Cleveland Academy of Trial Attorneys

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CLEVELAND ACADEMY OF TRIAL ATTORNEYS JUNE 1994 NEWSLETTER

EDITOR: RICHARD C. ALKIRE, ESQ.

PRESIDENT'S COLUMN

As I write this month's column, I cannot believe that one year has passed since I was sworn in as President of CATA. It has been a most wonderful experience; I have enjoyed working with your other officers and directors, and meeting many of you for the first time. I encourage you to get more involved in this outstanding organization. Each of you has something special to contribute and I am sure that you will find it to be a rewarding experience.

I want to share with you our many accomplishments over the last year.

Our CLE programs, organized by David Goldense, included:

Topic:	*A review of current legislative issues of interest to the Plaintiffs bar.*
Speaker:	*Bill Weisenberg, Director of Governmental Affairs; Ohio State Bar Association.*
Topic:	*Current CD ROM Technology, its impact on small office legal research and the future of law office research with the coming "information super highway"*
Speakers:	*Kathy Carrick, CWRU School of Law* *Jan Novak, Cuyahoga County Courthouse*
Topic:	*Pitfalls and Problems for the Civil Practitioner as Seen from the Bench*
Speaker:	*The Honorable James Porter* *The Honorable Janet R Burnside*
Topic:	*Precedent, Juries and the Common Law*
Speaker:	*The Honorable Peter Sikora*
Topic:	*Ethical issues relating to co-counsel fees and DR 2-10%*
Speaker:	*Albert Bell, Esq. - OSBA general counsel:*

Topic: *Dynamic MRI testing*
Speaker: *Dr. James Zelch:*

Topic: *Arthroscopic surgery*
Speaker: *Dr. Randall Marcus*

Each **luncheon** *program provided one hour of CLE credit and the opportunity to meet other Academy members and judges from the Court of Appeals and Common Pleas* **Court.** *If* **you** *attended each program you would have received 6 CLE credits.*

The highly-acclaimed annual Bernard Friedman Litigation Institute was held on February 18, 1994 and featured fifteen minute presentations **on** *topics valuable to all personal injury attorneys. It provided five hours of CLE credit. The luncheon speaker was Ohio Supreme Court Justice Paul Pfeifer.*

We also **co-sponsored** *two CLE programs with The Cuyahoga County* **Bar Association:** *How to Represent the Client with Chronic Pain and the New DUI Law.*

The Academy again co-sponsored the annual **Holiday No-Dinner** *Dance with The Cuyahoga County Bar Association.* This *worthy program supports hunger programs in Cuyahoga County. Over $27,000 was distributed to various organizations* **as** *a result of the 1993 No-Dinner Dance. This year's event will be held* **on November 19, 1994.**

The **Brief** *and* **Expert Bank,** *re-organized by past-President, William Greene and Director, Jean McQuillan, offers a huge collection of briefs written by Academy members on recurring issues involving personal injury cases and* **also** *a vast collection of deposition transcripts and expert reports from frequently encountered defense experts. I am attaching a* **full** *listing of the Bank for your use. Richard Alkire has "taken over" the Bank Call him at 621-2300 for more information, but remember that you have to exchange two new items for ever one item you want.*

I am happy to announce that we are again co-sponsoring a "Race for **Wishes" on Saturday, August 6, 1994** *in* **the Hinckley Metroparks.** *It features a 5 kilometer and 10 kilometer run/walk for the benefit of the local chapter of the Make-A-Wish Foundation. Last year's race (July 31, 1993) raised over* **$4,000.00** *The Make-A-Wuh Foundation raises money to be* **used** *to provide "wishes" to seriously ill children. Often times, these children are from poor families who do not have the financial means to provide their children with a bright spot in their otherwise unfortunate lives. Make-A-Wuh uses this money to provide such* '&+" **as** *trips to Disneyworld or the opportunity* **to** *meet a famous celebrity.* **In** *order to help raise* funds *for this worthy cause, we are again co-sponsoring this event with the* **Cuyahoga** *County* **Bar Association.** *CATA's name will appear* **on** *all promotional literature associated with the race, the Make-A-Wuh Newsletter, and will be printed on T-shirts given to all race participants. CATA's contribution not only benefits a very valuable charity, but also serves* **as** *public notice of our*

organization's commitment to this terrific program. Watch your mail for additional information about the specifics of this worthy event, including a registration form. Please put the date on your calendar now, plan on attending, and bring your friends and family with you to the ***Race-for-Wishes II!***

I hope to see you at ***our annual Golf Outing on Thursday, August 25, 1994*** *at* ***Spring Valley Country*** *Club in Elyria. Many people have already set up their foursomes and invited judges to play with their group. If you have any questions, please call Dave Goldense at* ***241-0300.*** *Notices will be in the mail shortly. Last year's outing was held at Elyria Country Club and was terrific!*

