

Cleveland Academy of Trial Attorneys

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CLEVELAND ACADEMY OF TRIAL ATTORNEYS FEBRUARY, 1998 NEWSLETTER

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PRESIDENT'S COLUMN

On behalf of the Cleveland Academy of Trial Attorneys, I wish you all a Happy New Year. I am sure that 1998 will present many challenges to us and our clients. Among these challenges includes preserving our clients' rights in medical malpractice actions involving the PIE Mutual Insurance Company and others. A stay has been issued by the court in Harold T. Durvee, Superintendent of Insurance v. The PIE Mutual Insurance Company, Case No. 97-CVH12-10867 presently pending in the Court of Common Pleas, Franklin County, Ohio before the Honorable Michael Watson. An agreed Order appointing a rehabilitator in that case was filed on December 15, 1997. In order to remain fully apprised of this matter, the CATA established its Task Force headed by Jean McQuillan and Michael Becker.

In this regard, you are urged to participate in this Task Force and communicate with Ms. McQuillan or Mr. Becker to pass along information which will benefit all of our members and clients.

One current issue includes cases being stayed where physicians insured by PIE are not parties but The Cleveland Clinic is a party. A coordinated approach should be taken to lift the stay in regard to cases stayed where PIE does not actually insure the parties.

BERNARD FRIEDMAN LITIGATION INSTITUTE

On March 6, 1998 at the Cleveland Hilton South, the Cleveland Academy of Trial Attorneys is co-sponsoring with the Ohio Academy of Trial Lawyers an all day seminar. The seminar is entitled "Big Cases-Big Issues: How To Overcome And Use Problems To Your Advantage." This seminar takes place annually to honor Bernard Friedman, a fine trial court judge of the Common Pleas Court of Cuyahoga County who was committed to helping young lawyers. This seminar also includes .75

hours of ethics credits. Francis E. Sweeney of the Ohio Supreme Court will present this segment of the program. Judge Friedman of the Cuyahoga County Common Pleas Court will present a talk on evidence while the Honorable Janet R. Burnside of the Cuyahoga County Common Pleas Court will speak on "Privileges and Peer Review: Statutory and Common Law Issues." Other trial lawyers from Northeast Ohio and elsewhere will present talks on subjects ranging from going the extra mile in a big case, subrogation, PIE Mutual proceedings, intentional tort cases and lawyering in the 21st Century.

This institute is being chaired by Jean McQuillan and promises to help you keep current with the ever changing issues facing our clients. I urge all of you to attend this seminar.

NEW MEMBERS

The CATA welcomes the following individuals as new members to our group. Thomas D. Robenalt, Carmen Naso, Robert V. Housel, Rhonda Baker-Debevec, Edward W. Cochran, Daniel R. Karon, George Mineff, Jr. and Timothy Pieper. We welcome these new members to the CATA and look forward to their participation in our various educational activities, including the luncheon seminars and the Bernard Friedman Litigation Institute.

FOLLOW UP TO TED MUSSLER LUNCHEON SEMINAR

We have received several inquiries from our members concerning evidence and demonstrative aids which have been used to support low impact injury claims. If you have any information or material, please forward it to our Brief Bank so that many of our members who continue to encounter difficulties in supporting injury claims involving low impact and minor property damage have access to this information. Any assistance we can give one another only inures the benefit of all of our clients.

SIGNIFICANT OUT OF COUNTY DECISIONAL LAW

The Illinois Supreme Court on December 18, 1997 announced that the entire tort reform statute which had been passed in 1994 was unconstitutional. This statute was declared invalid in its entirety. The Opinion is available Online at www.state.il.us/court/supremes/81890.txt.

Sincerely,



Richard C. Alkire, President

FOR CATA NEWSLETTER:

PIE TASK FORCE -

An organizational meeting is scheduled for January 27, 1998 at 12:00 p.m. at the Bond Court Building Conference Center (Conference Room "A"), 1300 E. 9th St., Cleveland, Ohio.

PIE is currently subject to an order of rehabilitation issued on 12/15/97 by Judge Michael Watson in the Franklin County Court of Common Pleas. The rehabilitation order has stayed all proceedings which involve PIE as a party or insurer for a minimum of 90 days. Immediate issues have arisen from the stay. First, can a Plaintiff still use a 41(A) dismissal of PIE Defendants to avoid the stay? Second, the Cleveland Clinic Foundation has sought stays of proceedings on the basis that it had contracted with PIE to provide legal representation, not insurance, to CCF. We hope to share information and attempt to deal with these immediate issues.

The question for the future will be whether the Department of Insurance takes PIE into liquidation. Historically, no insurance company in Ohio has come out of rehabilitation to do business again. Given the reported financial discrepancies, it would seem prudent to inform yourself about the ramifications of liquidation. First, it is covered by R.C. 3903.01, et.seq. All current PIE insurance policies will lapse within 30 days of the liquidation order (3903.19). If PIE is found insolvent, a liquidation order will invoke an automatic further 6-month stay of all proceedings (3955.19), and settlement of claims will involve the Ohio Insurance Guaranty Association (OIGA - R.C. 3955.01, et.seq.). There will be a separate claim procedure to

present claims to the liquidator and/or the OIGA. (3903.35,.36,.38).

The OIGA will step in to "replace" PIE insurance coverage with its own set of limits -- \$300,000.00 per "covered claim" -- and procedures. (3955.01).

As the **task** force begins work, we intend to provide members additional information to assist with resolution of PIE claims. If any member has questions or has information to share, please fax same to the PIE Task Force, c/o Greene & McQuillan Co., L.P.A. at (216) 687-0651.

Jean M. McQuillan
Michael Becker, Co-Chairs

GOVERNMENTAL IMMUNITY - EMERGENCY CALL

Jacobs v. City of Cleveland, Cuy. Cty. App. No. 72024 (Dec. **11**, 1997). For Plaintiff-Appellant: Scott A. Rumizen and For Defendant-Appellee: Traci M. Hixson. Opinion By: Timothy E. McMonagle. James D. Sweeney and Ann Dyke concur.

A Cleveland police officer observed plaintiff's vehicle driving at an excessive rate of speed through two red traffic lights. The police officer activated his overhead emergency lights and siren and proceeded to follow plaintiff's vehicle. Apparently, parts of the road were icy and snow covered. Plaintiffs pulled their vehicle over and stopped. However, the police officer was unable to stop and struck the rear of the plaintiff's vehicle. The trial court granted defendant's motion for summary judgment on the basis that the city was cloaked with the benefit of sovereign immunity under Ohio Revised Code Section 2744.02(B) (1)(a) because the officer was engaged in an emergency call. Despite the police officer's own testimony that he did not consider the events proceeding the stop of plaintiff's vehicle as an emergency and that the stop was a low level priority stop, the Court of Appeals affirmed on the basis that the definition of emergency call contained in R.C. 2744.01 (A) defined emergency call as a "call to duty" regardless of whether the officer was responding to an inherently dangerous situation. Moreover, the Court of Appeals found that the situation was "inherently dangerous" despite the opinion of the police officer.

