

**Bankruptcy/UCC Committee Minutes**  
**September 2, 2023**

Kenny Murena, Chair [kmurena@dvllp.com](mailto:kmurena@dvllp.com)

Adina Pollan, First Vice-Chair (Legislative) [apollan@mcglinchey.com](mailto:apollan@mcglinchey.com)

Matthew Hale, Second Vice-Chair (Study Groups) [mhale@srbp.com](mailto:mhale@srbp.com)

Hon. Mindy Mora, Judicial Chair

**I. Welcome & Approval of Minutes from the Prior Meeting - Exhibit A**

Kenny Murena

Judge Paul Hyman Jr. moved to approve the minutes. Seconded. No discussion. Motion passed unanimously.

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

Kenny Murena

Kenny Murena introduced Committee leadership and discussed reaffirming the Section's pro bono commitment and promoted two ways to contribute to the Section's pro bono efforts: the Veterans' Financial Literacy Project and the Middle District of Florida Bankruptcy Court's Districtwide Virtual Pro Se Clinic (Volunteer attorneys and unrepresented parties who want a virtual consult with a volunteer attorney can register at: <http://www.bankruptcyproseclinic.com> and will then be matched up for a virtual consult at a mutually convenient time).

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

Mark Stein, Section Chair

Manny Farach, Section Chair-Elect

Stephanie Lieb, Section Treasurer

Peter Valori, Section Secretary

Gregory Yadley, Section Chair of Long-Range Planning

Doug Bates, Section Immediate Past Chair

**IV. Legislation**

*A. Legislative Overview for 2023 Session*

Robert Barron, Legislation Committee Chair

Woody Pollack, Legislation Vice Chair

Aimee Diaz Lyon, Section Lobbyist

See below report from Robert Barron.

*B. Legislative Review Subcommittee*

Adina Pollan, Legislative Vice Chair

Jodi Dubose, Andrew Layden, James Silver, Luis Rivera, Thomas Zeichman, Dave Slenn

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Adina Pollan presented on the scope and function of the legislative committee review subcommittee. Ms. Pollan announced that there are currently five members of the committee and they could use more volunteers to assist with reviewing legislative initiatives as they come in. Ms. Pollan also referenced the pending committee review of the proposed legislative position, the white paper, and the proposed bill presented by the Legislative Committee of the RPPTLS regarding disputes under the Florida Uniform Disposition of Community Property Rights at Death Act (sec. 732.216-732.228). The bill proposes to statutorily exempt title disputes arising under the Act from Florida's creditor claim procedures. Claims raised under the proposed Act may also be raised in connection with a dispute related to business litigation, a bankruptcy proceeding, or a corporate change of control situation. The Committee may form a study group to examine further.

### C. 2024 Legislative Items

#### a. *Judgment Lien Amendments*

Prof. Jeff Davis, Jodi Dubose

[HB 27](#) by Rep. Benjamin (D-Miami Gardens)

Professor Davis gave the report. The Judgment lien act was passed last year. New amendments were passed at the June 2023 meeting. His group is still reviewing the possibility of a legislative fix for some bad case law that narrowly interprets judgment liens. The study group is looking at whether a glitch bill needed.

#### b. *Warehouse Lien Amendments* (§713.585)

Dennis LeVine

Wrecker and Towing-Storage Operators [HB 1085](#) by Rep. Maney (R-Fort Walton Beach)

Dennis LeVine provided the report on the current status of this legislation. The Bill was introduced in both the House and Senate in the 2023 legislative session. We were told it had backing of leadership of both houses. Towing lobby was very organized and attempted to stop the legislation. The bill made it through several committees but died at its last committee stop. Mr. Levine is planning to bring it back up for 2024 and is hopeful it will gain traction. Mr. Levine could use assistance with his efforts.

