LOUISIANA STATE LAW INSTITUTE

MEETING OF THE COUNCIL

January 20, 2023

Friday, January 20, 2023

Persons Present:

Baker, Pamela J.
Braun, Jessica
Breard, L. Kent
Brister, Dorrell J.
Byers, John Paul "Beau", III
Carroll, Andrea B.
Castle, Marilyn
Crigler, James C., Jr.
Crigler, John D.
Cromwell, L. David
Davidson, James J., III
Davrados, Nikolaos A.
Degan, Emily D.
Dronet, Joseph R.
Forrester, William R., Jr.
Freel, Angelique D.
Hamilton, Leo C.
Hawthorne, George "Trippe"
Hayes, Thomas M., III
Holdridge, Guy
Holthaus, C. Frank
Kunkel, Nick
Lampert, Loren M.
Landry, Harry, III
Lee, Amy Allums
Manning, C. Wendell
Matthews, Shearil S.
Mengis, Joseph W.
Philips, Harry "Skip", Jr.
Price, Donald W.
Riviere, Christopher H.
Saloom, Douglas J.
Stephenson, Gail S.
Stuckey, James A.
Thibodeaux, Casey L.
Thomas, Kacy
Ventulan, Josef
Veron, J. Michael
Waller, Mallory C.
Weems, Charles S., III
White, H. Aubrey, III
Ziober, John David

President Thomas M. Hayes, III called the January Council meeting to order at 10:00 a.m. on Friday, January 20, 2023 at the Lod Cook Alumni Center in Baton Rouge. After asking the Council members to briefly introduce themselves and making a few administrative announcements, the President called on Mr. Patrick S. Ottinger, Reporter of the Mineral Law Committee, to begin his presentation of materials.

Mineral Law Committee

Mr. Ottinger greeted the Council and indicated that his presentation comprised little more than a bit of minor clean-up from the Council's December meeting. In particular, he reminded the Council that at that meeting, it had adopted a number of revisions to the Mineral Code proposed by the Committee; in concert with its adoption of the Committee's proposed revision to Mineral Code Article 204, the Council had instructed Mr. Ottinger to draft a Comment clarifying certain aspects of the revision. Today, Mr. Ottinger was seeking adoption of that Comment. After reading the proposed Comment aloud, the Reporter characterized it as explaining Article 204 and clarifying that the article did not "pick up" those items susceptible to pledge under the Civil Code. Essentially, the Comment recognized that there was outside law applicable in contexts other than those described in Article 204. A motion was made and seconded to adopt the proposed Comment to Article 204, and the motion passed with all in favor.

Mr. Ottinger then concluded his presentation, and the President called on Judge Guy Holdridge, Reporter of the Code of Civil Procedure Committee, to begin his presentation of materials.

Code of Civil Procedure Committee

After brief introductory remarks, Judge Holdridge directed the Council's attention to Article 966(B)(5) and reminded the Council that the language was proposed in response to the Louisiana Supreme Court's decision in *Zapata v. Seal*, 330 So. 3d 175

(La. 2021), answering whether Article 1915(B)(2) authorizes a trial court, after having granted a defendant's motion for partial summary judgment pursuant to a plaintiff's failure to timely oppose, to subsequently grant the plaintiff's motion to vacate the partial summary judgment. The proposed revision seeks to address this issue by precluding reconsideration or revision of the granting of a motion for partial summary judgment if the moving party fails to meet the deadlines of Article 966(B). Judge Holdridge then stated that the court may still reconsider its ruling under Article 1915(B)(2); however, the Code of Civil Procedure Committee plans to subsequently study this issue. Beginning discussion, a Council member questioned whether a filing is timely if it is later supplemented. The member further stated that the language should clarify that reconsideration or revision shall not be predicated by the filing of additional evidence not in accordance with the deadlines of the paragraph. Both Judge Holdridge and the Council were amenable to the clarification. Next, a member asked whether the proposed language was necessary and asserted that the dominance of substantive law over procedural law, judicial discretion, and the de novo standard of review relative to summary judgment already serve as safe harbors to irreparable damage should an appellate court find the judgment unwarranted. The Council member further asserted that the proposed revision would make summary judgment procedure even more cumbersome. Judge Holdridge then explained the historical underlying policies contemplated by the legislature and practitioners as summary judgment procedure underwent revision. Discussion then turned to practical anecdotes of the results of the previous revisions and the implications of Article 1915(B)(2). Judge Holdridge explained that Article 1915(B)(2) is problematic within the context of summary judgment since it currently permits substantive revision to a judgment lacking decretal language; the primary objective of the revision seeks to have courts and practitioners turn to Article 966(B) rather than Article 1915(B)(2) when assessing deadlines in summary judgment procedure. Judge Holdridge continued his explanation and contended that this revision supports judicial efficiency since courts would be prohibited from essentially resetting litigation. Ultimately, the Council adopted the proposed revision as follows:

Article 966. Motion for summary judgment; procedure

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B.

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(5) Notwithstanding Article 1915(B)(2), the court shall not reconsider or revise the granting of a motion for partial summary judgment on motion of a party who failed to meet the deadlines of this paragraph, nor shall it consider any documents filed after those deadlines.

