this right, the public prosecutor office is exercising to secure the right of individuals[16]. Besides the prosecutor

right is not only limited to intervention but also has power even to initiate the described cases[17].

2.1.1.3 Time for Intervention

Law by its nature gives right and imposes duties. This rights and duties are not free from limitation. Among the limitation one for intervention is the time aspect. This time limit is not expected to be similar. It is dependent on the practice and statute of a particular country. In some countries, time for intervention is fixed by there statute[18]. Some on the other hand fails to describe fixed time. In such a case the application is expected to be produced in reasonable time at any stage of the proceeding[19].

The question for the second type of time aspect is what is reasonable time? To say a certain activity is performed with in a reasonable time, the requirement is dependent up on the particular facts and circumstances of each case with due regard to the opportunity for performance under the existing circumstances[20]. This means having a fixed time is not possible. It is different from case to case. On the other hand the Black's Law Dictionary stipulates reasonable time as follows:
The time needed to do what a contract requires to be done, based, subjective circumstances[21].

By taking this to the above discussion, the application to be produced to the court is dependent on the case and circumstances. Most of the time it is done by courts discretion.

Apart from the statute and reasonable time, some times courts have also power to specify timelines for intervention. This instance is where the court recognizes a third party need to be intervening, in such a case the court may by order specify the period of time[22].

Having the mentioned in mind, the time, when the application should be brought is with no doubt presupposes the actual pendency of a law suit[23]. A person is legally permitted to exercise his/her right of intervention before the case is dismissed. This principle has some

exception. In some limited instances intervention is allowed after final judgment or decree is given[24]. This kind of legal process is very unusual.

Such kinds of instances are where the case is sought as a matter of legal right or where it is necessary to permit some legal right that cannot otherwise be protected [25]. Besides, where a right to appeal from the judgment or where the applicant asserts an interest only in the hearing or execution of the judgment or decree rather than in the adjudicated issue, intervention will be permitted[26]. These grounds are not expected to be appearing at one. Among them if one materialized, and even though the application to intervene is produced after execution of judgment has issued intervention will be allowed[27].

An application for intervention for a case, which is settled by compromise, is also share the same effect with the above. But the right to intervene is very limited. The allowance of the application here is depending on the knowledge of the parties. If the stranger proves that the parties who settled their case by compromise knew his/her intention to intervene, then the court will accept the question for intervention[28].

The Ethiopian procedural law of intervention stipulates that, the question of intervention is timely when the application is brought to the court before judgment. Art. 41(1) of the procedure read as follow:

'*A person interested in a suit between other parties may intervene there in any time before judgment'*.

Here it can be deducted that an application may be done while the court is hearing the case generally, examining witnesses and others. Regard here must be had on whether or not the case is decided.

The article further tells us that, an entrance in a suit after judgment is impossible. But there is a possibility that a person whose right is affected by judgment may bring opposition based on Art.358 of the Civil Procedure Code. Out of this no indication about

such kind of instances is recognized in the code. So it can be concluded that, in Ethiopia, intervention is allowed during the pendency of the case and only before judgment.

2.1.1.4 Forms and Contents of the Application

Some type of laws impose formal requirement as a prerequisite for a particular activity. For example long term contract concerning immovable property, insurance contracts and the like (Art. 1724 of Civil Code) require to be made in written form. A person who brings an action to the court is also required to follow the procedural law. The same applies for intervention. Art. 41 of the Ethiopian Civil Procedure require written statement. Sub article 2 of the article stipulates that a question related to intervention is required to be in written form with a separate statement. Any oral begging to be a party is not permissible by law.

In this separate statement, grounds for intervention are expected to be pointed out. Art. 41(2) points that all grounds which justify for the intervention need to be disclosed to the court. Remembering the discussion of grounds for intervention in this thesis, it is not a hidden fact that a person, who wants to intervene in a suit, is required to prove what reason and ground does he/she has for intervention. Therefore the separate statement must incorporate the requirements of the law in order to avoid non-admissibility of the pray.

2.2 Joinder of Third Party

2.2.1 Grounds for Joinder of Third Party

In our planet almost many legal systems are reluctant to permit joinder of third party[30]. This third party is not tried to be a party with his/her own intention and initiation. Because of this fact it sometimes named as involuntary intervention and mandatory joinder of third party. Even though the joinder is conducted with out considering the motive of the third party, it is not free from some limitation and requirements to be fulfilled. The non-fulfillment of these conditions will lead the court to reject the question. If this is so what requirements are need to be fulfilled are disclosed below.

2.2.1.1 Requirements for Joinder of Third party

Among different types of requirements some selected four requirements are in use[31]. The book called Access to Civil Procedure points these in the following categories:

- A claim for contribution
- A claim for indemnity
- A claim for a remedy, which is similar to a remedy, the remedy the plaintiff claims and which arises out of the same facts as the plaintiff's claim.
- A claim to have any question or issue arising out of the plaintiff's claim decided not only as between either or both of them and the third party.

For the implementation of joinder of third party, among the described four at least one is required to be materialized.

In United States of America the first two requirements are in use. Its approach seems, permitting either party to call third party, provided the third party is liable to the defendant by way of contribution, indemnity or otherwise for the claim made against the defendant[32].

In England and Irish joinder of third party has wide application. These two countries are common law countries. These legal systems do not give recognition to the concept of intervention[33]. Instead of the concept of intervention they prefer to use the concept of joinder of third party. They try to implement the concept of joinder of third party with the liability cases. This means the third party is permitted, if he/she is liable to indemnify the plaintiff partly or fully in respect of the claim and if the question or issue to be decided between the third party and defendant has some question or issue arising out of the pending case[34].

The Ethiopian civil procedure on joinder of third party also imposes some requirements. These requirements have relation with the previous mentioned requirement of different

countries. A third party is forced to join in a pending suit when the court believes he/she is liable either to contribute or indemnify the plaintiff's claim.
The Ethiopian civil Procedure Art. 43(1) reads as follows:

Where the defendant claims to be entitled to contribution or indemnity from any person not a party to a suit, he may in his statement of defense show cause why the third party is liable to make contribution or indemnity and the extent of such liability and apply to the court for an order that such person be made a party.

