State Bar of Michigan

NEWSLETTER

Consumer Law

V. 24, No. 1 State Bar of Michigan Consumer Law Section April 2021

Contents

The Evolution of the Lodestar for Attorney Fee Calculations in Michigan—from *Smolen* to *Smith* to *Pirgu*

By Gary M. Victor

Introduction

As consumer protection blossomed in Michigan during the 1970s with statutes like the Michigan Consumer Protection Act (MCP)[1] providing private rights of action for consumers coupled with awards of reasonable attorney fees,[2] consumer advocates found themselves at the mercy of trial judges with regard to fee awards. Trial courts, in general, did not look fondly on consumer protection cases and were not disposed to make fee awards that were greatly disproportionate to the amount recovered by the named plaintiff or plaintiffs. These attorneys started to long for a more objective standard for attorney fee awards that not only could actually amount to reasonable compensation for litigating their cases, but might also provide a better chance for success on appeal should a trial court's award be too low. The search was for a lodestar approach to attorney fee calculations with the reasonable hourly rate times the reasonable number of hours worked as a beginning point.[3] With some important stops along the way, this article will examine this search for a lodestar from its early beginnings to its current status.

The Principle Attorney Fee Cases

Smolen v Dahlman Apartments, Ltd[4] and *Howard v Canteen Corp*[5]

Smolen was a Landlord-Tenant Relationships Act[6]/MCPA case involving the question of whether Michigan residential landlords could retain

Continued on next page

security deposit monies for the costs associated with apartment cleaning. On the substantive issue, plaintiffs lost in the trial court and won in the Court of Appeals (*Smolen I*).[7] The case was then appealed to the Supreme Court which granted leave, heard the case and then decided it had granted leave improvidently.[8] On remand to the trial court to determine attorney fees under the MCPA, and after hundreds of hours of work, the trial court awarded fees of $2,000 on the basis that the case was no more difficult than the typical landlord-tenant case. On appeal to the Court of Appeals (*Smolen II*)[9], plaintiffs argued that the Court should adopt a reasonable hourly rate times the reasonable amount of hours worked as the starting point in attorney fee calculations. The Court declined to adopt this lodestar approach.[10] Instead, the Court merely reiterated a reliance of the factors outlined in *Crawley v. Schick*[11] which were adopted by the Supreme Court *Wood v. Automobile Inter-Ins. Exch*.[12] This decision essentially left consumer advocates where they started.[13] On a positive n-ote, the *Smolen II* Court remanded for a new attorney fee hearing and did hold that attorney fees were available for work on appeal.[14]

However, less than a year after *Smolen II's* rejection of a lodestar approach another panel of the Court of Appeals held the exact opposite. In *Howard v. Canteen Corp*[15], a wrongful termination case brought under the Civil Rights Act,[16] the Court stated that:

> The most useful starting point for determining the amount of a reasonable attorney fee is the number of hours reasonably expended on the case multiplied by a reasonable hourly rate.[17]

There was some speculation that this apparent contradiction in holdings was based on *Howard* being a civil rights case whereas *Smolen II* was a MCPA case, but *Howard's* lodestar approach was later cited in non-civil rights cases.[18] After the contradictory holdings of *Smolen* and *Howard*, some trial courts used a lodestar approach in calculating attorney fees while others relied on *Crawley* and/or Rule 1.5(a) of the Professional Rules of Conduct.[19] At that point, the lodestar issue was left in limbo awaiting the intervention of the Supreme Court.

Jordan v Transnational Motors, Inc.[20]

As of 1995, the factors to be considered in determining attorney fee awards under both *Crawley* and the Rule of Professional conduct included the "amount involved and the results achieved". Trial courts in consumer cases tended to use this criteria to make low fee awards. Although *Jordan* is not a lodestar case, for consumer advocates is perhaps is the most important case in our arsenal as it helped to reverse this trend.[21]

Jordan was a defective vehicle case brought under the Magnuson-Moss Warranty Act (MMWA)[22] and the MCPA. Without an evidentiary hearing,

the trial court awarded the victorious plaintiff $3,000 in attorney fees on a fee application of $21,790.75.[23] The Court of Appeals, in reversing and remanding the case for an evidentiary hearing on attorney fees, stated:

> In consumer protection as this, the monetary value of the case is typically low. If courts focus only on the dollar value and the result of the case when awarding attorney fees, the remedial purposes of the statutes in question will be thwarted. Simply put, if attorney fee awards in these cases do not provide a reasonable return, it will be economically impossible for attorneys to represent their clients. Thus, practically speaking, the door to the courtroom will be closed to all but those with either potentially substantial damages, or those with sufficient economic resources to afford the litigation expenses involved. Such a situation would indeed be ironic: it is but precisely those with ordinary consumer complaints and those who cannot afford their attorney fees for whom these remedial acts are intended.[24]

After *Jordan*, if a trial court awarded low fees in a consumer case without conducting an evidentiary hearing and without considering the remedial purposes of the statutes involved, it became grounds for appeal. Defendants who might be happy with a low fee award in such cases would now face losing on appeal and paying for both higher fee awards on remand and fees for the appeal. In addition to the likelihood of consumer advocates obtaining more reasonable fee awards in trial courts, *Jordan* encouraged the settlement of fee disputes.

Smith v Khouri[25]

Smith was the first Supreme Court case to hold that some version of the lodestar should be used as the beginning point in calculating attorney fee awards. Smith was an appeal of an attorney fee award under the case evaluations rule—MCR 2403(O). After examining the existing methods of calculating a reasonable attorney fee, the Court stated:

> We conclude that our current multifactor approach needs some fine-tuning. We hold that a trial court should begin its analysis by determining the fee customarily charged in the locality for similar legal services, i.e., factor 3 under MRPC 1.5(a). In determining this number, the court should use reliable surveys or other credible evidence of the legal market. This number should be multiplied by the reasonable number of hours expended in the case (factor 1 under MRPC 1.5[a] and factor 2 under *Wood*). The number produced by this calculation should serve as the starting point for calculating a reasonable attorney fee. We believe that having the trial court consider these two factors first will lead to greater consistency in awards. Thereafter, the court should consider the remaining *Wood*/MRPC factors to determine whether an up or down adjustment is appropriate. And, in order to aid appellate review, a trial court should briefly discuss its view of the remaining factors.[26]

With *Smith,* consumer advocates finally have a lodestar that they had longed for, however this particular lodestar was surrounded by thorns. There were several problems with the Court's analysis that could have led to lower than hoped for fee awards.[27] The Court emphasized the use of empirical data, especially the Michigan Bar Journal's economics of law practice survey, which is often outdated when printed, to determine what a reasonable rate should be for the average attorney doing similar work. The Court allows to an upward adjustment for the "truly exceptional lawyer" without any indication how one might prove they are truly exceptional. Another problem is the Court's direction that trial courts should not accept the fee applicant's prior cases as evidence of a reasonable rate without further inquiry. Instead, if such cases were used, trial courts are supposed to examine those prior cases to determine if they are truly comparable. Like trial courts are going to take the time to do that.

Despite its shortcomings, *Smith* at least established a form of lodestar as a beginning point for use in calculating reasonable attorney fees. One cannot fault the

Court's intention:

> [W]e choose to provide the guidance that has been. . .sorely lacking for the many Michigan courts that are asked to impose "reasonable attorney fees" under our fee-shifting rules and statutes.[28]

The *Smith* lodestar became the principle method of determining attorney fees under both statutes and court rules for the next eight years.

Kennedy v Robert Lee Auto Sales[29]

Kennedy is worth mention because it is the first reported case to apply both *Smith* and *Jordan* to a consumer protection case.[30] Like *Jordan* discussed above, *Kennedy* was a car case brought under the MMWA and MCPA. In *Kennedy*, the parties had agreed to a settlement pursuant to which defendant agreed to pay statutory attorney fees. Plaintiff has requested over $14,000 in fees. After stating that the case was a "nickel and dime" case, the trial court awarded $1.000.[31] Not surprisingly, plaintiff appealed.

