

STATE BAR OF MICHIGAN

Negligence Law Section

Q U A R T E R L Y

THE OFFICIAL NEWSLETTER OF THE STATE BAR OF MICHIGAN NEGLIGENCE LAW SECTION

COUNCIL MEETING NOVEMBER 10, 2008



Doug Shapiro and Mark Bernstein



Sen. Bruce Patterson and David Mittleman



Ron DeNardis, Paul Manion, Ed Pappas, and Mike Janes



Sen. Bruce Patterson and Paul Manion



José Brown, Brian Einhorn and Jody Aaron display book announcements for *The Pages in Between—Holocaust Legacy*, written by Erin Einhorn, Brian's daughter.

I Went to a Garden Party

I went to a garden party to reminisce with my old friends

A chance to share old memories and play our songs again

I am confident that the reader will not see the link between Rick Nelson's 1972 song lyrics detailing his personal rejection at a Madison Square Garden concert and the state of negligence law in Michigan.

Au contraire. Garden parties have now woven their way into the fabric of our state's jurisprudence through the published comments of Michigan Supreme Court Justice Robert P. Young, Jr.

As we all know, Justice Young asserts that he is a "textualist" and stands ready to affirm and validate, irrespective of result, the actions of the legislature. Justice Young and the other members of what formerly represented the "majority" on the Supreme Court have repeatedly denied that they had an "agenda" or were in any way hostile to the civil justice system. However, Justice Young's comments, which will be analyzed here, demonstrate overt contempt for Michigan's common law.

The Michigan Constitution adopted the common law that was in effect in 1963. It states:

The common law and the statute laws now in force, not repugnant to this constitution, shall remain in force until they expire by their own limitations, or are changed, amended or repealed.²

While the Michigan constitution adopts the common law, Justice Young

has openly expressed his disdain for it. In a speech which he gave at a forum sponsored by the Federalist Society in 2004, Justice Young stated as follows:



Jules B. Olsman

Consequently, I want to focus my remarks here on the embarrassment that the common law presents—or ought to present—to a conscientious judicial traditionalist.

* * *

To give a graphic illustration of my feeling on the subject, I tend to think of a common law as a drunken, toothless ancient relative, sprawled prominently and in a state of nature on a settee in the middle of one's genteel garden party. Grandpa's presence is undoubtedly a cause of mortification to the host. But since only the most ill-bred of guests would be coarse enough to comment on Grandpa's presence and condition, all concerned simply try to ignore him.

Like the attendees at my imaginary garden party, common-law apologists have spent centuries denying that Grandpa was actually in attendance or, if so acknowledged, vigorously asserting that he was actually clothed and sober. Indeed, some jurists like Justice Cardozo actually celebrate Grandpa and his condition and

Continued on page 2

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I went ...

Continued from page 1

enthusiastically urge all of us to relax, undress, and join Grandpa in his inebriated communion with nature.³

Indeed, Justice Young's "speech" which is contained in a law review text also makes an appearance in *Henry v. The Dow Chemical Company*, 473 Mich 63; 701 NW2d 684 (2000). In that case, which held that no claim for medical monitoring could be made by thousands of individuals claiming exposure to Dioxin dumped by defendant Dow Chemical Company into the Tittabawassee flood plain near Midland, Justice Corrigan actually cites Justice Young's comments when explaining how the Michigan Supreme Court as constituted between 1999 and December 31, 2008 regarded the common law. She states:

This Court is the principal steward of Michigan's common law. See, e.g., *Adkins v. Thomas Solvent Co.*, 440 Mich. 293, 317, 487 N.W.2d 715 (1992); *Sizemore v. Smock*, 430 Mich. 283, 285, 422 N.W.2d 666 (1988). Acting in this capacity, we have on occasion allowed for the development of the common law as circumstances and considerations of public policy have required. See, e.g., *Berger, supra*. But as Justice Young has recently observed, our common-law jurisprudence has been guided by a number of prudential principles. See Young, *A judicial traditionalist confronts the common law*, 8 Texas Rev. L. & Pol. 299, 305-310 (2004). Among them has been our attempt to "avoid capricious departures from bedrock legal rules as such tectonic shifts might produce unforeseen and undesirable consequences," *id.* at 307, a principle that is quite applicable to the present case.⁴

