Financing the Construction of a Vessel - What You Should Know About Those Creditors of the Shipyard

By James D. Prendergast *
General Counsel
UCC Division The First American Corporation

It is one thing to finance the acquisition of an existing vessel, under full sail on the high seas, and, most importantly, documented with the United States Coast Guard. One can go on board, kick the tires, and search the public records to find out who may have an interest in the vessel. Additionally, if the buyer is financing the acquisition of the vessel, the lender can record a preferred ship mortgage. Depending on the status of existing encumbrances, the buyer can acquire a perfected lien on the vessel subject only to certain maritime and similar liens.

That is all great news to the buyer of an existing vessel under applicable law. The vessel is completed, secured creditors under Article 9 of the Uniform Commercial Code (“UCC”) can be cut off through the use of a Preferred Ship Mortgage, and the frequent problems with the financial condition of the constructing shipyard are avoided.

But what is a person to do who wants to build a custom vessel, whether commercial or pleasure? Now the buyer of the vessel is not buying a completed vessel, at least until the vessel floats and passes sea trials. Rather, for an extended period of time, depending on the size and complexity of the vessel-to-be, the buyer is providing financing to the shipyard to build the vessel. Now the buyer, here affectionately called the “financing buyer,” is faced with a new array of problems including the complexity of the Uniform Commercial Code and qualifying as a secured creditor.

Because a shipyard is in the business of selling ships, Section 9-320(a) would protect a buyer in ordinary course of business purchasing a completed vessel, but the shipyard is not in the business of selling the kinds of “stuff” that goes into building the vessel, and that “stuff” would be subject to a perfected security interest held by the shipyard’s lender. A security interest held by the buyer’s lender would attach to these goods when the goods are identified to the contract. Priority then depends on whether the goods are identified to the buyer’s contract before or after the shipyard has sufficient interest in the goods for its lender’s security interest to attach.

(Continued on page 16)
Message from the Chair:
Uniform Commercial Code

By Stephanie Heller
Federal Reserve Bank of New York
New York, New York

Well we are just weeks away from the 2005 Spring Meeting in Nashville and our first ever “Stump the Chumps” session. If you have somehow missed hearing about this great event, let me fill you in. Instead of holding our traditional full UCC Committee meeting at the Spring Meeting, we will devote the time to playing what I am sure will become one of your favorite UCC games – stump the chumps. As the title suggests, a panel of brave but perhaps somewhat foolhardy UCC experts will attempt to answer questions posed by the audience.

The panelists will be:
• Bill Henning, Professor at the University of Alabama School of Law and Executive Director of the National Conference of Commissioners on Uniform State Laws;
• Linda Rusch, Professor at Hamline University School of Law;
• Ed Smith, Partner at Bingham, McCutchen LLP;
• Steve Weise, shareholder at Heller Ehrman White & McAuliffe LLP; and our very own
• Stephen Sepinuck, Vice-Chair of the UCC Committee and Professor at Gonzaga University School of Law.

We are very excited about this event. But for this to be a success, we need your help. So whether your question originated on the ucc listserve, from your practice or from your own life experience, submit your questions now. Questions can be submitted in advance to me (Stephanie.heller@ny.frb.org), or you can come to the meeting with questions in hand. All questions will be entertained no matter how arcane! Who among us will “stump the chumps”?

Of course we will also present more traditional programming at the Spring Meeting. Our Committee Forum (which will immediately follow the Committee Meeting) is entitled “Arbitration and the Death of UCC Article 2” and, as described more fully below, will consider the effect of arbitration on Article 2 of the UCC.

Article 2 of the Uniform Commercial Code is often described as a “common law” Code, written in Karl Llewellyn’s “grand style,” and able to adapt, through judicial interpretation, to evolving commercial practice. Increasingly, however, commercial disputes are being resolved through mandatory binding arbitration. This panel will discuss whether the dominance of arbitration spells the death of contract law generally, and of Article 2 in particular.

Panelists:
• Charles Knapp, Joseph W. Cotchett Distinguished Professor of Law, University of California, Hastings College of Law
• Christopher Drahozal, Professor, University of Kansas School of Law

• Commentator: Professor Robert Rasmussen, Milton Underwood Chair in Law, FedEx Research Professor of Law, and Director, Joe C. Davis Law and Economics Program, Vanderbilt University.

We will also present two additional CLE programs:
“Pitfalls of Indemnification Clauses”

Indemnification clauses are sometimes drafted carelessly from form language, but small changes in words can have dramatic effects. These clauses emanate from insurance law and are closely related to the duty to defend and liability limitations. The panelists will examine various clauses used in commercial settings, especially technology-related contracts.

Moderator: Christina Kunz, Professor of Law, Wm. Mitchell College of Law.

Panelists:
• Paula Duggan Vraa, Attorney, Rider Bennett Egan & Arundel LLP
• Katheryn A. Andresen, Attorney, Bonnabeau, Salyers, Stite & Doe LLC
• Joseph P. Beckman, Legal Counsel, DR Contract Administration Group, LLC
• Daniel S. Kleinberger, Professor of Law, Wm. Mitchell College of Law.

(Continued on page 3)
“A Crash Course in Check 21 for Business Lawyers: Answering your bank, consumer and corporate client questions.”

Check 21 has been described in the press as anti-consumer, as a powerful attack on an important law enforcement tool, as an enemy of corporate check writers, and as necessitating immediate changes to check processing practices. But how much of this is hype and how much of this is reality? Come learn how Check 21 is designed to facilitate electronic processing of paper checks by creating a new form of paper negotiable instrument called a "substitute check" and how banks are dealing with it in reality. Also learn how this new law and this new negotiable instrument affects your rights and liabilities as a bank customer, whether consumer or corporate.

Panelists:
- Stephanie Heller, Counsel and Vice President, Federal Reserve Bank of New York
- Sarah Jane Hughes, Professor, Indiana University
- Ralph Joy, Senior Vice President, PNC Bank
- Karen Nash-Goetz, Vice President & Assoc. Legal Counsel, T. Rowe Price Associates, Inc.
- Linda Rusch, Professor, Hamline University School of Law.

The UCC Committee also will once again participate in the Institute for the New Business Lawyer. During the one-day Institute, the UCC Committee will present a basic UCC program entitled “UCC: Avoiding Common Pitfalls and Keeping Your Priorities Straight”. This year we plan to focus our attention on Articles 1, 2 and 9 of the UCC and examine issues such as good faith, various types of cover, reclamation and default under Article 9.

Finally I would be remiss if I did not mention our UCC Committee dinner which will be held jointly with the Commercial Financial Services Committee. The dinner will take place on Thursday March 31st at The Bound'ry, located in the Vanderbilt area, which is about a five minute cab ride from the hotel.

This year for the first time we plan on having a few tables reserved for new committee members and first time Spring Meeting attendees who would like to have dinner with Committee leadership and learn more about the work of the Committees and the ins and outs of the Spring Meeting. If you are a new member or a first time attendee and would like to sit at the reserved tables, please check the box on the registration form.

If you have not already done so, you can register on-line at: http://meetings.abanet.org/aba_timssnet/login/tnt_login.cfm?redirect_location=cfsucc.cfm

As always, I want to thank each of you for your continued commitment and involvement in the UCC Committee.

