NOT A PRECEDENT—FOR TEACHING PURPOSES ONLY

I have not prepared an outline discussing the purpose and structure of legal opinions in secured transactions. The reason is simple. This task has been done well by various authors, task forces and committees—with the resources collected by the American Bar Association in one place, on the web, for free and capable of printing.

Specifically, you should read: Special Report of The TriBar Opinion Committee: U.C.C. Security Interest Opinions—Revised Article 9, available at http://apps.americanbar.org/buslaw/tribar/materials/20050303000011.pdf

The ABA general opinion materials collection site appears here: http://apps.americanbar.org/buslaw/tribar/

FORM OF SECURITY INTEREST OPINION

[Letterhead of Counsel to Borrower]

[insert Closing Date]

To each lender party to the
Loan and Security Agreement referred to below

Ladies and Gentlemen:

We have acted as [special local] counsel to **BORROWER LEGAL NAME●**, a **BORROWER ENTITY TYPE●** (the "Debtor"), in connection with the negotiation, execution and delivery of that certain Loan and Security Agreement, dated as of **MONTH● DAY●, YEAR●** (the "Loan Agreement"), between the Debtor and **LENDER LEGAL NAME●**, a **LENDER ENTITY TYPE●** (the "Secured Party").

In giving this opinion, we have reviewed the Loan Agreement and the other "Loan Documents" as defined therein **[specify other documents]** (collectively, the "Transaction Documents"). Capitalized terms used in this opinion without definition have the meanings assigned to such terms in the Transaction Documents. Unless otherwise indicated, references in this opinion to the "UCC" refer to the Uniform Commercial Code of the State of **[STATE]●** and references to "Section" refer to sections of the UCC.

Summary of Comments on Lender-SI-Opinion-Comments.pdf

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Issue: Current Law Subject: Legal Opinions
The insertion of a date in the legal opinion should remind local counsel to satisfy itself that he or she has examined the most current law applicable to the transaction. Do you make a last minute check of Lexis, Westlaw, etc. on the morning of the closing to double check? How familiar is local counsel with pending legislation impacting the UCC and related matters in its state? What a pain, right? And you wonder why it is expensive to give legal opinions. And, if the closing date is postponed, you get to check all over again.

Issue: Opinion Addressees Subject: Legal Opinions
Note that, in form, this opinion is addressed only to specified addressees. Those are the parties who may rely on the opinion. It would seem that no new lender who received an assignment or participation post-closing could rely on the opinion. In this form, however, the problem of later assignees and participants is addressed in the last paragraph to the opinion. Not all opinions provide this coverage. Lender's counsel should get this coverage otherwise potential new lenders will request reliance letters or other confirmation. At best, it could delay an assignment or participation--and it will increase local counsel fees down the road--who will not like the idea of updating their opinion or giving a reliance letter for an opinion that may be outdated.

Issue: Entities Covered Subject: Legal Opinions
This opinion assumes a single Borrower. However, you know from prior materials that loans may be made to a Borrower that is a member of a corporate group. In that case, the Lender may elect to obtain guarantees (and security interests to support those guarantees) from other members in the corporate group. Typically, the Lender will require a legal opinion with respect to the security interests granted by those other credit parties. In that case, all the applicable credit parties must be covered by the opinion. You should note that those additional parties might be formed under the laws of jurisdictions that differ from the jurisdiction of organization of the Borrower. In that case, the legal opinion would need to cover the laws of multiple jurisdictions--and a law firm admitted to practice in another jurisdiction might be consulted. In this way, the number of counsel and legal opinions can multiply unless one firm is able and willing to cover the law of multiple jurisdictions. Complexity increases, as do costs.

Issue: Identity of Counsel Subject: Legal Opinions
The security interest opinion typically is given by counsel to the Borrower and not counsel to the Lender. One reason for this is to place Borrower in the position of having to disagree with its own counsel should Borrower later attempt to assert that the security interest is not enforceable, perfected or lacks a certain priority status.

Often counsel who gives the security interest opinion differs from counsel who represented the Borrower generally with respect to the negotiation and execution of the loan documents. This might occur, for example, if a Florida corporation were to borrow money from a New York bank. In that case, the loan documents typically would be governed by New York law (to the extent the UCC did not mandate application of another law). The New York bank would be represented by New York counsel and the Borrower might hire a large New York firm to represent it as well. However, Florida law would apply to certain perfection and priority issues if the Borrower were a Florida corporation. While a New York firm might be prepared to give an opinion on perfection and priority under Florida law (and it would not technically violate professional ethics to do so) lawyers are naturally reluctant to render opinions on laws of jurisdictions where they are not admitted to practice. This may not be an issue for a national firm with lawyers admitted in multiple states.

Issue: Loan Document Definition Subject: Legal Opinions
Note that the definition of Loan Documents is very broad. Especially for special local counsel who did not negotiate the loan transaction and is being brought in for the special purpose of giving a security interest opinion, review of all these documents may not be necessary. More importantly, local counsel may not actually have seen them all. Though reference to Loan Documents may make it easier to draft the preamble to the opinion easier, it also may be dangerous. Careful local counsel may want to make a specific listing that includes only those documents that they have actually reviewed and relied upon in giving the opinion.

Issue: Applicable Law Subject: Legal Opinions
As an example, if the Borrower were a Florida corporation, this opinion likely would specify Florida law because financing statements would be filed in Florida. However, think about how this choice will impact various other aspects of the opinion if, for example, the closing were to occur in New York City and certificated securities were delivered to the secured party as collateral in New York--and later kept at the Lender's vault in New York--or worse yet at an off-site storage facility in New Jersey or Texas.

Issue: UCC References Subject: Legal Opinions
You need to be careful about references such as this. For example, in Florida the UCC section references differ from those in the model UCC and in many other states. The opinion giver will need to match the section references in the opinion to the actual section references in the law of the state for which opinion coverage is given.

We have reviewed such documents and made such examination of law as we have deemed necessary or appropriate to give the opinions set forth below. We have relied, without independent verification, on certificates of public officials and, as to matters of fact material to our opinions, on representations and warranties made in the Transaction Documents and certificates and other inquiries of officers of Debtor and the its Subsidiaries **[and specify others]**.

We express no opinion regarding the attachment, perfection or priority of any lien or security interest except as specifically set forth in this letter.

1. The Transaction Documents are effective to create in favor of the Secured Party, as security for the Secured Obligations, a security interest (the "Article 9 Security Interest") in the collateral described in the Security Agreement in which a security interest may be created under Article 9 of the UCC (the "Article 9 Collateral").

2. Upon the filing of the financing statement in the form attached hereto (the "Financing Statement") with the **[specify any applicable filing office(s)]** (the "UCC Filing Office"), the Article 9 Security Interest in that portion of the Article 9 Collateral in which a security interest may be perfected by the filing of a financing statement under the UCC will be perfected.

