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CLEVELAND ACADEMY OF TRIAL ATTORNEYS
DECEMBER, 1995 NEWSLETTER

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PRESIDENT'S COLUMN

The Ninth Annual Holiday Dinner No-Dinner Dance on November **18** was a great success with reports that over $40,000.00 was raised for the various organizations comprising the Hunger Task Force. The Academy was proud to be a leading co-sponsor of the event, again this year, and will pledge to continue our support on behalf of this worthy cause into the future. Thanks to all the members who supported this year's effort.

This month's Newsletter highlights some outstanding lawyering by several of the Academy members and I commend to your reading several of the case summaries herewith. Of particular interest is Dennis Lansdowne's work on the Sprosty case wherein he utilized the nursing home patient's "Bill of Rights" to obtain a judgment including punitive damages, attorneys fees and now, on remand, is in the (enviable) position of trying a punitive damage issue where the compensatory claim has already been resolved. His partner and the Vice-president *of* this organization, Bill Hawal, has written a very interesting summary of his experience with Dr. Richard Kaufman as a defense expert. Please make sure to review that summary.

Further, noteworthy opinions in the area of insurance coverage, uninsured motorists and prejudgment interest are set forth herein in work done by Rick Alkire (our Treasurer) and his partner, Joel Levin, who seems to appear on every appellate decision out of their office.

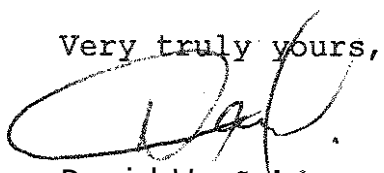
As the year ends and the holidays approach with their every-increasing rapidity, we can look back over the last few months and reflect proudly on the contributions of so many in opposing the provisions of House Bill H.B. 350. Its now-suspended momentum

demonstrates the need to re-commit ourselves to continuing the opposition to these kinds of destructive legislative innovations. As we learned from David Forest's presentation at the luncheon in October, H.B. **350** is the fully adorned "Christmas Tree Wish List" for all who would close the courthouse door to the victims of negligence, malpractice and defective products.

Watch for our announcement of luncheon programs in January, featuring the Editors of this Newsletter, the Bernard Friedman Litigation Institute to be held in March and, of course, all of the other luncheon programs to follow through the Spring.

On behalf of the Officers and Board of Trustees, **I** would like to wish each and everyone of you the happiest of holiday seasons and best wishes for the coming new year.

Very truly yours,



David W. Goldense

NEGLIGENT BURIAL

Frys v. City of Cleveland, Case No. 68273 (Cuy. Cty., October 26, 1995). For Plaintiff: Donald J. Moracz, Thomas R. Wolf and For Defendant: Robert J. Lally, Assistant Director of Law. Opinion by James J. Porter. David T. Matia concurs. Diane J. Karpinski dissents.

Plaintiff's deceased Mother was to be buried in a plot next to her own Mother. An adjacent vault had encroached upon the site, thus making the scheduled placement impossible without first moving the encroaching vault. Defendant's foreman decided to utilize a temporary grave site so that the burial could go forward as scheduled. Plaintiff's family accepted the plan. Due to poor weather conditions, plaintiff's deceased Mother was not buried permanently in the scheduled plot until twelve (12) days after the funeral. Plaintiff filed suit alleging negligence and intentional and negligent infliction of emotional distress. The trial court granted Defendant's Motion for Summary Judgment as it related to the intentional and negligent infliction of emotional distress claims but allowed a jury trial to proceed on the negligence claim. The trial court referred to plaintiff's negligence claim as one for "wrongful burial" and instructed the jury that liability could be premised upon the claimed failure to provide a "proper and dignified" burial. ?he jury returned a verdict in favor of the plaintiff in the amount of Ten Thousand Dollars ($10,000.00). The Court of Appeals reversed, holding that Ohio case law does not recognize a cause of action for wrongful burial. Moreover, the court held that there is no cognizable duty to provide a proper and dignified burial aside from appropriate contractual obligations. Accordingly, the Court of Appeals reversed and vacated the jury verdict and ordered that judgment be entered for the defendant. Judge Karpinski, in her dissent, was of the opinion that Ohio did indeed recognize a cause of action for wrongful burial under the case of McCracken v. Ziehm (April 20, 1925), Cuy. App. No. 5622, unreported, abstracted at 3 Ohio Law Abstracts, 573.

NEGLIGENT DISPLAY OPEN AND OBVIOUS CONDITION

Lazzara v. Marc Glassman, Inc., Case No. 68404, (Cuy. Cty., October 19, 1995). For Plaintiff: Sheldon D. Schecter and For Defendant: Jack M. Schulman. Per Curiam. Judge Karpinski dissents.

Plaintiff was shopping at defendant's store when she encountered a row of boxes stacked approximately nine high so that they almost reached the ceiling of the store. The plaintiff reached into one of the open sides of a box at the

level of her chin. When the plaintiff had removed the package containing four rolls of toilet tissue, the entire stack of boxes fell from above with the result that the plaintiff was struck between ten and twelve times by the falling boxes. Plaintiff had seen the boxes stacked in precisely the same manner on prior occasions but "just figured it was okay." The trial court granted the Defendant's Motion for Summary Judgment. The Court of Appeals affirmed, holding that the "open and obvious doctrine" applied to the facts of the case and that, accordingly, an owner or occupier of property owes no duty to warn invitees entering the property of an open and obvious danger on the property. In her dissent Judge Karpinski stated that the open and obvious doctrine did not apply to a situation where a store intentionally displayed a product in a manner that subjected the customer to risk by the very nature of the display. Judge Karpinski was of the opinion that the three cases relied upon by the majority were inapplicable because none of those cases dealt with a store display that invited the patron to encounter the risk.

UNINSURED MOTORIST COVERAGE

Sanders v. Motorists Mutual Insurance Company, Case No. 683241'68553 (Cuy. Cty., October 19, 1995). For Plaintiff: Leon M. Plevin, Joel Levin, David M. Paris, Sandra J. Rosenthal and For Defendant: Joseph W. Pappalardo, John T. Murphy. Opinion by James M. Porter. Judge Karpinski concurs. David T. Matia dissents.

Plaintiff was a passenger in a friend's uninsured motor vehicle. The friend lost control of the vehicle and plaintiff sustained serious injury in the resulting accident. Plaintiff's Father was an employee of Ed Wolfe Shaker Saab, Inc. The Father's employer had supplied a car to the former for business and personal use, The car was covered by a comprehensive general liability insurance policy with defendant. The named insureds on the policy were Ed Wolfe Shaker Saab, Inc., Wolfe Imports, Inc., Donald Wolfe, Edward W. Wolfe and Ray G. Longhitano. The policy defined "persons insured" under the uninsured motorist portion of the policy as follows: "the named insured and any designated insured and, while a resident of the same household, the spouse and relatives of either..." Defendant denied uninsured motorists coverage claiming that plaintiff did not fall within the policy definition of "persons insured." Plaintiff filed a declaratory judgment action and both parties filed opposing motions for summary judgment. The trial court overruled defendant's motion for summary judgment and granted plaintiff's motion. At a later trial on the issue of damages, the jury returned a verdict in

favor of plaintiff for One Hundred and Eighteen Thousand Dollars ($118,000.00). The Court of Appeals found that there was an ambiguity in the policy because while Father was not specifically a named insured in the policy, Father's employer, Ed Wolfe Shaker Saab, Inc., was a named insured. In affirming the trial court's' reliance upon King v. Nationwide Insurance Company (1988), 35 Ohio St. 3d 208, which held that uninsured motorists coverage exists where the policy contains family language but the named insured is a corporate legal entity, the Court of Appeals ruled that where a policy of insurance is reasonably susceptible of more than one interpretation, it will be construed strictly against the insurer and liberally in favor of the insured. The court further reasoned that since the named corporate insureds themselves could not occupy an automobile nor suffer bodily injury or death, naming them as insureds is meaningless unless the coverage extended to their employees. Thus, the policy could be construed, because of the residential household clause, to refer to the relatives residing with the employees of the corporations. Judge Matia dissented for the reason that it was his opinion that the construction of the insurance contract adopted by the majority was unreasonable. Judge Matia commented that any member of plaintiff's family need not obtain automobile insurance as they're completely covered regardless of how and where they are injured by an uninsured motorist by virtue of the fact that any one of the cars at the dealership carries UM coverage for each of the dealership's employees and their resident family members.

