No. 128012

In the

Supreme Court of Illinois

MONROE SHECKLER, and DOROTHY SHECKLER,

Plaintiffs-Appellees,

v.

AUTO-OWNERS INSURANCE COMPANY,

Defendants-Appellant,

RONALD MCINTOSH,

Defendant,

and

WAYNE WORKMAN,

Defendant-Appellee.

On Appeal from the Illinois Appellate Court, Third District, No. 3-19-0500
There Heard on Appeal from the Circuit Court for the Tenth Judicial Circuit,
Tazewell County, Illinois, No. 2018-MR-149
The Honorable **Michael D. Risinger**, Judge Presiding

BRIEF AND APPENDIX OF APPELLEES

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NATURE OF THE CASE

This appeal is from the decision of the Third District Appellate Court (Case No. 03-19-0500) reversing a circuit court judgment that held that Monroe and Dorothy Sheckler were owed a defense to a third-party claim for contribution filed against them in Tazewell County Case No. 17-L-49 by Wayne Workman.

The underlying suit was a subrogation case filed on behalf of Auto-Owners seeking recovery for fire damages to a house rented to the Shecklers by Ronald McIntosh. McIntosh sued for the benefit of Auto-Owners and demanded a jury. The suit sought recovery for damages paid to McIntosh for fire losses under McIntosh's landlord policy with Auto-Owners.

Auto-Owners stipulated that Workman could file a contribution claim alleging that Shecklers' negligence caused the fire. Shecklers tendered defense of the third-party claim to Auto-Owners which refused to defend it.

At issue is whether this court's holding in *Dix Mutual Insurance Company v. LaFramboise,* 149 Ill.2d 314, 597 N.E.2d 622, 173 Ill. Dec. 648 (1992), made the Shecklers co-insured under the terms of lease for losses paid by Auto-Owners pursuant to its policy.

ISSUE PRESENTED

Contrary to Auto-Owners' brief, the sole issue is whether the uncontroverted material facts of record made the Shecklers co-insured under Auto-Owners' policy and thus entitled to protection from personal liability arising from their negligence which caused the fire losses paid by Auto-Owners.

STATEMENT OF FACTS

This declaratory judgment action was filed by Monroe and Dorothy Sheckler against Auto-Owners Insurance Company. It arises from Auto-Owners' refusal to defend and possibly indemnify the Shecklers in a Third-Party Complaint for contribution filed on behalf of Wayne Workman in *McIntosh v. Workman*, Tazewell County Case No. 17-L-49. (C68-70, SA 7-9) The issues on appeal are grounded in uncontroverted facts from that underlying litigation. Accordingly, this Statement of Facts initially addresses the facts in the underlying case and then summarizes the procedural history of the cause on appeal.

The Residential Lease

Monroe and Dorothy Sheckler rented a premises at 2205 Valentine, Pekin, Illinois, from Plaintiff Ronald McIntosh. A written lease dated August 6, 2016, provided in pertinent part that McIntosh would provide fire insurance for the premises. (C82, C90, SA 1) At his discovery deposition, McIntosh testified that in 2016 he owned 21 rental houses in the Pekin area. (C83, SA 2) He acknowledged that the insurance premiums were paid as they come due from rental payments received from the various tenants. (C84, SA 3) The house rented to the Shecklers was covered by landlord's insurance purchased by McIntosh from Auto-Owners Insurance Company. (C99-C100, SA 4-5) The policy provided replacement cost coverage, rental loss protection, and liability protection. (C132, C168)

The Service Call

Shortly after taking possession, Shecklers became aware that the gas range in the rental house had an inoperative oven and one surface burner which did not function.

(C350) The landlord, McIntosh, contacted Wayne Workman, an appliance repairman, to repair the stove. (C331) Workman arrived at the house about 1:00 p.m. on August 26, 2016. He met with the Shecklers and attempted to repair the stove. (C332) He moved the stove out from the wall about one foot or less to unplug it so he could install an ignitor for the oven. (C333-C338) He was unable to locate a replacement part for the defective burner, so he removed the knob from the range which operated that burner and pushed the stove unit back into place so that the Shecklers could utilize it while he attempted to locate a part or alternatively, make arrangements to replace the stove. (C336-C337) Workman testified that he smelled no gas leaking from the area of the stove at the time he left the premises. (C340)

Mr. Sheckler testified that Workman worked on the stove for a relatively short time. Sheckler understood that Workman would be back after he hopefully located a part. (C351)

The Fire

Mr. Sheckler testified that gas odors appeared after Workman left and became stronger. (C351) Family members complained of an increasing gas odor. (C352) Shecklers' son complained and sprayed Febreze to cover the odor. (C352) Instead of spraying a little soap and water to see if there was a gas leak, Mr. Sheckler lit the oven and started the fire which severely damaged the house. (C353)

Underlying Suit

On behalf of Auto-Owners, Ronald McIntosh filed suit against Wayne Workman in Tazewell County Circuit Court (17-L-49), claiming that Workman was responsible for the fire damages to the rental house. Trial by jury was demanded.

In 17-L-49, McIntosh claimed $148,000.00 in damages plus costs and attorney's fees. Auto-Owners, as subrogee of McIntosh, is a party in interest pursuant to the subrogation rights in its policy. McIntosh also claimed his $500.00 deductible and additional losses. (C85)

McIntosh, Workman, and the Shecklers were all deposed on July 17, 2017. (C309, C329, C350) Based on the exhibits in the McIntosh deposition and the testimony of the Shecklers, Workman filed a motion for leave to file a third-party complaint for contribution against the Shecklers on September 11, 2017 – citing *Dix Mutual Insurance Company v. LaFramboise,* 149 Ill.2d 314, 597 N.E.2d 622, 173 Ill. Dec. 648 (1992). (C62-C64)

Workman's Third-Party Complaint alleges that the Shecklers were negligent in failing to advise Workman that they smelled gas after he had completed his work and before he departed, failing to shut off the gas when they smelled an increasingly strong odor, failing to call the gas company when they continued to smell the increasing odor of gas, attempting to mask the increasingly strong odor of gas by spraying Febreze air freshener and lighting the oven in the presence of a strong odor of gas – thus causing the fire which damaged the house. (C68-C69)

The Shecklers were served with process and Attorney Mark Wertz entered an appearance on their behalf in Case 17-L-49

The Insurance Policy

Contrary to Auto-Owners arguments, there were not two landlord policies – one for the property and another for liability. There was one policy number (#48-075-611-01), one set of policy declarations, and "liability" coverage was a scheduled form #15055