The Court spent considerable time discussing the applicability of *Smith* to this type of consumer protection case.[32] As part of that analysis it also concluded that principles .of Jordan would also apply.[33] In remanding, the Court provided the following instructions that the trial court:

> . . .should first determine the fee customarily charged in the locality for similar legal services. In general, the court shall make this determination using reliable surveys or other credible evidence. Then, the court should multiply that amount by the reasonable number of hours expended in the case. The court may consider making adjustments up or down to this base number in light of the other factors listed in *Wood* and MRPC 1.5(a). In order to aid appellate review, the court should briefly indicate its view of each of the factors.[34]

Pirgu v United Services Automobile Assocation[35]

Pirgu is the Supreme Court's latest attempt to tinker with attorney fee calculations. After examining the history of attorney fee determinations under *Wood* and *Smith*, the Court expressed the need for an adjustment and the new approach as follows:

> Unfortunately, *Smith* requires trial courts to consult two different lists of factors containing significant overlap, which unnecessarily complicates the analysis and increases the risk that courts may engage in incomplete or duplicative consideration of the enumerated factors. Therefore, we distill the remaining *Wood* and MRPC 1.5(a) factors into one list to assist trial courts in this endeavor:
>
> (1) the experience, reputation, and ability of the lawyer or lawyers performing the services,(2) the difficulty of the case, i.e., the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly, (3) the amount in question and the results obtained, (4) the expenses incurred, (5) the nature and length of the professional relationship with the client, (6) the likelihood, if apparent to the client, that acceptance of the particular employment will preclude other employment by the lawyer, (7) the time limitations imposed by the client or by the circumstances, and (8) whether the fee is fixed or contingent.
>
> These factors are not exclusive, and the trial court may consider any additional relevant factors. In order to facilitate appellate review, the trial court should briefly discuss its view of each of the factors above on the record and justify the relevance and use of any additional factors.[36]

Now, under *Pirgu*, an objective approach to attorney fee calculations seems to be a bit closer to realization. Consolidating the two sources makes the latest criteria more specific. Perhaps more important is the

requirement that trial judges "should" discuss each of the factors on the record and "justify the relevance and use of any additional factors." Hopefully, trial judges will make more reasonable fee awards in the first instance and appeals are more likely to succeed when trail judges stray from the path by making unjustified low fee awards.

There are two post *Pirgu* consumer protection cases worth mention. The first is the reported case of *Powers vs. Brown.*[37] *Powers* is a conversion case which appears to be based on a wrongful repossession. Brown, the defendant and counter-plaintiff had purchased a vehicle from Powers (dba Sweet Rides Auto). Powers repossessed the car, sold it at auction and sued Brown for the remaining loan balance. Brown countersued for conversion and won in the trial court including an award of attorney fees under the conversion statute.[38] Brown moved for an award of attorney fees seeking over $30,000. The trial court awarded $17,659.23 on the basis that Brown's attorney had a contingency fee agreement and the amount awarded was 1/3 of the maximum recovery.[39] Brown appealed.

The Court of Appeals reversed because the trial court had failed to apply the *Smith/Pirgu* framework. In reversing the Court stated:

> While we understand the trial court's concern regarding two of the applicable factors—"the amount in question and the results achieved" and "whether the fee is fixed or contingent," these are only two of the factors that the trial court should have weighed in its analysis. Because the trial court did not comprehensively review and state its findings with respect to all the factors in the *Smith/Pirgu* framework, but rather focused on "the amount in question and the results obtained" as well as on the fact that the fees at issue were contingency fees, it abused its discretion in its award of attorney fees and remand is necessary[40]

The other case is the recent unpublished case of *Seymour vs. Champs Auto Sales, Inc.*[41] *Seymour* is an odometer fraud case brought under the federal odometer act.[42] Plaintiff was granted summary disposition on facts that demonstrated an obvious violation and moved for attorney fees under the act's attorney fee provision.[43] Plaintiff sought fees of approximately $24,000. The trial court awarded $14,000. Both parties appealed.

The Court of Appeals analyzed the cases citing the *Smith/Pirgu* framework. Perhaps more importantly, the Court also recognized the importance of *Kennedy* and *Jordan* in determining attorney fees in consumer protection cases.[44] The Court also held that plaintiff was entitled to reasonable attorney fees associated with litigating the fee petition. This will be helpful in consumer cases where plaintiffs win on summary disposition or which are settled with an agreement that plaintiffs may apply for attorney fees.

Conclusion

Those of us that practice consumer law under statutes that provide for reasonable attorney fees gamble our time and talent in order to protect consumers who are abused by businesses. We gamble because we will only be compensated if we win and our gamble will not be recognized by an upward adjustment in the fee. Usually, our opponents are working on an hourly basis, win or lose, with no incentive to enter into expeditious settlements, an intent on making us invest significant hours of time and who scream bloody murder when we seek fees. Compounding these issues, consumer advocates have faced trial courts that have not looked fondly on our cases and have been very reluctant to award fees commensurate with the time involved. Often, we were at the mercy of trial judges who tended to emphasize the criteria of "the amount involved and the results obtained" to award low fees. We longed for a more objective approach to fee calculations, and in particular, a beginning point of a lodestar which multiplied a reasonable hourly rate times the reasonable amount of hours worked. This article has examined the evolution of the lodestar in Michigan.

