



6. Mr. Fusco was, at all times relevant hereto, the General Partner of Armstrong and was the person with ultimate authority for approving leases and amendments executed by Armstrong.
7. The Building (Building III of 2 Armstrong Road) was one of two office building owned by Armstrong in Armstrong Park.
8. Ford was a desirable tenant to Armstrong because Ford was creditworthy, had name recognition, and was expected to have increasing space needs.
9. At the time Ford became a tenant of the Building, there was only one other tenant in Building III.
10. On February 15, 1991, Armstrong, as landlord, executed a written lease (the "Lease") and an addendum (the "Addendum") for 9,878 square feet (the "Original Premises") for Class A office space located on the third floor of a building at 2 Armstrong Park Road known as Building 3 (the "Building") off Route 8 in Shelton, Connecticut. Mr. Fusco signed the Lease, the Addendum, and all amendments mentioned hereinafter.
11. The Lease and the Addendum to the Lease were executed by Ford, as Tenant, on February 11, 1991. (Stipulation of Fact, ¶ 7.)
12. The terms of the Lease were negotiated between Albert Orr ("Orr"), Director of Leasing for the Fusco Management Co. and Richard Groeninger ("Groeninger"), Vice President of Corporate Properties for Ford.
13. The term of the original lease between Ford and Armstrong was originally for five years commencing on March 11, 1991 and ending on March 10, 1996.
14. The Addendum to the Lease was incorporated in and made a part of the Lease, and included a "Tenant's Option to Terminate," which provides as follows:

Tenant's Option to Terminate. Tenant shall have the right and option to terminate and cancel this Lease Agreement and all of Tenant's obligations and rights hereunder at a date certain (the "Date Certain") to be determined by Tenant which Date Certain shall occur no earlier than after the expiration of three (3) full years of the term hereof together with a minimum of six (6) months

written notice. As a condition precedent to Tenant's rights to terminate its obligations hereunder, prior to the Date Certain set by Tenant, Tenant shall pay to Landlord the greater of either (i) a product arrived at by multiplying a fraction (the numerator of which is the number 6 and the denominator of which is the number of months remaining in the term of the Lease after the Date Certain set by Tenant) by the then net present value to Landlord of the balance of the leasehold payments remaining in the term as of and after the Date Certain, reduced to such net present value at the rate of two percent (2%) below the Prime Rate as published in the Wall Street Journal; or (ii) the balance of the unamortized cost of the Tenant improvements over the remainder of the Initial Term. The greater of the foregoing sums shall be paid to Landlord prior to the date set by Tenant for such termination, upon receipt of which by Landlord (and Landlord agreeing to the calculations made and the payment amount in all respects) this Lease shall be deemed to be cancelled, terminated and of no further force or effect, all as of the date certain set by Tenant.

[hereinafter, the "Cancellation Clause"]

15. The Lease and Addendum (collectively, "the Lease"), including the Cancellation Clause, were drafted by Armstrong's real estate attorney, Robert Leitze ("Armstrong's Counsel").
16. Armstrong supplied the formula for the cancellation fee that would be due and owing if Ford chose to exercise the Cancellation Clause.
17. Prior to the execution of the Addendum, Ford made it clear to Armstrong that it wanted the right to terminate its leasehold obligations early. If refused, there might not have been a lease.
18. Ford needed the flexibility to end its tenancy early and successfully bargained with Armstrong for the inclusion of the Cancellation Clause in the Lease.
19. The Addendum, drafted by Armstrong's Counsel, provides that the lease termination "shall occur no earlier than after the expiration of three (3) full years of the term hereof

together with a minimum of six (6) months written notice." Cancellation Clause (emphasis added).

20. Armstrong's Counsel drafted the Addendum with, he claims, the intent that Ford would be liable for 42 months of rent before Ford could effectuate termination.
21. Ford understood that it could exercise early cancellation after a minimum period of three years provided that it had given six months written notice.
22. It was standard procedure for Orr as Director of Leasing to apprise Edmund Fusco, Paul Morris and Paul Strecker (the "Decision Makers") of the key terms of any proposed lease amendments before such documents were agreed to.
23. Prior to Armstrong's execution of the Lease, Orr specifically advised the Decision Makers of the Cancellation Clause that was contained in the Lease as it was an important factor in assessing the financial feasibility of the transaction.
24. The square foot rent rates established by the Lease were as follows:

<b>Date</b>	<b>Dollars (\$)</b>
During the First Year of the Lease 3/91 - 3/92	\$4.00
During the Second Year of the Lease 3/92 - 3/93	\$13.50
During the Third Year of the Lease 3/93 - 3/94	\$15.50
During the Fourth Year of the Lease 3/94 - 3/95	\$17.50
During the Fifth Year of the Lease 3/95 - 3/96	\$19.50