Sincerely,

[Signature]
Message from the Chair: Commercial Financial Services

By Christopher J. Rockers
Husch & Eppenberger, LLC
Kansas City, Missouri

It promises to be an exciting lineup of programs and meetings at the Spring Meeting of the Business Law Section in Nashville beginning March 31 through April 3, 2005. Commercial Financial Services and our Subcommittees are meeting at the Renaissance Hotel and the Convention Center and we encourage our members to join us. The opportunity to obtain cutting edge CLE and to network with commercial law practitioners and other lawyers from around the country is unparalleled. If you have never attended the Spring Meeting, now would be a great time to start. We have even designed programs and events targeted to first-time attendees.

Commercial Financial Services is providing four CLE opportunities at the Spring Meeting. On Friday morning April 1, 2005, Jerry Blanchard will chair a program titled "Zone of Insolvency: Lender Liability in the New Millennium". We will all look forward to Gerry and his expert panel's discussion of new age pitfalls and ways we can steer our clients around them. Lynn Soukup will chair our Committee Forum on Friday, April 1, 2005 from 3:00 to 5:00 P.M. and will lead a panel discussion titled "When Godzilla Meets Bambi: Securities Law Issues for Finance Lawyers." On Saturday morning, Steve Weise and Teresa Harmon will be joined by Nashville's own John Murdock to present "Commercial Law Developments".

On Thursday, March 31, 2005, the Section will once again present the New Lawyer Institute which includes a day-long series of programs tailored to business lawyers who are new to the practice. Commercial Financial Services will present, for the second time, a program titled "Understanding and Documenting Commercial Loan Transactions – A Beginner's Guide". If you are looking for a basics course describing how commercial loan transactions are structured, documented, negotiated and closed, this is the program for you.

It has become tradition that Commercial Financial Services, along with the UCC Committee host a joint dinner for our members at the Spring and Annual Meetings. This year the dinner will be held, thanks to the fine investigative work of Kathi Allen, at the Boundry Restaurant in the mid-town Vanderbilt area. The restaurant specializes in "New Southern Cuisine". We will host the dinner on Thursday evening beginning at 8:00 P.M. following the Section's Welcome Reception. This year we will be reserving a few tables for new committee members and first time Spring Meeting attendees who would like to sit with our Committee leadership. You should have received an e-mail with additional detail on the dinner and a registration form. If you did not receive that e-mail, you may register online at the following link: http://meetings.abanet.org/aba_timssnet/login/tnt_login.cfm?redirect_location=cfsucc.cfm

The Committee is very proud of the January-February issue of Business Law Today. That issue included a "mini-theme" on Commercial Finance and members of our Committee published eight articles in that edition. These articles covered a wide range of commercial finance topics. I would like to thank the authors for all of the hard work that goes into writing articles of the caliber published in BLT. I encourage you to get a copy if you have not yet seen the current issue of BLT.

This year the Annual Meeting will be held in Chicago, Illinois from August 5 -9, 2005. If you would like to suggest a topic for a Subcommittee meeting or program at that meeting or if you would like to take an active role in the Committee or any subcommittee, please call or e-mail.

Best regards.
Committee Report:

Commercial Financial Services

Fall 2004 Meeting

The Commercial Financial Services Committee held its Fall 2004 Meeting in conjunction with the Commercial Finance Association Convention. At the Committee’s Fall Meeting, the focus was on a variety of risks affecting secured lenders. Lynn A. Soukup, Alston & Bird LLP, James D. Prendergast, The First American Corporation, and Norman M. Powell, Morris, James, Hitchens & Williams LLP, began with “Mighty Morphin Collateral: Planning for Changes in Character of Collateral,” on the many ways in which the nature of collateral can change and practical steps a lender can take to protect its interests. The discussion ranged from changes that have long been recognized and planned for in secured loan transactions (such as an account becoming an instrument) to those now coming into focus (the effect of state merger, conversion and other laws on securities held as collateral and the effect of opting into or out of Article 8 on an outstanding LLC or partnership interest). Edwin E. Smith, Bingham McCutchen LLP, Gary Samson, Jenkens & Gilchrist LLP, and James D. Prendergast, The First American Corporation, continued the theme of changes with “Avoiding Double Trouble and Other Issues of Transfers of Collateral, Mergers and New Debtors.” Ed, Gary and Jim considered many of the complex provisions of Article 9 concerning debtor change of name, intrastate and multijurisdictional transfers of collateral to a new debtor, and double debtor issues, reincorporation and other changes of debtor identity. Rounding out the day was more trouble – Jennifer Hagle, Sidley Austin Brown & Wood, LLP, and Christopher J. Rockers, Husch & Eppenberger, LLC, presented “Tranche B or Not Tranche B – That is the Question”: Evaluating the Risk Factors in Second Lien Financings. Chris and Jennifer discussed trends in the exploding area of second lien financings and relevant issues in evaluating, structuring and negotiating second lien financings and intercreditor issues, including what is currently considered “market” in these difficult and often contentious intercreditor agreement battles. The materials from the Committee’s Fall Meeting are available at http://www.abanet.org/buslaw/library/fall04.shtml.

2005 Spring Meeting CFS Committee Forum

On Friday April 1 from 3:00 to 5:00 please join the CFS Committee Forum, “When Godzilla Meets Bambi: Securities Law Issues for Finance Lawyers.” Federal securities laws affect the lender/borrower relationship and the lender’s right to deal with its collateral (if the collateral is a security). Karl A. Groskaufmanis, Fried, Frank, Harris, Shriver & Jacobson LLP, Scott Holz, Legal Division, Board of Governors of the Federal Reserve System, Mary Anne O’Connell, Husch & Eppenberger, LLC and Lynn A. Soukup, Alston & Bird LLP will address how securities law issues impact transaction planning, loan documentation, defaults and remedies, as well as intersections between the securities laws and UCC Articles 8 and 9. Securities law issues affecting the lender/borrower relationship, margin regulations, securities law issues facing a lender with “inside information” that wants to trade in securities (including forced sales) and securities law issues affecting sale of securities as collateral are some of the areas to be discussed.
In January, 2004, the Conference Executive Committee of the National Conference of Commissioners on Uniform State Laws (“NCCUSL”) appointed a drafting committee (“the Committee”) to draft proposed amendments to the Uniform Foreign Money Judgments Recognition Act (“UFMJRA”). The scope of the project was described as limited to “those issues necessary to correct problems created by the current Act and its interpretation by the Courts.”

A thorough discussion of UFMJRA, including its history, case law and problems which have arisen under the current version of the legislation, can be found in the April 4, 2004 Study Report (“Study Report”) posted on the NCCUSL website, www.NCCUSL.org, go to “Drafting Committees” “Foreign Judgments.”

