

IN THE COURT OF COMMON PLEAS OF MONTGOMERY COUNTY, PENNSYLVANIA

DE LAGE LANDEN FINANCIAL SERVICES INC

vs.

ELEMENT FINANCIAL CORP et al

NO. 2013-12296

**CIVIL COVER SHEET**

State Rule 205.5 requires this form be attached to any document commencing an action in the Montgomery County Court of Common Pleas. The information provided herein is used solely as an aid in tracking cases in the court system. This form does not supplement or replace the filing and service of pleadings or other papers as required by law or rules of court.

Name of Plaintiff/Appellant's Attorney: JOSEPH A DOUGHERTY, Esq., ID: 50193

Self-Represented (Pro Se) Litigant ☐

**Class Action Suit** ☐ Yes ☒ No

**MDJ Appeal** ☐ Yes ☒ No

**Money Damages Requested** ☒

**Commencement of Action:**

**Amount in Controversy:**

Complaint

More than \$50,000

**Case Type and Code**

Tort:

Intentional

**Other:** \_\_\_\_\_

DE LAGE LANDEN FINANCIAL SERVICES INC

vs.

ELEMENT FINANCIAL CORP et al

NO. 2013-12296

**NOTICE TO DEFEND - CIVIL**

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

LAWYER REFERENCE SERVICE  
MONTGOMERY BAR ASSOCIATION  
100 West Airy Street (REAR)  
NORRISTOWN, PA 19404-0268

(610) 279-9660, EXTENSION 201

# Supreme Court of Pennsylvania

## Court of Common Pleas Civil Cover Sheet

Montgomery

County

*For Prothonotary Use Only:*

Docket No:

*The information collected on this form is used solely for court administration purposes. This form does not supplement or replace the filing and service of pleadings or other papers as required by law or rules of court.*

### Commencement of Action:

- ☒ Complaint
 ☐ Writ of Summons
 ☐ Petition
 ☐ Declaration of Taking
 ☐ Transfer from Another Jurisdiction

Lead Plaintiff's Name:

De Lage Landen Financial Services, Inc.

Lead Defendant's Name:

Element Financial Corp. fka CoActiv Capital Partners, Inc.

Are money damages requested? ☒ Yes ☐ No

Dollar Amount Requested: ☐ within arbitration limits  
(check one) ☒ outside arbitration limits

Is this a *Class Action Suit*? ☐ Yes ☒ No

Is this an *MDJ Appeal*? ☐ Yes ☒ No

Name of Plaintiff/Appellant's Attorney: Marc R. Steinberg, Joseph A. Dougherty, Peter E. Ochroch

☐ Check here if you have no attorney (are a Self-Represented [Pro Se] Litigant)

### Nature of the Case:

Place an "X" to the left of the **ONE** case category that most accurately describes your **PRIMARY CASE**. If you are making more than one type of claim, check the one that you consider most important.

#### TORT (do not include Mass Tort)

- ☒ Intentional  
☐ Malicious Prosecution  
☐ Motor Vehicle  
☐ Nuisance  
☐ Premises Liability  
☐ Product Liability (does not include mass tort)  
☐ Slander/Libel/ Defamation  
☐ Other:

#### MASS TORT

- ☐ Asbestos  
☐ Tobacco  
☐ Toxic Tort - DES  
☐ Toxic Tort - Implant  
☐ Toxic Waste  
☐ Other:

#### PROFESSIONAL LIABILITY

- ☐ Dental  
☐ Legal  
☐ Medical  
☐ Other Professional:

#### CONTRACT (do not include Judgments)

- ☐ Buyer Plaintiff  
☐ Debt Collection: Credit Card  
☐ Debt Collection: Other  
☐ Employment Dispute: Discrimination  
☐ Employment Dispute: Other  
☐ Other:

#### REAL PROPERTY

- ☐ Ejectment  
☐ Eminent Domain/Condemnation  
☐ Ground Rent  
☐ Landlord/Tenant Dispute  
☐ Mortgage Foreclosure: Residential  
☐ Mortgage Foreclosure: Commercial  
☐ Partition  
☐ Quiet Title  
☐ Other:

#### CIVIL APPEALS

- ☐ Administrative Agencies  
☐ Board of Assessment  
☐ Board of Elections  
☐ Dept. of Transportation  
☐ Statutory Appeal: Other  
☐ Zoning Board  
☐ Other:

#### MISCELLANEOUS

- ☐ Common Law/Statutory Arbitration  
☐ Declaratory Judgment  
☐ Mandamus  
☐ Non-Domestic Relations Restraining Order  
☐ Quo Warranto  
☐ Replevin  
☐ Other:

## NOTICE

**Pennsylvania Rule of Civil Procedure 205.5. (Cover Sheet) provides, in part:**

**Rule 205.5. Cover Sheet**

(a)(1) This rule shall apply to all actions governed by the rules of civil procedure except the following:

- (i) actions pursuant to the Protection from Abuse Act, Rules 1901 et seq.
- (ii) actions for support, Rules 1910.1 et seq.
- (iii) actions for custody, partial custody and visitation of minor children, Rules 1915.1 et seq.
- (iv) actions for divorce or annulment of marriage, Rules 1920.1 et seq.
- (v) actions in domestic relations generally, including paternity actions, Rules 1930.1 et seq.
- (vi) voluntary mediation in custody actions, Rules 1940.1 et seq.

(2) At the commencement of any action, the party initiating the action shall complete the cover sheet set forth in subdivision (e) and file it with the prothonotary.

(b) The prothonotary shall not accept a filing commencing an action without a completed cover sheet.

(c) The prothonotary shall assist a party appearing pro se in the completion of the form.

(d) A judicial district which has implemented an electronic filing system pursuant to Rule 205.4 and has promulgated those procedures pursuant to Rule 239.9 shall be exempt from the provisions of this rule.

(e) The Court Administrator of Pennsylvania, in conjunction with the Civil Procedural Rules Committee, shall design and publish the cover sheet. The latest version of the form shall be published on the website of the Administrative Office of Pennsylvania Courts at [www.pacourts.us](http://www.pacourts.us).

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Paul J. Greco, Esquire (ID No. 55770)  
Anne E. Kozul, Esquire (ID No. 206099)  
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*Attorneys for Plaintiff*

**IN THE COURT OF COMMON PLEAS  
OF MONTGOMERY COUNTY, PENNSYLVANIA**

DE LAGE LANDEN FINANCIAL :  
SERVICES, INC. :  
1111 Old Eagle School Road :  
Wayne, PA 19087, :

Plaintiff,

**Civil Action No.**

v.

ELEMENT FINANCIAL CORP. :  
(f/k/a COACTIV CAPITAL PARTNERS, :  
INC.), :  
655 Business Center Drive :  
Horsham, PA 19044 :

and

**JURY TRIAL DEMANDED**

PATRICK NEARY :  
613 Smokehouse Road, :  
West Chester, PA 19382 :  
Defendants. :

## NOTICE

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**IN THE COURT OF COMMON PLEAS  
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DE LAGE LANDEN FINANCIAL :  
SERVICES, INC. :  
1111 Old Eagle School Road :  
Wayne, PA 19087, :

Plaintiff,

**Civil Action No.**

V.

ELEMENT FINANCIAL CORP.  
(f/k/a COACTIV CAPITAL PARTNERS,  
INC.),  
655 Business Center Drive  
Horsham, PA 19044

and

## JURY TRIAL DEMANDED

PATRICK NEARY  
613 Smokehouse Road,  
West Chester, PA 19382

Defendants.

## COMPLAINT

Plaintiff De Lage Landen Financial Services, Inc. (“DLL”) and Element Financial Corp. (“Element”) both provide leasing and financing solutions to manufacturers, dealers, and other vendors to aid them in selling or leasing their products to their customers. As such, they are competitors in the vendor finance business arena and specialize in almost identical business segments: office equipment, office technology, construction and industrial, health care, and transportation.

Defendant Patrick Neary is a Senior Vice President and General Manager of the Office Product Group (“Neary”) for Element. Working from Element’s headquarters, Neary used the laptop and security credentials of a DLL employee to improperly gain access into DLL’s secured computer systems. That DLL employee, Thomas Thomasian (“Thomasian”), had already accepted a job with Element to work in its Office Products group, but he had not yet resigned from DLL at the time that he handed over his laptop and security credentials to Neary, his future boss.

As set forth herein, the unlawful conduct of Neary and Element did not end with their willful intrusion into DLL’s secured computer systems. Rather, as set forth more completely below, Neary and Element have engaged in a range of improper activities, including, but not limited to, (a) inducing Thomasian and another DLL employee to provide information and comments upon an Element business plan to compete more effectively with DLL; (b) inducing Thomasian to download confidential customer contact information onto an Element-issued electronic device and to email to himself competitively sensitive DLL business reports; (c) inducing Thomasian to breach the terms of his employee agreement which imposed obligations not to disclose confidential information, not to compete with DLL, not to solicit its customers,



and not to recruit his co-workers; and in the process of doing all the foregoing, (d) misappropriating DLL's trade secrets. These wrongful activities, both singly and collectively, demonstrate the desire and intention of Neary and Element to gain an unlawful competitive advantage at DLL's expense. DLL has therefore instituted this action to redress the substantial injuries that it has sustained as a result of the Defendants' wrongful conduct.<sup>1</sup>

### **THE PARTIES**

1. Plaintiff, DLL, is a corporation organized under the laws of the State of Michigan with its principal place of business located at 1111 Old Eagle School Road, Wayne, Pennsylvania 19087.

2. Upon information and belief, Defendant Element is a corporation organized under the laws of the State of Delaware with its principal place of business located at 655 Business Center Drive, Horsham, Pennsylvania 19044. Element was formerly known as CoActiv Capital Partners, Inc.

3. Defendant Neary is a citizen of the Commonwealth of Pennsylvania, residing at 613 Smokehouse Road, West Chester, Pennsylvania 19382.

### **VENUE**

4. Venue is proper in Montgomery County, Pennsylvania pursuant to Pa. R. Civ. P. 1006 and 2179 in that the causes of actions asserted herein arose in this county; a transaction or occurrence took place in this county out of which the causes of action asserted arose; Element's

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<sup>1</sup> DLL is pursuing its rights and remedies against Thomasian in a separate lawsuit filed in federal court and captioned as *De Lage Landen Financial Services, Inc. v. Thomas Thomasian*, United States District Court for the Eastern District of Pennsylvania, Civil Action No. 2:13-cv-852-RB.

principal place of business is located in this county; Neary works for Element in this county; and Element regularly conducts business in this county.

### **FACTUAL BACKGROUND**

#### **The Vendor Finance Business is a highly competitive industry.**

5. DLL is engaged in the business of providing leasing and finance solutions to manufacturers, dealers, and other types of vendors to aid them in selling or leasing products to their customers (the “Vendor Finance Business”).

6. DLL is one of the largest companies engaged in the Vendor Finance Business and does business across the United States.

