

CORPORATE LAWS COMMITTEE
REPORT PREPARED FOR THE OCTOBER 1, 2020 COUNCIL MEETING

1. 2020-2021 Budget Request and Anticipated Use of Funds

For 2020-2021, we request a budget of \$1,500, the same amount budgeted for 2019-2020. Possible expenses include potential meeting costs and also for research costs related to new legislative initiatives.

2. Use of Budgeted Funds During 2019-2020

For 2019-2020 we incurred meeting costs for the Oppression Statute Study project of \$659.19, for a meeting held in February, 2020 in Novi.

3. Next Scheduled Meeting of the Committee.

No meetings as a full committee are currently scheduled. A meeting of our oppression statute study group was held on February 22, at which we discussed the activities of the various subgroups and the topics assigned to them. Several committee members are part of the study group, which also includes individuals not on the committee. We will consider possible additional in-person meetings once circumstances normalize and will also consider virtual meetings.

4. Council Approval.

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

5. 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.

6. 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.

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 includes plaintiff and defense lawyers who litigate oppression claims, transaction lawyers, and members of the LLC and Partnership Committee. In-person meetings of the task force were held on September 19, 2018 in Lansing and February 22, 2020 in Novi, and a meeting by conference call was held February 27, 2019. At the February 27, 2019 meeting, the task force created subcommittees to study discrete issues arising with regard to the oppression statutes. The subcommittees conferred separately and produced discussion material and recommendations to the larger group, which were discussed at the meeting on February 22, 2020, as was the effect of the Court of Appeals' recent decision in *Franks v Franks* relating to oppression. 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. In response to the letter, a Zoom call was held among four of the study group members and Judges James Alexander and Christopher Yates, who are assigned as business court judges for Oakland County and Kent County, respectively. In the call, we discussed the committee's efforts, asked about the utility of possible procedural revisions for oppression cases, and offered to address a future meeting of the business

court judges to discuss oppression statute issues. Following the call, Michael Molitor forwarded to the judges a memorandum he had previously prepared for the study group.

The Committee continues to monitor legislation that could affect Michigan corporation law. A bill was introduced in the Michigan State Senate that would require publicly held corporations with their principal executive offices in Michigan to have a minimum number of female directors. The bill (SB 115) was assigned to committee and there has been no action since its introduction. If no action on the bill is taken prior to the end of the current legislative session, the bill will die and would have to be re-introduced in the next session for action to be taken. Similar legislation has been enacted in California.

7. Meetings and Programs.

No programs are currently scheduled.

8. Publications.

The Committee is responsible for the Fall 2020 edition of the Business Law Journal. Members of the oppression study group have contributed a number of articles for this issue related to the topics considered by the study group. We await publication of the issue.

9. 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.

10. Miscellaneous.

The Committee will continue to accept ideas for technical and other amendments to the Business Corporation Act, which is amended periodically. Suggestions in this regard may be addressed to me as committee chair.

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

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