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CHASING PERFECTION: COLLATERAL INDICATIONS AND AMBIGUOUS DEBTOR NAMES ON FINANCING STATEMENTS UNDER ARTICLE 9

Abstract: Article 9 of the Uniform Commercial Code sought to create consistent commercial laws governing secured transactions across the United States. One of its principal tenets is that secured lenders must provide notice to other lenders of their stake in a debtor's personal property or fixtures. Secured lenders do so by filing a financing statement, a form that third parties can access to see who has a security interest in what. Two important aspects of the financing statement are the collateral indication and the debtor name. This Note will explore the nuances of the collateral indication and debtor name in light of *In re Financial Oversight and Management Board for Puerto Rico* and *In re I80 Equipment, LLC*, cases arising out of the First and Seventh Circuits, respectively. This Note argues that Article 9's collateral indication requirements on the financing statement must not be construed to require third parties to search outside a secured lender's filings to determine what collateral may be subject to a security interest. Requiring would-be creditors to do so is against the express purposes of the Uniform Commercial Code and creates uncertainty and an unnecessary burden for such creditors when conducting their diligence. This Note further argues that the First Circuit was wrong in its determination that the financing statement did refer to the debtor in question because when a novel issue arises under Article 9, an interpretation that promotes one or more of the Code's stated purposes should be preferred.

INTRODUCTION

The United States' credit market is the largest in the world and permeates throughout the economy and countless markets.¹ Credit allows individuals to purchase homes, businesses to conduct operations and pay employees, and governments to finance its functions.² Given the prevalence of credit and its

¹ See Kevin McPartland, *Understanding the \$41 Trillion U.S. Bond Market*, FORBES (Oct. 11, 2018), <http://www.forbes.com/sites/kevinmcpartland/2018/10/11/understanding-us-bond-market/#9d6b2a17caf81> [<https://perma.cc/9CGV-MAEL>] (detailing the size of the credit market and presence in everyday transactions). In the United States, the bond market is valued at \$41 trillion and approximately \$500 billion in bonds are exchanged every day. *Id.* As of October 1, 2019, the U.S. National Debt exceeded over \$23.6 trillion. US DEBT CLOCK.ORG, <http://www.usdebtclock.org> [<https://perma.cc/3RTQ-HRBN>].

² See RAYMOND T. NIMMER ET AL., COMMERCIAL TRANSACTIONS: SECURED FINANCING: CASES, MATERIALS, PROBLEMS 9 (3d ed. 2003) (describing various uses credit has in the United States). Credit also enables people, businesses, and government entities to borrow funds, write checks, and make daily purchases. *Id.* at 7.

enormous impact on the economy at all levels, legal scholars recognized the importance of having uniform laws to govern credit transactions secured by interests in personal property and fixtures.³ This recognition prompted the creation of Article 9 of the Uniform Commercial Code (UCC or Code), which governs most of such transactions.⁴ The simplest example of a secured transaction occurs between one lender and one debtor: the lender gives the debtor a loan and, in return, the debtor grants the lender a security interest in its property.⁵ If the debtor fails to comply with the terms of the loan and defaults, the creditor may repossess, sell, or otherwise dispose of tangible collateral, or if the agreement so permits, accelerate the debt.⁶ The agreement between the lender and debtor is a security agreement, and the lender attains the status of a

³ See William A. Schnader, *A Short History of the Preparation and Enactment of the Uniform Commercial Code*, 22 U. MIAMI L. REV. 1, 1 (1967) (discussing the proposal of uniform state commercial laws by the National Conference of Commissioners on Uniform State Laws in 1940). “Personal property” is defined as “[a]ny movable or intangible thing that is subject to ownership and not classified as real property.” *Property*, BLACK’S LAW DICTIONARY (11th ed. 2019). The Uniform Commercial Code (UCC or Code) defines “fixtures” as “goods that have become so related to particular real property that an interest in them arises under real property law.” U.C.C. § 9-102(a)(41) (AM. LAW. INST. & UNIF. LAW COMM’N 2018).

⁴ U.C.C. § 9-109(a) (defining the general scope of Article 9). Article 9 does not govern transactions secured by real estate. *Id.* § 9-109(d)(11). Although there are many similarities between these transactions and transactions secured by personal property and fixtures, the drafters of Article 9 recognized that separate bodies of law already existed for real estate financing and doubted that states would change their existing laws. See NIMMER ET AL., *supra* note 2, at 9. Other transactions that Article 9 does not apply to are listed in section 9-109. See generally U.C.C. § 9-109(d).

⁵ See JAMES J. WHITE ET AL., *PRINCIPLES OF SECURED TRANSACTIONS* 2 (2d ed. 2018) (providing an example of a basic secured transaction). The Code defines “security interest” as “an interest in personal property or fixtures which secures payment or performance of an obligation.” U.C.C. § 1-201(b)(35).

⁶ See U.C.C. §§ 9-609 to -610 (stating the secured party’s right to take possession of collateral after a default and its right to dispose of collateral after default). The word “default” is not defined in Article 9 and is left to the parties involved in the transaction to define the term. WHITE ET AL., *supra* note 5, at 232. Some common occurrences that parties include in their definition of the term “default” that may trigger the default are the debtor’s nonpayment, the debtor experiencing bankruptcy, an assignment for benefit of creditors, or another event that signals financial difficulties. *Id.* Default can also be triggered when the collateral is goods due to the loss, damage to or destruction of the goods, or the debtor’s failure to insure the goods or maintain insurance on the goods. *Id.*

An acceleration clause is a creature of contract, not an Article 9 remedy, and makes a debtor’s payments immediately due and payable. *Id.* at 235. Acceleration clauses are not designed to punish debtors, but are included in security agreements for creditors to avoid costly series of litigation. *Id.* In the example of an installment loan, if there were no acceleration clause, the creditor would have to wait for the debtor’s default on each separate installment to sue for the payment of that installment, whereas a creditor with an acceleration clause could sue for the payment of all installments after the debtor defaults on one installment payment. *Id.* One example of an acceleration clause is an “insecurity clause.” *Id.* When an insecurity clause is included in a security agreement, “the creditor may accelerate the maturity of the entire debt whenever the creditor deems itself insecure.” *Id.* The creditor may typically invoke an insecurity clause when it wants to avoid possible harmful actions by the debtor when the creditor has a genuine belief that the debtor may default. *Id.* Courts have typically upheld the validity of insecurity clauses even though “trigger-happy” creditors can sometimes take advantage of them. *Id.*

secured party upon the completion of the security agreement and other requirements.⁷ When a secured party seeks to create a security interest that is enforceable against its debtor and effective against third parties, the secured party must comply with the requirements of Article 9.⁸

For a secured party to make its security interest effective against other creditors, Article 9 requires that the secured party perfect its security interest.⁹ The notice-filing function of perfection ensures that other potential secured parties have the opportunity to discover an existing lien on a debtor's property before they distribute loans.¹⁰ Perfection is most commonly achieved through the filing of a financing statement with the relevant state office.¹¹ Certain information is required on the financing statement, such as an indication of the collateral that is subject to the security interest and the name of the debtor.¹² If the collateral indication is insufficient, the name of the debtor is incorrect, or if there are other seriously misleading errors, the financing statement is insufficient and, in certain circumstances, the security interest cannot be enforced against third parties.¹³

⁷ See U.C.C. § 9-203(b) (listing the requirements that must be fulfilled for a lender to become a secured party); *infra* notes 54–56 and accompanying text (further explaining the requirements for creating an enforceable security interest). Not all lenders are secured parties as many choose not to take security interests; these lenders are unsecured creditors. NIMMER ET AL., *supra* note 2, at 11. Due to the absence of a security device, an unsecured creditor can often charge a higher interest rate than a secured party would in the same transaction because of the higher risk. See *id.* (describing characteristics of an unsecured creditor). The unsecured creditor also has different legal rights than the secured party in the event of a default by the debtor and is a residual claimant when a debtor's claims are being paid off in bankruptcy. *Id.*

⁸ See NIMMER ET AL., *supra* note 2, at 9 (noting that Article 9 governs secured transactions). When a security interest is effective against the debtor, the secured party has the right to repossess if the debtor defaults. See WHITE ET AL., *supra* note 5, at 239 (describing a typical secured party's rights upon a debtor default). Nonetheless, the secured party can choose not to repossess and choose other methods of obtaining payment if prescribed in the security agreement. *Id.* A security interest is enforceable against a third party, such as another creditor, if the original creditor can enforce its security interest against the debtor before the latter creditor. U.C.C. § 9-201(a).

⁹ See *infra* notes 57–64 and accompanying text (detailing the policies behind and methods for perfecting a security interest).

¹⁰ See NIMMER ET AL., *supra* note 2, at 115 (explaining why secured parties must notify other creditors).

¹¹ See WHITE ET AL., *supra* note 5, at 60 (noting that the financing statement is generally filed with the secretary of state office at the state capital).

¹² U.C.C. § 9-502(a); see WHITE ET AL., *supra* note 5, at 87 (detailing the basic requirements of a financing statement).

¹³ U.C.C. § 9-502(a). A secured party being unable to enforce its security interest against third parties is typically only an issue when the debtor defaults on its loans, declares bankruptcy, or both. See WHITE ET AL., *supra* note 5, at 49 (describing the effect of perfection on a secured party). Suppose Debtor X grants Creditor A a security interest in its tractor and Creditor A extends Debtor X a loan for \$50,000, the value of the tractor. See U.C.C. § 9-502(a) (providing the rule for filing a sufficient financing statement). Creditor A subsequently files an insufficient financing statement. Debtor X then grants Creditor B a security interest in the same tractor and Creditor B extends a loan for \$50,000. Creditor B subsequently files a sufficient financing statement. Assuming Debtor X made no payments on either of its loans, when Debtor X defaults, Creditor A cannot enforce its security interest

Secured parties can indicate collateral on financing statements in multiple ways.¹⁴ One way is through a cross-reference to the description of the collateral in the security agreement, so long as the security agreement is attached.¹⁵ The precise boundaries of this method became the subject of recent litigation: the First Circuit, in *In re Financial Oversight and Management Board for Puerto Rico (In re Financial Oversight)*, tackled a unique set of facts that presented two novel issues to the secured transactions universe.¹⁶ There, the financing statement cross-referenced an attached security agreement to indicate the collateral.¹⁷ This practice would normally pose no issue, but instead of defining the collateral itself, the security agreement referenced an unattached, but publicly available, document for the definition of the collateral.¹⁸ A similar issue also arose a few months later in *In re I80 Equipment, LLC*.¹⁹ In this case, the financing statement referred to the collateral described in the security

against Creditor B because of the insufficient financing statement. *See id.* Therefore, Creditor B can take the tractor to satisfy its loan obligation and Creditor A is left with no collateral to satisfy its loan. *See id.*

Despite an insufficient financing statement, a security interest may nonetheless be enforceable against a third party if the security interest is perfected by an alternative method, such as by possession, control, or automatic perfection. *Id.* § 9-310(b). In addition, an unperfected security interest is enforceable against a buyer of collateral if the buyer has knowledge of the security interest. *Id.* § 9-317(b).

¹⁴ *See infra* notes 76–79 and accompanying text (outlining the available options for lenders to indicate the collateral on a financing statement).

¹⁵ *See, e.g.,* Leasing Serv. Corp. v. Hobbs Equip. Co., 894 F.2d 1287, 1290–91 (11th Cir. 1990) (determining that referencing a lease agreement attached to a financing statement for the description of the collateral met the requirements for indicating the collateral); *In re Tebbs Constr. Co.*, 39 B.R. 742, 747–48 (Bankr. E.D. Va. 1984) (holding that the financing statement was sufficient because it properly incorporated the security agreement and met Article 9’s notice requirement); *Hixon v. Credit All. Corp.*, 369 S.E.2d 169, 171–72 (Va. 1988) (concluding that the lender perfected its security interest because the security agreement described the collateral by type and was attached as a schedule to the financing statement). The security agreement may or may not have the terms of the loan included in the agreement, and the absence of these terms does not negate the status of the agreement as the security agreement; it will always grant the lender a security interest in the debtor’s collateral described in the agreement. *See* WHITE ET AL., *supra* note 5, at 55 (detailing the relationship between the security agreement and the loan). When a debtor takes multiple loans from a creditor and the creditor has interests in various debtor assets, well-written security agreements will make clear which collateral secures which loan. *Id.*

¹⁶ *See* Altair Glob. Credit Opportunities Fund (A), LLC v. Fin. Oversight & Mgmt. Bd. for P.R. (*In re* Fin. Oversight & Mgmt. Bd. for P.R.) (*In re Financial Oversight*), 914 F.3d 694, 703 (1st Cir. 2019) (attesting to the unique circumstances of the case); *see also infra* notes 108–134 (laying out the facts of *In re Financial Oversight and Management Board for Puerto Rico*).

¹⁷ Fin. Oversight & Mgmt. Bd. for P.R. v. Altair Glob. Credit Opportunities Fund (A), LLC (*In re* Fin. Oversight & Mgmt. Bd. for P.R.) (*In re Financial Oversight (P.R.)*), 590 B.R. 577, 585 (D.P.R. 2018) (detailing the information provided on the initial financing statement).

