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CLEVELAND ACADEMY OF TRIAL ATTORNEYS NOVEMBER, 1997 NEWSLETTER

EDITORS: DAVID M. PARIS, ESQ./PAUL V. WOLF, ESQ

PRESIDENT'S COLUMN

HOLIDAY NO-DINNER DANCE XI

The Cuyahoga County Bar Foundation and Cuyahoga County Bar Association in their affiliation with the CATA and others is presenting the Holiday No-Dinner Dance XI on November 22, 1997 beginning at 7:00 p.m. at the Halle Building. This event, over the years, has raised over $400,000.00 to help fund local programs that fight hunger. This year it is being held for the benefit of the Northcoast Food Rescue, the Hunger Network of Greater Cleveland and the Catholic Hunger Shelter Fund. Your participation and that of the members of your firm and/or office would be most appreciated. Please fill out the form attached to the newsletter to reserve your place and participate in this worthwhile holiday event.

LUNCHEON SEMINAR SERIES

I urge all of you to attend our upcoming seminars which have been organized by our Secretary, Robert F. Linton, Jr. On Nc vember 20,1997 David Goldense and Joseph Dubyak will present "The Anatomy of A Personal Injury Suit: Secrets of Success Learned in A 3 Million Dollai Case." On December 15, 1997 Theodore Mussler, Esq. of Louisville, Kentucky will present a talk on "Maximizing Recovery in Soft Tissue Cases: Turning Low Impact/Low Specials Into Six Figure Cases." Please make arrangements now to block out the lunch hour on these dates so you can attend these informative and worthwhile talks.

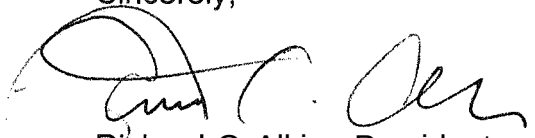
BRIEF BANK

As a reminder, in order to utilize the CATA's Brief Bank it is necessary that you submit two items for each item you access. Attached to this newsletter is the summary sheet which must be completed by you so that an appropriate index can be maintained regarding new submissions. I urge you all to please follow this procedure, complete the form for new submissions and be prepared to provide this information when you make a request for a Brief Bank item. In the next several months you will be receiving an updated index indicating all of the items which comprise our brief/deposition bank. Since this is a very useful resource which the CATA has to offer, I can't emphasize enough how important it is for each and every one of you to provide this updated information in a summarized form which will ultimately benefit all of our members. I thank you in advance for adhering to this request.

CASE LAW UPDATE

Bob Linton has brought to my attention the Supreme Court's decision to accept jurisdiction in his case, Valerie Cater, Etc., et al. v. City of Cleveland, Case No. 97-1488, Consolidated with Case No. 97-1261. This case involves the liability of a political subdivision for the operation of its swimming pools. The constitutionality of Chapter 2744 is being challenged as well as an appropriate analysis for applying the statute. The Eighth District Court of Appeals held that the operation of swimming pools, playgrounds, golf courses and other recreational facilities are provided with absolute immunity under the statute, not subject to any exceptions to immunity such as negligence occurring on the grounds of a building being used for a governmental function.

Sincerely,



Richard C. Alkire, President

RCA/jjt

ASSUMPTION OF DUTY

Wuertz v. Soltis, et al., Case No. 71309 (Cuy. Cty., September 18, 1997). For Plaintiff-Appellant: Stephen G. Thomas and For Defendants-Appellees: Thomas E. Dover and Richard R. Kuepper. Opinion by Joseph J. Nahra. John J. Patton concurs. Diane Karpinski concurs in judgment only.

Decedent attended an all night party and became intoxicated. She decided that she wanted to go swimming in a lake on the property of the defendant landowner who was hosting an all night party. The decedent had a blood alcohol content of 0.38 by autopsy. Defendant Soltis, who was another guest at the all night party, convinced the plaintiff not to go swimming but to go with him on a boat onto the lake. Plaintiff then jumped into the water while Defendant Soltis watched her swim for a brief period of time. Defendant Soltis did not see the plaintiff struggling and the last time that he saw her, plaintiff had swam under the boat. It was subsequently learned that the plaintiff had drowned. Plaintiff filed suit against both Soltis and the landowner. The trial court granted summary judgment in favor of both defendants. As to the landowner, the Court of Appeals affirmed the decision of the trial court. In so affirming, the Court of Appeals recognized that under Restatement of the Law 2d Torts, Section 315, that the host of a party may have a duty to control the conduct of a third person so as to prevent him from causing physical harm to another where a special relation exists between the host and the third person. However, the host must know or have reason to know that he had the ability to control the third person and know or should know of the necessity and opportunity for exercising such control. The Court of Appeals ruled that the landowners who were hosting the party had no reason to know of any necessity for controlling Soltis. The Court of Appeals reversed the trial courts grant of summary judgment as to Soltis for two separate reasons. First, R.C. 1547.02 et. seq., imposes various duties upon individuals who operate watercraft. Among those is the duty not to operate or be in physical control of any watercraft while under the influence of alcohol. Additionally, the statutory section provides that no person shall operate or permit to be operated any watercraft

without carrying flotation devices on board. Second, the Court of Appeals relied upon Section 324 of the Restatement of the Law 2d, Torts for the proposition that one such as Soltis who, being under no duty to do *so,* takes charge of another who is helpless adequately to aid or protect himself is subject to liability to the other for any bodily harm caused to him by the failure of the actor to exercise reasonable care to secure the safety of the other while within the actor's charge. Furthermore, Comment B to Section 324, is relied upon for the proposition that one who takes charge of another who is made helpless because of intoxication may be held liable. In the case at bar, it was found that a trier of fact reasonably could find that plaintiff was helpless and that Soltis assumed the duty of taking charge of plaintiff thus, permitting a reasonable inference that Soltis failed to exercise reasonable care while the plaintiff was in his charge.

