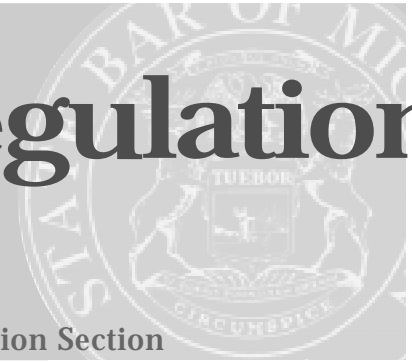


Michigan Trade Regulation

Volume 28, No.1 May 2000

State Bar of Michigan Antitrust, Franchising, and Trade Regulation Section



Two Recent Michigan Decisions Define The Scope of Mara Immunity

By Howard B. Iwrey

Recent decisions of the Michigan Court of Appeals and the Genesee County Circuit Court addressed, for the very first time, the scope of the broad-based governmental immunity provision contained in Section 4 of the Michigan Antitrust Reform Act, MCL 445.771-778 (“MARA”). The provision states:

“[T]his Act shall not be construed to prohibit, invalidate or make unlawful any act or conduct of any unit of government, when the unit of government is acting in a subject matter area in which it was authorized by law to act, except to the purposes of conducting an investigation and the obtaining of an appropriate injunctive or other equitable relief, other than civil penalties, pursuant to Section 7.” [MCL 445.774(3).]

Units of government are defined in MARA as:

“An agency, instrumentality, political subdivision, or public corporation of the state, including but not limited to municipal corporations, quasi-municipal corporations and authorities, and including their officials, employees, and agents when acting in their official capacity.” [MCL 445.771(1)(d).]

The Michigan Court of Appeals addressed this provision in *Bio-Magnetic Resonance, Inc. v Department of Public Health*, 237 Mich App 225; 593 NW2d 641 (1999). In *Bio-Magnetic*, a Magnetic Resonance Imaging (“MRI”) provider seeking to obtain a second MRI unit sued the Michigan Department of Public Health under MARA, alleging that the Department’s procedure to calculate the number of MRI procedures that would be performed by an additional MRI created an illegal monopoly. The Court of Appeals upheld the trial court’s grant of summary judgment on the grounds

that the Department’s actions were exempt under Section 4 of MARA.

The court noted at the outset that the Department was clearly a “unit of government” and specifically addressed the question of whether its actions were within its “subject matter area” authorized by law. The court indicated that the MARA grant of immunity was quite broad and would encompass actions that generally fall within a statutory grant of power. The Court of Appeals found that the term “subject

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**Two Recent Michigan Decisions
Define The Scope of Mara Immunity**

matter area” established “an intentionally general region of authority, the extent or scope of which is determined by a grant of legislative authority,” and that these terms evidenced “a legislative desire not to restrict the applicability of the exception to only those actions that fall undeniably within the statutory grant of power.” 593 NW2d at 644.

The court also held that the MARA exemption still applied even if the alleged actions were *ultra vires*, noting that:

“[W]hile an action may be judged to be invalid because it falls outside the scope of power granted, it can at the same time be statutorily exempt from the state antitrust laws. Simply because the action is not subject to suit under the state antitrust laws does not mean it is immune from individual challenge and judicial scrutiny.” [*Id.* at 645.]

The Genesee County Circuit Court soon thereafter held that a statutorily-designated medical control authority is entitled to immunity under Section 4 of MARA. *Elsworth Enterprises, Inc. v Genesys Health System, Inc., et al.*, (Circuit Court No. 96-475506-CP). Ellsworth challenged the actions of the medical control authority and its members.

The Michigan Public Health Act statutorily created medical control authorities by mandating that the Michigan Department of Medical Health (now the Department of Consumer and Industry Services) designate a medical control authority (consisting of licensed hospitals with services for admitting and treating emergency patients) for each Michigan county or, in appropriate cases, for two or more counties. MCL 333.20918(1). These medical control authorities are charged with the responsibility of promulgating protocols governing emergency medical service providers, including ambulance companies. MCL 333.20919(1).

