NORTH DAKOTA BANKERS ASSOCIATION

LEGAL UPDATE

A newsletter covering bank legal and compliance information.

Volume 24 • Issue 9

September 26, 2024

ADMINISTRATIVE LAW

Chivalry Isn't Dead... but Chevron is. [U.S.]

Congress passed 16 U.S.C. § 1801 et seq. (the act) to regulate overfishing in international waters near U.S. coastlines. The act provided for councils that created "fishery management plans, which [the agency] approves and promulgates as final regulations." The plans contained numerous rules, including regulations on annual catch limits, fishing gear, allocating catches to research, and other rules as "necessary and appropriate for the conservation and management of the fishery." At issue here were plans that required certain qualified fishing vessels to carry and pay for "observers." The agency amended the act to require vessels to notify the agency of a planned expedition, and the agency would determine whether an observer was required and whether the vessel owner would be responsible for the fee. The costs, far from nominal, could be as much as "$710 per day, reducing annual returns to the vessel owner by up to 20 percent." In two separate cases, several businesses (collectively "the businesses") challenged the amended rule, arguing that the act does not give the agency the authority to require payment of observers. Both district courts granted summary judgment against the businesses and deferred to the agency's interpretation of the act, citing the Supreme Court's opinion in Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837 (1984). Chevron established a "two-step framework to interpret statutes administered by federal agencies." The first step is determining "whether Congress has directly spoken to the precise question at issue." Id. at 842. "Clear" intent from Congress is final, but silence or ambiguity requires deference to an agency's "permissible construction of the statute." Id. at 843. The Supreme Court granted certiorari and combined the cases to determine "'whether Chevron should be overruled or clarified."

In **Loper Bright Enters. v. Raimondo**, 144 S.Ct. 2244 (2024), the Supreme Court of the United States overruled Chevron. First, the Court discussed the judiciary's Article III power, ability to make independent judgments, and its "province and duty... to say what the law is." Marbury v. Madison, 5 U.S. 137 (1803). The Court held that while they may give "respect" to agency interpretation, it could never bind a court or "judicial judgment would not be independent at all." Second, the Court analyzed its history of deference to agency determinations and found that during the New Deal era, courts had deferred to "factbound determinations" but not to legal questions. In addition, Congress had passed the Administrative Procedure Act (APA), which gave the courts the authority to interpret "'all relevant questions of law' arising on review of agency action." 5 U.S.C. §706. The Court found it notable that the act did not proscribe any standard for deference to an agency and stated that the text, history, and plain meaning of the APA show that courts are not required to show deference to agencies. Although Congress may enact a statute delegating power or authority to an agency, the court still has the responsibility to "independently interpret the statute and effectuate the will of Congress subject to constitutional limits." The Court took issue with Chevron and its progeny for its failure to "reconcile its framework with the APA"; in its view, the two cannot coexist. Next, the Court addressed the dissent and noted that an ambiguity in a statute does not mandate deference to an agency, nor does Congress' inaction in resolving the ambiguity demonstrate intent for deference to an agency. The Court stressed that courts must find the "best" meaning of the statute and that while courts have experience dealing with ambiguity, "agencies have no special competence in resolving statutory ambiguities." The respondents argue that the agencies have expertise in certain areas, and due to the potential for policymaking in interpreting the statutes, the determination is "best left to political actors, rather than courts." Finding both arguments unpersuasive, the Court held that deference is unnecessary because courts routinely resolve disputes requiring technical expertise and have the duty to "interpret statutes, no matter the context." In fact, the Court opined, "Chevron does not prevent judges from making policy. It prevents them from judging." Finally, the Court addressed stare decisis and held that it was not bound to the precedent set by Chevron because it has "proved to be fundamentally

misguided... unworkable...[and] [r]ather than safeguarding reliance interests, Chevron affirmatively destroys them." However, the Court clarified that this decision does not disturb the outcomes of Chevron. or its progeny. Ultimately, the Court overruled Chevron and affirmed the duty of the courts, under the. APA, to make independent judgments without deferring to an agency's interpretation of a statute.

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The Statute of Limitations for Facial Challenges to Agency Actions Begins When the Plaintiff's Cause of Action Begins [U.S.]