Justice Young's characterization of the common law as a "drunken ancient and naked relative" is repudiated by Justice Elizabeth Weaver in her concurring opinion in *Henry, supra*,

in which she dismisses the use of this article as authoritative in any way. She states:

Further, I do not agree with some of the article's tone, nor with its comparison of the common law to a drunken, toothless ancient relative, sprawled prominently and in a state of nature on a settee in the middle of one's genteel garden party.⁵

It is both ironic and noteworthy that an avowed textualist such as Justice Young would sign on to the decision that virtually eliminated the liability of property owners in the State of Michigan for any condition stated to be "open and obvious," *Lugo v. Ameritech Corp.*, 464 Mich 512; 629 NW2d 384 (2001).

Despite the fact that Michigan has a comparative fault statute, MCLA 600.2957, which contains no reference to the doctrine of "open and obvious," the decision of the Michigan Supreme Court in *Lugo, supra*, in which Justice Young joined, relishes development of the common law in a way that acts to eliminate a cause of action and abrogate legal duties on the part of landowners. The dissent in *Lugo* correctly notes that the standard of "open and obvious" has no precedent in Michigan's common law.⁶ The dissent also notes that the textualist majority is now "launching new legal principles from a factual vacuum."⁷

It would appear as though the former majority on the Michigan Supreme Court now choose to welcome "Grandpa," as he is referred to by Justice Young, to their party and have invited him to "belly up to the bar" and have a martini!

Anyone familiar with the abrogation of premises liability in Michigan realizes now that "black ice" is open and obvious even though it cannot be seen.⁸ The case that has enjoyed "David Letterman, are you kidding me?" status is *Sidorowicz v. Chicken Shack, Inc.*, 469 Mich 912; 673 NW2d 106 (2003), where the Michigan Supreme Court let stand a decision holding that a blind person who slips on a wet floor in a restaurant washroom is held to the same standard of responsibility as

a person with normal sight. No “special aspects” there!

This writer bears no personal animosity toward Justice Young, whom I have known for almost 30 years, have great personal regard for, and respect professionally. However, it is imperative that his opinions and statements such as those illustrated in this article be discussed and openly debated.

One might charitably suggest that Justice Young’s comments in the *Texas Law Review* article represent little more than him “heaving a side of beef” to the carnivores at a Federalist Society convention. That would be arguable but for the fact that his comments have found their way into the *stare decisis* of Michigan Supreme Court cases.

It now appears that a “bar fight” has broken out at the garden party. In an order dated December 17, 2008, Justice Young offered his comments on Justice Weaver’s dissenting statement in *Sazima*

v. Shepherd Bar & Restaurant, __ Mich __; __NW2d __ (2008):

While I concur with the order reversing the Workers’ Compensation Appellate Commission, I write to note that Justice Weaver’s dissenting statement is so breathtakingly and profoundly incoherent that it is hard to know how to respond to it.

* * *

Given that it is entirely likely that I will soon be in the philosophical minority on this Court, I will take great pleasure citing and relying on Justice Weaver’s odd legal doctrine under which the minority view controls.

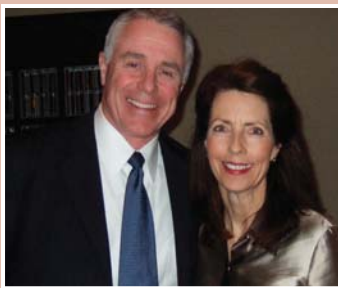
It is respectfully submitted that “Grandpa,” as he is described by Justice Young, should turn up the music at the garden party. The song that is playing is Bob Dylan’s 1960s anthem, “The Times

