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More Protection for Financiers

Determining What Constitutes A 'Mobile Good' Under the UCC

By Lawrence F. Flick, II and William J. Burnett

TYPCIALLY, lenders/lessors of equipment and inventory file financing statements solely in the jurisdiction where the equipment is located. This could be a dangerous practice if the subject equipment or inventory is movable goods.

Sec. 9-103 of the Uniform Commercial Code requires a lender/lessor to perfect its security interest in mobile goods not subject to a certificate of title statute by filing a UCC financing statement solely in the jurisdiction of the chief executive office of the lessee. Mobile goods are goods "normally used in more than one jurisdiction, such as motor vehicles, trailers, rolling stock, airplanes, shipping containers, road building and construction machinery and commercial harvesting machinery and the like." If the subject of the lender's collateral is deemed not to be a "mobile good," then the lender/lessor must file appropriate financing statement(s) in the jurisdiction where the collateral is located.

Recently, the U.S. Court of Appeals for the Third Circuit had an opportunity to examine what constitutes a "mobile good" under the Pennsylvania UCC. In *PNC Bank v. Varsity Sodding Serv. (In re Varsity Sodding Serv.)*, No. 96-7643, 1998 WL 107982 (3d Cir. March 13), the Third Circuit interpreted the definition of mobile goods to provide more protection to equipment financiers who file UCC financing statements only in the jurisdiction where a debtor is located.

Varsity Sodding was engaged in the landscaping and nursery business which required it to perform work on large commercial and residential interstate landscaping projects. First Eastern Bank, N.A. (predecessor-in-interest to PNC Bank) financed Varsity's purchase of various landscaping equipment in the approximate amount of $450,000.

In order to perfect its interest in the equipment, the bank filed financing statements in the appropriate filing offices for the location of Varsity's chief executive office. Shortly after Varsity had purchased the equipment, it transported the equipment to Maryland and then to New Jersey. The bank did not file financing statements in either jurisdiction.

Subsequently, Varsity filed a petition for relief under Chapter 11 of the Bankruptcy Code. The bank filed for relief from stay and a proof of claim as a secured creditor. Varsity and the trustee objected to the bank's claim, asserting that the bank did not have a perfected security interest in the equipment. The bankruptcy court agreed, denied the bank relief from stay and held that its claim against Varsity was a mere unsecured claim. The bank appealed, and the district court affirmed. The bank then appealed to the Third Circuit.

In order to determine whether the bank had a perfected security interest in the equipment, the Third Circuit was required to decide whether the subject equipment fell under the definition of "mobile goods" pursuant to § 9103(c) of the Pennsylvania UCC. If the court found the equipment to be mobile goods, then the bank would have a continuing perfected security interest in the equipment due to the financing statements filed in the jurisdiction of Varsity's chief executive office (Pennsylvania), without financing statements filed in the jurisdiction where the equipment was then located (New Jersey).

As the court pointed out, "the real question is 'whether the collateral is of a type normally used in more than one jurisdiction.'" In looking at the "normal use" of collateral, courts should focus on "inherent qualities of the collateral and uses to which such collateral would normally be put."

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According to the court, the inherent characteristics of Varsity's larger machinery suggest that its usefulness would be quite limited if it could not be relocated from site to site. Varsity's larger machinery was readily movable by means of a tractor-trailor and was generally capable of operation on a highway, but usually hauled. The larger machinery was "substantial construction-type" equipment akin to the "road building and construction machinery" which is specifically listed in the UCC section regarding mobile goods. The court found that Varsity's operations required it to perform work on large commercial and residential landscaping projects on sites outside of the borders of Pennsylvania, and the "normal" use of the equipment would require that it be taken from state to state. Therefore, the court held that the equipment fell under the definition of "mobile goods" as provided in § 9-103 of the Pennsylvania UCC and, thus, the bank continued to have a perfected security interest in the equipment.

