

# NEGLIGENCE LAW SECTION QUARTERLY

*The Official Newsletter of the State Bar of Michigan Negligence Law Section*

Spring 2008

## From the Chair

Spring always brings new hopes. This year is no different.

The Negligence Section traveled to Las Vegas for its spring meeting that will include a panel of highly respected mediators, all of whom are former jurists here in the state of Michigan. Former Judge Pamela Harwood, former Judge Jessica Cooper, and former Judge Peter Houk formed a panel of current mediators to discuss issues of importance to all of us who participate in the mediation process whether voluntarily or through court order. The information that they impart to those of us attending the Spring Meeting was very enlightening.

Whether you are a defense attorney in the negligence business or a plaintiff's attorney in the negligence business, it is important to understand all aspects of the mediation process in order to use it to your client's particular benefit. Also, Judge Jessica Cooper, a former Court of Appeals judge as well as a former circuit judge, provided entertainment to the group relative to her time spent on the Michigan Court of Appeals. It was a great meeting, and we hope to provide important feedback to the members of our section from this spring meeting. The meeting was held in conjunction with the Michigan Association of Justice and the Michigan Defense Trial Council in order to network with these other organizations.

Your Negligence Section is also working toward what will be a very first upstate meeting of any significance whatsoever when we travel to Traverse City. We have decided as a council that it was important to have a reception in the Traverse City area in order to bring in as many local members of the Negligence Section as possible from the upper part of Michigan in order to let them know exactly what we do with the dues money that they loyally provide to the section year in and year out.

We are hopeful that this reception, through cooperation with the Michigan Association of Justice and the Michigan Defense Trial Council, will bring out a large number of the members of the Negligence Section who practice in the upper part of Michigan. We have extended the invitations to the Michigan Supreme Court, appropriate members of the Court of Appeals, and local judges in the hopes that we will have a good turnout.

Plans are also well underway for what we hope to be another successful Past Chairperson's Dinner on Friday, June 6, 2008 at the Dearborn Country Club, at which time the Negligence Section, through the current council and past chairpersons, will honor Judge Robert Colombo, Jr. with the Earl Kline Award for his contribution to the practice of negligence law in the State of Michigan.

By early June, we should have completed our annual essay contest in order to provide financial support to the winner by way of scholarship money to the law school involved.

We are also working toward the annual meeting, which will be held in September at the Dearborn Hyatt Regency. We hope to have an informative program for those members of the Negligence Section who hopefully will attend the State Bar Annual Meeting.

I hope, and our council hopes, that this spring brings you renewed hope, health, and success in this work that we all share.



Thomas M. Peters  
Vandevveer Garzia, PC

Respectfully,

*Thomas M. Peters*

#### Chairperson

Thomas M. Peters  
Vandevener Garzia  
1450 W Long Lake Rd Ste 100  
Troy, MI 48098  
P: (248) 312-2800  
F: (248) 267-1242  
E: [tpeters@vgpclaw.com](mailto:tpeters@vgpclaw.com)

#### Vice Chairperson

Jules B. Olsman, Berkley

#### Secretary

José T. Brown, Flint

#### Treasurer

David E. Christensen, Southfield

#### Council

Jody L. Aaron, Detroit  
Roland F. DeNardis, Mt. Clemens  
Steven B. Galbraith, Detroit  
Michael R. Janes, Mount Clemens  
Paul J. Manion, Detroit  
David Mittleman, Lansing  
Gerald V. Padilla, Southfield  
Douglas B. Shapiro, Ypsilanti  
Thomas W. Waun, Grand Blanc

#### Ex Officio

Barry J. Goodman, Southfield

#### Commissioner Liaison

Brian D. Einhorn, Southfield

#### Lobbyist

Todd N. Tennis, Lansing

#### Editor and Executive Director

Madelyne Lawry, Grand Ledge  
[neglawsection@comcast.net](mailto:neglawsection@comcast.net)

The views expressed in this newsletter do not necessarily reflect the views of the Council or the Section. This publication does not represent an endorsement of any comments, views, or opinions expressed herein. Any opinions published herein are opinions of the authors, and will hopefully provide an impetus for further discussion of important issues.

## Penalties for Failure to Maintain Coordinated Coverage

By Pratheep Sevanthinathan

Zausmer, Kaufman, August, Caldwell & Tayler, P.C.