In 2010, Congress authorized the agency to set standards for ensuring that. interchange transaction fees (payments that... merchants pay to banks to process debit card transactions) are ... "reasonable and proportional to the cost incurred by the issuer with respect to the transaction in accordance with the Dodd Frank Wall Street Reform Act. The agency complied by passing Regulation II, restricting maximum interchange fees to $0.21 per transaction plus 0.05% of the transaction's value. The store owner sued the agency claiming that Regulation II allowed for higher interchange fees than the Dodd-Frank Act allows. The district court dismissed the store owner's claim, holding that the 6-year statute of limitations to bring a facial challenge to a final agency action begins when the agency publishes the regulation. Because the agency published Regulation II in 2011 and the store owner filed suit in 2021, the court held that the store owner filed suit after the statute of limitations. The appellate court upheld the district court's decision.

In **Corner Post, Inc. v. Bd. of Governors of the Fed. Rsrv. Sys.**, 144 S. Ct. 2440 (2024), the Supreme Court reversed the trial and appellate court's dismissal of the store owner's claim and remanded the case. The Court based its ruling on 5 U.S.C. §§ 702, 704, and 28 U.S.C. § 2401(a). 5 U.S.C. § 702 provides that "[a] person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action ... is entitled to judicial review thereof." 5 U.S.C.
§ 704 states that only final agency actions are subject to review. 28 U.S.C. § 240l(a) establishes a statute of limitations for challenging final agency actions of six years after the right of action first accrues." The agency had argued that an action "accrues" when an agency action is final, not when a party is injured. The Court held otherwise. The meaning of "accrue" has long meant "when the plaintiff has a complete cause of action." This was the word's meaning when Congress passed 28 U.S.C. § 2401(a) in 1948 and remains true today. Around the same time Congress passed 28 U.S.C. § 240l(a), Congress passed laws establishing statutes of limitations which expressly begin upon the issuance of agency orders, demonstrating that when Congress intended a statute of limitations to begin to run upon agency action, Congress would specify this in its wording. Additionally, the use of the word "the" in the statute further supports the plaintiff-specific accrual date by using "the" cause of action rather than "a" cause of action, Congress indicated that the statute of limitations begins to run following the beginning of a particular plaintiffs cause of action, rather than any cause of action.

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BANKING REGULATION

No Bright-Line Rule for Determining When Federal Banking Law Preempts State Banking Law [U.S.]

Under New York law, but not federal law, a bank that "maintains an escrow account pursuant to any agreement executed with a mortgage" must pay borrowers an "interest at a rate of not less than two per centum per year" on the balance. The borrowers each took out mortgages from the bank and placed monthly deposits into escrow accounts with the bank. The borrowers sued the bank for failing to comply with New York law by not paying the borrowers' interest on the balances of their escrow accounts. The bank responded by arguing that federal law, which does not require banks to pay borrowers interest on their escrow accounts, preempted New York's escrow payment law. The district court held in favor of the plaintiffs, while the appellate court reversed the district court's holding, finding that federal law preempted New York's law. In its holding, the appellate court, relying on "an unbroken line of case law since McCulloch [v. Maryland, 17 U.S. 316 (1819)]," held that any state law that "purports to exercise control over a federally granted banking power," regardless of "the magnitude of its effects" is preempted by federal law.

In **Cantero v. Bank of Am., N.A.**, 144 S. Ct. 1290 (2024), the Supreme Court vacated the appellate court's ruling and remanded the case to the district court. The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 established the standard by which courts analyze whether federal law preempts a state law courts are to analyze whether the state law "discriminates against national banks as compared to state banks" or "prevents or significantly interferes with the exercise by the national bank of its powers." Because New York's law did not discriminate against national banks, the

Court analyzed New York's law under the latter rule. The Dodd-Frank Act instructs courts, in determining whether a state law prevents or interferes with a national bank's exercise of its powers, to act "in accordance with the legal standard for preemption in the decision of the Supreme Court of the United States in Barnett Bank of Marion City, N. A. v. Nelson, 517 U.S. 25 (1996)."

In Barnett Bank, the Court had established that non-discriminatory state laws that significantly interfere with a bank's exercise of its powers may be preempted, even if the state law and federal law may both be complied with. However, the Court did not establish a clear line to determine when a state law significantly interferes with a national bank's power. Instead, the Court looked to previous cases in which it determined whether non-discriminatory state laws are preempted by federal law. In Franklin Nat'l Bank of Franklin Square v. New York, 347 U.S. 363 (1954), the Court held a New York law that prohibited banks from using the word "saving" or "savings" in the advertising interfered with the power of national banks "to receive savings deposits." In contrast, in Anderson Nat'l Bank v. Luckett, 321 U.S. 233 (1944), the Court held that a Kentucky law that required banks to turn over abandoned deposits to the state did not interfere with national bank's powers. While national banks had the power to collect deposits, "an inseparable incident" of that power is the obligation to return the deposits to the party legally entitled to demand payment of it. The Kentucky law simply made the state a party that may be legally entitled to demand payments of deposits "in, the same way and to the same extent that depositors could" after the depositors abandoned the account."