PREJUDGMENT INTEREST - INSURANCE COVERAGE

Lovewell v. Physicians Insurance Company of Ohio and Satayathum, M.D., Case No. 68542 (Cuy. Cty., October 19, 1995). For Plaintiff: Paul M. Kaufman, For Defendant PICO: Todd A. Cook, Gary W. Hammond and For Defendant Satayathum, M.D.: Sam A. Zingale. Opinion by Timothy E. McMonagle. Leo M. Spellacy and Ann Dyke concur.

Plaintiff brought declaratory judgment action against both defendants, seeking a declaration by the court that an award of prejudgment interest made to him in a malpractice action was covered under a policy of professional liability insurance issued by defendant PICO to Defendant Dr. Satayathum. Satayathum, M.D., filed a cross-claim against Defendant PICO. Plaintiff and Defendant Satayathum were granted summary judgment. Defendant PICO appealed on the grounds that its policy did not explicitly provide coverage for the payment of prejudgment interest and because prejudgment interest is not remedial in nature but, rather, is a penalty for a party's failure to make a good faith

effort to settle a case. With regard to this latter ground, Defendant PICO contended that the failure to comport with the good faith settlement requirement of R.C. Section 1343.03 was as a result of Defendant Satayathum, M.D., withholding his consent to settlement. The Court of Appeals held that pursuant to the language in the Supreme Court case of Digital and Analog Design Corp. v. N. Supply Company (1992), 63 Ohio St.3d 657, which states that "prejudgment interest...is designed to compensate the aggrieved party for the delay encountered by the failure of the tortfeasor to negotiate in good faith," Revised Code Section 1343.03, the Ohio Prejudgment Interest Statute, does not constitute a penalty but, rather, is wholly compensatory and indeed equitable in nature. With regard to PICO's claim that it was Dr. Satayathum who refused to settle the case and, therefore, violated the Prejudgment Interest Statute, the Court of Appeals held that Dr. Satayathum's right to withhold consent was unqualified in the policy. The Court of Appeals reasoned that PICO could very well have placed the risk of withholding consent to settlement on the insured by so providing in the plain language of the policy.

PRODUCTS LIABILITY - SUPPLIER

Lassiter v. MacWorth G. Rees Co., et al., Case No. 68535 (Cuy. Cty., October 19. 1995). For Plaintiff: John C. Meros and For Defendant Allied Electric Company, Inc.: Larry C. Greathouse. Opinion by Leo M. Spellacy. Ann Dyke and Timothy E. McMonagle concur.

Plaintiff worked at Viking Caulking Gun Company and was told to operate a power press manufactured by the Federal Press Company in 1952. Sometime after 1970, the machine was modified so that the method of activation was changed from a foot treadle to a single palm button located 29 1/2' from the base of the machine on the right side. Plaintiff alleged that Defendant Allied was responsible for modifying the press. Both Allied and Viking are owned by Leonard Stratton. Viking was purchased by Stratton in 1968. All electrical work performed at Viking after that point was done by Allied. Defendant Allied moved for summary judgment asserting that it was not a supplier pursuant to the definition set forth in R.C. 2307.71(O)(1)(b). Allied further contended that, even if it was found to be a supplier, it was not negligent. The trial court granted Allied's Motion for Summary Judgment. The Court of Appeals reversed, finding that there existed ample evidence in the record to infer that Allied did indeed perform the work done to modify the activation system of the press in question. Moreover, because Allied's owner stated that Allied would have installed the button, Allied was held to be a supplier

as defined by R.C. 2307.71(O)(1)(b). The Court of Appeals then went on to hold that as a supplier, Allied could only be found liable if it was negligent in proximately causing harm to the plaintiff. Toward the negligence inquiry, the Court of Appeals reviewed the facts surrounding the plaintiff's injuries including the fact that the safety cage which covered the single palm button activation system had been removed from the press. The Court of Appeals held that it was a question of fact as to whether Allied breached its duty to the plaintiff by the use of the single palm button system of activation.

RONGFUL DI ARGE - HANDBOOKS

Smith v. Counsel for Opportunities in Greater Cleveland, Case No. 68032 (Cuy. Cty., October 12, 1995). For Plaintiff: Thomas M. Moroney and For Defendant: Edward R. Stege. Opinion by Sara J. Harper. David T. Matia concurs. August Pryatel concurs in judgment only.

Plaintiff was hired as a Human Services/Outreach Worker. At that time, plaintiff received a personnel policy manual which provided defendant with the exclusive right to make employment decisions, including the termination of employees. Plaintiff also signed a new employee checklist which concluded with the advisory: "I understand the above are general guidelines and may be changed as business necessity requires. The above do not constitute a written contract and I understand my employment is for no definite period and may be terminated at will." On or about December 28, 1992, plaintiff received an "unacceptable" rating on her performance appraisal report. Moreover, on or about October 18, 1993, a meeting was held wherein it was alleged that plaintiff was falsifying documents relating to the Customer Outreach Opportunity Program. Immediately thereafter defendant terminated plaintiff's employment. Plaintiff filed suit aiieging breach of implied contract, promissory estoppel and negligent and intentional infliction of emotional distress. The trial court granted Defendant's Motion for Summary Judgment. In affirming the trial court, the Court of Appeals held that defendant's use of the disclaimer in the employee handbook precluded the use of that manual to demonstrate an implied contract of employment absent fraud in the inducement. With regard to the claim for promissory estoppel, the Court of Appeals held that the plaintiff could only recover if she could meet the threshold requirement of demonstrating reasonable and foreseeable detrimental reliance upon the progressive disciplinary process contained in the employee handbook. The Court of Appeals found that the policy manual stated in the disciplinary action section that depending on the "nature

and seriousness of the offense" the defendant may take any action from verbal reprimand the determination. Moreover, despite the policy of progressive discipline, the handbook specifically stated that the procedure need not be followed in cases involving serious misconduct. Under these facts, the Court of Appeals concluded that it was unreasonable for the appellant to believe that for every act requiring discipline, she would be subject to the progressive disciplinary steps prior to termination.

NURSING HOME VIOLATION OF PATIENT'S RIGHTS-PUNITIVE DAMAGES

Sprosty v. Pearlview, Inc., d.b.a. Corinthian, Inc., Case No. 67704, 67728, 67997 (Cuy. Cty., September 21, 1995). For Plaintiff: Dennis R. Lansdowne, Ellen Simon Sacks and for Defendant: Frederick P. Vergon, Jr., and Benjamin L. Moltman, III. Opinion by Leo M. Spellacy. John T. Patton and Terrence O'Donnell concur.

