Direct v. Derivative Task Force
Business Law Section
Friday, September 4, 2026; 2:00 p.m. to 3:30 p.m.
In Person Meeting during the Business Law Section Labor Day Retreat
The Ritz Carlton, Naples, Florida

Members attending in person may check the Business Law Section Labor Day Retreat website, https://meeting.flabizlaw.org. For the most current meeting time and room location, or may check the posted schedule upon arrival at the Retreat.

For Members Joining by Zoom:
Join Zoom Meeting: https://us02web.zoom.us/j/6973758975
Meeting ID: 697 375 8975
One tap mobile: +13126266799,,6973758975# US (Chicago); +16465588656,,6973758975# US (New York)
Join by SIP: 6973758975@zoomcrc.com
Join instructions: https://us02web.zoom.us/meetings/6973758975/invitations

Chair:	Zane Katz, Esq.; Trenam Law
Vice Chair:	Michelle K. Notte, Esq.; The Entrepreneur Lawyers (TELS)

AGENDA

1. **Call to Order.**

2. **Approval of Meeting Minutes.**

    ○ Approval of the Minutes of the Task Force's August 10, 2026 meeting (Schedule A).

3. **Introduction of Members and Welcome.**

4. **Finalize Proposed Legislation for Executive Council.**

- **Proposed Legislation:** Finalize additions and ensure accuracy of all modifications, additions, and changes (Schedule C).

- **White Paper:** Finalize White Paper and ensure accuracy (Schedule D).

- **Triple Motion:**

- What Is a Triple Motion. Under Standing Board Policy 9.50 of The Florida Bar, a voluntary bar section seeking to have the Executive Council and Board of Governors support proposed legislation must satisfy a three part test, commonly referred to as a Triple Motion, confirming that the proposed position (1) is within the Section's subject matter jurisdiction as described in the Section's bylaws, (2) is within The Florida Bar's permissible legislative or political activity and is not inconsistent with any official Bar position on the issue, and (3) does not have the potential for deep philosophical or emotional division among a substantial segment of the Bar's membership.

- **Presentation of the Proposed Triple Motion** (Schedule B), supporting proposed legislation amending sections 605.0801, 605.0802, 607.0750, 607.01401(17), 607.0742, 620.2001, and 620.2002, Florida Statutes, to resolve the conflict between the one prong statutory test and the *Dinuro* line of cases, reaffirm a one prong test for direct action standing, and authorize the joining of direct and derivative claims in a single proceeding.

- **Task Force Vote** on whether to approve the Triple Motion and recommend it to the Executive Council for consideration and vote at the Executive Council meeting on Monday, September 7, 2026, from 8:30 a.m. to 11:00 a.m., during the Labor Day Retreat.

5. **New Business.**

- **Issues Table.** Attached as Schedule E for the Task Force's consideration is the Issues Table the Task Force compiled in 2025, identifying ancillary issues that remain prevalent and unresolved under Florida law based on feedback from practitioners and inconsistent rulings throughout the State of Florida, including issues concerning court approval of derivative claim dismissals, allocation of fees and costs between direct and derivative claims, severance of claims following dismissal, deadlock and buyout scenarios between equal owners, counterclaims and set offs asserted by the entity, and control of the entity during a minority initiated dissolution proceeding. The Task Force will resume substantive discussion of these issues following the Labor Day Retreat, while simultaneously working to advance the proposed legislation through the next legislative session.

- **Proposed Second Amended and Restated Bylaws (Informational).** For members' awareness, the Section's current Bylaws (Schedule F) and the proposed Second Amended and Restated Bylaws (Schedule G) are included with these materials. The Executive Council is expected to consider adoption of the Second Amended and Restated Bylaws at its meeting on Monday, September 7, 2026. The proposed amendments do not change the vote required for the Executive Council to approve a legislative position under Section 6.2(e), or the Section's subject matter jurisdiction under Section 1.2, and therefore do not affect the Triple Motion process applicable to the Task Force's proposed legislation.

6. **Updates and Upcoming Meetings.**

    - Standing Zoom meeting on the first Tuesday of each month at Noon. Zoom link available on the Business Law Section website.

7. **Adjournment.**

Schedule A

Minutes of the Task Force's August 10, 2026 Meeting

MEETING MINUTES

- August 10, 2026
- Attendees:
    - Zane Katz
    - Donna Litman
    - Gary Teblum
    - Philip Schwartz
    - Judge Rivera
    - Garrison Cohen
    - Lou Conti
- Changing definition in 607.01401(17) to include “derivative action” “derivative proceeding” “derivative suit”
    - NEED TO DO A SEARCH OF 607 for “derivative”
    - Derivative Proceeding (used 10 times)
    - Derivative Action (used 3 times)
    - Derivative Suit (used once in 607.0831(3)(a)).
- Consensus:
    - Change 607.01401(17) to include “derivative proceeding,” “derivative action,” or “derivative suit” means …
- Change White Paper to talk about the definitional change.
- Change White Paper to align the timeline for the enacting of statutes.
    - Strazzulla and Dinuro accrued prior to the statutes.
- Add to White Paper that you can still dismiss direct claims without court approval because they are not direct actions.

Schedule B

Proposed Triple Motion

TRIPLE MOTION

***RESOLVED**, that the Florida Bar Business Law Section (the "**Section**") supports proposed legislation (the "**Proposed Legislation**") related to direct and derivative proceedings by partners of a limited partnership, members of a limited liability company, and shareholders of a corporation. The Proposed Legislation amends ss. 605.0801, 605.0802, 607.0750, 607.01401(17), 607.0750, 607.0742, 620.2001, and 620.2002 to (i) resolve conflict between the operative statute and Florida case law, (ii) reaffirm the intent for Florida to utilize a one-prong test for determining direct action standing, and (iii) authorize the joining of direct and derivative claims in a single proceeding. The Proposed Legislation will further [INSERT LANGUAGE FROM LOU/GARY].*

***RESOLVED**, that the Proposed Legislation (1) is within the Section's subject matter jurisdiction as described in the Section's bylaws, (2) is with The Florida Bar's permissible legislative or political activity and the proposed Section position is not inconsistent with any official Bar position on that issue, and (3) does not have the potential for deep philosophical or emotional division among a substantive segment of The Florida Bar's membership.*

Schedule C

Proposed Legislation

A bill to be entitled

An act relating to direct actions by partners of a limited partnership, members of a limited liability company, and shareholders of a corporation; amending ss. 605.0801, 605.0802, 607.01401(17), 607.0750, 607.0742, 620.2001, and 620.2002, F.S.; clarifying the standard for maintaining a direct action; permitting direct and derivative actions to be brought in the same proceeding; providing construction.

Be It Enacted by the Legislature of the State of Florda:

Section 1. Section 605.0801, Florida Statutes, is amended to read:

605.0801 Direct action by member.—

(1) Subject to subsection (2), a member may maintain a direct action against another member, a manager, or the limited liability company to enforce the member's rights and otherwise protect the member's interests, including rights and interests under the operating agreement or this chapter or arising independently of the membership relationship.

(2) A member maintaining a direct action under this section must plead and prove either:

(a) An actual or threatened injury that is not solely the result of an injury suffered or threatened to be suffered by the limited liability company; or

(b) An actual or threatened injury resulting from a violation of a separate statutory or contractual duty owed by the alleged wrongdoer to the member, even if the injury is in whole or in part the same as the injury suffered or threatened to be suffered by the limited liability company.

<u>(3) A member maintaining a direct action under subsection (2) is not required to plead or prove there is or was any actual or threatened special injury to the member.</u>

<u>(4) A member may maintain a direct action under this section and a derivative action under s. 605.0802 in the same proceeding where the actions involve a common question of law or fact.</u>

Section 2: Section 605.0802, Florida Statutes, is amended to read:

605.0802 Derivative action.–

<u>(1)</u> A member may maintain a derivative action to enforce a right of a limited liability company if:

<u>(a)</u> The member first makes a demand on the other members in a member-manager limited liability company or the managers of a manager-managed limited liability company requesting that the managers or other members cause the company to take suitable action to enforce the right, and the managers or other members do not take action within a reasonable time, not to exceed 90 days; or

(b) A demand under paragraph (a) of subsection (1) would be futile, or irreparable injury would result to the limited liability company by waiting for the other members or the managers to take action to enforce the right in accordance with paragraph (a) of subsection (1).

(2) A member may maintain a derivative action under this section and a direct action under s. 605.0801 in the same proceeding where the actions involve a common question of law or fact.

Section 3: Subsection (17) of section 607.01401, Florida Statutes, is amended to read:

607.01401 Definitions.—As used in this chapter, unless the context otherwise requires, the term:

(17) "Derivative proceeding," "derivative action," or derivative suit" means a civil suit in the right of a domestic corporation or, to the extent provided in s. 607.0747, in the right of a foreign corporation.

Section 4: Section 607.0750, Florida Statutes, is amended to read:

607.0750 Direct action by shareholder.—

(1) Subject to subsection (2), a shareholder may maintain a direct action against another shareholder, an officer, a director, or the ~~company~~ corporation, to enforce the shareholder's rights and otherwise protect the shareholder's interests, including rights and interests

under the articles of incorporation, the bylaws, agreements between or among some or all of the shareholders or agreements between or among the corporation and one or more shareholders, or this chapter or arising independently of the shareholder relationship.

(2) A shareholder maintaining a direct action under this section must plead and prove either:

(a) An actual or threatened injury that is not solely the result of an injury suffered or threatened to be suffered by the corporation; or

(b) An actual or threatened injury resulting from a violation of a separate statutory or contractual duty owed by the alleged wrongdoer to the shareholder, even if the injury is in whole or in part the same as the injury suffered or threatened to be suffered by the corporation.

(3) A shareholder maintaining a direct action under subsection (2) is not required to plead or prove there is or was any actual or threatened special injury to the shareholder.

(4) A shareholder may maintain a direct action under this section and a derivative action under s. 607.0742 in the same proceeding where the actions involve a common question of law or fact.

Section 5: Section 607.0742, Florida Statutes, is amended to read:

607.0742 Complaint; demand and excuse.–

(1) A complaint in a proceeding brought in the right of a corporation must be verified and allege with particularity:

(a) The demand, if any, made to obtain the action desired by the shareholder from the board of directors; and

(b) Either:

1. If such demand was made, that the demand was refused, rejected, or ignored by the board of directors prior to the expiration of 90 days from the date the demand was made;

2. If such demand was made, why irreparable injury to the corporation or misapplication or waste of corporate assets causing material injury to the corporation would result by waiting for the expiration of 90 days ~~a 90-day period~~ from the date the demand was made; or

3. The reason or reasons the shareholder did not make the effort to obtain the desired action from the board of directors or comparable authority.

(2) A shareholder may maintain a derivative action under this section and a direct action under s. 607.0750 in the same proceeding where the actions involve a common question of law or fact.

Section 6: Section 620.2001, Florida Statutes, is amended to read:

620.2001 Direct action by partner.–

(1) Subject to subsection (2), a partner may maintain a direct action against the limited partnership or another partner for legal or equitable relief, with or without an accounting as to the partnership's activities, to enforce the rights and otherwise protect the interests of the partner, including rights and interests under the partnership agreement or this act or arising independently of the partnership relationship.

(2) A partner ~~commencing~~ maintaining a direct action under this section ~~is required to~~ must plead and prove either:

(a) An actual or threatened injury that is not solely the result of an injury suffered or threatened to be suffered by the limited partnership; or

(b) An actual or threatened injury resulting from a violation of a separate statutory or contractual duty owed by the alleged wrongdoer to the partner, even if the injury is in whole or in part the same as the injury suffered or threatened to be suffered by the limited partnership.

(3) Any partner maintaining a direct action under subsection (2) is not required to plead or prove there is or was any actual or threatened special injury to the partner.

(4) The accrual of, and any time limitation on, a right of action for a remedy under this section is governed by other law. A right to an accounting upon a dissolution and winding up does not revive a claim barred by law.

(5) A partner may maintain a direct action under this section and a derivative action under s. 620.2002 in the same proceeding where the actions involve a common question of law or fact.

Section 7: Section 620.2002, Florida Statutes, is amended to read:

620.2002 Derivative action.–

(1) A partner may maintain a derivative action to enforce a right of a limited partnership if:

(a) The partner first makes a demand on the general partners requesting that ~~they~~ the general partners cause the limited partnership to ~~bring an~~ take suitable action to enforce the right and the general partners do not ~~bring~~ take the action within a reasonable time, not to exceed 90 days; or

(b) A demand under paragraph (a) of subsection (1) would be futile, or irreparable injury would result to the limited partnership by waiting for the general partners to take action to enforce the right in accordance with paragraph (a) of subsection (1).

(2) A partner may maintain a derivative action under this section and a direct action under s. 620.2001 in the same proceeding where the actions involve a common question of law or fact.

Schedule D

White Paper

BUSINESS LAW SECTION OF THE FLORIDA BAR
Direct v. Derivative Task Force White Paper

INTRODUCTION

The Florida Revised Limited Liability Company Act, Chapter 605, Florida Statutes ("RLLCA"), the Florida Business Corporation Act, Chapter 607, Florida Statutes ("FBCA"), and the Florida Revised Uniform Limited Partnership Act, Chapter 620, Florida Statutes ("FLPA"), each contain a statutory test for direct action standing. The FBCA was amended in 2019 to require a corporate shareholder to plead and prove an actual or threatened injury that is "not solely the result of an injury suffered or threatened to be suffered by" the corporation. This single-prong test is codified at Fla. Stat. § 605.0801 (for LLCs), Fla. Stat. § 607.0750 (for corporations),[1] and Fla. Stat. § 620.2001 (for limited partnerships).

Despite the enactment of the one-prong statutory test in 2019, Florida courts have continued to cite and apply a more restrictive, judicially created two-prong test for direct action standing, commonly known as the *Dinuro* test. This test, announced by the Third District Court of Appeal in *Dinuro Investments, LLC v. Camacho*, 141 So. 3d 731 (Fla. 3d DCA 2014), requires a plaintiff to show both (1) a "direct harm" that does not flow from an initial harm to the entity and (2) a "special injury" that is separate and distinct from injuries suffered by other owners. *Id.* at 739-40.

Courts applying *Dinuro* have also ruled that direct and derivative claims cannot be asserted in the same litigation, holding that a plaintiff cannot "in the same action sue in more than one distinct right or capacity." *DiSorbo v. Am. Van Lines, Inc.*, 354 So. 3d 530, 544 (Fla. 4th DCA 2023). This ignores the fact that many plaintiffs in entity litigation have facts that encompass both direct and derivative claims, and requiring separate proceedings duplicates work for parties, judges, and juries.

The Task Force originated out of concerns about the conflict between the one-prong statutory test and the judicially created *Dinuro* test and its progeny. The Task Force also identified issues with inconsistent application of the statutory test due to continued reliance on *Dinuro* and its progeny. The Task Force held numerous meetings to review and analyze the statutes and relevant case law, as well as statutes of other jurisdictions concerning standing in direct actions. As a result, the Task Force determined that amendments to Florida Statutes sections 605.0801, 605.0802, 607.0742, 607.0750, 620.2001, and 620.2002 would resolve the conflict between the statutes and the case law, reaffirm the intent for Florida to utilize a one-prong test for determining direct action standing, and authorize the joining of direct and

[1] Fla. Stat. §§ 605.0801 and 607.0750 also recognize an exception that is not the subject of the proposed amendment, and which would remain in effect: a plaintiff may bring a direct action where the injury results from a violation of a separate statutory or contractual duty owed to the member or shareholder, even if the injury is in whole or in part the same as the injury suffered or threatened to be suffered by the LLC or corporation.

derivative claims in a single proceeding, so long as they involve a common question of law or fact. The proposed statutory amendments will provide significant benefits to the administration of justice by, among other things: (i) providing a clear and concise statutory test for determining standing in direct action litigation, (ii) eliminating confusion or conflict created by varying judicial opinions, (iii) serving judicial economy, and (iv) allowing parties and counsel to far more easily assess and address standing questions prior to commencing litigation.

BACKGROUND

Origins of the Statutory Provisions

Florida's statutory framework for direct and derivative actions by entity owners is found in three parallel chapters of the Florida Statutes. First is the FLPA, enacted in 2005 (with an effective date of January 1, 2006 or January 1, 2007, depending on a partnership's date of formation or election), which led to the formation of the RLLCA. The RLLCA, which was modeled on the Revised Uniform Limited Liability Company Act, was enacted in 2013 (with an effective date of January 1, 2014 or 2015, depending on LLC's date of organization or election). The relevant section of the FBCA, which draws on concepts from the RLLCA,[2] was added through amendment in 2019 (with an effective date of January 1, 2020).

All three statutes contemplate a one-prong test for direct action standing. To properly maintain a direct action, the plaintiff must plead and prove "an actual or threatened injury that is not solely the result of an injury suffered or threatened to be suffered by" the entity. § 605.0801(2)(a), Fla. Stat.; § 607.0750(2)(a), Fla. Stat.; § 620.2001(2), Fla. Stat. The statutes do not discuss "special injury," nor do they require a plaintiff to show a "special injury" distinct from the injuries of other owners to maintain a direct action. *Id.*[3]

The legislative intent of the RLLCA was to be modeled consistent with the Revised Uniform LLC Act, with the general understanding that Florida LLCs often operate as partnerships with liability shields to the members, hence the language in the FLPA. With this understanding and intent in mind, the RLLCA framers did not include a special injury test in determining whether direct action standing exists. With respect to corporations, the framers agreed direct action standing for Florida corporations should be consistent with and follow the provisions related to direct actions in Florida LLCs.

The Dinuro Test

In 2014, one year after the RLLCA was enacted and one year before it became fully effective, the Third District Court of Appeal decided *Dinuro Investments, LLC v.*

[2] The remainder of the FBCA draws on concepts from the Model Business Corporations Act.
[3] Both the RLLCA and the FBCA have an exception to the direct harm test for statutory or contractual duties, but that portion of the statutes is not subject to, and will not be affected by, this proposed amendment.

Camacho, 141 So. 3d 731 (Fla. 3d DCA 2014). *Dinuro,* which was initiated with the trial court in 2011 based on events that occurred in 2010 and 2011, was decided under Florida's earlier version of a limited liability company act, Chapter 608, Florida Statutes. In *Dinuro*, the court comprehensively synthesized prior Florida precedent into a two-prong test for direct action standing. Under this test, a plaintiff may bring a direct action only if: (1) there is a "direct harm" to the plaintiff such that the alleged injury does not flow from an initial harm to the entity; and (2) there is a "special injury" to the plaintiff that is separate and distinct from injuries sustained by other owners. The *Dinuro* court explained that the "direct harm" prong requires a comparison between the plaintiff's injury and the entity's injury. In other words, if the damages are related to damages first sustained by the entity, the claim is derivative. The "special injury" prong requires a comparison between the plaintiff's injury and the injuries, if any, of other owners. The plaintiff must show a loss "substantially different" from those sustained by fellow members or shareholders.