In determining whether a state law is preempted by federal law, courts must analyze the state law in accordance with the guideline established by Barnett Bank, comparing and contrasting the state law to previous cases in which the Supreme Court determined that a state law does or doesn't interfere with national bank's powers. The appellate court attempting to establish a bright-line rule to determine whether a state law is preempted followed a different standard. The Supreme Court vacated the appellate court's judgment and remanded the case with instructions to analyze New York's law in accordance with, . the guidelines established in Barnett Bank.

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The Consumer Financial Protection Bureau's Funding Mechanism Is Constitutional Under the Appropriations Clause [U.S.]

The Consumer Financial Protection Bureau ("CFPB" or "Bureau") is an entity that Congress created in the wake of the 2008 recession. In creating it, Congress aimed to develop "an independent financial regulator within the Federal Reserve System." Because Congress wanted to keep the CFPB somewhat removed from direct political power, it allowed the Bureau to obtain its funding from the Federal Reserve System instead of directly approaching Congress each year for money. The amount the Bureau requests from the Federal Reserve System each year is "'the amount determined by the [Bureau's] Director to be reasonably necessary to carry out' its duties." However, there is a limit to the amount that the Bureau can request; a cap is set at 12% of the Federal Reserve's 2009 operating expenses. In 2017, some financial associations in Texas challenged the constitutionality of the CFPB's funding mechanism, arguing it violated the Appropriations Clause. The Supreme Court of the United States granted certiorari to address the issue.

In **Consumer Financial Protection Bureau v. Community Financial Services Association of America, Ltd.**, 601 U.S. 416 (2024), the Supreme Court held that the CFPB's funding mechanism does not violate the Appropriations Clause of the Constitution. The Court began its analysis by discussing what an appropriation is, defining it as "simply a law that authorizes expenditures from a specified source of public money for designated purposes." The Court then applies this definition, explaining that Congress created the CFPB by law, giving it the authority to withdraw funds (from the Federal Reserve System subject to a cap), and directed it to use the money to "pay the expenses of the Bureau in carrying out its duties and responsibilities."

While it is clear that this funding mechanism, on its face, meets the definition of the Appropriations Clause, the financial associations argued that the appropriation still violates the Constitution because: (1) there are no time restrictions on the appropriation; (2) the Bureau determines the amount of funds it withdraws; and (3) the funding violates the separation of powers doctrine. However, the Court looked to the history of appropriations, beginning with the founding fathers, and found that history does not support the associations' constitutional concerns. The Court discussed an instance where an appropriation was given with a time constraint, which was the funding of the army for a two-year period during wartime. It explained that Alexander Hamilton supported this singular time constraint but did not force any other constraints on other appropriations. In fact, the Court discussed that the First Congress was aware of the ability to impose a time-constraint on appropriations yet chose not to do so. All appropriations made since

that time have been subject to this same discretion of Congress, and the Court held that a time restraint is not a pre-requisite to establishing constitutionality when granting an appropriation. Next, the Court discussed the CFPB's ability to determine the amount of funds withdrawn. To this point, the Court stated that the Bureau does not have broad discretion to choose any amount of funds it may desire, but rather, merely has the "discretion to draw less than the statutory cap." Finally, the Court addressed the concern of separation of powers. The Court explained that there is much more to Congress's power of the purse than the Appropriations Clause alone. Additionally, the Court explained that the Clause is a limit, instead of a broad power that Congress is giving away. At the end of the day, Congress still must pass a law allowing agencies to obtain federal funding, exactly as the Constitution intended.

In short, the Supreme Court examined the extensive history surrounding the creation of the Appropriations Clause, how the founding fathers intended the government to use it, and the ways in which Congress used and continues to use the Clause. This examination allowed the Court to clarify the meaning of an "appropriation" and determined that the CFPB's funding mechanism fell within those constitutional bounds.

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BANKRUPTCY

A Chapter 11 Plan May Not Contain a Non-Consensual Third-Party Release [U.S.]

