

DEBTOR/CREDITOR RIGHTS COMMITTEE
REPORT PREPARED FOR THE JUNE 7, 2014 COUNCIL MEETING

1. Next Scheduled Meeting of the Committee.

Next meeting of the Committee has not yet been scheduled.

2. Council Approval.

N/A

3. Membership.

The Committee communicates regularly with its membership through its list serv, with announcements of Committee events, case law alerts, and announcements of events of interest to bankruptcy and insolvency law practitioners. This increases the Committee's profile. In addition, holding regular meetings and educational events increases the interest of the bar in becoming members. We regularly receive inquiries from bar members about joining the Committee and respond immediately to reach out to the individuals.

4. Accomplishments Toward Committee Objectives.

The Committee was active in drafting amendments to MCR 2.621 and MCR 2.622 on receiverships, and the Business Law Council twice wrote to the Michigan Supreme Court in support of the amendments. On March 26, 2014 the Michigan Supreme Court adopted the revised rules, effective May 1, 2014. A copy of the Order is attached as Exhibit 1. The Committee is hosting a seminar on receiverships and the new court rules on June 10, 2014, described in Section 5 below.

The Committee is also taking responsibility for the Spring 2015 issue of the Michigan Business Law Journal. See Section 6 below.

5. Meetings and Programs.

The Committee is hosting a seminar on the morning of June 10, 2014 at the MSU Educational Center in Troy about the newly adopted revisions to MCR 2.621 and MCR 2.622, which the Committee was instrumental in drafting and having adopted. The flyer for the seminar is attached as Exhibit 2. The seminar includes a Judges' panel with Hon. Kirsten Frank Kelly, Michigan Court of Appeals; Hon. Robert J. Colombo, Jr., Wayne County Circuit Court; Hon. John C. Foster, Macomb County Circuit Court; and Hon. Christopher P. Yates, Kent County Circuit Court.

The Committee, along with the Turnaround Management Association, the Chapter 7 Trustee Association, Federal Bar Association, Eastern District of Michigan Chapter and Access to Bankruptcy Court, sponsored a reception for the bankruptcy bar to meet new Bankruptcy Judge Mark Randon, on May 22, 2014 at the Southfield Westin. The reception was a great success, with 110 attending.

The Committee met on March 26, 2014 in Bloomfield Hills, with 12 members attending. In particular, the Committee discussed a “crowd sourced” article for the Michigan Business Law Journal on secret and unusual liens. Tom Morris agreed to undertake the gathering of information, editing and writing the article.

6. Publications.

The Committee agreed to trade responsibility with the Commercial Litigation Committee for the Spring 2015 issue of the Michigan Business Law Journal. The Committee is working collectively to write two “crowd sourced” articles on secret and unsecured liens, with Tom Morris taking the lead. In addition, the participants in the Committee’s receivership seminar are to write articles based on their seminar presentations.

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

The Committee members monitor new law, rules, cases and other matters of interest to share them with the Committee. The Legislative Review provided to the Council and a memorandum on recent cases of interest are also shared at the meeting and discussed. A copy of the recent case law memorandum shared at the March 26, 2014 meeting is attached as Exhibit 3.

As a bar group active in insolvency related issues, the Committee is often asked to participate in judicial and administrative developments, such as assisting in the drafting of the proposed amendments to the receivership rules. Also, the co-chairs individually and through bar groups monitor new developments to discuss at our meetings or in list serv alerts.

8. Miscellaneous.

N/A

Judy B. Calton, Co-Chair

Judith Greenstone Miller, Co-Chair

Exhibit 1

Order

Michigan Supreme Court
Lansing, Michigan

March 26, 2014

Robert P. Young, Jr.,
Chief Justice

ADM File No. 2012-30

Michael F. Cavanagh
Stephen J. Markman
Mary Beth Kelly
Brian K. Zahra
Bridget M. McCormack
David F. Viviano,
Justices

Amendments of Rule 2.621 and
Rule 2.622 of the
Michigan Court Rules

On order of the Court, notice of the proposed changes and an opportunity for comment in writing and at a public hearing having been provided, and consideration having been given to the comments received, the following amendments of Rule 2.621 and Rule 2.622 of the Michigan Court Rules are adopted, effective May 1, 2014.

