

**MINUTES OF THE EXECUTIVE COUNCIL MEETING
OF THE BUSINESS LAW SECTION OF THE FLORIDA BAR
SEPTEMBER 5, 2011 – 8:37 AM TO 11:07 AM**

I. CALL TO ORDER & INTRODUCTION OF PARTICIPANTS, BAR STAFF, & INVITEES:

The annual Fall Retreat meeting of the Executive Council (“Executive Council” or “EC”) of the Business Law Section (“BLS”) was called to order by **Mindy Mora**, *BLS Chair*, at 8:37 AM on Monday, September 5, 2011 in the Ritz Carlton Hotel at Vanderbilt Beach, in Naples, Florida. It was determined by the Chair that a quorum was present as is confirmed by sign-in sheets on which the following participants provided their respective name and (if changed from what was in the BLS database) updated e-mail address [presented alphabetically, below]:

Alan Aronson – alan.aronson@akerman.com	Ed LaRose – larose@flcourts.org
Robert Barron – rbarron@bergersingerman.com	Kevin Levy – klevy@gunster.com
Doug Bates – dbates@bergersingerman.com	Maxine Long – mlong@shutts.com
Russ Blain – rblain@srbp.com	Sam Lewis – slewis@feldmangale.com
Leyza Blanco – leyza.blanco@gray-robinson.com	Nick Lioce – dlioce@nasonyeager.com
Rob Brighton -- rbrighton@shutts.com	James Marx – James@BFMLegal.com
Jay Brown – jacob.brown@akerman.com	Tom Messana – tmessana@messana-law.com
Jason Burnett -- jburnett@gray-robinson.com	Ryon McCabe – rmccabe@mccaberabin.com
Michael Chesal – mchesal@pch-iplaw.com	Cathy McEwen – cmcewen@flmb.uscourts.gov
Robert Carbonneau – rpc@ecclegal.com	Mindy Mora – mmora@bilzin.com
Lou Conti – louis.conti@hklaw.com	Jennifer Morando – jmorano@therosenthallaw.com

Jodi Cooke – jdc@beggslane.com	John Villamil-Morel – jvillamil@pb-santander.com
Jude Cooper – jude@pcpalaw.com	Steph Nagin – snagin@pch-iplaw.com
Gerald Cope – gerald.cope@akerman.com	Mark Nichols – mark@pcpalaw.com
Melanie Damian – mdamian@dvllp.com	Mary Ann Obos – <i>(non-voting Bar staff)</i>
Kacy Donlon -- kdonlon@wiandlaw.com	John Olson – john_k_olson@flsb.uscourts.gov
John Emmanuel – emmanuel@fowlerwhite.com	Jon Polenberg – john@pcpalaw.com
Manny Farach – mfarach@uchmangreer.com	Barbara Riesberg – barbara@riesbereglaw.com
Brian Gart – bgart@bergersingerman.com	Stefan Rubin – srubin@shutts.com
Rick Gross – mgross@carltonfields.com	Phil Schwartz – philip.schwartz@akerman.com
Carly Hammond – chammond@pch-iplaw.com	Jeanne Seewald – jseewald@hahnlaw.com
Leora Herrmann – lherrmann@pch-iplaw.com	Yvonne Sherron – <i>(non-voting Bar staff)</i>
Michael J. Higer – mhiger@hlglawyers.com	Murray Silverstein – msilverstein@shutts.com
Jeffrey Hirsch – hirschj@gtlaw.com	Paul Singerman – singerman@bergersingerman.com
Alan Howard – ahoward@bergersingerman.com	Tom Smith – thomas_smith@flmd.uscourts.gov
Paul Hyman – paul_hyman@flsb.uscourts.gov	Ron Stephenson – rlspalaw@verison.net
Amir Isaiah – aisaiah@kaufmanrossin.com	Gary Teblum – giteblum@trenam.com
Sara Paris Isaiah <i>(a non-voting guest)</i>	Robert Thornburg – rthornburg@addmg.com
Laurel Isicoff – laurel_m_isicoff@flsb.uscourts.gov	Peter Valori – pvalori@dvllp.com
Richard Ivans – rbivans@arnstein.com	Bill Van Nortwick – nortwicw@ldea.org
Drew Jenkins – ajenkins@bushross.com	Lori Vaughan – lvaughan@trenam.com
Phil Kabler – pnkabler@kmcllp.com	Bill Wiley – wbwiley@billwileylaw.com
Scott Konopka – skonopka@pm-law.com	Mike Williamson – jwilliamson@flmb.uscourts.gov
	Greg Yadley – gyadley@slk-law.com
	Gwynne Young – gyoung@carltonfields.com

II. PRO BONO RESOLUTION:

As the first matter on the agenda the Chair requested **Judge William Van Nortwick, Jr.** to read into the record the following Pro Bono Resolution the Chair proposed for approval by the EC on behalf of the BLS:

Be it resolved that the Business Law Section encourages pro bono service by its membership; and

Be it further resolved that as part of its efforts to further and support pro bono service, the Business Law Section supports the Pro Bono committee partnering with the CLE Committee and other committees of the Business Law Section to include a brief (3 to 5 minutes) presentation re-affirming the Business Law Section's support of and commitment to pro bono service at CLE programming and other appropriate Section events.