The debtor sold OxyContin, an opioid prescription pain reliever, marketing it as a "less addictive" pain medication. In 2007, an affiliate of the debtor pleaded guilty to a federal felony for its misrepresentation of the drug as less addictive and less subject to abuse. The debtor was owned by some members of a single family (the "Sacklers"), who began a "milking program" following the guilty plea out of fear that the future litigation would soon directly impact them. The Sacklers increased their distributions from the debtor greatly (taking as much as 70% of the debtor's annual revenue, compared to the 15% taken prior to the plea). Eventually, the Sacklers drained the debtor's total assets by 75%, leaving the debtor in a compromised financial state. The debtor filed for Chapter 11 bankruptcy. The Sacklers proposed to return to the debtor's bankruptcy estate some of the eleven billion dollars they had withdrawn from the debtor in return for what amounted to a discharge - a release of any opioid victim's pending claims and an injunction foreclosing all future claims against them without the consent of all the victims. The debtor included the proposal in its bankruptcy reorganization plan and presented it for approval. The plan was objected to, primarily by opioid victims; however, the bankruptcy court entered an order confirming the plan, including the provisions related to the non-debtor discharge of the Sacklers. The district court vacated the decision but was overturned by the Second Circuit which ruled that the reorganization plan was appropriate under the bankruptcy laws. The Supreme Court granted certiorari and addressed "whether a court in bankruptcy may effectively extend to nondebtors the benefits of a Chapter 11 discharge usually reserved for debtors."

In **Harrington v. Purdue Pharma L.P.,** 144 S.Ct. 2071 (2024), the Supreme Court reversed the Second Circuit, holding that the Bankruptcy Code, specifically section 1123(b)(6), "does not authorize a release and injunction that, as part of a plan of reorganization under Chapter 11, effectively seeks to discharge claims against a nondebtor without the consent of the affected claimants." The Supreme Court first looked to section 1123(b) of the Bankruptcy Code, which governs what a plan "may" do. Paragraphs 1 through 5 permit a plan to address claims related to the debtor specifically, which is not the issue here. Paragraph 6 is a "catchall phrase" permitting a plan to "include any other appropriate provision not inconsistent with the applicable provisions of this title." Proponents of the plan and the dissent argued the paragraph permits a plan to include any other term deemed "appropriate" by the bankruptcy judge so long as it is consistent with the purpose of bankruptcy and not expressly forbidden by the Bankruptcy Code. However, the Court's majority opinion explained that when faced with a catchall phrase, the "interpretive principle" of the ejusdem generis canon applies. Therefore, the statute is not afforded the broadest construction but rather interpreted with its surrounding context in mind. The Court reasoned that paragraph 6 could not be read to allow a bankruptcy court to discharge debts of a nondebtor without the consent of non-debtor claimants because that interpretation would grant the bankruptcy court a "radically different" power than that contemplated by the remainder of section 1123(b). Additionally, the Court reasoned that the text of 1123(b)(6) does not lend itself to the proponents' interpretation because Congress could have written, "everything not expressly prohibited is permitted," but instead, Congress only permitted "appropriate" provisions in a reorganization plan. Further, the Court looked to the Bankruptcy Code as a whole and found three reasons 1123(b)(6) could not be interpreted to allow the nondebtor discharge: (1) the Bankruptcy Code generally reserves the benefit of a discharge to the debtor; (2) to receive the benefit of a discharge, a debtor is first required to contribute with all its non-exempt assets to the bankruptcy estate (which was not required of the Sacklers) and even then a debtor discharge does not cover fraud claims or claims "alleging 'willful and malicious injury"' and cannot "affect any [creditor's] right to trial by jury"

for "a personal injury or wrongful death tort claim" (yet, here the reorganization plan would bar all claims including fraud, willful injury, and wrongful death); and (3) the Bankruptcy Code specifically provides an exception allowing a court to issue an injunction barring claims against a nondebtor as to asbestos-related bankruptcies under section 524, indicating that if Congress meant for the exception to extend to other types of bankruptcies they would have also listed those in the Code. The Court then looked to the history of section 1123(b)(6) and again found no basis for a nondebtor discharge without consent of nondebtor claimants. The Court found that the statutes and cases pointed to by the parties generally reserved the benefit of a discharge to a debtor who surrendered its property to the bankruptcy estate. The Court emphasized that the nondebtor was not permitted under any provision of the Bankruptcy Code "to pay less than the Code ordinarily requires and receive more than it normally permits." Finally, the Court dismissed any policy arguments, stating its only role was "to interpret and apply the law as we find it."

