# LANDLORD/TENANT SUBROGATION IN ALL 50 STATES

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The rule of subrogation known as the *"Sutton Rule"* states that a tenant and landlord are automatically considered "co-insureds" under a fire insurance policy as a matter of law, and therefore the insurer of the landlord who pays for the fire damage caused by the negligence of a tenant may not sue the tenant in subrogation because it would be tantamount to suing its own insured. The "*Sutton Rule*" is derived from an Oklahoma Court of Appeals decision styled *Sutton v. Jondahl*, 532 P.2d 478 (Okla. App. 1975) and is the benchmark against which the landlord/tenant subrogation laws of most states is measured.

## ALABAMA

If a lease clearly and unambiguously states that each party agrees to cause any fire insurance policy on the property to contain a waiver of subrogation or endorsement under which the insurance company waives its right of subrogation against any party to the lease agreement in the case of destruction or damage by fire, each party waives any cause of action against the other in case their property is damaged by fire as the result of other's negligence. *McCay v. Big Town, Inc.*, 293 Ala. 582, 307 So.2d 695 (Ala. 1975).

## ALASKA

Fire insurer is not entitled, as subrogee, to bring action against tenant to recover for amounts paid to landlord for fire damage to rental premises caused by tenant's negligence in absence of express agreement between landlord and tenant to contrary. Landlord and tenant are co-insureds under fire policy. *Alaska Ins. Co. v. RCA Alaska Communications, Inc.*, 623 P.2d 1216, 1218 (Alaska 1981); However, a later case law indicates that the tenant is a co-insured under the lease only if the lease expressly provides for same. *Great American Ins. Co. v. Bar Club, Inc.*, 921 P.2d 626 (Alaska 1996).

## ARIZONA

Arizona has avoided per se rules and taken a more flexible case-by-case approach, holding that a tenant's liability to the landlord's insurer for negligently causing a fire depends on the intent and reasonable expectations of the parties to the lease as ascertained from the lease as a whole. General *Accident Fire & Life Assurance Corp. v. Traders Furniture Co.,* 401 P.2d 157 (Ariz. App. 1981).

## ARKANSAS

Arkansas has avoided per se rules and taken a more flexible case-by-case approach, holding that a tenant's liability to the landlord's insurer for negligently causing a fire will depend on the intent and reasonable expectations of the parties to the lease as ascertained from the lease as a whole. *Page v. Scott*, 567 S.W.2d 101, 103 (Ark. 1978).

## CALIFORNIA

California has avoided per se rules with regard to the "*Sutton Rule*" (see Oklahoma) and taken a more flexible case-by-case approach, holding that a tenant's liability to the landlord's insurer for negligently causing a fire depends on the intent and reasonable expectations of the parties to the lease as ascertained from the lease as a whole. *Fire Ins. Exch. v. Hammond*, 83 Cal. App.4th 313, 99 Cal. Rptr.2d 596, 602 (2000).

## COLORADO

A landlord's insurer may recover against tenant only if the landlord has the right to recover against tenant. *Employers Cas. Co. v. D. M. Wainwright*, 473 P.2d 181 (Colo. 1970). The ultimate question presented is whether provisions of the written lease between tenant and its landlord have circumscribed the landlord's right of recovery under the circumstances of the case. *U.S. Fidelity & Guar. Co. v. Let's Frame It, Inc.*, 759 P.2d 819 (Colo. App. 1988) (redelivery clause in lease has applicability only to premises subject to lease, and cannot affect tenant's liability for damage done to landlord's other property).

## CONNECTICUT

Tenants are co-insureds under a landlord's fire insurance policy and may not be sued for their negligence as they are an insured under the policy. *St. Paul Fire & Marine Ins. Co. v. Durr*, 2001 WL 984782 (Conn. Super. 2001) (*not reported in A.2d*). This holding was first adopted in *Sutton v. Jondahl,* 532 P.2d 478 (Okla. Ct. App. 1975) (the "*Sutton Rule*"). The Connecticut legislature has enacted a standard form of fire insurance that all fire insurance policies issued in this state must conform. C.G.S.A. § 38a-308. In regard to the insurer's subrogation rights, the standard form includes a subrogation provision stating: *"This Company may require from the insured an assignment of all right of recovery against any party for loss to the extent that payment therefore is made by this Company."* C.G.S.A. § 38a-307. The subrogation clause set forth in C.G.S.A. § 38a-307 fails to provide an insurer with a direct, and inviolate, right of subrogation. It merely provides that an insurer "may require" an insured to assign any rights *he or she* has to the insurer. Thus, under this clear language, the right of recovery belongs to the insured, and the insurer only obtains that right when the insured grants it. *Wasko v. Manella*, 849 A.2d 777 (Conn. 2004).

