

**Minutes for the Bankruptcy/Uniform Commercial Code
Committee of the Business Law Section of the Florida Bar**
Teleconference – Monday, September 9, 2019, 5:00 p.m. –
Continued to November 19, 2019, 5:00 p.m.

John Hutton, Chair
Jennifer Morando, Legislative Vice-Chair
James (Jim) Moon, Vice-Chair
Hon. Catherine Peek McEwen, Judicial Chair

I. Called to Order at 5:03 p.m. Introductions.

Mr. Hutton advised he is sensitive to everyone's time. Wants to give update on legislation and get to items we did not get to on Sept. 9.

II. Welcome and Approval of Minutes from the Prior Meeting

John Hutton
Minutes were attached as **EXHIBIT A** to Agenda
Motion to approve: Shirley Palumbo
Second: Adina Pollan

Unanimous approval of minutes.

III. Introductions and Announcements; New Slate

John Hutton

i. Committee website changes

John Hutton – trying to update and make more current. Want to make it easier to find things that are relevant and current. Included links to websites that we thought were helpful resources, like the Middle District website. We welcome comments on how to make it more useful. Can further discuss at meeting in February.

IV. Legislation

a. *Legislative Update for 2020 Session*

Doug Bates
Aimee Diaz Lyon, Section Lobbyist

i. *Brief Review of Standing Legislative Positions*

Aimee Diaz-Lyon: Appreciate the time with you to discuss legislative issues. We have an early session this year. Starts in January this year, used to start in March. It has been a highly unusual legislative session this year. Legislature has not done much. Cancelled majority of committee meetings, budget presentations not done, slow start to this session.

I think they will come back in Committee week and realize they need to move quickly and only pass priority legislation. Typically, it takes a lot of effort to get legislation over the finish line.

Our speaker and presiding officers change every 2 years – won't happen until after election. We know these folks and who to lobby.

Top issues for bankruptcy UCC committee

- Corporations rewrite was completed and passed. Some glitches with 500 pages. We have an 80 page glitch bill. Technical bill, and Senator Simmons agreed to sponsor. Please thank him for doing that. In house, we have Representative Robinson. Hope to have up in December. RPTLS had a question on application to condominium law, but being ironed out.
- Second bill priority: UCCREA – That bill has been carefully negotiated. Manny and Kenny have worked through a lot of technical issues. Tax law section input too. Senator Berman plans to file that bill to file in December. Working with Representative Beltran on that bill. He has a couple of technical issues we need to address. We hope to get that bill filed this week. Task Force will have to be reconvened to address any further changes requested.
- Decedents property bill filed without TBE language to which we don't agree. Legislators committed to wait for us to come to resolution on language. We may be able to reach consensus on investment account, and RPTLs are looking at this and will recommend language for us. Too early to tell what that will look like.
- Notice of Homeowners Foreclosure language. Discussed extensively last meeting. Judge McEwen has taken the lead on some of these issues and getting statistics – some volunteered to do a white paper. Slow start of legislative session is a concern, so my recommendation is to come up with language, develop a white paper with statistics etc. Need to educate legislators on this.

- When talking to RPTLs about UCCREA and other bills, maybe get a call with RPTLs point people and get a coalition of folks to hammer out language we can agree on. Try to get passed as an amendment in 2020 or maybe 2021.
- Financial Literacy Task Force: Call this week. Judge Isicoff and Judge Specie on call. Developing an action plan. Early stages. At some point, once organized, we will reach out to this committee in terms of being on front lines, visiting school, helping teachers, write letters to editors with goal of going to legislature to change from voluntary to mandatory course.

Kenny Murena: Substantive update to UCCREA. We have an SB number. Rep. Beltran agreed to file as is, with understanding we would consider further amendments.

3 issues Beltran raised to Manny Farach. Manny sent us a detailed email. Beltran wants a definition of residential in the act. There isn't one. We explored the idea to include that definition, but other definitions in other statutes are not helpful. In the end, the RPTLs (who also suggested this) agreed to drop and just go with the act as is. Rep. Beltran wants us to propose some definition and discuss it, but I don't necessarily agree with it. We just learned of this, and we will have a call before in person meeting next year.

Second issue: Time: Beltran had an issue with how fast some things happen in a receivership – like 5 day periods. He thinks it is too quick. He thinks it is unrealistic, even though Court can extend.

Finally, he raised an issue of bonds, and whether they are required for party that is the Receiver, and a Receivership bond. He wants alternative forms of security for the receiver – such as pledging personal assets. Manny explained court can waive bond, but we have to discuss and try to address his concern. We will at least consider his suggestion.

Aimee Diaz Lyon: Looking to get into Senate on Dec. 10. So good for task force to meet, if possible, next week. And we should meet with the RPTLs prior to Dec. 10 too.

2 changes requested by RPTLs:

On page 22, Senate Version of bill is 2 provisions in green. The RPTLs asked us to clarify that for purposes of selling an asset outside of ordinary course, express consent would be provided after commencement of action in which Receiver was appointed.