From the article it can be deduced that, the third party is called to the suit when there is a proof that he/she is legally liable to pay certain amount of money to the defendant. Such proof is needed to be produced by the first defendant.

2.2.1.2 Who Applies for Joinder of Third Party?

Ways of applying the issue of who could apply to join a third party differs in most countries. But this difference is not always applied for each and every part of the law. There are certain common features, like a person who wishes a certain thing to be performed is in duty and expected to do such performance by himself/herself. Even though this is true the application for joinder of third party is not expected to be performed by the third party. This is because a third party does not come in a suit with his/her full consent and motive.

In some foreign countries the enforcement of the concept of joinder of third party is brought either be made *ex-officio* (by the court's initiative) or by one of the parties to the pending proceding[35]. The term… either one of the party… indicates that the question of bringing a new third party in a suit can also be proposed by the plaintiff.

Courts have power to bring a third party without any initiation from either party. The practice might be different from country to country. In French and Italy for example, the procedure grants large measure of discretion to the court. But they do not have power to call third party with their motive. What they do is only giving order to either party to

issue or notice requiring the third party[36]. In England the reverse is true. Courts have power to call a third party if they find it proper.

What is practically known and widely recognized is that, an application to joinder of third party is done by the initiation of the disputed parties. This is because in principle legal systems permit a party to compel a third party to a suit by their initiation without courts motive[37].

Even though the principle is the above one, parties' right to call third party in a suit is not absolute right. There right is depending on discretion of courts[38]. Since the motion is not to be granted or denied arbitrarily, courts before rendering a decree must see circumstances properly[39].

In England joinder of third party was known as 'Voucher of warant' [40]. Now the rule is superseded by the rule on third party notice. Such rule is not only applied to a party notice and a party who is liable to contribution or indemnity but also for other kind of relief, which has connection with the subject matter of the action[41]. Because of the wide application and right of this third party, the notice is not only expected to be made by the parties. Courts are also participating in it.

The Ethiopian practice on the area is different. Under the procedure no indication of joinder of third party neither be initiated by the motive of the court nor the courts participation in guiding parties to issue third parties to be a party. Only such initiation is expected from the defendant Art. 43(1) supports this idea. The defendant is expected to notify the court by his/her statement of defense for joinder of third party. But the main thing is the court has wide discretion either to permit or reject the notice of the defendant. They only permitted to entertain the question of the defendant.

2.2.1.3 Time for the Application

In joinder of third party like in the intervention of parties, the motion to call third party or for leave to file must be brought timely[42]. The main difference with the intervention is, in intervention there are certain exceptional instances which intervention could be granted after decision has been made. No such instance is seen in joinder of third party. Since courts discretion is high in allowing third parties in a suit, having a timeline has a cogent factor to govern the exercise of the court either to permit or reject the application[43]. This is because it is obviously true that after the decree either permition or rejection, the original litigation by the original parties will be conducted. In short the mere existence or non-existence of the third party in a suit does not make a change in due course of the litigation.

As to the time aspect in United States, as a rule new parties are admitted as late as the final hearing is held[44]. This means any notice of joinder of third party will be permitted even after hearing is made. In French forcing third party to be in a suit is possible only when the case is pending. At one time the cassation bench was allowing joinder of third party in appeal stage. Professionals criticized this permission. This is because the cassation bench was not rendered the decree based on statutory recognition[45]. From this it can be noted that a notice for joinder of third party and permission done by the court is expected to be completed in the first instance court.

In Ethiopian context the time when a third party is called to a suit is not clearly mentioned in Art 43 of the Civil Procedure Code. But there is an indication when it can be done. From the phrase of the article that is…in the statement of defense…it can be noted that the application is expected to be produced to the court during the pendency of the case even before hearing is done. Because no written defense is allowed by the procedure after final judgment and hearing are made.

2.2.1.4 Form and Content

In the previous part of this chapter it is touched that, the notice of joinder of third party is needed to be produced in written form. To give orders for third party whether to join or not is dependent on the satisfaction of the court. This satisfaction is gathered from the produced application or notice of the defendant. Such application from the reading of Art.43 (1) needs to be made in written form. Apart from this why the third party is called and extent of liability must also be clearly disclosed. Since this statement of defense is done by written form, it can be concluded that the application form must be submitted to the court in written form.

This notice need to have full information about the subject matter. According to Art.43 (1) the application must contain and show causes why the third party is liable to make contribution or indemnity and the extent of such liability need to be clear for the court. Failing to disclose this important information will affect the defendant. Because the court might reject the question since courts have discretion whether to allow or reject the notice of the defendant.

Chapter Three

3. Effects of Intervention and Joinder of Third party in Liability Insurance

3.1 General Overview About the Ethiopian Insurance Law

Thinking the general attitude towards the economical status of Ethiopian, it can be easily concluded that the contribution of industry in the development of the country is very small. For such instances, to be underdeveloped, so many problems might be proposed. Now the main point to be emphasized in this part of this thesis is, to discuss the development of insurance law in Ethiopia. Like other categories of industrial activity, insurance business, is one of the best. But the people do not know its concept, purpose and aims. What is insurance in our country is a recent phenomena[1].

When we see the legal framework of insurance, until the 1960th when the Commercial Code was promulgated, there were no insurance laws, which govern insurance business[2]. By the year 1960 two bodies of laws independently were enacted, namely; the Maritime Code and the Commercial Code. Since, the belief of legal professionals is that insurance is a commercial activity; it is incorporated in the Commercial Code of Ethiopia.

Among several provisions of the commercial code, insurance law is found in title III of the code. The law is categorized in four chapters with a classification of eight sections. Very short numbers of articles are incorporated in the law. They are only 58 articles. These articles contain provisions, which govern especially property insurance, liability insurance, and insurance of persons. The concern of this thesis gives emphasis on liability insurance, which is discussed in detail in this chapter.

