

**WHAT EVERY LEASING ATTORNEY NEEDS TO KNOW  
ABOUT INSURANCE:**

**Negotiating Specific Lease Clauses**

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Prepared for the American Bar Association, Real Property, Probate & Trust  
Section Meeting Vancouver, British Columbia

September 28, 2007

## **WHAT EVERY LEASING ATTORNEY NEEDS TO KNOW ABOUT INSURANCE: Negotiating Specific Lease Clauses**

In a commercial lease arrangement the landlord allows the tenant to use the property in return for rental payments; the tenant takes possession of the property for the purpose of putting it to productive use in the tenant's business. Inherent in this arrangement are numerous risks for each party if the relationship does not proceed as anticipated.

It is useful to think of the lease as an attempt by the parties to allocate those transactional risks. It is not possible to address every imaginable risk that could disrupt the relationship between the landlord and tenant, but most landlords and tenants in commercial transactions attempt to identify what they consider to be the common and primary risks in the leasing transaction. For those risks that are identified, the landlord and tenant have two options: (i) allocate the risk or (ii) allow the applicable law of the jurisdiction to allocate the risk.

These two alternatives do not compel the landlord and tenant to procure insurance. In fact, there is really no legal requirement to include any insurance provision in a commercial lease.<sup>1</sup> Insurance provisions are routinely included, however, to accomplish several goals. The landlord and tenant, having allocated specific risks between themselves, may wish to provide some assurance that there are financial resources available to respond if the loss should arise from the risk. Insurance can be viewed as a means of financing a potential loss, and the insurance provisions of the lease describe the level of financing required by the landlord and tenant and who is to bear the cost of obtaining the financing.

Rather than argue between themselves over an allocation of risk, the landlord and tenant may attempt to allocate the risk to an insurance company. This course of action has the advantage of allocating a potential loss to a party that is not actively participating in the negotiations. The insurance company, however, has the advantage of limiting the risks that can be allocated to it through control of the terms of the insurance contract available for purchase by the landlord and tenant.

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<sup>1</sup> There may be statutory requirements that the landlord and tenant carry certain types of insurance, such as workmen's compensations schemes or automobile insurance requirements, but absent a specific state law requirement, those obligations do not have to be contained in a commercial lease.

In allocating risks between the landlord and tenant or to an insurance company, it is important that the lease be drafted in a manner so that the risk is (i) accurately identified (2) allocated to the party that is accepting the risk and (3) if transferred to an insurer, isolated from impacting the landlord and tenant. This last requirement involves the coordination of various lease provisions dealing with indemnity, required insurance, subrogation and waivers and exculpation with the other provisions of the lease dealing with maintenance and repair, damage, destruction and other loss, interruption of business and surrender of the premises.

## **INDEMNITIES.**

An indemnity provision in a lease requires one of the parties to assume the liability of the other party in event of a claim or loss. Indemnities come in two flavors – express and implied. Implied indemnities generally arise under situations in which two or more persons are jointly liable to a third party under either a tort or contract theory. For example, a landlord may have an implied legal obligation to indemnify a tenant from claims arising from personal injury due to the landlord's faulty repair of the premises.

Express indemnities in a lease seek to transfer all or a portion of the risk of loss from either the landlord or the tenant to the other. To be effective:

- The indemnity must identify the risk that is transferred;
- The indemnity must identify who is to bear the risk;
- The indemnity must clearly identify who is being indemnified;
- The indemnity must include a duty to defend; and
- The party that bears the risk must have the capacity to defend and pay.

In a lease, indemnities are normally associated with claims arising from personal injury or property damage asserted by third parties. That is not to say that indemnity provisions in leases are limited to personal injury claims, and it is not uncommon to find indemnities associated with liability arising from:

- discharge of hazardous materials,
- violations of laws,
- brokerage commissions,
- repairs and construction activity undertaken with respect to the premises;
- payment of contractors and other obligations that might give rise to liens on the premises; and
- breaches of the lease itself.

Lease indemnities shift risks from one party to the other. That risk may only be a duty to defend the indemnified party, but the risk may include the obligation to answer for damages that would otherwise be paid by the indemnified party. Indeed, ignoring the cost of defense, if the indemnified party has no liability with respect to a specific claim, there is no need for the indemnity. Indemnities are not binding on third parties that are making claims against the landlord and tenant. The fact that the tenant has indemnified the landlord against loss arising from personal injury occurring within the premises does not obligate the injured patron to sue only the tenant.

