



# BUSINESS LAW SECTION

OF THE FLORIDA BAR

January 17, 2020

To: Council of Sections

Re: Report of Business Law Section for Winter Meeting

From: Leyza F. Blanco, Chair-Elect

I am pleased to offer this report which provides a summary of some of the Business Law Section's ("BLS") ongoing projects and upcoming events:

### **Filing of Amicus Brief on Summary Judgment Standard**

The Business Law Section recently filed an amicus brief in the pending Florida Supreme Court case of *Wilsonart, LLC v. Lopez* on the issue of whether the Court should adopt the Celotex standard for deciding summary judgments. The Section advocated in its brief for the adoption of the Celotex standard.

Celotex is the standard used by the federal, 38 state and the District of Columbia courts. In the view of many, Celotex is a more balanced standard as it requires a non-movant to put forth sufficient evidence to show that it has a viable claim or defense, or in other words, a standard similar to a directed verdict standard. Florida's present *Holl v. Talcott* standard does not require the non-movant to put forth any evidence whatsoever to defend or promote its position, and worse yet, requires the movant to show that non-movant could never put forth a case. The members of the Section often represent clients both in favor and opposed to summary judgments and believes the present standard causes unnecessary trials that should have been resolved at the summary judgment stage, clogs the court system, and creates unnecessary costs for Florida businesses.

The briefing by the principal parties is not yet finished, so a decision by the Court is not expected until the Summer of 2020.

### **38<sup>th</sup> Annual Federal Securities Institute**

We are excited to be sponsoring the 38<sup>th</sup> Annual Federal Securities Institute at the Hotel Colonnade in Coral Gables on February 13-14, 2020.

This national program features senior members of the staff of the Securities and Exchange Commission, the Delaware judiciary, and leading Wall Street firms who will share their practical knowledge for structuring acquisitions and capital-raising transactions, handling litigation and regulatory enforcement issues, and addressing corporate governance and cybersecurity. Leading lawyers, judges, government officials and investment bankers will discuss the latest structures and areas of focus in M&A transactions, techniques for raising capital, public and privately by smaller companies, the most recent guidance on disclosure, accounting and financial report;

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approaches to cooperate governance and executive compensation; trends in shareholder activism and engagement; private securities litigation and government enforcement actions. The Institute will feature an important segment on how corporate lawyers can avoid ethical traps.

Former BLS Chair Gregory Yadley is Chair of the Institute. This year's Keynote Speaker will be Martin Lipton, the founding partner of Wachtell, Lipton, Rosen & Katz, and the Honorable Andre G. Bouchard, Chancellor of the Delaware Court of Chancery will be a featured participant at the Institute. Sponsors of the Institute include Donnelly Financial Solutions, Houlihan Lokey and SunTrust, along with 12 law firms. For additional information see: <http://www.flabizlaw.org/events/federal-securities-institute/>

## **Eleventh Annual IP Symposium**

Planning for the Section's Eleventh Annual IP Symposium is underway. Intellectual Property Committee is hosting the event at The Biltmore Hotel in Coral Gables, Florida on April 16 and 17, 2020.

This year's symposium will feature a series of case study panel discussions covering preliminary relief, ethical and e-discovery issues, and damages in IP litigation. Panel discussions will include employee mobility issues arising from the potential sweeping changes to Florida's and other states' non-compete laws, and the Romag Fasteners v. Fossil case, currently pending before the U.S. Supreme Court, which is likely to resolve a current six-to-six circuit split over the issue of trademark damages. The IP Committee's Judicial Chair, the Honorable Mary Scriven, and Academic Chair, Professor Jake Linford, will be featured in two of the panels.

Our Lunch Keynote Speaker will be U.S. Patent and Trademark Office Commissioner for Patents Drew Hirschfield. Our Dinner Speaker for Thursday evening will be Kurt Hammerle, a patent attorney at NASA who will discuss the legal impact of private corporations venturing into space and NASA's Artemis program which intends to land the first woman and next man on the Moon by 2024.

The symposium will close, as it has for many years, with a series of "year in review" discussions of recent case and statutory law impacted the various aspects of Intellectual Property.

The IP Committee is grateful for the generous support of its symposium sponsors, including Eisner Amper, Berger Singerman, Shutts & Bowen, CompuMark, and Mark Stein Law.

## **Business Court Task Force**

This task force, led by Hon. Gill Freeman and Jon Polenberg, continues to make progress on a proposal that would recommend changes to the Rule of Judicial Administration in respect to the maintenance and creation of business courts throughout the state. We have had several conference calls over the last few months and anticipate a proposal being presented to our Executive Committee for approval at its upcoming meeting on February 6<sup>th</sup> at 3:30 p.m.

