

1989

Commercial Law

Thomas J. Bamonte

Assoc., Sachnoff, Weaver & Rubenstein, Ltd., Chicago, IL

Beth Ballina Swank

Follow this and additional works at: <http://lawcommons.luc.edu/lucj>

 Part of the [Commercial Law Commons](#)

Recommended Citation

Thomas J. Bamonte, & Beth B. Swank, *Commercial Law*, 20 Loy. U. Chi. L. J. 253 (1989).

Available at: <http://lawcommons.luc.edu/lucj/vol20/iss2/3>

This Article is brought to you for free and open access by LAW eCommons. It has been accepted for inclusion in Loyola University Chicago Law Journal by an authorized administrator of LAW eCommons. For more information, please contact law-library@luc.edu.

Commercial Law

*Thomas J. Bamonte**
*and Beth Ballina Swank***

TABLE OF CONTENTS

I. INTRODUCTION	253
II. CONTRACTS	254
A. <i>Contract Construction</i>	254
B. <i>Contract Remedies</i>	257
III. EMPLOYEE BENEFITS	261
A. <i>Employee Retirement Income Security Act</i>	261
B. <i>Illinois Pension Code</i>	263
IV. SECURED TRANSACTIONS	265
V. SECURITIES REGULATION	268
VI. LEGISLATION	270
A. <i>The Business Corporation Act of 1983</i>	270
B. <i>The Professional Service Corporation Act</i>	271
C. <i>Limited Partnerships</i>	271
D. <i>The Uniform Commercial Code</i>	272
VII. CONCLUSION	273

I. INTRODUCTION

During the *Survey* year, the Illinois Supreme Court decided several cases in the field of commercial law. These decisions clarified principles in the law of contracts,¹ employee benefits,² secured transactions,³ and securities regulation.⁴ This Article will present a

* Associate, Sachnoff, Weaver & Rubenstein, Ltd., Chicago, Illinois; B.A., 1978, University of Chicago; J.D., 1983, Northwestern University.

** B.S., 1983, Georgetown University; J.D. candidate, 1989, Loyola University of Chicago.

1. *McLean County Bank v. Brokaw*, 119 Ill. 2d 405, 519 N.E.2d 453 (1988); *Midland Hotel Corp. v. Reuben H. Donnelly Corp.*, 118 Ill. 2d 306, 515 N.E.2d 61 (1987); *Rothe v. Maloney Cadillac, Inc.*, 119 Ill. 2d 288, 518 N.E.2d 1028 (1988). See *infra* notes 6-63 and accompanying text.

2. *Kennedy v. Deere & Co.*, 118 Ill. 2d 69, 514 N.E.2d 171 (1987); *Buddell v. Board of Trustees*, 118 Ill. 2d 99, 514 N.E.2d 184 (1987). See *infra* notes 64-99 and accompanying text.

3. *Medaris v. Commercial Bank of Champaign*, 118 Ill. 2d 443, 515 N.E.2d 1218

brief synopsis of these cases and examine their impact on commercial law. In addition, the Illinois General Assembly amended several statutes in the area of commercial law. This Article will highlight the most noteworthy of those amendments.⁵

II. CONTRACTS

A. Contract Construction

In *McLean County Bank v. Brokaw*,⁶ the Illinois Supreme Court interpreted the legal effect of a maximum indebtedness clause contained in a guaranty agreement. Beginning in 1977, McLean County Bank made a series of loans to the Brokaws' (the "Guarantors") son to finance his farming business.⁷ The initial loan was for \$50,000. At the Bank's request, the Guarantors signed a guaranty agreement as security for the debt.⁸ An additional loan was made the following year, and a guaranty agreement was executed for \$75,000 with the understanding that this agreement replaced the first.⁹ When their son's indebtedness climbed to \$182,957, the Guarantors signed a \$100,000 guaranty.¹⁰ Approximately one year later, a \$200,000 guaranty was executed by the Guarantors.¹¹ When the son's indebtedness reached \$216,724, Mr. Brokaw signed a \$250,000 guaranty without his wife's knowledge.¹² Subsequently, the Guarantors' son received additional extensions of credit from the Bank, and then he defaulted on his loan.¹³ The Bank sought to enforce both the \$200,000 and \$250,000 guaranties in order to collect the full amount of its loans.¹⁴

(1987); *Kramer v. Exchange Nat'l Bank of Chicago*, 118 Ill. 2d 277, 515 N.E.2d 57 (1987). See *infra* notes 100-120 and accompanying text.

4. *Daleiden v. Wiggins Oil Co.*, 118 Ill. 2d 528, 517 N.E.2d 1059 (1987). See *infra* notes 121-41 and accompanying text.

5. See *infra* notes 142-64 and accompanying text.

6. 119 Ill. 2d 405, 519 N.E.2d 453 (1988).

7. *Id.* at 409, 519 N.E.2d at 454.

8. *Id.*

9. *Id.*

10. *Id.* at 409, 519 N.E.2d at 454-55.

11. *Id.* at 409, 519 N.E.2d at 455.

12. *Id.* In pertinent part, this guaranty provided that the Guarantor:

[G]uarantee(s) absolutely and unconditionally the prompt payment when due, whether at maturity, by declaration, demand or otherwise, of any and all indebtedness from the Debtor to the Bank in a principal amount not to exceed \$250,000.00 (Two Hundred Fifty Thousand & no/100) Dollars in aggregate at any one time outstanding

Id. at 411, 519 N.E.2d at 455. The \$200,000 guaranty was identical, except for the stated principal amount. *Id.* at 411, 519 N.E.2d at 456.

13. *Id.* at 409-10, 519 N.E.2d at 455.

14. *Id.* at 408, 519 N.E.2d at 454. The Bank contended that Mrs. Brokaw's failure to

The Illinois Supreme Court rejected the Guarantors' contention that they were discharged from liability under both guaranties.¹⁵ It determined that the Bank had not materially altered the terms of the contract by extending credit to the Guarantors' son in excess of the principal amount specified in the agreements.¹⁶ The court articulated the rule as follows:

In the absence of an expressed intention in the contract that the maximum amount of credit specified is to be a limitation on the amount of credit to be extended and an absolute condition of the guarantor's undertaking, the extension of credit beyond that amount does not discharge or release the guarantor of liability on the specified amount.¹⁷

The court found that the Bank's extension of additional credit over the principal amount stated in the guaranties did not constitute a material change in the guaranty agreements because the additional credit had not increased the Guarantors' liability.¹⁸ The amount specified merely represented the total amount for which they would be liable regardless of the amount of credit extended to their son.¹⁹

The court, however, rejected the Bank's argument that the Guarantors were liable on both guaranties. It held that a discharge of liability by novation had occurred by the Bank's consent to the substitution of the \$250,000 guaranty for the \$200,000 guaranty.²⁰ The court found that the Bank's consent to the substitution could be inferred from the parties practice of replacing prior agreements with newly executed guaranties.²¹ In addition, the court noted that the Bank had sought a \$300,000 guaranty when its loans to the son exceeded \$250,000, indicating that the Bank believed it had only a \$250,000 guaranty.²²

Finally, the Guarantors contended that the Bank breached its

sign the \$250,000 agreement left her liable on the \$200,000 agreement based on the joint and several liability clause of that agreement. *Id.* at 415, 519 N.E.2d at 457.