3. The security interest in any Article 9 Collateral consisting of negotiable documents, goods, instruments, money or tangible chattel paper will be perfected upon the Secured Party's taking possession of such collateral. The security interest in any Article 9 Collateral consisting of certificated securities will be perfected upon the Secured Party's taking delivery of such collateral. We express no opinion as to the perfection by possession or delivery of the security interest of the Secured Party in any portion of such Article 9 Collateral, the continuous possession of which is not maintained by the Secured Party in the State of **[STATE]●**. In addition, we call to your attention that perfection (and the effect of perfection and non-perfection) of the security interest of the Secured Party in certificated securities may be governed by laws other than those of the UCC to the extent the certificated securities become located in a jurisdiction other than the State of **[STATE]●**, and have assumed that the Secured Party has taken, and will continue to maintain, legal possession of such certificated securities in the State of **[STATE]●**.

4. Upon the delivery, in the State of **[STATE]●**, to the Secured Party of the stock certificates listed on Exhibit ___ hereto (the "Pledged Stock") and the related stock powers pursuant to the Pledge Agreement and assuming that the Secured Party had no

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Author: Other Documents Reviewed Subject: Legal Opinions Date: 11/13/12 2:12:25 PM -05'00'
This is a very general reference. As to certificates of public officials, the opinion giver might have reviewed things such as the long form good standing certificate of the Borrower issued by the secretary of state of the Borrower's state of incorporation. Review of this document (which should include a certified copy of the Borrower's certificate of incorporation) would show the complete and correct legal name of the Borrower. It would also indicate any name changes and other transactions, such as mergers. In the case of a merger, it might indicate that you should look at additional documents (such as certificates of incorporation of former corporations). In any case, it gives official and third party confirmation of a number of facts relevant to searching for prior financing statements filed against a Borrower. And, it confirms information relevant to filing a new financing statement to protect the Lender. Certificates of public officials might be thought to include search reports of the UCC records. However, this is not necessarily the case. Often search reports are obtained from a private search company. Further, in the case of Florida, the UCC filing office is private. Usually, search reports are specifically referenced. That is the case in this form of opinion. See paragraph 6.

The representations and warranties referenced here generally refer to the various "perfection certificates", disclosures and other information in which the Borrower confirms things like its correct legal name, its entity type, the duration of its incorporation, its address, a listing of any prior name changes, a listing of any other prior business combinations, etc. To an extent, some of these items will duplicate information in the certificates of public officials. However, information typically is obtained from the Borrower at the outset of negotiations for the loan to permit searches to be conducted, and documents and filings to be prepared. The certificates of public officials often show up shortly before, or at, the closing.

Note that the opinion giver expressly disclaims any independent factual inquiry--instead indicating that mere documents and certifications are relied upon in giving the opinion.

Author: Enforceable Security Interest Subject: Legal Opinions Date: 11/13/12 2:58:24 PM -05'00'
This paragraph is designed to confirm that the Borrower has properly granted an enforceable security interest to the Secured Party. This is basic s. 9-203 stuff. Note that the opinion is limited to Article 9. Looking just at this paragraph, you would think that the opinion giver is telling you that (i) value has been given, (ii) the Borrower/debtor has rights in the collateral and (iii) that the Borrower/debtor has authenticated a security agreement. The opinion giver actually tells you a bit less.

There is no real way for the lawyer to opine that the Borrower/debtor has rights in collateral. Thus, later in the opinion, you will see that the opinion giver assumes that the Borrower/debtor has rights in the collateral. This assumption is important to make for otherwise the opinion giver might be deemed to be giving a title opinion. In any event, you should understand why the opinion giver must make this assumption. This is the only assumption that I think it is truly fair for the opinion giver to make. You will see later in this form of opinion that no opinion is given as to the sufficiency of the description of the collateral. This is going a bit far. The opinion giver should be able both to confirm that the security agreement contains adequate language of grant to create a security interest AND that the description is adequate--at least this is true IF the granting clause uses the defined terms in the UCC for particular classes of collateral (such as "accounts, inventory and equipment") because the UCC specifically tells you that this form of description is sufficient. I can see why an exception might (but only might) be thought reasonable otherwise. In effect, the opinion giver does not want to make a judgment about what sort of description reasonably identifies the collateral. The risk, however, is that with the exception taken, the opinion giver fails to be responsible for identifying a clearly inadequate description--such as a super generic description which we all know does not work for a security agreement (though may be used in a financing statement).

You sometimes see an opinion giver attempt also to assume that value has been given. This seems to me to be a truly unfortunate assumption because in the case of a loan of money it is easy to conclude that value has been given. The justification for this exception is sometimes given that the opinion is rendered immediately before the loan is funded as a condition to funding. In this hair splitting situation I suppose it is technically true that value may not yet have been given. However, if the Lender/Secured Party has made a commitment to advance funds (as is usually the case) the commitment to lend itself constitutes value if you check the definition. At a minimum, it would be better for the opinion giver to say that, "Upon funding the loan, the Transaction Documents are effective . . .

In any event, the above discussion should show you what goes into the thinking behind giving what appears to be a basic and simple opinion. You must bring all you know about s. 9-203 to bear to the question and then ask--what does or can the opinion giver know?

You should also note that this opinion may appear to say nothing about a security interest in Federally registered copyrights and other items of collateral excluded from coverage of Article 9. This all depends on your view of exactly what is pre-empted by the applicable Federal law. It is clear that the perfection and priority of a security interest in a Federally registered copyright is covered by Federal law and not the UCC. It is possible that the UCC governs the mere creation of the security interest (whereas Federal law only pre-empts the law governing perfection and priority). You see this if you look at s. 9-311. The federal pre-emption is expressly stated for "perfection"--it does not say anything about creation of the security interest. However, if you look at s. 9-109, you see it is possible that a Federal statute takes a class of collateral completely outside the reach of Article 9. This is the troublesome "to the extent" language. You would have to look at the statute and see whether it purports to govern "creation, perfection and priority" or only "perfection and priority."

Author: Financing Statement Subject: Legal Opinions Date: 11/13/12 3:47:26 PM -05'00'
You need to do a variety of things to give this opinion. First, you must determine in what state you need to file the financing statement. You do this by determining the location of the Borrower/debtor. You know the rules that tell you how to do this. For example, a registered organization is deemed located in the jurisdiction of its organization. Once you have determined the location, then you need to determine what form of financing statement will be accepted by the filing office in that state. This is usually done by going to the website for the filing office--though an acceptable form sometimes appears in the UCC in the applicable state. It is best to use the form recommended by the particular filing office. After, in a moment of paranoia, you check to see that the official form in fact contains all the items necessary for a financing statement to be sufficient, you then fill it out. You use the correct legal name of the debtor. You either use a super generic description of collateral which is allowed by the UCC OR you repeat the granting clause of the security agreement verbatim in the financing statement. This can be harder to do than it looks. If you just copied the granting clause from Section 3 of your form of Loan and Security Agreement you might be in trouble. I say this because, for example, that granting clause uses the term "Receivables". As you know, this term is not defined in the UCC. However, the Loan and Security Agreement itself contains a definition of Receivables--it is in that embedded definition that you find mention made of other types of UCC collateral--such as accounts and chattel paper. If you merely copied the granting clause as it appeared in Section 3 WITHOUT ALSO repeating the related definitions you run a serious risk of omitting collateral from coverage in your financing statement. In this later case, you can see that you have created a bit of a proofreading nightmare for yourself by using the granting clause description--not only must you proof for the granting clause itself--but also search for any incorporated definitions, etc. What if the granting clause was changed through negotiations at the last minute? What if there is a word processing error? Etc.?

