

**WAREHOUSE RECEIPTS IN UNITED STATES LAW—SUMMARY FOR
THE PACIFIC-RIM**

Drew L. Kershen *

TABLE OF CONTENTS

I. INTRODUCTION 179
 A. Components of the Business Structure for Warehouse Receipts 180
 B. Comparing Issuance, Transfer, and Delivery 182
 C. Identifying Two Essential Legal Concepts 188

I. INTRODUCTION

Since 1992, The National Law Center for Inter-American Free Trade (NatLaw) has worked to harmonize commercial law in international trade. Although NatLaw has worked principally with harmonization between the commercial laws of the nations of the Western Hemisphere, NatLaw also works on this topic with Pacific-Rim nations. Of particular importance for this symposium, NatLaw took part in a Pacific-Rim conference in January 2015. This article flows from the materials, presentation, and topic summary that the author prepared for the Second Pacific-Rim Colloquium on Economic Development and the Harmonization of Commercial Law in Shanghai, China on January 8-10, 2015. This article was one of a number of papers for a panel focused on warehouses and warehouse receipts.

Participants in Pacific-Rim conferences have agreed that electronic documents are the future for a harmonized commercial law related to the storage of goods in warehouses. Yet most legal systems have only begun to consider how electronic documents can function as valid, legally acceptable replacements for paper documents. To assist in these discussions, the author will focus on the United States' legal models for electronic warehouse receipts (EWRs). The author's goal is to provide basic information about the contrast between paper warehouse receipts (PWRs) and EWRs in the United States. The author places special emphasis on the issuance and transfer of warehouse receipts in paper in contrast to electronic formats. By so doing, the reader can hopefully begin to understand and to visualize the transition from paper documents to electronic documents. As the title to this Article indicates, the article focuses on warehouse storage and not on transportation.¹

* Earl Sneed Centennial Professor of Law Emeritus, University of Oklahoma College of Law.

¹ In the United States, a transportation (shipping) document is usually known by the term "bill of lading."

A. Components of the Business Structure for Warehouse Receipts

There are six focal components of the business structure for the warehouse and warehouse receipts system in the United States: (1) Farmer/Producer; (2) Warehouse (Storage); (3) Merchant Buyer/Broker; (4) Lender to Farmer or Merchant Buyer/Broker (Bank); (5) Governmental Regulatory Agency; and (6) Courts (Dispute Resolution).

With the emphasis being on agricultural commodities and electronic warehouse receipts in this Article, the author stresses that the fundamental national law governing the storage of agricultural products is the United States Warehouse Act (USWA).² By reading the USWA, one encounters the fundamental national statutory law about warehouses, warehouse receipts (including EWRs), and the governmental regulatory structure of this system. The USWA provides the legal definition of terms, the legal authorization for the use of tangible (paper) and electronic warehouse receipts, and the requirements for qualifying for participation in the legal system that the USWA creates. The USWA assigns responsibility for its legal system to the United States Department of Agriculture (USDA), including the delegated authority to issue legally binding regulations.

The USDA has issued legally binding regulations implementing the USWA.³ When reading the regulations one can immediately see that the USDA expanded and clarified the USWA statutory provisions. Thus, to understand the agricultural storage system in the United States, one must have familiarity with both the underlying statutory law (USWA) and with its implementing regulations (USDA-FAS). This underlying statutory law and its implementing regulations set forth the fundamental legal architecture for warehouses and warehouse receipts related to agricultural commodities in the United States.

Focusing on the regulations, Subparts A (General Provisions), B (Warehouse Licensing), and C (Inspectors, Samplers, Classifiers, and Weighers) are the most important for understanding the warehouse component of the business structure. Subparts A-C set forth the requirements for qualifying to serve as a warehouse and the obligations of the warehouse in terms of correct storage of agricultural commodities within the warehouse. It is important to understand that the USDA-FAS regulations concern the warehouse (storage) component of the system. These USDA-FAS regulations do not directly regulate the transactions among farmers, merchant buyers, or banks that lend to farmers or brokers.

The topic of the Pacific-Rim Shanghai session was electronic warehouse receipts. The USDA-FAS regulations specifically address warehouse receipts (Subpart D) and electronic warehouse Receipts (Subpart E). Brief substantive discussions of Subparts D & E occur later in this Article.