They Are A-Changin.”⁹

Endnotes

- 1 Nelson, Rick. “Garden Party.” *Garden Party*. Decca, 1972.
- 2 Const. 1963, Art. 3, § 7.
- 3 8 Tex. Rev. Law & Pol. 299, 301-02 (2004).
- 4 *Henry v. The Dow Chemical Company*, 473 Mich 63, 83; 701 NW2d 684, 694 (2000).
- 5 *Id.* at 104; 701 NW2d at 705.
- 6 *Lugo v. Ameritech Corp.*, 464 Mich 512, 544; 629 NW2d 384, 400 (2001).
- 7 *Id.* at 545; 629 NW2d at 400.
- 8 *Kenny v. Kaatz Funeral Home, Inc.*, 472 Mich 929; 697 NW2d 526 (2005).
- 9 Dylan, Bob. “The Times They Are A Changin.” *The Times They Are A-Changin*. Columbia Records, 1964.

**Council Meeting December 3, 2008
Detroit**



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Justice Diane Hathaway and Judge Robert Columbo



Jennifer Greico, Justice Diane Hathaway, and Jody Aaron



Todd Tennis, David Mittleman, Barry Goodman, Doug Shapiro, and Brian McKeen



Paul Manion, Justice Diane Hathaway, David E. Christensen, and Mike Janes

ERISA UPDATE: The Battleground Remains Fluid

By Troy W. Haney
Dilley Haney, PC



Troy W. Haney

In my article earlier this year, I discussed the “shifting battleground of competing fictions” that comprises federal court litigation under ERISA, the Employee Retirement Income Security Act of 1974. Since then, there have been significant developments relative to direct action of claimants for benefits as well as to the recent trend toward opposing counterclaims by insurers seeking reimbursement from claimants for medical benefits tendered.

As I discussed in my previous article, the ERISA playing field has been seriously skewed over the last 20 or more years by a burgeoning corpus of case law that holds that even though insurers’ claim decisions should ordinarily be subject to “de novo” review by the courts, if the subject insurance policy or employer’s plan includes adequate language granting the relevant entity the “discretion” to decide claims, courts will broadly defer to that discretion by applying the “arbitrary and capricious” review standard to such decisions.

Now, however, no less an authority than the United States Supreme Court, reviewing a case out of our own Sixth Circuit, has acted to significantly tilt the balance back toward the center. In *Metropolitan Life Ins. Co. v Glenn*, 128 S.Ct. 2343 (2008), the Court ruled that in the typical case where the same entity (usually the insurer) both determines eligibility for benefits and also pays those benefits out of its own pocket, an inherent conflict of interest is presented which

reviewing courts must consider as a factor in determining whether the insurer abused its discretion in denying benefits. While the *Glenn* Court left the proper priority of this factor to be developed on a case-by-case basis, it will certainly operate to restore some welcome balance to judicial review of ERISA benefits denials.

My previous article also discussed the issue of insurer reimbursement demands against claimants for ERISA benefits tendered, and cited the Supreme Court’s leading opinion in *Mid Atlantic Medical Services, Inc. v Sereboff*, 1126 S.Ct 1869 (2006), which restricts such demands to those cases where a “specifically identifiable fund” exists upon which an equitable lien may be asserted. While there are no developments on the reimbursement side as prominent as *Glenn* (and nothing yet from the Sixth Circuit), there are an abundance of recent federal district court opinions from around the country which largely tend to further restrict insurer reimbursement demands, on various independent grounds, including: (1) where a third-party tort settlement by an ERISA claimant plausibly attributes the received proceeds to noneconomic loss rather than medical expenses potentially subject to reimbursement, that settlement will generally be enforced; (2) settlements from providers such as state-paid Medicaid that themselves address a spectrum of benefits may only be enforced against medical costs and not disability, wages, and pain and suffering; (3) an insurer may only seek to assert a lien against an identifiable

fund presently existing at the time of assertion of the lien, rather than one already spent by the claimant; (4) a lien may not be asserted against the general assets of the party from whom reimbursement is sought; and (5) the policy or plan language itself must actually “create” the lien upon which reimbursement is sought.

