### Messages from the Chairs

**Committee on Commercial Financial Services**

*Christopher J. Rockers, Husch & Eppenberger, LLC*

The ABA Annual Meeting will be August 10 through 13, 2007 at Fairmont Hotel in San Francisco. Committee offerings will include many programs and meetings held by our subcommittees and which are outlined in the subcommittee reports in this newsletter, as well as a Committee Forum at 2:30 pm on Saturday, August 11, titled *The ABC’s of Securitization*. The forum is sponsored and presented by our Securitization and Derivatives Subcommittee. We are co-sponsoring a program at 10:30 am on Sunday, August 12, titled *Subprime Shift — Crisis or Market Correction: Discussion of Legal, Regulatory and Policy Implications* and at 2:30 pm on Sunday we are presenting a program titled *Here’s Our Wine List: Issues in Winery Financing, Structuring and Recovering Credit Extensions*.

Our joint dinner with the Uniform Commercial Code Committee will be Sunday, August 12, at 7:00 pm. Directions from the hotel are [here](#).

As I have mentioned in previous reports, there are many opportunities to become active in Committee leadership and to provide substantive input at committee meetings, subcommittee meetings, Committee forums and programs. If you are interested in becoming active or active in another area, please contact Lynn Soukup or me. Each year some portion of Committee leadership rotates and we are always looking for people who want to continue or become active in Committee work. There are many opportunities and I look forward to talking to you about them.

Speaking of leadership rotation, it is time for me to step down as Chair of the Commercial Financial Services Committee. This is my last newsletter column and the Annual Meeting in San Francisco will be my last meeting as Chair. It has been a wonderful opportunity as well as a privilege and an honor. Lynn Soukup will step up as Chair and the Committee will be in extraordinarily capable hands.

I look forward to seeing you in San Francisco. Thank you for your support over the last three years.

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**Committee on Uniform Commercial Code**

*Stephen L. Sepinuck, Chair, Gonzaga University School of Law*

The UCC Committee has some wonderful programming scheduled for ABA Annual Meeting. In addition to a full schedule of subcommittee and task force meetings, many of which will include substantive discussions (click [here](#) for a complete schedule), we will have three CLE events:

- **A Pound of Flesh, a Jot of Blood: Things Secured Parties Should Know, Do, and Avoid When Foreclosing on Collateral** on Saturday, August 11 at 2:30pm in the Gold Room of the Fairmont Hotel;

- **Alphabet Soup: How the UCC, CISG, UNIDROIT,**
T a s k   F o r c e   o n   S t a t e   C e r t i f i c a t e   o f   T i t l e   L a w s

J o i n t   S u b c o m m i t t e e   R e p o r t s

Subcommittees on Secured Lending (CFS) and Secured Transactions (UCC)

J o i n t   T a s k   F o r c e / W o r k i n g   G r o u p

Reports

J o i n t Task Force on Deposit Account Control Agreements

U C C   S c o r e c a r d

C o m m i t t e e   L e a d e r s h i p

E d i t o r i a l   B o a r d :

C h r i s t i n e   G o u l d   H a m m
Husch & Eppenberger, LLC
816-283-4626

M a r i a   M i l a n o
Riddell Williams, PS
206-389-1752

U E T A ,   a n d   E   S I G N   I n t e r a c t   i n   I n t e r n a t i o n a l   S a l e s
o n Sunday, August 12 at 10:30am in the
terrace Room of the Fairmont Hotel; and

D e a l s ,   D e n t s   &   D e f i c i e n c i e s   i n   C a r   P u r c h a s e s
a n d   F i n a n c i n g –   W h a t   L a w y e r s   R e p r e s e n t i n g
C o n s u m e r s   N e e d   t o   K n o w   a b o u t   t h e   U C C
on
Monday, August 13 at 8:00am in the Grand Balroom of the Fairmont Hotel.

Added to these will be the full committee meeting on Saturday
August 11 at 1:00pm in the Gold Room of the Fairmont Hotel.
That meeting will be devoted to a discussion of I A C A ’ s m o d e l
search logic. I A C A , the International Association of Commercial
Administrators, promulgates model rules for U.C.C. filing offices.
The rules, which have been widely but not uniformly adopted,
include rules on search logic: which records should be produced in
response to a search request. I A C A officials Kelly Kopyt and
Timothy Poulin will receive advice from the audience about how
filing offices should respond to a series of hypothetical U.C.C.
search requests. So, this is your chance to have input into how
filing offices operate. This discussion will be particularly timely
given that the State of Texas recently amended its version of
revised Article 9 to "clarify" that the name of a registered
organization in a financing statement is sufficient only if it
provides the name found on the debtor's formation documents
(e.g., the articles of incorporation). This differs from uniform § 9-
503(a)(1), which specifies the name "indicated in the public
record." As a result of this change, a filing listing the name found
in the Texas Secretary of State's corporations database would
apparently be insufficient if it differs from the name listed on the
actual formation documents.

Of course, the UCC Committee will again have a joint Dinner with
the Commercial Financial Services Committee. It will be at the
Y a n k   S i n g   R e s t a u r a n t , 4 9   S t e v e n s o n   S t r e e t , o n
Sunday, August 12 at 7:00pm. The restaurant specializes in deem sum and the
menu looks great. To register, click here.

M o r e . . .
Saturday, August 11, at 2:30 – 4:00 pm and the UCC Committee Meeting will be held Saturday, August 11, at 1:00 – 2:30 pm. And, we'll be hosting a conference call in advance of the meeting to discuss how to navigate the multi-page meeting schedule to get the most out of the meeting – email Susan M. Tyler (styler@mcglinchey.com), a CFS Membership Committee Liaison, or Terri A. Motosue (tmotosue@carlsmith.com), a UCC Membership Committee Liaison, if you would like to be part of that call or have questions about the meeting.

Save the Date!

- **September 18, 2007, New York, NY** – The Association of Commercial Finance Attorneys (ACFA) will sponsor an evening talk on the UNCITRAL Secured Transactions Legislative Guide and the Convention on the Assignment of Receivables in International Trade – recent international developments that may affect secured transactions within, as well as outside of, the United States. The panel will include the U.S. private delegation attendees (sponsored by ACFA and the American College of Commercial Finance Lawyers) at the recent UNCITRAL conference in Vienna. ACFA has invited members of the Commercial Financial Services and Uniform Commercial Code Committees to attend. A detailed invitation with topic and contact information will be sent to CFS and UCC Committee members in August.

- **September 20, 2007, New York, NY** – The Joint Task Force on Deposit Account Control Agreements will hold its next meeting from 10:00 am – 4:00 pm at Bingham McCutchen, 399 Park Avenue (Park and 53rd Street). Information about the meeting will be available on the Task Force's website [http://www.abanet.org/dch/committee.cfm?com=CL710060](http://www.abanet.org/dch/committee.cfm?com=CL710060).

- **November 7, 2007, Phoenix, AZ** – The Commercial Financial Services Committee will hold its Fall Meeting in conjunction with the 63rd Annual Commercial Finance Association Convention on November 7–9, 2007. Details and registration information will be sent to CFS Committee members following the ABA Annual Meeting. In addition, at the CFA Convention the CFS Committee will be presenting a panel of industry experts discussing market trends and legal developments in the burgeoning area of second-lien financing. The panel, moderated by John F. Hilson of Paul, Hastings, Janofsky & Walker LLP, will explore the major points of contention and the emerging market standards in the negotiation of intercreditor agreements between first- and second-lien lenders. The panelists also will describe the efforts of the CFS Taskforce on Model Intercreditor Agreements to develop a model agreement for use in second-lien financing transactions.

Committee on Uniform Commercial Code: Spotlight

**Stephen L. Sepinuck, UCC Committee Chair**  
**Kristen Adams, Chair, Subcommittee on General Provisions & Relations to Other Law**

The purpose of this column is to identify some of the most disconcerting judicial decisions interpreting the Uniform Commercial Code to be published after the previous edition of the Newsletter. The purpose of the column is not to be mean. It is not to get judges recalled, law clerks fired, or litigators disciplined for incompetence. Instead, it is to shine a spotlight on analytical errors, and thereby provide practitioners and judges with reason to disregard the opinion as precedent.

**Featured Case**
Provident Bank v. Community Home Mortgage Corp., 2007 WL 1350262 (E.D.N.Y. 2007), is a disturbing case reminiscent of the notorious OPM Leasing scandal of the early 1980s, which involved the fraudulent "double booking" of equipment leases. This case, however, involved the double booking of home mortgage loans.

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Featured Articles

UCC Terminations and the Searcher's Duty of Further Inquiry
Paul Hodnefield, Associate General Counsel for Corporation Service Company

UCC Records are not always what they appear to be. This is especially true for termination statements. Lenders and legal professionals often misunderstand what effect a termination has on the financing statement. Many mistakenly believe that a financing statement ceases to be effective upon the filing of a termination.

This misconception leads to risky search practices that could later prove costly for any party that must rely on the results. For example, a common UCC search shortcut is to omit terminated financing statements. It costs time and money to review terminated records. The reasoning is "why bother" if terminated financing statements are no longer effective.

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Who Holds the Assets in a Delaware Series LLC?
Norman M. Powell, Young, Conaway, Stargatt & Taylor, LLP

According to records of the Delaware Secretary of State, more than 96,000 Delaware limited liability companies ("Delaware LLCs") were formed in 2006. Delaware LLCs are increasingly the entity of choice for operating companies, and figure prominently in a great many structured finance transactions as so-called special purpose entities. The Delaware Limited Liability Company Act, 6 Del. C. § 18101, et seq. (the "Delaware LLC Act") facilitates the formation of Delaware LLCs with attributes carefully crafted to meet the needs of a given application, and is regularly revised so as to best assure that Delaware LLCs can be crafted to meet the ever-developing needs of the marketplace. For a number of years, the Delaware LLC Act has permitted the formation of Delaware LLCs with separate series of members, managers, and limited liability company interests.

