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CLEVELAND ACADEMY OF TRIAL ATTORNEYS JULY, 1998 NEWSLETTER

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OUTGOING PRESIDENT'S COLUMN

1998 INSTALLATION OF OFFICERS LUNCHEON

On Friday, June 26, 1998 at the Marriott, Jean M. McQuillan was installed as President of the Cleveland Academy of Trial Attorneys. Justice Frances Sweeney provided the oath of office to her and Robert F. Linton, Vice President, Frank G. Bolmeyer, Secretary and David M. Paris, Treasurer. Congressman Dennis Kucinich presented an update on legislation pending in Congress which most likely will affect us and our clients. This event was well attended by the bench and bar.

FEDERAL PRODUCTS LIABILITY LEGISLATION

I urge all of you to contact Senator Mike DeWine, Senate Office Building, Washington D.C. 20510, (202) 224-2315 (phone), (202) 224-6519 (fax) and Senator John Glenn, Senate Office Building, Washington D.C. 20510, (202) 224-3353 (phone), (202) 224-7983 (fax) concerning the product liability bill. In particular, you should oppose cloture. This bill limits the liability of sellers of products, caps, punitive damages against "small" businesses and preempts Ohio law and the Statute of Repose for products that cause workplace injuries. If this message arrives to you after the cloture vote, please contact your Senators about your opposition to the bill itself.

LUNCHEON SEMINAR

On May 28, 1998 Bob Linton presented his final luncheon seminar entitled "Ethics for the Personal Injury Lawyer." Mary Cibella, Jack Guttenberg and Ellen Hobbs Hirshman provided valuable information concerning the disciplinary process applicable to attorneys in Ohio.

At this time, I would like to publically thank Bob Linton for the marvelous job he did in assembling and presenting the various luncheon seminar

topics over the last year. The seminars were well attended because the topics and speakers were timely and pertinent to our members' practices.

FINAL NOTE OF THANKS

As outgoing President, I would like to thank the officers and directors who dutifully attended meetings throughout the course of the year to address the concerns of our members and issues confronting them as they practice law in Cuyahoga County. A special note of gratitude must be given to Jean McQuillan, Bob Linton, Frank Bolmeyer, David Paris and Paul Wolf.

Jean organized and presented the Bernard Friedman Seminar in cooperation with the Ohio Academy of Trial Lawyers for a day long seminar involving current topics confronting our members. She also co-chaired the PIE Task Force along with Mike Becker and finally organized the installation luncheon.

As mentioned above, Bob did a tremendous job in organizing and presenting the luncheon seminar series and also kept all of our officers and directors up-to-date by providing timely minutes after each of our meetings.

Frank Bolmeyer handled the finances of our group, timely presenting reports to the officers and directors.

David Paris and Paul Wolf were editors of the newsletter which has become more complete and informative than in any years past. The case analyses and Verdicts and Settlements provide our members with invaluable information guiding them in their representation of injured persons.

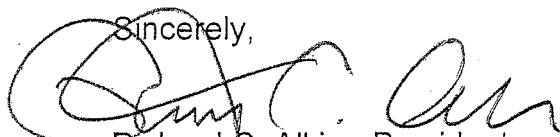
NEW MEMBERS

The CATA welcomes Benjamin F. Barrett, Jr., Gary Mantkowski and Mark Barbour as members.

CONCLUSION

Finally, I urge each and every one of you to bring to the attention of non-members the advantage to being involved in the Cleveland Academy of Trial Attorneys. Please review the "Access to Excellence" flyer on the back of the application for membership attached to this newsletter. It is certainly a bargain to be a member of this group with the benefits far exceeding the cost of membership.

Sincerely,



Richard C. Alkire, President

EVIDENCE - ADMISSIBILITY OF INSURANCE COVERAGE

Aerosol Systems, Inc. v. Wells Fargo Alarm Services, Cuy. Co. App. No. 71216 (April 23, 1998). For Plaintiff-Appellant: Steven G. Janik and Christian M. Williams and For Defendant-Appellee: David C. Tryon and David A. Bell. Opinion by James J. Sweeney. Patricia A. Blackmon and Terence O'Donnell concur.

Plaintiff brought suit against defendant alleging wanton misconduct in failing to respond to trouble signals emanating from defendant's alarm system. A major fire ensued, causing over 15 Million Dollars in property damage. The Court of Appeals held that the Trial Court did not abuse its discretion in allowing into evidence the fact that plaintiff's insurer covered the property damage loss. Although plaintiff argued that admission of the evidence violated the "collateral source rule", the Court of Appeals reasoned that where the Trial Court was faced with a complex set of facts and the Trial Court's jury instruction that the Jury was not to consider the existence of insurance, allowing evidence of collateral payment by the insurer was not an abuse of discretion. The Court of Appeals found applicable to this case the Supreme Court of Ohio's *dicta* in Ede v. Atrium S. OB-GYN, Inc. (1994), 71 Ohio St.3d 124, where the Court stated that Courts too often have a Pavlovian response to insurance testimony – immediately assuming prejudice, and that it is too naïve to believe that today's jurors do not already assume in a malpractice case that the defendant doctor is covered by insurance. "The legal charade protecting juries from information they already know keeps hidden from them relevant information that could assist them in making their determinations." Moreover, the trial was presided over by a visiting judge. Prior to the commencement of trial, the assigned judge had granted a motion in limine with regard to evidence of collateral payment by the insurer. The Court of Appeals held that since that order was interlocutory, a visiting trial judge may reverse the granting of a motion in limine by the assigned judge.

