

MEMORANDUM

**To: Steve Harris, Reporter
ULC/ALI Joint Review
Committee for UCC Article 9**
From: Alvin C. Harrell
Date: February 26, 2009
Re: Certificate of Title Issues in UCC Article 9

I. Introduction

A. Basic Issues

Cases arise each year from the intersection of state certificate of title (CT) laws and UCC Article 9. Most of the resulting problems derive from the CT laws, not Article 9, as the 1998 revisions to Article 9 satisfactorily addressed most CT issues. This memo focuses on residual issues in two scenarios: (1) the conflict between a security interest in vehicle inventory and the rights of a retail buyer and his or her secured party when the inventory lender holds the CT covering the vehicle after it is sold to the retail buyer; and (2) problems faced by the secured party of the retail buyer in seeking to perfect the security interest when the buyer fails or is unable to apply for a new CT in a timely fashion. The latter presents a particular problem if the buyer files bankruptcy and the security interest is attacked as a preferential transfer under Bankruptcy Code section 547 or as an unperfected security interest subordinate to the trustee's lien under section 544.

While this discussion focuses on vehicles, to some extent the same problems arise in the context of boats and manufactured homes covered by CTs.

These problems commonly derive in part from the intersections of up to four important laws:

- UCC (Articles 2 and 9);
- state CT laws;

- tribal CT laws; and
- bankruptcy.

These intersections provide ample potential for confusion. Each of these laws can be complex in its own right; when they are mixed together the complexity is magnified. Mostly the problems are a matter of state (including sometimes tribal) law, involving four parties: (1) the inventory lender; (2) the retail buyer; (3) his or her financier; and (4) the bankruptcy trustee. For example, in a recent series of cases Oklahoma bankruptcy courts held various times (in the context of tribal CTs) that:

- Article 9 does not apply to a security interest in goods covered by a CT law (this misconstrued section 9-109) (the *Lawson* case);
- the applicable CT law was not valid because it did not include priority rules (this misconstrued sections 9-102(a)(10) and 9-109) (the *Dalton* case);
- the forum state's CT law applied to perfection by lien entry on a CT issued by another jurisdiction (this misconstrued sections 9-303 and 9-311(a)(2)) (the *Snell* case); and
- the tribal CT law did not apply absent evidence of an explicit tribal secured transactions statute; Article 9 applied under section 9-301 and the security interest was unperfected due to lack of an Article 9 filing in the state (this misconstrued sections 9-102(a)(10), 9-301 and 9-303) (the *Wilserv* case).

Together these cases misconstrued most of the Article 9 provisions applicable to the relation between Article 9 and the CT law, illustrating the potential for confusion as to these issues.

B. Illustrative Scenarios

This memorandum discusses CT issues that may arise upon retail sale of vehicle by a dealer, in two illustrative scenarios:

- a conflict between a floor plan (inventory) lender holding the CT or manufacturer's certificate of origin, versus a retail buyer from the dealer/debtor (who may be a BIOCOP) and his or her financier; and
- a conflict between the retail financier and the buyer's bankruptcy trustee if: (1) the buyer does not apply for a CT (or delays beyond the Bankruptcy Code section 547(c)(3)(B) time period); (2) the vehicle is covered by a tribal CT that does not qualify as a CT under section 9-102(a)(10); or (3) the security interest is not indicated on the new CT.

II. Scenario One: a Conflict Between the Retail Buyer and the Floor Plan Lender Holding the CT

This scenario is governed by Article 9 section 9-320(a), and the result should be clear. However, it is sometimes argued that the CT law overrides Article 9. The correct analysis should go something like this: If the buyer is a BIOCOP, the buyer takes free of the inventory loan, then (as owner) can apply for a new CT. In some states, obtaining a new CT may require a lawsuit, depending on the CT law. UCOTA provides a procedure that creates a non-judicial solution. *See* UCOTA section 23. UCOTA also clarifies that the buyer can be a BIOCOP even though the CT was not executed. This is the majority view, but there are exceptions and (absent UCOTA) uncertainties.

