

**Business Law Section of the Florida Bar**

**Business Litigation Committee Minutes**

LABOR DAY RETREAT  
Saturday, September 3, 2022  
9:00 a.m. – 11:30 a.m.

JW Marriott Marco Island Beach Resort, Calusa 3-5

Chris DeCort, Chair  
Brian Barakat, First Vice Chair  
Joseph Van de Bogart, Second Vice Chair  
**Judge Darrin Gayles**, Federal Judicial Chair  
**Judge Edward LaRose**, State Judicial Chair

**Meeting Minutes**

1. **Call to Order** – The meeting was called to order at 9:09 am.
2. **Pro Bono Pledge** – The Chair recited at opening of meeting.  
*The mission of the Pro Bono Committee is to achieve 100% participation in Pro Bono Service by Business Law Section members and attorneys in their firms.*
3. **Introduction of Judicial Chairs** – The Chair introduced and welcomed the Judicial Chairs.
4. **Bankruptcy/UCC Committee Request** – Scott Shucker, in place of Mariane Dorris and on behalf of the Bankruptcy/UCC Committee, made a request for volunteers from Business Litigation to join Bankruptcy/UCC Study Group to review Section 501.207 of FDUTPA and the holding in *Perlman v. PNC Bank, N.A.*, 38 F.4th 899 (11th Cir. June 27, 2022).
  - a. Summary: To bring a claim on the behalf of creditors – a receiver in that case – 11<sup>th</sup> circuit understood why that change as made – but without an innocent director or stockholder there is still no standing so they dismissed the lawsuit. Will attempt to file another case to allow a receiver to file other tort claims to allow a receiver to seek those claims in pari delicto – if you are interested in receiverships or representing fiduciaries, email him - email in the minutes works or email Scott directly to look to make a fix to what the 11th circuit did
5. **The Chair presided over a discussion regarding c. Appellate Review of Certain Orders Vacating Arbitration Awards (moved up on agenda from below)**

Main question was whether to vote affirmatively that the Section participate as friend of the court through the filing of an amicus brief in *Unifirst Corporation v. Joey's New York Pizza, LLC*

- Florida Supreme Court accepted jurisdiction with certified conflict 1st DCA – issue whether an order vacating an arbitration and ordering a new arbitration should be appealable – 2nd DCA held that it is neither an appealable non final order – had no jurisdiction because the petitioner plaintiff could not establish irreparable harm that can be cured on an appeal
- 1st DCA found that such orders could be appealed on a petition for cert – different discussion for today whether we are going to take a position on this issue and write an amicus brief in this case

Judge Edward LaRose left the room and abstained from the discussion.

1. Are these type of orders are appealable under the current rules?
2. Should they be appealable under Florida law? – federal statute allows direct appeal
3. Final Judgments are reviewable under Florida appellate rules

Two things to add –

Deneen – Amicus Committee

One – the petitioner is making the argument that appellate rules already deal with this

Two – the Section took a position when putting forth the Florida Arbitration Act not support rules that slow down the arbitration process

Statute says it's a non-final appeal –

Chris - Original Order – based on lack of notice is not appealable – specifically states it in the statute – Not going to lose on lack of notice twice

Bigger issue that we need decide if we want these types of orders to be appealable

Jude Cooper made a motion that the Business Litigation Committee not file an amicus brief.

Jim Murphy seconded the motion with a friendly amendment that a study group be formed to study whether to amend the Florida statute to mirror the federal, thus, allowing direct appeal of orders vacating arbitration awards

Russel Landy seconded the friendly amendment

A discussion ensued, where it was suggested by the Chair that we table the issue to wait for the Florida Supreme Court to rule – and if that is done by the time we meet again in January – we can re-raise the issue of the study group

The motion passed without opposition and noting abstentions of members of the judiciary.

Judge LaRose was invited back into the room.

