1994 Developments in Commercial Law and Consumer Protection Law

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Introduction

This Article surveys significant developments in Indiana contract law, commercial law and consumer protection law from November 1, 1993 through October 31, 1994. The opinions reviewed include both Indiana decisions and federal court decisions construing Indiana law.

In comparison with 1993, when the Indiana Supreme Court made significant new law in the areas of punitive damages with the decision in *Miller Brewing Co. v. Best Beers of Bloomington, Inc.*[1] and application of Article 2 of the Uniform Commercial Code with the decision in *Insul-Mark Midwest, Inc. v. Modern Materials, Inc.*,[2] the 1994 Survey year was rather uneventful. However, there were some interesting and informative decisions in the areas of secured transactions and consumer protection.

I. Secured Transactions

In *Star Bank v. Laker*,[3] Laker obtained a loan from Star Bank and pledged certain farming implements as collateral, including two tractors, a corn picker and a disc.[4] When Laker defaulted on his loan, Star Bank repossessed the equipment.[5] In doing so, Star Bank's agents caused ruts in Laker's property, negligently injured one of Laker's horses, and damaged the disc.[6]

In support of his claim for damages, Laker offered evidence of the amount it cost to repair or replace his damaged property. However, no evidence was offered of the value of Laker's property before and after the damage caused by the bank. The jury found in favor of Laker and returned a verdict of $225 in compensatory damages and $7000 in punitive damages.[7]

The court of appeals held that the proper measure of damages is the difference in fair market value of the repossessed equipment immediately before the repossession and immediately after the damage allegedly occurred.[8] Because Laker failed to establish the amount of damages by showing fair market value of his property before and after the repossession, the court of appeals reversed the award of actual damages.[9] The Indiana Supreme Court granted transfer and reinstated judgment for Laker.

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1. 608 N.E.2d 975 (Ind. 1993).
2. 612 N.E.2d 550 (Ind. 1993).
3. 637 N.E.2d 805 (Ind. 1994).
4. *Id.* at 806.
5. *Id.*
6. *Id.*
7. *Id.*
8. *Id.* at 807.
9. *Id. See* Star Bank, N.A. v. Laker, 626 N.E.2d 466, 471-72 (Ind. Ct. App. 1993).

The supreme court stated that it was "abundantly clear from the evidence that in each instance, Laker in fact did suffer damage at the hands of the agents of the Bank. However, in each instance the jury was left to guess at what the actual damage was."[10] This ambiguity, however, does not require that the jury verdict be reversed. Because it was clear that Laker had incurred some damage, the jury appropriately awarded Laker damages of $225. Accordingly, the supreme court construed the $225 award as nominal damages. "[B]eing uninformed as to the actual amount of damages, [the jury] chose to award Laker a nominal sum of $225 for the actual damage he suffered. Having done so, it was entirely proper for the jury to then consider punitive damages."[11]

The "Court has stated on several occasions that an award of nominal damages may support an award of punitive damages."[12] The supreme court found sufficient evidence that the Bank's agents had acted "in an unreasonable and unnecessarily damaging manner in removing the machinery from Laker's property."[13] Most importantly, the Bank refused to release the machinery unless Laker would hold the Bank harmless for the damages caused to Laker's property. "This action alone by the Bank is full justification for the jury's award of punitive damages."[14] Therefore, the court reinstated the judgment of the trial court awarding $225 in compensatory damages and $7000 in punitive damages.[15]

Star Bank reminds practitioners that failure to return repossessed collateral upon receiving payment can result in exposure to punitive damages. Furthermore, punitive damages may be available, regardless of whether an amount of actual damages has been adequately proved, if at least nominal damages are awarded.

