



# INSIDE AND OUTSIDE THE LEASE

WHAT YOU NEED TO KNOW TODAY  
ABOUT ABATEMENT OF RENT AND  
BUSINESS INTERRUPTION  
INSURANCE

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CO-HOSTED BY:

**CBRE** MILLER | BARONDESS LLP

## TODAY'S PANELISTS



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## 01 Inside the Lease

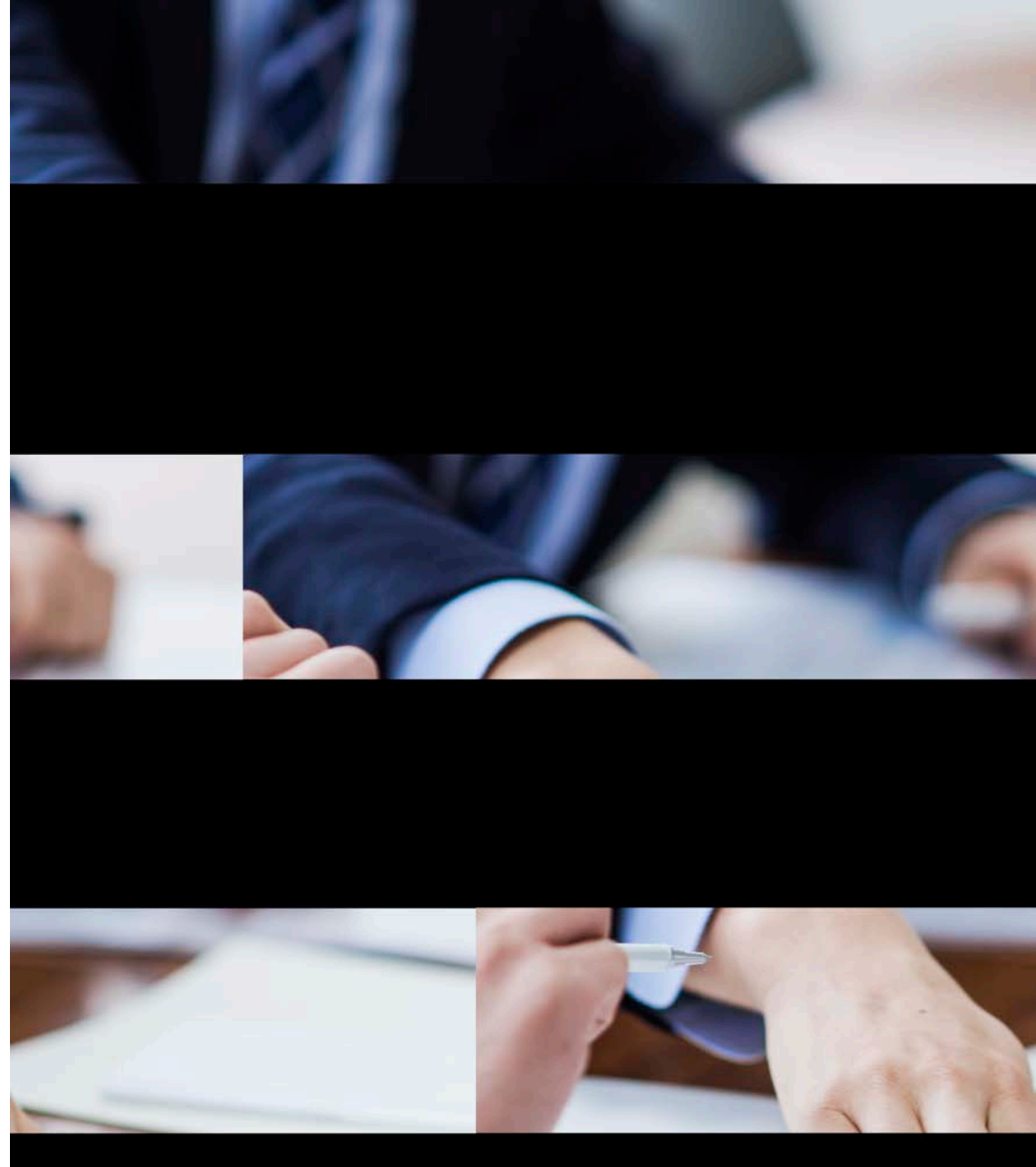
Best practices shared by Gregg Pasternack, CBRE

## 02 Outside the Lease

Best practices shared by Amnon Siegel, Miller Barondess

## 03 Q&A

Burning questions answered by the experts



## HOW TO SUBMIT QUESTIONS

### What are your most pressing questions about your lease?

- You can access Menti from your laptop or mobile phone
- Submit questions at any time throughout the presentation
- Submit as many questions as come to mind
- All submitted questions are anonymous
- Questions will be answered during the Q&A section
- Any questions we don't have time to address will be covered in future webinars and/or articles





