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November, 1998 Newsletter

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PRESIDENT'S MESSAGE:

Welcome to a new year with CATA . I have to begin by gratefully thanking David Goldense for his single-handed organization of our golf outing on August 27, 1998. A good attendance of CATA members and judges and perfect weather made it another great event. Thanks, David (and Anna, too!).

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Allstate Insurance/Minor Impact Soft Tissue Cases: We have received reliable information that Allstate Insurance Company has recently adopted a new corporate business policy on MIST cases. It intends to make "final offers" on cases and never negotiate after that offer is made. They will continue to send adjusters to pretrials and settlement conferences, but the adjuster will not be given any authority to negotiate once this "final offer" has been made. Members have reported that in the MIST cases, these "final offers" are often less than a Plaintiff's medical bills. Members also report this policy applies to UM/UIM cases as well. Members have reported an increasing need to try small cases (with values +/- \$10,000.00) because of this policy. So, members, be aware -- if you have Allstate cases -- it's nothing personal, it's corporate! Take some solace in the fact that Allstate's "policy" may permit you to obtain prejudgment interest and costs after you've been forced to obtain a verdict. We attach to this newsletter a sample set of Request for Admissions (used pre-trial) and a Notice of Deposition (used post-verdict) to establish the basis to obtain prejudgment interest and costs after a verdict. For more on Allstate's policies, see Jeffrey Boyd's article, "The Allstate Training Manual", in Ohio Trial, Summer, 1998, pg. 7.

In my opinion, "policies" like Allstate's should not be tolerated and deserve all of the challenges we can collectively make to them.

P.I.E. TASK FORCE: The stay of proceedings involving P.I.E. Mutual has been lifted, and many issues are developing. Mike Becker and I are planning a CLE program for December 11, 1998 at 1:00 p.m. (with assistance from the OATL PIE Task Force) to cover issues raised on per claim limits, exhaustion of joint tortfeasor coverage, subrogation of OIGA claims, etc. Look for registration and more information in the future. In the meantime, some may not be aware that the case of Vicker v. Howe (Fifth District #96CA07, 4/24/98, 1998 WL 401443) recently addressed the issue of exhaustion of remedies from a joint tortfeasor in an OIGA case. This case has been accepted for review by the Ohio Supreme Court.

Holiday No Dinner Dance - Saturday, 11/21/98: You should be receiving an invitation to this event which the CATA co-sponsors every year with the Cuyahoga ~~Bar~~ Foundation and other local bar associations. We sponsor attendance of our judges as guests of CATA. This event raises money for various Cleveland hunger groups. I encourage all of our members to attend and enjoy an evening away from the office for an excellent cause.

Dr. Robert Corn: Members should be aware that discovery of Dr. Corn's "IME's" and income from the same is the subject of an alternative writ proceeding in the Eighth District Court of Appeals. This action challenges discovery orders by Judges Nancy Russo, Daniel Gaul and Special Master Bob Housel. The Board of Directors of CATA has agreed to file an amicus brief supporting the discovery Orders of Judges Russo and Gaul and opposing the issuance of any writ limiting discovery. Briefs are due on 11/16/98, and we will keep you informed of these proceedings.

New Members: The CATA welcomes James P. Boyle as a member.

Sincerely,

Jean M. McQuillan, President

VERDICTS AND SETTLEMENTS

John Doe v. Roe Insurance Co.

Court and Judge: Cuyahoga
Settlement: July, 1998
Plaintiff's Counsel: PAUL M. KAUFMAN
Defendant's Counsel: N/A
Insurance Company: None
Type of Action: Breach of Contract

Denial of disability benefits to disabled podiatrist. Settlement represents the present value of the disability benefits for the life expectancy of the Plaintiff.