II. UNIFORM COMMERCIAL CODE—SECURED TRANSACTIONS

Late in 1993, the Indiana Court of Appeals for the First District published a primer on secured transactions in *Gibson County Farm Bureau Cooperative Ass'n v. Greer*.[16] In that case, the court confronted the previously unaddressed issue of whether a properly filed financing statement alone contains the requisite elements of an enforceable security agreement permitting it to be both proof of attachment and a sufficient perfection. Late in 1994, the Indiana Supreme Court affirmed the trial court and vacated the opinion of the court of appeals.[17]

In *Gibson County Farm Bureau*, a farmer, Norman Greer ("Greer"), financed his corn and soybean crops through Miles, Inc. ("Miles").[18] Greer executed a standard financing statement form[19] that identified himself as the debtor, Miles as the secured party, and all

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10. *Id.*
11. *Id.*
12. *Id.* (citing Hibschman Pontiac, Inc. v. Batchelor, 362 N.E.2d 845 (Ind. 1977); Arlington State Bank v. Colvin, 545 N.E.2d 572 (Ind. Ct. App. 1989)).
13. *Id.*
14. *Id.*
15. *Id.*
16. 622 N.E.2d 551 (Ind. Ct. App. 1993).
17. Gibson County Farm Bureau Coop. Ass'n v. Greer, 643 N.E.2d 313 (Ind. 1994).
18. *Id.* at 314.
19. IND. CODE § 26-1-9-402 (1993) prescribes a standard financing statement commonly known as a

corn and soybeans presently growing or to be planted on certain lands specified by legal description in an exhibit to the financing statement as the collateral.[20] Miles then filed the financing statement in the office of the county recorder. No other documents were executed by Greer in connection with his debt to Miles. After harvesting, Greer sold some of his corn and soybean crops to a company in exchange for a check made jointly payable to Greer, Miles and the Gibson County Farm Bureau ("Farm Bureau"). Greer endorsed the check and gave it to Miles, which then sought an endorsement from Farm Bureau. Farm Bureau refused, however, disputing Miles's priority to the proceeds from the check.[21]

Several months later, Farm Bureau obtained a judgment against Greer and filed a lis pendens notice pursuant to Indiana Trial Rule 63.1(C)[22] on all of Greer's crops and proceeds to perfect its security interest.[23] Thereafter, Farm Bureau filed a verified motion for proceedings supplemental seeking to collect against the outstanding check payable to Greer, Miles and Farm Bureau.[24] Later that year, Farm Bureau filed a verified motion for proceedings supplemental naming Miles as an additional garnishee defendant, thereby perfecting its lien when Miles was served with a summons.[25] In the subsequent proceedings to determine priority of claimants, Miles asserted that it also had a claim against Greer in excess of the amount of the check.[26]

After the parties stipulated to the facts, the trial court entered judgment finding that "while there was not a document specifically designated a security agreement, that nevertheless, the notice requirements of Indiana Code [section] 26-1-9-203 were met by the filing of the UCC-1 Financing Statement."[27] Thus, the trial court held that Miles had a perfected security interest in the check proceeds superior to Farm Bureau's interest as a judgment lien creditor.[28]

On appeal, Farm Bureau argued that the trial court erroneously held that the UCC-1 financing statement executed by Greer and Miles doubled as both a security agreement and a financing statement between them. Instead, Farm Bureau asserted that Greer and Miles never executed a security agreement, and therefore, there was no security interest to which the perfected financing statement could attach.[29]

UCC-1.

20. *Gibson*, 643 N.E.2d at 315.

21. *Id.*

22. Pursuant to IND. TRIAL RULE 63.1(C), a lis pendens notice perfects an interest in personal property that previously attached via judicial proceedings.

23. Gibson County Farm Bureau Coop. Ass'n v. Greer, 622 N.E.2d 551, 553 (Ind. Ct. App. 1993).

24. *Id.*

25. *Id.*

26. *Id.*

27. *Id.* IND. CODE § 26-1-9-203 (1993) specifies the requirements for creating a security interest that is enforceable against the debtor, or, in other words, for the security interest to "attach." To be enforceable against third parties, the security interest must not only have attached, but must also be perfected by properly filing a financing statement.

