

**Minutes for the Bankruptcy/Uniform Commercial Code
Committee of the Business Law Section of the Florida Bar**
Annual Meeting – June 27, 2019
Boca Raton Resort & Club

Stephanie Lieb, Chair
John Hutton, Legislative Vice-Chair
Jennifer Morando, Vice-Chair
Hon. Catherine Peek McEwen, Judicial Chair

I. Called to order at 9:08am. Introductions.

II. Welcome and Approval of Minutes from the Prior Meeting

The Committee considered the approval of the minutes of the January 17, 2019 mid-year meeting. Jodi Dubose moved to approve the minutes, which was seconded by Brett Lieberman, and the minutes were approved.

III. Introductions and Announcements; Incoming Slate

The Chair announced the incoming slate for the 2019-2020 year. John Hutton is the incoming Chair; Jennifer Morando will be the Legislative Vice-Chair, Jim Moon will be the Second Vice-Chair, Judge McEwen will be the Judicial Chair, and Jeff Davis will be the academic chair.

IV. Business Law Section Update & Welcome

Michael Chesal, Section Chair
Jay Brown, Section Chair-Elect
Leyza Blanco, Section Treasurer
Kacy Donlon, Section Secretary

Michael Chesal reported for leadership. He encouraged Committee members to think about expanding membership. Encourage people to become members. Website – goal is to keep the website fresh.

The Section Chair recognized Stephanie Lieb for her service to the Committee as Chair with a plaque.

Jay Brown asked for open dialogue regarding the leadership slate for next year. He requested that representatives be sent to attend non-substantive committees. As to the Labor Day retreat, the room block will probably open next week, and Committee members are encouraged to attend.

V. Legislation

a. *2019 Legislative Session Results & Update on 2020 Session*

Doug Bates, Section Legislative Chair

Aimee Diaz Lyon, Section Lobbyist

Doug Bates – reported on legislation session, and recognized Aimee Diaz Lyon and Doug Bell. Doug Bates recognized Mark Stein, the incoming Legislative Chair. Doug Bates congratulated the Committee on passing the financial literacy bill this year. While there is still work to do, it is a big accomplishment. The RPPTLs will likely to go to battle again on UCRERA. Jodi Dubose worked on the small accounts bill (which did not pass). Financial literacy will be an ongoing project because now that a bill has passed, the legislature is likely to look to our section for assistance with implementation

Aimee Diaz Lyon discussed the implementation of the financial literacy bill. She also noted that the RPPTLs likely to come back with the TBE bill. The small accounts legislation may or may not return. New bills for 2020 likely to be filed in September. The legislative work for this Committee will be September through December. The legislative session will be January and February.

Doug Bates discussed the foreclosure notice bill, a version of which was approved prior to the meeting by an email vote. Representative Driskell filed the bill, after having made certain changes. The BLS worked through it with her. The bankers had concerns. Constituencies agreed to hold off this year. We represented to Representative Driskell that we would give it a shot next year.

Judge McEwen – The bill provided for a cover sheet that would include warnings against agencies that claim to help debtors and a statement that chapter 13 could help them save their home.

Doug Bates recommended to come up with ideal language for the notice and work on getting that passed.

Aimee suggested that the Committee present actual language to the Executive Council and that would better enable her to fight for exactly what we want.

- i. The Summary of Results of 2019 Legislative Session were attached as **EXHIBIT B** to the Agenda, and the Committee reviewed the results.
- ii. *Financial Literacy bill*
Amanda Finley
Hon. Laurel Isicoff
Hon. Karen Specie

Amanda Finley gave the report. The legislation did get passed. Her group worked hard with a letter writing campaign and a white paper. It is now mandatory for all schools to provide a ½ credit elective in financial literacy. While the Committee preferred that the bill make the class mandatory rather than elective, this is clearly a step in the right direction. The Section Leadership plans to create a standing sub-committee.

iii. Chapter 607 Revision
Matt Hale

The new Chapter 607 (new corporations bill) successfully passed.

iv. Aviation Bill
Lynn Sherman

The study group was joint with Aviation Committee. While the study group was getting their recommendations together, another group put together a bill to fix the main impetus for the study which was a case that held that, even if you give notice of a lien to the FAA, if you don't have possession, you don't have a perfected interest in the collateral. That fix passed.

v. Digital/Cryptocurrency Regulation
John Hutton

John noted that there is a Section-wide task force now. The block chain study bill passed. As a result, there will be a Statewide task force created to study blockchain. The Digital/Cryptocurrency Task Force will continue to meet.