25. At the time that Armstrong and Ford were negotiating the terms of the Lease for 9,878 square feet, Armstrong anticipated that Ford would have additional space needs. Armstrong's expectations proved true.
26. The Parties engaged in negotiations for Ford to expand its lease as early as February of 1991 after Ford had signed the Lease but before Ford had even taken occupancy of the space under the Lease.
27. During the period from May of 1991 to July of 1996, the

Parties executed six amendments to the Lease whereby Ford increased its initial leasehold of 9,878 square feet to a total of 34,290 square feet, including some space on the first floor, and, after the Fifth Amendment, occupied all of the third floor.

28. On May 17, 1991, Ford executed a "First Amendment to the Lease Agreement" (the "First Amendment"). Armstrong executed the First Amendment on June 4, 1991. (Stipulation of Fact, ¶ 8.)
29. The First Amendment expanded Ford's tenancy by another 3,680 square feet (the "First Expansion Premises"), which was located on the third floor of the Building. (Stipulation of Fact, ¶ 9.)
30. On December 6, 1991, Ford executed a "Second Amendment to the Lease Agreement" (the "Second Amendment"). Armstrong executed the Second Amendment on December 12, 1991. (Stipulation of Fact, ¶ 10.)
31. The original lease term with the first two amendments was scheduled to expire on March 10, 1996.
32. Prior to Armstrong's execution of the First Amendment, Orr specifically reminded the Decision Makers about the existence of the Cancellation Clause.
33. The Decision Makers' response was to ask if Orr thought the Cancellation Clause could be eliminated. Orr advised the Decision Makers that he did not think Ford would agree to the elimination of the Cancellation Clause.
34. At the time the First Amendment was executed, Orr said he thought "Armstrong should let sleeping dogs lie" when he was asked whether Armstrong should seek to have the Cancellation Clause eliminated.
35. Without trying to negotiate the Cancellation Clause out of the Lease, Armstrong elected to execute the Lease and the First Amendment.
36. Armstrong refused to release the Addendum containing the Cancellation Clause to its broker, CB Richard Ellis (f/k/a CB Commercial) when the broker requested same.
37. In September of 1991, the Parties commenced negotiations for a second expansion of the Lease.

38. Orr reminded the Decision Makers about the Cancellation Clause and they elected to agree to a second amendment to the Lease despite Ford's continued right of early termination.
39. The Second Amendment established higher square foot rent rates, which applied only to the additional 6,620 square feet acquired pursuant to the Second Amendment. The existing square foot rent rates remained the same.
40. The Second Amendment (executed by Ford on December 6, 1991) was also drafted by Armstrong's Counsel.
41. The First Amendment, drafted by Armstrong's Counsel, contained a ratification clause which provided:

Ratification: All of the remaining terms, conditions and covenants as contained in said Lease except as modified in this First Amendment, are hereby ratified and confirmed in all other respects.
42. The Second Amendment, drafted by Armstrong's Counsel, contained a ratification clause which provided:

Ratification: All of the remaining terms, conditions and covenants as contained in said Lease Agreement and as contained in said First Amendment to Lease Agreement, except as modified in this Second Amendment to Lease Agreement, are hereby ratified and confirmed in all other respects and for all other purposes.
43. Plaintiff concedes that Ford's right to exercise the Cancellation Clause continued throughout the First and Second Amendments to the Lease.
44. After the execution of the Second Amendment, Armstrong and Ford entered into four more amendments to the Lease, all of which were drafted by Armstrong's Counsel (with certain minor exceptions not relevant hereto) and all of which included ratification clauses.
45. Orr's understanding of the Cancellation Clause is that it would survive further amendments to the Lease, subsequent to the First and Second Amendments, if the Cancellation Clause was ratified, even when additional space was assumed by Ford or when the lease term was extended as to existing space.