RELIEF FROM JUDGMENT

Huff v. Koscick, Cuy. Co. App. No. 73246 (April 30, 1998). For Plaintiff-Appellants: Randall M. Perla and For Defendant-Appellee: William H. Ryder. Per Curiam.

Plaintiff received an \$8,000.00 arbitration award stemming from injuries suffered when he was bitten by defendant's dog. Defendant did not timely appeal the arbitration award and the Trial Court entered final judgment upon the same. Nearly a month after the Court entered judgment upon the arbitration award, defendant filed a motion for relief from judgment arguing that defense counsel never received notice of the arbitration award which accounted for the lack of a timely appeal. The Court of Appeals reversed the Trial Court's decision to grant the motion for relief from judgment

because although the defendant may have stated a ground for relief under one of 4 provisions of Civil Rule 60(B), he did not demonstrate that he had a meritorious defense to the claim. Thus, the Trial Court abused its discretion.

EMERGENCY DOCTRINE

Walker v. Thomas, Cuy. Co. App. No. 73430 (May 14, 1998). For Plaintiff-Appellant: Anthony A. Gedos and for Defendant-Appellee: Jeffrey W. Van Wagner and D. Scott Harves. Per Curiam.

Plaintiff was rear-ended by defendant while stopped at a traffic light. Immediately after the accident, plaintiff provided affidavit testimony that the defendant was walking, talking and behaving normally. On the other hand, the affidavit of defendant's wife, who was a passenger in defendant's vehicle, averred that defendant suffered sudden weakness, confusion, and loss of muscle control immediately before the accident that rendered him unable to react to the stopped traffic in front of him. Defendant also produced the affidavit of his neurologist who averred that defendant "blacked out" due to an intra-cerebral hemorrhage just before the accident. The neurologist also averred that defendant had no previous history of black-out episodes prior to the cerebral hemorrhage and had no way of knowing that a brain hemorrhage was likely to occur. Under these facts the Court of Appeals concurred with the Trial Court's grant of summary judgment in favor of the defendant. The Court of Appeals ruled that a driver is not chargeable with negligence for failing to control his automobile when he is rendered unable to do so by a sudden period of unconsciousness which he has no reason to anticipate. Lehman v. Haynam (1956), 164 Ohio St. 595. Thus, upon the evidence presented, reasonable minds could only conclude that the "emergency doctrine" applied to absolve defendant of liability for the accident.

PRODUCT LIABILITY - PRODUCT MISUSE

Roch v. Unarco Industries, Inc., Cuy. Co. App. No. 72572 (May 14, 1998). For Plaintiff-Appellant: Richard C. Haber and Timothy G. Kasparek and For Defendant-Appellee: Paul D. Eklund. Opinion by Joseph Nahra. Terrence J. O'Donnell and Kenneth Rocco concur.

Plaintiff's decedent was killed while at work in a warehouse operated by his employer, Zellerbach Division of Mead Corporation. Plaintiff's decedent was crushed by paper which fell from a storage racking system manufactured by defendant and installed at Mead in 1968. Plaintiff objected to the Trial Court's jury instruction that product misuse by the decedent's employer, as opposed to the decedent, was a complete bar to recovery by the plaintiff. The Court of Appeals affirmed on the basis

Menifee v. Ohio Welding Products, Inc. (1984), 15 Ohio St.3d 75, where plaintiff was barred from recovery where the defendants were not aware that plaintiff's employer intended to use a particular system in a particular manner. Thus, product misuse by plaintiff's employer is just as much a bar to recovery as plaintiff's own misuse.

UNINSURED MOTORIST COVERAGE

Haynes v. Lock, Cuy. Co. App. No. 73457 (May 7, 1998). For Plaintiff-Appellant: Christian R. Patno and For Defendant-Appellee: Mark V. Micheli. Per Curiam.

The Court of Appeals affirmed a grant of summary judgment in favor of the insurer, Nationwide, on plaintiff's underinsured motorist claim. The Court of Appeals agreed with the Trial Court that a 'bicycle does not constitute a "motor vehicle" within the meaning of R.C. 3937.18 regardless of the fact that bicycles are frequently treated like motor vehicles for purposes of state and municipal traffic, registration and licensing requirements.

INSURANCE COVERAGE

Negron v. Odeon Concert Club, Inc., Cuy. Co. App. No. 73156 (May 7, 1998). For Plaintiff-Appellee: Murray Richelson and For Defendant-Appellant: Clifford M. Masch. Per Curiam.