(C99-100, SA 4-5) as listed on the policy declarations page. (C. 144, SA 6) The policy did not name the Shecklers but was identified as a landlord's policy. The liability endorsement covers "any insured." (C144, SA6)

On or about November 1, 2017, Attorney Wertz tendered defense of the Shecklers to Auto-Owners Insurance. That tender was rejected by Auto-Owners on January 26, 2018, and again on April 30, 2018. (C14-C15)

Declaratory Suit

On June 20, 2018, Mr. and Mrs. Sheckler filed this declaratory action against Auto-Owners Insurance Company, Ronald McIntosh, and Wayne Workman. (C8-C25) It was amended on July 2, 2018. (C26-C44)

On July 6, 2018, Defendant Workman filed his Answer to the Amended Complaint of the Shecklers with a Counterclaim seeking a declaration that Auto-Owners has liability coverage for Monroe and Dorothy Sheckler for their pro rata share of the damages to McIntosh's property and lost rentals. (C46-C47)

An Answer was filed by Auto-Owners Insurance Company denying it had any duty to defend the Shecklers and denying that it had any coverage for the Shecklers. (C49-C51)

Motions for Summary Judgment

No discovery took place in the declaratory suit. The material facts pertaining to whether Auto-Owners had a duty to defend the Shecklers and/or provide liability coverage for the Shecklers are uncontroverted. Accordingly, all parties pursued motions for summary judgment.

On March 20, 2019, the case was assigned to Judge Kirk Schoenbein. (C277) On May 20, 2019, the parties argued their cross-motions for summary judgment at length before Judge Schoenbein. Those arguments are in the Report of Proceedings on appeal. (R2-R91)

Summary of Arguments on Summary Judgment

At the outset of the hearing on the cross-motions for summary judgment, the following agreed set of uncontroverted facts were read into the record (R6-R12):

1. Ronald McIntosh had a residential lease with the Shecklers.

2. Under the lease, McIntosh would insure the house for fire and other damage.

3. Auto-Owners wrote a landlord policy for McIntosh covering it for fire damage and lost rentals.

4. McIntosh had 21 rental properties at the time in the Pekin area.

5. Premiums for the house in question had been paid before the Shecklers started their lease.

6. Auto-Owners' policy does not say that it covers tenants for liability coverage.

7. Defendant Wayne Workman did work on the stove in the rental house on August 26, 2016.

8. A fire resulted and Auto-Owners paid McIntosh for property damage and lost rentals.

9. McIntosh sued Workman. That suit included McIntosh's deductible and Auto-Owners' subrogation claims for property damage and lost rentals.

10. Defendant Workman denied liability but filed a third-party contribution claim against the Shecklers.

11. Shecklers tendered defense of the third-party claim to Auto-Owners for both a defense and for coverage.

12. Auto-Owners denied the request for defense under a Reservation of Rights and denied coverage.

13. Shecklers employed Attorney Mark Wertz to represent them in the underlying case.

14. The policy premium was paid by McIntosh on the house in question on March 19, 2016.

On behalf of both Workman and the Shecklers, Workman's counsel argued that under *Dix Mutual Insurance Company v. LaFramboise*, 149 Ill.2d 314, 597 N.E.2d 622, 173 Ill. Dec. 648 (1992), the policy issued to McIntosh covered the Shecklers for the property damage claim in the contribution third-party suit filed by Workman. The five holdings of *Dix Mutual* were argued as follows:

First, under *Dix Mutual*, tenants are implied insureds and therefore immune from a direct subrogation suit by the landlord or the landlord's insurer when their rent pays for the insurance. (R21)

Second, the crucial determination is the intent of the lease, i.e. that the landlord will provide the property insurance and the rental payments are intended to pay the insurance premiums. (R23) Judicial admissions of McIntosh established that he used rental payments from his 21 properties to pay for insurance premiums as each policy became due. (R30)

Third, *Dix Mutual* applies to subrogation claims, which are equitable in nature, whether direct claims against the tenant or third-party claims for contribution. (R25) This is because contribution is an equitable doctrine based on avoidance of unjust enrichment.

Fourth, *Dix Mutual* holds that it is the intent of the property leases under these circumstances that tenants are insured for their own negligence for damages to the insured premises. (R27)

Fifth, *Dix Mutual* is based on lease language less clear than to that found in the McIntosh-Sheckler lease. (R27)

Cases cited by Auto-Owners and McIntosh, which involved either commercial leases or claims not based on the damage to the leasehold residential property were distinguished. (R28-R29) At one point, the trial court identified the key issue, stating:

> As a matter of law that tenants are always the co-insureds for insuring the (rental) property. (R34)

The court recognized that *Dix Mutual* was a 6-1 decision of the Illinois Supreme Court. (R37) It was further argued that by not defending the Shecklers under a Reservation of Rights, Auto-Owners had waived whatever technical policy defenses it might have. (R40)

Counsel for Auto-Owners argued that coverage and duty to defend had to be based on policy language (R42) and that the Shecklers did not "pay" the insurance premium for this property. (R43) Auto-Owners claimed that *Dix Mutual* did not override exclusionary language in Auto-Owners' policy. (R47) It argued that *Dix Mutual* had no application to a contribution suit for property damage. (R50) Auto-

Owners disputed that the intent of the Shecklers' lease was to have premiums paid from rental proceeds. (R52) It argued that the fact that the Shecklers had been sued for contribution by a third-party was a "significant distinction" (R54) and that Auto-Owners had no duty to consider *Dix Mutual* in determining whether there was a duty to defend the Shecklers. (R55)

McIntosh's counsel argued that property damage coverage and liability coverage were separate. (R60) An affidavit from McIntosh was offered stating that he never intended to provide liability coverage to the Shecklers. (C452-C453) It was claimed that if Shecklers and Workman were correct, Auto-Owners would be exposed to unlimited liability for both auto and other third-party torts. (R61) It was claimed that *Dix Mutual* had no applicability. (R62-R63) Arguments raised by Auto-Owners were repeated. (R64-R65)

In essence, McIntosh claimed that *Dix* was limited to direct subrogation claims against the tenant and that the intent of McIntosh's lease with the Shecklers should be determined by his affidavit – not from the lease terms. (R67) It was claimed that McIntosh had elected not to sue the Shecklers directly – even though he could have done so. (R69)

Workman's counsel then briefly addressed the arguments raised by Auto-Owners and McIntosh. (R71-R76) Counsel pointed out that *Dix Mutual* was determinative of the intent of the parties to the lease. *Dix Mutual* specifically recognized that its holding was limited to damages to the leasehold property of the landlord, but for that purpose the tenant is considered an additional insured as a matter of law. (R71) There was no evidence that Auto-Owners or any insurer "screens" residential tenants for coverage.