<u>*Post-Dinuro Case Law*</u>

Florida courts have continued to apply the *Dinuro* two-prong test even after the enactment of the one-prong tests in Sections 605.0801(2)(a) and 607.0750(2)(a). For example, in 2015, the Fourth District Court of Appeal adopted the *Dinuro* two-prong test in *Strazzulla v. Riverside Banking Co.*, 175 So. 3d 879 (Fla. 4th DCA 2015).[4] The Third District Court of Appeal confirmed *Dinuro* three years later in *Ferk Family, LP v. Frank*, 240 So. 3d 826 (Fla. 3d DCA 2018), and again in 2020 with *Arbitrage Fund v. Petty*, 307 So. 3d 119 (Fla. 3d DCA 2020). In *Petty*, the parties conceded that § 607.0750 codified *Dinuro* but disagreed on how to interpret it. The court in *Petty* then relied on *Dinuro* and scholarly literature rather than the statutory text. The Third District most recently affirmed *Dinuro* in 2025. *Benes v. De La Aguilera*, aff'd, 2025 WL 322291 (Fla. 3d DCA 2025). Federal courts have also applied the *Dinuro* test rather than the statutory test. *See Feng v. Walsh*, 2020 WL 5822420 (S.D. Fla. Sept. 14, 2020); *Snyder v. Formerly B 3 Group, Inc.*, 2024 WL 2724435 (M.D. Fla. May 28, 2024).

The *Petty* decision warrants particular attention because, in addition to applying the *Dinuro* framework, it extended *Dinuro* to equity freeze-out claims, which has created additional uncertainty. The *Petty* court, applying the *Dinuro* framework, concluded that a forced cash-out and alleged inadequate merger consideration constituted a derivative harm because those injuries purportedly flowed from the undervaluation of the entity as a whole. While the court conceptualized the merger as functionally equivalent to an asset sale, an important distinction exists between an "asset sale" and a "merger." In a true asset sale, inadequate consideration would in fact diminish the value of the corporation, thus indirectly reducing the value of shareholders' equity and creating a derivative harm. However, a merger does not involve a "sale" but rather a transfer, and a shareholder does not "sell" shares in a merger. Rather, because shares are converted into the right to receive merger

[4] *Strazzulla* was decided in 2015 based on fraud that occurred in 2008. Thus, § 607.0750, Fla. Stat. did not apply.

consideration, a freeze-out eliminates the shareholder's individual ownership interest, voting rights, and economic stake in the enterprise, making the harm direct. *Petty* thus creates further confusion.

Separation of Direct and Derivative Claims

The RLLCA, FBCA, and FLPA do not expressly contemplate asserting direct and derivative claims in a single litigation. However, appellate courts applying *Dinuro* have ruled that plaintiffs in entity litigation cannot combine direct and derivative claims in a single action. *DiSorbo*, 354 So. 3d at 544. The rationale is that the plaintiff would be asserting rights in a different capacity (individual versus on behalf of the entity), and thus the actions cannot be joined absent express consent of the parties or by filing separate suits that are subsequently joined through consolidation. *Id.*

Despite its ruling and citing Florida Rule of Civil Procedure 1.110(g) for the proposition that direct and derivative actions should not be filed together, the *DiSorbo* court acknowledges exceptions to the separation. The first exception occurs when parties consent to joining the actions or waive the separation. The second exception would be consolidation of separately filed actions pursuant to Florida Rule of Civil Procedure 1.270: if a plaintiff filed separate suits that involve a common question of law or fact, the plaintiff could simply move to consolidate the actions.

Beyond the exceptions recognized in *DiSorbo*, existing Florida law and plain text interpretations of the Rules of Civil Procedure provide support for permitting direct and derivative claims in a single proceeding, especially if a statute expressly provides for the joinder.

The Supreme Court of Florida has upheld statutory joinder provisions that are consistent with existing court rules. *Agency for Health Care Administration v. Associated Industries of Florida, Inc.*, 678 So. 2d 1239 (Fla. 1996). The Florida Supreme Court, citing Rule 1.110(g), noted that "[j]udicial efficiency is promoted when similar legal issues can be ruled upon in one proceeding." *Id.* at 1255. The Court further noted that, because the Act created an independent cause of action, the challenged provision "simply allows the State to aggregate its own claims arising from this new cause of action." *Id.*

The Supreme Court of Florida has also recognized that when the Legislature creates substantive rights, it may include related procedural provisions without infringing on the Court's rulemaking authority under Article V, Section 2 of the Florida Constitution. In *Caple v. Tuttle's Design-Build, Inc.*, 753 So. 2d 49 (Fla. 2000), the Court held that a foreclosure statute creating new substantive rights did not unconstitutionally encroach on the Court's rulemaking authority because "the statute creates substantive rights and any procedural provisions are directly related to the definition of those rights." *Id.* at 54. The Court emphasized that it has "consistently rejected constitutional challenges where the procedural provisions were intertwined with substantive rights." *Id.* (citing *Smith v. Dep't of Ins.*, 507 So. 2d 1080, 1092 n.10 (Fla. 1987); *VanBibber v. Hartford Accident & Indem. Ins. Co.*, 439 So. 2d 880 (Fla. 1983)).

Additionally, and as touched on in the *AHCA* decision, Florida Rule of Civil Procedure 1.110(g) permits a pleader to "set up in the same action as many claims or causes of action or defenses in the same right as the pleader has," and further provides that "[a] party may also state as many separate claims or defenses as that party has, regardless of consistency and whether based on legal or equitable grounds or both." While some courts have interpreted Rule 1.110(g) as requiring separation of direct and derivative claims into separate actions, *see DiSorbo*, 354 So. 3d at 544, the Rule's express language broadly authorizes the assertion of multiple claims in a single action, including claims that may be grounded in different legal or equitable theories.

It is important to note that, under the proposed statutory amendments, even in situations where direct and derivative claims would be able to be properly brought in a single proceeding, the direct claims would be considered part of only the direct actions while the derivative claims would be considered part of only the derivative actions. As such, the existing continuing statutory provisions that do not permit a derivative action from being discontinued (such as by being dismissed) or settled without court approval (i.e., 607.0745(1) and 605.0806(1)), should be viewed as applying only to the derivative claims in such single proceeding; and the parties will be entitled to discontinue (such as by dismissal) or to settle any one or more of the direct claims in such single proceeding without having to secure court approval.

With the *Dinuro* cases currently requiring separate litigations for direct and derivative claims arising from the same facts, courts are imposing significant and unnecessary burdens on all parties and on the courts. Separating actions forces plaintiffs to file duplicative lawsuits, compels defendants to respond to overlapping allegations in multiple proceedings, and requires judges to preside over multiple cases involving substantially identical facts and witnesses. The proposed statutory amendments would eliminate this inefficiency by authorizing the joinder of direct and derivative claims in a single proceeding when the claims involve a common question of law or fact, thereby promoting judicial economy and reducing the costs and burdens of litigation for all participants.

REVIEW OF OTHER JURISDICTIONS' STATUTES <u>RELATING TO DIRECT ACTION STANDING</u>

The Task Force identified five states, apart from Florida, that have enacted statutes or have judicial precedent of varying specificity concerning direct standing: Delaware, Nevada, Tennessee, Texas, and Wyoming. None of these jurisdictions have adopted the "special injury" test outlined in *Dinuro*, and most have simply split the "direct harm" test into its own two-prong test that requires the plaintiff show direct harm by proving (1) who suffered the alleged harm and (2) who would receive the benefit of recovery.

Delaware

Delaware has no statutory provision governing direct claims for either LLCs or corporations. The right to bring a direct action in Delaware is a matter of common law. The controlling standard is the *Tooley* test, announced in *Tooley v. Donaldson, Lufkin & Jenrette, Inc.*, 845 A.2d 1031 (Del. 2004), which asks two questions: (1) who suffered the alleged harm—the entity or the individual owner? and (2) who would receive the benefit of any recovery—the entity or the individual owner? Delaware does not impose a "special injury" requirement. Its derivative action framework for LLCs is found in Sections 18-1001 through 18-1004 of the Delaware Limited Liability Company Act, and for corporations in § 327 of the Delaware General Corporation Law. As the Court of Chancery noted in *Bamford v. Penfold, L.P.*, 2020 Del. Ch. LEXIS 79, the LLC derivative action provisions were modeled on the corporate derivative suit, and corporate case law applies equally to LLC derivative claims.

Nevada

Nevada's statutes do not expressly address direct claims for either LLCs or corporations. Courts in Nevada rely on the *Tooley* test, which was adopted by the Nevada Supreme Court in *Parametric Sound Corp. v. Eighth Judicial District Court*, 133 Nev. 417, 401 P.3d 1100 (2017). The *Tooley* test, as applied in Nevada, asks two questions: (1) who suffered the alleged harm, and (2) who would receive the benefit of the recovery. Like Delaware, Nevada does not impose a "special injury" requirement.

Tennessee

Tennessee does not have a statutory provision for direct claims by LLC members or shareholders. Tennessee uses the *Tooley* test to distinguish direct from derivative actions, as confirmed in *Keller v. Estate of McRedmond*, 495 S.W.3d 852 (Tenn. 2016), and reaffirmed in *Houghton v. Malibu Boats, LLC*, 2025 Tenn. LEXIS 439 (Tenn. 2025). Under the *Tooley* test as applied in Tennessee, a court examines who suffered the harm and who would receive the benefit of the recovery.

Texas

Texas does not have a statutory provision for direct claims by LLC members or corporate shareholders. On the other hand, Texas's derivative action statutes for LLCs (§§ 101.451–101.463) and corporations (§§ 21.551–21.563) are among the most detailed in the country, and include specialized provisions for closely held entities. For closely held LLCs (fewer than 35 members with no publicly traded interests) and closely held corporations, the standing and demand requirements of the derivative action statutes do not apply, and courts may, "if justice requires," treat a derivative proceeding as a direct action and order recovery to be paid directly to the plaintiff. This closely held entity exception has no equivalent in Florida law.

Texas case law has not established a single definitive test like *Tooley* or *Dinuro* for distinguishing direct from derivative claims, in part because the closely held entity provisions reduce the practical significance of the classification for many disputes. Courts have generally held that to recover individually, a stockholder "must prove a personal cause of action and personal injury."

Wyoming

Wyoming has adopted a direct action statute for LLCs that closely tracks the Revised Uniform LLC Act that served as the model for Florida's RLLCA. Wyoming Statute § 17-29-901 provides that a member may maintain a direct action against another member, a manager, or the LLC, and must "plead and prove an actual or threatened injury that is not solely the result of an injury suffered or threatened to be suffered by the limited liability company." This is a single-prong test, substantively identical to § 605.0801(2)(a).[5] For corporations, the Wyoming Business Corporation Act does not have a specific direct-claims statute. Instead, direct claims are determined by common law and specific statutory provisions creating individual shareholder rights.

DISCUSSION

Objectives of the Amendments

The proposed amendments to Sections 605.0801, 605.0802, 607.0742, 607.0750, 620.2001, and 620.2002 seek to eliminate the conflict between the judicially created *Dinuro* test and the statutes. The amendments also seek to authorize the joining of direct and derivative actions in a single litigation in select circumstances. To accomplish this, the proposed amendments would add language expressly providing that the one-prong statutory test, *i.e.*, direct harm, is the exclusive test for direct action standing in Florida and that no additional common law or judicially created requirements, including the *Dinuro* two-prong test, may be imposed. The amendments would not alter the substantive standard nor remove the contractual or statutory duty exception. The amendments would simply affirm that the standard already enacted by the Legislature is the one courts must apply.

In practical terms, the amendments would maintain the first prong of the *Dinuro* test, as that prong is already in the statute. The proposed amendments, by including additional and express language, would remove the second prong of *Dinuro* that requires the plaintiff to show a "special injury" that is "separate and distinct" from those of other owners. The proposed amendments would also eliminate the analysis set forth in *DiSorbo* that holds direct and derivative claims cannot be joined

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[5] However, notably, Wyoming's statute does not include the separate statutory or contractual duty exception found in § 605.0801(2)(b).

in a single action, and would affirmatively bestow on plaintiffs the right to bring direct and derivative claims in a single action when the claims involve a common question of law or fact.

The proposed amendments would not alter the standards or procedures applicable to derivative actions. The RLLCA's derivative action provisions (§§ 605.0802–605.0806) and the FBCA's derivative action provisions (§§ 607.0741–607.0747) would remain fully in effect, including the pre-suit demand requirements, the special litigation committee process, the court-approval requirements for settlement or dismissal, and the rules governing proceeds and expenses. The proposed amendments to portions of those statutes are designed to consistently allow a plaintiff to maintain direct and derivative claims in the same action.

Judicial Application of the Amendments

The proposed amendments, while designed to eliminate the special injury test, are designed with judicial economy in mind and are designed to give courts the ability to determine, after sufficient discovery is conducted, whether a claim is direct, derivative, both, or neither. Determining whether a claim is direct or derivative often depends on several factual inquiries that cannot be fully resolved at the pleading stage. By preserving the statutory framework and eliminating the judicially created "special injury" overlay, the proposed amendments enable courts to assess the nature of the plaintiff's injury based on a developed factual record, rather than dismissing claims at the outset under *Dinuro*'s more restrictive two-prong test. This approach is consistent with the text and intent of the existing statutes, which require the plaintiff to "plead and prove" its injury.

Fee Awards in Derivative Litigation

Importantly, nothing in the proposed amendments alters, diminishes, or otherwise adversely affects the existing fee-granting provisions applicable to derivative litigation in the RLLCA and FBCA. Those provisions remain fully operative and unmodified by the proposed statutory changes. The proposed amendments address standing and joinder issues only, and plaintiffs pursuing derivative claims will continue to have access to the same fee-recovery mechanisms currently available under Florida law.

Consistency with Florida Rules, Supreme Court Precedent, and Statutory Definitions

The proposed amendments are consistent with Florida Rules of Civil Procedure 1.110(g) and 1.270, which permit a party to assert multiple claims or causes of action in the same proceeding, and permits joinder of claims when they involve a common question or law or fact. The proposed amendments operate within this existing procedural framework. Moreover, the Supreme Court of Florida's decision in *AHCA* makes clear that a statutory joinder provision that is consistent with existing court rules does not infringe on the Court's rulemaking authority. And as the Court confirmed in *Caple*, procedural provisions that are intertwined with substantive rights created by the Legislature are constitutionally permissible.

Because the proposed amendments create a new substantive right—the right to bring direct and derivative claims together in a single proceeding—and the joinder provision is directly related to the exercise of that right, the amendments fall squarely within the Legislature's constitutional authority.

Finally, the proposed amendments to Chapter 607, Florida Statutes aim to promote consistency in the FBCA and its defined terms. Chapter 607 currently uses the terms "derivative action," "derivative proceeding," and "derivative suit" interchangeably. *See, e.g.*, § 607.0208(4)(b) ("derivative action or proceeding"); § 607.0745(1) & (2) ("derivative action"); § 607.0750(1) ("direct action"); § 607.0831(3)(a) ("[i]n an action other than a derivative suit"). The Task Force agrees these terms are used interchangeably throughout Chapter 607. Thus, the amendment proposes to add the terms "derivative action" and "derivative suit" to the definition of "derivative proceeding" set forth in Section 607.01401(17). This change will bring uniformity and align with the current use of these terms in Chapter 607.

CONCLUSION

The proposed amendments to Sections 605.0801, 605.0802, 607.0742, 607.0750, 620.2001, and 620.2002, Florida Statutes, are narrow, targeted legislative fixes to a conflict between statutory text and judicial precedent. The *Dinuro* test, while a well-intentioned judicial effort to bring structure to direct and derivative litigation, adds a "special injury" test not contained in the statutes and that no other surveyed jurisdiction imposes. The proposed amendments would restore the Legislature's one-prong test as the exclusive standard for direct action standing, eliminate the confusion and inconsistency generated by the *Dinuro* overlay, and bring Florida into alignment with the Revised Uniform LLC Act and the approach taken by other major commercial jurisdictions—both of which recognize the Legislature's authority to include procedural provisions that are intertwined with the substantive rights it creates. At the same time, by creating a statutory right to bring direct and derivative claims in the same proceeding when they involve a common question of law or fact, the proposed amendments would promote judicial economy, reduce duplicative litigation, and provide clarity to parties and counsel.

Schedule E

Issues Table (2025)

Business Law Section Direct v. Derivative Task Force
Ancillary Issues Research

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Ancillary Issue 1: Does the ninety (90) day window to purchase shares in response to an action to dissolve terminate if a voluntary dismissal of the court for dissolution is filed?

Relevant Statutes:

CORPORATIONS:

607.1436 Election to purchase instead of dissolution.—

(1) In a proceeding under s. 607.1430(1)(b), the corporation may elect or, if it fails to elect, one or more shareholders may elect to purchase all shares owned by the petitioning shareholder at the fair value of the shares. An election pursuant to this section shall be irrevocable unless the court determines that it is equitable to set aside or modify the election.

(2) An election to purchase pursuant to this section may be filed with the court at any time within 90 days after the filing of the petition under s. 607.1430(1)(b) or at such later time as the court in its discretion may allow. If the election to purchase is filed by one or more shareholders, the corporation shall, within 10 days thereafter, give written notice to all shareholders, other than the petitioner. The notice must state the name and number of shares owned by the petitioner and the name and number of shares owned by each electing shareholder and must advise the recipients of their right to join in the election to purchase shares in accordance with this section. Shareholders who wish to participate must file notice of their intention to join in the purchase no later than 30 days after the effective date of the notice to them. All shareholders who have filed an election or notice of their intention to participate in the election to purchase thereby become parties to the proceeding and shall participate in the purchase in proportion to their ownership of shares as of the date the first election was filed, unless they otherwise agree or the court otherwise directs. After an election has been filed by the corporation or one or more shareholders, the proceeding under s. 607.1430(1)(b) may not be discontinued or settled, nor may the petitioning shareholder sell or otherwise dispose of his or her shares, unless the court determines that it would be equitable to the corporation and the shareholders, other than the petitioner, to permit such discontinuance, settlement, sale, or other disposition.

(3) If, within 60 days after the filing of the first election, the parties reach agreement as to the fair value and terms of the purchase of the petitioner's shares, the court shall enter an order directing the purchase of the petitioner's shares upon the terms and conditions agreed to by the parties.

(4) If the parties are unable to reach an agreement as provided for in subsection (3), the court, upon application of any party, may stay the proceeding to dissolve under s. 607.1430(1)(b) and shall, whether or not the proceeding is stayed, determine the fair value of the petitioner's shares as of the day before the date on which the petition under s. 607.1430 was filed or as of such other date as the court deems appropriate under the circumstances.

607.1430 Grounds for judicial dissolution.—

(1) A circuit court may dissolve a corporation or order such other remedy as provided in s. 607.1434:

..

