

RESOLVING CONFLICTS ARISING FROM THE INTERSTATE MOVEMENT OF MOTOR VEHICLES: THE ORIGINAL UCC § 9-103 AND ITS SUCCESSOR

I. INTRODUCTION

Since the advent of the automobile, the courts of the various states have been faced with the difficult problem of resolving conflicts between innocent parties who have unknowingly obtained competing interests in the same motor vehicle. This conflict invariably arises from the concurrence of interstate movement of the motor vehicle with fraudulent activities of a third person.

In a typical situation, Buyer purchases an automobile from Seller. He pays \$500 down and agrees to pay the balance of \$3000 in equal monthly installments over a period of three years. Seller passes the automobile's title to Buyer, but retains a security interest which he duly perfects according to the laws of his (Seller's) state. Buyer makes the payments for several months, but he has a turn of bad luck and needs funds quickly. He transports the car to a neighboring state and fraudulently registers it without noting Seller's security interest. Buyer then sells the car to a bona fide purchaser [BFP] and absconds with the proceeds. At some later date, Seller discovers that the car is in the BFP's possession and brings suit (presumably in the BFP's state) to foreclose his security interest in the car. The court is now in the undesirable position of having to allocate the resulting loss between an innocent secured party with a perfected security interest in a foreign state¹ and an innocent BFP residing in the forum state.²

In most cases the court's determination of the applicable state law will control the outcome of the conflict. If the law of the foreign state is applied, the secured party will generally prevail because his prior perfected security interest will be superior to the interest of the subsequent BFP. On the other hand, if the law of the forum state is applied, the secured party's interest will usually not be considered perfected in the forum state, and the BFP's interest will therefore be given preference.³

UCC §9-103 is the statutory authority upon which most courts rely in deciding which state law to apply. Although several states have al-

¹ "Foreign state" refers to the state of residence of the original secured party. It is ordinarily the state from which the vehicle was removed, and as such, it is sometimes referred to as the "removal state" in this note.

² "Forum state" refers to the state in which the suit is brought. It is ordinarily the state to which the vehicle was removed.

³ This note will focus upon the conflict of laws question and will not consider the problem of determining priorities within a state.

ready adopted the 1972 amended version of §9-103, the original §9-103 is majority law today.⁴ A discussion of the original UCC §9-103 is required not only because it is still majority law, but also because it is fundamental to an understanding of the comprehensive changes made by the 1972 amendments.⁵ The amended version of §9-103 will also be analyzed in depth because it will presumably be the majority law in the near future. This note will examine the application of the original and the amended version of UCC §9-103 to conflicts between innocent parties over the ownership of a motor vehicle that has been transported across state lines. All states will be categorized as either title states or non-title states and all possible combinations of interstate movement will be considered.⁶

II. THE ORIGINAL UCC §9-103

A. *Movement From Non-Title State to Non-Title State*

The simplest situation possible under the original §9-103 involves a conflict between parties residing in non-title states. Subsection (3) controls.⁷ It states that a foreign security interest which has been perfected

⁴ As of this writing, ten states have adopted the 1972 amendments: Arkansas, Illinois, Iowa, Nevada, North Dakota, Oregon, Texas, Virginia, West Virginia, and Wisconsin. Of the forty other states, all but Louisiana have enacted the original version of UCC §§9-103(3)-(4). Colorado has statutorily excepted motor vehicle titles from these provisions, and Georgia applies them in conjunction with an earlier statute, the Uniform Motor Vehicle Certificate of Title and Antitheft Act. For a discussion of the law in Louisiana, Colorado, and Georgia see Annot., 42 A.L.R.3d 1168 (1972).

Ohio has judicially excepted motor vehicle conflicts from the coverage of UCC §9-103. In *General Motors Acceptance Corp. v. Birkett L. Williams Co.*, 17 Ohio Misc. 219, 46 Ohio Op. 2d 311, 243 N.E.2d 882 (C.P. 1969), the court dismissed UCC §9-103(3) as not being applicable to motor vehicle transactions. UCC §9-103(4) was cited, but not discussed. The decision to exclude motor vehicles from the coverage of §9-103 was apparently based on legislative intent, although the court's reasoning was less than clear.

The pre-UCC law is discussed in Annot., 13 A.L.R.2d 1312 (1950).

