

MH&H FINANCE + LAW

At the intersection of commercial finance, technology, and the law, this bi-monthly newsletter explores the emerging legal topics impacting the secured lending and equipment finance industry. Thought-leading attorneys from **Moritt Hock & Hamroff's Secured Lending and Equipment Finance (SL&EF)** practice share their legal insight, experience, and best practices on this rapidly evolving area of law and invite your thoughts and questions.



Corporate Diversity and Inclusion Efforts Grow with Data Transparency

By Julia Gavrilov

Studies have consistently shown that increased diversity and inclusion often leads to increased corporate

profitability. The demand for diversity is partly driven by the vast body of empirical evidence that now exists demonstrating that greater diversity and inclusion efforts lead to better team decision making, work product and results.

Recently, companies have also been prodded by regulators and investors to make voluntary disclosures detailing data in their corporate diversity profiles, including a new U.S. Securities and Exchange Commission (SEC) regulation enacted in August 2020 requiring companies to disclose information about their “human capital resources,” that were prompted by last summer’s nationwide protests over racial discrimination and inequity.

Although a number of public companies have made progress in diversifying their boards, some of those that have been slow to diversify their board membership and executive leadership teams are now faced with an increased pressure to move beyond verbal commitments and incremental progress. In fact, litigation is now being used to gain leverage on companies to increase their commitment to diversity, disclose their diversity data and make significant financial investments in diversity initiatives.

Privately held companies will not be held to any lower standard. While companies often focus their diversity and inclusion efforts at the hiring level, this methodology falls short as the internal promotion system fails to advance diverse individuals over time through corporate ranks. One of the many measures that each company can take to diversify its workforce at every organizational level – and minimize the likelihood of litigation being used as a means to drive that change – is by implementing a proper internal mentorship and sponsorship program. Senior mentors can advise and provide guidance to junior minority employees with similar backgrounds. Having these same senior mentors in a position to sponsor, or advocate for, such employees should necessarily lead to the advancement of diverse talent and, in turn, increased profitability.

The data-driven metrics measuring corporate diversity and inclusion efforts are largely playing out in publicly traded companies at the moment, but the efforts will not stop there. In due course, this required level of transparency will permeate every organization, including privately held companies and nonprofits, and will become the gold standard in establishing how clients, investors and society alike will perceive any organization.

The full text of this blog post, including analysis of the “Oracle Complaint” from July 2020, is a must-read for anyone following developments in diversity and inclusion initiatives at both public and private companies.

[Click here](#) for the complete post by Julia.

Scott K. Levine Joins MH&H

MH&H is pleased to announce that [Scott K. Levine](#) has joined the firm as counsel in both our SL&EF practice group and our Creditors’ Rights, Restructuring & Bankruptcy practice group.

With more than 35 years in the legal field, Scott’s experience includes assisting clients in corporate reorganization, bankruptcy, leasing, secured transactions, litigation, commercial and residential real estate, commercial foreclosure, and corporate and collections law. He has regularly represented chapter 11 creditors’ committees, secured lenders, equipment lessors, major insurance companies, individual unsecured creditors, chapter 11 and chapter 7 trustees, landlords, debtors-in-possession and both filed and unfiled liquidating companies. Additionally, Scott also serves as outside corporate counsel to various companies and institutions. Prior to joining Moritt Hock & Hamroff, Scott served as the managing partner of Platzer, Swergold, Levine, Goldberg, Katz & Jaslow LLP in New York City.

Who We Are: Meet Some of Our Secured Lending and Equipment Finance Attorneys



Marc Hamroff

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Brett Garver

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Julia Gavrilov

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Theresa Driscoll

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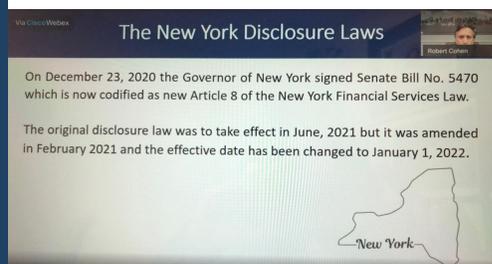
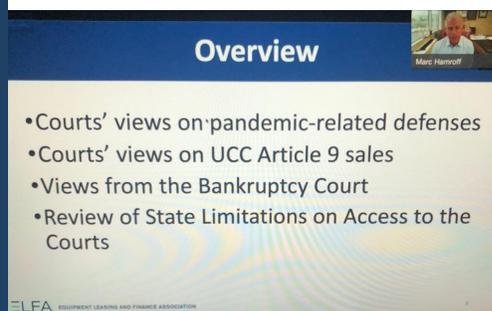


Brian Boland

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What We're Doing: Events and Postings

Three SL&EF Attorneys Present at ELFA Legal Forum *Live!*



Marc Hamroff, Bob Cohen, and Julia Gavrilov were featured as moderators or panelists for sessions at the recent Legal Forum *Live!*, a virtual conference hosted by the Equipment Leasing and Finance Association earlier this month.

Hamroff served as both as moderator and a presenter for a panel discussion entitled “What Are the Courts Doing during the Pandemic? A Look at Creditors Rights, Bankruptcy, and Workouts during These Challenging Times.” Hamroff’s panel explored how the COVID-19 pandemic has changed—and is changing—the commercial finance landscape, with a particular focus on the challenges lenders and lessors are facing with a “boots on the ground” approach. The session also looked at how the recent Subchapter V of the Bankruptcy code impacts small business debtors; provided an overview of new statutes, executive orders, and moratoriums arising from the pandemic, with examples of each from prominent states; described the implications of the enforcement of remedies, including the exercise of UCC Article 9 foreclosure cases; outlined and discussed new legal defenses, including force majeure; and provided an overview of the pandemic’s effect on access to courts, especially with regard to jury trials.

Cohen’s session, entitled “California and New York Federal Licensing and Disclosure,” explored how equipment leasing



and finance companies continue to face a barrage of new state and federal laws applicable to various commercial transactions, including the introduction of consumer-style financing disclosures and the expansion of state regulatory enforcement authority, among others. Cohen's session provided an overview of recent and pending changes being considered in Washington, D.C., California, and New York, as well as some noteworthy enforcement concerns. Cohen also discussed the commercial financing disclosure law (CFDL) signed in December 2020 and amended in February 2021 by New York State Governor Andrew Cuomo, which is set to take effect January 1, 2022. This New York State CFDL imposes interest rate and other disclosure requirements for a variety of commercial financing transactions of \$2.5 million or less, including loans, equipment finance agreements, sales-based financing, and factoring transactions, and is expected to have far-reaching implications for commercial finance.

Gavrilov's presentation, "Does Your Contract Work across State Lines?," explored the implication of state law and jurisdiction related to pandemic legal issues. According to Gavrilov, parties to a contract commonly agree to the application of a certain jurisdiction and/or state's law, without recognizing circumstances where such a governing law provision may be deemed unenforceable by a court. Her session discussed and analyzed the exceptions that can override a choice of law provision or forum selection clause and result in ramifications for which any lender or lessor may never have bargained.

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