LOUISIANA STATE LAW INSTITUTE

MEETING OF THE COUNCIL

February 10, 2023

Friday, February 10, 2023

Persons Present:

Baker, Pamela J.
Bowers, Clinton M.
Breard, L. Kent
Brown, Nanette Jolivette
Caldwell, N. Kordell
Castle, Marilyn
Crigler, James C., Jr.
Crigler, John D.
Cromwell, L. David
Davrados, Nikolaos A.
Degan, Emily D.
Freel, Angelique D.
Gregorie, Isaac M. "Mack"
Hamilton, Leo C.
Hawthorne, George "Trippe"
Hogan, Lila Tritico
Holdridge, Guy
Kunkel, Nick
Manning, C. Wendell
Mengis, Joseph W.
Philips, Harry "Skip", Jr.
Pirtle, Amy
Price, Donald W.
Saloom, Douglas J.
Shirey, Allison
Stephenson, Gail S.
Thibeaux, Robert P.
Thibodeaux, Casey L.
Tucker, Zelda W.
Ventulan, Josef
Waller, Mallory C.
Weems, Charles S., III
White, H. Aubrey, III
Ziober, John David

Vice-President L. David Cromwell called the February Council meeting to order at 10:00 a.m. on Friday, February 10, 2023 at the Lod Cook Alumni Center in Baton Rouge. After asking Council members to briefly introduce themselves and making a few administrative announcements, the Vice-President called on Judge Guy Holdridge, Reporter of the Code of Civil Procedure Committee, to begin his presentation of materials.

Code of Civil Procedure Committee

Judge Holdridge began his presentation by indicating that the proposed revisions are merely technical in nature, first directing the Council to Article 561 relative to abandonment in trial and appellate court. The Reporter explained that Subparagraphs (A)(2) and (6) provide for the abandonment of actions relative to Hurricane Katrina and the time in which the pertinent provisions become null and void. Judge Holdridge indicated that although these provisions were removed from the printed copies of the Code of Civil Procedure, they are still included on the legislative website, and since the provisions became null and void on August 26, 2010, they should be repealed. With little discussion, the Council adopted the proposed language as follows:

Article 561. Abandonment in trial and appellate court

A.(1) An action~~, except as provided in Subparagraph (2) of this Paragraph,~~ is abandoned when the parties fail to take any step in its prosecution or defense in the trial court for a period of three years, unless it is a succession proceeding:

(a) Which has been opened;

(b) In which an administrator or executor has been appointed; or

(c) In which a testament has been probated.

~~*(2) If a party whose action is declared or claimed to be abandoned proves that the failure to take a step in the prosecution or defense in the trial court or the failure to take any step in the prosecution or disposition of an appeal was caused by or was a direct result of Hurricane Katrina or Rita, an action originally initiated by the filing of a pleading prior to August 26, 2005, which has not previously been abandoned in accordance with the provisions of Subparagraph (1) of this Paragraph, is abandoned when the parties fail to take any step in its prosecution or defense in the trial court for a period of five years, unless it is a succession proceeding:*~~

~~*(a) Which has been opened;*~~

~~*(b) In which an administrator or executor has been appointed; or*~~

~~*(c) In which a testament has been probated.*~~

~~(3)~~ (2) This provision shall be operative without formal order, but, on ex parte motion of any party or other interested person by affidavit which provides that no step has been timely taken in the prosecution or defense of the action, the trial court shall enter a formal order of dismissal as of the date of its abandonment. The sheriff shall serve the order in the manner provided in Article 1314, and shall execute a return pursuant to Article 1292.

~~(4)~~ (3) A motion to set aside a dismissal may be made only within thirty days of the date of the sheriff's service of the order of dismissal. If the trial court denies a timely motion to set aside the dismissal, the clerk of court shall give notice of the order of denial pursuant to Article 1913(A) and shall file a certificate pursuant to Article 1913(D).

~~(5)~~ (4) An appeal of an order of dismissal may be taken only within sixty days of the date of the sheriff's service of the order of dismissal. An appeal of an order of denial may be taken only within sixty days of the date of the clerk's mailing of the order of denial.

~~(6) The provisions of Subparagraph (2) of this Paragraph shall become null and void on August 26, 2010.~~

* * *

Next, Judge Holdridge turned to Article 1810, noting that the previous Paragraph B was repealed and enacted in 1983 within Article 1672 relative to involuntary dismissal. Consequently, the only revision being presented at this time is to the title, removing "motion to dismiss at close of plaintiff's evidence." With little discussion, the Council adopted the proposed revision as follows:

Article 1810. Directed verdicts~~; motion to dismiss at close of plaintiff's evidence~~

A party who moves for a directed verdict at the close of the evidence offered by an opponent may offer evidence in the event that the motion is not granted, without having reserved the right so to do and to the same extent as if the motion had not been made. A motion for a directed verdict that is not granted is not a waiver of trial by jury even though all parties to the action have moved for directed verdicts. A motion for a directed verdict shall state the specific grounds therefor. The order of the court granting a motion for a directed verdict is effective without any assent of the jury.

Subsequently, Judge Holdridge further suggested that the Council consider recommitting the substance of Article 1810 since the statute does not define the term "directed verdict" and in light of post-1983 changes to the comparative fault framework. He explained that the Article currently contemplates that any party may move for a directed verdict; however, if a plaintiff were to offer no evidence as to the fault of one

defendant in a cause with multiple defendants, that defendant may move for a directed verdict. Consequently, a court may grant the motion and, though co-defendants may offer evidence as to the fault of the dismissed defendant and fault may be allocated, this may necessitate the drafting of multiple judgments and call into question recovery of the plaintiff from the remaining defendants and precise allocation of fault. After discussing potential consequences of leaving the Article untouched, the Council tasked the Code of Civil Procedure Committee with additional study.