Plaintiff brought action against Defendant Nursing Home for personal injuries and wrongful death resulting from alleged negligence and violation of plaintiff's rights as a nursing home resident. The latter cause of action was based on R.C. 3721.10 to 3721.19. Specifically, R.C. 3721.17(I) provides that "any resident whose rights under Sections 3721.10 to 3721.17 of the Revised Code are violated has a cause of action against any person or home committing the violation...the court may award actual and punitive damages for violation of these rights. The court may award to the prevailing party reasonable attorneys fees limited to the work reasonably performed." The jury returned a verdict in favor of the plaintiff in the sum of $350,000.00 for personal injuries and an additional $50,000.00 for wrongful death. Moreover, the jury found that plaintiff was entitled to punitive damages. The trial court later awarded $100,000.00 in punitive damages and an additional sum in the amount of $158,218.00 as reasonable attorneys fees. Defendant Nursing Home appealed on the basis that the statutory sections did not create a private right of action but created only an administrative remedy. Additionally, the defendant argued that under the statute in question, punitive damages and attorneys fees could not lawfully be awarded unless there was a demonstration of actual malice. With regard to this latter contention, defendant cited Revised Code Section 2315.21 which governs the recovery of punitive damages in tort actions. Plaintiff filed a cross appeal, arguing that the jury should have been permitted to determine the amount of punitive damages rather than the trial judge. The Court of Appeals held that R.C. 3721.17(1) expressly provides for a cause of action by a resident

against any person or home that has been found to have violated their rights. Additionally, the Court of Appeals held that R.C. 3721.17(I) expressly provides for an award of punitive damages and attorneys fees and that the malice requirement in R.C. 2315.21(D) is expressly limited by Subsection (D)(1) of that section which states that R.C. 2315.21 does not apply to the extent that another Section of the Revised Code expressly provides for punitive damages in a tort action on a basis other than that the actions or omissions of the defendant demonstrate malice, aggravated or egregious fraud, oppression or insult. However, the Court of Appeals reversed the trial court and agreed with plaintiff that under the case of Zoppo v. Homestead Insurance Company (1994), 71 Ohio St.3d 552, the requirement that the trial court determine the amount of punitive damages as provided for in Revised Code Section 2315.21(C)(2) is unconstitutional. Therefore, the Court of Appeals remanded the case back to the trial court so that the jury could determine the amount of the punitive damages.

E X VERAGE - YOUTHFUL OPERATOR

Wood v. McQueen, Case No. 68472 (Cuy. Cty., September 21, 1995). For Plaintiff: Richard C. Alkire, Joel Levin and For Defendant Liberty Mutual Fire and Insurance Company: Roy A. Hulme, Clifford C. Masch. Opinion by Joseph J. Nahra. Leo M. Spellacy and Patricia Blackmon concur.

Plaintiff was injured in an automobile accident in Ashtabula, Ohio. Defendant driver of the other car was 17 years old at the time of the accident. When the defendant was asked his address by the investigating police officer defendant reported the same as being that of his mother who resided in Cleveland, Ohio. The defendant informed the officer that he was driving a friend's car but that he did not have a license. Defendant further informed the police officer that his mother had "put him out of the house". The friend subsequently admitted that defendant was staying with her but both she and defendant agreed that Defendant did not have permission to use the car. Defendant's Mother had a policy of automobile liability insurance with Liberty Mutual. The Liberty Mutual policy extended coverage to the Mother or any "family member" who was a resident of mother's household. The policy also contained an exclusion for any vehicle other than the covered auto which is furnished or available for the regular use of any "family member." Finally, while not contained in the actual policy, the Declarations Page also contained the term "no youthful operators." Plaintiff filed suit against defendant and her friend. Liberty Mutual intervened asking for a declaration that it owed neither coverage nor a duty to defend under

mother's policy of insurance. Both Liberty Mutual and plaintiff submitted motions for summary judgment. The trial court granted Liberty Mutual's motion for summary judgment finding that the "exclusion" for "youthful operators" was not ambiguous and, therefore, Liberty Mutual owed neither coverage nor a duty to defend. The Court of Appeals reversed holding that the "no youthful operator" language contained in the Declarations Page was not a part of the actual policy and therefore not an exclusion. The Court of Appeals' reason that the notation of no youthful operators operated only as a basis for Liberty Mutual's computation of the premium. Moreover, the Court of Appeals held that even if the phrase contained in the Declarations Page could be interpreted as an exclusion, the language was ambiguous since the policy never defined the term "youthful operator." With regard to the exclusion for driving cars other than the insured vehicle which are furnished or available for the family member's regular use, the Court of Appeals held there existed sufficient evidence that the exclusion did not apply because it had been adduced that defendant had never previously driven the friend's car and did not have permission to drive the car on the occasion of the accident. Finally, the Court of Appeals ruled that there existed sufficient equivocation in defendant's responses to the police along with the fact that he had left his mother's home on previous occasion and indeed returned to his mother's home after the accident so as to raise a genuine issue of material fact as to whether defendant was a "family member" within the meaning of the policy.

GENERAL CONTRACTORS - ACTIVE PARTICIPATION

Simko v. Lee Holmes, Inc., Case No. 68372 (Cuy. Cty., September 14, 1995). For Plaintiff: Mark F. Kruse and For Defendant: Lynn A. Lazzaro. Opinion by James J. Porter. Diane Karpinski and John V. Corrigan concur.

Plaintiff filed suit against defendant and its subcontractor for the latter's negligent placement of a hose across plaintiff's driveway. The hose extended from a compressor across the sidewalk in front of plaintiff's residence. The compressor supplied air and the cord power to a job site where Defendant Lee Holmes was constructing a residence. After the trial court granted the general contractor's motion for summary judgment, plaintiff and the subcontractor entered into a stipulated judgment entry finding in favor of the plaintiff and against subcontractor for $25,000.00. Plaintiff then appealed the grant of summary judgment in favor of Defendant Lee Holmes, Inc. The Court of Appeals affirmed finding that Lee Holmes, Inc., the general contractor, did not actively participate in the job

operation involving the injury-causing episode. The Court of Appeals ruled that the job operation which caused the injury involved the placement of the hose from the compressor. The Court of Appeals relied not only upon Cafferky v. Turner Construction Company (1986), 21 Ohio St.3d 110, but also upon the recent decision in Bond v. Howard Corporation (1995), 72 Ohio St.3d 332. Bond refined the meaning of active participation. The Bond Court stated that active participation requires the general contractor to have directed the activity which resulted in the injury and/or to have given or denied permission for the critical acts that led to the employee's injury rather than merely exercising a general supervisory role over the project. The Court of Appeals further commented that it saw no significant distinction between the basis for the general contractor's liability to an injured employee of the subcontractor and injury to a third person such as the plaintiff.

EMPLOYER DEFAMATION OF EMPLOYEE AND PREJUDGMENT HEARING REQUIREMENT

Kluss v. Alcan Aluminum Corporation, Case No. 66255/68459, (Cuy. Cty., September 14, 1995). For Plaintiff: Andrew L. Johnson, Jr., and For Defendant: Irene C. Keyse-Walker, Alfred R. Cowger, Jr. Opinion by James M. Porter. John Patton and Sara Harper concur.

