

MEMORANDUM

TO: Joint Review Committee for UCC Article 9

FROM: Steven L. Harris, Reporter

RE: Addendum to April 13, 2009, draft of “priority” approach

DATE: April 27, 2009

1. Please add the following to the April 13, 2009, draft:

SECTION 9-506. EFFECT OF ERRORS OR OMISSIONS.

* * *

(b) [**Financing statement seriously misleading.**] Except as otherwise provided in subsection (c), a financing statement that fails sufficiently to provide the name of the debtor in accordance with Section 9-503(a) or (h) is seriously misleading.

* * *

2. In addition to the issues raised in the Reporter’s Notes to the draft, the Joint Review Committee may wish to consider how priority might be affected, if at all, by a change in the debtor’s name. Please consider the following cases:

Case #1: SP-1 made a loan to D. The loan was secured by D’s existing and after-acquired inventory. SP-1 perfected by making a high-priority filing that provided the name on D’s driver’s license. D’s driver’s license expired on December 31, 2008, at which time D’s passport became the source document under the waterfall. On January 2, 2009, SP-2 made a loan to D secured by the same collateral. SP-2 perfected immediately by making a low-priority filing that provided the name on D’s passport. A search under the name indicated on the passport would not disclose SP-1’s financing statement, and the name provided by SP-1’s financing statement is the “individual name” of the debtor. Put otherwise, at the time SP-1 filed, its filing was a high-priority filing; however, after D’s name changed, when SP-2 filed, the name provided by SP-1’s financing statement was no longer the name specified by the waterfall but would have been effective to perfect had SP-1 filed at that time.

(a) Should SP-1 have priority in inventory acquired during 2008 (i.e., before D's name changed)?

(b) Should SP-1 have priority in inventory acquired in 2009 (i.e., after D's name changed)?

Case #2: The facts are as in Case #1, except that the name on D's driver's license is not D's "individual name." Thus, when SP-2 filed, the name provided by SP-1's financing statement not only was no longer the name specified by the waterfall but also would have been ineffective to perfect had SP-1 filed at that time. Should this change the outcome?

S. L. H.