CATA
Cleveland Academy of Trial Attorneys

News

Fall, 2000

President's Message

Frank Bolmeyer takes over as the 41st CATA President from outgoing President Bob Linton

CATA 2000 And Beyond

By: Frank G. Bolmeyer

With our 41st Installation Dinner behind us, we are ready to move forward with our agenda for this year. One hundred forty- five members and guests attended the dinner. We were honored to have Justice Francis Sweeney and Judge Leo Spellacy present to swear in the Officers and Board members Bishop James Quinn. a lawyer in his spare time. gave an inspirational invocation. His continued support of our profession and the academy is appreciated.

Our own James Lowe gave a heartfelt introduction to our guest speaker, Rob Sanders, of Baltimore. Rob's seven year old daughter was tragically killed by the deployment of an airbag in a low impact accident. Thereafter, Rob became obsessed with a desire to learn how a safety device could kill someone. Rob founded "Parents For Safer Airbags," and his dogged determination has led to improvements in design and warnings. Rob inspired us to continue to fight the 'good fight' for our calling is truly a noble one.

*CATA Youth **Challenge Boat Regatta***

I am grateful for the opportunity to serve as your President. In the coming year, the CATA will continue its fraternal and educational pursuits for which this association has became known over the years. We also intend to expand our service to the community which began under Bob Linton's watch. CATA presented "Youth Challenge.' with a check for $10,800. I can assure you, it was money well spent on a worthy cause.

The political wing of this association needs to become more proactive in this crucial election year. We need to aggressively support those candidates who seek to protect the rights of our clients and, indirectly, our continued existence as trial lawyers.

Editedby
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and
Romney B. Cullers

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It is well known that big business and the insurance industry in Ohio; with money pouring in from outside the state , are seeking to reform our Supreme Court so they can revisit tort reform. Gone are the days when we can quietly sit back and wait for the election results for fear that we otherwise will alienate the judges we do not support.

A general membership meeting was held on September 7, 2000 to discuss our involvement in the Supreme Court Grassroots Campaign to help elect Judge Tim Black and re-elect Justice Alice Robie Resnick. CATA, in conjunction with the Ohio Academy of Trial Attorneys, are asking all members to send postcards and/or personal letters to our clients in order to educate them on the importance of this election and the need to get out and vote. This type of campaign was crucial in the successful overturning of workers' compensation reform in Issue 2 a few years ago. During the Issue 2 campaign meetings, you could see the sense of urgency on the faces of involved lawyers. They knew that the result of that election would substantially impact their practices. Sadly, that same urgency does not seem to pervade our bar and was not felt at our recent meeting.

We all need to understand that this election could change the practice of law in Ohio. We need to motivate our brethren in the plaintiff's bar and to emphasize the importance of this "Grassroots Campaign". The Ohio Academy will provide you with sample letters and pre -printed post cards with your firm name on them and will mail them for you for the cost of the bulk mailing.

Contact Board members Dennis Lansdowne (696-3232) , Dennis Mulvihill (781-2600) or myself for further information

Louie Nizer, a colorful New York lawyer; is quoted as saying, "I have a high opinion of lawyers. With all their faults, they stack up well against every other occupation or profession. They are better to work with or play with or fight with or drink with than most other varieties of mankind." I second Mr. Nizer.

Now get out there and show the insurance industry and big business what we are made of.

Best regards,

Frank G. Bolmeyer

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Robert F. Linton. Jr.
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Of Counsel

By Robert F. Linton, Jr.

Proving Causation Before Liability - Key to Large Med Mal Verdicts

According to *Lawyers Weekly USA*, plaintiff's lawyer, Don Keenan, used an unusual trial strategy to win the largest medmal verdict in South Carolina history for a girl who suffered brain damage because of a misdiagnosis Don Keenan. whose Atlanta firm boasts a record of more than eighty verdicts or settlements in excess of $1 million dollars. says that his trial strategy can be applied to virtually any med mal case Causation facts are often very, very powerful for the plaintiff, and appeal to the common sense of the jury When you work the case "backwards," it becomes an easy one for the jury to understand

Focus first on what happened, and then how the doctor could have prevented it. Once the jury is convinced by their common sense that the doctor could have prevented the bad outcome, then the doctor is done before he even puts on his defense. After causation is established, the jury can put the standard of care issues in context, and are more critical of the doctor's mistakes.

By contrast, in the traditional bad baby case, the liability dispute focuses on what the fetal heart strip shows and why the doctor should have performed a C-section in light of those findings. It usually involves "medical book technical talk" that can quickly lose the jury in a battle of the experts.

Instead, Keenan focuses on causation right from the start of his opening: "at the very moment John came out of his Mom, he was blue. He was gasping for air, and his PH level – which indicates whether he received proper oxygen – was way too low. This means he wasn't getting enough oxygen within moments or hours before birth." The jury then is thinking, well damn, why didn't he receive enough oxygen? Why wasn't he taken out sooner? They're much better prepared to accept that it's because of the defendant's mistakes.

Keenan also focuses on presenting only the most egregious standard of care violations. He whittled his case down to the four most important ones to maintain credibility with the jury. knowing that it only takes one to win.

He also simplifies the testimony so jurors can evaluate it themselves. For example, once the doctor starts talking about a differential diagnosis, Keenan stops and says "wait a minute, doctor, what is a differential diagnosis? Would it be ok to use the term "process of elimination" and forget about the medical term?" Once the doctor says yes, Keenan then uses the lay term with the witnesses.

In winning his verdict, Keenan also decided not to use a $15,000 300-slide Power Point presentation that could do everything "but make coffee." Keenan had several jurors on his panel over 60 years old. He better captured their attention with old fashioned demonstrative evidence – butcher paper and magic markers.

Powerful Opening Statements from a News Reporter

Every so often I read a news article that reads like a great opening statement. The Plain Dealer's account of Mike Monteleone's recent successful medical malpractice case–which may well have been Mike's own words—was one such example:

The first doctor told John Higgins' parents that their little boy's cough was nothing but the flu. Three days later, another doctor said Johnny had appendicitis.

And three days after that, the eight year old Berea boy was dead – from pneumonia—that no one diagnosed until it was too late.

This was followed by a quote from the boy's mother. which would have made wonderful drama on direct: "I couldn't live with myself if someone else lost their child like I did" said Mrs. Higgins. "I would do anything to be with my little boy again."

The Best $27 Investment You'll Ewer Make.

The Anatomical Chart Company, whose la ge, laminated exhibits are familiar to many of us, now offers a collection of its best anatomical charts, one for Anatomical Systems and Structures, the other for Diseases and Disorders. The graphics are first rate, the accompanying descriptions are in plain English and easy to follow. These make wonderful educational tools for yourself, your medical witnesses and the jury. Both 11x 14"books are available for $26.95. Call (800) 621-7500 or visit their website

Thanks again, Video Discovery

Thanks to Barry Hersh and Video Discovery, Inc. for providing, at no cost, the video equipment projector system used at this year's installation dinner to play the promotional video profiling Youth Challenge. Our firm, along with many CATA members, routinely use Barry's firm for videotape depositions and videotape settlement brochures, and appreciate his kind gesture on behalf of the Cleveland Academy and Youth Challenge in providing us this equipment.

Farewell

Finally, thank you for the privilege of serving as your past President. You have given me far more than I could ever give back. May your victories be many, your losses few, and always remember, in the race for justice, there is no finish line.

Robert F. Linton, Jr.

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Verdicts & Settlements

Jane Doe, a Minor, et al. v. Dr. Jones, et al.

Type of Case: Medical Malpractice
Settlement: $2,400,000
Plaintiff's Counsel: Charles Kanipinski. Christopher M. Mellino, Laurel A. Matthew
Defendant's Counsel: Withheld
Court: Astabula County,
Judge Gary L. Yost
Date: April, 2000
Insurance Company: Not Listed
Damages: Shoulder dystocia with brachial plexus

Summary: This was a medical malpractice action brought on behalf of 10 year old Jane Doe who was born at the ABC Hospital on June 11, 1990. During her birth, a shoulder dystocia was encountered. Defendants attempted to free the shoulder using fundal pressure, which is contraindicated. There was a 12 minute delay between delivery of the baby's head and the rest of her body.

After delivery, the baby was not resuscitated properly. Tthe obstetrical nurses failed to follow the hospital's code pink protocol for resuscitation of newborns.

The child now has motor and cognitive impairment, however, she is able to use a walker to ambulate and attends a regular public school. She has permanent brachial plexus injury.

Plaintiff's Experts: Max Wiznitzer, M.D. (Pediatric Neurology); George Cyphers (Life Care); John F. Burke, Jr., Ph.D. (Economist); Camille DiCostanzo, R.N; Sheila Webster, R.N.
Defendant's Experts: Ralph DePalma, M.D. (Obstetrics): Steven M. Donn, M.D. (Pediatrics); James J. Nocon, M.D. (Obstetrics); Robert C. Vannucci, M.D. (Neurology)

Jack Doe, etc., et al. v. Anonymous OB/GYN, et al.

Type of Case: Medical Malpractice/Wrongful Death
Settlement: $8,000,000
Plaintiff's Counsel: Charles Kampinski, Christopher Mellino, Laurel Matthews
Defendant's Counsel: Withheld
Court: Cuyahoga County Common Pleas
Date: June, 2000
Insurance Company: Not Listed
Damages: Death

Summary: At the time of her death, Jane Doe was 34 years old and carrying her second child, 34 week old Joe Doe. When they died on April 15, 1999, Jane and Joe were under the care of Jane's OB's Jeff and Jerry Roe and had an uncomplicated pregnancy.

On March 29, 1999, Jane had an elevated blood pressure that is documented in her medical record. Nothing was done to evaluate or treat this pregnancy-induced hypertension. On her next visit 2 weeks later, Jane was found to have a 13 pound weight gain. Once again, she had an elevated blood pressure. She was noted to have swelling and there was protein in her urine. Despite this constellation of symptoms, which is diagnostic of a condition called preclampsia, she received no laboratory evaluation and no treatment. Preeclampsia is easily treated without complications. However, if left untreated it can be deadly.

On April 14, 1999, Jane called the Defendants' office with respiratory complaints, Despite the abnormal findings at her office visit 2 days earlier, she was not given an appointment to come in for evaluation. Instead of examining Jane and ordering hospitalization and the necessary laboratory testing, Dr. Jerry Roe instructed his nurse to simply call an antibiotic prescription to the pharmacy. Jane and Joe were found dead in their home the next day. When Jane's husband, Jack, discovered their deaths, he found his frightened daughter, 3 year old Jill, alone in the home with her dead mother and brother. An autopsy determined that Jane and Joe's deaths re-

sulted from untreated preeclampsia. If they had been treated properly, they would be alive and well today.

Plaintiff's Experts: David Borge, M.D. (OB/GYN); Lisa Fisher, M.D. (OB/GYN); Kris Sperry, M.D. (Pathologist); John F. Burke, Jr., Ph.D. (Economist)
Defendant's Experts: Ralph DePalma, M.D. (Obstetrics)

John Doe, Adm. of the Estate of Jane Doe v. ABC Hospital, et al.

Type of Case: Medical Mal./Wrongful Death
Settlement: $2,500,000
Plaintiff's Counsel: Charles Kampinski, Christopher M. Mellino, Laurel A. Matthews
Defendant's Counsel: Withheld
Court: Cuyahoga County Common Pleas
Date: January, 2000
Insurance Company: Not Listed
Damages: Death

Summary: This is a medical malpractice/wrongful death action brought by the Estate of Jane Doe. Jane Doe was 46 years old when she died while under the care of Dr. April, Dr. May and Dr. June, the XYZ Institute, Inc., and ABC Hospital in March of 1997. Jane began working as a receptionist at ABC Hospital in December 1996 with Dr. April and Dr. May. On March 10, 1997, these physicians saw her as a patient. She gave a history of headaches and episodic visual loss. Jane Doe had a family history of aneurysm. These physicians did not tell Jane Doe that she had an emergent problem even though TIA, aneurysm and stroke were purportedly in the physicians' differential diagnosis for her complaints. Proper evaluation of her symptoms required an immediate CT scan with lumbar puncture if this test was negative. These physicians saw Jane Doe at work every day for the next 6 days and made no attempt to arrange this necessary diagnostic testing for her.

Jane Doe did see an optometrist on March 18, 1997 who made a diagnosis of TIA. Despite these findings suggesting an emergent condition, nothing was done,

On March 19, 1997, Jane Doe collapsed at work with a fatal aneurysmal bleed. On March 24, 1997, Dr. April altered the decedent's medical record with a "late entry" to make it appear that she had been non-compliant with treatment recommendations. At the time of these events, Dr. April's license to practice medicine was probationary under a consent agreement because of a history of narcotic abuse. Dr. April altered this medical record to conceal the fact that she had misssed the diagnosis of an intracranial aneurysm from the State Medical Board.

Plaintiff's Experts: John P. Conomy (Neurologist); Stuart Goodman, M.D. (Neurosurgeon); JoAnn Findlay, M.D. (Internal Medicine): John F. Burke, Jr., Ph.D. (Economist); Vickie L. Willard (Forensic Document Examiner)
Defendantb Experts: Thomas B. Flynn, M.D. (Neurosurgeon): Theodor F. Henvig, M.D. (Family Medicine); Frank T. Vertosick, M.D. (Neurologist); Emil S. Dickinson, M.D. (Internal Medicine)

Patty Doe v. Local ABC Hospital, et al.

Type of Case: Medical Malpractice
Settlement: $450,000
Plaintlff's Counsel: Howard D. Mishkind
Defendant's Counsel: Withheld
Court: Cuyahoga County Common Pleas
Date: Not Listed
Insurance Company: Not Listed
Damages: Hyper-coaguability leading to ischemic stroke

Summary: A sponge that was left in the patient at the time of a caesarean surgery resulted in abdominal symptoms and removal by open laparotomy 2 weeks later. Less than 24 hrs. later, patient suffered middle cerebral artery stroke. Patient made fairly good recovery with minimal neurological deficits.

Plaintiff alleged that as a consequence of the foreign object in her abdomen, she developed a state of hypercoaguability leading to ischemic stroke. Defense argued that there was no patho-physiological association between the sponge and subsequent stroke, as all tests

done at the time of the stroke were negative for the source of the stroke Defense argued that a post-partum state has an 8 times increased risk of stroke and that there was no causal relationship between the sponge and the stroke

Plaintiff's Experts Dr Clark Millican, Dr Sheldon Margulies, Dr Alan Lemer, Dr Layton
Defendant's Experts Dr Jeff King (Obstetrician); Dr Price (Stroke Expert), Dr Jack Riggs (Neurologist)

Jane Doe v. ABC Hospital, et al.

