Chair's Letter from Michael S. Khoury
April saw a flurry of activity in the Section, with meetings of the Nonprofit Corporations, Law Schools, Debtor/Creditor Rights, Financial Institutions, and Commercial Litigation Committees. May and June continue with sponsored seminars on Nonprofit Corporations, a Small Business Forum event, committee meetings of Debtor/Creditor Rights and Regulation of Securities, and the Michigan Business Law Institute. There are lots of events going on! I encourage you to become personally involved.

A Twist on the MAC Clause
Transactional lawyers are familiar with the regularly used, but rarely enforced, material adverse change (MAC) or material adverse effect (MAE) clauses in transactions and financing agreements. The recent turmoil in the credit and equity markets, however, have brought the prevalent use and reliance on these provisions. Lenders are walking away from financing commitments not because of anything done by the prospective borrower, but because the credit markets have changed. Similarly, both deals and financing commitments are regularly being terminated or renegotiated as a result of changes in the financial and business positions of the parties. Keep an eye out for these issues and consider whether the MAC clause in the agreement should be reviewed with greater care.

Attorney/Client Privilege and Electronic Communications
It is generally understood that electronic communications (such as e-mail) are entitled to the same protection as regular correspondence and phone communications when considering the attorney/client privilege of those communications. If your client is an individual using the electronic mail system of his or her employer, however, that communication may lose its privilege because the employee may not have an expectation of privacy. Remember that most company technology policies tell employees that there is to be no personal expectation of privacy for the employee using the company's electronic mail and other systems. If that is the case, as was learned by an
employee in *Scott v. Beth Israel Medical Center, Inc.*, 2007 WL 3053351 (N.Y. Sup. October 17 2007), the employee’s communication with a personal attorney outside of the employee’s scope of work can lose its privilege.