

Cleveland Academy of Trial Attorneys

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CLEVELAND ACADEMY OF TRIAL ATTORNEYS JULY 1993 NEWSLETTER

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PRESIDENT'S COLUMN

I am happy to announce that we are co-sponsoring a "Race for Wishes" on Saturday, July 31, 1993 in the Hinckley Metroparks. It is a 10 kilometer run/walk for the benefit of the local chapter of the Make-A-Wish Foundation. The Make-A-Wish Foundation raises money to be used to provide "wishes" to seriously ill children. Often times, these children are from poor families who do not have the financial means to provide their children with a bright spot in their otherwise unfortunate lives. Make-A-Wish uses this money to provide such "gifts" as trips to Disneyworld or the opportunity to meet a famous celebrity. In order to help raise funds for this worthy cause, we are co-sponsoring this event with the Cuyahoga County Bar Association. CATA's name will appear on all promotional literature associated with the race, the Make-A-Wish Newsletter, and will be printed on T-Shirts given to all race participants. We will be one of six major sponsors. Thus, CATA's contribution not only benefits a very valuable charity, but also serves as public notice of our organization's commitment to this great organization. Read the attached about the specifics of this worthy event. Please put it on your calendar now, plan on attending, and bring your friends and family with you!

Our annual Golf Outing will be held on August 26, 1993 at Elyria Country Club at 41625 Oberlin Road in Elyria. Special thanks to Ben Barrett who arranged our use of the club, as well as to Dave Goldense who has once again assumed full responsibility for setting up the festivities. Dave promises we will have great weather and terrific prizes! Invite a judge and line up your foursomes now. Notice will be mailed shortly.

I would like to see our members increase their participation in the arbitration program in the Cuyahoga County Common Pleas Court. Please fill out the attached form and get involved. Encourage your partners and associates to join too. We must help our clients and each other, and this is a great way to do so!

We are again planning to sponsor a **"People's Law School"**. Are you interested in participating in it? Please call me at 781-1700 or fill out the attached form to let me know what level of contribution you would like to make.

Many of you forget to share your **verdicts and settlements** with us. Please fill out the attached form to let us know what **is** happening in your practice. *Also*, please let me know what ideas you each have for the upcoming year, **including** for the Bernard Friedman Institute. I'd like to see more member satisfaction with our organization, so let me know what areas we need improvement in!

Save the following dates now for for our upcoming **CLE Luncheon Programs: Thursday, September 23, 1993; Thursday, October 21, 1993 and Tuesday, November 30, 1993**. The luncheon programs will be held at the Ritz-Carlton at 12:00 p.m.

You will also find an **application for membership** in the Newsletter. Please encourage your partners, associates and friends to join us!

Have a great summer. **I** look forward to seeing you all on July 31, 1993 and August 26, 1993.

Very truly yours,

A handwritten signature in cursive script that reads "Laurie".

Laurie F. Starr

91 Develowment Co. v. City of Willoughby

Court: U.S. District Court

Settlement: March, 1993

Plaintiff's Counsel: Dennis R. Lansdowne and John A. Lancione

Defendant's Counsel: David J. Fagnilli

Insurance Company: Republic Insurance Co.

Type of Action: 42 USC Section 1983 action for deprivation of due process.

Partnership purchased land for commercial development and was repeatedly rebuffed by City and forced to file successive lawsuits establishing its right to develop the land commercially. Case settled after five days of trial.

Plaintiff's Expert: William Warzlow (Real Estate Development)

Defendant's Expert: Thomas Hilbert, Robert Kocinski, Donald Martin and George Smerigan.

Settlement: \$362,500.00

Schoenberger v. Kramer

Settlement: April, 1993

Plaintiff's Counsel: Peter H. Weinberger

Defendant's Counsel: Joseph Wantz

Insurance Company: State Farm

Type of Action: Auto.

Auto accident - left of center head on collision.

Damages: L-1 fracture, wrist fracture.

Plaintiff's Expert: Francis Boumphrey, M.D.

Defendant's Expert: Robert Zaas, M.D.

Settlement: \$200,000.00

Michael Manzo d/b/a/ The Leather Attic v. Grange Mutual Casualty Company

Court: Cuyahoga County Common Pleas

Settlement: April, 1993

Plaintiffs' Counsel: Robert P. Rutter

Defendant's Counsel: Michael Russo

Insurance Company: Grange Mutual

Type of Action: Lawsuit against the fire insurance company following first party fire loss.