b. Reports for Ongoing Projects

i. Aviation Committee Legislation
Lynn Sherman

Covered in legislative report.

ii. ABI – Consumer Law Bankruptcy Commission
Hon. Laurel Isicoff

A four-page summary was included in the meeting materials. The Report addresses, among other things, student loans, protection of interest in collateral, and the discharge injunction. Substantive

recommendations are actually very short, and the remainder of report explains the how and why of how they got there. The Report also contains:

- Brunner recommendation
- Homestead exemption recommendation
- Unbundling of legal services
- Competency
- Creating rules regarding the appearance of counsel
- Guidelines for avoiding trial for low income debtors
- Asking courts to adopt mental health project

- iii. *Digital/Cryptocurrency Regulation*
(Section wide task force)
John Hutton

Covered during legislative report.

- iv. *Uniform Commercial Real Estate Receivership Act* – Final proposed document was attached to the Agenda as **EXHIBIT H**
(joint with Biz Lit & RPPTL)
Kenny Murena

Kenny Murena gave the report for the group. The RPPTLs have a problem with Section 16 – sale outside normal course. They have asked Kenny to attend a meeting and explain the Act, but particularly section 16. They also plan to have a debate. The Committee had a debate on whether the receiver should be able to sell property pre-judgment. Judges Delano & Williamson expressed concern. Judge Olson – value can be enhanced by liquidating pre-judgment.

Concerns were raised over Section 16, which changes the law to allow the appointment of a receiver without showing waste; Section 16 would then allow sale of property pre-judgment; recommended more strict procedures.

Kenny encouraged the Committee to review report and provide feedback. He also said his study group would review the concerns raised.

- v. *Bankruptcy Venue Reform Act*

Carlos Sardi
Hon. Catherine Peek McEwen
Ivan Reich

The Bill has not been filed yet; have been told several times it is imminent. National Association of Attorneys General drafted the bill.

- vi. *Judgment Liens excepted from title vehicle statute-* White paper was attached to the Agenda as **EXHIBIT I**

Prof. Davis
Jodi Dubose

Prof Davis – Judgment lien statute should be more clear that it does not create an interest in a motor vehicle. You get a lien, but you will lose to a creditor who subsequently takes a lien and records against COT. The study group intends to move forward in two phases:

Part 1 – Include cross reference to title statute.

Part 2 – Form a study group/committee to review additional amendments to judgment lien and title statute and whether they are needed. Possibly expand and improve judgment lien statute – currently just applies to leviabale personal property – tangible not intangible.

Motion:

Moved to support the addition of the following subparagraph to s. 55.205:

55.205 Effect of judgment lien.— ... (5) Motor vehicles and motor homes. If the personal property of the judgment debtor includes a motor vehicle or mobile home for which a Florida certificate of title has been issued, a judgment lien on such property is enforceable against the debtor, but a judgment lien is not enforceable against creditors or subsequent purchasers of such property for valuable consideration and without notice as provided in s.319.27.

Jodi seconded the motion. There was one vote against the motion; all others voted in favor.

- vii. *Fla. Stat. § 689.151 Revisions*
Andy Layden

The group succeeded in getting it pulled for the legislative session this year. Continuing to work with RPPTL section to try to come up with a compromise. This is expected to come back next session.

- viii. Personal liability of assignees
Scott Underwood

Tabled to September

- ix. Creating an App for FRBP/Code
Mark Healy
April Stone

Tabled to September

c. Items to be Monitored

- i. *Northern District Judgeships/Divisions*
Hon. Karen Specie
Jodi Dubose

Skipped

- ii. *Judicial Term Limits/Legislative Oversight of Judicial Decisions*
Doug Bates
Jodi Dubose

Skipped

- iii. *Uniform Voidable Transaction Act Amendments*
John Hutton

The task force does not recommend moving forward with UVTA this year. At the same time, we will monitor whether Senator Sevens intends to move it forward.

- iv. *Chapter 7 No-Asset Trustee Fee Increase*
Carlos Sardi
Judge McEwen

Skipped.

- v. *County Court Jurisdictional Threshold Amendment
(joint with Biz Lit)*

Skipped

- vi. *Chapter 48 Amendments*
(joint with Biz Lit)

Skipped

- vii. *Business Court Funding*
John Emmanuel

Currently, various circuits have different requirements, different status. There are also funding concerns, like Orlando has. Goal is to create a business court for each DCA. Will ask Supreme Court to form new rule of judicial administration to create criteria for cases that come to business court, perhaps educational requirements for judgment, funding for staff.