Judge Van Nortwick explained the importance of pro bono representation by all Florida Bar members and strongly urged passage of the Resolution, as did the Chair. Thereupon, without objection, on motion by Judge Van Nortwick, duly seconded, the EC unanimously adopted the Pro Bono Resolution by voice vote. The Chair announced that the Resolution had passed.

III. APPROVAL OF MINUTES FROM EC MEETING IN JUNE 2011:

Draft Minutes of the June 2011 EC meeting (at the Gaylord Palms Hotel in Kissimmee, Florida) having previously been made available to all BLS members on the BLS Web site, **Brian Gart**, *BLS Chair-Elect* [and just past *Secretary/Treasurer*] advised he had received very thoughtful comments from Gary Teblum, a Section member [and Chair of the BLS Legislation Committee], which had been incorporated into the draft Minutes for which special recognition was given by the Vice-Chair to Mr. Teblum. Thereupon, Mt. Gart moved for approval of the Minutes, which was duly seconded and the same was unanimously approved by a voice vote. The Chair announced that the Motion carried. Mr. Gart then reminded everyone present to sign the attendance sheet to reflect all who had approved the motion.

IV. TREASURER'S REPORT:

As the next item on the meeting agenda, **Stephen Nagin**, *BLS Secretary/Treasurer*, verbally reported that the BLS was "solvent." There were no questions; no comments; and some evident relief at the brevity of his succinct report. Mr. Gart advised that a full financial report would be provided at the BLS meeting in December 2011.

V. REPORTS OF SPECIAL COMMITTEES, TASK FORCES, AND BY THE FALL 2011 RETREAT COMMITTEE:

A. REPORT BY THE RETREAT & SPONSORSHIPS COMMITTEE: The Chair announced a report on the 2011 Fall Retreat would be delivered out of sequence to accommodate the Retreat & Sponsorships Committee's Chair's conflicting schedule. Thereupon, the following oral report was delivered by **Alan Aronson**, 2011 *Chair of the Retreat & Sponsorships Committee*.

With regard to the ongoing fall 2011 Retreat in Naples, Florida, Mr. Aronson advised that an "enormous effort" had been undertaken by a very "dedicated" Retreat Committee each of whom he recognized to a combined round of applause: **Lori Vaughan**, *Vice-Chair*, and Committee Members, **Jeanne Seewald** (a resident of Naples and former IP Committee Chair, who had selected and vetted numerous restaurants for Sunday night's dinner on-the-town), **Alan Howard**, and **Michael Chesal**, as well as by **Yvonne Sherron** [who was assisting in the transition to the new BLS administrative coordinator and her colleague in Tallahassee, **Mary Ann Obos** (who had taken over as the BLS administrative coordinator). There was a hearty round of applause for all persons so recognized and especially for Mr. Aronson's leadership and sustained hard work to assure success of the event.

Mr. Aronson explained that he had "encouraged" all BLS members to express "thanks and appreciation to the Sponsors" and that Lori Vaughan would become the Fall Retreat Chair for 2012. With regard to the instant event, he advised that "approximately \$112,000 has been raised from the Sponsors" which was "a record achievement for the Retreat." After further applause he delivered a lengthy explanation about the ongoing outreach to law schools in Florida

[intended to introduce the BLS to students and to invite them to become involved with the Section upon graduation], and he recommended that all BLS members were welcome to take part in outreach events to be conducted on the various law school campuses. He then described the Committee's evident success in "getting new sponsors" for the BLS Fall Retreat, in part by approaching sponsors who had participated in The Florida Bar's Annual Meeting in June, as well as by fine efforts of Fall Retreat Committee members and others in the Section. The Chair expressed her sincere appreciation for Mr. Aronson's dedication and perseverance. Thereupon, Mr. Aronson departed the meeting which continued with all others in attendance.

**B. REPORT BY THE BLS FLORIDA CHAPTER 608
LLC DRAFTING TASK FORCE:**

The Chair then invited **Lou Conti** [former BLS Chair, and former Tax Section Chair], *Chair of the Chapter 608 LLC Drafting Task Force*, to deliver an oral report on the status of on-going efforts to revise Florida's LLC statute.

Mr. Conti recognized the able assistance of **Gary Teblum**, **Greg Marks**, the Task Force's Vice Chairs and others who had contributed to the "progressing" effort to draft a timely Bill for filing by two sponsors in the Florida House and Senate in advance of the next legislative session (in January 2012). He reported that it was the intent of the Task Force to put the draft Bill in better form by the end of October 2011 and to craft a "White Paper" for the Bill Sponsors and the Section's lobbyists to use in educating other legislators and legislative staff.