⁵ References to the case law will be made only to illustrate some of the problem areas of the original §9-103. No point will be served by discussing the case law in detail. This has been done elsewhere. See Annot., 42 A.L.R.3d 1168 (1972).

⁶ As used in this note, "non-title state" refers to all states that permit perfection of a security interest by means of filing alone. This includes states that do not have certificate of title acts. It also includes states that have incomplete certificate of title acts (states in which a security interest does not have to be noted on the certificate of title as a condition of perfection). "Title states" are those that have complete certificate of title acts (states in which a security interest must be noted on the certificate of title as a condition of perfection). For a complete discussion of this labeling technique and a categorization of all states' perfection requirements, see Ward, *Interstate Perfection of the Motor Vehicle Security Interest: A Bottleneck in Section 9-103*, 34 ALB. L. REV. 251, 253-64 (1970).

⁷ UCC §9-103(3) reads, in pertinent part:

If the security interest was already perfected under the law of the jurisdiction where the property was when the security interest attached and before being brought into this state, the security interest continues perfected in this state for four months and also thereafter if within the four month period it is perfected in this state.

in the vehicle before it enters the forum state continues to be perfected in the forum state for four months after entry. This perfection is absolute in that it does not require re-perfection in the forum state by the holder of the foreign security interest in order to obtain the four months of protection. Thus a purchaser purchasing the vehicle within the four month period takes subject to the foreign security interest.⁸ Of course, the holder of the foreign security interest can perfect for an indefinite period by re-perfecting in the forum state before a purchase occurs.

The drafters have chosen the four month period as a reasonable period of time for the holder of the foreign security interest to relocate the vehicle and re-perfect his security interest.⁹ In so doing they have attempted to balance the conflicting interests of secured parties and purchasers of the motor vehicle or further creditors of the debtor.

B. *Movement From Title State to Non-Title State*

Section 9-103(4) applies when a vehicle is moved from a title state (in which the secured creditor's interest was noted on the certificate of title) to a non-title state.¹⁰ It provides that perfection is governed by the law of the jurisdiction which issued the certificate—the law of the "removal state."¹¹ The result of this is that in most instances the foreign secured creditor will prevail and the balancing attempted under subsection (3) will be discarded.

As can be seen from the prior two examples, it is advantageous for

⁸ *Churchill Motors, Inc. v. A. C. Lohman, Inc.*, 16 App. Div. 2d 560, 229 N.Y.S.2d 570 (1962); *First National Bank v. Stamper*, 93 N.J. Super. 150, 225 A.2d 162 (Super. Ct. L. Div. 1966).

It has been argued by at least one commentator that the additional four months of protection should only be conditional. Under this analysis, if the foreign secured party fails to re-perfect in the forum state within the four month period, his interest, at the end of the four months, will be treated as unperfected against any BFP, even one that purchased within the four month period. Vernon, *Recorded Chattel Security Interests in the Conflict of Laws*, 47 IOWA L. REV. 346, 377-78 (1962). This position is supported somewhat by UCC §9-103, Comment 7 (original version), but most commentators agree with the conclusions reached in *Churchill Motors* and *Stamper* that the four months of protection is absolute. Weintraub, *Choice of Law in Secured Personal Property Transactions: The Impact of Article 9 of the Uniform Commercial Code*, 68 MICH. L. REV. 684, 713 (1970); Note, *Section 9-103 and The Interstate Movement of Goods*, 9 B.C. IND. & COM. L. REV. 72, 82-85 (1968); Note, *Security Interests in Motor Vehicles Under the UCC: A New Chassis for Certificate of Title Legislation*, 70 YALE L. J. 995, 1020 (1961). A literal reading of §9-103(3) also supports the absolute protection construction.

⁹ UCC §9-103, Comment 7 (1972 amendments).

¹⁰ UCC §9-103(4):

Notwithstanding subsections (2) and (3), if personal property is covered by a certificate of title issued under a statute of this state or any other jurisdiction which requires indication on a certificate or title of any security interest in the property as a condition of perfection, then the perfection is governed by the law of the jurisdiction which issued the certificate.

