

Topic: UCC3 Submission to New York County
Question By: David Wanetik
Jurisdiction: First American Title Insurance Company
Date: 2011 August 15

Jurisdiction	Question(s)
	<p>An August 2006 filing was terminated by an unauthorized party in 2007. When the secured party attempted to file a continuation it was rejected because of the termination. Has anyone run into the same issue either in New York County or New York State Secretary of State? If so, did anyone explain that the basis of the refusal is the Roswell case which came down from the Southern District Court?</p>
Alabama	
Alaska	
Arizona	
Arkansas	
California	
Colorado	
Connecticut	
Delaware	
District of Columbia	
Florida	
Georgia	
Hawaii	
Idaho	
Illinois	<p>Illinois will accept all amendments received after a UCC 3 Termination as long as the Original UCC filing is still within "Maturity" and has not "lapsed". Is there a possibility that the filing was not authorized to begin with because the Debtor was not notified? There may have been another legal purpose for not accepting the Amendment, such as a court order, which has nothing to do with the unauthorized Termination.</p>
Indiana	
Iowa	
Kansas	
Kentucky	
Louisiana	
Maine	
Maryland	
Massachusetts	

Michigan	
Minnesota	
Mississippi	
Missouri	
Montana	
Nebraska	
Nevada	
New Hampshire	
New Jersey	
New Mexico	
New York	The NY Secretary of State's office would accept the continuation statement until the lapse date. Please let me know if you have any filing problems.
North Carolina	
North Dakota	
Ohio	
Oklahoma	
Oregon	
Pennsylvania	
Rhode Island	
South Carolina	
South Dakota	
Tennessee	
Texas	Interesting, the Filing Acceptance Chart says they will accept multiple terminations as well as continuations after a termination was filed. The chart indicates (for all states that have responded) that everyone would accept a continuation that was filed after a termination (which of course is what everyone should be doing).
Utah	
Vermont	
Virginia	
Washington	
West Virginia	
Wisconsin	
Wyoming	

Additional Comments:

Tue 08/16/2011 10:31 AM

I have not come across this problem (not having to file in New York County), but see *The AEG Liquidation Trust on behalf of American Equities Group, Inc. v. Toobro NY LLC, et al*, Supreme Court of New York (New York County), June 24, 2011. The court criticized and expressly refused to follow *Roswell*.

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Tue 08/16/2011 5:28 PM

It seems to me that the only legitimate basis for refusal would be a reason set forth in 9-516(b). Consistent with the filing office "open drawer" concept, the prior filing of a termination statement was specifically *excluded* as a reason for rejection of any subsequent amendments due to the fact that the filing office is incapable of determining the legal effect of any amendment including a termination statement. Add to that, IACA model rule 309 clearly states that a termination statement has no effect on the status of any party to the financing statement *or* the status of the financing statement.

Wally Boggus

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Wed 08/17/2011 9:11 AM

SUCCESS!!

This past Monday I sent off the following message to the list serve:

I've run into an issue attempting to file a UCC3 continuation in New York County. An August 2006 filing was terminated by an unauthorized party in 2007. When the secured party attempted to file a continuation it was rejected because of the termination.

Has anyone run into the same issue either in New York County or New York State Secretary of State and if so, did anyone explain that the basis of the refusal is the Roswell case which came down from the Southern District Court.

I am happy to report that with the response from Gary Trechel of the New York State Department of State in hand indicating that it would accept the continuation, the New York County Clerk acquiesced and accepted the filing.

I want to thank Gary and everyone who responded to the inquiry. There is no question as to the value of this distribution list and I greatly appreciate everyone's input.

Regards, David

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Wed 08/17/2011 10:18 AM

Awesome! Wow, Gary and everyone in STS rocks!

Wally Boggus
CAPITOL SERVICES, INC.

Full Text of Original Email:

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Thanks, David

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