## DELAWARE

Fire insurer is not entitled, as subrogee, to bring an action against tenant to recover for amounts paid to landlord for fire damage to rental premises caused by tenant's negligence in absence of express agreement between landlord and tenant to contrary. Landlord and tenant are co-insureds under the fire policy. *Lexington Ins. Co. v. Raboin*, 712 A.2d 1011, 1016 (Del. Super. Ct. 1998).

## FLORIDA

Florida has avoided per se rules with regard to the "*Sutton Rule*" (see Oklahoma) and taken a more flexible case-by-case approach, holding that a tenant's liability to the landlord's insurer for negligently causing a fire depends on the intent and reasonable expectations of the parties to the lease as ascertained from the lease as a whole. *Continental Ins. Co. v. Kennerson*, 661 So.2d 325, 327 (Fla. App. 1995) (denied subrogation because lease provided that damage caused by fire "s*hall be repaired by and at the expense of Lessor"*).

## GEORGIA

Georgia has avoided per se rules and taken a more flexible case-by-case approach, holding that a tenant's liability to the landlord's insurer for negligently causing a fire depends on the intent and reasonable expectations of the parties to the lease as ascertained from the lease as a whole. *Tuxedo Plumbing & Heating Co. v. Lie-Nielsen*, 262 S.E.2d 794 (Ga. 1980).

## HAWAII

Hawaii has not directly addressed this issue.

## IDAHO

Idaho has avoided per se rules with regard to the "*Sutton Rule*" (see Oklahoma) and taken a more flexible case-by-case fire approach, holding that a tenant's liability to the landlord's insurer for negligently causing a fire depends on the intent and reasonable expectations of the parties to the lease as ascertained from the lease as a whole. *Bannock Bldg. Co. v. Sahlberg*, 887 P.2d 1052 (Idaho 1994).

## ILLINOIS

Illinois has avoided per se rules with regard to the "*Sutton Rule*" (see Oklahoma) and taken a more flexible case-by-case approach, holding that a tenant's liability to the landlord's insurer for negligently causing a fire depends on the intent and reasonable expectations of the parties to the lease as ascertained from the lease as a whole. *Dix Mutual Ins. Co. v. LaFramboise*, 597 N.E.2d 622, 625 (Ill. 1992). Although a tenant is generally liable for fire damage caused to the leased premises by his negligence, if the parties intended to exculpate the tenant from negligently caused fire damage, their intent – as expressed in the lease agreement - will be enforced. To make this determination, the lease must be interpreted as a whole so as to give effect to the intent of the parties. *Stein v. Yarnall -Todd Chevrolet, Inc.*, 241 N.E.2d 439 (Ill. 1968). In *Dix*, the lease did not contain a provision expressly apportioning fault in the case of a negligently caused fire, so the court construed the lease "as a whole" and concluded that it did not reflect any intent that the tenant would be responsible for fire damage. Absent any such intent, the tenant is considered a coinsured with the landlord and an insurer may not sue its own insured for subrogation. The same outcome results from an oral lease which contains only basic terms such as rent and duration of the lease. *Cincinnati Ins. Co. v. DuPlessis*, 848 N.E.2d 220 (Ill. App. 2006). The rule, therefore, appears to be that a tenant will be an implied coinsured and cannot be sued by the landlord's subrogee for fire or other damage unless a contrary intent can be gleaned from the four corners of the lease itself.

## INDIANA

Indiana has avoided per se rules with regard to the "*Sutton Rule*" (see Oklahoma) and taken a more flexible case-by-case fire approach, holding that a tenant's liability to the landlord's insurer for negligently causing a fire depends on the intent and reasonable expectations of the parties to the lease as ascertained from the lease as a whole. *United Farm Bureau Mutual Ins. Co. v. Owen*, 660 N.E.2d 616 (Ind. App. 1996).

## IOWA

Iowa has rejected the implied co-insured rationale and allowed the insurer to bring a subrogation claim against the tenant, absent an express agreement to the contrary. *Neubauer v. Hostetter*, 485 N.W.2d 87, 89-90 (Iowa 1992).