15. *Id.* at 416, 519 N.E.2d at 458.

16. *Id.* at 414, 519 N.E.2d at 457.

17. *Id.* at 412, 519 N.E.2d at 456. The trial court ruled that the \$250,000 agreement superseded the previous \$200,000 agreement, thereby releasing Mrs. Brokaw from any liability. The appellate court, however, found the Guarantors jointly and severally liable on the initial \$200,000 agreement and held Mr. Brokaw individually liable for \$50,000 due to his obligations under the subsequent guaranty of \$250,000. *Id.* at 410, 519 N.E.2d at 455.

18. *Id.* at 414, 519 N.E.2d at 457.

19. *Id.*

20. *Id.* at 416, 519 N.E.2d at 458.

21. *Id.*

22. *Id.*

implied obligation of good faith and fair dealing by failing to disclose their son's deteriorating financial condition when requesting larger guaranties.²³ The guaranties, however, explicitly waived notice to the Guarantors of additional extensions of credit, and the court rejected the merits of the Guarantors' breach of good faith claim.²⁴ In rejecting the claim, the court emphasized that such a defense is valid only when the creditor fails to notify guarantors of facts that materially increase their risk under the guaranty and that the creditor reasonably believes are unknown to the guarantor.²⁵ The record revealed that the Bank did attempt to keep the Guarantors apprised of their son's financial status²⁶ and, more importantly, that the Guarantors were aware of their son's financial condition.²⁷

The *McLean* decision is noteworthy in two respects. First, the court failed to recognize that a guarantor's "liability" does in fact increase when the lender extends additional credit to the borrower. A guarantor's liability is the amount of the guaranty discounted by the likelihood that the borrower will repay the obligation that has been guaranteed. As the indebtedness of a given borrower increases, so does the risk that the borrower will default. In *McLean*, for example, the cash flow from the son's farming operation may have been enough to service a \$200,000 loan but not a \$400,000 loan. Consequently, to maintain their liability at the bargained-for levels, guarantors should insist that the guaranty contain a cap on the amount of debt to be extended to a debtor. Extensions of additional credit to the borrower expose guarantors to more risk than they have bargained for by materially increasing the likelihood that they will have to honor the guaranty.

The rule should be that guarantors will be released from their obligations when the lender makes additional extensions of credit that materially increase the risk of default without the consent of the guarantor. The *McLean* case was not the place to announce such a rule because the Guarantors had waived notice. The decision suggests, however, that the court may adopt a contrary rule that allows lenders to make additional extensions of credit without advising the guarantors of the greater risks that result from such lending.

23. *Id.*

24. *Id.* at 417, 519 N.E.2d at 458.

25. *Id.*

26. *Id.*

27. *Id.* at 417-18, 519 N.E.2d at 458-59.

The second reason *McLean* is noteworthy is the court's willingness to look beyond the Guarantors' waiver of notice of additional credit extensions to determine if the lender had breached its obligation of good faith and fair dealing. In *McLean*, the court concluded that the lender had not breached its obligation because the Guarantors were well aware of their son's deteriorating financial condition.²⁸ The decision strongly suggests that a waiver made in the absence of any first-hand knowledge of the debtor's financial condition is insufficient to defeat a breach of good faith claim.

B. Contract Remedies

During the *Survey* period, the Illinois Supreme Court decided two cases addressing issues of contract remedies. In *Midland Corp. v. Reuben H. Donnelly Corp.*,²⁹ the issues were whether the parties had entered into an enforceable oral contract to provide appropriate listings for the plaintiff hotel (the "Hotel") in a new telephone directory and, if so, the proper calculation of damages.³⁰ The Hotel sought lost profits measured by the difference between its occupancy rate and the city-wide average hotel occupancy rate.³¹ The defendant argued that there had been no meeting of the minds,³² that the term "appropriate listings" was overly ambiguous, and hence, there was no enforceable contract.³³ The defendant also claimed that the Hotel's lost profits were uncollectible because they were not within the reasonable contemplation of the parties at the time the contract was entered into,³⁴ and in any event, the measure of lost profits was speculative and facially flawed.³⁵

The *Midland Hotel* decision outlined an expansive rule for the jury in resolving contract disputes. Despite weak testimony by the Hotel's witness as to the promise of appropriate listings in the directory, and evidence that such listings were contrary to the de-

28. *Id.*

29. 118 Ill. 2d 306, 515 N.E.2d 61 (1987).

30. The trial court awarded Midland Hotel \$500,000 in damages for lost profits. On appeal, the appellate court remanded the case on the issue of damages because the trial court had improperly refused a jury instruction that lost profits, to be recoverable, must have been within the reasonable contemplation of the defendant when the contract was formed. *Id.* at 309-10, 515 N.E.2d at 63.

31. *Id.* at 311, 515 N.E.2d at 64.

32. *Id.* at 313, 515 N.E.2d at 65.

33. *Id.* at 314, 515 N.E.2d at 65.

34. *Id.* at 318, 515 N.E.2d at 67.

35. *Id.* at 316-17, 515 N.E.2d at 66.

defendant's policy,³⁶ the court held that it was for the jury to make that credibility determination.³⁷ The court also stated that it was the jury's task to determine whether there was a meeting of the minds on the "appropriate listings" term of the contract.³⁸ It stressed that the test of whether a contract has been formed is an objective one; the parties need not share the same subjective understanding as to the terms of the contract.³⁹ The jury is charged with making this objective determination.⁴⁰ Once the jury found that the defendant had promised the Hotel appropriate listings, the issue of whether this promise accurately reflected the defendant's subjective intention was irrelevant.⁴¹

The Illinois Supreme Court also held that the trial court properly refused a proposed jury instruction that the Hotel's lost profits must have been within the reasonable contemplation of the defendant at the time the contract was made in order for the Hotel to recover such profits.⁴² On this issue, the court likewise adopted an objective approach. Only when damages are the consequence of special or unusual circumstances must it be shown that the damages were within the reasonable contemplation of the parties.⁴³ When contract damages are a direct and foreseeable consequence of the defendant's breach as a matter of law, the plaintiff need not prove that the parties reasonably contemplated such damages.⁴⁴ In *Midland Hotel*, the very purpose of the directory listing, as touted in various marketing brochures, was to increase profits. Lost profits were, therefore, a direct result of defendant's failure to provide that listing.⁴⁵

The court emphasized, however, that the Hotel must prove with a reasonable degree of certainty that the defendant's contract breach caused some or all of the Hotel's losses. It remanded the case for a recalculation of damages because the Hotel had failed to isolate that portion of its lost profits that were attributable to the

36. *Id.* at 310-11, 515 N.E.2d at 63-64.