7. DLL does not solicit business directly from end-users who want to lease or buy equipment from manufacturers, dealers, or other kinds of vendors. Rather, DLL’s customers are the manufacturers, dealers, and vendors who want to offer leasing and finance solutions for the end-users who desire their equipment.

8. As with most companies in the Vendor Finance Business, DLL specializes in particular industry segments: (i) Office Technology; (ii) Construction, Transportation and Industrial; (iii) Healthcare; (iv) Clean Technology; and (v) Food and Agriculture.

9. DLL employs a sales force that works closely with its customers to develop leasing and financing solutions that are appropriate for their businesses. As a result, DLL’s sales personnel develop strong relationships with DLL’s customers, thereby also making vital the protection of goodwill to prevent competitors from obtaining an unfair competitive advantage by trading on goodwill that DLL has created through substantial efforts and investments.

10. Element is also in the Vendor Finance Business and competes with DLL.

11. Element's corporate headquarters are located in Horsham, Pennsylvania, less than 30 miles away from DLL's corporate headquarters in Wayne, Pennsylvania.

12. Like DLL, Element also specializes in particular industry segments, including (i) Office Products; (ii) Construction and Industrial; (iii) Technology; (iv) Healthcare; (v) Transportation; and (vi) Franchise.

13. The only business segments that DLL and Element do not have in common are Franchise and Clean Technology.

14. Until recently, Element was known as "CoActiv Capital Partners, Inc." ("CoActiv"). In November 2012, CoActiv was acquired by Element Financial Corporation, a Canadian based company. In a press release dated May 1, 2013, Element Financial Corporation described itself as "one of North America's leading independent equipment finance companies." Element Financial Corporation also announced in the press release that "it has commenced rebranding the operations of the recently acquired CoActiv Capital Partners under Element's North American identity. Effective immediately, the legal name of CoActiv Capital Partners, Inc. has been changed to Element Financial Corp. doing business as Element Financial (USA)." A true and correct copy of the May 1, 2013 press release is attached hereto as Exhibit A.

15. In announcing CoActiv's new name, Element Financial Corporation also touted the company's expansive geographic operations, asserting "With a well-established US origination and servicing platform as an integral part of our offering, Element now has the geographic reach, funding capacity, processing systems and leadership resources to support the vendor financing needs of equipment manufacturers, dealers and distributors across a broad range of industries in North America." *See* Exhibit A.

**DLL protects its Confidential Information and Trade Secrets.**

16. As a result of its hard work, DLL has developed longstanding and established relationships with equipment vendors, equipment dealers, manufacturers, banks, financial institutions, and various other equipment leasing and financing sources throughout the United States (each, a “DLL Customer” and, collectively, “DLL Customers”).

17. To gain a competitive edge, to efficiently and accurately meet DLL Customer demands, and to otherwise succeed in the Vendor Finance Business, DLL has invested a substantial amount of time, effort, and money to develop confidential information and trade secrets including, but not limited to, the following eight classifications, which are collectively referred to herein as “DLL Information and Trade Secrets”:

a. *Customer, Account, and Vendor Information and Data:* This category includes confidential and proprietary information regarding DLL’s customers and the banks and financial institutions with which DLL works.

b. *Program Agreements, Contracts, and Business Plans:* This category includes confidential and proprietary information regarding DLL’s existing business operations and its strategic plans for the future.

c. *Pricing, Profitability, and Financials:* This category includes confidential and proprietary information regarding DLL’s financial performance and budgets.

d. *Employees and Personnel Information and Data:* This category includes confidential and proprietary information regarding DLL’s personnel.

e. *Electronic Commerce and Services:* This category includes confidential and proprietary information regarding DLL’s Information Technology systems and applications.

f. *Intellectual and Intangible Property:* This category contains confidential and proprietary information concerning DLL's intellectual and intangible property rights, including its copyrights, licenses, patents, trademarks, trade names, inventions, shop rights, and rights, titles, interests, rents and royalties derived therefrom.

g. *Confidential Information of Third Parties:* This category includes confidential and proprietary business information and other trade secrets provided to DLL by third parties with an expectation of privacy and/or pursuant to contractual, common law, or other legal or statutory protection.

h. *Other Trade Secrets:* This category includes other confidential and proprietary information maintained by DLL which is not generally known to the public or not within the public domain or marketplace; which is valuable to DLL; which would be valuable to a competitor; which DLL takes reasonable measures to protect; which cannot be lawfully duplicated or easily acquired; and which was developed as a result of DLL's time, effort, and expense.

18. Knowledge of the DLL Information and Trade Secrets would enable a competitor to enter the Vendor Finance Business, to compete unfairly in the Vendor Finance Business, and/or to poach Vendor Finance Business from DLL.

19. DLL takes substantial measures to protect the secrecy of DLL Information and Trade Secrets. DLL safeguards the confidentiality of the DLL Information and Trade Secrets by, *inter alia*: (1) orally instructing all employees on confidentiality; (2) limiting access to its facilities; (3) promulgating a Code of Conduct with specific provisions addressing confidentiality; (4) training employees on adhering to the Code of Conduct; (5) forbidding employees from engaging in the unauthorized access, retrieval, or storage of electronic company

information; (6) requiring employees to use encryption when emailing sensitive or confidential information; and (7) maintaining security protocols and restrictions for access to company computers, servers, and databases.

**DLL hires Thomas Thomasian subject to restrictive covenants.**

20. Thomas Thomasian worked for DLL for over 11 years. At the time of his resignation on February 10, 2013, Thomasian was DLL's Country Sales Manager (East Coast) for its Office Technology Group Global Business Unit ("Office Technology Group").

21. Thomasian began his employment with DLL on August 20, 2001.

22. As a condition of employment, DLL required Thomasian to execute a document entitled, "EMPLOYEE AGREEMENT WITH RESTRICTIVE COVENANTS" ("Employee Agreement"). A true and correct copy of the Employee Agreement is attached hereto as Exhibit B.

23. The Employee Agreement prohibits Thomasian from disclosing any DLL Information and Trade Secrets. It also requires him to return immediately all DLL Information and Trade Secrets to DLL upon separation of employment. Specifically, it provides as follows:

**IV. Non-Disclosure – Obligation to Protect.**

All of the above DLL Information and Trade Secrets in any form, whether original, copied, computerized, memorized, handwritten, electronic, verbal, or reproduced, compiled, accumulated, or recreated in any form, format, medium, record, document, or database, or in any other form, is CONFIDENTIAL and deserves trade secret status and protection. Except for information provided to DLL by third parties, all DLL Information and Trade Secrets, and any records, documents, or data derived therefrom, in any form, is the property of DLL, and DLL has sole and exclusive right, title, and interest in the use, development, and exploitation of said Information and Trade Secrets, and all benefits derived therefrom.

DLL Information and Trade Secrets, whether provided to EMPLOYEE by DLL or by any other third party, or developed or enhanced by EMPLOYEE or any other DLL employee, is provided or entrusted to EMPLOYEE, solely in his/her capacity as an employee and representative of DLL. During EMPLOYEE's employment at DLL, and at all times thereafter, EMPLOYEE agrees that he/she will not divulge or disclose DLL Information and Trade Secrets, or permit DLL Information and Trade Secrets to become divulged or disclosed to any competitor or to any third party, either directly or indirectly, intentionally or inadvertently, inevitably, reverse engineering, or otherwise.

During EMPLOYEE's employment at DLL, EMPLOYEE agrees to take all reasonable efforts to maintain and preserve the confidentiality of DLL Information and Trade Secrets and shall immediately notify DLL of any facts or circumstances, conduct or activity that may compromise or threaten the confidentiality of DLL Information and Trade Secrets. EMPLOYEE agrees that he/she shall use DLL Information and Trade Secrets only in the course of fulfilling his/her duties and responsibilities and in furtherance of DLL's business interests, and shall disclose DLL Information and Trade Secrets within DLL only on a "need-to-know" basis.

Upon termination of EMPLOYEE's employment, EMPLOYEE agrees that he/she shall not remove any DLL Information and Trade Secrets from any DLL office, and that he/she shall immediately return to DLL any DLL Information and Trade Secrets then in his/her possession, custody, or control. To the extent that any DLL Information and Trade Secrets has been disclosed or divulged to any third-party by EMPLOYEE, EMPLOYEE shall demand and effect its retrieval, return, and disgorgement from any other system into which it may have been entered.

24. The Employee Agreement also affirms that Thomasian owes a duty of loyalty to DLL that, among other things, obligates him to safeguard against the misappropriation or unauthorized use or disclosure of DLL Information and Trade Secrets. Specifically, the Employee Agreement provides in pertinent part as follows:

#### **VIII. Duty of Loyalty – Obligation to Inform DLL.**

EMPLOYEE agrees that at all times during his/her employment he/she owes DLL a duty of loyalty and a duty to act in good faith. EMPLOYEE agrees that during his/her employment he/she will not individually, or in combination with any other employee or in concert with any third party or any competitor of DLL, violate or breach any terms of this Agreement.

If EMPLOYEE becomes aware of any actual or threatened misappropriation or unauthorized use or disclosure of DLL Information and Trade Secrets, actual or threatened breach of any non-compete, non-solicitation, or non-hire terms of this Agreement, EMPLOYEE shall promptly notify and fully advise DLL of any and all facts, circumstances, and activities known by him/her.

25. The Employee Agreement also prohibits Thomasian from competing for a limited period of time against DLL, following his voluntary resignation. Specifically, it provides as follows:

#### **V. Non-Compete**

In the event of EMPLOYEE's termination of employment at DLL for cause or resignation, EMPLOYEE agrees to the following non-competition terms:

A. Limited National Non-Compete: For a period of 9 months for resignation and 9 months with 3 months compensation (salary and commission) for cause, the following termination of EMPLOYEE's employment at DLL for any reason, EMPLOYEE agrees that he/she shall not become employed by, render services to, work on behalf of, or become associated with, directly or indirectly, any entity (i) that competes with DLL on a national basis and (ii) which provides the same or substantially similar leasing services or products as DLL.

B. Regional Non-Compete: For a period of 9 months for resignation and 9 months with 3 months compensation (salary and commission) for cause following termination of EMPLOYEE's employment at DLL for cause or resignation, EMPLOYEE agrees that he/she shall not become employed by, render services to, work on behalf of, or become associated with, directly or indirectly, any entity (i) that operates, maintains, or conducts a business in, or



seeks to operate, maintain, or conduct business in the “Proscribed Area”; and (ii) which competes with DLL or provides the same or substantially similar leasing services or products as DLL. For the purposes of this paragraph V(B), the “Proscribed Area” shall be defined as within thirty (30) miles from any regional office, branch office, customer field service office, or residence from which EMPLOYEE worked during his/her employment at DLL.

