OCC Determines that UCC is Not Preempted

The Office of the Comptroller of the Currency ("OCC") has put to rest concerns that national banks and their affiliates might be exempted from compliance with the UCC, under OCC regulations preempting certain kinds of state laws (12 CFR pt. 34, as amended January 13, 2004) (the "OCC Rule"). The amendments extended the scope of the OCC rule to lending by national banks that is not real-estate secured and are applicable to secured loans under Article 9 as well as to deposit-taking activities in checking accounts covered by Articles 3, 4 and 4A.

On June 10, 2004, the OCC wrote a letter (the "OCC Letter") stating that "such provisions [i.e. the uniform provisions of the UCC] would not be preempted under the OCC's preemption rules nor under the judicially-developed standards of preemption that would be applicable to the preemption analysis not specifically listed in our regulations.'

The Permanent Editorial Board for the UCC construes the OCC's June 10, 2004 response to be a determination of non-preemption pursuant to Sections 7.4007(c)(8) and 7.4008(e)(8) of the OCC Rule."

Although the OCC never expressed an intent to preempt the UCC, the preemption of state laws was stated in broad terms that arguably supported a plain-meaning interpretation that the UCC was preempted. The OCC Rule preempts state laws that "obstruct, impair or condition" a national bank's lending or deposit-taking activities and permits.

(Continued on page 2)
(Continued from page 1)
a national bank to engage in those activities (e.g. “Security property, including leaseholds”) “without regard to state law limitations.” Although the OCC Rule lists state laws on certain subjects that are not preempted, e.g. contracts, torts and rights to collect debts, neither commercial law nor the UCC is listed. Indeed, on October 6, 2003 during the comment period for the then proposed amendments to the Rule, the National Conference of Commissioners on Uniform State Laws (NCCUSL) had written to the OCC requesting that the UCC be listed, but the request was not acted upon in the final OCC Rule.

The concern was not so much that national banks or their affiliates would purposefully interpret and apply the Rule as authorizing non-compliance with the requirements of the UCC. Rather, the concern was that such institutions, if faced with a claim of non-compliance with a UCC provision that exposed it to substantial liability or loss, might be obliged to assert the defense that the plain-meaning of the OCC Rule preempted that particular provision.

The OCC Letter should end concerns about the impact of the OCC Rule on the uniform version of the UCC. The last sentence in the above statement of the PEB is a reference to the provisions of the OCC Rule that add to the list of state laws which are not preempted “Any other law the effect of which the OCC determines to be incidental to the [deposit-taking or non-real estate lending, respectively] operations of national banks or otherwise consistent with the powers set out in paragraph (a) of this section.” The PEB construed the OCC Letter to be a determination of non-preemption under those provisions.

On June 18, 2004 the OCC was advised that the PEB “was treating the conclusion [in the OCC Letter] as a determination pursuant to [the above-cited provisions] of the Rule” and that the letter and the May 12, 2004 letter from NCCUSL and ALI would be distributed to appropriate publications and posted on websites “that are consulted by the commercial bar in connection with the UCC.” The PEB has not received any objections thereto from the OCC.

Copies of these two letters may be viewed at the UCC Committee’s home page on the website of the Section of Business Law.

*Mr. Rapson has been a member of the Permanent Editorial Board for the UCC since 1982.

Business Law Today Sponsors Writing Program in Atlanta

The Business Law Today Editorial Board will sponsor a program titled “How Business Lawyers SHOULD Write” at the Annual Meeting in Atlanta on Friday, August 6, from 10:30 a.m. to 12:30 p.m. The program will be held in the Paulding Room, Second Floor, at the Atlanta Hilton (headquarters of the Business Law Section). The Business & Corporate Litigation Committee is co-sponsoring the program, along with the Business Law Education Committee, the Young Lawyers Division Business Law Committee, and SCRIBES - The American Society of Writers on Legal Subjects.

The program will feature several nationally renowned writing instructors and transactional attorneys. The panelists will discuss the do's and don'ts of careful document drafting, including "tips from the trenches" from the practicing attorney panelists. This program is a MUST for all business lawyers who want to improve or hone their document drafting skills.

For more information on the program, contact BLT Editor-in-Chief Heidi McNeil Staudenmaier, who is chairing the program (602-382-6366 or hstaudenmaier@swlaw.com).

By Kathleen J. Hopkins
Real Property Law Group, PLLC
Seattle, WA
In Pride Hyundai, Inc. v. Chrysler Financial Co., 369 F.3d 603 (1st Cir. May 27, 2004), the First Circuit, in a case of first impression, interpreted revised UCC Article 9 as it applies to dragnet clauses, and held that a security interest can secure debts of different types and classes, past and future, if the plain language of the dragnet clause says so. The Court’s decision rests on the 2001 changes to the Official Comments to UCC § 9-204, as well as the expanded definition of good faith in § 9-102 (43).

The case involved two kinds of loans made by the lender, CFC, to several related automobile dealerships. Initially, each dealership would execute a “retail” financing agreement in favor of CFC each time the dealership financed a customer’s automobile purchase. Each retail financing agreement contained a provision allowing CFC to make “chargebacks” against the debtor dealership’s account, making the debtor liable for payment of the chargeback amount under certain circumstances. The agreements did not create security interests to secure these contingent liabilities, but only required that the dealerships maintain minimum reserves to satisfy any amounts that CFC might charge back to them.

CFC later agreed to provide general inventory and working capital loans to the dealerships, as well, and the dealerships then executed “wholesale” financing agreements in favor of CFC. These wholesale financing agreements contained broad collateral provisions, including the dragnet clause at issue, which purported to secure all of the debtors’ obligations to CFC, regardless of whether those obligations arose prior to, concurrently with, or after the financing agreements.

CFC and the dealerships had a subsequent falling out, and the dealerships found a new financing source. The dealerships argued that the earlier retail financing agreements alone controlled the legal rights and obligations of the parties as to the chargebacks and, since the retail financing agreements did not create a security interest, the wholesale financing agreement could not override the earlier, more specific agreements. The dealerships also argued that extending the dragnet security interest to reach the chargeback amounts would unfairly hamper their ability to switch lenders.

The First Circuit rejected the dealerships’ arguments and held that the dragnet clause in the wholesale financing agreements did apply to the dealerships’ contingent liabilities arising out of both past and future retail financing agreements. The Court noted that that “the literal language of the dragnet clause created a new dynamic between the parties,” and clearly provided for such a result, despite any interference with the dealerships’ ability to get new financing. Therefore, CFC could not be forced to release its security interest until the dealerships had satisfied the requirements for the reserve balance on the chargebacks.

