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Corporate Signatures on Negotiable Instruments

Neil O. Littlefield

CORPORATE SIGNATURES ON NEGOTIABLE INSTRUMENTS

BY NEIL O. LITTLEFIELD*

INTRODUCTION

A corporate signature must necessarily be executed by a natural person. Normally, the signature will include the name of the corporate entity and the name of an individual. Where such a signature appears on a negotiable instrument to designate an obligor, the question arises: Who is liable? There are four possible answers: The corporation, the individual, both, or neither. Had the parties responsible for executing and accepting the instrument with such a signature verbalized their intent, it is conceivable that any of these four answers would have been given. However, such intent often is neither expressed verbally nor stated clearly and unambiguously on the instrument. To insure the relatively routinized transfer of such instruments, there must be a predictable, uncomplicated answer to the question of who is liable. On the other hand, prevention of unnecessary or unexpected liability suggests that an individual examination of each transaction in context is appropriate to determine liability.

Article Three of the Uniform Commercial Code attempts to articulate a set of rules[1] regarding the liability of signers of corporate instruments. However, an analysis of the case law to date under the Code rules will show that the application of Code rules does not result in the desired predictability. It is suggested that the Code drafters have chosen relatively mechanical rules which have an inherent logic which is out of touch with the patterns of human conduct to which the rules apply.

The underlying problem with the Code approach to the question of corporate signatures arises out of its application of the principle underlying the parol evidence rule. That rule, succinctly stated, dictates that parol (outside) evidence is inadmissible to vary or contradict the terms of a writing.[2] However, either by way

* Professor of Law, University of Denver; B.S., 1953, University of Maine; LL.B., 1957, Boston University; LL.M., 1956, S.J.D., 1961, University of Michigan. The author wishes to thank James Chalet for his assistance in researching this article.

[1] U.C.C. §§ 3-401, 3-403, 3-404 (1972 version).

[2] For a statement of the parol evidence rule, see, L. SIMPSON, CONTRACTS § 98 (2d ed. 1965). A more complete analysis will be found in Corbin, *The Parol Evidence Rule*, 53 YALE L.J. 603 (1944). The parol evidence rule for Article Two of the U.C.C. will be found

of exception or because it falls outside a chosen definition of the rule, it is clear that evidence is admissible to resolve an ambiguity apparent from the writing.[3] The parol evidence rule applies, ipso facto, to a negotiable instrument inasmuch as an instrument is an integrated, written contract.[4] The Code rules to be discussed recognize the ambiguity exception and state, in effect, that where an ambiguity exists in the form of the signature, parol evidence is admissible; otherwise it is not. As will be demonstrated, the Code rules articulate a mechanical test to determine if an ambiguity exists; the mechanical test is then unfortunately combined with the unnecessary protection of remote parties subsequently acquiring the instrument.[5] The result is that, given an admitted ambiguity, the remote purchaser is entitled to the most favorable construction. Application of this latter rule forces courts either to misapply the parol evidence rule in certain cases or to forego prevention of unexpected and perhaps unnecessary liability.

A comment might be added here with regard to the fact that this discussion focuses on *corporate* signatures. The principles of the Code being discussed are equally applicable to other agency situations. It is also true that the Official Comments to Code section 3-403[6] give examples where the agent, Arthur Adams, signs on behalf of the principal, Peter Pringle. However, it is assumed that the bulk of representative signatures involve a corporate entity. More than fifty cases under the Code involve corporate officers while less than a handful involve agents of individual principals, trustees, and the like.

I. PRE-CODE LAW

Where a signature on a negotiable instrument indicated ambiguity as to whether a principal or an agent or both were signing, pre-Code cases presented a bewildering split of authority.

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in § 2-202. It is not felt necessary for the purpose of this article to investigate in depth the policies and varying interpretations of the rule.

[3] L. SIMPSON, *supra* note 2, § 101.

[4] *See* U.C.C. §§ 3-118 and 3-119 (1972) and Official Comment One to § 3-118.

[5] One of the basic consequences of negotiability is that the holder in due course, defined in U.C.C. § 3-302 (1972), takes free of defenses and claims of ownership, § 3-305. This policy favoring remote purchasers is carried over into the cases interpreting § 3-403. *See* text accompanying notes 95-106 *infra*.

[6] U.C.C. § 3-403 (1972) and Official Comment Three. Perhaps some of the unsatisfactory character of the Code rules is explained if the draftees were overimpressed with the atypical situation, as indicated by Comment Three.

The issue raised in most cases was to what extent and in which situations parol evidence would be admissible for the purpose of determining liability. For those jurisdictions where the Uniform Negotiable Instruments Law[7] was in effect, the appropriate sections of the act were less than helpful. Section 19 of that act simply recognized the efficacy in bending the principle, that the signature of any party may be made by a duly authorized agent.[8] Section 20, unhelpfully, provided:

> Where the instrument contains or a person adds to his signature words indicating that he signs for or on behalf of a principal, or in a representative capacity, he is not liable on the instrument if he was duly authorized; but the mere addition of words describing him as an agent, or as filling a representative character, without disclosing his principal, does not exempt him from liability.

A. *Liability of the Principal*

It is not necessary, for the present purposes, to outline in detail the case authority under the N.I.L.[9] Cases and authorities seemed to assume with little discussion that where the principal is named and the agent is authorized the principal can be held liable irrespective of whether the plaintiff is an immediate or a remote party.[10] This result follows naturally from the language of section 19 that "The signature of any party may be made by a duly authorized agent . . . and the authority of the agent may be established as in other cases of agency." No policy seemed to exist to require that a named principal be bound only where a particular form of signature is used.

The converse was also well accepted: Where the principal is not named on the instrument, parol evidence is inadmissible to bind the principal on the instrument, even in those cases where

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[7] The UNIFORM NEGOTIABLE INSTRUMENTS LAW [hereinafter cited as the N.I.L.] is the statutory predecessor of Articles three and eight of the U.C.C. It was promulgated by the National Conference of Commissioners on Uniform State Laws in 1896 and was enacted in all jurisdictions. The version used here is that found in J. BRANNAN, BEUTEL'S BRANNAN NEGOTIABLE INSTRUMENTS LAW 209 (7th ed. 1948) [hereinafter cited as *Beutel's Brannan*].

[8] N.I.L. § 19 provided: "The signature of any party may be made by a duly authorized agent. No particular form of appointment is necessary for this purpose; and the authority of the agent may be established as in other cases of agency."

[9] A good source of the cases decided under the N.I.L. can be found either in BEUTEL'S BRANNAN, *supra* note 7, or W. BRITTON, BRITTON ON BILLS AND NOTES (2d ed. 1961) [hereinafter cited as W. BRITTON].

[10] W. BRITTON, *supra* note 9, § 162, and cases cited therein.

the agent is authorized.[11] This result follows even when the immediate parties both knew that the agent was signing on behalf of the unnamed principal.[12] This conclusion was said to flow necessarily from the language of section 18, which provided, that "No person is liable on the instrument whose signature does not appear thereon . . . ."[13] Application of the parol evidence rule to the question of liability *on the instrument,* however, should not be interpreted as prohibiting liability *dehors the instrument.* Cases permitted suit against the principal on theories other than suit on the instrument.[14]

B. *Liability of the Representative*

Most of the litigated cases under the N.I.L. involved the question of when an authorized agent would be able to escape personal liability on the instrument through the introduction of parol evidence to establish that the signature was intended to be made only in a representative capacity. The language of section 20 provides little guidance and makes no distinction between cases involving immediate parties and those involving remote parties. Cases generally proscribed the use of parol evidence in suits between remote parties where the agent had signed in an ambiguous manner.[15] Assuming ambiguity on the face of the instrument, courts, applying (or not applying) section 20 of the N.I.L., went their individual ways where litigation involved the immediate parties to the instrument. Two types of situations can be identified. In the first situation, the ambiguity was created because the party represented was named, but there is a failure to indicate that the individual signer was signing in a representative capacity. In the second situation, the party represented was

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[11] W. BRITTON, *supra* note 9, § 167.

[12] *See* cases cited in BEUTEL'S BRANNAN, *supra* note 7, § 18, at 404.

[13] The application of this principle has been less clear. *See* text accompanying notes 29-35 *infra.*

[14] *See* cases in W. BRITTON, *supra* note 9, § 167 nn. 7-8, and BEUTEL'S BRANNAN, *supra* note 7, § 18 at 404-06.

[15] See cases cited and discussion in W. BRITTON, *supra* note 9, § 163, which, however, suffers somewhat in not always making it clear whether the plaintiff was a payee or a remote party. A more complete, but less organized presentation of cases is found in BEUTEL'S BRANNAN, *supra* note 7, § 20 at 411-33.

Courts were sometimes unclear or contradictory as to what constituted an ambiguity for the purposes of the parol evidence rule. It appears unnecessary to pursue this issue, under the N.I.L., for the purposes of this article.

not named, but the individual signer indicated in some fashion that it was a representative signature.

