

ULLCPSA Drafting Committee  
Reporter's Summary of Results of September 21, 2016 Internet Meeting  
9-22-16

The agenda for the September 21 meeting included three items, the description of which is pasted below. *Interspersed, in this color and font, are the reporter's summaries of the results. Further below are a couple of additional points.*

1) After last week's call, an ad hoc "subcommittee" reconsidered Section 402 and the issues discussed on the call plus a few additional issues detected during the reconsideration. While the group is still considering revisions, we wanted to include the current draft of Section 402 for your consideration. Let's discuss whether we have addressed the concerns raised last week as well as other open issues raised by this section. Specifically, Jim and Scott (Ludwig) had raised questions earlier that we think have been addressed or resolved through this language, but we want to be sure.

*The meeting generally approved the structure and mechanics of Section 402 as currently drafted, with a discussion and up/down vote on including the section scheduled for next week (Wednesday, September 28). During the discussion of mechanics, it was suggested that we consider/include a safe harbor for recordkeeping that meets a good faith/reasonable/efforts/substantial compliance/etc. standard. E.g., a DMV error should not defeat association. The reporter is to draft language for the group's consideration (during such time we should also consider whether association under our current language could be precluded by third party actions).*

*Following the meeting, discussion on the mechanics resumed among an informal group of interested individuals. Those discussions will likely continue for a while; it is possible that Section 402 mechanics might return to the agenda at another internet meeting. Anyone interested in being on the addressee list of the informal group, please email the reporter – [daniel.kleinberger@mitchellhamline.edu](mailto:daniel.kleinberger@mitchellhamline.edu) .*

2) Leigh has raised in the past adding merger provisions to deal with terminating series and transfers of assets. Dan and I would like the group's guidance on whether adding either mergers or some other mechanism to facilitate transfers at law on termination of a series is appropriate.

*Including mergers prompted much interest, much doubt, and the realization that we need to consider mergers if only to make certain that – if we preclude them – we have done so adequately.*

*The reporter will put together a proposal for including mergers, circulate it to an informal group for discussion, with subsequent presentation to the committee of either proposed language or a proposal not to proceed with a merger provision. Anyone interested in being on the addressee list of this informal group, just email the reporter – [daniel.kleinberger@mitchellhamline.edu](mailto:daniel.kleinberger@mitchellhamline.edu) .*

3) In considering transition rules, Dan and I are struggling with what provisions of our act would apply to pre-existing series and when. For example, should pre-existing series be required to make a filing within a period of time to maintain shields (i.e., shields fall absent a filing). Even if we decide pre-existing series do not need to make a filing, we assume the record keeping rules would apply within a period of time and disclosure upon proceeding provisions of article 6 would apply. We want to confirm with the group.

*The participants voted overwhelmingly for the “Jericho” approach – i.e., the walls come a tumbling down. The commissioner vote was unanimous in favor of Jericho.*

*Additional Points*

*1. At or before the next internet meeting (Wednesday, September 28), we will develop a schedule of Wednesday meetings through at least the end of November. All meetings will be in the current time block (Wednesday, 2-3:30 PM Central Time). We will likely meet more often than bi-weekly but less often than weekly. To the extent possible, please keep all upcoming Wednesdays free for that time block pending the new schedule.*

*2. If you have been having technical problems participating in the meeting, please contact the chair ASAP (n.b. BEFORE the next meeting), and he will resolve all your problems, tell your fortune, and explain the karma of the Cubs. [frost@chapman.com](mailto:frost@chapman.com) ; (o) 312.845.3760 .*