¹⁸ *See id.* (explaining that the security agreement did not include a copy of the publicly available document that defined in detail the collateral, titled the Pension Funding Bond Resolution).

¹⁹ *See* First Midwest Bank v. Reinbold (*In re* I80 Equip., LLC), 938 F.3d 866, 870 (7th Cir. 2019) (stating that the court must decide whether incorporation by reference is a sufficient way to indicate the collateral).

agreement, but did not attach the security agreement to the filing or make the security agreement available.²⁰ The facts in both of these cases raise an Article 9 interpretive question; specifically, whether the secured parties satisfied the notice-filing principle of Article 9.²¹ Further, the cases have significant consequences for secured parties' rights in bankruptcy.²²

The other issue in *In re Financial Oversight* was a potential ambiguity in the debtor's name.²³ The Puerto Rican legislature allegedly changed the debtor-government entity's name by amending the original law that created the entity, and this amendment, likely by mistake, designated a new name for the entity in various parts of the English version of the statute.²⁴ In the act and in the updated statute, however, the legislature referred to the entity by its original name, creating a question as to what the actual name of the entity was.²⁵ These facts raise more interpretive issues: what the name of a governmental entity is and how strictly or liberally courts should construe statutes that create a government entity and designate its name.²⁶

Part I of this Note details the historical background of the UCC and Article 9, how secured lenders create a security interest that is enforceable against the debtor and third parties, the filing system, and the financing statement.²⁷ Part II of this Note examines the facts of *In re Financial Oversight* and *In re*

²⁰ *Id.* at 869. The financing statement read “[a]ll Collateral described in First Amended and Restated Security Agreement dated March 9, 2015 between Debtor and Secured Party.” *Id.*

²¹ See *In re 180 Equip., LLC*, 938 F.3d at 869; *In re Financial Oversight (P.R.)*, 590 B.R. at 588 (describing the UCC's public notice function). The notice-filing principle is satisfied if the financing statement “indicates merely that a person may have a security interest in the collateral indicated.” U.C.C. § 9-502 cmt. 2. “Further inquiry from the parties concerned will be necessary to disclose the complete state of affairs.” *Id.*

²² See NIMMER ET AL., *supra* note 2, at 116 (stating that the notice system should allow for parties to adequately assess risk from a planning perspective).

²³ See *In re Financial Oversight*, 914 F.3d at 706–07 (reiterating the facts regarding the name of the debtor); *In re Financial Oversight (P.R.)*, 590 B.R. at 585 (posing that the name of the debtor may have changed after the Puerto Rican legislature passed an act that, after translated into English, amended the original statute that created the debtor); see also *infra* notes 121–124 (detailing the amendments to the law that created the retirement system).

²⁴ 1951 P.R. LAWS 1298, amended by 2013 P.R. LAWS 39 (codified as amended at P.R. LAWS ANN. tit. 3, § 761 (2011)); see *In re Financial Oversight (P.R.)*, 590 B.R. at 585 (discussing the amendment to the original act). In 1951, the Puerto Rican legislature established the “Employees Retirement System of the Government of the Commonwealth of Puerto Rico” (ERS). *In re Financial Oversight (P.R.)*, 590 B.R. at 582–83. In 2013, the legislature adopted 2013 P.R. LAWS 39, which amended the original 1951 law. *Id.* at 585. Section 1-101 of 2013 P.R. LAWS 39 stated that the name of the government entity to be designated as the “Retirement System for Employees of the Government of the Commonwealth of Puerto Rico.” *Id.* Although the first section of the amended statute used a new name to designate the retirement system, the old name persisted throughout the rest of the statute. *Id.*

²⁵ P.R. LAWS ANN. tit. 3, §§ 761–788; 2013 P.R. LAWS 39.

²⁶ See *In re Financial Oversight*, 914 F.3d at 703 (noting the unique circumstances that led to the ambiguity in the debtor's name).

²⁷ See *infra* notes 32–99 and accompanying text.

180 Equipment, LLC.²⁸ Part III of this Note argues that third parties should not be required to search outside of a secured lender's filings to determine what collateral may be subject to a security interest.²⁹ Part III of this Note also argues that the clause in the statute that designates the name of a government entity should always be the name of a government entity for UCC purposes.³⁰ Lastly, Part III of this Note argues that when a novel issue arises under Article 9, an interpretation that promotes one or more of the Code's stated purposes should be preferred.³¹

I. THE UCC AND ARTICLE 9'S FRAMEWORK AND LAWS GOVERNING FINANCING STATEMENTS

The UCC represents a monumental innovation in American law.³² Its prominence is in part due to the fact that it is a uniform law that every state in the United States has adopted.³³ Article 9 of the Code governs secured transactions, which arise when personal property or fixtures are offered as collateral in a lending arrangement.³⁴ Article 9 gives secured parties various responsibilities that they must fulfill to make their security interest effective against third parties, one of those being the filing of a financing statement.³⁵ This requirement was at issue in *In re Financial Oversight* and *In re 180 Equipment, LLC*.³⁶

This Part details the history of the Code and Article 9, the methods to create and enforce a proper security interest, background information on filing and the financing statement, the rules governing the sufficiency of a collateral description on a financing statement, and the rules for providing a debtor's

²⁸ See *infra* notes 100–186 and accompanying text.

²⁹ See *infra* notes 194–211 and accompanying text.

³⁰ See *infra* notes 212–227 and accompanying text.

³¹ See *infra* notes 228–244 and accompanying text.

³² See Fred H. Miller, *The Uniform Commercial Code: Will the Experiment Continue?*, 43 *MERCER L. REV.* 799, 808 (quoting JAMES J. WHITE & ROBERT S. SUMMERS, *UNIFORM COMMERCIAL CODE* 5 (3d ed. 1988)) (stating that the UCC is among the greatest successes in American law).

³³ See *id.* (describing the extraordinariness of the Code because all fifty states have adopted a majority of the Code). The UCC has nine separate articles as of the 2018 edition. See generally U.C.C. Louisiana is the only state to not adopt the entire Code, having omitted Article 2 (Sales). *States Adopting the UCC, Louisiana*, USLEGAL, <https://uniformcommercialcode.uslegal.com/states-adopting-the-ucc/louisiana/> [<https://perma.cc/BT2C-P6VT>].

³⁴ See Stacy-Ann Elvy, *Commodifying Consumer Data in the Era of the Internet of Things*, 59 *B.C. L. REV.* 423, 457 (2018) (stating that a state's Article 9 governs a secured lending transaction between creditors and debtors).

³⁵ U.C.C. § 9-310. There are some exceptions that do not require the filing of a financing statement. *Id.*; see *infra* notes 63–64 and accompanying text (describing the other methods for ensuring a security interest is effective against third parties).

³⁶ See *In re 180 Equip., LLC*, 938 F.3d at 874 (finding that the collateral indication was sufficient to perfect); *In re Financial Oversight*, 914 F.3d at 721 (holding that bondholders' security interest failed to perfect due to an insufficient collateral indication, but the financing statement amendments did provide the debtor name).

name on a financing statement.³⁷ Section A explains the history and drafting of the Code, Article 9, and the amendments thereto.³⁸ Section B discusses relevant principles of commercial law and the functions that the law of perfection serves.³⁹ Section C describes the filing process and the information required to submit a sufficient financing statement.⁴⁰ Section D sets out the framework for sufficiently indicating the collateral on a financing statement.⁴¹ Section E describes the Code's rules with respect to providing the debtor's name on a financing statement.⁴²

A. Brief History of the Uniform Commercial Code and Article 9

On January 1, 1945, a group led by Karl Llewellyn began constructing the first draft of the UCC; by September of 1951 their work was finished.⁴³ Their proposal was, and still is, a model code that would align state laws to facilitate commercial transactions.⁴⁴ Pennsylvania became the first state to adopt the UCC in 1953, and after Massachusetts adopted a revised version of the Code in 1957, other states followed.⁴⁵ Despite a long and arduous legislative path to

³⁷ See *infra* notes 43–99 and accompanying text.

³⁸ See *infra* notes 43–52 and accompanying text.

³⁹ See *infra* notes 53–64 and accompanying text.

⁴⁰ See *infra* notes 65–74 and accompanying text.

⁴¹ See *infra* notes 75–86 and accompanying text.

⁴² See *infra* notes 87–99 and accompanying text.

⁴³ See Schnader, *supra* note 3, at 5 (reviewing the history leading up to the formation of the UCC and the forces that put it into place). At the time, Karl Llewellyn was a professor at Columbia University Law School and one of the foremost experts on commercial law. *Id.* at 4. A notable legal realist, it was among his and other drafters' intentions to import the idea of commercial reasonableness into the UCC so that state legislatures would incorporate the UCC into their own state laws. See Grant Gilmore, *In Memoriam: Karl Llewellyn*, 71 *YALE L.J.* 813, 815 (1962) (stating that for Llewellyn, it was necessary that the Code be passed by all state legislatures); Imad D. Abyad, Note, *Commercial Reasonableness in Karl Llewellyn's Uniform Commercial Code Jurisprudence*, 83 *V.A. L. REV.* 429, 429 (1997) (describing Llewellyn's vision behind the Code).

⁴⁴ See NIMMER ET AL., *supra* note 2, at 2 (reviewing the purpose behind the creation of the UCC). The UCC proposed by the drafters, Llewellyn, and others is the "Official Text." *Id.* Section 1-103(a) of the Code lists the purposes of the UCC, including "to simplify, clarify, and modernize the law governing commercial transactions." U.C.C. § 1-103(a)(1).

⁴⁵ See Schnader, *supra* note 3, at 8–9 (specifying which states were the early adopters of the Code). Revisions to the initial version of the UCC were required after the actions of the New York Legislature. *Id.* The Legislature sent the UCC along to the New York Law Revision Commission to study it and develop a report on it. *Id.* at 8. The Commission found that having uniform commercial laws was a good idea, but proposed various changes in its 1956 report. See Robert Braucher, *The 1956 Revision of the Uniform Commercial Code*, 2 *VILL. L. REV.* 3, 4 (1956) (outlining the details of the 1956 Report of the New York Law Revision Commission); Schnader, *supra* note 3, at 8–9 (detailing the New York Law Revision Commission's recommendations to improve the UCC). This prompted the Editorial Board for the Uniform Commercial Code to consider the proposed changes and it created a revised version of the UCC in the fall of 1956. Schnader, *supra* note 3, at 9. By 1963, the UCC was enacted in twenty-seven states, including the most important commercial states: New York, California, the District of Columbia, and Pennsylvania, which had adopted the recently revised version of the UCC. *Id.* By 1968, the UCC was enacted and effective in all states except Louisiana. *Id.* at 10.

enactment, the UCC successfully created uniform commercial processes and simplified commercial transactions across the United States.⁴⁶

Article 9 of the Code governs “Secured Transactions.”⁴⁷ Prior to the enactment of the UCC, each state had its own laws that governed secured transactions, which created headaches for transactional attorneys.⁴⁸ Introduced in 1962, Article 9 was quickly put into effect in all states because it addressed the problems posed by states’ varying laws.⁴⁹ Its key innovations were the usage of consistent terminology and the grouping of common security devices into one code of laws.⁵⁰ As such, states found it in their best interests to incorporate the UCC into their laws to make business transactions across state borders seamless.⁵¹ Since its inception, Article 9 has undergone various revisions, most notably with the 1998 revisions that led to Revised Article 9 and most recently with the 2010 amendments that went into effect in most states on July 1, 2013.⁵²

⁴⁶ See Lawrence J. Bugge, *Commercial Law, Federalism, and the Future*, 17 DEL. J. CORP. L. 11, 25 (1992) (noting the successes of the UCC and the impression it has left on lawyers); Miller, *supra* note 32, at 808 (describing the Code’s prominence in American law).

⁴⁷ U.C.C. § 9-101. Before the nineteenth century, nonpossessory security interests, where a secured lender had an interest in the collateral but did not have possession of the collateral, were invalid. See 1 GRANT GILMORE, *SECURITY INTERESTS IN PERSONAL PROPERTY* 24–25 (1965) (describing historical legal attitudes towards security interests). Considering the high demand for credit in an increasingly industrialized nation in the nineteenth century, this rule was abandoned, and nonpossessory security interests were permitted. *Id.* at 25. It is important to note that Article 9 does not govern the creation or transfer of an interest in real property, i.e. mortgages, and is limited to interests in personal property or fixtures. U.C.C. §§ 9-109(a)(1), (d)(11).