In a suit between the immediate parties, when the signer named the party represented, most courts under the N.I.L. permitted the introduction of parol evidence to resolve the ambiguity created by the absence of any indication of the representative capacity.[16]

In the second situation, when the principal is unnamed but some representative character is indicated, courts under the N.I.L. also split where the action involved immediate parties. Most cases barred parol evidence and held the signer individually liable.[17] The minority rule is best known by the New York case of *Megowan v. Peterson.*[18] In that case, the firm of Johnson & Peterson had entered into an agreement with its creditors whereby all assets of the firm were transferred to Peterson, as trustee for the firm's creditors. As trustee, Peterson undertook to complete the firm's construction contracts. The note in question was issued to the plaintiff (one of the firm's creditors), allegedly to pay for lumber purchased to carry out the agreement with the creditors. The note was signed "Charles G. Peterson, Trustee." In a suit to enforce the obligation against Peterson individually, the trial court dismissed the complaint after the introduction of parol evidence, and the plaintiff-payee appealed. The New York Court of Appeals reversed the trial court explicitly on the ground that there was conflicting evidence of the purpose of the purchase and the plaintiff's knowledge of that purpose. It was held that the case should have gone to the jury. However, the court rejected the plaintiff's argument that the form of the signature bound the

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[16] *See generally* BEUTEL'S BRANNAN, *supra* note 7, § 20 at 411-33. This situation involves signatures such as:

ABC Corporation
Prexy Preston
Peter Principal
Arthur Agent.

When the agent names the party represented, a bewildering and inexplicable pattern emerges depending upon whether the agent is a corporate officer, corporate employee, a simple agent, a trustee, or otherwise. *See* W. BRITTON, *supra* note 9, §§ 164-165. As the U.C.C. has made such a distinction irrelevant, no further word need be said here. *See* U.C.C. § 3-403(2)(b).

[17] W. BRITTON, *supra* note 9, § 164.

[18] 173 N.Y. 1, 65 N.E. 738 (1902). This case is referred to in U.C.C. § 3-403, Comment Three.

defendant personally as a matter of law. Thus, *Megowan* stands for the proposition that any ambiguity in the form of the signature which suggests representative signing permits the introduction of parol evidence between the immediate parties to resolve the ambiguity. This result seems to fly in the face of the (admittedly less than determinative) language of N.I.L. section 20.

II. THE CODE APPROACH

Given the known split of authority existing under the N.I.L., it is surprising that the drafting of the Uniform Commercial Code did not result in a more satisfactory resolution of the problem of representative signatures on negotiable instruments. The existing record of what the Code drafters or commentators had in mind is sketchy. The 1952 draft of the Uniform Commercial Code attacked the problem of the personal liability of the representative with a blunt instrument. Section 3-403(2) simply provided:

> An authorized representative who signs his name to an instrument is also personally obligated unless the instrument names the person represented and shows that the signature is made in a representative capacity. The name of an organization preceded or followed by the name and office of an authorized individual is a signature made in a representative capacity.

The policy of the 1952 version, simply a rewording of N.I.L. section 20, is apparent. Unless the signature is unambiguous, the authorized agent is to be personally liable. As the Comment to the section stated:

> [I]t excludes parole evidence for any purpose except reformation . . . .
>
> The rule here stated is that the representative is liable personally unless the instrument itself clearly shows that he has signed only on behalf of another named on the paper. If he does not sign in such a way as to make that clear the responsibility is his . . . .[19]

The 1952 version of section 3-403(2) had the advantage of simplicity. However, it carried the policy of the parol evidence rule to an extreme. This subsection was objected to by the New York Law Revision Commission in 1956[20] as overturning the prior majority rule where the signature was of the form,"ABC Corporation, Arthur Adams," and the New York (minority) rule of *Megowan,* where the signature was of the form, "Arthur Adams,

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[19] U.C.C. § 3-403, Official Comment Three (1972).

[20] REPORT OF THE LAW REVISION COMMISSION FOR 1956, at 408 (1956).

Agent." The rule is too harsh on agents or officers, given what is apparently wide-spread practice in signing in a representative capacity. Professor Hawkland has suggested: "To most businessmen, a signature following the name of a corporation on a negotiable instrument clearly means that an officer of the company has signed in his representative capacity, even though his name is not followed by a description of his office or his agency status."[21] At least one case decided under the 1952 version of the Code[22] held parol evidence between the immediate parties inadmissible to avoid the personal liability of an authorized officer where the corporation was named, but the representative capacity was not indicated.[23]

The present version of section 3-403, which remains unchanged since the 1956 version, is more receptive to the use of parol evidence than was the 1952 version. The present version reads in full as follows:

> (1) A signature may be made by an agent or other representative, and his authority to make it may be established as in other cases of representation. No particular form of appointment is necessary to establish such authority.
>
> (2) An authorized representative who signs his own name to an instrument
>
> (a) is personally obligated if the instrument neither names the person represented nor shows that the representative signed in a representative capacity;
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> (b) except as otherwise established between the immediate parties, is personally obligated if the instrument names the person represented but does not show that the representative signed in a representative capacity, if the instrument does not name the person represented but does show that the representative signed in a representative capacity.

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[21] W. HAWKLAND, CASES AND MATERIALS ON COMMERCIAL PAPER AND BANK DEPOSITS AND COLLECTIONS 81 (1967).

[22] Pennsylvania was the only jurisdiction to adopt a 1952 version of the U.C.C. Subsequently, Pennsylvania amended its code to conform to the 1956 version. The latter version of the code resulted from the attempts of the Uniform Commissioners to respond to the reactions of the New York Law Revision Commission. See J. WHITE & R. SUMMERS, UNIFORM COMMERCIAL CODE 4 (1972) and authorities there cited.

[23] *In re* Laskin, 204 F. Supp. 106 (E.D. Pa. 1962). This case was reversed, *In re* Laskin, 316 F.2d 70 (3d Cir. 1963) by permitting parol evidence under the equity powers of a court in bankruptcy. Another Pennsylvania case of the period is indeterminate in its holding inasmuch as the payee was dead and the testimony of the maker was inadmissable. *See* Bell v. Dornan, 203 Pa. Super. 562, 201 A.2d 324 (1964).

> (3) Except as otherwise established the name of an organization preceded or followed by the name and office of an authorized individual is a signature made in a representative capacity.

The Comments to the 1956 version were extensively rewritten to conform to the inherent change in policy contained in section 3-403.[24] The Comments expressly mention the adoption of the pre-Code majority rule where the signature is made in the form, "Peter Pringle, by Arthur Adams, Agent," (that is, where the one who is represented is named) and of the adoption of the majority rule where the signature is of the form, "Arthur Adams, Agent."[25] However, the Comments have not been of as much help as they could have been because they only speak of cases regarding principal and agent. But, of the nearly sixty litigated cases to date under section 3-403, more than fifty involve signatures where the party represented is a corporation.[26] A discussion of the cases litigated under the Code will reveal the weaknesses of the present Code rules as applied to the corporate context.

A. *Liability of the Named Party Represented*

Because the signature of an organization almost always must be made by an individual,[27] the question of the liability of the organization necessarily requires the introduction of parol evidence. Even where the signature is of the classic representative form, "ABC Corporation, By: Arthur Adams, Pres.," it is necessary to establish that Arthur Adams was authorized to sign on behalf of ABC Corporation, before the corporation can be held liable. This rule is articulated by section 3-403(1): "A signature may be made by an agent or other representative, and his authority to make it may be established as in other cases of representation." Those few cases which have posed the issue are in accord with the rule of this section.[28] One case, while not holding to the

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[24] Comment Three was also revised in 1966.

[25] U.C.C. § 3-403, Official Comment Three (1972).

[26] Research has found fifty-seven cases involving clear legal issues necessitating the application of § 3-403. Fifty-two of these cases involve an allegedly corporate signature, one involves "an account," one an Elks Lodge, one a partnership, one an unexplained "trustee," and only one involved a classical principal-agency relationship. The latter case is First Nat'l Bank v. Maidman, 2 U.C.C.R. 1048 (N.Y. Sup. Ct. 1965).

[27] An interesting exception may be provided by the facts of Walton v. William H. Corby, Inc., 12 Ches. Co. Rep. 43, 33 Pa. D. & C.2d 703, 1 U.C.C.R. 271 (1963), where the court opinion reports that the form of the signature on a note was simply, "Walter H. Corby Inc. (SEAL)."

[28] Jenkins v. Evans, 31 App. Div. 2d 597, 295 N.Y.S.2d 226 (5 U.C.C. Rep. Serv. 1185)

contrary, introduces unnecesssary confusion. In *Chiles v. Mann & Mann, Inc.*,[29] a note was signed, "Chiles Planting Co., By: E.B. Chiles, Jr." While the issue litigated concerned only the individual liability of the signer,[30] the court did comment that the form of the signature "meant that Chiles Planting Company was the trade name of E.B. Chiles, Jr., and he could not offer parol testimony to vary that meaning."[31] Insofar as that dictum states that parol evidence would be inadmissible in a suit against a corporation entitled "Chiles Planting Company," it flies in the face of the language of section 3-401(2) which reads: "A signature is made by the use of any name, including any trade or assumed name, upon an instrument, or by any word or mark used in lieu of a written signature." The correct result is indicated in *Nichols v. Seale*[32] where the party represented was named "The Fashion Beauty Salon." The Texas Court of Civil Appeals, referring to the above quoted section, properly stated: "Consequently, extrinsic evidence was admissable to show that 'The Fashion Beauty Salon' was an assumed name for 'Mr. Carl's Fashion, Inc.' "

It should be obvious from reading sections 3-401 and 3-403 that the question of the liability of the named party represented is completely independent of the question of liability of the representative. As indicated, the liability of the party represented depends upon that party being named plus a showing dehors the instrument that the signing party was authorized to act on behalf of the party represented. As will be seen, the question of personal liability of the signer (the representative) is governed by 3-403(2). Thus, it is incorrect to suggest that if the representative is liable, the party represented is not. Part of the holding on this issue in the lower court decision, *Grange National Bank v. Conville*,[33] is clearly wrong. In that case, the signature was in the form:

John P. Conville
Doris E. Conville
Hughesville Mfg. Co. Inc. (Seal)

(1968); and Musulin v. Woodtek, Inc., 260 Or. 576, 491 P.2d 1173 (10 U.C.C. Rep. Serv. 162) (1971).