UNINSURED MOTORIST COVERAGE

Hillyer v. State Farm Mutual Automobile Insurance Company, Case No. 71724, (Cuy. Cty., September 18, 1997). For Plaintiff-Appellee: Jeffrey Friedman and For Defendant-Appellant: Henry A. Hentemann. Opinion by David T. Matia. Terence O'Donnell and Joseph Nahra concur.

The trial court found that the Senate Bill 20 Amendments to Ohio Revised Code Section 3937.18 which permitted policies of uninsured motorist coverage to limit derivative wrongful death claims to a single per person limit to be unconstitutional because the Amendments violate the one subject rule contained in Article 11, Section 15(B) of the Ohio Constitution as well as the right to a remedy of insureds in vehicular specialty insurance claims. The Court of Appeals had no choice but to reverse on the basis of Beagle v. Walden (1997), 78 Ohio St.3d 59, in which the Court determined that the amendments to R.C. 3937.18(A)(2) accomplished through the enactment of Senate Bill 20 where constitutional. In reaching its decision in Beagle, the Supreme Court addressed a number of constitutional challenges including the one subject rule, separation of powers pertaining to legislative and judicial functions, equal protection, right to a remedy and the privileges and

immunities clause. The Supreme Court held that the amendments to R.C. 3937.18(A)(2) passed constitutional muster on each of the alleged grounds.

MARITIME CLAIMS

Markle v. Cement Transit Company, Inc., Case No. 70175 (Cuy. Cty., September 18, 1997). For Plaintiff-Appellant: Creighton E. Miller and For Defendant-Appellee: Henry E. Billingsley, II, and Irene C. Keyse-Walker. Opinion by Joseph Nahra. Terence O'Donnell concurs in part and dissents in part. Diane Karpinski concurs in part and dissents in part.

Plaintiff brought suit against defendant under general principles of maritime tort law and also under 46 U.S.C. 688 ("The Jones Act"). Plaintiff alleged that he injured his back when the ship upon which he was employed struck a dock. Other than the testimony of the plaintiff, all other individuals in a position to have knowledge deny that there was any contact of significance between the dock and the ship. In reversing a grant of summary judgment in favor of the defendant, the Court of Appeals recognized that in order to maintain an action under the Jones Act, a plaintiff must demonstrate: (1) negligence on the part of his employer and (2) that the negligence was a cause, however slight, of his injuries. The Court of Appeals commented that the Jones Act, with its unusual burdens of proof, has a unique place in our jurisprudence. Prior to its enactment, maritime liability had severely limited remedies available for injured seamen. The Jones Act broadly expanded benefits to seamen in order to more fully protect them. In order to effectuate the congressional intent, federal courts have required a very low evidentiary threshold to submit the issue of negligence to a jury. The Court of Appeals cited with approval the articulation of this lower burden of proof contained in Havens v. S/T Polar Mist, U.S.C.G. (C.A. 9, 1993), 996 F.2d 215 where it was held that the quantum of evidence necessary to support a finding of Jones Act negligence is less than that required for common law negligence, and even the slightest negligence is sufficient to sustain a finding of liability.

CLERGY NEGLIGENCE

Alexander v. Reverend Harriet Culp, et al., Case No. 71186 (Cuy. Cty. App., September 4, 1997). For Plaintiff-Appellant: Edward W. Cochran and For Defendants-Appellees: Stanley Keller. Opinion by Ann Dyke. James D. Sweeney and James Porter concur.

Plaintiff met with defendant for marital counseling. Defendant was a minister at plaintiff's church. Defendant assured plaintiff that his disclosures would be kept confidential. The plaintiff told defendant he had several affairs during his marriage and he was currently having an affair. Shortly thereafter defendant met with plaintiff's wife. It was alleged that defendant told the plaintiff's wife that plaintiff was having an affair. Moreover' it was also alleged that defendant stated to plaintiff's wife that defendant was a liar and not to be trusted. Defendant advised the wife to obtain a restraining order, change the locks on the house and divorce the appellant. Defendant also told the wife that the plaintiff was thinking of kidnapping the children and leaving the state with them. Defendant advised the wife to keep the children away from plaintiff. Plaintiff's complaint alleged these statements were made intentionally, with malice and intent to harm. The trial court granted a directed verdict subsequent to plaintiff's opening statement. Plaintiff's complaint had alleged statutory negligence for violating Ohio Revised Code Section 2317.02 (The Ohio Privilege Statute) and for common law invasion of privacy. The Court of Appeals reversed finding that the allegations of plaintiff's complaint along with counsel's comments during opening statements set forth a valid claim for common law negligence. The Court of Appeals stated that a claim for statutory negligence with regard to breach of confidentiality by a member of the clergy did not arise under R.C. 2317.02. The privilege exists only to the extent that clergy need not testify concerning matters told to them in confidence. In this case the Reverend did not testify. Moreover, the plaintiff could not set forth a cause of action for invasion of privacy because the private matters were not disseminated to the public at large but only to plaintiff's wife. The Court of Appeals went to great lengths to state that it was not

recognizing a cause of action for clergy malpractice in the case at bar. The Court of Appeals explained that plaintiff's claim did not allege a failure to discharge a standard of care common to members of the clergy in their religious duties, Instead, the plaintiff asserted that the Reverend had a duty, arising out of the Minister/Parishioner relationship, to maintain confidentiality and that the Reverend breached this duty by disclosing the information to plaintiff's wife and her family. Nevertheless, the Court of Appeals did state that even if the action were deemed a clergy malpractice action, the Supreme Court of Ohio had not disallowed such an action (Strock v. Pressnell (1988), 38 Ohio St.3d 207).[1]

DISMISSAL OF ACTIONS - OHIO SAVINGS STATUTE

Koslen v. American Red Cross, Case No. 71733 (Cuy. Cty. App., September 4, 1997). For Plaintiffs-Appellants: Donna Taylor-Kolis[2] and for Defendants-Appellees: Patricia A. Screen, William D. Bonnezzi, Douglas C. Leak and Joseph A. Farcione. Opinion by Ann Dyke. Joseph Nahra and John Patton concur.

