

**Minutes for the Bankruptcy/Uniform Commercial Code
Committee of the Business Law Section of the Florida Bar**

Annual Florida Bar Virtual Convention – Thursday, June 18, 2020, 9:00 – 11:00 a.m.
Zoom Meeting

John Hutton, Chair
Jennifer Morando, Legislative Vice-Chair
Jim Moon, Vice-Chair
Hon. Catherine Peek McEwen, Judicial Chair
Prof. Jeff Davis, Academic Chair

I. Welcome and Approval of Minutes from the Prior Meeting

John Hutton

The minutes of the Midyear Meeting held on February 6, 2020 were circulated with the meeting materials. Jim Moon moved to approve the minutes. Jennifer Morando seconded the motion, and the minutes were unanimously approved.

II. Introductions and Announcements

John Hutton

III. Business Law Section Update & Welcome

Jay Brown, Section Chair
Leyza Blanco, Section Chair-Elect
Kacy Donlon, Section Treasurer
Doug Bates, Section Secretary

IV. Legislation

a. *Legislative Update for 2020 Session*

Mark Stein, Jennifer Morando
Aimee Diaz Lyon, Section Lobbyist

i. *Review of Standing Legislative Positions*

All legislative positions of The Florida Bar (TFB) for the 2018-20 biennium – including those of committees, sections and divisions – are due to sunset at the July 2020 meeting of the Board of Governors (BOG).

The Committee reviewed the current list of recognized positions for the Bankruptcy/UCC Committee to determine which positions we wish to continue to advocate in the 2020-2022 biennium that begins with the legislature's first 2021 organizational session.

The Committee chairs prepared a redline of the prior standing positions to illustrate positions that they believed had gone stale and

focus on the positions that the Committee still intends to advocate. Jennifer Morando discussed the standing positions that the Committee was still pursuing or would pursue if proposed legislation arose in the future. There were no comments or questions concerning the proposed recommendations.

Mark Wolfson moved to approve the proposed standing legislative positions, and Stephanie Lieb seconded. The proposal was unanimously approved.

A copy of the approved standing legislative positions for 2020-2022 is attached as **EXHIBIT A.**

ii. Legislative Review Subcommittee

Jennifer Morando thanked the volunteers that participated in the Legislative Review Subcommittee and encouraged existing volunteers and new volunteers to continue to assist in the future as Jim Moon transitions into the role of Legislative Vice Chair of the Committee. The next legislative session will commence in March 2021.

John Hutton informed the Committee that the Legislative Team has advised it will be difficult for the BLS to accomplish much legislation in 2021 as the focus will be on COVID-19 and related legislation and also police issues.

Aimee: Mark Stein and Doug are here.

At this point, the BLS leadership joined the meeting. The Section Chair, Jay Brown, thanked the Committee its ability to continue to accomplish things remotely.

Aimee Diaz Lyon, the BLS lobbyist, and Mark Stein, the Chair of the BLS Legislation Committee, gave a legislation update for the 2020 session. The Uniform Commercial Real Estate Receivership Act passed, and, as of the time of this meeting, had been sent to the Governor for signature but it had not yet been signed. Mark Stein encouraged Committee members to thank the Florida legislators who sponsored bills or are friends of the Section.

Mark Stein reported that the next legislative session is March 2, 2021 through April 19, 2021. Bills that the Committee intends to move forward on need to be ready by the retreat meeting. By November, the BLS legislative team will have to hit the ground

running and get bill sponsors; however, the session is expected to be unusual in that it will likely be dominated by the pandemic and other issues. He encouraged the Committee to be very selective with its proposed legislation as the BLS will likely only be able to advance 2 to 3 legislative issues.

John Hutton stated that one issue the Committee is reviewing for next year is a fix in response to the decision in the Kearney case. The RPPTL Section has prepared a white paper and proposed legislation, and our Committee had a study group look at it. The study group agreed with the RPPTL Section that there needs to be a fix.

Aimee stated that the RPPTL Section has not finalized its legislative package yet; once it is finalized, we will know if TBE is back on the RPPTL agenda. The legislative team will be on the lookout for this issue which the Committee opposes.

b. Reports from Study Groups of Ongoing Projects

i. Aviation Committee Legislation

Lynn Sherman
No Report.