In other words, (i) a party that has the duty to indemnify another will have risk to the extent the insurance coverage acquired to cover the indemnity is less extensive than the risks insured against versus the risks indemnified against; and (ii) just because a party has been indemnified against risk doesn't mean that it will not be sued and suffer a loss if the indemnifying party cannot pay.

There is no "standard form" or "fair" lease indemnity provision. Some leases attempt to divide indemnity liability based upon the boundaries of the premises – the tenant indemnifies the landlord from everything that occurs within the premises and landlord indemnifies the tenant from everything that occurs outside of the premises. Even if a disciplined approach is attempted, invariably the exact items covered by indemnities and the scope of indemnifications will vary based on the relative bargaining position of the parties. In general, however, there are three types of indemnities. A **broad form indemnity** has the effect of shifting the risk of loss from the sole negligence of the party being

indemnified to the indemnifying party. It is very much like an insurance policy. For example:

Tenant will indemnify and hold Landlord, its officers, directors, employees, agents, consultants and contractors, harmless from and against any and all claims, liability, damages or causes of action arising from or in connection with the conduct of any activity within the Premises, **including, but not limited to the negligent acts or omissions of Landlord, its employees, agents or contractors.**

An **intermediate form indemnity** has the effect of shifting the risk of loss to the indemnifying party except for losses arising from the sole negligence of the indemnified party. Any fault by the party making the indemnity results in all liability being shifted. For example:

Lessee shall indemnify Lessor against all loss of or damage to the Building arising out of the negligence of Lessee, any contractor of Lessee, or any of Lessee's employees or agents. Lessee shall defend and indemnify Lessor, its employees and agents against all losses, claims, suits, liability, and expense arising out of injury or death of persons (including employees of Lessor or Lessee) or damage to property resulting from the conduct of business within the Premises **and not caused solely by Lessor's negligence without any contributory negligence or fault of Lessee, its contractors, agents or employees.**

A **comparative negligence or limited form indemnity** provides for an indemnity only to the extent of the negligence of the indemnifying party. For example:

Except with respect to claims or liabilities for damage which is covered by insurance maintained by Landlord to the extent of the cost of repairing such damage, and **except to the extent of damage caused by the acts, omissions or negligence of Landlord, its agents, employees or contractors,** Tenant shall indemnify, defend and hold Landlord harmless in respect of: (i) all claims, demands, liabilities and actions for bodily injury or death, property damage or other loss or damage arising from the conduct of any work or any act or omission of Tenant or such other parties that may be upon the Premises, and in respect of all costs, expenses and liabilities incurred by Landlord in connection with or arising out of all of

the foregoing, including the expenses of any action or proceeding pertaining thereto; and (ii) any loss, cost (including, without limitation, attorneys' fees and disbursements of counsel selected by Landlord), expense or damage suffered by Landlord arising from any breach by Tenant of any of its covenants and obligations under this Lease.

One question that should always be addressed in the context of indemnities is "What is the purpose of the indemnity?" Are the parties truly trying to allocate the risk of loss from certain events, or are the landlord and tenant trying to obtain the benefits offered under insurance policies maintained by each other? If the purpose is simply to shift risk to match insurance coverage, then seeking protection from a third party insurance company with an allocation of the premium cost may be a better approach that reflects reality rather than protracted negotiations concerning the extent of an indemnity. Similarly, if the negotiations end with each party agreeing to accept responsibility for their respective negligence, does the existence of the indemnity really add anything to the agreement? Again, perhaps it may be a better approach to simply delete the indemnity and focus on insurance and who are the named insureds for purpose of obtaining the benefit of coverage and defense from the insurer.

## **INSURANCE PROVISIONS.**

A party that agrees to indemnify another is very much like an insurer. The party that has undertaken the indemnity seeks to minimize risk by obtaining insurance. Most leases require insurance to be maintained and detail the types of coverage. As noted above, these provisions serve two purposes: First, the party that is the beneficiary of an indemnity has some assurance that there are funds available to the indemnifying party. Second, the landlord and tenant are allocating the cost of financing certain risks of loss, such as damage to the premises.