(b) In a proceeding by a shareholder to dissolve a corporation if it is established that:

1. The directors are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock, and:

a. Irreparable injury to the corporation is threatened or being suffered;

b. The business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally because of the deadlock; or

c. Both sub-subparagraphs a. and b.; or

2. The shareholders are deadlocked in voting power and have failed to elect successors to directors whose terms have expired or would have expired upon qualification of their successors;

3. The corporate assets are being misapplied or wasted, causing material injury to the corporation; or

4. The directors or those in control of the corporation have acted, are acting, or are reasonably expected to act in a manner that is illegal or fraudulent;

LLC:

605.0706 Election to purchase instead of dissolution.—

(1) In a proceeding initiated by a member of a limited liability company under s. 605.0702(1)(b), the company may elect, or, if it fails to elect, one or more other members may elect, to purchase the entire interest of the petitioner in the company at the fair value of the interest. An election pursuant to this section is irrevocable unless the court determines that it is equitable to set aside or modify the election.

(2) An election to purchase pursuant to this section may be filed with the court within 90 days after the filing of the petition by the petitioning member under s. 605.0702(1)(b) or at such later time as the court may allow. If the election to purchase is filed, the company shall within 10 days thereafter give written notice to all members, other than the petitioning member. The notice must describe the interest in the company owned by each petitioning member and must advise the recipients of their right to join in the election to purchase the petitioning member's interest in accordance with this section. Members who wish to participate must file notice of their intention to join in the purchase within 30 days after the effective date of the notice. A member who has filed an election or notice of the intent to participate in the election to purchase thereby becomes a party to the proceeding and shall participate in the purchase in proportion to the ownership interest as of the date the first election was filed unless the members otherwise agree or the court otherwise directs. After an election to purchase has been filed by the limited liability company or one or more members, the proceeding under s. 605.0702(1)(b) may not be discontinued or settled, and the petitioning member may not sell or otherwise dispose of the interest of the petitioner in the company unless the court determines that it would be equitable to the company and the members, other than the petitioner, to authorize such discontinuance, settlement, sale, or other disposition or the sale is pursuant to a deadlock sale provision described in s. 605.0702(1)(b).

605.0702 Grounds for judicial dissolution.—

(1) A circuit court may dissolve a limited liability company:

..

(b) In a proceeding by a manager or member to dissolve the limited liability company if it is established that:

1. The conduct of all or substantially all of the company's activities and affairs is unlawful;
2. It is not reasonably practicable to carry on the company's activities and affairs in conformity with the articles of organization and the operating agreement;
3. The managers or members in control of the company have acted, are acting, or are reasonably expected to act in a manner that is illegal or fraudulent;
4. The limited liability company's assets are being misappropriated or wasted, causing injury to the limited liability company, or in a proceeding by a member, causing injury to one or more of its members; or
5. The managers or the members of the limited liability company are deadlocked in the management of the limited liability company's activities and affairs, the members are unable to break the deadlock, and irreparable injury to the limited liability company is threatened or being suffered.

Notes:
There are not many decisions that clearly address this issue. It appears that as long as an election to purchase has not been filed, the dissolution proceeding can be voluntarily dismissed and the option to purchase shares terminates. If an election has already been filed, the dissolution cannot be discontinued or settled unless a court determines it would be equitable. Courts have not identified an "equitable" situation where they overlooked an election and discontinued a dissolution action.

6th District Court of Appeal	**1st District Court of Appeal**	**2d District Court of Appeal**	**Circuit Court of the Thirteenth Judicial Circuit of Florida**
Royal United Props. v. Royal, 370 So. 3d 1020; 2023 Fla. App. LEXIS 6673; 48 Fla. L. Weekly D 1893. Respondent filed for judicial dissolution, petitioning the trial court for relief from a shareholder deadlock pursuant to 607.1430(1)(b). Petitioners filed notices of election to purchase	*Graham v. Uphold*, 245 So. 3d 964 (Fla. 1st DCA 2018). The parties were 50\50 owners in a small corporation. As a result of a continuing deadlock, Appellee filed for dissolution pursuant to 607.1430(2). Appellant elected to purchase Appellee's shares in lieu of dissolution under 607.1436. After the parties failed to agree on	*Jones v. Pfaff*, 77 So. 3d 884 (Fla. 2d DCA 2012). Appellant filed for judicial dissolution and Appellee elected to purchase the shares. The trial court determined the fair value of the shares. Appellee then decided not to purchase Appellant's shares and instead file articles of dissolution. Appellant sought continued judicial dissolution of the	*Simcic v. McQuilken*, 2020 Fla. Cir. LEXIS 11264. There is not much detail in the opinion of this case, but the Court applied 607.1436(2). An election to purchase interest instead of dissolution was filed. After this filing was made, the Plaintiff filed a voluntary dismissal.

respondent's interests instead of dissolution pursuant to 607.1436. Although Respondent initially brought his action under the statute titled "Ground for Judicial Dissolution", he argues that he is not seeking dissolution as the remedy for the deadlock, but rather alternative relief such as an equitable division of assets. Respondent argued, and the trial court agreed, that because Respondent was not seeking dissolution as the remedy for deadlock, the statutory right to purchase Respondent's shares under 607.1436 was not triggered. This argument failed, and this Court disagreed with the trial court. This Court stated that according to the plain language of 607.1436, the triggering event that gave rise to Petitioners' right to purchase Respondent's shares was Respondent's filing of "a proceeding under s. 607.1430(1)(b)." In accepting Respondent's argument that its selected remedy controls whether Petitioners' right to purchase was triggered, the trial court misapplied the plain language of the statute. The Court acknowledged that 607.1436(1) states that a notice of election may be set aside if "the court determines that it is equitable to set aside or modify the election," and that no such finding was	the fair value of the shares, Appellant asked the court to make the determination pursuant to 607.1436(4), which triggered a stay of the dissolution proceedings. While the stay was still in effect, Appellee asked the court to appoint a custodian pendente lite to preserve the corporation's assets and to carry on and manage its business and affairs. The trial court granted the appointment and this court reversed. The court reasoned that although it is under the court's authority to appoint a custodian, they can only do so during a judicial dissolution proceeding. Because the dissolution proceedings were required by statute to be stayed while determining the value of the shares, the court did not have the authority to make the appointment. There was no voluntary dismissal in this case. However, this case shows how the court treats a dissolution proceeding once an election has been filed. Once an election is filed and the parties ask the court to determine the fair value of the shares, there is a "statutory stay" of the proceeding which would prevent a dismissal or other events from occurring.	Corporation but the trial court declined jurisdiction over the matter on the basis of the language in 607.1436(6), (7). This court affirmed, but the concurrence by J. Morris provides some insightful information regarding the statute. This case was applying the 2012 version of 607.1436(7) which stated: (7) The purchase ordered pursuant to subsection (5) shall be made within 10 days after the date the order becomes final **unless, before that time, the corporation files with the court a notice of its intention to adopt articles of dissolution pursuant to ss. 607.1402 and 607.1403, which articles shall then be adopted and filed within 50 days thereafter.** Upon filing of such articles of dissolution, the corporation shall be dissolved in accordance with the provisions of ss. 607.1405 and 607.1406, and the order entered pursuant to subsection (5) shall no longer be of any force or effect, except that the court may award the petitioning shareholder reasonable fees and expenses of counsel and any experts in accordance with the provisions of subsection (5) and the petitioner may continue to pursue any claims previously asserted on behalf of the corporation. In the concurrence, J. Morris cited to *Fierro v. Templeton*, 857 So. 2d 931, 933 (Fla. 4th DCA	The Court held that because the election had **already been filed**, the voluntary dismissal must be stricken and the claim for judicial dissolution be reinstated. The Court cited to 607.1436(2), which states that "after an election has been filed by the corporation or one or more shareholders, the proceeding under s. 607.1430(1)(b) may not be discontinued or settled...".

made by the trial court in its order setting aside the notice of election. However, the Court chose not to clarify this issue and stated that they will not address "whether Petitioners' right to purchase Respondent's shares is an unconditional right".		2003), which held that "the language in 607.1436(7) leaves no question that the filing of an intention to adopt articles of dissolution . . . automatically nullifies the order directing the purchase of shares and triggers the dissolution process *without further order of the court*.". J. Morris then explained that under this reading of 607.1436(7), a shareholder could avoid judicial dissolution sought by another shareholder "simply by asserting his intention to purchase the shares but then later filing the notice of intention to adopt articles of dissolution, either because he intended to do so all along or because he was dissatisfied with the determined fair value of the petitioning shareholder's shares". "Depriving the trial court of jurisdiction over the dissolution would deprive the petitioning shareholder of the right to supervision of the trial court over the dissolution, which could include the appointment of a receiver by the trial court or other actions by the trial court necessary to preserve the assets of the corporation". The Florida legislature removed this troublesome language from 607.1436(7). The statute now reads: 'the purchase ordered pursuant to subsection (5) shall be made within 10 days after the date the order becomes final". It does	

		not permit a party to file articles of dissolution after the election to purchase is made. This change may relate to this ancillary issue because it shows that the legislature has acknowledged that a party should not lose its right to purchase and its right to have the court supervise the dissolution process just because the other party decides to walk away.	

Ancillary Issue 2: Can a derivative claim be dismissed only with court approval? Is that approval needed for each derivative count, or only as to an entire action?

Relevant Statutes:

CORPORATIONS:

607.0744 Dismissal.—

(1) A derivative proceeding may be dismissed, in whole or in part, by the court on motion by the corporation if a group specified in subsection (2) or subsection (3) has determined in good faith, after conducting a reasonable inquiry upon which its conclusions are based, that the maintenance of the derivative proceeding is not in the best interests of the corporation. In all such cases, the corporation has the burden of proof regarding the qualifications, good faith, and reasonable inquiry of the group making the determination.

(2) Unless a panel is appointed pursuant to subsection (3), the determination required in subsection (1) shall be made by:

(a) A majority of qualified directors present at a meeting of the board of directors if the qualified directors constitute a quorum; or

(b) A majority vote of a committee consisting of two or more qualified directors appointed by majority vote of qualified directors present at a meeting of the board of directors, regardless of whether such qualified directors constitute a quorum.

(3) Upon motion by the corporation, the court may appoint a panel consisting of one or more disinterested and independent individuals to make a determination required in subsection (1).

(4) This section does not prevent the court from:

(a) Enforcing a person's rights under the corporation's articles of incorporation or bylaws or this chapter, including the person's rights to information under s. 607.1602; or

(b) Exercising its equitable or other powers, including granting extraordinary relief in the form of a temporary restraining order or preliminary injunction.

607.0745 Discontinuance or settlement; notice.—

(1) A derivative action on behalf of a corporation may not be discontinued or settled without the court's approval.

(2) If the court determines that a proposed discontinuance or settlement will substantially affect the interest of the corporation's shareholders or a class, series, or voting group of shareholders, the court shall direct that notice be given to the shareholders affected. The court may determine which party or parties to the derivative action shall bear the expense of giving the notice.

NON-PROFIT CORPORATIONS:

617.07401 Members' derivative actions.—

(1) A person may not commence a proceeding in the right of a domestic or foreign corporation unless the person was a member of the corporation when the transaction complained of occurred or unless the person became a member through transfer by operation of law from one who was a member at that time.

(2) A complaint in a proceeding brought in the right of a domestic or foreign corporation must be verified and allege with particularity the demand made to obtain action by the board of directors and that the demand was refused or ignored by the board of directors for at least 90 days after the date of the first demand unless, before the expiration of the 90 days, the person was notified in writing that the corporation rejected the demand, or unless irreparable injury to the corporation would result by waiting for the expiration of the 90-day period. If the corporation commences an investigation of the charges made in the demand or complaint, the court may stay any proceeding until the investigation is completed.

(3) The court may dismiss a derivative proceeding if, on motion by the corporation, the court finds that one of the groups specified in paragraphs (a)-(c) has made a good faith determination after conducting a reasonable investigation upon which its conclusions are based that the maintenance of the derivative suit is not in the best interests of the corporation. The corporation has the burden of proving the independence and good faith of the group making the determination and the reasonableness of the investigation. The determination shall be made by:

(a) A majority vote of independent directors present at a meeting of the board of directors, if the independent directors constitute a quorum;

(b) A majority vote of a committee consisting of two or more independent directors appointed by a majority vote of independent directors present at a meeting of the board of directors, whether or not such independent directors constitute a quorum; or

(c) A panel of one or more independent persons appointed by the court upon motion by the corporation.

(4) A proceeding commenced under this section may not be discontinued or settled without the approval of the court. If the court determines that a proposed discontinuance or settlement substantially affects the interest of the members of the corporation, or a class, series, or voting group of members, the court shall direct that notice be given to the members affected. The court may determine which party or parties to the proceeding shall bear the expense of giving the notice.

(5) Upon termination of the proceeding, the court may require the plaintiff to pay any defendant's reasonable expenses, including reasonable attorney's fees, incurred in defending the proceeding if it finds that the proceeding was commenced without reasonable cause.

(6) The court may award reasonable expenses for maintaining the proceeding, including reasonable attorney's fees, to a successful plaintiff or to the person commencing the proceeding who receives any relief, whether by judgment, compromise, or settlement, and may require that the person account for the remainder of any proceeds to the corporation; however, this subsection does not apply to any relief rendered for the benefit of injured members only and is limited to a recovery of the loss or damage of the injured members.

LLC:

605.0806 Voluntary dismissal or settlement; notice.—

(1) A derivative action on behalf of a limited liability company may not be voluntarily dismissed or settled without the court's approval.

(2) If the court determines that a proposed voluntary dismissal or settlement will substantially affect the interest of the limited liability company's members or a class, series, or voting group of members, the court shall direct that notice be given to the members affected. The court may determine which party or parties to the derivative action shall bear the expense of giving the notice.

Circuit Court of the Sixth Judicial Circuit of Florida	**Circuit Court of the Fifteenth Judicial Circuit of Florida**	**2d District Court of Appeal**	**3d District Court of Appeal**	**4th District Court of Appeal**
Vology, Inc. v. John K. O'Shea & Beth Coleman Ten Ent, 2021 Fla. Cir. LEXIS 11946. Respondent filed a notice of voluntary dismissal for a	*Third Reef Holdings, LLC v. Stein*, 2019 Fla. Cir. LEXIS 15685. When determining whether or not a proposed settlement of derivative claims	*WLT Software Enters. v. Brooks*, 361 So. 3d 927 (Fla. 2d DCA 2023). Appellant (director of the Corporation), filed a complaint against three	*Gratz v. 1750 James Condo. Ass'n*, 393 So. 3d 818 (Fla. 3d DCA 2024). If, on motion by a corporation, the court appoints an independent analyst	*Spanakos v. Hawk Sys.*, 362 So. 3d 226 (Fla. 4th DCA 2023). A settlement proposal made in an attempt to voluntarily dismiss a

derivative complaint. The Court cited § 607.0745, stating that derivative claims may not be dismissed absent approval of the Court. The notice of dismissal therefore **technically is ineffective**, and **will be treated as a motion under § 607.0745 requesting dismissal of the derivative complaint** (note that the language of 607.0745 applies to "discontinuance or settlement", not dismissal, but the Court is applying it as if it says dismissal. So, discontinuance and dismissal may be synonymous.). The Court appointed an independent analyst under § 607.0744(3) to determine if the derivative action was in the best interest of the corporation. The Court accepted the analyst's conclusion that maintenance of	should be approved under § 607.0806, courts determine if the settlement is fair and reasonable by considering the following factors: (1) the validity of the claims, possible defenses, and the probability of success if the action were pursued to final judgment (2) the complexity, expense and likely duration of the litigation (3) the benefit to the corporation (4) and such other factors as may be appropriate in the individual case. "Such other factors" in (4) include: probable validity of the claims, the delay, expense and trouble of litigation, amount of the compromise compared with collectibility of a judgment, and views	shareholders alleging breach of contract, breach of fiduciary duty, and unjust enrichment. The complaint stated that it was filed by the Corporation through a Director. The suit was not properly brought as a derivative action because it did not comply with 607.0742 requirements.[1] Because the suit was not brought as a derivative action, the shareholders were able to file a voluntary dismissal on behalf as directed by the Corporation's board of directors majority vote. Appellant now seeks relief from the voluntary dismissal under Fla. R. Civ. P 1.540 ("When a plaintiff files a voluntary dismissal, the defendant may seek relief in a rule 1.540(b) motion by proving fraud on the court and that the voluntary dismissal resulted in	to determine whether or not maintaining a derivative action is in the best interest of the company, the court does not have to assess the validity of the report's conclusions. Citing to *Ezer v. Holdack*, 358 So. 3d 429 (Fla. 4th DCA 2023) ("section 617.07401(3)(b)'s plain language does not require courts to question an investigator's recommendation as long as the court found the investigator was independent and conducted its investigation reasonably and in good faith. The court is not required to apply its own business judgment to assess the merits of the committee's conclusions). *Cornfeld v. Plaza of the Ams. Club, Inc.*, 273 So. 3d 1096 (Fla. 3d DCA 2019). Appellant brought a	derivative suit is not invalid just because it does not state that court approval is a condition to the settlement. The Court stated that "**while settlements in derivative shareholder actions require court approval, court approval is a post-agreement ratification of the settlement, not a condition of settlement**" (citing to *Berges v. Infinity Ins. Co.*, 896 So. 2d 665, 672 (Fla. 2004) (holding that "an offer to settle is not invalid simply because there is a requirement of subsequent court approval"); *Bateski By & Through Bateski v. Ransom*, 658 So. 2d 630, 632 (Fla. 2d DCA 1995) (explaining that court approval is "not an essential term" of a settlement but rather is a contingency that does not affect the proposal)).

[1] **607.0742 Complaint; demand and excuse.**—A complaint in a proceeding brought in the right of a corporation must be verified and allege with particularity:
(1) The demand, if any, made to obtain the action desired by the shareholder from the board of directors; and
(2) Either:
(a) If such a demand was made, that the demand was refused, rejected, or ignored by the board of directors prior to the expiration of 90 days from the date the demand was made;
(b) If such a demand was made, why irreparable injury to the corporation or misapplication or waste of corporate assets causing material injury to the corporation would result by waiting for the expiration of a 90-day period from the date the demand was made; or
(c) The reason or reasons the shareholder did not make the effort to obtain the desired action from the board of directors or comparable authority.

the suit was not in the corporation's best interest because he had been presented with no evidence to support any of the derivative claims. **The Court therefore approved dismissal with prejudice.**	of the parties involved, pro and con.	affirmative relief to the plaintiff which had an adverse impact on the defendant").[2] The Court held that Appellant has not demonstrated fraud or any other ground for relief under rule 1.540(b). The Court stated that if the Appellant instead took the steps to bring a derivative action when first filing her complaint, the shareholders could not have voluntarily dismissed the lawsuit as they did this one. If a derivative complaint was filed, the lawsuit could have only been dismissed with court approval once a good faith determination has been made that the lawsuit is not in the best interests of the corporation.	derivative action on behalf of a non-profit corporation under 617.07401. The Corporation filed a motion to dismiss, alleging lack of standing, failure to join an indispensable party, failure to state a cause of action, and seeking protection under the business judgement rule. The trial court deferred ruling on the motion to dismiss and instead sought to determine whether maintenance of the action is in the best interest of the Corporation. The trial court appointed an independent investigator who then determined that the suit should be dismissed. The trial court adopted these findings and dismissed the suit with prejudice. Appellant now argues that there are material issues of disputed fact regarding the reasonableness and good faith of the investigation. This Court affirmed the	

[2] **Fla. R. Civ. P. 1.540(b)**
A trial court may grant relief from a final judgment for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial or rehearing; (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) that the judgment, decree, or order is void; or (5) that the judgment, decree, or order has been satisfied, released, or discharged, or a prior judgment, decree, or order upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment, decree, or order should have prospective application.

			trial court decision, stating that the trial court did not abuse its discretion by adopting the investigators findings and concluding that the report was reasonable and conducted in good faith.	