GOVERNMENTAL IMMUNITY

Phipps v. Patton, et al., Cuy. Co. App. No. 72257, (Dec. **11**, 1997). For Plaintiff-Appellant: Timothy P. Misny and David C. Landever. For Defendant-Appellees: Nicholas J. Fillo and Rhonda Curtis. Per Curiam.

The trial court granted summary judgment on plaintiff's claims that the City of East Cleveland permitted a nuisance to exist upon one of its roadways due to an alleged obstruction of vision caused by overhanging branches and shrubbery on the property of a third party. The plaintiff

also alleged that the City of East Cleveland's failure to erect a traffic signal on the subject roadway constituted a nuisance. In granting the motion for summary judgment, the trial court reasoned that the offending overgrown trees and shrubs were located on property which was neither owned nor under the control of the City of East Cleveland. Additionally, the trial court went on to state that there was no evidence that the city was negligent in failing to install a traffic light at the subject intersection and, even if there was evidence of any such negligence, the decision to install a traffic signal is a discretionary decision for which the city is immune from liability under Ohio Revised Code Section 2744.03(A) (5). The Court of Appeals affirmed on the issue of the City's failure to install a traffic signal. However, the Court of Appeals held that an overgrowth of tree branches and/or shrubbery which extends into the right-of-way of the particular highway which renders the regular traveled portion of the highway unsafe for usual and ordinary travel may be a nuisance for which a political subdivision may be liable under Ohio Revised Code Section 2744.02(B) (3). The Court of Appeals concluded that there existed a genuine issue of material fact as to whether the alleged overgrowth extended into the highway right-of-way and, if so, whether that condition rendered the highway unsafe for usual and ordinary travel so as to constitute a nuisance., (Manufacturers National Bank of Detroit v. Erie County Road Commission, 63 Ohio St.3d 318 (1992)).

**STATUTE OF LIMITATIONS - RELATION BACK OF AMENDMENTS WHERE
NAME OF PARTY IS PREVIOUSLY UNKNOWN**

Austin v. The Standard Building, Cuy. Co. App. No. 71840- (December 4, 1997). For Plaintiff-Appellant: Christopher M. Ernst and Christopher S. Winters. For Defendant-Appellee: David J. Fagnilli. Opinion by Timothy E. McMonagle. James D. Sweeney and Joseph J. Nahra concur,

Plaintiff filed her personal injury action on July 29, 1994. At the time of the filing the name of one of the defendants was unknown so that that particular entity was designated ABC Corporation on the face of the complaint.

The complaint alleged that the fall which caused the injuries occurred on August 16, 1992. On February 8, 1995, plaintiff obtained leave of court to amend her complaint and substitute the R.W. Clark Corporation for ABC Corporation. Plaintiff perfected service of the amended complaint on R.W. Clark Corporation by certified mail on February 16, 1995. The trial court granted summary judgment in favor of R.W. Clark Corporation based upon the running of the applicable statute of limitations. The Court of Appeals affirmed. The Court of Appeals recognized that pursuant to Ohio Civil Rule 15(D), a plaintiff may designate an unknown defendant by a fictitious name. Civil Rule 15(D) then provides that the complaint must be amended to substitute the proper name of the defendant when it is discovered. Civil Rule 3(A) permits such an amendment of the complaint to relate back to the date of the original filing under circumstances where plaintiff has utilized a fictitious name for a previously unknown defendant. Nevertheless, the Court of Appeals relied upon the Ohio Supreme Court case of Amerine v. Haughton Elevator Company, 42 Ohio St.3d 57 (1989), in which the Supreme Court interpreted the newly amended Civil Rule 3(A). The Supreme Court of Ohio in Haughton held, at the syllabus: "in determining if a previously unknown, now known, defendant has been properly served so as to avoid the time bar of an applicable statute of limitations, Civil Rule 15(D) must be read in conjunction with Civil Rule 15(C) and 3(A). The Amerine court went on to state: "Civil Rule 15(D) specifically requires that the summons must be served personally upon the defendant. Thus, relying upon Amerine, the court of Appeals held that Civil Rule 15(D) requires personal service to be made upon the recently discovered defendant. Therefore, because the plaintiff did not serve the defendant personally but, rather, by certified mail, the

plaintiff was not entitled to the relation back provided for in Ohio Civil Rule 3(A).¹

PUNITIVE DAMAGE - A SUSTAINMENT OF SUBSEQUENT
DUI CONVICTIONS TO ILLUSTRATE MALICE

Cappara v. Schibley, Cuy. Co. Case Nos. 71070, 71368 and 71399 (November 26, 1997). For Plaintiff: Dennis R. Lansdowne and John R. Liber. For Defendant: James A. Sennett, Adam E. Carr and Thomas C. Schrader. Opinion By: James D. Sweeney. John J. Nahra and Timothy E. McMonagle concur.

Defendants admitted liability in a personal injury action stemming from a motor vehicle accident. Plaintiff sought punitive damages and attorneys fees based upon a contention that the defendant acted with malice in operating a motor vehicle while under the influence of alcohol. While there was apparently no direct evidence that defendant was intoxicated at the time of the accident, defendant had one prior conviction for driving under the influence of alcohol. The trial judge permitted plaintiff to introduce into evidence the defendant's two convictions for driving under the influence of alcohol subsequent to the accident which was the subject of the suit. The trial judge felt that the

¹Civil Rule 15(D) also states that the summons must contain the words "name unknown." This is interesting inasmuch as once the plaintiff discovers the name of the John Doe defendant the name is no longer "unknown" for purposes of personally serving the amended complaint which is relating back to the date of the original filing. On the other hand, if the service of the summons which must contain the words "name unknown" and which must be served personally upon the defendant is in reference to the filing of the original complaint, one is at a loss to determine how to personally serve a defendant whose identity and whereabouts are unknown.

subsequent convictions were relevant on the issue of punitive damages. The Court of Appeals reversed holding that subsequent convictions could never be relevant or have any bearing on defendant's state of mind for purposes of determining whether defendant acted with malice on the date of the accident in question. Nevertheless, the Court of Appeals affirmed that prior DUI convictions are admissible in evidence to demonstrate malice for purposes of punitive damages even where there is no direct evidence of intoxication of the defendant at the time of the accident.

UNINSURED MOTORIST COVERAGE

Wilson v. Nationwide Insurance Company, Cuy. Co. App. No. 71734 (November 20, 1997). For Plaintiffs-Appellants: Jeffrey H. Friedman and Stephen S. Vanek. For Defendant-Appellee: Timothy D. Johnson, Gregory E. O'Brien and Daniel A. Richards. Opinion By: Kenneth A. Rocco. Timothy E. McMonagle concurs. Diane Karpinski concurs in judgment only.

