Secured Transactions Update

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SECURED TRANSACTIONS

Scope Issues

1. *In re Biondo*,
2012 WL 162285 (Bankr. D. Md. 2012)
Article 9 did not apply to debtor's assignment to bank of his right to termination benefits from his employer because the assignment was absolute even though the debtor retained the right to a surplus after payment of the loan.

2. *In re Wolverine Fire Apparatus Co. of Sherwood Michigan*,
465 B.R. 808 (Bankr. E.D. Wis. 2012)
Truck dealer that, after abandoning sales agreement with the debtor, allowed debtor to take possession of truck but retained title, never placed the manufacturer's warranty in effect for a new buyer, continued to expose the truck to potential buyers through its listings on its inventory list and commercial trader database, kept its inventory lender informed of the truck's location, never sent a bill showing an amount due, and never listed the truck on its accounts receivable remained the owner. However, the transfer of possession was not a mere bailment but also a consignment because the truck remained for sale, and thus the truck became available to the debtor's creditors and property of the debtor's bankruptcy estate.

3. *Cox v. Community Loans of America, Inc.*,
2012 WL 773496 (M.D. Ga. 2012)
Car title pawn transactions with members of the armed services were not sales with an option to repurchase but secured loan transactions that are void under the federal Military Lending Act, and consequently the arbitration clause in the agreements were also void.

4. *Delphi Automotive Systems, LLC v. Capital Community Economic/Industrial Dev. Corp.*,
2012 WL 967568 (Ky. Ct. App. 2012)
Pursuant to Kentucky's non-uniform § 9-109(d), which excludes from the scope of Article 9 "a public-finance transaction or a transfer by a government or governmental unit," a transaction in which a state agency leased equipment to a private entity for 84 months, after which the private entity was to become the owner of the equipment, was truly a sale with a retained security interest and was excluded from Article 9. Accordingly, the state agency was not required to perfect its security interest and because its security interest predated that of the private entity's secured lender, the state agency's interest had priority.

5. *In re Palmdale Hills Property, LLC*,
457 B.R. 29 (9th Cir. BAP 2011)
Repurchase agreements relating to mortgage loans were true sales, not secured transactions, even though the putative buyer had an obligation to resell identical loans and the loans were unique because the transaction documents unambiguously indicated the parties' intent was that the transaction be a true sale.

6. *Brenner Financial, Inc. v. Cinemacar Leasing*,
2012 WL 1448048 (N.J. App. Div. 2012)
Non-terminable five-year lease of limousine calling for payments of over $160,000 with option to buy at the end for $600 was a sale with a retained security interest because the option price was nominal.

7. *VFS Leasing Co. v. J & L Trucking, Inc.*,
2011 WL 3439525 (N.D. Ohio 2011)
Six-year Finance lease of four trucks that gave lessee the option to purchase at the end of the lease term for 8.84% of the purchase price the lessor paid was a true lease because the option price was not nominal.

8. *In re HB Logistics, LLC*,
460 B.R. 291 (Bankr. N.D. Ala. 2011)
TRAC leases of trucks were true leases due to Alabama and Texas statutes providing that "a transaction does not create a sale or security interest merely because the transaction provides that the rental price is permitted or required to be adjusted . . . by reference to the amount realized upon sale or other disposition of the motor vehicle." TRAC leases governed by Minnesota law are also true leases due to a substantially similar Minnesota statute. TRAC leases governed by Mississippi law, which lacks such a statute, were also true leases based on the economic realities and the fact that the lessor was guaranteed to receive 25% of the sale price when the vehicles are sold.

9. *In re Turner*,
2011 WL 2490600 (W.D. Mo. 2011)
Putative lease of automobile was a true lease because the lessee could terminate at any time without charge. Relief from the stay to repossess the automobile will be denied if the debtor proposes a plan calling for payments of $120/month even though the lease calls for payments of $49/week.

10. *Gibraltar Financial Corp. v. Prestige Equipment Corp.*,
949 N.E.2d 314 (Ind. 2011)
Summary judgment was improperly granted on whether six-year lease of punch press recently purchased by lessee was a true lease. Although the lessee's options to buy in year five and at the end of the lease term did not pass the bright-line test, further evidence was needed about evidence of the expectations of the parties at the time they entered into the transaction, including to such factors as the expected value of the punch press on the option dates and whether the only economically sensible course for the lessee would have been to exercise the option.

11. *In re Del-Maur Farms, Inc.*,
2011 WL 2847709 (Bankr. D. Neb. 2011)
Non-cancellable lease of equipment with option to purchase at the end for 10% of the initial purchase price and, if the lessee does not exercise the option, an obligation to renew the lease for one year for a rent that exceeds option price was a sale with a retained security interest.

12. *In re Harbour East Development, Ltd.*,
2011 WL 3035287 (Bankr. S.D. Fla. 2011)
Consensual lien on debtor's interest as seller in forfeited deposits made in connection with contracts to sell real estate was governed by real estate law, not by Article 9. Even if Article 9 applied, the mortgagee was perfected because the escrow agent had possession of the funds on behalf of the mortgagee and money, when deposited into a bank account, is still money.

13. *Textron Financial Corp. v. Weeres Industries Corp.*,
2011 WL 2682901 (D. Minn. 2011)
Inventory lender's claim against manufacturer for breach of agreement to repurchase repossessed inventory of its dealers was not governed by Article 9, and therefore lender had no duty to manufacturer to sell the inventory in a commercially reasonable manner. The lender's general duty to mitigate damages was waived in the repurchase agreement and, in any event, did not require the lender to refinance the inventory with another dealer or permit the manufacturer to make interest payments to cure the defaulting dealers' defaults.

14. *In re Salander O'Reilly Galleries*,
453 B.R. 106 (Bankr. S.D.N.Y. 2011)
Law of New York – where the debtor was located – governed the effect of the debtor's consignment agreement, not the foreign law chosen in the parties' agreement. As a result, clause calling for arbitration under the law of the Channel Islands would not be enforced.

Attachment Issues

– Existence of Security Agreement

15. *Roswell Capital Partners LLC v. Beshara*,
436 Fed. Appx. 34 (2d Cir. 2011)
Lender's security interest in debtor's assets was extinguished when the lender converted the debtor's notes to equity, and nothing in the documents restored the lender's priority when equity was re-converted to debt. Unclear if court was saying, as the lower court did, that the security interest did nor re-attach at all or merely that the re-attached security interest did not have priority.

16. *Branch Banking & Trust Co. of Virginia v. M/Y BEOWULF*,
2012 WL 464002 (S.D. Fla. 2012)
Summary judgment denied on whether bank acquired a security interest in a yacht because the putative debtor signed only in his individual capacity and, while he did own the vessel at some point, it remained unproven whether he owned it at the time he signed the security agreement given that a second builder's certification and first transfer of title filed with the Coast Guard five months later described a wholly-owned corporation as the owner, as did other documents.

17. *Monlezun v. Lyon Interests, Inc.*,
76 So. 3d 628 (La. Ct. App. 2011)
Because a resolution of a corporations board of directors authorized the president to pledge corporate equipment as collateral for loan to himself and his wife, and the resolution expressly indicated that it would remain in force until the lender received notification of its revocation, the president was authorized to pledge the collateral for a second loan after he had paid off the first.

18. *In re Bucala*,
464 B.R. 626 (Bankr. S.D.N.Y. 2012)
Promissory signed in connection with sale of manufactured home which provided that: (i) the lender could file a motor vehicle lien against the home; (ii) interest would be added to the debt "and secured by the DMV lien"; (iii) the lender was to discharge the lien when the note was fully paid; and, most important, (iv) if the borrower defaulted the home could be repossessed, was sufficient to create a security interest. It did not matter that the note misidentified the model year of the manufactured home, especially given that the sales contract properly identified the model year and the documents can be read together.

19. *In re Buttke*,
2012 WL 529241 (Bankr. D.S.D. 2012)
Application for certificate of title and certificate itself, each of which identified a security interest, did not *create or provide for* a security interest, and thus did not constitute a security agreement.

20. *Lopes v. Fafama Auto Sales*,
2011 WL 6258818 (Mass. Ct. App. 2011)
Combination of two documents signed by the car buyer – a bill of sale stating that the car dealer had a right to repossess the car for nonpayment and a certificate of title application listing the dealer as sole the lienor – constituted an authenticated security agreement.

21. *First Premier Capital LLC v. Brandt*,
465 B.R. 801 (N.D. Ill. 2011)
Security agreement that mistakenly purported to grant a security interest in the assets of the creditor, rather than the debtor, could potentially be reformed. As a result, the bankruptcy court's approval of a settlement between the creditor and the trustee that acknowledged the validity of the creditor's lien but created a carve-out for the trustee was not an abuse of discretion.

22. *Quality Ford Auto. Sales, Inc. v. Ford Motor Credit Co., LLC*,
2011 WL 2935161 (Ky. Ct. App. 2011)
Corporate car dealership that granted signed security agreement with financier remained bound by the agreement after ownership of the corporation changed.

23. *Hadassah v. Schwartz*,
2011 WL 4862757 (Ohio Ct. App. 2011)
Judgment creditor could garnish funds law firm held in client trust fund for judgment debtor because there was no written agreement granting the law firm a security interest.

24. *In re Debaeke*,
2011 WL 5563543 (Bankr. E.D. Mich. 2011)
Because, in the court's judgment, the defendant's $1,000 payment to the plaintiff was a gift not a loan, the defendant could not have a security interest in the plaintiff's go-cart that the defendant was storing.

25. *Laborers Pension Trust Fund-Detroit and Vicinity v. Interior Exterior Specialists Co.*,
2011 WL 5211481 (E.D. Mich. 2011)
Written agreement pursuant to which a judgment defendant transferred funds during appeal to a special account held by the judgment creditor, and which provided a source for payment of the judgment if the appeal was overruled, was a security agreement even though it did not expressly use the words "security interest." Because the judgment creditor's interest was perfected by possession, it was senior to the rights of a judicial lien creditor that had attempted to garnish the funds.

26. *State v. Pressley*,
2012 WL 1371389 (Ala. Civ. App. Ct. 2012
Grandmother who provided funds for the purchase of truck for which the certificate of title identified her grandson as the owner did not have a security interest because there was no written security agreement. Consequently, the grandmother was not a bona fide lienholder for the purposes of Alabama statute authorizing forfeiture of vehicles used in to convey a controlled substance.

– Description of the Collateral

27. *In re Kuranda*,
466 B.R. 39 (Bankr. E.D. Pa. 2012)
Debtor who had granted lender a security interest "in the proceeds of [a specified] lawsuit" that had already been reduced to judgment had in fact granted a security interest in the judgment itself, not merely in the monies later collected on the judgment by the debtor's bankruptcy trustee.

28. *In re TMST, Inc.*,
2012 WL 589572 (Bankr. D. Md. 2012)
Security Agreement executed by debtor-loan servicer covered only the debtor's rights as "owner" under various servicing agreements, not the debtor's rights as "servicer." Because the owner had the right to terminate and replace the servicer without cause, the rights as owner were substantially more valuable than the rights as servicer. A combined sale by the debtor's bankruptcy trustee of all rights would be allocated 95% to the rights as owner and 5% to rights as servicer, with the former therefore qualifying as proceeds of the collateral.

29. *Monticello Banking Co. v. Flener*,
(6th Cir. 2011)
Summarily affirming lower court ruling that security agreement describing the collateral as "all Debtor's . . . [deposit] accounts maintained at . . . [any] financial institution . . . , including, but not limited to, those deposit accounts styled and numbered as follows: . . . Certificate of Deposit # -9536 at Monticello Banking Company . . . [;] . . . Certificate of Deposit # -2581 at CDARS; . . . together with current [and future] deposits in the deposit account(s) . . . as well as all rights, title, interests and choices in actions associated with the deposit account(s)" was insufficient to cover debtor's interest in deposits managed through the Certificate of Deposit Account Registry Service because the debtor's rights were a security entitlement and the language did not mention "security entitlements," "investment property," or describe the "underlying financial asset."

30. *U.S. Bank v. Hanson*,
2011 WL 2847414 (D. Idaho 2011)
Brick machine that turns sawdust into wood bricks and which was integrated with existing equipment of wood pellet manufacturer by connection to a conveyor system is an "accessory" to listed collateral within the meaning of the manufacturer's security agreement.

31. *In re O & G Leasing, LLC*,
456 B.R. 652 (Bankr. S.D. Miss. 2011)
Description of collateral as "Performance Drilling Rig # 3" and four other numbered rigs was sufficient even if the exhibit providing a more complete description was not attached when the debtor signed the security agreement because the description was sufficient "to raise a red flag to a third party, so as to indicate that more investigation may be necessary to determine whether an item is subject to a security interest." In addition, the exhibit is part of the security agreement even though attached after the debtor signed it.

32. *Regions Bank v. Bric Constructors, LLC*,
2011 WL 6288033 (Tenn. Ct. App. 2011)
Description of collateral in security agreement as "Hydraulic Excavator w/ Tramac V1600 Hammer Eq. # C0442 and a 36" HD Hensley Bucket Stock # A6775" was sufficient and created no confusion about which hydraulic excavator was covered.

33. *In re Inofin, Inc.*,
455 B.R. 19 (Bankr. D. Mass. 2011)
Original security agreement and financing statement that described the collateral to be "motor vehicle installments sales contracts purchased by Debtor with the proceeds of loans from Secured Party and assigned and delivered to Secured Party" did not include chattel paper not financed by the secured party. Subsequent loan agreement providing that "[a]s security . . . , Borrower shall assign and deliver to Lender, . . . Installment Contracts" removed the requirement that the secured party provide the financing for collateralized chattel paper but the secured party gave no value for that additional collateral.

