

**INTELLECTUAL PROPERTY LAW COMMITTEE
BUSINESS LAW SECTION
THE FLORIDA BAR**

MEETING MINUTES – 2021 Labor Day Retreat Meeting– In
Person and via ZOOM, Saturday, September 4, 2021, 1:30 PM –
4:00 PM

I. WELCOME AND INTRODUCTION BY THE CHAIR

Attendance: In person attendance: Michele Moss, Sam Lewis, Darren Spielman, Steve Milbrath, Fred Romano, Zachary Catanzaro, Jim, Matulis, Woody Pollack, Mark Warzecha, Diana Mederos, Raquel Wiborg-Rodriguez, Jose Rojas, Don Conwell, Stephen Bullock, Jeanne Seewald, Doug Cherry, Mark Stein.

In attendance via ZOOM: Robert Kain, Crystal Potts, Daniel Nordby, Elizabeth Stamoulis, Julee Milham, Karen Wilson, Kimra Major-Morris, Nancy Gregoire Stamper, Nicole Reid, Ava Doppelt, Oliver Ruiz, Joe Englander

II. OLD BUSINESS

- A. Adoption of Meeting Minutes.** June 10, 2021 – Florida Bar Annual Meeting (Moved by Sam Lewis, Second by Woody Pollack)
- B. CLE Course Numbers for Past IP Committee Meetings:**
 - 1. 6/10/2021-**The Simplified Retelling of *Compulife Software Inc. v. Newman*, 959 F.3d 1288 (11th Cir. 2020): “Warning: This Gets Pretty Dense (and Difficult) Pretty Quickly”-Course No. ???**

II. NEW BUSINESS

- A. Veteran’s Financial Literacy Program**-Carlos Sardi/Amanda Finley/Judge Laurel M. Isicoff- October 30, 2021, website: <https://flabizlaw.org/pro-bonopledge/veterans-financial-literacy-program/>
- B. IP Symposium Update** – Meredith Mendez, Miami – The Symposium will be in April 2022 at the Biltmore in Miami
- C. Legislative Update** – Samuel Lewis, Miami
 - 1. **BLS Proposed Changes to Service of Process Statute**- Changes to Chapter 48, F.S. to: (1) simplify the methods of service of process on business entities to eliminate redundancies and inconsistencies, (2) clarify the statutory scheme to avoid confusion, (3) better elucidate the methods for effectuating service of process in foreign countries, and (4) modernize the methods and procedures for service of process on business entities, while ensuring compliance with

fundamental notions of due process. Chapter 48 task force has provided updated language for review. Coordinating with RRPTL section.

2. **BLS Proposed amendments to the judgment lien statute in Chapters 55, 56 and 319 of the Florida Statutes** -Amendments to Chapters 55,56 and 319 to clarify the effect of a certificate of title on a judgment lien, and establish procedures for enforcement of a judgment lien against a motor vehicle, mobile home or vessel. Additional language has been added which expands the scope of the Florida judgment lien on personal property to reach accounts and payment intangibles as defined in Chapter 679. Supports legislation that makes clear that these judgment liens can only be enforced through judicial process and not through self-help or replevin without the express consent of the judgment debtor in a post-default record.
3. **UCC Pick your Partner**-Supports legislation to amend Fla. Stat. §§679.4061 and 679.4081 to clarify that certain “overrides” of restrictions on transferability do not apply to an ownership interest in a general partnership, limited partnership or limited liability company.
4. **Chapter 517-OFR (Office of Financial Regulation) Package**-Supports the legislative proposals by the Florida Office of Financial Regulation for the amendment of Chapter 517, the Florida Securities Investor Protection Act, as presented to the Business Law Section.
5. **Notice to Homeowner** - Supports the creation of §702.13 Florida Statutes, providing for notice to homeowner in mortgage foreclosure action of possibility of relief under U.S. Bankruptcy Code.
6. **Kearney**- Supports changes to Chapter 222 F.S. that protect Florida residents from unintentionally assigning, pledging, or waiving rights to assets that are otherwise exempt from the legal process.
7. **Data Privacy**-Coming back from 2021 Legislative Session-Supports legislation relating to data privacy and protection, including cybersecurity, that strikes the appropriate balance between protecting personal information without placing undue restrictions on business development or unnecessarily stifling technological advancement in this state.
8. **Offer of Judgment**-Coming back from 2021 Legislative Session
9. **Residential Evictions**-Coming back from 2021 Legislative Session
10. **Decentralized Autonomous Organizations**-Impacts LLC formations and digital currency.
11. **UCC Virtual Currency**-Issue for 2023 Legislative Session
12. **BLS Proposed Amendments to Fla. Stat. §713.78 regarding warehouse storage liens** – Supports amendments intended to clarify that: Fla. Stat. § 713.78

the exclusive Florida statute to foreclose a storage lien; the same procedures for a lender or owner of a vehicle or vessel to request an inspection related to a towing and storage liens is the same as set out in §713.585 for a repair lien are also applicable to towing and storage liens for vehicles and vessels under Fla. Stat. §713.78; the same procedures for posting a bond regarding repairs on vehicles and vessels in §§ 713.585 and 559.917 are also applicable to towing and storage liens for vehicles and vessels under Fla. Stat. §713.78.