¹¹ See note 1, *supra*.

a creditor who lends money with a motor vehicle as security to be situated in a title state. To be so situated can make the difference between absolute protection for four months and absolute protection for an indefinite period. Subsection (4) thus appears to be a secured-party-oriented provision, although it also recognizes the greater protection given to purchasers by a certificate of title. Very possibly, the drafters of subsection (4) were hoping that it would pressure legislators (through the lobbying activities of lenders) to adopt certificate of title legislation.¹² If all states had followed this course of action, many of the conflicts which arose in this area might never have occurred.

C. *Movement From Title State to Title State*

A troublesome situation, not specifically covered by §9-103, can arise when a vehicle in which a creditor has a duly perfected security interest is moved from one title state to another title state. If the "owner" obtains a "clean" certificate¹³ in the forum state, he can sell the car to an unwary resident of the forum state. In a suit for possession of the car, the courts must decide which certificate is the one referred to in subsection (4).

Three alternatives are possible in making this determination. The first, and majority, view is that the certificate issued in the removal state is controlling.¹⁴ Under this view the issuance of a second certificate has no effect so long as the first one is still extant. A second approach, and one that has received some support, would find the second certificate to be controlling.¹⁵ The second certificate is seen as revoking the first. Advocates of this theory emphasize the reliance of the public on the certificate of title system. They argue that the most recent certificate must be given priority if the certificate of title system is to function properly. The third approach holds that subsection (4) does not apply to the multiple certificate situation since it only contemplates the existence of one certificate.¹⁶ If this theory is employed, conflicts will in most likelihood be resolved pursuant either to subsection (3) or pre-statutory law. All

¹² Note comment (4)(b) to the 1972 amendments to §9-103:

It has long been hoped that "exclusive certificate of title laws" would provide a sure means of controlling property interests in goods like automobiles, which because of their nature cannot readily be controlled by local or statewide filing alone.

¹³ A "clean" certificate is one that shows no outstanding security interest in the vehicle it covers.

¹⁴ Annot., 42 A.L.R.3d 1168 (1972). This approach is consistent with the reasoning of *First National Bank v. Stamper*, 93 N.J. Super. 150, 225 A.2d 162 (Super. Ct. L. Div. 1966), discussed *infra*.

¹⁵ Annot., 42 A.L.R.3d 1168 (1972); 4 R. ANDERSON, *UNIFORM COMMERCIAL CODE §9-103:23* (2d ed. 1971); Rohner, *Autos, Title Certificates And UCC 9-103: The Draftsmen Try Again*, 27 BUS. LAW. 1177, 1188-90 (1972) [hereinafter cited as Rohner].

¹⁶ 1 G. GILMORE, *SECURITY INTERESTS IN PERSONAL PROPERTY*, §22.7 (1965).

three theories are plausible, and there is no indication from the language of subsection (4) as to how the problem should be handled. Understandably, the courts and commentators have disagreed.

D. *Movement From Non-Title State to Title State*

The final, and most controversial situation arising under §9-103 occurs when a vehicle is moved from a non-title state in which a security interest was appropriately perfected to a title state in which a clean title was obtained. The courts have split over whether subsection (3) or subsection (4) should be the applicable provision. Two cases illustrate respectively the arguments for the two positions: *First National Bank v. Stamper*¹⁷ and *Phil Phillips Ford, Inc. v. St. Paul Fire & Marine Insurance Co.*¹⁸

In *Stamper* a BFP in the forum state failed to successfully defend an action brought by a foreign secured creditor even though the BFP relied on a clean certificate issued by the forum state. The court found subsection (4) inapplicable because of a comment of the Editorial Board of the UCC which states that the purpose of subsection (4) is to avoid the necessity of duplicating perfection when there is a certificate of title.¹⁹ Essentially, the *Stamper* court interpreted subsection (4) to apply only to cases in which the certificate has been issued at the time the vehicle enters the forum state.²⁰

The court in *Phil Phillips Ford* disagreed with the *Stamper* decision.²¹ It cited the comments to UCC §9-103²² in interpreting the language of subsection (4) to mandate that perfection be determined under the law of the state which issued the certificate when the property is covered by a certificate of title at the time of the transaction in question.²³

Although the reading of subsection (4) by the *Phil Phillips Ford* court makes the law of title states preeminent and can cause some seemingly unjust results,²⁴ it should be followed. The interpretation of subsection (4) by the *Stamper* court ignores the express language of the stat-

¹⁷ 93 N.J. Super. 150, 225 A.2d 162 (Super. Ct. L. Div. 1966).