*ii. Digital/Cryptocurrency Regulation
(Section wide task force)*

Blockchain legislation passed in the 2020 session. The bills, HB 1391 & HB 1393, create a Financial Technology Sandbox program in Florida within the Office of Financial Regulation, to license financial technology innovators to test new innovative financial products and services within the areas of a regulatory sandbox using exceptions of specified general law and waivers of the corresponding rule requirements under defined conditions in the consumer finance, payment instruments sellers, and money transmitter programs.

iii. Uniform Commercial Real Estate Receivership Act

Kenny Murena
This legislation passed and is pending signature by Governor. A CLE to discuss the legislation has been planned, but it had to be rescheduled due to waiting on the legislation to be signed by the Governor.

iv. Bankruptcy Venue Reform Act of 2019

John Hutton
Hon. Catherine Peek McEwen

Judge McEwen reported that the act has 20 sponsors in the House, but only 2 Floridians. On the Senate side, there is no companion bill. Judge McEwen reached out to Senators Scott and Rubio's general counsels and floated that bankruptcy courts may become overwhelmed and that venue reform will help deal with COVID related issues. Rubio's general counsel said she is happy to revisit; Senator Scott's general counsel was less welcoming, stating that he hopes the economy recovers so we won't need the relief.

There was some discussion regarding a white paper that was published by the NCBJ. Judge McEwen stated that the white paper contained some inaccurate information. Judge Williamson said there were strong anti-venue reform influences that ultimately impacted the white paper.

Judge Isicoff reported that, if a venue bill becomes pending, then NCBJ has a procedure to employ to decide if it will support pending legislation.

Judge McEwen stated that NCBJ says it doesn't take a position on legislation unless it has likelihood to pass. Since venue reform is only pending in the House, NCBJ currently cannot consider the legislation based on that guideline.

John Hutton clarified that it is a standing position of this Committee and the Florida Bar to support venue reform. John previously circulated by email to the Committee a template put together by the Commercial Law League of America to assist people with reaching out to Congressional members. He encouraged Committee representatives to reach out to their Representatives and Senators again.

v. *Judgment Liens excepted from title vehicle statute*- Update

Prof. Davis
Jodi Dubose

Prof. Davis gave the update. The study group is pursuing two tasks. First, the study group is working on a procedure for getting a judgment lien on title. The study group has been trying to work with the DMV, but they have been resistant to change because they think it would require more staffing. Because of the

expectation of DMV resistance, the plan is to postpone this issue until the 2022 legislative session.

The study group's second task is to add intangibles to the scope of judgment lien. The proposed legislation will expand only for in state residents. The study group has decided to adopt the Article 9 definition of "location," so the legislation would not reach companies incorporated outside Florida. However, judgment creditors could still go after them with proceedings supplementary.

The study group intends to pursue both tasks as part of a single bill in the 2022 legislative session.

vi. *Fla. Stat. § 689.151 Revisions* (TBE legislation pushed by RPPTLs);
Update

Andy Layden
John Hutton
Doug Bates
Mark Wolfson

John Hutton reported that Aimee will continue to monitor this issue and notify us if the RPPTL Section brings it back up for 2021 legislative session.

vii. *Foreclosure Notice Bill*

Judge McEwen
Jennifer Morando

Jennifer Morando reported that this study group has made revisions to the prior version of the foreclosure notice bill to make sure it reflected the comments from last year. The study group intends to seek approval of the bill at the retreat meeting.

viii. *Proposed Amendments to UCC 9-406 and 9-408*
(joint with Corporations)

Jeff Davis
Matt Hale

Professor Davis gave the report for this joint task force. This issue has to do with choose your partner policy. If you are a member of partnership or LLC you can choose your partners and not be forced to involuntarily partner with someone you do not want to partner

with. The proposed amendment will admit transfer of property and give effect to language that prohibits transfer of ownership. A white paper was included with the meeting materials with the proposed changes. The task force plans to pursue in the 2022 legislative session.

ix. *Creating an App for FRBP/Code*
Mark Healy

Mark Healy gave the report. The app will have to point to a website, but the website doesn't update itself. We will create a webpage and put all of the important links on it. Local rules of districts, ABC, UCRERA and whatever else people want. Then they will be in one place and you can access in one place. We will send out an email on how to create a bookmark for it. That way, we could solve the problem another way and get what we want. Data will be harder to cut and paste, but it will be there and you don't have to hunt around for it. Sometime before next meeting, we will create page and put on labels. If you don't see something you would like to see, we are open to discuss.