3.2 Nature of Liability Insurance.

Obviously it is a true statement that, the primary function of insurance is to substitute certainty for uncertainty as regards the economic cost of loss producing events[3]. The loss might occur either on insured or a third party or on both. For such kind of economic loss an insurer issues so many policies. Among these one is insurance of liability. Nevertheless insurance of liability by its nature does not have territorial applicability to the insured. Because of this reason liability insurance is mostly named as third party insurance.

Each person has certain legal rights. Any activity, which affects such right, is a violation of a particular person's legal right[4]. Such infringement of person's right is caused by the non-recognition of rules. A person who lives in a community is required and is obliged to respect rules of the community. Any activity of the contrary might cause damage to a third party. This wrong action will have its own liability and also need a certain appropriate compensation. Such compensation is usually made in money.

Since person's claim of compensation is highly increasing, sometimes it becomes unaffordable by an individual capacity. To avoid this financial instability to have a liability insurance become high. Liability insurance provides an insurer with indemnification for damages to the extent of its liability for which the insured is responsible to a third party[5].

In addition a change in society during the past dicades[6], industrial and transport revolution like the advancement of technology, commercial practice, moral attitude and the price of human labor contribute the need to have insurance of liabiltiy[7].

Considering the above little illustration as a base to have liability insurance, let me briefly present the definition for liability insurance.

The book called Risk and Insurance gives a definition as:

"*Liability insurance is an outgrowth of, and is in fact an inevitable result of, these legal relationships in society which permit the bringing of successful law suits against individuals for negligence*[8]."

The definition gives a hint that; the liability insurance will be in effect in cases concerning negligence actions.
In other book called Insurance law, liability insurance is defined as:
An arrangement by an insurer to indemnify the insured against loss arising as a consequence of an insured's tort liability to a third party[9].

This definition categorized liability insurance with tort activity. The definition gives us a clue that a risk, which is covered by the policy, is a tort action.
The Blacks law dictionary states that:
The quality or state of being legally obliged or accountable; legal responsibility to other or to society, enforceable by civil remedy or criminal punishnment[10].
In this definition liability insurance includes not only civil action but also criminal acts.

The general overview of the above crucial points of this chapter tells us that, liability insurance is arising mainly from the operation of the law of negligence[11].
The policy mostly gives cover for tort actions. But this does not mean that contractual obligations and criminal actions are excluded. Wrong actions, which emanate from these categories of law, can be insured. But the difference is, in the case of criminal action, all type of crime is not accessible to be insured. Some serious crime like international criminal acts are excluded form liability of insurance[12]. Generally speaking liability policy provides indemnity against liability at law[13].

In consideration of this, the law creates three categories for describing situations in which one person injures another[14].

These are:

-Tort liability-, which arises form extra contractual activities

- Criminal liability

-Contractual liability

Any liability, which arises from these three, could be covered by the liability insurance. From this point it is easy to reach to conclusion that, liability insurance is an indemnity insurance[15]. Nevertheless the policy does not cover any payment out of legal liability like *ex-gracia*[16] which means, since liability of an insurer is to cover liability of insured's, the company is expected and is in obligation to pay only to the extent of its contractual obligation. Any payment which has no relation with the covered risk and which is not recognized under the policy agreement is not expected to be covered by the liability policy. So the insurer is not legally bound to pay money for unagreed sum.

The Ethiopian Commercial Code particularly insurance law recognizes liability insurance independently (Art. 685 to 688). As to the nature of the liability, the code does not give clear meaning about what types of risks are covered. In chapter two section two of the code Art. 663(2) which is about Risk Insured indicates that, unless otherwise agreed, negligence activity is out of cover. The *acontrario* reading of the article leads us to conclude, if there is contrary agreement negligence will not be covered by insurance. In my understanding, since liability emanates in both tort and criminal act either by negligence or intention, such liabilities are expected to be covered by insurance. The article further excludes intentional default (Sub. Art. 3). The reading of this article lead us to rose, if any negligent liability is excluded and because the law excludes intentional default, what kind of liability is covered by the policy is a question? The law seems unclear.

In addition Art. 687 of the law also tells us the insurer's right of direction of civil cases. The word civil case indicates that, the cover, which is given by the policy, is only liability of civil action. It excludes criminal activities impliedly.

All in all, take the different approach of countries in the world as a problem, the nature of liability insurance covers liability of the insured, which arises from tort, crime or contractual obligation against a third party.

3.3 Type of Liability Insurance

Since the sources of liability are emanating form tort, criminal and contractual obligations, its type is not expected to be similar. Based on this the liability insurance itself has so many divisions. Nevertheless, internationally these different types of liabilities are categorized in four type of contracts[17].

- Liability arising out of the use of automobile
- Liability arising out of conduct of business
- Liability arising from professional negligence
- Personal liability

Each of these divisions of liability insurance has sub division by themselves. For example, workmen's compensation, contractor's liability, professional liability, passenger's liability and the like are type of liability insurance.

The same is true for the Ethiopian context. Like the above-mentioned general category, policies are issued for different type of liabilities. If we take as an example the Ethiopian Insurance Corporation, it issues around 18-liability policies. (Attachment Number 1)

3.4 The purpose of Liability Insurance

The purpose of liability insurance is not different from the main purpose of insurance in general. The definition given to insurance by itself indicates what purpose liability insurance does. The definition reads as follow:

A system under which the insurer, for a consideration usually agreed upon in advance, promises to reimburse the insured or to render service to the insured in the event that certain accidental occurrences result in losses during a given period[18].

The definition is about Insurance in general. It doesn't particularly put a meaning about liability insurance. But the phrase…to render services to the insured… is an indication to say the purpose of insurance is applied for liability insurance too. In Ethiopia Art.654 (2) of commercial code stipulates that incase of damage, the policy will cover risks which affect property and for civil liability which arises out of the insured liability.

