

Let's Give 'Em Sutton to Talk About: Tennessee Court Enforces Sutton Doctrine

Gus Sara
The Subrogation Strategist
6.21.23

In *Patton v Pearson*, No. M2022-00708-COA-RC-CV, 2023 Tenn. App. LEXIS 231, the Court of Appeals of Tennessee (Court of Appeals) considered whether the lower court erred in dismissing an insurance carrier's lawsuit against its insured's tenant for damages sustained in a fire. While the lawsuit was filed in the name of the landlord (i.e., the insured), discovery revealed that the lawsuit was actually a subrogation lawsuit, brought by the landlord's insurance carrier. The lower court granted the tenant's motion for summary judgment based on the Sutton Doctrine, holding that the tenant was an implied co-insured under the landlord's policy. The Court of Appeals affirmed, finding that although the lease agreement did not reference insurance, the Sutton Doctrine applied, which barred the landlord's carrier from subrogating against the tenant.

In 2016, Anita Pearson (Ms. Pearson) signed a lease agreement to rent a home in Nashville, Tennessee, which was owned by John and Melody Patton (collectively, the Pattons). The lease stated that the Pattons were not responsible for the tenant's personal property. The lease also stated that the tenant would be responsible for any damage caused by her negligence or misuse of the home. The lease was silent as to which party would maintain property casualty insurance and regarding implied co-insured status on any policy. Ms. Pearson purchased renter's insurance for her personal property. The Pattons secured a property casualty insurance policy for the home.

In December 2019, a fire occurred at the home. The Pattons reported the claim to their property casualty insurance carrier. The carrier's investigation revealed that Ms. Pearson caused the fire by negligently using a candle. The Pattons' carrier paid for the damages caused by the fire. In January 2021, the insurer filed a lawsuit against Ms. Pearson, alleging negligence and seeking \$150,000 plus discretionary costs and attorney's fees. The complaint named only the Pattons as the plaintiffs.

During discovery, Ms. Pearson issued requests for admissions to the Pattons regarding their insurance coverage for the property. The Pattons objected to these requests, arguing that the collateral source rule made the information about insurance coverage inadmissible and non-discoverable. Ms. Pearson filed a motion to compel, which the trial court granted. The Pattons' responses to the requests for admissions revealed that the lawsuit was actually a subrogation lawsuit brought by the Pattons' carrier.

After this revelation, Ms. Pearson moved for summary judgment arguing that under Tennessee law, she was an implied co-insured of the Pattons' policy and the carrier could not subrogate against its own insured. The trial court granted summary judgment. The Pattons filed an appeal, arguing that the Sutton Doctrine did not apply to the subject lease and that the collateral source rule prohibited the court from compelling insurance coverage information because it was inadmissible evidence and, thus, non-discoverable.

The Court of Appeals acknowledged that the Sutton Doctrine was adopted by Tennessee in 2005. The court noted that, in Tennessee, the Sutton Doctrine establishes that "absent a clearly expressed agreement to the contrary, the tenant is presumed to be a co-insured on the landlord's insurance policy, and therefore the landlord's insurance carrier has no right of subrogation against [a] negligent tenant." The court reasoned that this approach promotes basic equity and fundamental justice more so than any other possible approach. Since there was nothing in the lease that specifically stated that the tenant was not a co-insured on the landlord's policy and that the tenant needed liability coverage insurance, the Court of Appeals affirmed the lower court's decision.

With respect to the collateral source rule, the court acknowledged that Tennessee law generally prohibits evidence that a plaintiff has received benefits or payments from a collateral source independent of the tortfeasor's contribution, so as to avoid prejudice. However, the court held that the collateral source rule does not apply when the evidence of insurance is introduced to establish that an insurer is improperly subrogating against a co-insured. The court stated that ruling otherwise would allow a carrier to subrogate against a co-insured by simply filing in the name of the insured and objecting to all discovery regarding insurance coverage.

The *Patton* case establishes that, under Tennessee law, the Sutton Doctrine prohibits a landlord's carrier from subrogating against a tenant without an express provision in the lease stating that the tenant is not a co-insured on the policy. This case shows that even if the lease explicitly holds the tenant responsible for damage caused by his/her negligence, a Tennessee tenant will still be considered a co-insured on the landlord's policy without an express provision otherwise. Furthermore, the *Patton* decision also tells us that a subrogating carrier cannot avoid the Sutton Doctrine simply by filing in the name of the insured. Subrogation professionals handling matters in Tennessee should be aware of the *Patton* decision when considering whether subrogating against a tenant is a viable option.

This correspondence should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended for general informational purposes only and you are urged to consult a lawyer concerning your own situation and legal questions.