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2018 ELFA Legal Forum

Motor Vehicles Roundtable Handouts

Tuesday, May 8, 2018

AUTONOMOUS VEHICLES

I. Autonomous Vehicles Statistics

Development.

According to a March 2017 study published by U.S. Chamber for Legal Reform, an affiliate of the U.S. Department of Commerce, fully autonomous vehicles will be widely available by 2025.

Companies developing self-driving cars, including auto manufacturers, technology companies, and ride-sharing services, include familiar companies: Tesla, Google, Uber, Ford (invest in start-up Argo AI), General Motors (invest in start-up Cruise Automation; Lyft).

Expected Benefits:

A 2013 study by Eno Center for Transportation found that:

- Safety:
  If 10% of the cars on the road were fully Autonomous, 1,000 lives could be saved each year. If the percentage increased to 90% fully autonomous vehicles, 22,000 lives could be saved.

- Cost Savings:
  If 10% of the cars on the road were fully autonomous, $18 billion could be saved each year. If the percentage increased to 90% fully autonomous vehicles, $350 billion could be saved.

- Societal Benefits:

-Ease traffic congestion and promote ride-sharing;
-Reduce fuel consumption, lower harmful emissions;
-Reduce distracted (text) and impaired (DWI) driving;
-Mobility to seniors and physically impaired.

Technology:

Technology is evolving in stages. Society of Automobile Engineers (SAE) has identified automation levels, from level 0 (no automation) to 5 (full automation).

- Level 2: partial automation: driver remains responsible for environment and key driving tasks.
  -self-correcting lane changes, cruise control, parallel parking

- Level 3 (SAE calls "conditional automation") vehicle performs driving functions, human driver as back up.
  -computer mapping, radar, cameras, sensors, technology to read the road, driving conditions.

- Level 4: Highly automated.

- Level 5: Vehicle-to-Vehicle Communication. Autonomous vehicle can "see"; exchange of data between vehicles and infrastructure. Transmit speed, braking, direction, mapping, road conditions, weather, and traffic signals.

Impacts on Finance:

- *Data*. Auto Finance News, June 2017, reports that by 2030 the total value of data from self-driving vehicles could reach $1.5 trillion.

  -Who owns the data? Privacy concerns? Digital Payment?
  -Digital and instant finance origination and approval process.

- *Loan Volume Decline*. A 2016 Deloitte University Press study found that $500 billion in new loans and leases are originated annually, with 86% of new car purchases and 55% of used car purchased relying on borrowed money from banks, captives, or fleet financiers. *DUPress.com*.

  -The study anticipated that overall loan volumes will decline as customers "transform" from individual buyers to consumers of rental, fleet, ride-share, and other products.
  -Expense of collateral will increase.

- *Industries and Brand*. Commercial fleet financing v. consumer preference.
  -Industries expected to take advantage: Rental Car, Delivery Services, and Municipalities.
  -Will consumers pay more for experience?

- *Liability and Exposure*. Laws vary state to state.
  -Negligence and Product Liability theories.
  -California and Nevada place liability for an accident on the "operator" of an autonomous vehicle. "Operator" is defined as the person behind the controls or who "causes the technology to engage". Cal. Vehicle Code ¶38750; Nev. Rev. Stat. §482A.030.

- *Insurance*. Efforts under way to establish a National Insurance Fund.

- *Location and recovery of collateral*.

II. Autonomous Vehicles – Legal and Practical Considerations

- Vicarious liability claims against equipment lessors are preempted by the Graves Amendment, unless the lessor is negligent. Typically, negligence claims involve negligent entrustment to the lessee or negligent maintenance by the lessor. A driverless car might arguably automatically fit either theory of negligence (notwithstanding safety studies). Is Graves appropriate and sufficient as written?

- Autonomous vehicles already exist, so liability is the primary limiting factor in actual usage.

