



# Seigfreid, Bingham, Levy, Selzer & Gee has a specialized and experienced Equipment Dealers Group.

## We Know How To Help Equipment Dealers - 30 Years Of Experience

Our law firm is the only law firm in the United States that has an equipment dealers practice group. It arose from our work over the past 30 years with hundreds of farm, utility, industrial, construction and outdoor power equipment dealers and our experience as legal counsel to the Southwestern Association, the North American Equipment Dealers Association, the Vermeer Dealers Association of North America and the other 15 regional equipment dealer associations throughout the United States. We have developed substantial knowledge in the equipment industry, making us uniquely qualified to advise and assist dealers and their associations. In short, we know how to help equipment dealers.

Each year, our lawyers help numerous dealers by answering their questions on our equipment dealer hot line. Our lawyers also regularly speak to dealers on a variety of legal topics at dealer meetings and conventions throughout the United States.

We routinely advise dealers regarding a broad range of issues that are critical to the services of a dealership, including those listed below. As you read this list and the following more detailed descriptions of our services, please consider how we might help you and your dealership.

We frequently help dealers:

- enforce their rights under the various state fair dealership acts and buy-back statutes;
- acquire, sell and combine dealerships;
- form dealerships and structure relationships among their owners;
- develop succession plans and estate plans for transitioning businesses to family members, employees or others;
- resolve issues with manufacturers, including terminations;
- review and modify dealer / manufacturer agreements;
- prevent and resolve employment-related issues and claims;
- enforce dealer repair liens;
- avoid UCC security interest disputes; and
- interpret environmental regulations.



Our Equipment Dealers Group includes: Katie Zogleman, John Neyens, John Walter and Risa Olds (standing). Mark Gilgus, Gary Fulghum, Jack Selzer and Karla Shepard (seated).

*“Our members and staff depend on SBLSG to give us practical and timely advice on all legal matters. We have been working with SBLSG for 30 years and the firm is known in the industry as the leading law firm in the United States.”*

**-Jeffrey H. Flora**  
Chief Executive Officer,  
SouthWestern Association

## Fair Dealership Acts and Buy-Back Statutes

Since the 1980's, our lawyers have drafted dealer protection statutes and testified for dealers before state legislatures. These statutes provided the foundation for similar statutes in many other states. Now, all but three states have statutes specifically designed to protect equipment dealers from unfair business practices that manufacturers occasionally use against dealers. Who better to assist you in understanding and enforcing your rights under these statutes than a law firm that wrote and helped pass them?

We understand your rights under these laws. Each day, we answer questions from dealers regarding the impact of these laws on their dealerships. Common questions include:

- What parts and whole goods must the manufacturer buy back from me when I sell or terminate a dealer agreement? At what price?
- Does the law protect me from a manufacturer terminating me as one of its dealers?
- Does the law help me get approval from a manufacturer for the sale of my business? For my business succession plan?
- Does the law prevent a manufacturer from giving competing dealers better prices?
- Does the law allow me to give stock to family members for estate planning purposes, even though the dealer agreement requires the manufacturer's approval?
- Does the law provide for warranty reimbursement to the dealer at retail rates even though a dealer agreement has limited warranty reimbursement provisions?

We can answer your questions and we will aggressively pursue enforcement of your rights.



## Business Structure and Owner Rights and Relations

We know the advantages and pitfalls of every type of organization. Whether you are just starting your business or are looking for the most advantageous way to structure the operations of multiple dealership locations or companies, we can provide the structure that is best for you.

Every dealership with multiple owners needs a written owners' agreement. Not only is it essential to the successful operation of your dealership and establishment of your exit strategy or succession plan, many manufacturers require it as a condition to approving a new dealership or owner. These agreements typically address the following concerns:

- Who will serve on the dealership's board of directors?
- What approval of owners is required to authorize extraordinary actions, such as a sale of the dealership?
- In what circumstances can an owner transfer all or part of the owner's interest?
- When does one owner have the opportunity to buy out another? Disability? Retirement? Other?
- What happens when an owner dies? Are the other owners obligated to buy the deceased owner's interest?
- How much do I have to pay for another owner's interest? How much will I get for buy-out of my interest?
- What are the terms of payment? How much down?
- How will a purchase be funded? Life insurance?

By working with you to develop agreements and procedures for resolving major issues among owners, we can help you protect your ownership interest and achieve your goals.

Often a simple change in the structure of a sale will lawfully result in hundreds of thousands of dollars in tax savings.