26. The Employee Agreement also prohibits Thomasian, upon separation from DLL, from soliciting DLL Customers. Specifically, it provides as follows:

**VI. Non-Solicitation – Non Acceptance of Business.**

EMPLOYEE agrees that for a period of one year following termination of his/her employment for any reason, EMPLOYEE will not solicit, or initiate contact or communicate with, either directly or indirectly, by mail, by phone, by personal meeting, or by any other means, any Customer, Manufacturer, Dealer, Vendor, Bank or Financial Institution (“Customer”) whom EMPLOYEE serviced or whose name became known to him/her during his/her employment at DLL. EMPLOYEE’S agreement “not to solicit” means that EMPLOYEE will not, either in anticipation of his/her termination of employment, and for a period of one year thereafter, initiate any contact or communication of any kind whatsoever with any Customer, Manufacturer, Dealer, Vendor, Bank or Financial Institution for the purpose of inviting, encouraging, or requesting any Customer:

- (a) to transfer its business to EMPLOYEE, to EMPLOYEE’s new employer, or to any other third party; or
- (b) to open a new account with EMPLOYEE, with EMPLOYEE’s new employer, or with any other third party; or
- (c) to otherwise discontinue its patronage of DLL or divert its business relationship to EMPLOYEE, to EMPLOYEE’s new employer, or to any other third party.

EMPLOYEE further agrees that he/she will not accept, transact, or conduct any business with any Customer that is solicited in violation of the terms of this paragraph or whose information is used, misappropriated, divulged, or disclosed in violation of paragraph IV.

27. The Employee Agreement also prohibits Thomasian, upon separation from DLL, from recruiting DLL employees. Specifically, it provides in pertinent part as follows:

**VII. Non-Hire – Non-Disparagement.**

For a period of one year following termination of his/her employment, EMPLOYEE agrees that he/she will not, directly or indirectly, recruit, solicit for hire, attempt to hire, encourage or recommend for hire, or hire or employ, or conspire with, or aid and abet any third party in the recruitment, solicitation, hiring, or employment of any current or former DLL employee, agent, or representative...

28. In addition to requiring Thomasian to execute and abide by the Employee Agreement, DLL also provided Thomasian with a copy of its Code of Conduct.

29. Thomasian acknowledged in writing that he was obligated to abide by the terms and conditions of the DLL Code of Conduct.

30. The DLL Code of Conduct provides, in pertinent part, that “any information about a customer should be treated as confidential.”

31. The DLL Code of Conduct further instructs employees to treat competitor’s confidential information with the same respect as DLL expects its employees to treat DLL Information and Trade Secrets. The DLL Code of Conduct therefore instructs DLL’s employees that they may never use (1) a competitor’s confidential information; (2) documents or computer data brought by new hires from previous employers; (3) information marked as “confidential” or something similar that belongs to third-parties; or (4) information about a competitor’s bid when involved in bidding processes.

**Thomasian was entrusted with key customer relationships and confidential information.**

32. At the time of his resignation, Thomasian was working in a sales capacity for DLL. As the Country Sales Manager, Thomasian led a sales team for the Office Technology Group, which was DLL's largest global business unit in the United States.

33. Thomasian and his team were responsible for all office equipment sales conducted for the Office Technology Group in the Eastern portion of the United States, including in Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Ohio, Pennsylvania, Delaware, Maryland, Virginia, West Virginia, North Carolina, South Carolina, Georgia, Tennessee, Kentucky, Alabama, and Florida.

34. The sales team Thomasian managed averaged several hundred million dollars in annual sales volume in the office equipment segment over the last three full calendar years of his tenure with DLL.

35. Thomasian did more than simply manage the sales team for DLL's Office Technology Group. Rather, Thomasian traveled extensively and met personally with DLL Customers, all at DLL's expense.

36. DLL invested heavily in cultivating relationships between Thomasian and DLL's Customers. While Thomasian worked at DLL, he would entertain clients, including by taking them to dinner and arranging golfing and fishing trips, and all such expenses would be paid by DLL in an ongoing effort to establish, nurture, and maintain DLL customer goodwill.

37. Thomasian has estimated that he spent an estimated \$50,000-\$60,000 per year on expenses which DLL would either pay directly or for which DLL would reimburse him.

38. By virtue of his position, Thomasian also had access to, and possession of, a wide range of DLL Information and Trade Secrets.

39. DLL provides each employee access to its computer systems.

40. DLL provided Thomasian with a suite of Microsoft software, including an Outlook account; a personal virtual drive to store email messages and other information; and access to portions of DLL shared virtual drives.

41. The virtual drives, among other things, store information relating to DLL's business and customers, and the level of access that a DLL employee has to the virtual drives correlates to the employee's level of seniority within the company.

42. In his position as Country Sales Manager, Thomasian had access rights to areas of the virtual drives that few others in the entire company had. By way of example, as a result of his access rights to the virtual drives, Thomasian had access to such highly confidential and competitively sensitive information as (1) new business volume for each and every DLL Customer; (2) detailed performance information and projections regarding DLL Customers on an individualized basis; (3) compensation information and incentive plans for all of the Office Technology Group's United States sales force; and (4) the Office Technology Group's budgets and goals for its United States operations.

43. In addition to his access to DLL's virtual drives, and once again by virtue of his senior management position within DLL, Thomasian also received highly confidential and competitively sensitive operational reports via email.

44. In performing his duties as Country Sales Manager, Thomasian also acquired DLL Information and Trade Secrets on a wide range of strategic issues by working with other senior executives at DLL and by participating in senior management meetings for the Office Technology Group.

45. Thomasian reported directly to Robert Hunter, the head of the Office Technology Business Unit for the United States.

46. Thomasian was one of a select group of officers that developed the strategic plan for the Office Technology Group's United States operations.

47. Thomasian was one of a select group of officers that developed the marketing plan for the Office Technology Group's United States operations.

48. Thomasian was one of a select group of officers who established pricing and fees for United States programs.

49. Thomasian was involved in designing and constructing program agreements for material DLL Customers.

50. Thomasian participated in establishing compensation and incentive programs for the Office Technology Group's United States sales force.

51. Thomasian participated in establishing incentive programs for DLL Customers.

52. Thomasian participated in developing the budgets for the Office Technology Group's United States operations.

53. At the time that they recruited and hired Thomasian, Neary and Element knew that he had access to, and possessed knowledge of, DLL Information and Trade Secrets arising out of his participation in the foregoing activities.

54. In November of 2012, Thomasian presented a draft 2013 budget to DLL for his geographic area of responsibility.

55. After making his draft budget presentation, Thomasian had numerous discussions with DLL's senior management about the 2013 budget and DLL's business strategies for meeting the budget.

56. The 2013 budget was finalized in January of 2013, while Thomasian still worked for the company, but after he had already clandestinely accepted an employment offer from Element.

57. Upon information and belief, copies of the final 2013 budget and the underlying data to support the budget are presently in Thomasian's possession, custody, or control.

58. The totality of the DLL Information and Trade Secrets to which Thomasian had access and/or which he presently possesses will cause immediate and continuing harm to DLL if used in competition with it.

**Element and Neary recruit Thomasian to compete with DLL.**

59. Over the course of the last several years, Element has grown substantially and become a significant competitor to DLL in the Vendor Finance Business.

60. The May/June 2012 issue of *The Monitor*, a publication for equipment and leasing professionals, published the results of a survey of the most active finance and leasing companies in the vendor/dealer space. Element, which was known as CoActiv at the time of the survey, ranked 15<sup>th</sup> in the "25 Most Active Players in the Vendor Channel." This was based on sales volume figures from 2007 through 2011. A copy of this report is attached hereto as Exhibit C.

61. In the May/June 2013 issue of *The Monitor*, Element was again ranked 15<sup>th</sup> in "2012's Most Active Players in the Vendor Channel." This report also reflects an increase in new business volume for Element of \$64.2 million, or an increase of over 37.8% from 2011 to 2012. A copy of this report is attached hereto as Exhibit D.

62. As Element has grown, it has repeatedly looked to DLL's workforce to find talented and experienced professionals to staff its operations. At least six of Element's most

senior managers are former DLL executives, including Element's current Chief Executive Officer, Chief Operating Officer, and General Counsel.

63. One of the senior executives that Element hired from DLL is Defendant Neary.

64. Neary worked for DLL for approximately twenty years. At the time that his employment with the company ended in November of 2012, Neary was DLL's Vice President, Inside Sales, for the Office Technology Group.

65. Neary subsequently accepted a similar position at Element. At Element, Neary is currently responsible for the overall performance and management of Element's Office Products Group. He thus has responsibility for, among other things, developing strategic plans, marketing plans, staffing plans, and vendor pricing for Element's Office Products Group.

66. Soon after Neary joined Element, both he and Element set their sights on hiring Thomasian.

67. When Neary worked for DLL, Thomasian reported to him. When Element sought to hire an experienced professional to oversee sales for its Office Products Group in the Eastern United States, Neary recruited Thomasian for the position.

68. On or about January 3, 2013, Thomasian had dinner with some of Element's most senior officers. During that dinner, Thomasian informed those assembled – including Donald Campbell (Element's CEO) and Steven Grosso (Element's President and COO) – that he had a non-compete with DLL.

69. Despite the restrictions set forth in Thomasian's Employee Agreement, on or about January 4, 2013, Element offered Thomasian a job to manage and grow Element's Office Products Group's sales in the Eastern United States. Thomasian accepted the job, but did not immediately resign from DLL.

70. When Element hired Thomasian, it understood that Thomasian not only had extensive knowledge of, and access to, DLL's Information and Trade Secrets, but also had strong relationships with quality DLL Customers. Neary, in particular, was well aware of the extent of Thomasian's knowledge and relationships (and the restrictions against Thomasian's exploitation of them for the benefit of third-parties) due to his prior reporting and working relationship with Thomasian while they were both employed by DLL.

71. Despite the contractual obligations that Thomasian owed to DLL, Element and Neary hired Thomasian with the intent and expectation that he would use his extensive knowledge and would help divert DLL Customer relationships for their benefit.

72. To utilize the knowledge that Thomasian possessed regarding DLL's business with DLL Customers, Element organized Thomasian's his job duties to include selling to the same customers with whom Thomasian had done business on behalf of DLL during his 11 years at the company.

**Element and Neary breach DLL's secured computer systems and condone Thomasian's use and disclosure of DLL Information and Trade Secrets for their benefit.**

73. Almost as soon as he accepted a job with Element, Thomasian began to use and disclose DLL Information and Trade Secrets for their benefit and with their knowledge and consent.

74. In mid-January, 2013, while he was still employed by DLL, Element provided Thomasian with a new iPhone. Without obtaining permission from anyone at DLL to do so, Thomasian then transferred the contact information stored on his DLL-supplied Blackberry to the Element-issued iPhone.



75. Among the information that Thomasian transferred from his DLL-Blackberry to his Element-iPhone was the telephone numbers – including cell phone numbers that were not readily publicly available – for representatives of 12 of his most significant accounts at DLL. Upon information and belief, and because there is no other legitimate business reason for providing Thomasian with Element-owned electronic devices while still working for a competitor, it is apparent that Element and Neary intended for Thomasian to place DLL Customer contact information on his Element-issued iPhone while he still had access to such data at DLL.