Moreover, the insurer's duty to defend has not been governed by the "Eight Corners Rule" since the Supreme Court decision in *Pekin Insurance v. Wilson*, 237 Ill.2d 446, 930 N.E.2d 1011, 341 Ill. Dec. 497 (2010). (R72-R73) (Insurer deemed on notice of facts in a third-party complaint that gave rise to potential coverage.) Counsel for Workman also argued that *Dix Mutual* is based on the commercial reality of residential rentals to unsophisticated tenants and so it has no application in non-residential leases. In short, Workman cannot be charged with 100% responsibility for property losses which were in large part or entirely caused by Plaintiff's tenants. (R76)

Counsel for the Shecklers stated he had "nothing to add." (R76)

The court then addressed issues relating to obtaining deposition testimony from Mr. Sheckler, who was being treated for advanced cancer. (R76-R89)

Decisions In The Courts Below

For reasons unrelated to this case, Judge Schoenbein was not reappointed as an associate judge. The action was then reassigned to Judge Michael Risinger. (C557) He stated that he had reviewed the matter and then entered summary judgment in favor of Auto-Owners and against both the Shecklers and Workman on August 7, 2019. (C564- C566) On the record on August 2, 2019, Judge Risinger explained his decision as follows:

> I find that reading Dix carefully, that as it applies to this case, Auto-Owners does not owe a duty to defend Sheckler. Sheckler is not being subrogated against. Sheckler is essentially being sued by the third-party for negligence.
>
> Sheckler is not being sued for property damage, so I don't find that - - and I'm not sure if that grants a summary judgment or denies a summary judgment. You guys need to figure that out for me based upon my notes here and what I'm ruling. (R95)

In the same hearing, the court refused to continue the jury trial of the underlying case until this declaratory suit had been resolved.

Notice of Appeal was filed by the Shecklers on August 23, 2019. (C570-C571)

The underlying case (17-L-49) was tried to a jury in December 2019 – while the coverage suit was on appeal. The Shecklers employed Attorney Mark Wertz, who defended them in 17-L-49, including discovery, motion hearings, and the jury trial itself. The jury exonerated Workman, rendering the third-party claim against the Shecklers moot. (All this occurred after the decision of the trial court in 18-MR-149.)

On October 22, 2021, the Third District reversed the circuit court and entered judgment in favor of the Shecklers. The majority opinion accurately summarizes the pertinent facts and the applicable law. The concurring opinion disagrees with the rationale of *Dix Mutual*, but recognizes it as controlling authority. The dissenting opinion fails to recognize that 17-L-49 was a subrogation case and offers a coverage analysis similar to the lone dissent in *Dix Mutual*.

ARGUMENT

Introduction:

Auto-Owners' entire brief focuses on those three assertions about the facts or the law.

First, that there were separate property and liability policies issued by Auto-Owners. As the record demonstrates, there was one policy with several coverages. (C99-

100, SA 4-5) One premium was charged. The "liability" coverage (Form #15055) is listed on the master policy. (C99, SA 4)

Second, that Shecklers were not named on the policy. Under *Dix Mutual Ins. Co. v. LaFramboise*, 149 Ill.3d.314, 597 N.E.2d 622, 173 Ill. Dec. 648 (1992) and other cases, this is irrelevant if the claim arises in a subrogation context where the insurer seeks recovery of fire damage, the landlord is required to provide fire insurance coverage, and the tenant's rent is intended to pay the fire insurance premiums as they become due.

Third, Auto-Owners' policy contains a liability exclusion which, if enforceable, would render the holding of *Dix Mutual* inapplicable.

Here we deal with Auto-Owners' subrogation rights and responsibilities, all triggered by its decision to pursue subrogation for a fire loss against a third-party, Wayne Workman, who was ultimately exonerated by a jury in December 2019.

I. THE HOLDING IN DIX MUTUAL IS CLEAR AND UNEQUIVOCAL

The central issue on appeal is whether this Court's decision in *Dix Mutual Ins. Co. v. LaFramboise*, 149 Ill.2d. 314, 597 N.E.2d 622, 173 Ill. Dec. 648 (1992) is controlling. It is important to recognize each of the specific holdings in that decision. More specifically:

First, subrogation is equitable and is intended to put the company seeking subrogation the place of or "shoes of" the insured. *Dix Mutual Ins. Co. v. LaFramboise,* 149 Ill.2d at 319, 597 N.E.2d at 624, 173 Ill. Dec. at 650. Auto-Owners' subrogation rights are limited by whatever duties the landlord owed the Shecklers under the lease.

Second, in *Dix Mutual*, the lease did not expressly require the landlord to insure the leased house for fire loss, but it did require the tenant to insure his personal property.

From this, this court concluded as a matter of law that the intent of the lease required the landlord to provide fire insurance for the leased premises. *Dix Mutual Ins. Co.,* 149 Ill.2d at 322, 597 N.E.2d at 626, 173 Ill. Dec. at 652. In contrast, the McIntosh-Sheckler lease required the landlord to provide fire insurance on the property. (C90) The intent to provide property insurance for fire loss was express – not implied as in *Dix*.

Third, because fire insurers "expect to pay fire losses for negligent fires," this court concluded that the landlord must look solely to insurance proceeds for fire loss payments and not to the tenant. *Dix Mutual Ins. Co.*, 149 Ill.2d at 322, 597 N.E.2d at 626, 173 Ill. Dec. at 652. In the case at bar, the Shecklers did not insure the leasehold premises but relied on the landlord, McIntosh, to do so. (It is doubtful the Shecklers had an insurable interest in the premises.) Auto-Owners was paid a premium for the coverages provided McIntosh based on the value of the rental house.

Fourth, this court concluded that because landlords "consciously figured on the rentals paid by the tenant as the source of the fire insurance premiums," the tenant was intended as an additional insured under the fire policy. *Dix Mutual Ins. Co.*, 149 Ill.2d at 322-233, 597 N.E.2d at 626, 173 Ill. Dec. at 652, citing *Cerny v. Pickas,* 7 Ill.2d 393, 398, 131 N.E. 2d 100, 104 (1955). In the case at bar, landlord McIntosh regularly paid the insurance premiums on his 21 houses as they became due from a common account funded by rental payments.

