



Seeking Legal Guidance?

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and finance lawyers are
ready to serve you

2017 ELFA Legal Buyers Guide

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ELFA
EQUIPMENT LEASING AND
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Hot Legal Issues in Equipment Finance

What are the latest developments and trends in the law affecting equipment finance? Here's a list of some of the top legal issues facing ELFA members.

Hacked! It's Management's Job to Save the Company

It's 3am...your phone rings...your heart races...it's your tech guy or CTO...personal credit information records on your lessees and declined lease applicants have been compromised and likely stolen...over 100,000 lessee records! The hackers also gained access to your funding and referral sources! Your customers are exposed and in jeopardy! This is no longer a technology problem...management must save the business! What will you do? This scenario may be avoided if you start to prepare now to implement a three-step preemptive strike that will enable management to successfully prepare and minimize the impact of being hacked: Action 1: Create a written information security plan or "WISP"; Action 2: Hire an attorney experienced in cybersecurity; Action 3: Buy "proper" cybersecurity insurance. Learn more in the March/April 2016 Leasing Law column by Robert S. Cohen, Esq.

Data Security on Default

With the proliferation of consumer privacy and data security laws over the last few years, most of us are aware of the need to keep our customers' information secure on our own systems. Also, most of us are aware that to prevent data from falling into the wrong hands, it is important to sanitize the hard drives or other data-collecting components of our equipment prior to re-sale or re-lease after a default... A basic knowledge of the issues surrounding data security upon your customer's default can help you protect your company from claims that data you or your vendor destroyed should not have been destroyed. Best practices for sanitizing equipment are sometimes inappropriate or inapplicable in default situations. Being mindful of the value of data will allow you to navigate these tricky issues without disrupting your existing data security practices and procedures. This basic

knowledge can help you avoid incurring liability for data destruction in the process of trying to prevent liability for data breach. Learn more in the May/June 2016 Leasing Law column by Elizabeth Fella.

Q&A: Complying with U.S. Economic Sanctions

Equipment leasing and finance companies are increasingly impacted by U.S. economic sanctions, particularly recent changes affecting Cuba, Iran and Ukraine, as well as entities targeted for money laundering associated with drug trafficking. To develop a basic understanding of sanctions and common compliance pitfalls, find the answer to the following questions: What are sanctions? Who must comply? What do you have to do? What are common traps for the unwary? Some companies fail to implement risk-based policies or procedures. Prudent companies will take a hard look at their operations and design compliance measures that are tailored to related risks, for example, in Central America and the Middle East. Learn more in the July/August/September 2016 Leasing Law column by Andrew Shoyer and Robert Torresen.

Developments in Aircraft and Marine Finance

As is the case with other transportation assets, the legal considerations for aircraft and vessel finance providers (FPs) include an amalgam of state, federal and international laws. The past year saw several noteworthy recent legal developments. In aircraft finance: FAA Accepts Digital Signatures; EPA Addresses Greenhouse Gas – ICAO Pending; FP Safe Harbor – Limited Progress; and UAS Operation/Certification. In vessel finance: Capetown Protocol for Vessels; Definition of Vessel; Inspection of Towing Vessels. Learn more in the October 2016 Leasing Law column by Marjorie F. Krumholz and Edward K. Gross.



Bankruptcy (Not So) Remote

Securitization of equipment leases and loans continues to provide a robust form of capital for many ELFA members. One critical element of a successful transaction is the establishment of a bankruptcy-remote, special purpose entity (SPE) to own the assets and issue the asset-backed securities (ABS). Two recent court decisions have overturned creditor efforts to interpose a special or independent member for the express purpose of blocking a Bankruptcy Code filing. A properly structured equipment ABS transaction should: have the independent director or member not waive its statutory duties; call for unanimous votes for a broader range of major decisions and not just a bankruptcy petition; and have unanimous vote requirements not expire until all ABS have been repaid. A well-structured ABS deal also will try to limit the possibility of an involuntary petition against the SPE. It is inevitable that frustrated subordinated borrowers or creditors will attack measures intended to guard against the possibility of an SPE bankruptcy. The lesson from recent cases is

that sponsors and investors need to avoid overreaching in their efforts to minimize the possibility that an SPE issuer of ABS debt could become subject to Bankruptcy Code proceedings. Learn more in the November/December 2016 Leasing Law column by Stephen T. Whelan.

Equipment Financing in Canada: A Primer

Equipment financing in Canada can be deceptively familiar to U.S.-based cross-border equipment lessors and financiers. Much of the Canadian regime is very similar to the U.S. approach, owing to similar market practice, and in particular because all Canadian provinces and territories other than Quebec have adopted a Personal Property Security Act that is largely based on the 1972 version of Article 9 of the Uniform Commercial Code. However, there are a number of traps for the unwary or uninitiated who engage in equipment financing in Canada. A non-exhaustive list of issues is summarized in the January/February 2017 Leasing Law column by Alexis Levine.