### Introduction

The vast majority of no-fault auto insurance carriers grant discounted policies to those insureds who have concurrent (and coordinated) health/accident insurance. The discount is given up front, with the stipulation that the insured must maintain the health/accident insurance at all times. If the insured does not maintain the requisite underlying insurance and is involved in an accident, a protective penalty (somewhere between \$200 and \$1,000) is assessed. Recently, the ability and manner of no-fault carriers to charge this fee has been challenged as being inconsistent with the Insurance code based on MCL 500.3109. This statute limits the amount a no-fault carrier can charge for a “deductible.” The argument is that the fees, which are subtracted from the insurance proceeds on a per accident basis, are nothing more than deductibles. Further, as a deductible, the amount that can be charged for failure to maintain the coordinated coverage cannot exceed the statutory maximum of \$300 per accident set by MCL 500.3109(3). In contrast, no-fault carriers believe that the fees assessed are penalties and not deductibles and, therefore, do not fall under MCL 500.3109. Accordingly, no-fault carriers believe the fees may be set to any reasonable amount. The Michigan Office of Financial & Insurance Services has yet to take an official stance on the issue, and is currently investigating the divergent theories.

The issue is better understood as follows: when purchasing a no-fault insurance policy, if a person has health insurance that overlaps in coverage with the no-fault insurance, the person can choose to lower premium payments on the no-fault policy by electing to “coordinate benefits” with his/her health insurance. When no-fault insurance is coordinated with health insurance, the health insurance carrier pays some post-accident benefits that would otherwise have been paid for by the no-fault carrier. In essence, the insured pays less to the no-fault carrier because he/she receives less coverage from the no-fault carrier.

However, a problem is created for the no-fault carrier when an insured who elects to coordinate coverage with a health insurer meets with an accident, but does not actually have health insurance. The no-fault carrier would end up owing benefits for the entire loss, including the portion of benefits that should have been paid for by the health insurance carrier. This results in no-fault carriers paying for maximum insurance coverage, while receiving disproportionately lower premiums. The aggregate losses faced by no-fault carriers could be substantial if not for the protective penalties.

### Applicable Law

The subject fees have been challenged under MCL 500.3109. MCL 500.3109(3) provides, in pertinent part:

An insurer providing personal protection insurance benefits may offer, at appropriately reduced premium rates, a deductible of a

specified dollar amount which does not exceed \$300.00 per accident. This deductible may be applicable to all or any specified types of personal protection insurance benefits but shall apply only to benefits payable to the person named in the policy, his spouse and any relative of either domiciled in the same household. Any other deductible provisions require the prior approval of the commissioner.<sup>1</sup>

### Penalties Are Different From Deductibles

Whether MCL 500.3109(3) is truly applicable to the subject fees depends on whether the fees are considered deductibles or penalties. The Insurance Information Institute defines a “deductible” as “the amount of loss paid by the policyholder, either a specified dollar amount, a percentage of the claim amount, or a specified amount of time that must elapse before benefits are paid. The bigger the deductible, the lower the premium charged for the same coverage.”<sup>2</sup> In practice, the amount of the deductible is usually correlated with the premium amounts. If the insured wants to lower premiums, the deductible will be higher. However, if the insured wants a lower deductible, the premiums will be higher. This system allows drivers who are less inclined to be involved in accidents to take advantage of lower insurance costs, and allows drivers who are more inclined to be involved in accidents to take advantage of more insurance protection.

Webster’s Law Dictionary defines a penalty as “a pecuniary sum that by agreement is to be paid by a party who fails to fulfill an obligation to another and that is punitive rather than compensatory.”<sup>3</sup> Thus, penalties are used solely to protect one party of an agreement against another’s failure to fulfill an obligation.

Based on the above definitions, it seems clear that a deductible is a fee the insured agrees to pay on *every* loss, whereas a penalty is a fee that the insured pays only after failing to meet a condition. Thus, if an insured elects to reduce the amount of his/her insurance proceeds in exchange for appropriately lowered premium payments, the reduction would have to be defined as a deductible. The reduction, in this case, is part of the loss the insured has agreed to pay. On the other hand, if an insured agrees to reduce his/her insurance proceeds by a certain amount of money *only*

*if* he/she fails to maintain health insurance, the reduction would have to be defined as a penalty. The reduction, in this case, is punitive in nature—meant solely to induce the insured to maintain health coverage.

