

**Bankruptcy/UCC Committee
of the Business Law Section of the Florida Bar**
Labor Day Retreat Meeting Minutes
Saturday, September 4, 2021, 9:00am – 11:30am

James Moon, Chair
Mariane Dorris, Legislative Vice-Chair
Kenny Murena, Vice-Chair
Hon. Catherine Peek McEwen, Judicial Chair
Prof. Jeff Davis, Academic Chair

I. Welcome and Approval of Minutes from the Prior Meeting

James Moon

- Minutes attached to Agenda and sent to all Committee members.
- Motion to approve made Roy Kobert and seconded by Daniel Stermer
- No opposition
- Motion carries, minutes approved.

EXHIBIT A

Legislative Committee

Judgment Lien Amendments – triple motion to be made at EC meeting. Circulated amendments to the Statute to all Committee members via email blast and materials posted on the BLS website.

II. Introductions of Special Guests and Pro Bono Reminder

James Moon

III. Business Law Section Update & Welcome

Kacy Donlon, Section Chair
Doug Bates, Section Chair-Elect
Mark Stein, Section Treasurer
Manny Farach, Section Secretary

Kacy Donlon, Doug Bates, Mark Stein, Manny Farach, and Stephanie Lieb (Legislation Committee Chair) enter conference room.

Kacy Donlon:

- Introduction of all leadership.
- Explanation of retreat schedule including luncheon and substantive meetings.
- Thanked sponsors for the previous evening's events and the sponsors of the Labor Day Retreat.
- Discussed events taking place later in the day.

- Asked Stephanie Lieb to speak about legislation

IV. Legislation

- A. *Legislative Overview for 2022 Session*
Stephanie Lieb, Legislation Committee Chair
Aimee Diaz Lyon, Section Lobbyist

Stephanie Lieb:

- Introduction of legislative team.
- Legislative session in Tallahassee will be January 11, 2022 to March 11, 2022.
- Committee will be proactive on legislation involving the following: Uniform Commercial Code, Judgment Liens, Service of Process, Section 517, Notice to Homeowners, Notice of Evictions.
- Committee will be reactive on legislation involving the following: Data privacy and cryptocurrency
- Legislation Committee changed the website so that members understand that a triple motion is not all that is needed for legislation.

- B. *Legislative Review Subcommittee*
Mariane Dorris

Legislative Review Subcommittee – Marianne Dorris will lead and James Moon will assist. Other Committee members were invited to be on Subcommittee, which will focus on issues important to Committee and eliminate issues that are not. 5-6 members were on the Subcommittee last session, but the Committee would like to have more members on the Subcommittee this year. BLS fellows were invited to participate on the Subcommittee.

- C. *Reports from Legislative Study Groups*

James Moon welcomed and invited fellows and scholars who were present at the meeting (and others) to get involved substantively in the Committee and to contact him or Marianne Dorris to work on Subcommittees and Task Forces.

2022 Legislative Items - New

- a. *Judgment Lien Amendments*
Prof. Jeff Davis
Jodi Dubose

Exhibit B

James Moon had circulated language of the proposed Amendment to the Judgment Lien Statute via email blast the morning before this meeting (on September 4, 2021).

Professor Davis:

- Provided an overview of Judgment Lien Statute and what it does.
- Explained the importance of the Statute and what judgment liens do.
- Explained that the Committee wanted to simplify the process (2 methods) for getting a judgment lien – through proceedings supplementary or statutory
- Explained that the proposed Amendments expand a judgment lien to reach goods subject to levy and 2 types of intangibles – accounts and payment intangibles.
- Explained that there were issues with the implementation to 2 types of intangibles. When the Committee made a triple motion in the past to EC, the Committee removed expansion to intangibles. Now, the Committee is proposing to add intangibles back in.
- Explained that the existing perfected security interests are not primed by liens created by this new law.
- Explained that the Committee spoke to RPPTLS to make sure its members are satisfied with the proposed amendments and the Committee made the changes they had proposed. Members of the RPPTLS were concerned about what would happen to mobile homes.
- Explained that the Committee will get sponsors if EC passes the triple motion.

James Moon:

- Explained that Section 8 of the bill was removed at the June 2021 meeting.
- Noted that he sat in on conference calls and was impressed with work put into it, the vigorous debate, and the fantastic end product.

Professor Davis:

- Offered special thanks to Andrew Layden.
- Moved (James Moon read the motion) to support legislation to update and clarify the Judgment Lien Statute, making further revisions to the amendments approved at the June 2021 meeting:

To (1) support legislation to update and clarify Section 55.205, F.S., Effect of judgment lien, to explicitly cross-reference Section 319.27, F.S; (2) support amendments to Chapters 55, 56 and 319 F.S. to (i) clarify the effect of a certificate of title on a judgment lien, and (ii) establish procedures for enforcement of a judgment lien against a motor vehicle, mobile home, or vessel; (3) support legislation to expand the scope of the Florida Judgment lien on personal property to reach accounts and payment intangibles as defined in Ch . 679, F.S. of a judgment debtor that is located in this state; and (4) support legislation that makes clear that the above judgment lien can be enforced only through judicial process and not through self-help or replevin without the express consent of the judgment debtor in a post-default record.

