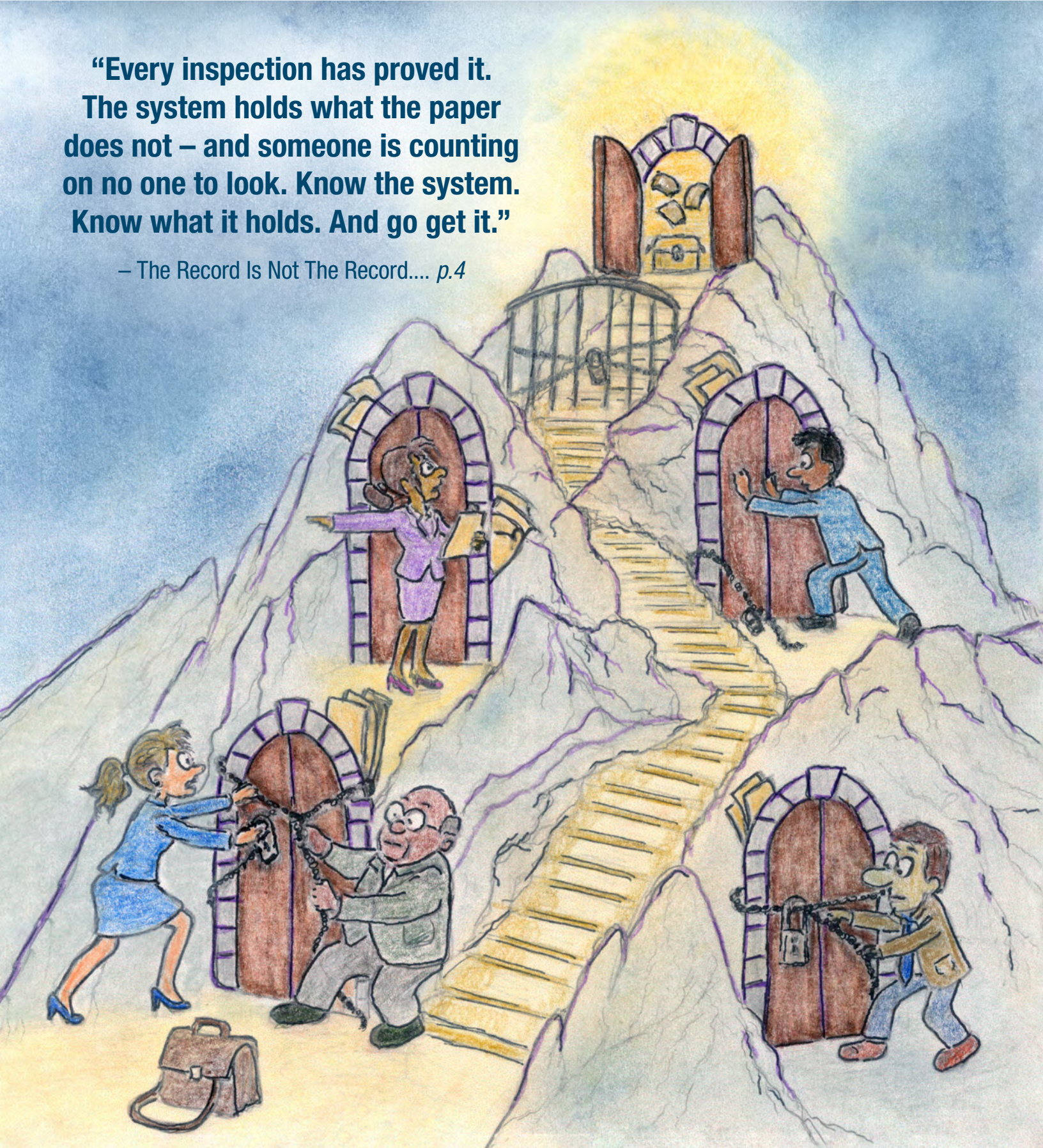


**“Every inspection has proved it.
The system holds what the paper
does not – and someone is counting
on no one to look. Know the system.
Know what it holds. And go get it.”**

– The Record Is Not The Record.... p.4





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President's Message

by Dustin B. Herman

It has been an honor and privilege to serve as President of CATA. In my final address as President, I want to bring everyone up to speed on some of the big things we've been working on.

1. A New Executive Consultant for CATA

Every local trial attorneys' organization struggles with the same issue: rapid turnover on the Executive Committee. CATA is no exception. Every year we have a new Treasurer, Secretary, Vice-President, and President, and with that comes a steady loss of institutional knowledge.

To fix this, the CATA Board has hired The Huntley Collection as a consultant to help us modernize how we run the organization. Megan Huntley and her colleague Amanda Fontana will assist with securing sponsors, collecting dues, marketing our CLEs and social events, updating our very outdated website, and improving the functionality of the listserv.

One of the most exciting improvements we're working on is turning the listserv into an AI-powered searchable archive. Members will finally be able to search every past post quickly and easily—an enormous benefit for all of us.

All of these changes are designed with one goal in mind: to make CATA membership significantly more valuable to you.

2. The Annual "CATA Horizon Program"

As plaintiff's lawyers, we face a real problem: most law students have no idea what we actually do. Worse, many of them already view plaintiff's attorneys as "ambulance chasers." I'll be honest—that's exactly what I thought when I was in law school. Too many students also believe the most prestigious path after graduation is landing a job at a "Big Law" firm. That mindset makes recruiting talented new lawyers into the plaintiff's bar much harder than it should be.

To push back against that, we created the CATA Horizon Program (originally called the CATA Fellows Program). We renamed it "Horizon" because these students represent the next generation of trial attorneys—the ones coming up over the horizon.

The program brings together law students from schools across Ohio. In the morning, they hear lectures from veteran trial lawyers. In the afternoon, they get on their feet in front of real mock jurors, deliver an opening or closing from a recent or upcoming trial competition, and receive honest feedback from experienced CATA members.

Through the Horizon Program, our members get to meet and mentor the next generation of trial lawyers. We get to show them what we really do and, hopefully, inspire them to choose a career

representing people—not corporations—after they graduate. That’s the goal, and it’s a worthy one.

Going forward, the CATA Horizon Program will be held every year in the fall. The next one is scheduled for Friday, **September 18, 2026**, at the CMBA conference center. I hope you’ll join us!!

3. The Annual “CATA Trial Skills Institute”

Let’s be honest: as trial lawyers, we simply don’t get enough time on our feet in the courtroom anymore. And we all know the only way to get better at trial work is to actually get on your feet and practice.

For the past few years, the CATA Litigation Institute has evolved into a workshop where lawyers can get on their feet and practice real trial skills—voir dire, openings, closings, and/or direct examinations—in front of real mock jurors. This year, we decided the name should better reflect what the program is really about, so we renamed it the **CATA Trial Skills Institute**.

On April 29, we once again brought in mock jurors and CATA members practiced voir dire and opening statements from



CATA Trial Skills Institute 4/29/26

cases they were actually working on. Getting on our feet and practicing our trial skills is one of the most important things we can do to improve as trial lawyers. We need to keep this tradition alive and strong, and we need it now more than ever.

Here’s to the future of CATA! Onward! ■



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The Record Is Not The Record: *EHR Inspections, Hidden Data, and Ten Lessons for Finding What Was Never Produced*

by Susan E. Petersen, Esq.

In March 2026, a defense law firm wrote a check to my office for \$221,937.98.

This was not discretionary. It was an agreed-upon sanctions payment entered after a court-ordered forensic inspection of the hospital's live electronic health record ("EHR") system uncovered 845 pages of medical records that had never been produced. Seven months earlier, defense counsel had certified that the complete electronic medical record—including audit trails and note revision histories—had been fully produced. The court found otherwise.

The Sanctions Order, issued in October 2025, made the basis for cost-shifting explicit. The court concluded that defendants had failed to comply with their prior discovery order and that no circumstances justified withholding the records. As the court explained, "[t]he fact that Plaintiffs were forced to proceed with a multiple day, virtual, live EMR inspection to obtain additional documents that should have been produced in discovery demonstrates that the Summa Defendants failed to comply with this Court's January 29, 2025 Order and with the general principles of discovery."¹

The sanction was not imposed for delay in the abstract. It was imposed because the inspection proved what the production did not—those responsive records existed within the system and had not been produced. The court ordered defendants to pay all reasonable fees and expenses associated with the inspection pursuant to Ohio Civ.R. 37(B)(3). The defendants contested the amount. The parties reached agreement in February 2026, and final payment was ordered by March 6.²

The check arrived.

Eight hundred forty-five pages of the patient's own protected health information—inside the hospital's EHR system the entire time. Available to any authorized user. Never produced. Never disclosed.

This is the argument. You cannot litigate what you cannot see; until you go inside the system—not the printed chart, but the live database—you do not know what it contains. What you receive reflects the limits of the query, the filters applied, and the assumptions built into the system.

Risk management does not print your client's chart. It runs a query. And whoever sets the parameters of that query decides what you get.

I have been conducting EHR inspections for many years, including prior to a 2023 article I published in this journal.³ That article catalogued the standard objections raised when plaintiffs seek audit trail data and live access to EHR systems, and it described a single case in which those objections were overcome through targeted discovery and inspection. Since that publication, I have conducted additional inspections of live EHR systems. The lessons have been consistent.

When a hospital produces the medical record, it is not opening a drawer and handing you the contents. It is running a query against a database—and that query was almost certainly not designed with your case in mind. It was designed for billing. For rounds. For the nursing supervisor. For risk management's routine chart reviews. The filters built into that query determine what surfaces in the report. Everything else stays in the system. The chart you receive with the title "Legal Medical Record" is not the record. The redacted audit trail that comes as a non-sortable PDF that ends on a date that the patient died or was discharged is not the record.

In an increasingly AI-integrated clinical environment, the terrain continues to shift. The medical record is no longer confined to the hospital's certified system. It may also reside within the retention policies of third-party scribe vendors, in the space between what an AI system generated and what a physician ultimately reviewed and signed, and in underlying

data layers that existing audit trail standards do not yet require to be preserved.

What follows is a field guide to getting inside the system—and to understanding what happens when the record has already left it entirely.

I. The Live Virtual Inspection: What It Is and How to Get One

The answer to a curated production is not another document request. It is access to the system that generated it. You need an agreed-upon or court-ordered, real-time examination of the live system that generated it. Not a deposition or a request for additional documents. An inspection of the system itself.

Using a secure remote connection — e.g., Zoom— the defendant’s IT staff connects your qualified forensic expert to a live session of the hospital’s EHR. The session runs under a court-approved or agreed-upon protective protocol: inspection is confined to the patient’s clinical records, the defendant controls the remote session, and the expert’s access is supervised at all times. No data leaves the system except through authenticated export under defense counsel’s supervision. The session is videotaped; screenshots are captured throughout the inspection and uploaded to a shared cloud folder accessible to the parties pursuant to the protocol’s terms.

This framework addresses the confidentiality concerns defendants typically raise and does so comprehensively. The safeguards are sufficiently robust that courts have not identified a legitimate basis for objection, and the litigation record reflects that result: where inspection has been ordered, those objections have failed. The same pattern holds on appeal, where the Ohio Eighth District Court of Appeals has repeatedly dismissed interlocutory challenges to inspection orders for lack of a final, appealable order.⁴ Inspection reveals context that a printed chart cannot—how records relate, what was visible to the user, how the system functioned at the time of care, and which systems were involved.

That distinction is particularly significant in multi-system hospital environments. As recognized by the IEEE Standards Association—an international body that develops widely adopted technical standards—the ICAID Workgroup on Data Quality Standards of Electronic Health Records has identified that EHR systems vary across facilities and implementations, often resulting in inconsistencies in how records are generated and interpreted.⁵ A single patient’s care may span multiple platforms—EPIC for inpatient care, Cerner for outpatient services, Oracle for imaging, and Soarian for surgical documentation—each generating its own data, each maintaining its own audit trail, and each requiring

its own query.⁶ A standard production typically runs against one system. An inspection can reach them all.

The following example, drawn from a recent inspection, demonstrates how revision histories for physician progress notes are accessible within the EPIC electronic medical record. Once inside the chart, the reviewer navigates to the “Notes” tab, clears any default filters to ensure all entries are visible, and selects the progress note of interest.

After opening the note, navigating to the bottom of the screen reveals whether the entry has been revised. Where revisions exist, EPIC provides a clearly identifiable link to the note’s revision history. Selecting that link opens a view displaying all prior versions of the note, each accessible for review. Reviewing these iterations reveals when changes were made and what changed. This process moves beyond the static version of a note typically produced in discovery and exposes the full history of the entry—an embedded audit trail reflecting its evolution over time.

The Procedural Vehicle

A live virtual inspection may be obtained through three procedural avenues: agreement of the parties, a request for production under Rule 34 that specifically identifies the live EHR system as the subject of inspection, or motion practice. Ohio Civ.R. 34(A) expressly authorizes a party to compel the production and inspection of electronically stored information, including access to the systems in which that information resides, when within the possession, custody, or control of another party.

In recent cases, this request has been incorporated at the outset of litigation, including within the joint discovery plan and initial discovery requests, often accompanied by a proposed protective protocol. Framed in this manner, the request places the issue squarely before the parties from the first scheduling conference. In a number of matters, that early framing has resulted in agreement without the need for motion practice.

LESSON 1 *A virtual inspection is the only mechanism by which the completeness of an electronic health record can be independently verified and should be requested at the outset of the case, in the initial joint discovery plan, as a primary remedy rather than a fallback. When defendants object, the case law supports the request, and when they pursue interlocutory appeal, Eighth District precedent supports dismissal for lack of a final, appealable order.*

The cases that follow illustrate why inspections are truth magnets.

II. The Exemplars — What Each Case Established

Matter One: The Care Plan That Did Not Exist

The facility entered litigation with confidence. It produced what appeared to be a complete and contemporaneous Fall Risk Care Plan—dated, formatted, and authenticated with nursing signatures. On its face, the document reflected compliance.

It was not contemporaneous.

The care plan had been generated only after the resident’s discharge and subsequent death. The discrepancy was not immediately visible because the EHR system had been configured to suppress a critical metadata field—the “Created On” timestamp—from all printed outputs. This was not a redaction. The field was systematically excluded. What remained was a curated record reflecting only a “Date Initiated,” thereby conveying the false appearance of contemporaneity.⁷

The defense offered shifting explanations—first denying the audit trail existed, then attributing it to a third-party vendor, and ultimately claiming it was not preserved in the ordinary course of business. The trial court rejected these representations. It found that the defendants maintained an accessible electronic audit trail—one that could be produced “by clicking a few buttons”—and imposed coercive contempt sanctions of \$1,000 per day, escalating to \$5,000 per day, until compliance was achieved. Quickly, the facility produced 1,145 pages of audit trail logs.⁸ The production confirmed what the printed records had concealed.

The trial court also ordered a live inspection of the EHR system.⁹ The defendants sought appellate relief, first in the Eighth District Court of Appeals and then in the Supreme Court of Ohio. Both efforts failed.¹⁰ Within days of the Supreme Court’s denial of jurisdiction, additional record materials were produced. Those materials established, conclusively, that the care plan had been backdated.

The family’s account was not merely plausible. It was correct. The contrast between the records produced before inspection and those produced after court intervention is shown below:

BEFORE
INSPECTION:

Goal
• No fall related injuries that require hospitalization through review date
Date Initiated: 08/26/2019
Revision on: 10/01/2019
Target Date: 12/05/2019

AFTER
ORDERS:¹¹

Special Instructions
Focus
• Fall Risk characterized by: impaired mobility
Date Initiated: 08/26/2019
Created on: 10/01/2019
Created by: (RN, MDS)
Revision on: 10/01/2019
Revision by: (RN, MDS)
- Fall Risk characterized by: impaired mobility
Date Initiated: 10/01/2019
Created on: 10/01/2019
Created by: (RN, MDS)

LESSON 2 *If a party represents that no audit trail exists, verify that claim independently by consulting the Office of the National Coordinator for Health Information Technology’s Certified Health IT Product List (CHPL) at chpl.healthit.gov, the federal repository for EHR certification standards. Search the CHPL for the defendant’s EMR software by name and review whether it reflects compliance with § 170.315(d)(3) (Audit Report(s)) under the Cures Update—as it almost invariably does—because that certification provides independent, government-sourced evidence that audit trail functionality exists and is capable of production. It directly undercuts any claim that such data does not exist and should be cited in support of a motion to compel.*

Matter Two: The Report That Preceded Surgery

A second EHR inspection in another case revealed a defect not in the content of the record, but in its chronology. The timeline requires no interpretation:

12:22 p.m. — *An operative report is electronically signed by the treating surgeon. The report states the surgery has been completed. It documents clinical findings. It describes what was observed. It specifies the quantity of tissue removed from the operative site.*

12:38 p.m. — *The surgery actually begins.*¹²

As set forth in the pleadings on the public docket, the operative report was signed, finalized, and placed in the permanent medical record sixteen minutes before the first incision. The surgeon documented findings from a procedure that had not yet occurred. The timestamp was system-generated, tamper-proof, and federally certified to be accurate under 45 C.F.R. § 170.315(g)(7), which requires synchronization to Network Time Protocol standards.¹³

That timestamp alone would have been enough. But it was not the only discrepancy. The original operative report — signed at 12:22 p.m. — documented a specific quantity of tissue removed from the operative site. After surgery concluded, a different operative report was created. The revised report documented a quantity approximately forty percent smaller. Two operative reports for the same procedure: one signed before surgery began, one created after it ended, each recording a materially different account of what was done.

In discovery, the defendant health system represented to the court that its production was complete. That representation proved inaccurate. The day before the plaintiff's deposition was scheduled to begin, the court entered an order requiring production of additional records by 10:00 a.m. the following morning — with sanctions of \$100 per day for noncompliance.¹⁴ The court thereafter ordered a live inspection of the EHR. The inspection was conducted pursuant to an agreed protocol.¹⁵

The 12:22 operative report was not in the defendant health system's document production. It surfaced in the records of the co-defendant, complete with a fax transmission timestamp of 12:25 p.m., thirteen minutes before the surgery began. The co-defendant, for its part, did not have the second report in its production. Each defendant had produced one version. Neither had produced both.¹⁶

Individually, each production looked like a complete medical record — correct date, correct provider, correct format. Only the timestamp revealed when the document had actually been created. The inspection revealed that BOTH versions of the operative report existed in the hospital's EHR.

“Documentation created before care and treatment are provided is false documentation. In more than a thousand cases reviewed across fourteen years of forensic audit trail analysis, I have never encountered an operative report created, signed, and made part of the medical record prior to a procedure.” — Expert report filed in the litigation.¹⁷

LESSON 3 *In every surgical case, counsel should ask their forensic expert a simple question: what are the creation timestamps for each operative procedure entry, how do those timestamps compare to the anesthesia times, and do any entries predate the scheduled or actual start of the procedure? This question is inexpensive to pose and straightforward to answer, yet it can be outcome-determinative—here, it was. Its significance, however, would not have been fully realized without both expert analysis and a system-level inspection.*

LESSON 4 *When multiple defendants are involved, serve inspection requests on each and cross-reference every production against the others and against the live system. Discrepancies do not hide under this approach—they surface. Incomplete or selective productions become immediately apparent when measured against parallel productions and the system itself. Here, that comparison, combined with direct inspection, exposed the existence of two divergent operative reports within the hospital EHR—records that did not reconcile and would not have been identified through any single production alone.*

Matter Three: Eight Hundred Forty-Five Pages Hidden in Plain Sight

Inspection Three—the matter introduced at the outset—illustrates the problem in its most concrete form. Comprehensive discovery was served at the outset: audit trails from every EHR platform and revision histories for every provider note. Defense counsel repeatedly certified production as complete after multiple rounds of supplementation. The trial court entered a stipulated order—signed by both counsel—requiring full compliance.¹⁸

By the time of a subsequent hearing, material components of that order remained unfulfilled.¹⁹ As the court made clear, the issue was not what had been produced, but what had not.²⁰ A forensic expert was retained for a specific purpose: to analyze the EHR systems and identify the gap between what existed and what had been produced.²¹ She did exactly that. Against that backdrop, the prospect of a live inspection was addressed on the record, and the defendants ultimately agreed to proceed pursuant to a defined protocol.²²

Unlike most inspections, which are completed within a day, this inspection extended across three days. What the forensic expert located—within the defendants' own EHR systems, never reached by any prior production query—required 19.75 hours to identify and document.²³ The burden was not the inspection. The burden was the omission. Civ.R. 37(B)(3) turned that omission into accountability.

The results were not marginal. They included: Twenty-three note revision histories previously represented as non-existent; forty-five complete infusion encounter records, including associated treatment plans; a key canceled surgical imaging order that had never been disclosed; ultrasound images and screening flowsheets omitted from every encounter summary produced in discovery; and documents residing in an archived prior version of the EHR system that had not migrated to

the current instance.²⁴ That final category reflects a problem recognized in the technical literature: when EHR systems are upgraded, data may not transfer completely, leaving records accessible only through legacy systems.

The court's Sanctions Order found that defendants had failed to comply with the stipulated discovery order and the governing principles of discovery, and it required payment of all fees and expenses associated with the inspection pursuant to Ohio Civ.R. 37(B)(3).²⁵ The parties subsequently agreed upon the sanctions amount of \$221,937.98.²⁶

That figure answers a recurring objection: live inspection is often labeled disproportionate, burdensome, or beyond the scope of discovery. The record demonstrates otherwise.

LESSON 5 *"Complete production" is a subjective assertion dressed as fact. It reflects what counsel represents, not what the system contains. If a production appears thin, unusually clean, or omits records that should exist, obtain a forensic audit analysis and, if supported, promptly seek a live inspection through a motion to compel. It is not a last resort.*

Matter Four: The Audit Trail and the Envelope

The patient had died. His estate brought suit for malpractice and wrongful death. Subsequent amendments added a claim that the defendants had altered the decedent's medical records to avoid liability.²⁷

Years after his death and during the course of litigation, the decedent's widow received an envelope in the mail. It had been sent from the office of one of the defendant physicians. Inside was a copy of a critical imaging study—one of the central evidentiary documents in the case. No explanation accompanied it. The significance of that party-to-party direct communication would become clear only after the audit trail was produced and analyzed, revealing who had accessed the record, and when, in the day immediately preceding the mailing.²⁸

From the outset, the discovery request was direct. Plaintiff served a notice of videotaped deposition under Civ.R. 30(B)(5) together with a Civ.R. 34 request seeking inspection of the live EHR system, including remote access sufficient to view the decedent's records within the system itself.²⁹ The defendants moved for a protective order. They argued that real-time access to the EHR system would invade privacy and confidentiality, expose protected health information, and impose an undue and disproportionate burden.³⁰ The trial court rejected those arguments. It denied the protective order and ordered that defendants provide access to the decedent's electronic medical record through a virtual inspection, subject

to a protective protocol and privacy safeguards to be agreed upon by the parties.³¹

The defendants pursued multiple interlocutory appeals. Each was dismissed for lack of a final, appealable order.³² The appellate court's reasoning was direct. The inspection order did not involve privileged or confidential information within the meaning of R.C. 2505.02(B)(4) because the protocol required that defendants control the system navigation, preapprove screenshots, and submit disputed material for *in-camera* review before disclosure. Blanket assertions of privilege were insufficient. Orders providing for *in-camera* inspection are not final, appealable orders.³³

The inspection proceeded pursuant to court order and protocol and revealed records that had not been previously produced. As set forth on the public docket, the inspection exposed the scale of the omission: 3,826 pages of medical records and 10,012,594 audit trail data points.³⁴ Deposition testimony established that these records were not missing or unavailable—they had remained in the defendants' systems for years and were capable of production when originally requested.³⁵

The audit trail further identified who had accessed the decedent's record on the dates that mattered. The defendant physician had done so, as had a member of the care team who had not previously been central to the litigation. Deposition testimony established that this access occurred in the presence of outside defense counsel—the same counsel who had argued, both in the trial court and across three appellate proceedings, that plaintiff counsel's access of a hospital's EHR system posed an unacceptable risk to security and confidentiality.³⁶

ASTM E2147-18 is explicit and leaves no room for ambiguity: access to a patient's record "by any means"—including access by attorneys, risk management, or similar personnel—is not privileged and must be "fully transparent and disclosed." The standard further requires that audit logs capture and preserve a complete, time-stamped record of all such access as part of the permanent medical record itself. Against that backdrop, three rounds of appellate litigation were undertaken to prevent disclosure of precisely that information. All three were dismissed.³⁷

LESSON 6 *In every hospital case, demand the master IT integration map in your first request for production. It is the table of contents for the discovery you should be conducting; without it, you are searching for documents in rooms you do not know exist. A hospital may operate multiple software systems for a single patient's care—each with its own data, its own audit trail, and each requiring its own demand. The integration map tells you what to ask for.*

Matter Five: The Florida Court Order — The Third-Party Scribe

The fifth matter in this article is not an EHR inspection. The records at issue never resided within the hospital's EHR in the first place.