Damages: Breach of disability contract
Plaintiff's Experts: JOHN BURNE, Ph.D.; MARK BERKOWITZ, M.D.
Defendant's Experts: Donald Mann, M.D.
Settlement: \$247,642.11

Confidential v. Confidential

Court and Judge: Pre-filed settlement
Settlement: Not Listed
Plaintiff's Counsel: RUBIN GUTTMAN, ESQ.
Defendant's Counsel: Not Applicable
Insurance Company: Travelers Property Casualty
Type of Action: Rear End Auto Collision

Plaintiff was a 49 year **old** surgeon whose vehicle was rear ended, causing only \$345.00 property damage. The Defendant's vehicle was damaged somewhat more, but not significantly. Defendant claimed to **be** going no more than 20 mph when he struck the rear of Plaintiff's stopped vehicle. At the time of the accident, Plaintiff was a surgeon earning in excess of \$450,000.00 per year. After the accident, Plaintiff performed surgery as usual. Twenty-four hours later, Plaintiff began to experience bilateral tingling and went to a rheumatologist whose findings were non specific. Several days later, when the symptoms continued, a neurologist asked whether Plaintiff had been involved in a motor vehicle accident. When the surgeon answered in the affirmative, the neurologist referred Plaintiff for an MRI, which disclosed herniated C5 and C6. After symptoms continued to worsen, Plaintiff underwent a partial corpectomy and fusion at C5-6 with screws and plates. After three months off work, Plaintiff returned to surgery and, after several weeks, resumed a full surgical schedule. Plaintiff experienced residual shoulder difficulty for some months; however, prognosis is for no residual harm or disability.

Damages: Herniated C5-C6 and shoulder capsulitis
Plaintiff's Experts: Not Listed
Defendant's Experts: Not Listed
Settlement: \$375,000.00

Estate of Baby Doe v. Dr. X

Court and Judge: Not Listed

Settlement: July, 1998

Plaintiff's Counsel: JEFFREY H. SPIEGLER

Defendant's Counsel: Confidential

Insurance Company: Confidential

Type of Action: Medical Malpractice/Wrongful Death

Defendant physician failed to do non-stress test and/or biophysical profile when mother reports decreased fetal activity during 38th week of pregnancy.

Damages: Still birth of full term male baby

Plaintiff's Experts: Michael Cardwell, M.D., Obstetrician;
Raymond Redline, M.D.

Defendant's Experts: Garth Essig, M.D., Obstetrician

Settlement: \$275,000.00

John Doe, Minor v. D. X and Dr. Y

Court and Judge: Not Listed

Settlement: November, 1997

Plaintiff's Counsel: JEFFREY H. SPIEGLER

Defendant's Counsel: Confidential

Insurance Company: Confidential

Type of Action: Medical Malpractice

Defendant pediatrician failed to make timely referral to otolaryngologist for recurring otitis media. Defendant otolaryngologist failed to diagnose and treat cholesteatoma (benign growths which destroy ear structures).

Damages: Loss of middle ear structures and conductive hearing.
Must wear hearing aids.

Plaintiff's Experts: Charles Bluestone, M.D.; Mark Anderson,
Vocational Counselor

Defendant's Experts: Not Listed

Settlement: \$625,000.00

John Doe v. Dr. X

Court and Judge: Not Listed
Settlement: December, 1997
Plaintiff's Counsel: JEFFREY H. SPIEGLER
Defendant's Counsel: Confidential
Insurance Company: Confidential
Type of Action: Medical Malpractice

Defendant orthopedic surgeon internally fixed distal tibial and fibular fractures without correcting valgus angulation, then failed to timely diagnose wound infection. Patient has to undergo osteotomy to correct malunion.

Damages: Malunion of distal tibial fracture, osteomyelitis
Plaintiff's Experts: W. Thomas Jackson, M.D.
Defendant's Experts: Randall Marcus, M.D.
Settlement: \$375,000.00

Estate of Jane Doe v. Medical Center, et al.

Court and Judge: Not Listed
Settlement: May, 1998
Plaintiff's Counsel: JEFFREY H. SPIEGLER and JOAN A. FORD
Defendant's Counsel: Confidential
Insurance Company: Confidential
Type of Action: Medical Malpractice/Wrongful Death

Failure to timely diagnose and treat dental abscess.

Damages: Death of 26 year old wife and mother of two children.
Plaintiff's Experts: Charles Babbush, D.D.S.; Anthony O. Udekwu, M.D.; Martin Raff, M.D.; James Gadek, M.D. John Burke, Ph.D.
Defendant's Experts: Robert Kelly, M.D.; Phillip Lerner, M.D.; Lawrence Martin, M.D.; Richard Haug, D.D.S.; Patrick Metro, D.D.S.; Edward Ruch, D.D.S.; Joel Steinberg, M.D.; Hugh Greely, Hospital Credentialing Expert
Settlement: \$2,500,000.00

John Doe v. City, et al.

