

LEASING TIMES

Key leasing phrases and topics to think about.

ARE YOU SURE YOU ARE INSURED?

Commercial leases usually require landlords to obtain property insurance for loss or damage to the building. Tenants may believe they are covered in the event the building is damaged or destroyed due to their negligence. This may not be the case. Without certain essential provisions, landlords' insurers may have the right to bring a subrogated claim against tenants for the amounts paid out to landlords for the loss. The subrogation right in an insurance policy allows an insurer to sue third parties in the insured's name for amounts paid to the insured under a policy. There are ways to avoid this risk. Tenants can try to obtain a waiver of the insurer's subrogation right. In recent years, insurers have become increasingly reluctant to provide these waivers. Under current case law, a tenant may also be protected from these subrogated claims if, under the terms of the lease, the landlord expressly agrees to provide insurance coverage and the tenant pays some or all of the premiums. In this situation, the Supreme Court of Canada has held that the insurance is for the benefit of the tenant and the waiver is implied. Make sure these critical clauses are included. Think about it.

Jean Leonard
Kitchener-Waterloo
jleonard@millerthomson.com

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