CATA News
Cleveland Academy of Trial Attorneys
March 2001

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President's Message

Reason For Celebration - Ohio Wins

I, along with a number of C.A.T.A. members and at least 500 supporters had the pleasure of attending Justice Alice Robie Resnick's swearing in celebration on December 30,2000 at Landerhaven. Justice Resnick quoted Ovid, the first century poet as reminding us that "the purpose of the law is to prevent the strong from always having their way." The voters of Ohio spoke loudly in assuring all of the citizens that the strong and powerful will not always have their way in this state, but that justice will continue to be fair, impartial and available to all.

Justice Resnick pointed out that the wisdom of the people uncovered the truth amidst the inaccuracies, and distorted facts that the big moneyed advocacy groups tried to disseminate through their multi-million dollar ad campaign.

Justice Resnick pointed out that the Supreme Court of Ohio must be totally independent to remain effective. If we do not have an independent judiciary all is lost for ordinary citizens. Justice Resnick noted that respect for the law will be lost if we do not have independent judges administrating justice in a fair and impartial manner. People must believe that they have equal access to our courts and that justice will be administered in a fair and impartial manner. The integrity and strength of the judicial system hinges on the assumption that judges will render decisions based on the merits of the case in light of the rule of law without respect to persons.

This campaign made it quite clear that big moneyed advocacy groups do not want an independent judiciary. They want to control all three branches of government. Fortunately for all of us in Ohio that did not happen!

The U.S. Chamber of Commerce, the "unnamed' sponsor of the disgusting ad campaign feels victorious despite their sound defeat in Ohio. A total of seven judicial races were chosen by the U.S. Chamber of Commerce for negative campaigning and they were successful in six other states. Their negativity won them election of corporate-minded judges. Jim Wooten, head of legal reform for the U.S. Chamber of Commerce promised only to increase the commitment to electing judges the Chamber likes and ousting those it does not like in future years.

This election underscored the fact that the voters of Ohio are interested in their Supreme Court, that they were well informed and were swayed by the untruths contained in the attack ads. When the dust settles and this election is analyzed we will find that the "grassroots" campaigning which we were all involved in was an intracle part of Justice Resnick's success.

Isn't it disappointing to hear almost immediately after this election, discussions concerning the resurrection of merit selection of judges?

Shouldn't we instead be considering election reform where individuals or groups that become involved in a judicial election, whether it is educational or promotional, must disclose their identity? The travesty of this election should never be repeated.

Bernard Friedman Litigation Institute 2001

C.A.T.A. Vice-president, David Paris has a great program prepared for the Bernard Friedman Litigation Institute on March 9, 2001. "Successful Approaches to Overcoming Common Obstacles" begins at 1:00 p.m. at the Forum where you will here from six of Cuyahoga County's finest judges and lawyers on contemporary topics of interest.

In addition to a great agenda this is the most affordable C.L.E. out there.

Cross-Examination - Should I???

Cross-examination. The term itself commands respect and generates fear among even seasoned trial lawyers. How many times, at the conclusion of a direct examination, has the thought flashed through your mind: "My God! What do I do now?"

That countless writers have called cross-examination an "art" hardly helps. Copying a model cross-examination from a "how to" text rarely helps because every witness is unique and must be treated as such.

Perhaps the most important question you must answer with regard to cross-examination is should you cross-examine? The decision to cross-examine cannot be intelligently made unless you have prepared in advance and have a realistic understanding of what you can expect to achieve during the cross of any given witness.

If we think hard enough we can all come up with a cross-examination of a witness that should not have occurred and turned out badly. I recently had such an experience with a local noted defense doctor who must have been having a bad day and despite his reputation of being an excellent witness just did a terrible job on direct examination. Because it was on video I had the luxury of going off the record after completion of direct and debating whether to cross-examine. I was convinced that I could obtain points that I could use in closing from this seasoned expert and wanted to make sure the jury knew how smart I was. This veteran testifier must have realized his direct examination was not all that powerful and he made every effort on cross-examination to rehabilitate his testimony to my chagrin. This near disastrous cross-examination should never have occurred.

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No one is required to cross-examine every witness who testifies at trial, even experts. Consider asking yourself several questions whenever a witness has finished direct testimony before automatically rising to begin your cross-examination:

1. **Has the witness hurt you?** Where the witness has not damaged your position, cross-examininghim is not essential.

2. **Is the witness important?** Jurors have certain preconceived notions about trials which include the notion that every witness can and will be cross-examined by opposing counsel. If the witness has a significant role in the trial you should undertake some form of cross-examination even if only on peripheral issues.

3. **Was the witness' testimony credible?** If the witnessjust did not "come off' right and will be contradicted by other witnesses you may well leave well enough alone and argue the contradictions in closing.

4. **Did the witness give less than expected on direct?** Has the witness (or his lawyer) forgotten an important part of his testimony? If so, conducting a cross-examinationmay give the witness time to realize the mistake and attempt to repair it on re-direct. The witness may also have intentionally withheld damaging testimony on direct hoping you will pursue it on cross. In other words, the witness is sandbagging. I learned this first hand. Damaging testimony is twice as damaging if elicited during cross-examination.

Sometimes the best cross-examination is none at all!

C.A.T.A New Members

Please join in welcoming our new members to the Cleveland Academy of Trial Attorneys:

R. Jack Clapp
James L. Burns
James Casey
Michael W. Goodman
Todd O. Rosenberg
Lisa M. Gano

Our membership ranks presently boasts 245

Contents

So, You Want To Be a Malpractice Lawyer?

By:
Michael F. Becker

Introduction

It is a heavy responsibility to represent an individual or family in a medical malpractice action. Not only must a plaintiffs attorney know the applicable law, but he or she must understand the medicine as well as the defendant medical provider. If this sounds like a major challenge and commitment, versus the run of the mill personal injury action, you are correct. Furthermore, if you think that your burden of proof in the jurors' minds in a medical malpractice action is merely one of establishing negligence, you are probably kidding yourself. The reality is that to often prevail, one must show gross negligence to persuade the average juror. This is likely due to the fact that physicians (unlike lawyers) still are held in high esteem by the public. Of course, aggravating circumstances, such as altered records, inaction in the face of pleas of hospital nurses, physician practicing beyond his/her specialty, readily help the plaintiff in this difficult burden of proof.

The purpose of this article is to assist the less experienced malpractice litigator with some time-tested tips. Certainly, there is no substitute for experience. If one has never prosecuted a significant medical malpractice case through to verdict, it would behoove the plaintiffs counsel to gain an experienced co-counsel early on for your first significant case. The actual trial of these cases, as one prominent defense attorney once said, comes down to a "game of inches". It is the experienced trial lawyer who appreciates this concept. Seasoned trial lawyers should not be afraid to help the inexperienced lawyer, regardless if the inquiry is for a formal co-counsel arrangement. Remember, it is the plaintiff who benefits when we stand on each other's shoulders in providing representation to the malpractice victim/family.

Cases to Avoid

The easiest threshold involved in acceptance of a malpractice case involves the valuation of damages Unless the damages are significant (death or permanent injury) and have a settlement value of minimally $100,000, the actions are not economically and emotionally worthwhile for the plaintiff. Of course there are those clear-cut malpractice cases that have a value less than the above, which can be readily resolved without any serious time, expense, and effort.

.Pure informed consent cases, nominal loss of chance cases, cases where the plaintiff dictates which defendant you can sue and not sue, cases where there is absolutely no reasonable support in the record for the plaintiffs version of the events, are those that generally prove to be troublesome and not successful. Occasionally, a family will come in and say that a medical provider "murdered' their relative. Such a declaration is almost universally a red flag to avoid involvement in the case.

When the case involves a patient who failed to follow physician orders or recommendations, and the same was arguably a substantial factor in the ultimate outcome, such is the "kiss of death' and should be avoided. It is clear that most jurors will not hesitate to blame a fully informed patient.

Always remember to make an assessment of the plaintiff or plaintiffs family at the initial interview. Their first interview with you will be comparable to the jury's first impression. If you do not like your client, the chances are the jury won't either.

Appreciating The Fact That Your Client May, in Fact, Have a Case

As noted above, there is no substitute for experience. However, through a commitment to religiously read various malpractice jury verdict settlement publications, one can quickly become sensitized as to viable theories of liability in the various medical subject matters. Some medical malpractice verdict settlement publications' are an enormous value to the plaintiffs lawyer. Not only do they assist the attorney and/or legal nurse consultant to become highly sensitized to potential theories of liability, but such publications also provide information on anticipated defenses, potential experts in the field, and case value.

It is a mistake and a disservice to the malpractice victim/family to merely take the medical records, wrap them up and send them out to a service' and ask someone if in fact there is a case here. Firstly, the person reviewing the matter may not be of the same subspecialty as the person that may have committed the negligence. Secondly, even with the most objective and qualified experts, it is sometimes necessary to take their nose and direct it right to the portion of the record that would advance your theory of liability. It is the skilled malpractice litigator, in his initial conversations with the reviewing expert, that will subtlely suggest what the appropriate standard of care would be under the circumstances of the case under review.

Another way that you can assist yourself in the initial work-up is to obtain medical journal articles/textbook chapters on the specific subject matter. You must remember that
journal articles/textbooks that speak to appropriate standard of care must precede the date of your cause of action. Contrarily, journal articles/textbooks can always be utilized, no matter how recent to assist one on causation. Of course, these medical journal articles/ textbooks readily provide a potential expert, as well.

Finally, do not simply accept on face value a response that, although the outcome is unfortunate, it's a known complication. Complications occur all the time. The real issue is, should it be an **acceptable** complication.

The Work-Up

After obtaining the appropriate medical research, the medical records must be obtained. These can be obtained both by the plaintiff and/or by the law firm. Sometimes if the plaintiff obtains the records themselves, there is less of an opportunity or a motive for alteration. In actual formal discovery obtain an official office copy of the doctor's records, and thereafter make a comparison to the patient's copy of the chart for alterations.

Selecting the Experts

Experts are found 1) in the authors of medical journals, 2) verdict/settlement reporters, and 3) expert services. I used to labor under the belief that experts obtained from services were somehow tainted. This is not tnie. On the contrary, it is the expert's experience, demeanor, and conviction that override all other factors. One must keep in mind the venue in which the action will likely be tried when selecting an expert. Certainly, one would not want to bring in a New York City expert in a rural Ohio county, as generally that expert will not be well received. When obtaining experts, it is a good idea to have a standard of care expert of the same specialty as the individual defendants. The same specialty as the defendant gives the expert more credibility on standard of care. An example of an overly qualified expert would be an internist on standard of care issues when the case involves a family physician. There are a number of fine family physician experts in this country who speak to standard of care.

When discussing the merits of your case with any expert, it is **always** prudent to record, with the expert's consent, the conversation. These transcripts are not discoverable. Have this recording transcribed and always review it before the plaintiffs expert's deposition. That will enable you to appreciate, before the deposition, if there is a misunderstanding of facts or areas of weakness that you can fortify before the deposition. A transcript of your experts' conversations can be utilized to remind him/her of their previous commitment on the merits of the case **if** they suddenly get "cold feet" on an issue. Finally, transcripts of recorded conversations with experts are of enormous assistance in better understanding the medicine as well as in preparing questions for cross-exam of the defendant and defense expert.

The Prosecution of the Case
Pretrial

Clearly, one needs to take the deposition of the defendant physician, and at such deposition all entries, either in the office chart or hospital, should be interpreted by the defendant physician. including his abbreviations, etc Make sure the doctor has the original chart and explains at said deposition his/her thinking and recommended medical course of management Don't be shy about gaining opinions from the defendant doctor on causation and/or the extent of your client's damages Before hospital nurses are deposed. hospital policies that govern their conduct should be obtained via a Request for Production of Documents At the depositions of the Individual nurses involved in the case. always ask if they

know of anyone, including themselves, who generated any personal notes, diaries, or affidavits; surrounding the circumstances of the particular patient's care that are not contained in the hospital chart. These private recordings are generally a gold mine.

The discovery depositions of the defendant's experts are probably one of the more important weapons in your arsenal. Always attempt to obtain, at the deposition, the defendant expert's personal notes as a result of his review and have them marked. Attempt to find out if that expert has given expert testimony previously in other cases on a similar subject matter, particularly if it is on behalf of a plaintiff. Obviously, a report or a deposition from the defense expert, when he was acting as a plaintiffs expert on the same subject matter, could be a wonderful tool for cross-examination at trial. Another means of finding out about previous depositions from the defendant expert is to check with Depo Connect or through Malpractice Verdicts and Settlements, which has a nominal search fee for the expert. If necessary, contact prominent plaintiffs malpractice lawyers in the region where the defendant expert is situated to assist you in obtaining any more valuable information on the defense expert. Again, don't be afraid to use the defense expert to support your view of standard of care, causation and/or damages. Always ask the defense expert if the complication or end result has ever happened to him. Some defense experts will concede individual or specific standard of care violations, if they are isolated in one's questioning. It is always a plus to have the defense expert concede that he would have managed this situation differently (thereafter get him to concede that he considers himself a prudent physician).

Thorough preparation of the plaintiffs expert can be easily overlooked. Prepare a "prep" checklist and staple a copy of it inside each of your experts' files. Such checklist should include:

1. A reminder to remove attorney-work product;
2. The significance of acknowledging a medical test or journal article or author as "authoritative";
3. If a standard of care expert, make sure he meets the minimal fifty percent of his professional time in the clinical practice of medicine standard in Ohio;
4. Confirm the appropriate magic language of "more likely than not" or "probable";
5. Explain the dangers and problems with certain words (to avoid), for example, could, maybe, speculative, chance, possibly, and might,
6. Make sure the doctor knows the definition of standard of care in Ohio (what a reasonably prudent medical practitioner would do or not do under like or similar circumstances),
7. Make sure the expert is prepared to deal with the common defense of "professional judgment", (i e there's good judgment and bad judgment, or judgment must be based on sound medical practice)

Requests For Admissions

Requests for Admissions are woefully underused by the plaintiffs bar. This discovery tool has great value and generally strikes fear in the heart of defense counsel. Submit Request for Admissions with regard to each element on which you have the burden of proof at trial. Select your words, phrases, and the order of the same very carefully in this written discovery. These are, in essence, the preview of your best case. Should certain of these be admitted, then they may go a long way to helping you establish your burden of proof at trial.[3] Furthermore, even if the defendant denies the request, he or she may admit a portion of the request, which will be deemed an admission under the Rules of Evidence at trial. If the defendant then attempts to waffle on the issue at trial, a Request for Admission can be shown to him or her on cross-examination.

Mock Jury/Focus Groups

It is prudent, in all significant malpractice cases, to engage in either a mock jury and/or focus group. Such process assists in bringing to light the factually significant and insignificant matters from a lay perspective. Often the plaintiffs counsel's fears or apprehensions about his case can either be confirmed or allayed by such a process. These mock juries or focus groups should not be done in a lawyer's office, but must have an air of independence to them. Various litigation support companies will facilitate mock juries or focus groups. It is certainly possible to conduct your own in ock jury/ focus group with having someone in your office act as the moderator. Mock jurors or focus group participants can be gained by advertising in the newspaper or by the services of a telemarketing company, such as the Pat Henry Group in Cleveland.

A mock jury award should add credibility to your settlement demand. Additionally, an award by a mock jury, which is in excess of the insurance policy limits, should be communicated to the defense counsel. Not only will this provide a basis for a bad faith claim and prejudgment interest, it will also send an independent message to a defendant doctor that his personal assets are at risk. The doctor and his private counsel will likely thereafter further press the insurance carrier to settle the case within the policy limits.

Motion in Limine

Motions in Limine can be used as an offensive and defensive motion pretrial. Such motions should help restrict irrelevant and prejudicial matters from the plaintiffs perspective. Furthermore, such motions in limine should be used to restrict and/or eliminate affirmative defenses.[4] Motions in limine can be used from an offensive standpoint to gain a preliminary ruling on difficult evidentiary issues from the plaintiffs perspective.'

Trial

Demonstrative Aides

Jurors very much appreciate the attorney using demonstrative evidence (for example medical illustrations and anatomical models) to better understand the medicine. Furthermore, timelines reflecting the key clinical events, as well as the likely "window of opportunity" are always well received by jurors. Finally, a proximate cause board assists lay people in better understanding this difficult legal concept. Such a board should compare what actually happened to what should have happened with appropriate medical care.