* * *

Next, Judge Holdridge directed the Council's attention to Article 966(D)(3). Reiterating previous explanations, he stated that the intent of the proposed language aims to encourage trial courts to utilize scheduling orders such that any motion filed in accordance with Article 1425(F) during summary judgment proceedings is heard and decided prior to the hearing on the motion for summary judgment. A member asked whether this revision was necessary since these motions are typically heard before the hearing on the motion for summary judgment in current practice; consequently, discussion then turned to the consequences of not disposing of the Article 1425(F) motion prior to the hearing on the motion for summary judgment. A member raised that failure to oppose an expert leads to an automatic consideration of the expert's affidavit, which will likely create a genuine issue of material fact and lead to a denial of the motion for summary judgment. The Council then discussed issues relative to the evidentiary burdens of summary judgment versus trial. A member asked whether the decision as to the expert for the purpose of summary judgment is also binding for trial. Judge Holdridge explained that the inclusion of this clarification was raised at the Committee level but did not pass. Another member expressed concern that the language presupposed that the Article 1425(F) motion must be filed prior to the hearing on the motion for summary judgment, though it does not explicitly state this. Judge Holdridge explained that this was in the original draft, but the Committee felt that the idea should not be codified since it was

focused primarily on timing of the hearing rather than substantive issues. He went on to state that the Committee plans to subsequently address additional issues in Article 1425 but decided that the timing of the Article 1425(F) hearing in summary judgment procedure was appropriate to address now. After further discussion, the Council determined that the language was sufficiently narrow to address the issue and adopted the proposed revision as follows:

Article 966. Motion for summary judgment; procedure

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D.

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(3) If a timely objection is made to an expert's qualifications or methodologies in support of or in opposition to a motion for summary judgment, any motion in accordance with Article 1425(F) to determine whether the expert is qualified or his methodologies are reliable shall be filed, heard, and decided prior to the hearing on the motion for summary judgment.

* * *

Judge Holdridge then asked the Council to consider the Comments for approval. After the Reporter's introductions and explanations of Comments (a), (b), (c), (d), and (e), the Council adopted them with little discussion. When discussing Comment (f), Council members asked that the Comment explicitly state that the amendment is not intended to make substantive changes to the law, and the Council agreed to this change. Discussion then turned to Comment (g), and members were concerned that the citation would muddle the intent of the revision since the cited cases pertain to more narrow circumstances. Consequently, members asked that the citation be removed and the language state only the Council's intent to have the Article 1425(F) hearing decided prior to the hearing on the motion for summary judgment. Accordingly, Judge Holdridge made the change. The Council also considered proposed Comment (h) with little discussion. The adopted Comments to Article 966 read as follows:

Comments – 2023

(a) Subparagraph (A)(4) expands the exclusive list of documents that may be filed and offered in support of or in opposition to a motion for summary judgment to include certified copies of public records and public documents as well as certified copies of insurance policies. Objections to any of the documents listed in Subparagraph (A)(4) or their contents may be raised in a timely filed opposition or reply memorandum. See Subparagraph (D)(2) and Comment (k)(2015). Even though affidavits may be filed in accordance with Subparagraph (A)(4), objections may be filed if the affidavit does not comply with the requirements of Article 967. Objections may be raised in a timely filed opposition or reply memorandum if the content of any document filed in accordance with Subparagraph (A)(4), including any certified copies of public records or public documents, would not be admissible at the trial on the merits. See *Thompson v. Ctr. for Pediatric and Adolescent Med., L.L.C.*, 244 So. 3d 441, 446 (La. App. 1st Cir. 2018), writ denied, 243 So. 3d 1062 (La. 2018). In most cases, a certified copy of an insurance policy should include the declaration page and relevant endorsements.

(b) Subparagraph (A)(4)(a) is new and provides that a document listed in Subparagraph (A)(4) that was previously filed in the record may be specifically referenced with the motion and opposition by title and date of filing. At the time of filing, the party shall also furnish to the court and opposing party a copy of the entire document, designate the pertinent part of the document, and include the date the document was filed. See District Court Rule 9.10. Failure to comply with Subparagraph (A)(4)(a) may be a

grounds for an objection requesting that the court not consider the referenced document. This subparagraph still allows a party to attach to their motion or opposition all documents that are submitted and does not require a party to reference a previously filed document. Parties shall also be aware that the entire document and not just a reference shall be included in any writ filed with the appellate courts. Subparagraphs (B)(1) and (B)(2) were also revised in accordance with this change.

(c) Subparagraphs (B)(1), (B)(2), and (B)(3) now require that the motion for summary judgment, opposition to the motion, reply memorandum, and all documents filed or referenced in support of or in opposition to the motion for summary judgment be served electronically in accordance with Article 1313(A)(4).

(d) Subparagraph (B)(3) intends to clarify that legal holidays are included in the calculation of time within which mover shall file the reply memorandum. Subparagraph (B)(4) continues to apply in this situation. For example, if the hearing on the motion for summary judgment is set on Friday, the fifth day to file the reply memorandum falls on the preceding Sunday. Accordingly, mover would have the entirety of the preceding Monday to file his reply memorandum. The court should be aware of this requirement when setting hearings on motions for summary judgment.

(e) Subparagraph (B)(5) is new and would change the result reached by the Louisiana Supreme Court in *Zapata v. Seal*, 330 So. 3d 175 (La. 2021). The subparagraph is intended only to prohibit a trial court from reconsidering the granting of a partial summary judgment because a document was not timely filed and served with an opposition in accordance with the deadlines of this Article.

(f) Subparagraph (D)(2) was amended to include only slight changes in the phraseology of the Subparagraph. The amendment is not intended to make substantive changes to the law.

(g) Subparagraph (D)(3) sets forth a rule recognizing that if a party timely objects to the expert's opinion attached to either the motion for summary judgment or the opposition and elects to file a motion in accordance with Article 1425(F) questioning the expert's qualifications or methodologies, the court shall set a hearing and decide the Article 1425(F) motion prior to the hearing on the motion for summary judgment. To avoid any possible conflict between the time delays in this Article and Article 1425(F), the court should set appropriate deadlines for the 1425(F) hearing in a scheduling or pretrial order.

