

Cleveland Academy of Trial Attorneys

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CLEVELAND ACADEMY OF TRIAL ATTORNEYS SEPTEMBER 1993 NEWSLETTER

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Our annual golf outing ~~was~~ held on August 26, 1993 at Elyria Country Club and ~~was~~ outstanding! Thanks to all of you who participated and helped make it a great success. Here are our prize winners:

1. Low Gross - Judge Joe Cirigliano
2. Low Net (Calloway System) - Jim Casey
3. Long Drive Hole #5 - Dave Goldense
4. Straight Drive Hole #10 - Al Tolaro
5. Pin Shot Hole #13 - Paul "Beau Brummel" Wolf
6. Proximity Second Shot Hole #14 - Bob Marcis
7. Long Putt Hole #18 - Ben Barrett, Jr.
8. High Gross - Judge Kosma Glavas
9. **Low Gross Ladies** - Laurie F. Starr

As you are all aware, the arbitration program in the Cuyahoga County Common Pleas Court needs our help. Therefore, please be advised that if you do not notify me that you are not interested in participating as an arbitrator or chairperson, your name will **automatically** be sent to the Arbitration Commission for inclusion on their list of arbitrators.

Please make sure the following dates are on your calendars for our upcoming CLE programs:

1. **Thursday, October 21, 1993 - Dr. James Zelch: dynamic MRI testing;**
2. **Tuesday, November 30, 1993 - Albert Bell, Esq. - OSBA general counsel: ethical issues relating to co-counsel fees and DR 2-107.**

The luncheon programs will be held in the Grill Room at the Ritz-Carlton from 12:00 to 1:30 p.m.

Additionally, we are co-sponsoring the following CLE program with the Cuyahoga County Bar Association:

How to Represent the Client with Chronic Pain:
Wednesday, October 6, 1993 from 3:30 to 6:00 p.m.
(2.5 CLE Credits) to be held at Stouffers.

The following 2 CLE programs were a huge success:

Tuesday, September 21, 1993 (1.5 CLE Credits) - The New DUI Law -- Judge Kenneth Spanagel of the Parma Municipal Court.

Thursday, September 23, 1993 - Dr. Randall Marcus: arthroscopic surgery; John V. Scharon, Jr., Esq.: effective use of evidence.

The Ohio Academy is offering two CLE programs that look great:

Tort Litigation: Old Problems/New Solutions -
October 15, 1993; and

1993 Medical Negligence Seminar - November 12, 1993.

Please check the September 20 issue of OBAR concerning Ohio Supreme Court standards that will guide local courts on "jury use and management standards." I am attaching the OATL position paper on Standard #7, 9, 16, and 17. Please watch OBAR for an announcement concerning the ability to comment on these standards. Please send your comments!

The Ohio Academy of Trial Lawyers has an excellent brief on the unconstitutionality of the collateral source statute, ORC § 2317.45 from Sorrell v. Thevenir, currently pending before the Ohio Supreme Court. Call OATL at 1-800-334-2471 if you are interested in it.

Kindly encourage your partners, associates and friends to join the CATA. You will find an application for membership in this newsletter. Please call me with any comments or suggestions you may have for improving CATA and its services to members.

Very truly yours,


Laurie F. Starr

OATL POSITION ON *JURY* MANAGEMENT PROJECT AND STANDARDS RELATED TO JURY USE AND MANAGEMENT

Standard #7 (Pertains to Voir Dire Examination) - The Academy's position with regard to voir dire is that counsel should be guaranteed the opportunity to ask jurors questions. Secondly, counsel should not be overly restricted as to the questioning of jurors so that they may intelligently use the peremptory challenges.

