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2019 ELFA Legal Buyers Guide

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ELFA
EQUIPMENT LEASING AND
FINANCE ASSOCIATION

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:

Syndications and Capital Markets: Recent Highlights

Equipment financing providers and investors continue to rely upon syndications and capital markets transactions to create liquidity, facilitate capital equipment acquisitions and offer investment opportunities. The ELFA Legal Committee has formed a Capital Markets Legal Subcommittee to track issues relating to syndications and capital markets transactions. This group is monitoring a range of topics, including fiscal agency matters, insurance and risk allocations and protections. Get an overview of the legal issues this group is tracking in the March/April 2018 Leasing Law column by Edward K. Gross and Erich P. Dylus.

Federal Court in New York Enforces "Floating" Forum Selection Clause

Forum selection clauses are favored by most courts in most jurisdictions as a contractual mechanism to provide certainty with respect to where a litigation may be commenced in the event of a dispute between the contracting parties. However, not all forum selection clauses are created equal. One type of forum selection clause that has not been universally enforced is the so-called "floating" forum selection clause. Nevertheless, floating forum selection clauses are widely used in the equipment leasing and financing industry and courts have recognized that the clauses serve a valid business purpose by making agreements more readily assignable, which results in lower pricing to customers. Recently, the enforceability of a floating forum selection clause under both New York and federal law was addressed by a federal judge in the Southern District of New York. Learn more about the case in the May/June 2018 Leasing Law column by Marc Hamroff, Esq., and Robert Tils, Esq.

Prepare for Unpaid Repairs

How can a repair or storage provider claim a lien that trumps your first priority security or ownership interest? It can happen. Every state has special statutes that allow providers of equipment repairs or storage to claim a lien on the repaired or stored equipment. Some of those states allow that lien to be a first priority lien, superior to the rights of the equipment owner and the rights of any security interest holder, including otherwise super priority purchase money security interests. Understanding the applicable law can help you if one of these claims lands on your desk. Appreciation for how courts construe repair lien statutes can help you, too: While some courts recognize lender paths to defeat repair company lien priority in equipment, courts generally apply repair lien statutes with a preference towards the repair company. Learn more about your option to prepare for the unpaid equipment repair in the July/August/September 2018 Leasing Law column by John L. Brown and John Hughes.

In the Penalty Box: Default Interest

It used to be axiomatic. The borrower and its lender would enter into a loan agreement or a finance lease and agree that, upon an event of default or even a delinquent payment, interest would be charged on that payment (or upon the entire contract balance, if the event of default was followed by an acceleration of the contract balance) at a noticeably higher rate. The purpose of the enhanced interest rate was to motivate the obligor to pay on time and avoid any serious breach of its other obligations. Not anymore. A 2018 federal bankruptcy court decision, *in re: Altadena Lincoln Crossing LLC*, has declared that the increased rate of interest that the lender and the borrower had agreed to, both in the original loan agreement and subsequent forbearance documents, constituted an unenforceable penalty under California law. Learn how lenders and finance lessors can cope with this judicial decision in the October 2018 Leasing Law column by Stephen T. Whelan.

Equipment Finance

Additional Risk in Financing Usage-Based Transactions Subject to Non-Appropriation

Banks and commercial finance companies active in the equipment finance industry routinely extend financing to state and local governmental entities (SLGs) that use tax generated, governmental funds for lease payments. The November/December 2018 Leasing Law column by Amanda Cook and Andrew K. Alper discusses a unique issue and an additional credit risk related to usage-based leases and loans, more particularly in transactions with SLGs when such entities must obtain various approvals to appropriate funds necessary to fulfill their obligations under a lease or loan. The lender should be keenly aware of all risks when it negotiates the pricing and documents the transaction in order to avoid the risk of losing money in the transaction.

