

**STATE BAR OF MICHIGAN
BUSINESS LAW SECTION
COUNCIL MINUTES**

December 3, 2011

Pursuant to notice duly given, a meeting of the Council of the Business Law Section of the State Bar of Michigan was held at Butzel Long in Bloomfield Hills, Michigan on Saturday, December 3, 2011. Council members present were Matthew Allen, Kevin Block, Judy Calton (via telephone), James Carey, Matthew Case, Jennifer Consiglio, Julia Dale, Marguerite Donahue, David Eberhard, Edwin Lukas, Chris Maeso, Richard McDonald, Thomas Morris, Douglas Toering, Jeffrey Van Winkle. Committee members present were Diane Akers, Timothy Damschroder, John Dresser (via telephone), Dee Dee Fuller, Agnes Hagerty, Mark High, Justin Klimko, Daniel Minkus, Theresa Orr, Mark Peters, and Jerome Schwartz. Others present were Dan Kopka, Tom Rico, and Terri Shoop.

1. Call to Order and Determination of Quorum. Section Chairperson, Edwin Lukas, called the meeting to order at approximately 9:42 a.m. and determined that a quorum was present.

2. Presentation by the Michigan Economic Development Corporation (“MEDC”) (Tom Rico) on the Business Connect Program. Mr. Lukas reported that the Section will continue its efforts at exploring ways to make Michigan a more attractive place to transact business. One such opportunity is the MEDC’s Pure Michigan Business Connect Program (the “Program”). The Program is designed to allow qualifying law firms to provide complimentary legal services to start-ups and emerging companies. Mr. Lukas introduced Tom Rico from the MEDC. Mr. Rico explained the Program and answered questions. Mr. Rico asked law firms to consider participating in the Program and asked the Section to promote the Program to its members. Mr. Lukas indicated to Mr. Rico that the Section would deliberate on the issue and that he would report back to Mr. Rico.

At this point Mr. Rico left the meeting.

A discussion ensued regarding the Program. It was suggested that the Section use the e-newsletter to encourage individual firm participation. A motion was made to approve the Section’s distribution of information to inform Section members and their law firms about the Program. The motion was seconded and passed unanimously 15-0-0.

3. Approval of Minutes of September 13, 2011 Council Meeting. Mr. Lukas called for a motion to approve the Minutes of the meeting of the Council from September 13, 2011. Pursuant to motion duly made and seconded, the Minutes were unanimously approved 15-0-0.

4. Treasurer’s Report. A written Treasurer’s Report is attached to these Minutes. Mr. Van Winkle reported that Business Boot Camp (“BBC”) and the Business Law Institute (“BLI”) have exceeded financial expectations and that committees and directorships have done a good job of remaining in budget. Mr. Van Winkle indicated that *The Michigan Business Law Journal* (the “Journal”), the BLI and committee and directorship activities are the Section’s most

significant expenses. The Section's expenses generally exceed revenue by \$12,000-\$15,000 per year. The fund balance is \$133,000, and the 2011-2012 budget contemplates a further reduction in the fund balance of \$30,000. Mr. Van Winkle will monitor revenue and report to the Executive Committee if dues are less than projected. Further, he will review the Section's larger expenses and consider ways to address the projected shortfall. The Section needs to consider ways to save money and must work diligently to identify ways to right size and make next year's budget sustainable.

5. Chairperson's Report.

A. Request for Amicus Brief from Private Litigant. Mr. Lukas stated that the Section policy regarding amicus briefs is that the Section will evaluate opportunities to file amicus briefs only (a) when specifically invited to do so by the Michigan Supreme Court or Court of Appeals or (b) when the Court invites organizations or groups that are interested in filing amicus briefs to do so with permission of the Court and the Section subsequently determines that it is interested in the legal issues presented.

Mr. Lukas reported that the Section was contacted by legal counsel to a private litigant in September. The Section was asked by the litigant's counsel to consider preparing and filing an amicus brief supporting its client's position. The Section declined the request to do so.