76. In around or mid-January, 2013, and also while Thomasian was still employed by DLL, Neary contacted him and asked for his input regarding Element’s “go-to-market” program for its Office Products Group.

77. The goal of the “go-to-market” program was to describe how Element planned to compete in the office equipment vendor finance marketplace, including how to distinguish itself from other companies, including DLL.

78. While he was still working for DLL, Thomasian responded to Neary’s inquiry by emailing information to him. Using knowledge about business strategies that Thomasian possessed solely because he worked at DLL, Thomasian provided specific advice to Neary about what kinds of business practices worked and what kinds did not. Also using knowledge that he possessed about how DLL did business – once again, information that Thomasian acquired solely because of his employment at DLL – Thomasian further provided Neary with an idea for a business strategy that would distinguish Element from DLL and other competitors in the market.

79. After receiving the information that Thomasian provided him, Neary confirmed with Thomasian that he intended to use it in a business presentation that he was going to make on behalf of Element.

80. On or about January 23, 2013, while Thomasian was still working for DLL, Neary and Thomasian made arrangements to meet for lunch (“January 23 Lunch”).

81. Upon information and belief, one of the purposes of the January 23 Lunch was for Neary to obtain information about DLL personnel who would be suitable for filling open sales positions at Element.

82. Element was interested in expanding and growing its office equipment sales team for its West Coast operations. Accordingly, during the January 23 Lunch, Neary induced Thomasian to identify several DLL Office Technology Group sales professionals in California whom Element might want to recruit. Neary also secured Thomasian’s promise to obtain contact information for these individuals that DLL maintained for them.

83. Before leaving the January 23 Lunch, Thomasian gave Neary his DLL-issued laptop, along with a security fob that, when attached to the laptop, deployed a rotating security code that was necessary to access DLL’s computer systems. Thomasian left the DLL laptop and the security fob in Neary’s possession after departing.

84. Although he had Thomasian’s DLL laptop and security fob, Neary lacked Thomasian’s password and PIN code for logging directly into DLL’s computer systems. Consequently, after the January 23 Lunch, Neary spoke with Thomasian on the phone and asked Thomasian for his security credentials. Thomasian gave Neary the log-in credentials that Neary requested.

85. On or about January 24, 2013, working from Element's headquarters, Neary logged onto DLL's computer system by using Thomasian's laptop, security fob, and log-in credentials to gain access.

86. Neary remained logged onto DLL's computer system for at least several hours on January 24, 2013.

87. During the time period while Neary was logged onto DLL's computer system through the use of Thomasian's security credentials, Neary had the same access to DLL's virtual drives that Thomasian enjoyed as a DLL senior executive.

88. At a minimum, Neary accessed Thomasian's Outlook files while logged onto DLL's computer system.

89. Thomasian's Outlook files contained a wide range of DLL Information and Trade Secrets, including, but not limited to, (1) email messages concerning DLL Customers and their business with DLL; and (2) DLL daily sales volume that provide information about the sales that each DLL sales representative has booked for the current month. By virtue of having logged into DLL's computer system with Thomasian's credentials, Neary acquired access to all such email messages and the DLL Information and Trade Secrets that they contained.

90. Neary retained possession of Thomasian's DLL laptop for several days. After he eventually returned it, Neary suggested to Thomasian that he should delete portions of the Internet history on the laptop in an effort to obscure Neary's breach of DLL's secured computer systems.

91. At the time Neary suggested deleting portions of the Internet history on Thomasian's DLL laptop, he was aware that Thomasian's Employee Agreement provided that Thomasian was obliged to report any "unauthorized use or disclosure of DLL Information and

Trade Secrets” and to “promptly notify and fully advise DLL of any and all facts, circumstances, and activities” known to him about such unauthorized uses. *See* Employee Agreement at Section VIII – Duty of Loyalty.

92. Given his improper activities with respect to Thomasian’s DLL laptop and his knowingly wrongful access to DLL’s computer systems, it is likely and believed that Neary has induced Thomasian to supply him with, or has otherwise acquired, other DLL Information and Trade Secrets for use in Element’s business.

93. Thomasian did not report Neary’s activities on his laptop to DLL.

94. On or about January 24, 2013, while he was still working for DLL, Thomasian forwarded to his personal Comcast email account a report that he had received from DLL on January 18, 2013 that included data regarding DLL’s fourth quarter sales for himself and his sales team.

95. On or about February 7, 2013, while he was still working for DLL, Thomasian forwarded to his personal Comcast email account an email that he received on January 29, 2013 containing data reflecting DLL’s 2013 budget and compensation plans. The January 29 email was marked “confidential.”

96. On or about February 8, 2013, while he was still working for DLL, Thomasian forwarded to his personal Comcast email account an email that he received on December 21, 2012 containing data about the 2013 budgets for DLL’s Office Technology Group. The data in the December 21 email was to be used to develop compensation plans for DLL’s employees, including Bryan Chandler, a sales professional on the West Coast that Element had also hired.

97. On or about February 9, 2013, while still working for DLL, Thomasian forwarded to his personal Comcast email account an email that he had received that day which contained the daily sales numbers for all parts of the Office Technology Group, including the West Coast.

98. Thomasian has never returned to DLL any of the email messages that he forwarded to his personal Comcast account. Upon information and belief, Thomasian's retention of this DLL Information and Trade Secrets has been with the knowledge and approval of Neary and Element.

99. Element is aware that Thomasian has retained the DLL Information and Trade Secrets that are contained in the email messages and their attachments that he forwarded to his personal Comcast account. As noted, there are a number of very senior executives now working at Element who were formerly employed by DLL and who therefore know and appreciate the competitive value of the DLL Information and Trade Secrets that are contained in the forwarded email messages. However, Element has taken not taken steps to ensure that Thomasian will not utilize the information contained in them for its benefit.

**Element employs Thomasian in breach of the Employee Agreement.**

100. On Friday, February 8, 2013, DLL paid Thomasian a substantial performance bonus for his 2012 calendar year performance.

101. On Sunday, February 10, 2013, Thomasian and Michael Hart, another DLL employer, announced that they were resigning from DLL.

102. Hart was an Account Manager Retail for DLL and reported directly to Thomasian. Immediately prior to his resignation, Hart was responsible for managing sales for DLL Customers located in portions of Pennsylvania and upstate New York.

103. Upon information and belief, Thomasian knew that Hart had accepted an offer of employment with Element before Thomasian tendered his resignation to DLL. However, Thomasian never informed DLL that one of the sales representatives that he managed had accepted employment with one of DLL's direct competitors.

104. Upon information and belief, Neary and Element knew and expected that Thomasian would not inform DLL that one of his direct reports, Hart, intended to resign in order to join Element in a competitive capacity.

105. DLL learned that Element had hired Thomasian and Hart on February 11, 2013, when Element hand delivered a letter to DLL to announce that fact.

106. After resigning, Thomasian did not return his DLL-issued laptop or Blackberry until several weeks later. He retained those electronic devices, and all the DLL Information and Trade Secrets stored on them, for several weeks after beginning to work for Element. Upon information and belief, Element was aware that Thomasian retained possession of his DLL-issued laptop and Blackberry, and it took no steps either to compel the return of them to DLL or to ensure that Thomasian did not use the information stored on them for Element's benefit.

107. Since joining Element, Thomasian has participated in multiple calls, meetings, or other communications with his former DLL Customers.

108. Since joining Element, Thomasian has spoken with representatives of at least 11 significant DLL Customers with whom he dealt while employed at DLL.

109. Through at least April 30, 2013, the only customers with whom Thomasian had spoken on behalf of Element were DLL Customers that he had serviced while working for DLL.

110. In a futile attempt to evade the non-solicitation restraint in the Employee agreement, Thomasian and Neary arranged for Neary to indirectly solicit Thomasian's former

DLL Customers by calling and “asking” them if they would like to hear from Thomasian. After Neary made such calls, Thomasian would then call the DLL Customers for the purpose of developing a business relationship for Element.

111. On or about February 19, 2013, Thomasian sent Neary an email and suggested that Neary contact a DLL Customer to let him know that Neary was going to be traveling nearby and would like to visit him.

112. The foregoing activities of Thomasian, Neary, and Element have caused, and will continue to cause, substantial injuries and actual legal damages to DLL.

**COUNT I**  
**MISAPPROPRIATION OF TRADE SECRETS &**  
**VIOLATION OF THE PENNSYLVANIA UNIFORM TRADE SECRETS ACT**

113. DLL incorporates by reference the allegations of Paragraphs 1 through 112 above as if fully set forth herein.

114. DLL has invested considerable time and money in developing valuable trade secrets and confidential and proprietary information.

115. As described hereinabove, DLL’s Information and Trade Secrets consists of highly confidential and proprietary information concerning (1) customer, account and vendor information and data; (2) program agreements, contracts, and business plans; (3) pricing, profitability, and financial data; (4) employee and personnel information and data; (5) electronic commerce and services information, software, systems, and databases; (6) intellectual and intangible property; (7) confidential information of third-parties; and (8) other trade secrets.

116. Thomasian acquired access to and possessed DLL Information and Trade Secrets during his employment with DLL.

117. With the knowledge and consent of Neary and Element, Thomasian has used and/or disclosed DLL Information and Trade Secrets to Element for its benefit without the express or implied consent of DLL.

118. DLL's Information and Trade Secrets are not available to the general public, could not originate with another party, and were compiled at substantial expense by DLL.

119. DLL takes substantial measures to protect the secrecy of its trade secrets.

120. DLL's Information and Trade Secrets could not easily be duplicated and derive independent economic value from not being generally known to, and not being readily ascertainable through proper means by, other person who can obtain economic value from their disclosure or use.

121. DLL's Information and Trade Secrets provide DLL with a competitive advantage in the market for Vendor Finance Business.

122. Element and Neary knew, or should have known, that Thomasian's use and/or disclosure of DLL Information and Trade Secrets for its benefit was unauthorized, unlawful, and improper.

123. By virtue of Neary's long tenure with DLL, his knowledge of its policies and procedures, and his own non-disclosure obligations to DLL, all of which is imputed to Element, both Neary and Element knew or should have known that Thomasian was not authorized to use or disclose DLL Information and Trade Secrets to Neary or Element.

124. Neither Neary nor Element acquired DLL Information and Trade Secrets through proper means.

125. Use of DLL Information and Trade Secrets gives Element and Neary an unfair and wrongful competitive advantage and compromises DLL's competitive advantage.



126. The conduct of Element and Neary has caused DLL actual legal damages.

**COUNT II**  
**TORTIOUS INTERFERENCE WITH CONTRACT**

127. DLL incorporates by reference the allegations of Paragraphs 1 through 112 above as if fully set forth herein.

128. DLL and Thomasian are parties to the Employee Agreement.

129. Element and Neary were aware of the terms of the restrictive covenants and other terms set forth in the Employee Agreement.