[29] Chiles v. Mann & Mann, Inc., 240 Ark. 527, 400 S.W.2d 669 (1966).

[30] *See* text accompanying notes 33-35 *supra* for discussion on that point.

[31] Chiles v. Mann & Mann. Inc., 240 Ark. 527, 531, 400 S.W.2d 667, 667 (1966).

[32] 493 S.W.2d 589 (Tex. Ct. Civ. App. 1973), *rev'd* on a procedural point, 505 S.W.2d 251 (1974).

[33] 5 Lyc. 170, 8 Pa. D. & C.2d 616 (1956).

Apparently there was conflicting evidence as to the liability of the Convilles, but the court stated: "We find, however, that the Hughesville Manufacturing Company, Inc. is not liable on the notes even though John L. Conville and Doris E. Conville may have been authorized to sign for the company, for the notes do not show that the signatures were made on behalf of the company."[34] The court could have reached this result only by assuming that the necessity of adding language to escape personal liability leads to the necessity of adding language to bind the party represented. This is a non sequitur.[35]

B. *Liability of Unnamed Parties*

Section 3-401(1) of the Uniform Commercial Code is brief and to the point: "No person is liable on an instrument unless his signature appears thereon." The language is a continuation of the law of the N.I.L.[36] The principle on its face is sensible in that one ought not to be liable on a negotiable instrument unless or until one signs. After all, a basic requirement of a negotiable instrument under Article Three is a "signed writing."[37] However, where an authorized representative has "signed" a negotiable instrument, why should not the party motivating the signing also be liable? The Article Three principle is in contrast to the liability of an undisclosed principal under agency law. There, the obligee may hold the undisclosed principal liable even where the obligee at the time of contracting did not know of the undisclosed party.[38]

It is difficult to articulate a policy to support the rule that an undisclosed principal cannot be liable on the note. Professor Britton, in his discussion of section 18 of the N.I.L., simply states that it codifies "the common law rule which rendered inapplica-

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[34] *Id.* at ____, D. & C.2d at 620.

[35] While it is true that the *Conville* case was decided under the 1952 version of the Code, the point involved here was the same under both versions of the Code as well as under the N.I.L. *See* Jenkins v. Evans, 31 App. Div. 2d 597, 295 N.Y.S.2d 226 (5 U.C.C. Rep. Serv. 1185) (1968). There are very few cases where the liability of the named party represented is at issue. Presumably, litigation only arises where the corporation is insolvent and personal liability of the representative is sought.

[36] Section 18 of the N.I.L. reads, in part, as follows: "No person is liable on the instrument whose signature does not appear thereon, except as herein otherwise expressly provided." The last clause of § 18 referred to liability by virtue of collateral and virtual acceptances (§§ 134-135) both abrogated by the Code. *See* U.C.C. § 3-401, Official Comment One (1972).

[37] U.C.C. § 3-104 (1972).

[38] *See* W. SEAVEY, LAW OF AGENCY, § 56 (1964).

ble to bills and notes the doctrine of undisclosed principal."[39] He points out that "[t]he rule has been applied in numerous cases."[40] A quote from a cited case states: "This exception to the rule is based upon the reason that each party who takes a negotiable instrument makes his contract with the parties who appear on its face to be bound for its payment . . . ."[41] It is submitted that this begs the question. Why is each party who takes a negotiable instrument bound by the contract on its face? In analyzing the policy, a distinction should be made between two situations. In the first situation, an authorized agent has signed his name with no indication of representative capacity. In the second situation, the authorized agent has signed his name and has indicated that he is signing in a representative capacity such as by prefacing his signature with "By:" or by adding "Trustee," "Pres.," or "Agent"—but has not named the party represented. In the second situation, parol evidence ought to be admissable to establish both the name of the principal and his liability. After all, under section 2-403(2)(b),[42] the agent may introduce evidence to disprove personal liability. What further violation of the policy favoring integration of contracts on negotiable instruments occurs, since the payee and holders have a right to assume that someone is liable?

The clear language of the Uniform Commercial Code does not prevent the holding suggested here. It is true that section 3-401(1) says, "No person is liable on an instrument unless his signature appears thereon." But it does *not* read, "No person is liable unless his *name* appears thereon." Additionally, section 3-401(2) says, "A signature is made by use of *any* name, including a trade or assumed name . . . ." (emphasis added). Section 3-403(1) says that an agent's authority to make a signature "may be established as in other cases of representation." The definition of "Signed" in Article One simply "includes any symbol *executed* or adopted by a party with present intention to authenticate a writing."[43] Arguably, the clear language of the statute seems to

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[39] W. BRITTON, *supra* note 9, at § 167.

[40] *Id.*

[41] Pratt v. Hopper, 12 Cal. App. 2d 291, 55 P.2d 517, 518 (1936).

[42] *See* text accompanying note 58 *infra.*

[43] U.C.C. § 1-201(39) (1972) (emphasis added).

lead to a different result from that indicated in the Official Comment to 3-401 which reads in relevant part:

> The chief application of the rule has been in cases holding that a principal whose *name* does not appear on an instrument signed by an agent is not liable on the instrument even though the payee knew when it was issued that it was intended to be the obligation of one who did not sign.[44]

Assume an authorized representative signs an instrument "Arthur Adams, Pres." Assume further that the party represented authorized Adams to use Adams' name as the principal's name. Then, "Arthur Adams" would be the assumed name[45] of the principal and the principal could be bound on the instrument. Why could not the same result be reached by presuming that where the authorized representative signs "Arthur Adams, Pres.," the party represented has authorized the agent to use that name as the principal's? It is submitted that this logic would have the desirable effect of erasing the illogic of the *Megowan* rule of section 3-403(2)(b):[46] After the agent shows that he did not intend to sign personally, no one is liable on the instrument.[47]

Only one case decided under the Code holds that parol evidence is inadmissable to establish liability of an unnamed corporate organization,[48] although a number of cases give lip service to the rule. One of the cases seems to suggest the contrary. In *Dynamic Homes, Inc. v. Rogers,*[49] the signature showed representative capacity through use of the word "by,"[50] but failed to name the corporation allegedly intended to be liable. The unnamed corporation appealed a trial court judgment against it, arguing

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[44] U.C.C. § 3-401, Official Comment One (1972) (emphasis added).

[45] *See* U.C.C. § 3-403(2) (1972).

[46] *See* text accompanying note 18 *supra.*

[47] J. WHITE & R. SUMMERS, *supra* note 26, at 403 and n.10 points out the illogic of that case, but assumes it to be compelled by the Code.

[48] Ness v. Greater Arizona Realty Co., 21 Ariz. App. 231, 517 P.2d 1278 (14 U.C.C. Rep. Serv. 152) (1974).

[49] 331 So.2d 326 (19 U.C.C. Rep. Serv. 560) (Fla. Dist. Ct. App. 1976).

[50] The signature in that case was as follows:

by /s/ Arthur J. Maas (SEAL)
by /s/ Janet H. Maas (SEAL)
/s/ Arthur J. Maas (SEAL)
ARTHUR MAAS—Individually
/s/ Janet H. Maas (SEAL)
JANET MAAS—Individually

Id. at 327 (19 U.C.C. Rep. Serv. at 561).

that it could not be liable on the note since it was not named on it and that parol evidence was wrongly considered on the point. The Florida District Court of Appeals, incorrectly discussing section 3-403(2)(b) and the Code adoption of the *Megowan* rule,[51] assumed that parol evidence was admissable to establish that the corporation was intended to be the party liable. However, the court did hold that there was an absence of evidence that the individual signers were authorized or that they intended to sign in a representative capacity, and therefore reversed the judgment against the corporation.

A second case seeming to apply the rule that an unnamed principal cannot be held liable on the note is not good authority on the point; the evidence clearly established that the parties intended the note to be a personal obligation of the stockholders only and not that of the corporation.[52] In a third case, section 3-401(1) was applied where the unnamed party sought to be held was an individual, and there was no indication of agency or the name of the alleged principal on the instrument.[53]

An interesting possible exception to the generally accepted rule of section 3-401(1) is provided by what must be characterized as a correct decision of the Illinois appellate court.[54] In that case, a note was made payable to a corporation. It was in the hands of the plaintiff bank which attempted to assert the rights of a holder in due course.[55] The defendant-maker asserted that the bank could not be a holder in that the only indorsement on the back of the note was in the form, "By /s/ Eugene Tarkoff, Sec.-Treas." Defendant did not "otherwise deny the plaintiff is the owner of the note, nor . . . deny the validity of the signatures on the note or the authority of Tarkoff" to act for the corporate payee.[56] The court properly phrased the issue as "whether or not a note made payable to a corporation by its corporate name can be legally endorsed by the signature of an individual fol-

[51] U.C.C. § 3-403(2)(d) (1956) and the *Megowan* rule properly relate only to the personal liability of the representative, and are inapplicable to the question of whether or not the party represented is liable. *See* text accompanying note 46 *supra*.

[52] Potts v. First City Bank, 1 Cal. App. 3d 341, 86 Cal. Rptr. 552 (1970).

[53] First Nat'l Bank v. Maidman, 2 U.C.C. Rep. Serv. 1048 (N.Y. Sup. Ct. 1965).

[54] American Nat'l Bank and Trust Co. v. Scenic Stagelines of Savannah, Inc., 2 Ill. App. 3d 446, 276 N.E.2d 420 (10 U.C.C. Rep. Serv. 416) (1971).

[55] U.C.C. §§ 3-302, 3-305 (1956).