Plaintiff recovered a default judgment against the defendant in the amount of \$30,000.00 stemming from injuries she sustained as a result of being thrown to the ground and trampled during a fight at an allegedly overcrowded bar. In addition to the overcrowding, plaintiff also alleged that the defendant failed to maintain proper security. After receiving default judgment, plaintiff filed a supplemental petition against the liability insurer for the defendant pursuant to R.C. 3929.06. Both plaintiff and the insurer filed motions for summary judgment. The Trial Court granted plaintiff's motion for summary judgment and overruled that of the insurer. Specifically, the trial court ruled that "coverage exist because Odeon negligently allowed the premises to be overcrowded which prevented plaintiff from removing herself from the area of potential harm. An endorsement to the insurance policy provided an exclusion for bodily injury arising from actual or alleged "assault" and/or "battery.]" The Court of Appeals found this exclusion applicable to plaintiff's claim that defendant negligently permitted its club to be overcrowded and negligently failed to provide adequate security so as to reverse the Trial Court's grant of summary judgment in favor of the plaintiff.

VERDICTS AND SETTLEMENTS

Lukich, et al . Greyhound Lines, Inc.. et al

Court and Judge: Cuyahoga County Common Pleas Court; Judge R. McAllister

Verdict: August, 1997

Plaintiffs Counsel: Richard L. Demsey, **NURENBERG, PLEVIN, NELLER & McCARTHY CO., L.P.A.**

Defendant's Counsel: Clark D. Rice

Insurance Company: Self-Insured

Type of Action: Automobile.

Plaintiff stopped in traffic on 1-77 northbound near 1-480 when defendant Greyhound's bus rear-ended her car. Defendant admitted liability and contested nature, extent and permanency of plaintiff's injuries. Jury award included loss of services.

Damages: Post traumatic stress, right sciatica, soft tissue neck and back.

Plaintiffs Experts: E. Joseph Carter, D.O.; Mark C. Brown, Ph.D.

Defendant's Experts: None

Judgment: \$207,040.00

Faith Gormley, et al v. John Kotrbav

Court and Judge: Trumbull County Common Pleas Court; Judge W.H. McKay

Settlement: September, 1997

Plaintiffs Counsel: Justin F. Madden and John D. Liber, **SPANGENBERG, SHIBLEY & LIBER LLP**

Defendant's Counsel: Williams & Sennet

Insurance Company: Lumberman's Mutual Casualty

Type of Action: Automobile Accident.

Plaintiff was belted rear passenger in defendant's vehicle. Defendant pulled in front of oncoming vehicle and was t-boned on plaintiff's side of vehicle.

Damages: Dislocated right hip, broken left arm requiring surgical fixation and extensive therapy.

Plaintiffs Experts: Michael Joyce, M.D.

Defendant's Experts: None

Settlement: \$315,000.00

Kelly King. et al v. Kenneth Zaletel, et al.

Court and Judge: Lake County Common Pleas Court; Judge Mitrovich

Settlement: November, 1997

Plaintiffs Counsel: Justin F. Madden, **SPANGENBERG, SHIBLEY & LIBER LLP**

Defendant's Counsel: I. James Hackenberg

Insurance Company: Motorist's Mutual

Type of Action: Premises Liability.

Plaintiff was an invitee in her cousin's home, sitting in front of a fireplace, when a sandstone mantel fell across her lower back. Defendant's insurer treated case as freak accident, but settled for policy limits.

Damages: Fractured L-4 resulting in partial paraplegia.

Plaintiffs Experts: Richard Kraly, AIA; Frederick Frost, M.D.

Defendant's Experts: Nyzen Consulting

Settlement: \$300,000.00

Norma Janiak v. Vesko Popovic

Court and Judge: Cuyahoga County Common Pleas Court; Judge J. Villanueva

Settlement: November, 1997

Plaintiffs Counsel: Justin F. Madden, **SPANGENBERG, SHIBLEY & LIBER LLP.**

Defendant's Counsel: Jay S. Hanson

Insurance Company: Progressive

Type of Action: Automobile Accident.

Plaintiff rearended by defendant's van. Plaintiff waiting to make a left turn.

Damages: Soft tissue and deep bruise on left shin.

Plaintiffs Experts: None

Defendant's Experts: None

Settlement: \$28,000.00

Laura Stanfield v. Lucille B. Collins

Court and Judge: Lorain County Common Pleas Court; Judge L.M. McGough

Settlement: December, 1997

Plaintiffs Counsel: Justin F. Madden and William Hawal, **SPANGENBERG, SHIBLEY & LIBER LLP**

Defendant's Counsel: Joseph G. Ritzler

Insurance Company: Nationwide

Type of Action: Auto Accident.

Defendant pulled out into plaintiffs lane of travel, t-boned plaintiffs vehicle.

Damages: Soft tissue injuries to neck, shoulder and back.

Plaintiffs Experts: None

Defendant's Experts: None

Settlement: \$32,000.00

Robert Csppola, et al v. City of Highland Hills

Court and Judge: U.S. District Court; Judge P. Gaughan

Settlement: December, 1997

Plaintiffs Counsel: Justin F. Madden, **SPANGENBERG, SHIBLEY & LIBEW LLP** and Lou J. Carozzi, **GONDA AND ASSOCIATES**

Defendant's Counsel: James A. Climer

Insurance Company: Not Applicable

Type of Action: Excessive Force

Plaintiff en route to medical emergency has minor traffic collision. Leaves scene and returns after medical emergency. Two Highland Hills officers engage plaintiff in argument and then physically and forcefully take plaintiff into custody.