Judge Holdridge then concluded his presentation, and the Vice-President called on Professor Melissa T. Lonegrass to begin her presentation on behalf of the Lease of Movables Act Committee.

Lease of Movables Act Committee

Professor Lonegrass began her presentation by reminding the Council that, in October, the Lease of Movables Act Committee had presented a series of relatively minor proposals related to the transfer of ownership of movable property, one of which was the repeal of R.S. 9:3310 as reflected in the materials. She explained that R.S. 9:3310 essentially provides that when parties enter a transaction that is in the form of a lease but is actually a sale of movable property made conditional upon full payment of the price – a transaction that would result in a sale with reservation of a security interest under the Uniform Commercial Code – the filing of a financing statement allows the seller-"lessor" to retain ownership of the property purportedly sold. The Committee had voted to repeal the provision because it is at odds with the rest of the country and makes little sense conceptually. Professor Lonegrass explained that today she would present a number of related revisions that effectively removed this retention-of-title concept and all related references from the Lease of Movables Act. The second major item for which the Committee was requesting approval was a change in terminology with respect to these transactions – replacing the term "financed lease" with the term "nominal lease." Professor Lonegrass noted that "nominal lease" was the terminology generally used in the industry and that eliminating reference to "financed lease" would further serve to eliminate confusion between Louisiana's use of "financed lease" to describe a transaction wholly distinct from the transaction described by the Uniform Commercial Code as a "finance lease". The Reporter of the Committee, Mr. Robert Thibeaux, emphasized the fact that the Committee would later return to the Council with a "complete" revision of the Lease of Movables Act and that today's presentation was limited in scope.

Moving to the materials, Professor Lonegrass highlighted two primary categories of proposed revisions: (1) the deletion of language speaking in some way to the concept of retention of title in a so-called "financed lease;" and (2) the replacement of "financed lease" with the term "nominal lease". She then acknowledged that there were a number of less-than-ideal drafting decisions contained in the Lease of Movables Act and urged the Council to keep in mind that the present proposal was only seeking to address a limited issue while the Committee completed its full revision. Professor Lonegrass then directed the Council to the proposed repeal of R.S. 9:3302. She explained that this provision had no substantive effect and simply elucidated the policy behind the initial enactment of the retention-of-title concept. A motion was made and seconded to adopt the repeal of R.S. 9:3302, and the motion passed with all in favor. Professor Lonegrass then proceeded to R.S. 9:3303, noting that the Committee was proposing the deletion of some but not all text. She stated that this proposal required a bit more background on the Lease of Movables Act: The Act – and the retention-of-title concept – was first enacted prior to the adoption of Article 9 of the UCC. Accordingly, once UCC-9 was adopted in Louisiana, a rule was added clarifying that a financed lease is a transaction that creates a security interest under the UCC. The addition of this concept dictated the addition of language addressing the treatment of financed leases entered into prior to the adoption of UCC-9, resulting in a temporal bifurcation appearing throughout the Lease of Movables Act. Because any lease entered into prior to the adoption of UCC-9 would now be thirty-three years old, however, the bifurcation is no longer necessary. The Committee was therefore proposing the deletion of all such language appearing throughout the Lease of Movables Act. Professor Lonegrass assured the Council that the Committee had been incapable of coming up with a single transaction that would be affected by the deletion and had the utmost confidence that there would be no such effect – and to the extent that

there was, the law of retroactivity would prevent harm. She noted that the proposed deletions in R.S. 9:3303 also included the deletion of a "souped up" conflicts of law provision. She explained that the provision was likely unnecessary in its entirety and would probably be deleted pursuant to the Committee's ultimate full revision but emphasized that it was *certainly* unnecessary to the extent of the present deletion.

One Council member then inquired as to whether a Comment would be helpful with respect to the deletion of the temporal language throughout. Professor Lonegrass opined that a comment was unnecessary, reiterating that nobody at the Committee meeting had had any concerns at all on the issue. A motion was then made and seconded to adopt R.S. 9:3303. Another Council member asked whether it was the Committee's intent not to change the language on line 9. More specifically, he asked whether "lease" should now be replaced with "true lease" in light of the fact that the Committee had proposed to eliminate the language recognizing financed leases as leases. Professor Lonegrass reasoned that the general reference to "lease" was intended to incorporate both, with "true lease" and "financed lease" being intended to represent subcategories thereof. She opined that no revision was necessary here but commented that the Committee could go through and find each use and address it if the Council felt that it was necessary. Ultimately, the Council agreed with Professor Lonegrass and decided against taking this step, reasoning that, if this issue existed, it had existed prior to and independent of any action by the Committee. Returning then to the motion on the floor, the Council voted with all in favor to adopt R.S. 9:33303 as presented. The adopted proposal reads as follows:

R.S. 9:3303. Scope

* * *

B. Subject to the provisions of R.S. 9:3303(D), (E), and (F), a lease agreement affecting movable property located or to be located in Louisiana may provide that the transaction will be governed under the substantive laws of the state in which the lease is entered into or governed under the substantive laws of the state of the lessor's residence, principal office, or incorporation or governed under the substantive laws of any other state having significant contacts with the transaction. ~~As a limited exception to the foregoing, the substantive laws of the chosen forum that would characterize the lease as a type of secured financing transaction under the Uniform Commercial Code shall not apply to a financed lease, provided that the transaction was entered into prior to the time Chapter 9 of the Louisiana Commercial Laws (R.S. 10:9-101, et seq.) became effective. Such a lease shall retain the legal effects of a "financed lease" under this Chapter notwithstanding the fact that the lease may be contractually subject to the substantive laws of another state and may otherwise be classified as a type of secured financing transaction under the Uniform Commercial Code or other laws of the chosen forum. It shall furthermore not be necessary under these limited circumstances for the lessor to perfect any type of security interest on the leased equipment located in Louisiana, again provided that such a financed lease was entered into prior to the time Chapter 9 of the Louisiana Commercial Laws became effective.~~

