Clebeland Academy of Trial Attorneys

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April, 1999 Newsletter

Editors: Paul V. Wolf, Esq./Romney Cullers, Esq.

PRESIDENT'S MESS GE

As we watch the haze of salt and snow disappear, your Academy is hard at work:

First: I am proud to announce that the CATA has been named the outstanding local trial bar association by the Ohio Academy of Trial Lawyers. The award will be presented at the OATL's annual convention luncheon on April 30, 1999. Congratulations to all of our members!

Second: The Bernard Friedman Litigation Institute was a first-class event. Thanks to Bob Linton for bringing in a thought-provoking and accomplished line-up of speakers. The visual evidence and focus group presentations were eye-opening. Thanks also to Barry Hirsch and Video Discovery (216-382-1043) whose video skills made the focus group deliberations and other visual presentations possible. They are really good people to work with on any electronic media presentation. Our local speakers, Judge Daniel Gaul and former President, Rick Alkire, were also great.

Third: The luncheon seminars continue. A presentation by Kevin Roberts on the Allstate Insurance Company's case valuation practices held on March 25 was well-attended. The last of our luncheon seminars will take place on April 27, 1999 -- watch for the announcement.

Fourth: Proposed DR 5-103 Amendment - You may have seen a request for comments on this rule change by the Supreme Court. This proposed change is the work of CATA board member, Mike Becker and involves how advanced litigation costs are treated. At present, all contingent fee contracts must state that the client is always responsible for costs. This makes Ohio plaintiff lawyers particularly vulnerable to an IRS audit in which the IRS position is that you may not deduct client costs because there **is** a chance of recovery under the contingency contract which states the client is always responsible. A firm which deducts litigation costs when paid and treats them **as** income when they are reimbursed (a common practice) will have devastating results in such an audit.

The rule change (attached) allows lawyers to make the repayment of advanced costs contingent upon the outcome of the matter. In other words, if you lose at trial, you do not have to collect the expenses from your client. This rule change brings Ohio Ethics Rules into conformity with reality and with the ABA Model Rules. The CATA has agreed to write in support of this change, and I urge individual members to do so as well. The Supreme Court needs to know our position on this. The deadline for comments to the Supreme Court is April 23, 1999, and the addresses are on the sheet with the rule change contained with this newsletter.

Fifth: More tax warnings -- As of this year, we are all receiving 1099 forms for gross settlement proceeds. Don't ignore them! Look them over and make certain that your tax identification number is correct and that the payment is reported in the proper box. It should appear in box 13, and the dollar amount should have the letter "A" after it indicating that the payment is a gross amount including attorney's fees and expenses. If the payment is in box 7, it is being reported as all income to your firm. One member has found a 1099 form reporting a settlement in box 6, medical expenses! If your 1099 forms have been improperly completed, you should send them back to the issuer with a request that they be corrected and reissued.

Sixth: I've received some reports that con artists are calling local law firms claiming to be out of towners involved in horrific auto accidents in Ohio. They'll be happy to meet with you, but they need cash for bus fares back home and other expenses. Calls to the police department and State Highway Patrol at the alleged accident location reveal that the accident never happened, and that they have received several calls from other law firms asking about the same alleged accident. Just a warning -- if it sounds too good to be true, it may well be.

Seventh: Thanks to Dennis Lansdowne, the CATA has submitted Amicus Briefs in the Sixth Circuit case of Lincoln Electric Co. vs. St. Paul Ins. Co.. The appeal involves the right of a plaintiff to obtain attorney fees in a successful declaratory judgment against an insurance company. Also, many thanks to Mark Ruf who wrote the CATA Amicus Brief in Waite v. Progressive Ins. Co. challenging the constitutionality of Senate Bill 20 regarding auto insurance coverage.

Eighth: Welcome to our new members, Thomas B. Kilbane, Joan Ford, Andrew Goldwasser and Robert Passov!

Sincerely,

Jean M. McQuillan,
President

PROPOSED AMENDMENTS TO THE CODE OF PROFESSIONAL RESPONSIBILITY

Comments Requested The Supreme Court of Ohio will accept public comments until April 23, 1999 on the following **proposed** amendments to the **Ohio** Code of Professional Responsibility (DR 5-103).

Publication for comment does not indicate that the Supreme Court endorses or ultimately will adopt the proposed amendments.

Comment April *23:* proposed amendments should be submitted in writing to. Richard **A.** Dove, Associate Director for Legal & Legislative Services, Supreme Court of **Ohio,** 30 East Broad Street, 3rd **Floor,** Columbus, Ohio 43266-0419, or dover@sconet state **oh us** not later than April **23, 1999**

Key to proposed amendments:

1. Original language **of** the rule appears **as** regular typescript.
2. Language to be deleted appears ~~thus~~.
3. Language to be added appears THUS.
4. Letters of added language to remain capitalized **appears** THUS.

OHIO **CODE** OF PROFESSIONAL RESPONSIBILITY

* * *

CANON *5*

A Lawyer Should Exercise Independent Professional Judgment on **Behalf** *of* a Client

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DR 5-103. AVOIDING ACQUISITION **OF** INTEREST **IN** LITIGATION.

(A) **A** lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation he is conducting for a client, except that he OR SHE may:

(1) Acquire a lien granted by law to secure his fee or expenses.

