

# MARKS & WEINBERG, P.C.

## Citicorp Vendor Finance, Inc. v. WIS Sheetmetal, Inc.

2002 WL 1339864 (S.D. Ind.)

Plaintiff and defendant entered into a finance lease for equipment. The defendant stopped making monthly payments and the plaintiff sued for breach. The lease agreement contained a "Default and Remedies" section, which among other requirements, mandated the payment of interest on unpaid rental payments and late charges at 16% per annum and also the payment of attorney fees equal to 20% of the total unpaid rental of the balance of the lease term.

The court addressed the question of whether a contract provision for damages is unenforceable as a penalty under Indiana law. The court found this to be a question of law to be determined by the court. The court found that the 16% interest rate provision was enforceable only if evidence could be presented "that the interest rate [was] proportionate to the expected damages and therefore reasonable under the circumstances." In respect to the provision regarding attorney's fees, the court found the provision to be an "unenforceable penalty," as the provision was "not tailored to approximate the damages to occur in the event of a breach and compensate that loss."

Marks & Weinberg, PC is a 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 [leaselawyer.com](http://leaselawyer.com) or contact Barry Marks at 205.251.8303 or Ken Weinberg at 205.251.8307.