34. *In re HT Pueblo Properties, LLC*,
462 B.R. 812 (Bankr. D. Colo. 2011)
Security agreement that described the collateral to include "[a]ll accounts, general intangibles. . . [and] rents . . .arising out of a sale, lease, consignment or other disposition of any of the . . . Collateral" did not cover room rents of hotel because there was no disposition of the property, merely operation of the property. Deed of trust that purported to grant a UCC security interest in "all present and future rents revenues, income, . . . and other benefits derived from the [subject] Property" does not clearly grant a security interest in the fees, charges, accounts, or other payments for the use or occupancy of rooms and in any event such an interest is in personalty and is governed by Article 9, and therefore must be created in the security agreement, not in ancillary documents.

35. *Algonquin Power Income Fund v. Christine Falls of New York, Inc.*,
466 B.R. 175 (N.D.N.Y. 2011)
Claim for engineering malpractice could not be assigned under Connecticut law (prior to enactment of revised Article 9) and, even if it could be, security agreement describing the collateral as "any interest in any kind of property or asset, whether real, personal or mixed, and whether tangible or intangible," while sufficient to cover a chose in action, was not sufficiently specific to cover the existing malpractice claim. Subsequent agreement covering "actions and rights in action . . . arising from or relating to any of the property described" also did not cover the malpractice claim because the claim did not involve damage to property. Moreover, no security interest attached when the malpractice action transformed to a judgment, bond, and contract claim because if a security agreement does not grant a security interest in a tort claim or its proceeds, no subsequent transformation will "magically" result in an automatic attachment of those proceeds.

36. *In re Moore*,
465 B.R. 111 (Bankr. N.D. Miss. 2011)
Description of collateral as "[a]ll crops, and farm products whether any of the foregoing is owned now or acquired later; whether any of the foregoing is now existing or hereafter raised or grown" was sufficient to cover future year's harvest, as well as the proceeds thereof.

37. *In re Southeastern Materials, Inc.*,
452 B.R. 170 (Bankr. M.D. N.C. 2011)
Description of collateral as" all of the Debtor's . . . equipment, wherever located," but which also stated that "the address where the Debtor keeps and maintains the equipment is . . . Columbus County," created a factual issue as to whether the parties intended to encumber equipment located in a different county.

– Obligations Secured

38. *In re Duckworth*,
2012 WL 986766 (Bankr. C.D. Ill. March 22, 2012)
Security agreement that described the secured obligation as a note executed on December 13, 2008 was effective even though the note was actually executed and dated December 15, 2008. The absence of a future advances clause in the security agreement prevented the collateral from also securing a second loan made in 2010 even though the second note expressly provided that "this Note is secured by Security Agreement dated December 13, 2008." Although the loan documents included an Agreement to Provide Insurance, by which the debtor promised to purchase insurance to protect the secured party's interest in the collateral, including crops, that was ineffective; pursuant to the Federal Crop Insurance Act, which preempts state law, the exclusive method by which a creditor may obtain a security interest in the proceeds of insurance provided by the Federal Crop Insurance Corporation is through an assignment accepted by the FCIC.

39. *Bank of America v. Ledgercare, Inc.*,
2012 WL 1591800 (Conn. Super. Ct. 2012)
Security agreement executed in 2002 to secure obligation on promissory note also secured by mortgage did not cover indebtedness under 2007 line of credit despite language in security agreement purporting to cover "all indebtedness and obligations now or hereafter oweing from the Debtor to the Bank of whatever kind or nature, whether presently existing or hereafter arising" because the security agreement predated the note and mortgage and the reference to future debt was necessary to cover that transaction, not the line of credit.

40. *Union Bank Co. v. Heban*,
2012 WL 32102 (Ohio Ct. App. 2012)
Although each of the security agreements the debtor authenticated contained a cross-collateralization clause purporting to make the collateral secure all of the debtor's obligations to the bank, the clauses were insufficient to overcome the fact that the promissory note for one loan – entered into after one secured transaction and before several others – expressly stated that the loan was unsecured.

41. *In re Dumlao*,
2011 WL 4501402 (9th Cir. BAP 2011)
Language in consumer's car loan agreement with credit union providing that the vehicle secured "any other amounts or loans, including any credit card loan, you owe us for any reason now or in the future" was effective under revised § 2-204 to cover credit-card obligation, but case was remanded to determine if clause violated the duty of good faith or was unconscionable given the adhesive nature of the agreement and the small font used.

42. *In re Alaska Fur Gallery, Inc.*,
457 B.R. 764 (Bankr. D. Alaska 2011)
Cross-collateralization clause in bank's commercial security agreement unambiguously covered future loans, even if unrelated, and therefore the borrower's inventory, equipment, accounts, chattel paper, and general intangibles secured subsequent real estate loans. Revised Article 9 rejects any requirement that the loans have a related purpose, which had previously been the law in Alaska, although that rule may still apply in consumer transactions.

43. *In re Zaochney*,
2011 WL 6148727 (Bankr. D. Alaska 2011)
Dragnet clauses in both car loan and line-of-credit agreement between credit union and consumer were enforceable to make car secure the line-of-credit obligation because revised Article 9 rejects the requirement that the loans have a related purpose.

44. *In re McGregor*,
449 B.R. 468 (Bankr. D.S.C. 2011)
Debtor's obligations on both the credit card and the truck loan were cross-collateralized by language in security agreement (court assumed, without analysis, that clause was effective).

45. *Educators Credit Union v. Guyton*,
805 N.W.2d 736 (Wis. Ct. App. 2011)
Automobile securing debtor's initial loan from credit union also secured debtor's credit card debt to the credit union because the initial loan agreement expressly provided that the collateral secured all amounts owing now or in the future to the credit union on other loans and the subsequent credit-card agreement provided collateral securing other loans from the credit union also secured the credit-card debt.

– Rights in the Collateral

46. *In re TerreStar Networks, Inc.*,
457 B.R. 254 (Bankr. S.D.N.Y. 2011)
Although federal law prohibits a security interest from attaching to an FCC license itself, a security interest can attach to the "economic value" of the license; because this lien attached prepetition, § 552 of the Bankruptcy Code does not apply even if, on the petition date, no proceeds of the license existed and there was no agreement to sell the license.

47. *In re Tracey Broadcasting Corp.*,
2011 WL 3861612 (D. Colo. 2011)
Because federal law provides that no broadcast license be "transferred, assigned or disposed of in any manner," without approval of the FCC, such licences are not property to which a security interest may attach. While it may be possible to grant a security interest in the right to future proceeds from an approved sale of a license, if, on the petition date, there is no contract for sale approved by the FCC, § 552(a) prevents the security interest from reaching any postpetition sale proceeds.

48. *U.S. v. Corry Communications*,
2011 WL 4572012 (W.D. Pa. 2011)
Because no lien can attach to an active broadcast license, merely to the proceeds of such a license, the federal tax lien on a broadcaster's assets extended only to the sale proceeds of the license, not to the license itself, and thus the government could not foreclose on the license now owned by the buyer.

49. *Concorde Equity II, LLC v. Bretz*,
2011 WL 5056295 (Cal. Ct. App. 2011)
Although state law prohibits the granting of a security interest in a liquor license, the lender's security interest could and did attach to the proceeds of the a liquor license sold by a court-appointed receiver.

50. *In re Garrison*,
462 B.R. 666 (Bankr. W.D. Ark. 2011)
Restrictions on transfer of corporate stock are governed by the state of incorporation. Statement on reverse of stock certificate for shares in close-held corporation providing that the shares "may not be offered, sold, transferred, pledged or hypothecated in the absence of an effective registration statement for the shares under the [Securities Act of 1933] and under any applicable state securities laws, or an opinion of counsel to the corporation that such registration is not required as to such sale or offer" was ineffective to prevent the shareholders from granting a security interest in the shares because it prevents only a public offering and the shareholder's pledge was an exempted transfer. However shareholder agreement that prohibited shareholders from transferring or encumbering any stock without the express written consent of all the shareholders, even though not noted on the stock certificate, was effective to prevent the creation of a security interest once the lender had knowledge of the restriction. The court did not explain why, given that the debtors authenticated the security agreement before that time, subsequent refinancings triggered the effectiveness of the restriction.

51. *In re Westbay*,
2011 WL 2708469 (Bankr. C.D. Ill. 2011)
Although LLC agreement required the written consent of all members to use of the debtor's membership interest as collateral, that requirement was impliedly waived because all the members knew of and benefitted from the transaction, which was in exchange for a loan of working capital to the LLC. No discussion of § 9-408.

52. *In re McKenzie*,
2011 WL 2118689 (Bankr. E.D. Tenn. 2011)
2011 WL 6140516 (Bankr. E.D. Tenn. 2011) (subsequent decision)
No security interest attached to the debtor's LLC interest because the operating agreement required the prior written consent of the LLC's Board of Governors, and no such consent was obtained. The court asked for more briefing on whether § 9-408 allows a security interest to attach to the proceeds of the LLC interest despite a restriction on assignment in the operating agreement.

Pursuant to subsequent decision, debtor could grant a security interest in wholly owned LLCs regardless of restrictions in membership agreement because consent to the transfer is presumed. As to remaining LLCs, secured party failed to submit evidence that the debtor's interests were freely transferrable. While § 9-408 does override restrictions on the transfer of an interest in general intangibles, such as partnership interests and some LLC interests, by failing to submit the operating agreements, the secured party failed to prove that the LLC interests were general intangibles and not securities.

53. *Meecorp Capital Markets, LLC v. PSC of Two Harbors, LLC*,
2011 WL 1119191 (D. Minn. 2011)
2011 WL 6151487 (D. Minn. 2011) (subsequent decision)
Summary judgment denied on whether lender acquired a security interest in LLC interests because LLC agreements required unanimous consent of all members to the creation of a security interest and it was not clear that all the members had consented.

Pursuant to subsequent decision, guarantor did not grant a security interest in his LLC interest because there was no evidence that written notice was provided to all members, as required by the member control agreement. The guarantor also did not grant a security interest in his general partnership interests because the member control agreements prohibit transfer of governance interests without the unanimous, written consent of all other members and the resolutions of the Boards of Governors consenting to the transfer were insufficient to satisfy this requirement. No discussion of § 9-408.

54. *In re Rabinowitz*,
2011 WL 6749068 (Bankr. D.N.J. 2011)
Although LLC operating agreement purported to make void any grant of a security interest in a member's LLC interest without the consent of a majority of members, state court judgment in action by lender against member and stating that the security agreement remained in full force and effect was binding on the debtor's bankruptcy trustee pursuant to the entire controversy doctrine because the validity of the security agreement could have been litigated in the state action.

55. *Lebedowicz v. Meserole Factory LLC*,
941 N.Y.S.2d 538 (N.Y. Sup. Ct. 2011)
Security agreement signed by members of LLC on behalf of the LLC, and not in their personal capacities, did not grant a security interest in the members' LLC interests because the LLC itself did not have rights in those membership interests.

56. *Variety Wholesalers, Inc. v. Salem Logistics Traffic Services, LLC*,
723 S.E.2d 744 (N.C. 2012)
Whether security interest granted by freight bill processor attached to the funds provided to the processor by its clients was a question of fact not appropriate for summary judgment with respect to clients' claim for conversion against the secured party. Summary judgment was also not appropriate on secured party's bona fide purchaser defense because whether the secured party had constructive notice of the clients' ownership of the funds provided to the processor was a question of fact.

57. *Lonely Maiden Productions, LLC v. Goldentree Asset Management, LP*,
135 Cal. Rptr. 3d 69 (Cal. Ct. App. 2011)
Security interest granted by payroll processor attached to funds provided by processor's clients, including a security deposit provided by one client, because the processor's contracts with its clients disclaimed any agency relationship and failed to create a trust because even though the contracts required the processor to pay the clients' employees, the contracts did not require the processor to make the payments out of the funds provided.

58. *Zurita v. SVH-1 Partners, Ltd.*,
2011 WL 6118573 (Tex. Ct. App. 2011)
Landlord acquired a security interest in equipment used by individual tenant even though the equipment was purchased by a limited liability company because the tenant wholly owned the LLC and therefore had the power to transfer rights in the equipment. Although security agreement referred to property "owned or hereafter acquired" by the tenant, that language did not limit the scope of the security interest.

59. *Farm Credit of Northwest Florida, ACA v. Easom Peanut Co.*,
718 S.E.2d 590 (Ga. Ct. App. 2011)
2011 WL 4057786 (Ga. Ct. App. 2011)
Although debtor's contracts to purchase peanuts provided that the sellers retained all beneficial interest and title until the peanuts were delivered to the debtor and the warehouse receipts therefor were delivered to the debtor, delivery of the peanuts to a third party processor at the debtor's direction gave the debtor sufficient rights in the peanuts for its lender's security interest to attach. The seller's reservation of title despite delivery to the processor was limited to an unperfected security interest.

60. *Jorday, Inc. v. Burggraff*,
2012 WL 1813436 (Minn. Ct. App. 2012)
Bank did not acquire security interest in amusement part equipment from newly formed corporation because even though the corporation later claimed depreciation allowance for the equipment on its tax return and the principals of the corporation represented that the corporation had acquired the equipment from the trust that had purchased it, and which they also controlled, there was no bill of sale or other document of conveyance from the trust to the corporation.

61. *JP Morgan Chase Bank v. Lamb Livestock, LLC*,
2011 WL 3360100 (Ariz. Ct. App. 2011)
Secured party had provided sufficient evidence in the form of the corporate debtor's financial statements and insurance lists, as well as a list of equipment that the debtor had provided to the secured party at the time the loan was made, to support trial court's conclusion that the bulk of the equipment was owned by the debtor rather than by related business entities and individuals.

62. *In re Moberg*,
2011 WL 3745889 (Bankr. D.N.M. 2011)
Factual issue remained as to whether corporation or its principals were the owners of the equipment in which the corporation purported to grant a security interest. Secured party no longer had a security interest in vehicles owned by the corporation because, although its interest was previously noted on the certificates of title, new certificates were issued to the principles showing that they owned the vehicles free and clear.