Finally, the majority concluded that the landlord's insurer could not subrogate against the tenant, its own insured, under well-established case law. *Dix Mutual Ins. Co. v. LaFramboise*, 149 Ill.2d at 323, 597 N.E.2d at 626, 173 Ill. Dec. at 652.

In a concurring opinion, Justice Freeman felt that rather than the broad holding of

the majority, the "better reasoned view" should base decisions not on the mere existence of insurance but on the parties' agreement as to the allocation of that burden." *Dix Mutual Ins. Co.*, 149 Ill.3d. at 325, 597 N.E.2d at 627, 173 Ill. Dec. at 653. Ironically, the McIntosh-Sheckler lease expressly allocated the fire insurance burden to the landlord. (C90, SA 1) Any concern about potential liability beyond the value of the premises insured is irrelevant.

Justice Heiple's dissent simply disagreed with the other six Justices – preferring a restrictive, traditional view of the law. *Dix Mutual Ins. Co. v. LaFramboise*, 149 Ill.2d. at 326-329, 597 N.E.2d at 628-631, 173 Ill. Dec. at 654-656. Justice Heiple's dissent could have been drafted by Auto-Owners' counsel. Undecided in *Dix Mutual* was whether 100% of an insurance loss caused in large part or in its entirety by tenant who are "additional insureds" for fire loss can be imposed on a third-party defendant whose fault is less than 100% of the fire's cause. As will be discussed, the legal mechanism available in a jury trial to apportion the tenant's fault is a third-party contribution action.

II. DIX MUTUAL PROTECTS TENANTS FROM THEIR OWN NEGLIGENCE

Dix Mutual held that absent express contrary provisions in a residential lease, tenants are considered additional insureds for purposes of fire damage to the leased property under the landlord's policy, stating:

> It is well settled that an insurer may not subrogate against its own insured or against any person or entity who has the status of a co-insured under the insurance policy…Under the particular facts of this case, the tenant, by payment of rent, has contributed to the payment of the insurance premium, thereby gaining the status of co-insured under the insurance policy. Both the landlord and tenant intended that the policy would cover any fire damage to the premises no matter who caused it and to conclude otherwise would defeat the reasonable expectations of the parties.

Dix Mutual Ins. Co., 149 Ill.2d at 323, 597 N.E.2d at 626, 173 Ill. Dec. at 652. (emphasis added)

In short, under *Dix Mutual* it is not the details of the insurance policy, the precise manner in which the payment of the rent is deposited, or the payment of a particular policy premium which controls. It is the intent of the underlying lease that controls.

The tenants in *Dix Mutual* had no insurable interest in the rental house itself. The reason they could not be sued for subrogation was because the lease put the burden of providing fire insurance to protect their interest on the landlord as a matter of law. *Dix Mutual* has been established Illinois law for more than 30 years but has never been considered in the context of a contribution claim against the tenant.

Reich v. Tharp, 167 Ill.App.3d 496, 521 N.E.2d 530, 118 Ill. Dec. 248 (5th Dist. 1988), cited with approval in *Dix Mutual*, held that a counterclaim against a party who was intended to be provided coverage but not named in the underlying policy would not lie, stating:

> No right of subrogation arises against a person who holds the status of an additional insured. (16 G. Couch Insurance §61:137, at 197 (2nd Ed. 1983)). Where the insured is required by contract or lease to carry insurance for the benefit of another, the other party may attain the status of a co-insured and no subrogation may be taken against such a party in the absence of a design or fraud on the part of the co-insured. (16 G. Couch Insurance §61:137, at 200 (2nd Ed. 1983)). The doctrine of subrogation originates in the general principles of equity and will be applied or not according to the dictates of equity and good conscience and considerations of public policy. (6 A.J. Appleman, Insurance Law and Practice, §4054, at 142 (1972)).

Reich v. Tharp, 167 Ill.App.3d at 501, 521 N.E.2d at 533-534, 118 Ill. Dec. at 251-252.

The court went on to hold that a tenant with the status of a co-insured is immune from subrogation claims by both the landlord and its insurer. All subrogation must be applied equitably.

Nationwide Mutual Fire Insurance Co. v. T and N Master Builder Inc., 2011 IL App (2d) 101143, 959 N.E.2d 201, 355 Ill. Dec. 173, applied the "no subrogation" rule in a commercial context. Significantly, the court rejected attempts to determine the "intent" of the parties to the lease at issue from parol testimony. Applying the ruling of *Dix Mutual*, the Second District held:

> Where the language of a lease is unambiguous, the parties' intent must be ascertained from the lease alone.

Nationwide Mutual Fire Ins. Co. v. T and N Master Builder and Renovations, 2011 IL App (2d) at ¶16, 959 N.E.2d at 206, 355 Ill. Dec. at 178.

Unlike the cause on appeal, that lease did not specifically require the landlord to insure the property. Nonetheless, because rentals paid the policy premium, the tenant was held to be an additional insured and was not subject to be subjected to subrogation liability.

Auto-Owners was well aware of the holding in *Dix Mutual.* See *Auto Owners v. Callaghan,* 2011 IL App 3d 100530, 351 Ill. Dec. 746 (3rd Dist. 2011). Ironically, the dissent in *Callagan* was authored by the same justice who wrote the concurring opinion in the Court below.

III. DIX MUTUAL APPLIES TO CONTRIBUTION CLAIMS AGAINST TENANT-INSUREDS

Subrogation is an equitable doctrine. *Dix Mutual Ins. Co.*, 149 Ill.2d at 319, 597 N.E.2d at 624, 173 Ill. Dec. at 650. Contrary to the opinion of dissenting Justice McDade, there was never a doubt that Tazewell County Case 17-L-49 was a subrogation

case for Auto-Owners against Wayne Workman. (C28, C50, C172; Auto-Owners' Petition, p.5) This was confirmed by deposition testimony, documentation exchanged in discovery, and admitted in both oral argument and the pleadings. The fact that the McIntoshes had a deductible renders 17-L-49 no less a subrogation case.

Auto-Owners' tactics in this litigation were inequitable to the Shecklers, whose rent was intended to pay for fire and hazard insurance coverage. If Workman had been found negligent; Shecklers could have been exposed to up to 99% of the damages for the fire losses paid by Auto-Owners to the McIntoshes.

