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President's Message

by Scott M. Kuboff

Our social and institutional norms are shifting. To some, these changes offer hope for a better future. To others, it is a direct assault on the fabric of our society. With these changes, there is plenty that could be discussed but, instead, I want to talk about something closer to our profession, our association, and our responsibility to each other and our clients.

Diversity, Equity, and Inclusion.

It is easy to demonize "DEI" when it is just an acronym tossed around in headlines. However, when considering the opposite – Uniformity, Inequity, and Exclusion – it becomes clear that our profession thrives on perspective, experience, and empathy. And those traits are inherently enriched by having diverse prospectives, giving colleagues equal chances, and including all of those who want to fight for justice.

As trial lawyers, we do not deliver tangible goods. Our product is the output of our minds – how we analyze, strategize, advocate, and connect. And our ability to do that well is shaped by our lived experiences.

When we share experiences with our clients – whether that's growing up in a similar neighborhood, facing similar challenges, or simply understanding cultural nuances – we gain insight. We form connections that transcend client files and case numbers. And even when we don't share those experiences, acknowledging that gap is itself a step toward better advocacy.

I won the lottery the day I was born – a white male in a supportive household with access to education and opportunity. Let me be clear: this isn't an apology for being who I am. I had no choice in the matter, but I recognize the privilege it afforded me. I also recognize that others have had to climb steeper hills just to stand beside me in the courtroom and that some of my clients have life experiences that I will never truly appreciate.

That's why representation matters. People of different races and nationalities. Women. Members of the LGBTQ+ community. Whoever you are, come as you are – you provide meaningful value to our pursuit of justice.

Sure, we can attend seminars, read books, or listen to podcasts to expand our knowledge, but we must also recognize the value of life experience – especially in the courtroom. Because no number of client meetings can fully replicate what it means to live someone else's truth.

No, race or gender should not be the only factors in who represents whom. But to ignore the lack of diversity, and equal voices, among us is to ignore the changing needs of the people we serve. Diversity doesn't divide us – it strengthens us. It helps us deliver justice more thoughtfully, more compassionately, and more effectively.

As an association, let's do more than acknowledge that truth. Let's live it. Let's welcome new voices. Let's look beyond the familiar. Let's build an organization – and a profession – that better reflects the people who need us most. ■

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MINDFULNESS & HEALTH
"A Wake-Up Call"

by Christian R. Patno

Close your eyes and imagine if you were no longer alive tomorrow morning and the profound effect it would have on your family, your co-workers, your clients, your friends and the organizations to which you devote extra time, effort, and energy. Think about the extensive loss that would be felt by those who rely upon you most.

On February 27, 2024, I was almost in this situation with a 99% blocked "widow maker" artery located at the entry to my heart and only minutes to hours from death. Luckily, I listened to my body, avoided a heart attack, pushed for an immediate heart catheterization, and had Triple By-Pass Open Heart Surgery on February 28, 2024. In order to do this, I needed to place my health first, ignore my docket, ignore my family responsibilities, and ignore my professional association responsibilities, all of which I had never done before. And, all of which many of us find ourselves unable to do as the commitments pile up and increase, the demands and stress levels increase, and we find ourselves on the treadmill of life trying to place lids on all of the pots. We do so because we are driven and find ourselves in a position of rarely being able to say "no".

I was very fortunate to grow up in a loving household where my earliest memories involve a father who worked 3 jobs in order to make ends meet. My mother was tasked with raising, encouraging, and pushing my sister and me to study, to work hard, and succeed in our education and careers. We were the first ones in our family to go to college. We worked multiple jobs to help pay for college as well as grad school. And, we both chose careers focused on helping individuals who had been the most harmed in our society.

My sister's path was music and she became the musical director for a very special school where music therapy is the backbone to elevate the confidence of at-risk and abused children. She has dedicated her life to this school and to the success stories of multiple children who as adults often reach back out to her with stories of how important she was to them at that stage in life. In doing so she worked tirelessly and when asked to do things, seldom said no. It was her passion.

My career path was injury and death trial law. Not unlike my sister, I wanted to make our parents proud and work as hard as I could, take on as much work as I could, and join and take part in as many related organizations as I could in order to be "successful" in the eyes of our parents.

Unfortunately, with as much love, support, and encouragement that our parents provided, they also transferred some very strong genes that placed both my sister and me at high risk for heart attacks as well as cancer. In 2023, my sister was stricken with a very terminal form on lymphoma. Both chemotherapy and radiation failed and she began making end of life decisions. It was during this time I was 57 and underwent an extensive cardiac workup since both of our parents had heart attacks and surgery at 59. The good news for my sister was that a new immunotherapy trial came out, and she was fortunate to be accepted

into the program. Her PET scans have ever since been cancer free. For me, the good news was I had a low calcium CT score and a great stress test result. My cardiologist assured me I was not like my parents. It turned out he was wrong.

On the mend... March 1, 2024

It was during my post-operative stay in the hospital that I first began to reflect back on what I may have been doing wrong and how I had gotten caught up in the treadmill of life where the demands in my life had taken control of everything, including my own health. There were many conversations with my sister, and I read multiple articles on mindfulness and being aware of my life and the present moment. Thoughts of what would have happened to those who relied upon me had I no longer been around flashed through my mind. It was at that point I realized many other lawyers were also in the same situation as I, albeit in different stages. And, like me, they were also too busy to be self-aware of the downward spiral that we can all become caught up in. My message to you is to take back your physical, mental, and emotional health before you place yourself too close to the flame. Do this for your family, yourself, your firm, and your clients. If you are not healthy and around, you are obviously of no help to any of them.

Family Vacation

Make healthy choices and priorities:

1. Learn to say no: Budget what cases, activities, events, and organizations you commit to. Do not overextend.

2. Make time for yourself: We all have a tendency to do everything for everyone else and put our priorities and needs last. Do something you want to do and schedule the time.

3. Remove yourself from toxic relationships: As we age, we add relationships throughout our lives. If the relationships become harmful or unfairly intrusive then terminate them and focus on the ones which enrich your life.

4. Make Your Physical Health A Priority: The first thing I plan for each day is exercise. Not only is it imperative for your physical health but it also helps greatly your mental health and gives you alone time. Walking is wonderful and a good time for reflection.

5. Only worry about that which you control: Many people spend countless hours worrying about matters over which they have no control. If you do not control the matter, worrying about it only provides stress with no benefit.

6. Do not try to do everything yourself: Surround yourself with co-workers and friends you can trust and rely upon to reduce your day to day burdens.

7. Listen to your body: We may feel something not right with our body and tell ourselves it is nothing or we will address it later when we have time. If something does not feel right do something about it right away. Make sure to set your regular and necessary medical appointments and follow through. Any delay with stroke, cancer, or cardiac issues may be the difference between life and death.

8. Genetics are important: Both my parents had heart attacks at the age of 59. I had my surgery almost 2 weeks after turning 59 and would have had a heart attack at 59. Stay vigilant and get proactively tested for those conditions which run in your family.

9. Be proactive instead of reactive: Take control of how you want to feel and set out on how to make that happen. Do not wait for something to occur in order to act.

10. Control, manage, and prioritize your time: Using a calendar plan your days, weeks, months and years ahead of time. Book the mandatory and priority events first. Always leave open spaces.

My sister, niece, and I on a recent five mile walk.

In order to take charge and regain control of your health and life you need to choose to do so. It is within the power of each and every one of us to do so. Once you begin the process you will likely realize that by taking control of a once out-of-control life, and doing so with clarity, you will soon be in a better place. My sister and I are the fortunate ones who were lucky enough to have a second chance and an opportunity to realize this. I hope this story in some way motivates you to take control of your health and wellness as well. The alternative of you no longer being around is simply not an option for you, your family, your co-workers, and your clients.

On November 13, 2024, my first grandchild Teagen Everly Spildener was born and life, health, and happiness goes on!! If you find yourself becoming so overwhelmed with life demands and stress which has caused you to place your health on hold or low on the priority list, please change your ways while you still have time. It is much too important not to do so. ■

Teagen the G baby

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Behind the Curtain: How GPT and AI Power Modern Legal Tools

by Thomas Ryan and Dave Goerlich

Artificial Intelligence has rapidly transformed from a futuristic concept to an everyday reality in legal practice. Our previous journal discussed ten practical AI tools that can enhance your legal practice. But to use these tools effectively and ethically, attorneys need to understand not just which tools to use, but how these technologies work.

I. Brief History of Artificial Intelligence

The history of the present day of artificial intelligence can be traced back to the mathematical foundations of the seventeenth century, through mathematicians such as Gottfried Leibniz, Thomas Hobbes, and Rene Descartes[1]. However, the modern evolution of AI over the past twenty-five years has been characterized by the tension between two competing methodologies: symbolic AI and neural networks/deep learning.

Symbolic AI represents a rules-based computational approach that uses pre-programmed logic, statistical models, and structured frameworks to handle diverse human inputs. Consider the familiar experience of using Westlaw's/Lexis's citation search function, where an automated system prompts you to enter a case citation or statute reference. When you input "347 U.S. 483" for *Brown v. Board of Education*, the system employs text parsing and pattern recognition technology to process your input through a sequence of operations: it analyzes the citation pattern, identifies jurisdictional markers, and matches them against established formats. This 'symbolic' approach relies on pre-defined rules, ensuring accuracy as long as input follows rigid conventions (e.g., correct citation format).

Symbolic AI dominated early artificial intelligence research from the 1950s through the early 2000s, driven by systems such as expert systems and knowledge bases that attempted to codify human expertise into formalized logical rules. These systems excelled at solving clearly defined problems with precise parameters, but they struggled significantly with ambiguity and contextual understanding. In the legal domain, early implementations such as Lexis's Shepard's citation service demonstrated symbolic AI by applying explicit rules to determine whether cases had been positively cited, distinguished, or overruled. Similarly, Westlaw's KeyCite system employed logical frameworks designed to replicate the analytical processes attorneys use when evaluating case law.

However, symbolic AI soon encountered fundamental limitations due to the complexity of human language and real-world scenarios. Researchers confronted the 'knowledge acquisition bottleneck'—the impracticality of manually coding explicit rules for every conceivable situation. Recognizing these inherent limitations spurred a fundamental shift in AI research: a move toward neural networks, which learn directly from data by recognizing patterns, rather than relying on pre-programmed rules. This shift marked a pivotal transition from explicitly programming computers for specific tasks to training them to learn and predict from real-world examples.

II. An Alternative Approach to Symbolic AI – Neural Networks, Big Data, and Deep Learning

While symbolic AI attempted to codify human reasoning through explicit rules, a fundamentally different approach was simultaneously developing. Neural networks, inspired by the

biological structure of the human brain, offered an alternative paradigm. These networks, first conceptualized in the 1940s, would eventually transform AI after decades of research and technological advancement. The current programs such as ChatGPT, Claude, and Google Gemini use a combination of neural networks, big data, and deep learning.

A. Neural Networks

Neural networks are computational models that are inspired by the human brain. They consist of interconnected nodes, or "neurons" organized into layers: an input layer, an output layer, and one or more additional layers between them called the hidden layers. The purpose is to create mathematical models to mimic human decision-making when there are multiple variables to consider.

A fundamental component of neural networks is the artificial neuron, and a very basic type is the perceptron. A perceptron is a simplified model that takes a numerical input, calculates a weighted sum of those inputs, and produces a binary output (either 0 or 1) based on whether the sum exceeds a predefined threshold. These input variables are then assigned weights to represent the importance of each. A mathematical function is then used to calculate an output for the given inputs and the weights assigned to them.

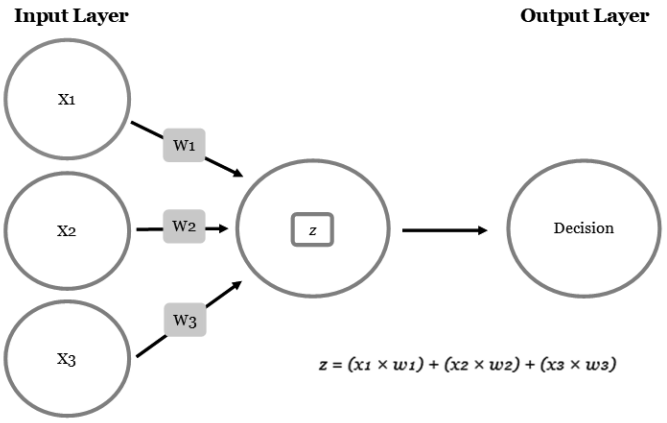

Figure 1: Simple perceptron

Consider a plaintiff lawyer deciding whether to take on a case. They might consider factors like the strength of liability (x_1), potential damages (x_2), and client credibility (x_3). They also may factor liability much more than damages and credibility and assign a higher weight to liability above the other two. A threshold value will then be used to determine whether to accept or reject a case. If the lawyer prioritizes strong liability, they could assign a high weight to x_1. By setting a threshold, the perceptron models their decision-making process, outputting 1 (take the case) when the weighted sum of factors meets the lawyer's criteria.

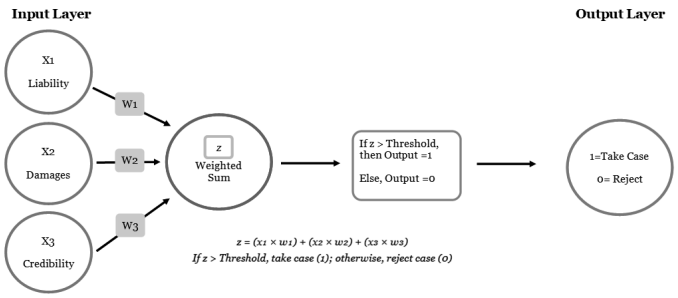

Figure 2: Legal Case Evaluation Perceptron

Assuming that the input values can only be a zero or one, the weights are assigned a value between 1 and 10, and the threshold value is assigned a value of 5, then below is an example calculation of whether the attorney would accept the case based on their evaluation of the input variables:

	Legal Case Evaluation Neural Network Model
Variables (Inputs)	
x1	Strength of Liability: 1 if strong, 0 if weak.
x2	Potential Damages: 1 if high, 0 if low.
x3	Client Credibility: 1 if credible, 0 if not credible.
Weights	
w1	Weight assigned to Strength of Liability (e.g., 6). Represents the lawyer's prioritization of liability.
w2	Weight assigned to Potential Damages (e.g., 2). Represents the lawyer's consideration of financial recovery.
w3	Weight assigned to Client Credibility (e.g., 2). Represents the lawyer's assessment of the client's reliability.
Parameters	
Threshold	A numerical value (e.g., 5). The weighted sum of inputs is compared to this threshold to determine the output.
Layers	
Input Layer	Contains the input variables (x1, x2, x3). In this simple perceptron, it's a single layer representing the factors influencing the decision.
Output Layer	Single output: 1 if the perceptron decides to take the case, 0 if not. The decisior is based on whether the weighted sum of inputs exceeds the threshold.
Calculation	
Weighted Sum	$z = (w_1 \times x_1) + (w_2 \times x_2) + (w_3 \times x_3)$
Output	If z > Threshold, Output = 1 (take the case). If z ≤ Threshold, Output = 0 (don't take the case).
Example Calculation	
Input Values	x1 = 1 (strong liability) x2 = 0 (low potential damages) x3 = 1 (credible client)
Using Weights	w1 = 6, w2 = 2, w3 = 2 Threshold = 5
Calculation	$z = (6 \times 1) + (2 \times 0) + (2 \times 1)$ $z = 6 + 0 + 2$ $z = 8$
Decision	**Since z (8) > Threshold (5), Output = 1 (Take the case)**

Figure 3: Example Data for Legal Case Evaluation Perceptron

The example detailed above illustrates the fundamental mechanics of a single perceptron—a foundational building block of neural networks. By assigning weights to different input factors (like liability, damages, and credibility) and comparing the sum to a threshold, this simple model makes a binary decision, mimicking a basic judgment process.[2]

One may attempt to extrapolate this simple system and just continue to add more and more inputs into the perceptron and expect a trustworthy output. However, this method proved to have its limitations, and in 1969, two researchers showed that the perceptron could only solve certain problems known as linearly separable problems, which are those with a simple rule that can perfectly divide all possibilities into two distinct groups - like "accept case" vs. "reject case" in our example above.[3] This limitation highlighted the need for more complex network architectures capable of handling non-linear relationships. The solution, as we'll explore next, involves stacking neurons into multiple layers, including those generally referred to as 'hidden layers,' which form the basis of modern deep learning.

The true power of neural networks emerges when thousands or even millions of these artificial neurons are interconnected across multiple layers, including numerous "hidden layers" between the initial input and final output. This layered complexity allows the network to learn and represent far more intricate patterns and relationships than a single perceptron ever could. By linking multiple perceptrons together, you create what is known as a multi-layer perceptron (MLP), a foundational structure of complex neural networks.

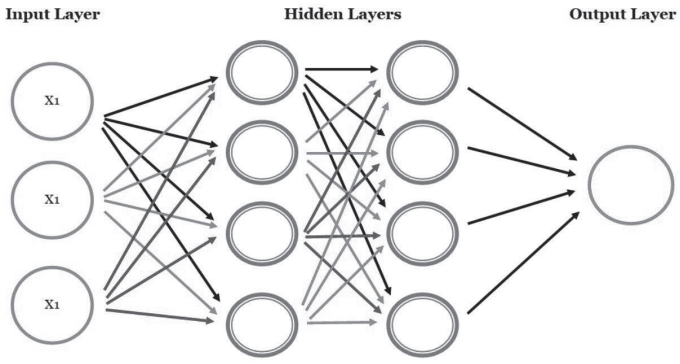

Figure 4: Multi Layered Perceptron

In an MLP, each neuron within hidden layers processes inputs through activation functions, effectively capturing and learning from intricate patterns and nonlinear interactions that exist within data. This ability to recognize nuanced relationships enables the network to handle complexities akin to those attorneys frequently encounter in evaluating legal cases, such as the subtle interplay between witness credibility, evidence strength, and juror biases.

Unlike the simple perceptron, which was strictly limited to linear separations, multi-layer networks can form sophisticated boundaries and decision rules. With sufficient training data, hidden layers become adept at identifying nuanced factors—such as how specific types of injuries correlate with jury verdicts or how the credibility of an expert witness might influence settlement values. This adaptability makes neural networks particularly suited for legal analytics, allowing them to predict case outcomes, evaluate damages, and even recommend litigation strategies based on learned patterns from vast datasets.

Thus, while the perceptron's inherent limitations once seemed to hinder AI's potential, the advent of multi-layered architectures and deep learning has dramatically expanded its capabilities, transforming neural networks from theoretical curiosities into indispensable tools for modern legal practice.

While this simple model required us to manually assign weights based on assumed lawyer preferences, modern neural networks operate differently. Instead of being explicitly programmed with rules or weights, they learn these parameters automatically by processing vast amounts of example data. The network adjusts the connections and weights between its neurons iteratively as it's exposed to more examples, gradually becoming better at identifying underlying patterns and making accurate predictions. This ability to learn directly from data is what distinguishes modern AI, but it hinges entirely on having access to massive datasets, which leads us directly to the concept of Big Data.

B. Big Data

Big data is exactly what it sounds like—enormous collections of information. Think of it this way: if a single case file is a drop of water, big data is the ocean. For attorneys who remember the transition from physical law libraries to digital research platforms, big data represents an even more dramatic leap in scale. In practical terms, big data refers to collections of information that are too vast to be stored on your typical computer, too diverse to be organized in traditional databases, generated and updated at tremendous speed, and often messy and unstructured. While earlier AI needed human programmers to write explicit rules (like Westlaw's early citation recognition systems), modern AI learns by finding patterns in massive datasets. This approach mirrors how lawyers develop intuition through exposure to thousands of cases over their careers—except AI can "read" millions of cases in days.