#### c. *FDUTPA: Revisions to Fla. Stat. § 501.207(3)*

R. Scott Shuker, Michael A. Friedman

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Mariane Dorris gave the report. The group is still waiting to get legislative support for these amendments. They are hoping to get a sponsor soon and that the amendments will gain some traction.

d. *UCRERA Amendments*

Kathleen DiSanto, Judge Mindy Mora

Kathleen DiSanto presented the status of the UCRERA Amendments, but there was not much of an update to provide. The RPPTL section initially pushed potential changes in the form of a “glitch” bill to UCRERA. Now it appears RPPTLS may be looking to our committee to take this on or make a recommendation. The study group will revisit the need for a glitch bill and make a recommendation.

e. *Florida Statutes, Chapter 517 Amendments*

*Will Blair*

Stuart Cohn and Will Blair appeared at our committee meeting and presented their triple motion on the 517 amendments, the amendments to Florida’s version of the Securities Investor Protection Act. Mr. Cohn explained that the new revisions incorporate a number of pro-business changes on a statute that hasn’t been updated in quite some time. They solicited any questions, and no questions were asked. The Triple Motion sought the Executive Council’s approval of the following:

*RESOLVED, that the Florida Bar Business Law Section (the "Section") supports proposed legislation updating and modernizing Chapter 517 of the Florida Statutes – The Florida Securities and Investor Protection Act (the "Proposed Legislation"), substantially in the form of the draft legislation, dated as of August 4, 2023, presented to the Executive Council of the Section, and subject to such further changes as are deemed appropriate and approved by the Chapter 517 Task Force and the Executive Council of the Section; and it is further*

*RESOLVED, that the Proposed Legislation: (1) Is within the Section’s subject matter jurisdiction as described in the Section’s bylaws; (2) Either is beyond the scope of the bar’s permissible legislative or political activity, or is within the bar’s permissible scope of legislative or political activity and the proposed Section*

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*position is consistent with an official bar position on that issue; and  
(3) Does not have the potential for deep philosophical or emotional  
division among a substantial segment of the bar's membership.*

*D. Legislative Items to be Monitored*

*a. Foreclosure Notice Bill*

April Stone, Hon. Catherine Peek McEwen

Kenny Murena read the report from Judge McEwen. Judge McEwen reported that there was no traction from Attorney General Ashley Moody's office towards pushing this legislation forward.

*b. Motor Vehicle Exemption Bill*

Kelly Roberts, Luis Rivera

Value of Motor Vehicles Exempt from Legal Process

Louis Rivera gave the report. Mr. Rivera explained the history of prior efforts to get reform passed. The initial legislative effort began with a basic bill to increase the Florida motor vehicle exemption from \$1,000 to \$5,000. As the bill moved through the House and Senate, the bill was amended to provide that the increased exemption amount would only apply to debtors in bankruptcy and would not apply outside of a bankruptcy proceeding. The BLS objected to the proposed legislation, which ultimately provided the impetus for Governor DeSantis to veto the bill. A new bill was proposed that would apply the exemption to all debtors (in bankruptcy and outside of bankruptcy) but it died in committee in the House and Senate. Mr. Rivera voiced uncertainty as to the outlook for this legislation in the upcoming 2024 legislative session. The study group is being reconstituted with the goal of presenting a more comprehensive white paper on Florida's exemptions and recommendations.

*c. H.R. 1017 - Bankruptcy Venue Reform Act  
118th Congress (2023-2024)*

John Hutton, Hon. Catherine Peek McEwen

Kenny Murena read a report from Judge McEwen. A bill is pending in the House and was referred to the judiciary committee in February where it has sat without any action. Representative Kathy Castor is a co-sponsor of the bill. Judge McEwen

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expressed the importance of garnering bipartisan support for any bill in the present Congress. There have been rumblings that Senator Elizabeth Warren may lend her support, and possible Representative Laurel Lee. John Hutton also spoke and echoed Judge McEwen's comments.

### d. Congressional Legislation affecting Student Loans

Kenny Murena provided a brief description of three pieces of legislation pending in the U.S. Senate that could potentially affect student loans:

- H.R. 306 – *Stopping Abusive Student Loan Collection Practices in Bankruptcy Act of 2023*. This legislation would add a provision in the Bankruptcy Code to provide for attorney's fees and costs for the debtor if the Debtor pursues dischargeability of student loan debt and the debt is ultimately discharged.
- H.R. 138 – *Private Student Loan Bankruptcy Fairness Act of 2023*. Under this proposed legislation, private student loans would be dischargeable without the need for a debtor to establish undue hardship as required under current law.
- S. 136 – *ISA Student Protection Act of 2023*. Under this proposed legislation, educational income share agreements would not be subject to same undue hardship standard typical of student loan discharges.

