NO. 19-_____

In the Supreme Court of the United States

IN RE: I80 EQUIPMENT, LLC,

Debtor.

JEANA K. REINBOLD,
NOT INDIVIDUALLY BUT SOLELY IN HER CAPACITY AS
CHAPTER 7 TRUSTEE OF THE ESTATE OF I80 EQUIPMENT, LLC,

Petitioner,

v.

FIRST MIDWEST BANK,

Respondent.

On a Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

PETITION FOR A WRIT OF CERTIORARI

ANDREW W. COVEY
416 MAIN STREET
SUITE 700
PEORIA, IL 61602
(309) 674-8125

JEANA K. REINBOLD
COUNSEL OF RECORD
1100 S. 5TH STREET
SPRINGFIELD, IL 62703
(217) 241-5629
JEANA@JEANAREINBOLDLAW.COM

JANUARY 8, 2020 *COUNSEL FOR PETITIONER*

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QUESTION PRESENTED

Whether the decision of the Seventh Circuit Court of Appeals, that a secured creditor need not give any public notice of the collateral securing its security interest, both misinterprets provisions of the Uniform Commercial Code contrary to the interpretation of another circuit court, and unreasonably departs from the appropriate course for federal court interpretation of state law.

DIRECTLY RELATED PROCEEDINGS

1. This case arises out of an adversary proceeding filed in a bankruptcy case pending in the U.S. Bankruptcy Court for the Central District of Illinois, *First Midwest Bank v. Jeana K. Reinbold, not individually but solely in her capacity as Chapter 7 Trustee of the Estate of I80 Equipment, LLC (In re I80 Equipment, LLC)*, Bankr. C.D. Ill. No. 17-81749, Adv. No. 18-8003. The bankruptcy court entered judgment in the adversary proceeding on August 20, 2018.

2. The adversary case was certified for direct appeal to the United States Court of Appeals for the Seventh Circuit. The Seventh Circuit entered judgment in the appeal on September 11, 2019. The Seventh Circuit entered an order denying rehearing and rehearing *en banc* on October 10, 2019, as amended on October 15, 2019 to reflect that three judges had taken no part in consideration of the petition for rehearing *en banc*. The docket number of the case in the Seventh Circuit was 18-3291.

3. There are no other directly related proceedings within the meaning of this Court's Rule 14.1(b)(iii).

TABLE OF CONTENTS

TABLE OF CONTENTS – Continued

Page

TABLE OF CONTENTS – Continued

Page

APPENDIX TABLE OF CONTENTS

OPINIONS AND ORDERS

REHEARING ORDERS

TABLE OF CONTENTS – Continued

Page

STATUTORY PROVISIONS

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES—Continued

Page

TABLE OF AUTHORITIES—Continued

STATUTES

TABLE OF AUTHORITIES—Continued

JUDICIAL RULES

LEGISLATIVE MATERIALS

OTHER AUTHORITIES

TABLE OF AUTHORITIES—Continued

Page

OPINIONS BELOW

The Seventh Circuit's opinion (App. 1a-14a) is reported at 938 F.3d 866. The decision resolved a direct appeal from a judgment entered by the bankruptcy court. The bankruptcy court decision (App. 17a-37a) is reported at 591 B.R. 353.

JURISDICTION

The Seventh Circuit entered judgment on September 11, 2019. The Seventh Circuit entered an order denying rehearing and rehearing *en banc* on October 10, 2019, as amended on October 15, 2019. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The appendix (App. 44a-49a) reproduces the relevant portions of 810 ILCS 5/1-103, 810 ILCS 5/9-502, 810 ILCS 5/9-504, 810 ILCS 5/9-108 and 11 U.S.C. § 544(a).

