

Ask an Expert

What Is The Best Way To Win A Lease or Contract Dispute?

The best way to win a lease or contract dispute is to avoid the dispute in the first place and adequately reallocate risk in your contracts.

As the business cycle grinds forward in a low-growth environment, Landlords are looking to stabilize properties with quality credit tenants willing to make longer-term commitments. Likewise, Tenants are seeking opportunities to lock

in lower rental rates for longer-terms or to have options to renew at pre-negotiated rates. Longer-term relationships present opportunities for both Landlord and Tenant to utilize the Lease negotiations to



Lloyd C. Birnbaum, Esq.

reduce their risk via the language of the contract or lease. Deals may go many in different directions but risk reallocation should be an item to focus on in negotiating any agreement for a longer-term relationship.

Longer-term

contracts give rise to more opportunities for disputes. The moment a dispute arises, all parties have already lost to some extent. To reduce the risk of a dispute, the underlying contract, which is at the heart of the transaction, must be clear and unambiguous. When drafting and negotiating a contract, you must assume that it may end up in front of a judge. With this in mind, you may be able to avoid

the courtroom altogether. Here are three risk reallocation issues.

Know what you are renting.

Avoid making assumptions about the description of the project, building, premises and common area. Ask any questions necessary, particularly if you will not be able to visit the site. Items to focus on: (1) ensure that responsibility of Tenant covers all matters concerning the Premises, and align that description with all areas to be given exclusively to Tenant, and (2) be clear if the Building is part of a larger project, and what responsibilities the parties will have over common areas of the project, including liability for property damage and bodily injury. This is both a risk allocation and a cost issue.

The dry, dull indemnification

clause. It is no mystery that the language of an indemnity provision will flow along like a serpentine river. Did you understand it or did you think "I'll leave this for my lawyers?" Items to focus on when considering the indemnity: (1) the indemnity you give should exclude grossly negligent acts of the other party, (2) where practicable, limit the extent of the indemnity you give to the amount of insurance coverage you will be carrying, and (3) place time limits after the contract ends on the indemnity obligations.

To insure or not to insure.

The insurance provisions are typically negotiated. Do not miss the opportunity to cover a risk by insisting that the contract contain insurance language that places obligations to provide separate policies on both parties. Do not insure over the other party's negligent acts or omissions where damage can result to you. These issues are well worth the cost of an attorney to guide you and resolve. Landlords faced with Tenants desiring to self-insure: (1) know the credit of your Tenant, (2) place a cap on the self-insurance and (3) reserve the right to annually re-examine and decrease the cap dependent upon the Tenant's credit.

SLOW AND PLODDING
LEGAL COUNSEL IS
PERFECTLY SUITABLE
FOR BUSINESS TODAY.
**AS LONG AS YOUR BUSINESS
IS SLOW AND PLODDING.**

Business never sleeps. It is always moving, always evolving, endlessly surprising. What worked yesterday is no assurance of success tomorrow. You have to think three steps ahead, second guess everything, and be ready to change direction at any moment. That's just the way business works today. Performance comes down to speed and flexibility. And if your business partners don't have it, neither do you. Call Lloyd Birnbaum today at 856-232-1600.

Doing Business Justice.



Lauletta Birnbaum
ATTORNEYS AT LAW

lauletta.com

About the Author:

For more information on how best to negotiate a lease or acquisition transaction, contact Lloyd C. Birnbaum, Esq., a founding member of Lauletta Birnbaum LLC, who has more than 25 years of experience in commercial real estate at 856-861-4062 or email: lbirnbaum@lauletta.com