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INSURANCE PROVISIONS: The Monster Under the Bed

Part 3

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INTRODUCTION

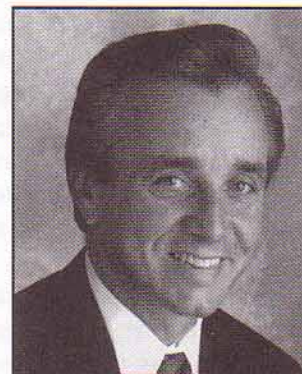
This is the last of a three-part series on Lease Insurance Provisions. As emphasized in Parts 1 and 2, one of the most difficult aspects of insurance provision negotiations in a lease is understanding how this provision interacts with other provisions, including Fire and Casualty, Operating Expenses, Workletter, Environmental and others. To simply pass the insurance provision on to a risk management person or an insurance carrier, who may not understand the other elements of a lease, could result in an ambiguous or conflicting lease document.

Another problem may occur if one assumes that the insurance required by the landlord in the lease will protect the tenant. Such an assumption could find your company or client facing an unexpected and severe financial burden. Most landlord-required insurance is designed to protect the landlord's and lender's interests, often placing the tenant in a situation of self-insurer for many potential perils that could prove financially devastating.

Some of the topics covered in Parts 1 and 2 of this series included Liability, Third-Party Coverage, Fire and Casualty, Insuring Tenant Improvements, Self-Insuring, Overcoming Policy Limitations, Duplication of Coverage, Rent Continuation and Business Interruption Insurance. Part 3 examines Waiver of Subrogation, No Fault Insurance, Indemnification and Exculpation, Co-Insurance and Certificates of Insurance.

WAIVER OF SUBROGATION

According to *Black's Law Dictionary*, Subrogation is "The substitution of one person in the place of another with reference to a lawful claim, demand or right, so that he who is substituted succeeds to the rights of the other in relation to the debt or claim, and its rights, remedies, or securities." By way of example, if a tenant's employee started a fire which caused substantial damage, the landlord would look to the insurance carrier to restore the property.



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Dr. Ronald R. Pollina is a nationally recognized corporate real estate broker, consultant and negotiator. In addition to representing corporations throughout the United States for over 20 years, he has served on the faculties of two Universities and written over 50 articles and books. As a frequently quoted real estate economist, Dr. Pollina's opinions have appeared in the *Wall Street Journal*, *Business Week*, *Financial Times of London* and other business publications.

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