130. Element and Neary induced Thomasian to breach the terms of the Employee Agreement by, *inter alia*, doing the following:

a. employing Thomasian notwithstanding the fact that Element and DLL compete on a national basis, in violation of the Limited National Non-Compete set forth in Section V(A) of the Employee Agreement;

b. employing Thomasian notwithstanding the fact that Element operates, maintains, or conducts business within the “Proscribed Area,” as defined in the Employee Agreement, in violation of the Regional Non-Compete set forth in Section V(B) of the Employee Agreement;

c. inducing Thomasian to solicit, initiate contact with, or communicate with, either directly or indirectly, DLL Customers in violation of the Non-Solicitation – Non-Acceptance of Business clause set forth in Section VI of the Employee Agreement;

d. inducing Thomasian to recruit, solicit for hire, attempt to hire, encourage or recommend for hire, or hire or employ, or conspire with, or aid and abet Element in the

recruitment, solicitation, hiring or employment of DLL employees in violation of the Non-Hire clause set forth in Section VII of the Employee Agreement;

e. inducing Thomasian to provide business advice and input into a plan by Element to compete more effectively against DLL for Vendor Finance Business; and

f. inducing Thomasian to disclose DLL Information and Trade Secrets in violation of the Non-Disclosure clause set forth in Section IV of the Employee Agreement.

131. The foregoing conduct of Element and Neary was neither privileged nor justified.

132. The foregoing conduct has caused DLL actual legal damages.

**COUNT III**  
**AIDING & ABETTING BREACH OF FIDUCIARY DUTIES AND THE DUTY OF LOYALTY**

133. DLL incorporates by reference the allegations of Paragraphs 1 through 112 above as if fully set forth herein.

134. As a senior executive at DLL and while employed by DLL, Thomasian owed DLL fiduciary obligations and an undivided duty of loyalty.

135. Neary and Element knowingly induced Thomasian to breach his fiduciary obligations and duty of loyalty by, *inter alia*, doing the following:

a. inducing Thomasian to provide business advice and input into a plan by Element to compete more effectively against DLL for Vendor Finance Business;

b. inducing Thomasian to provide information and/or assistance to Element in recruiting other DLL employees for the benefit of Element;

c. inducing Thomasian to provide his DLL laptop, key fob, and security credentials so as to enable Neary and Element to log into DLL's computer system;

d. inducing Thomasian to refrain from disclosing the intention of one of his sales representatives to join Element; and

e. inducing Thomasian to disclose DLL Information and Trade Secrets.

136. The foregoing conduct has caused DLL actual legal damages.

**COUNT IV**  
**CONVERSION**

137. DLL incorporates by reference the allegations of Paragraphs 1 through 112 above as if fully set forth herein.

138. At substantial expense, DLL has developed DLL Information and Trade Secrets for use in conducting its business.

139. DLL is the owner of, and has a proprietary interest in, DLL Information and Trade Secrets.

140. To the extent that DLL Information and Trade Secrets do not constitute trade secrets within the meaning of the Pennsylvania Uniform Trade Secrets Act, Element and Neary have nevertheless taken possession of, and/or interfered with DLL's proprietary interest in, DLL Information and Trade Secrets without DLL's consent.

141. The conduct of Element and Neary was unlawful and without justification.

142. The conduct of Element and Neary has caused DLL actual legal damages.

**PRAYER FOR RELIEF**

WHEREFORE, DLL demands judgment in its favor and against the Defendants, and respectfully requests the following relief:

a. actual damages that DLL is entitled to recover as a result of Defendants' misappropriation of trade secrets, tortious interference with contract, aiding and abetting of breaches of fiduciary duties and the duty of loyalty, and conversion;

b. incidental and consequential damages as permitted by law;

c. exemplary damages as permitted by law;

d. the costs of these proceedings;

e. attorneys' fees and costs as permitted by the Pennsylvania Uniform Trade Secrets Act;

f. pre-judgment interest as permitted by law; and

g. such other and further relief as this Court deems just and equitable.

Respectfully submitted,

/s/ Joseph A. Dougherty

Joseph A. Dougherty, Esquire (ID No. 50193)

Paul J. Greco, Esquire (ID No. 55770)

Anne E. Kozul, Esquire (ID No. 206099)

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(610) 386-5000

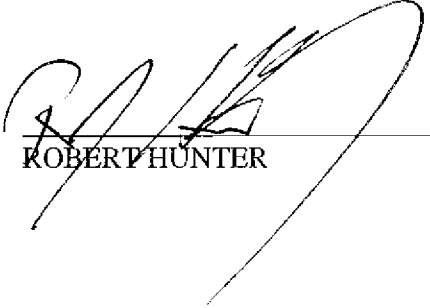
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**RUBIN, GLICKMAN, STEINBERG & GIFFORD P.C.**  
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Colmar, PA 18915  
(215) 822-7575

*Attorneys for Plaintiff De Lage Landen Financial  
Services, Inc.*

Dated: May 21, 2013

**VERIFICATION**

I, Robert Hunter, verify that the factual statements made in Plaintiff De Lage Landen Financial Services, Inc.'s Complaint against Defendants Element Financial Corp. and Patrick Neary are true and correct to the best of my knowledge, information, and belief. I understand that the statements made herein are subject to the penalties of 18 Pa. C. S. A. § 4904 relating to unsworn falsification to authorities.

  
\_\_\_\_\_  
ROBERT HUNTER

Dated: May 21, 2013

# Exhibit A

**For Immediate Release**

## **CoActiv Capital Partners Rebranded as Element Financial (USA)**

**Toronto, Canada – May 1, 2013** – Element Financial Corporation (TSX:EFN) (“Element” or “the Company”), one of North America’s leading independent equipment finance companies, today announced that it has commenced rebranding the operations of the recently acquired CoActiv Capital Partners under Element’s North American identity. Effective immediately, the legal name of CoActiv Capital Partners, Inc. has been changed to Element Financial Corp. doing business as Element Financial (USA). In conjunction with the rebranding, Element Financial (USA) has launched its new website at [www.elementcorp.com](http://www.elementcorp.com).

“For the past several months, we have been working to integrate our operations to enable us to quickly deliver the benefits of this cross-border alliance to customers in both Canada and the United States,” said Don Campbell, CEO of Element Financial (USA). “I’m very excited that our employees and customers are already finding ways to use this broader market presence to build deeper, stronger and more profitable relationships.

“With a well-established US origination and servicing platform as an integral part of our offering, Element now has the geographic reach, funding capacity, processing systems and leadership resources to support the vendor financing needs of equipment manufacturers, dealers and distributors across a broad range of industries in North America,” said Brad Nullmeyer, President of Element Financial Corporation.

Element Financial Corporation completed its acquisition of CoActiv Capital Partners from Marubeni America Corporation and Marubeni Corporation in December 2012.

### **About Element Financial Corporation**

With total assets of approximately \$1.5 billion, Element Financial Corporation is one of North America’s leading independent equipment finance companies. Element specializes in designing and implementing private-label sales-aid finance programs for equipment manufacturers across North America. The Company delivers equipment financing services through three business units - Element Capital structures large ticket equipment financing transactions, Element Finance serves the mid-ticket equipment finance market and Element Fleet provides vehicle fleet leasing and management solutions through the Company’s TLS Fleet Management division.

### **Contact:**

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# Exhibit B

NEW EMPLOYEE AGREEMENT

## EMPLOYEE AGREEMENT WITH RESTRICTIVE COVENANTS

This Employment Agreement with Restrictive Covenants ("Agreement") is now made as of this 20th day of August, 2000, by and between DE LAGE LANDEN FINANCIAL SERVICES, INC., a Michigan corporation with its principal place of business at 1111 Old Eagle School Road, Wayne, Pennsylvania 19087, its subsidiaries, parent and holding companies, and affiliated and related entities (hereinafter referred to individually and collectively as "DLL"), and Blaine Thurston an individual residing at 403 Smith St. Oceanport NJ (hereinafter referred to as "EMPLOYEE").

WHEREAS, EMPLOYEE desires to become an employee of DLL; and  
WHEREAS, DLL desires to employ EMPLOYEE, even though he/she has no experience in the equipment leasing industry; and  
WHEREAS, by virtue of said employment, DLL will provide and entrust to EMPLOYEE, and EMPLOYEE will gain access to, possession of, control over, and knowledge about, DLL Confidential, Proprietary, and Trade Secret Information; and  
WHEREAS, DLL seeks to protect its Confidential, Proprietary, and Trade Secret Information by entering into a legally binding Agreement with EMPLOYEE prohibiting him/her (1) from misappropriating, using, disclosing, or divulging Confidential, Proprietary, or Trade Secret Information; (2) from competing with DLL; (3) from soliciting DLL customers, manufacturers, dealers, vendors, banks and financial institutions, and others; (4) from recruiting or hiring DLL employees; (5) from breaching his/her fiduciary duty or duty of loyalty; (6) from engaging in any acts of unfair competition; and (7) providing for EMPLOYEE's consent to the issuance of temporary, preliminary, and permanent injunctive relief in the event of any violation or breach of his/her post-employment restrictive covenants;

NOW, THEREFORE, as a condition of employment, and in consideration of DLL hiring, training, educating, and supervising EMPLOYEE, in consideration of providing EMPLOYEE access to DLL Confidential Information and other Trade Secrets, in consideration of the independent, dependent and mutual covenants, undertakings, representations, consents, promises, and agreements set forth herein, and/or in exchange for other good and valuable consideration, the adequacy, sufficiency, and receipt of which is hereby acknowledged, and intending to be legally bound, DLL and EMPLOYEE covenant and agree as follows:

### I. Employment, Job Description, and Duties.

DLL hereby agrees to employ EMPLOYEE, and EMPLOYEE accepts employment with DLL subject to the terms, conditions, and provisions as set forth herein. EMPLOYEE's initial job description, duties, and responsibilities shall include, but shall not be limited to, his/her job description which is maintained in DLL's Human Resources Department. EMPLOYEE shall also be responsible for performance of such other duties and accepts such other responsibilities and agrees to fulfill such other positions as may be prescribed, substituted, modified, or amended by DLL from time to time, solely at its discretion. EMPLOYEE shall devote his/her full time, attention, and energies to the business of DLL and shall not during his/her employment be engaged in any other business activity in any capacity, for any entity, whether or not such business activity is pursued for gain or pecuniary advantage, unless EMPLOYEE first submits a written request for such activity and receives prior written approval from DLL.

### II. Compensation, Benefits, and Perquisites.

DLL agrees to provide EMPLOYEE with the following compensation, benefits, and perquisites for all services rendered under this Agreement:  
• Salary: EMPLOYEE shall be compensated at the semi-monthly rate of \$\_\_\_\_\_, subject to increases, decreases, changes and modifications at the discretion of DLL and based upon performance evaluation and profitability of the company.

• Additional Compensation: EMPLOYEE shall be eligible for additional compensation in the form of incentives or commission revenues, as from time to time may determine based upon the incentive or commission plan(s) in effect and an evaluation of EMPLOYEE's performance.  
• Other Benefits: To the extent that EMPLOYEE is otherwise eligible and qualifies to participate therein, EMPLOYEE shall receive other benefits and perquisites related to his/her employment, including:

- health care insurance coverage
- life, disability, and other insurance plans;
- retirement plan participation;
- expense reimbursement;
- paid time off;
- sabbatical leaves;
- unpaid leaves of absence;

all of which may be modified or terminated at any time and without notice, except as prohibited by law, statute, or the specific terms thereof.

