NJALA New Jersey Association of Legal Administrators
A Chapter of the Association of Legal Administrators

Summer / Fall 2011

JER-Z-JOURNAL

A Quarterly Publication
First in Newsletter Excellence*

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Now

WATCH THE *FINE* PRINT; BE **BOLD** IN NEGOTIATION

BY MARY A. REDMOND

Leasing allows law firms to add new equipment and conserve cash. However, leasing contracts can contain expensive surprises.

Most firms, large or small, lease some of their equipment. And they're not alone. A U.S. Department of Commerce report indicated that 80% of all U.S. businesses lease equipment.

Leasing is just one of the financial tools a law firm selects to support financial growth. It helps conserve cash, often allowing organizations the ability to finance 100% of the purchase price of the equipment. An additional benefit is that the lease length usually is structured to parallel the organization's useful life for the assets.

Lease paperwork is often quick and easy, while bank loan processes can be cumbersome and time consuming. In addition, banks may want to depend upon firm partners' personal guarantees to approve the lease.

To facilitate the sale, equipment dealers and manufacturers establish relationships with leasing companies. Some equipment dealers can have credit approvals in place before the ink is dry on the equipment sales contract.

Keeping Pace

Equipment salespeople understand the importance of leasing as a sales tool. Almost every manufacturer, equipment dealer and distributor presents lease options to clients with each equipment proposal. They understand the law firm budget constraints, cash flow considerations, year end incentives and that partner distributions require cash in the bank, not funds tied up in equipment that rapidly becomes obsolete.

SAVE THE DATE!

Author Mary A. Redmond will be the featured speaker at the NJALA Monthly Meeting on Tuesday, October 4, 2011. She will present a session on "Equipment Leasing: The Fine Print Financial Implications"

Ten years ago, staying on the cutting edge of technology did not require equipment upgrades every 12 to 18 months for laptops and every four years for copiers. Today, as technological innovations speed up, networked digital copiers replace inkjet and desktop printers that have expensive replacement cartridges. Cloud computing decreases the need for fully loaded desktop computers.

Headaches on the Horizon

Leases contain 5,000 to 7,000 finely crafted words that are written by leasing companies and their legal advisors. Headaches and surprises hide in the fine print.

Leases seem simple and straightforward in the honeymoon phase and leasing professionals make equipment financing simple by rolling everything into one easy payment. For example, one digital print market leader's payment includes the monthly lease payment itself, property tax, sales/use tax, insurance, maintenance, standard delivery and rigging fees, setup fees, documentation and Uniform Commercial Code (UCC) filing fees. Coffee and doughnuts are extra.

So how do you know if you are getting the best deal? Is the lowest payment always the best? The "bundled" payment method makes analysis difficult. Analysis is simplified when maintenance is not combined with the portion of the payment that pertains to the equipment. The keys are to remain vigilant, read each lease at least three times, audit all lease invoices and negotiate every lease.

Now what about those surprises? They're in every lease. The following may help your firm reduce total equipment lease spending.

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Watch the Fine Print

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Six Areas to Investigate in Every Lease

1. **Interim or prorate rent:** This is extra rent charged between the equipment acceptance date and the lease commencement date. Some leasing companies assume that they will add in 45 days of extra rent on every lease that is paid quarterly. Quarterly payments are the lease structure most commonly proposed for technology equipment. For a three-year lease paid quarterly, this can increase the total lease cost by 4-5% of the amount financed.

TIP: Establish a fixed amount of interim rent. We recommend that 15 days is adequate.

REAL LIFE: One firm paid interim rent on every lease for $10 million in technology equipment over a three-year period. This automatically added $430,000 to the total rent. Had the firm limited interim rent to 15 days, it would have reduced the total additional rent to $143,000, a savings of $287,000.

2. End of Lease Options: At the end of the lease, the firm should have three options: purchase, renew or return. Surprises occur when the definitions and conditions pertaining to the end options are uncovered.

TIP: Understand end of lease options and definitions of all lease terminology.

REAL LIFE: The following terms and dates were found in a recent lease we reviewed for a client: Acceptance Date, Installation Date, Commencement Date, First Day of Initial Term, Last Day of Initial Term, Scheduled Termination Date and Daily Rental. All of these terms were critical to a full understanding of the lease cost. None referred to the same date during the lease life. Firms must receive satisfactory definitions to all contract date references before executing the lease.

