



Civil Justice Subcommittee

Wednesday, January 25, 2012

8:00 AM

404 HOB

Action Packet

**Dean Cannon
Speaker**

**Eric Eisnaugle
Chair**

COMMITTEE MEETING REPORT

Civil Justice Subcommittee

1/25/2012 8:00:00AM

Location: 404 HOB

Summary:

Civil Justice Subcommittee

Wednesday January 25, 2012 08:00 am

CS/HB 119	Favorable	Yeas: 10	Nays: 5
Amendment 463619	Withdrawn		
Amendment 647779	Withdrawn		
HB 897	Favorable With Committee Substitute	Yeas: 12	Nays: 0
Amendment 144115	Adopted Without Objection		
PCS for HB 213	Favorable With Amendments	Yeas: 13	Nays: 1
Amendment PCS for HB 213 a1	Adopted Without Objection		
PCS for HB 935	Favorable	Yeas: 11	Nays: 0

Committee meeting was reported out: Wednesday, January 25, 2012 12:59:13PM

COMMITTEE MEETING REPORT

Civil Justice Subcommittee

1/25/2012 8:00:00AM

Location: 404 HOB

Attendance:

	<i>Present</i>	<i>Absent</i>	<i>Excused</i>
Eric Eisnaugle (Chair)	X		
Joseph Abruzzo	X		
Mack Bernard	X		
Matt Gaetz	X		
Bill Hager	X		
Shawn Harrison	X		
Martin Kiar	X		
Larry Metz	X		
Jose Oliva	X		
Kathleen Passidomo	X		
Scott Plakon	X		
Darren Soto	X		
Kelli Stargel	X		
Richard Steinberg	X		
Michael Weinstein	X		
Totals:	15	0	0

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COMMITTEE MEETING REPORT

Civil Justice Subcommittee

1/25/2012 8:00:00AM

Location: 404 HOB

CS/HB 119 : Motor Vehicle Insurance

Favorable

	Yea	Nay	No Vote	Absentee Yea	Absentee Nay
Joseph Abruzzo		X			
Mack Bernard		X			
Matt Gaetz	X				
Bill Hager	X				
Shawn Harrison	X				
Martin Kiar		X			
Larry Metz	X				
Jose Oliva	X				
Kathleen Passidomo	X				
Scott Plakon	X				
Darren Soto		X			
Kelli Stargel	X				
Richard Steinberg		X			
Michael Weinstein	X				
Eric Eisnaugle (Chair)	X				
Total Yeas: 10		Total Nays: 5			

CS/HB 119 Amendments

Amendment 463619

Withdrawn

Amendment 647779

Withdrawn

Appearances:

CS/HB 119

Stevens, Monte (Lobbyist) (State Employee) - Proponent
Director of Government Affairs, Office of Insurance Regulation
200 E Gaines St
Tallahassee FL
Phone: 850-413-2571

CS/HB 119

Lamoureux, Jason (General Public) - Opponent
611 S Kings Avenue
Brandon FL 33511
Phone: 813-655-9069

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COMMITTEE MEETING REPORT

Civil Justice Subcommittee

1/25/2012 8:00:00AM

Location: 404 HOB

CS/HB 119 : Motor Vehicle Insurance (continued)

Appearances: (continued)

CS/HB 119

Weiss, Kevin (General Public) - Opponent

698 N Maitland Avenue

Maitland FL 32751

Phone: 407-509-1539

CS/HB 119

Donovan, Christine (General Public) - Opponent

1008 Strathmore Drive

Orlando FL

Phone: 407-421-3174

CS/HB 119

Ulrich, Kyle (Lobbyist) - Waive In Support

Florida Association of Insurance Agents

3159 Shamrock S

Tallahassee FL 32309

Phone: (850)893-4155

CS/HB 119

Morrison, Jeff (General Public) - Opponent

6016 Manatee Avenue

Bradenton FL 34209

Phone: 941-739-2225

CS/HB 119

Smith, DC, Chip (General Public) - Opponent

555 Avenue L NW

Winter Haven FL 33881

Phone: 863-293-4249

CS/HB 119

Bradford, Rutledge (General Public) - Opponent

5210 S Orange Avenue

Orlando FL 32809

Phone: 407-926-8710

CS/HB 119

Fiorini, DC, Dennis (General Public) - Opponent

2619 Blairstone Rd

Tallahassee FL 32301

Phone: 850-656-2200

CS/HB 119

Lambert, Paul (Lobbyist) - Opponent

Florida Chiropractic Association, Inc

30 Remington Rd

Orlando FL 34748

Phone: (850)224-9393

Committee meeting was reported out: Wednesday, January 25, 2012 12:59:13PM

COMMITTEE MEETING REPORT

Civil Justice Subcommittee

1/25/2012 8:00:00AM

Location: 404 HOB

CS/HB 119 : Motor Vehicle Insurance (continued)

Appearances: (continued)

CS/HB 119

Brickman, Guy (General Public) - Proponent
State Farm Agent
16969 NW 67 Avenue
Miami FL 33015
Phone: 305-822-6921

CS/HB 119

Wilson, Jonathan (General Public) - Opponent
211 E Livingston Street
Orlando FL 32801
Phone: 407-420-1044

CS/HB 119

Cederberg, Mark (General Public) - Opponent
5210 S Orange Avenue
Orlando FL 32809
Phone: 407-926-8710

CS/HB 119

McMillan, Herbert (General Public) - Opponent
2065 Lake Drive
Winter Park FL 32789
Phone: 800-663-3114

CS/HB 119

Anthony-Smith, Coretta (General Public) - Opponent
1701 Park Center Drive
Orlando FL 32835
Phone: 407-299-8589

CS/HB 119

Eiffert, Crystal (General Public) - Opponent
122 E Colonial Drive, Suite 210
Orlando FL 32801
Phone: 407-244-1980

CS/HB 119

Barr, Chad (General Public) - Opponent
122 E Colonial Drive, Suite 210
Orlando FL 32810
Phone: 407-244-1980

CS/HB 119

Presser, Justin (General Public) - Opponent
1061 Charter Oak Lane
Altamonte Springs FL 32714
Phone: 321-356-7386

Committee meeting was reported out: Wednesday, January 25, 2012 12:59:13PM

COMMITTEE MEETING REPORT

Civil Justice Subcommittee

1/25/2012 8:00:00AM

Location: 404 HOB

CS/HB 119 : Motor Vehicle Insurance (continued)

Appearances: (continued)

CS/HB 119

Heath, Robert (General Public) - Opponent
423 N Baylor Street
Pensacola FL 32501
Phone: 850-466-3888

Reeves, Teye (Lobbyist) - Proponent
Florida Chamber of Commerce
136 S. Bronough Street
Tallahassee FL
Phone: 850-521-1235

CS/HB 119

Nuland, Christopher (Lobbyist) - Opponent
Florida Chapter American College of Physicians
1000 Riverside Ave #115
Jacksonville FL 32204
Phone: (904)355-1555

CS/HB 119

Kailes, MD, Steven (General Public) - Information Only
Florida College of Emergency Physicians
2001 Kingsley Avenue
Orange Park FL 32073
Phone: 904-276-8580

CS/HB 119

Mathews, Corey (General Public) - Waive In Support
CEO, Professional Insurance Agents of Florida
1390 Timberlane Rd
Tallahassee FL 32312
Phone: 850-893-8245

CS/HB 119

Newton, William (Lobbyist) - Opponent
Florida Consumer Action Network
3006 W Kennedy Blvd Ste B
Tampa FL 33609
Phone: (813)877-6712

CS/HB 119

Suarez-Resnick, Dulce (General Public) - Waive In Support
Legislative Chair, LAAIA
3911 SW 186 Avenue
Miramar FL 33029
Phone: 305-331-7316

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COMMITTEE MEETING REPORT

Civil Justice Subcommittee

1/25/2012 8:00:00AM

Location: 404 HOB

CS/HB 119 : Motor Vehicle Insurance (continued)

Appearances: (continued)

CS/HB 119

Gonzalez, Jose (Lobbyist) - Waive In Support
Associated Industries of Florida
PO Box 784
Tallahassee FL 32302
Phone: (850)224-7173

Collazo, Albert (General Public) - Proponent
Gear Up Florida Coalition

CS/HB 119

Foley, Chris (General Public) - Proponent
Fraud Alert Team, Gear Up Florida Coalition
Tampa FL

CS/Hb 119

Ligori, Christopher (General Public) - Opponent
Miller Orthopedic
117 S Willow Avenue
Tampa FL 33808
Phone: 813-223-2929

CS/HB 119

Copeland, Todd (General Public) - Opponent
Florida Justice Association
338 N Magnolia Avenue
Orlando FL 32801
Phone: 407-999-8995

CS/HB 119

Delegal, Mark (Lobbyist) - Opponent
State Farm Mutual Automobile Insurance Company
One State Farm Plaza
Bloomington IL 61710
Phone: (850)222-3533

CS/HB 119

Perotti, Michael (General Public) - Proponent
Major, Hillsborough County Sheriff's Office
2008 E. 8th Avenue
Tampa FL 32605
Phone: 813-242-5100

CS/HB 119

Large, William (Lobbyist) - Proponent
Florida Justice Reform Institute
210 S Monroe St
Tallahassee FL 32301-1824
Phone: (850)222-0170

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COMMITTEE MEETING REPORT

Civil Justice Subcommittee

1/25/2012 8:00:00AM

Location: 404 HOB

CS/HB 119 : Motor Vehicle Insurance (continued)

Appearances: (continued)

CS/HB 119

Brown, Donovan - Waive In Support

Property Casualty Insurers Association

Committee meeting was reported out: Wednesday, January 25, 2012 12:59:13PM

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 119 (2012)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

*Withdrawn
1-25-12*

1 Committee/Subcommittee hearing bill: Civil Justice Subcommittee
2 Representative Gaetz offered the following:

3
4
5
6

Amendment

Remove lines 1145-1203

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 119 (2012)

Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

*Withdrawn
1.25.12*

1 Committee/Subcommittee hearing bill: Civil Justice Subcommittee
2 Representative Gaetz offered the following:

3
4
5
6

Amendment

Remove lines 240-276

Third District Court of Appeal

State of Florida, July Term, A.D. 2011

Opinion filed October 12, 2011.
Not final until disposition of timely filed motion for rehearing.

