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2025 Winter Leadership Conference

UCC Liens in Consumer Bankruptcy

*Hosted by the Consumer Bankruptcy
and Secured Credit Committees*

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UCC Liens in Consumer Cases

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ARTICLE 9 BASICS

Article 9 Basics: Overview – Key Terms

- Attachment, perfection, and priority
- Goods: consumer goods, equipment, inventory, fixtures
- Fixtures: goods attached to real property
- Chattel Paper: records evidencing monetary obligations
- Deposit Accounts / Instruments / General Intangibles

Article 9 Basics: Overview

- Scope – consensual security interests in personal property & fixtures (not real estate mortgages or purely statutory liens)
- Key parties – debtor, secured party, and obligor
- Attachment – when the lien becomes enforceable:
 - Value given
 - Debtor has rights in the collateral
 - Security agreement (authenticated record, or possession/control)
- Perfection – makes interest effective against third parties:
 - Usually by filing UCC-1 in debtor’s state of residence/organization
 - Sometimes by possession or control; some interests automatically perfected (e.g., PMSI in consumer goods)
- Priority basics:
 - General rule – first to file or perfect
 - PMSIs may get super-priority; buyers in ordinary course and some consumer buyers can take free

Article 9 Basics: Perfection Methods

- - UCC-1 Financing Statement
- - Certificate of Title (vehicles)
- - Possession or Control (instruments, deposit accounts)
- - Automatic Perfection (PMSI in consumer goods)

FIXTURES VS. GOODS

FIXTURES vs CONSUMER GOODS: The Solar Saga

- Debra contracts with SunWave Solar for a rooftop solar system.
- Contract: “Panels remain personal property and are not intended as fixtures.”
- Panels are bolted to the roof, wired into the electrical system, and removable with only minor patching.
- SunWave files a fixture filing in the county registry; Debra files Chapter 7 two years later.
- Trustee claims panels are consumer goods and fixture filing alone is insufficient to perfect.

FIXTURES vs CONSUMER GOODS: Legal Issues & Cases

- Fixture tests: annexation, intent, and removability.
- What weight to give contract language stating goods are not fixtures?
- Whether a fixture filing perfects a security interest if the goods are actually consumer goods.
- In re Evans, 656 B.R. 848 (Bankr. D.N.M. 2023): solar panels treated as consumer goods, not fixtures.
- In re Ariman, 653 B.R. 685 (Bankr. M.D. Fla. 2023): windows treated as consumer goods, not fixtures, in part due to contract language.

FIXTURES vs CONSUMER GOODS: The Home Security Mix-Up

- Debtor installs a comprehensive home security system: wiring, sensors, cameras.
- System is screw-mounted, integrated into the electrical system, and removable with basic repair.
- Creditor files ONLY a central UCC-1, not a fixture filing; debtor files Chapter 7.
- Trustee: system is a fixture, so creditor is unperfected without a fixture filing.
- Creditor: system is consumer goods; central filing is sufficient and removability indicates non-fixture status.

FIXTURES vs CONSUMER GOODS: Legal Issues & Cases

- Applying fixture tests: intent, annexation, adaptation to the realty.
- How Evans and Ariman inform characterization of security systems as fixtures vs consumer goods.
- In re Evans, 656 B.R. 848 (Bankr. D.N.M. 2023): consumer-goods analysis for solar panels.
- In re Ariman, 653 B.R. 685 (Bankr. M.D. Fla. 2023): windows as consumer goods, despite fixture filing.
- How to determine “replacement value” under § 506(a)(2) in consumer Chapter 7.
- What is the correct redemption value under § 722 given condition and necessary repairs.
 - Evidentiary standards and weight of valuation guides vs testimony and repair estimates.

PROPER PARTIES

PROPER PARTIES: Legal Issues & Cases

- *Patterson Dental Supply, Inc. v. Aesthetic Dentistry of Charlottesville, P.C.*, 622 B.R. 192 (W.D. Va. 2020) (UCC-1 filed against dentist instead of LLC dental practice was ineffective)
- *In re Clinkingbeard*, 2020 WL 1517932 (Bankr. D. Kansas 2020) (no security interest where LLC president signed security agreement in his individual capacity)
- *In re Bryant*, 630 B.R. 671 (Bankr. M.D. Ga. 2021) (where debtor's driver's license name was "Darren Eugene Bryant," financing statements in the name of "Darren E. Bryant" or "Darren E Bryant" were ineffective)

LAPSE AND RENEWAL

UCC LAPSE & RENEWAL:

The Forgotten Financing Statement

- BigBank filed a UCC-1 against debtor's HVAC tools in 2018; debtor files Chapter 13 on January 10, 2024.
- Scenario 1: UCC-1 expires January 1, 2024 (9 days before filing).
- Scenario 2: UCC-1 expires January 20, 2024 (10 days after filing); creditor refuses to renew, fearing stay violation.