- States and even municipalities are considering laws relative to autonomous vehicles. Will these be ineffective or even necessary given interstate travel, especially in commercial settings? Many believe the first usage of autonomous vehicles in commercial settings will be trucks driven autonomously exit-to-exit, with drivers handling local routes.

- Some degree of autonomy is already present in the market (lane-keep assist, proximity warnings, electronic stability control, adaptive cruise control). Case law teaches us that warnings, disclosures and clear liability shifting in lease agreements is instrumental in avoiding liability. Lessors/rental companies would be well served to consider these existing technologies and revise agreements accordingly now. Considerations include risk disclosures, ensure manufacturer instructions are received and acknowledged, clearly state lessee has chosen the specific vehicle with the specific autonomous driving features, reiterate need for appropriate license(s), continue to monitor specific insurance requirements for autonomous vehicles and be prepare to amend lease documents accordingly upon changes in the law.

- Insurance. Who is insuring? Who is insured? Will/can a national fund be established?

- Expense of new technology will change ownership and finance. Owner operators may struggle to finance new technology, even though "driverless" vehicles might allow 24 hour usage and reduce competition.

- Expense of new technology might increase demand for car sharing and fractional ownership.

- Lease market may shift. Those who can/will finance a $250,000 truck might not be same that finance a $500,000 automated truck. Those lenders who are prepared now will be able to approve deals in real time when borrowers/lessees are demanding the product.

- Cyber security risks increase. Autonomous means remotely instructed. Likewise, joint control of personal data between multiple parties increases risks of mishandling.

- Employment and union issues are looming. Unions are lobbying at full throttle against the technology. "It is vital that Congress ensure that any new technology is used to make transportation safer and more effective, not used to put workers at risk on the job or destroy livelihoods," Teamsters President James P. Hoffa.

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Graves Amendment Case Updates

III. Graves Amendment (statute)

The Graves Amendment, 49 U.S.C. § 30106 (2006) provides:

Rented or leased motor vehicle safety and responsibility

(a) In general. An owner of a motor vehicle that rents or leases the vehicle to a person (or an affiliate of the owner) shall not be liable under the law of any State or political subdivision thereof, by reason of being the owner of the vehicle (or an affiliate of the owner), for harm to persons or property that results or arises out of the use, operation, or possession of the vehicle during the period of the rental or lease, if—

(1) the owner (or an affiliate of the owner) is engaged in the trade or business of renting or leasing motor vehicles; and

(2) there is no negligence or criminal wrongdoing on the part of the owner (or an affiliate of the owner).

(b) Financial responsibility laws. Nothing in this section supersedes the law of any State or political subdivision thereof--

(1) imposing financial responsibility or insurance standards on the owner of a motor vehicle for the privilege of registering and operating a motor vehicle; or

(2) imposing liability on business entities engaged in the trade or business of renting or leasing motor vehicles for failure to meet the financial responsibility or liability insurance requirements under State law.

IV. Recent Cases Interpreting Graves Amendment

A. Holdover (or Terminated/Expired) Lease As Graves Exception

Cheap Auto Rental rented a car to Marc Cote. Cote was involved in an accident with Plaintiff John Chase. Chase sued Cheap Auto, claiming vicarious liability. Cheap Auto is engaged in the business of renting cars and maintained the requisite insurance, so the Graves Amended seemed to be a good defense. However, the court denied summary judgment to Cheap Auto because Cheap Auto's rental agreement with Cote had expired by its terms and Graves only protects lessors "during the period of the rental or lease." Under the holding, once the rental agreement expired, Graves Amendment protection ended also. Specifically, the court stated:

> In support of its motion for summary judgment, [Lessor] submitted a copy of a one-page rental agreement between itself and [Lessee] for the subject motor vehicle. However, the agreement expressly stated that the "due date" and expiration date of the contract was March 25, 2014, approximately ten weeks prior to the accident. . . . [Plaintiff] identified an additional page as being part of the subject rental agreement. That page contained additional terms and conditions of the rental agreement. One of those conditions states that "If you wish to extend the rental period, you must return the vehicle to our rental office for inspection and written amendment of the due-in date." [Lessor] does not claim that a written amendment of the contract was ever signed . . . Rather, [lessee] made payments and extended the contract. The last payment made by [Lessee] was on May 24, 2014 and, at the time of the accident, [Lessee] owed money to [Lessor]. The conflicting evidence submitted by the parties establishes that there is a disputed issue as to whether the rental agreement was still in effect at the time of the motor vehicle accident on June 6, 2014. By its express language, the protection of the Graves Amendment is limited to harm to persons or property that arises out of the operation of the vehicle "during the period of the rental or lease." Accordingly, the defendant [Lessor] has not shown that it is entitled to judgment as a matter of law and its motion for summary judgment is hereby denied. *Chase v. Cote*, No. NNHCV156053762, 2017 Conn. Super. LEXIS 3533, at *4-6 (Super. Ct. June 12, 2017).

B. Lessor Reserving a *Right* to Inspect Driving Records and/or Vehicles Does Not Equate to a *Duty* to do so.

1. Negligent Entrustment

Graves does not protect lessors if they are negligent in entrusting the leased vehicle to a person/party. Lessors are typically not required to independently investigate driver's backgrounds. This includes leasing a vehicle to a company which has multiple drivers using the vehicle. Thus, even if a lease agreement requires all operators to be licensed and even reserves the right to terminate the lease due to accidents or other driver concerns, this "right" does not result in a legal duty to ensure drivers are responsible. *Knecht v. Balanescu*, 2017 U.S. Dist. LEXIS 169829 (M.D. Pa. Oct. 13, 2017):

> This Court agrees that the Graves Amendment cannot be read to exclude claims of negligent entrustment, when the facts giving rise to negligent acts of the lessor pose an unreasonable risk of harm to others. Namely, whether [Lessor] acted negligently in failing to vet [Lessee] prior to leasing equipment, knowing that doing so posed an unreasonable risk of harm to the Plaintiff. A state obligation to

> ensure that lessee's had adequate driving records would fall within the exception provided by the savings clause. Under ¶ 14 of the lease, "LESSEE agrees that the Vehicle(s) shall be operated by safe, careful, and licensed drivers to be selected, employed, controlled, and paid by LESSEE." The lease continues that [lessee] shall require drivers to exercise reasonable care and diligence. It contains no mention of [lessor] oversight and responsibility as to driver credentials. The clause does provide that [lessor] may advise [lessee] of any "reckless, careless, or abusive handling of such Vehicle(s)," but not that [lessor] could dictate any corrective or disciplinary action as a result. The lease term contains no assumption of driver history investigation attributable to [lessor]. Even where lessors have retained some modicum of investigative rights, courts have not construed the retention as usurping the responsibility imposed on the employer. [Lessor] did not have an affirmative duty to independently investigate driver backgrounds prior or subsequently to entering into the lease agreement. Thus, while negligent entrustment fits under the savings clause of the Graves Amendment, the credentials and safety of the employees of the lessee were the responsibility of the lessee, not [Lessor]. *Knecht v. Balanescu*, 2017 U.S. Dist. LEXIS 169829, at *30-31 (M.D. Pa. Oct. 13, 2017)

Similarly, the absence of any allegation of negligence against the lessor resulted in dismissal of a Plaintiff's action in *Edwards v. Zipcar, Inc.*, 2016 NY Slip Op 50850(U), 41 N.Y.S.3d 449 (Sup. Ct.):

> Zipcar has established that it was an "owner (or an affiliate of the owner) ... engaged in the trade or business of renting or leasing motor vehicles" (49 USC § 30106). Since there are no allegations of negligence or wrongdoing on its part, Zipcar is entitled to dismissal of the complaint. Accordingly, the burden switches to [Plaintiff] to raise a triable issue of fact. [Plaintiff] has not opposed this portion of Zipcar's motion and therefore does not raise a triable issue of fact. *Edwards v. Zipcar, Inc.*, 2016 NY Slip Op 50850(U), ¶¶ 4-5, 51 Misc. 3d 1227(A), 41 N.Y.S.3d 449 (Sup. Ct.)