No. 3D09-646
Lower Tribunal No. 07-15419

Jose De Leon,
Appellant,

vs.

Great American Assurance Company,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Jennifer D. Bailey, Judge.

Mark J. Feldman, for appellant.

Hinshaw & Culbertson, Maureen G. Percy and Luis A. Diz, for appellee.

Before SHEPHERD and SUAREZ, JJ., and SCHWARTZ, Senior Judge.

SCHWARTZ, Senior Judge.

This is an appeal from an order denying attorney fees under section 627.428 Florida Statutes (2008), in an action for property loss benefits under an automobile insurance policy. The ruling, which was entered even though the insurer settled the case for the full amount claimed, was based on the notion that the action had been premature and unnecessary and was thus not effective in securing the favorable result. See *JPG Enterprises, Inc. v. Viterito*, 841 So. 2d 528, 530 (Fla. 4th DCA 2003) (“A prevailing party is entitled to recover only fees which are ‘reasonably expended.’ *Fla. Patient's Comp. Fund v. Rowe*, 472 So.2d 1145, 1151 (Fla. 1985).”); *State Farm Florida Ins. Co. v. Lorenzo*, 969 So. 2d 393, 398 (Fla. 5th DCA 2007) (“Courts generally do not apply the confession-of-judgment doctrine, which supports awarding attorney fees under statute governing award of fees to insureds in insurance coverage actions, where the insureds were not forced to sue to receive benefits; applying the doctrine would encourage unnecessary litigation by rewarding a race to the courthouse for attorney fees even where the insurer was complying with its obligations under the policy.”); *Garcia v. Lumbermens Mut. Ins. Co.*, 246 So. 2d 574, 574 (Fla. 3d DCA 1971) (“[I]nterest and attorneys' fees will not be awarded where there is no necessity to institute suit to confirm or collect an arbitration award under an uninsured motorist provision in an automobile liability policy.”). This conclusion was in turn based on the finding that the insured had improperly refused to submit to and complete an appropriate

and contractually required pre-suit examination under oath. See Lorenzo, 969 So. 2d 393 (finding fees improper where insured sued without complying with policy conditions). We disagree with the result below and the premise upon which it was based and therefore reverse.¹

The controversy began when someone stole a truck owned by De Leon and insured by Great American. When it was recovered, it had been damaged and, most significantly, was missing nine large, valuable tires. As shown by Great American's payment of the entire claim, there was never a legitimate defense under the personal property section of his policy. Unfortunately, however, the carrier apparently decided to use the usual policy provision requiring a sworn statement as a license to make unwarranted and intrusive inquiries into the personal life of any insured who has the temerity to make a claim against it. At the statement, where De Leon appeared without counsel, Great American's lawyer, Luis A. Diz, did not even get to the truck and the tires. Instead, he insisted on probing into the details of, among other things, a prior, totally unrelated criminal conviction,² and the person with whom the claimant was then living.³

¹ In happy contrast to such cases as *Corey v. Corey*, 29 So. 3d 315, 321 (Fla. 3d DCA 2009) and cases cited at n.4 (Schwartz, J. dissenting), in which the tone of the author's dissenting opinions were caused by their having been originally prepared for the court, this one was originally a dissent which, unusually enough, persuaded the previous majority.

² The record shows that the following, which is quoted as a never-to-be-emulated

model of its kind, occurred:

Q So from 1994 to 2003, you lived in Homestead?

A No. From 1994 to 2000 -- I don't remember when I went to Kentucky and I was in Kentucky until 2003.

Q How long were you in Kentucky, more or less?

A From 1995 until 2003.

Q Okay. Maybe I'm a little confused. The way I understood your testimony was that you lived -- you've lived at your current address for approximately three years, four years. You started living there in 2003; is that correct?

A From 2003 until now.

Q Prior to that you lived in Kentucky?

A I lived in Kentucky.

Q From 1995 to 2003 more or less?

A Correct.

Q And that's -- you were continually a resident of Kentucky during those eight years?

A Correct.

Q Do you remember the address in Kentucky you resided?

A I don't remember the address.

Q Do you remember the city?

A I was in Lexington and Manchester.

Q Any other cities?

A No.

Q Who did you live with when you resided in Kentucky?

A With Barbara, the mother of my son.

Q Just you and Barbara?

A Yes.

Q You mentioned Homestead. Did you have a house in Homestead?

A Yes.

Q When was that?

A In 1994.

Q How long did you live at the house in Homestead?

A. One year

Q So you had it from 1994 to 1995 more or less?

A Correct.

Q Do you remember where you lived before that?

A In the southwest. In Shenandoah.

Q How long did you live in Shenandoah?

A In 1989 until 1994. '94 that I bought in Homestead.

Q Okay. You mentioned Barbara and the fact that she resided with you in Kentucky. Did anybody else live with you while you were in Kentucky either in Manchester or Lexington?

A Yes. There were more than 2,000 people in the prison. I lived in a facility.

Q What's the name of the facility?

A Federal Correction. Lexington Federal Correction or something like that.

Q You were serving time for a Federal offense?

A Correct.

Q Were you convicted of a crime?

A Correct.

Q What crime?

A Fraud. Cellular phone fraud. Conspiracy for a cellular phone thing, nothing to do, nothing that I did. You see what I'm telling you? What does that have to do with what has to be done. Absolutely nothing.

....

Q What was the facility called, the one that you were residing in in Kentucky?

A I don't remember. I told you I don't know. Lexington, Kentucky, Lexington Medical Center or something like that. Something like that.

Q When you were convicted of the cellular fraud, did you stand trial?

A Correct.

Q Where was the courthouse located, do you remember?

A Downtown.

Q Lexington?

A Miami.

Q You stood trial in Miami?

A Miami.

Q Did you have a lawyer?

A Correct.

Q What's the lawyer's name?

A Juan Gonzalez.

Q Do you know if Mr. Gonzalez is still practicing law in the State of Florida?

A I don't know. I have no idea.

Q When was the last time you spoke to Mr. Gonzalez?

A '94, '95, something like that.

Q Do you remember the specific allegations that were made against you when you stood trial for cellular fraud?

A That was complicated. Because the police came into my house looking for drugs, you understand? And that is something I would not like to talk about it. They came into my house by mistake looking for drugs and when they knocked on the door they even cut my wife, Barbara's, forehead and then they left and they didn't get anything. And they saw that I have never -- I don't have anything to do -- I've never had anything to do with drugs. I've not used drugs, I have not been a drug addict or anything.

So -- but they had some recordings but they could prove there was a telephone and that was all. So they called the Secret Service and those are the ones that came. But look, we go back to the same. Look where we are and we have not talked anything about what I'm here for.

Q What department came to your home?

A The police.

Q Was it Miami-Dade?

A I don't know. I didn't ask them. They were tons of them. You know, if it's a Federal case, you know, the Miami place is not Federal. It's Secret Service, U.S. Customs, and then they called the Secret Service of the United States.

Q Sir, the reason I'm asking you these questions is in case I want to get the records regarding an arrest I need to know specifically where to go.

A The public records. You're an attorney, you know where they are. I know where to go look for a book.

Q Do you have any copies of any documents?

A Yes. I have copy of everything but I cannot give you anything because I have them to defend myself because I was in jail for eight years. And that I'm making a claim and I won my

case and I have everything. And I have everything, as you can see here, to defend me. But I can't. What I wanted is finish this now. If you're not going to do it, then okay. I'm going to look for an attorney to make a claim on this and I don't have any problem.

Q What do you mean by you won the case?

A That I won the case.

Q What case?

A The case against the government when they took me into jail.

Q Did you file a civil suit against the government?

A I'm trying to do a civil lawsuit. I reached the Supreme Court.

Q Have you engaged an attorney in that regard?

A No. I don't have him yet.

Q Would you have any objection if, in the course of our investigation, we request that you sign an authorization directed to Attorney Gonzalez for all records regarding the fraud case, would you be inclined to sign that authorization?

A Not at all.

Q No objection?

A I don't know where he is. I don't know about him.

Q My question is not if you know where the attorney's at. I can get that information.

A My answer is no.

Q You have no objection?

A No. My answer is no.

