As you know, the Spring Meeting will be held on April 15-17th in San Francisco. We will have our usual turbo-charged programs and meeting, highlighted by the Jeff and Steve Commercial Law Developments program on the 17th. We also have a special dinner planned as the Second Annual Joint UCC-CFS Dinner. We will be taking the ferry from San Francisco to Sausalito, walking 5 minutes to the Spinnaker Restaurant, right on the water, with views to die for, then returning by a short bus ride to the hotel. Hope you all will be able to make it.

The Joint UCC-CFS Home Page is up and running. Be sure to visit it. It will have agendas of all meetings, copies of all handouts (which may be downloaded, for those who miss meetings), listing of all members and the Leadership, listing of all Subcommittees and Task Forces, and our 50-state surveys of commercial law. You will hear more about each from the respective chairs.

We pride ourselves on the openness of our Leadership; anyone with an interest in becoming active in the Committee, whether as the Chair of a Subcommittee, a presenter at a
Message from the Commercial Financial Chair, Con’t.

Subcommittee meeting, or the moderator or participant in a panel, will realize success. We try to fill positions with those who are new to the Committee, and thereby to open the Committee to all who are interested. There is no better way to be “plugged in” to the workings of the Committee, and thereby to the Section, by joining the Leadership. Openings are announced through our Committee ListServ. Be sure that you have subscribed.

I join with Ed Smith in again thanking Kathi Allen and Steve Weise for their supreme efforts in putting this newsletter together. And of course the ABA personnel has been, as always, quite helpful and supportive to the leadership of CFS, and we wish to thank all of them for their help.

Message from the UCC Chair, Con’t.

meeting will provide its “State of the UCC” update. In addition, we will have a short session at the UCC Committee meeting discussing the UCC related legislative process and how members of the UCC Committee can make contributions to the development of commercial law. We will also have our UCC Committee dinner on Thursday evening, April 15. Once again the dinner will be a joint one with the Commercial Financial Services Committee.

In anticipation of the Spring Meeting, John Power and Eric Steele have taken the lead, with their Commercial Financial Services Committee counterparts, in bringing on line the new CFS/UCC Committee joint home page. Subcommittees and task forces within the UCC Committee are being encouraged to build on the web site reserved for it. When you are in the net surfing mood, check out the new home page at www.abanet.org/buslaw/cfs-ucc/home.html. John and Eric will be exploring other opportunities to increase communication within the Committee through use of the home page. I am sure that they would welcome your suggestions.

I am also pleased to announce that Carl Bjerre has joined Kathy Patchel and Robyn Meadows as a co-editor of the annual UCC Survey for The Business Lawyer. As many of you know, this important contribution that the Committee makes to The Business Lawyer requires a great deal of effort. The editors need to provide organization and editorial skills as well as substantive guidance so that the product submitted will be both useful and timely. Carl provides needed help for this project to continue as first rate. Our plan is for each co-editor to serve a three-year term. Anyone courageous enough to volunteer should contact our senior co-editor, Kathy Patchel.

Kudos to Kathi Allen and Steve Weise. They continue to keep all of us on track to produce this newsletter three times a year. Once again, they have done a terrific job.

NOTE:
This Newsletter is published by the Uniform Commercial Code Committee and the Commercial Financial Services Committee of the American Bar Association’s Section of Business Law. The views expressed are the views of the authors only, and are not necessarily those of the ABA, the Section or either Committee. Please contact Katherine S. Allen, Farris Warfield & Kanaday, PLC, Nashville, kallen@fwar.com or Steven O. Weise, Heller Ehrman White & McAuliffe, Los Angeles, sweise@hewm.com with comments.
How Much May A Securities Purchaser Know And Still Be Eligible For Bona Fide Purchaser Status? (Securities and Exchange Commission v. Lehman Bros., Inc., 157 F. 3d 2 (1st Cir. 1998)).

By Stephanie A. Heller and Sophia R. Vicksman
Federal Reserve Bank of New York

This case involved a brokerage account opened by the chairman of Centennial Technology ("Company") with Lehman Brothers ("Broker"). Under the margin account agreement, the customer could borrow from the Broker to cover part of the cost of his purchases; in turn, the Broker had a security interest in the assets held in the account as collateral for any margin debt. The agreement was explicitly subject to New York law.