The First Circuit noted that, while the language of § 9-204 was only slightly modified by the 2001 amendments, Official Comment 5 was substantially changed. In particular, the Official Comment rejected the holdings of cases decided under former Article 9 that applied tests such as whether or not a future advance or other obligation was of the same or a similar type or class as the original debt secured by the collateral. The Official Comment notes that the determination should be made solely by construing the parties’ agreement. Even though the Official Comment was not enacted into law by Massachusetts, the First Circuit noted it was nonetheless powerful dicta entitled to considerable weight and viewed as highly persuasive authority. Predicting that the Massachusetts Supreme Judicial Court would adopt the approach to dragnet clauses as contained in the Official Commentary, the Court examined the parties’ intent as evi-

(Continued on page 4)
Holders of senior debt may need to review their subordination agreements carefully following the First Circuit Court of Appeals’ decision that New York’s “Rule of Explicitness” does not apply in bankruptcy cases. The Rule traditionally requires that payments on interest accruing in a bankruptcy case be allocated equally between junior and senior creditors unless there is an explicit and unequivocal agreement that such post-petition interest is to be paid to senior creditors first. The Rule of Explicitness is applied where a borrower files bankruptcy. Where the collateral for the transaction is insufficient to pay all principal and interest, the Bankruptcy Code does not permit the recovery from the borrower of interest that accrues post-petition. Lenders have come to rely upon the Rule of Explicitness, which permits lenders to agree among themselves about the priority of recovery in the borrower’s bankruptcy case. Frequently under these agreements, “senior indebtedness” (including interest which accrues after the bankruptcy case is filed) receives a priority over any recovery by junior indebtedness.

In HSBC Bank USA v. Branch (In re Bank of New England Corp.), 364 F.3d 355 (1st Cir. 2004), the United States Court of Appeals for the First Circuit held that, in a bankruptcy filing case, Section 510(a) of the Bankruptcy Code supplants the Rule of Explicitness as the guiding principle for the enforcement of contractual subordination provisions. Section 510(a) of the Bankruptcy Code provides that a subordination agreement is enforceable in a bankruptcy case to the same extent that such agreement is enforceable under applicable nonbankruptcy law. The First Circuit held that, because bankruptcy is an area of distinct federal competence, a state cannot adopt a rule like this one, which only comes into play in bankruptcy cases.

The practical effect of this case is to prohibit holders of senior indebtedness from relying on the Rule of Explicitness under New York law to gain priority of payment over junior indebtedness in a bankruptcy case. The First Circuit found that the subordination agreement’s language requiring full payment to the senior holders of “interest due or to become due” lacked certitude as to whether payment of post-petition interest on senior indebtedness was prior to any payment to the junior debt.

This holding does not mean that subordination agreements will not be upheld in the event of a borrower’s bankruptcy filing. The First Circuit acknowledged that a subordination agreement expressly stating the extent of the subordination would be upheld. Thus, stronger, unequivocal language with respect to the intent of the parties to include post-petition interest in the senior indebtedness and to bar any recovery by junior creditors until payment in full of all interest, including post-petition interest, should still be effective in the event of a borrower’s bankruptcy filing. The Bank of New England case creates a split of authority among the circuits on this issue. See Chemical Bank v. First Trust of New York, 153 F.3d 1141 (11th Cir. 1998).
I want to thank everyone who helped organize our meetings at the Business Law Section Spring Meetings in Seattle – it was my first meeting since becoming chair of the Uniform Commercial Code Committee and it was a huge success, thanks to all of you.

Spring Meeting Follow-Up

The UCC Committee sponsored a Committee Forum on contracting out of the UCC as well as two CLE programs: “Harmony and Discord: Consumer Protections in Commercial Transactions” and “Woulda, Coulda, Shoulda–How to Draft Loan Documents Under Revised Article 9 to Survive Challenges in Bankruptcy.”

In addition to our two traditional CLE programs, which are designed for lawyers with experience in commercial law, the UCC Committee participated in a new program track, called the Institute for the New Business Lawyer. During the one-day Institute, the UCC Committee presented a program entitled “Decoding the Uniform Commercial Code.”

Regardless of whether you attended the Spring Meeting, if you are a member of the Business Law Section you can obtain the materials for all of the UCC Committee programs, as well as all of the other Spring Meeting programs, free of charge at the 2004 Spring Meeting Materials section of the Business Law Section’s website [see page 19 for internet access instructions.] I encourage each of you to check this site and take advantage of the wonderful content, much of which was prepared by leading experts in commercial law.

UCC Membership Survey

During the meeting of the full UCC Committee, I reported on the results of the UCC membership survey that we conducted earlier this year. In brief, the results of the UCC membership survey largely mirrored the findings of the larger Business Law Section membership survey (which Jeff Turner briefly discussed in the March issue of The Commercial Law Newsletter). The majority of our members (particularly those who have joined during the past five years) do not attend ABA meetings. These members identified the Commercial Law Newsletter as the most important benefit of UCC Committee membership. Members who indicated that they do attend ABA meetings overwhelmingly indicated their satisfaction with the quality of our programs and materials. A few individuals indicated that more could be done with subcommittee meetings.

Now it is important to keep in mind that there was nothing scientific about the way in which this survey was conducted. If there is any doubt about this assertion, all you have to do is to look at the answers to the question I posed regarding the UCC Committee website. The question asked for an indication, on a scale from 1-5 (with 5 being the best), of your opinion of the UCC Committee website. At least half of the responses gave the website a 4 or a 5. I for one have been to the UCC Committee website several times over the past year. On those occasions when my computer allowed me to actually access the page, I was struck by how little substance there is on the site and how often what is posted there is out of date. As another example, a few members who indicated that they have not attended meetings during the past five years nonetheless indicated their displeasure with the quality of the programs presented at those meetings.

Despite this kind of clear “noise” in the data, the feedback was very useful. The UCC leadership has already implemented some important changes that at least in part resulted from the survey. Beginning with this year’s Annual Meeting, the chairs of the UCC Subcommittees, Task Forces and Working Groups have been asked to ensure that a majority of their meeting time be spent in substantive discussions of one sort or another. While many of our subcommittees have traditionally put on “mini-programs” at the Spring and Annual Meetings, you should expect to see a lot more of this type of programming from us.

Another big change, as noted above, is that the Business Law Section is making the meeting materials available to all Section members free of charge on the Section website.

I am optimistic that, over the next year, with the help of the Business Law Section, we will be able to develop a UCC Committee website that has strong content.
and is easily navigable. Moreover, the one clear message that came out of the survey results, is that our membership wants to get involved in projects and discussions online. This will no doubt be my biggest challenge, but I am determined to find more avenues for online participation by our members. Clearly this is our future.

Annual Meeting

Let me end this column with a preview of the programs that we will present at the Annual Meeting in Atlanta this August. On Saturday, August 7th we will be presenting jointly with the CFS Committee a Committee Forum titled “Choice of Law/Forum in International Transactions: Whose Law Is It (Anyway)?” From UCC Revised Article 1-301 to the UNICITRAL Convention on Accounts Receivable, the UNIDROIT Convention on Mobile Equipment and the Hague Conventions on Securities and (Continued from page 5)

Exclusive Choice of Court Agreements, the autonomy of parties to choose what law/forum governs their agreements has been hotly debated. Experts from the US and Europe will explain what these provisions are and how they—and courts interpreting them—will affect your everyday practice.

