Cleveland Academy of Trial Attorneys

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CLEVELAND ACADEMY OF TRIAL ATTORNEYS SEPTEMBER, 1994 NEWSLETT'ER

EDITOR: RICHARD C. ALKIRE, ESQ.

PRESIDENT'S COLUMN

I am honored to address you in my first column as the 35th President of this organization - and I am humbled by my predecessors' unselfish dedication to the continual growth and improvement of this academy, and the advancement of the causes of people injured by the neglect of others.

Among the stated purposes of CATA are the following:

- to advance the science of jurisprudence,
- to promote the public good, and
- to exchange information concerning trial techniques.

In my year at the helm I hope to steer the energy of our members, trustees and officers toward fulfilling these goals by continuing our existing programs, and by developing the initiatives set in motion by our immediate past president, Laurie Starr, to enhance membership, to publish our membership directory, and to promote the exchange of information among our members.

I would also like to dedicate CATA to helping our members develop the full potential of every claim by initiating a MENTOR/CONSULTANT PROGRAM where any member can tap into the special knowledge and expertise of other members in particular kinds of cases. Members who are willing to consult with other members in this way will be noted as such in our directory. If you are interested in participating as a MENTOR/CONSULTANT, please fill out the form on the back of this page and mail or FAX it to me.

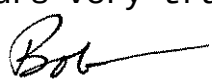
In advancing our goals, I know one thing – we can't do anything without your continued willingness to roll up your sleeves and pitch in to get the necessary work done. I encourage each of you to get involved in some way. If you are interested in becoming more involved call me, or call any officer or trustee. I promise you this – we will not turn away help.

At this time I want to specially thank Vice-Pres. Dave Goldense for another excellent Golf Outing at SPRING VALLEY C.C. on August 25th. It was a wonderful day, and a great way to get to know each other and many of our local judges.

In case you missed the recent announcement, Bill Hawal has scheduled a CLE Luncheon Seminar by Vocational Economic Analyst, Joseph R. Spoonster, on Wednesday, September 21, 1994, at the Ritz Carlton Grille Room (7th Floor). Call Bill (696-3232) if you still need a reservation.

I would be remiss if I didn't also thank Rick Alkire for handling the Newsletter again, and Bob Linton for assisting. I know it is a big job – especially chasing after the pres. for his column.

Yours very truly,



Robert E. Matyjasik

REGISTRATION FORM - VOLUNTEER MENTORS/CONSULTANTS

Name: _____

Address: _____

Phone: _____

Areas of Consultation: _____
(e.g.: Medical Malpractice, Legal Malpractice, Product Liability, Medical Products, Insurance Bad Faith, UM/URM, Workers Compensation, Social Security, Employment Termination, etc.)

Please return your registration form to:

Robert E. Matyjasik, Esq.
24441 Detroit Road, Suite 300
Westlake, OH 44145

Phone: 892-8439
FAX: 892-9623

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

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

UNINSURED/UNDERINSURED MOTORIST COVERAGE

1. Valente v. Nationwide Ins. Co., Case No. 66116 (Cuy. Cty., August 18, 1994) - For plaintiff: Claudia R. Eklund and for defendant: Albert J. Rhoa.

As a matter of law, the plaintiff's employer was found to have rejected uninsured motorist coverage. Pursuant to R.C. 3937.18 (C), the Court found there was no duty to re-offer uninsured motorist coverage upon renewal when it had been rejected during the preceding policy period. Thus, it was irrelevant that the formal rejection of uninsured motorist coverage was made six (6) months after the accident since there was no duty to re-offer the rejected uninsured motorist coverage.

2. Anderson v. Hartford Underwriters Ins. Co., Case No. 66018 (Cuy. Cty., July 28, 1994) - For plaintiff: Joseph DeRosa and for defendants: Johnny Martindale; Kevin Young; Daniel F. Petticord.