(h) Paragraph G was amended to codify the holding of the Louisiana Supreme Court in *Amedee v. Aimbridge Hosp. LLC*, 2021-01906, p. 22 (La. 10/1/22). A defendant who has filed an opposition to the granting of a motion for summary judgment dismissing a co-defendant may appeal the judgment despite the plaintiff's failure to appeal. Paragraph G was also amended to answer the question raised in footnote 1 of *Amedee* – if summary judgment is granted finding a party not at fault, not negligent, or not to have caused in whole or in part the injury of any harm alleged, and that judgment is subsequently reversed, the fault and/or contribution of that party is deemed not to have been adjudicated as to any other party notwithstanding whether any other party has appealed. As a result of the reversal, the previously dismissed defendant is returned as a party to the case for all purposes and as to all parties. The final judgment of the appellate court reversing the granting of a motion for summary judgment as to one party applies to all parties including a plaintiff who has failed to appeal.

Judge Holdridge then directed the Council's attention to the proposed revision of Article 531. He indicated to the Council that the change seeks only to replace the word

"suits" with "actions" in accordance with the court's ruling in *Chumley v. LaCour*, 339 So. 3d 766 (La. App. 2 Cir. 2022). After little discussion, the Council adopted the proposed revision and Comment as follows:

Article 531. ~~Suits~~ Actions pending in Louisiana court or courts

When two or more ~~suits~~ actions are pending in a Louisiana court or courts on the same transaction or occurrence, between the same parties in the same capacities, the defendant may have all but the first ~~suit~~ action dismissed by excepting thereto as provided in Article 925. When the defendant does not so except, the plaintiff may continue the prosecution of any of the ~~suits~~ actions, but the first final judgment rendered shall be conclusive of all.

Comment – 2023

The changes from "suits" to "actions" does not change the law but is in accordance with the court's ruling in Chumley v. LaCour, 339 So. 3d 766, 768 (La. App. 2d Cir. 2022), reh'g denied (June 23, 2022).

Next, Judge Holdridge directed the Council's attention to the changes in Article 1702 relative to default judgment. He went on to explain that that the revision is necessary since current Article 1702 allows litigants to circumvent meaningful notice of default judgment since the granting of the default judgment may be predicated on the mere sending of the notice. The revision resolves this issue by requiring proof similar to that required by the long-arm statute. A member then questioned whether this revision affects procedure in city courts, and to protect the procedural framework in parish and city court, the Council opted to include a Comment noting that this Article is not intended to change Article 4904 relative to default judgment in parish and city courts. Members then discussed whether the consequences of this Article were overly harsh; however, the Council reached the consensus that the change only suggests that a lawyer fulfil a professional obligation. A member then raised whether the language requires actual delivery of the certified mail to suffice as notice. Judge Holdridge directed the Council to proposed Subparagraph (A)(5) stating that no default judgment shall be rendered when notice is required under Subparagraphs (A)(2) and (3) unless proof of the required notice is made in accordance with R.S. 13:3205. Additionally, members questioned whether "by commercial courier" was necessary to qualify actual delivery of the notice, concluding that it was not and removing the suggestion. Moving to the changes in Paragraphs C and F relative to a proposed requirement mandating that courts also endorse a judgment with the date and time of issuance, Judge Holdridge explained that the change seeks to make exact the moment at which the defendant is precluded from filing an answer. The Council discussed the logistics of this requirement and decided that the issue needed further study with consideration to those courts not fully utilizing electronic capabilities. Thus, Paragraphs C and F were recommitted, along with the applicable Comment. After discussing additional minor changes, the Council adopted the following proposed revision and Comments:

Article 1702. Default judgment

A. (1) If a defendant in the principal or incidental demand fails to answer or file other pleadings within the time prescribed by law or by the court, and the plaintiff establishes a prima facie case by competent and admissible evidence that is admitted on the record, a default judgment in favor of the plaintiff may be rendered, provided that notice that the plaintiff intends to obtain a default judgment is sent if required by this Paragraph, unless such notice is waived. The court may permit documentary evidence to be filed in the record in any electronically stored format authorized by the local rules of the district court or approved by the clerk of the district court for receipt of evidence.

(2) If a party who fails to answer has made an appearance of record in the case, notice that the plaintiff intends to obtain a default judgment shall

be sent by certified mail or actually delivered to counsel of record for the party, or if there is no counsel of record, to the party, at least seven days before a default judgment may be rendered.

(3) If an attorney for a party who fails to answer has contacted the plaintiff or the plaintiff's attorney in writing concerning the action after it has been filed, notice that the plaintiff intends to obtain a default judgment shall be sent by certified mail or actually delivered to the party's attorney at least seven days before a default judgment may be rendered.

(4) In cases involving delictual actions where neither Subparagraph (2) or (3) of this Paragraph applies, notice that the plaintiff intends to obtain a default judgment shall be sent by regular mail to the party who fails to answer at the address where service was obtained at least seven days before a default judgment may be rendered.

(5) No default judgment shall be rendered against a defendant when notice is required under Subparagraphs (A)(2) and (A)(3) unless proof of the required notice is made in accordance with R.S. 13:3205.

* * *

Comments – 2023

(a) In addition to certified mail, this article now includes actual delivery as certified notice of intent to obtain a default judgment.

(b) This Article is not intended to change Art. 4904 relative to default judgment in parish and city courts.

The Council then moved to Article 1912 to consider changes relative to signing final judgments. Judge Holdridge explained that this provision was amended to comport with Article 194, which permits the signing of final judgments in any place where the judge is physically located. After brief discussion as to the exact phraseology, the Council adopted the proposed revision as follows:

Article 1912. Final judgment; ~~multi-parish districts,~~ signing ~~in any parish in the state~~

A final judgment may be signed ~~in any parish within the state~~ in any place where the judge is physically located and shall be sent to the clerk of the ~~parish~~ court in which the case is pending.