To understand the scale we're discussing, consider that a typical case file might be 10-50 megabytes of text and images.

Early legal databases like the first Lexis or Westlaw systems contained gigabytes of data. Modern AI like ChatGPT is trained on multiple petabytes (a petabyte is a million gigabytes). For perspective, if you printed the dataset used to train GPT-4, it would create a stack of paper taller than Mount Everest. The entirety of federal case law, in contrast, would be roughly the height of a small office building. Legal-specific AI tools might be trained on datasets containing nearly every reported case in American jurisprudence, millions of briefs, motions, and pleadings, contract databases spanning decades and multiple jurisdictions, law review articles, treatises, secondary sources, and legislative histories and statutory interpretations.

For plaintiff attorneys, understanding big data isn't just academic—it explains both the capabilities and limitations of the AI tools you're increasingly encountering. When you use an AI tool to estimate case value, it's not guessing—it's comparing your facts against thousands of similar cases. The more case data available, the more accurate the comparison. This is why mass tort settlements are often more predictable than unique personal injury cases. When working medical malpractice cases, AI can analyze the entire body of medical literature to identify standards of care and their evolution over time—tasks that would previously require multiple expert witnesses and weeks of research. In discovery, AI tools can process millions of documents to find the proverbial "smoking gun." The ability of these tools to recognize patterns comes directly from their training on massive datasets that included many similar document collections. Some advanced legal analytics platforms can tell you how specific judges have ruled on particular motions, or how long cases typically take in different venues. These insights come from analyzing complete case histories across jurisdictions. AI tools can also analyze an expert's complete publication history, prior testimony, and credibility challenges in ways that manual research could never accomplish.

Returning to the perceptron example we discussed earlier (where we built a simple model to decide whether to take a case), big data transforms this process completely. The perceptron example had three factors with weights we assigned manually. In contrast, modern AI systems learn from examples, not rules. Rather than attorneys assigning importance to factors, AI learns what matters by analyzing thousands of past cases. For example, it might discover that in trucking accidents, the carrier's safety record is more predictive of settlement value than the specific details of the collision. While a human might realistically consider 5-10 factors when evaluating a case, AI can simultaneously weigh hundreds of variables—from obvious ones like injury severity to subtle ones like demographic trends in the venue. AI might identify that certain expert witnesses are particularly effective with specific types of juries, or that particular defense counsel tend to settle quickly when faced with specific types of evidence—patterns that might escape even experienced attorneys. Imagine consulting an experienced colleague who has handled 10,000 similar cases and remembers every detail of each one. That's what big data enables for modern AI—not perfect judgment, but pattern recognition at scales impossible for human cognition.

Let's revisit our case selection example. A traditional approach might involve an intake form where you weigh factors like liability (strong/medium/weak), damages (high/medium/low), statute of limitations concerns, and client credibility. A big-data powered AI approach might compare the case facts against thousands of similar cases, identify that while liability seems challenging, cases with similar fact patterns have succeeded in your jurisdiction, calculate likely settlement ranges based on hundreds of comparable cases, flag that this particular defendant has settled similar cases quickly when certain documents are requested in discovery, and note that cases with this injury profile have been receiving increasing jury awards over the past 18 months. This isn't science fiction—legal analytics platforms are already offering these capabilities, changing how plaintiff attorneys evaluate and litigate cases.

C. Deep Learning

Deep Learning essentially represents the advanced evolution of the neural network concepts we've discussed, enabled by key breakthroughs and technological convergence. The modern deep learning revolution can be traced to two researchers: Geoffrey Hinton and John Hopfield. Their groundbreaking work in neural networks during the 1980s through early 2000s has led to the recent technologies that are becoming more common, such as chatGPT, Claude.ai, and Google's Gemini.

Drawing inspiration from the neurons in the human brain, they designed mathematical formulas and computer algorithms that simulate the decision-making processes of biological neural networks—that is, some group of neurons activating causing certain other neurons to activate. Their work from this period was awarded the Nobel Prize for foundational discoveries that enable machine learning with artificial neural networks.[4]

Their research pioneered backpropagation[5] algorithms and deep learning networks that made training multi-layered neural networks computationally feasible. They demonstrated that these systems could learn hierarchical representations

from data without the explicit, rules-based programming found in the symbolic AI approach. Initial applications in speech recognition and computer vision showed promise, but neural networks remained limited by computational constraints and available data.

The 2010s marked a turning point as three factors converged: exponentially increasing computational power, massive datasets ("big data"), and algorithmic innovations. Legal applications emerged as natural language processing capabilities improved. Unlike rule-based systems that struggled with language's inherent ambiguity, neural networks could capture semantic relationships between concepts even when expressed in varied terminology across different jurisdictions.

The watershed moment came with the 2017 publication of "Attention Is All You Need"[6] by researchers at Google and the University of Toronto. This team was investigating how to increase the efficiency of translating between languages. This paper introduced the transformer architecture, which revolutionized natural language processing through its self-attention mechanism.

Rather than processing text sequentially, transformers could analyze relationships between all words in a document simultaneously, capturing context and nuance in unprecedented ways. This innovation led directly to the development of large language models like BERT, GPT, and their successors, which have dramatically enhanced legal research platforms' ability to understand complex queries, synthesize information across multiple sources, and generate human-like summaries of legal documents. The evolution from simple neural networks to sophisticated transformer models represents not just a technical improvement but a fundamental shift in how AI approaches legal reasoning—moving from brittle rule-based systems toward adaptable, data-driven approaches that can navigate the inherent complexity of legal language.

III. Understanding GPTs and Transformer Models

Building directly on this transformer breakthrough, let's unpack what constitutes a 'GPT' model and how it powers many of today's AI tools.

A. Defining GPT (Generative Pre-trained Transformer)

The acronym "GPT" itself tells us a lot about the nature of these powerful AI models. As the name suggests, GPT models have three defining characteristics:

Generative: Unlike earlier AI systems that were primarily designed to classify or categorize information, GPT models can generate new content. This represents a significant evolution beyond the simple perceptron models discussed earlier, which could only make binary decisions based on weighted inputs. While a basic neural network might determine whether a case meets certain criteria, generative models can produce entirely new text that wasn't explicitly programmed. When an attorney asks a GPT-powered legal research tool to draft a motion, summarize a deposition, or explain a complex legal doctrine, the system leverages its multi-layered neural architecture to construct original responses by predicting which words should come next in a sequence. Rather than following explicit rules like symbolic AI systems, it draws on patterns identified across millions of example texts to generate contextually appropriate legal content.

Pre-trained: GPT models undergo a two-phase development process that exemplifies the big data approach described earlier. In the first phase, called pre-training, the model learns from massive datasets containing hundreds of billions of words—far exceeding the petabyte scale mentioned previously—drawn from books, articles, websites, and legal documents.

This pre-training phase is where the neural network adjusts billions of weights and connections through backpropagation algorithms pioneered by Hinton, essentially mapping out complex relationships between words, concepts, and legal principles. Unlike the manually assigned weights in our simple perceptron example, these connections are automatically refined as the model processes this enormous corpus—essentially digesting more text than any human could read in hundreds of lifetimes. This unsupervised deep learning approach allows GPT to develop broad knowledge across many domains, including law, without explicit programming of rules.

Transformer: The transformer architecture represents the breakthrough described in "Attention Is All You Need" that revolutionized natural language processing. Unlike earlier neural networks that processed sequential data (like text) one element at a time, transformers use a mechanism called "self-attention" to examine relationships between all words simultaneously. This parallel processing approach allows GPT to grasp complex legal concepts even when they're expressed in varied terminology or when the relevant context appears in different parts of a document. The transformer's ability to consider multiple contextual elements at once resembles how experienced attorneys can quickly identify connections between seemingly disparate parts of a legal document—connections that would elude simpler, more linear analysis systems.

For attorneys, the significance of GPT technology extends beyond mere automation. These models demonstrate capabilities that resemble certain aspects of legal reasoning—such as identifying relevant precedents, recognizing factual analogies between cases, and understanding how general principles apply to specific situations. When integrated into platforms like legal research tools, document analysis systems, or drafting assistants, GPT models can dramatically enhance productivity while also providing insights that might otherwise require extensive research.

However, GPT models also have important limitations that attorneys must understand. Their knowledge is limited to their training data, meaning they lack awareness of very recent legal developments unless specifically updated. They can exhibit reasoning flaws, especially when dealing with complex logical sequences or numerical calculations. As you may have discovered, they don't "understand" law in the way human attorneys do—they recognize patterns in legal language without necessarily grasping underlying policy considerations or moral principles that inform legal reasoning.

B. Anatomy of a GPT Model

Understanding how GPT models function requires examining the transformer architecture that serves as their foundation. While the full technical details involve complex mathematics, the key components can be explained through simplified analogies relevant to legal practice.

1. The Transformer Architecture: Self-Attention as the Core Innovation

The transformer architecture revolutionized AI's ability to process language by introducing the self-attention mechanism, which allows the model to weigh the importance of different words in relation to each other. To understand this concept, consider how experienced attorneys read legal documents:

When reviewing a contract clause stating that "payments shall be due within thirty (30) days of delivery, except as otherwise provided in Section 5.3," an attorney immediately recognizes the importance of both the timeframe and the exception reference. They understand that these elements carry more weight than other words in the sentence and that they need to connect this information with content elsewhere in the document.

Self-attention works similarly, allowing the model to assign different levels of importance to words based on their relationships to other words in the text. For each word in a document, the model calculates attention scores that determine how much focus to place on every other word when interpreting its meaning or generating related text. This mechanism enables transformers to:

- Recognize when distant parts of a document relate to each other (like connecting a contractual clause to its defined terms or exceptions)
- Understand ambiguous pronouns by identifying their referents (determining what "it," "they," or "this provision" refers to)
- Grasp how modifiers like "except," "unless," or "notwithstanding" fundamentally alter legal meaning

Unlike previous AI approaches that processed text sequentially—analyzing each word primarily in relation to those immediately surrounding it—transformers can simultaneously examine relationships between all words in their context window (typically several thousand words). This parallelized approach dramatically improves the model's ability to understand complex legal documents with intricate internal references and conditional statements.

2. Tokenization: How GPT Processes Text

Before processing any text, GPT models first break it down into smaller units called "tokens." A token isn't always a complete word—it can be part of a word, a word, or multiple words, depending on frequency patterns in the training data. This process, called tokenization, is somewhat analogous to how legal researchers break down complex legal concepts into searchable terms.

For example, common legal terms like "plaintiff" or "defendant" might each be single tokens, while specialized phrases like "*res ipsa loquitur*" might be split into multiple tokens. Common prefixes like "un-" or suffixes like "-able" might be separate tokens, allowing the model to recognize patterns in word formation.

The tokenization process is important because it determines:

- How much text the model can process at once (models have token limits, ChatGPT-4.o around 128,000 tokens, Claude3 has about 200,000, and Google Gemini has up to 2 million tokens)
- How the model recognizes and generates specialized terminology
- The granularity with which the model understands language

For attorneys using GPT-powered tools, understanding tokenization helps explain why these systems sometimes excel at recognizing standard legal terminology but might struggle with highly specialized jargon, regional terms, or newly coined legal phrases that weren't common in their training data.

3. Layers and Parameters: The Scale of Modern GPT Models

Modern GPT models consist of multiple transformer layers stacked together, each containing millions or billions of parameters (adjustable connections between neural network components). These parameters store the patterns and relationships learned during training.

To appreciate the scale: while the human brain contains roughly 100 billion neurons, GPT-4 reportedly contains over 1.76 trillion parameters. This massive scale enables the model to store intricate patterns about legal language, doctrine, and reasoning that it encounters during training.

The layered structure of transformers is particularly important for legal applications because it allows the model to build understanding at multiple levels of abstraction:

- Lower layers tend to capture basic linguistic patterns and grammar
- Middle layers recognize specific legal concepts and terminology
- Higher layers grasp complex relationships between legal principles

This hierarchical learning capability enables GPT models to perform surprisingly sophisticated legal reasoning tasks—from identifying relevant precedents to suggesting arguments based on specific fact patterns.

4. The Prediction Mechanism: Completing Sequences One Token at a Time

At its core, a GPT model operates by predicting what text should come next given the preceding context. When an attorney asks a GPT-powered system to draft a motion or summarize a case, the model is actually performing a sophisticated form of text prediction—determining the most probable next token based on patterns learned during training, then the next token after that, and so on.

This prediction process involves:

1. Encoding the input text through the transformer layers
2. Applying self-attention to weigh relationships between tokens (aka words)
3. Generating probability distributions for what tokens might reasonably follow
4. Selecting the most appropriate next token based on these probabilities
5. Repeating the process, incorporating the newly generated token into the context for subsequent predictions

The model's ability to maintain coherence across long passages comes from this iterative prediction process combined with its attention mechanism, which keeps track of what has been said and what would logically follow in a given context.

For example, if you ask a GPT system to predict the next word in this sentence "I am _____", the GPT will create a list of probable next words, similar to:

Rank	Next Word	Probability
1	sorry	15%
2	not	12%
3	a	11%
4	going	10%
5	sure	9%
6	happy	8%
7	here	7%
8	glad	6%
9	very	6%
10	ready	5%

But, if you change the passage to "I just went to a funeral. I am __" the probabilities change to:

Rank	Next Word	Probability
1	sad	21%
2	heartbroken	14%
3	devastated	13%
4	grieving	11%
5	numb	9%
6	exhausted	8%
7	shaken	7%
8	upset	6%
9	overwhelmed	6%
10	drained	5%

This newly generated token (or sequence of tokens) is then added to the existing context and fed back into the model, which repeats the process to predict the next token, and then the next, and so forth, iteratively building the response. While this allows the model to generate remarkably fluent and coherent text, this probabilistic, token-by-token prediction method is precisely what leads to the phenomenon known as "hallucinations." Because the model prioritizes generating statistically likely sequences based on its training data rather than retrieving verified facts, it may invent details—including plausible-sounding but entirely fictitious case citations, statutes, or factual assertions—if that information is not present or easily accessible within its learned patterns.

Unfortunately, several high-profile incidents have emerged where attorneys faced sanctions after submitting court filings containing such AI-generated fabrications without proper verification. This underscores the importance of treating AI output not as factual statements, but as preliminary drafts requiring rigorous human review and independent factual confirmation.

For legal applications, this sequential prediction capability allows GPT models to generate remarkably coherent and contextually appropriate legal documents—from demand letters to contract clauses—that follow conventional legal reasoning patterns and maintain consistent arguments across multiple paragraphs.

Understanding this fundamental architecture helps explain both the capabilities and limitations of GPT-powered legal tools. While these systems can process and generate text with impressive sophistication, they remain fundamentally pattern-matching systems rather than reasoners with legal understanding comparable to human attorneys. Nevertheless, when properly implemented and supervised, they offer powerful capabilities that are rapidly transforming legal practice across multiple domains.

5. Why LLMs Hallucinate, and When You're Most at Risk

One of the most important things attorneys can understand about Large Language Models (LLMs) is not just that they hallucinate, but why it happens. Hallucinations are not software glitches or malfunctions; they are a direct byproduct of how LLMs generate text.

LLMs are predictive engines. They don't retrieve facts from a database, and they don't understand the truth of what they're saying. Instead, they generate language one token at a time by calculating the most statistically likely next word based on the surrounding context. That means the more familiar the topic is to the model - because it's well-represented in its training data - the more likely it is to produce accurate and useful content. But as the prompt drifts toward the edge of what the model has "seen" in training, its predictions become more speculative, and the risk of hallucination increases dramatically.

This is why LLMs are often highly reliable when drafting something generic or widely represented in public data, like an email requesting payment on an overdue invoice. But when prompted to draft a motion that addresses a very narrow legal question or an obscure procedural issue in a less common jurisdiction, the model's training data may not offer much direct support. In those moments, it still attempts to generate a response, filling in the gaps with what sounds plausible based on learned patterns, even if it has no factual basis.

Asking an LLM to produce content near the "edges" of its training - unusual fact patterns, rare precedents, local statutes, recent rulings, or highly specialized legal doctrines - significantly increases the probability of hallucinated output. The results may look correct, cite real-seeming cases, and include familiar legal phrasing, but closer inspection often reveals inaccuracies, fabrications, or confidently stated errors.

Attorneys should approach these scenarios with heightened diligence. When you're working near the edges of what the model might know, think of it like drafting from memory after glancing at a textbook once, only with much better grammar. The output might sound polished, but it is not authoritative. The further from common examples your use case gets, the more rigorous your verification needs to be.

IV. Limitations and Ethical Considerations

While the capabilities of GPT models and other LLMs are impressive, attorneys utilizing these tools must remain acutely aware of their inherent limitations and the significant ethical considerations involved. Integrating AI into legal practice demands not just technical understanding but also unwavering adherence to professional responsibilities.

Accuracy, Hallucinations, and the Duty of Verification: The risk of "hallucinations" - inventing case citations, misstating legal rules, or fabricating facts – is a vital consideration when using these tools. Attorneys have a non-delegable duty under the Ohio Rules of Professional Conduct (including Rule 1.1 Competence, Rule 1.3 Diligence, and Rule 3.3 Candor Toward the Tribunal) to rigorously verify all substantive information provided by an AI. Never rely solely on AI-generated legal citations, factual assertions, or analysis without independent confirmation through traditional research methods.

Confidentiality and Data Security (Ohio Rule 1.6): Inputting confidential client information into public-facing AI tools poses significant risks. Attorneys must carefully review the terms of service for any AI tool to understand how input data is used, stored, and whether it might be used for future model training. Breaching client confidentiality via an AI tool is still a breach. Consider using enterprise-grade AI solutions with explicit data privacy guarantees or tools specifically designed for the legal profession that offer better security and confidentiality assurances.

Bias in Training Data and Output: LLMs are trained on vast datasets, primarily from the internet, which inevitably contain societal biases. These biases can manifest in the AI's output, potentially influencing legal analysis, drafting tone, or even perpetuating inequities. Attorneys must critically evaluate AI-generated content for potential bias and ensure their work product remains fair and objective.

Duty of Competence (Ohio Rule 1.1): Competent representation in the age of AI requires understanding the tools being used. This includes knowing their capabilities and, crucially, their limitations—such as knowledge cut-off dates, context window constraints, and the tendency to hallucinate. Competence also involves developing skills in effective prompt engineering and evaluating the AI's output rather than accepting it at face value.

Unauthorized Practice of Law (UPL): AI tools should be used to assist the licensed attorney, not replace their professional judgment or interact directly with clients unsupervised. The attorney remains ultimately responsible for the legal advice given and the work product submitted. Using AI to generate legal documents or advice without careful review and adoption by the attorney could risk engaging in UPL or aiding non-lawyers in UPL.

Disclosure: The ethical obligations regarding disclosure of AI use are still evolving. Attorneys should consider transparency with clients about the significant use of AI tools in their representation. Furthermore, candor to the tribunal may require disclosing if AI-generated text forms a substantial part of a filing, particularly given the risks of hallucination. Staying informed on developing court rules and ethical opinions in Ohio regarding AI disclosure is essential.

V. Conclusion

The journey from early Symbolic AI's explicit rules to today's sophisticated Large Language Models represents a profound shift in artificial intelligence. We've explored how concepts evolved from simple perceptrons to multi-layered neural networks, fueled by the immense power of Big Data, and brought to a new level of capability through Deep Learning architectures like the Transformer. Understanding these core components—neural layers, parameters, massive pre-training datasets, context windows, and attention mechanisms —is no longer just an academic exercise for attorneys; it's becoming fundamental to navigating the modern legal technology landscape.