Court and Judge: Cuyahoga County; Judge Daniel Gaul

Settlement: August, 1998

Plaintiff's Counsel: David M. Paris

**NURENBERG, PLEVIN, WELLER & MCCARTHY CO.,
L.P.A.**

Defendant's Counsel: Withheld per Request

Insurance Company: Withheld per Request

Type of Action: Premises and Product Liability

Plaintiff 1 and Plaintiff 2 were carpenters working for a construction company which was the successful bidder to reconstruct a City-owned bridge. The City relocated underground 11 KV feeder lines overhead onto existing utility poles which ran directly over the bridge. The City designed and installed switches to disconnect the power over the bridge in anticipation of construction equipment being used. When a crane was delivered, the City refused to de-energize, insulate and/or relocate the overhead lines. The crane cable made contact with the 11 KV line, resulting in electrical burns to Plaintiffs who were holding onto the load attached to the crane cable. The crane manufacturer and lessor were sued for failing to utilize an "insulated link" at the end of the crane cable which would have prevented and/or substantially lessened Plaintiffs' injuries. The City was liable since the maintenance of a utility is a proprietary function and the failure to temporarily de-energize was a ministerial task not involving high level decision making or discretion.

Damages: Electrical burns - both hands

Plaintiff's Experts: George Karady; Alexander Emmanuel;
Richard Jacobs, P.E.; John Burke, Jr., Ph.D.;
Rod Durgin, Ph.D.; Planet 3 Media;
Michael Keith, M.D.; Duret Smith, M.D.

Defendant's Experts: T.C. Cheng, Ph.D.; Howard B. Hamilton, Ph.D.;
J. Donald Morgan, Ph.D.; Alan L. Dorris,
Ph.D.; Bernie Enfield, CPS, P.E.;
Joseph Pickett; Samuel Rittenhouse, P.E.;
James Headley; O.C. Amrhyn, P.E., C.S.P.;
Richard Hayes

Settlement: \$2,050,000.00

James Hotz, et al. v. Donald G. Bohning & Assoc. et al.

Court and Judge: Cuyahoga; Judge J. Anthony Calabreze

Settlement: September, 1998

Plaintiff's Counsel: Leon M. Plevin and Ellen McCarthy
**NURENBERG, PLEVIN, HELLER & MCCARTHY CO.,
L.P.A.**

Defendant's Counsel: Thomas Kraus

Insurance Company: Grange Mutual

Type of Action: Automobile

Plaintiff was directing traffic at a cold patching site. Defendant was unable to stop without striking vehicle ahead. In an effort to avoid vehicle ahead, Defendant left the roadway, went onto a grassy area, striking Plaintiff.

Damages: Fracture tibial plateau

Plaintiff's Experts: Paul G. Forcier, M.D.

Defendant's Experts: Dennis B. Brooks, M.D.

Judgment: \$282,580.16

Jane Doe v. Dr. John Doe

Court and Judge: Cuyahoga; Judge J. Richard McMonagle

Settlement: August, 1998

Plaintiff's Counsel: Jeffrey A. Leikin/David M. Paris
**NURENBERG, PLEVIN, HELLER & MCCARTHY CO.,
L.P.A.**

Gary G. Kabat, **KABAT MIELZINER & SOBEL**

Defendant's Counsel: Withheld per Request

Insurance Company: Withheld per Request

Type of Action: Medical Malpractice

Plaintiff had surgical repair of shoulder fracture with bone graft. Defendant breached standard of care by misprescribing antibiotic (prophylactically) after surgery 4 x day for 10 days. This suppressed the clinical signs of the infection at the donor site at the 1st post-op visit. 5 days later, the patient called Defendant at 3:00 a.m. complaining of fever, chills, nausea and vomiting and was told it was probably the flu.

Damages: Toxic shock resulting in amputation of 8 fingers and both legs below the knee.

Plaintiff's Experts: Neal Crane, M.D.

Paul Forcier, M.D.

Defendant's Experts: Not Listed

Settlement: \$950,000.00

Clemons, et al. v. Perry Township, et al.

Court and Judge: Stark County; Judge Boggins; Case No. 1996CV01257

Settlement: June, 1998

Plaintiff's Counsel: Kenneth Knabe and James Szaller

BROWN & SZALLER CO., L.P.A.