STATEMENT OF THE CASE

A. Statutory Background

1. *Requirements of financing statements.* The Uniform Commercial Code ("UCC") has been adopted by all 50 states, the District of Columbia, Puerto Rico and the U.S. Virgin Islands.[1] It requires that,

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[1] *See* UCC Article 9, Secured Transactions & Amendments to Article 9, Secured Transactions, *available at* Uniform Law Commission, https://uniformlaws.org/acts/ucc.

for a secured creditor to perfect a security interest, it must file a UCC-1 financing statement with the appropriate office. The sections of the Illinois UCC dealing with financing statements follow the national text exactly. *Compare* 810 ILCS 5/9-502, 9-504, 9-108, 1-103 *with* UCC Sections 9-502, 9-504, 9-108, 1-103; *see* App. 45a-49a. Section 9-502 of the UCC provides that "a financing statement is sufficient only if it . . . indicates the collateral covered by the financing statement." 810 ILCS 5/9-502(a)(3). Section 9-504 provides that "[a] financing statement sufficiently indicates the collateral that it covers if the financing statement provides: (1) a description of the collateral pursuant to Section 9-108; or (2) an indication that the financing statement covers all assets or all personal property." 810 ILCS 5/9-504. Section 9-108 provides that a description is sufficient if it reasonably identifies what is described, and provides examples of such reasonable identification. 810 ILCS 5/9-108.

2. *Strong-arm power.* Section 544(a) of the United States Bankruptcy Code ("Bankruptcy Code") provides a bankruptcy trustee with the rights of a hypothetical lien creditor whose lien was perfected at the time the bankruptcy petition was filed. When a case is filed, the trustee acquires all the rights of a creditor with a lien on all of the debtor's property. Only when a financing statement contains sufficient description of collateral does a duty to inquire arise. *In re I.A. Durbin,* 46 B.R. 595, 601 (Bankr. S.D. Fla. 1985). The trustee has the "status of a hypothetical lien creditor 'without regard to any knowledge of the trustee or of any creditor,' entitling him to void a security interest because of defects that need not have misled, or even

have been capable of misleading, anyone." *In re Vic Supply Co.*, 227 F.3d 928, 931 (7th Cir. 2000).

B. Facts and Procedural Background

Prior to filing bankruptcy, I80 Equipment, LLC (the "Debtor") operated a commercial business. First Midwest Bank ("First Midwest") made a commercial loan to the Debtor. The Debtor signed a security agreement granting First Midwest a security interest in 26 categories of collateral to secure the loan. First Midwest filed a financing statement with the Illinois Secretary of State describing its collateral as "All Collateral described in First Amended and Restated Security Agreement dated March 9, 2015 between Debtor and Secured Party." It did not attach a copy of the security agreement to the financing statement or otherwise indicate any publicly available copy of the agreement.

The Debtor defaulted under the terms of loan and filed a Chapter 7 bankruptcy case on December 6, 2017. Bankr. C.D. Ill. No. 17-81749. The petitioner ("Trustee") was appointed to administer the case. First Midwest filed its adversary proceeding against the Trustee, seeking a declaratory judgment that its security interest in the Debtor's collateral was properly perfected. Bankr. C.D. Ill. Adv. No. 18-8003. The Trustee denied that First Midwest's security interest was properly perfected and asserted a counterclaim to avoid First Midwest's lien pursuant to her strong-arm powers under Section 544(a) of the Bankruptcy Code. 11 U.S.C. § 544(a). First Midwest also filed a Proof of Claim in the case indicating that it was owed more than $7.6 million, and with First Midwest's consent, the Trustee

sold assets of the estate for $1,862,806, while these proceedings were pending.

The bankruptcy court ruled for the Trustee, stating that this result was required by the plain statutory language:

> The statutory provisions . . . make clear that the notice required to be given by a financing statement is notice of the specific items of collateral themselves, of the kinds or types of property subject to the security interest, or that the debtor has granted a blanket lien on "all assets" or "all personal property." A financing statement that fails to contain any description of collateral fails to give the particularized kind of notice that is required of the financing statement as the starting point for further inquiry.