### III. Confidential, Proprietary, and Trade Secret Information.

Since 1969, DLL has been engaged in the business of equipment leasing, equipment lease syndication, equipment financing, financing dealer equipment inventory, vendor equipment leasing, training and consulting services, both under its own name, trade names, private label, quasi-private label, both independently and through partnerships, joint ventures, and pursuant to manufacturer, vendor, and bank programs. During this time, and as a result of its hard work, DLL has developed longstanding and established relationships with banks, financial institutions, equipment vendors, manufacturers, and various other equipment leasing sources throughout the United States.

DLL has also earned, and enjoys, an excellent reputation, national name recognition, and goodwill with its accounts and throughout the industry.

As a result of DLL's expenditures of time, effort, and money, DLL has acquired and developed, and now utilizes and relies upon, valuable information which is CONFIDENTIAL and which deserves TRADE SECRET status and protection. This information, includes, without limitation,

(a) Customer, Account, and Vendor Information and Data: Names and identities of manufacturers, dealers, vendors, banks and financial institutions, addresses, phone numbers, account numbers, locations, distribution networks, districts, regions, contact personnel, lease administrators and office managers, product offerings, lease financing requirements, sales volume, buying cycles, pricing, payment terms, discounts, incentives, creditworthiness, credit history, equipment, inventory, service contracts, and other information regarding customers, prospective customers, customer leads, customer referrals, reassignments, other similar, related, and derivative customer relationships. ("Customers and Vendors")

(b) Program Agreements, Contracts, and Business Plans: Program agreements, contracts, business plans, systems, and methodologies for leasing services, pricing, purchasing, ordering, distribution, marketing, management, sales force automation and access, internet, education, computerization, organization, growth and expansion, mergers, acquisitions, alliances, joint ventures, integration, consolidation, and similar, related, or derivative agreements, contracts, and plans. ("Program Agreements, Contracts, and Business Plans")

(c) Pricing, Profitability, and Financials: Pricing and profitability data, documents, records, and plans; annual, quarterly, year-to-date, periodic pro forma, and special financial statements; revenues, operating expenses, profitability, equity, debt, book value, profit margins, and related or derivative financial plans, proposals, and analysis. ("Pricing, Profitability, and Financials")

(d) Employees and Personnel Information and Data: Names, addresses, identities, phone numbers, social security numbers, compensation, commissions, salaries, bonuses, benefits, wage rates, job titles, and descriptions, duties and responsibilities, sales territories, performance evaluations, rankings, industry experience, length of service, intranet access, and related personnel information. ("Employees and Personnel")

(e) Electronic Commerce and Services: Computerized and technical information, services and software, electronic leasing products systems, technical architecture, specifications, designs, source codes, functionalities, templates, paradigms, data, databases, and derivative therefrom. ("Electronic Commerce and Services")

(f) Intellectual and Intangible Property: Intellectual and intangible property rights, copyrights, licenses, patents, trademarks, trade names, inventions, shop rights, and rights, titles, interests, rents and royalties derived therefrom. ("Intellectual and Intangible Property")

(g) Confidential Information of Third Parties: Confidential proprietary business information and other trade secrets provided to DLL by third parties, partners, joint or co-ventures, customers, manufacturers, vendors, banks and financial institutions, and others, with an expectation of privacy and/or pursuant to contractual, common law, or other legal or statutory protection. ("Confidential Information of Third Parties")

(h) Other Trade Secrets: Other information which is not generally known to the public or not within the public domain or marketplace; which is valuable to DLL; which would be valuable to a competitor; which DLL takes reasonable measures to protect which cannot be lawfully duplicated or easily acquired; and which was developed as a result of DLL's time, effort, and expense. ("Other Trade Secrets")

The foregoing information regarding (a) Customers, Accounts, and Vendors; (b) Program Agreements, Contracts, and Business Plans; (c) Pricing, Profitability and Financials; (d) Employees and Personnel; (e) Electronic Commerce and Services; (f) Intellectual and Intangible Property; (g) Confidential Information of Third Parties; and (h) Other Trade Secrets, is hereinafter individually and collectively referred to as "DLL Information and Trade Secrets."

### IV. Non-Disclosure - Obligation to Protect.

All of the above DLL Information and Trade Secrets in any form, whether original, copied, computerized, memorized, handwritten, electronic, verbal, or reproduced, compiled, accumulated, or recreated in any form, format, medium, record, document, or database, or in any other form, is CONFIDENTIAL and deserves trade secret status and protection. Except for information provided to DLL by third parties, all DLL Information and Trade Secrets, and any records, documents, or data derived therefrom, in any form, is the property of DLL, and DLL has sole and exclusive right, title, and interest in the use, development, and exploitation of said Information and Trade Secrets, and all benefits derived therefrom.

DLL Information and Trade Secrets, whether provided to EMPLOYEE by DLL or by any other third party, or developed or enhanced by EMPLOYEE or any other DLL employee, is provided or entrusted to EMPLOYEE, solely in his/her capacity as an employee and representative of DLL. During EMPLOYEE's employment at DLL, and at all times thereafter, EMPLOYEE agrees that he/she will not divulge or disclose DLL Information and Trade Secrets, or permit DLL Information and Trade Secrets to become divulged or disclosed to any competitor or to any third party, either directly or indirectly, intentionally or inadvertently, inevitably, by reverse engineering, or otherwise.

During EMPLOYEE's employment at DLL, EMPLOYEE agrees to take all reasonable efforts to maintain and preserve the confidentiality of DLL Information and Trade Secrets and shall immediately notify DLL of any facts or circumstances, conduct or activity that may compromise or threaten the confidentiality of DLL Information and Trade Secrets. EMPLOYEE agrees that he/she shall use DLL Information and Trade Secrets only in the course of fulfilling his/her duties and responsibilities and in furtherance of DLL's business interests, and shall disclose DLL Information and Trade Secrets within DLL only on a "need-to-know" basis.

Upon termination of EMPLOYEE's employment, EMPLOYEE agrees that he/she shall not remove any DLL Information and Trade Secrets from any DLL office, and that he/she shall immediately return to DLL any DLL Information and Trade Secrets then in his/her possession, custody, or control. To the extent that any DLL Information and Trade Secrets has been disclosed or divulged to any third party by EMPLOYEE, EMPLOYEE shall

demand and effect its retrieval, return, and disgorgement from any other system into which it may have been entered.

**V. Non-Compete**

In the event of EMPLOYEE's termination of employment at DLL for any reason, EMPLOYEE agrees to the following non-competition terms:  
**A. Limited National Non-Compete:** For a period of ~~one year~~ <sup>90 days</sup> following termination of EMPLOYEE's employment at DLL for any reason, EMPLOYEE agrees that he/she shall not become employed by, render services to, work on behalf of, or become associated with, directly or indirectly, any entity (i) that competes with DLL on a national basis and (ii) which provides the same or substantially similar leasing services or products as DLL. <sup>CAUSE OR RESIGNATION</sup>

**B. Regional Non-Compete:** For a period of ~~one year~~ <sup>90 days</sup> following termination of EMPLOYEE's employment at DLL for any reason, EMPLOYEE agrees that he/she shall not become employed by, render services to, work on behalf of, or become associated with, directly or indirectly, any entity (i) that operates, maintains, or conducts a business in, or seeks to operate, maintain, or conduct business in the "Proscribed Area"; and (ii) which competes with DLL or provides the same or substantially similar leasing services or products as DLL. For the purposes of this paragraph (B), the "Proscribed Area" shall be defined as within thirty (30) miles from any regional office, branch office, customer field service office, or residence from which EMPLOYEE worked during his/her employment at DLL. <sup>CAUSE OR RESIGNATION</sup>

**VI. Non-Solicitation - Non-Acceptance of Business.**

EMPLOYEE agrees that for a period of one year following termination of his/her employment for any reason, EMPLOYEE will not solicit, or initiate contact or communicate with, either directly or indirectly, by mail, by phone, by personal meeting, or by any other means, any Customer, Manufacturer, Dealer, Vendor, Bank or Financial Institution ("Customer") whom EMPLOYEE serviced or whose name became known to him/her during his/her employment at DLL. EMPLOYEE'S agreement "not to solicit" means that EMPLOYEE will not, either in anticipation of his/her termination of employment, and for a period of one year thereafter, initiate any contact or communication of any kind whatsoever with any Customer, Manufacturer, Dealer, Vendor, Bank or Financial Institution for the purpose of inviting, encouraging, or requesting any Customer:

- (a) to transfer its business to EMPLOYEE, to EMPLOYEE's new employer, or to any other third party; or
- (b) to open a new account with EMPLOYEE, with EMPLOYEE's new employer, or to any other third party; or
- (c) to otherwise discontinue its patronage of DLL or divert its business relationship to EMPLOYEE, to EMPLOYEE's new employer, or to any other third party.

EMPLOYEE further agrees that he/she will not accept, transact, or conduct any business with any Customer that is solicited in violation of the terms of this paragraph or whose information is used, misappropriated, divulged, or disclosed in violation of paragraph IV.

**VII. Non-Hire - Non-Disparagement.**

For a period of one year following termination of his/her employment, EMPLOYEE agrees that he/she will not, directly or indirectly, recruit, solicit for hire, attempt to hire, encourage or recommend for hire, or hire or employ, or conspire with, or aid or abet any third party in the recruitment, solicitation, hiring, or employment of any current or former DLL employee, agent, or representative. EMPLOYEE further agrees not to utter, publish, or communicate, or cause the utterance, publication or communication of any defamatory, disparaging, untrue, inaccurate, or misleading statements or opinions intended to cause DLL to be held in lower regard.

**VIII. Duty of Loyalty - Obligation to Inform DLL.**

EMPLOYEE agrees that at all times during his/her employment he/she owes DLL a duty of loyalty and a duty to act in good faith. EMPLOYEE agrees that during his/her employment he/she will not individually, or in combination with any other employee or in concert with any third party or any competitor of DLL, violate or breach any terms of this Agreement.

If EMPLOYEE becomes aware of any actual or threatened misappropriation or unauthorized use or disclosure of DLL information and Trade Secrets, actual or threatened breach of any non-compete, non-solicitation, or non-hire terms of this Agreement, EMPLOYEE shall promptly notify and fully advise DLL of any and all facts, circumstances, and activities known by him/her.