Type of Case: Medical Mal./Nursing Home negligence
Settlement: $400,000
Plaintiff's Counsel: Howard D. Mishkmd
Defendant's Counsel: Withheld
Court: Cuyahoga County Common Pleas
Date: Not Listed
Insurance Company: Not Listed
Damages: Perirectal abscess, sepsis, colostomy; and death

Summary: A 66 year old woman with an extensive medical history including peripheral vascular disease, left leg above-the-knee amputation, previous stroke, second toe on right foot amputation, hip replacement, was admitted to ABC Hospital with rectal bleeding. Patient developed perirectal infection that was not timely recognized or treated at ABC Hospital or upon subsequent admission to the nursing home. She developed a necrotizing infection, requiring a diverting colostomy. The patient died of hypotensive shock.

Plaintiff's Experts: Dr. Calvin Kunin (Infectious disease); Dr. Phil Donahue (Surgery); Dr. Todd Eisner (Gastrointestinal): Grace Glasser, R.N. (Nursing Home)
Defendant's Experts: Dr. Carl Culley

Jane Doe, etc. v. Dr. Anonymous, et al.

Type of Case: Medical Malpractice
Settlement: $300,000
Plaintrff's Counsel: Howard D. Mishkind
Defendantb Counsel: David J. Hanna
Court: Summit County Common Pleas
Date: Not Listed
Insurance Company: OHIC for Def. Doctor; American Continental for Def. Hospital
Damages: Brachial plexus injury

Summary: A 32 year old mother presented to Cuyahoga Falls General Hospital 2 hours after her water broke. fully dilated. A third year resident delivered the child. The child sustained a brachial plexus injury to the right arm. Plaintiff alleged that the Defendant obstetrician failed to perform a vaginal exam on the last visit (the day of delivery) and failed to appreciate patient's complaint of decreased fetal movement. Such complaints should have caused the mother to be sent to the hospital for an NST which would have placed her in the hospital at the time of labor so that the precipitous delivery would have been managed by more experienced personnel and with a greater likelihood of avoiding a brachial plexus injury. Plaintiff alleged that the Defendant resident applied excessive lateral traction on the baby's neck and did not apply the McRobert's maneuver. Plaintiff alleged that the 2 minute head to body time in the records is inconsistent with the outcome in this case.

Defendant alleged that the pre-natal care was totally proper and that the mother was appropriately examined on the last office visit and was not in active labor when she left. Defendant argued that Plaintiff mother delayed in going to the hospital after calling the obstetrician and that upon arrival, the baby was delivered in less than 15 minutes. Defendant hospital argued that the third year resident applied an appropriate technique to handle a shoulder dystocia and that the baby showed signs of distress at birth and that the delivery was handled properly under the circumstances.

Plaintrff's Experts: Dr. Stuart Edelberg
Defendant's Experts: Dr. Richard O'Shaughnessy; Dr. Stephen DeVoe

Terry Herbert Dabulewicz, Admin., etc v. The Cleveland Clinic Foundation

Type of Case Medical Malpractice
Settlement $450 000
Plaintiff's Counsel Jeanne M Tosti
Defendant's Counsel Anna Carulas
Court Lorain County Common Pleas.
Judge Thomas Janas
Date January, 2000
Insurance Company §elf-Insured
Damages Cardiac valve damage, multiple strokes. and death

Summary: Decedent was a 57 year old noninsulin diabetic who underwent coronary artery bypass grafting utilizing both internal mammary arteries. Two and a half weeks after surgery decedent presented to the Emergency Room with complaints of vomiting, fever; severe pain and burning in her incision, and an elevated white blood cell count. Decedent was seen in the ER by Defendant's cardiothoracic surgeon who concluded that decedent had a gastrointestinal disorder and discharged her to home with instruction to be seen in the office the next morning. At the office visit the next day decedent's sternal wound was found to be open and draining purulent material. Decedent was then hospitalized and antibiotics were started that evening, but the sternal wound was not debrided in surgery until several days later. Decedent suffered multiple complications and died from recurrent CVA's caused by sepic emboli following cardiac valve replacement surgery. Plaintiff alleged that decedent was at known risk for post-operative sternal wound infection because of her diabetes and the use of both internal mammary arteries for grafting, that she should have been hospitalized on presentation to the ER and started on antibiotics as soon as blood cultures were obtained, and that complete debridement of the sternal wound in surgery with removal of sternal wires should have been undertaken in a timely manner to limit the extension of infection. Plaintiff further alleged that the failure to timely diagnose and treat the infection resulted in her death from avoidable complications including mediastinitis, septicemia, bacterial endocarditis, and recurrent CVA's from septic emboli, as well as avoidable surgery including embolectomy and cardiac valve replacement Defendant argued that there was no evidence of wound abnormality on the day that decedent presented to the ER. that it was reasonable to conclude that her complaints were related to a gastrointestinal disorder. that follow-up in the office was appropriate. that surgical debridement of the wound was not indicated until sternal instability was noted. and that her condition was probably irreversible prior to the time of her admission to the hospital

Plaintiff's Experts: Cameron Wright, M.D. (Thoracic Surgery): hchard Blinkhorn, Jr., M.D. (Infectious Disease)
Defendant's Experts: Adolph Karchmer, M.D. (Infectious Disease); Robert Debski, M.D. (Cardiothoracic Surgery)

Gilbert Arndt, Individually and as Exec., etc. v. Trilok Sharma, M.D., et al.

Type of Case: Medical Malpractice
Settlement: $500,000
Plaintff's Counsel: Jeanne M. Tosti
Defendant's Counsel: Withheld
Court: Cuyahoga County Common Pleas
Date: July, 1999
Insurance Company: PIE Insured - Claim handled by Ohio Insurance Guaranty Association
Damages: Severe hypoxic encephalopathy resulting in long-term disability and death

Summary: Decedent was a 69 year old female with a long history of heart disease and other medical conditions including generalized dizziness for several years. §he was recommended to undergo carotid endarterectomy surgery. During the course of her surgery early signs of cardiac decompensation went unnoticed and untreated. At the end of surgery, while she was still in the operating room, Decedent developed acute respiratory distress, pulmonary edema, and critically low blood pressure resulting in catastrophic ischemic brain damage. Plaintiff alleged that decedent's history and existing test results did not warrant carotid endarterectomy surgery, that decedent was at high risk for cardiac complications during surgery, that pre-operative cardiac and carotid testing were inadequate to assess the need for

surgery and associated risks. and that surgical and anesthesia management during surgery were inadequate. Defendants alleged that surgery was indicated, that additional pre-operative testing was unnecessary. that degree of risk for cardiac complications was not prohibitive, that surgical and anesthesia management was appropriate, and that decedent suffered unforeseeable complications as a result of allergic reaction to a drug given during surgery or complications from endotracheal intubation. As a result of her injuries, decedent lived in a state of total disability until her death a year and 8 months later.

Plaintff's Experts: Theodore Stanley, M.D. (Anesthesiology); Joseph Durham, M.D. (Vascular Surgery): Ralph Lach, M.D. (Cardiology)
Defendant's Experts: James Rowbottom, M.D. (Anesthesiology); David Rollins, M.D. (Vascular Surgery): Raymond Magorien, M.D. (Cardiology)

Doe, Exec. v. ABC Hospital

Type of Case: Medical Malpractice
Settlement: $425,000
Plaintiff's Counsel: Jeanne M. Tosti
Defendant's Counsel: Withheld
Court: Cuyahoga County Common Pleas
Date: February, 2000
Insurance Company: Not Listed
Damages: Death due to hypovolemic shock

Summary: Decedent was a remarkably healthy 92 year old widow who lived independently and was active in the community. She fell at home, injured her hip and was subsequently transported to a local community hospital Emergency Room. In the ER she was found to have free fluid in the abdomen and diagnosed with probable pelvic hematoma and hemorrhage into the rectal sheath. She was given intravenous fluids to stabilize her blood pressure and then transferred to another hospital where it was anticipated she would receive blood transfusions and undergo surgical evaluation and possible intervention. At the second hospital, decedent was admitted to a general medicine floor under the management of internal medicine. Her only treatment consisted of the administration of intravenous fluids. Over the course of the next 6 hours her condition deteriorated, she suffered cardiac arrest and died. Laboratory blood work drawn more than an hour before death showed her blood values to be at life threatening low levels consistent with ongoing internal hemorrhage. Defendant provided information to the coroner that probable cause of death was hypovolemic shock. Plaintiff alleged that decedent should have been seen on surgical consult at the time of admission, that she was not at high risk for surgical complications if surgery was indicated, that blood transfusions should have been ordered and given on an urgent basis, that close monitoring including frequent vital signs were indicated, and that decedent should not have been sent unaccompanied to x-ray after suffering a hypotensive episode. Defendant argued that decedant's age, possible hip fracture, and high surgical risk made it unlikely that she would have survived regardless of treatment, that she may have had a heart attack prior to admission, that surgical and orthopedic consults were requested, but never completed, that routine surveillance and vital signs on a general medical floor was acceptable, and that delays in obtaining blood for transfusion were caused by the need to redraw a specimen for type and cross-match.

Plaintiff's Experts: Hadley Morganstern Clarren, M.D. (Internal Medicine); C. William Kaiser, M.D. (Surgery); Neal Persky, M.D. (Geriatric Medicine)
Defendant's Experts: Not Listed

Evelyn G. Isaac v. Frances Barrett

Type of Case: Pedestrian/Motor Vehicle Accident
Settlement: $465,000
Plaintff's Counsel: Howard D. Mishkind
Defendant's Counsel: C. Richard McDonald
Court: Cuyahoga County Common Pleas
Date: April: 2000
Insurance Company: Hartford
Damages: Bilateral tibial plateau fractures and a right ankle fracture

Summary: A *70* year old female pedestrian was hit in the crosswalk by a minivan. Plaintiff sustained bilateral tibial plateau fractures and a right ankle fracture requiring open reduction and internal fixation. Plaintiffs right

leg fractures healed without residual complication. Plaintiffs left proximal fracture healed with a post-fracture deformity of her left knee.

Plaintiff asserted that she would need a knee replacemcnt in the future. although. at the time of the settlemcnt. future knee surgery had not been planned Defendant alleged that Plaintiff's lower extremity complaints were related to left hip avascular necrosis and osteoarthritis as well as arthritic changes in Plaintiffs lumbar spine that pre-existed and nere not complicated by the motor vehicle collision Defendant alleged that Plaintiff would require a hip replacement before she would need a knee replacement

Plaintiff's Experts: Dr. John Wood (Orthopedic Surgeon)
Defendant's Experts: Dr. Robert Zaas (Orthopedic Surgeon)

Nancy Dunham v. Dr. Manahal Ghanma

Type of Case: Medical Malpractice
Settlement: $75,000
Plaintlff's Counsel: Howard D. Mishkind
Defendant 8 Counsel: John Travis
Court: Lorain County Common Pleas, Judge Lynett McGough
Date: November, 1999
Insurance Company: Ohio Insurance Guaranty Association (former PIE insured)
Damages: Avulsion of the greater tuberosity following right shoulder hemiarthroplasty and rotator cuff repair by Defendant doctor

Summary: A 66 year old woman slipped and fell causing a fracture dislocation of her right shoulder. She was taken to Elyria Memorial Hospital where Defendant doctor performed right shoulder hemiarthroplasty and rotator cuff repair. Following surgery, the patient underwent a series of physical therapy treatments. Following treatment, the patient developed significant pain with decreased range of motion. Defendant doctor did not recommend further intervention due to patient's age and pre-existing medical conditions.

Plaintiff alleged that Defendant failed to timely recognize during the post-operative period that an avulsion of a large portion of the greater tuberosity had occurred. Plaintiff alleged that had the Defendant recognized this condition earlier. secondary repair of the bone fragment would have led to a significantly improved functional outcome and decreased pain. Defendant alleged that the surgery was performed appropriately and that findings during the post-operative period did not represent major tuberosity fragments and the repair was still intact. Defendant alleged that patient developed a torn rotator cuff or rotator cuff dysfunction and that the original surgical intervention was done in accordance with accepted standards. Defendant further alleged that Plaintiff did not comply with physical therapy as directed, that Plaintiff may have caused a subsequent injury to her shoulder, and that Plaintiff was not a candidate for further surgery due to her bone stock being osteoporotic. Defendant further alleged that Plaintiff sustained a very serious injury to her shoulder during the original fall and that secondary repair following such injuries has a low percentage of success with significant residual functional disability and pain.

Plaintrff's Experts: Dr. Stephen Paul Kay (Orthopedic Surgeon)
Defendant's Experts: Dr. Richard Friedman (Orthopedic Surgeon)

James Scarlett, et al. v. Dr. Arthur Porter, et al.

Type of Case: Medical Malpractice
Settlement: $300,000
Plaintrff's Counsel: Howard D. Mishkind
Defendant's Counsel: Ed Cass
Court: Cuyahoga County Common Pleas
Date: August, 1999
Insurance Company: Ohio Insurance Guaranty Association (former PIE insured)
Damages: Prostatic perirectal abscess

Summary: A 58 year old male with a history of adenocarcinoma, which was detected by an elevated **QSA** and an abnormal rectal examination, consulted with Defendant urologist regarding definitive treatment for

his cancer after being started on Flutamide and Lupron.

Prior to having cryoblation of the prostate performed. patient underwent lymph node dissection to determine if there was anq metastasis Despite laparoscopic evidence that revealed metastatic disease in two out of four lqmph nodes (thus staging patient's cancer at D-l), Defendant doctor performed cryoblation of the prostate

One week after surgery, the patient developed severe sepsis and was found to have a rectal fistula.

Plaintiff alleged that Defendant urologist failed to advise him of the potential complications of performing cryosurgery. Plaintiff further alleged that Defendant was negligent in the performance of the cryosurgery, causing an injury to the rectum which was preventable and avoidable. Defendant argued that a rectal fistula is a known complication of cryosurgery and that the literature supported the use of cryosurgical ablation as an alternative to TURP, hormonal therapy and radiation. Plaintiff developed multiple complications requiring the insertion of a suprapubic catheter.

Plaintrff's Experts: Dr. Aaron E. Katz (Assoc. Prof. of Urology); Dr. Winston Barzell
Defendant's Experts: Not Listed

Carol Curry v. Mt. Sinai Hospital

Type of Case: Medical Malpractice
Settlement: $300,000
Plaintrff's Counsel: Howard d. Mishkind
Defendant's Counsel: Timothy P. Whitford; Ernie Auciello
Court: Cuyahoga County Common Pleas
Date: July, 1999
Insurance Company: PIE for Mt. Sinai Hospital
Damages: Death due to hypoxic ischemia secondary to placental abruption

Summary: Plaintiff mother was admitted to Mt. Sinai Hospital for delivery of her first child. Upon admission to labor and delivery, Plaintiff mother had an initial high blood pressure reading, no repeat of BP's were taken during labor and delivery. During the early afternoon: non-reassuring tracings were evident. Tracings showed minimal long-term variability at best. By late afternoon: there was no variability. Additionally: there were repetitive late decelerations combined with minimal to no variability. yet these findings were not recognized by the labor and delivery nurse and were not reported to the resident.

No steps were taken by the labor and delivery nurse to initiate intra-uterine resuscitative measures such as oxygen administration or increasing IV fluid rate. Finally, the labor and delivery nurse failed to recognize contraction patterns as a sign of possible uterine abruption.