Damages: Two bruised ribs, wrist lacerations and bruising, emotional distress.

Plaintiffs Experts: None

Defendant's Experts: None

Settlement: \$75,000.00

Wayne L. Miller v. Babcock & Wilcox, et al

Court and Judge: Cuyahoga County Common Pleas Court; Judge T. McGinty

Settlement: December 15, 1997

Plaintiffs Counsel: Michael R. Kube, **JEFFRIES, KUBE, FORREST & MONTELEONE
CO., L.P.A.**

Defendant's Counsel: Clarence Bartunek

Insurance Company: Cigna Insurance Co.

Type of Action: Slip and Fall.

Someone had strung a chain across a walkway which plaintiff tripped over.

Damages: Torn rotator cuff and dislocation of right shoulder on construction site.

Plaintiffs Experts: George A. Rago

Defendant's Experts: Not Listed

Settlement: \$360,000.00

Leuchtaa v. Lyden Oil

Court and Judge: Cuyahoga County Common Pleas Court; Judge P.F. Jones

Settlement: January, 1998

Plaintiffs Counsel: David M. Paris, **NURENBERG, PLEVIN, HELLER & McCARTHY
CO., L.P.A.**

Defendant's Counsel: David Ross

Insurance Company: Ranger Ins.

Type of Action: Class Action - Oil Spill

Lyden Oil gasoline truck tipped over on Chagrin Blvd. spilling 8,000 gallons of gasoline resulting in evacuation of businesses and residents of Woodmere for the day.

Damages: business interruption and displacement damages.

Plaintiffs Experts: Not Applicable

Defendant's Experts: Not Applicable

Settlement: \$250,000.00

Lynda Berohn v. Jonathan Karl

Court and Judge: Cuyahoga County Common Pleas Court; Judge C. Boyko

Settlement: February, 1998

Plaintiffs Counsel: Justin F. Madden, **SBANGENBERG, SHIBLEU & LIBER LLP**

Defendant's Counsel: Bruce M. Courey

Insurance Company: State Farm Insurance Co.

Type of Action: Automobile Accident.

Plaintiff was belted rear seat passenger that was rear ended on an on-ramp to 1-71. She had a history of left shoulder impingement. Dispute over whether rotator cuff tear, diagnosed 1 year later, was related.

Damages: Left rotator cuff tear and soft tissue strain.

Plaintiffs Experts: Jon P. Warner, M.D.

Defendant's Experts: None

Settlement: \$41,000.00

Douglas D. Gorey v. MTD Products, Inc., et al.

Court and Judge: Lorain County Common Pleas Court; Judge E.M. Zaleski

Settlement: February 5, 1998

Plaintiffs Counsel: Michael R. Kube, **JEFFRIES, KUBE, FORREST & MONTELEONE
CO., L.P.A.**

Defendant's Counsel: Jeffrey A. Schenk

Insurance Company: Firemans Fund

Type of Action: Automobile Accident.

Plaintiff was hit by a semi tractor-trailer going 55 mph.

Damages: Cervical strain, claim unoperated C5-6 herniated disc.

Plaintiffs Experts: Paul D. Sterurer, M.D.; Michael J. Smith, M.D.

Defendant's Experts: Robert Zaas, M.D.

Settlement: \$85,000.00

Loomis v. Farmers Ins.

Court and Judge: Cuyahoga County Common Pleas; Judge K. Craig

Settlement: March, 1998

Plaintiff's Counsel: David M. Paris, **NURENBERG, PLEVIN, MELLER & McCARTHY
CO., L.P.A.**

Defendant's Counsel: William Neubert

Insurance Company: Farmers

Type of Action: Auto - Underinsurance.

Plaintiff was run off the road by a phantom vehicle that left the scene. Independent verification by impartial witness.

Damages: Laceration of quadricep tendon

Plaintiffs Experts: Dr. Juan Rodriguez

Defendant's Experts: Dr. Robert Corn

Settlement: \$100,000.00

James Doty, et al v. Magnum Research, Inc.. et al

Court and Judge: U.S. District Court; Judge J.S. Gwin

Settlement: March, 1998

Plaintiffs Counsel: Michael R. Kube, **JEFFRIES, KUBE, FORREST & MONTELEONE
CO., L.P.A.**

Defendant's Counsel: Mark McCarthy

Insurance Company: Not Listed

Type of Action: Products Liability.

Gun misfired and went into automatic wherein plaintiff received multiple gun shot wounds through his left hand. Right hand dominant.

Damages: Shells from a gun went completely through plaintiffs left hand causing soft tissue injuries, compound comminuted fractures of second, third and fifth digits and head of fifth metacarpal.

Plaintiffs Experts: John T. Butters, P.E.

Defendant's Experts: None

Settlement: \$80,000.00

Jane Doe v. ABC Hair Salon. XYZ Product Manufacturer

Court and Judge: Lake County Common Pleas Court; Judge P. Mitrovich

Settlement: March, 1998

Plaintiffs Counsel: Michael B. Pasternak

Defendant's Counsel: Withheld

Insurance Company: Withheld

Type of Action: Negligence and Product Liability.