¹⁸ 465 S.W.2d 933 (Tex. 1971).

¹⁹ 93 N.J. Super. at 164, 225 A.2d at 170.

²⁰ See, 47 BOST. U. L. REV. 430, 433 (1967).

²¹ Even though the court disavowed the reasoning of *Stamper*, the foreign secured creditor prevailed because the sale to the subsequent purchaser was not in compliance with the Texas Certificate of Title Act, therefore making it void.

²² 465 S.W.2d at 936.

²³ 465 S.W.2d at 937.

²⁴ A secured creditor residing in a non-title state and holding a perfected security interest in a motor vehicle could lose his priority in the motor vehicle within a matter of days after it has been removed to a title state even though he could not have reasonably traced it.

ute. That decision, and others which take the same stance, have caused a needless problem. Even though subsection (4) is not an example of precise and comprehensive draftsmanship, its language reasonably permits only one result in cases such as *Stamper* and *Phil Phillips Ford*. If there is a certificate of title covering the vehicle at the time of the transaction in question, the law of the state issuing the certificate should control. Moreover, subsection (4) is prefaced by the language, "[n]otwithstanding subsections (2) and (3)," indicating that subsection (4) is meant to create an exception to subsections (2) and (3) when a certificate of title covers the vehicle at the time of the transaction in question. Also, the *Stamper* decision renders meaningless that portion of subsection (4) which specifically includes in its coverage property covered by a certificate of title issued by "this" state.

Had the *Phil Phillips Ford* interpretation been followed by all jurisdictions, it might have been a significant influence on the various states to pass certificate of title legislation.²⁵ Secured parties residing in non-title states would have been much more vulnerable to the actions of fraudulent parties, thus inducing such states to adopt certificate of title legislation.

It can be safely hypothesized that except for the perpetrators of the fraud, all parties concerned would be better served if all states had comprehensive—and preferably uniform—certificate of title legislation. A purchaser's reliance upon official documents issued by his state is reasonable. If a certificate of title indicates that a motor vehicle is not subject to any security interests, then a person purchasing in reliance on the certificate should be protected.

III. THE AMENDED UCC §9-103

The drafters have systematically tried to correct some of the problems caused by the original §9-103. The 1972 amendments are more detailed than the original version, and they contain some subtle refinements designed to better balance the competing interests of the various adversaries.

A. *Movement From Non-Title State to Non-Title State*

The amended version of the Code affords the same protection provided by original §9-103(3) if a motor vehicle is moved from a non-title state to another non-title state. The applicable provision is now §9-103(1)(d)(i).²⁶ One minor refinement specifies that the four month period

²⁵ See text accompanying note 12, *supra*.

²⁶ UCC §9-103(1)(d)(i):

of protection can be shortened if the period of perfection in the removal state expires before the end of the four month period. This rule, made explicit in the amended version, was probably implicit under the original §9-103.

A major change from the original version is that the four month period of protection is no longer absolute.²⁷ It is conditioned upon re-perfection occurring within four months after the vehicle enters the forum state. If re-perfection does not occur within the four month period, then the foreign secured creditor will lose to a BFP who purchases during the four month period. Thus the drafters have placed a premium upon efficient tracing, and unless the secured creditor can locate the vehicle and re-perfect within four months after the vehicle enters the forum state, he loses all protection.

Although the language of §9-103(1)(d)(i) indicates that the four month period of protection is only conditional, the comments to the section tend to muddle the picture.²⁸ Comment (4)(c), when discussing the four month period of protection given in §9-103(2)(b), states that "during the 4 months the secured party has the same protection for cases of interstate removal as is set forth in paragraph (1)(d) of the section [9-103] and Comment 7." Because the four month period of protection in §9-103(2)(b) is absolute, it is not the same as that offered in §9-103(1)(d)(i). Comment 7, referred to in the prior quotation, also indicates that the drafters intended the four month period of protection in §9-103(1)(d)(i) to be absolute:

"This state" will for four months recognize perfection under the law of the jurisdiction from which the collateral came, unless the remaining period of effectiveness of the perfection in that jurisdiction was less than four months (paragraph (1)(d)). After the four month period or the remaining period of the effectiveness, whichever is shorter, the secured party must comply with perfection requirements in this state. . . .