### e. Congressional Legislation on Exemptions

Kenny Murena mentioned an additional piece of legislation, H.R. 962 – *Protecting Gun Owners in Bankruptcy Act of 2023*. The legislation would increase the exemption for firearms to \$3,000 and clarifies that such firearms are household goods not subject to liens in bankruptcy.

### f. Congressional Legislation on Health Savings Accounts

H.R. 2959 and companion S. 2621 – *Health Savings Act of 2023*. Seeks, among other things, to exempt HSA's from creditor claims under federal bankruptcy exemptions (Florida law already provides for this in F.S. sec. 222.22.)

## **Business Law Section Leadership visited Committee meeting and provided their reports/updates to the Committee.**

Chair Mark Stein discussed two new initiatives he is pursuing. First, each committee and task force will be asked to put together a "playbook" to provide a road map for future leadership of the same

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committee or task force in conducting that committee's business. This would promote continuity of committee operations and ease the transition process year-to-year. This may be a good project for second vice chairs. Second, Chair Stein asked to make sure that all substantive committees have a liaison for the CLE committee. Chair Stein also plugged the FICPA/CLS event at Topgolf in Doral on November 8. Kenny Murena asked about new potential procedures for requesting funds for committee uses. Chair Stein mentioned forthcoming procedures for committees to request funds for committee uses, however nothing has been finalized at this point.

Robert Barron, Legislative Chair, presented on Section legislative efforts as it impacts the BK/UCC committee. The legislative team will be working on Warehouse Lien amendments and also the Judgment Lien glitch bill. FUPTA is out there and the window is closing very quickly to push that forward, hopefully we will know more soon. The legislative session is beginning very early this year, so Mr. Barron requested that committee members assist where possible if anyone contacts them asking for subject matter help on any legislative item, because this only happens where legislators or their staff are asking for help.

Peter Valori, Vice Chair, asked for us to email him the report for EC.

### *E. Study Groups*

#### *a. New: UCC 9-Financing Statements*

Adina Pollan [apollan@mcglinchey.com](mailto:apollan@mcglinchey.com)

Mark Wolfson [mwolfson@foley.com](mailto:mwolfson@foley.com)

Adina Pollan reported on their efforts to remedy the effects of the *Beach Boulevard* case (*In re NRP Lease Holdings, LLC*, 50 F.4th 979 (11th Cir. 2022)). This case held that under Florida law, because the Florida Secured Transaction Registry did not employ “standard search logic” for searches of financing statements, the statutory safe harbor for financing statements that fail to correctly name the debtor could not apply, and so the financing statements filed by creditor that incorrectly named debtor were “seriously misleading” and ineffective to perfect creditor's security interest in debtor's assets.

The study group is working with the Secretary of State and the DBPR to find out how to fix the website, which has been more of an operational issue. The group is also focusing on exploring legislative avenues to remedy the issue in the interim while the Secretary of State works through the issue. Ms. Pollan reported that it

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appears about 1/3 of UCC-1s are invalid under this new case. Study group is also working to get the notice out to affected parties.

b. *Commercial Financing Disclosure Law - Product Brokers & Providers*  
[HB 1353](#) by Rep. Bankson (R-Apopka)

Diane Wells, Mark Wolfson, John Hutton

Matt Hale presented on the issue and the study group. We formed a study group to see if we want to propose a glitch bill or other legislation to address the law.

Jocelyn Maceloni will be leading the study group. The study group is looking for interested participants to help in its efforts.

c. *UCC Article 12*

Robert Kain [rkain@conceptlaw.com](mailto:rkain@conceptlaw.com)

Matthew Hale

Hon. Mindy A. Mora

Robert Kain spoke on the current status of the UCC Article 12 amendments. Mr. Kain explained that this legislation incorporates the new Article 12 but also contains many revisions to other sections of the UCC. This item is not on the legislative agenda for 2024. Mr. Kain explained the white paper and the identification of each UCC section being amended. Mr. Kain also solicited participation the BK/UCC committee on his task force.