See App. 36a. The Seventh Circuit accepted a direct appeal, and, in deciding "a matter of first impression for our court," held that "[t]he plain and ordinary meaning of Illinois's revised version of the UCC allows a financing statement to indicate collateral by reference to the description in the underlying security agreement," even if the security agreement is not filed with the financing statement, and reversed the judgment of the bankruptcy court. *See* App. 2a, 14a.

REASONS FOR GRANTING THE PETITION

Jeana K. Reinbold, solely as the bankruptcy trustee of the Chapter 7 bankruptcy estate of I80 Equipment, LLC, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit.

THE SEVENTH CIRCUIT'S DECISION MISINTERPRETS PROVISIONS OF A UNIFORM STATE LAW AND IN SO DOING BOTH CONFLICTS WITH THE RULING OF ANOTHER CIRCUIT COURT AND UNREASONABLY DEPARTS FROM THE APPROPRIATE COURSE OF DECISION FOR A FEDERAL COURT INTERPRETING STATE LAW.

In this case, the Seventh Circuit Court of Appeals undertook the decision of an "issue of first impression" under the Illinois UCC. It ultimately came to a conclusion—that financing statements under the UCC are not required to contain a description of the collateral within or attached to the filed document—representing a substantial departure from previous practice and from a fundamental requirement under a uniform law adopted nationally, and contradicting a recent decision of the First Circuit Court of Appeals. The Seventh Circuit's decision is erroneous, and unreasonably so, for in reaching it the court far departed from the accepted and usual course of federal court determination of an unresolved interpretation of state law. The Seventh Circuit was required either to determine how the state's highest court would determine the issue or to certify the issue for ruling by the state's highest court. The court did neither, thus violating an essential element of federalism.

A. The Seventh Circuit's Decision Cites to But Does Not Follow Applicable Principles of Federalism

This Court has generally declined to disturb or overrule decisions by federal courts on issues of state law, but it has indicated that it would not hesitate to do so where the conclusion reached was not correct or unreasonable. *Propper v. Clark*, 337 U.S. 472, 486-87 (1949); *U.S. v. Durham Lumber Co.,* 363 U.S. 522, 526-27 (1960). This Court has given direction and a mandate to federal courts as to how cases construing state law are to be decided when there is no decision on point from the state's highest court:

> The highest state court is the final authority on state law . . . but it is still the duty of the federal courts, where the state law supplies the rule of decision, to ascertain and apply that law even though it has not been expounded by the highest court of the State . . . An intermediate state court in declaring and applying the state law is acting as an organ of the State and its determination, in the absence of more convincing evidence of what the state law is, should be followed by a federal court in deciding a state question.
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> . . .
>
> Here, the question was as to the construction and effect of a state statute. The federal court was not at liberty to undertake the determination of that question on its own reasoning independent of the construction and effect which the State itself accorded to its statute. That construction and effect are

> shown by the judicial action through which the State interprets and applies its legislation.

Fidelity Union Trust Co. v. Field, 311 U.S. 169, 177-78 (1940) (internal citations omitted). Even though federal courts may no longer be bound by state trial or intermediate court opinions, federal courts may not disregard and should still give such decisions appropriate weight if the highest court of the state has not spoken on the point. *Moore's Federal Practice* § 124.20 (3d ed. 2018) ("Decisions of intermediate state appellate courts usually must be followed [and] federal courts should follow decisions of intermediate state appellate courts unless persuasive data indicate that the highest state court would decide the issue differently.")