[56] American Nat'l Bank and Trust Co. v. Scenic Stagelines of Savannah, Inc., 2 Ill. App. 3d 446, 448, 276 N.E.2d 420, 422 (10 U.C.C. Rep. Serv. 416, 418 (1971)).

lowed by a description of his position but without reference in the endorsement itself to the entity for which he purports to act."[57] In referring to section 3-403(2)(b), the court pointed out that because the agent could escape liability, "there is a strong inference . . . that where the note names the corporation as payee that an endorsement signed by its agent in his own name, followed by a description of his position, is a significant indication that the individual signer is acting as an agent for the named payee and that such endorsement is legally sufficient."[58] It was pointed out that to rule otherwise would be to deprive the plaintiff bank of any rights. "Such a result would seem to be untenable."[59] The case is obviously correct and can be distinguished from a holding that an unnamed principal cannot be liable because the name of the principal did appear as payee on the front of the note.

A few cases have been decided under the Code where the unnamed party sought to be held was an individual.[60] In all of these cases, the courts routinely applied section 3-401(1) to hold that the alleged obligors were not liable on the instrument. The cases are correct even on a generous reading of section 3-401(2) inasmuch as the parties did not intend that the individuals be bound on the note. For example, in *Jennaro v. Jennaro,*[61] an attempt to hold an individual as a guarantor of a corporate note failed because the individual did not sign.

There is one clear exception to the rule that an unnamed party will not be liable on the instrument. It is represented by *McCollum v. Steitz.*[62] The note in that case was signed "/s/ W. F. Hamrick, Desert Inn," followed by an address. The payee plaintiff sued William Steitz and the evidence showed that the note was signed as a partnership obligation of the Desert Inn and that William Steitz was a partner. In holding that the nonsigning partner was liable on the note, the California District Court of Appeals pointed out: "One may be liable under a trade name

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[57] *Id.* at 449, 276 N.E.2d at 422 (10 U.C.C. Rep. Serv. at 419).

[58] *Id.* at 449, 276 N.E.2d at 423 (10 U.C.C. Rep. Serv. at 419).

[59] *Id.*

[60] Jennaro v. Jennaro, 52 Wis. 2d 405, 190 N.W.2d 164 (9 U.C.C. Rep. Serv. 1259) (1971); First W. Bank & Trust Co. v. Bookasta, 267 Cal. App. 2d 910, 73 Cal. Rptr. 257, 267 (5 U.C.C. Rep. Serv. 1181) (1968).

[61] 52 Wis. 2d 405, 190 N.W.2d 164 (9 U.C.C. Rep. Serv. 1259) (1971).

[62] 261 Cal. App. 2d 26, 67 Cal. Rptr. 703 (1968).

even though one's own name is not on the instrument."[63] The result follows from partnership law that all partners are jointly liable for partnership obligations.[64] There are pre-Code cases under section 18 of the N.I.L. to the same effect.[65] While it may be argued that this results from partnership law, the real question is the admissibility of parol evidence to establish the partnership, the names of the partners, and the resultant liability of the unnamed partner. It would appear just as logical to admit parol evidence where the signature was "Arthur Adams, Pres." to establish a corporate obligation and the name of the corporation.

Many courts faced with the problem of the liability of the unnamed principal properly point out that relief may be had on the underlying obligation. As the Third Circuit Court of Appeals said, "A note given in a transaction as collateral security is not a bar to a suit on the primary obligation even though the primary obligor did not sign the note. . . ."[66] This principle has been used to hold an individual liable on the underlying obligation as a joint venturer,[67] and to permit suit against a nonsigning dominant stockholder under the alter ego principle.[68] However, the unnamed corporation will not be liable on the underlying transaction where parol evidence establishes that the payee of the note never intended to hold the corporation liable, but relied entirely on the liability of the individual signers.[69]

C. *Personal Liability of the Individual Signer*

Most cases in the corporate signatures area concern the question of when an individual signer is personally liable on the instrument. The basic rule is that where there is no ambiguity, the question of liability will be determined without reference to parol evidence. The corollary is that where the party has signed in an ambiguous manner, parol evidence will be admissible to avoid

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[63] *Id.* at 29, 67 Cal. Rptr. at 706.

[64] *See* J. CRANE & A. BROMBERG, LAW OF PARTNERSHIP § 358 (1968).

[65] Frazier v. Cottrell, 82 Ore. 614, 162 P. 834 (1917) and Locatelli v. Flesher, 220 Mo. App. 447, 276 S.W. 415 (1925), *cited in* BEUTEL'S BRANNAN, *supra* note 9, at 406.

[66] *In re* Eton Furniture Co., 286 F.2d 93, 95 (3d Cir. 1961).

[67] McClung v. Saito, 4 Cal. App. 3d 143, 84 Cal. Rptr. 44 (7 U.C.C. Rep. Serv. 517) (1970).

[68] First W. Bank & Trust Co. v. Bookasta, 267 Cal. App. 2d 1016, 73 Cal. Rptr. 657 (5 U.C.C. Rep. Serv. 1181) (1968).

[69] Potts v. First City Bank, 7 Cal. App. 3d 341, 86 Cal. Rptr. 552 (1970).

personal liability in an action between the immediate parties, but not as to remote parties. The key issue is what constitutes an ambiguity. While the articulated Code statement of the above rules is an improvement on prior law[70] and reduces somewhat the confusion and splits of authority, the drafters chose a rather inflexible rule. The pertinent section is 3-403(2) which reads:

> An authorized representative who signs his own name to an instrument
> (a) is personally obligated if the instrument neither names the party represented nor shows that the representative signed in a representative capacity;
> (b) except as otherwise established between the immediate parties, is personally obligated if the instrument names the party represented but does not show that the representative signed in a representative capacity, or if the instrument does not name the person represented but does show that the representative signed in a representative capacity.

The Code is strangely silent on when the representative is not personally obligated on the instrument. The matter is left to implication. It is true that subsection (3) states: "Except as otherwise established the name of an organization preceded or followed by the name and office of an individual is a signature made in a representative capacity." But nowhere is the reader of the statute given a rule as to the effect of a representative signature. Clearly, an additional sentence should read to this effect: "Where an authorized representative signs in a representative capacity, and the represented party is named, the representative will not be liable on the instrument." Courts are fairly uniform in assuming such to be the intent of the draftsman, and have so held, where the signature is in the form:

> ABC Corporation
> /s/ Arthur Adams, Pres.
> or
> Arthur Adams, Pres.
> ABC Corporation[71]

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[70] *See* text accompanying note 15 *supra*.

[71] Southeastern Financial Corp. v. Smith, 397 F. Supp. 649 (17 U.C.C. Rep. Serv. 1043) (N.D. Ala. 1975); First Nat'l Bank v. C & S Concrete Structures Inc., 128 Ga. App. 330, 196 S.E.2d 473 (12 U.C.C. Rep. Serv. 913) (1973); Phoenix Air Conditioning Co. v. Pound, 123 Ga. App. 523, 181 S.E.2d 719 (9 U.C.C. Rep. Serv. 483) (1971); Grotz v. Jerutis, 13 Ill. App. 3d 543, 301 N.E.2d 60 (12 U.C.C. Rep. Serv. 1164) (1973); Bank of Am. Nat'l Trust & Sav. Ass'n v. Morse, 265 Ore. 72, 508 P.2d 194 (12 U.C.C. Rep. Serv.

This result should follow whether the individual signer is sued by an immediate party or a remote party. The principle is based upon a clear policy that the writing is unambiguous and that parol evidence cannot be admitted to contradict the plain meaning of the words.[72] The implied rule of section 3-403(3) removes some of the confusion which existed in pre-Code cases as some courts had previously required the representative to use "By" to escape personal liability.[73]

Two cases decided under section 3-403, both split decisions of an appellate court, indicate that confusion continues to exist. The cases are markedly similar and both involve multiple and repetitious signatures. In *Trenton Trust Co. v. Klausman,*[74] the facts demonstrate the foolishness of the rule, "The more signatures, the better." In that case, the face of the note bore the following:

The Shoe Rack
X Mark Klausman, Sec.
X Lionel Klausman, Vice Pres.
X Michael Klausman, Pres.

The back of the note was endorsed as follows:

X Mark Klausman, Sec.
X Lionel Klausman, Vice Pres.
X Michael Klausman, Pres.
The Shoe Rack
X Mark Klausman, Sec.

The trial court dismissed the complaint brought by the payee of the note against the individuals Mark and Michael Klausman for failure to state a cause of action. A majority of four of the Pennsylvania Superior Court held that the trial court wrongfully dismissed the complaint without permitting evidence. The majority pointed out that it was illogical for the corporation to endorse its own note. Presented with this ambiguity, parol evidence was ap-

520) (1973); *see also* Bennett v. McCann, 125 Ga. App. 393, 188 S.E.2d 165 (10 U.C.C. Rep. Serv. 851) (1972), and Security Ins. Co. v. Mangan, 250 Md. 241, 242 A.2d 482 (5 U.C.C. Rep. Serv. 621) (1968).

[72] The remedy, if any, for the party who relied upon the individual liability of the authorized representative is through the equitable remedy of reformation.

[73] *See* discussion in BEUTEL'S BRANNAN, *supra* note 7, at 413-15.

[74] 222 Pa. Super. Ct. 400, 296 A.2d 275 (11 U.C.C. Rep. Serv. 787) (1972). A questionable reference is made to example (c) in Official Comment Three to § 3-403—"Peter Pringle, by Arthur Adams, Agent"—as most closely resembling the signatures in the case. *Id.* at 406-07 (dissenting opinion).

propriate. The dissent (three judges) in the *Klausman* case agreed with the trial court.