Defendant's Counsel: Scott Piepho/Orville Reed, III; Greg Beck;
Kirk Roman

Insurance Company: County - Self Insured

Type of Action: Premises Liability - Political Subdivision Tort
Liability

The boys were sucked into an open, unguarded storm sewer hidden by flood waters. Defense was sovereign immunity; Plaintiffs' claimed exceptions for maintenance and nuisance on public grounds.

Damages: Wrongful deaths of 7 & 11 year olds

Plaintiff's Experts: John Denega; Paul Johnston;

Dr. Colleen Victory; Dr. John F. Burke

Defendant's Experts: Robert Rosen; Richard Riethmiller;
Daniel Hill; Alan Coogan; Donald Palmer;
Tim Ziegenfuss; James Nobile; Frank Pia

Settlement: \$650,000.00

Audrey Lipnick (a minor) v. United States of America

Court and Judge: Federal Court; Judge Donald Nugent

Settlement: June 30, 1998

Plaintiff's Counsel: VICTOR A. MEZAPA III and CHERYL O'BRIEN

Defendant's Counsel: William Kopp and Kathleen Midian, Asst. U.S.
Atty.

Insurance Company: N/A

Type of Action: Medical Malpractice

On 3/17/93 this 2+ year old female was taken to a Navy doctor (dermatologist) for evaluation and removal of a cyst-like growth in the 7-8 o'clock portion of the right areola. The dermatologist used a 3mm punch biopsy technique to "remove the area" after administering a local anesthetic. Late that evening the mother removed the bandage to observe the site and found the cyst remained and instead the child's nipple had been removed. Both experts agreed the Plaintiff would never breast feed from that side and that nipple reconstruction at breast maturity was a certainty. Experts were uncertain as to how much breast tissue was actually removed and whether that would lead to asymmetrical growth in the breast itself. Future reconstruction and augmentation procedures were estimated to be less than \$20,000.00. Case falls under the auspices of The Fed. Tort Claim Act 28 U.S.C. 52677 mandating parents are not entitled to damages and attorney's fees are limited. All damages were solely awarded to minor.

Plaintiff's Theory: It was beneath accepted standards of care to remove the child's nipple rather than the

cyst.

Defendant's Theory: Defendants did not contest liability. A defense medical exam was conducted to evaluate injury and damages.

Damages: Removal of undetermined portion of child's right nipple and scarring to areolar area

Plaintiff's Experts: Harvey Baumann, M.D.

Defendant's Experts: Robert L. Stroup, M.D. (damages only)

Settlement: \$400,000.00

Adm. of Decedent's Estate v. Hosp and OB/GYN Group

Court and Judge: Montgomery County Common Pleas Court

Settlement: September, 1998

Plaintiff's Counsel: John G. Lancione and John A. Lancione
LANCIONE & SIMON, P.L.L.

Defendant's Counsel: Withheld

Insurance Company: Not Listed

Type of Action: Medical Malpractice

Pregnant mother with history of prior cesarean section delivery undergoes a trial of labor at term. Symptoms of impending placental abruption develop while physicians are not in hospital. Bleeding and fetal distress develop and physician is notified but doesn't arrive until after uterine rupture, resulting in H.I.E., coma, and death one month later.

Damages: Severe brain damage and death

Plaintiff's Experts: Harlan Giles, M.D.

Defendant's Experts: Steven DeVoe; Bruce Flamm, M.D.

Settlement: \$500,000.00

Chapman v. Todd Hixenbaugh, M.D.

Court and Judge: Allen County

Settlement: August, 1998

Plaintiff's Counsel: John A. Lancione

LANCIONE & SIMON, P.L.L.

Defendant's Counsel: Timothy Krugh

Insurance Company: None

Type of Action: Medical Malpractice, Wrongful Death

Uninsured general surgeon failed to treat bowel obstruction resulting in septic shock and cardiovascular collapse. The widow remarried within 2 years. The surgeon paid the settlement personally.

Damages: Death from septic shock due to untreated bowel obstruction.

Plaintiff's Experts: James Zinser (economist)

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

Settlement: \$190,000.00

Paoloni v. Haftkowycz

Court and Judge: Cuyahoga County

Settlement: September, 1998

Plaintiff's Counsel: John G. Lancione and John A. Lancione

LANCIONE & SIMON, P.L.L.