**INSIDE THE  
LEASE**

## Force Majeure

- In the legal context, generally means an unforeseeable event that prevents a party from fulfilling a contract
- In the Leasing context:
  - Force Majeure is not in all leases, and leases that do have it define it differently
  - Even if there is a force majeure clause in the lease, it rarely excuses non-payment for rent



## Failure of Services

### Abatement of Rent for Failure to Provide (or Interruption of) Services to Tenant

- Rent abatement, if provided at all, is usually addressed in a “failure of services” provision
- Failure of Services - usually if Tenant cannot, and does not, occupy the Premises for a specified number of days (e.g. 5 business days), then Tenant gets rent abatement
- MANY different restrictions to rent abatement can apply, such as:
  - *Only applies to things within Landlord’s control*
  - *Only to the extent reimbursed by Landlord’s rental loss insurance*
  - *Only to the extent “services” are not provided*



## Examine the Entire Lease Document

- Key Point: Need to review the ENTIRE Lease. The vast majority of leases will have pertinent language that falls within the areas described above, **but every lease is different**, and a particular lease may contain unusual provisions
- Brokers should assist their clients to the best of their ability, but clients may need to engage legal counsel as well







**OUTSIDE THE LEASE:**

**BUSINESS INSURANCE  
AMID COVID-19**

## Business Interruption (“BI”) Insurance

- Disruption of business operations due to “**direct physical loss of or damage to**” business property
- Common Applications: fire, severe weather
- Can cover: lost income; increased expenses; restoration costs; losses from disruptions to your customers or suppliers
- Open Question: Is physical damage or structural alteration required to trigger coverage?
- But Coronavirus may constitute damage to property, albeit at a microscopic level
  - Cases no physical damage: Contamination in HVAC system; ammonia in workplace; gasoline in the soil around building
  - Bottom Line: Has a business suffered “loss of” the property due to presence of virus
- Viral contamination stays on the property: science suggests that virus can survive on surfaces for days

## “Civil Authority” Coverage – COMMON RIDER TO BI COVERAGE

- Purpose is to recover losses sustained if access to insured property is restricted by government decree
- Language typically requires:
  1. “physical loss of or damage” to property within close proximity of insured property;
  2. government prohibits access to area; and
  3. insured property is within area affected by government order.
- “Ingress and Egress” coverage rider is similar – recovery caused by restricted ingress/egress to insured property
- Check:
  - Sub-limits of liability for Civil Authority Coverage (often less than full policy limits)
  - Duration of Coverage (often limited time period)
- Example: Coverage granted to business prohibited from accessing its property when authorities closed downtown Manhattan after 9/11 (terrorism exclusion now standard)

## Common Exclusions – Virus/Bacteria, Communicable Diseases, Pollution, Fungi/Mold

- Law: Exclusions interpreted narrowly; coverage interpreted broadly in favor of policyholder.
- Virus/Bacteria Exclusions: prevalent since SARS, H1N1, and Ebola
  - Sample policy: “We will not pay for loss or damage caused directly or indirectly by any virus, bacterium or other microorganism that induces or is capable of inducing physical distress, illness or disease.”
- Communicable Diseases: some policies exclude, while others specifically cover; some don’t mention at all.
- Pollutants: “any solid, liquid, gaseous, or thermal irritant or contaminant”
- Fungi/Mold: “any type or form of fungus, including mold or mildew, and any mycotoxins, spores, scents or byproducts produced or released by fungi”
- Exclusions may only apply to certain subparts of policy—may not affect BI coverage

## Other Legal Protections: Impossibility/Impracticability of Performance

- Performance made impracticable by an unforeseeable event out of the parties' control
- Implied by Law
- Temporary Commercial Impracticability: temporarily suspends performance until performance is possible
- Potential Application to Contracts Affected by COVID-19:
  - Leases
  - Delivery of Goods
  - Completion Dates
  - Loan Payments or Covenant Compliance
- Reasonable extension of time to perform (think moratorium on evictions for non-payment of rent)
- Lessons from 2008 Recession: "once-in-a-century credit tsunami" (Greenspan)

## Advice for Business Policyholders: NEXT STEPS

- Promptly review policies
- Notify insurers of claims
- Track all business losses (even if there are issues/questions that may ultimately preclude coverage)
- Be careful about internal and external communications regarding losses (these may be used to support the insurer's effort to deny coverage)
- Engage and work closely with coverage counsel



Q&A

## WHERE TO LEARN MORE

- Miller Barondess, LLP: <https://www.millerbarondess.com/miller-barondess-client-alert-insurance-coverage-in-a-pandemic>
- CBRE COVID-19 Resource Center: <https://www.cbre.us/global/covid-19>
- Openpath website: [www.openpath.com](http://www.openpath.com)
- WHO: <https://www.who.int/emergencies/diseases/novel-coronavirus-2019>
- CDC: <https://www.cdc.gov/coronavirus/2019-ncov/index.html>
- OSHA: <https://www.osha.gov/SLTC/covid-19/controlprevention.html>
- Johns Hopkins COVID-19 Map: <https://coronavirus.jhu.edu/map.html>



# Q & A

# THANK YOU

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