Comments from page 2 continued on next page

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We express no opinion regarding the attachment, perfection or priority of any lien or security interest except as specifically set forth in this letter.

1. The Transaction Documents are effective to create in favor of the Secured Party, as security for the Secured Obligations, a security interest (the "Article 9 Security Interest") in the collateral described in the Security Agreement in which a security interest may be created under Article 9 of the UCC (the "Article 9 Collateral").

2. Upon the filing of the financing statement in the form attached hereto (the "Financing Statement") with the **[specify any applicable filing office(s)]** (the "UCC Filing Office"), the Article 9 Security Interest in that portion of the Article 9 Collateral in which a security interest may be perfected by the filing of a financing statement under the UCC will be perfected.

3. The security interest in any Article 9 Collateral consisting of negotiable documents, goods, instruments, money or tangible chattel paper will be perfected upon the Secured Party's taking possession of such collateral. The security interest in any Article 9 Collateral consisting of certificated securities will be perfected upon the Secured Party's taking delivery of such collateral. We express no opinion as to the perfection by possession or delivery of the security interest of the Secured Party in any portion of such Article 9 Collateral, the continuous possession of which is not maintained by the Secured Party in the State of **[STATE]●**. In addition, we call to your attention that perfection (and the effect of perfection and non-perfection) of the security interest of the Secured Party in certificated securities may be governed by laws other than those of the UCC to the extent the certificated securities become located in a jurisdiction other than the State of **[STATE]●**, and have assumed that the Secured Party has taken, and will continue to maintain, legal possession of such certificated securities in the State of **[STATE]●**.

4. Upon the delivery, in the State of **[STATE]●**, to the Secured Party of the stock certificates listed on Exhibit ___ hereto (the "Pledged Stock") and the related stock powers pursuant to the Pledge Agreement and assuming that the Secured Party had no

Of course, by giving the opinion you are confirming in a formal way that the proofreading and updating has been done. Now you can see why, as a practical matter, some prefer to use a super generic description.

You might note that this opinion says "Upon the filing of the financing statement . . ." What that tells you is that the financing statement was not prefiled--an option under the UCC if the debtor authorizes it--and that the filing of the financing statement will occur following the closing. It also assumes that the financing statement is filed--it does not get into the problems associated with the submission of a proper financing statement and its improper rejection by the filing office. You will recall that for a financing statement to count as having been filed, even if the filing office rejects it, the financing statement must have been submitted in proper form with the appropriate fee. This paragraph does not get into the details of how, for filing to occur, the proper fee must be tendered. Rather, the appropriate filing fees are ignored. You might think that filing fee matters are covered later in the opinion in paragraphs 9 and 10. If you look closely, I do not think so. The UCC filing office is here a defined term "Filing Office". Later in the opinion, you see the defined term "Recording Office". That term is being used to refer to the office of the real estate records where a financing statement or a mortgage might be filed as a fixture filing. In this paragraph 2 we are not dealing with real estate records or fixture filings but, instead, with the the general UCC filing office. Thus, I think this opinion is a bit deficient. As a Lender/ secured party, I need to know what fees are payable for the UCC filing so I can make sure that the UCC-1 is properly tendered to the Filing Office.

Also, you may recall in Florida it is possible that other documentary or stamp taxes may apply. You are alerted to this by the particular Florida form of UCC-1. However, you should get local counsel to identify all of these fees. Again, this form of opinion only addresses documentary and stamp taxes in the paragraphs dealing with real estate filings--though a general confirmation is given for the entire transaction at the end of paragraph 10--a confirmation that could not be given for a closing in Florida.

Issue: Perfection by Filing Subject: Legal Opinions
Notice what a wonderful statement this is--it tells you that you have done all you need to do to perfect if you want to perfect by filing. However, it does not tell you which collateral may be perfected by filing and which collateral may not be perfected by filing. For example, a security interest in goods which are subject to a certificate of title statute generally may not be perfected by filing (unless they are inventory in the hands of a dealer). Thus, filing against a company which owns a fleet of trucks used for deliveries would not work. Similarly, it is not possible to file a financing statement to perfect a security interest in a deposit account. And, this statement does not begin to address the problem of collateral that is not covered by the UCC because it is excluded as a matter of scope--like a Federally registered copyright, an airplane with engines of a sufficient size, a US flagged vessel, railcars, etc.

Issue: Negotiable Documents Subject: Legal Opinions
If you read s. 9-313(a), you will see that perfection by possession is only possible for "tangible" negotiable documents. This qualification is made in the opinion form with respect to tangible chattel paper but it is omitted here. As a matter of good opinion drafting, it probably should be added.

Issue: Goods Subject: Legal Opinions
You know from s. 9-313(a) that, as a general matter, a security interest in goods may be perfected by possession. This is not, however, the usual method used to perfect a security interest in goods. The usual method is to file a financing statement. Per s. 9-310 a financing statement must be filed to perfect all security interests unless an exception exists in s. 9-310(b) or s. 9-312(b). You find such an exception for goods in s. 9-312(b)(6) allowing possession to perfect under s. 9-313. Thus, filing is permissive, but not mandatory, to perfect an interest in goods.

However, if you read s. 9-313(a), you will see that it is qualified by an exception in s. 9-313(c). This tells you that a secured party may perfect a security interest in goods which are subject to a certificate of title statute (i.e. automobiles, motorcycles, certain other vehicles specified by applicable state law) by possession only in the circumstances specified by s. 9-316(d)--which deals with multi-state transactions.

Now, you should know that goods subject to a certificate of title statute may not, as a general matter, be perfected by filing a financing statement per s. 9-311 (a financing statement is not necessary or effective). The only exception to this rule is found in s. 9-311(d) which essentially provides that a secured party may perfect against vehicles that are subject to a certificate of title statute by filing a financing statement against a debtor who is holding those vehicles as inventory so long as that debtor is in the business of selling goods of that kind (i.e. an automobile dealer) and the debtor creates the security interest.

