

**Minutes for the Bankruptcy/Uniform Commercial Code  
Committee of the Business Law Section of the Florida Bar**  
Midyear Meeting – Thursday, February 6, 2020, 9:30 – 11:30 a.m.  
Hyatt Regency Orlando

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

Minutes are attached as **EXHIBIT A**

Telephonic Meeting of Nov. 19

***Motion to approve: Don Workman***

***Second: Stephanie Lieb***

***Approved Unanimously***

**II. Introductions and Announcements**

John Hutton

- i. First in-person meeting of the Committee; but very active and successful telephonic meetings on September 9 and November 19, 2019
- ii. Invitation to make introductions of all attendees

**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,

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Aimee Diaz Lyon, Section Lobbyist

Mark Stein: Chair of Legislation and Jennifer Morando is Vice Chair. Other part of our legislative team is in Tallahassee because we are in Session. The BLS has 2 primary initiatives this Session. The first is the UCCREA bill. Happy to report UCCREA has one committee left, then ready for floor. Remarkable job by Kenny and Manny getting all constituencies together.

The other section issue is the Corporations glitch bill. This bill made it through all committees and is ready to go to floor of House and Senate, and this is being sheperded along wonderfully by the great work of Phil Schwartz and Gary Templeton.

Our lobbying team is always working on court funding issues, working with the court system and big bar on behalf of the section. They will continue to advocate for court funding. This year court funding efforts look more promising.

For you all, the only other issue we are looking at legislatively right now is (1) bank property of deceased account holders, (2) litigation financing, and (3) rental agreements on foreclosure.

Looking to next year, remember we have a late session that begins in March. One of the issues this committee is working on is the notice of homeowners in foreclosure cases. Came out of bill drafting so we have a statute we can work on. For timing purposes we will be looking for you all to be done by retreat, to do that we need a white paper so we can look for sponsors.

Judge McEwen recognized for her efforts.

Financial Literacy - initiative for 2021. This has been an initiative of this committee and the section going on 5, 6, 7 years. Amanda has done a great job with her committee.

Andrew Layton question: Do you know when you think you will know if the UCCREA bill will pass or won't pass?

Aimee Diaz Lyon: We don't have a great idea for timing. Usually they send bills to governor in batches. Should know in April when it will become law. I will have a better idea if it will really happen in 3 weeks. July 1 effective date, so hopefully in terms of timing for CLE I will have better feel in the beginning of March so you can plan what you need.

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- i. *Brief Review of Standing Legislative Positions*
- ii. *Legislative Review Subcommittee*

Jennifer Morando – Very active legislative review subcommittee reviewing potential legislation from a bankruptcy perspective. We review potential legislation and determine whether we should take a position for or against. Please sign up, as we could use more volunteers. John attached as **Exhibit B** to the Agenda the standing litigation positions. We want to open up for discussion if anyone has comments or suggestions. Anyone want to discuss? (No response)

*Litigation Financing Legislation*

HB 7041 and SB 1828, attached as **Exhibit C**

John Hutton: Attached are two recently filed bills dealing with litigation financing. Please review and let me know if you have any comment. Staff has specifically asked how we feel about the following:

Section 7. Section 559.957, Florida Statutes, is created to read:

559.957 Contingent right to proceeds assignable; priority of lien or right to proceeds.—

(1) A consumer may assign his or her contingent right to receive an amount of the potential proceeds of a civil action or claim.

(2) A litigation financier’s lien on the potential proceeds of a civil action or claim has priority over liens that attach to such proceeds subsequent to the attachment of the litigation financier’s lien, except for any of the following:

(a) Attorney, insurance carrier, or health care practitioner liens or liens based upon subrogation interests or reimbursement rights related to the subject civil action or claim.

(b) Child support, Medicare, tax, or any other statutory or governmental lien.

John Hutton: Part of the concern, and the reasons our committee may need to review is twofold: First, this legislation pertains to consumer financing. Second, this legislation gives a financier a priority lien that attaches to any liens that come subsequent to the financier’s lien. Not sure there is any centralized place to record like a traditional UCC lien. Might be something

that warrants our committee taking a closer look at this. Any volunteers to review? (*no volunteer identified*).

*iii. Asbestos Legislation*

SB 1582 by Sen. Simmons (R-Orlando) & HB 741 by Rep. Leek (R-Daytona Beach)

John Hutton sought volunteer to look at this as well, to see if we should take a position. Stephanie Lieb volunteered.

*b. Reports from Study Groups of Ongoing Projects*

*i. Aviation Committee Legislation*

Lynn Sherman: Study group created to address a perceived problem caused by caselaw in aviation statute. Independent of our study group, legislation was passed. Right now, waiting to hear from aviation to see if there is anything else they want to do.

