

## **DANGER! Are you Covered? Negotiating The Allocation of Risk in a Retail Lease**

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On Oct 17, 2013 EPIC managing principal and national real estate practice leader Kathleen Felderman spoke at the 43rd Annual ICSC (US Shopping Center) Law Conference. Joining Kathleen in the presentation was Tanya March, Associate Professor, Wake Forest University School of Law. The format was a series of small group, peer-to-peer workshops entitled, "DANGER! Are you Covered? Negotiating The Allocation of Risk in a Retail Lease".

Kathleen's and Tanya's session was attended by approximately 100 people (attorneys who specialize in real estate leases), separated into groups of 10. Hypothetical facts and assumptions were given to the groups to discuss how they would propose crafting lease language; followed by a discussion of how various insurance policies might respond to a particular loss. The discussions were lively with many opinions and questions about the shortcomings of typically structured real estate leases as well as traditional insurance coverage.

### **The key take aways from Kathleen's presentation included:**

- Not all insurance policies are alike. ISO vs. carrier policies vs. broker manuscript policies can and will respond to losses and claims very differently
- Most real estate leases are typically crafted in a vacuum. Consultation with an experienced insurance broker specializing in real estate can be critical to ensure that insurance coverage will respond as needed when a loss takes place
- Be sure that a thorough analysis of business income is performed to establish the appropriate limit of coverage to be purchased. Again, an experience, specialized insurance broker should assist
- Request and require the broadest "Causes of Loss" available, as well as "Extended Period of Indemnity" and "Loss Adjustment Expense".

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