

CHAIR'S COLUMN

October 2008



The UCC Committee is continually striving to provide its members on a timely basis with important information about developments in commercial law and commercial practice. Anyone with a suggestion for a project the Committee should undertake or with an idea about how the Committee can better fulfill its mission should contact me.

Legislative Update

Just when we thought it was safe to go back in the water. . . . After more than a decade of revisions to almost every Article of the UCC, it seemed like the pace of legislative change was slowing. Alas, two new endeavors are under way.

Secured Transactions

The Uniform Law Commission (formerly known as NCCUSL) and the ALI have established the Joint Review Committee for Article 9 of the Uniform Commercial Code (the “Committee”). The Committee is charged with dealing with the approximately 40 issues identified in the June 2008 report of the Article 9 Review Committee (the “Study Committee”). A copy of the Study Committee’s report is available on the UCC Committee’s [web page](#).

The Committee held its first meeting on October 3-5, 2008 in Chicago. It reached tentative decisions on a number of issues, including how to respond to the highly criticized decisions in *Highland Capital Management v. Schneider*, 866 N.E.2d 1020 (N.Y. 2007), and *In re Commercial Money Center*, 350 B.R. 465 (9th Cir. BAP 2006). A detailed report on the Committee’s deliberations and tentative decisions is available on the UCC Committee’s [web page](#).

Payments

The Uniform Law Commission has established a Study Committee on Regulation of Financial Institutions and Payment Systems. The Study Committee’s charge is to

1. Monitor developments at the federal level, particularly of the Federal Reserve Board, Treasury Department, and relevant committees;
2. Communicate to those and other interested entities the ULC’s expertise related to payment systems and the regulation of financial institutions;
3. Present the advantages of maintaining a balance of federal and state regulation in these areas; and
4. Make any recommendations it deems appropriate to the Scope and Program Committee concerning the advisability of establishing a ULC or joint ULC/ALI drafting project in these areas.

The fourth of these instructions is the principal one. In short, the Study Committee is to consider whether to establish a drafting project to unify the law governing different payment mechanisms. The Study Committee is chaired by Professor Fred H. Miller and its reporter is Professor Linda J. Rusch. Its members are Boris Auerbach, John P. Burton, William H. Henning, Gene N. Lebrun, Richard A. Lord, Clinton R. Losego, Neal Ossen, Anita Ramasastry, Carlyle C. Ring, Jr., Sandra S. Stern, and Robert J. Tennessen. The official Observers include Stephanie A. Heller, on behalf of the Federal Reserve Bank of New York, and Amelia H. Boss, on behalf of the ALI.

In connection with this development, the UCC Committee and the Banking Law Committee have established a new Joint Task Force on the Unification of Payments Law to investigate and report on whether there are sufficient operational problems (*e.g.*, uncertainty, cost) with the current state of the law, to support an effort to revise payments law to treat different payments mechanisms under the same or similar legal rules. The Joint Task Force's report is due February 1, 2010. The UCC Committee's co-chair of the Task Force has yet to be appointed. Karen Nash-Goetz will serve as the Banking Law Committee's co-chair of the Task Force.

Noteworthy Events at the Upcoming Spring Meeting

The Spring Meeting of the Business Law Section will be held April 16-18, 2009 in Vancouver, BC. General information about the meeting can be obtained on the Section's [web page](#).

The UCC Committee has some wonderful events planned. The ever popular *Stump the Chumps* will be making a comeback on Friday, April 17, 2009 at 1:30–2:30. It will be preceded by a presentation of the UCC Committee's Award for Exceptional Service. In addition, the UCC Committee will be presenting three CLE programs. The tentative titles and dates are:

Non-uniformity: Is It the Spice of Life or a Recipe for Disaster?,
Thursday, April 16, 2009, 2:30pm–4:30pm;

How Well Do You Know Your Neighbor? What's New and What's Different about Canadian Secured Transactions, Friday, April 17, 2009, 2:30pm–4:30pm;

What Every Commercial Lawyer Needs to Know About the Restatement (Third) of Restitution and Unjust Enrichment, Saturday, April 18, 2009,
1:00pm–3:00pm

A more complete – but tentative – schedule of the activities of the UCC Committee and the Commercial Finance Committee appears at the end of this column.

Leaders Needed

The UCC Committee has four vacant leadership positions. Each position has a three-year term and is described below. If you are interested or wish to recommend someone who might be interested, please contact me.