Some wrongly-decided cases say the CT law overrides Article 9 on this issue; mostly these have been reversed on appeal or rejected on subsequent reconsideration by another court. Some cases (*e.g.*, in Texas) correctly hold that the UCC applies but incorrectly rely on the CT

law to determine this scope issue. *Compare* section 9-109 (Article 9 governs security interests, subject to exceptions not applicable to this scenario). It does not appear that any UCC revisions are needed to address this scenario, unless the definition of BIOCOP could be revised to say (consistent with UCOTA) that execution of the CT is not essential to BIOCOP status. Perhaps an expanded Comment to section 9-109 could help explain the scope issue. This scenario may lead to scenario two, and the problems discussed below.

III. Scenario Two: Vehicle Financed in a Retail Sale is not Covered by a new CT Indicating the Security Interest

A. Sample Scenarios

In this scenario, the buyer's secured party is unable to obtain a timely CT "lien entry," *e.g.*, because:

- the buyer fails or is unable to apply for a CT;
- the vehicle is covered by a non-qualifying tribal CT; or
- the CT is issued omitting the security interest.

B. Solution

The obvious solution is for the secured party to file what is commonly called a "lien entry" form (a security-interest statement under UCOTA) with the state CT office. UCOTA allows this, even in the absence of a CT application, and this solves the problem. Some state CT offices currently allow this as a matter of practice, but the statutory basis may be unclear. This issue has taken on increased importance in view of the *Wilserv* case (which broadly casts doubt on tribal CTs), despite the modest BAPCPA expansion of the section 547(c)(3)(B) Bankruptcy Code grace period.

C. Current Law and Analysis

Under current law, the analysis is as follows:

- If there is no qualifying CT or CT application, section 9-303 does not trigger a choice of the state CT law.
- The Article 9 analysis then proceeds under section 9-301, to determine which state's law applies (this leads to the law of the state of the debtor's residence) (other section 9-301 and 9-303 issues may arise for members of an Indian tribe).
- This leads to Article 9 Part 3 of that state. Under section 9-311(a)(2), the state CT law should apply because the vehicle is "subject to" that law (by reason of the filing of the "lien entry" form, or possibly due to other theories such as a requirement for residents to apply for CT in that state).
- Filing a lien entry form in this circumstance should be perfection under Article 9 if the CT law provides for lien entry on a subsequent CT as a result of such perfection.
- This works if the CT law supports it, *e.g.*, by providing that the filing of a lien entry form will result in indication of the security interest on a CT created in that state. This satisfies section 9-311(a)(2), and under section 9-311(b) this constitutes perfection under Article 9. UCOTA works in this respect (*see* sections 25 and 26), current CT laws perhaps less so and to varying degrees. Note that Article 9 section 9-311(a) and (b) do not require the CT law to specify or use the term "perfection" or contain priority rules; it is enough that the CT law provides a procedure designed to result in indication of the security interest on a CT (*i.e.*, as a means of public notice), and that this constitutes perfection and results in priority over a lien creditor in conjunction with Article 9 Part 3. *See* Article 9 section 9-311(b). While UCOTA is explicit on these points, some lesser level of CT law specificity is common and arguably will suffice.

- The alternative theories are even less clear, *e.g.*:
 - automatic PMSI perfection under section 9-309;
 - perfection by UCC filing; or
 - no method of perfection applies.
- Another issue is: where does the debtor reside, if a member of an Indian tribe?

IV. Limits of this Analysis under Current Law

One issue in this analysis is whether the CT law applies (under section 9-311(a)(2)) in the absence of an application for a CT. Obviously, a CT law does not automatically apply to every vehicle located in the state, though some CT laws purport to do so.

Pursuant to section 9-109, Article 9 determines the scope of the applicable secured transactions law, *e.g.*, under section 9-303 (if the vehicle is covered by a CT) or sections 9-301 and 9-311(a)(2) (if there is no CT but the vehicle is “subject to” the CT law). This requires an analysis of the relation between Article 9 and the specific CT law, *e.g.*:

- Does the CT law meet the requirements of sections 9-102(a)(10)?
- Is the vehicle “covered by” a CT (section 9-303)?
- Conversely, where is the debtor located (section 9-301)?
- Is the vehicle “subject to” the CT law of that state (section 9-311(a))?
- Do the CT law and CT office procedure allow lien entry perfection without a CT or CT application?