Had signs and symptoms been recognized earlier in the afternoon, interventionto delivery Plaintiffs baby would have been warranted and likely would have resulted in delivery of the baby avoiding the adverse consequences of placental abruption.

Plaintiff's Experts: Dr. Raymond Redline (Placental Pathologist); Dr. David Stockwell (OB-GYN)
Defendant's Experts: Dr. LeRoy Dierker (OB-GYN); Richard Naeye (Pathologist)

Anonymous v. Dr. X

Type of Case: Medical Malpractice
Settlement: $950,000
Plaintrff's Counsel: Howard D. Mishkind
Defendant's Counsel: Withheld
Court: Cuyahoga County Common Pleas, Judge Christine McMonagle
Date: December, 1999
Insurance Company: CNA
Damages: Stage 3B cancer; death

Summary: 64 year-old male admitted to Hillcrest Hospital with a diagnosis of acute bronchitis with chronic obstructive pulmonary disease and hypertension. During hospitalization, portable chest x-rays were taken which included a TA and lateral view which revealed right middle lobe atelectasis. During the hospital admission, Defendant pulmonary physician did not review the chest x-ray which showed findings most consistent

with an obstructive pneumonia secondary to a tumor No further follow-up studies were conducted on the patient Two years later, the patient was diagnosed with stage 3B cancer of the right lung Patient opted for alternative therapy in Mexico due to non-operable status of the tumor Patient died eight months later

Plaintiffs allege that Defendant pulmonary physician failed to follow-up on chest x-ray and should have ordered a repeat chest x-ray which would have led to further diagnostic studies. including a bronchoscopy which more likely than not would have led to an early diagnosis of lung cancer at a point in time where the tumor would have been resectable with a probability in excess of 50% that the patient would have survived.

Defendant alleged that patient cancelled follow-up appointment after discharge. Defendant further alleged that even if the cancer would have been diagnosed earlier. his outcome would have been the same.

Plaintff's Experts: Dr. Robert M. Rogers (Pulmonary Medicine)
Defendant's Experts: Dr. Harry Boltin (Radiologist)

Jane Doe v. Anonymous

Type of Case: Medical Malpractice
Settlement: $1,300,000.00
Plaintff's Counsel: Howard D. Mishkind
Defendant's Counsel: Withheld
Court: Cuyahoga County Common Pleas, Judge Christopher Boyko
Date: September, 1999
Insurance Company: Not Listed
Damages: Sigmoid resection; creation of Hartmann's pouch; end colostomy; colovaginal fistula

Summary: A 40 year old female underwent a hysterectomy. During the hysterectomy, the patient developed intraoperative complications requiring a sigmoid resection and the creation of a Hartmann's pouch and end colostomy.

During the attempted takedown of the colostomy several months later. Defendant physician failed to discover a leak at the time of the re-anastomosis Subsequent to surgery. the patient developed a colovaginal fistula The patient required multiple hospitalizations and operations to treat the fistula

Plaintiff's Experts· Dr. Scott Strong (Colorectal Surgeon): Dr. Richard Schlanger (General Surgeon)
Defendant's Experts: Not Listed

Anonymous Patient v. Dr. X

Type of Case: Medical Malpractice
Settlement: $190.000
Plaintff's Counsel: Howard D. Mishkind
Defendant's Counsel: Withheld
Court: Cuyahoga County Common Pleas
Date: May, 2000
Insurance Company: Zurich American
Damages: Failed post mastectomy reconstruction resulting in further surgical corrections

Summary: A 45 year old black female underwent a mastectomy for breast cancer in her left breast followed by reconstructive surgery performed by the Defendant plastic surgeon. The Defendant performed reconstruction using tissue expanders with subsequent implantation of saline implant. Following the successful tissue expander reconstruction, the Defendant surgeon performed nipple reconstruction. At the time of the nipple reconstruction: the prevoiusly placed implant was punctured during an injection of a local anesthetic. Plaintiff developed an infection in the breast wall requiring removal of the implant and subsequent reconstruction of the breast.

The Defendant alleged that Plaintiff was fully informed of the material risks and complications associated with the procedure and patient opted for the use of a tissue expander rather than a tram flap procedure. The Defendant further alleged that the complications which occurred were recognized complications and were unavoidable. The Defendant further alleged that subsequent reconstruction performed after the implant was replaced has left her with essentially the same outcome that she had previously.

Plaintiff alleged that the Defendant failed to disclose the material risks and complications associated with a tissue expander procedure versus a tram flap and other procedures and that Plaintiff would not have opted for the tissue expander had she recognized the risk benefit analysis. Plaintiff further alleged that the Defendant was negligent in performing the nipple reconstruction. Plaintiff further alleged that the Defendant failed to advise Plaintiff of the risk of doing nipple reconstruction on a previously radiated tissue bed.

Plaintlff's Experts: Dr. William Canada
Defendant's Experts: Dr. Randall Yetman

Michael DeSimone, et al. v. Thomas C. Perk

Type of Case: Car-Motorcycle Accident
Settlement: $100,000 (Limits)
Plaintlff's Counsel: Romney B. Cullers
Defendant's Counsel: Cornelius J. O'Sullivan, Jr.
Court: Cuyahoga County Common Pleas
Date: June, 2000
Insurance Company: State Farm
Damages: Knee injuries, including ACL disruption.

Summary: The driver of the car cut off the assured clear distance of the Plaintiff motorcyclist. Liability was admitted. Plaintiff, a 40 year old male, required reconstructive surgery for a torn anterior cruciate ligament.

Plaintiff's Experts: Andre Wolanin, M.D. (Treating Physician)
Defendant's Experts: None

John Doe v. ABC Practice Group and Hospital

Type of Case: Medical Malpractice
Settlement: $400,000
Plaintiff's Counsel: Romney B. Cullers
Defendant's Counsel: Withheld at request
Court: Cuyahoga County Common Pleas
Date: July, 2000
Insurance Company: Withheld at request
Damages: Permanent damage to kidneys.

Summary: Plaintiff, a **48** year old single male, suffered permanent kidney damage as the result of a 15 month delay in treatment for systemic vasculitis. Vasculitis is a progressive rheumatologic disorder that can cause arteries to become necrotic, and if left untreated, tissue death.

Plaintiff initially presented with an infarcted bowel, caused by the vasculitis. He underwent exploratory surgery which resulted in a partial small bowel removal. The surgical pathologist suspected that vasculitis had caused the infarction and recommended further workup to rule out a form of systemic vasculitis. This was never done, even though the Plaintiff continued to complain of severe bowel pain for over a year and suffered a second bowel infarction! During this period of time, the systemic vasculitis also caused irreversible ludney damage.

Defendants contended that Plaintiffs history of cocaine abuse accelerated his vasculitis and that alcoholism contributed to his failure to keep appointments with specialists who would have instituted treatment for vasculitis earlier. Defendants also contended that even with optimal care, the Plaintiffs life expectancy was only three to five years because of other health problems.

Plaintlff's Experts: Theodor Herwig, M.D. (Family Practice); Benjamin Lechner, M.D. (Rheumatology); Stephen Vaccarezza, M.D. (Nephrology); Rod Durgin, Ph.D. (Vocational Analysis); Malcolm Cohen, Ph.D. (Economic Analysis)
Defendant's Experts: Kevin Ferentz, M.D. (Family Practice)

John Doe v. ABC Practice Group and Hospital

Type of Case: Medical Malpractice
Settlement: $325,000
Plaintlff's Counsel: Romney B. Cullers
Defendant's Counsel: Withheld at request
Court: Cuyahoga County Common Pleas
Date: September, 2000
Insurance Company: Withheld at request
Damages: Brachial plexus injury

Summary: Plaintiff, an 8 year old boy, suffered a brachial plexopathy as the result of mismanagement of shoulder dystocia at birth. Shoulder dystocia is a complication that involves the baby's shoulder getting stuck behind the mother's pubic bone. The boy weighed 4,300 grams. but the ultrasound 24 hours prior to deliven estimated his weight to be significantly higher. Even though the mother had experienced over 50 hours of dysfunctional labor. the delivering obstetrician attempted a vacuum assisted vaginal delivery instead of a C-section.

After the shoulder dystocia was diagnosed, a nurse applied continuous fundal pressure while the McRoberts Maneuver was attempted. Fundal pressure is contraindicated and can cause the shoulder to become even more impacted.

Although the boy was born with a flail arm, most of his function returned by 6 months of age. He now has slight scapular winging and is functioning well in school and athletics.

Plaintrff k Experts: Paul Gatewood, M.D. (Obstetrics); Tracy Glauser, M.D. (Pediatric Neurology); Rod Durgin, Ph.D. (Vocational Analysis)
Defendant's Experts: Steven DeVoe, M.D. (Obstetrics); Max Wiznitzer, M.D. (Pediatric Neurology)

Katherine Gibson, etc. v. Bryan Medical Group, et al.

Type of Case: Med. Malpractice/Wrongful Death
Settlement: $750,000
Plaintrff's Counsel: Peter H. Weinberger, Mary A. Cavanaugh
Defendant's Counsel: John Barron
Court: Lucas County, Judge Christiansen
Date: May, 2000
Insurance Company: PHICO
Damages: Not Listed

Summary: A 4 ½ year old boy diagnosed with a migraine headache was prescribed Ergotamine by a family physician. The doctor did not clearly define the frequency within which the medication could be given. The Mother gave the child 10 pills over a 17 hour perod The boy suffered seizures and died

Plaintiff's Experts Fred Jorgenson M D , Michael Painter, M D . Michael Balko, M D
Defendant's Experts Douglas Quint, M D

John Doe v. ABC Clinic

Type of Case: Medical Malpractice
Settlement: $245,500
Plaintiff's Counsel: Peter H. Weinberger, Rhonda Baker Debevec
Defendant's Counsel: Withheld
Court: Not Listed
Date: December. 1999
Insurance Company: Not Listed
Damages: $19,500 medical expenses

Summary: A negligent injection of an influenza vaccine. Four employees went to an employer clinic for flu vaccinations. Because the clinic was temporarily out of the appropriate needles, the clinic physician assistant used a longer needle to administer the shots. Additionally, he administered the shot too high on their arms. The clients received varying degrees of injury to their shoulders.

Plaintrff's Experts: Hadley Morganstern-Clarren
Defendant's Experts: None Identified

Derek DeVine, Admr., etc. v. Blanchard Valley Medical Associates, Inc., et al.

Type of Case: Medical Malpractice
Settlement: $3 15,000
Plaintiff's Counsel: Justin F. Madden
Defendant's Counsel: Withheld
Court: Hancock County, Judge Reginald Routson
Date: October, 1999
Insurance Company: Ohio Hospital
Damages: Progression of cancer from Stage II to terminal Stage IV

Summary: A 28 year old woman presents to a

pulmonologist with a spot on a chest X-ray. The pulmonologist opted against a bronchoscopy or other pathological diagnoses in preference of ruling out several benign conditions. This course of treatment resulted in a 2-1/2 year delay where the patient progressed from Stage II at initial presentation to terminal Stage IV. with a loss of chance of survival between 20-40%.

Plaintiff's Experts: David Bettinger, M.D.; David Tanarek, M.D.
Defendant's Experts: Harvey J. Lerner, M.D.; Thomas J. O'Grady, M.D.; Jeffrey E. Weiland, M.D.

Doe v. Hospital

Type of Case: Medical Malpractice
Settlement: $600,000
Plaintlff's Counsel: Peter H. Weinberger, Mary A. Cavanaugh
Defendant's Counsel: Scott Fowler
Court: Mahoning County Common Pleas
Date: December, 1999
Insurance Company: Self-Insured Hospital
Damages: Wrongful Death of 73 year old woman

Summary: Post-angioplasty, the patient received Heparin and ReoPro and began oozing blood from the femoral artery sheath site. This progressed to a retroperitoneal bleed which went undiagnosed by the ICU nurses. Decedent is survived by one adult son.

Plaintlff 8 Experts: Raymond Magorian, M.D (Cardiologist); Carolyn Strimike (Nurse)
Defendant's Experts: Melody Halsey (Nurse)

Lundgren, et al. v. Wholesale Waterproofers, Inc., et al.

Type of Case: Motor Vehicle Collision
Verdict:$1,750,000
Plaintlff's Counsel: Peter H. Weinberger, Jennifer L. Whitney
Defendant's Counsel: Keith Thomas, Marilyn Singer
Court; Cuyahoga County Common Pleas
Date: July, *2000*
Insurance Company: Cincinnati Insurance and Allstate
Damages; Fractured arm with loss of muscle and nerves, fractured legs/ankles

Summary: This case established for the first time in Ohio that a company responsible for loading a truck has a duty not to overload the truck. Several cases outside of Ohio have established that a common law duty not to overload someone else's truck exists. Ohio now joins those other jurisdictions. On July *26,* 1997, a one ton pickup truck owned by Wholesale Waterproofers went left of center and struck Plaintiffs vehicle head on. Just moments before, the Wholesale Waterproofers' truck had stopped at R.W. Sidley Co. where Sidley employees loaded the truck with 3.4 tons of gravel, more than 3,000 lbs. over the gross vehicle weight rating of the truck. when the Wholesale Waterproofer employee attempted to apply his brakes to stop as a result of vehicles slowing in front of him, the brakes failed and the truck kicked left of center. Expert testimony revealed that the overloading of the truck was a factor in the brake failure. Wholesal3 Waterproofer, Inc. had only $100,000 in liability insurance, The trial court, Judge Friedman, ruled as a matter of law that the R.W. Sidley Co. had a duty not to overload the truck owned by a third party. The case went to trial and the jury ofund both defendants liable. They are jointly and severally liable, although the jury found that the Defendants' respective cross-claims, Wholesale Waterproofers, Inc. was 66 *213%* liable and R.W. Sidley Co. was 33 1/3% liable.

Plaintlff's Experts: Henry Lipian; James Crawford
Defendant's Experts: Richard Stevens

Jane Doe v. Insurance Companies

Type of Case: Auto Accident
Settlement: $1,000,000
Plaintlff's Counsel: David M. Paris; Jamie R. Lebovitz
Defendant's Counsel: Paul Eklund; David Lester
Court: Cuyahoga County
Date: April, 2000
Insurance Company: Westfield and Hartford

Damages: Diffuse brain injury with multiple orthopedic injuries

Summary Plaintiff nas run off the road by an intoxicated underinsured motorist She had rejected UM under her own policj *Scott/Pontzer* claims made under policies of her own emplojer and husband's employer

Plaintff's Experts: Barry Layton, Ph.D.; Mary Varga, M.D.
Defendant's Experts: None

Steven Swetz, et al. v. Grange Insurance Co.