Defendant's Counsel: Stephen E. Walters and Jay Kelly

Insurance Company: Mutual Assurance

Type of Action: Obstetrical Malpractice

Defendant-obstetrician failed to accurately assess weight of nearly 12 pound fetus and failed to obtain informed consent for trial of labor without option for cesarean section.

Damages: Permanent loss of use of right arm due to brachial plexus injury from shoulder dystocia.

Plaintiff's Experts: Mark Landon, M.D.; Martin Gimovsky, M.D.

Defendant's Experts: James Nocon, M.D.; John O'Grady, M.D.

Judgment: \$1,000,000.00

Confidential Minor v. Medical Center

Court and Judge: Scioto

Settlement: March, 1998

Plaintiff's Counsel: John G. Lancione and John A. Lancione
LANCIONE & SIMON, P.L.L.

Defendant's Counsel: Confidential

Insurance Company: Confidential

Type of Action: Medical Malpractice

8-year-old girl taken to E.R. after a fall injuring her head. E.R. caregivers delayed treatment and transfer to tertiary care center. Child died after three-hour delay, complicated by excessive sedation with Valium and Versed.

Damages: Death

Plaintiff's Experts: Norman Schneiderman, M.D.; Carole Miller, M.D.

Defendant's Experts: Robert McLaurin, M.D.; William Walker, M.D.

Settlement: \$400,000.00

Confidential

Court and Judge: Cuyahoga

Settlement: March, 1998

Plaintiff's Counsel: John G. Lancione and John A. Lancione
LANCIONE & SIMON, P.L.L.

Defendant's Counsel: Confidential

Insurance Company: Confidential

Type of Action: Medical Malpractice

Doctor caused multiple skull fractures during forceps delivery.

Damages: Child sustained head trauma from a complicated delivery causing hydrocephalus but no other brain injury.

Plaintiff's Experts: Harlan Giles, M.D.

Defendant's Experts: Method Duchon, M.D.

Settlement: \$450,000.00

Singer v. Williams

Court and Judge: Franklin

Settlement: July, 1998

Plaintiff's Counsel: John G. Lancione and John A. Lancione
LANCIONE & SIMON, P.L.L.

Defendant's Counsel: Withheld

Insurance Company: Travelers Insurance

Type of Action: Auto

Police officer injured while making an arrest, suffered fractured right shoulder when vehicle operator pulled away from the scene. Multiple surgeries required. Insurance limits paid in full.

Damages: Fracture of right shoulder

Plaintiff's Experts: Michael Kessler, M.D.

Defendant's Experts: Walter Hauser, M.D.

Settlement: \$125,000.00

Confidential

Court and Judge: Lorain County

Settlement: January, 1998

Plaintiff's Counsel: John G. Lancione and John A. Lancione
LANCIONE & SIMON, P.L.L.

Defendant's Counsel: Confidential

Insurance Company: Confidential

Type of Action: Medical Malpractice

Sixty-seven year old woman underwent hysterectomy for uterine cancer sustained intraoperative bowel perforation requiring life flight to tertiary care center for treatment of peritonitis bowel resection and colostomy.

Damages: Bowel perforation with peritonitis and bowel resection and colostomy.

Plaintiff's Experts: Michael Baggish, M.D.

Defendant's Experts: David Tullis, M.D.

Settlement: \$375,000.00

John Doe v. HIJ Corp.

Court and Judge: Stark County Common Pleas

Settlement: February, 1998

Plaintiff's Counsel: Christopher P. Thorman and Cathleen M. Bolek
LANCIONE & SIMON, P.L.L.

Defendant's Counsel: Randy Snow, Daniel Jonas and Tod Morrow

Insurance Company: Not Listed

Type of Action: Disability Discrimination and Retaliation

Plaintiff was harassed and subjected to a hostile work environment because of his disability. Plaintiff complained and continued to be harassed and retaliated against. Plaintiff eventually left work due to depression.

Damages: Depression and aggravation of existing conditions

Plaintiff's Experts: Dr. Kathleen Quinn

Defendant's Experts: Not Listed

Settlement: \$150,000.00

Long-Term Employee v. ABC Corp.