Voir Dire

Clearly, in voir dire, one should engage in a dialogue with the jurors, to get their firm beliefs and understanding about medical malpractice (improper health care) and individuals who file suit against the health care provider. Deselection of jurors should include those that believe that a bad result comes about from destiny versus lack of care. People connected with the medical field have sympathy (whether conscious or unconscious) to medical providers, and should be deselected, regardless of their affirmation of impartiality. The one exception *to* jurors in medical negligence cases are LPN's. LPN's generally, by their mere standing in the medical heirarchy, are much more closely aligned with the patient. Of course, jury selection should not be based on demographics, but more so on the individual juror's beliefs. Always explore, with a prospective juror, if any loved one or themselves have ever sustained the same complication as the plaintiff or plaintiffs decedent. If so, explore the details and inquire if they feel that the plaintiff or plaintiffs estate should have a better result than they did (assuming they were not compensated) if it can be medically shown that said condition was avoidable and preventable.

Opening Statement

Utilize the above-noted demonstrative aides in your opening statement. The plaintiffs counsel should be the first one to teach the jury the medicine. Explain the fancy medical terms in simpler words. Write out the standard of care violations and utilize your proximate cause board to demonstrate what flowed from the substandard care. Always broach the anticipated defenses in your opening statement (with your appropriate spin thereon), Such should color the jury's perception of defenses by the time they hear from the defense attorney.

Direct Exam of Plaintiff's Expert

Always elicit from the expert that he is licensed to practice in his jurisdiction, and he spends at least fifty percent of his professional time in the clinical practice of medicine. Direct exam of your expert is another opportunity to explain the medicine to lay people. Whenever your expert (or any medical providers for that matter) uses a fancy medical term, stop the examination, and have the physician explain what that fancy term means[6]. Some physicians appreciate receiving a script of the anticipated direct exam. During the beginning of the direct exam, tell the expert that you are looking for his/her opinion within a reasonable degree of medical probability, so that you don't have to repeat it each and every time, and get him/her to agree to give you the opinion in those terms. Topics that should be broached with the plaintiffs expert, before his ultimate opinion, should include his medical/legal experience, his familiarity with the subject matter (e.g. that he has written

or done research on the medical topics). You want the plaintiffs expert to be perceived as someone who the jurors would want to go to for their medical care (i.e. likeable and approachable and yet have the necessary conviction for your cause). Don't be afraid to raise anticipated defenses within the direct exam of your expert. This practice takes the wind out of the defense's sails. Don't hesitate to broach conduct by the defendant physician or the defendant hospital nurses that your expert can say met the standard of care. This technique gives your expert more credibility.

Damages of the Plaintiff

If the plaintiff does not make the best expert for himself or herself, delay putting this lay person on until the end of your case. Rather, have family members and friends speak to the plaintiffs loss and/or injuries and how they perceive this has affected him or her. This technique is very effective, and when the plaintiff takes the stand there is not such a great need to elicit the evidence of the loss. Always attempt to get stipulations on medical bills. Economic loss or reduced earning capacity should be ,conservativelypresented on a reasonable anticipated work life.

Calling the Defendant in Your Case-in-Chief

If the defendant makes an extremely good witness and has a somewhat reasonable explanation for some of his conduct, it generally proves of no value to call him in your case-in-chief upon cross-examination. Contrarily, the defendant that does not make a good witness and/or who is without reasonable explanation for his conduct, is an excellent witness to set the stage in the plaintiffs case-in-chief. Utilize the defendant called in your case-in-chief to acknowledge general standard of care principles and/or causation/damages. Validating one's timeline/proximate cause board by use of adverse medical witnesses in your case-in-chief is often worthwhile.

Defendant's Case-in-Chief

Again, where necessary, utilize your timeline or proximate cause board for validation purposes.' Always organize and structure your cross-examination of the defendant and/or defendant's experts Such organization should include, initially, topics for which there will be concessions. Prior to areas of disagreement, set forth any grounds for bias or prejudice against plaintiff or on behalf of the defendant. Then proceed to your questions for which the defendant or defense expert will be an advocate.

Closing Argument

Use the closing argument to first revisit the medicine, demonstrate what happened (timeline), why it happened (substandard care delineated on a board), and what the substandard care led to (proximate cause board). Remind the jury of each and every expert, whether plaintiff or defendant, who supported the standard of care violations and/or causation. Work into your closing critical portions of the actual jury charge. If there are any proposed written interrogatories to the jury, have these blown up and utilize the blow-up by writing in your proposed answers. Jurors appreciate the plaintiff's counsel making their life easier, from understandingthe medicine to understanding how they should complete the written interrogatories. Empower the jury to right a wrong by clearly demonstrating that the plaintiff's tragedy was avoidable, preventable and unnecessary.

Conclusion

Never lose sight of how privileged you are to represent the plaintiff or the plaintiffs estate. With dedication, commitment, and massive preparation, these difficult cases can be won. Remember that it is the conviction of the expert, as well as the plaintiffs counsel, that helps the jury understand how important this matter is, how much you care, and how right you are. Justice just doesn't happen. We have to make it happen. That's your job, and that's my job.

1 ATLA's Professional Negligence Reporter and "Medical Malpractice Verdicts, Settlements and Experts" edited by L.L. Laska.

2 This is not to suggest that experts obtained from services should not be used. On the contrary, service experts can be excellent.

3 Remember, any admissions will need to be admitted into evidence at trial by reading them into the record at trial prior to resting your case. Attempt to have the trial court read the Admissions to the jury in the beginning of the case. Also attempt to offer the Admissions as an exhibit.

4 In written discovery, always have the defendant state the factual basis, including identity of witnesses and documents that provide support for all asserted affirmative defenses.

5 It must be remembered at trial that rulings and motions in limine pretrial are merely preliminary, and one must continue to make the same objections during the course of the trial.

6 Plaintiffs counsel gains credibility and respect by being the individual who attempts to ensure that the jury understands the medicine.

7 Validation of demonstrative evidence gives the plaintiffs counsel further credibility. Attempt to have the timeline marked and accepted as an exhibit.

Interview with The Honorable Nancy Margaret Russo

Judge Nancy Margaret Russo graduated from Cleveland Marshall College of Law in 1982. Upon completing law school, Judge Russo worked for several years at Calfee, Halter & Griswold working primarily in the areas of labor law and First Amendment defense. She has also worked with Blue Cross & Blue Shield of Ohio and Nationwide Insurance in the areas of white collar crime. Judge Russo was elected to the Cuyahoga County Court of Common Pleas in 1997. This past May, she completed her Masters of Public Administration at Cleveland State University's Levin College of Urban Affairs, and was the recipient of the Rowland Hopkins Outstanding Graduate Award. She is now a lecturer and instructor for the Graduate and Doctoral Programs at that institution. Judge Russo has attended the Gerry Spence's Trial Lawyer's College, and that experience provided her with a unique opportunity to hone her skills as both a lawyer and judge.

- **Tips of Effective Voir Dire**

  To Judge Russo, voir dire is more than just the process by which jurors are selected, and it is about more than just the case that is being tried It is a process that, when presided over fairly, lends credence to our system of justice In Judge Russo's cstiination, if both sides walk away at the end of a trial, regardless of the result, and feel they were given full latitude to explore juror bias, the client will have greater confidence in the outcome, whatever it is It may take extra time to choose the jury while allowing more voir dire, but Judge Russo believes it fosters greater public confidence in the process

While lawyers spend time and money trying to identify what characteristics an "ideal juror" should possess, lawyers rarely take the time to experience what it is like to be a juror. Who cares what the psychological profile of an "ideal juror" is if you do not have any idea what it feels like to sit in that box and be asked personal and oftentimes embarrassing questions? Even an "ideal juror", if such a thing exists, can be transformed into anything but "ideal" if he or she is offended or alienated in the voir dire process.

To become more adept at conducting voir dire, lawyers need to literally step into the shoes of a prospective juror. They need to constantly remember that jury selection, regardless of how mundane and ordinary it may seem to us, is an intrusive, strange and oftentimes uncomfortable process for jurors. Think of it this way - how often have we as attorneys had to sit in open court and answer thirty questions in front of a roomful of people whom we have never met? What must that feel like?

Lawyers indeed should experience what it feels like to be a prospective juror Conduct a mock voir dire with your colleagues, in which you, the attorney, plays the role of a prospective juror Learn how it feels to be asked about your medical history, your likes and dislikes, your family members, etc How does it feel when you are asked about a family member who inay have a significant criminal history? How does it feel when you arc asked with a hint of skepticism by counsel for both sides "Do you really think that you can be fair and impartial in this case')."

If more attorneys could take the time to engage in such role playing exercises, they most probably

would approach voir dire much differently. The role playing process helps an attorney experience how jury selection feels from the standpoint of a juror. Judge Russo believes this process would help attorneys to conduct the selection process in a more effective manner, and better ensure the selection of a fair and impartial panel.

- **Remember that You are Your Client's Only Voice**

When asked how attorneys can improve the manner in which they present their cases to the jury, Judge Russo points out that attorneys should always keep in mind that they are their client's "only real voice" in the courtroom. While a client may have the opportunity to take the stand and tell part of the story with his or her own voice, it is the attorney's responsibility to be the client's "voice" throughout trial. Judge Russo expands on this thought as follows:

"I think what attorneys do more than anything else, which I think is an error, is that they do not remember that it is their job to tell a compelling, yet credible story. They are the voice for their client. What I have noticed is that many lawyers tend to treat litigation too much like a business. Due to the constant mayhem that is inherent in litigation, as well as the heavy work load and stress that accompanies the job, many lawyers end up making presentations that are perceived as sterile by the jury. Many of the presentations do not have the emotion behind them that would otherwise come through loud and clear if the client had the opportunity to be his or her own voice throughout the process. Being the client's only voice in the courtroom carries with it a lot of responsibility, including the duty to convey to the jury what that client wants that jury to know and what that client would say if he or she had the opportunity to speak throughout the trial."

- **Advice on Improving your Skills as an Advocate**

Judge Russo observes that lawyers and actors arc similar in many respects Both are required to "improvise" on a daily basis in their professions, their respective audiences typically have high expectations of them, and others are always willing to critique their perfonnances. Moreover, both lawyers and actors frequently feel insecure about how their performances are perceived by the audience. In light of these similarities, Judge Russo offers the following advice for attorneys who would like to become more dynamic, confident and persuasive advocates:

1. ***Take an acting or "improv" class***

"In order to improve the manner in which a given client's case is conveyed to the jury, I would like to see lawyers take improvisation, acting or theater classes. That should help them feel more comfortable with public speaking in the sense of telling a compelling story. In addition, it would teach them how to more effectively convey frailty, passion, and even humor. It would likewise teach them to be successful advocates in a way that is not clinical."

2. ***Engage in "role playing" exercises.***

One key point that Judge Russo took away from Gerry Spence's Trial Lawyer's College that she attended is this: To be more effective, lawyers need to learn how it feels to be a witness, a juror, the judge, and the client. Lawyers should participate in mock trials and "role play" as jurors, witnesses and clients. Judge Russo explains why this type of exercise can be so invaluable to a lawyer:

"One should really be able, whether he or she represents a plaintiff or a defendant, to imagine in his or her mind what it is like to be any of the players in the courtroom. **If** one can truly imagine what that experience would be **like,** then he or she will be a much better lawyer, because he or she will be more sensitive to the nuances of what is going on in the courtroom, and because it will help him or her coinmunicate better. It would also foster more cooperation amongst the different actors involved in the litigation process and that would be helpful to everyone involved. How many lawyers have been jurors in a real case? I have recently spoken with a few lawyers who were called for jury duty and

were actually seated on a jury. Every one of them that has talked to me about it said that it is one of their most amazing experiences, and that he or she will never try a case the same way again. And how many law-yers have been clients in any type of matter, civil or otherwise? When you have been a client, I think that you get a different perspective on the process. For these very reasons, I think that engaging in role-playing and improvisational exercises can be very effective training for a lawyer".

3. Remember that jurors' perceptions are influenced by the media

Judge Russo observes that jurors' expectations of lawyers are guided to some extent by how lawyers are portrayed in the media. This is precisely why lawyers need to avoid presenting their cases in a sterile, clinical fashion. On their television sets, lawyers are portrayed as advocates who present their cases with great fervor and passion. Jurors want to see some of this is the courtroom. If they finally get in the courtroom and that sense of passion is lacking, jurors might become bored or disinterested.

4. Jurors Respect Professionalism

Of course, this basic concept should go without saying. Why, then, do so many attorneys and even their clients leave their sense of professionalism on the courthouse steps? In speaking with jurors after they have concluded their deliberations, Judge Russo has developed a keen sense of how important professionalism of the lawyers is to jurors.

"Lawyers have to deal with the reality that jurors come into court with many preconceived notions of what they can expect from a trial and from the participants in that trial In general, these are people who watch a tremendous amount of television, and inany of those programs cause thcin to have stereotypes about how the judge and the lawyers arc going to behave in the Courtroom This is onc of the reasons that jurors do not like a lack of profcssionalisin - because they sec it on television all the time They often coinc to the courthouse with the attitude 'that's just how lawyers are'. and when they see a lack of professionalism, their suspicions are confirmed Even though I think that unprofessional conduct occurs very infrequently (and I rarely see it in the courtroom), the jurors are always appreciative of the lawyers behaving professionally While I perceive that the outcome of a trial is determined predominantly by how good the facts of the case are, it cannot be overlooked that a lawyer's professionalism, or lack thereof, may have a profound effect on the jury's deliberations"

▪ Tips on Effectively Conveying a Client's Damages to the Jury

Judge Russo suggests that attorneys should convey damages creatively and through the use of witnesses and exhibits, if possible. She describes some recurring pitfalls she has perceived in her courtroom and offers several practical pointers on how attorneys can more effectively convey damages to the jury:

1. ***Injured Plaintiffs Often Downplay Their Injuries.***

Lay witnesses are oftentimes better "damages" witnesses than the client, because clients are often too embarrassed or too nervous to tell a jury precisely how an injury has affected their lives. Severely injured clients will often go so far as to downplay their injuries or the extent to which thcir lives have been changed as a result of someone's negligent conduct. Putting friends, family members, neighbors and co-workers on the stand to describc the impact an injury has had on a client's life is an effective way to avoid the pitfall of a client who may tend to minimize his or her injuries, from a sense of embarrassment or not wanting to appear weak in front of jurors.

2. Demonstrate how damage to one person impacts the lives of other people.

Successful lawyers arc able to demonstrate to the jury that their client is the type of person who merits compensation as a result of the many life activities and relationships that have been altered due to a

defendant's negligence Using lay witnesses to describe not only how the clients' injuries have altered his or her life, but also the lives of those around them, brings the "damages" aspect of a case to life in the minds of the jury. Juries tend to have more empathy for a plaintiff when they see for themselves how the plaintiffs life *and* the lives of those closest to the plaintiff have been impacted as a result of a defendant's careless or reckless actions.

As an example, suppose your client, a 40-year-old woman, sustained a broken leg in an auto accident that required her leg to be in a cast for three months. Prior to the accident, the client was an avid skier, actively involved with her childrens' extracurricular activities, and self employed as an interior decorator. The plaintiffs lawyer may ask his client on the stand "how did your life change after the accident", to which the client may respond "well, my leg hurt really bad, I was on crutches for three months, and I really couldn't do too much of anything while I had a cast on". Without more, this testimony is bland. It does not adequately convey how the client's life was limited. While the client may be able to express in more detail the pain and suffering associated with her injuries, lay witnesses can supplement this testimony and make it more appealing to the jury. The skilled lawyer will find ways to bring the client's damages to life via the testimony of such lay witnesses. He or she may accomplish this by doing the following:

- Putting the next-door neighbor on the stand to testify how she had to pick up' and drop off the plaintiffs children at their soccer practices for three months because the plaintiff could not drive;
- Putting the plaintiffs sister on the stand and eliciting testimony that the plaintiff was unable to go on an annual and much anticipated family skiing trip because of her injuries;
- Putting the plaintiffs husband on the stand and obtaining testimony that he had to work overtime for three months to make ends meet because plaintiff was unable to earn any income for that period of time;

Putting the client's elderly mother on the stand to testify that since she does not drive, and because her daughter was unable to drive for three months, they were unable to visit with each other regularly as they had done before the accident.