⁴⁸ See WHITE ET AL., *supra* note 5, at 2 (describing the wide variety of personal property security laws in states prior to the UCC). The disparity in state laws posed a real problem because one type of security device may be created by statute in one state, created by common law in another state, and be non-existent in yet another state. *Id.* Further, states had different requirements for the same type of security device, which created problems for lawyers attempting to draft loan agreements that affected parties in more than one state. *Id.*

⁴⁹ See *id.* at 2–3 (noting the major innovations of Article 9 that led to its quick adoption among all states). Although the revised UCC in 1956 included Article 9, the last full revision of the UCC occurred in 1962 and prompted most states to enact it. See *Uniform Commercial Code (UCC) Timeline*, CORP. SERV. CO., <https://www.cscglobal.com/service/cls/ucc-timeline> [<https://perma.cc/54MH-6FHD>] (providing a detailed timeline of the UCC). After the 1962 UCC revisions, all subsequent revisions took place within individual articles. *Id.* Grant Gilmore, Allison Dunham, and Karl Llewellyn are the principal authors of Article 9. WHITE ET AL., *supra* note 5, at 1–2. Gilmore first formulated his idea for the uniform secured transaction laws in 1948. GILMORE, *supra* note 47, at 290 n.2 (citing Grant Gilmore & Allan Axelrod, *Chattel Security: I*, 57 YALE L.J. 517, 761 (1948)). At the time of the preliminary drafts of Article 9, it was apparent that all three of the principal authors were working on initial concepts of Article 9. *Id.*

⁵⁰ See WHITE ET AL., *supra* note 5, at 2 (stating the importance of using consistent terms to facilitate smooth commercial transactions). Article 9 uses defined terms such as “collateral,” “security interest,” and “debtor” to group together common security devices and create the common language with which transactional attorneys speak today. *Id.* at 2–3.

⁵¹ See NIMMER ET AL., *supra* note 2, at 3 (noting the enactment of the UCC in all states).

⁵² *Uniform Commercial Code (UCC) Timeline*, *supra* note 49. The first amendments to Article 9 were in 1972 after multiple years with the Code in place, but Article 9 eventually grew outdated and required additional changes to modernize. *Id.* As computers began facilitating transactions and states

B. Creating an Enforceable and Perfected Security Interest

Attachment, perfection, and priority are three features of Article 9 that must be understood before considering the issues in this Note.⁵³ Attachment relates to the creditor's ability to enforce its security interest against the debtor.⁵⁴ Section 9-203(b) of the UCC provides the requirements for a security interest to be enforceable.⁵⁵ Upon satisfaction of these requirements, the lender's security interest attaches.⁵⁶

Whereas attachment relates to the creation of a security interest against the debtor, perfection relates to the effectiveness of a security interest against third parties.⁵⁷ Furthermore, the secured party's date of perfection can be its priority date—i.e., the date that will be used to determine whether the secured party's rights are superior to those of other creditors.⁵⁸ The concept of perfection is rooted in the idea of notice; secured parties must give adequate notice to third parties that they have a claim to the debtor's property and Article 9 governs how this notice must be given.⁵⁹ The perfection rules serve two functions:

made amendments to their respective Article 9's, the law of secured transactions became less uniform. NIMMER ET AL., *supra* note 2, at 2; *Uniform Commercial Code (UCC) Timeline*, *supra* note 49. This led to the creation of Revised Article 9 in 1998, which took effect in most states on July 1, 2001. *Uniform Commercial Code (UCC) Timeline*, *supra* note 49. The final amendments in 2010 serve the purpose of clarifying some of the issues that Revised Article 9 presented. *Id.* Revised Article 9 is currently the law in every state, the District of Columbia, and Puerto Rico. P.R. LAWS ANN. tit. 19, §§ 2211–2409 (2011); NIMMER ET AL., *supra* note 2, at 3. This Note will refer to “Revised Article 9” as “Article 9.”

⁵³ U.C.C. §§ 9-203, -308, -317. Within Article 9, section 9-203 lists the requirements for attachment. *Id.* § 9-203. Sections 9-308 through 9-316 lay out the rules on how to perfect. *Id.* §§ 9-308 to -316. Sections 9-317 through 9-339 govern priority. *Id.* §§ 9-317 to -339.

⁵⁴ *Id.* § 9-203. Section 9-203(a) states, “A security interest attaches to collateral when it becomes enforceable against the debtor with respect to the collateral, unless an agreement expressly postpones the time of attachment.” *Id.*

⁵⁵ *Id.* § 9-203(b). The first requirement is that “value has been given.” *Id.* § 9-203(b)(1). This requirement necessitates that at some point, the creditor extends value to the debtor. *Id.* The second requirement is that “the debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party.” *Id.* § 9-203(b)(2). Finally, section 9-203(b)(3) requires that at least one of four conditions be met. *Id.* § 9-203(b)(3). The condition most commonly satisfied is section 9-203(b)(3)(A), which requires that “the debtor has authenticated a security agreement that provides a description of the collateral.” *Id.* § 9-203(b)(3)(A). This requires a record, either written or electronic, of the agreement and the debtor's authentication. *Id.*; NIMMER ET AL., *supra* note 2, at 74.

⁵⁶ U.C.C. § 9-203.

⁵⁷ See NIMMER ET AL., *supra* note 2, at 115 (discussing the role of perfection in a secured transaction). Secured creditors face threats from various types of third parties, such as other secured creditors, unsecured creditors, lien creditors, bankruptcy trustees, and U.S. Government with respect to tax liens. 26 U.S.C. §§ 6321–6323 (2018); see WHITE ET AL., *supra* note 5, at 60 (describing the parties that threaten secured creditors).

⁵⁸ See U.C.C. § 9-322(a)(1) (stating the priority rule as between two secured parties). If Party X files or perfects before Party Y files or perfects, Party Y is subordinate to Party X and Party X has priority to the collateral over Party Y, subject to some exceptions. See *id.*

⁵⁹ See NIMMER ET AL., *supra* note 2, at 116 (describing the hostility towards secret liens). Article 9's notice system is designed to protect parties against secret liens—a lien where only the debtor and

they permit secured parties to establish certainty of their position in the long term and generally allow parties to discover if someone else has already staked a claim to a debtor's property.⁶⁰

A security interest perfects when the interest attaches and the applicable requirements for perfection have been met.⁶¹ The steps for perfection are codified in sections 9-310 through 9-316 and can be satisfied, depending on the type of collateral, by control, through possession, automatically, or by filing.⁶² Although the general rule to perfect a security interest is to file a financing statement, there are exceptions to this rule.⁶³ Nonetheless, for many types of commercial transactions, a prudent transactional attorney would file a financing statement because it is a cheap and practical way to perfect a security interest.⁶⁴

secured lender know of the transaction—and the ill will towards secret liens can be traced back to 1601. See GILMORE, *supra* note 47, at 24 n.2 (chronicling the history of opposition against secret liens). See generally *Twyne's Case* (1601) 76 Eng. Rep. 809, 3 Co. Rep. 80 b. In *Twyne's Case*, Pierce was indebted against Twyne and another creditor, who was suing Pierce. *Id.* at 810–11. Pierce knew he was going to lose the lawsuit, so to shield his assets from seizure, he deeded his goods and sheep to Twyne in payment for the debt to Twyne, but Pierce maintained possession of the assets and continued to use them. *Id.* at 811. Because Twyne had the deed to the goods and sheep, when the creditor sought to enforce judgment against Pierce, Pierce argued that they were not his assets, rather Twyne's, and therefore could not be seized. *Id.* The court held this transaction to be fraudulent and therefore ineffective with respect to Pierce's other creditor. *Id.* at 812. Pierce's continued possession of the goods and sheep rendered the transaction void, and subsequent courts at common law held that secured transactions where the creditor did not retain possession of the collateral were invalid. *Id.* at 813; see NIMMER ET AL., *supra* note 2, at 117 (recounting the court's holding). Due to the costs of disallowing non-possessory security interests, such as the high barrier for manufacturers' access to credit, once the concept of filing was established, non-possessory security interests were validated so long as the filing met the Code's requirements. NIMMER ET AL., *supra* note 2, at 117–18 (citing Douglas G. Baird & Thomas H. Jackson, *Possession & Ownership: An Examination of the Scope of Article 9*, 35 STAN. L. REV. 175, 180–81 (1983)); see *infra* notes 75–99 and accompanying text (detailing the Code's requirements for a valid financing statement filing).

⁶⁰ See NIMMER ET AL., *supra* note 2, at 115 (stating the importance of Article 9's perfection rules and the functions they serve).

⁶¹ U.C.C. § 9-203.

⁶² *Id.* §§ 9-310 to -316; see *infra* notes 63–64 (describing methods of perfection based on the type of collateral). When undergoing a secured transaction, it is important that a secured lender first classifies the collateral it is attempting to take a security interest in. NIMMER ET AL., *supra* note 2, at 58. Personal property, in reality, can be classified as either goods or intangibles, but Article 9 has made further specified collateral classification types to make rules based on the type of collateral. *Id.*

⁶³ U.C.C. § 9-310(a). If the collateral is a deposit account or is a letter-of-credit right, the security interest in the collateral may be perfected only by control. *Id.* § 9-312(b)(1)–(2) (a creditor has control of a deposit account if it complies with section 9-104 and has a letter-of-credit right if it complies with section 9-107). If the collateral is money, the security interest in the collateral may be perfected only by possession. *Id.* § 9-312(b)(3).

Further, if section 9-311 applies, the creditor must satisfy the federal or state public notice systems that supplant Article 9's notice rules. *Id.* § 9-311. For example, if a creditor took a security interest in an aircraft, it could not perfect through Article 9, as it would have to follow the rules provided by the Federal Aviation Act. See *id.* § 9-311(a). At the state level, cars and trucks are governed by certificate of title statutes that creditors must follow. See *id.* § 9-311(b).

⁶⁴ *Id.* § 9-310(a). A security interest can also perfect when it attaches, a concept known as automatic perfection. *Id.* § 9-309.

C. Filing and the Financing Statement

The lending party files its financing statement in the applicable state of office.⁶⁵ The Code defines a financing statement as “a record or records composed of an initial financing statement and any filed record relating to the initial financing statement.”⁶⁶ The information needed to file an effective initial financing statement is set out in sections 9-502 through 9-504.⁶⁷ Section 9-502 prescribes that the secured party must provide the name of the debtor, the name of the secured party or representative of the secured party, and indicate the collateral covered by the financing statement.⁶⁸ Section 9-503 lays out the rules for providing the name of the debtor.⁶⁹ Finally, section 9-504 details the information needed on a financing statement to sufficiently indicate the collateral.⁷⁰

Financing statements are effective for five years after the date of filing.⁷¹ To further the effectiveness of a financing statement and keep a party’s priority date, secured parties must file a continuation statement within six months prior to the five years expiration date.⁷² The continuation statement is a type of amendment, and by using a Form UCC-3, parties can amend their initial financing statements.⁷³ According to section 9-512, parties can file an amendment that, along with continuing the effectiveness of a financing statement, can terminate a financing statement, add or delete collateral, and amend other information in the financing statement.⁷⁴

⁶⁵ *Id.* § 9-310(a). The relevant state office is determined by following the Code’s choice of law rules prescribed in sections 9-301 through 9-307. *Id.* §§ 9-301 to -307.

⁶⁶ *Id.* § 9-102(a)(39). The 2010 Amendments created a uniform initial financing statement form titled the “UCC-1.” *Id.* § 9-521(a).

⁶⁷ *Id.* §§ 9-502 to -504.

⁶⁸ *Id.* § 9-502(a).

⁶⁹ *Id.* § 9-503; *see infra* notes 87–99 and accompanying text (detailing the requirements for providing the name of the debtor).

⁷⁰ U.C.C. § 9-504; *see infra* notes 75–86 and accompanying text (outlining the Code’s requirements for a sufficient collateral indication).

⁷¹ U.C.C. § 9-515(a).

⁷² *Id.* § 9-515(c). If a secured party files an initial financing statement on January 1, 2020, the continuation statement must be filed between July 1, 2025 and December 31, 2025 for the secured party to remain perfected and keep its priority date. *See id.* If the secured party fails to file a continuation statement in the relevant period, “it is deemed never to have been perfected as against a purchaser of the collateral for value.” *Id.* A “purchaser of the collateral for value” includes buyers and secured parties but does not include lien creditors. *See* WHITE ET AL., *supra* note 5, at 123 (providing examples of purchasers of collateral for value).

⁷³ U.C.C. § 9-512; *see* 1 BARKLEY CLARK & BARBARA CLARK, *THE LAW OF SECURED TRANSACTIONS UNDER THE UNIFORM COMMERCIAL CODE* § 2.14 (3d ed. 2019) (detailing the filing of a continuation statement on the Form UCC-3). The Form UCC-3 can be found in section 9-521(b). U.C.C. § 9-521(b).

⁷⁴ U.C.C. § 9-512.

D. The Collateral Indication

A financing statement is insufficient if it does not “indicate[] the collateral covered by the financing statement.”⁷⁵ Section 9-504 lists the two ways to satisfy this requirement.⁷⁶ One way is to indicate that the financing statement covers “all assets” or “all personal property.”⁷⁷ The second way is to describe the collateral pursuant to section 9-108.⁷⁸ A description reasonably identifies collateral as required by section 9-108 if a collateral indication identifies the collateral by specific listing, category, a type of UCC collateral such as “accounts” or “equipment,” quantity, computational or allocational formula or procedure, or any other way that makes the identity of the collateral objectively determinable.⁷⁹ The Code rejects the “serial number” test that requires filers to be exact and detailed in their descriptions.⁸⁰ Furthermore, the Eighth Circuit held that a collateral indication that erroneously described the collateral could be corrected by a supergeneric description in the same financing statement.⁸¹ The court justified this holding by relying on the Code’s emphasis on the principle of notice filing.⁸²

Secured lenders are permitted to describe the collateral by referencing the security agreement, but filers should include the security agreement as an exhibit

⁷⁵ *Id.* § 9-502(a)(3).

