

# MARKS & WEINBERG, P.C.

## **GECC v. Danneman Associates v. Eastman Kodak** 1995 WL 163561 (Del. Super. 1995)

When Danneman refused to continue to pay rent for allegedly defective equipment manufactured by Kodak, GECC repossessed. Danneman claimed that the lease was, in fact, a security agreement and that the repossession technically violated the "commercially-reasonable sale" requirements of UCC §9-504 (discussed elsewhere in this issue). If so, GECC would be unable to collect the difference between the repurchase price paid by Kodak for the equipment and the amount owed under the lease.

The Delaware court first found that the lease was executed prior to the enactment of the then current version of UCC §1-201(37) in Delaware (the definition of security interest) and that the UCC provision did not simply codify existing Delaware law. The court stated, as an aside, that the lease might not be a true lease even under the new more relaxed standards because it was in a form that could be perfected as a security interest and GECC filed a UCC-1. Also, the lease provided for acceleration of all payments due for the entire term in the event of a default, which would result in payments greater than the purchase price of the equipment.

The court went on to examine the lease under pre-UCC provision and found that (1) the fair market value purchase option was probably, in fact, a nominal purchase option because the lease was probably for the entire economic useful life of the equipment and (2) payments



under the lease were "essentially indistinguishable from a sale . . . financed at six percent." This, coupled with the court's observation that GECC bore no burdens of ownership dictated a "common sense" finding that the lease was, in fact, a sale-and-security interest transaction and the lessee won.

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