Plaintiff filed suit on November 22, 1991. On April 2, 1993, the trial court dismissed the case without prejudice pursuant to Civil Rule 41(B)(1), because plaintiff-appellant failed to obtain an expert report as ordered. After the statute of limitations ran, the case was re-filed on March

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[1]In Strock, the Ohio Supreme Court declined to address whether a cause of action for clergy malpractice exists. However, other jurisdictions have held that such a cause of action does not exist. Nally v. Grace Community Church (1988), 47 Cal. 3d 278; DeStefano v. Grabrian (Colo. 1988), 763 P.2d 275.

[2]Ms. Taylor-Kolis was counsel for purposes of appeal only.

25, 1994. This re-filing within the one year period provided by the Ohio Savings Statute, R.C. 2305.19. On June 14, 1995, plaintiff voluntarily dismissed their action pursuant to Civil Rule 41(A)(1). Within one year of that voluntary dismissal the claim was filed for the third time. The trial court dismissed the third action, *sua sponte*, stating in its Journal Entry that R.C. 2305.19, the Savings Statute, can be used only once to obtain an additional year to re-file an action. The Court of Appeals affirmed citing *dicta* from the recent Ohio Supreme Court case of Thomas v. Freeman (1997), 79 Ohio St.3d 221 wherein Justice Stratton inserted a statement that "the Savings Statute can be used only once to re-file a case." This statement, unrelated to the issue presented in that case, was based upon one reported and one unreported court of appeals' decision. Plaintiff cited contrary authority which did not prevent a case from being filed a third time if the case was voluntarily dismissed by the plaintiff one time and dismissed by stipulation or by the court another time. The court of appeals distinguished these cases stating that none of these involved the issue of whether the Savings Statute could be applied twice in the same action. The Court of Appeals also distinguished the Supreme Court case of Logsdon v. Nichols (1995), 72 Ohio St.3d 124, where the complaint was filed three times because the majority opinion did not discuss the issue of multiple usage of the Savings Statute.[3]

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[3]A Memorandum in Support of Jurisdiction with regard to this case has recently been filed in the Supreme Court of Ohio.

PRODUCTS LIABILITY - PRODUCT MODIFICATION

Barrett v. Waco International, Inc., et al., Case No. 71199, (Cuy. Cty. App., August 14, 1997). For Plaintiff-Appellant: John S. Wasung and For Defendants-Appellees: David Ross and Kenneth P. Abbarno. Opinion by Diane Karpinski. David T. Matia concurs. August Pryatel concurs in judgment only.

Plaintiff filed suit against defendants in strict products liability for alleged defective manufacture and design of scaffolding and failure to make adequate warnings concerning modifications to the scaffolding. After initially denying Defendants' Motion for Summary Judgment, the trial court granted Defendants' Motion for Reconsideration. Apparently, defendant argued that since each of the components was indisputably non-defective, that it could not be liable for a defective product which was assembled from each of the non-defective components. Additionally, defendants argued that the product was not defective when it left its hands but was modified by a third party. The Court of Appeals reversed holding as to defendants, first theory that contrary to defendants' argument, entities who put non-defective components together to make a defective product are indeed subject to strict liability claims as manufacturers. Leibreich v. W.J. Refrigeration, Inc. (1993), 67 Ohio St.3d 266. The Court held that a product is defective in manufacture if, when it left the control of its manufacturer, it deviated in a material way from the design specifications. As to defendants' second contention, the Court of Appeals held that even if the scaffolding were modified as defendant argued, design defect claims may include the failure to design a product to prevent foreseeable misuse, including modifications. Welch Sand and Gravel, Inc. v. Θ & K Trojan, Inc. (1995), 107 Ohio App.3d 218. The Court reasoned that although manufacturers need not guaranty that a product is incapable of causing injury, they must consider, inter alia, the likelihood that the design would cause harm in light of the intended and reasonably foreseeable uses, modifications or alterations of the product. In short, manufacturers may be liable if the product design is defective beeause the modifications were foreseeable, reasonably preventable with

a feasible design, and proximately caused by the failure to use such a design. In the case at bar, the Court of Appeals found that it was foreseeable that someone would modify the scaffolding because it obstructed movement of a fire curtain which movement was necessary to complete the project.

DISMISSAL OF ACTIONS - NUNC PRO TUNC ENTRIES

Sangster v. Dunn, et al., Case No. 71617 (Cuy. Cty. App., August 14, 1997. For Plaintiffs-Appellants: Robert J. Sawyer and For Defendants-Appellees: Lewis Einbund. Opinion by: David T. Matia. Diane Karpinski and Robert E. Holmes (Retired Justice of the Ohio Supreme Court, Sitting by Assignment) concur.