In summary, while at long last the law appears to be tending somewhat in the direction of ERISA claimants rather than insurers, the only thing certain about this statutorily-based and highly technical area of the law is that change will likely remain constant.

Troy Haney is a partner in the Grand Rapids firm of Dilley Haney, P.C.. He is a graduate of Calvin College and the University of Detroit Law School. He is an Executive Board member of the Michgian Association for Justice and has been featured in the Best Lawyers in American, 12th ed. He practices in the areas of employee benefit law; short-term and long-term disability insurance litigation; ERISA-governed long-term disability, health care and pension plan litigation; serious and catastrophic automobile negligence; wrongful death, complex civil litigation in state and federal courts. Contact information: Dilley Haney, P.C., 330 East Fulton, Grand Rapids, MI 49503, (616) 235-2300. E-mail: thaney@dilleyhaneylaw.com.

... there have been significant developments relative to direct action of claimants for benefits as well as to the recent trend toward opposing counterclaims by insurers seeking reimbursement from claimants for medical benefits tendered.

Has the PIP Causation Standard Changed? Clarification Sought in Motion for Reconsideration

By Milea Vislosky
Miller & Tischler PC

A recent decision by the Michigan Supreme Court has raised questions about the level of causation required to support a claim for personal injury protection (“PIP”) benefits under the No-Fault Act.¹

The law interpreting the causal connection requirements for a PIP claim under the No-Fault Act has been consistent for the 30 years that No-Fault has been in effect. The statute requires that the injury “arise out of” the use of an automobile. MCL 500.3105(1). The decisions interpreting this provision have held that the causal connection between the injury and the accident must be more than incidental, fortuitous, or but for, but does not have to rise to the level of “proximate cause” as in the traditional tort context.² Additionally, several Court of Appeals decisions held that “almost any causal connection will do” to support a claim under the No-Fault Act.³

This view of PIP causation has been widely accepted in the Court of Appeals for decades and no contrary direction had been provided by the Michigan Supreme Court. However, in a recent Order issued by the Supreme Court in *Scott v State Farm*,⁴ the Court has suggested that a more demanding causal nexus may be required.

Kristen Krohn sustained a traumatic brain injury and significant physical and orthopedic injuries in a motor vehicle accident on May 17, 1981. Over the years, Kristen’s mobility and physical activity continued to decrease because of her physical limitations caused by the accident. As a result, she also struggled with her weight and over time gained over 80 pounds. In 1991, at age 26, Ms. Krohn was officially diagnosed with high cholesterol. This condition was controlled through diet and exercise and without medication until 1997, when medication was prescribed.

State Farm initially denied payment for this medication and requested documentation supporting the causal relationship between her injuries and the

1981 accident. Several of Ms. Krohn’s treating doctors related her need for the cholesterol medication to her injuries from the motor vehicle accident. Because of the injuries she sustained in the accident, she was not able to exercise or even ambulate without assistance. In addition, her traumatic brain injury caused impairment of self-control, making it difficult for her to manage and maintain a proper diet. State Farm accepted this documentation as reasonable proof that Kristen Krohn’s high cholesterol was related to and flowed from the 1981 accident, and paid for this medication for the next seven years.

The law interpreting the causal connection requirements for a PIP claim under the No-Fault Act has been consistent for the 30 years that No-Fault has been in effect.

However, in May of 2004, State Farm changed its position and denied further payment for the cholesterol medications. State Farm asserted that because Ms. Krohn was genetically predisposed to high cholesterol and because she did not require medication for the condition until many years after the accident, her condition was too remote and attenuated to have arisen out of the motor vehicle accident. State Farm moved for summary disposition on the medical causation issue. The trial court found that there was a genuine issue of material fact for the jury and denied the motion. State Farm filed an application for leave to the Court of Appeals, which was granted. The Court of Appeals issued a published opinion on April 15, 2008⁵ affirming the denial of State Farm’s summary disposition motion, finding there was a question of fact on causation.

