

**DEBTOR/CREDITOR RIGHTS COMMITTEE**  
**REPORT PREPARED FOR THE SEPTEMBER 20, 2012 COUNCIL MEETING**

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

Next scheduled meeting of the Committee: October 17, 2012 at 6:00 p.m. at the offices of Honigman Miller Schwartz and Cohn LLP, 39400 Woodward Avenue, Suite 101, Bloomfield Hills, MI 48304.

**2. Council Approval**

We want to update the Council on two issues which received prior approval:

The proposed amendments to MCR 2.621 and MCR 2.622 relating to the appointment of and regulation of receivers circulated for the May 4, 2012 Council meeting are being rewritten, primarily stylistically, by Anne Boomer at the Michigan Supreme Court and Court of Appeals Judge Kirsten Frank Kelly.

The Committee has been advocating amendments to Michigan exemptions statutes, in large part because M.C.L.A. § 600.5451 was held unconstitutional by many courts, including the Sixth Circuit Bankruptcy Appellant Panel (the "BAP"). On August 20, 2012, the United States Court of Appeals for the Sixth Circuit reversed the BAP, and held M.C.L.A. § 600.5451 constitutional, even though it applies only to debtors in bankruptcy. *In re Schafer*, Nos. 11-1340/1387 (6th Cir. August 20, 2012). While the Committee still believes Michigan debtors ineligible for bankruptcy or not in bankruptcy should have the same exemptions available to them as Michigan debtors in bankruptcy, this ruling lessens the likelihood of legislative success. Representative Constan, who had introduced a bill to address the issue, is considering withdrawing the bill.

Also, proposed amendments to the Federal Rules of Bankruptcy Procedure are out for public comment. After the Committee's next meeting, which will discuss the proposed amendments, the Committee may seek council authority to comment.

**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. We regularly receive inquiries from bar members about joining the Committee and

respond immediately to reach out to the individuals. In addition, holding regular meetings and events increases the interest of the bar in becoming members.

#### **4. Accomplishments Toward Committee Objectives**

See other entries.

#### **5. Meetings and Programs**

On May 1, 2012 the Committee held a regular meeting with an educational presentation by Gregory J. DeMars of Honigman Miller Schwartz and Cohn LLP and Mark P. Krynski of Jaffe Raitt Heuer & Weiss, P.C. on "New Consideration – A Year in the Sudden Development of the Law of Recourse Liability For Non-Recourse Loans."

The October 17, 2012 Committee meeting will include an educational presentation about the proposed amendments to the Federal Rules of Bankruptcy Procedure and bankruptcy-related amendments to the Federal Rules of Appellate Procedure.

#### **6. Publications**

The Committee is responsible for the March 2013 edition of the Michigan Business Law Journal. We have commitments for the following articles:

1. Paul Hage and Richard Kruger: TOUSA and indirect benefits.
2. Tricia Sherick and Adam Keith: Credit bidding.
3. Joseph McGill: Amendments to Michigan's UCC.
4. Judy Calton and Dan Linna: *Stern v. Marshall* for Business Lawyers.
5. Scott Eisenberg: Fraud Investigation.
6. Heather McGill and Lisa K. Mullen: New Rules on Mortgage Proofs of Claim.
7. Daniel Morley and Megan Smith: Michigan Business Trust Fund Act Claims in Bankruptcy.
8. Judy Miller and Alicia Schehr: Preservation of Causes of Action After Confirmation.

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

Our members are active in informing us about legal developments so that they or one of the co-chairs can draft and send case law alerts on the list serv to the membership. Also, the co-chairs individually and through bar groups monitor new developments to discuss at our meetings or for the basis of case law alerts.

**8. Miscellaneous**

Not applicable.

Co-Chairs  
Judy B. Calton  
Judith Greenstone Miller