28. *Gibson*, 622 N.E.2d at 553.

29. *Id.* at 554.

A. The Financing Statement

Indiana Code section 26-1-9-402 specifies the formal requisites of a financing statement.[30] Because the UCC-1 filed by Miles with the accompanying exhibit contained the names and addresses of both Greer and Miles, described the collateral crops and the real estate on which they were grown, and was signed by Greer, it satisfied the requirements for filing a financing statement.[31]

B. Perfection

Perfection occurs when a financing statement is filed in the proper place. Indiana Code section 26-1-9-401 specifies where such statements should be filed.[32] The financing statement filed by Miles was properly filed in the county recorder's office in the county in which the farmed real estate was located.[33] Thus, Miles met the requirements for perfection.

C. The Security Agreement

"Before a security interest is effective against third parties, it must have attached and be perfected."[34] "[P]erfection in the absence of a possessory security interest or a written security agreement accomplishes nothing, and the security interest is not enforceable against the debtor or third parties."[35] Indeed, the existence of a filed financing statement does not mean that an enforceable security interest exists.[36] Putting third parties on notice that a security interest exists, even with the written permission of the indebted party, does not create a security interest unless all the requirements for the creation of a security interest are satisfied. "No security interest attaches to collateral until the debtor signs a security agreement containing a description of the collateral, the debtor grants a security interest, value is given, and the debtor has rights in the collateral."[37]

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30. IND. CODE § 26-1-9-402 (1993), provides, in relevant part, as follows:

> A financing statement is sufficient if it gives the names of the debtor and the secured party, is signed by the debtor, gives an address of the secured party from which information concerning the security interest may be obtained, gives a mailing address of the debtor, and contains a statement indicating the types, or describing the items, of collateral. . . . When the financing statement covers crops growing or to be grown, the statement must also contain a description of the real estate concerned.

31. *Gibson*, 622 N.E.2d at 555.

32. IND. CODE § 26-1-9-401(1) (1993).

33. *Gibson*, 622 N.E.2d at 555.

34. *Id.* (citing IND. CODE § 26-1-9-303 (1993)).

35. *Id.* (citing IND. CODE § 26-1-9-203(1) (1993); *In re* R. & L. Cartage & Sons, Inc., 118 B.R. 646, 649 (Bankr. N.D. Ind. 1990); *In re* Hillman, 94 B.R. 18, 21 (Bankr. D. Conn. 1988)).

36. This is not to say that a security agreement cannot also be a financing statement. To the contrary, IND. CODE § 26-1-9-402(1) (1993) specifically allows that "[a] copy of the security agreement is sufficient as a financing statement if it contains the [requisite] information and is signed by the debtor."

37. *Gibson*, 622 N.E.2d at 555 (citing IND. CODE § 26-1-9-203(1) (1993)); Thrift, Inc. v. A.D.E., Inc., 454 N.E.2d 878, 881 (Ind. Ct. App. 1983); Cargill, Inc. v. Perlich, 418 N.E.2d 274, 278 (Ind. Ct. App. 1981)).

Although "a separate formal document labeled a security agreement is not necessary," and "there are no magic words required in a security agreement, there must be language in the instrument which leads to the logical conclusion that the debtor intended to create a security interest."[38] In the instant case, the court of appeals concluded that the UCC-1 financing statement filed by Miles did not contain language that could be construed as "actually conveying a security interest" in Greer's crops.[39] Thus, the appellate court concluded that the financing statement could not also be construed as a security agreement and it was error to find Miles's interest in Greer's crops superior to Farm Bureau's.