Problems with the current UFMJRA mentioned in the Study Report include, among others:
- confusion regarding the definitions a “foreign state” and a “foreign judgment;”
- ambiguity in language resulting in uncertainty as to the legal standard for recognition and enforcement of foreign country money judgments;
- absence of rules governing procedures for recognition and enforcement;
- absence of a burden of proof;
- lack of a provision for refusing recognition of a foreign country money judgment in proceedings where there has been a denial of fundamental fairness;
- uncertainty and confusion as to relationship with and availability of enforcement procedures under the Uniform Enforcement of Foreign Judgments Act (which applies to sister state judgments);
- lack of a statute of limitations.

Proposed Amendments

The Committee met in April 2004 and October 2004. The most recent (November 2004) draft (“Interim Draft”), the product of those two meetings, can be viewed at the NCCUSL website, www.NCCUSL.org. The Interim Draft incorporates amendments intended to resolve the problems cited in the Study Report.

Reciprocity

An exception to recognition of a foreign country money judgment not found in the current version of the UFMJRA is any requirement that it be established that the courts of the foreign country whose judgment is sought to be enforced here would recognize and enforce a comparable judgment of the forum state.

As set forth on page 6 of the Interim Draft, the Committee is currently considering whether the UFMJRA should contain a reciprocity requirement, either as a mandatory or discretionary ground for denial of recognition of a foreign country judgment. Although neither the Interim Draft, nor the current UFMJRA contain a reciprocity provision, 8 states have non-uniform amendments to the JFMJRA providing grounds for non-recognition where reciprocity is lacking.

In order to facilitate comment on the advisability of including a reciprocity provision in the Uniform Foreign Money Judgments Recognition Act, the reciprocity provision found in Section 7 of the American Law Institute (“ALI”) International Jurisdiction and Judgments Project is set out in the Interim Draft as an example of what such a provision would entail, and the new issues that a reciprocity requirement would raise. While the Committee has taken no position as to the advisability of including a reciprocity provision, it believes this is an important issue and seeks as much comment as possible.

The next meeting of the Committee is March 4th through 6th, 2005. Thereafter, the amendments will likely receive a first reading at the Annual Conference of the Commissioners in July, 2005.

* As official ABA Adviser to the Committee, I am tasked with providing this report on the status of the amendments to the ABA, and seeking comments from interested parties in the ABA. The Committee requests all interested parties in the ABA to review the Interim Draft, and solicits and welcomes comments and criticism. Questions or comments for the Committee may be forwarded to EB@jordenusa.com.
UCC Subcommittee on Sale of Goods

The UCC Subcommittee on Sale of Goods will meet on Friday, April 1, 2005 at 10:00-11:00 a.m. at the Business Law Section Spring Meeting in Nashville, with a panel presentation on Recent Developments in Sale of Goods Law. The panelists are Keith A. Rowley, from the William S. Boyd School of Law at the University of Nevada Las Vegas, Neil B. Cohen, the Jeffrey D. Forchelli Professor of Law at Brooklyn Law School, and Gregory M. Duhl, Visiting Assistant Professor of Law at Southern Illinois University School of Law. The discussion will cover topics of current interest including (1) the adoption and prospects for additional adoptions of one or more of the 2003 amendments to Article 2 this year, (2) the effect that such adoptions of Revised Article 1 may have on transactions and disputes governed by unamended Article 2, (3) sorting out governing law issues with the UCC in flux and the degree of uniformity declining, (4) recent cases of note, and (5) the new edition of the UNIDROIT Principles and their import.

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UCC Subcommittee on Leasing

The Committee on Leasing will hear a presentation and discussion on aircraft leasing, at the ABA Spring meeting in Nashville. The session will be held on Thursday, March 31, 2005 at 11 am to 12 noon, in The Country Room (4th floor) of the Renaissance Nashville Hotel. Our speaker will be Robert (Bo) Strauss, a partner with Troutman Sanders in Atlanta. Mr. Strauss is one of the nation’s leading lawyers on commercial aircraft leasing.

The Committee also will hear a brief report about the status of state legislative activity on the revisions to the Terrible 2s (UCC Article 2-sales and UCC Article 2A-leases). Together with Edward A. Gross of the Ober Kaler firm in Baltimore, your two co-chairs recently gave a nationally broadcast talk on “Equipment Leasing under Revised UCC 2A-Leases.” The written materials and voice recording of that program are available on request.

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UCC Subcommittee on Investment Securities

The Investment Securities Subcommittee has a full agenda for its meeting at the ABA Section of Business Law Spring Meeting in Nashville, Tennessee. Our meeting will take place on March 31, 2005 from 10:00 A.M. to 11:00 A.M. at the Renaissance Hotel, Country Room, 4th Floor. Caird Forbes-Cockell and Caroline Stratton of Linklaters have kindly agreed to give a presentation titled “Got Financial Collateral” which will cover recently promulgated English rules relating to financial collateral arrangements for securities accounts, securities and cash. We are also fortunate to have Lynn A. Soukup of Alston & Bird give a presentation titled “Securities Accounts and Deposit Accounts as Collateral: Twin Sons of Different Mothers,” which will analyze, compare and contrast the various UCC provisions relating to securities accounts and deposit accounts.

Penelope Christophorou, Chair
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**UCC Subcommittee on Payments**

What’s wrong with the law of bank deposits? You would be surprised! Learn about it when the Subcommittee on Payments of the Uniform Commercial Code Committee and the Subcommittee on Payments and Electronic Bank of the Banking Law Committee discuss this question at a joint meeting on April 2, 2005, from 1:30 to 3:00, in the Rock and Roll Room of Renaissance Hotel in Nashville, Tennessee.

The Subcommittees will hear from a distinguished panel of scholars and practitioners. The panel will consider whether a law reform effort should be undertaken to make this body of law more uniform and predictable.

The case for law reform will be made by Joe Sommer, Counsel and Assistant Vice-President of the Federal Reserve Bank of New York. Linda Rusch, of Hamline University School of Law, Neil Cohen of Brooklyn Law School, and Carter Klein of Jenner and Block will comment on the proposal. The panelists are experts on the law of bank deposits and veterans of past law reform efforts.

The Subcommittees invite everyone interested in the law of bank deposits to attend what should be a challenging and informative discussion.

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**UCC Subcommittee on General Provisions and Relation to Other Law**

At the Spring Meeting in Nashville, on Saturday, April 2 at 12:30, the Subcommittee on General Provisions and Relation to Other Law (we are still searching for a short and catchy Subcommittee name) will meet immediately following the Program, “A Crash Course in Check 21 for Business Lawyers: Answering Your Bank, Consumer And Corporate Client Questions.” We will be joined by the panelists from the Program for an hour of extended Q&A on Check 21. This will be a great opportunity to follow up on this timely and important Program. We look forward to seeing you there.

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**UCC Subcommittee on Letters of Credit**

At its meeting in Nashville, the Subcommittee will hear reports on the Annual Letter of Credit Survey and the UNCITRAL Convention on Standby Letters of Credit and Independent Bank Guarantees. We will also discuss recent case-law developments and hear from the Task Force on Annotated Model Form of Supersedeas Letter of Credit.