The second case is *First National Bank of Atlanta v. C. & S. Concrete Structures, Inc.*[75] In the words of the court, the note, payable to the plaintiff, was "signed C. & S. Concrete Structures, Inc. by Vernon Crutcher, President, and G. E. Strickland, Secretary and Treasurer." On the back of the note, the name of the corporation was repeated, "then followed under appropriate columns information with regard to the loan, such as interest, due date and amount,"[76] and finally the names of the two officers were signed and titles typed in. The trial judge granted a judgment on the pleadings for the individual defendants and six of the nine judges of the Georgia Court of Appeals affirmed. The court opinion relied upon section 3-403(3) with little discussion, and cited *Phoenix Air Conditioning Co. v. Pound*,[77] which is distinguishable. The three dissenting judges argued that the illogic of a corporation endorsing its own note presented an ambiguity necessitating the introduction of parol testimony.

There are three possible solutions to the problems presented by these two cases. Assuming corporate signatures—both naming the corporation and indicating representative capacity—appearing on the front and the reverse of a negotiable instrument, the first solution is to hold that they are both representative signatures as described in section 3-403 and thus the individuals are not bound and parole evidence is inadmissible to show otherwise. This is the holding of *C. & S. Concrete Structures, Inc.* The second solution, applied in the *Klausman* case, permits parol evidence in that the multiplicity of signatures introduces an ambiguity. The third and most logical solution, ignored by both cases, would use the multiplicity of the signatures plus the illogic of a corporation signing in two places to opt for unambiguous personal liability of the individual signers.

The proper result in cases of this type should be to recognize an ambiguity and to permit parol testimony. To argue that there is an illogic presented which compels a conclusion as a matter of law is to beg the question. It is obvious that the parties have not

[75] 128 Ga. App. 330, 196 S.E.2d 473 (12 U.C.C. Rep. Serv. 913) (1973).

[76] *Id.*

[77] 123 Ga. App. 523, 181 S.E.2d 719 (9 U.C.C. Rep. Serv. 483) (1971).

clearly indicated what they were trying to do. The multiplicity of signatures suggests that the payee anticipated multiple liability. The use of titles in conjunction with the name of an organization, however, suggests that the individuals contemplated action in a representative capacity.

1. Liability of the Unauthorized Signer

One may sign a negotiable instrument in an unauthorized manner either by forging a signature or by signing in a representative capacity while lacking the authority to bind the purported principal. In the forgery situation the forger himself arguably is not liable on the instrument inasmuch as one cannot be liable unless named. Thus, before the N.I.L., the holder was reduced to a common law cause of action against the forger.[78] Where the case involved an unauthorized agent, the rule under the N.I.L., by implication from section 20, was that the unauthorized agent or representative was personally liable.[79] Section 3-404(1) clearly expresses this rule and also applies it to the forgery situation in the following language:

> Any unauthorized signature is wholly inoperative as that of the person whose name is signed unless he ratifies it or is precluded from denying it; but it operates as the signature of the unauthorized signer in favor of any person who in good faith pays the instrument or takes it for value.

It should be noted that this subsection permits the taker for value to sue on the note. This results in a judgment based upon the face value of the note as contrasted with a judgment based upon damages caused by the lack of authority or forgery. The last clause of the subsection limits the application of the rule. In the words of the comment, "[O]ne who knows that the signature was unauthorized cannot recover . . . ."[80] In *First National Bank of Elgin v. Achilli*,[81] a note was signed:

HIGHLAND MOTOR SALES (printed by hand)
/s/ Ruth Achilli
/s/ Howard Achilli

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[78] *See* W. BRITTON, *supra* note 9, § 166.

[79] The leading case is New Georgia Nat'l Bank v. J. & G. Lippman, 222 App. Div. 383, 226 N.Y.S. 233, *aff'd.*, 249 N.Y. 307, 164 N.E. 108 (1928). The language in § 20 of the N.I.L. was: "(The agent) is not liable on the instrument if he was duly authorized . . . ." The implication accepted by most courts was that the individual signer was liable if unauthorized. Prior to the N.I.L., holders were relegated to an action for breach of an implied warranty of authority. *See* W. BRITTON, *supra* note 9, § 166.

[80] U.C.C. § 3-404, Official Comment Two (1976).

The individual signers appealed a denial of a motion to open a confessed judgment by the payee. Affidavits indicated that Highland Motor Sales was a sole proprietorship owned by the deceased Sam Achilli and that the signers were sole heirs and representatives of the estate although not authorized to sign the note in question. The Illinois appellate court held that the ambiguity present in the signature permitted parol testimony to disestablish individual liability and also held that if the defendants could establish that the plaintiffs knew that the defendants had no authority, section 3-404(1) required that the motion to open the judgment be granted.

Bank of America National Trust & Savings Association v. Morse[82] illustrates that in the corporate situation the question of authorization can be an important issue. A note was signed in a representative manner naming the corporation and giving the titles of the individual signers. However, the state of California had suspended the corporation's powers for failure to pay state corporation taxes. Plaintiff-payee argued that section 3-404(1) applied to bind the unauthorized individual defendants. The Oregon Supreme Court, applying California law, held that the effect of suspension of powers under the California statute was to be distinguished from the effect on a forfeiture of a corporate charter. Noting that a suspended corporation could not disaffirm its contracts, the court held that section 3-404(1) did not apply. This case should be interpreted as holding that the individuals were not "unauthorized" within the meaning of section 3-404(1).

One statement of the Oregon court must be questioned. In pointing out that the corporation would be bound, the court unnecessarily said: "Under the Uniform Commercial Code the unauthorized signer of a note can be held liable only if the purported principal is not bound."[83] There seems to be no basis for this statement other than a generalized notion of "not having one's cake and eating it, too." There is no basis in the Code's rules for this logic.[84] The question of the liability of the representative may turn on ratification. Section 3-404(2) reads: "Any unauthorized signature may be ratified for all purposes of this Article. Such

[81] 14 Ill. App. 3d 1, 301 N.E.2d 739 (13 U.C.C. Rep. Serv. 505) (1973).
[82] 265 Ore. 72, 508 P.2d 194 (12 U.C.C. Rep. Serv. 520) (1973).
[83] *Id.* at 81, 508 P.2d at 198 (12 U.C.C. Rep. Serv. at 525).
[84] *See* discussion note 79 *supra.*

ratification does not of itself affect any rights of the person ratifying against the actual signer." The second sentence of section 3-404(2) should be read to permit courts to decide on the facts or particular cases whether ratification which results in liability of the party represented will result in release of the unauthorized signer. Relevant facts to be examined would be the assumptions of the parties at the time of signing, the circumstances of the ratification, and the posture of the payee or taker at the time of the ratification and thereafter.

A recent Colorado case ignored the Uniform Commercial Code and thus did not reach the question of a difficult application of section 3-404(1). In *MacKay v. Lay,*[85] three notes, admittedly issued for corporate purposes, were signed:

Cert-a-Corporaton
Thomas C. MacKay, President

The trial court found that MacKay had never been duly authorized by the corporation to borrow money on its behalf.[86] Other relevant facts included: First, the payee-plaintiff was dealing with the corporation and not the individual at all times; second, the corporation made part payments on the note; and third, the corporation was insolvent at time of suit. The trial court found the defendant unauthorized and therefore personally liable.

The Colorado Court of Appeals, surprisingly, made no mention in its opinion of Article Three which is clearly applicable.[87] In reversing the trial court and ordering a dismissal, the appellate court applied the rule that if an agent exceeds his authority, his principal may complain, but a third party may not. It is submitted that this rule is inapposite to the language of section 3-404(1). The test is whether the signature operated "in favor of any person who in good faith pays the instrument or takes it for value." The

[85] 28 Colo. App. 70, 470 P.2d 614 (1970).

[86] This finding resulted from a correct application of the principle that the person relying on authority must establish it. *See* U.C.C. § 3-403(1) (1972). Apparently the individual defendant in the case was unable to show authorization as required by the bylaws because of casually kept corporate minutes.

[87] It is possible that the promissory note in question was not negotiable as not complying with U.C.C. § 3-104(1) (1972). The case is silent on the point. However, it is believed that if one has a nonnegotiable note, there is a strong argument that the rules of §§ 3-403 and 3-404 ought to apply. The reasons for the rules apply equally in the case of negotiable or nonnegotiable notes. *See* Agar v. Orda, 264 N.Y. 248, 190 N.E. 479, 258 N.Y.S. 274 (1934).

rule states, in effect, that, assuming lack of authority as between the individual signer and a holder (including a payee) for value in good faith, the unauthorized signer loses.

The *MacKay* case could have been decided the same way had the court faced section 3-404(1). For example, the court could have held that there was a ratification by the corporation which the payee took advantage of and that the payee could not take an inconsistent position. In certain cases, facts constituting waiver or estoppel might be present which would permit a holding that the individual is not liable.[88] However, the decision in the *MacKay* case clearly calls into question the wisdom of the Code rule of section 3-404(1). It is evident that the Colorado Court of Appeals did not wish to throw the risk of the insolvency of a corporate maker upon an innocently unauthorized individual signer. This is not a new thought. Shortly after the promulgation of the N.I.L., Dean Ames made the following comment upon the rule in section 20:

> Under this section, an agent signing without authority of the principal is, by implication, liable on the instrument. This is unjust and a departure from the English Act and the almost uniform current of judicial decisions by which the agent is liable only on his implied warranty of authority. According to this rule the measure of damages would be nominal, if the principal should happen to be bankrupt; whereas under sec. 20 it would be the amount of the instrument.[89]

Dean Ames' reference to the difference in effect is correct. Where the holder sues the unauthorized signer on a breach of the implied warranty of authority, the damages are limited to those *caused* by the breach. When the principal is insolvent, the inability to

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[88] *See* U.C.C. § 1-103 (1972), which reads: "Unless displaced by the particular provisions of this Act, the principles of law and equity, including the law merchant and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause shall supplement its provisions."