² United States Warehouse Act, 7 U.S.C. §§ 241-273 (2015).

³ 7 C.F.R. §§ 735.1-735.404 (2015).

Readers should keep in mind that because of the federal form of government of the United States, there are also state laws that govern certain aspects of the EWR transaction. While these state warehouse laws are similar to one another and similar to the USWA, each state system can also have its own unique attributes. This article does not discuss state warehouse laws because only the national law (USWA) has created a national functioning and widely-used system for electronic warehouse receipts. In the United States, if one wants to learn about how electronic receipts are used in the storage of goods (limited to agricultural commodities per USWA), one must study the USWA and its implementing regulations.

Readers should also keep in mind that in the United States the Uniform Commercial Code (U.C.C.), Article 7 (2015), titled “Documents of Title,” is an important and necessary law for the full understanding of warehouse receipts. As will be explained later in this Article, U.C.C. Section 7-106, titled “Control of Electronic Document of Title,” is particularly noteworthy. Section 7-106 formulates the key features of an EWR as that it be unique, identifiable, authoritative, and (with some exceptions) unalterable.⁴

In the United States, legal concepts integral to understanding warehouse receipts are not codified in the federal USWA or its regulations. Rather, the USWA and its regulations use legal concepts, as terms, but depend upon federal courts to define and to clarify these legal concepts in case-by-case precedential adjudication. However, U.C.C. Article 7 shapes these legal concepts, relevant for warehouse receipts, into a codified format. Nowadays when either federal courts or state courts in the United States adjudicate warehouse receipts issues, these courts rely heavily upon the U.C.C. codification (both its textual language and its accompanying comments) to define and to clarify these legal concepts. Consequently, anyone who wants to understand warehouse receipts must understand the interplay between the USWA, USWA regulations, U.C.C. Title 7, and court decisions.

This interplay between federal law and state law in the United States may have significance for other nations with a federal system of governance. As lawyers, governmental officials, and market actors discuss reform (and harmonization) of warehouse receipt law, it may be required to reform laws at both the federal and state levels of government. Reform at only one level of government may only be half the job of legal reform.

In addition to the six focal components of the business structure for warehouses and warehouse receipts, there are two peripheral components in the United States that deserve brief mention.

Peripheral component one is commodity exchanges. In the United States, commodity exchanges function not only as marketing but also as price setting mechanisms for agricultural commodities. Traders on these exchanges buy and sell standardized contracts (called futures contracts) that obligate a party to

⁴ U.C.C. § 7-106 (AM. LAW INST. & UNIF. LAW COMM’N 2003).

deliver or to accept delivery of a specified quantity and quality of a commodity at some designated time in the future. The only term of the standardized contract that is not standard is the price. Traders determine the price of the futures contract by continuous public bidding on these regulated exchanges. By the continuous public bidding for the buy/sale of futures contracts, the traders establish the price for agricultural commodities at any given time on any given day. In reality, in commodity exchanges such as in the United States, the traders rarely expect to possess the actual physical agricultural commodity. Consequently, traders do not deal with warehouses and do not handle the legal document of a warehouse receipt.⁵ By contrast, the author has learned that in some nations, traders on commodity exchanges regularly do expect to possess the actual physical commodity. If these traders regularly expect to possess the commodity, these traders will also likely have to deal with, or do trades in, warehouse receipts. Further discussion about the impact of commodity exchanges upon the warehouse storage of commodities and the transfer of warehouse receipts will be necessary for harmonizing commercial law on warehouses and warehouse receipts.

Peripheral component two consists of the ultimate, downstream buyers of the agricultural commodities who buy the commodities from the merchant buyers/brokers component of the business structure. Although ultimate, downstream buyers could come into possession of warehouse receipts, and thus deal with warehouses directly, for most practical purposes these buyers take physical possession of the agricultural commodity from the merchant buyers/brokers. These ultimate, downstream buyers use the agricultural commodity to produce food, clothing, energy, or other industrial products. In the United States, the scope of laws and regulation governing warehouse and warehouse receipts generally does not include these ultimate, downstream buyers.⁶

B. Comparing Issuance, Transfer, and Delivery

This article now turns to how the warehouse laws and regulations handle the issuance and transfer of tangible (paper) warehouse receipts (WRs) compared to the issuance and transfer of electronic warehouse receipts (EWRs). For the issuance and transfer of warehouse receipts (whether WRs or EWRs), Section 11 of the USWA and Subparts D and E of the USWA regulations are the relevant

⁵ The Commodity Exchange Act, 7 U.S.C. §§ 1-26 (2015). The Commodity Futures Trading Commission regulates commodity exchanges and promulgates regulations. 17 C.F.R. § 1.4(dd) (2015) (4 volumes).

