

**REPORT PREPARED FOR THE SEPTEMBER 20, 2007 COUNCIL MEETING
BY THE DEBTOR/CREDITOR RIGHTS COMMITTEE**

1. Next Scheduled Meeting of the Committee

Next scheduled meeting of the Committee is November 13, 2007 at 6:00 p.m.

2. Council Approval

The Committee is seeking Council approval of

- A. Engaging Karoub & Associates to assist in lobbying for passage of amendments to the recent Michigan exemptions legislation, which has been held unconstitutional and/or preempted by the Bankruptcy Code. The Council approved the Committee advocating these amendments in June, 2006, but we need lobbying help. We understand Karoub & Associates will charge \$5,000.00.
- B. Filing an amicus brief on behalf of the Business Law Section before the Michigan Supreme Court in the appeal of *Estes v. Titus*, 273 Mich. App. 356 (2006). The amicus brief would take the following positions on the five issues the Michigan Supreme Court asked be addressed:

Issue 1:

Whether a judgment of divorce is subject to judicial review for purposes of a claim under the Uniform Fraudulent Transfer Act (UFTA)?

Position:

No, divorce proceedings should remain proceedings just between spouses without creditor intervention.

Issue 2:

Whether a division of marital assets pursuant to a judgment of divorce is a transfer subject to the UFTA?

Position:

Yes, there should be no judicially created exception to UFTA to protect a potentially collusive divorce decree.

Issue 3:

Whether and under what circumstances a division of marital assets under a judgment of divorce can be deemed fraudulent?

Position:

A division of marital assets for purposes of a fraudulent transfer claim should be evaluated under the same standards applied under the UFTA for analysis of any other transfers generally.

Issue 4:

Whether a judgment debtor [sic] can attach marital property for the debt of one of the spouses. [The Supreme Court probably meant to say "judgment creditor."]

Position:

No position would be taken on this issue, which appears to be a family law as opposed to a debtor/creditor rights issue.

Issue 5:

The significance, if any, of Jan Estes' failure to appeal the denial of the motion to intervene in the divorce action.

Position:

The failure to appeal denial of the request to intervene is not significant because the divorce court did not ultimately address the fraudulent transfer issues as part of determining the substantive issues relating to the divorce.

Lisa Gretchko of Howard & Howard has agreed to draft the brief, with assistance from Michael Bartnick of Bartnick Law Offices, PLC. The Committee would fund the costs.

- C. A half-day seminar tentatively to be presented in February 2008 on alternatives to bankruptcy. The topics would include federal receivership, state receivership, assignment for the benefit of creditors, trust mortgages and compositions.

3. Membership

The Committee uses its list serv to send its newsletters and information about matters of interest to bankruptcy practitioners. We receive regular requests from lawyers to be added as a member. Nineteen members attended the September 5, 2007 meeting.

4. Accomplishments Toward Committee Objectives

We believe the Committee is accomplishing its goals. Our membership is active and energized.

5. Meetings and Programs

The Committee had a dinner meeting on September 15, 2007 at the Oakland County office of Honigman Miller Schwartz and Cohn LLP. Nineteen members attended. The Committee discussed the topics for which the Committee is seeking Council approval, discussed in Section 2 above. In addition, the Committee is working on an initiative to have wireless internet access installed for the use of the bar in the Eastern District of Michigan Bankruptcy with a lounge founded by and for the bar for printing documents and other activities.

6. Publications

The Committee has agreed to provide the articles for the March 2008 edition of the Michigan Business Law Journal (articles due November 30, 2007). Tom Morris of Silverman & Morris PC has agreed to be responsible for the edition and has commitments for the following articles:

Author	Topic
Laura Eisele, Kerr, Russell & Weber PLC	Directors Duties in Insolvency and Zone of Insolvency
Lisa Gretchko, Howard & Howard	<i>Estes v. Titus</i> issues
Tom Morris, Silverman & Morris	The Express Trust Requirement For Exception From Discharge in Bankruptcy Under 11 U.S.C. §523(a)(4)
Michelle Taigman, Honigman, Miller, Schwartz & Cohn LLP	What Extent Does a Prepetition Security Interest of Proceeds Continue Postpetition
Scott Wolfson, Honigman, Miller, Schwartz & Cohn LLP	A Primer on Bankruptcy Procedure

Other Members have committed to edit the articles. Tom Morris continues to solicit additional articles.

7. Legislative/Judicial/Administrative Developments

As discussed in Section 2, the Committee hopes the Council will authorize retaining Karoub & Associates to help us with amending the recent Michigan exemption legislation, which legislation repeatedly has been held preempted by the Bankruptcy Code.

Judy B. Calton, co-chair
Judith Greenstone Miller, co-chair