In this case, the subsequent treating physician recorded patient encounters in full on her cell phone. The patient was aware that the visits were being recorded. What was not disclosed was where those recordings went. The audio was not retained by the physician or the health system. It was transmitted to a third-party vendor—ScribeAmerica—where it was processed outside the hospital's electronic health record environment.³⁸

The documentation process operated entirely off system. Once recorded, the audio was uploaded to ScribeAmerica's platform, where a remote scribe—working from the recording rather than from presence in the room—generated a clinical note and transmitted it back to the physician for review and editing before it was signed into the medical record. The version that entered the permanent record was the edited version.³⁹

In discovery, a critical progress note reflected that it had been amended. After much digging, we learned the underlying materials—the audio recording and the contemporaneous transcription from which the note was created—were no longer available. ScribeAmerica's corporate representative testified that audio recordings and transcripts are deleted within seventy-two hours after completion of the note, and that audit logs are automatically deleted after approximately 400 days.⁴⁰ A preservation letter was sent to the defendant health system specifically requesting preservation of encounter recordings. ScribeAmerica did not receive that request until April 2025—well after the relevant encounters—and by that time, any audio, transcripts, and audit logs had already been deleted pursuant to standard retention protocols.⁴¹

Because ScribeAmerica is a Florida-based entity, an Ohio subpoena could not compel testimony. A Florida court order was required. After hearing argument, the Circuit Court for Palm Beach County denied ScribeAmerica's motion to quash and permitted a limited corporate deposition directed to three issues: what records existed, when they ceased to exist, and when ScribeAmerica became aware of the underlying Ohio litigation.⁴²

That deposition confirmed the practical effect of the retention policy. By the time ScribeAmerica was asked to search for records, it had no audio recordings, no transcripts, and no audit logs from the relevant encounters.⁴³ The witness further testified that once deleted, those materials cannot

be recovered.⁴⁴ What remained was the amended note—the final version entered into the medical record. What was lost was the most contemporaneous account of the encounter: the physician's recorded words, the verbatim transcription, and any system-level record of how the note was created or changed.

The record never remained where the law assumed it would be—and then it was gone.

LESSON 7 *On every intake call, identify whether any third-party documentation was used during clinical encounters, including human scribes and recorded interactions. Ask by name—ScribeAmerica, Aquity Solutions, iScribe, PhysAssist, ProScribe, Scribe-X, and similar vendors—and determine whether any portion of the clinical record was created or stored outside the hospital's EHR. The contemporaneous record of what was said and done in the exam room may not reside within the hospital's production at all. It may instead be maintained by a third-party vendor, subject to separate retention policies, and require independent legal process to obtain.*

LESSON 8 *Ohio Civ. R. 45 does not reach an out-of-state entity. The Uniform Interstate Depositions and Discovery Act, adopted in Ohio at R.C. § 2319.09, provides the mechanism for third-party discovery across state lines, but it requires additional procedural steps and, critically, time. That delay carries risk: a scribe vendor's retention policies continue to run while counsel determines the proper vehicle for enforcement. Third-party vendor discovery must therefore be built into the case strategy from the outset, not after gaps in production are identified.*

III. What Comes Next: The AI in the Room

The scribe problem—critical documentation existing outside the EHR, governed by private retention policies, and invisible to standard discovery—is about to become more complex. Human scribes are being replaced by software. Ambient AI documentation tools are already in widespread clinical use. These systems operate outside the EHR, generating and refining documentation before a finalized note is entered into the record. The underlying data—audio, drafts, edits, and system interactions—remains with the vendor, subject to private retention policies and often outside existing audit frameworks.

The IEEE has identified this gap with precision. In a November 2025 Industry Connections workgroup analysis addressing audit trail and audit data standards, the group concluded that existing frameworks no longer reflect the realities of modern, AI-integrated healthcare systems. The analysis specifically calls for updated audit standards capable of capturing “AI access, inference, decision outputs, and interactions with clinical workflows,” emphasizing that auditability must apply regardless of whether the system is rule-based or data-driven. It further recognizes a critical structural omission: patient care information is increasingly generated and exchanged through messaging platforms, collaborative tools, and external systems, yet “existing audit trail specifications and standards do not cover these ephemeral messaging platforms in the healthcare context.”⁴⁵ As of this writing, no federal certification requirement governs ambient or AI-assisted documentation tools, no comprehensive audit mandate extends to external or ephemeral systems, and no uniform retention requirement applies to the data they generate. The consequence is structural: the modern clinical record is increasingly created outside the certified EHR, beyond existing audit frameworks, and subject to private control. In the cases presented here, the missing record is not an anomaly—it is the predictable product of systems not designed to preserve what they create.

The same problem exists within the EHR itself. Clinical decisions are often communicated through integrated messaging systems that do not retain the underlying exchange. The instruction may be documented. The reasoning is not. In some systems, messages can be configured to auto-delete after they are read—ephemeral communications embedded within certified EHR infrastructure. These exchanges are not captured in standard productions and are recoverable only if identified and preserved before deletion.

At present, no comprehensive, enforceable standard governs how EHR-integrated messaging is created, retained, audited, or produced. The result is structural: critical components of clinical decision-making may occur within certified EHR systems and yet remain outside any durable, auditable, or discoverable record. In practice, this means the most contemporaneous version of the clinical encounter may never enter the medical record at all.

The gap between what the AI generated and what the physician signed is where the truth lives.

LESSON 9 *In every new case, before serving your first records request, determine whether any ambient AI documentation system was used during clinical encounters. Ask by name—Nuance DAX, DAX Copilot, Abridge, Suki, Nabla, DeepScribe, Augmedix—and do not rely on the facility to volunteer the information. These systems generate clinical documentation from recorded encounters and often operate outside the hospital’s certified EHR, with data stored in separate vendor environments. The inquiry must be directed beyond written discovery: ask the treating physician in deposition and the hospital’s IT administrator directly. The existence of such a system may define the scope of discoverable evidence and, in many cases, may be the most consequential fact identified in the early stages of litigation.*

LESSON 10 *Send a preservation letter to the AI vendor the day its use is identified and concurrently notify the hospital of its obligation to preserve all third-party documentation within its possession, custody, or control, including data maintained by vendors acting on its behalf. The hospital’s EHR operates under retention policies shaped by federal regulation; the AI vendor’s retention policy does not. Whatever its terms, the clock is already running. Unless the vendor receives a litigation hold before that period expires, the underlying data—often including the original audio or source inputs—may be automatically and permanently deleted. Once lost, it cannot be reconstructed.*

IV. The Expert You Need

I will be direct about this, because the wrong expert will undermine the work you have done to get inside the system.

Medical record review is a common skill. Forensic audit trail analysis is not. The right expert has specific, demonstrable experience with EHR audit data—not records generally. She must know how EPIC generates timestamp data differently from Cerner. How PointClickCare structures its audit logs relative to Soarian. What a copy-forward event looks like in the raw audit data versus an original entry. How the system records a note that was auto populated from a template versus one that was typed. How to read a workstation identifier and understand from which terminal and location a given action originated. Ask specifically: How many EHR platforms have you worked with? Which ones? How many live inspections

have you conducted? Have you identified pre-documentation — entries timestamped before the events they describe? Have you worked with post-death access data? With copy-forward analysis? Have you been deposed or testified in court on these specific topics? That depth of specialized experience is not a luxury. It is the difference between finding the evidence and walking past it.

And the expert must be able to explain it to a jury. Timestamps, VisitIDs, NTP synchronization, workstation identifiers — none of it means anything to the people in the jury box. The expert who can look at the jury and say, simply and clearly: the operative report says the surgery was documented at 12:22, the surgery did not begin until 12:38, and that is not a clerical error — that expert wins the case. The jargon is for the motion. The plain language is for the verdict.

V. The Threat on the Horizon: HTI-5

This Article concludes with a development that should concern any lawyer litigating medical cases. It threatens to place much of what has been described here beyond reach.

The U.S. Department of Health and Human Services has proposed the HTI-5 rule—formally titled *Health Data, Technology, and Interoperability: ASTP/ONC Deregulatory Actions to Unleash Prosperity*—which would eliminate a substantial portion of the current certification requirements for electronic health record systems.⁴⁶ The proposal removes federal guardrails without first establishing updated standards to replace them. It is deregulation without a successor framework. The practical effect is straightforward: the regulatory floor is being considered for removal before a new one has been built.

Among the criteria at risk is 45 C.F.R. § 170.315(d)(3), which requires certified EHR systems to generate complete, tamper-resistant, machine-readable audit trails. These are not technical formalities. They determine whether the underlying data exists at all. Every case described in this Article turned on data the audit trail either preserved or failed to preserve. Remove the requirement to generate that data, and the consequence is not merely regulatory—it is evidentiary. It changes what can be proved.

If certification requirements are reduced, the standards they enforce must first be modernized. That modernization must address AI-generated content, interoperability across platforms, metadata transparency, retention of ephemeral communications and scribe data, and audit coverage for systems operating outside the certified EHR. Those standards do not yet exist in enforceable form. The IEEE has

identified these gaps and called for expanded measures of data completeness, traceability, and auditability.

For more than two decades, the structure of electronic records has placed certain critical information beyond reach. HTI-5 risks transforming that reality from a flaw in the system into its design.

VI. Conclusion

It took years of litigation — multiple court-ordered inspections, three trips to the Eighth District, one to the Supreme Court of Ohio, and a \$221,937.98 check — to confirm what my instincts had long told me: the chart you were handed is not the chart that exists.

Every inspection has proved it. The system holds what the paper does not — and someone is counting on no one to look.

Know the system. Know what it holds. And go get it.

*IEEE: A Note on this Standards Authority

The Institute of Electrical and Electronics Engineers (IEEE) is the world's largest technical professional organization, with more than 400,000 members in over 160 countries. Its Standards Association develops widely adopted global technical standards, including those governing Wi-Fi (IEEE 802.11), Ethernet (IEEE 802.3), and electromagnetic safety in medical environments (IEEE C95.1).

In 2023, the IEEE Standards Association launched an international Industry Connections workgroup focused on data quality in electronic health records: the ICAID Workgroup on Data Quality Standards of Electronic Health Records. The workgroup includes engineers, informaticists, clinicians, health system architects, and legal practitioners from institutions across the United States and internationally.

Its published outputs are peer-reviewed working documents that provide the definitional and evidentiary foundation for standards currently under development in this area. The materials cited in this Article are publicly available through the IEEE Standards Association.

About the Author

Susan E. Petersen, Esq. is the founding partner of Petersen & Petersen in Chardon, Ohio, where she has represented catastrophically injured individuals and their families for nearly three decades. Her practice focuses on complex medical negligence litigation, with particular emphasis on electronic health record discovery and audit trail analysis. She has served



Susan E. Petersen, doing Zoom inspection.

as lead counsel in cases resulting in significant settlements and verdicts and has obtained court-ordered forensic inspections of live EHR systems across multiple platforms, including EPIC, Soarian, PointClickCare, and Cerner.

Petersen has presented nationally on issues of EHR data integrity and discovery. In 2025, she was invited to join the IEEE Standards Association Industry Connections Activity on Improved Data Quality of Electronic Health Records (ICAID) Workgroup. She is a founding member of the Health Access and Records Protection (HARP) Institute (2026) and argued before the Supreme Court of Ohio in *Paganini v. Cataract Eye Center of Cleveland* (Feb. 10, 2026).

She is the recipient of the 2024 CATA Excellence in Advocacy Award and the 2024 Ohio Association for Justice J. Thomas Henretta Distinguished Advocate Award and was inducted into the Cleveland-Marshall College of Law Hall of Fame in 2023. ■

End Notes

1. Case No. CV-2023-09-3525, Sanctions Order, at *1 (Ohio Ct. Com. Pl., Summit Cnty. Oct. 7, 2025) (finding that defendants failed to comply with the court's Jan. 29, 2025, order and applicable discovery obligations and ordering payment of inspection-related expenses pursuant to Ohio R. Civ. P. 37(B)(3)).
2. Case No. CV-25-113720, Affidavit of Susan E. Petersen, Esq. ¶ 4 (Ohio Ct. Com. Pl., Cuyahoga Cnty. filed Mar. 13, 2026) (attesting that the Summa defendants "paid the full agreed sanctions amount of \$221,937.98" in satisfaction of the Summit County sanctions award); see also Case No. CV-2023-09-3525, Journal Entry, at *1 (Ohio Ct. Com. Pl., Summit Cnty. Feb. 27, 2026) (reflecting that the sanctions amount was resolved by agreement and ordering payment by Mar. 6, 2026).
3. Susan E. Petersen, *Overcoming Objections to Production of a Complete and Unredacted Audit Trail*, CATA News, Spring 2023, at 10–11 (describing post-production audit trail disclosures revealing previously concealed record information); <https://clevelandtrialattorneys.org/wp-content/uploads/2023/06/CATA-NEWS-26th-Issue-Final-Proof-Spring-2023.pdf>.
4. No. 113288, ¶¶ 1–2 (Ohio Ct. App. Dec. 12, 2024) ("We dismiss the appeal for lack of jurisdiction."; dismissing interlocutory challenge to order permitting inspection of electronic medical records); see also *Id.* ¶ 14 ("An order that leaves issues unresolved and contemplates future action is not a final, appealable order."); No. 110373 (Ohio Ct. App. May 5, 2021) (denying reconsideration following dismissal of interlocutory appeal arising from discovery protocol governing electronic medical record inspection).
5. Varadraj Gurupur, *Understanding an Electronic Health Record System and Its Applicable Data Quality Measures*, IEEE SA Industry Connections (Mar. 29, 2024), at 6–7 (explaining that EHR systems vary across healthcare settings and implementations, leading to differences in data structure, format, and interpretation).
6. Varadraj Gurupur, *Understanding an Electronic Health Record System and Its Applicable Data Quality Measures*, IEEE SA Industry Connections (Mar. 29, 2024), at 6–7 (explaining that EHR systems vary across healthcare settings and implementations, leading to differences in data structure, format, and interpretation).
7. Case No. CV-20-934555, Plaintiff's Trial Brief (Ohio Ct. C.P., Cuyahoga Cnty. filed Sept. 21, 2021) (describing post-discharge creation of fall risk care plan and exclusion of "Created On" timestamp from printed records, thereby creating the appearance of contemporaneity); see also Susan E. Petersen, *Overcoming Objections to Production of a Complete and Unredacted Audit Trail*, CATA News, Spring 2023, at 10 (describing production of a fall risk care plan that excluded the "Created On" date, later revealed to have been generated after the patient's discharge and death).
8. Case No. CV-20-934555, Journal Entry (Ohio Ct. C.P., Cuyahoga Cnty. filed June 24, 2021) (finding defendants in contempt for failure to produce audit trail information and imposing sanctions of \$1,000 per day, escalating to \$5,000 per day; further finding that defendants maintained audit trail information electronically and could produce it "by clicking a few buttons"); see also *Id.* (ordering production of audit trail information responsive to requests for production).
9. Case No. CV-20-934555, Journal Entry (Ohio Ct. C.P., Cuyahoga Cnty. Mar. 11, 2021) (granting, inter alia, a virtual inspection of the plaintiff's electronic medical chart within the PointClickCare system).
10. No. 110373 (Ohio Ct. App. 2021) (dismissing interlocutory appeal arising from discovery order governing EHR inspection); No. 2021-0780 (Ohio Aug. 17, 2021) (declining jurisdiction) ("the court declines to accept jurisdiction of the appeal").
11. Susan E. Petersen, *Overcoming Objections to Production of a Complete and Unredacted Audit Trail*, CATA News, Spring 2023, at 10–11 (describing post-production audit trail disclosures revealing previously concealed record information); <https://clevelandtrialattorneys.org/wp-content/uploads/2023/06/CATA-NEWS-26th-Issue-Final-Proof-Spring-2023.pdf>.
12. Case No. CV-23-983480, Plaintiffs' Final Pretrial Statement, (Ohio Ct. C.P., Cuyahoga Cnty., filed Sept. 2, 2025), at 5–6 (describing operative report electronically signed at 12:22 p.m. prior to surgery beginning at 12:38 p.m., and existence of differing operative reports documenting inconsistent surgical findings).
13. 45 C.F.R. § 170.315(g)(7). This regulation was issued by the Office of the National Coordinator for Health Information Technology (ONC) and is available online at the following link: <https://www.ecfr.gov/>.
14. Case No. CV-23-983480, Journal Entry (Ohio Ct. C.P., Cuyahoga Cnty., Feb. 6, 2025) (ordering production of additional records and imposing sanctions for noncompliance).
15. Case No. CV-23-983480, Journal Entry (Ohio Ct. C.P., Cuyahoga Cnty. Mar. 13, 2025) (Ordering videotaped inspection conducted pursuant to an agreed protocol).
16. Case No. CV-23-983480, Plaintiffs' Final Pretrial Statement, (Ohio Ct. C.P., Cuyahoga Cnty. Sept. 2, 2025), at 5–6 (describing operative report electronically signed at 12:22 p.m. prior to surgery beginning at 12:38 p.m., and existence of differing operative reports documenting inconsistent surgical findings).

17. Case No. CV-23-983480, Plaintiffs' Final Pretrial Statement, (Ohio Ct. C.P., Cuyahoga Cnty. Sept. 2, 2025), at 6 (quoting Expert Report of Michele Gonsman, RN, BSN, ALNC).
18. Case No. CV-2023-09-3525, Stipulated Order, (Ohio Ct. C.P., Summit Cnty. Jan. 29, 2025) (requiring complete production of EHR records, audit trails, and related discovery materials by agreed deadline);
19. Case No. CV-2023-09-3525, Aug. 21, 2025, Tr. of Proceedings at 3–4 (Ohio Ct. C.P., Summit Cnty. Oct. 9, 2025) (court stating that the issue was not what had been produced but what had not and directing complete compliance with outstanding discovery obligations);
20. Case No. CV-2023-09-3525, Aug. 21, 2025, Tr. of Proceedings at 3–4 (Ohio Ct. C.P., Summit Cnty. Oct. 9, 2025) at 5–6 (“I don’t care. If there are another 10,000 pages to produce, then you owe them 6,000 pages.”)
21. Case No. CV-2023-09-3525, July 16, 2025, Tr. of Proceedings at 7–8 (Ohio Ct. C.P., Summit Cnty. Oct. 30, 2025) (counsel stating expert waiting in the wings to testify who plaintiff was forced to retain because gut told her they did not have everything in terms of the records.).
22. Case No. CV-2023-09-3525, Aug. 21, 2025, Tr. of Proceedings at 9–10 (Ohio Ct. C.P., Summit Cnty. Oct. 9, 2025)(agreement to live EHR inspection)
23. Case No. CV-2023-09-3525, Sanctions Order (Ohio Ct. C.P., Summit Cnty. Oct. 7, 2025) (finding that forensic expert required 19.75 hours to identify and document records that had existed within defendants’ EHR systems and had never been produced).
24. Case No. CV-2023-09-3525, Sanctions Order (Ohio Ct. C.P., Summit Cnty. Oct. 7, 2025) (finding that 845 pages of previously unproduced medical records—including revision histories, imaging, and treatment records—were identified during inspection and that locating them required 19.75 hours).
25. Case No. CV-2023-09-3525, Sanctions Order (Ohio Ct. C.P., Summit Cnty. Oct. 7, 2025)(issuing sanctions under Civ. R. 37(B)(3).
26. Case No. CV-2023-09-3525, Journal Entry (Ohio Ct. C.P., Summit Cnty. Feb. 27, 2026), (ordering payment of agreed sanctions amount of \$221,937.98); see also Case No. CV-25-113720, Affidavit of Susan E. Petersen, Esq., ¶ 4, Ex. Q, Plaintiff’s Reply in Support of Motion to Compel Discovery, (Ohio Ct. Com. Pl., Cuyahoga Cnty, Mar. 18, 2026).
27. No. 113288, ¶ 3 (Ohio Ct. App. Dec. 12, 2024) (noting amended complaint included claim that defendants altered medical records to avoid liability).
28. Case No. CV-22-962194, Plaintiff’s Reply in Support of Motion for Leave to File Third Amended Complaint, (Ohio C.P. Cuyahoga Cnty Aug. 28, 2024), at 4–7 (describing post-death record access, undisclosed activity within the EMR, and related factual developments).
29. No. 113288, ¶ 4 (Ohio Ct. App. Dec. 12, 2024) (quoting Civ.R. 30(B)(5) notice and Rule 34 request for virtual inspection of EMR).
30. *Id.* ¶ 5.
31. Case No. CV-22-962194, Journal Entry (Ohio C.P. Cuyahoga County June 5, 2023) (denying motion for protective order and ordering virtual inspection subject to protocol; warning of sanctions for noncompliance); No. 113288, ¶¶ 1–2 (Ohio Ct. App. Dec. 12, 2024) (dismissing interlocutory appeal for lack of jurisdiction).
32. No. 113288, ¶¶ 1–2 (Ohio Ct. App. Dec. 12, 2024) (dismissing interlocutory appeal for lack of jurisdiction).
33. *Id.* ¶¶ 1–2, 5 (holding discovery orders governing inspection and protocol are not final appealable orders and rejecting blanket privilege assertions).
34. Case No. CV-22-962194, Plaintiff’s Notice of Compliance with October 8, 2024, Judgment Entry; Supplement to Pending Motion to Show Cause; Emergency Motion for Rule 37 Sanctions, (Ohio C.P. Cuyahoga Cnty. Oct. 28, 2024), at 3, 6.
35. Case No. CV-22-962194, Deposition taken on Oct. 25, 2024, at 76–77, 92, 107, (Ohio Ct. C.P., Cuyahoga Cnty Oct. 29, 2024) (testifying that records produced in August 2024 included materials dating back to 2009–2017, that such records should have been produced in response to earlier requests, and that if records existed in the system in 2024, they would have existed in prior years).
36. Case No. CV-22-962194, Plaintiff’s Reply in Support of Motion for Leave to File Third Amended Complaint, (Ohio Ct. C.P. Cuyahoga Cnty. Aug. 28, 2024), at 4–7 (describing post-death record access, undisclosed activity within the EMR, and related factual developments).
37. ASTM International. (2018). ASTM E2147-18, Standard Specification for Audit and Disclosure Logs for Use in Health Information Systems §§ 1.1, 4.3 (2018) Retrieved from <https://www.astm.org/Standards/E2147.htm>.
38. Case No. CV-23-983480, Deposition of ScribeAmerica Representative at 23–24, 35–36, Aug. 28, 2025, (Ohio C.P. Cuyahoga Cnty Sept. 10, 2025) (describing recording and remote scribe process through ScribeAmerica platform).
39. *Id.* at 37–39 (testifying that audio recordings and transcripts are deleted within seventy-two hours after note completion and that audit logs are retained for approximately 400 days before automatic deletion).
40. *Id.* at 42–45 (testifying ScribeAmerica first received notice of litigation in April 2025 and confirming deletion and non-recoverability of data).
41. *Id.*
42. Case No. 50-2025-CA-005912 (Fla. Cir. Ct. Aug. 20, 2025), Order at 1–2, (denying motion to quash and limiting deposition to existence, destruction, and notice of records).
43. Case No. CV-23-983480, Deposition of ScribeAmerica Representative at 37-39, Aug. 28, 2025, (Ohio Ct. C.P., Cuyahoga Cnty Sept. 10, 2025) (testifying that audio recordings and transcripts are deleted within seventy-two hours after note completion and that audit logs are retained for approximately 400 days before automatic deletion).
44. *Id.*
45. Tom Jacob, J.D., *Updating ePHI Definitions: Audit Trail and Audit Data*, IEEE SA Industry Connections, IC23-005 Global Data Quality Standards for Electronic Health Records (Nov. 26, 2025), at 10–11 (explaining need to update audit standards to capture AI system activity, including “AI access, inference, decision outputs, and interactions with clinical workflows,” and noting that existing audit trail specifications do not cover “ephemeral messaging platforms in the healthcare context”); *Id.* at 5–6 (describing audit data and audit trails as necessary to ensure trustworthiness, authenticity, and completeness of electronic health records): <https://ieeexplore.ieee.org/stamp/stamp.jsp?arnumber=11270031>.
46. *Health Data, Technology, and Interoperability: ASTP/ONC Deregulatory Actions to Unleash Prosperity*, Docket No. ONC-2025-0001 (proposed Dec. 2025), available at <https://www.federalregister.gov> (U.S. Dep’t of Health & Hum. Servs., Office of the Nat’l Coordinator for Health Info. Tech.). The rule was proposed under the office’s then-current designation of “ASTP/ONC,” a dual title adopted in July 2024 when ONC was redesignated as the Office of the Assistant Secretary for Technology Policy / Office of the National Coordinator for Health Information Technology. That designation was reversed effective Mar. 31, 2026, returning the agency to its original name, ONC. See Office of the Nat’l Coordinator for Health Info. Tech., Reorganization, 91 Fed. Reg. ____ (Mar. 31, 2026). The rule’s title reflects the agency’s name at the time of proposal; the agency is now again referred to as ONC.