Mr. Conti explained, "We took the best of the current Florida LLC Statute and the best of the Delaware LLC Statute, as well as language from the Uniform Act and are layering-in additional provisions. We are not tinkering with *Olmstead*." [*Shaun Olmstead, et al., vs. Federal Trade Commission*, was a controversial 2010 decision by the Florida Supreme Court on a question of law concerning Fla. Stat. § 608.433(4) that was certified by the United States Court of Appeals for the Eleventh Circuit concerning the rights of a judgment creditor, specifically, "Whether... a court may order a judgment-debtor to surrender all right, title, and interest 'in the debtor's single-member limited liability company to satisfy an outstanding judgment.'"] "We are not tampering with creditors' rights, or UCC or bankruptcy laws. We are adding in domestication for foreign entities; provisions concerning mergers involving LLCs conditions are modified

slightly; and we are maintaining the requirement that every Florida LC have certain minimum fiduciary duties. A big change is being made to agency and authority issues to provide more certainty for third parties.”

Further details were provided on the issue the “authority” or apparent authority based on certain types of entity structure. Mr. Conti anticipated that a “clean draft of comments will be available by October 14th or 15th which will be circulated to the EC members, approximately two weeks after which a special conference call will be conducted in order to seek a Triple Motion” for approval of the proposed, revised Florida LLC Statute.

The Chair inquired whether the BLS Business Litigation Committee “was worked into the process.” Mr. Conti responded with a detailed explanation about the ongoing coordination to assure an adequate opportunity to secure such comments or suggestions. He also advised that he met with representatives of the Real Estate Section at its meeting during the prior month, and that in his opinion that Section’s official position was “neutral.” Mr. Conti further explained that he had spoken with and secured input and support from the Tax Section through **Nick Lioce** (*Chair of the Tax Section*), who was attending the Executive Council meeting, and was so recognized.

Mr. Conti cautioned that he had not yet officially spoken with anyone from the Family Law Section or the Board of Governors concerning proposed revisions to Florida’s LLC Statute.

Bill Wiley, the BLS long-standing lobbyist, was requested by the Chair to opine on the potential for passage of the legislative initiative during the next legislative session, in January 2012. He opined, “It will be challenging to get anything accomplished. It will be extremely difficult to get it through given the magnitude of the project and the number of people who need to weigh-in.” He was “cautionary optimistic,” about potential receptivity of legislators to the proposed revisions.

**C. REPORT BY SPECIAL TASK FORCE
ON THIRD PARTY OPINION STANDARDS:**

The chair called upon **Phil Schwartz** (*Chair of the Special Task Force on Third Party Opinion Standards, and former BLS Chair*) who presented a report on the status of preparation of the final Third Party Opinions standards, a long running project of the BLS. Mr. Schwartz

recognized the two Vice-Chairs of the Special Task Force, **Robert Barron**, and **J.C. Ferrer**, and he advised that: (a) the final draft would to be available for distribution to EC members in late September or early October 2011, along with a memorandum explaining the changes that were made to a prior draft of the Report, distilled to a two to three page PowerPoint™ document (to facilitate better understanding of the comments to which the final draft had responded), with a following “working session” if desired; (b) approval by the Real Property Section would be sought in November 2011; and (c) EC approval would be sought at the EC meeting on December 1st.

D. REPORT BY ANTITRUST, FRANCHISE, AND TRADE REGULATION SUB-COMMITTEE ON COVENANTS NOT TO COMPETE:

The Chair then reported that **Hal Litchford** (*Chair of the Sub-Committee and a former BLS Chair*) was chairing a Sub-Committee proposing amendments to the Florida Statute on covenants not to compete and that the Sub-Committee had commenced its work. In Mr. Litchford’s absence from the EC meeting, Bill Wiley advised that Mr. Litchford had prepared an initial draft outline of issues that were to be considered for legislative change, and characterized the status as a “work-in-progress for the 2013 legislative session.”

VI. COMMITTEE REPORTS:

A. ANTITRUST, FRANCHISE & TRADE REGULATION COMMITTEE:

The Chair then called upon **Jude Cooper**, Chair of the Antitrust, Franchise & Trade Regulation Committee to orally report about the Committee’s meeting earlier in the day. Besides a discussion concerning proposed amendment of the Covenants Not to Compete Statute, Fla. Stat. § 542.33 (spear-headed by Mr. Litchford); Committee members discussed the possibility of offering a CLE program (possibly in January 2012, in Orlando) concerning the United States Department of Justice’s ongoing investigation of Google; and – by the end of the Spring 1012 school term – offering to speak at each of the 12 law schools in Florida on issues of importance to the Committee as well as to expand awareness about the Business Law Section. The Chair inquired whether the proposed CLE program would be a “fly-in” or a Webinar, to which the Committee Chair responded that it would be a Webinar.

B. BANKRUPTCY / UCC COMMITTEE:

The Chair next called upon **Doug Bates**, Chair of the Bankruptcy / UCC Committee to orally report concerning the activities of the Committee. Mr. Bates advised that a CLE program on the Rules of Evidence in Bankruptcy Court had been presented during the Committee meeting.