These technologies offer powerful capabilities to amplify legal work—assisting with research, drafting initial documents, summarizing complex information, and analyzing arguments. However, as we've emphasized, they are tools, not replacements for legal expertise. The critical thinking, nuanced judgment, ethical reasoning, and client advocacy skills honed by experienced attorneys remain irreplaceable. Effective use of AI in law demands careful prompting, rigorous verification of outputs, and constant awareness of the ethical obligations surrounding confidentiality, competence, and candor.

For the members of the Cleveland Academy of Trial Attorneys, embracing these technologies requires a commitment to continuous learning. By understanding the principles "behind the curtain," we can leverage AI not just as a black box, but as a sophisticated tool to enhance our practice and better serve our clients in an ever-evolving legal world. Engaging with AI proactively and sharing insights within our legal community will be key to shaping their responsible integration into the future of trial practice. ■

End Notes

1. Thomas Hobbes, *Leviathan or The Matter, Forme and Power of a Commonwealth Ecclesiasticall and Civil, Thomas Hobbes, Chapter V, of Reason and Science* (1651); (When a man reasons, he does nothing else but conceive of a sum total, from addition and subtraction).
2. Neural networks often include another component called 'bias,' which acts like an adjustable threshold for the neuron, further refining its output. It's omitted from this simple example for clarity.
3. Perceptrons: An Introduction to Computational Geometry, M. Minsky, and S. Papert. MIT Press, Cambridge, MA, USA, (1969)
4. The Nobel Prize in Physics 2024 was awarded jointly to John J. Hopfield and Geoffrey Hinton "for foundational discoveries and inventions that enable machine learning with artificial neural networks," https://www.nobelprize.org/prizes/physics/2024/summary/
5. Backpropagation is a method used in artificial intelligence that helps computers learn by adjusting connections in a neural network, allowing them to recognize patterns and improve tasks like speech recognition and image processing.
6. Ashish Vaswani et al., *Attention Is All You Need*, in Proceedings of the 31st Conference on Neural Information Processing Systems 5998 (NeurIPS 2017), https://research.google/pubs/attention-is-all-you-need/

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Pointers From The Bench:

The Honorable Michael John Ryan: From the "F" Row to the Eighth District Court of Appeals

By Marilena DiSilvio

On November 8, 2022, Judge Michael John Ryan was elected to the Eighth District Court of Appeals—an achievement that marked not just a career milestone, but the continuation of a life story defined by commitment to education, resilience, service, and transformation.

A Teacher Who Cared

Judge Ryan's path to the bench was far from conventional. Growing up, he didn't dream of law. Inspired by his sixth-grade teacher, Bruce Hill Sr., Judge Ryan wanted to teach.

It was his first day as a new student in Mr. Hill's classroom that Judge Ryan encountered the kind of educator who changes lives. Mr. Hill had a unique seating system: new students were placed in the back "F" row and had to academically earn their way forward. For young Michael Ryan, "F" was not an option. Before attending this new school, he had always been an "A" student. Within two weeks, and with perfect test scores, he had climbed to the "C" row—but felt he belonged even further ahead given his stellar grades. There was simply no room in the "A" and "B" rows. He met with Mr. Hill after class, respectfully and emotionally advocating for himself. The next morning, a new desk had appeared in the "A" row, reserved just for him.

That was just the beginning of Mr. Hill's impact. When Judge Ryan scored a 98% on a test, he challenged the grade. Upon review, Mr. Hill realized it was the answer key that was wrong.

Judge Michael John Ryan

Recognizing that Ryan needed more academic challenges, Mr. Hill encouraged him to apply for the honors track. Judge Ryan's extraordinary determination and intellect earned him a place in the Major Works Honors Program.

Mr. Hill would go on to attend Judge Ryan's high school graduation from Cleveland Heights High School and encourage Ryan to teach – but at the collegiate level.

Early Hardships

Judge Ryan's childhood in the Longwood Projects was marked by adversity and loss. His stepfather was incarcerated for several years after his conviction for aggravated burglary. He did not meet his biological father until he turned 25 due to his incarceration for bank robbery. His mother, who had him shortly after she turned

15, struggled with addiction and was a victim of severe domestic violence at the hands of Judge Ryan's stepfather. Standing four feet, eleven inches, and a mere 98 pounds, Judge Ryan's mother was punched, strangled and stomped as he and his sister watched. She tried to get away, moving to California but his stepfather followed her and brought her back home. Against the backdrop of this trauma, Judge Ryan and his sister often wanted for food and a peaceful night's sleep.

It was his stepfather's mom, Grandmother Lula Douglas, who removed Judge Ryan and his sister from the projects and raised them. She gave them something precious: stability. Tragically, Judge Ryan's mother died when he was only 13. A year later, his beloved grandmother passed as well. Judge Ryan and his sister moved in with his stepfather's sisters until their maternal grandmother began caring for them when Judge Ryan was a senior in high school.

Yet, even amid such turbulence, Judge Ryan refused to be defined by tragedy. He pressed on, fueled by a sense of purpose and refusal to settle for mediocrity.

A New Dream: Law

Executing on his plan to become a teacher, Judge Ryan enrolled at Allegheny College with the goal of completing a five-year combined Master's and teaching certification program. When the program was canceled upon his arrival, he stayed the course—thanks to financial support from the college and an academic environment that allowed him to focus and thrive. It was there that he took a class in Civil Liberties with Professor Robert Seddig, a man who looked like a Founding Father and spoke with a passion for the Constitution that ignited something new in Judge Ryan. He left that class changed, walking straight to his advisor's office with a new question: *How do I become a lawyer?*

Judge Ryan sitting on Ohio Supreme Court panel alongside Justice Fischer

Allegheny helped Judge Ryan master what once were weaknesses: writing and public speaking. He majored in English and minored in Political Science. After meeting Robin, the woman who would become his wife, he chose to attend Cleveland State University's College of Law to stay close to her. He knew she was special when she brought him to church. They married during his second year.

Building a Career in Justice

While in law school, Judge Ryan threw himself into every opportunity. He initially worked as a mediator and intake officer at the City of Cleveland's prosecutor's office. He then transitioned from criminal to civil taking on a law clerk position that involved drafting motions, preparing discovery requests and writing legal memoranda. Judge Ryan turned law libraries into second homes.

After passing the bar, Judge Ryan became an Assistant Prosecuting Attorney for the City of Cleveland. Within two weeks, he had his own docket in the courtroom of Judge Salvatore Calandra. On the morning of his first trial, expecting to sit second chair, he found himself suddenly promoted to first chair. Though he lost that case, the experience was formative because it taught him how to charge cases better. The charge - resisting arrest and disorderly conduct - should not have been brought. Judge Ryan's experience as a prosecutor highlighted his commitment to service.

From there, he sought to build a résumé that would one day earn the public's trust. Judge Ryan gained valuable civil experience as an administrator with Cleveland's Department of Public Safety, concurrently serving as Advisor to the Civilian Police Review Board. He later joined Forbes, Fields & Associates Co., where he practiced personal injury, employment law, and criminal defense

After reaching the five-year practice milestone, he was appointed as a Magistrate for the Cleveland Municipal Court—a key steppingstone in his judicial career.

Deep Community Roots

Throughout this time, Judge Ryan never lost sight of community. Judge Larry A. Jones became both mentor and extended family, introducing him to leaders like activist Gloria Rice, who embraced him like a grandson. Through

public engagement and grassroots involvement, Judge Ryan built deep ties across Cleveland. His wife remained his biggest supporter—his sounding board, champion, and anchor.

A Judge of Many Firsts

Judge Ryan became the youngest African American male elected to the Cleveland Municipal Court and, later, the second African American male and youngest ever elected to the Juvenile Division of the Cuyahoga County Court of Common Pleas. Judge Jones—by then serving on the Eighth District Court of Appeals—kept telling Ryan: "*You need to come here.*" For years, Ryan demurred. He loved the trial bench. He made a difference. But when Judge Jones passed away in 2021, Ryan heard his voice again, loud and clear: *It's time.*

He changed course. Instead of running for reelection to Juvenile Court, he filed for the Court of Appeals. It wasn't a guaranteed seat. It was a competitive general election. And he won. Judge Ryan brings to the appellate bench an unparalleled breadth of experience—criminal and civil litigator, municipal judge and juvenile court judge. He sees the law from every angle.

A Full Life of Service

Judge Ryan is a deacon and trustee at his church, a proud husband, father, and soon-to-be grandfather. His daughter, whom he once indoctrinated with law as he pushed her on the swing while studying for the bar, took the route he initially sought and now works for the Cleveland Institute of Art as the Director for Career Services. His son, a St. Edward graduate and State Boys Division I Basketball champion, works for New York Life. His granddaughter is expected on April 26, 2025.

Judge Ryan remains deeply committed to service. He sits on the boards of St. Edward High School and Step Forward, a nonprofit organization that helps low-income individuals and families address immediate needs and build long-term skills to transform their lives through early childhood education programs, adult skills training, and other support. He formerly chaired the Sisters of Charity Foundation and worked with the Annie E. Casey Foundation which focuses on strengthening families and ensuring access to opportunities for children. He was instrumental in launching "A Place 4 Me," a program to prevent homelessness among youth aging out of foster care. He speaks regularly to young people about domestic violence, justice, and opportunity, and volunteers for mock trials in the Cleveland schools.

Words of Wisdom

Judge Ryan encourages those who appear before him as litigators to write well (and use spellcheck), to be honest with the law and facts, and to remember that their reputations matter. Though appellate work may not involve the daily phone calls and the in-person interactions of the trial court, he loves the intellectual rigor and variety of cases—from felonies to family law.

The Story Continues

Judge Ryan's story defies the odds. It's a journey from the "F" row to the front row; from Cleveland's toughest streets to Ohio's highest courts (Judge Ryan, sitting by assignment, recently presided over a case as a substitute Justice at the Ohio Supreme Court). And at every step, he has proven that where you start does not determine where you finish—character, conviction, and community do. The man who once doubted his writing ability became a published author, releasing his memoir, *The Least Likely: From the Housing Projects to the Courthouse*, in 2015. ■

Editor's Note

As we finalize this issue of the ***CATA News***, we invite you to start thinking of articles to submit for the next issue. If you don't have time to write one yourself, but have a topic in mind, please let us know and we'll see if we can find a volunteer. We would also like to see more of our members represented in the Beyond the Practice section. So please send us your "good deeds" and "community activities" for inclusion in the next issue. Finally, please submit your Verdicts & Settlements to us year-round and we will stockpile them for future issues.

From everyone at the ***CATA News***,
we hope you enjoy this issue!

Kathleen J. St. John, Editor

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Saving Plaintiffs from Themselves and Overzealous Courts: *McCullough v. Bennett*

In McCullough, the Court says it's not its job to "fix" a saving statute that isn't broken.

by Louis E. Grube

In litigation, procedural potholes can end a case before it ever reaches discovery in earnest or, hopefully, a jury trial. Ohio's Saving Statute, R.C. 2305.19(A), has long acted as a safety net—a practical acknowledgment that human error should not automatically spell doom. On July 24, 2024, the Ohio Supreme Court delivered a straightforward holding on the meaning of the Saving Statute in *McCullough v. Bennett*.[1] Justice R. Patrick DeWine wrote for the Court that the statute means what it says, and it allows more than one 'do-over' because it does not limit itself to one use. Plaintiffs are not limited to a single refiling if the statute of limitations has not run out; rather, they may refile multiple times, provided each successive lawsuit is filed within one year of the preceding dismissal, and so long as each prior case was dismissed otherwise than upon the merits. The ruling marks a pivotal moment for Ohio's civil litigation landscape, strengthening procedural protections for plaintiffs while emphasizing fidelity to the statutory text. This ruling was almost inevitable from a strict textualist perspective, but that did not stop Justice Jennifer Brunner from expressing some doubts.

The Unlucky Plaintiff

Ryan McCullough found out the hard way that lawsuits rarely unfold neatly. After an April 2017 car crash, passenger McCullough filed suit against the driver, Joseph Bennett, within the two-year statute of limitations. Then things went sideways: service of process on Bennett was returned unclaimed, and the trial court dismissed the case without prejudice six weeks after it was filed.

McCullough refiled within one year, as the saving statute allows. After successfully serving Bennett by publication, he again failed to meet the trial court's onerous demands. Bennett failed to answer, and the court ordered McCullough to file for default judgment within 14 days. He did not. So, the court dismissed the case again on November 27, 2018, once more without prejudice, and this time for failure to prosecute. McCullough's statute of limitations would have run on April 27, 2019.

Still determined, McCullough filed a third time on September 12, 2019, relying on the Savings Statute. Years removed from the accident, Bennett raised what sounded like a knockout blow in a motion to dismiss the third complaint; the statute of limitations had run out, and Ohio's saving statute, he argued, allows only one refiling. The trial court agreed and entered another dismissal.

On appeal to the Second District Court of Appeals, McCullough successfully established that the Savings Statute permitted a third filing under the circumstances. It mattered to the court of appeals that an earlier version of the statute only applied to dismissals after the limitations period had expired, but that requirement was abolished before the events of this case. The court of appeals also rejected the idea that McCullough needed to use the statute to refile the second time, since the statute of limitations had not run. There was no barrier to refiling on those facts.

Bennett appealed to the Ohio Supreme Court, and his appeal was accepted for a full merits review on October 19, 2022.

A Close Reading that Hews to the Plain Text of the Enactment

The pertinent parts of R.C. 2305.19(A) are mercifully brief for a statute that carries such weight:

> In any action that is commenced or attempted to be commenced, if . . . the plaintiff fails otherwise than upon the merits, the plaintiff . . . may commence a new action within one year after the date of . . . plaintiff's failure otherwise than upon the merits or within the period of the original applicable statute of limitations, whichever occurs later.

The questions before the Court were simple: Does the Saving Statute's one-year grace period apply only once, or can it be used after the plaintiff suffers a second non-merits dismissal? Or, can a party rely on the statute any number of times when claims are dismissed prior to the expiration of the statute of limitations?

Justice DeWine, writing for the Five-Justice majority, applied the radical approach of reading the statute as written even if it would help the plaintiffs' bar. Nothing in R.C. 2305.19(A) creates or even hints at a 'one-time use' restriction. Instead, the text plainly indicates that every qualifying dismissal triggers a new one-year clock to refile. And it had been amended to delete the requirement that the law could only be utilized if the statute of limitations had already expired by the time of a dismissal. This earlier version created a malpractice trap for the unwary, in which a dismissal the week before the limitations period concluded would require immediate refiling to meet the limitations deadline, even if a dismissal two weeks later would have triggered the one-year savings period.

The Savings Statute is not a License for Eternal Litigation

The Court did address concerns that plaintiffs might engage in unending refiling of lawsuits. But it rejected the ways in which lower courts had read a single-use rule into the Savings Statute using dicta in *Thomas v. Freeman*, 1997-Ohio-395, where the issue had not been considered. Notwithstanding the dicta in that case, which said the law could only be used once, the text of the current version of the statute unambiguously lacks such a condition.

As the Court pointed out, however, it's not open season for serial litigants. The double-dismissal rule of Civ.R. 41(A)(1) limits the use of voluntary dismissals to keep a statute of limitations from applying, and courts have power under Civ.R. 41(A)(2) to render a dismissal with prejudice to sanction abusive conduct.

The Nuanced Concerns of Justice Brunner

Justice Brunner wrote separately to explain her decision to concur in judgment only. She explained how the 1853 version of the Savings Statute did include a one-use restriction insofar as it required the first-filed case to be timely, and it only saved cases where failure otherwise than on the merits occurred after the limitations period concluded. Later amendments in 1894 and 1910 did not change the operation of the law according to Justice Brunner. She only agreed that the 2004 amendment had the effect of abolishing any one-use rule.

Justice Brunner went through these points for the purpose of disagreeing with the majority that the one-use rule declared in *Thomas*, 1997-Ohio-395, had truly been dicta. She criticized the majority for engaging in "a veiled form of judicial activism," one in which the present Court criticizes prior Courts for using a different kind of analysis or for explaining a ruling differently than it would today. She concluded with a wise reflection on the Court:

> Regardless of the point in time in the history of this court, "we" are the court, no matter who sits on the bench. It is integral to our duty that "we," whoever we happen to be, do everything possible to protect public confidence in this court. The statements of the majority opinion asserting that the one-use rule was "judicially created" and "unwritten," without engaging in any analysis of the prior versions of the saving statute, are both unnecessary and incomplete.

The Practical Upshot

In an age where litigation already demands tightrope-walking through procedural pitfalls, the Ohio Supreme Court's decision injects a welcome measure of common sense. For plaintiffs' counsel, *McCullough* is a breath of fresh air. It means that a second dismissal without prejudice is not necessarily fatal. The saving statute provides a true second (or third) chance. But a word to the wise is in order. The decision did not answer what if any upper limit might be placed on the number of times a case may be refiled under the Savings Statute. That answer will come in individual cases where the trial court's Civ.R. 41(A)(2) authority is triggered. And so, even with this new decision, we had all better stay on our best behavior.

For defense lawyers, *McCullough* is a reminder that a procedural dismissal is not a finish line. Only a resolution on the merits provides true closure so long as the Savings Statute can provide a mulligan or two.

For the State as a whole, *McCullough* reaffirms an unremarkable but crucial principle. If the legislature did not limit the Saving Statute's use to one shot, neither should the courts, even if it means the defense bar might lose a motion every so often. Plaintiffs who suffer dismissals otherwise than upon the merits can dust themselves off and try again—provided they get back to court within a year of the dismissal. ■

End Notes

1. 2024-Ohio-2783, 177 Ohio St.3d 102.

Judge Mary Jane Trapp, Ret., Ohio Court of Appeals, Eleventh Appellate District

Make a Record or Break an Appeal

by Judge Mary Jane Trapp, Ret., Ohio Court of Appeals, Eleventh Appellate District

The court of appeals is primarily an "error" court; that is, appellate courts review the record from the trial court in order to determine whether there was a "mistaken judgment or incorrect belief as to the existence or effect of matters of fact, or a false or mistaken conception or application of the law."[1] That error must appear in the record of the trial court proceedings.

While these are fundamental concepts of appellate practice, the number of cases in which the appellate court is presented with an incomplete record, and in some cases, no record at all, is increasing at an alarming rate and not solely in *pro se* appeals.

Creating a proper and complete record for appeal begins at the pretrial stage. If a document is not filed with the clerk of court it will not be a part of the record unless it is later admitted into evidence at a hearing or trial. But the trial lawyer's work is not done with the court's pronouncements admitting or excluding evidence, and deposition transcripts and other discovery materials are particularly problematic.

Making a record during a hearing or trial is the trial attorney's responsibility. With increasing budgetary pressures and the advent of more reliable recording devices and applications, trial courts have opted for differing forms of electronic recording of proceedings or no recording at all, as opposed to the certified court reporter.

Never assume that the court will supply a reporter or a recording device and never assume that the recording device will work properly at all times or that the court has a redundant recording system. When in doubt and when the nature and/or value of the case warrants bring a professional reporter. The hourly rate to preserve the testimony is worth it when compared to the amount of attorney's time (and trial court's ire) it takes to prepare and confirm an App.R. 9 (C) statement or an App.R. 9(E) correction or modification.

Side bar conferences are particularly troubling. The burden is once again on the lawyers to ensure that important side bar conferences are recorded. When a court reporter is present, do not forget to ask the reporter to join the conference. If the proceedings are taped, remind the judge to position the microphone so that all speakers may be heard. If necessary, the party requesting the conference should ask the judge to excuse the jury so that the discussion may be in open court and properly recorded.[2]

During trial it is again the trial attorney's responsibility to ensure that exhibits are properly marked and identified on the record and that they are offered into evidence. If the trial court does not admit an exhibit, the exhibit must be proffered and included with the admitted exhibits so that the appellate court may consider the excluded exhibit. At the end of a trial, counsel must also ensure that all exhibits are delivered to the court reporter or, in the case of an electronic recording of the proceedings, that all exhibits are in the court file before everyone leaves the

courtroom. It is a wise practice, if not required by local rule or the trial court's standard trial management order for counsel to prepare duplicate sets of trial exhibits if exhibits are lost or misfiled. If the parties at trial agreed on the record that the duplicate set was correct, App.R. 9(E) can be invoked to supplement the copies for the originals by stipulation of the parties. With the advent of inexpensive color copiers, it is also wise to make color copies of documents to preserve evidence of margin notes or other evidence that will not appear from a black and white copy of an original document.

