

Cleveland Academy of Trial Attorneys

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CLEVELAND ACADEMY OF TRIAL ATTORNEYS NOVEMBER 1993 NEWSLETTER

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The Cleveland Academy of Trial Attorneys is again co-sponsoring the Cuyahoga County Bar Foundation's Holiday No-Dinner Dance which will be held on Saturday, December 4, 1993 at the Halle Building. Attached you will find additional information about the party, as well as a ticket request form. I hope that you will make every effort to attend as this year's program should be an even greater success and even more enjoyable than past year's events. CATA is hosting all of the judges in the Cuyahoga County Common Pleas Court, Eighth District Court of Appeals and the Federal District Court in the Northern District of Ohio. Responses from judges have been very positive. So, please mark your calendars for the Holiday No Dance VII on Saturday, December 4, 1993 for the benefit of Cleveland Hunger Centers including The Interchurch Council Hunger Task Force, The Catholic Hunger and Shelter Network, Temple Ner Tamid - Project Hunger and Northcoast Harvest, Inc. You may also want to consider making a donation for the silent auction.

Save the date of Friday, February 18, 1994 for the Bernard Friedman Litigation Institute.

Over 400 runners participated in the Fun Run in Hinkley for the benefit of the Make-A-Wish Foundation. As you know, CATA was a co-sponsor with the Cuyahoga County Bar Association. Over \$4,000 was raised for the Make-A-Wish Foundation. Special thanks to Frank R. DeSantis, Thomas L. Feher, Judge Janet R. Burnside, Mercedes Spotts and Joy Mandula.

Our last two CLE programs, which featured Dr. James Zelch on dynamic MRI testing, and Dr. Randall Marcus on arthroscopic surgery, were outstanding. Our seminar on representing patients with chronic pain and the new DUI law, co-sponsored with the CCBA, were also very informative. Please mark your calendar for our next program which is scheduled for Tuesday, November 30, 1993 and features Albert Bell, Esq., General Counsel for OSBA. Mr. Bell will speak on ethical issues relating to co-counsel fees, DR 2-107 and will include credits for substance abuse. It will be held in the Grill Room at the Ritz-Carlton from 12:00 to 1:30 p.m. For further information on this CLE program, please contact David Goldense at 241-0300.

Additionally, watch your mail for the announcement about the full day seminar on the new DUI law which we will co-sponsor with the Cuyahoga County Bar Association on Thursday, December 9, 1993 at the Marriott. The program features terrific speakers including: Judge Mark Painter and Judge Ken Spanagel. You will learn about the use of the breathilizer machine, the guardian interlock responsible driver program, and gaze nystagmus.

The arbitration program **in** the Cuyahoga County Common Pleas Court should be providing us with greater assistance now that we have added over 100 arbitrators and/or chairpersons for inclusion on its list. I want to thank each of you for your cooperation with this program. By having experienced personal injury lawyers on panels we should be able to make a difference for our clients.

ATLA is asking for our financial support for the National Committee to Prevent Child Abuse-Healthy Families America National Media Campaign. ATLA is a sponsoring agency and sees this as an opportunity for us to improve our image as lawyers through approximately \$45 million in free advertising while helping this worthy cause. Please send your 100% tax deductible contribution to ATLA Fund, c/o NCPA, 332 S. Michigan Avenue, Suite 1600, Chicago, IL 60604-4357.

Let your voices be heard concerning the new tort reform bill (*S. B. 210*) introduced by Senator Snyder, who has announced his intention *to run* for Congress. Major problems and road blocks for tort victims are contained in this proposed legislation: \$250,000. cap on non-economic damages; elimination of joint and several liability; bifurcation of damages; periodic payments on tort actions; limitations on contingent fees and; changes to the statute of limitations on product liability claims.


OATL President, Andrew Krembs has provided us with the attached letter to send to our clients to help educate them about the truth and to dispel the myths about medical malpractice/negligence claims and health care "reform". I hope you will consider using it or your own version.

Your response to encouraging your partners, associates and friends to join CATA has been good, but we would still like to add a significant number of other new members to our organization. An application for membership is included in this newsletter. Please sign up a new member today!