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ECOA

CFPB Prohibits Discrimination Against Prospective Loan Applicants Based Upon Race [7TH CIR]

The Consumer Financial Protection Bureau (CFPB) is responsible for the enforcement of the Equal Credit Opportunity Act (ECOA), which prevents lenders from discriminating against someone based upon their "sex or marital status . . . race, color, religion, national origin, [or] age." In the summer of 2020, the CFPB sued a mortgage lender, claiming that the lender discriminated against African American prospective applicants. The lender had been hosting a podcast to advertise its business. However, in this podcast, the hosts often made statements discouraging African Americans from applying for a home loan. These statements varied from talking poorly of certain neighborhoods (which were predominantly African American) to making fun of African Americans that would call into the show. Furthermore, upon the CFPB's investigation, it found that the lender consistently received fewer applications from African American applicants and fewer applications for loans in areas that were 80% or more African American. However, the lender argued (and the lower court agreed) that ECOA does not apply to merely "prospective" applicants. The CFPB disagreed and appealed.

In **Consumer Financial Protection Bureau v. Townstone Financial, Inc.**, 107 F.4th 768 (7th Cir. 2024), the Court of Appeals held that ECOA does, in fact, apply to prospective applicants and that the CFPB can punish lenders that discriminate against those applicants. In coming to this decision, the court analyzed the history of ECOA, its various provisions, and notes of Congressional deliberations. The court found that there is a provision of ECOA that grants very broad authority and discretion to the CFPB when carrying out the purposes of the act. The court then compared this language to similar statutes (such as the Truth in Lending Act) to support its broad interpretation. This was important because it affirmed the rule adopted by the CFPB that explicitly states, "[a] creditor shall not make any oral or written statement, in advertising or otherwise, to applicants or prospective applicants that would discourage on a prohibited basis a reasonable person from making or pursuing an application." Thus, the court found that not only does the above quoted statement fall within ECOA, but the lender also violated the provision by discriminating against African American prospective clients.

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LENDING

Under Poorly Drafted Papers Interest Accrual on Loans Began When the Loan was Due [NC APP]

The lenders made two separate loans to the borrower: a $230,000 loan on April 7, 2020, and a $100,000 loan on May 1, 2020. The promissory notes for each loan provided for a 30% interest rate, and also provided that "[a]ll accrued interest and unpaid principal" was due a year following the execution of the notes. The borrowers failed to make any payments on the loans by their due dates. In June 2022, the lenders sued the borrowers for the loan amounts plus interest, calculating the interest for each loan from the date the loans were made. In a motion for judgment on the pleadings, the trial court held that the interest for the loans began accruing from a year after each note was due rather than from the day they were each signed. The lenders appealed, arguing that the interest accrued from the day the lenders made the loans.

In **Longphre v. KT Financial, LLC**, 898 S.E.2d 354 (N.C. Ct. App. 2024), the court affirmed the trial court's ruling. The promissory notes stated that "accrued interest" was due along with the loans' balances a year after the lenders issued the loans

but did not explain when the interest began to accrue. In the absence of a date specifying when interest begins accruing, North Carolina law establishes the date of accrual as "from the time [a loan] becomes due." N.C. Gen. Stat.§ 24-3(1). Accordingly, interest on the loans began accruing when the loans were due, a year after being issued.

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SECURITY INTERESTS

A Covenant Running with the Land Can Trump a Creditor's Security Interest in Bankruptcy [BKR SD TX]

A debtor had entered into a gas purchase agreement with a gas buyer, giving the gas buyer the rights to the gas on the property. The debtor later filed for bankruptcy under Chapter 11. After this filing, the court entered cash collateral orders that gave the creditor a senior security interest in the debtor's assets. However, in doing this the court failed to mention the gas buyer's rights to gas on the debtor's land in the cash collateral orders. Next, the debtor sold the land that the gas buyer's rights were tied to, free of any encumbrance or lien ("Sale Order"). After the sale, the proceeds of the sale went to the creditor under the cash collateral order, and because the value of the sale was less than the total amount the debtor owed the creditor; the gas buyer received no distribution from the sale for its gas rights. The gas buyer filed suit alleging that it had real property rights superior to any interest the court had given the creditor and that it should be paid for its rights in the sold land. The creditor moved for summary judgment, arguing that the ·gas buyer had no rights to the proceeds of the sale.

