

**Minutes of the Business Litigation Committee Meeting  
Business Law Section of the Florida Bar Annual Meeting  
June 21, 2012**

The meeting of the Business Litigation Committee of the Business Law Section of the Florida Bar (the “Committee”) was held at the Gaylord Palms Resort and Convention Center on June 21, 2012.

Present were the following: John Chapman, Honorable William Van Nortwick, David Ackerman, Kacy Donlon, Manny Farach, Christian Dodd, Russell Landy, Honorable Thomas Smith, Jim Murphy, Peter Valori, Chuck Hoskin, Honorable Gill Freeman, Honorable Richard Nielsen, Honorable Edward LaRose, Jude Cooper, Honorable Morris Silberman, John McManus, Jeff Hirsch, Jon Polenberg, Michael Higer, Honorable Jose M. Rodriguez, Mark Nichols, Barbara Riesberg, Maxine Long, Rick Gross and Detra Shaw-Wilder.

I. Committee Chair Mark Nichols called the meeting to order at 9:16 a.m.

II. Committee Chair Nichols asked the members to review the December 1, 2011 minutes for the Business Litigation Committee meeting at the Midyear Meeting. The minutes were approved unanimously.

III. Subcommittee Updates

A. LLC Drafting Task Force

Mark Nichols gave a brief synopsis of the issues upon which there is a lack of consensus, including fees provisions, judicial dissolution and other remedies available to Judges, and, the procedure for bringing a derivative action on behalf of an LLC.

Lou Conti visited the Committee and spoke at length about the LLC issues as well as the background leading to the proposed changes. Mr. Conti commented that the LLC is the number one business entity in Florida, with over 600,000 LLCs. In addition, the number of LLC disputes is rising.

Mr. Conti commented that currently the LLC is a hybrid entity which is presumed to have a membership agreement. The current statute provides little detail compared to the statutes governing corporations, and thus issues arise where an LLC does not have a membership agreement.

Mr. Conti raised the issue concerning whether the statute should include a laundry list of items courts can use as remedies, or, allow courts to provide “any other remedy.” There were a number of comments from both Judges and practitioners seeking clarity in the statutes governing LLC disputes. In particular, there were several comments concerning the fact that the words “equitable remedy” are not clear as to what remedies are available, and that a buyout is not defined as an equitable remedy.

At the conclusion of his visit, Mr. Conti announced that there would be a 3-hour program at the retreat regarding major changes in the LLC act.

### **Bill Wiley Visit**

Bill Wiley, lobbyist for the Business Law Section, visited the Committee. He introduced members of his team, Amy Diaz Lyons and Gregg Black, both of whom are with the Metz Law Firm.

Mr. Wiley updated the Committee on the last legislative session. It became very political due to the fair-redistricting issues. Not a lot of legislation passed. However, the legislature did pass two pieces of legislation supported by the Business Law Section: the UCC Bill and the Transferee Tax Liability Bill.

The Revised Uniform Arbitration Act Bill did not pass. Mr. Wiley informed the Committee that Jon Polenberg did a tremendous amount of work on this project, including multiple trips to Tallahassee to meet with legislators and testify before committees. The Committee gave a round of applause to Jon Polenberg.

B. E-Discovery State Rules Subcommittee – Manny Farach reported that the amendments to the Rules of Civil Procedure were argued before the Supreme Court on March 7 and that we should expect to see changes in the Rules this year. Mr. Farach also reported that the subcommittee is working on protocols to be used as forms or models.

**Executive Committee Visit** – Chair Mindy Mora, Chair-Elect Brian Gart and Secretary/Treasurer Steph Nagin. Ms. Mora thanked the Committee meeting attendees for their participation. She also reminded all about CLE programs and suggested a lunchtime CLE format. Ms. Mora requested a Committee submission for the Section Journal by August 15, 2012.

Additionally, Ms. Mora brought up the fact that there is no statutory or otherwise authoritative guidance on obtaining a charging order against an LLC. She requested the Committee participate with the Bankruptcy/UCC Committee to create legislation or rules laying out the procedure to obtain a charging order against an LLC.

Mr. Gart advised that one of his goals it to make the Section website better. He asked that the Committee keep its page on the website up to date. Mr. Gart also announced that the opening day of the Section Retreat will include CLE for a presentation on LLC issues.

### **C. Business Litigation Jury Instructions**

Manny Farach provided the following report: Judge Gerber is now the Chair of the Supreme Court Committee on Standard Jury Instructions for Contract and Business Cases. The instructions have been published and comments have been received. Mr. Farach expects the petition for approval to the Supreme Court to be filed in the near

future. The committee is also developing verdict forms. Mr. Farach indicated his hope to have the instructions in place by the end of the year. He invited emails concerning any suggestions for additional coverage.