Plaintiffs filed their personal injury and consortium lawsuit on November 5, 1991. The case was voluntarily dismissed pursuant to Ohio Civil Rule 41(A)(1)(a) on the original trial date of July 20, 1994. The case was timely re-filed on July 19, 1995. The case was scheduled for trial on July 8, 1996. On June 24, 1996, plaintiffs filed a Motion for Continuance of the Trial Date due to the unavailability of an expert medical witness. The trial court denied the plaintiff's Motion for Continuance of Trial by Entry dated June 27, 1996. On July 8, 1996, the day of the scheduled trial, plaintiff's filed a second Motion for Continuance of Trial along with an Affidavit of Disqualification against the trial judge. The Affidavit of Disqualification had been filed with the Ohio Supreme Court on July 5, 1996. As a result of the pending Affidavit of Disqualification, the scheduled trial did not occur. On July 9, 1996, the Ohio Supreme Court denied the Affidavit of Disqualification. Subsequently, the trial court issued an Entry which was journalized on October 21, 1996, stating: "hearing set for 10-21-96 at 8:30. Sanctions may be imposed for failure to appear." The parties appeared for the hearing and the trial court set forth much of the history of the case and stated its belief that the affidavit of prejudice was filed to improperly obtain more time in order to proceed with trial and to obtain witnesses' attendance. The trial court stated that the case was not diligently pursued or prepared for trial and that the case was

dismissed with prejudice for want of prosecution. Plaintiff's counsel stated on the record that he was ready to proceed with trial at that time. On October 22, 1996, the trial court journalized its Entry as follows: "Nunc Pro Tunc 7-8-96. Hearing had. The case dismissed with prejudice for want of prosecution. IT IS SO ORDERED." The Court of Appeals held that the trial court abused its discretion by failing to provide plaintiffs-appellants with notice and an opportunity of hearing before dismissing the complaint for want of prosecution as required by Ohio Civil Rule 41. Moreover, the Court of Appeals held that the court abused its discretion in issuing a Nunc Pro Tunc Order dated July 8, 1996, where the trial court admits that no action of any kind was taken on July 8, 1996, therefore, the Nunc Pro Tunc entry could not correct an omission or error in a prior trial court Journal Entry. The Court of Appeals did comment, however, that an Affidavit of Disqualification does not automatically divest the trial court of power to act, even upon substantive matters. (State ex rel. Litty v. Leskovyanski (19961, 77 Ohio St.3d 97.

MEDICAL MALPRACTICE - "JUDGMENT RULE"

Riley v. Northeast Family Health Care, et al., Case No. 17314 (9th Dist. Court of Appeals, Summit Cty., April 9, 1997). For Plaintiffs-Appellants: Paul G. Perantinides and For Defendants-Appellees: David M. Best. Opinion by Judge Quillin. Presiding Judge Dickinson concurs. Judge Barrett concurs in judgment only.

One of the major issues involved in this appeal stems from the trial court's usage of the term "a mere error in judgment" in the standard of care instruction. The trial court instructed the jury as follows: "A medical doctor cannot be held liable for a mere error in judgment. He cannot be held liable for medical negligence, as long as he employs such judgment as is allowed by acceptable medical practice in his field." It should be noted that this language is nowhere contained in the Ohio Jury Instructions as they relate to issues dealing with medical malpractice and the applicable standard of care therein. The plaintiff cited the case of Kurzner v. Sanders (1992), 89 Ohio App.3d

674. The Court of Appeals found no error in the trial court's utilization of the "judgment rule" in the standard of care instructions. The Court of Appeals reasoned that the totality of the instruction was a correct statement of the law as it related to the applicable standards of care as set forth in Bruni v. Tatsumi. Thus, inasmuch as the trial court utilized the Bruni standard of care in addition to the "judgment rule" language, the instruction, as a whole, did not modify the standard of care into one that is subjective rather than objective.[4]

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[4]Nevertheless, the court does not explain the rationale for the continued use of the "judgment" language inasmuch as it is not a part of the definition of the applicable standard of care as set forth by Bruni v. Tatsumi. In this context, it is obvious that the utilization of the "judgment" language is mere surplusage which has no basis in law and which, if anything, can only tend to mislead a jury into applying a subjective rather than objective standard as it relates to the standard of care.

VERDICTS AND SETTLEMENTS

Virginia Weinbern. et al v. Upper Lakes Towing Company
Court and Judge: Cuyahoga County Common Pleas; Judge William Coyne
Settlement: November, 1996
Plaintiffs Counsel: Thomas J. Silk, CARAVONA & CZACK
Defendant's Counsel: Timothy G. Sweeney
Insurance Company: Not Listed
Type of Action: Personal Injury.

Plaintiffs' 68-foot historical yacht was docked on the Cuyahoga River and was struck by the defendant's tug and barge configuration. Plaintiffs were asleep on board the vessel at the time that it was struck and escaped prior to the sinking of their vessel with minor injuries.

Damages: Post-traumatic stress disorder.
Plaintiffs Experts: Dr. Paul Becker & Dr. Sara Iannoni (psychology)
Defendant's Experts: Phillip Resnick, Ph.D. (psychology)
Settlement: $120,000.00

James Lassiter v. Viking; Caulking; Gun Co.. et al.
Court and Judge: Cuyahoga County Common Pleas Court; Judge G. Kane
Settlement: January, 1997
Plaintiffs Counsel: John C. Meros & Carla Tricarichi
Defendant's Counsel: Larry Greathouse (Allied Electric) & Salvatore LoPresti (Viking Caulking Gun Co.)
Insurance Company: Not Listed
Type of Action: Product liability and intentional tort.

Plaintiff inadvertently cycled press by bumping single run button as he reached into press, amputating fingers. Employer failed to put barrier guard in place; electrical supplier installed single palm button. Summary judgment for electrical supplier reversed on appeal.