Auto-Owners' tactics were also inequitable to Workman, who denied liability. His Third-Party Complaint sought to allocate some of the negligence to the Shecklers. (C68-70, SA 7-9) If we follow the rationale of Auto-Owners, 17-L-49, Workman, if 1% at fault, was exposed to paying for 100% of Auto-Owners' loss. This result would have been totally inequitable and defeat the public policy inherent in the Contribution Act, 740 ILCS 100/1, *et seq*.

In a jury trial, the only legal mechanism available to apportion relative fault between alleged tort feasors is contribution. The Shecklers had no principal-agent relationship with their landlord whereby their negligence could be attributed to reduce the recovery by Auto-Owners. The jury is not advised of Auto-Owners' interest if there is a deductible. The effect of Auto-Owners' refusal to defend was to deprive the Shecklers of the insurance protection to which they were entitled in their lease.

Because the jury ultimately exonerated Workman of any liability, only the Shecklers have been damaged. The attorney who successfully defended the third-party contribution claim in 17-L-49 has gone uncompensated.

IV. DUTY TO DEFEND

Auto-Owners cites numerous cases in support of the "eight corner" rule for determining whether there is a duty to defend. That approach to determining the duty to defend in a fire case involving a landlord and a tenant is inapposite for two reasons:

First, *Dix Mutual* made the tenants, the Shecklers, additional co-insureds as a matter of law under the lease provisions and the policy at issue. They should not be exposed to personal liability - even if their negligence caused the fire. That issue is expressly addressed in *Dix Mutual,* 149 Ill.2d at 323, 597 N.E.2d at 626, 173 Ill.Dec. at 652.

Second, the eight corners rule is not applicable in Illinois since this court's decision in *Pekin Insurance Company v. Wilson*, 237 Ill.2d 446, 930 N.E.2d. 1011, 341 Ill. Dec. 497 (2010). Under *Wilson*, the duty to defend is not limited to comparing the "eight corners" of the insurance policy and the complaint. An insurer now must consider whatever other information of which it has notice. Citing *Holabird v. Root*, 382 Ill.App.3d 1017, 1031-32, 886 N.E. 2d 1166, 320 Ill.Dec. 97 (1st Dist. 2008), with approval, the *Wilson* court stated:

> The trial court should be able to consider all the relevant facts contained in the pleadings, including a third-party complaint, to determine whether there is a duty to defend. (emphasis added)

Pekin Ins. Co. v. Wilson, 237 Ill.2d at 461, 930 N.E.2d. at 1020, 341 Ill. Dec. at 506 (2010).

Auto-Owners was on notice of the terms of the McIntosh-Sheckler lease, on notice of the fact that it was writing a fire insurance policy for a rental property, and on notice of the pleadings and deposition testimony in 17-L-49 before it denied liability and refused to defend. Its liability endorsement (#15055) covers any insured – not just the landlord.

(C144, SA6) Auto-Owners was fully aware of these uncontroverted facts and the law, which triggered the applicability of *Dix Mutual*.

Having misconstrued *Dix Mutual* and having ignored uncontroverted facts and pleadings raising its duty to defend, Auto-Owners is now estopped from asserting any policy exclusions. The existence of a Third District Appellate decision establishes a good faith issue which required a defense under a reservation of rights. *Clemmons v. Travelers Ins. Co.*, 88 Ill.2d 469, 479, 430 N.E.2d. 1104, 1009, 58 Ill. Dec. 853, 858 (1981). By not defending the Shecklers, additional insureds under *Dix*, Auto-Owners waived any right to assert a claimed exclusion in its liability coverage – which specifically covered "all" insureds. (C 144, SA 6)

V. NONE OF THE CASES CITED BY AUTO-OWNERS SUPPORT ITS POSITION ON APPEAL

Landlord-tenant cases decided before *Dix Mutual* in 1992 have no applicability. *Dix Mutual* changed the legal landscape with regard to when a tenant becomes a coinsured under a landlord's policy of insurance.

Hacker v. Shelter Insurance, 388 Ill.App.3d 386, 902 N.E.2d. 188, 327 Ill. Dec. 433, (5th Dist. 2009) has no applicability. It involved a claim for general liability coverage for losses unrelated to fire damage, i.e., personal injury to a tenant's invitee. The loss in *Hacker* could have been insured by the tenant under a tenant policy. The court held that such a risk of loss was "unknowable" and thus refused to extend *Dix Mutual* to that context, stating:

> The premium for that liability insurance coverage would likely be cost-prohibitive considering the magnitude of the potential risk covered by the policy.

Hacker v. Shelter Ins. Co., 388 Ill.App.3d at 393, 902 N.E.2d. at 194, 327 Ill. Dec.

at 438.

In contrast, the risk which Auto-Owners insured in this case was limited to the cost of repairs and lost rentals. These are the risks which it undertook in setting premiums so they were not "unknowable" within the meaning of *Hacker*.

In *Combs v. Schmidt,* 2012 IL App (2d) 110517, 976 N.E.2d. 659, 364 Ill. Dec. 381, a tenant cited *Dix Mutual* for the proposition that she was co-insured in the context of a claim for spoilation of evidence relative to a house fire. *Combs* did not involve a subrogation claim for damage to the insured premises. It was a Wrongful Death suit.

Pekin Ins. Co. v. Murphy, 2014 IL App (2d) 140020-U, was a Rule 23 opinion. It is questionable whether it was properly cited. It involved a claim against a tenant for water damage – an issue not addressed in a lease which did not require the landlord to provide such insurance.

Auto-Owners offers no reported case in which liability coverage was denied when the claim for negligence against the tenant was for fire damage for which the landlord was required to provide insurance and to which the rental payments were intended to pay.

VI. DIX MUTUAL IS GOOD LAW AND GOOD PUBLIC POLICY

Auto-Owners continues to base its arguments not on the intent of the lease between the Shecklers and their landlord but on the fine print in its policy. *Dix Mutual* expressly rejected looking to the insurance policy to see who is named or which coverages are excluded. The tenant is a co-insured.

In *Dix Mutual*, this court ruled that up to the value for the property insured, the tenant whose rent was intended to pay for coverage, is an additional insured – even for his or her own negligence. That insurable risk is limited and calculable.

Auto-Owners cannot impose total liability on a minimally responsible subrogation defendant and leave the Shecklers exposed to personal liability for their negligence which damaged the insured property. Furthermore, Auto-Owners could not deny them a defense under a reservation of right.