Judge McEwen was recognized by the Chair, and informed the Executive Council that Judge Isicoff, in attendance, was celebrating her birthday. There was a round of applause for Judge Isicoff.

Mr. Bates resumed his oral report by informing the EC that his Committee had discussed diversity and potential ways to promote leadership and funding for the diversity initiative of the Section. He also reported that the Committee's meeting representatives of local bankruptcy bar associations explained various local events in their respective cities.

Next, Mr. Bates advised that the upcoming 2011 "View From The Bench" CLE programs would be conducted in Tampa and Miami. He also explained that proposed revisions to Article 9, spearheaded by Mr. Workman and Professor Davis had progressed well but would be "way down the road," although Bill drafting of proposed legislative changes already was underway. On the topic of non-judicial foreclosures, the Committee Chair stated that he anticipated further activity including a "white paper" and possibly a nationwide study of lien-theory States. He expressed uncertainty about which Bills, if any, concerning non-judicial foreclosure "might emanate this year from the Legislature." The Section Chair thanked Mr. Bates for his thorough report.

C. BANKRUPTCY / JUDICIAL LIAISON COMMITTEE:

The Chair then called upon **Judge Hyman**, Chair of the Bankruptcy / Judicial Liaison Committee to present a report. Judge Hyman advised that his Committee had discussed the Section's Pro Bono Resolution and received oral reports by each Division on issues affecting bankruptcy practice in the respective Federal Bankruptcy Courts.

D. BUSINESS LITIGATION COMMITTEE:

The Chair then called upon **Mark Nichols**, Business Litigation Committee Chair, to provide the Committee's report. Mr. Nichols advised that the Committee had received oral reports by sub-committees; gave special recognition to **Detra Wilder**, a member of the Diversity Sub-Committee; advised the ready-to-go-to-press status of the Section's annual *Business Law Journal*, and then advised that his Committee was prepared to make three motions.

First, **Melanie Damian** with support by [Board of Governor's President-Elect] **Gwynne Young** made the following Motion: "**The Business Law Section of The Florida Bar Supports Access To Justice Funding**." **John Polenberg** seconded the Motion. Ms. Damian explained that Florida's Governor had vetoed such funding. She stated belief that it would be beneficial to support Access To Justice Funding to replenish the Courts' budget. Judge Van Nortwick was recognized by the Chair. He discussed the need for the Section's support. In his view, "It is especially important this year. The Legal Services Foundation's funding has dried-up." **By a voice vote the Motion unanimously was approved by the Executive Council.**

Second, **Melanie Damian** moved that "**The Business Law Section shall provide \$1,000 to become an annual sponsor of the Federal Practice Committee CLE Program.**" **Jon Polenberg** seconded the Motion. Discussion was had. **The Motion unanimously was approved.**

Third, **Jon Polenberg** moved that "**The Business Law Section supports Revision of Florida's Uniform Arbitration Act.**" **The Motion was seconded by Rick Gross.** Mr. Polenberg explained that the Business Litigation Committee had prepared a proposed Bill to amend and revise the State's Uniform Arbitration Act [Fla. Stat. § 682.01 et seq.], together with a White Paper on White Paper on the proposed Bill. That White Paper and proposed amended Act had been made available to the members of the Executive Council for their review and consideration in advance of the meeting. Mr. Polenberg advised that Steph Nagin had brought to his attention the need to address the circumstance of a reluctant party's refusal to fund its share of arbitral fees and expenses. Mr. Polenberg stated that he had discussed the issue raised by Mr. Nagin with Gerry Cope and Larry Silverman and that after discussion with his colleagues who had worked on the proposed revisions, he would commit to add language that might address the

ability of the arbitrator(s) to enter an Order as a sanction against recalcitrance of a party. Discussion was had during which an inquiry was made regarding whether a Triple Motion was required. Mr. Polenberg advised that major changes to Florida Law were part of the proposed amendments to the Act, such as “clear definitions, and rights to interim measures, and disclosures an arbitrator must make, as well as other technical changes in the Law.” Accordingly, Jon Polenberg, as the person who made the Motion, and Rick Gross, as the person who seconded the Motion, agreed to consider the Motion modified to be considered a Triple Motion. The question was called and **the Motion was approved unanimously.**

E. COMMUNICATIONS COMMITTEE:

The Chair next called on **Peter Valori**, Chair of the Communications Committee, who advised that the Section’s Web Site would be updated, “perhaps with the addition of [Adobe] Flash.” He stressed the need for “content by Committee Chairs and members.” He then discussed the Continuing Legal Education program, “Business Litigation Certification Review Course” which will be videotaped and made available on the Web Site “free to Business Law Section Members.” He anticipated instituting an “honor system on compliance.” The Section Chair inquired about potential “use of a Bar [membership] number to access the Web Page.” Mr. Valori advised he would look into the feasibility of such access.

