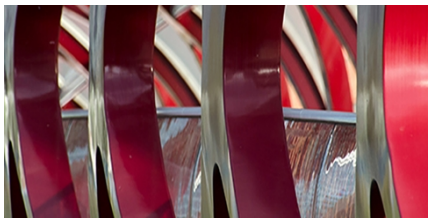
masuda funai



News & Types: Commercial, Competition & Trade Update

7th Circuit Rules on Sufficiency of UCC Financing Statement

9/27/2019

Practices: Commercial, Competition & Trade, Corporate, Finance & Acquisitions, Litigation

Secured creditors filing a UCC financing statement under Article 9 must include a description of the collateral. (UCC 9-502) UCC Article 9 adopts a "notice filing" system, under which the purpose of the filing is to provide notice of a security interest in the specified collateral. UCC Article 9 does not require a precise (e.g., serial number) description. Even so, there has been much litigation over the sufficiency of the collateral descriptions in UCC financing statements. A recent example is a 7th Circuit Court of Appeals opinion which may have stretched the concept of "notice filing." (*In re: I80 Equipment, LLC*, 7th Circuit Court of Appeals, No. 18-3291, September 11, 2019)

I80 Equipment purchased and refurbished trucks for resale. In 2015, I80 Equipment obtained a commercial loan from First Midwest Bank. As part of the transaction, I80 Equipment and First Midwest executed a security agreement which granted First Midwest a security interest in substantially all of I80 Equipment's assets. The security agreement described 26 categories of collateral, including cash, equipment, accounts receivable, instruments, goods, inventory, and proceeds; in other words, virtually every category of collateral covered by UCC Article 9.

To perfect its security interest, First Midwest filed a UCC financing statement. The collateral was simply described as "[a]ll Collateral described in First Amended and Restated Security Agreement dated March 9, 2015 between Debtor and Secured Party." The Security Agreement was not attached to the financing statement.

Sure enough, I80 Equipment defaulted and entered Chapter 7 bankruptcy, resulting in the appointment of a bankruptcy trustee to administer the bankruptcy estate. First Midwest sued the trustee for $7.6 million on the loan and security agreement, claiming its security interest was prior to all other claimants, including the trustee.

But the trustee challenged the perfection of First Midwest's security interest, claiming the description on the UCC financing statement was not sufficient. The bankruptcy court agreed with the trustee, noting that a "financing statement that fails to contain any description of collateral fails to give the particularized kind of notice" required by Article 9 of the UCC. The trustee sold the assets of I80 Equipment for $1.9 million and held the proceeds pending resolution of the dispute.

The 7th Circuit, in an opinion written by Judge Brennan reversed the bankruptcy court, holding the $1.9 million should go to the secured creditor, First Midwest.

©2026 Masuda, Funai, Eifert & Mitchell, Ltd. All rights reserved. This publication should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended solely for informational purposes and you should not act or rely upon information contained herein without consulting a lawyer for advice. This publication may constitute Advertising Material.

The basic question was interesting and not unprecedented. Is the collateral description in a UCC financing statement sufficient when it only references another document which is not attached to the security agreement? Judge Brennan described this issue as:

> ". . . whether the statutory language of Article 9 requires that the four corners of the financing statement include a specific description of the secured collateral (either by type, category, quantity, etc.), or if incorporating such a description by reference to a security agreement sufficiently 'indicates' the collateral."

This issue was a matter of first impression under Illinois law. So, to support the decision, Judge Brennan used state precedents, analogous decisions, dicta, scholarly works, and other reliable data to attempt to predict how Illinois courts would decide this issue.

As noted, UCC 9-502 requires the UCC financing statement to indicate the covered collateral. UCC 9-504 sets forth the fairly loose requirements to indicate the collateral.

> "A financing statement sufficiently indicates the collateral that it covers if the financing statement provides: (1) a description of the collateral pursuant to Section 9-108; or (2) an indication that the financing statement covers all assets or all personal property."

As Judge Brennan pointed out, this standard relaxes the requirements under former Article 9-402 (applicable prior to 2001). (See Comment 2, UCC 9-504) First Midwest did not indicate an all assets filing. So Judge Brennan went to UCC 9-108 to analyze the sufficiency of First Midwest's financing statement.

UCC 9-108 provides that the financing statement sufficiently describes the collateral "whether or not it is specific, if it reasonably identifies what is described." (UCC 9-108(a))

UCC 9-108 then lists six examples that reasonably identify the collateral, such as listing, category, type, quantity or formula. First Midwest did not meet any of these. The sixth was a catch-all permitting "any other method, if the identity of the collateral is objectively determinable." This is the category that Judge Brennan focused on and the category that saved First Midwest's filing.

Judge Brennan noted that the description in the financing statement does not require the same level of detail as the security agreement – "The different treatment of these two documents highlights the distinct function each serves under Article 9: the financing statement provides notice of an underlying security interest, while the security agreement creates and specifically defines that interest." There was no dispute about the sufficiency of First Midwest's collateral description in the security agreement.

Judge Brennan also followed bankruptcy courts in recognizing that incorporation by reference is an available method of describing collateral. Incorporation by reference is an example of the "any other method" permitted by UCC 9-104. " . . . [T]he financing statement in this case 'notified subsequent creditors that a lien may exist and that further inquiry [was] necessary to disclose the complete state of affairs.' "

Judge Brennan opined that "the plain and ordinary meaning of Illinois's revised version of the UCC allows a financing statement to indicate collateral by reference to the description in the underlying security agreement. . . . [W]e hold that the trustee is not entitled to avoid First Midwest's lien under the Bankruptcy Code."

©2026 Masuda, Funai, Eifert & Mitchell, Ltd. All rights reserved. This publication should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended solely for informational purposes and you should not act or rely upon information contained herein without consulting a lawyer for advice. This publication may constitute Advertising Material.

The I80 Equipment opinion has support in some similar cases, but other cases are more strict. If the UCC financing statement simply references a document, without attaching the document, a creditor searching the records is virtually required to inquire further. In this respect, Judge Brennan is correct that the notice requirement has been met. On the other hand, by not including any indication of the collateral, the UCC financing statement is not helpful to subsequent searchers.

Even in a description of collateral using the "any other method" in UCC 9-108(b)(6), the identity of the collateral must be "objectively determinable." The assumption is that the information in the security agreement is "objectively determinable." But agreements can be amended. What if the security agreement is amended to add collateral? Under UCC 9-512(c), a financing statement that adds collateral is only effective as to the added collateral from the date of filing of the amendment of the financing statement. Does a secured party rely on the reference to the security agreement and treat the financing statement as automatically amended by the amendment to the security agreement? Or does the secured party take a more cautious approach and amend the UCC-1 financing statement as to the added collateral?

Courts have treated UCC financing statements that only refer to an unattached document differently – some finding the UCC financing statement valid (as the court did in the *I80 Equipment* case) and others treating the UCC financing statement as not sufficient (as the bankruptcy court did in the *I80 Equipment* case).

But whether the *I80 Equipment* opinion is correct or not, it can be said that using this type of collateral description is not a good practice. Even if the chances of ultimately prevailing are high, the chances of a challenge are also high. It will be interesting if Illinois courts follow the *I80 Equipment* holding on this issue.

©2026 Masuda, Funai, Eifert & Mitchell, Ltd. All rights reserved. This publication should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended solely for informational purposes and you should not act or rely upon information contained herein without consulting a lawyer for advice. This publication may constitute Advertising Material.