In other cases, the Seventh Circuit has considered decisions of other jurisdictions when seeking to decide a "novel question of state law." *Pisciotta v. Old National Bancorp,* 499 F.3d 629, 635 (7th Cir. 2007). Moreover, where a uniform law is under consideration, Illinois courts have stated that decisions from other states which have adopted standard provisions of uniform laws are relevant and are shown greater than usual deference. *In re Hispanic American Television Co.*, 113 B.R. 453, 456-57 (Bankr. N.D. Ill. 1990); *Garver v. Ferguson,* 76 Ill. 2d 1, 8 (Ill. 1979). Standard practice under the various uniform laws treats decisions of all jurisdictions that have enacted them as highly persuasive if not binding. *Triangle Marketing, Inc. v. Action Industries, Inc.*, 630 F. Supp. 1578, 1579 n.1 (Bankr. N.D. Ill. 1986) (citing *Braden v. Bucyrus-Erie Co. (In re Halferty)*, 136 F.2d 640, 643 (7th Cir. 1943)). This is because the purpose of a construction

of the Uniform Commercial Code is "to make uniform the law among the various jurisdictions." 810 ILCS 5/1-103(a)(3).

In *Pisciotta,* the Seventh Circuit recognized the following:

> When faced with a novel question of state law, federal courts sitting in diversity have a range of tools at their disposal. First, when the intermediate appellate courts of the state have spoken to the issue, we shall give great weight to their determination about the content of state law, absent some indication that the highest court of the state is likely to deviate from those rulings . . . We also shall consult a variety of other sources, including other "relevant state precedents, analogous decisions, considered dicta, scholarly works, and any other reliable data tending convincingly to show how the highest court in the state would decide the issue at hand." . . . In the absence of any authority from the relevant state courts, we also shall examine the reasoning of courts in other jurisdictions addressing the same issue and applying their own law for whatever guidance about the probable direction of state law they may provide.

Pisciotta, 499 F.3d at 635 (internal citations omitted). In this case, although the Seventh Circuit cited *Pisciotta*, it proceeded to completely disregard the decision in the remainder of its opinion. Indeed, with the exception of one bankruptcy court opinion

(*Duesterhaus Fertilizer*)[2] which actually supports the Trustee's position, the Seventh Circuit did not address a single relevant case, nor a single argument made by the Trustee, in its opinion.

B. The Seventh Circuit's Decision Conflicts With the First Circuit and Other Relevant Decisions Which It Failed to Consider

Although there appears to be no case by the Illinois Supreme Court on the precise issue involved in this case, the Trustee pointed to numerous cases decided by other federal circuits, bankruptcy courts and Illinois courts, in her briefs below, considering analogous issues. Most pertinently, decisions from the First Circuit Court of Appeals and from the Illinois Appellate Court all contain reasoning highly suggestive of how the Illinois Supreme Court would decide the issue in the case.

The First Circuit construed analogous provisions of the UCC in effect in Puerto Rico, and found that a collateral description in a financing statement was insufficient because it only made reference to a description of collateral contained in a separate, unattached document. *In re Financial Oversight and Management Board for Puerto Rico*, 914 F.3d 694, 710 (1st Cir. 2019). While the statutes at issue in the *Financial Oversight* case were under an older version of the UCC, the First Circuit cited current UCC § 9-502, comment 2, which provides that "key goals of the UCC and its filing system . . . include fair notice to other creditors and the public of a security interest." *Financial Over-*

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[2] *In re Duesterhaus Fertilizer, Inc.*, 347 B.R. 646, 651 (Bankr. C.D. Ill. 2006).

sight, 914 F.3d at 711. The First Circuit then proceeded to discuss cases construing the provisions of the UCC under current and previous law, indicating that it would not reach a different conclusion under current version of the UCC. The Seventh Circuit failed to cite or distinguish the First Circuit's decision, creating a circuit split. *See* Am. Bankr. Inst., *Seventh Circuit Splits with the First Circuit on the Sufficiency of Financing Statements*, Rochelle's Daily Wire (Sept. 16, 2019);[3] Goodstein, *In re I80 Equipment: A Matter of Reference*, New York Law Journal (Oct. 2, 2019).[4] Indeed, even after the revisions to the UCC, some description of the collateral has to be included for a financing statement to be valid. Grant, *Description of the Collateral Under Revised Article 9,* 4 DePaul Bus. & Com. L.J. 235, 272 (2006).