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Holy Smoke, My Promissory Note’s a Security!
Howard Darmstadter, Senior Counsel-Corporate Law for Citigroup Inc.

The issuance of one or more promissory notes has been an unproblematic feature in many transactions. The basic legal regime for transfer and pledge of such instruments is well understood: If the note is negotiable, Articles 3 ("Commercial Paper") and 9 ("Secured Transactions") of the Uniform
Commercial Code (UCC) govern; otherwise, it's Article 9 and the common law (which is likely to draw on Article 3).

This past April the New York Court of Appeals (New York’s highest) upset those comfortable understandings. In *Highland Capital Management LP v. Schneider*, the court held that eight promissory notes issued to four individuals as partial payment for their business were securities governed by Article 8 (“Investment Securities”) of the UCC.

**More...**

Jeremy S. Friedberg, Leitess Leitess Friedberg + Fedder PC

On June 14, 2007, the Special Joint Committee on Lawyers’ Opinions in Business Transactions of the Section of Business Law and the Section of Real Property, Planning and Zoning of the Maryland State Bar Association, Inc. (the "Committee") issued its REPORT ON LAWYERS’ OPINIONS IN BUSINESS TRANSACTIONS (the "Report") in response to a perceived need to update a 1989 Report prepared by the Special Joint Committee on Lawyers’ Opinions in Commercial Transactions.


The Report contains several sample opinions and an exhaustive list of sample opinion language with commentary.

**More...**

**Subcommittee on Aircraft Financing**
Michael K. Vernier, Chair, Peter B. Barlow, Vice-Chair

The Subcommittee provides a forum for practitioners and other participants involved in aircraft financing to discuss issues and recent developments in the industry in the U.S. and around the world. We typically focus on emerging trends in aircraft financing techniques and structures, as well as on legal issues of current interest or concern.

At our meetings this summer we will have speakers discussing equipment manufacturers' new 'complete care' service programs, corporate aircraft financing structures, international engine financing issues and competing rights of leasing transaction participants in U.S. airline bankruptcies. We will have an update on the Cape Town Convention from our representatives on the International Registry Advisory Board, a review of the status of the Convention in Canada and a discussion of FAA and Cape Town filing and registration issues and opinion practice.

We will meet on **Friday, August 10, from 2:00 - 5:30 pm in the Fountain Room, Lobby Level, and again on Saturday, August 11, from 9:00 am - 12:30 pm in the Vanderbilt Room, Terrace Level, of the Fairmont Hotel.**
Subcommittee on Creditors’ Rights  
Carolyn P. Richter, Chair; Rhonda L. Nelson, Vice-Chair

We hope you will join us in San Francisco for our panel discussion: "Hedge Funds in Chapter 11 Cases." Hedge fund involvement in restructuring proceedings present some unique issues, and we have a panel of lawyers from New York and a hedge fund representative to discuss the issues they face when a hedge fund is a player in a chapter 11 bankruptcy. The program will be an overview of issues faced by hedge funds and private equity funds participating in chapter 11 cases, including disclosures under Rule 2019, fiduciary duties owed by individuals serving on official committees, NOL trading orders, ethical walls, rights offerings and Big Boy letters. The presentation will be given by Shannon Nagle and Gerald Bender, partners at O’Melveny & Myers LLP’s New York office, and Eric Winthrop, a Director with Houlihan Lokey Howard & Zukin.

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Subcommittee on Cross-Border Secured Transactions  
James C. Chadwick, Chair; Joseph Turitz, Vice-Chair

At the Spring Meeting in Washington, our Subcommittee hosted a meeting that was attended by approximately 40 lawyers from throughout the United States, Canada, the United Kingdom and Europe. The meeting focused on recent legislative and caselaw developments relating to cross-border secured transactions.


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Subcommittee on Intellectual Property  
Matthew W. Kavanaugh, Chair; John E. Murdock III, Vice-Chair

At the meeting of the CFS Committee’s IP Financing Subcommittee at the Spring Meeting of the Business Law Section in Washington D.C. Professor Tom Ward of the University of Maine School of Law gave a brief update on general developments in the area of IP financing particularly with respect to the lien filing study project with the U.S. Patent and Trademark Office. Next Michael Lasinski, Managing Director of Ocean Tomo LLC (an intellectual capital merchant bank) spoke on the subject of identifying and realizing value from intellectual property assets.

The Subcommittee will meet at the ABA Business Law Section Annual Meeting in San Francisco at which a discussion is planned on the topics of IP issues in financing food products companies, the issues and challenges of financing patent trolls, and virtual law, online gaming and other issues involving virtual worlds.
**Subcommittee on Loan Documentation**
*Jeremy S. Friedberg, Chair, Stuart D. Ames, Vice-Chair*

"Applicable Other Law – ERISA, Sarbanes-Oxley and the Patriot Act in Loan Documentation" will be our topic at the August 2007 meeting of the Loan Documentation Subcommittee in San Francisco. This timely program explores the unique documentation and disclosure issues raised by non-commercial laws. Jeremy Friedberg joins expert panelists David Mittleman and Kurt Lawson. We look forward to a lively discussion on Saturday, August 11, 2007, at 10:00 am to 11:30 am at the Fairmont San Francisco, Fountain Room on the Lobby Level.

**Subcommittee on Securitization and Derivatives**
*Teresa Wilton Harmon, Chair, Anthony R.G. Nolan, Vice-Chair*

The Securitization and Derivatives Subcommittee continues to work on programming and special projects related to the securitization industry. We welcome suggestions, volunteers and new members – contact Subcommittee Chair Teresa Harmon of Sidley Austin LLP (*tharmon@sidley.com*) or Subcommittee Co-Chair Anthony Nolan of K&L Gates (*anthony.nolan@klgates.com*). Here’s an update on our subcommittee’s activities and some interesting recent cases:

**More...**

**Subcommittee on Syndications and Lender Relations**
*Anthony R. Callobre, Chair, Michelle White Suárez and Gary D. Chamblee, Vice-Chairs*

The Syndications and Lender Relations Subcommittee continues to explore developments in the syndicated loan market and in the relations between different classes of lenders, with special emphasis on the relationship between first- and second-lien lenders in the burgeoning second-lien financing market. We welcome new members, suggestions and volunteers for subcommittee projects. If you are interested in the work of our subcommittee, please contact Subcommittee Chair, Anthony Callobre of Bingham McCutchen (*anthony.callobre@bingham.com*), or either of our Co-Vice Chairs, Gary Chamblee of Womble Carlyle (*GChamblee@wcsr.com*) and Michelle Suárez of Patton Boggs (*msuarez@pattonboggs.com*). The following is a brief description of the agenda for our next meeting and a brief status report on the major projects of the subcommittee.

**More...**

**Model Intercreditor Agreement Task Force**
*Gary D. Chamblee, Chair*

The Model Intercreditor Agreement Task Force was established by the Syndications and Lender Relations Subcommittee (CFS) which is chaired by Anthony R. Callobre (Bingham McCutchen LLP). Gary D. Chamblee (Womble Carlyle Sandridge & Rice, PLLC) and Michelle White Suárez (Patton Boggs LLP) are Vice Chairs of the Subcommittee. Gary is also Chair of the Task Force.

**More...**
Committee on Uniform Commercial Code: Subcommittee Reports

Subcommittee on Equipment Leasing
Barry Graynor, Chair, Teresa Davidson, Vice-Chair

The Subcommittee on Equipment Leasing will be co-sponsoring a meeting at the ABA Annual Meeting with the Law and Accounting Committee. Tony Lopez, CPA and Senior Managing Director of FTI Consulting, Inc.’s Forensic and Litigation Consulting Group, will be speaking on what lawyers need to know about lease accounting, particularly the new international leasing standards. Please join us at 10:00 a.m. on August 13, 2007.

Subcommittee on International Commercial Law
Lawrence I. Safran, Chair, Katherine Anne Sawyer, Vice-Chair

Dr. Winfried Schmitz of Schmitz Rechtsanwälte out of Dusseldorf, Germany, will be speaking on issues relating to security interest under German law as well as suretyship issues and a recent decision of the German Supreme Court relating to assignment of interests in commercial loans at our subcommittee meeting at the ABA Annual Meeting in San Francisco. Be sure to join us for this interesting presentation on August 11, 2007 at 11:00 a.m..

Subcommittee on Letters of Credit
George Hisert, Chair

At the ABA Annual Meeting, the Subcommittee on Letters of Credit will host a meeting, open to all interested in attending, where we will discuss letters of credit as substitutes for supersedeas bonds, the latest developments on UCP 600, governmentally mandated forms of letters of credit and the potential model reimbursement agreement. Please join us on August 12, 2007 at 1:30 p.m.

Subcommittee on Payments
Stephen C. Veltri, Chair, Greg Cavanagh, Vice-Chair

The Subcommittee on Payments will present a panel in conjunction with the Banking Law Committee titled Electronic Payment Systems – The Death Knell for UCC Article 4 or a Clarion Call for Modernization? The increasing use of ACH check conversion products, e-checks and electronic check image exchange, the collection and presentment of electronic check images through the check collecting system, severely threaten the continued relevancy of UCC Article 4. The nature of these electronic payment products, the governing law, and the current and future role of UCC Article 4 will be the focus of a panel presentation by distinguished UCC and Banking Law experts. Please join us at 10:00 a.m. on August 13, 2007.