* * *

Professor Lonegrass turned next to R.S. 9:3306, which provides definitions for the Lease of Movables Act. Turning first to Paragraph (12) – "financed lease" – she explained that the proposed revisions simply renamed the term and simplified the concept. She further noted that the Committee had opted to retain the term in light of its conclusion that certain provisions of the Lease of Movables Act would still be applicable to these transactions even if no title was retained. Finally, she highlighted the elimination of the outdated temporal language. A motion was made and seconded to approve the proposed revisions, and one Council member inquired as to whether a nominal lease constituted a sale and, if so, whether this principle should be explicitly stated. Professor Lonegrass clarified that this transaction was in fact a sale but reasoned that this was the case simply

by virtue of background law rather than any provision of the Lease of Movables Act or UCC. She further noted that the Council had already voted, in October, to adopt the Committee's proposed addition of the phrase "transaction in the form of." In response to further discussion as to whether the definition adequately captured these substantive points, the staff attorney highlighted the fact that the definition at issue cross-referenced the UCC and thus incorporated its substance as well. This prompted a question as to whether "classified" was in fact accurate in light of the UCC's description of the transaction as *creating* a security interest. Professor Lonegrass agreed that as a matter of semantics it made sense to use "creates" in the present context, as the transaction was not "classified" as a sale – or anything else, for that regard – under the UCC; it was classified as a sale under sales law. Thus, on lines 12 and 13 of page 5 of the materials, the language "is classified as a security interest as provided under..." was replaced with "creates a security interest under..." The Council returned to the motion on the floor, to approve the revised definition of "nominal lease" along with the corresponding redesignation, which carried with all in favor. The definition of "nominal lease" was adopted as follows:

R.S. 9:3306. Definitions

* * *

~~(12)(a)~~ (20) "~~Financed~~ Nominal lease" means a ~~lease entered into prior to January 1, 1990 under which:~~

~~(i) The lessee is obligated to pay total compensation over the base lease term which is substantially equivalent to or which exceeds the initial value of the leased property; and~~

~~(ii) The lessee is obligated to become, or has the option of becoming, the owner of the leased property upon termination of the lease for no additional consideration or for nominal consideration.~~

~~(b) After January 1, 1990 a "financed lease" for purposes of this Chapter means a~~ transaction in the form of a lease ~~entered into on or after that effective date~~ that ~~is classified as~~ creates a security interest ~~as provided~~ under R.S. ~~10:1-201(35)~~ 10:1-203.

* * *

Professor Lonegrass turned next to the definition of "true lease," explaining that the Committee had made a conscious decision to retain this term for practical clarity under the Lease of Movables Act, at least for the purposes of the present revision; she reminded the Council that the term would likely be removed once the Committee had completed its full revision. Referring back to the prior discussion regarding "classified as" versus "creates," a Council member inquired as to whether a similar revision was necessary in the present context. Another Council member answered in the affirmative but also noted that using the same language would not be appropriate in the present context, as a "true lease" might very well contain a term creating a security interest. Professor Lonegrass, joined by other members of the Council, praised this as a salient point. After brief wordsmithing and consideration of how to best incorporate these concepts, the Council decided to replace "is not classified as a security interest as provided under..." with "does not create a security interest *in the leased property* under..." (emphasis added). This revision was accepted as a friendly amendment. Another Council member queried whether language "in the form of" should likewise be added here so as to match the language used in regard to "nominal lease." Professor Lonegrass noted that the language was unnecessary here, as the actual transaction being contemplated *was* in fact a lease, whereas it was not in the prior context. Returning to the prior revision, a Council member queried whether the proper terminology was "leased thing" or "leased property." Given that the use of the term "property" would pick up a defined term under the Lease of Movables Act, the Council ultimately retained this language – but with the understanding that "leased thing" was the proper Louisiana terminology and would be employed in the

Committee's full revision. With no further discussion, a motion was made and seconded to adopt R.S. 9:3306(26). The motion passed, and the adopted proposal reads as follows:

R.S. 9:3306. Definitions

* * *

(26)(a) "True lease" means a lease ~~entered into before January 1, 1990, under which:~~

~~(i) The lessee has no obligation to pay total compensation over the base lease term which is substantially equivalent to or in excess of the initial value of the leased property; or~~

~~(ii) The lessee does not have the option or obligation to become the owner of the leased property upon termination of the lease for no or nominal consideration.~~

~~(b) A true lease also means a lease entered into after January 1, 1990~~ that ~~is not classified as~~ does not create a security interest in the leased property ~~as provided~~ under R.S. ~~10:1-201(35)~~ 10:1-203.

~~(c)~~ (b) Consistent with R.S. 10:9-505, the filing of a financing statement by a lessor under a true lease shall not of itself result in such a lease being classified as a ~~financed~~ nominal lease for purposes of this Chapter or otherwise.

