

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

Labor Day Retreat Meeting

Saturday, September 1, 2018; 9:30 a.m. – 11:30 a.m.

Hyatt Regency Coconut Point, Estero, Florida

Stephanie Lieb, Chair

John Hutton, Legislative Vice-Chair

Jennifer Morando, Second Vice-Chair

Hon. Catherine Peek McEwen, Judicial Chair

**I. Welcome and Approval of Minutes from the Prior Meeting**

The meeting was called to order at 9:35am by the Chair, Stephanie Lieb.

Following introductions by Committee members, Judge Williamson recognized the passing of Brian Gart, a former chair of the Committee and of the Section, and led a moment of silence in Brian's memory.

Tom Messana made a motion to approve the minutes of the Annual Meeting held on June 14, 2018. The motion was seconded by Jodi Dubose, and they were unanimously approved.

**II. Introductions and Announcements**

The Chair recognized and introduced the new Committee leaders for the 2018-2019 Bar year. Effective as of this year, the Section has changed the structure of the leadership positions such that a second vice chair has been added. The first vice chair will serve as the vice chair for all legislation activities of the Committee, and the second vice chair will handle all other vice chair duties.

The Chair discussed that, in light of the new leadership structure which allows for greater succession planning, the Chair and vice chairs have established the following goals for the Committee for the next few years:

- 1) Increase focus on legislation, including proactively identifying issues that are ripe for legislative action and providing more opportunities for Committee members to get involved with legislative initiatives;
- 2) Improve CLE benefits to Committee members by changing the format of CLE programming to include webinars or other live broadcasting to enable more members to attend CLE programs; and
- 3) Partner with sister committees and sections to promote cross-committee/section networking and relationships and increase the legislative opportunities available for Committee members.

a. *Brief Review of Standing Legislative Positions*

John Hutton

Legislative Vice Chair, John Hutton, discussed the standing legislative positions of the Committee, and explained the need for having standing positions. The Committee's standing legislative positions sunset every two years, and, as a result, are being renewed this year. Some items continue on as standing positions even if the Committee is not actively pursuing them because it enables the Section lobbyist to take swift action in the event related legislation is proposed in the future. A copy of the standing legislative positions of the Committee for 2018-2019 is attached as **Exhibit A**.

**III. Legislation**

b. *Legislative Update*

Doug Bates, Section Legislative Chair

Aimee Diaz Lyon, Section Lobbyist

This report was tabled until the Section leadership entered the room later in the meeting.

c. *Reports from Study Group of Ongoing Projects*

i. *Conclusion and Thanks to completion of work of certain Study Groups*

The Chair recognized the Proceedings Supplementary and FBA Foreclosure Amendment (Fla. Stat. § 702.12) study groups which have successfully completed their legislative efforts, and, therefore, have concluded and will be removed from future meeting agendas.

ii. *Aviation Committee Legislation -Amendments to Aviation Lien Statute (Fla. Stat. §§ 329.41 and .51)*

Lynn Sherman

The Chair read Lynn Sherman's written report as Lynn was unable to attend the meeting. The study group had its first phone meeting in August. They assigned research assignments on current status of Florida law, and they are also reviewing laws of other states. There will be another phone meeting next month. The study group's goal is to be ready to present proposed legislation to the Committee and the Executive Council for approval by June 2019.

Diane Wells is also participating in this study group and provided some additional details on the issues that the study group is considering, including: the need for replevin of an aircraft engine to include

recovery of its log book; lien perfection issues; and prevailing party attorney's fees.

iii. *ABI – Consumer Law Bankruptcy Commission*

Hon. Laurel Isicoff

Dennis LeVine

Dennis LeVine reported on the ABI Commission on Consumer Bankruptcy. The Commission is charged with researching and recommending improvements to the consumer bankruptcy system. The fifteen members of the ABI Commission, with the assistance of its three committees (Chapter 7; Chapter 13; Case administration) identified approx. 60 consumer bankruptcy issues to study. After numerous public hearings and submissions, the Commissioners have been meeting every two weeks and has completed work on approximately 40 issues. The process is going more slowly than expected. As a result, the Commission is now targeting the end of the year to finish its review of all issues and begin to prepare a final report with its recommendations. This report is now scheduled to be released at the ABI Annual Spring Meeting in April, 2019.

iv. *Northern District Judgeships/Divisions*

Hon. Karen Specie

Jodi Dubose

Doug Bates

Jodi Dubose reported that the caseload numbers are currently below the threshold to request an additional judgeship, but the issues have not gone away because Judge Specie has to travel so much in order to cover the entire Northern District. Letters, phone calls, etc. may be needed in the future to support a request for an additional judgeship to the 11<sup>th</sup> Circuit.