The purpose of this proposal is to expand the scope of Florida’s judgment lien to include certain intangible assets and clarify the means for enforcing the lien.

Mark Wolfson seconded the motion.

All voting member voted in favor of the motion with no member opposing the motion.

All Judges present, except Judge McKewan, abstained.

The Motion carried.

A Triple Motion will be made at the forthcoming EC Meeting.

- b. *Proposed Amendments to UCC 9-406 and 9-408*
(Joint with Corporations)
Jeff Davis
Matt Hale

Exhibit C

Triple motion to support the proposed Amendments passed at the June 2021 BLS Meeting with RPPTLS support.

Jeff Davis provided update regarding the bill, explaining that it out of bill drafting.

- c. *Chapter 48 Amendments Task Force*
(Joint with Business Litigation Committee)
Jim Murphy, Co-Chair
Adina Pollan, Bankruptcy/UCC Liaison

Exhibit D

Triple motion made (by Business Litigation Committee) at June 2021 EC Meeting

Adina Pollan provided update:

- Task Force has been working on the proposed Amendments for a few years.
- Task force in June presented proposed Amendments to allow electronic filings as substitute process.
- Goals of Task Force: Focus on Sections 605, 607, 617, 620 of Chapter 48.
- Explained work done since June 2021: Proposed Amendments will remove provisions regarding service of process and replace them with cross references to other sections, limiting the revisions to those sections to make them consistent with others.
- Representative Mike Beltran will sponsor the legislation.
- Worked with RPPTLS – summary of their amendment and White Paper was attached to the Agenda.

- Will present triple motion at EC Meeting.

Judge Hyman: Asked if certain proposed changes were cleared by Secretary of State and it was confirmed that the Secretary of State approves the proposed changes.

James Moon: Asked if the Committee needed to vote on the proposal by the RPPTLS or whether the Task Force's proposed Amendments it will just be presented to EC by Triple Motion and it was confirmed that the Committee approval for the RPPTLS's proposal was not needed.

d. Warehouse Lien Amendments (§713.585)
Dennis LeVine

Exhibit E

Dennis LeVine provided update:

- This Committee already approved the proposed Amendment at the June 2021 Meeting
- After the 2020 amendments were made, fraudsters found a work around.
- This Amendment will not allow people to use other statutes to work around the 2020 amendments. To get the lien, you must use this new Amendment.

Jennifer Morando moved:

To support legislation to amend Fla. Stat. Chapter 713.78 to clarify that (1) storage liens on motor vehicles and vessels can be foreclosed only under the procedures set out in Fla. Stat. 713.78 and 559.917; (2) 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; (3) 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.

The purpose of this proposal is to address an abusive practice by storage facilities to use the warehouse lien statutes to impose a lien against a vehicle instead of the statutes which deal specifically with storage charges for vehicles and provide greater protections for vehicle owners and lienholders. The proposal will make it clear that 713.78 F.S. is the sole remedy to address vehicle storage charges.

Roy Kobert seconded.

Judge Hyman abstained.

The Motion carried.

The Motion will be presented to EC as a Triple Motion.

2021 Legislative Items – Carrying Over to 2022

e. Kearney Fix (Re: Requirements for Waivers of Exemptions)

Jennifer Morando

John Hutton

Jennifer Morando provided update:

- Future effective date for the bill.
- This died in committee because chair of committee said it would do more harm than good.
- Compromised with the Bankers to get them on board, but it did not work.
- Important issue to RPPRTLS, which is floating the proposal to the Bankers that will significantly water down the bill and it may be ready for the next legislative session. It will include a new subsection D.
- It is uncertain if Kearney will come back in 2022 session or not.

Judge McEwen: noted that an article on Kearney in the State-to-State publication was attached to the Agenda.

Link to the article:

<https://www.flabaroutofstaters.org/wp-content/uploads/2021/08/2021-OOSD-State-to-State-Newsletter-Summer.pdf>

f. Foreclosure Notice Bill

April Stone

Judge McEwen

Judge McEwen: This bill will be brought back and hopefully get more support.

D. Reports from Other Ongoing Study Groups

a. Florida Exemption Review/Revisions

Kelly Roberts

Kelly Roberts:

- Explained efforts of Study Group. It is working hard and has diverse input from trustees, creditors, debtors. It is sending out a survey via Survey Monkey to

organizations to obtain a consensus from interested parties before it is presented to the RPPTLS. The Study Group is up for the challenge.