63. *Oxford Street Properties, LLC v. Rehabilitation Associates, LLC*,
2012 WL 1861119 (Cal. Ct. App. 2012)
Bank did not have a security interest in deposit accounts holding some of the proceeds of its refinancing loan to the debtor because the funds were earmarked to pay off a previous partner, not as security for the loan, and the debtor did not have sufficient rights in the deposit accounts to grant a security interest in them. In addition, the security agreement covered only those "deposit accounts . . . arising to of, or relating to, the acquisition, development, ownership, management or use of" certain real property, and the deposit accounts in question were not such accounts.

64. *In re Buchanan Land & Cattle, Inc.*,
2012 WL 1658296 (Bankr. N.D. Tex. 2012)
Because lender had a security interest in "all entitlements, rights to payment, and payments, . . . under any . . . program of the United States Department of Agriculture," post-petition checks were proceeds of prepetition collateral and thus the security interest was not cut off by § 552. That security interest was not waived by endorsing the checks to the trustee.

65. *In re Grain*,
2011 WL 2462037 (Bankr. E.D. Tex. 2011)
Bank with a security interest in farmer's grain deposited into a silo was entitled only to a pro rata portion of the proceeds of the grain sold after it was discovered that the silo operator had insufficient grain to cover all the claims to the grain.

66. *ATC Healthcare Services, Inc. v. New Century Financial, Inc.*,
2011 WL 2739540 (Tex. Ct. App. 2011)
Factor's perfected security interest in existing and after-acquired accounts covered accounts generated after the debtor became a franchisee and operated under the name of the franchisor.

67. *In re Ward*,
464 B.R. 471 (Bankr. N.D. Ga. 2011)
Credit union with security interest in customer's account could enforce that security interest by setoff even though the account contained social security benefits because setoff is not a judicial or other legal process and thus does not violate 42 U.S.C. § 407(a). Moreover, in this case the customer received an advance on the social security benefits from another creditor and thus treating the funds as exempt would effectively allow the debtor double benefits.

– Other

68. *In re Moye*,
2012 WL 96478 (5th Cir. 2012)
Putative buyers of chattel paper consisting of retail installment contracts for vehicles did not in fact acquire any interest in the chattel paper because the buyers were not licensed as required by Texas law.

69. *In re American Cartage, Inc.*,
656 F.3d 82 (1st Cir. 2011)
Security agreement's after-acquired property clause cannot encompass commercial tort claims that did not exist when the security agreement was entered into. While the right to a tort recovery can be proceeds of other collateral, the commercial tort claim itself – and hence standing to pursue a commercial tort claims – cannot be proceeds of other collateral.

70. *Shellbird, Inc. v. Grossman*,
2012 WL 208053 (S.D. Ind. 2012)
Seller that retained a security interest in show horse was entitled, after the horse's death and the buyer's default, to possession of and the right to foreclose upon the horse's frozen semen, Transport Semen Certificates, and the buyer's trademark. No discussion of whether the semen, certificates, or trademark were proceeds of the horse or otherwise covered by the security agreement.

71. *In re Young*,
2011 WL 3799245 (Bankr. D.N.M. 2011)
Debtors' member withdrawals from LLC – a form of distribution on account of their equity interests– were not proceeds of their LLC interests and hence Bank's security interest in those membership interests did not attach to the withdrawals. The court treated as dispositive the ruling in *In re Hastie*, 2 F.3d 1042 (10th Cir. 1993), without considering subsequent enactment of § 9-102(a)(64)(B).

72. *In re Chalmers*,
2011 WL 6217373 (Bankr. W.D. Mo. 2011)
Bank with a security interest in all of an insurance agency's assets was entitled to payments from buyer of agency's book of business even though the owner of agency agreed to stay on as an employee of the agency, thereby maintaining the value of the book of business. The payments were by the buyer to the seller agency, not by the agency to the owner, and hence were proceeds of the assets sold, not compensation for post-sale services.

73. *In re Vincent*,
2012 WL 694898 (Bankr. E.D. Va. 2012)
Because windows and siding are ordinary building materials, creditor's alleged PMSI in the windows and siding did not continue after they were installed in the debtor's home.

74. *21st Mortgage Corp. v. Stovall*,
2011 WL 3307516 Tex. Ct. App. 2011)
Dispute about material facts prevented summary judgment on whether manufactured home attached to leased land was either real estate or a fixture, and therefore whether security interest remained attached to it.

75. *Lopes v. Fafama Auto Sales*,
2011 WL 6258818 (Mass. Ct. App. 2011)
Fact that car dealer was not licensed as a sales finance company did not invalidate dealer's security interest car sold or make dealer's repossession unlawful, it merely subjected the dealer to the specified statutory penalties.

76. *Hanson v. 5K Auto Sales, LLC*,
2011 WL 6755138 (D. Minn. 2011)
Even if car dealer was required to be licensed as an automobile financier, the lack of a license would not invalidate the dealer's security interest.

77. *In re Dunlap*,
458 B.R. 301 (Bankr. E.D. Va. 2011)
Because federal statute prohibits assignment of military pension benefits until they are "due and payable," retired major's purported assignment of future pension benefits did not in fact transfer either a security interest or complete ownership of the future payments.

78. *In re Brooks*,
452 B.R. 809 (Bankr. D. Kan. 2011)
Bank had a security interest in debtor's mobile home by getting a mortgage on real estate and the fixtures thereon.

Perfection Issues

– Choice of Law

79. *In re Qualia Clinical Service, Inc.*,
441 B.R. 325 (8th Cir. BAP), *aff'd*, 652 F.3d 933 (8th Cir. 2011)
Factor was not perfected until one month before the debtor's bankruptcy, when factor filed a financing statement in Nevada where the debtor was incorporated; factor's earlier filing in Nebraska, where the debtor's principal place of business was located, was ineffective. As a result, factor's security interest was an avoidable preference and factor could have no valid § 547(c)(5) defense.

80. *In re Supplies & Services, Inc.*,
461 B.R. 699 (1st Cir. BAP 2011)
Although security agreement was by express choice governed by North Carolina law, which makes financing statements effective for five years, perfection was governed by the law of the debtor's location, Puerto Rico, which makes financing statements effective for ten years. Accordingly, secured party's filing had not lapsed seven years after it was filed.

– Method of Perfection

81. *In re Harbour East Development, Ltd.*,
2012 WL 314188 (Bankr. S.D. Fla. 2012)
Lender that obtained mortgage on real property and security interest in fixtures and goods therein and thereon, and whose recorded mortgage served as a fixture filing, was perfected in (i) goods acquired with proceeds of other collateral, including rents, within the last 20 days; (ii) goods that are post-petition proceeds of pre-petition collateral; and (iii) goods that have become fixtures.

82. *In re Szerwinski*,
467 B.R. 893 (6th Cir. BAP 2012)
Cottage built on leased land was a fixture even though it was sold through a bill of sale, not a deed, and the lease expressly provided that the cottage remained the property of the lessee. Bank's recorded mortgage that identified the property as "fixtures" adequately described the cottage and thus satisfied the requirements for a fixture filing, thereby perfecting the bank's security interest in the cottage.

83. *Epstein v. Coastal Timber Co., Inc.*,
711 S.E.2d 912 (S.C. 2011)
Although both Articles 2 and 9 treat timber to be cut as goods and the latter provides that a security interest in the timber can be perfected by filing a financing statement, a recorded mortgage on the land – even one that does not specifically mention the timber – also encumbers the timber and, if recorded first, has priority.

84. *In re McConnell*,
455 B.R. 824 (Bankr. M.D. Ga. 2011)
Security interest in civil aircraft must be recorded with the FAA to be perfected; filing a financing statement is inadequate to perfect.

– Adequacy of Financing Statement

85. *In re Harvey Goldman & Co.*,
455 B.R. 621 (Bankr. E.D. Mich. 2011)
Financing statement that identified the corporate debtor by its registered assumed name, "Worldwide Equipment Co.," rather than the name on its articles of incorporation, "Harvey Goldman & Company," was ineffective to perfect. Registration of the assumed name does not make it the proper name to use in the financing statement under or prevent a financing statement using that name from being seriously misleading.

86. *In re Miller*,
2012 WL 32664 (Bankr. C.D. Ill. 2012)
Financing statement identifying the debtor as "Bennie A. Miller" – the name the debtor had used much of his life and on his driver's license, social security card, tax returns, and the deed to his residence – was ineffective to perfect because the debtor's legal name was the name on his birth certificate, "Ben Miller," and a search under that name did not reveal the filing.

87. *In re PTM Technologies, Inc.*,
452 B.R. 165 (Bankr. M.D.N.C. 2011)
Financing statements that omitted the "h" in the debtor's name and which were not disclosed in a "standard" web search but were disclosed in a "non-standard" web search were ineffective to perfect because the filing office's rules provide for an exact word match (while ignoring certain "noise" words) and the "standard" search is the one that follows these rules.

88. *In re Camtech Precision Manufacturing, Inc.*,
2012 WL 1105627 (S.D. Fla. 2011)
Bankruptcy court erred in ruling that filed financing statements listing additional debtors on separate paper exhibits but which did not indicate in the additional debtors box of the financing statement to look beyond the first page or use the official addendum to indicate additional debtors were inadequate to perfect security interests granted by additional debtors given that the filings were not indexed by or discoverable under the names of the additional debtors. Whether the financing statements had errors or the filing office failed to properly index the filings was a factual issue that precluded summary judgment.

89. *In re Baker*,
465 B.R. 359 (Bankr. N.D.N.Y. 2012)
Financing statement that identified collateralized cows by name and ear tag number was effective even though the tag numbers were incorrect because the names were referenced in a certificate of registration for each cow, each certificate included a sketch of the cow's distinctive markings, and those markings were used to identify the cows. The fragility of the ear tag method of identifying cows is well known in the dairy industry and this is relevant to the searcher's duty in reviewing a financing statement.

90. *In re D & L Equipment Inc.*,
457 B.R. 616 (E.D. Mich. 2011)
Financing statement that described the collateral as "[e]quipment and inventory financed by The CIT Group" was effective to perfect equipment and inventory financed by Wells Fargo Equipment Finance Inc. after it acquired the secured loan and filed an amendment changing the name of the secured party – but not the collateral description – because the filings collectively provided notice of the possibility that Wells Fargo had assumed CIT's role in the financing arrangement.

91. *In re Borges*,
2011 WL 4101096 (Bankr. D.N.M. 2011)
Although the security agreements authenticated by the debtor secured all present and future debts owed by the debtor to both the secured party and the secured party's affiliates, and therefore granted a security interest to the affiliates, because only the secured party was listed on the financing statement, the affiliates' security interests were unperfected.

92. *SEC v. Kaleta*,
2011 WL 6016827 (S.D. Tex. 2011)
Financing statement filed by representative of secured party did not perfect security interest claimed by other creditors absent evidence that the representative had an agency relationship with the other creditors.

93. *In re O & G Leasing, LLC*,
456 B.R. 652 (Bankr. S.D. Miss. 2011)
Financing statement filed more than 30 days after separate secured loans were consolidated did not render the security interest preferential because earlier filed financing statements for each individual loan, each with its different collateral, remain effective to perfect the security interests in the collateral.

– Authorization of Termination Statement

94. *In re Negus-Sons, Inc.*,
2011 WL 2470478 (Bankr. D. Neb. 2011), *aff'd*,
460 B.R. 754 (8th Cir. BAP 2011)
Secured party that, after receiving prospective lender's letter requesting a payoff amount, seeking confirmation of the secured party's willingness to terminate its security interest, and enclosing a proposed amendment to its UCC filings to effectuate the termination, responded with letter providing payoff figure and stating "[u]pon receipt of payoff all liens will be released," authorized prospective lender to file termination statement. Therefore, secured party's prior loan to the same debtor, even if secured, was not perfected.

95. *AEG Liquidation Trust v. Toobro N.Y. LLC,*
932 N.Y.S.2d 759 (N.Y. Sup. Ct. 2011)
Unauthorized termination statement did not affect the perfection or priority of the secured party's security interest. As a result, the collateral remained subject to the secured party's lien even after a foreclosure sale by a lender with a subordinate security interest.

– Control

96. *Smith v. Powder Mountain, LLC*,
2011 WL 2457906 (S.D. Fla. 2011)
Creditor that received court order awarding it the debtor's securities accounts and that then proceeded to discuss with securities intermediary on how to transfer the entitlements did not have control under § 8-106(d)(2) sufficient to defeat the rights of intervening garnishor. Control requires not mere agreeability but a contractual right. While the intermediary had expressed a willingness to acquiesce in the creditor's orders, the parties had not yet agreed on whose signatures would be needed on those orders when the garnishment order was served.

– Collateral Covered by a Certificate of Title

97. *In re Moye*,
437 Fed. Appx. 338 (5th Cir. 2011)
Creditor's alleged purchase-money security interest in motor vehicles held as inventory was not perfected by possession of unmarked certificates of title. Perfection required filing a financing statement. Subsequent decision at 2011 WL 4808124 (Bankr. S.D. Tex. 2011).

98. *In re Godsey*,
2012 WL 86778 (Bankr. E.D. Ky. 2012)
Certificate of title that misidentified the secured party's name and address was ineffective to perfect even though secured party submitted a proper title lien statement and the certificate referred to the file number of that statement.

99. *In re Medcorp. Inc.*,
2012 WL 1098360 (Bankr. N.D. Ohio 2012)
Bank's security interest in ambulance company's vehicles was unperfected because it was neither indicated on the certificates of title nor, for vehicles for which no written certificate was issued, noted by the clerk of a court of common pleas into the automated title processing system. The bank's replacement lien granted by the cash collateral order did not insulate the bank's interest from avoidance because it expressly provided that the replacement lien extended only "to the same extent, validity, enforceability, perfection and priority" as the prepetition security interest.