Plaintiff's decedent suffered fatal injuries as a result of a motor vehicle accident in which the tortfeasor was uninsured. Both the accident and filing of the suit occurred after the effective date of Senate Bill 20. (R.C. 3937.18, as amended). The Court of Appeals affirmed the trial court's grant of summary judgment in favor of Nationwide on the basis that newly amended R.C. 3937.18 (Senate Bill 20), which governed this particular case, permitted Nationwide to limit uninsured motorist coverage to injuries sustained by insureds under the policy or by their resident relatives. In this case, since the adult siblings bringing the claim did not reside with the decedent, Nationwide's policy restriction was valid under Senate Bill 20. The Court of Appeals further held that the provision in Senate Bill 20 permitting the insured to limit coverage to injuries sustained by insureds under the policy and/or their resident relatives was constitutional pursuant to the Ohio

Supreme Court's decision in Beagle v. Walden, 78 Ohio St.3d 59 (1997).²

GOVERNMENTAL IMMUNITY

Neelon v. Conte, Jr., Cuy. Co. App. No. 72646 (November 13, 1997). For Plaintiff-Appellee: Benito C.R. Antognoli. For Defendant-Appellants: David K. Smith, Albert L. Purola and Jeffrey J. Wedel. Per Curiam.

Appellant school board, with full knowledge, permitted as an extra-curricular activity parties in the home of its high school principal. Indeed, the Board of Education provided school buses for these occasions. Plaintiffs alleged negligence and emotional distress in connection with the clandestine videotaping of their minor daughter while she changed clothes in the bathroom of the principal's home during one of these parties. The trial court overruled appellant's motion to dismiss. The trial court reversed holding that the exceptions contained in R.C. 2744.02(B) to the general rule of immunity did not apply in the case at bar. Specifically, plaintiff alleged that the exceptions for proprietary functions and injuries caused by the negligence of governmental employees occurring within or on the grounds of buildings used in connection with a

²Interestingly enough, the Court of Appeals read Holt v. Grange Mutual Casualty Company, 79 Ohio St.3d 401 (1997) and the Supreme Court's dismissal of the original allowance of the appeal in Kocel v. Farmers Insurance of Columbus, Inc., 79 Ohio St.3d 1235 (1997), as authority for the proposition that insured siblings could not recover wrongful death damages for non-resident relatives who suffer death at the hands of an uninsured motorist, regardless of whether Senate Bill 20 was applicable. The digression is interesting inasmuch as it is unnecessary to a resolution of the appeal under the amendments to R.C. 3937.18 which were clearly applicable to this case.

governmental function were applicable so as to defeat the general grant of immunity. The court of appeals concluded that the Board of Education, in cooperating with the parties at the principal's home, was engaged in a governmental function by providing a system of public education. At the same time, the Court of Appeals held that the exception for negligence by governmental employees occurring within or on the grounds of buildings used in connection with a governmental function was not applicable because the principal's home was not a building used in connection with the performance of a governmental function.

CONSTITUTIONAL CLAIMS

Brkic v. City of Cleveland, Cuy. Co. App. No. 72724 (November 6, 1997). For Plaintiff-Appellant: Roy C. Morscher. For Defendant-Appellee: Sharon Sobol Jordan and John W. Monroe. Per Curiam.

Plaintiff was the owner of a two unit family home. Tenants rented both units which were alleged to be in good repair. On May 25, 1992, the Cleveland Police executed a search warrant at the downstairs unit of the residence. The property was damaged by the police officers breaking into walls, smashing toilet reservoirs, sinks, tubs, kitchen cabinets, cutting wires and removing copper lines. Following the raid, the Cleveland Police contacted the city housing inspectors to examine the house and the inspectors found numerous violations. Plaintiff received notices of some violations which were dated June 3, 1992. Plaintiff was ordered to correct the violations by June 4, 1992. The property was condemned by Cleveland. Plaintiff received estimates from contractors to repair the damage which estimates were in excess of \$19,000.00, nearly equal to the fair market value of the property. Plaintiff alleged violations under the Ohio Constitution. Namely, plaintiff alleged that the police conduct constituted an unconstitutional taking of his property without compensation. Additionally, plaintiff alleged that the police conduct violated the Ohio Constitution guaranty that he would not be deprived of property without due process of law. Finally, plaintiff alleged that the Cleveland Police Department engaged in an abuse of their police power. The trial court granted summary judgment on the basis of

governmental immunity as provided under R.C. 2744.01, et seq. The Court of Appeals reversed, holding that under the circumstances the plaintiff set forth valid claims under the Ohio Constitution. The Court of Appeals further held that the plaintiff need not exhaust any administrative remedy relating to the condemnation where the housing code violations were caused by the Cleveland Police. Moreover, the Court of Appeals held that the issue of whether the conduct of the police when executing the search warrant was reasonable and bore a substantial relationship to the object of Cleveland in exercising its police power was a material fact in dispute. Finally, the Court of Appeals held that Ohio Revised Code Section 2744.01, et seq., did not apply to the case at bar because said statutory immunity provision applied only to tort actions and not those alleging deprivation of constitutional rights.

INVASION OF PRIVACY

Smith v. Dean's & Dave's Discount Stores, Cuy. Co. App. No. 71766 (October 30, 1997). For Plaintiff-Appellant: George L. Nyerges. For Defendant-Appellee: Patrick F. Roche. Opinion by Joseph J. Nahra. James D. Sweeney and Terence J. O'Donnell concur.

Plaintiff presented evidence that upon entering defendant's store an employee thereof ran up to plaintiff, grabbed her arm, stating that plaintiff "was the one." Additionally, the employee took plaintiff's purse and emptied its contents onto the counter. Plaintiff's male companion was ordered to empty his pockets and was searched. Both of these plaintiffs testified to the effect that they suffered shame, embarrassment and humiliation over the incident because a crowd of customers had gathered to watch the scene. They also stated that the stress of the incident aggravated pre-existing medical conditions. The Court of Appeals reversed the trial court's granting of a directed verdict in favor of the defendant because the facts were sufficient for a jury to conclude that the plaintiffs had suffered an invasion of privacy. The Court of Appeals held that an actionable invasion of the right of privacy is the unwarranted appropriation or exploitation of one's personality, the publicizing of one's private affairs with which the public has no legitimate concern, or the wrongful

intrusion into one's private activities in such a manner as to cause outrage or mental suffering, shame or humiliation to a person of ordinary sensibility. The Court of Appeals was of the opinion that while the conduct of the defendant was not so outrageous as a matter of law as to give rise to the tort of intentional infliction of emotional distress, a reasonable finder of fact could conclude that the intrusion, if any, was highly offensive so as to cause shame, humiliation and/or mental suffering to a person of ordinary sensibilities.

EXPERT TESTIMONY

Hayes v. Administrator, Bureau of Workers' Compensation, Cuy. Co. App. No. 72667 (October 30, 1997). For Plaintiff-Appellee: Jeffrey Lojewsky. For Defendant-Appellant: Betty D. Montgomery and James P. Mancino. Per Curiam.

The Court of Appeals affirmed the trial court's denial of the Bureau of Workers' Compensation's motion in limine to exclude the expert opinion testimony of plaintiff's treating physician. The Bureau sought to exclude such evidence because said doctor partially relied upon the diagnoses of other prior doctors, which prior doctors did not testify, in reaching his opinion as to the nature of plaintiff's condition or injury. The Court of Appeals reasoned that prior diagnoses of the other doctors were facts derived from the treating physician's care of the injured worker. The treating physician's care included a review of the injured worker's medical records and past medical history. In formulating a diagnosis, the treating physician is entitled to review the injured worker's entire record, including the medical records of other treating physicians. Thus, the facts and/or data upon which the treating physician based his opinion were those perceived by him in rendering his care to the injured worker.

