

May/June 2009

BARBEAT

Genesee County Bar Association



Michigan Columbine
Photo by LindaLee Massoud

Hearsay's Backdoor—Object!

How to Avoid a Ponzi Scheme

Liability for Lightning-induced
Fires

Civic Illiteracy: Help is
on the Way

Law Day 2009



Student Juror Orientation



Law Day Luncheon



Mock Trial Competition



2008-2009 Board of Directors

PRESIDENT – David S. Leyton
VICE PRESIDENT – Timothy H. Knecht
TREASURER – B.D. “Chris” Christenson
SECRETARY – Karen L. Folks
IMMEDIATE PAST PRESIDENT – Kurtis L.V. Brown

Specialty Bar Board Members

Young Lawyers Delegate – R. Paul Vance
Mallory, VanDyne, Scott Bar – Jade J. Edwards
Women Lawyers Delegate – Hon. M. Cathy Dowd
Flint Trial Lawyers Representative – Michael P. Parillo

Board Members

Peter M. Bade '09	Erwin F. Meiers III '09
Lynne A. Taft '09	Anthony P. Vance '09
Shayla Blankenship '10	Orene Bryant '10
Ridley S. Nimmo II '10	Jermy R.M. Piper '10
Jeffrey J. Himelhock '11	Dennis R. Lazar '11
Steven W. Moulton '11	James J. Wascha '11

Bar Beat Editor

LindaLee Massoud
BarBeat@gcbalaw.org

Genesee County Bar Association

315 E. Court St., Flint, Michigan 48502-1611
(810) 232-6012
For editorial information, call (810) 232-6000.

Published bimonthly by the State Bar of Michigan,
306 Townsend St., Lansing, MI 48933, for the
Genesee County Bar Association. For advertising,
call (517) 346-6315.

No material in *Bar Beat* reflects the opinion or endorsement of the
Genesee County Bar Association, unless otherwise stated.

4 In Summation . . .	by David S. Leyton
5 Hearsay's Backdoor—Object!	by Kevin L. Rush
8 How to Avoid a Ponzi Scheme	by Lori A. Tesch
9 Liability for Lightning-induced Fires	by Craig L. McAra
10 Civic Illiteracy: Help is on the Way	by Roberta J.F. Wray

Advertisers

Dan Bigsby
Burton Office Building for Sale 3

Nan Ruth Chardoul
Personal Property Appraisals 4

Plante and Moran
CPAs/Business Advisors 5

Glenn M. Simmington
Cline, Cline & Griffin 6

Paul Goebel Group
Insurance 7

Yeo & Yeo
Accountants and Business Consultants 8

Stephens Wealth Management Group
Investment Consultants back cover

Burton Office Building for Sale



\$179,000

4085 Lapeer Rd. Burton, MI 48509

Contact: Dan Bigsby

Ph: (810) 742-3100 or (810) 797-4658

- Frontage on two public roads
- 15-car parking lot
- Possible expansion into large garage
- Low property taxes (approx. \$4,500 yr.)
- Two fireplaces
- Zoned R-O (for office use)
- ¼ mile from I-69/Center Rd interchange
- 200 ft. x 400 ft. lot
- 1800 sq. ft. plus finished basement
- Very low maintenance
- Heavily insulated—low utilities
- Elegant interior
- Black walnut, mahogany, cherry, and oak walls
- Beveled glass doors

In Summation . . .

By David S. Leyton, President

As I conclude my term as Genesee County Bar Association president, let me begin by thanking you for the privilege of serving in the office. It is truly an honor to be chosen by my professional peers to lead this historic organization, and it has been one of the honors of my life to be selected. My thanks to the Board of Directors and the Executive Committee—Vice President Tim Knecht, Treasurer Chris Christenson, Secretary Karen Folks, and Past President Kurt Brown. Their guidance has instilled me with confidence in our decision making as we maneuver through difficult economic times. Our bar association is strong and thriving and will continue to be a shining example for other bar associations across Michigan and the

United States. Also, special thanks to Don Rockwell for originally nominating me to the Board of Directors.

