White and Williams LLP

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Subrogation By Landlord's Insurer Against Tenant

Certain exceptions may apply and law is subject to change. Contact White and Williams LLP for additional information at 215-864-6322.

Alabama

No case directly on point. Case law suggests, however, that tenants are not implied coinsureds on a landlord's insurance policy. *See McGuire v. Wilson*, 372 So.2d 1297 (Ala. 1975) (allowing a builder's risk insurer to subrogate against a purchaser occupying property pursuant to a lease provision in a real estate sales contract); *McCay v. Big Town, Inc.*, 307 So.2d 695 (Ala. 1975) (enforcing a waiver of subrogation/exculpatory clause in a lease).

Alaska

When a landlord covenants to carry fire insurance on the leased premises, the insurance is, absent an express provision in the lease establishing the tenant's liability, for the mutual benefit of both parties and the tenant is a co-insured of the landlord, barring a subrogation claim by the landlord's insurer. *Alaska Ins. Co. v. RCA Alaska Communications, Inc.*, 623 P.2d 1216 (Alaska 1981) (discussing a commercial lease). In contrast, "a landlord is a co-insured under a tenant's fire insurance policy only if the policy expressly so provides." *Great American Ins. Co. v. Bar Club, Inc.*, 921 P.2d 626 (Alaska 1996).

Arizona

A tenant's liability depends on the parties' intent as expressed in the lease. *General Acc. Fire & Life Assur. Corp. v. Traders Furniture Co.*, 401 P.2d 157 (Ariz. 1965).

Arkansas

A landlord's insurer can pursue subrogation against a tenant unless the terms of the lease establish that the insurance was purchased for the mutual benefit of the parties. *Page v. Scott*, 567 S.W.2d 101 (Ark. 1978).

California

A tenant's liability is generally resolved on a case-by-case basis, and depends on the parties' reasonable expectations in light of the particular lease terms. *Fire Ins. Exchange v. Hammond*, 99 Cal. Rptr.2d 596 (Ct. App. 2000).

Colorado

A landlord's insurer has a right of subrogation unless the terms of the lease circumscribe that right. *U.S. Fidelity & Guar. Co. v. Let's Frame It, Inc.*, 759 P.2d 819 (Colo. Ct. App. 1988).

Connecticut

Absent an express agreement, a landlord's fire insurer has no right of subrogation against a tenant. *DiLullo v. Joseph*, 792 A.2d 819 (Conn. 2002).

Delaware

Absent a clearly expressed lease provision, a residential tenant is an implied insured under his or her landlord's fire insurance policy and shielded from subrogation claims. *Lexington Ins. Co. v. Raboin*, 712 A.2d 1011 (Del. Super. 1998), *affirmed,* 723 A.2d 397 (Del. 1998).

District of Columbia

No case on point.

Florida

A tenant's liability depends on the parties' intent, as expressed in the lease. *State Farm Florida Ins. Co. v. Loo*, 27 So.3d 747 (Fla. Dist. Ct. App. 3rd Dist. 2010) (confirming a case-by-case approach); *Continental Ins. Co. v. Kennerson*, 661 So.2d 325 (Fla. Dist. Ct. App. 1st Dist. 1995).

Georgia

Case law suggests a case-by-case approach. Where a lease provides that insurance will be provided as part of the bargain, such an agreement must be construed as providing mutual exculpation of the parties, who have agreed to look solely to insurance in the event of a loss. *Pettus v. APC, Inc.*, 293 S.E.2d 65 (Ga. App. 1982) (commercial lease).

Hawaii

No case on point. Under the Residential Landlord-Tenant Code, a tenant may be held liable to the landlord for negligent failure to keep the dwelling in fit condition. H.R.S. § 521-69.

Idaho

A tenant's liability to the landlord's subrogee depends on the parties' intent, as shown by the lease and the surrounding facts and circumstances. *Bannock Bldg. Co. v. Sahlberg*, 887 P.2d 1052 (Idaho 1994).