Mr. Valori next advised that the *2011 Business Law Journal* was at the publisher. \$6,000 in advertising had been committed; \$9,000 more was needed. He sought funds from the Section to publish the *Journal* and “to fulfill an obligation to sponsors” by printing the *Journal* in hard copy, otherwise “the *Journal* could be published on the Section’s Web Site, or distributed on a thumb-drive with a cover.” Discussion was had. Brian Gart advised, “We have sufficient funds already allocated in the budget on a one-time basis, but we need to consider electronic publication in the future.”

Mr. Valori moved, and Mr. Polenberg seconded the following “**Motion to Fund The 2011 Business Law Journal for \$9,000.**” Further discussion was had during which Mr. Gross recommended that Mr. Valori should confer with Alan Aronson. Mike Williamson was recognized. He suggested the amount requested “not be a budget item; just a one-time thing.”

Mr. Valori concurred, “Electronic publication for the future makes sense.” The question was called, following which **The Motion was approved unanimously.**

Mr. Valori concluded his oral report by discussing potential use of “social media” such as Linked-in” by the Section, and he also requested articles authored by Section members for *The Florida Bar Journal*.

F. COMPUTER & TECHNOLOGY LAW COMMITTEE:

The Chair then called on **Kevin Levy**, Chair of the Computer & Technology Law Committee, to present a report on the Committee’s meeting. Mr. Levy explained that the Committee was “re-energized.” He announced his Vice Chair would be **Lawrence Kunin**; that there had been a 15% increase in membership, with 31 of the members attended the meeting; and that a Mission Statement (which is displayed on its BLS Web Site page) had been adopted to emphasize two of the Committee’s “new goals” as follows:

The mission of the Computer and Technology Law Committee is to educate the Business Law Section and members of The Florida Bar about substantive computer and technology law cases, issues and statutes.

Along with a structure comprised of several “Task Forces,” with each Task Force focused on discrete issues or initiatives, other “new goals” had been established at the meeting: to recruit more Committee members emphasizing adding diversity, and to increase communications for discussions of “hot topics” between Committee meetings utilizing the Committee’s listerv (administered by long-standing Committee member Sam Lewis) (Committee@CompLaw.com).

G. CONTINUING LEGAL EDUCATION COMMITTEE:

The Chair next recognized **Jason Burnett**, CLE Committee Chair, who delivered a humorous report along with the plaintive message that two CLE programs were needed per substantive committee, per year. Such programs could be offered in ways such as Webinars and teleconferences that did not require gathering at a remote location from a member’s office.

H. CORPORATIONS, SECURITIES & FINANCIAL SERVICES COMMITTEE:

The Chair then recognized **Robert Brighton**, Chair of the Corporations, Securities, and Financial Services Committee. Mr. Brighton commenced his oral report by discussing ongoing efforts of the Chapter 608 Task Force, which is proposing revisions to the State's laws covering limited liability companies [discussed previously in these minutes]. He next discussed *pro bono* and diversity efforts by the Committee. He also noted that, in order to increase future membership the Committee was "sponsoring meet and greet" events at Florida's law schools. He reported on the status of the Chapter 607 project, with respect to which Sub-Committees had been formed to consider proposed revisions to the State's laws covering for-profit corporations. Mr. Brighton advised that the Chapter 607 project most likely would culminate in proposed legislation for the 2013 (or a later) Legislative Session. He concluded by alluding to other potential initiatives and legislative projects that had been discussed and were under consideration.

I. DIVERSITY COMMITTEE:

The Chair next recognized **Leyza Blanco**, Chair of the Diversity Committee, who conceded that her Committee's meeting was "not well attended." Consequently, she had visited other committees that were meeting to encourage their participation in the BLS diversity outreach. Ms. Blanco reported that a project on which the Diversity Committee was focusing its immediate efforts was a picnic to be held in November in Miami-Dade County, similar to an event in 2010 at which the Section used a tent area where Section members were able to meet minority students. She anticipated that a similar picnic would be held in central Florida in the spring of 2013.

Ms. Blanco then announced that Diversity Committee member (Federal Bankruptcy Judge) Cathy McEwen would be attending a meeting in October at Stetson Law, in Tampa. In connection with that event **Ms. Blanco moved** as follows **"The Business Law Section Shall Fund \$1,000 To Be Applied As Follows: "\$500 For Sponsorship" Of The Diversity Event In Tampa In October 2011 And "\$500 To Purchase Giveaways For Students."** **Paul Singerman Seconded the Motion.**

Vice Chair, Brian Gart, inquired whether the Motion was for a single approval rather than an on-going yearly event. Ms. Blanco responded that the Motion was a “one time request” and that the sponsorship would coincide with the National Bankruptcy Judges Conference reception to be held on October 19th. Discussion followed concerning the Motion. In addition BLS participation at the National Bankruptcy Judges Conference was discussed. During the discussion Judge McEwen was recognized, who advised that “the \$500 already was approved and can be used to buy tchotchkes,” and that the sponsorship would promote diversity in leadership ranks.

