

By: Ritter, Krusee

H.C.R. No. 209

HOUSE CONCURRENT RESOLUTION

1 WHEREAS, Commercial Indemnity Insurance Company alleges
2 that:

3 (1) on or about September 29, 1995, the General
4 Services Commission, on behalf of the Texas Natural Resource
5 Conservation Commission, entered into an agreement with Cinnibar
6 Properties to lease a building, which was to be constructed by
7 Cinnibar Properties and located at 1101 Arkansas Lane, Arlington,
8 Texas, and the lease was designated State License Contract No.
9 582-8948-E3B-ARLINGTON;

10 (2) the initial term of the lease was from October 1,
11 1996, through September 30, 2006, but the term of the lease was
12 later amended to run from March 1, 1997, through November 30, 2006;

13 (3) at or shortly after the commencement of the lease,
14 the Texas Natural Resource Conservation Commission took occupancy
15 of the building;

16 (4) in early 2001, the Texas Natural Resource
17 Conservation Commission began complaining to Cinnibar Properties
18 about certain conditions of the building that the Texas Natural
19 Resource Conservation Commission alleged rendered the indoor air
20 quality of the building to be in violation of Occupational Safety
21 and Health Administration standards;

22 (5) following those complaints, an extensive
23 investigation was undertaken and a number of air quality tests were
24 conducted in the building that revealed that there were minor

1 deficiencies in the building with water infiltration and some mold
2 growth but that the indoor air quality was not in violation of
3 Occupational Safety and Health Administration standards;

4 (6) on or about May 8, 2001, Commercial Indemnity
5 Insurance Company became the owner of the building and promptly
6 undertook steps to address the water infiltration problems and
7 other conditions of the building about which the Texas Natural
8 Resource Conservation Commission complained;

9 (7) Commercial Indemnity Insurance Company advised
10 the Texas Natural Resource Conservation Commission of all remedial
11 actions it was taking;

12 (8) notwithstanding the minor nature of the problems
13 and Commercial Indemnity Insurance Company's prompt remedial
14 efforts, on or about June 12, 2001, the General Services Commission
15 gave notice that the owner had 30 days to correct deficiencies in
16 the building or the General Services Commission would terminate the
17 lease;

18 (9) on July 19, 2001, the General Services Commission
19 gave Commercial Indemnity Insurance Company formal notice that the
20 General Services Commission had cancelled the lease;

21 (10) the Texas Natural Resource Conservation
22 Commission vacated the building by the end of July 2001, and the
23 last rental payment was for the month of July 2001;

24 (11) at the time of the cancellation of the lease, the
25 building did not pose a health hazard to the occupants of the
26 building, and all material problems with the condition of the
27 building had been remedied;

1 (12) the true reason for the cancellation of the lease
2 was a decision by the Texas Natural Resource Conservation
3 Commission to relocate its offices to a more convenient location;

4 (13) even if the air quality of the building did
5 constitute grounds for termination of the lease, which Commercial
6 Indemnity Insurance Company denies, the Texas Natural Resource
7 Conservation Commission caused or significantly contributed to
8 these conditions by its operation of the heating, ventilating, and
9 air-conditioning system at excessively low temperatures and by
10 adjusting fresh air dampers so as to reduce the amount of outside
11 fresh air flowing into the system, promoting condensation on the
12 interior walls and potential mold growth;

13 (14) the General Services Commission's cancellation of
14 the lease and the Texas Natural Resource Conservation Commission's
15 abandonment of the lease and refusal to make further rental
16 payments constitute a breach of the lease;

17 (15) in the process of removing its furnishings from
18 the building, the Texas Natural Resource Conservation Commission
19 caused significant damage to the building;

20 (16) to date, despite its reasonable efforts,
21 Commercial Indemnity Insurance Company has not been able to lease
22 the building;

23 (17) for each month that Commercial Indemnity
24 Insurance Company is unable to lease the building, it incurs
25 damages of approximately \$19,774 in lost rental income;

26 (18) Commercial Indemnity Insurance Company incurred
27 approximately \$57,800 in repairing the damage to the building

1 caused by the Texas Natural Resource Conservation Commission during
2 its move out of the building;

3 (19) Commercial Indemnity Insurance Company has
4 attempted to negotiate a fair resolution of the breach of the lease
5 with the Texas Natural Resource Conservation Commission and has
6 filed a formal claim with the successor to the General Services
7 Commission, the Texas Building and Procurement Commission; and

8 (20) to date, both the Texas Natural Resource
9 Conservation Commission and the Texas Building and Procurement
10 Commission have failed and refused to make a good faith effort to
11 resolve this dispute; now, therefore, be it

12 RESOLVED by the Legislature of the State of Texas, That
13 Commercial Indemnity Insurance Company is granted permission to sue
14 the State of Texas and the Texas Building and Procurement
15 Commission subject to Chapter 107, Civil Practice and Remedies
16 Code, for breach of the lease and to recover for the damages caused
17 by the Texas Natural Resource Conservation Commission during its
18 move from the building, together with reasonable attorney's fees
19 necessarily incurred in such litigation, interest on any amounts
20 due as may be authorized by law, and costs of court; and, be it
21 further

22 RESOLVED, That the executive director of the Texas Building
23 and Procurement Commission be served process as provided by Section
24 107.002(a)(3), Civil Practice and Remedies Code.