Court and Judge: Cuyahoga County Court of Common Pleas

Settlement: February, 1998

Plaintiff's Counsel: Ellen S. Simon and Christopher P. Thorman
LANCIONE & SIMON, P.L.L.

Defendant's Counsel: Steven Wall & Marifrances Bolger

Insurance Company: Not Listed

Type of Action: Not Listed

Vice-president of Finance terminated while recovering from heart surgery after thirty-four years of employment. Company's succession planning documents targeted older workers, and included age-related criteria.

Damages: Aggravation of existing conditions, past and future economic and non-economic damages

Plaintiff's Experts: Not Listed

Defendant's Experts: Not Listed

Settlement: \$1.25 million

Group of Jane Does v. TUV Corp.

Court and Judge: Cuyahoga County Court of Common Pleas

Settlement: December, 1997

Plaintiff's Counsel: Ellen S. Simon and Christopher P. Thorman
LANCIONE & SIMON, P.L.L.

Defendant's Counsel: Barbara Arison and Michael Chesney

Insurance Company: Not Listed

Type of Action: Race Discrimination and Retaliation

Customer service representatives discriminated against with respect to job assignments which affected income. Supervisor made racist remarks. Employees retaliated against after complaining about discrimination.

Damages: Economic losses, pain and suffering and emotional distress

Plaintiff's Experts: Not Listed

Defendant's Experts: Not Listed

Settlement: \$400,000.00

Jane Doe v. XYZ Company

Court and Judge: Cuyahoga County Court of Common Pleas

Settlement: February, 1998

Plaintiff's Counsel: Ellen S. Simon and Christopher P. Thorman
LANCIONE & SIMON, P.L.L.

Defendant's Counsel: David Holcombe and Joy Evans

Insurance Company: Not Listed

Type of Action: Employment Discrimination and Retaliation

African American employee with good employment record denied comparable pay and promotional opportunities. Plaintiff was retaliated against for complaining about discrimination.

Damages: Lost income and benefits, emotional distress

Plaintiff's Experts: Not Listed

Defendant's Experts: Not Listed

Settlement: \$275,000.00

Olive v. Columbia of Northeast Ohio, et al.

Court and Judge: Cuyahoga County Court of Common Pleas

Settlement: March, 1998

Plaintiff's Counsel: Ellen S. Simon, Christopher P. Thorman and
Cathleen M. Bolek, **LANCIONE & SIMON, P.L.L.**

Defendant's Counsel: Ted Prasse, Paul Mancino and Kim Hastings

Insurance Company: Not Listed

Type of Action: Age Discrimination, Breach of Contract

Nurse manager at St. Vincent Charity Hospital terminated after twenty-five years of outstanding performance when Columbia instituted cost-cutting and targeted older long-term employees.

Damages: Not Listed

Plaintiff's Experts: John Burke, Jr., Ph.D.

Defendant's Experts: None

Judgment: \$2.61 million + prejudgment interest & \$185,000 in
attorneys fees

Jane Doe v. YZ Co.

Court and Judge: Cuyahoga County Court of Common Pleas

Settlement: April, 1998

Plaintiff's Counsel: Ellen S. Simon and Christopher P. Thorman
LANCIOME & SIMON, P.L.L.

Defendant's Counsel: John Lewis

Insurance Company: Not Listed

Type of Action: Employment Discrimination and Retaliation

Human resource employee was denied promotional opportunity, formally complained, and was then discharged within 6 weeks of her complaint. Case involved issues of gender discrimination and retaliation.

Damages: Not Listed

Plaintiff's Experts: Not Listed

Defendant's Experts: Not Listed

Settlement: \$480,000.00

Janet Doe v. Larse Corporation

Court and Judge: Federal Court/N.D. Ohio

Settlement: May, 1998

Plaintiff's Counsel: Ellen S. Simon & Christopher P. Thorman
LANCIONE & SIMON, P.L.L.

Defendant's Counsel: Michael Gorman and Jack Dunbar

Insurance Company: Not Listed

Type of Action: Employment Discrimination and Retaliation

African American account manager complained because she was paid less than white males. Company retaliated by investigating employee in order to find cause for discharge and then fired her.

Damages: Severe emotional distress and aggravation of existing conditions. Emotionally and physically disabled from work.

Plaintiff's Experts: John Burke, Jr., Ph.D.

