



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.



## Gavrilov Made Partner

Effective Jan. 1, 2022, Julia Gavrilov of the SL&EF practice has been elevated to partner. Her elevation reflects Moritt Hock & Hamroff's existing, steadfast commitment to the advancement of women in the industry and our recognition that she will lead the firm with the same core values and judgment that she brings to MH&H's clients. Gavrilov has been identified by many groups as a "rising star" in the industry and has recently been invited to speak on numerous industry panels on various topics including diversity and women in our sector. And just in 2021, she was named a "MonitorDaily Top Women In Equipment Finance," "MonitorDaily NextGen Leader," and "Who's Who In Professional Women Services Long Island Business News."

Gavrilov's day-to-day responsibilities with the firm will remain the same. "I will continue, as I do now, to work diligently to provide good judgment and first-class legal services to our clients, contribute to the continued growth of the firm, and learn from, collaborate with and support my colleagues," she said. Read on to find out more about Gavrilov's commitment to MH&H and the future of the firm:

### **Let's go back to the beginning. You're an incredibly talented attorney. Why did you choose to join and eventually grow your career at MH&H?**

*Before I came to MH&H, I was practicing at a commercial litigation firm in NYC, where I had worked since law school. I had already known of some of the accomplished MH&H attorneys in the industry and MH&H's status as one of the fastest growing firms in the New York area. I was drawn to the talent at MH&H, the resourcefulness of its multiple practice groups and its reputation as one of the preeminent firms in the region. I was also looking to establish and solidify my roots—a place where I could grow and help grow in turn. Not only has MH&H become a second family to me, but it has provided me with a platform and knowledge base to further develop and expand my skills.*

### **What do you see in the future for the firm?**

*I believe that the future of the firm is reflected in its continued and unwavering commitment to investing in the professional development of its younger generation, with the expectation that this younger generation will continue to deliver the high level of services to its clients that MH&H has delivered for the last 40 years.*

### **As partner, how do you think you can be a good leader within the firm?**

*I've always believed that a good leader inspires great performance, pushes you outside of your comfort zone, encourages you to take on challenges that expand your skill set and provides you with a platform to*

*make a difference and gain visibility. I am the product of such leadership and am committed to providing opportunities, particularly to the younger generation of the firm, that embrace these guiding principles and help develop the future leaders of the firm.*

**You've spoken extensively on diversity in the sector and women in law. Will you continue to be a thought leader and speaker in this space?**

*I am, both personally and on behalf of the firm, committed to furthering diversity and inclusion in the legal and all other industries in which we practice, including, but not limited to, the leasing and finance industries. The more we educate and raise awareness of the lack of diversity and inclusion in the sector, the greater change we can facilitate. Until we see the results that we want to see, I will continue to champion the cause.*

The next opportunity to see Gavrilov speak is this spring's 2022 NEFA Finance Summit, running from March 23-25. More information [here](#).



## Lee Joins Practice

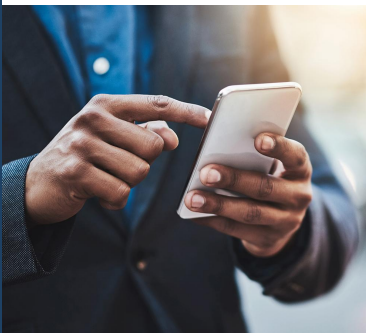
Moritt Hock & Hamroff recently welcomed new associate Grace Y. Lee to the SL&EF practice. Lee concentrates her practice in complex commercial lending and real estate matters and is based in the firm's New York City office. The scope of her practice is diversified and includes the handling of commercial real estate transactions, the representation of commercial and private lenders on mortgage loans for purchases, refinancing and loan modifications, assignments of mortgage, construction financing loans, hypothecation loans, secured and unsecured business loans and the purchase and sale of non-performing commercial loans. She earned her J.D. from the University of North Carolina at Chapel Hill Law School.



## Hamroff Shares Hiring Wisdom

Watch Marc Hamroff, managing partner of MH&H, discuss the role of legal counsel when working with bank-owned and independent equipment finance companies for Equipment Finance Advisor's thought leadership video series. According to Hamroff, lawyers are ultimately hired for their expert judgment, which is developed over years of experience. This is what he's hoping to instill in young lawyers who come to work with MH&H through years of training in the business and in the firm's deeply held resolve to partner with its clients and provide value-added services. [Read More](#).

## Taking Care of Business



## Business by SMS

The pandemic has created new opportunities for digital business—and a few grey areas concerning consent by potential customers, especially as “business by text” has emerged. Terese Arenth, partner with the firm, co-chair of the firm's Privacy, Cybersecurity and Technology Practice Group, and chair of its Promotional Marketing and Advertising Practice Group, shares her expertise in this discussion with Bob Cohen that will help you *take care of business*.