VERDICTS AND SETTLEMENTS

Tilda Lester, Adm. etc. v. Cleveland Clinic Foundation

Court and Judge: Cuyahoga County Common Pleas; Judge Ronald Suster

Settlement: May, 1996

Plaintiffs Counsel: Donald E. Caravona & Michael W. Czack, CARAVONA & CZACK,
P.L.L.

Defendant's Counsel: John Jackson

Insurance Company: Self-Insured

Type of Action: Medical Malpractice.

Plaintiff decedent, married and age 61, was admitted to the Cleveland Clinic Foundation for repair of an expanding abdominal aortic aneurysm. The surgery was unremarkable and considered a success. While in ICU in the middle of the night, a resident physician decided to extubate the decedent. As a result of complications arising after the extubation, the patient died.

Damages: Death.

Plaintiffs Experts: John W. Hoyt, M.D. (anesthesiology & critical care medicine); John F. Burke, Jr. Ph.D.

Defendant's Experts: Jeffrey S. Vender, M.D., F.C.C.M.

Settlement: \$770,000.00

Not Applicable

Court and Judge: Not Applicable

Settlement: October 22, 1996

Plaintiffs Counsel: Justin F. Madden, SPANGENBERG, SHIBLEY & LIBER

Defendant's Counsel: Not Applicable

Insurance Company: Erie Insurance Group

Type of Action: Personal Injury.

Plaintiff, unbelted passenger, in car that went left of center, hit oncoming vehicle head on.

Damages: Facial lacerations and broken front tooth.

Plaintiffs Experts: Not Applicable

Defendant's Experts: Not Applicable

Settlement: \$50,000.00 (Note: Case settled for policy limits. Underinsured claim barred by equal limits defense).

Debra Tuminello. et al v. Sandra Breidenstein

Court and Judge: Mahoning County Common Pleas Court; Judge George Limbert

Settlement: January, 1997

Plaintiffs Counsel: Justin F. Madden, SPANGENBERG, SHIBLEY & LIBER

Defendant's Counsel: Stephen C. Merriam

Insurance Company: Plaintiff: Nationwide; Defendant: State Farm

Type of Action: Motor vehicle negligence.

Defendant ran stop sign and t-boned plaintiffs vehicle.

Damages: Broken ankle requiring surgery; also suffered left hip laceration.

Plaintiffs Experts: Not Applicable

Defendant's Experts: Not Applicable

Settlement: \$90,000.00

Marcus Goleblewski, etc. v. The Ohio Dept. of Transportation

Court and Judge: Cuyahoga County Common Pleas; Judge W. Bettis

Settlement: January 9, 1997

Plaintiffs Counsel: Donald E. Caravona & Anthony L. Ania, CARAVONA & CZACK,
P.L.L.

Defendant's Counsel: Michael Valentine & Peter DeMarco (Ohio Atty. Gen'l Ofc)

Insurance Company: Not Applicable

Type of Action: Personal Injury.

During the evening of August 24, 1994, plaintiff was operating a motorcycle while travelling up the Ontario Street entrance ramp of Interstate 77 south bound in Cleveland, Ohio. ODOT was engaged in a maintenance operation which required that the far left lane of Interstate 77 be closed. While changing lanes from the entrance ramp to 1-77 South, plaintiff struck a non-reflectorized traffic cone that was being utilized in the lane closure. As a result, plaintiff was thrown from his motorcycle and sustained serious head injuries.

Damages: Multiple skull fractures, subdural and epidural hematoma, multiple fracture of the facial bones, open right clavicular fracture and severe, permanent brain injury resulting in severe muscle spasticity and reduction of higher cognitive function.

Plaintiffs Experts: As to Liability: Henry Lipian;
As to Damages: Joseph Spoonster, M.S.V.E.; Eileen Spoonster, R.N.B.S.N.; John Burke, Jr., Ph.D.; Jack Colton; Dan Posar; Dr. Allen M. Kline; Diane Herman Givens; Dr. Michael Papsidero; Dr. Cynthia Taylor; and Dr. Edgar Ross.

Defendant's Experts: As to Liability: Roger W. Carrette; Thomas B. Culp; Warner Riley; Alfred E. Staubus.

As to Damages: Pamela Hanigosky, R.N.; Linda Gurtman; Dr. Vinod Saghal; Ralph Frasca, Ph.D.

Settlement: Case was bifurcated. Trial of liability commenced on June 10, 1996 and resulted in a verdict dated January 9, 1997, in which ODOT was found to be 65% liable for the accident. The case resulted in a net award of \$6.6 million, prior to the scheduled damages trial. Bench trial result in comparative percentage of 35%.

Jane Jones v. Manufacturing Company

Court and Judge: Cuyahoga County Common Pleas

Settlement: February, 1997

Plaintiffs Counsel: Ellen S. Simon, LANCIONE & SIMON

Defendant's Counsel: Withheld

Insurance Company: Not Applicable

Type of Action: Discrimination.

Female corporate executive treated differently than male counterparts with respect to pay, title and promotional opportunities. "Glass Ceiling" discrimination case.

Damages: See above.

Plaintiffs Experts: Dr. John Burke; Dr. Kenneth Manges.

Defendant's Experts: Not Listed

Settlement: \$500,000.00

Clayton H. Bradshaw, et al v. Robert M. Cratty, et al.

Court and Judge: Cuyahoga County Common Pleas Court; Judge R. Suster

Settlement: April, 1997

Plaintiffs Counsel: Justin F. Madden, SPANGENBERG, SHIBLEY & LIBER

Defendant's Counsel: Joseph S. Vala

Insurance Company: State Farm

Type of Action: Premises Liability

Defendant's dog chased plaintiff (while plaintiff was on a bicycle), causing plaintiff to hit a utility pole.

Damages: Low back pain, numbness in legs, hip pain, concussion and overnight stay in E.R.

Plaintiffs Experts: Not Applicable

Defendant's Experts: Not Applicable

Settlement: \$41,000.00

Guzman v. Overnite Transportation

Court and Judge: Cuyahoga County Common Pleas; Judge William Coyne

Settlement: July, 1997

Plaintiffs Counsel: Daniel J. Klonowski

Defendant's Counsel: Frank Leonetti, III.

Insurance Company: Self Insurance/Trucking Firm

Type of Action: Premises Liability.

Plaintiff stepped into hole in semi-truck trailer floor while unloading furniture.

Damages: Second degree separation of right acromio-clavicular joint.

Plaintiffs Experts: Robert Zaas, M.D. and Kim L. Steams, M.D.

Defendant's Experts: None

Settlement: \$90,000.00

Nancy Weber v. Biomet

Court and Judge: Cuyahoga County Common Pleas

Settlement: June, 1997

Plaintiffs Counsel: Ellen S. Simon, Christopher P. Thorman, LANCIONE & SIMON

Defendant's Counsel: Phillip Campanella & David Schaefer

Insurance Company: Not Applicable

Type of Action: Sexual Harassment, Assault and Battery

Plaintiff was a successful salesperson for medical products company for many years. Plaintiff had romantic relationship with co-worker and ended it. Plaintiff received promotion to regional sales manager; ex-lover became her boss. Ex-lover stalked her, demanded sex in exchange for cooperation as her supervisor. Plaintiff refused to cooperate sexually and was demoted. Plaintiff reported sexual harassment through appropriate channels and company failed to appropriately investigate or take prompt action. Plaintiff resigned and went to work for competition and was sued. Case settled before depositions.