* * *

Professor Lonegrass expressed that the next series of revisions could likely be handled *in globo*, as they were all simply the replacement of "financed lease" with "nominal lease." She also noted that there were a handful of instances where the present language in the Lease of Movables Act referenced "true or financed leases" and the Committee had proposed to add "lease" after "true" so as to employ both terms as defined. This prompted a question from the Council about a handful of instances where these defined terms were paired with an additional descriptor – namely, "consumer" or "commercial." A Council member noted that the proposed addition of "lease" in the manner referenced by Professor Lonegrass would serve to cut off the application of the additional descriptor in certain instances. Professor Lonegrass acknowledged this as a fair point and decided against the addition of "lease" in these instances. In response to questions about how the preexisting issue – that is, the language "true and financed commercial lease agreements," for example, not picking up both categories of defined terms simultaneously – might be fixed, Professor Lonegrass reminded the Council that the Committee's goal today was *not* to fix any and all problematic drafting contained in the present Lease of Movables Act but rather to address a particular discrete issue. Thus, while acknowledging the Council's characterization of this issue as problematic, she proposed to carry on without attempting any overall fix, instead opting simply to replace terminology as initially intended. The Council ultimately agreed to this more limited course of action, with the understanding that this was not an issue being created by any action of the Committee and the further understanding that the Committee's final, comprehensive revision would address the issue. So as to make things less complicated in light of this issue, Professor Lonegrass agreed to take the remaining provisions one at a time, rather than seeking *in globo* approval. A motion was made and seconded to adopt R.S. 9:3310.1 as proposed, and the motion passed with all in favor. The adopted provision reads as follows:

R.S. 9:3310.1. Constructive delivery of possession in sale/lease-back situations

When equipment is sold to, and is contemporaneously leased under a true lease or ~~financed~~ nominal lease by, the vendee/lessor back to the vendor/lessee, the filing of a financing statement as provided in R.S.

9:3342(B) suffices for the transfer of ownership of the equipment as against third persons.

Professor Lonegrass then turned to R.S. 9:3312, noting that the only proposed revision was the replacement of "financed" with "nominal". A motion was made and seconded to adopt the proposal, and the motion passed with no objection. R.S. 9:3312 as adopted reads as follows:

R.S. 9:3312. Interest rate charges; ~~financed~~ nominal leases

A. Maximum interest rate charges capitalized into consumer purpose ~~financed~~ nominal leases shall be limited as follows:

* * *

B. Interest rate charges capitalized into commercial purpose ~~financed~~ nominal leases are unregulated and are not subject to conventional interest rate or usury limitations.

C. This Section does not limit or restrict the manner of contracting for interest rate charges, whether by way of add-on or otherwise, so long as the rate in connection with consumer purpose ~~financed~~ nominal leases does not exceed that permitted by R.S. 9:3312(A). Interest rates may be calculated on the assumption that all scheduled rental payments will be made when due and the effects of prepayment are governed under the provisions of rebate as provided under R.S. 9:3319(B).

D. For purposes of this Section, the term of a consumer ~~financed~~ nominal lease commences on the date the lease agreement is executed. Differences in lengths of months may be disregarded and a day may be counted as one-thirtieth of a month. Subject to classifications and differentiations, the lessor may reasonably establish a part of a month in excess of fifteen days to be treated as a full month if periods of fifteen days or less are disregarded and if that procedure is not consistently used to obtain a greater yield than would otherwise be permitted under R.S. 9:3312(A).

E. A lessor shall not divide a consumer ~~financed~~ nominal lease into multiple agreements for the purpose of obtaining higher interest rate charges than would otherwise be permitted by R.S. 9:3312(A).

Next, the Council considered R.S. 9:3313. One Council member pointed out that here, the Lease of Movables Act employed the language "lease agreements" in lieu of the more conventional "leases." Professor Lonegrass reminded the Council of the prior conversation, highlighting this as the same type of issue. The staff attorney also noted that the materials did not represent the entirety of the present Lease of Movables Act but rather just the provisions containing the term "financed lease;" thus, even if the Council did decide to remove all references to "lease agreements," this would nevertheless fail to address the issue in its entirety. Professor Lonegrass further emphasized that the more revisions the Council decided to make, the greater the apparent scope of the proposed legislation when eventually submitted to the legislature. Ultimately, the Council decided to limit the scope of its revisions in accordance with the Committee's recommendations. A motion was made and seconded to adopt R.S. 9:3313 as drafted, and the motion passed with all in favor. The adopted proposal reads as follows:

R.S. 9:3313. Additional lease related charges

A. Both true lease and ~~financed~~ nominal lease agreements, whether for consumer or commercial purposes, may contractually provide for the assessment, imposition, and collection of the following additional lease related charges:

* * *

Professor Lonegrass turned next to R.S. 9:3314, explaining that the proposed revisions were the same as previously discussed. After the removal of the added instance of "lease" was noted for the reasons previously discussed, a motion was made and seconded to adopt R.S. 9:3314. The motion passed with no objection, and the adopted proposal reads as follows:

R.S. 9:3314. Late charges

A. Lessees under both true and ~~financed~~ nominal consumer lease agreements may contractually agree to pay late charges on any one or more rental payments which are not paid in full within ten days after the scheduled or deferred due dates, in an amount not to exceed five percent of the unpaid amount of such delinquent rental payment, or twenty-five dollars, whichever is greater.

B. Lessees under both true and ~~financed~~ nominal commercial lease agreements may contractually agree to pay late charges in any amount or at any rate on any one or more delinquent rental payments which are not paid in full on the scheduled or deferred due dates.

* * *

Turning to R.S.9:3315, the same friendly amendment as was made to the previous provision was accepted here. A motion was then made and seconded to adopt the provision, and the motion passed with no objection. The adopted proposal reads as follows:

R.S. 9:3315. Deferral charges

A. The parties to a true or ~~financed~~ nominal consumer lease may agree, verbally or in writing, before or after default, to a deferral of all or part of one or more unpaid rental payments in consideration for which the lessor may assess, impose, and collect a deferral charge computed by applying a deferral charge rate not to exceed a maximum rate of twenty-five percent per annum, to the amount deferred over the period of deferral, calculated without regard to differences and lengths of months, but proportionately for a part of a month, counting each day as one-thirtieth of a month.