The ***37th*** *Annual* ***Convention*** *of the* ***Ohio*** *Academy* ***of*** *Trial* ***Lawyers*** *was outstanding. I hope you were able to attend to hear Ralph Nader speak Cleveland's own Bob Traci succeeded Andrew Krembs* ***as*** *President.*

Did you know that ***Local*** *Rule* ***29*** *was revised and became effective April* ***14,*** *1994? I am attaching a copy of the new rule for your records.*

Probably one of the most useful assets of membership ***is our Newsletter.*** *It* ***is*** *published approximately* ***six*** *times each year and contains summaries* ***of*** *significant unreported Court of Appeals opinions, reports of verdicts and settlements obtained by Academy members, Richard Alkire has done a great job editing it for* ***us.***

By the time you read this newsletter our Annual ***Installation*** *Dinner, held on* ***Friday, June*** *17, 1994, at the Sheraton City Centre will have taken place. I hope you were able to join me in welcoming* ***our*** *new officers: President, Robert Matyjasik; Vice-President, David Goldense; Secretary, William Hawal; Treasurer, Richard Alkire and* ***our*** *new and not-so-new directors:* ***Directors 1997 Term:*** *Frank G. Bolmeyer, Ann M. Garson, Robert F. Linton, Jr., John R Miraldi, Robert Rutter. Directors 1996 Term: David A. Forrest, R Eric Kennedy, David M. Paris, Lisa M. Gerlack,* ***Directors 1995 Term:*** *Jean McQuillan, Claudia R Eklund, Donna Taylor-Kolis, Francis E. Sweeney.*

We have increased our membership by almost ***20%*** *this year. I hope you will continue to encourage your friends, partners and associates to join CATA.*

As my year ***as*** *President ends, I know that my involvement with CATA will continue. I hope to see you at the next* ***CATA*** *function. Have a great summer!*

Very truly yours,

Laurie

Laurie F. Starr

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

The Editor wishes to acknowledge Robert F. Linton, Jr.'s assistance in summarizing many of the following decisions.

INTENTIONAL TORT

1. Kirby v. Dependable Stamping Co., Case No. 65009 (Cuyahoga Cty., March 24, 1994) - For plaintiff: Joseph L. Coticchia and for defendant: Jerome W. Cook.

The Court of Appeals reversed the trial court's granting of a motion for summary judgment in this employer intentional tort case pointing out that the evidence was conflicting on the three essential elements: 1) whether the employer had knowledge of the dangerous instrumentality; 2) whether injury to the employee was a substantial certainty; and 3) whether appellant was required to continue to perform the dangerous task despite the employer's knowledge of the dangerous instrumentality.

INTENTIONAL TORT

2. Duckworth v. Creative Interglobal. Inc., Case No. 65449 (Cuyahoga Cty., May 5, 1994) - For plaintiff: John V. Sharon and for defendant: Martin T. Franey.

Plaintiff was injured while working on a table saw without a safety guard at the defendant's cabinetry company. The trial court granted summary judgment in favor of the defendant employer, which was affirmed on appeal. The court held that the plaintiff had failed to show that the employer knew that injuries were substantially certain to occur from the lack of safety guards, or that the plaintiff was required to use the table saws without guards as a requirement of his job, and therefore failed to meet the second and third prong of the Supreme Court test under Fvffe v. Jeno's Inc., (1991) 59 Ohio St. 3d 115. In that case, although the evidence suggested that guards existed on the machine when it was delivered new, there was evidence that guards existed in the shop and it was within the discretion of each operator whether he wished to use a guard. The court found that it was not enough that the employer had seen the plaintiff use a table saw without guards, and failed to tell the plaintiff, an experienced operator, whether guards should be used or not be used.

CIVIL PROCEDURE

3. Sulak v. Club Concepts of Cleveland, Inc., Case No. 66147 (Cuyahoga Cty., March 24, 1994) - For plaintiff: Jeffrey W. Largent and for defendant: Rich R. Carpinelli.

The Court of Appeals upheld the trial court's refusal to grant defendant's motion for relief from a default judgment rendered in favor of the plaintiff in the amount of $100,000.00. The default judgment arose from the bodily injury suffered by Plaintiff when he fell on Defendant's premises. Defendant attempted to argue that its statutory agent and counsel had given it the understanding that the insurance company was going to handle the action. The plaintiff presented evidence that the defendant had no liability insurance and that its agent had definitely been served with summons and complaint. On these facts, the Court of Appeals held it was not an abuse of discretion for the trial court to refuse to grant it relief from judgment.