(d) When collateral is brought into and kept in this state while subject to a security interest perfected under the law of the jurisdiction from which the collateral was removed, the security interest remains perfected, but if action is required by Part 3 of this Article to perfect the security interest,

(i) if the action is not taken before the expiration of the period of perfection in the other jurisdiction or the end of four months after the collateral is brought into this state, whichever period first expires, the security interest becomes unperfected at the end of that period and is thereafter deemed to have been unperfected as against a person who became a purchaser after removal;

²⁷ Protection is considered "absolute" if the secured party does not have to re-perfect in the forum state within the four month period as a condition precedent to his security interest being recognized as against a BFP within the four month period.

²⁸ Although it would be a strained reading of §9-103(1)(d)(i), a court could conceivably hold that the secured creditor has four months of absolute protection. Such a reading would emphasize the comments to §9-103(1)(d)(i) and the language of §9-103(1)(d)(i) which states that "the security interest becomes unperfected at the end of that period. . . ."

The four-month period is long enough for a secured party to discover in most cases that the collateral has been removed and refile in this state; thereafter, if he has not done so, his interest, although originally perfected in the jurisdiction from which the collateral was removed, is subject to defeat here by purchasers of the collateral.

Either the comments are erroneous, or the drafters have erred in making the four month period of protection in §9-103(1)(d)(i) conditional.

Because the drafters fail to give any reason in the comments for the apparent change and, indeed, the comments treat the section as if there were no change, it is conceivable that the courts will reach differing conclusions as to whether the protection is conditional or absolute.²⁹ The better view is to treat the four month period of protection as conditional since the language of the statute should be given preference over the comments.³⁰ To the extent that the comments disagree with the statute, they should be ignored by the courts. Also, the change from absolute to conditional protection is consistent with the general trend of the amendments, *i.e.*, protection is being taken from secured parties and given to BFP's.

B. *Treatment of Certain Non-Dealer BFP's*

Subsection (2) of the amended version of §9-103³¹ covers all situa-

²⁹ For example, compare the differing constructions of UCC §9-103(4) (original version) in *First National Bank v. Samper*, 93 N.J. Super. 150, 225 A.2d 162 (Super. Ct. L. Div. 1966) and *Phil Phillips Ford, Inc. v. St. Paul Fire & Marine Insurance Co.*, 465 S.W.2d 933 (Tex. 1971).

³⁰ Two well written articles discussing the amended version of UCC §9-103 treat the protection offered under UCC §9-103(1)(d)(i) as only conditional. *Coogan, The New UCC Article 9*, 86 HARV. L. REV. 477, 535 (1973) [hereinafter cited as *Coogan*]. *Rohner, supra* note 15, at 1185-86.

³¹ UCC §9-103(2):

(2) Certificate of title.

(a) This subsection applies to goods covered by a certificate of title issued under a statute of this state or of another jurisdiction under the law of which indication of a security interest is required as a condition of perfection.

(b) Except as otherwise provided in this subsection, perfection and the effect of perfection or non-perfection of the security interest are governed by the law (including the conflict of laws rules) of the jurisdiction issuing the certificate until four months after the goods are removed from that jurisdiction and thereafter until the goods are registered in another jurisdiction, but in any event not beyond surrender of the certificate. After the expiration of that period, the goods are not covered by the certificate of title within the meaning of this section.

(c) Except with respect to the rights of a buyer described in the next paragraph, a security interest, perfected in another jurisdiction otherwise than by notation on a certificate of title, in goods brought into this state and thereafter covered by a certificate of title issued by this state is subject to the rules stated in paragraph (d) of subsection (1).

(d) If goods are brought into this state while a security interest therein is perfected in any manner under the law of the jurisdiction from which the goods are removed and a certificate of title is issued by this state and the certificate does not show

tions in which a certificate of title has been issued by a title state.³² When analyzing any case within the coverage of this subsection, careful attention should be given to paragraph (d), which provides special protection for a non-dealer BFP who relies on the forum state's clean certificate of title. In this situation, the foreign security interest becomes subordinate to the rights of the non-dealer BFP. This protection is an exception to the other substantive provisions of subsection (2).

