

# Commercial Division Rules on Enforceability of Liquidated Damages Clauses

**February 13, 2012 by Tyler Baker**

In *Wells Fargo Bank Northwest v. US Airways, Inc.*, 2011 NY Slip Op 52188(U) (Sup. Ct. N.Y. County Dec. 1, 2011), Justice Bernard J. Fried held that a liquidated damages provision requiring payment of a holdover fee equal to twice the monthly rent was reasonable and did not function as a penalty under New York contract law. The case arose from three aircraft sale and leaseback transactions, pursuant to which Defendant US Airways, Inc. (“US Airways”), sold to Plaintiff Wells Fargo Bank Northwest (“Wells Fargo”), and Wells Fargo leased back to US Airways, three Boeing 737 aircraft. The original lessee was America West, which merged into US Airways, and all of the agreements at issue were assigned to and assumed by US Airways.

In evaluating the liquidated damages provision at issue, Justice Fried explained that the contract provision stated that liquidated damages would apply until such time as the aircraft were returned in the condition required under the agreement, and that if Wells Fargo expended funds to make the necessary adjustments to have the aircraft meet the contract conditions, Wells Fargo would be entitled to those costs, and the liquidated damages provision would terminate at that point in time. The Court noted that contracts providing for liquidated damages for holdovers plus compensatory damages for repairs had been upheld as appropriate and enforceable in past cases. Further, the Court noted that past cases also upheld liquidated damages for rental holdovers in multiples of the monthly rent.

The Court stated that US Airways had failed to meet its burden to demonstrate that the liquidated damages provision acted as a penalty, that anticipated damages were easily ascertainable at the time of contracting, or that the liquidated damages amount was grossly disproportionate to the probable loss. Observing that the contracts in question were negotiated by sophisticated persons in the airline industry with experienced counsel, Justice Fried found nothing that would indicate that US Airways was unaware of what it was signing. The Court concluded that the liquidated damages provision of the agreements was valid and unenforceable, and denied US Airways motion for partial summary judgment.