Now, this form of opinion contains a lot of exceptions and qualifications; however, I do not see a clear exception for goods that are subject to a certificate of title statute. This seems to me a potentially serious omission by the opinion giver for a complicated and somewhat unintended reason. Suppose that I am lending to an automobile dealer. I could have perfected by filing a financing statement. Instead, I think I am being extra careful by taking possession of a fleet of cars and storing them in my warehouse. Am I perfected? Though it seems a bit crazy, it would seem that I am not--unless the circumstances of s. 9-316(d) obtain. As that section applies only in a multi-state transaction under certain facts, it would seem that my possession does not suffice. Now, I do not think this result is intended under the Code. However, if you are reading carefully, you will see that a potential hole exists for perfection by possession of goods.

Issue: Perfection by Possession Subject: Legal Opinions
Read s. 9-313. This section describes when possession of collateral perfects a security interest without filing a financing statement.

Issue: Money as Collateral Subject: Legal Opinions
See s. 9-312(b)(3). A security interest in money may only be perfected by possession under s. 9-313. You might note that a distinction is made between money and "cash proceeds"--which is a broader term. Cash proceeds includes proceeds that are money, checks, deposit accounts, or the like. Money is defined in s. 1-201(24).

Issue: Certificated Securities Subject: Legal Opinions
As you know, there are three methods to obtain a security interest in certificated securities: file a financing statement, take delivery or obtain control.

Even if a secured party intends to file a financing statement for a security agreement which contains a description of investment property, it is typical for a secured party to take possession of the share certificates that represent the equity interests in the Borrower/debtor's subsidiaries. This is because a security interest in certificated securities perfected by delivery or control will have priority over a security interest perfected by filing a financing statement--even if the financing statement was filed first (i.e. before another creditor took delivery or obtained control).

Issue: Choice of Law Subject: Legal Opinions
This is a choice of law qualification. You may recall that the choice of law that applies for the perfection of a security interest by filing a financing statement is based upon the location of the Borrower/debtor. For example, if a debtor is a Delaware corporation, the debtor is deemed located in Delaware even if its chief executive office is located elsewhere (e.g. Miami, Florida). However, the applicable law for perfection based upon possession or delivery is not based upon the law of the location of the debtor. Instead, it is based upon the location of the collateral. For example, if at the time of closing in New York the secured party took possession of debtor's goods located in Florida and the debtor delivered stock certificates to the secured party at the closing table in New York, Florida law would govern the perfection and priority of the interest in the goods and New York law would govern the perfection and priority of the the security interest in the certificated securities.

Comments from page 2 continued on next page

We have reviewed such documents and made such examination of law as we have deemed necessary or appropriate to give the opinions set forth below. We have relied, without independent verification, on certificates of public officials and, as to matters of fact material to our opinions, on representations and warranties made in the Transaction Documents and certificates and other inquiries of officers of Debtor and the its Subsidiaries **[and specify others]**.

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4. Upon the delivery, in the State of **[STATE]●**, to the Secured Party of the stock certificates listed on Exhibit ___ hereto (the "Pledged Stock") and the related stock powers pursuant to the Pledge Agreement and assuming that the Secured Party had no

Author: More Choice of Law Subject: Legal Opinions Date: 11/15/12 8:32:32 AM -05'00'
Further to the prior Choice of Law comment, I believe this qualification related solely to certificated securities is taken for a practical reason--I am not sure it is strictly needed based on the prior qualification (and, indeed, I would likely expand it to cover all possessory collateral to avoid a negative implication that these remarks apply only to certificated securities--they apply with equal force to all possessory collateral).

The practical reason is this: many banks and other secured parties maintain document storage facilities in other states. Thus, if a closing takes place in New York and the secured party is a New York bank, it is quite possible that the New York bank ultimately stores its documentary or paper collateral in another state even if the closing took place in New York. The most common form of documentary or paper collateral delivered at a closing table is stock certificates--hence, I think, the extra emphasis in the opinion on certificated securities.

Author: Problems with Stock Certificates Subject: Legal Opinions Date: 11/15/12 10:29:33 AM -05'00'
If this part of the opinion did not scare you, it should have. Remember that not all "stock certificates" will actually represent an equity interest in certificated securities as defined in Article 8. Sure, it is easy if the certificate represents stock in a corporation. But what if the certificate represents an equity interest in an alternate entity type? Think here about business trusts, LLC's and limited partnerships. To give this opinion, you must look at s. 8-103 and see what it takes to be a security. If you are dealing with shares in an LLC or a limited partnership, for example, you will need to look at the LLC agreement or the limited partnership agreement to determine whether or not an election was made to have the equity interest covered by Article 8. You will make a grave error if the exhibit lists certificates in entities of this type and you did not do the requisite due diligence to make sure they qualify for coverage.

Author: Effective Indorsements Subject: Legal Opinions Date: 11/14/12 9:52:53 AM -05'00'
The reference here to stock powers should be understood in the context of an 'indorsement' as defined in s. 8-102(a)(11) of Article 8. As you may recall, if a stock certificate is delivered, together with an effective indorsement, then a purchaser (which includes a secured party) will have control over the certificated security. If control is obtained and the secured party does not have notice of an adverse claim, then the secured party may acquired protected purchaser status--which means that the security interest is acquired free and clear of adverse claims. To properly give this opinion, it would seem that the opinion giver has determined that the stock powers are effective indorsements--which requires a look at s. 8-107 and its requirements.

Author: Stock Certificates--Again! Subject: Legal Opinions Date: 11/15/12 8:53:14 AM -05'00'
This opinion here yet again addresses a security interest in stock certificates. However, the purpose of this paragraph is a little bit different. In an indirect way, this opinion addresses priority--not simply perfection. It tells the secured party, in effect, that it will have priority in the listed stock certificates because it will take free of adverse claims. This conclusion is reached because the secured party took delivery of the stock certificates (which, in itself, is sufficient for mere perfection) and it obtained "related stock powers". I do not particularly like the reference to related stock powers because it masks an important inquiry--did those stock powers constitute effective indorsements? This is the key ingredient which, when combined with delivery of the certificates, gives the secured party control. Perfection by control will defeat perfection by mere possession--so it already is better. However, to be assured of this result, the opinion giver must be satisfied that the "related stock powers" in fact constitute effective indorsements. To be an effective indorsement, the stock power must, among other things, be signed by an "appropriate person"--see s. 8-107. Thus, this simple reference might conceal the fact that the opinion giver must have made an inquiry, and satisfied itself, that the right person with authority actually signed the stock powers. This might require an examination of corporate resolutions, certificates of incorporation and by-laws to trace through the chain of authority. It might include, for example, looking at an incumbency certificate with a specimen signature. The point is that a real inquiry must be done to make sure that the stock power constitutes an effective indorsement and this is legal work that can be done--it is not appropriate for the opinion giver to merely assume that the indorsement is effective.