**IX. Consent to Injunction.**

In the event EMPLOYEE breaches any of the covenants of paragraphs IV, V, VI, VII, or VIII, EMPLOYEE agrees that DLL will be entitled to injunctive relief. EMPLOYEE recognizes that DLL will suffer immediate and irreparable harm and that money damages will not be adequate to compensate DLL or to protect and preserve the status quo. Therefore, EMPLOYEE CONSENTS TO THE ISSUANCE OF A TEMPORARY RESTRAINING ORDER OR A PRELIMINARY OR PERMANENT INJUNCTION prohibiting him/her, and anyone acting in concert with him/her, from:

- (a) disclosing any DLL information and Trade Secrets as stated in paragraph III and IV;
- (b) from competing with DLL as stated in paragraph V;
- (c) from soliciting Customers of DLL as stated in paragraph VI;
- (d) from accepting or conducting business with any Customer as stated in paragraph VI;
- (e) from recruiting or hiring DLL employees or breaching his/her duties as stated in paragraphs VII and VIII;
- (f) from any and all other acts of unfair competition or violations of the just and equitable principals of trade.

For the purposes of this paragraph IX, EMPLOYEE agrees to submit to, and confer exclusive jurisdiction on, the United States District Court or the State Court which has original jurisdiction for the judicial district or county in which EMPLOYEE last worked for DLL, or any other site of proper venue and jurisdiction, to be determined solely at the election of DLL. This Agreement shall be construed, governed by, and enforced in accordance with the laws of such jurisdiction.

**X. Employment "At Will".**

Nothing herein is a promise of employment for a fixed term. DLL may terminate EMPLOYEE's employment for any reason, with or without cause, just as EMPLOYEE may resign at any time for any reason or for no reason at all.

**XI. Covenant and Consent to Advise Future Employer**

Regarding Post-Employment Restrictive Covenants  
 EMPLOYEE covenants to notify all prospective and future employers of the terms of the paragraph IV (nondisclosure); paragraph V (noncompetition); paragraph VI (nonsolicitation of Customers); paragraph VII (non-hire of employees); paragraph VIII (fiduciary duty and duty of loyalty); and paragraph IX (consent to injunctive relief) set forth herein. EMPLOYEE further authorizes DLL to provide notice of paragraphs IV through IX to any future or prospective employer of EMPLOYEE. EMPLOYEE hereby releases DLL from any liability arising out of DLL's lawful exercise of its rights as stated in this paragraph.

**XII. Successors, Assign, and Affiliates.**

This Agreement shall be binding upon and inure to the benefit of DLL, its successors, assigns, subsidiaries, parent and holding companies, and affiliated and related entities. The restrictive covenants to which EMPLOYEE has agreed shall remain in full force and effect notwithstanding any change in job duties, responsibilities, title, position, or assignment as they may be prescribed or modified by DLL, and shall be binding upon EMPLOYEE, his/her heirs, executors, administrators, and assigns.

**XIII. Representations by EMPLOYEE.**

EMPLOYEE hereby represents that he/she is free to enter into this Agreement, to comply with all its terms, and that he/she is not currently bound by any post-employment restrictive covenants of any former employer that would prohibit him/her from accepting employment with DLL and performing his/her duties. EMPLOYEE further represents that he/she does not have possession, custody, or control of any confidential information or trade secrets of any competitor, and that his/her employment at DLL will not require him/her to inevitably disclose any confidential information of any prior employer.

EMPLOYEE HAS READ AND REVIEWED THIS AGREEMENT WITH RESTRICTIVE COVENANTS IN ITS ENTIRETY AND HAS BEEN GIVEN AN OPPORTUNITY TO ASK DLL QUESTIONS ABOUT IT. EMPLOYEE HAS ALSO BEEN GIVEN AN OPPORTUNITY TO CONSULT WITH AN ATTORNEY OF HIS/HER CHOICE. EMPLOYEE FULLY UNDERSTANDS THE TERMS OF THIS AGREEMENT AND KNOWINGLY AND FREELY AGREES TO ABIDE BY THEM.

IN ADDITION TO THE FOREGOING, EMPLOYEE UNDERSTANDS THAT HE/SHE HAS AN ADDITIONAL THIRTY DAYS FROM THE DATE HE/SHE SIGNS THIS AGREEMENT TO CONTINUE TO REVIEW IT AND RESCIND IT, IF EMPLOYEE DISCONTINUES HIS/HER EMPLOYMENT AT DLL WITHIN THIRTY DAYS, THE PROVISIONS OF PARAGRAPH V (NON-COMPETE) WILL NOT BE IN FORCE. HOWEVER, ALL OTHER PROVISIONS SHALL REMAIN IN FULL FORCE AND EFFECT. CONTINUATION OF EMPLOYEE'S EMPLOYMENT AT DLL BEYOND THIRTY DAYS WILL CONSTITUTE EMPLOYEE'S RATIFICATION AND COMPLETE AND FINAL ACCEPTANCE OF ALL THE TERMS OF THIS AGREEMENT.

ATTEST:



WITNESS:

\_\_\_\_\_

De Lage Landen Financial Services, Inc.

BY: \_\_\_\_\_ (Seal)

BY: \_\_\_\_\_ (Seal)  
 Employee

# Exhibit C

# monitor

**monitor***daily* • For the Equipment Leasing & Finance Professional

## NWARD & UPWARD NDOR FINANCE ORIGINATIONS CLIMB WARD PRE-RECESSION LEVELS

**MONITOR EXCLUSIVE:**

Q1 2012 Equipment Finance  
Discussion Forum

**MONITOR RANKING:**

25 Most Active Players In  
Vendor Finance

**BUSINESS INTELLIGENCE**

Inside the Equipment  
Financing

WAYNE PA 19087-1453  
1111 OLD EAGLE SCHOOL RD  
DE LAKE LANDEN  
TOM SCIORILLO SUP HUMAN RESOURCES NA  
#BXBDDRYD \*\*\*\*\*FIRM 19087  
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DLL-000946

CONFIDENTIAL

## 25 Most Active Players in the Vendor Channel 2007-2011

Ranked in Order of 2011 Vendor/Dealer-Related New Business Volume

(\$ = Millions)

2011 Rank	2010 Rank	Company	VENDOR/DEALER NEW BUSINESS ACTIVITY				
			2011	2010	2009	2008	2007
1	1	De Lage Landen Finl Sves	11,402.0	10,110.0	8,094.0	8,952.1	7,114.0
2	2	Banc of America Leasing	3,608.0	2,888.0	2,998.0	3,492.0	3,111.0
3	4	Wells Fargo Equipment Finance	2,982.0	2,090.0	1,747.0	2,215.0	2,757.0
4	3	CIT Group	2,577.0	2,190.9	4,593.1	8,183.2	9,733.5
5	5	Key Equipment Finance	1,819.0	1,725.0	1,574.0	2,050.0	3,176.0
6	6	U.S. Bank Equipment Finance	1,588.4	1,187.5	1,360.1	1,191.4	1,125.4
7	7	PNC Equipment Finance	1,088.3	1,037.1	665.0	731.2	987.0
8	8	Bank of the West	690.9	473.7	328.0	617.0	387.0
9	10	TCF EF/Winthrop Resources	661.5	694.9	546.0	625.4	490.8
10	11	GreatAmerica Leasing Corporation	524.7	458.8	416.2	386.9	340.8
11	12	Societe Generale EF USA	471.8	300.5	267.2	134.4	—
12	13	Marlin Leasing	218.0	130.0	86.7	205.0	268.0
13	14	BMO Harris Equipment Finance	173.1	113.9	84.2	190.4	231.2
14	—	Med One Capital	170.4	185.1	—	—	—
15	16	CoActiv Capital Partners	170.0	96.4	191.0	261.0	193.0
16	—	TD Equipment Finance*	135.0	19.7	N/A	N/A	N/A
17	18	Steams Bank/EPD	132.7	67.0	47.0	38.0	113.3
18	15	LEAF Commercial Capital	122.5	105.1	324.8	429.5	245.9
19	20	People's Capital & Leasing	119.3	61.5	96.9	101.3	66.3
20	—	Direct Capital	111.5	65.2	—	—	—
21	22	Susquehanna Commercial Finance	75.1	47.6	47.1	59.0	67.1
22	—	Western Equipment Finance	69.6	47.2	—	—	—
23	21	Lease Corporation of America	65.4	56.4	43.0	53.6	48.4
24	25	Somerset Capital Group	49.2	38.1	46.4	85.6	20.2
25	24	Eastern Funding	49.0	42.5	37.9	32.9	—
* YE other than 12/31			29,074.4	24,232.1	23,593.6	30,034.9	30,475.9

MAY/JUN 2012 • monitor • 3

DLL-000947

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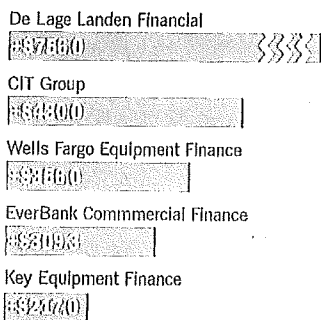
## Exhibit D

## 2012'S MOST ACTIVE PLAYERS IN THE VENDOR CHANNEL

# 2012: Vendor Channel Approaches \$30 Billion ... 92% of Participants Report Year/Year Volume Growth

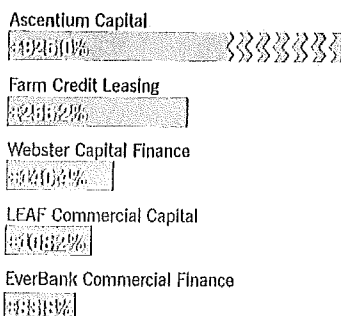
By all accounts, those who actively participate in the vendor finance channel stimulate portfolio growth clearly did so in 2012, as 23 of the top 25 vendor finance companies, or 92%, posted year-over-year increases with 18 (72%) reporting double- or triple-digit growth rates.

### LARGEST YEAR/YEAR \$ INCREASE



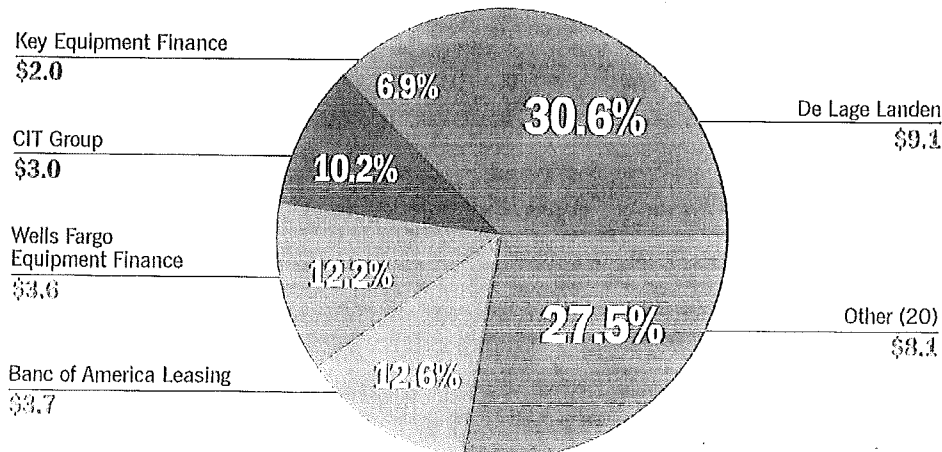
\$=millions

### TOP 5 PERCENTAGE GAINERS



### TOP 5% OF TOTAL

\$=billions



Numbers may not add due to rounding

This year's top ranked vendor finance company reported a total of \$29.6 billion in new business volume, which was up 12.7%, or \$3.3 billion compared to 2011. The increase was broadly based, 23 of the top 25, or 92%, of the participants show year-over-year growth in vendor-related activity. From historic perspective, the volume level achieved in 2012 was only \$900 million less than the vendor volume levels reached in pre-recession 2007 (\$30.5 billion).