If this court is inclined to abandon *Dix Mutual* or limit its applicability into meaninglessness, it should not be done retroactively. However, *Dix Mutual* remains good law and is already controlling here – as recognized by the majority opinion in the Third District Appellate Court.

CONCLUSION

Application of the majority and concurring opinion in *Dix Mutual* is dispositive of every argument raised by Auto-Owners.

It is not the intent of the insurance contract that controls these subrogation cases. It is the intent of the lease that the landlord provide the tenant insurance protection for fire loss to the premises that is dispositive.

The fact that the issue arises in the context of a contribution claim cannot, as a matter of law, deprive the tenant of that protection. Auto-Owners stands in the shoes of its insureds with respect to subrogation and is bound under the terms of the lease provided insurance for their own negligence. Ironically, it was only the tenants' negligence that caused this fire.

The judgment of the Third District Appellate Court should be affirmed.

Respectfully Submitted,

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Attorneys for Monroe Sheckler and Dorothy Sheckler

CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), contains 23 pages.

/s/ Mark E. Wertz
Mark E. Wertz

SUPPLEMENTAL APPENDIX

TABLE OF CONTENTS TO SUPPLEMENTAL APPENDIX

Rent shall be _____ per month, PAYABLE IN ADVANCE or on the____ day of each month, to Owner or his agent at the following address:

In the event rent is to be paid late, the Tenant must notify the owner or agent five days prior to said late payment. FAILURE TO NOTIFY THE OWNER OR AGENT WILL CARRY A LATE CHARGE OF $10.00 PER DAY THAT THE RENT IS LATE, FOR 5 DAYS; THEN AN AUTOMATIC EVICTION OF THE PREMISES. A 10% late fee will be charged on all rent money (including past due balances), not paid within ten days of the due date._____ (initial)

DEPOSIT: If an application for occupancy is accepted by owner or his agent and then rejected by the prospective tenant, all money deposited to hold the house for the prospective tenant shall be forfeited by the prospective tenant.

TRANSFERS: Upon 30 days notice, in writing, and with certified documentation, Tenant will be released from their lease because of job related transfers.

MULTIPLE OCCUPANCY: It is expressly understood that this agreement is between Owner and each signatory individually and severally. In the event of default by any one signatory, each and every remaining signatory shall be responsible for timely payment of rent and all other provisions of this agreement.

UTILITIES: Tenant shall be responsible for the payment of Ameren IL (gas & electric) and IL. American Water services._____(initial) Owner shall pay garbage and wastewater services.

USE: The premises shall be used as a residence by undersigned Tenants with no more than_____ adults and_____ children and for no other purpose, without prior written consent of Owner. Occupancy by guests staying over 15 days will be considered to be a violation of this provision.

INSURANCE: Owner shall maintain fire and other hazard insurance on the premises only. Tenant shall be responsible for any insurance they desire on their possessions contained in the leased premises. In case the premises should be rendered untenantable by fire, explosion or other casualty, owner may, at his option, terminate this lease or repair said premises within sixty (60) days. If owner does not repair said premises within said time, or the building containing said premises shall have been wholly destroyed, the term herby created shall cease and determine.

BY MR. ROBERTSON:
Q. Can you tell me what additional documentation you believe would have existed regarding the property?
A. I'm trying to really think what all is involved in there. Because we're missing page 2, 3, 4, and 5.
Q. Is this a standard form lease that you have used for rental houses?
A. Yes.
Q. Can you tell me generally what was on pages 2, 3, 4, and 5?
A. Well, I mean, like page 2 says where to -- you know, that I'm the landlord/property owner, you know, where to mail the rent to.
Q. Okay.
A. Just other, you know, no pets allowed, no, you know -- what's allowed at the property and, you know, that they have to follow the, you know, ordinances of the town.
Q. General --
A. Just general rules, correct.
Q. And this is going to shock you, but I was a trained -- I'm a trained advocate and I can

notice there was a gap between pages 1 and 6, and that's one of the reasons I brought it up. What about page 3, what would be -- would have been on page 3?
A. I mean, most of it is all general rules. There's a thing in there if you pay rent, you know, you have a five-day --
Q. Grace period?
A. Correct, grace period. If you paid after that, you know, there's the late fee. So many months in a row late calls for, you know, me to take legal action to evict them.
Q. Can you make a copy of those missing pages available to your attorney --
A. Yes.
Q. -- so he can provide them?
MR. ARNOLD: Do you still have them?
THE WITNESS: Not -- I probably -- I do not recall if I have their lease still. But I have a lease.
MR. ARNOLD: A form?
MR. ROBERTSON: You have a specimen copy?
THE WITNESS: Correct.

MR. ARNOLD: An example copy?
THE WITNESS: Correct. I can send you this (indicating), but it's blank.
MR. ARNOLD: I'm looking through the claim file and I have page 1 and 6.
MR. ROBERTSON: That's fine.
THE WITNESS: Is that okay though?
MR. ARNOLD: If it's okay with Mr. Robertson, it's fine with me. Okay.
MR. ROBERTSON: Off the record.

(Whereby a discussion was held off the record.)

BY MR. ROBERTSON:
Q. Was there anything that you recall in the pages 2, 3, 4, and 5 of the lease that dealt with that there was a requirement that the tenants carry any kind of insurance?
A. Yes, there is.
Q. What was that provision about the tenant insurance? What were they required to carry?
MR. ARNOLD: If you can remember.

THE WITNESS: Well, renters insurance.

BY MR. ROBERTSON:
Q. Would renters insurance generally -- and again I don't have your exact lease, but with 21 properties I assume you recall the general idea. Was it that they were to insure their own personal property?
A. Yes.
Q. Did you require them to produce a policy for you as part of the lease agreement?
A. No.
Q. Was there anything in the Rental Agreement that required them to insure the house itself against fire or other loss?
A. No.
Q. Was it your -- the Lease-Rental Agreement that you had on this house, Is that the same general Rental Agreement you had for all of your 21 properties?
A. Yes.
Q. So with regard to your -- I don't know what your tax returns will look like because they're not here, but generally speaking

then you would pay the property insurance for the various properties out of the rents received from the various renters; is that fair?
A. Yes.

(Exhibit C so identified for the record.)

BY MR. ROBERTSON:
Q. Exhibit C, these are some tax records that we received from your attorney. And again, I'm just trying to get the general understanding. The first page of Exhibit C looks like it is for tax year 2014 payable in 2015; is that right?
A. Yes.
Q. And it shows that the home site was assessed at 35 -- excuse me, $3,570.
A. Where are you seeing that at?
Q. It's right there (indicating). Did I get that right?
A. If that's what that means. I don't know what that means.