A disappointed ambulance provider in Genesee County sued the Genesee County Medical Control Authority and its members, alleging that it violated MARA by, among other things, denying its application to expand its designated service area. The Genesee County Circuit Court ruled that the Genesee County Medical Control Authority and private its hospital members were entitled to exemption under MARA because it constituted a “unit of government.” The court noted that MARA specifically defined “units of governments” to include such “authorities.” ■

MESSAGE FROM THE CHAIR

By Howard B. Ivrey



I am honored to serve as Chairperson of the Antitrust, Franchising and Trade Regulation Section of the State Bar of Michigan. When I graduated from law school in 1986, most people assumed that the antitrust laws were all but a dead letter. Things have certainly changed since then. Thanks to the *Microsoft* trial and increased federal enforcement efforts, antitrust issues are being discussed in the board rooms and lunch rooms of just about every company. I even heard an antitrust debate on local talk radio! We have also seen a recent emphasis on antitrust and trade regulation enforcement here in Michigan.

Not only have enforcement efforts increased, but we will all be faced with new challenges as a result of the explosion of the Internet and e-commerce. The recent holiday season provided undeniable proof that business will be forever changed by e-commerce and that our laws will need to catch up.

The Antitrust, Franchising and Trade Regulation Section's mission is to serve as a vehicle to keep attorneys in this state aware of changes in laws concerning antitrust, franchising and trade regulation, especially those which specifically impact persons in the State of Michigan. The Section recently sponsored a mini-seminar on trade regulation and advertising law featuring Attorney General Jennifer Granholm. Attorney General Granholm announced, among other things, her office's recent filing of a monopolization case against a renal dialysis provider, the State's participation in a nationwide antitrust and consumer protection case against a pharmaceutical company and the State's new program to conduct *pre-merger* reviews of transactions that have a specific impact in Michigan. The seminar also included presentations on advertising review processes for advertisers and advertising agencies, Michigan's patchwork of legislation impact-

ing pricing and the embryonic body of law regulating advertising and disclosures on the worldwide web.

I would like to extend the Section's sincere appreciation to the speakers, Attorney General Jennifer Granholm, Assistant Attorney General Paul Novak, David Chardavoyne, Christine Conte, Allan Huss, Merton Simons and Jim DeLine, whose tireless efforts helped to make this seminar a success.

You can look forward to other Section activities in the coming year. The Federal Trade Commission announced proposed changes to the Trade Regulation Rule governing Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures. The proposed rule includes expanded disclosure requirements, changes to the timing of required disclosure and rules regarding sales of franchises over the Internet. The Section will report on any final changes and sponsor a franchise law mini-seminar if any substantive changes occur. We will also be updating you on this and other key items in our website, www.michbar.org and this newsletter.



Congress Considers Substantial Amendments to the Hart-Scott-Rodino Act

By Howard B. Iwrey

On November 4, 1999, Senate Bill 1854 (the Hart-Scott-Rodino Antitrust Improvements Act of 1999) was introduced in the United States Senate by Senator Orin Hatch. S. 1854 proposes to increase and amend the jurisdictional threshold for the premerger notification requirements from \$15 million to \$35 million and adjust that figure bi-annually to reflect inflation. Currently, parties to certain transactions involving the acquisition of assets or voting securities valued at \$15 million or more must file a premerger notification with the U.S. Department of Justice Antitrust Division and the Federal Trade Commission, and observe a 30-day waiting period (which can be shortened at the discretion of the FTC and Justice Department, or extended if either agency believes that the transaction may be anticompetitive) prior to consummation. The \$15 million threshold has not been changed since the original act was passed in 1976.

The proposed legislation also changes the filing fee structure. Currently, the acquiring person in all reportable transactions must pay a \$45,000 fee. S. 1854 retains the \$45,000 filing fee for transactions valued from \$35 million to \$100 million and increases the fee to \$100,000 for transactions valued at greater than \$100 million.