B. The parties to a true or ~~financed~~ nominal commercial lease may agree, verbally or in writing, before or after default, to a deferral of all or part of one or more unpaid rental payments in consideration for which the lessor may assess, impose, and collect a deferral charge computed by applying a deferral charge rate to the amount deferred over the period of deferral, calculated without regard to differences and lengths of months, but proportionately for a part of a month, counting each day as one-thirtieth of a month. For purposes of this Subsection, deferral charges assessed in connection with commercial leases shall be unregulated and exempt from conventional interest rate and usury limitations.

C. A true lease or ~~financed~~ nominal lease agreement, including in connection with both consumer leases and commercial leases, may provide that if any one or more rental payments are not paid within the time periods specified under the agreement, the lessor may unilaterally grant a deferral of such payments and assess deferral charges as provided in this Section. Deferral charges may not be assessed after the lessor elects to cancel the lease following the lessee's default as provided in R.S. 9:3318(A)(2).

* * *

Professor Lonegrass then asked the Council to consider R.S. 9:3316 and 3317 together, as the revisions proposed were merely the replacement of terminology. After adding "lease" on line 19 of page 13 and line 17 of page 14, a motion was made and seconded to adopt the provisions. The motion passed with all in favor, and the adopted proposals read as follows:

R.S. 9:3316. Early termination charges

A. Both true <u>lease</u> and ~~financed~~ <u>nominal</u> lease agreements, whether for consumer or commercial purposes, may contractually provide for the assessment, imposition, and collection of reasonable early termination charges, including but not limited to:

* * *

R.S. 9:3317. End of lease charges

A. Both true <u>lease</u> and ~~financed~~ <u>nominal</u> lease agreements, whether in connection with consumer or commercial purpose leases, may contractually provide for the assessment, imposition, and collection of reasonable end of lease charges, including but not limited to:

* * *

Professor Lonegrass next directed the Council's attention to R.S. 9:3318, pointing out that this provision contained more substantive and complex revisions. Noting that R.S. 9:3318 provides the lessor's remedies, she explained that it treats a financed lease like a lease for these purposes, allowing for repossession of the property. She reasoned that the availability of this remedy no longer made sense in light of the deletion of R.S. 9:3310's provision for retention of title; thus, the present proposal reflected this change as applied to the lessor's remedies under the Lease of Movables Act. Professor Lonegrass added that the revisions on lines 15 through 21 were merely semantic in nature and highlighted the substantive revisions as beginning on line 4 of page 16. A motion was made and seconded to adopt R.S. 9:3318 as proposed. One Council member then inquired as to why the statute used "any one of the following" in lieu of "either" and suggested revising the language accordingly, a change that was accepted as a friendly amendment. Returning to the motion on the floor, R.S. 9:3318 was approved as amended with all in favor. The adopted proposal reads as follows:

R.S. 9:3318. Options of lessor following lessee's default

A. ~~(1)~~ In the event of default by the lessee under a true lease, ~~or under a financed lease entered into prior to the time Chapter 9 of the Louisiana Commercial Laws becomes effective,~~ the lessor may do ~~any one~~ <u>either</u> of the following:

~~(a) He may file an propriate collection action against the lessee to recover~~ <u>(1) Recover</u> accelerated rental payments and additional amounts that are then due and outstanding and that will become due in the future over the full base term of the lease, as provided under R.S. 9:3319.

~~(b) He may cancel~~ <u>(2) Cancel</u> the lease, recover possession of the leased property and recover such additional amounts and liquidated damages as may be contractually provided under the lease agreement, as provided under R.S. 9:3320 through 3328.

~~(2)~~ <u>B.</u> The above remedies following the lessee's default are not cumulative in nature. The lessor may not seek to collect accelerated rental payments under the lease and also to cancel the lease and recover possession of the leased equipment.

~~B. In the event of default by the lessee under a financed lease entered into after Chapter 9 of the Louisiana Commercial Laws becomes effective, the lessor may at his option:~~

~~(1) Exercise such rights and remedies following default as are provided under this Chapter; or~~

~~(2) Exercise such rights and remedies following default as are provided under Chapter 9 of the Louisiana Commercial Laws.~~

Professor Lonegrass noted that the next several provisions – R.S. 9:3319, 3331, 3332, and 3338 – merely substituted terminology in the same manner as prior provisions. Motions were made and seconded to adopt the proposed changes to these provisions as presented, and the motions passed with no objection. The adopted proposals read as follows:

R.S. 9:3319. Accelerated rental payments

A. If the lessor under either a true lease or ~~financed~~ nominal lease elects to recover accelerated future rental payments and additional amounts that are then due and owing under the lease following the lessee's default, as provided under R.S. 9:3318(A)(1), the lessor shall commence an ordinary collection proceeding against the lessee as provided under the Louisiana Code of Civil Procedure. Any refundable security deposit held by the lessor may be retained and shall be credited against lessee's liability for accelerated rental payments. The lessor under a consumer lease shall not seek to recover full accelerated rental payments from the lessee, but shall grant the lessee an appropriate rebate of unearned interest rate charges capitalized into the lease as required under R.S. 9:3319(B).

* * *

R.S. 9:3331. Requirement of insurance

A. In any lease transaction made under the authority of this Chapter, including both true leases and ~~financed~~ nominal leases, and whether such leases are entered into for consumer or commercial purposes, the lessor may request or require the lessee to provide credit life insurance and credit health and accident insurance as additional security for such contract or agreement.