On Sunday August 8th the UCC Committee will present two CLE programs. The first is entitled “Liquidity Assurances in Troubled Times – How Major Institutions Make Sure Prompt Payment is Made When Due.” This Program will discuss devices, structures, issues and problems of payment assurances or credit enhancements used or required by major institutions in large financial, securities, commodity or credit transactions. Speakers will discuss rating agency requirements and issues, securities and power industry collateral requirements and procedures, letter of credit supported and financial guaranty insurance products: how they differ, compare, and deal with the bankruptcy trustee.

The second program on Sunday is titled “Who Put the Good in Good Faith?” This Program will explore the meaning of the UCC’s obligation of “good faith” through a mock appellate argument in a hypothetical case. Experienced litigators will argue before a panel of judges that includes a federal Circuit Court judge and a member of the Article 1 Drafting Committee.

You should have already received an electronic mailing with the UCC Committee’s full meeting agenda. I hope if you are able to join us in Atlanta that you will make it a point to say hello and to share any ideas or suggestions that you may have concerning the UCC Committee.

UCC Subcommittee on Leasing

The Subcommittee on Leasing, meeting on Monday, August 9th at 2:30 p.m. to 1:30 p.m., will hear a presentation on the anti-leasing provisions in the United States Treasury Department’s 2005 Budget Proposal. Treasury’s specific proposals, as well as more moderate alternatives, will be discussed.

A separate talk will analyze the recent bankruptcy decision in In re Pillowtex, 349 F.3d 711 (3rd Cir. 2003). The various legal (tax, bankruptcy, commercial law) and accounting definitions of a “true lease” will be considered in light of the fundamental purposes of commercial law.

There also will be a report on the status of new clarifying Official Comments to UCC Article 2A-Leases. Together with the new Article 2A Comments, the entire project to revise Article 2-Sales and Article 2A-Leases is apparently being reviewed by the American Law Institute.

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UCC Subcommittee on Sales of Goods

At the ABA Annual Meeting in Atlanta, the UCC Subcommittee on the Sale of Goods will meet on Sunday, August 8, from 8-9 a.m. The program is called “Drafting Contracts for Mixed Transactions (Goods, Services and Information): How Best to Serve Your Client and Stay Out of Court.” Presenters will be Don Cohn from DuPont and Cindy Harvey from Cisco Systems. Here is a brief description of the program: While Article 2 and Revised Article 2 provide us with statutory guidance for transactions in goods, there is no immediate prospect of statutes that deal with mixed transactions. Thus the burden is on the drafter to incorporate performance standards and other terms addressing service and information components of the deal. The presenters will discuss appropriate models for buyers and sellers. Questions from the audience will be welcomed.

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UCC Subcommittee on General Provisions and Relation to Other Law

In Seattle, the former Subcommittee on Scope and Subcommittee on Article 1 held a joint meeting in anticipation of the merger of those Subcommittees into the Subcommittee on General Provisions and Relation to Other Law. The meeting focused on the Office of the Comptroller of the Currency Regulation relating to national banks and its potentially preemptive impact on the UCC, particularly Articles 3, 4 and 4A. There was considerable concern about the lack of clarification by the OCC in its response to commentary by the uniform law drafters raising concern about the potentially preemptive impact of the Regulation.

In Atlanta, the Subcommittee will hear briefly from Bill Henning, Executive Director of NCCUSL, about developments since the meeting in Seattle relating to this OCC regulation. After the OCC discussion, Sarah Jane Hughes, Professor of Law at Indiana University - Bloomington, and Linda Rusch, Professor of Law at Hamline University, will discuss the impact of the federal Check 21 Act on Articles 3 and 4. While concerns have been raised about the operation of Check 21 and the amendment to Regulation CC implementing it, this presentation will focus on the direct effects that the federal law and regulation will have on Articles 3 and 4. We hope you can join us Monday, August 9 at 9 - 10 A.M. for these informative discussions.

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JOIN THE UCC E-MAIL DISCUSSION GROUP
This free email discussion group is sponsored by Thomson West, publisher of the “UCC Reporting Service,” with assistance from the Washlaw Web.

To subscribe, go to: http://lists.washlaw.edu/mailman/listinfo/ucclaw-l
and follow the instructions.
UCC Subcommittee on Investment Securities


At the ABA Annual Meeting on Saturday, August 7, 2004 from 1:00 PM to 2:00 PM at the Atlanta Hilton in Atlanta, Georgia, the Investment Securities Subcommittee will have a joint meeting with the International Commercial Law Committee regarding recent developments in an effort to make UCC Article 8 “go global.” The meeting will focus on the recently released draft of UNIDROIT’s proposed convention on “Substantive Rules Regarding Securities Held with Intermediaries” and the National Law Center for Inter-American Free Trade’s “Proposed Inter-American Treaty to Modernize Securities Ownership, Transfer and Pledging Legal Framework.” A lively discussion will follow.

At future meetings, the Subcommittee will examine the rules applicable to U.S. Treasury book-entry securities and book-entry securities issued by U.S. government-sponsored entities, opinions given in secondary offering of securities and U.S. security agreement forms relating to investment property collateral. We welcome other suggestions for future meetings.

Please join us at the ABA Annual Meeting in Atlanta.

| Lynn A. Soukup, Out-going Chair |
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| Penelope Christophorou, Vice-Chair and In-coming Chair |
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CFS Secured Lending Subcommittee and UCC Secured Transactions Subcommittee

The Secured Lending Subcommittee of the Commercial Financial Services Committee and the Secured Transactions Subcommittee of the UCC Committee meet jointly at each Spring Meeting of the Business Law Section and each ABA Annual Meeting as a leading national forum for the presentation and discussion of important topics concerning secured transactions law (including UCC Article 9) and secured lending.

The Subcommittees will hold their joint meeting at the upcoming Annual Meeting in Atlanta from 9:00 a.m. to 10:30 a.m. on Sunday August 8, 2004, at the Atlanta Hilton, Grand Salon C, Second Floor.

The joint meeting will cover three varied and timely topics:

**True Lease vs. Security Interest: A Distinction With a Real Difference to You and Your Clients**

Malcolm Lindquist of the Tacoma, Washington office of McGavick Graves PS and Robert (Bo) Strauss of the Atlanta, Georgia office of Troutman Sanders LLP will discuss the legal tests for distinguishing between a lease and a secured transaction and the legal and practical implications of the characterization of a transaction.

**Delaware LLCs: Doing It Serially**

Norm Powell of the Wilmington, Delaware office of Morris, James, H itchens & Williams LLP will discuss Delaware’s provisions applicable to series LLCs (which provide a mechanism for creditors to have rights only to the assets of the LLC designated for a specified series) and the potential pitfalls and benefits of using these entities.

