

**Debtors/Creditors Rights Committee
REPORT PREPARED FOR THE MARCH 2006
BUSINESS COUNCIL MEETING**

1. Next Scheduled Meeting of the Committee

The most recent meeting of the Committee was on February 28, 2006, at which 25 attorneys were in attendance. We also have two additional meetings scheduled in March 2006 at the request of Chief Judge Steven W. Rhodes to address issues related to ECF filing in the United States Bankruptcy Court for the Eastern District of Michigan. We anticipate that an additional meeting will be scheduled in April or May 2006.

2. Council Approval

The Committee is seeking approval of the Council for a legislative fix to the new State exemption statute, specifically as relates to (i) the homestead exemption, in light of recent bankruptcy court decisions declaring this provision of the new statute unconstitutional on preemption grounds and other issues relating to vagueness of language of statute, and (ii) MCL 600.5451 being deemed to be the exclusive source for those electing State exemptions.

3. Membership

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 was passed on April 20, 2005 ("Act"). The Act, for the most part, became effective on October 17, 2005. Since the Act was passed, the Committee has been involved in various activities to educate its members on the Act. The Co-Chairs of the Committee participated in a program on the Act sponsored by various bar groups on June 3, 2005. In addition, the Committee has met on three other occasions to make presentations on various aspects of the Act. On August 10, 2005, Judy Miller and Barbara Rom made a presentation on reclamations and avoidance actions under the Act. On August 24, 2005, Jay Welford did a presentation to the members of the Committee on small business chapter 11's under the Act. On September 14, 2005, Judy Miller, Judy Calton and Alan Bentley made a presentation on the increased costs associated with a chapter 11 as a result of the Act.

We intend on scheduling additional programs on specific aspects of the Act impacting business practice and the new interim emergency rules implementing the Act. In particular, we are planning a seminar to be held on Columbus Day in October 2006 on the impact of the Act one year after its effective date that will be co-sponsored by the other local bankruptcy organizations upon the request of

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Judge Rhodes, Chief Judge for the United States Bankruptcy Court for the Eastern District of Michigan. We anticipate great participation for the seminar in light of it being held on a federal holiday when the courts will be closed.

In addition, we have started a list serv and have a designated webpage on the Business Law Section webpage. We are using these two services to better communicate with and advise our members, and also as a means of getting additional and new attorneys involved in the Section and the Committee's activities. We believe that both of these services helped to facilitate the tremendous attendance we had at our most recent meeting.

At our meeting held on February 28, 2006, the following was approved by those members in attendance:

1. The goals of the Committee are:
 - Utilize the list serv to increase and energize our membership,
 - Start a monthly newsletter on BAPCPA cases,
 - Put on an annual seminar (with the first on BAPCPA a year later),
 - Submit sufficient articles to at least fill the November 30, 2006 edition of the Michigan Business Law Journal,
 - Educate our membership and bar on ongoing issues,
 - Coordinate with other bar groups on issues of bankruptcy law and the bankruptcy court,
 - Advise the bankruptcy courts on issues of interest to our Committee, and
 - Develop successor leadership for the Committee.
2. The following people have volunteered to chair the following new subcommittees of the Committee:
 - Jose Bartholomei, November 2006 Issue of the Michigan Business Law Journal
 - Marty Fried and Laura Eisele, Newsletter on BAPCPA case law
 - Charles Schneider and Dick Fellrath, Proposed Legislative Fix to State Homestead Exemption deemed unconstitutional on preemption grounds, as well as proposing other "fixes" based on vagueness of current language of the statute
 - David Lerner, Paul Steinberg and Marty Fried, Proposed Legislative Fix to MCL 600.5451 exemption statute deemed to be "exclusive source of State exemptions" by Bankruptcy Court
 - Brian Trumbauer, Liaison to Chapter 11 Rules Committee of the United States Bankruptcy Court for the Eastern District of Michigan (Note: Judy Calton and Judith Greenstone Miller are also members of

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the Chapter 11 Rules Committee, and Judy Calton acted as the reporter for this Committee, under which new interim Chapter 11 rules were proposed, drafted and adopted by the bankruptcy court through administrative order approximately 1 year ago).

Additional subcommittees will be appointed as and when needed.

4. Accomplishments Toward Committee Objectives

See response to Question 3.

5. Meetings and Programs

See responses to Questions 1 and 3.

6. Publications

We are beginning to solicit articles for the Michigan Business Law Journal devoted to bankruptcy and insolvency articles.

7. Legislative/Judicial/Administrative Developments

Judge Tucker, United States Bankruptcy Court for the Eastern District of Michigan, and Judge Hughes, United States Bankruptcy Court for the Western District of Michigan, have each issued opinions holding the new Michigan homestead exemption, applicable upon the filing of bankruptcy only, to be unconstitutional on preemption grounds. The Committee recommends that the Council approve the Business Law Section and the State Bar advocating a proposed legislative modification of the new exemption statute that would make clear that the homestead exemption is a state exemption that applies irrespective of the commencement of a bankruptcy proceeding. This proposed fix would cure the constitutional infirmity found by the bankruptcy courts. We also have been advised by our members that the statute, as currently drafted, is vague, thereby creating a number of interpretative problems and creating a number of unforeseen results.

MCL 600.5451 has been held by Bankruptcy Judge Shefferly as being the exclusive source for taking State exemptions, thereby negating many other exemptions available under State law. A similar case is pending in front of Judge McIvor. We anticipate proposing a legislative fix to this problem so that individual debtors may avail themselves of all the potential exemptions available under State law.

8. Miscellaneous

N/A

Respectfully submitted;

Judith Greenstone Miller and Judy B. Calton
Co-Chairs, Debtors/Creditors Rights Committee
of the Business Law Section of the State Bar of Michigan