Comment – 2023

This Article was amended to utilize identical language and comport with Article 194 as amended by Acts 2021, No. 68 § 1, eff. Jan. 1, 2022.

Next Judge Holdridge introduced revisions to Article 1424 relative to the scope of discovery, trial preparations, and materials. He explained to the Council that the change to Paragraph C of the Article seeks to codify the preparation and sending of a privilege log to the other party. The Reporter also acknowledged that "privilege log" does not appear elsewhere in the Code of Civil Procedure but is a generally accepted term in the profession, as noted in the proposed Comment. With brief discussion, the Council adopted the proposed language as follows:

Article 1424. Scope of discovery; trial preparation; materials

* * *

C. When a party withholds information otherwise discoverable under these rules by claiming that it is privileged or subject to protection as trial

preparation material, the party shall make the claim expressly and shall prepare and send to the other parties a privilege log that describes the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.

* * *

Comment – 2023

This Article was amended in accordance with the court's opinion in Cloud v. Gibson, 344 So. 3d 253, 258 (La. App. 4th Cir. 2022) wherein the Fourth Circuit held that a privilege log under La. C.C.P. art. 1425(C) is mandatory and not discretionary. Privilege log is not used in the Code of Civil Procedure, but it is a generally accepted term that refers to a document that enables other parties to assess the applicability of a privilege or protection upon withheld information otherwise discoverable under the rules.

After concluding his presentation of the proposed revisions, Judge Holdridge directed the Council's attention to Article 3462 relative to the interruption of prescription by filing of suit or service of process. He noted to the Council that the proposed revision was previously presented to the Council in 2006 and 2007; however, an author could not be secured to propose the legislation during the 2007 Regular Session. The Code of Civil Procedure Committee reconvened following that legislative session and adopted new language to present to the Council that was ultimately rejected for resubmission to the legislature. Judge Holdridge asked the Council to consider whether the Committee should revisit its study and propose new language. Members of the Council welcomed the notion and discussed potential frameworks of the change and the consequences as a result of both the failure to bring an action in the appropriate venue and the failure to timely transfer an action to an appropriate venue. Accordingly, the Council approved further study of the matter by the Code of Civil Procedure Committee.

Judge Holdridge then concluded his presentation, and the President called on Mr. James A. Stuckey, Reporter of the Uniform Commercial Code Committee, to begin his presentation of materials.

Uniform Commercial Code Committee

Mr. Stuckey began by noting that he was also following up a prior presentation at the Council's December meeting. He explained that he would first give a brief overview of the materials he planned to present for the benefit of any Council members who may have missed the December meeting; from there, he would pick back up with the materials. Turning to the substance of the revisions, Mr. Stuckey stated that the Council had, in December, adopted new UCC Chapter 12 dealing with digital assets. He then proceeded with an overview of Chapter 12 and the related revisions:

Chapter 12 governed a new subset of digital asset known as a "Controllable Electronic Record" or "CER." The goal of the revision was to create a set of rules for transfers and security interests in these assets so as to allow for negotiability and secured lending. These assets included virtual currency such as bitcoin, electronic money, electronic payment rights – Mr. Stuckey highlighted this category as perhaps the most important – and others. Under present law, classification of these assets was difficult, rendering identification of applicable rules difficult and uncertain and creating an unpredictable transactional landscape. Because in the United States a promissory note was required to be in writing, Chapter 12 was in part intended to adapt this rule for digital or electronic promises to pay. Another important concept was the distinction between the record (the CER) and the underlying right evidenced by the record. Importantly, under the revision, the property rights evidenced by CERs were still governed by law external to the UCC. Likewise, nothing in the present revision affected the state or federal regulation of underlying property, leaving intact laws pertaining to taxation, money laundering, data

privacy, cyber security, and the like. Finally, the Reporter emphasized that Chapter 12 was only applicable to assets susceptible to "control," noting that this concept would be adopted in various contexts six to eight times as part of the present revision.

Mr. Stuckey explained that "control" with respect to these digital assets was essentially the functional equivalent of possession for corporeal goods. Characterizing the implementation of this concept as a primary goal of the Uniform Law Commission, he stated that the Committee sought to adopt the concept for use in Louisiana in a manner that conformed to existing civil law principles. According to the Reporter, "control" required an individual to have (1) the exclusive power to enjoy substantially all the benefits of an asset, (2) the exclusive power to prevent others from enjoying those benefits, (3) the exclusive power to transfer control, and (4) the ability to identify oneself as satisfying the first three criteria. He clarified that "exclusive" in this context really just meant that the power was not contingent upon someone else – it did not mean that the power could not be shared: If Person A and Person B were both permitted to act with consent of the other, both had control, but if Person B could act with consent of Person A while Person A could act alone, then only Person A had control. As to the fourth criterion, Mr. Stuckey stated that this identification need not be by name; oftentimes it was established via a numeric identifier or code phrase, as anonymity was greatly valued by individuals who transacted in these assets.

The Reporter then moved to his final introductory comment for the day, this one about "money." He reminded the Council that the revision changed the UCC's definitions so as to exclude digital currencies such as bitcoin from the traditional definition of money and noted that the revisions also introduced the concept of "electronic money." He explained that current law contemplated money only in tangible form; thus, perfection of a security interest in money could only be achieved by possession. Mr. Stuckey emphasized that this rule was separate and distinct from that applying to a deposit account. In any event, he reiterated that these aspects of present law – that perfection required filing and that control of electronic money seldom required any identification by name – rendered present law ill-fitting to electronic money, as one would be unable to know whether they were taking it free and clear. He further reminded the Council of an additional issue with current law as it related to these types of assets: Because the decades old UCC definition of "money" included currencies adopted by governments, El Salvador's recent adoption of bitcoin as legal tender brought this asset within the scope of "money" for the purposes of the UCC. In recognition of the fact that this was never the Uniform Law Commission's intention when it initially drafted this definition, the Uniform Law Commission drafted a permanent editorial board opinion setting out the contrary: that bitcoin did *not* constitute "money" under the UCC as drafted. Given, however, that this opinion was clearly inconsistent with the plain language of the UCC, it was never promulgated, and the Uniform Law Commission instead elected to undertake the present revision. Thus, the Reporter concluded, bitcoin *did* fall within the UCC definition of "money" prior to the present amendments. On this note, he jokingly offered "good luck" to anyone attempting to perfect a security interest in such "money". In any event, he clarified that the present revision would alleviate these difficulties if and when enacted, as the revised definition of money specifically excluded all digital assets that existed prior to their adoption by a government; under the new revision, digital assets only constituted "money" if they were created by such a government.