State Farm then filed an application for leave to appeal to the Supreme Court, which issued an Order on December 3, 2008. Though the Order denied the application for leave, it also vacated the language of the Court of Appeals decision referencing the “almost any causal connection will do” standard. The Court did so without further briefing or oral argument on the issue.

By vacating the “almost any causal connection will do” language without further analysis or explanation, the Court has left practitioners confused about this previously-clear standard. Ms. Krohn’s conservator has filed a motion for reconsideration asking that the Court either limit the Order to a simple denial, or grant leave on the causation issue. The motion is pending as of this publication.

Milea Vislosky graduated from Thomas M. Cooley Law School cum laude in 2005. She is an associate attorney at Miller & Tischler, PC in Southfield, MI, where she practices no-fault automobile insurance law. Contact information: Milea M. Vislosky, Miller & Tischler, PC, 26711 Northwestern Hwy., Ste.200, Southfield, MI 48033, E-mail: mvislosky@msapc.net

Endnotes

- 1 MCL 500.3101, *et seq.*
- 2 *Kochoian v Allstate Ins Co*, 168 Mich App 1; 423 NW2d 913 (1988); *Thornton v Allstate Ins Co*, 425 Mich 643; 391 NW2d 320 (1986); *Putkamer v Transamerica Ins Corp of America*, 454 Mich 626; 563 NW2d 683 (1997).
- 3 *Shinabarger v Citizens Mut Ins Co*, 90 Mich App 307; 282 NW2d 301 (1979); *Bradley v Detroit Auto Inter-Ins Exch*, 130 Mich App 34; 343 NW2d 506 (1983).
- 4 Order of the Michigan Supreme Court, entered December 3, 2008 (Docket No. 136502).
- 5 278 Mich App 578; 751 NW2d 51 (2008).

Ah, Gridlock!

By Todd Tennis
Captiol Services, Inc.

The 2007-2008 legislative session ended with nary a whimper on the negligence law front. The eternal battle over access to the courts continued unabated, but neither side made any significant gains in the Michigan legislature. The House and Senate lobbed

bills at each other, but neither could make much headway through the other's iron defenses. The art of lobbying has been reduced to trench warfare.

A lot has to do with simple partisanship. Although there are plenty of exceptions, Democrats tend to be more

sympathetic to the trial bar, and Republicans are usually more sympathetic to the insurance and health care industries. Therefore, while the Democratically-controlled House was willing to pass legislation to repeal immunity for pharmaceutical manufacturers and amend statutes pertaining to the *Kreiner* decision, these bills all died in the Republican-controlled Senate. Conversely, the Senate passed bills to grant doctors immunity from liability regardless of whether or not they report a patient who would be a hazard on the road to the Secretary of State. This legislation died in the House.

Even though the Democrats cleaned up in the 2008 elections, the outcome really will not have that great an impact in the Michigan legislature. The Republicans maintain solid control of the state Senate, and the election of Senator Mark Schauer (D-Battle Creek) to Congress gives them an opportunity to expand their current 21-17 majority. In the House, even though Democrats greatly expanded their majority from 58-52 to 67-43, it likely won't alter the current stalemate between the two chambers.

The one election that may ease some of the gridlock in the legislative branch actually occurred in the judiciary branch. The defeat of Justice Cliff Taylor by Justice-elect Diane Hathaway sent a shockwave through the capitol and drastically altered the policy playing field. For the last several years, lobbyists for the Chamber of Commerce, the insurance industry, the manufacturing community, and others could be reasonably assured that if they could not advance their policy agenda in the legislature, they could try their luck in the Supreme Court and have a positive result. Therefore, gridlock between the House, Senate, and governor was actually advantageous to them. They could often achieve their policy goals through the courts without having to negotiate anything in return.



