

TUESDAY, MAY 20, 2008  
10:00 A.M.

NO. 2

#24723

AMERICAN FAMILY MUTUAL  
INSURANCE COMPANY,  
Plaintiff and Appellant,

vs.

AUTO-OWNERS INSURANCE  
COMPANY, SANDRA PIKE,  
CHRISTOPHER PIKE, AND  
ASHLEY DEISS,  
Defendants and Appellees.

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(FOR APPELLANT)

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(FOR APPELLEES)

The Honorable William J. Srstka, Jr.  
Second Judicial Circuit  
Minnehaha County

(CIV 07-794)

20-20-10

**STATEMENT OF THE ISSUES****I. WHETHER THIS COURT SHOULD ADOPT THE PUBLIC POLICY RULE OF SUTTON V. JONDAHL AS AN INFLEXIBLE BARRIER PREVENTING A LANDLORD'S INSURER FROM SEEKING SUBROGATION IN THE FORM OF REIMBURSEMENT FROM THE INSURER OF TENANTS WHOSE NEGLIGENCE WAS SOLELY RESPONSIBLE FOR CAUSING A PROPERTY LOSS.**

The trial court answered this question in the affirmative, holding that the rule of *Sutton v. Jondahl* should be adopted to prohibit the landlord's insurer, American Family Mutual Insurance Co., from enforcing its contractual right of subrogation against the tenants and their insurer, Auto-Owners Insurance Co., because of public policy reasons discerned and adopted by the court.

- *Sutton v. Jondahl*, 532 P.2d 478 (Okla. Ct. App. 1975)
- *Rausch v. Allstate Ins. Co.*, 882 A.2d 801 (Md. Ct. App. 2005)
- *Koch v. Spann*, 92 P.3d 146 (Or. Ct. App. 2004)
- *Union Mutual Fire Ins. Co. v. Joerg*, 824 A.2d 586 (Vt. 2003)
- *Fire Ins. Exch. v. Hammond*, 83 Cal.App.4th 313 (Cal. Ct. App. 2000)
- *56 Assocs. v. Frieband*, 89 F.Supp.2d 189 (D.R.I. 2000)
- *Neubauer v. Hostetter*, 485 N.W.2d 87 (Iowa 1992)
- *Page v. Scott*, 567 S.W.2d 101 (Ark. 1978)
- SDCL § 43-32-10 and SDCL § 20-9-1

**II. WHETHER THE RESIDENTIAL LEASE AGREEMENT CONTEMPLATED THAT THE TENANTS AND THEIR HOMEOWNERS POLICY, AS OPPOSED TO THE LANDLORD'S BUSINESS OWNERS POLICY, WOULD BE ULTIMATELY RESPONSIBLE FOR A PROPERTY LOSS RESULTING SOLELY FROM THE NEGLIGENCE OF THE TENANTS.**

The trial court answered this question in the negative, holding that it did not think that the lease considered as a whole showed that it was reasonably anticipated by the parties that the tenant would be liable, in the event of a fire loss paid by the landlord's insurer, to a subrogation claim by the insurer.

- *Ziegler Furn. & Funeral Home v. Cicmanec*, 2006 SD 6, 709 N.W.2d 350
- *A-G-E-Corp. v. State*, 2006 SD 66, 719 N.W.2d 780
- *Rausch v. Allstate Ins. Co.*, 882 A.2d 801 (Md. Ct. App. 2005)
- *Koch v. Spann*, 92 P.3d 146 (Or. Ct. App. 2004)
- *Union Mutual Fire Ins. Co. v. Joerg*, 824 A.2d 586 (Vt. 2003)
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- *Page v. Scott*, 567 S.W.2d 101 (Ark. 1978)