The current Article 9 language at sections 9-102(a)(10) and 9-311(a) and (b) has some cumbersome aspects that complicate this analysis, but there are also good reasons for that language. Many (perhaps most) CT laws do not use the term “perfection,” and therefore Article 9 refers to priority over a lien creditor as a proxy for that term. But this priority is achieved by

the CT law in conjunction with the priority rules of Article 9, not by priority rules in the CT law. Relatively few CT laws properly use the term “perfection” or provide adequate priority rules. Thus, under section 9-311(a) and (b), the CT law needs only to provide a means of public notice equivalent to filing a financing statement (*e.g.*, by a public filing or a system providing for CT lien entry).

The current Article 9 language could be improved in this respect by deleting the phrase “for obtaining priority over the rights of a lien creditor” at section 9-311(b), and rewriting Comments 3 and 5 to section 9-311.

V. Impact of Potential Changes in view of UCOTA

A. Introduction

The discussion below considers whether the best approach to addressing the problems noted above, in terms of potential Article 9 revisions, is to expand section 9-102(a)(10) to include security-interest statements within the Article 9 definition of CT, so as to trigger a choice of the CT law upon the filing of such a statement via section 9-303, or alternatively to seek a similar result via a choice of law under section 9-301 and by clarifying the deference to that state’s CT law at section 9-311(a)(2) and (b). The discussion below also explores the potential impact of, and impact on, UCOTA.

B. Definition of CT

UCOTA section 2(a)(5) defines “Certificate of title” (with specified exceptions) as a record created by the CT office and designated by it as a CT evidencing ownership of a vehicle. The introductory sentence of section 2(a) specifies that the UCOTA definitions are applicable “[i]n this [act].” Thus, the UCOTA definition need not be identical to the Article 9 definition; the Article 9 definition at section 9-102(a)(10) must describe the characteristics of a qualifying

CT (and CT law), as a prerequisite for deferring to that CT law for perfection purposes under sections 9-303 and 9-311(a). This assures that there is no such deference unless the CT law has characteristics essential to public notice. However, the CT law does not need to do this in its definition of a CT; the public notice requirements necessary for perfection are provided separately in the CT law (*e.g.*, at UCOTA sections 25 - 26). So the definitions of CT in Article 9 section 9-102(a)(10) and UCOTA section 2(a)(5) (or other CT laws) serve different purposes and need not be identical.

Defining CT in Article 9 section 9-102(a)(10) as including a security-interest statement (*e.g.*, as that term is defined in UCOTA at section 2(a)(27)) would mean that the filing of a security-interest statement (*e.g.*, under UCOTA sections 25 and 26) also means the goods are covered by a CT for purposes of Article 9 section 9-303, triggering a choice of that state's law and deference to the state's CT law for purposes of perfection under section 9-311(a)(2). Priority is then governed by Article 9 (pursuant to section 9-109, as the deference at section 9-311(a) is limited to perfection). While aspects of this are a bit circular, this reflects the nature of the relation between Article 9 and the CT law.

However, the noted change could create a problem, *e.g.*, where a change in the choice of law under section 9-303 is triggered by the filing of a security-interest statement, if the vehicle is already covered by a CT (the only "real" CT) created previously in another state. Thus, consideration would need to be given to revising section 9-303(b) to specify whether a security-interest statement filing qualifies as (or is) a CT or an application for a CT under section 9-303(b) in these circumstances, and if so what limitations should apply. In other words, if a change in the definition of a CT at section 9-102(a)(10) is used to trigger a choice of law under section 9-303, a new range of conflicts issues may be implicated under Article 9 and other law.

As a solution, section 9-303 could specify that a security-interest statement is not a CT or CT application for purposes of that section if a CT has been created elsewhere. But this is a somewhat cumbersome approach that may be unnecessary, as noted below.