Damages: Amputated portions of three fingers, dominant hand. Plaintiff is a deaf-mute.
Plaintiffs Experts: Gerald Rennell (machine guarding); Richard Harkness, Ph.D., P.E.; Robert E. Johnson, Ph.D. (linguist)
Defendant's Experts: William Boorda, P.E.
Settlement: $475,000.00

Giannone v. McClaine
Court and Judge: Cuyahoga County Common Pleas; Judge Griffin
Settlement: April, 1997
Plaintiffs Counsel: Mark Fishman
Defendant's Counsel: Bob Rutter
Insurance Company: Allstate
Type of Action: Auto - contested red light case.

Intersection accident with no witnesses other than the two drivers.

Damages: Broken right arm, facial lacerations, healed soft tissue injuries.
Plaintiffs Experts: None
Defendant's Experts: None
Settlement: Judgment: $20,000.00; binding arbitration - verdict for defendant on counterclaim.

Thelma Payne v. Earlyne Bodenmiller
Court and Judge: Cuyahoga County Common Pleas; Judge Angellotta
Settlement: May, 1997
Plaintiffs Counsel: Peter H. Weinberger and Stuart E. Scott, SPANGENBERG, SHIBLEY & LIBER
Defendant's Counsel: William Rider
Insurance Company: Allstate
Type of Action: Premises Liability.

Blocked exhaust flue on chimney caused carbon monoxide is to build up in two family house.

Damages: Carbon monoxide poisoning.
Plaintiffs Experts: Michael Rolings, M.D. (cardiologist); Joseph Sopko, M.D. (pulmonologist); and David Fox, M.D. (psychiatrist).
Defendant's Experts: Not Listed.
Settlement: Judgment: $120,000.00

David Sillanpaa v. §am Brown
Court and Judge: Cuyahoga County Common Pleas Court; Judge P. Kellly
Settlement: May, 1997
Plaintiffs Counsel: David A. Kulwicki, BECKER & MISHKIND CO., L.P.A.
Defendant's Counsel: Lynn Lazzaro, Martin Murphy and Walter Krohngold
Insurance Company: State Farm/Westfield
Type of Action: Automobile.

Minimal impact rear end collision.

Damages: Herniated disc C5-C6.
Plaintiffs Experts: Gerald Bordlay, M.D.; A.E. Itani, M.D.; Gust Gallucci, D.C.; Robert Arganbright, M.S.; and James Pugh, Ph.D.
Defendant's Experts: Richard Kaufman, M.D.
Settlement: $147,500.00

Thomas Ostronek. et al v. All Pro Technology
Court and Judge: Cuyahoga County Common Pleas Court; Judge M. Corrigan
Settlement: May, 1997
Plaintiffs Counsel: Mitch Weisman. WEISMAN, GOLDBERG & WEISMAN
Defendant's Counsel: Rick McDonald
Insurance Company: Westfield
Type of Action: Products.

Janitor-plaintif€was cranking up basketball backboard in Lakewood School gym. Backboard fell on him. Defective weld.

Damages: Torn rotator cuff.
Plaintiffs Experts: Richard Harkness (mechanical engineer); Robert Ancell (vocational); John Burke (economics); Ken Chapman, M.D. (orthopedic).
Defendant's Experts: Tim Gordon, M.D. (orthopod)
Settlement: Judgment: $480,000.00 ($123,000.00 for loss of services).

Paul Porges, et al v. State Farm (UM)
Court and Judge: Cuyahoga County Common Pleas Court; Judge G. McMonagle
Settlement: May, 1997
Plaintiff's Counsel: Mitch Weisman, WEISMAN, GOLDBERG & WEISMAN
Defendant's Counsel: Ron Margolis
Insurance Company: State Farm
Type of Action: Automobile.

Rear-end collision; severe neck soft tissue injury. Problems with sleep. Possible small disc herniation. Surgery not indicated.

Damages: Soft tissue - neck.
Plaintiff's Experts: Ben Columbi, M.D. (neurosurgeon)
Defendant's Experts: Robert Corn, M.D.; Jody Pollack, L.P.T.; Bruce Montgomery, M.D. (neurologist who did EMG).
Settlement: $Judgment: $100,000.00 ($80,000.00/$20,000.00 loss of services) - Paid Verdict plus $15,000.00 prejudgment interest.

Estate of Ted Mroz v. Fleet-Mate Trucking Co.. et al
Court and Judge: Lucas County Common Pleas Court; Judge R. Franks
Settlement: May, 1997
Plaintiffs Counsel: David A. Kulwicki, BECKER & MISHKIND CO., L.P.A.
Defendant's Counsel: William Ramman
Insurance Company: Connecticut Specialty/State Farm
Type of Action: Automobile.

Improper backing of truck.

Damages: Wrongful death.
Plaintiffs Experts: None
Defendant's Experts: None
Settlement: $685,000.00

Mary Jane Somerick v. Joseph Ogonek, M.D.
Court and Judge: Summit County Common Pleas Court No. 96072900
Settlement: May, 1997
Plaintiffs Counsel: Henry W. Chamberlain, WEISMAN, GOLDBERG & WEISMAN
Defendant's Counsel: Steve Walters
Insurance Company: Medical Protective
Type of Action: Medical Malpractice.

Failure to timely diagnose and treat basal cell carcinoma on the plaintiffs chin.

Damages: Six inch car from lower lip down chin and neck. Residual skin discoloration on chin and neck from radiation therapy.
Plaintiffs Experts: Liability admitted. Brian Davies, M.D. (plastic surgeon)
Defendant's Experts: None.
Settlement: $325,000.00

Smartinean v. Atlas Plating v. Transcontinental Insurance Co.
Court and Judge: Cuyahoga County Common Pleas; Judge D. Gaul
Settlement: June, 1997
Plaintiffs Counsel: Bob Rutter
Defendant's Counsel: W. Charles Curley
Insurance Company: CNA
Type of Action: Declaratory judgment - intentional tort coverage under stopgap policy.