Second thing: Need to clarify notice and that service will be consistent with Chapter 48.

EXHIBIT B has Legislative Positions

b. Reports from Study Groups of Ongoing Projects

i. Aviation Committee Legislation

Lynn Sherman

ii. Digital/Cryptocurrency Regulation

(Section wide task force)

John Hutton

John Hutton update: Statewide study group on blockchain created. One of the members of the statewide task force is Woody Pollack. Had 3 meetings already. Next year they will issue a report. We can report further at Feb. meeting.

Aimee Diaz Lyon: Please thank President Galvano for appointing Woody Pollack to task force. Testament to the section's value.

iii. Bankruptcy Venue Reform Act

11/19/19:

Judge McEwen: Update – We need to get Deutch on board, on House Judiciary. And Debbie Murcasel Powell. Val Demmings on House Judiciary. 3 members that have not become sponsors yet, and they are critical. Greg Stubby is on, and 5th is Matt Gaetz.

We need to get a republican and democrat to co-sponsor in Senate. I have an appointment with Debbie Stabinow, as she has been favorable to bankruptcy issues so a potential democrat. I will try to see our two senators, but they don't see this as a priority.

Leyza Blanco: I met with Debbie Murcasel Powell, and we went through white papers with her. We should follow up, but not sure who should do that.

Judge McEwen: I would say, getting her name on the bill is important, and please circle back around and thank you for volunteering.

John Hutton: I will work on Rep. Ted Deutch. But with impeachment proceedings, not much chance of movement. Hopefully we will get movement.

Judge McEwen: There needs to be some sort of compromise to get Senator Coons to even look at this. Maybe \$1 Billion and above?

iv. Creating an App for FRBP/Code

Mark Healy

We created an app, but have to get Apple to approve, but it kept getting kicked back. Finally told they have an issue with copyrighted content and they don't like statutes included, because it could create liability for them. We have some workarounds we are working on.

(submitted the following via email):

We are running into some copyright issues with the content and Apple and we are trying to get a work around that will allow us to show the content on the app without directly putting it in the app.

Apple has an issue when people put copyrighted material or laws, statutes, codes, etc. content directly on their app. If they modify anything on those laws either on purpose or by mistake then Apple feels like they could have potential liability. There are a few options to work around that issue and we are assessing those to come with a solution that allows the content to be displayed. Should have an answer soon.

V. Continuing Legal Education, Communications, and Publications

a. *Future CLE Programs*

i. Fall and spring short programs/webinars – Ideas for Topics (Tech/Evid?)

Target dates: December 4; February 19; April 15

Andrew Layden

John Hutton: Wanted ideas for programming this year. One idea I have is in the nature of skills program. Stuff applicable to any practitioner – evidentiary seminar that focuses on the introduction of electronic evidence, social media evidence, since most communications are not paper, but are email, text message, social media post, posted on a website or other apps. How to you capture, preserve, etc.

Judge Mora: Want to mention at ABI Paskay seminar in January, I am spearheading a presentation called master evidence class. About 1.15 hour presentation. Group of lawyers at national bankruptcy judges workshop from Akin Gump, Paul Weiss, etc.

John Hutton: in light of that being in Paskay Seminar, should we steer away from? Or something we can leverage and use some of those materials and expand into other markets?

Judge Mora: Can be replicated assuming a big enough audience.

Judge McEwen: Not everyone coming to Tampa, so I would be in favor of bringing to other markets.

Judge Mora: good to have a demo of how it would go down.

John Hutton: Practical demonstration would be helpful.

Judge Mora: Southern District putting on a presentation on small business bankruptcy changes.

Judge Delano: Covered at Paskay seminar too.

Judge Mora: The issue is really whether you can get folks to come to a seminar as opposed to a webinar.

Jay Brown: The Section will be doing more webinars too. So let me know what we can do to help.

Aimee Diaz-Lyon: IF we get UCCREA passed, that could be a topic for training. We will know by mid-February. Effective date, unless it changes, is July 1.

John Hutton: That's a great idea. Task Force members could be participants on that. Maybe we could do something in May or June.

- ii. *ABI/Stetson Seminar - January 15-17, 2020, Tampa*
Hon. Roberta A. Colton

John Hutton mentioned.

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

John Hutton mentioned. Seminar and Dinner well attended.

VI. New Business

John Hutton: Need volunteers for subcommittees. Jennifer needs to rely on folks to volunteer. If we ask you to look at some legislation, we need you to do it.

Jennifer Morando: Great job summarizing. But the more volunteers the better. Already reviewed 15 bills for this session, so we need more folks onboard to spread the workload. It's usually just looking at legislation and see if it pertains to our committee and we should review further or not take a position. Most are in the latter category, but it is important to at least look at it.

VII. Future Meeting Dates

- a. BLS Midyear Meeting – February 5-8, 2020
Hyatt Regency Orlando

John Hutton mentioned.

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

John Hutton Motioned.

VIII. Adjourn

Motion to Adjourn: Leyza Blano
Second: Jodi Duboise