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Patients Have A Federal Right To View Their Electronic Medical Records On The Computer

10 Things Lawyers and Judges Should Know About a Patient's Right to View Their Medical Records in the EMR

by Dustin B. Herman, Esq.

Walk into any Emergency Room today and you will see vital sign monitors, dozens of connected devices, nurses and doctors texting through secure apps on their phones, and even AI making care recommendations.

Technology has transformed healthcare. The days of simple paper medical records are long gone. A patient's health information now lives across many different electronic/software systems—including the main Electronic Medical Record (EMR) system like Epic or Cerner,¹ but also separate messaging apps, alert systems, radiology, pharmacy, lab, and AI tools. All of these systems can generate various reports in PDF or spreadsheet format. These PDF "reports" are what we commonly refer to as the "medical records." But there are a ton of different potential reports and they will vary in length depending on the filters selected when the hospital generates the report. The EMR itself, only viewable on the computer, is the actual medical record—and the **best evidence** of the medical record is the EMR itself, not the various filtered "reports" that the EMR can generate.

Under federal law, patients have an absolute right to inspect and obtain a copy of their protected health information—no matter which system it lives in or which report it is contained in.² This right does not disappear when a lawsuit is filed. In litigation, patients are entitled to their full health information under federal law plus any additional relevant and proportional information under the discovery rules.

There is no longer a single report that can be called the "entire medical record." Instead of fighting over whether the "complete" record was produced, the parties should focus on three practical questions: (1) What systems contain the patient's health information? (2) What reports can those systems generate? and (3) Which filters should be used?

The easiest and most effective way to answer these questions is through the meet and confer process and a simple virtual inspection. The procedure is straightforward:

- 1. Make a List of Systems.** Counsel work together to identify a list of all the electronic systems that contain the patient's health information (EMR, messaging apps, alert systems, etc.).
- 2. Make a List of Reports.** The parties identify and discuss the available reports from each system.
- 3. Jump on Zoom and Run the Reports.** Counsel for the parties and a hospital representative jump on Zoom, review the systems together, and generate the needed reports with the agreed-upon filters.

This can be done quickly — often in a single afternoon — and can be repeated as needed if new systems or reports surface. Inspections are easy to do, produce highly relevant evidence, and dramatically reduce the amount of time a court has to spend on discovery disputes.

Inspections aren't the problem—they're the

solution (at least part of it) to discovery disputes over medical records. Here are ten things lawyers and judges should know about these electronic systems to understand why.

1. Federal Law Gives Every Patient the Right to Inspect Their Own Health Information

Patients own their own health information, not hospitals. Federal regulations give patients the absolute right to inspect and obtain a copy of their protected health information. That is what makes this issue different from discovery disputes in every other type of case. Patients are already entitled to view and inspect their own health information—they certainly do not lose access to it when they file a lawsuit.

First, 45 CFR 164.524(a) states: “Standard: Access to protected health information—an individual has a **right of access to inspect and obtain a copy of protected health information** about the individual in a designated record set[.]”

Second, a “record” and a “designated record set” are defined about as broadly as possible. “Record” means “**any** item, collection, or grouping of information that **includes protected health information**[.]” See 45 CFR § 164.501. And a “Designated Record Set” is defined as “A group of records . . . that is . . . (i) the medical records . . . or (iii) **Used, in whole or in part**, by or for the covered entity to **make decisions** about individuals.” See 45 CFR § 164.501.

The takeaway is that patients have broad rights to inspect and obtain a copy of their own health information—especially if the information was used to make decisions about the patient. This is also just common sense. Patients own their own medical information—and they have a right to see it and get copies of it.

2. Hospitals to Comply with Federal Law, Have Policies in Place to Provide Patients Access to Inspect Their EMR Upon Request

Hospitals have policies that allow patients to inspect their health information inside the EMR system. For example, the Cleveland Clinic uses Epic as its primary EMR system (it uses many other systems as well). Back in 2021, I was deposing a Cleveland Clinic corporate representative, and she told me: “**We have an open chart policy at Cleveland Clinic.** . . . [t]he patient does have a **right to view** his or her medical record and they have to request that.” Question: “**Within the Epic system?**” Answer: “**Yes.**” Depo of CCF Corp. Rep., May 7, 2021, pages 57:19, 58:9-12.

After that deposition, we requested and received the policy. It is called the “*Patient Requests to View Open Medical Records Standard Operating Procedure.*” It says: “**Patients will be made aware of the right to request to view their Open Medical Record upon admission to the hospital or registration as a patient.**” And it explains the procedure for doing an inspection of the EMR: “**A member of the direct care team . . . will remain with the patient or Personal Representative and will be the person navigating the Open Medical Record.**”

This is the exact same procedure we use for inspecting a patient’s EMR in litigation. Only in litigation, we do a virtual inspection via Zoom, so it is even easier. The hospital representative is still the person navigating the EMR and clicking through the chart.

The bottom line is this: Patients have a right of access under federal law and hospital policy to inspect their own health information in the EMR before litigation; patients certainly don’t lose

that right when they file suit. Discovery in litigation means getting more access to information, not less.

3. Paper/PDF Medical “Records” are Just Filtered “Reports”

EMR systems contain a ton of patient health information, and they can generate various reports into PDF form. One version of these reports is produced to patients upon request and is what we commonly refer to as the “medical records.” But there are many different types of reports, and they can contain more or less patient health information depending on the filters used when creating the report.

See **Image #1** at the end of this article. It is a screenshot from PointClickCare (PCC) showing a drop-down menu of different pre-set reports like “Discharge Hosp,” “Insurance Audit,” and “Legal chart.” These are just different template reports, referred to as different “charts” by the nursing home. The “Discharge Hosp” report goes to the hospital, the “Insurance Audit” report goes to the insurance company, and the “Legal Chart” report goes to the patient.

These reports vary in length—the “Legal Chart” for our client was 132 pages while the “Insurance Audit” was 196 pages. The information contained in each report depends on the filters the nursing home selected for each report.

Now look at **Image #2**, you can see the “Insurance Audit” report is selected. Below that, in the column on the left, you can see the various sub-reports that are included in this report. On the right, you can see the filters selected for these sub-reports. We learned that if the filter is not set to “all” that means there is information missing from the sub-report. Shout out to attorney and PCC expert consultant Megan Shore whom we hired to teach us how to do

these inspections of PCC—she is really really good and you should hire her too!

Now look at **Image #3**. It shows how some of the filters are set—simply by checking or not checking boxes. The “created date” (circled in Image #3) is a very important piece of information—it shows the exact date and time a progress note was written, as opposed to just showing the “effective date” which indicates when the writer says the event took place. The created date is often not included in the filtered report produced to patients.

4. EMR Systems Can Generate Many Different Reports

EMR Systems can generate a variety of reports, and facilities can create custom reports to pull specific information from the EMR. During an inspection of PCC, we found over 500 pages of relevant reports that were not included in any of the “charts” shown above. PCC even has a separate “reports” tab with a search bar.

For example, look at **Image #4**: a search is being done for the “Follow Up Question Report.” This Follow Up Question Report is highly relevant because it shows what time a nursing aid actually entered information into the chart. In a case in which our 88-year-old client lost 30 pounds in two weeks and died from dehydration, the “Legal chart” report produced showed that our client had supposedly been drinking lots of fluids and eating all his food in the weeks leading up to his death.

But the Follow Up Question Report showed that a large number of those entries were added weeks later. See Image #5. The first example in **Image #5** shows that a nurse aid documented that our client ate 100% of his food and drank 360 cc’s (12 ounces) of fluid at dinner (5:30pm) on November 1, 2022, but the nursing aid did not

actually add that to the chart until November 23, 2022—a few days after our client had been sent to the hospital for dehydration. We also found that entries had been added in advance. In the second example shown in Image #5, an agency nurse documented that on November 19, 2022, our client ate all his dinner and drank 360cc’s (12 ounces) of fluid at 5pm. **But that was entered at 10:18am that morning.** This is highly illegal, and we never would have had this information but for the inspection of the EMR.

5. Hospitals Have Many Other Electronic Systems That Contain Patient Health Information—and Those Systems Can Generate Their Own Reports

In addition to the EMR, hospitals have dozens of other electronic systems that contain patient data.

Messaging Apps. Nowadays, healthcare providers are constantly sending electronic messages to each other about patient care. But hospitals use many different messaging apps—SecureChat, In Basket Messages, Signal, Trillion, Tiger Chat, PerfectServe, Text Pages, plain old text messages, the list goes on. See Image #6. Most or all of the communications about a patient sent through one of these messaging apps will not appear in the paper/PDF reports normally produced in litigation, and many messages will not appear in the EMR system at all. Most attorneys will not even know which messaging apps the hospital used.

Critical Alert Systems. Hospitals also use critical alert systems for notifying providers about critical results. In a case we tried in 2023, a patient was sent home from the ER, and 9 hours later blood test results showed the patient had a blood infection—but no one called the patient, and the patient died.

We found out during an inspection of the EMR that a totally separate electronic system had sent out “critical red alerts” all over the hospital (13 recipients in total) when the blood tests came back. That system was called the “Veriphy” system and was not connected in any way to the EMR.

We had to do a separate deposition regarding the Veriphy system. The Veriphy system was able to generate a report that showed all the alerts and messages inside that system (and who received them and when). Turns out a nurse wrote a message that she was going to forward the critical results to the “culture nurse.” See **Image #7**. The problem was that, as we found out, the culture nurse was not working that day, and ultimately that is why no one called the patient.

Other Systems and AI. Hospitals also use various other software systems—like systems for radiology records, pharmacy records, and laboratory records. And now these electronic systems are infused with AI bots—providing analyses and making recommendations. Patients deserve to know how AI was used in their care—and what AI messages were displayed to the providers.

6. The Phrase “Legal Medical Record” Is Meaningless in Litigation

Federal regulations do not mention a “legal medical record.” A “Record” is broadly defined as “any item, collection, or grouping of information that includes protected health information[.]” See 45 CFR § 164.501. In Ohio, a “medical record” is “data in any form that pertains to a patient’s medical history, diagnosis, prognosis, or medical condition[.]” R.C. 3701.74(A)(8).

The “legal medical record” is simply the name of the template report hospitals and nursing homes produce to patients

outside of litigation. But any report that contains patient health information is a medical record, and the patient has the right to it under federal law.

Bottom line: The phrase “legal medical record” is meaningless in litigation.

7. There Is No Such Thing (Anymore) as the “Complete” Medical Record—and Attorneys Need to Meet and Confer at the Rule 26(F) Conference

Phrases like “complete medical record” or “entire medical record” are no longer helpful. Hospitals hold huge amounts of patient data that live across many different electronic systems, which can generate many different PDF (and spreadsheet) reports.

Instead, attorneys need to first discuss the various electronic systems at the Rule 26(F) conference (and thereafter) and **make a list** of the systems that might contain patient health information and other relevant evidence. Then, for each system on the list, the attorneys can discuss which reports are available, which filters should be used, and what should be produced. (Appendix K of the Local Rules for the NDOH sets forth a similar procedure for meeting and conferring about electronic discovery—it also requires the parties to designate an “e-discovery coordinator” who is familiar with the parties’ electronic systems; Cuyahoga County used to have Local Rule 21.3, which also set forth a similar procedure.)³

8. Zoom Has Made Conducting a Virtual Inspection of the EMR System Exceptionally Easy

Conducting a virtual inspection of the EMR via Zoom is extraordinarily easy. I did my first one in January 2021, during COVID. See **Image #8**. The hospital corporate representative logged

into the patient’s chart from her laptop at home and shared her screen. I simply directed her to click through the EMR and asked her questions about what we were seeing. We learned a ton that wasn’t in the PDFs.

There is simply no burden on the hospital for conducting a virtual inspection of the EMR—other than the deponent’s time.

9. Inspections of the EMR Produce Extremely Relevant Information

Here are 3 more examples of relevant information discovered during virtual inspections of the EMR:

- 1. Doctor saw sepsis alerts but ignored them.** Patient discharged from the ER twice in one day, died the next day from pneumonia. The EMR inspection revealed the ER doctor received two sepsis alerts and ignored them. This came out three weeks before trial; the jury cited it as the reason for negligence. See **Image #9**.
- 2. Physician’s assistant edits ER note after test results showed blood infection.** Patient discharged, then died days later. Inspection showed the PA made major edits to the ER note an hour after the critical results came back. The EMR allows you to see the “history” for any progress note, so you can see when each portion of the note was added. The additional text appears underlined just like in Microsoft Track Changes. See **Image #10**.
- 3. Records showing lack of bathing.** Inspection uncovered reports (never produced before) showing the patient received less than 35 baths for an entire year when she should have had at least 104. We made an exhibit by hand during the inspection that was

admitted into evidence at trial (without objection) as a summary of voluminous records. Based on this information, the jury found 72 separate violations of the resident’s nursing home bill of rights. See **Image #11**.

10. Inspections Are the Solution, Not the Problem, to Discovery Disputes Over Medical Records

Traditional discovery often leads to endless fights: Plaintiff requests production. Defendant objects, but provides stack of PDF “records.” Plaintiff says it’s not “complete.” Defendant asks what’s missing. Plaintiff says “I don’t know what I don’t know.” And the fight drags on.

A better way: Everyone jumps on a Zoom (including a hospital corporate rep.), and they pull up the patient’s EMR, review it together, and generate the needed PDF reports on the spot with the right filters selected. I have personally done 8 virtual inspections, and it is amazing how well they work.

During the inspection, plaintiff’s counsel can direct exactly which reports and filters to use as permitted by Rule 34.⁴ This is the most efficient and least burdensome method for conducting discovery and resolving disputes. So while inspections are permitted by Rule 34, they are—in a way—*required* by Rule 26.

Defense objections don’t hold up. They say merely viewing the EMR system on Zoom will risk disclosure of “proprietary” information. But training videos for these systems are all over the internet; and every nurse, doctor, and health care provider can see these EMR systems on a daily basis; and every patient in the country already has the right to see (and photograph if they want) their records in the EMR. By definition,

publicly available information cannot be proprietary.

HIPAA concerns are also overblown. Hospitals already allow in-person inspections with a staff member navigating the screen. On Zoom, there are even more safeguards in place—the hospital corp. rep. has 100% control of the screen, and if there is a concern that clicking on something may reveal another patient’s data, the representative can simply pause the screen sharing until they confirm no other patient data has been displayed.⁵

Virtual inspections will cut through the discovery disputes—and they are exactly the type of cooperation between counsel and the parties that is expected by Rule 26.

The shift from paper to electronic—and now AI-enhanced—records isn’t going away. It has made healthcare more efficient in many ways, but it has complicated discovery in medical malpractice cases. Clinging to old

ideas about what counts as “the complete medical record” only creates unnecessary fights.

Instead, in light of the fact that patients have a federal right of access to inspect and obtain a copy of all their health information, the parties need to work together to identify all the various electronic systems and various reports that contain a patient’s health information, and then figure out how to produce that health information to the patient/plaintiff. The easiest and most effective way to do this is through the meet and confer process and a virtual inspection. The procedure looks like this:

1. Make a List of Systems.

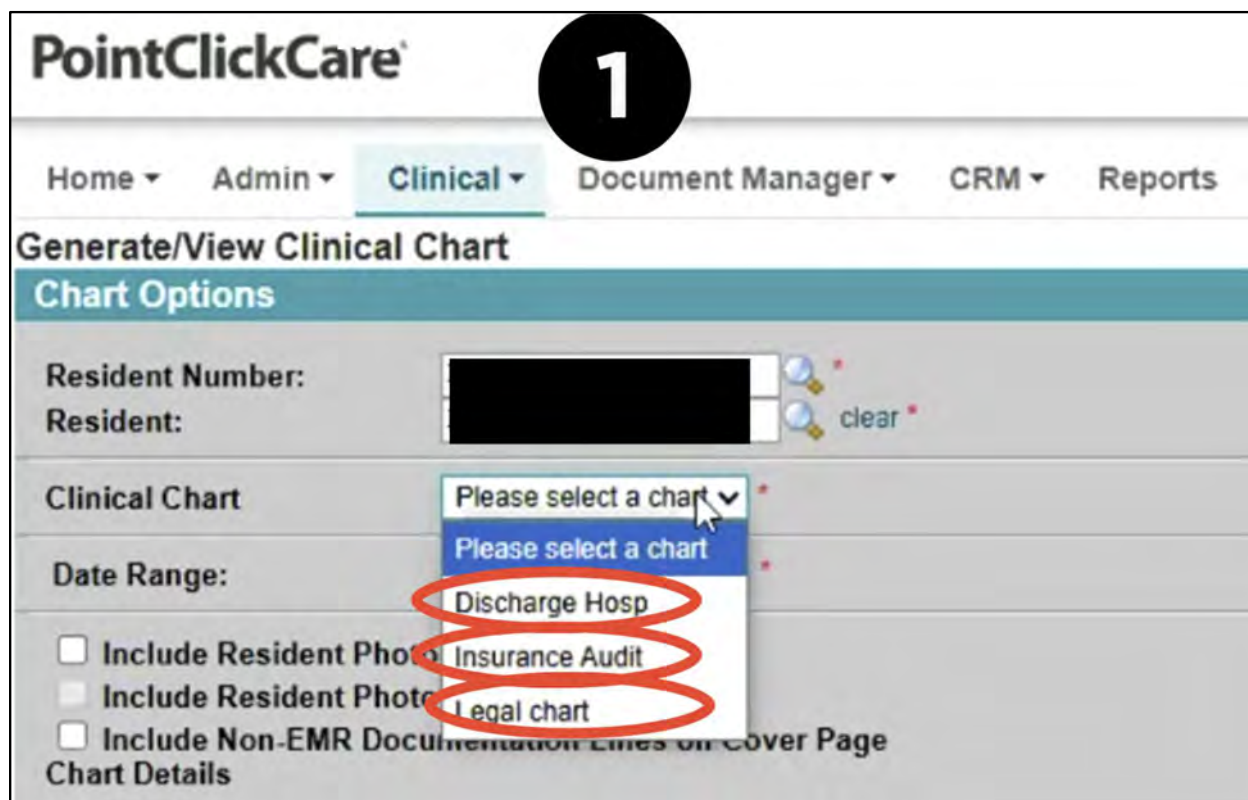
Hospital or nursing home identifies all of its electronic systems that contain the patient’s health information. That is obviously the EMR system itself (Epic, Cerner, etc.), but also includes messaging systems (e.g., SecureChat, In Basket, Vocera, Signal, PerfectServe, etc.), radiology, pharmacy, and

laboratory systems, alert systems, AI systems, etc.

2. Make a List of Reports. Identify the various “reports” (in PDF or spreadsheet/Excel format) that the systems can generate. Hospitals and nursing homes already have pre-set reports that are readily available. Custom reports can be run if need be.

3. Jump on a Zoom and Run the Reports. Everyone goes through the system(s) together and agrees on which reports to generate and which filters to use. This is so easy to do and can/should be done when new systems or reports are discovered.