CNA contended its Stop Gap policy provided defense only for intentional tort case, while Atlas contended it was entitled to indemnity and defense. CNA accepted coverage and settled two intentional tort cases for over $750,000 following ruling on cross-motions for summary judgment.

Damages: Two severe burn cases (one plaintiff represents by Joe Domiano, the other by Dave Fowest)
Plaintiffs Experts: None
Defendant's Experts: None
Settlement: Not Applicable

Mastri v. City of Cleveland
Court and Judge: Cuyahoga County Common Pleas Court; Judge Villanueva
Settlement: June, 1997
Plaintiffs Counsel: Daniel J. Klonowski
Defendant's Counsel: Heather Graham-Oliver
Insurance Company: Self-insured Municipality
Type of Action: Trip and fall.

Plaintiff tripped and fell in chuck-hole in OF near a pedestrian crosswalk at the intersection of East 14th Street and Prospect Avenue.

Damages: Fractured left patella, post surgical pulmonary emboli.
Plaintiffs Experts: Mark Berkowitz, M.D.; Paul Hudock, M.D
Defendant's Experts: Robert C. Corn, M.D.
Settlement: $172,500.00

Adeline Scafide, et al v. K Mart Corporation
Court and Judge: Cuyahoga County Common Pleas; Judge McAlister
Settlement: June, 1997
Plaintiff's Counsel: Dale S. Economus
Defendant's Counsel: Mark D. Amaddio
Insurance Company: CWA Insurance Company
Type of Action: Slip and fall

While walking through the main door entrance of the Garden Center of K Mart Store #3013, plaintiffs foot was caught by a piece of plastic wrap which was hanging off the bottom of a pallet of fertilizer which was directly inside the doorway blocking and obstructing the aisleway. As a direct result, plaintiff fell, striking her head and left hip. She suffered a fractured left hip, fractured left ring finger and injury to her head.

Damages: Left femoral neck fracture.
Plaintiffs Experts: Audley Mackel, orthopaedist
Defendant's Experts: Not applicable.
Settlement: Judgment: $170,000.00.

Leonard Miecznikowski v. Paul Enker, M.D.
Court and Judge: Cuyahoga County Common Pleas; Judge T. Matia
Settlement: July 1997
Plaintiffs Counsel: Peter Weinberger, SPANGENBERG, SHIBLEY & LIBER
Defendant's Counsel: Patrick Murphy
Insurance Company: PIE
Type of Action: Medical Malpractice.

During bone decompression for a low back variable screw placement with posterior lumbar interbody fusion, defendant lacerated the E-5 nerve root with a bone punch. Defense claimed this was a risk of surgery.

Damages: L-5 nerve root laceration/foot drop.
Plaintiffs Experts: Thomas Flynn, M.D. (neurosurgeon)
Defendant's Experts: David McCord, M.D. (orthopedic surgeon)
Settlement: Judgment: $1,200,000.00

Dr. Peter G. Kontos, et al v. Nationwide Mutual Insurance Company
Court and Judge: Cuyahoga County Common Pleas Court; Judge Stuart Friedman
Settlement: July, 1997
Plaintiffs Counsel: Thomas J. Silk, CARAVONA & CZACK, P.L.L.
Defendant's Counsel: Timothy Johnson and Gregory O'Brien
Insurance Company: Nationwide Mutual Insurance Company
Type of Action: Personal Injury; Automobile Accident.

Plaintiff was travelling east bound on a rural, two-lane, undivided highway. Defendant was driving in the opposite direction and attempted a passing maneuver. The defendant's panel-van struck the plaintiffs vehicle, virtually head-on. The plaintiff was trapped in his vehicle for approximately 30 to 45 minutes, after having sustained serious injuries. The underlying personal injury claim was resolved for policy limits against the primary tort-feasor. This claim proceeded for underinsured motorist benefits available to the plaintiff, under his automobile insurance policy.

Damages: Closed-head injury, severe fracture of the left humerus requiring internal fixation and subsequent surgery for removal of hardware, neurological compromise, partially severed left ear, vertigo, tinnitus.
Plaintiffs Experts: Norman Lefkovitz, M.D. (neurologist); George Kellis, M.D. (orthopedist); Delphi Toth, Ph.D. (neuropsychologist); Jose Pouelo, M.D. (Spain) (psychiatrist/psychopharmacologist); John F. Burke, Ph.D. (economist).
Defendant's Experts: Howard J. Tucker, M.D. (neurologist)
Settlement: $225,000.00

Constance R. Miller, Adm. etc. v. Dr. Harry E. Wilson. Jr.
Court and Judge: Cuyahoga County Common Pleas Court; Judge J. Villaneuva
Settlement: August, 1997
Plaintiffs Counsel: Howard D. Mishkind, BECKER & MISHKIND
Defendant's Counsel: Murray Lenson
Insurance Company: Medical Protective
Type of Action: Wrongful Death/Psychiatric Malpractice.

Plaintiff alleged that the defendant psychiatrist failed to obtain an adequate history and failed to appreciate the risk that the patient exhibited of committing suicide. Two days after the office visit, plaintiff's decedent shot himself. Plaintiff left behind an eight year old son. Plaintiff was separated from his wife at the time of his death.

Damages: Death of a 37 year old, separated, stationary engineer, who committed suicide 2 days after seeing defendant psychiatrist for the first and only office visit.
Plaintiffs Experts: Dr. Howard Sudak (psychiatrist)
Defendant's Experts: Not Listed
Settlement: $450,000.00 (Structured settlement with present value of $450,000.00 -- total payout of approximately $800,000.00)

Juba v. Kaiser Foundation Hospitals
Court and Judge: Cuyahoga County Common Pleas
Settlement: August, 1997
Plaintiffs Counsel: Henry W. Chamberlain, WEISMAN, GQLDBERG & WEISMAN
Defendant's Counsel: Gary Goldwasser
Insurance Company: Self Insured
Type of Action: Medical Malpractice.

