



# 2020 ELFA Legal Buyers Guide

## SEEKING LEGAL GUIDANCE?

These equipment leasing and  
finance lawyers are ready  
to serve you

## CONTENTS

- Hot Legal Issues in  
Equipment Finance
- Legal Services Listings
- ELFA Legal Resources

**ELFA**  
EQUIPMENT LEASING AND  
FINANCE ASSOCIATION





# Hot Legal Issues in

**What are the latest developments and trends in the law affecting equipment finance?**

## **Leasing With Native American Tribes**

Providing equipment lease financing to Native American tribes raises some unique concerns. This remains true notwithstanding the increased level of commercial activities taking place on tribal grounds in the past two decades, including the number of casinos, hotels and other businesses constructed on tribal properties. The March/April 2019 Leasing Law column by Dominic Liberatore explores some of the key issues to consider and some practical documentation drafting suggestions.

## **The Basics of Blockchain**

Blockchain is often hyped as the future technological backbone of everything. The May/June 2019 Leasing Law column by Scott Kearns is intended to ignore the hype and serve as a starting point in thinking about how blockchain might impact equipment finance. The article examines the five characteristics of blockchain—distributed database, peer-to-peer transmission, transparency with pseudonymity, irreversibility of records and the agreed truth and computational logic—and how they apply to equipment finance.

## **Air, Rail and Marine Finance: New or Not-So-New Things to Know**

Lenders and lessors financing regulated transportation assets are much more likely to achieve their investment goals if they are mindful of the existing and evolving laws, regulations and other legal matters and trends related to those assets. The Summer 2019

Leasing Law column by Bob Goldberg, Edward Gross, Marjorie Krumholz and Melissa Kopit provides summaries of some of the emerging legal issues related to air and vessel financings, and an explanation regarding a distinctive legal aspect related to rail financing.

## **Republic Airways: Crash Landing for SLV Damages**

Valentine's Day 2019 was a massacre for equipment lessors that have utilized the stipulated loss value (SLV) table to establish liquidated damages for an event of default under a true lease. The U.S. Bankruptcy Court for the Southern District of New York, in the *Republic Airways* decision, ruled that use of the SLV to establish liquidated damages “violate public policy and constitute unenforceable penalties in violation of” UCC section 2A-504. The October 2019 Leasing Law column by Stephen T. Whelan argues that the *Republic Airways* decision may have signaled the death knell for use of SLV as liquidated damages in a default context. But it provided a road map for lessors to construct an enforceable EOD damages formula—if lessors are careful to preserve that the lease is a true lease.

## **Ten Essential Lease Provisions**

Words matter. But which words should be in the contracts leasing attorneys pour over, passionately debate and... sometimes lose sleep over? Various considerations arise between legal, operations and sales personnel

# Equipment Finance

Here's a list of some of the top legal issues facing ELFA members:

regarding how long a lease should be, what it should cover and what provisions it should include. From a lessor's standpoint, an ideal lease should achieve two goals: (1) protect the lessor's economic interest—revenue stream and residual interest; and (2) limit the lessor's liability. The November/December 2019 Leasing Law column by Benjamin J. Court outlines 10 essential lease provisions that are “must haves” and a few other “nice to haves.”

## Equipment Acceptance Is Important

The lessee's acceptance of equipment is not merely a documentation formality from your Legal Department. It is a critical step to achieving “hell or high water” treatment (i.e., when the lessee's obligations under a lease become absolute and unconditional irrespective of any equipment or service issues). The January/February 2020 Leasing Law column by Dominic Liberatore explores the key aspects of equipment acceptance and several options available to lessors.

Note: Access the articles referenced here at [www.elfaonline.org/Magazine-Archive](http://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](http://www.elfaonline.org/industry-topics/legal-resources). Don't miss these resources:**

**2020 LEGAL FORUM**—The premier event for attorneys serving the equipment finance industry, May 3–5 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 online community 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](mailto:erosen@elfaonline.org).

# Legal Services Listings

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



This symbol indicates the firm is an ELFA member

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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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With more than 65 lawyers across the country in our Financial Services Group, BLG finds business-focused solutions to help you structure a lending transaction, or negotiate governmental, corporate, commercial or project financings. Clients depend on BLG for corporate and commercial loans, bilateral and syndicated loans, securitizations, structured finance,

derivatives, asset-based lending, equipment leasing and leasing arrangements to help move their businesses to the next level across the country and around the world.

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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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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 42 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 to the financial services community. 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 25 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 38 years and is the recipient of the Ed Groobert 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 11 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, Rouso & 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, 110-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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Killgore Pearlman is a Florida law firm representing equipment leasing and finance companies, banks and creditors throughout Florida. Killgore Pearlman's creditors' rights team has extensive experience with recovery and replevins, commercial collections, judgment enforcement and creditor representation in bankruptcy proceedings. In line with the Firm's AV Preeminent rating signifying the highest level of professional excellence, Killgore Pearlman focuses on providing excellent work at a reasonable cost.

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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](http://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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Michael Best & Friedrich represents Utah's leading equipment finance companies in all aspects of the leasing and financing transactions, including litigation, nationwide. When defaults and disputes happen, our leasing and finance team has extensive experience assisting clients successfully obtain possession of equipment so that it can be auctioned; litigating and settling cases in a cost-effective manner; and obtaining successful decisions at trial. Contact us to learn how partnering with Michael Best can help you.

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The Firm was founded in Mexico City in 1994, integrated by a team of the highest qualified lawyers, focused on providing professional legal services with the highest quality to meet its clients' business needs. Nowadays, Mijares, Angoitia, Cortés y Fuentes, is a top 5 leading firm in the Mexican market, engaged in quality and responsiveness; it has established itself as one of the most prominent Mexican full-service law firms.

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Moritt Hock & Hamroff LLP is a full-service, AV-rated commercial firm with 20 areas of practice and 75+ attorneys based in New York with offices on Long Island and in Manhattan. We have attained a national reputation over the past 40 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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Platzer, Swergold et al., is a full-service New York City-based law firm. With roots that go back more than 50 years, the Firm has built a reputation for excellence in practice areas which include equipment finance, commercial finance, real estate lending, purchase and sale transactions of real estate and business assets, commercial litigation, corporate law, corporate restructuring and insolvency, debtor and creditors' rights, secured transactions and related legal matters.

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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. Innovation, efficiency and attention to detail are RSP's hallmarks.

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Stinson attorneys leverage deep legal knowledge and experience to deliver sophisticated corporate, litigation, financing, tax and bankruptcy solutions to equipment lessors and numerous financial institutions nationwide. 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 excellent service to deliver value and a distinctive experience.



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Thompson Coburn attorneys understand the complexities of equipment leasing and finance and help clients find effective and creative solutions to their challenges. From structuring, negotiating and documenting deals 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.

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Wright Law Group, PLLC is a boutique commercial financing enforcement law firm practicing exclusively in collateral recovery, deficiency balance suits, judgment collection and creditors' rights in bankruptcy. As highly focused practitioners of financing enforcement law, our attorneys are experts in the field. Lenders and portfolio owners are our only clients, so we understand speed and efficiency are top priorities when it comes to collections. Our deep understanding of equipment financing allows us to immediately help you formulate the right enforcement strategy for any bad deal. The firm's core business values include reasonable flat fees for routine work, fast turnaround of assignments, and resolving cases quickly and efficiently.

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Womble Bond Dickinson is a transatlantic law firm with 27 office locations throughout the US and UK. Our equipment finance team has extensive experience in complex financial transactions representing lenders and lessors in all aspects of equipment finance, with an 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.