The trial court properly held in a declaratory judgment action that the insurer failed to prove that its insured expressly rejected raising his UM and UIM coverages in the same amount as his liability limits, even though such a rejection could be made orally. The Court also affirmed that in a wrongful death action, each wrongful death beneficiary is entitled to a per person award under Wood v. Shepard, (1988) 38 Ohio St.3d 86 and Savoie v. Granue Mutual Ins. Co. (1993), 67 Ohio St.3d 500. Here each daughter was entitled to $100,000 and a separate $100,000 was payable for the survivorship claim, less the $50,000 already paid in medical payments from a $100,00/300,000 policy.

3. Byers v. Liberty Mutual Ins. Co., Case No. 65985 (Cuy. Cty., August 4, 1994) - For plaintiff: William S. Jacobson and for defendant: James J. Turek; Nancy S. Zavelson.

In this declaratory judgment action, the Court of Appeals reversed the trial court's finding of uninsured motorist coverage, holding that UM coverage had been rejected orally. The Court held that the oral rejection corroborated the written contract, and therefore did not violate the parole evidence rule. The Court distinguished one of its earlier decisions in which an oral rejection was found to be inadmissible under that same rule because it varied the terms of the written contract of insurance.

The Court also found Ohio law to apply under Section 188 Restatement of the Law 2d, since all significant contacts took place here.

4. Dudash v. State Farm Mut. Auto Ins. Co., Case No. 66773 (Cuy. Cty., July 28, 1994) - For plaintiff: Mark L. Wakefield and for defendant: Harry Hentemann.

The Court held that the children of a decedent, who received no proceeds in a wrongful death settlement paid by the primary tortfeasor, could recover under their own underinsured motorist policies. The Court found coverage under the broad contractual language "we will pay damages for bodily injury and insured is entitled to collect from the owner or driver of an uninsured motor vehicle". According to the Court, the policy did not require that the bodily injury be sustained by an insured or that the covered automobile actually be involved in the accident.

5. Jocek v. Nationwide Mutual Fire Insurance Company, Case No. 64827 (Cuy. Cty., June 16, 1994) - For plaintiff: Timothy G. Kasparek and for defendant: Timothy D. Johnson; Gregory O'Brien.

In this combination declaratory judgment action, attorney fees, interest and breach of a duty to deal in good faith action, the trial court granted Plaintiff's declaratory judgment in a 2/1 decision, Judges Blackman and Spellacy held that under the facts of the instant case the employer did not expressly waive the underinsured and uninsured limits commensurate with its 2 Million Dollar liability limits. Essentially, the court held that under the facts of the instant case neither an oral or express waiver of limits was proven. However, the court affirmed the trial court's grant of summary judgment against the plaintiffs on their attorney fees and prejudgment interest claims. Judge Porter dissented on the basis that the facts supported the contention of Nationwide that there was express waiver and explained that the evidence demonstrated such waiver, particularly the contract itself which clearly set forth the minimum $25,000.00 limits for uninsured and underinsured protection. Judge Porter did not feel that there must be a separate document on which an express waiver of commensurate limits be recorded.

INSURANCE COVERAGE - DECLARATORY JUDGMENT

6. Lewis v. Motorists Ins. Co., Case No. 64978 (Cuy. Cty., August 18, 1994) Lexis No. 3626 - For plaintiff: Gerald Steinberg; Mark Gottfried; Thomas Mayerink; Sheldon Karp; Thomas G. McNally and for defendant: Joseph W. Pappalardo; Gary L. Nickolson.

The trial court properly determined as a matter of law that the insurer was equitably estopped from denying coverage based on a misleading cancellation notice suggesting coverage would

remain in effect for a limited period of time after the insured decided not to complete the purchase of the policy and had paid only a portion of the premiums. The trial court further found based on contract principles that the insurer could not accept the insured's offer to cancel after his death, since an offer is automatically revoked upon the death of the offerer.

