



CONCURRENT SESSION II: A

We Didn't Start the Fire – Navigating Insurance Clauses, Emerging Trends and Lessons Learned in Retail Leasing

MODERATOR

Angela Ceccarelli, ICSC+LAW SYMPOSIUM OH/KY/IN/MI/PA
2026 Program Advisory Committee Chair; Partner, Thompson Hine LLP

PANELISTS

Noelle McCall, National Practice Leader for Contract Review, Howden Group

Matt Replogle, Managing Director, Howden Group

Angela Savino, Partner, Perez Morris LLC



Moderator

ANGELA CECCARELI

Thompson Hine LLP
Dayton, OH

Panelists

NOELLE M. MCCALL

Howden US Specialty LLC
Charlotte, NC

ANGELA A. SAVINO

Perez & Morris LLC
Columbus, OH

MATT REPLOGLE

Howden US Specialty LLC
Roswell, GA



Market Trends Affecting Lease Negotiations

- Premiums & Deductibles Rising in CAT-Exposed Categories
- Valuation Challenges
- Cyber and Specialty Lines Tightening
- Lender-Driven Requirements Pushing Higher Limits and Stricter Terms
- Retailers Post-COVID
- Underwriters Limiting Additional Insured Rights on Some Policies



Clauses that Deserve Extra Attention in Real Estate Leases

Indemnification

Additional Insured

Contractual
Liability

Waiver of
Subrogation

Self-Insurance

Clauses that Deserve Extra Attention in Real Estate Leases (cont.)

- **Indemnification:** one party's agreement to assume the liability of another in the event of a claim or loss
 - **Limited:** only to the extent caused by the indemnitor
 - **Intermediate:** except if caused solely by indemnitee
 - **Broad:** even if caused solely by indemnitee
- **Additional Insured:** individuals or entities who are added as insureds due to a contract requirement or business relationship

How to Identify Additional Insured Scope

Scope	Wording to Watch For	Some ISO Forms that Can Provide This Level of Coverage
Limited	"only to the extent caused by or resulting from" "on a vicarious liability basis"	CG 20 11 (12/19) CG 20 26 (07/04, 04/13, 12/19) CG 20 10 (04/13, 12/19) CG 20 37 (04/13, 12/19)
Partial / Intermediate	"caused, in whole or in part, by"	
Broad / Full	"arising out of"	CG 20 11 (11/85, 01/96, 04/13) CG 20 26 (11/85) CG 20 10 (11/85, 10/93, 03/97, 10/01) CG 20 37 (10/01)

Clauses that Deserve Extra Attention in Real Estate Leases (cont.)

- **Contractual Liability:** liability for bodily injury or property damage to third parties the insured:
 - has in the absence of a contract or agreement, or
 - has assumed in a contract or agreement that is an "insured contract", provided loss occurs after execution of contract or agreement.

Clauses that Deserve Extra Attention in Real Estate Leases (cont.)

- **“Insured Contract”**:
 - a) **Lease of premises** – exception for damage by fire to premises
 - b) Sidetrack agreement
 - c) Easement or license agreement – except for construction or demo on or within 50 feet of railroads
 - d) Ordinance requirement to indemnify municipality - except in connection with work for municipality
 - e) Elevator maintenance agreement

Clauses that Deserve Extra Attention in Real Estate Leases (cont.)

- **“Insured Contract”:**

“f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which **you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization.** Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.”

Clauses that Deserve Extra Attention in Real Estate Leases (cont.)

- **Waiver of Subrogation:** prevents insurer from suing at-fault party to recover amounts paid by insurer for claims such parties
 - If allowed by law
 - May be automatic if required by written contract or agreement
 - Some policies must be endorsed to add coverage
 - Consider mutual waiver of subrogation for Property losses

Clauses that Deserve Extra Attention in Real Estate Leases (cont.)

- **Sample Mutual Waiver of Subrogation (Property):**
- “Waiver of Subrogation. Landlord and Tenant hereby waive any recovery of damages against each other (including their employees, officers, directors, agents, or representatives) for loss or damage to the building, tenant improvements and betterments, fixtures, equipment, and any other personal property to the extent covered by the commercial property insurance or boiler and machinery insurance required in this Lease.”

Clauses that Deserve Extra Attention in Real Estate Leases (cont.)

Self-insurance: Self-insurance is funded by the entity itself

- not a policy
- can create collection, claims, and credit-risk issues



Clauses that Deserve Extra Attention in Real Estate Leases (cont.)

Deductible: insurer pays claim and bills named insured for deductible

Self-insured Retention (SIR): named insured pays SIR before insurer pays anything for a claim

Case Study - “Sidewalk”

- **NY Lease** mentioned “sidewalk”
- Insurance to follow maintenance obligations
- Who should insure tenant improvement & betterments:
 - During lease?
 - After lease expires?



Insurance Broker Contract Review

Basic Contract Review:

- Does your insurance comply with insurance requirements in contracts?

Advanced Contract Review:

- Create/update insurance requirement templates for use in contracts with your tenants, vendors, subcontractors, etc.
- Provide contract review tools to simplify and streamline your review process
- Provide contract review training & coaching



Insurance Broker Contract Review

Advanced contract review from insurance & risk-related (not legal) perspective:

- Insurance
- Indemnity
- Limitation of Liability
- Waiver of Consequential Damages
- Jurisdiction
- Risk of Loss & Force Majeure
- “Claims” definition

Case Study – Who's on First?

- **Contract Priority**
 - Contract failed to specify whose insurance pays first and next
- **How to avoid confusion at claim time?**
 - Primary and Non-contributory



Contractual Risk Transfer



Howden: Public

What Coverage Should Landlords Carry?

- **Property Insurance** - on Building
- **Builder's Risk** - for Construction
- **Replacement Cost**



How to Verify Tenant's Insurance

- **Certificates of Insurance**
 - Who to ask?
- **Copies of required endorsements**
 - Which endorsements?
- **Notice of cancellation**
 - Not guaranteed



Practical Strategies for Aligning Contract & Coverage for Real Estate Transactions

Align Early

Update Legacy
Templates

Consider Risk
Exposures

Confirm
Insurability

Use Plain English