The Seventh Circuit's failure to treat the First Circuit's decision has been particularly criticized in a recent article by Professor Bruce Markell:

> The UCC is a connected series of statutes with an overall goal and purpose. Each section does not stand in isolation from the others; they form a cohesive whole. In addition, although a state statute, it is not untethered to other states' interpretation. UCC Section 1-103(a)(3) states that the UCC should be construed "to make uniform the law among the various jurisdictions." That

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[3] *Available at* https:/www.abi.org/newsroom/daily-wire/seventh-circuit-splits-with-the-first-circuit-on-sufficiency-of-financing.

[4] *Available at* https://www.law.com/newyorklawjournal/2019/10/02/in-re-i80-equipment-a-matter-of-reference.

part of the UCC is adopted in Illinois, yet the Seventh Circuit does not cite to it. Why is that important? A simple answer: the issue —what constitutes an adequate indication— was subject of a recent First Circuit case which the Seventh Circuit declined to even mention.

. . .

The standard in place in Puerto Rico in 2008 (and in the rest of the United States before 2001) was that the financing statement had to "contain [ ] a statement *indicating* the types, or describing the items, of collateral." So, unless you want to argue that "indicating the types . . . of collateral" is different in a meaningful way from "indicates the collateral covered by the financing statement" which is the wording in the current statute, the case is highly relevant, and should have been discussed.

But the difference is not meaningful. The verb "to indicate" is the same in both cases; the only difference is the direct object: "types of collateral" versus "collateral." In *I80,* the financing statement indicated neither. It indicated, if anything, a document, and only a document. No collateral was mentioned in the words used on [the] filed financing statement. There was only a reference to a document which no user of the filing system could verify was the same at all relevant times. If the First Circuit believed that a reference to a document not publicly available did not

> "indicate" a type of collateral, a simple reference to the same document doesn't "indicate" collateral either.

Markell, Bruce A., *The Road to Perdition: I80 Equipment, Woodbridge and Liddle Pave the Way*, 39 Bankruptcy Law Letter 11, 3-4 (Nov. 2019) (discussing *Financial Oversight*, 914 F.3d at 705, 712) (footnotes omitted).

In addition, Illinois cases interpreting the UCC have held that a financing statement must adequately describe the collateral to provide notice to third parties. *Magna First National Bank & Trust Co.*, 195 Ill. App. 3d 1015, 1019 (5th Dist. 1990). Of particular note is a decision by the Illinois Appellate Court, in which it found that a financing statement describing the collateral as "crops grown on certain real estate as described on a certain Security Agreement dated June 1, 1979 on file with (creditor)" insufficient to perfect the creditor's security interest. *Scott State Bank v. Tabor Grain Co.,* 109 Ill. App. 3d 858, 859-60 (4th Dist. 1982). The Illinois Appellate Court held that the financing statement had no description of the real estate "whatsoever" and that the description could not be "fleshed out" through incorporation by reference to a nonrecorded document. *Id.* at 860. The Trustee argued below that there was no reason why the rule in *Scott State Bank* would not apply to personal property descriptions as well and that the holding is still good law in Illinois. The Seventh Circuit did not discuss the *Scott State Bank* case, or any other decision of an Illinois court addressing the analogous issue.

Instead, the Seventh Circuit based its decision on a single dictionary definition of the word "indicate"—

as a "signal" that "points out" or "directs attention to"—to justify its conclusion that the meaning of Section 9-502(a)(3) was plain. *See* App. 6a-9a. Yet, this conclusion produces an absurd result. First, if all a financing statement has to do is "point to" the security agreement, a financing statement that contains no collateral description, but only sets forth the secured party's name and address, would be perfectly acceptable. But this would nullify Section 9-502(a)(3) as well as Section 9-504(1), contrary to the rule under Illinois law that a statute not be interpreted to render any portion of a statute meaningless or void. *Sylvester v. Industrial Commission (Acme Roofing & Sheet Metal Co.),* 197 Ill. 2d 225, 232 (Ill. 2001). Second, a secured party has no duty to provide a copy of its security agreement, a private document, to anyone. *See* App. 8a, n.5, citing 810 ILCS 5/9-210. It is thus further absurd to rule that a financing statement fulfills its duty to "indicate" what collateral it covers by referring to a document the secured party has no duty to provide.