**OBS: True Sale, Setoff and Legal Isolation**

Edgar Snow of the Atlanta, Georgia office of Burr & Forman LLP and Lynn Soukup of the Washington, D.C. office of Alston & Bird LLP will discuss FASB’s recent statements (and request for information) about the impact of obligor and transferor setoff rights on legal isolation for purposes of FAS 140 and off balance sheet treatment of loan participations and securitization transactions and the impact of such setoff rights on true sale analysis.

The program presented at the joint meeting of the
Subcommittees at the Business Law Section’s 2004 Spring meeting featured Lynn Soukup, George Hisert of the San Francisco office of Bingham McCutchen LLP, Holly Towle of the Seattle office of Preston Gates & Ellis LLP, and Professor Neil Cohen of Brooklyn Law School and of counsel to Bingham McCutchen LLP. “Two’s Company, Three’s a Crowd: Part 4 of UCC Article 9” provided a look at the impact of Part 4 of Article 9 through a staged (and hotly contested) arbitration proceeding involving a lender’s attempt to collect from the obligor under an assigned contract, and the many issues involved where Part 4 of Article 9 affects the rights of third parties. The program also addressed the interplay of Part 4 of Article 9 and intellectual property law as related to the use of IP rights as collateral. The impact of an assignment on setoff and other obligor defenses (covered in the Spring Meeting program and related materials) is one of the issues being analyzed in response to FASB’s focus on the impact of setoff on off balance sheet accounting treatment (which is being discussed as part of the Subcommittees’ Annual Meeting program). All of the materials from the Spring Meeting program are posted on the Business Law Section website at the Secured Lending Subcommittee home page and the Secured Transactions Subcommittee home page.

Peter Carson’s tenure as Chair of the Secured Transactions Subcommittee will come to an end this year after the Annual Meeting. Peter’s enthusiasm, sense of humor and leadership have been much appreciated, and we count on his on-going involvement to keep those assets available to both Subcommittees. Peter will be ably succeeded by Leianne Crittenden as Chair of the Secured Transactions Sub-committee. Pauline Stevens, a partner in Morrison & Foerster’s Los Angeles office, will be Vice Chair of the Secured Transactions Subcommittee. Pauline has been co-chair of the California Business Law Section UCC Committee for the last two years (and before that served as co-vice chair of that committee).

We look forward to seeing you in Atlanta.

Members of the ABA Section of Business Law can join the Uniform Commercial Code or the Commercial Financial Services Committee, for a $55 annual fee (or less for certain law student and associate memberships). The annual fee includes 4 issues of the Business Lawyer journal (now available on-line), 6 issues of the Business Law Today magazine, and 12 issues of the e-source monthly electronic newsletter, in addition to other resources and opportunities.

To join, visit the ABA website at http://www.abanet.org/members/join/
or the Business Law Section website at http://www.abanet.org/buslaw/home.shtml
IN MEMORIAM: Jeffrey S. Turner

It is with great sadness that we tell you about the recent and sudden death of Jeff Turner, Chair of the Commercial Financial Services Committee, on July 17, 2004, only a few weeks after he prepared the column below.

Jeff was a partner with Kaye Scholer LLP, in Los Angeles, where he practiced commercial law, and was a frequent speaker and writer on commercial law matters. He graduated from the Duke University School of Law, with highest honors/distinction, in 1979. In addition to his ABA positions, he also served as chair of the Section of Business Law of the State Bar of California, Chair of the Section of Commercial Law and Bankruptcy of the Los Angeles County Bar, President of the Financial Lawyers Conference, and a Regent of the American College of Commercial Finance Lawyers.

Jeff will be greatly missed by all of his friends in the Business Law Section. Members of the UCC Committee and Commercial Finance Committee, especially, will miss the Jeff Turner part of the annual commercial law update that he and Steve Weise have for years made a popular event during the Business Law Section’s Spring Meeting.

We extend our condolences to Jeff’s wife, Meredith Jackson, who is also active in both the CFS Committee and UCC Committee, and to the rest of his family.

Message from the Chair:
Commercial Financial Services Committee

by Jeffrey S. Turner*
Kaye Scholer LLP
Los Angeles, CA

* Ed. Note: Jeff drafted this Message in June. He was clearly anticipating his usual vigorous participation in activities at the Annual Meeting in Atlanta. Out of respect, we have not meddled with his language, even though some of it is, sadly, no longer accurate.

Dear members and other interested persons:
Since my last report dated February 10, 2004, the Committee on Commercial Financial Services of the Section of Business Law (the "Committee") and its various subcommittees met from April 1-3, 2004, in Seattle.

Spring Meeting

At that meeting, among other things, we were the primary sponsor of two programs and a committee forum. On Friday, April 2, we sponsored a program focusing on the lessons of Enron for commercial finance practitioners. Also on Friday, April 2, Chris Rockers moderated a forum on the subject of loan trading, featuring knowledgeable participants in the market, including a representative of the LSTA (the principal trade group for participants in the loan trading market). On Saturday, April 3, Steve Weise, Jeff Turner and Teresa Harmon presented the 2003 Commercial Law Developments program.

In addition, we co-sponsored several other programs, including a freshly-inaugurated "New Lawyers' Institute" on Thursday, April 1. And, of course, our Subcommittees had many substantive presentations as well. Thanks to the excellent planning assistance of our new Secured Lending Subcommittee Chair Malcolm Lindquist, our joint committee dinner on April 1 with the UCC Committee, at the Columbia Tower Club atop the Bank of America Tower, was a tremendous success.

ABA Annual Meeting – Atlanta

Shortly after the Spring Meeting, we embarked on planning another great schedule of meetings, programs and forums for the 2004 ABA Annual Meeting in Atlanta, Georgia (principally at the Atlanta Hilton). See page 15 in this newsletter for our detailed schedule for Atlanta. To briefly summarize:
• On Saturday afternoon, August 7, the Committee will co-sponsor (along with the UCC Committee) a forum on international choice of law issues.

• On Saturday evening, after the Section Reception, the Committee will have its customary joint dinner with UCC, this time at the famous Ruth's Chris Steakhouse near our hotel, where our Atlanta-based Creditors' Rights Subcommittee Vice Chair Carolyn Richter has generously helped us arrange an excellent menu. You should have received an invitation to the dinner and a sign-up form, and I hope to see many of you there.

• On Sunday afternoon, August 8, the Committee will co-sponsor (along with the Committee on Legal Opinions) a program on opinion practice in commercial financing transactions. Sunday at the ABA Annual Meeting has been informally christened "opinion day" by Art Field, Chair of the Committee on Legal Opinions, because there are so many programs and meetings that day that focus on legal opinions.

As always, this will be a great meeting and we hope you will brave the summer heat and humidity to join us! When you register for the Annual Meeting, please be sure to purchase a Section of Business Law CLE Passport so that you can attend the excellent programs and forums.