Plaintiff was terminated from his employment with Defendant Alcan Aluminum for allegedly taking kickbacks from a trucking company of which plaintiff was allegedly Vice-President of Finance. Plaintiff alleged that the conflict of interest claim was subterfuge and that his superiors wanted to get rid of plaintiff because the latter had not gone through proper channels in sending critical suggestions to Alcan's Montreal office. The day after plaintiff's termination, the Alcan Manager prepared a memorandum under his signature addressed "to all Alcan Ingot and Alcan Recycling Employees", stating: "this is to advise that Geoffrey Kluss (Plaintiff) is no longer employed by Alcan as of April 3, 1991. It had come to our attention that he was employed by another company and that this company was on the list of transportation companies to use. All matters concerning warehousing and onward transportation should be referred to me until further notice." The memorandum was disseminated to everyone on the 7th floor of Alcan Headquarters and it was faxed to Alcan's offices in Los Angeles, Dallas and Atlanta. A copy of the memo was also posted on the company bulletin board. Plaintiff filed suit against Defendant Alcan on theories of promissory estoppel and defamation. Dr. John Burke, an economist, testified

that plaintiff's economic losses from being discharged were $339,759.00 based on his past earning capacity and inability to obtain similar employment. The jury returned a verdict in favor of the plaintiff on the defamation claim in the amount of $400,000.00. The jury found in favor of the defendant on the promissory estoppel claim. The Court of Appeals affirmed the entry of judgment upon the jury's verdict. The court found that economic loss occasioned by defamation was compensible if believed by the jury and, indeed, could be a component of damage for injury to reputation. Plaintiff had assigned as error in his cross appeal the trial court's failure to hold an oral hearing on his motion for prejudgment interest. The Court of Appeals held that under Moskowitz v. Mt. Sinai Medical Center (1994), 69 Ohio St.3d 638, the trial court **must conduct a hearing** on a prejudgment interest motion. Thus, the Court of Appeals reversed and vacated the trial court's denial of plaintiff's motion for prejudgment interest and remanded that issue to the trial court.

APPEAL - CONSENT JUDGMENT ENTRY

Wells v. Spirit Fabricating Limited, Case No. 67940 (Cuy. Cty., September 7, 1995). For Plaintiff: William A. Karlin, Paul E. Carpenter and For Defendant: William P. Farrall, Andrew J. Dorman. Opinion by Diane Karpinski. John Patton concurs. Patricia Blackmon dissents.

Plaintiff and one Paul Marzola who were injured in an automobile accident which resulted when their vehicle was rear-ended by Defendant Robert Puleo. At the time that he rear-ended plaintiff's vehicle, Defendant Puleo was on his way to a medical facility due to an injury he sustained at work. Plaintiff filed suit against Puleo and Puleo's employer, Defendant Spirit Fabricating Limited, under theories of negligence and *respondeat superior*. Plaintiff settled his claim with Defendant Puleo and dismissed it with prejudice. Plaintiff and Defendant Spirit filed cross motions for summary judgment. The trial court overruled both motions finding that there existed a genuine issue of material fact as to whether Defendant Puleo was acting within the scope and course of his employment when he rear-ended plaintiffs' vehicle. The trial court also impliedly ruled against Defendant Spirit's argument that it was exonerated from any further liability as a result of the release executed with Defendant Puleo. On May 7, 1991, the jury found in favor of the plaintiff and in a special interrogatory found that Defendant Puleo was acting within the scope of his employment with Defendant Spirit when the collision occurred. It was apparent from the record that the jury resolved only the issue of liability. However, the

trial court never entered a Journal Entry on the prior trial and did not clarify the scope of the issues. Indeed, nothing further happened with regard to the case for 21 months. Finally, the parties entered into an Agreed Judgment Entry, journalized by the trial court on August 30, 1994. The agreed entry stated "it is hereby agreed between the parties that judgment is rendered in favor of Christine Wells and against Spirit Fabricating, Ltd., in the amount of $250,000.00." However, the Agreed Journal Entry did not resolve the claims of co-plaintiff Marzola. Defendant Spirit appealed the agreed entry on September 23, 1994. The Court *of* Appeals dismissed the Appeal for lack of a final appealable order since the agreed entry did not expressly resolve all claims for all parties. The appeal was reinstated after the parties submitted a Nunc *Pro* Tunc Agreed Judgment Entry journalized on March 20, 1995. The Nunc *Pro* Tunc Agreed Judgment Entry dismissed the claims of Plaintiff Marzola with prejudice as follows: "It is agreed by the parties that the claim of plaintiff, Paul Marzola, as raised in Count III of the Third Amended Complaint, is dismissed with prejudice. It is also hereby agreed between the parties that judgment is rendered in favor of Christine Wells only against Spirit Fabricating, Limited in the amount of $250,000.00." Defendant Spirit then appealed the Nunc *Pro* Tunc Agreed Judgment Entry assigning as error denial of their motion for summary judgment. The Court of Appeals affirmed on the basis that a party may not appeal a judgment to which it has agreed. The Court of Appeals stressed that both the August 30, 1994, Agreed Entry and the March 20, 1995, Nunc *Pro* Tunc Agreed Entry failed to contain any language that Defendant Spirit preserved its right to appeal on the issue of liability. Judge Blackmon dissented because of her view that there existed sufficient evidence in the Record to demonstrate that the intent of the parties was to preserve Defendant Spirit's right to appeal on the issue of liability.

VERDICTS AND SETTLEMENTS

Jane Doe v. ABC Hospital
Court: Ashtabula County Common Pleas Court No. 93CV000357
Settlement: Unknown
Plaintiff's Counsel: Charles Kampinski and Christopher M. Mellino
Defendant's Counsel: Donald Switzer and Jerome Kalur
Type of Action: Medical Malpractice

Child born not breathing and instead of calling pediatrician, defendant called a respiratory therapist who had never intubated an infant before and failed to intubate. As a result of lack of oxygen during the birth process, was born brain damaged.

Damages: Severe and irreversible deficits in both mental and motor function.
Plaintiffs Experts: Melvin Ravita, M.D. (ob/gyn), Max Wiznitzer, M.D. (pediatric neurologist), George Cyphers (certified rehab counselor), John Burke, Ph.d. (economist).
Defendant's Experts: Michael Johnston, M.D. (pediatric neurologist), Curtis Cetrulo, M.D. (ob/gyn), Herbert Grossman, M.D. (pediatric neurologist), Steven Donn, M.D. (neonatologist), Doreen Spak (rehab counselor), Mark Scher, M.D. (pediatric neurologist), Alan Pinshaw, M.D. (ob/gyn).
Settlement: $2,050,000.00

William Doe v. ABC Clinic
Court: Cuyahoga County Common Pleas
Settlement: March, 1995
Plaintiff's Counsel: Peter H. Weinberger, SPANGENBERG, SNIBLEY, TRACI, LANCIONE & LIBER
Defendant's Counsel: None listed
Insurance Company: Self-insured
Type of Action: Medical Malpractice/Wrongful Death

After coronary bypass surgery, the decedent exsanguinated 2700 cc's of blood into his cardiotomy reservoir. Emergency surgery revealed a leaking proximal angstanosis from a suture that had become untied and unraveled.

Damages: Decedent left five adult children, ages 30-40, and a minor child, age 14 from a second marriage.
Plaintiff's Experts: Withheld
Defendant's Experts: Robert Karp,D., Chicago (cardiothoracic surgery)
Settlement: $1,700,000.00

Maria McAleese v. ACME Aarsena
Court: Cuyahoga County Common Pleas
Settlement: March, 1995
Plaintiffs Counsel: Mitchell A. Weisman, WEISMAN, GOLDBERG & WEISMAN CO., L.P.A.
Defendant's Counsel: Teresa Stanford
Insurance Company: None Listed
Type of Action: Rear-end collision
Damages: Lumbar bulging disc requiring disectomy (outpatient procedure).
Plaintiffs Experts: Dr. Fassil Zahrawi, Orthopedic Surgeon
Defendant's Experts: None Listed
Settlement: $50,000.00

Jane Doe v. ABC Hospital
Court: Ashtabula County Common Pleas Court
Settlement: April 19, 1995
Plaintiffs Counsel: Charles Kampinski and Christopher Mellino
Defendant's Counsel: Donald Switzer and Jerry Kalur
Insurance Company: St. Paul and PIE
Type of Action: Medical Malpractice

Plaintiffs mother admitted into hospital in labor. The monitor began demonstrating late decelerations which became more frequent and more prolonged throughout the morning. The defendant obstetrician was present when plaintiff was having severe late decelerations. Rather than performing a cesarean section delivery, defendant waited for the baby to deliver vaginally.