Illinois

Unless the lease states that the tenant is to be liable for damage that he/she caused, a tenant, by payment of rent, has contributed to the payment of the insurance premium, thereby gaining the status of co-insured under the insurance policy and precluding subrogation. *Dix Mut. Ins. Co. v. LaFramboise*, 597 N.E.2d 622 (Ill. 1992). This rule applies to commercial leases as well as to residential leases. *Cerny-Pickas & Co. v. C.R. Jahn Co.*, 131 N.E.2d 100 (Ill. 1955); *Nationwide Mut. Fire Ins. Co. v. T and N Master Builder and Renovators*, 959 N.E.2d 201 (Ill.App. 2d Dist. 2011). Given subsequent decisions by the Appellate Court, application of the *Dix Mutual* exception may practically prove difficult. A "yield up" clause stating that the tenant agrees to surrender the premises in good condition and to be responsible for any damage is insufficient to trigger the exception. *Towne Realty, Inc. v. Shaffer*, 773 N.E.2d 47 (Ill.App. 4th Dist. 2002). Moreover, even with a lease provision requiring the tenant to reimburse the owner for any repair caused by the tenant's negligence, the First District declined to apply the exception, reasoning that the owner's agreement to procure insurance for the property trumped the reimbursement provision. *American Nat'l Bank & Trust Co. v. Edgeworth*, 618 N.E.2d 899 (Ill.App. 1st Dist. 1993).

Indiana

A tenant's liability is determined by the terms of the lease and the reasonable expectations of the parties. If the lease obligates the tenant to maintain fire insurance, the tenant should anticipate being held responsible for damage to the leased premises and is open to a subrogation claim. If the lease states that the landlord will procure insurance, the parties would reasonably expect that the loss would remain with the landlord, and subrogation is precluded. For multi-unit structures, absent clear notice to the contrary, a negligent tenant will not be held responsible for damage beyond the leases premises. *LBM Realty, LLC v. Mannia*, 19 N.E.3d 379 (Ind. App. 2014).

Iowa

A tenant is not an implied coinsured with its landlord, and a landlord's fire insurer is not precluded from exercising subrogation rights against a tenant. *Neubauer v. Hostetter*, 485 N.W.2d 87 (Iowa 1992).

Kansas

Absent a valid rental agreement to the contrary, a tenant is liable for fire damage caused by the tenant's negligence. *See* Kan. Stat. Ann. § 58-2555(f); *New Hampshire Ins. Co. v. Hewins*, 627 P.2d 1159 (Kan.App. 1981); and *New Hampshire Ins. Co. v. Fox Midwest Theatres, Inc.*, 457 P.2d 133 (Kan. 1969).

Kentucky

Leases will be literally interpreted if possible. A lease requiring the landlord to insure the premises "as lessor's and lessee's interest may appear" intends both parties to benefit from the insurance and precludes subrogation against the tenant. *Liberty Mut. Fire Ins. Co. v. Jefferson Family Fair, Inc*., 521 S.W.2d 244 (Ky. 1975).

Louisiana

No case on point. The subrogree of the owner of a building has the right to recover against the employee of a commercial tenant for damage done to the building. *Aetna Cas. & Sur. Co. v. Allen*, 132 So.2d 240 (La.App. 3d Cir. 1961). Whether the commercial tenant itself could be held liable to the subrogee was not addressed in *Allen*.

Maine

When a lease does not contain an express agreement addressing the issue of subrogation when the tenant negligently causes a fire, the landlord's insurer may not proceed against the tenant as subrogee. *North River Ins. Co. v. Snyder*, 804 A.2d 399 (Me. 2002).

Maryland

A tenant's liability is determined by the terms of the lease and the reasonable expectations of the parties. If the landlord communicated to the tenant an express or implied agreement to maintain fire insurance, the parties' reasonable expectations may preclude a subrogation claim – in the absence of a lease provision stating that the tenant will surrender the premises in good condition. For multi-unit structures, absent a clear, enforceable provision to the contrary, a court may properly conclude that the parties expected that the landlord would secure fire insurance covering the entire building and, with respect to damage to parts of the building beyond the leased premises, look only to the policy for compensation. *Rausch v. Allstate Ins.* Co., 882 A.2d 801 (Md. 2005).

Massachusetts

Absent an express lease provision establishing a residential tenant's liability, the landlord's insurance is held for the mutual benefit of both the landlord and the tenant. *Peterson v. Silva*, 704 N.E.2d 1163 (Mass. 1999). Whether a commercial tenant can be held liable for a negligently caused fire depends on the intent of the parties, as evidenced in the lease. *Seaco Ins. Co. v. Barbosa*, 761 N.E.2d 946 (Mass. 2002).