UIM INSURANCE COVERAGE

4. Bressan v. Secura Insurance Company, Case No. 64997 (Cuyahoga Cty., April 28, 1994) - For plaintiff: James Schumacher, Leon M. Plevin, Joel Levin and Ellen McCarthy and for defendant: Stephen M. Darlington and Stephen M. Bales.

In this appeal and cross-appeal the plaintiff appealed from the trial court's granting of a motion for summary judgment in favor of the defendant insurance company holding that the insurance company had no obligation to provide uninsured motorist coverage because the automobile which was insured was not principally garaged in Wisconsin, the principal place of business of the insurance company. Plaintiff presented evidence that the insurance company was on notice that the car was not principally garaged in Wisconsin but instead in Ohio. If these facts are found by the jury then the insurance company would be required to honor its contract of insurance since it was on notice of facts which would invalidate the policy yet it offered the insurance anyway. Further, Defendant's cross-appeal concerning in personam jurisdiction was dismissed since the trial court's denial of that motion is not a final appealable order.

UIM INSURANCE COVERAGE

5. Prather v. Liberty Mut. Ins. Co., Case No. 66131 (Cuyahoga Cty., May 19, 1994) - For plaintiff: Claudia R. Eklund and for defendant: John Rasmussen.

The Court of Appeals affirmed that UIM coverage is to be considered excess insurance and is available even where the UIM insurance limits are less than the amount of the tortfeasor's limits. In this case, the tortfeasor had limits of $100,000.00, and the plaintiff had UIM coverage in the amount of $25,000.00. Following Savoie v. Granue Mut. Ins. Co. (1993), 67 Ohio St. 3d 500 the court held that the plaintiff must be paid for damages suffered What exceed those monies available to be paid by the tort-feasor's liability carrier." The court also held that an election form in which the plaintiff elected to accept UM limits in the amount of

"the financial responsibility" limits, rather than in the amount of his liability insurance policy limits, was enforceable and unambiguous, when read with an attached endorsement defining that the amount of "financial responsibility" limits coverage for Ohio was **$25,000.00.** Without this endorsement, the court would have found the terms "financial responsibility" to be as ambiguous and unenforceable as language such as "minimum statutory limits." The court therefore reversed summary judgment entered in favor of the insurance carrier in a declaratory judgment action, for the sole issue of determining the amount of damages to which the plaintiff is entitled to collect up to the limits of the **$25,000.00** UIM coverage.

AUTOMOBILE

6. Kornuta v. Phillips, Case No. **64979** (Cuyahoga Cty., April **21, 1994) -** For plaintiff: John Lancione and for defendant: Marillyn Fagan Damelio.

The plaintiff appealed from judgment entered in favor of the defendant in this automobile case which went to trial. The jury found that the plaintiff was **55%** negligent. Essentially the Court of Appeals held that under the facts of this case no charge on contributory negligence should have been given to the jury. The plaintiff had been driving westbound on Rockside. A van was driving eastbound and turned left in front of the plaintiff at the intersection of Rockside and Broadway. As such, the defendant failed to yield the right-of-way to the plaintiff. The judgment was reversed and a new trial ordered.

WORKERS' COMPENSATION

7. Zelenak v. The Mav Company Devartment Stores, Case No. **64940** (Cuvahoaa Cty., **April 7, 1994) -** For vlaintiff: Paul W. Newendorp and David 'I. Pomerantz and for defendant: Eleanor J. Tschugunov and James E. Gardner and for Administrator, Ohio Bureau of Workers' Compensation: Fred J. Pompeani.

In this Workers' Compensation appeal to court, Plaintiff received her injury while she was in her husband's automobile leaving the Parmatown parking lot at the end of her work day. She remained at work to attend a company party and following the party returned to her own desk to complete some additional work. Her husband then picked her up on his way out of the Parmatown Mall parking lot had a collision with another vehicle. The trial court had granted Plaintiff's motion for summary judgment holding that she was within the zone of her employment at the time of the injury and that therefore her injury was compensable. The Court of Appeals reversed holding that in order to be compensable, an injury received while traveling to or away from the employment (which employment is fixed) must be the result of her employment and a special hazard created by the employment itself. In other words,

the risk created by the employment must be quantitatively greater or distinctive in nature when compared to the risk ordinarily confronting the general public and a situation where the employee would not have been at the location where the injury occurred "but for" the employment.

PRODUCT LIABILITY

8. Phan v. Presrite Corporation, Case No. **64821** (Cuyahoga Cty., March **24, 1994) -** For plaintiff: Michael R. Kube and Richard A. Vadnal and for defendant: James H. Crawford and Albert J. Rhoa.

