

# MARKS & WEINBERG, P.C.

## Having The Lessee Sign An Acceptance Certificate Before Inspection Is Not A Good Idea (1999)

For several years we have been warning against the common practice of having the Lessee sign a Certificate of Acceptance in advance of equipment installation and inspection.

Our concern has been that, should the equipment malfunction and the Lessee default, the Lessee might be able to show that it signed the Certificate of Acceptance before actual inspection and reopen the issue of whether the lease term had actually commenced. Several cases have ruled on this matter in favor of the Lessor, but the Utah Court of Appeals has made us feel bad for looking good.

In *Colonial Pacific Leasing Corp. v. J.W.C.J.R Corporation* 977 P.2d 541 (1999) the Court of Appeals overturned a lower courts ruling in favor of the Lessor and required trial on factual issues.

Among other things, the Utah court held that the issue of whether the Lessee has a reasonable opportunity to inspect the Equipment and whether it actually accepted the Equipment by its actions, were fact questions to be determined by Judge of Jury. In other words, the Judge could not simply rule in favor of the Lessor on these issues by virtue of the Certificate of Acceptance, which the Lessee apparently signed prior to delivery.



The Court shrugged off various arguments which had been successful in the past, such as that the execution of the certificate was conclusive evidence of inspection and that the Lessee taking possession of the goods constituted a legal acceptance.

In addition, the appellate court required the trial court to consider the possibility of an "oral cancellation" by the Lessee based on its claim of having made a telephone call to the Lessor and having received confirmation of cancellation of the Lease.

Marks & Weinberg, PC is law firm with significant experience in dealing with virtually every type of equipment and facility lease financing. The lawyers of the firm have participated in leasing financings for more than a billion dollars of equipment and are recognized throughout the industry. If you would like more cases or articles on leasing, or have any questions or comments about this Article or other leasing issues, please visit [www.lease lawyer.com](http://www.lease lawyer.com) or contact Barry Marks at 205-251-8303 or Ken Weinberg at 205.251.8307.