⁶ If the ultimate downstream buyer deals in a warehouse receipt, rather than taking physical possession of the commodity from the merchant buyer/broker, this buyer has recourse against the issuer of the warehouse receipt if the receipt states a misdescription or miscount of the goods covered by the receipt. U.C.C. § 7-203 (AM. LAW INST. & UNIF. LAW COMM'N 2003).

federal provisions.⁷ With regard to delivery of the stored goods (for this Article, the agricultural commodities), Section 12 of the USWA and Subparts D and E of the USWA regulations are the relevant provisions.⁸

The statute and the regulations both prescribe that the warehouse receipts be uniquely identified and properly connected to the specific goods (agricultural commodities) stored under that particular unique receipt. Both statute and the regulations attempt to assure that there is no duplicate receipt in circulation for the same stored goods. Both also make the fundamental and important distinction between non-negotiable and negotiable warehouse receipts. Both set forth the informational requirements that must appear on the warehouse receipt document itself so that the person reading the receipt has access to the information needed to make knowledgeable decisions about ownership, quantity, quality, location, and storage charges.

As the preceding paragraph makes explicit, the USWA and the regulations treat WRs and EWRs, as much as possible, as if there were no distinction. The USWA and the regulations want the commercial system essentially to disregard the format (tangible or electronic) of the receipt. But the USWA and regulations also do distinguish between WRs and EWRs with respect to issuance and transfer.

As for issuance, Regulation § 735.303 makes it clear that a warehouse cannot issue an EWR except through an approved Provider.⁹ Unlike tangible WRs, warehouses cannot issue EWRs directly to the farmer (depositor) but can do so only indirectly through the approved Provider. In addition, the same regulation makes clear that the person to whom the warehouse issued the EWR cannot transfer the EWR to another person (a new holder) without the third-party involvement of the approved Provider.

The legal definition of the term “Provider” is sufficiently important to quote the definition:

Provider means a person authorized by DACO [the competent national governmental regulatory agency], as a disinterested third party, which maintains one or more confidential and secure electronic systems independent of any outside influence or bias

⁷ See 7 U.S.C. § 250 (2000); 7 C.F.R. § 735.300(b) (2015); 7 C.F.R. § 735.400(b) (2015); *see also* Form of Warehouse Receipt; Effect of Omission; for comparable U.C.C. provisions, *see* Form of Warehouse Receipt; Effect of Omission, U.C.C. § 7-202; Irregularities in Issue of Receipt or . . . Conduct of Issuer, U.C.C. § 7-401; Duplicate Document of Title; Overissue, U.C.C. § 7-402 (AM. LAW INST. & UNIF. LAW COMM’N 2003).

⁸ For a discussion of delivery obligations, *see* 7 U.S.C. § 251 (2000); 7 C.F.R. § 735.300(b)(7)-(9) (2015); 7 C.F.R. 735.400(a) (2015); *see also* U.C.C. §§ Obligation of Bailee to Deliver; Excuse, 7-403 & No Liability for Good-Faith Delivery Pursuant to Document of Title, 7-404 (AM. LAW INST. & UNIF. LAW COMM’N 2003).

⁹ 7 C.F.R. § 735.303(a)(1) (2015).

in action or appearance.¹⁰

Hence, the Provider operates the electronic data system through which warehouses issue the EWR and through which the person to whom the EWR issued (holder) transfers the EWR to another person (a new holder). The Provider has the obligation to authenticate the commands from the warehouse to issue the EWR and the commands from the person issued the EWR (holder) to transfer the EWR to another person (a new holder).