The Court of Appeals upheld the trial court's granting of a motion for summary judgment involving an allegation that a foot switch was defective. The case involved the plaintiff's inadvertent actuation of the foot switch which did not incorporate a front guard, but only incorporated top and side guards around it meant to prevent its inadvertent actuation. Plaintiff's claim was essentially one involving a warning that this foot switch should not be used with a power press not equipped with point of operation guarding. Essentially, the Court of Appeals held that the warning as given was adequate and the additional matters Plaintiff argued that the defendant should have warned about were already known by the employer anyway, including the availability of front flaps and anti-trip devices which would prevent accidental activation. The court also held that the plaintiff presented no evidence that the alleged inadequacy of the warning was the proximate cause of Plaintiff's injuries. The evidence was that neither the plaintiff nor any of the co-employees read the warnings anyway and that therefore additional warnings wouldn't have prevented the injuries. The court held as a matter of law that the manufacture's only reasonable access to the employee was in the form of a warning on the foot switch itself and that therefore the claim that additional warnings should have been placed in a catalog for marketing would not have made a difference. One member of the court dissented in respect to the majority's decision.

EVIDENCE

9. Lewis v. Gant, Case No. **66084** (Cuyahoga Cty., May **19, 1994) -** For plaintiff: Barry King and for defendant: Otha M. Jackson.

Our Court of Appeals affirmed the judge's finding in a bench trial that plaintiff had established causal connection with the necessary expert opinion, even where that testimony did not use the magic words "with reasonable medical certainty or probability." At trial, the plaintiff's doctor had testified that Plaintiff suffered injuries which occurred as a result of the automobile accident. The Court of Appeals found that the testimony was not speculative, since the physician did not state the injury "could have been caused by the accident," he testified that the injury **"was"** caused

by the accident. The Court of Appeals said that it could think of no greater show of an expert opinion as to causal connection than to say that the injury came from the accident. The court therefore found the trial court did not commit plain error in deciding the issue of causal connection and damages based on this testimony.

PREMISES LIABILITY

10. Glover v. Tovs-R-Us, Case No. **64787** (Cuyahoga Cty., May **19, 1994)** - For plaintiff: Thomas P. Curran, Mildred S. Collins and for defendant: Roger H. Williams.

Plaintiff fell on an alleged unnatural accumulation of snow and ice in a trough formed by two sidewalks in front of defendant's store. Plaintiff introduced testimony of an architect that the sidewalks were defective and would have allowed the pooling of water and the unnatural accumulation of ice and snow. He also offered evidence of prior falls in the same area at or near the time of the incident and testimony by store employees that the sidewalk was **"defective."** The jury, however, returned a verdict for the defendant. The trial court granted Plaintiff's motion for a new trial, finding "overwhelming" credible evidence to return a verdict in Plaintiff's favor, based on trial court's "objective evaluation" of the evidence. The Court of Appeals reversed, finding that the trial court had substituted its judgment for that of the jury in determining that the verdict was against the weight of the evidence. The Court of Appeals also overruled the Plaintiff's assignment of error that the trial court had failed to enter a directed verdict in her favor on the issue of liability. The court found that issues of fact existed for the jury to determine 1) whether the ice was an unnatural accumulation; 2) whether the defendant had notice of the potentially dangerous condition; and **3)** whether the condition had been corrected by defendant's attempts at repair.

SANCTIONS

11. Wells v. Aust, Case No. **65325** (Cuyahoga Cty., May 19, **1994)** - For plaintiff: Clark D. Rice, Anne E. Leo and for defendant: Robert E. Lezaro.

The Court of Appeals reversed the trial court's entry of default judgment against the defendant for failure to appear at a pretrial conference. The court found that such a harsh remedy should be imposed only when the disobedient party's actions indicate willfulness or bad faith. The court found evidence that the party and counsel's failure to appear was due to inclement weather and that they had telephoned the court in an attempt to convince the court to reschedule, but were unsuccessful.

MUNICIPAL LIABILITY

12. Patton v. City of Cleveland, Case Nos. 65403, 65682 (Cuyahoga Cty., May 12, 1994) - For plaintiff: Nicholos J. Schepis and for defendant: Verna Jo Lanham.

