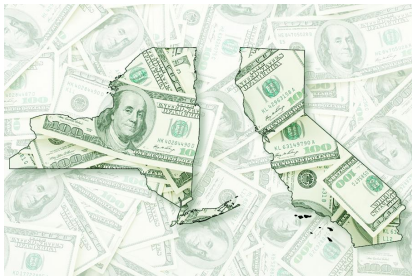




At the intersection of commercial finance, technology and the law, this newsletter explores the emerging legal topics impacting the secured lending and equipment finance industry. Thought-leading attorneys from **Moritt Hock & Hamroff's Secured Lending, Equipment and Transportation Finance** practice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

## CA and NY Disclosure Laws are 'Just the Beginning'



MH&H is helping clients stay informed of Commercial Finance Disclosure Law (CFDL) requirements. Robert S. Cohen, a partner of the firm who focuses his practice in secured lending, equipment and transportation finance, assists clients in creating or revising documents and processes accordingly. In a recent [MH&H blog](#) and [Law360 expert analysis](#), he offers valuable insights for lenders and lessors on New York's disclosure regulations and others developing across the country.

For example:

- Disclosure of lease/loan rates and terms in the required format will take considerable effort.
- Forms for New York are different from those required by California.
- The timing of the disclosure presents a change in operations to most lenders.
- Other states have followed California's lead to introduce and/or enact CFDL legislation.
- Inconsistencies between states will only make it more difficult and expensive to comply.
- Many smaller or regional lenders have stopped doing business in states with strict CFDLs.
- For others it has raised automation challenges and other issues.
- Many lenders are attempting to structure some financing products as true leases to be exempt.
- What does and does not constitute a true lease is not as simple as you think.
- The CFDLs are presenting business challenges to those lenders that utilize vendor discounts and broker commissions.

"Regardless of the many responses from the various finance companies, lenders now have no choice but to consider the CFDLs as a factor and cost of doing business in certain states and it may be just the beginning," Cohen writes in Law360.

Following publication of the article, Cohen was contacted by the chair of a new committee of the Uniform Law Commission that is studying whether to recommend drafting a uniform or model law on commercial financial disclosures. He accepted the invitation to participate and will help provide guidance and suggestions to the committee. The Uniform Law Commission has drafted many uniform laws including the Uniform Commercial Code (UCC).

## Taking Care of Business:

# Recruitment and Retention in 2023



**Jon Trafimow**

Many secured lending and equipment finance professionals own their own businesses and have employees to manage. In the following Q&A, Brian Boland, a partner of the firm in the secured lending, equipment & transportation finance practice, sits down with Jon Trafimow, a partner of the firm and chair of the employment practice, to discuss the challenges businesses are having hiring and retaining staff.

## **Jon, you've been an employment lawyer for over 30 years. What has occurred in recent years that makes hiring and retention so difficult for businesses right now?**

Hiring has been difficult because, from nearly the start of the pandemic to the present, we have been experiencing the "Great Resignation." U.S. workers have been resigning from their jobs at higher rates than normal for a variety of reasons. Moreover, the Great Resignation and the corresponding impact on the labor market have helped create one of the lowest unemployment rates in 53 years. As a result, companies are facing strong competition for employees, and talented employees who are in demand can jump from business to business seeking better work and salary opportunities.

## **How are changes in the economy affecting the workforce and what do you see for 2023?**

We may be at an inflection point in the economy. We will learn more in the coming months, but already in 2023, significant layoffs have been reported in the news. These layoffs are a sign that the labor market may be opening up, but hiring and retention challenges are likely to remain in many industries. Nonetheless, there are also reasons for optimism about the economy. For example, we are seeing apparent declines in the rate of inflation. As the economy changes, so will hiring practices.

## **Are there any positives in the hiring situation in which companies now find themselves?**

For some employers, the rise of remote work means the labor pool is much less "local" than it used to be, opening new labor markets. Many employers originally adopted remote work policies as a temporary measure to adapt to work conditions caused by the pandemic but have retained them as, essentially, an employee benefit and opportunity to attract talent from other geographic areas. Other employers have modified their remote work policies but still do not require all employees to physically return to the workplace every workday.

## **What are you hearing from clients in terms of hiring and retention? What are their primary concerns?**

Many employers across the country are deeply concerned with rising labor costs. Other concerns are more localized. As noted above, in some industries the rise of remote work as an adaptation to the COVID-19 pandemic has had the effect of blurring what formerly were local labor markets. There are benefits to this, as we just discussed, but also drawbacks for certain businesses. For example, employers located outside major metropolitan areas may now find themselves competing with urban-based employers for remote workers. This may pose a challenge for the "suburban" companies that may have traditionally compensated their employees at a lower rate than their big city competitors.

## **What strategies—other than salary—should companies use?**

In addition to providing competitive compensation, businesses must focus on building a strong, positive culture where employees feel they are valued. Many people change their jobs because they are unhappy with the management, not from a compensation standpoint, so fostering good management is essential to employee retention. A company's management reputation affects hiring as well, since job seekers are using social media platforms to search for company reviews by employees.

Depending on the industry, employers also can consider creative ways to provide financial and other incentives. It's important to think beyond the traditional retention bonus, which has its merits but is an infrequent perk that encourages employees to remain with the company only until the bonus is paid. Meals are just one creative financial incentive that is being offered by some companies, whether in the form of free or subsidized cafeterias, or dinner "meal" money for employees who work into the evening. This kind of incentive rewards employees regularly and makes the workplace more appealing, further strengthening corporate culture.