Do not forget to proffer excluded testimony as well. When the court of appeals has no idea what anticipated testimony or evidence was excluded, it cannot evaluate the assigned error. This is particularly true with trial preservation depositions. Your video may have been edited after a pre-trial objections conference or ruling, but please submit the complete deposition transcript with the highlighting or other notations to indicate what testimony was excluded or included over objection.

Another common misconception arises on appeal from a court that audio or videotapes its proceedings and does not have an "official court reporter". The proper procedure to be followed by counsel when the trial court does not have an "officially appointed reporter" is set forth in *City of Shaker Heights v. Johnson*[3]. Counsel must file with the trial court a motion to designate an official court reporter nunc pro tunc in which counsel requests the court appoint a private court reporting firm as the official court reporter for the purpose of reviewing the audio or video recording and transcribing the testimony in a form compliant with App.R. 9(B)(6). Further, counsel must use a professional registered reporter or merit reporter to transcribe—not the attorney's secretary (yes, I have seen that happen).

The record on appeal must include an official written transcript of the relevant proceedings, however recorded.[4]

"Regardless of the method of recording the proceedings, a transcript is required for the record on appeal; a videotaped recording of the trial court proceedings is no longer adequate."[5] As with any appeal, it is critical to check the district's local rules. While I was on the Eleventh District, I went totally paperless. I was used to electronic transcripts while in practice. It took some time for E transcripts to catch on with my colleagues and staff, but now they are becoming the rule, not the exception. The Eleventh District has proposed rule amendments outlining the E transcript requirements.

https://www.co.trumbull.oh.us/11thcourt/pdfs/11th%20Dist%20COA%20Amended%20Local%20Rules-2025.pdf

App.R. 9(C) allowing a statement of the evidence or proceedings is only applicable when there was no recording or the recording is not available.[6] It is critical to note that "unavailability" does not mean that a recording of the proceedings has not been transcribed or that the party chooses not to order a copy of the recording in order to have it transcribed.[7]

When an appellant fails to provide a transcript or an alternative to a transcript as provided for in the rules, there is nothing for the appellate court to pass upon, and the validity of the trial court proceedings is thus presumed.

Although App.R. 10(B) appears to place the duty to transmit the record upon the clerk, in reality the ultimate duty to ensure that the record is complete rests with the appellant. Never assume that the exhibits, photographs, trial testimony videos and transcripts will necessarily make it into the files that are delivered to the court of appeals.

Attaching items from the record to your brief will not suffice.[8] While it is true that there is case law in some districts that lift sole responsibility for assuring the record is complete off the appellant, I can say with complete confidence you do not want to risk your one appeal without taking all steps "reasonably necessary to enable the clerk to assemble and transmit the record" pursuant to the language of the rule.[9]

E filing and E records are still new or still not available in trial courts in many districts. A wise appellate practitioner will make a point of going to the clerk's office to review the file to ensure that critical documents have been included. In the past, the Eleventh District has taken a more liberal approach to requests to supplement the record with missing documents; however, many other districts are not so forgiving. When the court discovers that part of the record is missing and so advises counsel, do not delay in responding to the request. It is amazing that some attorneys actually ignore the time period given by the court for supplementing the record prompting a second request before facing dismissal.

Finally, motions for extensions of time to file the record are governed by both App.R. 10 and by districts' local rules. The Eleventh Dist.Loc. R. 10 limits the trial court's ability to extend the time for transmitting the record on appeal to a total extension of time of no more than thirty (30) days so that the time as extended will in no event extend beyond the seventieth (70th) day after the filing of the Notice of Appeal. The Eighth Dist.Loc. R. 10 provides "[e]xtensions of time to transmit the record to this court may be granted only by the court of appeals. Applications for extension of time to transmit the record must be made by written motion and must be accompanied by one or more affidavits setting forth facts showing good cause for extension."

Always consult the latest version of the local rules for the appellate district before you begin the appeal process because they contain a number of possible deviations from the Ohio appellate rules that could cause your appeal to fail otherwise than on the merits. For example, some districts by local rule allow for the sua sponte dismissal of the appeal for failure to timely transmit the record.[10]

The record on appeal is the foundation of your case. Make it a good one. ■

End Notes

1. Black's Law Dictionary.
2. *State v. Grey*, 85 Ohio App. 3d 165 (3rd Dist. 1993).
3. *Shaker Heights v. Johnso*n, 1993 Ohio App. LEXIS 2787 (8th Dist. June 3, 1993).
4. App. R. 9(B)(1); App.R. 9(B)(6) N.B. there are two cases that may afford you some grace, but in my opinion and given the year of each decision, I would not rely on them, *Mentor v. Meyers*, 2014-Ohio-2011 (11th Dist.) (2-1 holding that "[t]he filing of the audio-recorded bench trial substantially complied with App. R. 9 by providing this court with a more-than-adequate record of proceedings to thoroughly assess appellant's assignments of error"); *Cleveland v. Moore*, 2013-Ohio-2899 (8th Dist.) (continuing to quote former version of App. R. 9 that did not require record to include transcript of videotaped proceedings).
5. App.R. 9, 2011 Staff Notes.
6. *Harris v. Transp. Outlet*, 2008-Ohio-2917 (11th Dist.).
7. *Beres v. G. S. Bldg. Co.*, 2007-Ohio-6564 (11th Dist.).
8. *Hinkle v. Right Way Heating and Cooling, LLC*, 2022-Ohio-1649 (10th Dist.).
9. App.R. 10(A).
10. Fifth Dist.Loc.R. 5.

In Memoriam: Remembering Retired Judge Mary Jane Trapp

Editor's Note: *In March, I contacted Retired Judge Mary Jane Trapp about writing an article for the CATA News. She kindly obliged, and emailed it to me the Monday after Easter. Later that week, I, like many others, was shocked and extremely saddened to learn of her unexpected death. What follows on these pages are tributes we gathered from some of the many judges and attorneys who knew and admired her. – KSJ*

USE ALL YOUR TIME
In Memory of the Honorable Mary Jane Trapp

Earlier this year in mid-January as she was winding up things at the Eleventh District Court of Appeals in preparation for leaving the court, Mary Jane reached out to me and asked if I would be the keynote speaker for the Geauga County Bar Association Law Day in April. She explained that she was the chair of the planning committee and that I was the committee's first choice to speak. I include this part about being the committee's "first choice" speaker in case anyone reading this was also asked to keynote the Law Day luncheon, couldn't do so, and Mary Jane threw in that "first choice" line to influence my response. (You can tell me later). After some back and forth, I told her that I saw no reason why I couldn't do it unless by the time April arrived, I would be so burned out and exhausted that I would need to find an island somewhere. She said she would help me find that island: after Law Day.

On Wednesday, April 23, Mary Jane and I were two of three people scheduled to be presenters on a judicial panel for a program of the William K. Thomas Inn of Court. When I arrived, one of the co-chairs for the program committee told me that Mary Jane didn't feel good and would not be attending the event. Disappointed and a bit surprised, I responded, "Wow! She must feel pretty bad." As anyone who has ever worked with MJ knows, she just didn't miss things - especially events in which she was scheduled to participate. A bad sinus infection was the reported culprit.

The next day, I sent her a text message to ask how she was feeling and to check on some final details for Law Day. I surmised that, unless she was still feeling bad or was contagious, I would see her on Friday at the luncheon. She responded, "I feel like a train hit me. I am rarely sick, and do not do sick well." She gave me some logistics and told me that I had 40 minutes to talk. "FORTY MINUTES?" - I exclaimed. "I don't know that I can stand to hear myself talk for that long, let alone subject anybody else to it." I told her I think I'll be everyone's favorite retired jurist if I can cut that time at least in half if not by more. For those who attended the Law Day luncheon, you can thank me later. In what would turn out to be Mary Jane's last words to me, she replied with a smiley face emoji, "Hah. No one will mind if you do not use all your time."

I was called the morning of the luncheon and told that Mary Jane had passed. I was rocked. Still am. The Bar Association officers made the decision to go ahead with the luncheon and program. The event was just hours away, everything was in place, and high school students and others were receiving awards. The Bar officers all agreed that continuing on as planned is what Mary Jane would've wanted. I concurred.

The Honorable Mary Jane Trapp

After the call ended, I sat in silence for a moment. I let the information just given to me sink in. I thought about Mary Jane's and my days on the campaign trail last year and also reflected on our post-election conversations about life ahead. I thanked God for her. I thanked God for the wonderful life she led, for her servant leadership, and for her friendship. I then modified my remarks for the luncheon to reflect some of these sentiments, noted in abbreviated form below.

> I would be remiss if I dared to start talking about this year's Law Day theme without first saying a few words about the Honorable Mary Jane Trapp. As was said earlier, this was her day.
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> * * *
>
> MJ . . . was one of the giants in our legal profession. A top-notch practitioner, a well-respected member of our judiciary, a local and state-wide leader, and an avid and tireless member of so many boards and commissions tasked with helping our legal profession be a better one. On a more personal note - what a loving spirit she was. Simply put, MJ was a warm and compassionate human being who genuinely cared about others.
>
> * * *
>
> I know in the days ahead there will be tributes recognizing the full breadth of her life's work and her contributions.... So for now, I'll just say, farewell MJ. Thank you for your friendship, your collegiality, and for everything you've done to make our little part of the world a better place.

At the time of this writing, I don't know what caused Mary Jane's death: what health issue or issues were so severe that suddenly and abruptly took her from us. I may not ever know. What I do know - what we all know - is that she made the best of the life she lived. She used all her time. She used it well. And we are all the better for it.

Hon. Melody J. Stewart
Retired, Supreme Court of Ohio

This week we lost a brilliant trial lawyer who became a Court of Appeals Judge. The world is better off because we had the wisdom and compassion of the Honorable Mary Jane Trapp. That light was extinguished and her colleagues are devastated.

When one is elected a Judge it does not take long before you realize the incredible authority society has given you. Judges resolve long standing disputes, award damages, decide who gets to keep their kids and who does or does not go to jail. In short, Judges hold a position of trust granted by the electorate.

And that is why we have Courts of Appeals. To monitor the use of that trust by our fellow jurists. I served as a Court of Appeals Judge for ten years and a Supreme Court Justice for five more. In other words, I have a good deal of experience in recognizing who is doing their job well, and who is not. It is to be remembered that on average 95% of all appeals in Ohio result in the Judge and Court affirming what has happened at the lower court. Not that it was perfect, for there is no such thing as a "perfect" trial. But that it was good enough.

But in that 5% that are reversed there is a magical moment when Justice is served in superb fashion. Essentially the reviewing Court has found that an error has occurred and a citizen has been denied a fair day in court. And they can flat out reverse it, or remand it for a new trial. The exercise of such immense authority clearly demands a special trained legal mind.

I had the privilege of working with and for many Judges and I can honestly say one stands out. The Honorable Mary Jane Trapp joined me at the Court of Appeals when I was getting ready to leave for the Supreme Court and she was just beginning her judicial career. For years she and her late husband Mike Apicella had been trial lawyers in Northeast Ohio.

To have served as her senior mentor was a privilege I shall never forget. She was bright, hard working, intellectually curious and determined to make a difference. I can say with certainty that she was far smarter than I will ever be and within months of her arrival she was making a vast difference in our Court. She brought a renewed reverence for collegiality which had been lacking and was only surpassed by her demand for intellectual honesty in all our deliberations. She had the unique ability to demand the right answer even when precedent and the law appeared to be at odds with her view of right and wrong. She was rarely in the minority because of her ability to persuade. I always knew I was in for a long day when she, two clerks and a fellow judge arrived at my chambers to change my thinking on a particular case. She undoubtedly learned those skills as a trial lawyer and President of the Ohio State Bar Association.

In short, Judge Mary Jane Trapp was brilliant, kind, compassionate and always on the right side of the law. As lawyers and Judges we have been honored to call her colleague.

Justice Bill O'Neill
Retired, Supreme Court of Ohio

Justice Bill O'Neill and Judge Mary Jane Trapp campaigning

In Memory of Judge Mary Jane Trapp

It is with profound sadness that I offer my condolences on the passing of my cherished colleague and dear friend, Judge Mary Jane Trapp. For over forty years, I have had the privilege of knowing Mary Jane as both a professional peer and trusted confidant.

Throughout our careers, we served together on several Supreme Court and Judicial Conference commissions and committees, where her intellectual rigor and unwavering commitment to justice consistently elevated our work. As fellow judges on the Court of Appeals, I witnessed firsthand her remarkable ability to analyze complex legal issues with both precision and compassion. What I admired most about Mary Jane was her keen mind paired with her genuine sense of justice. She approached each case not as an abstract legal problem, but as an opportunity to apply the law with fairness and integrity. Her judicial philosophy was never ideological - she simply followed the law with wisdom and humanity.

Beyond her impressive professional achievements - from her leadership as President of the Ohio State Bar Association to her recent service as president-elect of the Geauga County Bar Association - Mary Jane was, above all, a person of extraordinary character and warmth. Her insight, wit, and kindness made her not just an exemplary jurist but a true friend.

The Ohio legal community has lost one of its brightest lights, but Mary Jane's legacy of service and unwavering commitment to justice will continue to inspire all who knew her. I am forever grateful for our decades of friendship and collaboration, and will miss her deeply.

May she rest in peace.

Judge Eugene A. Lucci
11th Dist. Court of Appeals Ohio

Excellence, integrity, commitment to the law and service, inspirational leader, trailblazer, and friend, these are the words that come to mind when I think of Judge Mary Jane Trapp. An exceptional jurist in every sense, but even more importantly, an exceptional human being. Giving, trustworthy, honorable, compassionate, principled, and strong, Judge Trapp touched countless lives, including mine. She embraced me, as she did others, encouraging and lifting us up. She understood that justice and dignity belong to everyone. With her words and her actions, Judge Trapp made a meaningful difference in this world, and now she calls us to do the same. Let us honor her life by continuing her legacy to live with purpose and passion, striving for justice for all people, in every facet of our lives.

Judge Betty Sutton
9th District Court of Appeals, Ohio

Judges Betty Sutton and Mary Jane Trapp, 2023 Annual Dinner

Mary Jane Trapp

A wise, caring jurist, an effective bar association and community leader, a dedicated and productive law firm partner, a great lawyer, and a dear friend. These are just some of the characteristics that come to mind when I think of Mary Jane Trapp. Her surprising and untimely death came to me as I am sure it did to most others - a shock and then profound sadness. We were all better because of her, and the impact of her loss will resonate through our profession and the general public as well. Rest in peace my friend and colleague.

John Liber
Thrasher, Dinsmore and Dolan

Mary Jane Trapp with CATA Members and Judge Cassandra Collier-Williams, 2024 Annual Dinner

My Heart Is Broken - Remembering Judge Mary Jane Trapp

My heart is broken! I want to share a memory - the original woman's retreat 2 years ago Ms Mary Jane and I went on a hunt for supplies for a woman who had a syncopal episode. We talked and told life stories and shared goals. I admire her and her love for fellow female attorneys and her passion for law and justice.

In that brief time searching for help together, I saw the genuine person behind her impressive career. She listened intently, asked thoughtful questions, and shared small glimpses of her own journey in law. There was no pretense, just authentic connection.

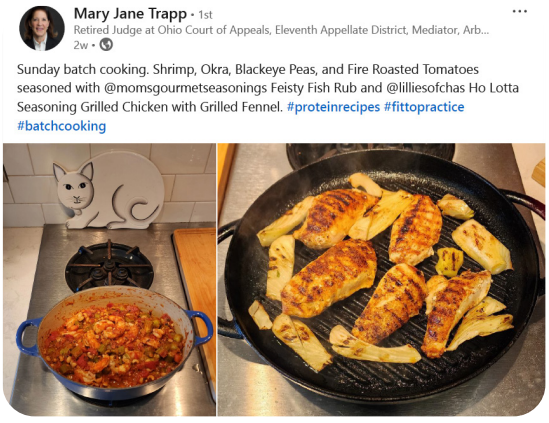
Mary Jane had this special way of making you feel valued. Not with grand gestures, but through her undivided attention and quiet understanding of the challenges we face as women in this profession.

What stays with me most is how she carried herself with both strength and kindness - qualities I strive to bring to my own practice. She showed me that you don't have to choose between being respected and being compassionate.

Our legal community has lost a remarkable advocate. I've lost someone whose brief but meaningful support will continue to inspire me. For that short time, helping a colleague in need, Mary Jane made me feel like I truly belonged in this profession.

I'll miss her terribly.

Heather Thomas, Heather L. Thomas Law, LLC



One of Mary Jane Trapp's last Facebook posts

Mary Jane Trapp and husband Mike Apicella, with Kathy St. John, 2015 Annual Dinner

Farewell, Dear Colleague

My darling MJ,

By the time I met you, you already had seen it all. You graduated from law school in a time when literally everyone assumed you were someone's secretary. You endured the judges who took umbrage at the audacity you displayed wearing pants in court. You suffered countless colleagues who disregarded your intellect, work ethic, and drive because you had the audacity to do it all in a skirt. You knew what it was like to feel as though you could never win, even when you were, in fact, winning.

You navigated the landmines of a man's profession in kitten heels. With grace. And elegance. And good humor. Inexplicably, you were never jaded or cynical. You radiated positive energy, like you knew that somehow, some way, if we all worked hard enough, everything would be fine. You were endlessly and aggressively good. Simply put, there was no one like you. I needed you long before I met you. And I needed you much longer than the ten years I was lucky enough to call you my friend.

I spent April 25 calling many of our friends. I wanted them to hear the news of your passing from somewhere better than Facebook. Dozens of people said some iteration of, "I just talked to/texted with/saw her!" Well, as George Carlin put it, "Didn't help." Through this retrospective case study, we have again confirmed the noncontroversial hypothesis that there are no medicinal qualities to our interactions.

But you did help. You created and nurtured a culture of community and connectedness. Being in your orbit was a magical thing. You cared about everyone. I've been reading your opinions as the waves of grief wash over me. They shine with the light of someone who cared about people. The majority opinions and, more pointedly, your dissents. You took the time to write them. And you were a great writer (something I've said of maybe three people total in the world). I suspect you wrote dissents to give the non-victorious litigant the solace that their views had been considered and taken seriously. Thank you for that.

I never had a woman mentor. Until you. I could rely on you for sound advice about anything from a thorny ethical conundrum to the ideal skin care regimen.

Every time I sit patiently while the judge charges a jury in Ohio, I will think of how you touched every word of those instructions. And I am determined to power through without dissolving into a puddle of tears.

Every time I return to an Inn of Court gala at the Supreme Court in DC, I will fondly reflect on our road trip playlist and the many ball gowns we wore. Late-night karaoke trips will not be the same without you (whether or not I'm in a ballgown). You'll be with me every time I roll out my yoga mat.

I am glad you knew how much you meant to me. But there are so many things I didn't get to tell you. Did you know I would wait until the next time I saw you to give you any good news I had to share? Because telling you in person was the best. I loved making you proud. Good news: I start my term on the Board of Trustees for the American Inns of Court Foundation in July. Getting through that event without you is going to take an unreasonable amount of waterproof mascara. I'm also sad we didn't get to kvetch over chardonnay at the indignity of relegating former Chief Justice O'Connor's portrait to the basement, returning the Grand Concourse of the Supreme Court of Ohio into a shrine to those who don't look like us. Neat.