Plaintiff struck a telephone pole, when swerving to avoid an excavation pile left on a municipal street. The excavation site was surrounded by barricades, there is a issue as to whether the flashing lights were working. The jury returned a verdict of $200,000.00, plus $3,000.00 property damage. They found the city 80% negligent and the plaintiff 20% negligent. After deducting collateral sources, the final judgment against the city was $159,175.36. The court first addressed the trial court's jury instruction relating to hedonic damages. The court held that where there is evidence of loss of usual function damages that it is error to omit the instruction adopted by the Supreme Court in Fantozzi v. Sanduskv Cement Prod. (1992), 64 Ohio St. 3d 601. Here the trial court instructed the jury to find the total amount of the plaintiff's damages, and to consider among other items, loss of enjoyment of life. Although it was error not to give the Fantozzi instruction, the court held that the defendant had waived the error by not objecting until after the jury retired. Second, the Court of Appeals reversed the trial court's finding of prejudgment interest. At one time Plaintiff had demanded only $6,000.00, and later increased that demand to $20,000.00. The defendant responded with an offer of $6,000.00 immediately before trial. The court found that the city had cooperated in discovery, even though it had delayed a few days before providing full and complete answers to interrogatories, and had negligently failed to see a duces tecum attached to a deposition notice, but nevertheless later provided documents responsive to that request. Third, the court found that the city could be liable for failing to place a construction sign near the construction site, which is required by the Ohio Manual of Uniform Traffic Control Devices ("MUTCD"). The court found that unlike stop signs or traffic lights, such temporary signs are not discretionary acts for which a city is immune under R.C. 2744.03(A)(3),(5). The court also noted that failure to meet the MUTCD requirements is negligence per se. Next the Court of Appeals held that the trial court had not abused its discretion in admitting evidence of two prior accidents that occurred within the two months before the accident at issue. The court held that such accidents were admissible to prove that danger existed or the city's knowledge of that danger provided they occurred under substantially certain conditions, not too remote in time, and must be reported to the city. The accidents were admissible even though there was no witnesses to precisely how the accidens occurred, or the actions or conditions of the drivers. Finally, the trial court held that jury verdict was not the product of passion or prejudice or against the manifest weight of the evidence notwithstanding the small medical bills and short time missed from work, given the evidence of the injuries, past and future pain, and loss of enjoyment of life.

MUNICIPAL LIABILITYIRECREATIONAL USER STATUTE

13. Kendrick v. The Cleveland Metroparks Bd. of Comm'ns., Case Nos. **65388** and **65525** (Cuyahoga Cty., May **5, 1994) -** For plaintiff: Daniel M. Sucher, Mark L. Wakefield and for defendant: Irene Keyse-Walker, Robert C. Tucker.

The Court of Appeals affirmed the trial court's granting of summary judgment in favor of the defendant. The plaintiff was injured when she fell down a steep embankment while in the Metroparks. The plaintiff argued that the defendants had failed to keep the public grounds open, in repair and free from nuisance under R.C. Chapter **2744.** The Court of Appeals and the trial court held that the action was barred by the Recreational User Statute R.C. **1533.181.** The court held that the Recreational User Statute, which was enacted in **1963,** was not superseded with the enactment of the Political Subdivision Tort Liability Act set forth in R.C. Chapter **2744.** The purpose of the two statutes as they applied to political subdivisions was found to be the same: an effort to limit the taxpayers exposure to liability.

14. Zurowski v. Parker, Case **Nos. 64907** and **65321** (Cuyahoga Cty., May **5, 1994) -** For plaintiff: John McCarthy, Jeffrey Leikin, Joel Levin and for defendant: Harry Sigmeyer, William H. Baughman.

Plaintiff, a passenger in a golf cart, suffered a serious injury when thrown from a golf cart at Astorhurst Country Club. The court first held that driving a golf cart at an excessive rate of speed was not an inherent and foreseeable part of the sporting event of golf for which a participant is immune from liability, and further that such conduct constituted recklessness, which is an exception to the rule granting such immunity. The court next found that the driver was acting within the scope within his employment as a vice president of a small closely held business at the time of the incident, since there was a business purpose for the golf outing. Finally the court affirmed the trial court's granting of prejudgment interest where the jury returned a verdict in the amount of **$950,000.00,** the plaintiff's final demand was **$525,000.00,** and there was no offer to settle. The court found that the defendants could not rely on the plaintiff's indication that a **$300,000.00** offer would not be acceptable, without at least making a settlement offer.

VERDICTS AND SETTLEMENTS

Randy Nakoff v. Georae Essig, M.D., et al.
Court: Cuyahoga County Common Pleas
Judgment: February, **1992**
Plaintiff's Counsel: Don C. Iler and Nancy C. Iler
Defendants' Counsel: John Polito and Mike Djoredevic
Insurance Company: PIE
Type of Action: Medical malpractice.

Motorcycle accident where Plaintiff suffered fractured right tibia, fibula with arterial injury. Dr. Essig (orthopedic) and Dr. Pappas (vascular) failed to recognize and perform arterial bypass graft to insure adequate blood flow to Plaintiff's lower right leg.

Damages: Below the knee amputation.

