

**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. –

(ITEMS THAT ARE GRAYED OUT WERE NOT COVERED)

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

**I. Called to Order at 5:12 p.m. Introductions.**

Mr. Hutton made apologies for conference call, but nature had other plans for us than attending our retreat. Should be short meeting.

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

John Hutton  
Minutes were attached as EXHIBIT A to Agenda  
Motion to approve: James Moon  
Second: Leyza Blanco

Unanimous approval of minutes.

**III. Introductions and Announcements; New Slate**

John Hutton

i. Committee website changes

**IV. Business Law Section Update & Welcome**

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

**V. Legislation**

a. *Legislative Update for 2020 Session*

Doug Bates  
Aimee Diaz Lyon, Section Lobbyist

i. *Brief Review of Standing Legislative Positions*

Jim Moon

Mr. Hutton advised committee members look at Exhibit B, as he did not want to discuss on the call. Mr. Hutton advise committee members to review the Exhibit B before next meeting.

**EXHIBIT B**

b. *Reports from Study Groups of Ongoing Projects*

i. *Aviation Committee Legislation*

Lynn Sherman

ii. *Digital/Cryptocurrency Regulation*

(Section wide task force)

John Hutton

iii. *Uniform Commercial Real Estate Receivership Act* – Final proposed document attached as **EXHIBIT C**

\*VOTE REQUIRED\*

(joint with Biz Lit & RPPTL)

Kenny Murena

Hon. Mindy Mora

Kenny Murena advised that as a result of issues raised about the Act at June meeting, the Task Force met to address the issues raised. We decided to require consent of owner of property. Section 16 of Act – significantly changed to make consistent with Florida Law.

Before a judgment is entered, before a receiver can transfer property outside ordinary course, receiver has to:

- confirm owner's consent to sale, or
- before or at hearing, that the owner failed to object, after Receiver in good faith provided reasonable notice and
- transfer is necessary to prevent diminution or impairment, etc.

Also added similar language to section 6 of the Act – appointment of receiver section.

Put together a power point presentation – invited to July RPPTLs meeting and presented to 2 of their substantive committees. Very productive. Weren't expecting changes to section 16, but changes seemed to mollify a lot of their concerns.

Various other comments made that we did look into – made some of their suggested minor changes – more belt and suspenders stuff. Not controversial.

We believe RPPTLs on board with revised version of UCRERA

Judge Isicoff: My only concern – is reasonable advance written notice a concept developed under state law?

Kenny Murena: I don't know how to answer that. I don't think it is a term of art. We used that language so judge could make that determination. A lot of the changes we made tried to give guidance to court, but wanted to give court discretion to make their own determination.

Leyza Blanco: Do we know when we will get formal news from the RPPTLs if they approve or not?

Kenny Murena: They wanted a new draft, but want to wait until we get through BLS before they take a firm position. They will not weigh in until it gets through BLS.

Mark Wolfson: With respect to time issue Judge Isicoff brought up, is it before judgment?

Kenny Murena: Yes

Mark Wolfson: We have personal and real property...applies to both, right? If personal property is included, like equipment, you are selling outside of article 9. You have right to judicially foreclose, but doing article 9 sale through receivership without usual process.

With respect to timing, if receiver is foreclosing on a farm, perishables need to be sold in a day, but heavy equipment will not need to be sold for a long time, and neither will raw land.

Maybe make a note that article 9 rules do not apply when personal property is involved in a sale. You are not doing a foreclosure sale.

Kenny Murena: this does not overwrite article 9. There are various references to it throughout.

Mark Wolfson: I will take a look at that.

Kenny Murena: If you suggest any further clarifying language, we are open to it.

John Hutton: I thought the concern at last meeting regarding sale before judgment was that such sales could only happen if owner consented or failed to object after receiver provided notice, and receiver demonstrates that it provided notice.

Kenny Murena: If owner expressly consents OR owner fails to object at or before hearing after reasonable advance notice, and receiver demonstrates sale is necessary to prevent waste or loss, sale can proceed.

Lynn Sherman: Negative notice provision was required because of situations where people have abandoned asset or are not participating actively in the receivership, so needed more than express consent from owner.

Leyza Blanco: Committee should add specific timeframe other than "reasonable advance notice" language. Some will say 7 days, others 5 days, and this could cause confusion.