Author: No Notice Adverse Claim Subject: Legal Opinions Date: 11/15/12 9:17:26 AM -05'00'
You know that, in order to have protected purchaser status, the secured party must have control over the stock certificates AND must not have notice of any adverse claims. As a general matter, I do not mind this assumption. The secured party should know what information it has--and the opinion giver can not get inside the secured party's head (or information set, in the case of an artificial entity). That being said, there are a couple of things that the opinion giver should look for. He or she should examine each stock certificate to make sure that it does not contain any restrictive legend which might provide notice of an adverse claim. This might be done, at a minimum. As an extra precaution, the opinion giver might take a look at the certificate of incorporation or other organic document for the entity whose stock certificates are being used as collateral to make sure no adverse claims are noted therein--you do not want your opinion to contain an assumption that is obviously wrong based on the documents in front of you. To see what constitutes an adverse claim, you might look at s. 8-105. In particular, notice s. 8-105(e). Surprisingly (it might seem) filing of a financing statement is not sufficient to provide constructive notice of an adverse claim! What this means is that, if you do not search, knowledge of the documents on file in the filing office will not hurt you. However, should you do UCC searches and if the UCC searches reveal a prior security interest in "all personal property of the debtor" or in "all investment property of the debtor" you now have an issue. How I think s. 8-105 should be read is as follows: it does not require that you do a UCC search. That is to say, it does not impute knowledge of a prior UCC filing to a secured party who wants to have perfected purchaser status. However, if a search IS DONE and it reflects a prior filed security interest in the stock certificate (or an interest that may potentially reach a stock certificate, under s. 8-105(a)(1) or (2) I think the secured party now has notice of an adverse claim. Thus, as an opinion giver I would want to carefully look at the Search Report mentioned in paragraph 6 below before taking this assumption.

notice of an adverse claim (within the meaning of Section 8-105) with respect to the Pledged Stock at the time the Pledged Stock is delivered to the Secured Party, the security interest in the Pledged Stock created in favor of the Secured Party under the Pledge Agreement will constitute a perfected security interest in the Pledged Stock, free of any "adverse claim" (as defined in Section 8-102). We call to your attention that in the case of the issuance of additional shares or other distributions in respect of the Pledged Securities, the security interests of the Secured Party therein will be perfected only if possession thereof is ~~obtained or other~~ action appropriate to the nature of the distribution is taken, in either case, in accordance with the provisions of the UCC and other applicable law.

5. The security interest in the [deposit account/securities account] will be perfected upon the ~~execution~~ and delivery of the [specify applicable Control Agreements] by the Debtor, the Secured Party and the [Depository Bank/Commodities Intermediary/Securities Intermediary]. ~~We assume~~ the following: (A) [Name of Depository Institution] is a "bank," within the meaning of Section 9-102(a)(8), with which the deposit accounts described in [specify applicable Control Agreement] are maintained; (B) the account described in the [specify applicable Control Agreement] is a "deposit account" within the meaning of Section 9-102(a)(29); (C) [Name of Securities Intermediary] is a "securities intermediary" as defined in Section 8-102; (D) the [Investment Account] described in the [specify applicable Control Agreement] is a "securities account" as defined in Section 8-501(a) and all property from time to time credited to the [Investment Account] is a "financial asset" as defined in Section 8-102(a)(9); and, (E) all such collateral is located, within the meaning of Sections 9-304 and 9-305, only in the State of [STATE]●. No opinion is expressed with respect to the perfection or priority of security interests in "letter of credit rights" as defined in the UCC.

6. For purposes of this opinion, we have reviewed the Search Report dated _____, based on a search conducted by _____ (the "Search Report"), of UCC financing statements filed in the Filing Office naming as debtor the Debtor identified in the Search Report and on file in the Filing Office through _____ (the "Effective Date"). The Search Report sets forth the proper filing office and the proper name of the Debtor necessary to identify those [secured parties] who under the [ ] UCC have, as of the Effective Date, financing statements on file against the Debtor indicating any of the Article 9 Collateral, as of the Effective Date. [Except for _____,] [T][t]he Search Report identifies no still-effective financing statement naming the Debtor as debtor and indicating any of the Article 9 Collateral filed in the Filing Office, prior to the

Issue: No Notice Adverse Claim Subject: Legal Opinions
You know that, in order to have protected purchaser status, the secured party must have control over the stock certificates AND must not have notice of any adverse claims. As a general matter, I do not mind this assumption. The secured party should know what information it has--and the opinion giver can not get inside the secured party's head (or information set, in the case of an artificial entity). That being said, there are a couple of things that the opinion giver should look for. He or she should examine each stock certificate to make sure that it does not contain any restrictive legend which might provide notice of an adverse claim. This might be done, at a minimum. As an extra precaution, the opinion giver might take a look at the certificate of incorporation or other organic document for the entity whose stock certificates are being used as collateral to make sure no adverse claims are noted therein--you do not want your opinion to contain an assumption that is obviously wrong based on the documents in front of you. To see what constitutes an adverse claim, you might look at s. 8-105. In particular, notice s. 8-105(e). Surprisingly (it might seem) filing of a financing statement is not sufficient to provide constructive notice of an adverse claim! What this means is that, if you do not search, knowledge of the documents on file in the filing office will not hurt you. However, should you do UCC searches and if the UCC searches reveal a prior security interest in "all personal property of the debtor" or in "all investment property of the debtor" you now have an issue. How I think s. 8-105 should be read is as follows: it does not require that you do a UCC search. That is to say, it does not impute knowledge of a prior UCC filing to a secured party who wants to have perfected purchaser status. However, if a search IS DONE and it reflects a prior filed security interest in the stock certificate (or an interest that may potentially reach a stock certificate, under s. 8-105(a)(1) or (2) I think the secured party now has notice of an adverse claim. Thus, as an opinion giver I would want to carefully look at the Search Report mentioned in paragraph 6 below before taking this assumption.

Issue: Dividends as Proceeds Subject: Legal Opinions
What are these issuances of additional shares or other distributions? Well, in ordinary terms they are things like stock dividends, stock splits, cash dividends, distributions of property, etc. By virtue of a definitional change to the UCC definition of "proceeds" all of these types of distributions constitute proceeds from the underlying investment property even though there is no sale or exchange of the underlying property. This was thought to be a clarification of existing law. As you know, an interest in proceeds will continue for a bit under s. 9-315--but then you may well need to take additional steps or lose your perfected status. You are unlikely to have proceeds which remain as identifiable cash proceeds forever.

You might well ask yourself why a qualification and caution is given with respect to proceeds from stock certificates when continuation of perfection and priority is a problem for all sorts of collateral. That is a good question. If I were drafting an opinion I would want to include a general warning about continuation of a security interest in proceeds. However, if the security interests is a very general one--in which the granting clause lists all the possible types of UCC collateral (and, for extra caution mentions proceeds), then the risk may be reduced simply because the requirements under s. 9-315(d) have been met. To know that you do not need to take this sort of "proceeds" qualification with respect to other collateral, you need to know quite a bit about the details of the transaction. If I were preparing a general form of opinion for use in multiple transactions, I would include a general qualification for proceeds to be on the safe side and let the opinion recipient negotiate the qualification out of the opinion if it is not necessary. You will see that this is exactly what is done on page 7 of this opinion.