Failure to timely diagnose thoracic spinal tumor before causing permanent, irreversible nerve damage.

Damages: Loss of bladder control and lower extremity weakness.
Plaintiffs Experts: Gary Lustarten, M.D.; George Cyphers; John Burke, Ph.D.
Defendant's Experts: Not Listed
Settlement: $400,000.00

Carl Kettterer v. Michael Blair, et al
Court and Judge: Lorain County Common Pleas Court; Judge Glavas
Settlement: August, 1997
Plaintiffs Counsel: Michael F. Becker, BECKER & MISHKIND
Defendant's Counsel: Tom Downs
Insurance Company: Nationwide Ins. Co.
Type of Action: Personal Injury Claim Against Homeowner's Policy

The plaintiff, while on duty, was called to the home of the defendant. Defendant was a minor at the time of the incident. Defendant's mother had requested that her son be deemed a runaway and be picked up by the local police department. In an attempt to take him into physical custody, the defendant resisted the same, causing a scuffle resulting in the plaintiff's injury. Prior to trial, the parties reached a high/low agreement of $100,000.00 to $175,000.00. Defendant claimed that police procedures were not followed and that excessive force by the plaintiff was the cause of plaintiff's injuries.

Damages: Torn rotator cuff.
Plaintiffs Experts: John Wright
Defendant's Experts: Manual A. Martinez, M.D
Settlement: Judgment: $275,000.00; Offer: $100,000.00; Demand: $275,000.00.

Robert A. Molek, et al v. State Farm Mutual Automobile Ins. Co. (1997), 77 Ohio St.3d 392
Court and Judge: Reversed and remanded to Judge Judith Kilbane Koch
Settlement: August, 1997
Plaintiffs Counsel: Joseph L. Coticchia
Defendant's Counsel: Henry A. Hentemann
Insurance Company: State Farm Mutual Automobile Ins. Co.
Type of Action: Underinsured Motorist.

Plaintiffs were the wife and three minor children who brought a loss of consortium claim on behalf of the injured claimant. Robert A. Molek recovered the $100,000.00 single limit. However, State Farm refused to honor the loss of services claim of the wife and three minor children. The Ohio Supreme Court held that each person covered by UM who asserted a claim for loss of consortium had a separate claim subject to a separate per person policy limit. The total limits after the $100,000.00 to the injured claimant were $200,000.00.

Damages: Skull fracture, subdural and epidural hematoma; high impact, compartmental fracture of leg.
Plaintiffs Experts: None
Defendant's Experts: None
Settlement: $200,000.00.

John Doe v. James Doe. M.D.
Court and Judge: Cuyahoga County Common Pleas; Judge J. Burnside
Settlement: August, 1997
Plaintiffs Counsel: Charles Kampinski & Christopher M. Mellino
Defendant's Counsel: William Bonezzi
Insurance Company: PIE
Type of Action: Medical Malpractice.

Decedent had an IUD inserted Friday, September 8,1995, at her doctor's office. During the weekend she had a fever, chills, vomiting, and abdominal cramps. Monday, she returned to her doctor's office and was seen by a different physician. He did not review her chart which contained a history of her symptoms. Instead, he did his own history, physical, and diagnosed back strain. He prescribed a muscle relaxant. The decedent died early the next morning of overwhelming septicemia from group A strep.

Damages: Death, pain and suffering.
Plaintiffs Experts: Melvyn Ravitz, M.D. (OB/GYN); Kris Sperry, M.D. (forensic pathology), Shelly Gordon, M.D. (infectious disease); John Burke, Ph.D. (economist)
Defendant's Experts: Cyril H. Wecht, M.D. (forensic pathologist); Dennis Stevens, M.D. (infectious disease); Randall Baselt, Ph.D. (pharmacologist); Keith DeVoe, M.D. (OB/GYN).
Settlement: $2,500,000.00

John Doe v. ABC Hospital
Court and Judge: Cuyahoga County Common Pleas Court; Judge Peggy Foley Jones
Settlement: August, 1997
Plaintiffs Counsel: Charles Kampinski & Christopher M. Mellino
Defendant's Counsel: Patrick Murphy
Insurance Company: PIE
Type of Action: Medical Malpractice,

Decedent went to the emergency room after passing out and complained of a headache. He was diagnosed with heat exhaustion and released. He came back to the E.R. a few hours later after passing out again and complaining of a headache and was released again with the same diagnosis. The following morning, he collapsed at his home. He was later diagnosed with a ruptured cerebral vascular aneurysm.

Damages: Death, pain and suffering.
Plaintiffs Experts: Karl Manders, M.D. (neurosurgeon); John Burke, Ph.D. (economist)
Defendant's Experts: Thomas B. Flynn, M.D. (neurosurgeon); David Lander, M.D. (E.R.)
Settlement: $750,000.00

Donna Quinones, Adm. v. Cleveland Clinic Foundation
Court and Judge: Cuyahoga County Common Pleas; Judge Nancy Fuerst
Settlement: August, 1997
Plaintiff's Counsel: David M. Paris and Harlan M. Gordon, NURENBERG, PLEVIN, HELLER & McCARTHY CO., L.P.A.
Defendant's Counsel: Cheryl O'Brien
Insurance Company: Self-Insured
Type of Action: Medical Malpractice.

[illegible] fresh and defendant contended the clot was old.

