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Eighth Edition

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To Cindy, with love

—John

To Gabe, Caroline, and Penelope,
Thank you for your love and patience.

—Kathy
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Preface and Acknowledgements to the Third Supplement to the Eighth Edition

This is the Third Supplement to the Eighth Edition of Asset-Based Lending: A Practical Guide to Secured Financing, and it includes a number of updated segments. The many changes include the following:

First, there is a new discussion relative to the rights of the bankruptcy trustee under U.C.C. § 9-317(a)(2). That section deals with the rights of an unperfected security interest vis-à-vis the rights of a lien creditor and can provide the bankruptcy trustee an additional means to attack an unperfected security interest.

Second, there is a further development of the different treatment under PACA of a factoring relationship as opposed to a secured financing arrangement, explaining that to take advantage of the bona fide purchaser exception available to a factor, the transaction must be a true sale rather than a security interest securing an obligation.

Third, there is a discussion of whether a security interest can be created under Article 9 in fixtures that are affixed to real property at the time that the security interest first attaches.

Fourth, there is an update regarding new case law that deals with whether the Rule of Explicitness—a “rule” applicable to the treatment of disallowed post-petition interest in subordination agreements—continues to be alive and well.

Fifth, there is new discussion around the priority rules contained in U.C.C. § 9-326 relative to property acquired post-merger and the competing interests of the secured creditors of the original debtor and the secured creditors of the surviving debtor in a merger transaction.

JOHN FRANCIS HILSON
KATHERINE E. BELL
June 30, 2018