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PRACTICES

Business Law and Litigation
Bankruptcy Law and Litigation
Business and Personal Debt Workout

Whether representing large or medium-sized corporations, small businesses, or individuals, Michael R. Wernette has established a reputation for strength and skill as a trial lawyer and counselor. Mr. Wernette has obtained successful trial verdicts and favorable settlements under challenging circumstances in courts throughout Michigan, as well as in New York, Delaware, Ohio, Florida and California. Mr. Wernette also handles bankruptcy matters and bankruptcy litigation on behalf of both creditors and debtors as a major segment of his practice, with amounts in controversy ranging from tens of millions of dollars down to tens of thousands.

ADMISSIONS & QUALIFICATIONS

State Bar of Michigan, 1996
Michigan Court of Appeals, 1996
U.S. District Court, Eastern District of Michigan, 1996
U.S. District Court, Western District of Michigan, 1996
U.S. Court of Appeals, Sixth Circuit, 1996

EDUCATION

Wayne State University, J.D., 1996
Michigan State University, B.A., 1991

SEMINARS

September, 2012, presenter, *Hidden Pitfalls Within the Michigan Building Contract Fund Act (aka, the "Builder's Trust Fund Act")*, the Michigan Association of Certified Public Accountants.

November, 2011, presenter, *Tax Anatomy of the Business Divorce*, The Michigan Association of Certified Public Accountants.

2007, *The Business "Divorce" – Breakups of Closely-Held Companies*, The Michigan Association of Certified Public Accountants.

2006, *Bankruptcy Actions and the CPA's Role*, The Michigan Association of Certified Public Accountants.

PUBLICATIONS

Co-author, *Handling Consumer and Small Business Bankruptcies in Michigan (Litigating in Bankruptcy Court)*, Institute of Continuing Legal Education, 2009.

PROFESSIONAL MEMBERSHIPS

State Bar of Michigan

Oakland County Bar Association

REPRESENTATIVE MATTERS

Recovered a \$500,000 settlement for an automotive parts manufacturer in the New York bankruptcy case of a large Tier One auto supplier. Mr. Wernette filed a claim in the Tier One's bankruptcy case seeking priority payment of the client's claim, which was based on a pricing dispute. The court scheduled the matter for trial. Mr. Wernette prepared his client's case and appeared in New York prepared to go to trial. The Tier One agreed to settle at the courthouse.

Won a federal court trial verdict of over \$600,000 for a real estate developer against a general contractor and its president based on Michigan's Builder's Trust Fund Act.

Defended an automotive tooling maker in a \$1.2 million "preference payment" suit in a Delaware bankruptcy case. The client had withheld delivery of tooling to a Tier One supplier to extract payment for old invoices from the Tier One. The Tier One later filed bankruptcy, and the client was sued to recover the payment as a preference under the Bankruptcy Code. The typical preference payment defenses were weak, but Mr. Wernette developed a theory that the \$1.2 million was not a preference because it was never the Tier One's money – rather, the Tier One was a mere conduit for money General Motors put up

to secure delivery of the “hostage” tooling. The client paid just 12 cents on the dollar to settle the case.

Defended a Detroit casino against breach of contract claims brought by the City of Detroit. The City claimed a right to terminate the contract based on the casino’s alleged breach. After a three-day bench trial, the court ruled that the City had failed to follow procedures required by the contract and thus had no right to terminate it.

Removed a \$1.5 million construction lien from a client’s real estate development project through fast-track litigation in bankruptcy court. After two days of taking evidence and argument, the court ruled that the construction lien was invalid, which paved the way for Mr. Wernette’s client to close on a sale of the project instead of losing it to foreclosure.

Won a unanimous jury trial verdict for a plaintiff business owner after ten days of trial in state court, in a breach of warranty/fraud action against a large manufacturer of custom roofing systems. The jury awarded every penny of requested damages.

Engineered a favorable settlement on behalf of a Michigan contractor and his wife in a \$50 million collection lawsuit filed against them by two of the largest and most powerful insurance companies in America, based on written indemnity agreements the clients had signed in favor of the insurers. Had the insurers prevailed in litigation, the judgment would have eclipsed the value of all of the clients’ assets and left them destitute. Mr. Wernette first obtained dismissal of the insurers’ federal court lawsuit, forcing the insurers to re-file in the client’s local state court. Mr. Wernette then filed defenses, counterclaims, discovery requests and a motion to compel the insurers to mediate, putting his clients in a proactive, not passive, position. Mr. Wernette successfully resisted the insurers’ motion for summary disposition in the state court and forced the insurers to mediate where, over the course of several mediation sessions, Mr. Wernette helped the clients craft a settlement that ended the litigation and provided for the clients to retain sufficient cash and real estate to retire comfortably.

Obtained favorable settlements on behalf of business borrowers and loan guarantors in several multi-million dollar collection lawsuits filed by national and regional banks, involving large discounts of debt and leaving the clients with sufficient assets to move forward and avoid bankruptcy. In one recent case, Mr. Wernette successfully resisted two motions for summary disposition brought by the bank, who sued to collect on signed, unpaid promissory notes, while working to focus the bank on a negotiated settlement rather than litigation. The bank increased the pressure during the lawsuit by initiating a foreclosure against the client’s commercial property, but Mr. Wernette challenged the foreclosure in court and the bank backed off. After prevailing at every single motion hearing in the case for over a year, Mr. Wernette was able to leverage a settlement with the bank featuring a large discount of the debt and dismissal of the lawsuit with no judgment against the client.

Obtained a temporary restraining order and preliminary injunction in state court on behalf of an automotive parts manufacturer to prevent the client’s raw material supplier from

stopping shipments due to late payments. Cessation of shipments would have shut the client down within days. Despite the client's repeated failures to pay the supplier according to written terms, Mr. Wernette presented evidence that the supplier had waived the payment defaults, and prevailed after a two-day preliminary injunction hearing. The injunction gave the client the time needed to find a new supplier at lower prices without interruption to its business.

Defended a small business owner against claims brought by the UAW. The client's company was unable to pay a subcontractor on a roofing project at the UAW's facility. The subcontractor filed suit to foreclose its construction lien on the UAW facility. The UAW filed a third-party complaint against Mr. Wernette's client personally, alleging breach of contract, fraud, and violation of the Builder's Trust Fund Act. Mr. Wernette went on the offensive, filing a motion to dismiss the UAW's complaint and seeking monetary sanctions. The UAW agreed to dismiss all claims against Mr. Wernette's client rather than respond to the motion.

Defended a nursing home in a personal injury action by a resident who fell at the facility, resulting in a fractured hip and femur. After investigation was complete but before substantial litigation costs were incurred, the plaintiff made a settlement demand of \$75,000. The client's in-house counsel authorized Mr. Wernette to settle the case up to \$50,000. Mr. Wernette negotiated a settlement for \$29,500, saving the client tens of thousands of dollars in settlement costs and legal fees.

OTHER DISTINCTIONS

Vice Chairman, Oakland County Bar Association Debtor/Creditor Committee, 2014-15

Named to the *Michigan Super Lawyers*[®] list, a peer review survey that selects the top 5% of attorneys, 2011, 2012, 2013, 2014.

Dean's Scholar Award Recipient, WSU Law School

Finalist - Arthur Neef Moot Court Competition, WSU Law School

Moot Court Executive Board, Director of Outside Competitions, WSU Law School