S. 1854 also proposes to change the “second request” process. The Hart-Scott-Rodino Act currently allows the FTC or Justice Department to request additional information and documentary materials from parties who filed premerger notifications if either agency believes that the transaction may be anticompetitive. The waiting period is then extended for an additional 20 days after the parties “substantially comply” with this second request. S. 1854 increases the second waiting period from 20 days to 30 days and also imposes some limitations on the agencies’ ability to issue second requests. First, second requests cannot be “unreasonably cumulative or duplicative” and cannot impose a burden or expense that substantially outweighs the likely benefit of the information

to either antitrust agency in conducting a preliminary antitrust review.

The Bill also takes away some of the unilateral authority of the agencies in determining whether parties have “substantially complied” with the second request. Currently, the requesting agency can hold up the start of the second 20-day waiting period by unilaterally determining that the parties have not substantially complied with the second request. Under S. 1854, a person is deemed to have substantially complied with the second request if that person’s response does not contain any deficiency that “materially impairs the ability of the [FTC or Justice Department] to conduct a preliminary antitrust review of the proposed acquisition.” Additionally, the requesting federal agency has 20 days from the parties’ response to issue a notice specifying

with particularity the basis for any asserted deficiencies in the response. The parties also will have a right to petition a designated United States Magistrate Judge in United States District Court for the District of Columbia for an expedited review of

whether the submission substantially complies with the second request under the above-stated standards. This determination may be appealed to the D.C. District Court, whose decision shall be final and not appealable.

This Bill is a long-overdue effort to relieve parties to small transactions of the burden of complying with the Hart-Scott-Rodino Act. Furthermore, the Bill attempts to address some (but not all) disparity in the filing fee obligations between large and small transactions. Finally, the proposed changes in the second request compliance standards give responding parties some relief. However, the federal antitrust agencies will still wield substantial power over the second request process, given the fact that the final determination of an appeal may take more time than merging parties have to spare. If this Bill passes, however, the agencies may be more willing to negotiate meaningful modifications to second requests.

“The proposed legislation also changes the filing fee structure”

Trade Secret Update

Trade Secret Update

By Mark T. Boonstra



The United States Court of Appeals for the Sixth Circuit has upheld Hon. Barbara Hackett's summary judgment award in favor of the defendant on a misappropriation of trade secrets claim. *Utilase, Inc. v. Mark S. Williamson*, 188 F.3d 510, 1999 WL 717969 (6th Cir. 1999). It reversed, however, Judge Hackett's finding of contempt against the defendant.

On appeal, plaintiff Utilase argued that Judge Hackett had applied the wrong legal standard in concluding that Utilase had failed to present any evidence from which a jury could conclude that defendant Williamson had used or disclosed a specific, protectable trade secret. Utilase argued on appeal that it was required only to adduce evidence indicating a "significant threat" that Williamson would use or disclose Utilase's confidential information. This proffered standard, the Sixth Circuit noted, was adopted from the standard used by a court in determining whether to grant an injunction.

The Sixth Circuit rejected Utilase's position on two grounds. First, because Utilase had failed to make the argument before the trial court, it was not preserved for appeal. Second, the Sixth Circuit concluded that the proper standard, as Utilase itself had argued before the trial court, was whether a genuine issue of material fact remained on the elements of a misappropriation of trade secrets claim.

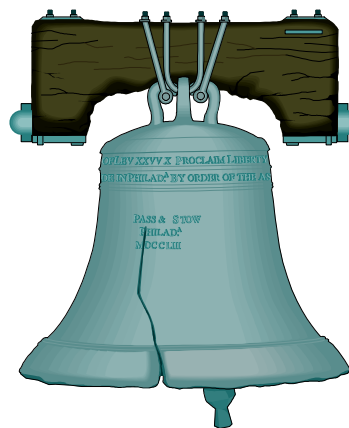
The Sixth Circuit also upheld Judge Hackett's finding that there was no genuine issue of material fact as to whether Williamson had misappropriated trade secrets. Fatal to Utilase's claim was the fact that Utilase had been "deliberately vague" and had "failed to state with specificity a protected trade secret." The court upheld the district court's finding that "knowledge," "information," and "experience" are not "trade secrets," and the fact that defendant may "draw upon Utilase's confidential information" at his new job is not

evidence that there has been or will be any disclosure of "trade secrets."