(2) Co[illegible]ct with [illegible]client for a reasonable contingent fee in [illegible]civil case.

(B) While representing a client in connection with contemplated or pending litigation, a lawyer shall not advance or guarantee financial assistance to his OR HER client, except that a lawyer may advance or guarantee the expenses of litigation, including court costs, expenses of investigation, expenses of medical examination, and costs of obtaining and presenting evidence, ~~provided the client remains ultimately liable for such expenses~~ THE REPAYMENT OF WHICH MAY BE CONTINGENT ON THE OUTCOME OF THE MATTER.

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EXPERT WITNESSES

Schroeder v. Parker, Cuy. Co. App. No. 73907, December 10, 1998. For Plaintiff-Appellant: Robert A. Boyd and For Defendants-Appellees: Margaret Gardner. Opinion By: Leo M. Spellacy. James M. Porter and Ann Dyke concur.

The Court reiterated that while a medical expert's opinion testimony is only competent if it is held to a reasonable degree of medical certainty or probability, the degree of reasonable probability, however, simply means "more likely than not." An event is probable if there is greater than fifty percent (50%) likelihood that it produced the occurrence at issue. Moreover, the magic words "probability" or "certainty" are not required. Rather, the expert's testimony, when considered in its entirety, must be equivalent to an expression of probability.

EXPERT WITNESSES

Azzano v. O'Malley-Clements, cuy. co. App. No. 73754, December 17, 1998. For Plaintiffs-Appellants: Arthur E. Dombek and For Defendant-Appellee: Joseph F Nicholas, Jr. and John T. McLandrich. Opinion By: Ann Dyke. Diane Karpinski and Kenneth Rocco concur.

Plaintiffs appealed a $162.00 jury verdict in their favor in an action for damages stemming from a rear-end motor vehicle accident. At trial, defendant utilized the testimony of an individual associated with a Forensic Engineering firm. This individual held himself out as a bio-mechanical engineer. This expert testified that as a result of the collision, the plaintiffs vehicle experienced a velocity change which is "below the threshold for symptomology." As to the qualifications of the expert, it was adduced at trial that the proposed expert had performed accident reconstruction and "bio-mechanical analysis" which the proposed expert defined as the "forces on the body, how the body responds to those forces." The proposed expert testified that the area is a hybrid between "engineering and medical" fields. The proposed expert was a police officer for five years and learned accident investigation. The proposed expert had taken some engineering courses but did not complete his degree. He did not list any medical training. The proposed expert stated that he had attended a conference which discussed human tolerance response to acceleration and has reviewed similar data in various journals. The proposed expert also stated that he had done 60 to 70 impact tests in which he measured structural deflection and body acceleration. While the tests did not utilize the cars involved in the collision, the proposed expert testified that he had reviewed crash test data for the same vehicles pursuant to an Internet search. The

proposed expert also testified that he reviewed papers which quantify muscle responses at crashes of various speeds. However, these papers were not identified and not introduced into evidence. The proposed expert concluded by stating his opinion that based upon previous crash tests which he performed, as well as "overwhelming literature;" symptoms do not occur with the type of acceleration involved in the case at bar.

The Court of Appeals reversed the judgment of the trial court finding that the expert opinion testimony of defendant's expert should not have been admitted into evidence. Under Ohio Rule of Evidence 702, the Court of Appeals found that defendant's proposed expert did not demonstrate specialized knowledge, skill, experience, training or education regarding the subject matter. The Court of Appeals noted that the proposed expert had no degree in either engineering or medicine. Moreover, the Court of Appeals noted that the proposed expert obtained general crash test information concerning the types of vehicles involved in the accident from the Internet and federal bumper standards. However, these documents were not introduced into evidence. Therefore, the proposed expert did not disclose the facts or data prior to rendering his opinion. Indeed, none of the data upon which the proposed expert relied was admitted into evidence. Expert opinions may not be based upon other opinions and may not be based upon hearsay evidence which has not been admitted.

Based upon these factors, the Court of Appeals held that the Trial Court had abused its discretion in admitting into evidence the testimony of defendant's proposed expert. Unfortunately, the Court went on to analyze whether the proposed expert's testimony related to matters beyond the knowledge and experience possessed by lay persons or dispelled a misconception common among lay persons. Towards that end, the Court of Appeals stated that "jurors are capable of determining whether a plaintiff has sustained injury in a collision when they are presented with information concerning the details of that collision".'

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[1]This *dicta* could form the basis for precedent to the effect that expert testimony is not required in order for a defendant to argue that the extent of property damage, or lack thereof, bears a direct correlation to the nature and severity of injury.

UNINSURED MOTORISTS COVERAGE

Hillver v. State Farm Mutual Auto Insurance Co, Cuy. Co. App. No. 75073. January 14, 1999. For Plaintiffs-Appellants: Jeffrey H. Friedman and For Defendant-Appellee: Henry A. Hentemann and J. Michael Creagan. Per Curiam.