⁷⁶ *Id.* § 9-504.

⁷⁷ *Id.* § 9-504(2). Section 9-504(2) permits supergeneric descriptions and satisfying the requirement can be accomplished simply by writing, “All debtor’s assets.” *WHITE ET AL.*, *supra* note 5, at 53.

⁷⁸ U.C.C. § 9-504(1).

⁷⁹ *Id.* § 9-108(b). It is not necessary for filers to include an after-acquired property clause in the collateral description if the secured lender identifies the collateral by type. *Id.* § 9-502 cmt. 2. Due to Article 9’s permission of supergeneric descriptions in financing statements, it is possible for a description to be sufficient for financing statement purposes but not for security agreement purposes. *Id.* § 9-108, -504. A description that is sufficient for security agreement purposes, however, is sufficient for financing statement purposes. *Id.*; *WHITE ET AL.*, *supra* note 5, at 53.

⁸⁰ U.C.C. § 9-108 cmt. 2; *see also* *Bishop v. All. Banking Co.*, 412 S.W.3d 217, 280 (Ky. Ct. App. 2013) (finding that a filed financing statement that accurately identified the collateralized backhoe by make, model, and year but that misstated the first three digits of the serial number was sufficient to perfect); *Maxus Leasing Grp., Inc. v. Kobelco Am., Inc.*, No. 5:04-CV-518 (FJS/DEP), 2007 WL 655779, at *3 (N.D.N.Y. Feb. 26, 2007) (holding that a financing statement that omitted one digit of a crane’s serial number, but otherwise correctly indicated the crane’s year, make, and model, was effective to perfect; the error was minor and not seriously misleading).

⁸¹ *See ProGrowth Bank, Inc. v. Wells Fargo Bank, N.A.*, 558 F.3d 809, 815 (8th Cir. 2009) (holding that the creditor’s financing statement perfected its security interest despite an error in the collateral indication). In the lender’s financing statement, the collateral indication included a supergeneric clause followed by incorrectly identifying the debtor’s annuity contract. *Id.* at 811.

⁸² *See id.* at 814–15 (noting that the statements in the collateral description must be judged in their entirety). The notice requirement is met if third parties are on notice that the filer may have a security interest in the collateral. U.C.C. § 9-502 cmt. 2. After viewing the financing statement, prudent third parties should then inquire further to understand the complete transaction. *Id.* The Eighth Circuit concluded that, despite the errors in indicating the collateral by type in *ProGrowth Bank*, third parties were on notice that all of the debtor’s assets may be subject to a security interest due to the inclusion of a supergeneric description. 558 F.3d at 815.

to the financing statement to avoid litigation.⁸³ In *In re Lynch*, the U.S. Bankruptcy Court for the Western District of Wisconsin held that describing the collateral as the security agreement did not perfect the secured lender's security interest, partially due to the fact that the security agreement was not attached as an exhibit.⁸⁴ In *In re The Holladay House, Inc.*, the U.S. Bankruptcy Court for the Eastern District of Virginia concluded that, although the security agreement was attached as an exhibit to the filing statement, the secured lender failed to perfect its security interest because the collateral description never cross-referenced the security agreement.⁸⁵ Secured lenders must exercise caution when employing this method to describe the collateral, although including the security agreement as an exhibit and cross-referencing it appears to be sufficient to perfect.⁸⁶

E. The Debtor's Name

A financing statement is also insufficient if it fails to provide the name of the debtor.⁸⁷ Filing offices index their files alphabetically based on the name of the debtor, so it is crucial that secured lenders are precise in providing the

⁸³ CLARK & CLARK, *supra* note 73, § 2.09 (citing *In re H.L. Bennett Co.*, 588 F.2d 389 (3d Cir. 1978)).

⁸⁴ *Rameker v. Farmers State Bank (In re Lynch)*, 313 B.R. 798, 800 (Bankr. W.D. Wis. 2004). The debtor and creditor in *In re Lynch* agreed to a General Business Security Agreement that granted the creditor a security interest in various types of collateral. *Id.* at 799. In the financing statement, the creditor described the collateral as "general business security agreement now owned or hereafter acquired." *Id.* at 799–800. No documents were attached to the filed financing statement. *Id.* at 800. Although the financing statement indicated the existence of a security agreement between the creditor and debtor, the financing statement failed to indicate the actual collateral subject to the creditor's security interest. *Id.* The court concluded that, because the creditor only provided notice of a security interest, third parties were not on notice of which of the debtor's assets were subject to the security interest, and therefore the creditor's security interest did not perfect. *Id.* at 801.

⁸⁵ 387 B.R. 689, 697 (Bankr. E.D. Va. 2008). The debtor and creditor executed a security/consignment agreement that granted the creditor a security interest in goods that the creditor delivered on consignment to the debtor as well as all other inventory of the debtor. *Id.* at 691–92 & 691 n.2. The creditor filed a timely financing statement, but the creditor described the collateral as "[a]ll inventory . . . delivered to consignee at any time by consignor pursuant to a consignment agreement between the consignee and consignor." *Id.* at 693. The security/consignment agreement was attached to the financing statement, but the financing statement did not reference or incorporate the security/consignment agreement. *Id.* The court reasoned that a reasonable third party relies on the indication of the collateral of the financing statement and nothing else. *Id.* at 696. Consequently, third parties only had notice of the security interest in the consigned items delivered by the debtor. *Id.* at 697. The creditor did not perfect its security interest as to the other collateral in the security/consignment agreement. *Id.* A leading Article 9 treatise has, however, queried whether this decision is appropriate given the Code's policy of notice-filing and the fact that the security agreement and financing statement were filed together. CLARK & CLARK, *supra* note 73, § 2.09.

⁸⁶ See CLARK & CLARK, *supra* note 73, § 2.09 (noting that it is best practice for secured lenders to attach the security agreement and cross-reference it if they choose this method to indicate the collateral for purposes of the financing statement).

⁸⁷ U.C.C. § 9-502(a)(1).

debtor's exact name.⁸⁸ The Code contains different rules for providing the debtor's name, depending on the debtor's status.⁸⁹

Section 9-503 lays out how to sufficiently provide the name of the debtor.⁹⁰ If the debtor is a "registered organization," a secured lender, to sufficiently provide the name of the debtor, must use "the name that is stated to be the registered organization's name on the public organic record most recently filed with or issued or enacted by the registered organization's jurisdiction of organization which purports to state, amend, or restate the registered organization's name."⁹¹ The Code defines "registered organization" as "an organization formed or organized solely under the law of a single state or the United States by the filing of a public organic record with, the issuance of a public organic record by, or the enactment of legislation by the State or the United States."⁹² Furthermore, the Code is explicit when it comes to trade names, stating that providing the trade name alone will render an insufficient financing statement.⁹³

If a secured lender fails to comply with section 9-503, but a third party is able to find the secured lender's financing statement by searching under the debtor's correct name using the "standard search logic" of the filing office, the financing statement is not rendered ineffective because it is not considered "seriously misleading."⁹⁴ Regardless of this safe-harbor, secured lenders must do all they can to ensure they are providing the exact name of the debtor, as some states' filing offices have stringent search parameters.⁹⁵

⁸⁸ See CLARK & CLARK, *supra* note 73, § 2.09 (describing how filing offices index).

⁸⁹ See *id.* (noting that Article 9 has introduced clear rules for lenders to follow regarding providing the name of the debtor). The Code has rules for providing the debtor name for a registered organization, decedent's estate, trust or trustee, general partnership, or individual, and creates a residual rule for other types of debtors. U.C.C. § 9-503. This Note will only detail the rules surrounding debtors as registered organizations. See *infra* notes 91–93 and accompanying text (describing the rules for providing a debtor's name when the debtor is a registered organization).

⁹⁰ U.C.C. § 9-503.

⁹¹ *Id.* § 9-503(a)(1).

⁹² *Id.* § 9-102(a)(71).

⁹³ *Id.* § 9-503(c). If a company is named "X, Inc." it may have a trade name such as "X Company" or "X Holdings." See *id.* In *In re EDM Corp.*, the creditor provided the actual name of the debtor and the trade name of the debtor on the financing statement: "EDM CORPORATION D/B/A EDM EQUIPMENT." *Hastings State Bank v. Stalnakar (In re EDM Corp.)*, 431 B.R. 459, 461 (B.A.P. 8th Cir. 2010). The d/b/a, "doing business as," indicating the debtor's trade name, was an unnecessary inclusion for providing the name of the debtor. *Id.* at 468. The court ultimately held that the financing statement was insufficient due to the creditor's failure to sufficiently provide the name of the debtor and stated "[t]rade names may be added, but not as part of the organizational name itself." *Id.* at 466.

⁹⁴ U.C.C. § 9-506(c). A third-party creditor is not required to search the files before extending credit and taking a security interest in the debtor's assets, but any prudent creditor would see if there are any existing liens on the debtor's assets that would have priority over its claim should it extend credit. See *id.* § 9-322 (stating that the first party to file or perfect has priority over subsequent security interests).

⁹⁵ See CLARK & CLARK, *supra* note 73, § 2.09 (stating the importance of doing due diligence and providing the exact debtor name); see also *In re EDM Corp.*, 431 B.R. at 468 (finding that the inclusion of the debtor's trade name after the debtor's correct name made the financing statement seriously

Occasionally, debtors change their name; in that case, any financing statement filed under their name might be rendered seriously misleading.⁹⁶ Under these circumstances, “the financing statement is effective to perfect a security interest in collateral acquired by the debtor before, or within four months after, the filed financing statement becomes seriously misleading.”⁹⁷ For collateral acquired more than four months after the name change, the financing statement will not perfect this collateral.⁹⁸ Therefore, an amendment to the financing statement must be filed within four months of the name change if the lender wants to remain continuously perfected as to all collateral and maintain its original priority date.⁹⁹

II. COURTS’ INTERPRETATIONS OF ARTICLE 9 REGARDING COLLATERAL INDICATIONS BY REFERENCE AND DEBTOR NAMES

The contrasting holdings of *In re Financial Oversight and Management Board for Puerto Rico (In re Financial Oversight)* and *In re I80 Equipment, LLC* created a circuit split between the First and Seventh Circuits on the issue of the sufficiency of a collateral indication by reference for purposes of a financing statement.¹⁰⁰ Further, *In re Financial Oversight* gives rise to a new question under section 9-503 of the UCC because the debtor is a government entity and the Puerto Rican legislature enacted laws that were inconsistent with respect to the name of the debtor.¹⁰¹

This Part lays out the facts of each case and examines the courts’ reasoning for their respective holdings regarding the collateral description and the First Circuit’s reasoning regarding the debtor’s name.¹⁰² Section A provides the

misleading because a search using only the debtor’s correct name did not produce the filed financing statement); Official Comm. of Unsecured Creditors for Tyringham Holdings, Inc. v. Suna Bros. (*In re Tyringham Holdings, Inc.*), 354 B.R. 363, 368 (Bankr. E.D. Va. 2006) (holding that the omission of “Inc.” in providing the debtor’s name in the financing statement enabled the financing statement to be seriously misleading because a search under the debtor’s correct name, which included “Inc.,” did not produce the financing statement).

⁹⁶ See CLARK & CLARK, *supra* note 73, § 2.09 (describing the process of filing when a debtor changes its name).

⁹⁷ U.C.C. § 9-507(c)(1).

⁹⁸ See *id.*

⁹⁹ See *id.*

¹⁰⁰ Compare *Altair Glob. Credit Opportunities Fund (A), LLC v. Fin. Oversight & Mgmt. Bd. for P.R. (In re Fin. Oversight & Mgmt. Bd. for P.R.) (In re Financial Oversight)*, 914 F.3d 694, 143 (1st Cir. 2019) (determining that referencing property in a publicly available document did not provide notice to searchers and therefore did not perfect bondholders’ security interest), with *First Midwest Bank v. Reinbold (In re I80 Equip., LLC)*, 938 F.3d 866, 870 (7th Cir. 2019) (finding that a financing statement’s collateral indication that referred to collateral described in the unattached security agreement did provide adequate notice to searchers and did perfect the creditor’s security interest).

¹⁰¹ See *In re Financial Oversight*, 914 F.3d at 703 (attesting to the unique circumstances that created an ambiguity in the debtor’s name).