Damages: Plaintiff was born severely depressed with brain damage as well as cognitive and motor dysfunction.
Plaintiffs Experts: Dr. Horowitz (pediatric neurologist), George Cyphers (certified rehab counsel), John Burke, Ph.D. (economist)
Defendant's Experts: Steven Donn (neonatologist), John Heavenrich (annuitant), Frank Boehm, M.D. (ob/gyn)
Settlement: $3,625,000.00

Lenore Lind v. Comprehensive Health Care of Ohio. Inc.. et al
Court: Lorain County Common Pleas Court No. 93CV110798
Settlement: May 31,1995
Plaintiffs Counsel: Charles Kampinski and Christopher M. Mellino
Defendant's Counsel: Robert Orth, Burt Fulton, Lynn Moore, Joseph Feltes, Richard Reichel, John Gallagher, Robert Quandt, Eric Zagrans and John Scott
Insurance Company: PICO and PHICO
Type of Action: Medical Malpractice

Plaintiff was put on a ventilator on April 23, 1992. For reasons unknown, Dr. Dacha took her off the ventilator on the morning of May *6*, 1992. Because Mrs. Lind was still having problems breathing and now had no assistance from the ventilator, Dr. Dacha wrote an order in the chart that no sedatives be given to Mrs. Lind. However, Mrs. Lind was given Demerol twice in direct or contravention of Dr. Dacha's order. The next day, Mrs. Lind was sent to the radiology department for a procedure called a HIDA Scan. She suffered respiratory distress and her blood pressure dropped dangerously low. The procedure was terminated and she was returned to her room. They repeated this test a second time and plaintiff suffered respiratory arrest and stopped breathing.

Daiiages: Plaintiff is now a paraplegic, confined to a wheelchair and dependent on others for her normal daily activities. She has a husband and three children.
Plaintiffs Experts: Dennis Mazal, M.D. (pulmonologist), Howard Tucker, M.D. (neurologist), John Burke, Ph.D., George Cyphers.
Defendant's Experts: Jonathan Glauser, M.D. (E.R. doctor), John Gardner, M.D. (neurologist), Ronald Stiller, M.D. (pulmonologist), Lawrence Martin, M.D. (pulmonologist), Donald Vidt, M.D (nephrologisit), Anthony DiMarco, M.D. (pulmonologist), Roy Ferguson, M.D. (gastroenterologist).
Settlement: In excess of $1 1,000,000.00

Eva Simmons. et al v. Burt Leavitt
Court: Cuyahoga County Common Pleas
Settlement: June, 1995
Plaintiff's Counsel: Mitchell A. Weisman, WEISMAN, GOLDBERG & WEISMAN CO., L.P.A.
Defendant's Counsel: Robert Hurt
Insurance Company: State Auto Insurance Co.
Type of Action: Rear-end collision.
Damages: Soft tissue injuries to the neck and low back.
Plaintiffs Experts: Dr. Jeffrey Morris, Orthopedic Surgeon
Defendant's Experts: None Listed
Settlement: $43.500.00

Names Withheld
Court: Cuyahoga County Common Pleas
Settlement: June, 1995
Plaintiffs Counsel: Peter H. Weinberger, Justin, Madden, SPANGENBERG, SHIBLEY, TRACI, LANCIONE & LIBER
Defendant's Counsel: Withheld Due to Confidential Nature of Settlement
Insurance Company: Withheld Due to Confidential Nature of Settlement
Type of Action: Medical Malpractice

Plaintiff suffered a heart attack after complaining of heartburn for 18 hours, 4 days after she had undergone elective urology surgery. She was a bypass patient with history of peptic ulcer disease.

Damages: Anoxic encephalopathy
Plaintiffs Experts: Raymond Magsrian, M.D. (cardiologist), Wanda Burns, R.N.
Defendant's Experts: Richard Watts, M.D.
Settlement: $2,500,000.00

Dovle v. Fairfield Machine. et al
Court: Cuyahoga County Common Pleas
Settlement: June 16, 1995
Plaintiffs Counsel: John R. Liber. II. and Michael T. Pearson - SPANGERNBERG, SHIBLEY, LANCIONE & LIBER
Defendant's Counsel: Donald Moracz and Thomas Wolf
Insurance Company: Not applicable
Type of Action: Fraud, interference with contract.

Defendant was looking for health insurance and misrepresented the claims history of its employees to plaintiff. When the truth was discovered, insurance was denied. Defendant then filed a meritless complaint with the Department of Insurance. Although it was dismissed, plaintiff was fired.

Damages: Past and future wage and fringes
Plaintiffs Experts: John F. Burke, Jr., Ph.D.
Defendant's Experts: None listed
Settlement: Demand: $250,000.00; Offer, $-0-, Judgment: $1,400,000.00

Cheairs v. Marymount, et al
Court: Cuyahoga County Common Pleas Court
Verdict: July, 1995
Plaintiffs Counsel: William S. Jacobson, NURENBERG, PLEVIN, HELLER & McCARTHY
Defendant's Counsel: John V. Jackson
Insurance Company: PIE
Type of Action: Medical Malpractice

Plaintiffs decedent was admitted to Marymount Hospital with respiratory problems and died seven (7) hours later from a massive pulmonary embolism which defendants had failed to diagnose and treat.

Damages: Death
Plaintiffs Experts: Kenneth McCarty, M.D. - Internist, Pathologist
Defendant's Experts: Bruce Sherman, M.D. - Pulmonologist
Verdict: $680,000.00

Gloria Riffie, et al v. Maroun Kattar, et al
Court: Cuyahoga County Common Pleas
Settlement: July, 1995
Plaintiffs Counsel: Mitchell A. Weisman, WEISMAN, GOLDBERG & WEISMAN CO., L.P.A.
Defendant's Counsel: Lynn Lazzaro
Insurance Company: State Farm Insurance Company
Type of Action: Auto: left of center.
Damages: Cervical discectomy infusion
Plaintiffs Experts: Dr. Matt Likavec, Neurosurgeon
Defendant's Experts: None Listed
Settlement: $92,500.00

Clark Kellogg v. Henry Eisenberg, M.D.
Court: Cuyahoga County Common Pleas Court No. 274039
Settlement: July 26, 1995
Plaintiffs Counsel: Charles Kampinski and Christopher M. Mellino
Defendant's Counsel: Jerome Kalur, Ronald Rosenfield
Insurance Company: None listed
Type of Action: Medical Malpractice.

Plaintiff underwent hemorrhoid surgery at the hands of the defendant. She became septic and died 5 days later Plaintiff had undiagnosed acute leukemia. Her preoperative blood count showed abnormalities which were called to the defendant's office. Defendant ignored the results of the blood count and proceeded with the surgery.

Damages: Mrs. Kellogg is survived by her husband, five children and five grandchildren. Wrongful death.
Plaintiffs Experts: Charles Linker, M.D. and John Burke, Ph.D.
Defendant's Experts: None listed
Settlement: $1,000,000.00 for pain and suffering and $1,440,000.00 for wrongful death claim.