I suppose that one reason to include a specific qualification for proceeds from stock certificates here, as well as rely upon the general qualification on page 7, is that it is not obvious that these sorts of distributions on stock certificates are, in fact, proceeds. You only know this if you are familiar with the updated UCC which makes them proceeds. Since distributions on stock are an odd sort of proceeds, perhaps drawing special attention to them here is warranted.

Issue: Deposit Account/Securities Account Subject: Legal Opinions
From your prior work, you know exactly what sorts of documents are being referred to here and how they work. What might surprise you is to see all the assumptions. The reasons for these assumptions basically relate to cost. You can imagine all the diligence needed to make sure that all of the assumed items actually have been satisfied--for example, to do due diligence on the bank to make sure it is a qualifying bank under the UCC. (Or to make sure that the broker is a qualifying securities intermediary!) Of course, all of this work can be done--but it takes time and money--hence the assumptions. In certain cases, an opinion recipient might require that this additional work be done.

You might note a number of things in your review:

Perfection of a security interest in a deposit account may only be accomplished by obtaining control over the account. Using a control agreement is only one method to obtain control over a deposit account. Alternately, the account may be maintained with the secured party or the secured party may have the account transferred into its name. Either of these latter two methods will have priority over control obtained via a control agreement. Of course, this paragraph deals merely with perfection and not priority--so these details are not addressed.

A security interest in a securities account may be perfected by use of a control agreement. However, it also may be perfected via filing of a financing statement. Perfection in the security account using control is more secure because it has priority over perfection obtain by filing a financing statement.

Other items of note appear in comments to the underlining in this paragraph 5.

Issue: Financial Asset Status Subject: Legal Opinions
You should check out the very lenient requirements for property to qualify as a financial asset. The definition includes things that you would expect, like securities. However, it also includes any other property that the securities intermediary has expressly agreed is to be treated as a financial asset under Article 8.

Issue: Governing Law-Deposit and Securities Accounts Subject: Legal Opinions
You should read the indicated UCC sections. You will see that deposit account collateral is deemed located in the jurisdiction where the bank is located. However, you will also see that the parties have the flexibility to manage that location by agreement. It is quite likely that, due to agreement or the failure to agree, the deposit account collateral will be located in a jurisdiction that differs from the jurisdiction where the opinion giver is admitted to practice law.

Similar rules apply with respect to the location of a securities account. Make sure to read s. 9-305 AND s. 8-110 to understand the securities account rules.

Issue: Letter of Credit Rights Subject: Legal Opinions
You might take a look at s. 9-107. You will see that it is possible to obtain something like control over a letter of credit right by getting the consent of the issuer of the letter of credit. It can be done, and you should be able to figure out how to do this from taking this course (i.e. you would get a signed letter from the letter of credit issuer). However, for practical reasons of cost and collateral benefit, this is not typically done--particularly for small letters of credit, it is not worth the hassle. This is why the form takes the position that no opinion is expressed. With the proper paperwork, and attention to either Article 5 of the UCC or the applicable version of the Uniform Customs and Practices for Documentary Credits it could be done.

Comments from page 3 continued on next page

notice of an adverse claim (within the meaning of Section 8-105) with respect to the Pledged Stock at the time the Pledged Stock is delivered to the Secured Party, the security interest in the Pledged Stock created in favor of the Secured Party under the Pledge Agreement will constitute a perfected security interest in the Pledged Stock, free of any "adverse claim" (as defined in Section 8-102). We call to your attention that in the case of the issuance of additional shares or other distributions in respect of the Pledged Securities, the security interests of the Secured Party therein will be perfected only if possession thereof is obtained or other action appropriate to the nature of the distribution is taken, in either case, in accordance with the provisions of the UCC and other applicable law.

5. The security interest in the [deposit account/securities account] will be perfected upon the execution and delivery of the [specify applicable Control Agreements] by the Debtor, the Secured Party and the [Depository Bank/Commodities Intermediary/Securities Intermediary]. We assume the following: (A) [Name of Depository Institution] is a "bank," within the meaning of Section 9-102(a)(8), with which the deposit accounts described in [specify applicable Control Agreement] are maintained; (B) the account described in the [specify applicable Control Agreement] is a "deposit account" within the meaning of Section 9-102(a)(29); (C) [Name of Securities Intermediary] is a "securities intermediary" as defined in Section 8-102; (D) the [Investment Account] described in the [specify applicable Control Agreement] is a "securities account" as defined in Section 8-501(a) and all property from time to time credited to the [Investment Account] is a "financial asset" as defined in Section 8-102(a)(9); and, (E) all such collateral is located, within the meaning of Sections 9-304 and 9-305, only in the State of [STATE]●. No opinion is expressed with respect to the perfection or priority of security interests in "letter of credit rights" as defined in the UCC.

6. For purposes of this opinion, we have reviewed the Search Report dated _____, based on a search conducted by _____ (the "Search Report"), of UCC financing statements filed in the Filing Office naming as debtor the Debtor identified in the Search Report and on file in the Filing Office through _____ (the "Effective Date"). The Search Report sets forth the proper filing office and the proper name of the Debtor necessary to identify those [secured parties] who under the [ ] UCC have, as of the Effective Date, financing statements on file against the Debtor indicating any of the Article 9 Collateral, as of the Effective Date. [Except for _____,] [T][t]he Search Report identifies no still-effective financing statement naming the Debtor as debtor and indicating any of the Article 9 Collateral filed in the Filing Office, prior to the

Author: Priority Opinions Subject: Legal Opinions Date: 11/15/12 10:51:30 AM -05'00'

Other than the protected purchaser opinion given in paragraph 4, this is as close to a priority opinion in general UCC collateral that most lawyers will give. It does not really say that the secured party will have a first priority security interest--and for good reason. You have seen many of the ways in which a secured party may not know about a competing security interest or lien. For example, another creditor may have a PMSI security interest which it has not yet filed (and which will have priority if a filing occurs in 20 or 30 days, depending on the applicable version of the UCC). A security interest may have continued in property acquired by the debtor. The list goes on and on. About all that an opinion giver can say is that you searched in the right location--because you have determined the debtor's location--and you have searched under the proper name--because you have used the debtor's correct legal name. You know that, even if another creditor filed under an improper name, you will only be subject to that improper financing statement IF the filing office search logic produces that financing statement. That is really all you can do. Even then, you will note that the searches conducted will almost certainly relate to an earlier date. To cover all these sorts of gaps, the secured creditor must rely on the representations and warranties of the Borrower/debtor to the effect that it has not incurred liens that are not "permitted liens". You will further note that even this search, with all its UCC limitations, is further limited. It says nothing about non-consensual liens--such as judgment liens. If state law provides for the recording of these liens in another filing office, then the failure to search in that office (or, perhaps in court dockets) will mean that the secured party has no independent check to determine all the possible creditors who may have priority over it. Again, absent a cost prohibitive and comprehensive search, the secured creditor is at the mercy of the representations and warranties of the Borrower/debtor.

