<u>QUESTION 14</u> THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK V

In late 2007, Mighty Machines, a manufacturer of industrial machinery, and Plush Resorts, an exclusive resort chain, signed a contract in which Mighty Machines reserved all of the rooms and connected venues (spa and golf facilities, etc.) at Plush Resorts' Traverse City, Michigan conference center for its annual executive strategic planning retreat during the last week of February 2009. Mighty Machines budgeted $1,000,000 for the retreat. The contract called for the pre-payment of a non-refundable deposit of $100,000 on signing (which was paid), an additional $400,000 payment on February 1, 2009, and $500,000 at the conclusion of the event. It also included a sentence stating that the parties' execution of the contract constituted "a merger of all previous proposals, negotiations and representations with reference to the reservation described in this contract." The contract further stated that any disputes would be resolved by applying Michigan contract law.

Mighty Machines had a policy of holding executive retreats at locations that had received a four-star rating from the Mobil Travel Guide. In the late 2007 discussions, Mighty Machines told Plush Resorts that the four-star rating was a condition of its willingness to book and hold the event at its facility. Plush Resorts assured Mighty Machines: "This resort has consistently had Mobil four-star ratings for the past twenty years. [This was true.] You don't need to worry about that." Relying on this statement, Mighty Machines did not ask to put language in the contract to provide that it could cancel without penalty if Plush Resorts lost its four-star rating.

Both companies had a tough year in 2008. The rating of Plush Resorts' Traverse City conference center was dropped from four to three stars, effective August 1, 2008. Also, the national economy entered a severe slowdown in 2008. Because of steep sales declines, Mighty Machines started its strategic planning in August 2008 (it could not wait for the 2009 retreat) and slashed many forms of discretionary spending, including executive retreats. On September 1, 2008, it sent Plush Resorts a letter announcing it was canceling the contract because (1) Plush Resorts no longer had the four-star rating that it had promised; (2) Mighty Machines no longer had a business need for a February 2009 strategic planning session since this work was already complete; and (3) "other current conditions" made it "financially infeasible" to hold the retreat. Mighty Machines did not offer to pay Plush Resorts anything on account of the cancellation.

Plush Resorts comes to you on October 1, 2008, alarmed by this news and concerned that new reservations are drying up because of the economic slowdown. You are told that despite diligent efforts (calls to convention brokers, ads in travel magazines and the Wall Street Journal, etc.), Plush Resorts has been unable to find another taker for the week Mighty Machines had reserved, and doubts it will be able to. Plush Resorts wants to discourage other corporate customers from canceling. At this point, it is well known that Mighty Machines is having a negative cash flow because of declining sales; however, there is no suggestion that it is in danger of running out of cash or filing for bankruptcy.

Plush Resorts requests your advice on the following: (1) can it file suit against Mighty Machines immediately or must it wait until February 2009; (2) will Mighty Machines have valid defenses if Plush Resorts sues for breach of contract; and (3) what damages can Plush Resorts expect to recover if it is successful. What advice do you give? Explain your answer.

*******THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK V*******