

State Specific: Illinois



Does Res Judicata Bar a Property Damage Subrogation Claim Where Tenants in a Building Previously Filed a Small Claims Action Arising Out of the Same Occurrence? The Illinois Appellate Court Recently Said, “No.”

BY JOSHUA WHITESIDE, GROTEFELD, HOFFMANN, SCHLEITER, GORDON, OCHOA & EVINGER, LLP

The doctrine of *res judicata* generally has a preclusive effect in subrogation actions where an insured files a lawsuit and that claim is adjudicated before the insurance company initiates its subrogation action.

However, a recent Illinois case provides cautionary guidance as to how a separate, but related, claim could provide a defendant with grounds to argue that *res judicata* bars an insurance subrogation claim.

In *Indian Harbor Insurance Co. v. MMT Demolition, Inc.*, 2014 IL App (1st) 131734, 13 N.E.3d 108 (2014), a panel of the Illinois Appellate Court, First District, Fifth Division, overturned the entry of summary judgment by the trial court based upon *res judicata*. Indian Harbor Insurance Company was the subrogee of a property manager for property that suffered damages as a result of demolition activities by defendant MMT Demolition. The subject property was adjacent to a property demolished by MMT Demolition. The two buildings were attached by interlocking running boards connecting the front wall of the two buildings. MMT allegedly pushed and pulled the entire roof framing to separate the buildings, rather than

cutting the common boards. MMT Demolition's activity allegedly caused the front wall of the subject property to become bowed by 5 inches.

Five months after the loss, two tenants in the subject building filed a *pro se* lawsuit in the small claims court in the Circuit Court of Cook County against MMT Demolition and Indian Harbor's insured. Shortly thereafter, Indian Harbor's insured succeeded in obtaining dismissal of the tenant's claims against it, and the insured had no more involvement in the small claims suit. However, the tenants' claims against MMT Demolition proceeded to a bench trial, and the trial court entered judgment in favor of Defendant MMT Demolition.

Two years after the small claims

action was adjudicated, Indian Harbor filed a subrogation lawsuit against MMT Demolition. MMT asserted the affirmative defense of *res judicata* in its answer and later filed a motion for summary judgment based upon *res judicata*.

The doctrine of *res judicata* provides that a final judgment on the merits rendered by a court of competent jurisdiction bars any subsequent actions between the same parties or their privies on the same cause of action. *Rein v. David A. Noyse & Co.*, 172 Ill. 2d 325, 334, 665 N.E.2d 1199 (1996). In Illinois, establishing the doctrine of *res judicata* requires that "three requirements must be met: (1) there was a final judgment on the merits rendered by a court of

competent jurisdiction; (2) there was an identity of causes of action; (3) there was an identity of parties or their privies." *Id.* at 335.

Res judicata can extend not only to what was decided in the original action, but also to matters which could have been decided in the original action. *Id.* At 334-335. However, if all three requirements are not met, then *res judicata* will not apply. *See, Goodman v. Hanson*, 408 Ill. App.3d 285 300, 945 N.E.2d 1255 (2011).

As to the first element, the Illinois Appellate Court concluded that Indian Harbor had failed to establish that there was no final judgment on the merits. However, the second element, identity of causes of action, was more problematic for MMT Demolition.

The court reasoned with regard to the third element, identity of parties or their privies, that the main issue to be resolved was whether the insured was in privity with the tenants, because if such a relationship existed it would result in such privity extending to Indian Harbor as subrogee.

State Specific: Illinois *continued*



The doctrine of *res judicata* provides that a final judgment on the merits rendered by a court of competent jurisdiction bars any subsequent actions between the same parties or their privies on the same cause of action.

With respect to this element of the *res judicata* doctrine, the court ruled that since the small claims proceedings were designed to be expedient, and that no discovery was allowed, it was reasonable that Indian Harbor could argue that it was not prepared to litigate its claims in the small claim action by way of a counterclaim. Moreover, the court held that since there was no record of the small claims proceeding, the appellate court did not know the basis for the judgment in favor of the defendant, and therefore could not say that the causes of action were identical.

The court reasoned with regard to the third element, identity of parties or their privies, that the main issue to be resolved was whether

the insured was in privity with the tenants, because if such a relationship existed it would result in such privity extending to Indian Harbor as subrogee. Significantly, the court held that the landlord-tenant relationship between Indian Harbor's insured and the pro se plaintiff-tenants was not sufficient to establish privity between Indian Harbor and the tenants. The court was unwilling to find that the tenants were representing the interests of Indian Harbor's insured given that the tenants had sued the insured in the small claims action.

Ultimately, the defendant in this case failed to establish two of the three elements required to support application of the doctrine of *res judicata* to the subrogation

claim. However, of significance to the subrogation community, is the court's language hinting that if the adjustment had been more complete, and Indian Harbor had completed its payment to its insured, these facts may have swayed the court to conclude that there was a sufficient identity of causes of action to satisfy the second element of the three required to apply the *res judicata* doctrine.

This *Indian Harbor* case illustrates both the evolving landscape of the law involving subrogation claims as well as the perils posed to the unwary subrogator by the potential application of the *res judicata* doctrine to claims involving multiple potential plaintiffs.