Insurance clauses typically describe the type of insurance to be obtained by the landlord and tenant. Insurance covering damage to the premises is of interest to both the landlord and tenant. The tenant is interested in whether the landlord has the financial capability to rebuild the premises in the event of a casualty loss; both the landlord and tenant are interested in describing the type of coverage that will be obtained so that the cost can be estimated and allocated as an operating expense

of the property. Insurance against damage to the premises might be described as:

Property insurance insuring the Property and improvements (excluding foundations) [and rental income insurance (i.e., loss of rents and/or income insurance<sup>2</sup>) for a period of not less than 12 months] against loss or damage resulting from perils covered by the causes of loss - special form (or the equivalent ISO form in use from time to time in the state where the Property is located).

If special types of coverage are required, such as flood or earthquake coverage, these are typically described so that there is no argument concerning the right of the landlord to recover the extra cost of this coverage from the tenant.

The landlord's commercial general liability coverage may also be detailed, but this is not so much a concern of the tenant for financial backing for landlord indemnities as it is a landlord concern that there are no arguments from the tenant concerning the premiums charged as operating expenses for the property.

The tenant's insurance coverage is also described in a commercial lease. This may include property damage coverage for the tenant's equipment and inventory, commercial general liability coverage and special coverage such as workmen's compensation and automobile coverage. These policies might be described as:

Commercial general liability ("CGL") insurance (or the equivalent ISO form in use from time to time in the state where the Property is located) [naming Landlord, Landlord's managing agent for the Property and, if requested, Landlord's mortgage lender, as additional insured parties,] providing coverage against any and all claims for bodily injury and property damage occurring in, or about the Property and land and/or arising out of or in any way related to use and occupancy of the Premises by Tenant or its agents, employees or invitees. Such insurance shall have a

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<sup>2</sup> If landlord carries (and as a pass through expense tenant pays for) loss of rents insurance, in order to obtain the benefit of the coverage, rent must abate after a loss. With the increasing numbers of excluded losses (terrorism, hazardous materials, mold, criminal acts, etc.), however, a blanket abatement of rent for all events of damage and destruction rendering the premises unusable may require additional negotiation between the landlord and tenant.

combined single limit of not less than \_\_\_\_\_ per occurrence with \_\_\_\_\_ aggregate limit and a deductible not to exceed \$ \_\_\_\_\_ and an excess umbrella liability insurance (following form) in the amount of \_\_\_\_\_. [If Tenant has other locations that it owns or leases, the policy shall include an aggregate limit per location endorsement. Such liability insurance shall be primary and not contributing to any insurance available to Landlord and Landlord's insurance shall be in excess thereto.]

Property insurance insuring all equipment, trade fixtures, inventory, fixtures and other personal property located on or in the Premises ("Insured Personalty") for perils covered by the cause of loss - special form (or the equivalent ISO form in use from time to time in the state where the Property is located).

These types of provisions provide some assurance that there is an insurance policy to back the tenant's indemnity obligations to the landlord. The property damage insurance provides some comfort to the landlord that the tenant can remain in business, and also reinforces the other provisions of the lease that shift from the landlord to the tenant the risk of loss to the tenant's property, equipment and inventory.

The lease will typically have some additional requirements for the insurance policies that are obtained. These provisions deal with the financial strength of the insurance company, evidence of the existence of insurance and cancellation notices:

The policies required to be or otherwise maintained by [Tenant] [the parties] shall be issued by companies rated [A (X)] or better in the most current issue of Best's Insurance Reports. [Insurers shall be admitted insurers in the state in which the Property is located, and domiciled in the USA.] Any deductible or retention amounts under any insurance policies required hereunder shall not exceed \$ \_\_\_\_\_ as to property and business insurance, and \_\_\_\_\_ as to liability insurance.<sup>3</sup> Certified copies of the policies, or [(i) Certificate of Insurance or (ii) a binder followed, before expiration of the

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<sup>3</sup> Liability coverage may be written without a deductible. Property damage policies always have a deductible. The amount of deductible can be important if the allocation of the risk of loss for property damage is tied to insurance coverage, since some states do not consider losses within deductible limits to be losses "covered" by insurance.

binder, by a copy of the declarations page(s) of the policy with a schedule of all endorsements, shall be delivered to Landlord prior to the Commencement Date and annually thereafter at least thirty (30) days prior to the expiration date of the old policy.]