³ This passage was as follows:

Q Okay. Is Barbara your wife?

A I refuse to respond.

Q Does Barbara currently reside with you?

A No.

Q Do you have her current address?

A No.

Q Who do you live with at the current address?

A With my wife.

Q What's your wife's name?

A Barbara Castellan.

Q Is that the Barbara you've been referring to during this deposition?

A No.

Q What's the other Barbara's last name?

A Del Castillo.

Q Do you know if she is in Miami?

A No.

Q She's not or you don't know?

A She's not in Miami.

Q Where is she?

A I don't know. I don't know.

Q How long have you been married to Barbara Castellan?

A I'm not married. We just live together.

Q How long have you been living together?

A Around 2003.

Q Does anybody live with you at that address other than Barbara Castellan?

A I'm not married. We just live together.

Q How long have you been living together?

A Around 2003.

Q Does anybody live with you at that address other than Barbara Castellan?

A Her two children.

Q What are their names and ages, please?

A They have not authorized me to give them to you.

Q Are you denying answering that question?

A Correct.

Q Do you have any kids of your own?

A Yes.

Q What are their names and ages, please?

A Jose De Leon.

Q How old is Jose?

A Twelve years old.

Q Where does he live?

A With the mother.

Q And what's the mother's name?

A Barbara del Castillo.

Q Have you ever been married?

With complete justification, De Leon declined to answer most of these questions, even though Diz specifically warned him that he was jeopardizing his insurance coverage and invited him to withdraw his claim in lieu of responding.⁴

A Yes. Once.

Q With Barbara del Castillo?

A No.

Q Does Jose De Leon live in Miami?

A No.

Q Where does he live?

A I don't know.

Q When was the last time you saw him?

A I don't remember.

Q More than five years?

A I don't remember. Three years, something. I don't remember.

Q When you last saw him was it in Miami?

A Correct.

Q Where?

A I refuse to respond. That has nothing do with this. We go back to the same thing. And to me -- forgive me for taking this attitude. But I'm tired of this. I'm tired of all these problems. It's been too long and I've lost too much money with this problem. But I'm going to recuperate it for sure.

⁴ The colloquy follows:

Q Were you convicted of a crime?

A Correct.

Q What crime?

A Fraud. Cellular phone fraud. Conspiracy for a cellular phone thing, nothing to do, nothing that I did. You see what I'm telling you? What does that have to do with what has to be done. Absolutely nothing.

Q Well, sir, its all relevant. Under Florida law, prior convictions are relevant. And that's something that you have to disclose when you go through a deposition pursuant to Florida law.

A I don't have to do anything. I know a lot about law. Unfortunately, I defended myself and I don't have to answer anything. My record is public. You can get it. I'm not applying to work with the government. I'm not making an application for anything. I'm making a claim. When the insurance company insured my truck, they did not make any investigation, took my check, cashed it and used it however he wanted. Unfortunately, a fatality happened, they stole my truck, there's a camera there. I already told the police to look for the camera and ask for the camera to see who stole the truck. I have nothing to do.

What do you want to do? You want to pay for my truck? Okay. If you don't want to pay for my truck, at least, I'm not going to stay here.

Q We'll get to the incident and your understanding of what happened. I'm just trying to get some background information now.

A But it has nothing do with for you to ask me that.

Q Unfortunately, however you want to look at it, basically it's something that you're duty bound, based on the terms and conditions of the policy issued by Great American --

A Obligated to? I'm not obligated. There's other companies. At any time -- at no time they told me I had an obligation to say anything. I simply went to get the insurance. I did not get insurance to rob you or to make a fraud or anything. The -- my car is there. They broke into my car to steal from it. So what's my need? What do I get out of this? I have my credit there. I have everything that I paid for my tires. Where are my tires?

Q Sir, I can't speak to other insurance policies, what they read or what they require from an insured. I know what Great American requires.

A Correct. That's correct. But when they insured me they didn't say anything, they just took my money. I've always paid, I've never been late. I renewed the insurance and everything and I've never been late. I was very happy with them.

....

Q Would you have any objection if, in the course of our investigation, we request that you sign an authorization directed to Attorney Gonzalez for all records regarding the fraud case,

would you be inclined to sign that authorization?

A Not at all.

Q No objection?

A I don't know where he is. I don't know about him.

Q My question is not if you know where the attorney's at. I can get that information.

A My answer is no.

Q You have no objection?

A No. My answer is no.

Q That you have no objection. You would sign an authorization, in other words?

A No.

Q You would not sign an authorization?

A Not at all.

Q Why not?

A Because I don't. I won't. I want to concentrate -- I go back. If not on this -- if I get tic and leave, that's it. I don't want anymore questions. I'm requesting the insurance to return all of the money I've given them from the moment to the policy to give me my money back and I leave as easy as that.

Q Sir, I can't tell you what to do or not do. I'm just here—it's my job to ask you these questions.

A I know. I know. Correct. But concentrate on what it is, not on what is not. I have the right to keep quiet and not respond to anything. That's what I have. I have the right. I want to concentrate on what you're going to ask. If not, I have my papers here. You have a copy of my papers, all my receipts, the bills, everything. If you don't want -- if you're not going to talk to me about -- about what it is, see you next time.

Q Okay. Sir, I can't tell you what to do but you're more than free to withdraw your claim. In fact, it's your choice.

A No, I'm not going to withdraw my claim, no. Please. I'm going to look for an attorney and I want to have the attorney talk to you.

MR. DIAZ [sic]: Off the record for a second..

(Discussion off the record.)

MR. DIAZ [sic]: We're back on.

BY MR. DIAZ [sic]:

Q Mr. De Leon, I want to tell you this right now so it's clear for everyone. There's questions I'm going to ask and you may not think they're relevant but they are to me. And I'm just doing my job. Okay? So, if you're not inclined to answer any of my questions, I just want to let you know you may be jeopardizing coverage under the Great American Insurance policy that was issued.

Now that that's on the table and it's clear to everybody here, I'm going to keep on asking questions. If you don't want to answer, I understand that's your personal choice but the caveat is you may be jeopardizing coverage.

Going back to a question I asked previously that I don't believe I got an answer to, can you tell me the specific allegations that were made by the U. S. Government *in* relation to the cellular fraud claim or cellular fraud charge that they made?

A Absolutely no. Next page.

Q Are you denying to answer the question; are you objecting to it; are you not going to answer it?

A Correct.

Q You said that Barbara was also with you when you were serving time in Kentucky; is that correct?

A I said I'm not going to answer. Next page.

Q Have you ever been convicted of any other crimes?

A I don't know. I deny responding.

Q Are you saying you don't remember or you're making an objection --

A I deny -- I'm not going to respond. I refuse to respond.

.....

Q Okay. Have you retained a lawyer regarding the claim that you've made to Great American Insurance Company?

A I don't have it yet but I'm going to have one. There's money for those.

Q Has anyone other than you and Barbara resided at the address you gave us earlier, your current address?

A I don't know. I have no idea.

Q During the time you lived there.

In fact De Leon told Diz that if he continued on that track, he would leave, get an attorney, and see him in court.⁵ Diz did not desist. He persisted. True to his word, De Leon got a lawyer and filed suit.

The appellee's position is based on the argument that

A Those are things that have nothing to do with -- those are private things. Are we not in a free country? That has nothing to do anything with this. Please.

Q Are you denying answering the question?

A For sure.

Q Other than -- strike that. You said you were married once; is that correct?

A. Look, excuse me. I'm sorry that you came from so far away. But we're not going to get anywhere so I'm leaving and we'll see you in court. And I'll tell you who my attorney is going to be and then we're going to talk. Because nothing is going to be resolved that way.

Excuse me. I know it's your job. And I want to continue because I want to do it and I'm going to go to court because it's my right and you have to pay.

⁵ One cannot help but sympathize with De Leon's eloquent statement about the disconnect between the simple facts of his claim and the subject of the interrogation Great American insisted on putting him through:

I'm not making an application for anything. I'm making a claim. When the insurance company insured my truck, they did not make any investigation, took my check, cashed it and used it however he wanted. Unfortunately, a fatality happened, they stole my truck, there's a camera there. I already told the police to look for the camera and ask for the camera to see who stole the truck. I have nothing to do.

What do you want to do? You want to pay for my truck? Okay. If you don't want to pay for my truck, at least, I'm not going to stay here.

De Leon's refusal to complete the examination and provide the requested documents prevented Great American from exercising its contractual right to fully investigate his claim.