This is the type of testimony that depicts not only a client's damages, but also how a defendant's negligent act has affected the lives of many other people. It is the type of testimony that can bring a case to life, and helps the lawyer tell the "story" in a compelling, understandable manner.

3. ***Overcome the "Taboo" of Discussing Money***

We have to acknowledge and deal with the fact that it is taboo in our society to discuss money. It makes people uncomfortable. After all, we have been socialized to the belief that it is not polite to ask others how much money they make, what their mortgage payment is, or how much of a bonus or raise they received at the end of a year. Likewise, asking a jury for a large amount of money is often difficult, because it can be an uncomfortable topic to discuss. Lawyers need to understand that money is an uncomfortable subject for jurors, too, and they must assist the jury in getting beyond the taboo of talking about it. Acknowledge to the jury that you understand the taboo and that you understand the difficult job they are being asked to do. Tell the jury "I know this is an uncomfortable subject for you, and it is an uncomfortable subject for me as well, but it is something that we are going to have to deal with in this case". If the lawyer is not willing or able to get beyond the taboo of talking about money, the jurors are placed in the uncomfortable position of being asked to go where the lawyer was not willing to go, Putting a value on a case is perhaps the toughest thing that juries do. Indeed, juries consistently say things at the end of a trial like "how were we really supposed to value the loss?". Without guidance by the attorney to the jurors to perform this difficult task, the client may not receive full and fair compensation from the jury.

- **The Pitfalls of Presenting an Expert Via Videotape**

Presenting expert testimony via videotape can be a critical mistake. While it is undoubtedly expensive to have an expert appear live at trial, jurors consistently complain about videotaped testimony when they are interviewed at the end of a trial. It is almost as if they feel disrespected They are left with the perception that the case was not important enough, or that the expert probably did not feel as if it were important enough, to justify the expert's physical presence in the courtroom. Many jurors who are called for jury duty and have to sit in court for a week or more have been inconvenienced, yet they suffer the inconvenience to do their duty. Presenting an expert by videotape may unnecessarily cause jurors to believe that you value the expert's time more than theirs. Further, videotaped testimony denies jurors the opportunity to see the expert in the heat of the moment, to experience them, or to make any type of real judgment about them and, therefore, may affect how they weigh the expert's credibility.

"What I think is happening as a result of there being so much videotaped testimony is that the jurors are tending to 'throw out' the testimony of the experts. The videotaped experts tend to cancel each other out in the minds of the jurors. In my experience, juries do not make their decisions based on the videotaped testimony of experts. They more often than not make their decisions based on the witnesses that appeared in court - the witnesses they could see, hear and personally experience. And in cases where one side brings in a 'live expert' but the other side presents his or her expert by videotape, it is interesting to hear the jury talk about how much more they paid attention to the expert who appeared in person. While live expert testimony will not always affect the outcome of a case, the jury will generally pay more attention to the live expert, and in many instances this may influence the jury's decision".

Law Update

by Stephen T. Keefe, Jr.

Writ of Prohibition - Criminal Contempt Proceedings in a Civil Case

State* ex *rel. Corn* v. *Russo (2001), 90 Ohio St.3d 551 (holding that the dismissal of an underlying civil action does not divest a court of coinmon pleas of jurisdiction to conduct criminal contempt proceedings).

In the underlying case of *Crow* v. *Dotson*, Cuy. C.P. No.CV345899, relator, Robert C. Corn, M.D., was hired by defense counsel to perform a defense medical examination of the plaintiff and to serve as an expert witness. Believing Dr. Corn to be biased, Plaintiffs counsel filed a request for production of documents, asking that Dr. Corn produce all I.R.S. 1099 tax forms received from insurance companies for the years 1991-1997; as well as all computerized records, billing statements, expert reports and other documents relating to any of the exams he performed during that time period. When those records were not produced, Plaintiffs counsel issued a subpoena to Dr. Corn and his professional organization requiring them to produce the documents. Dr. Corn filed a motion to quash the subpoena. Respondent, Judge Nancy Russo, denied the motion and issued an order stating that Dr. Corn's failure to comply by a date certain would be deemed contempt of court. When that deadline arrived, Dr. Corn had only produced a 1997 calendar containing the names of his patients and approximately 103 reports from 1996 and 1997. He failed to produce the remainder of the requested reports and the 1099 tax forms. The court held a show-cause hearing, at which time Dr. Corn stated that his appointment books and reports are destroyed at the end of the calendar year or every three months. Dr. Corn conceded that one of the reasons he destroys these records is to prevent plaintiffs and their attorneys from establishing his financial interest and defense bias in personal injury litigation. Dr. Corn also testificd that he could not produce any 1099 tax forms because he did not have any.

Attorney Robert Housel was called as a witness at the show-cause hearing. He was appointed as a special master by Judge Daniel Gaul in a separate tort action to investigate Dr. Corn's income and financial records pertaining to defense medical examinations. In his testimony at the show-cause hearing, attorney Housel revealed the information he obtained during his investigation of Dr. Corn in the separate tort action.

Relators filed a petition for a writ of prohibition and a writ of mandamus to prevent respondent from going forward with the contempt hearing. While that case was pending in the court of appeals, the parties in the underlying ***Crow*** litigation settled and voluntarily dismissed the case with prejudice. Thereafter, the court of appeals issued its opinion, holding that respondent had jurisdiction to proceed with the contempt hearing, but that it did not have jurisdiction to compel testimony or seek evidence from attorney Housel. The court of appeals granted a permanent writ of prohibition in that respect and ordered Housel's testimony sealed.

Respondent then returned ***Crow*** to her active docket and continued the show-cause hearing. In response, relators filed a verified complaint, once again seeking writs of prohibition and mandamus against respondent. The court of appeals denied the writ of mandamus but granted the writ of prohibition, holding that once the parties dismissed the underlying case, respondent lacked jurisdiction to proceed.

The Ohio Supreme Court reversed the court of appeals and held that respondent did have jurisdiction to continue the contempt proceedings. While conceding that a court would lack jurisdiction to proceed with a *civil* contempt proceeding after the underlying case has been dismissed, the Ohio Supreme Court held that *criminal* contempt proceedings survive the dismissal of a case. The Court characterized the contempt proceedings involving Dr. Corn as *criminal* ("what began as a civil matter became criminal in nature"). More specifically; the Court held that the purpose of the show-cause hearing was no longer restricted to coercing Dr. Corn into complying with the court's orders once respondent learned that he was intentionally destroying records to prevent opposing counsel and the court from inquiring into his practices and bias Instead. as the Court noted, "its purpose was to vindicate the authority of the judge and to punish relators if she found that their practices impeded the judicial process and frustrated the civil discovery rules"

Citing to R.C. 4731.22(F)(1), which provides that *"any person* may report to the board in a signed writing any information that the person may have that appears to show a violation of this chapter...", the Court also held that respondent had jurisdiction to investigate, but not decide, whether Dr. Corn's record-keeping practices violated State Medical Board requirements.

Insurance - Rejection of UM/UIM Coverage

Linko v. Indemn. Ins. Co. of N. Am. (2000), 90 Ohio St.3d 445 (addressing the issue of what constitutes an express and knowing rejection of UM/UIM coverage by a corporation on behalf of related corporations and other insureds).

On November 13, 1996, G. Michael Linko ("Linko") and two others died in an automobile accident caused by a tortfeasor who was driving a company owned car in the course of his employment with Saint-Gobain Industrial Ceramics, Inc. ("SGIC"). The tortfeasor's insurance carrier tendered its policy limit of $100,000 to the beneficiaries of the three decedents.

Linko's estate brought a declaratory judgment action against Indemnity Insurance Company, the company that issued a business auto policy to Saint-Gobain Corporation("SGC"), the Norton Company ("Norton"), and their various subsidiaries. Although SGIC, a subsidiary of SGC and/or Norton, was not a named insured in the policy, Indemnity did not dispute that SGIC and Linko qualified as additional insureds under the policy. Instead, Indemnity argued that Norton properly rejected UM/UIM coverage on behalf of itself and all of its related subsidiaries, including SGIC. Linko's estate sought a declaration that UM/UIM coverage had not been properly rejected under Ohio law by Norton on behalf SGIC.

The United States District Court for the Western District of New York certified the following six questions of state law to the Ohio Supreme Court

Question 1: Whether an insured under an automobile liability policy may challenge the authority of a signatory to an uninsured/underinsured motorist coverage rejection form when such signatory's authority is not disputed by the named insureds or insurer?

Answer: Relying on *Gyorr v. Coca-Cola Bottling Group, Inc.* (1996), 76 Ohio St.3d 565, the Court answered this question in the affirmative.

Question 2: Whether the language of the uninsured/ underinsured motorist coverage rejection forms accompanying the subject automobile liability policy satisfies the offer requirements of R.C. 3837.18?

Answer: No. To satisfy the offer requirement of R.C. 3937.18, a valid written offer of UM/UIM coverage must inform the insured of the availability of UM/UIM coverage, list the premium for such coverage, include a brief description of the coverage, and expressly state the UM/UIM coverage limits in its offer. Regarding this question, the Court held that "the Indemnity rejection form, lacking in that required information, thus could not be termed a written offer that would allow an insured to make an express, knowing rejection of the coverage".

Question 3(a): Whether each of several separately-incorporated named insureds must be expressly listed in the rejection form in order to satisfy the requirement that the waiver be made knowingly, expressly and in writing by each named insured?

Answer: Yes. "Separately incorporated named insureds must each be listed in a rejection form in order to satisfy the offer requirements .of R.C. 3937.18." Observing that a parent corporation and its subsidiaries remain separate and distinct legal entities, the Court concluded that an offer to the parent does not *per se* constitute an offer to the subsidiary. If a subsidiary's name does not appear on the coverage selection form, no offer of UM/ UIM coverage has been made to that entity. Each separate and distinct entity must be specifically offered UM/UIM coverage before an authorized representative inay reject coverage on its behalf.

Question 3(b) When, on its face, a rejection form was signed by the employee of only one of several separately-incorporated named insureds listed in the policy, whether the four corners of the insurance agreement control in determining whether the waiver was knowingly and expressly made by each of the named insureds, or does the parties' intent, established by extrinsic evidence, control?

Answer: "The four comers of insurance the insurance agreement control in determining whether waiver was knowingly and expressly made by each of the named insureds". Relying once again on *Gyorz,* the Court observed that the requirement of a *written* offer and *written* rejection simplifies the issues of proof - "the offer and rejection are either there or they are not". The Court further held that "extrinsic evidence is not admissible to prove that a waiver was knowingly and expressly made by each of the named insureds".

Question 3(c): Rendered moot based on the Court's response to Question 3(b).

Question 3(d): Whether a parent corporation has implied authority to waive coverage on behalf of its separately-incorporated subsidiary corporation when the subsidiary corporation did not provide *written* authorization to waive un/underinsured motorist coverage benefits on its behalf prior to commencement of the policy period?

Answer: No. "Only with a subsidiary's written authorization may a parent corporation reject UM/UIM coverage on the subsidiary's behalf'. In addition, the written authorization must be incorporated into the contract.

Insurance - Driver Exclusion Invalid

Brittuin *v.* Progressive Preferred *Ins. Co.* (Nov 2, 2000), Cuy App No 77440, unreported (holding that an automobile insurance policy inay not use liability exclusions to eliminate or reduce UM/UIM coverage)

Plaintiff-appellant was insured under a policy issued by defendant. The declaration page listed plaintiff as the only named insured and a 1988 Toyota pickup truck as the insured vehicle. Further, it expressly excluded plaintiffs live-in boyfriend, **John** Griffin, from the policy. On October 22, 1994, Griffin drove the insured truck off the road while plaintiff was a passenger in the car. Defendant denied uninsured motorist coverage to plaintiff. While not disputing that Griffin was an uninsured motorist, Defendant insisted that the driver exclusion precluded Plaintiffs claim. The trial court granted summary judgment for Defendant, and the Eighth District Court of Appeals reversed. Citing with approval to *State Farm Auto Ins. Co. v. Alexander* (1992), 62 Ohio St.3d 397 and progeny, the court held that the driver exclusion is invalid to the extent that it eliminated or excluded plaintiffs statutory right to uninsured motorists coverage.

Insurance- UM/UIM Coverage Not Available

Doganiero* v. *Ins. Co. of Ohio (Dec. 14, 2000), Cuy. App. No.77075, unreported.

Plaintiffs-Appellants' decedent, Nancy Kulikowski, was killed in an automobile accident on October 24, 1996 due to the negligence of a tortfeasor who was driving a truck for his employer at the time of the accident. She was survived by her husband, three children, her parents, three brothers (includmg plaintiff **John** Doganiero), and several nephews and nieces (including plaintiff Aria Doganiero). The insurer of the driver and the driver's employer settled the wrongful death action filed by the executor of Kulikowski's estate for $971,000, thereby exhausting the $1 million policy limits. The probate court approved the settlement and allocated the entire amount of the settlement to decedent's spouse and children.

Defendant insured Plaintiffs under an auto policy with a single per person/per accident limit of $300,000 in UM/UIM coverage. Their first policy was issued on April 9, 1993. Renewal policies were issued on October 9, 1993, April 9, 1994, October **6,** 1994, April 9, 1995, and April 9, 1996.

Both parties filed motions for summary judgment. While the motions were pending, appellant moved for leave to file a third amended complaint, seeking a declaration that S.B.20 was unconstitutional. The trial court granted Defendant's motion for summary judgment, denied Plaintiffs' motion for summary judgment, and denied Plaintiffs' motion to amend as moot.

Acknowledging that the law applicable to this case is the law in effect at the time the contract of insurance was made, the court first addressed the issue of when the applicable contract was made. The court observed that the Ohio Supreme Court's decision in *Wolfe* **v.** *Wolfe* (2000), **88** Ohio St.3d 246 establishes a guarateed two-year policy period during which the policy cannot be altered. Plaintiff argued that this two-year period should run from the October 6, 1994 contract, entered into just a few weeks before the effective date of S.B.20. The court disagreed, noting that the policy was originally issued on April 9, 1993, such that the October 1994 contract was invalid. Reasoning that a new contract came into existence on April 9, 1995, after S.B.20 went into effect, the court held that S.B.20 applied to this case.

Under S.B.20, underinsured motorist coverage must be provided "where the limits of coverage available to the insured under all liability bonds and insurance policies ...are less than the limits for the insured's uninsured motorist coverage". Further, S.B.20 provides that UIM policy limits *shall* be reduced by those amounts "available for payment" under "all applicable bodily injury liability bonds and insurance policies...". Because S.B.20 applied to this case, the Eighth District held that plaintiffs were not entitled to UIM coverage. The amount available from the other driver's policy (i.e., $1 million) far exceeded plaintiffs' $300,000 policy limits. Even though the probate court did not allocate any part of the wrongful death settlement proceeds from the tortfeasor's policy to plaintiffs, the court held that the setoff provision set forth at R.C. 3937.18(A)(2) pertains to amounts *available to*, even though not necessarily recovered by, the insured.

Insurance - *Scott-Pontzer* Applied in Federal Court Case

Carlisle v. *Fireman's* ***Fund Ins. Co.*** (Nov.16, 2000), N.D. Ohio, Case No.1:00CV1346. (UIM coverage exists by operation of law when an insurer does not comply with R.C.3937.18(C)'s requirement of a *written* offer and rejection, even if the insured is not in the course and scope of employment).

On April *28,2000,* Elmer and Carol Carlisle filed suit in the Cuyahoga County Court of Common Pleas against Fireman's Fund Insurance Co. and Transcontinental Insurance Co. for declaratory and monetary judgment arising out of a motor vehicle accident involving their son, Ron Carlisle. Defendants filed a Notice of Removal based on diversity jurisdiction.

Ron Carlisle was involved in an auto accident with an underinsured motorist on October 8, 1999 which necessitated several surgeries and resulted in the amputation of both of his legs. The tortfeasor's insurer tendered its liability limits of $100,000, which plaintiffs accepted with the consent of Fireman's Fund and Transcontinental.

On the date of the incident, Ron Carlisle was employed by Perfection Corporation, but he was not in the course and scope of his employment at that time. Perfection Corporation was insured by two commercial liability policies: (1) a general liability and auto policy issued by Fireman's Fund with liability limits of $1 million (note: Fireman's settled with plaintiffs for $900,000); and (2) a commercial umbrella policy issued by Transcontinental with liability limits of $30 million.