Court: Stark County Court of Common Pleas
Settlement: August, 1995
Plaintiffs Counsel: John D. Liber, Dennis R. Lansdowne, SPANGENBERG, SHIBLEY, LANCIONE & LIBER
Defendant's Counsel: Philip E. Howes & Thomas R. Himmelspach
Insurance Company: Self insured
Type of Action: Wrongful Death, Personal Injury, Punitive Damages Claim.

On November 27, 1990, plaintiffs decedent was a passenger in a pick-up truck which collided with a train at a railroad crossing. The trainiautomobile collision which killed plaintiffs decedent was due to the failure of defendant to sound the statutory whistle warning sound. In addition, the crossing had an extra-hazardous nature and bloody history and there was an absence of automatic train-activated flashers, lights, and gates. Despite the defendant's knowledge of the extra-hazardous nature and history of this crossing, they failed to install warning devices for purposes of saving money.

Damages: Death.
Plaintiffs Experts: Dr. *Gary* Long (transportation specialist), Henry P. Lipian (accident reconstructionist), John F. Burke, Jr., Ph.D. (economist)
Defendant's Experts: Consolidated Rail Corporation employees.
Settlement: $1,000,000.00

Beckart. et al v. Nationwide. et al
Court: Franklin County Common Pleas
Settlement: August, 1995
Plaintiffs Counsel: William S. Jacobson, NURENBERG, PLEVIN, HELLER & McCARTHY
Defendant's Counsel: Mike Henry
Insurance Company: Nationwide, Allstate, State Farm
Type of Action: Declaratory Judgment on Insurance Policy

Plaintiffs were the non-resident next of kin of a married couple killed by a drunk driver. This UM case was venued in Franklin County and was Pre-Senate Bill 20 and plaintiffs prevailed in their motion for Summary Judgment

Damages: Death of a non-resident relative
Plaintiffs Experts: Not Applicable
Defendant's Experts: Not Applicable
Settlement: $470,000.00

Diane Gross. et al v. Dr Farid Said
Court: Huron County Common Pleas Court
Settlement: August, 1995
Plaintiffs Counsel: Mitchell A. Weisman, WEISMAN, GOLDBERG & WEISMAN CO., L.P.A.
Defendant's Counsel: Jodi Diethelm
Insurance Company: PIE
Type of Action: Medical Malpractice
Damages: Reflex sympathetic dystrophy as a result of carpel tunnel surgery.
Plaintiffs Experts: Dr. James Campbell, Neurosurgeon, Johns Hopskins and Dr. James Culver, Chief of Hand Surgery at the Cleveland Clinic; two local doctors, Dr. Bauer, Neurologist and General Surgeon.
Defendant's Experts: None Listed
Settlement: Offer: $150,000.00; Demand: $250,000.00

Penny Patterson, Admx. v. Standard Testina Labs. et al
Court: Stark County Common Pleas
Settlement: August, 1995
Plaintiffs Counsel: Peter J. Brodhead and Justin F. Madden, SPANGENBERG, SBIBLEY, LANCIONE & LIBER
Defendant's Counsel: George Lutjen
Insurance Company: USF&G
Type of Action: Wrongful Death and Survivorship Steeming From Highway Negligence.

Decedent was participating in a field study on a highway. Re was walking along the berm away from the site, when one of defendant's vehicles, which was backing along the berm, backed over him and dragged him 100 feet.

Damages: Fractured ribs, ankle, extensive road burn and massive internal trauma, all of which proved fatal.
Plaintiffs Experts: Henry Lipian, Joseph Burton, M.D., John Burke, Ph.D.
Defendant's Experts: None listed.
Settlement: $2,650,000.00

Mary Bentoff v. Heritage Insurance Company
Court: Cuyahoga County Common Pleas Court
Settlement: August, I935
Plaintiffs Counsel: John G. Lancione, SPANGENBERG, SHIBLEY, LANCIBNE & LIBER
Defendant's Counsel: Walter Matchinga
Insurance Company: Heritage Insurance Company
Type of Action: Auto Accident

Plaintiff rear-ended while driving her utility vehicle

Damages: Cervical spine and right shoulder resulting in brachial plexus neuropathy which resolved and developed into reflex sympathetic dystrophy.
Plaintiffs Experts: Jennifer Kriegler, Ph.D.
Defendant's Experts: Karl Metz, M.D.
Settlement: $600.000.00 (Arbitration Award)

CONFIDENTIAL
Court: Cuyahoga County Common Pleas
Settlement: September, 1995
Plaintiffs Counsel: William S. Jacobson, NURENBERG, PLEVIN, HELLER & McCARTHY
Defendant's Counsef: Douglas Fifner
Insurance Company: OUM
Type of Action: Medical Malpractice

Plaintiff went to defendant podiatrist for ingrown nails which were surgically removed despite plaintiffs diabetes. Thereafter, plaintiff required revascularization which led to a stroke.

Damages: Stroke
Plaintiffs Experts: Alan Singer, D.P.M.; Kenneth Swan, M.D. - Vascular Surgeon
Defendant's Experts: Joel Novack, D.P.M.
Settlement: $475,000.00

Jane Doe. Administratrix of Estate of John Smith v. USAir
Court: Case Settled Prior to Suit
Settlement: September, 1995
Plaintiff's Counsel: James R. Lebovitz, NURENBERG, PLEVIN, HELLER & McCARTHY
Defendant's Counsef: None Listed
Insurance Company: Associated Aviation Underwriters
Type of Action: Aviation

Decedent was a passenger on USAir Flight 427 which crashed on September 8, 1994 while on final approach to Pittsburgh International Airport.

Damages: The deceased is survived by his wife, age 38.
Plaintiffs Experts: Dr James Kenkel (Economist)
Defendant's Experts: Not Listed
Settlement: $1,750,000.00

Jane Roe, Administratrix of Estate of John Roe v. USAir
Court: Case Settled Prior to Trial
Settlement: September, 1995
Plaintiffs Counsel: James R. Lebovitz, NURENBERG, PLEVIN, HELLER & McCARTHY
Defendant's Counsel: Not Listed
Insurance Company: Associated Aviation Underwriters
Type of Action: Aviation

Decedent was a passenger on USAir Flight 1016 which crashed on July 2, 1994 in a thunderstorm while on final approach to Charlotte International Airport

Damages: The deceased is survived by his wife to whom he was married 2 years Decedent married three times. Survived also by two adult children and a 10 year old daughter who lives with second wife.
Plaintiffs Experts: Not Listed
Defendant's Experts: Not Listed
Settlement: $1,200.000.00

Jane Smith. Administratrix of Estate of Robby Smith v. US. ABC Trucking Co.
Court: Cuyahoga County Common Pleas Court
Settlement. September, 1995
Plaintiffs Counsel: James R. Lebovitz, NURENBERG, PLEVIN, HELLER & McCARTHY
Defendant's Counsel: Not Listed
insurance Company: Self Insured
Type of Action: Auto/Truck

The decedent was a passenger in an automobile which collided with a semi-tractor trailer on an undivided two lane highway.

Damages: The decedent is survived by his parents and I sibling, age 17.
Plaintiffs Experts: Robert Senkar, Accident Reconstruction
Defendant's Experts: Not Listed
Settlement: $1,200,000.00

Gensler v. Brown, et al
Court: Cuyahoga County Common Pleas Court
Settlement: September, 1995
Plaintiffs Counsel: John R. Liber, II., SPANGENBERG, SNIBLEY, LANCIONE & LIBER
Defendant's Counsel: John Rea
Insurance Company: State Farm
Type of Action: Automobile Accident.

