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Illinois Supreme Court Curtails Tenant Implied Co-Insured Precedent

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On November 28, 2022, the Illinois Supreme Court unanimously reversed the appellate court's decision that an insurer would have to defend a rental property's tenants against a third-party negligence claim arising from a fire.[1] It found that the appellate court's reliance on *Dix Mutual Insurance Co. v. LaFramboise*, 149 Ill. 2d 314 (1992), which the tenants argued established them as co-insureds under the landlord's insurance policy, was misplaced.[2] In doing so, the Court made clear that the *Dix* decision was limited to the "particular facts of [that] case" and that tenants are not "automatically coinsured under the [landlord's] insurance policy as a matter of law."[3]

The tenants of the insured property, the Shecklers, had entered into a lease agreement that stated the landlord, Ronald McIntosh, would "maintain fire and other hazard insurance on the premises only" and that the Shecklers would "be responsible for any insurance they desire[d] on their possessions contained in the leased premises."[4] In compliance with the lease, McIntosh obtained an insurance policy from Auto-Owners, which included first-party dwelling coverage and third-party landlord liability coverage.[5] McIntosh and his wife were the only named insureds.[6]

After a fire at the property, Auto-Owners paid for the damages and filed a subrogation action against the repairman who had been working at the property on the day of the fire to repair the gas stove and range.[7] The repairman filed a third-party complaint for contribution against the Shecklers.[8] Auto-Owners declined to defend the Shecklers against the contribution claim.[9] The Shecklers subsequently filed an independent declaratory judgment action against Auto-Owners, McIntosh, and the repairman asserting that Auto-Owners had a duty to defend and indemnify them against the contribution claim.[10] The parties filed cross-motions for summary judgment. Both the repairman and the Shecklers cited the Supreme Court's decision in *Dix* to assert that the Shecklers were co-insureds under the Auto-Owners insurance policy.[11]

The circuit court held that Auto-Owners did not owe a duty to defend the Shecklers.[12] The appellate court reversed, based on *Dix*, the Shecklers' were coinsureds under the policy, as their rent payments accounted for the amount McIntosh paid for insurance and, in practical reality, served as reimbursement.[13] The appellate court also noted that the lease stated McIntosh would obtain fire insurance on the premises while exculpating himself from liability for damage to the Shecklers' personal property.[14] Accordingly, the appellate court held that Auto-Owners could not sustain a subrogation action against the Shecklers. The court further held that Auto-Owners owed a duty to defend the Shecklers against the repairman's contribution claim.[15]

While the issue presented on appeal to the Supreme Court was whether an insurer's duty to defend or indemnify extends to the tenants of an insured property against a third-party negligence contribution claim when the tenants are not identified as insureds under the policy, the Supreme Court discussed the *Dix* decision. It made clear that its decision was limited. The Court held that it agreed with Presiding Appellate Justice McDade's dissenting opinion.[16] Specifically, the Court noted that Justice McDade recognized that the Court expressly limited its holding in *Dix* to the particular facts of the case before it, which included the lease's provision that the tenant would not be liable for any fire damage and the assumption that a portion of the rent would be used to purchase fire insurance.[17] Significantly, the Court stated that Justice McDade determined "nothing in [the] Court's reasoning in *Dix* asserted 'a general rule that whenever tenants pay rent and their landlords insure the leased premises that the tenants are automatically coinsureds under the insurance policy as a matter of law.'"[18]

Jeffrey B. Greenspan

Member

jgreenspan@cozen.com
Phone: (312) 474-7143
Fax: (312) 878-2002

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The *Sheckler* decision limits the application of the implied co-insured doctrine in Illinois. Landlord claims, therefore, should be analyzed on a case-by-case basis and aggressively pursued when the facts and/or lease's language makes clear that a tenant will be responsible for damages caused by the tenant's negligence.

[1] *Sheckler v. Auto-Owners Insurance Co.*, 2022 IL 128012, ¶ 48.

[2] *Id.* at ¶ 39.

[3] *Id.* at ¶¶ 20 and 40.

[4] *Id.* at ¶ 4.

[5] *Id.* at ¶ 5

[6] *Id.*

[7] *Id.* at ¶¶ 8-10.

[8] *Id.*

[9] *Id.*

[10] *Id.* at ¶ 11.

[11] *Id.* at ¶ 12.

[12] *Id.* at ¶ 13.

[13] *Id.* at ¶ 15.

[14] *Id.*

[15] *Id.*

[16] *Id.* at ¶ 39.

[17] *Id.* at ¶¶ 20 and 40.

[18] *Id.* at ¶ 20.