46. Paul DiMauro ("DiMauro") replaced Orr as Director of Leasing for Fusco Management Company. DiMauro's title was Vice President of Property Management & Leasing for Fusco Management Company.
47. DiMauro was the person directly involved in the negotiation of the third through sixth amendments on Armstrong's behalf.
48. DiMauro claims that he was not aware of the Cancellation Clause, since he had not read the original lease, until he was notified by Ford in December of 1997 of Ford's intent to exercise that provision.
49. During negotiations for Ford's further expansion at Armstrong Park, DiMauro sent a Memorandum dated April 18, 1994 to Morris, setting forth certain information in the existing lease and proposed amendment and stating that "all other terms and conditions of the current lease would remain in effect."
50. The Third Amendment to Lease Agreement ("Third Amendment") extended the term of the Lease to March 31, 1999 for the entirety of the leased premises (25,087 s.f.) and reduced the square foot rent rate for all of the leased space for the period from September 1, 1994 through March 10, 1996 by one to three dollars per square foot.
51. At the time the Third Amendment was negotiated and executed, Paul DiMauro, having never read the Lease, was not aware of the Addendum providing Associates with an early termination right.
52. In July of 1994, before Ford took on additional space pursuant to the Third Amendment, Armstrong had approximately a 15% vacancy rate in the Building.
53. On July 14, 1994, Ford executed the Third Amendment. (As stipulated by the parties.)
54. On July 19, 1994, Armstrong executed the Third Amendment.
55. The Third Amendment increased Ford's total leased space to 25,087 square feet, marking an increase in the original size of Ford's tenancy by more than 153%.
56. The Third Amendment contained a ratification clause which provided as follows:

Ratification. All of the remaining terms,

conditions and covenants as contained (i) in said Lease Agreement; (ii) in said First Amendment to Lease Agreement; and (iii) in said Second Amendment to Lease Agreement, are hereby ratified and confirmed in all respects and for all purposes, except as specifically stipulated and modified by the terms of the herein Third Amendment to Lease Agreement. In the event of any conflict between the terms, conditions and provisions of the herein Third Amendment and the terms, conditions and provisions of the said Lease Agreement, as modified by the said First and Second Amendments thereto, then in such event the terms, conditions and provisions of this Third Amendment shall govern and prevail in all respects.

57. Plaintiff contends that because of the differences in the ratification clauses, the Third Amendment restructured the economic terms of the lease so that the Cancellation Clause was no longer effective.<sup>1</sup>
58. On September 30, 1994, Ford's broker requested a proposal from DiMauro for the proposed tenancy of Associates Financial Services Company, Inc. ("AFSCI"), a company associated with Defendant, in the Building.
59. Ford's broker asked Armstrong to provide a proposal for AFSCI's tenancy which addressed "all business terms incorporated in the recently executed lease amendment [referring to the Third Amendment]: Base Rental Rate, Loss Factor, Tenant Electric, Renewal Option, Expansion Option, Tenant Installation, Parking (one reserved), Early Termination Option." Pl. Ex. 198 (emphasis added).
60. On October 27, 1994, Ford executed the Fourth Amendment to Lease Agreement (the "Fourth Amendment"). Armstrong executed the Fourth Amendment on October 31, 1994. (Stipulation of Fact, ¶ 14.)
61. On or before June 15, 1995, Ford executed the Fifth

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<sup>1</sup> Plaintiff also argues that if it had known the Cancellation Clause could be employed in the future, it would not have entered into the Third Amendment because its costs (for commissions and construction) made it uneconomical. Defendant argues that the poor commercial rent market and Plaintiff's financial problems with its mortgages impelled Plaintiff to enter into the Third Amendment. We consider these contrasting positions to be speculative and hypothetical and make no factual findings thereon.

Amendment to Lease Agreement (the "Fifth Amendment"). Armstrong executed the Fifth Amendment on June 15, 1995. (Stipulation of Fact, ¶ 15.)

62. The Original, First, Second, Third, Fourth and Fifth Expansion Premises were all contiguous on the third floor of Building Three. (Stipulation of Fact, ¶ 19.)
63. The Fifth Amendment increased Ford's total leased space to 31,918 square feet, after which Ford was the only tenant on the third floor.
64. The commencement date for the Fifth Expansion Premises on August 7, 1995.
65. By Memorandum dated February 12, 1996, DiMauro submitted proposed terms to Ford for a sixth amendment to the Lease, which provided that "all other terms and conditions will remain as per the current lease and any amendments thereto."
66. The eighth WHEREAS clause to the Sixth Amendment stated the threefold purposes of the Sixth Amendment:

WHEREAS, Landlord and Tenant desire to enter into the herein Sixth Amendment whereunder, inter alia, (i) Tenant shall lease additional space consisting of two thousand three hundred seventy two (2,372) rentable square feet of building floor area on the first floor of Landlord's Building (the "Sixth Expansion Premises") upon the terms and conditions as contained hereinafter (thereby bringing the total square footage leased to Tenant to thirty four thousand two hundred ninety (34,290) square feet); (ii) Landlord shall cause certain improvements to be made to the third floor of the demised Premises; and (iii) the term of the herein Lease shall be extended for a given period of time upon and after completion of said third floor improvements, and upon the terms and conditions as contained hereinafter . . . .