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The Secured Transaction Subcommittee of the UCC Committee and the Secured Lending Subcommittee of the Commercial Financial Committee meet jointly twice a year, once at the spring meeting of the Business Law Section and later each year in connection with the ABA annual meeting. At last year’s annual meeting held in Atlanta, attendees of the joint meeting were treated to a smorgasbord of tasty secured lending topics. Robert (Bo) Strauss of the Atlanta office of Troutman Sanders LLP and Malcolm Lindquist of the Seattle office of Lane Powell PC gave a presentation entitled “True Lease versus Security Interest: A Distinction With A Real Difference To You And Your Client.” Norman M. Powell of the Wilmington, Delaware office of Morris James Hitchins & Williams LLP then gave insight into Series LLC’s under the Delaware Limited Liability Company Act. The program concluded with Edgar Snow of the Atlanta office of Burr and Forman LLP and Lynn Soukup of the Washington, D.C. office of Alston & Bird LLP speaking on True Sales, Setoffs and Legal Isolation.

The Secured Transactions and Secured Lending Subcommittee will again meet jointly at the upcoming spring meeting of the ABA Business Law Section in Nashville. The meeting will be held the morning of April 2, 2005 from 9:00 am until 10:30 am in the east ballroom located on the first floor of the Renaissance Hotel. The meeting will kick off with a report by Ed Smith of the Boston office of Bingham McCutchen LLP on the work in progress of the ABA Joint Task Force on Deposit Account Control Agreements. Next to air will be an episode from the hit series, “Wheel of Misfortune.” This spin on a popular game show will challenge a panel of three experts with questions on a variety of topics of interest to commercial finance lawyers. The contestants will be Martin Fingerhut with the Toronto firm of Blake Cassels & Graydon LLP, Meredith Jackson with the Los Angeles office of Irell & Manella, LLP and Lynn Soukup of the Washington, D.C. office of Alston & Bird LLP. The game show host will be Malcolm Lindquist of the Seattle office of Lane Powell PC. The role of letter turner and game show official will be played by Jim Prendergast, Vice President and Senior Counsel to the UCC Division of First American Title Corporation. The first episode in the “Wheel of Misfortune” mini-series was screened at the Commercial Finance Association Annual Convention held last November, where it was presented and received with great enthusiasm.

This last year saw changes in the leadership of both the CFS Secured Lending Subcommittee and the UCC Secured Transaction Subcommittee. Following the annual meeting, Lynn Soukup resigned her commission as Vice-Chair of the Secured Lending Subcommittee to take on the responsibilities of Vice-Chair of the Commercial Financial Services Committee. The void left by Lynn’s departure has been filled by the ever-energetic Katherine Allen of the Nashville office of Stites and Harbison PLLC. Kathi, who also serves as the co-editor of this Commercial Law Newsletter, has already been of invaluable service to our group by acting as ground zero coordinator for the CFS/UCC Joint Committee Dinner to be held at the Bound’ry Restaurant in Nashville on the evening of Thursday, March 31st.

Our last meeting marked the end of the tenure of Peter Carson of Bingham McCutchen LLP acting as Chair of the UCC Secured Transactions Subcommittee, and we thank him for his leadership, energy and generosity in coordinating and giving presentations over the last years. The CFS Secured Lending/UCC Secured Transactions joint meeting in Nashville this spring will also mark the beginning of Pauline Stevens’ tenure as Vice-Chair of the UCC Secured Transactions Subcommittee. Pauline, who is a commercial law partner with the Los Angeles office of Morrison and Foerster LLP, will fill the vacancy left by Leianne Crittenden’s ascension to the position of chair of the Subcommittee. Pauline comes to the Subcommittee with a strong background in committee work, and previously served as co-chair of the State Bar of California’s UCC Committee.

Supported by strong leadership and ever increasing membership, the future of our Subcommittees remains bright. We look forward to seeing you in Nashville.

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At the Annual Meeting in Atlanta, our Subcommittee jointly hosted a Committee Forum titled “Choice of Law/Forum in International Transactions: Whose Law Is It (Anyway)?” The Committee Forum covered the autonomy of parties to choose what law/forum governs their agreements, from UCC Revised Article 1-301 to the UNCITRAL Convention on Accounts Receivable to UNIDROIT Conventions on Mobile Equipment and Securities to the Hague Convention on Exclusive Choice of Court Agreements. A distinguished panel of experts from the US and Europe - Michael B. Carsella of LaSalle Business Credit, LLC, Sandra M. Rocks of Cleary, Gottlieb, Steen & Hamilton, Jeffrey D. Kovar of the U.S. State Department, William J. Woodward, Jr. of Temple University and Graham Wedlake of Barlow Lyde & Gilbert - explained what these provisions are and how (and courts interpreting them) affect our everyday practice. The Committee Forum was well attended and everyone seemed pleased with the coverage of this hotly debated topic.

Our Subcommittee last met at the 2004 Spring Meeting, at a joint Subcommittee meeting with the UCC Subcommittee on International Commercial Law. Sandra Rocks of Cleary, Gottlieb, Steen & Hamilton provided an update on European developments relating to investment property collateral. Martin Fingerhut of Blake, Cassels & Graydon LLP provided an update on the Avianca bankruptcy litigation, which involved a challenge to the "true sale" nature of an airline ticket receivables securitization. Jim Chadwick of Patton Boggs LLP provided an update on the Royal World Cruises bankruptcy, which included a discussion of the differing secured creditor enforcement methods and uncertainties in about two dozen countries throughout the world.

Our next meeting will take place on Friday, April 1, 2005, 9:00-10:30 a.m., at the Spring Meeting in Nashville. The meeting will be a joint meeting with the UCC Subcommittee on International Commercial Law, and will focus on recent legislative and caselaw developments relating to cross-border secured transactions and will feature a “sneak preview” of the 2004 annual survey of international commercial law developments. We would also like to take this opportunity to welcome the Vice-Chair of the Subcommittee, Joseph Turitz of CapitalSource Finance LLP in Chevy Chase, Maryland. Joe is General Counsel - Corporate Finance Group at CapitalSource and can be reached at (301) 841-2744 and jturitz@capitalsource.com

Members of the Commercial Financial Services and UCC Committees who have an interest in cross-border secured transactions and related areas are invited to join the Subcommittee by emailing the Chair at jchadwick@pattonboggs.com. We look forward to seeing you in Nashville.

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This Newsletter is jointly published three times a year 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, Stites & Harbison, PLLC, 424 Church Street, Suite 1800, Nashville, Tennessee 37219, katherine.allen@stites.com or Kathleen J. Hopkins, Real Property Law Group, PLLC, 1218 3rd Avenue, Suite 1900, Seattle, Washington 98101, khopkins@rp-lawgroup.com with any comments or suggestions.
CFS/UCC Pro Bono Committee Liaison Report

As the chair of the Section’s Pro Bono Committee and your liaison, I am pleased to report some very wonderful developments in the Section’s pro bono and public service activities. As you may know, our Section has a strong, substantial commitment to providing pro bono legal services to our communities and cultivating opportunities for its members within their practice areas. The Pro Bono Committee works on coordinating the Section’s pro bono efforts and, in particular, has been working to develop and support the Section’s showcase project: A Business Commitment (ABC). ABC is a project adopted by local and state bar associations, ad hoc groups and law schools around the country to provide community based non-profit organizations and micro-entrepreneurs with pro bono business legal advice. We currently have over 30 active projects around the country (and growing); and on May 5-7, 2005 at the ABA’s Equal Justice Conference in Austin, Texas we will be providing a full day of programming for bar leaders and existing ABC projects on how these projects can be set up, grow and succeed.

