

**Minutes for the Bankruptcy/UCC Committee  
of the Business Law Section of the Florida Bar**  
Mid-Year (Winter) Meeting  
Thursday, January 14, 2021, 10:00am – 12:00pm  
Zoom Meeting

Jennifer Morando, Chair  
Jim Moon, Legislative Vice-Chair  
Mariane Dorris, Vice-Chair  
Hon. Catherine Peek McEwen, Judicial Chair  
Prof. Jeff Davis, Academic Chair

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

Jennifer Morando

**EXHIBIT A**

Motion to approve by Jim Moon, Second by Dennis Levine  
Approved

**II. Introductions of Special Guests and Pro Bono Reminder**

Jennifer Morando

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

Leyza Blanco, Section Chair  
Kacy Donlon, Section Chair-Elect  
Doug Bates, Section Treasurer  
Mark Stein, Section Secretary

Leyza Blanco: Discussed desire for the creation of at least 2 short one hour CLE programs by June, and announced EC Retreat for April 7-11, Savannah, GA.  
Kacy Donlon: Announced that members interested in being considered for Vice Chair positions should contact her.

**IV. Legislation**

*A. Legislative Overview for 2021 Session*

Manny Farach, Legislation Committee Chair  
Aimee Diaz Lyon, Section Lobbyist

Manny Farach Update: The 2021 Legislative Session starts on March 2, 2021 and ends on 4/30/21. To be considered this year, bills must be received by 3/2/21. Please review and get comments to Stephanie Lieb and Doug Bates as soon as possible on upcoming bills. If there is a real concern, please reach out immediately. Believe most bills will be about COVID-19. There are four

pieces of legislation of concern to the Section: Corporations glitch bill, Restrictive Covenants, Foreclosure Notice (RPPTLS and Bankers group have issues with the bill), and Kearney fix.

*B. Legislative Review Subcommittee*

Jim Moon

A couple of items to review. Something related to COVID-19 relief for companies. Still need volunteers. Now only 4-5 people.

*C. Reports from Legislative Study Groups*

**\*\*\*VOTING ITEMS\*\*\***

a. *Proposed Amendments to UCC 9-406 and 9-408*

(Joint with Corporations)

Jeff Davis

Matt Hale

**Exhibit B**

Matt Hale: Fla. Stat. 679.4061 and 679.4081. "Overrides". Clarify that overrides do not apply to LLC, LP, GP etc. Most operating agreements provide restrictions on who can be a member. 406-Economic rights; 408 Ownership rights and general intangibles. Amendments to clarify existing law. If approved, this will be on the 2022 Legislative Agenda. Pending approval in Corporations Committee also.

Discussion:

Jim Moon: New York has not adopted; do we know why?

Matt Hale: Chart is from 2019, no update yet. Some states enacted their own fixes before the statutes-UCC Amendments. No data on why not enacted.

Judge Catherine Peek McEwen: Would it prohibit security interest in single member LLC?

Matt Hale: No it would not prohibit a consensual lien.

Matt Hale: Moved to approve, second by Jeff Davis.

Triple motion-legislative issues within subject, permissible scope of Bar; no philosophical or emotional division

Abstain: Judge Mindy A. Mora, Judge Paul G. Hyman, Jr., Judge Roberta A. Colton, Chief Judge Caryl E. Delano, Judge Scott M. Grossman, Judge Michael G. Williamson, Chief Judge Laurel M. Isicoff, Chief Judge Karen K. Specie, Tara Trevorrow

No opposition. Motion carries.

*Related issue for potential study group: Durham Comm. Cap'l Corp. v. Ocwen Loan Servicing, LLC, 777 Fed. Appx. 952 (11th Cir. 2019)*

Juan Mendoza: Does this decision warrant a study group in light of editorial comments?

Judge Mindy A. Mora: I am always concerned about comments from editorial board, and I think when they talk, we should listen. 11<sup>th</sup> Circuit may not have considered what the broader meaning should be.

Decision was made to create study group. Juan Mendoza to lead study group. Additional members include Diane Noller Wells, Judge Mindy A. Mora, and Mark Roher.

## **2021 Legislative Items**

### *b. Kearney Fix (Re: Requirements for Waivers of Exemptions)*

Jennifer Morando

John Hutton

#### **Exhibit C**

Jim Moon: We have had several meetings with RPPTLS and Bankers, they were opposed. Bill is now a little watered down. Still addresses unintentional pledging of exempt assets. This is a new version from bill drafting department, so if you have comments send me an email to discuss issues by end of the day tomorrow. Thank you to study group.

John Hutton: The Bill is a more watered down version, but the Bankers strongly opposed it. This version still gets job done. Requires waivers to specifically identify the assets being pledged.

### *c. Foreclosure Notice Bill*

April Stone

April Stone: Aimee Diaz Lyon covered everything. The Section is looking for a sponsor. Judge Catherine Peek McEwen has put together facts to support the position.