[Effective Date] [filing in the Filing Office of the Financing Statement]. This opinion covers only the Article 9 Collateral and does not address the priority of any other collateral or property referenced in any financing statement listed in the Search Report.

7. Other than as stated below, the choice of [New York] law as the governing law in the Loan and Security Agreement will be given effect under [STATE] law. We note that Section ___ of the Loan and Agreement provides that the Loan and Security Agreement and all issues arising thereunder shall be governed by the laws of the State of _____, without regard to principles of conflicts of laws. We express no opinion as to whether the provisions of such Section ___ are enforceable or as to the law that is applicable to the Loan and Security Agreement or the transactions contemplated thereby, including any security interest created pursuant to the Loan and Security Agreement or any other Loan Document, and we express no opinion regarding the laws of the State of _____; rather, with your permission, we have assumed, solely for purposes of our opinions herein, that [STATE] law is applicable to the Loan and Security Agreement and the transactions contemplated thereby, including the creation of any security interest thereunder.

8. The Deed of Trust [Mortgage] is in a form sufficient to permit due recordation in the real estate records of [specify county/jurisdiction] in which the real property described in the Deed of Trust [Mortgage] is located (the "Recording Office") and, upon proper recording and indexing, to create the lien that it purports to create on all right, title and interest of the grantor named therein in the real property described therein. [_____ County/[other jurisdiction]], [STATE], is the [county/jurisdiction] in which the Deed of Trust [Mortgage] must be properly recorded and indexed in order to cause the lien that the Deed of Trust [Mortgage] purports to create to be effective as against creditors of and purchasers from the grantor of the Deed of Trust [Mortgage]. No instrument other than the Deed of Trust [Mortgage] is required to be filed in the Recording Office in order to create the aforesaid lien. The Deed of Trust [Mortgage] creates a security interest in favor of the Secured Party, as security for the obligations described therein, in all of the collateral described in the Deed of Trust [Mortgage] that is composed of "fixtures" (as that term is defined in the UCC) and goods that are to become fixtures. Upon recordation of the Deed of Trust [Mortgage] in the Recording Office and proper indexing there, the security interest created by the Deed of Trust [Mortgage] in that portion of the collateral described in the Deed of Trust [Mortgage] that is composed of fixtures and goods that are to become fixtures will be perfected.

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Issue: Fixtures and Real Estate Collateral Subject: Legal Opinions

I have included provisions that deal with fixtures and real estate collateral for you information. This is not a matter that deserves your study for purposes of the exam in this class. The only thing that it is worth noting, in a general sort of way, is that if a good becomes a fixture it CAN be perfected by filing an ordinary financing statement. However, a security interest in fixtures perfected in that manner will lose out to a bona fide purchaser of the real property to which the fixtures relate unless a financing statement (or a mortgage qualifying as a financing statement) has been filed in the proper real estate recording office. If you think about it, that just makes sense. If you are a buyer of real estate, you think to check the real estate records but not typically the general UCC filing office.

9. The Financing Statement is in appropriate form for filing in the real estate records of the [county/jurisdiction], [STATE] in which the real property described in the Deed of Trust [Mortgage] is located (the "Recording Office"). The Deed of Trust [Mortgage] creates a security interest in favor of the secured party, as security for the obligations described therein, in all of the collateral described in the Deed of Trust [Mortgage] that is composed of "fixtures" and "goods" that are to become fixtures (as such terms are defined in the UCC). Upon the acceptance and filing of the Financing Statement in the Recording Office, the security interest created by the Deed of Trust [Mortgage] in that portion of the collateral described in the Financing Statement that is composed of fixtures and goods that are to become fixtures will be perfected.

10. Other than the filing and recordation fees and taxes imposed pursuant to [specify applicable state laws] and nominal per page or per document filing fees due on filing of the Financing Statement and recordation of the Deed of Trust [Mortgage], no fees, taxes or other charges are due or payable in the State of [STATE] in connection with the execution, delivery, and recording of the Deed of Trust [Mortgage] or the filing of the Financing Statement in the Recording Office. [No stamp tax or similar charge, duty, fee or tax is due or payable in the State of [STATE] as a result of the execution or delivery of any Loan Document constituting a note or loan agreement or upon the funding of any loan or other extension of credit as contemplated by the Loan Documents.

11. The execution and delivery by the Debtor of the Loan Documents and the performance by the Debtor of its payment obligations under the Loan Documents do not violate any Applicable Laws. As used herein, "Applicable Laws" means those laws, rules and regulations codified by governmental authorities of the State of [STATE] (excluding those of counties, cities and other municipalities, and any local governmental agencies) that we, in the exercise of customary professional diligence, would reasonably recognize as being applicable to [the Debtor and] the transactions contemplated by the Loan Documents.

Our opinion is subject to the following assumptions, limitations and qualifications:

(i) We express no opinion with respect to (a) the title to or the rights or interests of the Debtor in the Collateral or ability of the Debtor to transfer rights therein, (b) the adequacy of the description of the Collateral, or (c) except as explicitly set forth herein, the creation, attachment, perfection or priority of any liens thereon and/or security interests therein. Such opinions are given only to the extent set forth in opinion paragraphs [_ - _] and are subject to the additional assumptions,

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Author: Rights in the Collateral Subject: Legal Opinions Date: 11/15/12 11:00:47 AM -05'00'
You know that the debtor must have rights in the collateral for a security interest to attach. However, this qualification is taken because the opinion giver is not in a position to ascertain actual title to the Borrower/debtor's collateral. This is particularly true if the loan is secured by all the assets of the Borrower/debtor.

Author: Adequacy of Collateral Description Subject: Legal Opinions Date: 11/15/12 11:05:10 AM -05'00'
I do not like this qualification--at least not in many cases. You know how to make sure that a description of collateral is adequate in the granting clause of a security agreement by using the generic category descriptions provided in the UCC. If those descriptions are used, then there seems little need for this qualification. Note that this qualification is taken with respect to the granting clause in the security agreement because it is the security agreement that must contain an adequate description. We contrast this with the "indication" of collateral used in a financing statement--addressed in paragraph 2.

qualifications and limitations applicable to such opinions set forth in this opinion;

(ii) As to due recordation of the Deed of Trust [Mortgage] [and as to the due recording and/or filing of the Financing Statement in the Recording Office], you are relying upon the title insurance company that has issued a commitment for title insurance (the "Title Company"), and as to the priority of the Deed of Trust [Mortgage], you are relying upon title insurance to be provided by the Title Company, and we assume that such document has been [will be] properly recorded and indexed;

(iii) The real property described in the Deed of Trust [Mortgage] is located in [_____ County/[other jurisdiction], [STATE].