Subcommittee on Sale of Goods
Scott Burnham, Co-Chair, Keith Rowley, Co-Chair

DiMatteo (University of Florida, Warrington College of Business Administration), Henry Gabriel (Loyola University New Orleans College of Law), and Keith Rowley (University of Nevada Las Vegas, William S. Boyd School of Law, and The University of Alabama School of Law), will provide an introduction to the CISG, UNIDROIT Principles, UETA, E-SIGN, and the U.N. Electronic Commerce Convention and will explore a variety of topics arising in international sales transactions, e-commerce transactions, and international e-sale transactions in greater depth. The program is scheduled for Sunday, August 12, from 10:30 a.m. to 12:30 p.m.

**Task Force on State Certificate of Title Laws**  
*Alvin C. Harrell, Chair, Lee Anne Leathers-Lutz, Vice Chair*

At the ABA Annual Meeting our subcommittee will be discussing expanding UCOTA to cover boats and mobile homes. We hope you can join us on August 11, 2007 at noon.

**Joint Subcommittee Reports**

**Subcommittees on Secured Lending (CFS) and Secured Transactions (UCC)**  
*Katherine Simpson Allen, Chair (CFS), Leianne S. Crittenden, Chair (UCC), Wansun Song, Vice-Chair (CFS), Pauline M. Stevens, Vice-Chair (UCC)*

It was a cold and snowy day at the so-called "Spring" Meeting in Washington DC, but the regards were warm and the humor was dry as Steve Weise (Heller Ehrman LLP), Ed Smith (Bingham McCutchen LLP), and last-minute addition Neil Cohen (Brooklyn Law School) educated us on the NetBank/Commercial Money Center case, the mysterious workings of the UCC Permanent Editorial Board and the United Nations Convention on the Assignment of Receivables in International Trade. Richard Newman (Mayer, Brown, Rowe & Maw LLP) and Mattias Hallendorff (Dorsey & Whitney LLP) also gave a great presentation on the hot topic of electronic chattel paper and possible legal and technological frameworks for achieving control. Now if we could just control the weather...

With due regards to Mark Twain's observation about San Francisco's summer weather, the program for our joint meeting at the annual meeting is another hot topic! "New Players/New Games/New Foreclosure Strategies: Handicapping Second Lien vs. Senior Lien Foreclosure Disputes." An assembly of experts (Gary Chamblee, Womble Carlyle Sandridge & Rice, PLLC and Chair of the ABA Model Intercreditor Agreement Task Force, Mike Gillfillan, Meritum Partners which specializes in buyouts and restructurings, and Larry Engel, workout and insolvency partner, Morrison & Foerster LLP) will discuss issues that they foresee arising as the second lien craze moves its way through an economic life cycle.

**Joint Task Force/Working Group Reports**

**Joint Task Force on Deposit Account Control Agreements**
Marshall Grodner, Chair (CFS), Edwin Smith, Chair (UCC), John D. Pickering, Vice Chair

As many of you know, the Task Force was formed in 2004 to develop a form Deposit Account Control Agreement that was fair to all parties, represented market practice, could be widely accepted by market players and could be concluded with no or minimal negotiation. The form of deposit account control agreement developed by the task force was released at the American Bar Association's 2006 Spring Meeting in Orlando, Florida, and was published in 61 The Business Lawyer 745 (February 2006) together with an initial report of the task force. The form addresses the common situation in which a secured party seeks to enter into a control agreement with its debtor and the debtor's depositary bank relating to a transactional deposit account to which the debtor initially has access. Subsequently, the Task Force finalized several inserts to the initial form, including the Standing Disposition Instruction Insert, the Lock Box Insert, the Initial Block without Standing Disposition Instruction Insert, the Non-Demand Deposit Account Insert and the Time Deposit Insert.

More...
To review our privacy statement, go to http://www.abanet.org/privacy_statement.html.
Chair’s Column

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**Alphabet Soup: How the UCC, CISG, UNIDROIT, UETA, and E-SIGN Interact in International Sales of Goods** on Sunday, August 12 at 10:30am in the Terrace Room of the Fairmont Hotel; and

**Deals, Dents & Deficiencies in Car Purchases and Financing – What Lawyers Representing Consumers Need to Know about the UCC** on Monday, August 13 at 8:00am in the Grand Ballroom of the Fairmont Hotel.

Added to these will be the full committee meeting on Saturday August 11 at 1:00pm in the Gold Room of the Fairmont Hotel. That meeting will be devoted to a discussion of IACA’s model search logic. IACA, the International Association of Commercial Administrators, promulgates model rules for U.C.C. filing offices. The rules, which have been widely but not uniformly adopted, include rules on search logic: which records should be produced in response to a search request. IACA officials Kelly Kopyt and Timothy Poulin will receive advice from the audience about how filing offices should respond to a series of hypothetical U.C.C. search requests. So, this is your chance to have input into how filing offices operate. This discussion will be particularly timely given that the State of Texas recently amended its version of revised Article 9 to “clarify” that the name of a registered organization in a financing statement is sufficient only if it provides the name found on the debtor’s formation documents (e.g., the articles of incorporation). This differs from uniform § 9-503(a)(1), which specifies the name “indicated in the public record.” As a result of this change, a filing listing the name found in the Texas Secretary of State’s corporations database would apparently be insufficient if it differs from the name listed on the actual formation documents.

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On matters unrelated to the annual meeting, I am pleased to announce some changes in the Committee leadership.

**Professor Stephen C. Veltri** is retiring as chair of the Subcommittee on Payments but has accepted a new position as vice-chair of the Litigation Subcommittee. He will help
subcommittee complete its project to draft model jury instructions for payments cases. For those of you who do not know Steve, he practiced commercial law in Pittsburgh before joining the faculty of the Pettit College of Law at Ohio Northern University. Steve is also the co-author of the payments portion of the Annual Survey of Commercial Law published in The Business Lawyer.

Professor Sarah Howard Jenkins will be taking over as chair of the Payments Subcommittee. Sarah is the Charles C. Baum Distinguished Professor of Law at the University of Arkansas at Little Rock, William H. Bowen School of Law. She has published extensively in the areas of commercial and contract law including the current edition of Corbin on Contracts, Volume 13, Discharge of Contract (2003). She has also chaired the ABA’s U.C.C. Subcommittee on Article 1 and the AALS Section on Commercial and Related Consumer Law. Before beginning her teaching career, Sarah worked as an associate with Lewis and Roca in Phoenix, Arizona.

Meredith Jackson and Howard Darmstadter have become co-chairs of the Subcommittee on Investment Securities. Meredith is a partner at Irell & Manella LLP, where she heads the firm’s debt finance practice. She has extensive experience in structuring, negotiating and closing transactions from start-up financings to transactions involving multiple billions of dollars. Howard is an attorney with Citigroup, Inc., a frequent contributor to UCC Committee discussions, and a widely-acknowledged expert on Article 8.

Professor Carl S. Bjerre has become the UCC Committee’s first liaison to the Publication Committee. Carl practiced law for six years with the law firm of Cleary, Gottlieb, Steen, and Hamilton before joining the faculty of the University of Oregon School of Law. He is a member of the National Conference of Commissioners on Uniform State Laws and was reporter for NCCUSL’s Model Tribal Secured Transactions Act.

Anyone else seeking to become involved in the work or leadership of the UCC Committee should feel free to contact me. We are always looking for people who are willing to assist the Committee in providing useful and interesting information to the members of the Committee.

Stephen L. Sepinuck
Professor, Gonzaga University School of Law
ssepinuck@lawschool.gonzaga.edu
The purpose of this column is to identify some of the most disconcerting judicial decisions interpreting the Uniform Commercial Code to be published after the previous edition of the Newsletter. The purpose of the column is not to be mean. It is not to get judges recalled, law clerks fired, or litigators disciplined for incompetence. Instead, it is to shine a spotlight on analytical errors, and thereby provide practitioners and judges with reason to disregard the opinion as precedent.

**Featured Case**

*Provident Bank v. Community Home Mortgage Corp.*, 2007 WL 1350262 (E.D.N.Y. 2007), is a disturbing case reminiscent of the notorious OPM Leasing scandal of the early 1980s, which involved the fraudulent “double booking” of equipment leases. This case, however, involved the double booking of home mortgage loans.

Community Home Mortgage Corporation (“CHMC”) originated residential mortgage loans and pledged them to its warehouse lenders. For nine mortgage loans, CHMC required the borrowers to execute duplicate original promissory notes. It then sold one set of originals to NetBank and another set to Southwest Securities Bank. CHMC did not endorse any of the notes it sold to Southwest. In contrast it endorsed seven of the nine it sold to Netbank. Netbank also took possession of eight notes (including the two not endorsed) before Southwest took possession of its corresponding notes. However, for five of the notes, Southwest recorded its assignment of mortgage before Netbank. This set up a priority battle between the two lenders:

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CHMC
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Southwest Bank
(recorded 5 assignments first)
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Netbank
(6 endorsed & possessed first)
(1 endorsed)
(2 possessed first)
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As an initial matter, the court assumed that the mortgagors were not required to pay on both original notes. In addition, both Southwest and Netbank had given value for notes that were not overdue and that were devoid of facial irregularities. Thus, the court faced the unenviable task of assigning priority to one of two innocent parties.

The court then ruled that Article 9, not real-property law, governed the priority in the mortgage loans. In doing so, the court correctly noted that attachment and perfection in a note automatically extend to any mortgage supporting the note. U.C.C. §§ 9-203(g), 9-308(e). Thus, the court’s analysis focused exclusively on the notes, rather than the
mortgages. As a result, the court rejected Southwest’s argument that it should win as to the five loans for which Southwest had recorded an assignment of mortgage before Netbank.