As it is presently worded, Standard #7 appears to encourage the trial judge to monopolize the voir dire process by conducting preliminary examination with trial counsel, then getting to question prospective jurors for a reasonable length of time. Reasonable time is neither specified nor defined. We are concerned that the goal of this Standard appears to be solely to reduce the time of the trial for the convenience of trial judges and perhaps potential jurors, but not necessarily to ensure a fair and impartial trial for the parties for litigation. Indeed this is a problem that currently exists in Federal Court where trial judges do most of the voir dire examination and attempt to actively discourage counsel for the parties to do little more than a couple of follow-up questions. It is our feeling that this is a blatant denial of due process of law. Standard 7 (A) does not mention the issue of fairness and counsel's right to determine whether a potential juror may be fair or not.

The Academy is in agreement that basic background information regarding panel members should be provided to counsel as stated in Standard 7 (B). However, in order to review the background information, it should be provided prior to the day jury selection is to begin, not on the day of jury selection. This is seriously inadequate. It would be better to get the basic background information on jurors to trial counsel at least one week before the actual trial commences. This would enhance trial preparation and actually save time on the date of the actual commencement of trial. In this way, counsel will not be seeing the information for the first time on trial day and have to shuffle through a lot of papers and prolong his/her voir dire examination and hence lengthen the trial.

By way of custom, in Montgomery County questionnaires are available the week before trial and it would seem that this would be a desirable goal to accomplish on a statewide basis.

With regard to Standard 7 (C), we believe the voir dire examination should be conducted by trial counsel, not the judge. Additionally, counsel should be free to establish whether a juror is to be removed for cause, whether or not a juror is impartial, and whether or not a juror can be fair without time restrictions.

Another problem we have with Standard #7 is that it seems to say in some cases voir dire need not be held on the record. This likewise raises serious concerns with due process of law. It is our feeling that voir dire examination should always be held on the record in both civil and criminal trial in all cases and not just in selective cases.

Standard #9 Pertains to Peremptory Jury Challenges) - The present number of preemptory jury challenges in civil cases is three. The Academy supports the continuation of a minimum of three preemptory challenges in civil cases.

The rule generally says that preemptory challenges should be uniform throughout the state of Ohio, and then goes on *to* say that the general rule is that each side in the civil case is limited to three preemptory challenges as a general rule. However, the standard goes on to state that the trial court has discretion to allow additional preemptory challenges of up to three if it finds that there is a conflict of interest between parties on the same side. It appears that this means where there are multiple defendants, a trial judge can say that there is a conflict of interest and allow each such defendant to have three preemptory challenges when the plaintiffs counsel only gets a total of three preemptory challenges. This is blatantly unfair and the denial of due process. It also would serve to unnecessarily prolong trials.

The Academy strongly believes that if the court allows an additional number of preemptory challenges, then the party on the opposite side should be given a number equal to the total number of preemptors that are granted to parties on the same side. For instance, if there is one plaintiff and two defendants and the court determines that a ~~conflict~~ exists among the two defendants and grants each of them three, then it is only fair that the plaintiff would receive the same number - that is six preemptory challenges.

Standard 9 (D) concerns preemptory challenges in criminal cases. This proposed standard seeks to change Criminal Rule 24 and proposes that if there are multi-defendants, each additional defendant is only allowed one additional preemptory challenge. The Academy believes that Criminal Rule 24 is proper and that each additional defendant may peremptorily challenge the same number of jurors if he/she was the sole defendant. Each defendant should be free to make his/her own decisions with regard to preemptories and not be held to a co-defendants exercise of preemptory challenges.

Standard #16. Proposed Standard 16 (C) should not be mandatory but should be discretionary with the trial judge. Therefore, the Academy suggests that the word "may" be used instead of the word "should". In particular, we believe that the trial judge should have discretion whether to utilize written instructions. Written instructions should not be preferred by standard.

Standard \$517. The Jury Management Project Team's recommendation to reduce the *size* of juries is unacceptable to the Academy, its members, and the people of Ohio that are represented by the membership.

The Academy's position with regard to this recommendation is that it should be rejected. The reduction in the size of juries flies in the face and is inconsistent with Standard #1's goal of increasing the opportunity for jury service.

