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Contains Advice of Counsel

TO: Steve Kitchen, Executive Vice President
and Chief Financial Officer

FROM: Dan Runion
10th Floor, Topeka G.O.



DATE: May 4, 1998

REDACTED



Western
Resources

SUBJECT: equipment lease - jet

INTERNAL
CORRESPONDENCE

CC: J. Rosenberg (w/ enc.), J. Martin (w/ enc.), C. Liening (w/ enc.)

L. Cook (w/ enc.)

At the request of Jim Martin and Craig Liening, enclosed please find an Executive Summary of Legal Review Points for the lease and participation agreements contemplated in connection with Westar Capital, Inc.'s lease of an aircraft.

Please let me know if you have any questions on, or would like to discuss, the enclosures.
Best regards.

WS105334

Executive Summary of Legal Review Points
Proposed Equipment Lease

Ref.	Connell	Westar	Comments
§ 5(a)(x)	Connell seeks to have Westar perform operating, maintenance, and airworthiness directives which have been waived, dispensed with, or extended by the FAA.	Not a term of existing jet lease.	Additional costs to Westar
§5(a)	Connell seeks to limit use of jet to 7,000 hours; require Westar to do whatever is necessary at end of lease, including upgrade jet, to export it to foreign country if Lessor desires; and require Westar to correct whatever items Lessor identifies in the Return Certificate that Westar is required to provide at end of lease.	None of these are terms of the existing jet lease.	Additional costs to Westar
5(d)	Connell seeks to require Westar to make 200% lease pmts at end of lease irrespective of cause of failure to return, including causes beyond Westar's control.	Existing lease provides Westar continues lease pmts at same rate at end of lease where failure to return jet is caused by Westar.	Additional costs to Westar
5(f)	Connell seeks to have Westar make other parties whole for adverse change in investment return arising from changes in tax laws during term of lease and other parties' erroneous tax assumptions.	Similar in existing lease.	We recommend that Westar agree to this only on the condition that it is provided an appropriate tax opinion from Lessor's counsel.
§7	Connell seeks to have "hell or high water" clause specifically state that Westar pays for jet even if it does not have possession, or use of jet through no fault of Westar.	"Hell or high water" clause of existing jet lease silent regarding whether Westar pays for jet where it does not have possession, or use of jet.	Discuss
§9	De minimis personal/family use allowed	Existing lease silent on personal/family use.	Discuss

Executive Summary of Legal Review Points
Proposed Equipment Lease

Ref.	Connell	Westar	Comments
§10	Connell seeks to have Westar maintain jet in same manner as it maintains its other aircraft. Maintenance includes enrollment in various 3d party maintenance programs (CESCOM, Allied Signal Aerospace Maintenance Service Plan). Westar will deposit funds with Cessna and Allied Signal in accordance with such programs.	Existing lease requires maintenance in accordance with FAA and manufacturer's recommendations.	Proposed maintenance may cost more, and be more onerous than existing jet lease requirements. Consider discussing with . . . (Bruce Anderson?). Recommend reviewing terms of specified maintenance programs before Westar agrees to this provision.
§12	Connell seeks to permit parties with which Westar does not have a direct relationship (Security Trustee, AND Participant's) right of inspection in respect of jet and related records however often, and wherever, they desire.	We recommend limiting right of inspection to parties with whom Westar has direct relationship (ie Lessor), and to reasonable place and time.	Consider avoiding unreasonable interference with Westar's ability to use jet.
§13	Connell seeks to require Westar to execute all documents reasonably requested by Lessor in connection with its transfer of lease.	Existing agmt. limits Westar's obligation to execute further documents to UCC financing limits and those required by law upon Lessor's transfer of lease.	Connell's request is more onerous to Westar as it would commit Westar to executing unspecified documents. Recommend avoiding possible disagreement over what constitutes reasonably requested by Lessor by specifying documents to be executed
§15(b)	Connell seeks to have Westar indemnify Owner Participant for adverse tax consequences arising from replacements occasioned by loss, damage or destruction of jet.	Not a term of existing lease.	Additional costs to Westar
§17	Lessor excluding all warranties including warranty of its title to the leased property, and warranty of quiet enjoyment which directly affects Westar's possession and use. Manufacturer's warranties on jet not being specifically assigned or otherwise benefitting Westar.	Lessor under existing lease specifically warrants to Westar that its possession of jet shall not be disturbed by Lessor or anyone claiming thru Lessor.	It seems reasonable that Lessor should be able to give these warranties, particularly where it is taking possession of the plane directly from the manufacturer. Without these warranties, Westar does not have much, if any, recourse for a loss of possession or use of the jet. Westar should obtain manufacturer's warranties as a purchaser of the jet would. Westar is sufficiently similar to owner to strongly support this rationale.

Executive Summary of Legal Review Points
Proposed Equipment Lease

Ref.	Connell	Westar	Comments
§19(a)	Lessor, upon Westar's default, may require Westar, at Westar's sole cost, to store jet for 9 months and to bear all risks during such period.	Not a term of existing lease.	Additional costs to Westar
§19(t)	FMV of jet for certain purposes determined by appraiser chosen by Lessor, for which Westar pays associated fees.	Not a term of existing lease.	We recommend deleting or replacing with provision fairer to Westar.
§25	Option to renew, or purchase must be given 180 days before end of lease.		We recommend maximum 90 days maximum.
§27	Connell seeks to have Westar periodically furnish to Lessor, Owner Participant, Security Trustee, holders of Notes audited F/S with unqualified opinion of independent CPA.	Original Lessee, Wing, under existing lease required to provide independently audited and certified F/S.	Additional costs to Westar as it does not presently produce such F/S. Also, Westar's distribution of F/S should be limited to Lessor as this is the only party with which it has direct relationship.
§29	Connell seeks to have Westar pay for all expenses of Lessor and Owner Participant incident to Westar's exercise, if any, of its option to upgrade to another jet.		This is better addressed in the further agreements entered into, when, and if, Westar exercises the option.