Based on *Scott-Pontzer v. Liberty Mut. Fire Ins. Co.* (1999), 85 Ohio St.3d 660 and *Ezawa v. Yasuda Fire & Marine Ins. Co. of America* (1999), 86 Ohio St.3d 557, plaintiffs sought a declaration of the rights and obligations of the parties regarding the Transcontinental policy.

Transcontinental argued that UIM coverage did not arise by operation of law in this case, but was instead included in the policy In support this argument, it referred to the amendment endorsement it had added to the policy which stated "There is no uninsured/underinsured motorist coverage under this policy if we offered this coverage to you and you rejected it" Because Perfection Corporation did not reject UIM coverage, Transcontinental argued that it was part of the policy Further, Transcontinental argued that Plaintiffs were not entitled to coverage because one of the exclusions in the policy stated that employees are "insureds" only for acts done within the scope of their employment.

Plaintiffs argued that UIM coverage arose by operation of law because Transcontinental provided no evidence of a written offer, acceptance or rejection by Perfection Corporation.

The Northern District of Ohio rejected Transcontinental's arguments and granted summary judgment in favor of Plaintiffs. Relying on *Gyorz v. Johnston Coca-Cola Bottling Group, Inc.* (1996), 76 Ohio St.3d 565, the Court concluded that Transcontinental's amended endorsement "is a statement, not an offer". The Court held that UIM coverage exists by operation of law, because Transcontinental did not comply with the requirements set forth in R.C.3937.18(C). Moreover, the Court relied on *Scott-Pontzer* for the proposition that any language in the umbrella policy restricting insurance coverage applies solely to the *liability* provisions and not to UIM coverage.

The Court also denied defendant's motion for summary judgment on Plaintiff's bad faith claim. The Court determined that the issue of whether Transcontinental's denial of the claim was reasonably justified is a question of fact for the jury.

Insurance - *Scott-Pontzer* Coverage Available to Minor Child of Political Subdivision Employee

Congrove v. Wausau Ins. **Cos.** (Oct.2, 2000). Pickaway C.P. No. 2000-CI-006, unreported (minor child of political subdivision einployee entitled to UM/UIM benefits under *Scott-Pontzer).*

Plaintiff Tyler Congrove, a minor, was injured in a motor vehicle accident while he was a passenger in a car owned and driven by his mother. At the time of the accident, Ms. Congrove was employed by Circleville City Schools, and her husband was employed by Logan Elm Local School District.

The parties filed cross-motions for summary judgment on the issue of coverage. Relying on *Scott-Pontzer*, the court granted summary judgment in favor of Plaintiffs, holding that they are considered insureds for the purpose of collecting any available UIM benefits provided to the school districts by the defendants. The court observed that "even though the *liability* portion of the policy...was clearly amended to provide coverage only if the employee was acting in the scope of his employment, the UM/UIM portion of the policy was not amended and, therefore, left a crack in the door for the Supreme Court of Ohio to open wide and allow non-employees and/or employees driving their personal vehicles for personal errands to collect UM/UIM benefits".

Insurance - Additional Cases of Interest

Heiman v. Metlife Auto & Home Ins. (Dec. 7, 2000), Cuy. App. No. 77898, unreported.

Plaintiff-appellant was injured in an automobile accident on February 17, 1998 that occurred in North Miami Beach, Florida. On that date, plaintiff was a passenger in a car driven by Harry Katz that collided with another vehicle. Plaintiff negotiated a settlement with Katz's insurer for $100,000 and thereafter filed the instant case in the Cuyahoga County Court of Common Pleas for UM/UIM coverage under her own policy.

Defendant filed a motion for summary judgment based on the "anti-stacking" language of the policy's UM provisions read in conjunction with R.C. 3937.18(G)(1)-(2). More specifically, defendant argued that plaintiff was not entitled to coverage because (1) R.C. 3937.18, as amended in 1997, allows insurers to prohibit stacking of coverage, and (2) plaintiff had already obtained $100,000 from Katz, which was the limit of liability in plaintiffs UM/UIM policy In support of its motion for summary judgment, defendant attached to its motion what purported to be a certified copy of the UM/UIM policy. *However, the attached policy was incomplete in that each even-numbered page* ***was*** *missing.* Moreover, at least one of the omitted pages contained the UM coverage provided to plaintiff that defendant asserted precluded her claim.

Plaintiff responded to defendant's motion by arguing that Florida law, which permitted stacking of UM coverage, should govern the claim. The trial court granted defendant's motion for summary judgment, holding that Ohio law governed the case and prohibited the stacking of UM/UIM benefits.

On appeal, plaintiff argued that the trial court failed to apply the analysis set forth in *Csulik* v. *Nationwrde Mut. Ins. Co.* (2000), 88 Ohio St.3d 17, regarding choice-of-law issues when interpreting UM coverage contract provisions. Because both parties conceded that, pursuant to *Csulik,* the policy language is crucial in determining the choice-of-law issue, the court of appeals reversed the trial court's decision based on defendant's failure to attach a *complete* copy of the applicable insurance policy to its motion for summary judgment. More specifically, the court held that "in view of the Civ.R.56 directive that [plaintiff] is entitled to have the evidence, or lack thereof, construed most strongly in her favor, the trial court could not presume [defendant's] citations to the policy provisions were accurate. . .Summary judgment for [defendant], therefore, was inappropriate based upon the state of the record submitted to the trial court".

Drake-Lassie v. State Farm (Dec. 19, 2000), Franklin App. No. 00AP-841, unreported.

Plaintiff-appellant sued defendant-insurer under the UIM coverage of her policy for injuries sustained from a forklift driver's negligence. Both parties moved for summary judgment on the issue of whether a forklift is a "motor vehicle" for purposes of UM/UIM coverage. The trial court granted summary judgment in favor of defendant. On appeal, the trial court was reversed and the case was remanded with instructions to enter summary judgment in favor of plaintiff. After the case

was remanded, defendant filed a second motion for summary judgment raising an additional basis for summary judgment that was not set forth in the previously filed motion. In its second motion, defendant argued that UIM coverage was not available since the tortfeasor was immune from liability under the Workers Compensation Act. The trial court granted defendant's second motion for summary judgment, because S.B. 20, which amended R.C. 3937.18 to abolish the statutory immunity exemption to UM/UIM coverage, was enacted after plaintiff purchased her policy.

On appeal, the court observed that "as a practical matter, all grounds for summary judgment should be litigated in a single motion rather than risk serial grants of summary judgment based upon new theories and serial appeals based upon newly argued theories". Noting that the argument raised in the second motion for summary judgment motion was available for review as part of a single motion for summary judgment and should have been presented in the original motion, the court vacated the judgment of the trial court and entered judgment in plaintiffs favor on the issued of defendant's liability for UM coverage.

Burkholder v. German Mutual Ins. Co. (Nov. 1, 2000), Lucas C.P. No. CI 00-3058, unreported.

Plaintiffs sought to recover damages from defendant, German Mutual Insurance Company, arising out of a June 27, 1998 motor vehicle accident which resulted in the death of plaintiffs decedent. Plaintiffs filed suit seeking a declaration that a Farm Property policy issued by defendant provided UM/UIM coverage.

The court acknowledged that the Farm Property policy did not expressly offer UM/UIM coverage, but recognized that this fact was not dispositive of the coverage issue. Because German's policy provided coverage for owners and operators of motor vehicles "not requiring vehicle registration and/or licensing for road use that are used only for servicing the insured residence...or classified as recreation vehicles", the court held that it qualified as a policy of insurance that serves as proof of financial responsibility as defined by R.C 4509.01 (K), and that plaintiffs were entitled to UM/UIM coverage under the policy. However, the court also concluded that defendant was entitled, based on R.C. 3937.18(A)(2), to a set-off of $200,000 that plaintiffs received from the tortfeasor's carrier.

Employer Intentional Tort - Summary Judgment Improper

Brown v. Packaging Corp. of America (Jan. 11, 2001), Cuy. App. No. 77709, unreported.

Plaintiff-appellant was employed by defendant-appellee as a baling machine operator. On January 5, 1995, plaintiff sustained injury after attempting to dislodge paper jammed in the machine. In order to dislodge the paper, plaintiff climbed atop the machine and, while holding onto the inside ledge, attempted to kick the paper jam free with his feet. In doing so, plaintiff fell through the chute and landed on the floor under the baling machine.

In its motion for summary judgment, defendant confined its arguments to plaintiffs alleged failure to prove that defendant knew with substantial certainty that plaintiff would enter the baling machine to attempt to clear jammed paper with one or both feet and that, as a result, he would suffer injury. Defendant claimed that it had no knowledge that plaintiff would enter the machine like he did and therefore could not have known with substantial certainty that he would fall and sustain injury. Further, it was undisputed that there were no prior accidents or injuries arising out of the operation of the baling machine. Recognizing that the lack of prior accidents is not dispositive, the Eighth District observed that there was uncontroverted testimony from several employees, includmg plaintiff, that they were specifically instructed to enter the baling machine and kick the jammed paper with their feet. Entering the machine in such a manner was an acceptable alternative incthod of dislodging paper jams and a method on which plaintiff was specifically trained. The court reasoned that "given that there is a twelve to fifteen foot drop within the baling machine at the point where the employee would stand to the bottom of the chute, reasonable minds could conclude that the risk of harm is substantially certain to

occur when attempting to dislodge a paper jam with one's feet while holding precariously to an inside ledge".

While the evidence presented by defendant demonstrated that employees were instructed to first attempt to dislodge any paper jams with a metal pole before using their feet, the court held that the use of the pole cannot be considered a safety device so as to absolve defendant's liability when plaintiff did not use the pole because it could not be located. While the use of the pole had the effect of providing some protection to the employee because it obviated the direct contact of the employee's body with the machine, the court noted that the pole was but an alternative method of removing jammed paper and not a device to protect against harm. Further, the court could not ignore that plaintiff was specifically instructed to clear paper jams with his feet and that this method was an acceptable alternative method to achieve the same result. As such, the court reversed and remanded.

Lawrence v. LTV Steel Co., Inc. (Dec. 7, 2000), Cuy. App. No. 77560, unreported.

Plaintiffs decedent, Isaac Lawrence, was an employee of LTV Steel who was killed when a crane struck a 500-to 600-pound steel frame, causing it to fall over on him and crush his skull. Decedent was assigned to fabricate steel frames at LTV. A co-employee was attempting to maneuver the crane into position to lift a frame they were working on when the crane's hoist swung and dropped lower than the co-employee intended, thereby nicking the top of the frame. The hoist swung back, pushing the frame over onto the decedent who was on the ground below. After the incident, defendant was cited by OSHA for exposing employees to serious injury due to inadequate training of radio controlled crane operators.

Defendant filed a motion for summary judgment, which the trial court granted. In its motion, defendant argued that decedent's injury was not caused by a "dangerous process, procedure, instrumentality or condition within its business operation" but by three factors of which LTV had no knowledge and over which it had no control: (a) the removal of a "kicker" from the base of the frame the decedent and his co-workers were constructing; (b) the decedent's position on the ground rather than on top of a table; and (c) the bumping of the frame with the crane hook.

The court of appeals reversed the trial court's decision While recognizing that the removal of the kicker and the location of the decedent might constitute contributory negligence, the court noted that contributory negligence is not a defense to an intentional tort claim. Further, the court held that there was a genuine issue of material fact as to why the crane hook bumped the frame. Whereas defendant attributed this incident to the "miscalculations" of an "experienced' crane operator, the court determined that there was evidence in the record from which a reasonable juror could conclude that the crane was malfunctioning. Indeed, a co-employee who operated the crane earlier that morning reported that the hoist continued to descend after he released the toggle switch, which would normally stop it. When another co-employee, Donald Dotson, attempted to operate the crane, it would not respond to the remote controls at all. Dotson told his supervisor about this malfunction. The supervisor took the controls, and the crane began to work again. The supervisor then told Dotson to "go ahead and use it". Dotson testified that the crane was not responding evenly to the controls and that the hoist "drifted'. Dotson turned the crane over to another co-employee, who was operating it when the decedent was killed.

The court of appeals concluded that this testimony, if believed, would demonstrate that LTV knew the crane was not consistently responding to the controls the day decedent was killed. Further, given the hazardous activities performed with the cranes, a reasonable jury could find that LTV knew that injury was substantially certain to occur to an employee required to work with the malfunctioning crane, or in the same vicinity. Finally, the court held that a reasonable jury could find that LTV required decedent and his coworkers to use the malfunctioning crane.

Pleading - City of Cleveland Police Department is not *sui juris*

Richardson v. Grady (Dec. 18, 2000), Cuy. App. Nos. 77381 & 77403, unreported.

The underlying action stemmed from a high-speed motor vehicle chase involving officers from the City of Cleveland Police Department. At the time of the chase, decedent Tracy Burton was a passenger in a car driven by Rodney Frank. Motorized Cleveland police officers came up behind Frank's vehicle in pursuit of defendant, Demond Hairston, whose vehicle was also behind Frank's vehicle. Another Cleveland police patrol car allegedly turned in the path of Frank's vehicle from the opposite direction. Frank swerved to avoid the collision and, in the process, was rear-ended by Hairston's vehicle. This collision caused Tracy Burton's death.

Thereafter, decedent's mother filed suit against Hairston and the owner of the car he was driving. Almost one year later, the complaint was amended to add a new-party defendant, The City of Cleveland Police Department. In its answer to the amended complaint, the City presented the affirmative defense that the police department was not *sui juris* (i.e., does not have the capacity to be sued). The case was voluntarily dismissed and then refiled in a form identical to the earlier amended complaint in the original action. Upon the refiling of the case, the City of Cleveland filed a motion to dismiss pursuant to Civ.R.12(B)(6) arguing that The City of Cleveland Police Department was not *sui juris*. Plaintiff did not file a brief in opposition to this motion. The trial court granted the City's motion to dismiss on May 13, 1998. Plaintiff, unaware of the court's ruling on the City's motion, filed an amended complaint substituting as a party-defendant The City of Cleveland for The City of Cleveland Police Department. On January 22, 1999, plaintiff filed a motion for relief from the May 13, 1998 judgment pursuant to Civ.R.60(B). The trial court denied this motion.

On appeal, the Eighth District Court of Appeals concluded that the trial court did not abuse its discretion in granting the motion to dismiss the City of Cleveland Police Department. because it was not a legal entity capable of being sued. Regarding plaintiff's argument that the trial court erred in denying plaintiff's motion for relief from judgment, the court overruled this assignment of error, observing that "plaintiff has no meritorious claim against the party denominated as The City of Cleveland Police Department because it is not *sui juris*...Because the motion to dismiss was based solely upon whether the police department is *sui juris*, relief is not available."

Workers Compensation

State ex rel. Schrichten v. Indus. Comm (2000), 90 Ohio St.3d 436.

Workers' compensation claimant filed complaint in mandamus, alleging that the Industrial Commission abused its discretion in denying his application to reactivate his claim to authorize treatment by his attending chiropractor for lumbar disc degeneration. The Court of Appeals denied the writ, but ordered the Commission to reconsider its order. An appeal and cross-appeals were taken as of right. The Supreme Court held that the employer's payment of bills and authorization of surgery for claimant's allowed condition of lumbosacral strain and for the non-allowed condition of herniated nucleus pulposus (HNP), which was discovered during surgery and corrected, did not constitute an implicit allowance of HNP. In rendering its decision, the Court relied on *State ex rel. Griffith v. Indus. Comm* (1999), 87 Ohio St.3d 154, 156.

State ex rel. Sugardale Foods, Inc. v. Indus. Comm. (2000), 90 Ohio St.3d 383.

Claimant, Clyde Sheets, was injured in 1983 while working for Sugardale, a self-insured employer His claim was allowed for several conditions, including herniated disc L4-5, L5-S1, and degenerated discs at L4-5, L5-S1 By 1992, Sheets' orthopedist recommended that his L4-5 and L5-S1 levels be fused with the addition of Steffee plates Sheets had the Steffee plating surgery in 1994 As of 1994, this procedure had not been approved by the FDA and was generally considered too experimental by the BWC to

qualify as a covered expense under its policy for medical claims against the State Insurance Fund. As a result, the BWC typically refused to authorize this procedure when requested for employees covered by the State Fund. However, at least one such worker received the authorization on May 16, 1990, which was approved through BWC peer review.

