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2018 ELFA Legal Buyers Guide

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Hot Legal Issues in

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.

Tarnishing the Golden Share

Bankruptcy decisions limit the ability of lenders to acquire LLC membership interests in order to prohibit a voluntary bankruptcy filing. Learn what a golden share is and whether there are limits to a golden share, and review cases that a lender considering a golden share should consider in deciding the merits of pursuing a golden share, in the March/April 2017 Leasing Law column by Robert Downey.

Electronic Chattel Paper: Recent Developments and Headlines

In the nearly two decades since e-leasing laws were enacted, there have been no reported decisions directly analyzing electronic equipment leasing under the Uniform Commercial Code. However, there have been very supportive cases in other financing industries. Unfortunately, there have also been several headlines flowing from a recent California bankruptcy case that have raised unfounded concerns. Should the equipment leasing industry be concerned? No! Learn more in the May/June Leasing Law column by Dominic A. Liberatore.

The "As-Is, Where-Is" Disclaimer: How Strong Is It?

A bank is planning to sell equipment collateral, either repossessed equipment taken after a borrower's default or leased equipment that has been returned by a lessee at the end of the lease term. The proposed sale agreement includes the standard disclaimer that the bank is selling the equipment "as-is, where-is" and the bank feels confident that it does not have to worry about any mechanical or other problems with the condition of the equipment once the buyer pays the purchase price. However, two cases dealing with aircraft may give the seller reason to question its confidence. Learn why equipment finance providers should review

and update their equipment sale documents to include strong warranty disclaimers, express equipment acceptance terms and limit the effect of condition provisions in the July/August/September 2017 Leasing Law column by Andrew J. Kalgreen.

Fair Finance: Boiled by Boilerplate

It used to be so easy. The borrower and lender would enter into a loan and security agreement, fund the loan and perfect the security interest in the collateral. A year or two later the borrower might want an additional funding, perhaps providing supplemental collateral, and the parties would enter into an amended and restated loan and security agreement. This simplified the documentation and saved on legal fees. Not so fast. A federal court of appeals decision, *In re: Fair Finance Company*, declared that the borrower's bankruptcy trustee had established that refinancing loan documents were ambiguous as to whether the parties clearly intended an amended and restated loan agreement to extinguish the original loan agreement and the security interest that it had created. The lender hence was forced to litigate whether it had lost its security interest in the collateral. Learn how lenders and finance lessors can cope with this judicial decision in the October 2017 Leasing Law column by Stephen T. Whelan.

Collateral's A Walk'n

Dicey choices await a lessor when a lessee transfers the lessor's collateral without consent. Often the lessor learns of the transfer long after the collateral disappears, but what should the lessor do when it is fortunate enough to learn of the transfer? Because of potential traps, a lessor should consult carefully with its counsel before determining whether to file a UCC-1 against an unauthorized buyer, recognizing that the lessor may be compelled to rely on the stick of litigation to win compensation for the lessee's and the unauthorized buyer's collective bad faith. Learn more

Equipment Finance

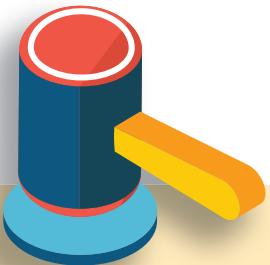
about this topic—including conversion and non-dischargeability claims, recent case law and a quirk in the law—in the November/December 2017 Leasing Law column by Alex Darcy.

How to Move Beyond NDA Negotiations and Start Doing Deals

In years past, most funders had unique forms of nondisclosure agreements (NDAs). Funders would find themselves negotiating before a business relationship even started and the routine process of getting NDAs signed became more difficult. A decade or so ago, the industry moved to some very common provisions and NDA forms. Recently, a number of challenging

provisions have resurfaced. The January/February 2018 Leasing Law column by Dominic A. Liberatore and Jane He identifies a few of the more material issues and suggests solutions. The goal is to efficiently conclude NDA negotiations so the parties can move on to the important thing: doing business together. Topics include NDA terms, scope, destruction of information, trade secrets, specific performance, non-solicitation of employees, binding on employees/agents versus personal liability and disclosure to governmental agencies. By keeping an open dialogue, there is no reason why the parties cannot come to terms with the NDA in a mutually beneficial manner and move on to getting deals done.