Negligent application of permanent hair treatment.

Damages: Loss of hair.

Plaintiffs Experts: Hassan Muhkter, Ph.D.

Defendant's Experts: Howard Schwartz, M.D.

Settlement: \$62,500.00

Stephen P. Ball v. Columbia Gas of Ohio. et al.

Court and Judge: Knox County Common Pleas Court; Judge O. Eyster

Settlement: March, 1998

Plaintiffs Counsel: John D. Liber and Justin F. Madden, SPANGENBERG, SHIBLEY & LIBER LLP and Richard B. Murray

Defendant's Counsel: Murray K. Lenson, Martin J. Murphy, Kim M. Ross and James R. Berendsen

Insurance Company: Westfield for Mt. Vernon Nazarene College

Type of Action: Negligence.

Six months prior to explosion, Gas Company performed a defective pipeline fusion. The fusion failed and was leaking gas for an undetermined period of time. The College received reports of a natural gas odor within 48 hours of the explosion but failed to contact the Gas Company until just an hour prior to the explosion. When the Gas Company arrived, they immediately detected strong natural gas levels around the dormitory room. Neither the College nor the Gas Company evacuated the dormitory room until after the explosion.

Damages: Severe burns to face, shoulders, upper back, forearms, and hands with keloid scarring.

Plaintiffs Experts: Robert Ancell, Ph.D. (Southfield, MI); John F. Burke, Jr., Ph.D. (Cleveland, Ohio); Leonard C. Mandell, P.E. (Pawtucket, RI); Brentley Buchele, M.D. (Columbus, Ohio).

Defendant's Experts: Thomas V. Lepley (Gambier, Ohio); H.M. Shepherd (Hamilton, VA).

Settlement: \$3,000,000.00

Chad Johnson v. Delta Upsilon Fraternity. et al.

Court and Judge: Portage County Common Pleas Court; Judge Enlow

Settlement: April, 1998

Plaintiffs Counsel: Mitchell A. Weisman and Daniel P. Goetz, **WEISMAN, GOLDBERG & WEISMAN CO., L.P.A.**

Defendant's Counsel: Gregory Baran

Insurance Company: Landmark Insurance Company/AIG

Type of Action: Hazing/negligence.

The plaintiff was threatened with being black-balled from the fraternity if he did not dive into a mud pit along with two other members of the fraternity. When he dove into the mud, he injured his spinal cord.

Damages: Quadriplegia.

Plaintiff's Experts: Dr. Frost (neurologist); Robert Ancell (vocational); Dr. John Burke (economist); George Cyhers (life care plan); David George (safety expert); Lionel Tiger (fraternity expert).

Defendant's Experts: None

Settlement: \$1,750,000.00

Renee Novak, et al v. Entemann's, Inc. and James Vaughn

Court and Judge: Cuyahoga County Common Pleas; Judge C. Boyko

Settlement: April, 1998

Plaintiffs Counsel: Mitchell A. Weisman, **WEISMAN, GOLDBERG & WEISMAN**

Defendant's Counsel: Kenneth Torgerson, Lisa Shesley, Lisa Levine

Insurance Company: Entemann's was self-insured, but Kemper did the adjusting.

Type of Action: Automobile collision; disputed left turn case.

Defendant took a left turn causing a collision with the left, front of the defendant's van with the left, front of plaintiff's car. The air bag discharged and hit the plaintiff in the head causing a tremor which normally is not caused by trauma and thus the dispute.

Damages: Soft tissue neck injury and tremor of the right hand. Plaintiff's primary hobby is drumming which has been severely restricted.

Plaintiff's Experts: Harold Mars, M.D. (neurologist); Jennifer Kriegler, M.D. (neurologist); William Witt, M.D. (ear, nose & throat).

Defendant's Experts: John Conomy, M.D. (neurologist)

Judgment: \$187,500.00

Angela Putrino, et al v. Garrett Hayden

Court and Judge: Lake County Common Pleas Court; Judge P. Mitrovich

Settlement: April 2, 1998

Plaintiffs Counsel: Michael R. Kube, **JEFFRIES, KUBE, FORREST & MONTELEONE
CO., L.P.A.**

Defendant's Counsel: I. James Hackenberg

Insurance Company: Motorist Mutual

Type of Action: Automobile Accident.

Defendant driver turned left at intersection in front of car in which plaintiff was a front seat passenger.

Damages: Plaintiff fractured her right tibia requiring insertion and subsequent removal of steel rod.

Plaintiffs Experts: Dr. Steven P. Combs

Settlement: \$107,500.00

John Doe, Administrator of Estate of Jane Doe v. ValuJet Aviation, et al

Court and Judge: St. Louis, Missouri

Settlement: May, 1998

Plaintiffs Counsel: Jamie R. Lebovitz, **NUREMBERG, PLEVIN, MELLER &
McCARTHY CO., L.P.A.**

Defendant's Counsel: Withheld

Insurance Company: United States Aviation Underwriters

Type of Action: Aviation

Crash of ValuJet Flight 592 on May 11, 1998 in the Florida Everglades. Decedent survived by husband and two minor children.