Q. Okay. Well, are you familiar with the fact that it is a fact that in Illinois the assessed value is roughly one-third of the fair market value, or at least is supposed to be?
A. That's what they say.
Q. Okay. So this shows the assessed value of the dwelling at $33,270. Did I get that correct (indicating)?
A. Yes.
Q. Did you ever appeal the tax assessment amount on this property?
A. No.
Q. Do you remember offhand what you paid for the property?
A. Yes.
Q. What did you pay?
A. 85,000 I believe it was.
Q. And that would have been approximately, you said, five years ago?
A. Well, five years prior to the fire. So approximately 2010. Now, when I purchased this property, it was a bank repossession.
Q. Did you then invest some money in renovating it?

A. Yes.
Q. Do you remember what you spent renovating?
A. Approximately 5- to 6,000.
Q. And under the lease -- we talked a little bit about the general terms of the lease. Under the lease were the tenants responsible for the real estate tax, or was that something that was essentially also included in their monthly rent?
A. I am responsible for the real estate taxes.
Q. So you would pay the real estate taxes out of the rental income as well as the insurance premiums?
A. Correct.

(Exhibit D so identified for the record.)

BY MR. ROBERTSON:
Q. Let's go to Exhibit D. The good news about Exhibit D is I don't have a lot of questions for you about it. How did you learn of the fire that occurred on August 26, 2015?

A. That's a long story.
Q. I've got time.
A. By phone is the short answer, by phone.
Q. Who called you?
A. I know for one the fire department called me.
Q. Okay. And that's the Pekin Fire Department?
A. Yes.
Q. Okay. Anyone else call you?
A. I do not recall if Dorothy called me or not really.
Q. That would be Dorothy Sheckler?
A. Yes. How I really found out about it is I was on a business trip that day with some coworkers, and one of my guys that was with me, his in-laws live directly behind that house. They knew that he worked with a guy that owned the house.
Q. Okay.
A. His mother-in-law called him, and he saw on his phone that it was his mother-in-law and he took the phone call, because we were on our way back to Morton.
Q. From?

15560 (10-08)
Issued 04-20-2015

AUTO-OWNERS INS. CO.

AGENCY ENVISION INSURANCE GROUP LLC
04-0096-00 Mkt Terr 013

Company Bill POLICY NUMBER 48-075-011-01
Company Use 07-51-IL-1003

INSURED RONALD DEAN MCINTOSH

Term 03-19-2015 to 03-19-2016

RATING INFORMATION

Adjusted Value Factor: 1.015
Construction: Frame
Families: 1
Territory: 51
Occupancy: Non owner Primary
Year Built: 1978
Roof Year: 2004

Rated Protection Class: 3
Hydrant: Within 1,000 Foot
Fire Dept: Within 5 Miles
Location: Inside City Limits
Community: PEKIN
No Solid Fuel Heating and No Fireplace

County: 90
Tazewell
Roof Material:
ASPHALT
Insurance Score: X803

TOTAL LOCATION PREMIUM $912.57

FORMS THAT APPLY TO THIS LOCATION: 15004 (07-97) 15058 (09-11) 15408 (06-13)
15426 (04-14) 15147 (02-06) 89028 (07-11) 15022 (07-97)

Wind or hail losses to your roof will be paid on a Replacement Cost basis.

SECURED INTERESTED PARTIES: See Attached Schedule

FORMS THAT APPLY TO ALL LOCATIONS: 15180 (07-97) 15167 (07-97) 15033 (07-97)
15390 (06-11) 15260 (03-07) 89350 (01-05) 15241 (07-08) 15432 (04-14)

TOTAL POLICY PREMIUM $912.57

EXHIBIT
F
7/27/22

C 99

Auto-Owners

Page 1

18560 (10-09)
Issued 04-20-2015
Policyholder since 2010

INSURANCE COMPANY
6101 ANACAPRI BLVD., LANSING, MI 48917-3999

DWELLING FIRE POLICY DECLARATIONS

Policy Revision Effective 03-19-2015

AGENCY ENVISION INSURANCE GROUP LLC
04-0098-00 Mkt Terr 013 (309) 343-1168

POLICY NUMBER 48-075-611-01

INSURED RONALD DEAN MCINTOSH
RITA KAY MCINTOSH

Company Use 07-61-IL-1003

ADDRESS 14060 MENNONITE CHURCH RD
PEKIN IL 61554-8550

Company Bill

POLICY TERM
12:01 a.m. 03-19-2015 to 12:01 a.m. 03-19-2016

	TERM
TOTAL POLICY PREMIUM PAID IN FULL DISCOUNT APPLIES	$912.57

The Paid in Full Discount does not apply to fixed fees or statutory charges.

LOCATION 001

SPECIAL FORM POLICY

Location: 2205 VALENTINE AVE PEKIN IL 61554-1955

PRIMARY PROPERTY AND LIABILITY COVERAGES	LIMITS	PREMIUM
A Dwelling	$147,500	Included
B Other Structures All Other Structures (Unless Specifically Excluded)	14,750	Included
C Personal Property	3,000	Included
D Loss of Rents	14,750	Included
F Landlord Liability (each occurrence) Entity Type: Individual	500,000	Included
G Medical Payments to Others (each person/each occurrence)	5,000	Included
Property Deductible $500 - All Peril Deductible		
COVERAGES INCLUDED IN YOUR POLICY		
Property Coverage Limitation for Fungi, Wet Rot, Dry Rot and Bacteria resulting from a covered cause of loss	$22,125	Included
Adjusted Value		Included
ADDITIONAL COVERAGES THAT APPLY		
Mine Subsidence		$68.00
TERRORISM - CERTIFIED ACTS SEE FORMS 80350, 15241, 50390		$9.48
TOTAL PREMIUM BEFORE ADJUSTMENTS		$1,466.48
PREMIUM ADJUSTMENTS THAT APPLY		
Property Deductible $500 - All Peril Deductible		
Age of Insured Discount - Policy Term Age 56		
Age of Construction Rating		
Paid In Full Discount		
Claim Free Discount		
Payment History Discount		
Insurance Score		
TOTAL ADJUSTMENTS		$543.91-

C 100

LANDLORD LIABILITY
Dwelling Policy

DEFINITIONS

1. The following definition applies to this endorsement in addition to those contained in the policy.
   Fungi means any type or forms of fungus, including but not limited to, any mold, mildew, mycotoxins, spores, scents or byproducts produced or released by any type or form of fungus.
2. The definition of Insured in the policy does not apply to this endorsement. As used in this endorsement, Insured shall mean, when you are designated in the Declarations as:
   a. an individual, you.
   b. a partnership or joint venture, you, your partners, your members and their spouses.
   c. a limited liability company, you and your members. Your managers are also insureds, but only with respect to their duties as such.
   d. an organization other than a partnership, joint venture or limited liability company, you, your executive officers and directors.