In addition to ABC, the Committee has drafted and presented to the Section’s Executive Council a strategic plan to further grow and support pro bono opportunities for business lawyers. As part of the Section leadership’s commitment to pro bono, they have approved employing a full-time staff counsel position to support the ABC projects and assist the Section’s committees in implementing the strategic plan. We are hopeful the right person can be engaged by the start of the next bar year.

Finally, the Section has established its own 503(c) charitable fund to support our pro bono, diversity and public service initiatives. At the upcoming Spring meeting, we will be kicking off our fund with a solicitation for a name for the fund and for tax-deductible contributions. Pledge cards will be distributed at the Spring meeting, and we hope members of both UCC and CFS Committees will provide suggestions on the fund’s name, and also contribute to this newly created fund! If you cannot find a pledge card, please stop by the Pro Bono table at the Thursday evening committee roundup, where I will be distributing such cards. Thank you in advance for your commitment to this important project.

Kathleen J. Hopkins
Real Property Law Group, PLLC
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CFS Creditors’ Rights Subcommittee

The Creditors’ Rights Subcommittee met jointly with the Bankruptcy Litigation Subcommittee at the National Conference of Bankruptcy Judges in Nashville on October 11, 2004. Judge Michael Williamson of Tampa spoke on evidentiary issues in bankruptcy and other matters of concern to the bench in handling contested proceedings.

The Subcommittee puts on three programs a year, with the next meeting scheduled for the ABA Spring Business Section in Nashville on Thursday March 31, 2005 at 1:00. The Business Law meetings provide hundreds of pages of materials on a CD-ROM, rather than the bulky printed hand-outs usually gathered at conferences. These materials, including those from our meetings, are available on the ABA website for Business Section members to access at http://www.abanet.org/buslaw/library/spr04.shtml.

If you would like to join our Subcommittee or participate by presenting materials, simply email the Chair, Duane Geck, or the Vice-Chair, Carolyn Richter.

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
CFS Subcommittee on Real Estate Financing

The Real Estate Financing Subcommittee invites you to the Spring 2005 meeting of the Subcommittee in Nashville, Tennessee, on Saturday, April 2, 2005, from 2:30 p.m. to 4:00 p.m. This meeting will be held jointly with the Business Transactions Subcommittee of the Business Bankruptcy Committee and will feature an outstanding program related to the enforceability of prepayment premiums in mortgage loan documents.

This panelists for the program include two nationally-recognized experts on the topic, John C. "Jack" Murray of First American Title Insurance Company and Margery N. Reed of Duane Morris. The program will focus on issues related to prepayment premiums both "inside" and "outside" the bankruptcy context. The program will include issues related to yield maintenance provisions, "exit fee" provisions, and defeasance provisions. The analysis will include both recent cases and sample loan document provisions.

We are very excited about hosting this tremendous program. We hope you can join us in Nashville. Please contact either of us with any questions.

Neal J. Klink, Chair
Sher Garner Cahill Richter Klein McAlister & Hilbert, LLC
New Orleans, LA
nkling@shergarner.com

Kathleen J. Hopkins, Vice-Chair
Real Property Law Group, PLLC
Seattle, WA
khopkins@rp-lawgroup.com

CFS Loan Documentation Subcommittee

The Loan Documentation Subcommittee now has its own list serv for Subcommittee members. You can post to the list serv by going to the Commercial Financial Services Committee page at http://www.buslaw.org/cgi-bin/controlpanel.cgi?committee=CL190000 and scrolling down to our Subcommittee’s section. You will see the place to click on to post.

The Subcommittee will be meeting in Nashville, Tennessee at the Business Section’s Spring Meeting on Friday, April 1, 2005 from 1:00 pm to 2:30 pm at the Renaissance Hotel in Belmont Room 3 on the third floor. The presentation will be the last in our series on the various standard sections of Credit Agreements, and will be about the part of the Credit Agreement dealing with interest rates and fees – a subject near and dear to our client’s heart. In particular, we will discuss the pitfalls of documenting LIBOR rate loans, as well as how to sneak in "float" days (a convenient secret fee).

Over the last several years, the Subcommittee has enjoyed presentations on all the other standard parts of the Credit Agreement. Now that the list serv has been set up, the materials and forms from those presentations will be e-mailed to Subcommittee members. All through these presentations, the basic idea has been to develop a form Credit Agreement that could be published by the ABA. The format would be similar to the ABA’s recent publication of the Model Asset Purchase Agreement, and could be a companion volume to the Forms Under Revised Article 9, also recently published by the ABA. Several Subcommittee members have volunteered to help convert the various forms and other materials into a coherent set of form documents for this purpose. We will need to finalize the membership in this editorial sub-subcommittee and begin scheduling meetings, either at a central location or by conference call. If you would like to participate in this project, please let me know.

Last, if anybody has any interesting (whether admirable, ambiguous, alarming, amusing or avant-garde) forms or documentation issues to submit to the Subcommittee, please feel free to post them to the list serv. We might have some good discussions, and I actually might learn something.

I hope to see y’all in Nashville.

Marshall Grodner, Chair
McGlinchey Stafford
Baton Rouge, LA
mgrodner@mcglinchey.com

Jeremy S. Friedberg, Vice-Chair
Leitess, Leitess & Friedberg, P.C.
Baltimore, MD
jsf@ll-f.com
The Agricultural & Agri-Business Finance Subcommittee met with the American Agricultural Law Association at its annual conference in October, 2004 in Des Moines, Iowa. In attendance were some 350 professionals who practice in agricultural law and agricultural finance. The Subcommittee presented two topics—“Set Off and Recoupment under the Food Security Act,” presented by Subcommittee vice-chairman Randy Wright, and “Liens and Remedies in Article 2 of the UCC,” presented by a panel consisting of past Ag Subcommittee Chairman Brooke Schumm, III, Des Moines, Iowa attorney Eldon McAfee and Kansas University professor Keith G. Meyer. The Subcommittee will be meeting at the Spring Meeting in Nashville at its usual and customary time—7:30 a.m. on Friday, April 1, 2005. Gary Sayers of Fresno, California, will be leading a discussion of the payment eligibility and limitation rules for federal farm program participation. Included will be a discussion of the risks for participants and their lenders arising from the structuring of business operations so as to qualify for such payments.

The Ag Subcommittee provides presentations and short seminars at all of its meetings, and has experienced significant growth in membership and attendance in the last several years.

Phillip L. Kunkel, Chair
Gray Plant Mooty
Saint Cloud, MN
Phillip.kunkel@gpmlaw.com

T. Randall Wright, Vice-Chair
Baird Holm Law Firm
Omaha, NE
rwright@bairdholm.com
CFS Intellectual Property Financing Subcommittee

The Intellectual Property Financing Subcommittee is going to change its tune now that we are going to Nashvillle. This meeting's topic is "The Music Publishing Business: How Songs Become Money and How to Lend Against Them." Our panelists are Charles Sussman of Gudvi, Sussman & Oppenheim, and John E. Murdock III and John McKain Rolfe, both of Boult, Cummings, Conners & Berry PLC. We are looking forward to learning about how another form of intellectual property can be financed and how it is accomplished.