- Asked Committee for other organizations from which the Study Group should obtain feedback and noted that all submissions are anonymous.

b. *ABC Glitch Bill Study Group*

Jodi Dubose

Patricia Redmond

Patricia Redmond provided report:

- Thanked everyone for providing topics to focus on.
- Explained that the Study Group will vet and reach consensus on controversial provisions.
- Explained that Nicole Maclamore is keeping everyone on task by sending out materials.

Jodi Dubose:

- Added that it is not too late to get involved, encouraged others to participate, and welcomed input from everyone.

c. *Article 9*

Juan Mendoza

Juan Mendoza reported that after the Eleventh Circuit issued the *Ocwen* opinion, applying the narrow interpretation of the word “assignment” to Article 9 (for the transfer of a security interest), the Study Group looked at the issue in the context of Florida law and prepared an article for practitioners, which is final and ready for publication.

d. *Bankruptcy Venue Reform Act*

John Hutton

Hon. Catherine Peek McEwen

John Hutton:

- Explained that the Act was introduced last July in the House of Representatives with bipartisan co-sponsors but that no companion bill has made its way to the Senate yet, they are always looking for more sponsors, and they are not sure if the Act will pass.

Judge McEwen:

- Explained that Charlie Christ and Greg Steube have supported the Bankruptcy Venue Reform Act. Asked attendees to help get support from Matt Gaetz, Val

Demings, Ted Deutch, Marco Rubio, and Rick Scott. Also, advised that if anyone wants to give feedback on H.R. 4193, they may do so by clicking the “give feedback on this bill” link on the Legislature’s website.

Discussion regarding companion bills regarding non-debtor releases and stays and prohibiting mergers to prevent stripping liabilities from assets.

James Moon commented on non-debtor release bill and discussed the release sought by the Sackler family in the Purdue Pharma case.

E. Items to be Monitored

a. Financial Literacy Task Force

Amanda Finley

Carlos Sardi:

- Provided update on Task Force meeting this morning, ongoing projects in the pipeline, including revamping of webpage with new content, and explained that these are resources for all stakeholders.
- Reiterated Task Force’s Mission: financial literacy for all high school students.
- Noted that April is National Financial Literacy Month and that the Task Force is planning for that event in 2022.

Veteran’s Financial Literacy Program – Oct. 30, 2021 (hybrid in-person / virtual)
South Florida

EXHIBIT F

Hon. Laurel M. Isicoff:

- Explained that the Pro-Bono Committee and Financial Literacy Task Force approved partnership with Mission United Broward and Greater Miami Legal Services to spring off Veteran’s Financial Literacy Program (“VFLP”).
- Explained that the VFLP is **not** for the purpose of taking a bankruptcy case. The VFLP will discuss writing checks, paying back student loans, etc.
- Explained that training materials for volunteers found on the website and relate to how to deal with veterans (*i.e.*, issues with PTSD, etc.). If conclusion is that the veteran should file for bankruptcy, veteran will be referred to Legal Aid. If volunteer wants to take the case, volunteer must advise Legal Aid.
- Asked for volunteers and passed around sign in sheet.
- Explained that it will be statewide if it works out well.

b. *Northern District Judgeships/Divisions*

Hon. Karen Specie

Jodi Dubose

Doug Bates

Judge Specie:

- Reported that Northern District of Florida turned down request for another judgeship even though the BLS supports it.
- Explained that the next opportunity to seek judgeship in the Northern District of Florida is September 2022.
- Explained that she is gathering data in support of another request will continue the effort.

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

Doug Bates

Jodi Dubose

Jodi Dubose:

- Explained that there was no movement on issue of judicial term limits.
- Explained that legislative oversight of judicial decisions got more traction than expected.
- Advised that this could be taken off the agenda and the Committee could address it if and when it pops up again.

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

Andrew Layden

Andrew Layden explained that there was no effort to reintroduce the law at this point and he is not aware of it coming back up at this point, and he advised that it could be taken off the Agenda.

John Hutton suggested the Committee keep it on the Agenda because RPPTLS might bring it up.

e. *Uniform Voidable Transaction Act Amendments*

John Hutton

John Hutton reported that the Task Force decided not to push for the Amendments in the 2022 session after which it would reconsider them as they gain traction in other states without the amendments proposed by the RPPTLS.

f. *Digital/Cryptocurrency Regulation Task Force*

John Hutton

James Moon (re: OFR reach out and Virtual Currency Task Force Creation question)

John Hutton reported that the Task Force was expecting a bill that defines and regulates cryptocurrency this coming year.

James Moon stated that he attended a meeting with Commissioner Weigel and the Task Force in which Commissioner Weigel asked for the Committee's support regarding changes to Article 12. Commissioner Weigel was asked to pump the brakes and wait to see what the ULC report says after which litigation efforts will proceed this or next year.

g. *Nondebtor Release Prohibition Act of 2021*

Hon. Catherine Peak McEwen

Would virtually eliminate the use in bankruptcy cases of non-consensual, non-debtor releases in private claims and those brought by the government.