Type of Case: Personal Injury
Settlement: $220,000
Plaintlffb Counsel: Scott Kalish
Defendant's Counsel: Warren George
Court: Cuyahoga County Common Pleas,
Judge Lillian J. Greene
Date: May, 2000
Insurance Company: Grange
Damages: Right intertrochanteric hip fracture

Summary: Plaintiff was the front seat passenger in an automobile that was involved in a collision at the intersection of State Route 83 and Lorain Road. Plaintiff sustained a right intertrochanteric hip fracture and underwent two surgeries as a result ofthe accident. Plaintiff brought a claim against tortfeasor, David M. Roberts, who was the driver of the other vehicle involved in the accident, Further, Plaintiff brought an underinsured motorist claim against Grange Insurance Co.

Plaintlff's Experts: Vernon Patterson, M.D.; Louis Keppler, M.D.
Defendant's Experts: Manual Martinez, M.D.

John Doe v. ABC Company

Type of Case: Premises and employer intentional tort
Settlement: $650,000
Plaintiff's Counsel: David M. Paris
Defendant's Counsel: Withheld
Court: Cuyahoga County,
Judge William Aurelius
Date: May. *2000*
Insurance Company: Withheld
Damages: Acid burns; lost tips of *3* fingers on left hand and tips of 2 fingers on right hand

Summary: Plaintiff was employed by a contractor hired by ABC Co. to clean and reline a 4,000 gallon acid tank. ABC told the employer that the tank had previously contained hydrofluoric acid (a highly corrosive acid). The employer directed its employee to clean the tank without requiring him to wear a rubber acid suit. Moreover, ABC Co. violated its own confined space entry program by permitting the contractor into the tank without an acid suit.

Plaintiff's Experts: Charles Wesley Jordan, Ph.D.; Kevin Chung, M.D.; Robert Ancell, Ph.D.; John F. Burke, Jr., Ph.D.
Defendant's Experts: Daniel Levine

John Doe v. ABC Employer

Type of Case: Employer Intentional Tort
Settlement: $2,000,000
Plaintlff's Counsel: Thomas Mester, David M. Paris
Defendant's Counsel: Withheld
Court: Cuyahoga County,
Judge Kilbane-Koch
Date: June, 2000
Insurance Company: Withheld
Damages: Electric shock resulting in heart stopping and brain dysfunction

Summary: Plaintiff, a maintenance man, was directed to sweep up around an industrial furnace. The furnace's ignition system had been in a state of disrepair for months before the injury. It had been arcing, sparking and shorting out and Defendant, despite observing thse events, failed to repair the problem.

Plaintiff's Experts: Simon Tamny, P.E.; Masood Tabib-Azar, Ph.D.; James Begley, M.D.; Barry Layton, Ph.D.; Robert Ancell, Ph.D.; John F. Burke, Ph.D.
Defendant's Experts: Howard Prosser, Ph.D., P.E.

Joseph & Marie Cavasinni v. Christopher Arnold

Type of Case: Automobile Collision/Disputed Liability
Settlement: $77,000.00
Plaintiff's Counsel: Phillip A. Ciano
Defendant's Counsel: Ronald Rawlin/UIM Adjuster
Court: Cuyahoga County Common Pleas, Judge Brian Corrigan
Date: February, 2000
Insurance Company: Nationwide/Royal
Damages: Medical/Specials: $9,000.00; Economic Loss: $0

Summary: A disputed liability/intersection collision case wherein the Defendant claimed Plaintiff was traveling at an excessive rate of speed, and Plaintiff claimed the Defendant failed to yield while making a left-hand turn across a 3-lane roadway in Cleveland, Ohio. Plaintiff suffered cervical strain injuries to his neck and upper back and a possible compress fracture at L-4. After settling this claim with the Defendant driver for policy limits of $25,000, Plaintiff proceeded with his underinsured motorist claim and resolved that portion for $52,000, totaling $77,000 in gross settlement proceeds.

Plaintrff's Experts: Jerome B. Yokiel, M.D.; Abdul Itani, M.D.
Defendant's Experts: None

Jane Doe, Rep. of the Estate of John Doe, etc. v. ABC Corporation, et al.

Type of Case: Products Liability/Wrongful Death
Settlement: $2,600,000
Plaintiff's Counsel: Phillip A. Ciano
Defendant's Counsel: Withheld
Court: Wayne County Circuit Court
Date: December, 1999
Insurance Company: Withheld
Damages: Economic loss; pre-death pain and suffering; wrongful death damages

Summary: Plaintiffs decedent, a 31 year old sanitation worker, was trapped and asphyxiated behind the defective crusher panel of a side-loading refuse truck. Plaintiffs counsel pursued the case under theories of general negligence and products liability. Due to the State of Michigan's Tort Reform Statute: Plaintiff's non-economic damages were capped at $500,000. Plaintiff's decedent was survived by his spouse and two minor children.

Plaintiff's Experts: Ken Allison (Sanitation Industry/ Training Expert); Daniel Pacheko (Engineering); Robert Breen (Human Factors)
Defendant's Experts: Not Listed

Wallace Skiba, et al. v. Fresh Mark Brands, et al.

Type of Case: Workers' Compensation Bad Faith
Settlement: Confidential
Plaintrff's Counsel: John R. Liber, Jr.
Defendant's Counsel: David Kovach, Eleanor Tshugunov
Court: Columbiana County, Judge Jenkins
Date: January, 2000
Insurance Company: N/A
Damages: Below knee amputation of the right leg of a 36 year old, sole provider for wife and two minor daughters, $76,000 past med.; $350,000 future cost of care and replacement services; $110,000 past wage loss; $490,000 - $985,000 future wage loss

Summary: Skiba's self-insured employer and its third party claims administration company (TPA) denied requested medical treatment for Plaintiffs early stage Reflex Sympathetic Dystrophy. All of the Defendants' IME examinations concurred with the nature of the condition and the necessity of the requested treatment. The disease spread requiring amputation of his leg.

Plaintiff's Experts: Michael Stanton-Hicks, M.D. (Cleveland Clinic); Thomas Stan, M.D. (Akron Crystal Clinic); Phillip J. Fulton, Esq. (Workers' Compensation); H. Thomas Wilkins, III (TPA, Human Resources); John Burke, Ph.D. (Economist); Dorene Spak (Life Care Technologies)
Defendant's Experts: Lee Smith, Esq. (Columbus Workers' Compensation); Paul C. Martin, M.D. (Occupational Medicine)

Mary Wilburn v. Cleveland Psychiatric Institute (C.P.I.)

Type of Case Medical Malpractice
Verdict $1,830 352
Plaintiff s Counsel John Meros. Sheila Cooley
Defendant s Counsel Susan Sullivan, Eric Walker
Court Ohio Court of Claims
Date March. 2000
Insurance Company Not Listed
Damages Lost income + cost of future care = over $1 million

Summary: Plaintiff, age 44, had on-et of stroke-like symptoms. Stroke protocol at the hospital was negative. She was sent to C.P.I. to rule out "conversion reaction". C.P.I. kept her for 25 days and treated her for psychiatric disorder, then sent her home. Eighteen days later, she suffered a massive stroke. Medical care and treatment showed she originally had a stroke before being sent to C.P.I. Her 2nd stroke was caused by thrombotic thrombocytopenic purpura (TTP), which went undiagnosed at C.P.I.

Plaintiff's Experts: John Conomy, M.D. (Neurology); Timothy O'Brien, M.D. (Hematology); Joseph Murray, Ph.D. (Psychology); Dorene Spak (Life Care Planner); Edward Bell, Ph.D. (Economist)
Defendant's Experts: Donald Kitka, M.D. (Neurology); Philip Hoffman, M.D. (Hematology)

Dennis Huffman v. Ayrskire, Inc.

Type of Case: Industrial Accident; Contractor Negligence
Settlement: Confidential
Plaintiff's Counsel: John Meros
Defendant's Counsel: Withheld
Court: Ashtabula Common Pleas, Judge Ronald Vettel
Date: October, 1999
Insurance Company: St. Paul/USF&G
Damages: Medicals = $140,000 / Lost Income = $245,000

Summary Huffman. age 57. worked as an instrument mechanic in a titanium tetrachloride plant in Ashtabula When removing the cap of a natural gas line to connect it to a burner unit. the cap blew off under unexpected air pressure in the line, causing multiple. complex leg fractures Third party contractor who built plant 5 years earlier failed to install a plug valve

Plaintiff's Experfs Philip W Morrison. Jr . Ph D (Chemical Engineer). Randolph Hansen (Architect/ Contractor)
Defendant's Experts Brian J Smith (Contract Mgr)

John Doe v. XYZ Ins. Co.

Type of Case: Wrongful Death - UIM
Settlement: $1,234,000
Plaintiff's Counsel: Larry S. Klein, Christopher J. Carney
Defendant's Counsel: Laura M. Faust
Court: Cuyahoga County Common Pleas, Judge Burnside
Date: March, 2000
Insurance Company: Withheld
Damages: Wrongful Death

Summary: A *50* year old driver was killed in a clear liability auto accident on 3/25/95. Decedent was survived by his wife, who remarried 2 years after the accident and a daughter who was emancipated at the time of settlement. Claims against underlying carriers settled for $334,000. Despite the fact that he was not in the course and scope of employment at the time of the accident, nor was he driving a company owned vehicle, a claim was made under the decedent's employer's commercial auto policy pursuant to *Scott-Pontzer v. Liberty Mutual Ins. Co.* This claim settled for an additional $900,000.

Plaintrff's Experts: None
Defendant's Experts: None

Virginia Ferrall v. Homer Skinner, D.O.

Type of Case: Medical Malpractice
Verdict: $1,750,000
Plaintiff's Counsel: John A. Lancione
Defendant's Counsel: James Blomstrom
Court: Mahoning County, Judge James Evans
Date: March, 2000
Insurance Company: PICO
Damages: Paralysis of 73 year old woman

Summary: Plaintiff, a 73 year old woman, had an expanding descending thoracic aortic aneurysm that was plainly visible on four serial chest x-rays over a 9 year period. The Defendant, a family practitioner, took the x-rays in his office and looked at them before sending the x-rays to a radiologist. Both the radiologist and the family practitioner missed the diagnosis of expanding thoracic aorta. The aneurysm dissected, causing spinal cord infarction and T-4 level paralysis.

Plaintiff's Experfs Geoffrey Graeber. M D (Thoracic & Cardiovascular Surgery). George Cyphers (Rehabilitation). James Zinser (Economist)
Defendant's Experts James Orosz, M D (Family Medicine)

Estate of Jane Doe v. ABC Nursing Home and Doctor X

Type of Case: Nursing Home Malpractice and Medical Malpractice
Settlement: $250,000
Plaintiff's Counsel: Paul M. Kaufman
Defendant's Counsel: NIA
Court: Lake County Common Pleas, Judge Mitrovich
Date: September, 1999
Insurance Company: N/A
Damages: Death of a 78 year old woman

Summary Decedent entered Defendant nursing home and orders were written by Defendant Doctor to check her prothrombin times once a week The nursing home was to check these times once a meek The nursing home checked the first week and then neglected to check them for the following three weeks until the decedent was found in her bed with blood coming out of her mouth. Decedent was rushed to the hospital and lingered for five days, and then died. The nursing home settled prior to trial for $250,000. The case then proceeded to trial against the doctor. The result was a defense verdict. Judge Mitrovich has subsequently granted a new trial to Plaintiff against the doctor. Prior to trial, the doctor had given consent to settlement negotiations and then withdrew his consent prior to trial.

Plaintiff's Experts. None
Defendants Experts. None

John Doe v. XYZ Truck Rental

Type of Case Motor Vehicle
Settlemenr $169.000
Plaintiff's Counsel Paul M Kaufman
Defendant's Counsel N/A
Court Cuyahoga County Common Pleas. Judge Kathleen Sutula
Date March. 2000
Insurance Company AIG
Damages Tom rotator cuff. requiring surgery . multiple fractured nbs and other bruises and contusions

Summary: Plaintiff was rear-ended by the Defendant and pushed into the vehicle in front of him. Plaintiff was already totally disabled from injuries suffered prior to the subject motor vehicle accident. His medical specials totaled approximately $27,000.

Plaintlff's Experts: Mark Berkowitz, M.D.
Defendant's Experts: Timothy Gordon, M.D.

Estate of John Doe v. John Smith, M.D.

Type of Case: Medical Malpractice/Wrongful Death
Settlement: $315,000
Plaintiff's Counsel: Paul M. Kaufman
Defendanr's Counsel: Withheld
Court: Cuyahoga County Common Pleas
Date; April. 2000
Insurance Company: Medical Protective
Damages: Death of a 53 year old. Surviving spouse, 3 adult children

Summary: Decedent was operated on by Defendant or Zenker's Diverticulan The operation was not performicd properly requiring a re-operation two months later After second operation. decedent devclopcd complications and d i d

Plaintiff's Experts: Lionel Zuckerbraun. M.D (General Surgeon)
Defendant's Experts: Harvey Tucker. M.D.

Corinne Henahan v. Kent State Univ.

Type of Case Negligent Failure to Maintain Machine
Settlement $42.500
Plaintiff s Counsel Paul M Kaufinan
Defendant s Counsel N/A
Court N/A
Date May. 2000
Insurance Company Not Listed
Damages Multiple lacerations

Summary: A student at Kent State University was injured while using a glass cutting machine that was not guarded and had no emergency cutoff.

Plaintiff's Experts: None
Defendant's Experts: None

Estate of Matthew Jakubcin v. City of Parma

Type of Case Wrongful Death - Negligence - Premises
Settlement $487.500 - City also agrees to create some type of memorial in decedent's name
Plaintiff's Counsel Paul M Kaufman
Defendant's Counsel Paul Eklund. John Neville
Court Cuyahoga County Common Pleas.
Judge Nancy McDonnell
Date May. 2000
Insurance Company Self-Insured
Damages Death

Summary Death of a 19 year old who rode his motorcycle into an inadequately guarded and signed open street excavation Decedent is survived by his divorced parents Decedent was a recent high school graduate with a spotty earning history Dcccdcnt was not wearing a helmet and thcrc was some issue of speed

Plaintiff s Experts Richard Stevens (Accident Reconstruction Expert)
Defendant s Experts Not Listed

John Sudol v. Youngstown Osteopathic Hospital, et al.

Type of Case Medical Malpractice
Settlement $95.000
Plaintiff s Counsel Paul M Kaufinan
Defendant's Counsel Withheld
Court Mahoning Count: Cominon Pleas.
Judge Durkin
Date April. *2000*
Insurance Company OIGA/PIE
Damages Extended hospital stay. partial vision and memory loss

Summary The failure of Defendant doctor to properlq treat an allergic reaction to an antibiotic resulted in sepsis. and extended hospital stay, and partial vision and memory loss

Plaintiff's Experts Jeffey Selwyn, M D . Harold Mars, M D . Robert Tomsak. M D
Defendant's Experts Withheld

Rosalind Fluker v. Mary Komorowski-Maxwell

Type of Case Motor Vehicle
Settlement $165.000
Plaintiff's Counsel Paul M Kaufman
Defendant's Counsel Thomas Dover
Court Cuyahoga Count? Coinmon Pleas
Judge Eileen Gallagher
Date June. 2000
Insurance Company Shelby
Damages Herniated cervical disc, torn rotator cuff

Summary: Admitted negligence auto case. Plaintiff underwent three surgeries - two on cervical spine re-

sulting in fusion and one for rotator cuff injury

Plaintiff's Experts Matt J. Likovec, M.D (Neurosurgery)
Defendanr's Experts Not Listed

Judith Rothman v. Reider's Stop-N-Shop

Type of Case. Slip and Fall
Settlement: $125,000
Plaintiff's Counsel Paul M. Kaufman
Defendant's Counsel. Pat Roche, Sr.
Court. Cuyahoga County Common Pleas
Date: June, 2000
Insurance Company: Westfield
Damages: Re-injury to knee; knee replacement

Summary: Injury to Plaintiffs knee which had previously been operated on, requiring two further knee replacement surgeries.