The supreme court granted transfer because "[a]lthough many jurisdictions have had to address the question [of] whether a financing statement may also serve as a security agreement, this is a question of first impression in the Indiana state courts."[40] However, the supreme court reversed the appellate court, and explained that the court of appeals applied the disfavored "*American Card* rule."[41] Grant Gilmore, one of the drafters of Article 9, has written:

> Certainly nothing in [section] 9-203 requires that the "security agreement" contain a "granting" clause. The [section] 9-402 financing statement contained all that was necessary to satisfy the [section] 9-203 statute of frauds as well as being sufficient evidence of the parties' intention to create a security interest in the tools and dies. No doubt the court would have upheld the security interest if the debtor had signed two pieces of paper instead of one. The [section] 9-402 provision that a short financing statement may be filed in place of the full security agreement was designed to simplify the operation. The Rhode Island court gives it an effect reminiscent of the worst formal requisites holding under the nineteenth century chattel mortgage acts.[42]

After reviewing the approaches commonly used in other jurisdictions, the court concluded that the best approach reflects the policies underlying the *Uniform Commercial Code*.[43]

> First, [section] 1-201(3) provides that "'Agreement' means the bargain of the parties as *in fact* found in their language *or by implication from other circumstances including course of dealing or usage of trade or course of performance* . . . ." Second, where the Writing Requirement of [section] 9-203(1)(a) has been satisfied—where there is a writing signed by the debtor identifying the collateral and the land involved when the collateral is crops—the definitions provided by the Code make it plainly apparent that the parties may

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38. *Id.* at 556 (citing *In re* Krause, 114 B.R. 582 (Bankr. N.D. Ind. 1988); Shelton v. Erwin, 472 F.2d 1118, 1120 (8th Cir. 1973)).

39. *Id.*

40. *Id.*

41. The first case to consider this question was American Card Co. v. H.M.H. Co., 196 A.2d 150 (R.I. 1963).

42. 1 GRANT GILMORE, SECURITY INTERESTS IN PERSONAL PROPERTY § 11.4, at 342-48 (1965).

43. *Gibson*, 643 N.E.2d at 320.

> have intended the writing to be a security agreement. For example, [section] 9-105(1)(c) provides that "'Collateral' means the property subject to a security interest. . . ." Thus, when a party has signed a document identifying a certain property as "collateral," that may be a fact showing an intent to create a security interest in the collateral.[44]

The court was unwilling to hold that "a standard-form UCC-1 financing statement alone is, as a matter of law, sufficient evidence that the parties intended to create a security interest."[45] However, in this case, the court held that "once the Writing Requirement of [section] 9-203(1) is satisfied, whether the parties intended the writing to create a security interest is a question of fact for the trier of fact to determine."[46]

In *Gibson County Farm Bureau*, the supreme court clarified existing law requiring that in cases where only a standard-form UCC-1 has been executed and filed, the finder of fact must determine whether the writing also created a security interest. Practitioners are cautioned not to assume that a UCC-1 will alone be sufficient to create and perfect a security interest. The better practice continues to be to use both a written security interest and a UCC-1 form.

III. Consumer Protection—Credit Reporting and Banks

In 1994, several cases on consumer protection law in the area of credit reporting and the Fair Credit Reporting Act (FCRA) were reported.[47] In *Nikou v. INB National Bank*, the court of appeals construed the FCRA, finding that the INB National Bank (INB) had qualified immunity and was therefore not liable for alleged damages caused to Nikou as a result of providing information to local credit reporting agencies.[48]

Nikou, a general manager of an automobile dealership, agreed to assist one of his employees in consolidating his debts by obtaining an installment loan through INB. The loan was evidenced by a note that was signed by both the employee and Nikou as co-makers. The employee never made a single payment on the note, so INB sought payment from Nikou.[49] On a few occasions, Nikou allowed INB to debit his business account at INB to bring the account current.[50]

In 1992, INB supplied local credit reporting agencies with information about Nikou's payment history on the installment loan. Subsequently, Nikou's credit report contained information that twenty payments had been made late on the account. As a result, Nikou was denied credit and was unable to refinance or obtain new loans.[51] Nikou then requested that INB correct the credit reporting "error" but INB responded that its report was accurate.[52]