Kenny Murena also noted that the BK/UCC committee had formed a study group at the last meeting to provide its own review and input on the Article 12 bill.

Bob Charbonneau asked whether the Article 12 legislation has been approved by the Uniform Law Commission. Robert Kain responded and confirmed that the legislation is ULC approved.

Judge Mora also weighed in with some comments. She noted that Florida would be one of the first large commercial states to adopt the Article 12 UCC amendments. She mentioned one political issue on the definition of money that includes Central Bank Digital Currency. In the past legislative session, the Florida legislature adopted a definition of money that expressly excludes CBDC from the definition of money. This is an important legislative issue to be mindful of. Judge Mora also emphasized that it will be important for this committee to go through all of the

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changes in Articles 8 and 9 and elsewhere in the UCC to ensure that our non-uniform provisions are not affected.

Robert Kain also mentioned an area of interest for the Committee – the new definition of payment intangibles.

Matt Hale also provided a brief update on BK/UCC committee's new study group and its focus. Mr. Hale also solicited more volunteers for the study group.

*d. Motor Vehicle Exemption Study Group*

Kelly Roberts, Luis Rivera

*See Legislative Items to be Monitored (above)*

*e. ABC Study Group*

Trish Redmond, Jodi Dubose

Trish Redmond provided the report. After the bill was signed, the committee was put on hold. But after the ULC announced it may be looking into proposing a uniform ABC statute, the study group decided to remain in place so it can be in a position to review and provide input on anything that comes out of the ULC.

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

### A. Bankruptcy/UCC Committee CLE Programs

Kenny Murena provided a brief overview of the prior CLE programs held by the Committee, including:

- *Panel Discussion: Benefits and Pitfalls of Subchapter V*
- *A.B.C. (Fla. Stat. §727): The State Court Alternative to Bankruptcy Court*
- *Practices & Procedures: Bankruptcy Judges of the Jacksonville Division of the Middle District of Florida*

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- *Practices & Procedures: Bankruptcy Judges of the Orlando Division of the Middle District of Florida*
- *Bank/UCC & BDA Committees Present the New UCC Article 12: Why, When and What Does It Do?* Course No. 7455

Mr. Murena also discussed the future CLE programs planned by the Committee, including:

- *Labor Day Retreat 2023 - Litigating Confirmation Issues*
- *The Judge Michael G. Williamson View From the Bench 2023*

Mr. Murena also encouraged fellows to contact Brad Saxton to assist with the digesting of cases, which will work towards fellows' project requirements.

Megan Murray noted potential parking issues with the Miami View from the Bench program and alerted committee members to be on the lookout for emails regarding reserving parking.

### *B. Communications Committee Report & Newsletter*

April Stone provided the report of the Communications Committee and solicited Committee members to submit articles and blogs for the section newsletters and social media outlets.

### *C. CLE Committee Report & Florida Bar Journal*

Kathleen DiSanto reported that one of the goals of the CLE committee is to try and route CLEs through the CLE committee. The Committee has also worked to get articles in the pipeline for the Florida Bar Journal. The CLE committee had several suggestions for CLE programs at their committee meeting.

### *D. Out of State Division Newsletter Submissions*

Hon. Catherine Peek McEwen, Don Workman

Kenny Murena discussed the benefits of submitting articles to the out of state division newsletter and encouraged members to submit articles, which are almost guaranteed to be published.

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

### A. Other Liaison Reports

#### i. IMF Committee – Kelly Roberts, Katherine Van de Bogart

No report from the IMF committee.

#### ii. Financial Literacy – John Hutton, Tara Trevorrow

John Hutton provided the report. Mr. Hutton reminded the Committee about the efforts of the task force and the achievements in passing legislation to introduce financial literacy courses in public high schools throughout Florida. Mr. Hutton also promoted the November Topgolf event. Tara Trevorrow also spoke about the Topgolf event. Mr. Hutton discussed the veterans literacy programs taking place on November 4 in Tampa, South Florida, and Pensacola. The program could use more attorney volunteers.