Defendant's Experts: Dr. Toni Carmen

Settlement: \$950,000.00

Audrey J. Kiplinger, et al. v. Ryan Operations G.P. dba Ryan Homes

Court and Judge: Medina; Judge Judith A. Cross

Settlement: August, 1998

Plaintiff's Counsel: Justin F. Madden, **SPANGENBERG, SHIBLEY & LIBER LLP**

Defendant's Counsel: R. Christopher Yingling

Insurance Company: Not Listed

Type of Action: Premise Liability

Plaintiff was visiting a model home of Defendant and crossed over the front step on the way into the house. Twenty minutes later, while exiting the house through the same door, she slipped on an icy patch on the same front step that she crossed to enter the home. She suffered a fractured tibia and fibia which required an emergency room visit, surgery, and a 2-night hospital stay.

Damages: Fractured tibia and fibia just above the right ankle which was surgically repaired.

Plaintiff's Experts: Not Listed

Defendant's Experts: Not Listed

Settlement: \$89,000.00

Susan C. Wischhusen, et al. v. St. Paul Insurance Co.

Court and Judge: N/A

Settlement: July, 1998

Plaintiff's Counsel: Justin F. Madden, **SPANGENGERG, SHIBLEY & LIBER LLP**

Defendant's Counsel: Kathryn M. Miley, Esq.

Insurance Company: Not Listed

Type of Action: Auto Negligence

Plaintiff was crossing the street in the late evening hours when she was struck and injured by a drunk driver. The driver had no insurance so the case proceeded to uninsured mediation. There were **no** experts for either case.

Damages: Severe hematoma and contusion to the left buttocks and tailbone area. (There were no broken bones.)

Plaintiff's Experts: Not Listed

Defendant's Experts: Not Listed

Settlement: \$25,000.00

John Doe v. Jane Doe

Court and Judge: Cuyahoga County; Judge Stuart A. Friedman

Settlement: October, 1998

Plaintiff's Counsel: **JACK LANDSKRONER**

Defendant's Counsel: None - Defendants represented themselves
Pro Se

Insurance Company: Defendant owner - insured by financial responsibility bond; did not cover driver

Type of Action: Auto - rear-end collision

Plaintiff and passenger on motorcycle stopped for red light when struck in rear by Defendant travelling approx. 27/35 mph causing Plaintiff to be thrown several feet through intersection.

Damages: Fracture of distal shafts, left tibia and fibula; fractured pubic rami; fractured sacrum, right; contusions of head and open reduction and internal fixation of fractures of distal shafts, left tibia and fibula required.

Plaintiff's Experts: J. George Furey, M.D.

Defendant's Experts: None

Judgement: \$300,000.00

IN THE COMMON PLEAS COURT
COUNTY, OHIO

CASE NO.

Plaintiffs,

JUDGE

V.

**PLAINTIFFS' FIRST REQUEST FOR
ADMISSIONS DIRECTED TO
DEFENDANT,**

Defendant.

The plaintiffs, pursuant to Ohio Civil Rule 36, request that the defendant,
_____, within twenty-eight days after service of this Request, make the following
admissions for purposes of this action:

1. On April 12, 1996, defendant was backing up his vehicle from a driveway located at 3862 Laurel Road, Brunswick, Ohio.

RESPONSE:

2. On April 12, 1996, while defendant was backing up his vehicle as described in Request For Admission No. 1, he failed to observe plaintiff's vehicle and failed to continue to look as he proceeded backing up thereby causing the collision of April 12, 1996.

RESPONSE:

3. At the time and place described in Request for Admission No. 1, the defendant backed his vehicle into the roadway without determining that such movement could be made with reasonable safety.

RESPONSE:

4. At the time and place described in Request for Admission No. 1, before backing, defendant failed to give sufficient warning to vehicles on the roadway, including plaintiff herein.

RESPONSE:

5. At the time and place described in Request for Admissions No. 1, while backing, defendant failed to exercise reasonable care under the circumstances.

RESPONSE:

6. At the time and place described in Request for Admission No. 1, plaintiff, Corinne Gelarden, had the right-of-way.

RESPONSE:

7. At the time and place described in Request for Admissions No. 1, defendant did not have the right-of-way.

RESPONSE:

8. The action of defendant at the time and place described in Request for Admissions No. 1 constituted negligence.

RESPONSE:

9. The negligence of defendant described in the preceding Request for Admissions was the proximate cause of the collision described herein.