When reports about financial instability of the Company appeared in the press and the Company's stock began falling, the chairman called the Broker and asked to arrange a "zero-cost-collar" on Company stock held in the chairman's margin account. The Broker complied with the request, and acquired a number of put options for the customer. A few days later, the Company announced that it was undertaking an inquiry into its earlier financial statements, that the Company's chairman had been removed, and that the New York Stock Exchange had suspended trading in the Company's stock. The Broker immediately issued a margin call, demanding that the customer pay his $5 million margin-account debt, which the customer failed to do.

Before the Broker could take advantage of the collateral, however, the Securities and Exchange Commission ("SEC") commenced a civil action and obtained a temporary restraining order, blocking all assets in the chairman's accounts with various financial institutions, including the margin account with the Broker. The SEC argued, inter alia, that the Broker's knowledge of the Company's financial problems had precluded the Broker from claiming that it was a "bona fide purchaser" of the put options held in the margin account. The U.S. District Court for the District of Massachusetts granted a preliminary injunction with respect to the proceeds of the put options, and the Broker appealed.

The First Circuit remanded the case, holding that under New York law, "dishonesty, and not mere suspicion," is required to deprive a securities purchaser of bona fide status. The starting point for the Court was Section 8-302(1) of New York's Uniform Commercial Code ("UCC"), pursuant to which a "bona fide purchaser" of an investment security is "a purchaser for value in good faith and without notice of any adverse claim." There was no doubt that the Broker was a "purchaser for value." It was claimed, however, that the Broker had not taken the collateral "free from any adverse claim," as required by Section 8-302(3), because the Broker disregarded "suspicious circumstances." Specifically, the SEC argued that the Broker's alleged knowledge of the use of insider information by the customer for procuring a "collar" transaction coupled with public information suggesting that the Company may be in financial difficulty, amounted to bad faith depriving the Broker of bona fide purchaser status.

The Court, however, rejected this contention. Relying on Section 3-304(7) of New York's UCC and citing a long string of cases, the Court took the view that "the emphasis in the New York case law is on subjective bad faith and dishonesty": "New York has deliberately adopted a standard somewhat more favorable to the recipient of the securities than have a number of other states[,]" explained the Court, confirming that notice must "be determined by a subjective test of actual knowledge."
Moreover, the Court expressly distinguished the case at bar from situations in which a person “deliberately avert[s] his eyes from evident misconduct.” Such conduct, the Court explained, while short of actual knowledge, could be treated as bad faith or dishonesty. Here, however, the chairman could have utilized the “collar” transaction without using insider information; thus, misconduct by the chairman was only a possibility, and the Broker could not “swiftly and definitely assure itself that no insider information had been used” before executing the transaction. Accordingly, the Court remanded the case for a determination of whether the preliminary injunction against the Broker should be maintained.

While this case arose under the 1978 version of UCC Article 8, it is likely that its outcome would have been the same if it were governed by Revised Article 8.

“Most importantly, the First Circuit opined that, under the facts of the case, the Broker had not deliberately closed his eyes to information that would establish the existence of an adverse claim.”

Section 8-303 of Revised Article 8 defines a “protected purchaser” -- who, like the original Article 8’s “bona fide purchaser,” acquires a security free of any adverse claims -- as a purchaser who gives value, obtains control, and does not have notice of any adverse claim. An equivalent rule for the indirect holding system, which would be implicated by the facts of Lehman Bros., is established in Section 8-502 of Revised Article 8.

Pursuant to Section 8-105 of Revised Article 8, a person has notice of an adverse claim if the person: (1) knows of the adverse claim; (2) is aware of facts sufficient to indicate a high probability that such claim exists, but deliberately avoids information that would establish its existence; or (3) has a duty imposed by statute or regulation, to investigate whether an adverse claim exists. Considering the facts of Lehman Bros., in light of this test, it appears that the Broker would not have been found to have had notice as he had neither the actual knowledge of an adverse claim required by subsection (1), nor a duty to investigate pursuant to subsection (3). Most importantly, the First Circuit opined that, under the facts of the case, the Broker had not deliberately closed his eyes to information that would establish the existence of an adverse claim. In all probability, this would have satisfied subsection (2) of Revised Article 8-105.