This is completely wrong; because De Leon "refused" to respond to wholly impertinent and improper questions which had nothing to do with the merits of the claim. And we think he was right to do so. To hold in these circumstances, as did the trial court, that it was not necessary to file the action and thus that section 627.428 is inapplicable, is to turn reality upon its head. What actually happened is that De Leon took Diz up on his challenge (and the propriety of his conduct of the sworn statement) and sued the company because, as was obvious, there was no other way to be paid. So far from being improperly employed, the statute was enacted for the very purpose presented by this case—to discourage the games insurance companies play. See *Beverly v. State Farm Florida Ins. Co.*, 50 So. 3d 628, 633 (Fla. 2d DCA 2010) ("[A]n insurer's post-suit payment of additional policy proceeds entitles the insured to section 627.428 attorney's fees where the insurer 'wrongfully caus[ed] its insured to resort to litigation in order to resolve a conflict with its insurer when it was within the company's power to resolve it.' See *Clifton [v. United Cas. Ins. Co. of Am.]*, 31 So. 3d 826, 829 (Fla. 2d DCA 2010)] (citing *First Floridian Auto & Home Ins. Co. v. Myrick*, 969 So. 2d 1121, 1124 (Fla. 2d DCA 2007)); see also *Hill, [v. State Farm Florida Insurance Co.]*, 35 So. 3d 956, 960-61 (Fla. 2d DCA 2010)]; *Goff, [v. State Farm Florida Insurance Co.]*, 999

So. 2d 684, 688 (Fla. 2d DCA 2008)].”); see also *Pepper's Steel & Alloys, Inc. v. U.S.*, 850 So. 2d 462, 465 (Fla. 2003) (“[t]he statute's [section 627.428] purpose ‘is to discourage insurance companies from contesting valid claims, and to reimburse insureds for their attorney's fees incurred when they must enforce in court their contract with the insurance company.’ *Bell v. U.S.B. Acquisition Co.*, 734 So. 2d 403, 411 n. 10 (Fla. 1999).”); *New York Life Ins. Co. v. Lecks*, 165 So. 50, 54 (Fla. 1935); *Underwood Anderson & Associates, Inc. v. Lillo's Italian Restaurant, Inc.* 36 So. 3d 885, 888 (Fla. 1st DCA 2010) (“[T]he courts have often stated to be the purpose of the attorney's fee statute, which is to encourage insurance companies to pay when they are presented with valid claims and, failing that, to compensate insureds that are forced to litigate their contracts with improperly recalcitrant insurance companies.”).

We cannot permit Great American to escape the consequences of what it tried to get away with in this case. Because the rule that any success in an action on an insurance policy, let alone the full payment of the asserted claim, requires an award of fees, see *Pineda v. State Farm Fla. Ins. Co.*, 47 So. 3d 890, 892 (Fla. 3d DCA 2010) (“An insured is entitled to attorney's fees under 627.428, Florida Statutes, where it was reasonably necessary for the insured to litigate in court”), applies in spades in this case, the order under review is reversed and the cause is remanded with directions to make an appropriate award of attorney’s fees.

Reversed and remanded.

SHEPHERD, J., concurring.

This court recently admonished “**all** counsel” who practice in the courts of this state that “improper conduct” **in** the courtroom “will not be condoned by this court.” Chin v. Caiaffa, 42 So. 3d 300, 311-12 (Fla. 3d DCA 2010) (emphasis added). This case involves conduct **outside** the courtroom, stemming from the theft of a 2000 Freightliner “eighteen wheeler” commercial truck from the premises of an interstate trucking company where it was parked. The police found the vehicle the next day. The insured’s principal claim is that the thieves took ten expensive tires from the truck and replaced them with then-inferior tires. After suit was filed, the trial court abated the action and ordered completion of the previously begun examination under oath (EUO). The same lawyer who conducted the first aborted EUO conducted the second. It lasted over **seven** hours. It strains credulity to assert—as the insurer does in this case—that a seven-hour sworn statement of a single individual is necessary to the investigation of an \$8000 tire loss claim, whatever might be the insurer’s suspicions. “Over-lawyering” is a frequent affliction found in the legal profession. If there is any question concerning whether the insured’s instincts about the interrogator’s purpose was any different

in the second EUO than in the first, the doubt can be dispelled easily by reviewing the transcript of the latter EUO.

An attorney is an officer of the court, and he plays his role badly, even outside the courtroom, if he trespasses against the obligations of his professional responsibilities. See Georgopoulos v. Int'l Bhd. of Teamsters, AFL-CIO, 942 F. Supp. 883, 905 (S.D.N.Y. 1996). A careful review of the transcript of the second EUO reveals the role played by counsel during that EUO was performed just like the first—badly. As in the first EUO, counsel's misunderstanding of the permissible range of inquiry in a sworn statement taken to verify a simple theft loss, whatever might have been the insurer's suspicions, was palpable. Upon a review of the **entire** record, it now is undeniable, in my estimation, that—although it should have been—the insured's claim in this case was not resolvable absent judicial intervention.

With these additional observations, I fully join in the well-reasoned opinion of the court.

COMMITTEE MEETING REPORT

Civil Justice Subcommittee

1/25/2012 8:00:00AM

Location: 404 HOB

HB 897 : Construction Liens and Bonds

Favorable With Committee Substitute

	Yea	Nay	No Vote	Absentee Yea	Absentee Nay
Joseph Abruzzo			X		
Mack Bernard	X				
Matt Gaetz	X				
Bill Hager	X				
Shawn Harrison			X		
Martin Kiar			X		
Larry Metz	X				
Jose Oliva	X				
Kathleen Passidomo	X				
Scott Plakon	X				
Darren Soto	X				
Kelli Stargel	X				
Richard Steinberg	X				
Michael Weinstein	X				
Eric Eisnaugle (Chair)	X				
Total Yeas: 12		Total Nays: 0			

HB 897 Amendments

Amendment 144115

Adopted Without Objection

Appearances:

HB 897

Lawson, Deborah (Lobbyist) - Waive In Support

NACM of Tampa

PO Box 22827

Tampa FL 33622

Phone: (850)878-1606

Committee meeting was reported out: Wednesday, January 25, 2012 12:59:13PM

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

- ADOPTED _____ (Y/N)
- ADOPTED AS AMENDED _____ (Y/N)
- ADOPTED W/O OBJECTION _____ (Y/N)
- FAILED TO ADOPT _____ (Y/N)
- WITHDRAWN _____ (Y/N)
- OTHER _____

*Yamable
1:25:12*

Committee/Subcommittee hearing bill: Civil Justice Subcommittee
Representative Moraitis offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Subsection (1) and paragraph (a) of subsection
(2) of section 255.05, Florida Statutes, are amended, and
subsection (11) is added to said section, to read:

255.05 Bond of contractor constructing public buildings;
form; action by materialmen.—

(1)(a) Any person entering into a formal contract with the
state or any county, city, or political subdivision thereof, or
other public authority or private entity, for the construction
of a public building, for the prosecution and completion of a
public work, or for repairs upon a public building or public
work shall be required, before commencing the work or before
recommencing the work after a default or abandonment, to
execute, deliver to the public owner, and record in the public
records of the county where the improvement is located, a

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 897 (2012)

Amendment No. 1

20 payment and performance bond with a surety insurer authorized to
21 do business in this state as surety. A public entity may not
22 require a contractor to secure a surety bond under this section
23 from a specific agent or bonding company. The bond must state on
24 its front page: the name, principal business address, and phone
25 number of the contractor, the surety, the owner of the property
26 being improved, and, if different from the owner, the
27 contracting public entity; the contract number assigned by the
28 contracting public entity; the bond number assigned by the
29 surety; and a description of the project sufficient to identify
30 it, such as a legal description or the street address of the
31 property being improved, and a general description of the
32 improvement. Such bond shall be conditioned upon the
33 contractor's performance of the construction work in the time
34 and manner prescribed in the contract and promptly making
35 payments to all persons defined in s. 713.01 who furnish labor,
36 services, or materials for the prosecution of the work provided
37 for in the contract. Any claimant may apply to the governmental
38 entity having charge of the work for copies of the contract and
39 bond and shall thereupon be furnished with a certified copy of
40 the contract and bond. The claimant shall have a right of action
41 against the contractor and surety for the amount due him or her,
42 including unpaid finance charges due under the claimant's
43 contract. Such action shall not involve the public authority in
44 any expense. When such work is done for the state and the
45 contract is for \$100,000 or less, no payment and performance
46 bond shall be required. At the discretion of the official or
47 board awarding such contract when such work is done for any

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Bill No. HB 897 (2012)

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48 county, city, political subdivision, or public authority, any
49 person entering into such a contract which is for \$200,000 or
50 less may be exempted from executing the payment and performance
51 bond. When such work is done for the state, the Secretary of
52 Management Services may delegate to state agencies the authority
53 to exempt any person entering into such a contract amounting to
54 more than \$100,000 but less than \$200,000 from executing the
55 payment and performance bond. In the event such exemption is
56 granted, the officer or officials shall not be personally liable
57 to persons suffering loss because of granting such exemption.
58 The Department of Management Services shall maintain information
59 on the number of requests by state agencies for delegation of
60 authority to waive the bond requirements by agency and project
61 number and whether any request for delegation was denied and the
62 justification for the denial. Any provision in a payment bond
63 furnished for public work contracts as provided by this
64 subsection which further restricts the classes of persons ~~as~~
65 ~~defined in s. 713.01~~ protected by the bond, which restricts or
66 the venue of any proceeding relating to such bond, which limits
67 or expands the effective duration of the bond, or which adds
68 conditions precedent to the enforcement of a claim against the
69 bond beyond those provided in this section is unenforceable.

70 (b) The Department of Management Services shall adopt
71 rules with respect to all contracts for \$200,000 or less, to
72 provide:

73 1. Procedures for retaining up to 10 percent of each
74 request for payment submitted by a contractor and procedures for
75 determining disbursements from the amount retained on a pro rata

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76 basis to laborers, materialmen, and subcontractors, as defined
77 in s. 713.01.