#### iii. Membership Committee – Juan Mendoza, Christina Taylor

Juan Mendoza reported about the Scholars in attendance at the Retreat. He also discussed the committee's plan to increase membership among business law practitioners that are not members of the Section.

#### iv. Pro Bono – Hon. Laurel Myerson Isicoff, Jim Moon, Tara Trevorrow

Tara Trevorrow provided the report. The committee has several initiatives, including a veterans financial literacy program, which is Judge Isicoff's brainchild. The pro bono committee would like to have more attorney volunteers. Ms. Trevorrow also discussed the committee's efforts to help Afghan judges relocate, in addition to the pro bono awards recently given.

#### v. Scholar and Fellows Retention Task Force – Zack Hyman, Chris Broussard, Hon. Catherine McEwen

Judge McEwen reported that the task force is moving along and creating a best practices retention handbook.

#### vi. Regional Bankruptcy Bar Liaisons

Megan Murray provided the report for the BBA-ND Fla., BBA-SD Fla., and the TBBBA. The Northern District seminar is coming up on Sep. 29. The TBBBA's

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first monthly luncheon is coming up next month and will be available by Zoom, and the consumer CLE is also available. TBBBA/TMA happy hour upcoming. For South Florida BBA, there is a deadline to submit recommendations for pro bono awards on Sep. 15. Installation Sep. 7, brown bag Sep. 12. Table of Eight program is returning, first one is Oct. 19.

Christian Haman provided a report for the SWFBPA. Paskay Memorial dinner will be held on Nov. 16 in Fort Myers.

Jen Morando reported for CFBLA, noting that they hosted their seminar recently. Ms. Morando reminded committee members about the CFBLA's pro bono efforts.

Adina Pollan reported for the JBBBA. The organization had their annual seminar at Sawgrass. Ms. Pollan reported on upcoming brown bag meetings.

### vii. *ABI Liaison*

Adina Pollan provided the report, noting that next year's ABI Southeast is slated to be at the Ritz Carlton Naples. ABI has several upcoming programs, including a healthcare program in Nashville on Sep. 18-19, the winter leadership conference in Nov. 30-Dec. 2, and the Caribbean insolvency symposium in Jan. 22 and 24, and the Paskay Seminar on Feb. 14 and 16 in Tampa.

### viii. *Commercial Law League of America (CLLA) – Robert Charbonneau*

Robert Charbonneau reported on the CLLA's efforts to promote venue reform in bankruptcy. Additionally, the CLLA is seeking to support an increase in subchapter V debt limits to \$10M, but will also focus on at least retaining the current \$7.5M limits.

Judge Mora also discussed the jurisdictional debt limits and recent debates regarding why creditors would oppose the increased limits.

Mr. Charbonneau responded and detailed his experience in bringing the CLLA around to supporting the increased debt limits and framed the issue as one primarily focused on educating creditors about the benefits to secured creditors in Subchapter V cases.

Judge McEwen also weighed in on the debt limit discussion, noting that in her experience in Capitol Hill asking for the original debt limit to be increased to \$5 million, the primary opposition was the bank lobby because they like the absolute priority rule.

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Jacqui Calderin also asked about the creditor position and raised the issue of whether credit card companies are vocal in opposition.

Megan Murray weighed in with her perspective from the ABI Subchapter V Task Force and it does appear that the credit card companies are pushing back on increased debt limits.

ix. *Florida Institute of CPAs (FICPA)*

Kenny Murena provide the report on behalf of Don Workman. The FICPA recently undertook some personnel changes and the person who recently worked with our organization recently left, so they are reviewing who will do what at the organization. However, our agenda continues to be advanced.

## VII. New Business

None.

## VIII. Future Meeting Dates & Events

Kenny Murena updated the committee on upcoming events: the The Florida Bar, Winter Meeting – January 24-27, 2024, Rosen Shingle Creek, Orlando, FL; and the Annual Florida Bar Convention – June 19–22, 2024, Signia by Hilton Orlando, Bonnet Creek & Waldorf Astoria, Orlando, FL

Adina Pollan moved to adjourn the meeting. Motion seconded. Motion passed unanimously.

**MEETING ADJOURNED**