B. Committee Consideration of Filing Amicus Brief with the Michigan Supreme Court. Mr. Lukas reported that in November, the Michigan Supreme Court invited amicus briefing on the issue of whether a mortgagee may be required to pay for a receiver's costs and fees even if the mortgagee did not consent to the appointment of a receiver or benefit from the receivership. The Debtor/Creditor Rights Committee expressed interest in the opportunity but, because the Section was not specifically invited to file a brief in the Court's order, the Section would have been required to file a motion with the Court seeking its permission to file. The Executive Committee advised the Debtor/Creditor Rights Committee that the Section Council would have to approve filing the motion for leave and taking a specific position in the brief. The Committee co-chairs surveyed the committee membership, and no consensus could be reached among the membership on the position to be taken. Therefore, the Debtor/Creditor Rights Committee is not requesting that the Section consider filing an amicus brief in this matter.

C. Invitation to Take Position on Uniform Interstate Depositions and Discovery Act. Mr. Lukas reported that the Section was invited by the State Bar of Michigan ("SBM") to take a position on or submit comments regarding SB 0707, which would add to the Revised Judicature Act a new Section 22, "Uniform Interstate Depositions and Discovery Act." The Executive Committee referred consideration of the legislation to the Commercial Litigation Committee. The Commercial Litigation Committee will discuss this issue during the Committee's report. Mr. Lukas advised that if a motion is made and passed, a short electronic submission must be made to the SBM by January 3 disclosing the Section's recommendation or position.

D. Request to Reproduce the Report of the Ad Hoc Committee on Legal Opinions. Mr. Lukas reported that Wolters Kluwer is the publisher of a book entitled *Glazer and Fitzgibbons on Legal Opinions*. In September, the publisher requested the Section's permission to reproduce the "Report of the Michigan Ad Hoc Committee on Legal Opinions of the State Bar

of Michigan Business Law Section (September 15, 2010)” (the “Report”) as an appendix in the upcoming supplement to the book. The Executive Committee consulted with Justin Klimko and others who led the ad hoc committee’s efforts. Everyone agreed that the proposed publication of the Report was a terrific acknowledgement of the quality of the Report and would benefit the Section. The Executive Committee granted the consent on behalf of the Section.

E. Support for In-House Counsel Committee and Sponsorship of Crain’s Event. Mr. Lukas stated that as mentioned at the annual meeting, one of the Section’s important objectives is to work with the In-House Counsel Committee and help direct the enthusiasm that Kim Yapchai and Theresa Orr are bringing to the Committee. Mr. Lukas suggested that the Section find a way to help the co-chairs coordinate with the Programs Committee while truly increasing the Section’s visibility among in-house counsel. Mr. Lukas reported that Eric Lark agreed to work closely with the committee on its initiatives. In September, the Section was given the opportunity to be a named presenter of Crain’s General/In-House Counsel Program and Awards Event on May 2, 2012. The Executive Committee and the committee’s co-chairs were aware that the Business Law Institute is scheduled for May 4-5 in Grand Rapids. A decision on whether to proceed had to be made quickly. The Executive Committee met numerous times and consulted with the Immediate Past Chair, the In-House Committee Chairs, and three of the five Directors of the Programs Directorship. The Executive Committee asked both ICLE and Crain’s about moving the BLI and In-House events to different dates. Crain’s could not move the date, and ICLE was willing to look into moving the date for the BLI, but it would entail additional costs, possible scheduling conflicts with speakers, and potential lower turnout due to vacation schedules if the BLI was moved to a later date. Notwithstanding the date of the event, the majority of those consulted supported a modified form of sponsorship and support. The Executive Committee decided to remain involved so the Section could influence the program, make an important connection to in-house counsel and maintain the relationship with Crain’s. A copy of the agreement with Crain’s was distributed. It is believed that the Crain’s event can work for the Section on a long term basis, but no commitment beyond 2012 has been made. There is no out-of-pocket cost to the Section. The Executive Committee believes the manner in which the Section’s support is required will not detract from the BLI or its anticipated attendance. For 2013, the parties agreed to coordinate well in advance to ensure that the Crain’s Event and the BLI will occur at least 10 days apart so that neither event negatively impacts attendance for the other. Any further discussion on this topic will take place during the Committee report.

F. Proposal to Appoint Ad Hoc Committee on Section Diversity. Mr. Lukas reported that an ongoing point has been identifying ways for the Section to increase the diversity of its membership and leadership. Earlier this quarter, it was proposed that the Section appoint an ad hoc committee of three individuals that would be charged with three tasks: (1) identifying minority attorneys who are currently Section members for a greater involvement in the Section generally and for future leadership positions in particular; (2) implementing programs and activities to encourage minority attorneys to join the Section and to become active in it; and (3) following up with minority law students who have shown an interest in business law after those students have graduated and become admitted to the bar. The Executive Committee supports the suggestion. Mr. Lukas stated that he has engaged in discussions with Julia Dale and she has agreed to chair the committee if approved by Council. A motion was made to establish the Ad

Hoc Committee on Diversity to be chaired by Julia Dale. The motion was seconded and passed unanimously 15-0-0.