[89] Shortly after the promulgation of the N.I.L., which had been quickly drafted by J. J. Crawford, it was attacked by Dean Ames, one of the leading authorities in the field. Ames, *The Negotiable Instruments Law*, 14 HARV. L.R. 241 (1900). Judge Brewster, Chairman of the ABA Committee on Uniform Laws, came to its defense. Brewster, *A Defense of the Negotiable Instruments Law*, 10 YALE L.J. 84 (1901). The reply from Harvard, Ames, *The Negotiable Instruments Law - Necessary Amendments*, 16 HARV. L.R. 255 (1903), concluded what is known as the "Ames-Brewster Controversy." See McKeehan, *The Negotiable Instruments Law—A Review of the Ames-Brewster Controversy*, 50 AM. L. REG. 457 (1902). The quote in text is from *Beutel's Brannan*, *supra* note 7, at 411.

collect is not due to the unauthorized signature. Suit under section 20 of the N.I.L. or section 3-404(1) of the U.C.C. gives recovery of the face amount of the instrument (less payments made or less value of valid defenses). The Code statement of the rule is too mechanical; recovery should be allowed on the instrument, but with exceptions. To provide flexibility, the last clause of section 3-404(1) perhaps should read: "But (an unauthorized signature) operates as the signature of an unauthorized signer not acting in good faith in favor of any person who in good faith pays the instrument or takes it for value."

2. Failure to Indicate Representative Capacity

The bulk of the cases both before and after the enactment of the Uniform Commercial Code involve negotiable instruments bearing a corporate name and personal signature which fails clearly to indicate representative capacity. Section 3-403(2)(b) states the mechanical rule that, "except as otherwise established between the immediate parties, [an authorized representative] is personally obligated if the instrument names the person represented but does not show . . . representative capacity . . . ."

The wisdom of the rule is questionable, at least insofar as the rule on its face prevents the introduction of parol evidence between remote parties in certain cases of corporate obligations. A well-reasoned opinion by the unanimous Supreme Court of New Jersey on clear facts seems a logical starting point for discussion, even though it is a pre-Code case. In *Norman v. Beling,*[90] a series of thirty-six notes, each for fifty dollars, was executed to repay an obligation of the Teal Corporation for services rendered. In the space for the maker's signature appeared the following:

Teal Corporation [typed]
/s/ J. Harole Semar
/s/ Christopher A. Beling

The notes were negotiated to the plaintiff who the courts assumed was a holder in due course. The first twenty-one notes to become due were presented to and paid by the corporation. When the remainder of the notes went unpaid, plaintiff brought this action against Beling. The trial court permitted evidence which supported a finding that the individuals were officers of the corpora-

[90] 33 N.J. 237, 163 A.2d 129 (1960).

tion and never intended to bind themselves personally. The Superior Court, Appellate Division, reversed, holding that judgment should have been rendered for the plaintiff,[91] and defendant appealed.

After indicating that section 20 of the N.I.L. offered no answer to the case, the court in *Norman v. Beling* engaged in a three-step analysis to hold that the trial court was correct in permitting evidence of intent. First, the court referred to a number of cases where parol evidence was held admissable as between the immediate parties when the signature was in the form, "ABC Corporation, John Doe." Next, the court discussed the applicability of that rule to the fact situation of the instant case—namely, when the corporate name was followed by two signatures, both lacking titles. Arguably, the first individual name is ambiguous in a sense that the second is not because at least one signature is universally expected to authenticate the signature of the corporation. But the court refused to distinguish between the two names, saying, "We do not consider this factor decisive, however, because it is a frequent occurrence for corporate by-laws to require the signature of two officers on instruments binding the corporation."[92] Lastly, the court applied the principle allowing parol evidence even though the plaintiff was a holder in due course. It is the last step in this analysis which creates the greatest divergence from the bulk of prior cases and is contrary to the plain language of the above cited Code subsection. The New Jersey court's support of the last step fights a basic assumption of many cases. The court said, "When a defect by way of ambiguity is suggested by the *face* of the instrument the purchaser is put on inquiry because to ignore such a warning with impunity has no sound basis."[93] Many would argue that the fact of the ambiguity of the signature should not put the purchaser on inquiry. Such a rule is felt to "clog negotiability" and thus be invidious. Both pre-Code and post-Code cases are confused, however, inasmuch as they fail to come to grips with a key question: What degree of ambiguity is necessary in order to insulate remote parties from a duty of inquiry? It is apparent that the New Jersey

[91] 58 N.J. Super. 575, 157 A.2d 17 (App. Div. 1959).

[92] Norman v. Beling, 33 N.J. 237, 244, 163 A.2d 129, 133 (1960). The court referred to the accounting practice of requiring two signatures. *Id.*

[93] *Id.* at 246, 163 A.2d at 133.

court in the *Beling* case felt that a purchaser of notes signed in the manner presented would most likely assume that the notes were corporate obligations. It does not seem to clog negotiability unnecessarily to require the purchaser to inquire for the limited purpose of personal liability of the signers. After all, there is no impediment to purchase where the purchaser contemplates only the purchase of a corporate obligation. It is also apparent that many of the purchasers (and perhaps even immediate parties) have questions about personal liability only after the fact, that is, after the insolvency of the corporate maker. It seems unnecessarily harsh in many cases to hold the corporate officer liable when the choice is between the corporate officer who admittedly was somewhat inartful in the manner of his signing and the holder of an instrument who made no simple inquiries at the time of execution or purchase.

As between immediate parties, it is clear under section 3-403(2)(b) that where a signature is simply in the form,

ABC Corporation,
John Doe,

parol evidence is admissable to establish that John Doe was not intended to be personally bound, and the cases so hold.[94] *Norman v. Beling* involved remote parties and thus is changed by the Code. No case has followed *Beling*.[95] Three cases decided under the Code have reasonably indistinguishable facts from *Beling* in that a note was signed with the name of a corporation followed by the signatures of one or two individuals, and the plaintiff was a remote party suing an individual signer. All of the cases hold contra to *Beling*.[96] Distinguishable from *Beling* are cases where an

[94] Speer v. Friedland, 276 So.2d 84 (12 U.C.C. Rep. Serv. 509) (Fla. Dist. Ct. App. 1973); First Nat'l Bank v. Achilli, 14 Ill. App. 3d 1, 301 N.E.2d 739 (13 U.C.C. Rep. Serv. 505) (1973); Weather-Rite, Inc. v. Southdale Pro-Bowl, Inc., 301 Minn. 346, 222 N.W.2d 789 (15 U.C.C. Rep. Serv. 669) (1974); Chips Distributing Corp. v. Smith, 48 Misc. 2d 1079, 266 N.Y.S.2d 488 (3 U.C.C. Rep. Serv. 177) (Sup. Ct. 1966); North Carolina Equip. Co. v. DeBruhl, 28 N.C. App. 330, 220 S.E.2d 867 (18 U.C.C. Rep. Serv. 1011) (1976); Viajes Iberia, S.A. v. Dougherty, 87 S.D. 591, 212 N.W.2d 656 (13 U.C.C. Rep. Serv. 1096) (1973).

[95] Certain cases decided independently of the U.C.C. under "Bad Check" statutes do accord with *Beling*. *See* Southeastern Fin'l. Corp. v. Smith, 397 F. Supp. 649 (17 U.C.C. Rep. Serv. 1043) (N.D. Ala. 1975) and ALA. CODE tit. 7, § 131(1) (Supp. 1973).

[96] Perez v. Janota, 107 Ill. App. 2d 90, 246 N.E.2d 42 (6 U.C.C. Rep. Serv. 357) (1969) (one signature); O.P. Ganjo, Inc. v. Tri-Urban Realty Co., 108 N.J. Super. 517, 261 A.2d

officer has signed a note twice, once without designation of office and once with the designation.[97] In this case, the second personal signature without the designation of representative capacity removes any ambiguity and the individual signer is liable.

One group of cases, which were correctly decided under the Code, can be distinguished from *Beling*. An example is *Lumbermen Associates, Inc. v. Palmer*,[98] where a corporate note was issued to the plaintiff and signed by the individual defendant on the back of the note without using the name of the corporation. Here, arguably, the "instrument names the party represented," in that the individual signed for the corporation on the front, using title and name of the party represented. The court properly held that the individual was liable as an indorser.[99] Other cases support the idea that the facts of the signing rather than an automatic application of section 3-403(2) should be decisivie.[100] The true explanation of the cases is that the total appearance of the note, front and back, presents no ambiguity. A corporate note signed with an authorized representative signature on front and the unadorned name of an individual on the back can suggest only one explanation: An individual was lending his or her credit to the obligation expressed on the front. The ambiguity of multiple signatures with representative capacity indicated, front and back,[101] is not present in this category of cases.

Two decisions in this group can be distinguished. In

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722 (7 U.C.C. Rep. Serv. 302) (1969) (one signature); Abby Fin'l. Corp. v. S.R.S. Second Ave. Theatre Corp. (11 U.C.C. Rep. Serv. 1011) (N.Y. Sup. Ct. 1972) (two signatures).

[97] *See, e.g.*, Gramatan Co. v. MBM, Inc., (6 U.C.C. Rep. Serv. 865) (N.Y. Sup. Ct. 1968) where the note was signed:

MBM, Inc.
by—Janet Meyerson, Pres.
JM—Janet Meyerson
MM—Milton B. Mejias, Sec.
Milton B. Mejias.

[98] 344 F. Supp. 1129 (11 U.C.C. Rep. Serv. 359) (E.D. Pa. 1972).