Plaintiff's Experts: Lawrence Bilfield, M.D.
Defendant's Experts: Not Listed

John Doe v. Medical Care Providers

Type of Case: Medical Malpractice
Settlement: $775,000
Plaintiff's Counsel: Tobias J. Hirshman
Defendant's Counsel: Withheld
Court: Cuyahoga County Common Pleas
Date: April, 1999
Insurance Company: Withheld
Damages: Chronic diarrhea as a result of inappropriate surgical intervention

Summary Plaintiff underwent a colonoscopy which revealed a large polyp at the hepatic flexure Subtotal colectomy mas performed on the patient Subsequent pathology reports showed the polyp to be inflammatory rather than pre-cancerous The patient now has chronic diarrhea as a result

Plaintiff's Experts David Carr-Locke. M D (Endoscopy); Thomas H Gouge. M D (General Surgeon)
Defendant's Experts Fred B Thomas, M D (Gastroenterology); Frederick A. Slezak, M.D. (General Surgeon)

Anonymous v. Anonymous

Type of Case. Denial of Life Insurance Benefits
Settlement: $200,000 paid on $300,000 policy
Plaintiff's Counsel: Robert F. Linton, Jr., Stephen T. Keefe, Jr.
Defendant's Counsel: Daniel F. Gourash, Leo M. Spellacy, Jr.
Court: US District Court, Eastern Division
Date: May, 2000
Insurance Company: Not Listed
Damages: Not Listed

Summary: The insurer claimed the decedent made several material misrepresentations on his application filed 3 months before his death. The insurer claimed the decedent mischaracterized his cardiac condition, failed to disclose that he was treating with 2 cardiologists, failed to disclose that he had undergone several EKG's and stress tests in the 2 years prior to his death, failed to disclose he was prescribed and taking prophylactic medication before dental procedures, and failed to disclose he had tentatively scheduled surgery to correct his condition (mitral valve prolapse).

Plaintiff's Experts: Dr. Thomas; Dr. Weisman; Dr. Vekstein
Defendant's Experts: Not Disclosed

Anonymous v. Anonymous

Type of Case: Drowning
Settlement: $650,000
Plaintiff's Counsel: Steven H. Slive, Robert F. Linton, Jr., Stephen T. Keefe, Jr.
Defendant's Counsel: Stanley S. Keller
Court: Summit County Common Pleas
Date: May, 2000
Insurance Company: Brotherhood Mutual
Damages: Death by drowning

Summary A 10 year old boy drowned at a church camp outdoor pool at night, unwitnessed Decedent was sur-

vived by two parents who never married and 3 half-siblings.

Plaintff's Experts: Frank Pia, BA.MA. (Aquatic Safety); John F. Burke, Jr., Ph.D. (Economist); Dr P.S. Murthy (Assistant Coroner and Pathologist)
Defendant b Experts: None

John Doe v. Medical Care Providers

Type of Case: Medical Malpractice
Settlement: $3 15,000
Plaintiff's Counsel: Tobias J. Hirshman
Defendant's Counsel: Withheld
Court: Summit County Common Pleas
Date: Summer, 1999
Insurance Company: Not Listed
Damages: Residual physical limitations from a stroke

Summary: A 43 year old male presented to several health care providers over a one month time frame with signs and symptoms consistent with possible vertebral artery stenosis. Ultimately patient went on to develop a brain stem stroke in the the right posterior inferior cerebral artery distribution. Patient does have some residual effects from the stroke. Plaintiffs' experts identified a *25%* loss of chance associated with the failure to administer aspirin therapy.

Plaintiff's Experts: Edward Feldmann, M.D.; David H. Lander, M.D.; Norman L. Eckel, Ph.D.; Richard Latchaw, M.D.; James Beegan (Rehabilitation)
Defendant's Experts: David Rosenthal (Internist); Harvey Friedman, M.D. (Neurologist); Dean Dobkin, M.D.; Bruce Janiak, M.D.; Howard Tucker, M.D.; Robert Tarr, M.D. (Radiology); Anthony Furlan, M.D. (Neurology); Leslie Friedman, M.D.

Jane Doe v. Medical Care Providers

Type of Case: Medical Malpractice
Settlement: $350,000
Plaintlff b Counsel: Larry S. Klein, Ellen Hobbs Hirshman
Defendant's Counsel: Withheld
Court: Trumbull County Common Pleas
Date: October, 1998
Insurance Company: Withheld
Damages: Death of infant

Summary: Plaintiff tested positive for group beta strep infection prior to the delivery of her child. However, the OB/GYN failed to recall this fact and failed to appropriately treat the mother at the time of delivery. As a result, the baby was infected with the group B strep infection and thereafter died. Plaintiffs were Jehovah's Witnesses and did refuse to transfer their baby for replacement of blood products.

Plaintlff b Experts: Melvyn J. Ravitz, M.D. (OB/GYN); Steven Ringer, M.D., Ph.D.; Raymond Redline, M.D. (Pathology)
Dejendantb Experts: Elliott H. Philipson, M.D. (OB/GYN); David R. Genest, M.D. (Pathology); Richard Martin, M.D. (Pediatrics)

Jane Doe v. ABC Health Care Provider

Type of Case: Medical Malpractice
Settlement: $300,000
Plaintiff's Counsel: Tobias J. Hirshman, Calvin F Hurd, Jr.
Defendant's Counsel: Withheld
Court: Cuyahoga County Common Pleas
Date: November, 1999
Insurance Company: Withheld
Damages: Below the knee amputation of right leg

Summary: Failure in the face of numerous allergies to antibiotics to properly treat the patient's osteomyelitis ultimately led to the patient losing her right leg.

Plaintiff's Experts: Keith Beck, M.D.; Jackson Lee, M.D.
Defendantk Experts: John C. Padgett, M.D. (Orthopedist); Phillip I. Lemer, M.D.; W. Leigh Thompson, M.D.; Robert Stroup, Jr., M.D. (Plastic Surgery); Lawrence X. Webb, M.D.; Richard J. Blinkhorn, M.D.

Jane Doe v. Health Care Providers

Type of Case: Medical Malpractice
Verdict:$500,000
Plaintiff's Counsel: Tobias J. Hirshman, Ellen Hobbs Hirshman
Defendant's Counsel: Numerous
Court; Cuyahoga County Common Pleas
Date; December, 1999
Insurance Company: PIE/Ohio Insurance Guaranty Assoc.
Damages: Disfigurement and disability as a result of a delay in diagnosis of oral cancer

Summary: The jury found that one of the Defendants, an ENT, failed to communicate the results of a biopsy which identified severe dysplasia in the patient's mouth.

Plaintiff's Experts: John R. Bogdasarian, M.D. (ENT); Carl Allen, DDS, M.D. (Oral Pathologist); Joseph R. Spoonster, M.S., V.E. (Vocational Rehabilitation Expert); John F. Burke, Jr., Ph.D. (Economist)
Defendant's Experts: Eric J. Dierks, M.D. (Dentist and ENT); Nathan Levitan, M.D. (Oncologist); Matthew Chung, M.D. (Internist); Robert K. Nahigian, DDS (Dentist); Michael Hauser, DMD, M.D. (Oral Surgeon); Harvey Tucker, M.D. (ENT); Louis E. Rosman, DMD (Dentist); Jack L. Gluckman, M.D. (ENT); Steven J. Katz, DDS (Dentist)

Baby Doe v. LMNOP Hospital, et al.

Type of Case: Medical Malpractice
Settlement: $1.5 million
Plaintiff's Counsel: Tobias J. Hirshman, Ellen Hobbs Hirshman
Defendant's Counsel: Withheld
Court: Tuscaraw-as County Common Pleas
Date: January, 2000
Insurance Company: PIE Insurance Co./Ohio Insurance Guaranty Assoc., and a hospital
Damages: Neonatal asphyxia/permanent brain injury

Summary: An infant has suffered neurologic deficits as a result of the hospital and family practitioner's failure to promptly perform a C-section in the face of vasa previa. Post-partum care was complicated by a preferential intubation in the right main stem bronchus.

Plaintff's Experts: Marcus C. Hermansen, M.D. (Neonatologist); Richard L. Markowitz, M.D. (Radiologist); Richard A. Zimmennan, M.D. (Radiologist); Boris M. Petrikovsky, M.D., Ph.D. (OB/GYN); Max Wiznitzer, M.D. (Pediatric Neurologist); Lawrence S. Forman, MED, J.D. (Rehabilitation Expert); John F. Burke, Jr., Ph.D. (Economist)
Defendant k Experts: Theresa Conciatori, R.N. (Nursing Expert); Michael A. Krew, M.D. (Maternal Fetal Medicine); Philip T. Nowicki, M.D. (Neonatologist); John Tombush, D.O. (Family Practitioner); Leroy Dierker, M.D. (Maternal Fetal Medicine Specialist/OB)

Estate of Jane Doe v. XYZ Hospital, et al.

Type of Case: Medical Malpractice/Wrongful Death
Settlement: $1.25 million
Plaintiff's Counsel: Tobias J. Hirshman, Ellen Hobbs Hirshman
Defendant's Counsel: Withheld
Court: Cuyahoga County Common Pleas
Date: Summer, 1999
Insurance Company: Three PIE Defendants/Ohio Insurance Guaranty Assoc., and one self-insured hospital
Damages: Death

Summary: A *20* year old female, 26 weeks pregnant, presented on several occasions to several medical health care providers and physicians who failed to appreciate that she had a leaking cerebral aneurysm. The patient ultimately suffered a massive brain hemorrhage which left her brain dead. Decedent was kept alive on mechanical ventilation to permit her unborn child to progress in utero. Decedent's unborn child delivered at 32 weeks' gestation and is now being raised by her grandmother. The child suffered no permanent injuries.

Plaintiff's Experts: Edward Panacek, M.D. (Emergency Physician); Fernando Diaz, M.D. (Neurosurgeon)

Defendant's Experts: Dean Dobkin, M.D. (Emergency Physician); Louis R. Caplan. M.D. (Neurologist): Linda DePasquale, RNC, MSN (Nursing Expert): Martin L. Schneider, M.D. (OB/GYN)

Legal Malpractice Action
Second Cause of Action in Same Case

Settlement: $125,000
Court: Cuyahoga County Common Pleas

Summary: The initial attorney for the decedent's family failed to file the medical malpractice lawsuit within the appropriate statute of limitations for the survival claim. The trial court dismissed the survival claim/conscious pain and suffering claim. Subsequent to the settlement of the medicai malpractice case for $1.25 million, the legal malpractice case was settled for $125,000.

Estate of John Doe v. Health Care Institution

Type of Case: Wrongful Death
Settlement: $200,000
Plaintiff's Counsel: Tobias J. Hirshman
Defendant's Counsel: Withheld
Court: Cuyahoga County Common Pleas
Date: Fall, 1999
Insurance Company: Withheld
Damages: Death

Summary: An 8 year old child in status epileptorus was placed into a drug induced coma for the purpose of trying to treat a seizure disorder. The child went into respiratory arrest and died.

Plaintlff's Experts: Grover M. Hutchins, M.D. (Pathology); Lucy Balian Rorke, M.D. (Pediatrics)
Defendant's Experts: Michael S. Duchowney, M.D. (Pediatrics); Charles T. Wallace; M.D. (Pediatrics)

Aaron Halevi v. The Cleveland Clinic Foundation

Type of Case: Medical Malpractice
Verdict: $1,000,000
Plaintiff's Counsel: Rubin Guttman
Defendant's Counsel: James Malone, Beverly Sandacz
Court: Cuyahoga County Common Pleas
Date: May, 2000
Insurance Company: Not Listed
Damages: Lacerated liver; sepsis: multi-organ failure; laparotomy and subsequent incisional hernia necessitating further surgery

Summary: Plaintiff was a 36 year old Israeli man who came to the Cleveland Clinic in September 1996 for mitral valve repair by Delos M. Cosgrove, M.D. Dr. Cosgrove chose to do a minimal access operation, involving a 3" right parasternal incision. During the course of inserting a chest drainage tube at the conclusion of the operation, Plaintiffs diaphragm and liver were punctured, but the injury went unrecognized. During 7 hours in the CICU, Plaintiff received fluids and blood products but his blood pressure continued to drop. He became hypotensive and suffered transient hypoperfusion injuries to the liver and bowel. Plaintiff was then returned to the OR where the chest was reopened and then a full laparotomy was done to allow for the liver to be repaired. A liter and a half of black blood was removed from his abdominal space. Klebsiella pneumoniae was released by the bowel into the bloodstream. A transient bacteremia eventually seeded the pleural space where a hematoma became infected. This eventually resulted in a Klebsiella bacteremia. Plaintiff went into septic shock and spent 43 days in the Cleveland Clinic undergoing numerous thoracostomies and a thoracotomy to remove old blood. Plaintiff came to the Clinic as an athletic, soccer playing, youthful father of four and left the hospital wheelchair bound. Plaintiff was off work for six months. One year after surgery, the laparotomy incision herniated, resulting in a severely protruding abdomen and further surgery.

Plaintiff's Experts: Merrill H. Bronstein, M.D.; Shelley M. Gordon, M.D.; Steven R. Hofstetter, M.D.
Defendant's Experts: Lawrence Cohn, M.D.; Keith Armitage, M.D.; David Longworth, M.D.

Nicholas Calvey v. Fairview General Hospital

Type of Case: Obstetrical Medical Malpractice/ Stillborn Birth
Settlement: $250,000
Plaintiff's Counsel: Henry W. Chamberlain
Defendant b Counsel: Chris Treu (for Fairview Gen.), Les Spisak (for Elise Brown, OB/GYN)
Court: Cuyahoga County Common Pleas
Date: Not Listed
Insurance Company: Hospital: CNA; Dr. Brown: Frontier
Damages: Death of child/stillborn birth

Summary: Shelley Calvey treated with Dr. Elise Brown, both for the prenatal care and delivery of her second child (Nicholas). She presented to her prenatal exam on September 30, 1997, full term (40 weeks), and underwent a stress test with questionable results. Dr. Brown sent her over to Fairview General Hospital where fetal monitoring was established.

Although Mrs. Calvey was not in labor when she first arrived at the hospital, pitocin was subsequently administered to initiate contractions.