The same result was reached in favor in favor of a lessor in *Scott v. A Betterway Rent-A-Car & Kirk G. Anglin*, 2018 U.S. Dist. LEXIS 57223 (M.D. Fla. Mar. 27, 2018):

> Plaintiffs' negligence claim asserts, without citation to authority, that [lessor] owed them a "duty to allow another to operate the [rental vehicle] in a careful and prudent manner so as not to collide with [Plaintiffs' vehicle]." Stated differently, Plaintiffs argue that [lessor] had a duty to conduct a pre-rental investigation into

[lessee's] ability to drive. This misstates the duty vehicle rental companies owe to third parties. Instead, vehicle owners have a duty to rent motor vehicles only to those who are licensed to operate motor vehicles and to inspect their driver license and verify their signature. See Fla. Stat. § 322.38. Plaintiffs have not pleaded any facts indicating that [lessor] breached their duty in that respect. *Scott v. A Betterway Rent-A-Car & Kirk G. Anglin*, 2018 U.S. Dist. LEXIS 57223, at *4-5 (M.D. Fla. Mar. 27, 2018)

2. Negligent Maintenance.

Leases often contain provisions pertaining to maintenance and upkeep required by the lessee. Failure to abide by these terms can be grounds for default and termination. In a recent Florida district court case, the commercial truck rental agreement required lessor approval for any maintenance on the vehicle in excess of $300. *Cardona v. Mason & Dixon Lines, Inc.*, 2017 U.S. Dist. LEXIS 83233 (S.D. Fla. May 31, 2017). The *Cardona* lessee was involved in a collision with Plaintiff. Plaintiff claimed that the accident could have been caused by a "defective" vehicle causing "blind spots", although Plaintiff provided no evidence of this theory. The lessor avoided liability due to Plaintiff's lack of proof of any defect. However, the opinion suggested that a lessor's control over maintenance could (in the right circumstances) result in liability. The court stated:

> Lessor reserved the right to continual supervision of the fitness of the driver, and reserved the right to unilaterally terminate the rental agreement should it deem it appropriate, and required that [lessee] name it as an additional insured on a policy of insurance. This included requiring that the truck not be used in a negligent manner, and retaining the right to revoke the lease for same. While it required [lessee] to assume liability for negligent operation of the vehicle, it did not require [lessee] to assume liability for improper safety equipment. Moreover, [lessor] retained the right to retake the truck at any time if the truck were not being maintained properly. The agreement required [lessee] to maintain the truck in the condition that it was rented, and did not require [lessee] to make any improvements to bring the truck within common law or regulatory safety standards. It identified certain types of maintenance expected, and did not include visual safety features of the vehicle. Finally, and most importantly, [lessor] retained the right to inspect the truck on an ongoing basis and retake the truck if, in its opinion, the truck was not being maintained in a safe condition. Lessor required approval of any maintenance on the vehicle in excess of $300. The plaintiff argues that for these reasons "[the defendant lessor] did not transfer custody and control to [lessee], and maintained at all times the right to access, inspect, and repair the vehicle for safe use on the roadways." The defendant

asserts that, under the terms of the Rental Agreement, it did not have a duty to maintain the truck after it was transferred to Mr. Leverette.

Even assuming, arguendo, that the plaintiff's interpretation of the Rental Agreement is correct — that the defendant still retained the duty to maintain the vehicle after its transfer to lessee — the defendant would still be entitled to summary judgment. The essential elements of negligence from which liability will flow are duty, breach of duty, legal cause and damage. Here, the plaintiff must point to evidence which would create an issue of fact as to whether the truck was in a defective condition. *Cardona v. Mason & Dixon Lines, Inc.*, 2017 U.S. Dist. LEXIS 83233, at *8 (S.D. Fla. May 31, 2017).

