

2002-2003 ANNUAL REPORT BUSINESS LAW SECTION

GENERAL

The Business Law Section remained very active during the year and provided a wide variety of services to Section members.

MEMBER DATABASE

The Business Law Section has created a database of all of its members that includes the name, address, contact information, type of practice (from questionnaires sent to the Section members), and certain administrative data. The database is an excellent tool to communicate with and keep track of Section members, to provide regional programs using geographical data, and to provide focused contact with members on areas of interest to them based upon their response to the type of practice questionnaire.

BUSINESS BOOT CAMP

In September, 2002, the Business Law Section began a nine month program intended to increase young lawyer participation in the Section and allow law firms to outsource associate training by offering a series of seminars on fundamental business law issues. There were over 180 participants to these monthly meetings held in Detroit and Grand Rapids. Twelve of the largest law firms in the State of Michigan signed up as a firm (flat fee for unlimited participation). The topics included Shareholder Buy/Sell and Voting Agreements; Forming an LLC – Including Operating Agreements; Understanding Financial Statements; Forming a Business Entity and Ancillary Issues; Mergers & Acquisitions; Business Valuations and Appraisals; Introduction to Securities Law; Security Agreements, Perfecting Security Interests and Understanding Priorities; and Intellectual Property Issues. Please go to <http://www.icle.org> for further information regarding the Boot Camp program.

Because of the tremendous response to the Boot Camp and the need to continue outreach to the young lawyers (as well as offering associate outsource training to law firms), the Boot Camp will be repeated for a second year beginning September 2003. ICLE is enthusiastic and has agreed to continue sponsoring this program with the Section. Topics will include Choice of Entity; Forming an LLC; Real Estate: What Every Business Lawyer Must Know; Business Issues For New Attorneys; Commercial Loan Transactions; Environmental Issues For Business Lawyers; Personal Property Transactions; Executive Employment Agreements; and Select Issues in Mergers & Acquisitions.

BUSINESS COURT COMMITTEE

The Section has formed an Ad Hoc Committee to study whether the State of Michigan should have a business court. The Ad Hoc Committee is chaired by Diane L. Akers, Chairperson of the Commercial Litigation Committee of the Business Law Section. Through a Section-wide e-mail sent by Ms. Akers, over 160 attorneys have joined the Ad Hoc Committee. The Committee is pursuing pilot projects in two Michigan counties. We look forward to the

Committee's further recommendations and results. Please contact Ms. Akers if you would like to participate (see below for contact information).

MID-YEAR MEETING

The Business Law Section's Fifteenth Annual Mid-Year Meeting was held in Traverse City in May 2003. The Mid-Year Meeting provides many opportunities to meet other Section members and discuss pertinent business law issues. There are plenty of opportunities for speakers and assistance with planning for future Mid-Year Meetings. If you are interested in assisting, please contact the Directors of Programs (contact information below).

COMMITTEES OF THE SECTION

Membership in all committees is open to all members of the Business Law Section. Please contact the appropriate committee chairperson(s) if you are interested in participating.

Agricultural Law Committee. The Agricultural Law Committee is focused on agricultural law issues and developments in the State of Michigan affecting both agri-businesses and farmers. Co-chairs of the committee are William G. Tishkoff [(734) 663-4077 tishkoff@ic.net] and John R. Dresser [(616) 651-3281 jrdresser@dresserlaw.com].

Commercial Litigation Committee. The Commercial Litigation Committee assists litigators as well as business and corporate counsel in addressing issues that may lead to or arise in business-related litigation. The committee sponsors seminars and other programs that address such issues and are designed to enhance the practice of those involved in commercial litigation. Chair of the committee is Diane L. Akers [(313) 393-7516 dakers@bodmanlongley.com].

The Council has approved funding for a pilot business court in Oakland and/or Kent Counties. The Business Court Ad Hoc Committee has conducted a good deal of research and has engaged in a number of other activities aimed toward establishing some form of a business court in Michigan. In the Committee's contacts with circuit courts as well as the Michigan Supreme Court and Court Administrator's Office, many people have asked how much business litigation each county actually has and how many cases may be suited to resolution in a business court. Presently, while both the Oakland and Kent County Circuit Courts have made some initial inquiry to try to answer such questions, they have not made much progress because there is presently no easy way to gather the necessary information. The approved funding will be used by the Pilot Business Court Administrators to pay for an administrator to review the business cases presently pending in that court as well as operational issues that may arise should the circuit court proceed to establish a Pilot Business Court.