Michigan

In tort: For damage to the leased real property, absent an express lease provision establishing tort liability, a tenant is not liable in tort to the landlord or the landlord's insurer. A "yield up" clause, providing that the premises will be surrendered in the same condition as received, is insufficient to establish liability. *New Hampshire Ins. Group v. Labombard*, 399 N.W.2d 527 (Mich. Ct. App. 1986). For other types of damage, such as damage to personal property and lost income, the tenant may be held liable in tort if it can be shown that the damages were the legal and natural consequence of the tenant's negligence. *Antoon v. Community Emergency Medical Service, Inc.,* 476 N.W.2d 479 (Mich. Ct. App. 1991). However, *Antoon* involved uninsured losses and no subrogation. In contract: In *Laurel Woods Apartments v. Roumayah*, 734 N.W.2d 217 (Mich. Ct. App. 2007), which did not involve subrogation, the court held that with respect to a tenant's violation of a lease clause holding her liable for damage caused by her acts or omissions, *Labombard* did not apply to the landlord's claim of contractual liability, and that the tenant was subject to contractual liability. In an unpublished opinion, the Court of Appeals later applied *Laurel Woods* to subrogation. *American States Ins. Co. v. Hampton*, 2008 WL 4724279 (Mich. Ct. App. 2008).

Minnesota

Minnesota has adopted a case-by-case approach, based on the expectations of the parties. The parties intent is determined from the language of the lease and by examining other admissible evidence shedding light on the expectations of the parties, including the types of insurance purchased by each party. *RAM Mut. Ins. Co. v. Rohde*, 820 N.W.2d 1 (Minn. 2012).

Mississippi

In the absence of any contract between the lessor and the lessee as to insurance by one for the benefit of the other, neither has any interest in the insurance taken out by the other in his own interest. But where the lease agreement stipulates that one of the parties shall keep the property insured for the benefit of the other, each is entitled to a proportionate interest in the proceeds of such insurance, and subrogation is precluded. *Fry v. Jordan Auto Co.*, 80 So.2d 53 (Miss. 1955).

Missouri

Whether a tenant is exonerated for its negligence depends on the intent of the parties, as expressed in the lease, including the terms of the "yield up" clause. A lease which calls for the landlord to obtain insurance may insulate the tenant from liability as a coinsured under the policy. *Rock Springs Realty, Inc. v. Waid*, 392 S.W.2d 270 (1965).

Montana

Courts have not specifically addressed a tenant's status as a coinsured, but case law suggests that whether suit can be brought against a tenant depends on the terms of the lease. See *Holiday Village Shopping Center v. Osco Drug, Inc.*, 315 F.Supp. 171 (D. Mont. 1970), involving a waiver of subrogation.

Nebraska

Absent an express agreement to the contrary in a lease, a tenant is an implied coinsured on his landlord's fire insurance policy. *Buckeye State Mut. Ins. Co. v. Humlicek*, 822 N.W.2d 351 (Neb. 2012); *Tri-Par Investments, L.L.C. v. Sousa*, 680 N.W.2d 190 (Neb. 2004). A lease requiring the tenant to obtain liability or renter's insurance does not change the general rule. *Beveridge v. Savage*, 830 N.W.2d 482 (Neb. 2013). Landlord's recovery of uninsured losses is not prohibited. *SFI Ltd. Partnership 8 v. Carroll*, 288 Neb. 698 (2014).

Nevada

Absent an express provision in the lease establishing a tenant's liability, the tenant is an implied coinsured on the landlord's policy. *Safeco Ins. Co. v. Capri*, 705 P.2d 659 (Nev. 1985).

New Hampshire

Absent an express agreement in a lease holding the tenant liable for the tenant's own negligence in causing a fire, the tenant is considered a coinsured on the landlord's insurance policy. Recovery is also barred for the recovery of uninsured losses if the landlord failed to obtain adequate insurance coverage. *Cambridge Mut. Fire Ins. Co. v. Crete*, 846 A.2d 521 (N.H. 2004) (residential lease).