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Whether the issues related to medical malpractice, auto insurance, or workers' compensation, the Supreme Court has been very willing over the past decade to overturn decades of precedent and grant very favorable interpretations of state law to the business community. No one expects the election of Diane Hathaway to cause a drastic and sudden shift in philosophy for the Michigan Supreme Court. However, the very fact that the Court may be less predictable in the future could cause business lobbyists to be more willing

to seek compromises in the Michigan legislature.

Todd N. Tennis has been a lobbyist with Capitol Services, Inc., a multi-client lobbying firm that specializes in representing nonprofit organizations, since 1995. Before becoming a lobbyist, Todd earned a degree in political science from the University of Michigan and worked as a staff representative for former State Senator Fred Dillingham. He has represented the Negligence Law Section of the State Bar since 1999. Todd lives in Lansing.

Warning to the Complacent Frogs: The Pot is Ready to Boil

On September 17, 2008, Norman Tucker received the Respected Advocates Award from the Michigan Defense Trial Council. Upon receiving the award, Mr. Tucker offered the following remarks on the state of negligence law in Michigan.



Norman D. Tucker

These are difficult times for those who represent injured clients. We know there has been a sea of change in the law in the last decade, but like the frog, frozen still and adjusting to the heating water, we easily lose perspective as the water slowly heats.

For those not familiar with the details:

- In 1996, drug companies were virtually given immunity for their products;
- The products liability legislation of 1996 has eliminated all but about 5 percent of the protections that previously existed—products liability cases today are 95 percent fewer than in 1996;
- As documented by Todd Berg in the *Michigan Lawyers Weekly* study last July, between 1996 and 2006, the 1994 medical malpractice legislation eliminated 75 percent of the cases that could be filed. My estimate is that by the end of this year, the cases will be down by 80 percent;

- The “open and obvious” defense for dangerous premises and the new *Kreiner* case threshold for auto cases have reduced these filings by at least 60 percent to 70 percent, in just the last few years.

Why? Remember what we were told at the time? We were told that fewer lawsuits would bring business to Michigan; maybe even a big drug company would relocate in Ann Arbor. We were promised that health care cost would go down, maybe even insurance rates, and it would even boost the Michigan economy and make it competitive. The only missing promise was weapons of mass destruction.

What is the driving force for this overhaul of our legal system? Part of the answer is in an unlikely place. Of the top 10 wealthiest counties in the U.S., one new area has claimed five: 1st, 2nd, 3rd, 6th, and 7th. Where is all this new wealth? Northern Virginia, a D.C. suburb. What is the dominant occupation in all these counties per Thomas Frank of the *Wall Street Journal*? Lobbyist. It is claimed that

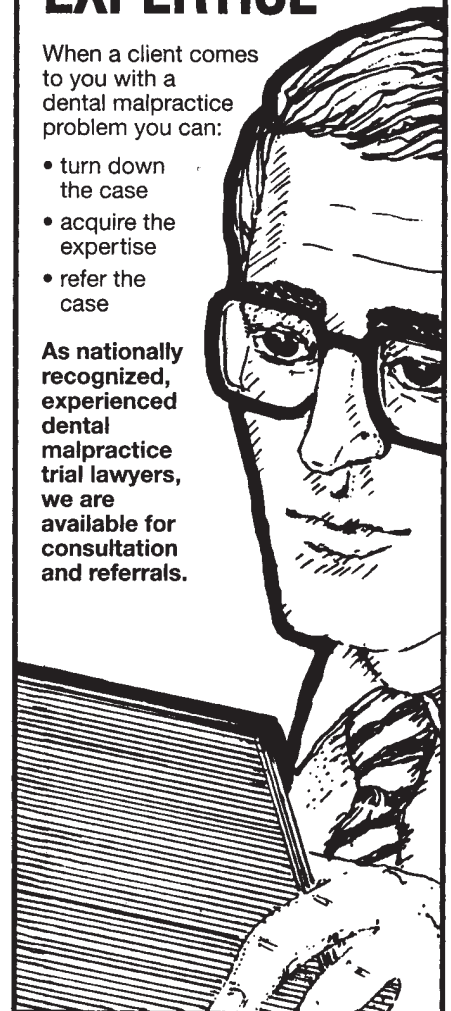
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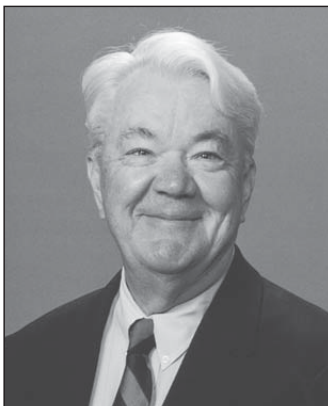
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Warning ...