Corporate Laws Committee. The Corporate Laws Committee monitors and reviews matters relating to corporate law statutes and developments in the law of corporate governance. The committee also works with the Business Corporation Act Revision Subcommittee, which reviews the Michigan Business Corporation Act for the purpose of keeping it current with developments in corporate law and assists from time to time in drafting and advocating proposed changes in the Act. Co-chairs of the committee are Cyril Moscow [(313) 465-7486 czm@honigman.com] and Justin G. Klimko [(313) 225-7037 klimkojg@butzel.com].

The Committee is cooperating in attempts to amend the Business Corporation Act and Michigan Limited Liability Act so as to permit direct conversions by one type of entity into another. These efforts are being spearheaded by James C. Cambridge, who has overseen LLC Act matters on behalf of the Section.

The Committee continues to monitor developments that may affect Michigan corporate laws. Of particular significance in this regard is the ongoing matter between Simon Properties and Taubman Centers, Inc. relating to Simon's tender offer for Taubman's shares. This case has produced judicial opinions regarding application of Chapter 7B of the Michigan Business Corporation Act and standing for derivative actions. A proposed amendment to the Business Corporation Act that would have required Board approval for amendments to the Articles of Incorporation and would have allowed continuing directors to exempt acquisitions from Section 7B after they occurred was withdrawn from consideration and sent back to committee after complaints that the bill was intended to influence the Simon/Taubman matter.

Senate Bills 593 (amending the general sales tax act), 594 (amending the use tax act), and 595 (amending the income tax act), all introduced by Senator Bullard and each dealing with the dissolution issue, became Public Acts 579, 580 and 581, effective October 14, 2002. As a result, it is no longer necessary to obtain a tax clearance certificate as a prerequisite to filing a certificate of dissolution for a Michigan corporation or an application for withdrawal for a foreign corporation with a certificate of authority. Tax clearance certificates must now be requested within sixty days after submitting a certificate of dissolution or application for withdrawal.

Public Act 433 of 2002, which repealed two RJA sections dealing with corporate matters, became law on June 10, 2002.

The Committee participated in the drafting of the amendments to the Business Corporation Act and the Professional Services Corporation Act that became law as P.A. 57 and 58 of 2001.

The Committee also prepared and filed an amicus brief that was extensively cited by the special panel of the Michigan Court of Appeals in its reconsideration of the holding in Estes v. Idea Engineering.

Debtor/Creditor Rights Committee. The Debtor/Creditor Rights Committee focuses on issues of insolvency, such as bankruptcy, state law alternatives to bankruptcy, secured lending (Article 9 of the Uniform Commercial Code), and state law exemptions. Co-chairs of this committee are Judy B. Calton [(313) 465-7344 jbc@honigman.com] and Judith Greenstone Miller [(248) 357-3010 jmiller@raypro.com].

Recent topics of interest to the Committee are (a) action in Congress on the Bankruptcy Reform Act and other bankruptcy related bills; (b) recent legislation in Michigan; (c) news on Michigan Liquor Control Commission issues; (d) the work on new rules relating to First Day Motions by the Advisory Committee to the Bankruptcy Judges of the Eastern District of Michigan; (e) amendments and the proposed amendment to the Federal Rules of Bankruptcy Procedure and the Federal Rules of Civil Procedure which took effect in December 2002; (f) the

status of the House Judicial and Civil Law Committees work on amending Michigan exemption statutes; and (g) recent changes to the United States Trustee's Fee guidelines.

Financial Institutions Committee. The Financial Institutions Committee focuses on legislative, regulatory, and judicial developments and issues of interest to financial institutions (primarily banks) and their affiliates. Chair of this committee is James H. Breay [(616) 752-2114 jbrey@wnj.com].

