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Indiana Court of Appeals Holds Insurer Has No Subrogation Rights Based on Lease Agreement

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In its decision in *Youell v. Cincinnati Ins. Co.* 2018 WL 6816772 (Ind. Ct. App. Dec. 28, 2018), the Indiana Court of Appeals ruled on the issue of whether a Landlord's insurer has the right via subrogation to seek recoupment of its payment of fire loss damages at the insured location against an allegedly negligent tenant. Pursuant to the lease agreement on which the ruling was based, the landlord was obligated to insure the building and the tenant was obligated to insure its own personal property within the building. Subsequent to a fire loss, the landlord's insurer covered the loss and, thereafter, brought a subrogation action against the tenant alleging that the tenant was ultimately responsible for the loss.

In response to the subrogation complaint, the tenant filed a motion for judgment on the pleadings wherein it argued that the landlord's insurer could not state a cause of in light of the landlord's agreement to provide property insurance in the lease. The tenant asserted that the lease agreement was an agreement to provide both parties with the benefits of insurance and, as such, allocated the risk of loss in case of fire. Correspondingly, based on that agreed allocation of risk the landlord was limited in its recovery to the insurance proceeds. The motion when on to assert that the landlord's insurer was likewise limited based on the nature of the subrogation action at issue. As the insurer stood in the landlord's shoes, it had no rights greater than those of the landlord. Agreeing with the tenant's argument, the Appeals Court held that the insurer had no subrogation rights as against the tenant.