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trial lawyers spend outrageous sums on lobbying. This is one group, and there aren't many, that lobbies for consumers. In 2006, the U.S. Chamber, one of hundreds that lobby for business, spent \$72.6 million, almost 10 times what the lawyers spent. Why spend so much money? It is simple—it works. They spent \$10 million in Wisconsin's April 2008 Supreme Court race—unseating an incumbent, and a Democrat, for the first time in 40 years.

Some political strategists like to dress this effort up as a difference in political or legal philosophy. To use the popular metaphor, you can put all the lipstick you want on it, at the end of the day, it is still the same animal—more profits. The CEOs who fund these efforts make more money before Wednesday's lunch than the candidates they put in office do in a year.

Business has one function, in fact a fiduciary obligation: to make profits. Pro business laws, through the legislatures and the courts, have become a national business plan. It costs a lot, but the cardinal rules for corporations to spend money are: (1) it had better work, and (2) it has to be worth the cost. I'm all for profits and a vibrant economy, but not at the expense of effectively abolishing a legal system that protects those without wealth.

The pot is about to boil. Many have spoken out, with their voices, their votes, and their money. Many others, like the frog in the heating water, think they will adjust. I'm fearful this pot is near the boiling point. When it boils, it will be the laws that hold responsible those who negligently injure others and innocently injured citizens that will be cooked.

Edmund Burke has an adage for why bad things happen: "All that is necessary for the triumph of evil is that good men do nothing." But it was Martin Niemoller, the WW II pastor, who put meat on this concept with a poem. If he were here today, I think this is how he would describe our boiling pot.

In Michigan, those with money and power came for the rights of those injured by drugs and defective products, and I didn't speak up because I thought maybe there were too many lawsuits.

Then they came for the rights of those injured by poor medical care, and I did not speak up because I was afraid doctors would leave the state.

Then they came for the rights of those injured by dangerous premises and drunk drivers, and I again did not speak up as it did not affect my clients.

Then they came for the rights of those injured by defective roads and highways, and I did not speak up because I believed these lawsuits would raise my taxes.

Then they came for the trial lawyers and I did not speak up because I was not a trial lawyer.

Then, what I never dreamed would happen, my family was seriously injured, but there was no one left to speak up.

Postscript, December 2008.

After the November election, before a group of attorneys, I could

not pass on the opportunity to comment that I was pleased that the above message must have been taken to heart and spread throughout the state as, for the first time in more than three decades, an incumbent justice on our Supreme Court was replaced. The reality, of course, is that millions of citizens, across the country and in Michigan, thought we were going in the proverbial “wrong direction” and worked tirelessly to change that direction. However, just as one case does not make a career, one election will not turn the course the laws and the courts have taken over the last decade. Those whose goal it is to abolish all laws that protect workers, patients, and consumers will not quit, and the shell organizations that preach a litigation crisis will not disband. To the contrary, they are likely to redouble their efforts. The fire has not been extinguished, but the pot has only been temporarily lifted from the stove. A relapse into complacency will surely put the pot back on the fire and, be assured, the flame will be turned higher.

Norman D. Tucker has more than 30 years experience in plaintiff’s medical malpractice, product liability, and complicated litigation. He specializes in birth trauma litigation and co-authored the two definitive reference books on the subject, Handling Birth Trauma Cases, Volume I and II. His meticulous attention to detail and evaluation of medical research has resulted in numerous multi-million-dollar settlements for clients. Contact information: Norman D. Tucker, Sommers Schwartz, 2000 Town Center, Ste 900, Southfield, MI 48075, (248) 355-0300, and e-mail: ntucker@sommerspc.com.



