

You Win Some, You Lose Some

**By Clifford H. Bloom
Law Weathers**

In general, the Michigan appellate courts have been relatively kind to lakefront property owners regarding riparian rights. However, on occasion, the Michigan courts issue opinions that are adverse to riparians, sometimes squarely grounded in the law, and other times, an opinion is an aberration.

In the recent unpublished decision by the Michigan Court of Appeals in *John Guidobono II Revocable Trust v Jones*, issued June 24, 2010 (Docket No. 290589), the riparian property owners both won and lost! The case involved a fairly standard lake access easement. The Court of Appeals held as a matter of law that the lake access easement did not grant riparian rights, and did not allow dockage, boat moorage, lounging, parking vehicles, and similar uses and activities. It cited *Dyball v Lennox*, 260 Mich App 698; 680 NW2d 522 (2003).

Unfortunately, the riparian property owners eventually lost the case. The Court of Appeals also held that certain backlot property owners had permanent rights to dockage, boat moorage, and similar activities at the easement at the lake based on both prescriptive easement and acquiescence principles. The backlot property owners (and their predecessors in title) had engaged in the uses at issue (dockage, permanent boat moorage, etc.) for well in excess of the 15-year statutory time requirement. Accordingly, while the Court of Appeals held that the original easement did not encompass rights to dockage, boat moorage, and similar otherwise riparian uses, it also found that the backlot property owners had permanently established those rights via prescriptive easement and acquiescence.

One of the lessons from this case is that riparian property owners whose lands are bound by or abut a lake access easement, road end, or other commonly-used lake access device should not “let sleeping dogs lie.” If the riparian property owners do nothing for a significant period of time, they will eventually lose the right to have a court order the backlot property owners to cease unlawful uses and activities.