37. *Id.* at 312, 515 N.E.2d at 64.

38. *Id.* at 314, 515 N.E.2d at 65.

39. *Id.*

40. *Id.*

41. The court gave short shrift to the defendant's argument that the term "appropriate listing" was too ambiguous to be enforced. According to the court, common sense indicated that an appropriate listing was one under the "Hotel" section of the directory. *Id.* at 314-15, 515 N.E.2d at 65.

42. *Id.* at 319, 515 N.E.2d at 67.

43. *Id.* at 318, 515 N.E.2d at 67.

44. *Id.*

45. *Id.* at 319, 515 N.E.2d at 67.

defendant's breach.⁴⁶ The court noted that it was unlikely that the failure to list the Hotel was by itself the cause of the Hotel's failure to meet the city-wide occupancy average.⁴⁷ The Hotel's occupancy level was below the average before the failure to list occurred, and this disparity actually increased once the Hotel was finally listed.⁴⁸

Thus, the *Midland Hotel* decision marks two steps forward and one big step backward for plaintiffs in breach of contract actions. On the one hand, the court refused to allow defendants to escape their contractual obligations or to abate contract damages by claiming they had a different subjective understanding of the contract. On the other hand, the court made it more difficult for plaintiffs to recover damages by putting the burden on plaintiffs to show with a reasonable degree of certainty that the defendant's breach caused a specific portion of the lost profits. This burden is a heavy one and may result in frequent battles between experts in breach of contract cases.

The issue of contract remedies also arose in *Rothe v. Maloney Cadillac, Inc.*⁴⁹ Referring to its prior decision in *Szajna v. General Motors Corp.*,⁵⁰ the Illinois Supreme Court reiterated that section 2310(d)(1) of the Magnuson-Moss Warranty Act ("Magnuson-Moss")⁵¹ provides consumers with a cause of action for breach of implied warranties of merchantability and fitness for a particular purpose against manufacturers who make express warranties.⁵²

In *Rothe*, the plaintiff sought to recover economic losses from the manufacturer, General Motors ("GM"), as a result of purchasing a defective automobile.⁵³ The plaintiff lacked the necessary buyer-seller relationship with GM and, therefore, did not have standing to assert a cause of action predicated upon implied war-

46. *Id.* at 317-18, 515 N.E.2d at 67. The Hotel derived its estimation of lost profits from "Trends in The Hotel Industry" (the "Trends"), a trade publication. However, the evidence did not sustain the assumption that the Hotel would have performed as well as the Trends average but for the defendant's breach. *Id.* at 316-18, 515 N.E.2d at 66-67.

47. *Id.* at 317, 515 N.E.2d at 66.

48. *Id.*

49. 119 Ill. 2d 288, 518 N.E.2d 1028 (1988).

50. 115 Ill. 2d 294, 503 N.E.2d 760 (1986).

51. 15 U.S.C. § 2310(d)(1) (1982).

52. *Rothe*, 119 Ill. 2d at 295, 518 N.E.2d at 1031.

53. *Id.* at 289-90, 518 N.E.2d at 1028. The circuit court dismissed the plaintiff's implied warranty claims against GM due to a lack of privity. The appellate court held that: 1) the lack of privity did not preclude recovery against GM for breach of the Uniform Commercial Code's implied warranties of merchantability and fitness for a particular purpose; and 2) section 2308(a) of Magnuson-Moss renders disclaimers of implied warranties ineffective when the manufacturer has given the consumer an express warranty. *Id.* at 290-91, 518 N.E.2d at 1029.

ranties arising under state law.⁵⁴ In contrast, section 2310(d)(1) of Magnuson-Moss⁵⁵ supplies a cause of action by authorizing actions brought by "consumers"⁵⁶ against all "suppliers"⁵⁷ for breach of "implied warranties."⁵⁸ Suppliers, including manufacturers such as GM, also are prohibited by section 2308(a) of Magnuson-Moss from disclaiming these implied warranties when express warranties have been made to the consumer.⁵⁹ In *Szajna*, the court concluded that Magnuson-Moss not only prohibited a manufacturer/express warrantor from disclaiming state law implied warranties, but that the Act actually imposed those implied warranties upon the manufacturer/express warrantor, though under state law they are imposed only upon the buyer's immediate seller.⁶⁰ Therefore, the plaintiff had standing to assert implied warranty violations against GM pursuant to Magnuson-Moss.⁶¹

Significantly, the court refused to limit its decision to those cases arising after *Szajna*.⁶² The *Szajna* case had not overruled precedent or created new law; it merely interpreted certain provisions of Magnuson-Moss that the court previously had not had an opportunity to address.⁶³ Therefore, the *Szajna* and *Rothe* decisions may be applied retroactively.

The *Rothe* decision will no doubt be applauded by consumers. Plaintiffs have been guaranteed access to the party ultimately responsible for the construction of the product, and the party with

54. *Id.* at 292, 518 N.E.2d at 1031.

55. 15 U.S.C. § 2310(d)(1) (1982).

56. 15 U.S.C. § 2301(3) (1982). Section 2301(3) defines "consumer" broadly "to include not only the purchaser of a consumer product but numerous others as well, including certain transferees." *Rothe*, 119 Ill. 2d at 293, 518 N.E.2d at 1030.

57. Section 2301(4) defines "supplier" as "any person engaged in the business of making a consumer product directly or indirectly available to consumers." 15 U.S.C. § 2301(4) (1982).

58. 15 U.S.C. § 2301(7) (1982). Section 2301(7) defines an "implied warranty" as "an implied warranty arising under State law (as modified by section 2308 and 2304(a) of this title) in connection with the sale by a supplier of a consumer product." *Id.*

59. *Rothe*, 119 Ill. 2d at 294, 518 N.E.2d at 1030. In *Szajna*, the Illinois Supreme Court acknowledged that some authorities incorporate state law without modification and impose section 2301(7) implied warranties only on the immediate seller. *Szajna*, 115 Ill. 2d at 314, 503 N.E.2d at 768-69. In *Rothe*, however, the court recognized that "the language in section 2301(7) . . . explicitly indicates that State-law implied warranties are *modified* by several other Magnuson-Moss provisions, including section 2308." *Rothe*, 119 Ill. 2d at 293-94, 518 N.E.2d at 1030 (emphasis in original).