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Net Effect Beneficial To Equipment Financiers

Clearly, the net effect of the holding in *Varsity Sodding* is beneficial to equipment financiers. Nevertheless, it is still essential that equipment financiers understand the nature of the collateral being financed and the importance of policing the location of the collateral. This attention to collateral is especially important in light of the fact that the court did not make clear whether its holding was based on the nature of the equipment or the nature of the lessee's business. Also, it should be noted that the court was forced to decide between the rights of the bank vis-a-vis the debtor-in-possession and not between two competing creditors, each claiming a properly perfected security interest in the same equipment. If another court were faced with a similar factual scenario, but the battle was between two such creditors, the underlying equities might dictate a different result.

Therefore, if a lender/lessor determines that the equipment probably constitutes mobile goods, it might still want to consider filing protective financing statements in all jurisdictions in which the collateral might be located. Further, even if equipment is not expected to move to different jurisdictions, but an argument can be made that the equipment might be mobile goods, the lender/lessor should also file a protective financing statement in the jurisdiction where the lessee's chief executive office is located. This may turn out to be inexpensive insurance against costly litigation. As additional evidentiary support, lenders and lessors might also consider requiring borrowers/lessees to make affirmative representations that the equipment in question constitutes mobile goods, and the "normal" use of this collateral could reasonably be expected to take it from state to state. ■

Selecting a Tribunal

Alternative Means of Enforcing An International Contract

By Fredric D. Tannenbaum

In the first part of this article, Mr. Tannenbaum explored contracts between parties from different countries, suggesting provisions that may be more helpful or important in these agreements than in agreements between purely domestic parties. In the second installment, he will discuss alternative means of enforcing the international contract and suggest ways to approach selection of a tribunal.

SELECTION of a judicial or alternative dispute resolution mechanism merits close attention in every contract. In the international context, this consideration takes on greater importance, since factors such as cost of enforcement, quality of the panel, likelihood of removing xenophobic favoritism of one of the litigants and likelihood of enforcement of the decision reached by the panel weigh heavily in determining the appropriate panel.

Once the parties draft and negotiate the contract, the selection of the most beneficial enforcement tribunal takes on paramount importance. The best drafted agreement, laden with the many provisions already discussed (and others), will provide little solace should the agreement be misinterpreted or not be enforced.

These immutable concerns are magnified in the international context. The decision between selecting a judicial or alternative dispute resolution (ADR) will sometimes exceed in importance the actual written words of the agreement. This article will explore the factors that parties should consider in deciding whether to select a judicial determination or ADR. The analysis, in this author's view, usually hinges on whether the party is a large behemoth or a financially smaller company.

The Large Company's View

The larger company's financial ability to put its smaller counterpart at a tactical disadvantage is magnified in the international context given the additional cost and time of litigating over large distances. In considering which tribunal to select, a large company will typically favor ADR after it weighs the following considerations.

- **Knowledge of Panel**

The benefit of the local forum is obvious whether a judicial resolution or ADR is selected. "Home cooking" (particularity when an adversary's "culinary tastes" may differ extremely from yours) is a distinct advantage in any litigation. However, while parties cannot typically select the judge who will try their case (although they certainly may raise appropriate objections regarding the propriety of the assigned judge to hear the case), they do have considerable voice in the selection of the arbitration panel. The frequent defendant will undoubtedly have a large database of knowledge of, and experience with, the local pool of arbitrators. The frequent defendant will understand the biases and predilections of an arbiter and be better able to select or reject such arbiter. Not unlike a voir dire for the selection of a jury, the litigants may choose — and reject — a selected list of arbitrators. While the panel that is ultimately agreed upon by the parties will undoubtedly be impartial and fair, human nature suggests that even the most impartial decisionmaker would, assuming all other aspects of the case were evenly weighed, be disposed to parties who speak the same language; share the same culture, background and values; or are likely to be associated with in the same community sometime in the future.