CFA Convention - Philadelphia

This fall, the Committee will meet at the Philadelphia Marriott from 11 am until 4 pm on Wednesday, November 3, 2004, immediately preceding the 60th Annual Convention of the Commercial Finance Association (CFA). Details and registration information for the November 3 meeting will be forthcoming in a subsequent email distributing and/or mailing. That meeting will be planned by our Programs Subcommittee Chair and Vice Chair, Jim Prendergast and Jim Schulwolf, respectively, under the excellent oversight of our Commitee Vice Chair, Chris Rockers, and they would love to have topic ideas and presenter volunteers. Please submit any ideas or volunteers before the November 3 meeting so that we can complete our planning. The November 3 meeting will follow the usual format, including several topics and speakers, and a buffet luncheon in the middle. It is a great networking opportunity for commercial finance lawyers.

At the CFA Convention, mid-morning on Friday, November 5, the Committee will sponsor a program for the convention attendees, titled "Wheel of Misfortune." That program, moderated by me (doing a game-show-host impersonation) will feature three expert "contestants" (Martin Fingherut, Meredith Jackson and Lynn Soukup) fielding questions on a variety of topics that have the following common theme - potential misfortune for lenders if not handled with care! If you will be attending the convention, you definitely don't want to miss this program.

And, believe it or not, we are already planning for next Spring's meeting in Nashville, but I won't bore you with the details.

Task Force on Deposit Account Control Agreements

I do want to mention in particular one important and exciting project upon which the Committee has embarked in cooperation with several other committees, including UCC and Banking. As you may know, we are part of a Joint Task Force on Deposit Account Control Agreements, the task of which is to develop a fair and balanced model form of deposit account control agreement suitable for use under Revised Article 9, that can be embraced by secured lenders, debtors and depositaries alike, and that can eliminate much of the unseemly haggling that now goes on in this contentious area. Although this is an ambitious project, we have a tremendous and growing group of specialists from all sides committed to work toward a consensus, and we are very optimistic about the prospects of this important project, with respect to which many of our Committee members (including Ed Smith and Marshall Grodner, as some of the task force's several co-chairs) are deeply involved. The first meeting of the task force, on April 1 in Seattle, was standing room only. Since then, we have organized subgroups and begun intense focus on key issues. We anticipate that the next meeting of the task force, at 8:30 am on August 7 in Atlanta, will be interesting, productive, and well-attended, and we encourage Committee members to stay abreast of and contribute to the activities of this important task force.

Committee Initiatives and Opportunities

In my last report, I spent several paragraphs describing our ongoing efforts to push out content to our constituents, to improve our technology, and to enhance membership and diversity. I won't repeat those remarks, except to emphasize that they are sincere and ongoing, and leading to results. For example, we are starting to populate our web site with program and forum materials, and subcommittee meeting materials. More content will be added as time goes on. Meanwhile, Stuart Ames and Bob Young, our liaisons to the Membership Committee, are actively engaged in an ongoing "membership summit" process, as a part of which we are working with other committees to enhance Section and committee membership and deliver

(Continued on page 12)
more benefits to members.

Within the next year, a number of leadership opportunities at the subcommittee level will open up on the Committee. As always, we are seeking active and committed volunteers to assume leadership positions. Information about our subcommittee structure is available on the web site. Anyone interested in becoming more involved in particular subcommittees should contact the leaders of those subcommittees (who are listed on the website), especially as to interest in assuming leadership responsibilities.

Aside from leadership roles, we constantly seek and value input and feedback, as well as suggestions for topics, projects, publications, speakers and volunteers. For example, we have been approached by Professors Miller and Henning, who have proposed that the Section commence publication of an annual set of materials on advanced commercial law topics. The professors would edit the publications, but are seeking volunteers from our Committee and/or the UCC Committee to make the project work. If you have comments about, or an interest in being a part of, this proposed project or other projects, please let me know. Our Surveys of State Law Subcommittee is designed to take on appropriate new projects, and is also seeking new leadership volunteers. Recent changes in Business Law Section policy Counsel of the Business Law Section require that leadership positions ordinarily be limited to three-year terms (prospectively - I was grandfathered into a four-year term!) so as to facilitate the involvement of more members. I would encourage you to seize the day and become more involved.

For those of you who are not currently active members, I hope this report will give you a least a hint of why you might wish to become more active. I can’t oversell the benefits of active membership.

CFS Securitization and Derivatives Subcommittee

The Securitization and Derivative Subcommittee continues to grow—we should reach 125 by the annual meeting in August.

At the Subcommittee’s last meeting, during the ABA’s spring meeting in Seattle, Lynn Soukup, Dennis Connolly, Kit Weitnauer and Mark Duedall of Alston & Bird, who represented the court-appointed examiner in the Enron cases, provided the Subcommittee with valuable insights on the use of derivatives, best practices in true sale analysis and the application of substantive consolidation concepts in connection with structured transactions.

Following the Seattle meeting, members of the Subcommittee were involved in two significant ABA task forces. The first responded to FASB’s announced intention to revise FAS 140 to deny accounting sale treatment if securitized accounts receivable are subject to account debtors’ set-off rights. The second task force is in the process of preparing a detailed critique of the SEC’s proposal to significantly overhaul the registration, disclosure and reporting requirements for asset-backed securities under the Securities Act of 1933 and the Securities Exchange Act of 1934.

Our next meeting will take place at 9:00 a.m. on August 9th in conjunction with the ABA annual meeting in Atlanta. At 9:30 a.m., after taking care of the regular business of the Subcommittee, Bob Aicher of Sidley Austin Brown & Wood will review a number of important legal and practice issues concerning letters of credit, guarantees, insurance and swaps that are routinely used to credit enhance billions of dollars of publicly issued structured debt securities.

Members of the Commercial Financial Services and UCC Committees who have an interest in securitization and related derivatives products are invited to join the Subcommittee by emailing the Chair at martin.fingerhut@blakes.com. We look forward to seeing you in Atlanta.

Martin Fingerhut, Chair
Blake, Cassels & Graydon LLP
Toronto, ON
martin.fingerhut@blakes.com

Lawrence F. Flick, II, Vice-Chair
Blank Rome Comisky & McCauley LLP
Philadelphia, PA
flick@blankrome.com

For those of you who are passive members, I wish to reassure you that we (both the Committee and the Section) value your membership and are ever striving to find more and better ways to deliver value and benefits of membership to you.

I’m now almost 3 years into my grandfathered 4-year term as Chair of your Committee. I continue genuinely to value the privilege of chairing this great Committee and hope to do the best I can with the one year that remains in my term. Thanks for the opportunity to be your Chair and don’t hesitate to contact me (email preferred) with suggestions, ideas, criticism, praise, or any other relevant communications.