Ancillary Issue 3: Under the provisions allowing for fees and costs upon dismissal based on the determination of independent board members, the court must make a finding that the claim was not brought in good faith. That determination would reopen litigation as to all of the matters which were just resolved by dismissal. So, it is not usable.

Relevant Statutes:

CORPORATIONS:

607.0746 Proceeds and expenses.—On termination of the derivative proceeding the court may:

(1) Order the corporation to pay from the amount recovered in the derivative proceeding by the corporation the plaintiff's reasonable expenses, including reasonable attorney fees and costs, incurred in the derivative proceeding if it finds that, in the derivative proceeding, the plaintiff was successful in whole or in part; or

(2) Order the plaintiff to pay any of the defendant's reasonable expenses, including reasonable attorney fees and costs, incurred in defending the proceeding if it finds that the proceeding was commenced or maintained without reasonable cause or for an improper purpose.

NON-PROFIT CORPORATIONS:

617.07401 Members' derivative actions.—

(5) Upon termination of the proceeding, the court may require the plaintiff to pay any defendant's reasonable expenses, including reasonable attorney's fees, incurred in defending the proceeding if it finds that the proceeding was commenced without reasonable cause.

3d District Court of Appeal	4th District Court of Appeal	Circuit Court of the Eleventh Judicial Circuit of Florida
Cornfeld v. Plaza of the Ams. Club, Inc., 306 So. 3d 1136 (Fla. 3d DCA 2020). Plaintiff's derivative action was dismissed by the Court after an independent investigator concluded that maintenance of the action was not in the Corporation's best interest. The Court awarded the Corporation attorney's fees and costs, including the cost of the independent investigator. The Plaintiff asserted that it was improper to award investigative costs unless the Corporation established and the trial court made a finding that the proceeding was commenced without reasonable cause as required by § 617.07401(5). The Corporation asserted that it was entitled to investigative costs pursuant to Fla. R. Civ. P. 1.420(d) and Fla. Stat. § 57.041(1).[3]	*Spanakos v. Hawk Sys.*, 362 So. 3d 226 (Fla. 4th DCA 2023). An additional route to attorney's fees is through Fla. Stat. § 768.79 and Fla. R. Civ. P. 1.442.[4] Plaintiff brought this derivative action and Defendants served a settlement proposal. Plaintiff did not accept the settlement offer. Later on, Defendants motion for summary judgement was granted. Defendants sought attorney's fees and costs pursuant to § 768.79 and rule 1.442 because the judgement provided Plaintiff with no recovery. Once an offer of judgment has been made and rejected and a judgment of no liability has been entered, the defendant has a right to an award of attorney's fees unless the offer was found to have been made in bad faith." (citing to *Fla. Gas Transmission Co. v. Lauderdale Sand & Fill, Inc.*, 813 So. 2d 1013,	*Tucker v. Ebadian*, 2021 Fla. Cir. LEXIS 15783. This derivative action was dismissed pursuant to the findings of an Independent Special Committee providing that maintenance of the suit was not in the best interest of the Corporation. The Final Judgement reserved jurisdiction to determine entitlement to, and the amount of, attorneys' fees and costs to be awarded to Defendants. Defendants filed motions of attorneys fees pursuant to § 607.07401(5) (this is the 2018 version of the statute that is now 607.0746(2)). Plaintiff asserted that the Court may not award attorneys fees given that the Final Judgement itself did not make findings as to whether the action was commenced without reasonable cause. The Court rejected this argument

[3] **Fla. R. Civ. P. 1.420(d) Dismissal of actions**
(d) Costs. Costs in any action dismissed under this rule shall be assessed and judgment for costs entered in that action, once the action is concluded as to the party seeking taxation of costs. When one or more other claims remain pending following dismissal of any claim under this rule, taxable costs attributable solely to the dismissed claim may be assessed and judgment for costs in that claim entered in the action, but only when all claims are resolved at the trial court level as to the party seeking taxation of costs. If a party who has once dismissed a claim in any court of this state commences an action based upon or including the same claim against the same adverse party, the court shall make such order for the payment of costs of the claim previously dismissed as it may deem proper and shall stay the proceedings in the action until the party seeking affirmative relief has complied with the order.
Fla. Stat. § 57.041(1) Costs; recovery from losing party
(1) The party recovering judgment shall recover all his or her legal costs and charges which shall be included in the judgment; but this section does not apply to executors or administrators in actions when they are not liable for costs.
(2) Costs may be collected by execution on the judgment or order assessing costs.

[4] **Fla. Stat. § 768.79 Offer of judgment and demand for judgment**
(7) Upon motion made by the offeror within 30 days after the entry of judgment or after voluntary or involuntary dismissal, the court shall determine the following:
(a) If a defendant serves an offer which is not accepted by the plaintiff, and if the judgment obtained by the plaintiff is at least 25 percent less than the amount of the offer, the defendant shall be awarded reasonable costs, including investigative expenses, and attorney's fees, calculated in accordance with the guidelines promulgated by the Supreme Court, incurred from the date the offer was served, and the court shall set off such costs in attorney's fees against the award. When such costs and attorney's fees total more than the amount of the judgment, the court shall enter judgment for the defendant against the plaintiff for the amount of the costs and fees, less the amount of the award to the plaintiff.
Fla. R. Civ. P. 1.442(h)(1) Proposals for settlement

To the extent that Fla. R. Civ. P. 1.420(d) and Fla. Stat. § 57.041(1) are inconsistent with 617.07401(5), **the more specific statutory provision controls**. Otherwise, a prevailing defendant in a derivative action could seek an award of costs under the less demanding provisions of Rule 1.420 and § 57.041, rendering § 617.07401(5) meaningless. The Court reversed the trial court's order awarding investigative costs to the Corporation because the Corporation did not establish any bad faith and the trial court did not find that the proceeding was commenced without reasonable cause. It seems that this Court did not reopen litigation to look into whether there was any bad faith; the Court just looked back to see if there was any bad faith established while the case was in trial court. The Court further clarified § 617.07401(5) and how it differs from other "more conventional prevailing party" provisions in that it: 1) Only applies to a prevailing defendant 2) Even if a defendant prevails, that party is not entitled to an award of reasonable expenses unless the trial court first finds that the proceeding was commenced without reasonable cause and 3) The ultimate decision to award reasonable expenses is permissive, not mandatory: even if a defendant prevails and the court finds that the proceeding was commenced without	1014 (Fla. 4th DCA 2002)). The Court held that the Defendants were entitled to fees because their settlement offer complied with the form, content, and particularity requirements of § 768.79 and rule 1.442 and was not made in bad faith (because the $500,000 offer was more than adequate).	because the Final Judgement specifically reserved jurisdiction to determine entitlement to attorneys fees. The Court then made the determination that the derivative action was commenced without reasonable cause, entitling Defendants to attorneys fees. The Court found that there is a sufficient record from which to determine whether or not the claims were asserted with reasonable cause. The Plaintiff admitted in his deposition that he had no knowledge of any damage having been suffered by the Corporation arising from the claims in the derivative action. Furthermore, the Plaintiff had ample opportunity at the evidentiary hearing prior to dismissal to proffer evidence that the Corporation had in fact suffered damages as a result of the asserted claims.

(h) Costs and Fees. **(1)** If a party is entitled to costs and fees pursuant to applicable Florida law, the court may, in its discretion, determine that a proposal was not made in good faith. In such case, the court may disallow an award of costs and attorneys' fees.

reasonable cause, the statute gives the trial court the discretion to deny an award of reasonable expenses to the prevailing defendant.		

Ancillary Issue 4: In cases where direct and derivative claims are brought, the court generally orders that separate claims must be filed for the direct action by a dismissal order. The court may also sever the claims.

3d District Court of Appeal	**4th District Court of Appeal**	**Circuit Court of the Thirteenth Judicial Circuit of Florida**
Lobree v. ArdenX LLC, 199 So. 3d 1094 (Fla. 3d DCA 2016). This Court reversed the trial court's dismissal of the action in its entirety based on the complaint's inclusion of direct and derivative claims in a single cause of action. The trial court should have dismissed **only those counts which it determined were improperly brought**, permitted appellants to file an amended complaint, choosing in which capacity they would continue to pursue this action, without prejudice to appellants pursuing a separate	*Disorbo v. Am. Van Lines, Inc.*, 354 So. 3d 530 (Fla. 4th DCA 2023). The complaint in this case asserts eleven different counts that are a mix of direct and derivative claims. Four of the counts were each brought in both a derivative and individual capacity. Generally, derivative and direct claims cannot be brought together because they are brought in different capacities (Fla. R. Civ. P. 1.110(g) provides that a pleader may set up in the same action as many claims or causes of action or defenses *in the same right* as the pleader has). However, this Court stated that the	*Nexcentri, Inc. v. Tampa Bay Fed. Credit Union*, 2015 Fla. Cir. LEXIS 55678. Complaints that allege derivative and direct claims within the same action require dismissal (citing *Haas v. Rose*, 696 So. 2d 1254 (Fla. 2d DCA 1997)). If this occurs, the court should grant a motion to dismiss with leave to file an amended complaint asserting either the derivative or personal claim(s), and without prejudice to file a separate action asserting the others.

action on the dismissed counts (citing to *Dep't of Ins. v. Coopers & Lybrand*, 570 So. 2d 369 (Fla. 3d DCA 1990)). *Shoma Coral Gables, LLC v. Gables Inv. Holdings*, LLC, 387 So. 3d 336 (Fla. 3d DCA 2023). A "dual-natured" claim is prohibited. This claim is one where a claimant seeks a double recovery by raising direct and derivative claims for a single injury. A corporation and its shareholders may not recover damages from a defendant in both a direct and a derivative action for an identical injury. The facts and circumstances can be the same, but there must be separate and distinct injuries.	trial court "mistakenly relied upon the principle that a plaintiff may not join individual and derivative claims in one action". That is a pleading issue that has "nothing to do with whether claims should be tried together to preserve the right to a jury trial on a legal claim where the legal and equitable claims are factually intertwined". In *Billian v. Mobil Corp.*, 710 So. 2d 984 (Fla. 4th DCA 1998), this Court established that a "jury must make findings concerning all facts which are common to the legal and equitable claims before the trial court may consider granting an equitable remedy". **The Court relied on this principle to overlook the fact that the claims were both direct and derivative. Because the direct and equitable derivative claims were so intertwined, a jury would necessarily have to decide issues that relate to both claims.** The claims are factually intertwined because they all revolve around the same underlying factual issue. The Court further clarified that even if the non-derivative claims were filed in a separate lawsuit, the Plaintiff could have moved for a joint trial or for consolidation of the actions under Fla. R. Civ. P. 1.270(a) because the cases involved common questions of fact. *McKane Fam. Ltd. P'ship v. Sacajawea Fam. Ltd. P'ship*, 211 So. 3d 117 (Fla. 4th DCA 2017). Plaintiff brought claims "individually and derivatively" on behalf of an LC.[5] The trial court did not dismiss the individual claim on the grounds that it was incorrectly brought together	

[5] This company goes by "LC" rather than "LLC" because § 605.0112(4) permits an LLC that was in existence before January 1, 2014, to keep using an abbreviation or designation in its name that was authorized under previous law.

	with the derivative claims. The trial court dismissed this unjust enrichment claim with prejudice for failure to state a cause of action, finding that this claim belonged to the LC and not the Plaintiffs. On appeal, the Court did not disagree with the trial court that the claim should have instead been brought derivatively. However, this Court stated that the dismissal should have been without prejudice so that the claim can be filed derivatively.	

Ancillary Issue 5: 50/50 owners who deadlocked, dissolution/buyout. Who pays the fees? Automatic Direct?

Relevant Statutes:

CORPORATIONS:

607.1436 Election to purchase instead of dissolution.—

(1) In a proceeding under s. 607.1430(1)(b), the corporation may elect or, if it fails to elect, one or more shareholders may elect to purchase all shares owned by the petitioning shareholder at the fair value of the shares. An election pursuant to this section shall be irrevocable unless the court determines that it is equitable to set aside or modify the election.

..

(5) Upon determining the fair value of the shares, the court shall enter an order directing the purchase upon such terms and conditions as the court deems appropriate, which may include payment of the purchase price in installments, when necessary in the interests of equity, provision for security to assure payment of the purchase price and any additional costs, fees, and expenses as may have been awarded, and, if the shares are to be purchased by shareholders, the allocation of shares among such shareholders. In allocating the petitioner's shares among holders of different classes of shares, the court shall attempt to preserve any existing distribution of voting rights among holders of different classes and series insofar as practicable and may direct that holders of any specific class or classes or series shall not participate in the purchase. Interest may be allowed at the rate and from the date determined by the court to be equitable; however, if the court finds that the refusal of the petitioning shareholder to accept an offer of payment was arbitrary or otherwise not in good faith, no interest shall be allowed. If the court finds that the petitioning shareholder had probable grounds for relief under s. 607.1430(1)(b), it may award expenses to the petitioning shareholder, including reasonable fees and expenses of counsel and of any experts employed by petitioner.

607.1430 Grounds for judicial dissolution.—

(1) A circuit court may dissolve a corporation or order such other remedy as provided in s. 607.1434:

..

(b) In a proceeding by a shareholder to dissolve a corporation if it is established that:

1. The directors are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock, and:

a. Irreparable injury to the corporation is threatened or being suffered;

b. The business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally because of the deadlock; or

c. Both sub-subparagraphs a. and b.; or

2. The shareholders are deadlocked in voting power and have failed to elect successors to directors whose terms have expired or would have expired upon qualification of their successors;

3. The corporate assets are being misapplied or wasted, causing material injury to the corporation; or

4. The directors or those in control of the corporation have acted, are acting, or are reasonably expected to act in a manner that is illegal or fraudulent;

607.1431 Procedure for judicial dissolution.—

(1) Venue for a proceeding brought under s. 607.1430 lies in the circuit court in the applicable county.

(2) It is not necessary to make shareholders parties to a proceeding to dissolve a corporation unless relief is sought against them individually.

(3) A court in a proceeding brought under s. 607.1430 may issue injunctions, appoint a receiver or custodian during the proceeding with all powers and duties the court directs, take other action required to preserve the corporate assets wherever located, and carry on the business of the corporation until a full hearing can be held.

(4) Within 30 days of the commencement of a proceeding under s. 607.1430(1)(b), the corporation shall deliver to all shareholders, other than the petitioner, a notice stating that the shareholders are entitled to avoid the dissolution of the corporation by electing to purchase the petitioner's shares under s. 607.1436 and accompanied by a copy of s. 607.1436.

(5) If the court determines that any party has commenced, continued, or participated in a proceeding under s. 607.1430 and has acted arbitrarily, frivolously, vexatiously, or not in good faith, the court may, in its discretion, award attorney fees and other reasonable expenses to the other parties to the proceeding who have been affected adversely by such actions.

LLC:

605.0706 Election to purchase instead of dissolution.—

(1) In a proceeding initiated by a member of a limited liability company under s. 605.0702(1)(b), the company may elect, or, if it fails to elect, one or more other members may elect, to purchase the entire interest of the petitioner in the company at the fair value of the interest. An election pursuant to this section is irrevocable unless the court determines that it is equitable to set aside or modify the election.

..

(5) Upon determining the fair value of the petitioner's interest in the company, unless the petitioner's interest has been acquired pursuant to a deadlock sale provision before the order, the court shall enter an order directing the purchase upon such terms and conditions as the court deems appropriate, which may include: payment of the purchase price in installments, when necessary in the interests of equity; a provision for security to ensure payment of the purchase price and additional costs, fees, and expenses as may have been awarded; and, if the interest is to be purchased by members, the allocation of the interest among those members. In allocating the petitioner's interest among holders of different classes or series of interests in the company, the court shall attempt to preserve any existing distribution of voting rights among holders of different classes or series insofar as practicable and may direct that holders of any specific class or classes or series may not participate in the purchase. Interest may be allowed at the rate and from the date determined by the court to be equitable; however, if the court finds that the refusal of the petitioning member to accept an offer of payment was arbitrary or otherwise not in good faith, payment of interest is not allowed. If the court finds that the petitioning member had probable grounds for relief under s. 605.0702(1)(b), it may award expenses to the petitioning member, including reasonable fees and expenses of counsel and of experts employed by petitioner.

605.0702 Grounds for judicial dissolution.—

(1) A circuit court may dissolve a limited liability company:

..

(b) In a proceeding by a manager or member to dissolve the limited liability company if it is established that:

1. The conduct of all or substantially all of the company's activities and affairs is unlawful;
2. It is not reasonably practicable to carry on the company's activities and affairs in conformity with the articles of organization and the operating agreement;
3. The managers or members in control of the company have acted, are acting, or are reasonably expected to act in a manner that is illegal or fraudulent;
4. The limited liability company's assets are being misappropriated or wasted, causing injury to the limited liability company, or in a proceeding by a member, causing injury to one or more of its members; or
5. The managers or the members of the limited liability company are deadlocked in the management of the limited liability company's activities and affairs, the members are unable to break the deadlock, and irreparable injury to the limited liability company is threatened or being suffered.

605.0805 Proceeds and expenses.—

(1) Except as otherwise provided in subsection (2):

(a) Proceeds or other benefits of a derivative action under s. 605.0802, whether by judgment, compromise, or settlement, belong to the limited liability company and not to the plaintiff; and

(b) If the plaintiff receives any proceeds, the plaintiff shall remit them immediately to the company.

(2) If a derivative action is successful in whole or in part, the court may award the plaintiff reasonable expenses, including reasonable attorney fees and costs, from the recovery of the limited liability company.

605.1070 Court costs and attorney fees.—

(1) The court in an appraisal proceeding shall determine all costs of the proceeding, including the reasonable compensation and expenses of appraisers appointed by the court. The court shall assess the costs against the limited liability company, except that the court may assess costs against all or some of the members demanding appraisal, in amounts the court finds equitable, to the extent the court finds the members acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by this chapter.