The first stop along the way was the 1990 case of *Smolen II*[45] where the Court of Appeals rejected out of hand the use of a lodestar. Next came the Supreme

Court's 1998 decision in *Smith v. Khouri*[46] where the Court finally adopted a somewhat flawed lodestar. The latest attempt by the Supreme Court to streamline attorney fee determinations came in 2008 with *Pirgu v. United Services Automobile Ass'n.*[47]Along the way, we examined two other cases, the most important of which was *Jordan v. Transnational Motors Inc.*[48]*Jordan* made it clear that trial courts must consider the legislative purpose of consumer protection statutes when awarding attorney fees. This deprived trial courts of their reliance on the "amount involved and the results obtained" in consumer protection cases. *Kennedy v. Robert Lee Auto Sales*[49]is significant as the first reported case to apply both the *Smith* lodestar and *Jordan* to a consumer protection case.

Today, when it comes to attorney fee applications, consumer advocates are working with *Smith's* somewhat flawed lodestar making it a bit more difficult to establish reasonable hourly rates and *Pirgu's* single set of criteria. Given the blessings of *Jordan*, consumer advocates are more likely to obtain reasonable attorney fee awards in trial courts and more likely to win on appeal when trial courts fail to adequately delineate on the record their fee decisions with regard to each of the *Pigu* criteria. All in all, consumer advocates are a lot better than when this search for a lodestar first began.

Endnotes

1 MCLA § 445.901, *et seq.*

2 *See, e.g.,* MCLA § 445.911.

3 *See*, Gary M. Victor, *In Search of the MCPA Attorney Fee Lodestar*, 2 *Consumer Law Newsletter* 2 (No. 2, June, 1998).

4 186 Mich.App. 292 (1990). (*Smolen II*).

5 192 Mich.App 447 (1992), rev'd on other grounds in *Raffety vs. Markovitz*, 461 Mich. 265 (1999).

6 MCLA § 540.601 *et seq.*

7 127 Mich.App.108 (1983).

8 127 Mich.App.108 1983); *appeal .den*. (Nov. 7, 1985).

9 186 Mich.App. 292 (1990).

10 *Id* at 296.

11 148 Mich.App 728, (1973). The *Crawley* Court listed the factors as follows: (1) the professional standing and experience of the attorney; (2) the skill, time and labor involved; (3) the amount in question and the results achieved; (4) the difficulty of the case; (5) the expenses incurred; and (6) the nature and length of the professional relationship with the client. *Id* at 737.

12 413 Mich 573, 588 (1982).

13 It should be noted that on remand the trial court awarded fees of $22,500 for 12 years of work and 700 hours of time

14 *Smolen II* at 298.

15 192 Mich.App 447 (1992), rev'd on other grounds in *Raffety vs. Markovitz*, 461. Mich. 265 (1999).

16 MCLA § 27.2101 *et seq.*

17 *Howard* at 437

18 See, e.g., *B & B Investment Group vs Gitler,* 229 Mich. App. 1 (1998).

19 The factors listed in the rule are : (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly; (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer; (3) the fee customarily charged in the locality for similar legal services; (4) the amount involved and the results obtained; (5) the time limitations imposed by the client or by the circumstances; (6) the nature and length of the professional relationship with the client; (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and (8) whether the fee is fixed or contingent.

20 212 Mich.App. 94 (1995).

21 *See,* Gary M. Victor, *Recent Attorney Fee Cases and Their Potential Effect in Consumer Protection Cases*, 78 *MichBJ* 278, 279-280 (No. 3, March. 1999).

22 15 USC 2301, *et seq.*

23 *Jordan* at 96.

24 *Id* at 98-99.

25 481 Mich. 519 (2008).

26 *Id* at 530-531.

27 See, Gary M. Victor, *Smith vs Khori, the Supreme*

Court Adopts a Modified Lodestar Likely to Produce Lower Fee Awards, 13 Consumer Law Newsletter 5 (No.2, August, 2009).

28 *Smith* at 536.

29 313 Mich.App. 237 (2015).