With respect to Article 9 priority, the court ruled that Netbank was a holder in due course of the seven endorsed notes, and thus entitled to priority of them under § 9-331. As to the other two notes, Netbank won because it took possession before Southwest took possession of its corresponding notes.

The decision is troubling for several reasons. First, the fact that holder-in-due course status could be used to resolve the priority battle with respect to seven notes was merely fortuitous. Because CHMC never indorsed the notes that it sold to Southwest, Southwest was not a holder of the notes, and thus automatically disqualified from holder-in-due-course status. However, the facts could have easily been otherwise. Both parties might have received endorsed certificates. Then the court would have faced a priority battle between two apparent holders in due course. Nothing in Article 3 or Article 9 is designed to resolve such a dispute.

Second, the court’s conclusion that the first to possess would have priority when holder-in-due-course status did not resolve the issue was likewise troubling. The court never indicated from where it derived this rule. Although § 9-330(d) does give priority to a purchaser of a note who takes possession, its language does not refer to the first to take possession. Indeed, it does not seem to contemplate that purchasers could simultaneously be in possession. The first-to-file-or-perfect rule of § 9-322(a)(1) might apply, but the court nowhere discussed whether or when either party filed a financing statement.

In short, none of the priority rules relied upon by the court was designed to deal with this type of problem. Perhaps that was because the court implicitly treated the two original notes in each transaction as the same piece of property. While doing so has the advantage of protecting the unsophisticated home buyer duped into making the duplicate notes, it ignores an assumption underlying both Articles 3 and 9 that anything capable of being possessed is unique.

Perhaps because of this, Southwest had exhorted the court to exercise its equitable powers to divide the loan interests equally. The court gave that argument rather short shrift. We think it merited more attention.

Honorable Mentions

The following recent decisions, while not as disconcerting as the featured case, are also noteworthy for their questionable analysis.

In re Yelverton, 2007 WL 841393 (Bankr. M.D. Ala. 2007)

This is yet another decision putting judicial limits on a dragnet clause. The court ruled that neither the first loan agreement, which included a clause indicating that
collateral securing other loans also secures this one, nor the second loan agreement, which included a clause purporting to make the collateral secure all other debts of the borrowers, was adequate to make the collateral granted in the second agreement secure the debt created in the first. The court relied in part on the fact that the first loan was made more than 10 days before the debtor acquired the collateral and the second loan was made to three co-debtors whereas the first loan was made to only one of them.

In re TXNB Internal Case, 2007 WL 914983 (5th Cir. 2007)

In this troubling opinion, the court ruled that the party deemed to have somehow had no cause of action for interference with its property rights. Specifically, the court ruled that a buyer who took gas in part payment of an antecedent debt and was therefore not a buyer in ordinary course was not liable to a secured party for conversion for selling the gas to purchasers who were buyers in ordinary course because it had no knowledge or notice of the lien. In addition, the buyer was not liable for conversion of the proceeds because an action for conversion of money requires a segregated fund or a transfer for safekeeping. However, the court ruled that the buyer may be liable in a collection action.

In re Cook, 2007 WL 680170 (Bankr. W.D. Mo. 2007)

The court ruled that a security interest in an automobile perfected by notation on an Arkansas certificate of title for the car became unperfected after the car was re-certificated in Missouri because the new certificate failed to list the lien. The court correctly noted that, pursuant to § 9-303, Missouri law begins to govern perfection and priority upon issuance of the Missouri certificate. However, it missed § 9-316(d), (e), pursuant to which the previously perfected security interest should have remained perfected.

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UCC Terminations and the Searcher’s Duty of Further Inquiry
By Paul Hodnefield

UCC Records are not always what they appear to be. This is especially true for termination statements. Lenders and legal professionals often misunderstand what effect a termination has on the financing statement. Many mistakenly believe that a financing statement ceases to be effective upon the filing of a termination.

This misconception leads to risky search practices that could later prove costly for any party that must rely on the results. For example, a common UCC search shortcut is to omit terminated financing statements. It costs time and money to review terminated records. The reasoning is “why bother” if terminated financing statements are no longer effective.

Unfortunately, failure of a party to review terminated financing statements during the search process carries hidden risks with serious consequences. A financing statement may remain fully effective after the filing of a termination statement. A party that relies on the face value UCC records may later find its security interest subordinate to that of the secured party listed on a “terminated” financing statement. Only by looking beyond the UCC records can a party determine the effectiveness of a record.

The Searcher’s Duty of Further Inquiry

Revised Article 9 established a notice filing system. The purpose of a financing statement is merely to provide notice that a security interest may exist. As a simple notice, the financing statement need not provide all the details of a transaction, such as the security agreement, dollar amounts or terms and conditions. Instead, the record provides just the basic information necessary to alert an inquiring party about the potential security interest. This includes the name of the debtor, name of the secured party and an indication of the collateral.

Note that the term “financing statement” as defined in UCC § 9-102(a)(39) means a record composed of the initial financing statement and any filed record that relates to that initial financing statement. This definition extends to amendments, such as a termination statement.

The financing statement was never intended to conclusively establish either the existence or absence of a security interest. The information necessary to make that determination resides outside the public record. Consequently, a searcher cannot rely on the UCC records alone. Interested parties must conduct further inquiry to disclose the complete state of affairs. See UCC § 9-502(a) Comment 2.

Further inquiry is especially important when it comes to terminated financing statements. The reason is that one cannot determine the effectiveness of a termination statement from
its contents. An interested party must look beyond the public record for the facts and circumstances that establish the effectiveness of a filed record.

Ineffective Terminations

The purpose of filing a termination statement is for the secured party to indicate the financing statement is no longer effective to perfect the security interest. It is nothing more than a notice filed for the benefit of interested parties to help them interpret the effectiveness of the financing statement. The termination has no effect on the filing office record. The filing office does not delete the record, mark it as ineffective or adjust the lapse date. Instead, the filing office treats the termination as any other type of amendment. A terminated financing statement can even be continued, assigned or amended.

However, filed does not equal effective: “A filed record is effective only to the extent it was authorized by a person that may file it under Section 9-509.” UCC § 9-510(a). With limited exceptions, a person may file a termination statement only if the secured party of record authorizes the amendment. See UCC § 9-509(d)(1). Any number of circumstances could cause a termination statement to be ineffective or limited in scope.

Every month, filing officers around the country index hundreds, if not thousands of unauthorized terminations. It is a common problem, often caused by an innocent mistake, or a misunderstanding of the filer’s authority.

Mistaken terminations commonly occur due to the simplicity of the termination form. Most filing offices will accept the National UCC Amendment form with only two pieces of information: the initial financing statement file number and a check in the termination box. Not even the name of the secured party that authorized the amendment is necessary. See UCC §§ 9-516(b) and 9-520(a).

The filing office links a termination statement to the initial financing statement exclusively by the file number. UCC document preparers commonly make mistakes in the initial file number. Often, a mistake results from typographical error or a poor copy of the original filing acknowledgment. Threes, eights and zeros can look a lot alike when the acknowledgement file number stamp is not clear.

Regardless of the reason, if an erroneous initial file number matches an active financing statement, the filing office will index the termination with that record. The filing office has no discretion to decide whether the termination relates to the correct record. It is the filing party’s responsibility to accurately provide this information or suffer the consequences. If the correct secured party did not authorize the termination, the financing statement remains effective.

Refinance transactions can also lead to unauthorized terminations. A new lender may file a termination based on the secured party’s authority contingent upon payment of the outstanding balance, only to have the deal fall through at the last minute. Sometimes the
new lender assumes it has authorization simply by its intent to pay off the obligation. Revised Article 9, however, does not recognize such authority. If the secured party has not granted authority to the new lender, the termination has no effect.

The challenge for a UCC searcher is to ascertain the filer’s authority. That determination depends on the rules of agency, not the contents of the public record. There is no requirement that a UCC record contain evidence of authority to file. An interested party can only establish the filer’s authority by contacting the principals to the transaction represented by the financing statement.

A financing statement with multiple secured parties provides another trap for the unwary UCC searcher. When there is more than one secured party, even an authorized termination may not effectively terminate the financing statement. “A record authorized by one secured party of record does not affect the financing statement with respect to another secured party of record.” UCC § 9-510(b). Thus, a termination filed by one secured party does not necessarily terminate the security interests of the remaining secured parties.

Take, for example, the case of a financing statement with four secured parties. If secured party #1 files a termination statement, it does not mean the financing statement is no longer effective. The effect of the termination may be limited solely to the interest of secured party #1. In that case, the debtor’s collateral remains every bit as encumbered as it was prior to the termination filing. The only difference is that there are now three secured parties claiming an interest in the debtor’s assets instead of four. The collateral pie remains the same size; it’s just cut into fewer pieces.

Even if all the secured parties did authorize secured party #1 to file the termination on their behalf, Revised Article 9 has no requirement that the termination statement reflect that authority. The effect of a termination statement can never be determined from the UCC records alone.

**Recommendations & Best Practices**

Due to the number of ineffective terminations indexed by filing offices around the country, searching parties face substantial risk if they make decisions in reliance solely on the contents of UCC records. To reduce this risk, UCC searchers must reach beyond the public record to determine the effectiveness of a terminated financing statement. However, further inquiry is not always easy, or even practical.