The purpose of a jury is to obtain a fair cross-section of the community. The smaller the number of jurors the less likely it is that a fair cross-section will be achieved. Jury service is a civic duty and everyone should have the opportunity for jury service. To restrict the number of jurors denies

citizens the right to participate in their government. The Academy strongly recommends that the Court reject proposed Standard 17.

The Cuyahoga County Bar Association



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WHAT A PAIN !!! HOW TO REPRESENT THE CLIENT WITH CHRONIC PAIN IN PERSONAL INJURY, MEDICAL MALPRACTICE AND WORKERS' COMPENSATION CASES

A seminar co-sponsored by The Cuyahoga County Bar Association and
The Cleveland Academy of Trial Attorneys.

Wednesday, October 6, 1993

Stouffer Tower City Plaza

Registration: 3:00 p.m.

Seminar: 3:30-6:00 p.m.

Chair: Laurie F. Starr, Esq.
Gaines & Stern

Faculty: Edgar L. Ross, M.D., Director
Meridia Suburban Pain Management Center
What is chronic Pain?

Donald S. Weinstein, Ph.D.
Donald S. Weinstein, Ph.D., Inc.
Psychological Issues in Treating Chronic Pain Patients

Meir Mazala, M.D.
Department of Anesthesiology
Meridia Suburban Hospital
Disability Evaluations of the Chronic Pain Patient

Prasad Perumbeti, M.D.
Chief of Staff
Meridia Suburban Hospital
Medical Management of the Patient's chronic Pain

John V. Scharon, Jr., Esq.
Gaines & Stern
Maximizing Damages

* A CARF Accredited Center

CCBA/CATA Members..... \$55.00

Non-Members..... \$75.00

Add \$10.00 after October 2, 1993.

2.50 Hours of C.L.E. credit have been requested.

The Cuyahoga County Bar Association is an established sponsor per Ohio Supreme Court Gov. Bar Rule X and the CCLE Regulations.

Pain Management Seminar
Wednesday, October 6, 1993
Stouffer Tower City Plaza, 24 Public Square

NAME _____ FIRM _____
ADDRESS _____ CITY _____
ZIP _____ TELEPHONE _____

MAKE CHECKS PAYABLE TO **THE CUYAHOGA COUNTY BAR ASSOCIATION.**

No cancellations (refunds) honored after Monday, October 4, 1993.

There is a \$20.00 Administrative Fee on all cancellations. All "no shows" will be billed. Course materials and beverages will have been ordered.

SUMMARIES OF RECENT DECISIONS BY THE
EIGHTH DISTRICT
COURT OF APPEALS, CUYAHOGA COUNTY
(AND TWO NINTH DISTRICT CASES)

1. Dickerson v. Thompson, Case No. 62640 (Cuyahoga Cty.) -
For plaintiff: James T. Murray and for defendant: Matthew J.
Hatchadorian.

Defendant Ohio Insurance Guaranty Association ("OIGA")
appealed from the trial court's judgement ordering it to pay claims
arising from the death of Arthur Dickerson, Jr. A trial resulted
in a jury verdict in the amount of **\$3,945,000.00**. A certain amount
was awarded for conscious pain and suffering and the remainder was
to be awarded to decedent's survivors, his surviving spouse and two
minor children. One of the defendant's general liability insurers
paid the limits. The excess liability insurance carrier became
insolvent and therefore plaintiff sought recovery through the OIGA.
Under the OIGA, each claim is limited to \$300,000.00. Therefore,
the executrix made three wrongful death claims (surviving spouse
and two minor children) and a claim for pain and suffering,
totalling four claims. The Court of Appeals affirmed the trial
court's determination that these indeed constituted four separate
claims under the same rationale employed by the Ohio Supreme Court
in the insurance context under Wood v. Sheuard, (1988) 38 Ohio St.
3d 86, 88, 526 N.E. 2d 1089. Further, the court refused to set off
the amount of money recovered from the primary insurance carrier
since there "presently [is] no amount payable on a 'covered claim'
from the primary insurance policy." The court reasoned that the
covered claim arose after the insolvency of the excess insurer and
therefore would not be set off by receipt of money under the
primary insurance policy. Lastly, the Court of Appeals reversed
the award of prejudgment interest indicating that it was
inappropriate since the amount to be paid in the event of liability
was in dispute.