Who can become a Provider? What specific requirements and responsibilities does a Provider have? Subpart E of the USWA regulations sets forth the rules that answer the “who” and “what” questions.¹¹

If the Provider operates the electronic data and authentication system correctly, there should never be more than one EWR issued and connected to particular identified stored goods (agricultural commodities).¹² Moreover, as an electronic data and authentication system, the Provider should always possess an electronic data trail showing the issuance and every transfer of the EWR until the EWR is surrendered for delivery of the stored goods and cancelled. Upon surrender and cancellation, the stored goods exit the storage system (usually to a transportation company issuing a bill of lading addressed to a downstream buyer). Of course, the EWR also exited the system by being surrendered and cancelled. The Provider’s electronic data trail also shows the EWR exit.

In the United States, the dominant Provider in the USWA-EWR system is EWR, Inc., a private company. EWR, Inc. has been a Provider for cotton EWRs since 1993 and for other agricultural commodities (primarily peanuts, with a very small number for grains) since the US-Congress amended the USWA in the year 2000 to authorize EWRs for all agricultural commodities.

Under Regulation § 735.303, anyone wanting access to a Provider’s electronic data system must enter a contractual relationship with the Provider to arrange passwords, software, and compatible computer equipment.¹³ The Provider and the other participant (the warehouse issuer or the holder of the EWR) agree upon the rights and responsibilities between them. In fact, EWR, Inc. has prepared two standardized contracts for these two distinct participants

EWR, Inc. has a Warehouse (Issuer) Agreement for warehouses

¹⁰ *Id.* § 735.3.

¹¹ *Id.* §§ 735.400-735.404.

¹² The fact that the Provider system should never have more than one EWR connected to particular identified goods means that fraud (due to a duplicate) should be practically eliminated from the EWR system. In fact, in the USWA EWR system, this form of fraud has been eliminated. By contrast, tangible WRs can still be lost (stolen) or destroyed and a warehouse may issue a duplicate WR. *See* 7 C.F.R. § 735.300(c) (2015).

¹³ 7 C.F.R. § 735.303(a) (2015) (outlining the requirements for warehouses providing storage); 7 C.F.R. § 735.303(b) (2015) (indicating that farmers/depositors, merchant buyers/brokers, and banks are collectively holders).

providing storage for the agricultural commodities. A warehouse differs from holders of EWRs in two significant ways. First, the warehouse initiates the electronic data system by providing authenticated information and commands to the Provider thereby allowing the warehouse to issue the EWR to a holder—usually the farmer (depositor) as the initial holder of the EWR. The warehouse is the issuer of the EWR.¹⁴ Second, the warehouse is the depository of the goods; the warehouse provides storage for the agricultural commodities. Other participants want to be the holders of EWRs, to control the transfer of EWRs, and (ultimately) to receive delivery of the stored goods, however other participants do not provide storage and are not in the business of providing storage services. Of course, warehouses provide the storage and other services to holders in return for agreed upon prices.¹⁵

EWR, Inc. also has a second standard contract called a Participant Agreement. Participants are persons or entities other than a warehouse or the issuer of the EWRs. Thus, participants include farmers¹⁶ (depositors), merchant buyers and brokers, lenders to farmers, or even lenders to merchant buyers/brokers. Participants want access to the system so that the participant can become a holder of the EWR and have the power to issue commands to the Provider about transfers of the EWR to another participant in the system. At some point in time, the holder of the EWR will desire to take delivery of the agricultural commodities identified in the EWR.

After reading the above description of the USWA EWR system, it becomes apparent that the national EWR system is a closed system—that is, one can participate in the system only through a contractual agreement with the approved Provider who operates an electronic data system. One cannot just enter the USWA EWR system whenever one needs to use an EWR. One is either inside the system as a warehouse or a participant; or one is outside the system. Outsiders must become contractual insiders to access the USWA EWR system.

The fact that the USWA EWR system is a closed system provides the primary explanation for discussing the approach to electronic warehouse receipts

¹⁴ Under the terms of the agreement between EWR, Inc., as Provider, and the warehouse, as issuer, EWRs are negotiable receipts. The EWR, Inc. electronic data system is for negotiable receipts. This article discusses the legal concept of negotiability in the last section.

¹⁵ 7 C.F.R. § 735.107(a) (2015). In the United States, warehouses and depositors generally negotiate their own terms of the relationship, including price. Warehouses can charge market rates. In the United States only a few state jurisdictions treat warehouses as public utilities, which requires a warehouse to gain approval for the fees charged for storage or other warehouse services. *Davies Warehouse Co. v. Bowles*, 321 U.S. 144, 148-49 (1944) (“Three states include warehouses in their statutory definition of public utilities, and eight include limited types of warehouses.”).