#### IV. Committee Liaison Updates

A. Pro Bono Committee – the Pro Bono Committee held a workshop for non-profit corporations at the University of Miami several months ago. Maxine Long reported that this committee is currently gathering information to create a best practices guide for pro bono work.

B. Diversity Committee – Detra Shaw-Wilder reported that the Florida Bar has hired a diversity director for the “Big Bar.” In addition, the Diversity Committee has reached out to minority law students to submit case summaries. The Minority Mentoring Picnic has been scheduled for November 10, 2012.

#### V. Legislation

Russell Landy volunteered to assist Mark Nichols with the project to create a procedure for obtaining charging orders against LLC interests.

#### VI. Business Law Journal

Peter Valori reported that the 2011 Journal will be published late in paper form. The 2012 Journal will cover the period from January 2011 through August 2012; it will be published in electronic format. Lynn Sherman and Jude Cooper are taking the lead as editors. Mr. Valori also reported that distribution on a thumb drive is under consideration.

Peter Valori moved that the Committee submission to the Business Law Section Journal should be case summaries arranged by topic. Mark Nichols seconded the motion and it carried unanimously.

#### VII. Business Litigation Certification Review Course

Mark Nichols reported that taped segments are on the Section website at “Free CLE” link. The segments will be renewed for credit; Mary Ann Obos can provide course numbers. The goal is to complete all taped segments by the end of the year.

#### VIII. State/Federal Court Liaison Committee

Committee Chair Ryon McCabe was unable to attend the meeting. Mark Nichols reported on behalf of the State/Federal Court Liaison Committee. We have a number of new judges assigned to Business Courts in Florida: Miami – Judge Jose M. Rodriguez and Judge Jennifer Bailey; Ft. Lauderdale – Judge Jeffrey E. Streitfeld, Judge Jack Tuter and Judge Patti Englander-Henning; Tampa – Judge Herbert J. Baumann, Jr.; Orlando – Judge Lisa T. Munyon

and Judge Alice L. Blackwell. Mark Nichols indicated he would liaise with the Communications Committee to update the contact information for the Business Court Judges.

Ryon McCabe invited all Business Court Judges, present and former, to attend the Business Litigation Committee meeting. Mr. Nichols welcomed new Business Court Judge Jose Rodriguez of the 11<sup>th</sup> Judicial Circuit. Mr. Nichols also noted the attendance of former Business Court Judges Freeman, Nielsen and Smith and thanked them for their participation.

Mr. Nichols reported that this committee is planning the Business Court Judges Roundtable for the Naples Retreat.

#### IX. Old Business

A. Noncompete Subcommittee – Hal Litchford gave a brief report on the proposed amendments to the noncompete statute. He acknowledged that the addition of protection of referral sources is arguably controversial. Another concern is that the provisions addressing real estate and license agreements is clear in the statute. Mr. Litchford agreed to reach out to RPTTL Section and to the Business Law Section Intellectual Property Committee.

A number of people volunteered to be a part of the Noncompete Subcommittee.

#### X. New Business

##### A. Visit by Jodie Cooke

Ms. Cooke is chairing a subcommittee of BK/UCC to amend the ABC statute. Email her at [JDC@beggslane.com](mailto:JDC@beggslane.com) for a copy of the draft as she is seeking comments from the Committee. The goal is to have a proposed bill for approval by EC at Retreat and submission during the next legislative session.

Judge Freeman suggested it would be a good idea to have all litigation related to an ABC be in front of the same judge.

Ms. Cooke also reported that a draft of the Receivership practice guide will be published on the Section website with forms. She is seeking input from other committees on this.

##### B. Merit Retention

Mike Higer spoke on behalf of the Board of Governors. Three Florida Supreme Court Justices will be on the November General Election ballot. The Florida Bar cannot take a position on any election. However, it can provide education to the public. Mr. Higer encouraged everyone to be involved in educating the public. There is information and educational materials available through a link on the Florida Bar website. <http://www.floridabar.org/thevotesinyourcourt>

Rick Gross encouraged all to attend the presentation Election v. Selection tomorrow.

C. Florida Uniform Enforcement of Foreign Out-of-Country Judgments Act

Maxine Long raised the issue that when domesticating judgments, there is no statutory guidance regarding conversion of the amount of the judgment. Cases are inconsistent as to when the exchange rate applies – on date of enforcement, or, date of judgment. Ms. Long sought support from the Committee for amendments to the statute. She will draft an amendment which Peter Valori volunteered to review.

XI. Adjourn

The Committee adjourned at 11:30 a.m.