ACCOUNTANT MALPRACTICE - COMPARATIVE NEGLIGENCE

7. American Nat'l Bank v. Touche Ross and Co., Case Nos. 65836, 65837 (Cuy. Cty., August 18, 1994) - For plaintiff: Marvin Karp; Richard J. Witkowski and for defendants: Richard McLaren, Jr.; Thomas L. Riesenberg; Pete C. Elliott; Wendy L. Toolin.

In this accounting malpractice case, the Court reversed summary judgment for the defendant, stating that the apportionment of fault under the comparative negligence statute is for the trier of fact, and cannot be disposed of as a matter of law on a motion for summary judgment. The Court also held that a question of fact existed as to whether the plaintiffs were within the foreseeable class to whom the accountants owed a duty of care.

STATUTE OF LIMITATIONS

8. Holmes v. Community Colleae of Cuvahoaa, Case No. 66025 (Cuy. Cty., August 11, 1994) - For plaintiffs: Michael V. Kelly; John A. Sivinski; Jack L. Petronelli; Michael A. Iacobelli and for defendants: Steven D. Williger; Michael L. Clark.

The trial court correctly granted summary judgment in favor of the defendants based on the statute of limitations where a woman alleged a heart condition caused by an earlier electrocution. The Court of Appeals applied the discovery rule set forth in O'Stricker v. Jim Walter Corp., (1983) 4 Ohio St.3d 84 since her injury was one that would not immediately manifest itself. However, the court found, as a matter of law, that the date of discovery occurred more than two years before she filed suit when she learned that her heart condition was potentially caused by being shocked.

MUNICIPAL LIABILITY

9. Baroudi v. Citv of Euclid, Case No. 66062 (Cuy. Cty., August 11, 1994) - For plaintiff: Charles V. Longo and for defendant: Richard A. Weigand.

The trial court incorrectly granted summary judgment for the City in a nuisance and negligence action based on the City's failure to properly barricade a construction site on a city street. Although the Court held that 45 minutes is insufficient time to put the City on notice that a nuisance exists, it nevertheless held

that issues of fact existed based on the affidavit of the plaintiff's expert that the City created the dangerous condition by not properly barricading the site.

10. Health v. City of Cleveland, Case No. **65702** (Cuy. Cty., July **14, 1994)** - For plaintiff: Thomas Mester; Joel Levin; James T. Schumacher and for defendants: Malcom C. Douglas.

The Court of Appeals reversed the trial court's decision granting the City of Cleveland summary judgment in this "fall-down" case due to a defective curb not within a crosswalk. The City of Cleveland argued that since the curb was not within a designated crosswalk it owed no legal duty to keep the curb safe for pedestrian traffic. Citing previous precedent from the Eighth District, the Court of Appeals held that "the duty imposed to keep the streets in repair and avoid creating a nuisance does not change when the path is not an 'ordinary traveled way.'" Further, the court found that the city had at the very least constructive notice of the nuisance. Accordingly, summary judgment was improperly granted.

MEDICAL NEGLIGENCE

11. Johnston v. University Mednet, Case No. **65623** (Cuy. Cty., August 11, **1994)** - For plaintiff: Michael F. Becker; Jeanne M. Tosti and for defendant: John V. Jackson; Joseph A. Farchione; Douglas G. Leak.

In this medical malpractice action, the Court denied a motion to supplement the appellate record with additional rulings and off the record conferences. The Court held that where the matters to be supplemented are in dispute, mandamus is the only appropriate remedy. The Court also held that medical opinion testimony was admissible, even though the witness admits on cross-examination that it is "educated speculation", where his direct testimony has ruled out other potential causes for the condition at issue and he testifies that the death was not likely caused by the condition alleged by the plaintiff. The Court also upheld the trial court's granting of a motion in limine concerning a physician twice failing her board certification examinations, where specific questions on that subject were not asked at trial.

12. Faber v. Sved, Case No. **65359** (Cuy. Cty., July **14, 1994)** - For plaintiff: J. Michael Monteleone; M. Jane Rua and for defendant: Beth Sebaugh; Janice L. Small; William D. Bonnezi.