Executive Summary of Legal Review Points
Proposed Participation Agreement

Ref.	Connell	Westar
	Connell seeks to have Westar pay all costs incurred by others in connection with certain items (§2.6 - costs associated with Notes, Operative Agreements).	We recommend limiting Westar's obligation to pay reasonable costs.
§3.2 (c)	The recommended provision is in the existing participation agreement.	We recommend that Westar's representation that its execution and delivery of lease documents is authorized/legal be conditioned on the veracity of other parties' reps/warranties.
§3.2 (d)	The recommended provision is in the existing participation agreement.	We recommend that Westar's representation that all taxes payable as a result of the jet purchase and lease thereof have been paid exclude taxes are contested in good faith.
§3.2 (f)	The recommended provision is in the existing participation agreement.	We recommend that Connell's representation that it is not in default such that it would not be able to perform under the lease agreements be broadened to include that it is not in default such that its business would be affected adversely.
§3.6 (a)	The recommended provision is in the existing participation agreement.	We recommend that each Participant acknowledge that it has been advised that the Notes (the source of debt financing) it purchases must be held indefinitely.
§3.6 (d)	The recommended provision is in the existing participation agreement.	We recommend conditioning Connell's right to transfer its interest in the trust holding title to the jet upon delivery of a legal opinion that the transfer has been authorized, and is (a) legal and binding, (b) meets legal reqmts, and (c) is exempt from Securities laws.
§3.6 (d)	Connell has rejected our request described in next column.	We recommend conditioning Connell's right to transfer its interest in the trust holding title to the jet upon the transferee maintaining minimum net worth.
§4.1	The recommended provision is in the existing participation agreement.	We recommend including in the conditions to Westar's obligation to lease the jet the same conditions upon Participants' obligation to make investment (ie purchase Note) which will be used to finance purchase of the jet.

Executive Summary of Legal Review Points
Proposed Participation Agreement

	Connell	Westar
ref.		
4.1 b)	The recommended provision is in the existing participation agreement.	We recommend limiting Westar's this obligation to filing/recording those documents reasonably requested. Avoid obligation to "take all actions deemed necessary or appropriate by [other party]."
§6(a)	Connell seeks that Westar indemnify other parties to transaction for taxes arising from payment of premiums or other amounts payable in respect of the Notes, and levied on any person.	We recommend against the specified obligations as Westar indemnifying for payment of amounts that it does not control (ie the premiums and other amounts in respect of the Notes); obligation arising from acts of persons that it does not control; and <u>these obligations are not in existing participation agmt.</u>
§6(a)	Connell seeks broadening Westar's tax indemnification obligation over that provided under existing participation agmt. Examples include requiring Westar to indemnify for taxes arising from replacement, modification, or alterations on respect of jet; accrual of indemnity payable; and levy of personal property, and value added taxes to the extent they are based on net income of the indemnitee.	The provision(s) sought by Connell is/(are) not in the existing participation agreement.
§6(b)	Westar's right to contest a tax obligation for which it has a related indemnity obligation, conditioned on Westar providing indemnity agmt satisfactory to Indemnitee.	Unclear what this means, but it is not a term of the existing participation agmt.
	The recommended provision is in the existing participation agreement.	We recommend conditioning Westar's right to contest a tax obligation upon providing an indemnity agmt reasonably satisfactory to the putative Indemnitee as currently pro
§7	Connell seeking to broaden Westar's indemnity obligation by including liabilities related to events spanning the date on which the jet is returned even if the events preceding such return are not a material cause of the liability.	We recommend that the indemnity obligation referenced should be limited to the extent such obligations relate to a period before Westar's return of the jet.

Executive Summary of Legal Review Points
Proposed Participation Agreement

	Connell	Westar
9	Connell seeks to limit Westar's ability to merge, consolidate, where it is not the surviving entity, or transfer substantially all its assets, upon getting the letter of credit provider in respect of lease payments to execute documents evidencing the provider's continuing obligations under the letter of credit.	Westar should only agree to this if it can gain assurance that it can cause the letter of credit provider, likely a 3 rd party, to execute and deliver documents evidencing the provider's continued letter of credit obligations. Connell rejected our recommendation that upon such merger, consolidation, or transfer of assets, the letter of credit provider would provide the Lessor a letter of credit substantially in the form as the then existing letter of credit, or other form of financial assurance, reasonably acceptable to the Lessor.
12.0(b)	The recommended provision is in the existing participation agreement.	We recommend that Westar have a right of consent to whom the Owner Trustee is if the Trust in which the jet is held revoked.
12.0(c)	Connell seeking a broad limitation of liability provision to its favor.	This is not a term of the existing participation agmt.
12.13	The recommended provision is in the existing participation agreement.	We recommend inclusion of a Reoptimization Clause as the existing lease contains the same.