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44. *Id.* (emphasis supplied in the court opinion).
45. *Id.*
46. *Id.*
47. 15 U.S.C. §1681 (1988).
48. 638 N.E.2d 448, 454 (Ind. Ct. App. 1994).
49. *Id.* at 450.
50. *Id.* at 450-51.
51. *Id.* at 451.
52. *Id.*

In December 1992, Nikou filed suit against INB alleging, inter alia, that INB furnished incorrect information to local credit reporting agencies.[53] INB filed a motion for summary judgment which was subsequently granted and entered as a final judgment.[54]

In the court of appeals' decision, Chief Judge Sharpnack provides an excellent introduction to the FCRA and its application to banks that use reports from, and provide information to, credit reporting agencies. For purposes of the instant case, two subchapters of the FCRA are of particular interest. First, 15 U.S.C. § 1681n provides that "[a]ny consumer reporting agency[55] or user of information which willfully fails to comply" with the FCRA is liable to a damaged consumer.[56] Second, 15 U.S.C. § 1681o provides that any consumer reporting agency or user of information that negligently fails to comply with the FCRA is liable to a damaged consumer.[57]

INB was not a "consumer reporting agency" within the definition of the FCRA because the information it supplied to the credit reporting agency was not a "consumer report."[58] "The term does not include . . . any report containing information solely as to transactions or experiences between the consumer and the person making the report."[59] Furthermore, INB was not a "user of information" within the definition of the FCRA because it used its own internally generated information when denying credit to Nikou. The fact that INB supplied credit reporting agencies with information about Nikou does not create liability for INB. "Persons who do no more than furnish information to a credit reporting agency are not covered by the FCRA."[60] Thus, the court of appeals concluded that "when a bank furnishes information based solely on its own experiences with the consumer, the information is not a consumer report and the bank is not under these circumstances a consumer reporting agency."[61]

Congress intended that 15 U.S.C. § 1681h(e) would provide qualified immunity from common law actions based on consumer credit information.[62] Section 1681h(e) provides as follows:

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53. *Id.*

54. *Id.*

55. 15 U.S.C. § 1681a(f) (1988) defines a "consumer reporting agency" as:

> any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

56. 15 U.S.C. § 1681n (1988).

57. 15 U.S.C. § 1681o (1988).

58. *Nikou*, 638 N.E.2d at 453.

59. 15 U.S.C. § 1681a(d) (1988).

60. *Nikou*, 638 N.E.2d at 453 (citing Alvarez Menendez v. Citibank, 705 F. Supp. 67, 69 (D.P.R. 1988); Mitchell v. First Nat'l Bank of Dozier, 505 F. Supp. 176, 177-78 (M.D. Ala. 1981)).

61. *Id.* (citing *Alvarez Menendez*, 705 F. Supp. at 69; Freeman v. Southern Nat'l Bank, 531 F. Supp. 94, 95 (S.D. Tex. 1982); Rush v. Macy's New York, Inc., 775 F.2d 1554, 1557 (11th Cir. 1985)).

62. *Id.* at 454 (citing *Alvarez Melendez*, 705 F. Supp. at 70; *Freeman*, 531 F. Supp. at 96).

> Except as provided in sections 1681n and 1681o of this title, no consumer may bring any action or proceeding in the nature of defamation, invasion of privacy, or negligence with respect to the reporting of information against any consumer reporting agency, any user of information, or any person who furnishes information to a consumer reporting agency, based on information disclosed pursuant to section 1681g, 1681h, or 1681m of this title, except as to false information furnished with malice or willful intent to injure such consumer.[63]

"Qualified immunity for sources of information, such as INB, is the 'quid pro quo' for full disclosure."[64] Thus, the court of appeals concluded that INB was immune from suit by Nikou unless Nikou could demonstrate that the information provided by INB to the credit reporting agencies was false, and that it was provided to those agencies because of malice or willful intent to damage Nikou.[65] Nikou failed to do so, resulting in a summary judgment against him.[66]

In *Nikou v. INB National Bank*, the court of appeals addressed a bank's exposure to liability when reporting consumer credit information, and provided a good example of how the FCRA can be used by banks to terminate common law actions before they become financially oppressive.