I would still like to hear from you regarding your suggestions or comments for improving CATA and its services to members. Your officers and directors are anxious to help.

I hope you and yours have a wonderful holiday season with the new year bringing happiness to each of you. I look forward to seeing you at the No-Dinner Dance!

Very truly yours,


Laurie F. Starr

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The Cuyahoga County Bar Foundation

in affiliation with
The Cleveland Academy of Trial Attorneys
Cleveland Bar Association
Cleveland Association of Civil Trial Attorneys
Cuyahoşa County Criminal Defense Lawyers Association
The Federal Bar Association, Cleveland Chapter
present

HOLIDAY NO DINNER DANCE VII



for the benefit of.
The Interchurch Council Hunşer Task Force
The Catholic Hunşer and Shelter Network
Temple Ner Tamid – Project Hunşer
& Northcoast Harvest

The Hunger Task Force of the Interchurch Council of Greater Cleveland provides emergency food to 50,000 people per month through its 22 hunger centers and 6 emergency meal programs. One-half of those are children; nearly ten percent are senior citizens.

In 1993, the Catholic Hunger and Shelter Fund provided over 3,500,000 meals, through a network of 60 programs. One hundred percent of the monies donated to this fund purchased food and provided shelter.

Temple Ner Tamid has a joint venture with St. Aloysius Church. Over 34,000 meals have been served in 1993.

Northcoast Harvest provides excess prepared and perishable food to 54 agencies in Cuyahoga, Summit, Lorain and Lake counties. Northcoast Harvest transports 10,000 pounds of food each week by refrigerated truck. The food, which is redistributed from area restaurants, caterers, hospitals and grocery stores, provides meals to 1,000 hungry men, women and children each day.

You are Invited to Attend the
Holiday No Dinner Dance VII

Saturday, December 4, 1993 at 7:00 pm
 The Halle Building,
 1228 Euclid Avenue at East 12th
 Cleveland, Ohio 44115

General Admission \$40.00
 (\$45.00 day of the event)
 Special Friends \$65.00
 Patrons \$650.00 (10 tickets)

Culinary Delights and Beverages
 Silent Auction

Entertainment throughout the evening
 Dancing to the Music of "Special Blend"

Free parking at the The Halle Garage,
 1212 Huron Rd (floors 3, 4 5, & 6)
 Please use the elevator to garage basement
 which has a tunnel to the Halle Building

General Admission \$40.00 in advance
 (\$45.00 day of event)
 Special Friends \$65.00
 Patrons \$650.00 (10 tickets)

Yes! I will attend. Enclosed is my check for \$ _____ for _____ persons.

Name _____

Address _____ Zip _____

Phone _____ Fax _____

Special Friends & Patrons: Please print your name as you wish it to appear in the program _____

(Program Listing)

No, I cannot attend. But enclosed is my tax-deductible donation in the amount of \$ _____ to help feed the hungry.

Please send check by November 17, 1993 to meet the program printing deadline.

Please make checks payable to CCBF—Hunger.

All tickets will be mailed upon receipt of check.

re: Key Facts About Health Care Costs

Dear Client:

Many of you have asked us about health care costs and lawsuits. Because you have had experience with the justice system, we believe it is **important** for you to understand the truth about health care costs.

Insurance companies and others have spent many years and many dollars trying to convince us that if patients wouldn't—or couldn't—sue doctors and hospitals when they are injured through negligence, then health care costs would go down, or at least increase more slowly. Not so.

What Roles Do Lawyers Play in the Cost of Health Care?

Fortunately for everyone, negligence litigation plays a small role in health care, and an even smaller role in health care costs. In fact, if we stopped every single negligence lawsuit against every single medical professional today, we would save less than 1 percent of our total national health care bill.

The cause of medical negligence lawsuits is medical negligence. In 1990, researchers from Harvard University released the results of a study of records of New York State hospital patients for the year 1984. They estimated that over 20,000 injuries and almost 7,000 deaths were caused by negligence. That's from just one state in just one year. Only about one in eight victims of negligence filed a lawsuit. The researchers' report concluded that "we do not now have a problem of too many claims; if anything, there are too few."

