Chair's Letter from Marguerite M. Donahue

Our Unsung Hero
Judy B. Calton, our co-chair of the Debtor/Creditor Rights Committee and Council member, deserves special recognition. She recently received the State Bar of Michigan Unsung Hero Award for establishing a 501(c)(3) non-profit Access to Bankruptcy Court for debtors unable to afford a bankruptcy lawyer. In addition to creating the program, she worked with the State Bar to add it to the list of Access to Justice Programs, obtained a $10,000 grant for organizational costs, and held an event to raise significant funds to support the program. Congratulations on making your innovative idea a reality, Judy! We are proud of you.

Pay It Forward
The State Bar recently launched a new Mentoring Center to match experienced attorney mentors with newer attorney mentees. The Mentoring Center was designed to provide the mentees with advice and counsel on their practices. The majority of the Section’s members have many years of experience and could provide helpful guidance to newer attorneys. If you are interested in becoming a mentor, you may register online with the State Bar’s Mentoring Center in about 5 minutes. Mentors and mentees mutually decide how much time they are able to devote to working with one another after registration.

Section Events

- December 1—Council Meeting (10 a.m., Bodman, Detroit)
- March 7, 2013—Council Meeting (3 p.m., State Bar of Michigan, Lansing)
- June 7-8, 2013—25th Annual Business Law Institute (Amway Grand Plaza Hotel, Grand Rapids)

Other Events

- December 11—Networking event jointly sponsored with the Detroit Metropolitan Bar Association (5:30–7:30 p.m., Angelina Italian Bistro, 1565 Broadway Street, Detroit)

New Development—Parent’s Attempt to Disregard Separate Identity of Subsidiary Rejected

In the litigation context, parent companies typically contend that a court should respect the separate identity of their subsidiaries. In an interesting twist, a trade association argued that the separate identity of its limited liability company subsidiary should be disregarded in a coverage dispute with its insurance carrier. The association formed an insurance agency to collect commission payments on insurance policies sold to its members, and then purchased an employee fidelity policy for the association and several affiliated companies (but not its subsidiary insurance agency). An association employee, who was also the general manager of the insurance agency, subsequently embezzled funds from the agency. The association sued its carrier to recover the loss under the employee fidelity policy after the carrier denied coverage. The carrier argued the association should not recover because its uninsured subsidiary incurred the loss. The association contended that the agency’s separate identity should be disregarded because the agency’s sole purpose was to serve as a conduit for commissions payable to the association. The federal district court granted summary judgment in favor of the carrier, and the Sixth Circuit affirmed. The Sixth Circuit reasoned that the loss was incurred directly by the agency and refused to disregard the agency’s separate identity. Tooling, Mfg. & Techs. Ass’n v. Hartford Fire Ins. Co., No. 10-2480, 2012 WL 3931802 (6th Cir. Sept. 11, 2012) (applying Michigan law).

Takeaway: It is good practice to remind clients who form and acquire new subsidiaries to consider insurance coverage issues carefully when doing so. In particular, an employee fidelity policy generally is not intended to cover third party claims, and fidelity coverage was narrowly construed in this case.