Kenny Murena: What would be the right amount of time?

Lynn Sherman: Article 9 already has language that says something about perishable goods unless exigent circumstances. Maybe safe harbor of 10 days is not bad if exigent circumstances.

Judge Isicoff: I thought Kenny said it only applies to real property and personal property incidental to real property.

Kenny Murena: Section 4 – applies to receivership for interest in real property and any personal property related to real property.

Leyza Blanco: Doesn't limit it to fixtures. I think Lynn's point is excellent. If 10 days is already in there, why not use that? Say within 7 or 10 days unless court says otherwise.

Judge Isicoff: maybe reference the section Lynn is talking about from Article 9. Never an issue with the real property, but referencing 612 might help. If we can use UCC language, then you already have court guidance and statutory interpretation to assist in analysis.

Kenny Murena: We will accept friendly amendment. Section 16(B)(2). Maybe reference 612 there. Florida equivalent anyway.

Mark Wolfson: If we cite the UCC provision, are we going to require Receiver to comply with other notification requirements of UCC? Need to be careful and think about whether we need to address.

John Hutton: Going back to notice issue, I understand reference to UCC notice on disposition, but this might be a bit different because it is for a hearing on disposition and may not be disposed of on same date.

Also, looking at section 16, within notice period, if owner objects, then receiver will not be authorized to sell?

Kenny Murena: Correct.

John Hutton: As long as court is comfortable owner got reasonable advance notice to object, I think that is enough of a guide post. What that is in a particular circumstance could vary.

Mark Wolfson: I would just pick days.

Doug Bates: I agree – you tie in Article 9, you will cause other problems

Kenny Murena: Only personal property here? Reasonableness language apply to real estate and 10 days for personal property?

Lynn Sherman: 10 days always reasonable, and shorter might be necessary.

Judge McEwin: 14 days might be better so it ends on a weekday.

Stephanie Lieb: I do not understand the distinction between real and personal property for notice for a hearing. Shouldn't it be the same for both?

Kenny Murena: I am ok that it applies to both.

Judge Isicoff: Safe harbor or less time if the court finds. Otherwise, people will argue more time may be required.

Mark Wolfson: But if pledgor objects, they kill the deal anyway.

**Friendly Amendment Moved by Lynn Sherman: Give a safe harbor on reasonableness of notice, that 14 days is always reasonable, but court can give shorter notice if warranted by circumstances of case.**

Mark Wolfson seconded.

John Hutton: giving study group latitude to adopt same or substantially similar language?

Motion by Kenny Murena: Move to approve the UCCREA with revisions proposed by task force to study it with the friendly amendment changing section 16(b)(2) clarifying that reasonable notice shall be 14 days or lesser if the court determines such other time is warranted by facts of the case.

Amy Diaz Lyon: We are looking for a supporting motion that we are recommending to EC to support an amendment to UCCREA for 2020 legislative session.

If you are going to do these amendments and some requested by corporations, the EC should have the final language with a recommendation that EC approve for 2020 legislative session.

Kenny Murena: I will do my best. I will present this to Business Litigation Committee tomorrow. I think I can do it.

Amy Diaz Lyon: If Motion carries, as soon as Kenny gets changes done, you can re-forward to committee and make sure there are no issues prior to Executive Council.

John Hutton: That's fine, let's go forward with triple motion, with clarification that this is for purposes of supporting amendment to UCCREA for 2020 legislative session.

**KM: Modified Motion: Moving to have this committee make a recommendation to EC that UCCREA be approved with revisions made by task force to study including changes to Section 16(b)(2) regarding reasonableness of notice being 14 day notice period subject to shorter time if court determines necessary for 2020 legislative session.**

Adina Pollan seconded.

#### **MOTION CARRIED**

iv. *Bankruptcy Venue Reform Act*

Hon. Catherine Peek McEwen

Judge McEwen: if the bill gets dropped, we would love to get as many legislators to get onboard as non-original sponsors as possible. We have myth-buster points and a white paper. Look at your delegation and if not a sponsor, try to get them on board. Don't have to be

judiciary committee sponsors. We want them first, but they don't have to be.

Leyza: Who are current sponsors?

Judge McEwen: Lofgren in CA and Sensenbrenner in WI. No one from Florida on Judiciary.