I want to remind you how fortunate we are to be lawyers. It is a very high calling and a most honorable profession. I love being a lawyer, being associated with lawyers, and doing the vast and various work that furthers our country's well-being.

No bar association boasts a staff like we do in Genesee County. Ramona Sain is without peer as a hands-on executive director, ably assisted by Tina Burroughs and Star Estep. Our budget is in the black, our membership roster is steady, and this year's Law Day activities were the best ever. We certainly packed the Masonic Temple for the annual luncheon—we were so full, we had to place tables on the stage! That's a successful event.

In this, my final message as your bar president, I want to remind you how fortunate we are to be lawyers. It is a very high calling and a most honorable profession. I love being a lawyer, being associated with lawyers, and doing the vast and various work that furthers our country's well-being. We are living the legacy of Adams, Jefferson, Lincoln, Darrow, Robert Kennedy, O'Rourke, Milliken, and Weiss. We are also living the lives of those lawyers played over the years on the big screen by Jimmy Stewart, Tom Cruise, Denzell Washington, and Paul Newman. Newman, playing troubled Boston lawyer Frank Galvin in *The Verdict*, offered one of the finest

summations I ever heard. It remains meaningful to me today:

"You know, so much of the time we're lost. We say 'Please God, tell us what is right. Tell us what's true. There is no justice. The rich win, the poor are powerless.' We become tired of hearing people lie. After a time, we become dead. A little dead. We start thinking of ourselves as victims. And we become weak...and doubt ourselves, and doubt our institutions...and doubt our beliefs...we say, for example, 'The law is a sham...there is no law...I was a fool for having believed there was.' But today you are the law. You are the law. Not some book and not the lawyers or the marble statues and the trappings of the court...all that they are is symbols of our desire to be just. All that they are, in effect, is a prayer...a fervent and a frightened prayer. In my religion we say, 'Act as if you had faith, and faith will be given to you.' If we would have faith in justice, we must only believe in ourselves. And act with justice. And I believe that there is justice in our hearts."

Galvin was speaking to a jury in a medical malpractice case. But the lessons taught by his final argument cut across a much wider landscape. We live in a free and just society and we must continue to believe in and fight for our institutions even when times are tough. And what is our most important institution? The law. Everything we stand for was created by law—the Magna Carta, the Declaration of Independence, the Constitution, and the Bill of Rights. We as lawyers are the keepers of the flame. Godspeed.



David S. Leyton

Personal Property Appraisals of Grand Blanc

Professional Appraisals and Reports
Probate
Family Division
Insurance
Donation

Reports Critiqued, Methodolgy
Condition Reports written
Brokerage Services supplied
Estates Liquidated

Nan Ruth Chardoul
810-694-7153

International Society of Appraisers
American Society of Equine
Appraisers
Reports Written to Appraisal
Foundations Standards

Hearsay's Backdoor—Object!

By Kevin L. Rush

The scenario is all too common: during testimony of a criminal witness, there is an objection to testimony being hearsay. Usually this comes in the form of a police officer relaying information from another source who is not testifying (and whom the prosecution has no intent of calling). The objection to any further testimony is that this is an out-of-court statement and the defense has no ability to cross-examine the veracity of that witness. It seems quite simple and straightforward. However, the prosecution counters and before you know it, the officer is allowed to testify as to the out-of-court statements, and you are left wondering what just happened.

This sometimes occurs in civil litigation, but the most common situation in which this comes up is the criminal matter. Usually, it is in the context of a police officer testifying as to the information the officer received which led the officer to do a certain thing; most frequently this would be arresting your client or executing a search warrant.