78 2. Procedures for requiring certification from laborers,
79 materialmen, and subcontractors, as defined in s. 713.01, prior
80 to final payment to the contractor that such laborers,
81 materialmen, and subcontractors have no claims against the
82 contractor resulting from the completion of the work provided
83 for in the contract.

84
85 The state shall not be held liable to any laborer, materialman,
86 or subcontractor for any amounts greater than the pro rata share
87 as determined under this section.

88 (c)1. The amount of the bond shall equal the contract
89 price, except that for a contract in excess of \$250 million, if
90 the state, county, municipality, political subdivision, or other
91 public entity finds that a bond in the amount of the contract
92 price is not reasonably available, the public owner shall set
93 the amount of the bond at the largest amount reasonably
94 available, but not less than \$250 million.

95 2. For construction-management or design-build contracts,
96 if the public owner does not include in the bond amount the cost
97 of design or other nonconstruction services, the bond may not be
98 conditioned on performance of such services or payment to
99 persons furnishing such services. Notwithstanding paragraph (a),
100 such a bond may exclude persons furnishing such services from
101 the classes of persons protected by the bond.

102 (2)(a)1. If a claimant is no longer furnishing labor,
103 services, or materials on a project, a contractor or the

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104 contractor's agent or attorney may elect to shorten the
105 ~~prescribed time in this paragraph~~ within which an action to
106 enforce any claim against a payment bond must ~~provided pursuant~~
107 ~~to this section may~~ be commenced by recording in the clerk's
108 office a notice in substantially the following form:

109
110 NOTICE OF CONTEST OF CLAIM
111 AGAINST PAYMENT BOND
112

113 To: ...(Name and address of claimant)...

114
115 You are notified that the undersigned contests your notice
116 of nonpayment, dated,, and served on the
117 undersigned on,, and that the time within
118 which you may file suit to enforce your claim is limited to 60
119 days after the date of service of this notice.

120
121 DATED on,

122
123 Signed: ...(Contractor or Attorney)...

124
125 The claim of any claimant upon whom such notice is served and
126 who fails to institute a suit to enforce his or her claim
127 against the payment bond within 60 days after service of such
128 notice shall be extinguished automatically. The contractor of
129 the contractor's attorney ~~clerk~~ shall serve mail a copy of the
130 notice of contest to the claimant at the address shown in the
131 notice of nonpayment or most recent amendment thereto and shall

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132 certify to such service on the face of such notice and record
133 the notice. ~~Service is complete upon mailing.~~

134 2. A claimant, except a laborer, who is not in privity
135 with the contractor must ~~shall~~, before commencing or not later
136 than 45 days after commencing to furnish labor, services, or
137 materials for the prosecution of the work, furnish the
138 contractor with a written notice that he or she intends to look
139 to the bond for protection. A claimant who is not in privity
140 with the contractor and who has not received payment for his or
141 her labor, services, or materials shall deliver to the
142 contractor and to the surety written notice of the performance
143 of the labor or delivery of the materials or supplies and of the
144 nonpayment. The notice of nonpayment must ~~may~~ be served ~~at any~~
145 ~~time~~ during the progress of the work or thereafter but may not
146 be served earlier than before 45 days after the first furnishing
147 of labor, services, or materials or, ~~and not~~ later than 90 days
148 after the final furnishing of the labor, services, or materials
149 by the claimant or, with respect to rental equipment, not later
150 than 90 days after the date that the rental equipment was last
151 on the job site available for use. Any notice of nonpayment
152 served by a claimant who is not in privity with the contractor
153 which includes sums for retainage must specify the portion of
154 the amount claimed for retainage. An ~~No~~ action for the labor,
155 materials, or supplies may not be instituted against the
156 contractor or the surety unless the notice to the contractor and
157 notice of nonpayment have been served, if required by this
158 section both notices have been given. If the payment bond is not
159 recorded before commencement of construction, the time periods

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160 for the claimant to serve the required notices may at the option
161 of the claimant be calculated from the dates specified in this
162 section or from the date the claimant is served a copy of the
163 bond. In no event, however, shall the limitation period for
164 commencement of an action against a payment bond as established
165 in s. 95.11 be expanded. Notices required or permitted under
166 this section may be served in accordance with s. 713.18. A
167 claimant may not waive in advance his or her right to bring an
168 action under the bond against the surety. In any action brought
169 to enforce a claim against a payment bond under this section,
170 the prevailing party is entitled to recover a reasonable fee for
171 the services of his or her attorney for trial and appeal or for
172 arbitration, in an amount to be determined by the court, which
173 fee must be taxed as part of the prevailing party's costs, as
174 allowed in equitable actions. The time periods for service of a
175 notice of nonpayment or for bringing an action against a
176 contractor or a surety shall be measured from the last day of
177 furnishing labor, services, or materials by the claimant and
178 shall not be measured by other standards, such as the issuance
179 of a certificate of occupancy or the issuance of a certificate
180 of substantial completion.

181 (11) If a contractor furnishes and records a payment and
182 performance bond for a public works project in accordance with
183 this section, the public authority may not condition its
184 payments to the contractor on the production of a release,
185 waiver, or like documentation from a claimant demonstrating that
186 the claimant does not have an outstanding claim against the
187 contractor, the surety, the payment bond, or the public

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188 | authority for payments due on labor, services, or materials
189 | furnished on the public works project.

190 | Section 2. Paragraph (b) of subsection (2) of section
191 | 713.10, Florida Statutes, is amended to read:

192 | 713.10 Extent of liens.—

193 | (2)

194 | (b) The interest of the lessor shall not be subject to
195 | liens for improvements made by the lessee when:

196 | 1. The lease, or a short form or a memorandum of the lease
197 | that contains the specific language in the lease prohibiting
198 | such liability, is recorded in the official records of the
199 | county where the premises are located before the recording of a
200 | notice of commencement for improvements to the premises and the
201 | terms of the lease expressly prohibit such liability; or

202 | 2. The terms of the lease expressly prohibit such
203 | liability, and a notice advising that leases for the rental of
204 | premises on a parcel of land prohibit such liability has been
205 | recorded in the official records of the county in which the
206 | parcel of land is located before the recording of a notice of
207 | commencement for improvements to the premises, and the notice
208 | includes the following:

209 | a. The name of the lessor.

210 | b. The legal description of the parcel of land to which
211 | the notice applies.

212 | c. The specific language contained in the various leases
213 | prohibiting such liability.

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214 d. A statement that all or a majority of the leases
215 entered into for premises on the parcel of land expressly
216 prohibit such liability.

217
218 The notice required by this subparagraph shall still be
219 effective and the lessor's interest in a premises on the parcel
220 of land shall not be subject to liens for improvements made by
221 the lessee of such premises notwithstanding that all of the
222 leases for all of the premises on the parcel of land do not
223 contain language prohibiting such liability or the language
224 prohibiting such liability varies in the various leases or does
225 not match the language in the notice, if the lease for the
226 specific premises as to which a lien could otherwise be claimed
227 against the lessor's interest expressly provides that the
228 interest of the lessor shall not be subject to liens for
229 improvements made by the lessee.

230 3. The lessee is a mobile home owner who is leasing a
231 mobile home lot in a mobile home park from the lessor.

232 Section 3. Paragraph (e) of subsection (1) of section
233 713.13, Florida Statutes, is amended to read:

234 713.13 Notice of commencement.—

235 (1)

236 (e) A copy of any payment bond must be attached at the
237 time of recordation of the notice of commencement. The failure
238 to attach a copy of the bond to the notice of commencement when
239 the notice is recorded negates the exemption provided in s.
240 713.02(6). However, if a payment bond under s. 713.23 exists but
241 was not attached at the time of recordation of the notice of

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242 commencement, the bond may be used to transfer any recorded lien
243 of a lienor except that of the contractor by the recordation and
244 service of a notice of bond pursuant to s. 713.23(2). The notice
245 requirements of s. 713.23 apply to any claim against the bond;
246 however, the time limits for serving any required notices shall,
247 at the option of the lienor, be calculated from the dates ~~begin~~
248 ~~running from the later of the time~~ specified in s. 713.23 or the
249 date the notice of bond is served on the lienor.

250 Section 4. Paragraph (f) of subsections (1), and
251 subsection (4), of section 713.132, Florida Statutes, are
252 amended to read:

253 713.132 Notice of termination.—

254 (1) An owner may terminate the period of effectiveness of
255 a notice of commencement by executing, swearing to, and
256 recording a notice of termination that contains:

257 (f) A statement that the owner has, before recording the
258 notice of termination, served a copy of the notice of
259 termination on the contractor and on each lienor who has a
260 direct contract with the owner or who has served a notice to
261 owner ~~given notice~~. The owner is not required to serve a copy of
262 the notice of termination on any lienor who has executed a
263 waiver and release of lien upon final payment in accordance with
264 s. 713.20.

265 (4) A notice of termination is effective to terminate the
266 notice of commencement at the later of 30 days after recording
267 of the notice of termination or the date stated in the notice of
268 termination as the date on which the notice of commencement is
269 terminated, if provided that the notice of termination has been

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270 served pursuant to paragraph (1)(f) on the contractor and on
271 each lienor who has a direct contract with the owner or who has
272 served a notice to owner ~~given notice~~.