Judge Specie also reported that she has already made a request twice. The 11<sup>th</sup> Circuit unanimously recommended that another judge be authorized, but it was ultimately not approved. Judge Specie stated that she is concerned that, with the weighted caseload numbers down, a new request at this time may waste political capital. An alternative solution may be a loaner judge. The deadline to make the request is at the end of September, and Judge Specie has not yet decided whether the request will be made.

v. *Chapter 607 Revision*

Matt Hale  
Chris Thompson

Matt Hale reported that he, Chris Thompson, and Andrew Layden have participated in this task force in order to review the proposed revisions for bankruptcy/UCC impact. The task force's goal is to bring the Florida Act closer to model act. The main change that potentially impacts bankruptcy/UCC is a revision to the dissolution process. The revision would shift notice from publication in a newspaper to notification from the Department of State. A memo was prepared to summarize the proposed changes; a copy of the memo is attached as **Exhibit B**.

vi. *Judicial Term Limits / Legislative Oversight of Judicial Decisions / CRC*

Doug Bates  
Jodi Dubose

No report at this time.

vii. *Digital/Cryptocurrency Regulation*

John Hutton

John Hutton gave the report. The task force's focus is not necessarily on digital currency, but rather on blockchain and distributed ledgers. This is an issue that was brought to the Section by the Florida Legislature because the Legislature wants to act with respect to regulation of digital currency but is unsure of the best course of action. A uniform act has been established as a nationwide model. The Legislature is not considering passing the uniform act for now; however, the current revisions being considered will incorporate some of uniform act. The proposed revisions will make it clear that these businesses are money services businesses that are regulated by the Office of Financial Regulation and must be licensed under Chapter 560. New York has enacted some legislation that has been very restrictive and caused businesses to leave the state. The Florida Legislature wants to add some regulation but in a way that will still foster business in the state.

Since this is an election year, the task force is not sure what the Legislature will ultimately decide to do with this issue. However, the task force has decided that it will pursue legislation even if the Legislature does not decide on its own to take action. The task force does not yet have anything ready for the Section to review, but they

have set a goal to have it ready by end of year so that a proposal is in place in time for the Spring 2019 legislative session.

viii. *Uniform Commercial Real Estate Receivership Act*

(joint with Business Litigation Committee)

Lynn Sherman

Kenny Murena

Diane Wells gave the report. This issue came out of NCCUSL. The task force is letting the draft legislation age to see how people are treating it. They have set a goal to have draft language for the Section to review in January, but they do not believe this will be an issue for the 2019 legislative session. One notable change under the revision will be to give a receiver power to sell property instead of requiring property to go to auction. RPPTL section had already been working on a change to 702 that would allow this, so they have been helpful. The intent is to keep this power narrowed only to commercial property, not residential.

ix. *Uniform Voidable Transaction Act Amendments*

John Hutton

John Hutton gave the report. This project has been ongoing for 2 years, but the Section has not been able to get it passed due to opposition from other sections. The opposition would continue if they pursued it this year, so the task force has decided not to pursue anything in the 2019 session. Instead, they will wait and let the law develop in other states. There is a chance that Senator Simmons may want to advance this legislation this year, in which case the Section may have to take action to defend bad legislation. Senator Simmons is waiting until November to make a decision. If Senator Simmons decides he is going to pursue, the UVTA task force will reevaluate.

Judge Mora asked John to summarize the RPPTL concerns and disagreements which include:

1) RPPTL does not like an addition to the official comments which defines what is an actual vs. constructively fraudulent transfer. The official comments discuss asset substitutions and entity conversions. John said these things do not seem to be new. They can be done for legitimate estate planning, but can also be done to avoid creditors.

2) RPPTL wanted an instruction to courts prohibiting courts from considering official comments because they are not the law of Florida. BLS attempted to compromise by including a statement that the

comments are non-binding, but RPPTL insisted on an absolute prohibition.

3) RPPTL also opposed the choice of law provision. The UVTA would establish a more concrete set of rules for determining which state law applies which would have weakened ability to forum shop.

x. *Bankruptcy Venue Reform Act of 2018, S. 2282*

Carlos Sardi

Hon. Catherine Peek McEwen

Ivan Reich

Judge McEwen gave the report. The bill was introduced in January 2018, but it has not gone anywhere. Senator Grassley does not want to get into anything controversial while he's still getting judges approved, so it will not likely be approved this year. It will likely move to 116<sup>th</sup> Congress. The bill will need to get additional sponsors. Judge McEwen urged members of the Committee to speak to their representatives and stated that she is working on a list of talking points which will be disseminated to the Committee.

d. Report from Section Leadership

The Committee took a short break from study group reports while Section leadership addressed the Committee. Section Chair, Michael Chesal, reported that all substantive committees need to establish a liaison to serve on all non-substantive committees. He also reported that registration is now open for the Executive Council spring retreat to Israel which is open to all Section members.