Typically, it comes about like this: officers receive information from an "anonymous tip," an undisclosed informant who has no problem helping the officer in exchange for "working off" a situation (e.g., the informant has been arrested or caught doing something illegal, like selling drugs). That person may set up a buddy or acquaintance with a drug deal so the buddy can get arrested, thereby working off his own situation based on the officer's agreement to "forget about" whatever it was the informant was caught doing. The informant, however, has no intention of testifying against the buddy. In reality, the informant does not want

the buddy or acquaintance to know who set him up.

The police send the informant to his buddy's place with marked money after searching him, the informant buys drugs, returns to the police (generally stationed down the street), and lo and behold, the informant has drugs. The police run to the local 24-hour, on-duty judge, inform the judge via affidavit that this informant has purchased drugs at this location, and "if allowed to get inside this location, your honor, we anticipate that we will find our marked money, more drugs, probably guns, scales, tabulations, and all those fun things that drug dealers have with them."

The officers get the warrant, search the home, arrest many people, and formally charge your client with possessing drugs with the intent to sell and usually with having weapons. Forfeiture proceedings will then take place to take all the money found and items (such as cars, motorcycles, etc.)

"traced" to the use, sale, or transportation of illegal drugs.

A problem is that, depending on who was at the home at the time the warrant was executed, "Mr. Big" might not be there. Maybe just a child is there. How does this information get in front of a judge or jury as to *how* this whole thing started and why your client is *the one*?

Typically, the prosecution asks the officer while testifying under oath, "Why this place? Why go here?" The officer then wants to testify about what the informant has told them. However, where the drugs were purchased and who sold them is hearsay. Still, the prosecution wants it in without giving up the informant. This is the catch-all drawer of hearsay exceptions: the information coming from the officer as to *how* or *why* this client has been targeted is not being offered for the



Kevin L. Rush

Continued on next page

**18 OFFICES. 1600 STAFF.
A LONG HISTORY OF
HELPING GENESEE COUNTY
ATTORNEYS & THEIR
CLIENTS THRIVE.**

85 YEARS

- Business Valuation
- Insurance Claim Assessment
- Forensic Accounting
- Marital Dissolution Services
- Commercial Litigation Damages
- Internal Control Assessment

Rob Selley 810.766.6004
plantemoran.com



CPAs / Business Advisors

THRIVE.

truth of the matter asserted, but rather to explain to the judge or jury *why* the officer did what he did (i.e., go to the location, execute the warrant, and find drugs). And usually, if the premise is not for the purpose of explaining what the informant said but rather *why* the officer took the action he did, it comes in as testimony—damning to your client, and you don't have the ability to cross-examine the informant. Now the jury or judge has heard about a drug purchase at this location, the general description of the person who sold it (which is remarkably like your client), and everything else found. This has been going on for years.

The February newsletter from the State Appellate Defender's Office addresses this concern. In a piece by Jeffrey L. Fisher, an associate professor of law at Stanford University Law School, and another piece by Ann Arbor's John Minock, the continued reverberations from the 2004 decision in *Crawford v Washington*, 541 US 36, are examined. The United States Supreme Court held in *Crawford* that a declarant's out-of-court testimonial statement could not be introduced against a criminal defendant unless the declarant is unavailable and was subjected to cross-examination. The issue in *Crawford* essentially was the definition of testimonial evidence and

confrontational situations when out-of-court statements are admissible. *Crawford* seemed to clearly define the hearsay rule, but it arguably left open a way out. Relying on the 1985 decision in *Tennessee v Street*, 471 US 409 (1985), the opinion in *Crawford* seemed to indicate that if the information was not being used for the truth of the matter asserted, then it was not barred.

"Officer, tell us everything you've heard."