Patients don’t lose the right to inspect the EMR when they file suit, and Rule 26 encourages the use of the most efficient solutions to discovery problems. EMR inspections are just that—and utilizing them to resolve discovery disputes will drastically reduce the need for court involvement. ■



Resident Number: [Redacted] Resident: [Redacted] clear

Clinical Chart: **Insurance Audit**

Date Range: Select

Include Resident Photo on Cover Page Only
 Include Resident Photo on Report Level
 Include Non-EMR Documentation Lines on Cover Page

Chart Details

Report Name	Report Filter Options
Admission Record	
Administration Record	Filter Options: <u>Report Type</u> = Monthly ... more
Order Summary Report	Filter Options: <u>Communication Method</u> =All ... more
Assessment Report	Filter Options: <u>Assessment Type</u> =Interdisciplinary discharge



Include Options

- Progress Note Drafts
- Deleted Progress Note Drafts
- Progress Note Drafts Only
- Deleted Progress Note Drafts Only
- High Priority Progress Notes Only
- Struck Out Progress Notes

Fields To Display (fields selected including mandatory fields not shown=9)

Progress Notes Details

- Show Resident Detail (124)
- Signature (124)
- Show Created Date (0)
- Follow-up Note Information (62)



PointClickCare

Home Admin Clinical Document Manager CRM **Reports**

follow | I X

RECENT ALL ENHANCED ADMIN CLINICAL DOCUMENT MANAGER

Sub Modules

- ADT / Profiles
- Assessments
- Behaviors and Side Effects
- Billing
- Care Plans/Tasks
- Clinical Chart
- Decision Support Intervention
- Document Manager Reports
- eMAR
- General Clinical

Follow Up Question Report

The Follow Up Question Report allows facilities to report on POC documentation responses. The report shows all documented responses for a follow up question within a specified date

Generated Clinical Chart History Report

Use the Generated Clinical Chart History Report to view any Clinical Charts generated over a period of time, by specified user(s), for specified resident(s) in your facility or organization for

Look Back Report (Clinical - Assessments)

The Look Back Report shows documentation from POC over a 3, 7, 14, or 16 day period, and

25
ganoff

Follow Up Question Report
10/27/2022 - 11/22/2022

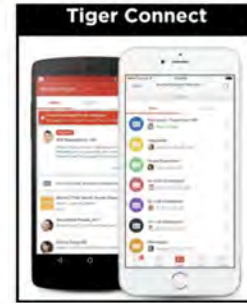
Page # 35

Effective Time	Question	Response	Documented By Documented Time
11/1/2022 17:30	Amount (%) consumed?	100% Eaten	11/23/2022 16:54
	Amount of Fluid Consumed?(In cc)	360	11/23/2022 16:54
11/19/2022 17:00	Amount (%) consumed?	100% Eaten	Agency Staff 1 11/19/2022 10:18
	Amount of Fluid Consumed?(In cc)	360	Agency Staff 1 11/19/2022 10:18

6

Epic's In Basket Messages

Epic's Secure Chat



Test	Result Level	Finding	1st Instance
Blood Culture smear Gram Negative Bacilli		Red	Yes

7

Message Notes

Date/Time	Author	Note/Reason
11/11/2018 12:28 PM	[REDACTED]	rn aware- to forward to culture nurse
11/11/2018 12:13 PM	[REDACTED]	Reached [REDACTED] they are aware .
11/11/2018 12:13 PM	[REDACTED]	Calling
11/11/2018 12:13 PM	[REDACTED]	Reviewing

8

9

⚠ This patient meets SIRS (System Inflammatory Response Syndrome) Criteria and may be septic.

PLAINTIFF'S EXHIBIT 14
19 CV 199157

JURY INTERROGATORY NO. 1

Do you find by a preponderance of the evidence that the Defendant was negligent?
Circle your answer in ink:

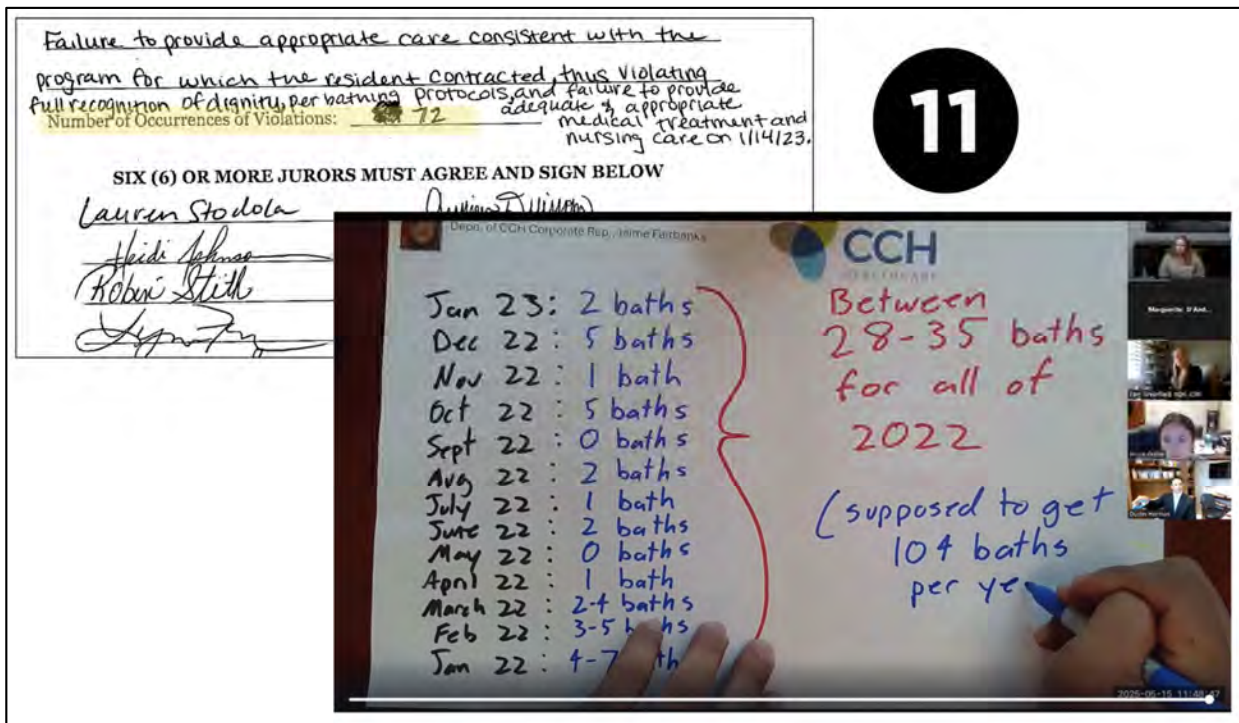
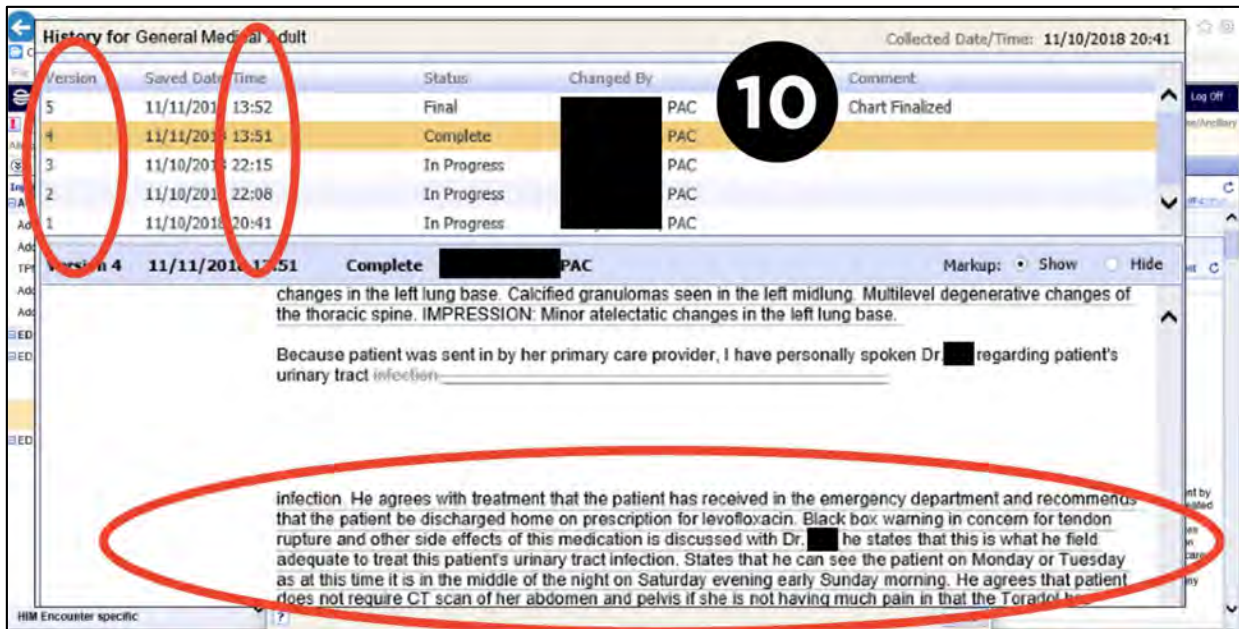
YES NO

SIX (6) OR MORE JURORS MUST AGREE AND SIGN BELOW

Rene Harris
Rachel Cline
Gay RVP
Keith Somme

Adrian [Signature]
Trudette S. Nelson

If you answered "YES" to Interrogatory No. 1, state in what respect do you find Defendant was negligent.
Ignoring the BPAs and not ordering the chest X-Ray and lactase tests.



End Notes

- Note: I use "EMR" throughout even though the Electronic Medical Record (EMR) and Electronic Health Record (EHR) are technically different, see V. J. Lopez, "Identifying The Difference Between Electronic Health Records and Electronic Medical Records," IEEE Publication, ISBN: 979-8-8557-2087-7, pp.1-12, 11 April 2025.
- Any report that contains patient health information—is a medical record under federal law. See 45 CFR § 164.501 ("Record" means "any item, collection, or grouping of information that includes protected health information[.]") Ohio law defines "medical record" as "data in any

form that pertains to a patient's medical history, diagnosis, prognosis, or medical condition[.]" R.C. 3701.74(A)(8).

- "Data Sources - Each party shall identify all known custodial and non-custodial data sources believed to contain potentially relevant ESI." NDOH L.R., Appendix K(3)(a) (ii). "In order to promote communication and cooperation between the parties, each party shall designate a single individual through which all e-discovery requests and responses are coordinated" who is "(a) Familiar with the party's electronic systems and capabilities in order to explain these systems and answer relevant questions; (b) Knowledgeable about the technical aspects of e-discovery,

including electronic document storage, organization, and format issues; and (c) Prepared to participate in e-discovery dispute resolutions." NDOH L.R., Appendix K(4).

- Under rule 34(A), a plaintiff can request "to inspect and copy . . . electronically stored information, including . . . data or data compilations stored in any medium from which information can be obtained." Under Rule 34(B) "The request may specify the form or forms in which electronically stored information is to be produced[.]"
- In the 8 virtual inspections I have conducted, there has never been an issue with another patient's data being disclosed.



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Pointers From The Bench: The Honorable Shannon Gallagher

By Ellen Hobbs Hirshman

On January 10th, 2015, Judge Shannon Gallagher assumed office as a judge in the Cuyahoga County Court of Common Pleas, General Division. Judge Gallagher's journey to the common pleas bench was a lifelong journey grounded in commitment to community service.



Judge Shannon Gallagher

Judge Gallagher was born in West Park, near the Winterhurst hockey arena, but eventually moved to the Brook Park area. Both of her parents worked in service-oriented jobs, her mother being a first-grade teacher for thirty-eight years and her father having retired after many years in public service. Judge Gallagher's father is an avid supporter of St. Edward High School and has worked tirelessly to promote the school and its legacy. He is also very involved with various recovery services in the community. Her paternal grandparents were Irish immigrants who met for the first time in 1949 at an Irish Dance held in Cleveland. Her grandfather, John, was a local 310 laborer, and her grandmother, Margaret "Peggy", was a waitress at the famous Blue Fox restaurant. They were hard-working people who served as an example of hard work and commitment to their community. Judge Gallagher's uncle, her father's brother, is Judge Sean C. Gallagher who has served on the Eighth District Court of Appeals for over twenty-three years. From a young age she watched and learned from her own family, the people she most admired, that community service is a wonderful path. It is no surprise she has devoted her professional life to serving in the public sector.

Judge Shannon Gallagher always excelled in the classroom. Her thirst for knowledge, coupled with her family's influence, naturally led her to enroll in the night school program at Cleveland Marshall College of Law. She recalls that Judge Brendan Sheehan, who was Judge Donald Nugent's bailiff at the time, encouraged her in this endeavor.

While attending law school, which she began in the fall of 2000, Judge Gallagher worked full-time as a probation officer. In law school, she found it stimulating to be surrounded by so many young professionals, and she admired her professors, many of whom were practicing attorneys. She also bonded with several other working night students with whom she remains close today; and although it was a four-year program they made a pact to work through the summers and graduated in 3.5 years.

One could say Judge Gallagher's journey to the Common Pleas bench was her destiny. Upon graduating from law school, she was not certain what path to take with her law degree, but working in a law firm did not interest her, and she felt the powerful pull of public service. She enjoyed working in the justice center, and interacting with people there. Thus, in 2004, Judge Gallagher accepted a position as a staff attorney in the Cuyahoga County Court of Common Pleas. From 2005-2007, she served as a judicial attorney with the Ohio Eighth District Court of Appeals. From 2008-2011, she was employed as a labor relations advisor in Cuyahoga County. From 2011-2014, she returned to the Eighth District Court of Appeals as an attorney. Then, in November of 2014, she was elected to be a Judge with the Cuyahoga Court of Common Pleas, a position in which she has served since January of 2015.

In 2018, Judge Gallagher was assigned to join the Cuyahoga County Common Pleas Mental

Health and Developmental Disabilities (MHDD) Court. Judge John J. Russo asked her to take on this docket, which she has chaired since February 1, 2023.

Judge Gallagher says that being involved in and overseeing the MHDD court has been a dream realized for her. As a probation officer, she was very familiar with addiction issues (substance use disorder), but the mental health aspect of the docket was new to her. She has found this work very rewarding. In 2024, the MHDD docket served approximately 615 individuals. On average the docket serves 500-700 at any one time. Being able to assist these people obtain medical and psychological treatment for their core medical disorders is often a path to recovery and deterrence for recidivism. The MRDD Court gives them an opportunity to save families, save lives, and restore stability in these families and their lives.

There are five community health-based programs which serve as resources to the MHDD court. These programs are invaluable to the success of the program. They are:

1. Metro Wrap
2. The Centers
3. Recovery Resources
4. Murtis Taylor
5. Frontline

The MRDD docket includes those people suffering from a traumatic brain injury (TBI) and persons who suffer from developmental disabilities or an IQ lower than 75. Unfortunately, one needs to have a psychosis to qualify for the docket. Someone diagnosed as bipolar without a psychosis diagnosis does not qualify for the Court's docket. Judge Gallagher hopes someday soon they will be able to include these people in the program.

One way that Judge Gallagher believes we can help these people find themselves is



Justin & Cameron

to talk more openly about mental health issues in our daily lives, and to be more open and accepting of these issues. She is a proponent of group homes, having one in her own neighborhood in Westlake. She recalls when the group home first moved into her neighborhood in 2014, the initial reaction of many neighbors was disapproval and resistance. Despite these sentiments, the group home exists harmoniously in her neighborhood. She believes a community needs to be more open minded and resist the first impulse to reject the idea of group homes. We can't push these people away. We as a society need to give them a chance and open our hearts and minds to the fact that these folks are human beings and need our help. In fact, we all know someone in our lives who needs help because of a substance use disorder or a mental health issue. We want to treat these people like we want our loved ones to be treated.

If you are willing to get involved or donate time or money to these issues, please visit the NAMI site, the National Alliance on Mental Illness, to support. <https://www.nami.org/>

When asked for her advice as to how attorneys should conduct themselves in her courtroom, Judge Gallagher quickly responded that the best approach in all thirty-four courtrooms, both civil and criminal, in Cuyahoga County is to be respectful of the process, respectful of the proceedings, and respectful of the people in the courtroom as well as your



Connor & Fiona

adversaries. She wants anyone who enters her courtroom to know that they are in a setting where they can get a fair hearing. This is her goal as a judge.

Judge Gallagher's husband, Justin, owns a tree removal company, and is truly an outdoorsman. They met rock climbing at the Cleveland Rock Gym. Their love of the outdoors and rock climbing has been passed down to their oldest son, Cameron, who plans to attend St. Edward High School in the fall. Cameron and his dad have traveled around the country climbing the high peaks in each state. They have a lifetime goal to complete all 50. Judge Gallagher's second son Connor and daughter Fiona are both dancers who have been selected to participate in the "Steps on Broadway" program in New York City this summer. Judge Gallagher and her husband, evidently a big dance dad, find such joy in watching Connor and Fiona perform. For them to be able to walk out on that stage with a large group of people and dance at such a high level with confidence and precision fills their hearts with so much joy.

One thing is certain, when you enter Judge Shannon Gallagher's courtroom you will find a jurist who cares about the community, fairness, and making you feel comfortable while making sure the resolution is a fair one. ■



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Hidden in Plain Sight: Litigating Commercial Tow Truck Cases

by Dana M. Paris

Tow trucks are among the most visible vehicles on our roadways, yet they remain one of the least scrutinized in personal injury litigation. The average motorist may see a tow truck as representing assistance—a response to breakdowns, accidents, or emergencies. However, for the personal injury practitioner, tow trucks present a far more complex and often overlooked category of commercial motor vehicle cases, governed by detailed federal regulations and fraught with significant risk when those regulations are ignored.

Too often, cases involving tow truck companies are approached as routine negligence claims rather than as commercial carrier cases requiring the same depth of investigation and regulatory analysis as traditional trucking litigation. This mischaracterization can lead to missed liability theories, underdeveloped evidence, and ultimately, undervalued claims. In truth, many tow trucks qualify as commercial motor vehicles subject to the Federal Motor Carrier Safety Regulations (FMCSRs).

The Regulatory Landscape: Tow Trucks as Commercial Carriers

A Commercial Motor Vehicle (CMV) is defined as any motor vehicle used on a highway in interstate commerce to transport property or passengers when the vehicle has a gross vehicle weight rating (GVWR) of 10,001 pounds or more.¹ When that's the case, the tow truck falls within the jurisdiction of the Federal Motor Carrier Safety Administration (FMCSA).

Among the most significant requirements are the obligation to obtain and maintain a USDOT number, ensure proper driver qualification and licensing, comply with hours-of-service limitations designed to prevent fatigue, implement drug and alcohol testing programs, and adhere to strict inspection, maintenance, and repair protocols. Additionally, for-hire motor carriers must maintain minimum levels of financial responsibility, typically no less than \$750,000.

For practitioners, the importance of this framework cannot be overstated. The FMCSRs provide an objective benchmark against which conduct can be measured.

Early Investigation: The Race Against Disappearing Evidence

As in any commercial vehicle case, securing critical evidence in tow truck litigation is often determined in the earliest days following the incident. Critical evidence—particularly electronic data, dashcam video footage, inspection records, and dispatch communications—can be lost, overwritten, or destroyed in the ordinary course of business if not promptly preserved.

Accordingly, immediately issuing comprehensive preservation letters, tailored to the specific facts of the case, is essential. At a minimum, the letter should request and seek to secure electronic data, driver qualification files, hours-of-service records (including electronic logging device data), inspection and maintenance records, dispatch logs, onboard video footage, and drug and alcohol

testing results, including any post-accident testing required by regulation.

Moreover, equally important, is a thorough investigation into the tow truck company itself. The FMCSA's Safety and Fitness Electronic Records (SAFER) system can reveal safety ratings, inspection summaries, crash history, and prior violations. Publicly available information, such as company websites, social media presence, and customer reviews, may provide additional insight into operational practices and systemic issues.

The Federal Motor Carrier Safety Regulations

The FMCSRs are not merely regulatory guidelines; they are, in many respects, the blueprint for litigating these cases. Several provisions are particularly relevant in the tow truck context.

Driver qualification rules require that operators be medically fit, properly licensed, and capable of safely performing their duties (49 C.F.R. Part 391). Hours-of-service regulations limit driving time and mandate rest periods, addressing the risk of fatigue—a factor that is frequently present but seldom fully explored in tow truck cases (49 C.F.R. Part 395).

Inspection and maintenance requirements mandate both annual inspections and daily pre- and post-trip evaluations, ensuring that critical components such as brakes, tires, and lighting systems are in safe operating condition (49 C.F.R. Part 396). Failures in this regard can have immediate and catastrophic consequences, particularly when a tow truck is operating in an active traffic environment.

One of the most significant—and frequently violated—regulations concerns vehicle securement. 49 C.F.R. § 393.128 applies to tow trucks when they are transporting automobiles, light trucks,

and vans that weigh 10,000 pounds or less. Under 49 C.F.R. § 393.128, automobiles and light trucks must be secured using an adequate number of tiedowns to prevent movement in any direction—forward, rearward, lateral, or vertical. Improper securement can result in a towed vehicle becoming dislodged, creating a hazard not only for the operator but for every motorist or pedestrian in the vicinity.

Finally, regulations governing warning devices and lighting require operators to take affirmative steps to alert approaching traffic when stopped on a roadway or shoulder (49 C.F.R. § 392.22; § 393.11). Inadequate warning in low-visibility conditions—such as nighttime operations or around curves—can transform an already hazardous situation into a catastrophic one.

Patterns of Negligence: Common Violations in Practice

In litigating tow truck cases, patterns of negligence emerge time and time again. As an example: operators frequently fail to conduct required inspections, leading to preventable mechanical failures; vehicles are often improperly secured, increasing the risk of shifting loads or detachment; warning devices—such as flares, reflective triangles or cones—are either inadequately deployed or not used at all, particularly in time-sensitive roadside recoveries.

These violations are rarely isolated. More often, they reflect systemic deficiencies in training, supervision, and safety culture. Recognizing and developing these patterns is critical to building a compelling case that extends beyond individual negligence to include corporate accountability.

The “Zone of Danger”: A Critical but Overlooked Concept

One of the most important concepts in tow truck litigation is the “zone of

danger”—the area surrounding a tow where people are at a heightened risk of injury from passing traffic, moving equipment, or shifting vehicles. Unlike controlled environments, roadside recoveries take place in unpredictable conditions. However, these conditions are likely foreseeable to the tow truck operators and, therefore, injuries suffered by those located in the “zone of danger” are oftentimes preventable.

A competent tow truck operator must not only recognize this zone but actively manage it. This includes properly positioning the tow truck, deploying adequate warning devices, and ensuring that customers and bystanders are directed to a safe location outside the risk area. Failure to do so can result in devastating injuries, particularly when individuals are struck by passing vehicles or caught in the movement of equipment.

From a litigation perspective, the concept of the zone of danger provides a powerful framework for explaining foreseeability and standard of care to a jury. It transforms abstract regulatory violations into concrete, relatable failures that directly contribute to the harm suffered.

Expanding the Field of Liability: Beyond the Driver

While the tow truck operator is often the most visible defendant, liability in these cases frequently extends well beyond the driver. Motor carriers may be held independently liable for negligent hiring, training, supervision, and retention. A failure to properly vet a driver's qualifications or to provide adequate training on roadside safety protocols can create substantial exposure.

In addition, practitioners must be prepared to confront the ubiquitous independent contractor defense. Tow

truck companies—and the entities that dispatch them—often structure their relationships to minimize liability exposure. It is imperative to look beyond the contractual labels and at the actual nature of the relationship, with emphasis on the right to control.

It is critical to secure evidence of control. This may include: dispatch procedures, performance requirements, branding and vehicle markings, compensation structures, and operational policies.

Damages and Coverage: Bridging the Gap Between Harm and Recovery

The injuries arising from tow truck incidents are often severe, if not catastrophic. Injuries may include amputations, traumatic brain injuries, and wrongful death claims. As a result, damages analysis must be comprehensive and forward-looking.

Establishing future medical needs, loss of earning capacity, and long-term care costs requires the coordinated use of expert testimony, including life care planners, vocational rehabilitation specialists, functional capacity evaluators, and economists. This combination of experts provides the foundation necessary to transform serious injuries into quantifiable damages.