(iv) Debtor owns and holds a [fee simple/leasehold] interest, of record and in fact, in the real property described in the Deed of Trust [Mortgage] and [owns/leases] that portion of the collateral described in the Deed of Trust [Mortgage] that is composed of "fixtures" (as that term is defined in the UCC).

(v) The descriptions of the real and personal property constituting the collateral described in the Deed of Trust [Mortgage] and the description of the personal property constituting the collateral contained in, or attached as exhibits or schedules to the loan documents, reasonably identify the property described or intended to be described.

(vi) We express no opinion as to the creation, attachment, perfection or priority of any lien or security interest where the Financing Statement and Deed of Trust [Mortgage] has not been properly recorded and indexed.

(vii) We express no opinion as to the enforceability of any provision of the Deed of Trust [Mortgage] that purports to make an absolute assignment of the interest of the debtor in the leases, rents and profits arising from the real property described in the Deed of Trust [Mortgage], rather than an assignment for security. We note that the Secured Party may be required to take additional steps following a default to acquire or perfect any interest in such leases, rents or profits (A) regardless of whether, by its terms or otherwise, the grant, assignment or transfer is operative immediately, or upon the occurrence of a specific event, or under any other circumstances, and (B) the the Secured Party may have to make an affirmative demand or take further affirmative action to create or perfect a security interest or lien therein.

(viii) We call to your attention the following: security interests in chattel paper, goods,

This page contains no comments

instruments, documents, securities, financial assets, and security entitlements are subject to the rights and claims of holders, purchasers, buyers and other parties as provided in Sections 9-320, 9-330 and 9-331. Rights to money or funds contained in a deposit account are subject to the rights of transferees under Section 9-327. Security interests are subject to rights of holders of possessory liens under Section 9-333. Security interests in deposit accounts are subject to the rights of the depository bank under Section 9-340. Security interests in Collateral consisting of proceeds will be limited as provided in Sections 9-203(f), 9-315 and 9-322(c). Security interests in goods that are installed in, or attached or affixed to, any other goods may be subject to the provisions of Section 9-335 and may be subject to the provisions of Section 9-336 to the extent that such goods form part of a larger product or mass. Security interests may be subject to other rights of persons in control of investment property, deposit accounts, letter-of-credit rights and electronic chattel paper.

(ix) We express no opinion as to the Secured Party's rights in the Collateral to the extent that the Secured Party has knowledge that its security interest in the Collateral violates the rights of another secured party.

(x) Certain rights of debtors and of other obligors and certain duties of secured parties referred to in Sections 1-102(3), 9-602 and 9-624 of the UCC may not be waived, released, varied or disclaimed by agreement except, in certain instances, following a default.

(xi) Obligors, in addition to debtors, have rights and remedies established by the UCC.

(xii) This opinion is rendered as of the date hereof and we undertake no duty or obligation to update our opinion. Without implying any limitation on the foregoing, we point out that the continued perfection of any security interest in any collateral (1) may be affected by the removal of such collateral to another jurisdiction, upon the change of the name or the state of organization of any debtor or by a business combination involving a debtor, or (2) that is perfected by the filing of a financing statement, may be affected by the failure to file a timely continuation statement. .

(xiii) We express no opinion as to any provisions of the Loan Documents that purport to create or perfect a security interest in and to either (a) any policy of insurance or the proceeds thereof or (b) any governmental permits or licenses.

(xiv) We express no opinion as to the enforceability of the security interests under the

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Author: Changes in Debtor Subject: Legal Opinions Date: 11/15/12 11:36:30 AM -05'00'
This caveat is an indicator that you should study the rules that require a new filing in different circumstances. Think here about s. 9-316 and the related comments for the impact of a jurisdiction change or a merger. To understand this section make sure you look at the Official Comments (which can be found on the Nebraska UCC website). Think here about s. 9-507 for the impact of a name change on perfection.

Author: Jurisdiction Change Subject: Legal Opinions Date: 11/15/12 11:29:16 AM -05'00'
As described in the comments elsewhere to this opinion form, when collateral is moved from one jurisdiction to another, the applicable law governing perfection and priority will change if perfection is based upon possession or delivery.

Author: Continuation Statements Subject: Legal Opinions Date: 11/15/12 11:26:36 AM -05'00'
This caveat should make you review the provisions of Article 9 that require the filing of a continuation statement within the six month period prior to the 5th anniversary of filing the financing statement. A financing statement is good for five years and it must be renewed in the 6 month gap immediately prior to its expiration.

Author: Excluded Property Subject: Legal Opinions Date: 11/15/12 11:23:12 AM -05'00'
This is a pretty standard exception. It is often taken even though the opinion is limited already to collateral that is subject to Article 9. It should make you think about the scope limitations in s. 9-109 and s. 9-311. I suppose the specific reference to insurance is taken because insurance payments constitute important proceeds of damaged or destroyed collateral and under state laws you must follow different procedures to obtain a security interest in the insurance policy and its proceeds. As discussed in class, anytime you have a government licenses or permit you may not assume it is a simple general intangible that may be perfected under the UCC.

Loan Documents as against the competing interests of those third parties who would, in accordance with the provisions of the UCC or other applicable law, take free of any such security interest notwithstanding perfection thereof.

(xv) We express no opinion regarding any security or other interests of the Debtor in property of another that secures the other's obligations to the Debtor.

(xvi) The assignment of any contract, lease, license, or permit may require the approval of the issuer thereof or the other parties thereto.

(xvii) Except to the limited extent an Article 9 Security Interest may be created therein, we express no opinion with respect to any security interest in any accounts, chattel paper, documents, instruments or general intangibles with respect to which the account debtor or obligor is the United States, any state, county, city, municipality or other governmental body, or any department, agency or instrumentality thereof.

(xviii) Our opinions above are subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other similar laws of general application affecting the rights and remedies of creditors and to general principles of equity.

[(xix) We have reviewed Article 9 of the Uniform Commercial Code appearing in the official statutory compilation of the State of _____ Uniform Commercial Code as reported in [cite source] and have relied solely upon this review in forming the opinions set forth above with respect to the laws of the State of _____.]

This opinion letter is being furnished only to you for your use solely in connection with the transaction described above and may not be relied on without our prior written consent for any other purpose or by anyone else other than your participants and assignees permitted by the Loan and Security Agreement.

Very truly yours,

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Issue: Buyer in Ordinary Course of Business Subject: Legal Opinions
Here, you might think about s. 9-320 and the ability of a buyer in ordinary course of business.

Issue: Excluded Collateral Subject: Legal Opinions
You may recall here the class discussion in which I pointed out that government receivables of all sorts, while very valuable collateral, may not be subject to the UCC. For example, accounts payable by the United States might be subject to the Federal Assignment of Claims Act. That is why you see an exception like this taken.