## **Cannabis Law Study Group**

The Section formed a Cannabis Law Study Group, led by Alan Howard, which includes six former chairs of the Section, eight members of the Section whose practice focuses on the cannabis industry, and other members of the Section and charged it to:

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1. Evaluate options to provide cannabis law practitioners participation in, access to and benefits of the Business Law Section including but not limited to full committee standing, task force, or subcommittee/joint subcommittee within existing standing substantive committees;
2. Consider negative and positive impacts of such participation and access, including concerns over Section reputation, membership enhancement or detracting, and use of proceeds from potential sponsors or from events involving cannabis law practitioners being inappropriate under both Federal and Florida law;
3. Outline proposed initial scope of any formed group's activities within the Section and correspondingly any initial limitations; and
4. Report back and make recommendations to the Executive Council.

After extensive work, the Study Group intends to recommend that the Business Law Section form a Cannabis Law Task Force for the purpose of providing:

- (a) education through CLEs, publications and otherwise for the purpose of educating lawyers on the state of cannabis laws and how they impact business in Florida;
- (b) technical advice on legislative measures impacting the cannabis business in Florida subject to the Section's and the Florida Bar's existing legislative safeguards; and
- (c) a forum for Florida lawyers practicing in the Cannabis business arena to network, exchange ideas and enhance this practice area.

Provided, however, the Cannabis Law Task Force and Section will not:

- (i) promote the expansion of Florida's marijuana legalization laws; or
- (ii) accept sponsorship from businesses that sell cannabis-related products that are illegal under federal or Florida law without the approval of the Executive Council.

This measure will be taken up at the Executive Council's February 6<sup>th</sup> 3:30 p.m. meeting. The full report is located at: <http://www.flabizlaw.org/committees-task-force/task-forces/cannabis-law-study-group/>

## **Legislative Efforts**

The Florida Legislature concluded its final series of six interim committee meeting weeks in early December. These interim meetings are held in preparation for the regular legislative session which officially began on January 14 and concludes on March 13, 2020. With the start of the legislative session, bills were being filed at a hectic pace.

Following is a brief summary of the two proactive Business Law Section legislative proposals:

### **Corporations/LLC Glitch Bill – *House Bill Clears Committee Hurdle***

**HB 495** by Rep. Robinson (R-Bradenton) and **SB 838** by Sen. Simmons (R-Altamonte Springs) update the Florida Business Corporation Act (FBCA), a law modeled after the Model Business Corporation Act (MBCA). In 2014, the Florida Bar's Business Law Section organized a drafting task force to conduct a full FBCA study and propose FBCA revisions to:

- Bring the FBCA in line with the revised MBCA;
- Maintain Florida's competitiveness with other jurisdictions;
- Fix issues created by the existing FBCA; and
- Encourage the formation and use of Florida corporations.

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The result of the BLS task force's effort was Chapter No. 2019-90 passed during the 2019 Legislative Session and signed into law by the Governor on June 7, 2019, with a January 1, 2020 effective date. HB 495 and SB 838 fix several glitch issues in the current law.

On December 12<sup>th</sup>, HB 495 passed the Civil Justice Subcommittee by a unanimous vote of 14 to 0 with 3 technical amendments.

Link to HB 495: <http://www.flsenate.gov/Session/Bill/2020/495>

Link to SB 838: <http://www.flsenate.gov/Session/Bill/2020/838>

## **Uniform Commercial Real Estate Receivership Act (UCRERA) – *BLS Priority Passes Senate Committee***

**SB 660** by Sen. Berman (D-Lantana) and **HB 783** by Rep. Beltran (R-Valrico) designate chapter 714, F.S., as the Uniform Commercial Real Estate Receivership Act. The legislation does the following:

- Specifies that a court has the exclusive jurisdiction to direct receivers and determine controversies under certain circumstances;
- Provides the requirements and authorizations relating to the appointment of a receiver;
- Provides for the defenses and immunities of a receiver;
- Authorizes the court to enter certain orders if the court concludes that the receivership property is likely to be insufficient to satisfy certain claims; and
- Requires a receiver to file a final report containing certain information upon completion of the receiver's duties.

On December 10<sup>th</sup>, SB 660 passed the Judiciary Committee by a vote of 5 to 0.

Link to SB 660: <http://www.flsenate.gov/Session/Bill/2020/660>

Link to HB 783: <http://www.flsenate.gov/Session/Bill/2020/783>

The bills are continuing in the process of being cleared in the appropriate committees of reference prior to getting heard by the House and Senate on the floor.

## **Executive Council Retreat**

Planning is well underway for the upcoming Annual Executive Council Retreat. The Executive Council plans to explore Greece at the upcoming Executive Council Retreat beginning on April 25, 2020 in Santorini, Greece. The EC is looking forward to visiting Santorini and Athens with an exciting itinerary which includes tours of the Acropolis and other Grecian sites.

The foregoing is just an overview of the various projects and events that comprise the ongoing work of the BLS. We are looking forward to the continued success of these efforts and the ongoing participation of the BLS members in these endeavors.

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