Reiterating once more the goals of the revision – to provide well-fitting rules for these new asset classes and to allow, for example, transferees to ensure that they would "take free" with respect to e-money – the Reporter then asked the Council to turn to page 15 of the materials. He explained that many of the remaining revisions were repeated instances of essentially the same few general categories of change; thus, he would be asking for *in globo* adoption of these proposals. He began with proposed R.S. 10:5-104, explaining that all this provision did presently was reproduce the substance of the revised definition of "signed." Thus, the proposal replaced the full recitation of this substance with the simple insertion of the term. Mr. Stuckey highlighted this as one of many instances where the term "authenticate" had been replaced with "sign" and identified this replacement as one of the handful of changes he hoped to adopt *in globo*. He listed three others: (1) the addition of the phrase "of this section" and related phrases where appropriate, to conform the provisions with Louisiana convention; (2) the replacement of

the current term "writing" with the "medium-neutral" term "record"; and (3) the simple addition of cross-references to new provisions where appropriate. After confirming that the Council understood each of these categories of revisions and was comfortable adopting them globally, the Reporter listed each of the Sections in which they were contained: R.S. 10:5-104, 7-102, 8-102, 9-102, 9-104, 9-203, 9-207 through 9-210, 9-312 through 9-314, 9-316, 9-324, 9-334, 9-341, 9-404, 9-412, 9-509, 9-513, 9-608, 9-611, 9-615, 9-616, 9-620, 9-621, 9-624, and 9-629. The Reporter clarified that he would still address specifically each of these Sections that also contained additional revisions. With this point clarified, a motion was made and seconded to adopt the aforementioned four categories of revision as contained in the listed statutes. The motion passed with all in favor.

Mr. Stuckey then turned to R.S. 10:5-116. He noted that this provision contained three revisions – in addition to the replacement of "authenticate" with "sign" and revisions for drafting convention, Subsection (d) had been added to overrule a series of cases and clarify that a branch of a bank was considered separate for the purposes of its location. A motion was made and seconded to adopt this Section as proposed, and the motion passed with all in favor. Mr. Stuckey next explained that the revisions to R.S. 10:7-106 comprised a non-substantive stylistic rewrite of the definition of "control" and the addition of several new "control" concepts inspired by new Chapter 12 and based primarily on R.S. 10:12-105. He noted that he had already reviewed the concept of control and that the present provision merely reproduced the substance he had elucidated. After a motion and a second, the Council adopted proposed R.S. 10:12-105 with all in favor. The Reporter noted that R.S. 10:8-102 provided for medium-neutrality – using "record" instead of "writing," a choice that accounted for both paper and digital records – and made stylistic clarification and added new definitional cross-references to Chapter 12. The Council adopted this provision in the same manner as the others. With respect to R.S. 10:8-103, Mr. Stuckey noted that Subsection (g) – which was not being revised and was thus omitted from the materials – provided that documents of title were considered financial assets only if the parties agreed and explained that new Subsection (h) simply adopted this same rule for Chapter 12 collateral. Again, the Council adopted this proposal without objection.

Mr. Stuckey proceeded to proposed R.S. 10:8-106, explaining that this provision served to introduce the familiar concept of "control" into Chapter 8. He highlighted this as important with respect to the rights of purchasers – a group that, under the UCC, included secured parties – and for the fact that Paragraph (d)(3) was revised to allow for the new concept of control through or on behalf of another person. With respect to this latter issue, the Reporter also noted the addition of new Subsections (h) and (i), provisions that had been added in several other control-related Sections, which clarified that a person with control was not required to acknowledge control on behalf of a purchaser and that such acknowledgment did not itself create any further duties or obligations. A motion was made and seconded to adopt proposed R.S. 10:8-106 without modification, and the motion passed with all in favor.

The Reporter then identified new R.S. 10:8-110(g) as setting forth a choice-of-law rule specifically for lien perfection. He explained that this provision codified a familiar UCC rule already used in similar contexts elsewhere. After listing several provisions of current law that contained analogous rules, Mr. Stuckey also pointed out that it had been implemented as part of Chapter 12 as well in R.S. 10:12-107. In response to a question from the Council as to what the rule itself provided, Mr. Stuckey explained that R.S. 10:8-110(g) was merely clarificatory in nature, stating that Subsections (a) and (b) dictated the applicable law even if the jurisdiction they identified had no connection to the transaction at issue. A motion was then made and seconded to adopt proposed R.S. 10:8-110(g) as presented, and the motion passed with all in favor. With respect to R.S. 10:8-303, Mr. Stuckey explained that the Uniform Law Commission national committee had noticed that the stricken language was superfluous when drafting the analogous provision of Section 12-104; thus, the proposal sought to delete this language. The Council unanimously adopted proposed R.S. 10:12-104 as drafted.