The most important part of these provisions is to describe the insurance that the parties actually maintain, rather than create a hypothetical set of coverages that either the landlord or tenant feel would be optimal. The greater the specificity of the description of the type of policy, means the greater the likelihood that the parties will be able to initially comply with the terms of the lease. The downside of specificity, however, is the fact that leases last longer than insurance policies and the industry routinely changes the types of policies that may be available without regard to the insurance provisions contained in leases entered into by policyholders. As policies and coverage changes, it is possible that the detailed requirements in the lease cannot be fulfilled in the future. For example, following the 9/11 attacks, insurance policies eliminated coverage for terrorist acts. Many landlords and tenants became involved in disputes concerning the obligation of the parties to maintain coverage for terrorist acts and the ability to recover the cost of what had become a separate coverage equivalent to flood and earthquake coverage.

## **SUBROGATION.**

Subrogation is an equitable theory that allows an insurance company, after paying a loss to its insured, to succeed to the rights of its insured against any third party that is legally responsible for the loss. Subrogation is a derivative right and it exists only to the extent the party suffering the loss has rights of recovery against others.

Examples of situations that may give rise to subrogation rights are:

Tenant pays landlord's fire insurance premiums and expects policy proceeds to pay for rebuilding. Tenant negligently burns down the building. Landlord's insurance company sues tenant to recover the cost of reconstruction.

Landlord required tenant to construct certain improvements to the premises and to maintain insurance to cover replacement in the event of a casualty loss. Faulty wiring in

the building causes a fire. Tenant's insurance company sues the landlord seeking to recover the cost of repairs to the tenant's premises.

These examples highlight the fact that the exercise of subrogation rights by an insurer may defeat the attempt of the landlord and tenant to allocate the risk of loss in a specific manner. Subrogation rights belong to insurers. To avoid the application of these rights, parties can:

- Require that insurers waive their rights of subrogation by endorsement to policy
- Obtain single insurance policy to cover risk, insuring the interests of both parties
- Name other party as additional insured under policy

Although many commentators have asserted that subrogation rights provide a windfall to insurers that have undertaken to cover specified risks, insurance companies take these rights seriously. There are normally other insurance policy provisions that reinforce the subrogation rights of the insurer. For example, a typical policy will (i) contain a right on the part of the insurer to require an assignment of all claims arising from the insured occurrence; (ii) prohibit the insured from taking acts that prejudice the insured's right to recover from other parties as a result of the occurrence; and (iii) require cooperation by the insured in both the defense of claims and seeking recovery from others.

If parties do not adequately address the subrogation rights of insurers, risk allocation will not be effective. Risks shifted from one party to another will return in the form of an insurance company seeking recovery for a loss that was paid, very much like a boomerang. ISO policy forms allow the parties to waive rights of recovery (and hence subrogation) prior to any loss. Similarly, CGL policies allow waivers by endorsement.

## **EXCULPATION AND WAIVERS.**

Exculpatory provisions in leases attempt to absolve either the landlord or the tenant (or both) from liability for actions that might otherwise give rise to a claim for damages. Waivers by the landlord and tenant for certain types of losses related to the acts of the other are a form of exculpation. Waivers of claims by the landlord and tenant

designed to affect only those claims covered by insurance are intended to eliminate the subrogation rights of insurers.

While the insurance policy may have a waiver of subrogation provision that prevents the insurer from seeking recovery for the amounts paid, the landlord and tenant may still have liability to one another as a result of various other clauses in the lease not covered by insurance. Waivers result in the waiving party retaining risk by agreeing not to seek recovery from the other party.

If the parties desire to eliminate transfer the risk entirely to the casualty policy maintained for the premises, then they may mutually waive all claims against one another for all damages arising from injury covered by the casualty to be insured against under the lease.

Examples of waivers which each have a slightly different approach:

Waiver Limited to Insurance Proceeds.

Landlord and Tenant each hereby releases the other, its partners, owners, officers, directors, employees, agents and, in the case of Landlord, any managing agent, management company and their respective employees and agents, from liability or responsibility to the other, or anyone claiming through or under them by way of subrogation or otherwise, for any loss or damage to the Premises or Property covered by valid and collectable "Special Perils Insurance," or other policy of insurance covering casualty losses, even if the fire or other casualty has been caused by the fault or negligence of the other party, or anyone for whom that party may be responsible. ***This release only applies to loss or damage: (a) actually recovered from an insurance company; and (b) occurring during the period of time the releasor's fire or extended coverage insurance policies contain a clause or endorsement to the effect that this release does not adversely affect or impair the coverage of the policy or the right of the releasor to recover under the policy.***

Waiver Not Including Insured Losses.