This backdoor approach, as Fisher puts it, has taken on a kind of urban legend proportion, with the hearsay exception being accepted by most courts as well-established law. The problem is that it is *neither* well-established nor accepted. Fisher breaks down the dicta-like statement in *Crawford* in so far as it relies on *Street* for its reasoning. The *Street* case involved the use of a co-defendant's statement in trial against a defendant. Although still good law, it was a narrow use of an out-of-court statement, essentially being used to respond to the defendant's in-trial assertion that the co-defendant's statement was a copy of the defendant's statement, which the defendant claimed was coerced. It was, for all purposes, rebuttal testimony. However, because this out-of-court statement was being used to rebut the defendant's assertion that the co-defendant's confession was coerced or false, it was not being used

for the "truth of the matter asserted" despite the fact the co-defendant's statement directly implicated the defendant. Indeed, it should be pointed out that *Street* treated the out-of-court statement as a rebuttal of the defendant's statement, a shield instead of a sword. Since that time, prosecutors have seized on this exception and have used it offensively as a "sword."

Attorney Neil Szabo, who has been doing appellate work for more than 20 years, cautions the practitioner about failing to object to these hearsay situations.

"If there is an appeal on this issue, the Court of Appeals is either going to call this ineffective assistance of counsel or harmless error," said Szabo, an excellent trial attorney who credits doing appeal work for keeping him abreast of evidence issues. "Neither of these arguments is going to likely prevail in the Court of Appeals."

Szabo said that the best situation is to at least object to the use of the hearsay to preserve it for the record so the matter can be addressed later, if necessary.

Minock also offers advice on this issue, stating that even if it is allowed, the attorney should make the argument that there is no need for the officer to give any more of an explanation other than "based on information." That way there is an explanation but not a revealing one, according to Minock. As he points out from *US v Silva*, 380 F3d 1018, 1020 (CA7, 2004), the Supreme Court "summarized the flaw" in the arguments to admit such evidence:

"Under the prosecution's theory, every time a person says to the police 'X committed the crime,' the statement (including all corroborative details) would be admissible to show why the police investigated X. That would eviscerate the constitutional right to confront and cross-examine one's accusers."

And that's the "truth."

GLENN M. SIMMINGTON

Attorney at Law

Concentrating in Appellate Work, Civil and Criminal

With professional experience before the Michigan Supreme Court and Michigan Court of Appeals. Years of private successful appellate work, both as appellant and appellee. Member of the State Bar of Michigan Appellate Law Section, 1998 to present and Criminal Law Section, 1983 to present.

Contact Glenn M. Simmington at



810-232-3141 or 800-837-1973

When you think of
Insurance
think of us.



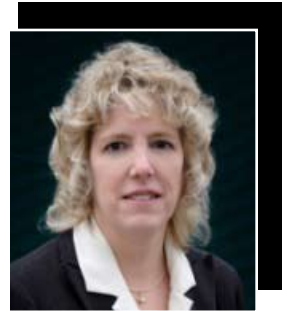
Life • Disability • Health

Professional Liability • Auto/Home • Business

161 Ottawa NW Suite 511-F Phone (616) 454-8257 www.paulgoebelgroup.com
Grand Rapids, Michigan 49503 Toll Free (800) 632-4591

How to Avoid a Ponzi Scheme

By Lori A. Tesch, CPA, CFE, CFF, FCPA



Lori A. Tesch

During the 64-day period from January 8 to March 12, the Commodity Futures Trading Commission charged 11 people with running Ponzi schemes to the tune of \$212 million. Although these pale compared to Bernard Madoff's \$50 billion scam, it is a sad reality that average investors fall prey to this type of scheme in staggering numbers, often resulting in the loss of their life savings. The headlines prove that it can happen to anyone regardless of economic status. The good news is there are steps that can be taken to minimize the risks. First, learn what a Ponzi scheme is and look for red flags that are consistent with every Ponzi scheme.

Ponzi Scheme?

A **Ponzi scheme** is a fraudulent investment operation that pays returns to investors from their own money or money paid by subsequent investors rather than from any actual profit earned. The term "Ponzi scheme" is

used primarily in the United States, while other English-speaking countries do not distinguish colloquially between this scheme and pyramid schemes. Participants are told they are investing in financial instruments they don't really understand such as mortgage-backed securities or financial investments. Rarely, however, does any commercial investing activity actually take place. Typically, a few of the beginning investors are paid "returns on their investments," which are actually funds from new investors, not money made from investments. If a Ponzi operator can continually draw in new investors and keep a few older investors happy with occasional small payouts, a scheme can be perpetuated for years.