### Basis for the Rankings

The rankings and data shown on the exhibits depict those equipment finance companies that provided information on funded 2012 volume derived from vendor and/or dealer relationships. The format has been changed to show year-over-year comparison versus the historic perspective we've provided in the past. We were motivated to switch to a Monitor 100-like presentation for several reasons, not the least of which was our good fortune of having each of the top five executives agree to share their individual thoughts on the most recent past as well as provide you with the outlook for 2013 (see feature story on page 24).

### Top Five — Commentary

The top five ranked vendor finance companies account for 72.5% of the total with a combined \$21.4 billion volume — the balance, or \$8.1 billion, was originated by the remaining 20 participants. As an observation, last year's top five delivered 74.5% of the total, which suggests that this year's performance was impacted most significantly by the remaining participants as shown by the two percentage point differential. Additional evidence of significant growth achievement is shown by the 18 companies that reported double or triple-digit increases in year-over-year vendor finance volume.

### Top Five Rankings

De Lage Landen repeated as the #1 ranked vendor finance company in the U.S. with \$9.1 billion in 2012 new business volume, up 9.1% from \$8.3 billion in 2011.



# 2012'S MOST ACTIVE PLAYERS IN THE VENDOR CHANNEL

From a historic perspective, the volume level achieved in 2012 was only \$900 million less than the vendor volume levels reached in pre-recession 2007 (\$30.5 billion).

Ranked #2 with \$3.7 billion in 2012 activity was Banc of America Leasing with #3 Wells Fargo Financial Leasing closing the gap at \$3.6 billion — the former's \$125 million increase was almost tripled by the latter's \$356 million. Not far behind and gaining ground is #4 CIT Vendor Finance at \$3 billion, i.e., CIT reported the second highest year-over-year increase of \$430 million. Ranked #5 Key Equipment Finance, with the fifth highest increase of \$217 million, maintained its top-five position and is back over a \$2 billion vendor-related milestone reached in 2008.

As a footnote to the foregoing, we wish to acknowledge that one of the major participants in the vendor channel, GE Capital, was unable to provide us with its global vendor leasing activity from this past year.

## Notable Performances — Largest Percentage Gainers

This year's largest percentage gainers includes four new members of the top 25 finance players in the vendor channel. Led by #17 ranked Ascendum Capital's 925.1% year-over-year increase, #19 ranked Farm Credit Leasing and #23 ranked Webster Capital Finance, followed with growth of 255.2% and 140.4%, respectively. With the #4 and #5 largest percentage gains, LEAF Commercial Capital (#14) and EverBank Commercial Finance (#10) reported increases of 108.2% and 83.8%. And as noted earlier, a total of 18 participants, or 72%, of this year's top 25 posted double-digit increases.

## Largest Dollar Increases

Of the overall year-over-year \$3.3 billion net increase in vendor/channel activity, #1 ranked De Lage Landen's \$756 million increase led the way, accounting for 22.7% of the growth, with #4 ranked \$430 million jump and #3 ranked Wells Fargo Financial Leasing's million improvement contributing the second and third highest late year-over-year dollar gains.

Number 10 ranked EverBank Commercial Finance, with \$ million of annual growth, and #5 ranked Key Equipment Finance rounded out the top-five dollar gainers, which, in the aggregate accounted for over 62% of the total overall increase of \$3.3 billion.

## Vendor Channel Activity — Segment Composition

Based on the data shown in this report, the U.S. bank affiliate continued to dominate share of this segment of the equipment finance market. With 61.4% of the total or \$18.2 billion, the U.S. bank represented by 72%, or 18 members, in this year's rankings balance, or \$11.4 billion (38.6%), is made up mostly by foreign origin participants (\$9.7 billion) and independents (\$1.4 billion) who ranked De Lage Landen, by far, the largest of the former and GreatAmerica Financial the latter.

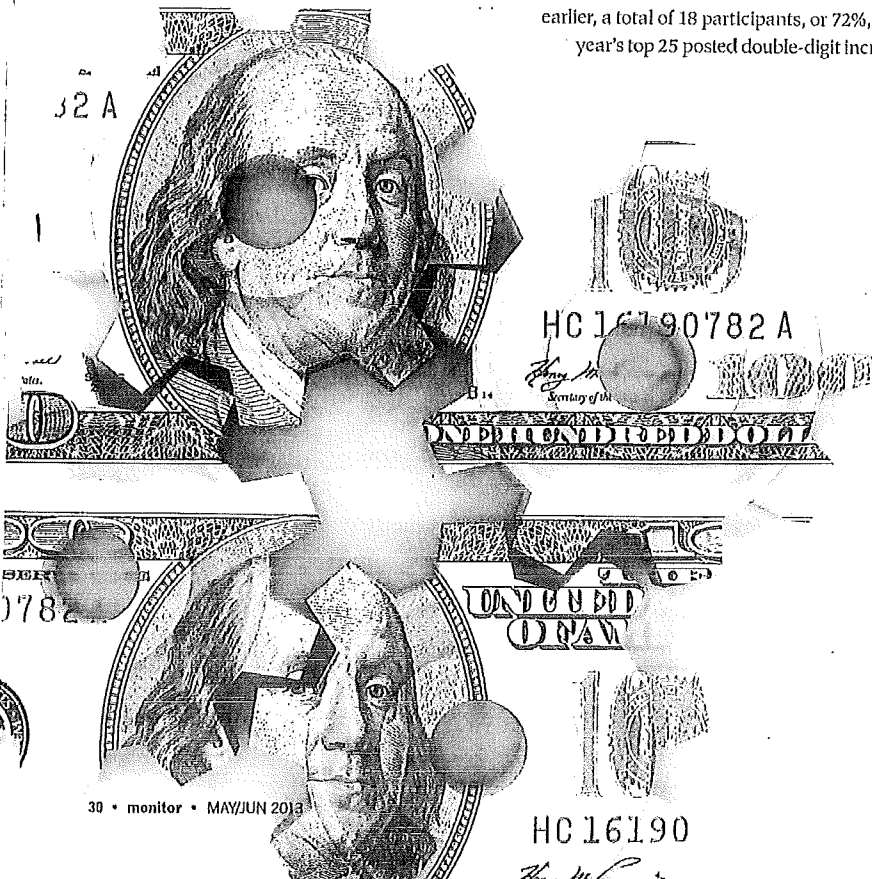
Regarding the overall vendor activity increase of \$3.3 billion ratio holds with the U.S. bank affiliates contributing \$2.1 billion or 62.2%, of the increase with the balance, or \$1.3 billion (37%) accounted for by the non-bank related participants.

## New Arrivals & Departures

This year we welcome EverBank Commercial Finance, Ascendum Capital, Farm Credit Leasing, Crossroads Equipment Lease & Finance and Webster Capital Finance to our Top 25 Most Active Players in the Vendor Channel. Also notable is the return of CoActive Capital Partners, newly branded as Element Financial (USA), resulting from its recent acquisition by Element Financial (Canada).

This year's volume cut-off of \$92.7 million was our highest ever. It did preclude a number of last year's participants to miss the list, namely: People's Capital & Leasing, Lease Corporation of America, Somerset Capital and Eastern Funding. We can only thank these organizations for participating in this annual event with the expectation they will agree to engage again in 2014.

The top five ranked vendor finance companies accounted for 72.5% of the total with a combined \$21.4 billion in volume — the balance, or \$8.1 billion, was originated by the remaining 20 participants.



# 25 Most Active Players in the Vendor Channel

Ranked in Order of 2012 Vendor/Dealer-Related New Business Volume

2012	2011	COMPANY	2012	2011	VAR (\$)	VAR (%)
					+/-	+/-
1	1	De Lage Landen Financial Svs <sup>1</sup>	9,053.0	8,297.0	756.0	9.1%
2	2	Banc of America Leasing	3,733.0	3,608.0	125.0	3.5%
3	3	Wells Fargo Equipment Finance <sup>2</sup>	3,616.0	3,260.0	356.0	10.9%
4	4	CIT Group	3,007.0	2,577.0	430.0	16.7%
5	5	Key Equipment Finance	2,036.0	1,819.0	217.0	11.9%
6	6	U.S. Bank Equipment Finance	1,658.9	1,588.4	70.5	4.4%
7	7	PNC Equipment Finance	1,172.5	1,088.3	84.2	7.7%
8	8	Bank of the West	818.8	690.9	127.9	18.5%
9	9	TCF EF/Winthrop Resources	790.1	661.5	128.6	19.4%
10	-	EverBank Commercial Finance	678.3	369.0	309.3	83.8%
11	10	GreatAmerica Financial Services	577.2	524.7	52.5	10.0%
12	11	Societe Generale EF USA	453.2	471.8	-18.6	-3.9%
13	12	Marlin Leasing	306.0	218.0	88.0	40.4%
14	18	LEAF Commercial Capital	255.0	122.5	132.5	108.2%
15	15	Element Financial (USA) <sup>3</sup>	234.2	170.0	64.2	37.8%
16	20	Direct Capital	174.0	111.5	62.5	56.1%
17	-	Ascentium Capital	151.7	14.8	136.9	925.0%
18	16	TD Equipment Finance	140.5	135.0	5.5	4.1%
19	-	Farm Credit Leasing	130.0	36.6	93.4	255.2%
20	14	Med One Capital	109.0	170.4	-61.4	-36.0%
21	-	Crossroads Equipment Lease & Finance	107.6	61.0	46.6	76.4%
22	17	Stearns Bank/EFD <sup>4</sup>	101.4	71.9	29.5	41.0%
23	-	Webster Capital Finance	93.5	38.9	54.6	140.4%
24	22	Western Equipment Finance	93.0	69.6	23.4	33.6%
25	21	Susquehanna Commercial Finance	92.7	75.1	17.6	23.4%
(\$ = Millions)			29,582.6	26,250.9	3,331.7	12.7%

## FOOTNOTES:

<sup>1</sup> De Lage Landen  
2011 volume adjusted to be consistent with  
2012, i.e., reflects organizational change

<sup>2</sup> Wells Fargo Equipment Finance  
2011 volume adjusted up to be consistent with  
2012, i.e., restated to include Canada

<sup>3</sup> Element Financial (USA)  
Successor to CoActive Capital Partners acquired  
by Element Financial (Canada) in 2012

<sup>4</sup> Stearns Bank/EFD  
2011 volume adjusted down to be consistent  
with 2012, i.e., elimination of broker activity.