



NEWS FROM THE FIRM

November 2010

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Chris Griswold, P.C.
A Business Transactions
and Estate Planning Firm

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- International Council of Shopping Centers
- Commercial Real Estate Council of Oklahoma City
- Oklahoma Renewable Energy Council
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Commercial Real Estate Council of OKC
www.crecokc.com
International Council of Shopping Centers
www.icsc.org
Oklahoma Renewable Energy Council
www.ocgi.okstate.edu.orec

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Message from Chris....

If I had a dime for all of the winks and smiles my 1 year old daughter "Mackenzie" has given me over the past few months, I wouldn't need to work. She's recently started walking, so, like any dad, I'm pretty excited. This month I want to discuss **waiver of subrogation** ("WOS"), an insurance concept that we've all come into contact with (or will come into contact with) at some point in our careers. Let's quickly recap what it's about....

Waiver of Subrogation

What is it? When an insured agrees to provide a WOS to another party to a contract, it's agreeing to give up the right of its insurer to seek recovery against such other party for any amount(s) such insurer pays to its insured for any insured loss/damage caused by such other party. An opposite to WOS is "subrogation" which allows an insurance company to **step into its insured's shoes** and bring an action in the insured's name against such other party.

Example: Landlord and Tenant enter into a lease which: **i)** contains mutual WOS's, and **ii)** requires Landlord to carry property coverage on the leased premises (as well as the entire strip mall within which the leased premises is located). At some point during the lease term, per the lease, Tenant must hire a roofer to re-roof its leased premises. While re-roofing, Tenant's roofer somehow (albeit unintentionally) sets the roof on fire and burns down the leased premises as well as most of the strip mall. The effect of the mutual WOS's is that Landlord's insurance company can't later come after Tenant to recover monies expended for the damage/loss incurred.

Stated another way, WOS means that by giving up its right of recovery, the insurer accepts the fact that its policyholder (and the party with whom such policyholder has contracted) has allocated the risk of loss of the insured event to the insurer.

Question: What happens if both parties just agree to each mark through or delete the mutual WOS provisions in the lease? Both parties' insurance companies will have rights of subrogation against the other party based upon any amount(s) that such insurance companies pay to their respective policyholders due to any loss/damage caused by such other party.

When should WOS be addressed? The sooner the better. Usually, the insured may waive its insurer's right to subrogation only when done as a part of the written contract between the insured and the other party (with written endorsements to such coverage signed by the insurer) and it must all be done at the outset of the contractual relationship and not after a claim/loss has arisen.

At the end of the day, WOS exists to keep parties to contracts out of the complexities of lawsuits by agreeing that the "buck stops here" with each party's insurance company if an insured loss actually occurs – regardless of what party is at fault.

What My Clients Are Saying....

"Chris Griswold has a unique skill set for a Real Estate attorney. He is equally adept in the courthouse as well as in a transactional setting. We have worked with him in lease negotiations where we found him to be pragmatic and fair minded while representing his client. As result of working on the other side of the table with Chris, we engaged him to assist us with various lease enforcement issues. We have used many attorneys to assist us with FED's, collections etc. and Chris has by far been the most efficient and cost effective counsel we have ever used."

Jeff Norman / President / JAH Realty, L.P. / Oklahoma City, Oklahoma

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