The Court of Appeals affirmed a defense verdict in this medical malpractice claim. Plaintiff asserted error in the jury charge, in limiting the scope of cross examination of Defendant's medical experts and in the denial of a new trial because the

verdict was against the weight of the evidence. The court found no error in "the medical judgment" jury instruction which reads:

> A physician is not liable for what is commonly called a honest error or mistake in judgment unless he was negligent as I defined that term for you. A physician is not liable if he selects on of several generally approved procedures, diagnoses, or courses of treatment, even if the one he selects turns out to be wrong or one not favored by other physicians.

PREMISES LIABILITY

13. Nawal v. Clearview Inn, Inc., Case No. **65796** (Cuy. Cty., August **4, 19941** - For plaintiff: Edward Galska and for defendants: John J. McClandrige; Harry Sigmier; Katheryn Vierkorn.

The trial court erroneously granted a directed verdict for defendants at the conclusion of plaintiffs' opening statement. The Court found that plaintiff alleged sufficient facts showing that defendants created an unnatural accumulation of ice and snow from improper maintenance of their down spouts and gutters, and by salting one area but not another heavily trafficked area where the fall occurred.

WORKERS' COMPENSATION

14. Henderson v. Gould, Inc., Case No. **65772** (Cuy. Cty., July 21, **1994)** - For plaintiff: Scott I. Levy and for defendant: Thomas E. Giffels; Keith A. Savage.

In this workers' compensation appeal the employee sustained an injury when she slipped and fell at a bowling alley while participating in a bowling league with which the employer had some involvement. The court analyzed this fact situation against the requirements that an injury both arise out of and in the course of one's employment. The court reasoned that, looking to the totality of the facts and circumstances, the requisite causal connection between Plaintiff's injury and her employment necessary under the "arising out of" element did not exist because there was no evidence that the employer derived any benefit from Plaintiff's participation in the league among other facts specific to this case. Additionally, the "in the course of" element was not met since there was no evidence to demonstrate an association between the employment and the time, place and circumstance of the injury. As such, the trial court's ruling granting summary judgment was affirmed.

INSURANCE BAD FAITH

15. Woyma v. Beaovic, Case No. **64985** (Cuy. Cty., July **14, 1994) -** For plaintiff: Steven Walker and for defendant: Carolyn M. Cappel.

Plaintiff obtained a jury verdict in her favor against defendant insurance company in this breach of contract and bad faith claim. The Court of Appeals affirmed that aspect of the judgment which represented an award for breach of contact and bad faith damages.

Specifically, the court found sufficient evidence of the insurance company's waiver of the strict written notice requirement contained within its policy thereby excusing Plaintiff from strict compliance with the **24** month written notice requirement. The plaintiff had orally notified her agent (who denied that this notification took place) and was told that this was all that had to occur under her policy.

Further, the court held that the case would be remanded since the trial court erred in its definition of malice to support a punitive damage award since the second branch of the Preston v. Murty rule involving conscious disregard of the rights and safety of the plaintiff was omitted from the jury instruction on malice. Also, the trial court erred in failing to instruct the jury on damages arising from Plaintiff's inability to perform her usual activities.

AUTOMOBILE/PEDESTRIAN NEGLIGENCE

16. Ellis v. Jackson, Case No. **65661** (Cuy. Cty., June **9, 1994) -** For plaintiff: Coleman R. Lalka; Kevin Lister and for defendant: Roger Williams.

The Court of Appeals affirmed the trial court's granting of a new trial on the issue of damages in this automobile/pedestrian personal injury action. Plaintiffs tried their claim against the operator of the vehicle which struck Plaintiff while she was running outside of a crosswalk across the street to her bus at the end of a school day. The jury returned a verdict which was reduced for Plaintiff's comparative negligence which essentially before its reduction was a sum slightly higher than the special medical damages and **$2,000.00** for past pain and suffering, present pain and suffering, disability and disfigurement, amounting to approximately seven cents per day for Plaintiff's life expectancy. The trial court granted Plaintiffs a new trial feeling that such damages were wholly inadequate to compensate Plaintiffs for their injuries. The Court of Appeals upheld the trial court in this respect noting that there was no opposing medical evidence presented to the jury. Essentially the Court of Appeals agreed that the trial court did not abuse its discretion in determining that this particular verdict was contrary to the manifest weight of the evidence.