At the same time, practitioners must confront the often significant challenge of limited insurance coverage. While federal regulations impose minimum financial responsibility requirements, these limits are frequently insufficient to fully compensate for catastrophic harm. Smaller tow truck operations may lack excess or umbrella coverage.

This reality underscores the importance of early and exhaustive coverage analysis. Identifying all potential policies—including primary, excess, and umbrella coverage—and exploring third-party

liability are essential steps to ensure that your client is made whole.

Conclusion: Elevating the Practice

Tow truck cases exist at the intersection of high-risk operations and underappreciated regulation. They demand the same level of rigor, strategy, and resource investment as traditional commercial trucking cases—yet too often, they do not receive it.

For the practitioner willing to engage deeply with the regulatory framework, pursue aggressive early investigation, and develop sophisticated liability theories, these cases offer not only the opportunity to secure meaningful justice for injured clients but also to effect broader change. By holding tow truck operators and their affiliates accountable to established safety standards, litigators play a critical role in promoting compliance, enhancing roadway safety, and preventing future harm.

In this sense, tow truck cases can be hidden in plain sight. They are a reminder that even the most familiar vehicles on our roads can pose serious dangers when the rules designed to govern them are ignored. It's not until thorough and exhaustive steps are taken that we can ensure justice is served for our clients. ■

End Notes

1. See 49 U.S.C. §31132(1)(A) and 49 C.F.R. 390.5T. See also, OAC 4901:2-5-01, and 4901:2-5-03.

Announcements - Spring 2026

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

Honors and Awards



Jamie R. Lebovitz, Senior Partner at Nurenberg Paris, was honored as one of two Alumni of the Year by the Cleveland State University Law Alumni Association. The CSU Law Annual Recognition Luncheon was held at the Hotel Cleveland on May 21, 2026.



Ellen Hobbs Hirshman received the OAJ's Craig Spangenberg Lifetime Achievement Award, recognizing her exceptional, long-term dedication to client representation and the civil justice system.



Katie Harris and Meghan Connolly of the Tittle and Perlmutter Law Firm, were selected as 2026 Notable Women in Law by Crain's Cleveland Business.



Dustin B Herman was a speaker at the 27th Judicial Conference of the Eighth Judicial District on "Electronic Medical Records and Discovery Issues."



Dana M. Paris, partner at Nurenberg, Paris, Heller & McCarthy, was honored to serve as Co-Chair of the 27th Annual 8th District Judicial Conference. In addition to her leadership role, Dana moderated a focused panel on "Electronic Medical Records and Discovery Issues," with an emphasis on navigating access to digital records and the practical challenges of conducting inspections in today's litigation landscape.

Recent Promotions and New Associations



Loucas Law is pleased to announce that **Yiannis C. Sarris** has joined the firm as an associate attorney, where he will be contributing to Loucas Law's personal injury and medical negligence practice, after serving as staff attorney to the Honorable Mollie Ann Murphy in the Cuyahoga County Court of Common Pleas.



The Becker Law Firm is proud to announce the promotion of attorney **Kristin Weinberg** to Litigation Attorney Manager, recognizing her leadership, litigation experience, and commitment to excellence in complex medical negligence and catastrophic injury cases, where she helps oversee litigation workflow and trial preparation. Outside the office, Kristin is the mother of two sets of twins, balancing the demands of high-stakes litigation with an active family life that reflects the same discipline and dedication she brings to her practice.

Announcements - Spring 2026 *continued*

Honors, Awards, and Appointments



The Becker Law Firm is proud to welcome **Christina Getto** as an attorney, where she brings a rare combination of frontline NICU nursing experience and legal training to the firm's medical malpractice and catastrophic injury practice. After serving three years with the firm as a full-time nurse consultant while earning her law degree, her transition to attorney reflects both her exceptional work ethic and the firm's commitment to developing elite trial talent from within.



Christian R. Patno has recently affiliated additionally with The Stuckey Law Firm. While still primarily with McCarthy Lebit and NO change in relationship there, he has expanded his practice statewide on catastrophic injury matters by joining forces as well with Nathan Stuckey and his team as Of-Counsel.

Rutter & Russin, LLC has become Of-Counsel to **Merlin Law Group**, a firm that represents policyholders nationwide in disputes with insurance carriers. Rutter & Russin has a statewide practice advocating on behalf of individuals and businesses in a wide range of insurance coverage and claim matters. By uniting their complimentary experiences, the firms strengthen their ability to evaluate, litigate, and successfully resolve complex insurance disputes across Ohio.

A Photo Montage: Recent CATA Seminars

3/25/26 CATA CLE



4/29/26 CATA Trial Skills Institute





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Avery's Law (HB 247): Ohio Dog-Bite Cases To Shift Under New State Law Taking Effect In 2026

by Michael P. Trexler

Ohio's legal landscape for dog-bite cases is poised to see significant change under a newly amended statute named "Avery's Law." O.R.C. § 955. The law, which took effect March 20, 2026, promises stronger enforcement methods and changes aimed at aiding victims of dog attacks. Prior to Avery's Law, Ohio's dog-bite laws had not changed since 2012. Now, Avery's Law changes how the state classifies nuisance, dangerous, and vicious dogs, while imposing additional financial responsibilities on owners.

Named for Avery Russell, a 13-year-old girl who suffered extensive injuries when she was attacked by a dog in 2024, the legislation was introduced in response to what lawmakers described as accountability gaps under Ohio's existing laws. To supporters of the law, Avery Russell's case illustrated how dog-bite victims are often left with devastating injuries and medical bills while dog owners face only minimal fines and consequences.

Here's what the law requires:

- Owners of "dangerous"¹ or "vicious"² dogs must carry at least \$100,000 in liability insurance.
- Dog wardens are required to investigate every formal complaint made of a "dangerous," "vicious," or "nuisance"³ dog act.
- Health care providers and veterinarians must report dog bites within 24 hours to the health commissioner of the health district in which the bite occurred.

- Local health boards must file annual dog-bite reports to the Ohio Department of Health.
- Owners may face stiffer criminal penalties for negligently failing to prevent attacks.
- Allows wardens to immediately impound dogs involved in attacks.

While Avery's Law emphasizes stronger penalties for dog owners, the impact on civil litigation will be much broader. First, the law is expected to provide attorneys with greater access to records and evidence. Prior to Avery's Law, trial lawyers were left with scant documentation of the facts of dog-bite cases. Trial lawyers often relied solely on a police report documenting each side's recitation of events along with the observations of police officers. Maybe, an additional medical record mentioning the dog bite in passing. Now, because of Avery's Law, much more written documentation could be available to the litigator who is seeking to develop the story of the dog-bite case. This access to increased documentation will be generated by the aspects of Avery's Law that require a more nuanced and mandatory response to certain instances of dog attacks, including mandatory seizures of dogs, records of reports by health care providers and veterinarians, and evidentiary hearings as part of enforcement actions. These records could help establish crucial liability-related facts early in a case — facts which previously might not have been documented.

Additionally, the new insurance-related mandates (minimum coverage required for owners of

“dangerous” or “vicious” dogs) could reshape dog-bite litigation by increasing the likelihood that injured victims can make a meaningful recovery. In the past, a large percentage of dog-bite cases involved clear liability but limited financial recovery, largely due to a lack of insurance coverage. With Avery’s Law now in effect, injured victims will have an avenue of state mandated relief to compensate injuries caused by known “dangerous” or “vicious” dogs.

Despite Avery’s Law appearing exclusively positive for plaintiffs, the law may encourage certain legal defenses to be raised more frequently than before. Issues such as the provocation of the alleged “dangerous” or “vicious” dog; criminal trespass; and self-defense will now play a larger role in litigation, potentially leading to more contested cases.

As is evident, Avery’s Law is primed to reshape how dog-bite cases are handled in Ohio, offering new tools for holding negligent and reckless dog owners accountable and providing full and fair compensation to victims and their families. At the same time, defenses available under the law will add to the complexity of dog-bite cases for litigators on both sides of a case. ■

End Notes

1. A “dangerous” dog is a designation, made by the dog warden, for dogs which committed a “dangerous dog act” without provocation or “caus[ed] injury by physical contact, other than killing or serious injury, to any person in either a menacing fashion or an apparent attitude of attack; caus[ed] serious injury to any person without making physical contact in either a menacing fashion or an apparent attitude of attack; [killed] another dog; or caus[ed] serious injury to another dog that result[ed] in euthanasia of the dog by a person authorized to perform euthanasia under Ohio law.” O.R.C. 955.22(A)(2).
2. A “vicious” dog is a designation, made by the dog warden, for dogs which committed a “vicious dog act” without provocation or “the killing of any person; causing serious injury to any person by physical contact; or engaging in a dangerous dog act after the dog has

been designated as a dangerous dog under O.R.C. 955.23.” O.R.C. 955.22(A)(1).

3. A “nuisance” dog is a designation, made by the dog warden, for dogs which committed a “nuisance dog act” without provocation or “chas[ed] or approach[ed] a person in either a menacing fashion or an apparent attitude of attack; attempt[ed] to bite or otherwise endanger any person in either a menacing fashion or an apparent attitude of attack; caus[ed] injury to any person without making physical contact in either a menacing fashion or an apparent attitude of attack; chas[ed], threaten[ed], harass[ed], or injur[ed] another dog or livestock in either a menacing fashion or an apparent attitude of attack; or [have] been the subject of a third or subsequent violation of O.R.C. 955.21.” O.R.C. 955.22(A)(3).

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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Self-Driving Hype on Trial: What the \$329 Million Tesla Verdict Means for Ohio Plaintiff Lawyers

by Kyle B. Melling and Scott M. Kuboff

***Note from the authors:** This is not our verdict, and we take absolutely no credit for it. The heroic efforts of Brett Schreiber and his team at Singleton Schreiber, along with Florida counsel Douglas Eaton of Eaton & Wolk, Adam Boumel of the Rousso Boumel Firm, and Todd Poses of Poses & Poses, are responsible for this outstanding result. That said, this is a historic verdict, and it lays out an incredible roadmap for similar cases throughout the country. Kyle and Scott are lucky to know Brett Schreiber and count him as a friend and colleague and are happy to share this story with you. This article comes from direct accounts from the trial, the public docket, and what Brett taught us.*

“We are here,” Brett Schreiber told the jury on the first afternoon of trial, “because Naibel Benavides and Dillon Angulo were made part of a beta testing that they never signed up for.” Three weeks later, on August 1, 2025, a federal jury in Miami returned a verdict of \$329 million against Tesla, Inc., in one of the first Autopilot wrongful-death cases to reach a jury. The final judgment, after apportionment of fault, was \$242,570,000 against Tesla.¹ On February 20, 2026, Judge Beth Bloom denied Tesla’s motion for judgment as a matter of law and new trial.² The verdict survives, pending appeal.

The verdict was big. *How the verdict was achieved* is bigger. The Plaintiffs, represented by Schreiber and his team at Singleton Schreiber, with local counsel Douglas Eaton of Eaton & Wolk, Adam Boumel of the Rousso Boumel firm, and Todd Poses of Poses & Poses, turned what initially looked like an unwinnable case into an outstanding verdict and an incredible lesson in products liability law.

Most firms wouldn’t dare to take a case where the driver of the bullet vehicle, George McGee, admitted that he had dropped his phone, looked for it, took his eyes completely off the road, was traveling 62 mph in a 55 mph zone, blew through a stop sign and a T-intersection, and into a parked car, killing one pedestrian and gravely injuring a second, and then try to blame the vehicle’s manufacturer. Tesla built its entire defense around those three facts: “a dropped cell

phone, a pressed accelerator pedal, and a car that in 2019 did not exist.” In the end, the jury found George McGee 67% at fault and Tesla 33% at fault for the accident. Then the jury awarded \$200 million in punitive damages against Tesla.

So why are we writing about this Florida verdict in the Cleveland Academy of Trial Attorneys newsletter? Because the Ohio Products Liability Act, R.C. 2307.71 *et seq.*, provides every theory the *Benavides* Plaintiffs used, and in at least one respect, a better one. Our goal here is to walk through how the Plaintiffs got there, how the defense pushed back, and how a similar case can be built in Ohio.

The Crash and the Verdict

The accident is very simple. On April 25, 2019, around 9:30 at night, McGee was driving his 2019 Tesla Model S home along Card Sound Road in Key Largo with Tesla’s Autopilot engaged. Card Sound is a two-lane rural road that ends at a T-intersection marked by a flashing red light, stop signs, and a yellow chevron. McGee testified that he dropped his cell phone into the footwell. He took his eyes off the road and reached down to try to pick up his phone. He did not take his foot off the accelerator pedal, and in fact pressed it down slightly harder as he bent down, accelerating to 62 miles per hour. McGee admitted he had “gotten too comfortable with the Autopilot” and that he “trusted the technology too much.” Asked whether he would have taken

his eyes off Card Sound Road and reached for his phone had he not been driving a Tesla on Autopilot, he answered: "I don't believe so, sir."

Unfortunately, McGee trusted technology too much, and while he was fishing for his phone and not watching the road, his car barreled through the stop sign at the T-intersection.

Naibel Benavides Leon (22) and her boyfriend, Dillon Angulo (27), had parked Dillon's Chevy Tahoe off the road and gotten out to stargaze. Unfortunately, they parked their Tahoe just behind the yellow chevron sign at the end of the T-Intersection. McGee's Model S did not slow down for the intersection, it did not detect the flashing light, the stop sign, the chevron, the end of the pavement, or the parked Tahoe.³ The Tesla struck the Tahoe at highway speed. Ms. Benavides was thrown 75 feet into the woods and was fatally injured. Mr. Angulo survived with a traumatic brain injury, a shattered pelvis, and injuries he will carry for the rest of his life.⁴

Plaintiffs filed in the Southern District of Florida and pled four counts: design defect, failure to warn, manufacturing defect, and negligent misrepresentation, plus a punitive damages demand.⁵ The Court dismissed the manufacturing-defect and negligent-misrepresentation counts at summary judgment but allowed the design-defect, failure-to-warn, and punitive damages claims to proceed.⁶ After a three-week trial, the jury returned its verdict: 33% Tesla, 67% McGee; \$59 million compensatory to the Estate of Naibel Benavides Leon, \$70 million to Dillon Angulo, and \$200 million in punitive damages against Tesla. The final judgment against Tesla was \$242,570,000.⁷

The Story of the Trial: Choices and Words

In closing, Schreiber told the jury he had put all the evidence against Tesla into two buckets: "It's their choices and it's their words." That is the right frame for understanding the case. The choices were engineering choices: what Tesla designed Autopilot to do, what safeguards it chose not to build, and what it did with the evidence after the crash. The words on the other hand were marketing choices: what Tesla and its CEO told the public Tesla Autopilot could do for years before, and after, the collision.

The Choices: How Tesla Designed Autopilot, and What It Did With the Data

Autopilot⁸ in a 2019 Model S had two main features: Traffic-Aware Cruise Control (adaptive cruise control with forward-facing automatic emergency braking) and Autosteer (automatic lane-keeping and centering).⁹ The system was able to detect traffic lights and signs, pedestrians, other vehicles

on the roadway, markings on the roadway, and obstructions. The Plaintiffs identified three central defects with the Autopilot system at trial, and the court gave each a name: the **ODD Defect** (permitting Autopilot to operate outside its intended Operational Design Domain), the **DMS Defect** (an inadequate Driver Monitoring System), and the **TACC Defect** (how Traffic-Aware Cruise Control disengaged when the driver pressed the accelerator).¹⁰

On the ODD Defect, Tesla did not geofence Autopilot to restrict activation to controlled-access highways. Other manufacturers with similar technologies geofenced their systems. For example, General Motors' Super Cruise is restricted to pre-mapped divided highways, and Waymo operates its fully autonomous taxis only within geofenced service areas in San Francisco and Phoenix.

On the DMS Defect, Tesla's driver-monitoring system relied primarily on steering-wheel torque rather than a driver-facing camera. Plaintiff's human-factors expert, Dr. Mary Cummings, testified that Tesla made this choice to save on computer processing. Other manufacturers rely on both steering-wheel torque monitoring and driver-facing cameras to detect whether a driver is paying attention while driver assistance systems help drive the vehicle.

On the TACC Defect, when McGee pressed the accelerator to exceed Autopilot's 45 mph set speed, Tesla's system treated that as an override of Traffic-Aware Cruise Control. This deactivated the automatic emergency braking that might have prevented the collision, while Autosteer continued to operate and steer the car straight ahead. Other manufacturers, including General Motors and Ford, made the opposite design choice: depressing the accelerator while using lane-keeping and adaptive-cruise assistance would disable the autonomous features entirely, accompanied by an audible chime and other feedback warning to the driver that the system had turned off.

All three are textbook risk-benefit arguments. The foreseeable risk of each design choice — serious injury or death when an inattentive driver encountered the exact conditions the system was not designed for — exceeded the benefit. These facts led the jury to apportion 33% of the fault to Tesla.

But the choices that most moved the jury were not about Autopilot's operating design. They were about what Tesla did with the crash evidence and in discovery. It's also an excellent lesson in how tenacious advocacy for our clients can and does pay off.

Every modern Tesla is a rolling computer. When a Tesla experiences a crash, the internal computer system automatically

compresses the camera feeds, radar returns, CAN-bus data, steering inputs, pedal pressures, and GPS coordinates for the seconds before and after impact into a single “snapshot” file. This snapshot is similar to the Electronic Data Recorder downloads that we are all used to. The difference with a Tesla is that the snapshot is immediately transmitted over the vehicle’s cellular modem to Tesla’s servers.¹¹ Skeptics (like us) have always believed that this data included overlay data — that is, data that could be plotted against the vehicle’s video feed, which produces an augmented video, showing frame by frame what the vehicle saw, what the computer interpreted, and how it responded:



Exhibit from trial showing video feed from Tesla Model-S with overlay data showing stop line, red flashing stop line, and vehicle’s recognition of both the Tahoe and a person at or near the rear of the Tahoe. Note that the vehicle also was going 62.10 mph.

For five years, Tesla told Plaintiffs and the Court it simply did not have this data. At various times they alleged that the data was never sent to Tesla, or was not preserved, or was not available, or was otherwise impossible to interpret. The excuses piled up. Eventually, Tesla admitted that the data had been sent to it, but an engineer had unintentionally deleted it. However, over the course of a 22-page Rule 37 sanctions motion¹² filed in December 2024, Plaintiffs laid out the following pattern:

- At a June 2023 hearing, Tesla’s counsel told the court this was not even an Autopilot case — that “autopilot technology on [McGee’s] vehicle was not even engaged at the time of the crash.” (Later at trial, Tesla conceded Autopilot *was* engaged.)
- Tesla’s Rule 30(b) designee, admitted in deposition that Tesla had received an “urgent upload” of CAN log files immediately after the collision — data Tesla had never produced.¹³ The CAN data alone showed the Tesla’s system detected the parked Tahoe from over 350 feet away, and that McGee’s hands had been off the wheel for roughly half of the final minute before impact.

- At a May 23, 2024, hearing, Tesla’s counsel told the magistrate judge: “There isn’t anything that we are holding back ... We don’t have anything else to give them.”¹⁴ On the same record, Tesla said it *could not* create an augmented video even if it had the data. While making that representation to the Judge, Tesla was simultaneously being ordered to produce — and was producing — augmented videos in two California federal cases.¹⁵
- Tesla violated multiple prior court orders compelling production.¹⁶ When Tesla did produce data in November 2024, it produced 144 Excel spreadsheets covering mostly the wrong time frames, plus a 4,049-page PDF in which the text had been rendered as images to defeat keyword search and in which critical entries had been truncated.¹⁷

The exact details of how Schreiber and his team were able to disprove Tesla’s insistence that the sought-after data did not exist is an incredible story in and of itself. You can read extensively about it through reporting by the Washington Post, PC Magazine, and X.com (formerly known as Twitter).¹⁸ However, in short, Schreiber found a Russian supercomputer hacker who went by the pseudonym “GreenTheOnly,” who claimed he could extract the data from a Tesla’s Media Control Unit to recreate the augmented video that Tesla claimed didn’t exist or couldn’t be created. Turns out, “GreenTheOnly” wasn’t full of malarkey, and Plaintiffs were awarded significant Sanctions. (See the images below)

At trial, Tesla’s pre-trial conduct was brought to life.¹⁹ Miraculously, Plaintiffs’ team was able to track down the vehicle’s actual physical media control unit (the vehicle’s “computer”) in July 2024. It had gone missing from police custody before it was found in an evidence locker at a different location. Upon being confronted with the discovery of the vehicle’s computer, Tesla’s counsel then argued that the files on the unit were “data placeholders without substance” and couldn’t be recovered.²⁰ Technically, this was correct: the files had been marked as deleted. But they were still physically present on the drive, and Plaintiffs’ team recovered them. The augmented video that was then produced, the same video Tesla had told the court it could not produce or create, showed that well prior to the impact, the Tesla had detected the Tahoe, identified Angulo as a pedestrian in its path, identified the stop bar on the road, and identified the limits of drivable space. The car’s direction-of-travel arrow wavered left and right in the seconds before impact. In short, the car knew continuing straight was not a viable option, yet it did nothing.²¹ Even more fascinating, once the Tesla analyzed it

was going to be in an accident, “past the Rubicon,” if you will, the vehicle is programmed to shut the Autopilot off less than a second before impact. That way, in press releases, they could say with a straight face that at the time of this, and many other accidents, Autopilot wasn’t engaged.²²



In these two screen grabs from ECF 285-17, this is Plaintiffs' Forensic team's recreation of the augmented video, using Tesla's data and video feed to recreate what the Tesla saw. In the top screen grab, the vehicle clearly saw the stop bar and the pedestrian, while in the bottom one, the stop bar and the Tahoe. The Tesla was going 62mph in both screengrabs.

Tesla claimed the data from the computer was gone and couldn't be recovered. Plaintiff's team showed that not only was it not gone, but it could also be recovered and used to recreate everything the vehicle saw and what the vehicle's computer interpreted. Schreiber's closing framed the sequence the way a jury could hold onto: "They didn't find it. They got caught deleting it." At the end of the day, because Plaintiff's team was able to recreate this video, and show what the vehicle saw (the flashing stop light, the stop bar, the Tahoe, and the pedestrian), and the fact that the vehicle didn't stop, slow, or even veer, the design defect case basically wrote itself. The feasible alternative design was already there; the vehicle possessed all the tools necessary to avoid this accident, but it simply wasn't programmed to do so.

The Words: Marketing as Evidence, and the CEO Who Never Testified

If the data fight was the spine of the liability case, Tesla's Elon Musk's own words were the backbone of the punitive damages case. The jury watched years of video: Musk claiming Tesla vehicles had "all the hardware necessary for full self-driving," Musk telling a 2016 audience that Autopilot was "superhuman," and Musk saying that if Autosteer was on, the car knew its probable path, and that even if "the vision system doesn't know what the obstacle is — it could be an alien spaceship, or it could be a pile of junk metal — it just knows there's something dense and it shouldn't hit that." Musk saying "All Tesla vehicles leaving the factory today are capable of Level 5 autonomy. Safer than manually driven cars."²³ Elon Musk never took the stand, but he was one of the stars of the Plaintiffs' case. The jury heard the boldest statements about Autopilot, from Tesla's most identifiable messenger, with no witness in the courtroom to contextualize or walk them back.