This article will use the term "alternative dispute resolution" or "ADR" to refer to the panoply of different nonjudicial means to resolve disputes. The continuum, in general, extends from the classic commercial dispute arbitration of the American Arbitration Association (AAA) with the rules of the AAA, to an arbitration panel selected by the parties (a "mid-level arbitration") with particular rules designed by the parties, to nonbinding mediation by a facilitator, to an informal advisory opinion. A mid-level arbitration can take a variety of forms. Each party could pick one arbitrator, with the two picking a third. The parties could select a panel not unlike the AAA process. The parties could use the federal rules of procedure and evidence, the AAA rules or simply devise or pick and choose which they prefer. For example, the parties could streamline the process by selecting a procedure that specifies the length and type of discovery, the number of witnesses that could be called and the length of testimony, the briefing and oral argument schedule and the time for rendering a decision.

- **Confidentiality of Proceedings**

ADR awards, unlike many judicial decisions, are not reported. A large corporation may consider this an

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important and comforting factor to isolate the dispute and not open the floodgates to copycat or similar disputes with other litigants. Some examples may include a franchisor desiring to keep specific disputes between it and each franchisee confidential, a manufacturer of a dangerous product desiring to limit public disclosure of particular injuries and awards and invitations to similarly situated victims, or a seller of securities wishing to avoid publicity regarding shoddy sales practices or faulty disclosures regarding a particular investment. The loss of a significant monetary amount, while painful, will not be telegraphed to the world and the circling contingent of plaintiffs' litigators. Further, disclosure of a dispute may communicate or suggest sales or business practices that could injure a litigant's reputation, even if they ultimately prevail. The absence of precedential value or collateral estoppel effect may also appeal to a litigant who is concerned regarding the cascading effect of multiple pieces of litigation over the same sales tactic or inherently defective product. The benefits of confidentiality are as important in the international context, since greater geographic distance hardly muffles the sound and fury of litigants' claims.

- **Consistency of Forums**

A large company, while confronting significant amounts of litigation, and perhaps unable to contain the plaintiff base through minimizing reported decisions, nonetheless may desire to limit the site or sites of the dispute resolution. For example, the securities and franchising industries commonly require disputes resolved in courts of their choosing, usually the site of their headquarters. A single forum may facilitate the defense of many claims through the saving of travel time, mitigation of the administrative burden of engaging and monitoring many law firms in far-off places, and reduction of the cost of training law firms regarding the nuances of the company's practices and policies. Courts will also typically enforce forum selection clauses, but may be more receptive to public policy or equitable arguments challenging the particular selection.

- **Reduction of Emotion and Disproportionate Awards**

The size and notoriety of a company often reduces the empathy that a trier of fact may have for the defendant or the concern that a trier of fact may have with making the absolutely right decision. As unfair as it may be, a trier of fact could develop, particularly in outrageous cases, a "they can afford it" mentality to justify awards that seem disproportionate to the underlying facts. The size of U.S. jury awards in certain celebrated cases is staggering. While a court could, and sometimes does, reduce the size of a jury award, the reduction should not be taken for granted and sometimes is insufficient.

Litigants often view an ADR panel as a more dispassionate assessor of the facts and a fairer arbiter of the true damages suffered in a particular situation. Arbitrators tend to be more experienced and professional than typical jurors. The claims considered by an arbitrator and the amounts at issue rarely daunt an experienced panel.

Panels, moreover, typically better understand the difference between compensating a victim and punishing a defendant. A corollary, however, may be that arbitrators typically would understand, while juries may not, that some claims may be covered by insurance, and therefore be more sympathetic to a plaintiff than if they were otherwise unarmed with that knowledge.

International use of juries is limited in many countries to criminal matters and a handful of civil issues. Reported decisions regarding emotional and excessive awards in non-jury cases are substantially less common.

An ADR panel is more inclined than a court to enforce outrageous or unfair provisions of contracts. While a court may use its equitable powers to minimize the impact of adhesion or unfair contracts that large companies may impose on small companies, arbitrators tend to have a more modest approach to righting the problems of the world. To use the example of the Proposed Article § 2B-107, a forum clause would be enforceable even if it required a licensee to bring all claims in a foreign country. A U.S. small business licensee could be required to sue a domestic large company licensor in Hong Kong applying Iraqi law. A court may be less inclined than an arbitration panel to honor such a provision.