The Court of Appeals upheld the Trial Court's grant of summary judgment in favor of the insurance company and held that where the sole named insured executes a waiver of uninsured motorists coverage that such waiver is effective and enforceable as to all insureds under the policy even where those insureds did not expressly waive their right to uninsured motorists coverage. In so holding, the Court of Appeals noted that former R.C. 3937.18 provided that the named insured may reject or accept UM/UIM coverage. The Court of Appeals noted that the statute differentiated between an "insured" and "named insured". In referring to the persons protected under an insurance policy, R.C. 3937.18(A)(1) and (2), speak of "insureds." However, paragraph (C) states: "the named insurec may only reject or accept both coverages offered under Division (A) of this Section.: Mcreover, the Court of Appeals rejected the argument that plaintiffs wife was a "named insured" because her name was not listed as such on the Declarations Page of the policy.

UNINSURED MOTORISTS COVERAGE - PREJUDGMENT INTEREST

Beal v. State Farm Ins. Co., Cuy. Co. App. Nos. 73204 and 73352. February 18 1999. For Plaintiff-Appellant: Robert S. Lintor anc for Defendant-Appellee: J. Michae Creagan and Henry A. Hentemann. Opinion by Michael J. Corrigan. Leo Spellacy and Patricia Blackmon concur.

Plaintiff was injured in a motor vehicle accident caused by an uninsured motorist. Plaintiff brought suit against Defendant State Farm on an uninsured motorist claim. Apparently, liability was not in dispute. Plaintiffs initial settlement demand was for the policy limit of $100,000.00. Defendant's initial offer was $14,000.00. Prior to trial, plaintiff's last settlement demand was $85,000.00 and defendant's last offer was $22,500.00. The case proceeded to trial and the jury returned a verdict in favor of the plaintiff in the amount of $80,000.00. The Trial Court overruled Plaintiff's Motion for Prejudgment Interest. The Court of Appeals reversed the Trial Court's failure to award prejudgment interest based upon the recent Supreme Court decision in Landis v. Grange Mutual insurance Company, 82 Ohio St.3d 39 (1998), wherein the Supreme Court held that an uninsuredhnderinsured motorist claim is a contract claim for which insureds are entitled to recover prejudgment interests on their uninsuredhnderinsured

motorist coverage pursuant to R.C. 1343.03(A). Under R.C. 1343.03(A), the award of prejudgment interest is not discretionary but, rather, is due and payable to the insured because it is based on an instrument of writing, the insurance contract. The Court of Appeals rejected State Farm's argument that the date upon which the interest begins to accrue is upon the jury's verdict and not the day of the accident. Instead, the Court of Appeals stated that the Supreme Court of Ohio specifically addressed this issue in Landis by stating whether prejudgment interest in that case should be calculated "from the date coverage was demanded or denied, from the date of the accident, from the date at which arbitration of damages would have ended if Grange had not denied benefits, or some other time based on when Grange should have paid the Landises was for the Trial Court to have determined." Accordingly, the Court of Appeals remanded the case to the Trial Court for a determination as to the proper amount of prejudgment interest to be awarded. The Court of Appeals enumerated factors which the Trial Court could consider in reaching the appropriate accrual date. These factors included whether a declaratory judgment action had been filed or was still pending, whether a determination had been made regarding the application of uninsuredhnderinsured provisions of a motorist insurance policy, the underlying cause of the accident itself, the nature and extent of the damages involved, and/or the availability of the tortfeasor. The Court of Appeals concluded that the ultimate determination of the accrual date or when prejudgment interest is due and payable is contingent upon a myriad of factors and, therefore, must be resolved on a case-by-case basis.

S (UA E IT

Malloy v. Citv of Cleveland, Cuy. Co. App. No. 73789. March 4, 1999. For Plaintiff-Appellant: Ellen S. Simon and Cathleen M. Bolek and For Defendant-Appellee: Joseph J. Jerse and Jennifer A. Corso. Opinion By: Leo Spellacy. Michael J. Corrigan and Ann L. Kilbane concur.

An employee of the defendant admitted to making inappropriate references to plaintiffs breasts. This employee received a three day suspension without pay for violating the City's sexual harassment policy. Plaintiff complained that another employee would throw paper clips, rubber bands, pencils, pens, paper and would always laugh. Moreover, she alleged that this other employee would use the office as a locker room and if plaintiff refused to leave after being informed to do so that the employee would start to unbutton his shirt or unzip his pants in front of the plaintiff. Plaintiff also alleged that this other employee received a postcard from his wife which depicted poses of womens' buttocks and bathing suit bottoms. Plaintiff alleged that the postcard was often on display. The other employee admitted to sending plaintiff an

envelope with monopoly money and condom wrappers as a "joke." This employee received a written reprimand for violating the city's sexual harassment policy. Thereafter, plaintiff filed statutory and common law sexual harassment claims against the City. The case proceeded to trial and the jury returned a verdict in favor of the City. The Trial Court denied plaintiffs Motion for Judgment Notwithstanding the Verdict and/or for New Trial. The plaintiff appealed. The Court of Appeals' analysis began with an enumeration of the elements for a claim of hostile work environment sexual harassment under R.C. Chapter 4112:

> (1) The employee was a member of the protected class;
> (2) The employee was subjected to unwelcome harassment;
> (3) The harassment complained of was based upon sex;
> (4) The harassment had the purpose or effect of unreasonably interfering with the employee's work performance or creating an intimidating, hostile, or offensive work environment; and
> (5) The existence of *respondeat superior* liability.