Am I Susceptible to a Ponzi Scheme?

In 2006, the Financial Industry Regulatory Authority (FINRA) Investor Education Foundation issued an Investor Fraud Study Final Report that was designed to determine why older

Americans tend to be more regularly victimized by fraud schemes. They also attempted to develop a victim profile. Some surprising conclusions were drawn from the survey. Investment victims typically are:

- older men,
- married,
- college educated,
- more affluent (level of income greater than \$30,000),
- more financially literate,
- more likely to have experienced negative life events (e.g., serious illness, limited physical abilities),
- more likely to rely on their own experience and knowledge when making investment decisions,
- more likely to listen to sales pitches,
- optimistic about the future, and
- unwilling to report fraud or admit to being scammed.

If you know someone fitting this profile—yourself, a relative, or a friend—pay close attention to the red flags and suggestions offered below.

Red Flags

A number of red flags are associated with all Ponzi schemes:

1. Is the rate of return being offered better than what is being offered in the marketplace?
2. Is the investment performance guaranteed?
3. Does the investment record look too steady over the long term?
4. Is the promoter particularly aggressive in wanting you to

Solid estate planning for your client

Alan Rohde,
CPA, PFS
Managing Principal
Flint Office



Rebecca Millsap, CPA
Senior Manager
Flint Office



Yeo & Yeo's experienced tax and estate planning specialists have the training and credibility to be the **best advocates for your clients.**

- Federal Estate Tax
- Planning Strategies
- Gifting
- Trusts
- Insurance Coverage
- Business Valuation

— Flint Office —

4468 Oak Bridge Drive

1-800-899-4742

www.yeoandyeo.com



- invest (i.e., there are only a few opportunities left)?
5. If you ask questions or request detailed information in writing, is the promoter reluctant or unable to comply?
 6. Are you encouraged to continually reinvest instead of taking a payout?
 7. Does the promoter want complete control over your money, and does he ask for checks to be made out to him or a company he controls?
 8. Is there any information on the Internet regarding the investment company or the promoter?
 9. Does the investment company have a legitimate website with investor credentials and licensing information?
 10. Are the invested funds held separately at a firm regulated by FINRA and backed by the Securities Investor Protection Corporation?

11. Can you get your statements directly from the broker and not the promoter?

If you answer "yes" to any of the first seven questions or "no" to the last four questions, then you should be concerned that the investment opportunity may be a Ponzi scheme.

Listen to Your Mother (and Get a Little Help from FINRA)

FINRA (www.finra.org) is the largest independent regulator for all securities firms doing business in the U.S. Its role is to protect investors by maintaining the fairness of the capital markets.

In February 2009, FINRA introduced two new, interactive tools on its website to help investors avoid fraudulent schemes. The tools are free.

- Scam Meter is a series of four questions that predict the likelihood that a potential investment is a scam.

- Risk Meter is a series of 12 questions to help investors determine if they are at risk of being scammed.

Another section explains how to check out an investment professional to make certain he is legitimate. If he is a broker, you can confirm his licensing and registration with FINRA's BrokerCheck, which will also list any history of complaints. The FINRA website also lists where to check on other types of investment professionals.

Before you turn over your life savings to someone you don't know, do some background work and remember two things my mother always told me: "Just because everyone else is doing it, doesn't make it a good idea" and, "If it sounds too good to be true, it probably is!"

Editor's Note: Lori A. Tesch leads the Fraud Services Division in Yeo & Yeo's Saginaw office. Yeo & Yeo is the Association's accountant.