JH: Members of Florida delegation we have spoken to have been very receptive to our position and statistics.

- v. Judgment Liens excepted from title vehicle statute- Update
  - Prof. Davis
  - Jodi Dubose

John Hutton: Already addressed by email. Approved at June meeting. Intent was for it to go to EC, but not enough time to be fully considered, and subsequent there were tweaks approved by email vote.

Prof. Davis: Jodi found a typo of motor home as opposed to mobile home. Amendment includes correction of my typo. Aside from that, thank you Jodi for catching. We are making progress on amending judgment lien statute. Encouraged, but too late in session to do anything this year about it.

Amy Diaz Lyon: Business Litigation may be the only other committee impacted. Idea is to get EC to approve for 2020 legislative session. Is that true? If so, can one of you be on that call and make sure they don't have issues? Call tomorrow at 4:00 p.m.

Prof. Davis: mark Stein, does Bus. Lit. care? No substantive content.

Mark Stein: we will find out at 4:00 p.m. tomorrow.

Typo already corrected and corrected version will be sent to Bus. Lit.

- vi. Fla. Stat. § 689.151 Revisions (TBE legislation pushed by RPPTLs);  
\*VOTE REQUIRED\*
  - Andy Layden
  - John Hutton
  - Doug Bates
  - Mark Wolfson

John Hutton: We are opposed to RPPTLs. They want to make TBE easier to establish and tougher to challenge. They attempt to do it by eliminating 2 of the unities which we oppose. One compromise we tried to advance with them is an arrangement pursuant to which unities could be eliminated if there was something like a deed. But no traction. They were opposed to the concept.

One issue they raised, there is an existing Fla. Stat. that applies to a signature card for opening a deposit account. If a husband and wife open a deposit account with both signatures, considered TBE even if unities not present. RPPTLs issue is that it only applies to deposit accounts, and there are other types of accounts like securities account so it is a trap for average person that otherwise thinks it will be treated as TBE but it is not. So the RPPTLs have asked us to agree to treat a securities account like a deposit account 678.501.

Mark Wolfson: The Asset Protection Lawyer Group within the RPPTLs are leading this issue from RPPTLs.

Doug Bates: Recommendation pass general defense bill...we oppose in full because they haven't given any indication they will accept any of our proposed edits. Will probably have to come back to committee during the session, but general defense gives Amy most flexibility.

Amy Diaz Lyon: I am pretty sure we already have authority to oppose, but with direction from this committee, we can regroup with RPPTLs and say we oppose this year.

John Hutton: I don't know if we need a new vote.

Amy Diaz Lyon: position is good to go from big bar for 2020. We have authority to oppose now. All position will sunset in June. In June, I would hope all committees take a look and see what they want to amend, keep, etc. and get approval in June and send to big bar in August/September timeframe.

*vii.* Personal liability of assignees  
Scott Underwood

*viii.* Foreclosure Notice Bill, attached as EXHIBIT D.  
Judge McEwen  
Douglas Bates

Approved by email vote. Attached so everyone has it on their radar.  
Went out in February re: what was then HB 495.

Judge McEwen: Suggested a couple of tweaks to make more accurate, but don't know if presented to Rep. Driscoll. I suggested they add after "proceeding" the phrase "in most cases" stay will be in effect. Also, re: cure and pay "or propose mortgage modification mediation."

Amy Diaz Lyon: last year bankers had an issue with colored paper. Just from a political perspective, it would be better to not have that provision in there if you want it passed this coming year. I can ask Judge Driscoll her thoughts.

Judge McEwen: It is just not practical. If in bold and stand alone coversheet, people will read it.

Doug Bates: Bankers had issues with color of paper in notice, as a substantive matter, will probably take issue with this bill too. More of issue than the paper.

Amy Diaz Lyon: This committee is recommending 3 proactive bills in 2020, and that means section is doing 4 proactive bills. Also have a slew of other bills we will have to fight. Like annual corporate reports.

3 proactive bills is a lot.

Judge McEwen: Tampa was 23<sup>rd</sup> in nation. We are getting back there. We will be able to show a lot of foreclosures coming.

Stephanie Lieb: Should we table till that occurs? More likely to get passed if we wait a year?

Judge McEwen: If she can get this through we should try now.