Plaintiff's Expert: Dr. Gerhard Mundinger

Defendants' Experts: Dr. Terry King and Dr. James Kellum

Judgment: 2.5 Million and 1 Million prejudgment interest

Offer: -0- Demand: $750,000.00

Matil Jacobs v. Menorah Park
Court: Cuvahoaa County Common Pleas
Settlement: January, **i993**
Plaintiff's Counsel: Don C. Iler and Nancy C. Iler
Defendant's Counsel: Stephen Walters
Insurance Company: Self insured
Type of Action: Wrongful death.

Plaintiff's decedent was a resident of Menorah Park Home. She was a paranoid schizophrenic who was on medication and lived on the psychiatric floor at Menorah. She wandered out of the building and drowned in a pond.

Damages: Death, drowning.

Settlement: $200,000.00

Greaorv Dolafuss. Executor **v.** Gene Davidson
Court: Portage County Common Pleas
Judgment: March, **1993**
Plaintiff's Counsel: Don C. Iler and Nancy C. Iler
Defendant's Counsel: Bill Oldham
Type of Action: Wrongful death.

Decedent was on the Defendant homeowner's property at night without permission. The decedent was at the homeowner's pole barn when the defendant yelled to get out. The decedent turned and ran away from pole barn and the defendant shot the plaintiff's decedent killing him.

Damages: Shooting death of 27 year old man.

Plaintiff's Expert: None.

Defendants' Experts: None.

Judgment: $200,000.00

Offer: -0- Demand: **$300,000.00** (policy limits)

Josephine Waaner v. Roche Lab.
Court: Lucas County Common Pleas
Judgment: April, **1993**
Plaintiff's Counsel: Don C. Iler and Nancy C. Iler
Defendant's Counsel: George Gore

Type of Action: Product liability.

Plaintiff took acne drug Accutane along with an antibiotic. She developed pseudotumor cerebri, the treatment of which required high doses of steroids which caused avascular necrosis of both hips and shoulder. Defendant failed to warn of dangers of combining Accutane and antibiotic.

Damages: Surgical replacement of both hip joints and right shoulder.

Plaintiff's Experts: Dr. Peter Elias
Dr. John Brems

Defendant's Experts: Dr. Daroff
Dr. Brickers

Judgment: $350,000.00

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

Garv Audet v. United Aero Services, et al.
Court: Cuyahoga County Common Pleas
Judgment: June, **1993**
Plaintiff's Counsel: Don C. Iler
Defendants' Counsel: Joel Newman, Richard Agopian and William McCarter
Type of Action: Negligence.

Defendant negligently overhauled Plaintiff's airplane engine. When Plaintiff flew airplane the engine failed, the plane crashed and Plaintiff was burned.

Damages: Third degree burns over 40% of body including face.

Plaintiff's Expert: James Stabley

Defendants' Expert: None

Judgment: $2,000,000.00

Offer: -0-

Nancy Dubrov. et al. v. Dr. Norberto Marfori
Court: Lorain County Common Pleas
Settlement: July, 1993
Plaintiffs' Counsel: Laurie F. Starr
Defendant's Counsel: J. C. William Tattersall
Insurance Company: PICO
Type of Action: Medical malpractice.

Plaintiff had a history of 19 breast biopsies which were all benign. In 1989, Dr. Marfori performed a bilateral subcutaneous mastectomy and insertion of expanders. A second procedure was performed and the expanders were removed and implants were inserted. She subsequently developed severe capsular contraction and skin necrosis requiring two additional corrective procedures. The doctor claimed that he had always intended on doing multiple procedures. Case settled on the first day of trial.

Damages: Psychological injuries.

Plaintiffs' Expert: Dr. Leonard Rubin

Defendant's Experts: Dr. John Jarrett

Judgment: **$127,500.00**

Doe v. Doe (Confidentiality Agreement)
Court: Cuyahoga County Common Pleas
Settlement: October, 1993
Plaintiff's Counsel: Laurie F. Starr
Defendant's Counsel: Peter Marmaros
Type of Action: Psychiatric malpractice - assault and battery, infliction of emotional distress.

Plaintiff was a minor at the time she was treated for depression by the defendant. Approximately 15 years later she realized that the defendant had sexual contact with her during treatment sessions. Her memory of these events was repressed until she sought psychological counseling as an adult. The defendant had left the state shortly after

his "relationship" with the plaintiff. This was the second case handled by Plaintiff's counsel against this Defendant.

Damages: Psychological injuries.

Plaintiff's Expert: Dr. Thomas Gutheil

Defendant's Expert: None

Settlement: **$125,000.00**

Jane Doe. et al. v. ABC Hoswital
Court: Cuvahoşa County Common Pleas
Settlement: February, **1994**
Plaintiffs' Counsel: Michael Shafran
Defendant's Counsel: Steve Albert
Type of Action: Medical malpractice.

