White and Williams LLP

# Supreme Court of Illinois Clarifies Who Qualifies as a Co-Insured

By: Ryan Bennett
*The Subrogation Strategist*
12.16.22

The Supreme Court of Illinois (Supreme Court) reversed a 2021 appellate court decision which held that an insurer had to duty to defend the property owner's tenant following a fire at the property. In *Sheckler v. Auto-Owners Insurance Co.*, 2022 IL 128012, the state's highest court ruled that the appellate court's reliance on *Dix Mutual Insurance Co. v. LaFramboise*, 597 N.E. 2d 622 (Ill. 1992) was misplaced as the ruling in *Dix* was limited to a specific set of facts, which did not apply to the current case.

In *Sheckler*, Auto-Owners Insurance Company (Insurer) paid its insured, Ronald McIntosh (McIntosh), for property damage following a fire in an apartment he rented to Monroe and Dorothy Sheckler (the Shecklers). Insurer filed suit against Wayne Workman (Workman), who performed service work on an oven in the Shecklers' apartment that leaked gas and resulted in a fire. Workman filed a third-party complaint against the Shecklers for contribution and the Shecklers tendered the defense of the claim to Insurer. Insurer refused the tender and the Shecklers filed a declaratory judgment action. The trial court ruled in favor of Insurer and found that it did not need to defend the Shecklers.

On appeal, the Shecklers argued that they were co-insureds under Insurer's policy because their rent payment had been used by the landlord, McIntosh, to purchase his insurance. The lease also indicated that the landlord would purchase fire insurance for the property.

Under *Dix*, absent an express agreement to the contrary, an insurer may not subrogate against its own insured or any person or entity who has the status of a co-insured under the insurance policy. The appellate court – applying an equitable extension of *Dix*— held that Insurer had to defend the Shecklers against Workman's contribution claim because the Sheckler's rent payment made them co-insureds under the landlord's policy.

The Supreme Court vacated the appellate court's decision. As the court explained, before determining whether Insurer had a duty to defend the Shecklers, it first had to determine whether the Shecklers were co-insureds on the landlord's policy. It further explained that *Dix* was not applicable as it was a subrogation case, governed by equitable principles. While *Dix* turned on a lease provision stating that portion of the tenant's rent would be used to purchase fire insurance, this case did not involve the equitable principles of subrogation. The issue in this case was whether Insurer had a duty to defend or indemnify the Shecklers against Workman's contribution claim. Looking at the plain language of Insurer's policy, the court found that the Shecklers were not covered by the policy.

While insurers may still need to consider whether a landlord's tenants are co-insureds, subrogation professionals need to remember that, in Illinois, there is a difference between equitable subrogation claims and claims for liability coverage that seek a defense and/or indemnification. In the later circumstance, if the claimants are not covered by the policy, they are not entitled the protections afforded by the policy.