## KANSAS

Absent an agreement by the landlord to provide insurance for the tenant, subrogation against a tenant appears to be allowed. Under a lease agreement providing that lessor would purchase fire insurance for adequate protection of improvements on leased premises and lessee would maintain premises in good repair "damage by fire or other casualty being expressly excepted", lessor's obligation to insure premises inured to benefit of both parties. The exemption from "damage by fire or other casualty" included all fires except those which, generally speaking, would be classed as arson, and lessee was not liable for loss by fire resulting from its negligence. *New Hampshire Ins. Co. v. Fox Midwest Theaters, Inc.*, 457 P.2d 133 (Kan. 1969). Kansas also has a statute which governs the liability of tenants:

> ***K.S.A. § 58-2555. Duties of Tenant.*** *(f) be responsible for any destruction, defacement, damage, impairment or removal of any part of the premises caused by an act or omission of*

*the tenant or by any person or animal or pet on the premises at any time with the express or implied permission or consent of the tenant.*

Independent of the above statute and an express agreement to insure the tenant, Kansas law imposes an obligation on a tenant to return the premises to the landlord at the end of a rental term unimpaired by the tenant's negligence. *Salina Coca-Cola Bottling Corp. v. Rogers*, 237 P.2d 218 (1951).

## KENTUCKY

A tenant's liability to the landlord's insurer for negligently causing a fire depends on the intent and reasonable expectations of the parties to the lease as ascertained from the lease as a whole. *Britton v. Wooten*, 817 S.W.2d 443, 445-47 (Ky. 1991) (subrogation allowed because there was no clause requiring purchase of fire insurance by landlord).

## LOUISIANA

Specific lease provisions will prohibit subrogation against a tenant. A lease provision, under which lessor agreed to carry fire insurance on property and released and discharged lessee "from any and all claims and damages whatsoever from any cause resulting from or arising out of any fire" constituted release from fire damage acknowledged to have been caused by lessee's negligence, and extinguished any subrogation recovery by lessor's insurer. *Home Ins. Co. of Illinois v. National Tea Co.*, 588 So.2d 361 (La. 1991). The intent of the parties as determined from the terms of the lease is paramount.

## MAINE

Fire insurer is not entitled, as subrogee, to bring action against tenant to recover for amounts paid to landlord for fire damage to rental premises caused by tenant's negligence in absence of express agreement between landlord and tenant to contrary. Landlord and tenant are co-insureds under the fire policy. *N. River Ins. Co. v. Snyder*, 804 A.2d 399, 403-04 (Me. 2002).

## MARYLAND

A tenant's liability for damage to the leased premises in a subrogation action brought by the landlord's insurer after paying the claim should be determined by the reasonable expectations of the parties to the lease, as determined from the lease itself and any other admissible evidence. *Rausch v. Allstate Ins. Co.*, 882 A.2d 801 (Md. 2005).

## MASSACHUSETTS

Massachusetts follows the "implied coinsured doctrine". The term "insured" impliedly includes the tenant. *Peterson v. Silva,* 704 N.E.2d 1163 (Mass. 1999). Absent an express provision in a lease establishing a tenant's liability, the landlord's insurance is deemed held for the mutual benefit of both parties. When a residential landlord sues a tenant for damages to the landlord's, the implied coinsured doctrine presumes that the landlord's liability insurance is held "for the mutual benefit of both parties". This rule applies to residential leases but is generally inapplicable to commercial leases. *Federal Ins. Co. v. Commerce Ins. Co.,* 2008 WL 4873959 (D. Mass. 2008).

Massachusetts recognizes that while courts have not distinguished between commercial and residential tenancies in applying *Sutton* (<u>see</u> Oklahoma), commercial tenancies present different considerations, for "*[c]ommercial tenants tend to be more sophisticated about the terms of their leases and, unlike residential tenants, commercial tenants generally purchase liability insurance*"; thus, commercial tenants will be relieved of liability for negligently caused fire damage only if the lease reveals the parties so intended. *Seaco Ins. Co. v. Barbosa*, 761 N.E.2d 946, 950 (Mass. 2002).

## MICHIGAN

Michigan follows "*Sutton Rule*" (see Oklahoma). Fire insurer is not entitled, as subrogee, to bring action against tenant to recover for amounts paid to landlord for fire damage to rental premises caused by tenant's negligence in absence of express agreement between landlord and tenant to contrary. Landlord and tenant are co-insureds under fire policy. *N.H. Ins. Group v. Labombard,* 399 N.W.2d 527, 531 (Mich. App. 1986).

## MINNESOTA

Tenants are co-insureds under their landlord's fire insurance policy for purposes of subrogation actions. *United Fire & Cas. Co. v. Bruggeman*, 505 N.W.2d 87 (Minn. App. 1993).