Upon admission, the fetal heart rate was hyper-stimulated and very soon showed poor beat-to-beat variability. Plaintiffs claimed that neither the fetal heart rate nor the uterine activity were properly monitored, The fetal monitoring was started at 4:40 p.m. and continued through 11:00 p.m. Very poor beat-to-beat variability was detectable as of 8:00 p.m.

Eventually, after a prolonged deceleration of the fetal heart rate (below 70 for over 3 minutes), Dr. Brown performed an emergency C-section, but the baby was delivered stillborn.

Thereafter, the baby's lungs were cultured and grew heavy numbers of beta strep cells. Prior to settlement, defense counsel defended on the issues of liability and causation, asserting that the baby died of a severe strep infection and that an earlier deliveyr would not have changed the outcome.

Plaintlff's Experts: Robert Dein, M.D. (OB/GYN); James McGregor (Neonatologist)
Defendantb Experts: Stephen J. DeVoe, M.D. (OB/GYN); Justin P. Lavin, Jr., M.D.; Janice M. Lage, M.D. (Placental Pathologist)

John Doe v. ABC Trucking Co., et al.

Type of Case: Product Liability, Negligent Performance of Construction Operation
Settlement: $1,350,000
Plaintlff's Counsel: Mitchell A. Weisman, R. Eric Kennedy
Defendant b Counsel: Withheld
Court: Cuyahoga County
Date: April, 2000
Insurance Company: Withheld
Damages: $250,000

Summary: In the course of his employment as crew foreman with ABC Construction Co., Plaintiff was injured when the swing gate on a dump truck broke loose from the side of the truck due to a defective weld on the gate chain. The gate struck Plaintiff in the front of his head.

Plaintiff's Experts: Simon Tamny (Engineer); Robert Ancell, Ph.D. (Vocational Expert); John Burke, Ph.D. (Economist); Sanford Emery, M.D. (Orthopedic Surgeon): Richard Harkness (Engineer)
Defendant's Experts: Withheld

Maria Galvez, etc, et al. v. Thomas F. McCafferty Health Center, et al.

Type of Case Obstetrical Medical Malpractice/ Wrongful Death
Verdict $2 75 million
Plaintiff's Counsel &chard J Berris
Defendant's Counsel Deirdre G Henry
Court Cuyahoga County Common Pleas, Judge David Matia
Date April. 2000
Insurance Company Mutual Assurance
Damages Wrongful death of 24 year old female

Summary: Guadalupe Martinez became pregnant in late 1997. She began receiving prenatal care at the Thomas F. McCafferty Medical Center, a division of MetroHealth Medical Center. Her attending physician was Dr. Eric Freiss. The pregnancy proceeded normally until July 20, 1998, when the decedent began to demonstrate rising blood pressure. excessive weight gain and edema — all signs of developing preeclampsia. Her blood pressure continued to rise on August 6, and by her August 13 prenatal visit, it was within the abnormally high range. In addition, Guadalupe had excessive weight gain, edema, and protein in her urine, all indicators of preeclampsia, By August 19, 1998 her blood pressure had increased significantly, and she began to experience head and abdominal pain/sickness. Massive intracranial bleeding developed, leading to death.

Plaintiff's Experts: John D. Calkins, M.D. (OB/GYN)
Defendantk Experts: Method Duchon, M.D. (OB/GYN)

Robert Murray, Jr., et al. v. Roc Lakeside, Inc., dba Holiday Inn Lakeside

Type of Case: Auto/Van Collision
Settlement: $125,000
Plaintiff's Counsel: Henry W. Chamberlain
Defendant's Counsel: Steve Merriam
Court: Cuyahoga County Common Pleas, Judge Daniel Corrigan
Date: February, 2000
Insurance Company: North River
Damages: Medical = $45,000; Wages = $15,000

Summary: The driver of a Holiday transport van experienced vehicle trouble. Instead of directing the van towards the outer lanes of traffic, he turned off the vehicle and left it in the center lane. Plaintiff was following a car that barely missed the van, but which blocked Plaintiffs view of the roadway. Plaintiff struck the parked van and sustained serious injuries.

Plaintlff's Experts: Dr. Roderick Jordan, M.D.; Dr. Brendan Patterson, M.D.; William Berg, Ph.D. (Liability Expert)
Defendant's Experts: Not Listed

John Scordeles v. George Simakis

Type of Case: Soft Tissue/Disputed Liability Auto Collision
Verdict: $15,300
Plaintiff's Counsel: Henry W. Chamberlain
Defendant's Counsel:
Court: William S. Durkin
Date: February? 2000
Insurance Company: Allstate
Damages: $3,600 medical bills

Summary: This case involves soft tissue neck and back injuries which were sustained in a disputed liability auto collision. Defendant maintained that he was well within his rights to pass Plaintiff's vehicle on the right when Plaintiff's vehicle slowed down to turn; Defendant claimed he had no reason to expect Plaintiff was turning right because he failed to use a turn signal. Plaintiff maintained that Defendant had no right to pass on the right side and further, that Plaintiff should not have had to anticipate that a car would try to sneak past on the right side. When Plaintiff attempted to turn right, his vehicle struck the Defendant's. The location of the collision was Lorain Ave. near West 50th St. in Cleveland. Defendant attempted to pass Plaintiff on the right side using the parking lane.

Plaintiff's Experts: Dr. M. Patel
Defendant's Experts: Not Listed

Dennis Woody v. Daniel Mathias, M.D.

Type of Case: Ophthalmic Negligence
Verdict: $404,000
Plaintlffb Counsel: Henry W. Chamberlain
Defendant b Counsel: William Bonezzi
Court: Cuyahoga County Common Pleas, Judge Angelotta
Date: June, 2000
Insurance Company: Not Listed
Damages: $35,822.11

Summary: After suffering for one week with a painful, red, right eye, Dennis Woody presented to Dr. Daniel Mathias for treatment on March 26, 1998. Dr. Mathias

began treating him for a viral infection of the cornea. However, the doctor failed to properly evaluate and monitor the retina, whch was also infected and required aggressive IV antiviral treatment. Over the one month course of treatment (ending April 29, 1998): the doctor neglected to recheck Mr. Woody's visual acuity or dilate the pupil to evaluate the retina. Consequently, the condition of acute retinal necrosis developed and the vision in Plaintiffs right eye decreased from 20/20 (with corrective lenses) to a level consistent with legal blindness.

Plaintiff argued that appropriate evaluation and treatment would have saved the eye. Defense counsel maintained that acute retinal necrosis is a very rare condition, and that even when detected early on and aggressively treated, can still result in blindness.

Plaintiffb Experts: Stephen Foster, M.D. (Ophthalmologist)
Defendant b Experts: Julia Haller, M.D. (Ophthalmologist)

Danielle Wilson, etc., et al. v. Dr. Nalini Jhaveri, M.D., et al.

Type of Case: Medical Malpractice
Settlement: $2.4 million
Plaintiff) Counsel: David I. Pomerantz
Defendant's Counsel: David Best, Kris Treu
Court: Cuyahoga County Common Pleas, Judge Ann Mannen
Date: June, *2000*
Insurance Company: MIIX (for doctor)
Damages: Brain damage and cerebral palsy

Summary: Danielle was the second of twins. After an uneventful pregnancy, Danielle began to demonstrate fetal distress shortly before Ian, the first twin, delivered. Labor after Ian's birth was prolonged - 1 hour and 20 minutes between births. During that time, Danielle's fetal distress worsened, and doctor and hospital staff failed to convert to C-section to rescue child.

Plaintrff's Experts: Dr. Harlan Giles, M.D. (OB/GYN); Sharon Hall, R.N. (Obstetrical Nursing); Dr. Garrett Burris, M.D. (Pediatric Neurology); Dr. Harvey Rosen, Ph.D. (Economist); Dr. George Cyphers (Life Care Planner)
Defendant's Experts: Dr. Sidney Wilchins (OB1 GYN); Dr. Victor Borden (OB/GYN); Dr. Mary Jane Minkin (OB/GYN); Dr. Walter Molofsky (Pediatric Neurology); Denise Kosty-Sweeney (Nursing)

Michael Blatnik, et al. v. Avery-Dennison, et al.

Type of Case: Defamation
Verdict: $735,000 plus attorneys fees plus
Plaintrff b Counsel: Steven A. Sindell, James Boyle, Cathleen M. Bolek
Defendant's Counsel: Richard Goddard
Court: Lake County Common Pleas, Judge Paul Mitrovich
Date: March, 2000
Insurance Company: None
Damages: Compensatory: Michael Blatnik: $100,000; Michille Blatnik (loss of service): $135,000; punitive: $500,000; attorney fees: $147,000; and prejudgment interest

Summary: Plaintiff Michael Blatnik was a lead process operator at Avery-Dennison. A female employee, whose performance he had negatively evaluated, accused him of verbal sexual harassment. The female employee left Avery-Dennison 4 months after she was hired. She filed an employment discrimination action against both the company and Plaintiff, individually. The day after that case was settled, the company fired Plaintiff for the alleged sexual harassment which had occurred 4 years earlier. After Plaintiffs termination, the company held several meetings with groups of employees to reinforce the company's sexual harassment policies. In those meetings, managers told the employees that Plaintiff was discharged for sexual harassment, describing in some detail the alleged misconduct of Plaintiff. Plaintiffs father-in-law, a company employee, was advised of these mattters in a separate, private meeting. The trial court determined that the Defendant enjoyed a qualified privilege and instructed the jury that Plaintiff could recover

only if he proved by "clear and convincing evidence" that Defendant acted maliciously which the Count defined as conscious and reckless disregard for the truth

Plaintiff's Experts: None
Defendant's Experts: None

Barber v. Cincinnati Insurance Company

Type of Case: Scott/Pontzer UIM Auto Case
Settlement: $1,250,000
Plaintiff's Counsel: David J. Guidubaldi
Defendant's Counsel: Withheld
Court: Not Listed
Date: June, 2000
Insurance Company: Cincinnati Insurance/ Westfield Insurance
Damages: Quadriplegia

Summary: Plaintiff exhausted the tortfeasor's coverage in this intersection auto collision case. He then pursued a "*Scott/Pontzer*" underinsured motorist claim which was settled with a structured settlement and Medicaid reimbursement trust.

Plaintff's Experts: None
Defendant's Experts: Not Listed

Kathleen Higgins, etc., et al. v. Drs. Hill & Thomas Co., et al.

Type of Case Medical Negligence/Wrongful Death
Verdict $4333,000
Plaintiff's Counsel J Michael Monteleone, M Jane Rua
Defendant's Counsel James P Triona. Beverly **A** Harris
Court Cuyahoga Count? Common Pleas, Judge David T Matia
Date June. 2000
Insurance Company Kentucky Medical
Damages: Death of an **8** year old boy

Summary: Johnny Higgins, an 8 year old boy, died from streptococcal pneumonia which was misdiagnosed as appendicitis Defendants missed the pneumonia on an abdominal x-ray and the child was sent for an appendectomy He went on to die of complications of the pneumonia following the appendectomy

Plaintiff's Experts: Robert J. Lerer. M.D. (Pediatrics); Francis E. Barnes, M.D. (Surgeon); Mark R. Schleiss, M.D. (Infectious Disease); G. Richard Braen, M.D. (Emergency Medicine); Norman Eckel, M.D. (Economist)
Defendant's Experts: Martin B. Kleiman, M.D.; Paul Rega, M.D.

Direct Examination of the Plaintiff and Other Lay Witnesses

By Ellen M. McCarthy

Direct examination of your client and other lay witnesses should elicit a comprehensive account of the relevant facts of your case. presented most favorably to your client It is direct exam that affords you the best opportunity to present the facts in a clear. concise and chronological order in connection with your theory of liability Never lose this opportunity, direct exam should be clear. simple and interesting

The sequence of witnesses will determine the direct exam Start and end with your strongest witnesses Determine well in advance what strong points each witness brings to the table and emphasize those point with that particular witness You must always be aware of the need to have laid the foundation for the testimony of each successive witness and to link them together in terms of causation

A chronological unfolding of facts may be the easiest to follow and for the jury to accept, particularly if liability is an issue. In a simpler case, where liability is not an issue, starting with the time of the accident and injury may have the most impact on the jury. You can always return to the biographical data on your client when discussing the impact the injuries have had on his/her life. In a complex case, where the timing of certain acts or certain failures to act is critical to liability, starting with the moment of injury makes no sense and does nothing to add to the drama.

Determining how many witnesses is enough should depend on what is necessary to present your case as clearly and expeditiously as possible, avoiding boring the jury with witness after witness testifying to substantially the same things. Typically, you should use only one witness; the one most able to deliver the message, to establish relevant facts. If, however, your case is enhanced by the sheer volume of people with knowledge of the facts giving rise to liability, particularly where you have witnesses with supervisory or management responsibilities in a Blankenship case. a parade of witnesses testifying to the same things is essential

It is a generally accepted fact that lawsuits are won or lost through preparation Unfortunately). it is not an uncommon event to see a lawyer meet a witness to an accident face to face for the first time in the hallway of the courthouse It is impossible to get a feel for a witness over the telephone Meet them well in advance and gauge their character and ability to focus Educate them not to volunteer unnecessary information Remind them to listen. understand and respond to a tightly phrased question Your witness must be prepared in advance for every question that he will get on direct Nothing is more frustrating than watching a witness deliver a series of "I don't know" or "I can't remember" responses to what appear to be questions to which he/she should know the answer

Your witness should also be prepared for those questions that can be reasonably anticipated on cross examination. Seriously assess the weaknesses of your witnesses and where your case is vulnerable. You should be able to anticipate the attack on every front and thereby defuse its impact during your direct examination. Short direct questions will get the necessary facts from the witness that will get your case to the jury. Restrict the questions to relevant facts or issues in the case. An outline is enormously helpful in making sure all the points have been covered with the witness. The questions should be phrased not only to avoid objections, but in anticipation of cross examination. Most importantly listen to the answer. This should be a conversation between you and the witness on which the jury is eavesdropping. Follow up an answer if it clears something up or if it will elicit the response that you initially wanted. Finally, end with testimony that emphasizes your theory, and, although it may be difficult to detect, if you hesitate with the last question, thinking it may be one question too many, it is. Thank the witness and sit down. And never, ever, ask a question to which you do not know the answer.

In Chambers with the Honorable Thomas P. Curran

by Stephen T. Keefe, Jr.

After graduating from Case Western Reserve University School of Law in 1962, Thomas Patrick Curran was appointed by Robert F. Kennedy under the Attorney General's Recruitment Program for Honor Law Graduates. He was assigned to the Criminal Division of the United States Department of Justice in Washington, D.C. and became actively involved in many high profile federal prosecutions. In recognition for his service, he was awarded the Attorney General's Superior Performance Award. Following his government service, Judge Curran returned to Cleveland and entered private practice as a trial lawyer. Judge Curran was appointed to the Cuyahoga County Court of Common Pleas bench in 1994 by Governor George Voinovich. Later that year, Judge Curran was elected to a full six-year term. Judge Curran is a Fellow of the American College of Trial Lawyers and a Diplomat of the National Board of Trial Advocacy.