VERDICTS AND SETTLEMENTS

Speck v. Hevse
Court: Cuyahoga County Common Pleas
Settlement: July, 1993
Plaintiff's Counsel: John A. Lancione and Peter H. Weinberger
Defendant's Counsel: Stephen Hubb
Insurance Company: PIE
Type of Action: Medical malpractice.

Plaintiff suffered colles fracture to right wrist in a fall. Defendant doctor failed to reduce the fracture resulting in deformity of wrist that impaired function. Surgery corrected deformity and impairment.

Damages: Non-union of colles fracture of right wrist, open reduction internal fixation with osteotomy to repair deformity.

Plaintiff's Expert: Dr. Michael Treister

Settlement: **$90,000.00**

Geroqeone v. Gillota, Inc.
Judgment: December, **1993**
Plaintiff's Counsel: John A. Lancione
Defendant's Counsel: Robert Hurt
Type of Action: Auto accident.

Plaintiff, a 77 year old female was rear-ended by a delivery truck while she was stopped at a red light.

Damages: Soft tissue injuries to cervical spine, aggravation of pre-existing degenerative arthritis in cervical spine.

Plaintiff's Expert: Dr. John Nemunaitis

Defendant's Expert: Dr. Malcolm Brahms

Judgment: $65,000.00

Offer: $25,000.00 Demand: $40,000.00

Nellie Favnblit, A Minor, et al. v. Agnon School
Court: Cuyahoga County Common Pleas
Judgment: December, **1993**
Plaintiffs' Counsel: Nicholas J. Schepis
Defendant's Counsel: Warren Rosman
Type of Action: Premises Liability.

Plaintiff entered her gym class late. She saw the gym teacher wheeling a portable tetherball pole out of the gymnasium. When she walked up behind the apparatus, the base came loose from the pole, crushing her right foot. The gym teacher had suffered the same type of injury in

exactly the same manner six months before Plaintiff's injury. There was no evidence that the pole had been repaired after the gym teacher's injury. Defendant claims that Plaintiff was warned to stay away. Plaintiff denies hearing a warning.

Damages: Four fractured metatarsals, first metatarsal displaced. Volar forefoot deformity (permanent).

Plaintiffs' Expert: Dr. Allan J. Alexander (Podiatrist)
Thomas A. DiFranco, Ph.D. (Psychologist)
John Burke, Ph.D. (Economist)

Defendant's Expert: Dr. Richard Kaufman (Orthopedic Surgeon)
Barbara Hill (Psychologist)

Judgment: **$121,800.00** **($72,500** for Plaintiff and **$72,500** for Plaintiff's parents, less **16%** for Plaintiff's negligence)

Offer: **$30,000.00** Demand: **$200,000.00**

Kriso v. Kaiser Permanente
Settlement: January, **1994**
Plaintiff's Counsel: Stephen J. Charms and Carmen Naso
Defendant's Counsel: John Robertson
Insurance: Kaiser
Type of Action: Medical malpractice

Plaintiff sustained a lumbar burst fracture in a motorcycle accident in **1976**. Kaiser physicians mismanaged the fracture by failing to put him in a rigid brace. Over the ensuing **12** years, Plaintiff complained of radicular pain which was treated with narcotics and no CT scan or myelogram was performed. In **1989,** he was referred to a spine surgeon for evaluation who performed three remedial back surgeries which have resulted in a failed back.

Damages: Chemical dependency, severe chronic pain syndrome, neurological deficits in legs.

Plaintiff's Experts: Dr. Jennifer Kriegler (treating pain management physician)
Dr. Charles Nash (treating spine surgeon)
Rod Durgin, Ph.D. (vocational rehabilitation)

Defendant's Experts: Dr. Barry Greenberg, (spine surgeon)
Dr. John McCulloch (spine surgeon)
John Burrick, D.O.