B. The cost of such insurance, if required by the lessor in connection with a consumer purpose ~~financed~~ nominal lease, shall be deemed a portion of the interest rate charge imposed under the lease for purpose of computing maximum rates under R.S. 9:3312(A).

* * *

R.S. 9:3332. Credit life and credit health and accident insurance

A. On all consumer lease transactions, including both consumer purpose true leases and ~~financed~~ nominal leases, the premium rate for declining balance credit life insurance shall not exceed one dollar per one hundred dollars per annum. The premium rate for joint credit life insurance shall not exceed one dollar and fifty cents per one hundred dollars per annum. The premium rate for level term credit life insurance shall not exceed two dollars per one hundred dollars per annum. The premium rate for joint level term credit life insurance shall not exceed three dollars per one hundred dollars per annum. The amount of credit life insurance issued pursuant to a consumer lease transaction shall not exceed the total sum payable under the lease. Credit life insurance in the amount of the total amount payable not to exceed maximum limits for each individual otherwise

provided by law, may be issued on the lives of individuals who are co-obligors with respect to that consumer lease transaction.

* * *

R.S. 9:3338. Gain from insurance

Any gain, or advantage to the lessor, or any employee, officer, director, agent, general agent, affiliate or associate from such an insurance or its provisions or sale shall not be considered as a further charge nor a further interest rate or markup charge in violation of R.S. 9:3312(A) in connection with any consumer purpose ~~financed~~ <u>nominal</u> lease made under this Chapter.

* * *

Reaching the end of the materials, Professor Lonegrass explained that the final statute, R.S. 9:3342, contained deletions beyond the mere replacement of terminology. In particular, she explained that the Committee was proposing to delete another instance of temporal bifurcation. She acknowledged that the language being retained was largely superfluous but stated that the Committee had concluded that it caused no harm and thus its deletion was unnecessary at the present time. A motion was made and seconded to adopt R.S. 9:3342, at which time one Council member suggested that line 3 of page 21 was entirely unnecessary, proposing its deletion and the corresponding redesignation of Paragraphs (1) through (3) as Subsections A through C. These changes were accepted as friendly amendments. The motion to approve R.S. 9:3342 as amended then passed with no objection, and the adopted proposal reads as follows:

R.S. 9:3342. Recordation of leases of movables

~~A. (1) Leases of movables entered into before Chapter 9 of the Louisiana Commercial Laws becomes effective may be recorded in the manner provided under this Subsection. The lease may be recorded by either the lessor or the lessee at their option. There is no requirement that a lease, including a financed lease entered into before the effective date of Chapter 9 of the Louisiana Commercial Laws, be recorded in order to be valid and enforceable as between the lessor and the lessee or with regard to third persons.~~

~~(2) A multiple original or photostatic copy of the lease or an extract of the lease may be recorded in the conveyance records of the parish in which the leased property is or will be initially located as well as, where applicable, in the parish in which the lessee is domiciled or maintains its principal or registered office in this state as reflected in the records of the secretary of state at the time the lease is recorded.~~

~~(3) For purposes of recording an extract of the lease, such an extract shall include:~~

~~(a) The name of the lessor;~~

~~(b) The name of the lessee;~~

~~(c) The date of the lease;~~

~~(d) The base term of the lease;~~

~~(e) A brief description of the leased property; and~~

~~(f) The location or locations at which the leased property is or will be initially located or kept when not in use elsewhere as provided in the lease.~~

~~(4) The extract of the lease shall be executed by a proper officer of the lessor and need not be signed by the lessee or certified before a notary public.~~

~~(5) Recorders of conveyances may assess fees for recordation of equipment leases in the same amount as assessed in connection with the recordation of leases of immovable property. Recorders of conveyances are bound to deliver to all persons who may demand it a certificate of recorded leases still in effect which have been filed. If there are none, the certificate shall declare this fact. The cost of the certificate charged by the recorder of conveyances shall be the same as charged for mortgage certificates.~~

~~B. Leases of movables entered into after January 1, 1990, may be filed as follows:~~

~~(1) Financed~~ A. Nominal leases are subject to the perfection and filing rules as provided in R.S. 10:9-101 et seq.

~~(2)~~ B. Other than as provided in R.S. 9:3310.1, there is no requirement that the lessor under a true lease make any type of filing in order for such a true lease to be valid and enforceable as between the lessor and the lessee or with regard to third persons. Notwithstanding this fact, the lessor may at his sole option and discretion choose to file a financing statement with regard to such a true lease in the manner otherwise provided under R.S. 10:9-501 et seq.

~~(3)~~ C. Consistent with R.S. 10:9-505, the filing of a financing statement in connection with a true lease not intended for security and not otherwise subject to Chapter 9 of the Louisiana Commercial Laws shall not of itself result in such a lease being classified as a ~~financed~~ nominal lease for purposes of this Chapter or otherwise.

Finally, Professor Lonegrass noted that a handout containing a few additional revisions proposed by the Committee was being distributed. In particular, she explained that these were provisions outside of the Lease of Movables Act where the concept of a financed lease was referenced. Thus, the Committee was proposing their revision in concert with the replacement of "financed lease" with "nominal lease." Beginning with R.S. 6:969.6, Professor Lonegrass noted that the only revision was a single instance of this replacement. In R.S. 9:3353, she explained that the Committee was proposing both to replace "financed" with "nominal" and to bring the definitional cross-references into accord with proper drafting conventions. A motion was made and seconded to adopt these revisions as presented. The motion passed with all in favor, and the adopted proposals read as follows:

R.S. 6:969.6. Definitions

As used in this Chapter:

* * *

(8) "Consumer credit sale" means the sale of a motor vehicle on credit under which the seller acquires a purchase money security interest in the purchased vehicle, and incident to which a credit service charge is charged and the consumer is permitted to defer all or part of the purchase price or other consideration in two or more installments excluding the down payment. A "consumer credit sale" does not include a lease of a motor vehicle under any circumstance, whether or not the lease constitutes a true lease or a ~~financed~~ nominal lease within the context of the Louisiana Lease of Movables Act, R.S. 9:3301 et seq. A consumer credit sale may be secured by other collateral in addition to the purchased vehicle.