## **Other Upcoming Issues**

### *d. Judgment Lien Amendments*

Prof. Jeff Davis

Jodi Dubose

#### **Exhibit D**

Jeff Davis: The Bill that we proposed has been approved by the committee (exact same as last time). The Bill is drafted. Plan is to get EC to adopt in favor of our recommendation. We are in the process of drafting the triple motion package. Once approved, Aimee Diaz Lyon will look for sponsors. We are

aiming for the 2022 Legislative Session. We have not yet approached the Department of Motor Vehicles because no triple motion passed.

Discussion:

Diane Noller Wells: Raised a question regarding the extension of liens. She wants to know how this proposed bill would interact with a charging order. Fla. Stat. 605.0503, lien on right to income from LLC. Where statute has lien coming into existence when certificate is issued. Confusion over what statute will prevail.

Jeff Davis: I have not spoken with Corporations Committee yet. I will need to get input from them.

- e. *Warehouse Lien Amendments* (§713.585)  
Dennis LeVine

Dennis LeVine: This Amendment addresses liens on vehicles by a storage facility. Fla. Stat. 713.78. Process to protect lienholders and owners. The sole purpose of §713.78 is to foreclose lien. DMV is not supporting the amendment yet but are scrutinizing other methods being used to foreclose lien. Curious about industry response, so contacting storage companies to get input. \$559.917 bond issues. Legislature changed statutes on towing and storage inspection issues.

Jim Moon: If you would like to volunteer to help, please email Dennis LeVine.

#### D. *Reports from Other Ongoing Study Groups*

- a. *Aviation Committee Legislation*  
Lynn Sherman not present

- b. *UCRERA-FRCP Task Force*  
Kenny Murena: Task force had last of meetings. Original charge has been fulfilled. Fla. R. Civ. Pro changes- 1.620 rule change recommendation. No further recommendations.

- c. *Bankruptcy Venue Reform Act*  
John Hutton  
Judge Catherine Peek McEwen

Judge Catherine Peek McEwen: We are starting all over because Senate filed a companion bill.

- d. *Chapter 48 Amendments Task Force*

Adina Pollan not present

*E. Items to be Monitored.*

*a. Financial Literacy Task Force*

Amanda Finley: Department of Education issued new standards. Committee meeting to discuss.

*b. Northern District Judgeships/Divisions*

Chief Judge Karen K. Specie

Jodi Dubose

Doug Bates

Judge Mindy A. Mora: Announced she thought she heard an additional judgeship had been approved for Northern District of Florida. Approval by 11<sup>th</sup> to ask for one, but not approved by Congress. **JCUS and after March meeting.**

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

Doug Bates

Jodi Dubose

Nothing to report.

*d. Fla. Stat. § 689.151 Revisions (RPPTLS proposed TBE legislation)*

Andy Layden

No report.

*e. Uniform Voidable Transaction Act Amendments*

John Hutton-no report.

*f. Digital/Cryptocurrency Regulation Task Force*

John Hutton

State Task Force has not had a meeting. BLS considering amendments, but no action yet.

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

*A. Bankruptcy/UCC Committee CLE Programs*

*a. Previously Held CLE Programs*

*i. Tax Planning for Insolvency and the Discharge of Indebtedness: State and Local Tax Considerations (Joint with Tax Section) - 8/31/2020*

*ii. Analyzing Bankruptcy vs. Workout Options: How to Communicate with Clients (Joint with Tax Section) - 9/9/2020*

- iii. *View from the Bench* - 11/5/2020 (Tampa); 11/6/2020 (Miami)  
Judge Michael G. Williamson: Paul Singerman was the moderator and was outstanding. Unique presentation with break out rooms and used two different platforms. One platform was "In Reach" and the second was "Zoom." We had over 200 registrants. Elizabeth Green will moderate next year.
- iv. Check BLS website, CLE page for free CLE on demand.

b. *Future Programs*

- i. 1/28/2021 - "*How to Guide" and Practical Considerations for Handling Evictions and Foreclosure Cases In, and After, the Pandemic*  
Bart Valdes leading the program.
- ii. 2/25/2021 – *Leadership in the Bar*  
IMF: This Course is designed to give participants an understanding of the organizational and leadership structure of the Florida Bar and the Business Law Section. Participants will be provided with greater understanding of the potential leadership roles, how to get involved in bar leadership, and the benefits of serving within those roles. The Course is scheduled to be presented on February 25, 2021.

<https://www.youtube.com/watch?v=OMIDVimVoLM>

B. *Communications Committee Report & Newsletter*  
Adina Pollan Not Present

C. *Out of State Division Newsletter Submissions*  
Judge Catherine Peek McEwen  
Don Workman

Don Workman: The next deadline is end of January. The Newsletter is a good way to get published.