The Reporter next turned to R.S. 10:9-102. First taking up Paragraphs (a)(2) through (7), he noted that, aside from technical amendments, the revisions simply inserted new Chapter 12 terms and replaced "authenticate" with "sign." A motion was made and seconded to adopt these provisions as proposed, and the motion passed with all in favor. Moving on, Mr. Stuckey explained that the Committee's use of decimals for Paragraphs (a)(7.1) and (7.2) was an intentional deviation from Louisiana drafting convention for the purpose of maintaining uniform numbering. He characterized the substance of these provisions as codifying National Official Comment 26, consistent with 2020 Uniform Law Commission Comment 21, in recognition that these terms had been used throughout the existing UCC but had not been specifically defined. The Reporter stated that these definitions had thus been added in response to cases that had held contrary to the initial intent of the drafters for these terms to encompass both sales and security interests. He reasoned that the definitions were self-explanatory and could not be summarized much more clearly than already written. A motion was then made and seconded to adopt Paragraphs (a)(7.1) and (7.2), and the motion passed with no objection.

Mr. Stuckey next explained that the definition of "chattel paper" in Paragraph (a)(11) had been deleted and rewritten so as to define the term more accurately in light of the new concepts being introduced; he wagered that the current definition was "a bit loose" as it related to these new concepts. In addition, this revision eliminated the distinction – introduced in 2001 – between tangible and intangible chattel paper because it had not proven helpful. In particular, the Reporter noted that often chattel paper transitioned from one form to the other, rendering their separation more confusing than helpful. He further highlighted that the revision added the "predominant purpose" test contained in (B)(ii) for the purpose of determining whether mixed-purpose contracts constituted chattel paper. A motion was made and seconded to adopt R.S. 10:9-102(a)(11) as reflected in the materials, and the motion passed with no objection.

As a brief aside, the Reporter pointed out that he had forgotten to mention previously that all but a small handful of the Committee's proposed revisions reflected uniform language. He promised that he would make specific note of the places where the Committee had deviated from the uniform text; thus, the Council could assume that all other provisions were uniform. Reiterating a point he had made at the December Council meeting, Mr. Stuckey urged that uniformity was of paramount importance with respect to the UCC and noted that the Committee had generally declined to deviate from uniform language except where it had good reason to do so. On a related note, he also indicated that at least five states had introduced the present legislation in the past week. Mr. Stuckey then proceeded to Paragraphs (27.1) and (27.2) – setting out the definitions of "controllable account" and "controllable payment intangible" – and identified these additions as tied to new Chapter 12. He referenced the overview of these terms provided at the December meeting, reiterating that a controllable account was a subset of payment intangible and reminding the Council that it had already approved the substantive use of these terms as defined in the present Section. A motion was made and seconded to adopt R.S. 10:9-102(a)(27.1) and (27.2) as proposed, and the motion passed without objection.

The Reporter next asked the Council to consider Paragraphs (a)(31), (31.1), (54.1), and (79.1) in concert with one another, as each pertained to money. He highlighted Paragraph (54.1) – the definition of "money" as an umbrella term – as the only provision of note among them, setting out a Chapter-specific definition that rendered "Chapter 9 money" (as the Reporter characterized it) as a mere subset of money generally. Mr. Stuckey explained that this sub-classification was germane to the grant of security interests and excluded deposit accounts and electronic money that was not susceptible to control under R.S. 10:9-105.1; he added that this second category was considered a general intangible for these purposes. A Council member queried why the word "money" itself was used in its own definition. The Reporter posited that this was the case because the provision at issue was merely cross-referencing another definition; thus, the second instance of the term as found in the definition would presumably pick up the term as defined elsewhere. He acknowledged that it was not optimal from a stylistic and semantic standpoint but reasoned that it would cause no harm. Upon request of the Reporter to take these provisions up together, a motion was made and seconded to adopt Paragraphs (a)(31), (31.1), (54.1), and (79.1), and the motion passed with all in favor. Mr. Stuckey

noted that this approval, taken together with the prior global approvals, left only one Paragraph unaccounted for in Chapter 9's definitions section – Paragraph (a)(47), defining the term "instrument." He highlighted this definition as consistent with the term's use in other, previously-adopted provisions, and the Council adopted proposed R.S. 10:9-102(a)(47) without objection.

The Reporter next turned to R.S. 10:9-104 regarding control of a deposit account, highlighting Paragraph (a)(4) as containing the pertinent revision – the addition of the concept of control on another's behalf. He reiterated that this concept was consistent with other provisions throughout the draft and had already been adopted in other contexts. A motion was made and seconded to adopt R.S. 10:9-104 as proposed, and the motion passed with all in favor. Mr. Stuckey then explained that R.S. 10:9-105 had been rewritten to mesh with the new definition of chattel paper and the new concept of control. He explained that Subsection (a) provided the general rule for control in this context, while Subsections (b) and (c) set out "safe harbor" tests for qualification under Subsection (a); Subsection (d) established the meaning of exclusive, consistent with the Reporter's prior explanation. A motion was made and seconded to adopt R.S. 10:9-105, and the motion passed with no objection.

Turning next to R.S. 10:9-105.1, the Reporter explained that this provision was entirely new and dealt with electronic money. In particular, he noted that R.S. 10:9-105.1 provided that the only way to perfect a security interest in electronic money was by control and listed the same series of rules regarding control that had already been discussed and adopted elsewhere in the draft. The Council adopted R.S. 10:9-105.1 without objection. Mr. Stuckey then highlighted R.S. 10:9-107.1 – an existing provision in the Louisiana UCC – as non-uniform in its entirety. He explained that, here, "authenticate" had been changed to "sign" and the familiar concept of control on behalf of another person had been added. He further noted that the provision was non-uniform insofar as it extended the applicability of UCC concepts to life insurance policies; because Louisiana had already made these rules applicable to life insurance policies, the Committee now proposed to add the new "control" concept to the present provision. A motion was made and seconded to adopt R.S. 10:9-107.1, and the motion passed with all in favor.