### Deductibles in Coordinated No-Fault Policies Are Not Capped

Even if the subject fees were deductibles under the No-Fault Act, they still would not be capped. MCL 500.3109a does not cap the amount that can be charged as a deductible when a no-fault policy is coordinated with other insurance.

MCL 500.3109a provides:

An insurer providing personal protection insurance benefits shall offer, at appropriately reduced premium rates, deductibles and exclusions reasonably related to other health and accident coverage on the insured. The deductibles and exclusions required to be offered by this section shall be subject to prior approval by the commissioner and shall apply only to benefits payable to the person named in the policy, the spouse of the insured and any relative of either domiciled in the same household.<sup>4</sup>

Although MCL 500.3109(3) and 500.3109a appear very similar, there are a few key distinctions. MCL 500.3109(3) provides for discretionary deductibles that are limited to \$300 per accident. In other words, 500.3109(3) allows no-fault carriers to subtract \$300 from insurance proceeds owed to the insured for every accident involved in by the insured. In exchange, the insured receives lower premium rates. MCL 500.3109a differs, in that it mandates deductibles when coordinating a no-fault policy with “other health and accident coverage on the insured.” This mandatory deductible is not statutorily capped. However, it should be noted that all deductibles are subject to approval from the insurance commissioner.

Arguments have been made that all deductibles under the no-fault Act are capped at \$300. This argument is not supported by the law. As mentioned above, while MCL 500.3109(3) covers the general ability to implement deductibles in a no-fault policy, MCL 500.3109a covers the specific situation of using deductibles in a policy that is coordinated with other health or accident coverage policies. The holding in *Michigan Mut. Ins. Co v. American Community Mut. Ins. Co.*<sup>5</sup> supports this conclusion. In *Michigan Mutual*, the Court of Appeals held that the defendant’s argument that “the existence of a \$300 deductible in § 3109(3) implies legislative approval of a \$300 limitation of liability in a § 3109a coordination of

Continued on next page

## Penalties...

Continued from page 3

benefits clause..." is "totally unpersuasive."<sup>6</sup> The Court's holding implied that, when an insured is attempting to coordinate benefits between a no-fault policy and another policy (such as health insurance), there is no cap on the deductible. Accordingly, even if the fee is deemed a "deductible," as opposed to a penalty, it would still not be capped under the Michigan Insurance Code.

### Avoiding the "Failure to Maintain Coordinated Coverage" Penalty

Many insureds who elect to coordinate policies unknowingly expose themselves to the penalty for failure to maintain coordinated coverage. This is especially true when insureds choose to coordinate a no-fault policy with health insurance. Since many people obtain health insurance through their employers, when a person loses his/her job, he/she also loses his/her health insurance. Thus, often when insureds with coordinated no-fault policies lose their jobs, they will be left exposed to the penalty.

So how does an insured combat this penalty? While an estoppel argument may exist—insurance agents have

a duty to advise about the consequences of coordinating policies—it will be hard to argue outside the four corners of the insurance contract. The better solution is prevention. Insurance agents should clearly warn insureds of the consequences of not maintaining underlying insurance when coordinating policies. Further, the agents should educate the insured on their duty to report the cancellation of underlying coverage. Finally, an insured should avoid coordinating policies if the insured is unsure about the permanence of his/her underlying coverage. Taking affirmative steps to maintain underlying coverage and reporting lapses in coverage to the no-fault carrier may bolster future estoppel arguments.

### Conclusion

Although many will argue that a fee enforced during the payment of insurance proceeds is nothing more than a deductible, this is not the case. A deductible is a mechanism used to shift risk, whereas a penalty is a mechanism used to deter nonperformance on a contract. The difference is of vital importance to carriers



## Leading Tech Forensic

YOUR LEADING SOURCE FOR TECHNICAL FORENSIC EXPERTS

### Experts Qualified In:

- Vehicles & Crash Reconstruction
- Industrial & Manufacturing
- Environmental & Occupational
- Human Factors & Warnings
- Premises Liability
- Architecture & Construction
- Elevators & Escalators
- Biomechanical Medical & Nursing
- Product Liability
- Electrical & Controls
- Police, Criminal, & Security
- Accounting/Computers/Intellectual Property
- Fires & Explosions
- Sports & Recreation

**CONTACT US FOR A FREE CONSULTATION**  
419.452.6992 • 419.452.6993 fax • LTF@LTFexperts.com

# www.LTFexperts.com

charging penalties during the payment of proceeds.