[The present language is amended as indicated below by underlining for new text and strikeover for text that has been deleted.]

Rule 2.621 Proceedings Supplementary to Judgment

(A)-(D)[Unchanged.]

(E) Receivers. When necessary to protect the rights of a judgment creditor, the court may, under MCR 2.622, appoint a receiver in a proceeding under subrule (A)(2), pending the determination of the proceeding.

(F)-(H)[Unchanged.]

Rule 2.622 ~~Receivers in Supplementary Proceedings~~

(A) Appointment of Receiver. Upon the motion of a party or on its own initiative, and for good cause shown, the court may appoint a receiver as provided by law. A receiver appointed under this section is a fiduciary for the benefit of all persons appearing in the action or proceeding. For purposes of this rule, "receivership estate" means the entity, person, or property subject to the receivership.

(B) Selection of Receiver. If the court determines there is good cause to appoint a receiver, the court shall select the receiver in accordance with this subrule. Every receiver selected by the court must have sufficient competence, qualifications, and experience to administer the receivership estate.

(1) Stipulated Receiver or No Objection Raised. The moving party may request, or the parties may stipulate to, the selection of a receiver. The moving party shall describe how the nominated receiver meets the requirement in subsection (B) that a receiver selected by the court have sufficient competence, qualifications, and experience to administer the receivership estate, considering the factors listed in subsection (B)(5). If

the nonmoving party does not file an objection to the moving party's nominated receiver within 14 days after the petition or motion is served, or if the parties stipulate to the selection of a receiver, the court shall appoint the receiver nominated by the party or parties, unless the court finds that a different receiver should be appointed.

- (2) Receiver Appointed Sua Sponte. If the court appoints a receiver on its own initiative, any party may file objection to the selected receiver and submit an alternative nominee for appointment as receiver within 14 days after the order appointing the receiver is served. The objecting party shall describe how the alternative nominee meets the requirement in subsection (B) that a receiver selected by the court have sufficient competence, qualifications, and experience to administer the receivership estate, considering the factors listed in subsection (B)(5).
- (3) Reduction in Time to Object. The court, for good cause shown, may in its discretion, with or without motion or notice, order the period for objection to the selected receiver reduced.
- (4) Objections. The party filing an objection must serve it on all parties as required by MCR 2.107, together with a notice of hearing.
- (5) If a party objects under subsection (B)(2) or the court makes an initial determination that a different receiver should be appointed than the receiver nominated by a party under subsection (B)(1), the court shall state its rationale for selecting a particular receiver after considering the following factors:
 - (a) experience in the operation and/or liquidation of the type of assets to be administered;
 - (b) relevant business, legal and receivership knowledge, if any;
 - (c) ability to obtain the required bonding if more than a nominal bond is required;
 - (d) any objections to any receiver considered for appointment;
 - (e) whether the receiver considered for appointment is disqualified under subrule (B)(6); and
 - (f) any other factor the court deems appropriate.

- (6) Except as otherwise provided by law or by subrule (B)(7), a person or entity may not serve as a receiver or in any other professional capacity representing or assisting the receiver, if such person or entity:
- (a) is a creditor or a holder of an equity security of the receivership estate;
 - (b) is or was an investment banker for any outstanding security of the receivership estate;
 - (c) has been, within three years before the date of the appointment of a receiver, an investment banker for a security of the receivership estate, or an attorney for such an investment banker, in connection with the offer, sale, or issuance of a security of the receivership estate;
 - (d) is or was, within two years before the date of the appointment of a receiver, a director, an officer, or an employee of the receivership estate or of an investment banker specified in subrule (b) or (c) of this section, unless the court finds the appointment is in the best interest of the receivership estate and that there is no actual conflict of interest by reason of the employment;
 - (e) has an interest materially adverse to the interest of any class of creditors or equity security holders by reason of any direct or indirect relationship to, connection with, or interest in the receivership estate or an investment banker specified in subrule (b) or (c) of this section, or for any other reason;
 - (f) has or represents an interest adverse to the receivership estate or stands in any relation to the subject of the action or proceeding that would tend to interfere with the impartial discharge of duties as an officer of the court.
 - (g) has, at any time within five years before the date of the appointment of a receiver, represented or been employed by the receivership estate or any secured creditor of the receivership estate as an attorney, accountant, appraiser, or in any other professional capacity and the court finds an actual conflict of interest by reason of the representation or employment;
 - (h) is an "insider" as defined by MCL 566.31(g);

