

**REPORT PREPARED FOR THE DECEMBER 1, 2007 COUNCIL MEETING
BY THE DEBTOR/CREDITOR RIGHTS COMMITTEE**

1. 2007-2008 Budget Request and Anticipated Use of Funds

The Committee requests a 2007-2008 budget of \$3,000, the same as its budget for 2006-2007. We anticipate the funds will be used for:

- (a) meeting costs. We expect to hold four to five meetings.
- (b) reimburse costs in connection with the *amicus* brief in *Estes v. Titus*.
- (c) Reimburse costs incurred in connection with technology issues for the Committee's newsletter. These costs (\$500) were approved in 2006 and incurred, but no request for reimbursement has been received to date from the provider.
- (d) potential costs in connection with a seminar on alternatives to bankruptcy scheduled for February 11, 2008. We expect the seminar to more than break-even, but obviously cannot guarantee the result.
- (e) incidental costs for wireless internet and business center at the Bankruptcy Court.

2. Use of Budget Funds During 2006-2007

Our budgeted funds in 2006-2007 were used for meeting expenses and flowers for Lisa Gretchko, who wrote the *amicus* brief (with assistance from Michael Bartnick).

3. Next Scheduled Meeting of the Committee

Next scheduled meeting of the Committee is January 29, 2008 with dinner at 6:00 p.m. and the meeting beginning at 6:30 p.m.

4. Council Approval

The Committee is seeking Council approval of

- A. Taking a position opposing proposed amendments to the Federal Rules of Bankruptcy Procedure to increase the time to take an appeal from 10 days to 30 days, as described in the attached.
- B. Engaging Karoub & Associates to lobby in favor of passage of amendments to MCLA 600.6023 and repeal of MCLA 600.5451 for a flat fee of \$5,000.

5. 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. Fourteen members attended the November 13, 2007 meeting.

6. Accomplishments Toward Committee Objectives

We believe the Committee is accomplishing its goals. Our membership is active and energized, and volunteers to work on Committee projects.

The Committee's recent work on the *amicus* brief to the Supreme Court in *Estes v. Titus*, and working with the Eastern District of Michigan Bankruptcy Court to provide wireless internet service and a business center of the Court for the use of bar is increasing the Committee's profile.

7. Meetings and Programs

The Committee held a dinner meeting on November 13, 2007 at the Oakland County office of Honigman Miller Schwartz and Cohn LLP. Fourteen members attended.

The Committee will be presenting a seminar on Alternatives to Bankruptcy on February 11, 2008. The speakers and topics are:

<u>Topic</u>	<u>Speakers</u>
State Court Receiverships	Honorable Mark A. Goldsmith, Oakland County Circuit Court Gregory J. DeMars, Honigman Miller Schwartz and Cohn LLP
Federal Court Receiverships	Kay Kress Pepper Hamilton LLP
Assignments for the Benefit of Creditors Composition Agreements	Geoffrey Silverman Silverman & Morris PLLC Tom Lindahl McDonald & Hopkins
Trust Mortgages	David Nowicki Bodman LLP

Kay Kress is taking the lead organizing the seminar.

The Committee is working on obtaining wireless internet access and a business center at the Bankruptcy Court at 211 W. Fort in Detroit for the use of the bar.

While the Committee is spearheading the project, members of the bar will cover the cost by paying separately for an internet log-in and security card for access to the lounge. David Ruskin and Charles Schneider are working on the project of the Committee.

8. 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). Thomas Morris of Silverman & Morris PLLC has agreed to be responsible for the edition and has commitments for the following articles:

Author	Topic
Judy Miller & Jay Welford, Jaffe Raitt	Claims under 11 U.S.C. §503(b)(9)
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 Litigation Procedure

Other Members have volunteered to edit the articles.

9. Legislative/Judicial/Administrative Developments

As discussed in Section 2, the Committee hopes the Council will authorize the Committee to take a position opposing proposed amendments to the Federal Rules of Bankruptcy Procedure and 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

Proposal:

The National Bankruptcy Rules Committee of the Judicial Conference ("Rules Committee") is currently reviewing and revising the Federal Rules of Bankruptcy Procedure. Recently, we were advised that the Rules Committee is considering extending the time for perfecting appeals (*i.e.*, filing notices of appeal and motions for leave to appeal) under Federal Rules of Bankruptcy Procedures 8001 and 8003 from 10 days to 30 days in order to make the appeal periods in bankruptcy consistent with the periods for taking an appeal outside the bankruptcy arena. We understand that a committee has been formed by the American Bar Association that is reviewing and considering taking a position and preparing a position paper with respect to this proposal.

At the recent meeting of the Debtor/Creditors' Rights Committee of the Business Law Section of the State Bar of Michigan ("Committee") held on November 13, 2007, the Committee discussed and unanimously approved taking a position adverse to this proposal of the Rules Committee. For a variety of reasons, the bankruptcy process is fast moving and requires, among other things, finality in a multitude of areas (*i.e.*, approval of sales, approval of DIP and exit financing, confirmation) such that if the time for appealing rulings of the bankruptcy court was extended, not only would finality be held in abeyance, but moreover, such delay could ultimately impact the ability to undertake such action and/or to effectuate a successful reorganization geared at maximizing the value of the assets of the estate for the benefit of the creditors of the estate. While in certain circumstances you can get around the finality issues by moving forward to close on such actions (assuming the 10 day stay is waived under the applicable rules, nevertheless, under those circumstances, parties will have to rely on judicial mootness to negate a determination of the underlying merits with no guarantee that the judicial doctrine will succeed in negating a determination of the substantive merits underlying the appeal.

The Committee requests authority to take the following actions:

1. Prepare and file a position paper with the Rules Committee opposing the proposed change in the rules governing the time for perfecting an appeal; and/or
2. File a concurrence with a position paper prepared by another bar group or organization that opposes the proposed change; and/or
3. Authorize a member of the Committee to request the opportunity, if available, to testify before the Rules Committee on the position paper on behalf of the Business Law Section of the State Bar of Michigan and to cover the expenses attendant thereto.

We do not believe that the authorization that the Committee seeks to take in this matter is or should be controversial as it involves process and procedure, as opposed to substantive changes to the Bankruptcy Code. Nevertheless, we would be pleased to respond to any additional questions or concerns you may have in regard to the proposed rule or the action the Committee seeks authority to take hereunder.