2. Freeman v. Administrator. Bureau of Workers'
Compensation, Case No. 62272 (Cuyahoga Cty.) - For plaintiff:
Eric P. Allen, Patrick Freeman and for defendant: Lee Fisher,
Diane Karpinski.

The Court of Appeals determined that the trial court had no
jurisdiction to entertain an appeal of a determination that a lump
sum settlement not be permitted in a Workers' Compensation claim.
Therefore, the Court of Appeals affirmed the trial court's grant of
summary judgment, since the trial court did not have subject matter
jurisdiction.

3. Roszak v. Princess Cruises, Inc., Case No. 64990 (Cuyahoga Cty.) - For plaintiff: David I. Pomerantz and for defendant: Douglas R. Denny.

The court upheld the trial court's grant of summary judgment on the ground that plaintiff's claim was time barred because of a clause in the passage contract limiting the time a passenger may file a suit for injury to one year. While this case was one of first impression for Ohio courts, the Court of Appeals relied upon federal authority which analyze this matter under maritime law, the ticket being a maritime contract. Under maritime law, six month notification requirements and one year time limits within which to file lawsuits have been enforced by courts including the United States Court of Appeals for the Sixth Circuit.

4. Hlatky v. Asplundh Tree Expert Co., Case No. 63434 (Cuyahoga Cty.) - For plaintiff: George Wukovich and for defendant: Robert G. Cohn, Steven L. Sterner.

The Court of Appeals affirmed the trial court's grant of summary judgment holding that a Workers' Compensation claim for benefits is abated by the death of the claimant.

5. Garson v. Fast Food Operations, Inc., Case No. 64923 (Cuyahoga Cty.) - For plaintiff: Brent L. English, Peter J. McCabe and for defendant: John F. Rasmussen.

The court reversed the trial court's grant of summary judgment in a case involving plaintiff's fall when he stepped over an accumulation of snow left by the curb by a snowplow. Essentially, a premises owner can be liable for injury if it plows its parking lot in a negligent manner so as to create an unreasonable hazard.

6. Weisbarth v. Smeal, Case No. 63347 (Cuyahoga Cty.) - For plaintiff: William G. Weston and for defendants: G. Michael Curtin, Clifford Masch.

The court affirmed the trial court's granting of summary judgment. The plaintiff was injured while he was on his motorcycle passing an automobile on the automobile's right side. While plaintiff was passing, the automobile passenger opened the passenger door and the collision between the motorcycle and the door occurred. The action was brought against the driver of the automobile and the passenger who opened the door. The court pointed out that it is negligence per se for the driver of a vehicle to pass on the right when the pavement is not sufficient for two lines of traffic, under Ohio Revised Code Section 4511.28(A)(2). Further, one may not pass if in so doing it is required to drive off of the roadway. See Ohio Revised Code Section 4522.28(8). Further, the court held that a trial court on summary judgment may determine that a plaintiff's negligence exceeds the negligence of the defendants depending upon the circumstances of the case, which the trial court did in this case.

7. Lewis v. City of Cleveland, Case No. 63314, (Cuyahoga Cty.) - For plaintiff: John E. Duda and for defendant: Danny R. Williams, Drew A. Carson.