Paragraph (d) recognizes the special situation of the non-dealer purchaser. Inherently, the non-dealer purchaser lacks the experience necessary to create an awareness that prior security interests may exist, and even to the extent that he is aware of such a possibility he is generally not equipped to make any extensive checks to verify their existence. Paragraph (d) also recognizes the fact that reliance on a clean certificate of title is reasonable and should be protected.³³

One might reasonably ask at this point why a dealer BFP should not also be protected. Apparently, the drafters have concluded that dealers should be aware of the possibility of other interests in the motor vehicle and that they have sufficient means available to protect themselves. For example, they could obtain insurance, pay an investigator to trace origins of out-of-state cars,³⁴ raise the price to absorb potential losses, or wait until the vehicle has been in the state for a period of four months.³⁵ It is reasonable to consider these additional expenses as a portion of the cost of doing business.

The protection given to the non-dealer BFP is by no means as extensive as it first appears, and, in fact, is subject to two important qualifications. First, because paragraph (d) speaks only of a certificate of title issued by "this" state, it only applies if the non-dealer BFP relies on a clean certificate issued by the forum state. If the non-dealer BFP relies on a clean certificate issued by the removal state, he loses the special pro-

that the goods are subject to the security interest or that they may be subject to security interests not shown on the certificate, the security interest is subordinate to the rights of a buyer of the goods who is not in the business of selling goods of that kind to the extent that he gives value and receives delivery of the goods after issuance of the certificate and without knowledge of the security interest.

³² UCC §9-103(2) is not applicable if a certificate of title has been issued by a state with an incomplete certificate of title act. See note 6, *supra*.

³³ When discussing the reasons for enacting paragraph (d), the drafters state in comment 4(e) that "[t]his state [forum state] will have every reason, nevertheless, to make its certificate of title reliable to the type of person who most needs to rely on it."

³⁴ A dealer can ascertain in many instances if a vehicle has been registered in another state by the certificate of title issued by the forum state. Many states have special codes on their certificates to warn of the foreign origin. See, e.g., *First National Bank v. Stamper*, 93 N.J. Super. 150, 154, 225 A.2d 162, 164 (Super. Ct. L. Div. 1966).

³⁵ See discussion *infra* sections II(C), (D), and (E) illustrating why a dealer is absolutely protected after the vehicle has been in the forum state for four months.

tection of paragraph (2)(d), even though he is just as defrauded as when he relies on a clean certificate issued by the forum state. Reliance in both cases is reasonable if the purchaser is in fact a BFP. Therefore, he should be protected in both cases. Second, if the certificate of title contains a general warning that the motor vehicle may be subject to security interests not shown on the certificate, then the non-dealer BFP loses all special protection given to him under paragraph (d). This is an unfortunate provision; a non-dealer BFP is no less deserving of protection merely because his state places a general warning on the certificates of title it issues. The general warning probably means no more to a non-dealer than other obtuse form language encountered by laymen. Even if the language does alert the non-dealer, in almost all instances he will not have the expertise or resources necessary to take steps to protect himself. Thus, states adopting the amended version of §9-103 should either delete the general warning provision from paragraph (d) or alter their certificate of title acts to eliminate the placing of general warnings on certificates of title.

C. *Movement From Title State to Non-Title State*

Section 9-103 (2)(b) controls the situation in which a motor vehicle is covered by a certificate of title issued by the removal state. If the vehicle is moved to a non-title state, the foreign secured creditor no longer has the indefinite protection he had under the original §9-103(4). The laws of the removal state only govern the transaction for four months after the vehicle is removed from that state. In contrast to the four months of conditional protection afforded a foreign secured party under §9-103(1)(d)(i), a foreign secured party residing in a title state has absolute protection for the four month period. Paragraph (b) does not use the specific language of §9-103(1)(d)(i), which indicates that the security interest is "thereafter deemed" to have been unperfected if re-perfection does not occur within the four month grace period. Section 9-103(2)(b) states only that perfection of the security interest is governed by the law of the jurisdiction issuing the certificate "until" four months after the goods are removed from that jurisdiction. Re-perfection within the four month period is not required in order to obtain priority over a purchaser of the vehicle within that period.