Another good case on general preemption of vicarious liability (and Congress' intent in enacting it) is *Zaraei v. Saini*, 2016 NY Slip Op 31141(U), ¶ 2, 2016 N.Y. Misc. LEXIS 2272 (Sup. Ct.). In addressing maintenance issues (in favor of lessor), the Court stated:

The Graves Amendment preempts the vicarious liability imposed on commercial lessors by Vehicle and Traffic Law § 388. To be eligible for the protection provided by the Graves Amendment, the statute requires that the owner of the vehicle be "engaged in the trade or business of renting or leasing motor vehicles" and that "there is no negligence or criminal wrongdoing on the part of the owner" (49 USC 30106 [a] [1]). Moving defendants have substantiated, through the affidavit of the supervisor of their servicer, the submitted contract and title records, that they were the owner and assignee of the subject vehicle, were engaged in the business of renting and/or leasing motor vehicles, and no allegations of direct negligence were asserted against them. Further, movants showed that they did "not engage in the repair, maintenance, delivery, service, operation, management, possession, supervision, control, or inspection' of the subject leased vehicle, and that defendant, Saini, was contractually responsible for maintenance of the leased vehicle. Additionally, plaintiff has failed to allege facts demonstrating that said defendants improperly maintained the subject vehicle. Absent evidence of improper maintenance, the negligence clause of the Graves Amendment is rarely applicable "in light of Congress' clear intent to forestall suits against vehicle leasing companies. *Zaraei v. Saini*, 2016 NY Slip Op 31141(U), ¶ 2, 2016 N.Y. Misc. LEXIS 2272 (Sup. Ct.)

Plaintiffs can often avoid dismissal of vicarious liability claims by simply alleging "negligent maintenance" on the part of the lessor. In one such case, the police determined that the accident at issue was intentionally staged to commit insurance fraud. The Plaintiff

nevertheless sued the owner/lessor U-Haul claiming the vehicle was negligently maintained. The Court denied a motion to dismiss the complaint, stating:

> With respect to that branch of U-Haul's motion [to dismiss], although U-Haul submitted documentary evidence establishing that it was engaged in the business of renting vehicles and that the subject vehicle had been rented to Hanif at the time of the accident, U-Haul failed to conclusively establish that it was not negligent in the maintenance of the vehicle, as alleged. The affidavit relied upon by U-Haul to establish that the accident was intentionally caused does not constitute documentary evidence within the meaning of [the motion to dismiss statute]. *Anglero v. Hanif*, 2016 NY Slip Op 04682, ¶ 2, 140 A.D.3d 905, 907, 35 N.Y.S.3d 152, 154 (App. Div.)

This exact same issue was decided in favor of the lessor in a different case. *Rivera v. Prerac, Inc.*, 2017 U.S. Dist. LEXIS 209624, at *3-4 (D.P.R. Dec. 19, 2017):

> Courts that have examined the [Graves/negligence] clause have expressed concern that "plaintiffs can defeat the spirit of Section 30106 on a motion to dismiss by merely alleging that the leasing company was negligent in maintaining the vehicle." So they have held the clause "should be cautiously applied in light of Congress' clear intent to forestall suits against vehicle leasing companies." Absent a controlling First Circuit precedent on this matter, the court is persuaded by this reasoning. The only allegations against [lessor] . . . are wholly conclusory and only parrot the relevant tort legal standard by claiming that [lessor] rented the vehicle to plaintiff despite allegedly having knowledge that it had defective airbags, restraining systems, and safety issues that needed to be addressed. They lack sufficient factual content to plausibly narrate a claim for relief in light of Congress' clear intent to forestall suits against vehicle leasing companies. To hold otherwise would render the entire statute illusory. *Rivera v. Prerac, Inc.*, No. 17-1194 (PAD), 2017 U.S. Dist. LEXIS 209624, at *3-4 (D.P.R. Dec. 19, 2017).