Sugardale refused to pay for Sheets' surgery on the ground that self-insured employers could not be required to pay for procedures that the BWC would not have charged against the State Fund. Sheets moved for commission review, and the commission granted authorization for his Steffee plating surgery, but without responding to Sugardale's argument that R.C. 4121.31(C) (now 4121.31(A)(3)) required the commission to process medical claims against State Fund and self-insured employers uniformly. Sugardale complained about this oversight in a 1995 mandamus action. The court of appeals agreed and issued a limited writ to return the cause to the commission for further review.

Pursuant to the court of appeals' order, the commission conducted another review and again ordered Sugardale to pay for Sheets' surgery. Although in 1994 it was the BWC's policy to refuse authorization for Steffee plating surgery, the commission did not consider this policy controlling. The commission reasoned that consistency in the processing of claims does not require uniformity in decisions. Rather, each claimant's request requires an independent evaluation of the medical evidence on file. The commission concluded that all the medical evidence supported Sheets' request for the surgery.

In further justifying its conclusion, however, the commission erroneously noted that Sheets' request for surgery was submitted to peer review for consideration and was granted, when in fact it had not Thus, Sugardale filed this original action in mandamus in the court of appeals The court magistrate detennined that the commission's policy was not absolutely controlling However, the magistrate found an abuse of discretion in the commission's misstatement about the peer review for Sheets' claim Despite the magistrate-s recoininendation, the court of appeals rejected the magistrate's recoininendation to grant another limited writ. The court held that the commission properly ordered Sugardale to pay for Sheets' surgery because the commission had decided in its first order, without any peer review, that the evidence justified the surgery. Sugardale appealed from this decision to the Ohio Supreme Court.

Before the Ohio Supreme Court, Sugardale first argued that the commission lacked jurisdiction to adjudicate disputes over medical cost authorization. The Court rejected this argument, noting that it has consistently held that the BWC and the commission share the power to oversee and determine the reasonableness and necessity of health care expenditures.

Sugardale next argued that the commission could not authorize a self-insured employer to pay for Sheets's procedure in the face of the BWC's former policy to deny State Fund claims for Steffee plating surgery and the uniform processing requirements of R.C. 4121.31(A)(3). The Court disagreed, observing that the BWC's policy of denying authorization for procedures that are experimental or not FDA-approved is merely a "guideline" and not an administrative rule. Thus, the policy of denying payment for Steffee plating surgery is not so legally binding that it cannot be set aside. The Court further concluded that the policy could reasonably be disregarded when medical evidence removes the usual justification for rejecting these claims. As long as the BWC does not discriminate against self-insured employers by always requiring them to pay for surgeries such as the Steffee plating procedure, but refusing to authorize such surgeries in State Fund claims, the BWC is within its rights to lift its policy whenever it sees fit. In this case, the Court found no compelling evidence of discrimination, most notably because the BWC's peer review committee authorized payment of this procedure. in the past for a claimant's State Fund claim.

The final question the Court addressed was whether the case should be remanded to the commission to see if the misimpression that Sheets' claim was subjected to peer review made a difference in authorizing his surgery The Court agreed with the court of appeals that further review was unnecessary

Sanctions - Exclusion of Expert Testimony

Anderson v. Nunnari (Nov.16, 2000), Cuy. App. No. 77241, unreported.

This case arose out of a rear-end motor vehicle accident that occurred on March 29, 1997. The issue on appeal was whether the trial court abused its discretion in excluding from trial the videotape testimony of defense expert, Karl Metz, M.D., because of defendants' failure to follow the discovery rules.

On April 16, 1999, the trial court ordered plaintiffs to submit to a defense medical examination by Dr. Metz. Plaintiffs appeared for their examinations, and Dr. Metz's reports were provided to plaintiffs' counsel. A status conference was conducted on April 28, 1999, at which time the court ordered defendants to complete discovery by May 28, 1999. A trial date was set for October 12, 1999. In preparation for trial, defense counsel scheduled the videotape trial deposition of Dr. Metz for September 27, 1999. Plaintiffs' counsel received the notice of the videotape trial deposition on September 20, 1999. On that date, plaintiffs' counsel made her first request for the discovery deposition of Dr. Metz. Defense counsel advised plaintiffs' counsel that Dr. Metz was available for discovery deposition on September 25, 1999. The day before the scheduled deposition, Dr. Metz's office sent a facsimile to plaintiffs' counsel containing an agreement requesting plaintiffs' counsel to agree to certain conditions regarding the doctor's compensation. Plaintiffs' counsel objected to the financial conditions and refused to sign the agreement. Because plaintiffs' counsel would not sign the agreement, Dr. Metz unilaterally canceled his deposition, notwithstanding the fact that plaintiffs' counsel sent Dr. Metz a letter agreeing to pay Dr. Metz' $400/hour deposition fee.

On September 27, 1999, the day of Dr. Metz' scheduled videotape trial deposition, Plaintiffs filed a motion to exclude Dr. Metz's testimony, or alternatively, for a protective order. The deposition went forward as noticed, but plaintiffs' counsel did not attend. The court thereafter granted plaintiffs' motion to exclude, noting that "defendant has failed to comply with the civil rules". At the conclusion of trial, a verdict in favor of plaintiffs.

On appeal, defendant argued that the trial court abused its discretion in barring Dr. Metz's testimony as a discovery sanction. Citing by analogy to *Jones* v *Murphy* (1984), 12 Ohio St.3d 84, the court of appeals disagreed with defendant and affirmed the trial court's exclusion of Dr. Metz's testimony in accordance with Civ.R.37(B)(2)(b).

If you would like to see a case summarized in an upcoming issue please send it to Stephen Keefe at. Linton & Hirshman, 700 West St Clair, Suite 300 Cleveland, Ohio 44113.

Verdicts & Settlements

Jane Doe, etc. v. ABC Hospital

Type of Case: Medical Malpractice
Settlement: $22,500,000
Plaintiff's Counsel: Charles Kampinski, Christopher M. Mellino, Laurel Matthews
Defendant's Counsel: Withheld
Court: Cuy. County Common Pleas
Date: August, 2000
Insurance Company: Not Listed
Damages: Catastrophic brain injury, paralysis, inability to communicate.

Summary: Jane Doe is a 36-year-old woman who was admitted to ABC Hospital on January 20, 1999 for delivery of a stillbirth. She requested an epidural anesthesia. Jack Roe, an anesthesiology assistant made multiple unsuccessful attempts at epidural placement. Ultimately, an anesthesilogist inserted the epidural needle and then he immediately left the room. Mr. Roe was put in charge of administering a test dose, and with dosing Jane's catheter with Fentanyl and Marcaine. An order to discontinue the morphine PCA before the epidural was ignored. Therefore, Jane received additional amounts of morphine, which increased her level of sedation and impaired her ability to complain about any adverse symptoms she may have been experiencing.

Jane developed a "high spinal" because the anesthesia was placed in the spinal canal instead of the epidural space. Jane complained of a severe headache immediately following insertion of the catheter. As a

result of air injected into the spinal canal, it traveled up to her brain. The caregivers at ABC Hospital completely ignored this warning signal. Jane developed low blood pressure that did not correct with high doses of ephedrine given by the anesthesia assistant, Mr. Roe. In addition, no sequential motor exams were done, which would have shown a rising anesthesia level. The danger of a "high spinal" is that the anesthetic rises causing paralysis to the respiratory system and the potential of a cessation of breathing. Therefore, continuous monitoring especially after a dropping blood pressure is mandatory.

When Jane's family went to eat dinner, a nurse promised them that she would remain and watch her. When the family returned from eating, they discovered her alone and not breathing.

A code was then called. Despite the fact that Jack Roe had never intubated a patient in an arrest situation, the anesthesiologist instructed him to perform Jane's initial intubation. This resulted in the tube being placed in the esophagus instead of the trachea. There was a fifteen (15) minute delay before she was properly intubated. A CT scan after the arrest showed air in her brain, evidence that a "high spinal" had been done instead of an epidural.

As a consequence of ABC's neligence, Jane is now catastrophically brain injured, living in a nursing home. She is alert, but is paralyzed and unable to communicate. She has a devoted husband who has been forced to quit his job to assist with her care, and a 3-year-old child.

Plaintiff's Experts: William Berger, M.D. (Anesthesiologist); Sivum Ramanathan, M.D. (Anesthesiologist); John Conomy, M.D. (Neurology); John F. Burke, Jr., Ph.D. (Economist); George W. Cyphers (Rehab. Counselor)
Defendant's Experts: Stephen C. Dodge (Annuitist); Charles H: Breeden, Ph.D. (Economist); Robert Jackson (Life Care Planner); David C. Brandon, M.D. (Anesthesiologist); Bruce L. Flamm, M.D. (OB/GYN); Jeffrey S. Vender, M.D. (Anesthesiologist); Ronald E. Cranford, M.D. (Neurology); William E. Dirkes, M.D. (Anesthesiologist); Margaret M. Jukanovic, R.N.

Jane Doe v. Anonymous Emergency Room Doctors

Type of Case: Medical Malpractice
Settlement: $500,000
Plaintiff's Counsel: Howard D. Mishkind
Defendant's Counsel: Withheld
Court: Cuy. County Common Pleas
Date: August, 2000
Insurance Company: Not Listed
Damages: Persistent low back pain, persistent left foot drop and diminished ability to stand or walk for polonged periods of time.
Summary: A 43-year-old female presented on two occasions to local emergency room with increasing complaints of low back pain. She was febrile, tachycardic and had an elevation in her white blood count. Patient was discharged and returned approximately 8 days later to emergency room with continued back problems, along with difficulty in urination. Patrient was discharged from the emergency room with no follow-up care.

24 hours later, patient was seen and admitted to local hospital and a diagnosis of epidural abscess was made. Patient underwent lumbar laminectomy from L1-S1 and a durotomy for. L3-L5 with evacuation with subarachnoid empyema and epidural abscess from L1-s2.

Plaintiff has chronic low back pain and persistent neurological loss in her legs, even though she is able to ambulate without the use of any orthopedic devices.

Plaintiff's Experts: Dr. Gregory Carlson (Orthopedic Surgeon); Dr. John Conomy (Neurologist); Dr. Jay Falk (Emergency Room)
Defendant's Experts: Dr. Richard Berg (Infectious Disease); Dr. Bruce Morgenstern (Neurologist); Dr. Thomas Flynn (Neurosurgeon)

Steve Frank, et al. v. Cincinnati Insurance Company

Type of Case: Underinsured Motorist Claim pursuant to the provisions of a business automobile policy
Verdict: $4,500,000 ($3,500,000 Steve Frank; $500,000 wife Linda, $250,000 minor child Angela,

$250,000 minor child Anthony)
Plaintiff's Counsel: Howard D. Mishkmd; David A Kulwicki
Defendant's Counsel: Patrick S. Corrigan
Court: Binding Arbitration, Stark County Common Pleas, Judge Reinbold, Jr.
Date: July, 2000
Insurance Company: Cincinnati Insurance
Damages: Mild traumatic brain injury, neck and back sprain/strain, tinnitus.

Summary: In June of 1995, Plaintiff was a 37-year-old sales executive that was involved in a massive rear-end collision. He sustained multiple injuries to his neck and back. He sustained headaches, disorientation, balance problems, ringing in his ears and was eventually diagnosed with mild traumatic brain injury. Plaintiff was married at the time with two children. He attempted to return to gainful employment after a period of absence and his position was terminated. Plaintiff moved his family to Tampa, Florida where he obtained new employment. He was subsequently terminated from that position as well. Plaintiff relocated to Charlotte, NC, where he currently resides. Plaintiff is currently unemployed and is going through a rehabilitation program.

This three-day binding arbitration involved presentation of multiple witnesses by both sides. The medical testimony presented by the Defendant failed to significantly refute the extent of Plaintiffs injuries other than to imply a degree of exaggeration of Plaintiffs symptoms. Defendant presented multiple witnesses in an effort to establish that the Plaintiff is able to work and that he is currently unemployed because he's involved in a major construction project involving a new home in Charlotte, NC. Witnesses from Plaintiff's previous employment as well as contractors from Charlotte, NC testified that Plaintiff was not disabled, disoriented, confused or otherwise unable to comprehend and to function in a normal manner.

The original tortfeasor that caused the collision and Erie Insurance Company, Plaintiffs underinsured motorist carrier, paid a total of $250,000. Motion for prejudgment interest is currently pending.

Plaintiff's Experts: Walter Afield, M.D. (Neuropsychiatrist);Audrey Shields, M.D. (Internal Medicine); Joan Wofford (Brain Injury Rehabilitation); Mark Anderson (Vocational Expert); John Burke (Economist)
Defendant's Experts: Robert Devies, Ph.D. (Rehabilitation Psychologist); Robert Thompson, M.D. (Neurologist)

Confidential Settlement
Type of Case: Medical Malpractice
Settlement: $800,000
Plaintiff's Counsel: Dennis R. Lansdowne
Defendant's Counsel: Withheld
Court: Cuy. County, Judge Coyne
Date: July, 2000
Insurance Company: Withheld
Damages: Wrongful death of a 74-year-old gentleman.

Summary: On January 25, 1997, Plaintiffs' Decedent suffered a small stroke in the left area of the brain. Decedent was taken to Defendant Hospital. Shortly after admission, Decedent began to experence difficulty swallowing, or "dysphagia", a common side-effect of stroke patients. Due to Decedent's inability to swallow, he was unable to control his secretions, making him vulnerable to lung aspiration. Due to lack of proper monitoring and treatment, Plaintiffs' Decedent asipirated on his own saliva and expired on January 28, 1997. Defendants claimed he was properly monitored and died from an extension of his stroke. There was no autopsy.

Plaintiff's Experts: Steven Simons, M.D.; Donna L. Luebke, RN
Defendant's Experts: James Gebel, M.D.; Mary J. Martin Smith, RN; Joseph P. Hanna, M.D.; Michael Yaffee, M.D.; Raymond Magorien, M.D.

John Doe v. ABC Hospital
Type of Case: Wrongful Death
Verdict: $500,000
Plaintiff's Counsel: William Hawal, John W. Martin
Defendant's Counsel: Beverly Sandacz, Thomas Kilbane
Court: Cuy. County, Judge Ralph McAllister

Date: October, *2000*
Insurance Company: Self-insured
Damages: Wrongful death

Summary: Dececent suffered a large intracranial bleed on February 6,1997 from an arteriovenousmalformation and was admitted to the Cleveland Clinic where he was hospitalized for 3 weeks. Decedent's condition slowly improved to the point where he was able to eat small amounts of pureed foods, supplemented by NG feedings and was generally aware of his surroundings. He was transferred to a nursing home where his condition was compromised by his nutritional status prompting the placement of a PEG feeding tube directly into his stomach on February 27, 1997 at ABC Hospital. The following day it was discovered that the PEG tube had been placed through the transverse colon causing peritonitis. Decedent died of complications from intraabdominal sepsis. Defendant retained Jeffery Ponsky, M.D. as an expert. Dr. Ponsky first developed the PEG procedure in 1979 and contended that colon perforation was a rare but recognized complication of the procedure.

Plaintiff's Experts: Arthur McCullough, M.D. (Gastroenterology); John Conomy, M.D. (Neurology)
Defendant's Experts: Jeffrey Ponsky, M.D. (Gastroenterology); Lee Schwamm, M.D. (Neurology)

Jane Doe v. John Doe Hospital, et al.
Type of Case: Medical Malpractice
Settlement: $450,000
Plaintrff's Counsel: Thomas Mester
Defendant's Counsel: Deidre Henry, Kris Treu
Court: Cuy. County, Judge Peggy Foley Jones
Date: October, 2000
Insurance Company: Evanston Insurance and Self-Insured
Damages: Death

Summary: Plaintiff presented at the emergency room with history of chest pain, chest tightness, wheezing, and cough with yellow sputum. Plaintiff had prior history and had been treated in the emergency room with asthma. Defendant deviated from the standard of care in failing to diagnose and treat a pulmonary embolism which Plaintiff succumbed several days later.