UCC LAPSE & RENEWAL: Legal Issues & Cases

- § 544(a) strong arm powers and avoiding unperfected liens.
- Difference between prepetition and post-petition lapse of a financing statement.
- Safe harbors: § 362(b)(3) and § 546(b) for post-petition continuation.
- Thomson v. Short (In re Short), 669 B.R. 81 (Bankr. D. Utah 2025): post-petition failure to renew did not strip secured status.
- In re Miller Brothers Lumber Co., Inc., 2013 WL 5755052 (M.D.N.C. 2013): similarly, post-petition lapse did not defeat priority.

COMPLEX CONSUMER ISSUES

Cross-collateralization: The Home Fitness Upgrade

- Jordan purchases a \$2,400 NordicTrack treadmill from FitLife Superstore on store-financed terms.
- Financing agreement: security interest in treadmill; cross-collateral for any and all obligations; future credit limit increases.
- Six months later: Jordan buys a rowing machine and adjustable dumbbells on same revolving line of credit, no new security agreement.
- Jordan files Chapter 7; FitLife files a secured claim asserting a PMSI in all equipment based on cross-collateralization.

Cross-collateralization: Legal Issues & Case

- Does cross-collateralization destroy PMSI status?
- Does automatic perfection apply to these consumer goods?
- Is this a single PMSI transaction or separate PMSI transactions for each purchase?
- In re Gayten, 664 B.R. 711 (Bankr. S.D. Miss. 2024): PMSI survives cross-collateralization if the loan enabled the purchase.

MCA ISSUES – FUTURE RECEIVABLES: Cash Today, Problems Tomorrow

- FastCash MCA advances \$35,000 to debtor's small business in exchange for 50% of all future receivables until \$65,000 is repaid.
- FastCash files a UCC-1 claiming ownership of the receivables.
- At petition date: no outstanding invoices; all receivables arise postpetition.
- FastCash claims its interest is automatically perfected and § 552(a) does not apply because this was a "sale."

MCA ISSUES – FUTURE RECEIVABLES: Legal Issues & Case

- Can receivables be "sold" before they exist, or is this a security interest in after-acquired property?
- Is the MCA structure a disguised loan subject to Article 9 and § 552(a)?
- Does § 552(a) cut off the lien as to postpetition receivables?
- In re Watchmen Sec. LLC, 2024 Bankr. LEXIS 2871 (Bankr. S.D. Ind. 2024): MCA found unsecured, no interest in postpetition income.

Emerging Topics: UCC Article 12 Cryptocurrency

- What it covers:
 - Governs certain digital assets called “controllable electronic records” (CERs) – e.g., some forms of crypto, tokenized rights, and other blockchain-based assets.
- Key concept – “Control”
 - A person has control of a CER if they can:
 - Use the record,
 - Prevent others from using it, and
 - Transfer that control to someone else.
- Property rights in CERs
 - Confirms that a person with control can acquire good title to a CER.
 - Introduces the “qualifying purchaser” (good-faith buyer who gives value without notice of competing claims) who can take free of certain adverse property claims.
- Interaction with Article 9
 - Article 12 works together with Article 9 for secured transactions in CERs.
 - Control is the gold standard for both ownership and secured lending in many digital-asset deals.
- What it doesn’t do
 - Does not decide whether a digital asset is a security, commodity, or money or regulate it like securities/commodities law.
 - Leaves tax, securities, and regulatory questions to other laws.

CONCLUSION

Practical Takeaways

- Confirm attachment and perfection early
- Audit UCC-1 filings regularly
- Review fixture filings and contracts
- Stay current on amendments
- Monitor crypto/digital asset rules

Questions?