Query whether the holding in Lehman Bros. will have any impact on cases decided under the "collusion" standard in Revised Article 8-503. Under this section, a purchaser is protected from any claims of an entitlement holder if the purchaser gave value, obtained control, and did not “collude” with the securities intermediary. The meaning of "collusion" in Revised Article 8 was a topic of great debate prior to New York's enactment of the statute. Those who advocated against the uniform collusion standard were concerned that the standard was so difficult to prove that it essentially left an innocent entitlement holder, whose securities intermediary had failed without sufficient financial assets, without recourse against the purchaser of those financial assets. For this reason, some argued that the New York Legislature should not adopt the collusion standard or that it should at least add language to Revised Article 8 to provide that collusion involved a subjective test of whether a purchaser had actual knowledge that a securities intermediary was violating its entitlement holder's rights.

Proponents of the uniform version of Revised Article 8-503 argued that a subjective test created uncertainty and would affect liquidity. One fact pattern of particular concern to lenders, was whether a bank would be deemed to "collude" with a securities intermediary if it lent to the securities intermediary at a time
when there were reports in the newspapers of possible financial problems and suspected wrongdoings at the securities intermediary. Ultimately the New York Legislature addressed the collusion issue in a statement of legislative intent accompanying Revised Article 8, which adopted a subjective test of actual knowledge. The statement of legislative intent eased somewhat lenders’ concerns by noting that “[A] purchaser’s knowledge of the precarious financial situation of the financial intermediary coupled with rumors, allegations, or reports of suspected wrongdoing does not amount to collusion.”

What is less clear from the statement of legislative intent, however, is what more would be needed to find collusion. In this respect, the decision in Lehman Bros. may prove relevant. Even though Lehman Bros. looks at the extent of the purchaser’s knowledge in the context of adverse claims rather than collusion, the Lehman Bros. court was applying the same subjective test of actual knowledge that is found in the New York Legislature’s statement of legislative intent. The First Circuit expressly found no evidence of the Broker’s knowledge of the customer’s wrongdoing. It may well be, therefore, that Lehman Bros. is indicative of how a court will examine the collusion standard when, in addition to rumors in the newspapers, there is also evidence of the purchaser’s independent knowledge of wrongful acts by the transferor.

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WEST GROUP—UCCLAW-L LISTSERV

The UCC Committee does not yet have an official ABA listserv like the CFS Committee does, but many UCC Committee members subscribe to the UCCLAW-L listserv (sponsored by West Group, Publisher of the Uniform Commercial Code Reporting Service, with assistance from WashLawWEB) and moderated by the editors of the UCC Bulletin/UCC Reporting Service.

To subscribe to the list, send an e-mail message to listproc@assocdir.wuacc.edu, leaving the subject line blank and including only the following message: subscribe UCCLaw-L[your name]

You will receive a welcome message and additional instructions.
As you know, with the help of the ABA staff, the CFS Committee has set up a Listserv. This is an email list of our members maintained by the ABA. **This is the only method by which the Committee leadership will communicate with the membership.** Thus, unless you join the list, you will become disenfranchised. Any Committee member can send a message to all Committee members with just one email. The list will be used to announce meetings, send agendas of subcommittee meetings and the like.

Joining the list is quite simple. Just send the following email message to listserver@abanet.org: **subscribe bl-cfsc [your email address]** [Do not include the brackets.]

If you have never received any email as a list member, or if you recently changed email addresses, or if you are lonely and need someone to send email messages to and want to confirm that you are on our list, please verify that you are on the list by sending the following message to listserver@abanet.org: **who bl-cfsc**.

Within a few minutes you will receive a list of all subscribers, in no particular order. Just search the list (using your email system search logic) for your email address. If you are not on the list, please join as described above. Those who are not on the list do not exist and not having an existence can be a real drag.

Thanks for your help in building the list. It will be invaluable in the efficient running of the Committee.