60. *Szajna*, 115 Ill. 2d at 315-17, 503 N.E.2d at 769-70. In *Rothe*, the court reaffirmed its position in *Szajna* that "Magnuson-Moss broadens the reach of the UCC article II implied warranties." *Rothe*, 119 Ill. 2d at 295, 518 N.E.2d at 1031.

61. *Rothe*, 119 Ill. 2d at 295, 518 N.E.2d at 1031.

62. *Id.*

63. *Id.*

the deepest pockets. Reflecting an obvious concern for equity, the decision represents the court's common sense interpretation of Magnuson-Moss. The statute clearly provides consumers with a direct cause of action against suppliers for implied warranties, and the court was simply unwilling to fashion its own definition of "supplier" by restricting its meaning to retailers.

III. EMPLOYEE BENEFITS

A. *Employee Retirement Income Security Act*

In *Kennedy v. Deere & Co.*,⁶⁴ the Illinois Supreme Court held that when an employee-participant assigns his right to benefits under a health care plan subject to the Employee Retirement Income Security Act of 1974 ("ERISA")⁶⁵ to a health care provider, the health care provider has standing to bring a federal action under ERISA to enforce that right.⁶⁶ The plaintiffs had provided chiropractic services to Deere & Co. ("Deere") employees who were participants in an ERISA health and welfare plan.⁶⁷ These employees assigned their rights to reimbursement for health care benefits under the plan to the plaintiffs on forms prepared by Deere.⁶⁸ When the trustees of the plan refused to honor some of the assignments, the plaintiffs filed suit to recover damages under ERISA.⁶⁹

ERISA provides that "participants"⁷⁰ and "beneficiaries"⁷¹ may

64. 118 Ill. 2d 69, 514 N.E.2d 171 (1987).

65. 29 U.S.C. §§ 1001-1461 (1982).

66. *Kennedy*, 118 Ill. 2d at 76, 514 N.E.2d at 174. Section 502(a)(1)(B) of ERISA provides in pertinent part: "A civil action may be brought —

(1) by a participant or beneficiary —

(B) to recover benefits due to him under the terms of his plan, to enforce his rights under terms of the plan, or to clarify his rights . . . under the terms of the plan" 29 U.S.C. § 1132 (a)(1)(B) (1982).

67. *Kennedy*, 118 Ill. 2d at 70, 514 N.E.2d at 171.

68. *Id.* at 74, 514 N.E.2d at 173.

69. *Id.* at 71, 514 N.E.2d at 171-72. Upon Deere's motion, the circuit court dismissed the suit for lack of standing to sue under ERISA as beneficiaries. The appellate court reversed the dismissal. *Id.* at 70, 514 N.E.2d at 171.

70. ERISA defines a "participant" as:

[A]ny employee or former employee of an employer, or any member or former member of an employee organization, who is or may become eligible to receive a benefit of any type from an employee benefit plan which covers employees of such employer or members of such organization, or whose beneficiaries may be eligible to receive any such benefit.

29 U.S.C. § 1002(7) (1982).

71. ERISA defines a "beneficiary" as "a person designated by a participant, or by the

bring civil actions to recover benefits and enforce rights thereto.⁷² A "participant" is an employee who is eligible to receive benefits under a benefit plan.⁷³ A "beneficiary" includes a person designated by a participant.⁷⁴ Deere argued that because ERISA was intended to protect "participants" and their families, only family members and other dependents could be designated as "beneficiaries."⁷⁵ It claimed that giving assignees standing would result in a deluge of litigation that would discourage employers from offering ERISA plans.⁷⁶

The court observed that there is nothing in the language of ERISA or its legislative history to suggest that Congress intended to narrowly define "beneficiary" status.⁷⁷ Following the Ninth Circuit's decision in *Misic v. Building Service Employees Health & Welfare Trust*,⁷⁸ the court found that allowing participants to assign their rights to reimbursement to health care providers permits these providers to render service without evaluating the solvency of the patient. Furthermore, the court found that the assignments obviate the need for participants to pay medical bills and then wait for reimbursement.⁷⁹ The court rejected Deere's argument that participants could assign benefits to health care providers but could not likewise assign their cause of action to enforce their right to those benefits.⁸⁰

The court decided the *Kennedy* case correctly. Deere's argument represented a brazen attempt to deny health care providers any remedy for rights assigned to them by ERISA participants. As the court recognized, section 514(a) of ERISA preempts any common law action by health care providers to enforce assigned rights to reimbursement under an ERISA plan.⁸¹ Deere would have denied health care providers their only remedy to enforce such rights.

terms of an employee benefit plan, who is or may become entitled to a benefit thereunder." 29 U.S.C. § 1002(8) (1982).

72. *Kennedy*, 118 Ill. 2d at 71, 514 N.E.2d at 172.

73. *See supra* note 70.

74. *See supra* note 71.

75. *Kennedy*, 118 Ill. 2d at 73, 514 N.E.2d at 172-73.

76. *Id.* at 73, 514 N.E.2d at 173.

77. *Id.* at 73-74, 514 N.E.2d at 173. The court compared section 206(d) of ERISA, which prohibits the assignment of pension benefits, with section 502(a)(1)(B) and its legislative history, which does not evince a congressional intent to prohibit assignments of health care benefits or to limit the class of persons a participant is permitted to designate to receive benefits under a health benefits plan. *Id.* at 74, 514 N.E.2d at 173.

78. 789 F.2d 1374 (9th Cir. 1986).

79. *Kennedy*, 118 Ill. 2d at 75, 514 N.E.2d at 173-74.

80. *Id.* at 75, 514 N.E.2d at 174.

81. *Id.*

Under Deere's approach, employees could assign their right to reimbursement to a health care provider and the company could refuse to pay the provider without risk of liability. The motive for the company's litigation undoubtedly was to gain additional leverage over health care providers serving its employees in order to drive down its health care expenses. The company's position also would have deterred employees from exercising their rights to benefits under the ERISA plan because they may have been personally liable for that portion of the health care costs for which the company chose not to reimburse the health care provider. Once again, the court correctly held that Deere's position conflicted with ERISA's overriding purpose of ensuring adequate financing for the health care needs of the participants in ERISA plans.

B. Illinois Pension Code

*Buddell v. Board of Trustees*⁸² presented the Illinois Supreme Court with the only issue of constitutional dimension in the area of commercial law. In that case, the court struck down an amendment to the Illinois Pension Code⁸³ that gave military service credit only to those persons who had applied for such credit before the date of the amendment.⁸⁴

The plaintiff had been hired by Southern Illinois University in 1969, following one and three-fourth years of active duty in the armed forces.⁸⁵ At that time, section 15-113(1)(i) of the Pension Code allowed participating state employees to purchase military service credit for time spent in military service.⁸⁶ There was no deadline for applying for this military service credit. In 1974, section 15-113(1)(i) of the Pension Code was amended to limit such credit to those who had applied by September 1, 1974.⁸⁷ In 1983, Buddell applied to the Board of Trustees of the University Retirement System (the "Board") to purchase his military service credit.⁸⁸ When the Board denied his application,⁸⁹ Buddell chal-

82. 118 Ill. 2d 99, 514 N.E.2d 184 (1987).