- (i) represents or is employed by a creditor of the receivership estate and, on objection of an interested party, the court finds an actual conflict of interest by reason of the representation or employment; or
 - (j) has a relationship to the action or proceeding that will interfere with the impartial discharge of the receiver's duties.
 - (7) Any person who has represented or has been employed by the receivership estate is eligible to serve for a specified limited purpose, if the court determines such employment or appointment is in the best interest of the receivership estate and if such professional does not represent or hold an interest materially adverse to the receivership estate.
- (C) Order of Appointment. The order of appointment shall include provisions related to the following:
- (1) bonding amounts and requirements as provided in subrule (G);
 - (2) identification of real and personal property of the receivership estate;
 - (3) procedures and standards related to the reasonable compensation of the receiver as provided in subrule (F);
 - (4) reports required to be produced and filed by the receiver, including the final report and accounting;
 - (5) a description of the duties, authority and powers of the receiver;
 - (6) a listing of property to be surrendered to the receiver; and
 - (7) any other provision the court deems appropriate.
- (D) Duties.
- (1) Within 7 days after entry of the order of appointment, the receiver shall file an acceptance of receivership with the court. The acceptance shall be served on all parties to the action.
 - (2) Unless otherwise ordered, within 28 days after the filing of the acceptance of appointment, the receiver shall provide notice of entry of the order of appointment to any person or entity having a recorded interest in all or any part of the receivership estate.

- (3) The receiver shall file with the court an inventory of the property of the receivership estate within 35 days after entry of the order of appointment, unless an inventory has already been filed.
- (4) The receiver shall account for all receipts, disbursements and distributions of money and property of the receivership estate.
- (5) If there are sufficient funds to make a distribution to a class of creditors, the receiver may request that each creditor in the class of all creditors file a written proof of claim with the court. The receiver may contest the allowance of any claim.
- (6) The receiver shall furnish information concerning the receivership estate and its administration as reasonably requested by any party to the action or proceeding.
- (7) The receiver shall file with the court a final written report and final accounting of the administration of the receivership estate.

~~(A)~~(E) Powers and Duties.

- (1) ~~A receiver of the property of a debtor appointed pursuant to MCL 600.6104(4) has, unless restricted by special order of the court, Except as otherwise provided by law or by the order of appointment, a receiver has general power and authority to sue for and collect all the debts, demands, and rents belonging to of the debtor receivership estate, and to compromise and/or settle those that are unsafe and of doubtful character claims.~~
- (2) ~~A receiver may sue in the name of the debtor when it is necessary or proper to do so, and may apply for an order directing the tenants of real estate belonging to the debtor, or of which the debtor is entitled to the rents, to pay their rents to the receiver. liquidate the personal property of the receivership estate into money. By separate order of the court, a receiver may sell real property of the receivership estate.~~
- (3) ~~A receiver may make leases as may be necessary, for terms not exceeding one year.~~
- (4) ~~A receiver may convert the personal property into money, but may not sell real estate of the debtor without a special order of the court.~~

- (53) A receiver is not allowed the costs of a suit brought by the receiver against an insolvent person from whom the receiver is unable to collect the costs, unless the suit is brought by order of the court or by consent of all persons interested in the funds in the receiver's hands, may pay the ordinary expenses of the receivership but may not distribute the funds in the receivership estate to a party to the action without an order of the court.
- (64) A receiver may sell doubtful debts and doubtful claims to personal property at public auction, giving at least 7 days' notice of the time and place of the sale. A receiver may only be discharged on order of the court.
- (7) A receiver must give security to cover the property of the debtor that may come into the receiver's hands, and must hold the property for the benefit of all creditors who have commenced, or will commence, similar proceedings during the continuance of the receivership.