Why are there so few cases? Consider what the negligence victim has to do to recover compensation for medical negligence. The patient has to prove the doctor or hospital did something wrong, the wrong was a substantial factor in causing injury, and the nature and extent of the damage. Another doctor has to testify under oath that the defendant doctor violated the medical profession's **own** standard of care—that the victim's doctor didn't act the way any reasonable doctor would have acted under the same circumstances.

This means that when doctors are held liable in court, it's not because they weren't perfect. It's not because they made a mistake. Doctors are **only** held responsible when they violate their **own** standard of care. This is true in every courtroom in every state in the United States.

What About Defensive Medicine?

"Defensive medicine" is an interesting term. Remember your early-on driving instruction emphasizing the need for "defensive driving"? That means driving *carefully so that nobody gets hurt*, and it's an excellent idea. But what is a good idea for everybody who drives a car is supposed to be a bad idea for doctors **who** literally hold other people's lives in their hands. By "defensive medicine," doctors mean changes in medical practice made solely because of fear of liability, changes

whose costs exceed their benefits to patients.

In a 1992 study of health care costs, the Congressional Budget Office concluded that much of what doctors call "defensive medicine" would probably continue even if medical negligence litigation was limited, because doctors generally do want to provide the best and safest care.

What Really Causes Unnecessary Procedures?

The Consumer Federation of America has identified a darker side to the "unnecessary procedures" argument. They identify the profit motive, not fear of litigation, as the reason for a sharp rise in diagnostic test costs. Physicians discovered that diagnostic testing could be a major profit center for doctors' offices.

Now, many doctors can enrich themselves by ordering procedures at facilities they own or invest in—and studies confirm that they order more tests and charge more for them than if they had stayed out of the testing business.

Are Negligence Lawsuits Justified?

In the tiny fraction of medical negligence incidents that do result in lawsuits, doctors themselves usually find that the care was substandard. For a study published in 1992 in the *Annals of Internal Medicine*, researchers looked at the files of over 8,000 negligence cases filed against New Jersey doctors. Overall, the researchers concluded that unjust payments in negligence cases were uncommon, and they believed that their findings would apply to the entire United States.

What Will Happen If We Let Them Take Away Your Right to Hold Negligent Health Care Providers Accountable?

Indiana is widely recognized as having the most restrictive law preventing full financial recovery by patients hurt by medical negligence. The law, passed in 1974, has now been in effect for nearly two decades. During those years, the cost of insurance for doctors has increased more slowly in Indiana than in other states. But what about the cost of health care to consumers? A 1992 report compared health care costs in Indiana with health care costs right next door in Illinois, which allows full access to the courts by injured patients. The report found the costs nearly identical, except that childbirth costs in Indiana are higher.

Depriving people of their right to seek justice from negligent health providers **will not** decrease costs. In fact, if doctors are not held accountable for their wrongdoing, they will do more harm to more people. Those injuries will require treatment and correction by other doctors, and the additional costs will cause health care expenses to go up.

It is time to look at real solutions and to stop pretending that lawsuits play any appreciable role in the escalation of health care costs.

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

1. Allison v. McDonald's Restaurants, Case No. 63170
(Cuyahoga Cty., November 4, 1993) - For plaintiff: Charles E.
Hannan and for defendant: John C. Cubar.

The Court of Appeals reversed the trial court's entry of summary judgment in favor of Defendant McDonald's and against the plaintiff arising from plaintiff's negligence action concerning her abduction and rape while she was a customer at McDonald's. The trial court's finding that the abduction and rape was unforeseeable was held to be an issue of fact for the jury to determine.

2. Kelley v. Rocky River Bd. of Educ., Case No. 63906
(Cuyahoga Cty., November 4, 1993) - For plaintiff: Edward L.
Bettendorf and for defendant: Stephen P. Kolozvary.

