

UNIFORM COMMERCIAL CODE COMMITTEE

REPORT PREPARED FOR THE SEPTEMBER 15, 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

On June 23, 2005 shortly after the Sixth Circuit's decision in *Crestmark Bank v. United States (In re Spearing Tool & Mfg. Co.)*, 412 F.3d 653 (6th Cir. 2005), I sent an email to all Section members on the listserv advising them of this decision and its impact on lending practices. On September 12, 2005, I arranged to send to these same people copies of a UCC Research Guide prepared by the ABA Business Law Section's UCC Committee along with a recent report of the UCC Permanent Editorial Board on nonuniform provisions in Revised Article 9.

4. Accomplishments Toward Committee Objectives

I am keeping abreast of current developments which will be transmitted to the Committee members and other interested parties on a periodic basis.

5. Meetings and Programs

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

6. Publications

There have been no recent publications attributable to this Committee.

7. Legislative/Judicial Administrative Developments

a. On June 21, 2005, the Sixth Circuit Court of Appeals issued its decision in *United States v. Crestmark Bank (In re Spearing Tool and Manufacturing Co.)*, 412 F.3d 653 (6th Cir. 2005) reversing the federal district court. The Sixth Circuit's decision is described in Appendix A to this Report.

b. *Metal One America, Inc. v. Center Manufacturing, Inc.*, Case No. 1:04-CV-431 (W.D.Mich. 2005). In this decision, Federal District Judge Gordon Quist granted a motion for partial summary judgment of a seller of steel bars and hot roll bars under a requirements contract with the buyer. The buyer shut down a plant to curtail financial losses and terminated the

requirements contract. Judge Quist held that, by these actions, the buyer breached the contract “in bad faith as a matter of law.” Judge Quist cited in support two recent decisions from courts sitting in Michigan: (i) *General Motors Corp. v. Paramount Metal Products Co.*, 90 F.Supp.2d 861 (E.D.Mich. 2000) and *Plastech Engineered Products v. Grand Haven Plastics, Inc.*, 2005 WL 736519 (Mich.Ct.App. March 31, 2005).

c. *Simon v. Brentwood Tavern, LLC (In re Brentwood Golf Club, LLC)*, Case No. 04-54286 (Bankr.E.D.Mich. August 30, 2005). In this decision, Bankruptcy Judge Marci McIvor granted the Chapter 11 trustee’s motion for summary judgment on his complaint for substantive consolidation of the debtor and its non-debtor affiliate. This decision has relevance to securitization transactions, especially as it relates to the issuance of non-substantive consolidation opinions.

d. *Seymour v. Weinberg*, Case No. 251924 (Michigan Court of Appeals, May 17, 2005) (Unpublished opinion). This decision involved the construction of a guaranty contract. The Michigan Court of Appeals affirmed the decision below holding that the guaranty was ambiguous and unenforceable as a matter of law.

e. *CIT Group/Equipment Financing, Inc. v. Elliott*, Case No. 260883 (Mich.Ct.App. July 19, 2005) (Unpublished opinion). This case involved the issue of whether a foreclosing secured creditor gave proper notice of a private sale of personal property collateral under MCLA §440.9613(a)(v). The notice of disposition stated that the sale would be held after a particular date; the notice did not indicate the exact date and time of the foreclosure sale. Citing to precedent decided under the prior version Article 9, the Court of Appeals reversed the Wayne County Circuit Court which held that the notice was deficient and remanded the case to the lower court for further proceedings.

8. Miscellaneous

Nothing else to report.

Respectfully submitted,

Patrick E. Mears