On a cross-appeal, the Sixth Circuit vacated Judge Hackett's contempt finding against Williamson, which had arisen out of her finding that Williamson had violated her preliminary injunction against "rendering services involving laser blank welding." Following the entry of the preliminary injunctive order, Williamson had acted as a project engineer, supervising the construction of a building that eventually would house a laser blank welding facility.

In vacating the contempt finding, the Sixth Circuit concluded that the district court "was plainly mistaken as to the scope of . . . its preliminary injunction and mistakenly believed that [it] incorporated what the court thought was a one-year non-competition provision of the confidentiality agreement."

Neither party appealed the district's court's earlier rulings enforcing a one-year non-competition provision, and awarding summary judgment to Williamson on Utilase's tortious interference and RICO claims.



FTC Proposes Changes to Franchise Rule

By Rick Kalisher

The Federal Trade Commission (“FTC”) recently announced proposed changes to the FTC Franchise Rule. Although the changes are significant, they will generally be more helpful than burdensome to most franchisers. Among the key changes are:

The proposed Rule eliminates the requirement of providing a UFOC to a prospective franchisee at the “first personal meeting” and also eliminates the requirement that a prospective franchisee receive disclosure documents 10 business days prior to signing a contract or paying any consideration to the franchiser. Instead, disclosure must be provided to a prospective franchisee 14 calendar days in advance of the franchisee signing a contract or paying any consideration to the franchiser. This will certainly make it easier for franchisers to correctly count disclosure days and will avoid confusion over what is or is not a “business day.” In addition, there is a proposed requirement that the franchiser have the UFOC receipt in its possession at least 5 days before receipt of consideration or signing of a contract, and it must retain the receipt for 3 years.

Electronic disclosure is now permitted (hence, the elimination of the “first personal meeting” requirement) under certain conditions. The proposed franchisee

must consent to disclosure in this fashion and must be afforded the right to revoke its acceptance of electronic disclosure in favor of paper disclosure at any time up to the time of the sale of the franchise. In addition, even where there has been electronic disclosure, the franchiser must still provide a paper summary containing the cover page of the UFOC, the table of contents and the Item 23 receipt. The electronic UFOC must be capable of being read, downloaded or printed as a unified document.

The proposed Rule substitutes the UFOC disclosure format for the FTC disclosure format. There are a few new requirements that are not currently part of the UFOC disclosure guidelines. Item 3 requires franchisers to list franchiser-initiated lawsuits if they are material. Item 19 does not mandate earnings claims, but does require an affirmative statement to the effect that the FTC does permit such claims. Item 20 requires a new table which will address unit turnover but is supposed to eliminate the double counting problem all franchisers now face because the current categories overlap.

Significantly, the proposed Rule explicitly applies only to franchises that are to be operated in the United States or United States territories or possessions. This addresses a long standing concern and debate over the extraterritorial effect of the FTC Rule.

The comment period on the proposed Rule runs through January 31, after which time the FTC will issue a report and accept comments from the public on the report for an additional 60 days. ■



Michigan AG Files Monopolization Claim Against Gambro

By Daniel R. Gravelyn

The Michigan Attorney General has filed an antitrust action against GAMBRO Healthcare Patient Services, accusing GAMBRO in a four-count complaint of attempted monopolization and monopolization of the markets for outpatient kidney dialysis in Kent, Ottawa and Muskegon Counties. The Attorney General brought the action under the Michigan Antitrust Reform Act (“MARA”) and sought equitable relief, including the rescission of non-competition agreements alleged to support the monopoly, as well as civil money penalties and attorneys’ fees. GAMBRO denied the Attorney General’s claims and raised several affirmative defenses.

The Attorney General’s complaint alleges that GAMBRO controls 95% of the market for the delivery of outpatient dialysis services to end stage renal disease patients in Kent and Ottawa Counties, and 100% this market in Muskegon County. According to the complaint, GAMBRO obtained market share by purchasing several outpatient dialysis clinics from a non-profit entity, Mercy Health Services (“MHS”), in 1998. As part of that transaction, MHS agreed not to compete with GAMBRO in the outpatient dialysis market and GAMBRO agreed not to compete with MHS in providing inpatient dialysis services. GAMBRO also entered into “medical director” agreements with nearly every nephrologist in West Michigan whereby the nephrologists agreed not to divert patients from GAMBRO and not to assist in the establishment of any new outpatient dialysis clinic for twelve years.

