The Osgoode Short Course in Debtor-Creditor Litigation

Attend this information-packed program and you will:

- Get a thorough overview of the important substantive and procedural issues involved in commercial litigation matters involving recovery of debts
- Learn valuable techniques, strategies and tactics for pursuing all available sources of recovery or for creatively opposing secured creditors
- Be better equipped to choose the most appropriate remedy using realistic cost-benefit analysis
- Hear from top counsel on how to maximize the advantages of the Commercial List and other forums
- Learn new developments and practical tips in receivership proceedings
- Ensure you have an up-to-date knowledge of the impact of receivership laws in this area
- Learn the techniques and hear practical strategies for identifying and dealing with commercial fraud as well as the ethical and professional issues that may accompany it
- Enhance your ability to conduct debtor-creditor litigation with proportionality and a results-oriented perspective

Plus! Don’t miss the Optional Workshop:
  Fundamentals of Commercial Litigation

Chair

Milton A. Davis, Davis Moldaver LLP

DATE & TIME
May 29, 2014
9:00 a.m. - 4:30 p.m. EDT/EST

OPTIONAL WORKSHOP
May 28, 2014
1:30 p.m. - 4:30 p.m.

LOCATION
Osgoode Professional Development Centre
1 Dundas St. W., 26th Floor
Toronto, ON

WEBCAST AVAILABLE

Osgoode Professional Development has been approved as an Accredited Provider of Professionalism Content by The Law Society of Upper Canada.
LSUC (ON) CPD: 6.75 CPD Hours (5.25 Substantive, 1.5 Professionalism) for the course, 3.0 CPD Hours (3.0 Substantive, 0.0 Professionalism) for the workshop

Register now at www.osgoodepd.ca
Learn the strategies you need to navigate this complex system of laws and remedies

Few areas of legal practice provoke more cries of “Help!” – from both clients and counsel – as debtor-creditor litigation.

- The context in which such litigation arises – including bankruptcies, receiverships, frauds and conspiracies – tends to be crisis-driven and fraught with expensive pitfalls and professional conundrums
- Controversy over best approaches and ever-evolving caselaw on remedies and damages make this area more challenging than ever before, and even experienced counsel are not always aware of some potentially helpful statutory provisions
- No creditor wants to wait years for the recovery of their money, and an uncollectable judgment is a very expensive piece of paper

Counsel need to know how to steer matters efficiently through the system, and how to maximize the recovery at minimum cost. Those who have a solid grasp of the available procedural tools and the arguments and evidence that play out best before mediators, masters or judges have a winning advantage.

In this Osgoode Professional Development short course, some of the best minds and top practitioners in the field will share their knowledge and insights derived from experience. An essential overview for lawyers new to debtor-creditor litigation, it will also challenge more experienced practitioners to rethink commonly-encountered problems in fresh and creative ways.

Register now by visiting www.osgoodepd.ca, calling 416.597.9724 or 1.888.923.3394, emailing opd-registration@osgoode.yorku.ca or faxing 416.597.9736.

Chair

Milton A. Davis, Davis Moldaver LLP

Faculty

The Hon. Justice Fred Myers, Superior Court of Justice (Ontario)
Sarit E. Batner, McCarthy Tétrault LLP
George Benchetrit, Chaitons LLP
Harvey Chaiton, Chaitons LLP
Tom Curry, Lenczner Slaght Royce Smith Griffin LLP
Ronald D. Davis, J.D., Ph.D., Principal ellwoodEvidence.com
Steven L. Graff, Aird & Berlis LLP
Brian H. Greenspan, Greenspan Humphrey Lavine
Monique Jilesen, Lenczner Slaght Royce Smith Griffin LLP
Jacqueline L. King, Shibley Righton LLP
Robert Kofman, Managing Director, Duff & Phelps Canada Restructuring Inc.
Shayne Kukulowicz, Cassels Brock & Blackwell LLP
Francy Kussner, Goodmans LLP
Rod Moran, Director, Group Risk Management, RBC
Agenda

Optional Pre-Conference Workshop

Fundamentals of Commercial Litigation
May 28, 2014 1:30 p.m. - 4:30 p.m.

Note: Workshop not available via webcast.