On the other hand having a policy of third party coverage is now become mandatory. When this thesis is prepared this mandatory third party insurance is promulgated by proclamation No 559/2008. The main purpose of this proclamation is to help victims who are victims of car accident. From the proclamation, Art. 3(1) it can be seen that, persons are prohibited not to drive or cause or permit any other person to drive a vehicle on a road unless he has a valid Vehicle insurance coverage against third party risks in relation to such Vehicles.

Exceptionally the sub 2 of the article recognizes certain cars to be driven or a road without having third party policy coverage. For this effect the permition of the ministry is a prerequisite. The proclamation further stipulates extent of liability of the insurer. Art 16 pointed out amount of compensation for different kind of harms. Besides who the beneficiary and who are excluded from the coverage are also disclosed under Art. 7 of the proclamation.

From these points it can be noted that third party insurance coverage is an indemnity policy. In addition it recognizes only tort action. But the problem here is, since to have the policy is mandatory, it is questionable to say this insurance agreement is made by the will of the parties. Both the insurer and the insured are not concluding the contract with their permission it lacks the main element of a contract, which is 'consent'.

To say a contract is valid, the following elements i.e. consent, capacity, object and form are cumulative requirements (Art 1678 of the Civil Code). By this fact if a contract lacks consent of parties then the contract becomes voidable (Art.1808 (1) of the Civil Code). So can we say a contract made between the insured and insurer is valid? Here what I

want to emphasis in this thesis is the importance of third party insurance coverage. To this point currently in Ethiopia the above-mentioned feature of third party insurance is recognized mandatorly.

From the perspective point of the need to have liability insurance, it can be grasped that the main purpose to have liability insurance is to cover any costs of the insured. At the beginning it was proposed particularly to pay on behalf of the insured all sums, which the insured become obliged and for reason of liability imposed upon him by law[19].

The general survey of these points leads us to say the main purpose of having liability insurance is reimbursing the insured from loss and third party from the liability come in to the picture by the fault of the insured.

3.5 Direction of Cases in General

Plenty of liability insurance policies have a clause about direction of cases. This agreement is a guarantee and a correlative requirement that the insurer defend the insured against all actions brought against him on the allegation of facts and circumstances covered by the policy[20]. In due course of implementing this agreement, the insurer is duty bound to defend the insured without considering either the case is groundless, false or fraudulent [21]. Once this agreement is disclosed in the policy, the insured can force the insurer to defend the suit even where the insured has no defense to the action[22].

This right in some limited circumstances may not be performed. An insurer, even in the existence of an agreement about direction of cases, has a ground to waive its duty to direct the case. These instances are when there is non-respection of policy agreement or any breach of condition or any contrary activity of the insured[23]. Besides if an insurer desired to show the claim against the insured is based on facts excluded from the policy coverage, then the insurer can refuse to defend the suit[24].

Imposing duty to defend in certain case on the insurer is dependent on courts permition. Courts have role in ordering whether an allegation requires the appearance of an insurer

or need defense of the insurer. Such order is made if the case is proved that, it is brought to the court with in the policy coverage[25]. Once this is proved, and the allegation is with in the policy, the insurer is duty bound to defend the suit against the insured and is legally obliged to direct the case.

The above general illustration tells us that, whatever the case may be, if the case does not fall under the mentioned exceptional instances, direction of civil case with no doubt is duty of the insurer. In other words the mere existence of liability insurance policy grants right to the insured to oblige the insurer to defend the suit and imposes duty on the insurer to defend suit against the insured.

3.5.1 Direction of Cases under Ethiopian Insurance Law

In Ethiopian context the concept of direction of cases is recognized under insurance law. This right is reserved in Art.687 (1) of the Commercial Code. The article reads as follows:

Provisions may be made to the effect that the insurer shall have direction of any civil case originating from a claim brought by the injured party.

This article notes that direction of cases will be in effect if the insured and the insurer agreed to do so. It is not mandatory by its nature unless the agreement appeared in the policy. Once it is disclosed in the policy, then it becomes obligation of the insurer. From this it can be noted that the only requirement to say an insurer is in duty to defend suits against the insured and an insured is rightful to force the insurer to defend the suit is based on their policy agreement. This means proving whether a clause of direction of a case is in the policy or not is enough to impose duty to defend or not.

The only defense on the insurer is the above discussion of this chapter, which are exceptional instances. In addition to this, in Ethiopia criminal acts are not set to be directed by the insurer Art.687 (2) of Commercial Code. Except these instances an insurance company is not legally permitted to reject its duty to direct the case.

3.5.2 Source of Direction of Cases.

3.5.2.1 Law

In the above discussion of this chapter, I mentioned that in Ethiopia the concept of direction of civil case is recognized in Art.687 of the Commercial Code. This law by its nature does not impose any obligation on the insurer to direct the case. Since it is drafted permissively, for its effect agreement of parties is a prerequisite. The question is what will be the effect if the policy fails to disclose about direction of cases?

In such cases an insurer is not legally bound to defend or direct suits against the insured. But the company has a right to intervene in a suit. The same is true for the insured, he/she can not oblige the insurer to direct the case but they can pray the court the insurer to be called in a suit. In such manner, an insurer has a wide right to bring any defense since such right is emanating from the law. In my opinion these two i.e. the procedural right and the concept of direction of cases have different scope of application. In insurance case, since the business is sensitive and need special attention, the law stipulates direction of cases as a right. But in absence of such agreement the insurer can defend any suit arising out of its contractual obligation by using the procedure of intervention and joinder of third parties. In other words the insurer's right of defense emanates from the law when the company applies to intervene in a case or when it is called to the suit by the defendant's pray.

3.5.2.2 Agreement

Direction of cases will be in effect if there is an agreement between the insured and the insurer. Like the above discussion of this chapter direction of cases is taken as a duty if and only if the policy recognizes as a condition. In Ethiopia Art 687(1) of the Commercial Code indicates that, direction of a case will be in effect if contracting parties have agreed on how litigation proceeds. Unless other wise the concept will not have effect and an insurer is not legally obliged by direction of a case.