83. ILL. REV. STAT. ch. 108 1/2, para. 15-113.7 (1987).

84. *Buddell*, 118 Ill. 2d at 106, 514 N.E.2d at 188.

85. *Id.* at 100, 514 N.E.2d at 185.

86. *Id.* at 101, 514 N.E.2d at 185.

87. Section 15-113, as amended, provides as follows:

This paragraph shall not apply to persons who become participants in the system after September 1, 1974. Credit for military service under this section shall be allowed only to persons who have applied for credit under this paragraph and have applied for such credit before September 1, 1974.

ILL. REV. STAT. ch. 108 1/2, para. 15-113.7 (1987).

88. *Buddell*, 118 Ill. 2d at 101, 514 N.E.2d at 185.

lenged the constitutionality of the amendment under article XIII, section 5, of the Illinois Constitution.⁹⁰

The court found that the plaintiff's right to purchase one and three-fourth years of military service credit at any time was a benefit that could not be defeated or diminished without violating the constitution.⁹¹ The court did not dispute the Board's assertion that the Illinois Constitution allows changes to the terms of employment that affect the amount of an employee's retirement benefits. The court emphasized, however, that such changes are permissible only when they are the result of amendments to statutory provisions outside of the Pension Code.⁹² The court drew a distinction between laws that merely have the underlying effect of diminishing the amount of benefits due (*i.e.*, raising the mandatory retirement age)⁹³ and those, like the one in issue, that specifically diminished the plaintiff's contractual rights under the Pension Code.⁹⁴ Since the plaintiff's right to purchase military service credit was contained within the Pension Code, this right could not be altered, modified, or released by amendment to the Code.⁹⁵

The Board also argued that the military service credit provision was unenforceable as a non-vested benefit.⁹⁶ Nevertheless, the

89. *Id.* The Board's denial of Buddell's application constituted a final administrative decision under the Administrative Review Law, ILL. REV. STAT. ch. 110, paras. 3-101 to 3-112 (1987). *Buddell*, 118 Ill. 2d at 101, 514 N.E.2d at 185. The circuit court held section 15-113(i) unconstitutional in light of article XIII, section 5, of the Illinois Constitution of 1970, which prohibits diminishing or impairing the benefits of any membership in any state pension or retirement system. *Id.*

90. *Id.* Article XIII, section 5, provides that "[m]embership in any pension or retirement system of the State, any unit of local government or school district, or any agency or instrumentality thereof, shall be an enforceable contractual relationship, the benefits of which shall not be diminished or impaired." ILL. CONST. art. XIII, § 5.

91. *Buddell*, 118 Ill. 2d at 104-05, 514 N.E.2d at 187.

92. Relying on *Peters v. City of Springfield*, 57 Ill. 2d 142, 311 N.E.2d 107 (1974), the Board argued that not all changes in the terms of employment that affect the amount of an employee's retirement benefits are prohibited by article XIII, section 5, of the Illinois Constitution. *Buddell*, 118 Ill. 2d at 103, 514 N.E.2d at 186. In *Peters*, the statutory maximum retirement age for firemen (not contained in the Pension Code) was set higher than the age at which benefits are made available under ERISA. *Peters*, 57 Ill. 2d at 144, 311 N.E.2d at 108. The Illinois Supreme Court held that it would be constitutional to set the retirement age at a point that incidentally affected the pension that the firemen ultimately would receive. *Id.* at 152, 311 N.E.2d at 112.

93. See *supra* note 92 and accompanying text.

94. *Buddell*, 118 Ill. 2d at 104-05, 514 N.E.2d at 187. The court observed that "[i]n our case the rights claimed by the plaintiff are those that were contained within the Pension Code itself and not provided for in some other statutory provision relating to other matters which incidentally affect pension benefits." *Id.* at 104, 514 N.E.2d at 187.

95. *Id.* at 104-05, 514 N.E.2d at 187.

96. *Id.* at 105, 514 N.E.2d at 187. The Board relied on *Ziebell v. Board of Trustees*, 73 Ill. App. 3d 894, 392 N.E.2d 101 (1st Dist. 1979), arguing that because the plaintiff

court determined that the plaintiff was not seeking gratuitous benefits, but merely the right to purchase his service credit.⁹⁷ When the plaintiff became a participant in the University Retirement System, the Pension Code provided that he could purchase military service credit.⁹⁸ It was the right to purchase the credit that he sought to enforce, and not a right to the benefits.⁹⁹

In *Buddell*, the court attempted to draw a bright line distinction between prohibited amendments to the Pension Code that diminish benefits, and other permissible statutory amendments that may have the effect of diminishing pension benefits. This distinction seems to be an open invitation for state and local authorities to attempt to evade article XIII, section 5, of the Illinois Constitution by the use of legislative enactments that are not made part of the Pension Code. Rather than relying on this distinction, the court should review all legislative enactments to determine if the intended effect of the enactment is to diminish or impair any enforceable pension benefit.

IV. SECURED TRANSACTIONS

The Illinois Supreme Court decided two cases in the area of secured transactions during the *Survey* period. In *Medaris v. Commercial Bank of Champaign*,¹⁰⁰ the court held that debtors in bankruptcy were ineligible to exempt any portion of the proceeds from the sale of their automobile from their secured creditor's claims when the debtor had purchased the automobile within six months of declaring bankruptcy.¹⁰¹ The plaintiffs (the "Debtors") purchased an automobile financed entirely by the defendant (the "Bank"), which retained a perfected purchase money security interest in the automobile.¹⁰² Five months later, the Debtors filed a petition for bankruptcy and claimed that the automobile was exempt property under section 12-1001 of the Illinois Code of Civil

had not acted to avail himself of his benefit prior to September 1, 1974, the benefit had not vested and he had no rights under the military service credit provision. *Id.* The *Ziebell* court held that additional pension benefits cannot be conferred without additional payments into the fund. *Ziebell*, 73 Ill. App. 3d at 898-99, 392 N.E.2d at 106. In *Buddell*, however, the plaintiff sought only to purchase the additional credits, and not to obtain the payment of the additional benefits. *Buddell*, 118 Ill. 2d at 105, 514 N.E.2d at 187.

97. *Buddell*, 118 Ill. 2d at 105, 514 N.E.2d at 187.

98. *Id.*

99. *Id.* See *supra* note 96 and accompanying text.