30 See, Gary M. Victor, *The Court of Appeals Holds that the Smith v Khouri "Lodestar" Should be Used in the Calculation of Attorney Fees in Michigan Consumer Protection Act and Magnuson-Moss Cases,* 20 *Consumer Law Newsletter* 7 (No. 1, February, 2016).

31 *Kennedy* at 283-283.

32 *Id* at 285-301.

33 *Id* at 299-301.

34 *Id* at 303.

35 499 Mich. 269 (2016).

36 *Id* at 281-282.

37 328 Mich.App. 617 (2019).

38 MCLA § 600.2919(a).

39 Powers at 620-621.

40 *Id* at 624.

41 202 WL 6819185 (November 19, 2020).

42 49 USC § 3710(a)

43 49 USC § 3710(b)

44 *Seymour* at 3-4

45 186 Mich.App. 292 (1990).

46 481 Mich. 519 (2008).

47 499 Mich. 269 (2016).

48 212 Mich.App. 94 (1995).

49 313 Mich.App. 237 (2015).

Consumer Protection in Other Nations

By Josh Ard

It is often interesting and informative to learn what is happening in other regions. Therefore, I thought it would be worthwhile to make a quick review of consumer protection activities in other countries. One reasonable place to look for what's happening in consumer law is the Consumer Law & Policy Blog found at https://pubcit.typepad.com/clpblog/ Unfortunately, that turns out not to be that informative as one might hope because most of the postings about consumer matters in Europe are over a decade old. The most recent posting under the tab Global Consumer protection was from March 2019. A more promising source of information is the Mondaq site found at www.mondaq.com Mondaq has frequent articles on consumer protection from various regions, including Europe, Canada, Australia, South America, India, Indonesia, China, Japan, at the Middle East. Another potential source is the Law Professors Blog Network, especially the ContractsProf Blog[1].

One limitation of Mondaq is that it posts information provided by law firms, who, of course, publish largely as means of publicizing their services. That might limit the types of matters discussed because law firms will only talk about things that might bring business to their doors. Another limitation of this resource, at least for me, is that articles about China tend to be written in Chinese and articles about Latin America tend to be written in Spanish or Portuguese. English appears to be the norm for other countries and regions. However, if you are able to access foreign language articles in Microsoft Edge, it has a translate function available to translate to English.[2] This is most likely the case with other browsers.

Some of the articles seem somewhat strange to me.

use to decide conformity with the European norm:

- Free of charge to the consumer
- Without a reasonable time
- Without significant inconvenience to the consumer.

Nevertheless, the European court declined to say that this meant that the seller had to pay the costs of transportation to the seller. The national courts should determine whether paying costs of shipment would burden consumers trying to assert their rights.

Russia, recently clarified when e-commerce operations based outside of Russia are subject to Russian consumer protection laws. As noted by Oxana Balayan and Serafima Pankratova[9] the Russian Supreme Court set three criteria to determine whether its laws would apply:

- Maintaining a website in the Russian language
- Listing prices in Russian rubles
- Indicating contact phone numbers in Russia or other signs that indicate targeting a Russian audience.

Our friends in Ontario, Canada are considering changing Door-to-Door Restrictions[10], according to Suhuyini Abudulai, posted on July 1, 2019. Right now a business can only enter into a contract for a good or service in the home if the consumer specifically invited the business into her home for that purpose. That also prevents a business from offering a replacement product when the requested repair isn't feasible. For example, if a business is called to repair a furnace and the furnace is beyond repair, the business cannot enter into a contract for a replacement furnace in the consumer's home. The business representative would have to leave the home and the consumer would have to reinitiate contact with the business in person or electronically for this to be legal. The proposed changes would allow the sale to be consummated at the home under restricted circumstances. This business-friendly change is somewhat balanced by consumer-friendly changes. Consumers can rescind transactions that involve UDAP violations within one year. The proposed change would make this one year from discovery rather than one year from the transaction.

Builders seem to escape Consumer Protection Act violations in Michigan. They don't have it so easy in India and Australia. As reported by S. S. Rana & Co. Advocates[11] on May 11, 2019, India has both a Real Estate Regulation and Development Act (RERA) and a Consumer Protection Act. In a recent case, a buyer complained about a builder. The builder said that the transaction was governed the RERA and the matter should go to arbitration. The buyers said that they had the right to sue under the Consumer Protection Act. Unlike Michigan, the Indian Supreme Court supported the buyers' right to sue.