Plaintiffs were insured by Grange Mutual Casualty Company, the store suffered a fire loss on April 16, 1990. Grange accused the

plaintiffs of intentionally setting the fire in order to collect the insurance proceeds, the policy limits of **\$100,000.00**. Plaintiffs denied the claim and obtained an expert opinion that the fire was caused by smoking debris discarded in a wastepaper basket.

Damages: Property damage to leather goods store.

Plaintiffs' Expert: Robert Taylor

Defendant's Expert: Wayne Groah

Settlement: **\$105,000.00**

Seth Riedel v. Medina County OB/GYN

Court: Medina County Common Pleas

Judgement: April 23, **1993**

Plaintiffs' Counsel: Charles Xampinski and Christopher Mellino

Defendants' Counsel: Michael Djordjevic

Type of Action: Medical Malpractice.

Plaintiff gave birth to her second child on January 2, **1991**. Despite Plaintiff's history of having a large baby and her request for a c-section, the defendant doctor used a vacuum extractor and the child became stuck. As a result, the brachial plexus nerves were completely ripped from the spinal cord causing permanent paralysis of the child's left shoulder, arm and hand.

Damages: Paralysis of left shoulder, arm and hand.

Plaintiffs' Expert: Dr. Stuart Edelberg (OB/GYN), Baltimore MD
Dr. Earl Browne (Plastic & Reconstructive Surgery), Cleveland OH
Dr. John Burke (Economist), Cleveland OH
George Cyphers (Certified Rehabilitation Counselor), Cleveland OH

Defendants' Expert: Dr. John P. O'Grady (Perinatologist),
Springfield MA

Judgment: **\$1,580,000.00**

Offer: \$400,000.00

Demand: **\$1,500,000.00**

Fabrizzi v. Cleveland Builders Suvvly. Inc.

Judgement: May, **1993**

Plaintiff's Counsel: Kent B. Schneider

Defendant's Counsel: Timothy Kasparak

Insurance Company: Self insured

Type of Action: Intentional tort.

Decedent was working on roof of building when he fell through a skylight that had been tarred over and camouflaged years earlier.

Damages: Death. Survived by spouse and four emancipated children. Wage loss - \$250,000.00

Plaintiff's Expert: Arthur Huckebridge, Ph.D. (Structural Engineer)
John F. Burke, Ph.D. (Economist)

Defendant's Expert: John Madden (Forensic Engineer)
Ed Wilson (Annuity, Kidder Peabody)

Judgment: \$2,510,000.00

Offer: \$55,000.00

Frank T. Lovewell v. Pradist Satavathum. M.D.

Court: Cuyahoga County Common Pleas

Judgment: May, 1993

Plaintiff's Counsel: Paul M. Kaufman

Defendant's Counsel: Robert Quandt

Insurance Company: PICO

Type of Action: Medical Malpractice.

Defendant performed inappropriate surgeries on multiple toes of both feet. Also performed certain other surgeries in a negligent fashion.

Damages: Damage to several toes on each foot causing instability of gait and pain. Medical specials - \$33,000.00.

Plaintiff's Expert: Michael Downey, D.P.M., Philadelphia PA
Gerard Yu, D.P.M., Cleveland OH

Defendant's Expert: Malcolm Brahms, M.D.

Judgment: \$200,000.00

Offer: -0-

Demand: \$250,000.00

Douglas White v. Lake Hospital Systems, et al.

Settlement: February 26, 1993

Plaintiff's Counsel: Larry S. Klein and Keith Blaha

Defendants' Counsel: Peter Marmaros

Insurance Company: St. Paul

Type of Action: Medical Malpractice.

Plaintiff, a 46 year old male cross country truck driver, sustained injuries to the neck in a work related fall in January

of 1990. Plaintiff's pain continued and he sought the treatment of a family practitioner in April. At that time, he refused to have X-rays taken but agreed to conservative care in the form of anti-inflammatory medication.

Three days after seeing the family practitioner, Plaintiff began a cross country trip from his home in Denver, Colorado which was to end in Massachusetts. During this trip, Plaintiff's pain became so severe that he stopped at Lake Hospital Systems West.