Moreover, even if the Seventh Circuit were justified in ignoring these considerations, its conclusion is flawed, because its reliance on one dictionary definition of "indicate" conflicts with another common definition—"to state or express briefly"—in the same dictionaries it relied on. *See* App. 8a-9a, n.6. The existence of alternate dictionary definitions shows that the term "indicate" is ambiguous. *Carmichael v. Laborers' & Retirement Board*, 125 N.E. 3d 383, 400 (Ill. 2018). In Illinois, "the primary rule of statutory construction is to ascertain and effectuate the legislature's intent." *In re Marriage of Logston,* 103 Ill. 2d 266, 277 (Ill. 1984). Where a statute is susceptible of two interpret-

ations, the Seventh Circuit, to predict accurately the approach of the Illinois Supreme Court, was required to examine sources other than its language for evidence of legislative intent. *Id.* at 279. It failed to do so, ignoring all of the Trustee's arguments as to a proper construction of the statute.

Again, Professor Markell highlighted this problem:

> At bottom, the Seventh Circuit's erroneous construction of the financing statement requirement is based on a deeply flawed reading of Article 9. It confuses the roles of various sections. The court looked to Section 9-502 and its use of "indicate," and then gave "indicate" its so-called plain meaning. But structurally, Section 9-504 defines what "indicates" in Section 502 means: (1) a description satisfying Section 9-108 or (2) an indication the financing statement is against "all assets." By ignoring the structure of the UCC as a code, the court mistakenly focused on one of its parts in isolation.
>
> This error in focus results in a perversion of policy. If the lender is not authorized to file a financing statement indicating "all assets" (which it was not in *I80*), then part two of Section 9-504 kicks in, and requires the financing statement description to satisfy Section 9-108.
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> Section 9-108 does not, however, use the "indicate" language. Best case for a lender is that it allows a description which "reasonably identifies" the collateral by a method that is "objectively determinable."

Markell, *The Road to Perdition*, 39 Bankruptcy Law Letter 11 at 4 (footnotes omitted).

The Seventh Circuit purported to rely on comment 2 to the Illinois UCC, 810 ILCS 5/9-502, comment 2, for the public notice function of the UCC, but then cited to cases which do not support or conflict with its conclusion that notice of a secured party's collateral in a financing statement was not required. It cited to an irrelevant case concerning whether mortgage lenders were required to file a financing statement to perfect a lien against land contracts of which they were unaware (*Blanchard*), and its own precedent (*Helms*). *See* App. 9a-11a. In *Helms,* the Seventh Circuit had noted that "[t]he purpose of the financing statement is to put third parties on notice that the secured party who filed it may have a perfected security interest in the *collateral described*, and that further inquiry into the extent of the security interest is prudent." *Helms v. Certified Packaging Corp.,* 551 F.3d 675, 679 (7th Cir. 2008) (emphasis added).