In order to be actionable, a hostile work environment "must be both objectively and subjectively offensive, one that a reasonable person would find hostile or abusive, and one that the victim in fact did perceive to be so. Faragher v. City of Boca Raton, 524 U.S. 775 (1998). The Court of Appeals noted that the United States Supreme Court in Faragher stated as follows:

> We directed Courts to determine whether an environment is sufficiently hostile and abusive by looking at all the circumstances, including the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance...we have made it clear that conduct must be extreme to amount to a change in the terms and conditions of employment.

Under this framework, the Court of Appeals concluded that although the admitted conduct of the two employees clearly constituted sexual harassment, it was within the jury's province to find that this harassment did not reasonably interfere with the appellant's work performance or create a sufficiently hostile and abusive work environment to be actionable under either R.C. 4112.02 or Ohio common law. The Court of Appeals concluded that, at worst, the conduct of the two employees was merely offensive and did not appear to unreasonably interfere with plaintiffs work performance.

VERDICTS AND SETTLEMENTS

Jane Doe v. Valuejet Airlines
Court and Judge: Circuit Court, St. Louis, Missouri
Settlement: September, 1998
Plaintiff's Counsel: JAMIE R. LEBOVITZ
Defendant's Counsel: Withheld
Insurance Company: United States Aviation Underwriters
Type of Action: Aviation

26 year old female survived by mother and father was a passenger in Valuejet Flight 592 which crashed in the Florida Everglades as a result of an onboard fire.

Damages: Death
Plaintiff's Experts: Glenn H. Carlson (Aviation Consultant);
Jim Frisbee (Aviation Consultant);
Charles F. Leonard (Air Safety Investigator);
Albert Moussa (Expert on Air Craft Fires and Explosions);
Richard A. Levy (Aerospace Medicine);
Aaron G. "Time" Olmstead, Jr. (Expert in FAR Compliance and Enforcement);
Roger Schaufele (Expert in Aircraft Design and Technology Development);
Capt. John L. Scuhocki (Forensic Animation);
Joseph A. Williamson (Materials Management)
Defendant's Experts: None
Settlement: $1,900,000.00

Jane Doe V. ComAir, et al.
Court and Judge: Federal Dist. Ct., Eastern Dist. of Michigan
Settlement: November, 1998
Plaintiff's Counsel: JAMIE F. LEBOVITZ
Defendant's Counsel: Withheld
Insurance Company: Withheld
Type of Action: Aviation

ComAir Flight 3272 crashed in icy conditions on its approach into the Detroit Metropolitan Airport due to the flight crew's failure to activate de-icing equipment as well as manufacturing and design defects associated with the aircraft's capability to fly safely in icy conditions.

Damages: Wrongful death of 20 year old student survived by mother and father.
Plaintiff's Experts: None Listed
Defendant's Experts: None Listed
Settlement: $950,000.00

Jane Doe v. ABC Radiology Group
Court and Judge: Cuy. County Common Pleas; Judge Eileen Gallagher
Settlement: January, 1999
Plaintiff's Counsel: JEFFREY LEIKIN, DAVID M. PARIS
Defendant's Counsel: Withheld
Insurance Company: Withheld
Type of Action: Medical Malpractice

Plaintiff's malignant microcalcifications were not reported on her 1992 mammogram and their increased number were not reported in her 1993 mammogram. By the time they were seen in her 1994 mammogram, she was at Stage III A.

Damages: Not Listed
Plaintiff's Experts: Martin Lee, M.D.
Defendant's Experts: Leonard Berlin, Esq.
Settlement: $400,000.00

Jane Doe v. ABC Hospital
Court and Judge: Cuyahoga County
Settlement: December, 1998
Plaintiff's Counsel: JOHN A. LANCIONE, LANCIONE & SIMON
Defendant's Counsel: C. Richard McDonald
Insurance Company: Self-insured
Type of Action: Medical Malpractice, Wrongful Death

Plaintiff presented to Defendant's emergency room at 39 weeks' gestation with groin abscess. A surgical resident performed incision and drainage but failed to prescribe antibiotics. The bacteria from the abscess spread hematogenously to the placenta and cord.

Damages: Stillbirth of 40 week gestational age fetus due to necrotizing funisitis of umbilical cord.
Plaintiff's Experts: Michale Cardwell, M.D. (OB/GYN)
Defendant's Experts: Kenneth Trofatter, M.D. (OB/GYN)
Settlement: $160,000.00

Jane Doe v. Doctor OB/GYN
Court and Judge: Not Listed
Settlement: January, 1999
Plaintiff's Counsel: JOHN A. LANCIONE, LANCIONE & SIMON
Defendant's Counsel: John Robertson
Insurance Company: Ohio Insurance Guarantee Association
Type of Action: Medical Malpractice - Failure to Screen for Breast Cancer

Defendant OB/GYN doctor failed to perform breast exams and order mammograms on high risk patients. After 6 years of treating with Defendant, Plaintiff was diagnosed with T3NoMo breast cancer.