## MISSISSIPPI

There do not appear to be any restrictions on the ability of a landlord's insurer to pursue the tenant for subrogation as a result of damages paid by the insurer which were caused by the tenant. *Paramount Ins. Co. v. Parker*, 112 So.2d 560 (Miss. 1959).

## MISSOURI

A tenant may be considered to be "co-insured" under the insurance policy obtained by the lessor where it was clear that the parties intended to look only to insurance, rather than each other, to pay damages caused by negligence. This intent must be determined from the four corners of the lease. *Jos. A. Bank Clothiers, Inc. v. Brodsky*, 950 S.W.2d 297, 303 (Mo. App. 1997). The *Brodsky* court found such intent from a surrender clause of the lease. That clause provided that the lessee would surrender possession of the leased premises to lessor in good condition, "loss by fire, casualty, providence and deterioration excepted." Where a lease requires the landlord to carry insurance and provides there's to be no subrogation right between the parties, it may be determined that the parties intended to look only to insurance, rather than each other, for any loss or damage to the premises. *Rock Springs Realty, Inc. v. Waid,* 392 S.W.2d 270, 274 (Mo. 1965). An insurer cannot subrogate against its own insured, since, by definition, subrogation arises only with respect to the insured's rights against third persons to whom the insurer owes no duty. Therefore, no right of subrogation arises against a person who holds the status of an additional insured, or against a tenant who is determined from the intent of the parties to be an implied "co-insured." *Brodsky,* supra. Where a party is required by contract to carry insurance for the benefit of another, that party will be treated as a co-insured. *Id.*

## MONTANA

Montana adheres to the rule that no right of subrogation can arise in favor of an insurer against its own insured since, by definition, subrogation exists only with respect to rights of insurer against third persons to whom insurer owes no duty. *Home Ins. Co. v. Pinski Bros., Inc.*, 500 P.2d 945 (Mont. 1972). However, there have been no cases addressing whether a tenant is considered an implied co-insured.

## NEBRASKA

Absent an express agreement to the contrary in a lease, a tenant and his or her landlord are implied co-insureds under the landlord's fire insurance policy, and the landlord's liability insurer is precluded from bringing a subrogation action against the negligent tenant. *Tri-Par Investments, L.L.C. v. Sousa*, 680 N.W.2d 190 (Neb. 2004).

## NEVADA

It is not uncommon for the lessor to provide fire insurance on leased property. As a matter of sound business practice, the premium to be paid had to be considered in establishing the rental rate. Such premiums would be chargeable against the rent as an overhead or operating expense. Accordingly, the tenant actually paid the premium as part of the monthly rental. Courts consider it an undue hardship to require a tenant to insure against his own negligence, when he is paying, through his rent, for the fire insurance which covers the premises. Fire insurer is not entitled, as subrogee, to bring action against tenant to recover for amounts paid to landlord for fire damage to rental premises caused by tenant's negligence in absence of express agreement between landlord and tenant to contrary. Landlord and tenant are co-insureds under fire policy. *Safeco Ins. Co. v. Capri*, 705 P.2d 659, 661 (Nev. 1985).

## NEW HAMPSHIRE

New Hampshire follows the "*Sutton Rule*" (<u>see</u> Oklahoma). A landlord's insurer may not pursue a tenant for any damages caused by the tenant's negligence because the tenant is considered an implied co-insured. *Cambridge Mutual Fire Ins. Co. v. Crete*, 846 A.2d 521 (N.H. 2004). In addition, a landlord may not pursue the tenant for uninsured losses it sustains.

## NEW JERSEY

If landlord has claim against tenant, existence of insurance obtained by landlord, paid by landlord, for the benefit of landlord, does not exculpate tenant from consequences of negligent conduct, absent express agreement to that effect. *Zoppi v. Traurig*, 598 A.2d 19 (N.J. Super. 1990).

## NEW MEXICO

Where lease indicated that parties failed to agree that one, or both, of them would carry fire insurance, and where there was no specific exculpatory language relieving tenant from liability for negligence, tenant was liable for negligently having caused a fire in the leased premises. *Acquisto v. Joe R. Hahn Enterprises, Inc.*, 619 P.2d 1237 (N.M. 1980).