Note: Access the articles referenced here at www.elfaonline.org/Magazine-Archive

ELFA Legal Resources

Are you looking for information about legal issues pertaining to the equipment leasing and finance business? Visit our new Legal Issues page at www.elfaonline.org/industry-topics/legal-resources. Don't miss these resources:

2017 LEGAL FORUM—The premier event for attorneys serving the equipment finance industry, May 7–9 in St. Pete Beach, Florida.

STATE TAX MANUAL—Reference guide designed to aid equipment finance companies in tax compliance and planning. Provides state-by-state analysis of sales and property taxes.

STATE LAW COMPENDIUM—50-state guide to compliance with selected state statutes and regulations.

WHAT'S NEW IN THE LAW—Summary of recent case law impacting the leasing and finance industry.

LEGALTALK—An e-mail discussion group focused on legal subjects.

LEGAL COMMITTEE—A member and staff resource on legal issues impacting the leasing and finance industry. For more information, contact Ed Rosen at erosen@elfaonline.org.

Legal Services Listings

The listings in this directory are paid listings. Information was provided by each law firm.



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Leasing is a specialized, technical and very important part of Bernstein-Burkley's practice. We represent small-, middle- and large-ticket equipment lessors in the enforcement of their leases. Whether in state or federal court, our firm is well-qualified to represent the interests of equipment lessors and others in the leasing industry. Managing Partner, Robert S. Bernstein, created and founded the first national network of attorneys with proven expertise in lease enforcement, LEAN (Lease Enforcement Attorney Network).

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Blakes is one of Canada's leading business law firms with 11 offices across Canada and

internationally. Recognized by leading directories (including Chambers Canada, Chambers Global, IFLR1000, The Canadian Legal Lexpert Directory, Who's Who Legal Series, Best Lawyers in Canada, Legal Media Group's Guides and Legal 500 Canada) as having Canada's pre-eminent financial services practice with extensive experience in equipment finance and leasing, asset based lending, banking, project finance, structured finance and financial services regulatory.

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Bodman PLC is Michigan's leading financial services law firm according to Chambers USA. Our experience helps us represent banks and equipment finance companies with unusual efficiency on equipment loan and lease originations, leveraged leases, lease acquisitions, and sales and remarketing of off-lease equipment for a variety of assets including mining equipment, aircraft, railcars, machine tooling, and computers. We also represent financial services clients in establishing vendor and referral programs and developing standard equipment finance documentation.



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Buchalter, with offices in California and Arizona, represents lessors, lenders and

funding participants in the full range of legal issues which arise in litigation, transactions, and syndications. Our expertise cuts across small, middle and large ticket transactions. We have extensive experience in creditors' rights, insolvency, workout agreements, prejudgment remedies, fraud investigation, and enforcement. Our equipment leasing team provides comprehensive legal advice and creative solutions to assist our clients in meeting their business goals.

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With more than 220 attorneys, Chapman represents equipment finance companies and funding sources in a variety of transactions, including asset-based loans, conduit warehousing and term securitizations. We represent finance and bank leasing companies in individual equipment finance transactions, portfolio acquisitions and dispositions and other strategic transactions, and provide regulatory, tax and commercial law advice. We also represent clients in distressed and troubled equipment finance transactions, including in litigation and bankruptcy matters.

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Chiesa Shahinian & Giantomasi PC is a full service law firm with extensive equipment

leasing and financing experience from the transactional stage through the workout, litigation, repossession, bankruptcy and foreclosure stages. We represent national, international and captive equipment leasing companies, commercial banks and alternative lending financial institutions in state, federal and bankruptcy courts. Our attorneys are long-standing leaders in their field, publishing highly-acclaimed books on equipment leasing.

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The National Equipment Leasing and Finance Group at Clark Hill PLC offers clients road tested experience that ranges from lease enforcement, vendor programs, inventory/dealership financing and implementation. Our team of professionals have litigation, bankruptcy, banking, corporate, and government experience to provide our clients unparalleled service. With offices in Arizona, Delaware, Illinois, Michigan, New Jersey, Pennsylvania, Washington, D.C. and West Virginia, our team stands ready to respond to the challenges you face. For more information on our Equipment Leasing and Finance Group, visit clarkhill.com.

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 Founded in 1981 with a goal of providing financial service companies with experienced counsel in all facets of their business, we regularly represent equipment leasing companies and commercial lenders in lease and loan documentation, real estate financings, workout negotiations, portfolio acquisitions, collections, litigation and bankruptcy matters. We offer our leasing and lending clients practical legal solutions to protect them from operational, compliance and legal risks and defend their collateral while maximizing recovery.