You took everyone seriously. And by seeing themselves reflected by you, so many of us learned to take ourselves seriously. You saw the value and potential in everyone. And reflected it back to us so we could see it, too. Helping people see themselves was your superpower. Well, one of them.

When I chose you to succeed me as president of the William K. Thomas American Inn of Court (Avery would want me to say "northeast Ohio's only Platinum Inn"), in 2022, we joked that now I was your mentor. I delighted in calling you my "mentee." What a joke. You towered above me in every way. I am just one of countless women who shined in your magnificence and are better because we knew you.

You made me believe that I could do anything. That I belonged in any room I wanted to occupy. You were endlessly supportive and infinitely kind. (Fun fact: we have now hit more adverbs in this tribute than I've deployed collectively in the past five years of briefs I've written. We'll chalk that up to my being tenderized by despair.)

You are gone but your legacy will endure in the hearts of so many of us who loved you. I lift you up in my heart. And I will endeavor to lift up others as you did.

Rest in peace. With love, Ashlie

Ashlie Case Sletvold
Peiffer Wolfe, LLP

The Honorable Mary Jane Trapp was one of a kind. She stood out to me before we ever met when I took note of her 11th District opinions as a law clerk doing research for a busy plaintiff's firm. Her opinions were not only eloquently written and well reasoned, but they were written with regard for the real world, with respect for the very real effect her holdings would have on real people. She did not reason from the vacuum of a judge's chambers. She seemed to be a judge for the people.

We then became acquainted at CATA dinners which she attended with her husband until he passed. Their love was one that stood out in a full room. She was clearly adored and respected by everyone in attendance.

I was fortunate that the William K. Thomas Inn of Court brought us closer together. She was a leader, but always approachable, and I found the guts one day to confess my MJT fan girl status to her. She was always gracious, witty, strong, and down to earth.

It must have been December of 2020 when I found myself locked down with 5 week old twins, a one year old, a 5 year old, and a Covid positive husband. MJT was one of the women of the Inn (thanks to them all) who cooked meals for my family to get me through that extreme and terrifying challenge. That kind gesture is one that I will never forget, and spoke volumes of what these women including MJT were made of.

Later working and living in Geauga County, I came to wonder how the heck MJT could be in so many places at one time. She was in every parade, at every local gathering, at every award ceremony, and at every community event. Her energy seemed endless. And her involvement wasn't just because she campaigned harder than anyone else, which she seemed to, but I'm sure she genuinely cared to support her community. She wanted to share her love and passion for the law with anyone and everyone on both sides of the aisle.

Her joy and talent for cooking leaves us inspired. MJT mastered the healthful enjoyment of life through food. She taught us that breaking bread with friend or foe is key to finding common ground.

She was a joyful spirit and brilliant woman, and we were so fortunate to know her. She is gone too soon. May she rest in peace knowing that she will be remembered as a judge and human being who gave all she had in service of others. Now, in spirit, she really will be everywhere at once, uplifting her friends and her community, just in a different way.

Meghan Connolly, Lowe Trial Lawyers

Announcements - Spring 2025

Editor's Note: *In this feature of the CATA News, we invite our members to share important milestones and achievements in their professional lives.*

Recent Promotions and New Associations

Lowe Trial Lawyers is pleased to announce the addition of **Associate Attorney Jen Evans** to the team. The firm benefits greatly from Jen's breadth of experience as both a paralegal and attorney prior to her joining the firm. Jen's practice focuses on client communication and building value during the pre-suit phase of motor vehicle, premises, and dog bite cases.

Honors, Awards, and Appointments

Florence A. Murray was elected to the board of directors of the Brain Injury Association of America (biausa.org) at the annual meeting in DC in March.

Florence is also now double board certified in Civil Trial Law and Truck Accident Law by the National Board of Trial Advocacy.

FG+G Partner Sarah Gelsomino was named one of Crain's Cleveland 2025 Notable Litigators and Trial Attorneys. She was also inducted into the International Society of Barristers at the ISOB annual meeting in Aruba.

Firm Name Change

Lowe Scott Fisher Co., LPA is pleased to announce the firm will now be known as Lowe Trial Lawyers. The rebrand celebrates the firm's 48+ year legacy of representing catastrophically injured plaintiffs with the standard of excellence established by founding partner James Lowe. The rebrand coincides with the opening of Lowe Trial Lawyers' Main Office at 5875 Landerbrook Drive, Suite 220, Mayfield Heights, Ohio 44124.

Ellen Hobbs Hirshman is an attorney at Lowe Trial Lawyers. She can be reached at 216.781.2600 or ehirshman@lsflaw.com.

Pointers From The Bench:
An Interview With Judge Lauren C. Moore

By Ellen Hobbs Hirshman

Judge Lauren C. Moore is the newest occupant of Cuyahoga County Court Room 21B, but she is hardly a rookie on the bench. Judge Moore served Northeast Ohio for twenty-one years as a Cleveland Municipal Court Judge and in November 2024 was elected to the seat previously held by retiring Judge Kathleen Sutula.

Judge Lauren C. Moore

Judge Moore was born and raised in Cleveland, Ohio the eldest of four children. She graduated from Shaker Heights High School where she describes herself as having been an extremely shy nerd, who always received good grades but was more of a wallflower at that point in her life. Education was a powerful motivator in her family and emphasized by her parents. Once Judge Moore went to Spelman College, she found her voice and experienced first-hand the power in standing up and speaking out. At Spelman she found herself surrounded by so many confident black women, students and teachers, who inspired her to abandon the comfort of her quiet zone and step into a lifetime commitment of service and enlightenment. At Spelman she served in student government, where she continued to be in awe of the powerful, ambitious, bright women with huge personalities.

After graduating from Spelman with a bachelor's degree in English, Judge Moore returned to her roots in Cleveland where she attended Case Western Reserve School of Law. Judge Moore always knew that the law was her path; it is a passion she inherited from her father, William David Moore. Her father dedicated his lifelong law practice to helping low- and middle-class working families. It sounds cliché but her true motivation to becoming an attorney was always to help people. She learned this firsthand by watching her dear father. She recalls that when they had to pack up her father's office when he was no longer able to practice law after falling ill, she uncovered a pile of uncashed checks from his former clients. Her father explained that these people may not have a lot of money, but he wanted them to keep their dignity, so he permitted them to pay him for his legal services. He chose, however, to not cash their checks. What a wonderful lesson in treating others with compassion and respect.

It was during law school that Judge Moore met her husband of thirty-seven years. They have two children, a son who serves on the Ohio Environmental Counsel as a political advocate and a daughter who works for the City of Cleveland Heights in the City Planning Department.

After law school, Judge Moore worked as a public defender and a legal aid attorney and Cleveland City Prosecutor until becoming a Cleveland Municipal Court Judge in 2004. During her last ten years on the municipal bench, she presided over the drug court and the medically assisted treatment program. She describes her experience with the drug court as being very satisfying and enlightening. She was able to be creative and innovative. Judge Moore took advantage of this opportunity to incorporate some unique programs/opportunities for the participants. While she presided over the Court two books were published. The first is called *Growing in Recovery*, a compilation of artistic expressions, testimonials, motivational essays, and artistic renderings from the drug program participants. The second book, published three years ago, is titled *Landscapes of Recovery*. This book contains an inspiring collection of poems, pictures, photos, and stories authored by the program participants. Each artistic expression charts a path to recovery, pitfalls and successes. You may locate these publications proudly displayed in her chambers.

Judge Moore as author under pen name Lauren Cecile

Judge Lauren C. Moore and husband

In addition to these two publications, Judge Moore created a therapeutic recovery program she titled "Yoga on the Beach." Saturday mornings in the summertime, she and the participants would gather on the beach at Edgewater Park for yoga, another form of healing and meditation. These innovative programs were instrumental in the success of the drug program. Judge Moore established these programs as outlets for the program participants to facilitate their path to healing and integration into the community.

Although it has only been several months, Judge Moore finds the Common Pleas bench to be quite intimate. There are more attorneys and prosecutors entering her courtroom on a daily basis and there is a completely different dynamic. She believes it is a different pace; one never knows what may occur on a day-to-day basis. When asked to describe her reputation as a Judge, she states that she is fair, impartial, and not a push-over. She also is patient, prepared, and knowledgeable. No one is more prepared in her courtroom than Judge Moore herself.

In her free time, Judge Moore loves to play tennis. She is not a pickleball fanatic, but a traditional tennis player. She enjoys playing with her husband and friends.

Judge Moore is also an accomplished, published author. She publishes under her pen name, Lauren Cecile, and has published a history novel, a travel book, a book outlining pandemic projects and others. The following is a list of her publications (#3 and 4 were her pandemic projects):

1. *Eyes Like Mine* (historical fiction, published 2015)
2. *Make the World Your Oyster: The Ultimate Travel Guide* (published 2019)
3. *Debbie's Daunting Dilemma: Alliterative Short Stories to Improve Your Vocabulary and Master Standardized Tests* (published 2021)
4. *Knowledge is Power: How much Do You Know, a Quiz Book* (published 2021)
5. *Keep It Classy* (an etiquette book, published 2025)

Understandably, Judge Moore is proud that her first book *Eyes Like Mine* has been honored in the form of a monument in front of the Shaker Heights Library.

Judge Moore also enjoys traveling. Her travels have taken her to Ghana, Senegal, Dubai, London, Paris, Berlin, Rome, Turkey, Istanbul, and even the Vatican where the Pope blessed them. Judge Moore is also blessed to be spending time with her mother and her sisters who chose a path in the education field. She is also active with her sorority, Alpha Kappa Alpha, the first intercollegiate historically African American sorority founded on January 15, 1908.

Judge Moore has been the recipient of many honors including the UNCF Eagle Award, The County Prosecutor's Eagle Award, Phenomenal Women Foundation award, National Council of Negro Women Meritorious Service award, Murtis Taylor's Ebony Rose award, the Justice Award from El Hasa Court #47, Phi Delta Kappa award for outstanding service in support of school youths in the greater Cleveland area, and Omega Psi Phi Fraternity, Inc. Zeta Omega Chapter Civic leader of the Year award. She is a former member and Vice President of the Cleveland Chapter of Jack and Jill of America, Inc. and President of the Ludlow Community Association, a neighborhood known nationally for being a model of racial tolerance and integration.

Judge Moore is committed to giving back to the community. She participates in several mentoring programs and enjoys having students shadowing her to complete their senior projects. The Cleveland Metropolitan Bar's 3R's program, the Get on Track program and the Mock Trial Competition for the Cleveland/East Cleveland Municipal School Districts are just a few of the programs she devotes her time to. She is particularly proud of the Get on Track program which she co-founded. The program assists young people to alter their trajectory in life by obtaining a G.E.D. and participating in community service and lifelong employment.

It is often stated that you cannot judge a book by its cover, but Judge Moore is the exception. She possesses an incredible smile and spirit that immediately draws you in and captivates you. Northeast Ohio is privileged to have this bright, experienced jurist on the bench. ■

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Effective Use of Discovery Sanctions; More Than Just Your Costs

Courts have broad authority under Ohio law to sanction parties who flout discovery obligations, ensuring a fair balance in litigation.[1]

by Kyle B. Melling

We are all aware that discovery is the lifeblood of a case. When a plaintiff files a lawsuit, many times they know in their minds that they should prevail, but they can only obtain the evidence needed to prove their case through the discovery process. Accordingly, when a defendant thwarts the discovery process – by violating court orders or hiding and withholding crucial information – Ohio courts have broad discretion to wield significant sanctions. Unfortunately, too often both our courts and litigators are limited in their thinking that the only sanctions available to them are financial, i.e., the cost of filing the motion. While financial gain is always nice, and recovering the costs of filing a motion feels satisfactory, at the end of the day it doesn't do anything to help the plaintiff. Worse, the few thousand dollars that are awarded hardly do anything to deter the defendants from repeatedly committing discovery violations.

Below, in examining the relevant Ohio Rules of Civil Procedure and Ohio case law, I have attempted to outline two different opportunities for thinking outside of the box. First, looking at sanctions beyond financial, such as negative inferences, all the way up to full blown liability determinations. Second, looking at opportunities for sanctions without blatant violations of discovery orders from the court. Think about setting up your case for sanctions, without even having a court order violated.

Ohio Rules Governing Discovery Violations and Sanctions

Ohio's Civil Rules provide a framework to compel compliance and punish discovery abuses. Ohio Civ.R. 37 is the primary rule authorizing sanctions for discovery violations. It addresses situations ranging from failure to obey specific court orders to general non-cooperation in discovery. The rule grants trial courts broad discretion to impose "just orders" against a noncompliant party. Below we outline the key provisions relevant to defendants stonewalling discovery in personal injury cases.

Violating a Court Order: Civ.R. 37(B) Sanctions

When a defendant violates a court's discovery order (for example, an order compelling answers or document production), Civ.R. 37(B) empowers the court to impose sanctions. Under Civ.R. 37(B)(1), if a party "fails to obey an order to provide or permit discovery," the court "may issue further just orders" including:

- **Establishing Facts:** Directing that the matters or facts sought in discovery be taken as established in favor of the requesting party. Civ.R. 37(B)(1)(a). This essentially precludes the offending defendant from disputing certain key facts, which can be devastating in a liability determination.
- **Excluding Claims or Evidence:** Prohibiting the disobedient party from supporting or opposing designated claims or defenses, or from introducing certain evidence. Civ.R.37 (B)(1)(b). A defendant who withholds evidence might be barred from later introducing contrary evidence or defenses on that issue.
- **Striking Pleadings:** Striking pleadings in whole or part. Civ.R. 37(B)(1)(c). The court might strike the defendant's answer or affirmative defenses, leaving them without a defense against some or all of plaintiff's claims.
- **Stay or Dismissal:** Staying the proceedings until the order is obeyed, or dismissing the action (or the defendant's counterclaims) in whole or part. Civ.R. 37(B)(1)(d).
- **Default Judgment:** Entering a default judgment against the disobedient party. Civ.R. 37(B)(1)(f). In egregious cases, the court can decide liability in the plaintiff's favor as a sanction.
- **Contempt:** Treating the failure as contempt of court. Civ.R.37(B)(1)(g)

In addition, Civ.R. 37(B)(3) requires the court to order the offending party or the attorney advising the offending party to pay the reasonable expenses, including attorney's fees, caused by the failure, unless there was substantial justification or circumstances. This fee-shifting is designed to make the injured party whole for the cost of seeking court intervention. It is important to remember that the financial portion of Rule 37 sanctions is "instead of or in addition to." When filing for sanctions, start with requesting the six enumerated sanctions first, prior to simply asking for costs and expenses. Not only will this deter future sanctionable behavior, but it will also help the plaintiff in the prosecution of their claim.

Ohio courts have emphasized that they have broad discretion in fashioning appropriate sanctions under Civ.R. 37(B). However, the harshest sanctions (like dismissal or default judgment) are typically reserved for willful or bad-faith violations. Ohio precedent, in line with federal guidance, holds that "the harsh remedies of default and dismissal should only be utilized when the failure to comply with discovery is due to willfulness, bad faith or fault" of the offending party.[2] In other words, a mere inadvertent or minor compliance issue is unlikely to result in a default judgment, but a defendant's willful disobedience of a court order – such as deliberately hiding documents – can justify the request and granting of terminating sanction.

Discovery Misconduct Without a Prior Order: Civ.R. 37(D) Failures

In today's climate, often a defendant's discovery violations occur *before* any court order is in place. Further, in some venues it can be difficult to get court orders for discovery violations, or the time it takes to obtain them can easily eat up all of the time the court has allotted for discovery. Thankfully, Ohio Civ.R. 37(D) addresses these situations, allowing immediate sanctions for certain complete failures. Specifically, if a party fails to appear for their deposition after proper notice, or fails to serve any answers or objections to duly served interrogatories or requests for inspection, the requesting party can move directly for sanctions. Unlike Civ.R. 37(B), no prior motion to compel or court order is required; the rule treats a total failure to respond as inherently sanctionable.[3]

Permissible sanctions under Civ.R. 37(D) include the same array of penalties available under 37(B)(1)(a)–(f) (establishing facts, striking defenses, default judgment, etc.), along with mandatory fee awards to the aggrieved party. Notably, default judgment can be imposed under Civ.R. 37(D) for a defendant's complete failure to participate in discovery, without any prior court order compelling compliance.[4] Ohio courts have upheld such severe sanctions in appropriate cases. For example, in *American Sales, Inc. v. Boffo*,[5] the defendants failed to appear for their depositions after proper notice. The trial court entered default judgment against them as a discovery sanction under Civ.R. 37(D), and the appellate court affirmed, noting that no prior court order was required given the blatant non-compliance. The appellate court in *Boffo* emphasized that a party who chooses to ignore a notice of deposition "waives his objections to the discovery sought" by not timely seeking a protective order, and thus runs the risk of immediate sanctions.

In practice, this means if a defendant simply stonewalls – fails to answer discovery or skips a deposition – plaintiff's counsel can move for sanctions right away. Courts may grant sanctions up to and including default if the non-compliance was unjustified. Defense counsel cannot later argue the discovery was objectionable if they never moved for a protective order; as the court bluntly stated, "By waiting until a motion for immediate sanctions has been made, [the party] waives his objections."[6]

Failure to Disclose or Supplement: Civ.R. 37(C)

Ohio's discovery rules also address situations where a party fails to disclose information or witnesses as required, or fails to supplement prior discovery responses. This often arises when a defendant omits key facts or witnesses in either their initial disclosures (now required in Ohio) or does not update their discovery responses when new information comes to light. Under Civ.R. 37(C)(1), if a party fails to timely identify a witness or provide information as required by Civ.R. 26(A) (initial disclosures) or 26(E) (duty to supplement), the default penalty is automatic exclusion – the party "is not allowed to use" that witness or information as evidence in motion practice, hearing, or trial, unless the failure was substantially justified or harmless.

Say, however, that the hidden witness would be advantageous to the plaintiff's case, if he/she had known about him. The court can impose other sanctions. On motion, after giving an opportunity to be heard, the court may impose any of the sanctions listed in Civ.R. 37(B)(1)(a)-(g) repeated above! Importantly for negative inferences, Civ.R. 37(C)(1)(b) expressly allows the court to inform the jury of the party's failure to disclose the key fact or witness. In a jury trial, this can equate to an adverse inference instruction – essentially telling the jurors that the defendant withheld information and they may draw negative inferences from that fact.

For example, if a defendant in a car accident case fails to disclose a surveillance video during discovery and only reveals it at trial (or it comes to light through other means), Civ.R. 37(C) empowers the court to exclude the video and even tell the jury that the defendant hid evidence. The rule thus ensures that a defendant cannot benefit from trial by ambush or strategic omission of damaging evidence.

Spoliation and E-Discovery: Civ.R. 37(E) and Adverse Inferences

Increasingly, discovery disputes involve spoliation of evidence – the destruction or loss of relevant information, including electronically stored information (ESI). In Ohio, the intentional destruction of material evidence can give rise to an independent tort claim for spoliation.[7] However, Ohio courts limit that tort to actual destruction or alteration of evidence; "intentional interference with or concealment of evidence" (without physical destruction) is *not* actionable as a tort, and instead must be remedied within the underlying case via discovery sanctions.[8] In other words, if a defendant hides or fails to produce evidence (but does not destroy it), the plaintiff's recourse is to seek sanctions under Civ.R. 37 in the personal injury action itself, rather than filing a separate spoliation lawsuit. The Ohio Supreme Court made this clear in *Elliott-Thomas v. Smith*,[9] noting that Civ.R. 37 provides trial courts with broad discretion to deter and punish discovery abuses by parties or counsel who conceal evidence. Why does this matter? Because we must pursue these discovery sanctions early, during the discovery period, so that we can obtain one of the enumerated discovery sanctions in Civ.R. 37.