[99] The court summarily referred to PA. STAT. ANN. tit. 12A, § 3-402, which provides, "Unless the instrument clearly indicates that a signature is made in some other capacity it is an indorsement." This is inapposite in that the section determines what liability the signature imports, (*see*, U.C.C. § 3-414(1) (1972), setting forth the condition liability of the indorser) and not *whose* liability is set forth.

[100] Other cases with similar facts are: Agfa-Gevaert, Inc. v. Bueding, 11 U.C.C. Rep. Serv. 794 (Md. 1972); Central Trust Co. v. J. Gottermeier Dev. Co., 65 Misc. 2d 676, 319 N.Y.S.2d 25 (8 U.C.C. Rep. Serv. 1297) (1971).

[101] *See* text accompanying note 74 *supra*.

Southern National Bank v. Pocock[102] an instrument was signed on the front by the corporation in an unambiguous manner, but "Ian I. Pocock, Pres." appeared on the reverse under a printed "Guaranty of Third Persons."[103] The trial court had admitted testimony from the plaintiff-payee and the defendant Pocock as to the circumstances surrounding the signing and the jury had found for the plaintiff. Citing section 3-403(2)(b), the North Carolina Court of Appeals held that evidence was admissible as between the immediate parties but held that there was sufficient evidence to justify the jury verdict and denied the appeal by the defendants. A signing even more demonstrative of the need for parol evidence is found in *National Bank v. Ament.*[104] The front of the note had three blank lines. On the first line appeared "R & A Concrete" and on the second line appeared the handwritten "By: Grover Roberts." The latter name was typed below the signing so that the last blank on the note was partially filled. On the reverse of the note appeared "John Ament, Sec. & Treas." The trial judge dismissed as to Ament in a suit by the payee. On appeal, the Georgia Court of Appeals, citing section 3-403(2)(b), held that the jury should "consider all of the circumstances of his signing, including the facts that the complete, correct name of the corporate defendant-maker was not utilized; that Ament indorsed the note on its reverse side, rather than on the line for maker on the face of the note; and that he (or someone else) may have considered that there was insufficient space in which to indorse on the face of the note."[105] The court is correct in permitting parol evidence to solve the ambiguity. A strong indication of ambiguity exists in that one could ask why only the "Sec. & Treas." would sign for accommodation and not the other executives. The facts of this case would give extreme difficulty to a court were the plaintiff a remote party. The clear application of section 3-403(2)(b) to deny the admissibility of parol evidence

[102] 29 N.C. App. 52, 223 S.E.2d 518 (19 U.C.C. Rep. Serv. 565) (1976).

[103] The instrument executed was a "Security Agreement" which on the face included the note and chattel mortgage and on the reverse contained a printed guaranty agreement. Obviously, this instrument would not qualify as Article Three paper under U.C.C. § 3-104(1) (1972), but the court without discussion applied U.C.C. § 3-403 (1972). The rule of the section can appropriately be applied to nonnegotiable instruments. *See* note 87 *supra* and accompanying text.

[104] 127 Ga. App. 838, 195 S.E.2d 202 (1973).

[105] *Id.* at 839, 195 S.E.2d at 202-03.

would seem to work an injustice. Again, it would seem that the remote purchaser should be on notice that possibly the signature on the reverse was only a continuation of the signature on the front. Suppose, for example, it were shown that the corporate by-laws required two signatures to authenticate a corporate undertaking on a note of this kind.

In spite of the perhaps beguiling reasoning of the *Beling* opinion, the Code seems to clearly favor the remote party where the individual signer has named the party represented, but has inadvertently omitted the designation of capacity or office. As indicated, the few cases decided under the Code apply the rule holding the individual liable. But the Code rule in the "ABC Corp., John Doe" context is too rigid; splits of authority may develop where courts find fact situations that denote equities in favor of the *Beling* result.

3. Failure to Name the Party Represented

As indicated above, the 1956 version of section 3-403 overturned the majority rule in favor of the New York rule of *Megowan v. Peterson.*[106] Where the signature is simply in the form, "John Doe, Pres." or "Charles Peterson, Trustee," without naming the party represented, parol evidence is admissible as between immediate parties to disestablish personal liability, but not as to remote parties. As to remote parties, the individual signer is personally liable. Very few of the cases litigated under the Code present fact patterns like *Megowan.* Conjecturally, this is explainable in that the issue is clear cut under the Code. However, perhaps the paucity of cases reflects the fact that such a signature form is rarely used. It is so ambiguous on its face that, even at the time of signing, one or both of the immediate parties would surely move to cure the ambiguity.

One case, *Kramer v. Johnson,*[107] does present the issue squarely. In that case, a note was signed:

Leo W. Palmer, Governor
George W. Johnson, Secy.
Hubert C. Alligood.

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[106] *See* text accompanying note 20 *supra.*

[107] 121 Ga. App. 848, 176 S.E.2d 108 (7 U.C.C. Rep. Serv. 1335) (1970).

The note did not name the corporation. The Georgia Court of Appeals, citing *Megowan v. Peterson* and section 3-403(2)(b), held that parol evidence was admissible between the immediate parties to disprove personal liability. *Kramer* is interesting in that it is one of the few cases, if not the only one, where a question is raised by the facts as to the meaning of "immediate parties." The plaintiff in that case was the transferee of the payee bank and her deceased husband was an indorser. The court assumed without discussion that she was an immediate party.

The cases very properly have little discussion as to the meaning of the term "immediate parties." The rule does not need to permit parol as between the principal and agent as to authority. The problem to which section 3-403 responds is the liability of the signers to the takers of instruments. Where a taker has dealt with the agent or officer, the taker is obviously an "immediate party." The immediate party is almost always the payee of the instrument. A purchaser from the payee, often a holder in due course, is a remote party.

4. Authorized Signatures on Checks

Article Three of the Uniform Commercial Code applies to notes, drafts, checks, and certificates of deposits.[108] The sections which I have discussed apply to "signatures" or "instruments."[109] Thus, logically, there is no reason to treat the problem of signatures on checks any differently than the problem of signatures on notes. However, one apparently significant fact of life is ignored by section 3-403: Many corporate or other organization checks are issued routinely without the clear signature form of "ABC Corporation, Jane Doe, Treas."[110] The cases therefore need explaining. It is submitted that it is no answer to the problem to say that

[108] U.C.C. § 3-104(2) (1972).

[109] U.C.C. § 3-102(1)(e) (1972) defines "Instrument" as meaning a negotiable instrument, and U.C.C. § 3-104 (1972) sets forth the requirements of a "negotiable instrument within this Article . . . ."

[110] Unfortunately, there is no survey or empirical study known to this writer measuring the exact magnitude of this fact. However, in the last several years of teaching this subject, I have been amazed at the number of organizational checks I have seen where the signature of the drawer is simply a handwritten, stamped, or printed name of an agent without designation of representative capacity. My salary checks come in that form. I have also received a check from a municipality in a land sale transaction and a check from my stock brokers in that form. Numberless checks have been shown to me by my students over the years similarly subject to the problem of the cases discussed here.

compliance with section 3-403 will resolve the question. The question, properly put, is: Should executing corporate obligations in the commonly accepted manner expose the authorized signer to liability?

Perhaps the best known case, *Pollin v. Mindy Manufacturing Co.*,[111] presents the problem with startling clarity. In September of 1966, Mindy Manufacturing Company issued a number of payroll checks[112] and cashed some $2,252 of these indorsed checks for a small fee. Before the checks were paid by the drawee bank, that bank had exhausted the payroll account because of a demand note of Mindy's held by the bank. Plaintiffs, probably holders in due course and undoubtedly remote parties, brought suit against, inter alia, Robert Apfelbaum, who had signed the checks without a designation that he was President[113] of Mindy Manufacturing. Summary judgment against the individual defendant was entered by the lower court, based on the clear language of section 3-403(2)(b).

A description of the checks in question is given by the Pennsylvania Superior Court in the appeal:

> The checks . . . are boldly imprinted at the top, Mindy Mfg. Co., Inc., 26th & Reed Streets, Philadelphia, Penna. 19146 - Payroll Check No. ____, and also Mindy Mfg. Co., Inc., is imprinted above two blank lines appearing at the lower right hand corner; also on the lower left hand corner appears Continental Bank and Trust Company, Norristown, Pa., in type. Under the imprinted name of the corporate defendant, on the first line, appears the signature of defendant Robert L. Apfelbaum without any designation of office or capacity. . . .[114]

The court properly pointed out that in an action by a remote party against the signer, to avoid personal liability under section 3-403(2), not only must the representative be named, but there must be a showing that "the representative signed in a represent-

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[111] 211 Pa. Super. Ct. 87, 236 A.2d 542 (4 U.C.C. Rep. Serv. 827) (1967).

[112] The opinion says no more about the character of the plaintiffs. In a generalized fact pattern of the problem we should be able to hypothesize professional check-cashing services, liquor stores, grocery stores, loan companies (when monthly payments are made), or cashing banks as the plaintiffs.

[113] Were the reader to be pleased that the individual made liable was the "Big Gun" of a close corporation, put the generalized fact pattern in terms of the defendant's being a salaried clerk, secretary, treasurer, or other agent of the insolvent corporation. Perhaps, his or her check also "bounced."