Chairs – Jon Polenberg and Judge Freeman

VI. Continuing Legal Education, Communications, and Publications

- a. *Communications Committee Report*
Matt Hale
Shirley Palumbo (BLS Blog)

Chris Thompson is the incoming chair of the Committee. @flbizlaw new Instagram handle. New link on BLS website to past chairs; trying to build it out to include bios, pictures, etc. Requested pictures from past retreats. Building white paper database. Made a plug for blog. Seeking submissions. There is a blog post submission form on the website.

- b. *CLE Committee Report*
Cori Lopez-Castro
 - i. Florida Bar Journal

Andy reported on the last CLE. Part 2 of “Pre-Bankruptcy Best Practices in Litigation” series was presented on May 23, 2019 in Orlando. Part 3 will happen in the fall. Share feedback with John Hutton.

- c. *CLE Programs*
 - i. *ABI/Stetson Seminar* - January 15-17, 2020, Tampa
Hon. Roberta A. Colton

- ii. *2019 View from the Bench Report* – November 6-8, 2019 Tampa and Miami
Hon. Michael Williamson

Judge Williamson reported. Dinners/cocktail receptions will precede each seminar. Sign up sheet going around to prepare case summaries.

- d. *Out of State Division Newsletter Submissions*
Hon. Catherine Peek McEwen
Don Workman

Skipped.

VII. Cross-Committee Partnership and Liaison Reports

a. Liaison Reports

- i. *Pro Bono* - Lynn Sherman

Rolled out pro bono pledge in January. Paper form available at meeting and electronic form on website.

- ii. *IMF Committee* - Mariane Dorris

The BLS Fellows were recognized.

- iii. *Membership Committee* - Jim Moon

VIII. Old Business

IX. New Business

- a. Honoring American Veterans in Extreme Need Act of 2019 ("HAVEN Act") - S.679 and HR.2938- Was attached as **EXHIBIT J**
VOTE REQUIRED

Carlos Sardi

Judge McEwen advised that the bill has been filed and has Bipartisan support.

Judge McEwen briefly reported on other anticipated federal legislative efforts, including the need to reform student loans, Puerto Rico's need for relief, elimination of credit counseling requirement, and an alternative small business bankruptcy filing which would provide for an election to do a regular small business

chapter 11 or file under another subsection which would be a fast track and operate like a chapter 13 with a standing trustee.

Carlos Sardi discussed the Haven Act. Honoring American Veterans in Extreme Need Act. Carlos requested a motion by the Committee. The BLS will support the Act. Senator Scott has not supported the Act. It will eliminate the disparity in treatment of veteran's benefits in calculation of disposable income. Right now, disposable income calculations do not include SSI, but they do include Veterans' benefits/disability.

Carlos made the following motion: To obtain BLS standing position and ask for specific support from the BLS Executive Council for the Honoring American Veterans in Extreme Need Act of 2019 (the "HAVEN Act") - S.679 and HR.2938 (see attached) - by having its leadership formally contact the offices of Florida U.S. Senator Rick Scott and all of Florida U.S. House Representatives to encourage their support and co-sponsorship of the bills in each of their respective Chambers in the U.S. Congress, and by sending a blast electronic mail to encourage BLS Section members to individually do the same.

Committee members expressed concern over a motion that directs members to contact the legislature. The motion was amended to reflect that the BLS will support the HAVEN Act. John Hutton seconded the motion. All voted in favor.

- b. Proposed Amendments to UCC 9-406 and 9-408 – White paper attached to Agenda as **EXHIBIT K**
(joint with Corporations)
Jeff Davis
Matt Hale

A study group was formed to review the 2018 amendments that were made to the uniform act; the study group will review whether to add the amendments to the Florida Act. A Sign up sheet was passed around.

- d. Foreclosure Notice Bill
Judge McEwen
Douglas Bates

Covered in legislative report.

X. Future Meeting Dates

- a. BLS Retreat – August 30 – September 2, 2019
Ritz Carlton, Naples

b. BLS Midyear Meeting – January 2020
TBD

c. BLS Annual Meeting – June 17 – 20, 2020
Hilton Orlando Bonnet Creek

XI. Adjourn

John recognized Committee and Stephanie's accomplishments.

Adjourned at 11:00am.