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**INTERNET SITES OF INTEREST**

- ABA Business Law Section: [http://www.abanet.org/buslaw](http://www.abanet.org/buslaw)
- ABA Joint Committee on Electronic Financial Services: [http://www.abanet.org/buslaw/efss/home.html](http://www.abanet.org/buslaw/efss/home.html)
- UCC Revision Drafts: [http://www.law.upenn.edu/library/ulc/ulc.htm](http://www.law.upenn.edu/library/ulc/ulc.htm)
- UCC Revised Article 9: [http://www.law.upenn.edu/library/ulc/ucc9/ucc9woc.htm](http://www.law.upenn.edu/library/ulc/ucc9/ucc9woc.htm)
- UCC Article 2B Revisions: [http://www.law.upenn.edu/library/ulc/ulc.htm#ucc2b](http://www.law.upenn.edu/library/ulc/ulc.htm#ucc2b)
- NCCUSL Meeting Schedule: [www.nccusl.org/meetings.html](http://www.nccusl.org/meetings.html)
- Uniform Electronic Transactions Act Drafts: [http://www.abanet.org/nccusl/home.html](http://www.abanet.org/nccusl/home.html)

Remember the NEW **UCC/CFS Committee Joint Website:**

[http://www.abanet.org/buslaw/cfs-ucc/home.html](http://www.abanet.org/buslaw/cfs-ucc/home.html)

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CONGRATULATIONS!!!!!

The ABA Business Law Section was recently applauded for its efforts to encourage the participation of women and minorities in Section activities. Both the Commission on Women in the Profession and the Commission on Opportunities for Minorities in the Profession named the Section to their respective honor rolls in the recently released report cards. The Business Law Section is the only Section to be named to both honor rolls!

The highlighted Business Law Section initiatives include the development of the Diversity Plan, the activities of the Subcommittee on Mentoring, the development of the Committee GOAL IX report card and the clearinghouse of women and minority speakers. The Business Law Section thanked its Committee Chairs for their commitment to increasing the participation of women and minorities, and sent a much deserved thank you to Mary Beth Clary and members of the Diversity Committee for their continued dedication and hard work!

UCC Committee Chair Ed Smith passed on these congratulations to the UCC Committee: “The Section has been providing great leadership on these issues, but the work in the core activities of the Committees, including our UCC Committee, is where it all counts. Congratulations are in order to all of you as well.”

The Sections named to the Commission on Women in the Profession Honor Roll are Business Law, International Law, and Labor and Employment Law. The Sections named to the Commission on Opportunities for Minorities in the Profession Honor Roll are Business Law, Law Student Division, Legal Education, Individual Rights and Responsibilities and the Forum on Affordable Housing.
Courts have taken varying courses in construing the purpose and function of Section 1-103 and the resulting applicability of principles of common law and equity to commercial transaction within the scope of the UCC. When are principles of common law and equity displaced by the provisions of the UCC? What process have courts followed for resolving the question of displacement? What process should a court follow for resolving the question of displacement? Have different processes been employed if the displacing principle is one of equity rather than of common law? Are courts consistent in their approach?

In his article entitled: Legal Realism: Its Cause and Cure, 70 YALE L.J. 1037 (1961), Grant Gilmore distinguished a statute from a code by the preemptive effect of a code.

“A ‘statute’...is a legislative enactment which goes as far as it goes and no further...when a case arises which is not within the precise statutory language, which reveals a gap in the statutory scheme or a situation not foreseen by the draftsmen (even though the situation is within the general area covered by the statute), then the court should put the statute out of mind and reason its way to decision according to the basic principles of the common law. A ‘code’...pre-empts the field and...is assumed to carry within it the answers to all possible questions...when a court comes to a gap or an unforeseen situation, its duty is to find, by extrapolation and analogy, a solution consistent with the policy of the codifying law...when a ‘statute’...has been interpreted in a series of judicial opinions...the meaning of the statute must now be sought not merely in the statutory text but in the statute plus the cases...decided under it. A ‘code,’ on the other hand, remains at all times its own best evidence of what it means: cases decided under it may be interesting, persuasive, cogent, but each new case must be referred for decision to the undefiled code text.” ¹

Does the existence of 1-103 negate the viability of the view that the UCC is a “code” rather than a statute? Or is the UCC a hybrid, an attempt to formulate a preemptive regimen of rules and regulations for commercial transactions with an accommodation through Section 1-103 of our common law tradition? Resolving the issue of Section 1-103’s future may rest in determining the nature or essence of the UCC or what it has become in its 50 year history.