(F) Compensation and Expenses of Receiver.

- (1) A receiver shall be entitled to reasonable compensation for services rendered to the receivership estate.
- (2) The order appointing a receiver shall specify:
 - (a) the source and method of compensation of the receiver;
 - (b) that interim compensation may be paid to the receiver after notice to all parties to the action or proceeding and opportunity to object as provided in subsection (5);
 - (c) that all compensation of the receiver is subject to final review and approval of the court.
- (3) All approved fees and expenses incurred by a receiver, including fees and expenses for persons or entities retained by the receiver, shall be paid or reimbursed as provided in the order appointing the receiver.
- (4) The receiver shall file with the court an application for payment of fees and the original notice of the request. The notice shall provide that fees and expenses will be deemed approved if no written objection is filed with the court within 7 days after service of the notice. The receiver shall serve the notice and a copy of the application on all parties to the action or proceedings, and file a proof of service with the court.

~~(8) A receiver may not pay the funds in his or her hands to the parties or to another person without an order of the court.~~

(5) The application by a receiver, for interim or final payment of fees and expenses, shall include:

(a) A description in reasonable detail of the services rendered, time expended, and expenses incurred;

(b) The amount of compensation and expenses requested;

(c) The amount of any compensation and expenses previously paid to the receiver;

(d) The amount of any compensation and expenses received by the receiver from or to be paid by any source other than the receivership estate;

(e) A description in reasonable detail of any agreement or understanding for a division or sharing of compensation between the person rendering the services and any other person except as permitted in subpart (6).

If written objections are filed or if, in the court's determination, the application for compensation requires a hearing, the court shall schedule a hearing and notify all parties of the scheduled hearing.

(6) A receiver or person performing services for a receiver shall not, in any form or manner, share or agree to share compensation for services rendered to the receivership estate with any person other than a firm member, partner, employer, or regular associate of the person rendering the services except as authorized by order of the court.

~~(9) A receiver may only be discharged from the trust on order of the court.~~

(G) Bond.

~~(B) Notice When Other Action or Proceeding Pending; Appointment.~~In setting an appropriate bond for the receiver, the court may consider factors including but not limited to:

(1) The value of the receivership estate, if known;

- (2) The amount of cash or cash equivalents expected to be received into the receivership estate;
 - (3) The amount of assets in the receivership estate on deposit in insured financial institutions or invested in U.S. Treasury obligations;
 - (4) Whether the assets in the receivership estate cannot be sold without further order of the court;
 - (5) If the receiver is an entity, whether the receiver has sufficient assets or acceptable errors and omissions insurance to cover any potential losses or liabilities of the receivership estate;
 - (6) The extent to which any secured creditor is undersecured;
 - (7) Whether the receivership estate is a single parcel of real estate involving few trade creditors; and
 - (8) Whether the parties have agreed to a nominal bond.
- (1) ~~The court shall ascertain, if practicable, by the oath of the judgment debtor or otherwise, whether another action or motion under MCR 2.621 is pending against the judgment debtor.~~
 - (2) ~~If another action or motion under MCR 2.621 is pending and a receiver has not been appointed in that proceeding, notice of the application for the appointment of a receiver and of all subsequent proceedings respecting the receivership must be given, as directed by the court, to the judgment creditor prosecuting the other action or motion.~~
 - (3) ~~If several actions or motions under MCR 2.621 are filed by different creditors against the same debtor, only one receiver may be appointed, unless the first appointment was obtained by fraud or collusion, or the receiver is an improper person to execute the trust.~~
 - (4) ~~If another proceeding is commenced after the appointment of a receiver, the same person may be appointed receiver in the subsequent proceeding, and must give further security as the court directs. The receiver must keep a separate account of the property of the debtor acquired since the commencement of the first proceeding, and of the property acquired under the appointment in the later proceeding.~~