## Selling, Purchasing and Combining Dealerships

The on-going consolidation of the equipment industry creates both threats and opportunities for owners of equipment dealerships. In this challenging market of continuing consolidation, we have assisted over 100 equipment dealers across the nation sell or acquire dealerships. Of particular value to our dealer clients in transactions of this type is our experience --

- Working with manufacturers to obtain their consent to dealership transfers;
- Working cooperatively with parties on the other side of the transactions and their lawyers to complete the transactions as efficiently and cost-effectively as possible;
- Assisting the parties to understand the components of value for the dealership and the range of value from comparable dealership transactions;
- Structuring the acquisition in a manner that reduces income taxes as low as possible through techniques such as (a) preventing double taxation through Subchapter S of the Tax Code, using Section 338(h)(10)(b) of the Tax Code for step-up basis, (b) allocating purchase price to capital assets and to compensation for covenants not to compete and post-transaction service agreements, (c) using the installment sale method of reporting and (d) implementing tax-free reorganizations under Sections 355 and 368 of the Tax Code;
- Establishing legal mechanisms that help sellers receive all the proceeds from the sale, including (a) sale for all cash, (b) promissory note coupled with a security interest in assets, (c) personal guarantees and spousal guarantees, (d) cross-default provisions, (e) pledges of stock with escrow agreement, (f) a “bucket” threshold before any liability under indemnification provisions and (g) release of personal guarantees;



- Drafting provisions that help buyers receive full value such as (a) comprehensive representations and warranties by sellers on the condition of the company and assets to be sold, (b) pre-closing rights to perform building and environmental inspections and (c) rights of offset under buyer’s promissory note in the case of seller’s breach of any warranty and representation; and
- Designing real estate transfers for best consequences, such as tax-free exchanges under Section 1031 of the Tax Code, long-term leases with options to renew or purchase and installment sales.

Taxes are an important component of any dealership transfer. Often a simple change in the legal structure of a sale will lawfully result in hundreds of thousand of dollars in saved taxes. We have highly trained lawyers with significant tax experience, including Jack Selzer (Masters of Tax Law from Boston University and four years experience with the IRS as Trial Attorney in the Chief Counsel’s Office), Karla Shepard (Masters of Tax Law from the University of Missouri at Kansas City) and Mark Gilgus (Former Tax Accountant with Arthur Anderson). We can help you minimize the tax consequences of a sale.

The sale or purchase of a dealership is likely the single most important deal of your lifetime. You owe it to yourself and your family to hire a firm that has many years of experience successfully representing dealers in a variety of transactions. Our firm understands how important this transaction is to you and we will give it our highest priority and careful attention.

*“When we were seeking proposals for a law firm to not only represent our Association, but to tackle virtually any legal situation faced by our dealer members, SBLSG was head and shoulders above the rest. I can’t imagine a firm more dedicated or with more expertise in equipment dealer issues than SBLSG.”*

**-Paul Kindinger**

Chief Executive Officer  
North American Equipment  
Dealer Association

## Business Succession and Estate Planning

If you desire to pass your dealership on to one or more of your children, grandchildren or employees, we can help you and your family design a succession or transition plan for continuing the business after your death or retirement. We can design equitable and practical solutions for families in which only some of the children or grandchildren will be involved in the ownership and management of the dealership.

With over 30 years of experience in designing and administering estate plans for owners of many equipment dealers, we can develop an estate planning strategy that fits your personal needs. By implementing an annual gifting program, taking advantage of gifting discounts, utilizing the unified credit to shelter your assets from estate taxes, providing more sophisticated techniques for larger estates (such as FLIPS, GRATS, ILITS) and employing techniques to provide liquidity and eliminate probate with revocable trusts, we can help you minimize or eliminate estate taxes and transfer costs at death. By doing so, we can help preserve your wealth for the benefit of your family.

By spending a few hours of planning time with us, we can identify the estate planning techniques that will lawfully result in the greatest tax savings. For example, many dealers have or will have a net worth greater than the current estate tax exemption amount of \$2,000,000. This exemption increases to \$3,500,000 in 2009 with no estate tax in 2010 and then, in 2011, the exemption reverts to a measly \$1,000,000. Without planning, the IRS will take over 45% of every dollar over the exemption amount. By using two common estate planning techniques — the marital deduction and the by-pass credit shelter trust — a



husband and wife can pass on \$4,000,000 of assets without any estate tax. Without planning, there could be an estate tax of approximately \$1,000,000.

As part of our estate planning services, we would prepare durable powers of attorney that allow you to appoint someone you trust to make financial and health care decisions for you at any time, including a time when you are disabled. If it meets your personal or religious desires, we will also prepare a living will for you. A living will states that if you are unable to indicate whether a procedure should be done and this procedure would artificially prolong the dying process, then you do not want the procedure done. Examples of artificial procedures that would not be performed if you have a living will and are terminally ill and in a persistent vegetative state include artificial ventilation, CPR and surgery. Comfort care, such as medication to alleviate pain would still be provided. We can help you identify, express and enforce your wishes.



The attorneys and paralegals in our Estate Planning & Administration Group are: Amy Hohensinner, Tanya Braa, Judy Galate-Swartzbaugh, Katie Zogleman, Bob Bartunek, Kate Milberger, Karla Shepard and Tim Fisher (standing) Gary Brouillette, Larry Bingham, Al Stopperan, Jack Selzer, Cindy McClannahan and Mark Gilgus (seated).