With Jeff’s passing, Chris Rockers, Vice Chair of the CFS Committee, has graciously agreed to step in and serve as Chair of the Committee. This appointment takes effect immediately and will run through the 2007 Annual Meeting.
CFS Intellectual Property Financing Subcommittee

We had an interesting session at the Spring Meeting in Seattle, covering two topics. First, Norm Page of Davis, Wright, Tremaine in Seattle discussed software vendors’ need for a device similar to the purchase money security interest - unavailable under Article 9. He advanced the theory that common law consignment might be used to obtain some of the benefits available to purchase money sellers of goods. A lively discussion followed.

Another lively discussion followed a summary of the recent 4th Circuit bankruptcy decision in Sunterra presented by Subcommittee Co-Chairs Tom Ward and Leianne Crittenden. Sunterra follows, and expands upon, the 9th Circuit decision in Catapult requiring licensor consent before a license can be assumed under section 365 of the Bankruptcy Code. And the beat goes on.

In Atlanta, we will discuss a peach of a question: “So how do you lease software, anyway?”, resulting from the recent CNB decision, holding that a lessor needs an interest in software in order to "lease" it. We expect this topic to generate a fair amount of differing opinions and look forward to hearing them!

Leianne Crittenden, Co-Chair
Oracle Corporation
Redwood Shores, CA
leianne.crittenden@oracle.com

Thomas M. Ward, Co-Chair
University of Maine School of Law
Portland, ME
tward@usm.maine.edu

CFS Cross-Border Secured Transactions Subcommittee

Our Subcommittee meeting at the BLS Spring Meeting in Seattle in April confirmed for all in attendance the value that can come out of participation. In addition to routine business and excellent updates on various international cases/legislation by Martin Fingerhut, Ed Smith and Sandra Rocks, there was a lively interchange concerning the recent bankruptcy of Royal World Cruises, Inc. in the Bankruptcy Court of Hawaii, legal implications of free trade zones and the possibility of the Subcommittee revisiting in a future seminar the topic of goods on the water.

The fascinating case of In re Royal World Cruises, Inc. and the complexities of multi-jurisdictional litigation involving mobile equipment acted as an unanticipated warm-up for our next meeting, which will be in the form of the Committee Forum on August 7th described below. In keeping with prior sessions, this will be a joint meeting with the International Commercial Law Subcommittee of the UCC Committee. Check the ABA program booklet for location.

We are extremely excited about hosting a Committee Forum at the ABA Annual Meeting in Atlanta, co-sponsored by the Uniform Commercial Code Committee’s Subcommittee on International Commercial Law and the International Litigation Committee of the Litigation Section. It is titled “Choice of Law/Forum in International Transactions: Whose Law Is It (Anyway)?” The concept of party autonomy in choosing the applicable law or court that will govern transaction disputes has expanded dramatically in recent years, from Conventions developed by UNICTRAL, UNIDROIT and The Hague, to the current debate in the U.S. over (and rejection by many states of) revised UCC Article 1-301. But just how likely is it that the agreement of the parties will be upheld? If you are attending the Annual Meeting, please join us and our distinguished panel on Saturday, August 7th at 2:30 as we try to address this complex, but timely, issue: William J. Woodward, Jr., Temple University; Jeffrey D. Kovar, Assistant Legal Adviser for PIL, Secretary of State; Graham Wedlake, Barlow Lyde and Gilbert (London); and Sandra Rocks, Cleary Gottlieb Steen & Hamilton.

Finally, the Subcommittee continues to work on the rollout of a much more informative and friendly website for our members. Current ideas include not only more timely notification to everyone of breaking issues and project updates, but a resource guide for secured transactions lawyers where we could post current written materials and provide a database of contacts within and outside the U.S. Anyone wishing information on, or who has an interest in assisting with, this project, should contact us at the locations below. Our current vice-chair, Jim Chadwick, will take over as chair after the next meeting. Anyone interested in assisting Jim as vice-chair should let us know.

Michael Carsella, Chair
ABN Amro
Chicago, IL
Michael.carsella@abnamro.com

James C. Chadwick, Vice-Chair
Patton Boggs, LLP
Dallas, TX
jchadwick@pattonboggs.com
CFS Loan Workouts Subcommittee

Professor Elizabeth Warren and Professor Jay Westbrook recently wrote: "More and more chapter 11 cases seem to be no more than vehicles through which secured parties may enjoy their Article 9 rights under the umbrella, and the protective shield, of the bankruptcy laws." ABI Journal, Spring 2003, Page 12. Harvey Miller of Greenhill & Co. recently observed that "Chapter 11 is being converted into a 363 sale process..." 10th Annual Conference on Distressed Investing. These are certainly correct observations -- many of the recent filings are simply a means for secured creditors to liquidate collateral, leaving avoidance actions for the unsecureds and nothing to reorganize -- which leads to the question of whether that result is good or bad. Many practitioners do not think it is an abuse of the bankruptcy process so long as administrative expenses are paid. But others disagree. Professors Warren and Westbrook have suggested that we have created an SPIP (secured-party-in-possession).

At the Spring meeting in Seattle, our esteemed panel (Kimberly Winick of Mayer, Brown, Rowe & Maw LLP, Larry Peitzman of Peitzman, Glassman, Weg & Kempinsky LLP, and Caroline Galanty of Bank of America) led an interactive discussion on this topic. Many issues flowed during the presentation, such as whether a Section 363 sale of all the assets for the sole benefit of the secured creditor should be allowed (or must some money be freed up for unsecureds), should the secured creditor have to guarantee administrative solvency to use the bankruptcy court to liquidate assets, can a carveout in such cases be limited to debtor's counsel and not committee counsel, how broad should first day orders be in such cases, and what happens in an underwater liquidating chapter 11 to involuntary post petition creditors (utilities) with no Section 506(c) claim.

Thanks to the panel for a great presentation. Our next meeting will be at the 2004 Section of Business Law Spring Meeting in Nashville.

Peter S. Clark II, Chair
Reed Smith LLP
Philadelphia, PA
pclark@reedsmith.com

CFS Creditors’ Rights Subcommittee

The Creditors’ Rights Subcommittee met jointly with the Bankruptcy Litigation Subcommittee at the Spring Meeting of the Business Law Section in Seattle on April 1, 2004. A full room of attendees heard Chief Judge Philip Brandt of Tacoma and Seattle describe the intricacies of practice and procedure before the Ninth Circuit Bankruptcy Appellate Panel, the busiest of all such tribunals. Bankruptcy Judge Rodney May of Tampa, Florida led an enlightening discussion of the application of the Daubert principles to expert testimony in bankruptcy litigation. Finally, Albert Manwaring of Wilmington, Delaware narrated the important steps in the sale of intellectual property in the Napster bankruptcy case.

The Business Law meetings provided over 900 pages of materials that were delivered on a CD-ROM, rather than the bulky printed hand-outs usually gathered at the meetings. These materials, including those from our meetings, are available for Business Section members at no charge at the 2004 Spring Meeting Materials section of the Business Law Section’s website.