New Jersey

When the parties agree that the landlord is to provide insurance for the structure, and that the tenant is to obtain insurance for its personal property, the parties are deemed to have agreed to look solely to insurance for recompense of their damages, protecting the tenant from subrogation by the landlord's insurer. *Mayfair Fabrics v. Henley*, 234 A.2d 503 (N.J. Super. Law Div. 1967). The *Mayfair* rule also applies if pursuant to the lease the tenant obtains an insurance policy naming the landlord as the insured. *Foster Estates, Inc. v. Wolek*, 252 A.2d 219 (N.J. Super. App. Div. 1969). In *Zoppi v. Traurig*, 598 A.2d 19 (N.J. Super. Law Div. 1990), the trial court opined that it could find no binding case law holding that a tenant could be immune to a subrogation claim by the landlord's insurer, absent an express agreement by the parties. In light of *Foster Estates*, which cited *Mayfair* with approval, *Zoppi* may have been wrongly decided.

New Mexico

"In the absence of an agreement between the parties specifying which of them will carry fire insurance for the benefit of both parties, or an express clause in the lease relieving a party from his own negligence, each party must bear the risk of loss for his own negligence." *Acquisto v. Joe R. Hahn Enterprises, Inc.*, 619 P.2d 1237 (N.M. 1980), overruled on other grounds by *C.R. Anthony Co. v. Loretto Mall Partners*, 817 P.2d 238 (N.M. 1991).

New York

A tenant is not an implied coinsured on her landlord's insurance policy. *Phoenix Ins. Co. v. Stamell*, 796 N.Y.S.2d 772 (A.D. 4th Dept. 2005). The tenant is liable for its negligent acts unless the lease exempts the tenant from liability in clear and unequivocal terms. *Galante v. Hathaway Bakeries, Inc.*, 176 N.Y.S.2d 87 (A.D. 4th Dept. 1958). However, where a lease requires the tenant to pay the cost of the landlord's insurance, the landlord's insurance company cannot subrogate. *Meadvin v. Buckley-Southland Oil Co.*, 451 N.E.2d 491 (N.Y. 1983).

North Carolina

Even if the landlord agrees to insure the property, the tenant is liable for its negligent acts unless the terms of the lease clearly and explicitly establish a contrary intent. *Dixie Fire & Casualty Co. v. Esso Standard Oil Co.*, 143 S.E.2d 279 (N.C. 1965); *Winkler v. Appalachian Amusement Co.*, 79 S.E.2d 185 (N.C. 1953).

North Dakota

Absent an express agreement to the contrary, a tenant is an implied coinsured under landlord's fire insurance policy and the landlord's insurer may not subrogate against the tenant. *Community Credit Union of New Rockford, N.D. v. Homelvig*, 487 N.W.2d 602 (N.D. 1992).

Ohio

A tenant is not relieved of his common law liability for negligence unless the lease clearly shows an intent to relieve the tenant of such liability. *United States Fire Ins. Co. v. Phil-Mar Corporation*, 139 N.E.2d 330 (Ohio 1956). If the tenant is relieved of liability, the landlord's insurer cannot subrogate against the tenant. *Id.* Ohio rejects the implied coinsured rule and follows a case-by-case approach. *Cincinnati Ins. Co. v. Getter*, 958 N.E.2d 202 (Ohio App. 12th Dist. 2011).

Oklahoma

Absent an express agreement to the contrary, a tenant is a coinsured on the landlord's fire insurance policy. *Sutton v. Jondahl*, 532 P.2d 478 (Ok. App.. 1975).

Oregon

An agreement in a lease obligating the landlord to carry fire insurance on the leased premises is a complete defense to a subrogation action by the landlord's insurer against the tenant for negligence in causing a fire. *Koennecke v. Waxwing Cedar Products, Ltd.*, 543 P.2d 669 (Or. 1975). Whether the landlord's insurer can subrogate against the tenant depends on the facts of each case and the terms of the rental agreement. *Koch v. Spann*, 92 P.3d 146 (Or. App. 2004).

Pennsylvania

A tenant's liability depends on the parties' intent, as expressed in the lease *Remy v. Michael D's Carpet Outlets*, 571 A.2d 446 (Pa. Super. 1990).

Rhode Island

The terms of the lease determine if the insurer, stepping into the landlord's shoes, may maintain a subrogation action against the tenant for the tenant's negligence. *56 Associates ex rel. Paolino v. Frieband*, 89 F.Supp.2d 189 (D.R.I. 2000) (predicting how a state court would address the issue).

South Carolina

Notwithstanding any other provision of law, no insurer has a cause of action against a tenant who causes damage to real or personal property leased by the landlord to the tenant when the insurer is liable to the landlord for the damages under an insurance contract between the landlord and the insurer, unless the damage is caused by the tenant intentionally or in reckless disregard of the rights of others. S.C. Code § 38-75-60.