Even without application of section 9-303, assuming the vehicle is not covered by a CT, a choice of law analysis under section 9-301 would lead to section 9-311(a)(2) of the state of the debtor's residence, triggering a reference to that state's CT law for purposes of perfection (meaning, *e.g.*, that the security interest was perfected by filing a security-interest statement, *e.g.*, under UCOTA sections 25 - 26). If the purpose is to address the issues noted above at Parts I. - IV., the essential goal is to apply this CT law despite the failure or inability of the vehicle owner to apply for a CT. This must be done through application of that state's 9-311(a)(2). Section 9-311(a)(2) can be reached through section 9-301 as well as through section 9-303. As noted, if this is accomplished via section 9-303, through a change in the definition of CT at section 9-102(a)(10), this could interfere with the established order of things, *e.g.*, where a prior security interest is perfected under the CT law of a different state, pursuant to a prior choice of law under section 9-303. In this situation, the result is application of the law of the state that issued the latest CT, under sections 9-303 and 9-311(a). If a new "CT" has been created by filing a security-interest statement in another state, triggering a new choice of law under section 9-303, it could disrupt the existing choice of law system. Trying to prevent this by revising section 9-303 could in turn create a "ripple" of other effects. This requires that proposed revisions of the definition at section 9-102(a)(10) consider the impact on other scenarios under section 9-303. It appears that the simpler approach is to apply section 9-311(a)(2) via section 9-301.

C. UCOTA Section 4

Section 4 is the UCOTA choice of law provision. It must dovetail with Article 9 sections 9-102(a)(10), 9-301, 9-303, and 9-311(a), though it cannot be identical to any of these because again the CT law and Article 9 perform different functions (and each relies on the other for such functions).

The definition of CT as used in section 4 uses the definition at UCOTA section 2(a)(5) as a foundation, but goes beyond the section 2(a)(5) definition to include a CT created by any state. *See* section 4(a). It may seem that this would not be affected by revision of the Article 9 definition at section 9-102(a)(10), because as noted UCOTA section 4 references the UCOTA section 2(a)(5) definition, not the Article 9 definition. However, one can envision a case where another state has allowed a security-interest statement filing and treats that as a CT under the noted revision to its section 9-102(a)(10). The security-interest statement filing in the other state would be regarded as a CT created by the other state under that state's law, and therefore would be a CT under UCOTA section 4(a), even though the forum's UCOTA section 2(a)(5) does not regard it as a CT. Thus, an expanded definition of CT in section 9-102(a)(10) could affect the choice of law analysis under UCOTA section 4. This could result in application of the other state's CT law under UCOTA section 4(b) (by reason of the security-interest statement). This could result in application of the "last-in-time, first-in-right" perfection system contemplated under section 9-303, based on the revised definition of CT at section 9-102(a)(10). While the "last-in-time, first-in-right" system of section 9-303 currently works well for interstate transactions (where the old CT is cancelled), the noted change to section 9-102(a)(10) could extend this to CT perfection scenarios currently subject to the normal "first-in-time" Article 9 priority rules.

This is not a desirable result, in that it could create new conflicts and uncertainties in the relation between CT laws and Article 9, *e.g.*, allowing an existing CT to be usurped by a rogue security-interest statement filing in an another jurisdiction. The problem exists today on a much narrower basis, *e.g.*, where a debtor fraudulently acquires a subsequent “clean” CT in a new jurisdiction, but the problem is limited and subject to extensive safeguards in Article 9 (and CT laws). UCOTA section 4(e) also protects against this risk. These protections could be undermined if the Article 9 definition of CT at section 9-102(a)(10) is revised to include security-interest statements. Further Article 9 (and UCOTA) revisions (beyond section 9-102(a)(10)) likely would be needed to address these issues.

Arguably, a security-interest statement filing alone (without a CT application) should be only a temporary (gap-filling) solution that works for perfection until a CT application is made. If a later CT application is made in the same state, the CT office should pick up the security-interest statement filing in that office. If the CT application is made in a different state, the security-interest statement may or may not be indicated on the CT or in the CT office files of the second state (possibly triggering an analysis under sections 9-313, 9-316(d) and (e), and 9-337). But in any event, a later security-interest statement alone should not be allowed to supercede a prior CT (and choice of law) in another state. This is a possible problem that needs to be addressed if section 9-102(a)(10) is expanded to include security-interest statements.