Section Chair-Elect, Jay Brown, reported on the Section-wide change to add 2<sup>nd</sup> vice chairs to all committees in order to develop continuity within the Section. He also stated that his goal is to have a slate developed soon after mid-year for 2019-2020 leadership. All committees need to make their recommendations to the Long-Range Planning Committee by that time. He instructed the Committee to make use of the fellows and get them involved with Committee projects.

Doug Bates, Chair of the Legislation Committee, reminded the Committee that there will be many changes in Tallahassee after the mid-term elections in November. He stated that the Bankruptcy/UCC Committee will be creating a new subcommittee to address financial literacy education legislation. Doug reported that there has been a great deal of division on this legislation in prior sessions because the state claims that this is already embedded in economics curriculum. Doug suggested that we identify what's already in the current curriculum and what can be built into that. He also suggested that we approach other interest

groups to determine whether we are missing anything. Our proposal will need to address teacher training, funding, and curriculum.

e. New Projects and Study Groups

i. *Financial Literacy as a New Subcommittee*

Hon. Laurel Isicoff

Hon. Karen Specie

Judge Specie gave report. The legislation the Committee has previously proposed was designed to require a ½-credit stand-alone course on financial literacy. Judge Specie reported that the State of Florida claims they include financial literacy in economics courses for high school students. Funding is an issue that will also need to be addressed. There are currently 24 states that require some sort of financial literacy education; however, only six have a stand-alone course that also has an exam. Some possible solutions the task force will consider will be: (1) whether professionals could serve as instructors for the course and get pro bono credit; and (2) whether the University of Florida would be willing to develop its financial literacy college course into a high school course.

ii. *Chapter 7 No-Asset Trustee Fee Increase*

Carlos Sardi

Carlos Sardi reported that a bill was introduced in July 2017 that would increase the trustee fee from \$60 to \$120, and then adjust the fee going forward according to the rate of inflation. This would be the first increase since 1995. The base filing fee will also increase accordingly, but there is no corresponding adjustment for inflation going forward. There was some movement on this bill in June 2018 as a hearing was requested; however, the hearing did not take place. The courts oppose the bill because the inflation adjustment piece only applies to the trustee fee and does not apply to the filing fee; this will cause the trustee fee to eat into the portion that goes to the court. The AO position may change if the filing fee gets indexed, too. For the time being, no further action needs to be taken, but the Committee should continue to monitor.

Dennis Levine added that the ABI is also studying this issue and will make a recommendation. They are looking at other possible sources of funding for trustees. This will probably be included with the ABI's report in April.

Judge McEwen added that the Administrative Office of the Courts usually does not support user fees; they should be funded instead.

iii. *County Court Jurisdictional Threshold Amendment*

Doug Bates reported that the proposed county court jurisdictional limits revision did not pass but that it is coming back and has a lot of support now. The Business Litigation Committee is focusing on the issue, and Doug suggested that we create a liaison position to monitor. Dana Robbins volunteered to serve as liaison.

iv. *Chapter 48 Amendment proposed by ILS*

Carlos Sardi reported on the position of ILS. There is no concrete legislative proposal to review at this time.

John Hutton reported that the Biz Lit Committee is forming a task force to review all of chapter 48 and make a comprehensive revision. They also plan to collaborate with the trial lawyers section. The sections of primary concern are: 48.193 (long arm); 48.151 (statutory agent); 48.197 (foreign service); and LLC service.

**IV. Continuing Legal Education, Communications, and Publications**

a. Communications Committee Report

Matt Hale

i. BLS Blog (Shirley Palumbo)

Matt Hale is the current chair of the Communications Committee and deferred his report to Shirley Palumbo to discuss the BLS blog. Shirley encouraged Committee members to make blog submission, and stated that these are intended to be brief articles with quick thoughts on an issue. She stated that legislative updates would make a good blog topic.

b. CLE Committee Report

Paige Greenlee

Cori Lopez-Castro

i. Florida Bar Journal

Cori Lopez-Castro reported that a CLE calendar is being developed for the BLS website. Please provide dates to CLE Committee for the CLE calendar. Additionally, each committee has to provide an article for Florida Bar Journal.