At its April 17 meeting during the Spring Meeting of the Business Law Section, the Subcommittee on UCC Article 1 will convene a joint session with the Subcommittee on Scope of the UCC to address these and other issues generated by the revision of Article 1. Analogized as central to the UCC as the “hub” is to a wheel², revision of Article 1 is a significant undertaking and should be of interest to academics and practitioners alike regardless of area of specialization. Members of the Section are invited to attend and to participate in the discussion among the Subcommittee members. For additional information or to obtain an application for Subcommittee membership, contact Sarah Jenkins at <shjenkins@ualr.edu> or Fred Miller at <fmiller@ou.edu>.

¹ Gilmore, Legal Realism: Its Cause and Cure, 70 YALE L.J. 1037, 1043 (1961)

The question of whether negotiable instrument law should apply to electronic notes and orders has been heavily debated in connection with the drafting of the Uniform Electronic Transactions Act ("UETA"). Those who advocate the inclusion of intangible instruments within the scope of Articles 3 and 4, have urged the UETA drafting committee to use the UETA to eliminate the writing requirement for Article 3 instruments. Much of this debate, however, has occurred without the benefit of input from experts in payments law. As a result, there has not yet been an opportunity to fully explore the ramifications of this proposal on the Uniform Commercial Code ("UCC").

At the Spring Meeting of the ABA in San Francisco, the Subcommittee on Payments will begin to explore this very important issue at its April 17, 1998 meeting. A panel discussion will be presented entitled "Lord Mansfield Meets the Millennium: Intangible Negotiable Instruments and the Uniform Commercial Code." The discussion will consider whether it is possible to have true intangible negotiable instruments and, if it is possible, how the UCC would need to be revised to accommodate such instruments. To aid in this discussion, two products currently under development as possible electronic negotiable instrument substitutes, will be demonstrated. At the end of the meeting, the Subcommittee members will be asked to consider whether the Subcommittee should ask the National Conference of Commissioners on Uniform State Laws ("NCCUSL") to create a drafting committee to consider revisions to Articles 3 and 4. If the Subcommittee decides to make such a request, a working group of Subcommittee members will be formed to draft the request (including a description of issues to be considered).

If time permits, the Subcommittee will also discuss its new website. The site, which is currently under construction, will include projects undertaken by the Subcommittee such as the emerging retail payments matrix. Subcommittee members will be asked if there are other types of items that should be posted to the website or other ways to make the website useful.

Subcommittee members are also invited to participate in the April 15, 1999 meeting of the Stored Value Task Force. The Task Force is currently preparing comments for the NCCUSL drafting committee on the draft Non-Depository Providers of Financial Services Act. The Task Force, working with the Electronic Commerce Payment Committee of the Section of Science and Technology, is also developing a position on the treatment of stored value under escheat laws.

Finally, we are pleased to announce that the Model Positive Pay Services Agreement, which was prepared by the Subcommittee, will be published in the February volume of The Business Lawyer.

If there are any members of the Subcommittee on Payments or the Uniform Commercial Code Committee who have new projects or issues that they wish the Subcommittee to entertain, please contact Stephanie Heller at 212-720-8198.
Robert A. Wittie, Chair
Kirkpatrick & Lockhart LLP
Washington D.C.

The Spring 1999 meeting of the Investment Securities Subcommittee will feature a look into some of the nooks and crannies of Article 8 and focus on some resolved and unresolved issues. We will consider problems that have arisen in applying or interpreting the 1994 Revision, as well as some that may loom under Revised Article 9. Among the issues to be discussed will be:

- How are the priority provisions of Article 9 reconciled with Section 8-510(a), which protects purchasers who have control from all adverse claims?
- Under proposed Section 8-106(d)(3) (which would be added by the Article 9 revisions), what happens when a "bailee" with control announces that it is no longer maintaining control on behalf of another secured party?
- How may foreign securities registration systems affect the determination of whether an investor who uses an intermediary actually has a security entitlement?

Committee members are encouraged to raise — and whenever possible offer answers to — interesting issues that they have encountered.