The Court of Appeals reversed a jury verdict in favor of the plaintiff and entered final judgement in favor of the defendant. This was a personal injury action brought by Plaintiff to compensate her for an injury to her right eye while she was participating in a physical education class at school. Although the jury found in her favor and awarded \$64,000.00 the Court of Appeals felt that the trial court erred in failing to grant Defendant's Motion for Judgment Notwithstanding the Verdict based upon sovereign immunity. The Court of Appeals held that since the activity involved was within the discretion of the political subdivision's employee and/or concerned policy making, planning or enforcement powers and/or the exercise of judgment or discretion (Ohio Revised Code Sections 2744.03(A) (3)- and (5)), sovereign immunity applied.

3. Rogoff v. Kind, Case No. 53782, (Cuyahoga Cty., October 28, 1993) - For plaintiffs: Marc N. Silberman and for defendant: Roy H. Hulme.

The Court of Appeals affirmed the trial court's granting of summary judgment in this dental malpractice case. Among other holdings, the Court made it clear that an expert's report not incorporated into an affidavit and which did not set forth opinions to a reasonable degree of medical probability was not sufficient to create an issue of fact on the standard of care or its breach.

4. Murphy v. Leo Baur Realty, Inc., Case No. 63756 (Cuyahoga Cty., October 21, 1993) - For plaintiff: Mark S. Fishman and for defendants: James T. Millican.

The Court of Appeals affirmed the trial court's grant of summary judgment in a landlord/tenant case. The plaintiff's minor children were diagnosed with lead poisoning. Evidence was presented indicating that the landlord was notified that paint was

peeling on the porch and that there was a roof leak which accounted for the peeling paint. However, the plaintiff and the defendants did not know that the paint was lead based. As a result, the trial court granted summary judgment since notice to the landlord was not proven. The Court held that actual knowledge of lead based paint was necessary for liability.

5. Felden v. Ashland Chem. Co., Case Nos. 64313, 64346 (Cuyahoga Cty., October 21, 1993) - For plaintiff: Jeffrey H. Friedman and Lisa M. Gerlack and for defendants: Ralph Streza and Terrance M. Miller.

The Court of Appeals affirmed the jury's monetary award of 3.5 million dollars in this employer intentional tort action. This case sets forth the Eighth District Court of Appeals view of the necessary elements to be proven. The Court also discussed evidentiary rulings concerning remedial measures, prior similar accidents and the OSHA citation and investigation file. Further, the Court of Appeals affirmed the trial court's award of prejudgment interest and deduction of collateral benefits from the jury award.

6. Galavda v. Lake Hospital Svstem, Inc., Case No. 63151 (Cuyahoga Cty., September 30, 1993) - For plaintiff: Peter H. Weinberger and Robert V. Traci and for defendants: Anthony P. Dapore, Janis L. Small and Robert C. Maynard.

The Court of Appeals affirmed the jury award of 2.7 million dollars after overruling appellants' various assigned errors as it relates to rulings made during trial. It went on to hold as unconstitutional the application of Ohio Revised Code Section 2323.57, Ohio's Periodic Payments of Future Damages statute. The Court found that the statute was unconstitutional on due process grounds as well as an individual's right to jury trial under Section 5, Article of I of the Ohio Constitution.

V E R D I C T S A N D S E T T L E M E N T S

John Doe v. Shiley Corporation

Plaintiff's Counsel: Michael Shafran

Defendant's Counsel: Richard Markus

Type of Action: Products Liability.

In **1983**, due to medical necessity, Mr. Doe underwent replacement of his mitral valve with a prosthetic device known as the Bjork-Shiley 60 Degree Convexo/Concave heart valve. At the time of the surgery, Mr. Doe was assured by his surgeons that this valve was state of the art and could last as long as **15-20** years.

In early **1991**, the public was made aware of problems associated with the Bjork-Shiley heart valve which the manufacturer had allegedly known of for years, yet chose to keep, not only from the public, but also from the FDA and the physicians who inserted these valves. Of particular note was the tendency for these valves to develop strut fractures which, if not treated within several hours of its occurrence, would lead to death.

During the pendency of a class action suit, of which Mr. Doe was a party (the class being composed of those individuals who had the particular valve which was at risk for fracturing, yet which had not fractured) Mr. Doe's Bjork-Shiley valve suffered a strut fracture. Mr. Doe underwent emergency open heart surgery, during which the valve was replaced. He underwent a second surgery several days later to remove a portion of the valve which had fractured and embedded itself in his abdomen.