Please join us for this presentation, as well as an update on past cases reviewed in our meetings. We will be meeting on Thursday, March 31 from 10:30 to 12:00 – see you there!

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 Membership Committee Liaisons Report

The mission of the Membership Committee of the Business Law Section is to increase and maintain membership in the Section and its Committees, including the CFSC. The Membership Committee is composed of at-large members of the Section and point persons of each Section Committee. The Membership Committee is chaired by Tim Lupinacci (who is also a member of the CFSC). Bob Young and Stu Ames serve as the point persons of the CFSC to that Committee.

During the past year, the membership in the CFSC increased from 1311 to 1491 members. The increase was due to a number of programs and practices that were implemented by the Section and the CFSC during the year, several of which were developed and suggested by the Membership Committee working with Section Staff. These included one of several blast emails to all ABA members at the beginning of 2004 which touted the principal benefits of Business Law Section membership under the slogan “Know the latest Business Law Developments . . . Before your Clients Ask. . . Before the Competition Answers.” The most recent issue of Business Law Today contained a mini-theme on commercial finance and included nine feature articles by CFSC members. Last year, the Section also began holding CLE teleconferences which were free to Section members or were delivered at a nominal charge. The most recent of these, a one-hour program on multi-borrower loan arrangements, had an attendance of over 500 lawyers from around the country.

The teleconferencing capabilities of the ABA are quite sophisticated and can be very useful for both CLE programs and meetings of committees and Subcommittees in the interim between the Spring and Annual Meetings of the Section. Committee and Subcommittee chairs are urged to consider teleconferencing as a means to increase membership and participation in their respective committees.

CFSC committees should consider targeting law students and new lawyers to become involved in their committee activities. This is particularly appropriate for students and new graduates who are located in proximity to the venues for the Spring and Annual Meetings where attendance by them will not be overly time-consuming or expensive. Committee chairs should also consider contacting law firms in those venues in advance of the meetings and offering a personal invitation to their lawyers to attend our meetings.

At the Spring Meeting in Nashville, CFSC leadership will reach out to ‘first timers’ and new CFSC members and invite them to sit together at the CFSC/UCC Committee joint dinner on March 31. CFSC members are urged to ‘meet and greet’ these newer members at the dinner and at committee meetings and Section functions.

If you have any ideas or suggestions for increasing or retaining members of the CFSC or its committees or Subcommittees, please contact Stu Ames or Bob Young.

Stuart D. Ames, Co-Chair
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Robert L. Young, Co-Chair
Carlton Fields
Orlando, FL
ryoung@carltonfields.com
CFS Business Law Today Liaison

As the liaison from the Business Law Today editorial board to both committees, I want to congratulate the CFS for its wonderful mini-theme published in January 2005. Special thanks for the hard work of Mike Maglio and Chris Rockers in pulling together the right mix of articles to make that issue truly special, relevant to the membership and a fitting tribute to Jeff Turner’s legacy. Rather than rest on our laurels, however, we should use this as an entree to provide a continuous stream of timely articles on Uniform Commercial Code and Commercial Financing topics to the magazine. Of course, you are welcome to first try out an article in this newsletter, and we can concurrently submit it for reprint in the magazine. Keep this in mind when you prepare materials for your Subcommittee meetings or CLEs. If you (and/or one or more of your associates) have an idea for a substantive article, you are welcome to contact me directly. There are no formal guidelines for submission of articles to this newsletter, so long as they are relevant, correct and of interest to the members of our two committees. For Business Law Today, you can also contact me with your ideas, and can find the author guidelines along with instruction on how to submit articles at: http://www.abanet.org/buslaw/blt/guidelines.html.

Kathleen J. Hopkins, Vice-Chair
Real Property Law Group, PLLC
Seattle, WA
khopkins@rp-lawgroup.com

Joint Task Force on Deposit Account Control Agreements

The Joint Task Force on Deposit Account Control Agreements is seeking to develop a form or forms of UCC Article 9 deposit account control agreements that can be entered into by the parties with no or minimal negotiation.

The Task Force is jointly sponsored by the Banking Law, Commercial Financial Services, Consumer Financial Services and Uniform Commercial Code Committees of the Section. It is composed of a number of in-house and transactional lawyers from a broad base of depository and lending institutions as well as academicians and other interested parties. The Co-Chair from the Commercial Financial Services Committee is Marshall Grodner, and the Co-Chair from the UCC Committee is Ed Smith.

The Task Force has been proceeding with its work at a brisk pace. A working draft of a deposit account control agreement for a demand deposit account was discussed at the November 2004 meeting of the Task Force and a revised working draft was discussed at the February 2005 meeting of the Task Force. These have been all-day meetings held in New York City. A third all-day meeting is scheduled in New York City on April 14 to discuss a further revised draft. The task force plans to have the current working draft available for discussion at the meeting of the Task Force in Nashville at the Section 2005 Spring Meeting.

If the Task Force is successful is developing consensus on a form of deposit account control agreement for a demand deposit account, it will turn its efforts to forms of control agreement for other accounts, such as blocked accounts, deposit accounts linked to postal lock boxes and deposit accounts where the cash is invested in money market instruments and which might be considered securities accounts.

If anyone is interested in joining the Task Force or obtaining a copy of the current working draft, please feel free to contact Ed Smith at Edwin.Smith@Bingham.

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Boston, MA
edwin.smith@bingham.com

Marshall Grodner, CFS Co-Chair
McGlinchey Stafford
Baton Rouge, LA
mgrodner@mcglinchey.com
Financing the Construction of a Vessel  continued from Cover

So what is stacked in all that stuff at the shipyard and assembled over time into the vessel-to-be (collectively, the “Vessel-under-Construction”)? Most likely “inventory” as defined under the UCC because the Vessel-under-Construction, whether in pieces or fully assembled, is inventory in the hands of the shipyard. However, if some of the “stuff” is needed to construct the vessel, then items such as special tooling that will not be incorporated into the completed vessel but retained by the shipyard after delivery of the vessel, will probably be “equipment” rather than “inventory.” Nevertheless, most of the personal property delivered to the shipyard for incorporation into the vessel - the sheet metal, wiring, decking, engines, electronics, etc. - is probably inventory.

The process usually begins with a construction contract between the shipyard and the financing buyer that includes the plans and specifications, the terms of the construction, and the procedures whereby the financing buyer will provide funds to the shipyard and how the funds will be applied. A vessel construction contract, just as any other contract for the purchase of goods, is governed by Article 2 of the UCC.

Article 2 of the UCC provides some rights to the financing buyer, but unfortunately not much. The first point is that “title” as a concept does not have much to do with the rights between buyer and shipyard.

“Title” as a concept does not have much to do with the rights between buyer and shipyard.