This distinction is especially important to no-fault carriers that penalize insureds who elect to coordinate coverage, but do not have the requisite underlying coverage. A carrier must be able to enforce these penalties as a way to ensure that they do not get stuck with exorbitant bills that should have been covered by another carrier, causing an unfair loophole in their no-fault policies. It is the insured's duty, and in the best interest of the insured, to be aware of the penalties and report any lapses in underlying coverage.



Pratheep Sevanthinathan  
Associate Attorney  
Zausmer, Kaufman, August,  
Caldwell & Tayler, P.C.  
31700 Middlebelt Road,  
Suite 150  
Farmington Hills, MI 48334  
P: (248) 851-4111  
F: (248) 851-0100

#### About the Author

Pratheep Sevanthinathan joined Zausmer, Kaufman, August, Caldwell & Tayler, P.C. as an associate in 2007. Prior to joining the firm, Mr. Sevanthinathan clerked at Potesivo & Associates (Rochester Hills), handling real estate litigation. Mr. Sevanthinathan was a Summer Associate at the corporate law firm Howard & Howard, P.C. (Bloomfield Hills/Detroit) in 2004, and clerked for the general practice firm Talpos & Arnold (Troy) in 2003.

In the summer of 2005, Mr. Sevanthinathan interned with Iraqi Special Tribunal, where he worked on issues involving the Saddam Hussein trial. For his work with the tribunal, Mr. Sevanthinathan was awarded a Cox Grant, interviewed by NPR, and published in an international law coursebook.

Mr. Sevanthinathan attended the University of Michigan for his undergraduate education, earning a BSE in chemical engineering in 2002. He obtained his Juris Doctor from Case Western Reserve School, where he was a member of Internet Law Journal. He has been published in three noted law journals on topics ranging from affirmative action to human cloning.

On his spare time, Mr. Sevanthinathan tutors for Kaplan Test Prep (LSAT) and coaches youth soccer. Mr. Sevanthinathan is fluent in the South Indian language Tamil.

#### Endnotes

- 1 MCL 500.3109(3).
- 2 Insurance Information Institute, *Glossary* (<http://www.iii.org/media/glossary/alfa.D/>)
- 3 MERRIAM-WEBSTER'S DICTIONARY OF LAW (2001)
- 4 MCL 500.3109a.
- 5 165 Mich.App. 269 (1987).
- 6 *Id.*

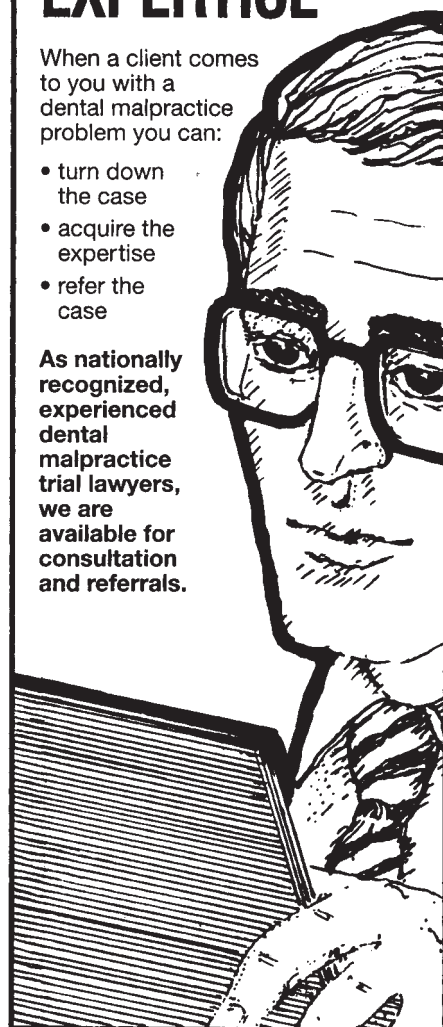
Make sure to invite the facilitators you use in your next case to join the Negligence Law Section. Section dues are only \$35.