Secured parties are under no duty to respond to inquiries from interested parties. Only the debtor can force the secured party to disclose information by following the statutory process set forth in UCC § 9-210. Even then, the process takes time, a luxury often not available in the fast-paced world of commercial transactions. Ultimately, the interested party must balance the need for further inquiry with the cost and time required, based on the risk involved in the transaction.
Nevertheless, lenders and legal professionals can still take steps to protect themselves from ineffective terminations. The single most important thing they can do is follow diligent search practices. A diligent UCC search will always require a careful review of terminated financing statements. This includes all related records, including termination statements.

The UCC records may contain indications that a termination statement was unauthorized or filed in error. If, for example, the termination provides a name for the party that authorized the amendment that differs from the secured party name listed on the financing statement, it could indicate an error or lack of authority. The same applies if the termination statement provides no name at all.

Other “red flags” might include the omission of information in the “Return To” or “Optional Filer Reference Data” sections. Most lenders and law firms provide some sort of information in these fields so they can link the record to the correct file. A record that lacks such numbers could indicate the filer lacked access to the necessary information. These indicators don’t necessarily mean the termination was filed without authorization, but they at least suggest the need for further inquiry.

Above all, UCC searchers must remember that a termination acts as nothing more than a notice. It is really the opposite of a financing statement. A termination statement simply indicates that the security interest may no longer exist. Further inquiry will always be necessary to determine the true effect of a termination record. Lenders and legal professionals that rely solely on the contents of a termination statement do so at their own peril.

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WHO HOLDS THE ASSETS IN A DELAWARE SERIES LLC?

by

Norman M. Powell, Esquire*

According to records of the Delaware Secretary of State, more than 96,000 Delaware limited liability companies (“Delaware LLCs”) were formed in 2006. Delaware LLCs are increasingly the entity of choice for operating companies, and figure prominently in a great many structured finance transactions as so-called special purpose entities. The Delaware Limited Liability Company Act, 6 Del. C. § 18-101, et seq. (the “Delaware LLC Act”) facilitates the formation of Delaware LLCs with attributes carefully crafted to meet the needs of a given application, and is regularly revised so as to best assure that Delaware LLCs can be crafted to meet the ever-developing needs of the marketplace. For a number of years, the Delaware LLC Act has permitted the formation of Delaware LLCs with separate series of members, managers, and limited liability company interests.

In recent weeks, Delaware’s General Assembly passed Senate Bill 96 (“SB 96”) amending the Delaware LLC Act. Assuming SB 96 is signed into law by Governor Minner, its amendments will take effect on August 1, 2007. Among other things, SB 96 provides a number of options for the holding of assets associated with a series. These options provide maximum flexibility, and so accommodate the needs of a great many constituencies. Inevitably, some options are better suited to some applications than others. This article considers the interplay between the Delaware LLC Act provisions relating to series and perfection of security interests by filing under Article 9 of the Uniform Commercial Code (“Article 9”).

Those dealing with the creation and perfection of security interests in assets associated with a series of a Delaware LLC must be particularly careful in identifying their “debtor” (that is, the person having an interest in the collateral at issue, within the meaning of Article 9 § 102(a)(28)), and answering each question that follows from that threshold issue. In the years since (revised) Article 9 took effect, most of us have become comfortable that a Delaware LLC is a “registered organization” within the meaning of Article 9 § 102(a)(70). Thus, a Delaware LLC is “located” in Delaware under Article 9 § 307(e), and a financing statement identifying a Delaware LLC as “debtor” must feature the Delaware LLC’s name (only) in box 1a as indicated in Article 9 § 503(a)(1) and be filed in Delaware pursuant to Article 9 § 301. But things may be very different if we’re considering assets associated with a series. As revised by SB 96, Section 18-215 of the Delaware LLC Act provides in relevant part as follows:

(b) . . . Assets associated with a series may be held directly or indirectly, including in the name of such series, in the name of the limited liability company, through a nominee or otherwise.

(c) A series established in accordance with subsection (b) of this section . . . shall have the power and capacity to, in its own name, contract, hold title to assets (including real, personal and intangible property), grant liens and security interests, and sue and be sued.

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As regards assets of a given series, who is the “debtor” within the meaning of Article 9 § 102(a)(28)? Possibilities would seem to include the Delaware LLC itself, the series, and a nominee.

If the Delaware LLC itself is the debtor, Article 9 would seem to require its ordinary filing against and naming the Delaware LLC as debtor, in the Delaware LLC’s location (that is, Delaware). Matters unique to the series might be addressed in the collateral description, or in box 10 (miscellaneous) of the financing statement addendum, as appropriate.

If a nominee is the debtor, one must consider whether that nominee is an organization, a registered organization, an individual, or something else. An effective filing against the assets of the corresponding series would be filed in such nominee’s location (which may not be Delaware) as determined under the applicable subpart of Article 9 § 307 and name the nominee (only) in box 1a (or box 1b, if applicable) in deference to the applicable subpart of Article 9 § 503.

If the series is the debtor, again one must consider whether it is an organization, a registered organization, or something else. “Organization” is defined in Uniform Commercial Code Article 1, Section 201(25), as “a person other than an individual.” “Person,” in turn, is defined in Uniform Commercial Code Article 1, Section 201(27), as “an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity [emphasis added].” Is it sufficiently clear whether a series is a legal or commercial entity? Article 9 appears to contemplate that debtors to which it applies are either individuals or organizations (see, e.g., Section 9 – 307(b)), with some organizations belonging in the subcategory “registered organization.” It would seem that the Article 9 definition of “registered organization” does not fit series of a Delaware LLC - there isn’t necessarily any public record maintained by the Delaware Secretary of State showing a given series to have been organized (let alone its name), and the Delaware LLC as a whole is issued a single organizational ID number. On balance, then, this particular option for holding series assets may leave Article 9 secured parties without the degree of certainty and confidence to which they’ve become accustomed.

As suggested above, having determined who is the “debtor” with respect to the relevant assets and having had such debtor effectively grant the desired security interest, interested parties must determine the proper characterization of such debtor for purposes of determining where to file a financing statement against it, and determine its name and other information for purposes of completing such financing statement. If the debtor is the Delaware LLC itself, these questions are easily answered. If the debtor is a nominee, these questions should be easily answerable by consideration of the relevant attributes of that nominee under Article 9. But if the debtor is the series, questions remain as to the characterization of the debtor and thus its location for purposes of Article 9 § 307 (that is, where to file), and what name, organizational ID number (if applicable – Delaware does not require organizational ID numbers on financing statements), and other identifying information to provide on a financing statement (that is, what to file). The same issues will appear in the Delaware Revised Uniform Limited Partnership Act, 6 Del. C. § 17-101, et seq., if Senate Bill 95, which is substantially similar to SB 96 discussed above, becomes law.
**Holy smoke, my promissory note’s a security!**

The issuance of one or more promissory notes has been an unproblematic feature in many transactions. The basic legal regime for transfer and pledge of such instruments is well understood: If the note is negotiable, Articles 3 (“Commercial Paper”) and 9 (“Secured Transactions”) of the Uniform Commercial Code (UCC) govern; otherwise, it’s Article 9 and the common law (which is likely to draw on Article 3).

This past April the New York Court of Appeals (New York’s highest) upset those comfortable understandings. In *Highland Capital Management LP v. Schneider*, the court held that eight promissory notes issued to four individuals as partial payment for their business were securities governed by Article 8 (“Investment Securities”) of the UCC.

No one has ever doubted that some promissory notes — for example, those traded on securities exchanges — are also Article 8 securities. Indeed, Article 8 states that if an Article 3 promissory note also meets the requirements for an Article 8 security, then Article 8 governs. It is also widely understood that some promissory notes (and lots of other instruments as well) may be “securities” for purposes of the federal securities laws without being Article 8 securities. The UCC governs the commercial law aspects of notes and securities — primarily the rights and obligations of transferors, transferees, pledgors and secured parties — while federal and state securities laws govern the anti-fraud and disclosure aspects of sales of securities.

What happens when the commercial law rules for promissory notes suddenly shift from Article 3 (or comparable common law principles) to Article 8? Here are a few things to watch for (or worry about):

1. **Statute of frauds.** In New York and many other states that have not adopted the newest version of UCC Article 1, a sale of promissory notes is subject to the statute of frauds; a sale of Article 8 securities is not. (This was the difference that led the plaintiff’s lawyers in *Highland Capital* to argue that the notes were governed by Article 8.)

2. **Endorsement.** Notes and securities certificates are both transferred by endorsement, but Article 3’s default rules differ from Article 8’s. Under Article 3, an endorser of a promissory note also guarantees that if the instrument is dishonored, the endorser will pay it in accordance with its tenor; an endorser of an Article 8 security makes no such undertaking. Of course, these are just default rules. An endorser of an Article 3 instrument can negate the guaranty by writing “without recourse” above his or her signature, just as an endorsement of an Article 8 security can include specific words of guaranty.

Notes can be transferred more than once, with each endorser warranting to later holders that the prior endorsements are genuine. The endorser of a security does not make these warranties, primarily because securities are generally not transferred via a string of endorsements. Which brings us to the next difference between notes and securities.

3. **Registration of transfer.** Generally, when a security certificate is transferred, the transferee will deliver the endorsed certificate to the issuer or its transfer agent, who will issue a new certificate in the transferee’s name. Indeed, Article 8 mandates that the issuer register transfer. So an issuer of promissory notes that are found to be securities will be obliged to register the transfer and issue new notes/securities upon a transferee’s request.
4 **Restrictions on assignment.** Article 9 makes some restrictions on the assignment of promissory notes ineffective, but these rules do not apply to securities.

5 **The great unknown.** Articles 3 and 8 differ in many other points that may prove critical in particular situations. Whether these differences will have a profound effect on market practices is not yet clear. Expect some surprises.