Liability for Lightning-induced Fires

By Craig L. McAra

Corrugated stainless steel tubing (CSST) is the new breed of gas pipe. Unlike copper and black iron, CSST is flexible and thus easier to install. However, flexibility comes at a cost: the walls of CSST are much thinner than copper and black iron pipe. Therefore, CSST is more prone to certain kinds of damage, especially lightning. Lightning-induced CSST failure occurs when energy from a lightning strike discharges between CSST and a nearby metallic object. This discharge, or "arcing," leaves a pinhole in the CSST and ignites the escaping gas.

The CSST manufacturers have known about problems with CSST and lightning for a decade. This risk was not disclosed to consumers until 2007, when most of the CSST manufacturers

agreed to provide warnings as part of a class action settlement. See *Lovelis, et al v Titeflex, et al*, Circuit Court of Clark County, Arkansas (Case No. CIV-2004-211). Even so, few people are aware of CSST or the genre of product liability litigation it has produced.

Claims against a CSST manufacturer for a lightning-induced fire are properly based on defective design and failure to warn. See MCL 600.2945 et seq. A product is defective under the act if it is "not reasonably safe" for its intended purpose. See MCL 600.2946(2). A full analysis of defective design claims is, unfortunately, beyond the scope of this article. The remaining discussion will focus on failure to warn claims against manufacturers and potential claims against non-manufacturing sellers.

Failure to warn is the most effective grounds for

claims against CSST manufacturers. "In order to establish a prima facie case of negligent failure to warn of a known danger, the plaintiff in a products liability action must show that (1) the defendant owed the plaintiff a duty to warn of the danger; (2) the defendant breached that duty; (3) the defendant's breach was the proximate and actual cause of the plaintiff's injury; and (4) the plaintiff suffered damages as a result." *Tasca v GTE Products Corp*, 175 Mich App 617, 622-24 (1988). A manufacturer or seller's actual or



Craig L. McAra

Continued on page 11

Civic Illiteracy: Help is on the Way

By Roberta J.F. Wray



Roberta J.F. Wray

“If a nation expects to be ignorant and free... it expects what never was and never will be.” —Thomas Jefferson

A few months ago, a friend sent an email with a civics quiz attached. I took the quiz. Afterwards, I was directed to this website (www.americancivilliteracy.org), for the answers, my score, my ranking among others who had taken the test, and a summary of test results from various demographics. More than 70 percent flunked!

It turns out this quiz is no joke. It is part of a continuing, nationwide study of the level of knowledge we have of our government, our economic system, our history, and our international relationships. The project is being conducted by researchers from the University of Connecticut's Department of Public Policy, under a commission by the Intercollegiate Studies Institute. I was shocked at the results published by the I. S. I., in 2006, 2007, and 2008.

The initial study, in 2006, covered 14,000 freshmen and seniors at 50 colleges and universities nationwide who were given a 60-question multiple-choice exam on basic knowledge of America's heritage. The results were a dramatic demonstration that our future leaders are not being taught what they need to know to preserve, protect, and defend our national heritage.

The study was followed up in 2007, with a similarly constituted study base, to make sure the initial results were not an anomaly. The original findings were confirmed.

The tests revealed that:

- Less than half of those tested can identify all three branches of government.
- Only 21 percent know that the phrase “government of the people, by the people, for the people” comes from Lincoln's Gettysburg Address.
- Only 53 percent know that the power to declare war belongs to Congress, and 55 percent know that Congress shares authority over U.S. foreign policy with the president.
- Only 27 percent know the Bill of Rights expressly prohibits establishing an official religion for the United States, and less than 20 percent know that the phrase “wall of separation” between church and state comes from a letter by Thomas Jefferson (www.americancivilliteracy.org).
- Forty-eight percent believe the founding documents are no longer relevant.

In 2008, the study was altered to determine the “real world consequences of this collegiate failure.” The new study included 33 questions, many of which came from tests given to graduating high school seniors and/or to new U. S. citizens.

This study included 2,508 American adults of all backgrounds, allowing comparisons between college and non-college educated citizens. Alarming, the average score over all demographics was 49 percent. Even more alarming is the fact that people who said they have held elected office scored lower than ordinary citizens, with an average score of 44 percent.