The Smaller Company's View

A smaller company will typically avail itself of ADR as a counterweight to some perceived advantages of a larger corporation — the ability to seize every opportunity, and attendant cost, inherent in the judicial process.

ADR is commonly perceived to be faster and less expensive than conventional judicial resolution. While initial decisions of courts in Cook County, Ill., may take five years to reach a jury decision, a typical commercial arbitration in the same locale might consume six to 12 months. Moreover, since the breadth of substantive issues and the discovery process may be circumscribed in ADR, many opportunities for cost savings exist.

While both large and small companies have a desire to resolve litigation, a larger company may not mind waging a war of attrition and wearing down, financially and administratively, the smaller adversary. The mere existence of litigation may be

Reasons to Favor ADR Common to All Litigants

OUTLINED below are some reasons common to both large and small companies in favor of ADR:

• **Focus on Material Issues**

Court-based litigation often tempts plaintiffs to conduct "fishing expeditions" into defendants' past practices, business strategies and past cases. These tactics are not always an abuse of the judicial process, and may be circumscribed by a court.

The ADR process, however, will tend to better narrow and focus the issues on the points that are really germane to the resolution of the substantive disputes between the parties. This narrower focus can speed resolution, reduce costs, minimize animosity between the parties and provide a clearer array of issues to resolve or settle.

•**Quality of Adjudicators May be Superior to Judges**

While the judicial system boasts of many fine judges at both the federal and state levels, there are many fine judges who have retired and enjoy lucrative and well-regarded careers as arbitrators or mediators. Many practitioners would concur with the view that, on balance, the quality of analysis and understanding tends to be superior among ADR panels than judicial triers of fact. This ADR edge could be particularly useful in complex cases such as antitrust or patent infringement disputes involving arcane or fact-intensive concepts and ideas. Resolving disputes with foreign parties also enables the parties to research and be comfortable with the skill and background of the arbitrators whom they select.

• **Favoritism of Panel to Local Party**

Although no one would ever admit that favoritism of a local litigant occurs, it is only human nature to suspect that it occasionally does, particularly in a close case. Of course, some decisionmakers may go overboard in the other direction just to dispel any notions of favoritism. Some might feel that a court would tend to show more bias than an ADR panel since a court, particularly if a jury is the decisionmaker, tends to be less educated and less professional. Others may feel that an ADR panel would be more biased, since its decision is typically nonappealable. In the international context, ADR seems to be the universal equalizer, particularly when the parties devise their own rules and can select their own panel.

• **Greater Likelihood of Enforcement in Foreign Country**

As the next section will discuss in greater detail, enforcement of a foreign judicial determination in the defendant's courts should not be taken for granted. Courts frequently entertain claims of procedural flaws in the rendering of a foreign judgment or decline enforcement on grounds of public policy. International treaties have not required, or have provided loopholes for the conferring of full faith and credit on foreign court rulings. International treaties, however, have provided means for enforcing arbitration awards in the defendant's country. ■

more of a burden on smaller companies in obtaining debt or equity financing and therefore may encourage such companies to resolve litigation faster.

In recent years, however, the shibboleth that ADR is cheaper and quicker has not been held universally. Many ADR panels now command high fees and costs. Additionally, many courts have streamlined their processes, ordered meaningful settlement conferences and taken an active role in mediating disputes. Federal courts, moreover, have typically had a reputation for being more efficient than many state courts. Therefore, in choosing between judicial resolution or ADR on the basis of cost and time savings, the parties should analyze the forum of the dispute resolution and should no longer automatically assume that ADR is cheaper and faster.

Treaties Regarding Enforcement Of Foreign Judgments

The United States is not a party to any international convention governing the recognition and enforcement of foreign judgments. "Recognition" occurs when a local court honors the adjudication of a particular claim or factual dispute. It is analogous to the domestic U.S. doctrines of res judicata and collateral estoppel. "Enforcement" occurs when a local court uses its coercive powers to order the relief granted by the court rendering the judgment.