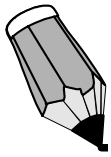
Following these agreements, the complaint charges, GAMBRO used its market power to impose substantial price increases both for outpatient kidney dialysis services and for drugs used in connection with these services. It then obtained exclusive provider agreements with area health insurers by offering them discounts off these inflated prices. Further, the Attorney General alleges, when Blue Cross Blue Shield of Michigan refused to agree to the inflated rates, GAMBRO ultimately advised BCBS that its insured would have to travel to other providers in other parts of the state for services.

GAMBRO denies that it attempted to monopolize or monopolized the outpatient kidney dialysis market or that it charges inflated or excessive prices for its services. GAMBRO further claimed that its actions were exempt from MARA under MCL §445.774(4), which provides an exemption for action authorized under the laws of the United States, because its acquisition of the MHS clinics was not challenged by the FTC. This defense was subsequently withdrawn.

GAMBRO also asserted as an affirmative defense that its actions were exempt from MARA under MCL §445.774(5), which provides an exemption for conduct subject to a pervasive regulatory scheme. The Attorney General filed a motion for partial summary disposition on this defense. The court recently granted the motion and held that the BCBS regulatory scheme did not confer antitrust immunity upon health care providers like GAMBRO. ■



Seminars of Interest

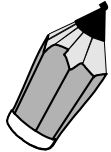
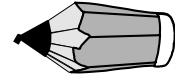
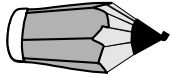
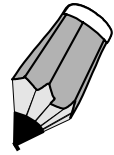


April 13, 2000 - Detroit (see below for details)

Unfairness and the Internet

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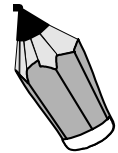


June 19-20, 2000 - New York City

July 20-21, 2000 - San Francisco

Intellectual Property Antitrust

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Notice of Special Meeting

The Antitrust, Franchising and Trade Regulation Section will hold a special meeting for all members on May 1, 2000 at 4:00 p.m. at the offices of May, Simpson & Strote, P.C., 100 W. Long Lake Rd., Suite 200, Bloomfield Hills, MI 48303. The purpose of the meeting is to vote on the nominations of Elizabeth Jolliffe Basten and Dennis White to fill vacancies on the Council.

Antitrust Section Sponsors WSU Symposium

“Unfairness and the Internet”

Presented in part by the Antitrust Law and Computer Law Sections of the State Bar of Michigan.

When: April 13, 2000 at 9:30 a.m.

On the campus of Wayne State University Law School

Price: Admission to the full-day program is \$35.00 (includes both symposium and luncheon) Admission to the symposium only is \$20.00. Admission to the luncheon only is \$15.00.

Members of the Computer Law Section and the Antitrust Law Section of the Michigan State Bar will receive free admission to the symposium program, but must pay \$15.00 for admission the luncheon program. Register online or contact: Michael J. Hamblin, Executive Articles Editor, (313) 577-8032.

Luncheon Address: Thomas B. Leary, FTC Commissioner

Expected Speakers include: Professor Jean Braucher, University of Arizona; James E. Rogers College of Law; Professor Stephen Calkins, Wayne State University Law

School, Detroit, Michigan, Former General Counsel, Federal Trade Commission; David H. Evans, Arent Fox Kintner Plotkin & Kahn, PLLC, Washington, D.C.; Professor Michael Greenfield, Washington University in St. Louis School of Law; William MacLeod, Collier, Shannon, Rill & Scott, PLLC, Washington D.C., Former Director of the Bureau of Consumer Protection, Federal Trade Commission; Lee Peeler, Associate Director of the Bureau of Consumer Protection in charge of Advertising Practices, Federal Trade Commission; Professor Roger Schechter, George Washington University School of Law, Washington D.C.