## DENTAL MALPRACTICE CASES CALL FOR SPECIAL EXPERTISE

When a client comes to you with a dental malpractice problem you can:

- turn down the case
- acquire the expertise
- refer the case

**As nationally recognized, experienced dental malpractice trial lawyers, we are available for consultation and referrals.**



**ROBERT GITTLEMAN  
LAW FIRM, PC**

**TRIAL LAWYERS**

31731 Northwestern Highway, Suite 101E  
Farmington Hills, Michigan 48334

(248) 737-3600

FAX (248) 737-0084

# Medicaid Contracted Health Plans

By Stephanie Arndt



Medicaid liens are no longer limited to those asserted by the Department of Revenue and Reimbursement. In addition to any lien asserted by the State, practitioners must be cognizant of Medicaid Contracted Health Plans (hereafter “MCHP”). A Medicaid Contracted Health Plan is a managed care organization with whom the State Department contracts to provide or arrange for the delivery of comprehensive health care services authorized by the act. *See* MCL 400.106(2).

The statute governing Medicaid’s right to reimbursement is MCL 400.106. This statute pertains to benefits paid directly by the State *and* benefits paid by a MCHP. The statute subrogates to the MCHP the right of recovery for the costs of hospitalizations, pharmaceutical services, physician services, nursing services, and other medical services that are provided to the injured person.

Currently, there are 14 MCHP’s. These plans are listed at [www.mich.gov/mdch](http://www.mich.gov/mdch). Included in this list are plans such as BlueCaid, Great Lakes Health Plan, Health Plan of Michigan, Midwest Health Plan, and Total Health Plan of Michigan.

Benefits paid by a MCHP are separate and distinct from benefits paid by the State. The initial notification should still be sent to the State at: Revenue & Reimbursement, P.O. Box 30479, Lansing, MI 48909. The letter should provide the plaintiff’s name, Social Security/Medicaid number, type of incident, date of injury, and the injuries sustained. Additionally, it is strongly urged that a HIPAA-compliant authorization also be submitted with the letter. This authorization allows the State to release a detailed itemization of the lien.

The lien letter from the State will generally provide a list of MCHP’s that your client participated with. Do not be surprised if there are multiple MCHPs. **A separate notification letter and HIPAA authorization must be sent to each MCHP.** MCHP’s oftentimes

pursue reimbursement through subrogation firms such as First Recovery Group or Healthcare Recoveries.

Once you have obtained the lien amounts from the MCHP’s, the next step is to carefully scrutinize the liens. First and foremost, review the itemizations to determine if the charges are related to the litigation. If they are not, contact the MCHP to dispute those claims. If necessary, you should support your dispute with copies of the medical records, a letter from the physician, and/or a transcript.

After you have reduced the liens to litigation-related charges, the next step is to determine if any further reduction should be pursued. Start with the State’s lien. MCL 400.106(5) provides the State with first priority over the MCHP’s: “the State Department has first priority against the proceeds of the net recovery from the settlement or judgment . . . .” Should the State offer a reduction, make sure that the MCHP is aware of that reduction. Also, if the State’s lien exceeds 50 percent of the net settlement, that should also be communicated to the MCHP’s.

Above all, it is critical that all applicable MCHP’s are notified of their potential right to reimbursement. As discussed in MCL 400.106(4), there are potentially costly sanctions for failing to notify a MCHP.

## About the Author

Stephanie Arndt is an associate at Olsman Mueller, P.C. Her practice focuses in the areas of medical malpractice, nursing home litigation, and appeals.

Stephanie L. Arndt  
Olsman Mueller, P.C.  
2684 W. Eleven Mile Road  
Berkley, MI 48072  
E: [sarndt@olsmanlaw.com](mailto:sarndt@olsmanlaw.com)  
P: (248) 591-2300  
F: (248) 591-2304

## Do Your Clients Know of Fraud Against Federal or State Governments??

Unnecessary Surgery or Substandard Care?  
Medicare-Medicaid Billing or HMO Violations?  
Drug Pricing, Sales, Packaging Cheating?  
Durable Medical Equipment Misrepresentations or Sales Violations?  
Highway and Defense Contacting Errors?  
Scientific and Educational Grant Fraud?  
Other Contractor Malfeasance?

The Federal False Claims Act and *Qui Tam* Litigation Provide Substantial Rewards.

-----  
MILLIONS RECOVERED · NATIONWIDE PRACTICE REFERRALS PAID  
-----

DAVID L. HARON



FRANK, HARON, WEINER AND NAVARRO, P.L.C.  
5435 Corporate Drive · Suite 225 · Troy, Michigan 48098 · 248-052-0400



## Group health insurance costs causing you pain?

Then we need to talk. We'll sit down and show you how and where you can keep more of what you earn and enhance your service at the same time. USB provides employee benefits to law firms. We sell and service the State Bar of Michigan endorsed health care programs through Blue Cross and Blue Shield of Michigan. Call us today at **248-524-1550**.