## **Can you describe some other good management practices and procedures that business owners should consider for the new year?**

As noted, maintaining a positive culture is very important. Employers should think about how to improve their employees' work experiences in a myriad of ways. For example, some companies, and some managers within companies, think seriously about offering valuable training for their employees and about how to provide feedback in a constructive manner. Training and constructive feedback can be powerful incentives for employees to stay longer in their jobs, and for job seekers to consider joining a company in the first place.

## **How can MH&H help business owners?**

Good hiring and retention practices clearly overlap with legal requirements. In fact, legal guidance is essential

to reduce a company's potential exposure to employment claims that can arise due to perceived improprieties, even those that are the result of an employer "trying to do something good" but inadvertently creating an issue for some employees. Additionally, MH&H helps businesses respond to changing laws affecting employment practices nationwide. For example, employers in a growing number of states, including California, Washington and Colorado, and metropolitan areas, including New York City, must now comply with pay transparency requirements when posting job openings.

## News Briefs



### MH&H Represented at First-Ever ELFA Equity Forum

Julia Gavrilov (far left), a partner of the firm and member of the Equipment Leasing and Finance Association's Equity Committee, was a panelist at the ELFA Inaugural Equity Forum in November in Washington, DC. The forum was established to celebrate and advance diversity, equity and inclusion (DEI) in the equipment finance industry. Gavrilov also served on the subcommittee to assist in planning the agenda for the forum.

### Boland and Price Promoted to Partner

We are pleased to announce that Brian P. Boland and Christine H. Price of the firm's Secured Lending, Equipment & Transportation Finance practice group were elevated to partner earlier this year with four of their colleagues.

[Boland](#) concentrates his practice in all aspects of complex commercial real estate and asset-based lending. He represents institutional and private lenders of all sizes in connection with commercial mortgage loans, construction loans, revolving credit lines, syndicated loans, mezzanine and equity financing and U.S. Small Business Administration loans. [Price](#) focuses her practice on all aspects of complex commercial lending and real estate matters. She represents numerous lending institutions and borrowers in the closing of all forms of commercial loan transactions including mortgage loans, construction loans, revolving credit facilities, term loans, and SBA loans. [Read Announcement](#)

### Gavrilov Featured on Monitor's The W Podcast

Julia Gavrilov, a partner of the firm, discussed how her desire to better understand the business side of her client organizations brought her from litigation to the front end of equipment finance, the importance of addressing the root of industry obstacles to providing women leadership opportunities and more on a recent episode of the Monitor's The W Podcast. Gavrilov is a member of the firm's Diversity & Inclusion Committee and chairs the firm's Women's Initiative. She concentrates her practice in equipment leasing, secured lending and all areas of complex commercial litigation. She is a frequent speaker on webinars and industry panels, including the ELFA's Legal Forum and Annual Convention as well as NEFA's Finance Summit. [Listen to The W Podcast.](#)

### Secured Lending and Distressed Investing Conferences

Our attorneys participate in industry conferences of interest to clients. Earlier this year, Partner Brett Garver attended the Secured Finance Network (SFNet) Asset-Based Capital Conference, and Partner Theresa Driscoll took part in the Turnaround Management Association (TMA) Distressed Investing Conference. A major focus of the SFNet event, themed "The Great Reboot," was on helping attendees set new asset-based capital strategies for a new world. The TMA conference provided insights on navigating and succeeding in today's distressed climate — a climate few in the industry have ever experienced before, conference organizers noted.

### The Case of the Billion-Dollar Banking Blunder

Of interest to our clients in the secured lending and equipment finance industry are developments in Citibank, N.A.'s case against a group of Revlon, Inc. lenders who refused to return millions of dollars mistakenly wired to them in an incident that one judge described as "one of the biggest blunders in banking history."

MH&H Partner Julia Gavrilov recently published an article entitled "Inquiry Notice Resolves the Billion Dollar Blunder" that discusses the recent unanimous decision by the United States Court of Appeals for the Second Circuit in favor of Citibank. In the article, which also walks readers back for a clearer understanding of the case history, she explains why the prior District Court decision favored the Revlon group, prompting more lenders to include preventative language concerning erroneous payments in their loan documentation. Gavrilov urges them to continue doing so despite Citibank's recent victory.

Follow these links to read her in-depth coverage of this unusual and important case.

[Equipment Finance Advisor article](#)

[ABL Advisor article](#)

## ELFA Legal Committee Appointment

Julia Gavrilov has been appointed to serve as a member of the Equipment Leasing and Finance Association's Legal Committee for the 2023-2024 term. The Legal Committee is a member and staff resource on a wide range of national and international legal issues impacting the leasing and finance industry. Committee members also provide guidance on the training needs of member companies' legal personnel, and help plan and deliver business and professional development events, including the ELFA's Legal Forum and various web seminars.

## Upcoming Events

We look forward to seeing you at these upcoming events.

### **National Equipment Finance Association (NEFA) Finance Summit**

March 21-23, 2023 (Robert Cohen)

### **ELFA Women's Leadership Forum**

April 3-4, 2023 (Julia Gavrilov)

### **ELFA Legal Forum**

May 7-9, 2023 (Marc Hamroff, Robert Cohen and Julia Gavrilov will be speakers)

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



**Marc Hamroff**

[Read Bio](#)



**Bob Cohen**

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**Brett Garver**

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**Theresa Driscoll**

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**Christine Price**

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