A voice vote was taken. **The Motion** [set forth above] **unanimously was approved.**

J. FICPA LIAISON COMMITTEE:

The chair recognized **Domenick Lioce**, Chair of the FICPA Liaison Committee (and Chair of The Florida Bar Tax Section). Mr. Lioce discussed “study groups” in conjunction with the Florida Institute of Certified Public Accountants (“FICPA”) on eleven topics, four of which were active. He advised that Bill Wiley had helped out but that additional assistance was needed for communications. He informed the meeting that the Chair of The Florida Bar Family Law Section, David Manz, would attend the next Committee meeting. Mr. Lioce explained that “One Committee goal is to reinvigorate social activities around the State.” Robert Brighton, a member of the FICPA Liaison Committee (and Chair of the Corporations, Securities, and Financial Services Committee as well as an active member in other initiatives of the Section) was recognized. Mr. Brighton recommended more participation by BLS members in the FICPA Liaison Committee’s functions and study groups. Mindy Mora advised that “Jamie Marx is liaison with the ‘Reptile’ Section” [more formally known as the Real Property, Probate and Trust Law or “RPPTL” Section of The Florida Bar].

K. INTELLECTUAL PROPERTY COMMITTEE:

The Chair next recognized **Robert Thornburg**, Chair of the Intellectual Property Law Committee. Mr. Thornburg advised that 30 participated in the meeting and had there been “call-in capability for the meeting” many more members would have participated. He proudly announced that 125 members of The Florida Bar were Certified in Intellectual Property Law.

Five Bar members sat for the latest Certification examination, four of whom achieved a passing grade.

Mr. Thornburg advised that, because the Intellectual Property Certification Committee had recommended to the Board of Legal Specialization and Education that the Certification Standards [approved by the Board of Governors and the Supreme Court] should be amended to increase the percent of “substantial involvement” [see Rules Regulating The Florida Bar, Rule 6-26.3(b)] from 30% to 50%, during the IP Committee meeting a debate between Mr. Chesal and Mr. Nagin had been scheduled to consider the “pros” and “cons” of the proposed amendment, after which the IP Committee voted in favor of the proposed amendment.

With respect to projects by the Committee, Mr. Thornburg advised that the Committee was undertaking to update the Manual for Florida Trademarks. He closed his report by mentioning that the meeting also provided a half-hour CLE program.

L. LEGISLATION COMMITTEE:

The Chair next recognized **Gary Teblum**, Chair of the Legislation Committee, who explained that the Vice-Chairs of each substantive committee served as members of the Legislation Committee in addition to certain at-large members of the Committee, and that there was “excellent participation” at the meeting. Mr. Teblum stressed a sense of urgency this year because the next Legislative Session was moved-up to commence on January 10, 2012 for a two-month period, with a focus on redistricting. He discussed the weekly teleconference schedule during every legislative session and reviewed the status of the Section’s legislative initiatives for the 2012 Legislative Session, as follows:

First, the Section’s joint initiative with the RPPTL and Tax Sections on Transferee Tax Liability that had been presented in the 2011 Legislative Session, but was not passed. It was being reintroduced as a White Paper in support of the proposed legislation, updated for the 2012 Legislative Session.

Second, with regard to **Revision of UCC Article 9** [covering Secured Transactions], the draft legislation had been completed and Bill drafting was ongoing by legislative staff.

Third, proposed amendment of the **Uniform Arbitration Act** had been approved earlier in the BLS Executive Council meeting [*see above in these Minutes*] and now would be submitted for Bill drafting.

Fourth, a White Paper was being finalized in opposition to proposed legislation designed to limit the ability of Florida tribunals to be directed to apply foreign law in cases before such tribunals.

Fifth, a White Paper had been prepared to counter anticipated ill-advised Bills covering **Credit Counseling, Debt Management, and Debt Counseling** because prior Bills introduced during the 2011 Legislative Session had attempted to regulate lawyers and it was expected that similar Bills would be reintroduced in the 2012 Legislative Session.

Sixth, Mr. Teblum explained the legislative process and anticipated that **Court Funding** would become an issue at the 2012 Legislative Session, as would **non-judicial foreclosures**.

Bill Wiley, the Section's Lobbyist, was recognized. He reviewed the "Article V attack on the judiciary [including attempts to defund the Courts], and the unlikelihood of the same level of activity as occurred during the 2011 Legislative Session." [*NOTE: Article V of the Florida Constitution establishes the judicial branch of the State's government, defines the organization of trial and appeals courts, and, in Section 14 provides for funding the judicial branch, pursuant to which, in Sub-Section "(d)" "[t]he judiciary shall have no power to fix appropriations."*]

M. LONG-RANGE PLANNING COMMITTEE:

There was no Report by the Long-Range Planning Committee.

N. MEMBERSHIP & LAW SCHOOL RELATIONS COMMITTEE:

The Chair recognized former BLS Chair, **Judge Mike Williamson**, a member of the Long Range Planning Committee and of the Membership & Law School Relations Committee, who spoke about membership outreach to students at all law schools in Florida and who recommended that BLS members should endeavor to attend such outreach events.