¹⁰² See *infra* notes 108–186 and accompanying text.

facts of *In re Financial Oversight*.¹⁰³ Section B provides the facts of *In re I80 Equipment, LLC*.¹⁰⁴ Section C details the First Circuit's affirmation of the District Court of Puerto Rico's decision that the collateral indications were insufficient.¹⁰⁵ Section D summarizes the Seventh Circuit's holding that the collateral indication at issue was sufficient.¹⁰⁶ Section E explores the First Circuit's holding that the amendments provided a valid debtor name.¹⁰⁷

A. Background of *In re Financial Oversight*

The issues relating to collateral descriptions and debtor names in financing statements came to the forefront in *In re Financial Oversight*.¹⁰⁸ In 1951, the Commonwealth of Puerto Rico's legislature enacted the Enabling Act, which created and authorized the Employees Retirement System of the Government of the Commonwealth of Puerto Rico (ERS) to issue debt and secure its debt with its own assets.¹⁰⁹ On January 24, 2008, the ERS issued pension funding bonds in accordance with a Pension Funding Bond Resolution (Resolution).¹¹⁰ The Resolution is publicly available, both electronically and in hard copy.¹¹¹ The holders of the ERS bonds (Bondholders) that were issued in furtherance of the Resolution were granted a security interest in collateral termed "Pledged Property."¹¹² "Pledged Property" was defined in detail in the Resolution.¹¹³

¹⁰³ See *infra* notes 108–134 and accompanying text.

¹⁰⁴ See *infra* notes 135–140 and accompanying text.

¹⁰⁵ See *infra* notes 141–159 and accompanying text.

¹⁰⁶ See *infra* notes 160–166 and accompanying text.

¹⁰⁷ See *infra* notes 167–186 and accompanying text.

¹⁰⁸ See *infra* notes 109–134 and accompanying text (laying out the facts of *In re Financial Oversight and Management Board for Puerto Rico*).

¹⁰⁹ P.R. LAWS ANN. tit. 3, §§ 761–788 (2011); Fin. Oversight & Mgmt. Bd. for P.R. v. Altair Glob. Credit Opportunities Fund (A), LLC (*In re Fin. Oversight & Mgmt. Bd. for P.R.*) (*In re Financial Oversight (P.R.)*), 590 B.R. 577, 583 (D.P.R. 2018). The ERS fulfills the purpose of dispensing pension payments to retired employees of the Commonwealth of Puerto Rico, various public corporations in the Commonwealth, and selected municipalities. *In re Financial Oversight (P.R.)*, 590 B.R. at 583.

¹¹⁰ *In re Financial Oversight (P.R.)*, 590 B.R. at 583. Approximately \$2.9 billion in bonds were issued pursuant to the Resolution. Brief for Appellee the Financial Oversight and Management Board for Puerto Rico, as Representative for the Employees Retirement System of the Government of the Commonwealth of Puerto Rico at 7, *In re Financial Oversight*, 914 F.3d 694 (No. 18-1836) [hereinafter Appellee's Brief].

¹¹¹ *In re Financial Oversight (P.R.)*, 590 B.R. at 584. The Resolution can be found in hard copy at the offices of ERS and on the websites of the Government Development Bank, the ERS, and the Electronic Municipal Market Access System. *Id.*

¹¹² *Id.* The majority of the Bondholders include individual Puerto Rican citizens and local Puerto Rican businesses. Appellants' Opening Brief at 4, *In re Financial Oversight*, 914 F.3d 694 (No. 18-1836) [hereinafter Appellants' Brief].

¹¹³ *In re Financial Oversight (P.R.)*, 590 B.R. at 584. The Resolution defined "Pledged Property" to include the following: all revenues, funds, accounts, subaccounts, cash and non-cash proceeds, rights to personal property pledged by the ERS, and more. *Id.* It further defined "revenues" to include

The Bondholders and ERS executed a security agreement (Security Agreement) on June 2, 2008.¹¹⁴ The Security Agreement granted the Bondholders “a security interest in (i) the Pledged Property, and (ii) all proceeds thereof and all after-acquired property, subject to application as permitted by the Resolution.”¹¹⁵ The definition of “Pledged Property” was not included in the Security Agreement, but the Security Agreement stated that “[a]ll capitalized words not defined herein shall have the meanings ascribed to them in the Resolution.”¹¹⁶

Two initial financing statements were filed with the Puerto Rico Department of State about a month after Bondholders and the ERS executed the Security Agreement.¹¹⁷ Each financing statement identifies the debtor as “Employees Retirement System of the Government of the Commonwealth of Puerto Rico.”¹¹⁸ In the collateral indication field, each financing statement described the collateral as “[t]he pledged property described in the Security Agreement attached as Exhibit A hereto and by this reference made a part hereof.”¹¹⁹ The Security Agreement was attached to each financing statement, but the Resolution that defined the collateral, the “Pledged Property,” was not included in either of the filings.¹²⁰

In 2013, the Puerto Rican legislature passed Act 3-2013, which amended the original Enabling Act that established the ERS.¹²¹ Among various changes, it amended section 1-101 of the Enabling Act, causing a potential name change of the ERS to the “Retirement System for Employees of the Government of the

all employers’ contributions, proceeds from bonds, income and interest realized by any fund or account, and more. *Id.*

¹¹⁴ *Id.* at 585.

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.* The Security Agreement provided that the ERS make the UCC filings and that the secured party not be responsible for any of them. Appellants’ Brief, *supra* note 112, at 6. Thus, ERS filed the two initial financing statements. *Id.* This is an uncommon arrangement, as creditors should never rely on debtors to make a filing that comports with the rules of the Code. Dan Schechter, *Although Original Financing Statements Failed to Describe Collateral, \$2.9 Billion Bond Issuance Was Properly Secured Because Amendments to Financing Statements Later Cured the Defects*. [*In re* Financial Oversight and Management Board for Puerto Rico, 2019 WL 364029 (1st Cir. 2019)], COM. FIN. NEWSL., Feb. 4, 2019 (describing the dangers of relying on debtors for filings and recommending that creditors should at least carefully review the forms that the debtor prepares to file on behalf of the creditor).

¹¹⁸ *In re Financial Oversight (P.R.)*, 590 B.R. at 585.

¹¹⁹ *Id.*

¹²⁰ *Id.* In sum, the Resolution included the definition of “Pledged Property,” but it was not attached to the Security Agreement, which omitted the definition of “Pledged Property.” Appellee’s Brief, *supra* note 110, at 8.

¹²¹ 2013 P.R. LAWS 39; *In re Financial Oversight (P.R.)*, 590 B.R. at 585. The Enabling Act was first approved in Spanish on April 4, 2013 and translated and published into English on February 28, 2014. *In re Financial Oversight*, 914 F.3d at 706.

Commonwealth of Puerto Rico” (RSE).¹²² Both the old name and the new name, ERS and RSE, are used throughout Act No. 3-2013.¹²³ Further, both names are used throughout the amended Enabling Act to designate the name of the retirement and benefit system.¹²⁴

The Department of State received a total of four UCC-3 amendment forms filed by the Bondholders in December 2015 and January 2016.¹²⁵ In each amendment form a new collateral indication reads as follows: “[t]he Pledged Property and all proceeds thereof and all after-acquired Property as described more fully in Exhibit A hereto and incorporated by reference.”¹²⁶ None of the UCC-3s included a debtor name and only referred to the debtor as “ERS” in Exhibit A attached to each of the UCC-3s.¹²⁷

On June 30, 2016, the United States enacted the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA) into federal law.¹²⁸ The law established the Financial Oversight and Management Board for Puerto Rico; it had the task of restructuring the government of Puerto Rico’s debt, which rose to over \$70 billion.¹²⁹ Section 405 of PROMESA put in place an automatic stay that prohibited creditors from obtaining or enforcing any security interest against the Puerto Rican government.¹³⁰ The Bondholders filed a motion in the U.S. District Court for the District of Puerto Rico on September

¹²² See Appellee’s Brief, *supra* note 110, at 39 (detailing the potential name change). The text that amended the English language Enabling Act reads: “A retirement and benefit system to be designated as the ‘Retirement System for Employees of the Government of the Commonwealth of Puerto Rico,’ which shall be considered a trust, is hereby created.” P.R. LAWS ANN. tit. 3, § 761. The original Spanish language Enabling Act and amended Spanish language Enabling Act consistently designated the debtor’s name as the following: “Sistema de Retiro de los Empleados del Gobierno del Estado Libre Asociado de Puerto Rico.” *Id.*

¹²³ 2013 P.R. LAWS 39.

¹²⁴ P.R. LAWS ANN. tit. 3, §§ 761–788. Compare *id.* § 761 (stating “[a] retirement and benefit system to be designated as the ‘Retirement System for Employees of the Government of the Commonwealth of Puerto Rico,’ which shall be considered a trust, is hereby created”), with *id.* § 763(36) (defining “System” to “mean the Employees Retirement System of the Government of the Commonwealth of Puerto Rico”).

¹²⁵ *In re Financial Oversight (P.R.)*, 590 B.R. at 585.

¹²⁶ *Id.* Exhibit A is attached to each of the UCC-3s and includes definitions for terms such as “Revenues” and “Employers’ Contributions,” terms found in the publicly available Resolution that the initial financing statements refer to. *Id.* at 586.

¹²⁷ *Id.*

¹²⁸ Nick Brown, *Puerto Rico Authorizes Debt Payment Suspension; Obama Signs Rescue Bill*, REUTERS (Jun. 30, 2016), <https://www.reuters.com/article/us-puertorico-debt/puerto-rico-authorizes-debt-payment-suspension-obama-signs-rescue-bill-idUSKCN0ZG09Y> [<https://perma.cc/5QNA-RBZZ>]. See generally Puerto Rico Oversight, Management, and Economic Stability Act, 48 U.S.C. §§ 2101–2241 (2018).

¹²⁹ 48 U.S.C. § 2121(b)(1); see Brown, *supra* note 128 (describing that the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA) allows Puerto Rico to undergo a “bankruptcy-like debt restructuring process”). PROMESA states that its purpose is to achieve “fiscal responsibility and access to the capital markets.” 48 U.S.C. § 2121(a).

¹³⁰ 48 U.S.C. § 2194.

21, 2016, to lift the automatic stay in *Altair Global Credit Opportunities Fund (A), LLC v. Garcia-Padilla*.¹³¹ The ERS, among other parties, entered into a stipulation to resolve the dispute.¹³² This stipulation mandated that the ERS deposit all contributions received during the section 405 automatic stay into a separate, segregated account.¹³³ Soon after, the ERS filed suit against the Bondholders asserting that the Bondholders failed to perfect its security interest.¹³⁴

B. Background of *In re* I80 Equipment, LLC

I80 Equipment, LLC was a business in Illinois that received a loan from First Midwest Bank to fund its purchase and refurbishment of trucks for resale.¹³⁵ The parties executed a security agreement that granted First Midwest Bank a security interest in nearly all of I80 Equipment, LLC's assets.¹³⁶ Twenty-six asset categories were described, including "accounts, cash, equipment, instruments, goods, inventory, and all proceeds of any assets."¹³⁷ Subsequently, First Midwest Bank filed a financing statement to perfect its security interest.¹³⁸ The financing statement indicated the collateral by stating the following: "All Collateral described in First Amended and Restated Security Agreement dated March 9, 2015 between Debtor and Secured Party."¹³⁹ Two years later, I80 Equipment, LLC filed for bankruptcy and its trustee argued First Midwest Bank did not properly perfect its security interest because its collateral indication was insufficient.¹⁴⁰

¹³¹ *Altair Glob. Credit Opportunities Fund (A), LLC v. United States*, 138 Fed. Cl. 742, 766 (2018). The Bondholders filed their motion to lift the automatic stay because they argued that the ERS and the Commonwealth of Puerto Rico failed to provide adequate protection to their property interests and "the value of their liens would inevitably decline as a result of the actions by ERS and the Commonwealth." *Id.* at 766–67.

¹³² *In re Financial Oversight (P.R.)*, 590 B.R. at 586.

¹³³ *Id.*

¹³⁴ *Id.* at 587. In addition to claims regarding the Bondholders' security interest, the suit brought by the ERS through the Financial Oversight and Management Board sought declarations regarding the Bondholders' compliance with the stipulation. *In re Financial Oversight*, 914 F.3d at 708. The Bondholders' brought nine counterclaims regarding their security interests and claimed the ERS violated the stipulation. *Id.*

¹³⁵ *In re I80 Equip., LLC*, 938 F.3d at 869.

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.*

*C. The First Circuit's and District Court of Puerto Rico's Decision
That the Collateral Indications Were Insufficient*

Article 9's filing system warns third parties that the secured lender on file may have a security interest in the collateral described.¹⁴¹ The collateral description serves as a "starting point for investigation" when searchers are considering whether to lend to a particular debtor.¹⁴² In *In re Financial Oversight*, the Bondholders contended that the collateral indication's cross-reference to an attached security agreement—which in turn cross-referenced a publicly available document not in the filings—satisfied this notice requirement.¹⁴³

The Bondholders pointed to *Chase Bank of Florida, N.A. v. Muscarella* for support.¹⁴⁴ The collateral indication in that case referenced collateral defined in an attached exhibit and the exhibit referenced an unattached document that properly defined the collateral.¹⁴⁵ The court held that the collateral indication was sufficient because a searcher could ascertain that the collateral was the debtor's share in a partnership.¹⁴⁶ The court quoted the Official Comments to the Code at then section 9-402 (currently section 9-502) and noted, "[f]urther inquiry from the parties concerned [was] necessary to disclose the complete state of affairs."¹⁴⁷ The Bondholders argued that its collateral indication is similar and should be deemed sufficient because it provided an adequate starting point for searchers, as they could find the true nature of the collateral by looking up the publicly available Resolution.¹⁴⁸ In contrast, a searcher could not know the collateral was anything more than an assignment of a partnership interest in *Muscarella* because the agreement laying out the partnership interest was not attached nor publicly available.¹⁴⁹ The District Court of Puerto Rico found this

¹⁴¹ See *In re Cushman Bakery*, 526 F.2d 23, 28 (1st Cir. 1975) (articulating the function of Article 9's notice system); U.C.C. § 9-502 cmt. 2.