C. Graves Amendment Defense Is Not Grounds for Removal of Action to Federal Court

Even though Graves is a federal statute and an effective defense to vicarious liability claims (especially in federal court with heightened pleading standards after *Iqbal* and *Twombly*), it does not provide a basis to remove state court cases to federal court. *Burns v. U-Haul of Providence*, 2018 U.S. Dist. LEXIS 149 (D.R.I. Jan. 2, 2018):

> The sole basis upon which U-Haul removed this case to federal court was an assertion of federal question jurisdiction: specifically, that this Court has subject matter jurisdiction because the Graves Amendment to the Federal Transportation Equity Act, 49 U.S.C. § 30106(a), preempts Ms. Burns' state law claims. No federal question is presented on the face of Ms. Burns' complaint. Only state law claims, common law and statutory, are asserted in the complaint. The only interjection of a federal question comes in U-Haul's anticipated assertion of a federal statute as a defense. Normally, federal defenses including preemption do not by themselves confer federal jurisdiction over a well-pleaded complaint alleging only violations of state law. U-Haul does not assert complete preemption. Instead it asserts that it is the interpretation of federal law—not state law—that will be critical to the resolution of this case." But the Supreme Court has decided that even where "the federal defense is the only question truly at issue," a federal defense does not provide a basis for removal to federal court. Caterpillar, 482 U.S. at 393. *Burns v. U-Haul of Providence*, No. 17-513-JJM-LDA, 2018 U.S. Dist. LEXIS 149, at *3-4 (D.R.I. Jan. 2, 2018).

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Titled Vehicles as Inventory

Security interests in titled vehicles are generally perfected by noting a lien on a certificate of title, in accordance with the applicable state's certificate of title statute. However, under 46 states' UCC 9-311(d), if those titled vehicles are considered inventory, held for sale or lease by a debtor "in the business of selling goods of that kind," a secured party must file a financing statement to perfect its security interest. The UCC and case law offer little guidance about what it means to be "in the business of selling" under UCC 9-311(d).

UCC §9-311

Pertinent Parts of UCC §9-311, Perfection of Security Interest in Property Subject to Certain Statutes, Regulations, and Treaties.

(a) **[Security Interest subject to other law.]** Except as otherwise provided in subsection (d), the filing of a financing statement is not necessary or effective to perfect a security interest in property subject to: . . .

(2) [list any certificate-of-title statue covering automobiles, trailers, mobile homes, boats, farm tractors, or the like, which provides for a security interest to be indicated on the certificate as a condition or result of perfection, and any non-Uniform Commercial Code central filing statute]; . . .

(d) **[Inapplicability to certain inventory.]** During any period in which collateral subject to a statute specified in subsection (a)(2) is inventory held for sale or lease by a person or leased by that person as lessor and that person is *in the business of selling goods of that kind*, this section does not apply to a security interest in that collateral created by that person. (Emphasis added.)

Non-Uniform States. Note that all but four states have adopted the language above. The four "outliers" are Idaho, Illinois, Louisiana, and Rhode Island. These outliers have a broader definition of "debtor" in §9-311(d), which includes a person "in the business of selling *or leasing* goods of that kind." (Emphasis added.)

Official Comment No. 4, Inventory Covered by Certificate of Title. Under subsection (d), perfection of a security interest in the inventory of a person in the business of selling goods of that kind is governed by the normal perfection rules, even if the inventory is subject to a certificate-of-title statute. Compliance with a certificate-of-title statute is both unnecessary and ineffective to perfect a security interest in inventory to which this subsection applies. Thus, a secured party who finances an automobile dealer that is in the business of selling and leasing its inventory of automobiles can perfect a security interest in all the automobiles by filing a financing statement but not by compliance with a certificate-of-title statute.