- Seventy-one percent of those who have been elected to government office do not know the Bill of Rights expressly prohibits establishing an official religion for the U.S.
- Thirty percent do not know that “life, liberty, and the pursuit of happiness” are the inalienable rights referred to in the Declaration of

Independence.

- Twenty-seven percent cannot name even one right or freedom guaranteed by the First Amendment.
- Forty-three percent do not know what the Electoral College does.
- Fifty-four percent do not know the Constitution gives **Congress** the power to declare war. Thirty-nine percent think that power belongs to the president, and 10 percent think it belongs to the Joint Chiefs of Staff.

On average, even graduates of the most elite schools fared poorly on these tests (Americancivilliteracy.org [Our Fading Heritage, p.19]).

Another striking fact revealed by the original test, and confirmed in the follow-ups, is that people with college degrees scored 57 percent, (F), but that's only 14 points higher than those who ended their education with high school. The implication of these studies, according to the Intercollegiate Studies Institute Report, is that colleges and universities need to do a better job of teaching the core principles upon which our constitutional democracy is based, if it is to continue.

I remember learning all of the above in K-12, so I wondered, what have we been teaching in our schools? For 50 years we have heard in periodic news pieces that the U.S. has fallen behind the rest of the developed world in math and science. And for 50 years, the major testing of students' performance has emphasized math and science skills, apparently at the expense of civic literacy.

What was the catalyst for this shift in emphasis? I did not have an “aha(!)” moment. Someone said it, or wrote it,

and it just made sense.

Sputnik!

In the summer of 1958, the Soviet Union launched a little round piece of space junk into orbit. It “beep-beep-beeped” its way around the world several times a day, with its alarming implication that the Soviets now had the capability of launching a warhead that could reach any point on the globe, including here. The United States was no longer invulnerable. It was then that the emphasis of education began to shift to the hard sciences from the social sciences.

So here we are now with documentation that even some of our best-educated citizens don’t know what rights they have or how they came to have them. They don’t know how their economic system works or how it should work. They don’t know about separation of power, “checks and balances,” and a host of other things involved in our constitutional democracy. Barely 10 percent of the 2008 study managed a C or better. Less than 1 percent got an A.

I was shocked to learn that in Michigan only half a credit in civics was required for graduation. Jefferson and the founders would be shocked.

Jefferson’s dream school

The curriculum would “expound the principles and structure of government; the laws which regulate the intercourse of nations, those formed municipally for our own government; and a sound spirit of legislation, which banishing all arbitrary and unnecessary restraint on individual action, shall leave us free to do whatever does not violate the equal rights of another.” (www.americancivilliteracy.org)

Of course, Jefferson’s dream school aimed to train leaders. In 2006, the Michigan legislature passed new graduation requirements, amended in 2008, that include math and science, but also a total of three high school credits in U.S. History and Geography, World History and Geography, Civics, and Economics (MCL 380.1278a, and MCL 380.1278b). On October 1, 2007, the Michigan Department of Education announced unanimous approval of the new Social Studies content expectations for K-12, the first updates to the

expectations since 1996 (www.mi.gov/mde, press release).

The collaboration of six intermediate school districts, including Genesee ISD, and regional education service agencies resulted in the development of the Michigan Citizenship Collaborative Curriculum, called one of the most outstanding social studies curricula in the country (www.mi.gov/mde op cit). The new Michigan K-12 social studies curriculum aims to make sure that **all citizens** have a basic understanding of the foundation and development of our government and our roles in it.

The reaction from educators to this new curriculum has been overwhelmingly and enthusiastically favorable (www.micitizenshipcurriculum.org/whatpeoplesaying). If you take the time to visit this site, you can view the entire outline, study materials, and bibliography for every grade. If you have been distressed by the fact that people don’t know about the “presumption of innocence” or the “freedom of the press” or the “right to silence,” perhaps this curriculum will give you hope that “government of the people, by the people, for the people” is safe, after all.