Many of our states, however, have become parties to the Uniform Foreign Money Judgments Recognition Act, which provides for some measure of recognition and enforcement of final judgments for liquidated monetary claims. While U.S. courts, in practice, have traditionally been quite liberal in recognizing and enforcing foreign judgments in the United States, foreign courts have not universally reciprocated. U.S. courts will likely enforce a foreign judgment if the court is satisfied that proper due process safeguards have been followed (such as proper notice and personal and subject matter jurisdiction). A U.S. court may also consider whether any fraud was involved in procuring the judgment and whether any compelling public policy principles compel circumscribing enforcement. Although most courts in the modern world make a passing attempt to provide due process and other procedural safeguards, a U.S. litigant may nonetheless attempt to challenge procedural lapses even stemming from the most civilized nation. For example, it is not clear whether a U.S. liti-

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Reasons to Disfavor ADR Common to All Litigants

ALTHOUGH there are many virtues justifying the use of arbitration, especially in attempting to enforce an agreement between parties from different countries, the parties should consider three particular shortcomings not discussed above.

• **Greater Tendency for Split Decisions**

Although little empirical evidence exists to support this proposition, many feel that ADR panels strive to avoid reaching the hard decisions and will attempt to reach a middle-ground compromise. While courts will sometimes attempt to reach a political (or euphemistically, a "Solomonic") decision, ADR panels tend to render such verdicts with more regularity. Very often, practitioners complain that, after months of ADR, the result was close to the midpoint of the parties' ranges of damages sought. Clearly, this conservatism and, perhaps, predictability avoids the rash and extreme jury awards. Conversely, split decisions can call into question the merits of protracted ADR litigation and whether true justice prevailed.

• **No Right of Appeal Increases Risk of Arbitrariness or Injustice**

While appeal may be had, even absent agreement of the parties, if there was a manifest abuse of the arbitration process or a grossly unfair or unjust result, it should be noted that there are no real standards for judicial review of a grossly unfair ADR result. In addition, most courts will decline to invade the province of even an aberrant ADR result. This is because finality, no matter how perverse, is supposed to be the point of ADR. So important, in fact, is the final, binding and nonappealable nature of most arbitration decisions, that it frequently justifies relinquishing the due process inherent in the right to appeal. Parties should be mindful, however, that the trade-off for certainty and finality is the abandonment of meaningful protection in the event of a perceived unjust ADR decision.

While judges frequently rule with the dominion and stature befitting their mastery over their own courtrooms, they are mindful, and frequently chastened by the fact that their rulings may be reversed. Arbitrators have no such tempering yoke and, therefore, no avenue remains for an aggrieved party in the event that injustice, real or imagined, has been inflicted.

• **International Enforcement of Judicial or Arbitral Awards**

Congratulations. You have drafted and negotiated a wonderful contract, interspersed with many of the clauses discussed in the first part of this article. You have also carefully analyzed the appropriate forum in which your client's dispute was resolved and have received a judicial or ADR determination in your home country. Now comes the hard part: Will you be able to enforce the judgment in the courts of the defendant's home country where its assets lie? Will you even be able to persuade the courts of the defendant's home country to enforce the agreement to arbitrate?

A number of treaties exist that attempt to address the circumstances under which full faith and credit or comity will be given in one country to the judicial or ADR decisions dispensed in another. This article will not discuss the nuances or intricacies of every treaty, but only highlight their existence and possible pitfalls. ■

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gant could challenge a civil judgment issued in Great Britain on the grounds that the absence of a jury deprived the defendant of due process protections.

Other nations have joined treaties that provide recognition and enforcement of a foreign judgment. The Brussels Convention (among European Community member states) and the Lugano Convention (among European Community and European Free Trade Association members) provide for universal recognition and enforcement of judgments entered from one treaty nation to the other. Although Article 27 of the Brussels Convention permits a foreign court not to honor the judgment of another nation's court if such judgment is contrary to public policy, this ground is only to be applied in exceptional circumstances. The Court of Justice at The Hague has not yet dealt with such a case. See Konstantinos D. Kerameus, "Basic Rules Relating to Recognition and Enforcement of Foreign Judgments under the Brussels Convention".