Tesla fought to keep Musk's statements out as nothing more than puffery, hearsay, and forward-looking statements about software not yet in the 2019 Model S. The Judge let the statements in, as substantive evidence of what a reasonable consumer would expect Autopilot to do based on the representations of Tesla's Co-Founder and CEO.

In closing, one of the major themes was the difference between what Tesla shouted aloud to the world, versus what they whispered to a jury in the courtroom: "The only way that Tesla is able to sell a different car in the showroom than they do in the courtroom is if you let them." In the showroom, the car was superhuman, safer than if a person was driving. In the courtroom, Tesla's lawyers described the same car as one with a lane-keeping driver-assistance system no different from anyone else's. As Schreiber put it: "There's Tesla in the courtroom, and then there's Tesla in the showroom. Words matter; choices matter."

Bringing a Similar Case in Ohio: A Walk Through the OPLA

The Ohio Products Liability Act gives Ohio plaintiff lawyers every tool needed to bring a case like *Benavides*. The OPLA abrogates "all common law product liability claims" and recognizes four statutory theories of defect: manufacturing defect (R.C. 2307.74), design defect (R.C. 2307.75), inadequate warning or instruction (R.C. 2307.76), and failure to conform to representation (R.C. 2307.77).²⁴ Under R.C. 2307.73, a manufacturer is liable for compensatory damages when the claimant establishes that the product was defective in one of these four ways, that the defect was a proximate cause of harm,

and that the manufacturer designed or produced the product. Every theory the *Benavides* Plaintiffs relied on maps directly onto this framework. Ohio's design defect theory under R.C. 2307.75 uses a risk-benefit analysis that incorporates consumer expectations. The consumer expectations test preserves a central jury question, whether a reasonable consumer, given, among other things, the manufacturer's marketing, would have expected the car to perform as it did.

Further, in one respect, Ohio law is materially better than the Florida law the *Benavides* Plaintiffs had to work with. Ohio R.C. 2307.77 makes a product defective when it "did not conform, when it left the control of its manufacturer, to a representation made by that manufacturer," and expressly provides that a product may be defective under this section "even though its manufacturer did not act fraudulently, recklessly, or negligently in making the representation." Ohio has codified **strict liability for product misrepresentation**, with no intent, recklessness, or negligence required. Interestingly, unlike in Florida, under R.C. 2307.77, the Plaintiff need not be a purchaser of the product that caused them harm: a bystander injured by a product that failed to conform to the manufacturer's representations has a claim regardless of whether the plaintiff was in privity with the defendant. While it is still necessary to show actual reliance, in a case like this, where the CEO is arguably one of the most famous people in the world, it is not as difficult as it may first appear.

The Discovery Fight You Should Be Planning For

The discovery battle in this case is further evidence that in discovery, we have to ask, ask again, ask the court to order, then ask again. The data Tesla told the Court, and the world, did not exist, had been sitting on Tesla's servers all along. Had Plaintiffs accepted the boilerplate: "Tesla does not possess the requested data," they would have tried the case blind, or worse. Some practical lessons:

- ♦ **Name and identify every data source in your first request.** The more we can identify the documents we are looking for using the terminology and identifiers the defendants use, the easier it will be to write the Motion to Compel.
- ♦ **Don't be afraid to notice an early 30(B) deposition to learn what to ask for:** If you don't know or can't determine the terminology, notice up a 30(B)(5) deposition for a records custodian. In that deposition, ask for the names and identifiers, and also have that person confirm how easy or difficult it would be to obtain the evidence.

- ♦ **The manufacturer has more than it gives its lawyers.**

In *Benavides*, Tesla's outside counsel twice represented to a federal court that Tesla had produced everything in its possession. Those representations were, in their own way, made in good faith. The lawyers themselves didn't know what hadn't been turned over to them. It wasn't until a 30(b) deposition that the corporate representative acknowledged that there was more data available that hadn't been produced.

- ♦ **Preservation of Evidence!** The discovery sanctions didn't come because Tesla finally admitted it had the information. It came after the Plaintiffs' team found the actual computer that was inside the subject Tesla, in an evidence locker at a different police station, and then had that computer interrogated by Mr. "GreenTheOnly." This confirms that preservation letters should go out early and often, and that no stone should be left unturned.

- ♦ **Treat spoliation as a live issue from day one.** Ohio Civ.R. 37(E) closely tracks the federal rule. If ESI that should have been preserved is lost and cannot be restored, the court may impose curative measures upon a finding of prejudice, and upon a finding of intent to deprive may instruct the jury that it must presume the information was unfavorable or enter default judgment.²⁵ The moment the manufacturer's representations about what exists are contradicted by forensic evidence, you have a sanctions motion.

The Blame-the-Driver Defense and Ohio Comparative Fault

Every case involving Advanced Driver Assistance Systems²⁶ (ADAS) will feature some version of Tesla's defense because, in almost all cases, there will be a negligent driver who could have avoided the accident. The driver was distracted. The driver pressed the accelerator. The driver could have avoided the crash. Tesla argued all of it. Tesla was factually right about McGee — he had a dropped phone, his foot was on the accelerator pedal, he was over the speed limit. The jury found him 67% at fault. And Tesla still owes \$242,570,000.

So what strategies were used to move the comparative fault needle away from the negligent driver? Schreiber's metaphor to the jury was "two cups, one pitcher of blame." The driver's responsibility and the manufacturer's responsibility are not zero-sum. The driver did not openly or aggressively fault the technology, and he was a defendant and appeared at trial and on the verdict form. Had he come into court and simply blamed the vehicle, that would have been transparent to a

jury that he was trying to avoid blame, and it may have been completely ignored. Instead, he testified that he had “gotten too comfortable with the Autopilot” and that he “trusted the technology too much.” When he was asked whether he would have taken his eyes off the road and reached for his phone if he had been driving a vehicle other than a Tesla on Autopilot, he answered: “I don’t believe so.” That opened the door for Plaintiffs to argue that Tesla’s statements to the public and to consumers like McGee about what his Tesla could do were relevant to the choices drivers eventually make. In other words, McGee made this mistake because he believed the vehicle would prevent an accident.

In closing, Plaintiffs’ counsel argued: “McGee [the driver] is a byproduct of Tesla’s choices.” He then reiterated Tesla’s choices and Tesla’s own words about what it advertised that Autopilot could do. The jury agreed, and while they still found McGee primarily responsible, they placed a third of the blame on Tesla, the company.

ADAS litigation is coming to Ohio, not just against Tesla. There is an arms race amongst auto manufacturers to get these systems into vehicles and to compete over which vehicle has the most advanced systems. This will inevitably lead to rushed products with safety gaps. A few considerations we should anticipate in this litigation:

First, corporate marketing statements will be the subject of motions in limine and evidentiary inquiries. The question under Ohio law is not usually whether the statements are admissible at all as R.C. 2307.77 nearly always makes them relevant, but instead the scope of their use. The Judge’s approach in *Benavides* is instructive here, and she permitted a consciousness-of-guilt argument as to the design defect (corporate awareness of risk).

Second, the Judge drew a line regarding the introduction of pre-trial discovery-conduct/abuse evidence. Her pretrial ruling was that the court’s own discovery rulings during the case were not admissible at trial, but that Plaintiffs could introduce evidence of the actual conduct (not producing the data, claiming the data had been deleted, then claiming the data was unrecoverable, then showing that Plaintiffs were able to extract the data on their own, then Tesla acknowledging that actually the data was available). That distinction was the right one and most certainly helped fire up the jury at the punitive damages stage. In a case where discovery abuse is rampant, the ability to introduce this conduct is key to showing the jury the defendants’ efforts to avoid producing evidence.

Finally, comparative-fault jury instructions in cases involving both human and product failures require precision. The OPLA is not particularly well written to show the interplay between a manufacturer’s strict liability and the possibility of apportionment of fault. Early work on jury instructions and verdict forms is very important in any products liability trial that involves the potential for apportionment of fault.

Conclusion

The Tesla verdict is being described in the press as a turning point for autonomous-vehicle litigation. For our bar, the important takeaway is that *Benavides* was won using the same theories of liability that Ohio has recognized in the OPLA. The design-defect theories are R.C. 2307.75. The warning theories are R.C. 2307.76. The marketing-as-representation theory is R.C. 2307.77. Further, Ohio’s version is strict liability, not negligence. The discovery approach used in *Benavides* is within Ohio’s Civil Rules. The comparative-fault framework is R.C. 2315.33, and the punitive damages framework is R.C. 2315.21. Every tool is on the shelf.

What the *Benavides* team did was refuse to accept two things most defense-side litigation teams count on: that the company’s public statements are merely puffery, and that the company’s representations about what data exists are true. They treated the marketing as evidence and the initial discovery responses as only a starting point. They chased the subject vehicle’s computer unit through two years of misdirection, hired a forensic engineer known only as “GreenTheOnly” to do the work the manufacturer said could not be done, and then put the full record before a jury. The result was a \$329 million verdict, with \$242,570,000 apportioned to one of the world’s most valuable companies.

The cars are getting smarter. The marketing is getting louder. The data is getting more extensive. When the next Advanced Driver Assistance System accident lands in an Ohio courtroom, the plaintiff bar should be ready. Thankfully, our OPLA is built for exactly this moment. ■

End Notes

1. *All documents will be cited by their ECF No. and can be found on Pacer or by emailing the author. *Benavides, et al., v. Tesla Inc., et al*, United States District Court for the Southern District of Florida, Case Number 1:21-cv-21940-BB, Jury Verdict Form, ECF No. 534 (Aug. 1, 2025); Final Judgment, ECF No. 538 (Aug. 3, 2025).
2. Order on Tesla’s Amended Renewed Motion for Judgment as a Matter of Law or, Alternatively, Motion for New Trial, ECF No. 612 (S.D. Fla. Feb. 20, 2026).
3. As of April 20, 2026, most of the exhibits used in trial remain on the public docket and are readily accessible on PACER. The case is No. 1:21-cv-21940-BB in the Southern District of Florida.

4. Camila Domonoske, Jury Orders Tesla to Pay More Than \$240 Million in Autopilot Crash, NPR (Aug. 2, 2025), <https://www.npr.org/2025/08/02/nx-s1-5490930/tesla-autopilot-crash-jury-240-million-florida>.
5. ECF No. 205 at 39, 43, 46.
6. Omnibus Order on Motion for Summary Judgment and Daubert Motions, ECF No. 428 at 97 (S.D. Fla. June 26, 2025); ECF No. 612 at 2.
7. ECF No. 612 at 2.
8. Not to be confused with Tesla's "Full Self-Driving," or "FSD," which is an entirely different subject.
9. Notably, this was really no different than many other driver-assistance features that had been on a substantial number of new vehicles dating back to as early as 2013.
10. ECF No. 428 at 72.
11. Plaintiffs' Motion for Rule 37 Sanctions, ECF No. 285 at 5-6 (S.D. Fla. Dec. 11, 2024).
12. *Id.*
13. ECF No. 285 at 10 (quoting Rubio Blanco Dep. at 187-88, 243).
14. ECF No. 285 at 10 (quoting May 23, 2024 Hearing Transcript at 31-33).
15. ECF No. 285 at 14-15 (citing *McLaughlin v. Tesla*, No. 5:22-cv-07849-SVK (N.D. Cal.); *Jackson v. Tesla*, No. 5:22-cv-04380-PCP (N.D. Cal.)).
16. ECF Nos. 273, 274 (S.D. Fla.).
17. ECF No. 285 at 12-13.
18. <https://www.pcmag.com/articles/hacker-who-helped-score-243-million-verdict-against-tesla> , <https://www.washingtonpost.com/technology/2025/08/29/tesla-autopilot-crashes-evidence-testimony-wrongful-death/> , <https://x.com/greentheonly>.
19. EP 4: Alan Moore | Autonomous Vehicles, LIGHTPOINT DATA (podcast transcript), <https://www.lightpoint.com/podcast/moore> .
20. ECF No. 285 at 13 (quoting Nov. 15, 2024 correspondence from Tesla counsel).
21. ECF No. 285 at 15-17. *See also*, ECF Nos. 547-7 and 542-8.
22. <https://electrek.co/2025/03/17/tesla-fans-exposes-shadiness-defend-autopilot-crash/>.
23. Numerous publications have kept a running list of Elon Musk's claims about what Teslas can and will be able to do. In an attempt to be as unbiased as possible, here's Wikipedia's table: https://en.wikipedia.org/wiki/List_of_predictions_for_autonomous_Tesla_vehicles_by_Elon_Musk.
24. R.C. 2307.71(B).
25. Ohio Civ.R. 37(E).
26. ADAS systems include: forward collision warning, automatic emergency braking, adaptive cruise control, pedestrian detection, lane keep assist, lane centering assist, autosteering, driver monitoring, blind spot warnings, and autonomous driving systems.

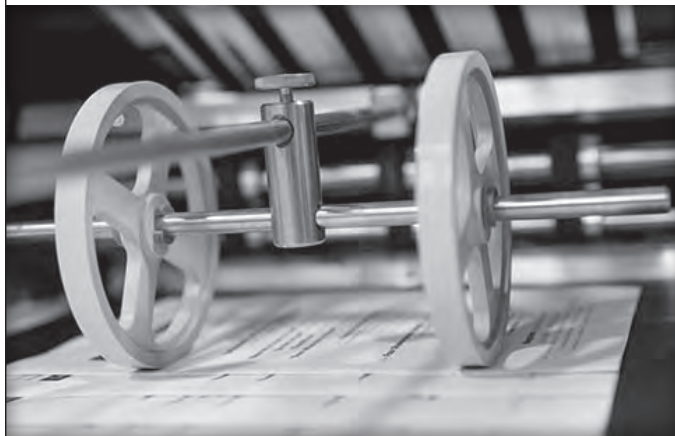


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Client Relations: Best (And Worst) Practices

by Jordan D. Lebovitz

Editor's Note: This article was inspired by a series of conversations I had with an out-of-state friend whose personal injury case took more than three years to litigate. The failure of her attorney and his staff to explain things as her case progressed perplexed and frustrated her, although in the end the outcome was satisfactory. It was a worthwhile reminder of the importance of client communications. I therefore invited my partner, Jordan Lebovitz, to address some best and worst practices in handling client communications. — KSJ

For plaintiff's attorneys, the attorney-client relationship is the backbone of every case. A client who feels informed, respected, and prepared is not only a better witness, but is a more trusting partner in the litigation process. Yet client relations are one area where even experienced trial lawyers can fall short. What follows is a practical guide to best (and worst) practices at every stage of the plaintiff's case, from the initial meeting through verdict.

The Initial Client Meeting

Q: Should the initial meeting be in person or by phone?

Whenever possible, the initial meeting should be in person. Body language, demeanor, and credibility are things you simply cannot assess over the phone. That said, geography and client circumstances sometimes make an in-person meeting impractical, and in those cases, a video call is a reasonable alternative. Sometimes a phone call works, but a face-to-face (by video or phone) interaction should occur at the early stages of representation.

Q: How do you address client expectations from the start?

The worst thing you can do is leave the initial meeting without calibrating expectations. Clients often arrive having Googled verdicts or spoken with well-meaning friends who "know

someone who got a million dollars" for a similar injury. Address this head-on. Explain clearly that every case is unique, that damages depend on a complex mix of liability, injury, and venue, and that you cannot promise a specific outcome.

The most important things to cover at the initial meeting include:

- **Social media advice:** Tell your client immediately, and in writing, to stop posting on social media. Defense counsel will search every platform. A photo of your client at a cookout two weeks after their "debilitating" injury can be devastating at trial.
- **Preservation of evidence:** Instruct the client to preserve everything, if feasible, including photos, clothing, medical records or post-op documentation, communications, and any physical evidence. Advise them not to repair property damage until it has been documented.
- **Communication protocols:** Explain how your office communicates, who the client's point of contact will be, and how quickly they can expect responses to calls or emails. We will share all names of individuals they should expect to hear from (intake staff, case managers, investigators, paralegals, etc.) and how they will hear from them, whether it's by text, email or phone.

- Honesty about the process: Litigation is slow. Cases can take years. Clients who understand this from day one are far more patient and cooperative than those who are surprised by every delay.

Ongoing Client Contact

Q: How often should you personally be in contact with the client?

The attorney should personally reach out to the client at every meaningful milestone: when a complaint is filed, when discovery begins, after significant depositions, before and after mediation, and, of course, well in advance of trial. For routine updates, a paralegal or legal assistant can be the point of contact, but the client should never feel like they've been handed off entirely. A quick call or text from the attorney goes a long way.

Q: What are best practices for scheduling-related communications?

For depositions, independent medical examinations, mediations, and trial, give clients as much advance notice as possible, ideally in writing, followed by a confirming call closer to the date. For a deposition or IME, contact the client at least two weeks out and confirm again a few days before. For trial, begin preparing the client weeks in advance. A worst practice: calling a client the night before their deposition to tell them where to show up.

Information Sharing: Addressing Difficult Developments

Q: What if liability starts to look worse after discovery?

Tell the client promptly and directly. Do not soften the news to the point of distortion. Your client deserves an honest assessment of their case at all stages. After a deposition where a key witness undercuts your liability theory,

call the client. Explain what was said, why it matters, and what your strategy is going forward. (Most) clients can handle bad news; what they cannot handle is feeling blindsided at mediation or trial.

Q: What about preexisting injuries or faster-than-expected recovery?

As soon as you have concrete information, a medical record revealing a prior injury to the same body part, or a treating physician's note that the client has reached maximum medical improvement sooner than expected, schedule a call with the client. Explain how this discovery affects the damages picture and what the defense is likely to argue. Getting ahead of these issues is always better than letting the client hear it for the first time during cross-examination.

Q: What if the defense produces surveillance video of the client?

This is one of the most delicate conversations a plaintiff's attorney can have. Review the video carefully before discussing it with the client. Then meet, in person if at all possible, to watch it together. Give the client the opportunity to explain. There may be context the video doesn't capture: a good day after months of bad ones, pain medication, or simply an activity the client genuinely can still do. Never sit on surveillance. You need to address it, strategize around it, and adjust your damages presentation accordingly.

Q: Do you share your demand letter with the client?

The client has a right to understand what is being demanded on their behalf. However, I oftentimes will share only pertinent elements of a demand letter (i.e. the # and other client-consent details). Clients who feel excluded from this process often become difficult

when settlement offers come in.

Q: How do you manage client expectations on monetary recovery?

This is an ongoing conversation, not a one-time talk. Remind clients early and often that verdicts are unpredictable, that juries are not always empathetic even in strong cases, and that the ultimate decision to accept or reject a settlement is theirs alone, but that your role is to give them an honest recommendation. Avoid the temptation to feed a client's optimism just to keep them happy. An over-optimistic client will be furious when reality arrives at mediation.

Deposition, Mediation, and Trial Preparation

Q: What are the best practices for deposition prep?

Deposition preparation should begin well in advance, typically several days before, ideally a week. Best practices include:

- Walk the client through the format and rules: answer only what is asked, ask for clarification if a question is unclear, do not guess.
- Review prior statements, medical records, and any social media posts that may come up.
- Do a mock run. Have someone play defense counsel and ask difficult questions. Clients are almost always surprised by how different it feels when they're actually in the chair.
- Worst practice: emailing a client a list of "tips" and calling it deposition prep. There is no substitute for sitting with your client and working through the likely questions together.

Q: How do you prep a client for mediation?

Many attorneys underestimate how disorienting mediation can be for a client who has never experienced it. Explain the structure: joint session (if used), separate caucuses, the mediator's role, and the back-and-forth of offers. Most importantly, have a frank discussion about the range of outcomes and what a reasonable settlement looks like given the strengths and weaknesses of the case. If you personally cannot meet with the client beforehand, have a team member do so; a client who walks into mediation cold is a client who is likely to blow it up.

Q: What about trial prep?

Trial preparation for the client should begin weeks in advance and intensify in the final days. Cover not just substance, what they will say, but logistics and demeanor: what to wear, how to address the jury, how to handle aggressive cross-examination without becoming defensive or emotional. Worst practices include waiting until the weekend before trial to prep your client, or leaving client prep entirely to a paralegal without attorney involvement. The client is your most important witness. Treat their preparation accordingly.

A Final Word: What Not To Do

The most common client relations failures we have seen come down to a few recurring patterns:

- ✦ Going silent. Clients who do not hear from their attorney for weeks or months lose confidence and sometimes lose patience entirely.
- ✦ Overpromising. Tell the truth about the case, even when the truth is disappointing. A client who was told "this case is worth \$500,000" and settles for \$75,000 is not a satisfied client, regardless of what that settlement actually represents.
- ✦ Failing to explain the process.

Many clients have never been through litigation. Explain each step before it happens, not after.

- ✦ Treating the client as a bystander in their own case. Clients are your partners. Keeping them informed, prepared, and respected is not a courtesy, it is part of the job.

Ultimately, excellent client relations are not about making every client happy, it is about making every client informed. Clients who understand their case, trust their attorney's judgment, and feel heard throughout the process are better prepared for every outcome, good or bad. That is the standard worth striving for. ■



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7 Deadly Sins of Voir Dire

by Dustin B. Herman, Esq.

Whether you adhere to the “cause is king” method or the “build a tribe” method—or utilize both—you need to use your peremptory strikes strategically and work up your challenges for cause effectively. Here are the 7 Deadly Sins of Voir Dire you must avoid!

1. Not Moving the Court for a Large Enough Panel

I don’t care how well you work up a challenge for cause, if there is a risk of busting the panel, a court will be loathe to strike a potential juror. In Ohio, many courts may by default have less than 25 jurors on a panel. That only gives you 7 jurors to work with (after 8 are seated, 2 alternates, 6 peremptory strikes, 2 more alternate peremptory strikes). With a few hardship challenges, you are barely holding on to the panel.

We request a jury panel of between 40 and 60 jurors depending on the case, and we request it early and often (in a motion, in our Trial Brief, and again at the Final Pretrial Conference). Most judges are happy to oblige if you make a timely request.

2. Not Educating the Judge on the Ohio Statute Governing Challenges for Cause

Compared to other states, Ohio has very strict statutory requirements for serving on a jury. Under R.C. 2313.17(B), there are automatic (“principal”) challenges for cause—like when a panelist or their spouse or child works for a defendant. In addition, challenges for cause

“shall” be sustained “if the court has **any doubt** as to the juror’s being **entirely unbiased.**” R.C. 2313.17(D).

That is a very low standard for striking jurors for cause, but many judges are not aware of this standard. You should remind trial courts of this statute in your motion for a larger panel, in your Trial Brief, and at the Final Pretrial Conference. Importantly, make sure you have printed copies of the statute during voir dire.

3. Not Using AI for Real-Time Transcripts During Voir Dire

Real-time transcripts are a game changer for voir dire. Instead of trying to read scribble on post it notes, you can read the black and white text back to the judge. There are a number of AI tools on the market that can provide reliable real-time transcripts essentially for free. Not only will you love it—courts love it because it helps them make the right decision when ruling on challenges for cause. Just offer to provide the judge (and opposing counsel) an iPad that will show the real-time transcript. The court will thank you for it.