¹⁶ Farmers often participate in the Provider’s electronic data system indirectly through an agent rather than directly by the farmer itself signing a Participation Agreement. 7 C.F.R. § 735.303(b)(7).

found in the U.C.C.

In the United States, the Uniform Law Commission is the primary sponsor and developer of the U.C.C. The Uniform Law Commission proposes a uniform law, such as the U.C.C., that becomes a real (actual) (*vigente*) law when a legislature of an individual American state adopts the uniform law as state law. Thus, states adopt their own statutory commercial law but the states widely adopt the U.C.C. as the content of that state's commercial law. As a factual matter, all American states have adopted almost identical versions of the U.C.C. Consequently, the commercial law of the various states is uniform (not identical, but nearly identical) even though there is no federal codified commercial law. For commercial law, the law of one state in the United States is so similar to the law of another state that lawyers and businesses consider the U.C.C. as an equivalent to a national code of commercial law.

As drafted by the Uniform Law Commission, one part of the U.C.C. is Article 7 on Documents of Title (including warehouse receipts and bills of lading). The Uniform Law Commission revised Article 7 in 2003 primarily to recognize and to accommodate electronic documents of title, including electronic warehouse receipts. As the Uniform Law Commission wrote:

To have the effective electronic documents that commerce demands, new concepts have to be introduced into the law. The concept of negotiation as we have known it in American law cannot apply in electronic media. The great addition to Article 7 deals with these issues and meets the test of seamless insertion into existing law.

These rules must deal with distinct issues: recognition of electronic documents of title; statute of fraud extensions; establishment of the unique original in electronic form (sometimes thought of as authentication); and interchangeability between electronic and tangible documents of title. In addition, the rules of electronic documents of title must fit as seamlessly as possible into the existing system governing tangible documents of title. The law should avoid skewing the choice between tangible and electronic documents of title in favor of either form. Only the actual marketplace should determine user's choices. Revised Article 7 deals with these issues and meets the test of seamless insertion into the existing law.¹⁷

¹⁷ *U.C.C. Article 7, Documents of Title (2003) Summary*, UNIF. LAW COMM'N, [http://www.uniformlaws.org/ActSummary.aspx?title=U.C.C.%20Article%207,%20Documents%20of%20Title%20\(2003\)](http://www.uniformlaws.org/ActSummary.aspx?title=U.C.C.%20Article%207,%20Documents%20of%20Title%20(2003)) (last visited Nov. 6, 2015).

Reading U.C.C. Article 7, Documents of Title (2003) Summary, and as noted early about the interplay between the U.C.C. and the USWA and its accompanying regulations, it becomes clear that a central concept in the Article 7 EWR system is the concept of “control.”¹⁸ Central to the concept of control is that the system be able to identify at all times a particular person to whom the EWR was issued or transferred and that the system creates a single, unique, and authoritative copy of the EWR. The person in control of the EWR in the Article 7 EWR system is equivalent to the holder of the EWR in the USWA EWR system.

Moreover, when one reads the Official Comments to § 7-106, the Comments make clear that Article 7 does not limit its EWR system to a closed system. The Article 7 EWR system is open to other technologies or approaches so long as those systems can properly establish “control” at all times by a particular person of a single, unique authoritative EWR.

While Article 7 contemplates “open” EWR systems, the reality is that as of 2015, the only widely adopted and used EWR system in the United States is the closed system established by the USWA and its implementing regulations. But maybe that “reality” only means that creative minds of information technologists, participants in an economic sector, governmental officials, and their lawyers have to spend time and effort thinking about, discussing, and testing open EWR systems as alternatives to the USWA EWR closed system. Those are the thoughts, discussions, and mental testing that the Second Pacific-Rim Colloquium can initiate and facilitate.