Amy Diaz Lyon: legislators only get 6 bills. Hard to get a house sponsor. Not that it is unheard of, but it is hard. 3 is a lot of bills for one year, and with corporations really 4 bills.

Might have to fight TBE too. A lot of energy.

Prof. Davis: Judgment lien stuff we can get in next year.

Leyza Blanco: Does there have to be a priority set for these efforts. Prof. Davis says judgment lien might be dealt with all together instead of piecemeal. At EC we will hear from Amy too, so may need to prioritize.

Mark Stein: Legislation – 4 plus TBE will be difficult. We will do what this committee wants us to do, if we could take something off that would be helpful. TBE battle might impact us. Bankers will push back on notice of foreclosure bill. Nice to knock to 2021 session. I am concerned, given early session starting in Jan. for Doug and Amy to deal with 4 proactive and defensive work.

Prof. Davis – there is a reason to go forward now with judgment lien stuff. It keeps people from making mistakes now. I would tell Amy, if you can find someone to do it, then do it, and if you can't find a sponsor, then you don't. But if you are all comfortable postponing until 2021 ok, but there is a reason to move forward now.

Mark Wolfson: Another bill we can tack Judgment lien stuff on?

Amy Diaz Lyon: Amendment strategy is easier for us. But too early for me to tell if there will be a chapter 55 bill. So the answer is maybe. We have begun discussion with DHSMV. Hope we can come to agreement on Chapter 319 language, but I don't think that will happen before January. There might be a 319 bill we could tack language on if we reach agreement with DHSMV. But don't know yet.

Mark Wolfson: IF we need to oppose bills, like TBE change, how important is it we find those legislators.

Amy Diaz Lyon: The answer is, it is the same people we go to. Mostly through judiciary pod, so always going back to same folks to either hear a bill or not hear a bill we oppose. It sounds like we should get EC to approve, and then get big bar approval, as that would allow us to do as an amendment and gives us flexibility. Then maybe we can revisit doing via amendment or actual bill to push forward.

John Hutton: Based on Amy's suggestion, any motion?

Leyza Blanco: Instead of putting 2020 language in motion, just leave timing to you?

Amy Diaz Lyon: yes – on all 3 make generic. We will try to do in 2020, but need flexibility. Language approved by big bar will be more generic to give us flexibility.

John Hutton: No motion or vote on prioritizing bills for 2020 except UCCREA motion.

ix. Proposed Amendments to UCC 9-406 and 9-408 – White paper attached as **EXHIBIT E**

(joint with Corporations)

Jeff Davis

Matt Hale

x. Creating an App for FRBP/Code

Mark Healy

c. Items to be Monitored

i. *Northern District Judgeships/Divisions*

Hon. Karen Specie

Jodi Dubose

ii. *Judicial Term Limits/Legislative Oversight of Judicial Decisions*

Doug Bates

Jodi Dubose

iii. *Uniform Voidable Transaction Act Amendments*

John Hutton

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

v. *Chapter 48 Amendments*  
(joint with Biz Lit)

vi. *Business Court Funding*  
John Emmanuel

## VI. Continuing Legal Education, Communications, and Publications

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

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

c. *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

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

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

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

## VII. Cross-Committee Partnership and Liaison Reports

a. *Current Partnership Initiatives*  
Jim Moon

b. *Liaison Reports*

- i. *Pro Bono* – [Lynn Sherman]
- ii. *IMF Committee* – [Mariane Dorris]
- iii. *Membership Committee* – Andrew Layden

**VIII. Old Business**

**IX. New Business**

- a. *Warehouse Liens* (the notice/sale procedures and dispute remedies of 713.585 if the warehouse lien involves a motor vehicle); **Exhibit F**  
John Schoene

Dennis Levine: Spoke about memo and interested in working on it. Offered to be in a working group with John on this.

John Hutton: If you can work with John on this, we can take up in November.

Dennis Levine: Great I will do that.

**X. Future Meeting Dates**

- a. BLS Midyear Meeting – February 5-8, 2020  
Hyatt Regency Orlando
- b. BLS Annual Meeting – June 17 – 20, 2020  
Hilton Orlando Bonnet Creek

**XI. Adjourn**

**Motion to Adjourn: Leyza Blanco**  
**Second: James Moon**