The court declined plaintiff's invitation to hold Ohio Revised Code Section 2744.02(B)(1)(b) unconstitutional. This section provides immunity to fire departments in the operation of motor vehicles while proceeding toward a place where there is a fire, when such conduct does not rise to willful or wanton misconduct. The court upheld the statute as being constitutional under Section 16, Article I of the Ohio Constitution that all courts shall be open since it is a permissible legislative objective to conserve political subdivision's fiscal resources. Further, the court upheld the statute under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution since under the rational basis test the classification created by the statute is based upon a valid and important policy.

8. Holtz v. Schutt Pattern Works Co., Case No. 61559, (Cuyahoga Cty.) - For plaintiff: John E. Duda and for defendant: Ellen Loth.

The Court reversed the trial court's grant of summary judgment in an employer intentional tort case where the product manufacturer was in bankruptcy. The case involved amputation injuries to plaintiff's first and middle fingers while he was operating an unguarded Oliver jointer machine. The plaintiff had developed substantial evidence of the employer's knowledge of hazards which would arise in the use of such machine including the availability of a guard and the employer's rejection of such guard. Further, an OSHA inspection resulted in a citation due to the lack of guarding. Under the circumstances of this case, the court determined that a fact issue existed as to the degree of knowledge of risk that the employer had under the test enunciated by the Ohio Supreme Court in Fyffe v. Jenos Inc., 59 Ohio St. 3d 115, 570 N.E. 2d 1108.

9. Kokitka v. Ford Motor Co., Case No. 63207 (Cuyahoga Cty.) - For plaintiff: Steven A. Sindell and for defendant: Aubrey B. Willacy, Michelle A. Lafferty.

The court reversed the final judgment of the Common Pleas Court entered on a jury verdict which found the plaintiff was not entitled to participate under the Workers' Compensation Act for injuries she sustained. The trial court reversed on the basis of two jury instructions, one involving expert testimony and one involving aggravation of pre-existing condition. The court pointed out, in respect to the jury instruction concerning expert testimony, that a jury instruction may not direct the jury to reject an expert's testimony by giving it no weight at all in the event that the jury finds the facts that the expert relied upon were not all accurate or true. The determination of the accuracy of facts relied upon by an expert by the jury does not necessarily mean that an expert's opinion must be rejected under all circumstances.

10. Iskowiz v. Whitt, Case No. 62030 (Cuyahoga Cty.) - For plaintiff: Morris Levin and for defendant: Marillyn F. Damelio.

The court reversed a jury verdict in favor of the defendant essentially because the trial court did not permit plaintiff's expert to testify. The trial court rejected the testimony of plaintiff's expert since plaintiff's expert was relying upon an examination of the automobile five months after the accident took place. In this automobile negligence case, the defendant denied striking the plaintiff's automobile in the rear. Plaintiff's expert examined defendant's vehicle some four to five months after the accident and took photographs. The trial court believed such inspection and photographs were too remotely connected to plaintiff's claims to be relevant. The Court of Appeals disagreed holding that such testimony and photographs were relevant under Evidence Rule 401. Further, under Evidence rule 403(A) such evidence was not so "remote" to be excludable.

11. Hallett v. Stow Board of Education, Case No. 15846 (Summit Cty.) - For plaintiff: Dennis R. Landsdowne, John A. Lancione and for defendant: Jeffrey Lindenberger.

The court reversed the trial court's granting of a motion for summary judgment in a premises liability case brought against a political subdivision. The plaintiff stepped in a hole which was present in the vicinity of bleachers at the Stow High School. It was plaintiff's contention that the hole was negligently permitted to exist. Thus, even under the immunities granted political subdivisions, plaintiff's claim could stand under Ohio Revised Code Section 2744.02(B)(2) (negligent acts of employees concerning proprietary functions, which include the operation and control of a public stadium under Section 2744.02(G)(2)) and also under Section 2744.02(B)(4) (negligence of employees occurring within or on the grounds of buildings used in the connection with the performance of a governmental function, which governmental function under 2744.01(C)(2)(c) included the provision of a system of public education). Under these two exceptions to non-liability plaintiff's claim was valid. Then, when considering the exceptions to liability under 2744.03, the court found that the activity of maintenance employees charged with the responsibility of removing litter and inspecting the grounds for hazardous conditions could subject the political subdivision to liability. This activity was neither one of policy making under 2744.03(A)(3) or one subject to fiscal discretion under 2744.03(A)(5).