*ii. Digital/Cryptocurrency Regulation*

John Hutton: There is an existing section-wide task force. I would note pending piece of legislation, attached to the agenda. Triple motion was approved by EC. There are 2 bills pending. see **Exhibit D** summary

SB 1870 & SB 1872 & SB 1874 by Sen. Hutson (R-Palm Coast)

HB 1391 & HB 1393 & HB 1395 by Rep. Grant (R-Tampa)

These bills seek to create a Financial Technology Sandbox program in Florida within the Office of Financial Regulation. The Taskforce supports legislation that defines blockchain technology in such a manner as to encourage innovation in the blockchain space without tying any statutory definition to a specific implementation of the technology.

Concern about definition of “blockchain.” Direction requested from EC was to make sure “blockchain” is defined in a way that encourages innovation in the blockchain space without tying the definition to any specific implantation of the technology.

iii. *Uniform Commercial Real Estate Receivership Act (UCCREA)*

John Hutton: We've had some positive developments there. Give a lot of credit to Kenny, Manny and others. It looks like they worked through some differences and it is moving forward.

Update on status of pending legislation (joint with Biz Lit & RPPTL); Attached for informational purposes as **Exhibit E** to the Agenda is the latest version (clean and redlined) of the Senate Bill for UCRERA with all of the changes made over the past 6 months or so with input from the BLS Task Force, the RPPTLS, the Florida Bankers Association, the Florida Land Title Association, the Uniform Law Commission, and Senate Bill Drafting.

Kenny Murena  
Hon. Mindy Mora

Kenny Murena: 6 months ago started Taskforce. Working out issues each group had with UCCREA. After countless phone calls and meetings within the Task Force and other groups, we were able to narrow the focus of disputes and worked on language. Told we only have one more hearing in each chamber then goes to the floor. All pleased with status.

Judge Mora - Want this committee to recognize the work Kenny put into this project. It has been non-stop. Lots of bickering, but he has been persistent in talking with people and working through things, scheduling phone calls, addressing issues, and this committee owes a debt of gratitude to Kenny. (*Committee Applauds*)

John Hutton - Work was tremendous. Kenny deserves a lot of credit.

Don Workman – Judge Mora has been in the trenches too everyday, so it seems like everyday, so she deserves recognition too. (*Committee Applauds*).

Kenny Murena and Judge Mora recognized for their significant contributions to this matter.

iv. *Bankruptcy Venue Reform Act*

Carlos Sardi  
Hon. Catherine Peek McEwen

Judge McEwen - discussed sponsors and from which states they hail. Original Cosponsors are Greg Steube (R) and Charlie Crist (D). Cosponsor is James Sensenbrenner. HR 4421 in the house, but working on senators. Members of House Judiciary Committee we are working with 4 key

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members of the Florida delegation on the Judicial Committee in the House: Ted Deutch (FL-22), Val Demmings (FL-10), Debbie Murcasel-Powell (FL-26) and Matt Gaetz (FL-01).

No movement during impeachment proceedings. CLLA Hill day is Feb. 20-23. Sending people from all over the country. Peter Califano from California is one of the leaders, and Eric Van Horn from Texas, cannot remember name of lawyer from Massachusetts. If not a member of CLLA, join.

NCBJ has not taken a position. Their legislative policy is not to get involved unless passage likely. But the judges can make their views known through letters to NCBJ leadership. We are up to 70 names. Judges Hyman, Williamson, Delano, Mora for example are already on the list. CLLA asked us to release letter at same time as their hill day.

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

Prof. Jeff Davis

Jodi Dubose

Jeff Davis - Chair of task force — proposing amendment to certificate of title statute. Proposed amendments sent to DMV. Chief counsel sent to someone in DMV who sent an email months ago saying they would get back to us with comments, but have heard nothing. Someone named Stephanie at DMV was tasked with providing feedback, but have not received any.

Also want to expand scope of judgement liens to reach intangibles. Trying to solve interstate issues. Supplementary proceedings statute is a good vehicle for this. We have not settled on language yet, but that is the thrust of our thinking.

Judge Williamson: I can't get my arms around at payment intangible. Is that like an account receivable?

Jeff Davis: things like IP rights, various ways people can owe money.

Judge Williamson: How do you get a judgment lien on an account?

Jeff Davis – Same way you get a security interest, you record it and can garnish through proceeding supplementary. Lien is more powerful than a garnishment.

## **SECTION LEADERSHIP VISIT**

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Jay Brown addressed committee as section chair. Leyza Blanco Chair Elect, Stacy Donlon

Federal Securities Institute committee volunteers sought. From Bankruptcy UCC standpoint, seeing a lot of officer/director issues in bankruptcy. Need a couple of years of commitment.