O. PRO BONO COMMITTEE:

The Chair recognized **Melanie Damian**, Chair of the Pro Bono Committee. Ms. Damian announced that three clinics were being planned: October 6th in Jacksonville, January or February in Tampa, and March or April in Miami. She explained the initiative and advised that a *pro bono* survey had been included within the materials for this Executive Council meeting.

P. RETREAT & SPONSORSHIPS COMMITTEE:

The Chair recognized **Lori Vaughan**, Committee Vice-Chair. [Mr. Aronson, Chair, previously had provided an extensive oral report at the commencement of the meeting, as set forth above.] Ms. Vaughan advised that, between October 12th and 15th, the annual Bankruptcy Conference would “by tradition” be held in conjunction with a meeting of the National Conference of Bankruptcy Judges. On October 13th a social event will be held at The Florida Aquarium, in Tampa. “The Bankruptcy Conference has a budget of \$160,000, primarily from sponsorships.” **Ms. Vaughan Moved The Business Law Section To Approve \$10,000 To Be A Major Sponsor and Host for The Event.** **Leyza Blanco seconded the Motion.** Discussion was had during which Mr. Gart confirmed the availability of funds in the BLS Budget, to cover this amount, for which \$2,000 already had been budgeted. A vote was taken by a show of hands, pursuant to which **the motion passed, with all Judges in attendance abstaining from the vote.**

Q. STATE / FEDERAL COURTS LIAISON COMMITTEE:

The chair then recognized **Ryon McCabe**, Chair of the State / Federal Courts Liaison Committee, who announced that Florida Circuit Court Judge Tom Smith had been appointed as a Magistrate Judge in the Middle District of Florida. There was a round of applause for Judge Smith, who was in attendance.

Mr. McCabe discussed the Web Site for Florida Business Courts, and advised that Judges would be recruited to participate in the Business Courts. Lou Conti was recognized. He opined that the Delaware Chancery Court was a good model for Florida to follow. Rick Gross was recognized. He reminded the meeting that a funding crisis in Florida had to be taken into consideration. Mr. Conti responded that the BLS should address use of business courts and the expertise of judges who serve on such courts. Judge Smith was recognized and suggested that the BLS “not to do anything.” John

Emmanuel suggested, “We can choose to meet with Judges in the selection process to be sure they are a good fit for serving in a business court.” Discussion was had of what, if anything, the Section could or should do to promote the business court concept and Florida’s Business Courts. Mr. Gross again was recognized and he stated the political situation was “delicate.”

Phil Schwartz was recognized. Mr. Schwartz stated, “The business court issue first arose when Paul Singerman was BLS Chair 15 years ago. This problem is different and folks move from Florida to Delaware for example [with Delaware presenting an excellent model of how an effective business court could function]. A constant, steady judicial body addressing business issues is needed.” Discussion continued without resolution or consensus on how to proceed.

VII. OTHER REPORTS:

A. “FASH” REPORT:

There was no FASH Report.

B. FLORIDA RECEIVER’S FORUM REPORT:

The Chair recognized **Brian Gart**. Mr. Gart advised, “A recommendation will be made by a sub-committee of the Bankruptcy / UCC Committee for receivership qualifications and standards. It will be addressed at the Executive Council meeting in December.” Jodi Cooke discussed reaching out to the Business Litigation Committee. Lou Conti advised, “In the corporate context attorneys use receivers and there should be outreach.”

C. HISTORIAN / PARLIAMENTARIAN’S REPORT:

The Chair recognized **Phil Schwartz**, the Section’s Parliamentarian, to present his report. Mr. Schwartz, a former Section Chair, took the opportunity to explain the concept of a “Triple Motion,” along with **Russ Blain**, another former Section Chair. The history of the Section briefly was explained, along with applicable Florida Bar Rules governing the Section, one of which is a “Triple Motion” [covered in materials electronically posted on the Section’s Web Site and available to all attendees prior to the Retreat, as Exhibit D to the materials] the policy and concept for which was explained. In summary, the Triple Motion has three requisites:

1. It must be within the subject matter of the Section;

2. It must not be beyond the permissible legislative activity of the bar;
3. It must not involve deep a philosophical or emotional division among a significant number of Bar members.

Further, a Triple Motion must “pass” by at least a two-thirds majority of the members present plus a majority vote of members taken together.

D. COUNCIL OF SECTIONS REPORT:

The Chair recognized **Brian Gart**, the BLS representative to the Council of Sections at its meeting on June 25th where a representative from all substantive areas of the Bar was present. Mr. Gart stated, “We have good outreach and do not need to formalize anything.” He advised that the next meeting would be held on September 24th.

E. BOARD OF GOVERNORS REPORT:

The Chair recognized **Michael Higer**, a former Chair of the Section and currently a member of the Board of Governors of The Florida Bar. Mr. Higer reported that the advertising rules were rewritten; an e-filing initiative was on-going; getting government lawyers more involved with the Bar was undergoing review by the Board of Governors; a full-time staff position was created to promote diversity; and “the Bar is insolvent.”