Plaintiff's Experts: Frank Baker, M.D. (ER Physician); Charles Shenker, M.D. (Pulmonologist)
Defendant's Experts: Bruce Janiak, M.D. (ER Physician); Louis Horowitz, M.D. (ER Physician): Hugo Montenegro, M.D. (Pulmonologist)

Jane Doe, deceased v. John Doe, M.D., et al.
Type of Case: Medical Malpractice
Settlement: $1,350,000
Plaintiff's Counsel: Thomas Mester, Michael Trov Watson
Defendant's Counsel: Warren Enders, Paul McCartney, Susan Blasik-Miller, John Butz
Court: Clark County, Judge Lorig
Date: September, 2000
Insurance Company: Withheld
Damages: Wrongful death

Summary: Plaintiffs Decedent had surgery performed for the removal of remnants of the right ovary which resulted in a bowel perforation. The perforation was not timely diagnosed leading to sepsis, peritonitis, ARDS, and death. Claims were made against the surgeon, hospital and other physicians who were responsible for her care subsequent to surgery.

Plaintiff's Experts: Gene Coppa, M.D. (Surgeon); Dennis Mazal, M.D. (Internist, pulmonologist, critical care); Neil Crane, M.D. (Internist/ Infectious Disease); Michael Levey, M.D. (Radiologist); John Burke, Ph.D. (Economist); Elisabeth Wolfe, M.D. (Nurse)
Defendant's Experts: Matthew Finnegan, M.D. (Surgeon), Edward Horton, M D. (Radiologist); Trent Sickles, M.D. (Internist); Harlan Giles, M D.; Jeff Ankrom, Ph.D

John Doe v. John Doe Company, *et* al.
Type of Case: Premises Liability
Settlement: $200,000
Plaintiff's Counsel: Thomas Mester, Jonathan Mster
Defendant's Counsel: Robert Fulton, Christopher Reece

Court: Summit County, Judge John Adams
Date: October, 2000
Insurance Company: Self-Insured and Burlington Insurance
Damages. Compound fracture of left femur

Summary: Plaintiff, while at a municipal obsolete sludge disposal building for the purpose of picking up parts from an electrical control panel, was near the brick wall of an incinerator that was being dismantled by another sludge salvage bidder when the wall collapsed on Plaintiff.

Plaintiff's Experts: Gregory Vrabec, M.D. (Treating Physician); Arthur Huckelbridge, Ph.D. (Civil Engineer)
Defendant's Experts: None

John Doe v. ABC Co., et al.
Type of Case: Premises and Employer Intentional Tort
Settlement: $150,000
Plaintiff's Counsel: David M. Paris, Ellen M. McCarthy
Defendant's Counsel: Withheld
Court: Cuy. County, Judge Kenneth Callahan
Date: August, 2000
Insurance Company: Withheld
Damages: Fractured wrist

Summary: Plaintiff worked for a trucking company which contracted to pick up and deliver garbage from a newly built waste transfer station. The station owner had originally designed the station to have an elevated catwalk with guardrails for truck drivers to tarp the truck beds. The catwalks were eliminated from the design when the trucking company promised to equip its trucks with automatic tarping mechanisms so the drivers could perform this task from the ground. The trucking company reneged and the station owner never provided a safe place to tarp. Truckers were required to stand on a 6 foot high wall and tarp the trucks. Plaintiff fell from that location.

Plaintiff's Experts Carmen Dacchcr, Harry Fcdele, Michael Keith, M D , Eric Pempus
Defendant's Experts: Joseph Driear; Earl Gregory

John Doe v. Surgeon
Type of Case: Medical Malpractice
Settlement: $250,000
Plaintiff's Counsel: Leon M. Plevin
Defendant's Counsel. Withheld
Court: Cuy. County, Judge Carolyn Friedland
Date: July, 2000
Insurance Company: Withheld
Damages: Additional knee surgery and rehabilitation

Summary: A 71-year-old active male underwent knee replacement surgery. During surgery, the nurse handed the physician the incorrect femoral component which went unnoticed by the physician. After the patient developed instability of the knee, it was discovered that the wrong component part was used and the patient underwent a second knee replacement to correct the error. The patient was subjected to another surgery and additional rehabilitation.

Plaintiff's Experts: Robert Corn, M.D.; Raymond Harwood, M.D.
Defendant's Experts: None

John Doe v. John Doe, M.D., et al.
Type of Case: Medical Malpractice
Settlement: $385,000
Plaintiff's Counsel: Thomas Mester, Ellen McCarthy
Defendant's Counsel: Mark O'Neill, William Meadows, Susan Seachrist
Court: Cuy. County, Judge Anthony Calabrese, Jr.
Date: June, 2000
Insurance Company: PIE
Damages: Death

Summary Plaintiff, a 45-year-old, who was unemployed, presented to the emergency room with complaints of vomitting, diarrhea, abdoininal pain and fever with a history of diabetes, carcinoma and a remote appendectomy He was diagnosed as having gastroenteritis which was treated with fluids and was discharged Approximately 1½ days later, he was found unresponsive, his cause of death being related to a small bowel obstruction It was Plaintiff's contention that the

small bowel obstruction should have been diagnosed and treated when presented to the emergency rooin. and thus preventing his death The Defendants contended that the Plaintiff would have succumbed to the previously diagnosed carcinoma of the neck and their experts testified that there were insufficient signs and symptoms to be diagnosed at the emergency room The Plaintiff was survived by a wife and three children The emergency room physician was a PIE insured with only $300,000 in insurance coverage

Plaintiff's Experts: Frank Baker, M.D.; Gene Coppa, M.D.; Martin Lee, M.D.
Defendant 8 *Experts:* Bruce Janiak, M.D.; Armin Green, M.D.; Jerry Marty, M.D.; Allan Jones, M.D.

John Doe, Adm. v. ABC Co.
Type of Case: Premises Liability and Employer Intentional Tort
Settlement: $950,000
Plaintiff's Counsel: David M. Paris
Defendant's Counsel: Withheld
Court: Cuy. County, Judge Kathleen Sutula
Date: August, 2000
Insurance Company: Withheld
Damages: Crush injury resulting in immediate death.

Summary: Decedent was part of a survey crew which had a subcontract to stake out new alignment for RTA train tracks which were being reconstructed by a track reconstruction company. The project was running behind schedule which caused the construction crews to operate construction equipment, such as tie cranes, on the train tracks while the survey crews were performing their tasks. The hazardousness of the job site was greatly increased by the fact that the 2 RTA tracks ran parallel with 2 other tracks operated by the Norfolk & Southern Railroad. In the area Decedent was directed to survey, the N&S tracks were located within 8-10 feet of the RTA tracks. This area is known as the "Devil Strip" and is extremely dangerous since there is no way to escape when there are two trains passing at the same time.

At the time of the accident, Decedent was standing in the "Devil Strip'' taking readings froin his transit man when a N&S train approached from his left at 60 mph. At the same time on the RTA tracks, another contractor was operating a tie crane in the same direction. The general contractor did not have any flagmen in the area to alert workers of oncoming trains or tie cranes; no radio contact existed between the survey crew and the contractors to alert them of oncoming trains or tie cranes; and the operator of the tie crane piled railroad ties on his cart so high that his forward view of the tracks (and Decedent) was obstructed. A computer animation demonstrated that Decedent saw the approaching train, stepped backward to avoid it, and stepped directly into the path of the tie crane which struck and killed him.

Plaintiff's Experts: Alan Cohen, P.E.; Planet *3* Media (Computer Animation)
Defendant's Experts: William C. Pugh, P.E.

Jane Doe v. John Doe Hospital, et al
Type of Case: Medical Malpractice
Settlement: $425,000
Plaintiff's Counsel: Thomas Mester
Defendant's Counsel: William Meadows
Court: Cuy. County, Judge Lillian Greene
Date: October, 2000
Insurance Company: Withheld
Damages: Total hysterectomy and other complications.

Summary: A pap smear had been performed with an abnormal lab finding of actinomyces. At that time, Plaintiff had an IUD. The physician and physician's assistant allegedly did not receive copies of this abnormal result and, therefore, did not advise the Plaintiff that she would need a removal of the IUD and antibiotic therapy. Nine months later, as a direct and proximate result of the Defendant's failure, a massive infection' ensued resulting in a total hysterectomy and other complications.

Plaintiff's Experts Nadia Al-Kaisi, M D (Pathologist), Martin Gimovsky, M D (OB/GYN); Jay Trabin, M D (OB/GYN); Neil Crane, M D (Internist/Infectious Disease), Donald Mann, M D (Neurologist); John Burke. Ph D

Defendant's Experts: Edward Westbrook, M.D. (Neurologist); David Burkons, M.D. (Gynecologist); Phillip Lerner, M.D. (Infectious Disease)

Sharon Balzano, et al. v. Malgieri & Dorsky, et al.

Type of Case: Medical Malpractice
Judgment: $777,000
Plaintiff's Counsel: Thomas Mester, Jonathan Mester
Defendant's Counsel: Murray Lenson
Court: Cuy. County, Judge Kenneth Callahan
Date: September, 2000
Insurance Company: ProNational Insurance
Damages: Spinal accessory nerve (11th cranial nerve transection) resulting in restriction of motion of right upper extremity.

Summary: During the course of a lymph node biopsy performed by Defendant, Lisa Rock, M.D., portions of the spinal accessory nerve were transected resulting in irreparable damage to the nerve resulting in fusion of the shoulder. Consequently, the Plaintiffs range of motion relative to the upper right extremity was limited on a permanent basis.

Plaintiff's Experts: Aaron Chevinsky, M.D. (Surgeon); Michael Kaufman, M.D. (Pathologist); Donald Mann, M.D. (Neurologist); Michael Keith, M.D. (Treating Physician); John Burke, Ph.D. (Economist); Robert Ancell, Ph.D. (Vocational Rehabilitation)
Defendant's Experts: David Grishkam, M.D. (Surgeon); Robert Mosley (Vocational Rehabilitation)

John Doe v. Jane Doe, M.D

Type of Case: Medical Malpractice/ Wrongful Death
Settlement: $750,000
Plaintiff's Counsel: William S. Jacobson
Defendant's Counsel: Beverly Sandacz, Steve Walters
Court: Cuy. County, Judge Fuerst
Date: April, 2000
Insurance Company. OHIC
Damages: Death.

Summary Decedent was an asthmatic She fractured an ankle and reported this to her family doctor's office staff Nine days later, she phoned her family doctor's office and spoke to one of the staff members The staff member claimed that she had requested that her asthma medication be refilled and did so There was no communication with the physician Plaintiff's Decedent died approximately 2 hours later of a pulmonary embolism and Plaintiff argued that the physician should have been informed of the call under the circumstances and that the decedent should have been directed to the emergency room Decedent was survived by a husband and parents

Plaintiff's Experts: Charles Shenker, M.D. (Pulmonologist); Hadley Morgenstern-Clarren, M.D. (Internal Medicine)
Defendant's Experts: Eric Pacht, M.D. (Pulmonoligist); Meade A. Perlman, M.D. (Internal Medicine)

John Doe v. John Doe Hospital, et al.

Type of Case: Medical Malpractice1 Wrongful Death
Settlement: $910,000
Plaintrff's Counsel: William S. Jacobson
Defendant's Counsel: Neil F. Freund, Stephen O'Keefe, Brian McNair
Court: Hamilton County, Judge Carolano
Date: June, 2000
Insurance Company: OHIC
Damages: Medical malpractice and wrongful death.

Summary: Decedent underwent plastic surgery with a general anesthetic. After meeting the extubation criteria, extubation was accomplished successfully. Approximately five minutes later an airway collapse occurred as a result of post operative swelling and laryngospasm. The anesthesiologist and CRNA attempted to reintubate the patient but waited too long to call the surgeon. By the time the surgeon had achieved the surgical airway, the Plaintiff was brain dead and died shortly thereafter.

Plaintiff's Experts: William Berger, M.D. (Anesthesiologist); John Conoiny, M.D. (Neurologist)
Defendant's Experts: None

Jane Doe v. John Doe, Inc., et al.
Type of Case: Negligence and Employer Intentional Tort
Settlement: $250,000
Plaintiff's Counsel: William S. Jacobson, Jonathan Mester
Defendant's Counsel: Marty Howarth, Curtis Scott
Court: Cuy. County, Judge Callahan
Date: December, 2000
Insurance Company: Liberty Mutual
Damages: Ligamentous and meniscal damage to knee requiring surgery.

Summary: Plaintiff was unloading a truck which moved forward and she fell injuring her knee. Her employer had had a similar incident three months previously and ignored suggestionsthat a failsafe system needed to be implemented to prevent further incidents.

Plaintiff's Experts: Carmen Daecher; Rod Durgin, Ph.D.; J. Shroyer, M.D.
Defendant's Experts: Mark Anderson, Ph.D.; Sal Malguarnera, Ph.D.

John Doe v. XYZ Trucking Company
Type of Case: Truck/Pedestrian
Settlement: $5,250,000
Plaintiff's Counsel: Jamie R. Lebovitz, William S. Jacobson, Harlan M. Gordon, Robert J. Finkenthal
Defendant's Counsel: Withheld
Court: Cuy. County Common Pleas, Judge Boyle
Date: November, 2000
Insurance Company: Withheld
Damages: Skull fractures, bilateral temporal bone fractures, brain injury, cranial and palsy nerve injuries, dislocation of bones of inner ear and muscular skeletal injuries to upper and lower extremities of body, psychological and emotional injuries

Summary: Plaintiff was struck by a tractor trailer

Plaintiff's Experts: Cynthia L. Wilhelm, Ph D.; John F. Burke, Jr., Ph D.
Defendant's Experts. John Conomy, M.D

Jane Doe, Executrix v. TWA
Type of Case: Aviation/Wrongful Death/Product Liability
Settlement: $2,250,000
Plaintiff's Counsel: Jamie R. Lebovitz
Defendant's Counsel: Withheld
Court: U.S. District Court, Southern District of New York
Date: December, 2000
Insurance Company: Various Aviation Insurers
Damages: Wrongful death of a single 27-year-old, survived by her father and brother.

Summary: Decedent was a passenger on board **TWA** Flight 800 which exploded shortly after take off from JFK airport in New York. Crash was the result of a defect in the design of the center fuel tank and its electrical systems.

Plaintiff's Experts: Retained but not disclosed to Defendants at time of settlement.
Defendant's Experts: None

Jane Doe, Executrix v. TWA
Type of Case: Aviation/Wrongful Death/Product Liability
Settlement: $1,500,000
Plaintiff's Counsel: Jamie R. Lebovitz
Defendant's Counsel: Withheld
Court: U.S. District Court, Southern District of New York
Date: December, 2000
Insurance Company: Various Aviation Insurers
Damages: Wrongful death of a single 69-year-old woman survived by her daughter.

Summary: Decedent wa s apassenger on board TWA Flight 800 which exploded shortly after take off from. JFK airport in New York. Crash was the result of a defect in the design of the center fuel tank and its electrical systems.

Plaintiff's Experts: Retained but not disclosed to Defendants at time of settlement
Defendant's Experts: None

Jane Doe, Executrix v. TWA
Type of Case Aviation/Wrongful Death/Product Liability
Settlement $1,500,000
Plaintiff's Counsel Jamie R Lebovitz
Defendant's Counsel Withheld
Court U S District Court, Southern District of New York
Date December, 2000
Insurance Company Various Aviation Insurers
Damages Wrongful death of a single 44-year-old woman survived by her sister

Summary: Decedent was a passenger on board TWA Flight 800 which exploded shortly after take off from JFK airport in New York. Crash was the result of a defect in the design of the center fuel tank and its electrical systems.

Plaintiff's Experts: Retained but not disclosed to Defendants at time of settlement.
Defendant's Experts: None

Jane Doe, Executrix v. TWA
Type of Case: Aviation/Wrongful Death/Product Liability
Settlement: $2,550,000
Plaintiff's Counsel: Jamie R. Lebovitz
Defendant's Counsel: Withheld
Court: U.S. District Court, Southern District of New York
Date: December, 2000
Insurance Company: Various Aviation Insurers
Damages: Wrongful death of a divorced 42-year-old man survived by his two children.

Summary: Decedent was a passenger on board TWA Flight 800 which exploded shortly after take off from JFK airport in New York. Crash was the result of a defect in the design of the center fuel tank and its electrical systems.

Plaintiff's Experts: Retained but not disclosed to Defendants at time of settlement.
Defendant's Experts: None

Jane Doe, Adm. v. John Doe City
Type of Case. Wanton and Wilful Misconduct of EMS Dispatchers and Paramedics
Settlement: $190,000
Plaintiff's Counsel: William S. Jacobson, Jonathan Mester
Defendant's Counsel: Withheld
Court: Cuy. County, Judge Kathleen Sutula
Date: November, 2000
Insurance Company: Self-Insured
Damages: Death

Summary: Plaintiffs decedent was shot in the heart by a playmate. The ambulance response was delayed because the dispatchers were tying up the lines on personal calls. Additionally, the closest paramedic unit was waiting at a hospital against City policy.