A pathology lab of the hospital failed to properly diagnose pre-dysplasia cells which eventually wound up as Stage 3 cancer. Plaintiff is now deceased.

Damages: Death.

Plaintiff's Experts: Dr. Thomas Lau
Dr. John Burke
Dr. John Sweeney

Defendant's Expert: Dr. Richard Lash

Settlement: $1,600,000.00

Demand: **$1,800,000.00**

Roberta Machen. et al. v. Marymount Hoswital
Court: Cuyahoga County Common Pleas
Settlement: February, **1994**
Plaintiffs' Counsel: Dennis Lansdowne
Defendant's Counsel: Andrew W. Paisley and Steve W. Albert
Insurance Company: The St. Paul
Type of Action: Medical malpractice.

When Plaintiff presented to Defendant hospital in May, **1991**, an erroneous laboratory report proximately caused a delay in diagnosis and treatment of the disease process herpes simplex encephalitis. The disease has left Plaintiff totally incompetent due to the destruction of portions of her brain.

Plaintiff's theory of liability was that the delay in diagnosis and treatment of Plaintiff's disease process resulted in a significant worsening of Plaintiff's outcome.

Defendant's contentions were that the delay in diagnosis and treatment of Plaintiff's disease process did not affect Plaintiff's outcome since she was so severely compromised by the time she presented to Defendant Hospital

Damages: Incompetence due to destruction of portions of Plaintiff's brain, no short or long term memory, irrational behavior, depression, and confinement to a nursing home for remainder of life.

Plaintiff's Experts: Dr. Richard C. Graham (infectious disease)
Dr. John P. Conomy (neurology)
Dr. John F. Burke, Jr. (economist)

Defendants' Experts: Dr. Michael W. Devereaux (neurology)
Dr. Phillip I. Lerner (infectious disease)
Dr. Donald C. Mann (neurology)

Settlement: $2,000,000.00

Fave Beaber, Executrix v. Khalil Korkor, M.D.
Court: Stark County Common Pleas
Judgment: March, 1994
Plaintiff's Counsel: William Hawal
Defendant's Counsel: Mark Frasure
Insurance Company: PICO
Type of Action: Medical malpractice.

During hospitalization for myocardial infarction decedent developed duodenal ulcer. Defendant failed to endoscope or otherwise treat the ulcer which re-bled causing death.

Damages: Death.

Defendant's Expert: Dr. Edward Brand (gastroenterology)

Judgment: $200,000.00

Offer: $ 75,000.00 Demand: $300,000.00

Richard Arsic v. GM
Court: U.S. District Court
Settlement: March, 1994
Plaintiff's Counsel: William Hawal and James A. Marx
Defendant's Counsel: Francis J. Grey Jr.
Insurance Company: N/A
Type of Action: Product liability.

Plaintiff was driving GM pick-up truck when he struck a construction barrel with outside driver's mirror causing mirror to shatter and a shard of glass to enter the cab and strike plaintiff's eye.

Damages: Penetrating eye injury with retinal laceration resulting in visual impairment.

Plaintiff's Expert: None identified.

Defendant's Expert: None identified.

Settlement: **$250,000.00**

Jeffrev McElhaney v. Dr. Doe
Court: Trumbull County Common Pleas
Settlement: March, **1994**
Plaintiff's Counsel: John A. Lancione
Defendant's Counsel: F. Theresa Dellick
Insurance Company: Cincinnati
Type of Action: Medical malpractice.

Defendant optometrist failed to diagnose a detached retina in Plaintiff's left eye and failed to timely refer Plaintiff to a specialist resulting in permanent 20/400 vision in left eye.

Damages: Loss of vision in left eye.

Plaintiff's Experts: Dr. Carl Asseff
Dr. Joseph Fammartino

Defendant's Expert: Dr. Jerome Sherman

Settlement: $500,000.00

Karin Millard v. State Farm
Court: Cuyahoga County Common Pleas
Judgment: March, 1994
Plaintiff's Counsel: William Hawal
Defendant's Counsel: Thomas Brunn
Insurance Company: State Farm
Type of Action: Uninsured motorist claim.

Plaintiff was a passenger in an automobile which was broadsided in Los Angeles.

Damages: Lacerated spleen, fractured ribs, post concussion syndrome, cervical laminectomy with fusion.

Plaintiff's Expert: Dr. Matt J. Likavec (neurosurgeon)
Defendant's Expert: Dr. Donald Mann (was not called to testify)

Judgment: $600,000.00

Offer: $350,000.00 Demand: $500,000.00
Arbitration Award: **$775,000.00**

Irene Karr. Executrix v. Dr. Fred Schnell, et al.
Court: Cuyahoga County Common Pleas
Judgment: March, 1994
Plaintiff's Counsel: Don C. Iler and Nancy C. Iler
Defendants' Counsel: John Scott and Bill Bonezzi
Type of Action: Medical malpractice.