After examination by the emergency room physician, plaintiff was discharged with instruction to seek additional emergency room care if pain did not get better within a few hours. While plaintiff was being physically discharged by a nurse, he advised her that he was now having numbness and weakness in his legs and was unable to walk. Despite plaintiff's complaints, the nurse, a hospital volunteer and two security guards physically placed plaintiff in his truck. Soon thereafter, on Interstate 90, plaintiff began exhibiting signs of total paralysis.

Surgery was performed the following morning to reverse the paralysis by relieving a herniated disk compressing on the cervical cord. The surgery was unsuccessful.

Damages: Paralysis below C-5-6.

Plaintiff's Expert: Albert Butler, M.D., Howard Tucker, M.D.

Defendants' Expert: Samuel Kiehl, M.D., Thomas Flynn, M.D. and Janet Bay, M.D.

*Settlement: \$1,700,000.00

***Also,** settlement with Workers' Compensation carrier so all medical bills past, present and future and all lost earnings past present and future will be paid by the employer's Workers' Compensation coverage under Colorado law with a complete waiver of their statutory right to a credit for all expense paid and owed in the future from malpractice carrier.

SUMMARIES OF RECENT DECISIONS BY THE EIGHTH DISTRICT
COURT OF APPEALS, CUYAHOGA COUNTY

1. THE COLLATERAL BENEFITS STATUTE, R.C. SECTION
2317.45 IS CONSTITUTIONAL

May v. Tandy Coro. (June 3, 1993), Cuy. App. No. 62679 (Dyke, Harper and Pryatel). For Plaintiff - Jeffrey A. Leikin, Richard C. Alkire, Sandra J. Rosenthal; For Defendant - Terrance P. Gravens and Michael E. Stinn. The Court of Appeals affirmed the jury's verdict in the amount of \$173,500.00 overruling all of the defendant's assignments of error attacking the trial court's rulings on motions for directed verdict, judgment notwithstanding the verdict, new trial and the admission and rejection of evidence as well as other rulings made during the course of the trial. However, in this premises liability case, the court did overturn the trial court's ruling that the collateral benefits statute was unconstitutional. The appellate court was unable to distinguish Morris v. Savoy (1991) 61 Ohio St. 3d 685 insofar as it upheld the Medical Malpractice Act set off provision, Revised Code Section 2305.27. This decision of the Court of Appeals has been appealed to the Ohio Supreme Court. Presently before the Ohio Supreme Court is the case of Sorrell v. Thevenir (Sept. 30, 1992), Gallia App. No. 91CA4, wherein the trial court held the collateral benefits statute unconstitutional and the appellate court overturned the trial court's decision in this regard. Oral argument has not yet been scheduled in Sorrell.

2. CONFLICTING AFFIDAVITS ON THE ISSUE OF NOTICE IN A
PREMISES LIABILITY ACTION AGAINST THE CITY REQUIRES
A DENIAL OF A MOTION FOR SUMMARY JUDGMENT

Wiley v. City of Cleveland, (May 20, 1993), Cuy. App. No. 62543 (Harper, Spellacy, Dyke). For Plaintiff - Robert J. Sawyer; For Defendant - Danny R. Williams and Michael A. Dolan. The trial court had granted summary judgment in a situation where the plaintiff sustained injury when she allegedly stepped on a manhole which flipped and caused her foot to fall into the hole. The plaintiff demonstrated that prior to her fall the city had attempted to stabilize the manhole by applying concrete to the side of it. The city opposed the motion through affidavits of two employees stating that there was no record of any complaint about the manhole in question. Arguing that since it had no notice it could not be held negligent, the city's argument was accepted by the trial court. The eye-witness affidavit of the plaintiff concerning the city's attempt to repair the manhole was supplied in opposition to the motion. On the state of this record the Court of Appeals held that genuine issues of material fact remained and that the trial court should not weigh the evidence in a summary judgment proceeding.