Further, the four month period provided in §9-103(2)(b) commences upon the *removal* of the vehicle from the removal state. This differs from the provisions in §9-103(1)(d)(i) and the original §9-103(3), wherein the four month period does not commence until the vehicle *enters* the forum state. This difference could be critical if the vehicle found its

way into the forum state by a lengthy, time-consuming route. Both of these changes illustrate that the amended version tends to deprive the secured creditor of much of the protection he was afforded under the original §9-103.

The laws of the removal state continue to govern after the four month period if the vehicle is not registered in the forum state, whereas if the vehicle is registered in the forum state, the laws of the forum state will govern after the expiration of the four month period. The comments state that the reason for the distinction between registered and non-registered vehicles is the danger of deception to third parties once the vehicle has been re-registered.³⁶ The determination of what is necessary to "register" a vehicle will presumably be resolved by the laws of the forum state.³⁷ If the laws require surrender of existing certificates in order for a motor vehicle to be registered, the foreign secured party can possibly protect himself indefinitely by retaining the certificate.³⁸ If registration occurs in the forum state and a fraudulently procured clean foreign certificate is surrendered instead of the original certificate, the question arises whether the vehicle has been "registered" within the meaning of §9-103(2)(b). Using the comments as a guide, courts should hold that the situation just posited is a valid re-registration because third parties are in danger of being deceived. If the courts so hold, the foreign secured creditor will be limited to four months of protection after the vehicle has been removed from his state.

The applicability of the removal state's laws to the transaction in question can also be affected if the certificate is surrendered. If this surrender occurs, or the four month period passes coupled with the re-registration of the motor vehicle, then §9-103(2)(b) provides that "the goods are not covered by the certificate of title within the meaning of this section." This can be interpreted to mean that the foreign security interest will no longer be given effect as to a purchaser in the forum state.³⁹

One puzzling addition to paragraph (b) requires the courts to apply the removal state's conflict of laws rules in addition to the other laws of the removal state. There seems to be no logical reason why the forum state should apply its conflict of laws provision (§9-103(2)(b)) in order to determine the applicable law, and then apply the indicated state's

³⁶ UCC §9-103, Comment 4(c) (1972 amendments).

³⁷ Rohner states that "registration usually involves the application for and issuance of tags in the second state [forum state]." Rohner, *supra* note 15, at 1187. See, e.g., OHIO REV. CODE ANN. §4503.19 (Page 1973), which requires an application for registration, payment of the tax, and issuance of a certificate of registration and two number plates in order for a motor vehicle to be registered in Ohio.

³⁸ Rohner, *supra* note 15, at 1188.

³⁹ Coogan, *supra* note 30, at 547-49.

general conflict of laws rules. This parenthetical addition to §9-103 cannot possibly serve a useful purpose. The substantive provisions of §9-103 attempt to balance the relative interests of the competing parties. The addition of a state's general conflict of laws rules can do nothing more than confuse the picture and cause results to vary according to the forum of the suit.

One commentator has suggested a solution to this predicament without ignoring the provisions of the statute. He would treat the entire transaction as if it had occurred within the removal state, unless the removal state's certificate of title statute has a specific conflicts rule.⁴⁰ Even with this analysis, it would be possible to have different decisions on identical facts, depending upon the jurisdiction. Such a result seems inconsistent with the basic premise of uniform laws, and undoes the substantive provisions of § 9-103.

D. *Movement From Title State to Title State*

The amended version of §9-103(2) still does not explicitly deal with the situation of multiple certificates. Implicit in the language of paragraph (b) is an answer to this problem. The laws of the state issuing the first certificate control for the four months following the removal of the motor vehicle from that state, providing that the certificate is not surrendered. At the expiration of the four months the laws of the forum state will govern the conflict since a second certificate has been issued. The first certificate is "the" certificate contemplated in §9-103(2)(b). When it no longer controls due to the passage of four months, the second certificate becomes "the" certificate.⁴¹ This interpretation is not mandated by the language of subsection (b), but it seems to be the one most consistent with the trend of the amended version of §9-103. It also is the only interpretation that gives effect to the opening phrase of paragraph (b), which implicitly refers to the non-dealer BFP exception. If the issuance of the second certificate is seen as revoking the first, the non-dealer BFP exception would not be needed since all subsequent purchasers would be protected.⁴²

E. *Movement from Non-Title State to Title State*

The *Stamper-Phil Phillips Ford* controversy has been resolved by

⁴⁰ Coogan, *supra* note 30, at 547-48.