273 Section 5. Section 713.16, Florida Statutes, is amended to
274 read:

275 713.16 Demand for copy of contract and statements of
276 account; form.—

277 (1) A copy of the contract of a lienor or owner and a
278 statement of the amount due or to become due if fixed or
279 ascertainable thereon must be furnished by any party thereto,
280 upon written demand of an owner or a lienor contracting with or
281 employed by the other party to such contract. If the owner or
282 lienor refuses or neglects to furnish such copy of the contract
283 or such statement, or willfully and falsely states the amount
284 due or to become due if fixed or ascertainable under such
285 contract, any person who suffers any detriment thereby has a
286 cause of action against the person refusing or neglecting to
287 furnish the same or willfully and falsely stating the amount due
288 or to become due for his or her damages sustained thereby. The
289 information contained in such copy or statement furnished
290 pursuant to such written demand is binding upon the owner or
291 lienor furnishing it unless actual notice of any modification is
292 given to the person demanding the copy or statement before such
293 person acts in good faith in reliance on it. The person
294 demanding such documents must pay for the reproduction thereof;
295 and, if such person fails or refuses to do so, he or she is
296 entitled only to inspect such documents at reasonable times and
297 places.

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298 (2) The owner may serve in writing a demand of any lienor
299 for a written statement under oath of his or her account showing
300 the nature of the labor or services performed and to be
301 performed, if any, the materials furnished, the materials to be
302 furnished, if known, the amount paid on account to date, the
303 amount due, and the amount to become due, if known, as of the
304 date of the statement by the lienor. Any such demand to a lienor
305 must be served on the lienor at the address and to the attention
306 of any person who is designated to receive the demand in the
307 notice to owner served by such lienor and must include a
308 description of the project, including the names of the owner,
309 the contractor, and the lienor's customer, as set forth in the
310 lienor's notice to owner. The failure or refusal to furnish the
311 statement does not deprive the lienor of his or her lien if the
312 demand is not served at the address of the lienor or directed to
313 the attention of the person designated to receive the demand in
314 the notice to owner. The failure or refusal to furnish the
315 statement under oath within 30 days after the demand, or the
316 furnishing of a false or fraudulent statement, deprives the
317 person so failing or refusing to furnish such statement of his
318 or her lien. If the owner serves more than one demand for
319 statement of account on a lienor and none of the information
320 regarding the account has changed since the lienor's last
321 response to a demand, the failure or refusal to furnish such
322 statement does not deprive the lienor of his or her lien. The
323 negligent inclusion or omission of any information deprives the
324 person of his or her lien to the extent the owner can
325 demonstrate prejudice from such act or omission by the lienor.

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326 The failure to furnish a response to a demand for statement of
327 account does not affect the validity of any claim of lien being
328 enforced through a foreclosure case filed prior to the date the
329 demand for statement is received by the lienor.

330 (3) A request for sworn statement of account must be in
331 substantially the following form:

332

333 REQUEST FOR SWORN STATEMENT OF ACCOUNT

334

335 WARNING: YOUR FAILURE TO FURNISH THE REQUESTED STATEMENT, SIGNED
336 UNDER OATH, WITHIN 30 DAYS OR THE FURNISHING OF A FALSE
337 STATEMENT WILL RESULT IN THE LOSS OF YOUR LIEN.

338

339 To: ... (Lienor's name and address) ...

340

341 The undersigned hereby demands a written statement under oath of
342 his or her account showing the nature of the labor or services
343 performed and to be performed, if any, the materials furnished,
344 the materials to be furnished, if known, the amount paid on
345 account to date, the amount due, and the amount to become due,
346 if known, as of the date of the statement for the improvement of
347 real property identified as ... (property description)

348

349 ... (name of contractor) ...

350

351 ... (name of the lienor's customer, as set forth in the lienor's
352 Notice to Owner, if such notice has been served)

353

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354 ... (signature and address of owner) ...
355 ... (date of request for sworn statement of account) ...

356
357 (4) When a contractor has furnished a payment bond
358 pursuant to s. 713.23, he or she may, when an owner makes any
359 payment to the contractor or directly to a lienor, serve a
360 written demand on any other lienor for a written statement under
361 oath of his or her account showing the nature of the labor or
362 services performed and to be performed, if any, the materials
363 furnished, the materials to be furnished, if known, the amount
364 paid on account to date, the amount due, and the amount to
365 become due, if known, as of the date of the statement by the
366 lienor. Any such demand to a lienor must be served on the lienor
367 at the address and to the attention of any person who is
368 designated to receive the demand in the notice to contractor
369 served by such lienor. The demand must include a description of
370 the project, including the names of the owner, the contractor,
371 and the lienor's customer, as set forth in the lienor's notice
372 to contractor. The failure or refusal to furnish the statement
373 does not deprive the lienor of his or her rights under the bond
374 if the demand is not served at the address of the lienor or
375 directed to the attention of the person designated to receive
376 the demand in the notice to contractor. The failure to furnish
377 the statement within 30 days after the demand, or the furnishing
378 of a false or fraudulent statement, deprives the person who
379 fails to furnish the statement, or who furnishes the false or
380 fraudulent statement, of his or her rights under the bond. If
381 the contractor serves more than one demand for statement of

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382 account on a lienor and none of the information regarding the
383 account has changed since the lienor's last response to a
384 demand, the failure or refusal to furnish such statement does
385 not deprive the lienor of his or her rights under the bond. The
386 negligent inclusion or omission of any information deprives the
387 person of his or her rights under the bond to the extent the
388 contractor can demonstrate prejudice from such act or omission
389 by the lienor. The failure to furnish a response to a demand for
390 statement of account does not affect the validity of any claim
391 on the bond being enforced in a lawsuit filed prior to the date
392 the demand for statement of account is received by the lienor.

393 (5) (a) Any lienor who is perfecting a claim of lien ~~has~~
394 ~~recorded a claim of lien~~ may serve with the claim of lien or
395 thereafter a ~~make~~ written demand on the owner for a written
396 statement under oath showing:

397 1. The amount of the direct contract under which the lien
398 was recorded;

399 2. The dates and amounts paid or to be paid by or on
400 behalf of the owner for all improvements described in the direct
401 contract;

402 3. The reasonable estimated costs of completing the direct
403 contract under which the lien was claimed pursuant to the scope
404 of the direct contract; and

405 4. If known, the actual cost of completion.

406 (b) Any owner who does not provide the statement within 30
407 days after demand, or who provides a false or fraudulent
408 statement, is not a prevailing party for purposes of an award of
409 attorney's fees under s. 713.29. The written demand must include

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410 the following warning in conspicuous type in substantially the
411 following form:

412
413 WARNING: YOUR FAILURE TO FURNISH THE REQUESTED
414 STATEMENT WITHIN 30 DAYS OR THE FURNISHING OF A FALSE
415 STATEMENT WILL RESULT IN THE LOSS OF YOUR RIGHT TO
416 RECOVER ATTORNEY FEES IN ANY ACTION TO ENFORCE THE
417 CLAIM OF LIEN OF THE PERSON REQUESTING THIS STATEMENT.

418
419 (6) Any written demand served on the owner must include a
420 description of the project, including the names of the
421 contractor and the lienor's customer, as set forth in the
422 lienor's notice to owner.

423 (7) For purposes of this section, the term "information"
424 means the nature and quantity of the labor, services, and
425 materials furnished or to be furnished by a lienor and the
426 amount paid, the amount due, and the amount to become due on the
427 lienor's account.

428 Section 6. Section 713.18, Florida Statutes, is amended to
429 read:

430 713.18 Manner of serving notices and other instruments.-

431 (1) Service of notices, claims of lien, affidavits,
432 assignments, and other instruments permitted or required under
433 this part, or copies thereof when so permitted or required,
434 unless otherwise specifically provided in this part, must be
435 made by one of the following methods:

436 (a) By actual delivery to the person to be served; if a
437 partnership, to one of the partners; if a corporation, to an

Amendment No. 1

438 officer, director, managing agent, or business agent; or, if a
439 limited liability company, to a member or manager.

440 (b) ~~By sending the same by~~ common carrier delivery service
441 or by registered, Global Express Guaranteed, or certified mail,
442 with postage or shipping paid by the sender and prepaid, ~~or by~~
443 ~~overnight or second day delivery~~ with evidence of delivery,
444 which may be in an electronic format.

445 (c) ~~If the method specified in paragraph (a) or paragraph~~
446 ~~(b) cannot be accomplished,~~ By posting on the site of the
447 improvement if service as provided by paragraph (a) or paragraph
448 (b) cannot be accomplished premises.