3.5.2.2.1 Ethiopian Liability Insurance Policies Concerning Direction of Cases.

Policies, which are issued by insurance companies concerning liability insurance, have a clause about direction of cases. The way of expression, however, does not have a direct meaning of direction of cases. Nevertheless, these policies oblige an insured to notify or to forward any summons to the insurer immediately. For the purpose of clarification, the writer describes some liability policies as follows:

In public liability policy, Art.3 states that…every letter claim write summons and / or process shall be notified or forwarded to the corporation immediately on receipt. (Attachment Number 2)

In Inland Carriers liability policy, the insured is in duty to notify the insurer about every claim. In condition part of the policy the following is disclosed. Art.2 (e) with regard to claims made the insured shall send every letter claims write or other documents to the corporation immediately and give all information and assistance as the corporation may require. (Attachment Number 3)

In Private Vehicle Policy under the general condition part Art 2… In the event of any claim, every letter, claim, write, summons and/or proceeds shall be forwarded to the corporation immediately on receipt by the insured. (Attachment Number 4)
The same is described under the commercial Vehicle Policy under Art.1 condition part of the policy. (Attachment Number 5)

N.B The policies are taken from the Ethiopian Insurance Corporation

These illustrations give us a clue that, any occurrence of claim of third parties are expected to be forwarded to the insurer by the insured immediately. By using this agreement an insurer is in duty to direct and to defend the insured against any suit.

3.5.3 Criminal Case and its Direction

The law of insurance in particular Art.687 (2) clearly demarcates what types of cases the insurer directs. From the article it can be seen that agreement made on criminal acts are void. Since criminal acts are personal by its nature an insurer is not permitted to defend the insured's criminal acts and the law allows no such kind of agreement. So the effect of direction of a case is depending on the type of the case. Direction of cases will have effect if the suit is concerning civil case. No territorial applicability of direction of cases for criminal acts is recognized by the law.

3.6 The Effect of Intervention, Joinder of Third party and Direction of Cases

3.6.1 Effects of Intervention

The discussion held in the previous chapters of this thesis is to see the effect of intervention. What effect an intervener has is different from country to country; depending on the legal practice and statute. In a general sense in this chapter some selected countries practice particularly the common law and civil law countries system are mentioned exhaustively.

In common law countries after an intervener submits its application and permitted to be in a suit, the intervener third party becomes a party in the full sense of the word. The applicant has the rights and duties of a party and the judgment is *resjudicate* against the applicant[26].

In civil law particularly in French, the intervener is considered as a party. He/she has the same position as a party whose legal position he wishes to protect[27].

As a final illustration let me put the United States of American law stand on intervention. In this country, an intervener is become a party in a suit. He/she is considered as original

party of the suit[28]. They are treated as the original parties. No discrimination on the side of the intervener is seen.

In the Ethiopian context, the procedural law unlike that of the mentioned countries practice fails to describe what effect and status an intervener has. Art. 41 of the Civil Procedure fail to describe what status an intervener has. The provision is not clear whether the intervener has full right as the original parties or not. The law does not impose limitation on the intervener; to what extent can he/she participate in the suit is unanswered.

But in other countries this right is not out of limitation. In some instances right of an intervener in a suit is limited. For example the stranger has no right to change the issue in dispute, cannot ask relief in contrary to the cause of action or new relief or cannot object a question of dismissal of a case by the plaintiff[29].

In Ethiopia what is seen practically is that, interveners like the original defendant, are free to submit any defense against the plaintiff. No limitation is imposed on them. But this is not always true. Some courts prohibit an insurer to bring defense against the plaintiff. Some on the other hand permit such kind of litigation. This part differs from countries practice, which I tried to see previously. The Ethiopian practice since the law is silent is dependent on courts discretion. That is why different approach on similar issues and interpretation of laws are appeared in our courts. So many problems are in practice concerning concept of intervention. These problems will be pointed out in chapter four of this thesis.

In my opinion, since the main purpose of intervention is to secure judicial economy and to guarantee rights of stranger, allowing the stranger to produce every defense against the claim and considering him/her, as an original party seems fair. But this must not be in contrary with the relief issued by the plaintiff. Taking this fact as a base, the Ethiopian practice, which is allowing the stranger to bring every defense and considering him/her as a party, seems logical.

3.6.2 Effects of Joinder of Third Party

Here also the discussions on joinder of third party made in the previous chapters of this thesis are taken as a base to see what effect the joindered party has. As it is clearly seen previously, in common law countries particularly in England and Ireland the concept of intervention is not widely in use. They use joinder of third party as a mechanism to handle cases. Having said so, let me put what the effect of joinder of third party is.

In United State of America the joined third party has a position of party. The joined stranger is entirely free to bring any defense to the action. He/she has a full status, which is similar with the original parties. This similar position leads the joined party to be fully bound by the judgment[30].

In England the joined third party is expected to bring its defense to the claim. Failure of third party to serve a defense is deemed to admit the claim stated in the claim. This tells us that, a stranger who is called to a suit fails to produce defense for the claim would mean that, the stranger wants to waive his/her right of defense impliedly.

The Ethiopian procedural law of Joinder of third party clearly indicates strangers' right, status and their effect in a suit. Art.43 (2) of the procedure states that the stranger is in the same position as a defendant. The full text reads as follows:

Where the application is allowed, the third party shall be served with a copy of the statement of claim and defense and, up on being summoned to appear on such day as the court shall fix, shall be deemed to be in the same position as a defendant.

The reading of this article with out any need to analyze other provisions of the procedure tells us the stranger third party is a real defendant and has a full status that a party has. This indication leads us to remember discussion of chapter one of this thesis, which is about meaning and right of party. In this chapter without taking in to account the status either a plaintiff, a defendant, an intervener or a third party joinder, once the name

appeared in a suit the person is taken as a party. And those parties must be treated equally. This is the general principle. The Ethiopian procedural law of joinder of third party recognize the stranger as a defendant. This means a stranger will have equal right, which is given to the real defendant. Therefore this party must and is expected to be treated as that of original parties' treatment.