¹⁴² Appellants' Brief, *supra* note 112, at 22 (quoting *John Deere Co. of Balt. v. William C. Pahl Constr. Co.*, 34 A.D.2d 85, 88 (N.Y. App. Div. 1970)).

¹⁴³ See *id.* at 24 (arguing that the reference to an external, publicly available document satisfies the UCC's collateral description requirement).

¹⁴⁴ *Id.* (citing *Chase Bank of Fla., N.A. v. Muscarella*, 582 So. 2d 1196, 1197 (Fla. Dist. Ct. App. 1991)).

¹⁴⁵ *Chase Bank*, 582 So. 2d at 1197. The exhibit stated: "[a]ll of the Debtor's right, title and interest, in the 'Collateral' as more particularly defined and described in that certain Assignment of Partnership Interest and Security Agreement dated January 20, 1987, up to an amount not to exceed \$600,000." *Id.*

¹⁴⁶ See *id.* at 1198 (holding that searchers were on notice that a partnership interest was the collateral).

¹⁴⁷ *Id.* (quoting U.C.C. § 9-402 cmt. 2) (currently residing at § 9-502 cmt. 2).

¹⁴⁸ See Appellants' Brief, *supra* note 112, at 23 (noting that courts have upheld collateral descriptions that require use of external evidence as sufficient).

¹⁴⁹ See *id.* at 24–25 (describing the court's reasoning in *Muscarella* to only require the financing statement to be the starting point of inquiry).

argument unpersuasive, stating that the collateral indication “requires a level of specificity sufficient to delineate the outer boundaries of the collateral.”¹⁵⁰

The Bondholders further contended that because the Resolution was a publicly available document, the description was adequate.¹⁵¹ The District Court noted that although some courts have held that collateral indications that reference publicly available documents are sufficient, those documents were publicly available in the sense that they were in UCC filings, not outside of the filing office.¹⁵² Article 9’s notice function, the court noted, would be defeated if searchers had to go outside the UCC records to ascertain an indication of the collateral.¹⁵³ Therefore, an indication reading “Pledged Property” is inadequate because it fails to include a “definition or explanation of the term’s scope or meaning” in the filings.¹⁵⁴

In affirming the District Court’s collateral indication holding, the First Circuit noted that the filing system’s purpose is to provide notice to other creditors.¹⁵⁵ The court focused on the problems with the filings, stating that the collateral indication did not describe collateral in any way, did not tell searchers where to find the publicly available Resolution, and that the Resolution could not be found at the UCC filing office.¹⁵⁶ The court noted multiple concerns it had with searchers going outside of the UCC files to determine the collateral in a publicly available document.¹⁵⁷ This included concerns about whether the collateral indicated in this document is the most recent version, whether the document includes the full list of the collateral, and whether the document is authentic.¹⁵⁸ This finding contributed to the court’s determination that the collateral indication did not provide adequate notice, thus rendering the initial financing statements insufficient.¹⁵⁹

D. The Seventh Circuit’s Decision that the Collateral Indications Were Sufficient

The Seventh Circuit began its analysis by noting a common canon of statutory interpretation: statutes should be given their plain and ordinary meaning

¹⁵⁰ *In re Financial Oversight (P.R.)*, 590 B.R. at 589.

¹⁵¹ *Id.*

¹⁵² *Id.*; see *In re Tebbs Constr. Co.*, 39 B.R. 742, 747–48 (Bankr. E.D. Va. 1984) (holding that a collateral description that referenced a security agreement attached to a previous filing was an adequate collateral description).

¹⁵³ See *In re Financial Oversight (P.R.)*, 590 B.R. at 589 (expressing concerns about having searchers go outside of the filing office to find the collateral potentially subject to a security interest).

¹⁵⁴ *Id.* at 590.

¹⁵⁵ See *In re Financial Oversight*, 914 F.3d at 711 (describing the goals of the filing system).

¹⁵⁶ *Id.*

¹⁵⁷ *Id.* at 711 n.12.

¹⁵⁸ *Id.*

¹⁵⁹ *Id.* at 712.

when the language is clear and unambiguous.¹⁶⁰ It used this method to interpret Illinois' section 9-502.¹⁶¹ In doing so, it found that the statute's use of "indicate" need not provide any sort of lead to what collateral is possibly subject to a lien; rather, "indicate" requires "a 'signal' that 'point[s] out' or 'direct[s] attention to' an underlying security interest."¹⁶²

The court next noted that incorporation by reference is a permissible method to describe collateral under section 9-108.¹⁶³ This construction, along with the court's approach to "indicating" the collateral, enabled the court to find that the indication was sufficient.¹⁶⁴ The financing statement references the underlying security agreement, which in turn lists twenty-six categories of collateral.¹⁶⁵ According to the court, this was a sufficient indication of collateral as searchers were on notice that a lien may exist, and they knew where to look if they wanted to find the exact collateral that may be subject to a lien.¹⁶⁶

E. The First Circuit's Holding That the Amendments Provide the Name of the Debtor

Although the initial financing statements failed to perfect the Bondholders' security interest, the amendments filed in 2015 and 2016 could have fixed the defective collateral indications in the initial financing statements or independently perfected the Bondholders' security interest.¹⁶⁷ After affirming the District

¹⁶⁰ *In re I80 Equip., LLC*, 938 F.3d at 870.

¹⁶¹ See 810 ILL. COMP. STAT. ANN. 5/9-502 (West 2020) (stating that one of the requirements for a sufficient financing statement is that it "indicate[] the collateral covered by the financing statement"); see also U.C.C. § 9-502(a)(3)).

¹⁶² *In re I80 Equip., LLC*, 938 F.3d at 871 (first quoting *Indicate*, WEBSTER'S NEW WORLD COLLEGE DICTIONARY (4th ed. 2001); then quoting *Indicate*, THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE (4th ed. 2000); and then quoting *Indicate*, MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY (11th ed. 2003)).

¹⁶³ *Id.* at 874. Recall that one way to indicate collateral on a financing statement is to comply with the requirements of section 9-108. U.C.C. § 9-504(a)(1).

¹⁶⁴ *In re I80 Equip., LLC*, 938 F.3d at 874. The security agreement, as the court explains, states twenty-six collateral types subject to the security agreement. *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ See *id.* (further noting that, as a result, the trustee is unable to avoid First Midwest Bank's lien in I80 Equipment, LLC's bankruptcy proceedings under section 544(a) of the Bankruptcy Code).

¹⁶⁷ *In re Financial Oversight (P.R.)*, 590 B.R. at 590. The court noted two cases that lend weight to the Bondholders' argument. *Id.* In *Miami Valley Production Credit Ass'n v. Kimley*, the Court of Appeals of Ohio held that two initial defective financing statements, which on their own were defective, but together satisfied the financing statement requirements, could be read together to produce a sufficient financing statement that perfects the lender's security interest. 536 N.E.2d 1182, 1183 (Ohio Ct. App. 1987). This financing statement would be deemed effective as of the date of the filing of the second defective initial financing statement. *Id.* In *In re G.G. Moss Co.*, the creditor filed an initial financing statement in the wrong office. *Maremont Mktg., Inc. v. Marshall (In re G.G. Moss Co.)*, No. 79-01585, 1981 WL 137971, at *778 (Bankr. E.D. Va. July 20, 1981). Three years later, the creditor filed an amendment in the correct office. *Id.* The Bankruptcy Court for the Eastern District of Virginia

Court's decision regarding the collateral indications in the initial financing statements, the First Circuit found that the amendments used the appropriate name.¹⁶⁸ The court first looked at the statutory language requiring that the debtor's name be provided when the debtor is a registered organization and the language in the amended Enabling Act.¹⁶⁹ The appropriate focus when inquiring into a debtor's name should be on the entire "public organic record . . . which purports to state, amend, or restate the registered organization's name."¹⁷⁰ The court noted that, although section 1-101 of the amended Enabling Act designates the name of the retirement system as RSE, there is other language in the amended Act that refers to the retirement system as ERS.¹⁷¹ Therefore, section 1-101 of the amended Enabling Act is not the only clause in the Act that one must look at when determining the retirement system's name.¹⁷²

The court addressed the retirement system's argument that section 1-101 of the amended Enabling Act controls the name of the debtor because of the "to be designated" clause.¹⁷³ While RSE is used in the amended Enabling Act three times, ERS is used more than thirty-five times.¹⁷⁴ In view of this evi-

determined that the amendment perfected the creditor's security interest because it contained the required information for a valid initial financing statement. *Id.* at *779.

¹⁶⁸ See *In re Financial Oversight*, 914 F.3d at 719 (concluding that the initial financing statements and amendments, taken together, perfect the Bondholders' security interest). Before engaging in its analysis regarding the debtor's name on the amendments, the First Circuit held that the collateral description on the amendments met the requirements for a sufficient collateral description. *Id.* at 714. The amendments, which referenced an attached exhibit for its collateral description, contained a detailed definition of "Pledged Property" which the court held as sufficient under the Code. *Id.*

¹⁶⁹ *Id.* at 716. The two clauses are section 9-503(a)(1) of the UCC and section 761 of the amended Enabling Act. *Id.*; see also P.R. LAWS ANN. tit. 3, § 761; U.C.C. § 9-503(a)(1). Section 9-503(a)(1) requires the financing statement to provide the "name on the public organic record . . . enacted by the registered organization's jurisdiction of organization which purports to state, amend, or restate the registered organization's name." U.C.C. § 9-503(a)(1). Section 761 of the amended Enabling Act provides "[a] retirement and benefit system to be designated as the 'Retirement System for Employees of the Government of the Commonwealth of Puerto Rico,' which shall be considered a trust, is hereby created." P.R. LAWS ANN. tit. 3, § 761.

¹⁷⁰ *In re Financial Oversight*, 914 F.3d at 716 (quoting U.C.C. § 9-503(a)(1)).

¹⁷¹ See *id.* (reconciling the amended Enabling Act with the Code's requirements of providing the name of the debtor if the debtor is a registered organization).

¹⁷² *Id.* at 716–17.

¹⁷³ *Id.* at 717 (countering the retirement system's argument). See generally P.R. LAWS ANN. tit. 3, § 761.

¹⁷⁴ *In re Financial Oversight*, 914 F.3d at 717. The court stressed the usage of the ERS name in the amended Enabling Act's definition of the term "system." *Id.* The definition section states the following: "System. Shall mean the Employees Retirement System of the Government of the Commonwealth of Puerto Rico." P.R. LAWS ANN. tit. 3, § 763(36). Further, although section 1-101 designates the name of the debtor as RSE, the section's header uses the name ERS. *Id.* § 761. The ERS name is also included in other section headings throughout the amended Enabling Act. See *id.* §§ 761a, 762, 763, 764, 765, 765a, 766, 766a, 766b, 766c, 766d, 768, 768a, 769, 769a, 770, 770a, 771, 772, 773, 774, 775, 776, 777, 778, 779, 779a, 779b, 779c, 781a, 782, 783, 784, 785, 786, 786a, 786b, 787, 788.

dence, the court found no reason to disregard the ERS name and found no rationale explaining why the RSE name is used instead.¹⁷⁵

The court next highlighted the Puerto Rican legislature's intent behind amending the Enabling Act; specifically, that it did not find evidence of an intentional name change from ERS to RSE.¹⁷⁶ In its Statement of Motives for amending the Enabling Act in 2013, the legislature identified "the fiscal crisis in Puerto Rico, the causes of the crisis, and the need to act promptly."¹⁷⁷ The court also reasoned that in amendments prior to the 2013 amendments, the legislature changed the name of the retirement system, such as in 2004, demonstrating that the legislature is capable of properly changing the name when it wishes to.¹⁷⁸ In addition, the Spanish language version of the 2013 amended Enabling Act uses the same name to designate the retirement system as the pre-2013 Enabling Act.¹⁷⁹ Based on these facts, the court concluded that the legislature did not intend to change the name of the retirement system from ERS to RSE.¹⁸⁰

The court also found noteworthy that the retirement system referred to itself as ERS in its court filings both before and after the Enabling Act was amended and never referred to itself as RSE.¹⁸¹ Moreover, the name of the retirement system was ERS for over sixty years, so any creditor searching the system to find liens prior to the purported name change would have to search under "ERS."¹⁸² This also helped the court determine that, along with the varied use of RSE and ERS in the amended Enabling Act, any prudent creditor would at least search under the ERS name.¹⁸³

All of these factors contributed to the holding that ERS was the valid name for UCC purposes after the Enabling Act was amended in 2013.¹⁸⁴ As a

¹⁷⁵ *In re Financial Oversight*, 914 F.3d at 717.