The rights of buyer and shipyard, and affected third parties, are governed by the provisions of the UCC and not where “title” to the goods may be at any particular moment. When goods are identified to a contract, and this can occur at any time and in any manner agreed to by the parties, the buyer obtains a special property and an insurable interest in the goods. It should also be pointed out that the buyer’s “special property” in goods identified to the contract is excluded from the definition of “security interest.”

Section 2-402 of the UCC provides generally that the rights of unsecured creditors of the shipyard, with respect to goods that have been identified to a contract for sale, are subject to the buyer’s right to recover the goods under Article 2. However, the financing buyer’s problems are not with unsecured creditors but the secured creditors of the shipyard. This is no hypothetical question. I participated in late 2000 in the representation of Foothill Capital Corporation (“Foothill”), now Foothill Wells Fargo, in negotiating the credit facility provided to Friede Goldman Halter, Inc. (“FGH”). FGH was a world leader in the design and construction of equipment for the maritime and offshore energy industries. Notwithstanding the best of intentions, with numerous shipyards and an extensive construction backlog, FGH filed for...
reorganization with the U.S. Bankruptcy Court for the Southern District of Mississippi in 2002. Foothill fortunately was a secured creditor of FGH. This was not the case for the financing buyers who had not taken the steps required by Article 9 of the UCC to perfect their status as secured creditors. The problem is that even the largest and, by all appearances, the most successful shipyards, are quite vulnerable to contract delays, performance defaults, slow pay customers and many of the other problems plaguing the construction industry that could cause their demise.

Section 2-502 of the UCC provides some additional although limited protections for the financing buyer who is not a secured creditor. First, a buyer may recover goods bought for personal, family, or household purposes if the seller repudiates the contract or fails to deliver the goods. This may help the financier of the construction of his or her own personal yacht. But I wonder how many significant yachts are purchased for personal rather than corporate use.

If not primarily for personal, family, or household purposes (i.e., consumer goods) as described above, Section 2-502 of the UCC further provides that upon tendering the unpaid portion of the price, the financing buyer may recover the goods from the seller if the seller becomes insolvent within ten days after receipt of the first installment of the price. This rule is the exception to the general rule that the financing buyer must usually resort to an action to recover damages. Given the length of the construction process and the amounts usually involved, this provision is generally useless. Whether the buyer acquires a security interest in identified goods and has the rights to the goods when insolvency takes place after the ten-day period depends upon “compliance with the provisions of the Article on Secured Transactions (Article 9).”

The buyer’s rights under Section 2-502 of the UCC vest upon acquisition of the special property interest discussed above. A secured party can acquire no greater rights in its collateral than the rights the debtor had or had the power to convey in the collateral.

Therefore, a buyer who acquires the right to recover the goods under Section 2-502 of the UCC will take free of the security interest created by the seller/shipyard in favor of its lender, if the lender’s security interest attached to the goods after the goods have been identified to the contract.

This requirement will usually NOT be present in the case of a working capital secured lender to the shipyard with blanket security interest in all the assets of the shipyard.

Given the foregoing, the financing buyer, and by assignment the lender to the financing buyer, in vessel construction should take the efforts necessary to become a secured creditor under Article 9 of the UCC. As a secured party, either in first position, or with appropriate intercreditor arrangements with any senior secured party, or in compliance with the further requirements under Article 9 to qualify as a purchase-money secured creditor, the financing buyer will prevail against other secured creditors of the shipyard, unsecured creditors of the shipyard, and, most importantly, the hypothetical lien creditor status of a trustee in bankruptcy. The key is for the financing buyer to structure the transaction as a financing transaction and for the buyer to position itself as a secured creditor.

* Editors’ Note: The author is Senior Counsel of the UCC Division of the First American Corporation, which markets UCC insurance products, as do most of the other major land title companies. The Commercial Law Newsletter and its sponsoring Committees do not endorse any such products.
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# Spring Meeting — CFS Schedule

## Thursday, March 31

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<tr>
<th>Time</th>
<th>Event</th>
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<tbody>
<tr>
<td>10:30 a.m.</td>
<td>Subcommittee on Intellectual Property Financing</td>
</tr>
<tr>
<td>1:00 p.m.</td>
<td>Subcommittee on Creditors Rights – Joint Meeting with the Bankruptcy Litigation Committee</td>
</tr>
<tr>
<td>2:00 p.m.</td>
<td>Subcommittee on Aircraft Financing (Session 1 of 2)</td>
</tr>
<tr>
<td>2:30 p.m.</td>
<td>Subcommittee on Loan Workouts</td>
</tr>
<tr>
<td>4:00 p.m.</td>
<td>Subcommittee on Lender Liability</td>
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<tr>
<td>8:00 p.m.</td>
<td>Joint Commercial Financial Services/ UCC Committee Dinner</td>
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## Friday, April 1 (continued)

<table>
<thead>
<tr>
<th>Time</th>
<th>Event</th>
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</thead>
<tbody>
<tr>
<td>1:00 p.m.</td>
<td>Subcommittee on Loan Documentation</td>
</tr>
<tr>
<td>2:30 p.m.</td>
<td>Committee Meeting and Forum</td>
</tr>
<tr>
<td>4:00 p.m.</td>
<td>“When Godzilla Meets Bambi: Securities Law Issues for Finance Lawyers”</td>
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</tbody>
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## Saturday, April 2

<table>
<thead>
<tr>
<th>Time</th>
<th>Event</th>
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<tbody>
<tr>
<td>9:00 a.m.</td>
<td>Joint Meeting of the CFS Secured Lending Subcommittee and UCC Secured Transactions Subcommittee</td>
</tr>
<tr>
<td>10:30 a.m.</td>
<td>Program (Primarily Sponsored by the Commercial Financial Services Committee and Co-sponsored by the UCC Committee)</td>
</tr>
<tr>
<td>1:00 p.m.</td>
<td>Subcommittee Chairs and Vice-Chairs</td>
</tr>
<tr>
<td>2:30 p.m.</td>
<td>Subcommittee on Real Estate Financing – Joint Meeting with the Business Transactions Subcommittee of the Business Bankruptcy Committee</td>
</tr>
</tbody>
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**THURSDAY, MARCH 31**

10:30 a.m. to 12:00 p.m. (1.5 hours)
Subcommittee on Intellectual Property Financing
Leianne Crittenden, Co-Chair
Thomas M. Ward, Co-Chair

1:00 p.m. to 2:30 p.m. (1.5 hours)
Subcommittee on Creditors Rights – Joint Meeting with the Bankruptcy Litigation Subcommittee of the Business and Corporate Litigation Committee
Duane M. Geck, Chair
Carolyn P. Richter, Vice-Chair

2:00 p.m. to 5:30 p.m. (3.5 hours)
Subcommittee on Aircraft Financing (Session 1 of 2)
James D. Tussing, Chair
Michael K. Vernier, Vice-Chair

2:30 p.m. to 4:00 p.m. (1.5 hours)
Subcommittee on Loan Workouts
Caroline C. Galanty, Chair
Kimberly Winick, Vice-Chair

4:00 p.m. to 5:30 p.m. (1.5 hours)
Subcommittee on Lender Liability
Gerald L. Blanchard, Chair
Robert W. Agler, Vice-Chair