449 (2) Notwithstanding subsection (1), service of ~~if~~ a notice
450 to owner, or a notice to contractor under s. 713.23, s. 337.18,
451 ~~or a preliminary notice under s. 255.05 is mailed by registered~~
452 ~~or certified mail with postage prepaid to the person to be~~
453 ~~served at any of the addresses set forth in subsection (3)~~
454 ~~within 40 days after the date the lienor first furnishes labor,~~
455 ~~services, or materials, service of that notice is effective as~~
456 of the date of mailing if:

457 (a) The notice is mailed by registered, Global Express
458 Guaranteed, or certified mail, with postage prepaid, to the
459 person to be served at any of the addresses set forth in
460 subsection (3);

461 (b) The notice is mailed within 40 days after the date the
462 lienor first furnishes labor, services, or materials; and

463 (c) The person who served the notice maintains a
464 registered or certified mail log that shows the registered or
465 certified mail number issued by the United States Postal

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466 Service, the name and address of the person served, and the date
467 stamp of the United States Postal Service confirming the date of
468 mailing or if the person who served the notice maintains
469 electronic tracking records generated through use of the United
470 States Postal Service Confirm service or a similar service
471 containing the postal tracking number, the name and address of
472 the person served, and verification of the date of receipt by
473 the United States Postal Service.

474 (3) (a) Service of ~~If an instrument served~~ pursuant to this
475 section is effective on the date of mailing the instrument if
476 it:

477 1. Is sent to the last address shown in the notice of
478 commencement or any amendment thereto or, in the absence of a
479 notice of commencement, to the last address shown in the
480 building permit application, or to the last known address of the
481 person to be served; ~~and, is not received, but~~

482 2. Is returned as being "refused," "moved, not
483 forwardable," or "unclaimed," or is otherwise not delivered or
484 deliverable through no fault of the person serving the item,
485 ~~then service is effective on the date the instrument was sent.~~

486 (b) If the address shown in the notice of commencement or
487 any amendment to the notice of commencement, or, in the absence
488 of a notice of commencement, in the building permit application,
489 is incomplete for purposes of mailing or delivery, the person
490 serving the item may complete the address and properly format it
491 according to United States Postal Service addressing standards
492 using information obtained from the property appraiser or

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493 another public record without affecting the validity of service
494 under this section.

495 (4) A notice served by a lienor on one owner or one
496 partner of a partnership owning the real property ~~If the real~~
497 ~~property is owned by more than one person or a partnership, a~~
498 ~~lienor may serve any notices or other papers under this part on~~
499 ~~any one of such owners or partners, and such notice is deemed~~
500 notice to all owners and partners.

501 Section 7. Section 713.22, Florida Statutes, is amended to
502 read:

503 713.22 Duration of lien.—

504 (1) A ~~No~~ lien provided by this part does not shall
505 continue for a longer period than 1 year after the claim of lien
506 has been recorded or 1 year after the recording of an amended
507 claim of lien that shows a later date of final furnishing of
508 labor, services, or materials, unless within that time an action
509 to enforce the lien is commenced in a court of competent
510 jurisdiction. A lien that has been continued beyond the 1-year
511 period ~~The continuation of the lien effected by the commencement~~
512 ~~of an the action is shall not enforceable be good~~ against
513 creditors or subsequent purchasers for a valuable consideration
514 and without notice, unless a notice of lis pendens is recorded.

515 (2) An owner or the owner's ~~agent or~~ attorney may elect to
516 shorten the time prescribed in subsection (1) within which to
517 commence an action to enforce any claim of lien or claim against
518 a bond or other security under s. 713.23 or s. 713.24 by
519 recording in the clerk's office a notice in substantially the
520 following form:

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NOTICE OF CONTEST OF LIEN

To: ...(Name and address of lienor)...

You are notified that the undersigned contests the claim of lien filed by you on, ...(year)...., and recorded in Book, Page, of the public records of County, Florida, and that the time within which you may file suit to enforce your lien is limited to 60 days from the date of service of this notice. This day of, ...(year)....

Signed: ...(Owner or Attorney)...

The lien of any lienor upon whom such notice is served and who fails to institute a suit to enforce his or her lien within 60 days after service of such notice shall be extinguished automatically. The clerk shall serve in accordance with s. 713.18, mail a copy of the notice of contest to the lien claimant at the address shown in the claim of lien or most recent amendment thereto and shall certify to such service and the date of service on the face of such notice and record the notice. ~~Service shall be deemed complete upon mailing.~~

Section 8. Paragraphs (c), (d), (e), and (f) of subsection (1) and subsections (2) and (4) of section 713.23, Florida Statutes, are amended to read:

713.23 Payment bond.-
(1)

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549 (c) ~~Either~~ Before beginning or within 45 days after
 550 beginning to furnish labor, materials, or supplies, a lienor who
 551 is not in privity with the contractor, except a laborer, shall
 552 serve the contractor with notice in writing that the lienor will
 553 look to the contractor's bond for protection on the work. If a
 554 notice of commencement with the attached bond is not recorded,
 555 before commencement of construction ~~or a reference to the bond~~
 556 ~~is not given in the notice of commencement, and in either case~~
 557 ~~if the lienor not in privity with the contractor is not~~
 558 ~~otherwise notified in writing of the existence of the bond, the~~
 559 lienor not in privity with the contractor may, in the
 560 alternative, elect to serve the notice to contractor up to shall
 561 have 45 days from the date the lienor is served with a copy
 562 ~~notified of the existence of the bond within which to serve the~~
 563 ~~notice.~~ The notice may be in substantially the following form
 564 and may be combined with a notice to owner given under s. 713.06
 565 and, if so, may be entitled "NOTICE TO OWNER/NOTICE TO
 566 CONTRACTOR:

567
 568 NOTICE TO CONTRACTOR

569
 570 To ... (name and address of contractor) ...

571
 572 The undersigned hereby informs you that he or she has furnished
 573 or is furnishing services or materials as follows:

574
 575 ...(general description of services or materials)... for the
 576 improvement of the real property identified as ...(property

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577 description)... under an order given by ...(lienor's
578 customer)....

579
580 This notice is to inform you that the undersigned intends to
581 look to the contractor's bond to secure payment for the
582 furnishing of materials or services for the improvement of the
583 real property.

584
585 ...(name of lienor)...
586 ...(signature of lienor or lienor's representative)...
587 ...(date)...
588 ...(lienor's address)...

589
590 ~~The undersigned notifies you that he or she has furnished or is~~
591 ~~furnishing ...(services or materials)... for the improvement of~~
592 ~~the real property identified as ...(property description)...~~
593 ~~owned by ...(owner's name and address)... under an order given~~
594 ~~by and that the undersigned will look to the contractor's~~
595 ~~bond for protection on the work.~~

596 ~~...(Lienor's signature and address)...~~

597 (d) In addition, a lienor is required, as a condition
598 precedent to recovery under the bond, to serve a written notice
599 of nonpayment to the contractor and the surety not later than 90
600 days after the final furnishing of labor, services, or materials
601 by the lienor. A written notice satisfies this condition
602 precedent with respect to the payment described in the notice of
603 nonpayment, including unpaid finance charges due under the
604 lienor's contract, and with respect to any other payments which

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605 become due to the lienor after the date of the notice of
606 nonpayment. The time period for serving a written notice of
607 nonpayment shall be measured from the last day of furnishing
608 labor, services, or materials by the lienor and shall not be
609 measured by other standards, such as the issuance of a
610 certificate of occupancy or the issuance of a certificate of
611 substantial completion. The failure of a lienor to receive
612 retainage sums not in excess of 10 percent of the value of
613 labor, services, or materials furnished by the lienor is not
614 considered a nonpayment requiring the service of the notice
615 provided under this paragraph. If the payment bond is not
616 recorded before commencement of construction, the time period
617 for the lienor to serve a notice of nonpayment may at the option
618 of the lienor be calculated from the date specified in this
619 section or the date the lienor is served a copy of the bond. In
620 no event, however, shall the limitation period for commencement
621 of an action against a payment bond as established in s. 95.11
622 be expanded. The notice under this paragraph may be in
623 substantially the following form:

624
625 NOTICE OF NONPAYMENT

626
627 To ... (name of contractor and address)...

628 ... (name of surety and address)...

629
630 The undersigned notifies you that he or she has furnished

631 ... (describe labor, services, or materials)... for the

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632 improvement of the real property identified as ...(property
633 description).... The amount now due and unpaid is \$.....

634

635 ...(signature and address of lienor)...

636

637 (e) An ~~No~~ action for the labor or materials or supplies
638 may not be instituted or prosecuted against the contractor or
639 surety unless both notices have been given, if required by this
640 section. An ~~No~~ action may not ~~shall~~ be instituted or prosecuted
641 against the contractor or against the surety on the bond under
642 this section after 1 year from the performance of the labor or
643 completion of delivery of the materials and supplies. The time
644 period for bringing an action against the contractor or surety
645 on the bond shall be measured from the last day of furnishing
646 labor, services, or materials by the lienor. The time period ~~and~~
647 shall not be measured by other standards, such as the issuance
648 of a certificate of occupancy or the issuance of a certificate
649 of substantial completion. A contractor or the contractor's
650 ~~agent or~~ attorney may elect to shorten the ~~prescribed~~ time
651 within which an action to enforce any claim against a payment
652 bond provided under this section or s. 713.245 must ~~may~~ be
653 commenced at any time after a notice of nonpayment, if required,
654 has been served for the claim by recording in the clerk's office
655 a notice in substantially the following form:

656

657 NOTICE OF CONTEST OF CLAIM

658

AGAINST PAYMENT BOND

659

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660 To: ... (Name and address of lienor)...