**U**nited  
**S**tructured  
**B**enefits LLC

Your Connection to Personalized Service



# Spring Meeting in Las Vegas



**WHITE-HOUSE**  
FINANCIAL & SETTLEMENT CONSULTING, LLC

CERTIFIED STRUCTURED SETTLEMENT CONSULTANT  
CERTIFIED FINANCIAL PLANNER™  
888.869.4837  
cyril@whitehousellc.com  
www.whitehousellc.com  
114 North Main Street, Suite 9, Chelsea, Michigan 48118

**THE RECORDS**  
NEVER FORGETS

**RECORDS DEPOSITION SERVICE**  
INCORPORATED



**BIENENSTOCK**  
COURT REPORTING & VIDEO  
NATIONWIDE

**LTF**  
Leading Tech  
Forensic

Leading Tech Forensic, Bob Yano



**LAWSUIT FINANCIAL CORP.**

*"we make the impossible possible"*





*When Getting It There Becomes The Priority!*

## **EXPRESS LEGAL SERVICES**

- Legal Filings
- Professionally Dressed Couriers
- Guaranteed On Time Delivery
- Extensive Experience with Courts Throughout Michigan
- Online Ordering & Tracking Available
- Document Retrieval
- Insured & Bonded
- Proof of Delivery Available

**ANN ARBOR 734-595-7700**  
**DETROIT 734-641-1600**  
**FLINT 810-391-5000**  
**GRAND RAPIDS 616-464-0374**

**1-800-DELIVER**  
**[www.reliabledelivery.com](http://www.reliabledelivery.com)**

Advertise in the  
*Negligence Law Section Quarterly*

Four times per year, the Michigan *Negligence Law Section Quarterly* reaches:

- Over 2,000 negligence members directly
- Various courts and law libraries

Your ad for services of products targets people you want and need to reach most.

**Cost of ad per issue:**

\$450 -back cover ♦ \$350 -full page  
\$200 -half page ♦ \$175 -quarter page

**For details, contact:**

Madelyne C. Lawry, Negligence Law Section,  
PO Box 66, Grand Ledge MI 48837  
P: (517) 712-4389 F: (517) 627-3950  
E-mail: [neglawsection@comcast.net](mailto:neglawsection@comcast.net)

ERISA Long-Term Disability Referrals

Established success representing claimants in this unique area of law—both at the administrative and federal court levels

***WE KNOW HOW TO PREPARE AND SUCCEED IN THIS SPECIALIZED PRACTICE AREA***

Hertz Schram PC  
1760 S. Telegraph Road, Suite 300  
Bloomfield Hills, MI 48302-0183  
Telephone: (248) 335-5000  
Fax: (248) 335-3346

Steve J. Weiss, [sweiss@hertzschram.com](mailto:sweiss@hertzschram.com)  
Derek D. McLeod, [dmcleod@hertzschram.com](mailto:dmcleod@hertzschram.com)

**Negligence Law Section  
Northern Michigan Council Events  
Traverse City, MI  
Monday, July 21, 2008**

*Park Place  
Hotel*



**Monday, July 21, 2008**

**Golf**

Tee Times Start at 9:00 a.m.

**Arcadia Bluffs  
Golf Club**

14710 Northwood Hwy  
Arcadia, MI 49613  
231-889-3001  
[ArcadiaBluffs.com](http://ArcadiaBluffs.com)

**Reception**

6:00 p.m. - 7:30 p.m.

**Park Place Hotel**

Top of The Park  
300 East State Street  
Traverse City, MI 49684  
231-946-5196  
[Park-Place-Hotel.com](http://Park-Place-Hotel.com)



**Arcadia Bluffs - Hole 13**

Council members will be present to meet with local members to update them on what the section does and answer any questions. The Legislative Consultant will also be present to update members on Legislative Issues that could affect the Negligence Law Practice.

**Golf 9:00 a.m. Arcadia Bluffs Golf Club:** All golfers must provide a valid credit card to use in the event of a late cancellation or no-show. All credit card numbers will be secured and only used if the golfer does not cancel prior to July 7, 2008 or does not show up on July 21, 2008.

**Reception - Casual Attire - 6:00 - 7:30 p.m. Park Place Hotel:** Supreme Court Justices, Court of Appeals Judges, and many other local judges have confirmed. We will also honor bar leaders: Ronald Keefe (State Bar of Michigan), Judith Susskind (MAJ), and Robert Schaffer (MDTC).

