



Case Study

Subrogation: Can a Landlord's Insurer Sue the Landlord's Tenant?

— by Jennifer Krumm

The doctrine of “implied co-insured” is rejected by Oregon Courts.

Koch v. Spann, ___ Or. App. ___ (7/9/04).

Plaintiff owned a duplex and maintained fire insurance on the building through United Services Automobile Association (USAA). Defendant was a tenant in the building. During the Christmas season, Defendant decorated a Christmas tree with lit candles and sparklers. The tree caught fire and caused over \$200,000 in damage.

USAA compensated Plaintiff and then brought a subrogation suit against the Defendant. The trial court granted summary judgment in favor of the Defendant, holding that the insurer could not recover because the tenant was an implied co-insured of the insurance policy.

On appeal, the court noted that the rental agreement between the landlord and tenant did not require the landlord to provide insurance. The court held that, without a contractual obligation to provide insurance, the tenant was not an "implied co-insured" of the landlord's insurance policy. Accordingly, the court reversed summary judgment, concluding that the insurer could seek recovery of its losses from the defendant-tenant.

— Full case available at: <http://www.publications.ojd.state.or.us/A119099.htm>.

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