IV. Consumer Protection—Credit Reporting and Agencies

During the 1994 Survey period, the Federal Court for the Southern District of Indiana granted a motion to dismiss for failure to state a claim upon which relief can be granted and the issue was taken to the Seventh Circuit Court of Appeals.[67] At issue was whether a credit reporting agency could be liable for reporting misleading information obtained from a court's erroneous docket.

In *Henson v. CSC Credit Services*,[68] various consumer credit reporting agencies obtained and reported the erroneous information from a court docket that mistakenly identified Greg Henson as a judgment debtor. Jeff Henson borrowed money from Cosco Federal Credit Union in order to purchase a car owned by his brother Greg. Shortly thereafter, the car was stolen and Jeff stopped making payments to Cosco.[69] Cosco filed suit against Jeff and Greg alleging that Jeff defaulted on his loan. Greg was named in the action to determine whether he had any ownership interest or claim to the vehicle. The trial court entered a default judgment against both Jeff and Greg and found that Greg had no interest in the car.[70] Cosco later obtained a deficiency judgment against Jeff.[71] The clerk of the court listed the deficiency judgment in the court's docket as being against

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63. 15 U.S.C. § 1681h(e) (1988).
64. *Nikou*, 638 N.E.2d at 454.
65. *Id.*
66. *Id.*
67. Henson v. CSC Credit Servs., 29 F.3d 280 (7th Cir. 1994).
68. *Id.*
69. *Id.* at 282.
70. *Id.*
71. *Id.* at 282-83.

both Jeff and Greg.[72] Greg sought damages suffered as a result of dissemination of the erroneous report that he was a judgment debtor.

As a result of this misreporting, Greg alleged that he suffered "denial of credit, high interest loans, public ridicule and humiliation, and embarrassment"[73] and that the credit reporting agencies violated the FCRA by "erroneously report[ing] in its credit reports that Greg owed a money/civil judgment in the amount of $4,076."[74]

The district court granted the defendant consumer credit reporting agency's motion to dismiss for failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6).[75] In doing so, "the district court noted that a consumer must allege that a credit reporting agency prepared a credit report containing inaccurate information to state a claim under the FCRA."[76] Furthermore, the district court applied a "balancing test" previously formulated by the D.C. Circuit in *Koropoulos v. Credit Bureau, Inc.*[77] to determine whether "technically accurate" but misleading information may be inaccurate for purposes of the FCRA.[78] That test requires the court to "weigh the potential that the information will create a misleading impression against the availability of more accurate information . . . and the burden of providing that information."[79]

In this case, the district court found that "requiring [the credit reporting agencies] to have discovered the clerk's erroneous entry of judgment against Greg is overly burdensome under the balancing test."[80] Therefore, the district court granted the credit reporting agency's motion to dismiss, finding that the information reported was not "inaccurate" under the FCRA.[81]

The Unites Stated Code provides that a consumer credit reporting agency is required to follow "reasonable procedures to assure maximum possible accuracy" of its consumer credit reports.[82] Thus, the Seventh Circuit noted that a "credit reporting agency is not automatically liable even if the consumer proves that it prepared an inaccurate credit report because the FCRA 'does not make reporting agencies strictly liable for all inaccuracies.'"[83] "A credit reporting agency is not liable under the FCRA if it followed 'reasonable procedures to assure maximum possible accuracy,' but nonetheless reported inaccurate information in the consumer's credit report."[84]

The defendant credit reporting agencies asserted that they used the required "reasonable procedures," and the court agreed, holding that "as a matter of law, a credit

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72. *Id.* at 283.