- ◆ **Co-chair or Vice-chair of the Subcommittee on General Provisions & Relations to Other Law.** The leadership of this subcommittee: (i) plans and arranges for substantive discussion, presentations by guest speakers, and distribution of materials at subcommittee meetings; (ii) suggests topics and provides organizers for Committee programs and forums at the annual and spring meetings; and (iii) either writes or finds someone to write substantive articles for the Commercial Law Newsletter. The terms of the current chair of this subcommittee, Professor Kristen Adams, expires in August, 2009. So, any new co-chair or vice-chair should be prepared to assume primary responsibility for the subcommittee at that time.
- ◆ **Vice-chair of the Subcommittee on International Commercial Law.** The leadership of this subcommittee: (i) plans and arranges for substantive discussion, presentations by guest speakers, and distribution of materials at subcommittee meetings; (ii) suggests topics and provides organizers for Committee programs and forums at the annual and spring meetings; and (iii) either writes or finds someone to write substantive articles for the Commercial Law Newsletter.
- ◆ **Liaison to the Diversity Committee.** This person serves as a conduit for communication between the UCC Committee and the Diversity Committee and submits a written report on his or her activities to the Committee chair twice each year (shortly before the Committee's report to the Section Council is due). The liaison is also expected to contact each person planning a CLE program or forum on behalf of the Committee to assist in finding presenters who will help bring a diverse perspective.
- ◆ **Regional Coordinator for the Northeast Region.** This person serves as a liaison between the UCC Committee of the ABA Business Law Section and state bar associations within the region (consisting of Connecticut, Delaware, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont). This is done primarily through each state bar association's UCC Committee, if it has one. The Regional Coordinator's tasks are to: (i) ensure that the members of the bar within their respective regions are aware of the programming, resources, and publications provided by the UCC Committee and have input into the policies and projects of the UCC Committee; (ii) assist state and local bars reprise UCC Committee programming at the local level; and (iii) identify for those organizing CLE programs for the UCC Committee attorneys from the area where the programs will be offered who would be effective presenters.

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BUSINESS LAW SECTION SPRING MEETING
APRIL 16-18, 2009
Vancouver, BC
(tentative schedule)

Thursday, April 16			
Time	Com Fin		UCC
9:00-9:30am			
9:30-10:00am	Joint Subcom. Mtg.: Int'l Com. Law (UCC) & Cross-Border Secured Trans. (ComFin)		Joint Subcommittee Meeting: Leasing (UCC) and Lease Financings (DBF)
10:00-10:30am			
10:30-11:00am	Program: Syndicated Loan Markets in the U.S. and Canada		Subcommittee Meeting: Sales
11:00-11:30am			
11:30-12:00pm			
12:00-12:30pm			
12:30-1:00pm			
1:00-1:30pm	Subcommittee Meeting: Creditors' Rights	Subcommittee Meeting: Loan Documentation	Subcommittee Meeting: Letters of Credit
1:30-2:00pm			Subcommittee Meeting: General Provisions
2:00-2:30pm			
2:30-3:00pm	Subcommittee Meeting: Loan Workouts	Subcommittee Meeting: Aircraft Financing (starts at 2:00)	Program: <i>Non-uniformity: Is It the Spice of Life or a Recipe for Disaster?</i>
3:00-3:30pm			
3:30-4:00pm			
4:00-4:30pm	Subcommittee Meeting: Lender Liability		
4:30-5:00pm			
5:00-5:30pm			
5:30-6:00pm			
6:00-6:30pm			
6:30-7:00pm			
7:00-7:30pm	UCC/Com Fin Joint Dinner		
7:30-8:00pm			
8:00-8:30pm			

Friday, April 17

Time	Com Fin	UCC	
8:00-8:30am			
8:30-9:00am		Subcommittee Meeting: Investment Securities	
9:00-9:30am	Subcommittee Meeting: Agricultural & Agri-Business Financing		
9:30-10:00am			
10:00-10:30am	Subcommittee Meeting: Aircraft Financing		
10:30-11:00am		Program: Cross Border Insolvency	
11:00-11:30am			
11:30-12:00pm			
12:00-12:30pm			
12:30-1:00pm	Task Force Meeting: Model Intercreditor Agreement		
1:00-1:30pm			Joint Subcommittee Meeting: Payments
1:30-2:00pm			Committee Meeting: <i>Stump the Chumps & Presentation of UCC Award of Exceptional Service</i>
2:00-2:30pm			
2:30-3:00pm	Committee Forum: <i>How Well Do You Know Your Neighbor? What's New and What's Different about Canadian Secured Transactions</i>		
3:00-3:30pm			
3:30-4:00pm			Subcommittee Meeting: IP Financing
4:00-4:30pm			
4:30-5:00pm	Leadership Meeting	Leadership Meeting	
5:00-5:30pm			
5:30-6:00pm			
6:00-6:30pm			
6:30-7:00pm			
7:00-7:30pm	Section Dinner		
7:30-8:00pm			
8:00-8:30pm			
8:30-9:00pm			

Saturday, April 18

Time	Com Fin	UCC
8:30-9:00am	Joint Subcommittee Meeting: Secured Lending (Com Fin) & Secured Transactions (UCC)	
9:00-9:30am		
9:30-10:00am		
10:00-10:30am	Joint Task Force Meeting on Commercial Finance Terms	
10:30-11:00am		
11:00-11:30am		
11:30-12:00pm		
12:00-12:30pm		
12:30-1:00pm	Subcommittee Meeting: Real Estate Finance	
1:00-1:30pm		
1:30-2:00pm		
2:00-2:30pm		Task Force Meeting: Syndications Chapter
2:30-3:00pm		
3:00-3:30pm	Joint Task Force Meeting on Filing Office Operations & Search Logic	
3:30-4:00pm		
4:00-4:30pm		
4:30-5:00pm		
5:00-5:30pm		

**Program: *Commercial Law Developments*
(UCC co-sponsoring)**

Program *What Every Commercial Lawyer Needs to Know About the Restatement (Third) of Restitution and Unjust Enrichment*