[114] Pollin v. Mindy Mfg. Co., 211 Pa. Super. Ct. 87, 89-90, 236 A.2d 542, 544 (1967).

ative capacity." Admitting that the instrument failed to show the office held by the signer, the court went further:

> However, we do not think this is a complete answer to our problem, since the Code imposes liability on the individual only ". . . if the *instrument* . . . does not show that the representative signed in a representative capacity . . ." [sic] This implies that the instrument must be considered in its entirety.[115]

The court then went on to hold that this requirement of the Code had been met, considering the entire instrument. The court pointed out the distinction between a note and a check, the fact that there was a double line beneath the printed "MINDY MFG. CO.," and that the check clearly showed that it was "payable from a special account set up by the corporate defendant for the purposes of paying its employees."[116]

The logic of the *Pollin* decision should be accepted under section 3-403. It is one of the few cases which underscore the necessity of examining the entire instrument to determine whether there is a signature in a representative capacity. The approach of the *Pollin* court is to make the rather wooden formula of section 3-403 more flexible and fact-responsive. It is conjectural whether this approach will ever be extended to the promissory note cases. One might argue that the promissory notes which have been litigated have not presented characteristics analogous to those on a payroll check.[117]

Surprisingly, in view of the enormous number of corporate checks issued daily, there are only two cases which may be said to follow *Pollin*.[118] *Bennett v. McCann*[119] involved a series of checks signed, "McCann Industries, Inc., Payroll Account, /s/ J.Y. McCann." Without discussion, and citing only *Pollin* and the Code, the court said, "The petition clearly shows that this was the corporation's liability and not that of an individual."[120] The case is distinguishable in that the suit was by the payee of the checks rather than a remote party. However, the decision was

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[115] *Id.* at 91, 236 A.2d at 544-45 (emphasis added).

[116] *Id.* at 92, 236 A.2d at 545.

[117] *But see* discussion of *Beling* case in text accompanying notes 90-97 *supra*.

[118] Bennett v. McCann, 125 Ga. App. 393, 188 S.E.2d 165 (10 U.C.C. Rep. Serv. 851) (1972); Bailey v. Polster, 468 S.W.2d 105 (9 U.C.C. Rep. Serv. 611) (Tex. Ct. App. 1971).

[119] Bennett v. McCann, 125 Ga. App. 393, 188 S.E.2d 165 (10 U.C.C. Rep. Serv. 851) (1972).

[120] *Id.* at 393, 188 S.E.2d at 165-66 (10 U.C.C. Rep. Serv. at 851).

an affirmance of the granting of a motion to dismiss on the pleadings, which is tantamount to holding that parol evidence is inadmissible because the checks were, unambiguously, only a corporate obligation. *Bailey v. Polster*[121] is distinguishable on its facts and in its procedural setting, but does rely upon *Pollin*. The instrument was an insurance draft drawn on the insurance company. The action was a suit in equity by the payee to enforce a compromise settlement of a personal injury case. The court, of course, had no problem in holding the company as the drawer of the draft, but the claim against the agent was predicated upon the fact that the agent signed the draft "as the ostensible drawer without anything under his signature to indicate the capacity in which he was acting."[122] The Texas Court of Civil Appeals held that section 3-403 of the Code should not be applied "to fix personal liability on an employee of an insurance company who is hired to pay approved claims . . . . The true relationship between the parties was clearly shown by undisputed evidence."[123]

Some ten years after the date of the *Pollin* case, there seems to be little judicial motivation to extend the decision beyond the precise facts of that case. The Texas Supreme Court distinguished *Pollin* in *Griffin v. Ellinger*.[124] In that case, payee sued on a check drawn on a standard check form.[125] The name "Gateway Bldg. Co., Inc.," below which was an address, appeared in the upper left-hand corner of the check. A single blank line in the lower right-hand corner bore the handwritten signature of the defendant with no indication of representative capacity. The amount of the check, $1,310, had been stamped on the check by a "check protector"[126] which imprinted not only the amount of the check but the company's name. The lower court admitted evidence on the issue of personal liability and found against the defendant. The defendant appealed, alleging that the instrument

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[121] 468 S.W.2d 105 (9 U.C.C. Rep. Serv. 611) (Tex. Ct. App. 1971). Interestingly enough, the case also cites *Norman v. Beling* for its holding. *See* text accompanying notes 90-97 *supra*.

[122] Bailey v. Polster, 468 S.W.2d at 109 (9 U.C.C. Rep. Serv. at 614) (Tex. Ct. App. 1971).

[123] *Id.*

[124] 19 Tex. S. Ct. J. 340, 538 S.W.2d 97 (19 U.C.C. Rep. Serv. 587) (1976).

[125] The case is one of the few which reproduces the form of the instrument as executed. *Id.* at ____, 538 S.W.2d at 99 (19 U.C.C. Rep. Serv. at 589).

[126] *Id.*, 538 S.W.2d at 99 (19 U.C.C. Rep. Serv. at 589).

showed conclusively on its face that he was signing in a representative capacity. The Texas Supreme Court affirmed the trial court action. Defendant's contention that the "check protector" imprint should control was rebuffed: "Although the stamp clearly reveals the name of the principal, it does not aid petitioner because it gives no information as to the capacity in which *he* signed the instrument." (Emphasis supplied by the court.)[127] *Griffin* is distinguishable from *Pollin* in the degree to which the check in each case evidenced a purely corporate character. However, it is submitted that the check protector imprint on a corporate name included ought to be as indicative as the legend "Payroll Account." The basic difference between the two cases is that the *Pollin* court focused on the "instrument as a whole," whereas the *Griffin* court focused on form of the signature and found no indication of representative capacity.

The logic of section 3-403(2)(b) can present a court with a "Catch 22" situation. An instrument such as was presented in either *Ellinger* or *Pollin* may persuade a court to introduce evidence as between the immediate parties to resolve the ambiguity and this result should not be criticized. However, such a holding leads inexorably to the result that the individual signer is personally liable to *remote* parties and parol evidence is inadmissible to avoid such liability. Thus, if the *Griffin* and *Pollin* cases—the first between immediate parties, the second between remote—involved the same instrument or indistinguishable instruments, the two results could not logically coexist. Why does the Code rule exclude the factual possibility of instruments which on their face present ambiguity necessitating parol evidence between the parties and also prevent evidence of "corporateness" which ought to permit an authorized signer to resist unexpected personal liability as to remote parties?

An unexplained amendment in 1966 to the Official Comment Three of Section 3-403 may indicate that the U.C.C. Permanent Editorial Board is less than sure about the matter being discussed here.[128] Prior to 1966, Comment Three listed a number of possible forms of signature. The last two were

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[127] *Id.* at ___, 538 S.W.2d at 99 (19 U.C.C. Rep. Serv. at 590).

[128] *See* PERMANENT EDITORIAL BOARD FOR THE UNIFORM COMMERCIAL CODE, REPORT NO. 3 at 25 (1967).

(e) Peter Pringle
Arthur Adams.
(f) Peter Pringle Corporation
Authur Adams.

The Comment in discussing case (e) explained that the section admits parol evidence as between immediate parties and adds: "Case (f) is subject to the same rule." The revised Comment in 1966 deleted case (f) and the reference thereto. There is no explanation for the change. Perhaps the Permanent Editorial Board has become aware of the fact that corporate signatures present different parol evidence problems than simple principal-agency situations.

In another context, *American Exchange Bank v. Cessna*[129] does present a check case involving remote parties which is distinguishable from both *Pollin* and *Griffin*. In that case, the instrument was a standard form check with the legal "Cessna Ranch" and an address in the lower left-hand corner. The individual defendant signed without indicating representative capacity and, when sued by a remote party, attempted to show that the check represented a corporate obligation and that Cessna Ranch was a California corporation. The court applied section 3-403(2)(b) to exclude the evidence. In this case, the ambiguity should favor the remote party because the remote party had no reason to know whether "Cessna Ranch" was a sole proprietorship, a trade name, a partnership, or a corporation. Even using the instrument-as-a-whole test of the *Pollin* decision, there is nothing to warn a purchaser that the check is a corporate rather than a personal obligation.

CONCLUSION

The counseling suggestions are obvious. And it is obvious that counseling suggestions are neeeded. Where the instrument is a promissory note and it is not intended that the individual signers be liable, the form of the signature should be

ABC Corporation,
by, /s/ Jane Doe, Pres.
by, /s/ Richard Roe, Treas.

All signatures should be in close proximity to each other. The use

[129] 386 F. Supp. 494 (N.D. Okla. 1974).

of the word "by" is recommended, under the principle that careful counseling reduces the chance of litigation, but, as has been indicated, it is not essential. Where the instrument is a promissory note and it is intended that the individual signers be liable, the recommended form is:

ABC Corporation,
By, /s/ Jane Doe, Pres.
By, /s/ Richard Roe, Treas.
and, as individuals with liability,
/s/ Jane Doe,
/s/ Richard Roe.

The above signature form would bind the individuals as comakers. In the event that the individuals bargained for the secondary liability of indorsers,[130] the individuals should sign on the reverse of the note without designation of office or other representative capacity.

The counseling suggestion with respect to checks is likewise simple, but it must be borne in mind that most corporate checks are on printed forms. Thus, clients should be urged to include in the printing process appropriate notations which would save an individual signer from unexpected liability, as in the *Pollin* case. It is best that the printed check form include under the line for the signature of the drawer appropriate words indicating representative capacity to avoid inadvertent omissions. Thus, where the treasurer is authorized to sign, the printed word "Treasurer" would appear beneath the individual's signature. In many factual situations more than one officer or employee of a corporate entity may be authorized to draw checks for corporate obligations. If such is the case, the legend below the drawer's signature line could read "Authorized Signature," or words to that effect. While to my knowledge the matter has not been litigated, it would be surprising for a court to hold that where the corporation was named on the check and the individual's signature was followed by the words "Authorized Signature," such a signature was not a representative signature within the meaning of section 3-403(3).

[130] *See* U.C.C. § 3-414 (1972) for the contract of an indorser.