Sixth Amendment at 2.

67. The only new space under the Sixth Amendment was on the first floor of the Building and is not involved in this case, since it was assigned to a related company and not canceled.
68. The Sixth Amendment called for the following improvements to

third floor space previously demised to Ford: (a) removal and relocation of a certain glass wall partition; (b) modification of configuration of a conference room facility; (c) performance of all necessary modification to electrical and mechanical installations; (d) installations of required finish work per standards existing on the premises.

69. The Sixth Amendment states, in relevant part, that the term commencement dates for the third floor premises were as follows:

TO HAVE AND TO HOLD the Original Premises for a period and term (the "Initial Term") commencing on March 11, 1991; TO HAVE AND TO HOLD the First Expansion Premises for a period and term commencing April 1, 1991; TO HAVE AND TO HOLD the Second Expansion Premises for a period and term commencing December 3, 1991; TO HAVE AND TO HOLD the Third Expansion Premises for a period and term commencing September 1, 1994; TO HAVE AND TO HOLD the Fourth Expansion Premises for a period and term commencing December 4, 1994; TO HAVE AND TO HOLD the Fifth Expansion Premises for a period and term commencing July 10, 1995; and TO HAVE AND TO HOLD the Sixth Expansion Premises for a period and term commencing on the date upon which (a) the Sixth Expansion Premises shall be substantially completed by Landlord . . . and (b) a Certificate of Occupancy (whether temporary or permanent) has been issued with respect to the Sixth Expansion Premises (the occurrence of both (a) and (b) constituting "First Floor Substantial Completion"). The date of such First Floor Substantial Completion shall be deemed to be the "Sixth Expansion Premises Commencement Date".

Sixth Amendment at 3-4.

70. The expiration of the term of the Lease, as amended, was extended for five years from the date upon which the improvements to the third floor called for in the Sixth Amendment were substantially completed, which was Feb. 13, 1997.
71. The event that triggered Ford's obligations to pay rent on the Sixth Amendment premises on the first floor was the completion of the improvements on the first floor, which occurred on June 15, 1996.

72. The third floor improvements called for by the Sixth Amendment did not increase Ford's rentable liability for the third floor space since it already rented all of the third floor.
73. Defendant planned and designed the improvements made to the third floor space pursuant to the Sixth Amendment, and Fusco Corporation completed the construction.
74. On February 13, 1997, the Building Department of the City of Shelton, Connecticut issued a Certificate of Occupancy for the third floor space indicating substantial completion of the third floor space. (Pl. Ex. 14.)
75. The square foot rent rates established by the Sixth Amendment were as follows:

<b>Date</b>	<b>Dollars (\$)</b>
From the Sixth Expansion Commencement Date through 3/31/97	\$17.00
4/97 - 3/98	\$17.50
4/98 - 3/99	\$18.00
4/99 - 2/12/02	\$17.55

76. The square foot rent rates established by the Sixth Amendment applied to all 34,290 square feet under lease (i.e., all of the third floor and the 2,372 square feet on the first floor).
77. In late 1997, Associates made the decision to move its entire Shelton, Connecticut operation to Cincinnati, Ohio.
78. By Assignment dated December 3, 1997, Ford assigned "all of its right, title, duties, obligations, and interest in and to the Sixth Expansion Premises . . . consisting of 2,372 square feet on the first floor" to an affiliate, Associates Financial Services Company of Connecticut, Inc. (Pl. Ex. 17.) Armstrong agreed to this assignment. Ford did not assign any of its interest in the third floor space of the Building.
79. Ford's interpretation of its rights under the Cancellation Clause was made by Wayne Stoltzman ("Stoltzman"), then Vice President of Corporate Properties for Associates Corporation of North America. Mr. Stoltzman had not been involved in negotiating the Lease or the Addendum.
80. During the negotiations for the Third and all subsequent

Amendments, the termination right claimed by Associates was never brought up or discussed between the parties.

81. The only references made to the Cancellation Clause after the execution of the Lease and Addendum were made by or on behalf of Associates in the form of the Broker Letter (Pl. Ex. 198) and in the form of Ford's comments on a Tenant Estoppel Certificate dated August 2, 1994 indicating it would not agree to any termination, cancellation or surrender of the Lease "other than as provided under the Lease."
82. Each of the six amendments contained a ratification clause which generally provided that, except as modified or amended by the applicable amendment, all of the terms and conditions of the Lease were confirmed and ratified.
83. None of the amendments contained any provision which deleted the Cancellation Clause.
84. Stoltzman wrote two letters to DiMauro terminating the lease pursuant to the Cancellation Clause. In the first letter, dated December 15, 1997, Stoltzman stated, in relevant part:

As you are aware, the Ford Consumer Finance operation at the above address will be closing effective 1/31/98. The Lease for the above space dated 1/1/91 contains a termination option which was not voided by any of the six (6) subsequent amendments. The option allows the Tenant to terminate its obligations any time after the third anniversary of the Commencement Date. Each incremental space added by the six (6) amendments has a separate and distinct Commencement Date.