Plaintiff, the passenger on an insured motorcycle, was injured when defendant's motorcycle collided with the motorcycle she was riding upon.

Damages: Amputation of two left toes, broken ankle, left leg, right wrist and elbow, tom ACL in left knee.
Plaintiffs Experts: Jack Holland, Anthony Smith, M.D.
Defendant's Experts: Henry Lipian
Settlement: $95,000.00

Burnell Mitchell v. Dr. Raj Seetharaman, M.D., et al
Court: Cuyahoga County Common Pleas Court
Settlement: September, 1995
Plaintiffs Counsel: David L. Pomerantz
Defendant's Counsel: Alan B. Parker
Insurance Company: None listed.
Type of Action: Medical Malpractice.

Plaintiff underwent elective cataract surgery. Defendant, a new doctor, caused several operative complications, including a hole in the posterior capsule. Defendant failed to convert from phacoemulsification lens removal to technically easier extracapsular cataract extraction, and dropped lens fragments into the eye. The following day, failed to refer patient in a timely manner to a vitreal-retinal specialist after eye showed signs of reaction to retained lens fragments.

Damages: Detached retina left eye.
Plaintiffs Experts: James Aquavella, M.D. (opthalmology), Robert Tomsak, M.D. (damages)
Defendant's Experts: Thomas Rice, M.D. (vitreal-retinal surgery), Louis Caravella, M.D. (opthalmology)
Settlement: $342,000.00

Confidentiality Agreement
Court: Cuyahoga County Common Pleas
Settlement: September 20, 1995
Plaintiffs Counsel: R. Eric Kennedy, Marilena Lencewicz, WEISMAN, GOLDBERG & WEISMAN CO., L.P.A.
Defendant's Counsel: Richard Markus, PORTER, WRIGHT, MORRIS & ARTHUR
Type of Action: Medical Malpractice/Wrongful Death

Defendant group of doctors failed to properly investigate a complaint of headache. Fourteen days after the decedent's last visit to the doctor, she was found unresponsive and ultimately died from a ruptured brain aneurysm.

Damages: Death. Survived by 3 adult daughters. No spouse nor economic loss.
Plaintiffs Experts: John Conomy, M.D.
Defendant's Experts: Edward Westbrook, M.D., Chester Plotkin, M.D.
Settlement: $650,000.00

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pulmonary embolism. Ail agreed that he had developed a deep vein thrombosis post-operatively which ultimately led to the pulmonary embolism and his death.

was one of fact as to wehther or not the decedent had called the defendant-physician to complain of symptomology consistent with a deep vein

Mays v. Ruch
Court: Not listed
Settlement: September 28, 1995
Plaintiffs Counsel: Edward Richard Stege, STEGE, HICKMAN & LOWDER CO., L.P.A.
Defendant's Counsel: R. Mark Jones
Insurance Company: P.I.E.
Type of Action: Medical Malpractice

Right iliac vein and artery lacerated during a lumbar laminectomy; delayed diagnosis of hemorrhage; death two and one-half months later; the case settled after the first day of trial.

Damages: Right iliac vein and artery lacerated during a lumbar laminectomy; delayed diagnosis of hemorrhage; death *two* and one-half months later.
Plaintiffs Experts: Andrew Kurman, M.D., Gerald Kaufer, M.D., Donald Austin, M.D., Edward Bell, Ph.D.
Defendant's Experts: Jerald Brodkey, M.D., David Rosenberg, M.D., Gordon Bell, M.D.
Settlement: $1,100,000.00

Guist v. Slesh
Court: Lake County Common Pleas Court
Settlement: October, 1995
Plaintiffs Counsel: William S. Jacobson, NURENBERG, PLEVIN, HELLER & McCARTHY and Julien Cohen, Esq.
Defendant's Counsel: Patrick Murphy
Insurance Company: PIE
Type of Action: Medical Malpractice

Plaintiffs decedent underwent laproscopic gallbladder removal and bowel was traumatized causing peritonitis. Defendant failed to address this probiem promptly and Mr. Guist expired.

Damages: Death
Plaintiffs Experts: Frances Barnes, M.D. - Surgeon; Neil Crane, M.D., - Infectious Disease: Kenneth McCarty, M.D. - Pathology
Defendant's Experts: R. Schlanger, M.D. - Surgeon
Settlement: $700.000.00

Evelyn Merritt, et al v. Lldea Askins
Court: Ashtabula County Common Pleas Court
Settlement: October, 1995
Plaintiffs Counsel: Mitchell A. Weisman, WEISMAN, GOLDBERG & WEISMAN CO., L.P.A.
Defendant's Counsel: Joseph Tira
insurance Company: Heritage Insurance Company
Type of Action: Auto; left turn.
Damages: Cervical herniated discs requiring surgery and fusion.
Plaintiffs Experts: Dr. Geoffrey Wilbur, Orthopedic surgeon; Dr. Yoo, Orthopedic sureon; and the family doctor from Rock Creek, Ohio
Defendant's Experts: Dr. Richard Kaufman
Settlement: $330,250.00

Fred Goldine. Adm. etc. v. U.S.A. and City of Ashland, Ohio
Court: U.S. District Court
Settlement: October, 1995
Plaintiffs Counsel: John G. Lancione, SPANGENBERG, SHIBLEY, LANCIONE & LIBER
Defendant's Counsel: Marcia Johnson and Raymond Schmidland, Jr.
Insurance Company: Not listed
Type of Action: Automobile Accident

Plaintiff was a rear seat passenger in a vehicle driven by U.S. Marine Corps recruiter that pulled out in front of a garbage truck whiie traveling to a recreation area.

Damages: Death from ciosed-head injury.
Plaintiffs Experts: Henry Lipian
Defendant's Experts: David L. Uhrich, Ph.D.
Settlement: $950,000.00

Estate of Douglas Butcher v. William Novelli, D.O.
Court. Trumbull County Common Pleas Court
Settlement: October, 1995
Plaintiff's Counsel: William Hawal, SPANGENBERG, SHIBLEY, LANCIONE & LIBER
Defendant's Counsel: Marc Groedel
Insurance Company: Medical Protective
Type of Action: Medical Malpractice

Decedent was prescribed Xanax, Valium, Darvocet, Tylenol with Codeine and other medications for a number of years because of severe and disabling neck pain. He became drug dependent and was ingesting in excess of the therapeutic dosages which resulted in respiratory arrest from polypharmacy.

Damages: Wrongful death
Plaintiffs Experts: Ted Parran, M.D. - substance abuse; Martin Scharf, Ph.D. - pharmacology.
Defendant's Experts: Meade Perlman, M.D. - internal medicine.
Settlement: $300,000.00

Marhefky v. K-Mart
Court: Trumbull County Common Pleas
Settlement: October 4, 1995
Plaintiff's Counsel: William Hawal, SPANGENBERG, SHIBLEY, LANCIONE & LIBER
Defendant's Counsel: Kevin Murphy
Insurance Company: Not Applicable
Type of Action: Negligence - plaintiff struck by falling box.

Boxed lawn mower fell and struck plaintiff in the left shoulder. Defendant disputed the extent of injury and necessity of medical treatment.

Damages: Tom labrum and impingement syndrome in left shoulder; suprascapular nerve injury.
Plaintiff's Experts: Gil C. Rah, M.D., Hyo Kim, M.D.
Defendant's Experts: Richard Kaufman, M.D.
Settlement: $108,000.00

John Doe. et al v. Drs. Safi & Garcia
Court: Cuyahoga County Common Pleas Court
Settlement: November, 1995
Plaintiffs Counsel: Anne L. Kilbane, Harlan Gordon, NURENBERG, PLEVIN, HELLER & McCARTHY
Defendant's Counsel: Matthew Moriarity
Insurance Company: PIE
Type of Action: Medical Malpractice

During elective AAA surgery, left ureter was nicked and went undiagnosed.