100. *In re Negus-Sons, Inc.*,
2012 WL 1110026 (Bankr. D. Neb. 2012)
Lender's perfected security interest in welder attached to truck remained perfected even though lender did not get its interest noted on the certificate of title for the truck. However, the lender's security interest in a service body and crane attached to truck by seller was not perfected by the lender's subsequent amendment to its financing statement referencing accessions.

101. *Stanley Bank v. Parish*,
264 P.3d 491 (Kan. Ct. App. 2011)
Pursuant to certificate-of-title statute, purchase-money security interest in truck was perfected by mailing notice of the security interest to the Division of Motor Vehicles even though the Division later issued a paper certificate that failed to indicate the security interest. As a result, secured party had priority over both subsequent lien creditor and buyer at sheriff's sale.

102. *In re Barbee*,
461 B.R. 711 (6th Cir. BAP 2011)
Security interest in titled manufactured home that was affixed to realty but for which no affidavit of conversion to real property was filed was not perfected by recorded mortgages; the home remained personal property and notation on the certificate of title was required to perfect.

103. *In re Epling*,
2011 WL 4356358 (E.D. Ky. 2011), *affirming*,
2011 WL 1984061 (Bankr. E.D. Ky. 2011)
Security interest in mobile home was not perfected because the secured party failed to file the title lien statement in the county where the debtor resides, as required by Kentucky law, even though, as a result of the filing elsewhere, the security interest was noted on the certificate of title for the mobile home.

104. *In re Pierce*,
2011 WL 4433620 (Bankr. E.D. Ky. 2011)
Security interest in mobile home was not perfected because the secured party failed to file the title lien statement in the county where the debtor resides, as required by Kentucky law, even though, as a result of the filing elsewhere, the security interest was noted on the certificate of title for the mobile home.

105. *In re Jones*,
2011 WL 5869610 (Bankr. N.D. Ohio 2011)
Father's security interest in daughter's motor vehicle was not perfected because the interest was not noted on the vehicle's certificate of title.

106. *Brenner Financial, Inc. v. Cinemacar Leasing*,
2012 WL 1448048 (N.J. App. Div. 2012)
New Jersey certificate of title for limousine that identified the lessor as owner perfected the lessor's interest, which was in reality a security interest, and subsequent Michigan certificate of title that failed to list the lessor and instead listed the security interest of a different lender neither destroyed the lessor's perfection nor perfected the lender's interest because the Michigan title was void, apparently due to the debtor's fraud in procuring the Michigan title.

107. *In re Stuewe*,
2011 WL 2173694 (Bankr. D. Kan. 2011)
Lessor listed as owner of vehicle on certificate of title would be perfected even if lease was re-characterized as secured transactions because substantial compliance with the certificate of title law is all that is necessary and a person examining the certificate of title would have notice that the lessor claimed an interest in the vehicle.

108. *In re Gannon*,
461 B.R. 869 (Bankr. D. Kan. 2012)
Pursuant to § 9-316(d), a security interest noted on Kansas a certificate of title remained perfected even after Oklahoma issued a new certificate of title that did not indicate the security interest. Although §§ 9-316(e) and 9-337 protect some purchasers in such a situation, a bankruptcy trustee with the status of a lien creditor is not a purchaser.

109. *In re Fryseth*,
2011 WL 4344162 (Bankr. W.D. Wis. 2011)
While a creditor who refinances a motor vehicle loan must, under Wisconsin law, get its security interest noted on the certificate of title to perfect, an assignee of a perfected security interest in a motor vehicle need do nothing to remain perfected.

110. *In re Rice*,
462 B.R. 651 (6th Cir. BAP 2011)
Because the assignee of perfected security interest in motor vehicle covered by a certificate of title did not have to get its interest noted on the certificate to have a perfected interest, the assignee had standing to seek relief from the bankruptcy stay.

– Other

111. *Operating Engineers Local 139 Health Benefits Fund v. Huml Contractors Inc.*,
2012 WL 664494 (E.D. Wis. 2012)
Perfection of insider's security interest years after it attached and when the debtor insolvent was not a fraudulent transfer done with intent to hinder, delay or defraud a creditor because the insider credibly testified that he was previously unaware of the need to perfect and shortly after he perfected he informed the main other creditor of his security interest, thus evidencing that he was not hiding his security interest.

112. *In re Miller Brothers Lumber Co., Inc.*,
2012 WL 1601316 (Bankr. M.D.N.C. 2012)
Secured party whose filing lapsed during the debtor's bankruptcy case lost perfection and therefore the debtor in possession could avoid the security interest.

113. *Joseph P. Galasso, Jr., Revocable Living Trust v. Surveybrain.com,LLC*,
2012 WL 1698411 (Mich Ct. App. 2012)
Perfection of security interest lapsed because the secured party filed a continuation statement more than six months before the expiration of the 5-year effectiveness period of the filed financing statement. Secured party therefore no longer had a security interest.

114. *In re McCoy*,
2011 WL 3501851 (Bankr. E.D.N.Y. 2011)
Cooperative association had, pursuant to its by-laws, a security interest in debtor's shares in the debtor's cooperative apartment and this security interest was automatically perfected under New York's non-uniform version of § 9-308.

115. *In re Winchester*,
2011 WL 3878336 (Bankr. E.D. Ky. 2011)
Because the debtor used his all-terrain vehicle for recreation and transportation, it was a consumer good and the PMSI granted to the secured party's assignor before ATVs became subject to the state's certificate-of-title statute was automatically perfected.

116. *In re Hall*,
2011 WL 4485774 (9th Cir. BAP 2011)
Attorney's charging lien on proceeds of lawsuit was unperfected because attorney failed to comply with Nevada statute requiring service of notice of the claimed lien on both the client and the opposing party.

– Bogus Filings

117. *United States v. Reed*,
668 F.3d 978 (8th Cir. 2012)
Criminal defendant who filed fraudulent financing statement against judge and prosecutor was properly convicted of violating 18 U.S.C. § 1521.

118. *United States v. Uptergrove*,
2012 WL 639482 (E.D. Cal. 2012)
Taxpayer's financing statements filed against federal court clerks declared to have no legal effect and filing office ordered to expunge them. Taxpayer enjoined from filing financing statements without validity or basis in law or fact.

119. *United States v. Marty*,
2011 WL 4056091 (E.D. Cal. 2011)
Financing statements filed by taxpayer against IRS employees, Justice Department attorney, and federal judge declared null and void and taxpayers enjoined from filing further financing statements.

120. *United States v. Merritt*,
2011 WL 5026074 (E.D. Cal. 2011)
Financing statement filed by relative of taxpayer against IRS employee declared null and void and both the filer and taxpayer enjoined from filing further financing statements.

PMSI Status

121. *In re Siemers*,
2011 WL 5598349 (Bankr. W.D. Wash. 2011)
Down payment made when debtor purchased a new vehicle and traded in old truck with negative equity was allocable to the negative equity, leaving a purchase-money obligation for the entire amount financed minus the thereby reduced negative equity.

122. *In re Inofin, Inc.*,
455 B.R. 19 (Bankr. D. Mass. 2011)
Chattel paper financier could not have a PMSI in the chattel paper even if the chattel paper itself represented a PMSI in the goods financed.

Priority Issues

– Tax Liens

123. *In re Reitter Corp.*,
2012 WL 1118418 (D.P.R. 2012)
IRS has priority over previously perfected security interest in any accounts generated by the debtor more than 45 days after the notice of federal tax lien was filed.

124. *Green Tree-AL LLC v. Dominion Resources, L.L.C.*,
2011 WL 3963010 (Ala. Civ. Ct. App. 2011)
Treatment of manufactured home as realty for purposes of taxation does not convert it to real property; a manufactured home remains personal property unless and until its certificate of title is cancelled. As a result, secured party with perfected security interest in manufactured home that became a fixture had priority over buyer of real property at tax sale.

– Buyers of Goods

125. *Wells Fargo Bank v. Associated Dealers, Inc.*,
2012 WL 666651 (Tex. Ct. App. 2012)
Buyer of manufactured home from dealer was a buyer in ordinary course of business under Texas Manufactured Housing Standards Act even though the dealer's distributor retained possession of the manufactured home and the manufacturer's certificate of origin and thus the buyer took free of all security interests in the manufactured home. Accordingly, the buyer's secured party was the only secured party and had priority over the rights of the distributor and the distributor's secured party.

126. *In re Black Diamond Mining Co.*,
2011 WL 6202905 (Bankr. E.D. Ky. 2011)
Buyer of coal from coal merchant was a buyer in ordinary course of business that took free of factor's security interest in inventory because even though the termination clause of the master sales agreement permitted the buyer to setoff the purchase price against liquidated damages for the seller's breach, termination had not occurred prior to the sales transactions and thus the buyer did not acquire the goods in satisfaction of a money debt. Although the volume of coal sold was large, the buyer was not a buyer in bulk given the repeal of Article 6 and the fact that the volume was no so large as to provide the buyer with notice that the seller will not continue in the same kind of business. Moreover, the factor had approved the master agreement before providing financing and had approved each individual sale before agreeing to factor the resulting account, the sales did not violate the terms of the factor's subsequent security agreement in inventory and, even if it did, the buyer had no knowledge that the sales violated the factor's rights.

127. *Madison Capital Co., LLC v. S & S Salvage, LLC*,
765 F. Supp. 2d 923 (W.D. Ky. 2011)
794 F. Supp. 2d 735 (W.D. Ky. 2011) (reconsideration denied)
Scrap metal buyer did not take free of security interest in metal shields created by mining company because the buyer either purchased from an intermediate entity, in which case the security interest was not created by the seller, or the buyer purchased from the mining company, through the agency of the intermediate entity, in which case the seller was not in the business of selling metal shields. The fact that the intermediate company was engaged in the business of selling scrap metal was immaterial; BIOCOB status is not determined from the perspective of the buyer but the perspective of the secured party.

128. *State Bank of Cherry v. CGB Enterprises, Inc.*,
964 N.E.2d 604 (Ill. Ct. App. 2012)
Because strict compliance with the notice rules of the Food Security Act are required for a secured party to retain a security interest in farm products sold to a buyer, notice that failed to identify the counties in which the farm products were grown or located was ineffective even though the notice stated that it covered "farm products wherever located."

129. *Dawson v. Fifth Third Bank*,
2012 WL 1066025 (Ind. Ct. App. 2012)
Buyers of motorcycle did not take free of security interest that was noted on missing certificate of title even though they were presented with earlier issued duplicate certificate that did not indicate the security interest.

130. *Great Plains National Bank v. Mount*,
2012 WL 1232286 (Colo. Ct. App. 2012)
Cattle that Oklahoman debtor purchased from supplier in Missouri and resold the day after receipt to a buyer in Colorado were "produced in" Oklahoma within the meaning of the Food Security Act and therefore the buyer that did not register in Oklahoma took subject to the security interest of a bank that had an effective financing statement in Oklahoma. The statutory reference to where the farm products were "produced" deals the location from which they were sold, not their geographic origin.

131. *Hammond v. Caterpillar Financial Services Corp.*,
66 So. 3d 700 (Miss. Ct. App. 2011)
Trial court did not err in refusing to allow buyer that admittedly purchased skid-steer subject to a perfected security interest to submit evidence at replevin hearing or in not requiring the secured party to prove it was entitled to immediate possession.

132. *Cornerstone Bank and Trust v. Consolidated Grain and Barge Co.*,
956 N.E.2d 944 (Ill. Ct. App. 2011)
Buyer of farm products that set off purchase price against prior indebtedness owed to it by the seller took free of security interest created by the seller because the Food Security Act preempts Article 9's protections for buyers of farm products (including the state's non-uniform rules regarding buyers of farm products) and, under the Act, the buyer qualified as a buyer in ordinary course of business even though it paid via the setoff.

– Competing Security Interests

133. *Merrill Lynch Business Financial Services, Inc. v. Kupperman*,
441 Fed. Appx. 938 (3d Cir. 2011)
Secured creditor of predecessor business had priority over secured creditor of successor with respect not merely to collateral transferred but also as to collateral acquired after the successor began operations because the security interest granted by the predecessor expressly covered after-acquired collateral and the successor was a mere continuation of the predecessor.

134. *First Financial Bank v. GE Commercial Distribution Finance Corp.*,
2012 WL 1340312 (S.D. Ohio 2012)
Secured party with a PMSI in inventory watercraft had priority over a lender with a previously perfected security interest because the lender received the secured party's notification of planned PMSI inventory financing, that notification, though unsigned, was authenticated because it was on the secured party's letterhead, and the notification sufficiently described the collateral as including "new and used boats."

135. *Great Plains National Bank v. Mount*,
2012 WL 1232286 (Colo. Ct. App. 2012)
Bank that had a perfected security interest in Oklahoman debtor's cattle had priority under § 9-322 over PMSI granted by the debtor's Colorado buyer because the bank's security interest attached prior to the debtor's sale and the bank re-filed in Colorado shortly after the sale. The buyer's secured party did not have priority under § 9-324(d) because the buyer did not take free of the bank's security interest under § 9-320 and because the secured party neither perfected before the buyer acquired possession nor gave notification to the bank.

136. *Union Bank Co. v. Heban*,
2012 WL 32102 (Ohio Ct. App. 2012)
Trial court erred in ruling that a financing statement must relate to a specific note or indebtedness of the debtor; bank's filed financing statement was effective to perfect subsequent secured transactions and to give bank priority over intervening secured party.

137. *Commercial Capital Bank v. House*,
2012 WL 220214 (W.D. La. 2012)
Secured party who perfected security interest in equipment in 1997 and twice filed timely continuation statements – as well as new financing statements for additional secured loans – had priority over subsequent creditor with security interest perfected in 2003 because, even though the original secured party's first loan was paid off, that security agreement covered future advances.

138. *Domus, Inc. v. Davis-Giovinazzo Construction Co.*,
2011 WL 3666485 (E.D. Pa. 2011)
Secured party which filed its financing statement as to the debtor's accounts before subsequent lender filed or perfected had priority. Although a party who acts in bad faith is not entitled to the protections afforded by the UCC, the secured party did not have unclean hands or overstep its authority when, after default, it filed arbitration claim on the debtor's behalf against the account debtor because the security agreement expressly gave the secured party the right to collect accounts and "to do all acts and things necessary or incidental thereto."