Judge Curran is impressed with the quality of the trial bar practicing before him and offers some tips on what works effectively.

- "Less **is** More". Many attorneys spend too much time presenting their cases to the jury. They use too many exhibits, too many witnesses and too much detail. The plaintiffs bar could learn from some of the better defense lawyers who put on their case in a day or less.

- Good Lawyers Are Good Storytellers. Effective storytelling brings the case to life, breaks down barriers, and boosts the juror's interest in the case. **A** few tips:
  1. Grab the audience's attention early. Hook them into the story from the start of the trial.
  2. Even if liability is admitted, it is appropriate to tell the audience what the case is about. especially where the story impacts the damage aspect of the case.
  3 Take the case out of the "ordinary" If a case *is* perceived as ordinary, the jury mon't give it much time or attention
  4 Be dynamic The story must be tailored to the audience's reactions This will allow the audience to perceive that they are creating the stoq with the stoqteller

- Order of Witnesses. Judge Curran finds that jurors are moved more by anger, than sympathy Smce jurors are more apt to render a large verdict based on their anger towards a defendant. use nitnesses who will stir up this anger early. before calling witnesses who will elicit sympathy for the injured plaintiff.

- Minimize Calling the Defendant **on** Cross-Examination. In med mal cases, Judge Curran generally does not believe it is effective to call the defendant doctor as part of the plaintiffs case in chief. He advocates instead saving a rigorous cross for after the defendant has testified on his own behalf. Otherwise, having the doctor testify twice becomes repetitious, or the plaintiff may have little left to use during the second cross. [Editor's note: this may not be true with a doctor who makes a poor appearance or who may be less prepared when called during your case in chief].

- Emerging Trends **with** Jury Trials. The Ohio Courts Futures Commission was created in 1997 by Justice Thomas Moyer to study Ohio's court system and make recommendations on how the court system should change over the next 25 years. That report can be downloaded by visiting the Ohio Supreme Court's website at "http:ll www.sconet.state.oh.us".

Judge Curran has sampled many of the Future Commission's proposed changes in his courtroom. For example, as often as not he allows note-taking by the jurors during trial. Judge Curran has also allowed "mini-summations" at the conclusion of a witness's testimony to help the jury understand and retain the testimony better. Judge Curran has seen positive results from sam-

pling these changes and observes that "these trends are here to stay"

While some advocate allowing jurors to ask questions during trial, Judge Curran is concerned that this may not be appropriate given the fact that juries are deliberative bodies. not investigate bodies. [Editor's Note: Many judges, such as Summit County Common Pleas Judge Patricia Cosgrove, presently allow such questioning in her civiljury trials.]

- **Improving Voir Dire.** Judge Curran proposes interrogating the entire panel of jurors as a group, as opposed to only the eight in the box. This makes the process less repetitive, more efficient and more fair since the attorneys know who is waiting in the wings. Judge Curran would also favor peremptory challenges being exercised in a "secret ballot" fashion, so the jurors do not know who struck them. Judge Curran is also amenable to using "blind alternates". The jurors draw straws at the end of the case to determine who the alternate jurors are. This forces *all* jurors to pay closer attention during trial.

Judge Curran offers a practical piece of advice regarding voir dire. Too frequently Judge Curran sees trial lawyers telling prospective jurors "this is not television". This is a characterization Judge Curran would like lawyers to avoid. The implication is that the trial is not going to be dynamic and exciting as portrayed on television. Based on feedback from jurors, Judge Curran concludes that most jurors find the experience to be very exciting and even better than TV.

- **Judge Curran's Pitfalls to Avoid:**

1. **Avoid Redundancy.**

2. **Avoid Duplication of Damage Evidence in Wrongful Death Cases.** Why put ten cousins on the stand and ask the same 20 questions? One witness may be more effective. **As** an example, in one case the decedent's husband pointed to his children seated in the front row of the courtroom and described the impact their mother's death had on each one of them.

3. **Avoid Redirect Examination if Possible.** Judge Curran notes that redirect may be interpreted as a sign of weakness that your opponent has scored some points It can also be dangerous when you don't know what the witness will say It should be avoided or minimized whenever possible

4. **Pick Your Side Bars and Battles Wisely.** Juries hate side bars. Judge Curran recently concluded a case with the fewest side bars he has ever seen. When interviewing the jury afterwards, several jurors nonetheless asked "why did you have so many side bars?" While it's obviously very important to preserve the record for appeal, Judge Curran suggests making an effort to resolve issues outside the jury's presence whenever possible.

5. **Get to the Heart of the Matter.** Judge Curran finds that many attorneys lose the jury's attention by spending too much time with questions that relate to irrelevant background information. "Get to the heart of the matter by asking the 10-12 questions that it takes to get there and then move on". The jury will appreci ate it and will stay more interested and focused.

- **Tips on Mow to Better Convey Information to the Jury**

1 **Voluminous Records and Evidence Rule 1006.** Evidence Rule 1006 provides that "the contents of voluminous writings, recordings or photographs which cannot conveniently be examined in court may be presented in the form of a chart, summary or calculation". Judge Curran says many attorneys are not using this rule to their advantage. Based on his experi ence, it is very effective for attorneys to prepare these types of summaries and use them while questioning a witness, Summaries can assist the jury in understanding the nature and extent of damages. For example, if a plaintiff is taking 20 medications for various conditions during different time periods, how can the jury

keep track of that in the absence of a summary 7 Likewise, medical bills can be summarized on single sheet The jury will appreciate the summaries and *will* use them in their deliberations

2. **Learned Treatises and Evidence Rule 706.** Under Rule 706 of the Ohio Rules of Evidence, if *any* expert witness says that a treatise is reliable, then that treatise is "admissible for impeachment". Compare Rule 803(18) of the Federal Rules of Evidence which does not limit the use of reliable learned treatises to impeach ment alone. Under Rule 706, if a learned treatise is admitted for impeachment, "the statements may be read into evidence but shall not be received as exhibits". Judge Curran suggests creating 30 x 40 blow-ups as demonstrative evidence of excerpts from any treatises that will be used during cross-examination at trial. (Or in the alternative copy them onto an overhead transparency). He notes that attorneys are not doing this often enough. The information will then stick in the jurors' minds even though the exhibit will not be physically with them during deliberations,

3. **Effective Use of Video,.** Judge Curran believes video is not being used effectively, especially in the context of video depositions, He offers some suggestions on how to make video presentations less mundane and more appealing to the jury. For example, consider using two cameras in the room where the deposition is taking place. During the deposition, take a panoramic view of the doctor's office or the lawyer's office. Show the jury what a real, live doctor's office looks like. Jurors *want* to be filled with this kind of knowledge. They want to see something that is interesting and appealing. In addition, consider super-imposing graphics on the screen during the videotape deposition. The technology is available - use it to your advantage. It will draw the jury into your presentation and will assist them in understanding the nature and impact of the witness's testimony.

Jury Pick'n: Lessons Learned at the Gerry Spence Ranch

By Dorothy Bretnall

Nearly everything I know about voir dire I learned from Gerry Spence In the fall of 1998 I attended Gerry's four day voir dire seminar in Mohican State Park Last summer I attended his month long Trial Lawyers' College at the Spence ranch in Wyoming

Gerry's method of teaching trial advocacy, including voir dire. is unconventional. The staff at the college includes not only famous plaintiffs' and criminal defense lawyers, but also actors and trained psychotherapists certified in the art of psychodrama. Gerry and his staff have found psychodrama to be a useful tool in enabling lawyers to understand the emotional dynamics of a courtroom and to become more powerful storytellers. Psychodrama uses action rather than words to recreate an event, including all the emotion originally surrounding it.'

Gerry and his staff used psychodrama not only to teach trial skills, but also to reprogram us from our traditional law school training. They challenged us to become more honest and real as human beings, more passionate and less objective, less lawyerlike, if you will. According to Gerry, this reprogramming from "thinking and speaking like a lawyer" and rediscovering one's more direct, passionate, and childlike self are absolute prerequisites to effective advocacy. The ability to be open and vulnerable as a human being, to know and cherish one's individuality, to love and accept others just as they are is more likely to impress jurors and persuade them than a polished, but scripted delivery, supported by extensive exhibits and fancy visuals. One must learn to be more genuine in relationships, to become a more forthright, loving human being in all contexts, including the courtroom.

In sum, to be a great litigator one must endure the pain of personal growth. If I am unwilling to experience and share my own humanity and vulnerability; how can I express my client's story with power and passion? If I cannot hear what I don't want to hear when it comes from my spouse or my child, I will not bc able to hear what I don't want to hear when it comes from a juror during voir dire. I will be reactive and ineffective. I will lose.

We were taught to begin voir dire by first reflecting on how we were feeling at that moment, Were we afraid? Petrified? Nervous? What were our fears about the case? We would begin by disclosing these feelings to the jurors.

We would then ask questions which focus on our concerns about the case. The instructor encouraged us to use open ended questions which invite juror comment and interaction among the jurors. The key requirement, however, was to be willing to first disclose our own feelings, not for the purpose of relieving anxiety, but as a means of inviting the juror to reciprocate. This was more important than the actual form of the question. It did not matter if we fumbled or stammered. The goal was not to be polished but to be open, real, and emotionally present in the moment.

We were told that if the voir dire was proceeding too slowly, we should slow down even more, because we weren't connecting. This can be remedied by acknowledging the truth, "I want to slow down here because I feel I'm not connecting. I'm not asking the questions in a manner which lets you really share. Let me try again. I want to ask questions that invite sharing. Your task is hugely important, and it's important to me to ask you questions that let you explain what you think and believe. We were talking about punitive damages. Would you admit to the possibility that there may be cases where there is clear proof that a defendant's conduct is so blatantly reckless or so deliberately harmful that punitive damages should be awarded? Would you share your thoughts with us, Mr. Jones?" "Can you imagine any circumstances where a defendant may not want to testify, even though he is innocent of the crime charged?" If necessan; I can explain that I'm stuck and refer to my notes. (I am amazed when I watch Gerry's tapes that he is not afraid to stumble. He takes his time, goes back to his notes. He apologizes for drawing so many objections, not doing a better job. Yet he never seems to lose the jurors' attention. He is very human.)

We practiced not panicking when a juror responded to our questions with answers that are undesirable, e.g., "too many plaintiffs are malingerers", "too many punitive damage awards drive my insurance rates up", "some lawyers really are ambulance chasers", "you may be one of them", "half the money will go to the lawyers, not the plaintiff". We learned to regard such answers as gifts because they raise issues that can be discussed by other jurors. One might begin by thanking the juror for his honesty, then thanking other jurors for their feelings about the answer just given. The juror who originally offered the seemingly undesirable opinion may be invited to respond to the comments of the other juror regarding his initial statements. Of course, the entire panel may share the original negative opinion. I have seen this happen in a criminal trial. The entire jury thought the defendant was probably guilty. The attorney said, "Well, maybe I should just leave." Silence. Then someone said "But isn't he supposed to be innocent until proven guilty? Aren't we supposed to have a trial?"

This all sounds simple enough, but it is very difficult to do. The temptation is to pull back and to be manipulative as soon as the juror gives a really honest answer by saying something that everybody is thinking anyway. "The defendant is probably guilty. "Where there's smoke, there's fire." However, as soon as one asks a question requiring a scripted answer, the dialog and the relationship comes to a standstill. The connection is broken.

In my small group at the Trial Lawyers' College everybody was repeatedly manipulative, even the most accomplished, experienced attorneys. When this occurred our instructors would usually ask the attorney attempting the voir dire to reverse roles with a juror so that the attorney could experience the emotional effect of the

manipulative question It does not feel good to be cut off or ignored At other times we were asked in our roles as jurors to tell how we were feeling about the attorney and his client

Often the attorney's feeling about the client were an impediment. What if we don't like the client'? What if he really is a pain in the neck? What if he is mentally ill? Self-absorbed? The instructor would then ask the attorney conducting the voir dire what made him feel passionate about his client and his case. One of us might be asked to play the role of the client in an encounter between the attorney and the client. The person in the role of the client might be asked to watch the voir dire and to share his feelings about how the voir dire was going. The attorney conducting the voir dire might be asked to role reverse with the client while someone else did the voir dire. Sometimes one of the psychodramatists would instigate an on-the-spot psychodrama about the subject matter of the case or about a personal block which the lawyer might be experiencing about the case. This was all done to empower us to relate the client's story to the jury more passionately and directly.

This approach was used for all aspects of trial work: direct and cross-examination, opening and closing statements, relationships with clients, judges. Other activities designed to encourage personal and professional courage was continued throughout the month.

Are these techniques effective? Many graduates report dramatic results using the Spence philosophy and approach. For example, one graduate from my class recently obtained a $1.5 million dollar verdict in a wrongful termination/ADA case. It was her first jury trial.

Another recent graduate from Texas is totally blind and facially disfigured from an explosion. He obtained a $7 plus million verdict on behalf of a young woman who became paraplegic when she fell through a skylight while washing windows without a safety belt. He was able to establish a relationship with his jury and to tell the client's story movingly. He actually sang to the jury during closing. "Are you going to Scarborough Fair ... remember me to the one who lives there. She once was a true love of mine."

Another graduate who attended the college in 1995 does back to back trials He reports that he has lost only two jurors since 1995 Not juries Jurors He remains undefeated

In another case recently tried by a South Dakota graduate. the jury sent out a note asking for permission to increase the award to the plaintiff to include attorney fees

Such stories abound, but will the Spence philosophy work for me? Will I be able to do an effective voir dire using what I learned at the ranch?

My post ranch experiences have been to help other attorneys apply the Spence approach, usually in criminal trials. What I have witnessed, however, has been incredible. It is amazing to watch a criminal defense attorney and the jury become a team.

For example, I watched Cleveland criminal defense attorney Mark Marein begin a Spence style voir dire in a rape case involving twenty counts of rape, all involving the defendant's step grandchildren. Mark began the case by sharing with the jury that he was terrified He felt that even thought the jurors had responded affirmatively when the judge had asked them as a group whether they could give the defendant the presumption of innocence, they were really completely offended by the reading of the indictment. Mark explained that he has five children and even he was deeply offended, so how could the jurors, how could anybody really presume the defendant to be innocent after the reading of so many charges of such offensive crimes. He was afraid that they already regarding his client as guilty and completely despicable.

One by one the prospective jurors acknowledge they too had felt shocked as the indictment was read. Mark said that he felt defeated, that the trial was over before it had even started, that he might as well leave. The prosecutor actually began to laugh at Mark.

Then something magical happened On their own jurors began to talk about the right to a fair trial, the burden of proof, nhy the burden of proof is on the state, the propensity of children to be manipulated. and even to lie They nere actually conversing among themselves The prosecutor was no longer laughing

The defendant entered into a plea agreement during the course of the trial, so I do not know if the jury would have acquitted the defendant. However; it was very clear that the outcome was no longer a predetermined verdict for the prosecution. Afterwards, the jurors said that if Mark had stated that a fact was true, they would have believed him.