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This year, State Bar of Michigan members can receive a \$350 discount if they register before the early bird deadline of February 27, 2009. Visit the ABA TECHSHOW website at www.abanet.org/techshow/register/, choose “Register Using an Event Promoter Code” and enter Event Promoter Code EP921. Please mail or fax registrations only.

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Heros

The Negligence Law Section mourns the tragic loss of Staff Sgt. Kevin Grieco in Afghanistan October 27, 2008. He was the beloved brother of our colleague and fellow council member, Jennifer Grieco.

We all acknowledge the extraordinary bravery and long service Sgt. Kevin Grieco gave to this country. We are all safe and far better off because of him. He was married to Rashmi and is the father of Joshua, age 4, and Angela, age 2.

Sgt. Grieco was buried at Arlington National Cemetery, a place reserved for national figures and heroes. Sgt. Grieco is certainly one of them.



Staff Sergeant, Kevin Grieco

2009 Nominations Open for Major State Bar Awards; New Cahill Bar Leadership Award Established

Nominations are now open for major State Bar of Michigan awards that will be presented at the September 2009 Annual Meeting in Dearborn. New this year is the Kimberly M. Cahill Bar Leadership Award established in memory of the 2006-07 SBM president who passed away in January last year. This award will be presented to a recognized local or affinity bar association, program or leader for excellence in promoting the ideal of professionalism or equal justice for all, or in responding to a compelling legal need within the community during the past year or on an ongoing basis.

The Roberts P. Hudson Award goes to a pAn awards committee co-chaired by State Bar President-Elect Charles Toy and attorney Thomas Cranmer reviews nominations for the Roberts P. Hudson, Champion of Justice, Frank J. Kelley, Kimberly M. Cahill and Liberty Bell awards. The Bar's Pro Bono Initiative Committee reviews nominations for

the Cummiskey Pro Bono award. The committee's recommendations are then voted on by the full Board of Commissioners at its June meeting.

Last year's non-winner nominations will automatically carry over for consideration this year. Nominations should include sufficient details about the accomplishments of the nominee to allow the committees to make a judgment.

Any State Bar member can propose candidates for SBM Awards. To apply online or download application forms visit www.michbar.org/programs/eventsawards.cfm. Cummiskey Award nominations can be directed to Gregory Conyers at gconyers@mail.michbar.org; all other nominations can be submitted to Naseem Stecker, State Bar of Michigan, 306 Townsend St., Lansing, MI 48933 or nstecker@mail.michbar.org. For more information call (517) 367-6428 or (800) 968-1442, or fax (517) 482-6248.

The **Roberts P. Hudson Award** goes to a person whose career has exemplified the highest ideals of the profession. This award is presented periodically to commend one or more lawyers for their unselfish rendering of outstanding and unique service to and on behalf of the State Bar, given generously, ungrudgingly, and in a spirit of self-sacrifice. It is awarded to that member of the State Bar of Michigan who best exemplifies that which brings honor, esteem and respect to the legal profession. The Hudson Award is the highest award conferred by the Bar.

The **Frank J. Kelley Distinguished Public Service Award** recognizes extraordinary governmental service by a Michigan attorney holding elected or appointive office. Created by the Board of Commissioners in 1998, it was first awarded to Frank J. Kelley for his record-setting tenure as Michigan's chief lawyer.

The **Champion of Justice Award** is given for extraordinary individual accomplishments or for devotion to a cause. Not more than five awards are given each year to practicing lawyers and judges who have made a significant contribution to their community, state and/or the nation.

The **John W. Cummiskey Pro Bono Award**, named after a Grand Rapids attorney, recognizes a member of the State Bar who excels in commitment to pro bono issues.

The **Liberty Bell Award** recipient is selected from nominations made by local and special-purpose bar associations.

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