Moving to more modern issues, for electronically stored information, Ohio amended Civ.R. 37(E) (effective July 1, 2021) to closely mirror the federal rule. Under Civ.R. 37(E), if ESI that should have been preserved in anticipation of litigation is lost and cannot be restored or replaced, the court will first assess prejudice. For negligent or inadvertent loss causing prejudice, the court may order measures no greater than necessary to cure the prejudice (e.g. additional discovery, or perhaps exclusion of certain testimony). However, if the court finds that a party acted with intent to deprive the opponent of the information's use, then much harsher sanctions are available. In cases of intentional spoliation of ESI, the court may presume the lost information was unfavorable to the party, instruct the jury that it may (or must) presume the information was unfavorable, or even dismiss the action or enter a default judgment. These sanctions essentially codify the adverse inference practice: the jury can be told to infer that the missing emails or files would have hurt the defendant's case, which can swing the outcome decisively. Notably, prior to this rule change, Ohio courts had discretion to issue adverse-inference instructions for spoliation under their inherent authority; now the rule provides a uniform standard, especially requiring intent for the most severe inferences.

Outside the ESI context, courts still retain inherent power to address physical evidence spoliation. A common remedy is a "missing evidence" adverse inference, given appropriate proof of malfeasance. Ohio courts generally require a showing that the evidence was intentionally or negligently spoliated by the party, and that the loss of evidence has prejudiced the other side, before instructing a jury that they may infer the evidence would have been unfavorable to the spoliator.[10] In egregious cases, courts have not hesitated to impose default judgments for spoliation of critical evidence. For instance, other jurisdictions have entered default against defendants who destroyed key documents to prevent their use at trial.[11] Ohio judges similarly recognize that when a defendant's discovery misconduct "tips the balance in a lawsuit" by eliminating evidence, strong sanctions are needed to preserve the integrity of the process.

Ohio Case Law: Sanctions Leading to Adverse Inferences or Liability

Ohio appellate decisions illustrate how discovery sanctions can turn the tide of litigation. We have already noted *American Sales, Inc. v. Boffo*, where the defendants' total non-compliance (ignoring deposition notices and prior discovery orders) resulted in a default judgment against them. The court effectively determined liability in the plaintiff's favor as a sanction, a dramatic but warranted outcome given the willful discovery violations. Similarly, in *Cunningham v. Garruto*, an Ohio court upheld a default judgment against a defendant who failed to answer discovery, emphasizing that such a severe sanction was justified due to the defendant's willfulness and bad faith (and cautioning that lesser failures would not merit default).[12]

On the issue of spoliation, the Ohio Supreme Court's 2018 decision in *Elliott-Thomas v. Smith*[13] is instructive. In that case, a plaintiff alleged that defense attorneys deliberately concealed and failed to produce emails in discovery. The plaintiff attempted to sue for spoliation, but the Supreme Court held that because there was no proof the evidence was destroyed, the proper remedy was through discovery sanctions in the underlying case – not a separate tort action. The clear implication is that the trial court in the underlying case could have, for example, sanctioned the defendants by deeming certain facts admitted or by instructing a jury that the hidden emails (once revealed) showed consciousness of wrongdoing. The Supreme Court noted that Ohio trial judges "should be diligent" in using Civ.R. 37's tools to deter lawyers and litigants from abusing the discovery process. In short, Ohio case law reinforces that courts will support strong measures – from fee awards to adverse inferences to default judgments – when a defendant's discovery violations prejudicially disrupt the plaintiff's case.

It is worth noting that Ohio's approach aligns with general principles in other jurisdictions. Courts around the country have increasingly cracked

down on discovery abuse. For example, in *Staubus v. Purdue Pharma, L.P.*,[14] a Tennessee court recently entered a default judgment as a discovery sanction against a pharmaceutical company that engaged in protracted evasiveness during discovery. And the federal Fourth Circuit upheld a default sanction in a case where defendants wiped hard drives in bad faith, concluding that "no less drastic sanction" could adequately address the prejudice to the plaintiff or deter such conduct in the future.[15] These examples underscore a universal message: willful discovery violations, especially those hiding the truth, can lead courts to essentially decide the case via sanctions.

Strategies for Leveraging Discovery Sanctions in Personal Injury Cases

For Ohio personal injury attorneys, discovery sanctions are a powerful tool to ensure fair play. Below are strategies to effectively leverage these sanctions when facing a recalcitrant defendant:

- **Be Proactive with Motions to Compel:** Don't tolerate repeated discovery delays or incomplete answers. If a defendant is stonewalling or providing evasive responses, file a motion to compel under Civ.R. 37(A). An **"evasive or incomplete answer"** is treated as a failure to answer at all, so insist on full compliance. Early court intervention puts the defendant on notice that non-compliance has consequences, and it builds a record of misconduct if sanctions become necessary.
- **Document Every Violation:** Keep meticulous records of the defendant's discovery failures – unanswered interrogatories, missed deadlines, deposition no-shows, etc. This documentation will support your motion for sanctions. When you move for sanctions, detail the chronology of the defendant's non-compliance and attach supporting exhibits (e.g. correspondence, the court's compel order, the unanswered discovery). A clear timeline of defiance can persuade the court that harsher sanctions (like issue preclusion or default) are justified.
- **Seek Sanctions Incrementally (if appropriate)**: Courts often prefer to impose gradually escalating sanctions. You might first request lesser sanctions (like an order to compel plus attorney's fees). If the defendant still disobeys, then seek more severe penalties (e.g. exclusion of defense evidence, or striking their answer). Showing the court that you gave the defendant opportunities to comply can strengthen your case for the nuclear option when those chances are squandered.
- **Aim for Adverse Inference or Issue Preclusion:** In cases where the defendant's misconduct conceals specific facts (such as destroying a report or hiding maintenance logs), tailor your requested sanction to fit the offense. For example, move for an order establishing certain facts in your favor – say, that the product was defective or the defendant had notice of a hazard – as a sanction for failure to produce related documents. Alternatively, request an adverse inference instruction to the jury (or a finding by the court) that the missing evidence would have been unfavorable to the defendant. This not only punishes the wrongdoer but also substantively advances your case by filling an evidentiary gap created by the violation.
- **Educate the Court on Prejudice:** When arguing for sanctions, clearly articulate how the defendant's violation has prejudiced your client's ability to prove their case. For instance, explain that failing to receive the truck's maintenance records has hamstrung your expert's analysis of the brake failure. Judges are more inclined to grant serious sanctions if they see a tangible risk to the fairness of the trial. Tie the requested sanction to curing that prejudice (e.g., "Because we cannot inspect the lost evidence, we ask the Court to presume it reflected negligence").

Conclusion

Discovery sanctions exist to ensure that litigation is not a game of hide-and-seek. In Ohio personal injury cases, where the stakes for injured plaintiffs are high, courts are empowered to enforce transparency and punish those who flout the rules. Whether through compelling disclosure, issuing adverse jury instructions, or even entering judgment outright, judges have a full arsenal of sanctions under Civ.R. 37 to deal with recalcitrant defendants. The key for plaintiff's counsel is to be vigilant and assertive in holding defendants accountable to their discovery duties. By understanding the rules and Ohio case law on discovery sanctions, and by strategically leveraging these remedies, seasoned personal injury attorneys can protect their clients' rights and turn a defendant's discovery misconduct into a powerful advantage in the pursuit of justice. ■

End Notes

1. *Elliott-Thomas v. Smith*, 154 Ohio St.3d 11, 2018-Ohio-1783; *Toney v. Berkemer*, 6 Ohio St.3d 455, 458 (1983).
2. *Cunningham v. Garruto* 101 Ohio App.3d 656 (3rd Dist. 1995).
3. *American Sales, Inc. v. Boffo*, 71 Ohio App.3d 168 (2d Dist. 1991).
4. *Id.*
5. *Id.*
6. *Id.* at 174.
7. *Elliott-Thomas v. Smith*, 154 Ohio St.3d 11, 2018-Ohio-1783.
8. *Id.*
9. *Id.*
10. *Branch v. Cleveland Clinic Found.*, 2011-Ohio-3975.
11. *QueTel Corp. v. Abbas*, 819 Fed.Appx. 154 (VA. 4th Cir. 2020).
12. *Cunningham v. Garruto*, 101 Ohio App.3d 656 (3rd Dist. 1995).
13. 2018-Ohio-1783.
14. No. C41916 (Tenn. Cir. Ct. Apr. 6, 2021).
15. *QueTel Corp.* at 156.

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"Keeper" vs. "Kept": What does it mean to "keep" a dog?

By Colin R. Ray

Readers of this publication are likely familiar with Ohio's two-track system for imposing liability in connection with injuries caused by dogs. Persons injured by dogs may pursue a claim directly under the dog harm statute, R.C. 955.28, or a common law claim under the case law. Issues can arise, however, when an out-of-possession owner has relinquished control of the animal to one who becomes a "keeper" of the dog.

Under the dog harm statute, R.C. 955.28(B),

> The owner, keeper, or harborer of a dog is liable in damages for any injury, death, or loss to person or property that is caused by the dog, unless the injury, death, or loss was caused to the person or property of an individual who, at the time, was committing or attempting to commit criminal trespass or another criminal offense other than a minor misdemeanor on the property of the owner, keeper, or harborer, or was committing or attempting to commit a criminal offense other than a minor misdemeanor against any person, or was teasing, tormenting, or abusing the dog on the owner's, keeper's, or harborer's property.

In many cases, particularly where there are no facts regarding trespassing or provocation, the statute is sufficient to impose liability on the owner, keeper, or harborer of the dog. But "under common law, a plaintiff suing for injuries inflicted by a dog must show that the defendant owned or harbored the dog, that the dog was vicious, that the defendant knew of the dog's viciousness, and that the defendant was negligent in ***keeping*** the dog." *Flint v. Holbrook*, 80 Ohio App.3d 21, 25-26 (2d Dist. 1992) (emphasis added).

What, then, happens when someone is "keeping" or "harboring" a dog, such as a kennel worker or a dog-walker, if the dog causes them harm? Under the black-letter law, such a person retains their common law cause of action against the owner. "[W]e note that 'keepers' or 'harborers' of dogs that proximately cause injury to them still have a common-law cause of action against the dog's owner." *Khamis v. Everson*, 88 Ohio App.3d 220, 226 (2d Dist. 1980) *citing Warner v. Wolfe*, 176 Ohio St. 389 (1964). *Warner* specifically held that *trespassers* still maintain their common law cause of action against owners with knowledge of the vicious nature of their dogs.

For "keepers," the case law is less clear. A "keeper, in the context of R.C. 955.28(B) is one having physical charge or care of the dog." *Kircher v. Baugess*, 2013-Ohio-4569 ¶10 (12th Dist.). Under *Kircher*, "injured 'keepers' cannot avail themselves of the strict liability protections within the statute, and instead, may proceed under common-law negligence principles." *Id.* ¶11.

The issue arises where the defendant dog owner is not "keeping" the dog at the time harm occurs. Few cases have addressed this issue in Ohio. Dog owners will likely argue that despite the clear language of *Warner* and *Kircher*, since they are

not "keeping" the dog at the time harm occurs as contemplated in *Flint*, they cannot be held liable.

The word "keep," like many general verbs, is susceptible to many meanings. Within the context of the law, it is rarely defined in legal dictionaries or style guides, leading practitioners to seek other sources. General dictionaries provide dozens of definitions for the term keep, many of which would be contradictory within the context of the element that a "defendant was negligent in ***keeping*** the dog" under *Flint*. For instance, the fairly colloquial Cambridge Dictionary's first definition of "keep" is "to have or continue to have in your possession." Yet another definition states "if you keep animals, you own and take care of them, but not in your home at pets." Similarly, the Oxford Dictionary defines "keep" as to "have or retain possession of." But obviously, one can retain possession in a true legal sense of something that is entrusted or provided to another for safekeeping or maintenance.

Accordingly, few cases have directly tackled whether an out-of-possession dog owner still "keeps" their dangerous dog. In *Pickett v. Dep't of Rehab & Corr.*, 2001 Ohio Misc. LEXIS 64 (Dec. 27, 2001), the Ohio Department of Rehabilitation and Correction facilitated a program that united offenders with dogs. The ODRC had possession of a Norwegian Elkhound. The offender assigned to the dog took it to his cubicle and gave it a treat. When the plaintiff picked up leftover crumbs, the dog lunged at him. On a second occasion, the dog lunged at a corrections officer when the officer attempted to give the dog a biscuit. Accordingly, there was evidence that the ODRC knew the specific dog was dangerous and nevertheless allowed an offender to play with it. It then foreseeably bit the offender, causing serious injury. The court found that the "greater weight of the evidence show[ed] that defendant had actual notice of the vicious propensity of the dog, and its failure to remove the dog from the program constitutes a breach of ordinary care towards plaintiff." *Id.* at *7. Even though the inmate was the keeper, and the ODRC was the out-of-possession owner, the inmate was still able to recover.

Though this issue of whether someone who must be classified as a "keeper" can recover when injured by an out-of-possession owner's dog remains largely unresolved in the case law, an injured person can still recover under common law for harm caused by the dog. This is one reason why it is important for practitioners in this area to use both the statutory and common law avenues of recovery for persons injured by dangerous dogs. Look for the case law in this area to develop in the future. ■

Recent Ohio Appellate Decisions

by Brian W. Parker and Louis E. Grube

Middleton v. Clarky's Closeouts, 2025-Ohio-1414 (11th Dist. Apr. 21, 2025).

Disposition: Trial court order granting summary judgment in favor of defendant retail store under the open and obvious doctrine was reversed.

Topics: Open and obvious defense, transitional spaces exception, attendant circumstances, summary judgment.

The plaintiff was shopping at a closeout store, which was in a warehouse space separated into rooms full of merchandise. As she exited a room full of exterior doors, she stepped into a hole and tripped. The hole was three to four inches deep and two feet in width and length. It was "located in an approximate eight-foot-wide entry/exit way separating the room of the store containing plumbing supplies from the room of the store containing doors." Plaintiff last remembers seeing her husband's back as she followed him through the door. Her husband testified that he turned to warn her, but could not do it in time to stop her from falling and becoming injured.

After plaintiff sued, the defendant store moved for summary judgment under the open and obvious doctrine. The trial court granted that request, but the Eleventh District Court of Appeals reversed, sustaining an assignment of error asserting that the doctrine had been "misapplied."

Rather than deploying the attendant circumstances exception to the open and obvious doctrine, which could conceivably apply here, the court of appeals applied a line of cases originating out of the Second and Third District Courts of Appeals. These decisions held that "genuine issues of material fact exist as to whether a hazard was open and obvious where the hazard is located in an area where customers would reasonably be expected to turn or change direction." Since "reasonable minds could infer that the hole was located immediately around the corner of a walkway, where one would not observe it until it was encountered," the trial court erred by awarding summary judgment. The court of appeals also rejected the defendant's arguments premised upon the idea that plaintiff was looking at her husband instead of the floor because the open and obvious doctrine revolves around the nature of the hazard, not the way that a plaintiff encounters it.

Wilkes v. Ohio Dept. of Transp., 2025-Ohio-1030 (10th Dist. March 25, 2025).

Disposition: Court of Claims verdict in favor of defendant Ohio Department of Transportation ("ODOT") for lack of duty owed and resulting judgment were reversed.

Topics: Special duties, foreseeable vandalism in bridge construction.

This case was profiled for the Spring 2024 issue of CATA News. Briefly summarizing, the plaintiff estate pursued a wrongful death claim against ODOT on behalf of the estate of a man who had been killed when a 30-50 pound sandbag fell from an overpass into the window of the car as he was driving by. The sandbag had been used to secure vandal fencing on the bridge, which a contractor had been rebuilding. Four children had thrown the sandbag off the bridge, leading to their prosecution.

Judgment was awarded to ODOT after a trial. The court of claims denied discretionary immunity to ODOT because it had not actually engaged in any consideration of whether to deploy fencing in the absence of a policy requiring it. Rather, the Court of Claims ruled that ODOT did not owe any special duties to the decedent, and the proximate cause of his death was therefore the criminal act of another. Without repeated acts of vandalism or criminality by third parties during construction of the bridge, the court concluded that ODOT had no duty to foresee and prevent the specific criminal acts of another.

The Tenth District recently reversed and remanded the matter for further proceedings. Reviewing under the manifest weight of the evidence standard, which is appropriate on review of a verdict after a bench trial, the court of appeals nonetheless expressed that it would review any legal issues de novo.

The trial court had failed to consider a previous case, *Semadeni v. Ohio Dept. of Transp.*, 75 Ohio St.3d 128 (1996), in which the Supreme Court of Ohio held that ODOT was enjoined with a special duty to take measures to prevent vandals from dropping things from bridges over roadways. In that instance, it was clear ODOT "was aware that incidents of debris being dropped from freeway bridges were occurring throughout Ohio" because of a policy the agency adopted in regard to

such problems. Because the Supreme Court "did not require evidence of a history of vandalism involving the particular bridge at issue," it was error for the Court of Claims to have done that while also ignoring the *Semadeni* decision. With similar evidence in the record that ODOT requires fencing for almost every bridge in the State, the Tenth District Court of Appeals ruled that the agency owed a duty to the decedent. Based upon the evidence, the court of appeals further ruled that ODOT had breached this duty, and that the breach was the proximate cause of the decedent's death. The case was remanded for the Court of Claims to decide the amount of damages.

Auto Recyclers of Middletown, Inc. v. Stein, LLC, 2025-Ohio-414 (12th Dist. Feb. 10, 2025).

Disposition: Affirming the trial court's granting of summary judgment for the defendants.

Topics: Requirement that parties provide expert reports in compliance with the court's pretrial order and Civ. R. 26(B)(7)(b) and (c); need for expert testimony for evidence of causation in support of environmental harm claims.

The plaintiffs operated auto parts salvage businesses near defendants' steel manufacturing and slag processing facilities. The plaintiffs alleged that particulate matter from the defendants' steel manufacturing operations accumulated on their inventory, damaging their businesses.

The trial court's modified pretrial order required that plaintiffs disclose their expert witnesses by February 26, 2024, and produce their expert reports within 30 days of the disclosure of their experts. The plaintiffs disclosed their experts in a timely manner, but never provided expert reports, as required by the order.

The defendants provided an expert report opining that their operations could not be the primary source of particulate matter on plaintiffs' properties. Since the plaintiffs did not comply with Civ. R. 26, and the pretrial order, the trial court excluded plaintiffs' experts from submitting testimony in opposition to the defendants' motion for summary judgment.

The trial court rejected arguments that defendants were not prejudiced by the failure to provide the expert reports because, through discovery, defendants were made aware of this information. The trial court further rejected plaintiffs' argument that defendants were aware of the identity of the plaintiffs' experts, yet chose not to depose them. The trial court held that the plaintiffs had no expert testimony to support the causation element of their negligence claims, and awarded summary judgment for the defendants.

On appeal, the Twelfth District affirmed, noting that Civ. R. 26(B)(7)(b) and (c) expressly require that parties submit expert reports in accordance with the time scheduled by the court, and an expert will not be permitted to testify or provide opinions on matters not disclosed in his or her report. The appellate court also rejected the plaintiffs' claims that the "thousands of pages of documents" disclosed in discovery satisfied their expert report requirement. The court noted that the documents fail to reflect an opinion to a reasonable degree of scientific certainty. Moreover, the defendants were not required to depose the plaintiffs' disclosed experts absent the production of an expert report.

