Commercial Money Center, Inc. v. Illinois Union Ins. Co., 508 F.3d 327, 332 (6th Cir. 2007). This decision details how one leasing company financed over $300 million in assets between dozens of banks, investment pools, and sureties. Another securitization case was Windy City Metal Fabricators & Supply, Inc. v. CIT Technology, 536 F.3d 663, 666 (7th Cir. 2008) which details the leasing industry’s appetite for one particular product through securitization.

Program Agreements generally provide that the equipment lessor will have the exclusive right or right of first refusal to finance the equipment vendor’s equipment sold to the vendor’s customers. The vendor will provide these leads to the lessor with the expectation that the lessor will finance the qualified lessees. See C & J Vantage Leasing Co. v. Wolfe, 795 N.W.2d 65 (Iowa 2011).


The securitization of lease pools and the resulting document suite is complicated and has a multitude of moving parts, often involving the lessor, a special purpose bankruptcy remote entity, a surety, the institutional lender, and servicer. It is not entirely relevant to the subject of bank leasing, since it is unlikely that a bank would have to obtain third party financing for its leases when it enjoys cheap Federal funds. However, for the curious, a good example of a securitization arrangement is detailed

(28) **Commercial Money Center, Inc. v. Illinois Union Ins. Co.**, 508 F.3d 327 (6th Cir. 2007); **Windy City Metal Fabricators & Supply, Inc. v. CIT Technology**, 536 F.3d 663, 666 (7th Cir. 2008).

(29) NorVergence was a vendor which sold a magic box which theoretically reduced telephone and internet cost. The box cost less than a $100 to manufacture but was sold for $15-30,000. Ultimately, it was established that the box was worthless. Hundreds of leasing companies wrote leases for the magic box, financed through securitized pools. See Byron Saintsing and Thomas A. Gray, *NorVergence: Isolated Incident or Growing Trend* ELA Legal Forum Miami, Florida (May 16, 2005).


(37) State of the Equipment Finance Industry” page 12 Equipment Leasing & Finance Foundation (2010) quoting one lessor as saying ““Our standards did not change, the quality of our customers did" making increased volume difficult.

(38) 12 USC §§ 24 and 84; M & M Leasing Corp v. Seattle First Nat’l Bank, 563 F.2d 1377 (9th Cir. 1977).


(43) 12 CFR § 7.3400.


(45) 12 CFR § 5.34.

(46) 12 CFR § 7.7380.

(47) OCC Letter from Peter Liebesman June 15, 1981.


(49) OCC Letter to Peter Nevitt November 1, 1984.

(50) 12 USC § 24.

(51) 12 CFR § 23.21. A non-CEBA lease must rely upon the credit worthiness of the lessee and guarantor, not the value of the equipment,
and the residual must be less than 25%. The 25% residual cap does not include situations where there is recourse to a third party or the lessee, if the recourse guaranty is creditworthy. See 12 CFR §23.21(b) There is no limit to the number or size of the non-CEBA leases the bank may enter into, subject the bank’s overall lending limit as proscribed by 12 CFR Part 32.

(52) 12 CFR §§ 23.20, 23.21. CEBA leases can have any residual value, including true leases where the equipment is returned to the bank, but the total value of such leases is limited to 10% of the bank’s consolidated assets. By using the term “consolidated” the intent to insure that all the assets of the bank, including subsidiaries are included in this definition. See 56 Fed. Reg. 28,314 §23.8. It should be noted that in the event of a true lease where the equipment is returned, the bank has a maximum of five years to dispose of the property. See 12 CFR 23.4(c). Such retained property may not exceed 15% of the bank’s capital. 12 CFR § 23.

(53) 12 CFR § 23.2(f).

(54) 12 CFR § 23.3(a)(3).

(55) A. Dubin and Jeffrey J. Wong Equipment Leasing ¶23.02[3][b] at p. 23-11 (2011)

(56) 12 CFR §23.4.

(57)12 CFR § 23.4(b)(1) and (2).

(58) 12 CFR § 201.3.


(60) See 2011 10Q of Leaf Financial (August 9, 2011) where late fee income was about 9% of total income.


(63) Such leasing software includes Litehous360 and Leasewave.
American Association of Equipment Lessors, Equipment Leasing Today p. 10 (March 1991). When AT&T reorganized in 1990 it increased to 425,000 customer accounts and processed lease applications in 24 hours or less.

The idea is that a lessee which is pleased with its vendor will be more apt to pay the lessor. Typical approval criteria include 2 years in business, business license, bank and trade references, and phone numbers and addresses which can verified.

Many program agreements contain specific criteria for mandatory approval of the vendor’s customers. Because the volume of the customers is not known (unless specified), the bank runs the risk of agreeing to an unspecified open-ended credit commitment. See Generally Barry A. Dubin and Jeffrey J. Wong Equipment Leasing ¶12.17 at 12-58 (2011). Any such program agreement should be scrutinized carefully.

See North Carolina Stats Annot. §66-106 et seq [Applies to loans or leases]; California Financial Code § 22000 [Applies to only loans].


The Back Office, Leasing News _______________.
http://www.leasingnews.org/Ag_leasing/backoffice.htm.

An exhaustive list developed by Terry Winders, CLP may be found in Leasing News December 21, 2009
http://leasingnews.org/archives/December%202009/12-21-09.htm#start.

GreatAmerica Leasing Corp. v. Star Photo Lab, Inc., 672 N.W.2d 502, 504 (Iowa Ct. App. 2003); California Commercial Code § 10407

http://leasingnews.org/archives/Jan2010/1_15.htm#special_report1. Mr. Coston argues that simple Equipment Finance Agreements, long forsaken by equipment lessor, have a place in equipment financing and indeed have advantages in certain situations

UCC 2A § 103(a)(7).


(78) The statutory definition is contained in the Uniform Commercial Code § -203.

(79) In re Celeryvale Transport, Inc., 822 F.2d 16, 18 (6th Cir. 1987) [FMV lease is true lease].

(80) In re Sankey 307 B.R. 674, (D.Alaska 20040 [10% purchase option was true lease].

(81) In re Pillowtex, Inc., 349 F.3d 711, (3rd Cir. 2003) [$1 purchase option is lease intended as security].

(82) Matter of Fashion Optical, Ltd., 653 F.2d 1385, 1390 (10th Cir. 1981) [Held that lease for the greater of FMV or 10% might be true lease depending on value].


(85) JAZ, Inc. v. Foley, 104 Hawai'i 148, 154, 85 P.3d 1099,1105 (Hawaii App. 2004); Ace Leasing, Inc. v. Bousted, 311 Mont. 285, 55 P.3d 371 (Mont. 2002) [Failure to abide by Purchase Order exonerated guarantor].