¹⁷⁶ *Id.* at 717–18.

¹⁷⁷ *Id.* at 717.

¹⁷⁸ *Id.* at 718.

¹⁷⁹ *Id.* at 716 n.20. The court also called attention to a Puerto Rican law stating that when there is any discrepancy between the English and Spanish version of the same law, "the Spanish text shall be preferred to the English" when the legislature originally passed the law in Spanish. *Id.* at 717; *see also* P.R. LAWS ANN. tit. 31, § 13 (2011). The court reasoned that this rule implied that the legislature did not intend to change the name because the Spanish name of the retirement system remained the same in the pre-2013 Enabling Act and the amended Enabling Act. *In re Financial Oversight*, 914 F.3d at 717.

¹⁸⁰ *In re Financial Oversight*, 914 F.3d at 717. Years after the amended Enabling Act was promulgated, the official English translation of the Puerto Rico Financial Emergency and Fiscal Responsibility Act of 2017 referenced the retirement system as "the Employees Retirement System." *Id.* at 718. The court mentioned that this is also evidence that the legislature did not intend to change the name from ERS to RSE. *Id.*

¹⁸¹ *Id.* at 718.

¹⁸² *Id.* at 718–19. *See generally* U.C.C. § 9-507(c)(1). When a debtor changes its name, "the financing statement is effective to perfect a security interest in collateral acquired by the debtor before, or within four months after, the filed financing statement becomes seriously misleading." *Id.*

¹⁸³ *In re Financial Oversight*, 914 F.3d at 719.

¹⁸⁴ *Id.*

result, the court concluded that the 2015 and 2016 amendments to the initial financing statements perfected the Bondholders' security interest.¹⁸⁵ According to the court, the amendments "contained an appropriate name of the debtor under the Commonwealth's Article 9."¹⁸⁶

III. INSUFFICIENT COLLATERAL INDICATIONS AND WHAT TO DO WHEN THE DEBTOR IS A GOVERNMENT ENTITY

The facts of *In re Financial Oversight and Management Board for Puerto Rico (In re Financial Oversight)* raise a novel issue surrounding the Code's Article 9.¹⁸⁷ Never before has a court had to interpret a statute that creates an ambiguity as to the name of a debtor that is a government entity.¹⁸⁸ Furthermore, *In re Financial Oversight* and *In re I80 Equipment, LLC* articulate two different conclusions about the sufficiency of a financing statement's collateral indication that references a security agreement.¹⁸⁹ This Part discusses how references to publicly available documents in collateral descriptions should be treated and how statutes that designate an entity's name should be read.¹⁹⁰ Section A argues that collateral indications in financing statements that reference an external document are insufficient collateral indications.¹⁹¹ Section B argues that, in determining an entity's name for purposes of a financing statement, the clause that designates the entity's name should be the name of the entity, regardless of other circumstances.¹⁹² Section C explores how future cases that present novel issues within the Article 9 framework should be analyzed.¹⁹³

A. Collateral Descriptions That Reference External (to the Filing Office) Documents for Collateral Indications, Without More, Are Insufficient

The First Circuit is correct in its analysis regarding the collateral indication: a collateral indication that references an external document, without

¹⁸⁵ *Id.*

¹⁸⁶ *Id.* Because the First Circuit concluded that the Bondholders had perfected their security interest, their security interest could not be avoided in bankruptcy using section 544(a) of the Bankruptcy Code. *Id.*

¹⁸⁷ See *Altair Glob. Credit Opportunities Fund (A), LLC v. Fin. Oversight & Mgmt. Bd. for P.R. (In re Fin. Oversight & Mgmt. Bd. for P.R.) (In re Financial Oversight)*, 914 F.3d 694, 703 (1st Cir. 2019) (attesting to the uniqueness of the issues presented).

¹⁸⁸ See *id.* (noting the novelty of the issue).

¹⁸⁹ Compare *id.* at 712 (holding that the collateral indications were insufficient because they did not provide the proper notice to subsequent creditor), with *First Midwest Bank v. Reinbold (In re I80 Equip., LLC)*, 938 F.3d 866, 874 (7th Cir. 2019) (finding that the collateral indication was sufficient).

¹⁹⁰ See *infra* notes 194–244 and accompanying text.

¹⁹¹ See *infra* notes 194–211 and accompanying text.

¹⁹² See *infra* notes 212–227 and accompanying text.

¹⁹³ See *infra* notes 228–244 and accompanying text.

more, is an insufficient collateral indication.¹⁹⁴ Although the Bondholders are correct in asserting that the financing statement is the starting point of inquiry, a financing statement's collateral indication must give some notice to third parties about what collateral may be subject to a security interest.¹⁹⁵ This idea is consistent with the Code's sufficient collateral indication requirement, where a creditor must either indicate that the financing statement covers all of the debtor's assets or all personal property or describe the collateral pursuant to section 9-108.¹⁹⁶

If a creditor is permitted to lead a searcher to an external document in its indication of the collateral it is claiming a lien on, the searcher could encounter a variety of problems.¹⁹⁷ The First Circuit appropriately posed various questions regarding the publicly available document, such as where the document could be found, how the searcher would know where to find the document, whether the public document that the description refers to is the latest version, whether it is authentic, and whether it includes a complete list of the covered collateral.¹⁹⁸ These concerns advance the proposition that collateral indications that reference external documents to indicate the collateral, without anything else, are insufficient under Article 9.¹⁹⁹

The Seventh Circuit's rationale undermines the value that collateral indication brings to the operation of the filing system.²⁰⁰ Its definition of "indicate" renders the purpose of indicating the collateral null.²⁰¹ Section 9-502(a) states the requirement for a sufficient financing statement: it (1) provides the name of the debtor; (2) provides the name of the secured party or a representative of the

¹⁹⁴ See *In re Financial Oversight*, 914 F.3d at 711–12 (concluding that the financing statements' collateral descriptions did not sufficiently indicate the collateral); Fin. Oversight & Mgmt. Bd. for P.R. v. Altair Glob. Credit Opportunities Fund (A), LLC (*In re Fin. Oversight & Mgmt. Bd. for P.R.*), 590 B.R. 577, 590 (D.P.R. 2018) (holding the collateral descriptions did not do anything more than indicate the existence of some collateral).

¹⁹⁵ See U.C.C. § 9-502 cmt. 2 (stating that "[f]urther inquiry from the parties concerned will be necessary to disclose the complete state of affairs").

¹⁹⁶ *Id.* §§ 9-108, -504. Section 9-108 prescribes that a description reasonably identifies collateral if it identifies the collateral by specific listing, category, a type of UCC category of collateral, quantity, computational or allocational formula or procedure, or any other way that makes the identity of the collateral is objectively determinable. *Id.* § 9-108.

¹⁹⁷ See *In re Financial Oversight*, 914 F.3d at 711 n.12 (listing the possible issues with requiring a searcher to look outside the files for a description of the collateral); Appellee's Brief, *supra* note 110, at 28 (raising questions regarding the sufficiency of describing the collateral in a publicly available document outside the filing office).

¹⁹⁸ *In re Financial Oversight*, 914 F.3d at 711 n.12.

¹⁹⁹ See *id.* at 711 (describing that a searcher only has notice that there is some collateral subject to a security interest, not what collateral is subject to the security interest, when looking at the financing statement in the filing office when the financing statement refers to a publicly available document, not in the filing office, for its collateral description).

²⁰⁰ See *In re 180 Equip., LLC*, 938 F.3d at 874 (finding that the collateral indication was sufficient to perfect).

²⁰¹ See *id.* (providing the court's reasoning).

secured party, and (3) indicates the collateral covered by the financing statement.²⁰² The Seventh Circuit’s reliance on the sensible creditor inquiring further into the collateral at issue and its reasoning that a financing statement that references an external-to-the-filing office security agreement for its collateral indication is sufficient means that a financing statement really does not need to indicate collateral at all.²⁰³ Despite the statutory indication requirement, a financing statement that provides the name of the debtor and the secured party (or representative of the secured party) would likely satisfy the Seventh Circuit because a searcher is on notice that a lien may exist and knows it needs to inquire further.²⁰⁴ Essentially, the Seventh Circuit ignores not only the requirement, but also any purpose that indicating the collateral provides to the Article 9 filing system.²⁰⁵

So, what purpose does indicating the collateral further? Consider two of the Code’s underlying policies: (1) “to simplify . . . the law governing commercial transactions” and (2) “to permit the continued expansion of commercial practices”²⁰⁶ With collateral indications that identify collateral that may be subject to the security agreement, creditors can see what they need to see to make a decision about whether to extend credit.²⁰⁷ It allows for swift action and does not require a potentially timely inquiry just to find out what collateral may be subject to the lien.²⁰⁸ This furthers the policy stated above: creditors can search the filing office, see the collateral subject to the security agreement, and make business decisions.²⁰⁹ The Seventh Circuit’s analysis adds the extra step of inquiring into the existing lending relationship between the debtor and secured party.²¹⁰ Article 9 does not require this step—and financing statements ought to be construed to require notice of security agreement-encumbered collateral without requiring creditors to search outside the filing office.²¹¹

B. Entities’ Names Must Not Be Unnecessarily Construed

In *In re Financial Oversight*, the First Circuit inappropriately read the debtor’s name as ERS instead of RSE.²¹² In doing so, the court introduces an

²⁰² U.C.C. § 9-502(a).

²⁰³ See *In re 180 Equip., LLC*, 938 F.3d at 874.

²⁰⁴ U.C.C. § 9-502(a)(3); see *In re 180 Equip., LLC*, 938 F.3d at 874.

²⁰⁵ U.C.C. § 9-502(a)(3).

²⁰⁶ *Id.* § 1-103(a)(1)-(2).

²⁰⁷ *Id.* § 9-504.

²⁰⁸ *Id.*

²⁰⁹ *Id.* § 1-103(a)(1)-(2).

²¹⁰ See *In re 180 Equip., LLC*, 938 F.3d at 874.

²¹¹ U.C.C. §§ 9-502(a)(3), -504.

²¹² See *In re Financial Oversight*, 914 F.3d at 714–19 (introducing a new reading to § 9-503 of the Code, counting the number of times the ERS and RSE names were used, reading into the intent of the legislature in amending the Enabling Act, looking at the history of the retirement system’s usage

impractical standard for searchers of the filing office to determine the name of the debtor when it is a government entity.²¹³ Nowhere in the Code is there a requirement that searchers read legislative intent into a statute when determining the name of a debtor when the debtor is a government entity.²¹⁴ Moreover, when a third-party creditor who is considering extending credit, reads a statute to determine the name of a government entity, it will likely not read past the clause that designates the name of the debtor because section 9-503 does not require them to do so.²¹⁵

Although the drafting error committed by the Puerto Rican legislature is rare and unlikely to occur again, courts have consistently held that in cases where the debtor's name is wrong because of a minor error and the search under the wrong name in the filing office does not disclose the financing statement, the security interest is unperfected.²¹⁶ The burden that the First Circuit

of the ERS name, and assuming what name a reasonable searcher would search under in a filing office search).

²¹³ See *id.* at 719 (determining that a clause that designates the name of a debtor does not provide the name of the debtor for filing purposes). The First Circuit's ruling is likely inapplicable to other types of debtors. See *id.* In the case of a debtor that is an individual, the individual's driver's license will only have one name and that is the name of the debtor for UCC purposes, making it impossible for there to be an interpretive issue as to the debtor's name. See U.C.C. § 9-503 (stating the rules for providing the name of the debtor when the debtor is an individual). For other types of debtors, such as a decedent's estate, trust or trustee, or general partnership, it is hard to imagine a scenario where a decedent can be interpreted to have had more than one name or the document or documents establishing the debtor create a scenario where there may be more than one name of the debtor. See *id.* (laying out the rules for providing the name of the debtor when the debtor is a decedent's estate, trust or trustee, and general partnership).

²¹⁴ Compare U.C.C. § 9-503 n.2 (noting the importance of providing the correct name of the debtor because it is the name that filing offices index under and is the name other potential creditors will search under), with *In re Financial Oversight*, 914 F.3d 719 (holding that a searcher would at least search under the long-standing name of the debtor and not necessarily the name that is designated in the amended statute that created the debtor).

²¹⁵ See P.R. LAWS ANN. tit. 3, § 761 (2011) (stating that, "[a] retirement and benefit system to be designated as the 'Retirement System for Employees of the Government of the Commonwealth of Puerto Rico,' which shall be considered a trust, is hereby created").