139. *Dayka & Hackett, LLC v. Del Monte Fresh Produce N.A., Inc.*,
269 P.3d 709 (Ariz. Ct. App. 2012)
Prior to amendments in 2009, Mexican law did not generally require a filing as a condition to a security interest obtaining priority over the rights of a lien creditor – something to be assessed in general, not on a collateral-specific basis – and thus secured party that filed in the District of Columbia against Mexican debtors' grape crop had priority over secured party that recorded in Mexico. Junior secured party, which had sold the crop, was liable for conversion because a senior secured party is entitled to possession even if it does not demand possession, although such a demand was in fact made. The fact that the junior secured party also acted as the debtor's distributor, and therefore had recoupment rights with the respect to the sale proceeds was irrelevant.

140. *Banner Bank v. First Community Bank*,
2012 WL 642310 (D. Mont. 2012)
Bank with a perfected security interest in all of the debtor's assets was entitled to the proceeds of some tanks that the debtor had sold and which proceeds the debtor had paid to another lender that had provided bridge financing to help reduce the loan to the bank. The Bank had priority in the tanks sold, even if the other lender had a security interest in them at all, and the other lender did not take free under § 9-332 because it colluded with the debtor in violating the bank's rights.

141. *In re Wilkinson*,
2012 WL 1192780 (Bankr. N.D.N.Y. 2012)
Creditor's security interest that was perfected by a filing that lapsed during the debtor's bankruptcy proceeding retained priority over the perfected security interest of another creditor because bankruptcy law fixes priority as of the petition date.

142. *In re Siskey Hauling Co., Inc.*,
456 B.R. 597 (Bankr. N.D. Ga. 2011)
Lender that acquired third security interest in debtor's accounts and whose loan was used to pay off the creditor with the first security interest was not entitled to be subrogated to that creditor's rights because the transaction was structured as a payoff, not an assignment, and because the lender was guilty of inexcusable neglect since it knew of the second security interest but failed to take the steps necessary to give it a superior position.

143. *Prestige Capital Corp. v. Pipeliners of Puerto Rico, Inc.*,
2011 WL 4899968 (D.P.R. 2011)
Secured party with a security interest in the debtor's existing and after-acquired accounts and who filed first had priority over government-run bank with a later perfected security interest even as to account owed by a Commonwealth agency. The secured party's failure to comply with the Puerto Rico Assignment of Claims Act was not relevant to the relative priority of the security interests and the secured party's UCC-3 amending the debtor's name was properly filed even though for some unexplained reason it was no disclosed in a search.

144. *In re Deckers Construction, Inc.*,
461 B.R. 143 (Bankr. D.P.R. 2011)
Even if a PMSI can be created in intangible assets, such as an account, under old Article 9, bank's security interest in contractor's account did not have PMSI status because the bank's loan was not used to acquire the account given that the construction contract – and hence the account – preceded the bank's loan.

145. *Farm Credit of Northwest Florida, ACA v. Easom Peanut Co.*,
2011 WL 4057786 (Ga. Ct. App. 2011)
Lender's perfected security interest in debtor's peanuts and the proceeds thereof may not have priority over unperfected security interests of sellers if lender acted in bad faith in assuring the sellers of the debtor's financial stability and that they would be paid. However, lender's security interest had priority over the possessory lien of a bailee/processor that had not issued warehouse receipt because the applicable Georgia statute expressly provides that a bailee's lien is inferior to a recorded lien, which the lender's security interest was. Although the bailee/processor may have a claim in quantum meruit against the lender for processing services provided at the lender's direction, that claim is not a prior lien on the proceeds of the peanuts.

146. *Comerica Bank v. Jones*,
2011 WL 4407422 (E.D. Mich. 2011)
Secured party with security interest in all of the debtor's assets, including investment property, had priority in proceeds of the sale of the debtor's stock in a Singapore subsidiary over a loan participant that had agreed to subordinate its interest even though the assets of the subsidiary were not collateral and even though the secured party may have made a representation to that effect.

147. *Action Capital Corp. v. Eclipse Bank, Inc.*,
2011 WL 4502080 (Ky. Ct. App. 2011)
Secured party with a senior security interest in accounts had priority in monies received from an auction of inventory, authorized by the defaulting buyer, over the lender with a perfected security in inventory. Even though the defaulting buyer never took possession, title vested in the buyer when the goods were identified to the contract and even if title re-vested in the debtor upon the buyer's default, it would have done so for the benefit of the account lender.

148. *SEC v. Kaleta*,
2011 WL 6016827 (S.D. Tex. 2011)
Although agreement by which seller agreed to subordinate its payment rights and security interest to the buyer's lender extended the subordination to others who provide "replacement financing," investors bilked in the debtor's Ponzi scheme were unable to show that they qualified as replacement lenders under the terms of the agreement because most could not trace the funds they invested to the debtor and those that could did not get a security agreement, as the subordination agreement required.

149. *In re Damon Pursell Construction Co.*,
2011 WL 6130528 (Bankr. W.D. Mo. 2011)
Although bank's perfected security interest in two excavators was initially junior to the interests of two creditors, each of which had a perfected PMSI in one of the excavators, when debtor sold one excavator and used the funds to pay the wrong PMSI creditor, the bank's interest became senior in the remaining excavator because the payment terminated the paid creditor's security interest and the unpaid creditor had no security interest at all in the unsold excavator. Presumably, the security interest of the unpaid creditor remained attached to the excavator sold.

150. *Minnwest Bank v. Arends*,
802 N.W.2d 412 (Minn. Ct. App. 2011)
Feed supplier with a perfected livestock production input lien did not have priority bank's earlier security interest because feed supplier did not send notification to the bank in an envelope marked "IMPORTANT–LEGAL NOTICE," as required by the agricultural lien statute.

– Other

151. *Mississippi County v. First Tennessee Bank*,
2011 WL 2160281 (E.D. Ark. 2011)
Creditor with security interest in hospitals' accounts generated prior to termination of hospitals' leases took those accounts subject to Medicare's right to reimbursement for overpayments.

152. *Variety Wholesalers, Inc. v. Prime Apparel, LLC*,
720 S.E.2d 30 (N.C. Ct. App. 2011)
Creditor with perfected security interest in clothier's accounts was not entitled to funds due from clothier's customer because the goods sold to the customer violated the trademark rights of another entity, and thus the debtor did not have any right in the account to pass to the secured creditor.

153. *RDLF Financial Services, LLC v. Esquire Capital Corp.*,
2012 WL 695488 (N.Y. Sup. Ct. 2012)
Junior secured party that received payment from debtor out of cash proceeds of the collateral that had been deposited into a commingled deposit account took free under § 9-332(a) of any claim of the senior secured party because there was no allegation that the junior secured party had colluded with the debtor to violate the rights of the senior secured party. Court also suggested that the commingling rendered the proceeds unidentifiable.

154. *Rabbia v. Rocha*,
34 A.3d 1220 (N.H. 2011)
Plaintiff, for whom defendant car dealer, pursuant to court order, wrote checks to its attorney to place funds in escrow, took free under § 9-332 of the security interest of the dealer's floor plan financier.

155. *First Dakota National Bank v. First National Bank of Plainview*,
2011 WL 4382147 (D.S.D. 2011)
Pursuant to § 9-341, bank's unperfected security interest in proceeds of debtor's livestock was subordinate to the setoff rights of the depositary bank in which the proceeds were deposited. The prior common law regarding special deposits is no longer applicable and, even if it were, the deposits were not special deposits, even though resulting from sales of livestock purportedly owned by the bank's customers, because they were all made in the ordinary course of the debtor's business. While the depositary bank had acknowledged the bank's interest in the debtor's livestock, it had not agreed to subordinate its setoff rights.

156. *BNP Paribas v. Olsen's Mill, Inc.*,
799 N.W.2d 792 (Wis. 2011)
Trial court could not order receiver to sell collateral free and clear of secured party's lien without the secured party's consent and secured party did not consent merely by initiating and participating in the receivership. Even if the sale proceeds paid the secured party the full amount of its secured claim, the sale order was invalid because it provided for the buyer to honor certain trade obligations of the debtor, thereby improperly giving them priority over the undersecured portion of the secured party's claim.

157. *M & I Marshall & Isley Bank v. Kinder Morgan Operating L.P.*,
2012 WL 382926 (Mo. Ct. App. 2012)
Perfected security interest in warehoused coal was junior to earlier warehouse lien, even though some or all of the originally warehoused coal had been replaced with new coal after the security interest was perfected. However, perfected security interest had priority over subsequent warehouse lien; the fact that the secured party may have benefitted by the warehouseman's storage of the goods did not give the warehouseman priority and storage of the goods was not an entrustment.

158. *In re Naknek Elec. Association, Inc.*,
2012 WL 986651 (Bankr. D. Alaska 2012)
Statutory mining lien on rig for work performed in connection with exploratory geothermal well has priority over previously perfected security interest because the secured party did not, prior to the work being performed, record its interest in the recording district where the property is located.

159. *In re Thermopylae, LLC*,
2011 WL 3439133 (Bank. D. Md. 2011)
Secured party with perfected security interest debtor's equipment had priority over landlord in the alterations, decorations, additions, and improvements that the debtor made to leased premises because even though such property would normally have become fixtures prior to attachment of the security interest, the lease expressly provided that the debtor would retain the right to such property.

160. *Kazar v. San Gabriel Plaza, Inc.*,
2011 WL 6062019 (Cal. Ct. App. 2011)
Original tenant that retained a security interest in equipment sold when assigning the lease to a buyer of tenant's franchise did not have priority over the interest of the landlord even though the lease expressly provided that any lien of the landlord would be subordinate because the assignee abandoned the leased premises, causing the lease to terminate and title to all equipment to vest in the landlord.

161. *BancorpSouth Bank v. Hazelwood Logistics Center, LLC*,
2011 WL 5900998 (E.D. Mo. 2011)
Lender with a security interest in borrower's right to tax refund, perfected by filed financing statement covering "all Tax and Insurance Deposits," had priority over equitable lien of company that performed tax surveys tax surveys and whose contract entitled it to 35% of the tax savings realized therefrom because the filing predated the contract.

162. *Mill Creek Lumber & Supply Co. v. First United Bank and Trust Co.*,
2012 WL 1862767 (Okla. Ct. Civ. App. 2012)
Because Article 9 does not apply to a lien on ordinary building materials incorporated into an improvement on land, it did not govern relative priority of materialman's statutory lien and mortgage lien.

163. *RMB Fasteners, Ltd. v. Heads & Threads Intern., LLC*,
2012 WL 401490 (N.D. Ill. 2012)
Seller of goods that sent § 2-702 reclamation demand within ten days after the buyer received them was entitled to the goods over the objection of the buyer's secured creditor because the secured party waived its rights by failing to object at the hearing when all parties agreed that the goods were properly subject to reclamation.

164. *Bode v. State*,
2012 WL 759203 (Alaska Ct. App. 2012)
Secured party's security interest in airplane could be forfeited to the state as a result of the debtor's criminal activity because the secured party was aware of the debtor's history of using the airplane to violate the law in ways that might lead to forfeiture and thus did not qualify for the innocent owner/creditor defense, even if the secured party did not have reason to believe that the debtor, her son, would re-offend.

165. *United States v. $463,497.72*,
2012 WL 1079956 (E.D. Mich. 2012)
Pharmaceutical supplier that had a security interest in the bank accounts of its customer pharmacy that had diverted controlled substances for unlawful purposes was entitled to the innocent owner defense to forfeiture because, even if the supplier was negligent in monitoring its customer, the supplier's employees had no knowledge of the illegal activity, had reported suspicious orders of controlled substances, and had credible explanations why the spike in the orders for some controlled substances did not provoke additional suspicious order reports or suspension of shipments, and thus the supplier was not willfully blind to the illegal diversions.

166. *In re Yarnell's Ice Cream Co., Inc.*,
2012 WL 1372097 (Bankr. E.D. Ark. 2012)
Seller of frozen strawberries did not comply with PACA because its invoices, although stating that the seller retains a trust claim "over the commodities sold" until full payment is received, did not state that the seller retains a trust claim over "all inventories of food or other products derived from these commodities," as required by § 4. As a result, the seller was not protected by PACA against the buyer's secured party with respect to the proceeds of the strawberries.

167. *Oyens Feed & Supply, Inc. v. Primebank*,
808 N.W.2d 186 (Iowa 2011)
Pursuant to Iowa agricultural lien statute, an agricultural supplier must comply with notice procedure to share equal priority with a prior perfected secured party generally, but need not comply with the notice procedure to have priority over a prior perfected secured party to the extent of the difference between the acquisition price of the livestock and either the fair market value of the livestock at the time the lien attaches or the sale price of the livestock, whichever is greater.

168. *In re Meadowbrook Farms Co-op.*,
2011 WL 2293389 (S.D. Ill. 2011)
Livestock seller that was entitled under the Packers and Stockyard Act of 1921 to treat the buyer's livestock sale proceeds as being held in trust for the seller until paid in full was also entitled to collect from the trust attorney's fees incurred in litigating its priority because the sales agreement so provided.

169. *Tecnitoys Juguetes, S.A. v. Distributoys.com, Inc.*,
2011 WL 2293855 (N.D. Ill. 2011)
Distributor of toys was entitled to temporary restraining order preventing customer from selling toys because the arrangement appears to have been a bailment due to the fact that: (i) the distributor had retained control over the toys by directing the customer to fulfill orders that the distributor had arranged; and (ii) bore the cost of handling and storing the toy cars for years after the toy cars were delivered to the customer.