12. Rogozinski v. Loverde, Case No. 2166 (Medina Cty.) - For plaintiff: Wendel E. Willman and for defendant Coronet Insurance Co.: Michael A. Pohl.

The court reversed the trial court's grant of summary judgment in favor of the insurance company on the question of uninsured motorist coverage. The plaintiff was a passenger in an automobile insured by Coronet and owned and operated by another defendant, Louis Loverde. This automobile was pulling an uninsured trailer.

Under the liability portion of the policy, coverage was excluded for incidents while an uninsured trailer is being towed. Based upon this exclusion in the liability section of the policy, the insurance company maintained that the uninsured motorist provision did not cover the plaintiff passenger's injuries. The court determined that since no insurance was available to the defendant driver based upon the liability exclusion, this was an uninsured motorist case and therefore the uninsured motorist protection was available to the plaintiff passenger who is an insured under the policy. The court simply applied Ohio Revised Code Section 3937.18 to the case at hand, which statute requires that uninsured motorist coverage be provided for the protection of persons insured under policies of insurance. Although plaintiff was not a named insured he was indeed an insured as that term was defined in the policy. As such, uninsured motorist benefits were available.

Booker T. Pruitt v. Veterans Administration (Wade Park)

Settlement: June, 1993

Plaintiff's Counsel: Daniel M. Roth

Defendant's Counsel: Terry J. Wolk (V.A. District Counsel)

Insurance Company: No carrier since the plan was funded by the United States through the G.A.O.

Type of Action: Medical Malpractice.

The plaintiff was 65 years old when he received radiation therapy for nasopharyngeal cancer at the V.A. Wade Park. Ten months after completion of the therapy, the plaintiff noticed a decrease in vision. The claim was made that the radiation therapy was improperly administered.

Damages: Bilateral loss of vision.

Plaintiff's Expert: Francis O'Conner M.D. (Radiologist)
Edmond A. Provder, C.R.C. (Occupational Assessment)

Defendant's Expert: None disclosed.

Settlement: \$600,000.00 (Structured)

Weitzel v. Varma, et al.

Settlement/Verdict: May, 1993

Court: Cuyahoga County Common Pleas

Plaintiff's Counsel: Charles Kampinski

Defendants' Counsel: William Coyne, Robert Warner, Ronald Okada, Robert Seibel, Sanjay Varma, Fred Carmen, Burt Fulton and John Jackson

Type of Action: Medical Malpractice/Wrongful Death

On February 11, 1991, Sharon Weitzel, age 46, sustained a heart attack at work. She was life-flighted the next day to a Cleveland hospital. Although she had an attending cardiologist, she was taken care of primarily by rotating resident. Her condition stabilized and she was being treated for complications of ARDS and various infections.

The resident left guide wires for an arterial line in plaintiff's right femoral artery. They were discovered 10 days later and the attending cardiologist performed a percutaneous removal on March 13, 1991, at which time he realized that not one, but two eighteen inch intact guide wires were in the iliac to the carotid artery. He was able to remove one of them. The next day, March 14, 1991, surgery was done to remove the other guide wire.

Approximately four hours after surgery her vital signs began deteriorating. She was not seen by any physician from 8:00 p.m. until 1:30 a.m., at which time she died. The autopsy revealed a large hematoma at the operative site.

Damages: Death. Survived by husband and fourteen year old son.
She was earning approximately \$10,000.00 a year.