As indicated by the chart below, we maintain the right to cancel the original lease space and space leased through the Fourth Amendment totaling 29,147 RSF. We do not have the right to cancel the 2,771 RSF leased by the Fifth Amendment until 7/31/98. The space leased under the sixth Amendment has been assigned to Associates Financial Services Company of Connecticut, Inc. effective 2/1/98 and will no longer be a part of this Lease.

<b>Document</b>	<b>Action</b>	<b>Area (SF)</b>	<b>Comm. Date</b>	<b>Initial Expiration (1)</b>	<b>Earliest Termin.</b>	<b>Initial Termin.</b>
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**(Months)**

Lease	Initial Space, Initial Term	9,878	03/11/91	03/01/96	03/10/94	60
Amendment 1	Additional Space	3,680	04/01/91	03/10/96	03/31/94	60
Amendment 2	Additional Space	6,620	12/03/91	03/10/96	12/02/94	52
Amendment 3	Additional Space, Extended Term	4,909	09/01/94	03/31/99	08/31/97	56
Amendment 4	Additional Space	4,060	12/05/94	03/31/99	12/04/97	52
Amendment 5	Additional Space	2,771	08/01/95	03/31/99	07/31/98	44
Amendment 6	Additional Space, Extended Term	2,373	06/15/96	05/31/01	06/14/99	60
Assignment	Reduced Space	(2,373)	02/01/98			

1) The Sixth Amendment extended the term for all space through 5/31/01.

86. In his second letter, dated December 23, 1997, Stoltzman stated:

The Lease Agreement for the subject Premises dated January 1, 1991, and subsequently amended, between you as Landlord, and Ford Consumer Finance Company, Inc., as Tenant, is currently scheduled to expire on May 31, 2001.

Pursuant to Paragraph 3 of the Addendum, Tenant may cancel the lease anytime after the third anniversary of the Commencement Date, by written notice to the Landlord not less than six months prior to the date of Cancellation, "Date Certain". Of the present 31,918 RSF under lease, 29,147 RSF may be canceled after 12/4/97. Please use this letter as our official notice that we are canceling the applicable 29,147 RSF effective July 1, 1998, and will vacate the premises by that date. We will continue to pay rent and perform all other obligation [sic] of the Lease as it relates to the remaining 2,771 RSF until such time as that space can be canceled on 3/31/99. Provided no mutually agreeable alternative arrangements are made in the interim, you can expect our payment of \$235,321.00 prior to the Date Certain as set forth in Paragraph 3.

87. By letter dated December 17, 1997, DiMauro responded to Stoltzman's December 15, 1997 letter as follows:

Tenant's termination option was included in an Addendum to the original lease between the parties which intended to grant a termination right to the Tenant during the initial five year term. At no

time during the course of subsequent lease amendments did extension of Tenant's termination rights play any part in lease negotiations, and at no subsequent time did the parties agree to extend the termination option beyond the original term. At the same time related issues such as term renewal rights and rights of first refusal were in fact considered on each subsequent occasion and were treated specifically in the lease amendments. Such was never the case with the termination option and we take exception to your attempt to give life to a long-expired provision to suit your current purposes.

(Pl. Ex. 64.)

88. Stoltzman's December 23, 1997 letter provided Armstrong with six months advance written notice of the termination of the Lease.
89. Defendant vacated the entire third floor in early 1998.
90. On June 23, 1998, Defendant tendered a check to Armstrong in the amount of \$288,780.72. This check represented the cancellation fee pursuant to the Cancellation Clause as well as rent and operating expenses for the month of July on the Fifth Amendment Expansion Premises.
91. Consistent with its cancellation, Ford has not paid rent for any of the third floor space since July of 1998.
92. Armstrong has now fully re-let the premises vacated by Ford on the third floor of the Building.

#### CONCLUSION

The parties are hereby directed to submit proposed conclusions of law based on the foregoing findings of fact within two weeks of the date of this decision.

SO ORDERED.

Dated: August 31, 2001  
Waterbury, Conn.

\_\_\_\_\_/s/\_\_\_\_\_  
GERARD L. GOETTEL  
United States District Judge