Recent topics of interest to the Committee are (a) risks associated with certain overdraft protection programs; (b) payday lending; (c) the new Consumer Mortgage Protection Act; (d) debt cancellation contracts; (e) proposed amendments to the Credit Union Act; (f) proposed Banking Code amendments (e.g. authorizing trust companies and LLC banks); (g) pending bills in the legislature that are of interest to the banking industry; (h) recent do-not-call list amendments to the Home Solicitation Sales Act; (i) the recent amendments to the Federal Reserve Board's Regulation; (j) issues under the new Consumer Mortgage Protection Act, such as whether a mobile home is "real property" under the Act, whether upcharges are prohibited and whether the Act's restrictions on balloon loans are preempted by federal law; (k) the issue of how to take a lien on a mobile home in light of the 6th Circuit's recent opinion; (l) Michigan's new creditor-placed insurance statute; (m) the recent holding of the Michigan Supreme Court that there is no purchase money mortgage priority in Michigan; (n) the status of the document preparation fee litigation; (o) Gramm-Leach-Bliley preemption of state restrictions on marketing insurance; (p) HIPAA issues for banks; and (q) the status of the proposed amendments to UCC Articles 1, 3 and 4.

In-House Counsel Committee Reports. The In-House Counsel Committee is committed to addressing the professional interests of in-house counsel by sponsoring continuing legal education programs, informing members about issues of particular interest to them, and offering social and professional networking opportunities. Chair of this committee is Paul Marcela [(989) 496-6365 paul.marcela@dowcorning.com].

Non-Profit Corporations Committee. The Nonprofit Corporations Committee's principal responsibility is to review and update laws relating to the organization of nonprofit corporations in Michigan. The principal focus has been the Nonprofit Corporation Act, but it also reviews other legislation, such as bills regulating the solicitation of contributions by charities. The committee also assists with sponsoring continuing legal education programs directed at nonprofit organization issues. Co-chairs of this committee are Jane Forbes [(313) 568-6792 jforbes@dykema.com] and Mark R. Lezotte [(313) 791-1730 lezottem@oakwood.org].

The Committee reviewed the updated draft of the amendments to the Nonprofit Corporation Act prepared by Prof. Mae Kuykendall. It was recommended that two pieces of legislation be created. One would contain items of immediate concern (such as e-mail meeting notices and filings by fax), changes designed to validate the existing practices of some nonprofit corporations (such as member voting by mail), and other "noncontroversial" amendments. A subcommittee has been created to identify the items in this legislation. The goal is to have it ready for submission to the legislature by September, 2003. The Committee will then work on additional amendments that may address more substantive questions, such as the issue of whether nonprofit stock corporations are needed, whether the "one member/one vote" rule

should be revised and whether board members of nonprofit corporations should be allowed to act by proxy.

Regulation of Securities Committee. The Regulation of Securities Committee is concerned with federal and state laws and regulations relating to the offer, sale, and trading of securities. The committee also supplies a liaison to the Securities Law Advisory Committee of the Michigan Corporation & Securities Bureau. Activities are designed to inform members of current developments and issues and provide input to appropriate administrative and legislative bodies. Co-chairs of this committee are Arthur Dudley, II [(313) 225-7070 dudleya@butzel.com] and Kenneth H. Gold [(248) 646-2400 kgold@mirolaw.com].

A Uniform Securities Act of 2002 Subcommittee was created to work on legislation in Michigan to adopt a form of the recently drafted Uniform Securities Act (“USA”) as drafted by the NCUSL. The subcommittee will (a) consider and draft amendments to the Uniform Securities Act of 2000, (b) work with the Michigan Office of Financial and Insurance Services in this effort, and (c) assist with introduction of the Uniform Securities Act to the Michigan Legislature. The chairpersons of the USA Subcommittee are Cyril Moscow [(313) 465-7486 czm@honigman.com] and Hugh H. Makens [(616) 752-2117 hmakens@wnj.com].

The subcommittee will meet with the new Commissioner of the Office of Financial and Insurance Services, Linda Watters, to obtain an approved sponsor for the bill, to determine what her wishes are relative to the legislation, and to discuss problems that the Bar is experiencing in dealing with securities matters at OFIS.