Stephanie Lieb – I would just add this is a really nice event. The caliber is very high. It is of the caliber of our View from the Bench.

Jay Brown - Going to Greece for EC trip. You do not have to be a member of the EC to go.

Discussed Fellows program - growing group. If you know any young lawyers that you think would benefit, please let them know about the Fellows program.

James Moon – Fellows are great for substantive work needs in the Committee. They are a great resource, as it benefits you and them.

50 year anniversary of section.

Leyza Blanco - 25th anniversary of Labor Day retreat. Want to have a special celebration. We have started sponsorship drive at EC this session. We want 100% of EC members to sponsor section.

IMF section looking at drafting and presenting policy for diversity at events. For example, diversity should be reviewed for panel formation. If you are interested, see Mariane Doris and James Moon. Hope to have ready for roll out by Labor Day.

Stacy Dolon - Budget approved but looks different than in the past. If you have questions, please talk to me prior to EC.

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

Andy Layden

John Hutton

Doug Bates

Mark Wolfson

John Hutton, we did legislative defense and convinced RPPTL not to pursue TBE legislation.

*vii. Personal liability of assignees*

Scott Underwood: The idea was to amend statute. Study group created to review. We started getting feedback that we should let this sit. We should not open revision process now. I propose this subcommittee be closed.

John Hutton: We will take off agenda and close study group.

*viii. Foreclosure Notice Bill*

Judge McEwen

Douglas Bates

Jennifer Morando: Need a white paper by June so we can vote on it by retreat. We need volunteers to assist with writing the white paper.

John Hutton: Whoever assists with white paper not starting from scratch. Judge McEwen has prepared a good outline. April (fellow) volunteered.

Judge McEwen: Notice is to be placed on first page, but doesn't say on what. Need to accumulate stats on foreclosures in Florida, and amount of dollars Ch. 13 trustees spending on mortgages.

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

(joint with Corporations)

Jeff Davis

Matt Hale

Jeff Davis - Discussed content described in white paper. Refer to white paper at **Exhibit F**.

Stephanie Lieb - Corporations brought this issue to us. They asked us to consider partnering on this.

Jeff Davis - Just want to make sure corporate folks are onboard.

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No study group with Jeff looking at this.

Stephanie Lieb. White paper was written by Steve Wright. But no official study group.

Jeff Davis - this issue is complicated, but benefits outweigh the complications.

John Hutton - since we have time, just to give folks more time, we can reattach white paper to June Agenda, signal we intend to vote on it, and that way give people more notice and opportunity to look at this and give a formal recommendation at June Meeting. Any volunteers?

Matt Hale, Judge Mora and Dave Peterson volunteer to review as well.

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

Mark Healy - We wanted to develop an app that we can use on daily basis. Submitted content to Apple, but kept getting rejected. Apple doesn't allow you to put materials on their platform that people rely on for legal matters. Our work around is to create a link you can save on phone or computer. The cost of doing this is apx. \$4,000 that Michael Moecker willing to pay, but would want to have recognition on app that Moecker sponsored the app.

John Hutton - appreciate the time and effort looking at this. Reasonable to request the sponsorship information on website link. I don't think we need a vote.

Jennifer Morando - ABI has a link to bankruptcy code and rules.

John Hutton - Ours would include more Florida statutes, so broader and better suited to Florida practitioners. It would also have the ability for cut and past and annotation.

Question: Who will keep it up to date? And who will be liable if it is not?

Mark Healy - Good question. Depends on how we pull that data in. May be automatic, but might have to manually input and no one is likely to want to do that.

James Moon: Could we have waiver language that we are not responsible if statutes are not the most updated, did the ABI do that?

Jennifer Morando: I don't see anything on the ABI page. But maybe a Fellow could do some research on this?

James Moon: At a minimum, we should have a disclaimer that says we are not responsible if not updated, this is a reference point only, etc.

Mark Healy: Agreed.

John Hutton – Do people think this is something we need to vote on?

Unidentified speaker: Bankruptcy rules, local rules, procedures always change. All that needs to be considered if we are putting out to the public as current and accurate. I don't have a solution for that.

John Hutton: It is a fair point, and I had not thought about that. I suggest that we table for now and look at some of these issues with respect to how and when the information is updated before the next meeting if you can confirm the links we pull from are updated. We need to get comfortable everything is updated. Also need to consider the liability issues.

*xi. Financial Literacy Task Force*

Amanda Finley

Amanda Finley - This was mainly for education and awareness. Last year we enacted legislation to make financial literacy voluntary, but still trying to make it mandatory.

Question - any other states have mandatory requirements?

