

PERMANENT EDITORIAL BOARD FOR THE UNIFORM COMMERCIAL CODE

MINUTES OF THE MEETING
OF THE
PEB EXECUTIVE SUBCOMMITTEE
HELD VIA TELECONFERENCE ON
APRIL 13, 2007

Lance Liebman, Chair of the PEB, called the meeting to order at 1:00 p.m. ET. In addition to Professor Liebman, the following members of the PEB Executive Subcommittee attended the meeting: Amelia Boss, Patricia Brumfield Fry, Carlyle Ring, Linda Rusch, and John Sebert. Also attending were PEB Research Director Neil Cohen, ALI Deputy Director Elena Cappella, and ALI Associate Deputy Director Deanne Dissinger.

Agenda Item 1 – Approval of minutes of the November PEB meeting: The minutes of the PEB’s meeting held on November 11, 2006, were approved without dissent. (Those minutes are attached as Annex A.)

Agenda Item 2 – Status of PEB Commentaries being drafted: Professor Cohen reported that two Commentaries are in progress. The first deals with the impact of UCC Sections 9-406 and 9-408 on anti-assignment provisions relating to interests in unincorporated business organizations and is being drafted by Edwin Smith. A draft was distributed prior to the PEB’s meeting in November 2006 (attached as Annex B). Mr. Smith has received helpful comments from Daniel Kleinberger, the reporter for NCCUSL’s Uniform Limited Liability Company Act, concerning changing the vocabulary of the draft to communicate its conclusions more effectively to readers whose primary expertise is the law of business organizations. A revised draft of the Commentary will be circulated to the PEB in advance of its fall meeting. The second Commentary to be drafted deals with the Commercial Money Center case, which was discussed at the PEB’s last meeting. Professor Cohen plans to outline a few alternative approaches to drafting the Commentary and circulate the outline to the PEB for advice at its fall meeting.

Agenda Item 3 – Discussion of Highland Capital case as subject of possible Commentary: Professor Cohen summarized this recent case decided by the New York Court of Appeals. (The decision is attached as Annex C.) He suggested that the PEB consider preparing a Commentary regarding the implications of the case; he has received many comments about the case from commercial-law lawyers and professors. There was no objection to Professor Cohen’s suggestion that he prepare a rough outline of a Commentary and circulate it to the PEB for consideration at its fall meeting. Professor Cohen also indicated that he would poll those who wrote to him to get their views on the urgency of the issues raised by the case.

Agenda Item 4 – Status of Committee for Implementation of the UN Convention on Independent Guarantees and Stand-by Letters of Credit: Mr. Sebert reported that this joint committee is now being formed. Edwin Smith will serve as chair and James White as reporter. NCCUSL has named its representatives; ALI will also appoint two. Representatives of the Uniform Law Conference of Canada and the Mexican Center for Uniform Laws will also participate. Mr. Sebert does not expect that the committee will meet before this fall, although the committee’s

leaders may have a preliminary meeting in the summer. He will compile a list of observers from other organizations to be invited to committee meetings.

Agenda Item 5 – Status of Committee to Harmonize North American Law with Regard to the Assignment of Receivables in International Trade Convention: Professor Cohen indicated that, as reported at the PEB's last meeting, the committee has moved from drafting amendments to state law to drafting declarations consistent with UCC Article 9 that would accompany U.S. ratification of the Convention. The committee has worked through several drafts and is now finalizing the declarations. According to Hal Burman of the U.S. Department of State, who has been working with the committee, the next step will be to send the declarations to the White House and the Senate Foreign Relations Committee. The committee's reporter, Steven Weise, is preparing a memo summarizing the benefits of the Convention. Mr. Sebert stated that Ed Smith, the committee's chair, is planning to read the declarations for comment at NCCUSL's annual meeting in July. He believes the declarations are being presented for information and not for approval. Professor Liebman indicated that the declarations will not be submitted for approval by the Institute. Professor Cohen noted that he and Steven Harris, ALI's other representative, will make clear that the declarations are not a product of the Institute.

Agenda Item 6 – Report on project to assemble a definitive official text of the UCC: Professor Cohen indicated that he plans to hire a research assistant to assist with this project over the summer. The proposed PEB budget for fiscal year 2007-08 includes approximately \$2000 to cover the assistant's compensation and travel expenses. The first step of the project will be to assemble all of the text of the UCC. The second step will involve identifying errors (including incorrect cross-references) and inconsistencies with the text compiled by West.

Agenda Item 7 – Financial report and budget: Ms. Dissinger reported on the finances of the PEB, which were the subject of a written report distributed in advance of the meeting. The Subcommittee members generally expressed satisfaction with the proposed budget for fiscal year 2007-08, and the budget was approved without dissent. (The written report is attached as Annex D.)

Agenda Item 8 – Other business: It was noted that PEB member Stephanie Heller is organizing a payments law symposium at the Federal Reserve Bank of New York in April. Several PEB members plan to attend.

Agenda Item 9 – Next meeting: Scheduling the fall meeting of the PEB was deferred until a later date. (The meeting was subsequently scheduled for November 3, 2007, from 11:00 a.m. to 3:00 p.m. in Philadelphia.)

The meeting was adjourned at approximately 1:45 p.m. ET.

These minutes were prepared by Neil Cohen and Deanne Dissinger, and were reviewed and approved for distribution by Lance Liebman. The Annexes are attached to the minutes maintained on file in the offices of ALI and NCCUSL.