Despite *Highland Capital*, you may be able to keep your promissory notes under the comforting shelter of Article 3. Primarily, *Highland Capital* depended on identical notes (except for amount) being issued to different payees. If your transaction doesn’t involve identical notes, you should have no worry. But if it does, you might consider changing some of the less important terms so that no two notes are alike.

You might also consider removing the issuer from the transfer process. The notes in *Highland Capital* had legends to the effect that they could only be transferred if a Securities Act registration statement was in effect, or the issuer received an opinion that registration was not required. These requirements seem to have been critical to the *Highland Capital* court’s decision. If you can do without such requirements, you’re probably safe.

There was a presentation on the earlier decisions in the *Highland Capital* litigation at the Spring 2007 meeting of the Business Law Section; materials are available at [http://meetings.abanet.org/webupload/commupload/CL190000/otherlinks_files/int6D.DOC](http://meetings.abanet.org/webupload/commupload/CL190000/otherlinks_files/int6D.DOC). An analysis of the New York Court of Appeals decision will appear in *The Business Lawyer*’s annual UCC roundup, scheduled for the August 2007 issue.

Howard Darmstadter
New York City
On June 14, 2007, the Special Joint Committee on Lawyers’ Opinions in Business Transactions of the Section of Business Law and the Section of Real Property, Planning and Zoning of the Maryland State Bar Association, Inc. (the “Committee”) issued its REPORT ON LAWYERS’ OPINIONS IN BUSINESS TRANSACTIONS (the "Report") in response to a perceived need to update a 1989 Report prepared by the Special Joint Committee on Lawyers’ Opinions in Commercial Transactions.

The full text of the Report may be found at https://www.msba.org/sec_comm/sections/realprop/docs/businesstrans_update.pdf.

The Report contains several sample opinions and an exhaustive list of sample opinion language with commentary.

Areas of Interest to Commercial Finance Attorneys

1. No Opinion

   The Report states that it is inappropriate to give or to request opinions in the following situations and as to the following matters, among others:

   (i) overly broad matters such as “compliance with all federal, state and local laws, rules and regulations”;
   (ii) financial status of the client;
   (iii) factual matters (with certain exceptions);
   (iv) priority of liens on real or personal property;
   (v) title to real or personal property;
   (vi) environmental status of the property;
   (vii) compliance with zoning laws and regulations (with some exceptions);
   (viii) opinions under the law of a state where the opinion giver is not admitted (with some exceptions, such as Delaware corporate law).

2. Creation, Perfection and Priority of Liens on Personal Property

   a. Perfection

   The Report contains a lengthy and well-considered discussion on perfection and priority opinions. The Committee basically adopts the 2003 TriBar U.C.C. Report and commends the 2003 TriBar U.C.C. Report as an important resource and guide when rendering opinions relating to Article 9 matters.
b. Priority Opinions Generally Disfavored

An opinion recipient generally should not request, and a Maryland lawyer generally should not be required to render, an opinion as to the priority of a security interest under Article 9. The priority of a perfected security interest under Article 9 can usually be determined by reference to records, reports or other information (other than a legal opinion) that are available to the secured party. The Report’s position is consistent with customary practice in Maryland and national practice as described in the 2003 TriBar U.C.C. Report. In addition, UCC insurance is available to secured parties.

Jeremy S. Friedberg
Leitess Leitess Friedberg + Fedder PC
Subcommittee on Creditors’ Rights
Carolyn P. Richter, Chair, Rhonda L. Nelson, Vice-Chair

We hope you will join us in San Francisco for our panel discussion: “Hedge Funds in Chapter 11 Cases.” Hedge fund involvement in restructuring proceedings present some unique issues, and we have a panel of lawyers from New York and a hedge fund representative to discuss the issues they face when a hedge fund is a player in a chapter 11 bankruptcy. The program will be an overview of issues faced by hedge funds and private equity funds participating in chapter 11 cases, including disclosures under Rule 2019, fiduciary duties owed by individuals serving on official committees, NOL trading orders, ethical walls, rights offerings and Big Boy letters. The presentation will be given by Shannon Nagle and Gerald Bender, partners at O’Melveny & Myers LLP’s New York office, and Eric Winthrop, a Director with Houlihan Lokey Howard & Zukin.

Our Spring meeting in Washington, D.C. focused on a topic that is useful for a wide variety of transactional and bankruptcy lawyers: “Structuring Transactions to Mitigate Insolvency Risks: Use and Limitations of Escrow Agreements, Letters of Credit, Security Deposits and Other Mechanisms.” New York attorneys Abe Zylberberg and Evan Hollander, both partners at White & Case LLP, gave us a tremendous talk and excellent materials on this topic. Their handout was a primer for lawyers on the tools available to mitigate insolvency risk, and we so appreciate all their work to present that program.

Please join us for our next meeting on Saturday, August 11, at 1:00 pm. Feel free to bring your lunch to the meeting and learn about hedge funds in chapter 11 cases.

Carolyn Richter
Partner, Troutman Sanders LLP, Atlanta office
Chair, Creditors’ Rights Subcommittee

Rhonda Nelson
Partner, Severson & Werson, San Francisco office
Vice Chair, Creditors’ Rights Subcommittee
At the Spring Meeting in Washington, our Subcommittee hosted a meeting that was attended by approximately 40 lawyers from throughout the United States, Canada, the United Kingdom and Europe. The meeting focused on recent legislative and caselaw developments relating to cross-border secured transactions.


Martin Fingerhut of Blake, Cassels & Graydon LLP, Toronto, Canada, provided an update on developments in Canadian secured transactions and securitizations, particularly those involving (i) financial assistance, (ii) unlimited liability companies, (iii) Ontario's adoption of UCC Article 8, (iv) proper completion of financing statements in Ontario, (v) pledges of third-party obligations, (vi) conflicts laws to determine the location of a debtor, (vii) anti-assignment clauses, (viii) securitizing Canadian receivables in the US, and (ix) issuing US term debt to Canadian investors.

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.

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Subcommittee on Securitization and Derivatives  
*Teresa Wilton Harmon, Chair, Anthony R.G. Nolan, Vice-Chair*

The Securitization and Derivatives Subcommittee continues to work on programming and special projects related to the securitization industry. We welcome suggestions, volunteers and new members – contact Subcommittee Chair Teresa Harmon of Sidley Austin LLP (tharmon@sidley.com) or Subcommittee Co-Chair Anthony Nolan of K&L Gates (anthony.nolan@klgates.com). Here’s an update on our subcommittee’s activities and some interesting recent cases:

**PROGRAMS:**

We have several great programs lined up for the annual meeting in San Francisco. We will sponsor ABC’s of Securitization, a general overview designed for a broad audience. We will also hold a joint subcommittee meeting with the Securitization Subcommittee of the Developments in Business Financing Committee. Topics will include a discussion of how securitization structures have fared in the subprime market, war stories from the first Reg AB reporting period, new information about rating agency derivatives criteria and an overview of Maple deals, which tap the Canadian investor base for US Securitizations. We will be co-sponsoring a program on developments in the sub-prime mortgage industry which will include Dale Lum of Sidley Austin LLP discussing the impact on securitization.

Several subcommittee members and securitization attorneys – Anthony Nolan of K&L Gates; Teresa Harmon of Sidley Austin LLP; Martin Fingerhut of Blake, Cassels and Graydon LLP; Dina Moskowitz of Standard and Poor’s; Michael Mitchell of Orrick, Herrington and Sutcliffe LLP; and Don Carden of Clifford Chance LLP – recently videotaped a 4-hour ABA CLE presentation called The ABC’s of Securitization. The program will be available for purchase on the ABA’s website and is a great training resource.

**SPECIAL PROJECT:**

Our subcommittee continues to work with the ABA’s Deposit Account Control Agreement Task Force to develop a model control agreement suitable for securitization transactions. We encourage all committee members to review the draft form, which is available on the ABA’s website, and send comments to Eric Marcus of Kaye Scholer. The drafts are available on the ABA website at [http://www.abanet.org/dch/committee.cfm?com=CL710060](http://www.abanet.org/dch/committee.cfm?com=CL710060). Many thanks to Eric for his leadership on this project.

**CASE LAW DEVELOPMENTS:**

The following recent decisions may be of interest to securitization lawyers:

*Highland Capital Management L.P. v. Schneider*, 2007 U.S. App. LEXIS 11255 (2d Cir. 2007). In May, the United States Court of Appeals for the Second Circuit reached the next step in the *Highland Capital* case. Earlier this year, The New York Court of Appeals, responding to a certified question from the Second Circuit, held that
S.E.C. v. National Presto Industries, Inc., 2007 U.S. App. LEXIS 11345 (7th Cir. 2007). A recent decision of the United States Court of Appeals for the Seventh Circuit evaluated the application of the Investment Company Act of 1940 to an operating company which also held significant investments. Judge Easterbrook’s opinion is a helpful reminder that an operating company can sometimes be an investment company and includes some quite colorful editorializing about the S.E.C.’s actions in the case.

North American Catholic Educational Programming Foundation, Inc. v. Gheewalla, 2007 U.S. Del. LEXIS 227 (Del. 2007). The Delaware Supreme Court has ruled that even when a company is insolvent or in the zone of insolvency, a creditor cannot file a direct claim against a company’s directors for breach of fiduciary duty. The court acknowledged that a derivative claim may be available to a creditor of an insolvent corporation.