Please RSVP to [neglawsection@comcast.net](mailto:neglawsection@comcast.net) to confirm your attendance. Please do so well in advance so we may ensure there will be sufficient space available. Or use the Registration Form at <http://sharedresources.us/documents/pdf/neglawnmc.pdf>.

---

# Legislative Update

By Todd N. Tennis

The Legislative climate in Lansing is still gloomy, but it is nonetheless a marked improvement over last year at this time when the shadow of the budget crisis cast a pall over the entire state. This year's budget picture is much less dire, and the Legislature is already beginning to look toward November when House members go back before the electorate (Michigan Senators are not up again until 2010).

Some members of said electorate are not content to wait. Numerous recall efforts sprang to life this year over the tax increases which were enacted last year. Ironically, these tax increases (or revenue enhancements if you voted for them) are the very reason the state is not facing a budget crunch for the first time since 2001. Nonetheless, angry citizens are making their voices heard by filing recalls against nearly a dozen legislators who voted in favor of tax increases.

Though a well-funded group of statewide organizers commenced the recalls earlier this year (you would recognize the group – they travel with a giant pig on wheels), they have already given up in all but one effort. Apparently the general public is not as angry about the tax votes as the recall organizers had hoped, so they have focused all of their efforts on one big target: Speaker of the House Andy Dillon.

Rumor has it that petition gatherers are being paid a whopping sum of \$10 per signature, which either shows that the pro-recall forces have deep pockets, are desperate, or both. Meanwhile, Dillon supporters are also hitting the streets to shadow the petition gatherers. Depending on your point of view, these individuals comprise “truth squads” or “goon squads,” and though police have been called frequently, so far the close proximity of opposing forces have not led to any serious altercations.

Even though the general public may be finding acceptance over the income tax increase, Michigan businesses are beginning to realize exactly what the replacement of the Single Business Tax means for them. Professional firms (like attorneys) seem to be hard hit, and the Michigan Chamber of Commerce has been seeking further tax cuts almost from the moment the ink dried on the new Michigan Business Tax. Unfortunately for businesses paying more under the MBT than they did under the SBT, it

is unlikely that the Legislature will wade into these waters again anytime soon.

As for legislation relating to negligence issues, the House and Senate are on two very different pages. As most Negligence Section members are aware, the House passed legislation last year to repeal immunity for pharmaceutical companies (HB 4044), address no-fault auto issues stemming from the *Kreiner* decision (HB 4301), and is currently working on proposals to amend affidavit of merit requirements for medical malpractice cases.

On the flip side, the Senate's work on tort issues has not extended far beyond legislation to create an affidavit of merit requirement for malpractice cases relating to architects and engineers (SB 106); clarifying the statute of limitations for personal injury cases against architects, engineers and contractors (SB 865); and limiting liability for certain defendants of asbestos claims (SB 591). Suffice it to say, the House and Senate are expressing very different philosophies when it comes to negligence law.

There is still hope that the two chambers will be able to come together and reach compromise on some of these issues. However, the days of this legislative session are dwindling fast, and before we know it the election and a new Legislature will be upon us.

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 with his wife, Cheryl, and son, Troy.



Todd N. Tennis  
Capitol Services Inc.

526 Townsend Lansing, MI 48933  
P: (517) 372-0860 F: (517) 372- 0723  
E: ttennis@capitolservices.org

# SAPONARO, INC.

*Thousands of Experts One Call Away*

## **Personal Injury**

Automotive  
Construction  
Engineering

## **Product Liability**

Product Failure  
Medical Devices  
Design

## **Medical Malpractice**

Medical  
Nursing Home  
Hospital/Nursing

**800-327-3026**

**[www.SaponaroInc.com](http://www.SaponaroInc.com)**

**SBM**

STATE BAR OF MICHIGAN

MICHAEL FRANCK BUILDING  
306 TOWNSEND STREET  
LANSING, MI 48933-2012

[www.michbar.org](http://www.michbar.org)

NON-PROFIT  
U.S. POSTAGE PAID  
LANSING, MI  
PERMIT NO. 191

## **Table of Contents**

From the Chair.....	1
Penalties for Failure to Maintain Coordinated Coverage.....	2
Medicaid Contracted Health Plans.....	6
Spring Meeting in Las Vegas.....	8
July Section Event.....	10
Legislative Update.....	11