(2) The court in an appraisal proceeding may also assess the expenses incurred by the respective parties, in amounts the court finds equitable:

(a) Against the limited liability company and in favor of any or all members demanding appraisal, if the court finds the limited liability company did not substantially comply with the requirements of ss. 605.1061-605.1072; or

(b) Against either the limited liability company or a member demanding appraisal, in favor of another party, if the court finds that the party against whom the expenses are assessed acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by this chapter.

(3) If the court in an appraisal proceeding finds that the expenses incurred by any member were of substantial benefit to other members similarly situated and should not be assessed against the limited liability company, the court may direct that the expenses be paid out of the amounts awarded the members who were benefited.

(4) To the extent the limited liability company fails to make a required payment pursuant to s. 605.1067 or s. 605.1069, the member may sue the limited liability company directly for the amount owed and, to the extent successful, is entitled to recover from the limited liability company all costs and expenses of the suit, including attorney fees.

Circuit Court of the Fourteenth Judicial Circuit of Florida	**Circuit Court of the Twentieth Judicial Circuit of Florida**	**Circuit Court of the Eleventh Judicial Circuit of Florida**	**Circuit Court of the Twelfth Judicial Circuit of Florida**	**United States District Court for the Middle District of Florida**	**United States District Court for the Southern District of Florida**
Winford v. D17 Props., LLC, 2020 Fla. Cir. LEXIS 1855. Plaintiff brought a derivative action alleging that Defendant misappropriated LLC funds. The Court found in favor of the Plaintiff on the claim. Judicial	*Jones v. Pfaff,* 2012 Fla. Cir. LEXIS 9120. <u>The "Federal Lodestar Approach"</u>: When awarding attorney's fees, the court may only approve fees that are reasonable. In reaching this decision, the	*Ektec v. Lozano*, 2021 Fla. Cir. LEXIS 8972. Plaintiff sought attorneys fees as the prevailing party in the dismissal of all Defendants counterclaims. The Court found that the Plaintiff was entitled to	*McCloud v. Bluwave Boat Rental*, 2021 Fla. Cir. LEXIS 11257. Plaintiff sought judicial dissolution of an LLC and Defendant elected to purchase Plaintiff's interest under	*Cox Enters. v. News-Journal Corp.*, 469 F. Supp. 2d 1094 (M.D. Fla. 2006). Once a corporation elects to purchase the shares of a shareholder which has petitioned for	*Agnelli v. Lennox Miami Corp.*, Civil Action No. 20-22800-Civ, 2022 U.S. Dist. LEXIS 125346 (S.D. Fla. July 14, 2022). Plaintiff sought judicial dissolution of a corporation and Defendant

dissolution was therefore triggered under § 607.0702(1)(b)4. The LLC elected to purchase the Plaintiff's interest rather than dissolve the LLC under § 607.0706. It was then determined that the Plaintiff was entitled to an award of attorney's fees and expenses of counsel and experts under § 607.0706(5). The Court is now tasked with determining the scope of this entitlement. More specifically, the primary issue is whether § 605.0706(5) allows for the award of the entirety of time spent by Plaintiff's attorneys or only the time spent determining the fair value of Plaintiff's interest in the LLC. **The Court held that the only fees that should be permitted are those that were reasonably**	court should consider: 1. The time and labor required, the novelty and difficulty of the question involved, and the skill requisite to perform the legal service properly; 2. The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer; 3. The fee customarily charged in the locality for similar legal services; 4. The amount involved and the results obtained; 5. The time limitations imposed by the client or by the circumstances; 6. The nature and length of the	recover its costs in defending all of the non-derivative claims under both Fla. R. Civ. P. 1.420 and Fla. Stat. § 57.041(2).[6] Plaintiff was also entitled to attorneys fees and costs for success on its claim, Count VII (Unlawful Denial of Access to Books and Records) under 607.1436(5). The Court did not provide much detail as to why, but it is likely because Defendant's unlawful denial of access to books is an illegal\fraudulent behavior under 607.1430(1)(b)(4).	605.0706. There were disputes regarding ownership of the LLC and its assets. Although the owners' "mutual approach to compensation from the business was informal", the Court found that the parties intended to participate in the LLC as equal partners on a 50\50 basis. Defendant argues the purchase price for Plaintiff's interest should be discounted because Plaintiff lacked control over the LLC through her ownership shares. Even if Plaintiff lacked control, a discount would be inappropriate given that after the purchase, Defendant will have 100% ownership in the LLC. The Plaintiff sought fees and expenses of counsel under 605.0706(5), citing that probable cause	dissolution of the corporation, there are only two forms of relief for the petitioner which are authorized by Florida's election-to-purchase statute (§ 607.1436): 1. The fair value of the petitioner's shares 2. Reasonable fees and expenses of counsel and experts The 2nd form of relief may only be issued if prior to the corporation's election to purchase, the petitioner "had probable grounds" to make out a claim for dissolution of the corporation based on an event in 607.1430(1)(b). Here, probable cause was found because the Defendants wasted and misapplied corporate assets when entering into an agreement that "made little sense from a business perspective". Defendants, on	elected to purchase Plaintiff's interest under 607.1436. The Court was tasked with determining the shares' value, as the parties were not able to agree on this amount. Here, contrary to the other cases mentioned so far, the Defendant was the party seeking attorney's fees under 607.1431(5). The Court held that the Defendant was not entitled to fees under 607.1431(5) because the action was not instituted "arbitrarily, frivolously, vexatiously, or not in good faith." The Court does not state exactly what led them to this finding, but it is likely that it was not frivolous for Plaintiff to seek dissolution after he was terminated from a Corporation that he was President, CEO, and shareholder

[6] *supra* note 1.

expended on the issue of the fair value of Plaintiff's membership interest together with those which were reasonably expended in proving the existence of probable grounds for relief under § 605.0702(1)(b). The Court further clarified § 605.0706(5) by stating that it is not a mandatory fee statute; an award is solely under the discretion of the Court. One of the determinations the Court should make when exercising this discretion is whether Plaintiff can recover fees for his successful and unsuccessful claims. To warrant an award of fees for an unsuccessful claim, the Plaintiff must prove that it was "intertwined" with the successful claims: "where a party is entitled to fees for only some of the claims, the court	professional relationship with the client; 7. The experience, reputation, and ability of the lawyer or lawyers performing the services; and 8. Whether the fee is fixed or contingent (citing to *Florida Patient's Compensation Fund v. Rowe*, 472 So. 2d 1145 (Fla. 1985)). Here, the Court awarded attorney's fees and expenses of experts pursuant to 607.1436. The Court reasoned that he number of hours expended by counsel for Plaintiff (623.7), the hourly rate charged by counsel for Plaintiff ($250.00 per hour), and the costs of expert witnesses ($59,318.25) were reasonable and were necessarily incurred by the Plaintiff during the course of the		for dissolution existed because the parties were deadlocked, unable to break the deadlock, and irreparable injury to the LLC was being suffered. The Court agreed that probable cause existed because "each owner has accused the other of both wrongdoing, misappropriation, acting unilaterally and acting against the interests of the LLC". In addition to the deadlock, LLC assets are also being misappropriated or wasted. Because probable cause for judicial dissolution existed because the parties were deadlocked (605.0702(4)) and company assets were being wasted (605.0702(5)), the Court awarded the Plaintiff reasonable fees and expenses of counsel and the experts she employed.	behalf of the corporation, entered into the deal purely due to their own personal interests, and overpaid the deal by $9 million by failing to negotiate terms or request an outside assessment. In addition to the 2 forms of relief mentioned above, Plaintiff sought damages equal to the amount of Defendants waste. The Court held that the only two forms of relief available are the fair value of the petitioner's shares and reasonable fees and expenses of counsel and experts; any extra relief for damages would "exceed the fair value of its shares". The Plaintiff's claim for damages has no basis in Florida's election-to-purchase statute. Plaintiff is entitled to the fair value of its shares and the reasonable fees and expenses of its attorneys and experts.	of.

must evaluate the relationship between the claims and where the claims involve a common core of facts **and** are based on related legal theories, a full fee may be awarded" (citing *Effective Teleservices, Inc. v. Smith*, 132 So. 3d 335 (Fla. 4th DCA 2014)).	litigation.				

Ancillary Issue 6: Counterclaims/set offs by the company; Managing legal actions from the company in response to claims.

2nd District Court of Appeal	**3rd District Court of Appeal**	**3rd District Court of Appeal** (continued)	**4th District Court of Appeal**	**Circuit Court of the Eleventh Judicial Circuit of Florida**
PBF of Ft. Myers, Inc. v. D & K P'ship, 890 So. 2d 384 (Fla. 2d DCA 2004). Appellants (a corporation) appeal from an order dismissing its counterclaim because it had been administratively dissolved for failure to file its annual report. Appellants cited to 607.1420(5), which states that a corporation that has been administratively dissolved continues in existence but may only carry on	*Schmitz v. Schmitz*, 49 Fla. L. Weekly D1861 (Fla. 3d DCA September 11, 2024). The parties were involved in a closely-held real estate corporation. The Appellant was removed from his position as president by the Appellees. He brought a complaint seeking to bar this removal. Appellees then filed five counterclaims, individually. The Corporation also brought crossclaims against the Appellant. During these	*Portuondo-Tarajano Int'l Corp. v. Farm Stores Grocery, Inc.*, 88 So. 3d 196 (Fla. 3d DCA 2011) A former employee and officer of the Corporation filed a complaint alleging breaches of contract against the Corporation and its subsidiaries (Defendants).The Corporation filed a counterclaim against the Plaintiff. Plaintiff (Plaintiff 1) filed an amended complaint to add an additional Plaintiff (Plaintiff 2). The Corporation made a settlement	*Cont'l Connections United States, Llc, Bdb Real Estate, Llc, Tg Miami Invs. v. D.O.D. Holdings*, 374 So. 3d 21 (Fla. 4th DCA 2023). The parties formed a manager-managed LLC. The operating agreement provided that the managers could not make major decisions without all members' consent. It defined a major decision as any change that altered the LLC's financial structure. One of the managers took out a large loan in the name of the	*Imc Group v. Comvest Imc Holdings*, 2020 Fla. Cir. LEXIS 17925. Defendant, an LLC, filed a 18-count counterclaim in response to claims against it. Because the Defendant filed "nearly identical declaratory judgement claims" in Count I and Count IV of their counterclaim, these counts were dismissed (citing to *Fernando Grinberg Jr. Success Int'l Props. LLC v. Scottsdale Ins. Co.*, 2010 WL 2510662,

activities necessary to wind up its activities and affairs, liquidate and distribute its assets, and notify claimants.[7] Appellee's cited to 607.1622(6), which states that a corporation that fails to file an annual report may not prosecute or maintain any action in any court until the report is filed.[8] This Court reversed the trial court's order dismissing the counterclaim, holding that the Corporation is not prohibited from pursuing its claim although it is dissolved because the cause of action accrued before the dissolution of the corporation (citing to *Levine v. Levine*, 734 So. 2d 1191, 1197 (Fla. 2d DCA 1999). Additionally, 607.1622(6) pertains only to existing corporations which have failed to file annual reports, not corporations which have already been dissolved (citing to *National Judgment Recovery Agency, Inc. v. Harris*, 826 So. 2d 1034 (Fla. 4th DCA 2002).	proceedings, Appellant repeatedly evaded discovery and concealed evidence. The trial court, after finding that he engaged in bad faith discovery tactics, directed that the burden of proof on all of the direct counterclaims and derivative crossclaims would be shifted. After the shift, counter-plaintiffs are entitled to a judgement on each of their claims unless the counter defendants prove by the greater weight of the evidence that counter-plaintiffs are not entitled to such relief. The trial court found in favor of the counterclaims and crossclaims. On appeal, Appellant argues that the trial court abused its discretion by applying the burden-shifting sanction to the Corporation's derivative crossclaims. He argues that the sanction was unfairly imposed without notice and that this error should void the court's finding of liability as to all crossclaims for which the Corporation would not have prevailed but for the burden	offer to Plaintiff 2. The offer stated that it does not include or cover any claims by and/or against the other Plaintiff, and an acceptance of this offer will result in a voluntary dismissal of the Corporations counterclaim. Plaintiff 2 accepted this offer. The Defendants filed a motion for dismissal asserting that as a result of Plaintiff 2's acceptance of the Corporation's offer, "every existing and possible claim" Plaintiff 2 had against the Corporation "settled and released." The trial court granted the dismissal, including Plaintiff 1's complaint. This Court reversed, holding that the trial court erred by dismissing both Plaintiff's complaints based on Plaintiff 2's acceptance of the Corporation's settlement offer. The only parties bound by an offer of judgment are the parties who made the offer and the parties who accepted the offer," unless the liability of the remaining parties is "derivative	LLC and failed to get the other members' consent. As a result, one of the other manager's sued the LLC and its managers in individual and derivative capacities. In 2016, the trial court found that the defendants violated the operating agreement and breach the duty of loyalty. In 2021, these defendants initiated a new suit in which they sued the LLC. They alleged they lent the LLC money as an initial investment, and they sought to recover these funds. The LLC responded by arguing that the claims were waived by the plaintiffs' failure to file them as a counterclaim in the 2016 lawsuit. A **pleading must state as a counterclaim any claim which** at the time of serving the pleading the pleader has against any opposing party, provided it **arises out of the transaction or occurrence that is the subject matter of the opposing party's claim** and does not require for its adjudication the	at 1 (S.D. Fla. June 21, 2010) (A trial court should not entertain an action for declaratory judgment on issues which are properly raised in other counts of the pleadings and already before the court, through which the plaintiff will be able to secure full, adequate and complete relief.)). Count III of the counterclaim will be tried along with Counts II, III, and IV of the Complaint because the court has the authority to bifurcate compensatory damage issues of a trial. The Court also stayed certain counts of the counterclaim. The remaining counts of the counterclaim, which assert claims that may be affected by the determination of which parties prevail on other claims, were stayed until a final order was issued with respect to these other claims. Additionally, Defendant's initiated a separate lawsuit which was also pending and was seeking substantially the

[7] Because this is an older case, the opinion cites to 607.1405. However, this is the same as 607.1420(5) today.
[8] The opinion cites to 607.1622(8), which is equivalent to 607.1622(6) today.

	shifting. “While a trial court has the inherent power to impose sanctions on a party who destroys evidence or perpetuates a fraud upon the court,' that power should be exercised with great restraint because **the courts of this state favor adjudications on the merits**." *E.I. DuPont De Nemours & Co. v. Sidran*, 140 So. 3d 620, 623 (Fla. 3d DCA 2014)”. This Court found that the trial court improperly applied the burden-shifting sanctions without proper notice. This is because the trial court did not expressly indicate that it would be applying the sanction to the crossclaims until its second amended findings of fact and conclusions of law, which the Appellant argued was done sub silentio. This Court remanded only as to the crossclaims for which the judgement would not have been the same irrespective of the burden-shifting. *Ferk Fam., LP v. Frank*, 240 So. 3d 826 (Fla. 3d DCA 2018). The parties were	or subsumed within the claims of the other parties to the offer" (citing to *Sec. Professionals, Inc. v. Segall*, 685 So. 2d 1381, 1383 (Fla. 4th DCA 1997). The offer was made only to Plaintiff 2, and therefore Plaintiff 1 is not bound by the offer. Plaintiff 1 alleged claims against the Corporation that were independent of Plaintiff 2, and in which only Plaintiff 1 would be owed fees.	presence of third parties over whom the court cannot acquire jurisdiction (Fla. R. Civ. P. 1.170(a). The Supreme Court in *Londono v. Turkey Creek, Inc.*, 609 So. 2d 14, 20 (Fla. 1992) decided that the logical relationship test is “the yardstick for measuring whether a claim is compulsory”: A claim has a logical relationship to the original claim if it arises out of the same aggregate of operative facts as the original claim in two senses: (1) that the same aggregate of operative facts serves as the basis of both claims; or (2) that the aggregate core of facts upon which the original claim rests activates additional legal rights in a party defendant that would otherwise remain dormant. This Court held that under the *Londono* test, the loan repayment claims at issue did not constitute a compulsory counterclaim in the 2016 lawsuit. The 2016 suit was against the defendants for fraudulently obtaining a loan.	same relief as in the counterclaim in this case. The Court stayed the related case pending a final order issued by this Court with respect to the complaint and counterclaims.

	members of an LLC. Appellee filed suit against individual members and the LLC seeking declaratory relief and damages for breach of contract and specific performance. The Appellant and the LLC filed counterclaims and third-party claims against the Appellees'. Three of these claims were brought derivatively from the LLC and two were brought directly from Appellant. The trial court determined that these counterclaims were solely derivative and could not be maintained as a direct action. This Court reversed. In *Dinuro Investments, LLC v. Camacho*, 141 So. 3d 731 (Fla. 3d DCA 2014), this Court held that an action may be brought directly only if (1) there is a direct harm to the shareholder or members such that the alleged injury does not flow subsequently from an initial harm to the company **and** (2) there is a special injury to the shareholder or member that is separate and distinct from those sustained by the other		Here, the plaintiffs seek to recoup monies lent to the LLC over various periods of time, some of which was before the 2016 lawsuit. Also, a number of these plaintiffs were not even parties in the 2016 lawsuit.	

	shareholders or members. However, Dinuro also held that one must not satisfy the two-prong test when there is a separate duty owed by the defendant(s) to the individual plaintiff under contractual or statutory mandates. Here, the operating agreement of the LLC explicitly states that "members who are aggrieved by other members may bring direct claims for breach of the provisions of the operating agreement". Fla. Stat. § 605.0105(1)(a) provides that the operating agreement governs the relations among the members as members. 605.0105(2) provides that "to the extent the operating agreement does not otherwise provide for a matter described in subsection 1, this chapter governs the matter". This led the Court to hold that "the plain language of the statute clearly provides that a member may still bring a direct action against another member where the operating agreement so provides, and			

	thus, the exception under *Dinuro* remains applicable under Florida law”.			

Ancillary Issue 7: Buy out the minority for a dissolution - should control shift during a minority-initiated dissolution?

Relevant Statutes:

3 Ways for a Corporation to Reach Dissolution:

607.1402 Dissolution by board of directors and shareholders; dissolution by written consent of shareholders.—

(1) A corporation’s board of directors may propose dissolution for submission to the shareholders by first adopting a resolution authorizing the dissolution.

(2)(a) For a proposal to dissolve to be adopted, it must be approved by the shareholders pursuant to subsection (5).

(b) In submitting the proposal to dissolve to the shareholders for approval, the board of directors must recommend that the shareholders approve the dissolution, unless:

1. The board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation; or

2. Section 607.0826 applies.

(c) If either subparagraph (b)1. or subparagraph (b)2. applies, the board must inform the shareholders of the basis for its so proceeding without such recommendation.