## **6. Committee Member Introductions** – Committee member introductions were made.

## **7. Housekeeping Matters:**

- a. Review of Website and Resources
  - i. Email sign up for new committee members
  - ii. Manny Farach's case law update (also through mailing list)
- b. Review of Committee Level Listserv
  - i. Sign up: <http://lists.flabizlists.org/listinfo.cgi/bizlit-flabizlists.org>
  - c. Regularly use a list serve to send out communications to the committee
- d. Review of Legislation Subcommittee / Listserv
  - i. Overview and call for volunteers
  - ii. Sign up: <http://lists.flabizlists.org/listinfo.cgi/bizlitlegislation-flabizlists.org>
  - iii. Legislative Session starts March 7, 2023
  - iv. Brian Barakat – presenting on the legislation subcommittee – If not involved in the drafting or editing of our legislation – attend the meeting today at 4 pm
- e. HOT Topic – The Chair explained that future committee meetings would contain a brief 10-15 presentation by a committee member or member of the judiciary on a “Hot Topic.” Requested submission of potential presentation topics from the members

## **8. Action Items:**

- a. Approval of Annual Convention (June 2022) Meeting Minutes
  - i. Brian Barakat made a motion to approve the minutes
  - ii. The motion was seconded
  - iii. The Annual Convention Meeting Minutes were thereafter approved without opposition
- b. Series LLC Task Force – Jamie Marx – presenting for the task force for Lou Conti
  - i. Vote to approve triple motion to EC supporting proposed legislation drafted by task force based upon the Uniform Protected Series Act
  - ii. Jamie Marx made a motion to approve a triple motion to executive committee drafted by the task for based on the Uniform act
  - iii. The motion was seconded
  - iv. The motion passed without opposition, with members of the judiciary abstaining

## **9. CLE Presentation: “Financial Statement Literacy in Business Litigation” Presented by: Petrucelli, Piotrowski, & Co., Inc.**

## **10. Discussion Items:**

- a. Business Law Section Legislative Update
  - i. Judgment Lien – None
  - ii. UCRERA Glitch Bill – Amanda Fernandez - Issue with title companies trying to work out an agreement with REPTILS – title companies want the sale order to be considered a final order
  - iii. Series LLC - None
  - iv. ABC - None
  - v. Warehouse Liens - None

- vi. Motor Vehicle Exemption - None
  - vii. Data Privacy - None
  - viii. UCC Article 12 – Jude Cooper - A task force has been created to begin the process of digital assets passed – came out of the uniform law commission – 2024 session is the goal - going to talk about the nuts and bolts of what is in Article 12.
- b. Statutory Settlement Agreements (Rep. Beltran request)  
Brian Barakat, Working Group Chair - Position paper has been prepared with some initial thought into it that it may be a violation of right to contract and have a chilling effect on people wanting to settle at mediation – maybe we prepare forms that at mediation can be a standard to start from as a settlement agreement. Position paper to be circulated to Section Leadership prior to EC meeting.
- c. Appellate Review of Certain Orders Vacating Arbitration Awards – Dealt with earlier in the meeting.
- d. Substantive Committees Update
- i. Bankruptcy/UCC – None.
  - ii. Computer & Technology Law – new task force due to the amendment federally – to the pat deck section 101 – to deal with that you cannot patent computer programs –
  - iii. IP – the copyright office now has a small claims procedure that we can become a part of – if our client gets sued in the small claims procedure – they can be on the hook for the damages – if do not have a copyright registration – if you do have a registration
  - iv. Corporations, Securities & Financial Services - None
  - v. Intellectual Property - None
  - vi. Blockchain & Digital Assets - None
- e. Task Force Update
- i. Business Courts – Chris DeCort – None and no meetings
  - ii. Civil Rules – Russell Landy – Formed the task force last year – prepared a white paper – wrote a comment – and given time for them to respond to the comment – possibly oral argument hereafter
  - iii. Ch. 517, Florida Securities and Investor Protection Act – Jason Sherry – Task force has met a couple of times and is currently determining what it wants to do with this issue
  - f. Restrictive Covenants – Brian Barakat – None
  - i. Financial Literacy – Jim Murphy – was passed – 2023-2024 all entering high school students must obtain a half credit hour in this topic – November 9 the task force will be presenting and in Fort Lauderdale young professional CLE to teach how to teach financial literacy
  - ii. Fla. Stat. § 607.0750 and Fla. Stat. § 605.0801 – None

- g. Standing Committees Update
  - i. Pro Bono – None
  - ii. Communications – None
  - iii. CLE – Joseph Van de Bogart – we are going to be putting on multiple CLEs about the rule changes coming this year
  - iv. IMF/Membership – Katherine Van de Bogart – they have fellows and scholars who will be able to help
- h. Biz Lit CLE update – Dealt with above.
  - i. Additional reports on old matters

**11. New Business**

- a. A study group was formed to review the recently-announced change from PDFs to links for the service of court documents via the Florida e-Portal to identify the potential impact on litigants. Daniel Davis will lead the study group.
- b. Rule 1.530 change to motions for rehearing

**12. Adjournment** – The meeting adjourned at 11:41 am.