Outside Commentators include: Jill Phillips, Ford Motor Company Senior Attorney and Legal Counsel for e-business, including e-commerce and other internet related initiatives; Robert Rothman, Counsel, e-GM; Stuart “Skip” Pruss, Michigan Assistant Attorney General in Charge Consumer Protection Division.

Attorney General Granholm spoke at Trade Regulation and Advertising Law Seminar.

Michigan Attorney General Jennifer Granholm was one of the featured speakers at a Section-sponsored seminar on trade regulation and advertising law held December 9, 1999. The Attorney General's remarks are reprinted below as prepared:

Thank you for extending me the invitation to speak with you today. These are both exciting and challenging times in the areas of antitrust and franchise enforcement. I would like to share with you some of the issues in which my office is involved and to outline what I feel are the greatest priorities that lie ahead.

Let me start by observing that health care costs have a tremendous impact upon the business climate in Michigan and the competitiveness of our state in attracting new employment. One of the greatest costs prospective employers face in hiring today is the cost of providing health care benefits to their workers.

Restraints upon a competitive, vibrant health care delivery system impact the State's economy in a number of ways: first, it diminishes our ability to attract new employers and retain existing ones. Secondly, state government is one of the largest consumers of health care. Between the Medicaid system, the state employees and retirees system, the state prisons and other programs, the state provides some form of health care coverage to nearly 1.2 million people. When anticompetitive practices in the health care industry impact health care costs, the consequences for the taxpayers are huge. Let me give some examples.

In March of 1998, Mylan laboratories instituted one of the largest price increases for a pharmaceutical product on record. The price for lorazepam, an anti-anxiety medication, and clorazepate, a preoperative sedative were increased by up to 3,200%. The wholesale cost of a bottle of lorazepam leapt from \$7.30 to \$191.50. The price hikes for just these two drugs were so severe that they caused a .2% increase in the Consumer Price Index.

In February of 1999, my office joined an antitrust suit with the

Federal Trade Commission and over 30 states to bring an action against Mylan and several conspirators alleging monopolization and price-fixing for the actions which they instituted in implementing the price increases. The action remains in discovery in a federal district court in Washington D.C.

In July, we settled consumer protection and antitrust issues for \$42 million in fines and costs in an action involving Synthroid, the nation's most widely used drug for the treatment of hypothyroidism. It had been our position that the manufacturers of Synthroid had misrepresented the scientific literature regarding Synthroid and its equivalence with other less expensive generic products. These representations assisted the company in dominating the levothyroxine sodium market.

Both of these actions addressed what is the fastest growing component of health care costs today: prescription drugs. But we are also mindful that some anticompetitive practices in the health care industry can be much more localized.

In August, I filed an action alleging monopolization and attempted monopolization of the outpatient kidney dialysis markets in Kent, Ottawa and Muskegon counties under the Michigan Antitrust Reform Act. The action alleges that

Gambro Healthcare of Michigan Inc., subsidiary of the Swedish multinational corporation Gambro AB, monopolized the dialysis markets and has extracted monopolistic profits. In some cases, the insurers who cover kidney dialysis have borne cost increases of over \$50,000 per patient, PER PATIENT, due to Gambro's activities.

The common thread behind all of these actions is that health care firms have raised the costs to the critically ill, senior citizens, patients, insurers, employers, or the public. Michigan will continue to pursue these types of cases aggressively. They involve products or services that are necessities and often may mean the difference between life or death --- or as our economists say, they have relatively inelastic demand functions.

A second area of antitrust enforcement priorities for the office



Attorney General Granholm spoke at Trade Regulation and Advertising Law Seminar.

has been a growing role in premerger reviews under the Clayton Act. Although merger review has traditionally been the focus of federal antitrust enforcement, the sheer volume of mergers which have taken place over the last few years renders it difficult for the feds to review everything. In fiscal year 1998, there were 4,728 Hart Scott Rodino filings --- over triple the number of filings in 1991. And the number of filings for this year are likely to exceed the 1998 totals.

Michigan will not take an active role in reviewing thousands of mergers. But there are mergers which have special significance for localized state markets where my office will participate in cooperation with the U.S. Department of Justice or the FTC.