- (H) Intervention. An interested person or entity may move to intervene. Any motion to intervene shall comply with MCR 2.209.
- (I) Removal of Receiver. After notice and hearing, the court may remove any receiver for good cause shown.
- (C) Claim of Adverse Interest in Property.
 - (1) ~~If a person brought before the court by the judgment creditor under MCR 2.621 claims an interest in the property adverse to the judgment debtor, and a receiver has been appointed, the interest may be recovered only in an action by the receiver.~~
 - (2) ~~The court may by order forbid a transfer or other disposition of the interest until the receiver has sufficient opportunity to commence the action.~~
 - (3) ~~The receiver may bring an action only at the request of the judgment creditor and at the judgment creditor's expense in case of failure. The receiver may require reasonable security against all costs before commencing the action.~~
- (D) Expenses in Certain Cases. ~~When there are no funds in the hands of the receiver at the termination of the receivership, the court, on application of the receiver, may set the receiver's compensation and the fees of the receiver's attorney for the services rendered, and may direct the party who moved for the appointment of the receiver to pay these sums in addition to the necessary expenditures of the receiver. If more than one creditor sought the appointment of a receiver, the court may allocate the costs among them.~~

Staff Comment: The amendments of MCR 2.621 and MCR 2.622 were submitted to the Michigan Supreme Court on behalf of the "Receivership Committee" (a committee created because of a need identified by the Debtor/Creditor Rights Committee of the

Business Law Section of the State Bar of Michigan) to expand and update the rules regarding receivership proceedings.

The staff comment is not an authoritative construction by the Court.



I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

March 26, 2014

A handwritten signature in cursive script, appearing to read "Larry S. Royster", written over a horizontal line.

Clerk

Exhibit 2



BUSINESS LAW SECTION

Live Seminar and Webcast

June 10, 2014, 8:00 a.m.

MSU Management Education Center

811 West Square Lake Road • Troy, MI 48098

MCR 2.621 and 2.622: The New Playing Field for State Court Receiverships

Effective May 1, 2014, the Michigan Supreme Court amended MCR 2.621 and MCR 2.622. The new rules significantly change the process for the court's selection of the receiver, qualifications, appointment, duties, compensation and administration of receiverships. These changes were based upon recommendations made by members of the Receivership Committee of the Business Law Section of the State Bar of Michigan. Hosted by the Debtor/Creditor Rights Committee of the Business Law Section of the State Bar of Michigan, this seminar will explain the new rules and procedures, and it will also provide an invaluable view from the state court bench on receiverships.

Speakers and Panelists

- Hon. Robert J. Colombo Jr., Chief Judge, Wayne County Circuit Court
- Hon. Kirsten Frank Kelly, Michigan Court of Appeals
- Hon. John C. Foster, Chief Judge, Macomb County Circuit Court
- Hon. Christopher P. Yates, Kent County Circuit Court
- Judy B. Calton, Partner, Honigman Miller Schwartz and Cohn LLP;
Co-Chair, Debtor/Creditor Rights Committee
- Gregory J. DeMars, Partner, Honigman Miller Schwartz and Cohn LLP
- Robert J. Diehl, Jr., Member, Bodman PLC
- David M. Findling, Managing Partner, Findling Law Firm PLC
- Kay Standridge Kress, Partner, Pepper Hamilton LLP
- Michael S. Leib, Shareholder, Maddin Hauser Roth & Heller PC
- Judith Greenstone Miller, Partner, Jaffe Raitt Heuer & Weiss PC;
Co-Chair, Debtor/Creditor Rights Committee

Registration

In-Person Attendance	\$100
Webcast Attendance	\$75
State Circuit Court Judge Attendance	Complimentary Registration