Liability for Lightning . . . Continued from page 9

constructive knowledge of a non-obvious danger will give rise to a duty to warn under section 2948 of the Act. E.g., MCL 600.2948(2)-(3); *Glittenberg v Doughboy Recreational Ind* (On Rehearing), 441 Mich 379, 389-90 (1992). Michigan has abolished common law “failure to warn” standards under negligence theories. See *Greene v A.P. Products, Ltd*, 475 Mich 502, 509 (2006). The “statute, by looking to the reasonably prudent product user, or persons in the same or a similar position as the injured person, establishes an objective standard.” *Id*.

With respect to CSST, the manufacturers knew of its susceptibility to lightning as early as 1998 and became aware of bonding and lightning protections systems that mitigate this risk shortly thereafter. The manufacturers’ knowledge clearly gave rise to a duty to warn well before they agreed to provide warnings as part of a 2007 class action

settlement. A reasonably prudent CSST user cannot be expected to appreciate the danger lightning poses to CSST in the absence of such a warning. In fact, most consumers are not even aware of what the product is or that they have it in their home/business.

Few installers present consumers with a choice between CSST and the other available gas pipes. Even so, unless there was a bad installation, claims against sellers and installers of CSST are probably not viable in Michigan. “The clear and unambiguous language of MCL 600.2947 precludes an ordinary manufacturing defect claim against a non-manufacturing seller.” *Hastings Mut. Ins. ex rel. Lalonde v General Motors Corp*, unpublished opinion per curiam of the Court of Appeals, issued March 29, 2005 (Docket No. 252427); accord *Coleman v Maxwell Shoe Co, Inc* 475 F Supp 2d 685, 688 -690 (ED Mich 2007). Liability may rest against a non-manufacturing seller

only if the proximate cause of injury is failure to “exercise reasonable care... with respect to the product” or breach of an express warranty. See *id.*; MCL 600.2947(6)(a)-(b). It is also important to note that “§ 600.2947(6) indicates that the legislature did not intend for failure to exercise reasonable care and breach of implied warranty to be separate products liability claims.” *Coleman*, 475 F Supp 2d at 688-90.

Lightning-induced CSST fires will continue to burn down homes and businesses for years to come. Unfortunately, a grandmother and two children in Jefferson, S.D., were reported as the first deaths caused by a CSST fire last year. Responsibility for recovery for property or life lost in a CSST fire clearly lies with the manufacturers under Michigan’s product liability statute. Of course, if you would rather not lose your own life or property, check your basement for CSST!

Genesee County Bar Association
315 East Court Street
Flint, Michigan 48502-1611

RETURN SERVICE REQUESTED

PRSR STD
U.S. Postage
PAID
Flint, MI
Permit No. 125

Investing can be a challenge...

Finding a financial advisor who cares about you doesn't have to be.

STEPHENS WEALTH MGT GROUP

Investment Consultants

Guiding your Financial Success

5206 Gateway Centre, Ste 300
Flint, MI 48507
810-732-7411

www.stephenswealthmgtgroup.com

Comprehensive Financial Planning

- *fee based investment consulting*
 - *retirement solutions*
 - *insurance*
 - *estate planning*
 - *cash flow analysis*

Private Trust Services

Stephens Wealth Mgt Group offers securities and investment advisory services exclusively through Raymond James Financial Services, Member NASD/SIPC



**Sherri Stephens, President
Wealth Manager, RJFS**

Over **\$350 Million** under
management

Serving Businesses and Professionals
for over 30 years.

- Named in Barron's in 2006 & 2007 as one of the "***Top 100 Women Financial Advisors***"
- In 2005 Research Magazine named Sherri as one of the "***Top-Ranked Advisors in America***"
- Named as one of the "***150 Best Financial Advisors for Doctors***" in 2004, 2005 & 2006 by Medical Economics