Damages: Loss of breast versus lumpectomy; increased risk of recurrent cancer.
Plaintiff's Experts: Mark Ratain, M.D. (Medical Oncology); Barry Zicherman, M.D. (Radiology); Richard Bassin, M.D. (Surgery)
Defendant's Experts: Leroy Dierker, M.D. (OB/GYN)
Settlement: $100,000.00

April Jones, et al. v. Erika Walsh
Court and Judge: Cuyahoga County; Judge Patricia Cleary
Judgment: January, 1999
Plaintiff's Counsel: LEON M. PLEVIN, ELLEN M. McCARTHY
Defendant's Counsel: Joseph Pappalardo
Insurance Company: CNA
Type of Action: Auto

Defendant failed to yield the right of way to Plaintiff. Plaintiff sustained soft tissue injuries to her neck. Defendant's expert agreed that Plaintiff's injuries were caused by the accident and likely to continue indefinitely.

Damages: Soft tissue neck injury.
Plaintiff's Experts: Harold Mars, M.D.; Daniel Liezman, M.D.
Defendant's Experts: John Conomy, M.D.
Judgment: $50,000.00

Robert Wm. Jones III, et al. v. Jane C. Kappus, M.D., et al.
Court and Judge: Cuy. County Common Pleas; Judge Joseph Nahra
Judgment: February, 1999
Plaintiff's Counsel: THOMAS MESTER, WILLIAM S. JACOBSON
NURENBERG, PLEVIN, HELLER & McCARTHY CO. LPA
Defendant's Counsel: Stephen Walters, William Meadows
Insurance Company: Mutual Assurance Company
Type of Action: Medical Malpractice

Defendant obstetrician failed to intervene in a timely fashion by way of discontinuing Pitocin or by way of C-Section in face of persistent decelerations continuing for a 2 hr. period of time. Apgars and Ph were normal and multi-organ system failure was questionable. Plaintiff's parents are both physicians.

Damages: Cerebral palsy; irreversible brain damage resulting in spastic quadriparesis and profound mental retardation.
Plaintiff's Experts: Stuart Edelberg, M.D. (OB/GYN);
Patricia Ellison, M.D. (Neurologist);
Charles F Lanzieri, M.D. (Neuroradiologist);
Carol Miller, M.D. (Neonatologist)
Gregory Baran, M.D. (Radiologist);
Ann Marie Walkos, R.N. (Nurse);
Kristine Amyoti, M.D. (Placental Pathologist)
John Burke, Ph.D. (Economist);
Cynthia Willhelm, Ph.D. (Life Care Planner)

Defendant's Experts: Frank Boehm, M.D. (OB/GYN);
Ralph DePalma, M.D. (Perinatologist);
Paul Chervin, M.D. (Neurologist);
Samuel Horwitz, M.D. (Neurologist);
Michael Johnson, M.D. (Neurologist);
Robert Zimmerman, M.D. (Neuroradiologist);
Mary Jane Minkin, M.D. (OB/GYN);
Stephen J. DeVoe, M.D. (OB/GYN);
Mark S. Scher, M.D. (Pediatric Neurologist);
Marc F Collin, M.D. (Neonatologist);
Denise O. Kose-Sweeney, R.N. (Nurse)
Judgment: 2,800,000.00

Cater, etc. v. City of Cleveland
Court and Judge: Cuy. County Common Pleas; Judge Frank Celebrezze, Jr.
Settlement: January, 1999
Plaintiff's Counsel: ROBERT F. LINTON, JR., LINTON & HIRSHMAN
LARRY S. KLEIN, KLEIN & CARNEY
Defendant's Counsel: Heather Graham-Oliver
Insurance Company: Not Listed
Type of Action: Accidental Death by Drowning

This case involved the drowning death of a 12-year-old boy at an indoor Cleveland City swimming pool.

Damages: Death
Plaintiff's Experts: Frank Pia (Aquatics Safety);
John Burke, Jr., Ph.D. (Economist);
Lia Lowrie, M.D. (Pediatric Critical Care)
Elizabeth K. Balraj, M.D. (County Coroner)
Defendant's Experts: Charles Kunsman (Aquatics)
Settlement: $800,000.00 plus agreed upon changes in lifeguard training and orientation

Kiss v. Simonson
Court and Judge: Lorain County; Judge Edward Zaleski
Judgment: January, 1999
Plaintiff's Counsel: JOHN R. MIRALDI
Defendant's Counsel: Patrick Flanagan
Insurance Company: Allstate
Type of Action: Auto

An elderly female Plaintiff had a history of LBP with arthritis. She was attending physical therapy for her condition at the time of her accident. Eight months after the automobile accident she began to experience radiating pain in her lower leg, which led to a microdiskectomy at L4-5. Liability was admitted.

Damages: Herniated disc at L4-5.
Plaintiff's Experts: Gale Hazen, M.D. (Neurosurgeon)
Defendant's Experts: Not Listed
Judgment: $50,000.00

Mary Doe v. ABC Nursing Home, Inc., et al.
Court and Judge: Cuy. County Common Pleas
Settlement: February, 1999
Plaintiff's Counsel: EDWARD RICHARD STEGE▪ D◎NALD ∜ RICHARDSON
Defendant's Counsel: Withheld
Insurance Company: PIE
Type of Action: Nursing Home Negligence

A 72-year-old diabetic woman was placed in a Greater Cleveland area nursing home for rehabilitation following a fall and a hip replacement. She was not turned in bed by the nursing home staff and developed a pressure ulcer on her tailbone. The ulcer was poorly managed and soon became infected. Necrotizing fascitis developed in the wound. She required four extensive debridements and a colostomy.