South Dakota

Whether subrogation against a negligent tenant is allowed by applying contract principles on a case-by-case basis. Under this approach, subrogation may be denied if the lease expressly requires the landlord to maintain fire insurance or the lease exonerates a tenant from losses caused by a fire. *American Family Mut. Ins. Co. v. Auto-Owners Ins. Co.*, 757 N.W.2d 584 (S.D. 2008).

Tennessee

Absent an express lease provision to the contrary, a tenant is deemed a coinsured under the landlord's insurance policy, thereby precluding subrogation against the tenant by the landlord's insurer. *Dattel Family Ltd. P'ship v. Wintz*, 250 S.W.3d 883 (Tenn. Ct. App. 2007).

Texas

A tenant's liability should depend on the parties' intent, as expressed in the lease. Public policy does not restrict a landlord and tenant from agreeing that the tenant will be responsible for damages it negligently causes. *Churchill Forge, Inc. v. Brown*, 61 S.W.3d 368 (Tex. 2001). See also *Wichita City Lines, Inc. v. Puckett*, 295 S.W.2d 894 (Tex. 1956) (holding that a lease stating that the landlord would carry his own insurance against loss by fire did not exonerate the tenant from liability for his own negligence).

Utah

A tenant is presumed to be a coinsured on the landlord's fire insurance policy absent an express agreement between the landlord and the tenant to the contrary. *McEwan v. Mountain Land Support Corp.*, 116 P.3d 955 (Utah Ct. App. 2005); *GNS P'ship v. Fullmer*, 873 P.2d 1157 (Utah Ct. App. 1994).

Vermont

A tenant's liability is contingent on the parties' intent, as expressed in the terms of a lease. Where a lease requires the landlord to carry fire insurance on the leased premises, such insurance is for the mutual benefit of the landlord and the tenant and the tenant, and the tenant's resident family members, are deemed coinsureds on the policy. *Union Mut. Fire Ins. Co. v. Joerg*, 824 A.2d 586 (Vt. 2003).

Virginia

A tenant's liability depends on the parties' intent looking at the lease as a whole. *Monterey Corp. v. Hart*, 224 S.E.2d 142 (Va. 1976). A tenant's common law liability for losses due to his negligent, reckless or willful acts is preserved absent a provision in the lease to the contrary. *Allstate Ins. Co. v. Fritz*, 452 F.3d 316 (4th Cir. 2006)(applying Virginia law).

Washington

A landlord is presumed to carry insurance for the tenant's benefit absent an express lease provision to the contrary. A "yield up" clause stating that the tenant will surrender the premises in the same condition as received does not overcome the presumption. *Cascade Trailer Court v. Beeson*, 749 P.2d 761 (Wash. App. Div. 3 1988). Subrogation is barred for damage to the entire building, not just to the leased premises, and is also precluded against the tenant's visiting spouse. *Trinity Universal Ins. Co. of Kansas v. Cook*, 276 P.3d 372 (Wash. App. Div. 3 2012).

West Virginia

Rejecting the "equitable insured" theory, the Supreme Court of Appeals held that a carrier may seek subrogation against a tenant not named on the landlord's insurance policy. *Farmers & Mechanics Mut. Ins. Co. v. Allen*, 778 S.E.2d 718 (W.Va. 2015). An insurance policy is a contract between the insurer and only the persons named on the policy. *Mazon v. Camden Fire Ins. Ass'n*, 389 S.E.2d 743 (W.Va. 1990).

Wisconsin

In light of Wis. Stat. Ann. § 704.07(3)(a), which requires tenants to repair damage caused by their negligence, a residential tenant is not an implied co-insured on the landlord's insurance policy. *Bennett v. West Bend Mut. Ins. Co.*, 546 N.W.2d 204 (Wis. Ct. App. 1996). Section 704.07(3)(a) may not be waived in a residential tenancy but may be waived in writing in a nonresidential tenancy. Wis. Stat. Ann. § 704.07(1).

Wyoming

No case on point. However, in *Berger v. Teton Shadows, Inc.*, 820 P.2d 176 (Wyo. 1991), the court held that with respect to fire damage to a building under construction, the general contractor's agreement to obtain insurance for the structure insulated the negligent subcontractor from a subrogation claim.

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