Our next meeting will be during the ABA Annual Meeting in Atlanta, Georgia on August 7, 2004. If you would like to join our subcommittee or participate by presenting materials, simply email the Chair, Duane Geck, at dmg@severson.com, or the Vice Chair, Carolyn Richter, at carolyn.richter@troutmansanders.com.

Duane M. Geck, Chair
Severson & Werson
San Francisco, CA
DMG@Severson.com

Carolyn P. Richter, Vice-Chair
Troutman Sanders, LLP
Atlanta, GA
carolyn.richter@troutmansanders.com
## COMMERCIAL FINANCIAL SERVICES COMMITTEE
### ANNUAL MEETING SCHEDULE

**Location:** Atlanta, Georgia

**Dates:** August 6-9, 2004

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<th>Subcommittee</th>
<th>Leadership</th>
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<td><strong>Friday, August 6, 2004</strong></td>
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<td>Maritime Financing</td>
<td>David M. Williams, Chair</td>
<td>12:00 p.m. to 1:00 p.m.</td>
<td>Atlanta Hilton Fulton Room, 2nd Floor</td>
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<td>Aircraft Financing (1)</td>
<td>James D. Tussing, Chair</td>
<td>2:00 p.m. to 5:30 p.m.</td>
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<td><strong>Saturday, August 7, 2004</strong></td>
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<td>Joint Task Force: Deposit Account Control Agreements</td>
<td>Ed Smith, Co-Chair Roberta Torian, Co-Chair Marshall Grodner, Co-Chair Marvin Heileson, Co-Chair John Pickering, Vice Chair</td>
<td>8:30 a.m. to 10:00 a.m.</td>
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<td>Aircraft Financing (2)</td>
<td>James D. Tussing, Chair</td>
<td>9:00 a.m. to 12:30 p.m.</td>
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<td>Loan Documentation</td>
<td>R. Marshall Grodner, Chair</td>
<td>10:00 a.m. to 11:30 a.m.</td>
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<td>Joint Meeting: Creditor's Rights and Business and Corporate Litigation Subcommittees</td>
<td>Duane M. Geck, Chair Philip S. Warden, Co-Chair William Knight Zewadski, Co-Chair</td>
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<td>Joint Committee Forum: International Transactions: Whose Law Is It (Anyway)?</td>
<td>Sandra M. Rocks, Co-Chair Michael B. Carsella, Co-Chair</td>
<td>2:30 p.m. to 4:00 p.m.</td>
<td>Atlanta Hilton Grand Ballroom B, 2nd Floor</td>
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<td>CFS Committee Chairs and Vice Chairs</td>
<td>Jeffrey S. Turner, Chair Christopher J. Rockers, Vice Chair</td>
<td>4:00 p.m. to 5:00 p.m.</td>
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<td>Joint Dinner: UCC and Commercial Financial Services Committees</td>
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<td>7:30 p.m. Cocktails (cash bar) 8:30 p.m. Dinner (with wine service)</td>
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<td><strong>Sunday, August 8, 2004</strong></td>
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<td>Joint Meeting: Secured Transactions and Secured Lending Subcommittees</td>
<td>Peter H. Carson, Chair Leianne S. Crittenden, Vice Chair Malcolm C. Lindquist, Chair Lynn A. Soukup, Vice Chair</td>
<td>9:00 a.m. to 10:30 a.m.</td>
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<td>Intellectual Property</td>
<td>Leianne S. Crittenden, Co-Chair Thomas M. Ward, Co-Chair</td>
<td>11:00 a.m. to 12:30 p.m.</td>
<td>Atlanta Hilton Grand Salon B, 2nd Floor</td>
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<td>Program: Commercial Finance Legal Opinions - What You Want and What You Get</td>
<td>R. Marshall Grodner, Chair</td>
<td>2:30 p.m. to 4:30 p.m.</td>
<td>Atlanta Hilton Crystal Ballrooms A and B, 1st Floor</td>
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<td><strong>Monday, August 9, 2004</strong></td>
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<td>Securitization and Derivatives</td>
<td>Martin Fingerhut, Chair Jamie Clark, Co-Chair</td>
<td>9:00 a.m. to 10:30 a.m.</td>
<td>Atlanta Hilton Roosevelt Room, 3rd Floor</td>
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## UNIFORM STATE LAWS SCORECARD

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

As of July 15, 2004

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<td>No Action</td>
<td>REVISE '97</td>
<td>Enacted '04</td>
</tr>
<tr>
<td>Washington</td>
<td>No Action</td>
<td>Enacted '93</td>
<td>No Action</td>
<td>REPEAL '93</td>
<td>No Action</td>
</tr>
<tr>
<td>West Virginia</td>
<td>Not Enacted</td>
<td>Enacted '96</td>
<td>No Action</td>
<td>REPEAL '92</td>
<td>No Action</td>
</tr>
<tr>
<td>Wisconsin</td>
<td>No Action</td>
<td>Enacted '92</td>
<td>No Action</td>
<td>Not Enacted</td>
<td>No Action</td>
</tr>
<tr>
<td>Wyoming</td>
<td>No Action</td>
<td>Enacted '91</td>
<td>No Action</td>
<td>REPEAL '91</td>
<td>No Action</td>
</tr>
</tbody>
</table>

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 ("NCCUSL") for their help in compiling the information above. These revisions are based on information provided by NCCUSL available as of **July 6, 2004**.

1. In addition to enactments noted below, all states have adopted the (i) the 1995 Official Text of Article 5 of the UCC, other than Puerto Rico (no action) and Wisconsin (no action); (ii) the 1994 Official Text of Article 8 of the UCC; and (iii) the 1998 Official Text of Article 9 of the UCC other than Puerto Rico (no action).

2. New York and South Carolina are the only states that still have the 1951 version of Articles 3 & 4.

3. In addition to the enactments noted, Puerto Rico has only adopted the following Articles: the 1995 version of Article 1, Article 4A, the 1978 version of Article 8, the original versions of Article 5 and Article 7, and the 1972 version of Article 9.
UCC Scorecard - Revisions

ARTICLE 1 – GENERAL PROVISIONS
Final Version: December, 2001
Status: Adopted by seven states and the Virgin Islands.
UCC Committee Contact:
David Snyder (216) 687-2319
Margaret Moses (312) 915-6430

ARTICLE 2 – SALES
Final Version: November 2003
Status: Approved at NCCUSL annual meeting 2002 and at ALI annual meeting in 2003.
UCC Committee Contact:
Rob Beattie (612) 607-7000

ARTICLE 2A – LEASES
Final Version: November 2003
Status: Approved at NCCUSL annual meeting 2002 and at ALI annual meeting in 2003.
UCC Committee Contact:
Ed Huddleson (202) 543-2233

ARTICLE 3 – NEGOTIABLE INSTRUMENTS
Final Version: November, 2002
Status: Adopted in one state and pending in several others.
UCC Committee Contact:
Stephanie Heller (212) 720-8198
Paul Turner (310) 472-5802

ARTICLE 4 – BANK DEPOSITS AND COLLECTIONS
Final Version: November, 2002
Status: Adopted in one state and pending in several others.
UCC Committee Contact:
Stephanie Heller (212) 720-8198
Paul Turner (310) 472-5802

ARTICLE 7 – DOCUMENTS OF TITLE
Final Version: October 2003
Status: Adopted by eight states.
UCC Committee Contact:
William Towle (406) 721-0720.