Damages: Pressure ulceration of the tailbone▪ necrotizing fascitis, debridements, colostomy.
Plaintiff's Experts: Not Listed
Defendant's Experts: Not Listed
Settlement: $900,000.00

James McCafferty, Sr. v. Bencin Trucking
Court and Judge: Cuyahoga County; Judge Nancy McDonnell
Settlement: December, 1998
Plaintiff's Counsel: PAUL M. KAUFMAN
Defendant's Counsel: Patrick Roche
Insurance Company: Westfield
Type of Action: Auto

Defendant, a truck driver, failed to yield to an oncoming vehicle in which Plaintiff was a passenger.

Damages: Fractured pelvis
Plaintiff's Experts: Benjamin Richman, M.D. (Orthopaedic Surgeon)
Defendant's Experts: Robert Zaas, M.D. (Confirmed Plaintiff's injuries and disability)
Settlement: $200,000.00

Thelma Ladner v. Mentor Way Nursing Home
Court and Judge: Lake County; Judge Jackson
Settlement: December, 1998
Plaintiff's Counsel: PAUL M. KAUFMAN
Defendant's Counsel: Joseph Tira
Insurance Company: Morgan Guarantee
Type of Action: Nursing Home Negligence

An unattended nursing home patient fell.

Damages: Broken leg
Plaintiff's Experts: John Posch, M.D. (Orthopaedic Surgeon);
Carol Ann Miller, R.N. (Geriatric Nurse)
Defendant's Experts: Robert Corn, M.D.
Settlement: $169,750 00

Eady, Admx. v. Portnow, D.P.M.
Court and Judge: Cuyahoga County; Judge Kathleen Craig
Settlement: January, 1999
Plaintiff's Counsel: PAUL M. KAUFMAN
Defendant's Counsel: Douglas Fifner
Insurance Company: Not Listed
Type of Action: Podiatric Malpractice

Defendant Podiatrist performed an unnecessary and unconsented foot surgery on a diabetic without proper vascular evaluation.

Damages: Cellulitis to foot after podiatric surgery.
Plaintiff's Experts: Elliott Biggs, D.P.M.
Defendant's Experts: Not Listed
Settlement: $150,000.00

John Doe v. ABC Electric Co.
Court and Judge: Cuyahoga County; Judge William J. Coyne
Settlement: February, 1999
Plaintiff's Counsel: PETER J. BRODHEAD
SPANGENBERG, SHIBLEY & LIBER LLP
Defendant's Counsel: Withheld
Insurance Company: Withheld
Type of Action: Rear-End Collision

Plaintiff was a 92-year-old, self-reliant resident of a nursing home injured in a violent rear-end collision. Subsequent to undergoing lengthy surgery for cervical fractures, he has been on permanent respiratory support.

Damages: Cervical fractures, respiratory support.
Plaintiff's Experts: Dr. Russell Hardy
Defendant's Experts: Not Listed
Settlement: $1,400,000.00

Doe v. Doe
Court and Judge: Lorain County; Judge Edward M. Zaleski
Settlement: February, 1999
Plaintiff's Counsel: WILLIAM S. JACOBSON
NURENBERG, PLEVIN, HELLER & McCARTHY
STEPHEN G. MECKLER
SPIKE & MECKLER
Defendant's Counsel: Murray Lenson
Insurance Company: Withheld
Type of Action: Medical Malpractice

Failure of Defendant to diagnose and treat gastric cancer. Defendant argued that the diagnosis is difficult and the usual prognosis is poor.

Damages: Death
Plaintiff's Experts: Hadley Morganstern-Clarren, M.D. (Internist)
R. Scheinbaum, M.D. (Gastroenterologist)
Martin Lee, M.D. (Oncologist)
Defendant's Experts: Eric J.B. Shapiro, M.D. (Gastroenterologist)
Hassan I. Tabsildar, M.D. (Oncologist)
Settlement: $700,000.00

Doe v. Doe
Court and Judge: Cuyahoga County; Judge Nance R. McDonnell
Settlement: March, 1999
Plaintiff's Counsel: WILLIAM S. JACOBSON, DAVID M. PARIS, MAURICE HELLER
NURENBERG, PLEVIN, HELLER & McCARTHY
Defendant's Counsel: Jeffrey Van Wagner, John Scott, Marc Groedel, Martin Franey
Insurance Company: CNA, PICO, Medical Protective
Type of Action: Medical Malpractice

Plaintiff was treated by a Dermatologist and a Urologist for penile lesion. These Defendants ordered a biopsy which was negative, but misread by the pathologist. The Dermatologist and Urologist should have re-biopsied anyway after 1 years time.