Faculty

Michelle H. Bass is a partner at Wolfson Bolton Kochis PLLC in Troy, Mich., where she manages its consumer bankruptcy practice group. She represents both debtors and creditors in consumer bankruptcy proceedings and has represented individuals reorganizing under chapter 11, including under subchapter V. She helps with stopping foreclosures, stripping secured liens and cramming down loans on collateral for individuals seeking to reorganize under chapters 13 and 11. Ms. Bass has successfully defended appeals in the Federal Eastern District for the State of Michigan and the Sixth Circuit Court of Appeals. She is a member of ABI, the Detroit Consumer Bankruptcy Association and the Oakland County Bar Association, and she is Board Certified in Consumer Bankruptcy Law. Ms. Bass has been named by *Michigan Lawyer's Weekly* as one of 2019's 30 Women in the Law, by *Crain's Detroit* as one of 2021's Notable Women in the Law, and by *The Best Lawyers in America* from 2023-25 for Bankruptcy and Creditor/Debtor Rights/Insolvency and Reorganization Law. She also has been consistently recognized by *Super Lawyers* as a Rising Star in Consumer Bankruptcy from 2014-22, as a *Super Lawyer* in Consumer Bankruptcy from 2023-25, and by *Leading Lawyers* from 2023-25 for Individual Bankruptcy Law. Ms. Bass served on ABI's "40 Under 40" Program Steering Committee in 2023 and 2024, and she chaired the Michigan IWIRC Network from 2017-21. She received her B.A. from the University of Michigan and her J.D. from the University of Detroit Mercy School of Law.

Patrick Hruby is a senior associate attorney at Brock & Scott, PLLC in its Tampa, Fla., office. His practice focuses on creditor-side bankruptcy matters in all Florida and Ohio bankruptcy courts. Mr. Hruby has a broad understanding of bankruptcy from his creditor representation in all chapters, and from having served as a judicial law clerk in the U.S. Bankruptcy Court for the Northern District of Ohio and serving chapter 7 trustees for several years. He writes frequently for industry publications and is currently serving as the Editor of ABI's Consumer Committee Newsletter. Mr. Hruby received his undergraduate degree *summa cum laude* in 2006 from Cleveland State University and his J.D. *cum laude* in 2009 from Case Western Reserve University School of Law.

Prof. Robert M. Lawless is the Max L. Rowe Professor of Law and co-director of the Program on Law, Behavior & Social Science at the University of Illinois College of Law in Champaign, Ill., where he writes and teaches about bankruptcy, consumer finance and business law. He also served as the College's associate dean for research from 2013-16. Committed to bridging scholarship and real-world policy, Prof. Lawless has played a key role in shaping discussions on bankruptcy reform. He served as the reporter for the ABI's Commission on Consumer Bankruptcy and received ABI's Service Award in 2019. He is a co-author of *Secured Transactions: A Systems Approach and Empirical Methods in Law*. He also administers the blog Credit Slips, a discussion on credit, finance and bankruptcy. He also is a co-principal investigator in the Consumer Bankruptcy Project, a long-term research project studying persons who file bankruptcy. Prof. Lawless has testified before Congress, and his work has been featured in media outlets such as CNN, C-SPAN, NPR, the *New York Times*, the *Wall Street Journal*, "Last Week Tonight with John Oliver," ABC News and the *Financial Times*. He is a member of the American Law Institute and the National Bankruptcy Conference, and he is a Fellow in the American College of Bankruptcy. Prior to joining the Illinois law faculty, Prof. Lawless served on the law faculties of the University of Nevada-Las Vegas and the University of Missouri-

Columbia School of Law, and he has been a visiting faculty member at Ohio State University and Washington University in St. Louis. Prof. Lawless began his career as a law clerk for Hon. Harlington Wood, Jr. of the U.S. Court of Appeals for the Seventh Circuit, then practiced law in Washington, D.C., with the firm of Zuckert, Scoutt & Rasenberger. He received both his undergraduate degree in accounting and his J.D. from the University of Illinois, during which time he served as editor-in-chief of the *University of Illinois Law Review*.

William J. Schumacher is a shareholder with Winthrop & Weinstine, PA in Minneapolis, where he represents and advises secured and unsecured creditors, with a focus in the financial services industry. He also represents borrowers and debtors across sectors, concentrating on creditors' rights, business restructuring and reorganization, including complex chapter 11 proceedings, bankruptcy litigation, liquidation, § 363 sales, out-of-court restructurings, receiverships and assignments for the benefit of creditors. Mr. Schumacher has represented clients in financial services, commercial real estate, retail, media, oil & gas and health care. He received B.S.B. in accounting in 2009 from the University of Minnesota – Carlson School of Management, and his J.D. *magna cum laude* with a business law concentration in 2014 from the University of Minnesota Law School.