Damages: Emotional distress and physical injuries from sexual assault.

Plaintiffs Experts: Case settled prior to experts identification.

Defendant's Experts: See Above.

Settlement: \$325,000.00

Baby Doe

Court and Judge: Huron County Common Pleas Court

Settlement: June, 1997

Plaintiffs Counsel: Ellen S. Simon, John G. Lancione and Pamela Pantages; LANCIONE & SIMON

Defendant's Counsel: Confidential

Insurance Company: Confidential

Type of Action: Wrongful Death, Medical Malpractice.

Pediatrician failed to properly work-up and refer failure to thrive baby. Baby died from congenital heart defect which could have been diagnosed and surgically repaired.

Damages: Wrongful Death.

Plaintiffs Experts: Dr. Jerome Liebman

Defendant's Experts: Not Listed

Settlement: \$400,000.00

Jane Doe v. ABC Hospital

Court and Judge: Cuyahoga County Common Pleas; Judge P. Kelly

Settlement: July, 1997

Plaintiffs Counsel: John G. Lancione, LANCIONE & SIMON

Defendant's Counsel: Confidential

Insurance Company: Confidential

Type of Action: Medical Malpractice.

Hospital delayed treatment for a dissecting ascending aortic aneurysm resulting in patient's death.

Damages: Wrongful Death.

Plaintiffs Experts: Dr. Michael Halpin

Defendant's Experts: Dr. Lars Suennson

Settlement: \$162,000.00

John White. et al v. Ethel W. Derick. Executrix of Estate of Milford R. Derrick, dec'd. et al.

Court and Judge: Cuyahoga County Common Pleas Court; Judge N. Russo

Judgment: July, 1997

Plaintiffs Counsel: Jamie R. Lebovitz, NURENBERG, PLEVIN, HELLER & McCARTHY

Defendant's Counsel: Margaret Mary Meko

Insurance Company: United States Aviation Underwriters

Type of Action: Aviation.

Plaintiff was a passenger in Beechcraft Baron which crashed on take off from Burke Lake Front Airport into Lake Erie on November 19, 1995

Damages: Multiple compound fractures to left leg, right leg, spine, facial fractures and other injuries.

Plaintiffs Experts: Richard Taylor (pilot); Dr. Cynthia Wilhelm (life care/vocational); Dr. Frederick Frost (physical medicine/rehabilitation); Dr. John Davis (orthopedic); Dr. Brendon Patterson (orthopedic); Dr. Michael Bosse (orthopedic); Dr. Warren Prendergast (psychiatry); Dr. John Burke (economist).

Defendant's Experts: Dr. Loretta Peterson (physical medicine); Ms. Debra Lee (vocational).

Judgment: 7.45 million (\$1,015,000.00 awarded to plaintiffs wife for loss of consortium).

Gregory G. Kouskouris. et al v. Metro Exuress. Inc.. et al.

Court and Judge: Stark County Common Pleas Court; Judge Boggins

Settlement: July, 1997

Plaintiffs Counsel: Robert Rutter

Defendant's Counsel: Alan Glassman

Insurance Company: Liberty Mutual

Type of Action: Auto Accident.

Rear end accident to van. Husband and wife were both injured. Husband was already disabled from two previous accidents which had injured his low back.

Damages: Husband's claimed injuries were two herniated discs in his neck and low back.
Wife had non-operative herniated disc in neck.

Plaintiffs Experts: Dr. Robert Broker

Defendant's Experts: Not listed

Settlement: \$200,000.00

Chris Pritchard v. Dr. Salamon

Court and Judge: Cuyahoga County Common Pleas; Judge Angelotta

Settlement: July, 1997

Plaintiffs Counsel: Thomas D. Robenalt

Defendant's Counsel: Christine Reid

Insurance Company: Not Listed

Type of Action: Medical Malpractice.

Defendant's transverse incision in plaintiff's wrist to remove ganglion cyst was shown to be negligent. The removal of the cyst caused sensory deficit only to small portion of right hand in an avid musician.

Damages: Permanent sensory injury to median nerve.

Plaintiffs Experts: Dr. Howard Tucker

Defendant's Experts: Dr. Avrum Froimson

Settlement: Judgment: \$70,000.00

Santino's, Inc. dba MaRusso, Inc.. et al v. Westfield Insurance Co.

Court and Judge: Cuyahoga County Common Pleas; Judge Sweeney

Settlement: August, 1997

Plaintiffs Counsel: Robert Rutter and Robert Housel

Defendant's Counsel: Rich Sweebe

Insurance Company: Westfield Insurance Co.

Type of Action: Insurance Claim.

Fire loss which destroyed a restaurant. The insurance company denied the claim alleging arson by the insured. This claim was settled prior to the commencement of discovery depositions.

Damages: See above.

Plaintiffs Experts: None

Defendant's Experts: None

Settlement: \$120,000.00

John Doe v. ABC Medical Group

Court and Judge: Cuyahoga County Common Pleas Court; Judge Nancy Fuerst

Settlement: September, 1997

Plaintiffs Counsel: Howard D. Mishkind, BECKER & MISHKIND

Defendant's Counsel: Withheld

Insurance Company: Withheld

Type of Action: Medical Malpractice.

Plaintiff was misdiagnosed with epididymitis over a period of one year. Defendant urologist failed to order a testicular ultrasound that would have lead to a diagnosis of testicular cancer. Treatment would have been an orchiectomy. Instead, plaintiff underwent extensive chemotherapy and radiation. Plaintiffs prognosis is very guarded.

Damages: Undiagnosed testicular cancer leading to metastatic brain cancer.

Plaintiffs Experts: Lawrence Einhorn (oncologist); Aric Greenfield (oncologist); Steven Jacobs (urologist).

Defendant's Experts: Dr. Craig Zippe (Cleveland Clinic - urologic oncologist).

Settlement: \$3,000,000.00

William Prusak, et al v. Jennifer Neel, et al.

Court and Judge: Cuyahoga County Common Pleas; Judge D. Gaul

Settlement: September, 1997

Plaintiffs Counsel: Michael W. Czack, CARAVONA & CZACK, P.L.L.

Defendant's Counsel: Raymond J. Schmidlin, Jr.

Insurance Company: Western Reserve Group

Type of Action: Motor vehicle accident.

Plaintiffs' van was struck at an intersection when the defendant ran a stop sign.

Damages: William: Acute cervical strain; acute lumbosacral strain; myofascial injuries; low back, right knee contusion.

Mary: Concussion, cervical and thoracic myofascial injuries.

Anne Marie: Cervical and lumbar strain; knee contusion.

Plaintiffs Experts: John Kavlich, M.D.; Daniel Karns, M.D.; Marvin Perry, M.D.; Augusto Juguilon, M.D.

Defendant's Experts: Robert Corn, M.D.