G. Invitation to Take Position on Business Courts Legislation; Proposal to Appoint Ad Hoc Committee on Same. Mr. Lukas reported on the work associated with certain circuit courts adopting and implementing business dockets and proposed legislation that would establish a statewide business court in Michigan. Mr. Lukas stated that he has been contacted by Mike Gadola, Director of Legal Affairs for Governor Snyder, for the purpose of obtaining the Section's support for the legislation. The Governor's Office will entertain proposed revisions to the legislation in order to gain Section support. Mr. Lukas reported that he attended a meeting of the Business Impact Committee in Lansing where the legislation was discussed and debated.

H. Social Media Policy. A draft of the Social Networking Policy for State Bar of Michigan and Related Entities (the "Policy") was distributed with the meeting packet. Mr. Lukas reported that the SBM is soliciting comments on the Policy, which are due by January 20. The Policy would permit sections using social media sites to display the SBM's name and logo, and it requires them to provide the SBM with administrative access. The access would be used rarely, and only when necessary, for site administration. The second part is directed at users of social media sites and sets forth rules of etiquette so as to encourage positive, engaging dialogue, and discourage inappropriate and disruptive postings. Mr. Lukas requested that the attendees read the Policy and provide comments or concerns to Jeff Van Winkle by January 13.

A motion was made to approve the actions taken by the Executive Committee since September 13, 2011, the date of the most recent meeting of the Council. The motion was seconded and passed unanimously 15-0-0.

B. Committee

6. Committee/Directorship Reports.

A. Standing Committees.

(i) Commercial Litigation Committee. A written report of the Commercial Litigation Committee is attached to these Minutes. Mr. Toering reported that the Committee has studied Service of Process Rules MCR 2.105 and MCR 2.103 and recommends that the Section take a position of support regarding the changes. A motion was made for the Section to support the changes to MCR 2.105 and MCR 2.103. The motion was seconded and passed unanimously 15-0-0.

Mr. Toering reported that the Section has been invited by the SBM to take a position on Senate Bill 0707, which would add Chapter 22, the Uniform Interstate Depositions and Discovery Act, to the Revised Judicature Act. The bill would (1) allow a party to submit a foreign subpoena to a circuit court clerk in Michigan, and request that court to issue a subpoena in Michigan, (2) establish requirements for the issuance and enforcement of a subpoena, including requiring compliance with Michigan Court Rules and statutes, and (3) amend Chapter 18 (Process and Arrests) of the RJA to delete provisions allowing a Michigan court

to order a person domiciled or found within Michigan to give testimony or to produce documents or other things for use in a proceeding outside of Michigan. The Committee endorses the Bill and recommends that the Section take the position of support. A motion was made that the Section take a position of support on Senate Bill 0707. The motion was seconded and passed unanimously 15-0-0.

(ii) Corporate Laws Committee. A written report of the Corporate Laws Committee is attached to these Minutes.

(iii) Debtor/Creditor Rights Committee. A written report of the Debtor/Creditor Rights Committee is attached to these Minutes.

(iv) Financial Institutions Committee. A written report of the Financial Institutions Committee is attached to these Minutes.

(v) In-House Counsel Committee. A written report of the In-House Counsel Committee is attached to these Minutes. Ms. Orr reported on the successful Cost Control Panel Discussion breakfast which was held in Birmingham on December 8. She reported that the Committee has established a listserv. This means of communication is an avenue for reaching 1,500 potential new in-house Section members. A discussion ensued regarding the Crain's event. Ms. Orr stated that a luncheon will take place before the event and Mr. Lark will attend as a liaison. At the event, the Committee will provide an easy way for attorneys to sign up to join the Section and the BLI will be promoted.

(vi) Law Schools. A written report of the Law Schools Committee is attached to these Minutes.

(vii) Nonprofit Corporations Committee. A written report of the Nonprofit Corporations Committee is attached to these Minutes. The Committee is approaching completion on the proposed draft to the Amendments to the Nonprofit Corporation Act and related statues. The Committee hopes to approve the Amendments and bring them to Council at the March meeting. Please read the summary included in the meeting packet before the March meeting.