4. Not Identifying the Leaders

At trial, we are not talking to a “jury”—we are talking to individual “jurors.” When seated on a jury, strangers have come together to form a group, pick a leader, and perform a task. Whenever strangers form a new group, leaders will emerge—so-called emergent leaders.¹ We all know what this is like from our own social experiences, and we are all leaders or followers depending on the situation. In the courtroom,

emergent leaders will tend to have: (1) advanced degrees; (2) subject matter experience; (3) leadership experience (duh); and (4) a personality high in extroversion. You can and should ask direct questions about the first three to every juror on your panel. People high in extroversion will reveal themselves—they will speak more quickly and more often than others on the panel. You must also have someone ranking each potential juror on leadership potential.

Your emergent leaders will carry more sway in the jury room than the other jurors. You must identify any leaders on your jury panel. The next step is to *try* to predict which way they will lean (good luck to us all). But a good principle to uphold: When in doubt, strike the leaders.

5. Not Identifying the Haters

Confirmation bias is a real problem. Daniel Kahneman's work in *Thinking Fast and Slow* (a must read for trial lawyers) shows us that if jurors want us to win—they will find the reasons; and if they want us to lose—they will find the reasons. If a juror comes in tilted towards "personal responsibility" and against lawsuits or damages for pain and suffering, they will be hunting for facts that allow them to vote their gut. As Jonathan Haidt likes to say, the question people answer is not "should I believe the claim asserted based on the evidence?" The question is "do I have permission to believe this?" Or the converse—"must I believe this?" As soon as there is one fact that gives a juror permission to believe a claim, they will believe it (if they want to), and as soon as there is a fact that allows a juror to reject a claim, they will reject it (if they want to).

We must identify the jurors that will tend to root against the plaintiff. You do this by giving jurors permission to hate on your case. Mitnik does this with his pie story. Alex Alvarez does

this by invoking the freedom we have in America to think and believe and feel what we want—and courts can't tell us any different. There are many techniques here, but the point is—do not be afraid to hear jurors hate on your case. You want them to, and you want to find others who agree with the haters. Then you need to effectively work up a challenge for cause for the haters.

6. Not Using Statutory Language to Work Up Challenges for Cause

Working up challenges for cause is difficult and takes lots of practice (you can hold Zoom focus groups and practice this for very cheap). After you give jurors permission to hate on your case, and you have identified the haters, you should use the statutory language of "any doubt" and "entirely unbiased" to clinch the challenge. Again, turn back to Mitnik's *Don't Eat the Bruises and Deeper Cuts* for details on doing this. But when it comes to the clincher, add in the Ohio-specific statutory language. Something like: "Despite your best efforts, is it fair to say you'd have some honest doubts about your ability to be entirely unbiased?" Or, "Fair to say you'd have some doubts about your ability to be entirely unbiased." Or, "So on a scale of 0-5, do you have any doubt about your ability to be entirely unbiased—0 being zero doubt, 1, 2, or 3 meaning you have some doubts, or 4 or 5 meaning you have a lot of doubts?"

There is no case law on this yet, but if a juror honestly admits they themselves have some doubt about their ability to be entirely unbiased, a court should not be able to say it does not have any doubt. We just need an appellate court to say so.

7. Not Preserving Objections for Appeal

If you identify the haters, work up the challenge for cause effectively, clinch it with the statutory language, and read

back the AI real-time transcript to the judge showing that the juror said they indeed had some doubts about their ability to be entirely unbiased—and the judge still denies your challenge for cause, you need to make sure you preserve the ruling for appeal. If you lose the trial, you may have a chance to make some good appellate law on voir dire.

The first step to preserving the challenge is to effectively make the challenge on the record, citing all the helpful statements from the subject juror. Second, you have to use all of your peremptory challenges so you can show there was in fact prejudice from the failure to grant your challenge for cause (if you have a remaining peremptory then you have nothing to complain about). It might also be prudent to identify on the record the identity of the specific juror in the box that you would have stricken if you had an extra peremptory. Some states even require you to ask the court for an additional peremptory and have it be denied to preserve an objection. I think that is good practice, but it is not required under Ohio law (yet). Finally, you should object again to the jury before the jury is sworn in.

By following this procedure, you can preserve any erroneous rulings on challenges for cause on appeal—and provide yourself with an opportunity to make good law on voir dire if you were to lose at trial.

* * *

Avoiding these 7 Deadly Sins of Voir Dire will make you a more effective advocate and give you a better shot at winning your next trial!■

End Notes

1. Marya Tabassum, Muhammad Mustafa Raziq, Naukhez Sarwar, "Toward an overarching multi-level conceptualization of emergent leadership: Perspectives from social identity, and implicit leadership theories" Human Resource Management Review, Volume 33, Issue 2, 2023, 100951, ISSN 1053-4822.

Verdict Spotlight

Julie Robinson v. City of Toledo

by William Price and Joshua Farrell

On January 13, 2026, a Lucas County jury returned a verdict of \$1,272,926.00 in favor of the Plaintiff in *Julie Robinson v. City of Toledo*. The Plaintiff was represented by Bill Price and Josh Farrell of Elk & Elk Co., Ltd.

This case arose from an August 29, 2019, chain-reaction collision in Toledo. A City of Toledo dump truck struck a tow truck with enough force to propel the secondary vehicle directly into Ms. Robinson's car. While the City of Toledo admitted negligence for causing the crash, it vigorously contested the extent, cause, and permanence of Ms. Robinson's injuries. The defense's final settlement offer during trial was just \$75,000, less than 6% of the eventual jury award.

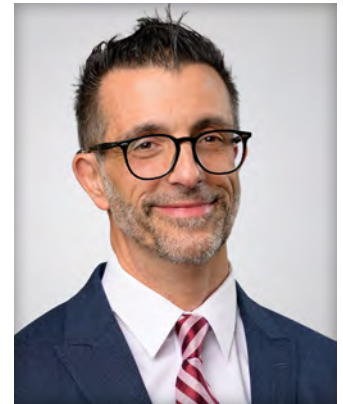
The central challenge at trial was communicating the weight of "invisible" injuries. While Ms. Robinson did sustain physical spinal damage, the crux of the case focused on her mild traumatic brain injury (TBI) and post-traumatic stress disorder (PTSD). These conditions are often labeled as "invisible" because the sufferer may appear fine to a casual observer, yet their internal world has been completely fractured.

The defense pursued an aggressive strategy of deflection, scouring Ms. Robinson's medical history for any previous stressor or minor injury to suggest that her current suffering was unrelated to the 2019 collision. They attempted to attribute her condition to unrelated past traumas and accidents, and argued that the dramatic changes in her quality of life were either pre-existing or exaggerated. By admitting fault for the accident itself, the defense shifted their primary strategy toward attacking the victim, a common hurdle in personal injury litigation where there is a gap between an admitted mistake and a refusal to pay for the consequences.

Two strategies proved particularly effective at trial.

First, the trial team focused on humanizing complex medical data by illustrating the dramatic "before and after" shift in Ms. Robinson's quality of life. Through expert testimony, the jury learned that a "mild" TBI is often a misnomer. The impact on a person's ability to process information, maintain relationships, and regulate mood is anything but mild. Expert witnesses explained that TBI and PTSD are not conditions one simply "gets over" with time, but are chronic issues requiring specialized, ongoing therapy and medical management.

Second, the testimony of Ms. Robinson's family and her boyfriend proved pivotal in making the invisible injuries concrete for the jury. They provided multiple stories illustrating how a woman who had once been vibrant and capable now lived in a world of cognitive fog, emotional volatility, and chronic pain. After six years of observing that she had not recovered, the jury was able to see the permanent reality of her condition, not just as a medical diagnosis, but as a lived experience affecting every aspect of her daily life.



Bill Price



Joshua Farrell



Josh Farrell and Bill Price



Josh Farrell and Bill Price with Julie Robinson after the verdict

A major component of the award was the recognition of future medical care and a substantial wage loss claim. The jury's decision to award over \$1.27 million reflected an understanding that Ms. Robinson will require ongoing support, including cognitive behavioral therapy, potential vocational rehabilitation, and medical monitoring for her spinal health and migraines. By awarding damages for future suffering and medical expenses, the jury acknowledged that the City of Toledo's negligence did not just happen on a single day in 2019, but rather it created a permanent deficit in Ms. Robinson's future.

The case was tried by Bill Price and Josh Farrell of Elk & Elk Co., Ltd.

The case is *Julie Robinson v. City of Toledo*, Lucas County, Case No. G-4801-CI-0202402120-000. ■

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Recent Ohio Appellate Decisions

by Brian W. Parker, Louis E. Grube, and Michael J. Factor

***Hoskins v. City of Cleveland*, 2026-Ohio-1225 (Ohio S. Ct. April 8, 2026).**

Disposition: Reversing the Eighth District Court of Appeals which had affirmed the trial court’s denial of the City’s motion for summary judgment under the “physical defect” exception to political subdivision immunity.

Topics: Political subdivision immunity under R.C. § 2744.02; physical defect on the grounds of buildings used in connection with the performance of a governmental function under R.C. § 2744.02(B)(4).

Plaintiff’s decedent drowned in a swimming pool owned by the City of Cleveland. The drowning occurred while the life guard on duty sat in a low profile folding chair, rather than the elevated life guard chair. The City moved for summary judgment, contending that it was immune from liability for the death under political subdivision immunity pursuant to R.C. § 2744.01, et seq. The trial court denied the City’s motion for summary judgment, and the Eighth District affirmed, finding there was a genuine issue of material fact as to whether the use of a low folding chair created a “physical defect” at the pool grounds entitling plaintiff to the exception to immunity under R.C. § 2744.02(B)(4).

In its appeal to the Supreme Court, the City argued the use of a low deck lifeguard chair could not constitute a “physical defect” within or on the grounds of City buildings pursuant to the exception to immunity under R.C. § 2744.02(B)(4). The plaintiff countered that the lower profile folding chair created a “blind spot” that prevented the life guard from seeing the decedent lying at the bottom of the pool. Moreover, the plaintiff argued that the elevated life guard chair was defective because it was “firm” and “uncomfortable” for the life guard to sit in.

The Supreme Court held that a “physical defect” can be reasonably understood as a material or tangible imperfection that impairs the quality, function, or utility of an object. Thus, the terms “firm” and “uncomfortable” are not equivalent to being physically defective for purposes of R.C. § 2744.02(B)(4); no tangible imperfection prevented the elevated life guard chair from functioning as a chair. Moreover, the “blind spot” was not a physical defect either as it was created by the life guard’s decision to sit in the lower profile folding chair; the chair and pool grounds could still function as intended.

***Doe v. City of Columbus*, 2026-Ohio-1095 (Ohio S. Ct. Apr. 1, 2026).**

Disposition: Reversing the court of appeals’ decision to grant plaintiffs’ motion to dismiss the appeal as premature.

Topics: Preliminary injunctions, final orders under R.C. 2505.02(B)(4), appellate jurisdiction.

This case presented the Ohio Supreme Court with an important question of appellate jurisdiction: may a municipality immediately appeal a trial court’s order granting a preliminary injunction that bars the city from enforcing its own duly enacted ordinances? The Court in a 5-2 decision authored by Justice Hawkins held that the answer is yes – such an injunction inflicts irreparable injury to the government’s sovereign interests and qualifies as a final, immediately appealable order under R.C. 2505.02(B)(4).

The case involved two gun-related ordinances passed by the Columbus City Council in late 2022 and early 2023. The first ordinance, passed on December 5, 2022, prohibited the possession and transfer of large-capacity magazines, defined as those accepting thirty or more rounds of ammunition, and also enacted a negligent storage provision requiring firearm owners to prevent minors from accessing weapons kept at their residences. A second ordinance, passed in February 2023, made minor amendments to the magazine restriction and granted a temporary immunity period for persons who had lawfully acquired prohibited magazines before the ordinances took effect.

Six anonymous plaintiffs, five from Franklin County and one from Delaware County, filed suit in Delaware County Court of Common Pleas challenging the ordinances as unconstitutional. The plaintiffs argued that the ordinances violated R.C. 9.68, Ohio’s firearm-regulation preemption statute, and Article I, Section 4 of the Ohio Constitution, which protects the right to keep and bear arms. After an oral hearing, the trial court agreed with the plaintiffs and issued a preliminary injunction barring the city from enforcing specified provisions of the Columbus City Code that had been created or amended by the ordinances.

The city appealed the preliminary injunction to the Fifth District Court of Appeals. The plaintiffs moved to dismiss the appeal, arguing that a preliminary injunction does not qualify as a “final order” that can be immediately appealed under R.C. 2505.02(B). The Fifth District agreed and dismissed the city’s

appeal for lack of jurisdiction. The city then sought review in the Ohio Supreme Court, which accepted the case.

The Supreme Court's analysis turned on R.C. 2505.02(B)(4), which provides that an order granting or denying a "provisional remedy," a category that expressly includes preliminary injunctions, qualifies as a final, immediately appealable order if two conditions are satisfied. First, the order must "in effect determine the action with respect to the provisional remedy" and "prevent a judgment in the action in favor of the appealing party with respect to the provisional remedy." Second, the appealing party must lack a meaningful or effective remedy from an appeal following final judgment.

The Court had little difficulty concluding that the first condition was met. The trial court's order definitively resolved the preliminary injunction request, leaving no further opportunity for the city to obtain a denial of that injunction. The more contested issue was the second condition, whether the city would have a meaningful remedy if forced to wait until after a full trial on the merits before appealing.

The majority concluded that a municipality suffers irreparable injury whenever a court enjoins enforcement of its duly enacted laws, an injury that cannot be meaningfully remedied after the fact. The Court grounded this conclusion in the Home Rule Amendment to the Ohio Constitution. When a court temporarily strips a municipality of that power, even with a preliminary injunction, it inflicts an injury to the city's constitutional sovereignty that cannot be undone retroactively. The majority drew support from United States Supreme Court precedent acknowledging that any time a government is enjoined from enforcing its laws, it suffers a form of irreparable harm. An appeal following final judgment, the Court held, is simply too late to be "meaningful or effective" under these circumstances.

Justice Brunner authored a pointed dissent, arguing that the majority had effectively written a new category of immediately appealable orders into R.C. 2505.02(B)(4) without statutory authority. She emphasized that R.C. 2505.02(B)(4)(b) is a test of available remedies, not a test of harms. The General Assembly had, in fact, recently amended R.C. 2505.02(B) to explicitly make orders enjoining state statutes immediately appealable but had deliberately excluded municipal ordinances from that provision. By extending immediate appeal rights to municipalities, the majority was doing what the legislature had chosen not to do. She also argued that the harms claimed by the city were temporary by nature, that laws can be amended or repealed, and that the city had an adequate remedy by proceeding to a full trial on the merits of the permanent injunction request, which had already been scheduled.

The practical importance of the decision is substantial. By confirming that municipalities can immediately appeal preliminary injunctions blocking their ordinances, the Ohio Supreme Court has provided local governments with a powerful procedural tool to immediately shunt a case into the court of appeals as soon as a trial court temporarily halts enforcement of a local law. The Fifth District was directed on remand to address the merits of the city's appeal from the preliminary injunction.

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Eddy v. Farmers Prop. Cas. Ins. Co., 2026-Ohio-626 (Ohio S. Ct. Feb. 26, 2026).

Disposition: Reversing the First District Court of Appeals which had upheld the trial court's order that an insurance company must produce claims-file documents alleged to be protected by the attorney-client privilege and the work-product doctrine.

Topics: In the context of discovery of an insurance company's claims-file documents in an insurer bad-faith claim: preliminary showing of bad faith; *in camera* inspection; attorney-client privilege, R.C. § 2317.02(A)(2), and viability of *Boone v. Vanliner Ins. Co., 2001-Ohio-27*; and the work-product doctrine.

In a bad faith tort action by an insured against its insurance company alleging the latter dragged its feet before settling their claim, the insured sought discovery of the insurance company's claims file. The trial court ordered the claims file produced without conducting an *in camera* inspection, and the First District affirmed reasoning that *Boone v. Vanliner Ins. Co., 2001-Ohio-27* created an exception to the attorney-client privilege for materials created prior to an insurance company's denial of coverage.

In reversing the First District, the Ohio Supreme Court held that the *Boone* decision was superseded by statute, R.C. § 2317.02(A)(2), governing attorney-client communications. Pursuant to that statute, attorney-client communications are only subject to discovery after the insured makes a *prima facie* showing of bad faith, and if such showing is made, after an *in camera* inspection determines that the communications are related to the attorney's aiding or furthering an ongoing or future commission of bad faith by the client. Further, work-product protection exists under Civ. R. 26(B)(4) for materials prepared in anticipation of litigation, and these materials may be disclosed after an *in camera* inspection and a showing of "good cause."

Thus, the Supreme Court remanded the case to the trial court to first determine whether the insured had made a "*prima facie*"

showing of “bad faith, fraud, or criminal misconduct” under R.C. § 2317.02(A)(2). If such a showing was made, the trial court was to conduct an *in camera* inspection to determine if the documents were protected by the attorney-client privilege. Also, the *in camera* inspection should be conducted for the documents alleged to be subject to the work-product doctrine.

United States Acute Care Sols., L.L.C. v. Drs. Co. Risk Retention Grp. Ins. Co., 2025-Ohio-5010 (Ohio S.Ct. Nov. 6, 2025).

Disposition: Reversing the Fifth District Court of Appeals and reinstating the trial court’s judgment compelling the parties to submit the insurance bad-faith claim to arbitration.

Topics: Arbitration agreement’s application to tort claim of bad-faith brought by medical provider against insurance company.

Defendant The Doctors Company Risk Retention Group Insurance Company (“TDC”) issued a medical malpractice insurance policy to plaintiff U.S. Acute Care Solutions, L.L.C. (“USAC”). In a prior medical malpractice claim filed by an injured party against USAC, there was a disagreement between USAC and TDC in settlement strategy, and USAC self-funded a settlement with the malpractice plaintiff to avoid the risk of a verdict being rendered in excess of those limits.

Alleging bad-faith insurance-claim handling, USAC then filed the present lawsuit against TDC to recover the amount of its self-funded settlement payout. The TDC insurance policy at issue contained an arbitration clause which required arbitrating disputes regarding TDC’s “contractual obligations.”

USAC argued that its action against TDC was a tort claim for bad-faith insurance claim-handling, not a contractual dispute, and hence the arbitration provision should not apply. The trial court granted TDC’s motion to arbitrate the dispute. On appeal, the Fifth District reversed based upon USAC’s argument.

On further appeal, the Ohio Supreme Court reversed the Fifth District decision, reasoning that Ohio law strongly favors arbitration. In considering a contractual provision to arbitrate, courts must classify arbitration clauses as broad or narrow. A presumption of arbitrability exists for broad clauses. An arbitration clause that contains the phrase “any claim or controversy arising out of or relating to the agreement” is the paradigm of a broad clause. Further, a court should deny a party’s request to compel arbitration only if the arbitration clause cannot reasonably be read to cover the dispute in question.

In the present case, USAC did not overcome the presumption of arbitrability because it did not identify an express exclusion

or other forceful evidence that the bad-faith claim fell outside the scope of the arbitration clause in the contract.

Hopkins v. Greater Cleveland Reg’l Transit Auth., 2026-Ohio-936 (8th Dist. Mar. 19, 2026).

Disposition: Reversing the trial court’s granting of summary judgment for defendant GCRTA.

Topics: GCRTA’s entitlement to a reinstatement of political subdivision immunity pursuant to R.C. § 2744.03(A)(3) and (5) based upon “policy” and “discretion”; the open and obvious defense; whether the plaintiff’s affidavit drafted after the plaintiff’s deposition testimony, and after GCRTA’s motion for summary judgment, is admissible.

The plaintiff was a passenger on a GCRTA bus in December. After plaintiff had stood up to walk toward the exit of the bus, he fell while the bus was traveling. Plaintiff alleged that the bus was speeding, and came to a sudden stop that caused his fall. GCRTA moved for summary judgment, contending, *inter alia*, that the wet bus floor was an open and obvious condition. The trial court granted summary judgment for GCRTA.

On appeal, GCRTA made several unsuccessful attempts to have its judgment affirmed. GCRTA contended that its political subdivision immunity, which was waived pursuant to R.C. 2744.02(B)(1) (regarding negligent operation of a motor vehicle) and (2) (regarding performance of a proprietary function), was reinstated under R.C. § 2744.03(A)(3) and (5) based upon GCRTA’s “policymaking” and “employee discretion,” respectively. In denying GCRTA’s reinstatement of immunity, the Court stated: “We find no merit to GCRTA’s argument that it can ‘policy’ and ‘discretion’ its way around a claim of driver negligence under either R.C. § 2744.03(A)(3) or (A)(5).”

GCRTA also claimed that plaintiff saw that the floor of the bus was wet, and the bus floor was thus an “open and obvious” hazard which negated GCRTA’s duty to plaintiff. The Court found that the “open and obvious” claim did not apply because the driver’s negligence in operating a moving bus was a “dynamic” condition, and not a “static” condition despite the presence of a wet floor.

In addition, GCRTA claimed that the plaintiff’s “sham” affidavit, drafted after his deposition, and after GCRTA filed its motion for summary judgment, should be stricken from the record. The Court denied GCRTA’s motion to strike the plaintiff’s affidavit because “[a]ppellant’s statement at

deposition (that the bus was speeding) and the statement in his affidavit (that the bus came to an unusually violent stop) are not inconsistent; they can both be true at the same time.” In so holding, the Court also noted the fact that, at plaintiff’s deposition, GCRTA’s counsel focused on the wet floor’s obvious condition, but did not question plaintiff about the speed or stopping of the bus.

.....
Estate of Altizer v. Arbors at Gallipolis, 2026-Ohio-369 (4th Dist. Jan. 16, 2026).

Disposition: Trial court order granting summary judgment in favor of defendant nursing home and associated entities on statute of limitation grounds was affirmed.

Topics: Medical claims statute of limitation, 180-day letters, statutory interpretation.

This case arose from a medical negligence claim brought by the Estate of Nancy Altizer against the Arbors at Gallipolis, a nursing home facility, and several related corporate entities. The appeal centered on the meaning of R.C. 2305.113(B), which allows a plaintiff pleading a medical claim to extend the limitations period on their claim by one hundred eighty days if they send a notice of claim letter to the defendant. The Fourth District Court of Appeals resolved the following question about R.C. 2305.113(B): what happens when a plaintiff sends their notice-of-claim letter before the expiration of the limitations period, but the defendant does not receive that letter until after the limitations period has expired? In other words, is the notice-of-claim letter effective when it is sent, or is it effective only once it is received by the defendant?

The Fourth District Court of Appeals held that the letter is effective upon receipt and affirmed the trial court’s decision to grant summary judgment to the defendants.

The underlying facts were straightforward. On November 6, 2019, Nancy Altizer suffered a fall at Arbors at Gallipolis nursing home, sustaining lacerations, contusions, and a fractured vertebra in her neck. The Estate alleged that the injuries resulted from the facility’s systematic understaffing and negligent care. Under Ohio law, medical claims must be filed within one year of the date the cause of action accrues, meaning the statute of limitations ran on November 6, 2020. See R.C. 2305.113(A).

The Estate sent a notice-of-claim letter in May 2020 to most of the defendant entities. However, rather than filing suit, the Estate sent a second 180-day letter on November 6, 2020 – the very last day of the limitations period – to *all* the defendant entities by certified mail, return receipt requested. The

defendants did not receive this letter until after November 6, 2020, meaning it arrived after the expiration of the one-year limitations period.

