

No Heat on Tenant for Fire Damage to Leased Premises

Insurance Law Update

July 2011

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Illinois Appellate Court for the Third District

In *Auto Owners Ins. Co. v. Callaghan*, ___ N.E.2d ___, 2011 WL 2183143 (Ill. App. Ct., June 3, 2011), the Illinois Appellate Court for the Third District held that a tenant was not liable to his landlord's insurer for fire damage to his leased home.

Tenant Thomas Callaghan rented a home from landlord John Ellis. The home was damaged by fire. Ellis had a fire insurance policy through Auto Owners Insurance Company. Auto paid \$258,500 to Ellis for the damage. Auto then filed a subrogation action against Callaghan, alleging he negligently caused the fire. The trial court granted Callaghan's motion to dismiss and entered judgment in his favor. Auto appealed.

The Illinois Appellate Court observed that courts in other cases have routinely held that a tenant is not liable for fire damage to the leased premises, unless the terms of the lease clearly indicate that the parties intended for the tenant to be liable for such damage. Additionally, the court referenced cases holding that, by paying rent, a tenant obtains the status of a coinsured with the landlord as to a fire insurance policy and cannot be sued for fire damage by either the landlord or the landlord's insurer. Because the lease contained no provisions imposing liability on Callaghan for fire damage, and finding it significant that Ellis, the landlord, had obtained fire insurance in the first instance, the court affirmed judgment in favor of Callaghan.

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