

Hermes, Netburn, O'Connor & Spearing, P.C. Obtains Validation of Provision in Massachusetts Commercial Leases

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June 30, 2019

Hermes, Netburn, O'Connor & Spearing, P.C. represented a major owner of commercial properties in Massachusetts against a claim by a tenant and the tenant's insurer that a commercial lease provision requiring the tenant to provide insurance naming the owner as an insured was void and unenforceable under Massachusetts law. Before retaining our firm, the owner had experienced an adverse decision in the Superior Court. We took the case on appeal to the Massachusetts Supreme Judicial Court. The decision of the Superior Court, if upheld, could have impacted provisions customarily contained in thousands of commercial leases. However, the Supreme Judicial Court reversed the judgment of the Superior Court, determining that the lease provision permitting an owner to require tenants to provide it with liability insurance was valid and enforceable.

After the appeal, the tenant and its insurer continued to maintain that the provision was unenforceable based upon the facts of the case. The owner prevailed on a Motion for Summary Judgment in the Superior Court and the firm continued its representation when this decision was appealed to the Massachusetts Appeals Court. This time, the ruling of the Superior Court was affirmed.

As a result of the work done by the lawyers of Hermes, Netburn, O'Connor & Spearing, P.C., commercial leases in Massachusetts may continue to contain a customary provision requiring tenants to provide liability insurance for the benefit of the owners for claims arising out of the tenant's use of the lease premises.