Jill S. Gelineau, Chair
Schwabe, Williamson & Wyatt
Portland, OR

Michael Ferry from St. Louis has agreed to be our speaker for the meeting. Mike plans to discuss the topic of Ethical Issues in Class Action Representation, focusing on the new standards adopted by the National Association of Consumer Advocates. This topic should be of interest for all of us who either frequently or on occasion plaintiff or defend class action suits. Please join us for this informal presentation and a helpful handout. In addition, time permitting, for those of you who are currently involved in UCC litigation cases that might be of interest to the entire group, please plan to share your war stories with the group.

UCC Litigation Survey Article for the Business Lawyer. Our committee is also involved at the present time with preparing the UCC litigation survey for the Business Lawyer. Steve Sanford at Caldwell, Sanford, Deibert & Garry in Sioux Falls, South Dakota is authoring the article, which is a presentation of important UCC litigation cases that have occurred over the last two years. Our UCC Litigation Survey article has always been well received.

CFS SUBCOMMITTEE REPORTS

Agricultural and Agribusiness Subcommittee

Brooke Schumm III, Chair
Baltimore, MD

Phillip Kunkel, Vice-Chair
St. Cloud, MN

Last fall, when the Subcommittee met in conjunction with the American Agricultural Law Association in Columbus, Ohio, the Subcommittee’s morning program featured Mike Weaver of Huntington Bank speaking on “Lending in the 21st Century.” He noted a trend to credit scoring and less personal
relationships between lenders and borrowers. In the afternoon, at the AALA meeting, Keith Meyer, Phil Kunkel, Gordon Tanner and Brooke Schumm entertained the audience with a program on Revised Article 9's provisions pertinent to agricultural lenders and borrowers. We lamented the expiration of the term of our past Chair, Richard Brunette of Los Angeles, CA, who is now managing partner of Sheppard, Mullin, Richter & Hampton, and presented him a miniature manure wagon to wish him well.

For the Spring Meeting of the Subcommittee at the Section of Business Law meeting, the planned program is to follow up on last year's CFS program on priming blanket liens with a program entitled: "Cold Comfort and Thin Blankets: Priming the Lender's Blanket Security Interest". The CFS and UCC Committees are co-sponsors. We are scheduled for Friday morning at 7:30-9 a.m. in the Mendocino Room. The subjects covered will be:

- A re-review of federal tax liens.
- FLSA restrictions and the Citicorp v. Brock case.
- Perishable Agricultural Commodities Act trusts.
- Packers and Stockyards Act issues—In re Samuels and statute.
- State non-UCC statutory liens--California-mini-PACA mini-PSA.
- Article 2 liens such as consignments: 2-326 and 2-711(3), and 2-501.
- Possessory liens.
- State tax liens—particularly personal property tax liens.
- Revised article 9.

We will also have our rapid finder index of non-UCC liens available for some states and are preparing to post it on our ABA website.

Current plans for the fall of 1999, when we meet in conjunction with the American Agricultural Law Association, call for a presentation at our Subcommittee meeting on and, as part of the general meeting on, "Problems in Dealing with Distressed Factory Farms, and Liquidating Factory Farms."

Longer term, we are examining projects on perfection of liens in water rights and the definition of family farmers.

Despite our Subcommittee name, all of the members handle a great deal of traditional bank financing. Our meetings are very useful for traditional lender's and borrower's counsel, who are encouraged to attend, because we always address the fundamental UCC framework while considering its agricultural dimensions.

SUBCOMMITTEE ON CREDITOR'S RIGHTS

Catherine E. Bauer, Chair
Bank of America
Los Angeles, CA

Philip Warden, Vice-Chair
Pillsbury, Madison & Sutro
San Francisco, CA

After many years of faithful service as Chair of the Creditors' Rights Subcommittee, William K. Zewadski of Tenam, Kemker, Scharf, Barkin, Frye, O'Neill & Mullis, P.A. in Tampa, has passed the gavel to Catherine E. Bauer of Bank of America's Office of General Counsel in Los Angeles. Bill, your enthusiasm and energy as Chair will be sorely missed!

Philip Warden of Pillsbury, Madison & Sutro in San Francisco is the new Vice-Chair of the Subcommittee. This is very convenient since
Phil is also the Chair of the Bankruptcy Litigation Subcommittee of the Corporate and Business Litigation Committee, and most of our recent programs have been joint meetings with Phil's Subcommittee.

