

**DEBTOR/CREDITOR RIGHTS COMMITTEE  
REPORT PREPARED FOR THE DECEMBER 5,2009 COUNCIL MEETING**

**1. 2009-2010 Budget Request and Anticipated Use of Funds.**

The requested amount is \$4,000. We anticipate using \$1,750 from the 2009-2010 budget for meeting expenses. The remainder will be used if we hold a seminar or other program.

**2. Use of Budgeted Funds During 2008-2009.**

The funds were used for meeting expenses.

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

The next scheduled meeting of the Committee's is January 19, 2010, with dinner at 6:00 p.m., meeting at 6:30 p.m.

**4. Council Approval.**

None at this time.

**5. Membership.**

We provided the entire membership, through the list serv, an alert about pending changes to the Federal Rules of Bankruptcy Procedure. The Committee list serv was successfully used to solicit articles for the Michigan Business Law Journal. That resulted in two lawyers in Traverse City submitting an article, even though they had not participate previously with the Committee.

**6. Accomplishments Toward Committee Objectives.**

The Committee's membership seems energized and growing. We intend to plan a future educational event at our January 19, 2010 meeting. Chief Judge Shefferly has expressed appreciation for Committee work in connection with amending the local court rules.

**7. Meetings and Programs.**

The Committee met on November 4, 2009, with 10 members attending. The Meeting included (a) a discussion and vote on the Michigan exemption initiative (discussed below in section 9), (b) the articles the Committee members are writing for the Michigan Business Law Journal, with members volunteering to edit informally the various articles (discussed below in section 8); (c) an educational presentation on the amendments to the Federal Rules of Civil Procedure,

Federal Rules of Bankruptcy Procedure and Local Rules of the Eastern District of Michigan Bankruptcy Court taking effect on December 1, 2009; (d) a discussion of recent case law of interest to the members; and (e) a discussion of possible future educational topics.

## **8. Publications.**

The Committee is responsible for the articles in the March 2010 edition of the Michigan Business Law Journal.

We have received and/or have commitments for the following articles:

Use and Relationships of Receivership and Chapter 11 for the Sale of Distressed Real Estate by Lawrence M. Dudek and Boyd White III

Proof of Claim: Whether to File, and If So How to File, by Judy Calton, Rozanne M. Giunta and Adam D. Bruski

The Earmarking Defense to Preferential Transfer Claims: A Dying Defense in the Sixth Circuit, by John P. Kuriakuz

Minimizing A Manufacturer's Exposure to Bankruptcy Preference Claims By Using Purchase Money Security Interests and Special Tools Liens, by Daniel M. Morley and Kristen Campbell

Defending Against Preferential Transfers Post-BAPCPA. Understanding the Ordinary Business Terms of Defense, by Anthony Kochis.

an article on Municipal Bankruptcies by retired Bankruptcy Judge Ray Reynolds Graves

## **9. Legislative/Judicial/Administrative Developments**

With the approval of the Business Law Council and the assistance of Karoub & Associates, the Committee has been pursuing amendments to Michigan's exemption statutes, M.C.L. 600.5451 and MCL 600.6023. MCL 600.5451, which became effective in 2005, contains updated more generous exemptions than MCL 600.6023, but only applies when the debtor is in bankruptcy. At least one court has held MCL 600.5451 preempted by the Bankruptcy Code. Another has held that MCL 600.5451 preempted other older Michigan exemptions not expressly included therein, such as a statutory exemption for certain insurance. Our proposal would result in Michigan having just one statute with the more generous exemptions, which would apply in or out of bankruptcy, and expressly not preempt other specific Michigan exemption statutes.

The Michigan Creditors Bar has told Rep. Mark Meadows that it would oppose the amendments unless the more generous exemptions continued to apply only when the debtor is in bankruptcy. The Committee discussed whether it should seek the Business Law Council's permission to change its legislative proposal along the lines proposed by the Michigan Creditors' Bar, and unanimously opposed the change.

Thus, the Committee decided to maintain the course previously approved by the Council.

**10. Miscellaneous.**

N/A

Judy B. Calton, Co-Chair

Judy Greenstone Miller, Co-Chair

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