

CROSS-BORDER FINANCE ALERT

UCC Requirements for Describing Collateral in Financing Statements

Authors: [Christofer Fattey](#) and [Brienne Szopinski](#)

December 13, 2018

A recent case from Illinois reminds us why secured parties must closely follow UCC requirements for describing collateral in financing statements.

In re I80 Equipment, LLC, 2018 WL 4006294 (Bankr. C.D. Ill. Aug. 20, 2018) involved whether a secured party properly perfected its security interest in a debtor's collateral. First Midwest Bank made a commercial loan to I80 Equipment, LLC, and obtained a security interest in substantially all of I80 Equipment's assets in return. The security agreement listed a security interest in twenty-six categories of collateral. However, when First Midwest filed a financing statement, it merely defined the collateral as "All collateral described in [the security agreement] . . . between Debtor and Secured Party." In perhaps a fatal move, First Midwest did not attach the security agreement to the financing statement.

Two years later, I80 Equipment filed for bankruptcy; at that time, it owed the secured party more than \$7.6 million. The bankruptcy trustee argued that it could avoid the secured party's lien because the secured party did not properly perfect its security interest in I80 Equipment's collateral. The trustee specifically argued that the secured party's collateral description in the financing statement was too general to put other parties on notice of an interest in the collateral.

UCC § 9-504 requires that a financing statement describe collateral either (a) by reasonably identifying the collateral under § 9-108, or (b) through a supergeneric description (i.e., stating that it covers "all assets or all personal property"). Section 9-108 lists the standards for collateral descriptions in a security agreement. It provides that a description is sufficient if it "reasonably identifies" the collateral through a specific listing, category, type of collateral, quantity, formula or procedure, or "if the identity of the collateral is objectively determinable." Therefore, a secured party can describe collateral in a financing statement using a supergeneric description or by describing the collateral using the same standards for the security agreement.

Here, instead of arguing that the financing statement contained a supergeneric description of the collateral, the secured party argued that its financing statement satisfied the requirements of § 9-108 because the identity of the collateral was "objectively determinable" by looking at the financing statement. The trustee disagreed, noting that although the financing statement referred to a collateral description in a different document, that document was not attached. Without this other document, the financing statement did not contain a collateral description "on its face." The trustee argued that a financing statement without a collateral description on the face of the document does not satisfy the "reasonable identification" standard of § 9-108. Extrinsic evidence, or evidence outside of the financing statement itself, cannot be used to interpret the identity of the collateral in a financing statement.

Ultimately, the trustee's argument prevailed, and the court held that First Midwest's financing statement was insufficient to perfect its security interest in I80 Equipment's collateral. As a result, First Midwest lost its priority on over \$7.6 million.

In re I80 Equipment, LLC magnifies the importance of strictly complying with the terms of the UCC. Failure to comply with these requirements could mean getting bumped to the end of the line when it comes time to recover an unpaid debt.

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CONTACT

[Christofer Fattey](#)

716.848.1757

cfattey@hodgsonruss.com

PROFESSIONALS

ATTORNEYS

John Amershadian
Christofer Fattey
Wendy Fechter
Amy Fitch
Andrea Gervais
Garry Graber
Timothy Ho
Joseph McKernan
Robert McLaughlin
Michael Reyen
James Thoman
Richard Weisz
Steven Wells
Sujata Yalamanchili

PARALEGALS

Jennifer Anthony
Betsy Mills