## NEW YORK

New York has rejected the implied co-insured rationale and allowed the insurer to bring a subrogation claim against the tenant, absent an express agreement to the contrary. *Galante v. Hathaway Bakeries, Inc.*, 6 A.D.2d 142, 176 N.Y.S.2d 87, 92 (1958). The principles underlying the subrogation doctrine and anti-subrogation rule in New York does not support the fiction that the tenant is an implied co-insured of the landlord, and subrogation is therefore allowed. *Phoenix Ins. Co. v. Stamell*, 21 A.D.3d 118, 796 N.Y.S.2d 772 (N.Y.A.D. 4 Dept. 2005).

## NORTH CAROLINA

North Carolina has rejected the implied co-insured rationale and allowed the insurer to bring a subrogation claim against the tenant, absent an express agreement to the contrary. *Winkler v. Appalachian Amusement Co.*, 238 N.C. 589, 79 S.E.2d 185, 190 (1953).

## NORTH DAKOTA

A tenant's liability to the landlord's insurer for negligently causing a fire depends on the intent and reasonable expectations of the parties to the lease as ascertained from the lease as a whole. *Agra-By-Products, Inc. v. Agway, Inc.*, 347 N.W.2d 142, 146-150 (N.D. 1984) (subrogation denied because lease required lessor to keep insurance and lessee to reimburse lessor for premiums).

## OHIO

A tenant's liability to the landlord's insurer for negligently causing a fire depends on the intent and reasonable expectations of the parties to the lease as ascertained from the lease as a whole. *United States Fire Ins. Co. v. Phil-Mar Corp.*, 166 Ohio St. 85, 139 N.E.2d 330, 332 (1956) (denied subrogation because lease provided that tenant would pay possible increase in fire insurance premiums due to tenant's activities).

## OKLAHOMA

Fire insurer is not entitled, as subrogee, to bring action against tenant to recover for amounts paid to landlord for fire damage to rental premises caused by tenant's negligence in absence of express agreement between landlord and tenant to contrary. Landlord and tenant are co-insureds under the fire policy. *Sutton v. Jondahl*, 532 P.2d 478 (Okla. App. 1975) (known as the "*Sutton Rule*").

## OREGON

Oregon rejects blanket following of "*Sutton Rule*" (see Oklahoma) which holds tenant is implied co-insured. Whether the landlord's insurer can subrogate against the tenant depends on the facts of the case and the language of the lease. *Koch v. Spann*, 92 P.3d 146 (Or. App. 2004). Where the lease provides that the landlord will provide "*full fire insurance coverage on all of the leased property for all of the parties and that the premiums therefore were included in the monthly lease payments*" or "*OWNER TO FURNISH FREE OF CHARGE ... [f]ire insurance in the amount equal to the value of the equipment ...",* the court recognized as a complete defense to either a direct action or a subrogation claim the landlord's contractual obligation to maintain fire insurance. Permitting the owner or lessor to proceed against the tenant or lessee would deprive the latter of the benefit of what it bargained for: insurance against liability for its own negligence.

## PENNSYLVANIA

It depends on the language of the lease. If the lease requires the landlord to provide fire insurance, the landlord's carrier cannot subrogate against the tenant. If the lease requires the tenant to obtain fire insurance, the landlord's carrier can subrogate. *Remy v. Michael D's Carpet Outlets*, 571 A.2d 446 (Pa. Super. 1990).

## RHODE ISLAND

A tenant's liability to the landlord's insurer for negligently causing a fire depends on the intent and reasonable expectations of the parties to the lease as ascertained from the lease as a whole. *56 Assocs. v. Frieband*, 89 F.Supp.2d 189, 194 (D.R.I.2000) (subrogation allowed where lease did not address question of fire insurance).

## SOUTH CAROLINA

South Carolina statute provides as follows:

> *§ 38-75-60. Cause of action by insurer against tenant. 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.*

## SOUTH DAKOTA

South Dakota rejects the blanket following of the "*Sutton Rule*" (see Oklahoma) which holds that the tenant is an "implied co-insured" of the landlord's insurer. *American Family Mut. Ins. Co. v. Auto-Owners Ins. Co.,* 2008 WL 4816666 (S.D. 2008). Instead, South Dakota adopts the case-by-case approach as a better reasoned rule that recognizes the intent of the parties under contract law and the equitable underpinning of subrogation. Subrogation may be denied under the case-by-case approach if the lease expressly requires the landlord to maintain fire insurance or the lease exonerates a tenant from losses caused by a fire.