* * *

R.S. 9:3353. Inapplicability of other laws; exempted transactions

A. Rental-purchase agreements which comply with this Chapter shall not be governed by the laws relating to the following:

(1) A consumer credit sale as defined in R.S. 9:3516~~(12)~~ of the Louisiana Consumer Credit Law.

(2) A consumer credit transaction as defined in R.S. 9:3516~~(13)~~ of the Louisiana Consumer Credit Law.

(3) A consumer loan as defined in R.S. 9:3516~~(14)~~ of the Louisiana Consumer Credit Law.

(4) A consumer lease as defined in R.S. 9:3306~~(9)~~ of the Louisiana Lease of Movables Act.

(5) A ~~financed~~ nominal lease as defined in R.S. 9:3306~~(12)~~ of the Louisiana Lease of Movables Act.

(6) A true lease as defined in R.S. 9:3306~~(26)~~ of the Louisiana Lease of Movables Act.

(7) A conditional sale as defined in R.S. 9:3306~~(7)~~ of the Louisiana Lease of Movables Act.

(8) A lease intended for security as defined in R.S. 10:1-201~~(35)~~ of the Louisiana Commercial Laws.

* * *

Professor Lonegrass then concluded her presentation, and the Vice-President called on Mr. Charles S. Weems, III, Reporter of the Constitutional Laws Committee, to begin his presentation of materials.

Constitutional Laws Committee

Mr. Weems greeted the Council and explained that although the typical function of the Constitutional Laws Committee is to report to the legislature every two years with respect to Louisiana laws that had been declared to be unconstitutional or preempted by federal law, today he would be presenting a report in response to House Concurrent Resolution No. 7 of the 2020 First Extraordinary Session relative to the language of the Constitution. As background, the Reporter briefly summarized the history of the Constitution of Louisiana, emphasizing its several iterations and the huge number of amendments to each; he contrasted this state of constant flux with the far more static history of the United States Constitution. Against this backdrop, Mr. Weems explained that the legislature had made two requests of the Law Institute: first, to study the current Constitution and propose stylistic, semantic, and conventional revisions; and second, to identify language that was legally unnecessary, misplaced within the Constitution, or should instead be found in statute. The Reporter characterized the first of these two tasks as a "grammar check" – a request to revise language that was susceptible to improvement without altering its meaning. He explained that the Committee had completed this task and that he would present the Committee's proposed revisions momentarily but acknowledged that these proposals would likely prove futile in practice as they were unlikely to be adopted by voters. With respect to the second request, Mr. Weems explained that the Committee had concluded that this task was *not* within the Law Institute's purview, as it would place the Institute in the position of delegates to a constitutional convention – a realm that Mr. Weems characterized as decidedly political and thus exceeding the bounds of the Law Institute's function. Thus, the Reporter explained that the Committee intended to decline this second task, noting that its response might be different if it had been asked to draft something wholly new.

Mr. Weems then directed the Council's attention to the report it had prepared in response to the resolution. One Council member highlighted the "the Law Institute remains concerned about the practical difficulties associated with making such amendments" language, suggesting using a word less adversarial than "concerned." After several Council members voiced proposals to add detail to the sentence at issue, another Council member cautioned that the inclusion of specifics here may be interpreted as the Law Institute chiding the legislature for failing to account for such issues. Accordingly, the member suggested making the language more generic by replacing "remains concerned about" with "notes." The Council expressed general support for this proposal, and Mr. Weems accepted it as a friendly amendment. Another Council member proposed the replacement of "making" with "enacting," which was likewise accepted as a friendly amendment. Finally, Mr. Weems accepted the replacement of "are indicated" with "were considered and approved by the Council of the Law Institute as indicated." Moving to the final paragraph, which addressed and responded to the legislature's second request, the Council discussed whether legislators might believe that the Law Institute was "thumbing its nose" at the legislature by declining this request, but the Director and Reporter did not share this concern. One Council member suggested that perhaps the report could explain how the present request differed from the Committee's typical function, and the Council agreed that it would be more productive to clarify under what circumstances the Committee would be willing to undertake a project of the type requested by the resolution, such as responding to a *specific* request for proposed constitutional revision or a request for input on the drafting of a new Constitution. Mr. Weems resolved to add language to this effect while the Council broke for lunch.

One Council member then questioned whether, in the Director's view, the resolution was indicative of the potential convening of a constitutional convention, and Judge Holdridge responded that this would likely be deferred until next term. Returning to the specifics of the report and referencing the previous discussion, one Council member proposed adding the phrase "without a specific charge" immediately following "making recommendations concerning the removal or relocation of substantive provisions of Louisiana's Constitution." This revision was accepted as a friendly amendment, and after breaking for lunch, the Reporter proposed the following language with respect to the third paragraph of the report: "The Law Institute determined, however, that without a specific request from the Legislature to do so, it should not make ~~making~~ recommendations concerning the wholesale removal or relocation of substantive provisions of Louisiana's Constitution~~,~~. Doing so would be ..." A motion was made and seconded to approve these revisions, and the motion passed with all in favor. Mr. Weems then proposed the addition of the following language at the conclusion of the report: "...the Law Institute makes no recommendations in response to the resolution's second request at this time but stands ready to do so should it receive legislative direction to draft a structure for the content and/or adoption of a new Constitution." A motion was made and seconded to approve this revision, and the motion passed with no objection. A motion was then made and seconded to adopt the report as amended, and that motion also passed with all in favor.