3. WHEN EVIDENCE AT TRIAL SUPPORTS PLAINTIFF'S CLAIMS OF NEGLIGENCE AS WELL AS PROXIMATE CAUSE, A JURY'S VERDICT IN FAVOR OF THE DEFENDANT SHOULD BE REVERSED AND THE CASE REMANDED FOR A TRIAL ON DAMAGES

Darling v. Scheid (May 20, 1993), Cuy. App. No. 62464 (Porter, Patten, Harper). For Plaintiff - Michael Watson; For Defendant - James C. Cochran. In an automobile collision personal injury action, the Court of Appeals through Judge Porter reversed and remanded the case for a trial on damages only even though the jury found that there was no proximate cause between the negligence of the defendant (which it did find in a special interrogatory answer) and the injuries and damages of the plaintiff. The defendant's medical expert conceded that there was injury due to the collision and in light of this concession the Court of Appeals held that the jury's verdict should have been overturned on a judgment notwithstanding the verdict and judgment should have been entered on the issue of liability and proximate cause.

4. FAILURE OF A PARTY TO APPEAR AT A PRETRIAL SHOULD NOT RESULT IN DISMISSAL WITH PREJUDICE OF THE PARTY'S COMPLAINT

McGrath v. Kochis (April 8, 1993), Cuy. App. No. 64247 (Dyke, Spellacy, Blackmon). For Plaintiff - Rory J. McGrath; For Defendant - Randolph C. Keller. The court held that since the plaintiff had not been ordered to attend the pretrial his absence could not be the basis of the dismissal of his complaint. Notice of impending dismissal under Ohio Rule of Civil Procedure 41(B)(1) must be such that the party is given an opportunity to correct the defect about which he is notified. Further, it is an abuse of discretion to dismiss a case with prejudice under such circumstances when the less drastic sanction of dismissal without prejudice is available.

5. EXPERT TESTIMONY MAY BE NECESSARY TO DEMONSTRATE UNNATURAL ACCUMULATION OF ICE AND SNOW

Theobald v. Normandy Towers (April 8, 1993), Cuy. App. No. 62106 (Sweeney, Patton, Nugent). For Plaintiff - Anthony B. Giardini, For Defendant - Kerry S. Volsky, Bradford R. Carver, Romney B. Cullers. The trial court's granting of summary judgment in this premises liability case involving accumulations of ice and snow is upheld because appellant did not attach evidence sufficient to overcome the motion supporting her claim that the accumulation of ice and snow was unnatural due to its accumulation from snow removal activities. The Court of Appeals pointed to the lack of expert testimony demonstrating that the ice was the result of negligent snow removal as well as the lack of evidence supporting the claim that the landlord failed to provide safe ingress or egress to the building or failed to maintain a safe common area. In any event, the Court of Appeals' opinion seems to suggest ways in which such motions for summary judgment due to accumulations of ice and snow can be overcome.



Cuyahoga County Bar Association's

RACE FOR WISHES

(Hinckley Buzzard Races and Fun Walk)

To benefit MAKE-A-WISH FOUNDATION OF NORTHEAST OHIO

Saturday, July 31, 1993

Hinckley Lake

5K run/walk at 8:30 a.m. — 10K at 9:30 a.m.
T-Shirts to the FIRST 700 entrants

COURSE:

5K (walkers are welcome) is one lap and 10K two laps around Hinckley Lake, starting north on East Dr.

AWARDS:

Given immediately after race. Trophies to top 3 men and 3 women finishers overall. Four deep in all divisions.

RACE DIRECTOR **Hermes Race Systems**

(216) 251.3550

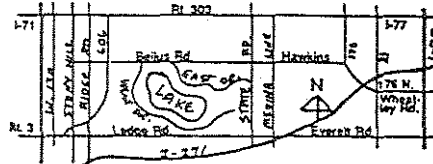
Make checks payable and mail by July 25th to:

HERMES RACE SYSTEMS
3416 W. 151, Cleveland, OH 44111

SPECIAL FEATURES:

Split limes; wafer stations; dressing facilities: rest-rooms; ample parking; police, rangers and rescue squad assisting with runner safety; free swim in Hinckley Lake.

(Non-refundable, non-transferrable)



PRE-REGISTRATION BY JULY 25:

\$9.00 one race—\$15.00 both races

DAY OF RACES

\$10.00 one race—\$17.00 both races

SIGN-IN:

5K run/walk from 7:15 am; 10K from 7:45 a.m.

AGE DIVISIONS

MEN:

WOMEN

14 and under; 15-18; 19-23
24-29; 30-34; 35-39; 40-44;
45-49; 50-59; 60 and up.

