

UNIFORM COMMERCIAL CODE COMMITTEE
REPORT PREPARED FOR THE JUNE 4, 2005 COUNCIL MEETING
BUSINESS LAW SECTION

1. Next Scheduled Meeting of the Committee

There is no meeting of the Committee presently scheduled.

2. Council Approval

There are no matters pertaining to the Committee that require Council approval.

3. Membership

I am in the process of preparing a brief newsletter to all Committee members discussing certain developments affecting the Uniform Commercial Code, such as Check 21, valuation and other provisions affecting secured creditors and reclamation claimants in the new bankruptcy legislation, etc.

4. Accomplishments Toward Committee Objectives

I am keeping abreast of current developments which will be summarized in the Committee members' newsletter described above.

5. Meetings and Programs

As of now, I do not anticipate any need for future programs.

6. Publications

The Spring 2005 issue of the Michigan Business Law Journal featured an article by Chad A. West entitled *Documentary Letters of Credit in International Transactions*.

7. Legislative/Judicial Administrative Developments

a. On October 28, 2004, the federal "Check 21 Act," Public Law 108-100, became effective. This legislation and the accompanying regulations adopted by the Federal Reserve Board, is designed to facilitate electronic processing of checks and, therefore, affects Articles 3 and 4 of the UCC. Briefly, this statute authorizes the use of a new negotiable instrument entitled a "substitute check," that can be transferred, presented or returned like an original paper check.

b. The Internal Revenue Service has appealed to the Sixth Circuit Court of Appeals from the decision of the United States District Court for the Eastern District of Michigan in *Crestmark Bank v. United States (In re Spearing Tool & Mfg. Co.)*, 302 B.R. 351 (E.D.Mich.

2003) (Edmunds, J.). Oral argument was held on March 11, 2005 and the Court has not yet issued its decision.

c. *Menorah Ins. Co. v. W.F. Whelan Co.*, 110 Fed.Appx. 524 (6th Cir. 2004). This unpublished decision of the Sixth Circuit Court of Appeals construed provisions of UCC 7-204(2), M.C.L.A. 440.7204(2) applicable to liquidated damages provisions in storage agreements.

d. *Pressman v. Franklin National Bank*, 384 F.3d 182 (6th Cir. 2004). The Sixth Circuit affirmed judgment by the United States District Court for the Middle District of Tennessee dismissing a lender liability action against a bank and the president of the bank's parent company for failure to make a loan to the plaintiff.

e. *Multimedia 2000, Inc. v. Attard*, 374 F.3d 377 (6th Cir. 2004). The Sixth Circuit addressed the issue of whether a claim for duress asserted by pledgors of stock converted their nonrecourse guaranty obligation into a recourse obligation.

f. *Parsley v. Monaco Coach Corp.*, 327 F.Supp.2d 797 (W.D.Mich. 2004). The United States District Court for the Western District of Michigan, per Chief Judge Robert Holmes Bell, held, *inter alia*, that a disclaimer of express and implied warranties in a contract for the sale of goods was conspicuous and therefore effective under M.C.L.A. 2.316(2).

8. Miscellaneous

Attached to this Report is the most recent UCC "Scoreboard" prepared by the UCC Committee of the ABA Business Law Committee.

Respectfully submitted,

Patrick E. Mears