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 Foster & Wolkind, P.C. is a New York law firm offering a broad range of legal services. We vigilantly represent and advise financial institutions of all sizes throughout New York State and specialize in equipment finance litigation and creditors' rights. For more than 20 years, we have maintained a culture of providing personalized, attentive and cost-effective services. Contact us to learn more about how we can work together.

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 Glass & Goldberg has served the equipment leasing and financial industries for over 35 years and is the recipient of the 2009 "Excellence in Leasing Award" presented by the ELFA Legal Committee. Showcased in Forbes Magazine, as the exclusive Southern California choice for outstanding law firm in the areas of Bankruptcy, Property, Commercial and Creditor/Debtor Rights law and selected for inclusion in "Super Lawyer" Magazine for the past 7 consecutive years, we are familiar with your issues, proficient in the law and prepared to handle your matters throughout the State of California.

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 Hemar, Rousso & Heald, LLP is a Los Angeles-based law firm specializing in equipment leasing, commercial law, creditors' rights and bankruptcy. For more than 35 years, we have served the equipment leasing and financial industry with distinction in such areas as pre-judgment writs, recovery of collateral, workouts, receiverships, bankruptcy litigation and judgment enforcement. We handle cases throughout California diligently, aggressively and with an eye toward cost-effectiveness.



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Jaffe Raitt Heuer & Weiss is a Michigan based, full-service, 100-plus attorney corporate law firm. Jaffe has an experienced leasing and finance law team, providing "cradle to grave" services to our clients on lease and loan matters, including origination, enforcement, litigation, collection, insolvency, receivership and bankruptcy assistance. Jaffe also provides corporate law support to our leasing and finance clients, including such matters as choice of structure, tax, financings, merger, disposition, employment, acquisition and regulatory support. Jaffe is the only Michigan-based law firm member of ELFA.

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With more than 200 lawyers, Lavery is the leading independent law firm in Quebec. Our highly experienced equipment financing team, recognized by leading directories (including Canadian Legal Lexpert Directory and Best Lawyers International) and a member of CFLA, ELFA and LEAN, regularly advises lessors, financial institutions and corporations on a vast array of financing issues, domestic or cross-border. Whether your transaction involves leases, floor plans, conditional sales, loans with or without security on property (including in the context of securitizations, vendor programs or syndicated loans), project financing, international finance or the financing of aircraft or heavy equipment, Lavery will guide you effectively through all critical stages to the successful completion of the financing transaction.

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We offer banks, leasing companies, captives, originators, funding sources and other lessors and lenders prompt, service-oriented representation based on over 40 years of experience in financing nearly every type of equipment. Our nationwide practice covers all types of equipment finance as well as asset-based and other loan transactions. Visit www.LeaseLawyer.com for a firm description and copies of our informative newsletter. Offices in Birmingham and Atlanta.

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 Nutter is a full service, Boston-based law firm. Our commercial finance team represents equipment lessors and lenders in syndication and origination transactions involving all types of equipment and other capital assets. In the last five years, we have advised clients on more than 500 transactions having an aggregate deal value exceeding \$5 billion. Nutter is recognized by clients for technical sophistication, deep knowledge of market conditions and deal structures, client responsiveness and practical business judgment.

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A full-service corporate firm with more than 400 attorneys in offices located in Arizona, Florida, Illinois, Indiana, Wisconsin and Washington, D.C., Quarles & Brady provides sophisticated, experienced counsel to companies in all types of lease documentation, acquisition, negotiation, workout and enforcement, including litigation and bankruptcy. Quarles provides detail-oriented, cost-effective services to minimize risk and maximize recovery, investing in the clients' success and helping clients achieve their business goals.

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Robbins, Salomon & Patt, Ltd. is a full-service business law firm. We represent equipment lessors, banks and other financial institutions in lease and loan documentation, litigation, workouts and restructurings. We represent our clients in commercial litigation, in state and federal courts, at the trial and appellate levels, on a national basis. We also represent our creditor clients in bankruptcy court matters on a routine basis. Our mission is clear: provide quality, value-driven legal services that make a positive difference in the professional and personal lives of our clients, our firm and our communities. We work to earn your business every day.

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Thompson Coburn attorneys understand the complexities of equipment leasing and finance and help clients find workable solutions to their challenges. From structuring, negotiating and documenting to handling tax issues, closings, workouts, litigation and bankruptcy, we provide a full spectrum of services. We represent lenders and lessors in various industries, including motor vehicle, industrial, commercial and manufacturing equipment. We also have a niche practice in transportation with a nationally recognized maritime practice. The firm was named by BTI Consulting as one of the top 25 firms most recommended by general counsel and among the top 30 firms for client service.