In Australia, according to Dan Pearce and Madison Tonkes[12], posted on May 25, 2019, it can be costly to violate consumer's rights in home transactions. We Buy Houses Pty Ltd claimed it offered free seminar boot camps, where people could learn how to buy houses for $1.00, buy homes without a deposit or investing their own funds, start making money immediately, and other pie-in-the-sky promises. The company itself was forced to pay $12,000,000 Australian dollars and the sole director and shareholder had to personally pay $6,000,000 more.

The Rana firm recently published an article that shows that the Indian government is being proactive

in consumer protection[13]. It has developed a smart phone app that is designed to help consumers determine accurate information about a consumer good from scanning the barcode. The article says nothing about whether the app can easily be defeated by skilled counterfeiters. Consider the question on the Quora site "How can I identify when a product is real or fake by scanning the bar code from a mobile?"[14] That article suggests that multi-factor identification is a prerequisite for success. The article from India says nothing about whether that is true for the governmental app.

International comparisons also remind us that categories can be somewhat arbitrary. Mondaq includes product liability and safety as a type of consumer protection. Clearly, they are, but it is an accident of history that in the US lawyers involved in product liability are rarely involved in other consumer cases, at least on the plaintiffs' side.

Mondaq also includes education as a subcategory of consumer protection. Again in the US the bars for education law and consumer law do not generally overlap. There are some obviously exceptions in the US. Issues involving debt collection and defense are generally recognized as consumer law matters here. There are many issues of relevance now. For example, under the previous administration, it appeared that Betsy DeVos's Department of Education was blocking Consumer Financial Protection Bureau oversight of student loan servicing even where there was fraud. Hopefully, this will change with the new administration.

There are two recent papers in the ContractsProf Blog about laws in Australia and New Zealand governing consumer contracts. Of particular interest, both seek to prevent unfair contract terms. As discussed by Victoria Stace et al.[15] New Zealand's High Court declared Home Depot's consumer contracts to be in violation. Under the contract, Home Depot was permitted to convert overpayments made by consumers into vouchers that could only be used on Home Depot purchases and only be done within one year. The court found both of these actions to be unfair contract terms.

The Stace article collected evidence as to whether the possibility of losing in court motivated businesses to remove such terms on their own. Guess what? It didn't. One difference between the two schemes is that only Australian consumers have a private right of action. New Zealanders have to hope that the Commerce Commission intervenes on their behalf.

In a collaboration between a professor from Israel and one from New Zealand, the authors argue that neither remedy is sufficient[16]. Rather, they suggest that some administrative agency be given the power to review and rewrite standard consumer contracts when there is a violation. It is an interesting idea but would be a hard sell in a country such as ours where deregulation of even safety matters seems to held as a winning election strategy.

One may ask, of course, what the point is of reading about consumer law in other nations. It is unlikely that an American court will be impressed by statutes of reasoning from abroad. Learning is useful for its own sake, but the greater utility may be in giving suggestions for proposed legislative changes here.

Endnotes

1 http://lawprofessors.typepad.com/contractsprof_blog/

2 https://www.microsoft.com/en-us/translator/blog/2016/03/23

3 http://www.mondaq.com/x/817422/Consumer+Law/Is+Haggling+For+Products+Legal

4 http://www.mondaq.com/x/820956/Dodd-Frank+Wall+Street+Reform+Consumer+Protection+Act/New+Egyptian+Consumer+Protection+Law

5 India: Consumer Protection Act, 2019—Key Highlights by Stuti Galiya at http://www.mondaq.com/article.asp?articleid=838108&email_access=on

6 http://www.mondaq.com/x/670732/Consumer+Law/New+ECommerce+Regulation+In+Costa+Rica

7 http://www.mondaq.com/Austria/x/823820/Dodd-Frank+Wall+Street+Reform+Consumer+Protection+Act/Latest+Eu+Directives+Strengthen+The+Protection+Of+Consumers+In+The+Digital+World

8 http://www.mondaq.com/x/824642/Consumer+Law/ECJ+Clarifies+Interpretation+Of+Consumer+Sales+And+Guarantees+Directive

9 http://www.mondaq.com/article.asp?articleid=832532&email_access=on

10 http://www.mondaq.com/canada/x/820230/Dodd-Frank+Wall+Street+Reform+Consumer+Protection+Act/Ontario+Considering+Further+Changes+to+DoortoDoor+Agreements+and+Other+Consumer+Protection+Amendments