Damages: Partial penectomy; 3 lymph nodes positive reducing life expectancy.
Plaintiff's Experts: Richard Blath, M.D. (Urologist)
Loretta Ciraldo, M.D. (Dermatologist)
Martin Lee, M.D. (Oncologist)
Kenneth McCarty, M.D. (Pathologist)
Joel Steinberg, Ph.D. (Psychologist)
Defendant's Experts: Gerald Neuevo, M.D. (Pathologist)
Bernard Ackerman, M.D. (Dermo Pathologist)
J. Levitan, M.D. (Oncologist)
David Paulson, M.D. (Urologist)

Settlement: $1,225,000.00

Doe v. Doe
Court and Judge: Lorain County; Judge Lynett M. McGough
Settlement: March, 1999
Plaintiff's Counsel: WILLIAM S. JACOBSON
NURENBERG, PLEVIN, HEELER & McCARTHY;
STEPHEN G. MECKLER
SPIKE & MECKLER
Defendant's Counsel: James Kelley
Insurance Company: Medical Protective
Type of Action: Medical Malpractice

Plaintiff underwent revascularization on his right lower extremity and developed an infection. Defendant was out of town when Plaintiff saw his nurse/office manager who failed to refer Plaintiff to another physician. As a result, Plaintiff lost his leg below the knee.

Damages: Below the knee amputation.
Plaintiff's Experts: Michele Cerino, M.D. (Vascular);
Neil Crane, M.D. (Infectious Disease);
Rod Durgin, Ph.D. (Vocational)
Defendant's Experts: George Anton, M.D. (Vascular)
Settlement: $450,000.00

Terrence O'Connell v. Conrail
Court and Judge: Cuyahsga County Com. Pls.; Judge Robert Lawther
Settlement: Not Listed
Plaintiff's Counsel: JEFFREY LEIKIN/MARSHALL NURENBERG
NURENBERG, PLEVIN, HELLER & McCARTHY
Defendant's Counsel: Sheila McKeon
Insurance Company: Self-Insured
Type of Action: FELA

Plaintiff slipped on loose coke which collected in the railroad yard from hopper cars.

Damages: Torn rotator cuff; torn medial meniscus.
Plaintiff's Experts: John Burke, Ph.D.; George Cyphers, Ph.D.;
John Brems, M.D.; Timothy Gordon, M.D.
Defendant's Experts: Dennis Brooks, M.D.
Settlement: **$300,000.00**

Jane Doe, et al. v. Neurology Clinic
Court and Judge: Montgomery County; Judge Froelich
Settlement: February, 1999
Plaintiff's Counsel: WILLIAM HAWAL/STUART E. SCOTT
SPANGENBERG, SHIBLEY & LIBER
Defendant's Counsel: Withheld
Insurance Company: OHIC
Type of Action: Medical Malpractice

Plaintiffs' automobile was rear-ended by an epileptic who suffered a seizure and was killed in the collision. Six months earlier he had been certified by his neurologist as having his seizures under effective control to the BMV despite 2 prior accidents in the preceding 4 months.

Damages: T7 paraplegia of mother; bilateral femur fractures to 10 year old son.
Plaintiff's Experts: Dr. Frank Judge
Defendant's Experts: Dr. Miles Drake
Settlement: $3,750,000.00

Edward Kriner, Exec., etc. v. Haw Chvr Wu, M.D.
Court and Judge: Trumbull County; Judge Kontos
Settlement: February, 1999
Plaintiff's Counsel: WILLIAM HAWAL, MARY A. CAVANAUGH
SPANGENBERG, SHIBLEY & LIBER
Defendant's Counsel: Mark O'Neill
Insurance Company: APA - sponsored Prof. Liability Ins. Program
Type of Action: Medical Malpractice

Defendant failed to properly monitor and treat decedent's depression resulting in her suicide by gunshot.

Damages: Wrongful death
Plaintiff's Experts: Mark Kremen, M.D.
Defendant's Experts: Gottfried Spring, M.D.
Settlement: $475,000.00

Earl Flint, et al. v. Lake Erie Construction
Court and Judge: Federal Dist. Ct.; Judge Potter
Settlement: February, 1999
Plaintiff's Counsel: WILLIAM HAWAL, STUART E. SCOTT
SPANGENBERG, SHIBLEY & LIBER
Defendant's Counsel: Thomas Betz
Insurance Company: CIGNA
Type of Action: Construction Accident

Plaintiff was checking grade when he stepped into a post hole which had not been back-filled following the removal of a guardrail post by subcontractor.

Damages: Herniated lumbar discs (L4-5 & L5-S1)
Plaintiff's Experts: Paul Maurer, M.D.
Defendant's Experts: Robert Corn, M.D.
Settlement: $650,000.00

Williams v. Marks, et al.
Court and Judge: Cuyahoga County; Judge Kathleen Craig
Settlement: December, 1998
Plaintiff's Counsel: FRANCIS E. SWEENEY, JR.
Defendant's Counsel: John G. Farnan - Weston, Hurd
Joseph B. Jerome
Insurance Company: GRE
Type of Action: Brake Failure

Defendant broadsided Plaintiff at exit/intersection

Damages: Permanent brain injury
Plaintiff's Experts: Advocare - Life Care Plan;
Harold Mars, M.D. (Neurologist)
Defendant's Experts: None
Settlement: $1,550,000 00

Marilyn Callahan and the Estate of Richard Callahan v. Owens-Illinois
Court and Judge: Cuyahoga County Common Pleas; Judge James Sweeney
Settlement: February, 1999
Plaintiff's Counsel: SHEPARD A. HOFFMAN
LAW OFFICE OF SHEPARD A. HOFFMAN
ROBERT A. MARCIS
SPANGENBERG, SHIBLEY & LIBER
Defendant's Counsel: Robert A. Bunda, Rebecca Sechrist
Insurance Company: Not Listed
Type of Action: Asbestos Tort