661

662 You are notified that the undersigned contests your notice
663 of nonpayment, dated,, and served on the undersigned
664 on,, and that the time within which you may file suit
665 to enforce your claim is limited to 60 days from the date of
666 service of this notice.

667

668 DATED on,

669 Signed: ... (Contractor or Attorney)...

670

671 The claim of any lienor upon whom the notice is served and who
672 fails to institute a suit to enforce his or her claim against
673 the payment bond within 60 days after service of the notice
674 shall be extinguished automatically. The contractor or the
675 contractor's attorney ~~elerk~~ shall serve mail a copy of the
676 notice of contest to the lienor at the address shown in the
677 notice of nonpayment or most recent amendment thereto and shall
678 certify to such service on the face of the notice and record the
679 notice. ~~Service is complete upon mailing.~~

680

681 (f) Any lienor has a direct right of action on the bond
682 against the surety. Any provision in a payment bond which
683 further restricts ~~A bond must not contain any provisions~~
684 restricting the classes of persons who are protected by the
685 payment bond, which restricts thereby or the venue of any
686 proceeding relating to such payment bond, which limits or
687 expands the effective duration of the payment bond, or which
adds conditions precedent to the enforcement of a claim against

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688 a payment bond beyond those provided in this part is
689 enforceable. The surety is not entitled to the defense of pro
690 tanto discharge as against any lienor because of changes or
691 modifications in the contract to which the surety is not a
692 party; but the liability of the surety may not be increased
693 beyond the penal sum of the bond. A lienor may not waive in
694 advance his or her right to bring an action under the bond
695 against the surety.

696 (2) The bond shall secure every lien under the direct
697 contract accruing subsequent to its execution and delivery,
698 except that of the contractor. Every claim of lien, except that
699 of the contractor, filed subsequent to execution and delivery of
700 the bond shall be transferred to it with the same effect as
701 liens transferred under s. 713.24. Record notice of the transfer
702 shall be effected by the contractor, or any person having an
703 interest in the property against which the claim of lien has
704 been asserted, by recording in the clerk's office a notice, with
705 the bond attached, in substantially the following form:

706
707 NOTICE OF BOND

708
709 To ...(Name and Address of Lienor)...

710
711 You are notified that the claim of lien filed by you on,
712, and recorded in Official Records Book at page of
713 the public records of County, Florida, is secured by a
714 bond, a copy being attached.

715
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716 Signed: ...(Name of person recording notice)...

717

718 The notice shall be verified. The person recording the notice of
719 bond clerk shall serve mail a copy of the notice along with a
720 copy of the bond to the lienor at the address shown in the claim
721 of lien, or the most recent amendment to it; shall certify to
722 the service on the face of the notice; and shall record the
723 notice. ~~The clerk shall receive the same fee as prescribed in s.~~
724 ~~713.24(1) for certifying to a transfer of lien.~~

725 (4) The provisions of s. 713.24(3) shall apply to bonds
726 under this section except where those provisions conflict with
727 this section.

728 Section 9. This act shall take effect October 1, 2012.

729

730

731

732

T I T L E A M E N D M E N T

733

Remove the entire title and insert:

734

An act relating to construction liens and bonds; amending s.

735

255.05, F.S.; requiring that the bond number be stated on the

736

first page of the bond; providing that a provision in a payment

737

bond furnished for a public works contract that limits or

738

expands the effective duration of the bond or adds conditions

739

precedent is unenforceable; requiring a contractor, or the

740

contractor's attorney, to serve rather than mail a notice of

741

contest of claim against the payment bond; providing additional

742

time for service when the bond is not recorded; specifying the

743

duration of the bond; providing that payment to a contractor who

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COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 897 (2012)

Amendment No. 1

744 has furnished a payment bond on a public works project may not
745 be conditioned upon production of certain documents; providing
746 prerequisites for commencement of an action against a payment
747 bond; amending s. 713.10, F.S.; providing that a specified
748 notice concerning a lessor's liability for liens for
749 improvements made by the lessee is effective notwithstanding
750 that all of the leases for all of the premises on the parcel of
751 land do not contain language prohibiting such liability or the
752 language prohibiting such liability varies in the various leases
753 or does not match the language in the notice, if the lease for
754 the specific premises as to which a lien could otherwise be
755 claimed against the lessor's interest expressly provides that
756 the interest of the lessor shall not be subject to liens for
757 improvements made by the lessee; amending s. 713.13, F.S.;
758 providing additional time for service when a notice of
759 commencement is not recorded with a copy of the bond attached;
760 amending s. 713.132, F.S.; requiring notice of termination to be
761 served on lienors in privity with the owner; amending s. 713.16,
762 F.S.; revising requirements for demands for a copy of a
763 construction contract and a statement of account; authorizing a
764 lienor to make certain written demands to an owner for certain
765 written statements; providing requirements for such written
766 demands; amending s. 713.18, F.S.; providing additional methods
767 by which certain items may be served; revising provisions
768 relating to when service of specified items is effective;
769 specifying requirements for certain written instruments under
770 certain circumstances; amending s. 713.22, F.S.; requiring that
771 the clerk serve rather than mail a notice of contest of lien;

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COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 897 (2012)

Amendment No. 1

772 amending s. 713.23, F.S.; revising the contents of a notice to
773 contractor; requiring that a contractor serve rather than mail a
774 notice of contest of claim against the payment bond and a notice
775 of bond; clarifying the attachment of the bond to the notice;
776 providing that a provision in a payment bond that limits or
777 expands the effective duration of the bond or adds conditions
778 precedent is unenforceable; clarifying applicability of certain
779 provisions; providing an effective date.

COMMITTEE MEETING REPORT

Civil Justice Subcommittee

1/25/2012 8:00:00AM

Location: 404 HOB

PCS for HB 213 : Judicial Proceedings

Favorable With Amendments

	Yea	Nay	No Vote	Absentee Yea	Absentee Nay
Joseph Abruzzo	X				
Mack Bernard	X				
Matt Gaetz	X				
Bill Hager	X				
Shawn Harrison	X				
Martin Kiar	X				
Larry Metz	X				
Jose Oliva	X				
Kathleen Passidomo	X				
Scott Plakon			X		
Darren Soto		X			
Kelli Stargel	X				
Richard Steinberg	X				
Michael Weinstein	X				
Eric Eisnaugle (Chair)	X				
Total Yeas: 13		Total Nays: 1			

PCS for HB 213 Amendments

Amendment PCS for HB 213 a1

Adopted Without Objection

Appearances:

PCS for HB 213

Ferguson, Diana (Lobbyist) - Waive In Support
Community Advocacy Network
119 S Monroe St
Tallahassee FL 32308
Phone: 850-681-6788

PCS for HB 213

Vickers, Alice (Lobbyist) - Opponent
Florida Consumer Action Network
623 Beard Street
Tallahassee FL 32303
Phone: 850-556-3121

PCS for HB 213

DiMarco, Anthony (Lobbyist) - Proponent
Florida Bankers Association
1001 Thomasville Rd Ste 201
Tallahassee FL 32302-1360
Phone: (850)224-2265

Committee meeting was reported out: Wednesday, January 25, 2012 12:59:13PM

COMMITTEE MEETING REPORT

Civil Justice Subcommittee

1/25/2012 8:00:00AM

Location: 404 HOB

PCS for HB 213 : Judicial Proceedings (continued)

Appearances: (continued)

PCS for HB 213

Perry, Booker T. (General Public) - Opponent

Federations of Congregations United to Serve (FOCUS)

2040 Rogers Avenue

Maitland FL 32751

Phone: 321-263-6984

PCS for HB 213

Thorpe, Reverend, Kevin (General Public) - Opponent

PICO Florida

Committee meeting was reported out: Wednesday, January 25, 2012 12:59:13PM

COMMITTEE/SUBCOMMITTEE AMENDMENT

PCS Name: PCS for HB 213 (2012)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

*favourable
1/25/12*

1 Committee/Subcommittee hearing PCS: Civil Justice Subcommittee
2 Representative Passidomo offered the following:

3
4 **Amendment**

5 Remove lines 483-487 and insert:

6 Section 7. The amendments to s. 702.10, Florida Statutes,
7 and the creation of ss. 702.11 and 702.13, Florida Statutes, are
8 remedial in nature and shall apply to causes of action pending
9 on the effective date of this act. Section 702.12, Florida
10 Statutes, created by this act, applies to cases filed on or
11 after
12

COMMITTEE MEETING REPORT

Civil Justice Subcommittee

1/25/2012 8:00:00AM

Location: 404 HOB

PCS for HB 935 : Child Support Enforcement

Favorable

	<i>Yea</i>	<i>Nay</i>	<i>No Vote</i>	<i>Absentee Yea</i>	<i>Absentee Nay</i>
Joseph Abruzzo			X		
Mack Bernard	X				
Matt Gaetz	X				
Bill Hager	X				
Shawn Harrison			X		
Martin Kiar			X		
Larry Metz	X				
Jose Oliva	X				
Kathleen Passidomo	X				
Scott Plakon				X	
Darren Soto	X				
Kelli Stargel	X				
Richard Steinberg	X				
Michael Weinstein	X				
Eric Eisnaugle (Chair)	X				
Total Yeas: 11		Total Nays: 0			

Committee meeting was reported out: Wednesday, January 25, 2012 12:59:13PM