Plaintiff's Experts: Michael Hickey, M.D.; R. Joseph Batza
Defendanti Experts: Steven R. Leonard, M.D.; Ron Walls, M.D.

John Doe, etc. v. John Doe, M.D
Type of Case: Medical Malpractice/ Wrongful Death
Settlement: $400,000
Plaintrff's Counsel: Richard J. Berris
Defendant's Counsel: Withheld
Court: Cuy. County Common Pleas
Date: November, 2000
Insurance Company: Withheld
Damages: Medical: $77,994.62; Funeral: $5,883.62

Summary Defendant doctor employed a dangerous needle knife during a diagnostic procedure on a 74-year-old woman, which caused a perforation of the duodenum. Despite presenting symptoms consistent with a perforation, the Defendant delayed appropriate treatment for three days, allowing peritonitis, bowel ischemia and multi-organ system failure to develop The patient expired nine days after the diagnostic procedure was performed

Plaintiff's Experts: Withheld
Defendant's Experts: Withheld

Jane Doe, etc. v. Drs. X, Y, Z
Type of Case: Medical Malpractice/ Wrongful Death
Settlement: $500,000
Plaintiff's Counsel: Richard J Berris
Defendant's Counsel: Withheld
Court: Cuy. County Common Pleas
Date: November, 2000
Insurance Company: Withheld
Damages: None Claimed

Summary: A 7-year-old girl presented to her pediatrician with a respiratory illness on two occasions (two days apart). Defendant doctor failed to do a complete history of the patient's presenting complaints and failed to do a complete physical exam on both her initial and follow-up visits. Said failures caused him to incorrectly assess the patient's condition and led to the delay of proper diagnosis and treatment of the patient, and her eventual death as a result of toxic shock syndrome.

Plaintiff's Experts: Gary Noel, M.D.;
Leslie Trubow, M.D.
Defendant's Experts: Withheld

Jane Doe, etc. v. John Doe, M.D.
Type of Case: Medical Malpractice/ Wrongful Death
Settlement: $898,000.00
Plaintiff's Counsel: Richard J. Berris
Defendant's Counsel: Withheld
Court: Franklin County Common Pleas
Date: September, 2000
Insurance Company: Withheld
Damages: Medical: $267,237.61; Loss of Income: $35,402.40 (at date of settlement)

Summary: A CT Scan of the decedent's abdomen and pelvis taken in May of 1992 revealed bilateral iliac artery aneurysms, 2.8-3.0 cm in diameter. The decedent's medical records contain no evidence of further evaluation or plans to follow the course of the aneurysms.

While on an Alaskan cruise in June, 1997, the decedent sustained a rupture of the right iliac artery aneurysm which had enlarged to at least 6 cm in diameter. The decedent was life flighted to a medical center in Seattle, WA, where he underwent a surgical repair of the ruptured aneurysm, resulting in his initial survival with multiple catastrophic problems, and culminating in his death from postoperative complications on August 6, 1997.

Plaintiff argued that follow-up radiologic studies should hve been performed after the initial discovery of the iliac artery aneurysmal disease in May of 1992, and that the failure to follow the disease process fell below the community standard of care. Plaintiffs expert opined that the failure to monitor the expected enlargement of the aneurysms led to the episode of rupture and, ultimately the death of the decedent.

Plaintiff's Experts: Withheld
Defendant's Experts: Withheld

John Doe v. John Doe
Type of Case: Automobile Accident
Verdict: $1.25 million (binding arbitration)
Plaintiff's Counsel: R. Eric Kennedy
Defendant's Counsel: Withheld
Court: Pennsylvania State Court
Date: October, *2000*
Insurance Company: Withheld
Damages: None; Wrongful death claimed only

Summary: The case involved the death of a 20-year-old single male in an automobile crash. The driver fell asleep and the decedent was asleep in the back seat. No seat belts were in use and the decedent was thrown from the car. He was survived by his parents and adult sisters. The case went to binding arbitration.

Plaintiff's Experts: None
Defendant's Experts: None

Jane Doe v. John Doe, M.D
Type of Case: Medical Malpractice
Settlement: $6.85 million
Plaintiff's Counsel: R. Eric Kennedy
Defendant's Counsel: Withheld
Court: Cuy. County
Date: September, 2000
Insurance Company: Withheld
Damages: Past Medical: $425,000

Summary The Plaintiff was born with a degenerative neurological disease, neurofibranatosis The disease caused severe hypertension and progressive loss of heart function At age 7, the Plaintiff underwent surgery on her tonsils and adenoids Presurgically there was a failure to investigate the extent of her heart dysfunction A respiratory arrest during surgery resulted in anoxic brain damage

Plaintiff's Experts: George Cyphers (Life Care Planner); John Burke, Ph.D. (Economist); Miles Dinner, M.D. (Anesthesiologist)
Defendant's Experts: None

Klemencic v. Euclid Pediatrics, et al.
Type of Case: Medical Malpractice
Settlement: $125,000
Plaintiff's Counsel: Greene, McQuillan & Eisen Co., LPA
Defendant's Counsel: Withheld
Court: Cuy. County, Judge William Coyne
Date: July, 2000
Insurance Company: PHICQ
Damages: Orthopedic surgery - pinning of hips

Summary: Jane Doe was 5 years old when her cholesterol level was discovered to be abnormally high. By that time, her weight was above the 95th percentile. Defendant/physician failed to diagnose hypothyroidism. At age 11, hypothyroidism was diagnosed after the child presented with bilateral slipped capital femoral epiphyses.

Plaintff's Experts: Carol Miller (Pediatrics)
Defendant's Experts: Daniel Finelli (Pediatrics)

Roe v. Physician and Hospital
Type of Case Medical Malpractice
Settlement $1,075,000 ($325,000 Hosp / $750,000 Physician)
Plaintiff's Counsel Greene, McQuillan & Eisen Co , LPA
Defendant's Counsel Withheld
Court Huron County Common Picas
Date December, 2000
Insurance Company Frontier (Physician), St Paul (Hospital)
Damages: Above-the-knee amputation

Summary: Following surgery to revascularizc the patient's left leg, patient developed circulation problems in right leg. Nurses observed deterioration in the condition of the patient's right leg. Surgeon was either not notified of, or failed to respond to, nurses' concern. Delayed revascularization resulted in loss of right leg above the knee.

Plaintiff's Experts: Donald Fry (Surgery); Michelle Stewart (Nursing)
Defendant's Experts: Wilson Van Garrett (Vascular Surgery); Paul Skudder (Vascular Surgery)

Administratrix of Estate W. XYZ Hospital and Physician
Type of Case: Medical Malpractice/ Wrongful Death
Settlement: $500,000
Plaintiff's Counsel: Brian N. Eisen
Defendant's Counsel: Withheld
Court: Cuy. County Common Pleas
Date: October, 2000
Insurance Company: Self-Insured (Hospital); Zurich (Physician)
Damages: $200,000 future economic loss

Summary: A 54-year-old male presented to Defendant hospital complaining of chest pain. Patient was admitted to C.I.C.U. overnight. The next morning, patient was reported to be pain-free and ordered discharged. The pain returned before patient left the hospital. Resident physician failed to tell attending cardiologist about the return of the patient's chest pain. Patient went home and died hours later of thoracic dissection.

Plaintiff's Experts: Joel Kahn, M.D. (Cardiology)
Defendant's Experts: Richard Watts (Cardiology); Michael Koch (Cardiology)

Confidential
Type of Case Medical Malpractice
Settlement $600,000
Plaintiff's Counsel John G Lancione, John A Lancione
Defendant's Counsel Withheld

Court: Withheld
Date: Not Listed
Insurance Company: Not Listed
Damages: Death of a 9-month-old child

Summary: Infant boy with respiratory problems was diagnosed with bronchomalasia at 4 months of age. An MRI was performed shortly thereafter and read as confirming thediagnosis. The child continued to deteriorate under the care of pulmonologist, pediatric and infectious disease specialists. The child died at 9 months of age of cardiomyopathy. A re-evaluation of the MRI taken at 4 months of age showed a very enlarged heart, which was missed by the original radiologist.

Plaintff's Experts: Myron Marx, M.D. (Radiologist); Jerome Liebman, M.D. (Pediatric Cardiologist)
Defendant's Experts: None

Confidential
Type of Case: Medical Malpractice
Settlement: $4,350,000
Plaintiff's Counsel: John *G.* Lancione, John **A.** Lancione
Defendant's Counsel: Withheld
Court: Withheld
Date: May, 2000
Insurance Company: Withheld
Damages: Medical Specials: *$500,000*

Summary: Plaintiffs claimed a failure to diagnose and treat a leaking cerebral aneurysm. Defense claimed there was no aneurysm and that the Plaintiff's intracerebral hemorrhage was due to a spontaneous primary hypertensive bleed, cause unknown, unpredictable and untreatable.

Plaintiff's Experts: Donald Frye, M.D. (General Surgeon); John Conomy, M.D. (Neurologist)
Defendant's Experts: None

Kenneth Ramella, etc., deceased v. Warren Selman, M.D.
Type of Case: Medical Malpractice
Verdict: $500,000
Plaintiff's Counsel: John G. Lancione
Defendant's Counsel: Withheld
Court: Cuy. County Common Pleas, Judge Daniel Gaul
Date: November, 2000
Insurance Company: Mutual Assurance
Damages: Wrongful death

Summary: Plaintiffs decedent was 56-year-old woman who developed a recurrent pituitary adenoma in early 1997. She was taken to surgery on August 21, 1997, for resection of the adenoma and did not awaken from the surgery. It was determined that she had a subarachnoid hemorrhage and ischemic stroke after the surgery. She died on September 3, 1997. Plaintiffs claimed the surgeon penetrated the brain causing the subarachnoid hemorrhage. Defendants claimed that the subarachnoid hemorrhage came from the surgery site and was a recognized complication of pituitary tumor surgery.

Plaintiff's Experts: Curtis Partington, M.D. (Neuroradiologist); Jules Hardy, M.D. (Neurosurgeon)
Defendant's Experts: Edward Laws, M.D. (Neurosurgeon); William Bradley, M.D. (Neuroradiologist)

J.H.G. v. J.A.F., et al.
Type of Case: Admiralty
Settlement: $195,500
Plaintiff's Counsel: Thomas J. Silk
Defendant's Counsel: Hunter *S.* Havens, Thomas Brown
Court: U.S. District Ct., Northern Dist. of Ohio, Eastern Div., Judge Solomon Oliver, Jr.
Date: May, 2000
Insurance Company: Reliance Insurance
Damages: Crushing injury to two fingers, requiring amputation of the right ring finger.

Summary: The Plaintiff was a crew member aboard a 30-foot sailboat which was participating in a sailing race off of Edgewater Yacht Club during Cleveland Race Week. The sailboat Plaintiff was on collided with another sailboat. Plaintiffs vessel, which was on a port tack, was struck mid-ship by another participant sailboat

which was traveling on starboard tack The Plaintiff sustained crushing injuries to fingers on the right hand which required amputation of the ring finger The Plaintiff maintained claims against the captains of both vessels, who also asserted cross and counterclaims against each other

Plaintiff's Experts: P.C. Clay Mock (Liability/ Racing Rules Expert); Michael Keith, M.D.; Vasu Pandrangi, M.D.
Defendant's Experts: Charles White

Deidra Miller v. Otis Smith

Type of Case: Personal Injury
Verdict: $35,000
Plaintiff's Counsel. Rubin Guttman, Ann Marie Stockmaster
Defendant's Counsel: Nicholas J. Fillo
Court: Cuy. County Common Pleas, Judge John Angelotta
Date: November, 2000
Insurance Company: Allstate
Damages: $9,400 medical

Summary: Plaintiff had a longstanding history of knee problems and had undergone knee surgery on the other knee one year prior to this incident. In August she began treating for her left knee, stopped treating at the end of September, and was struck by Defendant's vehicle at the end of October. Unsuccessful physical therapy culminated in arthroscopy nine months later. Defense claimed that there was no relationship between the left knee problems and the accident, given the fact that there was no direct impact to the knee in the accident. Plaintiff claimed aggravation/ acceleration due to the extra stress put on the already weakened knee due to the back and neck injuries which Plaintiff sustained in the accident.

Plaintiff's Experts: Thomas C. McLaughlin, M.D
Defendant's Experts: None

Louis Ward v. David Baroff, M.D

Type of Case: Medical Malpractice
Settlement: $400,000
Plaintiff's Counsel: John R. Libcr. Jr.
Defendant's Counsel: Marc Groedel
Court Mahoning County, Judge Robert Lisotto
Date Qctober, 2000
Insurance Company Med Pro
Damages Misdiagnosis of subdural hematoma causing cauda equina syndrome, loss of bladder control, partial loss of bowel control, bilateral leg weakness, loss of mobility

Summary: 78-year-old Louis Ward underwent lumbar decompression surgery following six months of unsuccessful conservative treatment for severe low back pain, radiating into his left leg. The day after surgery, he exhibited the classic symptoms of a developng subdural hematoma which were copiously documented by the nursing staff and ignored by the surgeon. Five days later, a neurologist ordered an MRI which showed the significant hematoma with cord compression.

Plaintiff's Experts: Brett Feree, M.D. (Wellington Orthopaedics); John Conomy, M.D. (Neurology)
Defendant? Experts: William R. Miley, M.D.; William R. Bohl, M.D.

Robert Senn v. Lawrence Karlock, DPM

Type of Case: Medical (Podiatric) Malpractice
Settlement: $475,000
Plaintiff's Counsel: John R. Liber, Jr.
Defendant's Counsel: Douglas Fifner
Court: Mahoning County, Judge James Evans
Date: July, 2000
Insurance Company: Affinity
Damages: Mal-alignment of distal tibial (ankle) fracture requiring repeat ORIF, foot drop with probable fusion.

Summary Rob Senn, a 24 year old college student, fractured his right ankle riding a dirt bike The Defendant, a local podiatrist, performed the ORIF of a distal tibial fracture, with the placement of screws and a reducing wire After he failed to improve, Scnn sought a second opinion at the Cleveland Clinic Brian Donely, M D advised him the prior surgeon had not set the fracture properly, requiring a second ORIF Due to the deterioration of the articular surface as a result of the mal-reduction, Scnn was told he would need fusion in the future

Plaintiff's Experts: Brett Feree, M D. (Wellington Orthopaedics), E. A. DeChellis, D.O (Disability Evaluation)
Defendant's Experts. None

Estate of Gillespie v. Gillespie
Type of Case: Wrongful Death Auto Collision
Settlement: $200,000
Plaintrff's Counsel: Mark Barbour
Defendant's Counsel: None
Court: None
Date: August, 2000
Insurance Company: State Farm
Damages: Death of 74-year-old woman with three adult children.

Summary: Plaintiffs decedent was a passenger in her husband's car when the husband ran a red light and collided with a truck. The victim was ponounced dead at the scene. The husband had a $100,000 policy of liability insurance and the same in homeowner's insurance with State Farm. Plaintiff claimed the homeowner's policy provided coverage for UIM benefits.

Plaintiff's Experts: None
Defendant's Experts: None

Pence v. Braceville Township, et al.
Type of Case: Auto Collision
Settlement: $250,000
Plaintff's Counsel: Mark Barbour
Defendant's Counsel: Scott Fowler
Court: Trumbull County Common Pleas
Date: September, 2000
Insurance Company: Self-Insured
Damages: Fractured hip and tibia fibia fracture

Summary: Plaintiff was the driver of a car that made a left turn on a two-lane road just as a local police cruiser was passing in the same direction, allegedly with lights and siren on and responding to an emergency call. Defendant claimed immunity and a cap on damages as well as setoffs.

Plaintiff's Experts: Dr. Ira Davis; Dr. Laurel Blakeinore
Defendant's Experts: None

In re: Munir Khan
Type of Case: Auto/Pedestrian
Settlement: $175,000
Plaintiff's Counsel: Jack Landskroner
Defendant's Counsel: Withheld
Court: Cuy. County
Date: November, 2000
Insurance Company: Utica National
Damages: Broken leg (tibia) and multiple rib fractures

Summary: Uninsured motorist hit Plaintiff who was a pedestrian crossing the street outside the crosswalk. Plaintiff was also uninsured. Claim made for uninsured benefits under Plaintiffs employer's commercial liability policy.