Decedent worked in the SOHIO refinery in Lima, Ohio, in capacities including laborer, filter operator and control operator from 1950 to 1969, when he transferred to an area of the refinery that was under construction. In 1975, he became a supervisor. Decedent died in 1996 at age 68 as a result of mesothelioma from exposure to asbestos

Damages: Death
Plaintiff's Experts: William Longo, Ph.D. (Electron Microscopist);
Victor Roggli, M.D. (Pathologist)
Defendant's Experts: John Craighead, M.D. (Pathologist);
Douglas Fowler; Ph.D. (Industrial Hygienist)
Settlement: $2.28 million plus attorney fees

Sean Mumaw v. C.M.K. Carpet Cleaning, Inc., et al.
Court and Judge: Stark County Common Pleas; Judge Reinbold
Settlement: Not Listed
Plaintiff's Counsel: ROBERT F. LINTON, JR., LINTON & HIRSHMAN
DAVID WEIMER, RODERICK MYERS & LINTON
Defendant's Counsel: Thomas Green, Michael Liss
Insurance Company: Indiana Insurance Company
Type of Action: Not Listed

Plaintiff was a passenger in a van-train collision. He brought a UM claim against Indiana Insurance Company

Damages: Mild brain injury and post traumatic stress disorder, fractured clavicle.
Plaintiff's Experts: Nathan D. Zassler, M.D. (Physical Medicine and Rehabilitation);
Delphi M. Toth, M.D. (Neuropsychologist);
Joseph R. Spoonster, M.S., V.E. (Vocational Analyst)
Defendant's Experts: Howard Tucker, M.D. (Neurologist)
Settlement: $450,000.00 plus $50,000.00 previously paid by the Railroad

Jane Doe v. Hit-Skip Uninsured Motorist
Court and Judge: Not Listed
Settlement: January, 1999
Plaintiff's counsel: RUBIN GUTTMAN, RUBIN GUTTMAN CO., LPA
Defendant's Counsel: Not Listed
Insurance Company: CGU
Type of Action: Hit/Skip

85-year-old woman was stopped at a red light when Defendant's vehicle came around the corner and struck her left front in a minor impact. When the driver approached her vehicle she apparently fainted, her foot hit the accelerator, and she accelerated away from the scene and into a telephone pole causing serious damage to the vehicle. When this occurrred the motorists who originally hit her hit-skipped, creating an uninsured motorist claim. Because of the patient's age and difficulty ambulating, she spent a total of nine weeks in the hospital and nursing home rehab.

Damages: Laceration to liver (internal only), fractured calcaneus,, minor lacerations to arm and leg.
Plaintiff's Experts: Not Listed
Defendant's Experts: Not Listed
Settlement: $220,000.00

Estate of Emmett Black v. ABC Hospital
Court and Judge: Cuyahoga County; Judge Janet Burnside
Settlement: March, 1999
Plaintiff's Counsel: DAVID I. POMERANTZ
Defendant's Counsel: Gary Goldwasser
Insurance Company: N/A
Type of Action: Medical Malpractice - Wrongful Death

Decedent suffered from cerebral palsy and seizure disorder since childhood. As a result, he was never able to work. In early 1996, he developed constipation with a 13 pound weight loss over approximately 7 months. He went to Defendant Hospital, his primary care giver, and tested positive for blood in his stool. A flexible sygmoidoscopy was attempted to rule in or out colon cancer, but the scope could not be passed all the way. Decedent had an extremely large prostate, and Defendant alleged that scope could not be passed due to the enlarged prostate. Plaintiff alleged that scope could not be passed due to a tumor in the colon. For approximately one year, Defendant attempted to treat prostate (although P.S.A. test ruled out prostate cancer). After one year, colorectal cancer was diagnosed. Chemotherapy/radiation treatment was attempted, but Decedent died from complications of colorectal cancer in July, 1997.

Plaintiff alleged that Defendant negligently failed to timely diagnose colorectal cancer in light of constipation, weight loss, blood in the stool, and suggestion of a mass in colon based on flex. sig. test. Defendant failed to conduct other tests, such as barium enema or CT Scan, to rule out colorectal cancer and/or to treat Decedent presumptively for cancer.

Plaintiff alleged that as a result, Decedent endured great pain and suffering, and had a shortened life-expectancy. He is survived by his wife, two emancipated daughters, and his parents, who helped care for him during his life.

Damages: Pain and suffering; death
Plaintiff's Experts: Robert Resnick, M.D. (Gastroenterologist);
Howard Abel, M.D. (Oncologist)
Defendant's Experts: Nathan Levitan▪ M.D. (Oncologist)
Settlement: Withheld

NETWORKING INQUIRIES

Name: MARK E. BARBOUR, ESQ.

Address: 1650 Midland Bldg, 101 W. Prospect Avenue
Cleveland, Ohio 44115

Telephone No. (216) 771-4050

Brief Description Of Case: Automobile accident involving a cervical disc injury.

Information Sought: (i.e., expert witness; similar cases; product information, etc.): Any and all information concerning Dr. Selwyn-Lloyd McPherson 2725 Abington Rd., #200, Akron, Ohio OR 401 Devon Place, #245, Kent, Ohio 44240, including depositions and reports.