Settlement: \$610,000.00

Saini v. Plotkin

Court: Cuyahoga County Common Pleas

Plaintiff's Counsel: Michael Shafran

Defendant's Counsel: Marc Groedel

Type of Action: Wrongful Death.

Mrs. Saini, the Decedent, had been treating with the Defendant, Dr. Plotkin, for years prior to her death. He was her "regular" or "family" doctor. While there was some knowledge on the part of both the Decedent and Dr. Plotkin that the Decedent suffered from premature ventricular contractions (a type of heart arrhythmia), at no time prior to her death did Dr. Plotkin feel it necessary to either treat these premature ventricular beats or have the Decedent undergo any type of cardiac workup to determine if the Decedent suffered from any underlying cardiac disease.

On December 4, **1990**, the Decedent was discovered by her husband to be unresponsive and not breathing. After being transported to a local hospital by EMS, she was pronounced dead. An autopsy

found underlying heart disease, as well as an enlarged heart.

Damages: Death

Plaintiff's Expert: Robert Stark, M.D. (Internal Medicine and Cardiology - Greenwich CT)

Defendant's Expert: Stephen E. Epstein, M.D. (Rockville MD)

Settlement: \$100,000.00

Joanne Jeffers, Admin. v. Southwest General Hospital, et al.

Court: Cuyahoga County Common Pleas

Plaintiff's Counsel: Charles Kampinski and Christopher M. Mellino

Defendants' Counsel: Donald H. Switzer (Southwest)
Dale E. Markworth (Dr. Banaga)
John V. Jackson (Dr. Binder)

Type of Action: Wrongful Death.

On May 3, 1992, Michael Jeffers, age 31, was admitted to the emergency room of Defendant Southwest General Hospital with symptoms of a severe headache, unrelieved even with morphine, a high white blood count, nausea, vomiting, lethargy, light sensitivity and, upon admission, the nurse assessing him, Nurse Knopf, found that he had a stiff neck. All of these symptoms are highly indicative of meningitis. However, the admitting diagnosis was a middle ear infection, (otitis media) and ruled out an external ear infection. He was prescribed Ciprofloxacin, over the phone by the admitting ENT, Dr. Binder. All physicians testified that Cipro does not provide antibiotic coverage for pneumococcus bacteria that can cause otitis media. The proper antibiotics would have also treated meningitis.

After being examined by Nurse Knopf, Mr. Jeffers was seen by the Defendant, Dr. Paraluman Banaga. Nurse Knopf has testified that she informed Dr. Banaga of Mr. Jeffers' symptoms and that he had an inability "to put chin to chest due to pain in spine." Dr. Banaga denied being told this and made a diagnosis of "otitis media" which is a middle ear infection.

Despite Mr. Jeffers being critically ill and receiving an inappropriate drug for a middle ear infection, Dr. Banaga did nothing except retire to her room and did not return to see Mr. Jeffers even after being called by the nurses at 3:00 a.m.

Dr. Jeffrey Binder, the attending physician was called twice after Mr. Jeffers vomited a large amount at 7:00 a.m., but never returned the calls. Dr. Binder saw Mr. Jeffers at around 8:30 a.m. for the first time. The nurses who had come on duty that morning at 7:00 a.m. failed to tell Dr. Binder about the findings made by Nurse Knopf the night before. The nurses also did not check Mr. Jeffers' neck for stiffness.

Dr. Binder did a very cursory examination of Mr. Jeffers and found that he was very sick and could not determine what the cause of his illness was. He left the hospital immediately after seeing Mike because of a personal situation. He didn't return to see Mike until late that evening. From **8:30** a.m. through the afternoon, Mike's condition and pain worsened until he finally lapsed into a coma at approximately **4:30** p.m. that afternoon.

At **4:30**, he was finally seen by a house physician, and a diagnosis of meningitis was for the first time suspected by a physician. A lumbar puncture was done and the diagnosis was finally made. However, at that point it was too late for treatment to have any beneficial effect.

Mike Jeffers died two days later and is survived by his wife, Joanne, his parents and two sisters. He was earning approximately **\$35,000.00** a year.