The Chair advised that Eugene Pettis, a member of the Board of Governors, who was attending the BLS retreat, had discussed with her ways to better coordinate activities and initiatives of the Board of Governors and the Business Law Section in order to reduce unnecessary duplication of effort and be more effective in carrying out such activities and promoting such initiatives.

F. “RPPTL” LIAISON REPORT:

The Chair recognized **Jamie Marx**, liaison with the Real Property, Probate and Trust Law Section of The Florida Bar. Mr. Marx advised that he had attended the full-day “Chapter 608 meeting chaired by Lou Conti.” The Real Property, Probate and Trust Law Section “will take a final look at the proposed Chapter 608 amendment but the Business Law Section is taking the lead. Longer term, the focus in on Chapter 607.”

G. YOUNG LAWYERS DIVISION LIAISON REPORT:

The Chair then recognized Andrew Jenkins who gave a humorous report that was well received by all in attendance.

VIII. SPECIAL NON-AGENDA MATTERS & HONORARIUM MOTIONS:

The Chair recognized Lou Conti, who advised that, at the National Conference of Bankruptcy Judges in Tampa, Leonard Gilbert would be honored for his sixty years of legal practice. He reminded everyone that Mr. Gilbert was the Section's first Chair, in the early 1970s. Mr. Conti believed the Section should honor Mr. Gilbert at the event.

Before addressing suggested recognition of Mr. Gilbert's contributions, the Chair recognized Paul Singerman, who **Moved To Recognize Judge Paskay For His Lifetime Achievement**. Mr. Singerman advised that Bankruptcy Judge Paskay "has participated in every View From The Bench program. He also suggested that Judge Killian would be retiring in 2012 and should be recognized with a plaque for his service on the Bench.

Discussion was had about the proposed award to Judge Paskay, a poster acknowledging Leonard Gilbert's achievements (to be placed prominently at The Florida Aquarium, where the event would be held), and recognition for Judge Killian. Based on the discussion three separate Motions duly were made and seconded, and Mr. Singerman's prior motion (which had not been seconded) was withdrawn. **The following three Motions, which included BLS funding for carrying out each such recognition were approved unanimously:**

1. **A Lifetime Achievement Award Will Be Presented To Judge Alexander L. Paskay In Connection With The 2012 View From The Bench Program and in Recognition of His Overall Achievements and Particularly His Participation In The View From The Bench Program From Its Inception;**
2. **A Plaque Recognizing Leonard Gilbert For His Commitment to and Efforts for the BLS, and His Overall Career Achievements, with such Plaque to be presented at the National Conference Of Bankruptcy Judges, in Tampa;**

3. **A Plaque Recognizing Judge Lewis Killian For His Commitment To and Service On The Bench will be presented on his retirement from the Bench in 2012.**

IX. BLS CHAIR'S REPORT:

Mindy Mora commenced her remarks by recognizing the 2011 Fall Retreat Committee Members: Alan Aronson, Lori Vaughan, Jeanne Seewald, Alan Howard, and Michael Chesal and the Section's administrators, **Yvonne Sherron** and **Mary Ann Obos**. There was a round of applause for the work of those recognized, which had greatly contributed to the success of the event.

The Chair next advised that:

The mid-year BLS Section Meeting would be moved earlier, to **December 1, 2011**. It would be a one-day, fly-in/fly-out meeting, to be held at the Hilton Westshore hotel, reachable by a shuttle bus to and from the Tampa airport. [Subsequent to the meeting, the location of the mid-year BLS Meeting was moved to Ft. Lauderdale due to logistical challenges associated with the planned Tampa location.]

The Executive Council Spring Retreat would be **March 14-18, 2012** in **BUENOS AIRES, ARGENTINA**. A pre-retreat biking excursion would be arranged for those able and interested.

The Annual Meeting of The Florida Bar and of The Business Law Section would be held on **June 21, 2012** at the Gaylord Palms Hotel, in Orlando.

Lastly, the Chair emphasized the importance to the Section for diversity and pro bono activities.

X. BLS VICE-CHAIR'S REPORT:

Brian Gart explained to the Executive Council what he and the Chair "do and how we do it." He advised that he was exploring the possibility of a "wine county retreat to Napa or Sonoma" in 2013. He requested the Council members to attend the Law School outreach efforts.

In response to an inquiry by Robert Thornburg about the location of next fall's retreat, Mr. Gart advised "We are coming back in 2012 to this Ritz Carlton." There was a round of applause.

X. ADJOURNMENT:

By motion duly made and seconded the Fall Retreat Executive Council Meeting adjourned at 11:07 AM.



Stephen Nagin
BLS Secretary /Treasurer

Minutes Approved: December 1, 2011
at the Business Law Section Executive Council Meeting
in Ft. Lauderdale, Florida, at the Renaissance Hotel