13. **Real Property, Probate and Trust Law Section (RRPTL) Legislative Activity**

i. Probate Division-

IRA in Divorce-An act clarifying that interests received incident to divorce in certain retirement accounts are exempt from the claims of the transferee's creditors,

The Kearney Fix- See C.6. above.

Independent Actions-proposed amendments to Fla. Stat. §733.705(5) to codify existing case law such that the requirement to bring an independent action is satisfied if, within 30 days of the filing of an objection to the claim: a motion to substitute the fiduciary is filed in the pending action; an order substituting the fiduciary is entered in the pending action; such other procedure as may exist is initiated to substitute the fiduciary in the pending action; or the timely filing of an arbitration is made when the decedent has entered into an agreement during lifetime which provides for the mandatory arbitration relating to the claim, or arbitration is required by the decedent's will or trust.

Guardianship Legislation-awaiting BOG approval

Trustee Legislation-Proposed amendments to Fla. Stat. §736.0705 to clarify that a trust instrument may, subject to minimum notice requirements, provide an additional method by which a trustee may resign.

ii. Real Property Division-

Service of Process-proposal to create Fla. Stat. §49.072 establishing a process to serve unknown parties in possession of real property.

DOC Stamp Trust fix-proposed legislation to create express statutory authority for Florida Administrative Code Rule 12B-4.013(28) in Fla. Stat. §201.02(4) to apply the general principle expressed in Fla. Stat. §201.02(1) to transfers of real property interests to or from trustees of written trusts under Chapter 689. This general principle requires that there be a transfer of beneficially ownership

and consideration for the transfer in order for the documentary tax to apply to the transfer.

MRTA-legislation intended to clarify the operation of Florida's Marketable Record Title Act (the Act) in response to (i) a common real estate practice of making specific reference to title restrictions in deeds and thereby, arguably, unintentionally extending the life of restrictions that would otherwise be extinguished by operation of the Act and (ii) the judicial exception created by *Save Calusa Trust v. St. Andrews Holdings, Ltd.*, 193 So. 3d 910 (Fla. 3d DCA 2016) for restrictions imposed in connection with governmental zoning, development, or building approvals. Construction Liens and Bonds-Proposes an amendment to Fla. Stat. §713.132 to allow for the termination of a notice of commencement in cases where construction is ongoing without the requirement that all construction cease before recommencement in cases where construction is ongoing without the requirement that all construction cease before recommencement and eventual completion of the project as under current law. Since liens may relate back to an existing notice of commencement, terminating it is required by most lenders making mortgages securing construction financing, including refinancing or modifying existing loans, and by most buyers taking title to the land during the course of construction. Having to stop work in order to reset the priority of liens is an unnecessary step that entails delay, expense, and uncertainty without any offsetting benefit to the owner or potential lienors.

Hurricane Protection-Proposal to clarify and expand usage of Hurricane Protection in condominiums-Revising Fla. Stat. §§718.104(4), 718.113(5) and 718.115(1)(E) to clarify the law governing the installation and maintenance of hurricane protection and expand the law to encourage the usage of hurricane protection, such as hurricane shutters and impact glass, in condominiums. The proposal would allow for associations to adopt specific requirements for the adoption and installation of hurricane protection. The proposal also clarifies the maintenance obligations for the installation of hurricane protection and allows associations to operate the installed type of hurricane protection to protect the condominium property and units from damage due to a hurricane. The proposal also provides financial incentives to unit owners to install their own hurricane protection.

14. **Tax Law Section Legislative Activity**-Amendments to Section 736.0505(3) to provide that, for purposes of such section, assets in a revocable trust in which the original settlor's spouse is a beneficiary, such as a Spousal Lifetime Access Trust, shall, upon the death of said spouse, be deemed to have been contributed by the settlor's spouse and not the settlor.

D. Section 542.335 Task Force Update – Jim Matulis, Tampa –

Recommendations of Task Force were not well taken by original bill sponsor.

E. Board Certification Study Materials Task Force – Jessica Shraybman, Miami Beach and Joe Englander, Miami, co-Chairs – (no update)

F. Board Certification Update – Woody Pollack, Tampa – update, 2021 IP Board Certification exam: 4 sat for the exam and 4 passed; Deadline for IP Board Certification applications to sit for the 2022 IP Board Certification Exam is October 31, 2021. IP Board recertification deadline was July 31, 2021' with extensions available through October 31, 2021.