Amanda Finley - Yes. We want to push hard for mandatory next year because a lot of other legislative priorities this year.

c. Items to be Monitored

*i. Northern District Judgeships/Divisions*

Hon. Karen Specie

Jodi Dubose

Judge Specie - 11th Circuit sitting *en banc* now aware of issues in Northern District. Barely have court space for hearings in ND. District Court will be moving out of building in May or June. Not appropriate for ND to operate as we have. We have video conference equipment, but different courts use

different technology. ND second highest in caseload to ND Mississippi in single court caseload. ND 6th in nation in pro se bankruptcy cases. ND has 8 district judges and 6 magistrate judges. Making it my mission to request to press the 11th Circuit for a second bankruptcy judge to sit in Pensacola.

Jennifer Morando - anything our committee can do to support you?

Judge Specie - Need to get BLS support for this effort.

Judge McEwen - Would a resolution letter from the BLS help?

Judge Specie - I will gather more information and make a report in June. May help.

Judge McEwen - Propose a resolution - wording be provided by Doug Bates. Seconded by Jennifer Morando

**MOTION: That the Bankruptcy/UCC committee, if not the Business Law Section, adopt a resolution to support the Bankruptcy Court for the Northern District of Florida in its endeavor to obtain an additional judge (whether by creation of a new position or by (borrowing) an already authorized but unfilled judgeship from another circuit under the JCUS Pilot Program) by drafting a letter of support to the chief judge of the 11th circuit with a copy to the JCUS Committee on the Administration of the Bankruptcy System.**

Motion carried unanimously.

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

Doug Bates

Jodi Dubose

iii. *Uniform Voidable Transaction Act Amendments*  
John Hutton

John Hutton - We made a decision not to press forward this year. Not a question of if, but when. We may evaluate for next legislative session.

iv. *Chapter 48 Amendments*

*(joint with Biz Lit)*

Adina Pollan - We are hard at work to get statute revised and made more clear. We are trying to figure out consistency with serving liquidating trustees. Need to make sure consistent with LLC and corporations statute.

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

*a. Communications Committee Report*

Matt Hale

Shirley Palumbo (BLS Blog)

No report

*b. CLE Committee Report*

Cori Lopez-Castro

i. Florida Bar Journal

No report

*c. Future CLE Programs*

Brett Lieberman/Andrew Layden

i. Fall and spring short programs/webinars – Ideas for Topics (Tech/Evid?); possible UCREA seminar if it passes?

Target dates: March and April, 2020 for evidence seminar  
May/June for UCCREA?

Andrew Layden discussed a potential UCCREA and Electronic Evidence CLE - if anyone interested in putting on, get in contact with me.

*d. Out of State Division Newsletter Submissions*

Hon. Catherine Peek McEwen

Don Workman

Don Workman - Publication deadline is in a week or 10 days. Circulates to 15,000 electronically, with built in links to other articles. If you get Don an article, it will be published.

Cross-Committee Partnership and Liaison Reports

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a. *Current Partnership Initiatives*

Jim Moon, John Hutton

Jim Moon - want to partner with other committees of section to work with issues common to both. For example, when we talked about UCCREA, we could work with corporations to put on panels about it. Talk with the Committee Chairs, and let them know we are willing to work with their committees on common issues. It is good for having our finger on the pulse of what is going on in the other committees.

b. *Liaison Reports*

i. *Pro Bono* – [Lynn Sherman]

Lyn Sherman - 20 hours of pro bono is an aspirational goal. Want to take opportunity to ask some that were involved to stand. They were recognized for their efforts. Pro bono webpage has been updated. We will be asking for 10,000 donation to Florida Bar Foundation. Showed footage at last meeting to discuss need for pro bono services, if you did not have a chance to make video we will try again.

ii. *IMF Committee* – [Mariane Dorris]

Reiterate Jay's comment that fellowship application process is open. Discussed diversity policy procedure that is being looked at so that it can be proposed as a policy for EC.

iii. *Membership Committee* – Andrew Layden

Want to reach out to potential scholars so we have a steady group coming in to section.

**VII. Old Business**

**VIII. New Business**

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

Dennis LeVine - discussed fraudulent issues that come up. Last year statutes amended related to storage and towing. Lots of loopholes were closed. But fraudsters have figured out how to use warehouse lien statute to get around the loopholes closed. Legislation will be proposed in June.

**Judge McEwen - Statute will be proposed to codify cy prez. In order to allow judges to use unclaimed funds, this will codify that ability. We will have text of proposed legislation ready for June meeting.**

**Cy prez doctrine is - undistributable funds not distributed to plan is a satisfactory default.**

**IX. Future Meeting Dates**

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

**X. Adjourn**