Nontreaty nations, however, have not treated other nations' court decisions with the same comity. Litigants are often afforded "two bites at the apple" by challenging the judgment of a rendering court in the nonprevailing litigant's home country. Typical grounds for challenge are that the judgment is void against public policy, or due process safeguards were not afforded some or all of the parties.

Foreign courts typically offer public policy grounds to deny recognition and enforcement of a U.S. judgment. Excessive jury awards, treble damages, excessive abuses of the discovery process, strict liability and product liability and even the presence of a jury have been public policy grounds asserted by foreign courts in refusing to recognize and enforce the judgments of U.S. courts. German courts, in particular, have been known not to give deference, as against public policy, to U.S. punitive damage awards or damages based on

Florida Stamp Tax Conflict Resolved

THE FLORIDA Department of Revenue has amended a regulation implementing changes to a new statute, House Bill 1337, relating to the Florida Documentary Stamp Tax. The amendment will now accommodate the concerns of equipment lessors.

H.B. 1337 was an industry-supported piece of legislation, which proposed to limit the application of the Florida Documentary Stamp Tax. The Revenue Department, however, was seeking to finalize rules that would have returned some of the taxing authority eliminated by the new law. In response, the ELA was prepared to file an administrative petition temporarily blocking the issuance of this regulation. But, at the last moment, the revenue department agreed to amend the final regulation. This concession avoided a proceeding before an administrative law judge, which would have prevented the regulations from being formally adopted until the challenge was resolved.

Since the 1995 Florida Appellate Court decision in *Computer Sales International v. Fla. Dept. of Revenue*, 20 Fla.L.Weekly, D1619 (Fla. 1st DCA 1995), which held that a Certificate of Acceptance is part of the lease document, even if not incorporated by reference, many equipment lessors have been subject to a Florida Documentary Stamp Tax. H.B 1337, the result of a successful lobbying effort by the ELA and the Florida Bankers Association, proposed to grant relief from CSI. According to Mark Holcomb, counsel for the Equipment Leasing Association, "the proposed rule would have circumvented the new statute."

Under H.B. 1337, separate documents could not be read together for tax purposes unless they were expressly incorporated. The proposed rule, however, would have permitted auditors to read separate documents together for tax purposes, even if they contained no language making the terms applicable to each other. "This vagueness regarding express incorporation would have left the door open for egregious interpretations of law by the Department," Mr. Holcomb said. ■

Marketplace

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• **John Salek** has joined ORIX Credit Alliance as vice president of the corporate development department in Rolling Meadows. He will be responsible for managing ORIX's national accounts and enhancing product development.

The company also announced the following personnel changes at its **Rediscount Operation** located in Orangeburg, N.Y.:

• **Steve Geller** has been promoted to vice president.

• **Lauri Cherelstein** has been promoted to administrative vice president.

• **Colin Rosenmeyer** has been hired as national sales executive. He will be responsible for extending the reach of the Rediscount Operation, which specializes in supplying financing for leasing companies by promoting new business development. Previously, Mr. Rosenmeyer served as vice president of sales and marketing for **Icon Funding Corp**.

THE TWO co-heads of the New York-based law firm White & Case's equipment leasing practice, **Marianne Rosenberg** and **J. Truman Bidwell Jr.**, and a tax partner, **Robert T. Smith**, have left the firm to join the 17-lawyer New York office of London-based Linklaters & Paines. ■

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strict tort liability. Brazil, Switzerland and France will refuse to enforce a judgment against their citizens unless there is a "clear indication" of the national's intent to submit to the foreign court's jurisdiction. Several nations (such as Norway, Sweden, the Netherlands and Saudi Arabia) will not recognize a foreign judgment unless an enforcement treaty exists with the rendering nation. U.S. litigants should carefully consider whether these grounds may render their judgment in the United States subject to serious challenge in the foreign country and therefore whether initiating the suit in the foreign country in the first place would be more prudent.