170. *National City Bank v. Texas Capital Bank*,
353 S.W.3d 581 (Tex. Ct. App. 2011)
Garnishee bank that maintained investment portfolio account for client and had a security interest in that account to secure a line of credit had priority over the rights of the garnishor. The garnishee bank was liable to the garnishor for funds that it returned to the debtor after service of the writ and liquidation of the account, but was not liable for amounts it set off against the client's obligation on the line of credit.

Enforcement Issues

– Default

171. *Buzzell v. Citizens Auto. Finance, Inc.*,
802 F. Supp. 2d 1014 (D. Minn. 2011)
Secured party that regularly accepted late payments was required to provide the debtor with notification of its intent to repossess vehicle before doing so, and its failure to provide such notice rendered the repossession wrongful.

– Waiver, Estoppel & Other Defenses

172. *Zorin Properties, LLC v. Denney*,
2012 WL 751978 (Ky. Ct. App. 2012)
Secured party that sent to the debtor notification of his intention to repossess the collateral on a specified date did not thereby waive the right to repossess earlier. Neither the security agreement nor the law required notification of repossession and the security agreement expressly provided that no notice to the debtor would entitle the debtor to further notice in the future. The notification was a courtesy and did not create a course of dealing that overrode the express terms of the security agreement.

173. *JPMorgan Chase Bank v. Jeffco Cinnaminson Corp.*,
2012 WL 996617 (N.J. Super. Ct. App. Div. 2012)
Summary judgment in favor of secured party reversed because debtor and co-borrower may have an impairment of collateral defense based on secured party's release of its lien on two vehicles upon receipt of subsequently dishonored payoff checks from consignee.

– Replevin & Repossession

174. *Harley-Davidson Credit Corp. v. Monterey Motorcycles, Inc.*,
2012 WL 1309151 (N.D. Cal. 2012)
Lender with purchase-money security interest in motorcycle dealer's inventory was entitled, ex parte, to temporary restraining order enjoining the dealer from selling any collateral due to evidence that, after selling some inventory out of trust and agreeing not to do so further, the debtor continued to surreptitiously sell inventory out of trust and use the funds to pay other creditors.

175. *All Points Capital Corp. v. B.C.A. Leasing Ltd.*,
2012 WL 246617 (N.Y. Sup. Ct. 2012)
Lender with security interest in auto dealer's inventory, as well as a mortgage on real property, was not entitled to a preliminary injunction awarding it possession of the inventory because even though the lender had established a likelihood of success on the merits based on the auto dealer's admitted default on the loan, the lender had not shown that it will suffer irreparable injury without injunctive relief. Moreover, and such an injunction would interfere with the auto dealer's ability to sell inventory, which would enhance its ability to repay the debt.

176. *De Lage Landen Financial Services, Inc. v. Tri State Crane Rental Corp.*,
2012 WL 484244 (D. Me. 2012)
Secured party with perfected security interest in crane was not entitled to *ex parte* pre-judgment writ of attachment even though the debtor had sold and delivered the crane to a buyer in another state. The secured party had not shown that there was an immediate danger that the defendants will damage or destroy any property to be attached, if notified in advance of the request for an attachment, particularly given that the crane was already gone, there was no evidence the proceeds were still on hand, and no evidence that the corporate guarantors were linked to the debtor's improper conduct.

177. *Whitney National Bank v. Flying Tuna, LLC*,
2011 WL 2669450 (S.D. Ala. 2011)
Secured party that had made a showing of default to which the debtor had not responded was entitled to a preliminary injunction prohibiting the debtor from disposing of any collateral but had not shown the likelihood of irreparable injury necessary for a preliminary injunction requiring the debtor to provide an inventory of collateral, to provide an accounting of accounts receivable, or to turn over artwork subject to the security interest.

178. *Firestone Financial Corp. v. Maxx Fun, LLC*,
2011 WL 4459388 (M.D. Pa. 2011)
Secured party had no shown that it was entitled to ex parte, pre-judgment seizure of the collateral because the claim that the collateral would decrease in value was unsupported, the assertion that the collateral may be moved outside the jurisdiction was vague and much of it was already outside the jurisdiction, the secured party had not established the value of the collateral, and some of the collateral was in the hands of a non-party.

179. *General Elec. Capital Corp. v. Oncology Associates of Ocean County LLC*, 2011 WL 6945739 (D.N.J. 2012)
Lessor/secured party of medical equipment was entitled to writ of replevin because the lessee/debtor failed to prove that: (i) the equipment had become a fixture, and thus it remained personal property; (ii) the cost of removal would exceed the likely sale proceeds and would therefore render removal commercially unreasonable; (iii) the clause in the agreement providing for immediate removal upon default was unconscionable because it would endanger public health by disrupting numerous, innocent third parties' ongoing cancer treatment; or (iv) would result in forfeiture.

180. *Oyster Technologies, Ltd. v. Environmental Developers Group, LLC*, 2011 WL 6213747 (D. Mass. 2011)
Creditor with nonrecourse loan secured only by A 50% interest in a limited liability company was entitled to preliminary injunction against the debtor withdrawing funds from or pledging the assets of the limited liability company.

181. *Gati v. Americredit Financial*, 2012 WL 345916 (Ohio Ct. App. 2012)
Assignee of security interest in automobile that was perfected by notation of original lender's interest on the certificate of title was entitled to repossess the vehicle even though assignee's interest was not noted on the certificate. Unclear if the court concluded that assignee's interest was perfected or that perfection was not necessary to enforcement.

182. *Home Savings & Loan Co. of Youngstown, Ohio v. Super Boats & Yachts, LLC* 2011 WL 2447641 (S.D. Fla. 2011)
Creditor with a purchase-money security interest in a vessel perfected by notation on the vessel's certificate of title had neither a maritime lien nor a preferred mortgage, and therefore there was no federal court jurisdiction over the creditor's effort to replevy the vessel from a buyer.

183. *Wecker v. Crossland Group, Inc.*, 939 N.Y.S.2d 481 (N.Y. App. Div. 2012)
Repossession company which contracted with independent contractor to effectuate repossession commissioned by secured party was not responsible for torts committed by independent contractor during repossession; although the secured party's duty not to breach the peace is nondelegable, the repossession company was not the secured party.

184. *Reinhart v. PNC Bank,* 2012 WL 1104685 (E.D. Pa. 2012)
Police officers that allegedly assisted in repossession by ordering the debtor's son away from the collateralized boat and opening the enclosure where the boat was stored could be liable under § 1983. However, borough that employed police officers was not liable for failure to properly train its employees based on this one incident.

185. *Brown v. City of Philadelphia*,
2012 WL 1758172 (E.D. Pa. 2012)
City was not liable under § 1983 for the assistance its police officers allegedly provided during repossession of debtor's car by demanding that the debtor exit the vehicle because by the time the officers arrived on the scene, the car was attached to the tow truck and had been driven down the street, and thus the repossession had already occurred, even though the debtor entered the car while it was still in his driveway.

186. *Johnson v. Universal Acceptance Corp. (MN)*,
2011 WL 3625077 (D. Minn. 2011)
Debtors had no cause of action against police for violation of their civil rights in connection with repossession of their car because the officers did not assist in the repossession, instead they merely kept the peace by separating the parties and threatening to arrest one of the debtors when he made threats after the vehicles was already hooked up to the tow truck.

187. *Marcum v. Eastman Credit Union*,
2012 WL 1820865 (E.D. Tenn. 2012)
Because the towing company had already attached the vehicle to the tow truck and towed the vehicle from its parking spot into the flow of traffic before the debtor exited the vehicle, made her presence known to the agent, and objected to the repossession, the repossession had been completed before the objection was made. Because there were no other facts bearing on the issue, the repossession was not a breach of the peace and the debtor's claim under the Fair Debt Collection Practices Act for taking property to which the creditor had no present right to possession failed.

188. *Emigrant Mortgage Co. v. Greenberg*,
2012 WL 751562 (N.Y. Dist. Ct. 2012)
Secured party that purchased at a public sale the debtor's shares in a condominium was entitled to use summary eviction proceedings to remove the debtor. Even though the shares were personal property and the summary proceeding is for real estate, ownership of the shares carries with it ownership of a proprietary lease, and therefore an interest in a chattel real.

189. *Reed v. Les Schwab Tire Centers, Inc.*,
2011 WL 692904 (Wash. Ct. App. 2011)
Tire seller that had a security interest in customer's tires did not commit conversion by removing tires and wheels from the customer's car, bringing them to the seller's place of business to there separate the tires from the wheels, and returning the wheels the following day. The seller actions were justified and the customer suffered no damages for the temporary loss of the wheels.

– Notification of Disposition

190. *Epps v. JP Morgan Chase Bank*,
675 F.3d 315 (4th Cir. 2012)
The National Bank Act and the OCC regulations promulgated thereunder preempt, with respect to national banks, state laws requiring disclosures relating to an extension of credit, not notices relating to debt collection, and thus do not preempt Maryland law requiring secured parties to provide certain detailed information to the debtor after repossession of tangible personal property.

191. *Aguayo v. U.S. Bank*,
653 F.3d 912 (9th Cir. 2011)
The National Bank Act and the OCC regulations promulgated thereunder do not preempt, with respect to national banks, California law requiring secured parties to provide certain detailed information to the debtor after repossession but before sale of an automobile.

192. *Barclays Bank PLC v. Poynter*,
2011 WL 3794890 (D. Mass. 2011)
Because the Ship Mortgage Act does not preempt state law on enforcement of security interests in vessels, the secured party was permitted to conduct a non-judicial, private sale of the vessel. As a result, the notification provided by the secured party, which did not state the time and place of the sale, merely the date after which the sale would be conducted, was sufficient.

193. *Zwicker v. Emigrant Mortgage Co.*,
936 N.Y.S.2d 158 (N.Y. Super. Ct. 2012)
Notification of disposition sent by certified mail, return receipt requested, was reasonable despite use of an incorrect zip code because the address itself was otherwise correct and because the debtor acknowledged receipt of at least one notification and her counsel acknowledged receipt of notification.

194. *In re MarMc Transp., Inc.*,
2012 WL 272791 (Bankr. D. Wyo. 2012)
Secured party's notification of disposition provided on January 21 and which indicated the collateralized airplane would be sold no later than January 31 gave only seven [sic] days notice of the pending sale and was therefore inadequate, particularly since the buyer had previously paid for the aircraft. It did not matter that secured party did not actually transfer title by providing a bill of sale until May 23.

195. *In re Boone*,
2012 WL 1118988 (Bankr. E.D. N.C. 2012)
Secured party in consumer transaction that on August 30 sent notification of a private sale to be held no earlier than September 9 gave reasonable notification even though the interval included a national holiday and the debtors claimed that they lacked the time to withdraw money from their retirement account to redeem the collateral.

196. *In re Catipon*,
2011 WL 6934448 (9th Cir. BAP 2011)
Secured party's notification of disposition, which did not state that the debtor had 15 days from the date of the notification to redeem the vehicle or that the secured party intended to dispose of the vehicle upon the expiration of that 15-day period, failed to comply with California statute governing conditional sale contracts for motor vehicles and, therefore, secured party was not entitled to a deficiency.

197. *Mountaineer Investments LLC v. Heath*,
2011 WL 6038450 (Wash. Ct. App. 2011)
Notification that motor home would be disposed of at a public sale on a specified date was not insufficient merely because the sale closed a month afterwards, given that the sale commenced on the date specified. Although no one appeared at the location to place an in-person bid, and the secured party then used telephone inquiries and written submissions to reach an agreement, the process remained a public sale.

198. *Scott v. Nuvell Financial Services LLC*,
789 F. Supp. 2d 637 (D. Md. 2011)
Collateralized vehicles were sold at a public sale, not a private sale, under Maryland's Credit Grantor Closed End Credit law because the public was invited through weekly advertisements in the *Baltimore Sun* and the forum was open to the public, even though non-dealers had to provide a refundable $1,000 deposit to attend. As a result, notification of the sale was proper.

199. *Cappo Management V, Inc. v. Britt*,
711 S.E.2d 209 (Va. 2011)
Automobile seller that repossessed the car subject to a conditional sale contract when the financing fell through was required to give the buyer notification of a resale because, even though the Supplement to Purchase Contract declared that the car remained property of the dealer pending approval of the lender, other contract documents treated the vehicle as belonging to the buyer and the ambiguity had to be construed against the dealer.

200. *Cosgrove v. Citizens Automobile Finance, Inc.*,
2011 WL 3740809 (E.D. Pa. 2011)
Class action settlement against auto financier for allegedly not providing a reasonable disposition notification – due to the fact that the notifications failed to set forth the debtor's reinstatement rights and in many cases overstated the debtor's obligations – would be approved, in part because the merits of the claim were compelling.

201. *Kight v. Ford Motor Credit Company, LLC*,
721 S.E.2d 204 (Ga. Ct. App. 2011)
Secured party that disposed of debtor's vehicle was not entitled to a summary judgment on its claim for a deficiency because even though it had sent by certified mail to the debtor's address listed in the security agreement the notification, required by non-uniform state law, of its intent to pursue a deficiency, the debtor had presented evidence that she had earlier notified the secured party of a change in address.

– Conducting a Commercially Reasonable Disposition

202. *In re Inofin, Inc.*,
455 B.R. 19 (Bankr. D. Mass. 2011)
Even if lender had a security interest in chattel paper sold at foreclosure sale, the sale was not commercially reasonable because: (i) the first and third notifications contained the wrong date and the second was sent only two days before the date of sale; (ii) the secured party's attorney was unaware whether the debtor was in default and did not cause notification of default to be sent to the debtor; (iii) and no effort was made to solicit bids from individuals or entities in the industry by placing ads in trade publications; there were merely two ads in the *Boston Herald.*

203. *Tex Star Motors, Inc. v. Regal Finance Co.*,
2012 WL 58945 (Tex. Ct. App. 2012)
Evidence was sufficient to support jury's determination that chattel paper financier acted in a commercially reasonable manner in selling 906 repossessed automobiles at wholesale, by having dealers make sealed bids. Pursuant to § 9-601(g), the financier, as a buyer of chattel paper, had no duty to provide notification to its debtor, the car dealer, before selling the cars of the account debtors.

