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COZEN O'CONNOR

Connecticut Supreme Court Clarifies (and Relaxes) the Default Rule for Subrogation Against Tenants

Subrogated insurers get a big win in Connecticut. In April, the Connecticut Supreme Court clarified, and effectively relaxed, the "default rule" for subrogation claims against a tenant in Connecticut. In *DiLullo v. Joseph*, 259 Conn. 847, 792 A.2d 819 (2002), the court announced a default rule pursuant to which a landlord's insurer had no right of subrogation unless the landlord and tenant had made a "specific agreement" to apply a different rule. Four years later, the court in *Middlesex Mut. Assurance Co. v. Vaszil*, 279 Conn. 28, 900 A.2d 513 (2006) affirmed the *DiLullo* holding and specifically noted that the term "subrogation" had not been used in the lease and barred subrogation. Thereafter, most lower courts in Connecticut, and the federal courts applying Connecticut law, interpreted the *DiLullo* and *Middlesex Mutual* holdings to require the term subrogation to be included in the specific agreement in the lease to allow subrogation by a landlord's insurer against a tenant. *Middleoak Mut. Assur. Co. v. DeJesus*, 2011 WL 2611825 (Ct. Super. June 13, 2011); *Valley Forge Ins. Co. v. Ceramic Fun Time*, 210 WL 1612647 (Ct. Super. March 25, 2010); *Vermont Mut. Ins. Co. v. Landy*, 2006 WL 2411504 (Ct. Super. Aug 2, 2006). That narrow, and nearly insurmountable, interpretation is no longer viable.

In *Amica Mut. Ins. Co. v. Muldowney*, 328 Conn. 428, 180 A.3d 950 (2018), the court revisited the issues addressed in *DiLullo* and *Middlesex Mutual* and found that expressly stating in the lease that the landlord's insurer has a right of subrogation against the tenant was unnecessary. The *Amica* Court found that it is sufficient if the lease notifies the tenant that she is responsible for damage to the leased property and responsible for obtaining liability insurance. The court recited the two primary concerns that led to a default rule with a presumption against subrogation: the strong public policy against economic waste and likely lack of expectation of the tenant regarding her liability under such circumstances. The court also recognized that the *Middlesex Mutual* opinion might have been looking for an agreement concerning subrogation specifically, but determined the analysis used by the court was, in fact, broader than whether the parties had included the express language of subrogation.

In *Amica*, the court went on to note that a review of *DiLullo* and *Middlesex Mutual* indicated that the court was primarily concerned with ensuring that the lease "put the tenant on notice that he would be responsible for any damages caused by his negligence and that he needed to purchase insurance to cover this liability." The *Amica* Court determined the lease provisions overcame the default rule and subrogation was allowed, even though the lease did not contain the word subrogation.

The court's opinion in *Amica* restores the proper balance the court originally intended in *DiLullo* that was unfortunately skewed by *Middlesex Mutual*. In Connecticut, as in most other jurisdictions, equitable subrogation works to prevent a tortfeasor from being unjustly enriched by the fortuitous circumstance that the victim's loss is covered by an insurer. *Pacific Ins. Co., Ltd v. Champion Steel, LLC*, 323 Conn. 254, 262, 146 A.3d 975 (2016). The *Amica* decision makes clear that the term subrogation does not need to appear in the lease in order for the landlord's insurer to pursue subrogation recovery from a negligent tenant. Instead, the specific agreement required in *DiLullo* need only include language in the lease notifying the tenant that it could be liable for damages the tenant causes to the building and that they should obtain liability insurance to cover the tenant if

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Related Practice Areas

- Subrogation & Recovery

such damages occur. The *Amica* decision is an important clarification of the law for subrogated insurers of landlords in Connecticut.

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