Finally, the Twelfth District affirmed the trial court's granting of summary judgment for the defendants on all of the plaintiffs' claims. The Court ruled that the steel manufacturing processes, and its emissions are outside the general knowledge of a lay person, requiring expert testimony for the issue of causation. Further, much of the evidence the plaintiffs submitted in opposition to summary judgment did not conform to the requirements of Civ. R. 56(C).

Favorite v. Cleveland Clinic Found., 2025-Ohio-269 (8th Dist. Jan. 30, 2025).

Disposition: Trial court order denying plaintiff's motion for relief from summary judgment in favor of defendant hospital under Civ.R. 60(B)(1) was reversed.

Topics: Motion for relief from judgment, potentially meritorious claims, and excusable neglect/ inadvertence.

The plaintiff pursued claims for tortious disclosure of private medical information against a hospital. The defendant was a family member, and she had allegedly accessed the plaintiff's medical records at the hospital without authorization.

Plaintiff's counsel incorrectly marked down the deadline to oppose a summary judgment motion that the hospital submitted. The memorandum opposing such relief was filed a few days late, leading to entry of summary judgment in favor of the defendant hospital. Plaintiff appealed that ruling.

After asking for and acquiring a limited remand to the trial court for this purpose, Plaintiff's counsel also filed a motion to vacate under Civ.R. 60(B)(1) and (5). The attorney explained that the responsive filing was only one business day late, and the

error resulted from an "extreme workload" due to an upcoming trial in another matter. Although it had been prepared early enough to be filed timely, the responsive brief was required to be filed under seal. So, he had waited until the deadline that he believed applied.

The trial court denied that request. On appeal from both the summary judgment ruling and the motion for relief from judgment, the court of appeals reversed. Finding that the assignment of error pertaining to the Civ.R. 60(B) motion was dispositive, the court of appeals did not reach the question of whether the summary judgment entry was proper in and of itself. The court accepted that the plaintiff at least had some potential to prevail on the substance of the dispute, and it concluded that this was exactly the kind of neglect that is excusable. Importantly, the court reflected that it did not appear anyone's rights had been prejudiced or that any delay had been caused by this mixup. All things considered, the court of appeals concluded that the trial court abused its discretion by denying the motion for relief from judgment.

Rau v. Mia. Valley Hosp., 2025-Ohio-13 (2d Dist., Jan. 3, 2025).

Disposition: Reversing a defense verdict in a medical negligence case where the trial court improperly allowed evidence of the plaintiff's informed consent and plaintiff's discussions regarding risks of surgery into evidence. The trial court also improperly admitted cumulative expert testimony.

Topics: Evid. R. 402 and 403: irrelevance and prejudicial nature of evidence of plaintiff's informed consent, and plaintiff's conversations concerning the risk of procedure evidence in a medical negligence claim; cumulative expert testimony.

The defendant physician performed a bilateral knee replacement surgery on the plaintiff. Following the surgery, the plaintiff complained of pain radiating from his foot to his calf in his right leg, and his right foot was cold. No pedal pulse in that foot was found. During subsequent surgery by a different physician, it was determined that the plaintiff's right popliteal artery had been injured during the earlier knee replacement surgery. Plaintiff had permanent injury as a result of the delay in correcting the initial surgical injury.

The plaintiffs sued the initial surgeon and surgical center for medical negligence; no claim for lack of informed consent was asserted. Prior to trial, the plaintiffs filed motions in limine to exclude evidence of informed consent and risk of injury, and to exclude cumulative expert testimony, which were granted by the trial court. During trial, however, the court allowed testimony that the plaintiff knew of the risks of the procedure, and that plaintiff had given informed consent to the surgery. Further, the trial court allowed a third expert to testify regarding these risks of the procedure.

The Second District held that because neither party raised informed consent as a claim or defense, evidence of informed consent, the consent forms, and discussions with the plaintiff about the risks and complications of the procedure were irrelevant and unduly prejudicial. The fact that the plaintiff consented to the surgery and was informed of the risks did not grant consent for the procedure to be performed negligently. The court noted that evidence that arterial injuries may occur during knee replacement surgery in the absence of negligence should be properly limited to the testimony of experts, and should not come from conversations with the plaintiff.

The Second District further held that the trial court erred in presenting cumulative expert testimony by allowing a third expert to testify that he agreed with the testimony of a second expert, and the defendant physician himself. The appellate court held that it did not matter that the third expert had a different demographic and type of employment (i.e., a younger physician from an academic center) than the other two expert witnesses for the defendant.

Patrick v. Mercy Health Youngstown LLC, 2024-Ohio-6132 (7th Dist., Dec. 30, 2024).

Disposition: Affirming $7 million jury verdict in favor of plaintiff in medical negligence case, and affirming award of prejudgment interest.

Topics: Evid. R. 401 and 403, relevant evidence and unduly prejudicial evidence; prejudgment interest statute, R.C. § 1343.03(C)(1); Fifth Amendment to Constitution and closing arguments highlighting defendant physician's failure to testify.

This is a medical malpractice case where plaintiff's decedent was not admitted to the hospital by defendants despite evidence that he was vomiting large amounts of blood. The decedent was taken by EMS to the hospital emergency room. The EMS records state that the decedent had vomited approximately a liter of blood. Based on this report, the hospital secured a bed for the decedent in the emergency room, but the decedent was not admitted to the hospital and subsequently died.

The defendants contended that the trial court improperly

admitted a photograph of a bucket of the decedent's blood. The photograph was taken by the decedent's brother at the time the decedent was being wheeled away on a stretcher by the paramedics.

Seeking to avoid an issue on appeal, plaintiff's counsel withdrew the offer of the photograph at the close of plaintiff's case. However, after a defense expert opined that there was "no way" the decedent vomited one liter of blood, plaintiff moved for admission of the photograph, which was admitted.

On appeal, the Seventh District held that the photograph of the bucket of blood was clearly relevant, and although the photograph may have appealed to the jurors' sympathies, it was not unfairly prejudicial.

The defendant medical providers also contested the plaintiff's counsel's closing arguments in which counsel pointed out that the defendant supervising physician did not testify at trial. The Seventh District held that it was proper for plaintiff's counsel to comment on the defendant's failure to testify, and the Fifth Amendment to the U.S. Constitution does not prohibit a fact-finder from making adverse inferences against a party in a civil action when they refuse to testify in response to probative evidence offered against them.

Finally, the Seventh District upheld the award of prejudgment interest. In this regard, the defendants did not cooperate in discovery as they refused to produce copies of their insurance policies until the trial court issued an order compelling them to do so. Moreover, the fact that both sides had highly credentialed experts testifying in their favor showed that the defendants did not rationally evaluate their risks and potential liability. Defendants did not make any settlement offer in advance of trial.

Hipshire v. Oakwood Vill., 2024-Ohio-5948 (2d Dist., Dec. 20, 2024).

Disposition: Reversing trial court order granting summary judgment in favor of defendant owner of a manufactured home community in dog bite statute case, R.C. § 955.28.

Topics: Dog bite statute, R.C. § 955.28; harborer of dog in residential community common area.

The plaintiff, a minor, was bitten by a dog on the premises of a playground in a manufactured home community. Both the minor and the dog owner were residents of the community. The dog bite occurred when the dog was on a leash tied to a swing, and the minor approached the dog to pet it. The community owner permitted the residents to bring leashed dogs onto common areas in the community, including on the playground.

The plaintiff, through his mother, sued the owner of the community for his injuries for strict liability under the dog bite statute, R.C. § 955.28. The trial court granted summary judgment for the community owner, focusing on whether the community owner had prior notice of the dog's aggressive tendencies, and whether the community owner protected tenants by its rules.

The Second District held that the trial court's reasoning was an improper basis for a decision under R.C. § 955.28. Rather, the salient question was whether the community owner was a "harborer" under that statute. A harborer is "a person who has possession and control of the premises where the dog lives and acquiesces, silently or otherwise, to the dog's presence." It was undisputed that the community owner controlled the common area playground and that tenants' dogs were allowed in the playground when the dogs were leashed.

The appellate court held that the community owner's rule that dogs must be on a leash in common areas did not affect its liability, because the dog was, in fact, leashed to the playground property at the time of the bite. The court noted that the analysis would arguably be different if the dog had not been leashed at the time of the bite because the community owner would not have acquiesced in the dog's unleashed presence on the playground.

Jeneanne Jackson, Administrator v. The Laurels of West Columbus, LLC, Franklin C.P. No. 23 CV 3112 (Dec. 2, 2024).

Disposition: Trial court denied plaintiff estate's motion for leave to file second amended complaint, which sought to add new defendants whose identities were only revealed in discovery after the one-year medical malpractice statute of limitations but before the two-year wrongful death statute of limitations concluded.

Topics: Statute of limitations, leave to amend complaint, futility of amendments.

Plaintiff estate pursued medical claims related to the death of its decedent on December 10, 2022. On October 11, 2024, the estate sought to join additional defendants whose identities were uncovered during discovery. The already joined defendants opposed this request.

According to the trial court, the only issue was whether the amendment would be futile, which is a common basis for denying a motion to amend a complaint. The question was whether such claims would be barred by the one-year statute of limitations for medical claims in R.C. 2305.113. With a deceased victim of medical negligence, the estate asserted that the two-year limitations period in 2125.02 would apply instead.

The trial court ruled that wrongful death claims premised upon medical negligence are covered by the shorter limitations period for medical claims, rendering the amendment futile. According to the trial court, the issue was "fully resolved" by the Supreme Court of Ohio in *Everhart v. Coshocton Cty. Mem. Hosp.*, 2023-Ohio-4670. Although *Everhart* has strictly decided that the "broad definition of 'medical claim' that applies to the statute of repose clearly and unambiguously includes wrongful-death claims based on medical care," *Id.* at ¶1, the trial court nonetheless held that such claims were therefore also roped into the statute of limitations for medical claims.

The trial court did not fully or even partly explore whether a key factor in *Everhart* might nonetheless rope such claims into the wrongful death statute of limitations. There, the Supreme Court of Ohio expressed that "nothing in Ohio's statutory wrongful-death chapter negates" the "inclusion" of wrongful death actions based upon medical negligence into the medical claims statute of repose. *Everhart* at ¶1. The definitions in the statute of repose included all medical claims, so they applied "unless another statutory provision negates their inclusion." *Id.* at ¶13.

In the wake of this decision, practitioners should be prepared to argue that the enactment of a separate statute of limitations for wrongful death claims negates their inclusion within the statute of limitations for medical claims. Particularly because of the similarities between the text mandating that such claims must be pursued by the estate representatives and the text dictating how quickly such a claim must be filed, there is a fairly strong argument based upon the plain text of the enactment that the general assembly wanted to impose a two-year statute of limitations on wrongful death claims regardless of the underlying tort theory, just as it requires the claim to be pursued by an estate's personal representative regardless of the underlying tort theory. ■

Brian W. Parker is an attorney at Nurenberg, Paris, Heller & McCarthy Co., LPA. He can be reached at 216.621.2300 or bparker@nphm.com.

Louis E. Grube is a partner at Flowers & Grube. He can be reached at 216.344.9393 or leg@pwfco.com.

CATA VERDICTS AND SETTLEMENTS

Case Caption: _____

Type of Case: _____

Verdict: _____ **Settlement:** _____

Counsel for Plaintiff(s): _____
Law Firm: _____
Telephone: _____

Counsel for Defendant(s): _____

Court / Judge / Case No: _____

Date of Settlement / Verdict: _____

Insurance Company: _____

Damages: _____

Brief Summary of the Case:

Experts for Plaintiff(s): _____
_____
_____

Experts for Defendant(s): _____
_____
_____

RETURN FORM TO: **Kathleen J. St. John, Esq.**

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CATA Verdicts & Settlements

Editor's Note: *The following verdicts and settlements submitted by CATA members are listed in reverse chronological order according to the date of the verdict or settlement.*

Wright v. State Farm

Type of Case: UIM with Bad Faith
Settlement: $50k tortfeasor, $50k on UIM, and $250k for Bad Faith
Plaintiff's Counsel: Florence Murray, Murray & Murray, (419) 624-3011
Defendant's Counsel: Greg Collins for UIM; Peter Georgiton for Bad Faith
Court: Sandusky County Common Pleas Court Case No. 23 CV 652, Judge Jeremiah Ray
Date Of Settlement: April 17, 2025
Insurance Company: State Farm; Progressive (pre-suit)
Damages: Tinnitus with small hearing loss in left ear

Summary: Now 45 years old, Ms. Wright was in a car crash in 2021 when a driver t-boned her in an intersection. Ms. Wright tried to resolve it on her own but no offer was made in the first year without a lawyer. Hearing aid with tinnitus attenuation prescribed by Dr. Bojrab works very well but has to be replaced every 3-5 years. State Farm resolved her bad faith before discovery on that part of the claim proceeded.

Plaintiff's Experts: Dennis Bojrab II, MD (Treating Otolaryngologist); Stuart Setcavage, AIC, CCLA (Bad Faith Expert)
Defendant's Expert: None

Santi Kalivaci, et al. v. Lauren Hattery, et al.

Type of Case: MVA
Verdict: $202,950.57
Plaintiffs' Counsel: Joshua D. Payne, Esq., and Jordan D. Lebovitz, Esq., Nurenberg, Paris, Heller & McCarthy Co, LPA, 1200 Superior Avenue, Suite 1200, Cleveland, OH 44114, (216) 621-2300
Defendants' Counsel: **
Court: Cuyahoga County Common Pleas Case No. CV-24-994607, Judge Kelly Ann Gallagher
Date Of Verdict: April 16, 2025
Insurance Company: Liberty Mutual
Damages: Lumbar herniation and spondylolisthesis

Summary: Plaintiffs were rear-ended while waiting to pull out of a parking lot. Wife suffered minor soft tissue injuries, husband suffered lumbar herniation as well as at least an aggravation of L5-S1 spondylolisthesis secondary to pre-existing bilateral pars defects. Defense argued these were all entirely pre-existing, with crash only causing sprains. Limited treatment, no surgery. Top offer pre-suit $3,000, top offer pre-trial $62,000.

Plaintiffs' Experts: Dane Donich, MD; and Todd Hochman, MD
Defendants' Expert: Daniel Loesch, MD

Joanne Rogers v. Marc Glassman, Inc., et al.

Type of Case: Slip and Fall
Verdict: $1,300,000.00
Plaintiff's Counsel: Mark J. Obral & Jacob DeBaltzo, Obral, Silk & Pal, LLC, (216) 529-9377
Defendants' Counsel: James M. Henshaw
Court: Cuyahoga County Common Pleas Case No. CV-23-987938, Judge Hollie L. Gallagher
Date Of Verdict: April 7, 2025
Insurance Company: Self-Insured
Damages: Fractured femur

Summary: 68-year-old woman shopping at Marc's was instructed to check out at the customer service counter where the cashier asked the customer to turn the cart towards the counter. The movement caused a needlessly-placed rug to catch on the wheel of the cart and caused the plaintiff to fall and break her hip.

Plaintiff's Experts: Dennis McNamara; and Brett McCoy, M.D.
Defendants' Expert: Samuel Cash

Dwayne Brooks v. State of Ohio

Type of Case: Wrongful Imprisonment
Settlement: $3,700,761.71
Plaintiff's Counsel: Sarah Gelsomino and Jacqueline Greene, FG+G; Russel Randazzo, Randazzo Law, L.L.C., (216) 241-1430
Defendant's Counsel: Ohio Attorney General
Court: Court of Claims Case No. 2024-00309WI
Date Of Settlement: April 2025
Insurance Company: None
Damages: **

Summary: Dwayne Brooks served nearly 36 years in prison for a crime he did not commit. He was convicted in Cuyahoga County. Mr. Brooks sought damages under ORC 2743.48 for

statutory damages, lost wages, and costs and fees of his defense. Dwayne was represented in post-conviction proceedings by David Singleton of the Ohio Justice Policy Center.

Plaintiff's Experts: **
Defendant's Expert: **

Pre-Suit

Type of Case: Dog bite
Settlement: $300,000 (policy limits)
Plaintiff's Counsel: Joshua D. Payne, Esq., Nurenberg Paris, Heller & McCarthy Co., LPA, 600 Superior Ave., Suite 1200, Cleveland, OH 44114, (216) 694-5232
Defendant's Counsel: Pre-Suit
Court: **
Date Of Settlement: April 2025
Insurance Company: Withheld
Damages: **

Summary: Adult male suffered dog bite requiring surgery and leaving permanent scarring.

Plaintiff's Expert: None
Defendant's Expert: None

Progressive Specialty Insurance Co. v. Estate of Tyler Davis

Type of Case: Declaratory Judgment
Verdict: Declaratory Judgment
Plaintiff's Counsel: Dennis Lansdowne / Kevin Hulick, Spangenberg Shibley & Liber LLP, (216) 696-3232
Defendant's Counsel: David Utley of Collins Roche Utley & Garner
Court: Geauga County Common Pleas Court, Judge Matthew Rambo
Date Of Verdict: March 4, 2025
Insurance Company: Progressive
Damages: Policy limits of $100,000

Summary: This case involved an insurance coverage dispute. Our client was driving a vehicle he did not own and was struck and killed. The driver had $50,000 in insurance. Our client had a $100,000 UIM policy through Grange, which paid the remaining limits of $50,000. The policy provided primary insurance. The owner of the vehicle our client was driving had a UIM policy of $100,000 through Progressive. Progressive claimed that its policy and the Grange policy pro-rated. We disagreed, claiming that the Grange policy was primary coverage and the Progressive policy was excess coverage, meaning that the Ohio Supreme Court rule on pro-rating policies did not apply. Progressive filed a declaratory judgment action. We filed a counterclaim for declaratory judgment and breach of contract. Both sides moved for summary judgment. The Court agreed with our analysis and granted our motion for summary judgment.

We wanted to share this result in case others are litigating similar issues and this ruling would be helpful to their position.

Plaintiffs' Expert: N/A
Defendant's Expert: N/A

John Doe v. ABC Transportation

Type of Case: Negligence
Settlement: $1,225,000
Plaintiff's Counsel: Michael D. Goldstein, Goldstein & Goldstein, (216) 241-6677
Defendant's Counsel: N/A
Court: Settled pre-suit
Date Of Settlement: January 2025
Insurance Company: Confidential
Damages: Right leg and left ankle fractures requiring surgery with subsequent surgical wound infection

Summary: Woman fell from wheelchair due to negligent securing within transport van suffering multiple leg fractures. Case resolved prior to suit.

Plaintiff's Expert: **
Defendant's Expert: **

Michael Buehner v. State of Ohio

Type of Case: Wrongful Imprisonment
Settlement: $2,300,000.00
Plaintiff's Counsel: Sarah Gelsomino and Jacqueline Greene, FG+G; Russel Randazzo, Randazzo Law, L.L.C., (216) 241-1430
Defendant's Counsel: Ohio Attorney General
Court: Court of Claims Case No. 2025-00012WI
Date Of Settlement: January 2025
Insurance Company: None
Damages: **

Summary: Michael Buehner served nearly 20 years in prison for a crime he did not commit. He was convicted in Cuyahoga County. At the time of his arrest, he was working as a union bridge painter. Mr. Buehner sought damages under ORC 2743.48 for statutory damages, lost wages, and costs and fees of his defense.

Plaintiff's Expert: **
Defendant's Expert: **

The Estate of John Doe v. ABC Hospital

Type of Case: Medical Malpractice/Wrongful Death
Settlement: $1.9 Million
Plaintiff's Counsel: Romney B. Cullers, The Becker Law Firm, LPA, (216) 621-3000
Defendant's Counsel: Withheld
Court: Withheld
Date Of Settlement: January 2025
Insurance Company: Withheld
Damages: Death

Summary: A retired, married father of three adult children underwent an elective robotic mitral valve repair operation. An iatrogenic aortic dissection occurred when cardiopulmonary bypass was initiated. Signs of a possible dissection should have been immediately apparent to the perfusionist due to resistance of blood flow. The dissection was recognized 9 minutes after initiation of cardiopulmonary bypass. The procedure was converted to a thoracotomy and the dissection was promptly repaired. During the repair, the patient suffered a hypotensive event resulting in anoxic brain injury and eventual death. The challenge in the case was proving the recognition of the dissection 5 to 7 minutes earlier would have changed the outcome.