Damages: Wrongful Death.

Plaintiffs Experts: Dr. Frederick Raffe (economist); Dr. Cynthia Wilhelm (vocational)

Defendant's Experts: Not Applicable

Settlement: \$4,500,000.00

John Doe v. John Roe (Confidential Settlement)

Court and Judge: Cuyahoga County Common Pleas; Judge C. Friedland

Settlement: May, 1998

Plaintiff's Counsel: Thomas Mester, **NURENBERG, PLEVIN, HELLER & McCARTHY CO., L.P.A.**

Defendant's Counsel: William Viscomi and Kevin Alexandersen

Insurance Company: Confidential

Type of Action: Premise Liability Drowning.

Plaintiff, a non-swimmer, found drowning in a deep end of a swimming pool. Plaintiff claimed defendant negligent in lifeguard duties. Defendants denied negligence, alleged contributory negligence of plaintiff for entering deep end of pool. Defendant alleged that plaintiff died of natural death causes based on coroner's report. Defendant claims he died of sudden arrhythmic death originating from a vegetative lesion in the mitral valve.

Damages: Near drowning resulting in death.

Plaintiffs Experts: John Burke, Ph.D. (economist); Thomas Ebro (aquatics); Dr. Dennis Mazal (pulmonologist); Robert Hoffman, M.D. (pathologist); Thomas Kaiser, M.D. (cardiologist)

Defendant's Experts: Anne Clement (aquatics); Bruce Waller, M.D. (cardiologist/pathologist)

Settlement: \$400,000.00

Darrel McCartney, et al v. Mohammed Akbar Naeem. M.D.

Court and Judge: Lorain County Common Pleas; Judge McGough

Settlement: May, 1998

Plaintiffs Counsel: John A. Lancione, **LANCIONE & SIMON, P.L.L.**

Defendant's Counsel: J.C. William Tattersall

Insurance Company: PICO

Type of Action: Medical Malpractice.

2-year delay in diagnosis of colon cancer. The delay caused the stage of plaintiffs cancer to advance from a Duke's A to Duke's C. Three years post-op the plaintiff is disease free and doing well.

Damages: Loss of chance of survival, increased risk of harm, reduced life expectancy.

Plaintiffs Experts: Kenneth McCarty, M.D. (pathology); James McLamb, M.D. (family medicine).

Defendant's Experts: Raymond Roman, M.D. (internal medicine); Armin Green, M.D. (oncology).

Settlement: \$250,000.00

Seymour I. Zimberg v. Joseph R. Braverman, et al

Court and Judge: Not Filed In Court

Settlement: May, 1998

Plaintiffs Counsel: Rubin Guttman

Defendant's Counsel: None

Insurance Company: Westfield Companies

Type of Action: Sidewalk Trip and Fall.

Plaintiff was a pedestrian to whom the area was not well known. Sidewalk was uneven and slabs were at various angles.

Damages: Right arm fracture.

Plaintiffs Experts: Not Applicable

Defendant's Experts: Not Applicable

Settlement: \$38,000.00

Confidential Baby Jane Doe v. ABC Hospital, et al

Court and Judge: Lorain County Common Pleas Court; Judge K. Glavas

Settlement: May, 1998

Plaintiffs Counsel: Edison H. Hall, Jr. & Mary Elaine Hall

Defendant's Counsel: Withheld

Insurance Company: Self-Insurance/CNA

Type of Action: Consolidated Medical Malpractice and Wrongful Death Lawsuit

Former premature infant, 4 months in age, was taken to hospital. The baby was seen in the non-urgent wing of the emergency room by a 78 year old physician who was working part time (9 hours a week).

The infant was found to be dehydrated, as well as listless and lethargic. In spite of these findings, the physician refused to order IV fluid therapy or blood work, even after prompting by one of the nurses.

Child remained in the non-urgent wing of the emergency room where she continued to deteriorate. The child finally received IV fluid therapy and blood work some three hours after she was initially seen by the emergency physician. By this time, she had suffered a straight sinus thrombosis of the brain, which resulted in the injuries below.

The hospital failed to follow it's own Triage Guidelines with regard to sick infants. Hospital and ER Physician Group settled. The on call pediatrician was released without obligation.

The child died shortly before her fourth birthday as a result of complications.

Note: A motion for punitive damages against the ER physician was granted.

Damages: Brain damage, mental retardation, spastic quadriplegia, chronic seizures, complications resulting in death.

Plaintiffs Experts: Robert Lerer, M.D. (pediatrics); Stephen Bates, M.D. (pediatric neurology); Rita Cydulka, M.D. (emergency medicine); Robert Belfer, M.D. (pediatric emergency medicine); Thomas Abramo, M.D. (pediatric emergency medicine); Michael Farrell, M.D. (pediatric gastroenterology); Josephine Ashmead, M.D. (pathology/autopsy); David Woodruff, R.N. (nursing); Joseph Canelongo (vocational opinion); George Cyphers (Life Care Plan); and John Burke, Ph.D. (economics).