Nichols v. Birdsell, 2007 U.S. App. LEXIS 10919 (9th Cir. 2007). The Ninth Circuit recently addressed the question of whether a company’s pre-petition tax overpayment constituted property of its bankruptcy estate. The decision includes an overview of Ninth Circuit precedent on Section 541(a) of the Bankruptcy Code, which defines property of the estate and is relevant to true sale opinions.
The Syndications and Lender Relations Subcommittee continues to explore developments in the syndicated loan market and in the relations between different classes of lenders, with special emphasis on the relationship between first- and second-lien lenders in the burgeoning second-lien financing market. We welcome new members, suggestions and volunteers for subcommittee projects. If you are interested in the work of our subcommittee, please contact Subcommittee Chair, Anthony Callobre of Bingham McCutchen (anthony.callobre@bingham.com), or either of our Co-Vice Chairs, Gary Chamblee of Womble Carlyle (GChamblee@wcsr.com) and Michelle Suárez of Patton Boggs (msuarez@pattonboggs.com). The following is a brief description of the agenda for our next meeting and a brief status report on the major projects of the subcommittee.

NEXT MEETING:

Our next meeting will be held from 9:00 am to 10:30 am in the California Room, Mezzanine Level, of the Fairmont San Francisco Hotel. Our meeting will be a joint meeting with the Syndicated Bank Financing Subcommittee of the Developments in Business Financing Committee, whose mission is fairly similar to the mission of our subcommittee. The meeting will begin with a short discussion of the current developments and trends in the syndicated loan markets. That discussion will be followed by brief reports on the status of our subcommittee’s two principal projects: the establishment of a task force to develop a model intercreditor agreement for use in second-lien financing transactions and the preparation of a chapter on syndicated loans for inclusion in Howard Ruda’s treatise on asset-based lending.

MODEL INTERCREDITOR AGREEMENT TASK FORCE:

Under the leadership of subcommittee Co-Vice Chair, Gary Chamblee, our subcommittee has developed a task force to develop a market-based intercreditor agreement for use in second-lien financing transactions. Gary will discuss the status of this project at our next meeting and will preside over a meeting of the task force (which is open to new members, observers and other interested parties) which will be held immediately after our subcommittee meeting, from 10:30 am to 11:30 am in the Fountain Room, Lobby Level of the Fairmont San Francisco Hotel. Many thanks to Gary for his leadership and enthusiastic work on this project.

SYNDICATIONS CHAPTER FOR ASSET-BASED LENDING TREATISE:

Under the leadership of subcommittee Co-Vice Chair, Michelle Suárez, our subcommittee is drafting a chapter on syndicated loans for inclusion in Howard Ruda’s treatise on asset-based lending. Michelle will discuss the status of this project at our next meeting. Many thanks to Michelle for her inspired leadership on this project.
Model Intercreditor Agreement Task Force
Chair: Gary D. Chamblee
Womble Carlyle Sandridge & Rice, PLLC
Charlotte, North Carolina

The Model Intercreditor Agreement Task Force was established by the Syndications and Lender Relations Subcommittee (CFS) which is chaired by Anthony R. Callobre (Bingham McCutchen LLP). Gary D. Chamblee (Womble Carlyle Sandridge & Rice, PLLC) and Michelle White Suarez (Patton Boggs LLP) are Vice Chairs of the Subcommittee. Gary is also Chair of the Task Force.

The Task Force was formed to develop a market-based form of intercreditor agreement for intercreditor arrangements between first and second lien institutional lenders holding liens on the same collateral. As the first step in the process, an initial draft of the proposed form of intercreditor agreement was circulated to Task Force members in March, 2007. The initial draft includes both a base form of agreement and alternative and optional provisions that address specific concerns of senior lenders and junior lenders. The next step will be for Task Force members to revise the draft agreement based on their particular areas of expertise and experience with the goal of developing a form of agreement that both first and second lien holders will find acceptable, at least as a starting point for further negotiations, and that reflects current practices among attorneys and lenders. Commentary will also be included as a guide to common legal issues and business concerns that arise in such intercreditor agreements.

The perceived need for a Model Intercreditor Agreement between first and second lien holders is driven by the explosive growth in the second lien market over the last several years. According to the Loan Pricing Corporation (“LPC”), second lien issuance in the North American market in 2003 totaled approximately $8 billion. In 2005 the issuance of second liens hit almost $22 billion and in 2006 totaled over $29 billion. In the first quarter of 2007 alone, LPC reported that the volume for the issuance of second lien financing reached an astounding $16.74 billion.

What has caused this dramatic increase in second lien financing?

For borrowers, second lien loans obtained in conjunction with a senior credit facility secured by all of the borrower’s assets offer a lower cost alternative to traditional unsecured mezzanine financing, and without the need to issue stock warrants or other equity interests in the company. According to LPC, in the first quarter of 2007, the spread of second lien loans over LIBOR averaged 598 basis points while spreads for first lien loans averaged 281 basis points. Second lien loans may also take the place of issuing high-yield bonds to raise capital. Although originally designed to meet the needs of financially-troubled companies, second lien loans now play a regular role in secured financing packages for acquisitions, recapitalizations, leveraged buyouts and other large financing transactions.

From the senior lender’s perspective, permitting a second lien loan allows the senior lender to meet its customer’s borrowing needs without extending its own credit beyond
limits it considers prudent. It also frees up borrower cash flow when compared to the typically greater demands placed on available cash by traditional unsecured mezzanine loans since those loans have typically been priced at higher interest rates than second lien loans.

For the second lien lender, in addition to earning a higher return than the senior lender for its higher risk, the second lien lender has the advantage over the typical mezzanine lender of being secured. To the extent that the borrower’s assets are sufficient to support both the senior lender and the second lien holder’s debt, the second lien holder obtains a position in the event of bankruptcy which is superior to unsecured creditors including trade creditors and which is typically behind only the senior lender’s first lien on the borrower’s assets.

Intercreditor agreements between first and second lien holders are often fiercely negotiated because the stakes are high, both parties are typically sophisticated lenders with knowledgeable counsel and the fundamental economic interests of the lenders are diametrically opposed.

The parties to an intercreditor agreement usually have no problem in agreeing on the basic proposition that the lien held by the first lien lender (or the collateral agent for a group of syndicated first lien lenders) to secure the first lien obligations will in all circumstances be prior and superior to the lien held by the second lien lender on the same collateral. In the typical intercreditor agreement, only the second lien holder’s lien will be subordinated and not its right to payment.

Once the parties move beyond the basic subordination provisions, however, there is little in the way of market standards to guide the parties. In the earlier stages of development of second lien financing, the senior lenders often permitted second liens only in the form of a “silent” second. For a senior lender, the ideal second lien is a junior lien in which the second lien holder has few approval rights (if any) over modifications of the senior loan and plays only a passive role in enforcement actions by the senior lender or in bankruptcy proceedings. As second lien financings have increased, and both second lien lenders and borrowers (including in particular private equity “sponsors” of borrowers) have increased their economic leverage over the terms of financing transactions, second lien holders have increasingly demanded a greater role in all aspects of the intercreditor relationship, including approval rights over material modifications of the senior loan and lien enforcement decisions.

Control of the enforcement process is of key importance to senior lenders. If the senior lender is forced into a race to the courthouse by the subordinate lender, the senior lender may find itself with little leverage to arrange a workout or other voluntary settlement with the borrower. On the other hand, if approvals are required from the second lien lender to exercise remedies and the second lien lender disagrees with the strategic decisions made by the senior lender, the senior lender may find itself unable to foreclose on collateral owned by a borrower whose financial position is deteriorating. For the second lien lender, the concern is that the senior lender will delay action if it considers itself adequately secured while the second lien holder’s position grows weaker. The typical solution to
this tension between the interests of first and second lien holders is to impose a
“standstill” period (often 90 to 180 days although this period is subject to considerable
variation) during which the senior lender has the exclusive right to exercise remedies,
including foreclosing on the collateral, and the second lien holder agrees not to contest
any foreclosure proceeding or other remedial action by the senior lender under the senior
loan documents. If the first lien holder fails to act during the standstill period, then the
junior creditor is free to pursue its own remedies, including initiating a foreclosure
proceeding on the shared collateral. However, if the senior lender begins exercising its
remedies during the standstill period, then the intercreditor agreement typically provides
that the junior lien holder will continue to suspend the exercise of any remedies as long as
the senior lender diligently pursues the exercise of its rights and remedies with respect to
the shared collateral. In order to protect the second lien holder’s position while the senior
lender forecloses, the intercreditor agreement usually gives the second lien holder the
right to take certain limited actions to protect its position in the collateral. For example,
the initial draft of the Model Intercreditor Agreement permits the second lien holder to
file a claim in any insolvency proceeding, to take actions to create, perfect or preserve its
lien on the collateral; to file a proof of claim in any bankruptcy proceeding and to vote on
any plan of reorganization.

Both the senior and junior lien holder want the ability to modify their respective loan
documents without the consent of the other lender and, at the same time, to prevent the
other lender from modifying its loan documents in a way that prejudices the rights of the
opposing lender (for example, by increasing the amount of the loan). The usual
compromise in an intercreditor arrangement is to give both lenders approval rights over
certain material modifications to the other lender’s loan documents. The initial draft of
the Model Intercreditor Agreement provides that the second lien holder’s approval is
required in order for the senior lender to increase the amount of its loan, to increase the
“applicable margin” on its interest rate beyond an agreed-upon amount, to shorten the
maturity date or to modify the mandatory prepayment provisions of the senior loan. The
draft Model Intercreditor Agreement gives the senior lender similar approval rights over
modifications by the junior lender, and a few additional rights of approval, including the
right to approve any change by the second lien holder in the events of default under its
loan documents.