⁴¹ Coogan, *supra* note 30, at 549-50.

⁴² The third possibility in the multiple certificate case, discussed earlier (see note 15 and accompanying text), would not appear to be a viable alternative. All cases in which the motor vehicle is covered by a certificate of title issued by a title state should be controlled by subsection (2).

paragraph (c). If the foreign security interest was perfected in the removal state otherwise than by notation on a certificate of title and the motor vehicle was subsequently covered by a clean certificate of title issued by the forum state, paragraph (c) directs the coverage to 9-103(1)(d)(i). Under §9-103(1)(d)(i) the foreign security interest remains conditionally perfected in the forum state for four months or until the expiration of the period of perfection in the removal state, whichever period first expires. This represents a compromise between the two positions. The foreign secured creditor is given some protection, but not nearly as much as was given in *Stamper*. His four month period of protection is only conditional, and it is subject to the provisions of §9-103(2)(d), which give special protection to a non-dealer BFP who purchases in reliance on the forum state's clean certificate of title.

IV. CONCLUSION

The amended version of §9-103 attempts to balance the competing interests of the possible participants in a suit over title to a motor vehicle. Secured parties residing in title states no longer have the complete protection they had under the original §9-103(4). They now have protection for a period of only four months following removal of the vehicle from their state. Their security interest is also subject to the possible purchase of a non-dealer BFP who relies on his state's clean certificate.

Secured parties residing in non-title states have also lost some of the protection they enjoyed under the original §9-103(3). Their four month period of protection has been changed from absolute to conditional, and this protection can also be defeated by the non-dealer BFP exception.

The dilution of the secured party's rights under the amended version illustrates the basic intent of the drafters. Secured parties are deserving of some protection, but they are also in the best position to prevent the fraudulent transaction from ever occurring. They are generally large enough to engage in a certain amount of tracing, and they also voluntarily choose to deal with the person who commits the fraudulent act. Secured parties could prevent many of the frauds from ever occurring by diligently checking the recipients of their credit. If a secured party chooses to deal with a high credit risk customer, he should insulate himself against fraud by purchasing insurance, efficiently tracing removed vehicles, or increasing rates to all customers in order to absorb losses.

Since the drafters were apparently conscious of the position of the secured party vis-a-vis persons who deal with the vehicle at a later date, it is curious that they did not place a knowledge provision refinement into the four month period. This provision could require action by the se-

cured party within thirty days after he discovered the location of the removed vehicle. Such a standard would work in the same manner as the changes already incorporated into the amended version of §9-103. It would encourage efficient tracing and re-perfection by the secured party, thereby further protecting third parties. It would be difficult for a third party to meet this burden of proof, but arguably he should be given the opportunity to do so.

As mentioned earlier, the protection given to the non-dealer BFP who relies on his state's clean certificate is an admirable addition to §9-103, but it is unfortunate that the drafters did not make this protection more extensive. Dealers were excluded from this BFP provision, presumably because they are better able to protect themselves and should be more familiar with the pitfalls of purchasing used motor vehicles. Notwithstanding this exclusion, the dealer (as purchaser) has more protection under the amended version of §9-103 than he had under the original version. The protection that secured parties have lost has been gained by the dealers, later extenders of credit, and the non-dealer BFP. On balance, this appears to be more equitable than the situation existing under the original version of §9-103.

Even though the amended version of §9-103 is an improvement over the original version, it remains defective in one area. It does not establish a uniform system of recording security interests that would inhibit the fraudulent sales of motor vehicles. The 1972 amendments only balance the competing interests of the defrauded parties; they do nothing to prevent the occurrence of the fraud. If all states would enact more comprehensive and uniform certificate of title acts, fraudulent dealing in motor vehicles could be greatly reduced. A fraudulent sale of a motor vehicle could then occur only through clerical error or through the fraudulent procurement of a second certificate. Furthermore, even these loopholes could be closed if in addition to the adoption of uniform certificate of title acts a national computerized system of recording security interests were adopted. The Permanent Editorial Board's next project should be to draft and propose some form of uniform recording system, thus making the conflict of laws section virtually unnecessary.

Terry L. Overbey