Damages: Death.

Plaintiff's Experts: Calvin M. Kunin, M.D.

Defendants' Experts: Vincent Quagliarello, M.D. (Southwest)
Vince Verdile, M.D. and Robert Fekety (Dr. Banaga)

Judgment: **\$3,800,000.00** (**\$1,900,000.00** wrongful death and **\$1,900,000.00** survivorship claim)

Offer: **\$2,300,000.00** Demand: **\$3,600,000.00**

Dora v. Trinidad Paving Co.. et al.

Court: Cuyahoga County Common Pleas

Settlement: April, 1993

Plaintiff's Counsel: Michael Kube

Defendants' Counsel: James F. Sweeney

Insurance Company: CNA Insurance Co.

Type of Action: Negligence.

Defendant's employee, while on a construction site, backed up his truck striking Plaintiff and knocking him into hot asphalt.

Damages: Permanent injuries to his head, brain - a fractured maxilla and clavicle, injury to right hip and left hand, second and third degree burns.

Plaintiff's Expert: Dr. David Lehtinen
Dr. James Mack
John Burke, Ph.D.

Settlement: **\$1,200,000.00**

Cowan v. Bath Iron Works/Atlantic Tool & Die Co.

Settlement: June, 1993

Plaintiff's Counsel: John Meros

Defendants' Counsel: Dale Markworth and Rosemary DiSanto

Insurance Company: Chubb (for Atlantic Tool & Die)

Type of Action: Employer Intentional Tort.

Failure of the employer to adjust the plaintiff's pull-back type safety device on punch press. Fingers caught in closing dies of press.

Damages: Amputation of portions of two fingers on dominant hand.

Plaintiff's Expert: Gerald Rennell, P.E. (Grand Blanc MI)

Defendants' Expert:

Settlement: \$175,000.00

Estate of Caitlin Ann Pearston. et al. v.

St. John & West Shore Hospital, et al.

Court: Cuyahoga County Common Pleas

Verdict: June, 1993

Plaintiff's Counsel: Fred Weisman, Laurence J. Powers and
John A. Wargo, Jr.

Type of Action: Medical Malpractice/Wrongful Death.

This case involved a totally normal and uncomplicated pregnancy, following which Patricia Pearston presented to St. John & West Shore Hospital in labor on the morning of June 17, 1989. The proceeded slowly and required augmentation with the drug Pitocin for the purpose of increasing uterine contractions. Pitocin was infused on June 18, 1989 at about 12:10 a.m. When Pitocin is infused, careful monitoring of the mother's contractions and baby's fetal heart rate are mandatory for the safety of both.

The major neglect was committed by the Hospital's labor and delivery room nursing staff. For a period of more that 5 hours, the nurses responsible for the interpretation of the Electronic Fetal Monitor (EFM) tracings failed to recognize that the mother's contractions were excessive and that the baby's fetal heart rate indicated abnormalities. Indeed, more than 30 non-reassuring signs of fetal heart abnormalities were ignored: the Pitocin was never stopped; the baby's oxygen supply was thereby severely compromised and this produced hypoxia (inadequate oxygen), hypercapnia (an excess of carbon dioxide), metabolic acidosis and asphyxia of this infant. These failures resulted in a brain damaged baby who suffered throughout her entire (albeit short) lifetime with cerebral palsy, sever spasticity and multiple other impairments and disabilities.

Caitlin was born on June 18, 1989 (Father's Day) and died on May 1, 1992 (Mother's Day).

Damages: Cerebral palsy and brain damage. Death.

Judgement: **\$5,000,000.00**

The Estate of Timothy B. Roach v. Dr. Gary Houston

Court: Ashtabula County Common Pleas

Settlement: July 1, 1993

Plaintiff's Counsel: Larry Klein

Defendant's Counsel: William Riedel and John Jeffers

Insurance Company: Erie Insurance and St. Paul Insurance

Type of Action: Automobile Accident/Medical Malpractice.

On January 15, 1992, the decedent was involved in a serious motor vehicle accident caused by a negligent and intoxicated operator of a motor vehicle who went left of center and also died the evening of the motor vehicle accident.