(3) The board of directors may set conditions for the approval of the proposal for dissolution by shareholders or for the effectiveness of the dissolution.

(4) If the approval of the shareholders is to be given at a meeting, the corporation shall notify, in accordance with s. 607.0705, each shareholder, regardless of whether entitled to vote, of the meeting of shareholders at which the dissolution is to be submitted for approval. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider dissolving the corporation.

(5) Unless the articles of incorporation or the board of directors (acting pursuant to subsection (3)) require a greater vote or a vote by voting groups, the proposal to dissolve to be adopted must be approved by a majority of all the votes entitled to be cast on the proposal to dissolve.

(6) Alternatively, without action of the board of directors, action to dissolve a corporation may be taken by the written consent of the shareholders pursuant to s. 607.0704.

607.1401 Dissolution by incorporators or directors.—If a corporation has not yet issued shares, its board of directors, or a majority of incorporators if it has no board of directors, may dissolve the corporation by delivering to the department for filing articles of dissolution that must set forth:

(1) The name of the corporation;

(2) The date of its incorporation;

(3) That none of the corporation's shares have been issued;

(4) That no debt of the corporation remains unpaid;

(5) That the net assets of the corporation remaining after winding up, if any, have been distributed; and

(6) That a majority of the incorporators or directors authorized the dissolution.

607.1430 Grounds for judicial dissolution.—

(1) A circuit court may dissolve a corporation or order such other remedy as provided in s. 607.1434:

(a) In a proceeding by the Department of Legal Affairs to dissolve a corporation if it is established that:

1. The corporation obtained its articles of incorporation through fraud; or

2. The corporation has continued to exceed or abuse the authority conferred upon it by law.

The enumeration in subparagraphs 1. and 2. of grounds for involuntary dissolution does not exclude actions or special proceedings by the Department of Legal Affairs or any state official for the annulment or dissolution of a corporation for other causes as provided in any other statute of this state;

(b) In a proceeding by a shareholder to dissolve a corporation if it is established that:

1. The directors are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock, and:

a. Irreparable injury to the corporation is threatened or being suffered;

b. The business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally because of the deadlock; or

c. Both sub-subparagraphs a. and b.; or

2. The shareholders are deadlocked in voting power and have failed to elect successors to directors whose terms have expired or would have expired upon qualification of their successors;

3. The corporate assets are being misapplied or wasted, causing material injury to the corporation; or

4. The directors or those in control of the corporation have acted, are acting, or are reasonably expected to act in a manner that is illegal or fraudulent;

(c) In a proceeding by a creditor if it is established that:

1. The creditor's claim has been reduced to judgment, the execution on the judgment returned unsatisfied, and the corporation is insolvent; or

2. The corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent;

(d) In a proceeding by the corporation to have its voluntary dissolution continued under court supervision; or

(e) In a proceeding by a shareholder if the corporation has abandoned its business and has failed within a reasonable period of time to liquidate and distribute its assets and dissolve.

(2) Paragraph (1)(b) does not apply in the case of a corporation that, on the date of the filing of the proceeding, has shares that are:

(a) A covered security under s. 18(b)(1)(A) or (B) of the Securities Act of 1933; or

(b) Not a covered security, but are held by at least 300 shareholders and the shares outstanding have a market value of at least $20 million, exclusive of the value of outstanding shares of the corporation held by the corporation's subsidiaries, by the corporation's senior executives, by the corporation's directors, and by the corporation's beneficial shareholders and voting trust beneficial owners owning more than 10 percent of the outstanding shares of the corporation.

(3)(a) In the event of a deadlock situation that satisfies subparagraph (1)(b)1. or subparagraph (1)(b)2., if the shareholders are subject to a shareholder agreement that complies with s. 607.0732 and contains a deadlock sale provision, then such deadlock sale provision shall apply to the resolution of such deadlock in lieu of the court entering an order of judicial dissolution or an order directing the purchase of petitioner's shares under s. 607.1436, so long as the provisions of such deadlock sale provision are initiated and effectuated within the time periods specified for the corporation to act under s. 607.1436 and in accordance with the terms of such deadlock sale provision.

(b) For purposes of this section, the term "deadlock sale provision" means a provision in a shareholder agreement that complies with s. 607.0732, which is or may be applicable in the event of a deadlock among the directors or shareholders of the corporation which neither the directors nor the shareholders, as applicable, of the corporation are able to break, and which provides for a deadlock breaking mechanism, including, but not limited to:

1. A redemption or a purchase and sale of shares or other equity securities;

2. A governance change;

3. A sale of the corporation or all or substantially all of the assets of the corporation; or

4. A similar provision that, if initiated and effectuated, breaks the deadlock by causing the transfer of the shares or other equity securities, a governance change, or a sale of the corporation or all or substantially all of the corporation's assets.

(4) A deadlock sale provision in a shareholder agreement that complies with s. 607.0732 which is not initiated and effectuated before the court enters an order of judicial dissolution under subparagraph (1)(b)1. or subparagraph (1)(b)2., as the case may be, or an order directing the purchase of petitioner's interest under s. 607.1436, does not adversely affect the rights of shareholders to seek judicial dissolution under subparagraph (1)(b)1. or subparagraph (1)(b)2., as the case may be, or the rights of the corporation or one or more shareholders to purchase the petitioner's

interest under s. 607.1436. The filing of an action for judicial dissolution on the grounds described in subparagraph (1)(b)1. or subparagraph (1)(b)2., as the case may be, or an election to purchase the petitioner's interest under s. 607.1436, does not adversely affect the right of a shareholder to initiate an available deadlock sale provision under the shareholder agreement that complies with s. 607.0732 or to enforce a shareholder-initiated or an automatically-initiated deadlock sale provision if the deadlock sale provision is initiated and effectuated before the court enters an order of judicial dissolution under subparagraph (1)(b)1. or subparagraph (1)(b)2., as the case may be, or an order directing the purchase of petitioner's interest under s. 607.1436.

(5) For purposes of subsections (1) and (2), the term "shareholder" means a record shareholder, a beneficial shareholder, or an unrestricted voting trust beneficial owner.

Notes:

It appears that the most common way (and maybe the only way, unless the articles of incorporation, shareholders agreement, or bylaws allow for something different) for minority shareholders to initiate a dissolution proceeding is through judicial dissolution (607.1430(b)1-4)). 607.1402 allows for a plan for dissolution to be proposed by the board of directors. 607.1402(4) states that unless the articles of incorporation or the board require otherwise, this proposal must be approved by a majority of all shareholder votes entitled to be cast on the proposal to dissolve. So, unless the articles or board explicitly require the vote of **all** shareholders (including the minority) to approve a dissolution proposal, all that is required is a majority of votes. 607.0721(1) states that "unless the articles of incorporation or this chapter provides otherwise, each outstanding share, regardless of class or series, is entitled to one vote on each matter submitted to a vote at a meeting of shareholders". Minority shareholders who do not hold many outstanding shares will have significantly less weight in the vote. Therefore, it will be more difficult for minority shareholders to initiate a dissolution this way. Additionally, when filing articles of dissolution, 607.1403 requires "a statement that the proposal to dissolve was duly approved by the shareholders in the manner required by this chapter and by the articles of incorporation". Minority shareholders would not be able to file articles of dissolution unless they provide a statement assuring that they complied with the requirement to receive shareholder approval. Therefore, the most common way for minority shareholders to initiate a dissolution proceeding is through judicial dissolution.

I searched through all the Circuit Courts and DCAs but could not find any case law that addressed this issue. In majority of the cases, it seemed that minority shareholders are usually the ones filing for judicial dissolution rather than the ones electing to purchase. The entity or the majority shareholders (who already have control) seemed to be ones who usually elect to purchase.

This issue may also be dependent upon the shareholder agreement. Fla. Stat. § 607.0732 provides that a shareholder agreement can have a lot of control, such as it can eliminate a board of directors or limit their power, govern the voting process, establish a mechanism for breaking a deadlock, etc. So, if a minority shareholder purchased shares that increased their power, they may be able to exercise control and take over depending on how much control their shareholder agreement provides.

4th District Court of Appeal	**Circuit Court of the Eleventh Judicial Circuit of Florida**
Foreclosure Freesearch, Inc. v. Sullivan, 12 So. 3d 771 (Fla. 4th DCA 2009). This case presents an instance where minority shareholders filed for judicial dissolution but were	*Hagstrom v. Co.fe*, 2020 Fla. Cir. LEXIS 19933. Plaintiff owned a minority membership interest in an LLC, but filed articles of dissolution without a resolution or notice being provided to the others

prevented from doing so because majority shareholders basically kicked them out by adopting a "reverse stock split". Although the minority shareholders were not able to regain any control in the corporation, they were entitled to appraisal. Appellees were minority shareholders of the Corporation. Majority shareholder terminated Appellees involvement with the Corporation and initiated a derivative lawsuit alleging that the minority shareholders fraudulently induced the company into treating them as shareholders when they had not paid consideration for their shares. Appellees filed counterclaims against the company and sought judicial dissolution. In response, the majority shareholder adopted a reverse stock split that eliminated all shares held by the minority shareholders. The reverse stock split triggered Appellees statutory appraisal rights 607.1302(e).[9] This statute provides a shareholder whose stock is being repurchased in a reverse split to appraisal rights to obtain fair market value of the stock. 607.1322(1) provides that if a corporate action requiring appraisal rights under 607.1302(1) becomes effective, the corporation must deliver to all shareholders a written appraisal notice and form. Here, the Corporation mailed a written notice that complied with the statutory requirements. Appellees responded to the notice by filing a motion for temporary injunction to stop the reverse stock split and appraisal process until the court made a final determination on their counterclaim against the company. They alleged that If they lost their shares through the appraisal process, they would also lose their standing to assert a shareholder derivative action if their discovery revealed fraud committed by the majority shareholder. The trial court granted the temporary injunction, which this DCA has now reversed. The possibility of losing standing to assert a derivative action was not a valid argument. 607.1330(1) protects against this kind of situation by providing that if a shareholder is dissatisfied with a corporation's offer for the fair value of the appraised shares, they must notify	holding membership interests. This violates 605.0701: **605.0701 Events causing dissolution.**—A limited liability company is dissolved and its activities and affairs must be wound up upon the occurrence of the following: (1) An event or circumstance that the operating agreement states causes dissolution. (2) **The consent of all the members.** (3) The passage of 90 consecutive days during which the company has no members, unless: (a) Consent to admit at least one specified person as a member is given by transferees owning the rights to receive a majority of distributions as transferees at the time the consent is to be effective; and (b) At least one person becomes a member in accordance with the consent. (4) The entry of a decree of judicial dissolution in accordance with s. 605.0705. (5) The filing of a statement of administrative dissolution by the department pursuant to s. 605.0714. The operating and employment agreements of the LLC contained arbitration clauses. The Plaintiff sought to stay the arbitration initiated against him by the LLC. The Court determined that filing for dissolution without consent or notice to the other member was an arbitrable issue because it violated the Employment Agreement which contained an arbitration clause. 605.0717(1)(b) states that the dissolution of a limited liability company does not "prevent commencement of a proceeding by or against the limited liability company in its name". Therefore, the Court found that the Demand for Arbitration was properly filed on behalf of the LLC.

[9] This case cites to 607.1302(1)(d) of the 2008 Florida statute which is equivalent today to 607.1302(1)(e).
607.1302 Right of shareholders to appraisal.—
(1) A shareholder of a domestic corporation is entitled to appraisal rights, and to obtain payment of the fair value of that shareholder's shares, in the event of any of the following corporate actions:
(e) An amendment of the articles of incorporation with respect to a class or series of shares which reduces the number of shares of a class or series owned by the shareholder to a fraction of a share if the corporation has the obligation or the right to repurchase the fractional share so created

the corporation who can then either provide the requested amount or initiate a proceeding with the court. If the corporation does not initiate the proceeding or provide the requested amount within 60 days, the shareholder who made the demand is permitted to commence the proceeding in the name of the corporation.[10] The Appellee's have an adequate remedy at law should the appraisal process continue. In Appellees initial counterclaim, they also alleged breach of fiduciary duty against the majority shareholder. *Williams v. Stanford*, 977 So. 2d 722 (Fla. 1st DCA 2008) established that if Appellees were able to prove the majority shareholders"have so besmirched the propriety of the challenged transaction that no appraisal could fairly compensate the aggrieved minority shareholder", the breach of fiduciary duty count may permit relief beyond the appraisal process. This further demonstrates how Appellee's have an adequate remedy at law if the appraisal process continues and if they need to seek additional relief.	

[10] **607.1330 Court action.**—

(1) If a shareholder makes demand for payment under s. 607.1326 which remains unsettled, the corporation shall commence a proceeding within 60 days after receiving the payment demand and petition the court to determine the fair value of the shares and accrued interest, if and to the extent applicable, calculated and accrued from the date the corporate action became effective and taking into account the amount of any prepayment previously made to the shareholder by the corporation pursuant to s. 607.1326(3). If the corporation does not commence the proceeding within the 60-day period, any shareholder who has made a demand pursuant to s. 607.1326 may commence the proceeding in the name of the corporation.

Schedule F

Business Law Section Bylaws Currently in Place (as of 08.31.26)

AMENDED AND RESTATED BYLAWS OF THE BUSINESS LAW SECTION

ARTICLE I
NAME AND PURPOSES

Section 1.1. Name. The name of the section is "Business Law Section" of "The Florida Bar" (the "section").

Section 1.2. Purposes. The purposes of the section are to:

(a) provide an organization within The Florida Bar for discussion and interaction among section members who deal with issues of "business law" (including, without limitation, the substantive areas of corporations, limited liability companies and other alternative entities, securities, bankruptcy, banking, commercial finance, franchise, antitrust, intellectual property and computer law), and involving both business transactions and business disputes;

(b) provide a forum for discussion and exchange of ideas leading to the improvement of business laws, and to propose and comment on legislation and regulations about substantive areas of business law;

(c) provide a forum for collaborative learning and interaction among those who are involved in substantive business law issues, including transactional lawyers and litigators, and by and among practicing lawyers and members of the state and federal judiciary;

(d) provide education and professional development for members of the section in substantive areas of business law (including practice management) practiced by the members of the section, and to enhance business law education generally;

(e) enhance the administration of justice and help facilitate the improvement of the legal profession;

(f) enhance the sense of professionalism within, the satisfaction of, and the ethical and competent practice of law by, members of the section;

(g) inculcate in section members and promote, support and take actions consistent with the principles of duty and service to the public, including the importance of providing pro bono services in the practice of business law and in the section's activities; and

(h) inculcate in section members and promote, support and take actions consistent with the principles of diversity, inclusion, and fellowship in the practice of business law and in the section's activities.

ARTICLE II
MEMBERSHIP

Section 2.1. Regular Member Eligibility. Any member in good standing, and any "law faculty affiliate," as defined in Chapter 1 of the Rules Regulating The Florida Bar, interested in the purposes of the section is eligible to be a regular member of the section, on application and payment of the section's annual dues. Any regular member who ceases to be a member in good standing of The Florida Bar (or ceases to have “law faculty affiliate” status) no longer is a regular member of the section. Law professors who qualify as “law faculty affiliates” are regular members of the section so long as they qualify. Reinstatement as a member of The Florida Bar in good standing automatically reinstates the person as a regular section member, provided that the member is current in the payment of section dues.

Section 2.2. Affiliate Membership Eligibility.

(a) The section’s executive council may enroll, on request and payment of the prescribed dues, as affiliate members of the section, other persons who have an interest in and intent to make a contribution to the section's activities as defined in these bylaws. The purpose of affiliate membership is to foster and promote the development and communication of information concerning business law, but not to encourage the unlicensed practice of law. The number of affiliate members may not exceed 1/3 of the section's membership. An affiliate member is an affiliate member of this section only. Affiliate membership affords the affiliate member no status as or any of the rights of a member of The Florida Bar.

(b) To qualify as an affiliate member of the section, a person must either:

1) hold a Juris Doctor degree from an accredited law school, be employed full time as a professor of law at an accredited law school, and not qualify as a “law faculty affiliate” under Chapter 1 of the Rules Regulating The Florida Bar;

2) be an "authorized house counsel" pursuant to Chapter 17 of the Rules Regulating The Florida Bar;

3) be admitted to practice law and in good standing under the laws of any state or territory of the United States or the District of Columbia or under the laws of any foreign nation;

4) be a student currently enrolled in an accredited law school;

5) be a graduate of an accredited law school who has applied for, but not yet been admitted to, membership in The Florida Bar;

6) be a foreign legal consultant as defined in Chapter 16 of the Rules Regulating The Florida Bar or an arbitrator (whether or not a lawyer) who is qualified to participate in international arbitration proceedings that are permitted to take place in Florida under Rule 1-3.11 of the Rules Regulating The Florida Bar; or

7) be a paralegal registered as a Florida Registered Paralegal by The Florida Bar or be a "legal assistant" who meets the qualifications set forth in subsection (d) below.

(c) Affiliate members of the section may not vote or hold a section office, participate in the selection of officers or members of the executive council, or vote on the adoption, change, or revision of any provision of these bylaws.

(d) For purposes of these bylaws, a "legal assistant" is a person who assists a member of The Florida Bar in the delivery of legal services in the area of business law and who has satisfied one of the following minimum requirements:

1) successful completion of the certified legal assistant (CLA) examination of the National Association of Legal Assistants, Inc.;

2) graduation from an ABA-approved program of study for legal assistants or graduation from any accredited law school;

3) graduation from a course of study for legal assistants which is institutionally accredited but not ABA-approved and which requires not less than the equivalent of 60 semester hours of classroom study;

4) graduation from a course of study for legal assistants, other than those set forth in subsections (2) and (3), above, plus not less than 1 year of in-house training as a legal assistant in a law firm or legal office under the supervision of 1 or more members of The Florida Bar in good standing;

5) a bachelor degree in any field, plus not less than 1 year of in-house training as a legal assistant in a law firm or legal office under the supervision of 1 or more members of The Florida Bar in good standing; or

6) five years of in-house training as a legal assistant in a law firm or legal office under the supervision of 1 or more members of The Florida Bar in good standing.

Section 2.3. Honorary Section Membership. The executive council may make any person whom the executive council finds to have made an outstanding contribution to the section or finds to have made an outstanding contribution in the field of business law an honorary member of the section. An honorary section member designated by the executive council may participate in section activities and attend meetings of section committees and the executive council, but may not hold any office or position in the section, may not vote and is not required to pay dues. Honorary membership affords the honorary member no status as or any of the rights of a member of The Florida Bar.

Section 2.4. Administrative Year. The administrative year of the section runs concurrently with the administrative year of The Florida Bar.

Section 2.5. Annual Dues. The annual dues for regular members and for affiliate members of the section are the amounts fixed from time to time by the executive council and approved by the Board of Governors of The Florida Bar. There is no proration of annual dues. On becoming a regular or affiliate member of the section, dues will be payable in advance for each membership year. Any member whose annual section dues are not paid by the date on which Florida bar membership dues are owed becomes delinquent and ceases to be a member of the section.

