

**REPORT OF MEETING
OF THE
DRAFTING COMMITTEE TO REVISE
UCC ARTICLE 7**

**October 5-6, 2001
Washington, DC**

The Drafting Committee to revise Uniform Commercial Code Article 7 met in Washington, D.C. on October 5 and 6, 2001. Present were Henry Gabriel, Chair, Drafting Committee members William Cattell, Patricia Fry, Neal Ossen, and Sandra Stern. The reporter, Drew Kershen, was unable to attend. Also present were William Towle, American Bar Association, Mary Helen Carlson for the U.S. Department of State, George Chandler for the Maritime Law Association, L. H. Wilson for the American Bankers Association, and Chris Hoving for the UCC Bulletin. The committee had been provided by the reporter with memoranda concerning scope provisions, electronic documents of title, and sections 7-204, 7-207 and 7-209. The Chair furnished a draft revision of Article 7 which he had prepared, incorporating the proposals which had been made prior to the meeting.

Scope: Existing Article depends on the definition of documents of title to define scope. There was a discussion of whether to retain this approach or more specifically define the scope of the article. While proposals had been made to include self storage facilities within the scope, there was concurrence among all present that self-storage facilities involve relationships different from those within Article 7. All concurred that these facilities should not be brought within the ambit of a revised Article 7.

After further discussion of scope, it was concluded the best approach was to revisit the subject at a later point in the revision process, at which point it should be more apparent whether to include a scope provision and what form it might take.

Electronic documents: The Bolero system, the cotton warehouse receipts system, and other existing electronic systems were discussed. It was noted that while the cotton warehouse receipts system involves electronic documents, the Bolero system contemplates electronic equivalents for documents, depending on contracts amongst the members of the system to establish the rights and liabilities with respect to goods. It also was noted that Bolero is not now functioning for electronic documents, still being at the proposal stage. On the other hand, many maritime shippers, like the railroads, are using proprietary electronic systems to evidence all shipments. While the security of these proprietary systems varies, frequently the electronic document will be placed within an electronic envelope. The identification of the parties and goods will be on the document, which will incorporate by reference standard terms and conditions found on a website.

After discussing potential models for provisions validating electronic documents, there was consensus that the goal should be to establish electronic documents, not merely equivalents, that any system provisions should be technology neutral, that the substantive provisions governing rights and liabilities should be medium neutral, and that the drafting should not assume or require any specific system but should not outlaw or disrupt any existing systems. The

provisions of Uniform Commercial Code Article 8 should be reviewed. The consensus was that the Uniform Electronic Transactions Act, and particularly its provisions on transferable records, was the most likely model. Those familiar with existing industry practices indicated that the provisions of UETA Section 16 would not disrupt existing systems and established a reasonable basis for proceeding. It was agreed also that something should be added to insure that a system would not be disqualified from qualifying under the draft merely because it was found that the system had been breached by a wrongdoer. One possibility is the creation of a new part for Article 7, dealing with the system for electronic documents.

Review of Existing Article 7: The Committee turned to a discussion of changes needed in the existing provisions of Article 7. Revisions will be made to avoid gender-specific terms. References to writings will become medium neutral. In addition, references to tariffs must be revised. At the time the original article was written, federal law required that carriers file tariffs with federal regulators, which were subject to regulatory approval and made a part of the public record. While federal law continues to require the establishment of tariffs, they are no longer subject to any filing requirement or regulatory review. They are retained by the carrier and may not be available. Since existing references to tariffs appear to assume that they are publicly available, either references to tariffs must be removed or the references must be revised to refer only to publicly filed tariffs. Further, the issue of which provisions of the article may be varied by contract must be considered, including the impact of system rules.

7-104: there should be an opt out provision, similar to 3-104, permitting a document otherwise qualifying as a negotiable document to conspicuously state that it is “non-negotiable” or “not negotiable.” The names of documents should not be listed.

7-105: It was agreed this provision should be deleted, subject to a search of the caselaw to see if the provision has had any impact.

7-201: The reference to government bond should be clarified to reflect that the reference is to warehouses which are bonded pursuant to statutory requirements.

7-202: The reference to specific terms which must be included in a warehouse receipt presents difficulties in an electronic environment unless it is clear that the inclusion may take the form of an incorporation by reference. The comments should include an example of linking in an electronic document.