ARTICLE 9 – SECURED TRANSACTIONS
Latest Amendments December, 2001
Status: Adopted by all 50 states, D.C. and the Virgin Islands.
UCC Committee Contact:
Steve Weise (213) 244-7831
Peter Carson (415) 693-2000

UNIFORM ELECTRONIC TRANSACTIONS ACT
Final Version: 1999
Status: Adopted by 46 states, D.C. and the Virgin Islands.
UCC Committee Contact:
Rob Beattie (612) 607-7000
Ben Beard (208) 885-6747

UNIFORM COMPUTER INFORMATION TRANSACTIONS ACT
Status: Adopted by 2 states.
UCC Committee Contact:
Mary Jo Howard Dively (412) 392-2136

UNIFORM CONSUMER LEASES ACT
Final Version: May, 2001
Status: Adopted in one state.
UCC Committee Contact:
Michelle Hughes (757) 499-8800
EDITORS’ ABA WEBSITE BASIC NAVIGATION GUIDE
(For Our Print Readers)

NOTE: We appreciate the patience of our more technologically advanced readers, who will want to skip this section entirely.

The website for the ABA Business Law Section at http://www.abanet.org/buslaw/home.shtml has recently been revamped. If you read this newsletter on-line, you will notice that several articles include red hyperlinks to take you directly to a specified web location. If you read a printed copy, though, the hyperlinks are no help. The alphanumeric hyperlink addresses are so long that they create new opportunities for printing errors (and, in the opinions of some, mar the aesthetic purity of the printed page), and we decided not to include them unless necessary. Instead, to help you find the materials cited in this newsletter, we are providing this general guide for navigating the home pages for the UCC Committee, the CFS Committee, their respective subcommittees, task forces and working groups and the related materials:

• **Step 1:** Go to the ABA website at www.abanet.org/home.cfm. (Make sure you know your ABA member number and enter it as indicated.)

• **Step 2:** Under “Lawyer Resources” in the blue box at the left, point the cursor to “Member Groups” and select “Sections” from the pull-down menu. This takes you to the list of ABA Sections, where you can select the Business Law Section and go to its home page.

• **Step 3:** On the Business Law Section’s home page, select “Committees” in the blue box at the left. This takes you to the Business Law Section’s Committee Directory page.

• **Step 4:** Click on “C” for the CFS Committee or “U” for the UCC Committee, or scroll down the page until you find the right Committee. Then double-click on the Committee’s name, and you will go to the Committee’s home page.

• **Step 5:** Under the heading “Information” directly beneath the Committee’s name, there are several hyperlinks, including one for the Commercial Law Newsletter and one for “Materials.” Click on Materials, for instance, to find the OCC’s statement on UCC preemption.

Each Committee’s home page lists its subcommittees, task forces, working groups, etc. Under each Subcommittee’s name, there are hyperlinks you can click to join the Subcommittee, find its leadership, sign on to its listserv, etc.

*We hope this helps!*
SELECTED ABA BUSINESS LAW SECTION PUBLICATIONS

The Portable UCC, Fourth Edition, Edited by Corinne Cooper
This is the miniature UCC, with the complete Official Text but not the comments. The new Fourth Edition contains the complete text of the 2003 UCC, including the official revisions made since 2000 (when the 3d edition was published) to Articles 1, 3, 4, and 7. Best of all, it has an comprehensive and easy to use subject index, completely updated to incorporate new terms from the revised articles. ($39.95 for 1-9 copies; $35.95 for 10-25 copies; $10.00 discount if you order by August 13, 2004. Product Code: 5070433.)

Hereof, Thereof, Everywhereof. A Contrarian Guide to Legal Drafting, by Howard Darmstadter
This is no ordinary, dry-as-dust legal writing manual. Howard Darmstadter, award-winning columnist for Business Law Today, offers a lively collection of his own musings, suggestions, anecdotes, and witticisms that will entertain you as it teaches you how to modernize your legal documents. This guide covers basic legal drafting rules, specific types of legal documents, the use of boilerplate, examples, and mathematical formulas for clarification, and suggestions on format choices that can enhance document readability ($39.95. Product Code 5070393.)

Forms Under Revised Article 9, by the Uniform Commercial Code Committee, ABA Section of Business Law.
This handy book collects forms prepared by UCC Committee experts, and includes electronic versions on CD-ROM. Special features include a summary of revised Article 9 terms, incisive commentary, extensive annotation with UCC citations, comparisons with prior law, discussions of “best practices, and a thumb-tab index. ($54.95 for BLS members; $69.95 for others. Product Code 5070394.)

The New Article 9, 2nd Ed., edited by Corinne Cooper; Steven O. Weise and Edwin E. Smith, contributing authors.
This handy guide contains the full text of Revised UCC Article 9 and the Official Comments, along with the complete text of current Article 9 (1995). It also includes a plain-English overview, checklists, comparison charts, detailed transition analysis, and a comprehensive index, with particular attention to new terms and new rules.

The ABCs of the UCC, Series edited by Amelia Boss
These primers on the UCC articles are written for both practitioners and students. Each book avoids footnotes and convoluted discussions and explains just the basic UCC concepts and operation of the Code, in a simple, straightforward style.

- Article 1: General Provisions (Revised), by Fred H. Miller and Kimberly J. Cilke
- Article 2: Sales (Revised), by Linda J. Rusch and Henry D. Gabriel
- Article 2A: Leases, by Amelia H. Boss and Stephen T. Whelan
- Article 3: Negotiable Instruments and Article 4: Bank Deposits And Collections, by Stephen C. Veltri
- Article 4A: Funds Transfers, by Thomas C. Baxter, Jr. and Stephanie A. Heller
- Article 5: Letters Of Credit, by James G. Barnes, James E. Byrne and Amelia H. Boss
- Article 8: Investment Securities, by Sandra M. Rocks and Carl S. Bjerre
- Article 9: Secured Transactions, by Russell A. Hakes
- Related and Supplementary Consumer Law, by Fred H. Miller and Cindy Hastie
- Resolved Insolvency Law, by Fred H. Miller and Alvin C. Harrell

The Default Provisions of Revised Article 9, by Timothy Zinnecker.


To order, call the ABA Service Center at 1-800-285-2221 or visit the Publications page on the Business Law Section’s website