Next, the Seventh Circuit cited three Illinois bankruptcy decisions which oppose or do not support its conclusion. The first case cited (*Grabowski*) concerned a financing statement that contained a description of actual collateral. *See* App. 11a-12a. *Grabowski* also noted that Section 9-502 calls for a description of the debtor's property. *In re Grabowski,* 277 B.R. 388, 390 (Bankr. S.D. Ill. 2002). The second cited decision (*Duesterhaus Fertilizer*) concerned a case in which the bankruptcy court actually found a financing statement insufficient because its description of collateral was a reference to an unattached prior financing statement which had lapsed. *See* App. 12a-13a. The

Seventh Circuit completely misread *Duesterhaus Fertilizer*, which in fact held that to hold that incorporation of a collateral description by reference to a nonpublic document is sufficient "would require this Court to totally ignore the requirement of Section 9-502 that collateral be indicated on the financing statement . . . This Court cannot ignore an entire portion of the statute." 347 B.R. at 651. The third case (*Macronet*) cited suggested that reference to a separate document within a *security agreement* might be permissible, but did not address whether such reference would be acceptable for a financing statement. *See* App. 13a. This is completely irrelevant, as a security agreement is a contract for which incorporation by reference is acceptable if the parties agree; a financing statement serves a public notice function, which purpose is thwarted if it contains no collateral description.

Professor Markell explains the error in the Seventh Circuit's analysis as follows:

> In finding that the lender's financing statement met § 9-502['s] requirements, the [Seventh Circuit] conflated the requirements of Sections 9-504 and 9-108. It chose the perspective of the contracting parties, not the perspective of those searching the UCC filing system. This can be seen from the following excerpt from the opinion, which summarizes various decisions on attachment:
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> > "The approach of these courts to financing statements supports the conclusion that incorporation by reference is permissible in Illinois as 'any other method' under

> § 9-108, so long as the identity of the collateral is objectively determinable."
>
> This passage confuses the requirements for attachment and for disclosure. It neglects to consider a UCC searcher's perspective (which, after all, is the focus of what a financing statement should provide). By contrast . . . incorporation by reference as between the debtor and secured party in a security agreement can validly be used . . . But a financing statement is not designed to augment the contractual relationship between the debtor and the secured party . . . Rather, the function of a financing statement is to put other creditors on notice of a possible security interest in particular collateral that, unless it is all assets, is "reasonably described" in the financing statement—which means that searchers in the UCC system could . . . find out what the collateral might be.

Markell, *The Road to Perdition*, 39 Bankruptcy Law Letter 11 at 4-5 (footnotes omitted).

The Seventh Circuit also failed to review relevant decisions from the Third, Ninth, and Tenth Circuits (*Bennett; Softalk; Maxl Sales);* decisions cited by the bankruptcy court (*Lynch; Lexington Hospitality Group*); and decisions of other federal (*Burival; Bailey; Dubman*) and Illinois (*Allis-Chalmers*) courts,[5] all of

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[5] *In re H.L. Bennett Co.*, 588 F.2d 389 (3rd Cir. 1978); *In re Softalk Pub. Co.*, 856 F.2d 1328 (9th Cir. 1988); *Maxl Sales Co. v. Critiques, Inc.*, 796 F.2d 1293 (10th Cir. 1986); *In re Lynch,* 313 B.R. 798 (Bankr. W.D. Wisc. 2004); *In re Lexington Hospitality Group, LLC*, 2007 WL 5035081, Bankr. No. 17-51568 (Bankr.

which suggest or reach a result contrary to the Seventh Circuit's ruling.

C. This Court Should Reverse or Certify the Question Presented in the Decision to the Illinois Supreme Court

The Seventh Circuit's decision thwarts trustees seeking to perform their duties, many of whom are working under onerous circumstances, and weakens their ability to perform their duties under 11 U.S.C. § 544.[6] The opinion is also controversial and has national significance, as other federal courts will look to this opinion for guidance on this issue of uniform law if the state in which the issue arises has no controlling state court opinion. By eradicating the requirement that a financing statement contain a collateral description, the decision will greatly increase the time, cost and uncertainty of secured transactions, for a UCC search will never end with the financing statement. This decision negatively impacts secured

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E.D. Ky. 2017); *In re Burival,* 2010 WL 4115493, Bankr. Nos. 07-42271, 07-42273, Adv. No. A10-4012 (Bankr. D. Neb. 2010); *In re Bailey,* 228 B.R. 267 (Bankr. D. Kan. 1998); *In re Dubman,* 1968 WL 9197, Bankr. No. 92, 5 UCC Rep. Serv. (Callaghan) 910 (W.D. Mich. 1968); *Allis-Chalmers Corp. v. Staggs,* 117 Ill. App. 3d 428 (5th Dist. 1983).