Subsection (d), and thus the filing and other perfection provisions of this article, does not apply to inventory that is subject to a certificate-of-title statute and is of a kind that the debtor is not in the business of selling. For example, if goods are subject to a certificate-of-title statute and the debtor is in the business of leasing but not of selling goods of that kind, the other subsections of this section govern perfection of a security interest in the goods. The fact that the debtor eventually sells the goods does not, of itself, mean that the debtor "is in the business of selling goods of that kind."

The filing and other perfection provisions of this article apply to goods subject to a certificate-of-title statute only "during any period in which collateral is inventory held for sale or lease or leased." If the debtor takes goods of this kind out of inventory and uses them, say, as equipment, a filed financing statement would not remain effective to perfect a security interest.

Case Law

Union Planters Bank, N.A. v. Peninsula Bank, 897 So.2d 499 (Fla. Dist. Ct. App. 2005), is the most commonly cited case on what it means to be "in the business of selling" under UCC 9-311(d). In Union Planters, the Court found that the debtor was not "in the business of selling." The debtor, a car rental company, sold approximately 4,000 of its used rental vehicles each year through unrelated third-parties, accounting for 60-70% of the debtor's annual revenue. Multiple lenders financed the debtor's rental fleet, two of which gave notice of their interest in the vehicles by recording liens on the certificates of title and filing financing statements ("Title Lenders"), another lender gave notice of its interest by filing financing statements, but did not record liens on the certificates of title ("UCC Lender"). The Court concluded that this debtor was merely "disposing" of vehicles it no longer used in its rental business, and therefore was not "in the business of selling goods of that kind." Supporting its conclusion, the court noted that (1) the debtor did not have a dealer's license, (2) the vehicles were sold through wholesale auctions or dealers, (3) the debtor did not advertise the sale of the vehicles, and (4) the debtor's business was renting motor vehicles, and that it only sold vehicles that had lost their usefulness to the rental business.

Hypothetical Fact Pattern

Lease and Finance Company ("LCA") has just approved a $20MM line to finance new trucks and trailers for Truck Leasing, LLC ("Truck Leasing"). Truck Leasing leases trailers to third-party carriers and leases trucks and trailers to its affiliate, Carrier, LLC ("Carrier"). LCA's credit approval permits subleasing of trucks to Carrier and trailers to Carrier and third-party carriers so long as, among other things, the applicable sublessee acknowledges that its rights in and to the trucks or trailers are subject and subordinate to LCA's (or, more generally, a senior secured party).

Discussion Questions

- How should LCA perfect its interest in the trucks and trailers?
- Should LCA's method of perfection change if Truck Leasing only leases trucks and trailers to Carrier, its affiliate?
- Should LCA's analysis change as a result of other factors, such as: (1) if Truck Leasing only sells trucks and trailers it no longer uses, (2) if Truck Leasing's trucks and trailers are only marketed and sold by a third-party unrelated to LCA, (3) if Truck Leasing or one of its affiliates markets and sells trucks and trailers that are no longer used, (4) if Truck Leasing or one of its affiliates has a dealer's license, or (5) if Truck Leasing regularly sells a certain percentage of its trucks and trailers?
- What if Truck Leasing changes its business strategy (or attempts to relieve cash flow pressure) and decides to sell off a large tranche of trailers?
- What if Truck Leasing ceases leasing trucks and trailers to third-parties (including its affiliates), and instead operates the trucks and trailers as its own equipment?

- When do you file a financing statement covering titled vehicles/inventory?
- When do you perfect by noting a lien on a certificate of title?
- How do you evaluate whether a customer is "in the business of selling"?
- When you file a financing statement covering titled vehicles, do you also perform a search and clear potentially conflicting filings?
- Do you rely on PMSI?
- Do you get push-back from your business lines when your method of perfection includes filing a financing statement covering titled vehicles/inventory?