8:00 p.m.
Joint Commercial Financial Services/ UCC Committee Dinner

**FRIDAY, APRIL 1**

7:30 a.m. to 9:00 a.m. (1.5 hours)
Subcommittee on Securitization and Derivatives
Martin Fingerhut, Chair
Lawrence F. Flick, II, Vice-Chair

7:30 a.m. to 9:00 a.m. (1.5 hours)
Subcommittee on Agricultural and Agri-Business Financing
Phillip L. Kunkel, Chair
T. Randall Wright, Vice-Chair

9:00 a.m. to 10:30 a.m. (1.5 hours)
Subcommittee on Cross-Border Secured Transactions
James C. Chadwick, Chair
Joseph Turitz, Vice-Chair

9:00 a.m. to 12:30 p.m. (3.5 hours)
Subcommittee on Aircraft Financing (Session 2 of 2)
James D. Tussing, Chair
Michael K. Vernier, Vice-Chair

10:30 a.m. to 12:30 a.m. (2 hours total)
Program (Sponsored by the Commercial Financial Services Committee)

“ZONE OF INSOLVENCY”
Gerald L. Blanchard, Program Chair
Bob Agler
Ed Dobbs
Kit Weitnauer
Honorable Mary Grace Diehl
### Spring Meeting — UCC Schedule

#### THURSDAY, MARCH 31

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<thead>
<tr>
<th>Time</th>
<th>Event</th>
<th>Panelists</th>
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<tbody>
<tr>
<td>8:00-9:00</td>
<td>Joint Meeting: State Certificates of Title and Simplification</td>
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<tr>
<td>9:00-10:00</td>
<td>Deposit Control Agreements</td>
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<tr>
<td>10:00-11:00</td>
<td>Investment Securities</td>
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<td>11:00-12:00</td>
<td>Leasing</td>
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<tr>
<td>12:00-1:00</td>
<td>Consumer Involvement</td>
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<tr>
<td>1:00-2:00</td>
<td>UCC Litigation</td>
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<tr>
<td>2:30-4:00</td>
<td>INSTITUTE FOR THE YOUNG BUSINESS LAWYER: UCC: Avoiding Common Pitfalls and Keeping Your Priorities Straight</td>
<td>Leianne Crittenden, Oracle Corporation</td>
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<td></td>
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<td>Jeremy S. Friedberg, Leitess Leitess &amp; Friedberg PC, Baltimore, MD</td>
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<td>Mark Wilson, Kerns, Pitrof, Frost &amp; Pearlman</td>
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<tr>
<td>2:30-4:30</td>
<td>PROGRAM: &quot;Pitfalls of Indemnification Clauses&quot;</td>
<td>Christina Kunz, Professor of Law, Wm. Mitchell College of Law</td>
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<td>Moderator:</td>
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<td>Paula Duggan Vraa, Attorney, Rider Bennett Egan &amp; Arundel LLP</td>
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<td></td>
<td>Katheryn A. Andresen, Attorney, Bonnabeau, Salyers, Stite &amp; Doe LLC</td>
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<td>Panelists:</td>
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<td></td>
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<td>Joseph P. Beckman, Legal Counsel, DR Contract Administration Group, LLC</td>
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<td>Daniel S. Kleinberger, Professor of Law, Wm. Mitchell College of Law</td>
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<tr>
<td>4:30-5:30</td>
<td>Forms under Article 9</td>
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<tr>
<td>8:00 p.m.</td>
<td>UCC/CFS dinner The Bound’ry Restaurant</td>
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#### FRIDAY, APRIL 1

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<tr>
<th>Time</th>
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<tr>
<td>8:00-9:00</td>
<td>Model Trading Partners Agreement</td>
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<td>9:00-10:30</td>
<td>International Commercial Law</td>
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<tr>
<td>10:00-11:00</td>
<td>Sales of Goods</td>
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<tr>
<td>11:00-12:00</td>
<td>Transferability of Electronic Assets</td>
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<tr>
<td>1:00-2:00</td>
<td>Letters of Credit</td>
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</tr>
<tr>
<td>2:00-3:00</td>
<td>UCC COMMITTEE FORUM: Stump the Chumps</td>
<td>Bill Henning, Professor, University of Alabama School of Law and Executive Director of the National Conference of Commissioners on Uniform State Laws</td>
</tr>
<tr>
<td></td>
<td>12:30 – 1:30 General Provisions and Relation to Other Law</td>
<td>Linda Rusch, Professor, Hamline University School of Law; Ed Smith, Bingham, McCutchen LLP; Steve Weise, Heller Ehrman White &amp; McAuliffe LLP; Stephen Sepinuck, Professor, Gonzaga University School of Law</td>
</tr>
<tr>
<td>1:30-3:00</td>
<td>Payments</td>
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<tr>
<td>2:00-3:00</td>
<td>Electronic Contracting Practices</td>
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#### FRIDAY, APRIL 1 (continued)

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<tr>
<th>Time</th>
<th>Event</th>
<th>Panelists</th>
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<tbody>
<tr>
<td>3:00 – 4:30</td>
<td>COMMITTEE FORUM: Arbitration and the Death of UCC Article 2</td>
<td>Charles Knapp, Joseph W. Cotchett Distinguished Professor of Law, University of California, Hastings College of Law; Chistopher Drahozal, Professor, University of Kansas School of Law; Robert Rasmussen, Milton Underwood Chair in Law, FedEx Research Professor of Law, and Director, Joe C. Davis Law and Economics Program, Vanderbilt University; Commentator: Robert Rasmussen, Milton Underwood Chair in Law, FedEx Research Professor of Law, and Director, Joe C. Davis Law and Economics Program, Vanderbilt University</td>
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<td>4:30-5:30</td>
<td>Meeting of Subcommittee, Working Groups and Task Force Chairs, Vice-Chairs</td>
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#### SATURDAY, APRIL 2

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<td>9:00-10:30</td>
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<td>10:30-12:30</td>
<td>PROGRAM: A Crash Course in Check 21 for Business Lawyers: Answering your bank, consumer and corporate client questions.</td>
<td>Sarah Jane Hughes, Professor, Indiana University; Joy, Senior Vice President, PNC Bank; Karen Nash-Goetz, Vice President &amp; Assoc. Legal Counsel, T. Rowe Price Associates, Inc.; Linda Rusch, Professor, Hamline University School of Law</td>
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<td>12:30 – 1:30</td>
<td>General Provisions and Relation to Other Law</td>
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<td>2:00-3:00</td>
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## UNIFORM STATE LAWS SCORECARD

### Survey of Adoptions of Revised Official Text of the UCC\(^1\)

**As of February 1, 2005**

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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 February 1, 2005.

1. In addition to enactments noted below, all states and the District of Columbia have adopted (i) the 1995 Official Text of Article 5 of the UCC, other than Wisconsin, (ii) the 1994 Official Text of Article 8 of the UCC and (iii) the 1998 Official Text of Article 9 of the UCC.

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

The editors wish to express their sincere and belated gratitude to Linda Hayman at Skadden, Arps, Slate, Meagher & Flom, LLP, and her teams of able assistants, for updating and providing the UCC Scorecard for every issue of the Commercial Law Newsletter.

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