Any person (other than your employee), or any organization while acting as your real estate manager is also an Insured, but only with respect to their duties as such.

COVERAGES

COVERAGE F - LANDLORD LIABILITY
We will pay all sums any insured becomes legally obligated to pay as damages because of or arising out of bodily injury or property damage:
1. arising out of the ownership, maintenance or use of the described premises as a rental dwelling; and
2. caused by an occurrence to which this coverage applies.

We will settle or defend, as we consider appropriate, any claim or suit for damages covered by this endorsement. We will do this at our expense, using attorneys of our choice. This agreement to settle or defend claims or suits ends when we have paid the limit of our liability.

COVERAGE G - MEDICAL PAYMENTS TO OTHERS
We will pay the reasonable expenses incurred for necessary:
1. medical, surgical, X-ray and dental services;
2. prosthetic devices, eye glasses, hearing aids, drugs and medicines; and
3. ambulance, hospital, licensed nursing and funeral services.

These expenses must be incurred within three years from the date of the occurrence causing bodily injury covered by this endorsement. The bodily injury must be discovered, treated and reported to us within one year of the occurrence.
We may pay the injured person or the party that renders the medical services. Payment under this coverage is not an admission of liability by us or an Insured.

EXCLUSIONS

COVERAGE F - LANDLORD LIABILITY and
COVERAGE G - MEDICAL PAYMENTS TO OTHERS
No coverage applies:
1. to bodily injury or property damage reasonably expected or intended by the Insured. This exclusion applies even if the bodily injury or property damage is of a different kind or degree, or is sustained by a different person or property, than that reasonably expected or intended.

FILED
9/14/2017
TAZEWELL COUNTY CIRCUIT CLERK
TENTH JUDICIAL CIRCUIT OF ILLINOIS
SW

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT
TAZEWELL COUNTY, ILLINOIS

RONALD McINTOSH, Plaintiff, vs. WAYNE WORKMAN, Defendant and Third-Party Plaintiff, vs. MONROE SHECKLER and DOROTHY SHECKER, Third-Party Defendants.	)	Case No. 17-L-49

THIRD-PARTY COMPLAINT

NOW COMES Wayne Workman, Defendant and Third-Party Plaintiff, by Statham & Long, LLC, his attorneys, and by way of Third-Party Complaint against Monroe and Dorothy Sheckler, states:

1. This Complaint is brought under the Joint Tortfeasor Contribution Act, 740 ILCS 100/0.01, et seq.

2. To the extent that Monroe and Dorothy Sheckler ("Shecklers") are not considered plaintiffs as co-insureds of Auto-Owners with respect to Plaintiff's action against Workman, then Workman has a cause of action against them for equitable apportionment of the losses claimed based on their relative degree of fault.

3. At all pertinent times, Shecklers were tenants of the house owned by Plaintiff and had a duty to exercise ordinary care for its safety.

4. Shecklers were negligent in one or more of the following ways which proximately caused the fire which damaged the insured premises:

(a) Failed to advise Workman that they smelled gas after he had completed his work and before he departed.

(b) After Workman departed, failed to shut off the gas to the stove where they smelled an increasingly strong odor of gas.

(c) After Workman departed, failed to call the gas company when they continued to smell an increasing odor of gas.

(d) After Workman departed, attempted to mask the increasingly strong odor of gas by spraying Febreze air freshener in the house.

(e) Knowing of the existence of a strong gas odor, lit the oven to test it – thereby igniting the fire which destroyed the house.

5. To the extent that Workman may be liable to Plaintiff, which liability is expressly denied, then he is entitled to equitable apportionment of that loss against Shecklers and against Auto-Owners Insurance – their insurer.

WHEREFORE, Workman prays for contribution from Shecklers under the Contribution Act.

Respectfully submitted,

STATHAM & LONG, LLC

By: _____
Attorney for Defendant Wayne Workman

John W. Robertson
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Telephone: 309/341-6000
Facsimile: 888/419-2191
Email: jwr@galesburglaw.com
Email: jennifer.steck@galesburglaw.com

The clerk is requested to issue summons for service upon the third-party defendants as follows:

Tazewell County

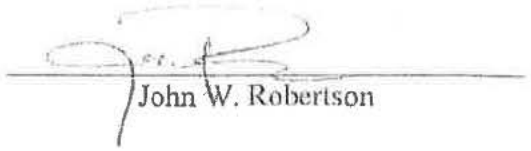
Monroe Sheckler
1921 Verbena Street
Pekin, IL 61554

Dorothy Sheckler
1921 Verbena Street
Pekin, IL 61554

CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies subject to the penalties of perjury under 735 ILCS 5/1-109 that, in compliance with 735 ILCS 5/15-1507(c)(3), the undersigned served a copy of the foregoing document on the following person by email on the 14th day of September, 2017:

Ronald McIntosh
c/o Attorney Bradley M. Arnold
KOLB CLARE & ARNOLD, PC
Via email to: barnold@kcalegal.com



John W. Robertson

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128012

NOTICE OF FILING and PROOF OF SERVICE

IN THE SUPREME COURT OF ILLINOIS

MONROE SHECKLER, and DOROTHY SHECKLER,

Plaintiffs-Appellees,

v.

AUTO-OWNERS INSURANCE COMPANY,

Defendants-Appellant,

RONALD MCINTOSH,

Defendant,

and

WAYNE WORKMAN,

Defendant-Appellee.

On Appeal from the Illinois Appellate Court, Third District, No. 3-19-0500
There Heard on Appeal from the Circuit Court for the Tenth Judicial Circuit,
Tazewell County, Illinois, No. 2018-MR-149
The Honorable **Michael D. Risinger**, Judge Presiding

The undersigned, being first duly sworn, deposes and states that on August 3, 2022, there was electronically filed and served upon the Clerk of the above court a **Brief.** On August 3, 2022, service of the **Brief** will be accomplished via Odyssey eFileIL and serve program by email to the following counsel of record:

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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

/s/ Mark Wertz
Mark E. Wertz