Mr. Karr was admitted to Deaconess Hospital for a lumbar laminectomy, the surgery went fine. Postoperative, Mr. Karr's hemocut and hemoglobin dropped significantly. Plaintiff's expert testified he needed a blood transfusion.

Damages: Death.

Plaintiff's Expert: Dr. Barry Singer

Defendants' Experts: Dr. Richard Watts, Dr. Fred Suppes, Dr. William Bohl and Dr. Matt Likarc

Judgment: $1,250,000.00

Dale Drzazaa. et al. v. St. Alexis Hospital Med. Center, et al.
Court: Cuyahoga County Common Pleas
Judgment: March 11, 1994
Plaintiffs' Counsel: Thomas C. Schrader and Richard J. Ambrose
Defendants' Counsel: Jacobson, Maynard, Tuschman & Kalur
Insurance Company: PIE
Type of Action: Medical malpractice.

Plaintiff went to his family doctor complaining of pain in back of neck. He received Procaine injections for a "pinched nerve" and was sent home. Three days later, Plaintiff began to feel numbness and tingling in his arms and legs. He finally lost muscle and bladder control and had to undergo an emergency decompressive laminectomy. His paralysis was irreversible. Had Plaintiff been properly examined by his family doctor the infectious abscess pressing on his spinal cord would have been discovered and paralysis avoided.

Damages: Incomplete quadriplegia. Paralysis from chest down due to spinal epidural abscess at C-7/T-1. Loss of consortium claims on behalf of spouse and three minor children.

Plaintiffs' Experts: Dr. Maurice Victor (neurologist)
Dr. Frederick Frost (physical med./rehab.)
Dr. Donald Weinstein (psychologist)
Dr. John Burke (economist)

Defendants' Experts: Dr. John Kincaid (neurologist)
Dr. Bruce Janiak (emergency medicine)

Judgment: $12,350,000.00

Offer: -0- Demand: $2,000,000.00

Vicky Lonaert v. Greaory Watts, M.D.
Settlement: April, **1994**
Plaintiff's Counsel: Mark Cohn
Defendant's Counsel: Joseph Farchione and Joseph Herbert
Insurance Company: PIE
Type of Action: Medical malpractice.

Plaintiff was treated for asthma with prednisone for one year. Due to the relatively large dosage and long-term use, she developed AVN.

Damages: Avascular necrosis of the left hip.

Plaintiff's Expert: Dr. Constantine Falliers

Defendant's Expert: Dr. Raymond **G.** Slavin

Settlement: **$250,000.00**

Joseph Nemeth. Extr. v. Western Reserve Care Svstem, etc. et al.
Settlement: April, **1994**
Plaintiff's Counsel: Paul M. Kaufman
Defendants' Counsel: Anthony Dapore and Michael Hudak
Insurance Company: PIE
Type of Action: Medical malpractice/wrongful death.

A 43 year old wife and mother employed as a school teacher, entered Youngstown Hospital for open heart surgery which was successful. Within **24** hours after the surgery, serious complications involving her lungs developed which either went unnoticed or untreated and adult respiratory distress syndrome resulted. The patient's condition deteriorated resulting in her death approximately 10 days after the operation.

Damages: Adult respiratory distress syndrome resulting in death.

Plaintiff's Experts: Dr. Allan Markowitz (Chief Cardio-Thoracic Surgeon at Mt. Sinai)
Dr. John Burke (economist)

Defendants' Expert: Dr. Jerome Cohen (preventive cardiologist)

Settlement: **$1,250,000.00**

Plaintiff v. Consolidated Manaaement. Inc.
Court: Lorain County Common Pleas
Settlement: May, **1994**
Plaintiff's Counsel: Robert F. Linton, Jr.
Defendant's Counsel: Hugh McKay and Samuel J. Najim
Insurance Company: National Union Insurance Company
Type of Action: Inadequate security.

Plaintiff was forced to perform oral sex at knife point when intruder gained access to her apartment through her balcony sliding glass door. The balcony door lock was allegedly defective. Landlord also provided additional track locks for the doors which were altered and allegedly made defective.

Damages: Rape, Post-Traumatic Stress Disorder.

Plaintiff's Experts: Robert Duman, (certified master locksmith and security expert)
Richard Harkness (mechanical engineer)
Dr. John Wilson (PTSD expert)
Treating Psychologists

Defendant's Expert: Noah Thomas (security expert)
Eugene Bahniuk (mechanical engineer)
Dr. Phillip Resnick (psychiatric expert)

Settlement: $300,000.00 structured with present value