## TENNESSEE

According to a U.S. Federal District Court, a tenant's liability to the landlord's insurer for negligently causing a fire depends on the intent and reasonable expectations of the parties to the lease as ascertained from the lease as a whole. *Tate v. Trialco Scrap, Inc.*, 745 F.Supp. 458, 467 (M.D. Tenn. 1989) (subrogation denied because lease required lessor to purchase insurance coverage on building). Since then, however, in an unreported decision (limited precedential value) the Tennessee Court of Appeals has decided that the case by case review of the lease terms to determine the intent and expectations of the parties is not the best approach, and has indicated that absent an express agreement to the contrary, a tenant should be considered a co-insured under the landlord's property casualty insurance policy, and the insurance carrier should therefore be precluded from asserting subrogation rights against the tenant. *Dattel Family Limited Partnership v. Wintz*, 2007 WL 2937794 (Tenn. App. 2007).

## TEXAS

As a matter of law, insurer of leased premises had no subrogation claim against tenant for losses paid to landlord when leased premises were destroyed by fire where lease agreement, signed by landlord and tenant, contained limitation of liability clause which provided that neither party would be liable for insurable casualty damage to leased premises, even though tenant had assigned its lease to third party prior to fire. *Interstate Fire Ins. Co. v. First Tape, Inc.*, 817 S.W.2d 142 (Tex. App. - Houston [1st Dist.] 1991). However, the application of the "*Sutton Rule*" has never been addressed in Texas.

## UTAH

Utah considers the tenant an implied co-insured for the "limited purpose" of subrogation. *GNS Partnership v. Fullmer,* 873 P.2d 1157, 1162 (Utah Ct. App. 1994).

## VERMONT

Vermont finds the case-by-case approach to be the most consistent with Vermont law. In determining the rights of the parties to a lease, this court has consistently looked to the intent of the contracting parties as ascertained from the terms of the lease. *Fairchild Square Co. v. Green Mountain Bagel Bakery, Inc.*, 658 A.2d 31, 33 (Vt. 1995); *Lamoille Grain Co. v. St. Johnsbury & Lamoille Cty. R.R.*, 369 A.2d 1389, 1390 (Vt. 1976).

## VIRGINIA

A tenant's liability to the landlord's insurer for negligently causing a fire depends on the intent and reasonable expectations of the parties to the lease as ascertained from the lease as a whole. *Monterey Corp. v. Hart*, 224 S.E.2d 142, 147 (Va. 1976) (subrogation denied because lease contained "except fire" provision).

## WASHINGTON

A landlord is presumed to carry insurance for tenant's benefit, as implied co-insured, absent express lease provision to the contrary. Therefore, without more, the landlord's fire insurer has no subrogation rights against tenants for loss to leased premises. *Cascade Trailer Court v. Beeson*, 749 P.2d 761 (Wash. App. 1988). A mutual understanding that a tenant will be relieved of liability for his own negligence may be inferred from provisions of the parties' lease. For example, the lease may expressly require the lessor to carry fire insurance covering the leased building, or it may prohibit the tenant from performing any acts which would raise the cost of insurance. Other circumstances may also give rise to an inference that the parties have mutually understood that the lessor would provide the insurance. *Rizzuto v. Morris*, 592 P.2d 688 (Wash. App. 1979).

## WEST VIRGINIA

West Virginia has not directly addressed this issue.

## WISCONSIN

Wisconsin Statute § 704.07(3)(a) makes a tenant automatically liable to the landlord for damage to property caused by the tenant's negligence. A tenant is precluded from claiming co-insured status under the landlord's fire insurance policy so as to avoid subrogation where the lease is silent as to fire insurance coverage. *Bennett v. West Bend Mut. Ins. Co.*, 200 Wis.2d 313, 546 N.W.2d 204 (Wis. App.1996). The statute reads as follows:

> ***§ 704.07 (3) Duty of Tenant****. (a) If the premises are damaged by the negligence or improper use of the premises by the tenant, the tenant must repair the damage and restore the appearance of the premises by redecorating. However, the landlord may elect to undertake the repair or redecoration, and in such case the tenant must reimburse the landlord for the reasonable cost thereof; the cost to the landlord is presumed reasonable unless proved otherwise by the tenant.*

## WYOMING

Although Wyoming has not directly addressed this issue, the Wyoming Supreme Court has intimated that it views a contractual provision to provide specific insurance as a waiver of subrogation rights with regard to the risk insured against. *Berger v. Teton Shadows, Inc.*, 820 P.2d 176 (Wyo. 1991).

If you have any questions regarding landlord/tenant subrogation, please contact Gary Wickert at gwickert@mwl-law.com.

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