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 Legal Issues page at www.elfaonline.org/industry-topics/legal-resources. Don't miss these resources:

2018 LEGAL FORUM—The premier event for attorneys serving the equipment finance industry, May 6–8 in Washington, D.C.

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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ELFA MEMBER 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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ELFA MEMBER 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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ELFA MEMBER Chambers USA ranks Bodman PLC as Michigan's leading financial services law firm. Our experience helps us represent banks and equipment finance companies with high efficiency on equipment loan and lease originations, leveraged leases, lease acquisitions, bankruptcies/workouts 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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With more than 240 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. Frank and Robert recently co-authored "Secured Transactions for the Practitioner," which presents a practical approach to help secured parties navigate the legal perils surrounding personal property liens and provides insight into the latest case law related to Article 9 of U.C.C.

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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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FERNs, ADAMS & ASSOCIATES is a California law firm representing numerous banks, commercial financial companies, credit unions and leasing (both auto and equipment) companies, in all aspects of a creditors' rights such as: collections, replevin actions, defense litigation, bankruptcy litigation and documentation review. The principals of Ferns, Adams & Associates have been involved in the equipment leasing industry for over 36 years and have been very active in both the ELFA and NEFA. We have appeared in most every state and federal court in California and are very aggressive in our approach to litigation and collections in general.

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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 36 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 and as a Top Southern California Attorney by *Los Angeles* Magazine for the past 8 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.

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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.

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Messerli Kramer is a well-established full-service law firm based in Minneapolis. Our Equipment Leasing & Creditors' Remedies team has extensive experience in all aspects of equipment leasing and finance; secured transactions; asset-based lending; and banking and finance litigation. We routinely handle lease and loan negotiation; documentation and enforcement matters; inventory/dealership financing; replevins; collections and judgment enforcement; business and fraud litigation; portfolio acquisitions; bankruptcies and workouts; receiverships; and appeals throughout the Midwest and across the country.

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Moritt Hock & Hamroff LLP is a full-service, AV-rated commercial firm with 19 areas of practice and 70+ attorneys based in New York with offices on Long Island and in Manhattan. We have attained a national reputation over the past 35 years, representing members of the equipment leasing and finance industry including asset-based lenders, finance and leasing companies, banks and independent companies of varying size and specialty. Some of the



largest, most well-known companies in the industry rely on us for services that include drafting, negotiation and structuring of loan and lease agreements, creating and documenting specialized programs, transactions and portfolio sales, capital markets, formation, purchase and sale of leasing companies, as well as workouts, litigation, creditors' rights and bankruptcy representation.

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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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Formed in 1940, Ray Quinney & Nebeker is Utah's top financial institutions law firm. For many decades, we have represented leasing companies, banks and other commercial lenders in documenting lease, loan and real estate transactions and handling workouts, collections, litigation and bankruptcy matters. We also have many years of experience in specialized areas, such as aircraft transactions, asset-based financing and entity formation. Our objective is to make a meaningful contribution to our clients' success.

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Stinson Leonard Street is a full-service firm with 13 U.S. locations. Our 450 attorneys provide corporate, litigation, financing, tax and bankruptcy solutions to equipment lessors and financial institutions. We have significant experience documenting lease and loan transactions for independent, captive, and bank-affiliated finance companies and routinely enforce the rights of lessors and secured creditors. We blend a collaborative environment, innovative project management, and deep legal knowledge to deliver premium value and a distinctive experience.

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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 has been 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.

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Womble Bond Dickinson is a transatlantic law firm with 27 UK and US office locations. Our equipment finance team has extensive experience in complex financial transactions representing lenders and lessors in all aspects of equipment finance, with emphasis on transportation assets and renewable energy transactions. Our lawyers manage deals across the country, working closely with financial institutions and law firms in New York, Chicago, Washington, D.C., Baltimore, Boston, San Francisco and other cities nationwide.

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