Chair’s Letter from Michael S. Khoury

I find it particularly satisfying when the efforts of the Section have an impact on the development of the law in the State of Michigan. In a prior newsletter, you read about legislative changes to address a troubling Michigan Court of Appeals case and the modernization of Michigan’s business entity and securities laws. You will see updates as those efforts progress through the Legislature.

The input of the Business Law Section has also been sought from the Michigan Supreme Court. The Supreme Court recently requested an amicus curie brief from the Business Law Section in a pending case dealing with the interrelationship between certain family and business law issues. The Debtor/Creditor Rights Committee undertook the project and carried it through to conclusion. Under the leadership of Lisa Gretchko of Howard & Howard, with the assistance of Michael Bartnik and other members of the Debtor/Creditor Committee, the amicus brief was filed with the Supreme Court. The case will be argued today. Kudos to Lisa, Michael, and the rest of the team.

UCC Committee Reports on Interesting Case

Patrick Mears of Barnes & Thornberg reports to the Section about a case decided in the Western District of Michigan, Chainworks, Inc. v. Webco Industries, Inc., Case No. 2006 WL 461251(W.D. Mich. Feb. 24, 2006), motion for reconsideration denied, 2006 WL 1521946 (W.D. Mich. May 31, 2006) (Bell, D.J.). In this litigation commenced by a buyer of goods under a requirements contract, the plaintiff sought a declaration from Federal District Judge Robert Holmes Bell that the defendant seller could not pass on raw material price increases to the buyer under a theory of commercial impracticability embodied in MCL § 440.2615. In support of his
decision granting the buyer's motion for summary judgment, Judge Bell found, inter alia, that the parties knew that the price of steel was volatile and that they contracted against this background. Thus, the seller could not sustain its claim that an increase in the price of steel was unforeseeable and that the nonoccurrence of such a price increase "was a basic assumption underlying the agreement," as required by MCL § 440.2615. This decision also contains an excellent discussion of Michigan law on the "battle of the forms" under M.C.L.A. § 440.2207.