PREFACE

Volumes 7, 8 and 8A of the Indiana Practice Series are intended to provide a ready reference to the Indiana version of the Uniform Commercial Code with a special emphasis on practical application of the Code. These volumes provide a brief overview of each provision of the Indiana UCC, selected forms applying the provisions and references to key Indiana and other cases applying or construing the provisions. The practical focus in the UCC, as drafted by the National Conference of Commissioners on Uniform State Laws ("NCCUSL"), should be kept in mind by practitioners, whether drafting a commercial document, planning a transaction, sorting through a failed transaction, or litigating a commercial dispute. All Articles of the UCC have undergone substantial revision in the past few years, and new articles 2A, 4A, 10 and 11 have been added. Many of the changes and additions reflect changing technology in the commercial marketplace.

There are two keys to handling any problem involving the UCC. First, the practitioner must keep in mind the three goals of the UCC: (1) to provide a simple, clear and modern system of law for governing commercial transactions in a variety of contexts; (2) to provide a flexible and expansive system of commercial law that is adaptable to a variety of commercial contexts, industries, trades, business environments and technology; and (3) to provide for uniformity in commercial transactions and laws across jurisdictional boundaries, making it easier for businesses to allocate risks and predict the outcome of commercial transactions. The Indiana Supreme Court has repeatedly recognized and affirmed these goals and emphasized that the Code should be liberally construed to provide a system of law that contributes to "sound commercial practice by allowing the parties to anticipate clearly the results of their transaction." *Rheem Mf'g Co. v. Phelps Heating & Air Conditioning, Inc.*, 746 N.E.2d 941, 949 (Ind. 2001) (emphasis in original omitted). By emphasizing clarity, flexibility and uniformity in drafting, practitioners can help their clients carry out commercial transactions with a minimum of "interference" to achieve their business goals. By focusing on the three goals of clarity, flexibility and uniformity, courts and advocates can advance commercial law and resolve business disputes effectively and efficiently.

The second key is to remember that almost all problems involving the UCC implicate more than one section of the Code. Thus, the Code should be understood as a whole, and the text of each Code provision should be read in light of the general purposes of the Code, and specific terms of related Code provisions. *See Rheem*, 746 N.E.2d at 949. The UCC is an interrelated document. Both within individual Articles and across the several Articles there are frequent cross-references and parallelisms. The overriding principles of Article 1 control the entire Code, but even more, the various Articles and sections within specific Articles often function in tandem to provide resolution of an issue. It is also important to remember that most commercial transactions are also controlled by other federal or state laws or regulations such as federal and state bankruptcy and insolvency laws, certain consumer protection laws, the federal Magnuson-Moss Warranty Act, Federal Trade Commission regulations and principles of common law, particularly with respect to matters such as agency, contracts, fraud, equity, and so on. *See* Indiana Code § 26-1-1-103.

The UCC does impose duties of good faith and reasonableness that are not imposed on other contracts or transactions as a matter of Indiana common law. Parties generally may not derogate the duties of good faith, diligence, reasonableness or care imposed on them by the Code. *See* Indiana Code § 26-1-1-102(3). However, the underlying principle of freedom of contract is preserved, and in some instances, even championed, in the UCC. The Code permits parties to apply the Code by analogy where it would not otherwise apply, and, within limits, permits them to modify or omit the application of certain Code provisions. Thus, parties can structure their commercial transactions as they see fit, better anticipate the consequences of their transactions and allocate the risks. *Rheem*, 746 N.E.2d at 950.

All fifty states and the U.S. territories have adopted some version of the UCC. Thus, as commerce transcends state and even international boundaries, the UCC becomes more useful as a means of making commercial transactions predictable. Although Indiana has not adopted the "Official Comments" to the UCC as a part of its statutory enactment of the Code, these Comments provide uniformity in interpretation and application of Code provisions. Indiana courts nevertheless frequently look to the Official Comments for guidance, and occasionally cite them as authority for a particular interpretation and adopt their reasoning. *See HCC Credit Corp. v. Springs Valley Bank & Trust*,

712 N.E.2d 952, 955 (Ind. 1999). Practitioners should routinely consult the Official Comments and should be particularly aware of them when dealing with a matter that crosses jurisdictional boundaries.

The Author's Comments sections in these volumes are not intended as a substitute for research, and do not contain extensive discussion of any particular section or case. Rather, these Comments are intended to be a starting point for analysis and problem solving. Commercial law will continue to evolve and change, and no one practitioner can fully grasp all the issues and nuances of such a diverse area of law.

I am flattered that Thomson/West asked me to tackle the Second Edition of these volumes. It has been an arduous task, at times tedious, but interesting and challenging. As the daily demands of law practice and family sometimes intruded on my plans to work on these volumes, the UCC mantra of simplicity, clarity, flexibility and uniformity took on another meaning for me. I am grateful to many people who have shaped me and my legal career along the way. I owe an immeasurable debt to my family, especially my two wonderful children, Matthew and Meredith, who have been supportive of me and my career, even when it meant long hours and time away from home.

My dear friend and law school professor, the late William F. Harvey, was a great influence on my legal career from those first days of law school when he called on me repeatedly to stand and recite in civil procedure class and for many years after law school. Bill taught me much and was an inspiration in many ways. I am grateful for the support of others, including the Honorable James Kirsch, and many, many colleagues and assistants. As the world around us changes and the ability to communicate electronically becomes mundane, lawyers bear a special responsibility to remember the human consequences of their actions. Behind every transaction or case, there are real people, and it is the people who are most important.

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