Damages: Wrongful death.
Plaintiff's Experts: Kenneth [illegible]
[illegible] $575,000.00 [illegible] Pulmonology); Russell Harley (pat[illegible]

Linda Paino v. Raghu Sawker, M.D., et al
Court and Judge: Cuyahoga County Common Pleas Court; Judge Burnside
Settlement: September, 1997
Plaintiff's Counsel: William Hawal, SPANGENBERG, SHIBLEY & LIBER
Defendant's Counsel: William D. Bonezzi
Insurance Company: PIE
Type of Action: Medical Malpractice.

[illegible] the leg until second surgeon performed repeat bypass 48 hours

Damages: Severe ischemic left leg resulting in multiple debridements and signif[illegible]
damage.
Plaintiff's Experts: John Port[illegible] Multiple debridements and significant nerve
Defe[illegible]
Settlement: $1,000,000.00 [illegible] Pituk, M.D. (vascu

Gary Fairchild. Adm.. et al v. James F. Byers, M.D.. et al
Court and Judge: Mahoning County Common Pleas; Judge Charles J. Bannon
Settlement: October, 1997
Plaintiffs Counsel: J. Michael Monteleone & M. Jane Rua, JEFFRIES, KUBE, FORREST & MONTELEONE CO., L.P.A.
Defendant's Counsel: Shirley Christian & Marshall Tindall
Insurance Company: Western Reserve Ins., Ltd. & Pennsylvania Medical Society Liability Insurance Co.
Type of Action: Medical Malpractice/Wrongful Death.

18 year old pregnant woman had abdominal pain and was transported via ambulance to the hospital where she was examined, diagnosed with a urinary tract infection and discharged. The following morning (less than 12 hours later) she and her unborn child died as a result of uterine rupture.

Damages: Ruptured uterus causing death of 18 year old mother and unborn child of 7 months gestation.
Plaintiffs Experts: D. Ware Branch, M.D. (Salt Lake City, Utah)
Defendant's Experts: John J. Kane, MD. (Bethel Park, PA).
Settlement: Judgement: $5,605,000.00

John Doe. Adm. v. Dr. Moe
Court and Judge: Cuyahoga County Common Pleas Court; Judge Corrigan
Settlement: October, 1997
Plaintiffs Counsel: David M. Paris, NURENBERG, PLEVIN, HELLER & McCARTHY CO., L.P.A.
Defendant's Counsel: Requested To Be Withheld
Insurance Company: Requested To Be Withheld
Type of Action: Medical Malpractice.

On 6/6, decedent complained to her family doctor of severe chest pain. He misdiagnosed it as heartburn. She died on 6/19 of myocardial infarction.

Damages: Wrongful death.
Plaintiffs Experts: Thomas Kaiser (cardiology)
Defendant's Experts: Theodor Herwig (family practice)
Settlement: $507,500.00

C A T A VERDICTS AND SETTLEMENTS

JUDGMENT $_____ SETTLEMENT $_____

OFFER $_____ DEMAND $_____

PLAINTIFF'S DEMAND IN CLOSING ARGUMENT_____

DEFENDANT'S SUGGESTION IN CLOSING ARGUMENT_____

MONTH AND YEAR OF SETTLEMENT OR VERDICT:_____

CASE CAPTION:_____

COUNTY/JUDGE:_____

COUNSEL FOR PLAINTIFF(S): NAME:_____
(Do you want us to withhold name of Plaintiff's Counsel?_____)

ADDRESS:_____

_____

Tel. No._____

COUNSEL FOR DEFENDANT(S): NAME:_____

INSURANCE COMPANY:_____

TYPE OF ACTION: (Auto, med mal, products, slip 6i fall., etc.)

_____

AGE OF PLAINTIFF:_____ OCCUPATION:_____

MEDICAL SPECIALS (past) $_____ (future) $_____
WAGE LOSS $_____ DIMINISHED EARNING CAPACITY $_____

INJURIES:_____

_____

BRIEF DESCRIPTION OF CASE:_____

_____

_____

_____

EXPERTS FOR PLAINTIFF(S):_____

_____

EXPERTS FOR DEFENDANT(S):_____

_____

RETURN TO: David M. Paris, Esq.
Nurenberg, Plevin, Heller & McCarthy Co., L.P.A.
1370 Ontario Street, First Floor
Cleveland, Ohio 44113-1792

APPLICATION FOR MEMBERSHIP
THE CLEVELAND ACADEMY OF TRIAL ATTORNEYS

President, The Cleveland Academy of Trial Attorneys
Cleveland, Ohio

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

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

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

NAME: _____ AGE: _____

FIRM NAME: _____

OFFICE ADDRESS: _____ PHONE NO: _____

HOME ADDRESS: _____ PHONE NO: _____

SPOUSE'S NAME: _____ NO. OF CHILDREN: _____

SCHOOLS ATTENDED AND DEGREES (GIVE DATES): _____

_____

PROFESSIONAL HONORS OR ARTICLES WRITTEN: _____

_____

DATE OF ADMISSION TO OHIO BAR: _____

DATE COMMENCED PRACTICE: _____

PERCENTAGE OF CASES REPRESENTING CLAIMANTS: _____

DO YOU DO 25% OR MORE PERSONAL INJURY DEFENSE: _____

NAMES OF PARTNERS, ASSOCIATES AND/OR OFFICE ASSOCIATES (STATE WHICH): _____

_____

MEMBERSHIP IN LEGAL ASSOCIATIONS (BAR, 'FRATERNITY, ETC.): _____

_____

DATE: _____ APPLICANT: _____

INVITED BY: _____ SECONDED BY: _____

PRESIDENT'S APPROVAL: _____ DATE: _____