At a fundamental level, there is an inconsistency between the “last-in-time” perfection system contemplated for CT applications in section 9-303 and the normal Article 9 priority rules. While currently this issue is faced in interstate scenarios, *e.g.*, under Article 9 section 9-316, the problem has been logically constrained under the 1998 Article 9 revisions. The proposed change to section 9-102(a)(10) could somewhat expand the problem. Thus, there is a danger in allowing

a change in the choice of law under section 9-303, by reason of filing a security-interest statement in a second state even after a CT application has been made in a prior state. UCOTA section 4(e) precludes this by limiting the circumstances where a security-interest statement can trigger a choice of law to cases where (1) there is an outstanding certificate of origin (*i.e.*, the collateral is a new vehicle not yet covered by a CT); and (2) otherwise applicable choice of law principles support the choice of that law. This is designed to prevent the filing of a security-interest statement as a means to trigger a new choice of law after a CT application has been made. But if a security-interest statement is deemed a CT under section 9-102(a)(10), it would (absent new safeguards) invite this abuse, both under Article 9 section 9-303 and UCOTA section 4. This could also suggest a need to revisit other fundamental issues, such as those covered in Article 9 section 9-316. For this reason, revising section 9-102(a)(10) may not be the best way to go, if the beneficial results can be achieved without confronting these issues, *e.g.*, by considering section 9-311(a) and (b) instead.

If the goal of revising section 9-102(a)(10) to include security-interest statements is to trigger application of section 9-311(a)(2) via section 9-303 despite the absence of a CT or CT application, that goal can also be accomplished via a choice of law under section 9-301, without affecting the existing choice of law structure for CTs (since section 9-301 applies only if the vehicle is not covered by an existing CT under section 9-303).

Revising section 9-311(a) or (b) (and/or the relevant Comment), to clarify that Article 9 defers to the CT law of a state (pursuant to a choice of law under section 9-301 and, *e.g.*, UCOTA section 4(e)), even without a CT application (by reason of a filed security-interest statement), would permit perfection by such a filing but only if there has not been a CT

application in another state. (If there has been such an application, that state's CT law applies, pursuant to section 9-303 and, *e.g.*, UCOTA section 4).

D. CT Administration -- UCOTA Sections 9 - 15

Revision of section 9-102(a)(10) to include security-interest statements within the definition of CT should not affect the general CT office administrative provisions of UCOTA (such as UCOTA section 9 concerning the application for a CT), because those UCOTA provisions are subject to the UCOTA definition of CT at section 2(a)(5). Of course, there is some risk any time the definition of a term (like CT) is different (and contradictory) in two related statutes (such as the CT law and Article 9). For example, state CT laws or procedures referencing CTs created in other states could be affected if the other state expands the definition of CT at section 9-102(a)(10). One can also envision internal conflicts, *e.g.*, where a court or CT office erroneously applies the UCOTA requirements for a CT application to a security-interest statement if the Article 9 definition is changed to say that the latter is a CT. Similar confusion is possible (though probably not justified) with respect to UCOTA sections 10 and 11 (creation, cancellation and contents of a CT).

There are several sections of UCOTA which (like UCOTA section 4) refer to CTs created by any state or jurisdiction. For example, UCOTA section 12 (effect of possession of a CT and judicial process) has this broad scope. Probably all CT laws have some such provisions. These are limited exceptions to the general rule that a CT law only applies to CTs created under that law. Once again this creates some potential for confusion as to whether a security-interest statement filed in a state that deems it a CT (under the noted revision to section 9-102(a)(10)) would be treated as a CT in other states for purposes of a provision like UCOTA section 12. The content and context of section 12 make it unlikely that any serious confusion would result in this

instance, but states with CT laws or provisions that are less tightly drafted might present similar and more serious issues.

Overall, to the extent that state CT laws are, like UCOTA, carefully drafted to limit their scope to CTs issued in that state, and to appropriately define CT within the CT law for purposes of that law, with only specified and appropriate exceptions, it should not create problems with respect to internal CT office administration to have the definition of the term CT at section 9-102(a)(10) expanded to cover security-interest statements. Thus, the consequences of that change should be limited to Article 9 issues. However, as suggested above, the Article 9 issues are noteworthy. Of course, there may be some residual uncertainty as whether a given issue is governed by the CT law or Article 9 (*e.g.*, Article 9 Part 5 in view of section 9-311(a) and (b)). Moreover, there is always some risk of unintended consequences, particularly in non-UCOTA states; if the same purposes can be achieved without introducing potential contradictions within the various definitions of CT, *e.g.*, by instead clarifying the role of section 9-311(a) and (b), that may be the preferable approach.