Apart from this, elements of the article support this argument. The process to consider the third party as a party is started while the stranger served a copy of the plaintiffs' claim and defendants' defense. After the stranger reserves these copies, he/she will be taken as a party. From this process it can be noted that the third party has dual right to bring defense on both the plaintiff and the defendant. The procedure without any rational does not want to serve claim of the plaintiff to the third party. Had it been the fact that, the third party is called to the suit only to bring defense against the defendant or for contribution and indemnity, there would not be a need to serve claim of the plaintiff. But the law grants right for joined third party to bring any defense against the plaintiff and the defendant. This means a person who is called as a third party joinder has wide right like that of the intervener.

In other instance the provision of joinder of third party is incorporated under book II of the Civil Procedure Code. This part of the procedure is titled as PARTIES TO SUITS. The Amharic version is clearer than the English version. In the Amharic version the title is written as "uŸXi'ƒ ¨ÃU u¦ŸXi'ƒ ¾S<Óƒ ¦"óÃ eKSJ"" both the English and Amharic version of the procedural provision indicates that a person, to be considered as a party in a suit being a plaintiff or a defendant is enough. And the law, with no doubt recognizes the joined third party as a party since the article is found under the book II of the code, which is parties to suit. If the procedure does not want to recognize the third party as a party the provision would not be incorporated in the mentioned part of the book. By this fact it can be concluded that the law wants to recognize the status of a third party joinder as a party. If this is so, all duties and rights of a party will be effective on the third party joinder too.

Courts practice on the area is not similar. Practically, the concept and implementation as to the effect of joinder of third party is not left to discretion of courts. The law is clear enough to be implemented. Courts are not in power to interpret clear provisions of the law in wrong way and are not in effect to limit scope of people's right granted by the law. But what they do now is this. They reject defense of the third party against the plaintiff. They reject appeal brought by the third party. Generally speaking some courts are not treating the joined third party as a party. The current stand on the concept of procedural provision will be discussed in the next chapter.

3.6.3 Effects of Direction of Cases.

The discussion held previously about direction of cases indicates that, the obligation of the insurer to defend against the insured becomes in effect if there is an agreement between the insured and insurer. Once the agreement is in the policy, the insurer will get the right to defend the insured against any claim. This agreement without looking any option (intervention and joinder of third party) will help the insurer to implement its duty of defense.

In Ethiopia, liability policies are issued with a clause of direction of cases. But in practice courts are not implementing it seriously. They give emphasis only whether the insurer is in a suit either by intervention or as third party joinder. The writer of this thesis strongly argues that, once agreement on direction of cases is in the policy, to allow the insurer to defend the insured without referring any option by its own is enough.

From this analysis it can be easily deduced that an insurer to be in a suit has three mechanisms. i.e. Intervention, Joinder of third party and Direction of cases. The first two emanates from the law the last one is from the policy agreement of both the insured and the insurer. By these mechanisms an insurer may participate in a suit. And if the insurer gets in a suit by using either of the mentioned mechanisms, it will have a full party status.

Chapter four

Court Practice Concerning Intervention and Joinder of Third Party

In this final chapter of this thesis what I want to show and prove is to pinpoint problems associated with implementation of intervention and joinder of third party in courts. The cases are selected from both Federal and Regional Courts. The analysis of these cases, in my opinion, will broadly indicate problems in interpretation of both procedural concepts.

In addition, by looking at these decisions one can reach to conclusion that the decisions given by the court helps the reader to know the practice is non-uniform and unstable. Moreover the problems in the decision, particularly failure to have similar interpretation will also let the reader to think about non-predictability of decisions.
All in all, the decision will help the reader to see the current stand of our courts. With this objective the cases are analyzed as follows:

- In the case of Nile Insurance $V_{s.}$ Ato Temesgen Belay, Ato Chalachew Yenesew, Ato Misu Asnake and third party joinder Ethiopian Insurance Corporation, the plaintiff sued defendants to recover the money, which it spent for car maintenance. The first two defendants are owners of the vehicle, which caused the accident on the plaintiff clients' car. The third defendant is the driver of the car. The owners of the car, during the accident have liability Insurance policy in Ethiopian Insurance Corporation.

  After they received the charge, they in their statement of defense pray the court to join third party in a suit. The court accepts the notice and orders the third party to be in a suit. The third party in its statement of defense rose a preliminary objection which was not raised by defendants against the plaintiff concerning period of limitation.

The Federal First Instance Court 6th bench at Lideta renders decision in favor of the third party defendant. The court accepts the company's objection and dismissed the case without looking at its status either true defendant or third party defendant. (Attachment Number 6)

- The next case is totally the reverse of the first one. The Federal First Instance Court at Meshualekiya was entertaining the case.

  The plaintiff called Ato Shewangizaw Haileselase brought a case against Walya transport service and Ato Shewaye Lema in seeking a compensation for body injury. The first defendant's car has a third party insurance coverage against liability in Ethiopian Insurance Corporation. After they received a charge, in their statement of defense, they requested the court for joinder of third party, Ethiopian Insurance Corporation. The court permits joinder as the defendant's pray. But it did not allow the third party defendant to bring defense against the plaintiff only it accepts defense against the defendant. The court also rejects right of cross-examining of witnesses by the third party. In addition the court in its decision did not write and accept defense of the third party against the plaintiff.

  The court's stand not to do so is disclosed in the decision that, since the third party is called to the suit based on Art. 43 of Civil Procedure Code, it has no direct right to bring any defense against the plaintiff rather with the defendant. Based on this argument the court accepts defenses rose by the third party against the defendant and sends it free from the suit. (Attachment Number 7)

- The following case was started in Sidama Zone High Court. In the case the defendant Seid Mohamed called an Insurance company as a third party. The plaintiff Taddese Serbesa brings his claim seeking compensation for a body injury he has suffered because of the defendant's car. The court, which entertains the case in its First Instance jurisdiction, permits the third party to bring any defense against the plaintiff.