The arguments largely revolved around whether the 2019 amendment to R.C. 2305.113 changed the rule established by the Ohio Supreme Court in *Edens v. Barberton Area Family Practice Center*, 43 Ohio St.3d 176 (1989). In *Edens*, the Ohio Supreme Court held that because 2305.113(B)’s precursor was silent on the method of notice, a notice-of-claim letter was effective only upon receipt by the defendant, not upon the date of mailing. The Estate argued that the 2019 amendment, which added R.C. 2305.113(B)(2) and expressly provided that the plaintiff may give their notice "by sending it by certified mail, return receipt requested" effectively overruled *Edens* by specifying a method of delivery. According to the Estate, once the legislature defined how notice must be given, the notice became effective upon the act of sending, not upon receipt.

The trial court rejected this argument, finding that the amendment was intended only to change the method of accomplishing service – requiring certified mail rather than personal service – without altering the fundamental rule that notice is effective upon receipt. The trial court granted summary judgment to the Gallipolis Entities and subsequently, on remand, also granted summary judgment to the remaining Northpoint/Prestige Entities, who had never received any 180-day letter at all.

The Fourth District Court of Appeals affirmed. Writing for the court, Judge Wilkin agreed that R.C. 2305.113(B)(2) was ambiguous, noting that the phrase "shall give that notice by sending it by certified mail" could plausibly mean that notice was effective upon sending, but it could equally be read as merely specifying the required delivery method without addressing the timing of effectiveness. Finding ambiguity, the court turned to rules of statutory construction.

The court saw several indicators pointing toward the defendants’ "effective upon receipt" interpretation. Most significantly, the requirement of a "return receipt" suggested the legislature remained concerned with actual delivery. The court reasoned that if notice were effective upon mailing, a return receipt would serve no purpose and would therefore become surplusage. The court also noted that Ohio’s Civil Rules governing service of process treat certified mail service as effective upon delivery, not dispatch, and that the legislature is presumed to have known this when it amended the statute using similar certified-mail language.

The estate’s reliance on other statutes – such as R.C. 119.09 (administrative appeals) and R.C. 1923.04 (eviction notices) – failed to persuade the court. Neither statute expressly

stated that certified mail service is effective upon mailing, and neither contained a return-receipt requirement analogous to R.C. 2305.113(B)(2). The court also noted that the only Civil Rule treating certified mail as effective upon dispatch, Civ.R. 4.6, applies only in narrow circumstances involving refused or unclaimed mail, which was not at issue in this case.

The court also found support in the 2019 amendment's legislative history. Representative Robert Cupp, who introduced the bill, testified that it was intended to permit plaintiffs to serve notice by certified mail rather than personal service, without changing the existing legal standard for when notice becomes effective. The legislative history reinforced the conclusion that the amendment was simply meant to expand *how* one could give notice without changing *when* notice was made effective.

Accordingly, the court held that the 180-day letter under R.C. 2305.113(B)(2) is effective only upon delivery to the defendant. Because the estate's second 180-day letter was not received by the defendant entities before the limitations period expired on November 6, 2020, the estate failed to timely extend the limitations period. Summary judgment was affirmed in favor of all defendants. The decision is a sobering reminder to plaintiffs' attorneys bringing medical claims that last-minute 180-day letters carry substantial risk if sent so close to the limitations deadline that delivery cannot be assured before expiration.

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Wattley v. Rinaldi, 2025-Ohio-5538 (5th Dist., Dec. 11, 2025).

Disposition: Court of appeals affirmed a trial court's order dismissing parts of a complaint.

Topics: Pleading to utilize the saving statute, amendments to the complaint after an order granting a motion to dismiss for failure to state a claim.

Plaintiffs were football coaches at Canton McKinley High School, who had been fired following an incident in which they allegedly used unconventional discipline against a player who purportedly appeared at practice after using marijuana. The opinion indicates that the student was made to sit and eat a pepperoni pizza while all the other team members practiced, despite a claim that he did not eat pork for religious reasons. One plaintiff alleged that he offered the student chicken nuggets instead. The plaintiffs were all terminated after an investigation.

Plaintiffs filed suit for defamation and related tort theories against two relevant defendants, the school superintendent and president of the board of education. These claims arose out of a series of public statements made in May and June, 2021. Some of these statements were posted to the official

school district facebook page. Others took the form of draft resolutions for the board of education to consider and a statement made at a board meeting. The final statement was a videotaped statement by the superintendent. The first action was voluntarily dismissed before being refiled in May 2023.

The trial court ultimately dismissed the second-filed complaint for several reasons, including a claim of political subdivision immunity and defects within the substantive facts of some claims. But the potentially precedential issue was procedural. How much information does a plaintiff need to incorporate in a re-filed complaint to satisfy and therefore trigger operation of Ohio's saving statute, R.C. 2305.19? And if a complaint does not incorporate factual allegations sufficient to satisfy the saving statute, can a plaintiff seek to amend the complaint to add them after a motion to dismiss for failure to state a claim has already been granted? The trial court was asked to take judicial notice of the date of voluntary dismissal of the last action, but that request was rejected.

After the trial court granted the motion to dismiss by applying the one-year statute of limitations, it denied in part a motion to amend to fix the pleading deficiency that led to the dismissal. It permitted an amendment with respect to some other defendants who had not yet been dismissed. But when the amended complaint incorporated allegations against the relevant defendants too, the trial court struck those allegations from the complaint.

On appeal, the Fifth District Court of Appeals explained that the trial court's key decisions, rejecting a request to take judicial notice and denying leave to amend against the relevant defendants, were both reviewed for an abuse of discretion.

Starting with the saving statute, the Court of Appeals reflected that the trial judge "needed the date of the voluntary dismissal to determine whether Appellants timely refiled their complaint pursuant to R.C. 2305.19." The refiled complaint only included the date of initial filing. But without an allegation of the dismissal date in the complaint, the question on appeal became whether the trial court properly declined to take judicial notice of the prior case, which had been filed and pending before the very same jurist. The Fifth District relied upon a series of authorities holding that "a trial court cannot take judicial notice of factual allegations or evidence from court proceedings in another case," with only "a few narrow exceptions" that did not apply in this instance. The Court also noted that the Supreme Court of Ohio had rejected many opportunities to answer what facts of prior litigation may properly be the subject of judicial notice. Consequently, the trial court's decision not to take judicial notice was affirmed.

The Court of Appeals likewise affirmed the trial court's

decision to deny an amendment to fix the foregoing pleading problem after the dismissal had already been entered. Relying on several decisions holding that "a trial court does not abuse its discretion in denying a motion to amend a complaint once a motion to dismiss has been granted," the Court considered the trial judge's decision that an amendment to fix the saving statute issue would be prejudicial to the dismissed defendants and result in undue delay. Central to the decision was the plaintiffs' timeline responding to the motion to dismiss. The plaintiffs were "put on notice that voluntary dismissal date of the previous case was not contained in their complaint" as soon as the motion to dismiss was filed. Counting days, the Court of Appeals suggested that the motion to amend could have been filed within the "109 days" before the dismissal order or within the "59 days from the close of the briefing on the motion to dismiss." Instead, the plaintiffs asked to amend "eight days after the adverse ruling." The decision denying that motion, and the underlying findings of prejudice and undue delay to the relevant defendants, were affirmed for those reasons.

A potentially helpful note for the practitioner: Civ.R. 15(A) expressly permits a plaintiff to "amend its pleading once as a matter of course within . . . twenty-eight days after service of a motion under Civ.R. 12(B)."

Cooper v. Gen. Truck Sales of Toledo LLC, 2025 U.S. Dist. LEXIS 191195, 2025 WL 2771306 (N.D. Oh., Sept. 29, 2025).

Disposition: Federal district court denied summary judgment in favor of defendant truck dealer as to the applicability of the general tort caps on noneconomic damages in R.C. 2315.18(B)(2).

Topics: General tort damage caps, permanent and substantial physical deformity

The plaintiff was injured in a car accident in November 2021. He required significant surgery to his left shoulder, including a left "biceps tenodesis." But that procedure failed. As a result of the failure, plaintiff suffered a "Popeye" deformity, where the bicep dropped down the arm and the area above it would atrophy. After a second procedure, which corrected the "Popeye" condition, plaintiff was left with "scarring, a sunken region above the bicep, intermittent pain, and limited range of motion in the left shoulder." The district court included photographs of the resulting condition of the arm in its written opinion.

The defendants sought summary judgment on the issue of the application of the general tort caps on noneconomic damages in R.C. 2315.18(B)(2). Both sides submitted expert opinions

differing on the seriousness of the plaintiff's condition following the second surgery. While the defendants' expert admitted there was "visible scarring on the bicep and left shoulder," he generally asserted that this was not a "remarkable" instance of a "Popeye" deformity. Plaintiff's expert opined to the contrary that this was a visible "Popeye" condition, and that it was accompanied by pain, stiffness, and weakness that were likely to persist.

The dispute turned on the exception to the general tort caps on noneconomic damages in R.C. 2315.18(B)(3)(a). Plaintiff argued that his "deformed bicep, visible atrophy, visible surgical scarring, implantations of internal hardware, and restricted use of his left arm clearly constitute objective deformities, and their significance should be submitted to a jury to decide." The district court rejected the defendants' contrary position that the injuries were "not significant enough" to satisfy the exception for permanent and substantial physical deformity. The court cited to a number of cases recognizing that "altered musculature accompanied by pain and scarring can meet the evidentiary threshold." While the court recognized that a "single minor scar" might not satisfy the statutory standard, the court noted "no dispute" that plaintiff suffered from a more substantial injury than that. With photos showing "visible scarring and a prominent indentation in Plaintiff's arm" after "multiple surgeries, each requiring the insertion of medical hardware into his arm," plaintiff presented facts sufficient to reach a jury on the question of whether the exception to the damage caps for permanent and substantial physical deformity applied.

Always important at summary judgment, the district court framed its ruling in terms of the Civ.R. 56 standard: "To be sure, Plaintiff's injuries are not as severe as some in the cases I cited above. Even so, the standard for summary judgment is not if a reasonable jury *will* find for the plaintiff, but if they *could* find for the plaintiff." The summary judgment motion was therefore denied. ■



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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): _____

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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.

Estate of Jane Doe v. ABC Hospital, et al. (pre and post-suit resolution)

Type of Case: Wrongful Death - Improper Antibiotic Administration in newborn baby

Settlement: \$2,150,000.00

Plaintiff's Counsel: David E. Oeschger, Jr., Esq., The Becker Law Firm LPA, (216) 621-3000

Defendant's Counsel: Withheld

Court: Withheld

Date Of Settlement: March 27, 2025 / March 4, 2026

Insurance Company: N/A

Damages: Death of Newborn

Summary: Alleged failure to administer appropriate antibiotic coverage to a newborn. In the hours following birth, the patient began to exhibit signs of infection including decreased oxygen saturation and respiratory distress. The patient was ordered 32 hours of antibiotic coverage, but despite continued signs of infection, the antibiotics were inexplicably discontinued. At four (4) days of life, the patient passed away from sepsis due to E.coli infection. The defendants did not present any standard of care defense.

Plaintiff's Expert: Withheld

Defendants' Expert: Withheld

Baby Doe v. ABC Hospital

Type of Case: Medical Negligence

Settlement: \$2.75 Million

Plaintiff's Counsel: David W. Skall, The Becker Law Firm LPA, (216) 621-3000

Defendant's Counsel: Withheld

Court: Withheld

Date Of Settlement: March 13, 2026

Insurance Company: N/A

Damages: Newborn birth asphyxia, brain injury, and partial disability

Summary: This birth injury lawsuit against a central Ohio hospital involved alleged failure to perform electronic fetal monitoring ("EFM") and intrauterine resuscitation leading to delayed c-section and birth asphyxiation during delivery of a preterm baby boy. Notably, the mother (age 40) was considered high risk for advanced maternal age, diabetes, and a history of multiple emergent preterm deliveries. Upon reporting decreased movement during a 36-week office visit, her outpatient obstetrician performed biophysical profile

testing ("BPP") that produced a concerning result and promptly directed her to go to the hospital with orders that she be provided continuous EFM and IV fluids for fetal resuscitation. Once at the hospital, however, the resident and nursing staff inexplicably did not follow the prior orders for continuous monitoring and support. They instead conducted two additional BPPs, wherein EFM belts were not recording the heart rate for extended intervals totaling more than 25 minutes. What's more, even after the misdirected secondary BPPs, continuous monitoring and support were not resumed for the next 32 minutes, leaving the baby at risk of dangerous, unobserved deterioration in a situation that was already worrisome. When monitoring finally resumed, the heart rate had indeed dropped and shortly after plummeted below 60 beats per minute (bradycardia) without recovery. The providers rushed to perform an emergency c-section but could not deliver for another 29 minutes due to the lack of prior IV access and other preparation that should have already been completed given the earlier concerns.

This overall delay to recognize the deterioration and deliver was unfortunately too long and too much to withstand. By that time, the newborn had become asphyxiated, with corresponding severe depression (apgars 0/0/2/3) and critical fetal umbilical artery acidemia. This birth-related asphyxia and structural brain damage that followed have since led to the boy, now age 8, being diagnosed with mild cerebral palsy and permanent intellectual deficits that he will endure on a life-long basis.

Plaintiff's Expert: Withheld

Defendants' Expert: Withheld

John Doe Injured Driver

Type of Case: Motor Vehicle Collision

Settlement: \$875,000.00

Plaintiff's Counsel: Romney B. Cullers, The Becker Law Firm, LPA, (216) 621-3000

Defendant's Counsel: Withheld

Court: Withheld

Date Of Settlement: February 6, 2026

Insurance Company: Withheld per confidentiality

Damages: Permanent Injury to Lower Extremity

Summary: A 61-year-old gentleman employed part-time as a pipefitter was rear-ended at a high rate of speed. Shortly before the crash, he had undergone a total knee arthroplasty

of the left knee. The force of the impact disrupted the knee arthroplasty and he developed instability and mechanical looseness, ultimately requiring a revision total knee arthroplasty. Unfortunately, after a brief period of recovery, the plaintiff posted videos of himself dancing on various social media platforms which made proving damages challenging. However, he maintained throughout the litigation that the reason he “looked good” in the videos is because “he is a great dancer.” In fact, he had some permanent restrictions in flexion and mobility, limiting his ability to kneel, squat, climb, and maintain his balance, and of course, dance like he used to.

Plaintiff’s Expert: Withheld per confidentiality
Defendants’ Expert: Withheld per confidentiality

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Tamula Higgins v. Intrepid Insurance Company

Type of Case: MVA
Settlement: \$585,000
Plaintiff’s Counsel: Jordan D. Lebovitz, Esq. and Kyra Wieber, Esq., Nurenberg, Paris, Heller & McCarthy Co., LPA, 600 Superior Ave., E., Suite 1200, Cleveland, OH 44114, (216) 621-2300
Defendant’s Counsel: *
Court: Cuyahoga County Common Pleas Court
Date Of Settlement: February 2026
Insurance Company: Intrepid Insurance Company
Damages: *

Summary: Plaintiff was t-boned by a driver who ran a red light in downtown Cleveland, causing back injuries, disc herniations, and requiring surgical intervention.

Plaintiff’s Expert: Zachary Gordon, M.D.; Maryann S. Cline, BS, RN, CRRN, CCM, CLCP, CNLCP; Edward Aube, DPT; Randi Owen, MA, MEd, CVE, CRC, CCM; and David Boyd, Ph.D.
Defendants’ Expert: *

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Adams v. ESS Equipment Sales & Service

Type of Case: Auto v. Work Truck Collision
Settlement: \$2M
Plaintiff’s Counsel: Florence Murray, Murray & Murray, (419) 624-3011
Defendant’s Counsel: Donald Anspaugh & Patrick Roche
Court: Huron County Common Pleas Court Case No. CVC 2024 0163, Judge Conway
Date Of Settlement: January 2026
Insurance Company: Westfield
Damages: mTBI with binocular vision disorder, dysautonomia, migraines with light and sound sensitivity, pituitary dysfunction; memory problems and angry mood swings

Summary: Client was 16 when she stopped to turn into a driveway on US 20 and was rear ended by a work truck weighing just under 15,000 lbs traveling at 55 mph. She suffered immediate effects of concussion, and had trouble even finishing HS, but had been the #1 softball catcher in the country when her team won nationals the season before the crash. She was unable to go to college and 4 years after the crash started blacking out after being on her feet too long, as she continued to have cascading symptoms even when the case settled at the 5 year mark. Askenazi was videotaped as was her depo and she was caught lying about the scores and the answers. Steiman withdrew after he was ordered to produce his taxes and financials. Koletsky does not know anything about TBIs.

Plaintiff’s Experts: Shahin Korangy (Radiologist); Marc Orlando (PM&R); Kate Smith (LCP); Brendan Bauer (Neurologist); Michael Freeman (Biomechanic); Charlotte Otabor (Economist); Richard Frederick (Rebuttal Psychologist); Steve Belyus (Crash Reconstruction); and Opada Alzohaili (Endocrinologist)
Defendant’s Experts: Galit Askenazi (Psychologist); Gerald Steiman (Neurologist); Jason Johnson (Radiologist); and Richard Koletsky (Endocrinologist)

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Estate of John Doe v. ABC Corporation, ABC Rental Co., and Contractor

Type of Case: Product Liability
Settlement: Confidential
Plaintiff’s Counsel: Ryan Fisher, James Lowe, and Kyle Melling, Lowe Trial Lawyers, (216) 781-2600
Defendants’ Counsel: Confidential
Court: Lucas County
Date Of Settlement: January 2026
Insurance Company: *
Damages: Crushing death

Summary: Plaintiff’s decedent was killed when he fell from the operators platform on a piece of construction equipment into a moving pinch point where he was sucked in and crushed to death. Plaintiff alleged the equipment was defective because it lacked several simple safety devices any one of which would have prevented the incident. Defendants argued that decedent was standing and was unbelted while he was operating the equipment.

Plaintiff’s Experts: Paul Lewis, Jr. (Biomechanics); Tim Harpster (Property Appraiser); Jonathan Eisenstat (Pre-Death Terror); Wayne Knoblauch (Economics); Carl Sabo (Voc Rehab); Russ Hunt (Human Factors); and Tom Berry (Product Design)
Defendants’ Experts: Eric Boelhouwer (Human Factors); Bret Salyers (Property Appraiser); Andrew Baker

(Pathology); Michael Rogers (Engineer); Joel Breuer (Engineer); Kathleen Rodowicz (Engineer); Tara Amenson (Biomechanic); and Paul Zimmer (Economics)

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Jane Doe v. ABC Automobile Manufacturer

Type of Case: Automobile Product Liability
Settlement: Confidential
Plaintiff's Counsel: Ryan Fisher, Kyle Melling, and Jaime Jackson, Lowe Trial Lawyers and Jaime Jackson Law, (216) 781-2600
Defendant's Counsel: Confidential
Court: Cuyahoga County
Date Of Settlement: November 2025
Insurance Company: *
Damages: Quadriplegia

Summary: Plaintiff's stopped vehicle was struck from behind at a high rate of speed by tortfeasor on the highway. The driver attempted an evasive maneuver 0.3 seconds before the impact. Tortfeasor's SUV was sold without any front crash mitigation technology when the manufacturer sold the same SUV at higher trim levels with crash mitigation technology as standard equipment. COA against the manufacturer was its failure to equip the vehicle with Forward Collision Warning and/or Automatic Emergency Braking technology. Confidential settlement was achieved with vehicle manufacturer and for the driver's policy limits.

Plaintiff's Expert: Tony Gioutsos (Automobile Algorithms); William Vigilante (Human Factors); Peter Leiss (Vehicle System Engineering); Shawn Harrington (Accident Recon); Ron Fijalkowski (Biomechanics); Camillo Castillo, MD (PM&R and LCP); and Alex Constable (Economics)
Defendants' Expert: J. Bradley Sargent (CPA); Erin O'Callaghan (LCP); Todd Best (Physiatrist); Eldon Leaphart (Engineer); Austin Folley (Engineer); Kristin Lennox (Data Sciences); David Cades (Human Factors); and Nicholas Durisek (Accident Reconstruction)

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The Estate of Devon R. Cook v. Montville Township, et al.

Type of Case: Premises Liability, Wrongful Death
Settlement: \$2,500,000.00
Plaintiff's Counsel: Steven M. Goldberg
Defendants' Counsel: Greg Beck / Baker Dublikar
Court: Medina County Common Pleas Case No. 19CIV0760, Judge Joyce V. Kimbler
Date Of Settlement: August 26, 2025
Insurance Company: OTARMA
Damages: Wrongful Death
Summary: The Estate of Devon R. Cook obtained a \$2,500,000 settlement from Montville Township for a fatal

tree fall along River Styx Road near Austin Badger Park.
On August 4, 2017, Devon Cook, 28, was driving with her 12-month-old daughter when an 84-foot dead white ash tree collapsed onto her vehicle, killing her instantly. Her child was uninjured. The tree straddled the boundary between Township park property and the Medina County roadway; two of its three trunks had fallen previously.

The Estate showed Montville had actual and constructive notice of the hazard for years, including written warnings and prior inspections. A Board-Certified Master Arborist testified that accepted standards required the tree's removal long before the incident. Surveys confirmed the tree's base extended onto Township land, imposing a shared duty to address the danger. Montville claimed political subdivision immunity and denied responsibility, but the trial court denied summary judgment, the Ninth District affirmed, and the Ohio Supreme Court dismissed further appeal.

The case settled in mediation for \$2.5 million, providing over \$4.3 million in guaranteed future payments to Devon's two minor children. Goldberg Legal, with attorneys Scott L. Melton and Eric H. Zagrans, represented the Estate.

Plaintiff's Experts: Mark A. Webber, BCMA, CPH, LTE, MArborA, OCMNT, TPAQ, TRAQ (Master Arborist); Dennis W. Stoffer, P.E., P.S., CPESC (Engineer-Surveyor); David E. Stewart (Vocational); and Alex L. Constable (Economist)
Defendants' Expert: Joseph A. Burgoon (Engineer-Surveyor)

.....
John Doe v. ABC Company

Type of Case: Construction
Settlement: \$1,000,000
Plaintiff's Counsel: Jordan D. Lebovitz, Esq., Joshua D. Payne, Esq., Kyra Wieber, Esq., Nurenberg, Paris, Heller & McCarthy Co., LPA, 600 Superior Ave., E., Suite 1200, Cleveland, OH 44114, (216) 621-2300
Defendant's Counsel: Confidential
Court: Confidential
Date Of Settlement: Confidential
Insurance Company: Confidential
Damages: *

Summary: Plaintiff was injured in a construction incident, causing multiple lumbar fractures and a traumatic shoulder injury resulting in a dislocation and torn rotator cuff requiring multiple surgeries.

Plaintiff's Experts: Michael Hayslip, P.E.; Randi Owen, M.A., M.Ed., C.R.C., C.C.M.; Joseph Riley, M.D.; Xin S. Xin, M.D.; Christopher Lovejoy, D.P.T.; and David Boyd, Ph.D.
Defendant's Expert: *

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.

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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 Thomas P. Ryan, Esq.
Ryan, LLP
55 Public Square, Suite 2100
Cleveland, OH 44113
(216) 363-6028; Email: thomas.ryan@ryanllp.com

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Spring 2026

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