The liability of Tenant to indemnify the Landlord stated in this Section \_\_\_\_ does not extend to any matter against which

Landlord may be effectively protected by insurance. **Tenant shall be liable to Landlord for any amount of loss or damage suffered by Landlord and indemnified against pursuant to this Section \_\_\_\_ to the extent the loss or damage exceeds the effective and collectable insurance which covers Landlord.**

Exculpation clauses are risk-shifting to the extent they seek to limit or avoid damages in situations where liability would otherwise be imposed by law (i.e., a claim for negligence) or by contract (i.e., a breach of the underlying lease agreement). The end result is that either the landlord or tenant may suffer damage without recourse to the other party for compensation.

Exculpation provisions, including waivers, are normally scattered throughout the lease; rarely is a lease drafted with a single section entitled **“Everything the Landlord/Tenant Can Do and Tough Luck.”** Some of the items for which either a landlord or a tenant may seek exculpation are (it is no surprise that the typical landlord’s list is longer):

- | <b>LANDLORD EXCULPATORY CLAUSES</b>  | <b>TENANT EXCULPATORY CLAUSES</b>  |
|--|--|
| <ul style="list-style-type: none"><li>• Failure to deliver premises on specific date</li><li>• Area of premises</li><li>• Fitness of premises for specific use<ul style="list-style-type: none"><li>Zoning</li><li>Ability to conduct specific business</li><li>Availability of building permits</li></ul></li><li>• Utilities<ul style="list-style-type: none"><li>Liability for interruption of service</li><li>Availability</li><li>Level of service</li></ul></li><li>• Quiet Enjoyment<ul style="list-style-type: none"><li>Temporary interruption of possession</li><li>Permanent interruption</li><li>Interruption or disturbance by others</li></ul></li><li>• Damage to Tenant’s business or property</li></ul> | <ul style="list-style-type: none"><li>• Failure to open for business (retail leases)</li><li>• Failure to operate (retail leases)</li><li>• Personal liability for rent (land leases with requirement that tenant build structure)</li><li>• Consequential damages incurred by landlord</li><li>• Damages as a result of actions that interfere with other tenants</li><li>• Damages for holding over at end of term</li></ul> |

- Tort liability
- Adequacy of repairs
  - Failure to supply services, such as janitorial, window cleaning, parking lot maintenance, etc.
  - Failure to repair or rebuild
  - *Force Majeure*
  - Personal liability for breach of lease covenants
    - Personal liability of fiduciaries
    - Limitation to recovery against interest in premises
  - Liability following transfer of property
- Failure to remove personal property at the conclusion of the term

Most of these provisions are relatively straight-forward allocations of risk between the landlord and tenant. Consider, however, the effect of these types of provisions when the parties have attempted to transfer risk to an insurance company.

1. If landlord insists upon exculpation of damages for failure to rebuild, or limits tenant's remedy to that of termination of the lease, does this create a benefit for the tenant's fire insurance company that can limit the tenant's recovery?
2. If the landlord insists upon a limitation to any liability to the landlord's "interest in the premises," what happens if:
  - The landlord fails to apply fire insurance proceeds toward the cost of rebuilding as required by the lease;
  - The landlord fails to apply condemnation proceeds toward the cost of restoration;
  - The landlord's insurer fails to defend tenant in suit under which an indemnity is otherwise applicable.

In drafting clauses that involve risks that are to be transferred to insurance companies or other third parties, consider the following options to deal with exculpatory clauses intended to be coordinated with insurance policies:

1. Do not grant exculpation for any event which the parties agree will be funded by another source (i.e., those matters to be insured against), but rather deal with the risk of insolvency of that source of repayment (i.e. what happens if the insurance company goes broke);
2. Allow exculpation only to the extent liability exceeds insurance recoveries for those losses in which it is anticipated that the insurance policy maintained by one party will be available to pay the loss incurred by the other party.

### **SPECIFIC DRAFTING AND COORDINATION PROBLEMS.**

Like other risk shifting devices, waivers need to be coordinated with insurance provisions and subrogation rights. In theory, if a party waives its right of recovery, the party's insurer should be bound by that waiver. In practice, however, insurers will look to other portions of the agreement to attempt to recover its loss, so it is necessary to make certain that subrogation rights have effectively been waived. Waivers that are tied to insurance coverage can also create problems if the parties fail to consider the effect of deductibles and self-insured risks.