V. Continuing Legal Education, Communications, and Publications

A. *Bankruptcy/UCC Committee CLE Programs*

a. *Previously Held CLE Programs*

- i. *Antiquated or Adequate? An Overview and Examination of Florida's Bankruptcy Exemptions – 5/27/2021*
- ii. *6/22/2021 – Mediation Perspectives: From Business Litigation to Bankruptcy*
- iii. *6/30/2021 - Nuts & Bolts of the Legislative Process (Bank/UCC and Legislative Committee joint presentation)*

Juan Mendoza

Kelly Roberts

Juan Mendoza provided an update, thanked participants in the Legislative Process CLE, and requested assistance with the "Nuts and Bolts" CLE.

Kelly Roberts stated that the "Nuts and Bolts" CLE will be held in-person in January 2022.

James Moon provided the schedule for the upcoming CLEs.

b. Future Programs

- i. 10/5/2021 -- Mediation Perspectives: From Business Litigation to Bankruptcy*
- ii. View from the Bench 2022 – January 20 (Tampa), January 21 (Miami) (was Oct. 28-29, rescheduled due to COVID)
Hon. Michael Williamson*
- iii. CLE Planning
Tara Trevorrow*
- iv. Contact James Moon or Mariane Dorris if you would like to present a CLE or share ideas for future topics*

*B. Communications Committee Report & Newsletter
Chris Thompson*

Chris Thompson:

- Advised that blog content is always needed and that BLS fellows can help with blog content and should reach out to him.
 - Valeria and IMF Committee were going to assign blog posts to the fellows.
- Still preparing weekly new letters for information to disseminate to BLS members.
- Discussed the member directory on the website and reminded everyone to create a profile because many members do not have a profile on the website.

James Moon discussed future CLE planning and asked members for ideas for CLEs that would be beneficial to the Committee.

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

Judge McEwen discussed Kearney and invited members to submit articles for the Newsletter.

VI. Cross-Committee Partnership and Other Liaison Reports

*A. Current Partnership Initiatives
Mariane Dorris*

Mariane Dorris:

- Reported that the Committee currently does not have any partnership initiatives, that it had partnered with ADR to present a CLE, which was postponed until October, that

- it is looking to work with other Committees and Task Forces to put together initiatives, and that it would like to work with the Animal Law Committee.
- Asked that members contact leadership with ideas for partnership initiatives.

B. Other Liaison Reports

a. *CLE Committee* – Andrew Layden

Andrew Layden:

- There will be a CLE on mediation perspectives to be presented via Zoom on October 5, 2021, moderated by Lynn Sherman, with 3 panel members, and invited members to attend and encourage others to attend.
- The next Florida Bar Journal will include an article regarding UCRERA written by Mariane Doris and Scott Shuker.
- There are openings for articles in the Florida Bar Journal published on behalf of BLS, the Committee has not missed publishing an article in an issue in a long time.
- Contact CLE Committee to get in the cue to have an article published.
- CLE Committee reads the articles before they are published to make sure they meet all requirements.

b. *IMF Committee* – Christina Taylor

Lorna Brown Burton:

- Provided update on the Committee meeting.
- Explained that more mentors are needed for the mentor/mentee program and asked members interested in mentoring to reach out to the IMF Committee.
- The Scholars and Fellows Task Force will be reviewing the strategic plan for the future and the Task Force Chair is working with some of the fellows.

c. *Membership Committee* – Terry Sanks

No report

d. *Pro Bono Committee* – Amanda Finley

Amanda Finley:

- Reported that the Pro Bono Committee had a successful meeting.
- Encouraged everyone to sign pro-bono pledge, committing to 20 hours per year.
- Discussed Veterans Literacy program, which was already described by Judge Isicoff.

- Explained that the Committee will be seeking approval from EC for a pro bono award.

VII. Old Business

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

Mark Healy explained that Mort with Moecker & Associates was asked to create an App for BLS to have all content in one place. But there were issues with the content of the App so it was not created and, instead, a page with links to the Bankruptcy Code, Local Rules, UCC statutes, UCC search, vehicle lien search, etc. was created.

VIII. New Business

No new business

IX. Future Meeting Dates

Winter Meeting – January 26-29, 2022
Rosen Shingle Creek
9939 Universal Blvd., Orlando FL

X. Dude, Where's My Bitcoin? Secured Transactions Involving Digital Assets

Panelists:

Andrew Hinkes, K&L Gates
David Gay, Carlton Fields
Professor Carla Reyes, Southern Methodist University
Moderator: Eric Ostroff, Meland Budwick

XI. Adjourn