Plaintiff's Experts: George Essig, M.D. (Treating Orthopedic)
Defendant's Experts: None

John Doe, a minor v. Defendant 1, et al.
Type of Case: Auto/Wrongful Death
Settlement: Confidential
Plaintiff's Counsel: Jack Landskroner, Paul Grieco
Defendant's Counsel: Withheld
Court: Lake County
Date: September, 2000
Insurance Company: AIG and State Farm
Damages: Death of 4-year-old stemming from head and neck trauma.

Summary: Plaintiffs decedent, a 4-year-old child was placed in the front seat of a vehicle without restraints by Defendant 1 when her vehicle was hit by Defendant 2. who failed to yield. The airbag went off killing the child.
Plaintiff's Experts: Family psychiatrist and therapist
Defendant's Experts: None

John Doe v. John Foe, M.D
Type of Case Medical Malpractice
Settlement $175,000
Plaintiff's Counsel Francis E Sweeney, Jr

Defendant's Counsel Reminger & Reminger
Court Cuy County Common Pleas
Date September, 2000
Insurance Company Ohio Insurance Guaranty Assoc
Damages Left arm median nerve neuropathy (not dominant arm)

Summary: Negligent "ABG" (arterial blood gas) test.

Plaintiff's Experts: None
Defendant's Experts: John P. Conomy, M.D., J.D. (Neurology); Lawrence Martin, M.D. (Neurology)

Anonymous v. Frances C. Baxter
Type of Case: Auto
Settlement: $100,000
Plaintiff's Counsel: John S. Chapman
Defendant's Counsel: Raymond C. Mueller
Court: Cuy. County, Judge David T. Matia
Date: September, 2000
Insurance Company: State Farm
Damages: Torn rotator cuff, broken tooth, partial loss of function in right shoulder and wrist.

Summary: As Plaintiff was exiting her car, she was rear-ended by Defendant. Plaintiff fell, and her right arm was driven into the arm rest causing rotator tear.

Plaintiff's Experts: Duret S. Smith, M.D
Defendant's Experts: None

Deborah Bush v. Bettina Cerankowski
Type of Case: Breach of Fiduciary Duty
Verdict:$90,905.95
Plaintiff's Counsel: John S. Chapman
Defendant's Counsel: Thomas C. Wagner
Court: Cuy. County Probate, Judge John E. Corrigan
Dale: October, 2000
Insurance Company: Not Listed
Damages: Monetary loss
Summary: Trustee used assets of *inter vivos* trust for personal benefit.

Plaintiff's Experts John F Gale, CPA
Defendant's Experts None

Rita Sach, Extrx., ea al. v. University Primary Care Practice, et al.
Type of Case. Medical Malpractice/ Wrongful Death
Settlement: $450,000
Plaintff's Counsel: Paul M. Kaufman
Defendant's Counsel: Joseph Farchione, Deirdre Henry
Court Cuy. County Common Pleas, Judge Richard Markus
Date: October. 2000
Insurance Company. Zurich and St. Paul
Damages: Death of a 68-year-old male

Summary: This case results from the wrongful death of a 68-year-old man from undiagnosed and untreated subaccute bacterial endocarditis. The decedent had a history of rheumatic fever, valvular heart disease, heart murmur and recent dental work. He presented to the Defendant physicians with complaints including recent unwanted weight loss, fatigue, malay, mental status changes, chills, and other systemic problems. The diagnosis was potential early dementia and at no time was bacterial endocarditis ever considered on a differential diagnosis by any of the treating physicians. After being under the care of the physicians for approximately six weeks, Mr. Sachs died suddenly when his valves perforated and the autopsy confirmed subacute bacterial endocarditis.

Plaintiff's Experts: Jeffrey Selwyn, M.D. (Internal Medicine); Howard Shapiro, M.D. (Neurologist)
Defendant's Experts: None

Meyer Herman v. Charlotte Kaminsky
Type of Case: Motor Vehicle v. Pedestrian
Settlement: $200,000
Plaintiff's Counsel: Paul M. Kaufman
Defendant's Counsel: Withheld
Court: Not Filed
Date: November, 2000
Insurance Company: Nationwide
Damages: Multiple broken bones, fractured dislocated shoulder.

Summary: An 80-year-old pedestrian was struck by a motor vehicle while the driver was backing out of the

driveway. Multiple broken bones resulted including a fractured dislocation of the shoulder. The Plaintiff underwent two surgical procedures and faces the possibility of a complete shoulder replacement at some time in the future. Otherwise, the Plaintiff has permanent limitations in the use of the affected shculder and continues to experience pain and discomfort.

Plaintff's Experts: William Seitz, M.D. (Orthopedic Surgeon)
Defendant's Experts: None

Steven Silvers, et al. V. Michael McClure, et ai.
Type of Case: Automobile/Chain Collision
Settlement: $166,000
Plaintiff's Counsel: Phillip Ciano, Andy Goldwasser
Defendant's Counsel: Patrick Dukes, Keith Thomas, Terry Kenneally
Court: Cuy. County, Judge Anthony Calabrese
Date: September, 2000 and October, 2000
Insurance Company: Nationwide and Cincinnati
Damages: Spiral fracture of non-monimant left hand

Summary: Plaintiff pulled over to median and exited auto to exchange information with Defendant 1, when Defendant 2 lost control and spun into median, striking Plaintiffs hand and Plaintiffs vehicle. Plaintiff is proceeding to trial in February, 200 1 against Defendant 3 — a driver involved in chain collision.

Plaintiff's Experts: James Ruff, M.D. (Hand Specialist); William Barker, M.D. (Orthopedic)
Defendant's Experts: Stanley Nahigian, M.D.

John Doe v. Jane Doe, et al.
Type of Case: Disputed Liability Automobile Accident
Settlement: $50,000 (policy limits)
Plaintiff's Counsel: Andrew S. Goldwasser, Phillip A. Ciano
Defendant's Counsel: Gina Snow
Court: Cuy. County, Judge Burt Griffin
Date: November, 2000
Insurance Company: State Farm
Damages: Fractured ribs, paralyzed diaphragm, miscellaneous abrasions and soft tissue injuries.

Summary: Intersection collision whereby Plaintiff claimed that Defendant was traveling at an excessive rate of speed.

Plaintff's Experts: None
Defendant's Experts: None

John Doe v. ABC Hospital
Type of Case: Medical Malpractice
Settlement: $100,000
Plaintiff? Counsel: Michael B. Pasternak
Defendant's Counsel: Withheld
Court: Confidential
Date: March, 2000
Insurance Company: Not Listed
Damages: Limitation of use of fifth (pinky) finger

Summary: Plaintiff cut his fifth (pinky) finger. Neither the treating physician assistant or the doctor diagnosed that a tendon had been lacerated. Plaintiff was left with some limitation of use of the finger.

Plaintff's Experts: Duret Smith, M.D
Defendant's Experts: None

Estate of Doe v. ABC Hospital
Type of Case: Medical Malpractice/ Wrongful Death
Settlement: $200,000
Plaintiff's Counsel: Michael B. Pasternak
Defendant's Counsel: Withheld
Court: Confidential
Date: April, 2000
Insurance Company: Withheld
Damages: Not Listed

Summary: Decedent underwent a number of cardiothoracic procedures including repair of septal defect, catheter ablation, etc. Patient was left. unmonitored in the bathroom for an undetermined amount of time, only to be found unresponsive by a nurse.

Plaintiff's Experfs Ken Lehrman, M D
Defendant's Experts None

Heidi Zimmerman, et al. v. Peter Walker

Type of Case. Personal Injury
Verdict: $28,709.75
Plaintiff's Counsel: Dale S. Economus
Defendant's Counsel: Johanna M. Sfiscko
Court Cuy. County Common Pleas,
Judge Timothy McCormick
Date: November, 2000
Insurance Company: Erie Insurance Group
Damages: Heidi Zimmerman sustained injuries to her upper back, arms, shoulder, and hip. Mr. Zimmerman was seen at the Bedford Med. Ctr.

Summary: This case is brought because of personal injuries and loss of consortium claims on behalf of Heidi and Albert Zimmerman arising from an automobile accident which occurred on August 12, 1999.

Plaintiff's Experts: Christopher Cartellone, M.D.
Defendant's Experts: None

Arlene Hodge, Adm. v. City of Cleveland

Type of Case: MVA/Wrongful Death
Settlement: $188,500
Plaintiff's Counsel: David I. Pomerantz
Defendant's Counsel: City of Cleveland - Law Department
Court: Cuy. County Common Pleas,
Judge Pokorny
Date: September, 2000
Insurance Company: None
Damages: $1,450 (hospital bill and burial expenses)

Summary: Five-year-old Kerina Darnell was struck and killed by a hit-skip driver while crossing West 105th St., at the intersection of West 105th Place. **A** stop sign governing traffic for the driver was missing. Summary judgment was granted but was reversed on appeal. Defendant alleged that the cause of the collision was the driver's inattention and/or mother's failure to supervise the child.

Plaintiff's Experts Dr David Uhrich, Ph D (Accident Reconstruction)
Defendant's Experts None

MARCH 9, 2001

Cleveland Academy of Trial Attorneys

BERNARD FRIEDMAN LITIGATION INSTITUTE - 2001

"Successful Approaches To Overcoming Common Obstacles"

Program Agenda

The Forum
The Erie Room
1375 East 9th Street, Cleveland, Ohio 44115

1:00 - 1:20 p.m.
Honorable Nancy M. Russo
Cuyahoga County Common Pleas Court
"Effective Courtroom Techniques That Will Endear You to The Judge and Jury"

1:20 - 1:40 p.m.
Robert V. Housel, Esq.
"Neutralizing The Defense Medical Expert"

1:40 - 2:00 p.m.
William S. Jacobson, Esq.
Nurenberg, Plevin, Heller & McCarthy
"American College of Obstetrics & Gynecology (ACOG): The Fox Guarding the Hen House"

2:00 - 2:20 p.m.
Stephen E. Walters, Esq.
Reminger & Reminger Co., L.P.A.
"Common Mistakes Made By Plaintiffs"

2:20 - 2:35 p.m.
Break

2:35 - 2:55 p.m.
Ronald B. Lee, Esq.
Roetzel & Andress
"The Scott/Pontzer Minefield: The Defense Strategies"

2:55 - 3:15 p.m.
Stephen S. Vanek, Esq.
Friedman, Domiano & Smith
"Scott/Pontzer: The Plaintiff's Stafegies"

3:15 - 3:35 p.m.
Richard C. Alkire, Esq.
Krembs & Alkire
"Product Liability In 2001"

3:35 - 3:55 p.m.
Kathleen St. John, Esq.
Nurenberg, Plevin, Heller & McCarthy
"Constitutional Challenges in Your Personal Injury Practice"

3:55 - 4:20 p.m.
Honorable Anne L. Kilbane
Cuyahoga County Court of Appeals
"Current Status Of UM"

David M. Paris
Nurenberg Plevin Heller & McCarthy

In addition to the list of depositions housed in the CATA brief bank provided with the last Newsletter, we have since received additional depositions and trial testimony of the individuals listed below. Any member wishing to contribute to the brief bank should send the ASCI discs to Rosemary Graf which will enable us to easily e-mail depositions upon request:

Jennifer Allsop, M.D.
(medical director/staff physician)
Bruce J. Ammerman, M.D. (neurosurgeon)
George Anton, M.D. (thoracic surgeon)
David Barringer, M.D. (surgeon)
William B. Bauman, M.D. (cardiologist)
James E. Bianchi, M.D. (emergency medicine)
Joseph B. Blanda, M.D. (orthopedic)
Linda Camp, M.D. (surgeon)
Robert Corn, M.D. (orthopedic)
Louis D'Amico, M.D. (urologist)
John Downs, M.D. (anesthesiology)
Mark Froirnson, M.D. (orthopedic)
Erin J. Furey, M.D. (anesthesiology/critical care)
Jonathan Glauser, M.D. (emergency medicine)
Erin H. Gluck, M.D. (pulmonary/critical care)
K.V. Gopalakrishna, M.D. (infectious disease)
John W. Hoyt, M.D. (anesthesiology)
Michael V. Johnston, M.D. (pediatric neurologist)
Michael W. Keith, M.D. (orthopedic surgeon)
John K. Krebs, M.D. (orthopedic surgeon)
Jai Lee, M.D. (cardiothoracic surgeon)
Phillip Lerner, M.D. (infectious disease)
Nathan Levitan, M.D. (medical oncologist)
Steven Lippitt, M.D. (orthopedic)
Scott Manker, M.D. (pulmologist)
Arnold Markowitz, M.D.
(internal medicine/infectious disease)
Geoffrey Mendelsohn, M.D. (pathology)
Mark Noble, M.D. (urologist)
Gary Noskin, M.D.
(internal medicine/infectious disease)
Christine Plecha, M.D. (OB/GYN)
Scott Vande Poi, M.D. (pathologist)
William J. Todia, M.D. (OB/GYN)
James Toole, M.D. (internal medicine)
Thomas Trevor Reiley, M.D. (neurology/pediatrics)
David Rollins, M.D. (vascular surgeon)
Helmet Schreiber, M.D. (surgeon)
David Siker, M.D. (anesthesiologist)
Norman Silverman, M.D. (cardiac surgeon)
William J. Todia, M.D. (OB/GYN)
Robert Paul Van Bergan, M.D.
(cardiothoracic surgeon)
Cyril H. Wecht, M.D. (forensic pathology)
Zaas, Robert, M.D. (orthopedic)

The Cleveland Academy of Trial Attorneys
"Access to Excellence"

The Cleveland Academy of Trial Attorneys is one of Ohio's premier trial lawyers organizations. The Academy is dedicated to excellence in education and access to information that will assist members who represent plaintiffs in the areas of personal injury, medical malpractice and product liability law. Benefits of academy membership include **access to:**

1. **THE EXPERT REPORT, DEPOSITION BANK AND THE BRIEF BANK:**
   a huge collection of reports and depositions of experts routinely used by the defense bar, and detailed briefs concerning key issues encountered in the personal injury practice.

2. **THE ACADEMY NEWSLETTER:**
   published six times a year, contains summaries of significant unreported cases from the Cuyahoga County Court of Appeals. Also contains recent verdict and settlement reports.

3. **LUNCHEON SEMINARS:**
   C.L.E. accredited luncheon seminars, about six per year, includes presentations by experienced law yers, judges and expert witnesses on trial strategy and current litigation topics. These lunches also provide networking access with other lawyers, experts and judges.

4. **THE BERNARD FRIEDMAN LITIGATION SEMINAR:**
   this annual all day C.L.E. seminar has featured lecture styled presentations and mock trial demonstrations with a focus group jury. Guest speakers usually include a judge from the Ohio Supreme Court.

5. **ACADEMY SPONSORED SOCIAL AND CHARITABLE EVENTS:**
   these include the annual installation dinner, the golf outing, and the holiday no dinner dance which supports the hunger programs in Cuyahoga County. These events are routinely attended by members of the academy and judges from Cuyahoga County Common Pleas Court, the Eighth District Court of Appeals, U S District Court and the Ohio Supreme Court.

THE CLEVELAND ACADEMY OF **TRIAL ATTORNEYS**
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"membership application on reverse"

Application for Membership

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

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

In addition, I certify that no more that 25% of my practice and that of my firm's practice if I am not a sole practitioner, is devoted to personal injury litigation defense.

Name_____ Age:_____

Firm Name:_____

Office Address:_____ Phone no:_____

Home Address:_____ Phone no:_____

Spouse's Name:_____ No. of Children:_____

Schools Attended and Degrees (Give Dates):_____

_____

Professional Honors or Articles Written:_____

_____

Date of Admission to Ohio Bar:_____ Date of Commenced Practice:_____

Percentage of Cases Representing Claimants:_____

Do You Do 25% or More Personal Injury Defense:_____

Names of Partners, Associates and/or Office Associates (State Which):_____

_____

Membership in Legal Associations (Bar, Fraternity, Etc.):_____

_____

Date:_____ Applicant:_____

Invited:_____ Secondeh By:_____

President's Approval:_____ Date:_____