Settlement: Jury Verdict: \$84,000.00; broken down as follows: William - \$40,000.00; Mary - \$36,500.00; Anne Marie - \$7,500.00.

Jane Doe v. Dr. OB

Court and Judge: Mahoning County Common Pleas; Judge R. Lisotto

Settlement: September, 1997

Plaintiffs Counsel: John G. Lancione, John A. Lancione, LANCIONE & SIMON

Defendant's Counsel: Confidential

Insurance Company: Confidential

Type of Action: Medical Malpractice.

Obstetrician failed to perform cesarean section in the face of fetal distress.

Damages: Spastic hemiplegia.

Plaintiffs Experts: Garth Essig, M.D.

Defendant's Experts: Steven DeVoe, M.D.

Settlement: \$800,000.00

Jane Doe. Adm. v. Family Doctor

Court and Judge: Cuyahoga County Common Pleas Court; Judge W. Aurelius

Settlement: September, 1997

Plaintiffs Counsel: William S. Jacobson & David M. Paris, NURENBERG, PLEVIN,
HELLER & McCARTHY

Defendant's Counsel: Withheld

Insurance Company: Withheld

Type of Action: Medical Malpractice/Wrongful Death.

Decedent had many risk factors for CAD. He developed chest pain, went to ER and was admitted under his family doctor's service for cardiac work up and stress test. Decedent checked himself out AMA before the work up. His family doctor rescheduled the stress test for 9 days later. On the 6th day, decedent again developed chest pain, saw his doctor and was told he had a muscle strain. Decedent was found dead the next morning. No autopsy.

Damages: Wrongful death.

Plaintiffs Experts: Thomas Kaiser, M.D. (cardiology)

Defendant's Experts: Richard Watts, M.D. (cardiology); Daniel Wolpaw, M.D. (family practice)

Settlement: \$425,000.00

Sharon Ferrone v. Peter McGlamery

Court and Judge: Cuyahoga County Common Pleas; Judge R. Lawther

Settlement: October, 1997

Plaintiffs Counsel: Donald E. Caravona, CARAVONA & CZACK, P.L.L.

Defendant's Counsel: Shawn Pearson

Insurance Company: Nationwide Ins. Co.

Type of Action: Personal Injury.

Plaintiff was a passenger in an automobile that was making a lefthand turn when it was struck by the defendant who ran a red light.

Damages: Cervical strain resulting in post-traumatic headaches.

Plaintiffs Experts: Jack Anstandig, M.D. (neurologist); Harold Mars, M.D. (neurologist);
John Kavlich, M.D. (general practitioner); David Zymler, D.C.
(chiropractor).

Defendant's Experts: Ralph Kovach, M.D. (orthopedist)

Settlement: Jury Verdict: \$100,000.00 compensatory.

Edward Beohm, et al v. David Leasure, et al

Court and Judge: Muskingum County; Judge Hixson

Settlement: October 21, 1997

Plaintiff's Counsel: Peter J. Brodhead, John R. Liber, 11, SPANGENBERG, SHIBLEY &
LIBER

Defendant's Counsel: Joseph Ritzler and Jack Baker

Insurance Company: Progressive and CNA.

Type of Action: Truck/train grade crossing collision.

Defendant left his dump truck parked on a railroad grade crossing as part of a construction project for Shelly and Sands. Plaintiff was the conductor of a freight train which struck the dump truck at the crossing.

Damages: L5 nerve root, non-surgical - completely disabled.

Plaintiffs Experts: John Phillips, M.D. (neurosurgeon); John F. Burke, Jr., Ph.D (economist)

Defendant's Experts: Costas Sarantopolas - IME; Dudley J. Fowley (trucking)

Settlement: \$425,000.00.

Amei Eberius v. First Colony Life Insurance Co.

Court and Judge: U.. District Court, Northern District, Eastern Division/Judge Gaughan

Settlement: October, 1997

Plaintiffs Counsel: Robert Rutter

Defendant's Counsel: Nick Milanich and Brian Sullivan

Insurance Company: First Colony Life Insurance Co.

Type of Action: Recovery of Proceeds.

First party lawsuit against First Colony to recover the proceeds of a life insurance policy. First Colony had denied the claim arguing that the policy had lapsed for non-payment of the premium eight months before the insured's death in an airplane crash.

Damages: As above

Plaintiffs Experts: None

Defendant's Experts: None

Settlement: \$1,350,000.00

Lear v. Ponitz. MD. and John Doe Hospital

Court and Judge: Cuyahoga County Common Pleas Court; Judge Daniel Gaul

Settlement: October, 1997

Plaintiffs Counsel: Peter H. Weinberger and Stuart E. Scott; SPANGENBERG, SHIBLEY & LIBER

Defendant's Counsel: Joseph Farchione, other defense lawyer name withheld due to confidentiality agreement.

Insurance Company: P.I.E., self insured hospital majority of settlement paid by PIE.

Type of Action: Medical Malpractice.

Failure to diagnose spinal meningitis. Plaintiffs child presented to family pediatrician (not a defendant) who evaluated child as febrile with infection of unknown origin. Child was admitted to hospital where attending physician and resident diagnosed child with RSV and failed to place child on antibiotics.

Damages: Wrongful death.

Plaintiffs Experts: Mark Schleiss, M.D. (pediatric infectious disease)

Defendant's Experts: Eugene Shapiro, M.D. (pediatric infectious disease); Raoul Weintzen, M.D. (pediatric infectious disease); Bruce Meyer, M.D. (pediatrician)

Settlement: \$950,000.00

Anonvmous

Court and Judge: Cuyahoga County Common Pleas Court

Settlement: October, 1997

Plaintiffs Counsel: Michael F. Becker, BECKER & MISHKIND

Defendant's Counsel: Withheld

Insurance Company: Frontier Insurance Company

Type of Action: Medical Malpractice.

Plaintiffs mother was induced at a community hospital. During the course of labor, signs of chorioamnionitis were present but prophylactic IV antibiotics were not given. Furthermore, signs of fetal distress developed during the labor - management of labor jointly by defendant midwife and defendant obstetrician. Settlement was reached just before trial with the defendant midwife and defendant obstetrician for \$3,750,000.00. Prior to suit, plaintiffs had negotiated a \$500,000.00 settlement with the community hospital.

Damages: The plaintiff sustained severe mental retardation and cerebral palsy (spastic quadriplegia) secondary to birth asphyxia.

Plaintiffs Experts: Suzanne M. Smith; Max Wiznitzer, M.D.

Defendant's Experts: Robert Vanucci, M.D.; Thomas M. Frank, M.D.; Richard C. Towbin, M.D.

Settlement: \$4,250,000.00

Magic v. Dr. Naraghipour. et al

Court and Judge: Cuyahoga County Common Pleas

Settlement: October, 1997

Plaintiffs Counsel: Michael F. Becker, BECKER & MISHKIND

Defendant's Counsel: Patrick Murphy

Insurance Company: P.I.E.

Type of Action: Medical Malpractice.

Plaintiffs decedent sustained a protracted long hospitalization in intensive care due to a mismanaged mediastinitis infection post-CABG. This infection ultimately weakened the decedent resulting in his death many months later. The defendant claims that the protracted hospitalization was due to the plaintiffs pre-existing congestive heart failure.

