

**DEBTOR/CREDITOR RIGHTS COMMITTEE
REPORT PREPARED FOR THE MAY 8, 2009 COUNCIL MEETING**

1. Next Scheduled Meeting of the Committee

No meeting of the Committee is scheduled. With the state of the economy and so many major bankruptcies being filed, the Committee members have become too busy to meet.

2. Council Approval

None pending.

3. Membership

Some messages have gone out on the Committee ListServ.

4. Accomplishments Toward Committee Objectives

The Council authorized the Committee to support adoption by the United States District Court for the Eastern District of Michigan of a Bankruptcy Appellate Panel. Despite individual efforts by several members and the Co-Chairs meeting with the District Court's bankruptcy committee, the District Court voted against adoption.

5. Meetings and Programs

None scheduled at this time.

6. Publications

We are soliciting articles to be submitted for the Business Law Journal by November 30, 2009.

7. Legislative/Judicial/Administrative Developments

The Federal Rules of Bankruptcy Procedure are being amended effective December 1, 2009. The Committee Co-Chairs assisted the Detroit Bankruptcy Court in drafting conforming amendments to the Local Rules.

8. Miscellaneous

UCC §9-513(d) provides in pertinent part:

Except as otherwise provided in Section 9-510, upon the filing of a termination statement with the filing

office, the financing statement to which the termination statement relates ceases to be effective.

State of Michigan Administrative Rule 440.310 (copy attached) seems to contradict this. We recently ran into a situation where a termination statement was filed, but subsequently, within five years of the original filing, a continuation statement was filed. Despite the termination statement and the Secretary of State treated the termination statement as not effective because the five years had not lapsed. Has anyone else run into this problem?

DETROIT.3641722.1

(g) An amendment that deletes a secured party of record has no effect on the status of any party to the financing statement, even if the amendment purports to delete all secured parties of record.

(h) An amendment shall have no effect upon the status of the financing statement, except that a continuation may extend the period of effectiveness of a financing statement.

History: 2002 MR 21, Eff. Nov. 20, 2002.

R 440.308 Assignment of powers of secured party of record.

Rule 308. Upon the filing of an assignment, the status of the parties and the status of the financing statement shall be as follows:

(a) An assignment shall have no effect on the status of the parties to the financing statement, except that each assignee named in the assignment shall become a secured party of record.

(b) An assignment shall have no effect upon the status of the financing statement.

History: 2002 MR 21, Eff. Nov. 20, 2002.

R 440.309 Continuation statement.

Rule 309. (1) Upon the timely filing of a continuation statement by any secured party of record, the lapse date of the financing statement shall be extended by 5 years.

(2) The filing of a continuation statement shall have no effect upon the status of any party to the financing statement.

(3) Upon the filing of a continuation statement, the status of the financing statement remains active in the UCC information management system until 1 year after it lapses, as prescribed in subrule (1) of this rule.

R 440.310 Termination statement.

Rule 310. (1) The filing of a termination shall have no effect upon the status of any party to the financing statement.

(2) The filing of a termination shall have no effect upon the status of the financing statement and, except as provided in subrule (3) of this rule, the financing statement shall remain active in the UCC information management system until 1 year after it lapses.

(3) If the termination relates to a financing statement that indicates it is filed against a transmitting utility, then the financing statement shall become inactive 1 year after it is terminated with respect to all secured parties of record.

History: 2002 MR 21, Eff. Nov. 20, 2002.

R 440.311 Correction statement.

Rule 311. Upon the filing of a correction statement, the status of the parties and the status of the financing statement shall be as follows:

(a) The filing of a correction statement shall have no effect upon the status of any party to the financing statement.

(b) The filing of a correction statement shall have no effect upon the status of the financing statement.

History: 2002 MR 21, Eff. Nov. 20, 2002.

R 440.312 Procedure upon lapse.

Rule 312. (1) If there is no timely filing of a continuation with respect