The Reporter likewise highlighted R.S. 10:9-107.2 as wholly non-uniform, stating that it had codified – in 1990 – the official UCC Comments' clarification that a secured party's agreement not to *exercise* control until default did not prevent the secured party from nevertheless having control in the interim; he explained that the Committee had felt that the principle was important and thus decided to codify it. Presently, the Committee simply proposed to add newly adopted Sections to the list of Sections to which the aforementioned rule would apply. Mr. Stuckey explained that the present revision – to simply add R.S. 10:9-105.1 and 9-107.3 to lists of provisions to which a principle was made applicable by cross-reference – occurred in several more places throughout the draft and thus requested that the Council adopt these revisions globally. A motion was made and seconded to adopt both revised R.S. 10:9-107.2 and the other instances referenced by the Reporter in R.S. 10:9-207 and 9-601. The motion passed with all in favor.

Mr. Stuckey explained that R.S. 10:9-107.3 set forth the same rule for control but this time with respect to Chapter 12 collateral. He acknowledged that this was little more than a cross-reference to R.S. 10:12-105 but reasoned that a parallel provision was necessary. The Council adopted proposed R.S. 10:9-107.3, and Mr. Stuckey then highlighted R.S. 10:9-107.4 as yet another instance of the same rules and language regarding control on behalf of another. This provision was likewise adopted by the Council. With respect to R.S. 10:9-203, the Reporter stated that Subparagraphs (b)(3)(D) and (E) had been revised to add new types of collateral to the list of assets to which the present rule – that the evidentiary requirement was satisfied if the debtor gave control to the secured party – applied. Again, the Council adopted the proposal without discussion.

The Reporter then moved to R.S. 10:9-204, reasoning that this provision required a bit more depth of consideration. He also highlighted that the Committee had proposed the addition of a Comment following the statute. Taking up the statute itself first, Mr. Stuckey explained that proposed R.S. 10:9-204 – which he noted had no relation to digital

assets – was a uniform revision that contained a non-uniform component. In particular, the revision was a legislative override of bad case law, adding new Paragraph (b)(1) to clarify that certain types of collateral could be proceeds even if the "original" test to be collateral was not met. As an example, the Reporter cited tort claims; he explained that tort claims could be collateral but that under the current UCC the case actually had to exist and be listed and described – simply referencing "all tort claims" was insufficient. He reasoned that if a party loaned money on equipment and the equipment – on which the party had a lien – was subsequently damaged, then the proceeds from the resulting tort claim should count as proceeds. Because courts had disagreed with this logic, the present revision overruled their holdings. The Reporter then highlighted the two non-uniformities proposed by the Committee: First, the national text was applicable only to commercial tort claims, whereas the present proposal extended to all tort claims; and second, the inclusion of Paragraph (4). A motion was then made and seconded to adopt proposed R.S. 10:9-204. A Council member questioned whether the provision as proposed could refer to a money judgment or was merely security property. Mr. Stuckey clarified that the UCC drew no distinction in this regard, referring only to "judgments." A vote was then taken on the motion to adopt R.S.10:9-204 as proposed by the Committee, and the motion passed with no objection. The Reporter then read the Comment, which was also adopted by the Council without objection.

Next, Mr. Stuckey turned to R.S. 10:9-208. He noted that Paragraphs (b)(3) and (6) had been rewritten and (7) and (8) had been added, clarifying that these provisions described when control had to be relinquished to release a lien, with each Paragraph applicable to a particular type of collateral. A motion was made and seconded to adopt the provision as presented, and the motion passed with all in favor. Noting that R.S. 10:9-209 and 9-210 were adopted as part of the global approvals, the Reporter turned to R.S. 10:9-301, which he described as containing revisions that were merely technical in nature. The Council adopted this provision as well. Mr. Stuckey next asked the Council to consider R.S. 10:9-304 and 9-305 together, noting that both pertained to choice of law. He explained that these provisions simply clarified the familiar rule that the choice-of-law provisions governed regardless of the relationship or lack thereof between the jurisdiction and the transaction. These Sections were likewise adopted by the Council with no objection.

The Reporter then noted that R.S. 10:9-306.1 added new rules to account for the fact that chattel paper had been "carved out" from existing rules. He identified the rules provided by proposed R.S. 10:9-306.1 as the same rules set out in existing UCC Chapter 8 and R.S. 10:9-305 for investment property; R.S. 10:9-306.1 simply made them applicable to chattel paper. Mr. Stuckey noted that this provision set out the familiar "waterfall" test for determining the law applicable electronic chattel paper, while chattel paper evidenced by a tangible copy was governed by the law of the jurisdiction in which the tangible copy was located; Subsection (d) included an exception, providing that if the security interest was perfected by filing, then the law of the jurisdiction where the debtor was located would govern. The Reporter summarized this Section as simply consolidating all of the existing rules for chattel paper in a single location. A motion was made and seconded to adopt R.S. 10:9-306.1, and the motion passed with all in favor.

Next, Mr. Stuckey described R.S. 10:9-306.2 as providing choice-of-law rules for security interests in the new types of collateral in Chapter 12. He noted that R.S. 10:9-306.2 simply incorporated by cross-reference Chapter 12's choice-of-law rules, with the exception that Subsection (b) selected the law of the debtor's location for a security interest perfected by filing. A motion was made and seconded to adopt the provision as presented, and the motion passed with all in favor. The Reporter then summarized R.S. 10:9-312 as providing more details regarding alternate methods of perfecting security interests: Subsection (a) listed types of collateral in which a security interest could be perfected by filing; the revision simply added new types of collateral to this list. New Paragraph (b)(4) added electronic money to the list of types of collateral in which filing was *not* effective to perfect a security interest and only control would suffice. A motion was made and seconded to adopt R.S. 10:9-312, and the motion passed with no objection. Mr. Stuckey then took up R.S. 10:9-313, 9-314, and 9-316 together, noting that the revisions to these Sections simply alphabetized and added to the existing lists of collateral. The Council adopted these provisions as proposed with no objection. The

Reporter next indicated that R.S. 10:9-314.1 revised the rules for chattel paper to conform with the new structure of related provisions. He noted that this Section dictated that, without a UCC-1 filing, perfection of a security interest in chattel paper required control of all authoritative copies. This provision was also adopted without discussion.

