

**DEBTOR/CREDITOR RIGHTS COMMITTEE  
ANNUAL REPORT PREPARED FOR THE  
DECEMBER 3, 2011 ANNUAL MEETING**

1. Sponsorship of programs for Continuing Legal Education via a means accessible to Section Members, including holding at least one program yearly (Article I, 3).

The Committee sponsored three educational programs in 2011:

(a) On May 11, 2011, Daniel Minkus addressed the Committee on creditors' rights issues relating to membership in limited liability companies. The Committee had asked for an educational event on this topic, and Dan did a great job.

(b) On June 22, 2011, Honorable Stephen R. Rhodes spoke on effective legal writing where pleadings are read on line by the Judge using the electronic case filing system. Sixty members reserved to attend, and the talk was very enlightening.

(b) On September 20, 2011, the Committee, jointly with the Bankruptcy Committee of the Federal Bar Association for the Eastern District of Michigan, presented a panel discussion on the recent Supreme Court opinion on bankruptcy court authority, *Stern v. Marshall*. The panelists were the Honorable Thomas J. Tucker, Professor John A. E. Pottow, Judith Greenstone Miller and Michael S. Leib. Seventy members reserved to attend and the materials and panel discussion were valuable and well received.

2. Addressing substantive legal issues for committee members, including holding regular committee meetings (at least once a year) and reporting on the meetings to the Council (Article I, 4).

The Committee holds regular meetings, including a January 11, 2011 meeting and the three educational events/meetings described above. The Committee has submitted a report for each Council meeting, which described the Committee meetings.

3. Promoting involvement in the committee and making the committee more responsive to members including the designation of a contact person (Article I, 5).

We believe regular meetings, educational events and activities such as the Michigan exemption initiative promote membership. Use of the Committee's list serv for announcements of interest to debtor/creditors rights attorneys and case law alerts promotes membership. Also, jointly sponsoring events with other organizations exposes the members of those organizations to the Committee.

David Lerner and Craig Schoenherr agreed to be contact persons for the Committee.

We receive e-mails from lawyers interested in the Committee, and immediately reach out to them to let them know what we are doing and invite them to the next meeting.

4. (A) monitoring and raising awareness of laws or developments in laws that affect Michigan businesses and, when appropriate, making recommendations for updates and improvements;

The Committee discusses new case law and proposed/enacted new rules at each meeting.

The Committee has asked its members to inform the co-chairs of new case law. Based on information from members, we have sent out numerous case law alerts on the Committee's list serv this year.

In addition, a number of members on the Committee are involved in other organizations nationally and regularly reach out and advise the Committee about pending or enacted legislation. Co-Chair, Judy Miller, serves as the Chair of the Legislation Committee for the Business Bankruptcy Committee of the Business Law Section of the American Bar Association.

- (B) providing assistance to appropriate state government personnel with respect to business-related legislation and rule making;

The Michigan Supreme Court is interested in issuing a rule on receiverships, and asked David Findling to form a group to draft the rule. Co-Chair Judy Calton is serving in that group.

The Committee is supporting adoption of amendments to Michigan statutes on exemptions.

- (C) as appropriate, providing amicus curiae briefs related to business-related issues being addressed by the courts, and

The Michigan Court of Appeals in *The Estate of Darryl Houston Price* issued an April 12, 2011 decision that a mortgagee can be surcharged for a receiver's fees even if the mortgagee did not consent to the receivership. In granting leave to appeal, the Michigan Supreme Court invited amicus briefs by certain organizations, not including the Business Law Section. We surveyed our members regarding seeking leave to file an amicus brief. There was interest in seeking leave to file an amicus brief, but a split as to what position should be taken, so the decision was made not to seek leave to file an amicus brief.

(D) educating Michigan businesses, their owners and employees about changes to Michigan's laws in order to maintain Michigan's ability to attract and retain new business enterprises and enable existing businesses to remain competitive. (Article II, 1).

Our members were educated on issues in creditors' rights with respect to limited liability company membership, which we believe furthers this goal.

5. Please comment on your plan regarding succession (Article III, 5).

At the January 11, 2011 meeting we discussed leadership succession, and had several members interested. Because the co-chairs desire to continue in office, it seems premature to do anything further at this time.

6. Please list your Committee's goals and objectives for the next 12 to 24 months and whether you will require additional support from the Section to achieve these goals (Article III, 5).

We have no request for support at this time. The Honorable Stephen R. Rhodes has co-written a book on *In pari delicto* issues which will be published in 2012. He (and possibly his co-author) has agreed to speak to the Committee about that topic in the first quarter of 2012.

The Committee will be responsible for a 2013 issue of the Michigan Bar Journal, with the articles to be submitted by November 2012. The Committee will be working on that.

Respectfully submitted,

Judy B. Calton  
Judith Greenstone Miller