Article 7 provides the legal authorization for such open system creativity. Moreover, by authorizing an open system for EWRs, Article 7 also allows for harmonization between EWR systems within disparate legal traditions in Latin American and Asian nations participating in the Pacific-Rim conferences. To this author’s thinking, the USWA EWR closed system may be too unique to the U.S. institutional and governmental context. The U.S. EWR closed system may be too oriented towards the internal (domestic) market in agricultural commodities in the United States. If too unique or domestically oriented, those involved in warehousing and warehouse receipts in other nations may not feel comfortable using the USWA EWR closed system as the model upon which to build a harmonized EWR legal system.¹⁹ By contrast, the U.C.C. Article 7 open system

¹⁸ See U.C.C. § 7-106 & its Official Comments (AM. LAW INST. & UNIF. LAW COMM’N 2003).

¹⁹ The author makes these comments without intending or implying criticism of the USWA EWR closed system. The USWA EWR has performed marvelously for U.S. agricultural commodities by reducing errors, increasing efficiency, improving commerce, and providing legal certainty. Since the establishment of the USWA EWR closed system in 1993, there have been very few legal disputes resulting in a judicial opinion. When the author used the search “electronic warehouse receipts” in an all-federal-cases database, the search returned a total of seven cases. Of these seven cases, four involved disputes about security interests and liens against the cotton covered by EWRs. Disputes about security interest and liens get resolved outside the law governing the USWA EWR closed system.

may provide for flexibility that facilitates cross-border transactions, international trade, and internal domestic reform without appearing to be too U.S.-centric in its structure or concepts. The goal should be to create an EWR system that meets the commercial needs of those who will use it and that fits within the legal and business cultures of the particular nation intending to adopt electronic warehouse receipts. There need not be a “one-size fits all” mentality. There need not be a mentality that “there is one way to create an EWR system.” Maybe a “closed” system fits; maybe an “open” system fits. Future Pacific-Rim Conferences will need to consider and to discuss all models as the conference participants attempt to create a harmonized EWR legal system.²⁰

C. Identifying Two Essential Legal Concepts

The substance of this Article and the substance of the Pacific-Rim conference session on electronic warehouse receipts, of which this Article was one presentation, resides in the creation of a feasible, sensible, and usable electronic warehouse receipts system. This overview article and the other symposium articles on warehouse receipts, along with their accompanying documents and accompanying memoranda of explanations for the Second Pacific-Rim Colloquium, provide early preliminary steps hopefully leading to the accomplishment of that substantive goal.²¹

Thus, only three cases have involved factual claims related to the warehouse receipts issued within the USWA EWR closed system: *Staple Cotton Coop. Ass'n v. D.G. and G., Inc.*, 503 F. Supp.2d 1217 (E.D. Mo. 2007); *Hohenberg Bros. Co. v. Anderson Logistics Serv. Corp.*, 6 F. Supp.2d 1377 (S.D. Ga. 1998) (a procedural decision, not a decision on the substantive law); and *Allenberg Cotton Co. v. Staple Cotton Coop. Ass'n*, 2009 WL 1619950 (not reported in F. Supp) (N.D. Miss. 2009). This remarkable record commends itself to those thinking about a harmonized EWR legal system.

²⁰ As participants at future conferences consider various models for a harmonized EWR legal system, it may well be beneficial to consider the Bolero e-Bill of Lading (eBL) that is widely used in international transportation (carriage). *See, e.g.*, “The Bolero Electronic Bill of Lading (eBL) Overview.” *The Bolero Electronic Bill of Lading (eBL) Overview*, BOLERO INT'L LTD., <http://www.bolero.net/files/downloads/eBLOverview.pdf> (last visited Nov. 7, 2015).

²¹ This Article is a broad overview of warehouse receipts in United States Law. Page limitations for the symposium law review issue meant that an in-depth article was not feasible nor desired. But this Article can be more fully probed by consulting the video recording, the documentary materials, and the memorandum of comments/explanations about warehouse receipts from the Second Pacific-Rim Colloquium. *See* Drew L. Kershen, *Memorandum of Comments/Explanations on Warehouse Receipts in United States Law and Accompanying Materials*, NAT'L L. CTR. FOR INTER-AM. FREE TRADE (Dec. 18, 2014), <http://www.natlaw.com/sites/default/files/Memorandum%20Comments%20and%20Explanations%20Kershen%20Dec%202014.pdf#overlay-context=pacific-rim-electronic->

Two legal concepts, drawn from the United States, for creating a feasible, sensible, usable electronic warehouse receipts system are now very sparingly identified. The goal of electronic receipts is to have *negotiable EWRs* that are *duly negotiated* in the chain of commerce (producing, storing, financing, buying, selling) relating to goods (agricultural commodities) in storage at a warehouse.