Damages: Subsequent repairs involved bilateral axillary bypass grafts.
Plaintiff's Experts: Dr. Kenneth Swan and Dr. Neil Crane
Defendant's Experts: Dr. W.D. Turnipseed, Madison, Wisconsin
Settlement: $475,000.00

Jane Doe **v.** John Doe and John Doe, Inc.
Court: Cuyahoga County Common Pleas Court
Settlement: November, 1995
Plaintiffs Counsel: Richard C. Atkire, NURENBERG, PLEVIN, HELLER & McCARTHY
Defendant's Counsel: Tom Wright
Insurance Company: Motorist Mutual
Type of Action: Automobile Accident.

Plaintiff driver was struck head on by defendant individual who was driving a car entrusted to him by his employer. Defendant was travelling the wrong way on an exit ramp. After the accident, defendant wandered away from the scene and claimed he had sustained a head injury At the time of the accident, the defendant was operating his vehicle with a license under suspension and had three previous DUIs and two previous speeding tickets that his employer acknowledged would have been a reason not to give him the automobile if the employer had known of this prior driving record.

Damages: Comminuted fracture of right heel and non-displaced fracture of right wrist, third nerve palsy left eye.
Plaintiffs Experts: Robert Corn, M.D. - Orthopedic Surgeon
Robert Tomsak, M.D. - Neurological Opthalmologist
Defendant's Experts: None
Settlement: $700,000.00

Michalski. et al v. The Weldinghouse, Inc.
Court: Cuyahoga County Common Pleas
Settlement: November 8, 1995
Plaintiffs Counsel: Edison H. Hall, Jr. and Mary Elaine Hall
Defendant's Counsel: Jeffrey Embleton, Esq.
Insurance Company: Zurich - American
Type of Action: Products Liability - Supplier Liability 2307.78(B)

Propane tank - fire in basement.

Damages: Severe burn.
Plaintiffs Experts: Allan Bullerdiek - Engineer and Propane Expert
Allen Emerson - Cause and Origin Expert
John Burke, Ph.d. - Economist
George Cyphere - Rrhabilitation
Joseph Cannelongo - Rehabilitation
Defendant's Experts: Allan Mossman - Engineer
Settlement: $600,000.00

CONFIDENTIAL
Court: Cuyahoga County Common Pleas Court
Settlement: November, 1995
Plaintiffs Counsel: William S. Jacobson, NURENBERG, PLEVIN, HELLER & McCARTHY
Defendant's Counsel: Confidential
Insurance Company: Confidential
Type of Action: Medical Malpractice

Plaintiffs decedent was treated and released at defendant's emergency room for suspected gastric problems. Eight (8) hours later she collapsed from pulmonary embolism. She died three *(3)* days later.

Damages: Death
Plaintiffs Experts: Charles A. Peck, M.D. - Internist; James Vankaskas, M.D - pulmonologist; Edward Sussman, M.D. - pathology; G. Richard Braen, M.D. - emergency medicine; Dennis A. Mazal, M.D. - intensivist.
Defendant's Experts: Defendant had eight (8) experts, the most important of whom were: Lawrence Martin, M.D. - pulmonologist; B. Janiak, M.D. - emergency medicine
Settlement: $800,000.00

Gibson v. John Doe. M.D.
Court: Cuyahoga County Common Pleas Court
Settlement: November, 1995
Plaintiffs Counsel: William S. Jacobson, James R. Lebovitz, NURENBERG, PLEVIN, HELLER & McCARTHY
Defendant's Counsel: John Scott
Insurance Company: Med Pro
Type of Action: Medical Malpractice

Plaintiffs mother took him to defendant for what defendant claims was a sore throat. Plaintiffs mom claimed plaintiff had swollen eyelids. Defendant's records supported defendant. Two days later, plaintiff was hospitalized with severe infection.

Damages: Infection causing subdural empyema and brain damage.
Plaintiffs Experts: Charles Peck, M.D.; Neil Crane, M.D.; Max Wiznitzer, M.D.; Doreen Spak - Life Care; N. Eckel, Ph.D. - economist
Defendant's Experts: H. Morganstern-Clarren, M.D. - internist; D. McKinney, M.D. - infectious disease.
Settlement: $825,000.00

Neitzke v. Kleinhenz. M.D.. et al
Court: Montgomery County Common Pleas Court
Settlement: November, 1995
Plaintiffs Counsel: William Hawal, SPANGENBERG, SHIBLEY, LANCIONE & LIBER
Defendant's Counsel: Patrick Adkinson
Insurance Company: PIE
Type of Action: Medical Malpractice

Plaintiff underwent arthroscopic knee surgery and surgeon inflated tourniquet not knowing plaintiff had prosthetic fem-pop by-pass graft. Graft occluded 12 days later requiring amputation. Following surgery, plaintiff fell in ICU while attempting to get out of bed

Damages: Above knee amputation; fractured hip
Plaintiffs Experts: Melvin Adler. M.D. - orthopedic surgeon; Roman Nowygrad, M.D. - vascular surgeon.
Defendant's Experts: Richard Fowl, M.D. - vscular surgeon; Jeffrey stambaugh, M.D. - orthopedic surgeon.
Settlement: $550,000.00

Patricia Moms. et al v. Allstate Insurance Company
Court: Cuyahoga County Common Pleas Court
Settlement: November 8,1995
Plaintiffs Counsel: Mitchell A. Weisman, WEISMAN, GOLDBERG & WEISMAN CO., L.P.A.
Defendant's Counsel: James Johnson
Insurance Company: Allstate Insurance Co.
Type of Action: Rear-end collision.
Damages: Cervical soft tissue injuries.
Plaintiffs Experts: Dr. Wolford, Chiropractor and Dr. Weinstein, Neurosurgeon
Defendant's Experts: Dr. Richard Kaufman
Settlement. Judgment: $125,000.00; offer: $37,000.00; demand: $50,000.00; verdict will probably be paid.

MATTERS OF INTEREST

One point of interest for those of you who have cases involving **Richard S. Kaufman, M.D.** as a defense medical examiner is the recent effort at impeachment undertaken by Bill Hawal. We have all long believed, but can now prove, that Dr. Kaufman tells the hiring client one thing and the jury another. In Marhefkv v. K-Mart, which was tried in Warren, Ohio, Bill Hawal subpoenaed Mary Ellen Twining, an adjuster with Commercial Union Insurance Co., for deposition relating to a memo which she dictated to her file concerning her discussion with Dr. Kaufman about a defense medical exam in an unrelated underinsured motorist claim. In that memo, Ms. Twining relates that Dr. Kaufman called her and "privately" advised of the seriousness of the claimant's permanent disabilities and his agreement with the opinions of the treating physician. Of course, Dr. Kaufman's report, dated that same day, mentions none of this except to say that the prognosis was "guarded". Dr. Kaufman, in his testimony prior to the deposition of Mary Ellen Twining, professed no recollection of the matter but denied favoring his opinions on behalf of the party which hires him. The testimony of Mary Ellen Twining was admitted at trial to show bias and prejudice under Rule 616 of the Ohio Rules of Evidence. Bill Hawal suggests that anyone who needs to undertake this effort consider subpoenaing Mary Ellen Twining for trial. In Bill's case, her negative appearance and demeanor enhanced plaintiff's position. The depositions and exhibits are available through the Academy Expert Bank.