

**CORPORATE LAWS COMMITTEE**  
**REPORT PREPARED FOR THE DECEMBER 1, 2022 COUNCIL MEETING**

**1. Next Scheduled Meeting of the Committee.**

No meetings are currently scheduled. The Committee is presently focused on promoting proposed benefit corporation legislation that it has developed, working with legislative consultants on the effort.

**2. Council Approval.**

We do not request council approval of any matters at this meeting.

**3. Membership.**

The Committee remains open to participation by any interested parties. The Committee has approximately 75 members on its active roster, though many fewer who actively participate.

**4. Accomplishments Toward Committee Objectives.**

The activity of the Committee is directly related to the Strategic Plan mission of promoting improved legislation and regulation for business and the goal of reviewing Michigan laws affecting business formation, capital raising, corporate governance and related legal matters. The Committee attempts to keep Michigan corporate law current with national trends and competitive with the business law environments of other jurisdictions.

The Committee continues to monitor legislation that could affect Michigan corporation law. We have begun the process of assembling material for the next round of amendments to the Michigan Business Corporation Act. We determined to bifurcate that effort and to first focus on preparing proposed draft benefit corporation legislation. We have been working with Michigan Legislative Consultants to seek legislative sponsorship for the act. We had hoped to move the bill prior to the end of the legislative session but that will not happen. However, we have lined up a potential sponsor to introduce the bill in the next legislative session.

In the past the Committee has taken the lead in preparing amicus briefs on behalf of the Business Law Section, at the request of both the Michigan Court of Appeals and the request of the Michigan Supreme Court. In response to one such invitation from the Supreme Court, in 2021 several committee members participated in the preparation of an amicus brief in the case of Murphy v Inman. The brief, which addresses issues including the distinction between direct and derivative actions and whether directors have common-law fiduciary duties, was filed in October 2021. The Supreme Court's decision in Murphy v Inman was issued on April 5, 2022 and adopted the positions urged in the amicus brief, as follows: (i) directors have common law duties to shareholders that were not abrogated by the adoption of the Michigan Business Corporation Act; (ii) directors have a fiduciary duty to maximize shareholder value in the context of a cash-out merger; (iii) in determining whether an action is direct or derivative, Michigan courts must apply a two-part test adopted from Delaware law, which asks (A) who suffered the alleged harm and (B) who would benefit from any recovery or other remedy; and (iv) in connection with a shareholder claim that directors breached their duties in a cash-out merger by negotiating an inadequate and unfair price, the claim may be brought directly

**5. Meetings and Programs.**

No programs are currently scheduled.

## **6. Publications.**

The Committee was responsible for the Fall 2020 edition of the Business Law Journal. Members of the Committee's oppression study group contributed a number of articles for this issue related to the topics considered by the study group. The Committee will be responsible for the Fall 2023 issue.

## **7. Methods of Monitoring Legislative/Judicial/Administrative Developments and Recommended Action.**

The Committee monitors bills that would affect corporation statutes that are introduced without its input and considers these together with the Corporations Division of the Bureau of Commercial Services of the Department of Licensing and Regulatory Affairs. The Committee interacts with the Division and the Bureau frequently on matters of legislative interpretation and administrative practice. The Committee also consults with the Division regarding efforts to further streamline corporate filings and information dissemination.

The Committee reviews judicial decisions affecting matters of Michigan corporate law. From time to time the Committee proposes statutory amendments that are intended to address the effects of specific case law. Additionally, the Committee has prepared and filed amicus curiae briefs at the invitation of the Michigan Supreme Court.

The Committee monitors developments and changes in the corporate laws of other states such as Delaware and developments and changes in the Model Business Corporation Act.

## **8. Miscellaneous.**

The Committee will continue to accept ideas for technical and other amendments to the Business Corporation Act. Suggestions in this regard may be addressed to either committee co-chair.

Any questions regarding this report may be directed to Justin Klimko or Mike Molitor.

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