If this goal can be achieved, then the advantages of an EWR come to the forefront. Advantages might include the following: reduction in paper and handling of paper; speed and efficiency in the issuance and transfer of EWRs; reduced risks of fraud and mistakes in the use of EWRs; elimination of geographical distances as a barrier to transactions; reduction in costs for the services provided by an EWR system; and increased confidence throughout the production, storage, financing, buying, selling, and (ultimately) delivery so that participants have greater willingness to participate in market transactions related to stored goods such as agricultural products. With greater confidence, greater participation, and reduced costs, the EWR system, hopefully, should be a creator and driver of economic wealth and economic growth for every participant in the system.

Once the EWR system has come into focus, attention can then turn towards the two identified legal concepts that will make the EWR system operate efficiently and effectively.

The concepts of “negotiation” and “duly negotiated” are legal concepts with a long history in the English common law.²² However, Article 7 of the U.C.C. is the best source for understanding these two concepts. More precisely, one should consult, study, and understand the following most relevant U.C.C. provisions: U.C.C. Article 7 § 7-102 for definitions, including cross references to definitions in U.C.C. Article 1; U.C.C. Article 7 § 7-104 (Negotiable and Nonnegotiable Documents of Title); and U.C.C. Article 7 Part 5: Warehouse Receipts and Bills of Lading: Negotiation and Transfer (§§ 7-501 through 509). One should also consult the Official Comments 2003 related to these cited U.C.C. provisions.

This article does not set forth excerpts from the U.C.C. textual language or the Official Comments of U.C.C. Article 7 concerning “negotiation” and “duly negotiated.” The article does not do so because a discussion of these two legal concepts is beyond the scope of this symposium. In the United States, the

warehouse-receipts.

Furthermore, this Article should be understood also in the context of the other symposium articles originating from the session on EWRs held at the Second Pacific-Rim Colloquium, Shanghai, China, Jan. 8, 2015. *Second Pacific Rim Colloquium on Economic Development and the Harmonization of Commercial Law*, NAT’L L. CTR. FOR INTER-AM. FREE TRADE (Jan. 8-10, 2015), <http://www.natlaw.com/sites/default/files/Pac-Rim%20Colloquium%20Materials%202015.pdf>.

²² As the Pacific-Rim session showed, comparable concepts exist in other legal systems.

opinions of numerous courts discuss these two concepts in particular factual situations. The numerous court decisions constitute a judicial jurisprudence, often called the common law, of warehouse receipts. U.C.C. Article 7 incorporates and clarifies these numerous court decisions, thereby creating a codified commercial law for warehouse receipts.²³

The article has identified two essential legal concepts – “negotiable” and “duly negotiated” related to EWRs, but these two legal concepts are a step beyond the session on EWRs at the Second Pacific-Rim Colloquium. The Pacific-Rim session had its focus on the business structure for warehouses and warehouse receipts and discussions about creating an EWR system, particularly as an “open” or a “closed” system. Thus, these two identified legal concepts are the ultimate goals for a functioning EWR system. But also, in a valid sense, these two legal concepts are outside the narrower focus of the Pacific-Rim session about creating a sensible, feasible, and usable electronic warehouse receipts system. Foundations for an EWR system must be in place before legal concepts can become functionally meaningful.



²³ For a fuller understanding of the concepts of “negotiable” and “duly negotiated” in United States law, readers should consult the two major treatises on the Uniform Commercial Law. See 7B RONALD A. ANDERSON & LARY LAWRENCE, LAWRENCE’S ANDERSON ON THE UNIFORM COMMERCIAL CODE § 7-101 (3d ed. 2009); Linda Rusch, *Article 7: Warehouse Receipts, Bills of Lading and Other Documents of Title*, in 7 HAWKLAND’S UNIFORM COMMERCIAL CODE SERIES § 7-101 (2010); Linda Rusch, *Revised Article 7: Documents of Title*, in 7 HAWKLAND’S UNIFORM COMMERCIAL CODE SERIES § 7-102:8 (2010). See also Drew L. Kershen, *Comparing the United States Warehouse Act and the U.C.C. Article 7*, 27 CREIGHTON L. REV. 735 (1994).