204. *In re MarMc Transp., Inc.*,
2012 WL 272791 (Bankr. D. Wyo. 2012)
Secured party did not prove that its private sale of an airplane was commercially reasonable even though the secured party claimed the sale price exceeded the appraised value of the collateral because the secured party did not provide any evidence that the sale was conducted in the usual manner on any recognized market, that the price was current in any recognized market at the time of disposition, or that the sale was in conformity with the reasonable commercial practices among dealers of aircraft.

205. *GMAC v. Jones*,
933 N.Y.S.2d 354 (N.Y. App. Div. 2011)
Debtors failed to raise a triable issue of fact as to whether the secured party sold the collateralized vehicle in a commercially reasonable manner given that the sales price was $1,700 greater than its estimated wholesale value.

206. *People's United Equipment Finance Corp. v. Hartmann*,
447 Fed. Appx. 522 (5th Cir. 2011)
Public sales of collateralized equipment at which the secured party was the only bidder were commercially reasonable because they were conducted in accordance with industry standards and the sale prices represented, according to various pricing resources, the equipment's fair market value as of the dates of sale.

207. *In re Adobe Trucking, Inc.*,
2011 WL 6258233 (Bankr. W.D. Tex. 2011)
Public sale of collateralized drilling equipment at which the secured party credit bid $41 million was commercially reasonable given that the price was higher than the amount of one appraisal, the other appraisal had to be discounted because it was prepared well before the sale and the market for such equipment was declining, and the secured party resold the equipment four months later for only $9 million. Advertising for the sale for one day in newspapers of general circulation was adequate because the security agreement provided that it would not be commercially unreasonable "to advertise dispositions of Collateral through publications or media of general circulation, whether or not the Collateral is of a specialized nature." The debtors could not complain about the secured party's failure to clean or paint the equipment prior to the sale or make it available for inspection given their refusal to turn the collateral over, identify its location, otherwise cooperate and because the security agreement provided that the secure party need not incur expenses to prepare the collateral for sale and need not have possession at the time of sale.

208. *Mountaineer Investments LLC v. Heath*,
2011 WL 6038450 (Wash. Ct. App. 2011)
Amalgamated public/private sale of motor home was commercially reasonable because the secured party advertised the sale sufficiently to draw six bids, extended the sales process, which resulted in a doubling of the number of bids, and negotiated a $500 increase in the sales price from the high bidder.

209. *First Chatham Bank v. Landers*,
2011 WL 4501968 (D.S.C. 2011)
2011 WL 7064553 (D.S.C. 2011)
Secured party may bring an action against the debtor on the secured obligation despite retaining possession of collateralized stock certificates because the certificates were still in the debtor's name and had not been "repossessed" (*i.e.*, foreclosed upon).

– Collecting on Collateral

210. *Bank of America v. Illumination Station, Inc.*,
2012 WL 1030321 (N.D. Ill. 2012)
Although creditor with a security interest in accounts that, after default, bought the accounts at a public auction, may have acquired the accounts pursuant to § 9-617 free of any right of the account debtor normally preserved by § 9-404, factual questions about whether the creditor really had a security interest, whether the sale was conducted in a commercially reasonable manner, and whether proper notification was provided, prevented a determination of whether the creditor qualified as a good faith transferee. The account debtor's claims under § 9-404 are limited to those that reduce the obligation (no affirmative recovery is available against an assignee) and to those that either arose out of the same contract as the acco8unt or prior to notification of the assignment.

211. *Riviera Finance of Texas, Inc. v. Capgemini U.S., LLC*,
2012 WL 1132209 (S.D.N.Y. 2012)
Account debtor that, after receiving notification of the assignment of the account, received reports that the debtor was not paying subcontractors and entered into a second agreement with the debtor regarding payment to subcontractors could not use the debtor's breach of that agreement to offset its liability to the factor that received the assignment of the account. The debtor's breach of the original agreement did not cause any damage to the account debtor; instead all of the account debtor's expenses incurred in paying contractors directly arose from the debtor's failure to abide by the second agreement and its statements to contractors.

212. *Mobile-One Auto Sound, Inc. v. Whitney National Bank*,
78 So.3d 807 (La. Ct. App. 2011)
Bank was not required to provide borrower with notification of default before debiting borrower's checking account of funds that the borrower had earmarked for floor plan financiers.

213. *Agri-Best Holdings, LLC v. Atlanta Cattle Exchange, Inc.*
812 F. Supp. 2d 898 (N.D. Ill. 2011)
Secured party that obtained relief from the stay and then notified account debtor to pay it directly was the real party in interest in action against the account debtor that the debtor commenced shortly after filing for bankruptcy and the secured party could be substituted for the debtor.

214. *Constructors & Associates, Inc. v. First National Bank of Cameron*,
2011 WL 2770234 (Tex. Ct. App. 2011)
General contractor/account debtor was not entitled to summary judgment on claim brought by bank with a security interest in subcontractor's accounts because the general contractor failed to provide evidence about which contracts the subcontractor breached – thereby giving rise to a contractual setoff right – or how much was owed to the suppliers.

215. *In re Black Diamond Mining Co.*,
2011 WL 6202905 (Bankr. E.D. Ky. 2011)
Account debtors who purchased coal from debtor pursuant to master sales agreement that permitted the account debtor to recoup the purchase price against liquidated damages for the debtor's breach owed no obligation to the debtor's factor because the breach damages exceeded the amounts due. Factor had no standing to argue that it was the account debtors who in fact breached because it was not a party to the agreement and, in any event, the debtor had never issued an event of default notice to the account debtor. Amounts the account debtor paid directly to the debtor to amend the master sales agreement did not violate the factor's rights because those payments were not "accounts" under Article 9 and did not arise from the sale of inventory, which were the only rights to payment that the factor had acquired an interest in.

216. *Bank of America v. Trinity Lighting, Inc.*,
2011 WL 3489693 (N.D. Ill. 2011)
Account debtor could had a right, valid against buyer of account, to set off against its account obligation the amounts the debtor owed to the account debtor from other, unrelated transactions and which obligations arose before the account debtor received notification of the assignment.

217. *U.S. Bank v. U.S. Rent a Car, Inc.*,
2011 WL 3648225 (D. Minn. 2011)
Account debtor could use claims against debtor to reduce amount owed but not to seek affirmative recovery from the secured party.

218. *Nova Bank v. Madison House Group*,
2011 WL 6028213 (D.N.J. 2011)
Secured party with security interest in promissory note was not, after the debtor's default, entitled to accelerate the obligation on the note or demand adequate assurance of future performance. Although the security agreement gave the secured party these rights against the debtor, neither the promissory note nor the law gave the debtor or the secured party these rights against the maker.

219. *Citywide Banks v. Armijo*,
2011 WL 4837501 (Colo. Ct. App. 2011)
Bank with a security interest in and possession of negotiable promissory note secured by deed of trust could not enforce obligation of maker who had paid the note in full to the debtor because the bank had allowed the debtor to service the loan and thus the debtor was the bank's agent. No discussion of § 3-602.

220. *CapTran/Tanglewood LLC v. Thomas N. Thurlow & Associates*,
2011 WL 2969835 (S.D. Tex. 2011)
Article 9 provides that a secured party may deduct from collections on collateral its reasonable collection expenses, including attorney's fees, but does not provide for recovery of attorney's fees against the account debtor.

221. *Vogel v. Onyx Acceptance Corp.*,
267 P.3d 1057 (Wyo. 2011)
Buyer of chattel paper did not violate the Uniform Consumer Credit Code by charging account debtors for the option of paying by phone or internet because that fee was not incident to the extension of credit, and thus did not constitute a "credit service charge" within the meaning of the UCCC, and the UCCC does not prohibit such an unenumerated fee.

222. *ITS Financial, LLC v. Advent Financial Services, LLC*,
823 F. Supp. 2d 758 (S.D. Ohio 2011)
Debtor and guarantors had no standing to raise subordination agreement as a basis for interfering with secured party's collection against account debtor and, in any event, the subordination agreement did not cover the account at issue.

223. *International Son-Ry's Enterprises, Inc. v. B & T Pools, Inc.*,
718 S.E.2d 424 (N.C. Ct. App. 2011)
Because subordination clause – including standstill requirement – was in the promissory note, the debtor and guarantors had standing to raise the subordination agreement as a defense to an action against them on the note and guarantees.

224. *TFG-Illinois, L.P. v. United Maintenance Co., Inc.*,
2011 WL 5239728 (D. Utah 2011)
Original equipment lessor that had assigned the lease to a bank but continued to service the lease had standing to sue the lessee because: (i) the return assignment from the bank to the original lessor was valid even though not in writing; (ii) the lessee has no standing to raise any statute of frauds problem that may exist with the return assignment; and (iii) its role as servicer gave it a pecuniary interest in the outcome even though it was not paid on a percentage basis.

– Retaining Collateral

225. *Tex Star Motors, Inc. v. Regal Finance Co.*,
2012 WL 58945 (Tex. Ct. App. 2012)
Chattel paper financier's acceptance of cars from some account debtors in satisfaction of their debts did not release the debtor-car dealer of its liability for a deficiency based on its obligation to repurchase nonperforming loans.

226. *Smith v. Community National Bank*,
344 S.W.3d 561 (Tex. Ct. App. 2011)
Stipulation and agreed order by which bankruptcy trustee transferred of title to collateral to secured party did not constitute an acceptance of the collateral in satisfaction of all or part of the secured obligation because neither the stipulation nor the order mentioned the indebtedness. As a result, the guarantor of the secured obligation was not discharged, although it would have to be given credit for any amounts the secured party collects through a disposition or from insurance.

– Standing Issues

227. *Bank of America v. Bridgewater Condos, L.L.C.*,
2011 WL 5866932 (Mich. Ct. App. 2011)
Bank with a security interest in condominium buyers' rights in escrow agreements could enforce the buyers' right to recover the deposits due to the invalidity of the purchase agreements.

– Statute of Limitations

228. *Hassler v. Account Brokers of Larimer County, Inc.*,
274 P.3d 547 (Colo. 2012)
Limitations period on secured debt began running on either the day the creditor was first entitled to accelerate the debt or the day, shortly after repossession, that it did in fact accelerate, not the day when the disposition occurred and the resulting deficiency became liquidated.

229. *Madison Capital Co., LLC v. S&S Salvage, LLC*,
794 F. Supp. 2d 735 (W.D. Ky. 2011)
Secured party's actions for conversion and trespass against buyer of collateral were barred by a two-year statute of limitations.

– Other

230. *Lombard v. Station Square Inn Apartments Corp.*,
942 N.Y.S.2d 116 (N.Y. App. Div. 2012)
Trial court erred in enjoining cooperative association that had security interest in shares to cooperative apartments from foreclosing on the shares. The debtor did not attempt to cure the default until almost 3 months after the expiration of the 10–day cure period in the notice of default and thus failed to show a likelihood of success on the merits; the debtor also failed to show that he would sustain irreparable harm absent a preliminary injunction.

231. *Secure US, Inc. v. Security Alarm Financing Enterprises, Inc.*,
2012 WL 1253002 (N.D.W. Va. 2012)
Secured party with prior perfected security interest in the debtor's accounts was not entitled to prevent junior judgment lienor from selling the debtor's accounts even though such a sale may not generate any proceeds for the judgment creditor.

232. *Newton v. Bank of McKenney*,
2012 WL 1752407 (E.D. Va. 2012)
Servicemembers' Civil Relief Act, which forbids secured parties from foreclosing on collateral owned by an active military member and pledged before activation, unless the creditor obtains court permission to do so, does not apply to collateral owned by a corporation that the service member in turn owns and controls.

233. *Johannsen v. Morgan Stanley Credit Corp.*,
2012 WL 90408 (E.D. Cal. 2012)
Debtor's claims that secured party mismanaged investment property serving as collateral and that it was unconscionable for the secured party to acquire a security interest in both the investment property and real property to secure a residential real property loan were both subject to arbitration.

234. *FDIC. v. Katzowitz*,
2012 WL 368672 (E.D. Mich. 2012)
Nominal borrower who signed promissory note waiving any defense relating to the lender's failure "to realize upon the Collateral" had no defense based on the lender's release of collateral to the person who received the loan proceeds. Even if the release violated the duty to dispose of the collateral in a commercially reasonable manner, it would not bar a deficiency action but merely result in a reduction of the deficiency.

235. *FDIC v. Cashion*,
2012 WL 1098619 (W.D.N.C. 2012)
Promissory note that expressly provides that the lender may "fail to realize upon . . . the collateral" does not require the lender's assignee to seek recovery from the collateral before obtaining a judgment on the note.

236. *Chuhar v. AMCO Insurance Co.*,
2012 WL 589369 (N.D. Ind. 2011)
Bank with a mortgage and security interest in motel and related personal property, and which was a loss payee and additional insured under the debtor's insurance policy, could be substituted for the debtor in the his pending action against the insurer or breach of the property damage coverage and the claim for bad faith relating thereto but not for breach of the policy provision covering lost business revenue or the claim for bad faith relating thereto because the bank had not been assigned an interest in the loss of business policy provision.

237. *Amegy Bank v. Monarch Flight II, LLC*,
2011 WL 4948986 (S.D. Tex. 2011)
Even though the debtor had sold the collateral, the secured party was not entitled to a preliminary injunction freezing the debtor's assets because the secured party had not shown a likely irreparable injury due to the fact that its damages would be fully compensable by a monetary award and the debtor testified that he had a substantial net worth. No constructive trust was appropriate because the secured party was not seeking to recover a specific asset and had not proven fraud, despite evidence that the debtor had made misrepresentations.

238. *Ford Motor Co., LLC v. Heinrich*,
808 N.W.2d 174 (Wis. Ct. App. 2011)
Claim preclusion did not bar secured party's action on the secured obligation even though the secured party had previously obtained a judgment and writ of replevin for collateral; the secured party did not recover the collateral because the sheriff was unable to execute the writ.