Defendant's Experts: Mark Scher, M.D. (pediatric neurology); Jeffrey Blumer, M.D. (pediatric emergency medicine); and Charles Brill, M.D. (pediatric neurology).

Settlement: \$1,775,000.00

Martin Russell. et al v. Christine Corbin. M.D.. et al

Court and Judge: Cuyahoga County Common Pleas Court; Judge K. Satula

Settlement: May 27, 1998

Plaintiffs Counsel: Edward Richard Stege, **STEGE & ASSOCIATES CQ., L.F.A.** and
Donald J. Richardson

Defendant's Counsel: Michael F. Lyon, Burt Fulton and Lynn L. Moore

Insurance Company: Kentucky Mutual

Type of Action: Medical Malpractice.

This was a case against Drs. Corbin and Reinhold and St. John's Hospital for the mismanagement of Helen Russell's pregnancy. As a result of mismanagement and neglect by all three sets of defendants, Martin Russell was born with an advanced stage of Group B Strep, such that shortly after birth, his brain hemorrhaged causing irreversible and profound damage. St. John's Westshore Hospital was negligent in failing to process "stat" the amniotic fluid lab work. Drs. Corbin and Reinhold failed to diagnose and treat a Group B Strep infection in Mrs. Russell and failed to diagnose and treat the infection's ascendency into her baby.

Damages: Mental retardation, cerebral palsy, cortical blindness, and seizures.

Plaintiffs Experts: Richard L. Sweet, M.D. (ob/gyn); Jay P. Goldsmith, M.D. (neonatology); John F. Burke, Jr. Ph.D. (economist); Mona Yudkoff, RN (rehabilitation nurse); Samuel Horwitz, M.D. (pediatric neurology); Debra Heller, M.D. (pathology); and Robert A. Zimmerman (radiology)

Defendant's Experts: David M. Burkons, M.D. (ob/gyn); Garth Essig, M.D. (ob/gyn); and Michael S. Radetsky, M.D. (pediatrics)

Jury Verdict: \$6,600,000.00

Kenneth Summerton. et al v. Bill Thompson Transport

Court and Judge: Graham County, U.S. District Court, Southern Division

Settlement: June 1, 1998

Plaintiffs Counsel: Peter H. Weinberger and Stuart E. Scott, **SPANGENBERG, SHIBLEY & LIBER, L.L.P.**

Defendant's Counsel: Lawrence Sutter and James Brudny

Insurance Company: Markell Insurance

Type of Action: Auto/Tractor Trailer; Rear End Collision - Admitted Liability

Marie, 44 year old Wife and mother of 2 teenagers, died in the collision. Ken suffered multiple injuries from which he made a remarkable recovery. His total medical bills and lost wages were \$115,000.00.

Damages: Wrongful death; multiple injuries.

Plaintiffs Experts: Michael Pedoto, M.D. (physical medicine and rehab); James Gilchrist, Ph.D. (neuropsychologist); John Burke, Ph.D. (economist)

Defendant's Experts: Carol Miller, M.D. (neurosurgeon); Tom Schey, J.D. (annuitant)

Judgment: \$2,720,000.00 as follows: \$2,070,000.00 (wrongful death), \$650,000.00 (personal injury)

Galletti v. Petsmart

Court and Judge: Cuyahoga County Common Pleas; Judge R. Suster

Settlement: June, 1998

Plaintiffs Counsel: David M. Paris, **NURENBERG, PLEVIN, HELLER & McCARTHY CO., L.P.A.**

Defendant's Counsel: Terrence J. Kenneally and Mark Greer

Insurance Company: USAA: Chubb

Type of Action: Premises - Dog Bite

Plaintiff was shopping at Petsmart with mother. Defendant dog owner brought her dog into store on a leash, in conformance with store policy but then tied the dog to a display shelf. Store employees saw this and failed to remind owner to maintain "control" over dog. Plaintiff went to pet dog and was bitten.

Damages: Facial scars.

Plaintiffs Experts: Karen Arnoff (canine behavior specialist)

Defendant's Experts: David L. Harris (trainer and animal behaviorist)

Settlement: \$200,000.00

Dale Smith. Adm. v. Nationwide Insurance Co.

Court and Judge: Not In Suit

Settlement: June, 1998

Plaintiffs Counsel: David M. Paris, **NURENBERG, PLEVIN, HELLER & McCARTHY
CQ., L.P.A.**

Defendant's Counsel: None

Insurance Company: Nationwide

Type of Action: Auto - Underinsurance

Decedent was survived by husband and two adult and two minor children. Case resolved for policy limits.

Damages: Wrongful Death; no conscious pain and suffering.

Plaintiffs Experts: Not Applicable

Defendant's Experts: Not Applicable

settlement: \$500,000.00

George Merkuloff, et al v. Special Busing. Inc.. et al

Court and Judge: Cuyahoga County Common Pleas; J. K.R. Callahan

Settlement: June, 1998

Plaintiffs Counsel: J. Charles Ruiz-Bueno, **NURENBERG, PLEVIN, NELLER &
McCARTHY CO., L.P.A.**

Defendant's Counsel: Joseph F. Nicholas, Jr.