73. *Id.* (quoting the Complaint).

74. *Id.*

75. *Id.*

76. *Id. See* Henson v. CSC Credit Services, 830 F. Supp. 1204, 1207 (S.D. Ind. 1993).

77. 734 F.2d 37 (D.C. Cir. 1984).

78. *Henson*, 29 F.3d at 283.

79. *Henson*, 29 F.3d at 283 (quoting *Koropoulos*, 734 F.2d at 42).

80. *Id.* (quoting *Henson*, 830 F. Supp. at 1207).

81. *Id.*

82. 15 U.S.C. § 1681e(b) (1988).

83. *Henson*, 29 F.3d at 284 (quoting Cahlin v. General Motors Acceptance Corp., 936 F.2d 1151, 1156 (11th Cir. 1991)).

84. *Id.* (quoting 15 U.S.C. § 1681e(b)).

reporting agency is not liable under the FCRA for reporting inaccurate information obtained from a court's Judgment Docket, absent prior notice from the consumer that the information may be inaccurate."[85] Thus, the court of appeals held that the district court correctly dismissed the complaint to the extent that it alleged that the credit reporting agencies had failed to follow reasonable procedures to assure maximum possible accuracy of the information contained in Henson's consumer credit report.[86]

The balancing test adopted by the district court in *Henson* is a reasonable approach to determining when information reported by a consumer credit reporting agency under the FCRA is "accurate." Requiring complete accuracy, or imposing strict liability on consumer credit reporting agencies for reporting inaccurate information, would be cost-prohibitive and difficult to enforce. Such an approach would be inconsistent with the statutory goals of full and prompt disclosure of credit-worthiness and would require credit reporting agencies to look beyond the reports made to them, including court documents. With the approach used in *Henson*, the courts have struck a reasonable middle-ground, resulting in maximum efficiency while continuing to protect the public.

V. UNIFORM COMMERCIAL CODE—REVISION OF ARTICLE 2

In 1994 the American Law Institute and the National Conference of Commissioners on Uniform State Laws continued their efforts to redraft Article 2 of the Uniform Commercial Code. Last year's Survey Article reviewed the redraft of the scope section of Article 2 and advocated adopting a configuration implementing a hub and spoke format that anticipates and is adaptable to future technological advances.[87] Under such an approach, Article 2 would contain general principles that are applicable to all commercial contracts. Several sub-articles could then be developed, similar to Article 4A—Electronic Funds Transfers, in which more specific transactions, such as software contracts, could

85. *Id.* at 285.

86. *Id.* at 286.

87. *See* Judy L. Woods & Brad A. Galbraith, *Recent Developments In Contract And Commercial Law*, 27 IND. L. REV. 769, 776 (1994).

be addressed with particularity.[88] As of the latest redraft,[89] no significant changes to the scope section have been made since the draft discussed in last year's Survey Article.[90]

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88. *See* Raymond T. Nimmer et al., *License Contracts Under Article 2 Of The Uniform Commercial Code: A Proposal*, 19 RUTGERS COMPUTER & TECH. L.J. 281, 318-22 (1993).

89. Section 103 of the redraft of Article 2 currently is written as follows:

(a) Unless the context otherwise requires, this article applies to:

(1) any transaction, regardless of form, that creates a contract for the sale of goods, including a transaction in which a sale of goods predominates;

(2) any dispute relating to goods supplied under a transaction in which the sale of goods does not predominate; and

(3) any dispute arising under an agreement obligating the seller to install, customize, service, repair, or replace goods at or after the time of contracting.

(b) If this article conflicts with Article 2A or 9 . . . . [deferred].

(c) A transaction subject to this article is also subject to . . . . [deferred].

U.C.C. § 2-103 (Tentative Revision of Article 2, Aug. 5, 1994).

90. *See* Woods & Galbraith, *supra* note 87.