Employment law is definitely one area in which the old saying “an ounce of prevention is worth a pound of cure” couldn’t be more true.

## Employment Law

Regardless of the size of your dealership or the number of your employees, there are countless and ever-changing employment laws that directly affect your dealership and your employee relationships on a day-to-day basis. Being fair to employees and establishing a good work environment are the first steps in reducing the risk of substantial liability in this challenging legal environment. But, one slip-up in this maze of complicated employment laws could cripple a small dealership from both an operational and financial standpoint. As a result, employment law is one area in which the old saying “an ounce of prevention is worth a pound of cure” couldn’t be more true.

There are many ways our employment law attorneys can help you avoid employment-related litigation and administrative actions. We can help you prepare and update a properly written employee handbook, provide your supervisors with training and, when appropriate, conduct pre-emptive compliance audits. We can also furnish day-to-day advice and practical guidance regarding your obligations under the many federal and state employment laws affecting your business, including:

- Wage and hour laws (i.e. minimum wage, overtime and record-keeping);
- Child labor laws and workplace safety;
- Required workplace posters, notices and reporting;
- Medical leave and disability issues;
- Equal employment opportunity and anti-discrimination laws;
- Workers’ compensation and unemployment compensation;



- Drug testing and privacy of medical information; and
- Employee benefits, health insurance and COBRA.

Additionally, we can help you establish compensation and benefit packages and advise you on compliance with complex tax and ERISA regulations governing employee benefit plans. We routinely advise dealers on structuring, interpreting, administering and terminating qualified benefit plans such as profit sharing plans, 401(k) plans, employee stock ownership plans, health plans, cafeteria plans, life insurance plans and tax-exempt welfare benefit trusts. We further represent dealers in negotiating and administering executive compensation packages, including salary deferral agreements, supplemental executive retirement plans, company-owned and split-dollar life insurance arrangements and all types of incentive compensation and stock option plans.

We can further help you protect your dealership by drafting effective non-competition, non-solicitation and confidentiality agreements with employees and by negotiating and drafting severance packages and employment-related releases and settlement agreements. Agreements of these types protect your customer relationships and trade secrets and prevent your key employees from jumping ship and engaging in unfair competition.

Regardless of your best efforts, governmental investigations, lawsuits and other problems cannot always be avoided. In these circumstances, our experienced litigation attorneys can provide you with an aggressive and cost-effective defense.

# Meet The Attorneys In Our Equipment Dealers Group



## *Jack R. Selzer, Shareholder*

University of Notre Dame; B.A., Rockhurst University, 1965; J.D., University of Florida, 1972; LL.M. in Taxation, Boston University, 1974. Former trial attorney for the IRS. Lieutenant USNR (Retired). Leader of Equipment Dealers Group with 30 years of experience working with business owners, including numerous equipment dealers in the U.S. General Business Law, Mergers and Acquisitions, Taxation, Estate Planning, Equipment Dealer Law. E-mail: [jselzer@sblsg.com](mailto:jselzer@sblsg.com)



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### ***Our Other Attorneys Join Us In Serving Our Equipment Dealer Clients***

Because equipment dealers and related businesses have many of the same legal needs as those outside the equipment industry, other attorneys in our firm participate in providing legal services to our equipment dealer clients. With approximately 40 lawyers overall, we have the attorneys needed to help dealerships and their owners face a broad range of increasingly complex legal issues in specialty areas such as taxes (including sales, income and estate taxes), anti-trust restrictions, construction laws, environmental regulations and bankruptcies.

### ***Our Support Staff Are Important Members Of Our Team***

Our firm is fully staffed with experienced associates, paralegals, legal assistants and other support personnel necessary to meet the needs of our clients. They share our values and our desire to provide personalized services. With their help, we are able to balance our clients' needs for experienced lawyers actively engaged in performing their work, and their need for efficiency and cost-effectiveness, by delegating work, when appropriate and with the supervising attorney's oversight, to a capable associate or paraprofessional at a lower billing level.

### ***We are Equipped With The Latest Technology***

We have rejected the notion that you must be a "big" firm to be on the cutting edge. So, we have invested in the latest technology to serve our clients better, including video conferencing and a fully equipped Media Room for presentations and "virtual meetings". All attorneys and staff are equipped with access to the firm's network computer system and our other state-of-the-art technology resources.

### ***There's a Lot More to Learn***

The only way to really get to know Seigfreid, Bingham, Levy, Selzer & Gee and our Equipment Dealers Group is to spend some time with us. We encourage you to call any of the attorneys in our Equipment Dealers Group or visit our office. We also invite you to visit our firm's website at [www.sblsg.com](http://www.sblsg.com) for additional information about our firm.

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