RESPONSE:

10. As a direct and proximate result of the negligence of defendant, plaintiff required medical treatment at Medina General Hospital on April 12, 1996 resulting in damages of \$150.00.

RESPONSE:

11. As a direct and proximate result of the negligence of defendant, plaintiff required the medical services of Radiology Professionals, Inc. on April 12, 1996 resulting in damages of \$28.00.

RESPONSE:

13. As a direct and proximate result of the negligence of defendant, plaintiff required medical treatment at Southwest General Health Center on April 15, 1996 resulting in damages of \$248.75.

RESPONSE:

13 As a direct and proximate result of the negligence of defendant, plaintiff required the medical services of Emergency Professional Services on April 15, 1996 resulting in damages of \$129.00.

RESPONSE:

14. As a direct and proximate result of the negligence of defendant, plaintiff required the medical services of Drs. Hill & Thomas on April 15, 1996 resulting in damages of \$35.00.

~~RESPONSE:~~

15. As a direct and proximate result of the negligence of defendant, plaintiff required medical treatment from Charles E. Hugus, M.D. for the period of May 1, 1996 to August 6, 1996 resulting in damages of \$268.00.

RESPONSE:

16. As a direct and proximate result of the negligence of defendant, plaintiff required the medical services of Majika Physical Therapy Associated for the period of May 8, 1996 to July 3, 1996 resulting in damages of \$1,400.00.

RESPONSE:

17. As a direct and proximate result of the negligence of defendant, plaintiff required the medical services of Old Oak Imaging Center on May 30, 1996 resulting in damages of \$1,200.00.

RESPONSE:

18. As a direct and proximate result of the negligence of defendant, plaintiff required medication resulting in damages of \$15.00.

RESPONSE:

19. As a direct and proximate result of the negligence of defendant plaintiff sustained a loss of income resulting in damages of \$407.04.

RESPONSE:

20. ~~As a direct and proximate result of the negligence of defendant, plaintiff sustained a loss of income resulting in damages of \$407.04.~~ Rendered was reasonable a \emptyset necessary by virtue of the negligent acts and omissions of defendant.

RESPONSE:

_____, Esq.

(S. Ct. No. _____)

Attorneys for Plaintiffs

evaluation, setting of reserves and negotiations of cases involving Minor Impact
Soft Tissue injuries

(3) any and all statistical information, raw data, and evaluations of Allstate
litigation in Ohio pertaining to cases designated as Minor Injury Soft Tissue
for the years 1996 to present.

ESQ.

Attorney for Plaintiffs

CATA member John Chapman is taking an interesting approach to solving a deep-pocket problem in one of his cases. His client was seriously injured in a m.v. crash, Available mv insurance policies, including um/umi, provided inadequate aggregate coverage for the loss. However, the client is covered under a homeowner's insurance policy. That policy provides the usual very limited liability coverages for certain vehicles, such as for those that are not subject to m.v. registration, are kept in dead storage on an insured location or are designed to assist the handicapped.

John has brought a declaratory judgement action, asking the court to declare that the homeowners policy provides um/umi coverage for his client's injuries. His argument is as follows:

- 1) Some of the vehicles covered under the homeowners policy are "motor vehicles" within the expansive definition of ORC Section 4501.01(B), thus subjecting the policy to the requirements of O.R.C. 3937.18, governing m.v. liability policies of insurance issued in Ohio;
- 2) because the carrier that issued the homeowners policy never offered, and the insured never declined um/umi coverage when the homeowners policy was issued, as mandated by O.R.C. 3937.18, um/umi coverage arises by operation of law.
- 3) because um/umi coverage arises by operation of law, it is not limited by any restrictions or exclusions contained in the principal liability coverage.

The declaratory judgement action, Chapple v. Erie Insurance, has been filed in Franklin County, where the defendant has an office. The 10th Appellate District for Franklin County ruled favorably with respect to similar arguments raised in Goettenmoeller v. Meridian Mutual Insurance No. 95 APE1 1-1553, *slip op.* (Franklin Co. App, June 25, 1996).

John would be happy to provide copies of the summary judgement brief filed in Chapple to interested CATA members. He can be reached at (216) 241-8172.