Plaintiff's Experts: Withheld
Defendant's Experts: Withheld

Dawn Davison, Admr. v. The Ohio State University Wexner Medical Center

Type of Case: Medical Malpractice/Wrongful Death
Verdict: $4,531,700.50
Plaintiff's Counsel: Romney B. Cullers, The Becker Law Firm, LPA, (216) 621-3000; Francis E. Sweeney, Jr., Francis E. Sweeney, Jr., Esq., LLC, (440) 446-1200
Defendant's Counsel: Assistant Attorneys General Brian Kneafsey and Jeanna Jacobus
Court: Ohio Court of Claims Case No. 2018-00127JD, Judge Lisa L. Sadler
Date Of Verdict: December 23, 2024
Insurance Company: N/A
Damages: Death

Summary: A 41-year-old married father of three presented for low back surgery at The Ohio State University Wexner Medical Center. Pain management physicians treated him in the hospital with high-dose opioids for pain control. Despite knowing he had been addicted to opioid pain medication years earlier, they discharged him without any attempt to wean him from the opioids he had been administered in the hospital and then provided him with a prescription for high-dose opioids at the time of discharge without any plans for follow up. He took the medication at home, as prescribed, and died 36 hours later. The coroner who investigated the circumstances surrounding the young man's death testified that the dosages of pain medication prescribed by the Wexner Medical Center providers at the time of discharge were the highest he had ever seen and were sufficient to induce death even if taken as prescribed. The challenge in the case was overcoming the stigma of mental illness and history of addiction.

Plaintiff's Experts: Gregory Collins, M.D. (Addiction Medicine); Timothy Deer, M.D. (Pain Management); and Harvey S. Rosen, Ph.D. (Economics)
Defendant's Experts: Patel Alpesh, M.D. (Orthopaedic Surgery); Richard Bryant, M.D. (Pain Management); and Stephen Renas, Ph.D. (Economics)

Confidential Manufacturing Company v. Insurance Company

Type of Case: Equipment breakdown and business income loss
Settlement: $6,400,000
Plaintiff's Counsel: Bobby & Bob Rutter, Rutter & Russin, LLC, (216) 642-1425
Defendant's Counsel: Confidential
Court: None
Date Of Settlement: December 16, 2024
Insurance Company: Confidential
Damages: Business income loss due to equipment breakdown

Summary: The insured's 1200-ton press failed, resulting in a massive business interruption claim that threatened to bankrupt the company. Its insurer accepted coverage under the equipment breakdown coverage form, but its forensic accountant minimized the business loss, seeking to blame other causes. The insured got all it could from the insurer and then turned the claim over to us. We obtained an additional $6,400,000 through a combination of appraisal and mediation.

Plaintiff's Experts: Alex N. Sill Company (Damages, (216) 524-9000)
Defendant's Expert: MDD Forensic Accountants

The Estate of John Doe v. ABC Hospital

Type of Case: Medical Negligence
Settlement: $2.75 Million
Plaintiff's Counsel: Romney B. Cullers, The Becker Law Firm, LPA, (216) 621-3000
Defendant's Counsel: Withheld
Court: Withheld
Date Of Settlement: December 12, 2024

Insurance Company: Withheld
Damages: Death

Summary: A 75-year-old, married father of two adult children, presented at the emergency department two weeks after a complicated heart surgery involving, among other things, a quadruple coronary artery bypass graft. At the ED, he was experiencing cold chills, shortness of breath, lower extremity edema, decreased urine output, diaphoresis and jugular vein distension. A point of care ultrasound revealed a large pericardial effusion. The patient was admitted to the ICU for planned drainage of the fluid collection, but while awaiting a bed, he arrested in the ED as the result of cardiac tamponade. The fluid collection should have been drained in the ED without delay.

Plaintiff's Experts: Withheld
Defendant's Experts: Withheld

Confidential Technology Company v. Insurance Company

Type of Case: Insurance Bad Faith
Settlement: $2,500,000
Plaintiff's Counsel: Bobby & Bob Rutter
Defendant's Counsel: Confidential
Court: Franklin County Common Pleas Court, Judge McIntosh
Date Of Settlement: December 2, 2024
Insurance Company: Confidential
Damages: Unreasonable delay in settling business interruption claim.

Summary: The insured suffered a devastating business interruption claim that its insurer agreed was a covered loss, but disputed the value. Following a lawsuit, and appraisal, and appeal the insurer finally paid its insured several million dollars. But by that time the insured had been forced to sell and was out of business. We then pursued a bad faith claim.

Plaintiff's Experts: Chris Johnson (Highbanks Insurance Professionals, (614) 315-8926); and Sean Saari, CBIZ (Economist, (440) 449-6800)
Defendant's Expert: Bernd Heinze (Claim Handling, (610) 992-0001)

John Doe, a minor v. ABC Hospital, et al.

Type of Case: Medical Malpractice – Birth Injury
Settlement: $2,500,000.00
Plaintiff's Counsel: David W. Skall, The Becker Law Firm, LPA, (216) 621-2300
Defendants' Counsel: Withheld
Court: Withheld
Date Of Settlement: December 2024
Insurance Company: N/A
Damages: Cerebral Palsy and permanent disability

Summary: Alleged malpractice of an obstetrician, nurse midwife, and hospital staff nurses during induction of labor resulting in severe neurologic injury and cerebral palsy in term newborn that was later found to have a developmental abnormality of the brain. Claims more specifically set forth that the providers improperly continued induction with Pitocin despite signs of excessive uterine activity, maternal failure to progress (protracted labor), and intermittent fetal heart rate decelerations that suggested the baby was becoming increasingly hypoxic and at significant risk of injury. Despite explicitly questioning the need for safer c-section and setting a cutoff time for the induction in the medical record, the care team allowed the labor to continue for 2-3 hours beyond their own deadline thereby exposing the baby to ongoing stress and reduced oxygenation. The mother later did become complete and pushed limitedly for 5 minutes, delivering what initially appeared to be a healthy newborn with reasonable Apgar scores (6/8) and umbilical cord blood gas values that suggested there was good fetal oxygenation. However, it was shortly after discovered that the newborn had a structural abnormality of the brain – congenital aqueduct stenosis – that led to development of severe hydrocephalus and seizures during the first 9 hours of life. Akin to an "egg shell" plaintiff theory, it was alleged that this structural abnormality made the newborn's brain uniquely susceptible to direct hypoxic injury from the excess stressors and periods of reduced oxygenation of the protracted labor, and that these factors also caused the brain to be at greater risk of further injury in the setting of the postnatal hydrocephalus. It was correspondingly alleged that that these excessive, injurious effects would have been avoided, and that the baby would have been successfully treated and developed normally, had the care team abandoned labor and moved to deliver via c-section 2-3 hours earlier as set forth in the chart.

Plaintiff's Experts: Withheld
Defendants' Experts: Withheld

Confidential Estate v. Insurance Company

Type of Case: Property damage due to fire
Settlement: $537,600
Plaintiff's Counsel: Bobby & Bob Rutter, Rutter & Russin, LLC, (216) 642-1425
Defendant's Counsel: Confidential
Court: Cuyahoga County Common Pleas Court
Date Of Settlement: November 4, 2024
Insurance Company: Confidential

Damages: Fire damage to primary residence

Summary: The insured died during a fire at his house. His daughter did not know the insurance company and took five months to locate the company and submit a claim. The insurer denied based on late notice even though the house was still standing and all damages were still ascertainable. We were hired and filed suit and after discovery the insurer paid its policy limits.

Plaintiff's Experts: Andrew Kobak (Cleveland Public Adjusters, (216) 633-9843; Dane Contractors, (216) 288-2881)
Defendant's Expert: None

Raymond Street Partners, LLC v. The Cincinnati Indemnity Company

Type of Case: Insurance coverage
Verdict: $2,208,448
Plaintiff's Counsel: Bobby & Bob Rutter, Rutter & Russin, LLC, (216) 642-1425
Defendant's Counsel: James Reagan
Court: Cuyahoga County Common Pleas Court, Judge William McGinty
Date Of Verdict: November 4, 2024
Insurance Company: The Cincinnati Indemnity Company
Damages: Property damage

Summary: Wind and hail damage to commercial building. Coverage accepted. Damages disputed.

Plaintiff's Experts: Martin Shields (Shield Engineering Group); and Matt Latham (Compass Adjusting - Damages)
Defendant's Experts: Doug Brown (American Structure Point); and Newman Construction Consulting

John Doe, a minor v. ABC Hospital, et al.

Type of Case: Birth Injury / Neonatal Malpractice
Settlement: $2,625,000.00
Plaintiff's Counsel: David W. Skall, The Becker Law Firm, LPA, (216) 621-3000
Defendants' Counsel: Withheld
Court: N/A
Date Of Settlement: November 2024
Insurance Company: N/A
Damages: Brain damage and mild seizure disorder

Summary: Alleged malpractice of a Central Ohio obstetrician and hospital neonatal care team leading to severe subgaleal hemorrhage and shock in an otherwise healthy term baby. Claims against the obstetrician more specifically involved failed operative vaginal delivery with excessive vacuum use (6 total applications, 14 pulls, and 2-3 pop offs) resulting in subgaleal bleeding at delivery. Secondarily, the newborn was transferred to the hospital Neonatal Intensive Care Unit (NICU) where the neonatal nurse practitioner and staff nurses failed to properly monitor deteriorating vitals, blood levels, blood gasses, and other markers of perfusion that showed subgaleal bleeding was ongoing and becoming critical. Without sufficient intervention, medications, and support with blood products in the NICU for nearly 6 hours, the newborn went into hemorrhagic/hypovolemic shock and suffered permanent hypoxic/ischemic brain damage prior to being resuscitated and stabilized.

Plaintiff's Experts: N/A
Defendants' Experts: N/A

Confidential Hotel v. Insurance Company

Type of Case: Property damage from freezing
Settlement: $485,000
Plaintiff's Counsel: Bobby & Bob Rutter, Rutter & Russin, LLC, (216) 642-1425
Defendant's Counsel: Confidential
Court: U.S.D.C., N.D., Judge James Knepp
Date Of Settlement: October 22, 2024
Insurance Company: Confidential
Damages: Property damage to hotel undergoing renovations

Summary: Before our involvement, the insurer denied this claim based on a freezing exclusion. We filed suit, hired our own forensic engineer to determine how the loss occurred, and determined that the facts of this freezing incident did not fall within the scope of the exclusion.

Plaintiff's Experts: David Riegner, SEA, CFEI, (614) 888-4160
Defendant's Expert: None

Confidential Homeowners Association v. Insurance Company

Type of Case: Roof damage to condo association
Settlement: $3,475,000
Plaintiff's Counsel: Bobby & Bob Rutter, Rutter & Russin, LLC, (216) 642-1425
Defendant's Counsel: Confidential
Court: Franklin County Common Pleas
Date Of Settlement: October 8, 2024
Insurance Company: Confidential
Damages: Property damage

Summary: Insured HOA submitted claim for extensive wind and hail damage to asphalt shingle roofs. Claim denied based on expert report that damage pre-dated effective policy

period. Discovery showed that insurer did an inspection after the policy was issued and found no damage at that time.

Plaintiff's Experts: Chris Johnson (Claim Handling, (614) 315-8926); Matt Latham (Compass Adjusting - Damages, (317) 525-4127); Dillon Tuner (Forensic Weather Consultants, (518) 862-1800); and Martin Shields (Shields Engineering, (404) 521-9999
Defendant's Experts: James Brown (Wiss, Janney, Elstner Associates - Roofing, (317) 510-3940); and Jason Webster (AtMoSci - Weather)

Bailey v. ABC School District Board of Education

Type of Case: Negligence - Motor Vehicle
Settlement: $2,500,000
Plaintiff's Counsel: Michael D. Goldstein, Goldstein & Goldstein, (216) 241-6677
Defendant's Counsel: **
Court: Cuyahoga County Common Pleas Court
Date Of Settlement: October 2024
Insurance Company: Ohio School Plan
Damages: Fractured hip, leg, ankle, toes and ankle wound requiring skin grafting

Summary: Woman was crossing the street early in the morning in a crosswalk and was run over by a school bus making a right turn at the intersection. Visibility in the intersection was disputed. Client sustained severe leg injuries with chronic pain and limitation of motion.

Plaintiff's Experts: Robert Wetzel, MD (Orthopedics); Patrick Yingling Psy.D. (PTSD); Mark Foglietti M.D. (Plastic Surgeon); Richard Bowman M.D. (Life Care Planner); John Pullman (Vocational Rehab); John Burke (Economist); and Hank Lipian (Crash Reconstruction)
Defendant's Experts: Deanna Frye, Ph.D. (Psychologist); William Khoury, D.P.M. (Podiatrist); Zach Brosky, P.T. (Functional Capacity); Lauren Petkoff (Vocational Assessment); William Pearson (Economist); and Jeffrey Hickman (Human Factors)

Estate of Jane Doe v. ABC Hospital, et al

Type of Case: Medical Malpractice/Wrongful Death – Delayed Diagnosis of Myocardial Infarction
Settlement: $2,600,000.00
Plaintiff's Counsel: David E. Oeschger, Jr., Esq./Michael F. Becker, Esq., The Becker Law Firm, LPA, (216) 621-3000
Defendants' Counsel: Withheld
Court: Withheld
Date Of Settlement: August 13, 2024
Insurance Company: N/A
Damages: **

Summary: Alleged delayed diagnosis of a myocardial infarction ("MI") leading to the death of an 18-year old patient. The patient, who suffered from congenital heart disease, presented to the ABC hospital emergency room with signs and symptoms consistent with MI, including chest, jaw, and shoulder pain, as well as abnormal EKG readings and troponin levels. However, it took approximately 18 hours for the hospital and its medical providers to recognize the myocardial infarction and send the patient to a neighboring hospital for appropriate treatment. Unfortunately, this long delay caused permanent damage to the patient's heart muscle, which ultimately led to a fatal arrhythmia approximately three weeks later. The defense argued that the patient's presentation was consistent with myocarditis, which did not require immediate intervention. They further argued that a delay in treatment at the second facility further contributed to the injuries/death.

Plaintiff's Experts: Withheld
Defendants' Experts: Withheld

Application for Membership

I hereby apply for membership in The Cleveland Academy of Trial Attorneys, pursuant to the invitation extended to me by the member of the Academy whose signature appears below. My application must be seconded by a CATA member and approved by the President. I agree to abide by CATA's Constitution and By-Laws and participate fully. I certify that no more than 25% of my practice, nor my firm's practice, is devoted to personal injury litigation defense. I also certify I possess the following qualifications for membership prescribed by the Constitution:

1. Skill, interest and ability in trial and appellate practice.

2. Service rendered or a willingness to serve in promoting the best interests of the legal profession and the standards and techniques of trial practice.

3. Excellent character and integrity of the highest order.

Name: _____ Email: _____

Firm: _____

Office Address: _____ Phone: _____

Home Address: _____ Phone: _____

Law School / Year Graduated: _____

Professional Honors or Articles Written: _____

_____

Year Admitted (Ohio): _____ Year Began Practice: _____ Percent of Cases Representing Claimants: _____

Names of Partners, Associates and/or Office Associates (State Which):_____

_____

Membership in Legal Associations (Bar, Fraternity, Etc.):_____

_____

Applicant Signature: _____ Date: _____

Invited By: (print) _____ (sign) _____

Seconded By*: (print) _____ (sign) _____

(*if blank we will seek a second from the membership)

Please return completed Application with membership dues to:

Cleveland Academy of Trial Attorneys
c/o Katie R. Harris, Esq.
Tittle & Perlmuter
4106 Bridge Avenue
Cleveland, OH 44113
(216) 285-9991; Email: katie@tittlelawfirm.com

CATA Membership Dues

First-Year Lawyer: $50
New Member (rec. before 7/1): $175
New Member (rec. after 7/1): $100

All members are responsible for $175 annual dues to remain in good standing

[FOR INTERNAL USE]

President's Approval: _____ Date: _____

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CATA
CLEVELAND ACADEMY OF TRIAL ATTORNEYS

2025 Annual Installation Dinner

Please join CATA for our Annual Installation Dinner at the Shoreby Club

Date & Time:

Wednesday, June 18, 2025
5:30 pm - 10:00 pm

5:30 pm	Cocktail Hour
6:45 pm	Dinner and Dessert
7:15 pm	Special Recognition - David Grant
7:30 pm	Outgoing President's Remarks
7:45 pm	Excellence in Advocacy Award
8:00 pm	Oath of Office
8:15 pm	President's Remarks
8:30 pm	Music, Dancing, Cocktails

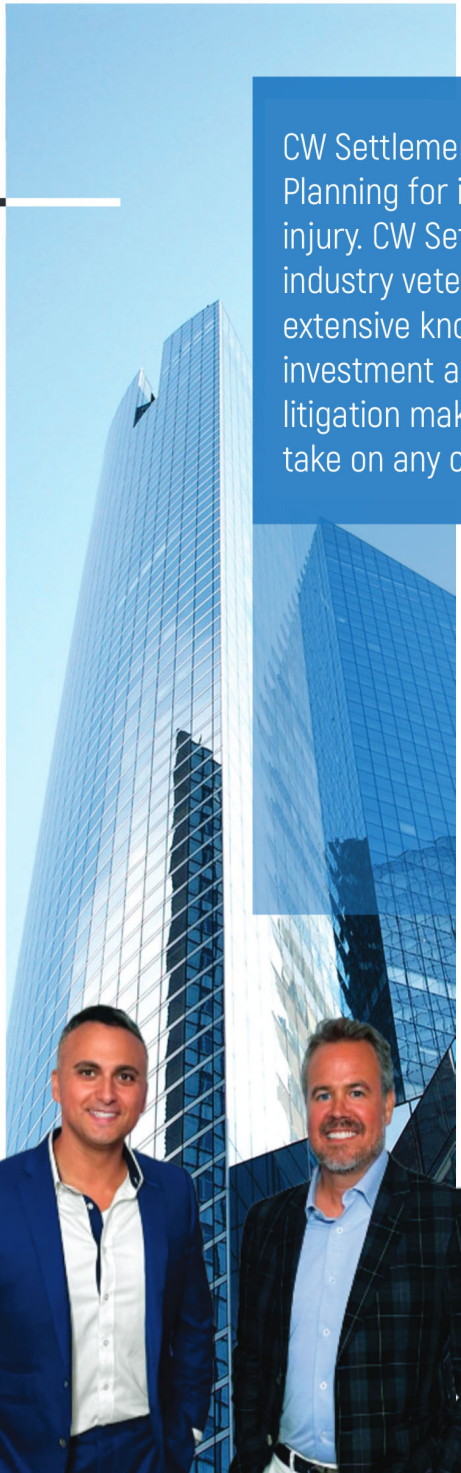
Location:

The Shoreby Club, Bratenahl, Ohio

Spring 2025

Structured Settlements & Settlement Planning

CW Settlements specializes in comprehensive Settlement Planning for individuals and families affected by physical injury. CW Settlements founder, Tom Stockett, is an industry veteran with over 20 years of experience. His extensive knowledge of structured settlements, investment advisory services, government benefits and litigation makes Tom one of the most trusted experts to take on any case, regardless of size.



CW Settlements

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- Market Based Structured Settlement Solutions
- Settlement Financial Planning

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