Register at: <http://michigan-receivership-rules.eventbrite.com>

Questions? Please contact Casee Kidd at ckidd@honigman.com or 313.465.7155

8:00 – 8:30 a.m.	Registration and Breakfast
8:30 – 8:35 a.m.	Welcome and Introduction <i>Judith Greenstone Miller</i>
8:35 – 9:20 a.m.	Panel Discussion: Appointment and Payment of a Receiver <ul style="list-style-type: none"> • When appointment of a receiver is appropriate; • How to get a receiver appointed; • Paying the receiver <i>Judy B. Calton</i> <i>Gregory J. DeMars</i> <i>Robert J. Diehl, Jr.</i> Moderator: <i>Judith Greenstone Miller</i>
9:20 – 10:00 a.m.	Receiver Qualifications and Receivership Orders <i>Kay Standridge Kress</i> <i>Michael S. Leib</i>
10:00 – 10:15 a.m.	BREAK
10:15 – 10:45 a.m.	Receiver's Duties; Practice and Timeline <i>David M. Findling</i>
10:45 - 11:30 a.m.	The View from the Bench <ul style="list-style-type: none"> • How best to prove your case for getting a receiver appointed in the trial court • Evidence and proofs to obtain the desired result • Protecting the record for appeal <i>Hon. Kirsten Frank Kelly, Michigan Court of Appeals</i> <i>Hon. Robert J. Colombo, Jr., Third Judicial Circuit of Michigan (Wayne County)</i> <i>Hon. John C. Foster, Macomb County Circuit Court</i> <i>Hon. Christopher P. Yates, Kent County Circuit Court</i> Moderator: <i>Judith Greenstone Miller</i>
11:30-11:40 a.m.	Wrap-up <i>Judith Greenstone Miller</i>

**Receivership Subcommittee of the Debtor/Creditor Rights Committee of the
Business Law Section of the State Bar of Michigan**

Receivership Rule Committee

C. David Bargamian, Member, Barris Sott Denn and Driker PLLC

Judy B. Calton, Partner, Honigman Miller Schwartz and Cohn LLP

Gregory J. DeMars, Partner, Honigman Miller Schwartz and Cohn LLP

Robert J. Diehl, Jr., Member, Bodman PLC

J. Benjamin Dolan, Member, Dickinson Wright PLLC

David M. Findling, Managing Partner, Findling Law Firm PLC

Hon. Kirsten Frank Kelly, Michigan Court of Appeals

Kay Standridge Kress, Partner, Pepper Hamilton LLP

Robert D. Mollhagen, Partner, Varum LLP

Aaron M. Silver, Partner, Honigman Miller Schwartz and Cohn LLP

SBM
STATE BAR OF MICHIGAN

BUSINESS LAW SECTION

Exhibit 3

HONIGMAN

Memorandum

To: Debtor/Creditor Rights Committee File

From: Judy B. Calton

Re: Recent Cases of Interest

Date: March 20, 2014

Obsidian Finance Group, LLC v. Cox, Nos. 12-35238, 12-35319 (9th Cir. 2014). This case made the news because it held that a blogger has the first amendment protections of a journalist, so that the negligence defamation standard applies to blog statements. The blogger accused a Chapter 11 trustee for a Ponzi-scheming financial advisory forum of tax fraud, corruption, money-laundering and other illegal activities. The trustee was not a public official requiring actual malice to sustain his defamation claim. The accusation that the trustee failed to pay \$174,000 in taxes could be held defamatory; the other accusations were so stream of consciousness and hyperbolic that they were clearly opinions and not defamatory.

In re Emoral, Inc., No. 13-1467 (3d Cir. January 24, 2014). The debtor was a manufacturer of diacetyl, a chemical used in food flavoring. Prepetition, Aaroma Holding, LLC purchased certain assets from the estate and assumed certain liabilities. Postpetition, the *Emoral* trustee asserted the sale was a fraudulent transfer, and settled with Aaroma for \$500,000, granting a release from all causes of action that were property of the debtor's estate. Persons injured by diacetyl brought actions against Aaroma arguing it was a mere continuation of *Emoral* and thus had successor liability. The successor liability claim asserted a generalized injury to all creditors, and therefore was a released cause of action belonging to the estate.