[6] The public docket of the bankruptcy case is at Bankr. C.D. Ill. No. 17-81749. The bankruptcy case has not been an ordinary one, and has presented many problematic elements for the Trustee: uncooperative principals, hidden assets, transferred assets, destruction of property, and demands from many creditors, including the creditor in this case. The case has been ongoing for over two years, during which time the Trustee has worked without compensation, and it appears she will be required to continue doing so for some time.

transactions not only in the Seventh Circuit, but commercial practice around the country.

Against this backdrop, it seems highly dubious that the Illinois Supreme Court, which conducts a very holistic approach to statutory interpretation, would have relied on a single dictionary definition for the meaning of a statute, particularly an issue of uniform law, without considering other definitions, standard tools of statutory construction, its own precedents, analogous precedents in its own and other jurisdictions, and scholarly works. Under the Seventh Circuit's own analysis, UCC Section 9-502(a)(3) is ambiguous, and therefore it was required to conduct a proper and thorough analysis. In failing to do so, and interpreting the statute in a way that frustrates the goals of the UCC, the Seventh Circuit's decision is clearly erroneous.

Rather than deciding the question itself, the Seventh Circuit had discretion under Illinois Supreme Court Rule 20 to certify the issue to the Illinois Supreme Court. Illinois Supreme Court Rule 20 provides that:

> When it shall appear to the Supreme Court of the United States, or to the United States Court of Appeals for the Seventh Circuit, that there are involved in any proceeding before it questions as to the law of this State, which may be determinative of the said cause, and there are no controlling precedents in the decisions of this court, such court may certify such questions of the laws of this State to this court for instructions concerning such questions of State

> law, which certificate this court, by written opinion, may answer.

Illinois Supreme Court Rule 20; *Shirley v. Russell,* 69 F.3d 839, 843-44 (7th Cir. 1995); *Todd v. Societe BIC, S.A.,* 9 F.3d 1216, 1221-22 (7th Cir. 1993).

In *Shirley*, the Seventh Circuit noted that:

> When the rules of the highest court of a state provide for certification to that court by a federal court of questions arising under the laws of that state which will control the outcome of a case pending in the federal court, this court, *sua sponte*, or on motion of a party, may certify such a question to the state court in accordance with the rules of that court, and may stay the case in this court to await the state court's decision of the question certified.
>
> . . .
>
> Certification respects and promotes the core principles of judicial federalism . . . It is therefore all the more appropriate where the certified question implicates a state's important public policy concerns.

Shirley, 69 F.3d at 843-44 (internal citations omitted). Given that the Seventh Circuit was deciding a question that it considered to be an issue of first impression under state law, and given the impact of the decision on a national uniform law, it should have certified the question in this case to the Illinois Supreme Court rather than deciding the case in the manner it did. This Court has the discretion to certify the issue in this case to the Illinois Supreme Court.

For all the reasons stated herein, the decision of the Seventh Circuit is erroneous and productive of a circuit split. The decision is also unreasonable and violative of the principles of federalism as it wholly failed to conduct the analysis the Illinois Supreme Court would have conducted in deciding this case. The decision should be reversed or certified to the Illinois Supreme Court.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

JEANA K. REINBOLD
COUNSEL OF RECORD
1100 S. 5TH STREET
SPRINGFIELD, IL 62703
(217) 241-5629
JEANA@JEANAREINBOLDLAW.COM

ANDREW W. COVEY
416 MAIN STREET
SUITE 700
PEORIA, IL 61602
(309) 674-8125

COUNSEL FOR PETITIONER

JANUARY 8, 2020