**VI. Cross-Committee Partnership and Other Liaison Reports**

A. *Current Partnership Initiatives*  
Mariane Dorris: We are currently working on creating a CLE on the Sections' involvement in the Florida legislative process.

B. *Other Liaison Reports*

- a. *CLE Committee* – Bob Charbonneau: We need articles for Florida Bar Journal. (copy Andrew Layden on any emails). We need content for new CLE programs. Upcoming CLE programs: September-Bankruptcy vs. Workouts; October IP Symposium; November-View From the Bench. Potential legislative update CLE-bankruptcy provisions sprinkled throughout, and an update on small business bankruptcy. IMF will be presenting a Leadership in the Bar program. Chief Judge Caryl E. Delano’s mission is to support substantive committees and get articles. Checkout CLE new webpage.
- b. *IMF Committee* – Mariane Dorris: Applications for the new Fellowship Program are open and available on the website.
- c. *Membership Committee* – Dana Robbins. We are planning a St. Thomas University School of Law networking event.
- d. *Pro Bono* – Carlos Sardi 2019 Pro Bono Heroes (completed 20 hours of pro bono) The list of honorees is on the webpage. We encourage all of you to take the pro bono pledge. Our mission is to have 100% participation. Thank you to Judge Michael G. Williamson, Judge Roberta A. Colton, and Chief Judge Laurel M. Isicoff for volunteering their time to produce a small video for pro bono week. Thank you to Adina Pollan and Judge Thomas Smith.

## VII. Old Business

### A. *Creating an App for FRBP/Code*

Mark Healy

Creating the app for FRBP/Code - The website is outlined. Needs some polishing and then linked up. Will update in the near future.

## VIII. New Business

### A. *Attorney-Client Privilege in an ABC: In re: ASSIGNMENT FOR the BENEFIT OF CREDITORS OF MIAMI PERFUME JUNCTION, INC., et al., Petitioners, v. Leslie S. OSBORNE, etc., Respondent, 2020 WL 7636020 (Fla. 3d DCA, 2020)*

John Hutton

#### **Exhibit E**

This was a typical ABC case. The Assignee sought production of information related to assignors' business and financial affairs and requested accountant files and other files. Litigation ensued over who owned the privilege. The trial court, following a hearing, concluded that these privileges were transferred to the Assignee despite the statute's silence on the issue and the lack of Florida case law directly on point. Instead, the trial court looked to federal bankruptcy decisions for guidance, ultimately concluding that

bankruptcy law “supports the finding that authority to assert the corporation's attorney-client and accountant-client privilege passes with the transfer” under Chapter 727.

The concern is the statement that there is no settled law or statute on the issue. As such we request a study group to review the issue.

Patricia Redmond: I think a study group would be appropriate.

Jim Moon: Are there any volunteers to look at the issue. The following people volunteered: Dan Stermer, Jacqui Calderin, Grace Robinson, Andrew Layden, Chris Broussard, Phil Von Kahle, Paul Giordano, Adam Gilbert, Craig Pugatch, Thomas Zeichman, Diane Wells, Trish Redmond, John Hutton, Judge Mindy Mora, Matt Hale, Don Workman, and Mark Roher.

Jodi Dubose: Moves to Revive ABC Sub Committee. Jim Moon second. Motion carries.

#### B. *Other New Business*

### IX. **Future Meeting Dates**

June 9-12, 2021 (Note the date change!): Annual Florida Bar Convention; Hilton Bonnet Creek & Waldorf Astoria, Orlando

### X. **Adjourn**

Motion to adjourn by John Hutton, seconded by Jim Moon.

#### **Chat box:**

Supreme Court just released decision in *City of Chicago vs. Fulton*, 141 S. Ct. 585 (2021) - City won, and no violation of stay to hold car repo'd prepetition - Held: The mere retention of estate property after the filing of a bankruptcy petition does not violate §362(a)(3) of the Bankruptcy Code This does not change the law applicable in Fla. under *In re Kalter* 292 F.3d 1350, 1356 (11th Cir.2002).

From Karen Specie to Everyone: 10:20 AM

I abstain.

From Jennifer Morando to Me: (Privately) 10:23 AM

Judge Specie and Tara Trevorrow (Judge Mora's clerk) also abstained).

From Karen Specie to Everyone: 10:23 AM

Thank you, Dennis. Also, yesterday the Florida Third DCA en banc reversed precedent from 1982 and held that debtors' appeals are stayed by their bankruptcy filings. Case is: National



Medical Imaging LLC et al. v. Lyon Financial Services Inc. et al., case number 3D20-730, (2020 WL 5228979)

From Cathy McEwen to Everyone: 10:24 AM

That 3rd DCA opinion conflicts with the 2d DCA in the Wells Fargo case by Judge Lucas.

From Karen Specie to Everyone: 10:29 AM

Thank you, Judge McEwen - Wells Fargo cite is 197 So.3d 1105.