In **Mustang Gas Products, LLC v. Wells Fargo National Ass'n (In re Alta Mesa Res., Inc.)**, No. 19-35133, 2023 WL 4139854, 2023 Bankr. LEXIS 1609 (Bankr. S.D. Tex.2023) (unpublished opinion), the court denied the motion for summary judgment, finding that there was a disputed material fact concerning whether the gas buyer's real property interest in the land had been extinguished. When viewing the facts in the light most favorable to the gas buyer, the court assumed that the gas buyer held a covenant that ran with the land for the gas rights. This, the court reasoned, would mean that the gas buyer's interest would trump the creditor's security interests the proceeds from the sale. However, after close examination of the facts, the court was unable to determine whether the Sale Order had properly terminated the gas buyer's interest in the land, and thereby terminated the gas buyer's superior interest over the creditor. The court reasoned that if the Sale Order did extinguish the gas buyer's rights, the gas buyer would be entitled to claim proceeds of the sale. However, if the Sale Order did not extinguish the gas buyer's rights, the gas buyer would have to pursue the new purchaser of the land for any compensation. Because of this uncertainty, the court denied the creditor's motion for summary judgment.

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Which State Governs Perfection? [BKR D KS]

The debtors purchased the vehicle in Kansas. At the time of the purchase, the vehicle had an Illinois certificate of title. The parties executed an agreement on the back of the Illinois title, listing the debtor as the purchaser and the creditor as the lienholder. A month before the debtor filed for bankruptcy, the creditor filed a notice of security interest (the "Notice") with the Kansas Department of Revenue using the department's "E-lien site." The Notice indicated that the creditor had a security interest in the debtor's vehicle; The department confirmed the Notice. The creditor did not submit anything in Illinois. Later, the debtors filed for Chapter l3 bankruptcy, and the case was subsequently converted to a Chapter 7 bankruptcy. The debtor did not apply for a Kansas certificate of title until after filing for bankruptcy but ultimately did receive a Kansas title, which listed the debtor as the owner and noted the creditor's security interest. When the creditor filed its motion for relief from the automatic stay to foreclose on the vehicle, the vehicle was covered by the Kansas title. The Chapter 7 trustee objected to the creditor's motion, arguing that the creditor's security interest in the vehicle was unperfected and, therefore, avoidable. As a result, the court had to decide whether Illinois or Kansas law applied in determining if the creditor's security interest in the vehicle had been perfected before the bankruptcy petition date.

In **In re Alexander**, No. 22-10612, 2024 WL 2096171, 2024 Bankr. LEXIS 1093 (Bankr. D. Kan. May 6, 2014) (unpublished opinion), the bankruptcy court held that Kansas certificate-of-title law applied and, thus, the creditor's lien was perfected under Kansas Revised UCC Article 9. The court explained that Kansas choice-of-law rules controlled, and the only issue was which state's certificate-of-title law applied in order to determine if the creditor's interest had been perfected. The court found that under Kansas choice-of-law rules, the applicable law is determined only by where the vehicle is covered by a certificate of title. Specifically, section 84-9-303 of the Kansas Revised UCC provides that "the applicable state law is the law of the jurisdiction that issues the certificate of title covering the vehicle." The court looked to other courts who have also applied UCC § 9-303 and found that one state's title ceases to control the perfection of a security interest when an application is made in a new state for that state's

title: The trustee argued that because her rights as trustee (and hypothetical lien holder) began before the application for Kansas title was filed, Illinois law should govern perfection. However, the bankruptcy court found no authority that a bankruptcy filing would change the applicability of UCC § 9-303 if the change in which state's certificate of title covers the vehicle occurs after the bankruptcy was filed but before a lien priority dispute arose. Here, two different certificates of title covered the vehicle at separate times, but at the time of the dispute, the vehicle was covered by a Kansas title, and Kansas law governed perfection. The court then explained further that even if the title was determined from the bankruptcy filing date, the Notice submitted by the creditor was acted as a certificate of title under Kansas law. Therefore, because the creditor complied with Kansas law regarding the perfection of its security interest, its interest was perfected before the bankruptcy petition had been filed.

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Role of NDBA General Counsel

NDBA's general counsel serves as the attorney for the association. Although Tracy is pleased to be able to serve as a resource for NDBA members in responding to their questions, she is providing general information, not legal advice. Banks must obtain legal advice from counsel who has been retained by the bank to represent the bank's interests in a specific matter.

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