11 http://www.mondaq.com/india/x/810918/Dodd-Frank+Wall+Street+Reform+Consumer+Protection+Act/RERA+Does+Not+Bar+Homebuyers+Complaint+Under+Consumer+Protection+Act+Against+Builder

12 http://www.mondaq.com/australia/x/808946/Consumer+Trading+Unfair+Trading/Heavy+penalties+for+consumer+law+breach+ACCC+v+We+Buy+Houses

13 http://www.mondaq.com/article.asp?articleid=828908&email_access=on

14 https://www.quora.com/How-can-I-identify-when-a-product-is-real-or-fake-by-scanning-the-bar-code-from-a-mobile

15 Victoria Stace, Emily Chan, and Alexandra Sims "New Zealad's Unfair Contract Terms Law Fails to Incentivise Businesses to Remove Potentially Unfair Terms from Standard Forms Contracts. Available at https://ssrn.com/abstract=4746793

16 Yehuda Adar and Shmuel I. Becher, "Ending the License to Exploit: Administrative Oversight of Consumer Contracts." Available at htpps://ssrn.com/abstract=3720946

Michigan Supreme Court May Revitalize the MCPA

The Michigan Supreme Court may be taking another look at the "specifically authorized" exemption to the Michigan Consumer Protection Act. Plaintiffs in *Cyr v Ford Motor Company*, MSC Docket No. 160927, had originally defeated Ford's motion for summary disposition based on MCL 445.904(1)(a), and the Court of Appeals reversed in an unpublished opinion. Plaintiffs then sought leave to appeal to the Michigan Supreme Court, which was originally denied. After Plaintiffs filed a Motion for Reconsideration of the Court's denial of leave to appeal, the MSC granted leave to the Michigan Attorney General's Office, Public Justice, the National Consumer Law Center, the Michigan Association for Justice, the Prosecuting Attorneys' Offices of Washtenaw, Alger, Chippewa, Genesee, Ingham and Marquette Counties, to file amicus briefs in support of the Application for Leave to Appeal, and to Michigan Manufacturers Association, Michigan Realtors and Home Builders Association of Michigan, and the Michigan Defense Trial Counsel, to file amicus briefs in opposition.

Consumer Law Section Mission

The Consumer Law Section of the State Bar of Michigan provides education, information and analysis about issues of concern through meetings, seminars, a website, public service programs, and publication of a newsletter. Membership in the Section is open to all members of the State Bar of Michigan.

SBM Major Award Nominations Moved To 2022

2020 Award Winners to be Celebrated in September 2021

Nominations for major State Bar of Michigan awards for 2021 are being moved to 2022 so that we can properly celebrate our 2020 award winners. The Board of Commissioners made this decision after last year's awards celebration was canceled due to the pandemic.

"Our goal was to ensure that our outstanding 2020 award winners receive the recognition they so rightfully deserve while doing the same for our next round of nominees in 2022," said State Bar Secretary James Heath, who chairs the State Bar's Awards Committee. "The Board of Commissioners agreed wholeheartedly."

If you are interested in nominating an individual for a major State Bar Award, please wait until the nomination process opens early next year. If, however, you are seeking to nominate an individual whose nomination is extremely time sensitive, please contact Marge Bossenbery at mbossenbery@michbar.org for more information.

In addition, if you nominated someone in 2019 who was not chosen for a 2020 award, your nomination will now be extended to the 2022 cycle for consideration.

Information regarding this year's Inaugural & Awards Celebration will be announced soon.

Moving? Getting Married?

Address, Name, & Contact Information Changes

In order to safeguard your member information, changes to your SBM member record must be provided in one of the following ways:

- Login to SBM Member Area (https://e.michbar.org/) with your login name and password and make the changes online.
- Complete contact information change form and return by email, fax, or mail. Be sure to include your full name and P-number when submitting correspondence.
- Fax form to Member Records at (517) 372-1139.
- Mail form to State Bar of Michigan, Member Records, 306 Townsend St., Lansing, MI 48933-2012.
- Email completed form to sbmaddressfix@michbar.org
- Name Change Request Form (https://www.michbar.org/file/programs/pdfs/namechange.pdf)—Supporting documentation is required.

SBM
State Bar of Michigan
Michael Franck Building
306 Townsend Street
Lansing, MI 48933-2012