ARTICLE III
OFFICERS AND EXECUTIVE COMMITTEE

Section 3.1. Selection of Officers. The officers of the section are a chair, a chair-elect, a secretary, and a treasurer. The chair-elect becomes chair in the manner provided by these bylaws. The chair-elect, the secretary, and the treasurer are elected at the annual meeting of the section each year in the manner provided in these bylaws. In January of each year, the chair will appoint a nominating committee consisting of not fewer than 3 members of the long range planning committee. The nominating committee will nominate active regular members of the section for the offices of chair-elect, secretary, and treasurer. Other nominations may be made by any 10 regular members in good standing of the section who file a petition with the secretary, at least 30 days prior to the annual meeting, setting forth the name(s) of the nominees, If a petition is received, the secretary will notify the other officers of the section of the nominations. At the election held at the annual meeting of the section, nominations for the offices of chair-elect, secretary, and treasurer will not be permitted unless the nominations have been made in the manner provided in this section.

Section 3.2. Duties of Officers.

(a) *Chair.* The chair presides at all meetings of the section, the executive committee and the executive council. The chair appoints (subject to the approval and concurrence of the executive committee) the chairs and vice-chairs of all section committees and task forces, prepares all reports to be submitted to The Florida Bar, and performs other duties as customarily pertain to the office of section chair. While serving as chair, the chair is an ex-officio member of all section committees and task forces.

(b) *Chair-elect.* The chair-elect becomes chair in the event of the death, resignation, or failure of the chair to serve for any reason. In the case of temporary disability or absence of the chair, the chair-elect serves as acting chair only for the duration of the chair's disability or absence. The chair-elect is responsible for duties as the chair designates. While serving as chair-elect, the chair-elect is an ex-officio member of all section committees and task forces.

(c) *Secretary.* The secretary keeps the permanent files and records of the section, including minutes of meetings of the section and of the executive council, unless these services are performed by staff members of The Florida Bar. The secretary also has oversight responsibility for section committees that are responsible for the section's communications (such as the section committees responsible for the section's website and publications). The secretary becomes chair in the event of the death, resignation, or failure to serve of the chair, the chair-elect, and the treasurer. In the case of temporary disability or absence of the chair, the chair-elect, and the treasurer, the secretary serves as acting chair only for the duration of the disability or absence of the chair, the chair-elect, or the treasurer.

(d) *Treasurer.* The treasurer accounts for all funds of the section, approves all section disbursements and prepares all section financial statements, unless these services are performed by staff members of The Florida Bar. The treasurer also has oversight responsibility for section committees that are responsible for the section's budgeting and financial activities (such as the section's budget committee and the committee responsible for planning the section's annual retreat). The treasurer becomes chair in the event of the death, resignation or failure to serve of the chair and the chair-elect. In the case of temporary disability or absence of the chair and the chair-elect, the treasurer serves as acting chair only for the duration of the disability or absence of the chair and the chair-elect.

Section 3.3. Term of Office.

(a) *Chair.* The chair's term of office begins immediately after the conclusion of the annual convention of The Florida Bar and ends at the conclusion of the next annual convention of The Florida Bar, at which time the chair is automatically succeeded as chair by the chair-elect.

(b) *Chair-elect.* The term of office of the chair-elect runs concurrently with that of the chair. At the end of the chair's term as chair, the chair-elect automatically becomes chair.

(c) *Secretary and Treasurer.* The term of office of the secretary and the term of office of the treasurer run concurrently with that of the chair and the chair-elect.

Section 3.4. Vacancies. The chair (with the approval and concurrence of the executive committee) fills all vacancies except vacancies in the offices of chair, chair-elect, secretary, and treasurer, which will be filled in the manner provided by these bylaws. In the event that the offices of chair, chair-elect, secretary, or treasurer become vacant, the executive committee will propose members of the section to fill the unexpired term, subject to approval by the section's executive council, and, at the next annual meeting of the section, vacancies will be filled in the manner provided for in these bylaws.

Section 3.5. Executive Committee. The executive committee of the section consists of the section's officers and the chair of the section's long range planning committee. The immediate past chair of the section is an ex-officio non-voting member of the executive committee. The executive committee is the planning agency for the executive council and convenes periodically. The executive committee has the full power and authority to exercise the function of the executive council when and to the extent authorized by the executive council with respect to a specific matter, and with respect to any other matter which the executive committee reasonably determines requires action between meetings of the executive council; *provided, however,* that only the executive council may approve legislative, administrative, and judicial positions of the section. The executive committee may not take any action that conflicts with an approved position of the executive council. The executive committee also must:

(a) approve and concur with the selections of the chair-elect of the chairs and vice chairs of the section's committees and task forces and the section's liaisons for the upcoming administrative year; and

(b) make recommendations for consideration by the section's long range planning committee of projects to be undertaken by the long range planning committee.

Section 3.6. Reports of the Executive Committee to the Executive Council. Any action taken on behalf of the executive council between meetings must be reported to the executive council no later than the executive council's next regular meeting.

Section 3.7. Actions of Executive Committee. All actions that require the advice and consent of the executive committee require the affirmative vote of a majority of the members of the executive committee.

ARTICLE IV
EXECUTIVE COUNCIL

Section 4.1. Governing Body. The executive council is the section's governing body. The chair of the section is the chair of the executive council and the secretary of the section is the secretary of the executive council. The executive council conducts its business at regular and special meetings, as provided for in these bylaws, and between meetings, by correspondence, telephone, facsimile, electronic mail, or other electronic means to the extent authorized in these bylaws.

Section 4.2. Membership. The membership of the executive council consists of:

(a) the members of the executive committee;

(b) the chairs (including any judicial chair) and 1 vice-chair of each substantive law committee of the section;

(c) the chairs (including any judicial chair) and 1 vice-chair of each standing committee of the section;

(d) all members of the long-range planning committee;

(e) the chairs and 1 vice chair of any task force of the section;

(f) up to 5 liaisons between the section and other organizations who are selected in the manner set forth in Section 5.5 below;

(g) the liaison to the section from the Board of Governors of The Florida Bar; and

(h) up to 5 at-large members designated by the chair-elect to serve for the upcoming administrative year.

Section 4.3. Term of Office. Each member of the executive council serves a term of one year. Members of the executive council may be reappointed for 1 or more additional one-year terms.

Section 4.4. Vacancies. If at any time during the term of office of a member of the executive council that office becomes permanently vacant by reason of death, resignation, ineligibility, or other reason, the chair (with the approval and concurrence of the executive committee) will appoint a successor to serve for the balance of the term.

ARTICLE V
COMMITTEES

Section 5.1. Committees and Task Forces. The section may establish 1 or more substantive law committees, standing committees, and task forces (including task forces officially designated as subcommittees of a particular section committee but organized for a significant section project). The following standing committees are permanent committees of the section: long range planning, budget, legislation, and diversity/inclusion. Committees and task forces may be established from time to time by the executive council, by the affirmative vote of more than a majority of the members of the executive council in attendance at a regular meeting of the executive council at which more than a majority of the current members of the executive council are in attendance. The section will maintain a list of all committees and task forces of the section that have been established, including a brief description of the role played by each committee and task force. The list of section committees and task forces will be updated at least annually and will be made available for viewing on the section's website.

Section 5.2. Functions and Responsibilities of Committees and Task Forces. Substantive and standing committees and task forces of the section have responsibility for the subject matter indicated by their respective names and/or for the tasks described in the resolutions of the executive council approving the organization of the committee or task force. Standing committees oversee section activities that support the section's substantive law committees and task forces, and the section's purposes.

Section 5.3. Organization of Committees and Task Forces. The chairs and vice-chairs of each committee and task force of the section are appointed by the chair-elect of the section (with the approval and concurrence of the executive committee) for the upcoming administrative year. Chairs and vice chairs of section committees and task forces may be reappointed for additional one year terms.

Section 5.4. Change in Committee Structure. Subject to the procedures set forth in and the requisite vote required by Section 5.1 above, the executive council may abolish any committee or task force of the section, merge any 2 or more committees or task forces of the section or create any new committee or task force of the section without amendment to these bylaws. Proposed changes of committee and task force structure will be included in the notice of any meeting of the executive council at which changes are to be considered.

Section 5.5. Liaisons. Annually, the chair-elect of the section (with the approval and concurrence of the executive committee), may designate 1 or more persons to act as liaisons for the upcoming administrative year. Liaisons may be appointed with any section, committee, subcommittee, or other entity of the American Bar Association, The Florida Bar or any other legal organization (i.e. bar organizations), with any or all of the public and private law schools in the state of Florida (i.e., faculty liaisons), or with any or all of the federal or state courts of Florida (i.e., judicial liaisons). The executive council may abolish any designation or make new designations without amendment to these bylaws. The section will maintain a list of all liaisons and the organizations to which each of them liaise. The list of liaisons will be updated at least annually and will be made available for viewing on the section's website.

Section 5.6. Legislation Committee. The legislation committee oversees the section's legislative activities. The legislation committee is composed of at least 3 regular members of the section appointed by the chair-elect of the section (with the approval and concurrence of the executive committee) for the next administrative year. Additionally, a designated vice chair or representative from each substantive law committee of the section serves as a member of the legislation committee.

Section 5.7. Diversity/Inclusion Committee. The diversity/inclusion committee, or a committee with an alternative name whose focus is comparable, is responsible for promoting, supporting and taking actions consistent with the principles of diversity, inclusion, and fellowship in the practice of law and in the section's activities. The diversity/inclusion committee is composed of at least 3 regular members of the section appointed by the chair-elect of the section (with the approval and concurrence of the executive committee) for the next administrative year. Additionally, a designated vice chair or representative from each substantive law committee of the section serves as a member of the diversity/inclusion committee.

Section 5.8. Long Range Planning Committee. The long range planning committee performs tasks requested by the executive committee and provides advice to the executive committee and the executive council on those matters that are requested from time to time. The membership of the long range planning committee consists of former chairs of the section who wish to serve on the long range planning committee and other members of the section with more than 10 years of distinguished service on the executive council who are nominated for appointment to the long range planning committee by the chair-elect (with the approval and concurrence of the executive committee) and are approved for service on the long range planning committee by both the executive council and a majority of the current members of the long range planning committee. Annually, the chair-elect of the section (with the approval and concurrence of the executive committee) will appoint, from among the current members of the long range planning committee, the chair of the long range planning committee and a parliamentarian of the section to serve for the next administrative year.

Section 5.9. Budget Committee. The budget committee is responsible for overseeing preparation and implementation of the section's budget and for providing oversight of the section's financial performance. The treasurer chairs the budget committee and its members include the immediate past chair of the section, a member of the long range planning committee selected by the long range planning committee, and 2 other executive council members appointed by the chair-elect of the section (with the approval and concurrence of the executive committee) for the next administrative year. The secretary serves as an *ex-officio* member of the Budget Committee.

ARTICLE VI
MEETINGS

Section 6.1. The Section. The section's annual meeting will be held at the same time and place as the last meeting of the executive council immediately preceding the completion of the annual convention of The Florida Bar. Notice to all section members as to time and place of the annual meeting must be given at least 30 days in advance of the meeting. The members of the section present in person at the annual meeting constitute a quorum, and a majority vote of those section members present is binding.

Section 6.2. Executive Council.

(a) The executive council will hold its organizational meeting immediately after the annual meeting of the section required by Section 6.1 above. The executive council will also hold 1 or more additional meetings between organizational meetings of the executive council. Meetings may be held in person or by telephone conference call. It is expected that at least two additional in-person meetings of the executive council will be held between organizational meetings. The executive council may only meet telephonically if all members of the executive council in attendance at the meeting are able to hear one another at that telephonic meeting.

(b) Between meetings, the executive council may conduct business by correspondence, telephone, facsimile, electronic mail, or other electronic means, to the extent authorized by the executive committee. Any action of the executive council taken by written consent requires notice of the requested written consent to the entire executive council, approval of the written consent by more than a majority of the current members of the executive council, and notice to the entire executive council of the action taken within ten days after the requisite written consents approving the action are received. Votes by written consent may be received by facsimile or electronic mail so long as the executive council member voting on the matter can be identified.

(c) Notice of the organizational meeting and of each regular in-person meeting of the executive council must be delivered to members of the executive council at least 30 days before that meeting. Notices of special meetings of the executive council, including meetings to be held by telephone conference call, must be delivered to members of the executive council at least 5 business days prior to each special meeting. The date, time, location, and manner of executive council meetings will be determined by the chair.

(d) Members of the executive council may grant proxies to other members of the executive council to vote on matters to be considered by the executive council, and these proxies may be voted by the holder designated. The executive council may establish procedures for granting proxies and for the authentication of proxies. In all circumstances, proxies must be in writing and, if voted, the minutes of the meeting at which these proxies were voted must reflect a record of votes by proxy.

(e) Except as otherwise set forth in these bylaws, members of the executive council in attendance at a meeting of the executive council, whether in person or by written proxy, constitutes a quorum for any regular or special meeting and the affirmative vote of the majority of those present at the meeting in person or by written proxy constitutes the act of the executive council and is binding. Notwithstanding the foregoing, actions by the executive council on (i) affirmative section legislative, administrative, or judicial positions (including amicus positions), (ii) changes in the designation of section committees and task forces, and (iii) amendments to these bylaws, may only be taken (x) at properly called meetings of the executive council at which more than a majority of the current members of the executive council are present or (y) by a written consent of executive council members meeting the requirements of subsection (b) above.

Section 6.3. Committees and Task Forces. The chair of each section committee and task force calls meetings and determines the time, place and notice for each meeting of that committee or task force.

Section 6.4. Conduct of Meetings. Except where it conflicts with these bylaws, the chair may invoke the provisions of the current edition of "*Robert's Rules of Order"* to govern the conduct of a meeting or portion of a meeting of the executive council. Decisions of the section's parliamentarian on these matters is final.

ARTICLE VII
AMENDMENTS

These bylaws may be amended at any meeting of the executive council by the affirmative vote of more than a majority of the current members of the executive council; *provided, however*, that no amendment to these bylaws becomes effective until approved by The Florida Bar. Before they are approved, proposed changes to these bylaws must be considered at not less than 2 meetings of the executive council and must be published on the section's website for comment by section members at least 30 days before they are considered for formal approval by the executive council. Notice that proposed amendments to these bylaws will be considered for formal approval at an upcoming meeting of the executive council must be included in the notice of the meeting.

ARTICLE VIII
MISCELLANEOUS

Section 8.1. Action of The Florida Bar. No action of the section may be represented or will be construed as the action of The Florida Bar unless the action is approved by Board of Governors of The Florida Bar. All recommendations of the section to The Florida Bar, any branch of the judiciary or to any other group or body to which the recommendations may be directed must first be approved by the executive council and if made to other than The Florida Bar, must have the prior approval of The Florida Bar or comply with bar policies and procedures permitting the action without the bar's approval.

Section 8.2. Financial Obligations. Before payment, all section financial obligations must first be approved in the manner specified by the executive council.

Section 8.3. Compensation and Expenses. No salary or other compensation may be paid to any member of the section for performance of services to the section, but the executive committee may authorize the payment of reasonable out-of-pocket expenses resulting from performances of these services. The executive council may also authorize payment of travel and other expenses of faculty and judicial liaisons in connection with executive council meetings if these expenses are in accordance with the policies established by the executive council with respect to reimbursements.

Section 8.4. Conformance with Policies of The Florida Bar. The section may take no actions contrary to the policies of The Florida Bar.

Required approvals:

Approved by Executive Council:	January 29, 2016
Approved by PEC:	July 28, 2016
Approved by Rules Committee:	August 16, 2016
Approved by Board of Governors:	September 30, 2016

Schedule G

Proposed Second Amended and Restated Bylaws

SECOND AMENDED AND RESTATED BYLAWS OF THE BUSINESS LAW SECTION

ARTICLE I
NAME AND PURPOSES

Section 1.1. Name. The name of the section is "Business Law Section" of "The Florida Bar" (the "section").

Section 1.2. Purposes. The purposes of the section are to:

(a) provide an organization within The Florida Bar for discussion and interaction among section members who deal with issues of "business law" (including, without limitation, the substantive areas of corporations, limited liability companies and other alternative entities, securities, bankruptcy, banking, commercial finance, franchise, antitrust, intellectual property and computer law), and involving both business transactions and business disputes;

(b) provide a forum for discussion and exchange of ideas leading to the improvement of business laws, and to propose and comment on legislation and regulations about substantive areas of business law;

(c) provide a forum for collaborative learning and interaction among those who are involved in substantive business law issues, including transactional lawyers and litigators, and by and among practicing lawyers and members of the state and federal judiciary;

(d) provide education and professional development for members of the section in substantive areas of business law (including practice management and technology used in connection with business law) practiced by the members of the section, and to enhance business law education generally;

(e) enhance the administration of justice and help facilitate the improvement of the legal profession;

(f) enhance the sense of professionalism within, the satisfaction of, and the ethical and competent practice of law by, members of the section;

(g) inculcate in section members and promote, support and take actions consistent with the principles of duty and service to the public, including the importance of providing pro bono services in the practice of business law and in the section's activities; and

(h) inculcate in section members and promote, support and take actions consistent with the principles of ~~diversity, inclusion,~~mentorship and fellowship in the practice of business law and in the section's activities.

ARTICLE II
MEMBERSHIP

Section 2.1. Regular Member Eligibility. Any member in good standing, and any "law faculty affiliate," as defined in Chapter 1 of the Rules Regulating The Florida Bar, interested in the purposes of the section is eligible to be a regular member of the section, on application and payment of the section's annual dues. Any regular member who ceases to be a member in good standing of The Florida Bar (or ceases to have "law faculty affiliate" status) no longer is a regular member of the section. Law professors who qualify as "law faculty affiliates" are regular members of the section so long as they qualify. Reinstatement as a member of The Florida Bar in good standing automatically reinstates the person as a regular section member, provided that the member is current in the payment of section dues.

Section 2.2. Affiliate Membership Eligibility.

(a) The section's executive council may enroll, on request and payment of the prescribed dues, as affiliate members of the section, other persons who have an interest in and intent to make a contribution to the section's activities as defined in these bylaws. The purpose of affiliate membership is to foster and promote the development and communication of information concerning business law, but not to encourage the unlicensed practice of law. The number of affiliate members may not exceed 1/3 of the section's membership. An affiliate member is an affiliate member of this section only. Affiliate membership affords the affiliate member no status as or any of the rights of a member of The Florida Bar.