100. 118 Ill. 2d 443, 515 N.E.2d 1218 (1987).

101. *Id.* at 445-46, 515 N.E.2d at 1219.

102. *Id.* at 445, 515 N.E.2d at 1218.

Procedure.¹⁰³

The Illinois Supreme Court summarily dismissed the Debtors' arguments, stating that section 12-1001 provides that "[p]roperty acquired within 6 months of the filing of the petition for bankruptcy shall be presumed to have been acquired in contemplation of bankruptcy."¹⁰⁴ Because the Debtors acquired the automobile within six months of declaring bankruptcy, the court presumed that they did so with the intent to transform nonexempt property into exempt property.¹⁰⁵ Therefore, the Debtors were unable to shield any portion of the value of the automobile from their creditor, the Bank.¹⁰⁶

The court either denied the Debtors the opportunity to rebut the presumption in section 12-1001 that property acquired within six months of bankruptcy was acquired in contemplation of bankruptcy, or it completely ignored all evidence to the contrary. In *Medaris*, the Debtors' purchase of the automobile was financed entirely by the Bank. The Debtors therefore did not have any equity in the property that they were allegedly attempting to put outside the reach of creditors. When the court is again faced with this issue, it must allow debtors the opportunity to rebut that presumption if it is to promote both justice and the spirit of the law.

The court strengthened creditors' rights in *Kramer v. Exchange National Bank of Chicago*.¹⁰⁷ Exchange National Bank of Chicago loaned \$300,000 to American Properties Corporation ("APC"), a corporation owned entirely by the plaintiff (the "Debtor").¹⁰⁸ In return, the Bank took a note executed by the Debtor as secretary/

103. *Id.*

104. *Id.* Section 12-1001 of the Illinois Code of Civil Procedure provides in part:

The following personal property, owned by the debtor, is exempt from judgment, attachment or distress for rent:

.....

(c) The debtor's interest, not to exceed \$1,200 in value, in any one motor vehicle;

.....

If a debtor owns property exempt under this Section and he or she purchased such property with the intent of converting nonexempt property into exempt property or in fraud of his or her creditors, such property shall not be exempt from judgment, attachment or distress for rent. Property acquired within 6 months of the filing of the petition for bankruptcy shall be presumed to have been acquired in contemplation of bankruptcy.

ILL. REV. STAT. ch. 110, para. 12-1001 (1987).

105. *Medaris*, 118 Ill.2d at 445-46, 515 N.E.2d at 1219.

106. *Id.* at 446, 515 N.E.2d at 1219.

107. 118 Ill. 2d 277, 515 N.E.2d 57 (1987).

108. *Id.* at 279, 515 N.E.2d at 58.

treasurer of APC pledging certain real property as collateral.¹⁰⁹ After the note was executed and delivered, the Bank unilaterally added an assignment of the beneficial interest in the Debtor's personal residence as collateral for the loan.¹¹⁰ Upon default, the residence was sold at auction by the Bank and foreclosure proceedings were instituted against the other real property collateral.¹¹¹

The Debtor complained that the note was unenforceable because it had been materially altered by the Bank's addition of the residence as collateral.¹¹² The Bank, on the other hand, claimed that the addition was authorized under a continuing guaranty and security agreement in favor of the Bank executed by the Debtor for a loan made to APC in 1978.¹¹³ That security agreement authorized the Bank to designate the residence as collateral for all future loans.¹¹⁴

The court disagreed with the Debtor's assertion that a material alteration of the note had occurred. Section 3-407 of the Uniform Commercial Code discharges a party from liability on an instrument only when there has been a fraudulent or material alteration of the instrument.¹¹⁵ The Bank's addition of the Debtor's residence as collateral was not fraudulent or material, the court reasoned, because the Bank did not attempt to impose additional unauthorized obligations on the Debtor. According to the court, the Bank's listing of the Debtor's residence was authorized by the previous guaranty and security agreement that the Debtor had executed.¹¹⁶

The Debtor also argued that the Bank could not bring a foreclosure proceeding against the real property collateral at the same time that it conducted a non-judicial sale of the Debtor's personal residence.¹¹⁷ The Illinois Supreme Court disagreed. The court cited section 9-501(4) of the Uniform Commercial Code, which authorizes the concurrent attachment and liquidation of pledged real and personal property upon a debtor's default.¹¹⁸

The court was precluded from enjoining the sale of the residence

109. *Id.*

110. *Id.* The beneficial interest was held under a land trust. Consequently, it was regarded as personal property. *Id.* at 280, 515 N.E.2d at 58-59.

111. *Id.* at 280, 515 N.E.2d at 58.

112. *Id.* at 280-81, 515 N.E.2d at 59.

113. *Id.* at 281, 515 N.E.2d at 59.

114. *Id.*

115. *Id.* at 282-83, 515 N.E.2d at 60.

116. *Id.* at 283-84, 515 N.E.2d at 60.

117. *Id.* at 284, 515 N.E.2d at 60.

118. *Id.* at 284-85, 515 N.E.2d at 60-61.

on the basis of the homestead exemption because the issue was not raised at the appellate court level.¹¹⁹ The issue was, therefore, effectively waived and not an issue in the appeal.¹²⁰

V. SECURITIES REGULATION

In *Daleiden v. Wiggins Oil Co.*,¹²¹ the Illinois Supreme Court expanded the scope of investment contracts that must be registered for sale in Illinois. The court allowed investors in an oil and gas venture to rescind the sale and recover the entire amount invested in the contract, which included amounts paid for the drilling and completion of the well.¹²² The plaintiffs (the "Purchasers") had purchased a ten percent undivided interest in two oil and gas wells located in Texas.¹²³ The letter of agreement drafted by Wiggins Oil Company provided that the Purchasers agreed "to pay 12.5% of all costs incurred in the drilling, testing, completing, and equipping or plugging for [their] 10% of said well."¹²⁴ Most of the money invested by the Purchasers covered drilling and completion costs rather than the cost of acquiring the land upon which the oil well was drilled. The investment contract was not registered for sale in Illinois.¹²⁵ When the Purchasers discovered the wells were dry, they sought to rescind the sale as voidable and to recover all sums expended in the venture.¹²⁶

The trial court held that the Purchasers could recover only the portion of their investment attributable to the acquisition of the leasehold for the well.¹²⁷ The court relied upon *Hammer v. Sanders*.¹²⁸ In that case, the Illinois Supreme Court interpreted the Illinois Securities Law of 1919 as excluding sums spent to pay drilling costs from the consideration paid for a "security" and held that such sums could not be recovered in an action for rescission under

119. *Id.* at 286, 515 N.E.2d at 61.

120. *Id.*

121. 118 Ill. 2d 528, 517 N.E.2d 1059 (1987).