Another area of dispute between first and second lien holders are the respective rights of
the parties in bankruptcy. The senior lender will often insist that the junior lender waive
certain of its rights in any bankruptcy proceeding as a condition to permitting the second
lien. For example, the senior lender may require that the junior lien holder agree that it
will not contest any request by the first lien holder for adequate protection and that it will
not object to the senior lender’s use of cash collateral or to any DIP financing under
Section 364 of the Bankruptcy Code. Despite the prevalence of these types of agreements
and waivers in intercreditor agreements, there have been only a relatively few cases
addressing the enforceability of such provisions in bankruptcy and those cases have
reached differing results. One purpose of the commentary in the Model Intercreditor
Agreement will be to provide some guidance in this difficult area.
The Model Intercreditor Agreement Task Force will be meeting at the Annual Meeting in San Francisco. The meeting is open to all and is scheduled for Monday, August 13, at 10:30 AM immediately following the meeting of the Syndications and Lender Relations Joint Meeting at 9:00 AM. If you are interested in joining the Task Force, please contact Gary Chamblee, Womble Carlyle Sandridge & Rice, at gchamblee@wcsr.com.
JOINT TASK FORCE ON DEPOSIT ACCOUNT CONTROL AGREEMENTS
Marshall Grodner, Chair (CFS), Edwin E. Smith, Chair (UCC), John Pickering, Vice-Chair

As many of you know, the Task Force was formed in 2004 to develop a form Deposit Account Control Agreement that was fair to all parties, represented market practice, could be widely accepted by market players and could be concluded with no or minimal negotiation. The form of deposit account control agreement developed by the task force was released at the American Bar Association’s 2006 Spring Meeting in Orlando, Florida, and was published in 61 The Business Lawyer 745 (February 2006) together with an initial report of the task force. The form addresses the common situation in which a secured party seeks to enter into a control agreement with its debtor and the debtor’s depositary bank relating to a transactional deposit account to which the debtor initially has access. Subsequently, the Task Force finalized several inserts to the initial form, including the Standing Disposition Instruction Insert, the Lock Box Insert, the Initial Block without Standing Disposition Instruction Insert, the Non-Demand Deposit Account Insert and the Time Deposit Insert. Additional inserts that are almost final are the First Lien Insert and the Second Lien Insert. We are also working on new DACA for securitization transactions with the input of the Securitization Subcommittee. It will include a new form of the General Terms and Specific Terms designed specifically for securitization transactions. The Initial Report, the General Terms, the Specific Terms, the finalized inserts, the draft inserts, and draft securitization General Terms and Specific Terms are available on the Task Force’s website at http://www.abanet.org/dch/committee.cfm?com=CL710060. We intend to publish a second report including the inserts, as well as commentary to the inserts in the Fall of 2007 or the Spring of 2008. The General Terms and Specific Terms for securitization transactions with commentary will be published separately probably in late 2008.

We are meeting at the ABA Annual Meeting on August 11, 2007 from 8:30 am to 10:00 am in the Fairmont Hotel in the Fountain Room on the Lobby Level. The topic will be “Unveiling the New Inserts: Time Deposit, Initial Block, Non-Demand Deposit Accounts, and First and Second Liens, and Maybe More”. In addition to meeting at the spring and annual meetings, the task force meets also at daylong sessions three or four times during the year, typically in New York City. The next Task Force Meeting in New York City will be on September 20, 2007, 10:00 am - 4:00 pm at Bingham McCutchen, 399 Park Avenue (Park and 53rd Street). Many task force members participate at the day-long sessions in person or by telephone conference. The email list serve for the task force is quite active. Anyone interested in joining the task force should contact Marshall Grodner at mgrodner@mcglinchey.com or Ed Smith at edwin.smith@bingham.com or sign up on the website of the Task Force.
# UNIFORM STATE LAWS SCORECARD

## Survey of Adoptions of Revised Official Text of the UCC¹

As of June 1, 2007

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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 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 June 1, 2007.

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, (ii) the 1994 Official Text of Article 8 of the UCC and (iii) the 1998 Official Text of Article 9 of the UCC.

2. All states have adopted the 1990 version of Article 2A with the exception of Louisiana and South Dakota. Louisiana has not enacted Article 2A and South Dakota still has the 1987 version of Article 2A. A 2003 version of Article 2A has been introduced in Kansas and Oklahoma, but has not yet been enacted in any state.

3. New York and South Carolina are the only states that still have the 1951 version of Articles 3 and 4.
Commercial Financial Services Committee
Section of Business Law
American Bar Association
Leadership Roster
July 2007

Chair:
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Husch & Eppenberger, LLC
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Subcommittees, Liaisons and Other Leadership Positions

See pages that follow
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Term expires:    Following Annual Meeting – August, 2008
# UCC COMMITTEE LEADERSHIP

<table>
<thead>
<tr>
<th>Group</th>
<th>Chair(s) &amp; Vice-Chair(s)</th>
<th>Term Expires*</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Uniform Commercial Code Committee</strong></td>
<td>Stephen L. Sepinuck (c)</td>
<td>2009</td>
</tr>
<tr>
<td></td>
<td>Penelope Christophorou (vc)</td>
<td>2009</td>
</tr>
<tr>
<td></td>
<td>Mario J. Ippolito (vc)</td>
<td>2009</td>
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<tr>
<td><strong>General Provisions &amp; Relations to Other Law</strong></td>
<td>Kristen Adams (c)</td>
<td>2009</td>
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<tr>
<td><strong>International Commercial Law</strong></td>
<td>Larry I. Safran (c)</td>
<td>2008</td>
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<tr>
<td></td>
<td>Kate Sawyer (vc)</td>
<td>2008</td>
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<tr>
<td><strong>Investment Securities</strong></td>
<td>Meredith S. Jackson (co-c)</td>
<td>2010</td>
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<td></td>
<td>Howard Darmstadter</td>
<td>2010</td>
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<tr>
<td><strong>Leasing</strong></td>
<td>Barry Graynor (c)</td>
<td>2008</td>
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<td></td>
<td>Teresa Davidson (vc)</td>
<td>2008</td>
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<tr>
<td><strong>Letters of Credit</strong></td>
<td>George A. Hisert (c)</td>
<td>2009</td>
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<td><strong>Payments</strong></td>
<td>Sarah H. Jenkins (c)</td>
<td>2010</td>
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<td></td>
<td>Greg Cavanagh (vc)</td>
<td>2009</td>
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<td><strong>Sale of Goods</strong></td>
<td>David K. Daggett (co-c)</td>
<td>2010</td>
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<tr>
<td></td>
<td>Keith A. Rowley (co-c)</td>
<td>2008</td>
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<tr>
<td><strong>Secured Transactions</strong></td>
<td>Leianne S. Crittenden (c)</td>
<td>2008</td>
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<tr>
<td></td>
<td>Pauline Stevens (vc)</td>
<td>2008</td>
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<tr>
<td><strong>Annual Survey</strong></td>
<td>Russell A. Hakes</td>
<td>n/a</td>
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<tr>
<td></td>
<td>Robyn Meadows</td>
<td>n/a</td>
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<td></td>
<td>Stephen L. Sepinuck</td>
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<tr>
<td><strong>Article 7</strong></td>
<td>William H. Towle</td>
<td>expired</td>
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<tr>
<td><strong>Commercial Law Newsletter</strong></td>
<td>Maria Milano</td>
<td>2008</td>
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<tr>
<td><strong>Membership</strong></td>
<td>Terri A. Motosue</td>
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<td><strong>Consumer Involvement</strong></td>
<td>Michael Ferry (co-c)</td>
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<td>William Woodward, Jr. (co-c)</td>
<td>expired</td>
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<tr>
<td><strong>Deposit Account Control Agr.</strong></td>
<td>R. Marshall Grodner (c-ComFS)</td>
<td>n/a</td>
</tr>
<tr>
<td></td>
<td>Marvin D. Heileson (c-Banking)</td>
<td>n/a</td>
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<tr>
<td></td>
<td>Edwin E. Smith (c-UCC)</td>
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<td></td>
<td>Roberta G. Torian (c-ConFS)</td>
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<td>John D. Pickering (vc)</td>
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<td><strong>Article 9 Forms</strong></td>
<td>Cindy J. Chenuchin</td>
<td>2010</td>
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<tr>
<td><strong>State Certificate of Title Laws</strong></td>
<td>Alvin C. Harrell (c)</td>
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<td>Lee Anne Leathers-Lutz (vc)</td>
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<td><strong>UCC Litigation</strong></td>
<td>Mary Binder (c)</td>
<td>2008</td>
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<td>Stephen C. Veltri (vc)</td>
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</tr>
<tr>
<td>Group</td>
<td>Chair(s) &amp; Vice-Chair(s)</td>
<td>Term Expires*</td>
</tr>
<tr>
<td>--------------------------</td>
<td>------------------------------------------------</td>
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</tr>
<tr>
<td>Working Groups</td>
<td>Mattias Hallendorf (c-Cyberspace) Richard M. Newman (c-UCC)</td>
<td>2009</td>
</tr>
<tr>
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<tr>
<td>Liaisons</td>
<td>Emilie R. Ninan</td>
<td>expired</td>
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<tr>
<td></td>
<td>James J. Murphy</td>
<td>2007</td>
</tr>
<tr>
<td></td>
<td>Gail Hillebrand</td>
<td>n/a</td>
</tr>
<tr>
<td></td>
<td>Yvonne Rosmarin</td>
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<td></td>
<td>Alan White</td>
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<td></td>
<td>Carl Bjerre</td>
<td>2010</td>
</tr>
</tbody>
</table>

* All terms expire at the end of the ABA Annual Meeting in the year indicated.