(viii) Regulation of Securities Committee. A written report of the Regulation of Securities Committee is attached to these Minutes.

(ix) Uniform Commercial Code Committee. A written report of the Uniform Commercial Code Committee is attached to these Minutes.

(x) Unincorporated Enterprises Committee. A written report of the Unincorporated Enterprises Committee is attached to these Minutes. Mr. Minkus reported that the Committee is working with ICLE on the LLC and Business Entity Update seminar scheduled for February.

B. Ad Hoc Committees.

(i) Bylaws Committee. Mr. Wilson reported that the Board of Commissioners has approved the Section's revised Bylaws.

C. Directorship Reports.

(i) Legislative Review Directorship. A written report of the Legislative Review Director is attached to these Minutes.

(ii) Nominating Directorship. A written report of the Nominating Director is attached to these Minutes.

(iii) Programs Directorship. A written report of the Programs Director is attached to these Minutes. Mr. Minkus reported that Business Boot Camp II in Grand Rapids in November was a success. Registrations were close in number to those from Business Boot Camp I. The Directorship is considering Business Boot Camp III. The Business Law Institute is scheduled for May 4-5 in Grand Rapids. Mr. Minkus thanked Mark Peters for his work on BLI sponsorships.

a. Small Business Forum. A written report of the Small Business Forum is attached to these Minutes. Mr. Toering reported on the successful Business Courts in Michigan seminar in October (held jointly with the Commercial Litigation Committee). Approximately 45 people attended, including several judges.

b. ICLE Liaison. A written report of the ICLE Liaison is attached to these Minutes.

(iv) Publications Directorship. A written report of the Publications Director is attached to these Minutes. Mr. McDonald stated that no changes will be made to the contract with ICLE for the *Journal*.

(v) Section Development. A written report of the Section Development Director is attached to these Minutes. Mr. Damschroder reported that the Directors are proposing a new position for outstate representatives in an effort to increase membership. The position could potentially be a directorship as a title and budget would add to the importance of the role. The Executive Committee will examine this proposal and work with the Directors. This matter will be discussed further at the March meeting.

Mr. Damschroder reported that the Directors would like to think about hiring a higher level marketing firm. The Executive Committee will review this issue with the Directors and will bring a recommendation to Council at the March meeting.

(vi) Technology. A written report of the Technology Director is attached to these Minutes.

D. Liaisons.

(i) Probate Section. Mr. Dresser reported that the Probate Section is working on a pilot program to allow members to opt in to receive their journal.

7. Other Business and Announcements.

A. Update on Business Courts Legislation. Ms. Akers led a detailed discussion of the proposed business court legislation including the Governor's request of BLS support, regions and travel issues, opt out provisions, efficiencies, and timelines. A motion was made to revive the Business Courts Ad Hoc Committee to be chaired by Ms. Akers. The committee will be tasked with recommending revisions to the legislation and proposing to Council the specific position to be taken on behalf of the Section with respect to the legislation. The motion was seconded and passed unanimously 15-0-0.

B. Budget. A discussion ensued regarding budget amounts. Mr. Van Winkle indicated that budget amounts for some committees or directorships may be less than the amount requested, but may be adjusted in the future. A motion was made to approve the budget as presented. The motion was seconded and passed unanimously 15-0-0.

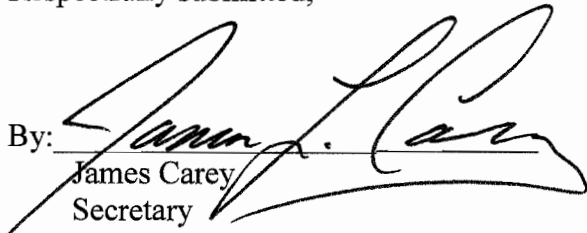
C. Reports for March Meeting. Please submit your reports for the March meeting to Ms. Shoop by March 1.

8. Announcement of March 8, 2012 Council Meeting. The next meeting of the Business Law Section Council will take place on Thursday, March 8, 2012 at 3:00 p.m. at the State Bar of Michigan in Lansing.

9. Meeting Adjournment. There being no further business to come before the Council of the Business Law Section, upon motion duly made, seconded, and unanimously approved 15-0-0, the meeting was adjourned at approximately 1:00 p.m.

Respectfully submitted,

By:


James Carey
Secretary