

McGinnis, Anigian and Fuller Author Chapter in Global Legal Insights Fund Finance 2025

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PRACTICES Finance, Fund Finance

Understanding potential issues and anticipating enforcement strategies against a borrower and its investors are essential for a lender's effective risk management and credit analysis. Haynes Boone Partners [Ellen McGinnis](#), [Richard Anigian](#) and [Emily Fuller](#) authored a chapter in *Global Legal Insights' "Fund Finance 2025"* discussing enforcement strategies and how to prepare to implement them.

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 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. 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.

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. 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) if the case is within its subject-matter jurisdiction and involves an actual controversy. A lender seeking a declaratory judgment has the burden of establishing, by a preponderance of the evidence, that there is an actual controversy. 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."