Milton A. Davis, Davis Moldaver LLP
Ronald D. Davis, J.D., Ph.D., Principal, ellwoodEvidence.com
Steven L. Graff, Aird & Berlis LLP

This workshop provides a general orientation – for plaintiffs’ and defendants’ counsel – to the essentials of litigating commercial disputes, with topics drawn from such areas as:

• Who are the appropriate defendants? — extending (or restricting) liability
• Injunctions and interim relief
• Maximizing the chances for success on motions
• Causes of action including economic torts
• The spectrum of available commercial damages
• Technological aspects of prosecuting and defending commercial cases, including use of technological tools, destruction of evidence, obtaining and using electronic records, and key e-discovery issues
• Evidence and advocacy in proving damages
• Practical tips for maximizing cost awards

Thursday, May 29, 2014

8:30 Registration and Continental Breakfast
9:00 Chair’s Welcome & Introductory Remarks
9:10 Early Warning Signs – What to Do?
Shayne Kukulowicz, Cassels Brock & Blackwell LLP

• Preliminary considerations and assessing danger signals from or concerning the debtor
• Conducting a cost/benefit analysis of essential facts
  - assessing timelines
  - understanding priorities
  - looking ahead to the enforcement strategy
• Choosing the most effective remedy available
  - taking a guarantee or security
  - unpaid supplier rights
• Commencing of proceedings
  - actions, applications and other strategies
  - making demand

9:40 When and How to Use the Commercial List
Tom Curry, Lenczner Slaght Royce Smith Griffin LLP

• Choosing the best alternative options if you don’t qualify
• Navigating the system and getting things done
• The effective use of 9:30 appointments
• Particularly difficult opponents – what to do?
• Recent developments in policy and procedure

10:05 The Essentials of Receiverships: Opportunities, Pitfalls, Best Practices
Robert Kofman, Managing Director, Duff & Phelps Canada Restructuring Inc.
The Hon. Justice Fred Myers, Superior Court of Justice (Ontario)

• When to use them
• Court appointed vs. private appointment
• Bringing the application
• Choosing a receiver and funding the receivership
• Defending and opposing receiverships
• Receiver reports as evidence
• The most pertinent recent law

11:15 Judgments – Pre- and Post- Judgment Strategies
Sarit E. Batner, McCarthy Tétrault LLP

• Addressing the problems in summary judgment procedures
• Is it faster to go to trial?
• Citi Cards Canada Inc v. Pleasance
  - a stumbling block to a sheriff’s sale
  - limitations on financial institutions’ ability to disclose financial data without customer consent
• Collections – effecting recoveries and maximizing the slice
  - seizures, garnishments and other tools

12:30 Luncheon

1:15 Commercial Fraud and Creditors’ Remedies
George Benchetrit, Chaitons LLP
Harvey Chaiton, Chaitons LLP

• Discovering the unlawful activities and using the right tools (including Norwich orders) for gathering relevant evidence
• Freezing the fraud: ex parte injunctions, certificates of pending litigation and other mechanisms to avoid a dissipation of assets
• Legal remedies for unlawful asset transfers: what’s available under bankruptcy law and under provincial legislation?
• Identifying/proving a commercial conspiracy
• Extending liability to directors and other individuals via the oppression remedy
• Identifying/dealing with Ponzi schemes

2:15 Refreshment Break

2:30 Ethical and Professional Considerations for Counsel
Brian H. Greenspan, Greenspan Humphrey Lavine
Francy Kussner, Goodmans LLP

• Moving or transferring assets – how to advise the debtor client in a manner consistent with counsel’s ethical and professional responsibilities
• When does the lawyer become part of a conspiracy?
  - practical tips for managing risk
• Dealing with the obstructive or unethical lawyer
• When should police or the OSC be alerted?
Agenda [Cont’d]

3:30 The Creditor’s Expectations and the Debtor’s Strategies
Milton A. Davis, Davis Moldaver LLP
Monique Jilesen, Lenczner Slagt Royce Smith Griffin LLP
Jacqueline L. King, Shibley Righton LLP
Rod Moran, Director, Group Risk Management, RBC

- The debtor’s strategies
  - when to fight and when to negotiate
  - defences that work and creative use of the BIA
  - scope of the duty to act reasonably and in good faith
  - the defence of failure to mitigate
- Meeting and/or managing creditors’ expectations
  - proportionality and common sense, making and keeping the client happy, acting quickly and charging reasonably

4:30 Course Concludes

“Very good variety of topics covered”
— James Desjardins, Blake, Cassels & Graydon LLP

“The topics chosen were very good and the presenters were all very engaging. Informative and very well-structured”
— Nicole Sigouin, Norton Rose Fulbright Canada LLP

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Questions? E-mail: cpd@osgoode.yorku.ca or refer to the program website.