²¹⁶ See *Hastings State Bank v. Stalnaker (In re EDM Corp.)*, 431 B.R. 459, 468 (B.A.P. 8th Cir. 2010) (ruling that the creditor's security interest did not perfect because the debtor's name was "EDM Corporation," the financing statement provided the debtor's name as "EDM CORPORATION D/B/A EDM EQUIPMENT," and a search under this name did not disclose the creditor's financing statements); *Rushton v. Standard Indus., Inc. (In re C.W. Mining Co.)*, 488 B.R. 715, 728 (D. Utah 2013) (holding that the creditor failed to provide the name of the debtor because the creditor provided the name "CW Mining Company" instead of "C.W. Mining Company" and stating that "Article 9 is unforgiving of even minimal errors"); *Mainsource Bank v. Leaf Capital Funding, LLC (In re Nay)*, 563 B.R. 535, 540 (Bankr. S.D. Ind. 2017) (determining that a lender's security interest did not perfect because it listed the individual debtor's name as "Ronald Mark Nay" instead of "Ronald Markt Nay," the name on the individual debtor's driver's license); *PTM Techs., Inc. v. Maxus Capital Grp., LLC (In re PTM Techs., Inc.)*, 452 B.R. 165, 170 (Bankr. M.D. N.C. 2011) (deciding that a creditor's financing statement did not provide the name of the debtor and was therefore insufficient because it provided the name of the debtor as "PTM Technologies, Inc.," instead of "PTM Technologies, Inc.," and a search using the filing office's standard search logic under the incorrect name did not reveal the

places on searchers to search under more than one name is inconsistent with these decisions and is not supported by the Code.²¹⁷

In future cases, where the debtor is a government entity and the entity is established by statute, the clause that designates the name of the debtor in the statute should be the name of the debtor regardless of other circumstances.²¹⁸ The First Circuit remarkably reads section 9-503(a)(1) of the Code to allow an entire statute to designate the name of the debtor when a single clause in the statute does just that.²¹⁹ Yet, the court ignores this designation and creates an unworkable standard for searchers to guess the name of the debtor.²²⁰ It is impractical to expect that a searcher will assume legislative intent, count the number of times names are used in the statute, consider the name the entity has been historically known as, or regard the name the entity refers to itself as.²²¹

financing statements); Official Comm. of Unsecured Creditors for Tyingham Holdings, Inc. v. Suna Bros. (*In re Tyingham Holdings, Inc.*), 354 B.R. 363, 368 (Bankr. E.D. Va. 2006) (holding that the creditor did not perfect its security interest because it listed the Virginia corporation-debtor's name as "Tyingham Holdings" instead of "Tyingham Holdings, Inc.," the name listed in the public records).

²¹⁷ See U.C.C. § 9-506 n.2 ("Such a financing statement is ineffective even if the debtor is known in some contexts by the name provided on the financing statement and even if searchers know or have reason to know that the name provided on the financing statement refers to the debtor. Any suggestion to the contrary in a judicial opinion is incorrect."); *supra* note 216 and accompanying text (laying out the relevant case law).

²¹⁸ See Appellee's Brief, *supra* note 110, at 46 (expressing that the designation clause in the statute could not be clearer in providing the name of the debtor).

²¹⁹ See *In re Financial Oversight*, 914 F.3d at 719 (holding that the RSE name was a valid name for UCC purposes). The First Circuit's holding also allows the possibility for a debtor to have more than one name because it held "that the ERS name was a correct name for the debtor for UCC purposes." *Id.* In *In re Silver Dollar, LLC*, the United States Bankruptcy Court for the Eastern District of Tennessee rejected a creditor's argument that its debtor had two names. First Cmty. Bank of E. Tenn. v. Jones (*In re Silver Dollar, LLC*), 388 B.R. 317, 322 (Bankr. E.D. Tenn. 2008). The court read the language of section 9-503, notably "the name of the debtor indicated on the public record," to mean only one name. *Id.*; see CLARK & CLARK, *supra* note 73, § 2.09 (addressing the court's reasoning that a debtor can only have one name).

²²⁰ See *In re Financial Oversight*, 914 F.3d at 716 (determining that more than one clause, not just the clause that designates the name of the debtor, can state the name of the debtor for UCC purposes). Section 9-503 of the Code states that if the debtor is a "registered organization" the lender must use "the name that is stated to be the registered organization's name on the public organic record most recently filed with or issued or enacted by the registered organization's jurisdiction of organization which purports to state, amend, or restate the registered organization's name." U.C.C. § 9-503(a)(1).

²²¹ U.C.C. § 9-503(a)(1) (stating the rule for providing the name of a registered organization debtor). The First Circuit's holding is based on concluding that a reasonable searcher would have made a search under the RSE name, but that is not the requirement of the Code. *Id.*; see *In re Financial Oversight*, 914 F.3d at 719 (concluding that a reasonable searcher would search under the name that is not in the clause that designates the name of the government entity). The requirement is simply whether the creditor provided the correct name and factors related to what a reasonable searcher would do should not be considered. See U.C.C. § 9-503 (omitting any considerations about what a reasonable searcher would do).

In further analyzing the First Circuit's holding, it is helpful to consider the result had the debtor been a corporation instead of a government entity.²²² Under Delaware General Corporate Law Section 102(a)(1), a certificate of incorporation is required to set forth the name of the corporation.²²³ This often takes the form of a clause at the beginning of the certificate of incorporation that looks like the following: "The name of the corporation is Company X, Inc."²²⁴ If the certificate of incorporation refers to the corporation as "Company Y" in the remaining clauses, it would be difficult for a court to ignore the name designation clause that denotes the name of the corporation as "Company X" because the actual name of the corporation is "Company X."²²⁵ If the government entity in *In re Financial Oversight* was instead a Delaware corporation, no searcher would assume the incorporator's intent, count the number of times "Company X" and "Company Y" were used in the certificate, consider the name the corporation has been historically known as, or inquire into how the corporation refers to itself.²²⁶ Thus, the clause in the statute or certificate of incorporation that designates the name of the entity or corporation, respectively, should always be the entity's actual organizational name.²²⁷

C. How to Interpret the Code?

As discussed, *In re Financial Oversight* and *In re I80 Equipment, LLC* give rise to a contentious Article 9 issues; specifically, whether reference to external documents for a collateral indication is sufficient and what the name of a debtor is for purposes of a financing statement when the name of the debtor is ambiguous.²²⁸ In future cases involving these issues, courts should not interpret Article 9 like the Seventh Circuit did in *In re I80 Equipment, LLC*, with respect to the collateral indication issue, and like the First Circuit did in *In re Financial Oversight*, with respect to the debtor name issue.²²⁹ Instead, Article 9 should be interpreted consistent with the Code's purposes.²³⁰ Sometimes

²²² See *In re Financial Oversight*, 914 F.3d at 714 (likening a government entity to a registered organization under Article 9).

²²³ DEL. CODE ANN. tit. 8, § 102(a)(1) (2020).

²²⁴ *Id.*

²²⁵ See *id.* (laying out the rule for stating the name of a corporation); see also U.C.C. § 9-503(a)(1) (stating the rules for providing the name of a registered organization-debtor).

²²⁶ See *supra* note 221 and accompanying text.

²²⁷ See *In re Financial Oversight*, 914 F.3d at 714 (likening a government entity to a registered organization under Article 9).

²²⁸ See *In re I80 Equip., LLC*, 938 F.3d at 869 (describing the collateral indication on the secured party's financing statement); *In re Financial Oversight*, 914 F.3d at 703 (attesting to the odd circumstances and the novelty of the debtor name issue at play).

²²⁹ See *infra* notes 232–244 and accompanying text (arguing for a textualist approach when dealing with new Article 9 issues).

²³⁰ See U.C.C. § 1-103 (listing the purposes of the UCC). Recall one of the Code's purposes is "to simplify, clarify, and modernize the law governing commercial transactions." *Id.*

a broad interpretation will promote the Code's policies and other times a strict interpretation will, but the choice of interpretation should be the one that best serves the Code's policies.²³¹

When parties initiate a secured transaction, they do not attempt to follow the rules of Article 9 by making new and unforeseen interpretations of the Article's provisions.²³² Had the drafters of Article 9 wanted parties to consider a variety of factors other than the name designation clause—as the First Circuit did in its debtor name change holding in *In re Financial Oversight*—these factors would have been codified in Article 9.²³³ When parties entering into a secured transaction face a novel issue, they rely on the text of the Code and are not in a position to engage in interpretive horseplay; courts should expect this approach and rule accordingly.²³⁴ When the First Circuit held that the Bondholders could have considered legislative intent, the number of times each of the names are used in the statute, the name that the debtor has been historically known as, and the name the debtor refers to itself as, it forced future secured lenders and searchers to consider new factors that Article 9 does not suggest.²³⁵ This approach is unpredictable and can cause serious damage to parties undertaking a secured transaction.²³⁶ Applying a strict interpretation, in this instance, to Article 9's text allows parties to undergo common commercial transactions with certainty and without interpretive strain.²³⁷

In the case of the collateral indication in *In re 180 Equipment, LLC*, the Seventh Circuit's strict interpretation of the Code, specifically with respect to

²³¹ See *id.* (providing the Code's purposes).

²³² See NIMMER ET AL., *supra* note 2, at 10 (noting that a transactional attorney's role in a secured transaction is to follow the rules, minimize risks, and avoid litigation).

²³³ See U.C.C. § 9-503 (stating the rule for providing the name of the debtor on a financing statement); *supra* notes 108–134 and accompanying text (detailing the facts of *In re Financial Oversight and Management Board for Puerto Rico*).

²³⁴ See NIMMER ET AL., *supra* note 2, at 10 (stating transactional attorneys attempt to reduce risk for their clients in a secured transaction).

²³⁵ See U.C.C. § 9-503 (setting forth the rule for providing the name of a debtor).

²³⁶ See Appellee's Brief, *supra* note 110, at 45 (arguing that if § 9-503 were misconstrued, parties could not rely on official records and the risks to parties in a secured transaction would increase).

²³⁷ See U.C.C. § 1-103(a) (listing the purposes and policies of the Code, including “to simplify, clarify, and modernize the law governing commercial transactions”). Critics of this approach may argue that section 1-103(a) says “[The Uniform Commercial Code] must be liberally construed and applied to promote its underlying purposes and policies.” *Id.* A strict interpretation of the Code, therefore, goes directly against the Code's directions. See *id.* This, however, is misreading the Code, as a liberal interpretation of a Code provision that does not promote one of the Code's policies is an improper interpretation. See *id.* Thus, when the First Circuit read section 9-503(a)(1) and concluded that more than one clause can “state, amend, or restate the registered organization's name,” it liberally construed the provision inconsistent with the Code's purpose “to simplify, clarify, and modernize the law governing commercial transactions” and not consistent with any other purpose. See *In re Financial Oversight*, 914 F.3d at 716 (quoting P.R. LAWS ANN. tit. 19, § 2323(a)(1) (2011)); U.C.C. §§ 1-103(a), 9-503(a)(1) (stating the Code's purposes and setting out the rule for providing the name of a registered organization-debtor).

the meaning of the word “indicate,” failed to promote the Code’s underlying policies.²³⁸ The Seventh Circuit construed the Code in such a way that searchers cannot rely at all on the filing system to find out what collateral may be encumbered by the security interest.²³⁹ This interpretation made the law governing commercial transactions more complex, not simpler, and this is against the Code’s policies.²⁴⁰ Furthermore, as one scholar noted, and per the Code’s policy, the Code “is not untethered to other states’ interpretation.”²⁴¹ This is notable because, though it faced the same legal question, the Seventh Circuit did not even cite to the First Circuit’s *In re Financial Oversight* collateral indication decision or analysis.²⁴² To reiterate, the Code seeks to encourage uniformity, and courts ought to note this policy, let alone acknowledge its sister courts’ interpretation, before interpreting the Code.²⁴³ Moving forward, in cases presenting a novel issue arising under Article 9, courts should carefully construe Article 9; whether a narrow or broad interpretation of the Code is preferred depends on which promotes the Code’s underlying policies.²⁴⁴

CONCLUSION

In re Financial Oversight and *In re I80 Equipment, LLC* give rise to various issues that have widespread implications for transactional attorneys and others submitting financing statements to perfect security interests under Article 9. A financing statement’s collateral indication that requires a searcher to go outside of the filing office’s files and seek out a publicly available document should be deemed insufficient because it fails to give a sufficient indication of what collateral may be subject to a security interest. Otherwise, a host of concerns arises, including the authenticity of the public document, how recent it is, and whether it is the complete document. With respect to the debtor’s name, the clause in the statute or certificate of incorporation that designates the name of the entity or corporation should always be the entity’s actual organizational name. Following these approaches creates a practical standard for searchers to follow when conducting searches and will confirm that they are on notice to any existing liens on the government entity’s assets. These approaches promote an essential policy underlying the Code: certainty. When faced with

²³⁸ *In re I80 Equip., LLC*, 938 F.3d at 871–72.

²³⁹ *Id.* at 874.

²⁴⁰ U.C.C. § 1-103(a)(1).

²⁴¹ Bruce A. Markell, *The Road to Perdition: I80 Equipment, Woodbridge, and Liddle Pave the Way*, 39 BANKR. L. LETTER, Nov. 2019; see U.C.C. § 1-103(a)(3) (stating one of the Code’s policies as “to make uniform the law among the various jurisdictions”).

²⁴² Markell, *supra* note 241.

²⁴³ U.C.C. § 1-103(a)(3).

²⁴⁴ *Id.* § 1-103.

novel questions about how to interpret the Code, courts should choose the interpretation—whether broad or narrow—that best promotes its policies.

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