E. Transfers of CTs

UCOTA sections 16 - 24 deal with issues relating to sales of vehicles and transfers of CTs. There is considerable interplay on these issues between UCOTA and UCC Articles 2 and 9. As with UCOTA sections 9 - 15 (discussed above), many of these UCOTA provisions are limited to CTs created pursuant to the CT law of that state (the enacting state), but some are not. For example, UCOTA section 16(b) states that execution of a CT created by any state satisfies the section 16(a) requirement that a seller execute the CT to the buyer (or perform a functional equivalent). While it seems absurd that a seller could claim that execution of a security-interest

statement in another state fulfills this requirement, the odd fit of a section 9-102(a)(10) change is apparent.

The same issue should not arise in an intra-state context (in the enacting state, with respect to its own CTs), because internally UCOTA uses the term CT as defined in UCOTA at section 2(a)(5), not as defined in Article 9 at section 9-102(a)(10). So revising the latter should not cause problems on this basis in a state that has enacted UCOTA. As noted, however, there is considerable overlap and interplay between UCOTA sections 16 - 24 and UCC Articles 2 and 9, so the possibility of unintended consequences resulting from contradictory definitions cannot be dismissed. But, so long as UCOTA is read to mean what it says, major problems with these UCOTA sections are not apparent.

F. Perfection of Security Interests

This is the most important area of intersection between Article 9 and UCOTA (or any other CT law). In order to mesh with Article 9 sections 9-303 and 9-311(a) and (b), the CT law must provide a means of perfection for purposes of Article 9 consistent with sections 9-102(a)(10) and 9-311(a)(2) or (3) and (b). UCOTA does so at sections 25 and 26, which are designed to provide a means of CT law perfection and to result in indication of the security interest on the CT. UCOTA thus meets the current “tests” for a CT law at sections 9-102(a)(10) and 9-311(a)(2) and (3). Other state CT laws are widely presumed to do so as well, though the issue has not been well tested. Note again that it is unnecessary (and inappropriate) for the CT law to include priority rules. Pursuant to section 9-109, Article 9 governs security interest issues, except as provided otherwise. Section 9-311(a)(2) provides otherwise only as to perfection, not priority. Thus, Article 9 Part 3 governs the priority of security interests perfected pursuant to section 9-311(a).

Presumably, as discussed above, one goal of expanding the definition of CT at section 9-102(a)(10) would be to allow use of a security-interest statement (or the like) to serve as a CT for purposes of choosing that state's law under section 9-303. This would also make clear that the vehicle is "subject to" that CT law under section 9-311(a)(2), thereby allowing perfection pursuant to the CT law (by filing a security-interest statement) for purposes of section 9-311(a)(2). This would be recognized in other states pursuant to each state's sections 9-303 and 9-311(a)(3).

This would work in conjunction with UCOTA section 25, which provides rules governing the mechanics and effectiveness of a security-interest statement for perfection purposes. The noted change to section 9-102(a)(10) should not cause problems in this respect. The revised definition of CT at section 9-102(a)(10) would be inconsistent with the UCOTA definition (and the use of the term CT in UCOTA sections 25 and 26), but again this should not be a problem to the extent it is recognized that each of the differing definitions applies only in that statute. On the other hand, if the same overall goal can be achieved without creating this inconsistency, then perhaps the alternative solution is preferable.

As noted above, an alternative to redefining CT at section 9-102(a)(10) is to clarify the effect of section 9-311(a) and (b) by specifying (perhaps in Comments) that a vehicle is "subject to" a CT law by reason of filing a security-interest statement (or the like) that is accepted (or not rejected) by the CT office, even in the absence of an application for a CT. This necessarily assumes the vehicle is not covered by a CT in any other state (in which case that state's law is triggered by section 9-303). Absent such coverage by a CT, the choice of a law is determined under section 9-301 and that leads to section 9-311(a) of the state of the debtor's residence. This is an appropriate analysis that does not disturb any other law. As noted, it might also be helpful

to delete the language at section 9-311(b) referring to priority over a lien creditor (which is unnecessary and confusing).