Uniform Commercial Code Committee. The Uniform Commercial Code Committee monitors developments and issues under all Articles of the UCC and related commercial statutes. In October of each year, the committee presents a seminar on recent developments in commercial law. Additionally, the committee prepares an annual survey of case law involving the UCC and commercial law. Chair of this committee is Patrick E. Mears [(616) 776-7550 pmears@dykema.com].

The Committee has been monitoring the proposed revisions to the Uniform Commercial Code (Articles 2, 3, 4 and 7). These revisions were adopted by voice vote at the 2003 Annual Meeting of the American Law institute on May 13, 2003 in Chicago, and will now be transmitted to the states and territories for legislature approval. Developments in the case law under the various Articles of the UCC are also being monitored.

Unincorporated Enterprises Committee. The committee remains active in conducting seminars regarding unincorporated enterprises and focusing on the statutory revisions regarding limited liability companies. The committee has also assisted in informing members of the Bar from other sections as to legislation affecting unincorporated enterprises. The focus of the committee’s activities has been to present seminars in conjunction with ICLE and the Business Law Section. Membership and the opportunity to play a significant role in the committee’s activities is and will continue to be open to all members of this Section. Chair of this committee is Daniel H. Minkus [(248) 642-9692 dminkus@clarkhill.com].

The Committee has been active presenting its annual Business Entity Update seminar in conjunction with ICLE. This year's session focused on the tenth anniversary of the LLC Act in Michigan. Plans are being made for the 2004 ICLE Business Entity Update Seminar. The Committee was active with the Ad Hoc Committee on legislative amendments to the Michigan Limited Liability Company Act. The proposed amendments were adopted in December 2002 with immediate effect. The Committee was responsible for the session in the Business Boot Camp program on limited liability companies and operating agreements.

DIRECTORS OF THE SECTION

Director of Legislative Review. Eric I. Lark [(313) 961-0200 eil@krwplc.com] serves as the Director of Legislative Review and is responsible for reviewing proposed legislation and advising the Section leadership of matters of substantive law which may be of interest or concern to business lawyers in Michigan.

Director of Nominations. The Director of Nominations is Jeffrey S. Ammon [(616) 831-1703 ammon@mjsc.com].

Director of Programs. Mark R. High [(313) 223-3500 mhigh@dickinson-wright.com] and Stephen C. Waterbury [(616) 752-2137 swaterbury@wnj.com] serve as Co-Directors of Programs for the Section. They are responsible for programs at both the Annual Meeting of the Business Law Section (in conjunction with the Annual Meeting of the State Bar) as well as the Mid-Year Meeting.

Director of Publications. Robert T. Wilson [(248) 258-7851 wilsonr@butzel.com] is the Director of Publications and is responsible for the publication of the Business Law Journal.

Director of Section Development. Timothy R. Damschroder [(734) 930-0230 tdamschroder@bodmanlongley.com] is the director of Section Development.

In addition to implementation of the Member Database and Business Boot Camp, the Section Development Director is working to develop the Section through the following programs:

(a) **Regional Programs.** Tania (Dee Dee) Fuller and John Dresser have agreed to help facilitate and promote regional programs for increasing outstate participation in the Section. Using the Section database and contacts at various local bar organizations, they will identify persons in certain targeted communities to act as regional program coordinators. Each regional program could include substantive seminars, discussion groups, networking, or whatever is deemed appropriate by the regional coordinator. It is recommended that, as possible, at least one Council member attend each regional program to solidify the connection between the Section and the regional programs.

(b) **Scholarship Program.** The Section hopes to undertake a one year trial scholarship award program. The program would be open to all Michigan law schools, with a \$2,500 award to the student with the best article dealing with any business law topic. The

program would have two primary purposes: (i) to promote involvement with, and knowledge about, the Section with law students; and (ii) to promote law student interest in business topics.

Director of Technology. Michael S. Khoury [(248) 357-3010 mkhoury@raypro.com] is the Director of Technology and is responsible for developing the structure for the Council's website and, along with the Section Webmaster, for bringing opportunities to the Section to enhance the Section website and other forms of electronic communication with its members.

The Section has created a membership listserv which is available for use. The use of the listserv for transmittals is currently limited to Section leadership. Please see Listserv Guidelines under the heading Listserv on this website for more information.

Timothy R. Damschroder, Chairperson