



Chris Griswold, P.C.

News From the Firm

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Message From Chris....

Tenants in commercial leases are liable for a lot. In some cases, they're even liable for the acts, omissions and negligence of their invitees (customers) and licensees (sub-contractors, vendors, kiosk operators, christmas tree/pumpkin parking lot sales outfits, etc...) – but they don't have to be if the lease is well written. Good stuff. See more below (and don't forget to click on my Facebook or YouTube links below to also see my short video on this material).

Untangling Tenants From their Invitees and Licensees

Question #1: So what is the big deal for a Tenant to be liable for these groups?

Answer: Well, ultimately, it's a mark down on that Tenant's profitability. It's an added cost of doing business, on top of taxes, rent, employee salaries and benefits, CAM, and the list is customarily long. So, why add one more item to it?

Question #2: How can a commercial tenant ensure that it's not liable?

Answer: The lease has to carve out a Tenant's liability for these groups. It's one thing (and normal) for a Tenant to be liable for its own officers, directors and employees, but, it's another for that Tenant to be liable for other extended persons which are not under the control or direction of Tenant – that extension/enlargement beyond the Tenant's officers, directors and employees is what must be examined closely before a lease is finalized.

Question #3: Is there anything more at risk in this situation?

Answer: Yes. If Tenant fails to eliminate this extension of liability, it will cost not only Tenant, but possibly the Tenant's Landlord as well, unless the Landlord puts language into the same Lease that makes the General Liability coverage that Landlord carries subject to carve-outs that Landlord's General Liability coverage shall all be secondary, non-primary, excess and non-contributory to Tenant's coverage, as well as making Landlord's coverage further subject to a Waiver of Subrogation clause in the Lease.

Question #4: What should Landlord's really do?

Answer: *In diametric opposition to the statements in Question/Answer #2 above* (which are to Tenant's favor), Landlord's shouldn't let a lease get written that allows Tenant to avoid liability for the acts, omissions and negligence of such Tenant's invitees and licensees. In other words, Landlord wants Tenant to be liable for these – or they become Landlord's liability. Remember,

leases are the product of good negotiation and the parties need to know what points are really important to them, and then act accordingly.

Question #5: Will Landlord or Tenant win?

Answer: Unless the Tenant is a huge anchor in the center, Landlord will usually win (because Landlord's insurance underwriter will require Tenant to be liable for its own licensees and invitees, at least in situations involving accidents occurring within the demised premises itself).

What My Clients Are Saying

“Chris is a business-minded attorney who negotiates with the client's goals in mind. He is a knowledgeable and constructive participant in deal negotiations... loyal to his clients but practical in his approach.”

Bond Payne, Jr. / Vice Chairman of Corporate Development, Argent Financial Group / Oklahoma City, Oklahoma

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