After analyzing the case the court renders decision as it thinks right. The third party was not satisfied by the decision and brought an appeal to the Federal High Court. The appellate court before considering the merit of the appeal rejects the claim because the appellant joins the suit based on Art.43 of Civil Procedure. Another objection on the Federal Higher Court decision was also taken to the Federal Supreme Court Cassation Bench. But the bench with out giving comment on the decision ratified the high court's stand. (Attachment Number 8)

- The case between Ethiopian Insurance Corporation (appellant) $V_{s.}$ W/ro Aregash Kebede (respondent) was started in Eastern Shoa Zone High Court. The court permits the third party (the current appellant) to bring any defense against the plaintiff. The court after analyzing the case renders decision. Since the third party was not satisfied by this decision an appeal was brought to the Oromia Supreme Court. The Supreme Court before looking at the merit rejects the claim of the third party just because the appellant joins the suit based on Art. 43 of Civil Procedure Code.

  The objection was taken to the Federal Supreme Court Cassation Bench. The bench with out taking the objection as independent issue, accepts the objection and render a decision by considering the insurer is legally permitted to bring defenses that are defenses of the defendant. It emphasized that; a third party has a right to bring defense against the plaintiff. (Attachment Number 9)

  The decision was contrary to the previous decision. The question and relief was the same, the law and the analysis brought to the court was the same but what was seen is a different stand in the same bench.

- A case held with W\t Zinash Assefa and Mulate Assefa $V_{s.}$ Ministry of Capacity Building, Intervener Ethiopian Insurance Corporation was started in Eastern Showa Zone High Court in Adama. In this case Ethiopian Insurance Corporation

was praying the court to intervene in a case based on Art. 41 of Civil Procedure Code. After the third party was allowed to be in the litigation, the court rendered its own decision. The intervener was not satisfied by the decision and brings an appeal to the Oromia Supreme Court. The court after accepting the appeal and heard the parties rejects the case by the same argument it takes to Art.43 of Civil Procedure Code, which is mentioned in the second case of this chapter. Its argument was, since the appellant's (Ethiopian Insurance Corporation) liability emanates from its client's liability and because the company is not an attorney (lawyer of its client) it cannot in its own capacity bring an appeal.

The case brought to Federal Supreme Court Cassation Bench and the bench reversed the Oromia Supreme Court decision and remand the case by arguing, the intervener has a right to bring appeal like that of the plaintiff and the defendant. (Attachment Number 10)

- In another case a surprising order was given to the Ethiopian Insurance Corporation in Adama special Zone High Court. In a case W/ro Muksina Keliffa V$_s$. Niyala Motors Share Company; the Ethiopian Insurance Corporation produces an application to intervene in a case with its own initiation by Art 41 of Civil Procedure Code.

  The court orders the Ethiopian Insurance Corporation's lawyer Ato Tesfaye Niguse to change the article, which is mentioned on the application, Art. 43of Civil Procedure Code. The court, orally ordered the change to be made at the bench. Its stand according to the lawyer is, an insurer is not entitled to be in a suit with in its own initiation based on Art.41 of the Civil Procedure Code. Since this arrangement is ordered orally, the writer of this thesis does not get a chance to have the court written order.

- The case African Insurance Share Company (appellant) $V_{s.}$ Ato Tolla Tasew (respondent) is a pertinent case for this thesis particularly for status and effect of third party joinder. The case is about compensation for body injury. The current appellant in the lower court (Eastern Shoa Zone High Court) was joined the case by the notice of defendants based on Art.43 of Civil Procedure Code. The company was not satisfied by the decision given by the lower court and brings an appeal to the Oromia Supreme Court. The Supreme Court with out analyzing the case rejects the appeal since the appellant was a third party joinder who cannot, in its reasoning, have the capacity to appeal.

  The current appellant brought its objection on a decision given by the Oromia Supreme Court to the Federal Supreme Court Cassation Bench. The bench accepts the appeal to prove whether the rejection made by the supreme court of Oromia, because the appellant entered to a suit based on Art. 43 of Civil Procedure Code, is proper or not.

  In the preparation of this thesis the case was pending and the final decision was not known. Nevertheless, the summon which, is issued by the court indicate the above point. (Attachment Number 11)

There are a number of similar cases, which are rendered defectively. For this thesis the mentioned are more than enough. In the decisions as it is clearly seen, the concept of intervention and joinder of third parties are not interpreted, as the law require.

According to the courts stand the concept of intervention and joinder of third party were in use interchangeably. The case w/ro Mukisna Kelifa $V_{s.}$ Niyala Motors Share Company is a pertinent case for such kind of instance. From the previous discussion theses two procedural provisions have independent requirements and effect as well.

According to the previous discussion, we reached to conclusion that, intervention is a permissive act of a stranger. It is done only by the motive and initiation of the intervener

himself/herself. On the contrary in joinder of third party a person who is called to the suit is proposed by the defendant's motive and initiation. That is why it is termed as mandatory joinder. From the above case what was seen is that the court surprisingly orders a change to be made on the application by the intervener company a pray to intervene by a third party joinder. This stand makes the decision to be contrary to the features of the procedure.

On the other hand our courts also affect the right to appeal, which is given to all persons. In both Federal and Regional courts this Constitutional right is not properly in use. According to Art.37 of the Federal Democratic Republic of Ethiopia constitution, person's right to access to justice is guaranteed. By this fundamental right, every person has right to bring a justifiable matter. Since the supreme law of the land secures this right, no one is empowered to stop this right. But our court practice is not in conformity with the guaranteed constitutional right. They prohibit a third party to bring appeal who joins in a case based on both Art.41 and 43 of the Civil Procedure Code. Take for example a case W/rt Zinash Assefa $V_{s.}$ Ministry of Capacity Building.

Apart from this in the above-mentioned decisions the concept of direction of cases is not totally in use. No indication for such kind of using the concept is mentioned in the decision. Courts fail to refer policy agreement on how the litigation is going on. They simply use the two procedural provisions as the only way of joining an insurance company in a suit.