Damages: Prolonged course of intubation in intensive care and attempted rehabilitation in a nursing home -- resulting in the death of plaintiffs decedent.

Plaintiffs Experts: Timothy E. Albertson, M.D. (pulmonary intensive care)

Defendant's Experts: None named at time of settlement.

Settlement: \$1,475,000.00

Anonymous

Court and Judge: Mid-Ohio County
Settlement: October, 1997
Plaintiffs Counsel: Michael F. Becker, BECKER & MISHKIND
Defendant's Counsel: Withheld
Insurance Company: OHIC and PIE
Type of Action: Medical Malpractice.

The plaintiffs mother presented at full term to the defendant hospital with classic signs of chorioamnionitis. The defendant obstetrician failed to order prophylactic IV antibiotics. Furthermore, during the course of labor, fetal distress was not appropriately recognized resulting in a depressed, septic newborn. Resuscitation was also inadequate compounding plaintiffs injuries.

Damages: Mild cerebral palsy and mild mental retardation secondary to birth trauma.
Plaintiffs Experts: Robert J. Lerer, M.D.; Raymond W. Redline, M.D.
Defendant's Experts: John J. Kane, M.D.; Richard L. Naeye, M.D.
Settlement: \$2,250,000.00

David Hunt, etc. v. Medina County OB/GYN

Court and Judge: Medina County Common Pleas Court; Judge J. Cross
Settlement: November, 1997
Plaintiffs Counsel: Christopher M. Mellino, Charles Kampinski
Defendant's Counsel: John Jackson, Patrick Murphy and Mark Frasure
Insurance Company: PIE and PIC0
Type of Action: Medical Malpractice.

Decedent had trophoblastic disease which was initially benign. Defendants were doing blood tests to check for reoccurrence. Two consecutive tests showed recurrence. Nothing was done about the abnormal tests and the decedent's condition progressed to cancer resulting in her death.

Damages: Death.
Plaintiffs Experts: Becky Miller, M.D. (medical oncology); Melvyn Ravitz, M.D. (OB/GYN); John Burke, Ph.D. (economist).
Defendant's Experts: John Lurian, M.D. (gynecologist); Larry Copeland, M.D. (gynecologist); Jeffrey Bell, M.D. (gynecologist); Stephen DeVoe (gynecologist); Thomas Kirkhope (gynecologist); Howard Homesley (GYN/gynecologist); Paul Fischer (family practice).
Settlement: \$1,750,000.00

Jane Doe v. Dr. OBE

Court and Judge: Lorain County Common Pleas Court; Judge L. McGough

Settlement: November, 1997

Plaintiffs Counsel: John G. Lancione; LANCIONE & SIMON

Defendant's Counsel: Confidential

Insurance Company: Confidential

Type of Action: Medical Malpractice.

Patient presented for hysterectomy for cancer of uterus sustained perforation of bowel requiring repair, colostomy and long hospitalization.

Damages: Surgery to repair bowel injury, colostomy, and take down of colostomy.

Plaintiffs Experts: Michael Baggish, M.D.

Defendant's Experts: David Tullis, M.D.

Settlement: \$375,000.00

Jane Jones v. SP Company

Court and Judge: Cuyahoga County Common Pleas; Judge L. Green

Settlement: November 1997

Plaintiffs Counsel: Ellen S. Simon, Christopher P. Thorman, LANCIONE & SIMON

Defendant's Counsel: Withheld

Insurance Company: None

Type of Action: Sexual Harassment/Emotional Distress

Plaintiff worked in sales. Regional sales manager, her supervisor, repeatedly sent unsolicited pornographic faxes from his office to hers and made sexually offensive comments. Company president made sexual advances which she rejected. She told national sales manager about president's conduct. Within months, her position was eliminated. Company had received other complaints of sexual harassments, had no policies in place and never took appropriate action to address harassment.

Damages: Emotional distress; plaintiff was treated by counselor for about one year.

Plaintiffs Experts: Treating counselor

Defendant's Experts: None listed

Settlement: \$240,000.00

Walter Karczewski, et al v. Glenn A. Snody, et al

Court and Judge: Cuyahoga County Common Pleas; Judge T.P. Curran

Settlement: November, 1997

Plaintiffs Counsel: Jamie R. Lebovitz, NURENBERG, PLEVIN, HELLER & McCARTHY

Defendant's Counsel: Richard C. Talbert

Insurance Company: State Farm

Type of Action: Automobile Accident.

Plaintiff, while pulling into intersection, struck by dump truck which ran red light.

Damages: Husband: Left clavicular fracture; torn rotator cuff; three rib fractures; cervical.

Wife: Multiple rib fractures; neck, shoulder, back pain, left cheek and breast.

Plaintiffs Experts: John K. Sontich, M.D. (orthopedics); John Davis, M.D. (orthopedics)

Defendant's Experts: Not Listed

Settlement: \$245,000.00

Babv Doe v. Dr. OBE

Court and Judge: Cuyahoga County Common Pleas; Judge A. Calabrese

Settlement: November, 1997

Plaintiffs Counsel: John G. Lancione, LANCIONE & SIMON

Defendant's Counsel: Confidential

Insurance Company: Confidential

Type of Action: Medical Malpractice.

Baby delivered by vacuum extraction (failed) and forceps resulting in skull fractures and intracranial bleed resulting in hydrocephalus and placement of ventriculoperitoneal shunt. No cognitive brain damage.

Damages: Hydrocephalus

Plaintiffs Experts: Harlan Giles, M.D.

Defendant's Experts: Method Duchon, M.D.

Settlement: \$450,000.00

John Doe v. ABC Defendants

Court and Judge: Cuyahoga County Common Pleas Court; Judge Nancy Fuerst

Settlement: November, 1997

Plaintiffs Counsel: David M. Paris, NURENBERG, PLEVIN, HELLER & McCARTHY

Defendant's Counsel: Withheld by request

Insurance Company: Confidential

Type of Action: Auto Accident - Medical Malpractice.

Plaintiff was struck in the knee by bumper of car. ER doctor failed to appreciate knee dislocation and vascular injury resulting in prolonged ischemia. Subsequent vascular surgeon failed to perform prophylactic fasciotomy and introduced a redundant arterial graft which kinked resulting in further vascular insufficiency.

Damages: Right leg amputation at the knee.

Plaintiffs Experts: G. Richard Braen, M.D. (emergency medicine); Jeffrey Shall, M.D. (orthopedic surgery); Kenneth Swan, M.D. (vascular surgery); Rod Durgin, Ph.D. (vocational rehabilitation).

Defendant's Experts: Stephen Stapczynski, M.D. (emergency medicine); Donald Goodfellow, M.D. (orthopedic surgery); David Brewster, M.D. (vascular surgery).

Settlement: \$1,075,000.00

Pamela Holmes v. Mt. Olive Missionary Baptist Church

Court and Judge: Cuyahoga County Common Pleas Court; Judge Eileen Gallagher

Settlement: November, 1997

Plaintiffs Counsel: Steven M. Weiss

Defendant's Counsel: Tom O'Donnell

Insurance Company: Church Mutual

Type of Action: Slip & Fall

Plaintiffs church constructed a concrete ramp in the church's basement. Plaintiff slipped and fell while descending the ramp. The ramp was poorly designed.