Judgment: **$2,950,000.00** Settlement: Confidential

Offer: None Demand: $1,500,000.00

William Spivery, Administrator v.
Cardioloav Associates of Cleveland, Inc., et al.
Court: Cuyahoga County Common Pleas
Settlement: February, **1994**
Plaintiff's Counsel: Kent B. Schneider and Thomas J. Escovar
Defendants' Counsel: Patrick Murphy
Insurance Company: PIE
Type of Action: Medical malpractice

Single *38* year old male with no children presented at Marymount emergency room with sudden onset of chest pain. The treating cardiology group misdiagnosed his condition as non-cardiac in origin and released him from the hospital. One day later he died from the rupture of an aortic dissection. Decedent was survived by adult siblings and parents.

Damages: Death.

Plaintiff's Experts: Dr. Arthur J. Labovitz
Dr. Frank Ittleman

Defendants' Experts: Dr. Carol M. Buchter
Dr. David H. Cooke

Judgement: $1,000,000.00

Beverly Williams, Executor v. Meridia Huron Hospital
Court: Cuyahoga County Common Pleas
Settlement: February, **1994**
Plaintiff's Counsel: Kent E. Schneider and Thomas J. Escovar
Defendant's Counsel: James Malone
Insurance Company: None
Type of Action: Medical malpractice

Widowed *83* year old female underwent elective hip replacement surgery. During recovery in hospital, the central venous line came loose and Plaintiff died of exsanguination.

Damages: Death.

Plaintiff's Expert: Dr. Gene Coppa

Defendant's Expert: None

Settlement: $300,000.00

Sara Lay v. Firelands Community Hospital and Dr. McCrea
Settlement: February, **1994**
Plaintiff's Counsel: Stephen J. Charms and Leonard Davis
Defendants' Counsel: Stephen Walters and Jerome Kalur
Insurance: St. Paul for Firelands and PIE for Dr. McCrea
Type of Action: Medical malpractice

Plaintiff presented to Firelands Community Hospital in labor with first child. An external fetal monitor was placed upon arrival which showed a significant non-reassuring pattern of lack of beat-to-beat variability and late decelerations. The nurses failed to apprise the attending OB, Dr. McCrea, for approximately 3 1/2 hours. Dr. McCrea delivered this child by low forceps rather than performing emergency C-section. Also, Dr. McCrea failed to have a pediatrician or anesthesiologist in attendance to resuscitate the child. Dr. McCrea took approximately **14** minutes to intubate the baby. As a result, Sara Lay sustained severe hypoxic ischemic encephalopathy.

Damages: Cerebral palsy with severe mental retardation, seizure disorder, spastic quadriplegia, and G-tube.

Plaintiff's Experts: Dr. Marshall Klavan (OB/GYN)
Dr. Stephen Bates (pediatric neurologist)
Dr. James Sanders (treating pediatric neurologist)
Dr. Glenn Trippe (treating pediatrician)
Dr. J. P. O'Grady (OB/GYN)

Defendants' Experts: None

Settlement: *$3,050,000.00*

John Doe v. Dr. Roe (Confidential)
Settlement: March, **1994**
Plaintiff's Counsel: John A. Lancione
Defendant's Counsel: F. Theresa Dellick
Insurance: Cincinnati Insurance Company
Type of Action: Medical malpractice

Defendant optometrist failed to diagnose an inferior retinal detachment and failed to refer Plaintiff to an ophthalmologist or retinal specialist resulting in permanent loss of vision in left eye.

Damages: Permanent loss of vision in left eye.

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

Defendant's Experts: Dr. Jerome Sherman

Settlement: *$500,000.00*

Jane Doe v. ABC Hospital
Court: Cuyahoga County Common Pleas
Settlement: March, **1994**
Plaintiff's Counsel: **R.** Erick Kennedy
Type of Action: Medical negligence

Dispute as to appropriate surgery route in removal of brain tumor.