Plaintiff's Experts: Paul Kohn, M.D. (Cardiologist)
Howard Pitluk, M.D. (General Surgery)
Dennis Mazal, M.D. (Pulmonologist)
John Burke, Ph.D. (Economist)

Settlements/Verdicts: \$1,325,000.00 - Wrongful Death claim
\$1,600,000.00 - Survivorship claim

Linda Yarborough v. Best Products

Court: Cuyahoga County Common Pleas
Plaintiff's Counsel: Michael Shafran
Defendant's Counsel: Steven Kelley
Type of Action: Slip and Fall.

Plaintiff, a 31 year old hairdresser slipped and fell on ice and snow outside defendant's store, in the area of the sidewalk, causing a fracture of the ankle, necessitating surgery.

Damages: Fractured ankle. Medical specials - \$20,000.00.

Settlement: \$175,000.00

Garv Rall, et al. v. Nursery Land Garden Center, et al.

Court: Lake County Common Pleas
Judgement: February, 1993
Plaintiffs' Counsel: John A. Sivinski and Jack L. Petronelli
Defendants' Counsel: Timothy G. Sweeney
Insurance Company: Heritage Mutual Insurance Company
Type of Action: Automobile Accident.

Plaintiff claims back injury from rear end automobile accident with continuing low back problems. Defendant claimed back problems were result of pre-existing degenerative disc disease.

Damages: Cervical, dorsal and lumbar myositis.

Plaintiffs' Experts: Richard Stang, D.O.
Richard O. Dickson, D.C.

Defendants' Expert: Byron Hoffman, M.D.

Judgment: \$59,000.00 Settlement: \$54,000.00 after
post-verdict deduction of
Workers' Compensation benefits

Offer: \$17,500.00 Demand: \$30,000.00

Florence & Frank Pirnat v. Christopher Ferrito

Court: Cuyahoga County Common Pleas

Judgement: July 1, 1993

Plaintiffs' Counsel: Michael V. Kelley and John A. Sivinski

Defendant's Counsel: Timothy Sweeney

Insurance Company: Safeco

Type of Action: Automobile Accident.

Plaintiffs while riding in a cab were rear ended. Wife sustained non-union of prior lumbar fusion. Husband sustained minimal soft tissue injury.

Damages: Florence - Lumbar fusion revision with internal fixation.
Frank - Soft tissue.

Plaintiffs' Experts: R. Geoffrey Wilbur, M.D.

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

Judgment: \$155,000.00 Settlement: -0-

Offer: \$82,000.00 Demand: \$165,000.00

Samantha Taylor, A Minor, etc., et al. v. Dr. Obstetrician, et al.

Court: Cuyahoga County Common Pleas

Plaintiffs' Counsel: Michael F. Becker

Defendants' Counsel: William Bonezzi, Joan Ford and
Leslie Spisak

Type of Action: Medical Malpractice.

Plaintiffs first child was born October 20, 1989 after an uneventful prenatal course. Shortly after labor began, there were warning signs of fetal distress. The same was not appropriately assessed and acted upon by the attending obstetrician and attending nurses. Some five or six hours after fetal distress first became apparent, Samantha was born in a very depressed state. Her Apgars were 1 and 4 at 1 and 5 minutes, respectively. She was born flaccid and extremely pale and had no respirations. No pediatrician was in attendance at the time of birth. A pediatrician in the area ultimately intubated her at four minutes of life. There was some dispute whether or not Samantha sustained any type of forced ventilation during the first four minutes of life. Within two minutes after the intubation, the house pediatrician arrive. The house pediatrician failed to (1) recognize the malpositioning of the endotracheal tube during the resuscitation efforts, (2) recognize a tension pneumothorax and treat the same via a chest tube, and (3) push fluids and give bicarb. Over 25 Minutes passed before the house pediatrician called for transport to a tertiary care center. Upon tertiary care arrival at approximately one and a half hours of life, they promptly established a venous line and

pushed fluids, administered bicarb, inserted a chest tube and readjusted the endotracheal tube which had been in the right main bronchi. Samantha was ultimately transferred to a tertiary care center in Cleveland where she was diagnosed as having severe birth asphyxia and went on to have a seizure at 14 1/2 hours of life.