Enforcement of Foreign Arbitration Awards

Perhaps counter-intuitively, arbitration awards have a greater likelihood of being enforced abroad than U.S. judicial decisions. The United States, together with 107 other nations, are parties to the New York Convention. The New York Convention requires each contracting nation to recognize and enforce an arbitration award. The same due process and public policy exceptions to enforcement are available to disgruntled litigants. In practice, however, most courts will enforce a member nation's arbitration award. Cogent rationale to explain why an arbitration award has a greater likelihood of being enforced than a judicial determination, although the same due process and public policy standards are applicable, is not obvious. ■

In the Marketplace

CHARTER Financial Inc. of New York has named two new regional vice presidents in the capital markets finance division. **Jason A. Crist** will be based in Washington, D.C., and **Robert G. Winkelmann** will be based in Chicago. They will both provide venture stage financing and leasing services to capital market firms in their respective regions.

D'ACCORD Financial Services Inc. of San Francisco has opened a new office near London to serve its growing number of European clients. **Geoffrey Gross** has been named managing director and Europe head, and will manage the office and lead D'Accord's European operations. He will be responsible for the origination of cross-border leveraged leases and other financial transactions from various European jurisdictions, including the U.K., Sweden and Germany, for use in connection with U.S. domestic and other cross-border opportunities. Based in London for more than seven years, Mr. Gross was previously the managing director and European head at Citibank.

DCC Technology Management Group of San Francisco, a business unit of **Dana Commercial Credit Corp.**, has announced the introduction of a total cost of ownership tool, the **TCO Wyzard**. Marketed as part of DCC's consulting services, the TCO Wyzard will provide companies with the power to benchmark and reduce the life-cycle costs of their information technology assets by organizing a company's IT expenses into four functional areas: support, capital, administration and operations.

In a separate announcement, Dana Commercial Credit Corp. announced that it is administering **Apple Canada Inc.'s** lease program for the entire Canadian education market. DCC is the exclusive lessor of the Apple Education Finance lease program, which has enabled Canadian educators to acquire Apple computer equipment for students in grades K-12. The program has been expanded to cover the higher education market. DCC is an indirect, wholly owned subsidiary of Dana Corp.

FIRST Sierra Financial Inc. of Houston has announced signing a definitive agreement to acquire **OMNI Leasing** of Hatfield, Pa. OMNI Leasing has been active in the arbor, landscaping, trucking, sanitation and automotive industries, with a lease volume of $24 million in 1997. OMNI will be operated as a part of First Sierra's eastern retail region.

GE Capital Services of Stamford, Conn., has announced the acquisition of **Brunswick Micro Systems**, a privately held technology company headquartered in Canada. Brunswick delivers technical and professional services to large telecommunications, education, health and government accounts. It will become part of GE Capitals IT Solutions company, the largest Canadian desktop systems integrator.

HELLER Financial Inc. of Chicago has named **Rich Goiffon** senior account executive in its commercial equipment finance division. He will be based in Minneapolis/St. Paul and will be responsible for originating and structuring equipment loans and leases and servicing companies in Minnesota, Iowa, North Dakota, South Dakota and western Wisconsin. Mr. Goiffon was formerly with **Transamerica Business Credit**.

LEASING Solutions Inc. of San Jose, Calif., has promoted **Steven L. Yeffa** to executive vice president. After joining the company in 1991 as director of funding, he was promoted to treasurer in 1995 and in April 1996 was appointed vice president, finance-international. In April 1997, Mr. Yeffa was promoted to vice president, finance and CFO. He will continue to oversee the financial operations of the company and its subsidiaries, as well as its global financing strategy.

ORIX Credit Alliance Inc. of Rolling Meadows, Ill., a subsidiary of the **ORIX Corp.**, has announced the following personnel changes:

• **Charles Whittaker** has joined ORIX's corporate headquarters in Secaucus, N.J., as vice president and director of taxes.

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