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## Article

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### **LEASE LANGUAGE: Secrets to managing your lawyer**

By Claude Hawkins & Gregory Hawkins

**Shopping Center World, Jan 1, 2002**

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For most shopping center owners and managers, litigation is like the typhoon that ravishes a remote country — unfortunate but far away. A well designed lease forestalls this possibility. Or at least tilts the playing field to your advantage should a disgruntled tenant pursue legal action.

In 1997, pizza chain Little Caesars sought to exercise a renewal option on a lease executed with a previous owner. Bell Canyon Shopping Center, the new owner, set the lease rate at \$19.00 per sq. ft. Little Caesar sued citing the lease language, “in the first option period, the Minimum Rent shall not be higher than \$11.00 per sq. ft...” The trial court agreed with Little Caesar.

Bell Canyon appealed, arguing the lease contained the phrase, “Market rates shall be at the then prevailing market rates....” They maintained “the renewals provision's method to determine the rental rate is vague and indefinite...” After three years of legal wrangling, the Appellate Court disagreed and Bell Canyon lost \$8.00 per sq. ft. for five years.

Win or lose, both the process and the result of legal action can prove disheartening, often damaging and always expensive. When defending against a lawsuit, it is tempting to lay your problem at your attorney's feet, then step back and hope for the best. This is the most common lawyer/client relationship. It is the least effective.

Except for basic legal work, the interaction between client and lawyer should be viewed as a cooperative effort. Obviously, you pay for and expect the lawyer to do the heavy lifting. Still, there are steps you can take to improve your odds.

Discuss with your lawyer specifically how often you want a progress report and how much detail you require. Don't rely on your lawyer's discretion to determine a reporting schedule. One of the most frequent complaints made by clients is that their lawyers kept them in the dark.

Take careful notes whenever you talk with your attorney. Then ask

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your lawyer to memorialize your discussions in a letter. This letter or précis, which means a “concise summary,” becomes an essential element of the reporting system. Compare any apparent discrepancies between your notes and your lawyer's précis. Discuss these differences openly, but without antagonism.

Human nature dictates that people make accommodations more readily at the beginning of a relationship. This includes your lawyer. Every point you fail to resolve with your lawyer early in the process, including fees and expenses, will prove more difficult to correct later.

Your lawyer will prepare a “Representation Agreement.” This is a critical contract; read each word carefully. Ask questions and request changes to anything that seems unclear. Your reporting system is a good addition to this agreement.

At some point during the slow course of litigation, you are likely to discover your case is not making the progress you expected. Delays are part and parcel of litigation. Remember, another attorney is working to spoil your lawyer's good work. Then again, your lawyer may be the one missing deadlines and asking for extensions.

This is where your reporting system demonstrates its true value. Because of your lawyer's précis after each consultation and the progress reports, you know your lawyer's strategies, how they were implemented and the results.

Your reporting system allows you to ask critical questions like, “Why did this happen?” or “When will this happen?” or “How do you plan to counter?”

Caution is advised however, as directing your lawyer's every move would prove counterproductive and costly. Managing your lawyer is best viewed as a diplomatic balancing act.

This is your case and you must live with the results. As one attorney observed, “All of the strategic decisions that the lawyers make can affect the final decisions in the case, and the client is stuck with the decisions of the attorney.”

Don't get stuck; participate.

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