122. *Id.* at 540, 517 N.E.2d at 1065.

123. *Id.* at 531, 517 N.E.2d at 1060.

124. *Id.*

125. *Id.* at 531-32, 517 N.E.2d at 1061. The Securities Law of 1953 provides that "[a]ll securities except those exempt . . . under Section 4 of this Act . . . shall be registered . . . prior to their offer or sale in this State [with the office of the Secretary of State]." ILL. REV. STAT. ch. 121 1/2, para. 137.5 (1987).

126. *Daleiden*, 118 Ill. 2d at 532, 517 N.E.2d at 1061. The Securities Law of 1953 also provides that "[e]very sale of a security made in violation of the provisions of this Act shall be voidable at the election of the purchaser." ILL. REV. STAT. ch. 121 1/2, para. 137.13(A) (1987).

127. *Daleiden*, 118 Ill. 2d at 532, 517 N.E.2d at 1061.

128. 8 Ill. 2d 414, 134 N.E.2d 509, *cert. denied*, 352 U.S. 878 (1956).

the state securities law.¹²⁹

The *Hammer* decision was issued over three dissents, and the appellate courts repeatedly avoided applying the decision.¹³⁰ The *Daleiden* court, however, refused the Purchasers' invitation to overrule *Hammer*. Instead, the court distinguished the present action from *Hammer* by noting that the Illinois Securities Law of 1953¹³¹ rather than the Securities Law of 1919¹³² applied.¹³³ The interpretive comments to the 1953 Act¹³⁴ provide that the definition of "security" was taken from the Federal Securities Act of 1933, and that the term "investment contract" is to be interpreted in a manner consistent with its meaning as refined by pertinent federal court decisions.¹³⁵ Thus, the court was not constrained by the *Hammer* decision, and it took a new look at the question of whether investors can recover drilling and completion costs in rescission actions under the 1953 Act.

With the urging of the Illinois Secretary of State as *amicus curiae*,¹³⁶ the Illinois Supreme Court focused on the "economic realities" of the case.¹³⁷ The record clearly indicated that the Purchasers invested in the Oil Company in order to realize a profit from the Oil Company's efforts.¹³⁸ According to the court, sums spent for drilling and other operational expenses cannot be divorced from the cost of the leasehold itself, as both amounts were

129. *Id.* at 424, 134 N.E.2d at 514.

130. *Id.* at 425, 134 N.E.2d at 515. See *Wright v. Richards*, 144 Ill. App. 3d 450, 494 N.E.2d 1269 (5th Dist. 1986); *Witter v. Buchanan*, 132 Ill. App. 3d 273, 476 N.E.2d 1123 (1st Dist. 1985); *Illinois Nat'l Bank & Trust Co. v. Gulf States Energy Corp.*, 102 Ill. App. 3d 1113, 429 N.E.2d 1301 (2d Dist. 1981); *Meihsner v. Runyon*, 23 Ill. App. 2d 446, 163 N.E.2d 236 (2d Dist. 1960).

131. ILL. REV. STAT. ch. 121 1/2, paras. 137.1-137.19 (1987).

132. ILL. REV. STAT. ch. 121 1/2, paras. 97-137 (1953).

133. *Daleiden*, 118 Ill. 2d at 536, 517 N.E.2d at 1063.

134. ILL. ANN. STAT. ch. 121 1/2, para. 137.2(A) (Smith-Hurd 1960) (interpretive comments).

135. *Daleiden*, 118 Ill. 2d at 537, 517 N.E.2d at 1063. The court stated that:

[T]he term 'investment contract' in the 1953 Law is based upon the interpretation given it by the *Howey* [Secs. & Exch. Comm'n v. W.J. Howey Corp., 328 U.S. 293, 66 S.Ct. 1100 (1946)] and *Joiner* [Secs. & Exch. Comm'n v. C.M. Joiner Leasing Corp., 320 U.S. 344, 64 S.Ct. 120 (1943)] opinions.

Id. The United States Supreme Court in *Joiner* and *Howey* interpreted an "investment contract" as including "the sale of an interest in any type of profit-seeking venture whereby the investor transfers his capital to the promoters, and looks to the promoters for the success of his investment." *Id.* (citing *Young, Exemptions from Registration Under the Illinois Securities Law of 1953*, 1961 U. ILL. L.F. 205, 206 (1961)).

136. *Id.* at 529, 517 N.E.2d at 1060.

137. *Id.* at 534-35, 538, 517 N.E.2d at 1062, 1064.

138. *Id.* at 538-39, 517 N.E.2d at 1064.

expended with the hope of realizing an economic benefit.¹³⁹ The Purchasers were therefore entitled to recover the full amount paid for their interest in the oil venture.¹⁴⁰

The *Daleiden* decision was long overdue. The securities laws always have been aimed at protecting the investor, a factor that did not figure prominently in the *Hammer* decision. Unsophisticated investors are unlikely to distinguish between sums paid for a leasehold and those for operational expenses.

The *Daleiden* case also provides a fascinating glimpse at the lengths to which the court will go to avoid overruling an earlier decision. The court distinguished *Hammer* on the grounds that it interpreted the 1919 Securities Act rather than the 1953 Act, yet the definition of a security contained in both Acts is nearly identical in relevant respects.¹⁴¹

Simply put, the *Hammer* case was wrongly decided. The *Daleiden* court's attempted obfuscation of this fact was unfortunate because it was so obvious. It would have been better had the court either admitted its error, or simply interpreted the 1953 Act and ignored *Hammer's* erroneous interpretation of the 1919 Law altogether.

VI. LEGISLATION

The Business Corporation Act of 1983

Amendments to the Illinois Business Corporation Act of 1983¹⁴² manifest the legislature's concern that the state collect all income taxes due from dissolved corporations. Section 12.45 was amended to require an administratively dissolved corporation to file a tax clearance letter from the Illinois Department of Revenue with the Secretary of State within five years before it can be reinstated.¹⁴³ Section 12.75 also was amended to provide that a claim arising

139. *Id.* at 539, 517 N.E.2d at 1064.

140. *Id.* at 540, 517 N.E.2d at 1065. Although the court declined to explicitly overrule *Hammer*, stating that it was distinguishable from *Daleiden*, the *Hammer* decision was strictly limited to its interpretation of the Illinois Securities Law of 1919. *Id.* at 539-40, 517 N.E.2d at 1064.

141. The Illinois Securities Law of 1919 provided in part that "[t]he word 'securities' shall mean and include . . . investment contracts, . . . and any oil, gas or mining lease, royalty, or deed, and interest, units or shares in any such lease, royalty, or deed." ILL. REV. STAT. ch. 121 1/2, para. 97(1) (1953).