Under current Article 9, the first question relevant to this discussion is whether the vehicle is “subject to” the CT law of that state, *e.g.*, by reason of a security-interest statement filing (or the like). The second question is whether the CT law and filing of a security-interest statement (or lien entry form) meet the requirements of section 9-311(a) and (b). Under UCOTA sections 4, 25, and 26 the answers are clearly yes, and arguably should be the same under other, existing CT laws if the CT office has accepted the filing. A separate statutory basis for this in the applicable CT law would be nice, in addition to the CT office procedure under which the filing is accepted, and that may exist in some states, but that requires a state-by-state CT law analysis. However, even without such a basis, Article 9 may be able to clarify the issues for Article 9 purposes.

One option is the view that the vehicle is “subject to” the CT law (despite the lack of a CT application) because other provisions in that CT law require a CT application to be made by state residents, typically within a stated time period. This is not as compelling as the alternative rationale that the filing of a security-interest statement triggers section 9-311(a) and (b), because: (1) the requirement to apply for a CT may appear in a different part of the state’s motor vehicle code, and therefore there is an argument that the vehicle is subject only to that part, and not the CT perfection rules; and (2) the requirement to apply for a CT may be applicable only after a stated period of residency (*e.g.*, thirty or more days) or a stated number of days after retail purchase of the vehicle, so it is arguable whether the vehicle is “subject to” this CT law and requirement before that period has expired (which could leave the security interest unperfected during a crucial interim).

Thus, it appears that the best option is to clarify under section 9-311(a) and (b) that: (1) goods are “subject to” a CT law by reason of a filed security-interest statement (or the like), even if there has been no application for a CT; and (2) such a filing constitutes perfection for purposes of Article 9.

Many of the other issues arising in this context are products of the CT law and can be fully addressed only by enactment of UCOTA or other CT law reform. Section 9-311(a) and Comments 3 and 5 correctly provide an Article 9 basis for addressing these issues, but Comments 3 and 5 could be more explicit as to the problems noted here. Given that the current “subject to” language in section 9-311(a) is already quite broad, and seems clearly sufficient to recognize a security-interest statement filing as a means of Article 9 perfection (along with section 9-311(b)), perhaps the optimal solution is an expanded Comment (and/or a PEB Commentary) to explain this analysis. As noted, deleting the phrase “for obtaining priority over the rights of a lien creditor” at section 9-311(b) also might be helpful.

VI. Summary and Conclusion

For the most part, revision of the definition of CT at Article 9 section 9-102(a)(10) to include a security-interest statement would not interfere with UCOTA, because UCOTA contains its own definition of CT and for the most part that is the definition applicable in UCOTA. This is particularly true of the UCOTA provisions dealing with administration of the CT law.

However, there are some instances where UCOTA refers to a CT created in another jurisdiction, or interfaces with UCC Articles 2 and 9. In cases where UCOTA recognizes a CT created in another state, if that state has adopted an expanded version of section 9-102(a)(10), it is possible that the UCOTA reference to a CT created in another state could be taken to include a security-interest statement. This could lead to unintended consequences, *e.g.*, triggering a choice

of a state's law based on the filing of a security-interest statement another state, despite the existence of an existing CT in the UCOTA state. This would disrupt the established choice of law regimen for CT issues, and should be avoided.

One means to do so is an alternative approach to clarify that section 9-311(a)(2) applies (based on section 9-301) to a vehicle that is subject to a CT law's perfection system by reason of a filed security-interest statement (or the like), in the absence of a CT or CT application. This should already be the law, given an accommodative CT office or CT law. It might also be helpful to clarify that this constitutes Article 9 perfection pursuant to section 9-311(b). An expansion of Comments 3 and 5 to section 9-311 should be helpful in this regard, and may be sufficient. Of course, this also requires analysis of the state CT law, and a CT office that accommodates this solution. But this is so in any event, as there is a limit to what Article 9 can do to address this issue absent a supportive CT law and/or a cooperative CT office procedure.