Damages: Comminuted fracture of elbow requiring open reduction.

Plaintiffs Experts: William Marletta (West Islip, N.Y.); Dr. Jaime Sabogal (orthopedic surgeon)

Defendant's Experts: Dr. Richard Kaufman (orthopedic surgeon)

Settlement: \$115,000.00

Anonymous

Court and Judge: Lorain County Common Pleas Court

Settlement: November, 1997

Plaintiffs Counsel: Michael F. Becker, BECKER & MISHKIND

Defendant's Counsel: Withheld

Insurance Company: PHICO

Type of Action: Medical Malpractice.

The plaintiff decedent was seen on an urgent basis at her internist's office with a history of diabetes, extreme fatigue, nausea and vomiting. Defendant internist diagnosed gastritis. The decedent, a special education school teacher, died 10 hours later.

Damages: Death due to diabetic ketoacidosis (DKA).

Plaintiffs Experts: John Daniels (endocrinologist); Hadley Morgenstern-Clarren (internist)

Defendant's Experts: Harry J. Bonnel (forensic pathologist)

Settlement: \$1,400,000.00

Ciavarelli. et al v. St. Vincent Hospital & Dr. Charms

Court and Judge: Cuyahoga County Common Pleas; Judge T. McCormick

Judgment: November, 1997

Plaintiffs Counsel: Thomas Mester & Joel L. Levin, NURENBERG, PLEVIN, HELLER & McCARTHY

Defendant's Counsel: William Bonezzi, Steven Hupp & Terrance Gravens

Insurance Company: P.I.E., St. Vincent Self-Insured \$2,000,000.00

Type of Action: Medical Malpractice.

Plaintiff presented with pain to wrist, x-ray not taken, resulting in 2-1/2 month delay in diagnosis of MFH, a bone sarcoma. Timely diagnosis plaintiff argued would have lead to limb saving surgery, i.e., a fusion of wrist. Defendants claimed no x-ray necessary and amputation was unavoidable if timely diagnosed.

Damages: Amputation of right upper extremity below elbow, instead of resection and fusion with allograft.

Plaintiff's Experts: Barry Singer, M.D.; Michael Joyce, M.D.

Defendant's Experts: Dr. Reithmiller; Martin Malawer, M.D.

Judgment: \$3,090,000.00

Sarah Haynes, etc. v. The Ohio Dept. of Corrections

Court and Judge: Franklin County Court of Claims

Settlement: December, 1997

Plaintiffs Counsel: John D. Liber, John R. Liber, II., SPANGENBERG, SHIBLEY & LIBER

Defendant's Counsel: Terry J. Finfrock, Assistant Attorney General

Insurance Company: Self - State of Ohio

Type of Action: Workplace intentional tort.

Decedent, a female case worker at the Lima Correctional facility, was murdered by two inmates.

Damages: Death

Plaintiffs Experts: Dale K. Sechrist, Ph.D.

Defendant's Experts: None

Settlement: \$850,000.00.

John Doe. etc. v. John Doe Hospital

Court and Judge: U.S. District Court, Pittsburgh, PA.

Settlement: December, 1997

Plaintiffs Counsel: Peter H. Weinberger & Justin F. Madden, SPANGENBERG, SHIBLEY & LIBER

Defendant's Counsel: Dickie McCamey & Chlcote

Insurance Company: Self-Insured

Type of Action: Medical Malpractice - Wrongful. Death

Plaintiffs decedent was 6 days postpartum when she developed severe peripartum cardiomyopathy. The only possible cure was a heart transplant. She was transferred to the defendant hospital and during failed intubation attempts, she developed hypoxia and died.

Damages: Death.

Plaintiffs Experts: Raymond D.. Magorien, Jr., M.D. (cardiology); Edward Panacek, M.D. (critical care - er medicine); Elmer Klein, Jr. M.D. (anesthesiology).

Defendant's Experts: Walter F. Pae, Jr., M.D.; John W. Hoyt, M.D.; Larry E. Hurwitz, M.D.; Sebastian Arena, M.D.

Settlement: \$1,018,000.00

Alan Herstrum, etc. v. University of Toledo

Court and Judge: Court of Claims

Settlement: December, 1997

Plaintiffs Counsel: Peter H. Weinberger & Justin F. Madden, SPANGENBERG, SHIBLEY & LIBER

Defendant's Counsel: Ohio Attorney General

Insurance Company: Self-Insured

Type of Action: Wrongful Death.

Student at University of Toledo was murdered by University of Toledo police officer. Theory of liability was negligent hiring, retention and supervision.

Damages: Wrongful death.

Plaintiffs Experts: Dale Shaffer (campus security expert)

Defendant's Experts: Not listed

Settlement: \$1,000,000.00

Labertha Dotson v. DiSanto Company

Court and Judge: Cuyahoga County Common Pleas Court; Judge Norman Fuerst

Settlement: December, 1997

Plaintiffs Counsel: Peter H. Weinberger & Stuart E. Scott, SPANGENBERG, SHIBLEY & LIBER

Defendant's Counsel: William Scully

Insurance Company: Allstate

Type of Action: Automobile Accident.

Intersection collision.

Damages: Subluxation C-1, C-2, fractured femur, bilateral tibia fracture.

Plaintiffs Experts: John Sontich, M.D. (orthopedic surgeon); Hank Lipian (accident reconstructionist).

Defendant's Experts: Not Listed

Settlement: \$1,200,000.00

John Doe, a Minor v. ABC Emergency Room

Court and Judge: Cuyahoga County Common Pleas; Judge N. Fuerst

Settlement: December, 1997

Plaintiff's Counsel: Leon Plevin & Ellen M. McCarthy, NURENBERG, PLEVIN, HELLER & McCARTHY

Defendant's Counsel: Withheld

Insurance Company: Withheld

Type of Action: Medical Malpractice.

Brain damage due to failure to timely diagnose meningitis.

Damages: As above.

Plaintiff's Experts: Patricia Wilson, M.D. (pediatric neurologist); James Todd, M.D. (infectious disease); John Burke, Ph.D. (economist)

Settlement: \$2,000,000.00

James Browning v. Midwestern Indemnity Co.

Court and Judge: Cuyahoga County Common Pleas Court; Judge N. Fuerst

Judgment: December, 1997

Plaintiffs Counsel: Leon M. Plevin & Ellen M. McCarthy, NURENBERG, PLEVIN, HELLER & McCARTHY

Defendant's Counsel: David Lamb

Insurance Company: Midwestern Indemnity Co.

Type of Action: Auto; Underinsured.

Plaintiff hit head on by tortfeasor who paid policy limits of \$50,000.00. Plaintiff sustained closed head injury causing memory loss, confusion and depression. Defendant expert claimed injuries were due to Epstein Barr Syndrome, not head injury.

Damages: Mild deceleration type closed head injury, low back and knee.

Plaintiffs Experts: Patrick Murray, M.D.; Donald Mann, M.D.; Robert Ancell

Defendant's Experts: John Gardner, M.D.

Judgment: \$900,000.00