SPECIAL THANKS TO:

Metroparks System and Rangers
Hinckley Police and Fire Departments

RACE SPONSORS:

* *Cleveland Academy of Trial Attorneys* *

FRIEDMAN, DOMIANO & SMITH CO., L.P.A. WEINER & SUIT CO., L.P.A.

STEGE, HICKMAN & LOWDER CO., L.P.A. TICKTIN, BARON, KOEPPER & CO., L.P.A.

Weisman, Goldbera & Weisman Co., L.P.A.

CATA member/friend

ENTRY FORM — RACE FOR WISHES

in consideration of the acceptance of my entry, i, for myself, my executors, administrators, and assigns, do hereby release and hold harmless the Metroparks System, Hinckley Township, and any participating sponsors, supporters, coordinating groups, and any other group or person, either directly or indirectly connected with this event, from any and all claims of injury, damages, demands, actions and causes of action whatsoever, in any manner arising or growing out of my participation in said event. i also give permission for the free use of my name and picture in any broadcast, telecast or media account of this event. i certify that i am in adequate physical condition to participate in this event.

RUNNER'S SIGNATURE

Parent/Guardian Signature If under 18 years of age

For office use only: PAID: Cash Check no. _____
5K Entry no. _____ 10K Entry No. _____

PRINT NAME: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____

Male: _____ WHICH RACE?

Female: _____ 5K _____ 10K _____ BOTH _____

Age as of July 31, 1993: _____

T-Shirt Size: M L XL

I am unable to race, but wish to make a donation.

I'm enclosing my check for \$ _____ payable to Make-A-Wish Foundation of Northeast Ohio.

Please complete and mail to Laurie F. Starr at 1400 Renaissance Center, 1350 Euclid Avenue, Cleveland, Ohio 44115.

I'd like to help out by participating in the **Cuyahoga County Common Pleas Court** arbitration program. I have been practicing for _____ years. I was admitted to the Ohio bar in _____

Please print:

Name _____

Firm Name _____

Address _____

Phone Number _____

I'd like to participate in the **People's Law School** program. I would be interested in doing the following:

1. Setting up the program for people who live:
_____ West _____ East _____ South
2. Lining up speakers for the program:
_____ West _____ East _____ South
3. Speaking on the following topics:

4. Assisting with the program _____

Please print:

Name _____

Firm Name _____

Address _____

Phone Number _____

APPLICATION FOR MEMBERSHIP

THE CLEVELAND ACADEMY OF TRIAL ATTORNEYS

President, The Cleveland Academy of Trial Attorneys
Cleveland, Ohio

I hereby apply for membership in The Cleveland Academy of Trial Attorneys, pursuant to the invitation extended to me by the member of the Academy whose signature appears below, and submit the requested information in support of my application. I understand that my application must be seconded by a member of the Academy and approved by the President. If elected a member of the Academy, I agree to abide by its Constitution and By-Laws and participate fully in the program of the Academy. I certify that I possess the following qualifications for membership prescribed by the Constitution:

1. Skill, interest and ability in trial and appellate practice.
2. Service rendered or a willingness to serve in promoting the best interests of the legal profession and the standards and techniques of trial practice.
3. Excellent character and integrity of the highest order.

NAME: _____ AGE _____

OFFICE ADDRESS: _____ PHONE NO. _____

HOME ADDRESS: _____ PHONE NO _____

SPOUSE'S NAME _____ NO. OF CHILDREN _____

SCHOOLS ATTENDED AND DEGREES (GIVE DATES): _____

PROFESSIONAL HONORS OR ARTICLES WRITTEN: _____

DATE OF ADMISSION TO OHIO BAR: _____

DATE COMMENCED PRACTICE _____

PERCENTAGE OF CASES REPRESENTING CLAIMANTS: _____

NAMES OF PARTNERS, ASSOCIATES AND/OR OFFICE ASSOCIATES (STATE WHICH): _____

MEMBERSHIP IN LEGAL ASSOCIATIONS (BAR, FRATERNITY, ETC.): _____

DATE _____ APPLICANT: _____

INVITED BY: _____ SECONDED BY: _____

PRESIDENT'S APPROVAL _____ DATE: _____