The plan is to have a prototype before the retreat meeting for people to begin reviewing.

x. *Financial Literacy Task Force*
Amanda Finley

Judge Isicoff reported that there is no update. The task force had a plan, but the plan is on hold due to COVID. Judge McEwen stated that student athletes are now required to take a financial literacy course.

c. Items to be Monitored

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

Judge Specie gave the report. At the Midyear meeting, Executive Council and this Committee passed a resolution of support for another judge. The 11th Cir. solicits requests in late July or early August. ND-Fla filings are currently down, but, if they go up

in September, that would help support the request. An influx of cases is expected.

ii. Judicial Term Limits/Legislative Oversight of Judicial Decisions

Doug Bates

Jodi Dubose

Jodi Dubose gave the report. There is no update. The issue has not been as active as it has been in the past. Leave on agenda and provide update when one becomes available.

iii. Uniform Voidable Transaction Act Amendments

John Hutton

John Hutton reported that this issue remains a standing position of the Committee, but it is not the right time to move this forward.

iv. Chapter 48 Amendments

(joint with Biz Lit)

Adina Pollan

Adina Pollan gave the report. The task force has been meeting regularly; however, this is not an issue that will be ready for 2021 legislative session. The task force is currently working on service on dissolved corporations and other entities. Adina encouraged anyone with practical experience in this area to participate in the task force.

V. Continuing Legal Education, Communications, and Publications

a. Communications Committee Report

Matt Hale

Shirley Palumbo (BLS Blog)

Adina Pollan is the incoming chair and gave the report. This committee update the website and created a blog. The committee has been sharing old photos as part of a blast from the past series. If you want to submit a blog article, contact Adina.

b. CLE Committee Report

Cori Lopez-Castro

i. Florida Bar Journal

Bob Charbonneau is the incoming committee chair and gave the report. The committee is responsible for the BLS Florida Bar Journal articles. If you are interested in publishing an article, contact Bob. There is a two month lead time for each deadline. There is also a style guide which Bob can provide. There is a plan to do a subchapter 5 presentation. Let judge Colton know if you are interested.

c. *Future CLE Programs*

Andrew Layden reported that a UCRERA seminar had been scheduled for June 11, but it was postponed because the Governor has not signed the bill. The seminar will be rescheduled.

John Hutton reported that the Tax Section working with our Committee to put together a joint educational series. There will be a bankruptcy primer for non-bankruptcy or tax attorneys, and a tax primer for bankruptcy attorneys.

Judge Williamson gave an update on View from the Bench. The plan is to go forward with a live session in Tampa; the Florida Bar is looking into Jungle Island for the Miami program. If the seminar cannot be done live, it will be done online.

i. COVID Task Force

John Hutton gave the report. This is another joint effort. A lot of the members of the task force are from this Committee. There have already been several educational programs related to COVID issues, including one that was bankruptcy related – Business Unusual. The task Force has a COVID website, and it is a great resource.

d. *Out of State Division Newsletter Submissions*

Hon. Catherine Peek McEwen
Don Workman

Don Workman gave the report. There have been some great submissions. You can find the articles on the website flabaroutofstater.org. The publication goes out by link to 15, 000 out of state Florida Bar members. Great distribution, and you can hyperlink to features in your article.

Judge McEwen gave a shoutout to Kenny Murena for his article on UCRERA, and Steve Dupree did an article that was great, too.

VI. Cross-Committee Partnership and Liaison Reports

Current Partnership Initiatives & Liaison Reports

Due to lack of time, this portion of the agenda was skipped.

VII. Old Business

N/a

VIII. New Business

a. Kearney

The RPPTL Section seeks an amendment to Fla Stat 222, in light of the 11th Circuit decision in *Kearney Constr. Co., LLC v. Travelers Cas. & Sur. Co. of Am.*, 2019 WL 5957361 at *3 (11th Cir. 2019). Kearney essentially held that an “all assets” pledge included the pledgor’s interest in exempt IRA accounts. The RPPTLS prepared a proposed legislative fix and white paper, which were included with the meeting materials.

John Hutton gave the report. The study group reviewed the proposed fix by the RPPTL Section and believes it may have gone too far. A minimalist approach would be that the pledge be identified with specificity.

Judge Mora commented that she was surprised by the holding in Kearny. She believed the exemption provisions in Chapter 222 superseded a blanket pledge. To the extent the legislative fix merely requires a creditor to specifically identify assets to be pledged, she believes the fix is reasonable.

Mark Wolfson also expressed that a pledge should be required to specifically identify otherwise exempt assets.

John Hutton stated that the study group would deliberate on this more, and determine whether to support the RPPTL proposal.

b. Proposed COVID-19 Business Recovery Plan

John Hutton gave the report. The state court requested BK/UCC input on a proposal to create a non-liquidating receivership program in state court for businesses impacted by COVID-19. The proposal was akin to the small business Chapter 11 process, with certain obvious limitations. The study group met and essentially decided that, although well-intentioned, new Subchapter V for small business is a better option for small business.

IX. The meeting was adjourned at 11:00am.