The decedent, Timothy Roach, was in his significantly damaged vehicle for thirty minutes until extricated by EMS personnel. He was then taken to defendant, Brown Memorial Hospital where he was attended to by Dr. Houston.

Due to extremely bad weather for the evening, all helicopter transfers from Brown Memorial Hospital, or anywhere in Ashtabula County, were not in operation. Therefore, Dr. Houston was called in by the emergency room. After one hour, Mr. Roach was emergency transferred to Hamot Medical Center in Erie, Pennsylvania where he was dead on arrival. It was the opinion of the plaintiff's expert that Dr. Houston failed to comport to the standard of care in the manner in which he placed the airway. Plaintiff's expert further opined that Dr. Houston failed to comport to the standard of care by placing a central venous catheter into the subclavian vein in a manner in which a perforation occurred through the vein into the mediastinum. The fluids and blood being given to Mr. Roach via that catheter failed to resuscitate him. This caused compromised myocardial function and caused deterioration by expanded mass within the mediastinum due to the failure to replace the volume lost in the circulation.

Damages: Death.

Plaintiff's Experts: F. Mischler, M.D. (Trauma Surgeon)
J. Burke, Ph.D. (Economist)

Defendant's Expert: Dr. El Sanadi (Emergency Room Physician)

Settlement: **\$1,315,760.00** (\$581,360.00 cash and \$734,400.00 structured settlement)

Barna v. Randall Park Mall, et al.
Court: Cuyahoga County Common Pleas
Verdict: July, 1993
Plaintiff's Counsel: John Meros
Defendants' Counsel: Judson Hawkins
Insurance Company: Aetna
Type of Action: Slip and Fall.

Plaintiff worked at the mall and was walking near the water display fountain, which had over sprayed water onto floor a day or two earlier causing plaintiff to fall. Plaintiff struck shoulder on water retaining wall of fountain.

Damages: Torn rotator cuff of right shoulder which was surgically repaired.

Plaintiff's Expert: Robert Nickodem (Orthopaedic)

Defendants' Expert:

Judgment: \$85,500.00 Settlement: -0-
Offer: \$25,000.00 Demand: \$45,000.00

*Please note that the first trial in 1990 ended in directed verdict for defendants. Court of Appeals reversed.

Robert Tanner v. Dr. Edwin Eisner
Settlement: August, 1993
Plaintiff's Counsel: Robert I. Levey and Frank P. Giaimo
Defendant's Counsel: Anna Moore Carulas
Insurance Company: P.I.E.
Type of Action: Medical Malpractice.

Defendant ophthalmologist mismeasured plaintiff's eye causing surgical implant of overly powerful lens in cataract procedure.

Damages: Increased degree of nearsightedness in one eye.

Plaintiff's Expert: Howard Siegal, M.D.

Settlement: \$50,000.00

York v. LTV Steel Company, Inc.
Court: Cuyahoga County Common Pleas
Verdict: August, 1993
Plaintiff's Counsel: Michael Xube
Defendant's Counsel: Gary Cook
Insurance Company: Defendant was self-insured.
Type of Action: Negligence.

Defendant's fork lift operator dropped coil of steel on

Plaintiff's trailer bed, causing the plaintiff to be thrown onto the bed of the trailer.

Damages: Bulging disc low back (not operated).

Plaintiff's Expert: Dr. James Thomson

Dr. Sean Logan

Judgment: \$740,000.00 Settlement: -0-

Offer: \$60,000.00 Demand: \$450,000.00

Lestock v. Richard Holzheimer. M.D.

Court: Cuvahoga County Common Pleas

Settlement: August, 1993

Plaintiff's Counsel: Michael Kube

Defendant's Counsel: Joseph A. Farchione

Insurance Company: PIE

Type of Action: Medical Malpractice.

Injury during course of delivery.

Damages: Left arm - brachial plexus, 90% recovery.

Plaintiff's Expert: Dr. S. Edward Davis

Settlement: \$200,000.00

Michael Kechisen v. Domino's Pizza

Verdict: September, 1993

Plaintiff's Counsel: Mitch Weisman

Defendant's Counsel: Charles Cooper

Type of Action: Automobile Accident.