The Illinois Securities Law of 1953 provides that "'[s]ecurity' means any . . . investment contract, . . . fractional undivided interest in oil, gas, or other mineral lease, right, or royalty." ILL. REV. STAT. ch. 121 1/2, para. 137.2-1 (1987).

142. ILL. REV. STAT. ch. 32, paras. 1.01-16.10 (1987).

143. ILL. REV. STAT. ch. 32, para. 12.45(a)(4) (1987).

from the failure of the corporation to pay any tax, penalty, or interest related to any tax or penalty may not be barred against a dissolved corporation, its directors, officers, employees, agents, shareholders, or transferees.¹⁴⁴ The corresponding sections of the General Not For Profit Corporation Act of 1986 were likewise amended.¹⁴⁵

B. *The Professional Service Corporation Act*

Amendments to the Professional Service Corporation Act¹⁴⁶ relaxed restraints relating to both incorporation and stock ownership. Section 6 of that Act was revised to provide that an attorney who is licensed to practice in Illinois may sign and act as an initial incorporator on behalf of any professional service corporation.¹⁴⁷ Section 11 was amended to allow an individual to hold stock in more than one professional service corporation.¹⁴⁸

C. *Limited Partnerships*

Amendments to the Revised Uniform Limited Partnership Act¹⁴⁹ evince a legislative desire to increase the administrative ease of monitoring limited partnerships' adherence to statutory requirements. The right of domestic and foreign limited partnerships to transact business in Illinois under an assumed name is now effective until the first day of the anniversary month of the partnership that falls within the next calendar year evenly divisible by five.¹⁵⁰ Limited partnerships then may elect to renew this right within sixty days (effective for five years),¹⁵¹ or the right may be changed or cancelled at any time by filing an appropriate application.¹⁵² In addition, the Secretary of State was appointed an irrevocable agent for service of process for foreign limited partnerships if within five years of cancellation of the application for admission to transact business an action is instituted against the partnership and the reg-

144. ILL. REV. STAT. ch. 32, para. 12.75(d) (1987).

145. ILL. REV. STAT. ch. 32, paras. 112.45, 112.75 (1987).

146. ILL. REV. STAT. ch. 32, paras. 415-1 to 415-18 (1987).

147. ILL. REV. STAT. ch. 32, para. 415-6 (1987).

148. ILL. REV. STAT. ch. 32, para. 415-11 (1987).

149. ILL. REV. STAT. ch. 106 1/2, paras. 151-1 to 162-5 (1987).

150. ILL. REV. STAT. ch. 106 1/2, para. 151-9(d) (1987). An exception exists when the application is filed within the three months immediately preceding the anniversary month that falls within a calendar year evenly divisible by five. *Id.* In such a case, the right to use an assumed name will be effective until the first day of the anniversary month of the partnership that falls within the next succeeding year evenly divisible by five. *Id.*

151. ILL. REV. STAT. ch. 106 1/2, para. 151-9(e) (1987).

152. ILL. REV. STAT. ch. 106 1/2, para. 151-9(f) (1987).

istered agent cannot be found with reasonable diligence at the registered office in the state, or if there is no registered agent appointed in Illinois.¹⁵³

A number of statutes relating to limited partnerships also were enacted during the *Survey* year. All partnership documents that are required to be filed must contain the assigned partnership file number.¹⁵⁴ Limited partnership certificates and applications to transact business must be renewed by filing a renewal report setting forth the partnership name, file number, federal employer identification number, name and address of its registered agent, the address of the office where the partnership records can be found, a statement that the partnership still exists in Illinois, and, if it is a foreign limited partnership, the jurisdiction and date of formation with a statement that the partnership validly exists under the laws of that jurisdiction as of the date of filing the report.¹⁵⁵ Such renewal reports must be delivered to the Secretary of State before the first day of the anniversary month every two years.¹⁵⁶ The Secretary of State also may determine delinquency of any limited partnership upon the partnership's failure to fulfill its statutory obligations.¹⁵⁷ Once the limited partnership is in default, if the delinquency is not cured, then the Secretary of State may invoke penalties.¹⁵⁸ A delinquent partnership may be reinstated to good standing by the timely filing of all applications, reports, information requirements, registrations, renewals, and the timely payment of all fees and penalties.¹⁵⁹

D. *The Uniform Commercial Code*

Article 8 of the Uniform Commercial Code,¹⁶⁰ which pertains to investment securities, underwent vast revision during the *Survey* year, primarily to distinguish between certificated and uncertificated securities. The definition of "security" was entirely rewritten to reflect this distinction,¹⁶¹ and a subparagraph was added to ex-

153. ILL. REV. STAT. ch. 106 1/2, para. 159-9(b)(3) (1987). Other changes in the Revised Uniform Limited Partnership Act include technical amendments to sections 151-2 to 151-5, 152-2, 153-5, 156-1, 159-2, 159-3, 159-11, 161-4, and 161-5.

154. ILL. REV. STAT. ch. 106 1/2, para. 161-7 (1987).

155. ILL. REV. STAT. ch. 106 1/2, para. 161-8 (1987).

156. ILL. REV. STAT. ch. 106 1/2, para. 161-8(c) (1987).

157. ILL. REV. STAT. ch. 106 1/2, para. 161-9 (1987).

158. ILL. REV. STAT. ch. 106 1/2, para. 161-9(b) (1987).

159. ILL. REV. STAT. ch. 106 1/2, para. 161-10 (1987).

160. ILL. REV. STAT. ch. 26, para. 1-101 to 12-102 (1987).

161. ILL. REV. STAT. ch. 26, para. 8-102(1)(c) (1987).

plicitly define a "certificated security."¹⁶² Various provisions within Article 8 were amended correspondingly to incorporate and reflect this distinction,¹⁶³ while numerous other sections were independently amended and enacted.¹⁶⁴

VII. CONCLUSION

During the *Survey* year, the Illinois Supreme Court addressed a range of issues that fall under the rubric of "commercial law." The cases were limited in number, but the issues spanned the spectrum from contracts and secured transactions to employee benefits and securities regulation. Therefore, the court had an opportunity to effect a variety of Illinois commercial laws. The court often displayed a desire to protectively balance the equities in favor of the "little guy." Nonetheless, in the *McLean County Bank* and *Medaris* cases it refrained from taking that extra step in analysis that would have better served the interest of the law and the public.

162. ILL. REV. STAT. ch. 26, para. 8-102(1)(a) (1987).

163. The following sections were amended during the *Survey* year: ILL. REV. STAT. ch. 26, paras. 8-103 to 8-107, 8-201 to 8-208, 8-301 to 8-320, and 8-401 to 8-406 (1987).

164. The following sections were enacted during the *Survey* year: ILL. REV. STAT. ch. 26, paras. 8-108, 8-321, 8-408, and 8-409 (1987).