In re Rizzo, 741 F.3d 703 (6th Cir. 2014) held a responsible officer liable for Michigan's SBT tax. The court rejected the argument that the responsible officer should have no personal liability because the tax liability is a derivative claim. SB 337 would limit future officer liability assessments to trust fund taxes only.

Javery v. Lucent Technologies, Inc., 741 F.3d 686 (6th Cir. 2014). Debtor failed to disclose his ERISA disability claim in his chapter 13 case. The Court of Appeals affirmed that judicial estoppel did not bar his subsequent appeals of the denial of his disability claim. The Bankruptcy Court had found the failure to schedule the claim was the result of error by the attorney and not the debtor, because the debtor had given his attorney information about the claim and did not release the significance of the attorney not scheduling it.

HONIGMAN

March 20, 2014

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In re KB Toys Inc., 736 F.3d 247, 249 (3d Cir. 2013). The Third Circuit disagreed with *In re Enron Corp.*, 379 B.R. 425, 427 (S.D.N.Y. 2007), and held “a trade claim subject to disallowance in the hands of the original claimant is similarly disallowable in the hands of a subsequent transferee.”

In re Wank, 2014 WL 340893 (9th BAP 2014). Prepetition, the debtor was sued for fraud and other claims. As part of a prepetition settlement, the debtor gave the plaintiff a declaration admitting to facts which should support exempting the judgment from bankruptcy. When the bankruptcy was filed, plaintiff sued to exempt the judgment from discharge and moved for summary judgment based on the declaration. The debtor opposed the summary judgment with a second declaration challenging the first affidavit. The Bankruptcy Court granted summary judgment and the Bankruptcy Appellate Panel reversed. The BAP reasoned that the second declaration’s attacks on the first declaration, particularly in light of the public policy against prepetition waivers of bankruptcy protection, meant there were questions of fact. The first declaration also did not establish the element of justifiable reliance.

In re Barroco, Case No. 2:13-cv-14160 (E.D. Mich. Feb. 24, 2014) (Battani, J.). In an alleged fraudulent transfer, a corporate debtor transferred real estate to the principal’s wife who sold it to a bona fide purchaser without notice. The creditor sought to hold the principal personally liable for the fraudulent transfer. On appeal from a dismissal by the bankruptcy court, the District Court held that fraudulent transfer sounds in tort under Michigan law. Thus, it is possible for personal liability to be imposed on a debtor that fraudulently transfers assets to an insider. Using a piercing of the corporate veil analysis, it is also possible that the principal of the debtor transferor could be personally liable for the fraudulent transfer.

KLN Steel Products Co., LLC, Adv. Pro. No. 13-01013 (Feb. 18, 2014 Bankr. W.D. TX). This preference opinion addresses several issues. One of interest is that payments to financial advisors providing restructuring advising services to the debtor furniture manufacturer were debts incurred in the ordinary course.

In re Nicole Energy Services, Inc., 502 B.R. 503 (Bankr. S.D. OH 2013). The debtor sold its causes of action to TCO, on notice to Sanders and Fulson. Sanders and Fulson sued TCO on the sold claims. TCO sought an order holding Sanders and Fulson in contempt of the sale order. Because there was no bankruptcy court order specifically requiring Sanders and Fulson to refrain from suing on the sold claims, there was no basis for a contempt claim.

In re Eastman Kodak Co., 495 B.R. 618 (Bankr. S.D. N.Y. 2013). The debtor assumed an unexpired lease in August 2012. The assumption order reserved the debtor’s rights to assign the lease. The lessor did not object to the assumption. In June 2013, the debtor moved to assign the lease and the lessor objected that assumption and assignment must occur simultaneously, and sought enforcement of the leases anti-assignment provision. The Bankruptcy Court rejected that argument, holding the Bankruptcy Code permits assignment of previously assumed leases.