The Reporter then turned to the Committee's response to the legislature's first request. He explained that the Committee had addressed this request using Louisiana's legislative drafting conventions and the Law Institute's own semantics rules. Mr. Weems noted that the materials had been prepared in three groups – revisions to Articles I through VI, revisions to Article VII, and revisions to Articles VIII through XIV – and explained that each proposed revision had been highlighted. He noted that he planned to proceed through the revisions in the order that they appeared in the materials, and that because many revisions were the same as or similar to other revisions, he would ask for approval of each individual revision and all others in its category as they appeared. The Council had no objection to proceeding in this fashion. Mr. Weems began on page 3 of the "Articles I through VI" materials, pointing to the replacement of "non-federal" with "nonfederal." He characterized this category of revision as "spelling changes" and noted that the category included changes to hyphenation. A motion was made and seconded to approve this and all similar revisions, and the motion passed with no objection. Next, the Reporter turned to page 7, indicating to the Council that the Committee was proposing the capitalization of "Constitution" and categorizing this revision as a "capitalization

change." A motion was made and seconded to approve this and all similar revisions, and the motion passed with no objection.

The next revisions identified by the Reporter were the addition of subdesignations ("organization changes"), the insertion of the oxford comma ("punctuation changes"), and the replacement of "this Constitution" with "the Constitution of Louisiana" ("changes to improper and inconsistent language"), all on page 9. Motions were made and seconded to approve all revisions in these categories in the same manner, and these motions passed with all in favor. Next, on pages 14-15 of the materials, Mr. Weems noted that the Committee had deleted temporally limited language that no longer had any effect. On page 16, the Committee had replaced pronouns with the specific title to which they referred. The Reporter noted that the revision on page 21 deleted another instance of obsolete transitional language, this time specific. On page 30, the Committee had reorganized internal cross references, and on page 43, it had replaced "which" with "that." The Council approved each of these categories of revision without objection. Turning next to page 44, Mr. Weems noted that the deletion of the obsolete language "Within two years after the effective date of this constitution" probably fit into the earlier category of "transitional revisions" but in any event simply served to eliminate now-unnecessary verbiage. A motion was made and seconded to approve this and all related revisions, and the motion passed without objection.

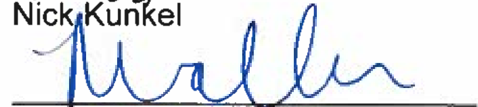
Before the Reporter moved on, one Council member pointed out that lines 3, 14, and 20 of page 44 used the phrase "inconsistent with Constitution" and queried whether these phrases should instead read "inconsistent with *this* Constitution". The Reporter agreed, and a motion was made and seconded to make this change. The motion passed without objection. Mr. Weems turned next to page 52, where the Committee had replaced a reference to "the effective date" of the Constitution with a specific date. A motion was made and seconded to approve this and all related revisions, and the motion passed without objection. Returning to an item that he had inadvertently skipped over, the Reporter noted that throughout the materials, the Committee had included various notes to the legislature regarding references that, although not necessarily involving transitional language, nevertheless employed some form of out-of-date language. For example, in several places, the Constitution referred to certain previously elected but presently appointed positions as being elected positions. Because the solution to this issue would require a substantive revision to the Constitution, the Committee had simply noted these items for the legislature. A motion was made and seconded to approve these notes, and the motion passed without objection. One Council member then raised an issue regarding Article I, Section 17, noting that the provision had been declared unconstitutional but that the resulting amendment had overlooked certain offending language – in particular, the phrase "ten of whom must concur to render a verdict" in Paragraph (B). After a brief discussion, the Council decided to add a note explaining this issue to the legislature.

The Reporter then moved to the "Article VII" materials, which include corrections to statutory cross-references (page 16), the replacement of "provided however that" with "nevertheless" and other issues of language simplification (page 22), the insertion of the clarifying prefatory phrase "In each parish" preceding certain parish-specific provisions (page 39), and the deletion of references to dated legal principles (page 60). Each of these revisions, as well other revisions of the same type throughout the Constitution, were approved without objection. Mr. Weems also noted the addition of notes to the legislature on pages 62 and 64, and both notes were approved with all in favor. The Reporter then moved to the "Articles VIII through XIV" materials, explaining that this document contained no new "categories" of revision and had thus already been approved nearly in its entirety. Mr. Weems noted that page 15 contained a note to the legislature with respect to the Fist-Use Tax that had been declared unconstitutional, and page 54 contained a note explaining that the reference to the 1921 Constitution regarding the legislative auditor was unnecessary. A motion was made and seconded to approve the inclusion of both of these notes, and the motion passed with all in favor.

Mr. Weems then concluded his presentation, and the Director, Judge Guy Holdridge, took the podium to review a few brief scheduling notes. First, he informed the Council that there would no longer be a Council meeting on March 17th – that date had been set "just in case" but had since proven unnecessary. Instead, Judge Holdridge

explained that there were plans to schedule a May meeting so as to avoid having to wait until the end of the year to begin approving legislative proposals. Finally, the Director noted that an August meeting might also be scheduled, and he assured Council members that they would be notified of all relevant updates. There being no additional business, the February 2023 Council meeting was then adjourned.

Nick Kunkel



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