G. Liaison Updates

1. Inclusion/Mentoring/Fellowship Committee – Nicole Reid, Mount

Dora – Please review the IMF updated website for information on upcoming events. Mentorship program: More mentors are needed, requires a meeting at least once per quarter with mentee. Current volunteer mentor numbers show that each mentor would have to be assigned two mentees. Networking Committee is sponsoring an event sometime in the Fall. Location to be announced. CLE Committee is seeking content ideas for future CLE programs. There will be a review of the 10 year Diversity Committee Strategic Plan which is dated January 14, 2011.

2. Communications Committee — Crystal Potts, Fort Pierce – Committee is seeking content for the weekly newsletter. The Committee will include a sponsor spotlight in the weekly newsletter. Any firm can become a sponsor and be eligible for the spotlight. Committee is also seeking articles for the BLS blog.

3. Pro Bono Committee —Mark Stein provided an update on the Business Law Section's Pro Bono Pledge and the "One Promise" Campaign. Michele Moss discussed filling out the Pro Bono Pledge and committing to 20 hours of pro bono service each year.

4. CLE Committee –Liz Stamoulis, Sarasota- Committee is always seeking articles for inclusion in the Florida Bar Journal. The CFAA article that was circulated by Robert Kain will be included in the March 2022 edition. The Committee is seeking articles for the May/June 2022 edition of the Florida Bar Journal. Article submission deadlines to the CLE Committee are 60 days before; April 1, 2022 deadline for articles to be submitted to the CLE Committee for inclusion in the May/June 2022 edition of the Florida Bar Journal. Upcoming CLEs-View from the Bench: postponed to January 20-21

(tentative); October 5 Mediation Perspectives (From Business Litigation to Bankruptcy)

- 5. Financial Literacy Task Force**-Mark Warzecha, Melbourne-Task Force encourages members to check out their new webpage; they are creating a Financial Literacy Resource Page for Teachers, Students, & Parents, Financial Literacy is included in elementary schools; Task Force is working on financial literacy guidelines to be part of the curriculum for H.S. students; seeking volunteers and ideas for Outreach/Awareness activities for National Financial Literacy Month in April 2022; Seeking volunteers for October 30, 2021 Veteran's Financial Literacy Program: not necessary to have knowledge of bankruptcy law, volunteers will speak one-on-one with a veteran to assist with budgeting and finances, should the veteran need bankruptcy assistance they can be referred to a bankruptcy attorney who will handle their case pro bono; volunteers can participate remotely; via ZOOM.
- H. IP Committee Virtual Roundtable Events** – Michele G. Moss, Orlando, the second Wednesday of each month, from noon-1:00, via Zoom. Consider cancelling 9/8/21 Virtual Roundtable given today's meeting on 9/4/21. – Committee agreed to cancel 9/8/21 meeting in light of 9/4/21 Committee meeting.
- I. USPTO Comment on State of Patent Eligibility**-Michele G. Moss, Orlando Deadline for submission of Comment extended to October 15, 2021, Preparing triple motion to present to Business Law Section Executive Council (Commentary provided by Woody Pollack to change one sentence from “The USPTO’s position is completely arbitrary in applying Section 101 rejections that different application of law varies from one examiner to another” and instead use “The USPTO also struggles with application of Section 101 given the lack of clarity on this law, thus all stakeholders would benefit from clarifying legislation on this important body of law.” With this additional proposed change a vote was had in person and via zoom with all in favor.
- J. Amicus Brief Request**-Daniel E. Nordby, Tallahassee, Nancy W. Gregoire Stamper, Fort Lauderdale --Both Mr. Nordby and Ms. Gregoire presented a short commentary, and our BLS Amicus chair Dineen W. provided a procedural context of timing and practice. Michael Chesal provided a motion for the committee to vote on asking the section for the ability to file a notice of intent to file an amicus brief in connection with the WPB Hotel Partners v Point Conversions LLC matter which is pending in the FL. Supreme Court. A live vote and zoom vote was conducted, with all in favor, and Woody Pollack abstaining. Zach Catanzaro and Diana Mederos volunteered to write the eventual brief if it reaches that stage. Dineen Wasyluk will assist with the brief.

IV. CLE EVENT

Topic: Counterfeit Goods and the Intellectual Property Enforcement Landscape- T. Raquel Wiborg-Rodriguez, Stephen M. Gaffigan, P.A.

V. ADJOURNMENT

Next Meeting, Florida Winter Meeting, January 26-29, 2022 @ The Rosen Shingle Creek in Orlando, FL