SEWARD & KISSEL LLP

Simply Speaking

Obscure legal concepts or terms in a loan document explained in plain English

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UCC Financing Statements

Example

UCC Filings. The Facility Agent shall have received evidence that UCC Financing Statements have been filed in the State of New York and the District of Columbia and in such other jurisdictions as the Facility Agent may reasonably require.

What is it and what does it do?

A UCC Financing Statement is a publicly filed document that puts other potential creditors on notice that a security interest exists over one or more types of property owned by a borrower or other loan party.

Why is it there?

The Uniform Commercial Code (UCC) is a set of state laws that govern commercial transactions in the United States. The UCC provides, among other things, a framework for secured transactions. As part of this framework, the UCC sets out how to perfect a security interest in collateral for a secured loan. Perfecting a security interest means that the secured party has taken the steps required by the UCC to “put the world on notice” of the security interest and to establish a legally enforceable claim against subsequent claims by other lenders to the same property. For certain types of property, the UCC requires that UCC Financing Statements be publicly filed in order to perfect the security interests in such property. A security interest in some of the property pledged or assigned in a typical ship finance transaction is perfected by filing UCC Financing Statements.

The UCC has been adopted, with certain variations, by every state in the United States.

Why is it important (or not so important) to Lender?

UCC Financing Statements are important to a lender because they perfect a lender's security interest and protect the priority of the lender's claim in certain property against other claims by other creditors in an insolvency or bankruptcy.

Generally, in an insolvency or bankruptcy, a secured lender will have priority over an unsecured lender as to the proceeds of the debtor's assets securing such secured lender's claims. If such lender's security interest is unperfected, it may be avoided in certain situations, which may mean that such lender may be treated as an unsecured lender.

Additionally, for most secured transactions, the UCC provides for a "first to file" priority, where, subject to certain exceptions, the first lender to perfect its security interest in a property has priority over a subsequent lender claiming a security interest in the same property.

In most bankruptcy or insolvency cases, the claims of a secured lender with a first perfected security interest will be paid before claims of a secured lender with a subsequently perfected security interest or claims of an unsecured lender. As a bankrupt or insolvent company does not have sufficient assets to pay all claims, the relative priority of claims is used in helping determine who gets paid from the limited assets available. As such, the prompt filing of UCC Financing Statements is important to a lender to establish the priority of a lender's security interest.

How does it affect Borrower in practical terms?

UCC Financing Statements are standard in secured lending and the practical impact on a borrower is minimal. A borrower should ensure that a UCC Financing Statement only covers the assets being pledged, particularly if the borrower is not an SPV and owns other substantial assets. A borrower should also ensure that outgoing lenders terminate their UCC Financing Statements upon being repaid to avoid any issues or delays with a subsequent secured financing or sale.

How is it relevant to shipping?

In most ship finance transactions, the most important security for a lender is the ship mortgage, which is perfected by recording the mortgage with the relevant vessel registry and not by filing a UCC Financing Statement. However, other important pieces of security for a lender, such as an assignment of earnings or an assignment of certain types of limited liability company interests, are perfected by filing UCC Financing Statements in the appropriate jurisdiction or jurisdictions.

A lender will also perform a search for existing UCC Financing Statements on a borrower before entering into a loan agreement or permitting a borrower to drawdown on a loan to help ensure that these elements of the security package have not been previously assigned or pledged to any other creditor.

How is it negotiated?

UCC Financing Statements are required to perfect certain security interests and as such are rarely negotiated. UCC Financing Statements must reasonably describe what property a lender is taking a security interest in and a borrower should generally avoid any overly broad “all assets” type of description of the collateral in the UCC Financing Statements. UCC Financing Statements that cover “all assets” of a borrower can, among other things, create issues or delays with future secured financings, particularly where a borrower owns more than one vessel or subsidiary and the initial secured financing only relates to some of its vessels or subsidiaries.

Questions?

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