Damages: Brain injury resulting in cognitive disfunction in **14** year old girl. Occurred during brain surgery.

Plaintiff's Experts: Dr. Jules Hardy (Neurosurgeon specializing in the surgical removal of pituitary tumors)
George Cyphers (Vocational and Healthcare Rehabilitation)
Dr. John Burke (Economist)

Settlement: $1,300,000.00

Leech v. State Auto
Judgment: April, **1994**
Plaintiff's Counsel: John A. Lancione
Defendant's Counsel: Robert Koeth
Type of Action: Auto accident and UMI action.

Plaintiff was back seat passenger in a vehicle that veered off a single lane highway and struck a utility pole.

Damages: Post-concussion syndrome.

Plaintiff's Expert: Dr. Kathleen Quinn
John Kenny, Ph.D.

Defendant's Expert: Dr. Deborah Roricke

Settlement: $200,000.00

Roelof and Maria Oostra v. Schenkels All-star Dairy
Settlement: May. **1994**
Plaintiffs' Counsel: Paul M. Kaufman
Defendant's Counsel: None
Insurance Company: CIGNA
Type of Action: Auto accident

Milk company truck tanker truck jackknifed into path of Plaintiffs' vehicle causing extensive injuries.

Damages: Husband loss of eye, various neck and back injuries; Wife multiple fractures including both arms and shoulders, internal injuries.

Plaintiffs' Expert: Dr. John Bullock
Dr. James Binski

Defendant's Expert: None

Settlement: $860,000.00

John Doe. Incompetent v. Anonymous Hospital and Doctors
Settlement: June, **1994**
Plaintiff's Counsel: Paul M. Kaufman
Defendants' Counsel: (Confidential)
Insurance Company: (Confidential)
Type of Action: Medical malpractice

Plaintiff went to care giver complaining of chest pains radiating to shoulders and arms. Exam was done. Patient sent home told to contact his personal physician the next morning if symptoms persisted. Plaintiff saw personal physician next morning with same complaints. Plaintiff examined, told he had inflamed cartilage in chest, sent home. Later that day, he suffered massive MI, was without oxygen for five to seven minutes, sustained neurological damage. Plaintiff is incompetent and will never work again.

Damages: Neurological damage.

Plaintiff's Experts: Dr. Wayne Kawalek (Emergency Medicine)
Dr. Jeff Selwyn (Internal Medicine)
Dr. John Burke (Economist)

Defendants' Expert: Dr. Donavin Baumgartner

Settlement: **$1,900,000.00**

Patricia Riddle v. University MedNet
Court: Cuyahoga County Common Pleas
Verdict: June, **1994**
Plaintiff's Counsel: Paul M. Kaufman
Defendant's Counsel: Patrick Murphy
Insurance Company: PIE
Type of Action: Medical malpractice

Negligent repair of damage. Negligent placement of supra-pubic tube.

Damages: Permanent incontinence after damage to urethra during bladder suspension operation.

Plaintiff's Expert: Dr. Edward McGuiref (Urological surgeon)

Defendant's Expert: Dr. George Webster (Urological surgeon)

Judgment: **$400,000.00**

Offer: -0- Demand: $500,000.00

John Riffle, Administrator v.
Suraical Associates of Medina. Inc. et al.
Court: Medina County Common Pleas
Settlement: June, **1994**
Plaintiff's Counsel: Kent B. Schneider and Thomas **3.** Escovar
Defendants' Counsel: David Best
Insurance Company: PIE
Type of Action: Medical malpractice

Defendant surgeon performed laparoscopy procedure to lyse adhesions and inadvertently perforated small bowel. The doctors failed to diagnose the perforation for **24** hours. The plaintiff died from sepsis two days later after subsequent surgery to repair the perforation. Plaintiff was a single female survived by adult children.

Damages: Death.