The defendant was driving for Domino's Pizza and went left of center. The 30 minute delivery guarantee was "off" due to the weather.

Damages: Fractured sternum/deviated septum requiring surgery.

Plaintiff's Expert: Charles Cassady, M.D. (E.N.T.)

Defendant's Expert: Robert Katz, M.D. (E.N.T.)

Dr. Fay (Ph.D. - Cleveland Institute of Music)

Judgment: \$150,000.00 Settlement: -0-

Offer: \$80,000.00 Demand: \$100,000.00

Anna Mae Braxton v. Domino's Pizza, Inc.

Settlement: September, 1993

Plaintiff's Counsel: Edison H. Hall, Jr. and Mary Elaine Hall

Defendant's Counsel: Frank Leonetti

Type of Action: Automobile Accident.

Defendant, Domino's Pizza delivery vehicle failed to yield to Plaintiff and struck her automobile.

Damages: Multiple fractures to left ankle which required surgery.

Plaintiff's Expert: Fred Beherens, M.D. (Orthopaedic Surgeon - Case Western Reserve University, Cleveland OH)
Frank Landy, Ph.D. (Behavioral Psychologist - Penn State University, University Park PA)

Defendant's Expert: Malcolm Brahms, M.D. (Cleveland OH)

Judgment: -0- Settlement: \$225,000.00

First Offer: \$80,000.00 Demand: \$2,000,000.00 compensatory
1,000,000.00 punitive

Jane Doe v. ABC Hospital

Court: Cuyahoga County Common Pleas

Settlement: September, 1993

Plaintiff's Counsel: Charles Kampinski and Christopher M. Mellino

Type of Action: Wrongful Death.

Jane Doe, age 51, started experiencing numbness and tingling in her hands and arms. She was diagnosed with having narrowing of her spinal canal at C1-C2. She also had a misalignment of her vertebrae. She came to Cleveland because her 80 year old parents lived here and could take care of her post surgically. She saw Dr. John Roe, a neurosurgeon, who performed surgery on August 8, 1991. He fused the misaligned vertebrae, but did not do a decompression to alleviate the narrowing. Additionally, steroids were not used during the surgery.

After the surgery, Jane could not move her extremities. She developed a superficial infection and was re-operated upon. Once again steroids were not used during the operation on August 21, 1991, nor was a decompression done on this occasion. The narrowing prior to the first operation at C1-C2 was 7 mm and just prior to the second operation was 4 mm. Normal is 12-15 mm. She was diagnosed as quadriplegic following the second operation.

Jane Doe was divorced with no children. She worked as an auditor for a retail company earning approximately \$16,000.00 a year. She had been a teacher for 20 years previously.

The allegations of negligence were the failure to use steroids during both operations and failing to do a decompression because of her narrowed spinal canal.

Damages: C4 quadriplegia.

Plaintiff's Experts: Dr. Karl Manders (Neurosurgeon)
Dr. John Burke (Economist)

Settlement: \$8,000,000.00

William Gill, et al. v. Atlantic Mutal Insurance Co.

Court: Cuvahoga County Common Pleas

Settlement; October, 1993

Plaintiffs' Counsel: Jeffrey H. Spiegler

Defendant's Counsel: Richard McGraw

Insurance Company: Atlantic Mutual Insurance Co.

Type of Action: Underinsured Motorist Claim.

UMI claim stemming from head on collision. Fifteen minute loss of consciousness and minimal retrograde amnesia. Discharged from emergency room. Plaintiff has been unable to return to executive level work, but has resumed employment with same firm as a technical account representative.

Damages: Closed head injury resulting in attention and short term memory deficits.

Plaintiffs' Experts: William Bauer, M.D. (Neurologist -
Bellevue OH)
Diane Klisz Karle, Ph.D. (Neuro-
psychologist - Detroit MI)
Michael Rosko, MA, CRS (Vocational
Rehabilitation - Detroit MI)

Defendant's Expert: Lance Trexler, Ph.D. (Neuro-
psychologist - Indianapolis IN)

Settlement: \$775,000.00