239. *Fifth Third Bank v. Rivera*,
2012 WL 1831460 (M.D. Fla. 2012)
Secured party's action against the debtor was not subject to arbitration even though the collateralized brokerage account – for which an affiliate of the secured party was the broker – contained an arbitration clause because the secured party itself neither signed nor benefitted from the brokerage account agreement and there was no allegation that it even knew of the arbitration clause.

240. *Camelot Entertainment Inc. v. Incentive Capital LLC*,
2011 WL 4477317 (C.D. Cal. 2011)
Mandatory forum selection clause in security agreements was binding even though the debtor's note contained a non-exclusive forum selection clause and the parties' escrow agreement contained no forum selection clause because the debtor's claim related to the collateral and was therefore inextricably bound up with the security agreements.

241. *Alabama Title Loans, Inc. v. White*,
80 So. 3d 887 (Ala. 2011)
Debtor who claimed repossession agent assaulted her and repossessed car after loan had been paid in full had to arbitrate claim because the loan agreement provided that its arbitration clause "shall survive the repayment of all amounts owed" and because the arbitration clause covered all claims, including tort claims, that "relate[] to this Agreement or the Vehicle," not merely those arising under the contract.

242. *Shah v. Santander Consumer USA, Inc.*,
2011 WL 5570791 (D. Conn. 2011)
Language in security agreement that provided for arbitration of any "claim or dispute arising from this Contract of whatever nature" was a broad clause even though it did not refer to disputes "relating to" the agreement or the parties' relationship, and it therefore encompassed the debtor's action for the secured party's alleged failure to comply with state statutes requiring a post-repossession notice and disclosure of certain consumer rights even though such an action did not require interpretation of the security agreement.

Liability Issues

– of the Secured Party

243. *Sadowski v. Commissioner of Revenue*,
2012 WL 1414924 (Minn. Tax. Ct. 2012)
Secured party who, after the debtor's default, exercised his rights in the debtor's pledged corporate stock to become the sole director of the corporation, was personally liable for the corporation's unpaid sales tax liability incurred prior to when the secured party took control because, after he took control, he was the person responsible for filing the returns and paying the taxes, there were corporate funds available to pay the taxes, but the funds were used for other purposes. The secured party's lack of knowledge about the lax liability and lack of access to the corporation's records was not material.

244. *Huffman v. Credit Union of Texas*,
2011 WL 5008309 (W.D. Mo. 2011)
The statutory damages available under § 9-625 do not make that provision a penal statute and therefore the limitations period in Missouri for a claim based on an allegedly deficient pre-sale notification was the general 5-year period for actions relating to "liability created by a statute other than a penalty."

245. *Great Western Bank v. Branhan*,
804 N.W.2d 447 (S.D. 2011)
Because the debtors had agreed, after default, to surrender and transfer collateralized stock to the secured party, and the value of that stock was used in calculating the amount of a deficiency judgment, the secured party was entitled to retain the stock issuer's refund, announced and made after the debtors paid the deficiency, of a prior capital call.

246. *Homestead Finance Corp. v. Southwood Manor L.P.*,
956 N.E.2d 183 (Ind. Ct. App. 2011)
State statute that makes lienholder on mobile home liable, upon notification from the owner of the land, for ground rent until the mobile home is removed does not impose liability on secured party for any rent accruing after it surrenders its lien.

247. *Symetra Life Insurance Co. v. Rapid Settlements, Ltd.*,
2011 WL 4807901 (S.D. Tex. 2011)
Obligor on structured settlements had claim for tortious interference with contractual relations against assignee of structured settlement payments that attempted to use arbitration to avoid state statutes requiring court approval of the transfers because the assignee had no colorable argument that arbitration could be used in such a manner.

– of the Debtor

248. *BrooksGreenblatt, L.L.C. v. C. Martin Co., Inc.*,
2012 WL 911882 (M.D. La. 2012)
Account debtor who improperly paid the debtor after receiving an instruction to pay the secured party, and who later paid the secured party and received in return an assignment of rights against the debtor and guarantors, had a valid action against the debtor for the sums the debtor received from the account debtor and failed to remit to the secured party.

249. *Klinker v. First Merchants Bank*,
964 N.E.2d 190 (Ind. 2012)
Although summary judgment on contract claim was appropriate against car deal that had sold vehicles out of trust and lied about it, summary judgment was not appropriate on fraud claim – which gives rise to treble damages – because the requisite fraudulent intent was still a disputed factual issue.

250. *Exchange Bank of Missouri v. Gerlt*,
2012 WL 1850974 (Mo. Ct. App. 2012)
Bank that sold collateralized logging truck without notification to the debtor failed to rebut presumption that no deficiency was owing because the only evidence it provided was the buyer's testimony of what he was willing to pay, not what the truck was worth, and even if the testimony did relate to the truck's value, it did not deal with what a complying disposition would have brought and the trial court was free to find that the testimony lacked credibility.

251. *United States v. Stevens*,
447 Fed. Appx. 488 (4th Cir. 2011)
Debtor was guilty of transporting a stolen vehicle in interstate commerce, in violation of 18 U.S.C. § 2312, because he transported a motorcycle with the intent to dispose of the motorcycle by selling it to a third party and knowing he was depriving the lienholder of its security interest.

252. *United States v. Gilbert*,
2011 WL 652830 (E.D. Mich. 2011)
2011 WL 5904429 (E.D. Mich. 2011)
Debtors' guilty plea embezzlement or theft of public property, in violation of 18 U.S.C. § 641, by selling without permission cattle in which the United States had a security interest and not using the proceeds to pay the secured debt was rejected because the offense requires government ownership of the property, not a mere security interest. However, subsequent indictment for violating 15 U.S.C. § 714m, which criminalizes conversion of property pledged to the Commodity Credit Corporation, would stand.

253. *Hollish v. Maners*,
2011 WL 4390156 (Ohio Ct. App. 2011)
Debtor that resold business he had purchased remained liable for the balance of the purchase price even though the seller had failed to perfect his security interest in the business and the subsequent purchaser had made payments on the debt for several years. The debtor failed to prove any novation or basis for waiver or estoppel.

254. *Wells Fargo Bank v. LaSalle Bank*,
2011 WL 2470635 (N.D. Ill. 2011)
Claim against originator and seller of commercial mortgage loan originator for breach of warranties that origination met industry standards and that property appraisals satisfied the guidelines in FIRREA had to be dismissed because it failed to put the originator on notice of what conduct deviated from industry standards or the reasons why the appraisals violated FIRREA.

– of Others

255. *Volvo Const. Equipment Rents, Inc. v. NRL Rentals, LLC*,
2012 WL 10893 (D. Nev. 2012)
2012 WL 27658 (D. Nev. 2012)
Secured party with security interest in deposit account had no cause of action for conversion or unjust enrichment against entity to whom the debtor sent a wire transfer from the deposit account because the secured party made no effort to exercise its rights while the funds were in the debtor's deposit account.

256. *BancorpSouth Bank v. 51 Concrete, LLC*,
2012 WL 1269180 (Tenn. Ct. App. 2012)
Secured party that brought a conversion claim against the buyers of the debtor's equipment for failing to turn over the proceeds they received upon resale has a right to attorney's fees under § 9-607(d) and under the security agreement with the original debtor, which became effective against the buyers under § 9-201(a).

257. *In re Fish & Fisher, Inc.*,
2012 WL 1027230 (Bankr. S.D. Miss. 2012)
Secured party's claim against the debtor's law firm for negligently disbursing proceeds of an arbitrated claim – which the secured party were proceeds of an account and imbued with a constructive trust – was dismissed because conversion requires an intentional act, not negligence, and the secured party's notification of its rights did not indicate how much it was owed or demonstrate the priority of its security interest.

258. *Valley Community Bank v. Progressive Casualty Insurance Co.*,
2012 WL 581301 (N.D. Cal. 2012)
Insurer that provided Bond and Safe Depository Coverage to bank that issued loan purportedly secured by securities account maintained at brokerage firm was not liable for losses the bank incurred because even if the control agreement was forged, the proximate cause of the loss was the fact that there were no securities.

259. *North Shore Bank v. Progressive Casualty Insurance Co.*,
674 F.3d 884 (7th Cir. 2012)
Lender defrauded by borrower's fake certificate of origin for motor home that was to collateralize loan did not have action against its insurer because although the insurer agreed to indemnify the bank for losses resulting from "counterfeit" documents, the fake certificate of origin did not qualify as a counterfeit because it was a complete fabrication and there was no original certificate for a motor home with the vehicle identification number listed.

260. *Repossession Specialists v. Geico Insurance Co.*,
33 A.3d 1242 (N.J. Super. Ct. 2012)
Repossession company is not covered by debtor's automobile insurance policy as someone using the vehicle with the debtor's possession and thus insurer was not responsible for injuries the debtor suffered when attempting to retrieve items from her vehicle as repossession company was towing the vehicle away.

261. *Rawlinson v. Law Office of William M. Rudow, LLC*,
2012 WL 19666 (4th Cir. 2012)
Aunt of debtor stated cause of action under the Fair Debt Collection Practices Act against law firm that brought replevin action against her, as well as the debtor, on the theory that she lived with the debtor and therefore might be in possession of the collateral.

262. *NLRB v. Leiferman Enterprises, LLC*,
649 F.3d 873 (8th Cir. 2011)
Entity that purchased debtor's assets free and clear from court-appointed receiver was liable, as a successor-in-interest, for the debtor's unfair labor practices because the purchaser acquired substantial assets of the debtor with knowledge of the pending unfair labor practice charges and continued, without interruption or substantial change, the debtor's business operation.

263. *Ortiz v. Green Bull, Inc.*,
2011 WL 5554522 (E.D.N.Y. 2011)
Tort claimant pled a cause of action based on successor liability against the newly formed entity that, after debtor's default, purchased the lender's note and security interest, and then entered into a collateral transfer agreement with the debtor pursuant to which it acquired most of the debtor's assets. Although a de facto merger requires some continuity of ownership and the tort claimant pled that it lacked knowledge of any such continuity, dismissal was premature because the transactions were confidential and plaintiff was entitled to discovery on the issue.

264. *Fifth Third Bank v. Lincoln Financial Securities Corp.*,
453 Fed. Appx. 589 (6th Cir. 2011)
Securities broker breached control agreement with customer's secured party by either: (i) misrepresenting that the value of the customer's account by including in the stated value securities purchased with funds from a check that was later dishonored; or (ii) reversing trades after the check was dishonored despite clauses in control agreement by which broker promised not to execute sell orders without the secured party's consent and "waive[d] and release[d] all liens, encumbrances, claims and rights of setoff it may have." The control agreement was not rendered unenforceable for lack of consideration or mutuality or mistake.

265. *Bluwav Systems, LLC v. Durney*,
2011 WL 5375200 (E.D. Mich. 2011)
Secured party's assignee that conducted partial strict foreclosure of all collateral – including the debtor's "contract rights" – thereby acquired all the debtor's rights under a settlement agreement between the debtor and its former attorney, under which the former attorney released claims and covenanted not to sue. The attorney's later suit against the assignee based on the same transactions as those underlying the settlement agreement constituted a breach of the settlement agreement, giving rise to the liquidated damages provided for in the settlement agreement.

266. *Stanley Bank v. Parish*,
264 P.3d 491 (Kan. Ct. App. 2011)
Although lien creditor's sale of vehicle did not constitute conversion against secured party with a prior security interest in the vehicle, both the lien creditor's refusal to surrender the proceeds and the buyer's refusal to surrender the vehicle were acts of conversion.

267. *Sequel Capital, LLC v. Pearson*,
2011 WL 4398108 (N.D. Ill. 2011)
Trustee who received assignment for benefit of creditors could not have breached fiduciary duty by failing to determine the value of the inventory or by compromising an action against an account debtor after the senior secured party took control over the assets.

268. *In re Colusa Mushroom, Inc.*,
2011 WL 4433595 (Bankr. N.D. Cal. 2011)
Members of unsecured creditors committee had no cause of action against committee's attorney for failure to perfect security interest that debtor retained when it sold assets to a third party because any negligence was on the part of the debtor's counsel, not the creditors committee's counsel, who did not have the right or power to file a financing statement.

269. *DCFS USA, LLC v. District of Columbia*,
803 F. Supp. 2d 29 (D.D.C. 2011)
District of Columbia violated secured creditor's constitutional rights by selling impounded vehicle free and clear of security interest without providing notice of the sale to the secured creditor, whose predecessor's interest was noted in the records of the Virginia office that had issued a certificate of title for the vehicle.

270. *Cliff Findlay Automotive, LLC v. Olson*,
263 P.3d 664 (Ariz. Ct. App. 2011)
Co-maker of promissory note secured by a new car was an accommodation party and therefore had a partial defense to payment of the deficiency under § 3-605(d) based on the secured party's failure to timely perfect, which led to avoidance of the security interest as a preferential transfer in the other maker's bankruptcy. The defense is limited to the value of the collateral lost.

271. *Buckner v. Gebhardt*,
2011 WL 4842371 (Cal. Ct. App. 2011)
Former bail bondsman's legal malpractice claim against his attorneys for failure to advise him to retain a security interest in the business he sold was time barred because the cause of action accrued not after default when the buyer's other lender perfected its security interest but when the agreements were signed because the plaintiff was an experienced businessman who had recommended the other lender to the buyers and knew the other lender would require a security interest as a condition of making the loan.

272. *Schultze v. Chandler*,
2011 WL 6778823 (N.D. Cal. 2011)
Attorney for unsecured creditors committee did not owe a duty to individual creditors outside his role as attorney for the committee and was therefore not liable for professional malpractice for failing to make sure that debtor's attorney filed financing statement in connection with a credit sale of the debtor's assets, a transaction in which the attorney for the creditors committee was not involved.