The Reporter then stated that proposed R.S. 10:9-317 merited greater explanation, as it contained non-uniform language – or, rather, it *omitted* language that *was* uniform. Directing the Council's attention to the footnote detailing the non-uniform deletions, Mr. Stuckey explained that Subsection (f) as proposed would preserve consistency with existing non-uniformity in other Subsections of this Section. In particular, Louisiana did not require a lack of knowledge of claims for a purchaser to take free under R.S. 10:9-317's existing rules; thus, the same requirement – implemented via the phrase "without knowledge" – had been omitted here to maintain consistency. A motion was made and seconded to adopt proposed R.S. 10:9-317 as presented in the materials, and the motion passed with all in favor. The Council also adopted the proposed Comment to this provision without objection. The Reporter moved to R.S. 10:9-323, which he highlighted as being unrelated to digital assets. This Section was being amended to extend to buyers in the ordinary course the applicability of the rule allowing for buyers and lessees to take free of future advances; Mr. Stuckey noted that the omission of buyers in the ordinary course had been acknowledged by the Uniform Law Commission as a drafting error, as the provision was intended to apply to all buyers. The Council adopted R.S. 10:9-323 without objection.

Skipping R.S. 10:9-324 as already approved, Mr. Stuckey turned to R.S. 10:9-326.1. He noted that this provision simply adopted for new Chapter 12 collateral the same rules as for investment property and other collateral. The Council adopted this provision without objection. It did the same for R.S. 10:9-330, which the Reporter characterized as a simple reworking of the rule for chattel paper, and R.S. 10:9-331, which simply added new categories of Chapter 12 collateral into existing rules. Mr. Stuckey then explained that R.S. 10:9-332 represented a clarification of the rules for money in light of the new definitional categories and subcategories thereof. In particular, he stated that Subsection (a) merely clarified what the Uniform Law Commission had intended to express in 1998, while the revisions to Subsection (b) were aimed at clearing up a frequently litigated issue and Subsection (c) simply provided a rule for electronic money. Again, the Council adopted R.S. 10:9-332 as proposed. It did the same for R.S. 10:9-406, the revisions to which added cross-references to new Sections providing additional exceptions to the rule at issue. Upon the Council's adoption of R.S. 10:9-406, the Reporter directed its attention to the proposed Comment. He explained that this Comment recognized that, in spite of Louisiana's non-uniform Subsection (k), the Committee's retention of the uniform cross-reference to Subsection (k) was not unintentional. The Council adopted the proposed Comment without modification.

Returning to newly adopted R.S. 10:9-406, a member of both the Committee and the Council then posed a question regarding Subsection (d). In particular, he pointed to the inserted language stating that "promissory note" for this Subsection included a negotiable instrument evidencing chattel paper and queried rhetorically whether he was mistaken in his recollection that the Committee (and subsequently the Council) had revised the definition of "instrument" so as to specifically exclude writings evidencing chattel paper. He expressed confusion as to the relationship between these two seemingly contradictory statements. After discussing this issue with the Council member for several minutes, the Reporter pointed to the Uniform Law Commission's commentary with respect to R.S. 10:9-408 as containing an explanation for the quirk: In particular, the commentary explained that, because the definition of "instrument" now excluded chattel paper, a statement analogous to the one at issue had been added in Section 9-408(g) to clarify that the rule provided in Section 9-408 was still applicable to promissory notes in spite of the revision to the definition of "instrument." He acknowledged that the drafters had gone about achieving this goal in awkward fashion but reasoned that this was the answer. Turning then to R.S. 10:9-408, Mr. Stuckey referenced the previous conversation as the reason for the present revision. A motion was made and seconded to adopt R.S. 9-408 as presented, and the motion passed with all in favor.

In light of the prior global adoptions of various categories of revision, the Reporter next took up R.S. 10:9-605, asking the Council to consider this provision alongside R.S. 10:9-628, as they were related. He explained that, under present law, these provisions taken together relieved the secured party from duties owed to a debtor in such case as the secured party did not know the debtor's identity; these rules addressed the fact that the transferee from a secured party's original debtor would himself constitute a "debtor", but the secured party might be unaware of the transfer. However, with respect to the new categories of digital asset and collateral, Mr. Stuckey explained that the Uniform Law Commission had made the policy choice to invalidate this rule: If the secured party knew on the front end that the type of collateral at issue would prevent him from identifying the debtor in any event, then he should be considered to have entered the transaction at his own risk; thus, the secured party would not be excused from statutory duties to debtors with respect to these new asset classes. Mr. Stuckey posited that the Uniform Law Commission had implemented these rules in the hope that it would encourage developers of these assets to incorporate mechanisms allowing for identification so that they could subsequently be more securely used for lending and other transactional functions. A motion was made and seconded to adopt these two Sections together, and the motion passed with no objection. Taking up R.S. 10:9-613 and 9-614 together, the Reporter explained that these provisions largely contained minor technical corrections and small changes to forms – nothing much substantive. The Council unanimously approved both of these provisions as well.

Having reached the end of the materials, Mr. Stuckey concluded his presentation, and the January 2023 Council meeting was adjourned.

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