Damages: Spastic quadriplegia and moderate mental retardation. Presently, unable to walk or talk.

Plaintiffs' Expert: William Wittert, M.D. (Chicago IL)
Stuart Edelberg, M.D. (Baltimore MD)
Steven Donn, Neonatologist (Ann Arbor MI)

Defendant's Expert: Geoffrey Altshuler, Placental Pathologist (Oklahoma City OK)

Settlement: \$4,000,000.00

Kenneth A. Chastain, Adm. of The Estate of
Cathy Chastain v. Thomas C. Klosterman, M.D., et al.

Settlement: August, 1993

Court: Medina County Common Pleas

Plaintiff's counsel: Jeffrey H. Spiegler

Defendants' Counsel: Douglas Fifner and Jeffrey Schobert

Insurance Company: Medical Protective and P.I.C.O.

Type of Action: Medical Malpractice/Wrongful Death

Defendant family practitioner failed to diagnose or treat staph infection in decedent's right iliopsoas musculature. Decedent then developed endocarditis which led to embolic infarction and mycotic aneurysm to her brain. The aneurysm ruptured resulting in death. Defendant radiologists failed to report plain X-ray and MRI findings suggesting pathology in right psoas and iliacus muscles.

Damages: Death. Medical specials - \$98,000.00. Diminished earning capacity - \$628,000.00 (contested).

Plaintiff's Experts: Martin Raff, M.D. (Infectious Disease - University of Louisville)
Harry Boltin, M.D. (Radiologist - New York NY)

Defendants' Experts: Stuart Levin, M.D. (Infectious Disease - Rush-Presbyterian Hospital, Chicago IL)
Bruce Farber, M.D. (Infectious Disease - Cornell University)
Lawrence Cooperstein, M.D. (Radiology - Pittsburgh PA)

Settlement: \$850,000.00

Zachary Hammon v. Marymount Hospital, et al.

Judgment: June 30, 1993

Court: Cuyahoga County Common Pleas

Plaintiff's Counsel: Christopher M. Mellino

Defendants' Counsel: Jerome Kalur

Type of Action: Medical Malpractice.

On September 1, 1988, Rita Berardinelli was admitted to Marymount Hospital in labor with her first child, Zachary, and continued in labor throughout the early morning hours of September 2, 1988. She was seen at approximately 9:00 a.m. in the morning by the Defendant, Dr. Amin El-Mallawany. After seeing Rita at that time Dr. El-Mallawany left the hospital. Although Dr. El-Mallawany did not clinically estimate Zachary's fetal weight on the day of delivery, he expected Zachary to weigh approximately 9-9 1/2 pounds. Rita developed a urinary tract infection during labor which the defense claimed caused the brain damage.

Plaintiff alleged that Dr. El-Mallawany was negligent in failing to clinically estimate the fetal weight on the day of delivery, in using forceps to attempt to deliver Zachary and in using fundal pressure once shoulder dystocia was encountered.

Damages: Permanent brain damage causing great difficulty with any activity involving muscle control or motor skills.

Plaintiff's Experts: Stuart Edelberg, M.D. (OB/GYN - Baltimore MD)
Max Wiznitzer, M.D. (Pediatric Neurology - Cleveland OH)
John Burke, Ph.D. (Economist - Cleveland OH)
George Cyphers, Certified Rehabilitation Counselor (Cleveland OH)

Defendants' Experts: Elias Chalhub, M.D. (Pediatric Neurology - Mobile AL)
Leroy Dierker, M.D. (OB/GYN - Cleveland OH)

Judgment: \$3,995,000.00

Settlement: -0-

Offer: -0-

Last Demand: \$3,200,000.00