

CORPORATE LAWS COMMITTEE
REPORT PREPARED FOR THE DECEMBER 3, 2021 COUNCIL MEETING

1. Next Scheduled Meeting of the Committee.

We are in the process for choosing a date for a meeting in early 2022 to discuss the next round of proposed amendments to the Michigan Business Corporation Act.

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.

As previously reported, we assembled a study group to examine the oppression provisions of both the Business Corporation Act and the Limited Liability Company Act., to consider whether changes should be recommended to make it easier to understand and apply. The task force met sporadically for over two years. The task force created subcommittees to study discrete issues arising with regard to the oppression statutes which conferred separately and produced discussion material and recommendations to the larger group. We determined to explore whether the Business Court judges would be interested in amendments giving them expanded abilities to enter preliminary orders in oppression cases and sent a letter to them. We also sponsored an issue of the Michigan Business Law Journal devoted to oppression topics.

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 and expect to begin meeting in early 2022 to discuss possible amendments

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.

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 oppression study group contributed a number of articles for this issue related to the topics considered by the study group.

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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