3. **Renewal Option:** The renewal option may be automatic without notice from the lessee and can frequently add 12 extra payments if not monitored closely. Some firms find themselves in an automatic non-cancelable renewal.

TIP: Leases usually require that the firm provide a written end of lease notice no less than 90 days before making the final lease payment. Tricky lease language may require that the notice be no more than 120 days and no less than 90 days before the lease ending date. That's easy to miss. Negotiate when this notice is due before signing the lease and put a reminder on your calendar as well as in your computer software reminder system.

REAL LIFE: One company missed the required notification date by seven days. This added $85,000 in surprise extra costs for a 12-month automatic extension.

4. **Fair Market Value**: At lease end, there is usually a purchase stated as the "In-Use, In-Place Fair Market Value" option.

TIP: Never assume that the "In-Use, In-Place Fair Market Value" is the same as the Used Equipment Value. It is not. "In-Use" values can include electrical costs, user training, consulting, and system wiring. These costs increase purchase prices by as much as 5-10%. We recommend a more detailed purchase option process. If the lease total amount is a significant investment for your firm, delete the "In-Use, In-Place" phrase. Negotiate new language that provides your firm with the option to involve two or three appraisers of your selection to determine the Fair Market Value and equally share the cost of the appraisals with the lessor.

5. **Return Charges**: If the firm decides to return the equipment at the end of the lease, packing and shipping charges as well as insuring the equipment is the lessee's responsibility. If returns are not well coordinated, the leasing company may add repair charges, added rent or storage fees.

TIP: Prior to lease commencement, ask the leasing company to provide a copy of the standard repair charges. These fees may apply if equipment is judged to be unacceptable when inspected and returned to the lessor.

This is another case in which knowing potential charges can help the firm make a better decision whether to return or purchase equipment at lease end. Is it better to purchase the damaged equipment or pay to pack and ship it to the leasing company?

REAL LIFE: A firm had to pay a 60-day storage charge during the time the leasing company inspected the returned equipment. In addition, the customer owed unexpected damaged equipment charges although the lessee's IT department inspected all equipment prior to shipping. Was the equipment damaged in shipping? This was difficult to determine without a pre-shipping certification by an acceptable equipment provider.

A lessee told me that the damage charges became a big enough financial problem that for all future returns, the company hired the vendor to inspect, photograph and certify each piece of returning equipment. The leasing company's damaged equipment charges dropped dramatically.

6. **Missing Equipment:** When returning equipment, the lessee owes the lessor for missing, damaged or destroyed equipment.

TIP: With every lease contract, require a copy of the Stipulated Loss Value Table. Aggressively negotiate the values contained in the table. The leasing company says the amount on the table must be paid in order to make the profit the lessor had originally anticipated when the lease commenced.

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If, at any time during the lease, equipment is damaged beyond repair, the lessee may allow the lease payments to continue as if the equipment were still in good working condition or choose to pay the Stipulated Loss Value of the equipment and terminate that portion of the lease schedule.

If a company continues to make all the lease payments, when the lease ends, the lessee owes either the Stipulated Loss Value amount or the Fair Market Value. Most Stipulated Loss Value Tables have higher values than the Fair Market Value and should be negotiated to a lower amount before the lease is signed.

REAL LIFE: A Stipulated Loss Value Table we negotiated recently showed a three-year end of lease value of 35% of the original purchase price. Are you prepared to shell out $700 for a three-year old missing laptop that originally sold for $2,000?

End Game

In addition to understanding the terms of a lease clearly from the outset and monitoring payments during the length of the lease, be sure that, before you sign, you are comfortable with what will occur *throughout the entire lease lifecycle*.

Don't discover at the end of the lease that the only choices you have are to purchase the equipment for an outrageous price, renew the lease for another year, or enter into another lease with the same company under terrible terms.

Remember, almost everything is negotiable if only you ask!

Mary A. Redmond is a nationally known speaker, author and negotiator working in the equipment finance industry for 30 years. Mary created* The LeaseSpeak™ System: Your Guide to Saving Money on Leases, *and co-created* Men and Women do it Differently…Negotiate, That Is! *Mary frequently speaks, consults, and writes nationally about negotiation and equipment financing for ALA members. She has written for ALA's Legal Management, and has spoken at the ALA National Educational Conference and for many ALA chapters. You may reach Mary at 913-515-7779 or via email at Mary@ReviewYourLease.com.