Another effect is if the implementation and interpretation of these concepts of the procedural provision and the law keeps going with similar stand, insurers' economic capacity will face tremendous problem. Naturally, this will have a disastrous effect on insurers in particular and the economy in general.

Generally speaking both Federal and Regional courts fails to use the concept of the three mentioned mechanisms in appropriate manner. The laws are clear to be implemented. In intervention if a person shows his/her interest and right is affected by others' litigation irrespective of to what extent their interest is affected, courts should allow the intervener to be part of the case especially for insurance companies because of the sensitivity of the business. In joinder of third party a person who is called to a suit is taken as a party, so this third party will have a right to bring every defense including appeal by its own capacity.

In addition if there is an agreement on how litigation is going on then the proceeding should be entertained by the insured. Accordingly, nowadays all these fundamental rights, which are secured both by procedural and substantive laws, are mutilated by courts.

Conclusion and Recommendation

Now the writer believes that the concept of what this thesis wants to show is discussed exhaustively. The two procedural provisions are taken as a device for third parties to secure their rights. Both intervention and joinder of third party are in use to secure judicial economy. They give an opportunity for courts to handle similar cases in one.

Such procedures will be in effect when appropriate and legally permitted persons' used them. These persons might have real interest on a dispute or not. But the mere existence on the dispute leads them to be considered as a party. Parties in a suit have equal right and interest at least as to the way of how they are treated.

A person whose interest and right is affected by others has an option to secure his/her right by using the two procedures. Such exercise is expected to be made by the party whose interest and right is affected, unless he/she is incapable to handle him/her right. The application for intervention and joinder of third party shall be made in written form with full information why the intervention is made, why the third party is called and its limit of liability are expected to be disclosed.

These two procedural provisions have a special link with insurance particularly for liability insurance. An insurer is liable to third parties to make them in their original economic status.

To this end, so many types of liability insurance coverages are issued in our globe. These policies, apart from agreement on condition and exception, have a clause about direction of cases. The source for direction of cases might emanate from either the law or agreement. The law grants right to bring any defense against any claim based on the two procedural provisions. If there is an agreement, which binds an insurer to defend the insured against any claim, then the insurer is in duty to perform its obligation.

The effect of both procedural provisions and a right, which emanate from direction of cases on the insurer, seems the same. In both cases a person who wants to be in a suit and a person who is forced to be in a suit are considered as real parties. They are treated equally as the original parties.

The concept of intervention under Art.41 of the Civil Procedure Code fails to describe the status of an intervener. But foreign practice shows us that a person who intervenes in a case by its own initiation will have a right to bring any defense and is totally considered as a party. The same is true for Ethiopian practice.

The concept of joinder of third party, particularly the status and effect of the stranger, under Art.43 of the Civil Procedure Code is clearly mentioned. According to sub article 2 of the provision the status of the third party with no limitation is similar to the defendant. If it is considered as a defendant all rights and duties given to defendants must be accorded to a third party defendant.

The joined third party is not only legally permitted to bring any defense against the defendant. This third party has a right to challenge both the plaintiff and the defendant by its own capacity. The procedure Art.43 (2) orders claim of the plaintiff and the defense of the defendant to be served to the third party. This order has its own rational. The rational is the mentioned above.

Moreover in principle execution of decisions with no doubt is expected to be made by the judgment debtor. The question of judgment debtor and creditor comes to picture if there is contradicting parties. So imposing duty to execute judgment without considering the third party as a party is not legally permitted. In other words non-parties in a suit are not forced by decision imposed on parties in a suit.

Generally speaking whatever the base and the reason to be a party, once a person gets a status of a party, he/she will be bound by the decision and the litigation.

Concerning insurance cases, an insurer has three options to be a party in a suit. These three options i.e. Intervention, Joinder of third party and Direction of cases. These grant full status of a party. Their scope, source, way and requirement are different but the effect they give to the insurer is the same. If only entrance in a certain compound is mandatory, a person who gets in to the compound either by a door or a window is discharging his duty. No need to worry about how a person gets in to a compound since the main thing is being in side of the compound.

The same is true for an insurer. No matter an insurer gets in a suit on Art.41 or 43 or based on its agreement, once the company gets in to the suit then the question of "how" is unnecessary and illogical. So the company should be given recognition as a party.
Although the law is clear in this manner, court practice remains unpredictable and controversial

Hence, in order to make our court practice concerning the implementation of the mentioned procedural device and commercial law more sound and effective the problems mentioned in chapter four of this paper must be solved. In doing so the following recommendations are suggested.

- Since our Civil Procedure is transplanted from the India law, which is common law country the interpretation and how to use those provisions, must be seen in conformity with the practice of the common law country.
- Courts in using these provisions are recommended to refer the common law practice, which deals on the subject matter.
- To make the provision more than clear enough, the concerned governmental body is required to re-discuss on the subject matter and the procedural provisions with the current practice of our courts.
- Since Art.41 of the Civil Procedure Code fails to deal with what the status and effect the intervener has, the relevant body is required to see and to amend the provision.

- Courts in giving decision on Art.43 are in obligation to consider elements of the provision.
- Courts are required to distinguish what right and duty of stranger has under Art.41 and 43 of the Civil Procedural Code. They need to emphasize a separate existence of the two.
- Courts in resolving disputes concerning the two procedural provisions must consider their activities in conformity with the law particularly with the constitution.
- Courts are required to use the concept of Direction of cases. They need to refer what insurance policy say about the subject matter. And they are required to know the independent existence of the subject matter.
- Insurance companies are required to protect their rights of access to justice via influencing the concerned bodies to come up with a consistent mode of interpretation of these procedural provisions to maintain uniform court practice.
- Insurance companies are also required to prepare panel discussion on the area with stakeholders.
- The last but not the least insurance companies, governmental and non governmental organizations, are required to prepare training for both Federal and Regional court judges concerning what Intervention, Joinder of third party and Direction of cases means together with their effects.

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