We had a great program in connection with the National Conference of Bankruptcy Judges in Dallas on October 24 at 7:15 in the Metropolitan Ballroom of the Wyndam Hotel. Our topic was "Offshore Goes Onshore: The New Alaska and Delaware Asset Protection Statutes and Looming Controversies." Our distinguished panel included the Honorable Robert C. McGuire, Chief Judge, U.S. Bankruptcy Court, Northern District of Texas, the Honorable Margaret A. Mahoney, Chief Judge, U.S. Bankruptcy Court, Southern District of Alabama, Jonathan G. Blattmachr, of Milbank, Tweed, Hadley & McCloy in New York, Paul S. Singerman, of Berger, Davis & Singerman in Miami, and Kaaran E. Thomas, of Vinson & Elkins L.L.P. in Houston.

Please join us in San Francisco in April for the Spring Meeting. WE WILL BE MEETING LATER IN THE DAY BEGINNING WITH THE APRIL MEETING. Our apologies to those of you who truly enjoy meeting at 7:15 in the morning.

At the Spring Meeting in San Francisco, the Creditors' Rights Subcommittee will be meeting on Saturday, April 17th, 3:30 to 5:00 (location to be announced). Our speaker will be Roy T. Englert, Esq. of Mayer, Brown & Platt's Washington, D.C. office.

Mr. Englert has argued many cases in front of the United States Supreme Court, including, on behalf of Bank of America, the 203 North La Salle Street Partnership "new value" case that was heard by the Court on November 2, 11998 (a ruling is expected shortly).

Mr. Englert will be talking with us about the La Salle case, his expert predictions as to that case's outcome, and his recommendations and perceptions with regard to the Supreme Court in general.

This will be an excellent opportunity to talk with a well-known expert on the subject of appearing before our country's highest court. Please join us!

LENDER LIABILITY SUBCOMMITTEE

Paul Burke O'Hearn, Chair
Jones, Day, Reavis & Pogue
Atlanta, GA

The CFS Lender Liability Subcommittee is holding its next meeting in conjunction with the Spring Meeting of the Business Law Section in San Francisco. The Subcommittee meeting is scheduled for 2:30 - 4:00 PM on Thursday afternoon, April 15, 1999. All Subcommittee members and members of the CFS and UCC Committees are encouraged to attend.

As usual, there will be a Subcommittee program at the meeting, updating members on current developments with respect to commercial litigation involving claims against lenders. This Spring there will be an emphasis on the ubiquitous subject of Y2K claims. Additional details on the program will be posted on the Subcommittee's website, along with program materials as soon as they are available.

Additionally, there will be a discussion at the Subcommittee meeting of the Subcommittee's participation in a possible program to be presented in conjunction with the ABA Annual Meeting in Atlanta in August of 1999. The topic currently under consideration is the defense of consumer class actions against banks and other lending institutions. We are in discussions with the leadership of various consumer and business litigation Subcommittees regarding this issue. The input of all Subcommittee members on this subject is encouraged - either at the meeting or by e-mail to the Subcommittee chair. We are especially
interested in hearing from subcommittee members who have been directly involved in such litigation.

**SUBCOMMITTEE ON REAL ESTATE FINANCING**

*Thomas A. Snow, Chair*
*Carlton Fields*
*Tampa, FL*

The Real Estate Financing Subcommittee will next meet at the Spring Meeting of the ABA Section of Business Law to be held in San Francisco. The Subcommittee meeting is scheduled for Saturday, April 17 from 8:30 – 10:00 a.m. At our meeting, Jim Chadwick of the Patton Boggs firm in Dallas, together with other panelists, will present a program concerning synthetic leases and related issues. All are invited to attend.

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**JOINT SUBCOMMITTEE REPORTS**

**SUBCOMMITTEE ON DOMESTIC AND INTERNATIONAL TRANSACTIONS**

*Shelley G. Dedmon, Chair*
*Calfee, Halter & Griswold, LLP*
*Cleveland, OH*

*Guy G. Guinn, Vice-Chair*
*Calfee, Halter & Griswold, LLP*
*Cleveland, OH*

*D. Benjamin Beard, Vice-Chair*
*University of Idaho College of Law*
*Moscow, ID*

The Subcommittee on Domestic and International Transactions is preparing a sample International Distribution Agreement that will highlight significant issues to consider when selling goods via distributors in various jurisdictions around the world.

