

McGinnis, Anigian and Fuller Author Chapter in *GLI: Fund Finance 2026*

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PRACTICES Fund Finance

In the *Global Legal Insights: Fund Finance 2026* edition, Haynes Boone Partners [Ellen McGinnis](#), [Richard Anigian](#) and [Emily Fuller](#) authored an in-depth analysis of lender remedies under United States law in subscription-secured credit facilities—a core pillar of the fund finance market. The chapter offers a practical, experience-driven examination of how lenders can prepare for and navigate events of default, from establishing jurisdiction and enforcing capital call obligations to pursuing recovery from borrowers and investors.

Read an excerpt below.

Structuring and documenting subscription-secured credit facilities is an exercise of planning for success. Nobody wants or expects defaults, but lenders who adequately plan for an event of default and exercise of remedies are more likely to prevail against the borrower and its investors if a default occurs. Lenders must have a sound understanding of the process of enforcing their legal remedies against a borrower and its limited partners [i] under a subscription-secured credit facility in order to assess risk, price the risk, and properly document the facility. Lenders must be prepared to execute every step of their enforcement strategy, beginning with the occurrence of an event of default, through the decision to accelerate the obligations, to the exercise of remedies, and, finally, to recovery of payment.

Establishing an Event of Default: Issues of Jurisdiction and Service of Process

A legally undisputed event of default under the facility documents will trigger the right to exercise remedies. If a borrower contests the existence of a default, the lender should consider immediately filing a declaratory judgment action in an appropriate court to establish that an event of default has occurred. [ii] A declaratory judgment filing does not set forth a cause of action for damages but instead seeks a declaration from the court establishing existing rights, status or other legal relationships under the terms of a contract. It provides a quick adjudication of rights without having to wait for the borrower to file suit. [iii]

The court must have jurisdiction over the parties and the subject matter to issue a declaratory judgment. Typically, the borrower agrees to submit to jurisdiction in a particular forum in the facility documents, which establishes personal jurisdiction over the borrower. [iv] Subject-matter jurisdiction is the court's jurisdiction over the nature of the case and the type of relief sought. A U.S. federal court has the power to hear a declaratory judgment action under 28 U.S.C. § 2201(a) [v] if the case is within its subject-matter jurisdiction and involves an actual controversy. [vi] A lender seeking a declaratory judgment has the burden of establishing, by a preponderance of the evidence, that there is an actual controversy. [vii] Similarly, under most state laws, a declaratory judgment is only proper when there is an actual controversy and the existence of the controversy is not “contingent upon the happening of future events which may never occur.” [viii]

In federal court, service of process on domestic entities is governed by the Federal Rules of Civil Procedure. Rule 4 provides that a corporation, partnership, or other type of business association may be served by delivering the summons and complaint to an officer, managing or general agent, or an agent authorized by appointment or law to receive service.[ix] New York and Delaware courts have similar service of process rules.[x] If the borrower agrees in the facility documents that service of process may be effected by registered or certified mail sent to a specific address, the state or federal court will recognize such service as effective.[xi]

Several additional issues must be considered when the defaulting borrower is a non-U.S. (“foreign”) entity. First, lenders must decide whether to pursue the foreign entity in the United States or in its home country. [xii] A number of factors favor suit in the United States. First, a judgment from any American court, state or federal, is relatively easy to register and enforce throughout the United States. Second, a U.S. court will be more familiar with the contractual obligations at issue. Finally, depending upon the applicable foreign jurisdiction, there may be considerable local bias in the foreign jurisdiction in favor of the foreign defendant that must be overcome.

Establishing personal and subject-matter jurisdiction over a foreign entity requires the same analysis. [xiii] Once jurisdiction has been established, the lender must effectively serve process on the foreign entity. If a foreign borrower has agreed in the facility documents to accept service of process by certified or registered mail, this manner of service will be enforceable unless the borrower demonstrates that such service is precluded by foreign laws. [xiv]

[Read the full chapter here.](#)