Insurance Company: National Interstate

Type of Action: Automobile Accident.

Plaintiff at full stop awaiting on-coming traffic to make left turn. Then, rear-ended by defendant, driving school bus.

Damages: Soft tissue injury to neck, shoulders and upper back. Lost opportunity for job promotion.

Plaintiffs Experts: Dr. George Muenster

Defendant's Experts: Dr. Malcolm A. Brahms

Settlement: \$75,000.00

Dennis Thrall, Admr., etc v. Metrohealth Medical Center

Court and Judge: Cuyahoga County Common Pleas Court; Judge R. Suster

Settlement: June, 1998

Plaintiffs Counsel: William Hawal, **SPANGENBERG, SWIBLEY & LIBER L.L.P.**

Defendant's Counsel: James L. Malone

Insurance Company: None

Type of Action: Wrongful Death.

Decedent became hypotensive and tachycardic at onset of coronary bypass surgery when she developed Redman syndrome as a consequence of a rapid Vancomycin infusion. Patient died from irreversible cardiac ischemia.

Damages: Wrongful Death.

Plaintiff's Experts: None yet identified.

Defendant's Experts: None yet identified.

Settlement: \$750,000.00

Phyllis Sever, Admr., etc. v. Marc Dinga, M.D., et al

Court and Judge: Cuyahoga County Common Pleas Court; Judge R. McAllister

Settlement: June, 1998

Plaintiffs Counsel: William Hawal and Mary Cavanaugh; **SPANGENBERG, SKIBLEY & LIBER. L.L.P.**

Defendant's Counsel: Ronald Rispo/Marilyn Miller Cirsafi (Dr. Dinga); Stephen Walters (Drs. Banna & Espinosa); Beverly Sandacz (Lake West Hospital)

Insurance Company: Frontier; Medical Protective

Type of Action: Medical Malpractice/Wrongful Death

Two days after discharge, following triple by-pass, decedent presented to Lake West ER with complaints of confusion. Clinical presentation prompted attending cardiologist to suspect pulmonary embolism. VQ scan was indeterminate and no pulmonary angiogram was done. Consulting pulmonologist was pursuing diagnosis of mediastinitis at time of death.

Damages: Wrongful Death.

Plaintiff's Experts: Hadley Morgenstern-Clarren, M.D.

Defendant's Experts: Terence Kilroy, M.D. (pulmonologist); Francis Pamela, M.D.
(cardiologist)

Judgment: \$1,400,000.00

Mabel Smith, et al v. Alfred W. Harrison. et al.

Court and Judge: Cuyahoga County Common Pleas Court; Judge J. Burnside

Settlement: June, 1998

Plaintiff's Counsel: J. Charles Ruiz-Bueno, **NURENBERG, PLEVIN, HELLER & McCARTHY CO., L.P.A.**

Defendant's Counsel: James Johnson, Lawrence Gawell, Gretchin Hirschauer

Insurance Company: Allstate, ITT Hartford, RTA

Type of Action: Auto-Pedestrian

Plaintiff jaywalking to catch RTA bus which had stopped across the street for boarding. Trial on liability, only, as defendant's policy and UM coverages limited. Plaintiff found 40% negligent.

Damages: Knee replacement and shoulder surgery.

Plaintiff's Experts: None

Defendant's Experts: None

Settlement: \$66,000.00

John Bizorik, et al v. Gloria M. Schach

Court and Judge: Summit County Common Pleas Court; Judge Williams

Settlement: June, 1998

Plaintiffs Counsel: J, Charles Ruiz-Bueno, **NURENBERG, PLEVIN, HELLER & McCARTHY CO., L.P.A.**

Defendant's Counsel: Terrence Kenneally, Sean Allen and J. Michael Creagan

Insurance Company: State Farm

Type of Action: Automobile Accident.

Plaintiff forced off toll road by defendant. Plaintiff car rolled over and totalled. Plaintiff and defendant had equal limits of \$200,000.00 through State Farm. State Farm waived med-pay subrogation of \$91,000.00.

Damages: Catastrophic injuries to both plaintiffs. Both retired.

Plaintiff's Experts: Dr. Robert Coll; Dr. John J. Young; Dr. Kam Ming Wong

Defendant's Experts: None

Settlement: \$200,000.00

James Maclin. et al v. William Benford. et al

Court and Judge: Cuyahoga County Common Pleas Court; Judge W. Coyne

Settlement: July, 1998

Plaintiffs Counsel: Jamie R. Lebovitz and J. Charles Ruiz-Bueno, **NURENBERG, PLEVIN,
HELLER & McCARTHY CO., L.B.A.**

Defendant's Counsel: Mark Greer

Insurance Company: Farmers Ins. Group

Type of Action: Automobile Accident.

Plaintiff hit head on by defendant, who crossed yellow line. Defendant was an uninsured motorist. Plaintiff also received \$14,500.00 in medical payment benefits.

Damages: Head, neck, upper back.

Plaintiffs Experts: Harold Mars, M.D. and Roman Petroff, M.D.

Defendant's Experts: Richard Kaufman, M.D.

Settlement: \$75,000.00