There are two dates still available: November 1 deadline (Jan/Feb publication); January 1 deadline (March/April publication).

c. *Future CLE Programs*

Brett Lieberman

i. Fall and spring short programs/webinars

Jennifer Morando reported that the Committee is temporarily suspending its spring program due to the cost and decreased attendance. Instead of an in-person spring program, the Committee will be looking into a platform that can live broadcast CLE presentations so that members all over the state can attend. These will be done as one-hour CLEs, most likely over the lunch hour. Brett Lieberman will be leading a sub-committee to plan a three-part series on issue preclusion in bankruptcy, including use of preclusion in bankruptcy litigation and also best practices for state and federal court litigation to ensure that your judgment precludes re-litigation in a subsequent bankruptcy. Dates to follow.

ii. *ABI/Stetson Seminar* (Hon. Catherine Peek McEwen)

Judge Colton reported that the ABI Stetson Seminar will take place February 6-8, 2019 at the Embassy Suites, Tampa.

iii. *View from the Bench Seminar/Case Review* (Hon. Michael Williamson)

Judge Williamson reported that View from the Bench will be held in Tampa on November 8 and in Miami on November 9. Both locations will also have a reception the night before their respective seminars. There is a new moderator this year, Liz Green. Brad Saxton and his team of volunteers are producing the written materials.

d. *Out of State Division Newsletter Submissions*

Hon. Catherine Peek McEwen

Don Workman

Judge McEwen reported that no one published an article in the summer issue. Roy Kobert published an article in the spring on discovery activity. The newsletter is circulated to 13,000 lawyers, and Judge McEwen encouraged Committee members to take advantage of this opportunity and submit an article.

## V. Cross-Committee Partnership and Liaison Reports

### a. Goals for Partnership

Jennifer Morando

Jennifer Morando reported that one of the goals the Committee has set for the next few years is to increase partnership with sister committees and sections. Committee leadership believes this will benefit members by increasing awareness of legislative activity in other areas of law, providing greater opportunities for involvement with legislative initiatives, and promoting relationship and business development among attorneys who practice in other areas of law.

### b. New Projects

#### i. *Business Court Funding*

The Chair reported that the Section has established a task force which met on August 31. The task force will release a report to the Section in the coming weeks. This item will be removed from the agenda going forward since it is a Section initiative.

### c. *Liaison Reports*

#### i. *Pro Bono - John McDonald*

John McDonald reported that the Committee's Embrace-a-Case challenge in June was a success but that they hope to increase participation in the future. He also encouraged members to become fellows of the Florida Bar Foundation.

#### ii. *Joint Report by IMF Committee and Membership Committee*

Mariane Dorris

Jim Moon

Mariane Dorris provided the following written report: IMF has welcomed 26 new BLS Scholars this year at the Retreat. The Scholars are from all the Florida Law Schools and Emory, and have been in attendance since Thursday. There are two upcoming networking events: (1) the HCBA Diversity Networking Social will be held on February 9, 2019 from, 1-3 p.m. at the Chester H. Ferguson Law Center; (2) the Central Florida Diversity & Inclusion Picnic is tentatively scheduled for February 23, 2019 and will be held in Orlando, FL-more details to come. To volunteer and

support the Section, please email Mariane Dorris, Chair of the IMF Committee. As a reminder the application for BLS Fellowship Program will be open January 2019, so please encourage worthy candidates to apply.

Jim Moon also added that the IMF Committee is working on getting more diverse representation into the Section. They are working closely with the Membership Committee on this initiative since there is a lot of overlap with what they do. They are also working on retention of scholars and fellows. The Kozyak picnic is not happening this year, but there will be other smaller events, including a reception at Kozyak for black law students on October 11. Orlando and Tampa will be having networking picnics this year. Orlando is tentatively scheduled February 20.

**VI. Old Business**

None.

**VII. New Business**

Scott Underwood proposed a sub-committee to review personal liability of assignees and proposed amendments to the law. This will be added to the agenda for the January 2019 meeting.

Professor Davis stated that the judgment lien statute is misleading in that it does not specify that personal property does not include vehicles and other titled goods. He suggested that the Committee should review this statute and determine whether an amendment should be made to clarify this issue.

**VIII. Future Meeting Dates**

- a. BLS Mid-Year Meeting – Jan. 16-19, 2019  
DoubleTree by Hilton Orlando at SeaWorld
  
- b. BLS Executive Council Spring Retreat – March 10 – 14, 2019  
Israel
  
- c. BLS Annual Meeting – June 26 – 29, 2019  
Boca Raton Resort and Club

**IX. Adjourn**

The meeting was adjourned at 11:30 a.m.