**Cohen: Can a business entity contact its customer or potential customer by cell phone or text without its consent? Does it matter if this is by cell phone or text, or an existing customer or prospect?**

**Arenth:** *For purposes of the Telephone Consumer Protection Act, if the call or text is made using an artificial voice, prerecorded message or autodialer, a customer's prior consent is always required prior to a company contacting the customer at a mobile number, regardless of whether that contact is by call or text and regardless of whether the customer is existing or a prospect. The definition of an autodialer has been subject to extensive litigation and best practice is to consult with your counsel as to whether or not it*

is applicable.

**Cohen: Is this impacted by whether the communication is for administrative, collection or marketing purposes?**

**Arenth:** Assuming that the call or text is made using an artificial voice, prerecorded message or autodialer, the purpose of the communication does not impact the need to obtain the customer's prior consent. It does, however, impact the type of consent that is required. If the communication purpose or content is in any way marketing (even if a hybrid of both marketing and administrative), the company must first have obtained the customer's prior express written consent. If the purpose is purely administrative or for collection purposes (i.e., informational content/purpose that related directly to the account, transaction or purpose for which the customer knowingly provided their number), then the company need only obtain prior express consent.

**Cohen: Does the owner of the cell phone impact the analysis?" For example – if the text comes from an employee of the company on her/his personal cell phone vs. a company owned cell phone.**

**Arenth:** The operative factor is whether the call or text is made using an artificial voice, prerecorded message or autodialer and the purpose/content of the call or text, not who owns the device used to make the call or text.

**Cohen: If consent is required for any of the above, how does a company obtain it and does it have to be in writing? And what about third parties (ex. can a company extend their consent to a third party?)**

**Arenth:** How to obtain consent first depends upon the type of consent that is required. If the purpose of contacting the customer is only for non-marketing purposes, then the company only needs prior express, not written, consent. If the customer voluntarily provides his/her mobile number to the company (for example, on a credit application), absent any instructions to the contrary, that is generally sufficient to serve as prior express consent. If the purpose of contacting the customer is for marketing purposes, then the company needs prior express written consent, which requires specific disclosures made to the customer and the customer's affirmative opt-in to the receipt of marketing call/text—for example, by the customer affirmatively checking a box to indicate his/her consent. Whether or not a company can extend the consent to a third party depends upon the type and scope of consent that it obtained from its customer.

For example, if the company obtained consent by the customer providing his/her number to the company on a credit application, the consent would apply to a third party hired by the company to collect the debt; that said, however, that consent only extends to the mobile number provided by the customer and the calls or texts must be related only to the transaction for which the number was provided. Whether or not a company can extend the consent to an assignee of the loan documents that arose from the credit application may depend upon several factors and could depend upon the specific circumstances.

**Cohen: What is the difference between obtaining consent by opting in or opting out?**

**Arenth:** Opting in requires an affirmative act to indicate the customer's consent. Opting out requires an affirmative act to indicate withdrawal of consent. For purposes of TCPA compliance, the customer must affirmatively opt in to the receipt of marketing messages. So, a prechecked box purporting to give consent will not suffice.

**Cohen: What are some of the other considerations to be taken into account before a company considers implementing the use of cell phone or texts when contacting its customers?**

**Arenth:** The top considerations are:

1. How the communication is being sent, the purpose and content of the communication, and whether or not the company has obtained the appropriate consent from its customer;
2. The scope of consent;
3. Whether the company is utilizing the services of a call center or service provider for its telemarketing and whether the consent obtained is sufficient to encompass calls/texts made by the company's agents;
4. How a customer can opt out of receiving marketing calls or texts after giving its consent; how the company intends to manage opt-outs and its internal do not call list; and maintenance of written consent records, which should be maintained for at least four years, as TCPA claims can be brought against a company four years after a call or text is made.

This is not an exhaustive list of other considerations, and a company best practice should always be to consult counsel regarding TCPA compliance.

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





**Marc Hamroff**

[Read Bio](#)



**Bob Cohen**

[Read Bio](#)



**Brett Garver**

[Read Bio](#)



**Theresa Driscoll**

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**Julia Gavrilov**

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**Brian Boland**

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## Stay Tuned for More on Disclosure Laws and 1071



We will soon provide our legal perspective on how to comply with the CFPB Section 1071 lending requirements affecting how financial institutions collect and report data pertaining to credit applications.

Also, MH&H is closely following developments in state disclosure laws. We will provide legal insight on the New York disclosure regulations, which are still pending. Once final, equipment lessors will have six months to comply.

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