An example of that type of cooperative effort was the consent decree which the federal district court in Ohio entered this Summer in the merger of USA Waste and Waste Management. Michigan was a signatory on that decree after negotiating significant divestiture relief including the sale of four landfills in Michigan. In fact, Michigan had more assets divested for purposes of preserving competition in that case than any other state in the country.

On a selective basis, we will continue to work with federal enforcement agencies to assure that mergers with anticompetitive effects will be restrained or restructured.

Michigan will also continue to participate in multistate and joint state/federal antitrust cases. The most visible of these actions has been the Microsoft case about which, due to current circumstances, I will say very little. I will observe that I think we did OK on the findings of facts.

Other examples where Michigan has participated in larger multistate actions are the contact lens case currently pending in Florida. That case alleges that contact lens manufacturers and eye care providers have conspired to restrict distribution of contact lenses through cost-cutting alternative distribution channels. A similar case involves Toys R Us and several national toy manufacturers who have restricted distribution of toys to cost-cutting warehouse clubs like Sam's and Costco. That case is currently awaiting settlement approval in a New York federal district court. Under the settlement, we envision over \$1.2 million in toys being distributed to

needy children in Michigan over the next few holiday seasons and funding of a pre-kindergarten reading skills development program which has been championed by Governor Engler.

Franchise enforcement in Michigan has continued at a steady pace as well. Just last month, we brought a criminal action under the anti-pyramid provision of the Michigan Franchise Investment Law. And we are a participating state along with six other states and the FTC in an action against Equinox International Corporation which alleges the operation of an illegal pyramid promotion of home, nutritional and beauty products.

As I indicated at the beginning of my remarks, these are both exciting and challenging times for trade regulation enforcement. My office is working to assure that the state's economy operates in a competitive, fair and legal marketplace where consumers are not taken advantage of.

At the AG's office, I brush shoulders every day with a legal staff of 300 attorneys who have given up the perks of the private sector to make sure that our children are not abused, our seniors not taken advantage of, our vulnerable and our naive not victimized.

Those men and women, let me add, are the single greatest legacy that Frank Kelley left to this state when he left office.

In the private sector, you all know about Adam Smith and his theory that profit is the invisible hand that drives your decisions and your processes.

In the public sector, we don't have that profit to motivate us, but Frank managed to cultivate a staff driven to excel by the psychic capital they earn from knowing they've done good by the people they serve.

And that, ladies and gentlemen is powerful stuff.

Powerful enough, in fact, to draw 300 of some of the state's most intelligent, competent attorneys away from the pull of partnerships, and big offices and big profits ...to instead help fill the gaps in this state.

To give volume to those who have no voice and power to those who have no tools. To weave a social fabric that's thick and strong and protects all of us from slipping through

the cracks in society or from being hurt by those who are already completely disconnected.

Those 300 people - every one of them - is there to make people less isolated from one another, to bring people together, to create community. Or at least to help create trust.

Trust and integrity should be at the heart of your work as legal counselors and they should be the basic building blocks of the kind of communities I think we'd all like to see us reconstruct in this state.

You hold the power to effect change in your hands this afternoon. In fact, we as custodians of the law, as officers of the court have an enormous power.

- We have the power to bring civility to our caseloads; and we have the power to foster hostility;

- We have the power to protect our clients; and we have the power to swindle them;
- We have the power to uphold the law; or to undermine it;
- We can exhort your colleagues to citizenship; or we can example them to cynicism.
- We can live and breathe an ethical example, or we can teach our colleagues how to cheat without getting caught.
- And you can, as attorneys, help fill the gaps for your clients, or you can create new ones.

How will you use that power? Looking around this room today, I think I know.

Thank you.

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**Be sure to visit our internet site for the latest
Section news and project updates!**

ANTITRUST SECTION MEMBER SURVEY

1. Which Section-sponsored seminars have you attended in the past?

2. What topics would you like to see covered at a future Section-sponsored seminar?

3. What features would you like to see in the Section newsletter?

4. What percentage of your practice constitutes antitrust, franchising, or trade regulation matters?

5. Would you like to see any changes in the Section's website?

6. What services would you like the Section to provide?

Please mail, fax, or e-mail your response to:

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