Equipment Finance: Understanding Licensing Obligations

Commercial equipment lessors and finance companies face a web of state and federal laws applicable to various aspects of their business activities. In particular, determining whether a company requires a license can be tricky given the various statutory triggers and permutations of licensable activities varying across state laws. In an effort to help companies better understand the implications of state licensing laws, the January/February 2019 Leasing Law column by Kathryn L. Ryan, Moorari K. Shah and Frida Alim provides an overview of licensing considerations and trends in state enforcement activity with respect to equipment finance.

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:

2019 LEGAL FORUM—The premier event for attorneys serving the equipment finance industry, April 28-30 in San Diego.

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.

LEGAL TALK—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.



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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BLG is the oldest and largest law firm in Canada, a recognized leader offering expertise in most practices across its offices in Vancouver, Calgary, Toronto, Ottawa and Montreal. We are primary counsel and partner to law firms

around the world, financial institutions, lenders, insurance companies, cooperatives and entities of all sizes and all industries. We regularly provide guidance on leasing and financing, vendor programs and syndications, and securitizations in respect of all asset classes and artificial intelligence, as well as in default scenarios.

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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 are at the forefront of the important legal issues and industry trends, regularly speaking at ELFA and NEFA and recently co-authoring the practical guide "Secured Transactions for the Practitioner" to help secured parties navigate the legal perils surrounding personal property liens.

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 Emanuel & Zwiebel, PLLC is a Florida law firm which focuses on representing commercial lenders and financial institutions throughout the State of Florida, specializing in equipment finance litigation, creditor's rights, bankruptcy, appeals and judgment collections. With our vast experience, we make it a point to provide all of our clients with personalized, attentive and cost-effective services. Cases are handled on an hourly, contingency or flat fee basis.

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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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Frاندzel Robins Bloom & Csato, L.C. (the "Firm") has 26 lawyers who specialize in all aspects of lending, equipment leasing, factoring and service the financial services industry. The Firm represents its clients in litigation, bankruptcy, transactional matters from the complicated to the simple lease or loan, operational matters and essentially all aspects of the financial services industry except for tax. Andrew K. Alper has been recognized as one of the most influential persons in the equipment leasing industry by The Leasing News. The Firm is a member of the major leasing and lending associations. Mr. Alper has written and given seminars for ELFA, NEFA (and its predecessor entities UAEL, WAEL and EAEL), NAELB, the Los Angeles County Bar Association, and has taught the Certified Lease Professionals courses. The Firm is well equipped to handle almost all of your financing and leasing needs.

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Glass & Goldberg has served the equipment leasing and financial industries for over 37 years and is the recipient of the 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 9 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, 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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You work hard to finance and lease the equipment that drives economic growth. You build relationships that depend on trust. When that trust is violated, you need to take action. When your customers file bankruptcy or try to avoid their obligations in Texas, we can help. We know the legal and economic landscape of Texas, whether it be industrial or agricultural and we can handle the job efficiently. Visit www.kesslercollins.com or call Dan Callahan or Howard Rubin at 214-379-0722.

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Lam Lyn & Philip PC is a Texas-based law firm that for over 25 years has provided a full spectrum of commercial litigation services for its clients, which include banks, equipment finance companies and technology companies. The services provided include: demand letters, workout and restructuring negotiations, prejudgment remedies (sequestration, replevin and garnishments), litigation, and post judgment enforcement actions.

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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 and loan transactions and handling real estate financings, workouts, collections, litigation and bankruptcy matters. We also have many years of experience in specialized areas, such as aircraft transactions, regulatory compliance and entity formation. Our objective is to make meaningful contributions to our clients' success.

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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 Leonard Street LLP 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. Locations: MN, MO, ND, TX, CO, NY, NE, AZ, DC and KS

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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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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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Wright Law Group, PLLC is a boutique law firm specializing in collateral recovery, deficiency balance suits, and creditor's rights in bankruptcy. As highly focused practitioners of loan/lease enforcement law, our attorneys are experts in the field. Core business propositions include reasonable flat fees for routine work, fast turnaround of assignments, and a focus on resolving cases quickly and efficiently. Offices in California and Texas allow us to cover all counties and all federal districts in each state.