(b) To qualify as an affiliate member of the section, a person must either:

1) hold a Juris Doctor degree from an accredited law school, be employed full time as a professor of law at an accredited law school, and not qualify as a "law faculty affiliate" under Chapter 1 of the Rules Regulating The Florida Bar;

2) be an "authorized house counsel" pursuant to Chapter 17 of the Rules Regulating The Florida Bar;

3) be admitted to practice law and in good standing under the laws of any state or territory of the United States or the District of Columbia or under the laws of any foreign nation;

4) be a student currently enrolled in an accredited law school;

5) be a graduate of an accredited law school who has applied for, but not yet been admitted to, membership in The Florida Bar;

6) be a foreign legal consultant as defined in Chapter 16 of the Rules Regulating The Florida Bar or an arbitrator (whether or not a lawyer) who is qualified to participate in international arbitration proceedings that are permitted to take place in Florida under Rule 1-3.11 of the Rules Regulating The Florida Bar; or

7) be a paralegal registered as a Florida Registered Paralegal by The Florida Bar or be a "legal assistant" who meets the qualifications set forth in subsection (d) below.

(c) Affiliate members of the section may not vote or hold a section office, participate in the selection of officers or members of the executive council, or vote on the adoption, change, or revision of any provision of these bylaws.

(d) For purposes of these bylaws, a "legal assistant" is a person who assists a member of The Florida Bar in the delivery of legal services in the area of business law and who has satisfied one of the following minimum requirements:

1) successful completion of the certified legal assistant (CLA) examination of the National Association of Legal Assistants, Inc.;

2) graduation from an ABA-approved program of study for legal assistants or graduation from any accredited law school;

3) graduation from a course of study for legal assistants which is institutionally accredited but not ABA-approved and which requires not less than the equivalent of 60 semester hours of classroom study;

4) graduation from a course of study for legal assistants, other than those set forth in subsections (2) and (3), above, plus not less than 1 year of in-house training as a legal assistant in a law firm or legal office under the supervision of 1 or more members of The Florida Bar in good standing;

5) a bachelor degree in any field, plus not less than 1 year of in-house training as a legal assistant in a law firm or legal office under the supervision of 1 or more members of The Florida Bar in good standing; or

6) five years of in-house training as a legal assistant in a law firm or legal office under the supervision of 1 or more members of The Florida Bar in good standing.

Section 2.3. Honorary Section Membership. The executive council may make any person whom the executive council finds to have made an outstanding contribution to the section or finds to have made an outstanding contribution in the field of business law an honorary member of the section. An honorary section member designated by the executive council may participate in section activities and attend meetings of section committees and the executive council, but may not hold any office or position in the section, may not vote and is not required to pay dues. Honorary membership affords the honorary member no status as or any of the rights of a member of The Florida Bar.

Section 2.4. Administrative Year. The administrative year of the section runs concurrently with the administrative year of The Florida Bar.

Section 2.5. Annual Dues. The annual dues for regular members and for affiliate members of the section are the amounts fixed from time to time by the executive council and approved by the Board of Governors of The Florida Bar. There is no proration of annual dues. On becoming a regular or affiliate member of the section, dues will be payable in advance for each membership year. Any member whose annual section dues are not paid by the date on which Florida bar membership dues are owed becomes delinquent and ceases to be a member of the section.

ARTICLE III
OFFICERS AND EXECUTIVE COMMITTEE

Section 3.1. Selection of Officers. The officers of the section are a chair, a chair-elect, a secretary, and a treasurer. The chair-elect becomes chair in the manner provided by these bylaws. The chair-elect, the secretary, and the treasurer are elected at the annual meeting of the section each year in the manner provided in these bylaws. In January of each year, the chair will appoint a nominating committee consisting of not fewer than 3 members of the long range planning committee. The nominating committee will nominate active regular members of the section for the offices of chair-elect, secretary, and treasurer. Other nominations may be made by any 10 regular members in good standing of the section who file a petition with the secretary, at least 30 days prior to the annual meeting, setting forth the name(s) of the nominees, If a petition is received, the secretary will notify the other officers of the section of the nominations. At the election held at the annual meeting of the section, nominations for the offices of chair-elect, secretary, and treasurer will not be permitted unless the nominations have been made in the manner provided in this section.

Section 3.2. Duties of Officers.

(a) *Chair.* The chair presides at all meetings of the section, the executive committee and the executive council. The chair appoints (subject to the approval and concurrence of the executive committee) the chairs and vice-chairs of all section committees and task forces, prepares all reports to be submitted to The Florida Bar, and performs other duties as customarily pertain to the office of section chair. While serving as chair, the chair is an ex-officio member of all section committees and task forces.

(b) *Chair-elect.* The chair-elect becomes chair in the event of the death, resignation, or failure of the chair to serve for any reason. In the case of temporary disability or absence of the chair, the chair-elect serves as acting chair only for the duration of the chair's disability or absence. The chair-elect is responsible for duties as the chair designates. While serving as chair-elect, the chair-elect is an ex-officio member of all section committees and task forces.

(c) *Secretary.* The secretary keeps the permanent files and records of the section, including minutes of meetings of the section and of the executive council, unless these services are performed by staff members of The Florida Bar. The secretary also has oversight responsibility for section committees that are responsible for the section’s communications (such as the section committees responsible for the section’s website and publications). The secretary becomes chair in the event of the death, resignation, or failure to serve of the chair, the chair-elect, and the treasurer. In the case of temporary disability or absence of the chair, the chair-elect, and the treasurer, the secretary serves as acting chair only for the duration of the disability or absence of the chair, the chair-elect, or the treasurer.

(d) *Treasurer.* The treasurer accounts for all funds of the section, approves all section disbursements and prepares all section financial statements, unless these services are performed by staff members of The Florida Bar. The treasurer also has oversight responsibility for section committees that are responsible for the section's budgeting and financial activities (such as the section's budget committee and the committee responsible for planning the section's annual retreat). The treasurer becomes chair in the event of the death, resignation or failure to serve of the chair and the chair-elect. In the case of temporary disability or absence of the chair and the chair-elect, the treasurer serves as acting chair only for the duration of the disability or absence of the chair and the chair-elect.

Section 3.3. Term of Office.

(a) *Chair.* The chair's term of office begins immediately after the conclusion of the annual convention of The Florida Bar and ends at the conclusion of the next annual convention of The Florida Bar, at which time the chair is automatically succeeded as chair by the chair-elect.

(b) *Chair-elect.* The term of office of the chair-elect runs concurrently with that of the chair. At the end of the chair's term as chair, the chair-elect automatically becomes chair.

(c) *Secretary and Treasurer.* The term of office of the secretary and the term of office of the treasurer run concurrently with that of the chair and the chair-elect.

Section 3.4. Vacancies. The chair (with the approval and concurrence of the executive committee) fills all vacancies except vacancies in the offices of chair, chair-elect, secretary, and treasurer, which will be filled in the manner provided by these bylaws. In the event that the offices of chair, chair-elect, secretary, or treasurer become vacant, the executive committee will propose members of the section to fill the unexpired term, subject to approval by the section's executive council, and, at the next annual meeting of the section, vacancies will be filled in the manner provided for in these bylaws.

Section 3.5. Executive Committee. The executive committee of the section consists of the section's officers and the chair of the section's long range planning committee. The immediate past chair of the section is an ex-officio non-voting member of the executive committee. The executive committee is the planning agency for the executive council and convenes periodically. The executive committee has the full power and authority to exercise the function of the executive council when and to the extent authorized by the executive council with respect to a specific matter, and with respect to any other matter which the executive committee reasonably determines requires action between meetings of the executive council; *provided, however,* that only the executive council may approve legislative, administrative, and judicial positions of the section. The executive committee may not take any action that conflicts with an approved position of the executive council. The executive committee also must:

(a) approve and concur with the selections of the chair-elect of the chairs and vice chairs of the section's committees and task forces and the section's liaisons for the upcoming administrative year; and

(b) make recommendations for consideration by the section's long range planning committee of projects to be undertaken by the long range planning committee.

Section 3.6. Reports of the Executive Committee to the Executive Council. Any action taken on behalf of the executive council between meetings must be reported to the executive council no later than the executive council's next regular meeting.

Section 3.7. Actions of Executive Committee. All actions that require the advice and consent of the executive committee require the affirmative vote of a majority of the members of the executive committee.

ARTICLE IV
EXECUTIVE COUNCIL

Section 4.1. Governing Body. The executive council is the section's governing body. The chair of the section is the chair of the executive council and the secretary of the section is the secretary of the executive council. The executive council conducts its business at regular and special meetings, as provided for in these bylaws, and between meetings, by correspondence, telephone, facsimile, electronic mail, video conferencing, or other electronic means to the extent authorized in these bylaws.

Section 4.2. Membership. The membership of the executive council consists of:

(a) the members of the executive committee;

(b) the chairs (including any judicial chair) and 1 vice-chair of each substantive law committee of the section;

(c) the chairs (including any judicial chair) and 1 vice-chair of each standing committee of the section;

(d) all members of the long-range planning committee;

(e) the chairs and 1 vice chair of any task force of the section;

(f) up to 5 liaisons between the section and other organizations who are selected in the manner set forth in Section 5.5 below;

(g) the liaison to the section from the Board of Governors of The Florida Bar; and

(h) up to 5 at-large members designated by the chair-elect to serve for the upcoming administrative year.

Section 4.3. Term of Office. Each member of the executive council serves a term of one year. Members of the executive council may be reappointed for 1 or more additional one-year terms.

Section 4.4. Vacancies. If at any time during the term of office of a member of the executive council that office becomes permanently vacant by reason of death, resignation, ineligibility, or other reason, the chair (with the approval and concurrence of the executive committee) will appoint a successor to serve for the balance of the term.

ARTICLE V
COMMITTEES

Section 5.1. Committees and Task Forces. The section may establish 1 or more substantive law committees, standing committees, and task forces (including task forces officially designated as subcommittees of a particular section committee but organized for a significant section project). The following standing committees are permanent committees of the section: long range planning, budget, legislation, and ~~diversity/inclusion.~~mentorship/fellowship. Committees and task forces may be established from time to time by the executive council, by the affirmative vote of more than a majority of the members of the executive council in attendance at a regular meeting of the executive council at which more than a majority of the current members of the executive council are in attendance. The section will maintain a list of all committees and task forces of the section that have been established, including a brief description of the role played by each committee and task force. The list of section committees and task forces will be updated at least annually and will be made available for viewing on the section's website.

Section 5.2. Functions and Responsibilities of Committees and Task Forces. Substantive and standing committees and task forces of the section have responsibility for the subject matter indicated by their respective names and/or for the tasks described in the resolutions of the executive council approving the organization of the committee or task force. Standing committees oversee section activities that support the section's substantive law committees and task forces, and the section's purposes.

Section 5.3. Organization of Committees and Task Forces. The chairs and vice-chairs of each committee and task force of the section are appointed by the chair-elect of the section (with the approval and concurrence of the executive committee) for the upcoming administrative year. Chairs and vice chairs of section committees and task forces may be reappointed for additional one year terms.

Section 5.4. Change in Committee Structure. Subject to the procedures set forth in and the requisite vote required by Section 5.1 above, the executive council may abolish any committee or task force of the section, merge any 2 or more committees or task forces of the section or create any new committee or task force of the section without amendment to these bylaws. Proposed changes of committee and task force structure will be included in the notice of any meeting of the executive council at which changes are to be considered.

Section 5.5. Liaisons. Annually, the chair-elect of the section (with the approval and concurrence of the executive committee), may designate 1 or more persons to act as liaisons for the upcoming administrative year. Liaisons may be appointed with any section, committee, subcommittee, or other entity of the American Bar Association, The Florida Bar or any other legal organization (i.e. bar organizations), with any or all of the public and private law schools in the state of Florida (i.e., faculty liaisons), or with any or all of the federal or state courts of Florida (i.e., judicial liaisons). The executive council may abolish any designation or make new designations without amendment to these bylaws. The section will maintain a list of all liaisons and the organizations to which each of them liaise. The list of liaisons will be updated at least annually and will be made available for viewing on the section's website.

Section 5.6. Legislation Committee. The legislation committee oversees the section's legislative activities. The legislation committee is composed of at least 3 regular members of the section appointed by the chair-elect of the section (with the approval and concurrence of the executive committee) for the next administrative year. Additionally, a designated vice chair or representative from each substantive law committee of the section serves as a member of the legislation committee.

Section 5.7. ~~Diversity/Inclusion~~Mentorship/Fellowship Committee. The ~~diversity/inclusion~~mentorship/fellowship committee, or a committee with an alternative name whose focus is comparable, is responsible for promoting, supporting and taking actions consistent with enhancing mentorship and the principles of ~~diversity, inclusion,~~mentorship and fellowship in the practice of law and in the section's activities. The ~~diversity/inclusion~~mentorship/fellowship committee is composed of at least 3 regular members of the section appointed by the chair-elect of the section (with the approval and concurrence of the executive committee) for the next administrative year. Additionally, a designated vice chair or representative from each substantive law committee of the section serves as a member of the ~~diversity/inclusion~~mentorship/fellowship committee.

Section 5.8. Long Range Planning Committee. The long range planning committee performs tasks requested by the executive committee and provides advice to the executive committee and the executive council on those matters that are requested from time to time. The membership of the long range planning committee consists of former chairs of the section who wish to serve on the long range planning committee and other members of the section with more than 10 years of distinguished service on the executive council who are nominated for appointment to the long range planning committee by the chair-elect (with the approval and concurrence of the executive committee) and are approved for service on the long range planning committee by both the executive council and a majority of the current members of the long range planning committee. Annually, the chair-elect of the section (with the approval and concurrence of the executive committee) will appoint, from among the current members of the long range planning committee, the chair of the long range planning committee and a parliamentarian of the section to serve for the next administrative year.

Section 5.9. Budget Committee. The budget committee is responsible for overseeing preparation and implementation of the section's budget and for providing oversight of the section's financial performance. The treasurer chairs the budget committee and its members include the immediate past chair of the section, a member of the long range planning committee selected by the long range planning committee, and 2 other executive council members appointed by the chair-elect of the section (with the approval and concurrence of the executive committee) for the next administrative year. The secretary serves as an *ex-officio* member of the Budget Committee.

ARTICLE VI
MEETINGS

Section 6.1. The Section. The section's annual meeting will be held at the same time and place as the last meeting of the executive council immediately preceding the completion of the annual convention of The Florida Bar. Notice to all section members as to time and place of the annual meeting must be given at least 30 days in advance of the meeting. The members of the section present in person at the annual meeting constitute a quorum, and a majority vote of those section members present is binding.

Section 6.2. Executive Council.

(a) The executive council will hold its organizational meeting immediately after the annual meeting of the section required by Section 6.1 above. The executive council will also hold 1 or more additional meetings between organizational meetings of the executive council. Meetings may be held in person, via video conference, or by telephone conference call. It is expected that at least two additional in-person meetings of the executive council will be held between organizational meetings. The executive council may only meet via video conference or telephonically if all members of the executive council in attendance at the meeting are able to hear one another at that video conference or telephonic meeting.

(b) Between meetings, the executive council may conduct business by correspondence, telephone, facsimile, electronic mail, video conference, or other electronic means, to the extent authorized by the executive committee. Any action of the executive council taken by written consent requires notice of the requested written consent to the entire executive council, approval of the written consent by more than a majority of the current members of the executive council, and notice to the entire executive council of the action taken within ten days after the requisite written consents approving the action are received. Votes by written consent may be received by facsimile or electronic mail so long as the executive council member voting on the matter can be identified.

(c) Notice of the organizational meeting and of each regular in-person meeting of the executive council must be delivered to members of the executive council at least 30 days before that meeting. Notices of special meetings of the executive council, including meetings to be held by video conference or telephone conference call, must be delivered to members of the executive council at least 5 business days prior to each special meeting. The date, time, location, and manner of executive council meetings will be determined by the chair.

(d) Members of the executive council may grant proxies to other members of the executive council to vote on matters to be considered by the executive council, and these proxies may be voted by the holder designated. The executive council may establish procedures for granting proxies and for the authentication of proxies. In all circumstances, proxies must be in writing and, if voted, the minutes of the meeting at which these proxies were voted must reflect a record of votes by proxy.

(e) Except as otherwise set forth in these bylaws, members of the executive council in attendance at a meeting of the executive council, whether in person or by written proxy, constitutes a quorum for any regular or special meeting and the affirmative vote of the majority of those present at the meeting in person or by written proxy constitutes the act of the executive council and is binding. Notwithstanding the foregoing, actions by the executive council on (i) affirmative section legislative, administrative, or judicial positions (including amicus positions), (ii) changes in the designation of section committees and task forces, and (iii) amendments to these bylaws, may only be taken (x) at properly called meetings of the executive council at which more than a majority of the current members of the executive council are present or (y) by a written consent of executive council members meeting the requirements of subsection (b) above.

Section 6.3. Committees and Task Forces. The chair of each section committee and task force calls meetings and determines the time, place and notice for each meeting of that committee or task force.

Section 6.4. Conduct of Meetings. Except where it conflicts with these bylaws, the chair may invoke the provisions of the current edition of "*Robert's Rules of Order"* to govern the conduct of a meeting or portion of a meeting of the executive council. Decisions of the section's parliamentarian on these matters is final.

ARTICLE VII
AMENDMENTS

These bylaws may be amended at any meeting of the executive council by the affirmative vote of more than a majority of the current members of the executive council; *provided, however*, that no amendment to these bylaws becomes effective until approved by The Florida Bar. Before they are approved, proposed changes to these bylaws must be considered at not less than 2 meetings of the executive council and must be published on the section's website for comment by section members at least 30 days before they are considered for formal approval by the executive council. Notice that proposed amendments to these bylaws will be considered for formal approval at an upcoming meeting of the executive council must be included in the notice of the meeting.

ARTICLE VIII
MISCELLANEOUS

Section 8.1. Action of The Florida Bar. No action of the section may be represented or will be construed as the action of The Florida Bar unless the action is approved by Board of Governors of The Florida Bar. All recommendations of the section to The Florida Bar, any branch of the judiciary or to any other group or body to which the recommendations may be directed must first be approved by the executive council and if made to other than The Florida Bar, must have the prior approval of The Florida Bar or comply with bar policies and procedures permitting the action without the bar's approval.

Section 8.2. Financial Obligations. Before payment, all section financial obligations must first be approved in the manner specified by the executive council.

Section 8.3. Compensation and Expenses. No salary or other compensation may be paid to any member of the section for performance of services to the section, but the executive committee may authorize the payment of reasonable out-of-pocket expenses resulting from performances of these services. The executive council may also authorize payment of travel and other expenses of faculty and judicial liaisons in connection with executive council meetings if these expenses are in accordance with the policies established by the executive council with respect to reimbursements. To the extent the executive council maintains a written reimbursement policy, that written reimbursement policy shall be made available on the section's webpage.

Section 8.4. Conformance with Policies of The Florida Bar. The section may take no actions contrary to the policies of The Florida Bar.

Required approvals:
Approved by Executive Council:
~~January 29, 2016~~ Approved by PEC: ~~July 28, 2016~~
Approved by Rules Committee:
~~August 16, 2016~~ Approved by Board of Governors: ~~September 30, 2016~~