Several major issues will be covered in endnotes prepared by attorneys practicing in the various jurisdictions. Those issues include:

- Retention of Title
- When purchase orders and sale confirmations contain conflicting terms (“Battle of the Forms”)
- Retail Price Maintenance
- Sharing Information
- Implied Warranties
- Product Liability
- Extraterritorial Sales
- Termination
- Choice of Law
- Arbitration

Currently, the following jurisdictions are part of the project: Korea, Paraguay, Scotland, Sweden, and the United States.

If attorneys practicing in other jurisdictions wish to participate, please contact the project coordinator:

Barney Fyman
Styrbjörn Gärde Advokatbyrå
Gothenburg Sweden
Fax +46 31 13 73 68
Email: bf@garde.se

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ARTICLE 1 - GENERAL PROVISIONS

Latest Draft: September, 1997
Status: Drafting Committee’s next meeting not scheduled.
UCC Committee Contact: Sarah Howard Jenkins (501) 324-9937 or Fred Miller (405) 325-4699.

ARTICLE 2 – SALES

Latest Draft: March 1, 1999
Status: Drafting Committee’s next meeting March 12-14, 1999.
UCC Committee Contact: David J. Frisch (302) 477-2119.

ARTICLE 2A – LEASES

Latest Draft: July 1997
Status: Drafting Committee’s next meeting April 9-11, 1999.
UCC Committee Contact: Steve Whelan (212) 912-7654.

ARTICLE 2B – LICENSES

Latest Draft: February 1, 1999
Status: Drafting Committee’s last meeting February 26-28.
UCC Committee Contact: Donald A. Cohn (302) 773-3521.

ARTICLE 5 - LETTERS OF CREDIT

Latest Revision 1995. Revised Article 5 is being presented to the states for adoption, and has been adopted by at least 38 states.
UCC Committee Contact: James G. Barnes (312) 861-2854.

ARTICLE 7 - DOCUMENTS OF TITLE

Latest Draft: No draft.
Status: Article 7 Task Force presented its report to the PEB Committee, which voted to recommend to NCCUSL appointment of a Drafting Committee to start work on a revision. Report to be updated for November 1999.
UCC Committee Contact: Drew L. Kershen (405) 325-4784.

ARTICLE 8 – INVESTMENT SECURITIES

Latest Revision 1995: Revised Article 8 is now being presented to the states for adoption, and has been adopted by all states other than Rhode Island and South Carolina.
UCC Committee Contact: Sandra M. Rocks (212) 225-2780.

ARTICLE 9 – SECURED TRANSACTIONS; SALES OF ACCOUNTS AND CHATTEL PAPER

Latest Revision: 1998 Final Official Draft
Status: Revised Article 9 is approved and is being presented to the states for adoption. It has been introduced in ten states.
UCC Committee Contact: Steven O. Weise (213) 244-7831.

UNIFORM ELECTRONIC TRANSACTIONS ACT

Latest Draft: January 29, 1999
Status: Drafting Committee’s last meeting February 1999.
UCC Committee Contact: C. Robert Beattie

UNIFORM CONSUMER LEASES ACT

Latest Draft: October, 1998
Status: Drafting Committee’s next meeting not scheduled.
UCC Committee Contact: Steve Whelan (212) 912-7654.
# UCC SCORECARD

## 50 State Survey of Adoptions of Revised Official Text of the UCC

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1. South Dakota has adopted only 1987 Official Text without the 1990 Amendments.
2. States which have repealed Article 6 are identified by indicating "Repeal" next to the state name; states adopting the revisions suggested in Alternative B to the 1989 Official Text are identified by indicating "Revise" next to the state name.
3. In addition to the enactments noted, Puerto Rico has only adopted the following Articles: Article 1, Article 4A, the original versions of Article 5 and Article 7, and the 1972 version of Article 9.

Please note that the Enactment Date does not necessarily reflect the effective date. Please refer to the applicable statute for the relevant effective date.

Our thanks to John McCabe and Katie Robinson at the National Conference of Commissioners on Uniform State Laws for their help in compiling the information above. These revisions are based on the information available as of February 1, 1999.
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