Expert for Plaintiff: Dr. Gene Coppa

Expert for Defendant: None

Settlement: $550,000.00

Rachel Koch v. Peter V. Scoles. M.D.. et al.
Settlement: June, **1994**
Plaintiff's Counsel: Kent B. Schneider, Kerry S. Volsky and Jonathan Sobel
Defendants' Counsel: Patrick Murphy, Anna Carulas, Kris Treu and Kathryn Boselli
Insurance Company: PIE, University Hospitals of Cleveland
Type of Action: Medical malpractice

Defendant physicians surgically removed a veinous malformation in Plaintiff's left calf. In the post-operative order Defendant University Hospital's resident negligently ordered an overdose of heparin causing a bleed. The bleed resulted in the development of a compartment syndrome which was not contended the amputation resulted from veinous obstruction or infection, both known complications of the initial surgical procedure.

Damages: Above-knee amputation of left leg.

Plaintiff's Experts: Dr. Louis Queral (Vascular) Baltimore MD
Dr. Richard Lash (Pathologist) Cleveland OH

Defendants' Experts: Dr. Howard Pitluck (Vascular) Cleveland OH
Dr. Martin A. Torch (Orthopedist) Columbus OH
Dr. Kevin Bove (Pathologist) Cincinnati OH
Dr. Blaise Congeni (Infectious Disease) Akron OH

Settlement: **$625,000.00**

Anonymous v. Anonymous (Confidential)
Settlement: June, **1994**
Plaintiff's Counsel: Keith E. Spero
Defendant's Counsel: Jacobson, Maynard, Tuschman & Kalur
Insurance Company: PIE
Type of Action: Medical malpractice

Plaintiff underwent surgery for resection of sigmoid colon and surgeon unknowingly removed part of left ureter and this was not discovered for two days. Plaintiff later developed infection in left testicle which was caused by temporary N-tube becoming infected during subsequent treatment; surgeon had a tremor.

Damages: Resected left ureter necessitating surgical repair with remaining left ureter attached to right ureter; on-going testicle pain.

Plaintiff's Experts: Dr. Francis Barnes (Columbus OH)
Dr. Gerald Kaufer (Pittsburgh PA)
Dr. Harold Mars (Cleveland OH)

Defendant's Experts: Dr. Timothy Pritchard (Cleveland OH)

Settlement: $250,000.00

John Doe v. ABC Hospital
Court: Cuyahoga County Common Pleas
Settlement- June, **1994**
Plaintiff's Counsel: R. Eric Kennedy
Type of Action: Medical malpractice/wrongful death

Failure to monitor post-operative period.

Damages: Death of 5 year old.

Plaintiff's Expert: Dr. Mervin Jeffries (Anesthesiologist)

Settlement: $1,300,000.00

Manaie, Administratrix v. Western Reserve Care System
Court: Mahoning County Common Pleas
Settlement: July, **1994**
Plaintiff's Counsel: Peter H. Weinberger and John D. Liber
Defendant's Counsel: Larry Springer
Insurance Company: Self insured
Type of Action: Medical malpractice

Post surgery for bleeding ulcer, Decedent was on respirator and she extubated herself. A surgical resident did an esophagal intubation and Decedent suffered brain anoxia and died.

Damages: Wrongful death of single woman who left two adult siblings.

Plaintiff's Expert: Dr. Alan Delaney (Anesthesiology)

Settlement: $500,000.00

Jane Doe v. ABC Hosvital, et al.
Court: Cuyahoga County Common Pleas
Plaintiff's Counsel: William J. Kovak
Defendants' Counsel: Peter Marmaros and Victoria Vance
Insurance: PICO
Type of Action: Medical malpractice

Decedent went to the emergency room at ABC Hospital with chronic asthma. She allegedly refused treatment. Defendants were not appropriately treating her in the face of hypoxia.

Damages: Death.

Plaintiff's Experts: Dr. Richard Shara
Dr. Carolyn Ray

Defendants' Experts: Dr. Michael Frank
Dr. David Rosenberg
Dr. Charles Weiner

Settlement: $900,000.00