As to consecutive numbering, it was noted that bills of lading no longer have consecutive numbers and electronic receipts may be controlled by an alphanumeric code but are not numbered. It was agreed the critical factor is an identification code specific to each receipt.

7-203: The provision should be considered against 7-301(1). If these provisions state the same thing, they should be consolidated into one general provision or drafted in parallel fashion.

7-204: The reference in subsection (2) requiring a per article or per item establishment of liability limitations no longer accords with industry practice. This provision should be replaced with something which tracks industry practice more closely or some provision about ‘reasonable’ limitations. Concerning the provisions in subsection (3) dealing with the time and manner of presenting claims or bringing actions, there are a number of non-uniform state acts, fixing minimum limitations or claims periods ranging from a few months to a few years. It was agreed that the industry practices and state statutes should be identified and reviewed. The reporter’s proposal to add language to the time and manner provision specifying that the contractual limitations apply both to contractual obligations and to conversion claims was deferred pending

further study. The proposed addition of a subsection (5) adding requirements for conspicuous notice and express assent in consumer transactions will be reviewed. It was suggested that the provision should refer to notice to the consumer who does not agree to pay the cost of increasing the warehouse's liability.

7-206(2): It was agreed this provision needs revision to refer to the rules for sale contained in 7-210.

7-207: The proposal to revise the provision requiring goods to be kept separate was discussed in light of the reports received. Federal statutes dealing with shortages of stored commodities and current industry practices dealing with the storage of fungible and non-fungible goods should be reviewed before determining how to revise this provision.

7-209: The reporter's proposal distinguishes between the specific lien of the warehouse, subjecting the goods to the charges and expenses for storage of those goods, and the general lien of the warehouse, subjecting the goods to charges and expenses relating to the storage of other goods. While neither of the liens would have priority over an owner whose goods were wrongfully stored, the draft specifies that the general lien would be subordinate to prior perfected security interests. Both liens would have priority over all other competing claims. This is a substantial change in existing law. It was noted that the volume of intake and release of goods held in inventory storage has accelerated significantly since the original Article 7 was drafted, particularly in light of just-in-time inventory practices. Warehouses rely on the general lien in releasing goods without prior payment of all charges specific to those goods. Concerning the priority issues, it was agreed the reporter should be asked to study the commercial context, including the practices of lenders secured by stored goods. The Committee will return to the provision to make policy judgments in light of the results of that study.

The draft furnished by the reporter conditions the priority of the specific lien to cases where the goods are bailed by the "legal possessor." This is a change from existing law which contains references to entrustment and authority. It was noted that the entrustment language of UCC 2-403 is limited to buyers in the ordinary course of language. Before the reference to a "legal possessor" is approved, the purpose and intent of such a change must be determined.

With respect to the specific provisions dealing with household goods, it was noted that this provision has caused significant problems in the domestic relations area and operates to the harm of consumers. It was suggested that the appropriate rule would provide that the lien is not good against the owner of household goods unless the storage is by the owner or an authorized agent. There was consensus that the special provision on household goods should be deleted.

An additional issue was raised concerning charges for processing the goods. While there was consensus that charges for pick-and-pack processing, in which goods are broken down into smaller units and repackaged before release, could be included appropriately in the lien, there also was consensus that further processing which affects the goods themselves, such as refining or otherwise adding value, should not be included within the lien.

There was consensus that the text should not include a specific reference to attorney's fees. The subject will be left to contract or judicial development under other law.

7-210: After discussion, the reporter was requested to review these provisions in light of the Article 9 provisions on enforcement and to consider whether the statute should specify whether any warranties are given at such a sale. It was noted that the practice today is to use the consumer provisions as a safe harbor in commercial cases.

7-301: The provisions will be reviewed in light of COGSA and the project for its

revision. As to the references to common carriers, the language needs to be reviewed since non-vehicle operating common carriers [NVOCC] may issue bills of lading. The reporter also is requested to review practices as to when the use of 'shipper's weight load and count' terms is appropriate. The development of container shipment occurred subsequent to the drafting of the original language and it may require revision.

7-309: These provisions are to be coordinated with the provisions on the duty of warehouses.

Part 5: 7-501 requires revision in light of electronic documents. Once that revision is made, the balance of the part will need to be revised for consistency.

Part 6: The reporter was asked to advise the extent to which these provisions should be modified in light of federal law, industry practices, and the changes in the industry since the original article.