In another trial Mark asked a juror, "Isn't it true that we often really think that all these folks charged with crimes are really guilty, and that this is all about slick defense lawyers trying to get guilty defendants off?" The juror said "Well, yes." Mark asked, "Do you think that I'm one of those slick lawyers?" Answer, "Well, yes." Titters from the prosecution table. Smiles from other jurors and from me sitting second chair. Then the juror added, "But if I were in trouble I think I'd want someone just like you to defend me." Titters stop.

On another occasion a juror sat with arms crossed over his chest casting a steady, disgruntled gaze towards Mark, who said, "I'm no psychiatrist but you look so angry, sitting there looking at me with your arms crossed like that! Do you not like me for some reason?" The juror laughed in a friendly way and aid, "No, actually, I've been watching you because I think you are a pretty interesting guy."

Will the approach work for me? I believe that it will. However, one has to be oneself. The goal is not to copy Gerry Spence or Mark Marein, but to allow Dorothy Bretnall to be there in the moment with those jurors. To be perceived as phony or pushy would be disastrous. It is as delicate a matter as courting. During voir dire we are slowly building trust and choosing to become a group together. I am choosing them, and they are hopefully choosing me.

This kind of voir dire is difficult to do and requires practice. When I attempted to do the voir dire of alternates while sitting second chair with Mark, I clutched when the juror said that she would have no problem at all being fair to our client charged with aggravated vehicular homicide, despite the fact that a family member, I believe her father had also been killed in an accident. I immediately cross examined her because she could not admit to her obvious prejudice. Of course, she became entrenched in her prior view. I could have begun better with a good analogy involving the practice of law, by sharing that I did not feel objective enough about some matters to permit me to take a case. I tried but drew an objection which was sustained. I could also have simply moved on to another topic. Practice with other lawyers assuming the roles of jurors helps one to handle such situations. Our local group of Spence graduates is forming a group to practice voir dire using the Spence methods. I am certain this will help me in future situations.

In conclusion: my aspirations for voir dire have changed completely. I will still prepare and probably write out questions ahead of time. But my goal as I stand before that jury will not be to deliver a smooth, polished voir dire eliciting only answers I want to hear. I will disclose how I feel at that moment as I address them and my fears about my client's case. I will gently invite the jurors to disclose how they really feel about the case. Ideally, I'd take them home with me to discus the case sitting in my kitchen while we drink coffee. Of course, I can't do that, but can humbly strive for a similar level of intimacy. When they disclose attitudes that aren't helpful to my case, I will not manipulate them, but will listen and accept everything they have to say, even if I don't want to hear it, having confidence that other jurors will share opinions which balance out those which hurt me. I will use peremptory challenges only if I absolutely must and will do so very gently and reluctantly. I do not want to conduct an audition. I want to build a team, my team.

If you wish to learn more about the Spence approach by attending a Spence seminar or the Trial Lawyers' College, you can obtain additional information by contacting the Trial Lawyers College, at P.O. Box 548, Jackson, Wyoming (Phone: 307-739-1870, Fax: 307-733-0875) or Joane Garcia-Colon, the executive director at 706-318-0393 (Fax: 706-323-9375).

[1]This article is about my experience at the ranch with voir dire. A detailed explanation of how psychodrama can be used to enhance courtroom effectiveness can be found "Psychodrama and Trial Lawyering", Trial, April 1999. The article is written by James D. Leach, John Nolte, and Katlin Larimer. all three of whom are instructors at the Trial Lawyers' College.

Other helpful articles are "Group Formation in Jury Selection" and "The Use of Psychodrama in Depositions, Direct, and Cross-examination by Charles Abourezk, Abourezk Law Firm, Rapid City, South Dakota, which I will send to anyone requesting them. Please contact me at 440-933-6718,

As you all know, the CATA Deposition/Brief Bank is a valuable resource for CATA members when preparing to cross-examine defense experts Locating prior inconsistent testimony of the same expert in depositions warehoused in the CATA Deposition/Brief Bank can make or break your case To keep this resource dynamic, it is important for all members to contribute either the hard copy expert depositions and/or the ASCII disc to the Brief Bank The ASCII disc can be downloaded and returned to the member The advantage of using the ASCII disc is that the particular deposition can be e-mailed upon request for future use

Enclosed as an insert to the Newsletter is a current list of experts whose depositions are located in the CATA Deposition/Brief Bank In each subsequent CATA Newsletter, we will endeavor to provide you with an update of recent submissions of expert depositions We hope that this will remind all members to not only call the Brief Bank before deposing an expert but to contribute your own depositions/ ASCII discs to the Brief Bank for use by other members

Jury Instructions and Other Issues In Nursing Home Cases

by Dennis R. Lansdowne, Spangenberg, Shibley & Liber LLP

Nursing Home litigation is one of the fastest growing areas of tort law. This increase is due in part to the aging of the population with its corresponding need for extended care. Currently approximately 85,000 Ohioans are in extended care facilities. The increase is also due to legislation designed to protect those nursing home residents and the use of that legislation by advocates for this vulnerable population.

An exhaustive review of all of the legislation and potential theories thereunder is beyond the scope of this article. Suffice it to say creative attorneys are finding interesting and innovative ways to frame causes of action for nursing home neglect. See e.g. United States ex rel Aranda v. Community Psychiatric Centers, Inc. 945 F. Supp 1485 (W.D. Okla 1996) (Claim under False Claims Act for failing to provide government insured patients with a reasonably safe environment.)

Ohio has its own powerful statutory weapon to protect nursing home residents in the Nursing Home Residents Bill of Rights, O.R.C.

§ 3721.10et seq. Most practitioners are already familiar with this legislation and, obviously, anyone who considers taking a nursing home case must be familiar with it.

Briefly, and essentially, for our purposes, the statute does three things: 1) establishes certain basic rights for all nursing home residents (O.R.G. § 3721.13); 2) creates a private cause of action for violation of those rights (O.R.C. § 3721.17 (I)); and 3) provides for an award of actual and punitive damages and reasonable attorney fees in the action. (O.R.C. § 3721(I)).

Although, as indicated, most practitioners are aware of the statute and many cases are being filed containing the statutory claim, there is little case law determining how these cases proceed to a jury. With respect to perhaps the most basic question-what is the jury instructed on the claim?-the attorney or judge will find no standard O J.I. charge and scant published authority.

The instructions obviously must track the statute and the statute really is fairly basic. Therefore the instructions can and should be simple and straightforward.

First, the introductory instruction should set forth the claims. Most cases will proceed to the jury on the statutory claim as well as common law negligence and/or malpractice. A sample introduction is as follows:

JURY INSTRUCTION

This is a civil action instituted by the plaintiff, ____, the Executrix of the Estate of ____, deceased. Under the law of Ohio, the Executrix of the estate brings the action on behalf of someone who has died.

The plaintiff brings this action against the following defendants ____ and ____, doing business as ____. Plaintiff claims that these Defendants were negligent in the care of ____. Plaintiff also claims that these defendants violated their duty to ____ under Ohio law relating to nursing home care. Plaintiff claims that this negligence and violations contributed to cause injury and damage to ____.

Defendants deny that they were negligent or violated the Ohio law relating to nursing home care and further deny that they caused ____ any injury or damage

Certain facts are not in dispute It is undisputed that ____ was a resident of ____ from August 6. 1991 to February 10. 1993 She was then in ____ for a short stay until Februan 18. 1993 when she was re-admitted to ____. She remained at ____ until July 6, 1993 nhen she nent to the Emergency Room at ____and was admitted to that facility

The second instruction should more precisely set forth the statutory basis for the claim and the specific rights claimed to have been violated.

JURY INSTRUCTION

Pursuant to the law of the State of Ohio, residents of nursing homes have certain rights. These are known as the Nursing Home Residents Bill of hghts. Those rights include:

Upon admission and thereafter, the right to adequate and appropriate medical treatment and nursing care and to other ancillary services that comprise necessary and appropriate care consistent with the program for which the resident contracted . . . without regard to . . . age.

The right to be treated at all times with courtesy, respect and full recognition of dignity and individuality.

Plaintiff claims that these rights of ___ were violated by defendants.

If you find that any of these rights were violated by these defendants, then you shall find for plaintiffs against those defendants.

O.R.C.§ 3721.13; Slagle v. Parkview Manor, Inc., CaseNo. 6155 & 6159 (Stark County Ct. App. 1983); Sprostyv. Pearlview, 106 Ohio App. 3d 679 (Cuyahoga Cty 1995).

The two enumerated rights are the most commonly used for initiating an action. Others that may be applicable to particular cases include the right to "a safe and clean living environment, " (§ 372 1.13 (A) (1)), "to have all reasonable requests and inquiries responded to promptly," ((A)(4)) "to have clothes and bed sheets changed as the need arises" ((A)(5)) "to be free from physical or chemical restraints . . . except to the minimum extent necessary . . . "((A)(13)).

The home is required to provide a copy of all the rights to the resident upon admission. O.R.C.§ 3721.12(A)(3)(a). The copy should be marked and admitted into evidence.

Notice that the instruction provides that if the jury finds a violation of a right it shall find for the plaintiff. There is no requirement of a finding of proximately caused damages in order to prevail. The statute does not require such a showing. Indeed it is obvious from the lengthy list of rights, including such things as "the right to consume a reasonable amount of alcoholic beverages" (O.R.C. § 3721.17(A)(6)), "to use tobacco" (A)(17))" to observe religious observations" ((A)(20)), that the legislature wanted to permit a party to prevail even where there is no "actual damage."

The significance of this feature is that if the plaintiff proves a violation but cannot prove proximately caused actual damage-e.g., the jury finds that the care was not adequate and appropriate but the resident would have needed debridement for decubiti anyway--the plaintiff will still recover attorneys fees and costs of the action. For this reason, as recommended below, a specific jury interrogatory on violations should be submitted.

It must be noted, however, that in Silver Circle, Inc. v. Thomas, Nos. C-950146, 950166 (Hamilton Cty Ct. App., 1995) the First District Court of Appeals held that a plaintiff who did not prove actual damages was not entitled to nominal damages. The Court found that since the legislature did not provide for nominal damages in the Act they could not be recovered. The Court did not discuss the issue of "prevailing party" and attorneys fees but this case will be used by the defense to maintain that actual damages must be proven in order to prevail.

Of course, plaintiffs will want to recover for actual physical and mental damages proximately caused by the violations of the resident's rights.

In this respect the actual damages are the same as compensatory damages in a negligence action and the two can be combined.

JURY INSTRUCTION
DAMAGES

If you find for the plaintiff you will decide by the greater weight of the evidence an amount of money that is fair and reasonable under all the evidence.

There are different types of damages claimed in this action: (1) damages for injury to ____ before her death; (2) damages to ____ family because of her death; (3) punitive or exemplary damages.

With respect to injury to ____ you should take into account and consider the nature and extent of the injury and damage, the effect upon her physical health, the pain and suffering, including any mental suffering or anxiety of mind or humiliation sustained as a direct result of the defendant's violations of her rights or negligence.

1 O.J.I. § 23.01

One of the most significant ways the statutory claim differs from the common law claim is with respect to punitive damages. Case law interpreting the Act holds that it is not necessary to show malice to recover punitive damages. Sprosty v. Pearlview 106 Ohio App. 3d 679 (Cuyahoga Cty 1995); Slagle v. Pearkview Manor Inc., Case No. 6155, 6154 (Stark Cty Ct. App. 1983).

The legislature attempted to overrule these decisions in an amendment passed in 1997. That amendment would have made recovery of punitive damages under the Act subject to O.R.C. § 2315.21(E)(1) and (2).

The amendment took effect on July 9, 1998 and, by its terms, was to apply to all pending cases

Fortunately § 2315.21(E) was part of H.B.350. Since the Ohio Supreme Court has invalidated that statute in its entirety one may presume that the prior statute and cases interpreting it constitute the current law.

The question raised then is should the plaintiff seek punitive damages under the statute, which does not require a showing of malice, and also at common law which does require a showing of malice. The answer is yes. First, the Ohio Supreme Court has not addressed the issue of proving malice under the Act and, although the question appears settled at the Court of Appeals level, it is possible the law will change. Second. the interest groups that prevailed on the legislature to amend the Act before are certain to try again. If the law does change to require malice for the statutory punitive damages you will be prepared if you are already pursuing a common law claim. Third, if your punitive claim is limited to the statutory cause of action the defense might argue that certain evidence--state citations, other similar incidents--that would be admissible to show malice is not admissible when malice is not at issue. While the argument is dubious, See e.g., Estate of Alma Richardson v. Abbey Nursing Home, No. 46126 (Cuyahoga Cty. 1983) (holding that evidence of the poor general condition of the nursing home was admissible to show lack of care for residents), it is better not to have to argue the point.

With both types of punitive damage claims the instruction can read as follows:

JURY INSTRUCTION
PUNITIVE DAMAGES

If you find that the defendants violated the Nursing Home Residents Bill of Rights you may also award punitive damages. Punitive damages are awarded as a punishment to discourage others from committing similar wrongful acts. Slagle v. Parkview Manor, supra.

You may, but are not required to, award punitive damages for a violation of the Nursing Home Residents Bill of Rlghts.

You may also award punitive damages if you find that the defendants acted with actual malice. Actual malice is a conscious disregard for the rights and safety of other persons that has a great probability of causing substantial harm.

Therefore, you may award punitive damages either for a violation of the Nursing Home Resident Bill of Rights or if you find actual malice or both.

As indicated, jury interrogatories are recommended. The following are examples that may prove helpful.

JURY INTERROGATORY NO. 1

1. Do you find by a preponderance of the evidence that any of ____ rights under the Nursing Home Residents' Bill of Rights were violated?

_____ Yes _____ No

_____ _____
_____ _____
_____ _____
_____ _____
_____ _____
_____ _____

If yes, do you find by a preponderance of the evidence that a violation of ____ rights was a proximate cause of any injury or damage before her death"

_____ Yes _____ NO

JURY INTERROGATORY NO. 2

2. Do you find by a preponderance of the evidence that defendants were negligent in the care provided to _____?

_____ Yes _____ NO

If yes, do you find by a preponderance of the evidence that the negligence was a proximate cause of any injury or damage to ____ before her death?

_____ Yes _____ No

JURY INTERROGATORY NO. 3

Do you find by a preponderance of the evidence that defendants acted with a conscious disregard for the rights and safety of other persons that had a great probability of causing substantial harm?

_____ Yes _____ No

JURY INTERROGATORY NO. 4

Total Amount of Compensatory Damages Award $_____

_____ _____
_____ _____
_____ _____
_____ _____
_____ _____
_____ _____

JURY INTERROGATORY NO. 5

Total Amount of Punitive Damages Award $_____

_____ _____
_____ _____
_____ _____
_____ _____
_____ _____
_____ _____

The law in this area will continue to develop as more cases under the Act proceed through trial and to the appellate courts. We can help shape that law and in so doing we must consistently remind the Courts of the reason for the Act in the first place-to protect a vulnerable and growing segment of our population which otherwise would have no voice.