

**DEBTOR/CREDITOR RIGHTS COMMITTEE  
REPORT PREPARED FOR THE SEPTEMBER 24, 2009 COUNCIL MEETING**

**1. Next Scheduled Meeting of the Committee**

The next meeting of the Committee will be a dinner meeting on November 4, 2009 at 6:00 p.m.

**2. Council Approval**

None at this time.

**3. Membership**

We have successfully used the ListServ to reach out to our members to solicit articles for the Michigan Business Law Journal.

**4. Accomplishments Toward Committee Objectives**

On December 6, 2008, the Business Law Council approved the language of the proposed amendments to the exemption statutes, MCL 600.5451 and MCL 600.6023. Following that approval, the Committee has proceeded with its lobbying efforts to attempt to gain passage of the proposal. Tom Morris and Chuck Bullock met in Lansing in March, 2009 with Representative Mark Meadows, (Democrat, Chairman of the House Judiciary Committee), to solicit his support of the proposal. Tom Morris met in July with Senator Mike Bishop, (Republican, Senate Majority Leader) to likewise solicit his support. The text of the proposal and explanatory comments were furnished to the staff of both Rep. Meadows and Sen. Bishop for their evaluation. The next step in the process is for the Michigan Legislative Service to produce a "blue back" or official text of the proposal for discussion purposes.

Tom and Chuck also met with representatives of the Michigan Creditors Bar Association to discuss their position on the matter and technical issues, such as whether "bankruptcy specific" exemptions are allowable under federal law. The courts are split on the issue, but the Michigan Creditors Bar Association favors separate exemptions available only in bankruptcy. This is the current system, which has been found by one judge in the Bankruptcy Court for the Western District to be unconstitutional. In contrast, the approved proposal would make bankruptcy and non-bankruptcy exemptions consistent, eliminating the uncertainty of the validity of MCL 600.5451.

The support of the Life Insurance Association of Michigan has also been sought. One unpublished bankruptcy court ruling held that MCL 600.5451 rendered the insurance policy exemption found in MCL 500.2207 unavailable in bankruptcy. This decision should be of concern to the life insurance industry, since it calls into question the application of the insurance exemption. The proposal would clarify that neither MCL 600.5451 nor MCL 600.6023 (the "general" exemption statutes) is intended to be an exclusive list of state-law exemptions. Other exemptions are found in the Insurance Code and in statutes related to veterans' benefits, state-retirement benefits, unemployment insurance, and various public welfare provisions.

Work has continued on the wording of the proposal, legal research on issues related to the proposal, and the compilation of information (such as studies comparing exemption laws of other states). We are awaiting feedback from Rep. Meadows and Sen. Bishop. Matters such as the state budget are currently preoccupying the state legislature, but we hope to soon join in technical and policy discussions regarding the proposal.

## **5. Meetings and Programs**

The next meeting of the Committee will be a dinner meeting on November 4, 2009 at 6:00 p.m.

## **6. Publications**

The Committee is responsible for the March 2010 edition of the Michigan Business Law Journal, and has the following commitments for articles:

1. Lawrence M. Dudek and Boyd White III, Use and Relationships of Receivership and Chapter 11 for the Sale of Distressed Real Estate.
2. Donald M. Morley and Kristen A. Campbell, Using Liens to Defeat Preference Claims.
3. Judy Calton and Rozanne Giunta, When and How to File a Proof of Claim.
4. John Kuriakuz, The Current Status of the Earmarking Defense to Preference Claims.
5. Judge Ray Reynolds Graves, Municipal Bankruptcy.
6. Anthony J. Kochis, The flexible standard of the ordinary course of business defense to preference claims.

**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**

Nothing currently.

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