Below are two examples of what can happen when the provisions in a lease are not adequately coordinated so that the landlord and tenant failed to effectively allocate risk among themselves or to an insurance company. These examples may be the result of boilerplate provisions not being modified to address a unique situation (otherwise known as the "*Revenge of the Boilerplate*") and others are the result of the parties not anticipating a judicial interpretation at variance with the probable intent of the parties – a risk inherent in every written agreement.

Waivers and Deductible Amounts. Tenants suffer substantial losses, both insured and uninsured, due to fire in the building in which their premises are located. The leases contained the following clauses:

Lease 1:

Each party, on its own behalf and on behalf of any one claiming under or through it by way of subrogation or otherwise, hereby waives all claims, rights and causes of action against the other party, for any loss or damage in or to

the building or other improvements located on the real property described in page 1, the demised premises and its contents **caused by any risk insured against under any insurance policies carried by either party or required to be carried under this lease at the time of such loss or damage, even if such loss or damage may have been caused by the negligence of the other party**, its officers, employees, contractors, agents or invitees."

Lease 2:

Notwithstanding the foregoing, each party shall look first to any insurance in its favor before making any claim against the other party for recovery for loss or damage resulting from fire or other casualty, and **to the extent that such insurance is in force and collectible and to the extent permitted by law, Landlord and Tenant each hereby releases and waives all right of recovery against the other or any one claiming through or under each of them by way of subrogation or otherwise**. The foregoing release and waiver shall be in force only if both releasors' insurance policies contain a clause providing that such a release or waiver shall not invalidate the insurance.

One tenant was allowed to recover the amount of its deductible (\$1,000,000) for damage suffered to its inventory and personal property; the other tenant was entitled to recover the amount of its deductible (\$10,000) and uncompensated business interruption losses (\$520,000). In both instances, the court determined that losses within the deductible amount or uninsured business interruption claims were not covered by the waivers. *The Gap, Inc. v. Red Apple*, 282 A.D.2d 119; 725 N.Y.S.2d 312; (2001). It can be assumed that the landlord did not anticipate the size of the deductible applicable to the tenant's inventory and personal property and failed to anticipate that the other tenant might not maintain adequate business interruption coverage. For a contrary result as to whether a loss within a deductible is a "covered loss," see *Seattle First National Bank v. Mitchell*, 87 Wn. App. 448; 942 P.2d 1022 (1997).

Damage and Destruction. Lease provided that certain tenant improvements immediately become the property of landlord upon installation. The landlord was also obligated to pay for repair of building following fire damage. Following a fire, tenant's insurers paid for repairs of

certain tenant improvements and sought recovery from the landlord under the insurers' subrogation rights. Lease contained waiver of subrogation clause. Insurers were allowed to proceed with action under theory that waiver applied only to claims arising under "tort" theory. Since a portion of the claim was asserted under the contractual obligation of the landlord to repair the premises, the insurers were entitled to pursue these contractual claims under their subrogation rights. *Viacom International v. Midtown Realty*, 193 A.D.2d 45; 602 N.Y.S.2d 326 (1993). This case highlights the problem of the landlord and tenant attempting to allocate a loss solely to an insurer. The intention of the landlord and tenant is not necessarily binding on the insurer if the lease does not accurately set forth that intent.

Unintentional Waiver. Owner contracts for construction of prefabricated buildings. Contractor hires fabrication company as subcontractor to supply materials and provide instructions for erection of the buildings. Parties use a standard AIA form of contract. After completion of construction, buildings collapse. Owner sues contractor and subcontractor. Claim against contractor is dismissed because contractor built buildings in accordance with instructions approved by owner and supplied by fabrication company. Claim against subcontractor dismissed because of the application of the following clause:

The Owner and Contractor waive all rights against (1) each other and the Subcontractors, Sub-subcontractors, agents and employees each of the other, and (2) separate contractors, if any, and their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other perils to the extent covered by insurance obtained pursuant to this Paragraph, or any other property insurance applicable to the Work . . .

The collapse had been covered by insurance, even though the owner of the property had been unable to recover all of its business losses. *Anderson Hay v. United Dominion*, 119 Wn.App. 249 (2003). Although not a landlord-tenant case, the outcome highlights the problems arising from boiler plate provisions applied to specific transactions.

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